[The Title-Page of the Edition of 1621]

A WORK ON THE THREE THEOLOGICAL VIRTUES FAITH, HOPE AND CHARITY

Divided into Three Treatises, to Correspond with the Number of the Virtues Themselves

by Doctor

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of Granada

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Dedicated to the Most Illustrious and Most Reverend

Lord D. JOÀO MANOEL

Bishop of Vizeu, &c.

With the Privilege of the Inquisitors, of the Ordinary, and of the King

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In the Year 1621

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TO THE MOST ILLUSTRIOUS LORD D. JOÂO MANOEL, MOST EMINENT BISHOP OF VIZEU, WISEST OF COUNSELLORS TO THE CATHOLIC KING

The Jesuit College of Coimbra

Far more tardily than befits us, most illustrious Bishop, this College of Coimbra, belonging to our Society, and by many titles yours also, offers to you this gift, such as it is. For this College is keenly aware that in you alone there are combined in the highest degree all those qualities by which authors are customarily moved to pay such tribute to their benefactors. They are the glory of your name, and of your truly royal lineage, the distinction of episcopal rank, choice literary culture, and what surpasses and almost eclipses all other titles, an admirable union *of* all the virtues that adorn a man and a prince. For if it is not unbecoming to pass over other considerations, it would seem to betoken not a human, but (as it were) a divine excellence, that one who excels in every way, should be unassuming in his mode of life, not elated by honours, and, though of an exalted position, not disdainful even of humble friends. For those reasons, indeed, Father Francisco Suarez, while living, had long been aware that he ought by some outstanding product of his talents, to manifest in unique fashion the gratitude due to you before all others. This, I bear witness, was the perpetual and constant -wish, this the ardent endeavour, of one whose last wishes it would be wrong, in our judgment, utterly to disregard, especially as he could have found no more favourable advocate for his teachings, no readier champion of his labours.

However, we found at hand no work of this kind by which the debt could be completely discharged, and which could be considered a gift worthy of your acceptance.

[iv] But, lo ! there now speaks one from above (in my belief, none other than the author), who says: 'You have here the treatise on the theological virtues, by means of which you may carry out the wishes of Suarez, and which you may quite fittingly lay before the illustrious Bishop of Vizeu, so that he who is known to have cultivated these virtues long and well, shall also be the patron of that teaching concerning them, by which the minds of men are disposed to harmony?

Doubtless, Suarez had foreseen that this posthumous offspring of his talents, when it had come into our possession, and being bereft of its parent, would have need of your protection and your guardianship, so that, should it chance to be exposed to the arrows of the envious,

it might be sheltered as by a rampart. For though the author was one whom the plaudits of the world, already universal, had raised above the reach of envy, nevertheless, now that he has attained to that more blessed felicity, far removed from human intercourse, he has been able to look, for this solicitude, to you alone, his strongest and most loving defender.

In truth, how'ever, our College has been moved [also] by this consideration, namely, that the work should by preference be dedicated to you, if not as an [adequate] manifestation of the cherished hope that we may requite our own debt of gratitude, yet as some slight testimony of the sentiments which, each and every one, we entertain for you. Even though you accord but scanty credit to our own labours in connexion with this work, yet the author was one on whose behalf those labours will seem not unfruitful, and to you, most Eminent Lord, before all others, the fruits of that author should be dedicated. *Vale.*

[v]

BALTHASAR ALVARUS, DOCTOR OF THEOLOGY, OF THE COLLEGE OF COIMBRA OF THE JESUIT SOCIETY

To the Readers on behalf of the Author

There are three chief reasons which have urged us not to confine within the enclosure [of our College] these lectures on the theological virtues. First, one might in all justice anticipate that a discussion of theological virtue by so great a theologian would be worthy, indeed, of so eminent an author and so weighty a subject. Secondly, the greater part of this wrork, which treats of faith, is (as it were) the last offspring of Suarez, generated that he might give a final proof, from his exalted position, of the wealth of his genius and the rich vein of his wisdom. Although, in Spain or in Italy, before he was summoned to this Academy of Coimbra, Suarez dealt more concisely (as he WOuld do in the schools) with the subject-matter of the other two treatises, yet, they cannot fail to evince traces of the author's power and artistry. Thirdly, since—owing to the reasons which we have just mentioned—many copies of those lectures on faith were transcribed incorrectly, and since the number of these copies increased daily, we have decided to make them public, thoroughly freed from copyists' errors, and readily accessible to all students, thanks to the help of the press.

It will, however, appear that in this work one thing is lacking in [vi] doctrinal method—though you would hardly find any other writer so successful and scrupulous in the observance of that method—that is io say, the author ought first of all to have discussed the theological virtues in general, and then treated thereafter *of* the points proper to

each. But a reply is ready to hand. For since all habits that accompany grace, chief of which are the theological virtues, go by the name of holiness, there remained hardly anything to be said as applicable to them in common, that would not be applicable also to sanctifying grace. The matter has been treated by Suarez in his work *De Gratia*[1] lately published, in questions such as these: first, are there any such habits *per se* infused and dwelling in the soul? Are the principles of their acts adequate (a point fully treated in Book V I)? Secondly, do the aforesaid habits demand a special co-operation of grace, in order that they may be actualized, or is the general co-operation sufficient (a question accurately treated in Book II)? Then again, thirdly, can these habits become more intense or remiss or be lost altogether (treated in full in Books IX, XI)?

However, if an explanation as to other more common elements in these virtues is desired, it will be published, God willing, in the fourth treatise, that on Passions and Habits, where the treatment by St. Thomas (I.-II, qq. 62 *et seq.)* will be amplified. *Vale.*

1 [No part of Suarez's treatise *De Gratia* is included in these *Selections.*—Ta.]

FRANCISCO SUAREZ

A WORK ON THE THREE THEOLOGICAL VIRTUES FAITH, HOPE AND CHARITY

Of this treatise On Faith, Hope and Charity, only the following Disputations are included in these *Selections:* Disputation XVIII of *On Faith* and Disputation XIII of *On Charity*

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A WORK ON THE THREE THEOLOGICAL VIRTUES FAITH, HOPE AND CHARITY

ON FAITH: DISPUTATION XVIII

DISPUTATION XVIII

ON THE MEANS WHICH MAY BE USED FOR THE CONVERSION AND COERCION OF UNBELIEVERS WHO ARE NOT APOSTATES

The means by which men may be drawn to virtue and faith, or recalled from vice and unbelief, are partly those which move the will through persuasion, instruction or kindness; and partly those others, which hold man to his duty through punishment or coercion.

The mccins dv which unbelievers may be convert^> differ in

Of such means, the former class are, without doubt, more in harmony with faith, because their influence is brought to bear more upon the will, and faith should be voluntary. But the latter class are sometimes necessary, if there is not to be a lack of power; and consequently, we are bound to treat *of* both groups, beginning with the former. Nevertheless, since the second group depend especially upon authority, which must reside in some individual, in order that he may coerce or punish another, we must first state that this coercion may be twofold, direct and indirect.

A twofold coercion: direct, and indirect,

As to this issue, in order that coercion may be directly applied, two things are required. One is that it should be derived from the power of jurisdiction; the other is that this means should be used to draw men to the faith. Indirect coercion will be present, when compulsion is exerted not intentionally but in self-defence, or else in order to punish the injustice or crime of another.

Therefore, this latter sort of compulsion might be exercised without anY Power of jurisdiction. With regard to this power, it is well to note at the outset that jurisdiction -n Qlurc}l js twofold, spiritual and temporal. Hence, unbelievers may be subject to the Church in either *of two* ways, namely, with respect to the spiritual jurisdiction, as apostates are, or merely with respect to the temporal jurisdiction, as in the case of unbelievers who are not apostates.

Ecciesiasticai jurisdiction is twofold in this matter.

SECTION I[1]

HAS THE CHURCH THE POWER AND RIGHT OF PREACHING THE GOSPEL TO ALL UNBELIEVERS EVERYWHERE?

I. In the caption introducing this question, two words, power *t (-potestas}* and right *(ius* must be noted and distmguisned, since they do not mean the same thing, ρ0Γ there are two ways in which one may have the power to perform a given act. First, there is the per-

Explanahon of what constitutes the right and power of preaching

[1] [It should be borne in mind by the reader that this Disputation and the one following are divided by Suarez into Sections and Sub-sections instead of Chapters and Sections, as elsewhere.—Tr.]

missive sense; since one may be allowed to perform an act, although he may have no peculiar right to do so, no proprietary privilege (so to speak) with regard to the practice or act in question, as when I am allowed, for example, to enter the house of another. In the other sense, this power is coupled with right, as in the case of the power to make use of one's own house or of common property. Hence, in the question propounded above,[1] the power referred to must be understood in both senses.

[The first proposition:] the Church has lawful power to preach the Catholic faith in all regions,

Therefore, we must assert, first, that the Church has that power by which it may legitimately preach the Catholic faith everywhere and to all kinds of unbelievers. This is obvious and is clearly a matter of faith, as is proved *fay-* the words of Christ in the following passages: *{Matthew,* Chap, xxiv [, v. 14]) 'And this gospel [of the kingdom,] shall be preached in the whole world, for a testimony to all nations'; (Chap, xxviii [, v. 19]), 'Going [therefore], teach ye all nations'; and *(Mark,* Chap, xvi [, v. 15]), 'preach the gospel to every creature.' For He Who gave this command, gave also the power of carrying it out, as the event has proved. Paul said (in the *Epistle to the Colossians,* Chap, i [, v. 6]), speaking of the Gospel: 'It has come unto you, even as it is in all the world bringing forth fruit and growing.' The reason [for the existence of this power] is also clear. For faith is necessary to all for salvation; and therefore, it was likewise necessary that there should be some way of announcing this faith to the whole world, since otherwise there would not be salvation for all according to the ordinary law, in view of the fact that, by the common and ordinary process, faith comes only through hearing and preaching, as Paul bears witness in *the Epistle to the Romans* (Chap, x [, w. 14 et seq.]). For this reason also Christ Our Lord said *(Luke,* Chap. xxiv[, w. 46-7J: Thus it is written, and thus it behoved Christ to suffer, and to rise again from the dead [, the third day]: And that penance [and remission of sins] should be preached in his name [...].' Consequently, this act of preaching the faith is righteous in its very nature and by reason *of its* object; hence, it is permissible of itself; and therefore, the power of executing that act is everywhere essentially legitimate, and proper to the Church. Finally, the [possession of the power] in question is also in harmony with natural reason. For the reproval of a brother by fraternal correction, and the instruction of the ignorant, especially regarding those things which relate to good conduct are [acts prescribed] by natural law, and the power of performing these acts—nay more, the obligation to do so at an opportune time—is therefore given to all; consequently, when once the fact *of* revelation and

Mark, last chap.

Colossians, i.

Luke, xxiv.

The foundation [of this proposition].

[1] *[Le. the* heading for Section I. 'Has the Church the Power and Right of Preaching the Gosoel to All Unbelievers Everywhere?'—Tn.]

the necessity of faith, are assumed, the act of communicating that revelation through speech and teaching, and the permission to do so, follow (as it were) from the natural law, and therefore, the power of preaching is also derived from it.

We may infer incidentally that this simple power (so to speak) normally belongs in some degree to all believers, if they are sufficiently instructed to exercise it, and are not otherwise forbidden. This is obvious, for the reason that [such preaching] is a work of charity, and one of the works of mercy, a fact which will be more fully expounded in connexion with the next proposition.

The inference [from the first proposition]*

2. My second proposition is as follows: the Church has not only the simple and (so to speak) the permissive faculty of preaching the Gospel everywhere, but also the right *° preach thus, coupled with a special power. This is evidently the opinion of St. Thomas, as expressed jn & passage (П.-II, qu. io, art. 8), on which Cajetan and other commentators are in agreement; as are other scholastics (on the *Sentences of Peter Lombard,* Bk. II, dist. xli), especially Major *(ibid.,* Dist. xliv, qu. 3), others on the *Sentences* (Bk. IV, dist. iv), including Soto *(ibid.,* Dist. v, the sole question, art. 10), and Victoria (Relectio I: *De Indis,* Sect. II, no. 9 [Relectio V: *De Indis,* Sect. III, no. 9]).

The second proposition concerns the ChŸŸSiï power to 469 preach the true faith everywhere.

St. Thomas. Cajetan. Major. Soto. Victoria.

The basis of that opinion is that Christ our Lord had this power over all men, as His heritage. For that heritage was to j,e obtained by means of preaching the faith; and since all the nations were not to be instructed by Himself, Christ bestowed the power of giving such instruction, coupled with the corresponding right and authority, to His apostles, and through them to the Church; therefore, the Church has this special right. The entire first proposition of the foregoing argument may easily be drawn from the Old and New Testaments. For in *Psalms,* ii [, v. 6], the Psalmist, speaking in the person of Christ, says: 'But I am appointed king by him over Sion his holy mountain', while the mode of acquiring the kingdom is indicated by the phrase *[ibid.],* 'preaching his commandment'; and then these words are added *[ibid.,* v. 8]: 'Ask of me and I will give thee the Gentiles for thy inheritance, and the uttermost parts of the earth for thy possession,' plainly declaring a plenitude of jurisdiction over the whole world. That this prophecy was fulfilled in and through Christ, Our Lord Himselfhas testified, saying, *Matthew,* last Chap. [chap, xxviii, v. 18], 'All power is given to me in heaven and in earth'; then follows the command *[ibid.* v. 19], 'Going [therefore], teach ye all nations', whereby He communicates His own right and power to the Apostles. This is Paul's meaning in the words(2 *Corinthians,*

Rack of the second proposition.

Psalms, d.

Mauhm, last rhap.

i Comtfaasu,

Chap, v [, v. 19]), 'hath placed in us the word of reconciliation'; to which he adds *[ibid.,* v. 20], 'For Christ therefore we are ambassadors'; and an ambassador, indeed, represents his prince and shares in his power. Accordingly, Paul also said *(Ephesians,* Chap, iv [, w. 11–12j), 'And He gave some apostles [. ..] and other some pastors and doctors [...] for the edifying of the body of Christ'; and, in his Second *Epistle to Timothy* (Chap, ii [, v. 9]), '[I labour even unto bands, as an evildoer,] but the word of God is not bound'; that is to say, it is not bound, because the Church has this right of spreading the word, and not merely the right, but the necessity and obligation as well, according to the passage *Corinthians,* Chap, ix [, v. 16]), 'For woe is unto me if I preach not the gospel, for a necessity lieth upon me.'[1] Finally, the words of Christ to Peter *(John,* Chap, xxi [, v. 17]), 'Feed my sheep,' support this truth; for the term 'Feed' refers not merely to an indefinite sort of power, but to one coupled with jurisdiction, which is exercised, or rather, is begun, by preaching. Therefore, since this power was given to Peter that it might persist in the Church forever, the Church possesses such right and power.

Ephesians, iv.

2 Timothy, a.

j

John, soi.

3. Moreover, if we regard the end to be achieved, a reason can be given for the existence of this authority, namely, that the power of teaching the faith was necessary, as I have said, for the salvation of men, and in order that the redemption of Christ might be brought to all men. Therefore, in order that the said power of teaching might be efficacious, it was necessary to communicate it not only with a simple authorization and (as it were) permission, but also with its own proper right and power. The Lord Christ was able to give that power in this way; hence, He did so give it. Furthermore, although the existence of such power cannot be demonstrated by natural reason, it is still entirely in harmony therewith, since, as I have said, the right of teaching the ignorant is (as it were) connatural to every man. Therefore, assuming the necessity for faith, it is entirely consonant with reason that the Author of faith should leave to His ministers and especially to His Vicar this special right of instructing men in the doctrines of the faith.

authority, in terms of the end in view, is

4. From this second proposition, a third follows, namely: the Church has the right of defending its preachers, and of subduing those who by force and violence hinder or do not permit this preaching. This is the opinion held by the authors above cited, and especially by Major and by Victoria. It is possible also, in a sense, to confirm this proposition by an example from Paul *(Acts,* Chap, xiii [, w. 8-11]), who condemned Elymas the sorcerer to

The third proposition: the Church has the right of protecting its preachers, and of punishing those who hinder its preaching.

Acts, xiii.

[1] [The word order, as given by Suarez, varies somewhat from the Vulgate.—Tr.]

a perpetual blindness for resisting the ways of the Lord, as Jerome stated in his letter *To Riparius against Vigilantius [= Letters,* cix. 3] and cited in *Decretum,* Pt. II, causa xxm, qu. viii, can. xiii, where there are many references to the Fathers who confirm this truth; see also *Decretum, ibid.,* can. xi, and other passages therein. Jerome.

Reasons in support of this proposition are easily inferred from what we have already said. The first is that if the Church has the right of preaching the Gospel everywhere, then whoever by force or violence prevents the exercise of this right, does an injury to the Church. Therefore, the Church may repel such violence and protect its own right; for this [secondary right] follows naturally from the original right [of preaching], especially since the authority in question is supreme within its own order, as is this right in the Church. The first reason in proof of this proposition.

Secondly, this same reason is reinforced by another principle of both canon and civil law, namely: when jurisdiction is granted, everything morally necessary for the exercise thereof is granted as well, because otherwise the grant would be minimized and inefficacious *{Digest,* II. i. 2; and likewise *Decretals,* Bk. I, tit. xxix, chap, v and other similar passages). But the right in question has been given to the Church as a true power and jurisdiction over the whole world, a fact which has been proved by the words of Christ, 'Feed my sheep'; and the exercise of that jurisdiction should begin with the preaching of the Gospel; therefore, it is necessary that the Church should at least have the power of protecting [its preachers]. The second reason.

The third reason, which is very cogent, concerns a power that is natural (so to speak) though indirect. For every state has the power to protect innocent persons who surfer grave injury from those stronger than themselves; but whoever hinders the preaching of the Gospel does the gravest injury to many who perchance might have been converted if they had heard it, and who would willingly have heard it, if it had been preached to them; therefore, the Church has the power of protecting those who in that respect are innocent and who suffer a grave injury.

Finally, there is another analogy showing that the existence of this power is consonant with natural reason. It is as follows: every state has the right of sending ambassadors to treat of peace with another state, and consequently the former has the right of protecting those ambassadors and of avenging an injury if they are ill-treated; therefore, much more has the Church this right with respect to her own ambassadors who are the preachers of the faith, especially since the Church, as was proved above, has the power, given by Christ, to expand and to occupy the whole world. The fourth reason.

5. But first we must inquire: In whom is vested this right or power which we have said exists in the Church? This question may be asked either with regard to the immediate power of preaching the Gospel, or secondly, with regard to the right to send forth preachers, or thirdly, with regard to the right of defending those preachers and of removing any obstacle in their way.

The power of preaching the faith rests in pastors separately, and is one of common right.

As to the first phase of the question, it must be said that this power is vested as one of ordinary right in each of the pastors of the Church respectively; and by delegation it is vested in those only who are legitimately sent forth by those pastors.

The first half of the immediately preceding statement is clearly true, because this power is not only highly necessary to the pastors of the Church, but, more than that, it belongs by virtue of their office to them alone. For the sheep of Christ are to be fed chiefly with the word of faith, and Christ committed His sheep to the charge of these pastors. Moreover, I have said, 'respectively', because the power in question, in so far as it is supreme and universal over the whole world, resides in the Roman Pontiff alone, as Salmeron (on the *Acts of the Apostles,* Vol. XII, tract, xxxviii) well taught.

Salmerôn.

And by delegation, the power in question only who are fully sent out to preach.

In the case of bishops, this power is limited to each one's own diocese, with dependence on the supreme Pontiff. In the case of parish priests, it exists in a proportionate degree, as I assume from other passages.

The second half of the same statement[1] is proved by the custom of the Church. For the practice which has always been observed, from the beginning, is that the ministers of the Gospel should be sent out by the Apostles or by other pastors, according to the passage (2 *Corinthians,* Chap, iii [Chap, viii, v. *22]),* 'And we have sent with them our brother,' &c. More explicitly, elsewhere occur these words also *(Romans,* Chap, x [, v. 15]): 'And how shall they preach unless they be sent?' Secondly, this restriction is necessary for the observance of due order, upon which depend the peace and the tranquillity of the Church, and also for the sake of purity of doctrine; for errors would easily be implanted if any person whosoever should assume to himself the power of preaching the faith; and consequently, this office must be exercised by commission from the Church or from its pastors, a rule which is laid down in the *Decretals* (Pt. V, tit. vn, chap. xii). Finally, the right in question pertains to the power of jurisdiction; nor can any one of his own authority usurp the jurisdiction of another, particularly not when this jurisdiction is spiritual and supernatural, and should therefore flow from Christ immediately,

2 Corinthians, iii [viii].

Romans, x.

[1] *[FÙÙ* two paragraphs above.—Tr.]

or from him to whom Christ directly granted such jurisdiction when he said, 'Feed my sheep', or, 'I send you'.

This must be understood as referring to public preaching, and not to private instruction.

However, all this must be understood as referring to public preaching, which is carried on by virtue of special authorization; inasmuch as private instruction and teaching can be conducted by any one of the faithful sufficiently learned, when the principle of charity and the occasion should so demand. This is the meaning of the statement in *Ecclesiasticus* (Chap, xvii [, v. 12]), 'And God gave to every one of them commandment concerning his neighbour.' For this sort of instruction is not a usurpation of jurisdiction, since such private teaching is given, not as though by virtue of the pastoral office, but by reason of a duty or counsel of charity. St. Thomas (on *Romans,* Chap, x) adds also that the passage in *Romans* refers to the ordinary [public church] law; for the Holy Spirit, by a private law, may send whomsoever He shall wish, inspiring such a minister with a special impulse to this service. But in that case the Church must be assured by some supernatural act or sign of the validity of this private law, a fact which is brought out in the *Decretals* (Bk. V, tit. vn, chap. xii). Otherwise—that is to say, if anyone wishes to exercise this gift contrary to the precept and [right] order of the Church (as Innocent III said in a similar case, *Decretals,* Bk. I, tit. ix, chap, x), such an inspiration must be judged as proceeding from an evil spirit rather than from a good one.

6. In accordance with the foregoing statements, and in regard to the second phase[1] of the question above propounded it must be asserted that the absolute, supreme and universal of sending preachers of the Gospel to such unbelievers resides in the supreme Pontiff alone; because he a]one is the supreme pastor of the whole flock of Christ, according to the words of Christ, 'Feed my sheep'; and furthermore, because the special duties of extending the bounds of the
471 Church and of disseminating the faith pertain to him, since the other bishops have their jurisdiction limited within definite territorial boundaries. Hence, if there should be any unbelievers of this kind within such territory, any bishop within his own diocese could send to them preachers, or teachers. But as to the territory outside his own diocese, by the ordinary law (as it were) and normally speaking, no bishop below the Pope has this power. However, if necessity presses, or if there should arise a fit occasion for converting any one to the faith, the bishops, as a duty of charity, could send preachers to neighbouring provinces with the approval and the tacit, or interpretative, consent of the supreme Pontiff, who always in such cases should

The supreme and ^ndfrSaforthWer °f preachers°resides in the supreme Pontiff.

1 [Le. 'In whom is vested . .. the right to send forth preachers?' See the first paragraph of Subsection 5 of this Section, *supra,* p. 744.—Tr .]

be consulted as soon as is conveniently possible, that he may, in accordance with his office, provide for the necessity or take advantage *of the* occasion which has arisen.

7. With regard to the third aspect[1] of our question, there is even greater reason to observe that the duty of defending t^ie a^oresa^ right, even by coercion and war, if such defence should be necessary, belongs solely to the supreme Pontiff. In defence of this statement, we argue, first, that it is his duty to defend the universal rights of the Church. Secondly, such defence involves the waging of war, and therefore normally requires power *of* a sovereign order; this power does not reside *per se* in temporal princes, for it is derived from a spiritual right which is not granted to them, but is, on the contrary, joined to spiritual power, the latter being indirectly extended to temporal affairs, as was shown elsewhere. Therefore, the power in question resides only in the supreme Pontiff.

The right of protecting the Penemers even through war and by coercion, resides in the supreme Pontiff; and in what way this is true.

De Legibus, Bk. III, chap. via and in other places and *Defensio Fidei,* Bk. III, from chap, xxii.[2]

It must be added, however, that this power does not so belong to the Pope that it should be exercised by himself or through ecclesiastical persons. For it is no part of the priestly office, nor of the ecclesiastical status, to take up corporeal arms, as was rightly held by Ambrose *[Letters,* xx. 8, *To Marcellina],* who is cited in the *Decretum* (Pt. II, causa xxm, qu. viii, can. xxi), where, throughout the first sir chapters [of the *Causa],* this fact is supported by manifold evidence. Consequently, the Pope has the pow'er of entrusting this defence—that is to say, its execution—to temporal princes, and may even command them to undertake the change *{Decretum,* Pt. II, causa xxm, qu. viii, can. viii with other canons in said question viii).

Ambrose.

It follows, therefore, as Major and Victoria *[De Indis,* Sect. III, no. 10] rightly observe, that the Pope can distribute among temporal princes and kings the provinces and realms of the unbelievers; not in order that the former may take possession of these regions according to their own for tbat WOuld be tyranny, as I shall explain later, but in order that they may make provision for the sending of preachers of the Gospel to those infidels, and may protect such preachers by their power, even through the declaration of just war, if reason and a rightful cause should require it. For this purpose, then, the Pope may mark off specific boundaries for each prince, which that prince may not later transgress without committing an injustice. This, as we read, was done by Alexander VI in the case of the kings of Portugal and of Castile.

Major. Victoria.

The supreme Pontiff may entrust this right of defence to ~~kin~~gs, ~~and distribute~~ to them the kingdoms of unbelievers.

The chief reason of all [for asserting this principle] is the fact that

1 [Le. 'In whom is vested... the right of defending... preachers and of destroying any impediments in their way?' See the first paragraph of Sub-section 5 of this Section, *supra,* p. 744.—Tr.]

2 [Not included in these *Selections.*—Tb.]

it is expedient that this matter, w'hich most gravely concerns the Church, should be conducted in an orderly manner. For that is most necessary, both for preserving peace among Christian princes, and also in order that each of these princes may procure with the greater care the welfare of the people committed to his charge. Therefore, this prerogative belongs wholly to the Pope as one who gives the first impulse (so to speak); for kings are (as it were) his organs and instruments, and consequently no [temporal prince] can transgress the limits prescribed to him, since he cannot act unless he has received this impulse.

8. A further inquiry may be made regarding this same doctrine, and especially regarding the third proposition: an inquiry that is, as to whether such defence *of* preaching and *of* preachers of the Gospel is allowed only after injury has been inflicted by unbelievers, or some obstacle has been placed in the way *of* the preaching of the faith; or whether that defence is permitted as a precautionary measure (so to speak) and soldiers may be employed in order to prevent injury to the preachers, or in order that their ministry may not be hindered.

Whether the defence of preachers of the faith is allowed before any injury has been done to them. —The affirmative opinion of some is stated.

For some have said that a Christian prince may justly seize the territory of a pagan king on this ground alone, namely, in order that the Gospel may be preached with greater ease anj securjty under a Christian prince.

The affirmative opinion of certain persons.

But since this opinion understood, without limitation, is incredible, as will be made clear from what we shall say later on, some have modified it by declaring that Christian princes may send forth preachers accompanied by a military force, sufficient, not for the waging ot* war, but in order that the preachers may proceed in security. They add also that a Christian prince may build towers and fortified strongholds in the lands of unbelievers, especially at the national boundaries, in order that entrance and access to such lands may be made easier and
472 more secure for the faithful. Finally, they hold that a prince may collect, from the unbelievers who inhabit the territory in question, whatever expenses he has incurred in such enterprises, since that sum is spent for the benefit of those unbelievers; and that, consequently, he may resort to violence and warfare in order to exact payment, if it is denied, and may proceed even to the occupation of the territory if this should be necessary. That is the opinion of Major ([on the *Sentences,* Bk. II, dist. xliv, qu. 2 [qu. 3], and it is based solely upon the principle that preferential favour should be shown to the faith.

f

*ÿor·

9. But this teaching is not to be approved, according to the sounder opinion of Victoria, Bânez, and other modern authors, as set forth in the passages cited above.

The negative opinion is approved,

First, because it has no foundation in the teachings of Christ, but

is rather repugnant to his very words *(Matthew,* Chap, x [, v. 16] and *Luke,* Chap. x[, v. 3]), 'Behold I send you as sheep in the midst of wolves', words by which He plainly meant that the preaching of the faith was introduced not by arms, but by gentleness, patience, and the power of the word, and also by living example, according to the assertjon θρ pau] *Corinthians,* Chap, x [, v. 4]), 'For the weapons of our warfare are not carnal, but mighty to God.'

Luke, x.

2 c^nnthians,

Secondly, the opinion in question is opposed to the custom and practice of the Church, for the Apostles and their successors assuredly did not preach the Gospel in that way, nor were the Popes, even after the conversion of the emperors to the faith, accustomed to send forth preachers to unbelievers in such fashion, a fact which is evident from the case of Gregory, who sent preachers to England, and from similar instances.

Thirdly, the practice under discussion is, in point of fact, not defensive, but aggressive; therefore, it is a virtual coercion to the adoption of the faith, or at least, to a hearing of those who preach the faith ; and such coercion, as we shall presently explain, is not permissible.

The first member of this proposition may be explained thus: if preachers are sent with an army, those to whom they are sent may—morally speaking, and not without obvious reason—presume that these preachers have come to seize their territory rather than to provide for their spiritual welfare ; hence, even as a general rule, [these unbelievers] may justly defend themselves, acting upon a prudent presumption; accordingly, an occasion for a just war is given them, and under these
Φ circumstances, the practice in question becomes an aggressive rather than a defensive measure; and on the other hand, if [the unbelievers] are not able to resist, and yield through fear, that, in turn, is coercion, even in the highest degree.

From this explanation is derived a confirmation of the [concluding] statement [of our proposition, namely,] that such means are not fitted for the introduction of the faith. For they lead to its injury and defamation; since the infidels will think, [if we resort to these means,] that our faith gives us the privilege of violating the *ius gentium,* and even the law of nature, by our seizure of the property of others against the -will of the owners and by our waging of war without any just ground; and since these same infidels will consequently become more hardened, and more indisposed to receive the faith. Therefore, this mode of introducing the preaching of the faith is not permissible.

10. Accordingly, it should be stated that one ought first to try peaceful means, inviting and repeatedly urging infidel princes and states to permit the preaching of the faith in their realms, and to offer or allow security to persons who come into or dwell within their domains for the purpose of performing that task of preaching. This

In what way Christian princes ought to conduct themselves with unbelievers, in order that the latter may provide opportunity for preaching.

is clearly what Christ Our Lord meant, when He counselled the Apostles whom He was sending forth to preach, that above all things they should proclaim peace *{Matthew,* Chap, x [, v. I2]). But if the unbelieving princes resist, and do not grant entrance, then, in my opinion and on account of the reasons given above, they may be coerced by the sending of preachers accompanied by an adequate army.

In like manner, if, after the preachers have been received, the infidels should kill them or treat them wrongfully, when the victims are blameless, and for no other reason than that they have preached the Gospel, then an even better reason for just defence and, indeed, for righteous vengeance, has arisen, the latter sometimes being necessary in order that other infidel chiefs may be coerced and may fear to practise like acts of tyranny. For such [defensive action] is in harmony with the natural law and is not opposed to any command of Christ; and if, during the first years of the Church, this mode of coercion was not customarily practised, the reason was, not that this coercion was impermissible, but that the Church in those days had not the temporal means of resisting the enemies of the faith. For in the beginning, Christ our Lord willed to conquer the world by the power of the word and by that of miracles, in order that His own power and the truth of His doctrine might be made more manifest.

SECTION II

IS IT PERMISSIBLE FOR THE CHURCH AND CHRISTIAN PRINCES TO FORCE THESE UNBELIEVERS TO GIVE EAR TO THE FAITH?

I. With regard to this point, there are two opposing opinions.

The affirmative opinion.

The first affirms absolutely and unconditionally that such coercion is permissible. This appears to be Major's opinion ([on the *Sentences,]* Bk. II, dist. xliv, qu. 2 [qu. 4]), M although he does not state it in set terms.

473 Moreover, this view may be suggested by what we have already said *{supra,* p. 741, Sect. I, sub-sect. 2). For if the infidels could not be forced

Argument I in support of the affirmative opinion.

to listen, then the power to teach would be superfluous, or, at least, in the highest degree useless, since teaching vajn> jf there is no one to hear; but we have said that the Church does possess the power and the right to teach the faith; and therefore it has, accordingly, the power to obtain a hearing through compulsion.

Secondly, the force of the foregoing argument is clear from analogy.

gument '

For Christ said to his Apostles *[John,* Chap. xx. v. 23]: 'Whose sins you shall forgive,' &c., wherefore the Church very properly infers that He commanded the faithful to confess their sins, inasmuch as sins cannot be forgiven unless they are

heard and known; hence, by the same reasoning, if He gave to the Church the power of teaching unbelievers, He therefore gave it the power to force unbelievers to hearken, since there can be no teaching without an audience, or since, at least, such teaching would be vain and useless.

Argument III.

Hence, the opinion in question is founded, thirdly, upon the principle that when one of two correlatives is granted, the other is granted also; since the one cannot exist without the other, as is usually taught in the matter of privileges in a like connexion. What has been stated elsewhere *{De Legibus,* Bk. VIII, chap, xi)| may be consulted. Another principle set forth above has a like bearing on this point, namely, the principle that when jurisdiction has been granted, everything is granted without which that jurisdiction could not well be exercised.

Finally, I contend, in the fourth place, that an argument is derived from what was stated above, namely: it is permissible to employ coercion m order to prevent resistance to the preaching of the faith; but if the pagans are unwilling to listen, in that very unwillingness they resist and impede the preaching of the faith; therefore,. . .

The second and negative opinion.

2. The second opinion denies unconditionally that the coercion in question is permissible with respect to any unbelievers whomsoever, whether or not they are temporal subjects of the Church or of Christian princes. This opinion was held by Valentia ^*Commentariorum Theologicorum,]* Vol. III, disp, i, qu. x, point 6, near end), and Salmeron (Vol. XII, tract, xxxviii [, on the *Acts of the Apostles*^ appears to have upheld the same doctrine.

Valentia.

Salmerôn,

The proofs of the negative opinion are, first, that we do not read that Christ gave this coercive power to the Church; neither does it necessarily accompany the power of preaching, since the latter may have been given with respect to those who wish to hear, and since we often see that a given person has the power, the duty and the right of teaching, but has not the power to compel others to hear him.

Luke, ix.

Secondly, such coercion does not seem to be in harmony with the example of Christ. For we read (in *Luke,* Chap, ix [, w. 54-5]), that once, when He went into Samaria, and the Samaritans proved unwilling to receive Him, certain of His disciples said: 'Lord, wilt thou that [we command] fire [to] come down from heaven', &c.; to whom Christ replied: 'You know' not of what spirit you are. [The Son of Man came not to destroy souls, but to save',] as if to say that force and threats were not to be used against the Samaritans; and accordingly, He peacefully withdrew. The same principle of conduct may be observed in other passages, also. According to one of those other passages

1 [Not included in these *Selections*—Tr.]

[Matthew, Chap, x, v. 14], He said to His Apostles, 'And whosoever shall not receive you, nor hear your words: [.. .] shake off the dust,' &c. *MaUhn,* x.

Thirdly, there is an excellent reason, namely, that faith should be voluntary; therefore, the means to faith Should also be voluntary; consequently, coercion to the faith in the case of the unbelievers in question is not permissible, as we shall observe in the following Section; and accordingly, coercion to the hearing of the faith is also impermissible. The proof of this deduction is as follows: the essential desirability of the means is the same as that of the end, especially when the means are entirely necessary, and desirable solely on account of the end.

The fourth is the principal argument and is as follows: the coercion which we are discussing is either direct—that is, it employs fear, which it inspires with the intention of forcing these unbelievers to the desired act—or else it is indirect—that is to say, it employs fear which is instilled on some other ground, but one from which it is hoped that the act in question will result, even though this result is not intended directly and for its own sake; this latter method of coercion ordinarily has no place in cases of the sort under discussion, because subject-matter and occasion for such coercion are lacking with respect to unbelievers *of* the kind in question; the former sort of coercion, indeed, is always illicit; therefore, . . .

The truth of this second proposition is established thus: without jurisdiction, there is no just coercion; the Church has no jurisdiction over unbelievers who are not its [temporal] subjects, while over those infidels who are its subjects it has at most a temporal jurisdiction, which does not extend to spiritual affairs; and to give ear to the preaching *of* the faith pertains to the spiritual sphere.

3. A third opinion, which is intermediate between these two, and which distinguishes between infidels subject to Christian princes and those who are not subject, seems to me worthy of approval. The third and true °Pinion·

Accordingly, I hold, first, that it is permissible for Christian princes to force their own infidel subjects to hear the faith. Such is the opinion held by Pezant and Binez (on II.-II, qu. 10, art. 8). Moreover, although the latter author shrinks from the view because he thinks that this practice was never customary on the part of the Church, nevertheless, the example of Rome has great weight with me. The first proposition· Pesant. Bâôex.

For the Roman Pontiffs use coercion upon the Jews who are their subjects, compelling those Jews to hear the preaching of the faith once a week, and imposing a penalty upon those who refuse to hear. On this point, one may con- This proposition is proved by means of an example.

474 suit the Bull of Nicholas III which begins *'Fineam*,* and that of Gregory XIII beginning *'Sancta Mater Ecclesia'.*

An evasion of the foregoing proof.

Some persons, however, reply that this imposition constitutes, not a penalty, but a species of tribute, which may justly be imposed upon such infidels, in their capacity as subjects, but which is remitted by the kindness *of* the prince in the case of those who hear the preaching; so that the practice in question is not coercion, at least not coercion of a direct kind, but, at most, indirect—or rather a method *of* inducement through the kindness displayed in the remission of the tribute, a method the use of which is permissible, as we shall explain in the following Section.

This means of evasion is precluded,

This evasion of the difficulty, however, although it cannot be clearly refuted, would nevertheless seem to have been devised without any foundation; for that sum of money which is imposed upon those refusing to hear, is levied, not on the extrinsic title of a just tribute, but only on account *of* an omission, or act of disobedience; and apart from this tax, there are other sufficient tributes which are levied upon such infidels because of their temporal subjection.

The rational proof of the same proposition.

4. Our proposition, then, may be maintained by an appeal to reason. For there are two ways in which the subjects in question may be compelled to hear the preaching of the word.

Victoria.

First, they are bound by divine command to hear the faith, as Victoria maintained (Pt. I of the aforesaid Relectio, no. 36 *[De Indis,* Sect. II, no. 12]). To be sure, this point does not suffice to justify coercion, at least, direct coercion; for the observance and enforcement of that command do not pertain to temporal jurisdiction, a fact which is self-evident.

Secondly, then, it is possible that there might intervene in this matter some just command issued by the prince himself, for the observance of which he might use coercion upon his subjects. This assumption seems entirely plausible; for the hearing of preaching, is not, in itself and of its own nature, an action that falls within the supernatural sphere, and under the present circumstances subjects could be convinced that it was right and calculated to be for their advantage. Indeed, [such a command on the part of the prince] could even be referred to that welfare of the realm which a temporal prince may and ought to preserve—that is to say, the greater concord and peace of all the subjects: either in order that the unbelievers themselves may be set free from the errors [of whose falsity] they can be convinced because these errors are opposed to natural reason as are those which the Gentiles adopt; or else because such errors are opposed to what they themselves admit and believe, as happens in the case of the Jews; or, finally, because this action [on the part of the prince] may be directed to enabling the subjects to choose the true religion and the true worship of God, since in every human state that is well

governed this care must be taken. Therefore, such a mandate, issued by the prince, is just and does not exceed his jurisdiction; and consequently, he may, by imposing a penalty, compel his subjects to obey the mandate in question.

5. The arguments adduced in support of the second [and wholly negative] opinion,[1] then, do not militate against this proposition, for they relate only to non-subjects.

The arguments adduced in connexion with the second opinion do not militate against this proposition.

Thus, in reply to the first argument, we confess that this act [of coercion] is not to be ascribed to any special power given by Christ, but we maintain that the ordinary power of a temporal prince is sufficient. Therefore, the second argument is fallacious in appealing to the example set by Christ and His Apostles; for they did not assume or make use of a temporal principate. As to the third argument, indeed, regarding coercion to belief, although the introductory statements[2] may be admitted, the final inference[3] is denied: partly on the ground that one may be forced to hear, but not be forced to believe (just as a person may be forced to hear the preaching of the evangelical counsels or that on the grant of indulgences, without on that account being forced either to follow the counsels or to gain the indulgences); and partly on the ground that it is not necessary that the command in question be imposed for the specific reason of belief in a given supernatural faith, but for the general reason of choosing the true religion and of avoiding errors which are repugnant even to reason. The same reply may be made to the fourth argument.

Bânez, however, adds two limitations to the proposition in question.[4] The first is that this coercion may be allowed solely for the sake of a single hearing of the faith; since otherwise, if it took place frequently, there would be a virtual compulsion to belief. The other limitation is that it be attended by a moderate punishment [in case of disobedience].

A twofold limitation of the proposition, by Bânez.

But I disagree as to the first *of* the two limitations: I do so, partly because the contrary is proved by the Roman custom mentioned above; partly because, practically speaking, the [single exercise of] coercion would be useless, since, for the acceptance of faith, it is not enough that its preaching should be heard once, and especially not, in the case of men who have grown accustomed to their errors; and partly, in fine, because there is no reason, if the coercion has been licit once and has had no effect, to prevent it from being licit again. Neither does there follow from such a procedure any virtual coercion to the faith; for our assertion is not that it is permissible for princes to

The first limitation is rejected.

1 *[Supra,* p. 750.—TR-]

2 [i.e. 'faith should be voluntary; therefore, the means to faith should also be voluntary; consequently, coercion to the faith in the case of the unbelievers in question is not permissible. – – TtJ

3 fi_e. 'and accordingly, coercion to the hearing of the faith is also impermissible.'—Tr .J

♦ [i.e. the first proposition under the third opinion, *supra,* p. 751.—Tr .J

impose this burden simply at will, but that it is permissible for them to do so with prudence and moderation, and in accordance with the attendant circumstances, as may be seen in the case of the example set by Rome.

The other limitation, however, is decidedly acceptable. For judge- 475
ment in the case of such coercion should be passed on the same grounds as in the case of a penalty imposed upon one who fails to observe some civil law, the transgression of which, politically speaking, neither causes great disturbance to the state nor is considered to be a very grave matter.

The second limitation is approved.

6. Secondly, I hold: it is in nowise permissible to coerce unbelievers who are non-subjects, to a hearing of the faith. This proposition is much more nearly a certainty than the first; and is commonly accepted as such, being furthermore proved by the first and second reasons in support of the second opinion, and, especially, by the fourth.

The second proposition.

I set forth and urge [the second proposition], in the following manner: all coercion, whether it be direct or indirect, requires in the person exercising it a certain jurisdiction or power over the person coerced, since—in view of the fact that all coercion is executed by the infliction of some ill—it cannot be licit except in virtue of a superior power; but Christian princes have no power or jurisdiction over the unbelievers in question; therefore, . . .

The sources of proof for this proposition,

This minor premiss is proved both by the very terms themselves, in that these unbelievers are assumed to be non-subjects; and also by the fact that the Church has no spiritual power over such persons (a point which I shall for the present assume to be true, and which I shall discuss more fully in the next Section); nor has the Church a temporal jurisdiction, since that jurisdiction resides in the princes and kings of the said unbelievers, these rulers being supreme in their own order; and therefore, such coercion cannot under any title be just.

7. Neither do the arguments relating to the first opinion[1] avail against this proposition. For to the first argument, we reply that the power to preach is not formally a power of jurisdiction, but merely the virtue (so to speak) of enlightening through teaching; so that the efficacy of this power resides, not in any coercive virtue, but in the efficacy of the word and in the showing of the Spirit and power,[2] as Paul said [z *Corinthians,* Chap. ii]. Nevertheless, it does not follow that this power is fruitless; for it is morally certain that there will be some who will give ear voluntarily, if there is one to preach.

The answer to the first argument.

The arguments relating to the first opinion are answered.

I Corinthians, ii.

1 *[Supra,* p. 749.—Tr.]

2 *[virtus,* translated 'virtue' immediately above, and probably having the same significance here; whereas the 'power' referred to earlier in the same sentence is *potestas,* not *virtus.* The slight inconsistency in translation is due to the fact that the Biblical passage here cited (Douay version) contains the phrase, 'in shewing of the Spirit and power.'—Tr.]

The answer to the second argument.

Accordingly, the reply to the second argument, which was derived by analogy and by similitude with the words, 'Whose sins y0U shall forgive,' is easily evident. For the power to remit sins is one of jurisdiction, and applies to the subject as such; so that, in this respect, there is involved in such power a very different essential principle from that involved in the power to preach. But a certain proportion may be preserved with regard to this point, since, just as the divine precept to confess is joined with the power to give absolution, even so a divine precept to hear and to embrace the faith is imposed together with the power and the right to preach the faith. There is, however, a difference. For the precept enjoining confession falls upon those who are members of the Church, and they can certainly be compelled, through that same Church, to fulfil the said precept; whereas the other precept includes also those persons who are not subject to the Church, and over them the Church can certainly exercise no compulsion.

The answer to the third argument.

The answer to the third argument is as follows: the principle there set forth, with regard to correlatives, applies only jn the case of those things which are necessary to the use of a power granted in connexion with one of the correlatives; whereas, in the case under discussion, it is not necessary, in order to use the pow'er of preaching, that it should be possible for others to be forced to hear; rather does it suffice that they are licitly able to do so, and that they ought to hear voluntarily. Moreover, the same is true of the other principle adduced.

The answer to the fourth argument.

Hence, the reply to the fourth argument is evident, since the reasons for maintaining the power to resist those who place unjust impediments in the path of preaching the faith, differ greatly from the reasons for maintaining the power to compel a hearing of the same. For the former power is a means morally necessary, and assumes that an injury which one is allowed to repel, has been committed; whereas neither of these conditions can be found to exist in the latter case, and thus the grounds [for maintaining the existence of this second power] are entirely different.

8. But hereupon a difficulty arises, since it follows from what has been said that if, perchance, in the case of any infidel kingdom both the king and the leaders of the realm are unwilling to admit the preachers of the Gospel, or to permit them to come into the kingdom, the Church cannot use any violent means or coercion in order that the Gospel may be preached there; and this seems unfitting, because such a nation would not be sufficiently provided for; therefore,... The truth of the [primary] inference is evident. For in such a case, the entire nation is unwilling to hear the Gospel; and—as has been said—they cannot be compelled to hear it; therefore,. . .

The reply made by certain persons to this objection.

As to this argument, some simply concede the inference; since follows thence, not that men are insufficiently provided for, but only that they are not thus effectually provided for, because under such conditions, men may by their own malice, hinder the means of salvation given them, as it is probable that they will do.

The true solution.

What should be done if the king and the leaders of the realm hinder preachers from preaching.

Nevertheless, I think that, as a general rule, some coercion is 476 allowable under the circumstances posited. In particular, if any pagan state wishes to hear preachers, and if the pagan king prevents the people from so doing, then the said state may resist him; and in this matter it may be aided by Christian princes, in order that the unwilling king shall permit the preaching of the faith; for in thus [restraining] his subjects he does them an injury, by setting obstacles in the way of their salvation. According to the same reasoning, if the king consents to and desires the preaching, but does not dare to allow] it on account of the resistance of the leaders or of the realm at large, the king may bring force to bear upon his subjects; and if he lacks the power, then, in this matter, also, he may be aided by Christian princes, for the reason given above.

Finally, if both the king and kingdom offer simultaneous resistance, I think that they may be forced to permit the preachers of the Gospel to live in their territories; for this tolerance is obligatory under the *ius gentium* and cannot be impeded without just cause. Moreover, that king and that people may be forced to permit these preachers to declare the word *of* God, without suffering violence or treachery, to those who are willing to hear; since it is probable that there will never be lacking individual persons who will hear voluntarily. For, even if we assume that the king and his kingdom are offering resistance, still, not absolutely all individuals are included under the term 'kingdom', but rather, the Councils or chief men, or else the greater or greatest part of the kingdom; and always, without exception, the Church retains unimpaired its right to preach in that kingdom, and to defend the innocent (so to speak)—to defend, that is, individuals who may wish to hear the word. Accordingly, under such circumstances, there is involved no coercion to the hearing of the faith, but only a coercion to refrain from impeding the preaching of the Gospel, or placing obstacles in the way of those persons who may voluntarily choose to give ear to such preaching.

SECTION III

AFTER A SUFFICIENT PRESENTATION OF THE GOSPEL, IS IT ALLOWABLE TO USE FORCE TO COMPEL BELIEF ON THE PART OF THOSE INFIDELS WHO HAVE BEEN SUFFICIENTLY INSTRUCTED?

[1.] This question may be discussed both in its relation to those unbelievers who are in every sense non-subjects, and The first opinion. in relation to those who are temporally subject to the Church. Hence, we have the first opinion, which teaches that it is permissible to use force upon unbelievers, even upon those who are not subjects, in order that they may accept the faith after it has been sufficiently expounded to them. Such is the opinion of Major (on the *Sentences,* Bk. II, dist. iv [dist. xliv, qu. 4]); and—so it is said—in the time of Charles V, and with reference to the Jews, a certain Genesius Sepûlveda [, *De Fato et Libero Arbitrio]* strenuously defended the same view. Major. Genesius Sepulveda.

This opinion may find a basis in the words of Christ *{Luke,* Chap. xiv [, v. 23]):'Compel them to come in', that is, into Church, as Gregory (Homily XXXIX [Homily XXXVI], *On the Gospel)* and Chrysostom explain (Homily XIV, [On *Matthew}*][1] in their discussion of that point. Therefore, Christ gave the power to compel unbelievers to come into the Church; and that power given by Christ extends to every one. This point is confirmed by the example of Christ, who used force upon Paul to make him submit to the faith. Augustine *{Letters,* xlviii [xciii, no. 5]) makes use of this example in a similar case. *Luke,* xiv. The first proof. Gregory. Chrysostom. Augustine.

I base a second argument upon reason, as follows: these pagans sin grievously in not accepting the faith after it has been sufficiently heard by them; therefore, on account of this sin, they may justly be punished, and through punishment coerced to accept the faith; consequently, men have power to punish the sin in question, for it pertains to the Providence of God so to order human affairs that public crimes shall not remain unpunished; therefore, the power under discussion resides in the Church alone, because that power presupposes the existence of the faith which is found in the true Church and there only. The second proof.

Thirdly, expediency may be adduced as an argument. For through such coercion great good may be anticipated; since, granted perhaps that those who are coerced may be converted less sincerely or even fictitiously, still those who follow,—and who will greatly outnumber the former—will believe the more easily, and many innocent children will be saved through baptism. The third proof.

[1] [St. Chrysostom there speaks very indirectly of the Church. His main point is that St. Matthew was speaking of the kingdom of God.—Reviser.]

Therefore, because of this beneficial result, the coercion in question may be allowed. For if any evil follows therefrom, that evil is not wrought, but [merely] permitted, by the Church. This argument may-

Gregory. be supported by the authority of Gregory *([Letters,]* Bk. IV, letter vi), according to a passage in which, for a similar reason and with regard to a similar case, he uses almost the same words.

2. According to the second opinion, the Church and Christian

The second opinion. princes may compel acceptance of the faith on the part of those who are temporally subject to them, although this is not the attitude taken with regard to those who are

Scotus. not subj'ects. Scotus (on the *Sentences,* Bk. IV, dist. iv, qu. 6) upholds

Gabriel. Angelus. this second opinion; while Gabriel and Angelus follow him, but on the condition that the coercion be indirect, not direct, a limitation which will be discussed later.

The opinion in question is founded first of all upon the arguments in favour of the first opinion, which *a fortiori* support this one.

Secondly, the practice of the Church may also be adduced in 477 support of the latter view, for the kings of Spain used the power of which we are speaking. Ferdinand forced the Moors to accept the faith; and before Ferdinand, King Sisebut, he who is called 'most religious', had done likewise in the case of the Jews, and is praised for

Council of Toledo. *Decreturn. Decretals.* that deed by the Fourth Council of Toledo (Chap. Ivi [Chap. Ivii] cited in the *Decretum,* Pt. I, dist. xlv, can. v and the *Decretals,* Bk. III, tit. XLii, chap, iii, last section). The Sixth Council (Chap, iii), and the Seventeenth Council of Toledo (Chap, viii), have also expressed a favourable opinion of the act of Sisebut. The *Decretum* (Pt. II, causa

Gregory. xxiii, qu. vi, can. iv) quotes Gregory, too, as declaring in his *Letters* (Bk. III [Bk. II], letter xxvi), with regard to the Jews who were subject, that: 'They should be burdened with such a weight of fines that they are compelled through punishment [to accept the faith].' Lastly, there

Augustine. is the rule of Augustine *(Letters,* cciv [clxxiii. 2, in Migne ed.]),'Wicked men are to be restrained from evil and compelled to do good', cited in *Decretum* (Pt. II, causa xxm, qu. iv, can. liv). Unbelievers are wicked, and the faith is for them a great good; therefore, they may be forced by their princes to accept this good.

3. Finally, a special argument may be added as to these unbeliev-

A confirmation as to unbelieving subjects' ing subjects, namely: that the coercion in question is not repugnant to the faith; that with respect to such unbelievers the power to coerce is not lacking, nor is there lacking a suitable reason for such coercion; and that therefore, the coercion is permissible.

The major premiss of this argument may be proved, first of all, from the example of heretics, on whom the Church imposes the faith Therefore, the sort of coercion under discussion is not repugnant to

the faith. Hence, there does not seem to be any solid and true basis for the contention urged by some persons, in this connexion, namely, that faith resulting from coercion is slavish and involuntary, and therefore a sacrilege. For in the example mentioned [that is, in the case of heretics] this contention appears to be proven erroneous. Its erroneous nature may also be proven by reasoning, as follows: when the wish is forced it retains, absolutely speaking, its character as a wish, although relatively it may be involuntary; but it is sufficient for the acceptance of the faith that the act be voluntary, absolutely speaking. To this we may add the consideration that a man is very often induced by punishment and coercion to change his will utterly and absolutely; and therefore, coercion is permissible with respect to many benefits which could not well exist without an absolute wish, as Augustine teaches at some length (in the aforesaid *Letters,* xxiv *[Letters,* cciv, which is clxxiii, no. 2, in Migne ed.]) and as we read in the *Decretum* (Pt. II, causa xxm, qu. iv, can. xxxviii). Augustine,

The minor premiss[1] of the chief argument may be proved as follows: the unbelievers in question are assumed to be subjects of Christian princes; and a prince has power to coerce his subjects, especially as to those matters which are necessary for their salvation; moreover, the prince or the immediate prelate may compel a subject to obey not only his own commands, but also the law of a superior sovereign; and therefore, much more certainly may a temporal prince compel his subjects to obey the law of the Supreme Heavenly Prince, and to obey, consequently, the law of faith. Furthermore, a prince may forcibly restrain a pagan subject from blaspheming against the Christian religion, and from inflicting any injury upon it; but those unbelievers have blasphemed in not believing a faith sufficiently set forth to them, for they think and declare that it is false, and therefore may justly be punished and through punishment forced to conversion. This is especially true since these pagans may be convinced that what is set before them is much more prudently credible than the errors in which they themselves live. Therefore, the power in question is not wanting to Christian princes. Finally, and in accordance with the preceding remarks, it is easy to prove the remainder of this minor premiss, namely, that a suitable reason [for such coercion] is not lacking. For it is to be hoped that much good will result from this coercion, either to the parents or to the children or to those who follow, as we have gathered from Gregory *[Letters,* Bk. IV, letter vi]. Neither is there any reason to fear greater evils, for it is worse that unbelievers should persist in their errors than that their conversion should be fictitious. They and not the Church are responsible for that fiction, and conse-

[1] [ix. the statement that, 'with respect to such unbelievers the power to coerce is not lacking, nor is there lacking a suitable reason for such coercion'. See the first paragraph of this Sub-section.—Ti.]

quently, there is no reason to consider this coercion as an evil in itself.

4. Nevertheless, the third and common opinion of theologians is that unbelievers who are not apostates, whether subjects or not, may not be coerced to embrace the faith, even after it has been sufficiently proposed to them. So St. Thomas teaches (IL-II, qu. 10, arts. 8 and 12); as do also Cajetan [on II.-II, *ibid.],* de la Palu (on the *Sentences,* Bk. IV, dist. iv, qu. 4), Durandus *(ibid.,* qu. 6), Soto *(ibid.,* dist. ix, qu. I, art. 3 [dist. v, sole question, art. 10]), Richard Middleton *(ibid.,* dist. vi, art. 3, qu. 1), Antoninus *(\Summa Theologica,']* Pt. II, tit. xn, chap, ii), Abulensis [Tostado] (on *Kings,* Bk. I, chap, viii, qq. 34, 182, 183), Sylvester (word *baptismus,* Pt. iv, qu. 6), Alfonso de Castro *(De lusta Haereticorum Punitione,* Bk. II, chap, iv), Victoria, at length (Relect. *De Indis,* Sect. II, no. 15), Salmeron (Vol. XII, tract, xxxvii) and Henriquez *(Summa Theologiae Moralis,* Bk. II, chap, iv, no. 8 [Bk. II, chap, iii, no. 8]). This is absolutely a true and certain opinion, which we shall prove, in separate sections dealing first w'ith non-subjects, then with subjects. Moreover, we shall speak first of direct coercion, and shall then add some remarks as to indirect coercion.

The third and true opinion.

St. Thomas.
Cajetan.
de la Palu.
Durandus.
Soto.
Richard Middleton.
Antoninus.
Abulensis [Tostado].
Sylvester.
Castro.
Victoria.
Salmeron.
Henriquez.

5. We hold, first, that it is essentially wTong to force unbelievers who are not subjects, to embrace the faith.

The first proposition: to compel unbelievers who are not subjects to embrace the faith is essentially wrong.

The proof of this proposition is that such coercion cannot occur without lawful power, as is self-evident, since othenvise all wars and all acts of violence could be called just; but the Church does not possess this lawful power with respect to such unbelievers. Therefore, . . .

The proof of the first proposition.

The minor premiss of this argument may be proved as follow's: the power in question has not been given by Christ, 478
tïnuXpÎemiif. nor does it: reside in the princes of the Church from the very nature of the case—not, at least, with respect to the unbelievers mentioned. The first half of the foregoing statement—namely, the assertion that Christ did not give this special power to the Church—may be proved, first, from what we have said in the preceding section [Sect, n, subsect. 2], where we demonstrated that Christ did not give such power of forcing these unbelievers to hear the faith, therefore, neither [did He give the power of forcing them] to embrace the faith after hearing it; for the same reasoning is valid in both cases.

Secondly, this minor premiss may be proved by a negative argument, since, in the tradition of the Church, there
thTSTrVimiil· is no trace of sucil P°wer› either in its practice, or in Scripture; for the words of Christ, 'Compel them to

come in' have a meaning very different from this, as I shall show below.

Thirdly, the same premiss is established affirmatively by the words of Paul (z *Corinthians*, Chap, v [, w. 12-13]), 'For what have I to do to judge them that are without ? For them [. . .] God will judge ; words based, surely, upon the fact that these persons are not under our jurisdiction. This was the opinion expressed by Innocent III in the aforesaid *Decretals* (Bk. III, tit. xiii, chap, iii) and enunciated by the Council of Trent (Session XIV, chap, ii), as follows: 'The Church passes judgement upon no man who has not first entered it, through baptism.' Innocent III upholds this same view in another Chapter of *the Decretals* (Bk. IV, tit.xix, chap, viii); and it is the common opinion ofChrysostom, Theophylact, Ambrose, Anselm, St. Thomas, on the text cited (on *i Corinthians,* Chap, v, v. 13), and of Augustine *(De Verbis Domini,* Sermon VI, chap, vii [in *Sermones supposititii,* Sermon λ I, chap, vi, Vol. V, col. 1751 Migne ed.]). Therefore, Paul, *loc. cit.* [z *Cor.,* v. 13] in order to make it clear that this power was not given to men, added, 'For God will judge them that are without.' The judgment, then, and consequently the punishment and coercion of such unbelievers, have not been committed to men. Wherefore, Christ our Lord instructed the Apostles *(Matthew,* Chap, x [, v. 10]) whom He sent forth to preach, not to carry a staff or a sword; and with respect to this passage, Jerome [on *Matthew,* Chap, x] notes that Christ forbade methods of coercion and taught peace, concluding His instructions with the words: 'Whoever will not receive you, it shall not be remitted to them on the day of judgment', meaning thereby that God has reserved to Himself the punishment of this crime, just as He said elsewhere *(Matthew,* last chap. *[Mark,* Chap, xvi, v. 16]): 'He that believeth not shall be condemned.'

I Corinlhùuu,

Dtcretals.

Council of Trent.

Innocent III.

Chrysostom. Theophylact. Ambrose.

Augustine.

Maiûm, x.

Jerome.

MaUkrtr. la*t ch*p.

Fourthly, the same premiss is proved by the canon law, for this coercion is prohibited therein *(Decretals,* Bk. V, tit- VI, chap, ix; *Decretum,* Pt. I, dist. xlv, cans, iii and v). The prohibition, however, arises, not so much from a prohibition of the Church, as from an explanation of the same. Hence, in the *Decretals* (Bk. II, tit. xiii, chap, iii) such coercion is said to be contrary to the Christian religion. Pope Gregory was *of* the same opinion *(Letters,* Bk. I, letter xci [letter xlvii] and Bk. XI, letter xv [Bk. IX, letter vi]) as were Ambrose (on *Luke,* Chap, x), and Chrysostom (on *Matthew,* Chap, xxxiv).

Ambrose. Chrysostom.

From the foregoing, the strongest argument is derived, namely, that if the power in question had been specially granted prSiiif by Christ it WOuld not be vested immediately in temporal princes, because Christ granted no power

immediately to them. Therefore, this power would reside in the bishops, and especially in the supreme Pontiff. But the pastors of the Church themselves do not acknowledge the possession of this power, nor have they ever used it; and Christ our Lord said to Peter simply this: 'Feed my sheep.' Therefore, it is certain that Christ has not given this power to the Church.

6. Finally, an argument may be derived from the end in view; for such a coercive method of drawing men to the faith would not befit the Church; on the contrary, it would be much more expedient that the first acceptance and profession of the faith should be absolutely and entirely spontaneous.

the ïïmeÞpremis.

This spontaneity is desirable, first, in order that the power o£ the divine word and of the grace of God may be manifested in this work of conversion, which is especially the work of God, as Christ said (*John,* Chap, vi [, v. 29]). Accordingly, Paul wrote (2 *Corinthians,* χ Q v . ψ 0Γ tpe weapOns of our warfare are not carnal', &c., and again (z *Corinthians,* Chap, i [, v. 26]): '[there are not many wise according to the flesh,] not many mighty [, not many noble].'

John,™.
*2*Conntkians,*
i Corinthians,

The same spontaneous element is desirable, secondly, because the coercive method in question would involve many disadvantages, since it would, as a general rule, be followed by feigned conversions and innumerable acts of sacrilege. The unbelievers also would be much scandalized and would blaspheme the Christian religion if, by any human power, they were forced to embrace that religion, which is entirely supernatural. Therefore, the special supernatural pow'er of which we are speaking has not been given to the Church.

Again, as to the fact, no proof is needed that this power, in so far as concerns pagans who are not subjects, does not reside in the Church from the very nature of the case; for this truth is expressed in the terms themselves, since from the very fact that we assume that these pagans are not subjects—at least, not temporal subjects—we consequently imply that the Church has no temporal power over them; therefore, it has no other power with respect to them from the nature of the case; for there exists no other power derived from the law of nature over human beings as members of a human state. Moreover, even the power in question comes not immediately from God or from the law of nature, but mediately through man's devising and from the *ius gentium.* Therefore, to no state or prince is this power given with respect to aliens, but only with respect to the members of that particular state; and these unbelievers, in addition to the fact that they are not members of the Church, are supposedly not even members of a secular state under the rule of a Christian prince. Therefore, the power in question does not extend to them.

The second proposition.

7. Secondly, the following proposition must be laid down: the Church may not exercise compulsion even upon those pagans who are temporally subject to it, in order that they shall embrace the faith. This proposition is easily proved from
479 the preceding one, since the reference is to direct compulsion, which requires power and jurisdiction. For from what has been said, it is evident that the Church has not such power over the infidels in question, by any special grant from Christ; inasmuch as the proofs adduced above are universal, and the canon laws, when they forbid any coercion [of subjects] and declare it to be contrary to the Christian religion, refer to pagan subjects in particular. Yet the Church is not forbidden to wield temporal power over these pagan subjects, for the latter can be members of a civil state, although the supreme temporal power of that state resides in a Christian prince. Nevertheless, that power does not extend to the act of punishing such subjects because of their sin in not embracing the faith after it has been sufficiendy proposed to them; for the power in question, being proximately derived from men, is accordingly directed only to a natural end, and especially to preserving the peace of the state, and natural justice, and the virtue appropriate to such an end; whereas the aforementioned sin of unbelief is a matter entirely apart from that purpose and end, so that the punishment of it does not fall within the scope of this [temporal] power. Therefore, the power of coercion to effect an acceptance of the faith cannot rightfully be claimed by virtue of such [temporal] power; for that coercion cannot be justly exerted unless it be in the form of a just punishment for an offence opposed [to the acceptance of faith]. Hence we see, even in the case of the Church, that to whatever extent it may justly compel unbelieving apostates to return to the faith, to precisely that same extent it may justly punish them on account of apostasy from the faith professed by them in baptism; and therefore, wherever the power for the punishment of unbelief is wanting, there is lacking also the power to compel an acceptance of the faith. This fact is further confirmed by all the arguments from inexpediency w'hich have been adduced in this, and in the preceding Sub-section.

The fourth [third] proposition: indirect coercion to compel acceptance of the faith is not intrinsically evil.

8. From this proof it may easily be understood that the preceding proposition refers to direct coercion exerted directly to this end, namely, the prevention of unbelief and the acceptance of the faith. Accordingly, we must make an additional statement as to indirect coercion, to the effect that such coercion is not in itself and intrinsically evil, if applied under the proper conditions. This is the opinion of Saint Antoninus, Angelus in passages already cited, and V alentia (Vol. III, disp. i, [qu. x,] point 6, [ad 4]); and the same view is

St. Antonin». Angelus. Valentia.

Gregory.

to derived from Gregory *{Letters,* Bk. VII, letter xxx [Bk. II, letter xxxii] and Bk. IV, letter vi [letter xxvi]), for in the first mentioned place he advises that a portion of the just tribute be remitted to pagan subjects, so that through kindness they may be drawn to the faith; and in the latter place, he says that if some of the pagans become too contumacious, they are to be loaded with burdens in order to recall them to their senses, a course of action which is indirect coercion. He states a like view elsewhere *{Letters,* Bk. III, letter xxvi, cited in *Decretum,* Pt. II, causa xxm, qu. vi, can. iv).

The reason for the proposition stated above'

The reason [supporting the proposition that such indirect coercion is not intrinsically evil] is as follows: coercion is indirect when any right [asserted] or punishment inflicted under one particular title or on account of a given offence is secondarily directed by the one exercising [the right, or inflicting the penalty,] to the end of inducing another to exercise some act *of* the will; and in the case under consideration, the power to punish or to exercise compulsion on account of a just end is not lacking, while the secondary end, consisting in the conversion of another to the faith, is not evil, but, on the contrary, is in itself virtuous. Therefore, the act of indirect coercion [to this secondary end] is not in itself evil, but can be justified. The truth of the major premiss and of the consequent is clear. The minor is also proved bv the fact that the Christian princes in the case under discussion mar justly punish the pagan subjects on account of offences other [than unbelief], or they may impose tributes upon such subjects. Therefore, if the princes should judge that this [imposition of penalties or of tribute] WOuld be useful for the conversion of the subjects, they mar bear in mind this additional intention and may impose the burden in the manner best adapted to such a [secondary] end.

Under what circumstances indirect coercion should be used.

9. However, as I have said, this indirect coercion should be ap- P^ed under the proper conditions; for there are two conditions, above all others, which must be observed, Qne that ·η imp0Sing any burden or in inflicting any evil, the bounds of justice are not to be transgressed, since if they should be transgressed, the coercion would, for that reason, be inequitable. Take, for example, the statement of Gregory, *[Letters,* Bk. IV, letter xxvi] to the effect that greater taxes could be imposed on such pagans for the purpose in question, provided, however, that these taxes be just; for within the limits of just taxation one tax may be heavier than another even to the maximum amount, which, for the rest, is termed 'rigorous'; up to that limit, then, a tax may be increased, but no further. The same is true as to punishment, which may be increased or diminished at the will of the prince; and thus a rigorous punishment, which is nevertheless just, may be imposed. In the same

way, Catholic princes have, when there is just cause, the power to prohibit unbelievers from dwelling in their kingdoms: as when [such fellow-countrymen] would be dangerous to the faithful; or after unbelievers have been conquered in a just war, so that they may be expelled on that ground and punished (as it were) by exile; or surely, if they are strangers and aliens, and may [on that account] be forbidden to acquire a domicile in the kingdom. In such cases, then, a Christian prince may prohibit unbelievers from dwelling in his realm unless they are converted, as was stated in the Sixth Council of Toledo (Chap, iii); and that act on his part is, indeed, a form of indirect coercion. It is necessary, however, that this act of expulsion be just.

Council of Toledo.

10. The other condition [to the proper exercise of indirect coercion] is that the end of conversion shall be sought prudently. For the kind of coercion in question, even though indirect, carries with it the danger of a counterfeit conversion, and therefore thorough precautions must be taken lest unbelievers be admitted to the faith and to the Sacraments without sufficient examination, and without a moral certitude that their conversion is real. On this point it must be especially noted, that to take such precautions is the duty of the pastors of the Church, rather than of temporal princes; for the princes may work piously in this way, by striving for the just conversion of unbelievers, but it is not for them to admit to baptism those who are thus converted and ask for baptism. This function pertains rather to the pastors of the Church, and therefore it is for the latter to test and examine such conversions, and to avert in all cases the moral peril of a pretence.

480 Prudence must be observed in the use of indirect coercion to convert unbelievers to the faith.

11. From all of the above it may be gathered that this indirect coercion, strictly speaking, takes place only in regard to su^Jects› because lawful power to inflict ills upon non-subjects is lacking, unless they are first reduced to subjection by reason of an offence committed in a kingdom not their own, or by the title of a just war.

indirect coercion to takes^piace'oniy7 with respect to7 pagan subjects.

However, I have used the term 'strictly speaking', because even though non-subjects may not positively (as it were) be afflicted with punishments and loaded with burdens, nevertheless, they may be deprived of gratuitous benefits, advantages, or favours; and such means also may be well adapted to drawing them to the faith or to a favourable inchnation towrard it, and may be considered as a kind *of* indirect coercion. Without doubt, coercion exercised only in this way is permissible, because no jurisdiction or superior power is required in order to deprive any one of such benefits. Moreover, since it is entirely permissible to entice these unbelievers to the faith by kindness and good deeds, when there is hope of success, as is evident from the statements

made by Gregory *(Letters,* Bk. XIII, letter xii [in Migne, *P.L.,* p. 1268, col. 2]); therefore, conversely, when kindness is of no avail, these same pagans may rightfully be deprived of such benefits, in order that 'vexation may give them understanding' *[Isaias,* Chap. xxviii, v. 19]; for this vexation is legitimate, as I have already explained.

isaias, xxviii.

12. The first argument in support of the first opinion[1] was derived from the words of Christ, 'Compel them to come in', words which Augustine (in *Letters,* xlviii and Lxc^· 2 and clxxxv]) interprets as referring to real compulsion by means of a penalty. However, he applies t^ie Passa£e *n question to heretics and apostates; for he explains that the first group who have been invited, are the Jews; the second, who have simply been called, are the Gentiles; while the third, who are under compulsion, are the heretics. Concerning the latter, we shall answer, first, that it is indeed permissible to use force upon them. But the literal interpretation would seem, in my opinion, to be that adopted by Chrysostom and others, who say that this passage refers to the end of the world, at which time, in order to complete the number of the elect, there will be used a kind of compulsion upon the number lacking—compulsion, not by means of punishments or real violence, but by the might of signs and miracles and by the efficacy of preaching and of inner grace. Such was the power manifested in the conversion of Paul, which is cited as an example by the authorities above-mentioned.

T . first argument in opCfiontSu^sec^if the passage in *Luke,* plained literally*'

Chrysostom.

The second argument in support of the first opinion is based uPon tiie Power of punishing wrongdoing, to which we reply that God has not given men the power of punishing all the evil deeds of mankind; since He has reserved some of these deeds for His ow*n tribunal, because otherwise the human race could not be governed with peace and justice. And among these sins which God has reserved for His own judgement, is the sin of unbelief, in those who have not professed the faith through baptism. This inference we may well derive from the words of Christ and of Paul, quoted above; for without such a divine reservation, even greater evils would necessarily result.

The answer to the second argument for the same opinion,

Therefore, as to the third argument, based upon expediency and upon the fact that the successors of such unbelievers might, [by the coercion in question,] be more easily and more surely converted, it should be replied, first of all, that evil should not be done in order to bring about good. Furthermore, experience

The reply to the third argument.

1 [Le., the opinion that: 'it is permissible to use force upon unbelievers, even upon those who are not subjects, in order that they may accept the faith after it has been sufficiently expounded to them.' *Vidt* the first paragraph of Sub-section i, p. 757.—Tr .]

^Sêi-V

has taught that such success is not obtained by that kind of coercion, but rather, that the contrary is true. Hence, Gregory did not adduce the argument of expediency, save in the case of indirect coercion, to be exercised only in a lawful manner and with due circumspection.

The arguments in favour of the second opinion, and set forth in Sub-sections 2 and 3, are answered.

13... As to the arguments in favour of the second opinion,[1] the examples set by the Spanish kings which are cited, chiefly regard indirect coercion applied in virtue of a just title, such as was the practice of Catholic kings. For if formerly Sisebut somewhat exceeded due limits, his intention only and not his action is to be praised; and similarly if, perchance, a proper moderation is not observed in indirect coercion, although that fault may be excused on the ground of good faith, yet the result proves that the act was not fitting.

As for the second argument in support of the second opinion, the argument regarding the law of a superior, the reply is that this holds good with respect to subjects and in connexion with delegation by a sovereign prince; but, as I have explained, God has not committed such pow'er to men.

Finally, it is not enough that the faith should be capable of being made clearly credible; for authority *{potestas)* is requisite to coercion, and authority is lacking in the case under discussion.

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SECTION IV

MAY UNBELIEV ERS BE FORCED TO ABANDON THOSE OF THEIR ERRORS AND FALSE RITES WHICH ARE CONTRARY NOT ONLY TO FAITH BIT ALSO TO REASON ?

Two kinds of unbelief are distinguished.

I. In the subject-matter *of* faith we have distinguished, in former Chapters, between two main categories—one concerning the entirely supernatural mysteries; another concerning a group of either divine or moral truths which can also be known through a natural process [, that is, by reason]. Therefore, a twofold kind of unbelief may, in like manner, be distinguished; the unbelief which is opposed to supernatural truths only, and with which we have hitherto been chiefly concerned; and the unbelief which is opposed also to natural reason, and concerning which something remains to be said.

Now in regard to the latter point, we may also assume, from

1 [i.e. the opinion that, 'the Church and Christian princes may compel acceptance of the frith on the part of those who are temporally subject to them, although this is not the attitude taken with regard to those who are not subjects.' *Vide* the first sentence of Sub-section 2 of this Section, p. 758.—Tt]

what has already been said, that unbelievers may not be coerced to accept this [set of truths] as revealed, and as something to be believed by faith; but we ask whether or not, in this matter, they may at least be compelled to think correctly in accordance with reason or with some kind of human faith, and consequently to abandon external rites contrary thereto, such as idolatry and the like. In the consideration of this question, the usual distinction must be made, with respect to those unbelievers who are civil subjects of the Church, or of Christian princes.

Whether unbelievers may be coerced to contrary to natural understanding.

Major.

Sepulveda.

2. Concerning non-subjects, Major (on the *Sentences,* Bk. II, dist. xliv, qu. 4) and Sepûlveda *{De Fato et Libero Arbitrio),* then, have logically maintained that pagan idolaters may be forced by the Church to worship the one God and to relinquish the rites of idolatry, and that if these pagans refuse [to do so], they may justly be punished and deprived of their liberty and their kingdoms.

The first opinion affirms [that compulsion may be used] even against non-subjects.

Possibly, the basis of this view is the fact that a Christian state has the right to defend the divine honour, and to suppress and avenge blasphemies against God; but idolatry is a serious offence to the Almighty and connotes blasphemies against Him, as St. Thomas (II.-II, qu. 94, art. 3, ad 1) teaches; therefore,... The major premiss of the argument is also derived from St. Thomas *{ibid.,* Qu. 10, arts. 8 and 11), where he asserts specifically that unbelievers may be forcibly prevented from uttering blasphemies against God's name. The same opinion can also be supported by reasoning, as follows: one man may licitly defend the life or the honour of another; and therefore, still more rightfully may a man defend the honour of God.

The basis of this view.

St. Thomas.

The first confirmation of such a view is this: if the heathen sacrifice grown men or children to their gods, they may be forcibly compelled to abandon this practice, at least on the ground of defence of the innocent; therefore, Christian princes may take the same measures towards any heathen people, on behalf of the honour of God.

The first confirmation of the view in question.

The second confirmation is that the Romans have been praised for the reason that they made subjects of the barbarian nations, in order to recall those nations to a better way of living; as is evident from Augustine *{On the City of God,* Bk. V, chaps, xii and xvii), and from St. Thomas *{De Regimine Principum,* Bk. III, chaps. iv *et seq.).*

The second confirmation.

Augustine.

St. Thomas.

The final confirmation is that certain peoples are so barbarous, so unfitted to acquire naturally the knowledge of God, that they seem fashioned by nature for a state of

The third confirmation.

slavery, as Aristotle *{Politics,* Bk. I, chap, i [, §§ 4-6] and chap, iii [Bk. I, chap, ii, § 15]) has remarked; therefore, even on this ground, they might be forced to true knowledge and to an upright way of life. Aristotie.

3. Nevertheless, the true and certain opinion is that those unbelievers who are not subjects, cannot normally be forced even to change their errors and their rites. This is the view of the commentators on the above cjte j artjcjesj ı .Thomas, namely, on [II.-II, qu.10,] arts. 8 and 11, and by Cajetan (on II.-II, qu. 66, art. 8), Victoria in the aforesaid Relectio, no. 40 *[De Indis,* Sect. II, no. 16], Soto (on the *Sentences,* Bk. IV, dist. v, sole question, art. 10), Covarruvias (on *Sext,* in rule *peccatum,* De Reg. Jur., Pt. II, § 10, no. 3), Valentia (Vol. III, disp. i, qu. 10, point 7), and Aragôn (on II.-II, qu. 10, art. 8).

The second and true opinion denies the tru* i men a ve.

St. Thomas. Cajetan. Victoria. Soto. Covarruvias. Valentia. Aragôn.

This true opinion may be proved, first, by appeal to divine example; for when God wished to destroy or punish the people living in the Promised Land, He willed, not that they should be conquered by the Israelites solely on account *of* idolatry, but that they should thus be conquered on account of the wrong they had committed in denying to the children of Israel a peaceful transit through their lands, and because of other similar wrongs; a fact which one deduces from the Book of *Numbers* (Chap. XX). Augustine, too, has noted this point (on *Numbers,* Qu. xliv [in *Questions on Heptateuch,* Bk. IV, qu. xliv]; on *Josue,* Qu. x [in *Questions on Heptateuch,* Bk. VI, qu. x]); and it is also brought out in the *Decretum* (Pt. II, causa xxm, qu. ii, cans, ii and iii). From this example the general rule is inferred that it is not permissible for a prince to make war on the peoples in question, save in order to avert or vindicate some injury inflicted upon himself or upon his subjects. Therefore, the sole purpose of overthrowing idolatry is not a sufficient ground for a just exercise of coercion. Hence, Pope Nicholas, in reply to the questions of the Bulgarians, said: 'As to those who sacrifice to idols, we can say nothing more than that such persons must be reclaimed by reason rather than by force.'

The proof of the true opinion, through an example.

Augustine. P<4* i3'

The reason supporting the true opinion is the same as that which has been suggested in previous passages, namely, that the Church has no jurisdiction over the unbelievers in question, and that coercion or punish-
482 ment without jurisdiction is unjust; for both these points have been proved. Therefore, just as one private individual may not punish or coerce another private individual, and just as one Christian king may not be accorded such treatment by another Christian [king], nor an infidel ruler by another infidel [ruler], so neither may an infidel state, supreme in its own order, be punished by the Church on account of its crimes, even if those crimes are contrary to natural reason; and

The proof of the true opinion, through reason.

consequently, it may not be compelled to give up idolatry or similar rites.

The reply to the grounds on which the^rst opinion is

4. Neither is it pertinent that such sins (as was noted in the basic argument [for the first opinion])[1] are sins against God. For as I have already said, God has not made men judges to avenge all wrongs done to Him by any man; on the contrary, He has willed that due order be observed in this respect, [namely,] that subjects should obey their princes, while, on the other hand, He has reserved sovereign princes for His own tribunal in those matters which relate to the natural order, because greater evils would result from the opposite course.

Moreover, in reply to the observations made concerning blasphemy, it should be said in the first place that idolatry is not formal blasphemy, but only virtually and inclusively such. It should also be said that a Christian prince may compel the unbelievers to cease from blaspheming, when their blasphemy is in contempt of the Church and to the injury of the Christian religion, because from such an act on their part there arises a just ground for war; even as these same infidels may be forcibly prevented from harming Christians, and from dragging the latter into error or compelling them to desert the faith; whereas the case is far otherwise when the sins of infidels, although contrary to religion, are against God alone.

The reply to the first confirmation [of the first opinion].

The reply, then, to the first confirmation [of the first opinion][2] is eyident. It wras in view of this reply, moreover, that I inserted [the limiting term,] 'normally', in my statement [of the second opinion].[3] For, in order to defend the innocent, it is allowable to use violence against the infidels in question, that they may be prevented from sacrificing infants to their gods; inasmuch as such a war is permissible in the order of charity and is, indeed, a positive duty if it can be conveniently waged. It should be added that this course of action is licit, not only in order to free children, but also for the purpose of freeing adults, even though the latter may consent and wish to be sacrificed to idols; because in this respect, they are worse than madmen, and because, moreover, they are not the lords of their own lives, so that, accordingly, any man can be restrained by another from committing suicide. But what has been stated [concerning sacrifice] must be limited to cases where such killing is unjust. For if infidels had a custom of sacrificing to idols only those criminals who were justly condemned to death, such infidels could not be coerced solely on that ground, since in this prac-

[1] [i.e. the opinion that even in the case of non-subjects, 'pagan idolaters may be forced by the Church to worship the one God and to relinquish the rites of idolatry, &c. *Vide* Sub-section 2 of this Section, p. 768.—Tr.]

* *[Vide* Sub-section *2* of this Section, p. 768.—Tr.]

» *[Vide* the first sentence of Sub-section 3 of this Section, p. 769.—Tr.]

tice they would sin, not against justice, but against religion only, and the excuse of defending the innocent would therefore cease to avail.

The answer to the second and third confirmations [of the first opinion].

5. The reply to the second confirmation [of the first opinion]1 is this: the practice of the Romans is praised, not as being virtuous in an absolute sense, but as a lesser evil possessing some semblance of virtue because of its material object. As for the saying of Aristotle quoted in the last [and third] confirmation,1 it would indeed be duly applicable, if there existed any people so barbarous that they were neither united in a civil society, nor capable of exercising government. For in that case, it would be not on the ground of religion, but on that of the defence of humanity (so to speak) that they might be forcibly subjected to the government of some state. But, in my opinion, no people so barbarous have yet been found.

infidels who are subjects of a Christian prince should be forced to profess the cult of the true God.

6. As to infidels of the kind in question, who are nevertheless subjects of Christian princes, it should be said that, in the first place, they may be forced by such princes to profess the worship of the true God, and consequently to cease from professing errors contrary to natural reason and to the faith. So St. Thomas teaches, St. Thomas. as do the other theologians, in the passages cited.

The first proof of this assertion, from a Passage in *Deuteronomy*, Chap. XIII.

Moreover, the truth of this assertion can be proved, first, from a Passa§e *Deuteronomy* (Chap, xiii), wherein God orders that unbelievers of this kind—namely, unbelievers who are in any way subjects [of a faithful state]—shall be put to death on account of such wrongdoing. On this passage, and others like it, one may consult Cyprian's C>TnaB· *Exhortation to Martyrdom* (Chap, v), and other references given there by Pamelius.2 Pamela»,

the same assertion based upon the practice of the Church.

Secondly, the assertion in question can be proved from the practice of the Church, since from the beginning, the Christian emperors followed this course m so far as tbe circumstances of the times rendered it advisable, p0J. Constantine forthwith ordered that the temples, of the idols should be closed and that idolatry should be abolished, as we may gather from Eusebius (On *the Life of Constantine,* Bk. II, Eusebw. chaps, xliii and xliv and Bk. IV, chap, xxiii), Rufinus *(Ecclesiastical* Ruhnus. *History,* Bk. II, chap, xix), and Nicephorus (in Bk. λ III, chap, xxxiii Mcephons. and also in Bk X, chap, xxxix), where he cites a similar order issued by Jovinian.3 Later, indeed, Theodosius entirely destroyed the temples,

1 *[Vide* Sub-section *2* of this Section, p. 768.—Tb.]

3 [Jacobus Pamelius (Jac. de Joigny de Pamele, 1536-87), Flemish priest, edited the works of Cyprian.—Tb.]

3 [Suârez probably refers to Jovian or Jovianus Flavius Claudius who became Emperor of Rome m 363 A.D.—Tr.]

according to Rufinus (Bk. II, Chaps, xxii and xxiii]), and Nicephorus (Bk. XII, chap. xxv). Subsequently, the same Theodosius framed many laws in which he condemned the worshippers of idols and which are to be found in the *Theodosian Code* (tit. *On the Pagans [Code,* XVI. x]). Moreover, he was imitated by Justinian in his *Code,* same title *[Code,* I. xi]. Augustine *{Letters,* xlviii, 1 and xxiv [Migne ed. *Letters,* xciii, clxxxv and cci]) approved of these laws, while Ambrose, too *{Letters,* xxx [xl]), and many Councils also, approved of the practice in question: for the Fifth Council of Carthage (Chap, xv [Chap, xvi]) declared that the Emperor must be petitioned to destroy the remnants of idolatry; the same view was upheld by the African Council under Boniface (Chap, xxv); the Third Council of Toledo (Chap, xvi) ordered that idolatry be uprooted from the lands of the faithful, a decree which was also issued by the Twelfth Council *of* Toledo (Chap, xi), and the Sixteenth (Chap, ii); and finally the Council *of* Elvira (Chap, xli) ordered that Christians having pagan servants should not allow the latter to keep idols in their homes.

Ambrose. Council of Carthage. African Council. Council of Toledo, &c.

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7. The reason [for the opinion under discussion[1]] is that these Christian princes do not lack jurisdiction with respect to the unbelievers in question, since the latter are assumed to be subjects, and since the action *of which we* are speaking does not exceed the limits of that jurisdiction.

The assertion set forth [in Sub-section 6] is confirmed by

A second reason [for the same opinion] is as follows: it is the duty of a civil state, by virtue *of* reason and the natural law, to provide for the true worship of God within its borders; accordingly, in that same state there exists a directive power for the government of men with respect to this sort of worship; consequently, that state possesses also a coercive power for the punishment of offences contrary to such worship and for the coercion of men, lest they become involved in errors of the kind (for a directive power WOuld be ineffective, and of insufficient use to the state, without an accompanying coercive power); and this coercive power, in so far as it is natural, resides in Christian princes; therefore, Christian princes may thereby exert force upon their own subjects, in the manner above-mentioned, even if the latter are unbelievers. The entire argument is clear. Its foundation, moreover, which is expressed in the first antecedent, is laid down by St. Thomas *{De Regimine Principum,* Bk. I, chap, xiv, and Bk. II, last chapter). This assertion is, furthermore, a self-evident truth. For the power in question is of God, as Paul testifies in *Romans* (Chap, xiii [, v. 1J), adding, immediately thereafter, the words, 'And those [powers] that

St. Thomas.

Romans, xiii.

1 [Le. the belief that infidels who are subjects of Christian princes, 'may be forced by such princes to profess the worship of the true God, and consequently to cease from professing errors contrary to natural reason and to the faith.' *Vide* the first sentence of Sub-section 6 of this Section, p. 77Γ.—Ta.]

are, are ordained of God.' Hence, this power has pre-eminently been given for the honour and worship of the one God, of Whom human princes are the ministers, as Paul says, in the chapter cited. The confirmation of our argument is that the purpose of such power is to maintain the state in peace and justice, which cannot be done unless the state is also induced to live virtuously; but men cannot live according to moral and natural virtue, without true religion and the worship of the one God; therefore, natural power and the jurisdiction of a human state are extended to include this purpose.

8. From this reasoning I infer, first, that even a pagan—that is, a non-Christian—king, if he has a knowledge of the true Lrod, may use force upon his own subjects to cause them to believe that truth, either by their own reasoning if they are intelligent, or by putting human faith in more learned men, if they are ignorant; and consequently, he may compel those same subjects to cease from the worship of idols and from similar superstitions contrary to natural reason. The proof of this inference is that there resides in such a king all power which, according to natural reason, is suitable for a human state.

The first corollary of the immediately menÿÙlg

Secondly, it follows from that series of statements that the princes in question not only have the aforesaid power, but are moreover bound to use it in the manner indicated. The proof of this second corollary is as follow's: by virtue *of* their office they are under an obligation to govern their sub' jects well, in accordance with the purpose for which they possess power; and good government demands this use [of such power], as has been proved; hence, this obligation is more weighty in the case of Christian princes, because they have a greater knowledge of truth, and because in Christian kingdoms this coercion is especially necessary in view of the welfare of the Christian subjects also; consequently, princes of the kind in question are bound to frame laws prohibiting offences in this matter [of worship], for they cannot inflict punishment for such offences, if they observe a due order, unless they first prohibit the offences in their laws.

The second corollary of the same statements.

Thirdly, it follows that such power is to be exercised by public, not private authority; and hence a private citizen who is a Christian may not force another and infidel citizen to refrain from the worship of idols; neither may that Christian citizen, acting on his own private authority, destroy those idols, [a prohibition] which is indicated by the civil law *{Code,* I. xi. 3 and 6). In this sense, also, one should understand Canon 60 of the Council *of* Elvira, according to which a Christian who breaks an idol and does so on his own private authority, is not reputed a martyr, even though he be slain for that action, because he thrust himself

The third corollary of those statements.

Mendoza.

forward indiscreetly and on his own initiative, as Mendoza explains at length, in dealing with the said Council ([*Λetustissimum et Nobilissimum Concilium Illiberitanum cum Discursibus* . . .,] Bk. Ill, chap, xlv).

Are the rites of unbelievers to be tolerated in Christian kingdoms?

9. Finally, there remains for discussion an obvious question connected with the foregoing, a question of which St. Thomas (II.-II, qu. 10, art. 11) treats, namely: are the rites of unbelievers to be tolerated in the kingdoms of the faithful? From what has been said, it would seem that such rites ought not to be tolerated; for they are superstitious and injurious to God, Whose true worship the princes of those kingdoms are bound to advance.

However, St. Thomas makes a valid distinction between two kinds of rites: those which are contrary to natural reason, and opposed to God as known by the light of nature, for example, idolatry, and so4S4 forth; and those others which are indeed superstitions, by comparison with the Christian faith and its precepts, but which are not intrinsically evil or contrary to natural reason, for example, rites of the Jews, and perhaps even many of the rites of the Saracens and of similar infidels who worship only the one true God.

As to the first group, then, the inference stated at the beginning of this section[1] is valid; for the Church ought not to tolerate these among her infidel subjects, a point proved by all the passages which we have cited and by the fact that, in such toleration or permission, there is no advantage either to the unbelievers themselves or to the Christian state. This assertion must be understood, however, only in a general sense; for it often happens that a Christian king is not able to destroy these rites entirely, without great loss to his kingdom or to the other Christian subjects, in which event he may, without sin, connive at and allow [the continued observance of the rites]. This concession has its foundation in the words of Christ *{Matthew,* Chap, xiii [, v. 29J as set forth in the parable in which the servants asked the head of the household whether the cockle should be rooted up, whereat the latter replied: 'No, lest perhaps rooting up the cockle, you root up the wheat also together with it'. So it is that the Church often tolerates grave sins even in the faithful, lest schisms still more grave result. Such is the doctrine upheld by Augustine refuting Parmenianus *Contra Epistolam Parmemam,* Bk. Ill, chap, ii [, no. 13]), and set forth in *Decretum* (Pt. II, causa xxm, qu. iv, can. xix). The reason for this view is clear, namely: prudence teaches that of many evils the least should be chosen, while the rule of charity demands that correction should not be exercised save for a fruitful result; and therefore, much less should coercion be exercised when greater harm would ensue.

Matthew, xüi.

Augustine.

[1] [Sect. 9; Le. the inference that, 'such rites ought not to be tolerated', &c.—Tk.]

10. As to the other rites of unbelievers, those which are opposed only to the faith but not to natural reason, it is a certainty that unbelievers, even though subjects, should not be compelled to abandon them; on the contrary, such rites should be tolerated by the Church. So St. Gregory teaches *(Letters,* Bk. I, letter xxxiv [Bk. XIII, letter xii]), especially with respect to the Jew's, when he forbids that the latter be deprived of their synagogues, and urges (Bk. XI, letter xv) that they be permitted to engage in their ceremonies therein. He likewise teaches that the Jews should be permitted to celebrate their solemn rites.

Unbelievers are not to be compelled, even when they are subjects, to abandon rites which are merely in opposition to the faith.

Gmr>ty.

The reason for such a view is that these rites are not intrinsically evil according to the natural law, and that therefore, the temporal power of the prince does not *per se* include the authority to prohibit them; since no reason for the prohibition can be given, save that the rites in question are contrary to the faith, and this is not a sufficient reason in the case of those who are not spiritually subject to the power of the Church.

The proof of this assertion.

The congrmatjon of this argument is the fact that such a prohibition would be (so to speak) a coercion to the acceptance of the faith; and this coercion, as we have said, is not permissible. The foregoing argument applies in general to the Saracens and to the other unbelievers who know and worship the one true God, in so far as pertains to those rites which are not contrary to natural reason.

The confirmation.

However, the Church has always considered that this tolerance is especially advisable in dealing with the Jews, because the errors of the latter furnish a testimony to the faith jn many particulars. In the first place, the Jews admit Messiah was promised, and they accept the Scriptures from which we clearly prove that the promise has been fulfilled. Secondly, we see fulfilled in them what the Prophets and Christ foretold regarding their desertion of Him and their hardness of heart. Finally, Augustine has said *(On the City of God,* Bk. XV III, chap, xlvi) that the Jews should be preserved and allowed to five in their own sects, in order that they in turn may preserve a testimony to the Scriptures such as the Church received, even from her enemies; and, in this connexion, Augustine quotes the words of Paul *(Romans,* Chap, xi [, v. 1iJ), 'But by their offence, salvation is come to the Gentiles'; and also a passage from the *Psalms* (Iviii [, v. 12]), 'Slay them not, lest at any time my people forget, scatter them by Thy power, &c.' Augustine cites similar examples in his first sermon, on *Psalm* xl, near the end.

Why the Jews are to be permitted to ceiebrate their own rites m hnstian states.

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II. However, it should be added that the Church has allowed these rites within certain bounds and limitations.

The first and general limitation is that such rites are not to be

celebrated to the scandal of the faithful; a fact which one may gather from the *Decretals* (Bk. V, tit. vi, chaps, iii, iv, vii and xv) and from the *Code* (I. ix, throughout many laws there given). Among the Laws of Spain, too, there are many of the same sort *([Las Siete Partidas,* Pt. VII, tit. xxiv, laws I *et seq.* and Pt. I, tit. iv, law 63).

Within what limits these rites should be allowed to the Jews,

Secondly, and specifically, although the Jews are permitted to retain and to keep in repair their old synagogues, they are nevertheless forbidden to erect new synagogues. On this point, see the *Code* (I. ix. 18), and the *Decretals* (Bk. V, tit. vi, chaps, iii and vii).

Thirdly, although it is forbidden that their synagogues should be taken away from them, nevertheless, if these are once so taken, and consecrated as churches, they are not to be restored, and the loss must be made good in some other way; as Gregory indicates in *Letters* (Bk. VII, letter Iviii [Bk. IX, letter Iv]).

Gregory.

Fourthly, the Jews are not allowed to do anything which has not been ordained in their law, a limitation which is laid down by Gregory in the same Letter Iviii [Iv].

Fifthly, they are not allowed to have their synagogues in the neighbourhood of Christian churches, according to the same Gregory (Bk. XII, letter xviii [Bk. I, letter x]).

Gregory. 485

Sixthly, on the day of the Passover, Jews are forbidden to go out in public; nay more, they are ordered to keep their doors and windows closed, as we read in the *Decretals* (Bk. V, tit. vi, chaps, iv and xv). According to this same authority, they are also commanded to wear an outward sign by which they may be externally distinguished from the faithful. And in general, they are to be severely punished if they do anything or make any public manifestation, in opposition to the honour of the Christian religion; a fact which is also brought out in the *Decretals* (Bk. V, tit. vi, chap, xv) and in the *Decretum* (Pt. II, causa xxiii, qu. viii, cans, viii *et seq.),* and in the civil laws cited above.

Finally, for the reason already expounded, the ancient rabbinical books which were written sincerely and without any hatred of the Christian religion are tolerated; but the Books of the Hebrews, who later corrupted the Scriptures, are banned, as Cajetan has noted (on II.-II, qu. 10, art. 11).

Cajetan.

SECTION V

MAY THE UNBELIEVERS IN QUESTION BE DEPRIVED OF ALL SUPERIOR POWER WHICH THEY HOLD OVER CHRISTIANS, THAT IS TO SAY, OVER THE FAITHFUL?

I. This power may be manifold, but it can be reduced to four heads. First, there is the power of jurisdiction, whether it be supreme

as in kings, or inferior as in their ministers. The second sort is t^ie P°wer oftrue dominion, to which absolute slavery corresponds. The third is the power which may be called domestic, to which sendee corresponds. The fourth is the *patria potestas.*

The fourfold power of unbelievers over Christians.

The question stated above may be applied to all these forms of power, but w'e shall speak chiefly of princes; and that point being made clear, the other headings will be disposed of easily. Moreover, all these forms may be treated as relating to non-subjects [as well as subjects]; and in either case a twofold procedure is distinguishable by which the holders may be deprived of this power—that is, they may be deprived directly, merely by reason of the unbelief of the superiors, or because of the faith of the subjects; or only indirectly, on account of other intrinsic purposes.

2. In the first place, then, as to those non-Christian princes some or many of whose subjects are converted to the faith, there is the opinion of certain persons who hold that these unbelievers may be absolutely and directly deprived by the Church of their power over their Christian subjects. Hostiensis *(Summa,* Bk. III, *De Koto,* p. 263, at end) has been cited as supporting this opinion; but he does not really hold such a view, although in other matters he differs from what we have said above, expressing himself in a somewhat inconsistent manner. Alvaro Paez *(De Planctu Ecclesiae,* Bk. I, chap, xviii [chap, lix]), however, inclines more definitely to the view in question. The ground on which that opinion is based is the contention that it is not fitting, but on the contrary, seems wholly disgraceful, that the faithful should be governed by unbelievers. This statement is made in the *Decretals* (Bk. V, tit. vi, chap, i) and is derived from Paul's writings (z *Corinthians,* Chap. vi). Moreover, there are cited in favour of this view other Scriptural testimonies which I shall not discuss here, since I speak ot them in another passage presently to be cited. However, the opinion in question is wholly false.

The opinion of certain persons, who affirm the right even of direct deprivation.

Bitwise,

Aλ-aro Paet.

3. The following proposition must, then, be laid down at the outset: unbelieving princes may not simply and direcdy on the ground [of unbelief], be deprived by the Church of the power and jurisdiction which they hold over Christian subjects. This is the common opinion, and it is drawn from a passage in the works of St. Thomas above cited ([II.-II,] qu. io, art. io), in connexion with which Cajetan and all the more recent commentators uphold such a view; as do the other Scholastics, especially Durandus (on the *Sentences,* Bk. II, dist. xliv, qu. 3), the canonists, in general, on the *Decretals* (Bk. III, tit. xxxiv, chap, viii), St. Antoninus

The first proposition: unbelieving princes may not be deprived of their jurisdiction over their Christian subjects, simply and directly [on the ground of unbelief].

St. Thome.

Duraadus.

Antonuna.

(Pt. II, title x, chap, xv, § i, at end [tit. xn, chap, iii, § I, at end]), Sylvester (word *infidelitas,* Qu. 4), Waldensis *{Doctrinale Antiquitatum Fidei,* Bk II, chaps. Ixxxi *et seq.),* Driedo *{De Libertate Christiana,* Bk. III, chap, ix, at end), Victoria (Relect. *De Indis, 'passim),* Soto *{De lustitia,* Bk. IV, qu. ii, art. 2) and Salmeron (Vol. XIII, tracts, xxxvii and xxxviii [Vol. XII, tract, xxxviii]). Other authorities, who will be referred to below, support the same opinion.

Sylvester. Waldensis. Driedo. Victoria. Soto. Salmerdn.

4. The basis of this truth rests on the fact that either the princes Question may be deprived *de facto* of such jurisdiction and power, on the ground that they do not ρθδδ€δδ ^tiis jurisdiction and power by divine right, or else they are unworthy on account of their unbelief to hold the power which they may actually have, and consequently may justly be deprived of it; but neither of these arguments is valid; therefore, . . .

The basis of the first proposition stated as a dilemma.

The first part of the minor premiss, which I have elsewhere proved at length *{Defensio Fidei,* Bk. III, chap, iv, no. i),[1] is most certainly true. Briefly, the argument is as foj]ows. Chj-st our Lord has not deprived the aforementioned princes of the power in question; nor does baptism—whether *ipso iure* or *de facto*—exempt the Christian from the power of his king, even though the latter be an unbeliever.

An exposition Of the first part of the dilemma.

The proof of this argument is sufficiendy evident, both in the fact that neither from Scripture nor from tradition can such deprivation or exemption be derived; and, more especially, in the fact that 486 both Scripture and tradition clearly uphold the contrary practice. This is true of Scripture, because Paul said *{Romans,* Chap, xiii [, v. 1]): 'Let every soul be subject to higher powers'; an admonition which, under the expression 'every soul', manifestly includes the faithful, and under 'higher powers', includes the emperor and the princes of those days, who were unbelievers; wherefore in the *Epistle to Titus* (Chap. iii [, v. I]), Paul also said, 'Admonish them to obey princes',[2] and Peter wrote (r *Peter,* Chap, ii [, v. 13]), 'Be ye subject,' &c. Again, as to tradition, [viewed in relation to our argument,] it is well-known from the ancient custom of the Church, which I have elsewhere pointed out, in the work cited *[Defensio Fidel],* in accordance with the comments of many of the Fathers. To these citations I now add only the name of Polycarp as quoted by Eusebius *{Ecclesiastical History,* Bk. IV, chap, xiv, or xv [chap. xv]). The former, speaking of non-Christian princes, says, 'We are taught to render to the magistrates and the powers constituted by God, in proportion to their dignity of rank, such honour as is in no

Romans, xiii.

Titus,ni.

Eusebius.

1 [Not included in these *Selections.*—Tr .]

2 [The Vulgate reads: ‡Admonish them to be subject to princes and powers, to obey at a word', &c.—Tr .]

way detrimental to our salvation orto our religion.' St. Thomas (II.-II, qu. io, art. io) also defends this view very cogently by argument, when he reasons as follows: the political powerin question springs from natural law and the *ius gentium,* whereas faith springs from divine and supernatural law; and the one law does not destroy or alter the other; neither is the natural law founded on the divine positive law; rather is it in a way subject thereto, constituting (as it were) the presupposition of the latter; and therefore, positive power is not founded on faith in such, a way that one may lose that power on account of unbelief nor, on the other hand, is positive subjection, i.e. [subjection in the political sense] to one who is an unbeliever, repugnant to faith or to the baptismal character, so that, consequently this subjection is not automatically dissolved [by faith and baptism].

An exposition of the latter part of the dilemma.

5. The other part[1] of the proposition which we have stated as 2 dilemma follows clearly from what has been said above. For the unbelieving princes of whom we speak, may not rightfully be deprived of their possessions without some just ground; and included within those possessions is the jurisdiction which they are assumed to have over Christian subjects; therefore, they may not be deprived of such jurisdiction, simply and directly [on the ground *of* unbelief].

The truth of the antecedent in both its parts is self-evident. The proof of the consequent is as follows: there is no just ground on which such an act of deprivation may be committed; for the pretext would be specifically that very unbelief, since strictly speaking, no other ground exists or can be conceived; and in truth, unbelief is not, *per se,* a just ground. For if we consider it purely as an absence of faith, we must admit that, as I have said, such a lack does not destroy the basis of political power; and if, on the other hand, unbelief is considered as a sin worthy of such punishment, even so, it is not within the power of the Church to punish these unbelievers, since the Church has no jurisdiction over them, as *I* have also proved. Therefore, just as they may not be punished by the loss of other temporal goods, in view of the fact that their ownership of those goods is not based upon faith, similarly, they may not be deprived of the power in question.

a demonstration by anaJ°gy-

Proof of this fact may be derived by analogy. For *if* there were two sovereign princes who were unbelievers, and one of them worshipped the true God as known by the light of nature, while the other prince was an idolater some of whose subjects worshipped the true God, the latter prince could not, on the ground of his idolatry, be deprived by the former *of* his jurisdiction

[1] β-e. the assumption that the princes in question, 'are unworthy on account of their unbelief to hold the power which they may actually have, and consequently may justly be deprived of it.' *Vide* the first sentence of Sub-section 4 of this Section, p. 778.—Tr .]

Over such subjects, since the prince who worshipped the true God would have no jurisdiction over the other, and since the idolatrous prince would not lose his jurisdiction over the subjects in question owing to the mere fact of his idolatry. There is, then, an indication from natural law that this order must be preserved, because that preservation is expedient to the welfare and peace of the world and to a just equity; but the power given to the Church does not interfere with natural rights, since it has [rather] been given for edification and is to be used in the way best adapted to the preservation of the faith; therefore, the Church has not been given the aforementioned power of deprivation, a power which would serve for destruction instead [of serving for edification], inasmuch as it would result in harm to the faith and in scandal to those who are not of the faith.

The second proposition may indkecUyUdeh prive non-Christian princes of their power over those of their subjects who are believers.

6. Nevertheless, we must state, in the second place, that the Church may indirectly[1] deprive these non-Christian Pr^nces their power over those subjects who are believers, if the welfare or defence of the latter makes this necessary. St. Thomas so teaches (II.-II, qu. 10, art. 10), as do others cited above; and I also have touched upon this subject in the *Defensio Fidei* (Bk. III, chap, xxiii, no. 21).[2]

The reason supporting this proposition,

The reason in support of this second proposition is as follows: the baptized faithful, by the fact of their faith and their baptism, are subjects of the Church in spiritual matters, so that the Church has the power to rule them to the extent that is necessary or highly expedient for the welfare of their souls; and therefore, if it should become necessary to this end, to free such persons from the power of non-Christian lords, the Church may do so, and consequently may deprive those non-Christian princes of their power over the persons in question. For he who gives the form, gives also those things that are consequent upon the form; and whoever gives power and jurisdiction in order to attain any end, gives consequently, all the means necessary to reach that end.

This argument is confirmed by the example of a marriage contracted between unbelievers, one of whom is later converted to the faith. For if either party wishes to 487 remain in wedlock without injury to God, the other may not sever the bond; but if, on the other hand, the unbelieving spouse is the occasion to the Christian partner of evil living, then the latter both may and ought to be separated from that unbeliever, as Paul declares (2 *Corinthians,* Chap, vii [, v. 15]). Thus the unbelieving partner, indirectly (as it were) and for the good of the faith, is deprived of the

[1] [Le. incidentally, in the process of attaining some other end.—Tr .]
[2] *[Supra,* p. 700.—Tr .]

power and dominion which he has over his spouse. Therefore, the same holds true to a far greater degree in the case which we are discussing; for the marriage bond is of its nature more nearly indissoluble than the bond of political subjection.

7. It should be noted, however, that there are two ways in which such Christians may be freed from the power of unbelievers.

The first mode of freeing the faithful from the power of non-Christian princes, viz. through change of domicile.

The first primarily affects the subjects themselves, who may change their domicile and pass over to the realms of Christian princes; for then it follows of necessity that they are no longer subject to their former prince. This method is easy and entirely just; and therefore, it may be employed by any Christian subject, acting on his own authority, for he is not bound to remain always in the same territory. Consequently, if any prince attempts to prevent his Christian subjects from thus transferring their domicile, he may be forcibly resisted by Christian princes, and justly subdued in war in defence of these subjects, because they are being deprived *of* their right which they wish to exercise.

8. These unbelieving princes may be deprived of their power over their Christian subjects in another way, which affects [primarily] the princes themselves; that is, though the subjects in question remain in that territory, the prince may be deprived [either of his sovereignty],[1] or at least of his power over such subjects. But this result could hardly be effected without a change of ruler, so that the second method is more difficult [to follow' than the first]; and therefore, although the power [to employ that method] is not lacking [to the faithful], nevertheless, great caution is necessary in its employment. In the first place, [if this second method is to be used,] the faithful should constitute a great multitude; or, if they be few, it must be practically impossible for them to change their domicile to a place where they may practise their faith without scandal. Furthermore, the successful issue of the enterprise must be morally certain, lest it come to pass that in wishing to eradicate the cockle, these Christian subjects should pull up the wheat.

The second mode of depriving an unbelieving prince either of his sovereignty, or of his power over the faithful.

Durandus requires that some injuries be committed on the part of the prince [before the second mode may be employed].

Durandus [on the *Sentences,* Bk. II, dist. xliv, qu. 3] holds, moreover, that it is necessary, [in order to justify the method in question,] that the non-Christian prince shall first have been the cause of injuries and obstacles to the faith—such as attempting to entice his subjects to unbelief, or impelling them to observe his own rites, or prohibiting

[1] [The bracketed English phrase has been supplied from the Latin phrase, *sd regno,* which occurs in the marginal note, but not in the body of the text.—Ts.]

them from practising the Catholic rites and. from obeying their own spiritual pastors, or similar injuries—since both necessity and the ground of justice would then exist.

St. Thomas.

St. Thomas (PI.-II, qu. 10J art. 10), however, thinks that, although these factors may, in a general sense, be necessary for the exercise of the power in question, yet the Church has the power, even before the infliction of this kind of injury, to remove such non-Christian sovereigns solely on the ground of moral peril to the faithful. This opinion I too have approved, in the aforesaid *Defensio FideifBk.* III, chap, xxx, no. 6),[1] because, in moral questions peril must be guarded against before any specific injury occurs, a principle which certainly is very true when the peril is imminent and concerns the moral order. Therefore, as regards the matter specifically under discussion [—that is, the second mode of depriving an infidel prince of power—] all the circumstances in any particular case must be taken into consideration, and [in view of them], such peril to the faithful must be judged to exist [before resort to that second method is justifiable].

Yet the moral peril of injury is sufficient.

9. Furthermore, I note that this indirect power, which we hold, exists in the Church for the removal of the above-mentioned princes, is a public power and not a private one, a fact which is self-evident. Therefore, it may be considered as residing either in the Pope, or in some sovereign Catholic king. The Pope has, by reason of his supreme spiritual jurisdiction, the power to secure and watch over the salvation of souls; whereas this power exists in a temporal prince only as a means of defending his neighbours, and especially the faithful, for such a prince has no spiritual jurisdiction.

in whom this indirect power resides,

Consequently, a temporal lang may not use this power on his own authority until a non-Christian prince has inflicted violence upon his own Christian subjects, since measures of defence are not lawful before an act of aggression occurs. But both the Pope, and a king as moved by the Pope and as his instrument (so to speak) may well take preventive measures solely on the ground of peril, since the power of jurisdiction extends to the prevention of evils lest they occur.

These remarks will suffice as to sovereign princes. In due proportion, the same conclusions might easily be applied to other and intermediate rulers, as well as in the case of all unbelievers not subject to the Church who exercise jurisdiction over the faithful.

10. In view of the foregoing, it is easy to deal with the second division [of power],[2] that which relates to Christian *slaves* and their infidel masters, ror, following a simi-

The third proposition: *infidel masters,*

1 [Not included in these *Selections.*—Tr.]

2 *[secundum membrum,* referring to true dominion, the second of the four divisions mentioned in the first paragraph of this Section. The various series of numbers used by Suarez in the course of the section are somewhat confusing.—Tr.]

not subjects of the Church, cannot be deprived of their dominion over their Christian slaves, directly [on the grouncfof unbelief].

lar line of reasoning, we must state that these masters, who are not in any other respect subjects of the Church, may not be deprived of their Christian slaves, directly [on the ground of unbelief], whereas they may indirectly[1] be deprived of those slaves.

The first half of this proposition is certainly true and commonly accepted. With regard to it, and in addition to the authors already
488 cited, Sylvester (word *furtum,* Qu. 6), may be consulted; and by him, at that place, Rosella ([word *furtum,]* No. 25) is quoted, although in another passage *{ibid.,* No. 24) Rosella seems to hold a different opinion. In the latter case, however, he was probably speaking of Christian slaves captured in an unjust war; otherwise he would be speaking incorrectly and contradicting himself. Angelus de Clavasio (*fSumma,* word *dominus,]* No. 56) may also be consulted on this point. The statement in question is upheld, too, by Navarrus *{Summa,* chap, xvii, nos. 103 and 104), Covarruvias (on *Sext,* rule *Peccatum, De Reg. Jur.,* Pt. II, §11, no. 6), and Molina *{De lustitia,* Bk. I, disp. xxxù).

Sylvester. Rosella. Angelus. Navarrus. Covarruvias. Molina.

The argument supporting this statement is similar to that given above. For Christians who before baptism were subject to unbelievers are not released from temporal servitude to the latter by the simple force of divine law, that is, of baptism; and, therefore, infidel masters, who are not in any other respect subjects *of* the Church, may not, directly [on the ground of unbelief,] be deprived by the Church of their dominion. The truth of the antecedent, Paul clearly assumes, when he says in the *Epistle to the Ephesians* (Chap, vi [, v. 5]): 'Servants be obedient to them that are your lords according to the flesh [...] as to Christ.' This injunction is repeated in the *Epistle to the Colosstans* (Chap, iii [, v. 22]), in that to *Titus* (Chap, ii [, v. 9]), and in the *First Epistle of Peter* (Chap, ii [, v. 18]). Wherefore Augustine (on *Psalms,* cxxiv [, no. *y]),* also, rightly says: 'Christ did not make free men out of slaves, but made good slaves out of bad ones.' He upholds this same doctrine at some length in his thirty-first sermon, on *Psalm* cxriii, and under His name in *Questions on the Old and New Testaments* (Qu. xxxv). From what has been said above, the truth of the consequent is also evident, namely, that these non-Christians, since they are not subjects of the Church, may not justly be deprived of their slaves.

Ephesians, vi. *CnlAtrtAut'* yj. *Psalms,* otxnr. Augustine.

ii. The second half of our third proposition,[2] indeed, that half

Heverthei these infidel masters may suffer such depnvation, indirectly.

re^ates to the power [to deprive infidel masters] on indirect grounds of their dominion over Christian slaves—is applicable when non-Christian masters are *fs.* hostile to their Christian slaves, especially *if* that hostility involves matters of faith. In that case, these very slaves have

1 [i.e. incidentally.—Tb.]

2 *[Vide the* first paragraph of Sub-section io of this Section, p. 7S2.—Tb.]

the right to defend themselves, or to recover their original freedom if they can do so through flight; and certainly, in view of the arguments already set forth, the princes of the Church have the right, in this connexion, to exercise coercion upon unbelievers.

The same holds true as to servants.

From the above statements, we derive sufficient enlightenment as to what should be said on the third point,[1] which relates to servants and the power of the head of the household over them; for the solution [in this case] should preserve a similar proportion.

St. Thomas.

May the children of unbelievers be baptized against the will

With respect to the fourth point, however [—that which relates to the *patria potestas*—] there arises a serious question, of which St. Thomas ([II.-II., qu. 10, art. 12) treats, namely: may these unbelievers who are non-subjects be forcibly deprived of their infant children in order that the latter may be baptized? But this question pertains to the subject of baptism, with which I have dealt in Vol. III, disp. xxv, §3 *[De Sacramentis].*[2] Enough has been said, then, as to unbelievers who are not subjects.

The fourth proposition.

12. We must consider, secondly,[3] [whether] unbelievers who are [themselves] subjects of Christian princes [may be deprived of power over Christians]. Under this head those four topics discussed above may be examined and treated.

As to the first point, indeed—that which relates to jurisdiction—the question has no application with respect to a sovereign prince; for we are assuming that these unbelievers are subjects of some Christian sovereign. Therefore, we have only to inquire as to the inferior judges or governors; and on this point it should be stated briefly that the Church can deprive such unbelievers, either directly or indirectly, of all jurisdiction of this kind over Christians, or—what amounts to the same thing—it may determine that in a Christian kingdom the faithful shall not be governed temporally by infidel judges or other infidel officials.

Infidel judges under a Christian king may be deprived of their power either directly or indirectly.

The first proof: from reason.

The direct power to do so clearly exists, because it is a Christian prince who has jurisdiction over the subjects in question, and he may require in his judges and officials such qualifications as he deems necessary for honour, or for distributive justice, or for the peace and safety of his state. On this ground, then, it is easily possible to exclude certain persons from the offices men-

1 [Le. domestic power. *Vide* the first paragraph of Sub-section 1, pp. 776-7.—Tr.]

2 [Not included in these *Selections*.—Tr.]

3 [Le. 'secondly', as opposed to 'In the first place', the opening phrase of Sub-section 2 (p. 777), where Suarez introduces the discussion relating to non-Christian princes whose subjects are converted to the faith.—Tr.]

♦ [*Vide* the first paragraph of Sub-section 1; and also, footnotes, 2, p. 782 and 1, this page.—Tr.]

tioned. The existence of the indirect power, on the other hand, is a self-evident fact; for the act in question is highly expedient to the welfare of the faith, an argument which proves the existence, not only of the power, but even of the obligation.

13. This teaching agrees with the words of Paul (z *Corinthians,* Chap, vi [,v.6]), 'But brother goeth to law with brother and that before unbelievers', clearly reproving such behaviour as indecorous; at least, in cases in which it can be avoided. To the same effect is his saying elsewhere (2 *Corinthians,* Chap, vi [, v. 14]), 'Bear not the yoke with unbelievers'. For although there may be other interpretations of this passage, this also is a probable one; or, in any case, the phrase may well be adapted to such an interpretation by a parity of reasoning.

The second proof: from Paul.

iCerinAunt, **.

Furthermore the existence of this power may be clearly proved from the application of human laws. For in the *Code* (1. Justinian forbids the Jews to hold public offices affecting Christians. Innocent III makes a similar ruling in the *Decretals* (Bk. V, tit. vi, chap, xvi), when he imposes a penalty upon Jews who accept or hold such offices. Moreover, the application of this rule is extended to the pagans,[1] that is, to Saracens, as may be learned from the last chapter of the same title [, i.e. *Decretals,* Bk. *V,* tit. vi, chap, xviii], in which Portugal is expressly enjoined to obey this law, with an additional statement to the effect that she may not sell tribute or royal grants to the Jews except when the latter are joined [in partnership] with some Christian, who will take care lest injury 489[be done to believers. A similar law is laid down by the Third Council of Toledo (Chap, xiv [cited in] *Decretum,* Pt. I, dist. xxiv, can. i [Pt. I, dist. Liv, can. xiv]); and in the Fourth Council of Toledo (Chap. Ixiv [cited in] *Decretum,* Pt. II, causa xvn, qu. iv, can. xxxi), it has been enacted that those who entrust such offices to Jews should be excommunicated. The reason given is that, relying on this authority, the Jews take occasion to*do injury to the faithful. Finally, the same rule is laid down in the First Council of Macon (Chap. xiii).

The third proof: from law.

innocent

Council of Toledo.

14. Secondly, as to slavery, it should be stated that the faithful may not be slaves of the unbelievers in question, [i.e. of those unbelievers who are subject to a Christian prince or state,] and consequently the Church has been able[3] to deprive her infidel subjects of such power over Christians. So the Emperor Justinian also ordered, in the *Code* (Lx, only law); and in the *Decretals* (Bk. V, tit. vi, chap, v) there is a similar rule with respect to Jews. Gregory,

tion: Christians may not be slaves of those unbelievers who are subjects of the Church or of Christian princes.

Gregory.

[1] *[Paganos, where* one would expect *infiddes. Cf. note to* first paragraph of Sub-section 15, *infra,* p. 787.—Tr .]

* [The Latin text incorrectly has '493'.—Tr .]

[3] *[potuisse.* Possibly Suarez intended *posse.*—Tr .]

too *{Letters,* Bk. II, letter xxxvi or Chap. Ixxvi [Bk. Ill, letter xxxviii]) and the *Decretum* (Pt. I, dist. 1 iv, cans, xiii and xiv, with other Chapters of the same dist. 1 iv), have rulings to this effect.

A special reason for such provisions may be inferred from the danger that would result to the faithful themselves if they should be allowed to dwell under the dominion of unbelievers. Another reason is that occasions of blasphemy, contempt of faith, and injury to the faithful might arise from such a relation.

These reasons pertain rather to the question of indirect power, although I may add that they have to do also with the direct power of Christian princes. For, in the first place, a Christian king may issue a general decree to apply throughout his realm, to the effect that Christians are not to be made the slaves even of other Christians, a rule which many kingdoms even now observe; because, though the civil power is not directly derived from the faith, nevertheless, when it is joined thereto, it is directed, and (so to speak) elevated thereby, so that it may do much for the welfare of the faith; therefore, the same law may far more readily be decreed with regard to unbelieving masters. Secondly, a king may impose upon his subjects such tribute and burdens as he deems necessary for good government; therefore, in like manner, he may impose upon infidel subjects the burden of an incapacity to be masters of Christians.

By what right the Christian slaves of unbelievers are freed from servitude.

So it has been ordained that if an unbeliever, the slave of another unbeliever, is converted to the faith, by that very conversion he shall be emancipated. In the same way, if a Christian is bought by an infidel as a slave for purposes of servitude, he shall become free, by the very nature of the transaction, and the buyer shall lose his purchase money. But if the said Christian be bought for purposes of trading, he shall be sold to a believer within three months; otherwise, he becomes free. The same provision is laid down in the *Code* (I. ix, last law [only law] and I. iii, last law, last section *[Code,* I. iii. 54 (56), §§ 8 *et seq\).*

However, the canonists note, with respect to one of the chapters cited above *{Decretals,* Bk. V, tit. vi, chap, ii), that these rulings do not prevent a Christian from working as a farm-servant, whether as a newcomer to the lands or estates of an unbeliever, or as one born thereon, for the following reasons: the permission to do so may be inferred from the passage in question; moreover, such labour is not servitude, and consequently is not included under the aforesaid prohibition; and finally, in the case of farm-servants there does not exist the same peril [to the faith], or likelihood of scandal, since the believer and the unbeliever do not live together or engage in frequent and familiar intercourse by reason of such occupation.

15. Thirdly, on the question of servants it must be stated that the Church has this same power to prohibit Christians from acting even as free servants of unbelievers. This assertion may be proved without difficulty by applying to the present case the reasons given above,[1] an application which is easily made and which I therefore omit. Usage also confirms the same assertion. For this principle is laid down in a Chapter of the *Code* (I. iii. 55, § 5 [54, §§ 8 *et seq.f),* already cited; and its application is extended to the pagans,[2] in the *Decretals* (Bk. V, tit. vi, chap, viii [chap, xiii]), in a passage where the Saracens are expressly mentioned.

The sixth proposition: the Church has the power to command that Christians shall not act as servants of unbelievers who are subject to her; and the Church does in fact so order.

Finally, with respect to the *patria potestas,* it is certain that the son of an unbeliever, as soon as he is baptized, must in view or that very fact be treed from the power of unbelieving parent, for the sake of the safety of the faith, and because by reason of baptism he is now under the law of the Church. This rule has been laid down in the Councils of Toledo, cited above, and is proved by the *Decretals* (Bk. III, tit. xlii, chap. iii). Whether the infant children of these unbelieving subjects may be baptized when the parents are unwilling, and whether the former may be taken from the parents with that end in view, are, however, disputed questions, which I have discussed [in *De Sacramentis],* Vol. III, pt. m, disp. xxv, §§ 4, 5 and 6, to which the reader may refer.[3]

regarding the power in view of *chddren^ °ver thek*

SECTION VI

WHETHER EVERY OTHER FORM OF COMMUNICATION BETWEEN CHRJSTIANS AND UNBELIEVERS IS OR MAY BE PROHIBITED

1. Three kinds of communication between Christians and unbelievers must be distinguished: the first may be called formal, that is, communication in the works of unbelief; the second is communication in the works of our religion, and in a way this approximates to formal communication; the third is purely secular and human, and with
490 respect to faith and unbelief, it is merely material [, i.e. incidental].

The three kinds of communication between Christians and unbelievers.

2. The first kind is certainly forbidden by the divine and the natural law. This prohibition, by its very nature, is directed primarily to Christians; yet it may be applied to the unbeliever himself, either because unbelief is itself forbidden thereby, or—again—because the

The first kind of communication, ^in *te°forbiddtmby* the natural law.

1 [Püfc 785; the fifth proposition in the preceding Sab-section.—Ta.]

2 *[Paganas* again occurs where *infideles* would seem to be the more appropriate term. Cf. note I, p. 785.—Tr.]

3 [Not included in these *Selections.*—Tr.]

act of drawing a Christian into the intercourse or co-operation in question, is *per se* an evil act. However, this negative command regarding Christians is issued primarily to us, to whom these words were addressed (z *[2] Corinthians,* Chap. vi[, w. 14,16,15]) : 'For what fellowship hath light with darkness [...] or what agreement hath the temple of God with idols [. . .] or what part hath the faithful with the unbeliever?' Paul repeated this admonition in the same Epistle (z *Corinthians,* Chap, x [, v. 20]) : T would not that you should be made partakers with devils.' And a similar sense may be given to the passage (2 *Corinthians,* Chap, vi [, v. 14J): 'Bear not the yoke with unbelievers.' The same prohibition, both in its general form and with reference to many specific points, is found in the Sacred Canons (69, 70)[1] of the Apostles, in the Canons (61, 62) of the Trullan Synod, held after the Sixth [General] Council, in the Collection (71 to 75) of Martin, Bishop of Braga, compiled after the Second Council of Braga, and in the Council of Laodicea (Canons 37 *et seq.),* and also in the *Decretum(f\.* II, causa xxvi, qu. v, can. iii).

1 *Corinthians,* x'

2 *Corinthians,*

*

A proof by reason-

Now the reason [for this prohibition] is that such intercourse is both irreligiously superstitious and opposed to the profession of the faith. Therefore, all that we said above about the necessity of professing the faith has due application at this place, as have our remarks in Vol. I: *De Religione* (Tract. Ill, bk. n)[2] on the sin of superstition.

The appearance and moral suspicion of to beavoia>d°n

We need only add that not merely actual communcat^on unbelievers] must be avoided, but also the appearance and moral suspicion of the same, such as the frequenting of the synagogues and temples of unbelievers, especially at the hours when their rites are celebrated. For this practice may give rise to scandal and provide occasion for the suspicion that those temples and rites are acceptable or approved.

Azor.

Azor *(Moral Institutes,* Vol. I, bk. vm, chap, xxii, qu. 3 and IX' c^aP Qu· 3) maX ke consulted on this point, as may also my own work, the *Defensio Fidei* (Bk. VI, chap, ix),[2] in which I have added that all co-operation is much more to be avoided [than is communication]. However, it is difficult to determine whether or not any co-operation takes place in particular cases: as when [Christians] sell to Jews or to pagans any animal or other object necessary for the sacrifices of the latter. But wfith respect to this point, one must observe the rule that if a thing cannot possibly be put to a good use, the sale of the same is co-operation; whereas if the object in question can be put to a licit use and in itself is neither good nor bad, then, normally, its sale is not co-

ah i-.-_-.n-ii.Li: the wô^E^o^un! believers is stiu moreto be avoided.

1 [Canons 70, 71 in the edition of Funk.—Reviser.]

2 [Not included in these *Selections.*—Tr.]

operation. This is the rule laid down by Cajetan (on II.-II, qu. 10, art. 4), a rule which conforms with the opinion expressed by St. Thomas (II.-II, qu. 169, art. 2, ad 4); moreover, the same view is held by Sylvester, Angelus de Clavasio, and others (on word *infidelitas)',* while I, too, have touched upon this subject in the aforesaid Chap, ix *[Defensio Fidei,* Bk. VI, chap, ix],[1] and have discussed it at length in the treatise on *The Sacraments in General,*[1] andon *Oaths,*[1] and in other passages ; for this question is indeed of a very general application.

Cajetan. St.Thomaj. Sylvester. Aηβ'l"·

3. The second kind of communication of unbelievers with believers, that which takes place in connexion with sacred matters and with the works or our own religion, js at times forbidden by divine and natural law as being intrinsically evil.[2]

communication is prohibited by the natural law.

An instance of such a forbidden act is the admission *of* an unbeliever to partake of the Sacraments, this act of admission being absolutely and directly prohibited to believers; but unbelievers, too, are forbidden to obtrude themselves into the rites in question, and accordingly, they may be punished as injurious to the Christian religion, if they do so forcibly.

Under this part of our discussion, we may include the prohibition of marriage with unbelievers, although an infidel who has been converted to the faith may remain in wedlock already contracted with another infidel, provided that no offence[2] to the Creator results therefrom. Nevertheless, a baptized Christian is forbidden to contract marriage with an unbeliever, as I assume from the treatment of the subject of matrimony. It is true indeed that this prohibition is ecclesiastical rather than divine; and yet it seems to have been enacted not only on account *of* peril [to the faith], but also because of reverence for marriage, which, among the faithful, has been elevated to the character of a Sacrament.

Accordingly, other acts of communication of this sort are forbidden by human law; for example, it is prohibited that unbelievers should be present at the sacrifice of the Mass, or should behold the Sacrament of the Eucharist, prohibitions recorded by St. Thomas *(Summa,* Pt. III, qu. 80, art. 4, ad 4) commenting on Dionysius *(Eeriesiastica Hierarchia,* Chap. vii). This view is supported by Clement *(Constitutions,* Bk. VIII, chaps, viii and xii), whereon Turrianus comments at length; by the Fourth Council of Carthage (Chap. Ixxxiv); and in the *Decretum* (Pt. III, dist. iv [dist. 1, can. IxviiJ). According to the latter passage, unbelievers are allowed to be present at that portion
491 of the Mass which is called the Mass of the Catechumens, and far

St. Thoma. Dwcysra». Oenx-nt. Tuman™-.

1 [Not included in these *Selections.*—Tr .]

2 ['offence'. The Latin words *contumelia, injuria,* are used indifferently to express any grievous sin which the unbaptized partner induces, or might induce, the Chrkiffon partner to commit.—Reyisu l]

more readily are they allowed to be present at discourses on sacred matters delivered for their benefit; just as it is also permissible to pray privately for them or even to instruct them in the mysteries of religion.

St. Thomas. In this connexion, there arose also a question of which St. Thomas treats ([II.-II,] qu. 10, art. 7), namely: is it permissible to debate with unbelievers, on sacred matters? The discussion of this point, I shall reserve for Disputation XX [, i.e. *De Remediis Ecclesiae contra Haereses et Haereticos,*] Sect. i),[1] in which we are to ask the same question with regard to heretics, because that aspect of the question involves the same principle. For the present, I shall state briefly that such debating is not in itself evil, since it is often essential to the conversion of those unbelievers; but it should be conducted under proper circumstances, of which we shall speak in the Disputation above-mentioned.

detet?w^unbe- iMttM3?0n sacred

4. The third kind of communication is secular, or human, and it is with this kind in particular that we are now dealing. In this connexion, three points should be briefly discussed.

The third kind of communication, that which takes place in secular affairs, is not inherently evil, nor is it forbidden by divine law; but incidentally, in certain cases, it may be forbidden.

The first is that the sort of communication in question is not in itself evil or forbidden by divine law. This is certain; for Paul (r *Corinthians,* Chap, vii [, w. 12-14]) permits complete domestic and human communication between a Christian spouse and an unbelieving partner, and in the same *Epistle to the Corinthians* [Chap, x, v. 27] he allows the faithful to eat with unbelievers, upon invitation from the latter, a fact which both Chrysostom thereon (in Homily XXV [on *First Corinthians,* Chaps, vii and x] and Homily XXV, on *Hebrews)* and St. Thomas ([II.-II, qu. 10,] art. 9) note. Furthermore, a general prohibition with regard to such matters would not be expedient, because the conversion of unbelievers would thereby be rendered practically impossible. This would be the result, in the first place, in so far as preachers are concerned; for how could they approach those unbelievers for the purpose of instructing them, without first having had human intercourse with them? Therefore, this kind of communication is not only not prohibited, but even encouraged, as we learn from *she Decretals* (Bk. V, tit. vi, chap, x) and from the *Decretum* (Pt. II, causa xi, qu. i, can. xl), following Gregory *{Letters,* Bk. III, letter xxvi). Secondly, in so far as the unbelievers themselves are concerned, how could a father be converted to the faith, if he were to be immediately cut off from communication with his children or with his entire family, or even with his friends? This kind of communication, then, is not evil in itself; neither do we find that it is forbidden by divine law. The fact is simply that

Chrysostom.

St. Thomas.

Gregory.

[1] [Not included in these *Selections.*—Tr.]

any believer is bound by virtue of the natural and the divine law to avoid that kind of human communication or converse with unbelievers which threatens peril to himself or is scandalous to others. This distinction as to different sorts of human intercourse is clear from general principles, but in a particular case it is based upon circumstances and the exercise of prudence.

5. Hence, secondly,[1] it must be stated that the Church can prohibit this sort of communication between Christians and unbelievers. This is evident, because there is no lack of jurisdiction for the making of such a law; and subject-matter is also capable of being placed under such a prohibition, since the latter may be conducive to the peace and security of the faithful. Therefore, that prohibition must, as a general rule, be held to fall directly upon Christians alone, because, as St. Thomas noted (II.-II, qu. 10, art. 9), they are the true subjects of the Church. We must add, however, that the law in question may also [in special cases] be directly applied to non-believing subjects, either in punishment for some offence—as is the case with many laws which we shall presently cite—or in order to promote sound external government of the state, or even for the sake of the security of the faithful. Consequently, there are times when a Christian prince can, for the sake of religion, place a ban, directed even to foreign and non-subject unbelievers, upon this intercourse within his own kingdom.

Nevertheiess, the third kind of com- forbidden by eccie- siasticai law.

6. Thirdly,[2] the statement must be made that the Church has, in actual fact, laid down many prohibitions with respect to the sort of communication under discussion.

In the first place, indeed, familiarity with Jews is placed under a general prohibition. On this point, the *Decretal* Tw V, tit. vi, chap, vüi) may be consulted. In fact, it WOuld seem that absolutely all converse and communication with them was forbidden by the Fourth Council of Toledo (Chap. Ixi [Chap. IxiiJ). However, that prohibition has reference, not to all the faithful, universally, but to those who have been newly converted to the faith from among the ranks of the Jews themselves. To these new Christians, converse with those of their own people who persevere in Judaism is forbidden, because of the peril attending such converse. Therefore, this prohibition should be understood to refer to frequent, or continued converse, which may result in peril. Thomas Sanchez *{Opus XIorale in Praecepta Decalogi, Bk. 11, chap.* xxxi), following St. Thomas, Sylvester, and others, limits this general prohibition in such a way as to exclude its application in the case of those believers who

Moreover, familiarity with tfie jews is «^actual fact for-

Sanchez.

St. Thoms,

1 [Le. this is the second of the three points to be discussed in connexion with secuhr, or human, communication. *Vide* the first paragraph of the immediately preceding Sub-section, p. 79c.—Tr.]

2 [This is the third of the three points to be taken up in connexion with secular, or human, communication. *Vide,* Sub-section 4, p. 790.—Tr.

are firm in the faith and with respect to whom there can be no fear of moral peril. However, if the prohibition contained in a law is general, it does not cease to bind in an individual case, even if the purpose of the law does, in a purely negative sense, cease to be realized in the individual case, as I assume from the treatise on laws. I therefore thinl that there is a limitation to the prohibition in the case of those persons whose care it is to convert such infidels as we speak of, because the purpose of the law then does not simply cease to be realized in a negative sense, but in addition, it ceases by contrariety.[1]

7. Secondly,[2] living in the same house with Jews is specifically forbidden *(Decretum,* Pt. II, causa xxvin, qu. i, can. 492 *Decretals,* Bk. V, tit. vi, chap. v). The reason for this prohibition is the avoidance of harm.

Secondly, living in the same house with forbidden.^

But the objection may be made that a Christian can own a sfoye who is an unbeliever, and that consequently, he can live with that unbeliever. The antecedent is supported in the *Decretals (ibid.,* chap. xiii).

An objection.

Our reply is as follows: either this fact constitutes an exception to t^ie prohibition set forth above; or else it cannot properly be said that the master dwells with, the slave, but rather the converse, so that the prohibition in question does not apply to such a master; or, at least, a certain equality of fellowship and familiar intercourse is required for 'dwelling together', in the true sense of the phrase, so that the Christian master, in accordance with other laws above-mentioned, must avoid also this equal association with an unbelieving slave.

The solution.

Thirdly, a Christian is forbidden to invite an unbeliever to his banquet table, or to accept such an invitation from the latter; for this also is dangerous association. This prohibition was especially directed against Jews in the Third Council of Orleans (Chap, xxiii [Chap, xiii]), and in the Council of Agde (Chap, xl cited in *Decretum,* Pt. II, causa xxvin, qu. i, can. xiv), the special reason being given that Jews discriminate among different sorts of food, a practice which is not permissible to Christians. However, as a special concession, this eating in common is permitted to preachers who are sent forth to convert unbelievers.

Furthermore, it is forbidden to eat at the same table with Jews.

Council of Orleans.

Council of Agde.

Fourthly, in these same laws, and in the Apostolic canons cited

1 [Le. harm to the individual. The above is what is taught by all theologians on law, viz. if law ceases to secure its purpose negatively in a given case, it still binds; if, however, it ceases *contrarie,* as is said, it ceases to bind, Le. if a law does some real extrinsic harm to a person, it would *not* bind him. This is clearly seen in the laws of fasting and abstinence. If such a law would make a person unwell, it is said to cease *contrarie.* However, the law against reading certain books may cease negafttvly, but never *contrarie.*—Reviser.]

2 [This introduces the second of the prohibitions mentioned at the beginning of the preceding Sub-section. Six more, making eight in all, are discussed in the immediately succeeding pages.—Te.]

above, Christians are specifically forbidden to eat the unleavened bread of the Jews; an act which is evil in itself, if it is understood to involve the consumption of such food as a Jewish rite; but this rule is also interpreted as a prohibition, in order to avoid suspicion and peril [to the faith], against any partaking of the azyme with the Jews themselves or receiving it from them. When there is no danger of scandal, however, and especially if necessity requires, the eating of this food as ordinary bread is not forbidden, as the eating of idolothytes is forbidden in the *Decretum* (Pt. II, causa xxxn, qu. iv, can. viii).

The eating of unleavened bread is also forbidden.

8. Fifthly, in case of illness, Christians are forbidden to call in Jews; at least they are forbidden to do so for the purpose of [medical] treatment (Sixth Synod, Chap. XI, cited in *Decretum,* Pt. II, causa xxvin, qu. I, can. xiii). This rule may have been made not merely because of special peril to the soul, but also to avoid bodily contact. Hence, a further rule has been laid down against receiving medicine from Jews, a prohibition which is chiefly understood to mean medicine is not to be received at their hands and administered by them, lest familiarity and peril result. But these and like prohibitions should be interpreted as applying only when the case is not one of necessity, since necessity knows no law.

It is forbidden, moreover, to call in Jews in case of illness.

Sixthly, Christians are further ordered not to bathe with Jews at the same time at the same public baths, a prohibition which is laid down in the above-mentioned Chapter xiii *[Decretum, ibid.']*. This rule should be understood as applying only in a general sense, namely, as referring to the act of walking to the baths with them, that is to say, [the act of bathing together] as the result of an intention to do so. For this deliberate practice involves true social intercourse and familiarity, against which, on account of the danger involved therein, all the prohibitions under discussion are especially directed. If a Christian, then, should come accidentally to a public bath where a Jew is bathing at the time, the rule has no application, and it is not necessary that the Christian should on that account forgo what is convenient to him, or postpone it.

It is likewise forbidden to frequent the baths in the company of Jews, if this be done in accordance with a previous agreement.

Seventhly, it may be especially noted that Christian women are forbidden to act as nurses for Jewish children, a fact which is brought out in the *Decretals* (Bk. V, tit. vi, chap. viii). However, this qualifying phrase is added: 'in their homes'—that is, in the homes of the Jews—so that apparently, the rule in question is made solely to guard against the practice of dwelling together. Consequently, the inference may be drawn that a Christian woman is not forbidden to nurse a Jewish

Furthermore, it is forbidden that Christian women should nurse Jewish children.

child, in her own home; since the words of the law do not include such a case and should not be so extended. However, although this is true in so far as the strict letter of the law is concerned, nevertheless, the situation in question should be avoided because of the familiarity and peculiar affection which, as a general rule, result therefrom.

It is also forbidden to make heirs or legatees of Jews.

9. Eighthly, it is forbidden that Christians, in their wills, should name Jews as their heirs and legatees. This is the doctrine of the canonists {*Decretals,* Bk. V, tit. vi, chap, anj eSpecjaHy of Felinus (on *Decretals, ibid.,* no. 3), the Gloss thereon, and Sylvester (on the word *iudaeus,* Qu. 1 [, no. 2]). The *Code* (I. ix. 1) may be cited on the same rule; but in the *Code* the prohibition refers only to the Jews as a whole, that is, as a community, and prohibitions expressed in such terms are not usually extended to apply to individuals, as the Gloss thereon indicates. In this case, however, the extended application is allowed in the interests of the faith and of religion. Yet another chapter in the *Decretals* (Bk. V, tit. vn, chap, v) and one in the *Decretum* (Pt. II, causa xxiv, qu. ii, can. vi) may be mentioned in this connexion, in which the said prohibition is imposed upon bishops, in particular, while in the *Decretals* (Bk. V, tit. vn, chap, vi) it is extended to clerics.

The Doctors, however, apply that rule to all Catholics, either by the same process of reasoning, or at least *a fortiori*; and such should be the practice observed by all Catholics, especially since there exists a general warning lest they render aid and favour of this sort to Jews. This was the ruling of the Fourth Council of Toledo (Chap. Ivii).

One must note, with respect to these and like questions, that the 493
prohibitions involved are grave, both because of their subj'ect-matter and because of the purpose they serve; and that by their nature, and generally speaking, they are binding under pain of mortal sin, although occasionally, when the particular instance happens to be of slight importance, the transgression may become venial.

Moreover, since a prohibition of the sort under discussion is part *of* the common law [of the Church], dispensations therefrom cannot usually be given by bishops; but when in any given case the necessity is urgent and delay would be dangerous, then, according to the common teaching on law, the granting of such dispensations is within the power of a bishop.

Are these prohibitions extended to apply to all unbelievers?

10. Finally, it may be asked whether the laws in question are to be interpreted as applying universally to all unbelievers, or whether they have reference only to the Jews.

The cause of the doubt is that the laws cited speak expressly of the Jews, so that some persons hold that, the said laws being penal in nature, there should be no extension of their application. A special reason which is customarily given is that,

according to the *Decretals* (Bk. V, tit. vi, chap, xiii), the Jews are not only subjects but also slaves. Hostiensis *(Summa,* Bk. V, *De ludaeis,* p. 349) holds that the passage in question refers only to one's own purchased slaves, a view which certain of the Summists adopt. However, such a limitation is certainly not contained in the text, where, on the contrary, it is stated that the Jews have indeed inherently merited this slavery, but that in point of fact they are tributaries with the civil status of subordinate subjects, as Panormitanus (on *Decretals,* Bk. V, tit. vi, chap, xiii) notes with reference to this point, and as St. Thomas (II.-II, qu. 10, art. 12, ad 3 and Pt. III, qu. 68, art. 10, ad 2) and Soto (on the *Sentences,* Bk. IV, dist. v, sole question, an. 10, ad 2) have also explained. Therefore, the true reason for this discrimination against the Jews is thought to be the fact that intercourse with the Jews involves more peril on account of their greater peninacity and their hatred of the Christian religion.

Hosier»·, Panormuan St. Thomas. Soto.

Nevertheless, it is my opinion that the prohibitions which we are discussing, apply also to the Saracens[1]—that is, the Mohammedans—both because such an extension of their force is repeatedly indicated in the civil and canon law *(Code,* I. iii. 57, § 5 [I. iii. 54 (56), §§ 8 (3) *et seq.*~\ and *Decretals,* Bk. V, tit. vi, chaps, viii, xvi, xv, xix, v); and also because there is an analogy in the reasoning applicable to both cases, inasmuch as these [Mohammedan] unbelievers are also enemies *of* the Christians, and attempt with all their strength to pervert the faithful.

As for other unbelieving pagans, however, they do not seem to have been included in the aforementioned laws, a fact which has been noted by Sanchez *([Opus Morale in Praecepta Decalogi,* Bk. II,] chap. xxxi, no. 25), of whose opinion I approve in so far as relates to this matter. Many statements concerning these prohibitions may also be found in the writings of the jurists on the laws in question, in the comments of the Summists (on the word *iudaeus),* and in the statements of St. Antoninus (Pt. II, tit. xn, chap, iii), as well as in those *of* Azor and Sanchez, already cited; and these authorities quote many others.

^chex. s«. Antoc.no·. A«cr.

The foregoing may suffice on the subject of unbelief.

1 [The *Code* refers to 'pagans'.—Tb]

FRANCISCO SUAREZ

A WORK ON THE THREE THEOLOGICAL VIRTUES FAITH, HOPE AND CHARITY

ON CHARITY: DISPUTATION XIII

TO THE GENTLE READER

The primary cause, gentle reader, *of* the unusually brief form in which the following treatises on Hope and Charity are published, was the fact that even the members of the very school over which Suarez presided at Rome, during the time when he lectured on these subjects, became wearied of extremely diffuse and excessively elaborate dissertations, wherefore he readily bowed to the precepts and wishes of that school, such was the simple sincerity of this noble Doctor.

Furthermore, this treatment is brief, because he disregarded not a few matters that are usually dealt with, especially on the subject of Charity, for these matters are either entirely or in great measure applicable to grace, a subject which Suarez, in his work thereon, had very cogent reasons for thinking to be distinct from Charity *(De Gratia,* Bk. VI, chap, xii).[1] Such matters concern the supernatural entity of Charity, the production, increase, and loss of habits, the power of sanctifying and meriting. These are explained at length in that same work, and partially, in his treatise on the resuscitation of merit (section 3).[2] Grace itself, which of its nature precedes Charity, demanded that all of those matters should have a prior claim to treatment, and if the reader should here find them to be missing, they will be *fully supplied in the* passages indicated above.

However, the fact that these treatises, if compared with others which the author has already published, are briefer, is no indication that they are in any respect unsuited to the character of his genius and judgment. On the contrary, we venture to assert that when the author employs this concise method of composition, he appears, not merely to be equal to, but in a certain sense, to surpass himself. For the discursive reasonings of his profound genius and keen discernment, as well as the cogency *of* the arguments set forth by him, which attain a felicitous amplitude in other works of his, are here compressed into small compass, and more readily understood, without any loss of efficacy and force. Consequently, these treatises contain the pith and marrow *of the* subjects at hand, as you yourself, gentle reader, will (I hope) admit, when you have made the test of experiment. Nor will it be difficult, *if you* observe the similarity of this work[3] with others, its order and method, to divine the author of both the one and the others, recognizing (as it were) the lion by its claws.

In addition, in order that all this matter may be readily intelligible even to those who are not very well versed in the works of Suarez, we

[1] (Not included in these *Selections.*—Tr.]

[2] *[Opusculum; Relectio de Meritis mortificatis,* &c., Disp. I, sect, in, which is not included in these *Selections.*—Tr.]

[3] *[hujus operis,* referring evidently to both disputations (those on Hope and Charity).—Tr.]

indicate in the margins of these disputations on Hope and Charity identical or similar points which Suarez discusses elsewhere more at length.[1] For the author will thus come to his own assistance, where there might seem to be need, without help sought from any other source.

DISPUTATION XIII

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ON WAR

War in a general sense is manifold.

An external contest at arms which is incompatible with external peace is properly called war, when carried on between two sovereign princes or between two states. When, however, it is a contest between a prince and his own state, or between citizens and their state, it is termed sedition. When it is between private individuals it is called a quarrel or a duel. The difference between these various kinds *of* contest appears to be material rather than formal, and we shall discuss them all, as did St. Thomas (II.-II, qq. 40, 41, 42) and others who will be mentioned below.

SECTION I

IS WAR INTRINSICALLY EVIL?

The first error. On this and the following error see Bellarmine, *De Laicis,* Bk. III, chaps, xiv and xvi. Molina, *De Iustitia,* Disp. xc.

1. The first heresy [in connexion with this subject] consists in the assertion that it is intrinsically evil and contrary to charity to wage war. Such is the heretical belief attributed by Augustine to the Manichaeans *{Against Faustus,* Bk. XXII, chap. Ixxiv), whom Wycliffe followed, according to the testimony of Waldensis *{De Sacramentalibus* [which is Vol. III of *Doctrinale Antiquitatum Fidei*\ last title, next to last chapter). The second error is the assertion that war is specifically forbidden to Christians, and especially, war against Christians. So Eck maintains *(Enchiridion Locorum Communium,* Chap, xxii) ;[2] and other persons of our own time, who are heretics, advance the same contention. They distinguish, however, two kinds of w'ar, the defensive and the aggressive, which we shall discuss in Sub-section 6 of this Section. The conclusions that follow will elucidate the matter.

The second error.

In opposition to these heretics, others are also cited by Cenedo, *Collect.,* LIX, pt. I.

2. Our first conclusion is that war, absolutely speaking, is not intrinsically evil, nor is it forbidden to Christians, This conclusion is a matter of faith and is laid down in the Scriptures, for in the Old Testament, wars waged by most holy men are praised *(Genesis,* Chap, xiv

which is negative, 2th a matter of

Genesis, xiv.

[1] [Of the volume *De Triplici Virtute Theologica,* only Disp. XVIII of the treatise *On Faith,* and Disp. XIII of the treatise *On Charity* are included in these *Selections.*—Tr .]

[2] [Eck speaks of the lawfulness of Christians waging war against Turks and heretics.—Reviser.]

[, w. 19-20]) : 'Blessed be Abram [...·] And blessed be God by whose protection the enemies are in thy hands.' We find similar passages concerning Moses, Josue, Samson, Gedeon, David, the Machabees, and others, whom God often ordered to wage war upon the enemies of the Hebrews. Moreover, the apostle Paul *{Hebrews,* Chap, xi [, v. 33]) said that by faith the saints conquered kingdoms. The same principle is confirmed by further testimony, that of the Fathers quoted by Gratian *{Decretum,* Pt. II, causa xxm, qq. 1 and 2), and also that ot Ambrose *{On Duties,* various chapters).

Hebrrrs, xi.

Gratian.

Ambrose.

The first objection: based on *i Paralipomenon,* xxviii.

However, one may object, in the first place, that the Lord said to David *Paralipomenon,* Chap, xxviii, v. 3]: 'Thou shalt not build my temple because thou art a man who has shed blood.[1]

The second objection: based on *Matthew,* Chap, xix *[John,* Chap, xviii] and on *Isaias,* Chaps, ii and xi.

Secondly, it will be objected that Christ said to Peter *{Join,* Chap, xviii [, v. 11]) : 'Put up thy sword into the scabbard,' &c. ; and that Isaias also said *{Isaias,* Chap, ii [, v. 4]) : 'They shall turn their swords into ploughshares [. . .] neither shall they be exercised any more to war' ; and, in another Chapter (Chap, xi [, v. 9]) : 'They shall not hurt nor shall they kill in all [my] holy mountain.' The Prophet is speaking, indeed, of the time *of* the coming of the Messiah, at which time, especially, it will be made clear, what is permissible and what is not permissible.

Thirdly, at the Council of Nicaea (Chap, xi [, can. xii]), a penalty was imposed upon Christians who, after having received the faith, enrolled themselves for military service, Furthermore, Pope Leo *{Letters,* xcii [Letter clxvii, inquis, xii]) wrote that war was forbidden toChristians, after a solemn penance.

_ xt_. . based on the Counletter oΓρορ ^*eo*

Fourthly, war morally brings with it innumerable sins; and a given course of action is considered in itself evil and forbidden, if it is practically always accompanied by unseemly circumstances and harm to one's neighbours. [Furthermore,] one may add that war is opposed to peace, to the love of one's enemies, and to the forgiveness of injuries.

The fourth objection: based on reasoning.

A confirmation.

3. We reply to the first objection that [the Scriptural passage in question] is based upon the unjust slaying of Uriah; and, also, upon the particularly great reverence owed to the Temple.

The answer to the first objection.

798 [As for the second objection, we may answer, first, that] Christ our

1 [Suare?ᴎ quotation of *Paralipomenon,* Chap, xxviii, v. 3, reads: *Non aedificabis mihi templum, q<aa tir sanguinum es.* The same passage in the Vulgate reads: *Non aedificabis domum nomini meo, eo quod su tir bellator, et sanguinemfuderis.*—Tr .]

Lord is speaking of one who on his own initiative wishes to use the sword, and in particular, of one who so desires, against the prince. Moreover, the words of Isaias, especially in Chap, xi, are usually understood as referring to the state of glory. Secondly, it is said that future peace was symbolized in the coming of the Messiah, as is explained by Jerome on this point [*Onlsazas,* Chap, xi], Eusebius {*Demonstrations,* Bk. I, chap, i), and other Fathers [of the Church]; or, at least, that Isaias is referring to the spiritual warfare of the Apostles and of the preachers of the Gospel, who have conquered the world not by a material but by a spiritual sword. This is the interpretation found in Justin Martyr, in his *Second Apology* for the Christians, and in other writers.

The answer to the second objection.

Jerome. Eusebius.

Justin Martyr.

The Council of Nicaea, indeed, dealt especially with those Christians who, for a second time, were assuming the uniform of pagan soldiers which they had once cast off. And Pope Leo, as the Gloss (on *Decretum,* Pt. II, causa xxxm, qu. iii {*De Paenitentza),* dist. v, cans, iv and iii) explains, was speaking of those Christians who, after a public penance had been imposed upon them, were returning to war, before the penance had been completed. Furthermore, it may have been expedient for the early Church to forbid those who had recently been converted to the faith, to engage in military service immediately, in company with unbelievers, and under pagan officers.

The answer to the third objection.

Gloss.

To the argument drawn from reason, Augustine replies {*On the City oj God,* Bk. XIX, last chapter [Chap, vii]) that he deems it advisable to avoid war in so far as is possible, and to undertake it only in cases of extreme necessity, when no alternative remains; but he also holds that war is not entirely evil, since the fact that evils follow upon war is incidental, and since greater evils would result if war were never allowed.

The answer to the fourth objection.

Augustine.

Wherefore, in reply to the confirmation of the argument inquestion one may deny that war is opposed to an honourable peace; rather, it is opposed to an unjust peace, for it is more truly a means of attaining peace that is real and secure. Similarly, war is not opposed to the love of one's enemies; for whoever wages war honourably hates, not individuals, but the actions which he justly punishes. And the same reasoning is true of the forgiveness of injuries, especially since this forgiveness is not enjoined under every circumstance, for punishment may sometimes be exacted, by legitimate means, without injustice.

The answer to the confirmation.

4. Secondly, I hold that defensive war not only is permitted, but sometimes is even commanded. The first part of this proposition follows from the first conclusion, which even the Doctors cited above accept; and it holds true

sion, which is two-fold.

not only for public officials, but also for private individuals, since all laws allow the repelling of force with force *(Decretals,* Bk. *y,* tjt XXXIX, chap. iii). The reason supporting it is that the right of self-defence is natural and necessary. Whence the second part of our second proposition is easily proved. For self-defence may sometimes be prescribed, at least in accordance with the order *of* charity; a fact which I have elsewhere pointed out, in Disputation IX [: *De Ordine circa Personas Servando in Praecepto Charitatis,* &c., Chaps, xxv, xl, § 3].[1] The same is true of the defence of the state, especially if such defence is an official duty. See the statement of Ambrose *(On Duties,* Bk. I, chap. vii). If any one objects that in the *Epistle to the Romans* (Chap, *xii [, v.* 19]) these words are ^ounc^: 'Revenge not yourselves, my *dearly beloved',* and that this saying is in harmony with the passage *{Matthew,* Chap, v [, v. 39]): 'If one strike thee on the right cheek, turn to him also the other', we shall reply with respect to the first passage, that the reference is to vengeance, so that another version reads *[Romans,* Chap, xn, v. 19]: Aot avenging yourselves', and that the Greek word, *Ικδικοϋντ€,* has both significations; but the meaning is clear from what follows: 'For it is written: Revenge is mine', &c. The meaning of the second passage cited is the same, if it is interpreted as a precept; although it may also be understood, in accordance with Augustine's explanation (Vol. IV in the book *On Lying,* Chap, xv and elsewhere), as referring to the preparation of the soul, at least when such a process is necessary; for otherwise [the passage in question is] merely a counsel [of perfection, and not a commandment].[2]

The proof of the first part. *bfCrelais.*

The proof of the second part.

An objection

The solution.

Augustine,

5. My third conclusion is, that even when war is aggressive, it is not an evil in itself, but may be right and necessary, This is clear from the passages of Scripture cited above, which make no distinction [between aggressive and defensive wars]. The same fact is evidenced by the custom of the Church, one that has quite frequently been approved by the Fathers and the Popes, according to an extensive collection of all such instances, made by Roffensis[3] *(Contra Lutherum [Assertionis Lutheranae Confutationem,]* Art. 4 [Art. 34]). In this connexion, we may refer also to Torquemada (on *Decretum,* Pt. II, causa xxm, qu. i, nos. I and 2), as well as to many other passages, in *Decretum, ibid.,* qu. viii, cans, vii *et seq.*

The third conclusion.

Proof from authority.

Rofimse.

Torquemada.

The reason supporting our third conclusion is that such a

1 [Not included in these *Selections.*—Tr.]

2 [St. Augustine here means that one must be prepared to be struck on the other cheek, if this s a necessary part of persecution for the faith; when it is not necessary, the words of St. Matthew, cited above, express a counsel, not a precept.—Reviser.]

3 [John Fisher, Cardinal, and Bishop of Rochester, lately canonized.—Tk.]

war[1] is often necessary to a state, in order to ward off acts of injustice and to hold enemies in check. Nor would it be possible, without these wars, for states to be maintained in peace. Hence, this kind of warfare is allowed by natural law; and even by the law of the Gospel, wdiich derogates in no way from natural law, and contains no new divine commands save those regarding faith and the Sacraments. The statement of Luther that it is not lawful to resist the punishment of God is indeed ridiculous; for God does not will the evils [against which war is waged,] but merely permits them; and therefore He does not forbid that they should be justly repelled.

A proof from reasomng.

6. It remains for us to explain what constitutes an aggressive war, and^ w^at, on the other hand, constitutes a defensive war; for sometimes that which is merely an act of defence may present the appearance of an aggressive act. Thus, for example, if enemies seize the houses or the property of others, but have themselves suffered invasion[2] from the latter, that is no aggression but defence. To this extent, civil laws *{Code,* VIII. iv. I and *Digest,* XLIII. xvi. 1 and 3) are justified in conscience also, when they provide that if any one tries to dispossess me of my property, it is lawful for me to repel force with force. For such an act is not aggression, but defence, and may be lawfully undertaken even on one's own authority. The laws in question are extended[3] to apply to him who, w'hile absent, has been ejected from a tenure which they call a natural one, and who, upon his return, is prevented from recovering that tenure. For [the same laws decree] that any one who has been despoiled may, even on his own authority, have recourse to arms, because such an act is not really aggression, but a defence of one's legal possession. This rule is laid down in *Decretals,* Bk. II, tit. xin, chap. xii.

What is a defensive war; and what, an aggressive war?

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Decretals.

Consequently, we have to consider whether the injustice is, practically speaking, simply about to take place; or whether it has already done so, and redress is sought through war. In this second case, the war is aggressive. In the former case, war has the character of self-defence, provided that it is waged with a moderation of defence which is blameless.[4] Now the injury is considered as beginning, when the unjust act itself, even physically regarded, is beginning; as when a man has not been entirely deprived of his rightful possession; or even when he has been so deprived, but immediately—that is, without noteworthy delay—attempts to defend

1 [i.e. an aggressive war.—Tr.]

2 *[invadent* should be replaced by *invaserint.* Cf. the edition of Paris, 1858.—Tr.]

3 [Read *extenduntur* in the Latin text, as in the 1858 edition above cited.—Reviser.]

4 [That is, when the act of self-defence is not excessive, and out of all proportion to the attack.—Reviser.]

himself and to reinstate himself in possession. The reason for this is as follows: When any one is, to all intents and purposes, in the very act of resisting, and attempts—in so far as is possible—to protect his right, he is not considered as having, in an absolute sense, suffered wrong, nor as having been deprived of his possession. This is the common opinion of the Doctors as stated by Sylvester (word *bellum,* Pt. II), and also by Bartolus and the jurists on the aforesaid *Digest,* XLIII. xvi. 3, § 9 [§§ I *et seq.*].

Syiv^-r.
ihrtUus

The fourth conclusion.

On this conclusion, see Bellarmine, *De Laids,* Bk. III, Chap, xv; and Molina, *De luslitia,* Disps. X *et seq.*

7. Our fourth proposition is this: in order that a war may be justly waged, a number of conditions must be observed, which may be grouped under three heads. First, the war must be waged by a legitimate power; secondly, the cause itself and the reason must be just; thirdly, the method of its conduct must be proper, and due proportion must be observed at its beginning, during its prosecution and after victory. All of this will be made clear in the following sections. The underlying principle of this general conclusion, indeed, is that, while a war is not in itself evil, nevertheless, on account of the many misfortunes which it brings in its train, it is one of those undertakings that are often carried on in evil fashion; and that therefore, it requires many [justifying] circumstances to make it righteous.

SECTION II

K'HO HAS THE LEGITIMATE POWER OF DECLARING WAR?

I. Our question relates to aggressive war; for the power of defending oneself against an unjust aggressor is conceded to all.

The first conclusion.

I hold first: that a sovereign prince who has no superior in temporal affairs, or a state which has retained for itself a like jurisdiction, has by natural law legitimate power to declare war. This is the opinion held by St. Thomas (II.-II, qu. 40, art. 1); and he is supported by all. Reference may be made to Covarruvias (on *Sext,* rule *peccatum,* Pt. 11, § 9), who cites many laws, as well as certain theological divines.

St. Th.
Covamm»

The first roof

A reason in support of this conclusion is, first, that this sort of war *s at t^mes Permitted by the natural law, as we have demonstrated;[1] hence, the power of declaring such a war must rest with some one; and therefore it must rest, most *of all,* with the possessor of sovereign power, for it is particularly his function to protect the state, and to command the inferior princes [within the realm].

[1] [*Vide* second paragraph of Sub-section 5 of Section I, *supra,* p. 804.—Tb.j

A second reason is that the power of declaring war is (so to speak) a power of jurisdiction, the exercise of which pertains to punitive justice, which is especially necessary to a state for the purpose of constraining wrongdoers; wherefore, just as the sovereign prince may punish his own *subjects when they* offend others, so may he avenge himself on another prince or state which by reason *of some offence becomes* subject to him; and this vengeance cannot be sought at the hands of another judge, because the prince of whom we are speaking has no superior in temporal affairs; therefore, if that offender is not prepared to give satisfaction, he may be compelled by war to do so.

The second proof.

In this first conclusion, I used the words, 'or a state', in order that *I might* include every kind of polity; for the same reasoning holds true of all polities. Only it must be noted of a monarchical regime that, after a state has transferred its power to some one person, it cannot declare war without that person's consent, because it is no longer supreme; unless the prince should chance to be so negligent in avenging or defending the state as to cause public and very grave harm to that state, for, in'such a case, the commonwealth as a whole could take vengeance and deprive the sovereign of the authority in question. For the state is always regarded as retaining this power within itself, 800 if the prince fails in his duty.

2. *I hold, secondly,* that an inferior prince, or an imperfect state, or whosoever in temporal affairs is under a superior, cannot justly declare war without the authorization of that superior. A reason for the conclusion is, first, that a prince *of* this kind can claim his right from his superior, and therefore has not the right to declare war; since, in this respect, he has the character *of* a private person. For it is because of the reason stated that private persons cannot declare war. A second reason in support of this same conclusion is that such a declaration *of* war is opposed to the rights of the sovereign prince, to whom that power has been specially entrusted; for without such power he could not govern peacefully and suitably.

The second conclusion.

Victoria.

Victoria *[De lure Belli,* no. 9], indeed, sets certain limitations to what has been here stated,[1] and Cajetan and others seem to hold the same opinion.

The first limitation to this second conclusion is as follows: provided no contrary practice shall have been observed by very ancient custom. This provision may have force when a war has been declared against those who are not subjects of the king who governs the declarer of war. But if on the other hand the war should be declared against another portion of the same realm, the custom in question would certainly appear to be

The first limitation of this conclusion, rom Victoria.

[1] *[Haec verb limitai Victoria supra.*—Tr .]

contrary to the natural law; for when there exist a tribunal and an authority superior to both parties, it is contrary to the law of nature to strive for one's own right by force, and acting (as it were) on one's own authority. Moreover, in the case of private persons, such an attempt is without doubt contrary to natural law; and yet, in the case which we have supposed, these two members of the same state, although they may be of more importance [than single individuals], are nevertheless in the position of private persons.

The second limitation.

To the same conclusion, Victoria *[ibid.] sets a* second limitation, namely: provided that the sovereign prince is not negligent in avenging a wrong. For, if he is negligent, an inferior prince may avenge himself.

Such a course of action is not entirely commendable.

Nevertheless this course of action is not [entirely] commendable, especially when the conflict occurs between two portions of one and the same state. For, although a private person, when he cannot obtain his rights at the hands of a public tribunal, may secretly and without scandal protect himself, nevertheless he may not do so by force and through war; and still less may he avenge himself [after an injury has actually been inflicted], if he is not able to obtain such vengeance through the judge. For a punishment inflicted by one's own private authority is intrinsically evil, and tumults and wars might easily be provoked within a state, on this pretext. But the right of punishment possessed by a portion *of* the state, or that possessed by a mere private person, are equally imperfect, and in the former case, there is greater likelihood of the harm in question; therefore, licence [to exact private vengeance] must not be granted to a portion of a state or to a private person, save only within the limits of just defence.

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3. But it must be added, first, that [provided the need for declaring war arises,] it is sometimes sufficient to interpret the wish of the sovereign in the cases above-mentioned, if the matter is pressing, and recourse [to the sovereign] is not immediately possible; particularly if the war is to be undertaken against foreigners, and above all if these foreigners are on other grounds overt enemies of the sovereign.

Secondly, I must also note that if at any time enemies of this kind are seized within the boundaries of some imperfect state, not only is a just defensive war against them then permissible, but so also are aggression, vengeance, and punishment; for by reason of the wrong committed in the territory of that state they have made themselves its subjects.

Note 3'

Finally, it should be added that more things are allowable to a given state or commonwealth with regard to its own defence than to a given private individual; because

the good defended in the former case is common to many, and is of a higher grade, and also because the power of a state is by its very nature public and common; therefore, it is not strange that more things are permissible to a state than to an individual.

4. But it may be asked, what is a perfect state; or, who is a sovereign prince? The reply is, first, that all kings are in this respect sovereign. Innocent III so states (*Decretais.* IV, tit. xvii, chap. xiii). Many counts also claim this sovereign power. Hence, certain of the canonists are mistaken in saying that only absolute power is sovereign in this fashion. Consequently, the issue depends on the mode of jurisdiction exercised by each particular prince, or state; and it is the mark of supreme jurisdiction when, under such a prince or such a state, there exists a tribunal before which all cases of litigation in that realm are decided, and from which there is no appeal to any superior tribunal.

with respect to the first and second conclusions.

The mark of supreme jurisdiction.

But when there is room for an appeal, that is the mark of an imperfect state, since an appeal is the act of an inferior towards a superior. Hence it must be noted, first, that not all the states which are subject to one and the same king are necessarily of the imperfect sort. For it may happen that such a bond of union has been effected incidentally, a fact indicated by a diversity in laws, taxes, and so forth. And this distinction between a perfect and an imperfect state, although it is of no great importance in relation to the power of which we now treat, since the latter is already vested in the king, has, nevertheless, an important relation to the power which such a state may possess in opposition to its own king, if he lapses into tyranny. For if the state be a perfect one, it has power against its own king, even when the latter rules also over other kingdoms. But the case is otherwise if the state be an imperfect one, and a portion of one kingdom; for then nothing can be done without the consent of the whole. All of the foregoing statements, since they are founded upon natural law, are applicable to both Christians and unbelievers.

5. In the case of Christian kings, however, a second point must be noted, namely, that the supreme Pontiff, although no direct power in temporal affairs outside of his own domain, nevertheless does possess such power indirectly, as is indicated in certain passages of the *Decretals* (Bk. I, tit. vi, chap, xxxiv; Bk. II, tit. I, chap. xiii). Therefore, under this title, he has a right to require that a cause of war be referred to him, and the power to give a judgment thereon, which the parties in question are bound to obey, unless his decision be manifestly unjust. For such [authority on the part of the Pope] is certainly necessary for the spiritual welfare of the Church

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Christian kings are subject to the Pope.

Décrétais, i.xiii.

See *Defensio Fidei,* Bk. III, Chap, xxii.[1]

[1] [Not included in these *Selections*—Tr.]

and for the avoidance of almost infinite evils. Accordingly, Soto said (on *Romans,* Chap, xii [, v. 18]), that war between Christian princes is rarely just, since they have at hand another ready means of settling their mutual disputes.

But sometimes the Pope does not interpose his authority, lest perchance greater evils result. In that event, to be sure, sovereign princes are not bound to secure any authorization from the Pope, and may urge their own right as long as they are not forbidden to do so. Nevertheless, they should take care lest they themselves be a cause ot the fact that the Pope dares not intervene; for in that case they will not be free from blame.

The third conclusion; and the reason m support of it.

6. Thirdly, I hold that a war which, according to the preceding conclusion, is declared without legitimate authority, is contrary not only to charity, but also to justice, even -pa]egitimate cause for it exists. The reason supporting this conclusion is that such an act is performed without legitimate jurisdiction, and is consequently an illegitimate act. Therefore, it follows that a war of this kind gives rise to an obligation of making restitution for all ensuing damages.

e rst coro ary.

Therefore, it is indeed true that if anyone merely recovers his own property in such a war, he will not be bound to restore prOperty. but jæ vv£[] Held Hable for all injuries and losses inflicted upon others. The reason for such a distinction is that in the latter case he has done an injustice, since there was no just cause for all that damage; whereas, in recovering his own property, he has not, strictly speaking, committed an injustice,—save possibly in the means used, from which, in a strict sense, there arises no obligation to make restitution.

The second coroi- lary; from Sylvester,

Whence follows the conclusion noted by Sylvester (word *bellum,* Pt· I, qu. io [qu. 11, no. 4]), that he who makes war without the authorization in question, even *if* he has, in other respects, a just ground for so doing, nevertheless incurs the penalties imposed upon those who wage an unjust war; so that if, for example, he be an incendiary, he will incur the excommunication promulgated against incendiaries.

The solution of a doubt which arises.

7. But it may be asked whether a Christian king or prince subject only to the Pope sins against justice or merely against His duty of obedience, if he wages a just war, of the kind in question, in defiance of the papal prohibition. For it is upon this point that the judgment regarding the obligation of making restitution depends.

My reply is that so long as the Pope does not so issue his prohibition as to remand the case for his own hearing, constituting himself as its judge, the prince does not *sin against justice in* prosecuting his own

rights, irrespective of whether or not the Pope has done wrong in not [thus] forbidding the war. The reason is that in such a case, the prince [, notwithstanding the want of papal approval,] nevertheless retains his own jurisdiction and power. If the Pope, however, by his own authority and power justly issues a prohibition against the war in question as being opposed to the spiritual welfare of the Church and thereby, as he may, deprives the prince of all right to make war; then, the prince [who persists in waging the war] will sin against justice, and will be under a binding obligation to make restitution. The reason for this assertion is that under such circumstances he no longer has any title whereby he may justly, through war, cause harm to another prince; and therefore, when he causes such harm, he does so in opposition even to commutative justice, and consequently justice demands that reparation for those injuries shall be made. Neither is the situation affected by the fact that, when the Pope deprives the aforesaid prince of the right to make war, he acts only by means *of* his indirect power, provided that he is acting on the genuine ground of the common good, as we assume to be the case.

SECTION III

IS IT PERMISSIBLE EVEN FOR CLERICS TO DECLARE WAR AND TO ENGAGE THEREIN?

The question is expounded.

I. Since it may be that sovereign power in temporal affairs resides in ecclesiastical princes, it is necessary to discuss the question of whether the aforesaid right is common to all of them; and at the same time we shall consider the inquiry of St. Thomas (II.-II, qu. 40, art. 2) as to whether it is permissible for clerics and bishops to engage in battle, a question which concerns offensive, not defensive war. For just as the latter sort *of* war is allowed by the law of nature, even so it is not forbidden by positive law, whether one is defending his life, or his property, or the life and property of another—especially if that other be his father,[1] or if the matter relate to the common good. The above-mentioned question, however, 802 relates only to positive law, both divine and human. For the acts of waging and declaring war are not in themselves forbidden to any one by the natural law, unless perhaps to those persons who are unable to render military service, as, normally, women are said to be. But even in the case of women, there is no absolute prohibition, and without doubt they may declare war, if they are sovereign princes. Hence we shall speak only of positive law, which alone is applicable to ecclesiastical persons.

St. Thomas.

[1] *[patris,* an erratum for *patriae* (native land)?—Tr .]

2. I hold, in the first place, that episcopal Prelates of the Church, # there are any such who are sovereign in temporal affairs, may licitly, and even without fear of irregularity, declare war, assuming the presence of the other required conditions. This conclusion is unquestioned and commonly held.

The first conclusion: unquestioned, and commoniy held.

The reason [supporting it] is that such a right is inherent in the complete and perfect sovereign power which resides £n princes of this character. Moreover, the fact that such a course of action is not forbidden to them is evident from many decrees *(Decretum,* Pt. II, causa xxm, qu. viii). Again, these princes themselves do not directly incite men to homicide or mutilation, but rather to an act of fortitude.

The reason supportmg this conclusion.

The conclusion is confirmed by the fact that the princes in question are, for a like reason, allowed to set up judges who may rightfully give judgment in criminal cases. Furthermore, Sylvester adds (word *bellum,* Pt. III, no. 2) that this right may pertain to bishops by virtue of their spiritual power, though indirectly, for the reason that it is essential to spiritual welfare. This statement may easily be credited in the case of the supreme Pontiff; but in the case of other [ecclesiastical] princes, not sovereign in temporal affairs, it can exist only on the ground of self-defence; for with respect to offensive war, the latter are not supreme in spiritual matters, and may easily have recourse to their supreme head.

A confirmation: concerning which see the work *De Censuris,* Disp. XLVII, sect. I, from no. 5.

3. I hold, secondly, that although by divine law clerics are not necessarily forbidden to engage in war, nevertheless, by ecclesiastical law, they are forbidden to do so.

The second conclusion: twofold in form.

The first member of the conclusion is proved by the fact that there exists no divine precept to this effect, whether in Scripture or in tradition; neither is the prohibition absolutely inherent in the priestly office; nor is [clerical participation in warfare] intrinsically repugnant to right reason. This argument is confirmed by the analogous consideration that a cleric is not forbidden by the divine law to be judge in a case involving bloodshed.

The exposition of the first member of the conclusion.

A confirmation.

The second part of the same conclusion is incontrovertible; and it *s derived from *Decretum,* Pt. I, dist. 1, can. v, wherein Pope Nicholas forbids [clerics to engage in war], under penalty of suspension. Many canons relating to this matter are contained in *Decretum,* Pt. II, causa xxni, qu. iv. Arguments from reason and congruity in support of this prohibition are obvious. In connexion with this, St. Thomas mav be consulted (II.-II, qu. 40, art. 2).

The second member is supported by the

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* [This work of Suarez is not included in these *Selections.*—Ta.J

4. It follows from the first part of this conclusion that the supreme Pontiff can grant a dispensation from the precept in question because it is a human one. Gratian held the contrary opinion *(Decretum,* Pt. II, causa xxm, qu. viii, at the beginning), but without any grounds therefor.

A consequent of this conclusion.

The opinion of Gratian is rejected.

The inference in question is also clearly to be drawn from many chapters of the [canon] law; and the granting of dispensation is usually held to be justified by a case of grave necessity, if the common good of the Church is at stake, for in such cases clerics may even be obliged by natural law to engage in war of the kind under discussion. It is, indeed, true that this kind of war is then more allied to defence than to aggression; for in an aggressive war there is not normally so great a necessity. See Cajetan (on II.-II, qu. 40, art. 2) and Covarruvias *(On the Constitutions of Clement,* c. *sifuriosus,* Pt. II, § 3, no. 2).

Cajetan. vovarruvias.

5. Thirdly, I hold that the precept in question is binding under pain of mortal sin, on those who have been ordained to holy orders. First, because the matter is most serious, and because it is forbidden under the gravest penalties and censures [that clerics should engage in war]. That this precept is indeed binding upon all those who are ordained to holy orders, even upon subdeacons, is the common opinion of St. Thomas (II.-II, qu. 40, art. 2), Cajetan *(ibid.),* Sylvester (word *bellum,* Pt. III, qu. 2 [qu. 3]), Antoninus *(\Summa Theologica,]* Pt. III, tit. xxvm, chap, ii, § *6),* Covarruvias *(loc. cit.),* and others also (on *Decretals,* Bk. V, tit. xn, chap, xxiv). The reason for this opinion is readily apparent, namely: that such persons are already at the threshold *of the* sacred ministry and are bound to its [duties].

The third conclusion.

St. Thomas.

Cajetan. Sylvester. Antoninus. Covarruvias.

As to others, however, constituted in minor orders, since they participate but imperfectly in the clerical state, it is probable either that they are in no way bound, especially if they have already entirely renounced that state ; or else, at most, that they are bound under pain of venial sin. This is the opinion of Soto *(De lustitia,* Bk. V, qu. i, art. 4) and Covarruvias *(On the Constitutions of Clement,* c. *si furiosus,* Pt. II, § 3, no. 2), except with reference to those who chance to hold an ecclesiastical benefice; for in the latter event, such individuals are already *ex officio* ministers of the Church, and under an obligation—as so many persons believe—to aspire to higher orders, or, at least, not to create any impediment to those orders while they will to remain in their office. Therefore, these individuals are bound under a grave penalty.

Soto.

Covarruvias.

Sanchez, *De Sancto Matrimonii Saaa~mento,* Bk. VII, Disp. XLV, discusses at some length this obligation to aspire to higher orders.

However, it must be noted that this sin on the part of clerics is not precisely a sin against justice, but rather one against religion or obedience; and hence, if the other

Note

conditions of a just war are fulfilled, such clerics are in no wise bound to make any restitution, [in case they have committed the sin in question]. Sylvester (on word *bellum,* Pt. III, qu. 4), indeed, holds a contrary opinion, saying: 'Just as a prince could not authorize a cleric to wage war, so he could not authorize him to engage in plunder.'[1]

Refutation of Sylvester's view.

But this argument is not conclusive. For [the prince], although he may not have been able to grant [to clerics] the authority to engage in war legitimately, can nevertheless give
803 [them] the power to engage therein without violating justice; provided the Pope does not, in the manner explained at the end of the preceding section, deprive him of the right to do so; and this authorization on the part of the prince is enough to free [the said clerics] from the obligation of making restitution; just as the same principle is clear in the case of a cleric who, as a minister of justice, puts some one to death, since he does not thereby sin against justice, and is not bound to make restitution.

6. But what of irregularity? This question is answered as follows: if a war is unjust, and if, in the course of the same, any person is slain or mutilated, then all the soldiers incur irregularity, whether they be priests or not, and whether they kill directly or through the help of others. This is the opinion of Sylvester, as stated in a passage (on word *bellum,* Pt. III, qu. 3), wherein he cites certain laws which, to be sure, are not sufficiently convincing to me. Nevertheless, since the matter is doubtful, his position is the safer one; for this reason, that all those fighting in such a manner are held to be co-operating in the homicide, because practically all are guilty of unjust co-operation, proximate or remote.

Whether clerics engaged in war incur an irregularity.

Vide De Censuris, Disp. XLVII, sect. vi, by the author.[2]

If, on the other hand, the war be a just one, we must make a further distinction. For if the cleric sins by becoming a combatant, and kills another person by his own hand, he contracts an irregularity; for clearly, he is a voluntary homicide; but if he himself does not kill, although others do so, then he incurs no irregularity, a fact which may be gathered from the *Decretals* (Bk. V, tit. xn, chap, xxiv; *ibid.,* tit. xxv, chap, iii; *ibid.,* chap. iv). The basis of the foregoing distinction is the fact that the war is in itself just, and the harm done follows incidentally, so that, under the circumstances, this harm is not to be morally imputed to any one and therefore may be imputed only to that person who was the physical cause of the same. If a cleric, however, while legitimately a combatant, kills or mutilates some one by his own hand, but does so in absolutely necessary defence of his life, he does not contract an irregularity.

Decretals,* V. III. *xxrr.

1 [Although this passage is printed in the Latin text as a quotation, it is in fact a paraphrase *of* Svivester. Suarez has: *quia Princeps sicut non potuit dare clerico auihoritatem bellandi, ita nec praedandi,* while Sylvester reads thus: *quia sicut bellandi ita rapiendi non potuit ei suus dominus auctoritatem dart.—Tr.]*

2 [Not included in these *Selections.*—Tr.]

Cajetan. Navamis. St. Thomas. Sylvester. *Vide De Censuris,* Disp. XVLI sectPùîl A twofold objection. The answer to the said objections treated in *De Censuris,* Disp. XLVII, sect, vi, no. 8.‘

Apart from this case, indeed, Cajetan holds (on II.-II, qu. 40, art. 2) that irregularity is always incurred [by clerics in the situation described], Navarrus *([Consilia seu Responsa,}* Chap, xxvii, no. 213), is of the same opinion. The reason for their view is that self-defence is the only exception mentioned in the law *{Constitutions of Clement,* Bk. V, tit. iv, only chapter). Moreover, their view is confirmed by the fact that in *Decretals,* Bk. V, tit. xn, chap, xxiv, and in connexion with a certain just war in defence of [the subjects'] own town, the reply of the Pope was to the effect that it was advisable for clerics engaging in that war to refrain from the ministry of the altar. So it is that St. Thomas (II.-II, qu. 64, art. 7, ad 3) simply cites this text, [in his discussion *of the* question]. It is true that the reason for the Pope's reply might possibly have been that those clerics had exceeded the limits of self-defence. And therefore, there are some who hold, not without reason, that he who fights legitimately does not incur irregularity, even if he be a cleric and commit homicide. Others limit this exemption from irregularity to cases [of homicide] in defence of the common good, a motive which is not merely equal to, but higher than defence of one's own life, and which might, upon occasion, make it obligatory [for clerics] to engage in war. In such a situation, then, it seems to me practically certain that there is no irregularity, an opinion which is confirmed by that of Sylvester (on word *bellum,* Pt. III, qu. 2). For, in the first place, it is not reasonable that evil consequences should result from an action to which one is absolutely bound in charity. Furthermore, Cajetan, for this same reason, has said (on II.-II, qu. 33, art. 7) w^° brings an accusation in a criminal case, if he is bound to do so, does not incur irregularity. If, however, the war be legitimate, but not a matter of obligation, then the question is very doubtful; because in that case there is not the pressure of unavoidable necessity. Consequently, under such circumstances, it is safer [for clerics who propose to engage in the contest] to obtain a dispensation. We must note, however, that if, at any time, a cleric is permitted, by a papal dispensation, to engage personally in warfare, he contracts no irregularity in the course of that warfare; for a dispensation with respect to the principal act is held to cover any consequence that accompanies that act.

7. On the other hand, one may argue thus: the foregoing discussion would imply that it is not fitting for clerics to take any part in war, or to exhort soldiers to do battle; and that clerics who do so, incur irregularity. Moreover, the same would seem to hold true of clerics who advise other persons to go to war. One may reply that the latter part of the objection presents no difficulty, because such advice is not in itself evil, nor is it forbidden.

1 [Not included in these *Selections.*—Tr .]

On the contrary, it is the custom of the Church [to give counsel of this sort], as is evident from a passage in the *Decretum^t.* II, causa xxm, qu. ii [, can. iii]) ; for [in so doing, the Church] exhorts men not to homicide, but to an act of fortitude and justice, even as one rightfully admonishes a judge to make a just decision. However, Sylvester (earlier, on word *bellum,* Pt. III, qu. 2) holds otherwise, asserting that [such a course of action on the part of clerics] is permissible only in a defensive war, and that even in a war of this kind irregularity is incurred, if a cleric urges on the soldiers during the actual progress of the combat. With this view, Hostiensis agrees (on *Decretals,* Bk. V, tit. xxxvn, chap. v). Sylvester ll..tH!

As to the first part of the objection, it should be observed that the exhortations mentioned are not evil in themselves; nor are they forbidden by law; for custom indicates that the contrary is true. It is more fitting, however, that [clerics] should not deliver these exhortations without the permission of the bishop or superior, a fact which is brought out in the *Decretum* (Pt. II, causa xxm, qu. viii, cans, xxvii and xxvi). Similarly, I believe it more correct to hold that no irregularity is incurred in such cases, unless the cleric intentionally and directly incites to homicide. But if he merely exhorts the combatants to act bravely, irregularity is not incurred; for the law does not expressly state that it is incurred, nor does the cleric morally co-operate in homicide, and, in short, the same reasoning holds good [with regard to exhortation] as that which we applied to the matter of advising. This is the view of Navarrus (*Consilia seu Responsa* or *Enchiridion^* Chap. xxvii, no. 216) and Covarruvias, as already cited [on the *Constitutions of Clement,* c. *sifuriosus,* Pt. II, § 3, no. 2]. 5ava.-ru-. Cr.vanu% --

Finally, it may be asked, Who has the power to grant dispensations in the case *of* such an irregularity? On this question see Sylvester, as cited above, and Cajetan (word *trregularitas).* I reply briefly that only the supreme Pontiff can grant a dispensation, unless the matter is occult, in which case, the power is expressly granted by the Council of Trent to the bishops (Session XXIV, chap, [canon] vi, *De Reformatione).* Such a situation, however, rarely occurs in connexion with questions of war, and it is with these matters that we are dealing.

„ , tions *vide De Censuris,* Disp. IV, sect, ' ' "

SECTION IV

WHAT IS A JUST CAUSE OF WAR, ON THE BASIS OF NATURAL REASON:

This question and hy Molina, *De Iustitia,*

There was an old error current among the Gentiles, who thought that the rights of nations were based on military strength, and that it was permissible to make war solely to acquire prestige and wealth; a belief xvhich,

1 [Not inchided in these *Selections*—Tr .]

Treatise ii, disps. CÜ, civ, cv, cvi.

even from the standpoint of natural reason, is most absurd.

I. Therefore I hold, first: that there can be no just war without an underlying cause of a legitimate and necessary nature, lhe truth of this conclusion is indubitable and clearly evident. Now, that just and sufficient reason for war is the infliction of a grave injustice which cannot be avenged or repaired in any other way. This, the consensus of opinion of all the theologians, is also to be deduced from the *Decretum* (Pt. II, tit. xxm, chap, ii) and from a mass of evidence collected by Covarruvias on the *Constitutions of Clement,* c. *sifuriosus,* Pt. II, § 3, no. *2].*

Decretum.

The first reason in support *of* such a conclusion is the fact that war is permissible [only] that a state may guard itself from molestation; tor in other respects, war is opposed to the welfare of the human race on account of the slaughter, material losses, and other misfortunes which it involves; and therefore, if the cause in question should cease to exist, the justice of war would also cease to exist.

Secondly, in war, men are despoiled of their property, their liberty, and their fives; and to do such things without just cause is absolutely iniquitous, for if this were permissible, men could kill one another without cause.

Thirdly, the sort of war which we are chiefly discussing is aggressive war, and if is frequently waged against non-subjects. Consequently, it is necessary that the latter shall have committed some wrong on account of which they render themselves subjects. Otherwise, on what ground could they be deserving of punishment or subject to an alien jurisdiction?

Furthermore, if the grounds or purposes which the Gentiles had in view (for example, ambition, avarice, and even vainglory or a display of ferocity) were legitimate and sufficient, any state whatsoever could aspire to these ends; and hence, a war would be just on both sides, essentially and apart from any element of ignorance. This supposition is entirely absurd; for two mutually conflicting rights cannot both be just.

2. But in order that this matter may be explained more clearly, there are several points which should be noted.

First, it is not every cause that is sufficient to justify war, but only those causes which are serious and commensurate with the losses that the war would occasion. For it would be contrary to reason to inflict very grave harm because of a slight injustice. In like manner, a judge can punish, not all offences whatsoever, but only those which are opposed to the common peace and to the welfare of the realm. In this connexion, however, we must remem-

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ber that not infrequently a wrong which appears to be slight is in fact serious, if all the circumstances are weighed, or if other and similar wrongs are permitted [as a consequence], since thereby great harm may gradually ensue. Thus, for example, to seize even the smallest town, or to make raids, &c., may sometimes constitute a grave injustice, especially when the prince who has done the wrong treats with scorn the protest that is made.

3. Secondly, it must be noted that there are various kinds of injuries which are causes of a just war. These may be grouped under three heads. One of the heads would be the seizure by a prince of another's property, and his refusal to restore it. Another head would be his denial, without reasonable cause, of the common rights of nations, such as the right *of* transit over highways, trading in common, &c. The third would be any grave injury to one's reputation or honour. It should be added that it is a sufficient cause for war if an injury of this kind be inflicted either upon a prince himself or upon his subjects; for the prince is guardian of his state and also of his subjects. Furthermore, the cause is sufficient if the wrong be inflicted upon any one who has placed himself under the protection of a prince, or even if it be inflicted upon allies or friends, as may be seen in the case of Abraham *(Genesis,* Chap, xiv), and in that *of* David *(1 Kings,* Chap, xxviii). 'For a friend is a second self*, says Aristotle *(Nicomachean Ethics,* Bk. IX, chaps, iv andix). But it must be understood that such a circumstance justifies war only on condition that the friend himself would be justified in waging the war, and consents thereto, either expressly or by implication. The reason for this limitation is that a wrong done to another does not give me the right to avenge him, unless he would be justified in avenging himself and actually proposes to do so. Assuming, however, that these conditions exist, my aid to him is an act of co-operation in a good and just deed; but if [the injured party] does not entertain such a wish, no one else may intervene, since he who committed the wrong has made himself subject not to every one indiscriminately, but only to the person who has been wronged. Wherefore, the assertion made by some writers, that sovereign kings have the power of avenging injuries done in any part of the -world, is entirely false, and throws into confusion *all the* orderly distinctions of jurisdiction; for such power was not [expressly] granted by God and its existence is not to be inferred by any process *of* reasoning.

Note 2

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4. Thirdly, we must note that, in regard to an injury inflicted, two arguments may be alleged, [to *justify*- a declaration of war]. The first is [that such a declaration is justifiable], in order that reparation for the losses suffered should be made to the injured party. For this cause, indeed, it is not to be

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questioned that war may legitimately be declared; for if this declaration is to be permitted because of an injury [already done], then it is in the highest degree permissible when the object is that each one may secure himself against loss. Many examples illustrating this point are to be found in the Scriptures *(Genesis,* Chap, xiv, and similar passages). The other argument is [that war should be declared] in order that the offender may be duly punished; a contention which presents its own difficulty.

Genesis, xiv.

5. Secondly, then, I hold that a war may also be justified on the ground that he who has inflicted an injury should be justly punished, if he refuses to give just satisfaction for that injury, without resort to war. This conclusion is commonly accepted. In connexion with it, and with the preceding conclusion, we must assume that the opposing party is not ready to make restitution, or to give satisfaction; for if he were so disposed, the warlike aggression would become unjust, as we shall demonstrate in the following sections.

The second [and] commonly accepted

The conclusion is proved, first, by certain Scriptural passages (*Numbers,* Chap, xxv; *2 Kings,* Chaps, x and xi), according to which, unconditional punishment for offences was carried into execution, by the command of God.

Numbers, xxv. *2 Kings,* x and

Its exposition and proof. First: from Scripture.

The reason in support of this same conclusion is that, just as within a state some lawful power to punish crimes is necessary to the preservation of domestic peace; so in the world as a whole, there must exist, in order that the various states may dwell in concord, some power for the punishment of injuries inflicted by one state upon another; and this power is not to be found in any superior, for we assume that these states have no commonly acknowledged superior; therefore, the power in question must reside in the sovereign prince of the injured state, to whom, by reason of that injury, the opposing prince is made subject; and consequently, war of the kind in question has been instituted in place of a tribunal administering just punishment.

The second proof, by reasoning.

6. But, on the other hand, one may object, first: that to fight in this manner seems opposed to the admonitions in the *Epistle to the Romans* (Chap, xii [, v. 17]): 'To no man rendering evil for evil', and *[ibid., n.* 19]: 'Not avenging yourselves.' The reply to the objection is that the passages quoted refer to acts performed by private authority and with the intention of doing evil for its ovyn sake, to another. But if the acts in question be done under legitimate and public authority, with the intention of holding an enemy to his duty and of reducing to its due order that which was disorderly, then they are not only not prohibited

The first objection, drawn from *Romens,* xii. Its solution.

but even necessary. Hence, in that same Epistle *(Romans,* Chap, xiii [, v. 4])> we find this additional passage: 'For he beareth not the sword in vain. For he is God's minister: to work vengeance upon evildoers.'[1] *Ramans,* xiii.

The second objection.

Secondly, it is objected that [if our second general conclusion be true,] then, as a consequence, the same party in one and same case is both plaintiff and judge, a situation which is contrary to the natural law. The truth of the conclusion is evident, since the prince who has been wronged, assumes the role of judge by his act of aggression.

The first confirmation of this objection.

The objection is confirmed, in the first place, by the fact that the r^ht to avenge themselves is denied to private individuals, for this reason, namely, that they would practically exceed the bounds of justice; and yet the same danger exists in the case of a prince who avenges himself.

The second continuation of the second objection.

A second confirmation of the same objection is that, by a like reasoning, any private person who might be unable to secure such punishment through a judge could take the law into his own hands, executing it on his own authority; since this privilege is granted to princes, on the sole ground that there is no other way of securing a just vengeance.

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7. Our reply is, that it cannot be denied that in this matter [of public vengeance], one and the same person assumes, in a sense, the role of plaintiff and that *ofjudge;* even as we perceive that God, to Whom there is some analogy in the public authority, assumes this double role. But the cause [of such an assumption on the part of public authority] is simply that this act *of* punitive justice has been indispensable to mankind, and that no more fitting method for its performance could, in the order of nature and humanly speaking, be found. This is especially true, since we must presuppose, prior to the war, the contumacy of the offending party in not wishing to give satisfaction; for then (contumacy being established) if he finds himself in subjection to the offended party, he may impute his own misfortune to himself.

The reply to the first confirmation.

Neither is this case analogous to that of a private individual. For in the first place, such an individual is guided by his own [unaided] judgment, and therefore he will easily exceed the limits of vengeance; whereas public authority is guided by public counsel, to which heed must be paid, and consequently authority of this sort may more easily avoid the disadvantages arising from personal inclination. In the second place, this power of punishment has for its essential purpose not private but public good, and hence it has been committed not to the private individual, but to the public

[1] [Suarez's quotation for the latter part of this passage reading: *ad vindiciam malijactorum,* varies somewhat from the version found in the Vulgate which reads: *vindex in tram à qui malum agit.*—Ttj

body. Therefore, if the latter is unable or unwilling to punish [an injury], the private individual shall patiently endure his loss. From the foregoing remarks, then, our reply to the first confirmation of the objection is evident.

The 1 **of certain** authorities to the second confirmation

As to the second confirmation, it has been said by some persons that in the situation referred to, a private individual is allowed to avenge himself secretly; and in the *Code* there is a title, *Ouando liceat sine iudice* [. . .] *se vindicare* [. . .] (when it is permitted to avenge oneself without recourse to a judge = *Code,* III. xxvii). But this must be understood as referring to restitution for losses suffered; for in so far as 806 it refers to the punishment of an offence, it is an inadmissible error. An act of punitive justice, indeed, is an exercise of that jurisdiction which private individuals do not possess, and cannot obtain through an offence committed by another. For if they could possess it, there would be no need to employ the public power of jurisdiction; or at least, since this power of jurisdiction is derived from men themselves, each one would have had the power to refrain from transferring it to the state official, retaining it, on the contrary, for himself; a conclusion which would be opposed to the natural law, and to the good governance of the human race.

A dear reply

Therefore, we deny the consequent involved in the second confirmation. For laws regard those things which are true in an absolute sense, and private individuals, absolutely speaking, may obtain a ready revenge for offences because there is a public authority, while the fact that sometimes they are not able to do so, is an accidental occurrence which, for that reason, must necessarily be endured, as we have said. But the relationship between two sovereign powers is based on an absolute necessity. It is in the light of this necessity that certain civil glosses cited by Covarruvias (on *Sext,* rule *Peccatum,* Bk. I, pt. ii, § 9), should be interpreted. On this point, Victoria *fie Potestate Civili,* no. 6 *fie lure Belli,* no. 56]) and Soto *fie lustitia,* Bk. IV, qu. iv, art. 1) may also be consulted.

Covarruvias.

Victori i.

Soto.

The truth 0f a third condusion is

8. Thirdly, I hold that whoever begins a war without just cause, sins not onty against charity, but also against justice; and hence he is bound to make reparation for all the harm that results. The truth of this conclusion is manifest.

A doubt which arises·

The only question which arises in connexion with this point is whether or not there may sometimes exist a cause for war which absolves one from the charge of injustice, but not from the charge of sinning against charity. The reply must be that such a situation rarely occurs; and yet it is by no means inconceivable. For just as it happens among private individuals that one

person may take what is due to him from another, an act which is not opposed to justice, but which is opposed to charity at times (namely, when the debtor incurs very serious losses in consequence, while the property in question is not in great degree necessary to the creditor); even so, a similar situation might arise between princes or states. In this connexion, however, it should be noted that in a war of the kind described, it is possible to consider, first, the loss to the state against which the war is waged; secondly, the loss to the state which commences the war; thirdlyandfinally,thepossiblelosstotheentireChurch.

A discussion of the tolie^hurch| harm would result from war.

With respect to this third contingency, we may easily find support for our assertion. For although a Christian king may ^ec^are war on some particular just ground, it will nevertheless be possible for him to sin against the charity due to the Church, in pursuing his rights. For example, he may foresee the consequent growth in power of the enemies of the faith, and so forth; so that, in that case, it may be a sin to wage war, and yet there arises no obligation to make restitution, since the particular just ground that he has extinguishes such an obligation.

Discussion of the cases in which harm to the enemy would result.

When the harm is of the kind first mentioned, [a harm, that is, to the state against which war is waged,] then there is no great obligation to make restitution, since the malicious intent of the state inflicting the original injury was the cause of the loss in question. Nevertheless, if in a particular case the latter state should be unable to give satisfaction or make restitution without suffering great injury, and if such satisfaction should not be necessary to the prince of the other state, then the latter, by insisting that satisfaction be given, would clearly be acting against charity.

A discussion of the cases*m* which harm would result tothe party that commences hostilities.

Finally, turning to the second case mentioned, if one prince begins a war upon another, even with just cause, while exp0Sing his own realm to disproportionate loss and peril, then he will be sinning not only against charity, but also against the justice due to his own state. The reason for this assertion is as follows: a prince is bound in justice to have greater regard for the common good of his state than for his own good; otherwise, he will become a tyrant. So a judge who condemns to hanging a criminal deserving of execution but very necessary to the state, would act in a manner opposed to his official obligations, and, consequently, to justice. Similarly, a physician would sin against the justice required by his profession if he should give medicine which would heal a present disease but would cause more serious diseases to ensue.

A modification of the last statement.

9. However, with respect to this last point, we must take into consideration the fact that a single king who rules over several kingdoms, can often make war for the sake of

one of these to the detriment of another. For though the various kingdoms may be distinct from one another, nevertheless, inasmuch as they are subject to one head, they can and should be of mutual aid, since the defence of one contributes to the benefit of another and in this way, the principle of equality is preserved. For in its own emergency, one kingdom might require the aid of another. In addition to all these considerations, the mere fact that their [common] prince is rendered more powerful, is in itself extremely advantageous to each of the kingdoms involved. In short, greater peace, and other advantages, may perhaps accrue to a state so supported; and many other [similar] points can easily be perceived upon reflection. There are, then, numerous considerations which may oblige a prince to abandon his right to make war lest his realm suffer loss.

The conclusion of Cajetan.

io. Furthermore, we should call attention to the conclusion, drawn from these primary considerations by Cajetan (on II.-II, qU› ç›6, art. q [qU. qO, art. i]), namely, that for a war to be just, the sovereign ought to be so sure of the degree of his power, that he is morally certain of victory. The first reason for this conclusion is the fact that otherwise the prince would incur the 807
evident peril of inflicting upon his state losses greater than the advantages involved. In the same way, says Cajetan, a judge would do wrong in attempting the arrest of a criminal without a force that, to his certain knowledge, could not be overpowered. Secondly, w'hoever begins a war assumes an active role; and the one who assumes such a role must always be the stronger, in order to vanquish the one who plays a passive part.

How much truth is there in this conelusion?

But this condition [of certitude] does not appear to me to be absolutely essential. First, because, from a human standpoint, it is almost impossible of realization, Secondly, because it is often to the common interest of the state not to await such a degree of certitude, but rather to test its ability to conquer the enemy, even when that ability is somewhat doubtful. Thirdly, because if the conclusion were true, a weaker sovereign could never declare war upon a stronger, since he is unable to attain the certitude which Cajetan demands.

Therefore, the following rules should be laid down. A prince [w'ho declares war] is, indeed, bound to attain the maximum certitude possible regarding victory. Furthermore, he ought to balance the expectation of victory against the risk of loss, and ascertain whether, all things being carefully considered, expectation is preponderant. If so great a degree of certitude is impossible of attainment, he ought at least to have either a more probable expectation of victory, or one equally balanced as to the chances of victory or defeat, and that, in proportion to the need of the state and the communal welfare. But if

the expectation of victory is less apt to be realized than the chance of defeat, and if the war is offensive in character, then in almost every case that war should be avoided. *If* [, on the other hand,] rhe war is defensive, it should be attempted; for in that case it is a matter of necessity, whereas the offensive war is a matter of choice. All of these conclusions are sufficiently clear in the light of the principles of conscience and justice.

SECTION V

CAN CHRISTIAN PRINCES HAVE ANY JUST GROUND FOR WAR BEYOND THAT WHICH NATURAL REASON DICTATES ?

The first opinion: affirmative.

I. The first opinion [which we shall discuss in this connexion] is affirmative, and is defended by Hostiensis, Panormitanus, and other canonists (on *Decretals,* Bk. Ill, tit. xxxiv, chap, viii), as well as by Alvaro Paez *(De Planctu Ecclesiae,* Bk. I, chap, xxxvii [chap, xiii and Bk. II, chap, xlvi]), Gabriel (on the *Sentences,* Bk. IV, dist. xv, qu. 4) and other authorities to whom Covarruvias refers (on *Sext,* rule *Peccatum,* Pt. II, § 10).

HortiensM. Panormi Unu».

Gabrid.

Covamiviw.

But these authors do not all express themselves in the same manner, for they mention varying grounds for the opinion in question.

The first ground which may be advanced is rejected by the author, in the treatise *De Ftde(Disp. xviii).*l

The first ground is that of simple unbelief [on the part *of the enemy],* that is, a refusal to accept the true religion. But this is a false ground, a point with which we deal in the treatise *De Fide.*l

The second ground is also rejected.

The second ground is that God may be avenged for injuries which are done to Him by sins against nature, and by idolatry. Alfonso de Castro *(De lusta Haereticorum Punitione,* Bk. II, chap, xiv) supports this latter contention. But this opinion is also false, and it is $0 first of all, even if we speak of 'vengeance', in the strict sense. For God did not give to all men the power to avenge the injuries they do to Him, since He can easily avenge Himself, if He so wills. Moreover, it would not have been well for the human race had men received this power from God, for the greatest disorder would have resulted therefrom. The same argument holds true with respect to the plea of defending [the majesty of God]; since the sins against Him would thus be multiplied rather than prevented. On this same ground, moreover. Christian princes could declare war even upon one another, for many of these princes also are offenders against God. Likewise, since such a ground of aggression could never be sufficiently established, those who were so attacked could justly defend themselves, and the war would thus become just for both sides.

l *[Supra,* p. 754.—Tb.]

2. The objection may be made that the people of Israel were permitted to make war against idolaters on this very ground, aS is clear from the Old Testament *(Leviticus,* Chap, xviii [, w. 24-8]).

An objection based upon *Leviticus,* XVIII.

I reply that various grounds are assigned for [the justification of] the war in question. Augustine *(Sermones,* CXV, *De Tempore* [also C\ = *Sermones De Scripturis,* xxxiv, in γθρ y, Appendix? coL 18n> Migne ed.]), Epiphanius *([Panarium Adversus LXXX Haereses,* Lib. II, tom. 11,] haeres Ixvi, [no. Ixxxiii]) and Cassian *(Collationes,* V, chap, xxiv) hold that the [disputed] land belonged by hereditary right to the children of Israel as descendants *of* Sem, to whom Noe had given it as an inheritance, and that it had been forcibly seized by Cham, the brother of Sem. I neither accept nor reject this ground, because the arguments adduced on both sides are insufficient.

its solution by Augustine, Epiphanius and Cassian.

Others say that the title in question was a gift of God, and this is indeed a valid title. Augustine adds, however *(Questions on Josue,* Qu. 20 [= *Questions on Heptateuch,* Bk. VI, qu. 20]), that although this title was just, nevertheless, since it could not be proved, other reasons, more firmly and clearly established, have always been sought, namely: that the enemy forbade [the Israelites] passage over common highways; or again, that the former were the aggressors, and began the war. It may also be said that these enemies were not only idolaters, but homicides, since it was their custom to sacrifice innocent little children; hence, on the ground of the defence of the innocent, it was permissible to subdue them in war.

The solution of other authorities is approved.

3. It must be noticed, however, that the second ground mentioned[1] has been virtually accepted by a number of authorities, with respect to cases in which it happens that a state worshipping the one God inclines toward idolatry through the wickedness of its prince; these authorities claim that it is allowable to make war upon that prince. Their contention would be valid if the prince forcibly compelled his subjects to practice 808 idolatry; but under any other circumstances, [such a ground] would not be a sufficient cause for war, unless the whole state should demand assistance against its sovereign. For where compulsion does not intervene, defence has no place.

A further explanation of the second ground mentioned above.

Concerning this second ground, see *De Fide,* Disp. XVIII, sect, rv.[2]

This position is supported, first, by the fact that, if the reasoning in question were valid, it would always be permissible to declare such a war on the ground of protecting innocent little children. Secondly,

[1] [That is, the avenging of God for sins which are against nature, or idolatrous.—Tr.]

[1] [Supra, p. 767.—Tr.]

on the basis of that same reasoning, Christian princes would always be permitted to wage war among themselves, upon their own authority. Finally, by whatever arguments this ground for war may be justified, [the title urged] is not confined to Christians alone, but is possessed in common with all unbelievers who worship only the one God; and accordingly, these unbelievers could rightfully defend those who wished to worship the same God, and who were forced by others into idolatry.

The third ground is absolutely rejected.

4. A third ground for war is advanced, namely, the supreme temporal dominion [of Christians]. That is to say, the authorities mentioned above maintain either that unbelievers are not true owners of their possessions; or else that the Christian Emperor, or—at least—the supreme Pontiff, has direct temporal dominion over the whole world.

π „ r .t in, chap, vii [chap, yj], *Defensio Fidei,* Bk. IILchaps.ijiv.v.[1]

But all such claims are vain inventions, a point which we discuss elsewhere, on the subject of dominion and laws. In the second place, even if we grant that such a title does indeecf exist, still it would be impossible either to demonstrate its existence to the satisfaction of infidels, or to force them to believe in the existence of such dominion; and therefore, they could not be forced to obey. Finally, on that same ground, the Pope or the Emperor could make war [even] upon all Christian princes. Wherefore, it must be observed that although the Pope has indirectly supreme power in temporal affairs, nevertheless, the existence *of* such temporal power is always based, essentially, upon the assumption of direct power in spiritual matters; and therefore, this indirect power does not essentially extend to unbelievers, over whom no direct spiritual dominion exists even in the Pope himself. Butluse the term, 'essentially' *(per se loquendo),* because 'incidentally' *{per accidens)* the case may be otherwise, as I shall presently show.

A fourth ground is examined.

5. A fourth ground urged is that unbelievers are barbarians and incapable of governing themselves properly; and that the order of nature demands that men of this condition should be governed by those who are more prudent, as Aristotle *{Politics,* Bk. I, chap, i) has taught, saying *{ibid.,* chap, v [Bk. I, chap, iii, § 8]) that a war is by nature just, when it is waged against men born to be under obedience but unwilling to accept that condition; a ground [for war] which is approved by Major (on the *Sentences,* Bk. II, dist. xliv, qu. 3), and at great length by Sepûlveda (Bk. MI, chap, ii *[De Regno et Regis Officio,* Bk. Ill, near end]).

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In the first place, however, such a contention cannot have a general application; for it is evident that there are many unbelievers more gifted by nature than are the faithful, and better adapted to

1 [Of these chapters, only chap, v of Bk. III of the *Defensio Fidei* is included in these *Selections. Vide supra,* p. 667.—TR.]

political life. Secondly, in order that the ground in question may be valid, it is not enough to judge that a given people are of inferior natural talents; for they must also be so wretched as to live in general more Eke wild beasts than like men, as those persons are said to live who have no human polity, and who go about entirely naked, eat human flesh, &c. If there are any such, they may be brought into subjection by war, not with the purpose of destroying them, but rather that they may be organized in human fashion, and justly governed. However, this ground for war should rarely or never be approved, except in circumstances in which the slaughter of innocent people, and similar wrongs take place; and therefore, the ground in question is more properly included under defensive than under offensive wars.

Finally, Aristotle, in the passage cited above, declares that a war of this sort is permissible only when those men who are subdued in order that they may be governed, are as different from the rest of mankind as is the body from the soul; a proposition from which one must conclude, however, that the said ground for war, if it really exists, is valid not only for Christians, but also for every sovereign who wishes to defend the law of nature, which, when understood in an absolute sense, gives rise to that ground.

6. Therefore, the assertion must be made that there is no ground for war so exclusively reserved to Christian princes that it has not some basis in, or at least some due relation t0 natural law, being therefore also applicable to princes who are unbelievers.

The true solution of this question, by means of three conclusions.

By way of explaining this assertion, I conclude, first, that a Christian prince may not declare war save either by reason *of some* injury inflicted or for the defence of the innocent. We have already given sufficient proof of this fact, by rejecting all the invalid grounds for war, [advanced above]. The arguments we have adduced are a proof of this same fact; for the law of grace has not destroyed, but on the contrary completes the natural law.

7. Secondly, I must say that the defence of the innocent is permissible in a special sense to Christian princes, and that the same proposition holds true, proportionately, with respect to avenging injuries. For if a state subject to an unbelieving prince wishes to accept the law of Christ and the unbelieving sovereign prevents that acceptance, then Christian princes have the right 809
to defend that innocent people; but if the same kingdom wishes to submit to the law of unbelievers—for example, to the Mohammedan—and its prince is opposed to this submission, then an unbelieving Turkish prince would not have a similar right of war against that other sovereign. The reason for this distinction is that to prevent the acceptance of the law of Christ does indeed involve grievous injustice

The second conclusion.

and harm, whereas there is no injury at all in prohibiting the acceptance of another law. Likewise, if [a given people] are willing to listen [to the Gospel], they may be convinced through reason that this is the more credible faith and that it ought to be believed; and therefore, it is just to assist them, under these circumstances.

Similar examples may be adduced, relating to the first[1] part of our conclusion, as when injuries are inflicted upon preachers of the Gospel; or certainly when unbelieving princes act to the harm of the faithful, for this is an injury to the Church which she has a special right to repel and avenge. This right is in part supernatural, that is, in so far as the power from God to preach the Gospel is concerned, and in this sense, it surely is not possessed by unbelievers; all of which we have sufficiently proved in treating of faith *(De Fide,* Disp. XVIII, sect, i).[2]

8. I hold, thirdly, that all of the foregoing considerations are so founded on the natural reason that they may, to a certain extent and in due proponion, be applied to unbelievers. The explanation *of* this conclusion is that if any state wishes to worship the one God and observe the law of nature, or to listen to preachers who teach these things, and if the sovereign of that state forcibly prevents it from doing so, there would spring up in consequence a just ground for war to be waged by some other prince, even if the latter should be an unbeliever, and guided solely by natural reason; because that wrar would be a just defence of innocent persons.

The third conclusion.

In like manner, if any nation should worship the one God and observe the laws of nature, while another nation practised *idolatry and lived* contrary to natural reason, then the former state would have the right to send missionaries to instruct [the citizens of the latter state], and to free them from their errors. And if this action were forcibly prevented, then war could justly follow; first, *for* the reason that such a right is entirely in harmony with nature; secondly, because the defence of the innocent would be involved in that procedure, since, speaking generally, there would not fail to be some who wished to be taught the natural truths necessary for an upright and virtuous life, and who would be wickedly impeded in the attainment of this wash, and finally, because of other reasons which we have set forth in our discussion of faith *(De Fide,* Disp. XVIII)[2] and which, in due proportion, are applicable to the point under discussion.

1 *[Sie (primam)*; but the reference is apparently to the second conclusion. which relates to 'avenging injuries *Vide* the first sentence of Sub-section 7 of Section *V, supra,* p. 826.—Tr .]

2 *[Supra,* p. 739.—Tr .]

SECTION VI

WHAT CERTITUDE AS TO THE JUST CAUSE OF WAR IS REQUIRED IN ORDER THAT WAR MAY BE JUST

Three kinds of persons must here be distinguished, to wit: the sovereign king and prince, the leading men and generals, and the common soldiers. It is to be assumed that practical certitude is required of all these persons, a certitude which may be expressed in the statement: 'It is lawful for me to make war.' The whole doubt is concerned with theoretical certitude, which is to be expressed as follows: 'This cause of war is just in itselF, or, 'This thing which I seek through war is rightfully mine'.

The first conclusion: which is twofold.

I. I hold, first, that the sovereign ruler is bound to make a diligent examination of the cause and its justice, and that after making this examination, he ought to act in accordance with the knowledge thus obtained.

The proof of the first p*lll.

The basis of the first part of this conclusion is that war is a matter of the gravest character; and reason demands that in any matter whatsoever, deliberation and diligence should be applied, commensurate with its importance. Furthermore, a judge, in order to pass judgment in a private matter, ought to make diligent investigation; hence, the necessity for such diligence exists in due proportion in a public cause of war. Finally, if the ruler were not bound to make this investigation, the rashness of princes would easily result in universal disturbance. With regard to the first part of this assertion, then, there is no difficulty.

The ssesnd part of this conclusion is explained:

2. The explanation of the second part of the conclusion is as follows. Let us suppose that the ground for a war is the fact that a certain king claims a certain city as belonging to him, or as falling newly to him by hereditary right. Now if, when the matter has been carefully examined, the truth of that claim is clearly established, what I have asserted is obviously true. But when the case of each side contains [an element of] probability, then the king ought to act as a just judge.

What [should the king do] when [the arborel puLdbie [than those of the other side]?

Therefore, if he finds that the opinion favouring his own side is t^ie more probably true, he may, even justly, prosecute his own right; because, so I believe, the more probable opinion^should always be preferredHn passing judgment. For that is an act of distributive justice, in which the more worthy party is to receive the preference; and he is the more worthy party w-ho enjoys the more probable right, as we shall explain below' at greater length. For the same reason, however, if the more probable opinion favours the opposing side, the prince in question may on no account proceed to war.

810 3. If, finally, after diligent investigation, the probabilities on both sides are found to be equal, or if, at least, equal uncertainty exists—whatever the ground *of* the uncertainty—then, if the opposing party is in possession, he ought to have the preference, because even in a judicial process, that party is favoured, inasmuch as he has the greater right. On this account, the party who is not in possession cannot proceed to war against the possessor; while the latter, on the other hand, is secure [in his conscience] and may justly defend himself.

What should the king do, when the doubt is equal on both sides and the opposing side is in possession?

Adrian (on the *Sentences,* Bk. IV, concerning restitution, and in *Quaestiones Quodlibeticae,* Qu. ii, art. 2), however, maintains an opinion contrary to this last statement. 'For that person' (he says) 'is in doubt as to whether he is retaining the property of another. Therefore, he is not secure [in his conscience].'[1] Soto *(De lustitia,* Bk. IV, qu. v, last arg.) also says that the one who is in doubt is bound to divide with the other party, or to give satisfaction to that other in proportion to the doubt. This would be true if in the beginning he had taken possession, while doubting [the justice of his action]; for that sort of possession confers no kind of right. But if, on the other hand, he held possession at the beginning in good faith, if a doubt has arisen since that time, and if he has made diligent inquiries into the truth but has not been able to ascertain it, then he may, [with a] secure [conscience], continue in possession of the whole of the property in question; *for the* doubt remains purely theoretical, and such possession confers absolutely the right to the whole of the thing possessed, a fact which we have established universally and more fully, in our discussion of conscience *([De Bonitate et Malitia Humanorum Actuum,']* Treatise III, disp, xii, §§5 and6).[2] The same fact is stated specifically by Covarruvias(on*Sext,* rule *possessor,* Pt. II, § 7) and by Victoria (aforesaid Relectio *[De lure Belli,* no. 29]). Soto (Relectio: *De Secreto,* Memb. iii, qu. 2)[3] does likewise. Nevertheless, Victoria observes that a possessor of the kind in question is bound, when the doubt arises, to inquire diligently into the truth; and that, if he refuses to do so, he can be forced into this inquiry by the other party, even through war, for the principles of justice and right judgment do indeed demand that such an investigation be made.

Adrian

Soto,

4. Another aspect of the question regards the situation in which no one is in possession and the doubts and probabilities balance each other. The more common opinion seems to be that either party has the right to seize first the thing in dispute. In accordance with this opinion, the

What should the king do when neither side is in possession?

1 *[If* cgrtainty of true ownership cannot be attained, the possessor, being in doubt, must relieve his conscience by giving the thing (possessed) to the poor *(loc. at. ĭ" punctum, secundo dico).*—Réviser.]

2 (Not included in these *Selections.*—Tr.]

3 [Soto, *De ratione tegendi et detegendi secretum,* relectio theologica (Salamanca, 1574).—Reviser.]

war would become just simultaneously, on both sides; but this point is of no importance, when ignorance intervenes. The reason, indeed, which is offered in support of this opinion is that in a similar case a judge could award the property by his own decision to either one of the parties to the litigation, as he might choose.

However, I am unable to persuade myself that a judge may act thus in the case supposed. For certainly, under those circumstances, the judge is merely a distributor of property over which he personally has no right; consequently, if the rights *of* the parties in question are at all times entirely equal, there is no reason which would allow him to allot the whole property to either party; and therefore, the judge is bound to divide the property. Or, if this cannot be advantageously done, it will be necessary to satisfy both sides, in some fashion. Hence, in a question involving war, the princes shall be bound to this same attitude. Accordingly, they must either divide between them the thing in dispute, or cast lots for it, or settle the matter in some other way. But if one party should attempt to seize the whole possession to the exclusion of the other party, by that very act he would be doing the other a wrong which the latter might justly repel, thus seizing, on this just ground of war, the entire disputed possession.

It is more probably true that in case of doubt as to the justice of a war, a prince is bound to submit the matter to the judgment of a good man.

5. But the question may be asked whether, in cases of this kind, *sovereign* princes are bound to submit the matter to the decision of good men. This question, moreover, arises from the standpoint of natural law only, so that, in our discussion, we shall not include the authority of the Pope, of which we have already spoken.[1]

Indeed, I am of the opinion that the affirmative answer to this question is, in all probability, correct. For the said princes are bound to avoid war in so far as is possible, and by upright means. Therefore, if no danger of injustice is to be feared, the above-mentioned [arbitration] is plainly the best means of decision, and consequently resort should be had to it.

This opinion is confirmed as follows: it is impossible that the Author of nature should have left human affairs, governed as they are by conjecture more frequently than by any sure reason, in such a critical condition that all controversies between sovereigns and states should be settled only by war; for such a condition would be contrary to prudence and to the general welfare of the human race; and therefore it would be contrary to justice. Furthermore, if this condition prevailed, those persons would as a rule possess the greater rights who were the more powerful; and thus such rights would have to be measured by arms, which is manifestly a barbarous and absurd supposition.

[1] *[Cf. Sub-section 5 of* Section II, *supra, p. 808.—Tr.]*

6. In this connexion, however, we must observe, first, that a sovereign prince is not bound by the decision of those whom he himself has not constituted as judges. Therefore, it would be necessary for the arbitrators to be chosen with the consent of both sides. Resort to this method, indeed, is a most rare occurrence, inasmuch as [these princes] seldom favour it; for very frequently one or other of the princes holds the foreign judges in suspicion.

Note i Concerning the decision that is given.

Secondly, it should be noted that a sovereign prince, if he is acting in good faith, may ascertain his own rights through prudent and learned men [of his own choice]; then he may follow their judgment (if by it his rights are made clear to him); and under these circumstances he will not be bound to abide by the judgment of other [and foreign arbitrators]. The reason in support of this statement is that the rights in question must be judicially ascertained in the same manner as a just decision of a court; and in the latter sort of decision, [only] two objectives are involved. One is an
811 examination of the cause and acquaintance with the rights of both sides; for which process, not jurisdiction, but knowledge and discretion, are necessary. For since this decision is not sought through war, but, on the contrary, a substitute for war [i.e. a judicial inquiry] is employed, there is no occasion to call in any arbitrator. The other objective is the enforcement of the right after it has been made clear. For this, jurisdiction is indeed required; but such jurisdiction is inherent in a sovereign prince when in other respects he is sufficiently certain of his right. In that case, then, there is no reason binding him to await the judgment of another, although he ought to accept just settlements if they are presented to him.

Note 2

7. Secondly, I hold that generals and other chief men of the Inngdom, whenever they are summoned for convultation to give their opinion on beginning a war, are j50unj t0 inqUfre diligently into the truth of the matter; but *if they* are not called, they are under no greater obligation to do so than others who are common soldiers. The first part *of* this conclusion is clearly true; because these generals, having been summoned, are bound in justice to give a just opinion, for if they did not do so, any injustice that there might be in the war will be laid to their charge. The proof of the second part of the conclusion is the fact that, when they are not summoned [to give advice], their part in the affair becomes simply that *of* private soldiers, since they are merely set in action by others, but do not control action; while it is only incidental *(per accidens)* that they are wealthy or of noble birth. Nevertheless, Victoria *(De lure Belli,* no. 24) adds that such generals are bound in charity to inquire into the justice of the war, in order to give

The second conclusion, in two parts. Victor, rating to generals.

warning when it shall be necessary. But if this obligation is derived from charity alone, it will exist only in case of necessity; and therefore, generally speaking, apart from these cases where there is such need, they will not be so bound.

8. I hold thirdly, that: common soldiers, as subjects of princes, **are in no wise bound to make diligent investigation,** but rather may go to war when summoned to do so, **provided it is not clear to them that the war is unjust.** This conclusion may be proved by the following arguments: first, when the injustice of the war is not evident to these soldiers, the united opinion of the prince and of the realm is sufficient to move them to this action; secondly, subjects when in doubt (i.e. doubt of a theoretical character) are bound to obey their superiors *{Decretum,* Pt. II, causa xxm, qu. i, can. iv, which is cited from Augustine, *Against Faustus,* Bk. XXII, chap. Ixxv). This last statement is based upon the best of reasons, namely, the fact that in cases *of* doubt the safer[1] course should be chosen; therefore, since the prince possesses rightful authority, the safer course is to obey him.

The third conclusion: relating to common soldiers.

The assertion is confirmed by the fact that the official subordinate of a judge may execute a sentence without any previous examination, provided that sentence is not manifestly unjust. Such is the common opinion of Cajetan *(Summa,* word *bellum),* Soto *(De lustitia,* Bk IV> qu art Victoria *(De lure Belli,* no. 25), and Sylvester (word *bellum,* Pt. I, qu. 9 [qu. 5]).

See Suârez in a similar passage in torarvoi° *aSee3Censuris,* Disp, in, sect.xv.fromno.9.[2]

Cajetan. Soto. Victoria. Sylvester.

9. Nevertheless, Sylvester would seem to limit this conclusion. For says that, if the common soldiers have doubts, they are bound to make inquiries in order to dispel those doubts; but, if they cannot do so, it will be permissible for them to fight. Adrian *(Quaestiones Quodlibeticae,* II) indeed, absolutely denies that it is permissible to go to war with such doubts; both because it is never permissible to act with a doubtful conscience; and because soldiers who ^id act wou^ be choosing the [morally] more dangerous course, since they would be exposing themselves to the peril of unjust slaughter and plundering; whereas, if they abstained from going, they would sin only by disobedience, and justice imposes a more rigorous obligation than that of obedience.

A limitation of the third conclusion; by Sylvester.

Adrian likewise limits this conclu- ^Sy; 0T ^auSThe [absolutely] denies xt'

The reply to this objection, however, is that the doubt in such a case is not practical but speculative, and therefore joes renc[er the conscience doubtful. Further-

Adrian is answered.

1 [Le. morally safer.—Tr.]
2 [Not included in these *Selections.*—Tr.]

more, it would not be safer to disobey; for as a natural result of such disobedience, it would become impossible for princes to defend their rights, and this would be a serious and general misfortune.

With regard to Sylvester's limitation, we should observe: first, that the doubt may be a purely negative one, namely, that the soldiers are entirely ignorant of the basis of the justice or injustice underlying the war; in which case they are in no wise bound to make inquiry, being sufficiently supported by the fact that they have relied upon the authority of their sovereign; secondly, that the doubt may be positive, having its source in conflicting arguments adduced in favour of one side and the other. Indeed, if the arguments showing the war to be unjust were such that the soldiers themselves were unable to give a satisfactory answer, then they would be bound to inquire into the truth in some way. Even this obligation, however, is to be imposed, not readily, but only in case those arguments render the justice of the war extremely doubtful, for in that case, it would seem that the soldiers have inclined towards a moral judgment that the war was unjust; otherwise, however, if they have probable reason for thinking that the war is just, they may legitimately conform their conduct to these reasons.

Sylvester is answered.

10. A greater difficulty arises in connexion with soldiers who are not subjects and who are called mercenaries. The opinion commonly held seems to be that these soldiers are bound to inquire into the justice of a war, before they enlist. This is the opinion of Sylvester (on word *bellum,* Pt. I, qu. 10), who even states definitely that such soldiers, when doubtful, cannot legitimately engage in the war. Cajetan *{Summa,* word *bellum) holds almost the* same view; although he makes this limitation: 'Unless they receive their pay in time of peace also, and are bound to go forth to war whenever called.' For in that case, [according to Cajetan], mercenaries may conduct themselves as *if they were* subjects, since they are really such, by reason of the pay which they receive. The basis of the foregoing opinion is r^e ^act t^iat æ suc^ a situation it is safer for one who is not a subject to abstain from fighting; because if he so abstains he does not expose himself to any peril; whereas, *if* he does fight, he exposes himself to all the dangers enumerated by Adrian; and in doubtful matters the safer pan should be chosen.

The more common opinion with respect to mercenary soldiers, who are not subjects.

Sylveter Gyna,·..

The basis of the opinion above set fortb·

812

This assertion is confirmed, first, by the *Sexi (Bk. λ,* tit. xii, *De Regulis luris,* rule 10) and the *Digest* (L. xvii. 38 *L3°D' which* states that he is not exempt from blame who thrusts himself, with peril to another, into affairs that do not concern him; wherefore Ambrose

The first confirmation from the rule of law and from Am-

1 [In the Latin text *Cajetan' is incorrectly placed before 'Sylvester'.—Ti.]

(*On Duties,* Bk. III, chap, ix and cited in *Decretum,* Pt. II, causa xiv, qu. v, can. x) makes the general statement that no one ought to assist one party to the prejudice of another.

It is confirmed secondly by the fact that, in a similar kind *of* doubt, and for the reason set forth above, the laws hold that a spouse who is in doubt [as to the title to the act] may render the conjugal debt, but may not ask for it. By the same reasoning, it may also be said that princes who are kinsmen or friends may not assist one another until they have duly examined the cause.

The second confirmation.

11. However, such an opinion comes into conflict with the following difficulties.

First, it would be necessary *for* each individual mercenary soldier to inquire into the cause *of* the war. But such an investigation is contrary to all custom, and humanly speaking, is impossible; for, as I have said above, the reason *for the* war cannot be explained to all, nor are all capable *of* appreciating that explanation.

The first argument against this opinion,

Secondly, [if the opinion in question were valid,] even soldiers who were subjects could not take part in a doubtful war without examining the cause, save when they were under strict orders of such sort that they would be disobedient in not going; for in that case their obedience would alone excuse them. But as long as they were not under orders, it would be [morally] safer not to fight. However, this consequent is contrary to all custom, and that obligation [to investigate the cause of war] would be harmful to the state.

The second argument.

Thirdly, if permanent mercenaries could, previously to a war, bind themselves to fight even in doubtful cases by giving their consciences into the keeping of the prince's conscience, why could not those mercenaries do the same who enlist at the outbreak of a war? For, from a moral standpoint, the same principle is involved in the performance of an action and in binding oneself to perform it.

The third argument.

The confirmation of this argument lies in the fact that just as one is not allowed to proceed to an unjust war, neither is he allowed to undertake the obligation of serving in such a war, nor even in any war indiscriminately, whether just or unjust; and the reason for these restrictions is that to fight in an unjust war is to act unjustly. Therefore, conversely, if one is permitted to bind himself to service in a doubtful war, the obligation involved in such a case is not 'wicked; and therefore, it would be permissible so to bind oneself for pay, here and now, although no previous obligation exists. Nor does it seem to be of much importance that a given

The confirmation of the third argument.

' [Reading *ilia* for *alia.*—Reviser.]

[mercenary] was already regarded as a subject before the war, by reason of his pay. For one might say the same thing in the case of a contract made on the eve of the outbreak of the war, since, at such a time also, soldiers bind themselves to obedience in all matters in which obedience is legitimate; so that it makes no difference from the standpoint *of* justice, whether this contract was made before the war, or whether it is made now, [at the moment when the conflict begins].

The fourth argument.

Fourthly, in a similar doubtful situation, any person is permitted to sell arms to these princes and to the soldiers; nevertheless, if they do so, the same danger is present, namely, that the act may contribute to the injuiy of innocent persons, if by any chance, the war is in fact unjust. The antecedent is commonly accepted as true. The proof of the consequent is, that both kinds of co-operation are very pertinent to actual wars; and although soldiers seem, in a sense, to co-operate more immediately, nevertheless the persons who furnish arms are ordinarily able to do more harm.

rv x

Fifthly, any individual is permitted to enter the service of a merchant, on a wage contract, with the intention of co-operatmg with the latter m those of his contracts whose injustice is not manifest to the employee; neither is that employee under an obligation to examine the nature of the contracts; and accordingly one should adopt a similar view with respect to the case under discussion.

The sixth argument.

Lastly, there is one argument that is commonly applicable to all the cases mentioned above, namely, in all of them, the first and essential element is that one who is not a subject, submits himself to another for the sake of payment, and in so doing, inflicts no injury upon any person; neither, *generally* speaking, does he expose himself to the danger of any wrongdoing. And for the rest, he is [simply] exercising his right, when he sells his own property or his own labour, a right of which he certainly is not bound to deprive himself to his own detriment. With regard to these [mercenary] soldiers, there is, in addition, a special argument; for each of them has the authority of the prince and that of the whole state to support him, a fact which involves a great probability [that their conduct is just].

Hence, all the circumstances being weighed, it would by no means seem that mercenaries who serve in that contingency,[1] are choosing the course that is [morally] less safe.

The author's decision: in two parts,

12. These arguments are clearly convincing; nor do I find any difference in actual fact between subjects and non-subjects. *So it is that Victoria (supra, in his Relectio [De lure Belli],* no. 24 [no. 25]), too, speaks simply *of soldiers',* without distinction. *Vk-tom.*

1 (Le. when there is great probability that the war is just.—Revises.]

However, since the question is one of moral conduct, and in order that we may proceed with less risk *of error, I* lay down this conclusion: if the doubt [as to the justice of a *war] is* purely negative, it is probable that the soldiers in question may [rightfully] take part in that war without having made any examination of the question, all responsibility being thrown upon the prince to whom they are subject. We assume, to be sure, that this prince enjoys a good reputation among all men. This is clearly the opinion supported by Victoria and agreed to by other Thomists. 813

With respect to a negative doubt.

If, however, the doubt is positive, and if both sides advance plausible arguments, then, in my opinion, [those who are about to enlist] should make an inquiry into the truth *of* the matter. If they are unable to ascertain the truth, they will be bound to follow the course of action which is more probably just, and to aid him who is more probably in the right. For when the case involves doubt with respect to a fact, such as loss affecting one's neighbour, or with respect to the defence of the innocent, that course which appears to be more probably just should be followed, in accordance with the rules on conscience above set forth (Sub-sect. 6). To this end, indeed, it will be sufficient if the soldiers consult prudent and conscientious men upon the question of whether or not they are in an absolute sense able to take part in such a war. And if the soldiers in question form a single political body, and have their own chiefs, the inferiors will certainly satisfy all requirements, if each person examines the question of the justice of the war, through his own chief or prince, and follows the judgment of that authority. Finally, if the arguments on both sides contain an equal [element of] probability, the soldiers may under such circumstances conduct themselves as if the doubt were purely negative; for the balance is then equal, and the authority of the prince turns the scale. Sylvester, too (on the word *bellum,* Pt. I), has clearly suggested this conclusion.

With respect to a positive doubt.

The foregoing may suffice for the question under discussion.

SECTION VII

WHAT IS THE PROPER MODE OF CONDUCTING WAR?

1. Three periods must be distinguished [with respect to every war]: *ts inception; its prosecution, before victory is gained; and the period after victory. The three classes of persons already mentioned must also be distinguished, namely: the sovereign prince; the intermediate group of leaders; and the soldiers of the rank and file.

Notes for the solution of this question.

All of these persons may be considered in certain specific relationships. First, with respect to the enemy, that is to say: how may these classes justly conduct themselves to-

A fourfold relationship is outlined.

ward the enemy? Secondly, with respect to their mutual relations: how should the king conduct himself toward his soldiers? Thirdly, [and again in connexion with their mutual relations,] how should the soldiers conduct themselves toward their kings? Fourthly, how should they conduct themselves toward other persons, for example, those persons in whose houses the soldiers are quartered during the march?

At present, we are dealing in the main with the first question; but we shall also treat briefly *of the* others.

On the fourth relationship.

2. With respect to the fourth relationship, then, we may repeat briefly the admonition of John the Baptist *(Luke, Lût.* Chap, iii [, v. 14]): 'Do violence to no man; [...] and be content with your pay.' Hence, none of these *soldiers* may take anything from his hosts, beyond that which has been determined by the king; otherwise, he sins against justice and is bound to make restitution. The same is true if he does any other damage to houses, fields, &c. To be sure, the leaders [of intermediate rank] and the princes are bound, by virtue of their office, to prevent such acts in so far as they are able. If they fail to do so, the whole duty of making restitution falls upon them, in default *of* the soldiers.

On the third relationship.

Concerning the third head, just as the kings are under an obligation to give pay to the soldiers, so the latter are bound to discharge all the duties pertaining to their office. Hence, justice requires of them brave conduct, even to such a degree that they shall not take to flight, nor desert their stations or fortifications; a matter concerning which there are many laws (in XLIX. xvi). Cajetan, also, should be consulted in his brief treatise on the ejecta, subject *(Opusculum,* Bk. IV, last question but one [Bk. Ill, treatise ix: *De Vinculo ObedientiaeJ); for* he holds that commanders *of forts* are under an obligation not to surrender through any fear of death or starvation, since they have made a contract with the prince not to do so, and since they receive their payment because *of* this contract, whence there arises an obligation binding them in justice.

Finally, with regard to the mutual relationship of the private soldiers, we may remark that, apart from the ordinary rules of justice, they are especially bound after victory to make a just distribution in sharing the booty. What that just distribution may be, however, it is not possible for us to determine; for in every kingdom the rules laid down by the monarchs or generals should be observed, or, at least, those rules which may have been established by usage and custom.

Only the first head, then, still remains for discussion.

On the first relation- tiro C°n" parts. '

5. I hold, first that before a war is begun the [attacking] prince is bound to call to the attention of the opposing state t^ie existence of a just cause of war, and to seek adequate reparation therefor; and if the other state offers

such adequate reparation, he is bound to accept it, and desist from war; for if he does not do so, the war will be unjust. If, on the other hand, the opposing prince refuses to give satisfaction, the first prince may begin to make war.

This conclusion is commonly accepted in its entirety, and the latter part is clearly true because, assuming the obstinacy of the opposing prince or state, and the other conditions specified, there is no [other] point that calls for consideration.

It is commonly accepted. The latter part of the conclusion is clearly true.

The first part is derived from Augustine (in *Decretum,* Pt. II, causa xxiii, qu. i, can. iii [which is cited from Augustine, *Letters,* clxxxix, no. 4, *To Boniface]', Decretum, ibid.,* qu. ii, can. ii [cited from Augustine, *On Josue* in *Questions on the Heptateuch,* Bk. VI, qu. 10, Migne ed.]). Moreover, this view is accepted by all Doctors: Major (on the *Sentences,* Bk. IV, qu. 20); Driedo *(De Libertate Christiana,* Bk. II, chap, vi); Cajetan (on the word *bellum)* and Sylvester *(ibid.,* qu. iv, concl. 2 [qu. i, concl. 2]). And it would seem that the same principle may correctly be inferred from a passage in *Deuteronomy* (Chap, xx [, v. 1]) : 'If thou go out to war [against thy enemies and see horsemen and chariots, and the numbers of the enemy's army greater than thine, thou shalt not fear them : because thy God is with thee]'. The reason supporting this part of our conclusion is that any other manner of making war would be unjust, and therefore the cause of war itself would become unjust. For where a full and sufficient satisfaction 814 is voluntarily offered, there is no ground for violence; especially not, since reason demands that punitive justice be exercised with the least possible harm to all, provided, however, that the principle of equality be observed. Moreover, one sovereign has no coercive power over another sovereign, unless the latter acts unjustly, as is the case when he is unwilling to give satisfaction.

The first part is proved by citing authorities and by reasoning.

Augustine.

Major.
Driedo.
Cajetan.
Sylvester.

Deuteronomy, xx.

4. But Cajetan limits this conclusion by stipulating the following condition: namely, that the satisfaction in question shall ke offered before the actual encounter in war. For after the war has commenced, he who brings it to a victorious conclusion is not bound to accept such satisfaction ; since, in that conflict, he is as a judge who, once the action has been undertaken, finds the cause within his jurisdiction, having acquired the right to proceed to the end, so that the vanquished party has only himself to blame, in that he did not offer satisfaction at the proper time.

Cajetan's limitation of this conclusion,

But, I ask, what does Cajetan mean by 'actual encounter in warfare?' If he refers to the last actual battle in which the whole war is to find its conclusion, there is no doubt that, if the affair has already been entered into and victory is

This limitation is examined.

beginning to favour the side of the just belligerent, the latter is not bound, under such circumstances, to accept any reparation short of complete victory; for such victory now seems to be in all probability close at hand, and, indeed, to treat of peace at that juncture is, to all intents and purposes, impossible.

If, on the other hand, by actual encounter in warfare, Cajetan means a war in which several conflicts have occurred, I do not see how it may be asserted with any solid assurance that, under these circumstances, [the just belligerent] has the cause under his jurisdiction any more than he had before the commencement of the war. For previously, he had the same right to begin the war that he now has to proceed with it; and the sole difference is that the injury has grown greater, and that consequently an increased right to a greater satisfaction has arisen. Moreover, the arguments set forth above apply equally to both of the situations in question. For the continuance as well as the beginning of the war ought to be dictated by necessity. And, in addition to all these considerations, there is the fact that, [in the wake *of* both situations,] similar wrongs against the general welfare follow, wrongs which should be avoided while preserving intact one's individual rights. These are preserved when satisfaction is offered, because nothing further than this satisfaction can be claimed even when victory is achieved, a point which we shall discuss below'.[1] In short, the right to make war is prejudicial to others,[2]* and the punishment inflicted through war is of the severest kind; therefore, that punishment ought to be inflicted as sparingly as is possible.

5. Therefore, the opinion contrary to Cajetan's appears to be in everF respect nearer the truth, with the sole proviso that complete satisfaction shall include the following conditions: all property unjustly withheld shall be restored; secondly, reimbursement must be made for all expenses due to injuries inflicted by the enemy, so that, once the war has been begun, a claim may justly be made for all its costs, to date; thirdly, something may be demanded as a penalty for the injury inflicted, for in war, regard must be had not only for commutative justice, but also for punitive justice; and finally, a demand may justly be made for whatever shall seem necessary to preserve and also to guard peace, in the future, since the chief end of war is to establish such a future peace. It should also be added that the state of war has its rightful source in justice and that, consequendy, if war is made contrary to justice, there arises from that fact an obligation to make reparation for this injury.

The [author's] solution, which is absoCietan's°iùSion° it is more fully explained.

1 *[Infra,* P· 840, Sub-section 7.—Tr.]

2 *[Jus belli odiosum.* The expression has a legal connotation, namely, that one man's right may restrict the action *of* another, and is, therefore, prejudicial to the latter.—Reviser.]

The second conclusion.

6. I hold, secondly, that after war has been begun, and during the whole period thereof up to the attainment of victory, it is just to visit upon the enemy all losses which may seem necessary either for obtaining satisfaction or for securing victory, provided that these losses do not involve an intrinsic injury to innocent persons, which would be in itself an evil. Of this injury, we shall treat below, in the sixth conclusion. The reason in support of this conclusion is as follows: if the end is permissible, the necessary means to that end are also permissible; and hence it follows that in the whole course, or duration, of the war hardly anything done against the enemy involves injustice, except the slaying of the innocent. For all other damages are usually held to be necessary for attaining the end to which the war is directed.

The third conclusion: commonly applicable, and undoubtedly true.

7. In the third place, I hold that after the winning of victory, a prince is allowed to inflict upon the conquered state such losses as are sufficient for a just punishment and satisfaction, and reimbursement for all losses suffered. This conclusion is commonly accepted and undoubtedly true, both because the exaction of such penalties is the object of war, and also because in a righteous judgment at law this same course of conduct is permissible. But it should be observed that in computing the sum required for this satisfaction, one should include all the losses by the state in question throughout the war, i.e. the deaths of men, conflagrations, &c.

The first observation: An additional comment is not improperly attached to this observation, by Sylvester and by Victoria.

In the first place, however, the additional comment made by Sylvester (word *bellum,* Pt. I, qu. 9 [qu. 10]) and by Victoria (above-cited Relectio, no. 20 *[De Iure Belli,* no. 51]) is not unacceptable, namely, that movable goods captured by soldiers during the war are not to be reckoned by the prince as part of the restitution. For this rule has become a part of the *ius gentium,* through common custom. The reason underlying it is that, since the soldiers' lives are exposed to dangers so numerous and so grave, they should be allowed something; and the same is true of their prince.

The second observation.

Secondly, it is necessary to observe with regard both to this, and the previous conclusions,[1] that soldiers are not allowed to seize anything on their own authority, whether after 815 or even before the victory is won; because they have in themselves no power, but possess it solely through their prince, as his agents, so that they may not justly take anything without his express or implied authorization.

Thirdly: it follows from this conclusion that, if all the penalties

[1 fie. the first conclusion, Sub-section 3 of this Section; and the second conclusion, Sub-section 6 of the same.—Tr.]

just enumerated seem insufficient in view of the gravity of the wrong, then, after the war has been entirely ended, certain guilty individuals among the enemy may also, with justice, be put to death; and, although the slaying of a great multitude would be thus permissible only when there was most urgent cause, nevertheless, even such slaughter may sometimes be allowed, in order to terrify the rest, as is indicated in the following passage from *Deuteronomy* (Chap, xx [, w. 13-14]): 'When the Lord thy God shall deliver the city into thy hands, thou shalt slay all that are therein of the male sex, with the edge of the sword, excepting women and children,' &c. And from this passage it follows that with much more reason the guilty who have been vanquished may be reduced to captivity and all their property seized.

The third observation, involving a twofold corollary based upon this conclusion.

Dtulemu^,

Fourthly, it is to be noted that one should interpret in accord with this conclusion the civil laws which assert that, t^lrou$^l t^Le *gentium,* it has been established that all the property of the enemy, both movable and immovable, passes to the victors. This fact is brought out in the *Digest* (XLIX. xv. 24, 28), the *Code* (VIII. liii. 36), and the *Decretum* (Pt. I, dist. 1, cans, ix and x). The same point is made by Ambrose (on *Abraham,* Bk. I, chap, iii), and by St. Thomas *{De Regimine Principum,* Bk. Ill), while Covarruvias (on *Sext,* rule *peccatum,* Pt. II, § 13 [§ 11, nos. 6-7]) discusses the subject at length. Moreover, similar laws are found in *Deuteronomy* (Chaps, xi and xx), as Abulensis notes thereon [on *Deuteronomy,* Qu. 3]. But all of these passages must be interpreted in conformity with the rule previously laid down, namely, that a just equality must be preserved, and regard must be had for the future peace; a matter of which we shall treat below. For it is necessary to preserve in war the same quality as in a just judgment; and in such a judgment, the offender cannot be visited with every sort of punishment nor deprived of all his property without any restriction, but may be punished only in proportion to his fruit.

The fourth observa- ouT lawT|^ardln' this conclusion are made clear.

Ambrose. St Tbomas. Covurovu*.

tbriasn.

8. A doubt, however, arises; for it sometimes happens that among the goods of the enemy there are found many of which they themselves are not the owners. May these goods, then, be seized, if they are necessary for reparation? The reply is, that if the property is immovable, [the victors] certainly cannot retain it; for those from whom it was taken were not the owners; therefore, the victors themselves do not acquire any ownership therein; and consequently, they must restore such goods to the true owners. This is the rule laid down in certain laws of the *Digest* (XLIX. xv. 20, § 1, XLI. i. 44).

The first doubt: concerning goods which did not belong to the enemy.

First, a decision is given as to immovables.

However, the civil laws apparently lay down the contrary rule in

regard to movable property, as Covarruvias contends at length (on *Sext,* rule *peccatum,* Pt. II, § ii, nos. 6-7). But, putting aside the positive law, if such property has been acquired through theft, so that the title thereto does not vest in those in whose custody that property is found, but rather in its former owners, the reason stated above proves incontestably that the said property must be restored to those former owners. Nevertheless, the victorious *soldiers* may demand a just reward for their labours, and may exact it from the true owners of the property in question; or the victorious prince may make the demand, if it so happens that he has already recompensed his soldiers. The foregoing is, indeed, a provision *of the* natural law.

A decision is given, secondly, as to movables.from the standpoint of the law of nature.

9. But positive laws in favour of those making war against the enemies of the state could have granted to the soldiers tnemselves the ownership of such property, when it ^as ^een found by those soldiers to be already in the peaceful possession of the enemy. Accordingly, the effect of these laws could have been to deprive the former owners of their title to the property, for the benefit of the state, to which such a practice may often be advantageous, particularly with respect to movables, the true ownership of which it is difficult to ascertain, while it is nevertheless desirable that the rights of ownership should in some other way be rendered unimpeachable. This is the case especially when the property in question comes into the hands of subjects, a practice which, according to Covarruvias, was allowed by the laws of Spain. For, as a general rule, it would be rather difficult to believe that this practice *prevailed, since the laws of one country* cannot bind [the citizens *of] other* countries, nor deprive aliens of their *rights of* ownership. Thus the civil laws seem, in this respect, to have sprung from the unjust manner in which wars were at that time carried on. For Romans believed that the wars which they waged against the enemies *of* the state were just on both sjdes. and in fact, they preferred to fight as if upon the tacit and mutual understanding that the conqueror should become absolute master. Hence, they were accustomed to consider that all property of the enemy, whatsoever its origin, passed absolutely to the captors; and that the latter would thus possess this property, whatever might be its source. This standpoint is clearly brought out in the *Digest* (XLIX. xv. 5, § 2). Accordingly, they thought it unnecessary to restore these goods to the former owners, since the enemies of the latter,[1] as *soon* as they had taken the property, had acquired the title to it. Furthermore, arguing conversely, the laws deny this right [of postliminiumJ to pirates and robbers. On this point see the *Digest*

The unjust mode of war employed by the ancient Romans.

[1] [Who had subsequently become the enemies of the Romans.—Tr .]

(XLIX. xv. 19). Assuming that all this is true, the question of whether or not such a practice would imperil the conscience is a matter which will be better explained below, in Sub-section 22 [of this Section].

816 10. But another doubt remains, namely: whether it is equally allowable to inflict damages of this kind upon all those who are numbered among the enemy. In answering this question we must note that some *of* these persons are said to be guilty, and others innocent. It is implicit in natural law that the innocent include children, women, and all unable to bear arms; by the *ius gentium,* ambassadors, and among Christians, by positive [canon] law *{Decretals,* Bk. I, tit. xxxiv, chap, ii), religious persons, priests, &c. And Cajetan (on *Decretum,* Pt. II, causa mu, qu. iv [causa xxiv, qu. iii, can. xxv, word *bellum])* holds, indeed, that this provision of law has been abolished by custom, which should be observed. All other persons are considered guilty; for human judgment looks upon those able to take up arms as having actually done so. Now, the hostile state is composed of both classes of persons, and therefore, all these persons are held to be enemies *{Digest,* XLIX. xv. 24). In this respect, strangers and foreigners, since they form no part of the state and therefore are not reckoned among the enemy unless they are allies in the war, differ from the persons above mentioned.

The second doubt: who on the enemy's side are liable to punishment?

Cajetia.

ii. Assuming that the foregoing is true, I hold, fourthly,[1] that if the damages inflicted upon the guilty are sufficient *for* restitution and satisfaction, those damages cannot justly be extended to affect the innocent. This fact is self-evident as a result of what has already been said, for one may not demand greater satisfaction than that which is just. The only question that might arise is whether or not victorious soldiers are always bound to observe this order in their procedure, taking vengeance upon the guilty and their property rather than upon the innocent. The reply is briefly that, other things being equal, and within the limits of the same class of property, they are so bound. For the principle of equity clearly imposes this rule, a fact which will become more evident from what follows.

The fourth conclusion.

12. Fifthly, I hold that if such a course of action is essential to complete satisfaction, it is permissible to deprive the innocent of their goods, even of their liberty. The reason is that the innocent form a portion of one whole and unjust state; and on account of the crime of the whole, this part may be punished even though it does not of itself share m the fault.

The fifth conclusion and die reason underlying it.

This argument is confirmed as follows: first, it is on this very ground that the children of the Saracens are made slaves by the

1 [The Latin reads: *hoc posito, ii. Dico quarto-,* Le. the new section actually begins after the phrase 'Assuming that the foregoing is true.'—Tr .]

Christians; secondly, a son is sometimes punished for a crime committed by his father, as we have said in the treatise on faith, in dealing with heresy (Disp. XXII, sect, v, and Disp. XXIV, sect, in, no. 3).[1] In this connexion, the canon law *(Sext,* Bk. V, *De Regulis luris,* rule 23) states that, 'No one is punished save for guilt or for a just cause'[2]; from which one infers the falsity of the opinion expressed by Sylvester (word *bellum,* Pt. I, qu. 10 [qu. 11]) that, after victory is attained, the property of the innocent must be restored to them; unless he is speaking of cases in which property has evidently been seized in excess of the amount required for satisfaction, for in that case, if anything is to be restored, reason demands that a beginning be made with what was taken from the innocent; but if the property seized does not exceed the required amount, then, just as it was permissible to take such property, so also it is permissible to retain it, as Victoria has noted [Relectio, *De lure Belli,* no. 40].

The opinion of Sylvester is expounded.

Victoria.

13. In this connexion, however, some [special circumstances] existing among Christians must be noted. First: by the *ius gentium* the custom has been introduced among Christians that prisoners of war are not to be made slaves by *mancipium,* although they may justly be detained until they are sufficiently punished or redeemed by a just ransom; a point which is confirmed by a royal decree *([Las Siete Partidas,]* Pt. II, tit. xxix, law 1). But since this privilege was introduced for the benefit of the faithful, it is not always extended to apostates. Therefore, if war be waged against those baptized persons who have entirely forsaken the faith, as is the case with those who pass over to paganism, such persons may be made slaves by *mancipium.* This is the custom. For they themselves wholly deny Christ, and consequently, they may not reasonably profit by the privilege of Christians. However, it has been customary for heretics to enjoy this privilege, since in a sense, at least, they confess Christ. For [this privilege], inasmuch as it has been introduced by custom, is to be interpreted equally in the light of custom. Covarruvias (on *Sext,* rule *peccatum,* § 9, no. 4 [Pt. II, § 10, no. 3]), indeed, quoting Innocent an^· ot^ers› seems not to have spoken truly with respect to wars waged against apostate subjects, in which the latter, [according to him,] may not be enslaved by *mancipium,* 'since', says Covarruvias, 'it is not properly war, but (as it were) an exercise of ordinary jurisdiction'.

The first observation.

The____.j :™ made by Covarruvias concem^g war against

In the war against Granada, however, we see that the contrary procedure was adopted, with the approval of all the most learned and conscientious men. Ayala, too, takes this stand *([De lure et Officiis Bellicis et Disciplina*

The point made by Covarruvias is rejected'

1 [Disputations XXII and XXIV are not included in these *Selections.*—Tr.]

3 [This quotation, as given by Suarez, varies slightly from the text of the canon law.—Tr.]

Militari, Bk. I, chap, ii, no. 15). The argument in favour of such a view is that the apostates in question are subjects and that, therefore, they may justly be punished. Moreover, if [the practice in question] is permissible with respect to foreigners over whom there is less jurisdiction, why is it not permissible with respect to subjects? Finally, it is false to assert that the action described above is not war; for when subjects are rebels the ordinary mode of procedure is to subdue them anew through war.

The second observation.

14. Secondly, we must note that among Christians the immunity of ecclesiastical persons and property has also been introduced, both because *of reverence,* and because these persons or goods seem to form a kind of spiritual realm distinct from the temporal state and exempt from temporal jurisdiction.

How far the statement added by Sylvester is true.

817 Furthermore, Sylvester (word *bellum,* at end) adds that all property, to whomever it may belong, if it is placed within a church, enjoys this same privilege; for consecrated places cannot be attacked. But this last statement is true only in a general sense. Therefore, if men seek retreat in such places solely to protect their own lives, they should enjoy ecclesiastical immunity; but if an enemy use a church as a citadel or as a defensive camp, that church may be attacked and burned, even if some disadvantages follow therefrom; for such disadvantages would be of an incidental nature. However, with respect to other temporal goods, there is no fixed rule; although, in such cases, the customary practice should be observed.

The sixth conclusion: in two parts.

15. Sixthly, I hold that innocent persons as such may in nowise be slain, even if the punishment inflicted upon their state would, otherwise, be deemed inadequate; but incidentally they may be slain, when such an act is necessary in order to secure victory.

The reason supporting the first part of this conclusion.

The reason supporting this conclusion is that the slaying of innocent Persons intrinsically evil. However, one may object that this is true with respect to killing- upon private authority and without just cause, but that the case in question involves both public authority and a just cause. Nevertheless, such a plea must be rejected when the slaughter is not necessary for victory (a condition which we have already assumed to exist), and when the innocent can be distinguished from the guilty.

The first confirmation.

The conclusion is confirmed by the difference existing between life and other possessions. For the latter fall under human dominion; and the state as a whole has a higher right to them than single individuals; hence, individuals may be deprived of such property because of the guilt *of the* whole realm. But life does not fall under human dominion, and therefore, no one

may be deprived of his life save by reason of his own guilt. For this reason, undoubtedly, a son is never killed on account of the sin of his father; which is in accordance with the passage in *Deuteronomy* (Chap, xxiv [, v. 16]), and *Exodus* (Chap, xxiii [, v. 7]), 'Do not put to death the innocent.' [Another] confirmatory argument is that, *[f* the innocent were able to defend themselves, they would act justly in so doing; hence, an attack upon them is unjust. There is a final confirmation of the same conclusion in the act of Ambrose, who visited Theodosius with a major excommunication because of a like slaying of the innocent; a fact which is recorded in the *Decretum* (Pt. II, causa xi, qu. iii, can. Ixix).

Deuteronomy, xxiv. *Exodus,* xxiii.

The second confirmation.

The third confirmation.

Decretum,

But one may ask, who actually are the innocent, with respect to this issue? My reply is that they include not only the persons enumerated above, but also those who are able t0 bear arms if it is evident that, in other respects, they have not shared in the crime nor in the unjust war; for the natural law demands that, generally speaking,[1] no one who is actually known to be free from guilt, shall be slain. But what shall we say, if certain persons are not known to have participated either [in the crime or in the unjust war], and if there exists only the presumption that they were able to bear arms? On this point, I shall speak shortly.

Who are the innocent, with respect to tiie conclusions un-

16. However, there is an argument [opposed to the sixth conclusion] which. runs as follows: In two passages of the Old Testament *{Josue,* Chap, vi [, v. 17] and *1 Kings,* Chap, xv [, v. 3]) the people of God were ordered to kill all of the enemy, not excepting the children. Again, according to the account in the Book of *Judges* (Chap, xx), as many as possible of the tribe of Benjamin were slain indiscriminately by the Israelites, even after victory.[2] In *Deuteronomy* (Chap, xx [, w. 16-17]) we read that after a city had been captured authority was given to kill all the enemy, including the women and children.

Josue, vi. *1 Kings,* xv.

Judges, xx.

Deuteronomy, **xx.**

An argument from Scripture against this conclusion.

As to the first two passages cited, the reply must be that only God could have given such an order, and accordingly, that this command was a special judgment of God designed to terrify the nations in question and caused by their iniquity, as may be gathered from *Deuteronomy* (Chap. ix).

Deuteronomy, ix.

The reply to the first two passages.

In the event described in the third passage [, that concerning the slaughter of the Benjamites,] the children of Israel acted wrongfully. On this point, see Abulensis [Tostado] ([on *Judges*^ Chap, xv, qu. xxxvii).

Abulensis.

0 e pA^ge.

1 *[per se;* i.e. apart from specific cases in which such slaughter is needful, for incidental reasons.—Tr.]

2 *[citra victoriam* is a rather obscure expression, but the context appears to favour the translation given above.—Tr.]

St. Thomas (I.-II, qu. 105, art. 3, ad 4), explains the fourth passage as meaning that permission was given to kill all who refused to accept peace; therefore he would seem to conclude that this permission applied only to the slaughter of the guilty. Nevertheless, the commentators generally appear to think that it applied to the slaughter of all adult males who might have been capable of bearing arms; for the presumption *of* guilt existed with respect to all of them and therefore their destruction was lawful, if there was no proof of their innocence. Abulensis adds another reason [for the authority to slay, mentioned in this fourth passage], namely, that [otherwise] the *enemies* in question might renew the warfare against the Chosen People. But this reason, simply in itself, is not sufficient; and consequently, Abulensis (above cited, Qu. xxxvii) himself later refutes it on the ground that no one may be punished for a prospective sin, provided that he is not otherwise deserving of death; this refutation being especially applicable because the presumption in question does not of itself seem to warrant the slaughter of human beings, since in a criminal trial particularly there should be sufficient proof, and since, furthermore, he who is not proved guilty is presumed to be innocent. Finally, it is practically certain that, among a whole multitude, some may be found who neither consented to the war nor gave any assistance in it, but who, on the contrary, urged the acceptance *of* peace; and therefore, all may not be indiscriminately slain.

St. Thomas's reply to the fourth passage

The sense in which this passage is more commonly taken.

Refutation of the reason given by Abu-thT^rSisïJn *mentioned in Deuteronomy* xx

These arguments prove beyond a doubt that, after victory has been attained, those only who are clearly guilty may be slain. As for the law above referred to [see *Josut,* Chap. vi› v. v; I *& W* Chap, xv, v. 3 and *Judgts,* Chap, xx], we may say that this was a positive law laid down by a special act of God's will.

A reply especially adapted to the first S°4^sion'e.

With regard to the second part of that same law,[indeed, we may even observe that it was given in time
818 of actual combat and upon an occasion of the kind when, according to the customary phrase, a rebellious city is justly handed over 'to blood and to the sword'. For sometimes this is permissible, either on account of the enormity of the offence, or for the correction [by example] of other cities; since, to be sure, upon such occasions it is scarcely possible to distinguish the innocent from the guilty, except through age and sex. Hence, the slaughter *of all those whose innocence is* not clearly evident for reasons of age or sex is, in general, permitted, as long as the actual combat continues; but the case will be otherwise after the cessation of combat, and the attainment of victory.

What of the second part?

][*De posteriori veto parte illiusmet legis.* This appears to be interpolated in the Lacn text.—Rtvisnt.

17. The latter part of the [sixth] conclusion is also commonly accePted› and is clearly true in the case of certain means essential to victory, which, however, necessarily involve the death of innocent persons, as in the burning *of* cities and the destruction of fortresses. For, absolutely speaking, whoever has the right to attain the end sought by a war, has the right to use these means to that end. Moreover, in such a case, the death of the innocent is not sought for its own sake, but is an incidental consequence ; hence, it is considered not as voluntarily inflicted but simply as allowed by one who is making use of his right in a time of necessity.

The reason supporting the latter part of ^on ‡sixthJ condu·

A confirmation *of* this argument lies in the fact that it would be **impossible, through any other means, to end the** war. In like manner, a pregnant woman may use medicine necessary to preserve her own life, even if she knows that such an act will result in the death of her unborn child. From these arguments it is to be inferred that, save in time of necessity, the means in question are not legitimate.

A confirmation of this argument, from the inconvenience that would otherwise follow, and from an example.

18. On the other hand, one may argue, first: that in the case **described, one really co-operates, in a positive sense,** *n brmgmg about the death of an innocent person; hence, one cannot be excused from sin.

Arguments against sbrt^condusionfthe

The first argument.

In the second place: it may be alleged that to kill an innocent person is as intrinsically evil as to kill oneself; and to kill oneself in this manner, even incidentally,[1] is evil; as, for example, when soldiers demolish a citadel and a w*all, although they know with certainty that they will be crushed at the moment [when the fortifications fall]. An indication of this fact is that Samson, who committed such an act [of self-destruction], is exonerated by the Fathers, Augustine (On *the City of God,* Bk. I, chaps, xxi and xxvi), Bernard *(De Praecepto et Dispensatione* [Chap, iii]), St. Thomas (II.–II, qu. 64, from no. 5 [art. 5], ad 4) only because he acted at the prompting of the Holy Spirit.

The second argument.

Augustine.

Bernard.

St. Thomas.

In the third place: evil may not be done that good may ensue.

The third argument.

Fourthly: [in the parable of our Lord] *(Matthew,* Chap, xiii [, v. 29]) it is forbidden to pull up the tares lest the wheat should be pulled up with them.

The fourth argument.

The fifth argument.

Fifthly : the innocent persons in question would be justified in defending themselves if they were able to do so; hence the aggression against them is unjust.[2]

Sixthly: the past] argument mentioned in favour of the sixth

[1] *[Per accidens,* i.e. incidentally to the attainment of a justifiable end.—Tr .]

[2] [According to the principle that war (or combat) cannot be justly waged on both sides.—Tr .]

conclusion may be reversed, to prove the contrary contention; for a mother is not allowed to use a particular medi-

es argument. cjne^ ·ρ certainty that it will cause the death of her unborn child, and especially not after the infusion into that child of a rational soul. This seems to be the opinion more commonly held by Antoninus *([Summa Theologica,*\ Pt. Ill, tit. vi [tit. vn], chap, ii), Sylvester (word *medicus,* Qu. 4), Navarrus ([Surnwu,] Chap, xxv, no. 62). The reason supporting it is that, if help cannot be given to one person without injuring another, it is better to help neither person. On this point, see the *Decretum* (Pt. II, causa xiv, can. i [Pt. II, causa xiv, qu. v, can. x]).

Antoninus, Sylvester.

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19. The reply to the first of the foregoing arguments is as follows:

The reply to the first of the foregoing ar^uments· if .the matter be viewed from a physical standpoint, the victor does not really kill, for he is not the cause of the death in an essential, but merely in an incidental sense; and even in the moral order, he is not guilty of homicide, because he is exercising his own right, nor is he bound to avoid to [his own] great detriment, the resulting harm to his neighbour.

As for the second argument, I deny that [the act in question] is

The reply to the second argument. intrinsically evil, basing my denial on that same ground, namely, that the person described does not in fact kill himself, but merely permits his own death. The question of whether or not this may be allowed under such circumstances must be considered in the light of the order of charity; that is to say, one must consider whether the good at stake in the case is to such an extent the common good,[1] that there is an obligation to expose oneself in its defence to a peril so great. There are some who think that Samson's action may be excused from this point *of* view; but such a reason would not seem to serve as a sufficient excuse for that action, because, it the matter is looked at from a purely human standpoint, the punishment of one's enemies would not seem to be a good so great as to justify Samson in killing himself therefor, even though his death would be only incidental [to the attainment of his end].

With respect to the third argument, it is true that morally evil

The reply to the third argument. deeds may not be performed that good may ensue, but is permissible to inflict the evils of punishment [for that purpose]; though, [in point of fact,] in the present case, the evils in question are not so much brought about [with deliberation], as they are allowed to follow [incidentally].

As to the fourth argument: in the first place, I deny that the case

The reply to the fourth argument. [set forth in *Matthew,* Chap, xiii, on the tares and wheat] involved a legitimate necessity [of pulling up rhe

1 [The Latin reads: *an ibi intercedat tam commune bonum.* If for *tarn,* we substituted *tantum,* the translation would be: 'Whether the common good at stake is so great that, &c.'—Reviser.]

tares]. Moreover, there was no power to do so. Again, the pulling up of the tares was inexpedient to the end sought by the head of the household.

The reply to the fifth argument.

To the fifth argument, some persons reply that, under such circumstances, the war may incidentally be just for both sides. Excluding cases of ignorance, however, this seems impossible. Accordingly, my reply is that the innocent persons in question may indeed protect themselves in so far as mere self-defence is concerned: by preventing the burning of the city, for example, or the destruction of the citadel, &c. For such actions involve solely the protection of their own lives, and may lawfully be performed. I maintain, however, that they may not adopt an aggressive defence (so to speak) combating those who are justly engaged in the war; for, in point of fact, such combatants are doing them no injury. But these innocent persons may fight against those who are responsible for the war, since the latter are truly doing them an injury.

The reply to the sixth argument.

As for the last argument, the judgment set forth above must be understood to relate to a situation in which the medicine is not indeed absolutely necessary to save the 819
mother's life, but is perhaps necessary simply as an aid to her better health; for in such a case the life of the child should be given the preference. This would seem to be the teaching of Ambrose (on *Duties,* Bk. III, chap. ix). That same judgment must also be held to refer to medicine administered with the deliberate intention of killing the foetus. But otherwise, if a case of necessity coupled with a right intention be present, then without doubt it is permissible [to take the medicine]. This is clearly true, even apart from the arguments adduced above; because, if the mother were allowed to die, then, in most cases, both she and the child would perish; therefore, it is preferable, if possible, to save the mother's life while permitting the child to die, rather than to allow the death of both. The matter would, indeed, be somewhat doubtful, if it involved a comparison of the mother's physical existence with the spiritual life of the child; for possibly the latter could be baptized [if he were not deprived of physical life]. With respect to this question, however, the order *of* charity mentioned above must be observed.

Ambrose.

The seventh conclusion commonly held,

20. Seventhly, I hold that, in addition to all the losses which have previously been enumerated and which may be claimed as necessary to satisfaction, a prince who has obtained a just victory may do everything with the property of the enemy that is essential to the preservation of an undisturbed peace in the future, provided that he spare the lives of the enemy. Therefore, if it is necessary, he may on this ground seize cities, provinces, &c.

That is the doctrine supported by all, and the rational basis thereof

is derived from the very purpose of an honourable war; since war is permissible especially for this reason, namely, as a way (so to speak) to an upright peace.

The rational basis of this conclusion.

This reasoning is confirmed by the fact that within the state itself, wrongdoing is punished in accordance with what is necessary for the public peace with the result that, frequently, some person is ordered into exile, or visited with a similar punishment, &c. From this example, one infers that, if a [precautionary] measure of this sort is taken under circumstances such that it may at the same time come into the category of a penalty, this step should be taken on both of these grounds[1]; nor is it permissible to multiply without cause the harm inflicted upon the enemy.

The confirmation.

21. Finally, I hold that a war will not be unjust, if all the precautions which we have enumerated are observed in it, and if at the same time the other general conditions of justice are fulfilled; and yet, such a war may contain some evil element opposed to charity or to some other virtue. The first part of this conclusion is sufficiently proved by what has already been said (Sect, iv, sub-sect. 8). Some examples confirming the second part have been mentioned above, examples relating to cases in which a war is undertaken in opposition to charity, but not in opposition to justice. Another illustration would be a situation in which the conditions above set forth are fulfilled, yet the war springs from hatred.

The last conclusion: in two parts.

22. However, some doubts which need elucidation are attached to this conclusion. The first doubt is as follows: if both sides voluntarily engage in war, without just cause, should that war be considered as opposed to charity, or as opposed to justice; and does it give rise to a consequent obligation to make restitution? Covarruvias (on *Sext,* rule *peccatum,* Pt. II, § 21 [§ 12]) indicates that a war of this kind is contrary to justice; for he says that goods captured therein must be restored, since an unjust war creates no right.

The first doubt concerning this conclusion.

The affirmative answer of Covarruvias.

But, while there is no doubt that in the sight of God such a war is, in its essence, opposed to justice, because of the homicides—actual or potential—which are involved in it, nevertheless, there would seem to be no injustice involved, in so far as regards the combatants themselves.

The author's solution of the doubt,

For injustice is in no wise done to a person who knowingly consents [to an action]; and [, in the situation under discussion,] the two sides are voluntarily fighting with each other, since, as I assume, the war is waged by mutual agreement, and after proclamation.

[1] *[I.e.* the grounds of precaution in the interests of future peace, and punishment for past wrongdoing.—Tr.*]*

In the second place, for the very reason that the parties in question make this agreement, they surrender (as it were) their own rights, and join in a pact to the effect that the victorious party shall acquire the property of the vanquished; and once this compact—unjust though it is in the sight of God—has been made, the victors become the true owners of such property, since they possess it by the will of the former owners. Therefore, [the victors are not bound to make restitution for property thus acquired].

In the third place, for these same reasons, there exists no obligation to make reparation, not, at all events, for the losses inflicted; and therefore, the conquerors may also reimburse themselves from the property of the enemy, at least to the extent of the expenses which those conquerors have incurred in the war.

Finally, because of the mutual and voluntary agreement, there arises in the case of a private duel which is voluntary on both sides, no obligation to make restitution, nor any act of injustice. Therefore, . . .

These arguments, then, would seem to prove that there results no obligation of making restitution for losses inflicted—not, at least, in a war of the kind in question; but as to other questions of property, the case is doubtful. Nevertheless, it is extremely probable that the same rule holds with regard to this matter, also; just as a game which is in other respects wrong, but in which there is no injustice committed among the players, may result in the transference of property from one to another without any consequent obligation to make restitution. The same may be said of adultery, if a price is given in exchange for it; however, we do not deny that the opposite opinion may perhaps be correct; and much less do we deny that it is [morally] safe.

23. A second doubt, according to St. Thomas (II.-II, qu. 40, art. 3), is whether stratagems are permissible in war. To this we must briefly reply, in agreement with him, that they are permissible in so far as relates to the prudent concealment of one's plans; but not with respect to the telling of lies. Regarding this point, what we have said elsewhere (Disp. XIV, sect, iv)[1] on the concealment of one's religious faith should be consulted. 820

The second doubt: drawn from St. Thomas.

From the foregoing, another doubt is resolved *afortiori,* the doubt as to whether it is permissible in war to break faith plighted with the enemy. For we must say that, generally speaking, such an act is not permissible, since it involves patent injustice; and consequently, if the enemy suffers loss for this reason, full reparation should be made. However, all this is true only provided that the promise shall have been made

Vide Bk. vi of the *Defensio Fidei,* cnap.ix.

[1] Not included in these *Selections.*—Tr.]

from the beginning of the war, by a just and mutual agreement (as it were) in such a way as to be binding; and it is also necessary that this promise shall have remained and persisted in full vigour and force, since, if one side has perchance broken faith, the other side will be entirely freed from its own obligation. For the equity of law demands that this condition be understood to exist. The same holds true if any change in circumstances has occurred, such that the promises in question cannot be hept without grave loss. In that event, the opposing side must be warned that it is not possible to keep the promise made to it; and, after [either side] has issued this declaration, it is freed from the pledge. However, such a declaration is seldom to be permitted.

24. A third doubt, also derived from St. Thomas *(II.-II,* qu. 40, art. 4), turns upon the question: is fighting permissible on feast days? The reply is that such fighting is permissible, in cases of urgent necessity. Cajetan adds that, if mass is heard, there is no mortal sin involved in fighting on feast days, even when there is no necessity for so doing; although such an act may be a venial sin, because it is characterized by a certain lack of proportion, especially if the fighting could be postponed without detriment. Sylvester (word *bellum,* Pt. I) extends this permission to the season of Lent, relying on the canon law *{Decretum,* Pt. II, causa XΣIII, qu. viii, can. xv; *Decretals,* Bk. I, tit. xxxiv, chap, i), but custom does not sanction that view, a fact which is noted in the Gloss on the passages above cited.

The third doubt: drawn from the same St. Thomas. The author treats of this point more fully in *De Diebus Festis [inDe VirtuteetStatu Religionis,']* Bk. II, chap, xxviii, no. 7.[1]

25. A fourth doubt concerns the question of whether or not a Christian prince sins in *calling to his aid infidel sovereigns,* or, conversely, in *giving* them aid in a war which is otherwise just. We must answer that such an action is not in itself a sin, since it is not opposed to any virtue, and since examples *[of* this sort of conduct] are supplied by the Scriptures in the case of David (r *Kings,* Chap, xxviii) and the iMachabees (f *Macbabees,* Chaps, viii and xi).

The fourth doubt is *resoived* by means of examples.

Furthermore, it is permissible in war to employ the aid *of* wild animals; therefore, why not the aid of unbelievers? Conversely, it is permissible to sell arms to unbelievers for use in just wars; hence it is permissible to aid them.

Jrlvedbyreasoni^g0

Sometimes, however, such a course of action may militate against charity, because it involves public scandal, or some peril to believers, or even lack of trust in divine aid. In this connexion, an example may be found in the Old Testament *(2 Paraltpommon, Chap,* xvi), where *King Asa is* gravely rebuked and is punished for having sought the human aid of another and infidel prince, through his want of trust in

l JTwip.'**.*. *tSlaAtl·**.

*"

x "

[1] *[Not included* in these *Seleciims.—Hl]*

Abuiensis. divine aid. Abulensis [Tostado] should also be consulted, in this connexion (on *i Kings,* Chap, xxviii, qu. 17).

SECTION VIII

IS SEDITION INTRINSICALLY EVIL?

I. Sedition is the term used to designate general warfare carried on within a single state, and waged either between two parts thereof or between the prince and the state. I hold, first, that sedition involving two factions of the state is always an evil on the part of the aggressor, but just on the defensive side. The truth of the latter statement is self-evident. The truth of the former is proved by the fact that no legitimate authority to declare war is discernible in such a situation, for this authority, as we have seen (Section II *[su'pra,* p. 806]), resides in the sovereign prince.

What is sedition?

The first conclusion.

The objection will be made that, sometimes, a prince will be able to delegate this authority, if urgent public necessity demands that he do so. In such a case, however, the prince himself, and not a part of the state, is held to be the aggressor; so that no sedition will exist in the sense in which we are using the term. But what if one part of the state actually suffers injury from another part, and is unable to secure its right through the prince? My reply is that this injured part may do nothing beyond that which a private individual may do, as can easily be gathered from what we have said above.[1]

The objection to the contrary is enswered.

2. I hold, secondly, that a w'ar of the state against the prince, even aggressive› not intrinsically evil; but that the conditions necessary for a war that is in other respects just must nevertheless be present in order that this sort of war may be righteous. This conclusion holds true only when the prince is a tyrant, a situation which may occur in one of two Ways, as Cajetan notes (on II.-II, qu. 64, art. I, ad 3 [art. 3]). In the first place, the prince may be a tyrant in regard to his [assertion of tyrannical] dominion, and power; secondly, he may be so merely in regard to his acts of government.

The second conclusion, on which see w^chap iv*** Bk' s*

Cajetan.

When the first kind of tyranny occurs, the whole state, or any portion thereof, has the right [to revolt] against the prince. Hence, it follows that any person whatsoever may avenge himself and the state against [such] tyranny. The reason supporting these statements is that the tyrant in question is an aggressor, and is waging war unjustly against the state and its separate parts, so that, in consequence, all those parts have the right of defence. Such is the opinion expressed by Cajetan

[1] [Cf. Section II, sub-section 2, of this Disputation, supra, p. 806, especially the third paragraph.—Tk.] * *[Supra,* p. 705.—Tr.]

(loc. cil.'); and this conclusion may also be derived from a passage in
821 St. Thomas's works (on the *Sentences,* Bk. II, dist. xhv, qu. 2, art. 2).

John Huss upheld the same doctrine with respect to the second kind *of* tyrant, and, indeed, with respect to every unjust superior. But this teaching was condemned at the Council of Constance Comal ‹›f
(Sessions VIII and XV). Consequently, it is most certain that no private person, nor any imperfect power, may justly begin an aggressive war against this kind of tyrant, and that such a war would be sedition in the true sense of the term.

The proof of these assertions is as follows: the prince in question is, we assume, the true sovereign; and inferiors have not the right of declaring war, but only that *of* defending themselves, a right which does not apply in connexion with this sort *of* tyrant; for the latter does not always do wrong to individuals, and in any attack which [these individuals] might make, they would be obliged to confine themselves to necessary self-defence. The state as a whole, however, may rise in revolt against such a tyrant; and this uprising would not be a case of sedition in the strict sense, since the word is commonly employed with a connotation *of* evil. The reason for this distinction is that under the circumstances described the state, as a whole, is superior to the king, for the state, when it granted him his power, is held to have granted it upon these conditions: that he should govern in accord with the public weal, and not tyrannically; and that, if he did not govern thus, he might be deposed from that position of power.

[In order that such rebellion may justly occur,] however, the situation must be one in which it is observed that the king does really and manifestly behave in a tyrannical manner; and the other conditions laid down for a just war must concurrently be present. On this point, see St. Thomas *(De Regimine Principum,* Bk. I, chap. vi). st-Tbon»»

3. I hold, thirdly, that a war of the state against a king who is
The third conclu- tyrannical in neither *of* these two ways, is sedition in
aon· the truest sense and intrinsically evil. This is certainly true, as is evident from the fact that, in a such a case, both a just cause and a [rightful] authority are lacking. From this, conversely, it is also evident that the war of a prince against a state subject to himself, may be just, from the standpoint of rightful authority, if all the other required conditions be present, but that, in the absence of those conditions, that same war is entirely unjust.

LAST SECTION [SECTION IX]

IS A PRIVATE WAR, THAT IS TO SAY, A DUEL, INTRINSICALLY EVIL?

I. A private contest of this sort, which in Greek is called *μονομαχία* (single combat), may be entered into, in one of two ways: either

suddenly (as it were) and by chance, and viewed in this light, the treatment of such contests is part of the subject-matter of homicide; or else, by the agreement and consent of both parties. In the latter case, if certain public conditions are satisfied, the contest is called a duel *{duellum)*; but if the affair is conducted privately, it is termed a *diffidatio*[1] or single combat, that is, in our common tongue,[2] a *desafio.*

The first conclusion.

I hold, first: that if a just cause be lacking, a duel is always wicked. This is clearly true, since such a contest is a kind of war, and since it is even possible that in the course of that contest the death of a human being may occur.

Again, a duel may be fought in order to display prowess and courage; or in order to win a reputation, as is wont to be the case, from time to time, among soldiers during a war. Duels fought for such reasons are also evil, because the participants rashly expose themselves both to the peril of death and to the peril of killing another.

This view is confirmed by the fact that a sham battle[3] is a mortal sin, if it involves evident danger of death; for those who die therein are denied the right of ecclesiastical burial, in accordance with the canon law *{Decretals,* Bk. V, tit. xm, chap, i); therefore, . . .

Cajetan.

Torquemada.

Henry of Ghent.

For a like reason, the same opinion should be held with respect to duels fought for the sake of revealing some truth or clearing oneself of some charge. This is the doctrine laid down by Cajetan (on II.-II, qu. 95, art. 8 [, ad 3]), and supported by *Decretals* (Bk. V, tit. xxxv, chap, i), by the *Decretum* (Pt. II, causa 11, qu. v, can. xxii), by Torquemada thereon, and by Henry of Ghent *{Quodlibeta,* IX [V], qu. 32). The reason supporting this view is that such contests are not really a means of revealing truth and innocence, seeing that sometimes an innocent man is slain in a duel. Neither, [in situations of this sort,] is there sufficient reason to justify killing another; and therefore, there is not sufficient reason for making an attack. Furthermore, such conduct is contrary to the charity due to oneself; for if the person who issues the challenge is innocent, he exposes himself to the peril of death; and, on the other hand, if he is guilty, his sin is far greater in that he attempts to clear in a superstitious manner. Finally, in these contests, God Himself is tempted, since His aid is hoped for, through unfitting means.

See the author [Suarez,] *De irreii-fritteetsiatu^Rdi-gionis,* Tract, ill, Bk. I, chap. iu].[4]

The second conclusion and the proof

2. I hold, secondly: that every private duel, that is, [every contest of this sort] that is not characterized by all the conditions of a just war, is intrinsically evil. This is the common opinion of the Summists (on word *duellum).*

1 [An impromptu armed combat following a challenge—Tr.] 3 *[fulgo;* in this case, Spanish.—Tr.]

3 *[Bellicum exercitium* (a warlike exercise). Or Suarez may have had in mind a tournament, to which his canon law reference applies.—Tr.]

4 [This treatise is not included in these *Selections.*—Tr.]

Regarding the challenger to a duel, indeed, the truth of such an assertion is admitted without any limitation or distinction, and may be proved as follows: the killing of any man on mere private authority is intrinsically wicked, except in the necessary defence of one's own person and property; and the challenger to a private duel sets out to kill upon his private authority;
822 therefore, . . .

A second point.

Secondly, the same proof applies in regard to one who accepts a challenge; for in his very acceptance he wills to undertake the slaying of that other person who issues the challenge.

Confirmation from both forms of law.[1]

This argument is confirmed by the fact that such duels are, in general, condemned by the law, as laid down in the *Code* (XL xliv. 1); while the Council of Trent (Session XXV, *De Reformatione* [, chap, xix]) has also imposed the penalty of excommunication, and many other penalties, upon those who fight, counsel, participate as spectators, &c., in connexion with these duels. In a certain Bull of Pius IV *[Contra Pugnantes in Duello,* &c., Nov. 13, 1564],[2] such excommunication is reserved [for absolution] to the Pope, save with respect to the persons of the emperors or kings [who are not included in the penalty]. And although these laws may seem to refer only to public duels, Gregory XIII [Bull *Ad Tollendum,* Dec. 5, 1582][3] nevertheless extends such duels to include single combats between individuals; but he does not reserve [to himself the absolution of] the excommunication.

Council of Trot.

BdloIPnaFV.

Gregory xu:

A limiting clause which some writers impose upon this conclusion.

3. It is to be noted, indeed, that some writers have limited this conclusion with reference to the person who accepts the challenge, if he does so in order to defend his honour and for the reason that, otherwise (that is, if he did not accept the challenge received), he would incur disgrace.

The basis of their limitation.

An argument in favour of this stand is based upon analogy: for a nobleman attacked by another is not bound to flee, but may lawfully stand his ground and kill his aggressor in self-defence; and this merely to protect the honour befitting his rank; therefore, in like manner,...

This is the point of view suggested by Navarrus in one passage of his work *[Summa [Enchiridion sive Manuale Confessariorum,]* Chap, xv, at end); although in another Chapter (Chap, xi, no. 39), he expresses a different opinion.

However, the contrary is in every respect true, as is evident from

1 [Le. civil and ecclesiastical.—Tr.]
2 [Bullarium Romanum VII, p. 85 (Turin, 1862).—Réviser.]
3 [Bullarium Romanum VIII, p. 400 (Turin, 1862).—Reviser.]

the laws above cited, and especially from the Bull of Pius IV, in which the following words are to be noted: 'To allow [duelling], for whatsoever cause, even for one not disapproved by the [civil] laws, or on whatsoever pretext', &C.[1]

This limiting clause is rejected: first, by citing authorities.

The reason, *a posteriori,* for such a stand is derived from nature;[2] for in the judgment of every prudent person, each of the combatants in the situation described, chooses, contrary to right reason, to smite his adversary. Furthermore, I maintain that the alleged disgrace is not truly such, although the ignorant crowd may judge it to be disgrace. The reason, *a priori* for this same opinion, is clear, to wit: [acceptance of a challenge] is not an act of defence but one of aggression, since there is occasion for defensive acts only when force is repelled by force and since no force has entered into the case in question.[3] Herein lies the difference between this case and the analogous one that was adduced. For in the latter instance, the nobleman suffers actual violence, and is forced into an action which would not otherwise be permissible to him; whereas, in the former instance, [as we have said,] there is no use of force. Moreover, in that [supposedly analogous] situation, a man is provoked to an act of simple defence; but in this matter [of the duel], one is provoked to an act of aggression, and such a challenge may be refused, for a righteous reason. Such is the stand taken by Cajetan (on II.-II, qu. 95, art. 8, ad 3) and in his *Summa* (word *duellum),* and Armilia thereon ([on word *duellum,']* no. 1). See also Soto *{De lustitia,* Bk. V, qu. i, art. 8, clause *quod si hinc),* and Abulensis [Tostado] (on *1 Kings,* Chap, xvii, last qu.).

Furthermore, it is rejected by reasoning.

The reply to the bases of the assertions made by those who offer this opinion.

Cajetan.

Armilia.
Soto.
Abulensis [Tostado].

4. Secondly, there is an exception to the conclusion in question,[4] in the case of an innocent person who is unjustly accused and condemned—or who, at least, is going to be sentenced to death—if that person is challenged by his accuser to a duel, and wishes to substitute the peril of such a contest, for the certain death to which he must shortly submit as the result of a judicial decision. For, under these circumstances, his agreement to undertake the duel would seem to be an act of just [self-]defence. This is the opinion held by de Lyra (on *1 Kings,* Chap, xvii), Navarrus *{[Summa* or *Enchiridion],* Chap, xi, no. 39 and Chap, xv, no. 9), and Cajetan (on II.-II, qu. 95, art. 8 and *[Summa,]* on word *duellum).*

a second limiting clause.

de Lyra.
Navarrus.
Cajetan.

1 [The words are not in the Const, of Pope Pius IV (1560), but very similar words are found in the Const, of Pope Julius II *[Regis pacifici,* Feb. 24,1509).—Reviser.]

2 *[naturalis.*—Tr.]

3 [i.e. the case in which a given person has been challenged to a duel.—Tr.]

4 [i.e. the second conclusion: 'Every private duel that is not in every way characterized by the conditions of a just war is intrinsically evil.' *Supra^* sub-section *2* of this Section.—Tr.]

The latter, however, adds a provisional clause to the effect that this duel shall be undertaken, not upon one's own authority, but upon that of the prince.

Cajetan adds a proviso to this second limiting clause.

The proof of the second limiting clause is as follows: the accuser in question attacks an innocent man with the sword of justice; therefore, self-defence is permissible to that innocent person; and consequently, it is also permissible for him to avail himself of the means of defence, which in the case supposed is none other than the duel.

The proof of the second limiting clause, as drawn from the authorities dted above.

This argument is confirmed by the fact that, occasionally, as we have said above, what is material aggression is formal defence; so that this fact, too, must be considered, in connexion with the situation described.

A confirmation.

5. But this [second] exception is not established to my satisfaction. Moreover, it is rejected by Sylvester (word *duellum),* Abulensis [Tostado] *(supra),* and Antoninus *([Summa Theologica,]* Pt. III, tit. iv, § [chap.] iii), with other authorities there cited. Soto *(De lustitia,* Bk. V, qu. 1, art. 8, near end) appears to hold the same view.

Sylvester. Aboleasè [Tostado]. Astomous.

The [second] limiting clause is rejected.

If, indeed, we put aside [the cases sanctioned by] the authority of the prince, we may argue that, in reality, the act in question is not one of defence but one of aggression, for defence is possible only where force is applied by an actual aggressor; and the accuser, in this instance, does not resort to force, since he does not compel the other to fight, but merely invites him to do so, being an aggressor, strictly speaking, only in his false accusation; whereas calumny is repelled not by violence, but by the manifestation of truth. Moreover, *if* the latter course *of* action cannot be followed, it is in no wise permissible to resort to irregular means which are not truly means. On the contrary, death must be patiently endured just as if an innocent person were found guilty because of false witnesses.

with respect to [cases not sanctioned by] the authority of the prince.

Salon also agrees with this, on II.-II, qu. 64, art. 3, controvers. 3.

This argument is confirmed [, first,] by the fact that, if the acceptance *of* a duel under these circumstances had a defensive character, then, surely, the challenge also would have the same character, provided no other means [of exonerating oneself] were available. For this act [of challenging, on the *of* the violence inflicted with the sword *of* justice. And therefore, such a challenge [on the part of the accused] to a duel *[of this* sort] would be permissible; a proposition which, however, the very authorities cited above deny. [Secondly,] a further

A confirmation derived from a threefold absurdity.

The first absurdity.

* [Cf. Section I, sub-section 6, of this Disputation.—Ta.)

consequent [of the assertion which we are rejecting] would be that the accused, should he be able to do so, might legitimately kill his accuser in secret, if he hoped thereby to escape 823
death. This consequent would clearly follow, since in a just defence it is allowable to anticipate a future situation. Another [and third] consequent of the assertion in question would be that one could licitly accept the challenge in question in order to prevent any other person from depriving him through a judicial decision of his reputation or his entire fortune. For not only in defence *of one's* life, but also in defence of one's external possessions, it is permissible to kill another. This consequent is rejected by Cajetan, who argues as follows: armed defence is permissible only when one person makes an armed attack upon another; in a criminal action, however, while the aggressor does not attack with his own weapons, still he does attack with the sword of the judge; but this is not true of a civil action, wherein the sole weapon employed is an unjust judgment. However, this point is of no significance; for in the first place, as far as the moral question is concerned, such a distinction is wholly of a material nature, and consequently has no application to upright conduct.

The second.

The third.

Cajetan's evasion [of these arguments].

This evasion is rejected.

Therefore, other authorities make an assertion which, even if it is less probably true, is nevertheless more logical; since they admit that the same reasoning holds for both sides. This assertion is that, when an innocent person may be condemned, even if it be [merely] to serious *loss* of reputation or of fortune, he may accept or issue a challenge to a duel. Furthermore, Cajetan even makes a false assumption; for if some unarmed person should attempt to steal my property, and *if I were* unable to ward *off the injury* without arms, it would be entirely permissible for me to use weapons for that act of self-defence; and therefore, in like manner, it would be allowable for me to avert by armed defence the above-mentioned loss of reputation or property, while accepting my calumniator's challenge to a duel. There are some, however, who deny that the cases are similar, on this ground, namely, that no one is allowed to expose himself to the peril of death for the sake of external possessions. The denial which they rest upon such a basis is erroneous. For, indeed, as was pointed out in Sub-section 3 [of this Section] the nobleman [in the case supposed] is not bound to flee, although, by awaiting the aggressor in order to protect the honour befitting his rank, he exposes himself to the danger of death.

Among these authorities are Molina, *Treatise in, De iustitia et Commutativa,* Disp. XVII, no. 7; and Sinchez, with others whom he cites, *Decalogue,* Bk. II, chap. xxxix, no. 8.

6. Finally, the defendant who is thus falsely accused may not slay his accuser; and therefore, he may not attempt to do so by means of

a duel. The truth of the consequent is evident; for it is not permissible to attempt that which it is not permissible to do. The truth *of* the antecedent also becomes dear, both from what has been said above, and from the following example: if Peter, for instance, knew dial Paul had given money to another person in order that the latter might slay Peter, it would not be permissible for Peter, acting on his own authority, to slay Paul, even if he believed that there was no other way in which he could escape death at the hands of that third person; and this would be true for no other reason than that Paul would not, in his own person, be inflicting violence; therefore, and in like manner, one who has been falsely accused before a judge may not for that reason slay his accuser.

The second and principal rejection of the limiting clause.

In fine, the foregoing is confirmed by the fact that much unjust slaughter would undoubtedly result, to the great detriment of the state, from the acceptance of the contrary opinion. For any one might easily persuade himself that he was being unjustly accused in court and that there remained no other means of protecting his life, honour, or property, than that he should slay his accuser. It would also follow that, if one person should, out of invincible ignorance, accuse another—in good faith, to be sure, but nevertheless falsely—the accused could slay that innocent accuser, in order to protect his own fife or reputation. For even such an accuser attacks another person with the sword *of* the judge, no less than if he were making the accusation out of malice; since, in point of tact, he also is about to take from that other, through a false accusation, his life or his good fame. Consequently, although the opinion opposed ro that which we are defending may seem convincing from a theoretical point of view, still, it is by no means admitted in practice.

A confirmation.

7. Cajetan's statement, indeed, that it is permissible to accept the challenge in question, at least, with the permbiion of the prince, does not seem to be sufficiently sound, por a prince may not justly give such authorization, sjnce according to the allegations and the proofs, he is certain either that the accused person is innocent or that he is guilty, or that neither the one nor the other fact [is manifest]. If the first alternative be true, then the sovereign is bound to acquit the accused and cannot righteously involve him in the peril of a duel. In the third case, exactly the same assertion applies. For the laws and the principle *of* justice demand that when the accuser does not prove his charge, the defendant shall be discharged; and in case of doubt, the defendant is to be favoured. If, however, the second alternative shall prevail, the judge is bound to condemn the accused, according to the ordinary law.

the limiting clause, as qualified by Cajetan s proviso.

Moreover, if it be argued that a sovereign prince, out of the

plenitude of his power, may set free even a convicted person, especially if privately he knows that person to be innocent, we say in rebuttal, not even then may he permit the duel; for if the prince has the power to acquit, right reason demands that he shall wholly acquit this person and not expose him to the peril of a duel. There is the additional consideration that, with respect to the accuser, an injustice would be committed. For, even though the prince may be able to acquit an innocent person who has been found guilty, still he may in no wise punish a guilty person who has not been convicted of guilt; and the accuser, in his turn, even though he may be in fact a calumniator, nevertheless has not been convicted of this offence in court; and if, eventually, he is punished, it will at least be through a just punishment, and not through a duel. It may be urged that the 824
contest in question is not a punishment nor a wrong, because, so we assume, the duel is voluntarily sought or accepted. I reply, indeed, that it is true that on this account no wrong is done to the private person involved; but a wrong is nevertheless done to the state and to good government, whenever, in violation of due process of law, any person is exposed to the peril of death without sufficient public cause.

Evasion is precluded.

The reply is overthrown.

Finally, if it should be contended that in any given situation, the sovereign may allow such a duel in order to avoid greater evils, just as in actual fact prostitutes are tolerated; even so, he can in no way confer the right and the power to engage justly in this practice of duelling, although he may not have been sinful in permitting it [, in a particular instance]. For the innocent or accused person in the case has no right, acting for himself and on his own authority, either to slay or to attack the other; and consequently, the prince cannot grant such power to innocent persons of this sort. The truth of the consequent is evident, since the sovereign may not grant that any one shall, without sin, kill another person, unless the latter has previously been legally convicted and condemned, circumstances which do not exist in the situation supposed. Therefore, the conclusion propounded above[1] is applicable in general without qualification.

The final argument is refuted, and the defended as generally applicable.

8. Thirdly, I hold that a private armed contest—that is, one by two or by a few individuals—is not intrinsically wicked, if engaged in by public authority; on the contrary, if in other respects the contest in question comprehends the conditions of a just war, it may be justified, for in that event it has the nature of war;—at least, war of a limited sort—rather than that of a duel. This is the commonly accepted conclusion.

The third conclusion: commonly held and consisting of two

[1] [i.e. the second conclusion. See Sub-sections 2 and 4 of this Section.—Th.

The prior part of the conclusion is proved, in the first place, as follows: slaying on public authority and for a just cause is not intrinsically evil; hence, it will not be evil to resort to the means necessary in order to effect that slaying (in which means there is included the [private armed] contest in question.)

The first part is Proved.

This argument is confirmed by the fact that a war in which many persons are engaged, and which is characterized by the conditions laid down above, may be just; and therefore, the same assertion holds true of a contest carried on among a few persons; for a mere difference in the number of persons involved does not affect the righteousness or the justice of a cause.

Confirmation I.

Secondly, the argument in question is confirmed as follows: any one condemned to capital punishment may legirimately, on the authorization of the pnnce, be put to death by any private person whatsoever, if it shall prove necessary for such an authorization to be given; and under these circumstances, the private agent will not be guilty of any sin in such killing, since he acts as a minister of justice; therefore, in the case described, the same procedure will be permissible.

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9. Now the latter part of [this third] conclusion may be established, in the first place, from the [special] use of the word duel *{duellum).* Ordinarily, indeed, the term refers to a combat which is entirely private, i.e. undertaken solely upon private authority and on account of a private matter. Such a duel, to be sure, is intrinsically wicked. But the combat of which we are speaking, although it may in appearance be private, because it involves only a few persons, is nevertheless held to be public in point of fact, for the reason that it is undertaken under public authority and for a public cause; and therefore, it is not characterized by the intrinsic wickedness of the duel, but has, on the contrary, the true character of war. Accordingly, in order that such a contest may licitly be undertaken, it mu>t be clothed with the conditions characterizing a just war; and this may come about in either one of two ways.

The proof of the latter part.

First, the whole business of a war may be reduced to an armed contest among a few combatants. No doubt exists on the question of whether or not such [a cause] is righteous, provided that, in addition to the fact that the war is just, precaution is taken by the prince not to make victory more doubtful than it would have been in case of actual warfare. Cajetan [on II.-II, qu. 95, art. 8, comment, x], indeed, maintains that the prince is not allowed to reduce *a* war *to* an engagement among a few combatants, unless he is sure that he would be defeated in the general war. But the rule already laid

The first way in which this kind of a

down[1] is more widely applicable and contains more truth. For when the hope of victory is not diminished and does not become less sure because the war has been reduced to a duel, no harm or wrong is done to any one, and for the rest, a great deal of slaughter is avoided. Accordingly, [the arrangement in question] will be righteous and just. However, since this sort of advantageous transformation of the war is a rare occurrence, prudence must be used in allowing it. For if the prince does perchance allow such [a procedure] rashly and without sufficient cause, he will not sin, to be sure, against the justice owed to the enemy state, provided that, in other respects, he is waging a just war; but he will be sinning against the due rights of his own state, for which, by virtue of his office, he is bound to make careful provision and take careful thought; and he will also be sinning against those subjects whom he exposes to the peril of a duel without reasonable cause.

In a second way, the contest in question may be righteous. Not because the entire war is (so to speak) virtually contained therein, but because it is a portion of a war, justly undertaken and begun, which it is perhaps expedient to carry forward in this fashion to the attainment of victory, inasmuch as the act of reducing the war to a duel deprives the enemy of certain of their bravest soldiers or else disheartens that enemy, while, on the other hand, one's own men may be heartened; or there may be other, similar reasons, which will possibly arise. Thus Navarrus taught *([Summa,]* Chap, xv, at end). However, the true reason [for the legitimacy of the contest] is that a lawful cause and power underly it, in this case. Moreover, if the war as a whole is legitimate, the same is true of a part thereof; and this armed contest is (as it were) a certain portion of the whole, and a portion, so we assume, which is necessary or useful to attaining the end of the war in its entirety; therefore, . . .

which this kind of duel may be justified

Navarros.

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The foregoing argument proves that it is as permissible to propose such a contest as it is to accede to the proposal; for if that contest is allowable in itself, it will also be allowable to obtain the authorization to engage in it, from the possessor of authority. Cajetan (word *duellum),* however, seems to hold an opinion opposed to this one regarding the second manner [in which the contests in question may be justified]. But Navarrus explains the statement of Cajetan as referring to those occasions when the war is confined to a few combatants, without justice and without cause.

Cajetan.

10. Now it is maintained in opposition to the above conclusion, first, that whoever offers a challenge to such a duel, he is waging a righteous war, consequently

The first objection to Hnsinnregoing C°n" **Pæ^ed**

[1] [i.e. the rule that the prince may resort to such a procedure, if the chance of victory is not rendered more doubtful thereby.—Tr.]

invites and incites another to an action which the latter cannot without sin accept; hence the challenger himself sins by the act of provocation.

The second objection. Secondly, he exposes innocent people to the peril of death, an act which in its very essence would seem to be evil.

The third objection. Thirdly, he binds himself not to defend his own people, if they are vanquished by their adversaries orare in most evident danger; yet, to bind oneself thus seems to be opposed to natural law, which places us under the obligation of protecting the innocent.

In reply to the first objection, we must say that the prince in question provokes not to evil [as such], but to a lesser [alternative] evil; for he is directly concerned with seeking his own rights; and he may, on the ground that the other side is sinning, and for the purpose *of* preventing war on a large scale, seek to substitute for that war a lesser evil, such as this engagement involving peril to only a few persons.

The reply to the first objection.

To the second objection, one may reply that sometimes it is permissible to endanger the fives of innocent persons for the sake of the common welfare. For in the general engagement, also, innocent persons—in much greater number—are exposed to the peril of death. In individual cases, however, care must be taken that these single combats be entered into only with serious reason and that, as far as possible, the peril be diminished.

The reply to the second objection.

To the third objection it may be replied that, just as the duty of defending the innocent is a precept that binds, not without intermission, but only when it can advantageously be carried out; so, conversely, to bind oneself in a given situation to refrain from defending the innocent, is not intrinsically wicked, and may be allowed when such an obligation is entered upon, under circumstances that to the prudent mind may render the defence of the innocent impossible for the reason that it would clearly involve grave and general disadvantage; these being, indeed, the circumstances assumed in the course *of* our argument.

The reply to the third objection.

We might deal at this point with the penalties inflicted for duelling, as well as with the punishment *of* those who encourage the practice; matters which are, however, more suitably discussed in connexion with censures, Here, then, we may conclude the entire treatise on charity, written for the glory of God and of His Virgin Mother.

Vide Suârez, Vol. *De* ™ ,rns'LDis?* ii ; Disp. xxxi, sect, iv, no. 48.

PRAISE BE TO GOD

1 *[This* work is not included in these *Selections.—Ti·]*