the printed versions interfered with the text. The critical edition in the Corpus Hispanorum de Pace series (Vitoria 1967) contains a valuable apparatus of variants, and notes on sources; Barbier's commentary is indispensable for the doctrinal background (Vitoria 1966).

RELECTION OF THE VERY REVEREND FATHER FRIAR FRANCISCO DE VITORIA, MASTER OF THEOLOGY AND MOST WORTHY PRIME PROFESSOR AT THE UNIVERSITY OF SALAMANCA, DELIVERED IN THE SAID UNIVERSITY, A.D. 1539[2]

THE TEXT TO BE RE-READ is 'Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost' (Matt. 28: 19). This raises the following problem: *whether it is lawful to baptize the children of unbelievers against the wishes of their parents?* The problem is discussed by the doctors on Lombard's *Sentences* IV. 4. 9, and by Aquinas in *ST* II-II. 10. 12 and III. 68. 10.

This whole dispute and relection has arisen again[3] because of these barbarians in the New World, commonly called Indians, who came under the power of the Spaniards some forty years ago, having been previously unknown to our world.

My present discussion of these people will be divided into three parts: first, by what right (*ius*) were the barbarians subjected to Spanish rule? Second, what powers has the Spanish monarchy over the Indians in temporal and civil matters? And third, what powers has either the monarchy or the Church with regard to the Indians in spiritual and religious matters? The conclusion to the last question will thus lead back to a solution of the question posed at the outset.

[Introduction: Whether this dispute is justified]

AS FOR THE FIRST PART, it may first of all be objected *that this whole dispute is unprofitable and fatuous*, not only for those like us who have no

2. De bello contra indos *add. in marg.* The title is given in *G* as 'Relectio de Indiis a Victoria anno 1538'; in *L* as 'De Indis insulanis prior', and in *S* as 'De Indis recenter inventis relectio prior'.

3. The controversy dated back to 1513 (see Introduction, pp. xxiii), but had recently been renewed by Paul III's bull *Sublimis Deus* (see the Glossary, *s.v.*), which likewise took Matt. 28: 19 as its *thema*. Vitoria himself had referred to the problem of the evangelization of the Indians in his 1534–5 lectures on *ST* II-II. 10. 8 (see Appendix B. §3, footnote 33), while his colleague Domingo de Soto wrote a repetition *On the Right Way of Preaching the Gospel* at about this time, now apparently lost (Hamilton 1963: 179), which may also be referred to here.

affair is in the hands of men both learned and good, everything has been conducted with rectitude and justice. But when we hear subsequently of bloody massacres and of innocent individuals pillaged of their possessions and dominions, there are grounds for doubting the justice of what has been done.[10] Hence it may be concluded that *disputation is not unprofitable*, and the objection is answered.

Furthermore, even if the objection that this question admits of no doubt were granted, it is not unusual in theology to debate questions whose answer is certain (*de re certa*). After all, we admit debates on the Incarnation of Our Lord and other articles of faith. The reason is that not all theological disputations are of the deliberative kind. Frequently they are *demonstrative* – that is, undertaken not to argue about the truth, but to explain it.

But if anyone objects that, even if there was once some doubt about this business, it has long since been discussed and settled by wise men, and matters fully arranged according to their verdict, so that further deliberation is unnecessary, my first reply is: 'if so, blessed be the Lord!' My lecture does not seek to imply the contrary, and I have no desire to stir up fresh contentions. And second, I say that it is not the province of lawyers, or not of lawyers alone, to pass sentence in this question.[11] Since these barbarians we speak of are not subjects [of the Spanish Crown] by human law (*iure humano*), as I shall show in a moment, their affairs cannot be judged by human statutes (*leges humanae*), but only by divine ones, in which jurists are not sufficiently versed to form an opinion on their own. And as far as I am aware, no theologian of note or worthy of respect in a matter of such importance has ever been called upon to study this question and provide a solution. Yet since this is a case of conscience, it is the business of the priests, that is to say of the Church, to pass sentence upon it. So it is written of the king 'that it shall be, when he sitteth upon the throne of his kingdom, that he shall write him a copy of the Law out of that which is before the priests the Levites' (Deut. 17: 18). And third, even if the principal question has been sufficiently examined and resolved, in so great a matter there may yet remain particular matters of doubt which merit some clarification.

In conclusion, I should regard it as something not unprofitable and fatuous, but an achievement of considerable worth, if I were to succeed in treating this question with the seriousness which it deserves.

10. Compare Vitoria's comments to Miguel de Arcos on the conquest of Peru in Appendix A1.

11. For the significance of this assertion see Pagden 1986: 66–7.

[Question 1: On the dominion of the barbarians]

§4 Returning to the question, therefore, and proceeding in due order, I shall first ask:

Question 1, Article 1: Whether these barbarians, before the arrival of the Spaniards, had true dominion, public and private?

That is to say, whether they were true masters of their private chattels and possessions, and whether there existed among them any men who were true princes and masters of the others. It may seem in the first place that they have no right of ownership (*dominium rerum*):

1. 'A slave cannot own anything as his own' (*Institutions* II. 9. 3 *Item vobis*; *Digest* XXIX. 2. 79 *Placet*). Hence everything a slave acquires belongs to his master (*Institutions* I. 8. 1 *Nam apud omnes*). But these barbarians are slaves by nature.[12] This last point is proved by Aristotle, who says with elegant precision: 'the lower sort are by nature slaves, and it is better for them as inferiors that they should be under the rule of a master' (*Politics* 1254^{b}20).[13] By 'lower sort' he meant men who are insufficiently rational to govern themselves, but are rational enough to take orders; their strength resides more in their bodies than in their minds (1252^{a}32). And if indeed it is true that there are such men, then none fit the bill better than these barbarians, who in fact appear to be little different from brute animals and are completely unfitted for government. It is undoubtedly better for them to be governed by others, than to govern themselves. Since Aristotle states that it is a natural law that such men should be slaves, they cannot be true masters. Furthermore, it is no objection to argue that before the Spaniards arrived the barbarians had no other masters; it is not impossible that a slave may be a slave even without a master, as stated by the *Glossa* on the law *Si usum fructum* (*Digest* XL. 12. 23); indeed, the law concerned expressly says so, and there is an actual case adduced in the law *Quid seruum* (*Digest* XLV. 3. 36 *pr.*) on the unclaimed slave abandoned by his master, which shows that such a slave may be appropriated by anyone. Therefore, if the barbarians were slaves, the Spaniards could appropriate them.

12. *P* natura / hereditate *in marg., omm. LSG.*

13. 1° ethicorum *PGL, om. S.* For an extended discussion of Vitoria's reading of Aristotle's theory of natural slavery in this article, see Pagden 1986: 67–78.

§5 BUT ON THE OTHER HAND it may be argued that they were in undisputed possession of their property, both publicly and privately. Therefore, failing proofs to the contrary, they must be held to be true masters, and may not be dispossessed without due cause.

I REPLY that if the barbarians were not true masters before the arrival of the Spaniards, it can only have been on four possible grounds. To avoid wasting time, I omit any recapitulation here of the many writings of the theologians on the definition and distinctions of dominion (*dominium*), which I have quoted at length elsewhere (see my discussion of restitution in my lectures on Lombard's *Sentences* IV. 15 and *ST* II-II. 62).[14] These four grounds are that they were either sinners (*peccatores*), unbelievers (*infideles*), madmen (*amentes*), or insensate (*insensati*).

[Question 1, Article 2: Whether sinners can be true masters]

There have been some who have held that the title to any dominion (*dominium*) is grace, and consequently that *sinners, or at least those who are in a state of mortal sin, cannot exercise dominion over anything*. This was the heresy of the Poor Men of Lyon or Waldensians and later of John Wycliff, one of whose errors condemned by the Council of Constance was: 'No one is a civil master while he is in a state of mortal sin.' The same opinion was enunciated by Richard Fitzralph, archbishop of Armagh, in his *Summa in quaestionibus Armenorum* 10. 4 and in his dialogue *De paupertate Christi*.[15] Fitzralph claims that any such dominion (*dominium*) held by a sinner is condemned by God, adducing the verse 'They have set up kings, but not by me; they have made princes, and I knew it not', and adding as explanation the next phrase: 'of their silver and their gold have they made them idols' (Hos. 8: 4). It follows that such men lack any just dominion in the eyes of God:

14. Lombard's treatment of *restitutio* (*Sent.* IV. 15) was the standard occasion for theologians' discussions of *dominium*; it was the *thema*, for instance, of Soto's important relection *De dominio* (1534), which is preserved in MS *P*, fols. 232–41. As usual, Vitoria refers to the corresponding passage in Aquinas' *ST* II-II. 62. 1 (for his commentary on the latter see Vitoria 1932–52: III. 63–7).

15. De paupertate Christi *:* de fensionum parte[1] *P* defensionum *G* Defensorium pacis *LS*. The reading adopted here is suggested by Barbier (Vitoria 1966: 16 n.), on the basis of the parallel passage in *On Civil Power* 1. 6. After this sentence *S* inserts an interpolation: 'against whom wrote Walden, *De antiq.* I. 3. 82–3, II. 3'; but the reference to Thomas Walden's *Doctrinale antiquitatum* should apparently read I. 2. 3. 81–3 and II. 3.

1. It is axiomatic that every dominion (*dominium*) exists by God's authority, since He is creator of all things and no one may have such dominion unless he is given it by God; but it is not logical that He should give such dominion to those who sin disobediently against His precepts. Human princes do not give their goods or demesnes to rebels; or, if they turn out to have done so, they take them away again. We should judge the divine according to the human (Rom. 1: 18–20). Hence God does not grant dominion to the disobedient.

2. As a sign of this He sometimes casts the wicked down from their dominion, as he did Saul (1 Sam. 15–16), Nebuchadnezzar, and Belteshazzar (Dan. 4, 5).

3. It is also written: 'Let us make man in our image, after our likeness; and let them have dominion over the fish of the sea and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth' (Gen. 1: 26). From this it is clear that dominion (*dominium*) is formed in the image of God; but the image of God is not in the sinner, hence the sinner cannot have such dominion.

4. The sinner commits the crime of lese-majesty, and therefore deserves to lose his dominion.

5. Augustine says that the sinner is not worthy of the bread which he eats; even less will he be worthy, therefore, of dominion.

6. God gave the dominion of Paradise to our first parents Adam and Eve, and then deprived them of it because of their sin; *ergo*, etc.

True, neither Wycliff nor Fitzralph make the necessary distinctions; they appear to refer solely to jurisdiction (*dominium jurisdictionis*) or lordship. But since their argument is no less applicable to all types of ownership (*dominium rerum*), public and private, it is clear that they intended their conclusion to apply to dominion (*dominium*) in general. That at any rate is what Fitzralph clearly says, and that is the sense in which Conrad Summenhart took their conclusion (*Septipertitum opus de contractibus* I. 7). Therefore anyone who accepts this conclusion may argue that the barbarians were not true masters because they were continually in a state of mortal sin.

§6 BUT ON THE OTHER HAND, *mortal sin is no impediment to the civil right of ownership, nor to true dominion*. This was one of the propositions determined by the Council of Constance.

I REPLY that Almain's attempt in his commentary on Lombard's *Sentences* (in IV. 15 §2) to prove the proposition using an argument taken from

4. *The barbarians are not prevented by this, or by the argument of the previous article, from being true masters.* The proof of this is that they are not in point of fact madmen, but have judgment like other men.[34] This is self-evident, because they have some order (*ordo*) in their affairs: they have properly organized cities, proper marriages, magistrates and overlords (*domini*), laws, industries, and commerce, all of which require the use of reason. They likewise have a form (*species*) of religion, and they correctly apprehend things which are evident to other men, which indicates the use of reason.[35] Furthermore, 'God and nature never fail in the things necessary' for the majority of the species, and the chief attribute of man is reason; but the potential (*potentia*) which is incapable of being realized in the act (*actus*) is in vain (*frustra*).[36]

Nor could it be their fault if they were for so many thousands of years outside the state of salvation, since they were born in sin but did not have the use of reason to prompt them to seek baptism or the things necessary for salvation.

THUS if they seem to us insensate and slow-witted, I put it down mainly to their evil and barbarous education.[37] Even amongst ourselves we see many peasants (*rustici*) who are little different from brute animals.

[Question 1, Conclusion]

THE CONCLUSION OF ALL THAT HAS BEEN SAID is that the barbarians undoubtedly possessed as true dominion, both public and private, as any Christians. That is to say, they could not be robbed of their property,

34. *LSG* substitute for the last phrase: 'but have, in their own way, the use of reason'.

35. Vitoria's sketch of Indian society is a modified version of Aristotle's criteria for the civil life (e.g. *Politics* 1328^{b}6–22), particularly as developed in Aquinas' commentary on the famous passage on barbarians as 'natural slaves' (*Politics* 1255^{a}28–34): Aquinas, 1971: A.74–A.93. See Pagden 1986: 68–79, and compare 3. 8 below.

36. This 'gnomic utterance' is an intended echo of Aristotle's oft-repeated dictum that 'nature makes nothing in vain' (*On the Soul* 432^{b}22–3 'nature never makes anything without a purpose and never leaves out what is necessary'; *Generation of Animals* 788^{b}20–1 'nature never fails nor does anything in vain'; *Politics* 1253^{a}8, 1256^{b}20–1 'nature makes nothing incomplete and nothing in vain'; *cf.* 2. 2 below). Vitoria's pupil Domingo de las Cuevas, in his *De insulanis*, glossed this passage: '*God and nature make nothing in vain*, and since they [the Indians] potentially have the use of reason, being men, they are able to have it, and therefore they do have it' (printed in Vitoria 1967: 196–218, on p. 199). The full implication of the argument had already been pointed out by Bernardo de Mesa at the *Junta* of Burgos in 1513: to claim that the Indians were natural slaves was to imply that God had created an imperfect creature incapable of realizing its potential (Pagden 1986: 49–50, 93–7).

37. For a full discussion of the Aristotelian concept of *ethismus* to which Vitoria here alludes see Pagden 1986: 82.

either as private citizens or as princes, on the grounds that they were not true masters (*ueri domini*). It would be harsh to deny to them, who have never done us any wrong, the rights we concede to Saracens and Jews, who have been continual enemies of the Christian religion. Yet we do not deny the right of ownership (*dominium rerum*) of the latter, unless it be in the case of Christian lands which they have conquered.

TO THE ORIGINAL OBJECTION ONE MAY THEREFORE SAY, as concerns the argument that *these barbarians are insufficiently rational to govern themselves* and so on (1. 1 ad 2):

1. Aristotle certainly did not mean to say that such men thereby belong by nature to others and have no rights of ownership over their own bodies and possessions (*dominium sui et rerum*). Such slavery is a civil and legal condition, to which no man can belong by nature.

2. Nor did Aristotle mean that it is lawful to seize the goods and lands, and enslave and sell the persons, of those who are by nature less intelligent. What he meant to say was that such men have a natural deficiency, because of which they need others to govern and direct them. It is good that such men should be subordinate to others, like children to their parents until they reach adulthood, and like a wife to her husband. That this was Aristotle's true intention is apparent from his parallel statement that some men are 'natural masters' by virtue of their superior intelligence. He certainly did not mean by this that such men had a legal right to arrogate power to themselves over others on the grounds of their superior intelligence, but merely that they are fitted by nature to be princes and guides.

Hence, granting that these barbarians are as foolish and slow-witted as people say they are, it is still wrong to use this as grounds to deny their true dominion (*dominium*); nor can they be counted among the slaves.[38] It may be, as I shall show, that these arguments can provide legal grounds for subjecting the Indians, but that is a different matter.

§24 For the moment, the clear conclusion to the first question is therefore *that before arrival of the Spaniards these barbarians possessed true dominion, both in public and private affairs.*

[Question 2: By what unjust titles the barbarians of the New World passed under the rule of the Spaniards]

Accepting, therefore, that they were true masters, it remains to consider by what title we Christians were empowered to take possession of their

38. *LS* (but not *G*) add '*civil* slaves'.

territory. I shall first list the irrelevant and illegitimate titles which may be offered, and then pass to the legitimate titles by which the barbarians could have been subjected to Christian rule. There are seven irrelevant titles, and seven or perhaps eight just and legitimate ones. And the first title might be as follows:

Question 2, Article 1: First unjust title, that our most serene Emperor might be master of the whole world

If this were so, then even if in the past there had been some irregularity (*uitium*) in the Spanish title, it would be entirely wiped out in the person of our most Christian Caesar the emperor.[39] Granting the barbarians had true dominion as explained above, they might still have superior overlords, just as lesser princes are beneath a suzerain and some kings are beneath the emperor, because it is possible for several parties to have dominion over the same thing; hence the jurists' well-worn distinctions between dominions high and low (*dominium altum, bassum*), direct and usable (*directum, utile*), and mere and mixed (*merum, mixtum*). The question, then, is whether these barbarians had some superior overlord. This doubt can refer only to the emperor and the pope; it is them I shall discuss.

1. It seems in the first place that the emperor is master of the whole world, and consequently of the barbarians. This is clear first of all from the common style of address used of the emperor [as 'Divine Maximilian, or Eternally August Charles Lord of the World (*orbis dominus*)'];[40] and second, from the passage in Luke which speaks of a decree going out 'from Cæsar Augustus that all the world should be taxed' (Luke 2: 1), since it would not be fitting that Christian emperors should be of less rank than the Roman emperor Augustus.

2. Our Lord evidently judged Caesar to be the true master of the Jews, since he said 'Render unto Caesar the things which be Caesar's' (Luke 20: 25). But he clearly could not have had this right (*ius*) other than as emperor. To this effect Bartolus of Sassoferrato states expressly in his commentary on Emperor Henry VII's constitution *Ad reprimendam* (X. 1. 31. 8) that 'the emperor is *de iure* master of the whole world'.[41] The same opinion is expressed in the *Glossa ordinaria* on the

39. Charles I of Spain succeeded his grandfather Maximilian as emperor in 1520.

40. The words in square brackets are supplied from *LSG*, having been omitted by *P*.

41. For Bartolus' celebrated distinction between the emperor's *de iure* and *de facto* dominion of the world, see Skinner 1978: I. 9–10.

decretal *Per uenerabilem* (X. 4. 17. 13), and again at length on *Venerabilem* (X. 1. 6. 34), adducing as proof the canon *In apibus* (*Decretum* C.7. 1. 41) in which Jerome talks of there being one emperor in all the world just as there is one queen in a hive of bees (*Epistles* 125. 15); the Roman *Lex Rhodia* (*Digest* XIV. 2. 9), where Emperor Antoninus says 'I, master of the universe (*dominus mundi*)'; and the law *Bene a Zenone* (*Codex* VII. 37. 3 §1), which states that 'all things are understood to belong to the ruler'.[42]

3. A further proof is that first Adam and later Noah were clearly masters of the whole world, according to the words of the Lord to Adam: 'Let us make man in our image, after our likeness, and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth', and a little further on, 'Be fruitful and multiply, and replenish the earth, and subdue it', which he repeated in more or less the same terms to Noah (Gen. 1: 26, 28; 8: 17). Now they had successors, who must therefore have been masters of the earth.

4. Again, we cannot suppose that God founded any but the best kind of government in the world, since 'in wisdom hast Thou made them all' (Ps. 104: 24). But the best kind of government is monarchy, as St Thomas says so well in *De regimine principum* I. 2, and as Aristotle seems to think in *Politics* 1286^{b}3–7;[43] therefore by divine institution there ought to be one emperor of the world.

5. Finally, things which are additional to nature (*praeter naturam*) ought to imitate natural things; but in natural things there is always one ruler, as one heart in the body, one rational part in a soul. Therefore there should be only one ruler in the world, just as there is only one God.

But this opinion is without any foundation. I reply as follows:

§25 1. My first proposition is that *the emperor is not master of the whole world*. The proof of this is as follows: dominion (*dominium*) can exist only by natural law, divine law, or human law. But the emperor is not master of the world by any of these. The minor premiss is proved as follows.

42. For the standard canonist texts cited in this paragraph (compare *I On the Power of the Church* 5. 1, 5. 9), see the Glossary, *s.vv.*, and Muldoon 1968: 269–71; on *Lex Rhodia* as a topic in juristic writings about imperial power, Ullman 1975: 57–8.

43. Compare *On Civil Power* 1. 8. Aquinas prefers the 'mixed' constitution in *ST* I-II. 105. 1 (see *On Law* §136 *ad loc.*, p. 197); Aristotle prefers aristocracy in the passage of the *Politics* alluded to here, whereas he opts for monarchy in *Nicomachean Ethics* 1160^{a}31–6.

unbelievers who recognize the dominion of the Roman pontiff, but can freely be declared on them if they do not recognize it; our opponents know perfectly well that no unbeliever recognizes any such thing.

The clear conclusion is that this title against the barbarians is also invalid, whether it is alleged because the pope gave dominion over these countries to the emperor,[61] or because the barbarians fail to recognize the dominion of the pope. So argues Cajetan at length in his commentary on *ST* II-II. 66. 8 ad 2.[62] Even the weighty authority of St Antonino of Florence must not be accepted; on this occasion he does no more than repeat Agostino Trionfo, just as he elsewhere tends to follow other canonists.

IT IS CLEAR from all that I have said that the Spaniards, when they first sailed to the land of the barbarians, carried with them no right at all to occupy their countries.

Question 2, Article 3: Third unjust title, that possession of these countries is by right of discovery

This title by right of discovery (*in iure inuentionis*) was the only title alleged in the beginning, and it was with this pretext alone that Columbus of Genoa first set sail. And it seems that this title is valid because:

1. All things which are unoccupied or deserted become the property of the occupier by natural law and the law of nations, according to the law *Ferae bestiae* (*Institutions* II. 1. 12).[63] Hence it follows that the Spaniards, who were the first to discover and occupy these countries, must by right possess them, just as if they had discovered a hitherto uninhabited desert.

BUT ON THE OTHER HAND, against this third title, we need not argue long; as I proved above (1. 1–6), the barbarians possessed true public and private dominion. The law of nations, on the other hand, expressly states that goods which belong to no owner pass to the occupier. Since

61. *P* imperatori *:* tanquam dominus absolute *LS*.

62. *LS* add: 'The contrary opinion of the canonists need not unduly influence us, since (as I have said above) this is a question of divine law, and the majority of better authorities including Johannes Andreae are on our side, while they cannot adduce a single text in favour of their view.'

63. In 3. 1 below, however, *Ferae bestiae* is adduced as providing a just title (see footnote 77 *ad loc.*).

the goods in question here had an owner, they do not fall under this title. Therefore, although this title may have some validity when taken in conjunction with another (as I shall discuss below), of itself it provides no support for possession of these lands, any more than it would if they had discovered us.

Question 2, Article 4: Fourth unjust title, that they refuse to accept the faith of Christ, although they have been told about it and insistently pressed to accept it

IT SEEMS that this is a legitimate title for occupying that land of the barbarians because:

1. Barbarians are obliged to accept the faith of Christ, because 'he that believeth and is baptized shall be saved, but he that believeth not shall be damned' (Mark 16: 16). No one is damned except for mortal sin; and 'neither is there salvation in any other, for there is none other name under heaven given among men, whereby we must be saved' (Acts 4: 12). Since the pope is the minister of Christ, at least in spiritual things, it seems that barbarians may be compelled to receive the faith of Christ at least on the authority of the pope; and that if they are asked to do so and refuse, in the law of war action may be taken against them. Indeed, it seems that even princes may do this on their own authority, since they are 'ministers of God, and revengers to execute wrath upon him that doeth evil' (Rom. 13: 4). These barbarians do the greatest evil by refusing to accept the faith of Christ; therefore princes may coerce them to do so.

2. If the French refused to obey their king, the king of Spain would be empowered to compel them to obey; so if these barbarians refuse to obey God, who is the true supreme Lord, Christian princes are empowered to compel them to obey, since God's cause should clearly never be of less account than the cause of men. The confirmation of this is given by Duns Scotus in his commentary on the text which is the subject of this relection, Lombard's *Sentences* IV. 4. 9, arguing that someone ought to be compelled to obey a higher lord rather than a lower. Therefore if barbarians can be compelled to obey their own princes, much more can they be compelled to obey Christ and God.

3. If the barbarians were publicly to blaspheme against Christ, they could be compelled by war to desist from such blasphemies. This is conceded by the doctors, and it is true; we could declare war upon them if they put the Crucifix to ridicule, or in any way abused or shamed Christian things, for instance by making mockery of the sacraments of

the Church or things of this kind. This is obvious, because if they were to do wrong to any Christian king, we would be empowered to avenge the wrong, even after the king were dead; so much more so, then, if they insult Christ, who is the king and Lord of Christians. There can be no doubt about this; if Christ were yet alive amongst mortal men, and the pagans were to do him wrong, there is no doubt that we would be able to punish the wrong by war; and therefore we may still do so now. But unbelief is a greater sin than blasphemy, since, as St Thomas proves (*ST* II-II. 10. 3), unbelief is the gravest of all the sins caused by perversity of morals, being directly opposed to faith, whereas blasphemy is not directly opposed to faith, but only to the confession of faith. Unbelief also attacks the root of conversion to God, which is faith, whereas blasphemy does not. So, if Christians can punish unbelievers by war for their blasphemies against Christ, they must also be empowered to do so for their unbelief.[64]

§32 BUT ON THE OTHER HAND let us reply with the following conclusions:

1. FIRST, *the barbarians, before they had heard anything about the Christian faith, were not committing the sin of unbelief merely because they did not believe in Christ*. This conclusion is taken word for word from St Thomas , *ST* II-II. 10. 1, where he explains that in the case of those who have never heard of Christ, unbelief is not logically a sin, but rather a punishment. Such ignorance of heavenly things is a consequence of the sin of our first parent. 'Those who are unbelievers in this situation', he says, 'may indeed be damned for other sins, but not for the sin of unbelief.' The Lord said: 'if I had not come and spoken unto them, they had not sin' (John 15: 22); Augustine explains in his commentary on this verse that He referred to the 'sin' of not believing in Christ, and this too is the opinion of St Thomas in *ST* II-II. 10. 6 and 34. 2 ad 2.

There are, however, many doctors who disagree. First of all, William of Auxerre, *Summa aurea* III. 3, who says that it is impossible for anyone to live in invincible ignorance, not merely of Christ, but of any article of faith; if he does his best, the Lord will enlighten him, either through an external teacher or by an inner light. And hence it will always be a mortal sin to believe anything contrary to the articles of faith, even, for example, for an old woman to whom the bishop preaches something contrary to an article of faith. In general, he says, ignorance of divine law excuses no one.

64. *LS* add: 'this deduction is confirmed by the fact that according to the civil laws blasphemy, being a lesser sin than unbelief, is not punishable by death when committed by a Christian, as unbelief is'.

The same opinion was held by William of Auvergne, bishop of Paris, using much the same argument: either such a person will do his best, and will receive enlightenment, or he will not, and will have no excuse (*De fide* prol.). The same idea seems to be expressed by Jean Gerson in *De spirituali uita animae* 4. 4.[65] Hugh of St Victor affirms that no man is excused from the commandment to undergo baptism by ignorance, since he can only fail to hear and know of it through his own fault, as shown by the example of Cornelius in Acts 10 (*De sacramentis* II. 6. 5). But Pope Hadrian limits this opinion in the following way (*Quodlibet* IV):

> Matters of divine law fall into two categories. Some are such that God does not oblige all men universally to know, these being the difficult summits of divine law and scriptural commandments; in these there may be some question of invincible ignorance, even on the part of one who does his best in the matter. But others are such that God obliges all men universally to know, these being the articles of faith and the universal commandments of law; and of these it is true, as the doctors say, that there can be no excuse through ignorance, because if a man does his best in these, God will enlighten him either through an inner light or an external teacher.

All the same, the proposition as stated clearly accords with the express opinion of St Thomas. The proof is that those who have never heard about a thing are invincibly ignorant, and such ignorance cannot be a sin. The major premiss is proved by Paul: 'How shall they believe in him of whom they have not heard? and how shall they hear without a preacher?' (Rom. 10: 14). If the faith has not been preached to them, their ignorance is invincible, since they have no means of knowing. Paul does not condemn unbelievers on the grounds that they do not do their best to receive enlightenment from God, but on the grounds that when they heard they did not believe: 'have they not heard? Yes verily, their sound went into all the earth' (Rom. 10: 18). This shows that he condemns them because the Gospel had been preached throughout the world; otherwise he would not have condemned them, however many their other sins.

In this connexion, Hadrian is led astray on another point about this matter of ignorance: he says in the same passage of his *Quodlibet* that even in a matter of morals where a person displays all due diligence and industry in finding out what he needs to know, this is not sufficient to

65. *LS* add: 'It is the unanimous opinion of the doctors that in these matters of divine law there is no question of invincible ignorance, since God, who is ever ready to enlighten the mind in all that pertains to salvation and the avoidance of error, will always come to the aid of the man who does his best.' Compare *On Law* §125.

excuse ignorance unless he also disposes himself by contrition for his sins to receive enlightenment from God. For instance, someone is in doubt about a particular contract, and makes inquiries to the experts and takes other pains to find out the truth, and concludes that the contract is lawful. Now if the contract happens, nevertheless, to be unlawful and he closes it, and if by chance he happens to be in a state of sin, he has no defence. This is because he did not do his best to overcome his ignorance, because it is an established fact that in the state of sin, even if a man lays himself open to grace he will not be enlightened; therefore he can have no defence unless he removes the impediment to grace, that is his state of sin. It follows that if Perkin and Jack are in doubt about the same contract in equal circumstances, and both of them go to the same pains as far as humanly possible to assure themselves that the contract is lawful, but Perkin is in a state of grace, while Jack is in a state of sin, then Perkin has the defence of invincible ignorance, while Jack does not. And so, if both of them close the contract, Perkin has a defence while Jack does not.

But this argument, as I say, is fallacious. I have discussed the matter at length in my lectures on Aquinas, under the heading of *ignorance* (*In ST* I-II. 6. 8 and 19. 5–6). It is extraordinary to claim that an unbeliever, or indeed anyone in a state of mortal sin, cannot be invincibly ignorant about any matter whatsoever in divine law. In fact, the consequence of the argument would be that our Perkin, who is in a state of grace and thus invincibly ignorant of some matter to do with usury or simony, would become vincibly ignorant of the same thing by the very fact that his ignorance would then lead him into mortal sin. The thing is manifestly absurd.

§33 Therefore I assert that for ignorance to be considered, and in fact to be, vincible and hence a sin, it must be accompanied by some negligence to do with the particular matter in hand; for example, a refusal to listen, or a refusal to believe when one has heard. And conversely, for ignorance to be considered invincible it is sufficient that a man has taken every care humanly possible to find out the truth, even if he happens to be otherwise in a state of sin. As far as this is concerned, therefore, the verdict is the same for a man who is in a state of sin or one who is in a state of grace, both now and ever since the moment of Christ's coming, or at least since his Passion. Hadrian cannot deny that, just after our Lord's passion, the Jews who happened to be in India or in Spain would have been invincibly ignorant of the Lord's Passion, however deep they may have been in mortal sin. Indeed, he expressly concedes as much in his discussion of the observance of the precepts of the Law (in *Sentences* IV. 1. 1 ad 4). It is certain that the Jews who were abroad from Judaea,

whether or not they were in a state of sin, were invincibly ignorant of baptism and the Christian faith. And hence it follows that, just as there could then be a question of invincible ignorance about these matters, so too the same ignorance could now exist amongst those to whom no announcement concerning baptism was ever made. But the source of the error of these doctors is that they believe that if we allow the existence of invincible ignorance concerning baptism or the Christian faith, it will immediately follow that a man can gain salvation without baptism or the faith of Christ. But this does not follow at all. The barbarians who have never received any news of the faith or Christian religion will be damned for their mortal sins or their idolatry; but not for the sin of unbelief, as St Thomas says (*ST* II-II. 10. 1). If they were to do their best to live well according to the law of nature, it is a fact that the Lord would take care to enlighten them concerning the name of Christ. But it does not follow from this that, if they live evil lives, their ignorance or lack of belief in baptism and the Christian religion should be counted against them as a sin.[66]

2. MY SECOND CONCLUSION is that *the barbarians are not bound to believe from the first moment that the Christian faith is announced to them*, in the sense of committing a mortal sin merely by not believing a simple announcement, unaccompanied by miracles or any other kind of proof or persuasion, that the true religion is Christian, and that Christ is the Saviour and Redeemer of the universe.[67]

§34 The proof follows from my discussion of the first proposition. If they were excused before they heard anything about the Christian religion, then again they are not obliged by a simple statement or announcement of this kind. Such an announcement is no argument or reason for believing; indeed, as Cajetan says (in *ST* II-II. 1. 4 ad 2), it is foolhardy and imprudent of anyone to believe a thing without being sure it comes from a trustworthy source, especially in matters to do with salvation. But the barbarians could not be sure of this, since they did not know who or what kind of people they were who preached the new religion to them. This is confirmed by St Thomas, who says that things which are of faith visibly and clearly belong to the realm of the credible; the faithful man would not believe them unless he could see that they were credible,

66. Palacios Rubios had argued in his *Libellus de insulis Oceani* (1512), on the basis of the same authorities used by Vitoria in this article, that although the Indians were clearly in a state of invincible ignorance, if they had been a more deserving race God would have sent them missionaries, as he sent St Peter to Cornelius, St Paul to the Corinthians, and St Augustine to the English (Pagden 1986: 53).

67. As Pidal 1958: 15–16 points out, the reference is once again to the *requerimiento* (see the Glossary, *s.v.*).

either by palpable signs or by some other means (*ST* II-II. 1. 4 ad 2, 1. 5 ad 1). Therefore where there are no such signs nor any other persuasive factor, the barbarians are not obliged to believe. A further confirmation is that if the Saracens were to preach their own sect in this simple way to the barbarians at the same time as the Christians, it is clear that the barbarians would not be obliged to believe the Saracens. Therefore, since they would not be able or obliged to guess which of these two was the truer religion without some more visible proof of probability on one side or the other, the barbarians are not be obliged to believe the Christians either, unless the latter put forward some other motive or persuasion to convince them. To do so would be to believe too readily, like the 'light-headed man' (Ecclus. 19: 4). And this is confirmed by the Lord's words: 'if I had not done among them the works which none other man did, they had not had sin' (John 15: 24). Where there are no miraculous signs or other reasons for belief, there will be no sin.

§35 From this proposition it follows that if the faith is proposed to the barbarians only in this way and they do no accept it, the Spaniards cannot use this pretext to attack them or conduct a just war against them. This is obvious, because the barbarians are innocent on this count, and have not done any wrong to the Spaniards.

The corollary is proved by St Thomas' teaching that for the just war a just cause is required; namely, that those who are attacked have deserved attack by some culpable action (*ST* II-II. 40. 1). Hence Augustine says (*Quaestiones in Heptateuchum* VI. 10):

> The usual definition of just wars is that they are those which avenge injustices (*iniuriae*), when a nation or city is to be scourged for having failed to punish the wrongdoings its own people or to restore property which has been unjustly stolen.[68]

If the barbarians have done no wrong, there is no just cause for war; this is the opinion shared by all the doctors, not only theologians but also jurists such as Hostiensis, Innocent IV, and others; Cajetan expounds it eloquently in his commentary on *ST* II-II. 66. 8. I know of no author who opposes it. Therefore this would not be a legitimate title for occupying the lands of the barbarians and despoiling their previous owners of them.

§36 3. MY THIRD CONCLUSION is that *if the barbarians are asked and advised to listen to peaceful persuasion about religion, but refuse to do so, they incur unpardonable mortal sin*. The proof is that if their own beliefs are

68. Vitoria cites this fundamental definition of the just war at second hand, from Aquinas, citing it incorrectly as *Liber 83 quaestionum* (see *On the Law of War* 1. 1, footnote 6).

gravely mistaken, as we suppose they are, they can have no convincing or probable reasons for them, and are therefore obliged at least to listen and consider what anyone may advise them to hear and meditate concerning religion. Furthermore, belief in Christ and baptism is necessary for their own salvation: 'he that believeth and is baptized shall be saved, but he that believeth not shall be damned' (Mark 16: 16). But they cannot believe if they have not heard (Rom. 10: 14). Hence they are obliged to listen, because if they were not obliged to hear they would be beyond all salvation through no fault of their own.

§37 4. MY FOURTH CONCLUSION is that *if the Christian faith is set before the barbarians in a probable fashion*, that is with provable and rational arguments and accompanied by manners both decent and observant of the law of nature, such as are themselves a great argument for the truth of the faith, and if this is done not once or in a perfunctory way, but diligently and observantly, *then the barbarians are obliged to accept the faith of Christ under pain of mortal sin*. The proof follows from the third proposition; if they are obliged to listen, then they are also obliged to acquiesce with what they hear if it is reasonable. This is clear from the passage: 'Go ye into all the world, and preach the gospel to every creature; he that believeth and is baptized shall be saved, but he that believeth not shall be damned' (Mark 16: 15–16). And also from: 'there is none other name under heaven given among men, whereby we must be saved' (Acts 4: 12).

§38 5. MY FIFTH CONCLUSION is that *it is not sufficiently clear to me that the Christian faith has up to now been announced and set before the barbarians in such a way as to oblige them to believe it under pain of fresh sin*. By this I mean that, as explained in my second proposition, they are not bound to believe unless the faith has been set before them with persuasive probability. But I have not heard of any miracles or signs, nor of any exemplary saintliness of life sufficient to convert them. On the contrary, I hear only of provocations, savage crimes, and multitudes of unholy acts. From this, it does not appear that the Christian religion has been preached to them in a sufficiently pious way to oblige their acquiescence; even though it is clear that a number of friars and other churchmen have striven industriously in this cause, by the example of their lives and the diligence of their preaching, and this would have been enough, had they not been thwarted by others with different aims.

§39 6. MY SIXTH CONCLUSION is that, however probably and sufficiently the faith may have been announced to the barbarians and then rejected by them, *this is still no reason to declare war on them and despoil them of their goods*. This conclusion is expressed by St Thomas in his *ST* II-II. 10. 8, where he says that unbelievers who have never taken up the faith such

as the pagans and Jews are by no means to be compelled to believe. And this is the common conclusion of the doctors of both canon and civil law. The proof is that belief is a matter of will, but fear considerably diminishes the freedom of will (Aristotle, *Nicomachean Ethics* 1110ª1–12). To come to the mysteries and sacraments of Christ merely out of servile fear would be sacrilege. A further proof is the passage in Gratian's canon *De Iudaeis* (*Decretum* D.45. 5): 'Concerning the Jews, the holy Council laid down that no one should use force to compel belief, since God is merciful to those He wishes, and hardens the hearts of those He wishes' (*Concilium IV Toletanum* §56). There is no doubt that this opinion of the Council of Toledo means that threats and terror should not be used to bring the Jews to the faith. And St Gregory the Great expressly says the same in the canon *Qui sincera*: 'those who sincerely desire to lead those outside the Christian religion to perfect faith should be careful to use blandishments, not cruelty' (*Decretum* D.45. 3). Those who act otherwise and decide to tear them from their accustomed religious observances and rites under this pretext are serving their own ends, not God's. The proposition is also proved by the use and custom of the Church, since no Christian emperor, with the benefit of the advice of the most holy and wise popes, has ever declared war on unbelievers simply because they refused to accept the Christian religion.

Besides, war is no argument for the truth of the Christian faith. Hence the barbarians cannot be moved by war to believe, but only to pretend that they believe and accept the Christian faith; and this is monstrous and sacrilegious. Duns Scotus says that it is a religious act for princes to compel unbelievers to believe with threats and terror (in *Sentences* IV. 4. 9); but this can only be understood to refer to unbelievers who are already the subjects of Christian princes. Of such subjects I shall speak later. But the barbarians do not belong to this group, and therefore I do not believe that Scotus would have applied his assertion to these barbarians of ours.

It is therefore clear that this title to the conquest of the lands of the barbarians, too, is neither applicable nor legitimate.

Question 2, Article 5: Fifth unjust title, the sins of the barbarians

This next title is also seriously put forward by those who say that, although the barbarians may not be invaded because of their unbelief or their refusal to accept the Christian faith, war may nevertheless be declared on them for their other mortal sins, which according to the proponents of this argument are manifold, and very serious to boot.

Concerning mortal sins, however, they make a distinction. Some sins, they say, are not against natural law, but only against positive divine law; and for these the barbarians cannot be invaded. But others, such as cannibalism, incest with mothers and sisters, or sodomy, are against nature; and for these sins they may be invaded and compelled to give them up. The reasoning behind this is that in the former category of sins against positive law, it cannot be demonstrated by evidence that they are sinful, whereas in the case of sins against the law of nature the barbarians can be shown that they are committing an offence against God, and may consequently be compelled not to offend Him further. Again, they can be forced to observe a law which they themselves profess; and this is the case with natural law. This is the opinion of St Antonino of Florence (*Summa theologica* III. 22. 5 §8), following Agostino Trionfo (*De potestate ecclesiastica* I. 23. 4); and the same opinion is held by Silvestro Mazzolini da Priero (*Summa Sylvestrina*, *s.v.* papa §7), and Innocent IV in his commentary on the decretal *Quod super his* (X. 3. 34. 8), where he expressly says: 'I believe that if the gentiles break natural law, which is the only law they have, they may be punished by the pope'. He adduces to this purpose the fact that the Sodomites were punished by God (Gen. 19); 'since God's judgments are examples to us, I do not see why the pope, who is the vicar of Christ, should not be empowered to do the same'. So says Innocent; and by this argument, they might also, on the pope's authority, be punished by Christian princes.

§40 BUT ON THE OTHER HAND I adduce the following proposition: *Christian princes, even on the authority of the pope, may not compel the barbarians to give up their sins against the law of nature, nor punish them for such sins.*

I REPLY with the following proofs. First of all, our opponents' presupposition that the pope has jurisdiction over the barbarians is false, as I have said above (*On the American Indians* 2. 2).

Second, they either interpret 'sins against the law of nature' in a universal sense, as including theft, fornication, and adultery; or in the special sense of 'sins against nature' as defined by St Thomas (*ST* II-II 154 11–12), that is to say, not only 'against natural law' but 'against the natural order', or what is described by the word 'uncleanness' in 2 Cor. 12. 21, which the *Glossa ordinaria* explains as pederasty, buggery with animals, or lesbianism, which are referred to also in Rom. 1: 24–7.[69] Now if they interpret the expression exclusively in the second of these

69. On the significance of the association between these crimes 'against the natural order' see Pagden 1986: 86–7.

two ways, one may argue against them that murder is as serious a sin, or more serious; and therefore it is clear that if it is lawful to punish men for these 'sins against nature', it must also be lawful to punish them for murder; and similarly, blasphemy is as serious a sin, and so it is obvious that one may punish them for blasphemy too, and so on. But if they extend their interpretation to include the general sense of 'any sin against the law of nature', the reply is that it is not lawful to punish them for fornication, and therefore it is not lawful to punish them for the other sins against natural law. The minor premiss is clear from 1 Cor. 5: 9–13, which says: 'I wrote unto you in an epistle not to company with fornicators . . . and not to keep company, if any man *that is called a brother* be a fornicator or an idolater', and then adds: 'For what have we to do to judge them also that are without?' St Thomas expounds this as meaning that prelates have received power only over those who have subjected themselves to the faith (in 1 Cor. 5: 12, lect. 3). It is quite clear, then, that Paul means that the judgment of unbelievers, whether they be fornicators or idolaters, is none of his business.

A further argument is that not all sins against natural law can be demonstrated to be so by evidence, at least to the satisfaction of all men. Furthermore, to make this assertion is tantamount to saying that the barbarians may be conquered because of their unbelief, since they are all idolaters. Besides, the pope may not make war on Christians because they are fornicators or robbers, or even because they are sodomites; nor can he confiscate their lands and give them to other princes; if he could, since every country is full of sinners, kingdoms could be exchanged every day. And a further confirmation is that such sins are more serious in Christians, who know them to be sins, than in the barbarians, who do not. Besides, it would be extraordinary that the pope should be able to pronounce judgments and inflict punishments on unbelievers, and yet prevented from making laws for them.

And there is a further argument, which seems to conclude the matter. Either the barbarians are obliged to suffer the penalties ordained for these sins, or they are not. If they are not, the pope is not empowered to inflict them. If they are, then they are obliged to recognize the pope as their lord and legislator; but if this is the case, then the very fact that they refuse to recognize him as such is a reason for declaring war upon them. But even my opponents deny this conclusion, as I have said above. It would indeed be extraordinary that they should be able to deny the authority and jurisdiction of the pope with impunity, and yet be obliged to suffer his judgments. Again, those who are not Christians cannot accept the judgment of the pope, since the pope cannot condemn or punish them by any right other than that he is the vicar of Christ. But

all these opponents, St Antonino and Silvestro Mazzolini da Priero as well as Agostino Trionfo and even Innocent IV himself, admit that unbelievers cannot be punished on the grounds that they have not accepted Christ. Therefore they cannot be punished because they do not accept the judgment of the pope; the latter presupposes the former.

And a confirmation that neither this nor the preceding title is sufficient is that even in the Old Testament, where affairs were conducted by force of arms, the people of Israel never occupied the lands of the unbelievers either on the grounds that they were infidels and idolaters or because they were otherwise sinners against nature, even though they were sinful in many ways, being idolaters and sinners against nature, for instance by sacrificing their sons and daughters to demons. They only conquered such peoples by God's special gift, or because they refused to allow them free passage, or because they had wronged them first.

Besides, what do these opponents mean by 'professing' the law of nature? If they mean 'knowing what it is', the barbarians do not have complete knowledge of it. But if they mean 'being willing to observe the law of nature', I counter by pointing out that, in this case, they must also mean 'willing to observe the whole of Christ's law', since if they knew that Christian law was divine law, they would be willing to observe it. In this sense, they no more 'profess' divine law than Christian law.

And again, we actually have better proofs to show that Christ's law is true and God-given than to show that fornication is evil or that the other things prohibited by natural law are to be avoided. Therefore, if the barbarians can be forced to keep the law of nature because it can be proved, they can also be forced to keep the law of the Gospels; but this is indeed an incredible deduction.

Question 2, Article 6: Sixth unjust title, by the voluntary choice of the barbarians

This is yet another title which can be and is alleged. Whenever the Spaniards first make contact with the barbarians, they notify them that the king of Spain has sent them for their benefit, and advise them to take him and accept him as their lord and king. And the barbarians have replied that they agree to do so. And 'nothing is so natural as that the wishes of an owner (*dominus*) who wishes to transfer his property to another should be ratified' (*Institutions* II. 1. 40).

BUT ON THE OTHER HAND I propose the proposition that this title, too, is inapplicable. This is clear, first of all, because the choice ought not to

have been made in fear and ignorance, factors which vitiate any freedom of election, but which played a leading part in this particular choice and acceptance. The barbarians do not realize what they are doing; perhaps, indeed, they do not even understand what it is the Spaniards are asking of them. Besides which, the request is made by armed men, who surround a fearful and defenceless crowd. Furthermore, since the barbarians already had their own true masters and princes, as explained above, a people cannot without reasonable cause seek new masters, which would be to the detriment of their previous lords. Nor, on the contrary, can the masters themselves elect a new prince without the assent of the whole people. As I have said before, they are not obliged to believe in the Christian religion, nor in the dominion of the pope, and hence not in the dominion of the emperor either.[70]

Since, therefore, in these methods of choice and acceptance some of the requisite conditions for a legitimate choice were lacking, on the whole this title to occupying and conquering these countries is neither relevant nor legitimate.

Question 2, Article 7: Seventh unjust title, by special gift from God

Here is the last title that may be alleged. Some, I know not who,[71] say that the Lord has by his special judgment damned all these barbarians to perdition for their abominations, and delivered them into the hands of the Spaniards just as he once delivered the Canaanites into the hands of the Jews (Num. 21: 3).

But I am unwilling to enter into a protracted dispute on this argument, since it is dangerous to give credit to anyone who proclaims a prophecy of this kind contrary to common law and the rules of Scripture unless his teaching is confirmed by some miracle. The proclaimers of this prophecy offer no such miracles.

Besides, even if it were true that the Lord had decided to bring about the destruction of the barbarians, it does not follow that a man who destroyed them would thereby be guiltless. The kings of Babylon who led their armies against Jerusalem and enslaved the children of Israel were not guiltless, even though all this in fact came about by the special

70. The last sentence is omitted by *LS*.

71. The author of this argument is identified by Barbier (Vitoria 1966, n. *ad loc.*) as Martín Fernández de Enciso, in his memorial of 1513 which was later incorporated in the *requerimiento* (see the Glossary, *s.v.*).

providence of God, as had often been foretold. Nor did Jeroboam act righteously when he led the people of Israel in revolt against Rehoboam, although this too was done by the counsel of the Lord, and as the Lord had threatened through the mouth of the prophet Ahijah.

And if only the sins of some Christians were less grave, apart from the one sin of unbelief, than those of these barbarians! It is written: 'Beloved, believe not every spirit, but try the spirits whether they are of God' (1 John 4: 1). As St Thomas says, the revelations of the Holy Spirit are given to perfect the virtues, so that where faith, authority, or prudence[72] show what is to be done, we need not appeal to the revelations of the spirit (*ST* I-II. 68. 2).

THIS CONCLUDES the discussion of the false and irrelevant titles for the conquest of the countries of the barbarians.

But I should remark that I have never seen any written work on this question, nor been personally present at any debate or council on the matter.[73] It is therefore possible that someone has elsewhere constructed a reasonable argument to establish the title and justice of this business from one of the titles mentioned above. But speaking for myself, I am unable to find any solution apart from the ones expounded here. This being so, if there were no other titles than these, it would indeed look grim for the salvation of our princes.[74] 'For what is a man profited', says the Lord, 'if he shall gain the whole world, and lose himself, or be cast away?' (Matt. 16: 26; Mark 8: 36; Luke 9: 25).

Question 3: The just titles by which the barbarians of the New World passed under the rule of the Spaniards

I shall now discuss the legitimate and relevant titles by which the barbarians could have come under the control of the Spaniards.

72. *P* prudentia *:* providentia *L*.

73. Although it is true that Vitoria did not participate in any of the meetings to discuss the affair of the Indies, and nowhere makes explicit reference to the writings of Palacios Rubios or any of the members of the Junta of Burgos of 1512–13 (see the Introduction, p. xxiii), this statement would seem to contradict, probably for reasons of prudence, the remarks made in the opening passage of the relection (intro., p. 238).

74. *LS* add: 'or rather, since princes are guided by the advice of others, for the conscience of those whose business it is to find a solution to the problem'.

§1 **Question 3, Article 1: First just title, of natural partnership and communication**

MY FIRST CONCLUSION on this point will be that *the Spaniards have the right to travel and dwell in those countries, so long as they do no harm to the barbarians, and cannot be prevented by them from doing so.*[75]

§2 The first proof comes from the law of nations (*ius gentium*), which either is or derives from natural law, as defined by the jurist: 'What natural reason has established among all nations is called the law of nations' (*Institutions* I. 2. 1). Amongst all nations it is considered inhuman to treat strangers and travellers badly without some special cause, humane and dutiful to behave hospitably to strangers. This would not be the case if travellers were doing something evil by visiting foreign nations. Second, in the beginning of the world, when all things were held in common, everyone was allowed to visit and travel through any land he wished. This right was clearly not taken away by the division of property (*diuisio rerum*); it was never the intention of nations to prevent men's free mutual intercourse with one another by this division. Certainly it would have been thought inhuman to do so in the time of Noah. Third, all things which are not prohibited or otherwise to the harm and detriment of others are lawful. Since these travels of the Spaniards are (as we may for the moment assume) neither harmful nor detrimental to the barbarians, they are lawful.

Fourth, it would not be lawful for the French to prohibit Spaniards from travelling or even living in France, or vice versa, so long as it caused no sort of harm to themselves; therefore it is not lawful for the barbarians either. Fifth, exile is counted amongst the punishments for capital crimes, and therefore it is not lawful to banish visitors who are innocent of any crime. Sixth, it is an act of war to bar those considered as enemies from entering a city or country, or to expel them if they are already in it. But since the barbarians have no just war against the Spaniards, assuming they are doing no harm, it is not lawful for them to bar them from their homeland.

A seventh proof is provided by Virgil's verses:

> What men, what monsters, what inhuman race,
> What laws, what barbarous customs of the place,
> Shut up a desert shore to drowning men,
> And drive us to the cruel seas again!
>
> (*Aeneid* I. 539–40, Dryden's translation)

75. On the denial of right of passage as an *iniuria* sufficient for war (Augustine, *Quaestiones in Heptateuchum* IV. 44; *Decretum* C.23. 2. 3) see Barnes 1982: 781.

An eighth proof is given in the words of Scripture: 'Every living creature loveth his like' (Ecclus. 13: 15), which show that amity (*amicitia*) between men is part of natural law, and that it is against nature to shun the company of harmless men. A ninth argument is the passage, 'I was a stranger and ye took me not in' (Matt. 25: 43), from which it is clear that, since it is a law of nature to welcome strangers, this judgment of Christ is to be decreed amongst all men. And a tenth, the jurist's determination that by natural law running water and the open sea, rivers, and ports are the common property of all, and by the law of nations (*ius gentium*) ships from any country may lawfully put in anywhere (*Institutions* II. 1. 1–4); by this token these things are clearly public property from which no one may lawfully be barred, so that it follows that the barbarians would do wrong to the Spaniards if they were to bar them from their lands. Eleventh, the barbarians themselves admit all sorts of other barbarians from elsewhere, and would therefore do wrong if they did not admit the Spaniards.

Twelfth, if the Spaniards were not allowed to travel amongst them, this would be either by natural, divine, or human law. But they are certainly allowed to do so by divine and natural law. But if there were a human enactment (*lex*) which barred them without any foundation in divine or natural law, it would be inhumane and unreasonable, and therefore without the force of law.

Thirteenth, either the Spaniards are their subjects, or they are not. If they are not their subjects, the barbarians cannot enjoin prohibitions on them; if they are their subjects, then the barbarians ought to treat them fairly. And fourteenth, the Spaniards are the barbarians' neighbours, as shown by the parable of the Samaritan (Luke 10: 29–37); and the barbarians are obliged to love their neighbours as themselves (Matt. 22: 39, and may not lawfully bar them from their homeland without due cause. As St Augustine says, 'when one says *Love thy neighbour*, it is clear that every man is your neighbour' (*De doctrina Christiana* I. 30. 32).

§3 MY SECOND PROPOSITION is that *the Spaniards may lawfully trade among the barbarians, so long as they do no harm to their homeland.* In other words, they may import the commodities which they lack, and export the gold, silver, or other things which they have in abundance; and their princes cannot prevent their subjects from trading with the Spaniards, nor can the princes of Spain prohibit commerce with the barbarians.

The proof follows from the first proposition. In the first place, the law of nations (*ius gentium*) is clearly that travellers may carry on trade so long as they do no harm to the citizens; and second, in the same way it can be proved that this is lawful in divine law. Therefore any human enactment (*lex*) which prohibited such trade would indubitably be

unreasonable. Third, their princes are obliged by natural law to love the Spaniards, and therefore cannot prohibit them without due cause from furthering their own interests, so long as this can be done without harm to the barbarians. Fourth, to do so would appear to fly in the face of the old proverb, 'do as you would be done by'.

In sum, it is certain that the barbarians can no more prohibit Spaniards from carrying on trade with them, than Christians can prohibit other Christians from doing the same. It is clear that if the Spaniards were to prohibit the French from trading with the Spanish kingdoms, not for the good of Spain but to prevent the French from sharing in any profits, this would be an unjust enactment, and contrary to Christian charity. But if this prohibition cannot justly be proscribed in law, neither can it be justly carried out in practice, since an unjust law becomes inequitable precisely when it is carried into execution. And 'nature has decreed a certain kinship between all men' (*Digest* I. 1. 3), so that it is against natural law for one man to turn against another without due cause; man is not a 'wolf to his fellow man', as Ovid says, but a fellow.[76]

§4 MY THIRD PROPOSITION is that *if there are any things among the barbarians which are held in common both by their own people and by strangers, it is not lawful for the barbarians to prohibit the Spaniards from sharing and enjoying them*. For example, if travellers are allowed to dig for gold in common land or in rivers or to fish for pearls in the sea or in rivers, the barbarians may not prohibit Spaniards from doing so. But the latter are only allowed to do this kind of thing on the same terms as the former, namely without causing offence to the native inhabitants and citizens.

The proof of this follows from the first and second propositions. If the Spaniards are allowed to travel and trade among the barbarians, they are allowed to make use of the legal privileges and advantages conceded to all travellers.

Secondly, in the law of nations (*ius gentium*) a thing which does not belong to anyone (*res nullius*) becomes the property of the first taker, according to the law *Ferae bestiae* (*Institutions* II. 1. 12); therefore, if gold in the ground or pearls in the sea or anything else in the rivers has not been appropriated, they will belong by the law of nations to the first taker, just like the little fishes of the sea.[77] And there are certainly many

76. The proverb *homo homini lupus* does not occur in Ovid, but cf.*Tristia* V. 8 ('Though men in shape, they scarce deserve the name; | their savagery doth put the wolves to shame', Burton's translation). This formulation, from Plautus, *Asinaria* 495, was popularized during the Renaissance by its inclusion in Erasmus' *Adagia*.

77. Compare 2. 3, where the relevance of the same law is denied with respect to *dominium rerum*. The interpretation of the Roman text and status of the *ius gentium* caused Vitoria and his pupils some difficulty (see the Introduction, pp. xv–xvi).

things which are clearly to be settled on the basis on the law of nations (*ius gentium*), whose derivation from natural law is manifestly sufficient to enable it to enforce binding rights. But even on the occasions when it is not derived from natural law, the consent of the greater part of the world is enough to make it binding, especially when it is for the common good of all men. If, after the dawn of creation or after the refashioning of the world following the Flood, the majority of men decided that the safety of ambassadors should everywhere be inviolable, that the sea should be common property, that prisoners of war should be enslaved, and likewise that would be inexpedient to drive strangers out of one's land, then all these things certainly have the force of law, even if a minority disagree.

§5 MY FOURTH PROPOSITION is that *if children born in the Indies of a Spanish father wish to become citizens* (cives) *of that community, they cannot be barred from citizenship or from the advantages enjoyed by the native citizens born of parents domiciled in that community*. The proof is that the law of nations (*ius gentium*) clearly defines a 'citizen' (*ciues*) as a man born in a community (*ciuitas*) (*Codex* X. 40. 7). The confirmation is that man is a civil animal (*animal ciuile*), but a man born in one community is not a citizen of another community; therefore, if he is not a citizen of the first community, he will not be a citizen of any community, and this would be inequitable by the law of nature and of nations (*ius naturale et gentium*).

Indeed, if anyone were willing to take up domicile in one of these barbarian communities, for example because he had taken a wife there or for one of the other reasons by which denizens customarily acquire citizenship, it does not seem to me he could be prohibited from doing so, any more than the other inhabitants. Consequently, it seems he would enjoy the same privileges as the rest, at least as long as he accepted the same burdens as they.

It is also relevant that hospitality is commended in Scripture: 'use hospitality one to another without grudging' (1 Pet. 4: 9), and, speaking of bishops, 'a bishop must be given to hospitality' (1 Tim. 3: 2). It follows that to refuse to welcome strangers and foreigners is inherently evil.

§6 MY FIFTH PROPOSITION is that if the barbarians attempt to deny the Spaniards in these matters which I have described as belonging to the law of nations (*ius gentium*), that is to say from trading and the rest, the Spaniards ought first to remove any cause of provocation by reasoning and persuasion, and demonstrate with every argument at their disposal that they have not come to do harm, but wish to dwell in peace and travel without any inconvenience to the barbarians. And they should

demonstrate this not merely in words, but with proof. As the saying goes, 'in every endeavour, the seemly course for wise men is to try persuasion first' (Terence, *Eunuchus* 789). But if reasoning fails to win the acquiescence of the barbarians, and they insist on replying with violence, the Spaniards may defend themselves, and do everything needful for their own safety. It is lawful to meet force with force.[78] And not only in this eventuality, but also if there is no other means of remaining safe, they may build forts[79] and defences; and if they have suffered an offence, they may on the authority of their prince seek redress for it in war, and exercise the other rights of war. The proof is that the cause of the just war is to redress and avenge an offence, as said above in the passage quoted from St Thomas (*ST* II-II. 40. 1; see above, 2. 4 §11). But if the barbarians deny the Spaniards what is theirs by the law of nations, they commit an offence against them. Hence, if war is necessary to obtain their rights (*ius suum*), they may lawfully go to war.

But I should remark that these barbarians are by nature cowardly, foolish, and ignorant besides. However much the Spaniards may wish to reassure them and convince them of their peaceful intentions, therefore, the barbarians may still be understandably fearful of men whose customs seem so strange, and who they can see are armed and much stronger than themselves. If this fear moves them to mount an attack to drive the Spaniards away or kill them, it would indeed be lawful for the Spaniards to defend themselves, within the bounds of blameless self-defence; but once victory has been won and safety secured, they may not exercise the other rights of war against the barbarians such as putting them to death or looting and occupying their communities, since in this case what we may suppose were understandable fears made them innocent. So the Spaniards must take care for their own safety, but do so with as little harm to the barbarians as possible since this is a merely defensive war. It is not incompatible with reason, indeed, when there is right on one side and ignorance on the other, that a war may be just on both. For instance, the French hold Burgundy in the mistaken but colourable belief that it belongs to them. Now our emperor Charles V has a certain right to that province and may seek to recover it by war; but the French may defend it.[80] The same may be true of the barbarians. This is a consideration which must be given great weight. The laws of war against really harmful and offensive enemies are quite different from those

78. Vitoria alludes to the famous principle *Vim ui repellere licet* (*Digest* I. 1. 3), which he was to discuss again in *On the Law of War* 1. 1.

79. *P* arces *:* artes *L*.

80. Compare *On the Law of War* 5. 3.

against innocent or ignorant ones. The provocations of the Pharisees are to be met with quite a different response from the one appropriate to weak and childish foes.

17 MY SIXTH PROPOSITION is that if all other measures to secure safety from the barbarians besides conquering their communities and subjecting them have been exhausted, the Spaniards may even take this measure. The proof is that the aim of war is peace and security, as St Augustine says in his letter to Boniface (*Ep*. 189. 6). Therefore, once it has become lawful for the Spaniards to take up war or even to declare it themselves for the reasons stated above, it becomes lawful for them to do everything necessary to the aim of war, namely to secure peace and safety.

18 My seventh proposition goes further: once the Spaniards have demonstrated diligently both in word and deed that for their own part they have every intention of letting the barbarians carry on in peaceful and undisturbed enjoyment of their property, if the barbarians nevertheless persist in their wickedness and strive to destroy the Spaniards, they may then treat them no longer as innocent enemies, but as treacherous foes against whom all rights of war can be exercised, including plunder, enslavement, deposition of their former masters, and the institution of new ones. All this must be done with moderation, in proportion to the actual offence. The conclusion is evident enough: if it is lawful to declare war on them, then it is lawful to exercise to the full the rights of war. And is confirmed by the fact that all things are lawful against Christians if they ever fight an unjust war; the barbarians should receive no preferential treatment because they are unbelievers, and therefore can be proceeded against in the same way. It is the general law of nations (*ius gentium*) that everything captured in war belongs to the victor, as stated in the laws *De captiuis* and *Si quid in bello* (*Digest* XLIX. 15. 28 and 24), in the canon *Ius gentium* (*Decretum* D.1. 9), and more expressly still in the law *Item ea quae ab hostibus* (*Institutions* II. 1. 17), which reads: 'in the law of nations, anything taken from the enemy immediately becomes ours, even to the extent that their people become our slaves'. Furthermore, as the doctors explain in their discussions of war, the prince who wages a just war becomes *ipso jure* the judge of the enemy, and may punish them judicially and sentence them according to their offence.

The foregoing is confirmed by the fact that ambassadors are inviolable in the law of nations (*ius gentium*). The Spaniards are the ambassadors of Christendom, and hence the barbarians are obliged at least to give them a fair hearing and not expel them.

THIS, THEN, IS THE FIRST TITLE by which the Spaniards could have seized the lands and rule of the barbarians, so long as it was done without

trickery or fraud and without inventing excuses to make war on them. But on these grounds, if the barbarians allowed the Spaniards to carry on their business in peace among them, the Spaniards could make out no more just a case for seizing their goods than they could for seizing those of other Christians.

§9 **Question 3, Article 2: Second possible title, for the spreading of the Christian religion**

MY FIRST PROPOSITION in support of this is that *Christians have the right to preach and announce the Gospel in the lands of the barbarians*. This conclusion is clear from the passage 'Go ye into all the world and preach the gospel to every creature' (Mark 16: 15); and 'the word of God is not bound' (2 Tim. 2: 9). Second, it is clear from the preceding article, since if they have the right to travel and trade among them, then they must be able to teach them the truth if they are willing to listen, especially about matters to do with salvation and beatitude, much more so than about anything to do with any other human subject. Third, if it were not lawful for Christians to visit them to announce the Gospel, the barbarians would exist in a state beyond any salvation. Fourth, brotherly correction is as much part of natural law as brotherly love; and since all those peoples are not merely in a state of sin, but presently in a state beyond salvation, it is the business of Christians to correct and direct them. Indeed, they are clearly obliged to do so. Fifth and finally, they are our neighbours, as I have said above (3. 1 §2 *ad fin.*), 'and God gave them commandment, each man concerning his neighbour' (Ecclus. 17: 14). Therefore it is the business of Christians to instruct them in the holy things of which they are ignorant.

§10 MY SECOND PROPOSITION is that although this right is common and lawful for all, *the pope could nevertheless have entrusted this business to the Spaniards and forbidden it to all others*. The proof is that although the pope is not a temporal lord, as shown above (2. 2), he nevertheless has power in temporal things insofar as they concern spiritual things. And since it is the pope's special business to promote the Gospel throughout the world, if the princes of Spain are in the best position to see to the preaching of the Gospel in those provinces, the pope may entrust the task to them, and deny it to all others. He may restrict not only the right to preach, but also the right to trade, if this is convenient for the spreading of the Christian religion, because he has the power to order temporal matters for the convenience of spiritual ones. So if these things are convenient for this purpose, they belong to the authority and

power of the supreme pontiff. And it is quite clear that they are convenient, because if there were an indiscriminate rush to the lands of these barbarians from other Christian countries, the Christians might very well get in each other's way and start to quarrel. Peace would be disturbed, and the business of the faith and the conversion of the barbarians upset. Besides, the princes of Spain were the first to undertake the voyages of discovery, at their own expense and under their own banners; and since they were so fortunate as to discover the New World, it is just that this voyage should be denied to others, and that they alone should enjoy the fruits of their discoveries. In the same way, the pope has always had the power to distribute the territories of Saracens among Christian princes for the preservation of peace and the progress of religion, to prevent one prince from trespassing on the lands of another. So he could also make new princes for the furtherance of religion, especially in places where there had never before been any Christian princes.

§11 MY THIRD PROPOSITION is that if the barbarians permit the Spaniards to preach the Gospel freely and without hindrance, then *whether or not they accept the faith, it will not be lawful to attempt to impose anything on them by war, or otherwise conquer their lands*. This was proved above in my refutation of the fourth unjust title (2. 4); and it is obvious, because no war can be just when not preceded by some wrong, as St Thomas says (*ST* II-II. 40. 1).

§12 MY FOURTH CONCLUSION is that if the barbarians, either in the person of their masters or as a multitude, obstruct the Spaniards in their free propagation of the Gospel, the Spaniards, after first reasoning with them to remove any cause of provocation, *may preach and work for the conversion of that people even against their will*, and may if necessary take up arms and declare war on them, insofar as this provides the safety and opportunity needed to preach the Gospel. And the same holds true if they permit the Spaniards to preach, but do not allow conversions, either by killing or punishing the converts to Christ, or by deterring them by threats or other means. This is obvious, because such actions would constitute a wrong committed by the barbarians against the Spaniards, as I have explained, and the latter therefore have just cause for war. Second, it would be against the interests of the barbarians themselves, which their own princes may not justly harm; so the Spaniards could wage war on behalf of their subjects for the oppression and wrong which they were suffering, especially in such importan matters.

FROM THIS CONCLUSION IT FOLLOWS that on this count too, if the business of religion cannot otherwise be forwarded, that the Spaniards may lawfully conquer the territories of these people, deposing their old masters and

setting up new ones and carrying out all the things which are lawfully permitted in other just wars by the law of war, so long as they always observe reasonable limits and do not go further than necessary. They must always be prepared to forego some part of their rights rather than risk trespassing on some unlawful thing, and always direct all their plans to the benefit of the barbarians rather than their own profit, bearing constantly in mind the saying of St Paul: 'all things are lawful unto me, but all things are not expedient' (1 Cor. 6: 12). Everything that has been said so far is to be understood as valid in itself; but it may happen that the resulting war, with its massacres and pillage, obstructs the conversion of the barbarians instead of encouraging it. The most important consideration is to avoid placing obstructions in the way of the Gospel. If such is the result, this method of evangelization must be abandoned and some other sought. All that I have demonstrated is that this method is lawful *per se*. I myself have no doubt that force and arms were necessary for the Spaniards to continue in those parts; my fear is that the affair may have gone beyond the permissible bounds of justice and religion.

This, then, is the second possible legitimate title by which the barbarians may have fallen under the control of the Spaniards. But we must always keep steadfastly before us what I have just said, lest what is in substance lawful becomes by accident evil. Good comes from a single wholly good cause, whereas evil can come from many circumstances, according to Aristotle (*Nicomachean Ethics* 1106^{b}35) and Dionysius the Pseudo-Areopagite (*Divine Names* 4. 30).

§13 Question 3, [Article 3: Third just title, the protection of converts]

ANOTHER POSSIBLE TITLE derives from the previous one, which is that if any barbarians are converted to Christ, and their princes try to call them back to their idolatry by force or fear, the Spaniards may on these grounds, if no other means are possible, wage war on them and compel the barbarians to stop committing this wrong.[81] If they persist, they may exercise all the rights of war, sometimes including the deposition of their masters, as in other just wars.

This third title may be advanced not only on grounds of religion, but on grounds of human amity (*amicitia*) and partnership (*societas*) since the barbarians' conversion to Christianity makes them friends and partners of us Christians, and we ought to 'do good unto all men, especially unto them who are of the household of faith' (Gal. 6: 10).

81. For the argument deployed here, compare *I On the Power of the Church* 5. 8.

§14 Question 3, [Article 4: Fourth just title, papal constitution of a Christian prince]

A FURTHER TITLE might be this: if a good proportion of the barbarians were converted to Christ either rightfully or wrongfully (that is, so long as they were true Christians, even if they had been converted by threats, terror, or other umpermissible means), *the pope might have reasonable grounds for removing their infidel masters and giving them a Christian prince, whether or not they asked him to do so*. The proof is that if this course was expedient for the preservation of the Christian faith, for fear that under infidel masters they might become apostates and fall away from the faith, or else suffer persecution from these same masters because of their faith, the pope is empowered to exchange their masters for the sake of the faith. The doctors confirm this, since, as St Thomas expressly says (*ST* II-II. 10. 10), the Church can liberate any Christian slave of an infidel master, even if he is in other respects a legitimate prisoner-of-war. Innocent IV makes this quite clear in his commentary on the decretal *Quod super his* (X. 3. 34. 8). And if this is the case, so much the more may he liberate other Christians who are subjects, and not so strictly bound to their masters as slaves. Another confirmation is that a wife is bound to her husband as much as, or even more than, a subject to his master, since the bond of marriage belongs to divine law whereas the bond between subject and lord does not. But a Christian wife may be freed of an infidel husband if he harasses her on account of her religion, as the Apostle makes clear in 1 Cor. 7: 15 – 16 (quoted in the decretal *Quanto te nouimus*, X. 4. 19. 7). Indeed, it has become customary in our day that if one partner of a marriage is converted to the faith, they become free of the infidel partner. So the Church may liberate all Christians from their obedience and subjection to infidel masters for the sake of the faith and to forestall danger, provided all provocation is avoided. And this is the fourth legitimate title which is advanced.

§15 Question 3, Article 5: Fifth just title, in defence of the innocent against tyranny

THE NEXT TITLE could be[82] either on account of the personal tyranny of the barbarians' masters towards their subjects, or because of their tyrannical

82. As Barbier notes, Vitoria henceforward uses the more reserved conditional *posset* instead of *potest*. The argument in favour of 'humanitarian' wars, though accepted by Grotius, was 'against the spirit of just war theory' (Barnes 1982: 775 – 8). Vitoria discussed the barbarians 'tyrannical laws' in *On Dietary Laws, or Self-Restraint*.

and oppressive laws against the innocent, such as human sacrifice practised on innocent men or the killing of condemned criminals for cannibalism. I assert that *in lawful defence of the innocent from unjust death, even without the pope's authority, the Spaniards may prohibit the barbarians from practising any nefarious custom or rite*. The proof is that God gave commandment to each man concerning his neighbour (Ecclus. 17: 14). The barbarians are all our neighbours, and therefore anyone, and especially princes, may defend them from such tyranny and oppression. A further proof is the saying: 'deliver them that are drawn unto death, and forbear not to deliver those that are ready to be slain' (Prov. 24: 11). This applies not only to the actual moment when they are being dragged to death; they may also force the barbarians to give up such rites altogether. If they refuse to do so, war may be declared upon them, and the laws of war enforced upon them; and if there is no other means of putting an end to these sacrilegious rites, their masters may be changed and new princes set up. In this case, there is truth in the opinion held by Innocent IV and Antonino of Florence, that sinners against nature may be punished (2. 5 above).[83] It makes no difference that all the barbarians consent to these kinds of rites and sacrifices, or that they refuse to accept the Spaniards as their liberators in the matter.[84] This could therefore be the fifth legitimate title.

§16 Question 3, Article 6: Sixth just title, by true and voluntary election

Imagine the barbarians recognized the wisdom and humanity of the Spaniards' administration, and one and all, both masters and subjects, spontaneously decided to accept the king of Spain as their prince. This could happen, and might be a legitimate title in natural law. Any commonwealth can elect its own master; for this, the unanimous consent of all is not necessary, a majority being clearly sufficient. As I have elsewhere argued (*On Civil Power* 2. 1), in matters which concern the good of the commonwealth, the decisions of the majority are binding, notwithstanding the opposition of the minority; otherwise no action could be taken for the benefit of the commonwealth, since it is difficult to obtain unanimous agreement for any proposal. It follows that

83. Wright notes in his edition (Vitoria 1917: 265, n. 13) that *G* adds the phrase: 'when their sins are to the detriment of the innocent (*quando sunt in detrimentum innocentium*)'. As Pidal remarks (1958: 26, n. 18), this would be a qualification of the views of Innocent IV and Antonino; but it is not attested in *PLS*.

84. *LS* add the explanatory phrase: 'it is not within their rights to deliver themselves or their children up to execution'.

if there was a Christian majority in any community or country, and they wished to have a Christian prince for the sake of the faith and for the common good, I believe they could elect such a prince and abandon their allegiance to their infidel masters, even against the opposition of the remainder of the population. By this I mean that they could elect a prince not only for themselves, but for the whole commonwealth. In this way the Franks changed princes for the good of their commonwealth, and transferred Childeric's crown to Pepin, the father of Charlemagne; this change of dynasty was approved by Pope Zacharias.[85] This, then, is the sixth title which may be proposed.

§17 Question 3, Article 7: Seventh just title, for the sake of allies and friends

A further title may arise whenever the barbarians themselves are engaged in legitimate war with one another, in which case the injured party has the right to wage war, and may call upon the Spaniards to help them, and then share the prizes of victory with them. This is what is said to have happened when the Tlaxcaltecs were fighting the Mexicans; they made a treaty with the Spaniards that they should help them to defeat the Mexicans, and promised them in return whatever they might win by the laws of war.[86] There can be no doubt that fighting on behalf of allies and friends is a just cause of war, as Cajetan declares (in *ST* II-II. 40. 1 §5); equally, a commonwealth may call upon foreigners to punish its enemies and fight external malefactors.[87] The confirmation of this is provided by the Romans, who extended their empire in just this way, by coming to the aid of their friends and allies and profiting from the opportunity to declare just wars, thereby taking possession of new provinces by the laws of war. The Roman empire is declared legitimate by St Augustine (*De ciuitate dei* V. 15–21) and by St Thomas (*De regimine principum* III. 4); Pope Sylvester I recognized Constantine the Great as emperor, just as Ambrose recognized Theodosius. Yet there seems to be no other title in law for the Romans' possession of the world

85. For this argument see *I On the Power of the Church* 5. 9 and the Glossary, *s.v. Alius*. Vitoria clearly rejects the common decretist view that the pope's role had been the determining factor in the deposition, insisting that it was the Franks who 'transferred the crown' (Muldoon 1968: 277).

86. Vitoria refers to Cortés' alliance with the independent Tlaxcaltecs against Montezuma's Aztec confederacy in 1519 (Cortés 1986: 58–72).

87. On coming to the aid of *socii* 'allies' as a justification for war (*Decretum* C.23. 3. 7 and d.p.c. 10; *ST* II-II. 188. 3 ad 1) see Barnes 1982: 778.

than the law of war, whose chief occasions were the defence and vengeance of their allies. In the same way, Abraham fought for the rights of the king of Salem and his other allies against the four kings of those lands, though he personally had received no wrong at their hands (Gen. 14).

This, then, is the seventh and last title by which the barbarians and their lands may or might have come into the possession and dominion (*dominium*) of the Spaniards.

§18 Question 3, [Article 8: An eighth possible title, the mental incapacity of the barbarians]

There is one further title which may be mentioned for the sake of the argument, though certainly not asserted with confidence; it may strike some as legitimate, though I myself do not dare either to affirm or condemn it out of hand. It is this: these barbarians, though not totally mad, as explained before (1. 6, p. 250), are nevertheless so close to being mad, that *they are unsuited to setting up or administering a commonwealth both legitimate and ordered in human and civil terms*. Hence they have neither appropriate laws nor magistrates fitted to the task. Indeed, they are unsuited even to governing their own households (*res familiaris*); hence their lack of letters, of arts and crafts (not merely liberal, but even mechanical), of systematic agriculture, of manufacture, and of many other things useful, or rather indispensable, for human use.[88] It might therefore be argued that for their own benefit the princes of Spain might take over their administration, and set up urban officers and governors on their behalf, or even give them new masters, so long as this could be proved to be in their interest.

As I have said, this argument would be persuasive if the barbarians were in fact all mad; in that case, it is beyond doubt that such a course would be not merely lawful, but wholly appropriate, and princes would be bound to take charge of them as if they were simply children. In this respect, there is scant difference between the barbarians and madmen; they are little or no more capable of governing themselves than

88. The list of 'arts' required for a civil society, and the reference to eating raw and 'uncivilized' food below, are based on the Aristotelian criteria for distinguishing civil from barbarian societies; the passage thus forms a counterpart to 1. 6 (see footnote 35 *ad loc.*). In returning to the question of natural slavery, Vitoria 'approached the subject from the other end, listing this time not what the Indians had in common with civilized men, but what they did not have' (Pagden 1981b: 80–1; see also Pagden 1986: 79–93).

madmen, or indeed than wild beasts. They feed on food no more civilized and little better than that of beasts. On these grounds, they might be handed over to wiser men to govern. And an apparent confirmation of this argument is if some mischance were to carry off all the adult barbarians, leaving alive only the children and adolescents enjoying to some degree the use of reason but still in the age of boyhood and puberty, it is clear that princes could certainly take them into their care and govern them for as long as they remained children. But if this is admitted, it seems impossible to deny that the same can be done with their barbarian parents, given the supposed stupidity which those who have lived among them report of them, and which they say is much greater than that of children and madmen among other nations. Such an argument could be supported by the requirements of charity, since the barbarians are our neighbours and we are obliged to take care of their goods.[89]

But I say all this, as I have already made clear, merely for the sake of argument; and even then, with the limitation that only applies if everything is done *for the benefit and good of the barbarians, and not merely for the profit of the Spaniards*. But it is in this latter restriction that the whole pitfall to souls and salvation is found to lie.

In this connexion, what was said earlier about some men being natural slaves might be relevant (1. 1). All these barbarians appear to fall under this heading, and they might be governed partly as slaves.

Conclusion

THE CONCLUSION OF THIS WHOLE DISPUTE appears to be this: that if all these titles were inapplicable, that is to say if the barbarians gave no just cause for war and did not wish to have Spaniards as princes and so on, *the whole Indian expedition and trade would cease*, to the great loss of the Spaniards. And this in turn would mean a huge loss to the royal exchequer, which would be intolerable.

1. MY FIRST REPLY is that *trade would not have to cease*. As I have already explained, the barbarians have a surplus of many things which the Spaniards might exchange for things which they lack. Likewise, they have many possessions which they regard as uninhabited, which are open to anyone who wishes to occupy. Look at the Portuguese, who carry on

89. This claim was rejected by Melchor Cano (see the Introduction, p. xxvii) on the grounds that no precept of charity could involve coercion (Pagden 1987: 89).

a great and profitable trade with similar sorts of peoples without conquering them.

2. MY SECOND REPLY is that *royal revenues would not necessarily be diminished*. A tax might just as fairly be imposed on the gold and silver brought back from the barbarian lands, say of a fifth part of the value or more, according to the merchandise. This would be perfectly justifiable, since the sea passage was discovered by our prince, and our merchants would be protected by his writ.

3. MY THIRD REPLY is that it is clear that once a large number of barbarians have been converted, it would be neither expedient nor lawful for our prince to abandon altogether the administration of those territories.

7

ON THE LAW OF WAR

(De Indis Relectio Posterior, sive de iure belli)

As the first paragraph makes clear, Vitoria wrote this relection as the continuation of On the American Indians. *The colophon of the scribe Juan de Heredia states that it was delivered a few months later, on the last day of the summer term, 19 June 1539. An interesting and possibly authentic variant reading in the first paragraph of* L *states that the relection was read in the schools 'at the same time as another relection' (see footnote 2 below). This detail seems too circumstantial for Boyer to have invented; if genuine, it provides a concrete reason, lacking from the anodyne version of the passage preserved in* PS, *for the relative brevity of* On the Law of War.

As usual, P *is the basis of this version; a selection of the numerous additions and changes in* LS *(many of which, to judge by the one recorded in footnote 28, were made after Vitoria's death) have been noted. The recent critical edition in the Corpus Hispanorum de Pace series (Vitoria 1981) provides full details of variants in these and other witnesses (notably* V*), as well as exceptionally full notes on sources, which are supplemented by Barbier's excellent doctrinal commentary in Vitoria 1966.*

The division of the relection into two parts, of one and two questions respectively, follows Vitoria's own indications, in the divisio *at the end of the Introduction and the paragraphs at the end of* 4. 1 *and* 5. 5 *respectively.*