Mediæval Philosophical Texts in Translation

No. 34

Roland J. Teske, S.J., Editor

Francisco de Vitoria, O.P.

RELECTION ON HOMICIDE

&

Commentary on Summa theologiae II^a-II^{ae} Q. 64
(Thomas Aquinas)

Translated from the Latin
with an Introduction and Notes

by

John P. Doyle

MARQUETTE
UNIVERSITY
PRESS

Library of Congress Cataloguing in Publication Data

Vitoria, Francisco de, 1486?-1546.
[De homicidio. English & Latin]
On homicide / by Francisco de Vitoria ; [containing] Relection on homicide & Commentary on Summa theologiae IIa-IIae Q. 64 (Thomas Aquinas) ; translated from the Latin with an introduction and notes by John P. Doyle.
p. cm. — (Mediaeval philosophical texts in translation ; no. 34)
Includes also English translation of Aquinas' Summa theologiae, IIa-IIae, Qu. 64.
Includes bibliographical references.
ISBN 0-87462-237-9 (pbk.)
1. Homicide (Canon law) I. Doyle, John P., 1930-
II. Vitoria, Francisco de, 1486?-1546. Quaestio sexagesimaquarta De homicidio. English & Latin. 1997. III. Thomas, Aquinas, Saint, 1225?-1274. Summa theologica. Secunda secundae. Questio 64. English. 1997. IV. Title. V. Series.
LAW
262.9'35—dc21 96-51253

MARQUETTE UNIVERSITY PRESS
MILWAUKEE

The Association of Jesuit University Presses

Dedication

To Mary Gale

With Love and Gratitude

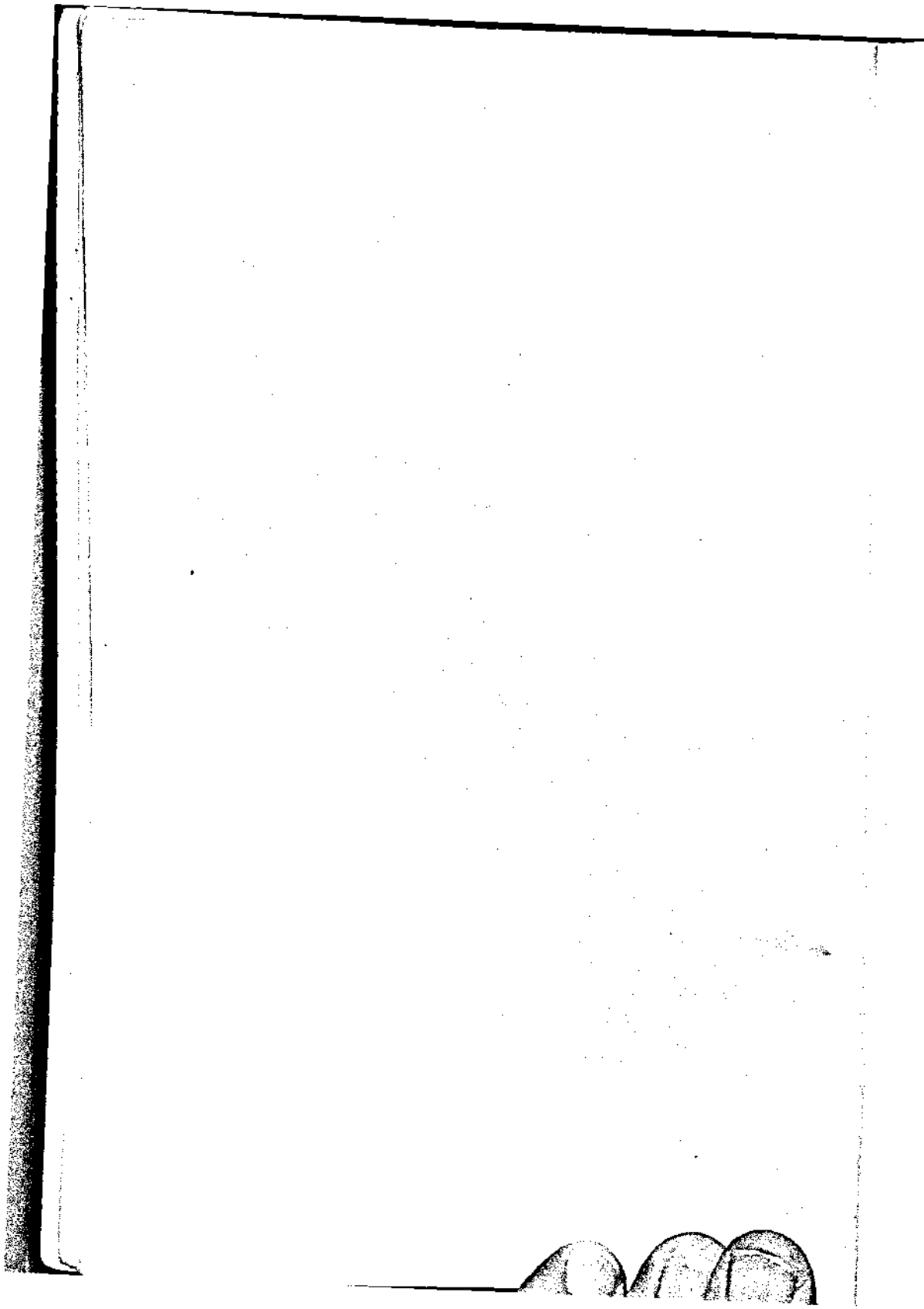


Table of Contents

Foreword

There are no more current topics of ethical debate than euthanasia, assisted suicide and abortion—more generally, the taking of innocent human life, as well as the morality of capital punishment. Recently, Pope John Paul II in his encyclical "The Gospel of Truth" (Evangelium Vitae, 1995) has declared,

> By the authority which Christ conferred upon Peter and his successors, and in communion with the bishops of the Catholic Church, I confirm that the direct and voluntary killing of an innocent human being is always gravely immoral. This doctrine, based upon the unwritten law which man, in the light of reason finds in his own heart (Cf. Rom 2:14-15) is reaffirmed by the Sacred Scriptures, transmitted by the tradition of the church and taught by the ordinary and universal magisterium (n. 57).

Furthermore, the pope applies this general principle to the cases of abortion (n. 62), euthanasia (n. 65), and suicide (n. 66). On the other hand, he concedes that capital punishment may in extreme cases be necessary to defend the order of justice in society, although, "Today, however, as a result of steady improvements in the organization of the penal system, such cases are very rare if not practically nonexistent."

These very solemn statements, although they are not in the form of infallible pronouncements, are clear papal assertions that these doctrines havealways been recognized in the Church as part of its ordinary and universal and therefore infallibly true teaching. This is also witnessed by their inclusion in *The Catechism of the Catholic Church* (1994, cf. nn. 2268-2283) after consultation of the entire episcopate.

A few years ago I had the privilege of participating in one of the official Catholic-Protestant dialogues, the topic of which was these same issues. During the course of the dialogue the Protestant participants expressed surprise that the Catholics had such elaborately developed views on these topics concerning which the Biblical texts seemed so diverse and inconclusive. I was assigned the task of preparing a paper on the history of the doctrinal development in the Catholic tradition of the opposition to suicide and euthanasia. In doing so I discovered the excellent treatise *De Homicidio* of the Jesuit theologian Cardinal Juan de Lugo (1583-1600). I later mentioned this to John Doyle, whom I knew to be a specialist on the Jesuit philosophers of Baroque scholasticism, and he said, "Oh you must consult your Dominican Francis Vitoria who is the real source of these ideas!"

Therefore, I am very happy to see that Professor Doyle has made Vitoria's thorough analyses of this basic moral topic, still so much debated in our own

times and so central to the Catholic moral tradition, available in Latin and in an accurate translation, along with a brief biography and a very helpful commentary. Certainly Vitoria did not say the last word on these issues. Some of his opinions suffer from his historical limits. For example, he discusses whether the state might permit a husband to kill his adulterous wife, but not whether it might permit a wife to kill an adulterous husband! On a few points he seems to have changed his own mind. Nevertheless, the penetrating clarity of his moral reasoning is for the most part still valid and highly instructive.

What is especially noteworthy is that Vitoria, although he had studied with the famous nominalist John Major, is genuinely a Thomist, not a nominalist, a voluntarist, or legalist. Although he does not neglect the role played by positive law in moral decision, he seeks always to ground his reasoning in the natural law as a participation in the Divine Law, that is, in the reasoned conformity of human action to the requirements of God-given human nature.

Professor Doyle has not merely contributed to historical scholarship by this fine publication, but to the solution of the grave moral problems of our times by making available to us this model of sound ethical reasoning.

Benedict M. Ashley, O.P., S.T.M.

Introduction

I. Vitoria's Life, Work and Influence[1]

The earliest birthdate proposed for Francisco de Vitoria[2] is 1480.[3] Other dates which have been suggested include: 1483, 1486, 1492, and 1493.[4] Most probably, he was born in 1492[5] of a Basque family in Burgos. His father was Pedro de Vitoria and his mother was Catalina de Compludo, whose family generations back had likely been converted from Judaism.[6] He had two brothers, Diego who would, like Francisco, later become a Dominican, and Juan who married and became the father of a Jesuit, Juan Alfonso de Vitoria.[7]

If the 1492 date is correct, then Vitoria possibly at age nine in 1501 entered the Dominican convent of San Pablo at Burgos. Here he studied Latin and Greek and made his formal profession as a Dominican most plausibly in 1506. In 1509 he was sent by the Dominicans to the University of Paris to take academic degrees, first in arts and then in theology.[8] He was in Paris until 1523.

Although much reduced from what it had been in the thirteenth century, Paris was still the first ranking university in Europe. Both in arts and theology, the dominant thought in its schools was nominalistic. At the turn of the sixteenth century, the university was undergoing a strong revival driven by religious and also humanistic forces.[9] This revival flourished most especially in two colleges attached to the Sorbonne, namely, the College of Montaigue and the Dominican College of St. Jacques. At Montaigue (where Desiderius Erasmus [ca. 1466-1536] and later Ignatius of Loyola [1491-1556] studied) reform had been initiated by John Standonck (1443-1504).[10] Among others there was the famous Scottish nominalist, John Mayor (1469-1550) — who taught first in arts (logic and philosophy) and then in theology. Disciples of Mayor at Montaigue included Erasmus, for whom Vitoria in Paris had great admiration, Peter Crockaert (ca. 1460/70-1514) and Jacob Almain (ca. 1480-1515).

When Vitoria entered the College of Saint Jacques, it was far along the path of its reform, begun under the rigorous guidance of Jean Clerée, O.P. (1455-1507).[11] Within its walls were over three hundred friars, most of them students from Dominican provinces outside France.[12] Vitoria's most important teachers in this period were the Spaniard, Juan de Celaya (ca. 1490-1558),[13] who taught arts in a nominalist fashion at the College of Coqueret, and the Fleming, Peter Crockaert. Coming from Montaigue, Crockaert had joined the Dominican order in 1503 and had gone on to teach first philosophy and then theology at St. Jacques. It was Crockaert who in 1507 inaugurated at Paris a practice which Cajetan (a.k.a. Tommaso de Vio [1469-1534]) and Ferrara (Francesco de Silvestri [ca. 1474-1528]) were following about the same time in Italy, viz. employing the *Summa Theologiae* of St. Thomas Aquinas

as the base of their lectures. In addition to Crockaert, another of Vitoria's St. Jacques teachers who exercised much influence upon him was Jean Feynier (Fenarius — d. 1538), one of the most learned men of the time and afterwards a Master-General of the Dominicans.[14] It was probably from Feynier that Vitoria took the model for his own teaching style and his interest in current issues. And most likely it was Feynier who recommended Vitoria to the Dominican Chapter General at Genoa in 1513 for a position in Paris lecturing on theology.[15]

Complying with a mandate of the Chapter General,[16] Vitoria, while still a student (i.e. as a "bachelor sententiarius"[17]), began his teaching at St. Jacques in 1516-1517. For this he used the *Sentences* of Peter the Lombard, which had from the twelfth century on been the standard text for theological instruction,[18] and whose use had been reaffirmed by the Genoa Chapter, under the Master-Generalship of Cajetan. However, before he left Paris Vitoria was, like Crockaert, using the *Summa Theologiae* for his lectures.[19]

It was during this first period of his teaching that, under Crockaert's direction, Vitoria edited and wrote a preface for the Second Part of the Second Part (II^a-II^{ae}) of the *Summa Theologiae* of Aquinas, published at Paris in 1512.[20] He did other editing work on the *Sermones dominicales* of Pedro de Covarrubias. O.P. (d. 1530), which was published in two volumes at Paris in 1520.[21] The next year he worked on and wrote a preface for a new four volume edition of the *Summa theologiae moralis* of Antoninus of Florence (1389-1459).[22] Antoninus was canonized in 1523 and in the years that followed, his *Summa* exercised great influence on Vitoria's thinking.[23] In 1521-22, Vitoria also cooperated on a three volume Parisian edition of the *Dictionarium seu repertorium morale* of the Benedictine, Pierre Bersuire (1290-1362), for which edition again he wrote a preface.[24] The elegant Latin of Vitoria's prefaces bears the stamp of his early lessons learned well at San Pablo.

On the 24th of March, 1522, having completed his studies, Vitoria received his licentiate in theology from the University of Paris and then on June 21st of the same year he was awarded his doctorate.[25] It was most probably also in that year that he journeyed to visit relatives in Flanders, which place he mentions a number of times in his lectures after. Sometime before, at a date uncertain for us, he had been ordained a priest.[26]

In 1523 Vitoria returned to Spain to teach theology at the Dominican college of San Gregorio in Valladolid.[27] Two years later, having been proposed by the Dominicans as their candidate for the principal chair of theology (*Cátedra de Prima*) at the University of Salamanca, he was elected to it by a large majority of students voting.[28] At this time, he took up residence at the Dominican convent of San Esteban in Salamanca. There his first lectures were on the Second Part of the Second Part of the *Summa*. In this, he introduced to Salamanca Crockaert's substitution of St. Thomas for the Lombard.

Yet another innovation which Vitoria introduced at Salamanca was the "*dictatum*," the practice of slowly dictating his lectures in order to allow students to copy every word. Descended from the medieval custom of "*reportatio*," the *dictatum* was employed at Paris during his time there.[29] It had earlier been controversial,[30] but Vitoria had become convinced of its value and brought it back with him to Spain.[31] One very important byproduct of the *dictatum* is the confidence we can have even now in the notes of his students, which are the only form in which his lectures survive. To be sure, these notes do have defects and certainly contain many things which Vitoria would have improved if he himself had edited them for publication.[32] Despite this, the notebooks of Vitoria's students are both impressive and valuable, as may be seen from the Relection "On Homicide" and the Commentary on II^{a}-II^{ae}, question 64.

In the years that followed his election to the *Cátedra de Prima*, Vitoria was chiefly occupied with teaching theology at Salamanca. Again, his main vehicle for that teaching was the *Summa Theologiae* of Aquinas, on all of whose parts he lectured at least one time. In this, his preference lay with the Second Part of the Second Part,[33] which he treated twice: first between 1526 and 1529 and then from 1534 to 1537. But in addition to his lectures, he played a role in various theological disputes and gave expert opinions on different issues.[34] Among such disputes and issues was the case of Erasmus, accused in 1527 at Valladolid before a commission of the Inquisition. Participating in this commission, Vitoria opined that Erasmus had rashly questioned doctrines on the Trinity and the Incarnation which had been universally held up to that time.[35] With this, Vitoria adopted toward the Dutch humanist a new attitude, very different from that of his days in Paris.[36]

Vitoria also kept abreast of the political events of the day, especially those taking place in the New World. Growing out of this last was his most famous judgment on the Spanish conquest of the American Indians[37] and his connected theory of just war.[38] It is primarily on the basis of his teaching on these matters that he has often been regarded as the "father of international law."[39]

Despite his criticisms of Spanish policy toward France[40] and his condemnation of Spanish excesses in America, Vitoria remained in the good graces of Emperor Charles V (1500-58; King of Spain: 1516-56; Holy Roman Emperor: 1519-56).[41] Indeed, his favor with the emperor was an important factor in the positive reception of that condemnation and the adoption in 1542 of "The New Laws of the Indies," which has been called the "most Christian code ever promulgated in a colonial situation."[42] Again, this favor was probably instrumental in Charles personally asking him in 1545 to be in the Spanish delegation to the Council of Trent, summoned that year by Pope Paul III (1468-1549; pope: 1534-1549). Unfortunately, Vitoria's health prevented his acceding to the emperor's request. His reply, instead, was that rather than going to Trent he was on his way to "another world." In the same connection,

he wrote to Prince Philip (1526-98; King of Spain [as Philip II]: 1556-98): explaining that for the last six months he had been like one "crucified on his bed."[43] In the time that followed, the poor health with which he was afflicted for most of his life[44] worsened, his pain increased, and finally he died on August 12, 1546.[45]

Except for the mentioned prefaces, Francisco de Vitoria himself published nothing. Luis Alonso Getino has classified his literary output as follows. "Vitoria's bibliography contains three kinds of work: (1) those of other authors which he published, ... (2) those of his which others published [after his death], and (3) those which are found as manuscripts in archives."[46] The present translations were made from works in the second group.

Rather than by published work it was by his teaching that, during and after Spain's golden sixteenth century, Vitoria influenced the ethical and political thought of countless disciples. There are estimates of up to 1000 auditors attending some of his lectures.[47] He himself in one place comes close to confirming that figure.[48] But more than this, in the century that followed his death, almost all the great moralists of the age looked back to Vitoria as their foremost authority. On the Catholic side of the religious divide, starting with his successors in the *Cátedra de Prima* at Salamanca,[49] their names are an honor roll of Spanish and Counter-Reformation scholasticism.[50] But also outside Spain and Catholic circles, in the dawning age of international jurisprudence, Vitoria exercised evident influence on important figures such as Hugo Grotius (1583-1645) and Alberico Gentili (1552-1608).[51] Looking at all his influence and at the dearth of work published while he lived, it was with perfect truth that Domingo Bañez (1528-1604) would refer to him as "another Socrates".[52]

II. The Relection *"On Homicide."*

A. *"Relection."*

Literally a "re-lecture," the term "relection" refers to the practice in which professors at Salamanca were required to represent in a formal manner some topic treated in their lecture courses each year.[53] In ways a successor to the medieval *Quaestio quodlibetalis*,[54] a Salamanca relection was open to the whole university community. Unlike its medieval forerunner, however, the relection took the form of a set speech, rather than a question and reply exchange between the master and his students or those in attendance.[55] The custom was for the master to prepare his own manuscript and read from it for the space of two hours, measured by a water clock.[56] At Salamanca the practice went back to 1422 when it was sanctioned by Pope Martin V (pope: 1417-1431).[57] After Vitoria, it was continued by Domingo Soto (1494-1560) and others.[58]

B. *Vitoria's Relections.*

In all Vitoria delivered fifteen relections, of which thirteen have been printed from his students' notes.[59] These were numbered as twelve and originally published in 1557 at Lyons by the French printer, Jacques Boyer. Inasmuch as Boyer was an outsider, and not even a Spaniard, his action annoyed and embarrassed the Dominicans at Salamanca who after Vitoria's death had set up a commission to edit and publish his work. This commission had been inactive but upon the advent of Boyer's volumes it was revived with the aim of using more and better manuscripts to bring out an edition much superior to that of the Frenchman. However, the new edition, which appeared at Salamanca in 1565, was basically a reworking of Boyer's effort. Connected with this, it has been the subject of debate and different judgments among modern scholars. Getino, for example, regarded it as quite inferior to the first edition on which it is based.[60] Vicente Beltrán de Heredia, on the other side, thought it very much better than the first edition.[61] Teófilo Urdánoz is somewhere in between and has concluded that both editions should be used to make a modern critical edition.[62] In any event, since these first two editions there have been more than a score of reprints in whole or in part of Vitoria's relections, none of which notably change the first two editions.[63]

C. *The Text of the Relection "On Homicide."*

Although it was third in chronological order among Vitoria's relections, "On Homicide" was placed tenth in the logical order of Boyer, which all subsequent editors followed.[64] In addition to printed texts, the relection "On Homicide" still exists in six manuscripts. These are found in Palencia, Valencia, Granada, Rome, Seville, and Vienna.[65] Since I have not seen any of these, for text I have relied upon "the critical edition of the Latin text" (*Edición crítica del texto latino*) made by Urdánoz,[66] checking it at times against the Boyer edition which has been photographically reproduced by Getino.[67]

The text of "On Homicide" bears the signs of its being hastily composed after a period in which Vitoria was ill. He himself tells his audience that he was not allowed to postpone its delivery. This should be understood against the background of a system of fines which was then in force at Salamanca. The masters were required to give relections and were allowed to evade or postpone them only in the most exceptional circumstances. Short of that they were subject to a large fine of ten doubloons (3650 maravédis).[68]

The most obvious signs of the relection's hasty composition are three. First is the fact that Vitoria raises an opening question but afterwards addresses it only in part. Second is the fact that at the end of the relection he has raised seventeen objections to his position but has overlooked one of them (number sixteen) in his replies. And third, unlike his practice in other relections, in the

relection, "On Homicide," Vitoria has made little attempt to give exact references to texts and persons which he mentions or is reflecting.[69]

D. *Exposition of and Thoughts upon the Relection "On Homicide."*

The following exposition and thoughts, as well as their counterparts with respect to II^a-II^{ae}, q. 64, are not meant to be exhaustive. While at times they will engage wider issues, their chief purpose is to help readers without much background in Scholastic thought make their way through Vitoria's thinking on a multifaceted subject which is perennially interesting in itself as well as important for understanding much that he wrote about the conquest of the New World and just war in general. For more than main line help readers are referred to the extensive notes attached to both this relection and the commentary on question 64.

Opening "On Homicide," Vitoria asks: *Is it the act of a brave man to kill himself or, when he could save his life, to embrace death? And when and to what extent is this either lawful or laudable?* He will answer that "while it is always sinful to inflict death upon oneself, to suffer death patiently and to undergo it freely is generally counseled and sometimes commanded." The total thrust of the relection, which to my knowledge is the most extended treatment of suicide up to the time of its appearance, will be to prove the first part of this answer: that it is always sinful to bring about one's own death. In proving this first part, Vitoria will proceed in four steps.

First, he will argue that suicide is always sinful because it contradicts a God-given natural inclination to preserve one's life. This will occasion a metaphysical discussion of the basic goodness of our natural inclinations and give Vitoria an opportunity to voice his Catholic optimism about human nature. This optimism will appear in other parts of his work and will undoubtedly play a role in his willingness to accept the pagan Indians of the New World as by nature persons, masters of themselves and their possessions, and in this equal to Europeans.[70] In addition, the first argument will allow Vitoria to speak of the power of God and to separate himself from the nominalist position of Gabriel Biel (ca. 1410-95), which maintained that God could create natures without their essential properties or inclinations.[71]

Second, Vitoria will argue that suicide is wrong inasmuch as it is a form of homicide and is therefore forbidden by the command of God, "Thou shalt not kill." This immediately provokes discussion of just what is forbidden by God's command, a discussion centering upon capital punishment.

Certain people,[72] he says, understand the commandment, "Thou shalt not kill," in such way that it prohibits the killing of any human being, whether such killing be effected by private authority or by public authority and whether the one killed be guilty or innocent. But then, they say, by divine positive law there are some exceptions, some instances in which God has explicitly per-

mitted killing. In this way, they think it is allowed by divine exception from the general rule that a murderer be justly killed by order of a magistrate.

This, in Vitoria's view, is wrong. The Decalogue commandment is a simple re-statement of natural law, which as such reflects eternal law and does not admit of exceptions even by God himself. Accordingly, if capital punishment or other killing is permitted it cannot be by way of exception. The truth rather is that the commandment does not prohibit all forms of homicide. It does not, for instance, prohibit killing another man in self-defense. For by the natural law one has the right to defend himself even at the cost of his attacker's life. But the question is whether it is permitted to kill another apart from such self-defense. Vitoria's answer is *yes*, but it is carefully hedged.

As just said, Vitoria regards the command of the Decalogue as a re-statement of natural law. He further regards it as first and foremost forbidding the intentional killing of an innocent man. But more than this, it is wrong for a private person intentionally to kill even a guilty man, except when this is required for self-defense. However, it is permitted to public authority to kill a guilty man who is pernicious to the republic.

In our own time opinions are divided on the issue of capital punishment. The range runs all the way from those whose philosophy might seem little different from the *lex talionis* to those who would regard the death penalty as nothing more than "state killing" or even legally sanctioned "state murder." Indeed, among the latter the idea of any state executing a capital offender often is painted as worse than the original crime which may have provoked it. For while that crime may have taken place in a moment of fury or of ungovernable passion, the execution of a criminal takes place in a deliberate, calm, and dispassionate way. Moreover, in many instances such a criminal (even granted that he has had a fair trial and is truly guilty) is now no longer in any realistic sense a threat to society. Again, statistics are often cited to the effect that the death penalty has no demonstrable deterrent effect. Accordingly, the argument runs: any execution by the state is nothing much more than an act of vengeance on the part of public authority, nothing more than a cold blooded and indefensible murder.

On the other side, until very recently most philosophers and theologians recognized the difference between killing the innocent and killing the guilty. They also saw a difference between public and private killing. They recognized that while the latter was wrong and to be condemned, the former was at least tolerable and in some cases necessary. In the sixteenth century, virtually all responsible opinion was in this vein. For example, the *Catechism* of the Council of Trent (1545-1563) held that the execution of a criminal by legitimate public authority was not a sin against the Fifth Commandment.[73] Trent represented in this the definitive teaching of the Catholic Church, which went back through the Middle Ages[74] to early Christian times[75] and contin-

ues in principle to the present day.[76] This teaching and this tradition is clearly in the thought of Vitoria.

Moreover, in the thought of Vitoria the teaching finds its natural setting. For following Aristotle,[77] Vitoria views human beings as political by nature, which for him is to say that human beings naturally incline toward life in a republic and this natural inclining comes from God. While the form any republic may take is a matter of choice for its citizens,[78] civil society as such is natural and necessary.[79] It has its own ultimately God-given place and finality.[80] Individual human beings thus are not social atoms who may or may not come together through some arbitrary agreement which may be completely abrogated by any one or all together.[81]

To be sure, there is in this a certain inequality between the state and individuals composing it. For Vitoria, the state and the individual citizens who form it are not like so many peas in a pod, equal in all ways. While from one point of view individuals, or better *persons*, are superior to the state (inasmuch as the state exists for the good of persons), from another viewpoint, precisely as they are parts making up a wider whole, individuals, even persons, have a certain subordination to that whole. Indeed, at least in some way, man belongs, as Aristotle earlier put it, more to the republic than to himself.[82]

Notwithstanding a recent translation of a passage from his relection, "On Civil Power,"[83] Vitoria does not regard the original condition of men as wolves to one another.[84] Rather, as he indicates in the present relection, "On Homicide," there is a natural affinity, sympathy, or even love which obtains among all human beings. At the same time, each human being, each person made in the image of God is in charge of himself, the lord of his own actions.[85] That is to say, each person is self-determining and left to himself would simply go in his own direction. Accordingly, if the common and natural republic is going to arise and be maintained, there needs be some public authority.[86]

While public authority has a directive function, which will eventuate in laws that bind in conscience,[87] it must also have, Vitoria thinks, coercive power to enforce such laws and to defend as well as preserve the common good. This is proven by reason and confirmed by Scripture.[88] This power extends to the task of defending the state or the republic against external enemies. That is to say it includes the right to make war and even to kill such enemies. It also includes the power and the right to conscript citizens to fight such a war — with the attendant risks of their killing or being themselves killed. In this, the state can justly subsume basic rights of its citizens.

Vitoria allows that part of the natural public power of the state extends to the punishment not just of external persons but of those within who do wrong and in that abridge the rights of their fellow citizens, as well as threaten the common good of peace and order within the state itself. Such punishment can be different as offenses and circumstances warrant. Thus some offenses

will merit fines or imprisonment. But others will deserve corporal punishment, or even torture and death.

In all of this, there is little appeal to punishment as a deterrent. Nor is the corrective function of punishment stressed, at least not as corrective or rehabilitative for the one punished. Preeminently the justice at work here is a kind of retributive justice. While there is an element of vengeance in this, it is not simply that. Instead, it is a correction in the sense of righting the balance in society which has been disturbed by a wrongdoer.[89] As such it is medicinal, but primarily for society rather than for the individual wrongdoer.[90] Vitoria sees a parallel in this between the capital punishment of a pernicious member of society for the good of the whole society and the amputation of a diseased limb for the good of the whole body.

Vitoria's third proof that suicide is sinful hinges on the assertion that one who kills himself injures the republic and in this does serious wrong. This is his shortest proof, which is surprising in view of his deep and abiding interest in the political nature of man and man's natural participation in the republic, an interest which we have just treated and which is at the base of his whole juridical philosophy.[91]

His fourth proof may also surprise modern readers. On its face, it might seem to us to say one thing, but Vitoria intends another. His reasoning is that suicide is wrong because it goes against charity. When modern readers see this, their first thought may be that Vitoria is talking about the sadness and pain which suicide so often brings to surviving family members and friends. However, this is not his point. Instead, he is thinking about an objective order of charity[92] in which we are commanded to love our neighbors as ourselves with the obvious entailment of a proper self-love which would be violated by suicide.

This last comes, with other things, to light in the remainder of the relection where he raises seventeen (and answers sixteen) arguments against the conclusion that suicide is always sinful. The first fourteen of these arguments, he tells us, do not involve a question of anyone intentionally and deliberately killing himself, but only unintentionally doing so. Therefore, they can prove nothing against the proposed conclusion. Hence, one need not take them into account when he affirms that no one may lawfully kill himself with the intention of doing so. At the same time, these first fourteen arguments and Vitoria's replies do have interest.

The *first* argument claims that no one can kill himself with full knowledge and intention. The unstated obverse of this is that anyone who kills himself is not responsible because he would not be in his right mind. But rather than supporting this as a modern might do from clinical studies or statistics, the argument here is more metaphysical. The reasoning is that because the will always wills some good, no one can will the evil of not being. Hence, no one can with full volition kill himself.

To this Vitoria replies that an object moves the will only through knowledge and this is the same whether that object is truly good or just thought to be so. Because, therefore, to kill oneself, or simply not to exist, can be thought to be good, someone may kill himself with knowledge and volition. For he could make a mistake and think it to be a good for himself. More than this, one may even without any mistake will not to exist. Thus it is better for the damned not to exist than to exist as they are and they could without mistake or self-contradiction will not to exist.[93]

The *second* argument is again familiar to modern ears. One who commits suicide, it runs, does no injury to anyone — not to himself, because he is willing to end his life, nor to society, for indeed some societies grant legal permission for suicide. The main point here is further confirmed inasmuch as someone destroying his own material goods or killing his horse does no damage either to himself or to the republic. But one's own life belongs more to him and less to the republic than temporal goods or a horse. Therefore.

Vitoria answers that a man is not the master of his own life or body in the way that he is master of other things, such as his horse or his house, which he may use as he wishes without injury to anyone else. For God alone is the master of life and death. And with respect to this, man is the servant of God. Therefore, someone who kills himself does injury to God, from whom he received the great gift of life to be used and not to be destroyed. Equally, one who kills another who has asked to be killed is not immune from guilt, because that other is not the master of his life in a way that he can give permission to anyone to take it.

The *third* argument is that one is not always obliged to defend himself, for example, at the cost of an attacker's life. But the command not to preserve one's life is the same as the command not to kill oneself. Hence, if in some circumstances one is not bound to preserve his life, he may also be allowed to kill himself.

Vitoria agrees that there are many cases in which a man could preserve his life by lawful means but is not obliged to do so. Thus, he could let an attacker kill him rather than kill that attacker and send him to hell in his present condition. Vitoria adds that although a man is not the master of his own body, or of his own life, in the way that he is master of other things, nevertheless, he has some dominion and right with respect to his life, by reason of which anyone who does a man bodily harm does injury not only to God but also to that man himself. This right, then, which a man has over his own body he can laudably renounce, and he can patiently bear death, even though he has the right to defend himself.

Argument *four* says that given a case of two people with only enough food for one, it is lawful for one of them to give that food to the other — which amounts to the one's killing himself.

On the authority of Scripture and of Aristotle, Vitoria simply concedes that, in the case proposed it is lawful to give bread to another even though doing so involves the certain loss of one's own life. At the same time, he denies that such a one can in every circumstance give his food to whomever he wants. For while a son may keep his bread for himself or may renounce his right to it, he cannot simply give it to a stranger toward whom he has no obligation in preference to his father to whom he is obliged by the objective order of charity mentioned above.

The *fifth* argument is that if a slave and a king were together on a raft which could hold only one of them, it would be lawful for the slave to throw himself into the sea with the certainty of drowning in order to save the king — which means it would be lawful for the slave to kill himself.

Vitoria replies that in this case the slave could give up the raft, even though he were certain his death would result. Moreover, deliberately ignoring the social inequality between a slave and a king, as well as the public role of a king, Vitoria tells us it would be laudable to do this not only on behalf of a king, but also on behalf of any friend or neighbor. For while laying down one's life for friends is stupidity before the world, it is wisdom before God.

Argument *six* reasons that since one can submit to a lawful sentence, it is permissible for someone lawfully condemned to death by starvation not to eat food that is offered to him. Therefore, it is permissible for him to kill himself.

To this Vitoria says that such a man is obliged to eat. For, to preserve his life, he is obliged to use all means which have not been forbidden by his judge. But the judge has not condemned him, indeed he had no authority to condemn him, to kill himself by not eating, but only that he should suffer death. Thus, it is lawful for him to eat in the case advanced and evidently he is obliged to do so.

The *seventh* argument is to the effect that it is lawful for someone condemned to death not to flee even though he may have an opportunity. But in this way he is contributing to his own death, which then would make suicide lawful.

Vitoria answers that such a man is obliged to flee, for it is not part of the penalty inflicted by the judge that he remain in prison. The case here is similar to that of someone who without any reason at all offers himself to a judge to be imprisoned. For just as such a person would be doing wrong, so too, Vitoria argues, would the one who would not flee even given the opportunity.

Recalling Socrates, the *eighth* argument is that someone condemned to death by drinking poison, may lawfully do so and thus lawfully kill himself.

Vitoria's reply is that if other forms of capital punishment can be just, why not this? And in a case where unless one drinks poison the penalty cannot be otherwise imposed, there seems no reason why it would be unlawful for him

to drink it. The act itself seems similar to a condemned man climbing up to the gallows or preparing his throat for the sword. For one is not cooperating more in his own death than is the other. At the same time Vitoria will admit some probability attaching to an opposite opinion and note that there is room for disagreement on the matter.

Arguments *nine*, *ten*, and *eleven* are similar. They all argue that exposing oneself to the danger of death is on a line with killing oneself and is forbidden by the fifth commandment. Yet such exposure is at times lawful, e.g., when visiting a plague ravaged friend, when undertaking to sail in the face of danger, or when taking part in military exercises or bullfights. Equally, therefore, killing oneself should at times be lawful.

Vitoria answers that if a sick spouse or friend were to need help, one could without doubt give that help no matter what the danger to oneself. To be sure, it would seem rash to expose oneself to serious danger for no benefit. Yet, friendship and keeping faith with one's friends, are themselves a great benefit. As for navigation and military exercises, to know what is lawful one should look at what generally occurs as well as public good and evil. Indeed, navigation in face of danger is useful for the common good and, if because of danger men would be deterred from navigation, great loss would result for the republic. Something similar is true of military exercises. The republic needs trained soldiers to defend its terrritory. There are, or course, less dangerous exercises, such as horseback riding and others, which suffice to train soldiers and which should be used in lieu of more dangerous ones. However, if soldiers could not be trained without even great danger, training should not be rejected on that score. Bullfighting is not mentioned in Vitoria's reply, probably because he thought of it as manly sport in the same vein as military exercises.

Also not mentioned here, or anywhere in either this relection or the commentary on question 64, is the practice of duelling. However, touching elsewhere on a reply by St. Thomas to an objection[94] in support of the practice, Vitoria declares that duelling of itself is absolutely forbidden and condemned by Church law.[95] But while it is never licit to challenge another to a duel, Vitoria thinks it may in one case be licit to accept a challenge. For where one has been falsely accused, say of treachery, and will be killed if he does not accept a challenge to a duel, such acceptance would be lawful because it amounts to self-defense.[96]

Argument *twelve* states that monks and others lawfully shorten their lives by the rigors of austere living. But this amounts to lawfully killing themselves.

To this Vitoria says that while it is not lawful to shorten one's life, it is one thing to shorten life and another thing not to prolong it. Again, although a man is obliged not to shorten his life, he is not obliged to seek all means, even

all lawful means, to lengthen it. This is made clear by an example which in part foreshadows modern medical ethics debate about ordinary versus extraordinary means to preserve life.[97] Granted that someone knows with certainty that the air in India is more healthful and temperate, and that he would live longer there than in his homeland, he is not obliged to take the extraordinary means of sailing to India. Indeed, coming closer to ordinary means, Vitoria says he is not obliged even to go from one city to another more healthful. Specifically on fasting and abstinence, his wry opinion is that people die young "more often from luxury than from penance; for gluttony has killed more than the sword."[98]

Argument *thirteen* again anticipates current questions in medical ethics. Someone close to death, it runs, is not obliged to spend everything he has in order to regain his health. Hence, he is not obliged to preserve his own life, which obligation seems to be the same as that of not killing oneself.

Back in the sixteenth century, Vitoria answered this in a way which should be acceptable today. "Someone is not obliged to use every means to preserve his life, but it is enough to use those means which are of themselves ordered and fitting for this." Thus, in the case described, the man is not obliged to spend his whole fortune to preserve his life. From this the further conclusion is that when someone is terminally ill, "granted that some expensive drug could prolong his life a few hours, or even days, he is not obliged to buy it, but it is enough to use common remedies."

Argument *fourteen* reasons that it is lawful to endure a lesser evil in order to avoid one greater. But infamy and ignominy seem greater than death.[99] Therefore, at least to avoid these, it will be lawful to suffer death and even to kill oneself.

Vitoria answers that life is a greater good than temporal things such as glory, honor, and reputation. Hence, they sin seriously who kill themselves for these, as do also they who put their lives in great danger simply for these.

The *fifteenth* argument says it is not self-evident that to kill oneself is wrong. For suicide has been praised by many who have been reputed to be wise. Therefore, at least those will escape blame who think that by killing themselves they are acting in a brave and laudable way.

Relating this to persons like Brutus, Cato, and Decius, Vitoria asks whether they could without fault not have known that suicide was unlawful. In answer he says that there is no greater problem here than with other divine commandments. For many divine commandments (e.g., those regarding fornication and revenge) were formerly observed among pagans and later became unknown to them — and about these commandments no responsible theologian in Vitoria's time would allow invincible ignorance. But clearly, he says, in the natural light of reason it could be known that suicide is wrong. For philosophers taught this, as evidenced by Aristotle saying that to inflict

death on himself is not the act of a magnanimous man, but rather of one who is pusillanimous and not able to bear the burdens of life.

Argument *sixteen* says that certain saints, when they were tyrannically condemned to be burnt to death, of their own volition hurled themselves into the fire. Therefore, it is lawful to kill oneself. Vitoria gives no reply to this argument in the relection "On Homicide." However, he will return to it in his Commentary on II^a-II^{ae}, qu. 64.

Argument *seventeen* asserts that persons like Samson killed themselves and then were numbered among the saints. Thus, in their instance suicide was not wrong.

Vitoria's answer agrees with St. Augustine that Samson was excused because he acted as moved by God. However, one might also employ a double effect reasoning and say that Samson did not intend to kill himself, but instead intended to crush and kill his enemies, in the wake of which his own death followed. And this seems lawful without special inspiration from God. For who doubts that someone in battle, or defending a city, could undertake an action for the welfare of his homeland and for the detriment of its enemies, even though it would involve his own certain death?

III. The Commentary on *Summa Theologiae IIa-IIae, qu. 64, aa. 1-8.*

A. *Vitoria's "Lectures."*

1. *General Description.* As we have them, Vitoria's lectures are redactions of his classroom presentations over a period of fifteen years at Salamanca. Their remote origin is in notes which he composed for his classes, though he never actually read them aloud.[100] Regretably, these original notes have perished. In their place, we must rely on other notes, which exist in manuscript and which are of two types: "academic" and "extra-academic." The academic notes are those of Vitoria's students, who intelligently, perseveringly, and carefully transcribed his dictation. First intended for personal use, these notes were later given or sold to other students and to persons outside the academic community. In time, they were copied by scribes and even spread commercially. Thus there arose extra-academic manuscripts containing Vitoria's lectures. While these latter may frequently appear better, they are in fact of less value than the academic manuscripts, inasmuch as they stem from persons often unfamiliar with the doctrine and the language of Vitoria.

As for the original copies of Vitoria's students, their value varies depending on the intellectual qualities and the energies of those producing them. Most tend to be mere summaries of what the master said, but some reproduce this almost word for word. Among the latter, the most outstanding is the report left to us by Francisco Trigo[101] of the three courses Vitoria gave on the *Secunda secundae* in the years 1534-1537.

2. *The Manuscripts.* Student notes of Vitoria's lectures were never that numerous. From his first seven years at Salamanca there remains only one probable transcription of his 1526-28 exposition of the II^{a}-II^{ae}, plus work redacted in 1541 and published in 1560 by Tomás de Chaves, which corresponded to Vitoria's 1529-31 classes on the fourth book of Lombard's *Sentences.* In a 1565 edition of this work Chaves noted that Vitoria himself had read the redaction of 1541 and had approved it.[102]

Of Vitoria's lectures from 1533 on there were more manuscripts, but today there remain only about two dozen total manuscripts for both the *Lectures* and the *Relections.* The largest group of these come from acquisitions collected by Cardinal Ascanío Colonna (d. 1608) during his studies at Alcalá and Salamanca between 1577 and 1584. These were later deposited in the Vatican Library.[103]

3. *Lectures on the Second Part of the Second Part of the Summa.* Vitoria lectured twice at Salamanca on the II^{a}-II^{ae}, first in 1526-1529 and then in 1534-1537. As mentioned, the report left to us by Francisco Trigo of the three courses given in the years 1534-1537 is the best we have from Vitoria's students.[104] Trigo's manuscript has been used in our century by Vicente Beltrán de Heredia as a basic text to publish six volumes of Vitoria's lectures. Of these volumes the first five follow the Trigo notes, while the sixth also incorporates material on the First Part of the Second Part (I^{a}-II^{ae}) of the *Summa* plus fragments of two Relections from other copyists.

B. *On IIa-IIae Question 64, Articles 1-8.*

1. *A General Description and Date of the Commentary.* In the Middle Ages there were basically two styles of commentary on received texts. One was "by way of question" (*per modum quaestionis*) and the other was "by way of comment" (*per modum commenti*).[105] Vitoria's work combines both styles. Originally delivered in Latin with Spanish phrases interspersed,[106] it is commenting on the text of St. Thomas; but at the same time it raises and answers questions, many of them outside the purview of Aquinas.

As has been said, the Commentary on II^{a}-II^{ae} of which the present text is a part stems from the years 1534 to 1537. More specifically, Vitoria's lectures on question 64 were copied by Trigo most likely in January of 1536.[107] Apparently, Vitoria did not comment upon Aquinas' short prologue to question 64, which locates the treatment of homicide within the wider treatment of justice, i.e., as a violation of commutative justice.

2. *Exposition of and Thoughts on Articles One to Eight.*

(a) *Article One,* going much broader than the matter of the relection, asks whether it is unlawful to kill anything at all. Vitoria begins his commentary

with a statement of two conclusions from the body of St. Thomas' text. First: inasmuch as the less perfect exists for the more perfect, it is lawful for human beings to use all irrational things for human purposes. Second, for the unstated same reason, it is lawful to use plants and grasses for the sake of animals.

But granted that men may kill animals for food, can they kill them for any other purpose? Vitoria answers, *yes*. For example, they can kill animals for their hides. Again, the governing thought is that the existence of the less perfect is ordered toward that of the more perfect.

What, however, should be said about men killing animals for no purpose or for no benefit resulting from their death? Vitoria's answer, which would be out of fashion today, is twofold. First, because unlike human beings, animals have no rights (*jura*), they cannot suffer the deprivation of rights which is injury (*injuria*).[108] Nor does their killer commit any sin in their regard. Second, while animals do not belong to themselves, they do belong to men. Thus, if they are killed, even though there is no injury to them, there may be injury to other men who own them.[109] Such injury would be more or less, depending on the character and extent of the killing involved.

This immediately leads to the question of hunting for sport. Is it lawful to kill animals for pleasure? For Vitoria, following Aristotle, hunting is of itself lawful and honorable, and thus the pleasure it affords needs no justification. However, it may not always be lawful or respectable for everyone. Specifically, as a matter of Church law, clerics may be barred from the custom of hunting, particularly if this involves unseemly running and shouting.

A question about whether wild animals belong to a hunter who kills them gets into issues of Roman and Spanish law, issues which anticipate some touched by game and property laws today. Vitoria also uses such questions in ways to define the political or legislative power of the emperor, kings, and nobles in his own time. As usual, he gets down to cases — here about such things as common property, ownership, enclosures, the damage done by animals which escape from them, and the restitution to which their owners will be obliged.

(b) *Article Two* asks whether it is lawful (according to moral law) to kill sinners. St. Thomas' reply is summarized in one conclusion: it is lawful. Though Vitoria does not explicitly say so here, the principle dictating this conclusion is the same as that governing Aquinas' reply in Article One — the imperfect is ordered to the more perfect.[110] But individuals as parts are imperfect when compared to the whole community. They are in this similar to bodily members compared with the whole body.[111]

By way of clarifying Aquinas' conclusion, Vitoria again takes up the Fifth Commandment and asks how it should be understood. His answer is that it does not forbid the killing of a dangerous man by public authority — which

once more raises the question of capital punishment. It also sets Vitoria apart from Duns Scotus, who maintained that the commandment applied to all killing of human beings but that God had made exceptions to its universal sweep. Against this, Vitoria argues that to kill murderers and certain other wrongdoers has always been allowed by natural law and therefore such killing needed no exception by God.

Another interpretation of the Commandment is that one may not by any authority, public or private, kill an *innocent* person. By implication then it would be generally permissible to kill a guilty person. But Vitoria says that this killing too is forbidden in some instances. Thus, the killing of even a guilty person is forbidden (at least ordinarily) to those acting on private authority.

Closer to the truth, he thinks, is an opinion maintaining that this commandment prohibits killing by private authority but permits killing by public authority. Yet Vitoria demurs, for the reason that however great a public authority may be it cannot rightly kill an innocent person. Also no public authority may kill a person who is guilty of only a minor transgression. Again, a private person acting with moderation in the special case of self-defense needs no public authority to kill his attacker.

Vitoria himself says that the command, "Thou shalt not kill," is a matter of natural law. As such, it was always the same and it could never be rescinded by any positive law, whether human or Divine. Accordingly, against Scotus, if it was ever lawful to kill a murderer, a thief, or an adultress, this cannot be by Divine exception — but only because it was never against this commandment.

What the Fifth Commandment then forbids and what it permits is as follows. First, it forbids only a homicide which is of itself evil — regardless of whether such a homicide be of a guilty or of an innocent person, and whether it be by public or private authority. Second, it forbids the intentional killing, either by public or private authority, of a man who is innocent. Third, natural law and this commandment, which is its expression, permit the intentional killing of a guilty man who is dangerous or harmful to the republic, but only by public authority. Fourth, both natural law and this commandment forbid every other intentional homicide.

This leaves further questions which Vitoria will pursue in articles to come. But at least one difference at this point between him and St. Thomas is worth mentioning. In his reply to the third objection in this Article, Aquinas has argued for killing a sinful man because such has abandoned his humanity for the status of a beast and like a beast he may be disposed of for the good of others. Surprisingly, in view of his extended commentary on Article One,[112] Vitoria has not taken this up in his commentary here. I have no explanation for it but I find the fact remarkable.

(c) *Article Three* asks whether it is lawful for a private person to kill a sinner. The answer of Aquinas is that this is not lawful, for wrongdoers may be killed only by public authority. To this Vitoria adds a confirmation from the fact that the penalty by which wrongdoers are punished is not from natural but from positive law and no positive law allows private persons to kill wrongdoers. This, of course, immediately raises the question whether positive law *could* allow this to private persons. Vitoria replies that positive law probably could not allow general permission for any person anywhere to kill wrongdoers without judicial forms. But even granted that such a practice would be permissible, it would not be in the best interests of the republic to encourage what would lead to a kind of social anarchy and injustice. However, in a particular case, Vitoria acknowledges legal permission to kill wrongdoers can be given to private persons. For example, he says, the king might rightfully grant permission to a son to kill his father's murderer.

This raises a further doubt about a wife taken in the act of adultery. Would it be lawful for her husband to kill her on the spot by private authority? It seems it would be lawful, because the law at the time apparently gave him permission. To this Vitoria replies that if in that case he kills his wife, the husband is sinning, no matter how much the law apparently gives him permission to kill her. The reason is that in fact the law has not given, nor could it give, such permission. For it is against the natural law, and all positive law, that even the worst person be punished and killed without a hearing. Therefore, husbands who kill their wives in the act of adultery sin most grievously.

On the question of the actual civil law in force at the time, Vitoria says that this does not give a husband permission or authority to kill a wife caught in the act of adultery. What it does rather is exempt a husband who kills a wife found in the act of adultery from the penalty for homicide. In this way, he says, the law may take into account the extenuating circumstance of a wronged man's feeling and show him leniency. On the related question of whether a judge could hand a wife tried and convicted of adultery over to her husband for punishment, even capital punishment, Vitoria believes such could be done and that the husband in that instance could without sin act as an official executioner.

A further question here concerns tyrannicide. May a private person kill a tyrant? In answer, Vitoria distinguishes two kinds of tyrant — one who is occupying territory to which he has no legitimate claim and one who is a legitimate ruler but who is governing for his own advantage and not that of the republic. It is, he says, unlawful for any private person to kill a tyrant of the second sort, although the republic could defend itself from him. As regards a tyrant of the first kind, he says, it is lawful for any private person to kill him as long as doing so will not result in greater evil for the republic. His rationale is that in killing such a tyrant a private citizen would be acting by

public authority to continue an unfinished war on the part of the republic against an outside aggressor.

(d) *Article Four* asks a question which is not treated in the relection "On Homicide." Is it lawful for clerics to kill felons?[113] St. Thomas has replied in the negative for the reason that such killing is out of line with the office of clerics and with the spirit of the New Testament. Vitoria, however, raises other legal, or even legalistic, questions.

Is Aquinas speaking of Divine or human positive law? In reply, Vitoria says that Divine law may be taken either for everything which is commanded in Scripture or more properly "for that which is established by God without human authority interposed." In this second way, the commands of the Decalogue are matters of Divine law. However, that clerics are forbidden to kill felons is a matter of Divine law in the first way. As such, even though it is found in Scripture, it has been established by the Apostles and, like the Lenten fast, it is not properly a Divine commandment but rather a positive human law.

This immediately raises another question. Can the pope dispense from this law? Vitoria's answer is that the pope can, for reasonable cause, dispense both from an Apostolic command as well as from any penalty or irregularity which the Church has afterwards attached to its violation. For the pope, he says, does not have less jurisdiction now than the Apostles had. But they would have dispensed for good reason from laws they themselves enacted. Therefore, the pope now can also do the same.

But if the pope dispenses without reasonable cause, is such a dispensation valid? It seems that it is not, for the reason that a law should be fair and an unreasonable dispensation would be unfair to those not dispensed but still bound. Yet Vitoria says that the opposite is more true — that in cases where the pope dispenses without reason the dispensation holds, even though the pope himself, and perhaps also the one dispensed, sins.

Finally in this place, after declaring that the law here applies to all clerics and not just to priests, Vitoria raises a further question about a simple (i.e. non-ordained) cleric who takes part in a just war and kills Saracens. While those taking part in a just war do not sin, nevertheless, a cleric so doing who kills Saracens is subject to irregularity or the penalty established by the Church which forbids the reception of Holy Orders or the exercise of Orders already received.

(e) *Article Five* returns to the main matter of the relection, "On Homicide," and asks: *is it lawful for anyone to kill himself?* As Vitoria sees it, St. Thomas has answered that killing oneself is unlawful for four reasons. *First*, suicide contradicts the natural inclination which everyone has to love himself and to preserve his life. *Second*, suicide is wrong because a person killing himself does injury to the republic of which he is a part. *Third*, it is wrong because

God, not man, is the master of life and death, and thus one who kills himself does injury to God inasmuch as he takes to himself the mastery that belongs to God. *Fourth*, suicide is wrong because it is against the love which everyone is obliged to have for himself. Therefore, one who kills himself would be committing mortal sin and would in this be acting against the Fifth Commandment.

Two remarks seem immediately in order. *First*, in his response to the question, St. Thomas has actually given just three reasons which correspond to Vitoria's first three here. Vitoria's fourth reason is mentioned by Aquinas, but only as part of the first reason. My guess is that Vitoria's choice to highlight it as a separate argument is rooted in the fact that while arguments two and three are based upon the injury done to the republic and to God, and there is question about whether one can work injustice or injury toward himself, suicide can be wrong for another reason, namely, that it violates the order and obligation of charity. *Second*, the four reasons given here have all more or less been given by Vitoria in the earlier relection "On Homicide," but those here are not simply congruent with the four main ways he argued in that place.

Perhaps the most obvious difference between the treatment here and that in the relection results from the fact that by this place in the commentary he has already discussed, at Article Two, the question of capital punishment. Hence there is no need to treat it again here. Instead, he will directly confront ten arguments against the general conclusion, understanding this to be that to kill oneself is always a serious sin against the Fifth Commandment.

The *first* of these arguments is the same as argument *sixteen*, which he neglected to answer in the relection. Certain saints (he mentions Vincent and Apollonia) cooperated in their own martyrdom in that they exhorted others to kill them or themselves rushed to their own death. But this would argue that at least in such cases suicide would be lawful. Supplying somewhat for his omission in the relection, Vitoria here answers part of the argument and says that what the martyrs did was not only lawful, but it was also laudable. For they did not exhort their oppressors in order to move these to evil, but in order to show the truth of faith. Moreover, since they themselves were going to suffer anyway, their exhortation of their oppressors was only a form of non-resistance. This leaves unaddressed the action of someone like St. Apollonia (d. 249) who, he tells us, "escaping from the hands of her oppressors, hurled herself into the fire that was prepared for her." To this he will return in his answer to the third argument.

The *second* argument here corresponds to argument *twelve* in the relection. Carthusian monks and others, it says, shorten their lives by works of penance and abstinence. In so doing, they are lawfully, if only by inches, killing themselves. To this Vitoria replies that while it is seriously sinful to intentionally shorten one's life, it is not sinful to intend something good, such as peniten-

tial practices, from which incidentally one's life may be shortened. In this connection, he notes that one is not obliged always to eat the best food. Nor is one is obliged to do everything possible to lengthen his life, for example, emigrate to another more habitable country. But it would hardly be lawful to shorten one's life by such harsh and unusual penance as eating only once a week.

Returning to the case of St. Apollonia, the *third* argument against the general conclusion here is that she hastened her own death and thus killed herself by leaping into the fire which her tormentors had prepared for her. Some would excuse her action as the result of ignorance. Vitoria, however, refuses to take this way out. Instead, he says, it was lawful and indeed laudable that she would hurl herself into the fire since she was going to die anyway. And she did not cooperate in her own death, since that was already decreed by her oppressors. Much the same is true regarding Saint Vincent (d. 304), who did not wait to be thrown into the fire, but threw himself in. His act (as well as that of Apollonia) was certainly praiseworthy, done to show both strengh of soul and that he was voluntarily dying for Christ. Moreover, in itself what they both did was not much different from a condemned man putting the rope around his own neck, which would hardly be a sin.

Coupled with this is another question, which corresponds to the *eighth* argument of the relection. Is it lawful for someone, such as Socrates condemned to death by poisoning, to administer the poison to himself? Vitoria's answer is that if the law requiring such a death existed not among barbarians, but within a well ordered republic, such as that of Athens in the time of Socrates, that law would presumably be just and it would be lawful for a condemned man to drink poison himself rather than wait for someone else to pour it into his mouth. This answer of Vitoria differs from that given earlier by Cajetan as is noted below in the translation.

The *fourth* argument against the general conclusion corresponds to the *fourth* argument in the relection. It reasons that suicide is lawful inasmuch as someone can lawfully give to another — say, his father, his king, or even a neighbor — food which is necessary to sustain his own life. Vitoria concedes that such a gift is lawful but he denies that it amounts to killing oneself intentionally. This occasions a question, corresponding to argument *five* in the relection, about survival and self-sacrifice in a lifeboat: could someone voluntarily give up his place, and thereby drown in the sea, to save another? Vitoria replies that it would be lawful for someone to sacrifice himself in this way — particularly if it would be someone of lesser rank sacrificing himself for someone of greater rank. Examples he gives are a slave sacrificing himself for his master, a son for his father, and a private person sacrificing himself for some public person. Strangely here he does not emphasize the neighbor mentioned above or at the corresponding place in the relection. Also strange is the fact

that he does not address the possibility of a person invested with public authority putting undue pressure on one in subjection to that authority to sacrifice his life.[114]

The *fifth* argument corresponds to the *sixth* argument in the relection. It takes the case of someone condemned to death by starvation and reasons that when he is offered food he can lawfully refuse it. But in this he would be intentionally and lawfully killing himself. Vitoria's answer here is essentially that given in the relection. A person condemned to death by starvation is not and cannot be forbidden to eat food which is available to him. Therefore, he cannot lawfully refuse such food. Vitoria adds a difference between this case and that of those in a lifeboat, or that of the martyrs, because in these other cases the persons affected will die no matter what they do but this is not so in the present case. Instead, a man condemned to starve will live if he eats offered food and he will die, by his own decision, if he refuses it.

In the same context, corresponding to argument *seven* in the relection, is a case addressed in another place by St. Thomas.[115] Take someone justly condemned to death. Is he obliged to flee if he can, and were he to do otherwise would he be cooperating in his own death? Here Vitoria's reply is that although it is lawful for such a person to flee, he is not morally obliged to do so. Instead, he may virtuously submit to the penalty imposed upon him for his crime. This differs from what he has said in the relection. In a later question, at the Thomistic place just mentioned, Vitoria will return to the same matter and will repeat what he says here.[116]

Corresponding to arguments *ten* and *eleven* of the relection are doubts here about dangerous navigation, military exercises and bullfights. Navigation in the face of clear and present danger would, he says, not be lawful for mere private gain. It can, however, be justified for the common good of the republic or for the Faith. Indeed, in this the good of the republic or of the Faith confers added legitimacy on the pursuit of private gain, which in itself is not wrong. It is easy to see in this a justification for Spaniards sailing to the New World "for God, for country, and for gold."[117]

Even though such military exercises as jousting may entail the risk of death, they are lawful says Vitoria. Ordinarily they do not result in death and the republic has need of trained men at arms. While not explicitly saying that bullfighting is a military exercise, Vitoria says that it is the same as jousting or taking part in tournaments inasmuch as it too involves minimal danger of death. The *thirteenth* argument of the relection had raised the issue of how much a sick man must sacrifice to preserve his life. Here in the commentary, the case, which has parallels in our time, is that of a rich man held captive. How much is he morally obliged to give for his life? Indeed, is he obliged to give anything? Vitoria's flat answer is *no*. Such a man is not obliged to give anything for his life and in this he is not cooperating in his own death. In-

stead, full responsibility for his death, if it occurs, rests with his captors who would intentionally act to kill him.

Again shifting ground from the relection is an argument here to the effect that it is lawful to kill oneself in order to avoid mortal sin. Argument *fourteen* in the relection had offered the same reasoning with respect to things like disgrace or the loss of one's reputation. There Vitoria had answered that life is a greater good than honor, fame, or reputation and hence those who kill themselves for these things do wrong. Here he says that since sin is a matter within one's own control the death of the body is never required in order to avoid it. Accordingly, it is never lawful intentionally to kill oneself in order to avoid mortal sin. One may, however, unintentionally expose himself to death to avoid mortal sin.

Returning at this point to the question of killing oneself to avoid disgrace, Vitoria raises the issue raised earlier in argument *fifteen* of the relection. Granted that it is never lawful to kill oneself intentionally, is this precept so evident that no one can be ignorant of it? It seems not. For Brutus and others killed themselves to avoid disgrace and they thought they were in this acting better than by staying alive. Vitoria's answer here is that absolutely such persons were doing wrong. However, softening his stand in the relection, he allows that they may be excused because of ignorance — which, of course, is to agree that the proscription of suicide is not so evident that no one can be ignorant of it.

Finally in this place, Vitoria raises again cases of persons like Samson and Eleazar, who killed themselves and who have been praised in Scripture. Vitoria's comment here is the same as that given in response to argument *seventeen* in the relection. Even without a special Divine command, it would have been lawful for Samson or Eleazar to sacrifice themselves for their people. Indeed, the intention of both was not to kill themselves but rather to kill the enemies of the republic and for this they were praised.

(f) *Article Six* asks whether in some particular case it is lawful to kill an innocent person? Vitoria follows St. Thomas to make a distinction between a man considered in his own right and a man considered in relation to someone else. Then he reduces Aquinas' reply to three conclusions which together give insight into their common position. First, it is not lawful to kill even a sinful man (and *a fortiori* one who is innocent) if we consider him just in himself. Second, if we consider a man in relation to others, it is lawful to kill him. This would, of course, have to be for some serious reason, but the point is that it is only as he is related to others that it can ever be lawful to kill another human being. Third, it is never lawful to kill an innocent man.

Immediately doubt arises. Since killing a sinful man is precisely permitted not because of his sin but rather for the good of the republic, why cannot an innocent man also be killed for the same reason? Why especially when the

killing of one innocent man might save the whole republic of which he is a part? Vitoria replies that it is never lawful to kill an innocent person, even if that person is willing to be killed. Even granted that the life of an innocent person demanded by an enemy may be necessary to save the republic, nevertheless, it is not absolutely necessary inasmuch as it hinges upon the enemy's evil demand, which is voluntary and to that extent contingent. Moreover, since evil things cannot be the means for good ends, even less can they be necessary means.

As for the argument that a person is a member of the republic and thus an innocent person may be sacrificed for the good of the republic in the way that a healthy bodily member may be sacrificed for the good of the whole body, Vitoria denies the parallel. A bodily member, he says, cannot of itself suffer injury for the reason that it has no good of its own apart from the whole body. A man, however, has his proper good to which he has a right even apart from the republic. Hence, an innocent person cannot without injury be killed simply for the good of the republic.

Against this is an argument to the effect that a king, the ruler of the republic, can in a just war send an innocent soldier to certain death, which amounts to killing him. Vitoria replies that in this instance the king is not sending the soldier expressly to die, but rather for the lawful end of fighting the enemy.

Still on the subject of war, the argument is made that it is lawful in war to intentionally kill innocent persons. This may occur in the repulse of attackers, many of whom are innocent men who are just obeying lawful orders. In answer, Vitoria denies that such persons would be intentionally killed inasmuch as they are innocent. Instead, they would be killed because they are attacking like guilty enemies, even though from ignorance they may think they are acting in a lawful manner. Were it otherwise, he says, a just war could not be waged — for the obvious reasons that there would be innocents on both sides and that it is never lawful to intentionally kill innocent persons.

Connected is a question whether it is lawful to kill innocent, even Christian, enemies when there is no reason to do so — to kill them, say, after victory has been attained. To this Vitoria replies that if it is not necessary for victory or for the recovery of possessions it is unlawful to kill innocent persons except from some accidental circumstance. However, even when victory has been achieved but safety and security are still not assured, it is lawful to kill innocent persons who have aided the enemy's cause or who have borne arms in it. This would be done in self-defense inasmuch as such persons pose danger for the victors in that they may soon rise against them.

While a position like this may sound harsh to modern ears, it should be judged in its own context. For this at least two things should be taken into account. The first is a Scriptural passage, viz., *Deuteronomy* c. 20, v. 10, where it is stated: "If when you come to take a city by storm, you first offer it peace;

if it shall accept and open its gates to you, all persons in it will be safe and will serve you for tribute. But if, however, it declines to make peace and it begins war against you, you will attack it. And when the Lord your God shall have delivered it into your hand, you will strike with the edge of the sword all in it of masculine gender, but not women and children." To see the effect of this text upon Vitoria one need only look at his relection, *On the Law of War*.[118]

A second item which ought to be taken into account here is the basic equality which would in Vitoria's time still remain between a victor and a vanquished enemy soldier. While in our time a well armed victor would enjoy an enormous advantage over a disarmed and defeated enemy, in the sixteenth century there would clearly not be the same disproportion between a victor with a sword or a clumsy firearm and say a defeated enemy with a concealed dagger. While this may not validate Vitoria's position, it may make it more understandable.

Even with regard to the Saracens, Vitoria would accept the *Deuteronomy* text just cited when it spares women and children from the sword. But he raises a question about killing such persons in an all out war. The question, which has obvious application to the wars of our own century, concerns the killing of innocent children when, for example, a city is bombarded. Vitoria's judgment is that if the war is just and it is necessary to take the city in order to pursue the war then it is lawful to kill innocent children in the process, if it cannot be avoided.

Finally here, Vitoria denies the parity between despoiling or enslaving innocent persons in a just war and simply killing them. The former he says is lawful, but only from the accidental condition that these persons are parts of a republic against which war is being justly waged and that as parts they may be despoiled or captured to order to inflict harm on the whole republic. From this, however, it does not follow that they may be intentionally killed.

(g) The question in *Article Seven* is whether it is lawful to kill someone in self defense. The thought of St. Thomas is summed up in three conclusions. First, it is not unlawful to kill an attacker. Second, explaining the first, it is lawful to kill another in self-defense, but only "within the bounds of blameless defense." And third, even within such bounds, it is not lawful to intend to kill another, for example, to intend a revenge killing while defending oneself.

In reaching these conclusions, St. Thomas employed what has later come to be called the principle of double effect, a principle which was previously in play here in the commentary and in the relection "On Homicide."[119] It concerns a moral act which results in two consequences, one evil and the other good. The act may be lawfully performed, if the good is in reasonable proportion to the evil, if the good cannot be attained without the evil, if the two results are concommitant, and if only the good is directly intended while the

evil is merely permitted. Applying it here, what is directly intended is one's own defense, the proportion is in blamelessly not doing more than is necessary for that defense, the defense and the death of the attacker are simultaneous, and the attacker's death is not as such intended, but only accepted as the price of the defense.

About all of this Vitoria raises further questions, which might contradict the apparently self-evident character attributed to self-defense in the relection, "On Homicide," as well as earlier in the commentary. For instance, since to will seems the same as to intend, one may doubt that the killing of an attacker, which is willed as a necessary means by one defending himself, is unintentional. Vitoria concedes that when in self-defense one kills an attacker he wills to do so. Moreover, it is lawful for him to so will. But when it is further argued that it is therefore lawful for him to intend that killing, Vitoria disagrees. For there is, he says, a difference between an act of willing and a direct intending of something as an end in itself. To illustrate this, he gives the case of a sick man, who on account of health may will the amputation of an arm, but does not intend this, since he does not will that the arm be cut off as an end in itself. In the present case, his thought then is that it is lawful to will, but not to intend, whatever is necessary for one's defense.

Again, one may doubt whether it is universally true that a man may in self-defense kill his attacker. Take the case where that man is being attacked, even unjustly so, by his king or by his father. It would seem that he could not lawfully kill either one. Not the king, because he is a public person upon whose death turmoil might ensue in the republic and, besides, every subject should be willing to lay down his life for his king. And not his father, because to kill his father goes against the filial devotion which every son should have.

In answer, Vitoria allows the killing in self-defense of both one's king and one's father. As regards the king, he makes a distinction, and first stipulates a situation in which there would be no serious harm resulting in the republic from his death. In this situation, he says, the subject could defend himself even at the cost of the king's life, for the king as such would have no right to be attacking him unjustly. As for the obligation of laying down one's life for the king, this will apply only where necessary, which is not here since the king could (and should) let the man live without attack. But in a situation in which great harm would result to the republic from killing its king, Vitoria says that a a subject should submit to his attack with his own death resulting rather than kill his king. Presumably, this would not be suicide or cooperating in one's own death, but rather patiently bearing injustice. However, just how strong the obligation of a subject to do so would be Vitoria does not say.

As regards one's father, while a devoted son might at the cost of his own life bear an unjust attack from his father, Vitoria says that he is not bound to do so. He can instead defend himself and, if necessary, in the process kill his

father. For in unjustly attacking his son a father is not acting as a father, but rather like a stranger. Correspondingly, the son may defend himself against the attack as if it were from a stranger. What is not said, and is somewhat notable from its absence, is that the father in this is not like the king. He is not a public person, the embodiment of the republic, and his death will not cause serious public turmoil.

Returning to the issue of obligation but on the other side, Vitoria now asks whether someone is obliged to kill an attacker when he cannot otherwise defend himself against him? His answer is negative. In proof he points to cases he has already mentioned, cases in which there is obviously no overriding obligation always to preserve one's own life at all costs. Martyrs who could have defended themselves but chose instead to patiently bear death, have been praised for this. A man is not obliged to pay a huge ransom to avoid death at the hands of his captors. A man may give his food to another and serenely face death. A man facing death in prison with an opportunity to flee is not obliged to do so. A man may give his life for his father, by giving him a plank to avoid death by drowning, while the man himself remains in the sea. In a similar situation a man may give his life for a friend. But he can also give his life for an enemy inasmuch as he has freedom not to kill him. Thus he can lawfully allow himself to be killed if he cannot defend himself except by killing his attacker — especially when he considers the probability of his attacker being damned if he is killed in the act of an unjust attack.

Here an objection is raised. From the order of charity, every man has the obligation to love himself and to preserve his own life more than that of another. Therefore, one would be obliged to prefer his own life over that of an attacker. Vitoria's reply is to the effect that while this is true of one's own spiritual life, it is not true that one must prefer his own corporeal life to the spiritual detriment, for example here the damnation, of another. At the same time, one is not obliged to refrain from killing an attacker. For, inasmuch as the attacker is himself choosing to attack and in this bringing on his own spiritual loss, refraining from killing him and in the process losing one's bodily life is not going to avert his spiritual detriment.

Connected here is the question of whether it is lawful in defense of something less than one's life, say for some temporal possession, to take the life of an attacker, such as a mugger or a hold-up man demanding my property. While Cajetan has said that it is lawful to defend one's possessions, even one's cloak, no matter what may follow from that defense, Vitoria distinguishes between a trivial possession and one of great value. His judgment is that it would be seriously sinful to kill a thief to prevent the loss of a small thing. However, it would be permissible to defend a valuable possession even at the cost of a thief's life, if no other way to retain or regain that possession is possible. Thus it would not be permissible to kill one who is demanding my

possession if I knew who he was and could in a court action against him recover what he might take.

Yet another question concerns a choice between killing an attacker and fleeing from him. Vitoria's answer reflects the mores and social distinctions of sixteenth century Spain. A knight or a nobleman, who would by fleeing suffer a loss of reputation, would not be morally obliged to do so. But a man of lesser rank, whose reputation is not so great a matter, would be obliged to choose flight over killing an attacker. In both cases, however, if the cause of the attack is trivial, a small sum of money for example, there is an obligation to prefer flight over taking the attacker's life for something of such little value.

A final question in this place has implications for Vitoria's just war theory and the issue of a preemptive strike. If it is lawful to kill one's attacker, would it also be lawful to forestall his action by killing him first? While a plausible case might be made for such preemptive killing, Vitoria rejects it as a general rule. This is because it would lead to anarchy if everyone could preemptively kill presumed attackers. Again, the preemptive killing of an attacker cannot be accepted where there are other courses available, for example, flight to save one's life. However, if there is no other means to save one's life except preemptively killing an enemy who certainly means to kill me, then, says Vitoria, it is lawful to kill that enemy. This is not to attack him, but rather to defend oneself. Indeed, it is the enemy who is attacking when he is preparing to kill me. Whatever one may think of this doctrine of Vitoria, its application to his just war doctrine is patent, with far reaching ramifications.

(h) *Article Eight* asks whether someone who kills a man by chance is guilty of homicide. Vitoria says that St. Thomas has basically concluded that anyone who contributes to a homicide, in any way in which he did not need to and in which he was obliged not to do so, causes it voluntarily and sinfully. St. Thomas, he says, makes a distinction here between two ways of contributing to a homicide. One way is by intending something unlawful from which a homicide results. A second way is by intending something lawful and using sufficient care to avoid a homicide which still, despite such care, follows. In the first way, the homicide will be imputable to the one who contributes to its causation but in the second way not.

Following Cajetan, Vitoria raises some doubts about this. But first he notes with Cajetan that something which is intended is not by chance. Second, he notes that howevermuch anyone contributes to the causation of a homicide, if the homicide still does not follow from that, then it should not be imputed to him. He gives the example of someone who wounds another, which other then dies by his own bad conduct or his neglect of the wound. In such event, the homicide, says Vitoria, should not be imputed to the one who wounded him.

Other doubts in the wake of Cajetan concern special cases of chance killing and ecclesiastical irregularity resulting from them. While, in contrast to

Cajetan, Vitoria did not discuss the matter of an accidental abortion which St. Thomas had raised,[120] in other cases he is usually in agreement with Cajetan. To explore these in more detail would take us far afield into areas of Church discipline and canon law. The reader who wishes to go further may look to the text itself which, as annotated, is for the most part clear enough without further comment.

IV. Some Remarks on the Translation

As mentioned, both the Relection and the Commentary have come down to us only through students' notes. We do not have a Vitoria's own final polished version of either text. As was also said, the relection, "On Homicide," betrays a certain incomplete character in its overall structure and in its citations of texts. In the Commentary, the structure is better defined but there is some inexactness again in citations. This may be due to Vitoria himself, but it could easily have resulted from his copyist's miscues.

A further complication in the Commentary comes from the fact that the notes of Vitoria's lectures contain numerous passages in which he broke off speaking in Latin and, perhaps better to aid his listeners' understanding, injected a word or a phrase in Spanish. Marking these passages with quotation signs, I have done my best to render them literally and yet clearly. Sixteenth century Spanish presented some difficulties for a translator whose reading in Spanish has been limited to present century authors. For example, it took me a while to realize that "*dalle*" equates with "*dar le*" and "*matalle*" equals "*matar le.*"

Wherever possible I have tried to give a literal translation. This, however, sometimes made for such awkward English that I had to range out from the Latin. At least as reported, Vitoria's Latin is alternately repetitious and cryptic. Clauses are interlocked in an almost byzantine way. His sequence of tenses is often unreliable and the text of both the Relection and the Commentary is replete with anacolouthic constructions. Of course, the lecture style itself contributed to this. A particular difficulty came from the Scholastic style of "*sic et non*" ("yes and no"). Often it took some sorting to know just what was Vitoria's own position *vis à vis* those of others he was reporting or refuting. In the Commentary, especially, I tried to bring out his positions by underlining such phrases as "I say" or "I answer."

Not too helpful in this connection was the paragraphing of Vitoria's Latin editors. Although I was tempted at times to break their long rambling paragraphs into shorter ones, I resisted doing so. Usually, but not always, I did the same with respect to sentences which were at times almost interminable. My thought was to stay close to the Latin in order to aid scholars wishing to verify my translation and also to stay myself as close as possible to Vitoria. With this in mind, normally when I had to insert words to bring out his meaning I enclosed them in square brackets.

A few items which bear mentioning are: Vitoria's use of "*et*" ("and") often in an exegetic way; his typically Latin employment of double negatives, e.g. "*non inconvenit*" ("it is not unfitting"); and his impersonal Latin constructions, e.g. "*arguitur*" ("it is argued") or "*respondetur*" ("it is answered"). These last I usually translated by "we argue," "we answer," or "the answer is," etc. A usage which I at first thought unusual was "*postquam*" ("after") as equivalent to a temporal "*cum*" ("when"). But after meeting it numerous times, I came to see it as normal.

As regards Vitoria's use of pronouns and antecedents, sometimes I substituted the unexpressed antecedent for a prounoun while at other times I substituted a pronoun for an expressed antecedent. His use of personal verb endings was often inconsistent. In the same paragraph, or even at times in the same sentence, he talks in both first person singular and first person plural, in second person, or in third person with an unidentified "they" conveyed by a verb ending.

With regard to verbs, frequently I treated present tense as historical, equivalent that is to a past tense. In this vein, the imperfect tense often equated with a simple past tense. Again, I relied on context to choose between a simple past tense and a perfect tense. To bring out wherever possible Vitoria's legal interests, I usually translated the impersonal verb, "*licet*," as "it is lawful" or "it is licit," rather than "it is right" or "it is permitted." Also at times for a livelier reading I changed Vitoria's verbs in passive voice into active verbs in English.

For biblical quotations, whenever possible I used the Douay-Rheims version. My reason was that this version, made as it was directly from the Vulgate, came closest to Vitoria's Latin. For the Relection, I did use the Spanish translation, made originally by Getino and reproduced by Urdánoz, on occasion to revise my English rendition. But at other times I deliberately translated in a different way from their Spanish.

says VI remained in Ch 2's good graces

Notes

[1] The principal sources I am following here are: Luis Alonso Getino, O.P., *El Maestro Fray Francisco de Vitoria. Su vida, su doctrina e influencia* (Madrid: Imprenta Católica, 1930); Teófilo Urdánoz, O.P., "Introducción biográfica," in *Obras de Francisco de Vitoria: Relecciones teologicas* (Madrid: Biblioteca de Autores Cristianos, 1960), pp. 1-107; Vicente Beltrán de Heredia, "Vitoria (François de)," *Dictionnaire de théologie catholique*, XV, 2ème part. (Paris: Letouzey et Ané, 1950), cols. 3117-34; and for Vitoria's student days at Paris: Ricardo G. Villoslada, S.J., *La universidad de Paris durante los estudios de Francisco de Vitoria, O.P. (1507-1522)* (Romae: Apud aedes Universitatis Gregorianae, 1938).

[2] On the spelling of his name, cf. Getino, p. 14, and: "En cuanto a la grafía del nombre, sigue la suerte del de la cuidad de donde ha sido tomado, que en aquella época se escribía de tres maneras: *Victoria, Bitoria, Vitoria*. De los tres modos escriben los registros el nombre de nuestro teólogo. Pero era más común y prevaleció el último. Es también el modo como se firma el maestro en las cartas castellanas: *Francisco de Vitoria*. Sólo en la firma latina usa también la grafía latina: *Victoria*." Urdánoz, p. 5.

[3] Cf. Getino's report (p. 13) of the opinion of Echard.

[4] To be sure, most dates in this brief presentation of Vitoria's life have been in dispute among his biographers. Since I have neither the interest nor the competence to enter into these disputes, I am simply presenting here a distillation of my reading of those biographers.

[5] For this, see Vicente Beltrán de Heredia, O.P., "En qué año nació Francisco de Vitoria? Un documento revolutionario," *La ciencia tomista*, LXIV (1943), pp. 49-59.

[6] Cf. Urdánoz, p. 4.

[7] Cf. Urdánoz, p. 6.

[8] *Ibid.*, pp. 6-8.

[9] On both the decadence and the sixteenth-century revival of the University of Paris, cf. Villoslada, ch. 2, pp. 29-71.

[10] On Standonck in this connection, cf. Villoslada, pp. 61-4.

[11] Cf. *ibid.*, esp. pp. 65-6.

[12] *Ibid.*, p. 31.

[13] On the person and work of Celaya, see Villoslada, pp. 180-215. For lists of the Spanish masters and students at Paris during this period, cf. *ibid.*, 371-414.

[14] Cf. Getino, p. 29.

[15] Urdánoz, 12-13.

[16] For the text of this, cf. Getino, p. 33.

[17] On this and the course of theological studies at medieval universities, see Etienne Gilson, *History of Christian Philosophy in the Middle Ages* (New York: Random House, 1955), p. 248.

[18] For Lombard's work and its use through the Middle Ages, see P. Glorieux, "Sentences (Commentaires sur les)," *Dictionnaire de théologie catholique*, XIV, 2ème partie (1941), cols. 1860-84.

[19] Cf. Urdánoz, pp. 11-14.

[20] The Latin title of this was: *Sancti doctoris divi Thomae aquinatis predicatorum ordinis liber nomine: Secunda Secundae*, at meritis facile primus nusquam citra montes hactenus impressus, geminoque indice illustratus, altero antiquo illo articulatim materias distinguente: altero alphabetario scilicet primo adiecto. Et a reverendo admodum patre et doctore optime merito fratre Petro brussellensi accuratissime castigatus; cf. Getino, p. 300. For a reproduction of Vitoria's preface, which is his first known, cf. Villoslada, pp. 422-5.

[21] Cf. Getino, pp. 303-7.

[22] *Ibid.*, 308-11. For Vitoria's preface, see p. 309.

[23] Cf. its citation in some of the notes to the Relection and Commentary below.

[24] Cf. Urdánoz, p. 17.

[25] In this connection, cf. remarks of a great medievalist: "La educación de Vitoria fué el último esclarecido mérito que se asignó esta escuela de su Orden, tan nombrada

en la historia de la antigua escolástica, antes de ver palidecer su brillo, junto con el de la Universidad de París, en las tormentas de la Reforma; entonces huyó con Francisco la primacía de la ciencia teológica, atravesando los Pirineos, a la fiel creyente España." Franz Cardinal Ehrle, "Los manuscritos vaticanos de los teólogos salmantinos del siglo XVI. De Vitoria a Bañez," primera edición española corregida y aumentada a cargo del padre José M. March, S.J., *Estudios Eclesiasticos*, VIII (1929), p. 157, cited by Urdánoz, p. 17.

[26] Getino (p. 381) gives a date of 1509 for this. Urdánoz (p. 13), however, says that the date of Vitoria's ordination is unknown.

[27] For Vitoria at Valladolid, cf. Getino, pp. 47-56.

[28] Salamanca, like other southern European universities was organized and run by its students rather than, as at Paris, by the masters; cf. "... Salamanca era Universidad de tipo democrático, calcada más en los estatutos de Bolonia que en los de París." Villoslada, p. 316.

[29] Cf. Villoslada, pp. 308-19.

[30] In 1355 the Faculty of Arts at Paris, alarmed by abuses of the method of dictation, had forbidden its further use. At the same time it was also proscribed there by the Faculty of Canon Law and then in 1366 by the Faculty of Theology. By the end of the fourteenth century this last prohibition was reversed and finally in 1491 the Faculty of Arts also restored the practice; cf. *ibid.*, pp. 310-311. For a similar controversial practice called "diting" in seventeenth-century English and Scottish schools, cf. William T. Costello, S.J., *The Scholastic Curriculum at Early Seventeenth-century Cambridge* (Cambridge, MA: Harvard University Press, 1958), pp. 13-14.

[31] On Vitoria's lively style of dictating, cf. Villoslada, 316-7.

[32] On this, cf. "Que en la exposición de las doctrinas filosóficas existan defectos en las relecciones vitorianas, es cosa harto notoria. ... en ellas hay: argumentos presentados en forma imperfecta y que non concluyen; intercalación de sentencias y de pruebas con tanta confusión que, a veces, hasta cuesta trabajo llegar a entender qué es lo que, en ciertos puntos, defiende Vitoria; inexactitudes y equivocaciones de bulto; y otros varios defectos, sobre los cuales no se puede en justicia hacer gran hincapié para formar un capitulo de cargos a Fray Francisco, ya que no fué éste quien publicó el texto de las relecciones, y por tanto, no pudo limar ni corregir estos defectos, que, pueden no ser de él, sino de los alumnos que, al oído, tomaron sus explicaciones y las transcribieron en los códices que sirvieron para imprimir las relecciones." Marcial Solana, *Historia de la filosofía española. Época del renacimiento (siglo xvi)*, III (Madrid: Real Academia de Ciencias Exactas, 1940), p. 83.

[33] Vicente Beltrán de Heredia, O.P., calls it "materia preferida en sus estudios por Vitoria," cf. Francisco de Vitoria, O.P., *Comentarios a la Secunda secundae de Santo Tomás* [hereafter: *Comentarios* ...], I (Salamanca: Biblioteca de Teólogos Españoles, 1932), pp. vii-viii.

[34] For some of this, cf. Beltrán de Heredia, "Vitoria (François de)," col. 3122; also cf. Urdánoz, pp. 38-41.

[35] For the text of Vitoria's opinions before the commission, cf. Getino, pp. 98-101.

[36] Cf. "Ces réponses nous font entendre que l'enthousiasme jadis manifesté par Vitoria pour Erasme, lors de son séjour à Paris, s'était bien refroidi, depuis qu'il avait cru

remarquer les affinités de celui-ci avec Luther." Beltrán de Heredia, "Vitoria (François de)," col. 3122.

[37] Cf. esp. his "Relection on the Recently Discovered Indians" (*Relectio de Indis recenter inventis*) [hereafter referred to as: *On the Indians*], ed. Urdánoz, 641-726.

[38] See the "Relection on the Law of War" (*Relectio de jure belli*) [hereafter referred to as: *On the Law of War*], Urdánoz, 811-858; and his commentary on *Summa Theologiae* II[a]-II[ae], qu. 40, aa. 1-4, in *Comentarios* ..., II (Salamanca, 1932), pp. 279-93.

[39] On this, cf. J. Brown Scott, *The Spanish Origin of International Law. T. 1, Francisco de Vitoria and his Law of Nations*, Oxford: The Clarendon Press, 1933 and N. Pfeiffer, "Doctrina juris internationalis juxta Franciscum de Vitoria," in *Xenia Thomistica* III (Romae, 1925), pp. 391-420. For Vitoria's influence on the colonization of America, cf. Urdánoz, pp. 53-60.

[40] Getino, pp. 219-222.

[41] *Ibid.* 224-5.

[42] Cf. Beltrán de Heredia, "Vitoria (François de)," col. 3123.

[43] 'como crucificado en una cama;' cf. Getino, p. 277.

[44] For Vitoria's poor health throughout his years at Salamanca, cf. Getino, pp. 114-18.

[45] *Ibid.*, p. 279.

[46] "La Bibliografía del P. Vitoria abarca tres grupos de obras: 1.° las que él publicó de otros autores, ...; 2.° las que otros publicaron de él; 3.° las que se encuentran manuscritas en los Archivos." Getino, *El maestro* ..., p. 299. For a convenient listing of Vitoria's prefaces, extracts from his teaching, opinions, moral decisions, and extant letters, cf. Urdánoz, pp. 83-4.

[47] Cf. Getino, p. 270; Urdánoz, p. 68; and Beltrán de Heredia, *Comentarios* ... III (Salamanca, 1934), xxxiii, who remarks (xxxivxxxv) among Vitoria's hearers many law students as well as later bishops and theologians (xxxv-xxxviii).

[48] Cf. Vitoria, *In IIa-IIae*, q. 89, a. 7, in *Comentarios* ..., V (Salamanca, 1935), p. 20. On this text and the number of Vitoria's hearers, cf. *ibid.*, I, p. xii, n. 1.

[49] On this, cf. the remarks of a biographer of the famous Jesuit philosopher-theologian, Francisco Suárez (1548-1617), who studied theology at Salamanca in the third decade after Vitoria's death; "Perhaps in no other university in the world is there to be found so brilliant a succession of professors as that which filled the principal chair of theology at Salamanca during the sixteenth century. Suarez' teacher, Mancio, was the fifth of the line which started with the great Francis Vittorio in 1526, and ended with the controversial Dominic Banez in 1604. In the order in which they followed Vittorio these outstanding Dominican scholars were: Melchior Cano [1509-1560], Dominic de Soto [1494-1560], Peter de Sotomayor [1511-1564], John Mancio [1497-1576], Bartholomew de Medina [1527-1580], and Dominic Banez [1528-1604]. All of these men enter intimately into the life of Francis Suarez; those before Mancio, his teacher, because of their influence on his development; those after Mancio because he knew them personally and was sometimes at odds with them." Joseph Fichter, *Man of Spain, Francis Suarez* (New York, 1940), 79-80, dates added.

[50] For some of their testimonies, see Getino, pp. 281-284 and Appendix I, esp. pp. 421-428; also cf. Solana, pp. 84-85.

[51] See for example the listings of parallel passages between Vitoria and Grotius, and then Gentili, as given by Getino, *Relecciones teológicas del Maestro Fray Francisco de Vitoria*, edición crítica, con facsímil de codices y ediciones príncipes, variantes, versión castellana, notas e introducción, por el P. Mtro. Fr. Luis G. Alonso Getino, Cronista de Salamanca y Bibliotecario de la "Asociación Francisco de Vitoria," tomo III (Madrid: Imprenta La Rafa, 1935), pp. ix - xliii.

[52] For this, see Getino, *El Maestro* ..., p. 283.

[53] Cf. Urdánoz, 78-9.

[54] On this, cf. P. Glorieux, *La littérature quodlibétique*, 2 vols., Paris: J. Vrin, 1925, 1935.

[55] Cf. Urdánoz, p. 78.

[56] Beltrán de Heredia, "Vitoria (François de)," col. 3128.

[57] *Ibid.*, 78.

[58] *Ibid.*, 79.

[59] *Ibid.*, p. 80.

[60] Cf. *El maestro* ..., pp. 323-5; *Relecciones* ..., I, xx-xxvi.

[61] Cf. "Vitoria (François de)," ... col. 3132.

[62] Cf. *Obras* ..., pp. 93-4.

[63] See Urdánoz, pp. 90-8. This contrasts with the rare publication of relections by other Salamanca masters; cf. Beltrán, "Vitoria ...," col. 3128.

[64] Urdánoz, p. 80.

[65] Urdánoz, p. 102. For descriptions of the manuscripts themselves, cf. *ibid.*, 99-101.

[66] Cf. *Obras* ..., pp. 1083-1130.

[67] Cf. *Relecciones teológicas del Maestro Fray Francisco de Vitoria* ..., III, pp. 24-38.

[68] Cf. Urdánoz, p. 79; Beltrán de Heredia, "Vitoria ...", col. 3128.

[69] Cf. Urdánoz, p. 1071.

[70] Cf. e.g. "The result, therefore, from all that has been said is that, without doubt, the barbarians were true lords, both publicly and privately, just as much as the Christians. And so they, both princes and private citizens, could not be despoiled of their possessions, on the ground that they were not true lords." *On the Indians*, I, n. 23; Urdánoz, p. 665; *ibid.*, III, n. 6, p. 713.

[71] On the influence of nominalism, for good and ill, upon Vitoria, see Urdánoz, p. 16; esp. cf.: "En sus *Relecciones* y *Lecturas* teológicas posteriores, para las que runiria en gran parte materiales durante su profesorado, su posición es casi siempre *crítica* y polémica frente a las teorías del nominalismo, opuestas al tomismo. No obstante, opiniones nominalistas se infiltran a veces, total o parcialmente, en su pensamiento y exposición." *ibid.*

[72] These are identified in the Commentary as Duns Scotus (1266-1308) and his followers.

[73] Cf. *The Roman Catechism*, translated and annotated by Robert I. Bradley, S.J. and Eugene Kevane (Boston: St. Paul Editions, 1985), Part III, c. 5, n. 4 (pp. 410-411). On this Catechism, see E. Mangenot, "Catéchisme," *Dictionnaire de théologie catholique*, II, 2ème partie (1932), cols. 1917-1918.

[74] Cf. "As regards the secular power, we assert that it can without mortal sin exact a judgment of blood, as long as in carrying out retribution it proceeds not from hatred but by judgment, not without precaution but with care." Profession of Faith prescribed for the Waldensians, 18 December 1208; cf. Henricus Denzinger et Adolfus Schönmetzer, S.J., *Enchiridion symbolorum definitionum et declarationum de rebus fidei et morum*, editio xxxii (Barcinone/Friburgi/Romae/ Neo-Eboraci: Herder, 1936), n. 795, p. 257 [hereafter this work will be referred to as: *Denzinger*].

[75] Cf. E. Thamiry, "Mort (Peine de)," *Dictionnaire de théologie catholique*, X, 2ème partie (1929), col. 2500.

[76] Cf. "Preserving the common good of society requires rendering the aggressor unable to inflict harm. For this reason the traditional teaching of the Church has acknowledged as wellfounded the right and duty of legitimate public authority to punish malefactors by means of penalties commensurate with the gravity of the crime, not excluding, in cases of extreme gravity, the death penalty. For analogous reasons those holding authority have the right to repel by armed force aggressors against the community in their charge." *Catechism of the Catholic Church* (Città del Vaticano: Libreria Editrice Vaticana, 1994), n. 2266, p. 546.

[77] *Politics* I, c, 2, 1253a2

[78] Cf. e.g., Relection "On Civil Power" (*De potestate civili*) [hereafter: *On Civil Power*] , n. 8, Urdánoz, pp. 162-3; ibid., n 11, p. 166; *On the Indians*, III, n. 16, p. 721.

[79] Cf. *On Civil Power*, n. 10, Urdánoz, p. 166.

[80] Cf. *ibid.*, nn. 4-6, pp. 156-9.

[81] Cf. *ibid.*, n. 9, p. 164.

[82] Cf. Relection "On Matrimony," (*De matrimonio*) [hereafter: *On Matrimony*], n. 6, ed. Urdánoz, p. 891. For Vitoria making this opinion his own, see *In IIa-IIae*, q. 62, a. 1, n. 34 in *Comentarios* ..., III, p. 86.

[83] The heart of the passage in question is: "Sicut corpus hominum in sua integritate conservari non posset nisi esset aliqua vix ordinatrix quae singula membra in usus aliorum membrorum, maxime in commodum totius hominis componeret. Sane ita in civitate contingere necesse esset, si unusquisque pro suarum rerum utilitate sollicitus esset, et unusquisque civis publicum bonum negligeret." *On Civil Power*, n. 5, Urdánoz, pp. 157-8. Pagden and Lawrance translate this as follows: "Just as the human body cannot remain healthy unless some ordering force directs the single limbs to act in concert with the others to the greatest good of the whole, so it is with a city in which each individual strives against the other citizens for his own advantage to the neglect of the common good." *Vitoria: Political Writings* (Cambridge: Cambridge University Press, 1991), pp. 9-10. I would rather translate it something like this: "Just as the human body could not remain intact unless some ordering force direct its individual members to act together for the greatest good of the whole, so would it necessarily be in a republic, if each one were to worry about his own advantages and each were to neglect the common good." Thus in Vitoria's Latin, there is no mention of individuals *striving against* one another in some Hobbesian state of nature. The point rather is that without direction each would simply go his own way and ignore the common good, which, with or without conflict, would be bad for the republic. Finally, Urdánoz's Span-

ish translation here is: "Así como el cuerpo del hombre no se puede conservar en su integridad si no hubiera alguna fuerza ordenadora que compusiese todos los miembros, los unos en provecho de los otros y, sobre todos, en provecho del hombre entero, así ocurriría en la ciudad si cada uno estuviese solícito de sus propias utilidades y todos descuidasen el bien público." p. 157.

[84] Cf. "As it is said in [the *Digest*] *De justitia et jure* [I, 1, 3]: 'Nature has established a kind of kinship as a force among all men.' Hence, it is against natural justice [*jus naturale*], that one man turn himself away from another without reason. "For man is not a wolf to man", as Ovid says [actually: Plautus, *Assinaria*, (Act. II II Sc. 4, 78-94)], but rather a man." *On the Indians*, III, n. 3, Urdánoz, p. 709; also cf. *On Civil Power*, n., Urdánoz, p. 156.

[85] Indeed, the basis of all dominion is that human beings are made in God's image; cf. *On the Indians*, I, n. 21, Urdánoz, p. 663.

[86] Cf. note 83, above.

[87] Cf. "I say that civil laws also oblige under pain of sin and guilt just as much as Church laws." *On Civil Power*, n. 15, Urdánoz, p. 183; and "Again, as St. Thomas teaches, in [*Summa Theologiae*] I^{a}-II^{ae}, q. 96, a. 4, laws oblige in conscience." *On the Indians*, I, n. 9, Urdánoz, p. 657.

[88] Here the principal text, as I have marked it in footnotes to the translations, is *Romans* 13: 4: "*He beareth not the sword in vain, for he is an avenger.*"

[89] In this the sovereign is conceived as acting in the role of God's minister, cf. *Romans*, 13: 4.

[90] On the role of public punishment, cf. the text cited cited from Domingo Soto in note 107 in the *Commentary* on II^{a}-II^{ae}, question 64, below.

[91] For an excellent summary of Vitoria's juridical philosophy, cf. J.G. Menendez-Rigada, "Vitoria (François de): III, Doctrine juridique de Vitoria," *Dictionnaire de théologie catholique*, XV, 2ème partie (1950), cols. 3133-3143.

[92] For this, see St. Thomas, *Summa Theologiae*, II^{a}-II^{ae}, q. 26. As a cursory reading of the texts translated below will reveal, Vitoria's thought was very much guided by the Thomistic doctrine of the order of charity.

[93] For the willing of something impossible in later debate about "impossible objects," cf. my article, "Another God, Chimerae, Goat-Stags, and Man-Lions: A Seventeenth-Century Debate about Impossible Objects," *The Review of Metaphysics*, XLVIII (1995), esp. 802-3.

[94] Cf. *Summa Theologiae* II^{a}-II^{ae}, q. 95, a. 8, ad 3.

[95] Cf. *In IIa-IIae*, q. 95, a. 8, n. 3, in *Comentarios* ..., V, pp. 73. The principal law cited here is *Decretum* II, *Causa* II, q. 5, c. 22 (*Monomachiam*), in *Corpus juris canonici*, ed. Lipsiensis secunda, A. Richter et A. Friedberg, Pars prior: Decretum Magistri Gratiani (Lipsiae: Officina B. Tauchnitz, 1922), col. 464.

[96] Cf. "Nicholas of Lyra answers that this is the one case in which it is lawful to accept a duel. And I think that he is speaking the truth, because it is case of defense, inasmuch as he [i.e. the challenger] means to kill me." (*Respondet Nicolaus de Lyra quod iste est unus casus in quo licet suscipere duellum. Et credo quod verum dicit, quia est causa defensionis, quia ille vult occidere me.*) *Ibid.* n. 4, p. 74.

[97] On this, cf. Daniel A. Cronin, *The Moral Law in Regard to the Ordinary and Extraordinary Means of Conserving Life*, Rome: Pontificia Universitas Gregoriana, 1958.

[98] For other examples of Vitoria's wry humor, cf.: (1) his rejection of Spanish claims on the basis of a "right of discovery" — "... it profits nothing toward the possession of those barbarians — any more than if they had discovered us." *On the Indians*, II, n. 7, ed. Urdánoz, p. 685; (2) his discussion of the case of a nun at Paris "who conceived — and you know it was not by the Holy Spirit," *In IIa-IIae*, q. 62, a. 6, n. 18, in *Comentarios ...*, III, p. 189; and (3) his delightful introduction to his 1531 relection, *On Matrimony*, in which he compares himself, a celibate priest, speaking of marriage with a certain old sophist who dared to give Hannibal a lecture on the art of war, cf. Urdánoz, p. 880.

[99] While Greeks and Romans may have reasoned so, modern Americans might adapt the argument to cover physical pain and suffering.

[100] Cf. Beltrán de Heredia, *Comentarios ...*, I, xvi.

[101] For the little we know of Trigo, see Beltrán de Heredia, *Comentarios ...*, I, xxv-xxviii.

[102] Cf. Urdánoz, p. 28.

[103] *Ibid.*, pp. 28-9.

[104] Cf. "Alumno inteligente y aventajado, que escuchó durante siete años las lecciones del maestro Vitoria, nos ha transmitido una versión, si no integral, indiscutiblemente la mejor que nos queda de sus lecciones sobre la Secunda secundae." V. Beltrán de Heredia, *Comentarios ...*, VI (1952), p. 13.

[105] For this, cf. Martin Grabmann, *Mittelalterliches Geistesleben*, I (München: Max Huebner Verlag, 1926), p. 529. For another distinction between "in the manner of a writing" (*per modum scripti*) and "in the manner of a commentary" (*per modum commenti*), cf. M.D. Chenu, O.P., *Toward Understanding St. Thomas*, tr. Landry and Hughes (Chicago: Henry Regnery Company, 1964), p. 220, n. 34.

[106] On Salamanca statutes relating to this, cf. "En los Estatutos de 1538, redactados en parte por Vitoria, se dispone que 'los lectores (profesores) sean obligados a leer en latín y no hablan en las cátedras en romance, excepto refiriendo alguna ley del reino o poniendo enxemplo; ...'" L. Getino, *El Maestro ...*, p. 112, n. 3. Also, cf. "... in this university it has been imposed under pain of excommuncation that scholastics would speak Latin in the schools." (... in hac Universitate impositum est sub poena excommunicationis quod scholastics loquerenter latine intra scholas.), *In IIa-IIae*, q. 62, a. 3, n. 4, in *Comentarios ...*, III, p. 151.

[107] Cf. "Desde fines de diciembre hasta bien avanzado febrero de 1536 recorrió las cuestiones 63-77 dilucidando magistralmente la materia relativa a los vicios opuestos a las partes subjectivas de la justicia, ..." *Comentarios ...*, IV (1934), p. x.

[108] For a fuller presentation of Vitoria's doctrine of rights and dominion and the lack of such in animals, see *In IIa-IIae*, q. 62, a. 1, nn. 4-16, esp. nn. 10-11, in *Comentarios ...* III, pp. 63-74.

[109] Cf. *ibid.*, n. 11, p. 71.

[110] This is basic thought which Aquinas has expressed in other places also; see e.g., *De potentia Dei*, q. 5, a. 9, ed. P. Pession (Taurini: Marietti, 1953), p. 154; also cf.:

"Elements then exist on account of mixed bodies. But these in turn exist for living things, among which living things plants exist for animals and animals for man. Man, therefore, is the goal of all generation." (*Sunt ergo elementa propter corpora mixta; haec vero propter viventia; in quibus plantae sunt propter animalia; animalia vero propter hominem. Homo igitur est finis totius generationis.*) *Contra Gentiles*, III, c. 22 (Madrid: Biblioteca de Autores Cristianos, 1953, II, pp. 122-3.

[111] On the medieval conception of the republic as organic, cf. Tilman Struve, *Die Entwicklung der organologischen Staatsauffassung im Mittelalter*, Stuttgart: Hiersemann, 1978.

[112] On this, Vitoria even more stands out inasmuch as Cajetan, the principal commentator before him, did not comment at all on Article One.

[113] Note a parallel question: "Whether it is lawful for clerics and bishops to fight [in a just war]?" *In IIa-IIae*, q. 40, a. 2, in *Comentarios* ..., II, pp. 288-91.

[114] Of course, Vitoria would say that a master may not simply kill his a slave; cf. e.g. "... nor is a master the master of his slave in all ways, for he must not kill him." (... *nec dominus est dominus servi ad omnes usus, quia non ad occidendum.*) *In IIa-IIae*, q. 62, a. 1, n. 15, *Comentarios* ... III, p. 73.

[115] Cf. *Summa Theologiae*, II^a-II^{ae}, q. 69, a. 4, ad 2.

[116] Cf. *In IIa-IIae*, q. 69, a. 4, nn. 3 and 8, in *Comentarios* ..., IV, pp. 39 and 42. Also cf. translation below at *In IIa-IIae*, q. 64, a. 7, n. 4.

[117] For a bitter criticism of the Spaniards' motivation in this, cf. Gustavo Gutiérrez, *Las Casas: In Search of the Poor of Jesus Christ*, tr. Robert R. Barr (Maryknoll, NY: Orbis Books, 1993), esp. pp. 429-44.

[118] See, e.g. nn. 35, 38, 45, and 48; Urdánoz, pp. 841, 844, 848, and 849.

[119] For examples, see Vitoria's replies above to the arguments about the Carthusians and to Samson.

[120] Cf. *Summa Theologiae* II^a-II^{ae}, q. 64, a. 8, ad 2. It may be noted that the abortion of an animated fetus, which results from striking a pregnant woman, is here regarded as homicide. This seems remarkably anticipatory of present day laws in various American states which prescribe a charge of homicide in such a case. Vitoria would hardly be in any doubt about this, and much less would he doubt that an intentional abortion of an animated fetus would be homicide. In all probability, his only questions would concern the species of sin when a fetus would be aborted prior to animation and the ecclesiastical penalities to be attached to abortion at different stages of fetal development. For a brief summary of the views of St. Antoninus and Silvester Prieras on abortion, with which Vitoria would have been familiar and for which he would have had respect, cf. Germain Grisez, *Abortion: The Myths, the Realities, and the Arguments* (New York: Corpus Books, 1972), p. 166.

Relection on Homicide

By

Francisco de Vitoria, O.P.

A Translation

From: *Obras de Francisco de Vitoria*: Relecciones teológicas, edición crítica del texto latino, versión española, introducción general e introducciones con el estudio de su doctrina teológico juridica, por Teófilo Urdánoz, O.P. (Madrid: Biblioteca de Autores Cristianos, 1960). Printed with permission.

De Homicidio

An sit fortis viri occidere se

1. Mortem sibi consciscere, quomodo sicut semper impium, ita et mortem non solum patienter, sed libere etiam subire plerumque consilium, nonnunquam praeceptum sit.

2. Interficere seipsum, semper est impium. Et multa de inclinatione naturali, peculiariter an sit semper prona ad malum.

3. Inclinatio hominis, quatenus homo est, est bona et ad nullum malum, aut virtuti contrarium inclinat.

4. Deus an naturas rerum inmutare potuerit, vel ab initio alias facere, quam nunc sunt.

5. Quod Deus naturas rerum mutare non possit ab auctore probari videtur.

6. Deus, supposito quod non possit rerum naturas mutare quomodo fecerit hominem cum naturali inclinatione ad malum.

7. Inclinatio hominis quamvis sit ad malum tamen non est mala malitia morali quamdiu manet intra terminos appetitus.

8. Deus creavit hominem sine inclinatione mala, qua appetitus inclinat ad malum.

9. Deus dedit appetitui naturalem inclinationem, ut obediret voluntati.

10. Homo non inclinetur ad diligendum se plus quam Deum, vel proprium bonum plus quam commune.

11. Praecepto, non occides, quid et qualiter homicidium prohibeatur. Et de triplici opinione ibi recitata.

12. Praeceptum de non occidendo, est iuris naturalis, et non positivi, sicut etiam alia praecepta Decalogi secundum auctorem.

On Homicide

Whether It is the Act of a Brave Man To Kill Himself

[Table of Contents[1]]

1. Just as it is always sinful to inflict death upon oneself, so it is often a matter of counsel and sometimes prescribed to undergo death patiently and even freely.

2. It is always sinful to kill oneself. Plus many things about natural inclination — especially whether it is always prone to evil.

3. Human inclination, as such, is good and inclines to no evil or to what is contrary to virtue.

4. Whether God could change the natures of things or from the beginning could have made them different than they are now.

5. That God could not change the natures of things seems proven to the author.

6. Supposing that He could not change the natures of things, how would God have made man with a natural inclination to evil?

7. Although human inclination may be toward evil, still that inclination is not morally evil as long as it remains within the limits of appetite.

8. God created man without an evil inclination moving his appetite toward evil.

9. God gave human appetite a natural inclination to obey the will.

10. Man is not inclined to loving himself more than to loving God, or to loving his own good more than the common good.

11. Which and what kind of homicide is forbidden by the commandment, "Thou shalt not kill"? Three opinions voiced on this.

12. According to the author, the command not to kill is, like the other commands of the Decalogue, a matter of natural and not positive law.

13. Praeceptum de non occidendo semper fuit aequale, et ante legem, et in lege, et tempore Evangelii.

14. Interficere si licebat adulteram, aut furem in lege Moysi, etiam licuit ante legem, et licet in lege evangelica.

15. Praecepto hoc, non occides, quomodo prohibeatur omne homicidium, quod stando in lege naturae sola, est malum et irrationabile.

16. Praecepto de non occidendo, non magis prohibetur homicidium auctoritate publica, quam privata.

17. Occidi quomodo dupliciter potest homo, scilicet ex intentione, et praeter intentionam.

18. Occidere hominem reipublicae nocivum ex intentione, stando in iure divino et naturali licet ipsi reipublicae.

19. Homicidium de iure naturali et divino permissum, quibus sit commissum.

20. Homicidium omne ex intentione praecepto de non occidendo est prohibitum, seu publicae seu privatae personae, praeter quam id, quod reipublicae aut publicis magistratibus et principatibus fuerit commissum.

21. Interficere seipsum quare non liceat.

22. Obiectum voluntatis non est solum verum bonum.

23. Deus solus est vitae et mortis dominus, non homo, qui quantum ad hoc, est peculiariter servus Dei. Unde occidere seipsum, est Deo iniuriam facere.

24. Homo in multis casibus quamvis licitis viis possit vitam servare, quomodo tamen non teneatur.

25. Quod homo semper tenetur defendere vitam proximi, etiam quandocumque licet, non est exploratum.

26 Panem licet alteri cedere cum certa pernicie propriae vitae.

13. The command not to kill was always the same — before the [Mosaic] law, during the time of that law, and in the time of the Gospel.

14. If in the law of Moses it was permitted to kill an adultress or a thief, it was also permitted before that law, and it is permitted now in the law of the Gospel.

15. How by this command, "Thou shalt not kill," there is forbidden every homicide which, within the law of nature alone, is evil and irrational.

16. A homicide by public authority is not, by this command not to kill, more forbidden than one by private authority.

17. How a man can be killed in two ways — either by intention or without intention.

18. Within both divine and natural law it is permitted for the republic intentionally to kill a man who injures it.

19. To whom is it permitted to kill a man when it is lawful by divine and natural law?

20. By the command against killing, there is forbidden every intentional homicide, whether of a public or a private person, except that which is allowed to public magistrates or governments.

21. Why it is not lawful to kill oneself.

22. The object of the will is not only what is a true good.

23. The lord of life and death is God alone, and not man, who in this regard is in a special way the servant of God. Hence to kill oneself is to do injury to God.

24. How, although in many cases a man may preserve his life in lawful ways, he still may not be obliged to do so.

25. It is not certain that a man is always obliged to defend the life of his neighbor, even when it is lawful to do so.

26. It is lawful to give bread to another, even when it entails the sure loss of one's own life.

27. Animam ponere pro amicis licet sit stultitia huius mundi, tamen est sapientia apud Deum.

28. Damnato ad mortem non licet se fame interficere.

29. Damnato ad mortem licet fugere, et mortem non expectare.

30. Damnato ad mortem per cicutae seu veneni haustum, licet illud haurire, nec videtur ad sui mortem cooperari.

31. Auxiliari licet amico etiam cum quantocumque vitae discrimine. Et quid dicendum de uxore, quae etiam cum magno periculo marito peste laboranti adsideret.

32. Navigare, et artem militarem exercere etiam cum magno vitae periculo servatis circunstantiis quae magis et ut plurimum contingunt, licet.

33. Vitam abbreviare nullo modo licet, etsi non teneatur homo omnia media licita etiam facere, ut sibi vitam reddat longiorem.

34. Alimentis insalubribus et nocuis vitam reddere breviorem, non licet, neque tamen uti tenetur quis optimis.

35. Vitae conservandae ratione non sunt omnia media adhibenda necessario, sed solum illa, quae ad hoc sunt de se, et ordinata et congrua.

36. Vita non est in discrimine pro bonis temporalibus ponenda, inter quae gloria, honor, et fama reponuntur.

37. Brutus, Cato, Decius et alii innumeri qui sibi mortem consciverunt, utrum excusationem habebunt, eo quod putabant in hoc se fortiter et laudabiliter agere. Et quid de Samsone, Rasia et Saule.

27. Although it is folly for this world, to give one's life for one's friends is wisdom before God.

28. It is not right for one condemned to death to kill himself by starvation.

29. It is right for one condemned to death to flee and not wait for death.

30. For one condemned to death by drinking hemlock or poison, it is right to drink it and he is not cooperating in his own death.

31. It is right to help a friend, even with some degree of danger to one's own life. What should be said of a wife who with great danger would sit by the side of her plague struck husband.

32. It is permitted to sail, or to practice the art of soldiering, even with great danger to life, even under the conditions which generally prevail in such instances.

33. It is not right to shorten life in any way, although a man is not bound to make use of all, even licit, means in order to prolong his life.

34. It is not permitted to shorten life by unhealthy or harmful food, but one is not bound to eat the best.

35. In order to preserve life, it is not necessary to use all means — but only those which of themselves are both fitting and suitable

36. Life should not be put in danger for such temporal goods as glory, honor, and reputation.

37. Whether Brutus, Cato, Decius, and many others, who inflicted death on themselves, may be excused by the fact that they thought they were doing something brave and praiseworthy. And what about Samson, Razias, and Saul?

Non de nihilo dixit Ecclesiastes 1,18: *Qui addit scientiam, addit et laborem.* Habent agricolae sua otia, habent operarii, habent omnes opifices. Et cum diebus operosis victum paraverint, festis diebus requiem habent, et pro suo arbitrio remittunt, et oblectant animos, et corda oblita laborum. Nobis neque festis neque profestis licet esse otiosos; nullas habemus studiorum ferias, nullam vacationem ab exercitiis litterarum. Ecce convenimus, patres religiosissimi virique spectatissimi, in festo tam celebri
ad hanc relectionem cum mihi non licuit non solum in sequentem annum ut putaram, sed neque in alium quidem diem proferre. Ergo, ne supra laborem necessarium, novum etiam in prooemiis assumamus, rem ipsam superis praeeuntibus aggrediamur.

Argumentum me tractandum in praesenti relectione, non est aliquis novus locus ad hoc designatus, et in ordinariis lectionibus praetermissus, ut in aliis relectionibus a me factum est. Sed ut non nomine tantum, sed et re etiam sit relectio, constitui tractare aliqua prius in meis lectionibus disputata, non tamen multa; nec enim possem. Sed consilium meum fuit in praesentiarum disputare quaestionem: *An sit fortis viri occidere seipsum, vel cum conservare vitam possit, mortem oppetere. Et quando et quatenus hoc aut licitum, aut laudabile sit.* Ad quam quaestionem commodius tractandam et examinandam, tanquam fundamentum totius huius relectionis, sequentem conclusionem a principio pono.

1. PRIMA CONCLUSIO: *Sicut mortem sibi consciscere semper impium est, ita mortem non solum patienter tolerare, sed libere etiam subire plerumque consilium, nonnunquam praeceptum est.*

Hanc conclusionem pro temporis angustia, proque tenui mea eruditione quam potero perspicue et clare, varie versabo. Inmoraborque circa singulas partes, primo illam probando, deinde argumenta in contrarium obiciendo, illaque pro captu ingenii diluendo ac dissolvendo. Quod interim dum facio, vos patres observandissimi virique ornatissimi, oratos velim ut me non tam attente, quam benevole et amice audiatis.

2. Prima ergo pars conclusionis est, quod *semper est impium interficere seipsum.* Hoc primo probatur. Quia occidere seipsum est contra naturalem inclinationem hominis. Sed facere aliquid contra inclinationem naturalem est peccatum. Ergo occidere se semper est peccatum. Maior est manifesta.

[The Text of the Relection, "On Homicide"]

[Introduction]

It is not for nothing that *Ecclesiastes* I, 18, has said: "*He that addeth knowledge, addeth also labor.*" Farmers, laborers, and artisans have their leisure. And after they have prepared food on days of work, they have their rest on feast days and choose to relax and pleasure their minds and hearts forgetful of their labors. But for us it is not permitted to be idle either on feast days or on ordinary days. We have no days of rest from studies nor any vacation from literary pursuits. Indeed, we come together, most religious fathers and most respected men, on a feast so famous,[2] for this relection, since I was not permitted to defer it until next year nor indeed to deliver it on another day.[3] Therefore, lest in introductions we take on more new labor than necessary, let us with the help of God get on with the matter.

The argument I am about to treat in this relection, is not some new topic designated for this and left aside in ordinary lectures, as was the case in my other relections.[4] But, in order that it be a "relecture" not just in name but also in fact, I have decided to treat some, for I could not treat many, things already discussed in my lectures.[5] But it was my intention to discuss (*disputare*[6]) today the question: *Whether it is the act of a brave man to kill himself, or when he could save his life, to embrace death. And when and to what extent is this either licit or laudable?* In order to treat and examine this question in the best way, I am positing at the beginning *the following conclusion, as a basis for this entire relection.*

[The First Conclusion]

1. THE FIRST CONCLUSION:[7] *While it is always sinful to inflict death upon oneself, to suffer death patiently and to undergo it freely is generally counseled and sometimes commanded.*

Governed by the shortness of the time[8] and by my meagre erudition,[9] I will treat this conclusion in various ways as clearly and as precisely as I can. And I will spend time on its different parts, first proving it, then putting up arguments against it, refuting and solving them according to the capacity of my talent. While I am doing this, I would ask you most honorable fathers and most eminent men, to listen to me not so much with attention as with benevolence and friendship.

[First Proof of the First Part of the Conclusion]

2. Therefore, the first part of the conclusion is that *it is always sinful to kill oneself.* THIS IS PROVEN FIRST: because to kill oneself goes against the natural inclination of a human being. But to do something against natural inclination is a sin. Therefore, to kill oneself is always a sin. The major pre-

Non enim homo solum omniaque animantia, sed res omnes resistunt suae corruptionis et pro viribus adnituntur conservare se in rerum natura, ut dicitur in secundo *De generatione*, et experientia apertius docet. Quam ut probatione res indigeat, nec opus est in re non dubia argumentis uti non necessariis. Est ergo contra naturalem inclinationem hominis ut se interimat.

Quod autem inclinationi naturali adversari et repugnare sit illicitum, exploratum est valde, atque in confesso. Si enim naturalis inclinatio semper in bonum et honestum propensa est, atque adeo nunquam malum suggerit, profecto huiusmodi inclinationi repugnare, aut in contrarium tendere, semper illicitum erit. Quemadmodum enim virtuti quicquam contrarium facere semper illicitum est, quod ea non nisi ad honestum inducat, ita prorsus si id, ad quod homo suapte natura et inclinatione fertur, semper bonum est, huiusmodi inclinationi contravenire malum erit. Bono enim non nisi contrarium malum esse potest. Quare cum hic sit vel primus locus, et praecipuum argumentum, quo hanc conclusionem doctores probare contendunt, operae praetium erit, si de hac ipsa re uberius disseruerimus.

Et quidem sunt nonnulli, nec vulgares, neque contemnendi, sed primi etiam Aristotelis expositores, quibus non videtur verum, naturam semper ad bonum inclinare et honestum. Sed potius credunt naturam et gratiam, legem et naturalem inclinationem contrarias esse sibique invicem repugnare. Quod multis tum argumentis, tum etiam testimoniis suadere conantur.

Et primo argumentantur. Appetitus enim humanus fertur naturaliter in omne bonum. Bonum autem delectabile est bonum quoddam. Fertur ergo appetitus in bonum delectabile naturaliter, bonum autem delectabile plerumque est contrarium virtuti; ergo naturaliter homo appetit contrarium virtuti atque adeo peccatum et malum.

Secundo. Virtus omnis versatur circa difficile (ex auctoritate Aristotelis 2 *Ethicorum*). Quod si natura inclinaret in bonum virtutis, certe huiusmodi bonum difficile non esset. Nihil enim aliud inclinatio virtutis facit nisi reddere facile et iucundum ipsum bonum, quod alioqui difficile erat. Non ergo natura inclinat de se ad bonum. Inclinat autem, ergo inclinat ad malum. Et confirmatur: Si enim homo sua natura inclinaretur ad bonum, non essent necessariae virtutes, quarum hoc unum officium est, tollere difficultatem illam et molestiam bonorum operum. Atque adeo qui probabilius philosophantur, negant necessariam esse aliquam virtutem, anteponendam quidem ad ea bona ad quae homines sua natura feruntur et inclinantur. Nemo enim tam ingenio tardus est, qui putet virtutem esse aliquam, ut homines cupiant felices esse, oderint autem miseriam.

miss here is evident. For not only man and all animals, but all things generally, resist their own corruption, and strive with whatever powers they have to preserve themselves in reality, as is said in the second book of the *De generatione*[10] and as experience teaches more evidently than the matter needs proof. Nor is there any need in a non doubtful thing to use unnecessary arguments. It is therefore against the natural inclination of a man to kill himself.

That it is illicit to oppose and to contradict a natural inclination is very certain and generally acknowledged by all. For if a natural inclination is always leaning toward what is good and decent, and thus would never suggest evil, to contradict an inclination of this kind and to lean in the opposite direction will indeed always be illicit. For just as it is always illicit to do anything contrary to a virtue which leads only to what is decent, so indeed, if that to which a man is by his very nature borne is always good, it will be evil to go against an inclination of this kind. For the opposite of good can only be evil. Wherefore, since this is the first place and the principal argument by which the doctors try to prove this conclusion, it is worthwhile to treat this matter more fully.

And indeed there are some, not common nor to be despised, but even prime exponents of Aristotle, to whom it does not seem true that nature always inclines to what is good and decent. But they rather believe that nature and grace, as well as law and natural inclination are opposites and contradict one another. And they try to show this both with many arguments and with many authorities.

Thus they argue first: Human appetite is indeed naturally led toward every good. But pleasurable good is a certain good. Therefore, the appetite is naturally led toward pleasurable good. But pleasurable good is often opposed to virtue. Therefore, a human being naturally desires what is opposed to virtue and what is therefore sin and evil.

Second, they argue from the testimony of Aristotle in Book 2 of his *Ethics*[11]: All virtue is concerned with something difficult. But if nature were to incline to the good of virtue, certainly a good of this kind would not be difficult. For the inclination of virtue does nothing else but make easy and pleasant that good which was otherwise difficult. Therefore, nature does not of itself incline to good. But it does incline; therefore it inclines to evil. This is confirmed: for if a man by his nature were to be inclined to good, virtues would not be necessary — virtues whose one task it is to remove that difficulty and the trouble involved in good works. And therefore, those who philosophize more reasonably deny that it is necessary to posit some virtue inclining to those goods to which human beings of their nature are led and inclined. For there is no one so dull witted as to think that it is a virtue that human beings would desire to be happy and would hate misery.

Tertio. Theologi ponunt motus subitos tam in voluntate, quam in appetitu sensitivo. Nihil vero aliud sunt tales motus, quam inclinationes quaedam naturales in malum. Ergo natura inclinat ad malum.

Quarto. Nam ad hoc, vel solum, vel certe potissimum ponebatur iustitia originalis in primis parentibus, ut appetitus sensitivus contineretur in officio, et voluntati sine difficultate pareret, et voluntatem ipsam rationi rationemque divinae legi et voluntati subiectam efficeret. Quod si humanus appetitus non sua natura adversaretur vel rationi vel legi divinae, nullum fuisset aut munus aut opus ipsius iustitiae originalis.

Quinto. Homo secundum virtutem et legem Dei tenetur diligere Deum plus quam se, et commune bonum praeferre bono privato. Non enim caritas, iuxta Apostolum, quaerit quae sua sunt, sed quae Iesu Christi. Et tamen homo naturaliter diligit bonum proprium et est valde difficile Deum plus quam se diligere, quia homo, ut a principio dictum est, naturaliter inclinatur ad conservationem propriam. Ergo natura inclinat contra caritatem et legem Dei.

Sexto. Inclinatio appetitus sensitivi est naturalis, cum ipse sit potentia naturalis, nec eius inclinatio sit aliud ab appetitu sensitivo. Et tamen appetitus non obedit rationi, sed tendit in contrarium. Ergo inducit in malum. Et confirmatur. Obiectum appetitus sensitivi est bonum delectabile. Hoc autem plurimum est contrarium virtuti et legi Dei. Ergo appetitus sensitivus naturaliter fertur in malum.

Septimo. Fomes inclinat ad peccatum, ut theologi definiunt secundo *Sententiarum*. Et tamen fomes nihil aliud dicit praeter naturam et naturales potentias hominis destitutas dono iustitiae originalis, ut in eodem loco theologi defendunt. Ergo homo per naturales potentias fertur et inclinatur in malum. Et confirmatur hoc. Si enim homo produceretur in puris naturalibus, hoc est sine iustitia et sine peccato, eodem modo inclinaretur ad malum, sicut nunc inclinatur ex fomite. Ergo inclinat]o naturalis est ad malum.

Adducunt deinde et advocant in favorem huius sententiae Scripturarum testimonia. Et in primis dictum Domini Gen. 8,21: *Sensus et cogitatio humani cordis in malum prona snnt ab adolescentia*. Ex quo videtur quod natura humana sit proclivis et inclinata ad malum. Dominus item apud Mt. 26.41: *Spiritus promptus est, caro autem infirma*. Quod exponens Apostolus ad Gal. 5,17: *Caro* (inquit) *concupiscit adversus spiritum et spiritus adversus carnem*. Et Rom. 7.23: *Video aliam legem in membris meis*. Et plura in hanc sententiam. Et rursum alibi: *Si secundum carnem vixeritis, moriemini*. Et iterum: *Spiritu ambulate, et desideria carnis non perficietis*. Ex quibus omnibus manifeste constat, carnis appetitum esse in malum, et contrarium spiritui et legi Dei.

Third, theologians say that there are "sudden motions" both in the will and in the sense appetite.[12] But such motions are indeed nothing more than certain natural inclinations to evil. Therefore, nature inclines to evil.

Fourth: original justice was placed in our first parents for this alone or most of all— that their sense appetite be contained in bounds, and that it obey their will without difficulty, and to make the will itself subject to reason, and reason subject to the divine law and will. But if human appetite of its nature would not be opposed either to reason or to the divine law, there would have been no task or need for that original justice.

Fifth: according to virtue and the law of God, a man is obliged to love God more than himself, and to put the common good before his private good. For, according to the Apostle [Paul],[13] charity does not seek its own things but rather those of Jesus Christ. And yet a man naturally loves his own good and it is very difficult to love God more than himself, since man, as was said in the beginning, is naturally inclined to his own preservation. Therefore, nature inclines against charity and the law of God.

Sixth: the inclination of the sense appetite is natural, since this is a natural power and its inclination is not other than itself. And yet that appetite does not obey reason, but rather tends to the opposite. Therefore, it leads to evil. This is confirmed because the object of the sense appetite is a pleasurable good. But such is frequently contrary to virtue and to the law of God. Therefore, the sense appetite is naturally inclined to evil.

Seventh: as the theologians determine in the second book of the *Sentences*, "the kindling" inclines to sin.[14] Still, as theologians say in the same place, "the kindling" involves nothing else than human nature and natural powers deprived of the gift of original justice. Therefore, a man is led and inclined to evil by his natural powers. And this is confirmed: for if a man were to be produced in a pure state of nature, i.e. without grace and without sin, he would be inclined to evil in the same way as he is now inclined from the kindling. Therefore his natural inclination is toward evil.

They further advance and suggest texts of Scripture in favor of this opinion. First there is the word of the Lord, in *Genesis* 8,21: "*The imagination and thought of a man's heart are prone to evil from his youth*" — from which it seems that human nature is leaning toward or inclined to evil. Again, the Lord says in *Matthew* 26.41: "*The spirit is willing, but the flesh is weak.*" And the Apostle [Paul] expounding this in *Galatians* 5,17, says: "*The flesh lusts against the spirit and the spirit against the flesh.*" And in *Romans* 7, 23, he writes: "*I see another law in my members*" — and more in the same vein. And again elsewhere[15]: "*If you live according to the flesh, you shall die*" and "*Walk in the spirit and you shall not fulfill the lusts of the flesh.*"[16] From all of which places it is clearly evident that the appetite of the flesh is toward evil, as well as contrary to the spirit and to the law of God. But the desires of the flesh are natural,

Desideria autem carnis sunt naturalia, cum sint apud omnes. Ergo prorsus naturalis inclinatio est in malum et in peccatum.

Item, Aristoteles 2 *Ethicorum* dicit quod ad hoc quod homo fiat studiosus, oportet ut servet se ab his ad quae natura maxime inclinat, ut Sanctus Thomas 2.2 q.166 a.2 ad 3 adducit.

His et aliis rationibus et testimoniis auctores illi sententiam suam tuentur. Unde etiam in naturam ipsam, illae querelae exortae sunt, ut alii novercam, alii inimicam, alii scelerum altricem, alii malorum parentem, aliisque invidiosis odiosisque nominibus appellent ac dehonestent. Inde etiam illud, quod homo ex se non potest nisi malum. Inde adhuc ille odiosior et omnibus mortalibus insigniter iniurior error, quod omnia omnium hominum opera sunt peccata, et aeterno supplicio digna, nisi misericordia Dei venialia fierent. Unum ex dogmatibus luteranorum.

Verum bona venia tantorum virorum et pace, non adducor nec propositis, neque quibuscumque aliis argumentis ut credam humanam naturam, quam omnipotens et sapientissimus Deus ad imaginem et similitudinem suam condidit, tam malo genio, et pravis conditionibus formatam et constitutam, ut cum reliquae res omnes in fines et operationes sibi convenientes suo ingenio et natura ferantur, solus homo non nisi in mala, atque adeo in perniciem suam et condemnationem feratur et inclinetur.

3. Quare in praesentiarum defendo inclinationem hominis, quatenus quidem homo est, bonam esse. Atque adeo ad nullum malum, aut virtuti contrarium inclinare. Quod postquam auctoritate probare non sufficio, argumentis non infirmis probabile facere contendam.

Et primo quidem sic arguo. «Inclinatio naturae humanae est immediate ab ipso Deo». Ergo non potest esse ad malum. Antecedens est notum. Cum Deus sit auctor ipsius naturae, atque adeo omnium quae consequuntur naturam, cuius in primis est inclinatio naturalis. «Qui enim (ut verbis Aristotelis utar) dat formam, dat consequentia ad formam». Est ergo Deus solus auctor et causa humanae inclinationis.

Consequentia vero probatur. Motus enim naturalis sive ex naturali inclinatione, attribuitur et imputatur generanti, id est auctori et causae ipsius naturalis inclinationis, ut Aristoteli merito placuit 8 *Physicorum*, simulque multis gravissimis philosophis. Gravia enim et levia hac una ratione a generante, et non a se ipsis moveri dicuntur, quod eam inclinationem, atque adeo necessitatem ad motum vel sursum, vel deorsum a generante acceperint. Si ergo homo ad malum naturaliter inclinatur, illa inclinatio et motus sequens talem inclinationem in peccatum imputarentur ipsi Deo. Quod prorsus dicere, vel cogitare impium est. Certe si motus lapidis deorsum, aut motus ignis sursum peccatum esset, nulli dubium quin hoc peccatum Deo potius

since they are present in all human beings. Therefore, natural inclination is wholly toward evil and sin.

Likewise, as St. Thomas cites him in *Summa Theologiae* II^{a}-II^{ae}, q. 166, a. 2, ad 3, Aristotle, in Book two of his *Ethics*,[17] says that for a man to become studious he must keep himself from those things to which nature is most of all inclined.

With these and other arguments and texts, those authors defend their opinion. Hence also against nature itelf complaints have arisen, such that different people may call it a stepmother, an enemy, the nurse of crimes, the parent of evils, and may dishoner it with other invidious and hateful names. Hence again, the opinion that man of himself can do only evil. Hence even more, that opinion most hateful and extraordinarily harmful to all human beings, that all the works of men are sins worthy of eternal torment unless by God's mercy they are forgiven — which is one of the dogmas of the Lutherans.[18]

But with the good pardon and peace of [you] so distinguished men, neither by the arguments proposed nor by any other arguments either, am I brought to believe that human nature, which the omnipotent and most wise God made in his own image and likeness, was formed and made with such an evil spirit and such depraved conditions that, while all other things would be led to goals and operations fitting to their talent and nature, man alone would be led and inclined only to evil things and thus to his own destruction and condemnation.

3. Accordingly, I am now holding that human inclination as such is good. And therefore, it inclines to nothing evil or opposed to virtue. Not able to prove this sufficiently by authority, I will try to do so by strong arguments.

And first, I argue as follows: *The inclination of human nature is immediately stemming from God himself.* Therefore, it cannot be toward evil. The antecedent is evident. For God is the author of nature itself and therefore of all things following upon nature, of which first is natural inclination. "For" (to use the words of Aristotle) "who gives the form, gives whatever follows upon the form."[19] God alone, therefore, is the author and the cause of human inclination.

The consequence is proven: for a natural motion, or one which follows from a natural inclination, is attributed and credited to the generator, that is to the author and cause of that natural inclination, in line with Aristotle's opinion in Book eight of the *Physics*,[20] and at the same time that of many serious philosophers. For heavy and light things are said to be moved not of themselves but by their generator for this one reason that they have received that inclination and thus a necessity for motion up or down from their generator. If therefore a human being is naturally inclined to evil, that inclination and the motion to sin which follows it would be imputed to God himself — which, indeed, to say or to think is impious. Certainly, if the motion of a stone down, or the motion of fire up, were a sin, no one would doubt that

tribuendum esset, quam ipsis gravibus et levibus, quae talem a Deo inclinationem acceperunt. Et similiter si homini peccatum esset appetere felicitatem, non tam homini imputandum esset quam Deo, qui sic hominem constituit, ut naturaliter appeteret felicitatem. Quare haec ratio efficax est ad probandum aliquem actum non esse peccatum, quia procedit ex inclinatione hominis a Deo sibi data. Ex quo etiam loco arguit Sanctus Thomas et alii theologi graves non invalide ad probandum quod prima operatio angeli non potuit esse mala. Cum enim prima operatio sit dilectio sui, omnes enim aliae operationes ex ista proficiscuntur, ut Aristoteles docet in *Ethicis*. "Amicabilia, inquit, quae sunt ad alterum, sunt ex amicabilibus quae sunt ad nos". Primam operationem angeli oportet fuisse amorem sui. Cum ergo ex naturali inclinatione ad talem amorem inclinaretur, fieri non potuit ut ille amor malus esset. Et sic prima operatio angeli non potuit esse peccatum.

Secundo probatur idem. "Non posset Deus producere in anima habitum vitiosum inclinantem ad peccatum". Hoc enim repugnat divinae bonitati. Ergo neque potuit dare animae rationali aut homini vitiosam inclinationem, qua scilicet ad peccatum inclinaretur. Non enim minus esset causa, inclinatio vitiosa mali actus, quam vitiosus habitus.

Tertio. "Non posset Deus producere habitum inclinantem ad falsum". Ergo nec inclinationem ad malum. Patet consequentia. Nam non minus repugnat Deo inclinare ad peccatum, quam ad falsum. Imo multo plus. Qui ergo non potest producere inclinationem ad falsum, multo minus potuisset dedisse inclinationem ad peccatum. Assumptum autem patet. Ea enim est una probatio doctorum, quod fidei non potest subesse falsum, quia scilicet est infusa a Deo. Non ergo potest Deus infundere habitum ad falsum inclinantem.

Atque ista ratione probari quodam modo possunt prima principia, quamvis per se nota. Quid enim si quis fateretur quidem se cogi ad assentiendum huic principio: "Omne totum est maius sua parte"; diceret tamen se timere ne forte deciperetur, quemadmodum et homo aliquando cogitur ad credendum aliquid hominum auctoritate, quibus fidem non habere homo non potest, et tamen fieri potest ut decipiatur? Quid inquam si quis diceret ita de primis principiis, an non aliqua ratione induci posset ad assentiendum illis? Ego vero puto, si quis mihi recipiat, Deum neque mentiri, neque decipere posse, concedat etiam necesse esse naturam rationalem esse a Deo creatam cum hac necessitate et inclinatione consentiendi his principiis, manifeste etiam convinci talia principia vera esse. Si enim falsa sunt et Deus humanum intellectum cogit ad assentiendum illis, aperte constat Deum homines decipere et per consequens mentiri. Simili ergo modo, si Deus produceret quemcumque habitum inclinantem ad falsum, merito et mendacii et deceptionis argueretur.

this sin would have to be attributed to God rather than to those heavy and light things which would have received such an inclination from God. And similarly if it were a sin for man to desire happiness, it would have to be imputed not to man but rather to God, who so made man that he would naturally desire happiness. Accordingly, this argument decisively proves that an act is not a sin if it proceeds from a man's inclination given to him by God. On this same basis, St. Thomas and other serious theologians have also argued to validly prove that the first operation of an angel could not be evil. For, since the first operation is self-love, all other operations proceed from it, as Aristotle teaches in his *Ethics.*[21] "Benevolent acts," he says, "which are directed toward another, stem from benevolent acts toward ourselves." So, the first operation of an angel had to have been self-love. Since therefore it was inclined by a natural inclination to such love, it could not be the case that such love would be evil. And thus the first operation of an angel could not be a sin.

Second, the same thing is proven: *God could not produce in the soul a vicious habit inclining toward sin.* For this is contrary to divine goodness. Therefore, He could not give to the rational soul or to a man a vicious inclination by which he would be inclined to sin. For a vicious inclination would not less than a vicious habit be the cause of an evil act.

Third: *God could not create a habit which would incline toward what is false.* Therefore, neither could He create an inclination to evil. The consequence is clear: for it is not less contradictory for God to incline [a man] to sin than to what is false. Indeed, it is much more so. He, therefore, who could not produce an inclination to what is false, could much less have given an inclination to sin. What is assumed here is evident. For it is one of the proofs of the doctors that Faith cannot be false, because it has been infused by God. Therefore, God cannot infuse a habit inclining to what is false.

And by this reasoning, first principles also, even though they are self-evident, can be in a certain way proven. For what if someone were to say that he was forced to assent to this principle: "Every whole is greater than its part," but would also say that he was afraid perhaps that he was deceived, just as a man sometimes is forced to believe something on the authority of men, in whom the man must have faith and yet it could happen that he be deceived? What, I say, if someone were to speak like this about first principles — could he not be induced by some reasoning to assent to them? Indeed, I think that if someone were to admit to me that God cannot lie nor deceive, he would also concede that it is necessary that a rational nature be created by God with this necessary inclination to consent to these principles, and would evidently be convinced that such principles are true.[22] For if they are false, and God is forcing the human intellect to assent to them, it is plainly evident that God is deceiving men and consequently lying. Similarly, if God were to create any habit inclining toward what is false, He would rightly be accused of lying and deception.[23]

Quarto. "Si homo induceret alium ad peccandum, peccaret. Ergo similiter si Deus inclinat homines ad peccandum, peccat". Quamvis enim non valeat apud theologos consequentia: Deus concurrit cum homine ad peccandum, ergo peccat. Tamen recipient istam: Deus se solo inducit homines ad peccandum, ergo peccat. Nam sicut consequens est impossibile, ita et antecedens: Deus autem se solo est causa inclinationis naturalis hominis. Si ergo per talem inclinationem homo induceretur ad peccandum, videtur etiam quod Deus inducat ad tale peccatum.

Quinto. "Voluntas humana non fertur in obiectum nisi mediante ratione". Ratio autem semper inclinat ad iudicandum quod omne malum est evitandum. Ergo voluntas non inclinat ad malum.

Sexto. "Si inclinatio ad malum est a solo Deo, ut isti fatentur, non video quomodo negent quod Deus sit causa peccati". Quod omnes theologi tamquam impium semper reiecerunt.

Quod si rationes nostrae, ut videmus, superiores et probabiliores sunt, ne testibus etiam deficiamur, aliquid de Scripturis etiam oportet adducere. Et primo omnium facit auctoritas Iacobi 1,13: *Nemo*, inquit, *cum tentatur, dicat quod a Deo tentatur; Deus enim intentator malorum est*. Ex quo loco sic arguitur. Si inclinatio naturalis esset ad malum, Deus esset tentator malorum. Quod est contra Apostolum. Ergo impossibile est quod natura tentet seu inclinet ad malum. Assumptum probatur. Nihil enim aliud est tentare nisi facere inclinationem ad malum. Si ergo Deus fecit et dedit talem inclinationem homini ad malum, qualem isti dicunt esse naturalem inclinationem, cur ergo Deus tentare non diceretur? Confirmatur: si daemon iniceret talem inclinationem homini ad malum, qualem isti asserunt esse naturalem, certe daemon tentaret. Ergo et Deus diceretur tentator.

Secundo, Ecclesiastes 7,30 dicitur: *Fecit Deus hominem rectum, et ipse inmiscuit se infinitis quaestionibus*. Non autem videtur Deus hominem rectum fecisse, si cum ista pessima inclinatione et maledictione creavit, qua sua natura ferretur ad malum. Ergo...

Sed in primis videtur facere, quod *sapientia divina attingit a fine usque ad finem fortiter, et disponit omnia suaviter*, ut per Salomonem ipse testatur. Non esset vero suavis dispositio, si cum Deus homini legem et praecepta dedisset, naturam in contrarium trahentem, vocantem et allicientem dedisset. Cum enim Deus hominem condiderit ad laudandum creatorem suum, vitamque aeternam ab illo promerendum, non utique tamquam sapiens architector hominem fabricavit, si naturam fini repugnantem, et incommodam illi dederit. Cum tamen *viderit Deus cuncta quae fecerat, et erant valde bona*. Et alibi: *Dei perfecta sunt opera*. Profecto non videretur opus aut valde bonum aut perfectum, si hominem cum huiusmodi inclinatione fecisset.

Fourth: *If one man were to lead another into sin, he would himself sin. Therefore, similarly, if God inclines men to sin, He sins.* For even though this argument is not valid for theologians: "God concurs with a man sinning, therefore He sins," they will however accept this one: "God by Himself alone leads men to sin, therefore He sins." For just as the consequent is impossible, so also is the antecedent. But God by Himself alone is the cause of the natural inclination of a man. If therefore by such inclination a man would be led to sin, it is apparent that God would be leading him to such sin.

Fifth: *The human will is moved to its object only by means of reason.* But reason always inclines us to judge that every evil should be avoided. Therefore, the will is not inclined to evil.

Sixth: *If the inclination to evil is from God alone, as the opponents say, I do not see how they can deny that God is the cause of sin.* But this is something which all theologians have always rejected as impious.

But even though our arguments, as we see, are superior and more probable, in order not to lack testimony, we should also adduce something from the Scriptures. And first of all is the authority of *James* 1,13, saying: "*Let no man, when he is tempted, say that he is tempted by God. For God is not a tempter of evils.*" From this passage the argument is: if there were a natural inclination to evil, God would be a tempter of evils; which goes against the Apostle [James]. Therefore, it is impossible that our nature tempts or inclines us to evil. The antecedent is proved: for to tempt is nothing else that to give an inclination to evil. If therefore God has made and given to man such an inclination to evil, as the opponents say his natural inclination is, why then would God not be said to tempt? This is confirmed: for if a demon had put in man such an inclination to evil, as they assert is natural, certainly that demon would be a tempter. Therefore, God also would be a tempter.

Secondly, it is said in *Ecclesiastes* 7,30: "*God made man right, and He hath entangled him with an infinity of questions.*" But it does not seem that God would have made man right, if He created him with that most wicked inclination and curse by which his nature would be brought to evil. Therefore...

This seems first to do with the fact, as stated by Solomon,[24] that "[*Divine wisdom*] *reacheth from end to end mightily and ordereth all things sweetly.*" But it would not be a 'sweet ordering' if while God had given man the law and the commandments, He had also given him a nature drawing, calling and enticing him to their opposite. For since God created man to praise his Creator and by that to merit eternal life, as a wise maker He certainly did not make man and give him a nature contradictory and unsuitable to that end. For indeed "*God saw all things that He had made, and they were very good.*"[25] And elsewhere[26]: "*The works of God are perfect.*" But indeed the work would not seem very good or perfect, if God has made man with an inclination of this kind.

Et demum, ut quid Deus hominem non fecit propensum et proclivem ad bonum potius quam ad malum, ad legem suam quam ad transgressionem legis? An quia non potuit? Hoc vero quid stultius, quid indignius divinae maiestati excogitari posset? An quia non voluit? Invidit ergo Deus mortalibus hanc felicitatem, quam tamen maxime ad divinorum praeceptorum usuri essent observantiam. Angelos certe Deus non hac conditione creavit ut non nisi ad peccatum et malum tantum inclinarentur. Quae ergo ratio esse potuit, ut hac parte tanto benignior et aequior angelis esset quam hominibus qui de Deo quidem non poterant melius esse meriti? Videmur igitur ex parte probasse hominem sua natura non inclinari ad malum, sed relictum potius in manu consilii sui, ut utrumlibet pro suo arbitrio sequeretur, sive bonum, sive malum.

Superest ut argumentis in contrarium adductis utcumque satisfaciamus. Ad quorum expeditionem illud in primis meminisse oportet, homines esse compositum ex duabus naturis, rationali scilicet ac sensitiva. Quas Apostolus ad Rom. 12 (*sic*. Recte: 7,22) *interiorem et exteriorem hominem* vocat. Quod non est sic intelligendum, ut anima ipsa sit interior homo, aut natura rationalis, corpus vero natura sensitiva. Sed totus homo secundum spiritum est homo interior, idem vero secundum carnem est homo exterior, et natura sensitiva.

Secundo est advertendum quod quia homo est homo simpliciter inquantum rationalis, non inquantum sensitivus. Inclinatio hominis absolute est inclinatio hominis inquantum homo est, scilicet inclinatio voluntatis et intellectus, et non inclinatio partis sensitivae, quae aut non est inclinatio hominis, aut non inquantum homo est, sed secundum quid, et non absolute. Comparatur enim appetitus sensitivus ad hominem quasi aliquod extrinsecum. Nec plus debet dici inclinatio hominis, inclinatio appetitus sensitivi, quam inclinatio daemonis aut mundi. Cupit enim et mundus et daemon trahere humanam voluntatem ad malum, cupit etiam nunc appetitus sensitivus. Sed sicut non interest nostra, quid aut mundus aut daemon suggerat, sed quid ipsi per voluntatem et rationem prosequamur, ita eadem ratio est de appetitu, ac si esset a nobis separatus. Nec enim quod caro nobis suadet, imputatur, nec opus nostrum, aut desiderium dicitur, sed in tantum quod per liberum arbitrium acceptum habuerimus et secuti fuerimus.

Quare quanquam sint nonnulli qui etiam defendere velint nec ipsum etiam appetitum inclinare ad malum ex specie aut natura sua, sed ex peculiaribus uniuscuiusque conditionibus, quas non a Deo, sed a patria, vel a parentibus, vel astris unusquisque contraxit. Tamen ego non nego quidem sensualitatem trahere et tendere ad malum et peccatum ex specie et natura sua, sed nego eam esse humanam inclinationem aut conditionem. Imo contrariam,

Finally, why did God not make man inclined and prone to good rather than to evil, to law rather than to its transgression? Was it because He could not do so? But what could be imagined more stupid and more unworthy of the divine majesty than this? Was it then because He was unwilling to do so? Therefore, God envied mortals this happiness which however they would especially use for the observance of divine commandments. Certainly, God did not create the angels in this condition that they would be inclined only to sin and evil. Therefore, what reason could there be that God would be in this way so much more benign and fair to the angels than to men, when those angels could not have deserved more from Him? We seem, therefore, to have proven on our side that man is not by nature inclined to evil, but is rather left in the hand of his own counsel so that by his own choice he may pursue either good or evil.

What remains now is that we answer in some way the arguments on the other side. In doing this, we must first remember that human beings are composed of two natures: rational and sensitive. The Apostle [Paul], in *Romans* 12,[27] calls these "the interior and the exterior man." This is not to be understood in such a way that the soul itself is the interior man or the rational nature while the body is the sensitive nature. Rather the whole man according to the spirit is the interior man, and the same man according to the flesh is the exterior man and the sensitive nature.[28]

Secondly, we should note that because man is man precisely inasmuch as he is rational and not inasmuch as he is sensitive: the inclination of a man precisely as such is the inclination of a man inasmuch as he is a man, namely, the inclination of will and intellect, and not the inclination of the sensitive part, which is not the inclination of man, or not insofar as he is man, but only to a certain extent and not simply as such.[29] For the sensitive appetite is compared to man like something extrinsic. And the inclination of the sensitive appetite should not be called the inclination of a man any more than should the inclination of the devil or of the world be so called. For both the world and the devil desire to draw the human will to evil, as does also now the sensitive appetite. But just as what the world or the devil may suggest does not interest us, but rather what we ourselves pursue through will and reason, so the same reasoning is valid about the [sensitive] appetite, [which is] as though it were separate from us. For what the flesh persuades us to is not imputed to us, nor is it called our work or desire, except insofar as we through free choice have accepted and followed it.

Hence, although there are some who wish to defend the position that even the sensitive appetite itself does not incline to evil from its species or nature, but from the peculiar circumstances which each person has received not from God, but from his birthplace, his parents, or the stars — I, however, do not deny that sensuality, specifically from its nature, does draw and tend to evil and sin, but I do deny that this is the human inclination or condition. In-

quemadmodum nec motus appetitus voluntatem praecedentes, actus humani dicuntur. Atque adeo simul verum est quod appetitus sensitivus inclinatur contra virtutem. Homo vero interior, qui simpliciter est homo, inclinatur ad virtutem. Utrumque Apostolus signanter et diserte expressit ad Rom. 12 (*sic.* Recte: 7,22): *Condelector*, inquit, *legi Dei secundum interiorem hominem; video autem aliam legem in membris meis repugnantem legi mentis meae.* Quod tamen Paulus non aliter ad se pertinere arbitratur, quam angelum satanae, qui eum colaphizabat. Et sicut manente vera inclinatione hominis ad virtutem erat angelus satanae eum colaphizans, ita adversante et contraveniente appetitu sensitivo manet integritas humanae voluntatis, quae est hominis integritas, inquantum homo est.

Verum restat scrupulus ex hac responsione. Nam aeque est a Deo inclinatio appetitus sensitivi, sicut et voluntatis. Si ergo inconveniens dicitur quod Deus sit causa inclinationis voluntatis ad malum, quare non idem habeatur pro inconvenienti de appetitu sensitivo? Quare, inquam, sapientissimus creator et conditor rerum malam inclinationem dedit appetitui et carni, et non potius bonam, quae magis convenire videbatur illi infinitae bonitati?

4. Dico primum omnium. Dubium est certe inter theologos et philosophos: *An naturas rerum Deus inmutare possit, vel potuerit, vel ab initio alias facere, quam nunc sunt.* Et quidam sunt qui putent cum Gabriele 4 d.1 q.1. Quamvis Deus species quidem rerum et essentias variare non potuerit, neque enim potuit aut hominem, aut bovem alterius speciei facere quam fecit, potuit tamen proprietates et inclinationes naturales immutare. Potuit (inquam) ignem frigidum naturaliter facere et aquam calidam, ac rursum nigram nivem, et album corvum. Quod tali ratione probatur. Nam posse Deum ignem frigidum facere aut calidam aquam, et caetera huiusmodi, dubitari non potest. Potuit ergo Deus ab initio aquam calidam facere, aut frigidum ignem, levem terram, gravem aerem, et legem ponere ut sic perpetuo perseverarent. Qua lege posita, illud esset proprium, aut naturale talium rerum. Nihil enim aliud est rerum natura quam id quod ab initio (ut Augustinus ait) Deus rebus dare voluit. Ergo potuit Deus contrarias naturas et inclinationes dare rebus, quam dedit. Et confirmatur. Nam potuit Deus res nudas creare, id est essentias sine quibuscumque accidentibus aut proprietatibus. Ergo non necessario creavit cum his conditionibus et proprietatibus, quas nunc habent.

5. Hanc sententiam quamquam theologi et auctores nonnulli, qui in pretio habentur, defendunt, non puto esse probabilem, nec verisimilem. Unde puto quod Deus non potuerit quidem ignem calidum naturaliter frigidum facere aut non naturaliter calidum, aut nivem nigram, aut levem terram, et in

deed, I say the contrary — just as the motions of appetite which precede the will are not called "human acts."[30] And thus, it is at the same time true that the sensitive appetite is inclined against virtue, but the interior man, who is precisely man, is inclined to virtue. The Apostle [Paul] has expressed both of these points with striking eloquence in *Romans* 12:[31] "*I am delighted*," he says, "*with the law of God, according to the inward man; but I see another law in my members fighting against the law of my mind*." But Paul does not think this belongs to him any more than the angel of Satan who was buffeting him. For just as while his true human inclination to virtue remained, there was an angel of Satan buffeting him, so even while the sensitive appetite is opposing and resisting it, the integrity of the human will remains, which is the integrity of man insofar as he is man.

But now there is one small problem with this answer. For the inclination of the sense appetite is from God just as much as that of the will. If therefore it is hard to say that God is the cause of an inclination of the will to evil, why not think the same about the sense appetite? Why, I mean, has the most wise creator and maker of things given an evil inclination to the sense appetite and to the flesh, rather than a good inclination which was evidently more fitting to His infinite goodness?

4. First of all, I say: it is certainly doubtful among theologians and philosophers: *Whether God can change the nature of things or could have from the beginning made them other than they now are*. There are some who think with Gabriel [Biel (1410?-95)], at 4 d.1 q.1,[32] that although God indeed could not change the species and essences of things, for He could not make a man or a cow to be of another species than He did make it, nevertheless, He could change natural properties and inclinations. He could, I mean, make fire naturally cold and water hot, or again snow black or a crow white. This is proven as follows. It cannot be doubted that God can make cold fire or hot water, and other things of this sort. Therefore, God from the beginning could have made hot water, or cold fire, light earth, heavy air, and decreed it as law that they would endure forever so. And if such a law had been decreed, that would be proper or natural for such things. For, as Augustine says,[33] the nature of things is nothing else but what God from the beginning willed to give things. Therefore, God could have given natures and inclinations to things contrary to those He did give them. This is confirmed: for God could have created things bare, that is to say, as essences without any accidents or properties. Therefore, He did not need to create them with the conditions and properties which they have now.

5. Although some reputable theologians and authors defend this opinion, I do not think that it is probable or likely. Thus I think that God could not indeed have made naturally cold rather than naturally hot fire, or black snow, or light earth, or in general remove or change natural inclinations. This is

universum naturales inclinationes tollere, aut mutare. Quod sic probatur. Nam *primum* omnium, multae sunt proprietates et aptitudines rerum, quae secundum communem opinionem non conveniunt rebus per aliquas qualitates superadditas, sed inmediate per suas essentias. Ut verbi gratia, si risibile non convenit homini per aliquam qualitatem superadditam secundum opinionem istorum, sed per essentiam, potuit quidem Deus facere quod homo nunquam rideret, non autem quod non esset natura risibilis. Quia Deus non potest tollere effectum causae formalis, manente causa formali. Si ergo homo est formaliter risibilis per suam essentiam, non potuit Deus facere quod sua natura non esset risibilis.

Secundo sic arguo. Aqua cum concursu Dei generali producit frigiditatem in se, ut patet in aqua reducente se ad frigiditatem. Ergo Deus non potuit facere quin cum tali concursu esset frigida, et per consequens naturaliter frigida. Consequentia probatur. Nam detur oppositum, puta quod faceret Deus quod aqua naturaliter esset calida, quaero, an aqua cum concursu Dei generali potuerit reducere se ad frigiditatem, vel non. Si potuit, ergo non erat naturaliter calida. Si non potuit, ergo nec nunc potest, quia concursus generalis Dei non potuit esse maioris activitatis, quam nunc est. Et ab eisdem causis semper producitur similis effectus. Nec Deus potest facere quod causa naturalis, quae nunc non potest in aliquem effectum cum concursu generali, possit in illum cum eodem concursu. Verbi gratia, nunc non potest homo suscitare hominem cum concursu generali Dei. Ergo Deus non potest facere quod homo id possit cum tali concursu. Nec Deus ipse posset cum generali concursu facere quod nunc non facit. Sicut ergo Deus non potuit facere ut homo naturaliter posset suscitare mortuum, ita non potest facere quod aqua produceret calorem, aut quod naturaliter lapis ascenderet sursum.

Et confirmatur. Aut essentiae rerum, aut species de se sunt indifferentes ad quamlibet proprietatem, aut non. Si non, ergo non potuit fieri, quin id, ad quod essentia magis inclinatur, sit magis naturale. Si sint indifferentes, verbi gratia si natura ignis nuda est indifferens ad calorem et frigus, ergo cum concursu generali non plus produceret calorem quam frigus. Et per consequens non poterit esse magis naturale unum quam aliud.

Et confirmatur exemplo. Deus non poterat facere quod caelum naturaliter inclinaretur ad quietem vel ad motum a septentrione ad meridiem. Ergo nec alias naturas rerum potuit mutare. Antecedens probatur: Si caelum naturaliter inclinaretur ad motum contrarium isti quem nunc habet, vel ad quietem, non posset cum concursu generali moveri motu isto quem nunc habet. Sicut e contrario. Et confirmatur valide. Quia si potest Deus mutare naturas rerum, faciat ergo quod aqua sit naturaliter calida. Sic arguo. Calor nunc cum generali concursu sufficit corrumpere aquam. Ergo cum simili concursu potuisset tunc

proven as follows. For, *first* of all, there are many properties and aptitudes of things which, according to the common opinion, do not belong to things through superadded qualities, but immediately through their essences. For example, if to be able to smile does not belong to man through some superadded quality, in line with the opinion of those [theologians and authors above], but through his essence, God could indeed make it that man would never smile, but not that man would be by nature not able to smile. For God cannot remove the effect of a formal cause, as long as that cause is present. If, therefore, man is formally able to smile through his essence, God cannot make his nature not able to smile.

Secondly, I argue as follows. With the general concurrence of God, water produces coldness within itself, as is clear in the case of water reducing itself to being cold. Therefore, God could not with such concurrence make it not be cold, and thus it is naturally cold. The consequence is proven: for if we grant the opposite, say that God could have made water naturally be hot, the question is whether with the general concurrence of God water could have reduced itself to coldness or not. If it could, then it was not naturally hot. If it could not, then neither can it do so now, because the general concurrence of God could not be capable of greater activity than it is now. And from the same causes there is always produced a similar effect. Nor can God bring it about that a natural cause, which now with His general concurrence is not capable of some effect, could be capable of it with that same concurrence. For example, a man cannot now with God's general concurrence raise another man from the dead. Therefore, God with that same concurrence cannot make a man so capable. Nor could God himself with His general concurrence do what He is not now doing. Therefore, just as God could not bring it about that one man could naturally raise another from the dead, so He could not bring it about that water would produce heat or that a stone would naturally ascend on high.

This is confirmed: the essences or species of things are of themselves indifferent to any property, or not. If not, then it could only happen that a property to which an essence is more inclined is more natural. If they are indifferent — for example, if the nature of fire by itself is indifferent to hot and cold — then with the general divine concurrence it would not produce heat more than cold. As a result, one could not be more natural than the other.

It is also confirmed by an example. God was not able to make heaven naturally incline to rest or to motion from north to south.[34] Therefore, neither was He able He change the natures of other things. The antecedent is proven: if heaven were naturally inclined to a motion contrary to what it has now, or to rest, it could not with general divine concurrence be moved with that motion it now has, and *vice versa*. And this is strongly confirmed: for if God can change the natures of things, He can bring it about that water would be naturally hot. I argue as follows: Now with the general divine concurrence,

corrumpere. Ergo non est ei calor naturalis. Non enim posset Deus cum solo concursu generali impedire ne calor corrumperet aquam. Et non est impotentior quam a principio. Ergo nec tunc potuit. Certe puto quod argumentum concludit.

Item, Deus non potuit hominem naturaliter facere incorruptibilem. Item, non posset agens naturale cum concursu generali inducere formam aquae in materiam indispositam per calorem et siccitatem. Ergo calor et siccitas non possunt esse naturales aquae. Ut enim arguebatur, quidquid creatura potuit posse (ut ita dicam) cum concursu generali Dei, potest nunc cum simili concursu.

6. Hoc ergo supposito, quod Deus non potest naturas rerum mutare dico quod Deus fecit hominem, cum hac naturali inclinatione appetitus sensitivi. Quia aliter fieri non poterat.

7. Secundo dico quod talis inclinatio, quamvis sit ad malum, non tamen est mala, quandiu quidem manet intra terminos appetitus sensitivi. Malum inquam malitia morali. Nam malitia poenae non inconvenit, cuius Deus semper est causa. Sicut non dicitur mala inclinatio qua leo inclinatur ad homicidium. Sicut enim appetitus inclinat hominem ad malum ita etiam obiectum ipsum, ut delectabile, aut utile inclinat etiam ad malum. Et tamen natura ipsius auri, verbi gratia. aut cibi dulcis, bona prorsus est. Neque unquam aliquis conqueritur de Deo quod aurum pulcherrimum fecerit, aut vinum suave. Ita prorsus nec de appetitu sensitivo, qui movet hominem ad malum, non aliter quam ipsum obiectum. Unde nulla malitia exsistit appetitus sensitivi, aut rerum ipsarum.

Tertio dico quod appetitus inclinat ad malum, non ipsius appetitus, sed hominis. "Semper enim appetitus naturalis est conveniens", ut Sanctus Thomas dicit 1 q.31 a.1.

8. Quarto dico quod Deus hominem creavit sine tali inclinatione mala. Creavit enim eum cum iustitia originali, quae appetitum subiciebat rationi, et nullo modo inclinabat ad malum. Quod si postea sua culpa incidit in hunc laborem, sibi potius quam divinae sapientiae imputandum est. Nec plus sane quam si oculos sibi erueret, quos illi creator dedisset, conqueri de creatore suo posset.

9. Quinto dico quod dedit appetitui naturalem inclinationem ut obediret rationi. Et sic tandem tota inclinatio est bona. Et ista pro argumentis satis esse videntur, quatenus ad inclinationem appetitus sensitivi spectabat.

Sed aliunde arguebatur quia scilicet homo tenetur diligere Deum plus quam seipsum, et commune plus quam privatum bonum. Et tamen inclinatio hominis naturalis est in contrarium atque adeo in malum.

heat is enough to corrupt water. Therefore, with a similar concurrence it could have corrupted it in the past.[35] Therefore, heat is not natural to water. For, with His general concurrence alone, God could not prevent heat from corrupting water. And as He is not less powerful now than He was at the beginning, He was therefore not able to prevent it then. To be sure, I believe this argument is conclusive.

Again, God was not able to make man naturally incorruptible. Likewise, a natural agent could not, with God's general concurrence, induce the form of water into a matter which would through heat and dryness be indisposed for it. Therefore, heat and dryness cannot be natural to water.[36] For, as was argued, whatever a creature could have been able to do (if I may speak so) with the general concurrence of God, it can do now with that same concurrence.

6. Therefore, supposing this, that God cannot change the natures of things, I say that God made man with this natural inclination of his sense appetite. For man could not have been made otherwise.

7. Secondly, I say that this inclination, even though it may be to something evil, is still not itself evil as long as it abides within the limits of the sense appetite. Evil, I mean, with moral evil. For the evil of pain [or punishment] (*poenae*),[37] of which God is always the author, does not pose a problem, just as the inclination by which a lion is inclined to kill a man is not called evil. For just as the [sense] appetite inclines a man to evil, so also an object which is pleasurable or useful also inclines him to evil. And, nevertheless, the nature of gold, for example, or of sweet food, is completely good. Nor does anyone ever complain about God, that He made gold most beautiful or wine smooth. So neither [should anyone complain] generally about the sense appetite, which moves man to evil in a way not different from such objects. Hence, there is no evil either in the sense appetite or in those objects.

Thirdly, I say that the sense appetite inclines to evil, which is such not for the appetite itself, but rather for the man. For as St. Thomas says in *Summa Theologiae* I², q. 31, a. 1: "A natural appetite is always fitting."[38]

8. Fourthly, I say that God created man without such an evil inclination. For He created him with original justice, which subjected appetite to reason and in no way inclined to evil. But if afterwards, by his own fault, man fell into this difficulty, it should rather be imputed to himself than to the divine wisdom. And certainly not any more than, if he were to pluck out the eyes which his Creator gave him, he could complain about his Creator.

9. Fifth, I say that God gave sense appetite a natural inclination to obey reason. And so in the end the whole inclination is good. And this seems to be enough for arguments that relate to the inclination of the sense appetite.

But the argument was made elsewhere[39] that a man is obliged to love God more than himself, and is obliged to love the common good more than his private good. Yet the natural inclination of a man is in the opposite direction, and therefore it is toward what is evil.

10. Ad hoc quamquam sint clari philosophi et theologi, qui ita esse arbitrentur, ego vero nego hominem inclinari ad diligendum se plus quam Deum, vel proprium bonum plus quam commune. Sicut enim membrum plus inclinatur ad bonum totius quam ad bonum proprium, periclitatur enim manus pro salute totius, ita etiam ex naturali inclinatione homo quem Deus fecit partem reipublicae, natura inclinatur ad bonum publicum plus quam ad privatum. Et cum Deus sit bonum universale, plus etiam homo diligit Deum quam seipsum. Sicut nota experientia docet quod aqua ascendit, defetens conveniens sibi bonum propter integritatem et continuitatem universi. Non est autem consentaneum ut Deus rebus inanimatis aut membris corporis inclinationem dederit convenientem suo fini, uni autem homini negaverit.

Sunt vero qui hoc ipsum negant, scilicet, membrum plus inclinari ad bonum totius quam ad proprium. Nec membrum se exponit (ut aiunt) periculo pro salute totius, sed ipsum totum membrum tremens et resistens opponit pro se. Sed certe hoc ipsum est inconsonum rationi. Et est condemnare industriam divinam dicere quod Deus cum membra corporis fecerit solum propter bonum totius, et non propter se, tamen membris dederit inclinationem contrariam bono totius. Quasi vero pedes sibi, et non homini ambularent, et aures sibi, et non homini audirent, et oculi etc. Et ut de membris hominis donemus hoc illis, quid de aqua dicturi sunt cum sursum ascendit? An non ipsa se sursum movet? An potius imaginandum est totum universum concurrere ut aquam moveat? Profecto dicendum non est. Quod si ita est, ut certe est, cum Deus fecerit hominem potius propter se, quam propter hominem, absurdum est dicere non dedisse inclinationem suo fini convenientem, qua plus ipsum Deum, quam se diligeret.

Error tamen iste emanavit, quod viderent hominem cum magna difficultate, aut vitam, aut etiam bona temporalia ponere pro Deo, aut pro bono publico. Quare ex hoc arguunt non inclinari naturaliter ad bonum publicum. Sed hoc perinde est, ac si quis dicat hominem non amare propriam vitam plus quam unum membrum, cum videant gravari nimis. Et cum magna molestia et difficultate secare aut urere membrum propter salutem totius. Aut si quis neget aliquem cupidum esse vitae, ideo quia potionem amaram non libenter sumit. Ita non statim, si quis aegre et moleste ferat aut vitam, aut fortunas perdere propter Deum, aut propter bonum publicum, non inquam statim arguendum est hominem non plus naturaliter Deum aut commune bonum diligere, quam privatum. Ut enim doctores docent, gratia non est contraria

10. In answer to this, although there are famous philosophers and theologians who think that, I deny that a man is inclined to love himself more than God or to love his own good more than the common good. For just as one member is more inclined to the good of the whole body than to its own proper good, say when a hand is risked for the safety of the whole body, so also from natural inclination a man, whom God made to be part of a republic, is by nature inclined to the public rather than to his private good. And since God is the universal good, a man loves God even more than himself. In the same way, experience evidently teaches that water ascends [in a vacuum], leaving aside what is fitting for itself in favor of the integrity and continuity of the universe.[40] However, it is not reasonable that God would have given to inanimate things or to corporeal members an inclination suitable for His end, while denying such to man alone.

But there are those who deny that a corporeal member is inclined more to the good of the whole than to that of itself. Neither, as they say, does a member expose itself to danger for the preservation of the whole body, but rather a member puts that whole before itself only trembling and resisting.[41] But that certainly does not square with reason. And it impugns God's work to say that, although He made the members of the body solely for the good of the whole, and not for themselves, nevertheless, He gave those members an inclination contrary to the good of the whole. As if, indeed, feet would walk for themselves and not for the man, and ears would hear for themselves and not for the man, and eyes [would see for themselves,] etc.! And if we grant them this regarding the members of the human body, what are they going to say about water ascending on high? Is it not moving itself upward? Or should we rather imagine that the whole universe concurs in order that water move?[42] Certainly, that should not be said. But if this is so, as it certainly is so, since God made man for Himself rather than for man, it is absurd to say that He did not give him an inclination suited to his end, by which he would love God more than himself.

This error, however, has arisen because they have seen that a man gives his life, or even temporal goods, for God or for the public good only with great difficulty. Then they argue from this that man is not naturally inclined to the public good. This is as if someone were to say that a man does not love his own life more than one of his members, since they see he is sorely vexed and that it is with great trouble and difficulty that he cuts off or burns a member for the salvation of the whole body — or if someone were to say that a person does not desire to live because he does not relish taking some bitter medicine. Accordingly, if a man only with pain and distress bears the loss of his life or his fortune for God or for the public good, I say that you should not immediately argue that man does not naturally love God or the common good more than his private good. For, as the Doctors teach,[43] grace is not contrary to

naturae, sed perficit naturam et naturalem inclinationem. Difficultas autem provenit, tum ex appetitu, tum etiam quia licet plus inclinetur ad bonum totius, tamen etiam inclinatur ad alia bona. Et sic patitur difficultatem, sicut de proiciente merces in mare.

Atque in demum cogitandum est non esse Deum deteriorem artificem ipso homine, cum tamen artifex homo, si quod instrumentum ad aliquem finem fingat, curet omnem aptitudinem ad talem finem instrumento dare, idoneumque suo fini facere. Quare ergo Deus, qui omnia fecit propter se, non talem inclinationem suae creaturae credatur dedisse, qualem ad illum finem convenire noverat? Nos ergo amoliamur huiusmodi querelas de summo artifice ac conditore, credamusque naturam non nisi ad bonum inclinare. Atque ideo omne quod est contrarium naturali inclinationi, esse malum. *Perditio enim tua ex te, Israel. Salus autem ex me*, Os. 13,9. *Cum ergo*, ut a principio arguebam, *interficere seipsam sit contra naturalem inclinationem, consequens est esse illicitum*, quod erat primum argumentum ad probationem conclusionis.

Secundo PRINCIPALITER PROBATUR EADEM CONCLUSIO. *Occidens seipsum facit contra praeceptum decalogi: Non occides.* Quod habetur Ex. 20,13 et Deut. 5,17. Ergo peccat, et mortaliter. Hoc est argumentum beati Augustini I *De civitate* c.20 ad probandum quod occidere seipsum sit illicitum.

Sed ut apertius constet quam vim habeat argumentum, sicut etiam de primo fecimus, operae pretium est etiam examinare quid prohibetur in illo praecepto: Non occides. Cum in Scriptura non inveniatur alibi prohibitum, aut reprehensum seipsum occidere. Aut ex illo praecepto oportet esse illicitum, aut revocari in dubium potest, an liceat se interficere.

Cum enim praeceptum sit absolutum: Non occides, et in multis casibus licitum sit occidere, ut certo constat, dubitare merito potest, quid illo praecepto et qualiter homicidium prohibeatur.

11. Quidam ergo ita intelligunt praeceptum illud ut absolute prohibeatur occisio cuiuscumque hominis, sive privata auctoritate, sive publica, sive nocentis, sive innocentis. Sed ab eo praecepto tanquam a canone generali excipiuntur lege divina aliqui casus, in quibus licet occidere. Verbi gratia ut homicida iuste a magistratu occiditur. Sed dicunt quod nisi hanc facultatem haberent a Deo ex Sacra Scriptura, quae iubet ut qui occiderit hominem occidatur, ut patet Lev. 24,17, magistratus occidens latronem faceret contra illud praeceptum: *Non occides*. Itaque sine quocumque alio praecepto praeter id: *Non occides*, erat sufficienter prohibitum regi occidere etiam malefactorem,

nature, but rather perfects nature and natural inclination. But the difficulty comes from sense appetite itself and from the fact that even though it is more inclined to the good of the whole, it is however also inclined to other goods. And so a man does undergo hardship, as in the case of someone throwing merchandise into the sea.[44]

Finally, we should not think that God is a less skilled worker than is man himself. But a human craftsman, if he fashions a tool for some purpose, takes care to give that tool every aptitude for that purpose and to make it suitable for what he wants. Why, then, should God, who has made all things for Himself, not be thought to have given to his creature an inclination such as He knew was suitable for that end? Let us, therefore, put aside complaints of this kind about the Supreme Craftsman and Creator, and let us accept the fact that nature inclines only to what is good. And, therefore, everything that is contrary to natural inclination is evil. "*For destruction is thine own, O Israel, thy help is only in me*" (*Osee* 13,9). *Since therefore*, as I argued in the beginning, *to kill oneself is against our natural inclination, it is illicit.* And that was the first argument to prove the conclusion.

[Second Proof of the First Part of the Conclusion]

In a SECOND PRINCIPAL WAY THE SAME CONCLUSION IS PROVEN: *Someone killing himself is acting against the command of the Decalogue: "Thou shalt not kill."* This is taken from *Exodus* 20,13 and from *Deuteronomy* 5,17. Therefore, such a person commits a mortal sin. This is the argument St. Augustine uses, in *De civitate* I, c. 20,[45] to prove that killing oneself is illicit.

But to see the force of this argument more evidently, we need to examine just what is prohibited in that command: "Thou shalt not kill." For killing oneself is not forbidden or censured anywhere else in Scripture. Necessarily, therefore, either it is illicit on the basis of this commandment or you can doubt whether it is licit to kill oneself.

For although this command, "*Thou shalt not kill,*" is absolute, certainly in many cases it is clearly lawful to kill. Hence one may reasonably doubt what is, or what kind of homicide is, prohibited by this command.

11. Thus certain people understand this command in such way that the killing of any man at all, whether by private or public authority, whether guilty or innocent, is forbidden. But from this command, as from a general rule, [they think] there are excepted by divine law some cases, in which it is lawful to kill. For example, when a murderer is justly put to death by a judge. But they say that without God's permission in Sacred Scripture, ordering that he who kills a man should be killed, as in *Leviticus* 24, 17, a judge putting a criminal to death would be acting against the commandment: "*Thou shalt not kill.*" Therefore, in the absence of any other command but this: "*Thou shalt*

nisi Dominus excepisset de homicida, et quibusdam aliis malefactoribus. Et sic apud istos in nullo casu licet etiam publicis potestatibus occidere, nisi in casibus expressis a iure divino. Unde ortum habuit illa opinio quod non licet interficere, aut adulteram, aut simplicem furem, quia non est expressum in iure divino de adulterio. Et licet fuerit expressum in Veteri Testamento, tamen est revocatum a Domino per illa verba Io. 8,11: *Nemo te condemnavit, mulier? neque ego te condemnabo.*

Sed contra hanc sententiam arguitur. Illud quod est de se licitum et per se bonum non est prohibitum praecepto divino. Sed occidere hominem in casu est per se bonum, videlicet in defensione sui. Ergo non est prohibitum illo praecepto: *Non occides.* Neque indiget excipi a regula id quod nullo modo potuit cadere sub regula. Si ergo occidere invasorem non potuit cadere sub praecepto: *Non occides*, non est factum licitum, quia exceptum sit ab illo praecepto. Item, in lege data Moysi fuit aliquando licitum occidere, aliquando non. Et tamen non erat facta talis exceptio in iure divino plus de homicida, quam de adultera. Ergo vel utrumque licebit, vel neutrum. Et quaero, ante legem Moysi, an licebat interficere blasphemum et homicidam, vel non. Si non, contra. Quidquid non licuit in lege naturae, nunquam licuit. Non enim lex Moysi aut lex gratiae sunt dispensationes legis naturae, sed potius e contrario multa licebant in lege naturae quae in lege Moysi prohibita sunt. Si ergo licebat interficere in lege naturae adulteram, sine exceptione et expressione iuris divini, licuit in lege Moysi.

Et ideo alii dicunt quod in praecepto: *Non occides*, prohibetur solum occisio innocentis. Et illud praeceptum Ex. 20,13: *Non occides*, videtur explicatum Ex. 23,7: *Insontem et iustum non occides.* Sed contra hoc est quod privatus occidens peccatorem et sontem facit contra illud praeceptum: *Non occides.* Si enim non peccat contra id praeceptum: *Non occides*, nusquam alibi in iure prohibetur occisio nocentis hominis. Quare cum certum sit etiam apud istos privatum hominem reum esse homicidii, etiam si nocentissimum occidat, certum est illo praecepto non prohiberi solum innocentis occisionem plus quam nocentis.

Et ideo alii, qui propius ad veritatem accedunt, dicunt quod prohibetur illo praecepto occisio hominis privata auctoritate. Sed neque isti quidem sufficientem vim illius praecepti explicarunt. Si enim respublica aut rex innocentem hominem occideret, faceret contra illud praeceptum, ut certum est. Ergo non prohibetur absolute privata auctoritate occidere, aut permittitur occidere publica. Neque valet dicere quod qui interficit se defendendo, occidit

not kill," it was completely prohibited that a king kill a criminal, unless God made an exception for a murderer and for certain other criminals. Thus according to these people it is not lawful, even for public authorities, to kill in any case except those expressly mentioned in divine law. In this way, there arose the opinion that it is not lawful to kill an adultress (or a simple thief) because it is not expressly mentioned in the divine law regarding adultery. And even if it was expressed in the Old Testament, it has, nonetheless, been revoked by Our Lord in these words of *John* 8, 10-11: "*Hath no man condemned thee, woman? Neither will I condemn thee.*"

But against this opinion I argue as follows. That which is lawful and of itself (*per se*) good is not forbidden by a divine command. But to kill a man is in some cases of itself good, for instance, in defense of oneself. Therefore, it is not forbidden by the command: "*Thou shalt not kill.*" Neither does that which can in no way fall under a certain rule need to be excepted from that rule. If, therefore, to kill an aggressor could not fall under the command, "*Thou shalt not kill,*" it is not made lawful because it has been excepted from that command. Moreover, in the Mosaic law it was sometimes lawful to kill and sometimes not. Yet, apart from a murderer or an adultress, no such exception was made in divine law. Therefore, either both will be lawful, or neither.[46] And my question is: before the Mosaic law, was it lawful to kill a blasphemer and a murderer, or not? If not, then on the other side: whatever was not lawful in the law of nature was never lawful. For the Mosaic law and the law of grace are not dispensations from the law of nature, but, on the contrary, many things were lawful in the law of nature which were prohibited in the Mosaic law. If therefore under the law of nature it was lawful to kill an adultress, apart from any explicit exception of divine law, it was lawful in the Mosaic law.

And therefore, others say that in the command: "Thou shalt not kill," only the killing of an innocent person is prohibited. Further, they say, the command, "*Thou shalt not kill,*" in *Exodus* 20, 13, is seemingly explained in *Exodus* 23,7: "*The innocent and the just person thou shalt not put to death.*" But against this is the fact that a private man killing a sinner or a guilty person contravenes this command: "Thou shalt not kill." For if he does not sin against the command, "Thou shalt not kill," nowhere else in the law is the killing of a guilty person prohibited. Since, then, it is certain also according to these people that a private citizen is guilty of homicide, even if he kills someone who is most guilty, it is certain that by this command there is not prohibited only the killing of the innocent rather than of the guilty.

Therefore, others coming closer to the truth say that what is forbidden by this commandment is killing a man by private authority. But these also do not explain the full force of this commandment. For if a republic or a king were to kill an innocent man, it is certain they would act against this commandment. Therefore, to kill by private authority is not absolutely prohib-

publica auctoritate. Quia habet auctoritatem a Deo, per ius naturale. Hoc enim ineptum et ridiculum est. Nam hoc modo neque comedere aut bibere nisi publica auctoritate liceret. Non enim liceret nisi a iure divino esset permissum.

12. Et ideo dimissis variis opinionibus, dico primo *quod hoc praeceptum est iuris naturalis, et non positivi, sicut etiam alia praecepta decalogi.* Quod patet, quia in lumine naturali semper fuit notum homicidium esse culpabile et illicitum.

13. Secundo. Infertur ex hoc quod hoc praeceptum semper fuit aequale, et ante legem, et in lege, et tempore Evangelii. Patet. Quia lex naturalis nunquam mutatur. Nec enim abrogatur, aut limitatur, aut extenditur. *Est enim lumen signatum super nos a principio.*

14. Tertio infero quod si licebat interficere adulteram aut furem in lege Moysi, etiam licuit ante legem et licet in lege Evangelica.

15. Quarto dico et infero quod illo praecepto prohibetur omne homicidium, quod stando in lege naturae sola, est malum et irrationabile. Et ad hoc solum oportet respicere, et non ad exceptiones, vel permissiones factas in lege. Omnia enim illa vel solum sunt iudicialia, quae iam cessaverunt, aut si sunt moralia, sunt explicativa iuris naturalis. Quare ad id est ultimo referendum, quando licet occidere, et quando non. Ad quod tamen iuvat Scripturas consulere. Neque hoc est (ut aiunt) explicare idem per se ipsum, aut ignotum per ignotius. Non est enim homicidium malum quia prohibitum, sed prohibitum quia malum. Quare ad intelligendum quid sit prohibitum per illud praeceptum: *Non occides*, optime respondetur, et per causam, *quod omne illud homicidium, quod est iure naturali malum.*

16. Quinto dico quod in illo praecepto non magis prohibetur homicidium auctoritate publica quam privata. Alia enim quaestio est, quem et quando licet occidere; et alia quaestio est, cui licet occidere. Nam aliquando est malum publica auctoritate occidere.

17. Sexto dico quod dupliciter potest occidi homo. Uno modo ex intentione et certo proposito, ut iudex intendit privare vita malefactorem. Alio modo praeter intentionem, non dico solum a casu et involuntarie, sed etiam propter alium finem, quem si posset occidens aliter consequi non occideret. Sicut cum quis in defensionem sui, vel etiam reipublicae occidit invasorem, quem non occideret, si aliter posset se defendere.

18. Septimo dico quod ex intentione licitum est, stando in iure divino solum et naturali occidere hominem nocivum reipublicae. Quia homo est membrum communitatis. Et ideo sicut licitum est abscindere membrum corruptum et nocivum toti corpori, ita est licitum in iure divino et naturali hominem

ited, nor is it absolutely permitted to kill by public authority. Nor is it valid to say that one who kills in self-defense is killing by public authority because he has authority from God, through natural law. For this is foolish and ridiculous, since in this way to eat or to drink would be lawful only by public authority. For such would not be lawful if they were not permitted by divine law.

12. Therefore, putting aside these various opinions, I say first that *this commandment is a matter of natural, and not positive, law — just like the other commands of the Decalogue.* This is clear, because by the light of natural reason it was always evident that homicide is blameworthy and illicit.

13. Second, it is inferred from this that *this command was always the same — before the law, during the time of the law, and in Gospel time.* This is clear, because the natural law is never changed; it is not abrogated, limited, or extended. For it is "*a light marked* (*signatum*) *upon us from the beginning.*"[47]

14. Third, I conclude that *if it was lawful to kill an adultress or a thief under Mosaic law, it was also lawful to do so before the law, and it is lawful in Gospel law.*

15. Fourth, I say and conclude that *by that commandment there is prohibited every homicide which, by the law of nature alone, is evil and irrational.* And it is only to this that we must look, and not to exceptions or permissions given in [divine] law. For all of these are only judicial, and have ceased to obtain, or if they are moral are explanatory of the natural law.[48] Accordingly, when it is lawful to kill and when it is not must be ultimately referred to this. However, it does help here to consult the Scriptures. Neither is this to explain (as they say) the same thing by itself or to explain what is unknown by what is more unknown. For homicide is not evil because it is prohibited, but rather prohibited because it is evil. Hence, to understand what is forbidden by this precept: "Thou shalt not kill," the best reply is through the cause itself, that it is *every homicide which is evil by natural law.*[49]

16. I say, fifth, that *in this command homicide by public authority is not more forbidden than is homicide by private authority.* For it is one question, *whom and when it is lawful to kill,* and another question, *for whom is it lawful to kill.* For sometimes it is wrong to kill by public authority.

17. Sixth, I say, *there are two ways in which a man can be killed:* first, *intentionally* and by express purpose, as when a judge intends to deprive a criminal of life, and second, *unintentionally.* Here I mean not only by chance and involuntarily, but also for some purpose for which, if it could be otherwise achieved, the one killing would not kill. An example might be when someone in self-defense, or in defense of the republic, kills an aggressor whom he would not kill if he could defend himself in another way.

18. Seventh, staying within divine and natural law only, I say *it is lawful intentionally to kill a man who injures the republic.* For man is a member of the community. And, therefore, just as it is permitted to cut off a corrupt member which is harmful for the whole body, so it is permitted in divine and

perniciosum et boni communis corruptorem interficere, etiam si hoc nunquam sit expressum in iure divino scripto. Quia hoc est notum in lumine naturali quod maius bonum debet praeferri minori bono, et privato bono publicum bonum.

19. Octavo dico quod tale homicidium de iure naturali et divino est solum commissum reipublicae aut publicis magistratibus et principibus, qui habent curam reipublicae, ut patet ex Paulo ad Rom. 13,4: *Non sine causa gladium portat, vindex enim est.*

20. Nono dico quod ex intentione occidere hominem semper est prohibitum homini privato. Nunquam enim licet nisi in casu praemisso. Non autem est commissa cura publici boni defendendi nisi publicis personis. Ergo nulli privato sua auctoritate licet ex intentione occidere.

21. Ultimo dico quod omne aliud homicidium ex intentione est illo praecepto prohibitum, seu publicae, seu privatae personae, praeterquam in casu praemisso, quando vita alicuius propter peccatum eius est perniciosa reipublicae. Nam de homicidio non ex intentione, quale est in defensione sui, aut reipublicae latior est disputatio. Quod licet etiam ex iure naturali cognosci posset, tamen quia non est praesentis speculationis, missum facio.

Ex his patet quam vim habet argumentum ex illo praecepto ad probandum quod non licet interficere seipsum. Cum enim nemo sit iudex sui ipsius, neque habeat auctoritatem in seipsum, nunquam licebit se interficere, etiamsi dignus morte esset, et perniciosus reipublicae.

22. TERTIO ARGUITUR ET PROBATUR CONCLUSIO. Se occidens facit iniuriam reipublicae. Ergo peccat. Consequentia est clara. Antecedens patet. Quia quidquid homo est. est ipsius reipublicae, sicut pars sui est totius. Ergo qui se occidit aufert a republica quod suum est.

QUARTO ET ULTIMO PROBATUR. Quia occidens se facit contra praeceptum de caritate. Ergo peccat. Consequentia est nota. Et antecedens probatur. Quia non minus homo tenetur se diligere quam proximum sicut seipsum. Sed si occideret proximum, semper esset contra caritatem proximi. Ergo se occidens, facit contra caritatem sui. Ista duo arguenta non carent

natural law to kill a man who is destructive and corruptive of the common good, even if this has never been expressed in the written divine law. For this is evident by natural light, that a greater good should be preferred to a lesser good, and the public good should be preferred to a private good.

19. Eighth, I say that *such a homicide as a matter of natural and divine law is permitted only for the republic, or for public judges and princes who govern the republic*, as is clear from Paul to the *Romans* 13, 4: "*He beareth not the sword in vain, for he is an avenger.*"[50]

20. Ninth, I say that *it is always forbidden for a private person to intentionally kill a man*. For it is never lawful, except in the case mentioned.[51] But the task of defending the public good is given only to public persons. Therefore, it is unlawful for any private person intentionally to kill on his own authority.

21. Last, I say that *every other intentional homicide is forbidden by that commandment*, whether for a public or a private person, apart from the mentioned case when, because of his misconduct, the life of some person is destructive of the republic. And it is beyond our intention to discuss a non-intentional homicide, such as in the defense of oneself or of the republic. That this is lawful also could be known from natural law, but because it is not a matter of present concern, I am putting it aside.

From all of this, it is clear what force the argument from this commandment has to prove that it is wrong to kill oneself. For, since no one is his own judge, nor does he have authority over himself, it will never be lawful for him to kill himself, even though he may be deserving of death and be injurious to the republic.[52]

[Third Proof of the First Part of the Conclusion]

22. THE CONCLUSION IS PROVEN WITH A THIRD ARGUMENT. Someone who kills himself injures the republic. Therefore, he sins. The consequence is clear and the antecedent is evident. For whatever a man is, he belongs to the republic in a way similar to that in which a part of himself belongs to his whole reality. Therefore, he who kills himself takes away from the republic what belongs to it.

[Fourth Proof of the First Part of the Conclusion]

FOURTH AND LAST THIS IS PROVEN. For one who kills himself acts against the commandment of charity. Therefore, he sins. The consequence is evident. And the antecedent is proven: for a man is obliged as much to love himself as to love his neighbor as himself. But if he were to kill his neighbor, it would always be against the love of his neighbor. Therefore, killing himself, he is acting against his own self-love.[53]

difficultatibus et dubiis, possentque examinari sicut praecedentia. Sed quia impugnando conclusionem ipsam commodius veritas ipsius explicabitur, nec tempus nobis suppeteret si utrumque vellem prosequi, ideo hoc relicto, contra conclusionem arguitur.

Et primo sic. Nemo potest se saltem de industria et volens occidere. Ergo conclusio includit falsum, scilicet inveniri posset tale delictum et crimen. Antecedens probatur. Quia voluntas non potest velle nisi bonum ut Aristoteles habet, et impraesentiarum pro rato habemus. Sed non esse, aut desinere esse non est bonum, imo potius malum. Ergo nullus seipsum potest interficere. Neque sufficit dicere quod cum anima sit inmortalis, non desinit esse saltem meliori sui parte, qui se interficit. Saltem enim argumentum procedit de illo qui non haberet spem alterius vitae qui non posset seipsum interficere. Cuius oppositum ex historia constat. Et confirmatur. Quia impossibile est quod aliquis nolit esse beatus, ut diserte Augustinus tenet 17 *De civitate Dei*. Sed qui vult esse beatus, vult esse, cum non possit esse beatus si non sit. Ergo non potest aliquis nolle esse, et per consequens neque se interficere.

Secundo arguitur. Nulli facit iniuriam qui se interficit. Ergo non peccat se interficiendo. Antecedens patet. Quia non sibi, volenti enim non fit iniuria. Ipse autem volens patitur. Ergo non patitur iniuriam. Nec sufficit dicere quod facit iniuriam reipublicae, quia saltem qui bona venia reipublicae vel adepti licentiam a republica (sicut mos apud aliquas nationes fuit) se interficerent, non peccarent. Et confirmatur. Quia qui bona temporalia volens perderet, neque sibi, neque reipublicae iniuriam faceret. Ut si quis equum suum occideret. Et tamen non minus res temporales sunt reipublicae quam hominis vita, imo multo plus. Ergo nec se interficiens facit iniuriam reipublicae, aut sibi. Item, licet non se defendere a latrone invadente, quando non potest vitam tueri nisi alterum occidat. Ergo licet se interficere. Consequentia probatur. Eodem praecepto tenetur quis defendere propriam vitam quo tenetur se non occidere. Et si se posset defendere, et non se defenderet, esset contra praeceptum de non se occidendo.

Quarto. Licet duobus existentibus in extrema necessitate. et habentibus solum unicum panem, unde alter posset tantum vitam conservare, licet inquam alteri habenti panem cedere alteri. Et hoc est se interficere. Ergo.

These two arguments do not lack difficulties and doubts, and they could be examined as have the preceding arguments. But because by arguing against the conclusion its truth will be more fittingly explained, and because there would not be time[54] for us to do both things, therefore, putting this aside, we argue *against the conclusion.*

First as follows: No one can kill himself, at least on purpose and willingly. Therefore, the conclusion includes something false, namely, that such a fault or crime could happen. The antecedent is proven: for the will can only will what is good, as Aristotle says,[55] and as we hold it certain now. But not to be, or to cease to be, is not good; indeed rather it is bad. Therefore, no one can kill himself. Nor is it enough to say that, since the soul is immortal, someone who kills himself does not cease to be at least in his better part. For at least the argument proceeds against a person who would not have a hope of another life, that[56] he could not kill himself. But the opposite of this is clear from history. And this is confirmed. For it is impossible that someone not want to be happy, as Augustine eloquently holds in Book 17 of his *De civitate Dei.*[57] But he who wants to be happy, wants to be, since he could not be happy unless he is. Therefore, someone cannot not want to be, and consequently he cannot kill himself.[58]

The second argument is that one who kills himself does an injury to no one. Therefore, if he kills himself, he does not sin. The antecedent is clear. For no injury is done to himself, since to a willing person no injury is done.[59] But he suffers [death] willingly. Therefore, he does not suffer injury. Nor is it enough to say that he injures the republic, for at least those who would kill themselves with the permission of the republic or with a licence from the republic (as was the custom in some nations[60]) would not sin. And this is confirmed: for he who willingly would destroy [his own] temporal goods would not injure himself or the republic. For instance, if someone were to kill his own horse. And, nevertheless, temporal goods belong to the republic not less than the life of man, indeed they belong much more. Therefore, someone killing himself does not injure the republic or himself.

Again [third], it is lawful not to defend oneself from an aggressive criminal, when one cannot defend his life unless he kill another. Therefore, it is lawful to kill oneself. The consequence is proven. One is obliged to defend his own life by the same commandment by which he is obliged not to kill. And if he could defend himself, and did not do so, it would be against the commandment not to kill oneself.

Fourth: where there are two people existing in extreme necessity with only enough bread between them to sustain the life of one of them, it is, I say, lawful that the one having the bread give it to the other. And this is to kill oneself. Therefore...

Quinto. Si servus esset cum rege in naufragio et essent in tabula vel navicula quae utrumque non posset sustineret licet servo desilire in mare sine spe evadendi, ut regem servet a morte. Ergo licitum est in casu se interficere.

Sexto. Licitum est damnato ad mortem, ut fame conficiatur, oblato pane non comedere. Ergo licitum est se interficere. Antecedens patet. Quia licitum est, et potest parere sententiae, cui adiudicatus est.

Septimo. Licet damnato ad mortem habita etiam opportunitate fugiendi non fugere, sed expectare. Sic dat operam morti propriae. Ergo.

Octavo. Licet damnato ad mortem veneni hausti haurire venenum. Ergo licet se interficere.

Nono. Licet cum manifesto periculo mortis tempore pestis visitare amicos. Ergo...

Decimo. Licet navigare cum manifesto periculo mortis. Ergo

Undecimo. Licita sunt exercitia militaria, et taurorum exagitatio, etiam cum periculo mortis. Ergo seipsum interficere. Probatur consequentia. Quia in omnibus his tribus argumentis est eadem ratio, quia eodem praecepto generaliter prohibetur interficere alium, et exponere se periculo occidendi. Ergo etiam
de seipso.

Duodecimo. Licet vitam breviorem facere abstinentiis, et duro victu, et aliis vitae austerioris rigoribus. Ergo se interficere. Consequentia probatur ex dicto Hieronymi: "Nihil interest parvo aut magno tempore te interimas". Et antecedens probatur, et patet de monasteriis, ubi certum est vitam esse breviorem quam extra.

Decimo tertio. Non tenetur aliquis constitutus in extremo periculo redimere salutem quacumque pecunia, vel toto patrimonio. Ergo non tenetur conservare vitam suam. Antecedens patet. Si enim quis indigeret ad salutem herba aliqua, ut (exempli gratia) radice pontica, quam non posset habere, nisi daret suum regnum, aut principatum, non teneretur dare. Ergo.

Decimo quarto. Semper est licitum subire minus malum ad evitandum maius malum. Sed maius videtur infamia et ignominia, quam mors. Ergo saltem ad vitandum ignominiam et infamiam, licitum erit subire mortem et se interficere.

Decimo quinto. Saltem hoc, scilicet non licitum esse se occidere, non est ita per se notum, quin possit ignorari. Cum apud multos, qui reputati sunt sapientes, fuerit laudatum. Ergo saltem excusabuntur illi, qui putant se fortiter et laudabiliter agere, se interficiendo, ut Cato, Brutus et similes.

Fifth: if a slave (*servus*) were in a shipwreck with a king and they would be on a plank or a lifeboat which could not bear them both, it would be lawful for the slave to throw himself into the sea, without hope of survival, in order to save his king from death. Therefore, it would be lawful in that case to kill himself.

Sixth: it is lawful for someone condemned to death by starvation not to eat food that is offered to him. Therefore, it is lawful for him to kill himself. The antecedent is clear: for one can submit lawfully to a sentence to which he has been condemned.

Seventh: it is lawful for someone condemned to death not to flee even though he may have an opportunity, but rather to wait for that death. But in this way he is contributing to his own death. Therefore.

Eighth: it is lawful for someone condemned to a death by drinking poison, to drink that poison. Therefore, it is lawful that he kill himself.

Ninth: it is lawful for someone in a time of plague to visit his friends even though there is obvious danger of death. Therefore ...

Tenth: it is lawful to sail in face of a clear danger of death. Therefore ...

Eleventh: military exercises and bullfights[61] are lawful, even with the danger of death. Therefore, it is lawful to kill oneself. The consequence is proven: because in all these three [last] arguments the reasoning is the same, namely, that to kill another and to expose oneself generally to the danger of killing him is forbidden by the same commandment. Therefore, the same is true with respect to oneself.

Twelfth: it is lawful to shorten one's life by abstinences, poor food, and other rigors of austere living. Therefore, it is lawful to kill oneself. The consequence is proven from the words of St. Jerome: "It makes no difference whether you kill yourself in a short or over a long time."[62] The antecedent is both proven and is clear from monasteries, within which life is certainly shorter than it is outside.

Thirteenth: someone in extreme danger is not obliged to purchase health with all possible amount of money or with his whole patrimony. Therefore, he is not obliged to preserve his own life. The antecedent is clear: for if someone were to need some herb for his health, for example some root from the region of the Black Sea, which he could not get without giving up his kingdom or his government, he would not be obliged to give these up. Therefore.

Fourteenth: it is always lawful to endure a lesser evil in order to avoid one which is greater. But infamy and ignominy seem greater than death. Therefore, at least in order to avoid ignominy and infamy, it will be lawful to suffer death and even to kill oneself.

Fifteenth: that it is unlawful to kill oneself is not so self-evident that it cannot be unknown. For it has been praised by many who have been thought to be wise. Therefore, at least those will escape blame who think that by killing themselves they are acting bravely and laudably, for example, Cato,[63] Brutus,[64] and the like.

Decimo sexto. Legitur de quibusdam sanctis feminis quod cum essent a tyrano damnatae ut igne comburerentur, ipsae se in eum praecipitaverunt. Ergo licet se interficere.

Decimo septimo. Samson, Saul, Razias, Eleazarus, se interfecerunt, qui non solum non vituperantur in Scriptura, sed certe Samson inter sanctos refertur ab Apostolo ad Hebraeos 11, 32-33. Et Razias et Eleazarus laudantur. Et idem argumentum potest fieri de virginibus, quae fugientes romanorum iniuriam, apud Aquileiam se in flumen praecipitaverunt.

Pro solutione istorum argumentorum multa et varia possent adduci, quae si tempus ferret, non essent inutilia vel iniucunda tractatu. Sed pro temporis brevitate solutionem illorum in paucissima verba conferam.

Pro elucidatione ergo primi argumenti est advertendum quod obiectum voluntatis non est solum verum bonum. Cum enim obiectum non moveat voluntatem nisi mediante cognitione, nihil refert ad movendum voluntatem, an sit verum bonum, aut aestimetur verum bonum. Itaque cum interficere seipsum, aut prorsus non esse, possit aestimari bonum, ex hac parte non impeditur, quin potest aliquis sciens et volens seipsum interficere. Cum possit errare, et aestimari sibi bonum esse. Sed quoniam ista solutio solummodo ostendit aliquem ex errore posse velle non esse, et per consequens se interficere, dico secundo quod non inconvenit aliquem sine errore quocumque, velle non esse.

Pro quo advertendum quod sicut non inconvenit aliquid esse secundum se bonum, et tamen ex aliqua circumstantia fieri malum, ita e contrario aliquid quod absolute est malum, potest ex aliquo adiuncto fieri bonum. Atque in proposito non esse, licet absolute sit malum, tamen tanquam medium ad vitandas miserias, non solum potest aestimari bonum, sed revera esse bonum. Et quamvis esse secundum se sit bonum tamen coniunctum cum aliquo malo, potest non solum aestimari, sed fieri revera malum. Unde dico quod damnati, sine quocumque errore cupiunt non esse. Quamquam enim esse absolute esset eis bonum, tamen tale esse, scilicet cum summa miseria, revera est eis malum. Et melius esset eis non esse, quam sic esse. Quod Dominus in Evangelio satis aperte ostendit dictum de Iuda traditore: *Bonum erat ei, si natus non fuisset homo iste* (Mc. 14,21). Quamvis enim aliqui ita hunc locum intelligunt, ut melius quidem fuisset Iudae non nasci, non tamen melius non concipi aut non esse. Tamen non puto Christum habuisse respectum ad differentiam illam inter natum esse et conceptum esse, et prorsus esse, sed absolute protulit melius futurum illi omnino non esse, quam ita perditum esse. Unde Ecclesiastici 30,17: *Melius est mors quam vita amara.* Quare damnati non errantes, sed

Sixteenth: we read of certain sainted women who, when they were condemned by a tyrant to be burnt to death, of their own volition hurled themselves into the fire. Therefore, it is lawful to kill oneself.

Seventeenth: Samson, Saul, Razias, and Eleazar killed themselves. And not only were they not blamed in the Scripture, but Samson was certainly numbered among the saints by the Apostle [Paul], in *Hebrews* 11, 32-33, and both Razias and Eleazar are praised.[65] The same argument can also be made with regard to the virgins in Aquileia, who, to escape harm from the Romans, threw themselves into a river.[66]

In answer to these arguments, many different things could be brought forth, which if time would allow,[67] would not be useless or hard to treat. But, because of the brevity of time, let me solve them in very few words.

For the solution of the first argument, therefore, one should note that the object of the will is not only what is truly good. For, since an object moves the will only through the medium of knowledge, it does not matter for such moving whether it is a true good or whether it is simply thought to be a true good. Since, therefore, to kill oneself, or simply not to exist, can be thought to be good, on this score there is no obstacle to someone's being able to kill himself with knowledge and volition. For he could make a mistake and think it to be a good for himself.[68] But since this solution only shows that someone from error can want not to be, and consequently kill himself, I say secondly, it is not a problem for someone, without any error, to want not to exist.

In explanation, we should note that just as it is not a problem that something be good in itself and still because of some circumstance become bad, so on the other hand something which is simply evil can from some added thing become good. And in the case before us, although not to exist is as such bad, still as a means of avoiding afflictions it can not only be thought to be good, but can actually be good. And although to exist is good in itself, nevertheless, when it is linked with some evil it can not only be thought to be, but actually can become evil. Hence, I say that without any error the damned [in hell] desire not to exist. For although existence as such would be a good for them, still the existence they have, that is with supreme misery, is indeed an evil for them. And it would be better for them not to exist, than to exist as they are. The Lord evidently showed this when in the Gospel he said of Judas, the betrayer: "*It were better for him, if that man had not been born*" (Mark 14, 21). For, although some understand this passage to mean that it would have been better for Judas not to have been born, but not better for him not to have been conceived or simply not to exist, I, however, do not think that Christ was making any difference between being born and being conceived, or just being as such, but was simply saying it would be better for that man not to be than to be, as he was, damned. Hence it is that *Ecclesiasticus* (30,17) says: "*Better is death than a bitter life.*" Therefore, not in error, but choosing rightly,

recte eligentes, cupiunt non esse. Et hoc plusquam satis ad primum argumentum.

Sed instabat in confirmatione, quod omnis homo necessario appetit beatitudinem, quam non potest habere si non sit. Et per consequens videtur quod necessario vellet esse, neque posset velle non esse.

Ad hoc argumentum quamvis multifariam possit responderi, tamen in praesentia dico quod nullus potest velle absolute quod scit se nunquam adepturum. Et per consequens nec medium eligere ad consequendum illud, quod consequi non sperat. Quare cum damnati firmiter credant se nunquam futuros felices, fit ut nec etiam esse velint, quod tamen necessarium est ad felicitatem. Et eo ipso quod damnati cupiunt felices esse, cupiunt miserias vitare, quas fugere non possunt. Ac per consequens vellent non esse.

23. Pro *secundo argumento* eiusque confirmatione est notandum quod differentia est inter alias res corporales et inter vitam hominis. Est enim homo ita verus dominus aliarum rerum ut possit pro suo arbitrio uti omnibus illis. Omnia enim Dominus subiecit pedibus eius. Quare non tenetur homo ad conservationem rerum temporalium, sed potest pro sua voluntate vel tenere, vel dimittere. Unde occidens proprium equum, aut comburens propriam domum, nulli facit iniuriam. Non est autem ita dominus aut corporis aut vitae propriae. Est enim solus Deus dominus vitae et mortis. Et quantum ad hoc homo peculiariter est servus Dei. Unde occidens seipsum, occidit alicui servum, et facit iniuriam Deo, a quo tantum donum utendum accepit, non perdendum. Et sicut non est inmunis ab iniuria qui alium interficit, etiam alio petente, quia scilicet ille non est ita dominus vitae suae, ut possit facultatem cuiquam dare sibi vitam eripiendi, ita et qui seipsum interficit, iniuriae reus est. Ut enim apud Ciceronem Pythagoras ait, "prohibentur mortales sine iussu imperatoris vel domini de praesidio et statione vitae discedere".

24. Pro *tertio argumento*. Quamvis nonnulli in illa sint opinione ut putent hominem teneri ad tuendam vitam, quandocumque licite potest, tamen dico quod non solum in isto, sed in multis aliis casibus homo posset licitis mediis vitam servare. Et tamen non tenetur. Unde si invasus a latrone aliter non posset se defendere quam latronem interficiendo, non dubito quin sit opus consilii et perfectionis permittere se occidere potius quam latronem in tali statu mittere in perditionem. Quod probatur. Si enim christianus deprehensus in solitudine a pagano invaderetur eo quod christianus esset, dato quod posset se ab illo defendere, etiam licite, et sine scandalo fidei, tamen nemo dubitaret quin esset opus patientiae ferre aequanimiter mortem in testimonium fidei.

the damned desire not to be. And this is more than enough by way of reply to the first argument.

But in the confirmation of that argument it was further objected that every man necessarily desires happiness, which he cannot attain unless he exists. Consequently, it seems that a man would necessarily will to exist and that he could not will not to exist.

Although this argument can be answered in various ways, for now I say that no one can without qualification will what he knows he will never attain. Consequently, neither can he choose a means to attain that which he has no hope of attaining. Therefore, since the damned firmly believe that they will never be happy, it is the case that they also do not will to exist, which is necessary for happiness. And by that very fact that the damned desire to be happy, they desire to avoid the afflictions which they cannot escape. Consequently, it is their will not to exist.

23. As regards the second argument and its confirmation, it must be noted that there is a difference between human life and other corporeal things. For man is the true master of other things in such a way that he can use them all as he wishes. For the Lord subjected all things under the feet of man. Therefore, a man is not obliged to keep temporal things, but he can hold them or let them go, as he wills. Thus, a man killing his own horse, or burning his own house, is injuring no one.[69] However, he is not in this way the master of his own body or of his own life. For God alone is the master of life and death. And with respect to this, man is in a special way the servant of God. Therefore, someone who kills himself, kills the servant of another, and does injury to God, from whom he received the great gift of life to be used and not to be destroyed. And just as one who kills another, even when that other has asked to be killed, is not immune from guilt, because that other is not the master of his life in such a way that he can give permission to anyone to take it away,[70] so also he who kills himself is guilty of injury.[71] Thus, according to Cicero,[72] Pythagoras said: "Apart from the command of their ruler or master, mortals are forbidden to leave their post or station."

24. *In reply to the third argument*: although some are of the opinion that a man is obliged to protect his life whenever he can lawfully do so, I say that a man could preserve his life by lawful means not only in that case but in many others as well — but he is, however, not obliged to do so. Thus, if when attacked by a robber he could not defend himself unless he killed that robber, I do not doubt that it is an act of counsel and perfection to let the robber kill him rather than to kill the robber and send him to hell in his present condition. This is proven: for if a Christian surprised in a lonely place by a pagan were to be attacked for the reason that he is a Christian, granted that he could defend himself, even lawfully and without any scandal to the faith, nevertheless, no one would doubt that it would be an act of patience to suffer death

Probatur secundo. Christus licite se poterat defendere a iudaeis vel gentilibus, qui tyrannice oppresserunt illum, nec tamen fecit. Ergo non quicumque licite potest salvare vitam suam, tenetur. Item, decem millia martyrum qui pro Christo mortui sunt, non videtur quod non potuissent se defendere licite et pugnare adversus tyrannos. Sicut et nunc christiani se tuentur contra paganos. Unde non dubito quin plerumque martyrium sit sub consilio, et quod multi martyres se ultro martyrio obtulerunt, cum ad hoc non obligarentur. Quod satis consonum videtur consilio Apostoli ad Rom. 12,19: *Non vos defendentes, carissimi, sed date locum irae.* Et Dominus in Evangelio Mt. 5,39: *Ego autem dico vobis, non resistere malo.* Imo iste videtur error iudaeorum, quem Dominus apud Mt. 5, elidit, quod putabant non esse laudabile, si quis iniurias patienter toleraret.

Pro quo est considerandum quod licet (ut dictum est) homo non sit dominus sui corporis, aut vitae suae sicut aliarum rerum, tamen aliquid dominii et iuris habet in vita sua, ratione cuius qui nocet in corpore non solum facit Deo, qui est supremus dominus vitae, sed etiam ipsi homini privato, iniuriam. Hoc ergo ius quod homo habet in proprium corpus, potest homo laudabiliter dimittere et perdere, quamvis habeat ius se defendendi, et sic patienter ferre mortem.

Contra hanc tamen solutionem potest instari. Quilibet tenetur defendere vitam innocentis, si quis per violentiam velit eum interficere. *Unicuique enim Deus mandavit de proximo suo.* Et Prov. 24,11: *Erue eos, qui ducuntur ad mortem; et eos qui trahuntur ad interitum, liberare non cesses.* Unde si quis posset innocentem eripere de manu invasoris, et non faceret, esset reus homicidii. Ex hoc sic arguitur. Plus tenetur homo servare propriam vitam quam vitam proximi. Si ergo tenetur homo defendere vitam proximi ab iniusto invasore. Ergo etiam propriam vitam.

25. Ad hoc primo dico quod non est ita exploratum quod semper homo teneatur defendere vitam proximi, etiam quandocumque licet. Si enim christianus se ultro offerret tyranno, ad augmentum fidei etiam extra tempus necessitatis, quando scilicet est opus consilii, dato quod christiani possent illum eripere de manu tyranni, et liceret sine scandalo, credo quod non tenerentur. Et sic non est universaliter verum quod quilibet tenetur defendere vitam innocentis, etiam cum licite potest. Ut patet de Petro Apostolo, quem Dominus reprehendit quia volebat eum eripere de manibus iudaeorum.

with equanimity in witness of his faith. It is proven secondly: Christ could have lawfully defended himself against the Jews and the gentiles who were unlawfully (*tyrannice*) oppressing him, and yet he did not do so. Therefore, not everyone who can lawfully save his own life is obliged to do so. Again, it is apparent that the ten thousand martyrs who died for Christ could have lawfully fought and defended themselves against the tyrants [who killed them],[73] just as now Christians defend themselves against pagans.[74] Thus, I do not doubt that oftentimes martyrdom falls under a counsel[75] and that many martyrs have offered themselves voluntarily to martyrdom, even though they were not obliged to do so. This seems consonant enough with the advice of the Apostle [Paul] to the *Romans* (12, 19): "*Defending not yourselves, dearly beloved, but give place unto wrath,*" and to that of the Lord in the Gospel of *Matthew* (5, 39): "*But I say to you not to resist evil.*"[76] Indeed, that seems to be the error of the Jews, which the Lord struck against in *Matthew* 5, that they thought it was not praiseworthy for someone patiently to suffer injuries.

In this regard, we must consider that although (as has been said) a man is not the master of his own body, or of his own life, in the way that he is master of other things, nevertheless, he has some dominion and right with respect to his life. And by reason of this anyone who does a man bodily harm does injury not only to God, the supreme Lord of life, but also to that individual man himself. This right, then, which a man has over his own body he can laudably give up and renounce, and thus can patiently bear death, even though he has the right to defend himself.

However, against this solution one can object: everyone is obliged to defend the life of an innocent person, if someone is looking to violently kill him. For God has charged everyman with respect to his neighbor, and *Proverbs* 24, 11, says: "*Deliver them that are led to death, and those who are drawn to death forebear not to deliver.*"[77] Hence, if someone were able to deliver an innocent person from the hands of an attacker and did not do so, he would be guilty of homicide. From this, it is argued as follows: a man is more obliged to save his own life than to save the life of a neighbor. If therefore a man is obliged to defend the life of a neighbor from an unjust attacker, he is then also obliged to defend his own life.

25. In answer to this, I say first that it is not so certain that a man is always obliged to defend the life of a neighbor, even when such is lawful. For if to spread the Faith a Christian were to willingly offer himself to a tyrant, even apart from necessity, that is, when it would be an act of counsel — granted that other Christians could snatch him from the hands of this tyrant and that it would be lawful to do so without scandal, I believe that they would not be obliged to do so. Thus, it is not universally true that everyone is obliged to defend the life of an innocent person, even when he can lawfully do so. This is clear from the Apostle Peter, whom the Lord reproved because he wanted to snatch him from the hands of the Jews.

Secundo dico negando consequentiam: Si teneor defendere vitam proximi quod tenear meam. Possum enim, ut dictum est, cedere iuri meo, non autem iuri fratris mei. Exemplum est clarum. Certum est enim quod non teneor defendere bona temporalia mea iuxta id: *Si quis petierit a te tunicam, da ei et pallium.* Et tamen, si possem sine periculo meo defendere bona innocentis a ràptore et latrone, certum est quod teneor. Simili ergo modo quamvis possum non defendere vitam meam, non possum non defendere vitam proximi.

Pro *quarto argumento* licet multi vertant in dubium, an liceat pro privata persona ponere vitam, et plures partem negativam defendant, tamen ut alias a me disputatum est, puto probabilius hoc esse laudabile. Et videtur laudatum a Domino in illo loco: *Maiorem delectionem nemo habet, ut animam suam ponat quis pro amicis suis*, etc., ubi non distinguit de privata persona aut publica. Et Io. 1,3.16: *In hoc cognovimus caritatem Dei, quoniam ille animam suam pro nobis posuit et nos debemus pro fratribus animas ponere.* Neque videtur solum loqui pro spirituali bono proximorum. Statim enim subditur: *Qui habet substantiam huius mundi et videt fratrem suum necessitatem habere*, etc. Et Cant. 8,6: *Fortis est ut mors dilectio*, quia scilicet facit pro amico mori. Et ad Eph. 5,25: *Viri diligite uxores, sicut Christus dilexit Ecclesiam, et semetipsum tradidit pro ea.* Et infra: *Ita viri debent diligere uxores suas, sicut corpora sua.* Et item: *Unusquisque uxorem diligat sicut seipsum* (5,33). Et Aristoteles 9 *Ethicorum*, omnino docet maximam honestatem esse mortem etiam oppetere pro amicis. Et filium patrem potius quam se redimere; et honestius esse parentibus alimentis opitulari, quam sibi ipsis. Quodsi in extrema necessitate licet panem vitae necessarium patri relinquere, non est dubium quin etiam liceat amico dare. Quare omnino concedo in casu proposito in argumento, quod licet panem alteri cedere cum certa pernicie propriae vitae.

26. Sed contra hoc vehementer illud urget. Sit enim casus, quod sint in extrema necessitate filius cum patre et alio extraneo, et filius habeat unicum panem. Sic arguitur. Sequitur quod filius potest dare panem extraneo, relicto patre. Consequens autem est contra ordinem caritatis. Ergo non sufficienter respondetur ad argumentum. Consequentia probatur. Quia postquam filius habet ius servandi sibi soli panem, si potest iuri suo cedere, ergo relinquere extraneo, et nullam iniuriam facit patri, cum pater nihil iuris habeat in pane illo. Ad hoc nego consequentiam. Quamquam enim filius possit sibi panem

Secondly, I deny the consequence: that if I am obliged to defend the life of a neighbor, I am obliged to defend my own life. For I can, as was said, give up my own right, but not the right of my brother. The example is clear. For it is certain that I am not obliged to defend my own temporal goods, according to this: "*If anyone asks for thy tunic, give him also thy cloak.*"[78] And, still, if I could without danger to myself defend the goods of an innocent person from a bandit and a robber, it is certain that I would be obliged to do so. Thus, in a similar way, even though I may be permitted not to defend my own life, I may be obliged to defend the life of a neighbor.[79]

As regards the *fourth argument*, although many doubt whether it is lawful to lay down one's life on behalf of a private person, and many defend the negative side on this, nevertheless, as I have discussed it elsewhere,[80] I think it is more probable that this is praiseworthy. And it seems to have been praised by the Lord in this passage: "*Greater love than this no man hath, that a man lay down his life for his friends*, etc.,"[81] where he does not distinguish between a private and a public person. And *First John* (3, 16) also says: "*In this we have known the charity of God, because he hath laid down his life for us: and we ought to lay down our lives for the brethren.*" Nor does this seem to mean only with regard to the spiritual good of neighbors. For immediately [v. 17] it adds: "*He that hath the substance of this world and shall see his brother in need, etc.*" And the *Canticle of Canticles* (8, 6) says: "*Love is as strong as death*," because it causes one to die for a friend. And at *Ephesians* 5, 25, we read: "*Husbands love your wives, as Christ also loved the Church and delivered himself up for it.*" And below that [v. 28]: "*So ought men to love their wives as their own bodies.*" Again (5, 33): "*Let everyone love his wife as himself.*" And Aristotle, in the ninth book of his *Ethics*,[82] especially teaches that it is a most honorable thing to die for one's friends, and for a son to redeem his father rather than himself, and that it is more honorable for children to give food to their parents rather than to themselves. But if in extreme necessity it is lawful to give to one's father bread which is necessary for one's own life, without doubt it is also lawful to give it to one's friend. Therefore, I completely concede that, in the case proposed in the argument, it is lawful to give bread to another even though doing so involves the certain loss of one's own life.

26. But very much against this is the following. Imagine a situtation in which a father, his son, and some stranger, are in dire need, and the son has a single bit of bread. The argument then is that it follows [from the position just enunciated] that the son may give that bread to the stranger rather than to his father. But this consequent is against the order of charity.[83] Therefore, we have not sufficiently answered the argument.[84] The consequence is proven: because when the son has a right to keep the bread for himself alone, if he can give up that right, then he can give it up to the stranger, and in the process do no injury to his father, since the father has no right to the bread.[85] In reply to

retinere et potest cedere iuri suo, non tamen cui vult, sed tenetur ex ordine caritatis subvenire potius patri quam extraneo. Et eo quod panis est in potestate filii, pater habet maius ius ad panem quam extraneus.

27. Et per hoc patet ad *quintum argumentum*. Credo enim quod in illo casu servus possit relinquere naviculam, aut tabulam, certus mortis. Et non solum pro rege hoc esset laudabile, sed pro quocumque etiam amico, aut proximo. Quod Lactantius 1.5 *De iustitia* c.18 diserte commendat: "Quid (inquit) iustus faciet, si nactus fuerit aut in equo saucium, aut in tabula naufragum? Non invitus confiteor morietur potius quam occidet. At stultitia est, inquiunt, alienae animae parcere cum pernicie suae nunc etiam pro amicitia perire stultum iudicabitur". Et reliqua quae in hunc locum eloquentissime congerit. Est sine dubio pro amicis animam ponere stultitia huius mundi, quae tamen sapientia est apud Deum.

28. Pro *sexto argumento* dico quod talis tenetur comedere. Et Sanctus Thomas 2.2 q.69 a.4 ad 2 dicit quod si non comederet, se interficeret. Quod probatur. Quia tenetur uti ad conservandam vitam omnibus mediis a iudice non prohibitis. Iudex autem non prohibuit, imo neque potuit quidem prohibere, ne oblato pane non ederet. Non enim damnavit eum ut mortem sibi daret, sed solum ut pateretur. Ut patet quia comedens non facit contra sententiam iudicis. Ergo non est poena inflicta a iudice ut ipse se ab esu abstineat. Itaque si licet ei comedere in casu posito, quod pro confesso video inter omnes constare, omnino videtur quod tenetur.

29. Pro *septimo argumento* similiter dico sicut ad sextum. Quod talis tenetur fugere, quia non est pars poenae inflictae a iudice ut maneat in carcere. Ad minus dico quod idem est iudicium de eo qui est in carcere, et de eo qui est in sua libertate. Et si latro peccat ultro se offerendo iudici et carceri, etiam peccat si libere potest fugere, et non fugit.

30. Pro *octavo* certe non video quare id sit negandum licere. Etenim sicut sunt alia supplicia decreta contra nocentes, quare non posset id institui ut veneno tolleretur. Quod si illud supplicium potest esse iustum cum aliter illa poena irrogari non potest, nisi ut ille venenum epotet, nihil videtur cur non liceat ei haurire venenum. Sicut licet damnato ad supplicium ascendere scalas, et ei qui damnatus est gladio parare iugulum. Neque enim unus magis

this last, I deny the consequence. For although the son can keep the bread for himself and he can also give up his right to it, he cannot, however, give it up to whomever he wants. But he is obliged by the order of charity to help his father before the stranger. And by the very fact that the bread is in the possession of his son, the father has a greater right to that bread than does the stranger.

27. Through this the answer to the *fifth argument* is clear. For I believe that in the case mentioned in that argument the slave can give up the lifeboat or the plank, even though he is certain his death will result. Moreover, it would be laudable to do this not only on behalf of a king, but also on behalf of any friend or neighbor.[86] This is what Lactantius clearly recommends in Book 5, c. 18 of his *De iustitia*:[87] "*What* (he says) *will the just man do, if he finds a wounded man on a horse or a man shipwrecked on a plank?*[88] *I say that he will voluntarily die rather than kill. But it is stupidity, they say, to spare the life of another with damage to one's own life and now also it will be deemed foolish to perish for friendship*"[89] — as well as the rest of what he most eloquently adds in this place. Without doubt, therefore, to lay down one's life for friends is stupidity for the world, but it is wisdom before God.

28. As regards the *sixth argument, I say that such a man is obliged to eat.* And St. Thomas, in *Summa Theologiae* II^{a}II^{ae}, q.69, a.4, ad 2, says that if he does not eat, he is killing himself. This is proven: for, to preserve his life, he is obliged to use all means which have not been forbidden by his judge. But the judge has not forbidden, indeed he was not empowered to forbid, him to eat food offered to him. For the judge has not condemned him to kill himself, but only that he should suffer death. This is clear, since one who eats is not acting against the judge's sentence. Therefore, the penalty inflicted by the judge is not that the condemned man should abstain from eating. And thus, if it is lawful for him to eat in the case advanced, which I see as universallly acknowledged, it seems he is absolutely obliged to do so.

29. As regards the *seventh argument*, I say the same as for the sixth. Such a man is obliged to flee, for it is not part of the penalty inflicted by the judge that he remain in prison. At least, I say that the judgment is the same about him who is in prison and him who is at liberty. And if a criminal sins by gratuitously offering himself [i.e. without any cause at all to do so] to a judge or to a prison, he also sins if he can freely flee and he does not.[90]

30. As regards the *eighth argument*, I certainly do not see why we should deny that this is lawful. And indeed just as other forms of capital punishment are exacted against guilty persons, why could it not be ordered that one be killed by poison? But if another punishment can be just, in a case where unless one drinks poison the penalty cannot be otherwise imposed, there seems to be no reason why it would be unlawful for him to drink it. This is similar to its being lawful for someone condemned to death to climb up to the gallows or to prepare his throat for the sword. For one is not cooperating more

cooperatur morti suae quam alius. Quod si datur non posset tale supplicium constitui, consequenter dicendum est non esse licitum venenum sumere damnato a tyranno. Sicut neque se iugulare, aut gladio incumbere. Hoc autem est probabiliter dictum. Non tenetur enim sibi aliquis poenam inferre sed solum ferre. Unde non videtur posse constitui poena ad quam necessarium sit ipsum nocentem cooperari. Mihi tamen primum magis placet quam hoc. Neque valet. Ergo posset damnari, ut seipsum iugulet. Hoc enim potest fieri per alium, quod non est de haustu veneni. Sed de hoc disputari potest.

31. Ad *nonum* patet ex solutione ad quartum et quintum. Ubi enim amicus meus indigeret auxilio meo, vel obsequio in aegritudine, vel consilio meo in conscientia, non dubito quin possem consulere illi cum quantocumque periculo meo. Quod si nihil essem profuturus, profecto non videtur carere temeritate exponere me periculo gravi sine ullo fructu. Quamquam hoc ipsum, scilicet amicitiam et fidem in amicis servare magnus fructus est. Nec vellem uxorem damnare, quae etiam cum magno periculo marito peste laboranti assideret. Etiam si hoc officium non esset illi ullo pacto profuturum, sed ut pereunti viro officium et consolationem praestaret.

32. Ad *decimum* et *undecimum* est advertendum quod ad cognoscendum quid in hoc casu liceat, non oportet solum habere respectum ad circumstantias pro tempore occurrentes, sed magis quid ut plurimum contingat. Neque respectus habendus magis est ad bonum vel malum privatum quam ad bonum vel malum publicum et commune. Navigatio etiam pro tempore periculoso est utilis bono communi. Ex communicatione enim nationum et provinciarum respublica magna commoda accipit, et in pace, et in bello. Quare si propter periculum tempestatum homines deterrerentur a navigatione, fieret magna iactura publici boni. Cum aut vix, aut nunquam navigare sine magno periculo possit. Et eodem modo de exercitiis militaribus dicendum. Omnino enim est necessarium reipublicae milites habere ad defendendum patriam, qui sine militari exercitio inutiles bello essent. Sunt autem quaedam exercitia militaria parum periculosa, ut sunt equestria et alia multa, quae sufficiunt ad exercendos milites. Et ideo aliis multum periculosis uti illicitum esset. Verum si non possent milites exerceri sine etiam magno et gravi periculo, non ideo omittenda essent bellica exercitia. Minus enim malum temporale tolerandum esset ad evitandum maius, ne scilicet patria perdatur, et tyranni occupent illam aut in bello victores hostes multo plures caedant, quia non sunt exercitati milites.

in his own death than is the other. But if it is granted that this kind of death could not be ordered, one would have to consequently say that it is not lawful for a condemned man to take poison from a tyrant, just as it would not be lawful for one to cut his own throat or to fall upon his sword. However, this is said only "probably." For someone is not obliged to inflict punishment on himself, but only to bear it. Hence, it does not seem that a punishment can be established in which it is necessary that the guilty person himself cooperate. Still, to me the first [alternative][91] is more acceptable than this. Nor is it valid that he could, therefore, be condemned to cut his own throat. For this can be done by another, which is not the case with a drink of poison. But there is room for dispute about this.

31. The answer to the *ninth argument* is clear from the solutions to the fourth and fifth. For if my friend were to need my help, or my assistance (*obsequio*) in time of sickness, or my advice in a matter of conscience, I do not doubt that I could look to his interest no matter what the danger to myself. But if I were in no way useful to him, it certainly would seem rash to expose myself to serious danger for no resulting gain; although this very thing, namely to keep friendship and faith with one's friends, is a great gain. Nor would I want to condemn a wife, who even with great danger to herself would assist her husband suffering with the plague — even if her doing so would not help him in any way, but as to a dying friend[92] it would offer service and consolation.[93]

32. In answer to the *tenth and eleventh arguments*, we should note that in order to know what is lawful in this case, it is necessary not only to have regard for the circumstances occurring at some time, but even more for those which generally occur. And we should not have regard more for private good or evil than for public and common good and evil. Indeed, navigation in perilous time is useful for the common good. For from the communication of nations and provinces, the republic receives great advantages both in peace and in war.[94] Therefore, if because of the danger of storms men would be deterred from navigation, great losses would result for the common good, for sailing only rarely or never could take place without great danger. And we must speak in the same way about military exercises. For it is absolutely necessary that the republic have soldiers to defend its terrritory, soldiers who without such exercises would be useless. Nevertheless, there are certain less dangerous military exercises, such as horseback riding and many others, which are enough to train soldiers. And, therefore, it would be unlawful to use other more dangerous exercises in place of these. But if soldiers could not be trained without even great and serious danger, training for war should not be rejected because of this. For a lesser temporal evil ought to be tolerated in order to avoid a greater, namely, that one's nation not be lost, that tyrants not occupy it, or that victorious enemies not slaughter many more, because there are no trained soldiers.

33. Ad *duodecimum* argumentum dico quod nullo modo licet abbreviare vitam. Sed est considerandum quod (sicut in materia de abstinentia late disserui) aliud est vitam minuere, aliud non proferre. Secundo est advertendum quod homo, licet teneatur non abrumpere vitam, non tamen tenetur omnia media etiam licita quaerere, ut longiorem vitam faciat. Quod manifeste patet. Dato enim quod aliquis certo sciat quod in India est salubrior et clementior aura, et quod ibi diutius viveret quam in patria,
non tenetur navigare in Indiam. Imo nec de una civitate ad aliam salubriorem. Nec enim Deus voluit nos tam sollicitos esse de longa vita. Similiter dico de alimentis, quod quaedam sunt quae non sunt proprie alimenta, quia de se sunt insalubria et nociva humanae valetudini. Et istis uti, esset interficere se. Nec solum intelligo de venenis, sed etiam de aliis insalubribus cibis. Ut si quis velit victitare ex fungis, aut crudis herbis et acerbis aut aliis similibus. Alia sunt alimenta, quae licet non sint ita salubria sicut alia, non tamen sunt contraria vitae humanae, ut pisces, ova, lacticinia, potus aquae. Item dico quod oportet respicere ad id, quod communiter accidit. Est autem commune ut plures in iuventute reperiantur ex lautis, quam ex poenitentibus. Plures enim interficit gula quam gladius.

34. Istis praemissis dico ad argumentum quod non est licitum vitam breviorem reddere alimentis insalubribus et nocivis. Secundo quod non tenetur homo uti alimentis optimis, non nocivis, ut piscibus. Neque enim si medicus consuluit quod si quis bibat vinum vivet diutius decem annis, quam cum aqua, ideo non licebit abstinere a vino. Potus enim aquae non est contrarius vitae, nec hoc est vitam minuere, sed non producere. Ad quod non tenetur quisquam. Hoc dico de sanis et bene habentibus. Aegrotantibus enim aliqui sunt insalubres et nocivi, qui sanis sunt salubres. Unde aegrotis non esset licitum huiusmodi alimentis uti. Sed de hoc vide in materia de abstinentia latius. Et idem est de inediis, et aliis poenitentiae exercitiis iudicium.

35. Per hoc etiam patet ad *decimumtertium*. Non enim tenetur quis, ut dixi, omnia media ponere ad servandum vitam, sed satis est ponere media ad hoc de se ordinata et congruentia. Unde in casu posito credo quod non tenetur ille dare totum patrimonium pro vita servanda, et reputatur non habere remedium. Et alius qui negat remedium, est homicida. Ex quo etiam infertur quod cum aliquis sine spe vitae aegrotat, dato quod aliquo pharmaco pretioso posset producere vitam aliquot horas, aut etiam dies, non tenetur illud emere, sed satis erit uti remediis communibus. Et ille reputatur quasi mortuus.

33. In answer to the *twelfth argument*, I say that it is in no way lawful to shorten one's life. But it should be taken into account that (just as I extensively said on the subject of abstinence[95]) it is one thing to shorten life and another thing not to prolong it.[96] Second, it should be noted that although a man is obliged not to shorten his life, he is not however obliged to seek all means, even all lawful means, to lengthen it.[97] This is very clear: for granted that someone knows with certainty that the air in India is more healthful and temperate, and that he would live longer there than in his homeland, he is not obliged to sail to India. Indeed, he is not obliged to go from one city to another more healthful.[98] Neither, indeed, did God intend us to be so worried about a long life. And I say much the same about foods. Certain ones are not properly food because they are unwholesome and harmful to human health, and to eat these would amount to killing oneself. Nor am I thinking here only of poisons, but also of other unwholesome foods, for example, if someone wanted to live on mushrooms, or unripe and bitter herbs, or other similar things. There are other foods, which, although they are not as healthy as some, are not however opposed to human life, for example, fish, eggs, milk-pottage,[99] and water. Again, I say it is necessary to look at what commonly happens. But it is more common that young people die from luxury than from penance; for gluttony has killed more than the sword.

34. That being prefaced, in answer to the argument I say that it is not lawful to shorten one's life with unwholesome and harmful foods. Second, I say that a man is not obliged to eat the best not harmful foods, such as fish. Neither is someone obliged to drink wine, because a physician has advised him that if he drinks wine he will live ten years more than he will with water. For to drink water is not opposed to life, nor does it shorten life, although it may not prolong it, which last is something to which no one is obliged. I am saying this about people who are well and healthy, because some foods are unwholesome and harmful for sick persons which are wholesome for those who are healthy. Hence, it would be unlawful for sick persons to eat foods of this kind. But about this see more in my treatment of abstinence.[100] And my judgment is the same about fastings and other penitential exercises.

35. Through this the answer to the *thirteenth argument* is also clear. For, as I have said, someone is not obliged to use every means to preserve his life, but it is enough to use those means which are of themselves ordered and fitting for this. Hence, in the case put forward, I believe the man is not obliged to spend his whole patrimony to preserve his life,[101] and in this he is considered as not having any remedy. At the same time, someone else who may refuse to take a remedy is guilty of homicide.[102] From this it is also inferred that when someone is sick without any hope of life, granted that some expensive drug could prolong his life a few hours, or even days, he is not obliged to buy it, but it is enough to use common remedies[103] and such a man is judged as if [already] dead.

36. Ad *decimumquartum* dico quod vita est maius bonum quam bona temporalia, inter quae gloria, honor et fama reponuntur. Cuncta enim quae habet homo, pro anima sua dabit. Omnia enim illa ordinantur ad vitam humanam sicut ad finem. Unde Salomon dicit: *Curam habe de bono nomine; hoc enim permanebit tibi magis quam mille thesauri.* Non enim comparat bonum nomen ad vitam, sed ad thesauros. Et alibi: *Melius est nomen bonum quam divitiae multae.* Et Eccles. 30,16. *Non est census super censum salutis corporis.* Dico ergo quod non licet ponere vitam pro fama aut gloria. Unde non solum qui se interficiunt, sed qui sine alio titulo ponunt vitam in magno periculo propter gloriam humanam graviter delinquunt. Aristoteles 3 *Ethicorum* ait: «Ultimum malorum mors».

Pro his omnibus quatuordecim argumentis est considerandum quod in eis omnibus non est tractatum an aliquis ex intentione et volens possit se occidere, sed solum praeter intentionem. Ut patet in omnibus illis. Et ideo nihil possunt probare contra intentionem conclusionis propositae. Unde solum concedimus quod non possit quis se interficere ex intentione, ut se interficiat. Quare sive id, quod in argumentis propositum fuit, sit licitum, sive non, nihil procedunt contra conclusionem. Non enim id est se interficere, ut in proposito accipimus, sed solum mors imperata ex tali actu: «volo me occidere».

37. Et ideo gravius argumentum est *decimumquintum*. Utrum Brutus, Cato, Decius et alii innumeri qui se occiderunt poterant ignorare inculpabiliter talem mortem esse illicitam, cum ipsi omnino crederent esse optimam et honestissimam, et a viris, qui pro sapientibus habiti sunt, laudentur.

Respondetur. Non videtur maius dubium quam de aliis divinis praeceptis. Multa enim sunt praecepta divina, quae apud paganos fuerunt, et hodie sunt ignorata, ut de fornicatione, de vindicatione iniuriae, in quibus tamen non damus ignorantiam invincibilem, sed dicimus cum beato Paulo ad Rom. 1,28 quod in poenam perfidiae suae et impietatis: *Tradidit illos Deus in reprobum sensum, ut faciant ea quae non conveniunt, repletos omni iniquitate, malitia, fornicatione, homicidiis,* etc. Et sic quod non excusantur, sed est sapientia huius mundi, quae est stultitia apud Deum. Quod autem in lumine naturali cognosci possit, illicitum esse se ipsum interficere, patet. Quia philosophi studiosi virtutis id docuerunt, ut patet ex Aristotele 3 *Ethicorum* dicente quod est non magnanimi mortem sibi consciscere sed pusillanimi, et non potentis ferre vitae labores. Et Cicero: «Mortem (inquit) cur mihi consciscerem, cum causam

36. In answer *to the fourteenth argument* I say that life is a greater good than temporal things, including glory, honor, and reputation. For a man will give everything that he has for his life. For all those things are ordered to human life as to their end. Hence, Solomon says: "*Take care of a good name: for this shall continue with thee, more than a thousand treasures.*"[104] For he is not comparing a good name to life, but rather to riches. And elsewhere, he says: "*A good name is better than great riches.*"[105] And *Ecclesiasticus* 30, 16 reads: "*There is no riches above the riches of the health of the body.*" I say, therefore, that it is not lawful to give one's life for fame or glory. Hence, they sin seriously not only who kill themselves, but also they who, for no other reason besides human glory, put their lives in great danger. For Aristotle in Book 3 of his *Ethics* says: "Death is the ultimate evil."[106]

As regards these fourteen arguments, we should consider that clearly in all of them it is not a question of anyone intentionally and deliberately killing himself, but only unintentionally doing so. Therefore, they can prove nothing against the intent of the proposed conclusion. Hence, we simply affirm that no one may kill himself with the intention of doing so. Therefore, whether what was proposed in those arguments was lawful or not, they do not proceed against the conclusion. For what was proposed in those arguments is not killing oneself as it is taken in the conclusion posited above, which is only a death commanded in the wake of a judgement like this: "I will to kill myself."

37. And therefore, the fifteenth argument carries more weight. The question is whether Brutus, Cato, Decius,[107] and others who killed themselves could have without fault not known that such a death was unlawful, even though they themselves believed it to be best and most honorable and even though they were praised by men who were thought to be wise.

The answer is: there is no greater problem here than with respect to other divine commandments. For there are many divine commandments which were formerly observed among pagans, but which are today unknown to them, for example those regarding fornication and revenge, in regard to which, however, we do not allow invincible ignorance.[108] But we say with St. Paul to the *Romans* (1, 28) that in punishment of their perfidy and infidelity: "*God delivered them up to a reprobate sense, to do those things which are not proper, being filled with all iniquity, malice, fornication, murders, etc.*" Thus they are not excused, but what they are doing is the wisdom of this world, which is folly before God. But clearly it could be known in the natural light of reason that it is unlawful to kill oneself. For philosophers striving for virtue taught that, as is evident from Aristotle, in Book 3 of the *Ethics*[109] saying that to inflict death on himself is not the act of a magnanimous man, but rather of one who is pusillanimous and not able to bear the burdens of life. And Cicero says: "Why should I inflict death upon myself, since I have no reason? Why would

nullam habeam? Cur optarem mulctas? Quamquam hoc ipsum sapienter; sapientis enim est, neque optare mortem, neque timere».

Ad ultimum de Samsone et Razia, Saule, etc., non similiter de omnibus dicendum videtur. Samsonem enim necessarium est excusare, quem Paulus retulit inter iustos. Unde Augustinus dicit Samsonem hac ratione excusari, quia spiritu Dei motus fecit. Nec hoc est divinare sed habetur expresse ex historia Iudicum, ubi dicitur orasse Dominum ut redderet ei pristinam fortitudinem, ut ulcisceretur se de inimicis suis. Quamvis posset et alia solutio dari. Non enim interfecit se ex intentione, sed voluit hostes opprimere et interficere, ad quod secuta est mors ipsius. Ipse enim bene optasset alios perdere se salvo, si fieri potuisset. Hoc autem sine nova revelatione videtur licitum. Quis enim dubitat quin aliquis in praelio, vel defendendo civitatem, posset certus de morte facinus aggredi, quod sit quidem patriae saluti, hostibus autem magnum detrimentum futurum? Ut de Eleazaro legitur 1 Mach. 6,43-47 qui ingressus sub ventre elephantis cui regem Antiochum insidere credebat, elephantem quidem gladio confodit. Ipse vero bestiae ruina oppressus, praeclaram mortem invenit, quia se libenter (ut dicit Scriptura) pro populo suo posuit. Quod factum adeo non vituperatur ut Ambrosius libro *De officiis*, capite de fortitudine, Eleazarum mirificis efferat laudibus. Atque ita videtur posse excusari Samson sine recursu ad instinctum caelestem. Eodem modo Eleazarus se interfecit, sicut Samson.

De Saule vero non est idem iudicium. Cum enim dimissus esset, imo repulsus a gratia Dei, non est necesse quaerere excusationes. Sabellicus scribit Saulem non se interfecisse, sed cogitasse quidem de morte sibi consciscenda. Verum quia visum est impium vitam violenter abrumpere, ab amalecita quodam ignorante quis esset, interfectum. Sed est turpis lapsus christiani historici, cum primi Regum ultimo legatur Saulem incubuisse super gladium suum, et sic vitam finiisse.

Razias vero probabilius posset excusari, quamvis Sanctus Thomas 2.2 q.64 a.5 non excuset illum. Super qua re est contentio inter Nicolaum et Burgensem, quos videre poteritis ad longum. Et ista quantum ad praesentem relectionem sufficiant.

I much desire it? Yet [I would bear] it wisely, for it is the mark of a wise man neither to desire nor to fear death."[110]

In answer *to the last argument*,[111] about Samson, Razias, Saul, and others: we should not speak of all in t he same way. For it is necessary to excuse Samson, whom St. Paul numbered among the just.[112] Hence Augustine says that Samson was excused for this reason that he acted as moved by the spirit of God. And this is not guessing, but it is taken expressly from the history of the Jews, where Samson is said to have prayed the Lord to restore his former strength that he might avenge himself on his enemies. However, another solution also could be given: that he did not indeed kill himself intentionally, but rather he wished to crush and kill his enemies, in the wake of which his own death followed. For he really wanted to destroy them, saving himself if it were possible. But this seems lawful without any new revelation. For who doubts that someone in a battle, or defending a city, could undertake an action for the welfare of his homeland and for the great detriment of its enemies, even though it would involve his own certain death? For example, we read of Eleazar, in I *Machabees* 6, 43-47, who having gone in under the stomach of an elephant on which he thought King Antiochus was seated, stabbed the elephant with a sword. But he himself, crushed by the fall of the elephant, died gloriously, since, as the Scripture says, he freely gave himself for the people. What he did, therefore, was not blamed, but rather St. Ambrose in his book, *De officiis*, the chapter on bravery,[113] extolled Eleazar with fabulous praise. Thus it seems that Samson can be excused without resorting to divine inspiration, for he killed himself in the same way as Eleazar.

About Saul, however, the judgment is not the same. For since he was deposed, and indeed rejected by the grace of God, there is no need to try to excuse him. Sabellico (Marco Antonio Sabellico [ca. 1436?-1506]?)[114] writes that Saul did not kill himself, but that he only thought to kill himself. But because it seemed sinful to shorten his life unnaturally, [he allowed himself to be killed] by one of the Amalectites who did not know who he was. But this is a very bad mistake by the Christian historian, because in the last chapter of the first book of *Kings* we read that Saul fell upon his sword and in this way ended his life.[115]

Razias more probably could be excused, although St. Thomas, in *Summa Theologiae* II^{a}-II^{ae}, q.64, a.5, will not do so. On this there is an issue between Nicholas and Burgensis,[116] both of whom you could spend some time looking at. But that will be enough for this present relection.

Notes to the Translation

[1] The following table of contents comes from the first edition of Vitoria's *Relections* published by Jacob Boyer at Lyons in 1557; cf.: Reverendi Patris F. Francisci de Victoria, ordinis Praedicatorum sacrae Theologiae in Salmanticensi Academia

quondam primarii Professoris *Relectiones Theologicae XII* in duos Tomos divisae. Quorum seriem versa pagella indicabit Summariis suis ubique locis adiectis una cum Indice omnium copiosissimo Tomus primus. Lugduni: Apud Jacobum Boyerium, MDLVII.

[2] That is, the feast of Saint Barnabas — June 11, 1530; cf. Teófilo Urdánoz, O.P., *Obras de Francisco de Vitoria: Relecciones teológicas*, edición crítica del texto latino, versión española, introducción general e introducciones con el estudio de su doctrina teológico-jurídica (Madrid: Biblioteca de Autores Cristianos, 1960), p. 1070.

[3] There is an obvious allusion here to Vitoria's health.

[4] Previous to this, Vitoria had delivered relections "On the Obligation of Silence" (*De silentii obligatione*) in 1527 and "On Civil Power" (*De potestate civili*) in 1528; cf. Urdánoz, pp. 79 and 1070.

[5] Held from 1526 to 1529, these were on *Summa Theologiae* II^{a}-II^{ae}; cf. Urdánoz (following V. Beltrán de Heredia), p. 77.

[6] On the kind of discussion (or disputation) involved here, cf.: "... it is not novel for theological disputations to be conducted about something that is certain. Indeed, we conduct disputations even about the Incarnation of the Lord and other articles of faith. For theological disputations are not always of deliberative kind (*in genere deliberativo*) but many are demonstrative (*in genere demonstrativo*), that is to say, undertaken not as searching for certitude but for purpose of teaching." *On the Indians*, I, n. 3; ed. Urdánoz, p. 649.

[7] While to call this conclusion "first" may indicate that Vitoria's original intention was to treat a number of conclusions, this is actually the *only* one dealt with in the present relection. Moreover, most of what follows will be devoted to proving just the first part of this conclusion.

[8] Two hours were allowed for a relection; cf. Urdánoz, p. 79. Vitoria on other occasions has remarked his constraint by the time allowed; cf. e.g. "But because, pressed by time, we could not here treat all things which might be discussed on this subject, or we could not extend our pen as much as the matter might merit, we will therefore say only as much as the brevity of time will allow." *On the Law of War*, ed. Urdánoz, pp. 814-815.

[9] On Vitoria's earlier studies at Paris, see R. Villoslada, S.J., *La Universidad de Paris durante los estudios de Francisco de Vitoria*, Romae: Univ. Gregoriana, 1938.

[10] Cf. Aristotle, *De generatione et corruptione*, II, c. 10, 336b27-337a7.

[11] Cf. c. 6, 1106b31-2 and c. 9, 1109a24-9.

[12] For such motions, which differ from physical motions involving succession, cf. St. Thomas, *Summa theologiae* I^{a}, 31, 2, ad 1, who cites Aristotle, *De Anima* III, c. 7, 431a6.

[13] Cf. I *Corinthians*, 13: 5.

[14] The "fomes peccati," or the tinder of sin, which is identified with concupiscence, is a certain disposition toward evil which remains in human beings even after the remission of original sin. The place referred to here is II *Sent.* 32, q. 1, aa. 1-3; cf. St. Thomas Aquinas, *Scriptum super libros Sententiarum Magistri Petri Lombardi episcopi Parisiensis*, editio nova, cura R.P. Mandonnet, O.P., Tomus II (Parisiis: Sumptibus P. Lethielleux, 1929), pp. 822-32.

[15] *Romans* 8: 13.

[16] *Galatians* 5: 16.

[17] II, c. 9, 1108b1.

[18] On the Lutheran concept of man, see Edo Osterloh, "Anthropology," *The Encyclopedia of the Lutheran Church* (Minneapolis: Augsburg Publishing House, 1965), I, 81-5. For the difference between Lutheran and Catholic anthropologies here, cf. José M.ª G. Gomez-Heras, *Teología protestante, sistema e historia* (Madrid: Biblioteca de Autores Cristianos, 1972), pp. 13-50. Also cf. R. Garcia-Villoslada, *Martín Lutero* (Madrid: Biblioteca de Autores Cristianos, 1976), I, 230-4; 444-8; II, 193-4.

[19] While I have not been able to locate Aristotle saying this, the thought expressed is certainly Aristotelian, as well as central to Vitoria's argument here. My guess is that the quotation actually comes more or less from Averroes (d. 1198); cf. "Generans enim est illud quod dat corpori simplici generato formam suam, et omnia accidentia contingentia formae: ..." ("The generator is that which gives a simple body its form and all the accidents contingent upon the form.") In Physicorum libros, VIII, n. 28, in *Aristotelis De Physico Auditu, libri octo. Cum Averrois Cordubensis variis in eosdem commentariis* (Venetiis: Apud Junctas, 1562), f. 370v; and *idem, In De Coelo libros*, III, n. 28, in *Aristotelis De Coelo, De Generatione et corruptione, Meteorologicorum, De Plantis, cum Averrois Cordubensis variis in eosdem commentariis* (Venetiis, 1562), f. 198v. For Vitoria in another place attributing this, without an exact reference, to Aristotle, see *On Civil Power*, n. 6, Urdánoz, p. 159.

[20] c. 4, 256a1.

[21] IX, c. 4, 1166a1-2.

[22] Cf. "Vitoria enuncia así, con un siglo de antelación, la doctrina de Descartes sobre el criterio supremo de verdad y solución del problema crítico." Urdánoz, *Obras* ..., p. 1075.

[23] Cf. "... that to which a man is naturally inclined is good and that which he naturally abhors is evil. Otherwise, if I am deceived God, who gave me that inclination, would be deceiving me." ("... id ad quod naturaliter homo inclinatur, est bonum, et quod naturaliter abhorret, est malum. Alias si ego decipior, Deus me deceperit, qui dedit mihi istam inclinationem.") *In Iª-IIæ*, qu. 94, a. 2; Comentarios ... VI, p. 426.

[24] *Wisdom* 8: 1.

[25] *Genesis* 1: 31.

[26] Cf. *Deuteronomy* 32: 4.

[27] Here Urdánoz corrects the reference to: *Romans* 7: 22.

[28] Vitoria's Aristotelianism here has obvious epistemological corollaries; for some of these, cf. Étienne Gilson, *Réalisme thomiste et critique de la connaissance* (Paris: Librairie Vrin, 1947), c. 7, pp. 184-212.

[29] With this cf.: *In Iª-IIæ*, q. 26, a. 6, n. 2, in *Comentarios* ..., II, p. 101.

[30] For the distinction of "human acts," which are under the control of the will, from "acts of man," which are not under such control; cf. St. Thomas Aquinas, *Summa Theologiae* Iª-IIæ, q. 1, a. 1.

[31] The actual reference should be: *Romans* 7: 22-23.

[32] Cf. Gabrielis Biel, *Collectorium circa quattuor libros Sententiarum, Libri quarti pars prima (dist. 1-14)*, collaborante Renata Steiger ediderunt Wilfridus Werbeck et Udo Hofmann (Tübingen: J.C.B. Mohr (Paul Siebeck), 1975), *In Sent.* IV, d. 1, q. 1, a. 1, *not.* 3 (pp. 14-15); *ibid.*, a. 3, *ad dub.* 2, (p. 30); and *ad dub.* 3 (p. 33). On Gabriel Biel, cf. Heiko Augustinus Obermann, *The Harvest of Medieval Theology*, 3rd edition (Durham: The Labyrinth Press, 1983), esp. pp. 30-8.

[33] Cf. *Confessiones* XII, c. 11, n. 11, in *Obras de San Augustin*, edición bilingüe, tomo II, por P. Angel Custodio Vega, O.S.A. (Madrid: Biblioteca de Autores Cristianos, 1955), p. 622; *De libero arbitrio* III, c. 15, n. 42; in *Obras* ..., tomo III, versión, introducciones y notas de los padres, Fr. Victorino Capanaga, O.R.S.A., *et al.* (Madrid: BAC, 1951), p. 476.

[34] That is, as opposed to its normal daily motion from east to west.

[35] Urdánoz's reading here [Calor nunc cum concursu generali sufficit corrumpere aquam. Ergo cum simili concursu generali sufficit corrumpere aquam. Ergo cum simili concursu potuisset tunc corrumpere.] is obviously in error due to homoioteleuton. In its place, I have taken the reading from: Reverendi Patris F. Francisci de Victoria, ordinis Praedicatorum, sacrae Theologiae in Salmanticensi Academia quondam primarii Professorii, *Relectionum Theologicarum*. Secundus tomus (Lugduni, apud Iacobum Boyerium, 1557), p. 119, as reproduced by Luis G. Alonso Getino, in *Relecciones teológicas* ..., III, p. 30.

[36] For Aristotle's doctrine of the four elements and their primary qualities, which is presupposed here, cf. esp. *De Generatione et corruptione*, II, cc. 2-3, 329b6-331a6.

[37] For St. Thomas on the distinction between moral evil (*culpa*) and pain or punishment (*poena*), cf.: *Summa theologiae* I[a], q. 17, a. 1; *ibid.*, q. 19, q. 19, a. 9; a. 10, ad 2; a. 12, ad 4; q. 48, aa. 5 and 6; I[a]-II[ae], q. 39, a. 2, ad 3; II[a]-II[ae], q. 19, a. 1; In Sent. II, d. 34, 1, 2; *De potentia* VI, 1, ad 8; and *De malo* I, 4.

[38] Vitoria's reference here does not check out. But cf. *Summa Theologiae* I[a], 80, 1, ad 3.

[39] For this, cf. *Summa Theologiae* II[a]-II[ae], q. 26 — "On the order of charity." For Vitoria's later (1534-5) lectures on the topic, see: *Comentarios* ..., II, 84-134.

[40] Cf. "... we speak about water. It has its natural good next to the earth and in order that there not be a vacuum it does not descend downward. Indeed, sometimes it ascends to fill a vacuum. This is clear from many experiences in which it is evident that water puts aside its own good, namely to be down, for the common good, namely that there not be a vacuum. I ask therefore, by what is water moved? It cannot be said by anything else but itself in the way in which it descends." (... *dicimus de aqua. Illa naturale bonum habet juxta terram nec descendit deorsum ut non detur vacuum, immo aliquando ascendit ad supplendum vacuum. Hoc patet multis experientiis ubi patet quod aqua postponit bonum particulare, scilicet esse deorsum, bono communi, scilicet ne detur vacuum. Quaero ergo, a quo movetur aqua? Non potest dici aliud nisi quod a seipsa eo modo quo descendit.*) *In II[a]-II[ae]*, q. 26, a. 3, n. 3, in *Comentarios* ... II, p. 102. For the natural place of water next to earth and its ascent to fill a vacuum, cf. Aristotle, *De Caelo et mundo*, II, c. 4, 287a32-b8. On water drawn up in a clepsydra, see *ibid.*, c. 13, 294b20-21; or in heated vessels, *ibid.*, IV, c. 5, 312b13-14. For post-Aristotle discussion of experiments with

clepsydrae, drinking straws, and siphons, showing how water fills a void, see Pierre Duhem, *Le système du monde: histoire des doctrines cosmologiques de Platon à Copernic*, T. I, nouveau tirage (Paris: Librairie Scientifique Hermann et Cie, 1954), pp. 323-332.

[41] Here Urdánoz (1104) and Getino (III, 214-215) translate: "Hay quienes niegan también esto, que el membro del cuerpo busque, más que su proprio bien, el de éste, pues dicen que el miembro se expone al peligro temblando y resistiendo, no por la salud del todo, sino por la suya."

[42] For some possible physical, metaphysical, epistemological, and historical ramifications of this, see my article, "Prolegomena to a Study of Extrinsic Denomination in the Work of Francis Suarez, S.J.," *Vivarium*, XXII, 2 (1984), esp. pp. 139-140, n. 109.

[43] Cf., e.g. St. Thomas, *Summa Theologiae* I[a], 2, 2, ad 1.

[44] Cf. Aristotle, *EN* III, 1, 1110a8-11; St. Thomas, *In decem libros Ethicorum Aristotelis ad Nichomachum, expositio*, III, c. 1, l. 1; ed. novissima, cura ac studio P. Fr. Angeli M. Pirotta, O.P. (Taurini: Marietti, 1934), p. 134, nn. 389-90.

[45] Cf. *Obras de San Augustín*, edición bilingüe, tomo XVI, preparada por el padre José Moran, O.S.A. (Madrid: Biblioteca de Autores Cristianos, 1964), pp. 39-41.

[46] Here the Spanish translation reads: "Por tanto, o será licito matar a los dos o a ninguno." (Urdánoz: 1107).

[47] Cf. *Psalms* 4: 7.

[48] For the difference here between "moral," as of or pertaining to natural law, and "judicial," as pertaining to further human laws determining justice among men, cf. St. Thomas, *Summa Theologiae* I[a]-II[ae], 99, 4.

[49] Vitoria's point here is plain even though it may be stated in a way which is strange to a modern reader. The prohibition is the effect while the evil of the thing prohibited is the cause. The wider point and its context goes back to Plato's question of whether the pious or holy is beloved by the gods because it is holy, or holy because it is beloved by the gods; cf. *Euthyphro* 9E-10A. A. Koyre is hardly exagerrating when of Plato's question he writes: "This, by the way, is a very difficult problem which became later the crux of the medieval Christian philosophy." *Discovering Plato*, tr. L. Rosenfield (New York: Columbia University Press, 1960), 58, n. 6a. For St. Thomas on this, cf.: "... when, therefore, it is said that not every sin is evil because it is prohibited, this is understood with regard to a prohibition by positive law. But if reference is made to the natural law, which is contained first in the eternal law and second in the natural court of human reason, then every sin is evil because it is prohibited. For from the very fact that it is disordered (*inordinatum*), it contradicts natural law." *Summa Theologiae* I[a]-II[ae], q. 71, a. 6, ad 4.

[50] This text of *Romans* is a prominent link between Vitoria's doctrine here and his doctrine of just war; cf. "Secondly, it proven by the argument of St. Thomas, [in *Summa Theologiae*] II[a]-II[ae], q. 40, a. 1, that it is lawful to draw the sword and to use weapons against domestic criminals and seditious citizens, according to the passage from *Romans*, c. 13, v. 4: "Not without reason does he carry the sword; for God's minister is a wrathful avenger for him who does evil." Therefore, it is also lawful to use the sword and weapons against external enemies." *On the Law of*

War, n. 2, Urdánoz, 816-17; ibid., n. 13, Urdánoz, 825; *On the Indians* II, 7, Urdánoz, 685-6.

[51] That is the case of self-defense, or defense of the republic, in which the one killing would prefer another means if that were possible.

[52] Cf. St. Thomas, *Summa Theologiae* II^{a}-II^{ae}, q. 64, a. 5, ad 2.

[53] Here I am breaking the paragraph in a different way from that of Urdánoz.

[54] See note 8, above.

[55] Cf. *EN* III, c. 6, 1113a 23-4.

[56] Here I am reading "quia" instead of Urdánoz's and Boyer's "qui."

[57] I have not found this reference as Vitoria gives it; but cf. *De libero arbitrio* III, 7, 20-21; ed. P. Evaristo Seijas, *Obras de San Augustin*, III (Madrid: BAC, 1951), 434-6.

[58] That is, "on purpose and willingly."

[59] Cf. "Therefore, it must be said that, directly and formally speaking, no one can do an injustice unless he is willing and no one can suffer it unless he is unwilling." St. Thomas, *Summa theologiae* II^{a}-II^{ae}, q. 59, a. 3.

[60] In our own time, this custom appears to be coming back in some nations.

[61] "In 1567 Pius V condemned bullfighting, punishing participants and spectators with excommunication. A few years later, Gregory XIII restricted the penalties to clerics in major orders." B. Riegert, "Bullfighting," *The New Catholic Encyclopedia* (New York/St. Louis: McGraw Hill, 1967), II, 882.

[62] "Nihil interest parvo aut magno tempore te interimas;" cf. Urdánoz, p. 1114. An electronic search of the *Patrologia Latina* and the *CETEDOC Library of Christian Latin Texts* has not located this quotation. It should be noted that while Vitoria, commenting on *Summa Theologiae* II^{a}-II^{ae}, 64, art. 5, has cited Jerome in the same way, in parallel contexts in another work he has cited him differently. Cf. *On Temperance*, n. 1, Urdánoz, p. 1007-8: "Nihil interest quo pacto te interimas: quia de rapina holocaustum offert, qui vel ciborum nimia egestate, vel manducandi penuria immoderate corpus affligit" ("It does not matter in what way you kill yourself: for he who immoderately afflicts his body with either too little food or a want of eating offers a sacrifice of rapine."); and *ibid.*, n. 11, p. 1068: "Nihil interest quo pacto te interimas" ("It does not matter in what way you kill yourself.") A possible source may be St. Augustine speaking not of suicide but of the end of a long or a short life: "Quid autem interest, quo mortis genere vita ista finiatur, quando ille cui finitur, iterum mori non cogitur?" ("But what does it matter by what kind of death this life is ended, when he for whom it ends is not forced to die again?" *De civitate Dei*, I, c. 11; ed. J. Moran, *Obras de San Augustin*, XVI (Madrid: BAC, 1964), p. 24.

[63] Marcus Portius Cato (95-46 B.C.), "Cato the Younger," committed suicide after learning of Caesar's victory at Thapsus in 46 B.C.

[64] Marcus Junius Brutus (85-42 B.C.), one of Caesar's assassins, committed suicide after defeat in 42 at Philippi.

[65] For Eleazar, cf. I *Machabees* 6, 43-47; for Razias, see II *Machabees*, 14, 41-46.

[66] Cf. St. Augustine, *De civitate Dei* I, c. 26, ed. J. Moran, *Obras de San Augustin* ... XVI, p. 48; and St. Ambrose, *De virginibus*, III, n. 33; PL 16, col. 241. Also cf. Vitoria, *In IPII^{ae}*, q. 124, a. 1, n. 8, *Comentarios* ..., V (1935), pp. 317-319.

[67] See note 8, above.

[68] Here I follow Boyer (p. 136 [as given by Getino: III, 34]), and omit the "non" which has been mistakenly added in Urdánoz's text (p. 1116).

[69] In this Vitoria has, of course, no concern for modern issues relating to the environment.

[70] This is the main argument against assisted suicide. It is also an argument which Vitoria has used in at least three places, two linked directly to the Spanish conquest of the New World, against a justification of human sacrifice on the basis that the victims are willing; cf. "ANOTHER TITLE [for the conquest] could be because of tyranny, either of the barbarian rulers themselves or simply because of tyrannical laws working injury to innocent people. Think, for example, that they are sacrificing innocent men or killing blameless persons in order to eat their flesh. I say that even without papal authority the Spaniards can restrain the barbarians from every such abominable custom and rite, because they can defend innocent people from unjust death.

"This is proven, inasmuch as God has commanded everyone to have care for his neighbor, and all these are neighbors. Therefore, anyone can defend them from such tyranny and oppression, but this is especially the prerogative of princes. Again, it is proven from *Proverbs*, c. 24, v. 11: *"Deliver those who are being led to death, and do not cease to free those who are being dragged to destruction."* And this is to be understood not only when people are actually being dragged to death, but the Spaniards can also compel the barbarians to desist from this kind of religious practice. And if they are unwilling, the Spaniards can for this reason wage war on them and pursue the rights of war against them. Moreover, if the sacrilegious practice cannot otherwise be rooted out, they can change their rulers and establish a new government. And with respect to this, the opinion of the Archbishop [i.e. St. Antoninus (1389-1459) — Dominican, Archbishop of Florence, author of a four part *Summa Theologica*] is true: that they can be punished for sins against nature.

"Furthermore, it is no obstacle that all the barbarians may agree on laws and sacrifices of this kind, and that they have no wish on this score to be delivered by the Spaniards. For in these matters they are not so much in charge of themselves (*sui juris*) that they can hand themselves or their children over to death. And this could be a Fifth Legitimate Title." *On the Indians*, III, n. 15, ed. Urdánoz, pp. 720-721; and: "No one can grant to another the right to kill, or to eat, or to sacrifice himself." *On Temperance*, n. 7 *Fragmentum*, Urdánoz, p. 1051; also cf. *In II*II*ae*, 59, a. 3, n. 3, *Comentarios* ..., III (1932), p. 32.

[71] It should be clear that the injury in this case is not to the person killed but to society and to God. This doctrine is a logical extension from that of St. Thomas in *Summa theologiae*, II*II*ae*, 59, a. 3, ad 2: "Thus, he who kills himself does injury not to himself, but to the republic (*civitati*) and to God." For another statement of Vitoria's doctrine, cf.: "... in those acts which someone suffers willingly there is no injury. And in answer to the proof [of those saying otherwise], I concede that he [who kills a willing person] has committed a mortal sin by the fact that he has acted against the law and the commandment of God, and against the republic of

which he is a part, and he is acting against the natural law: *'Thou shalt not kill the innocent and the just'* (Ex. 23: 7). But I say that he has not done injury to the one asking and willing to be killed .... Therefore, he who kills another who is willing does not do injury any more than if he were to kill himself, although in both cases there is mortal sin." Vitoria, *In IIª-IIæ*, 59, a. 3, n. 3, *Comentarios* ..., III (1932), p. 32.

[72] Cf. *De senectute* XX, 73; in *M. Tulli Ciceronis Cato maior de senectute*, with notes by Charles E. Bennett (Chicago/New York/Boston: Benj. H. Sanborn & Co., 1930), p. 31.

[73] Note that these are identified in the *Commentary* on II-II, 64, 7, n. 4, as "martyred soldiers." Immediately coming to mind is the "Theban legion," whose martyrdom at Aguanum in Switzerland was reported early in the fourth century by St. Eucherius, bishop of Lyons; for this cf. H. Leclerq, "Aguanum," *The Catholic Encycopedia* (New York, 1913) I, 205-6. Perhaps, however, the reference is to 1004 legionaries who were said to be martyred in Armenia under Diocletian; cf. Alfred Vanderpol, *La doctrine scolastique du droit de guerre* (Paris: A. Pedone, 1919), p. 176.

[74] Inasmuch as the "Reconquest" (*Reconquista*) of Spain from the Moors has been by this time completed, there is perhaps a reference here to the situation in the New World?

[75] Rather than a commandment.

[76] For these same two texts advanced in favor of pacifism, which Vitoria rejects, cf. *On the Law of War*, n. 1, Urdánoz, p. 815.

[77] Remark the role that this text plays in the passage cited above in note 70.

[78] Cf. *Matthew* 5: 40.

[79] In recent years, moralists have formulated what has been called "the Kew Gardens principle" (cf. e.g. Robert Barry, O.P., "Infant Care Review Committees: Their Moral Responsibilities," *Linacre Quarterly*, Nov. 1985, p. 366). Named from the famous incident in New York City in which dozens of people witnessed the murder of Kitty Genovese and did nothing to stop it, this principle is that all moral agents are required to take actions which do not entail grave risk for them if those actions would prevent another from losing a fundamental human good or from experiencing grave sufferings. In this place, Vitoria is clearly teaching what amounts to the Kew Gardens principle. On the wider point being made, cf.: "It is true that for the defense of others, for example fellow citizens, we are obliged to fight; but for the defense of oneself no one is obliged to fight with injury to his attacker, and thus he is not bound to fight in defense of his own life." (*Verum est quod pro defensione aliorum, puta suorum civium, tenemur nos pugnare; sed pro defensione sui ipsius nullus tenetur pugnare cum malo invadentis, ita quod pro defensione vitae suae non tenetur pugnare:* ...) *In IIª-IIæ*, q. 124, a. 4, n. 11, *Comentarios* ..., V, p. 344.

[80] This is probably a reference to Vitoria's unpublished lectures on the *Summa Theologiae*, given before the present relection.

[81] *John* 15: 13.

[82] Cf. c. 2, 1165a2 and c. 8, 1169a20.

[83] For the order of charity, cf. St. Thomas, *Summa Theologiae* IIªIIæ, qu. 26.

[84] That is, the fourth argument above. Therefore, the insufficient answer referred to is that given in paragraph 25, immediately preceding.

[85] Note in this discussion that "*jus*" is used in the sense of a subjective right.

[86] Vitoria's nuance here is noteworthy. The argument seems to rest at least in part upon the social inequality of a slave *vis à vis* a king, who incidentally is a *public* person (cf. paragraph 25, above). In reply, however, Vitoria ignores both the inequality and the public character of the king and in effect says that the case is the same between equals who are both private persons.

[87] Cf. *Patrologia Latina*, 6, 607.

[88] *Quid (inquit) iustus faciet, si nactus fuerit aut in equo saucium, aut in tabula naufragum?* Urdañoz (Getino) translates: "¿Qué hará el justo — dice — si se encontrarse en un caballo desbocado o náufrago en una tabla?" (pp. 1122-23).

[89] With this cf.: "What then will the just man do, if he shall have met with a wounded man on a horse or a shipwrecked man on a plank? I am not unwilling to confess he will rather die than put another to death. ... It is folly, he says, to spare the life of another in a case which involves the destruction of one's own life. Then do you think it foolish to perish even for friendship." Lactantius as translated by Rev. William Fletcher, D.D., in *The Ante-Nicene Fathers*, Vol. VII (New York: Charles Scribner's Sons, 1913), p. 153. Also cf. Vitoria: "Lactantius in Book Five, Chapter 18 of his *De justitia* ("On Justice"), explicitly says this of a Christian who is shipwrecked with another and there is only a plank on which one can survive: he will die rather than take the plank." *In IIª-IIæ*, q. 26, a. 4, n. 3, in *Comentarios* ..., II, p. 108.

[90] On its face, this argument seems very weak. Remark, however, that it is advanced in a hypothetical way. Also remark its possible application to the case of a criminal who, for whatever reason, might admit to a crime which in fact he did not commit. Farther out from this, but still plausible, might be the case of someone who refuses to defend himself against a death sentence — even though others feel a moral obligation to do so.

[91] That is, that such a penalty could be ordered.

[92] Here I read "*amico*" (Boyer, p. 146; Getino, p. 37) instead of Urdánoz's "*viro*" (p. 1125).

[93] With this, cf.: "Again, with danger to her own life, a wife can sit by and assist her husband suffering from plague, even where it is not necessary, except to preserve marital faith." (*Item, uxor cum periculo vitae suae potest assidere, et assistere viro peste laboranti, etiam ubi non est necesse, sed tantum ad conservationem fidei maritalis.*) *On Temperance*, n. 9, Urdánoz, p. 1064.

[94] Note here an allusion to what will become Vitoria's first legitimate title for the Spanish entry into the New World; cf. "I will speak now about legitimate and fitting titles by which the barbarians could have come under the rule of the Spaniards. The FIRST TITLE can be called that of *natural society and communication*." *On the Indians*, III, 1, ed. Urdánoz, p. 705.

[95] We do not have the work to which Vitoria refers here. However, we do have his later teaching on abstinence; for this, cf. see his 1537 relection "On Temperance,"

nn, 8-15, ed. Urdánoz, pp. 105969. Also cf. the lectures given during his illness in 1536-7 by his substitute; *In II^a-II^{ae}*, 146; in *Comentarios* ..., VI, pp. 4650.

[96] Vitoria's point here has obvious application to current "death with dignity" issues.

[97] Cf. *On Temperance*, n. 1; Urdánoz, p. 1009; *ibid.*, n. 9, p. 1065; *ibid.* n. 13, p. 1069.

[98] Cf. *ibid.*, n. 9, p. 1064 and n. 13, p. 1069.

[99] "Lacticinia" in Urdánoz (p. 1126), omitted in Boyer (p. 147; Getino, p. 37).

[100] Cf. note 96, above.

[101] Cf. "Nor do I think that, if a sick person could get a drug only by giving his whole substance for it, he would be obliged to do so." *On Temperance*, n. 9, Urdánoz, p. 1065.

[102] Cf. "Third, we say that if someone were morally certain that he would regain his health through some drug and that without that drug he would die, he certainly does not seem excused from mortal sin [if he does not take the drug], for if he did not give [such a drug] to a sick neighbor, he would sin mortally ..." *ibid.*, n. 1, Urdánoz, p. 1009.

[103] Here two points may be remarked: (1) Vitoria clearly recognizes a difference between food and medicine with respect to one's obligation to preserve his life; cf.: "... it is not the same with regard to medicine (*pharmaco*) and food. For food is a natural means which is directly ordered to the life of an animal, but medicine is not such. And a man is not obliged to use all possible means in order to preserve his life, but only means which are directly ordered to that. Second, we also say that it is one thing to die from a [chosen] want of food, which would be imputed to a man and would be a violent death, and another thing to die from the power of a naturally invading disease. And thus, not to eat would be to kill oneself, but not to take medicine would be not to impede death threatening from elsewhere, [to impede which] a man is not always obliged. For it is evident that a person may sometimes lawfully defend his life and not be obliged to do so. And it is one thing not to prolong life and another to cut it short; the second is always illicit, but not the first." *On Temperance*, n. 1, Urdánoz, p. 1009. (2) In another passage, he says: "One is not obliged to use medicines in order to prolong life, even where there would be a probable danger of death, say, to take a drug for a number of years in order to avoid fevers or something of this nature." *ibid.*, n. 14, p. 1069.

[104] *Ecclesiasticus* 41: 15.

[105] *Proverbs* 22: 1.

[106] Cf. c. 6, 1115a27.

[107] Publius Decius Mus was the name of three consuls, father, son, and grandson, who sacrificed themselves to assure Roman victories in 340 B.C., 295 B.C., and 279 B.C., respectively.

[108] The pagans of "today" whom Vitoria has in mind are most likely the Indians of the New World. For what is required in order that ignorance be vincible or invincible, cf. *On the Indians*, II, n. 9, Urdánoz, 690-2.

[109] Cf. c. 7, 1116a13-14.

[110] Cf. *Ad familiares*, VII, 3, 4; in: M. Tulli Ciceronis, *Epistularum ad familiares, libri sedecim*, ed. H. Moricca, pars prior (Augustae Taurinorum: In Aedibus Paraviae, 1965), p. 234.

[111] Note that Vitoria has not replied to the sixteenth argument.

[112] Cf. *Hebrews* 11: 32.

[113] Cf. S. Ambrosii episcopi Mediolanenis, *De officiis ministrorum, libri III*, I, c. 40; ed. Io. Georgius Krabinger (Tubingae: Libraria Henrici Laupp, 1857), p. 101.

[114] Cf. *Historia Hebreorum ex elegantissimis Marci Antonii Coccii Sabellici Enneadibus excerpta, eius gentis ritus leges et gesta, ab orbe condito, ad Iesu Christi tempora (sunt haec omnia in libris Bibliacis et Iosepho ubertim comprehensa) succincte complectens, in septem est partita libros, qui singuli suis quoque capitibus distincti, capitum brevibus argumentis sunt elucidati, et ad laudem dei impressi*, Lib. III, cap. viii (Basileae: Ludovicus Horken, 1515), fol. 45r.

[115] Cf. I *Kings* 31: 4.

[116] I have not seen the text to which Vitoria is referring, which I think is: *Textus biblie cum glosa ordinaria: Nicolai de Lyra postilla, moralitatibus eiusdem, Pauli Burgensis additionibus, Matthie Thoring replicis*, 7 vols., Basileae: Johannes Petri et Johannes Frobensius, 1506-1508. On Nicholas of Lyre (d. ca. 1349) and his critic, Paul of Burgos (d. ca. 1431), cf. F. Vernet, "Lyre (Nicolas de)," *Dictionnaire de théologie catholique*, IX (1926), esp. 1414-1415; and Melquiades Andrés, *La teología española en el siglo XVI*, I (Madrid: BAC, 1976), pp. 314-315. For another place in which Vitoria has paired Nicholas and Burgensis, cf. *Fragmentum de regno Christi*, in *Comentarios* ... VI, p. 499.

Commentary on Summa theologiae *II^{a}-II^{ae} Q. 64*
(Thomas Aquinas)

By

Francisco de Vitoria, O.P.

A Translation

From: *Comentarios a la Secunda secundae de Santo Tomás*, edición preparada por el R.P. Vicente Beltrán de Heredia, O.P., Tomo III (Salamanca: Biblioteca de Teólogos Españoles, 1934) pp. 266-311.
Printed with permission.

/266/ Quaestio Sexagesimaquarta

De homicidio.

Articulus primus

Utrum occidere quaecumque viventia sit illicitum.

1.-Prima conclusio: Licitum est homini uti omnibus irrationalibus, sive animatis sive inanimatis, quae sibi ad usum data sunt. Probatur, quia imperfectiora sunt propter perfectiora; Deus enim non fecit solem propter ipsum Deum, nec lunam propter ipsum, sed propter hominem.

Secunda conclusio: Licitum est plantis et herbis uti et eas mortificare, segar los prados ad usum animalium.

Non est dubium de utraque conclusione. Et sanctus Thomas forsan movit hanc quaestionem propterea quia fuerunt haeretici antiqui dicentes quod non licebat occidere animalia ad vescendum. Forsan hujus sententiae fuerunt philosophi antiqui ut Pythagorici.

2.-Dubitatur. Dato, ut dicit sanctus Thomas, quod licitum est interficere animantia bruta ad vescendum, an tamen liceat occidere illa ad quoscumque alios usus praeterquam ad vescendum. Videtur quod non, quia in Genesi non aliud dicitur nisi quod ea dedit Dominus ad vescendum.

Respondetur quod non est dubium nisi quod liceat animantia bruta occidere etiam ad alios usus, utputa propter pelles animalium. Sic legitur de Cain quod erat venator, et tamen ante diluvium non legimus quod homines comederent carnes. Sed postquam Cain erat venator, ad quid venabatur? Dicunt doctores quod Cain et alii venabantur propter pelles animalium; et ita lupi occiduntur propter pelles, y las martas. Licet ergo uti animalibus ad alios usus praeterquam ad vescendum, quia imperfectioribus propter perfectiora uti licet.

3.-Sed dubitatur, an si occisor sine ulla utilitate occidat bruta, pec/267/cet. De hoc nihil dicit sanctus Thomas, quia solum dicit quod si quis occidat rem ad illud ad quod est, non peccat.

Respondeo primo, quod certum est quod nulla fit injuria animantibus brutis etiamsi occidantur, nec sunt capacia injuriae, quia bruta non habent jus in se, sed homo habet jus. Diximus enim quod solum natura rationalis est capax dominii. Solus namque homo est dominus sui ipsius et suorum membrorum, non tamen sic bruta. Unde lapis non est dominus sui, nec cervus, et sicut nulla fit injuria lapidibus etsi frangantur, ita nec plantis etsi evellantur nec arboribus etsi abscindantur, nec etiam brutis occidendo illa, nec peccat occisor illorum. Secundo dico, quod bruta omnia sunt hominum. Unde si aliqua

Question Sixty-Four

On Homicide.

Article One

Whether it is unlawful to kill any living things at all.

1.— *The first conclusion: it is lawful for a man to use all irrational things, whether animate or inanimate, which have been given for his use.* This is proven, because more imperfect things exist for the sake of things more perfect. Indeed, God did not make the sun or the moon for His own sake, but for that of man.

The second conclusion: it is lawful to use plants and grasses, and to kill them — [e.g.] "to mow meadows"[1] for the use of animals.

Both conclusions are certain. But St. Thomas perhaps raises this question because in antiquity there were heretics saying that it was not lawful to kill animals for food. Perhaps also of this opinion were ancient philosophers such as the Pythagoreans.[2]

2.— *A doubt is raised*: granted, as St. Thomas says, that it is lawful to kill brute animals for food, the question is whether it is lawful to kill them for any other use. It seems that it is not lawful, since in *Genesis*[3] it is said only that the Lord has given the animals for food.

The *answer* is that it is certainly lawful to kill brute animals for other uses, for example, for their pelts. Thus we read of Cain that he was a hunter,[4] yet we do not read that before the flood men ate meat.[5] But when Cain was a hunter, for what was he hunting? The doctors[6] say that Cain and others were hunting for the skins of animals; and thus wolves were killed for their pelts and also "martens."[7] It is therefore lawful to use animals for other ends besides eating, because it is lawful to use more imperfect things for those more perfect.

3.— But there is *doubt* whether someone sins if he kills brute animals for no benefit. St. Thomas has said nothing about this, for he states only that if someone kills a thing for what it is intended he does not sin.

I answer, first, that it is certain that no injury is done to brute animals even if they are killed. For brutes are not capable of [receiving] injury, since they have no right in themselves.[8] But a man does have such a right. For we have said that only a rational nature is capable of dominion;[9] since man alone is the master of himself and of his members, and brutes are not such. Thus, a stone is not its own master, nor is a stag, and just as no injury is done to stones when they are broken, so also neither is any done to plants when they are uprooted nor to trees when they are cut down, nor also to brutes when they are killed. Neither does their killer commit a sin. *Second*, I say that all brute animals belong to men. Hence, if some animals are needed and have some

sunt animalia necessaria et alicujus utilitatis, occidere illa sine quacumque utilitate est peccatum, quia aliquo modo fit injuria aliis hominibus ad quorum manus possent pervenire. Sicut qui sine utilitate occideret cervos et lepores et alias feras quae sunt utiles hominibus, peccaret, non propter injuriam factam illis, sed propter injuriam quae fit hominibus, quia nocent illis, postquam illa sunt in usum hominum, ut porci monteses. Et posset tantum nocere, quod peccaret mortaliter, ut si silvam combureret et vastaret ubi essent ferae necessariae et utiles ipsis hominibus, quibus fit injuria, quia habent jus ad illa animalia bruta.

4.-Dubitatur tertio, an liceat occidere bruta solum voluptatis causa, id est an liceat venari recreationis causa. Supposito, ut verum est, quod licet venari, an tamen venatio ex genere suo, id est ex objecto sit licita. Videtur quod non, quia in sacra scriptura videntur reprehendi venatores, quia Hieremiae, 16 (v. 16), inter comminationes quas Deus ponit, ponit unam, quod *mittet eis venatores multos*; et Eccle. 10 (v. 16) dicitur: *Vae terrae cujus principes male comedunt*; omnes intelligunt de venatoribus. Item, Hieronymus in Psalmo 90, et habetur 86 dist., ca. *Esau*, dicit: "Esau venator erat quoniam peccator erat"; et plus dicit: et penitus non invenimus in sacra scriptura sanctos venatores, sed piscatores. Et Ambrosius in homilia quadragesimae, et habetur in eadem dist. 86, ca. *An putatis*, reprehendit vehementer venatores. Item, quia interdicitur clericis venatio, ut patet in cap. 1 [*Episcopum*] de clerico venatore, ubi dicitur quod non licet clericis habere canes ad venandum, nec accipitres nec alia instrumenta venationis. Ergo videtur quod venatio de se, dato quod non sit injusta, quod tamen est turpis, sicut ludere de se non est /268/ iniustum, ponitur tamen inter turpia, et ita quod adquiritur per ludum ponitur inter turpia. An ergo ita dicendum sit de venatione.

Respondeo: primo, quod venatio de se est licita et honesta, nec ponitur inter turpia sicut ludus, sed inter honesta. Expresse hoc ponit sanctus Thomas 1 p., q. 96, a. 1 ex Aristotele 1 *Politicorum* dicente, quod venatio est licita et honesta, non solum causa necessitatis, sed etiam causa voluptatis. Ponitur enim venatio inter honestas voluptates quia est conformiter ad jus naturale, quia omnes ferae non solum ordinantur ad usum, sed etiam ad voluptates. Idem dicit sanctus Thomas 3 *Contra gentes*, cap. 22. Et dat rationem, quia alias si non liceret homini occidere oves ut faceret vestem et vestiret se, certe non esset factum conformiter ad sapientiam divinam, quia non bene consuluisset Deus et providisset homini, cum nudus nascatur et cum multis necessitatibus, quod sic maneret; animalia vero induta et omnibus necessariis

utility, to kill them for no use is a sin. For in some way an injury is done to other men into whose hands they could come. Just as he who would for no reason kill deer, rabbits, and other wild creatures which are useful for men, would sin not because of any injury done to those creatures but because of the injury which results for men, because he is harming[10] those creatures, when they (e.g., mountain pigs)[11] are of use to men. And he could do such great harm that he would sin mortally — for instance, if he were to burn a forest and destroy the habitat of wild animals which were necessary or of use for those men, to whom injury would be done inasmuch as they have a right to those brute animals.

4.— There is a *third doubt*: whether it is lawful to kill brute animals simply for pleasure; that is, whether it is lawful to hunt for sport. Supposing that it is lawful to hunt, the question is still whether hunting of its nature, that is from its object, is lawful. It seems that it is not, because in Sacred Scripture hunters appear to be condemned. For *Jeremiah* 16, v. 16, among the threats made by God puts this one: that he "*will send them many hunters*;" and at *Ecclesiastes* 10, v. 16, it is said: "*Woe to the land whose princes eat wrongly*"[12] — [which] all understand to be about hunters. Again, Jerome, commenting on *Psalm* 90, which is reproduced in distinction 86,[13] says about *Esau*: "Esau was a hunter because he was a sinner;" and he further says: "we simply do not find saintly hunters in Sacred Scripture — but rather fishermen."[14] And Ambrose in a Lenten homily, which is also in the same distinction 86, about *An putatis*,[15] strongly blames hunters. Again, because hunting is forbidden to clerics, as is clear in chapter 1 of *Episcopum*[16] about a clerical hunter, where it is said that it is not lawful for clerics to have hunting dogs, nor hawks, nor other instruments for hunting. Therefore, it seems that hunting of itself, granted that it is not unjust, is however base, just as to gamble is not of itself unjust, but it is put among base things, and thus what is acquired through gambling is put among base things. *The question* then is should the same be said of hunting.

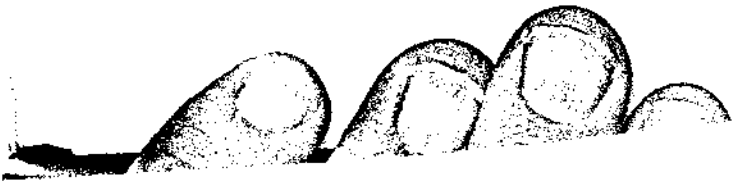
I answer: first, that hunting of itself is lawful and honorable, nor is it to be put among base things, like gambling, but among honorable things. St. Thomas explicitly affirms this in *Summa theologiae* I^{a}, q. 96, a. 1, on the basis of Aristotle in Book I of his *Politics*[17] saying that hunting is lawful and honorable, not just out of necessity, but also for the sake of enjoyment. For hunting is put among honorable pleasures inasmuch as it is in conformity with natural law, because all wild animals are ordered not only for use, but also for pleasure. St. Thomas says the same in *Contra gentes*, Bk. III, chapter 22. And he argues that otherwise, if it were not lawful for a man to kill sheep in order to make clothes and clothe himself, certainly this would not be something in conformity with divine wisdom, since God would not have well looked out for and provided for man who is born naked and needing many things, be-

implevit, et non alia de causa nisi ut homo egeret animalibus. Secundo dico, quod dato quod venatio sit honesta, non tamen omnibus est honesta. Sicut bellatio et militatio armorum ponitur inter honesta exercitia, non tamen omnibus est honesta, ita venatio ponitur inter res honestas, sed non omnibus est honesta. Ideo interdicitur clericis, tum propter occupationem nimiam quam operatur, quia multum occupat venatio tum propter cursus et clamores quae sunt necessaria ad venationem, indiget enim currere et clamoribus, quae omnia non sunt honesta clericis. Tertio dico et dubitatur, an cleris in illo loco sit absolute interdicta omnis venatio. Dico quod clericis non absolute prohibetur venatio, sed exercitium et consuetudo cujuscumque venationis, de cualquier caza, est sibi prohibitum. Et illic ponitur poena quae esset infligenda clerico qui sic haberet consuetudinem venandi. Quarto dico, quod prohibetur eis omnis venatio quae indiget clamore et cursibus. Quinto dico, quod non est simpliciter interdicta venatio, quia quod semel exeat ad venandum, si hoc non habet pro exercitio, licitum est. Sexto dico, quod absolute est inhonesta venatio quando habetur pro officio et pro exercitio, in qua consummitur vita et omnis industria. Etiam de laicis dico quod non est laudabile que su vida sea cazar, nec laudantur venatores in sacra scriptura, immo dicitur, "venator est quoniam peccator est," ex qua multa mala sequuntur, maxime tempore quadragesimae in quo non esset venandum, quia venatores non jejunant. Immo si legatis historias antiquas, videbitis quod non erat con- /269/ suetudo venandi, sed rarissime venabantur. Unde certe res honestissima ut venatio, fit ab illis inhonesta propter consuetudinem venandi.

5. — Dictum est quod venatio est licita et licitum occidere bruta. Dubitatur an bruta et ferae campestres quae occiduntur sint ipsius venatoris.

Respondeo primo, de jure communi omnes ferae sunt communes omnibus hominibus et non propriae alicujus. Patet in instituta "De rerum divisione," *Ferae*, et § *Et quidem* et § *Flumina*, ubi expresse determinatur quod non solum sunt communes ferae, sed quod est de jure gentium. In § *Et quidem* dicitur quod mare est commune jure gentium; ideo dicit quod omnibus licet navigare et piscari in mari, et ita de portu et fluminibus. Et idem judicium est de venatione. Et in alio § dicit de omnibus animalibus quae in caelo et in terra nascuntur, quod incipiunt esse illius qui capit illa.

Dicetis quod verum est si capiat in communi agro; sed si capiat in agro meo, quid dicetur? Dicitur ibi quod non interest quod capiat in fundo suo vel in alieno, sed dicitur ibi quod potest quis prohibere ne ingrediantur in agro



cause he would remain so; but the animals he clothed and gave them all they needed — for no other cause than that man would need them. *I say, second*: granted that hunting is honorable, it is not however honorable for everyone. Just as waging war and using weapons are reckoned among honorable exercises, but not honorable for all, so hunting is put among honorable things, but it is not honorable for all. Therefore, hunting is forbidden to clerics, because of both the chase and the cries which are necessary for it, for it does need running and shouting, which are not at all respectable for clerics. *Third I say*, there is also doubt whether in that passage[18] all hunting whatever is proscribed for clerics. *I say* that hunting is not absolutely prohibited for clerics, but the habitual practice[19] of any hunting whatever, "of any kind of hunting,"[20] is forbidden for them. And a penalty is there declared which should be inflicted upon any cleric who thus would have a habit of hunting. *I say, fourth*, all hunting which requires shouting and running is proscribed for them.[21] *Fifth I say*, that hunting is not absolutely forbidden, because what one may do one time in hunting, if it is not his [habitual] practice, is lawful. *I say sixth*, that hunting is without qualification dishonorable when it is regarded as a business or a practice in which one's life and whole industry is consumed. With respect to laymen also I say that it is not laudable "that their life be hunting."[22] Nor are hunters praised in Sacred Scripture; but rather it is said: "he is a hunter because he is a sinner."[23] And from hunting many evils follow, as especially in Lent when there should be no hunting because hunters do not fast. Indeed, if you read ancient histories, you will see that there was no custom of hunting, but they hunted most rarely. Thus certainly a most honorable thing such as hunting was made dishonorable by the ancients on account of the custom of hunting.

5. — It has been said that hunting is lawful and that it is lawful to kill brute animals. The *question* is whether brutes and wild animals of the field which are killed belong to the hunter himself.

I answer, first, from the common [i.e. Roman] law that all wild animals belong in common to all men and are not the property of any one man. It is clear in the *Institutes*, "On the division of things,"[24] § *Ferae*,[25] and § *Et quidem*[26] and § *Flumina*,[27] where it is explicitly decided that not only are wild animals common, but that this is a matter of the "law of nations."[28] In § *Et quidem* it is stated that the sea is common by the *law of nations*. Therefore, it states that it is lawful for all to sail upon and to fish in the sea, and the same with regard to harbors and rivers. And the same judgement holds as regards hunting. And in another paragraph it is stated, with respect to all animals which are born in heaven and on earth, that they become the property of him who takes them.[29]

You will say that this is true if he takes them in a common field. But what will be said if he takes them in my field? In that place,[30] it is said that it does not matter whether he takes them on his own land or on that of another.

suo ad venandum sub tali poena; sed si quis ingrediatur et capiat bruta, tunc sua sunt. Dicitur etiam quod potest quis circumdare montem et ibi intromittere cervos et alia animalia, et ipse est dominus eorum et manent in suo dominio. Sed si aliquae ferae inde exiliant et fugiant, quandiu dominus non persequitur illas, sunt capientium et suae; sed si illas persequitur, etsi egrediantur, sunt suae. Hoc etiam patet ff. "De adquirendo dominio rerum," lege naturali.

Dico ergo primo, quod si loquamur de jure communi, omnes ferae sunt communes omnibus et pisces.

Secundo dico, quod sunt capientium de jure gentium, nec hoc est revocatum per aliquam legem.

Tertio dico, quod licet ita sit quod de jure gentium sunt communes et fiunt capientium, tamen quia jus gentium est magis jus positivum quam naturale, ut supra diximus, ideo jus ipsum commune ex rationabili causa potest aliter disponi per legem positivam. Unde imperator potest facere novas leges de venatione ex rationabili causa, licet non sint factae. Potest facere quod ferae non sint communes, et quod cervi et porci campestres non capiantur nisi solum a regibus et dominis. Patet, quia potest rex jus commune mutare per legem ex rationabili causa. Item, quia rex ha/270/bet potestatem a communitate et republica; sed respublica posset dividere bruta, quod cervi essent de los hidalgos y las liebres de otros: ergo ita rex potest facere, postquam habet potestatem a republica.

Quarto dico, dato quod rex possit facere tales leges, tamen, sicut si res nunc essent communes, non essent dividendae sicut nunc sunt divisae, ita quod divites plus habeant, pauperibus remanentibus in egestate, sed essent dividendae sine injuria alicujus; ita dico quod licet rex possit facere leges illas de venatione, tamen postquam ex natura sua ferae sunt communes nunc et non divisae, non posset utcumque appropriare illas ita ut solum possent equites venari. Non posset facere quod aliquae ferae approprientur istis, las liebres y conejos a los hidalgos et aliis aliae, quia sunt communes, sed debet in communi distributio fieri et divisio sine injuria aliorum. Et si exhauriretur venatio, potest dari modus quomodo non exhauriatur.

Quinto dico, quod divisio non debet fieri aequalis, sed proportionabiliter secundum statum cujuslibet, ita ut quisquam habeat suam partem. Itaque dato quod ferae omnes sint communes ut sunt, non oportet tamen quod

Rather it is said there that someone can under a certain penalty forbid persons from entering his field in order to hunt; but if someone does enter and takes animals, then they are his. It is also said that someone can fence off a mountain and there introduce deer and other animals, so that he is their owner and they are under his control. But if some wild animals escape and flee from there, as long as the owner does not pursue them, they belong to those taking them, so that they are theirs. But if the owner pursues them, even though they get out, they belong to him. This is also clear by natural law, according to [the law] "On aquiring ownership of things."[31]

Therefore, *I say first* that if we are speaking of the common law, all wild animals and fish are common to all.

I say second that from the *law of nations* they belong to those who take them, and this has not been revoked by any [other] law.

Third, I say that although it is the case that from the *law of nations* they are common and they become the property of those taking them, nevertheless, as I have said above,[32] the law of nations is more positive than natural law,[33] therefore that common law can for a reasonable cause be changed through positive law. Thus the Emperor, for some reasonable cause, can make new laws about hunting, even though they have not been made. He can make a law that wild animals are not common, and that deer and wild boar are not to be taken except by kings and lords alone. This is clear, because a king, for a reasonable cause, can by his law change the common law. Again: a king has power from the community and the republic;[34] but the republic could divide brute animals so that "the deer would belong to the nobles and the rabbits to others;"[35] therefore, once he has power from the republic, a king can make such a law.

Fourth, I say that, granted that a king could make such laws, still, if things were at present common, they should not be divided as they now are, in such a way that the rich have more, with the poor remaining in want. But they should be divided without injury to anyone. So I say that although a king can make those laws about hunting, nevertheless, when now of their nature wild animals are common and not divided, he could not in just any way apportion them so that only knights could hunt. He could not make a law that some wild animals be apportioned to them, "the hares and rabbits to the nobles,"[36] and other animals to others, because [wild animals] are common. Thus there should be a common distribution and a division without injury to one or another. And if hunting were being depleted, a way could be legislated in which it would not be depleted.

Fifth, I say that a division does not have to be made equal, but proportionately according to the condition of each one, so that each one may have his own share. Granted, therefore, that all wild animals exist as common, never-

dividerentur aequaliter, dicendo: partamoslo desta manera: lleven tanto los hidalgos, y tanto los labradores, sed quod dividerentur secundum dignitatem personarum, quia rationabile est quod quidam dominus habeat majorem partem quam quidam agricola; sed taliter divisio deberet fieri ut omnes ex his haberent.

Sexto dico, quod illud quod potest fieri per legem, potest etiam fieri per consuetudinem antiquam cujus non est memoria in contrarium. Probatur, quia appropriatio potest fieri per legem; et antiqua consuetudo habet vim legis: ergo. Sicut si sit aliquod nemus in quo prohibe[b]atur antiquitus venatio de qua non habetur memoria apud homines in contrarium, ista consuetudo tenenda est tamquam lex, et dominus juste defenderet feras suas. Patet, quia hoc potest fieri per legem; sed antiqua consuetudo habet vim legis: ergo quod potest fieri per legem, potest fieri per consuetudinem antiquam cujus contrarium non est in hominum memoria. Unde si esset consuetudo antiqua de prendar los que entran a cazar en su monte, y los prenda, licite facit, quia consuetudo habet vim legis.

Septimo dico, quod quamvis rex possit facere talem legem, ut dictum est, scilicet de appropriatione ferarum, non tamen hoc potest facere dux Albanus nec alii magnates. Probatur, quia tales non sunt legislatores, id est non possunt facere leges proprie, sed rex. Item, quia omnes ferae sunt communes: ergo non potest dominus aliquas illas sibi appropriare. No puede acotar la caza, nisi habeat ex antiqua consuetudine cujus nulla /271/ memoria sit in contrarium. Quod non dicatur: audivi ab avis meis quod omnes solebant in tali monte venari; tunc enim non esset consuetudo antiqua cujus non est memoria. Unde dico quod non possunt appropriare sibi feras nisi ex antiqua consuetudine, quia tyrannicum est quod faciant leges de appropriatione ferarum et contra libertatem populi ad venandum, quia ferae sunt communes. Immo potius debent defendere principes hanc libertatem.

Octavo dico, quod quamvis ita sit quod dominus non possit appropriare simpliciter sibi feras, potest tamen facere aliqua statuta de venatione quae sint convenientia, et alias non; lo que puede hacer un concejo para que no se pierda la caza y se acabe. Potest ergo facere leges, non ad utilitatem propriam, sed communem, scilicet praecipere quod non venentur con hurones ni con redes, sino con galgos; cum illis enim exhauritur venatio. Sed non potest omnino tollere libertatem venandi.

Nono dico, quod in hujusmodi statutis debet servari jus proportionabiliter, scilicet secundum dignitatem cujusque, sic quod major licentia detur majoribus et dignioribus.

theless, they need not be equally divided — saying: "let's divide it in this way: let the nobles take so much and the workers take so much"[37] — but they should be divided according to the dignity of persons, since it is reasonable that some lord have a larger share than some farmworker. But the division ought to be made in such way that all would have a share.

Sixth, I say that what can be done by law can also be done by ancient custom of which there is no memory to the contrary. This is proven: because an apportionment can be achieved by law, and an ancient custom has the force of law; therefore .... For example, if there is some grove in which from antiquity hunting has been prohibited, and there is no human memory to the contrary, that custom must be held as a law, and the owner would justly defend his wild animals. This is clear, because this can be done by law; but an ancient custom has the force of law; therefore, what can be done by law can be done by an ancient custom the contrary of which is not in human memory. Hence if it were an ancient custom "to arrest those entering on his mountain for the purpose of hunting, and he does arrest them,"[38] he is acting lawfully, because the custom has the force of law.

Seventh, I say that although the king can make such a law, as has been said, that is, about the apportionment of wild animals, the Duke of Alba or other *magnates*[39] cannot do this. This is proven, because such are not legislators, that is, they cannot on their own make laws, as can the king.[40] Again it is proven, because all wild animals are common; therefore, a lord cannot appropriate any of them to himself. "He cannot set bounds for hunting,"[41] unless he possesses it from an ancient custom, of which there is no memory to the contrary. Thus it may not be said: "I have heard it from my grandparents that everyone used to hunt on such a mountain" — because then it would it would not be an ancient custom of which there is no memory. Hence, *I say* that they cannot appropriate wild animals to themselves except from an ancient custom, because it is tyrannical to make laws for the appropriation of wild animals against the people's freedom to hunt, since wild animals are common. Indeed, princes should rather defend this freedom.

Eighth, I say that although it is the case that a lord may not simply appropriate wild animals to himself, he can however make some statutes about hunting which are fitting (if they are not fitting, he cannot make them); "which is what a town council can do in order that hunting not be destroyed and ended."[42] He can therefore make laws, not for his own but for the common advantage, for instance, to prescribe that persons hunt "with greyhounds, but not ferrets and nets,"[43] since hunting is exhausted by these.[44] But he cannot entirely remove freedom to hunt.

Ninth, I say that in statutes of this kind what is right must be observed proportionately, that is, according to the dignity of each one, so that more licence is given to greater and more noble persons.

Consequenter dico, quod illud quod potest fieri per legem et consuetudinem antiquam, potest fieri ex pacto facto cum populo, ita quod aliqui domini possunt appropriare sibi feras et habere jus ad venationem, componendo hoc cum populo et faciendo pactum quod dabit tantam pecuniam populo ut habeat jus ad venationem, v. g. cervorum, et quod nullus alius venetur. Ita scio quod aliquis princeps facit; quitale las alcabalas, et tunc volenti non fit injuria. Sed hoc intelligendum est dummodo compositio non sit violenta, utputa quod propter dominum ipsum, populus non audeat aliud facere nec aliter quam ipse vult; sed oportet quod sit voluntaria, vel quia subditi accipiunt majus beneficium, vel quia gratis volunt placere domino. Tunc domini possunt uti illa libertate venandi et custodire venationem.

6.— Restat respondere ad argumenta quae domini vel alii pro illis faciunt ad probandum quod possunt habere venationem et custodire illam. Primo arguitur: quia aliqui domini habent donationem a rege his verbis: quod dat illis totam potestatem quam habebat in villa quam dat alicui domino cum omnibus privilegiis et conditionibus requisitis ad veram appropriationem; sed rex poterat in villa illa facere leges de venatione et dividere eam: ergo et dominus. Item, rex poterat sibi appropriare venationem: ergo et dominus, postquam rex dedit magnati totum dominium quod ipse habebat quando dedit villam, et per consequens potest prohibere subditos a venatione.

/272/

Ad hoc respondetur multo clarius quam ipsi arguunt. Domini habent villas cum potestate regia etc.: distinguo, et dico quod rex duplicem habet potestatem. Una est potestas quae est communis ipsi regi et aliis, ita quod est potestas ut est privata persona, ut potestatem quam quis habet in praedio suo, habet etiam rex. Alia est potestas propria et praerrogativa ipsius regis quae non cadit in aliis, ut potestas imponendi tributa, sisas y pechos, et remittendi homicidia et limitare libertatem populi. Unde si domini habent potestatem regiam, est prima potestas et non haec secunda, quia domini non possunt remittere poenam homicidii latam a lege, no pueden perdonar la muerte de uno, sed solum rex. Et sic dico quod domini non habent totam potestatem regiam, quia facere leges est praerrogativa regis, et qui sunt subditi illi ut domini non possunt illas facere. Secundo dico, quod licet rex possit facere leges de venatione, non tamen debent esse iniquae et irrationales. Et iniqua esset lex si appropriaret sibi illa quae sunt communia, vel alteri. Sic potest facere legem de los ejidos que se rompan, sed non potest appropriare alicui sed omnibus quibus prata erant communia; como las mercedes que hizo de los ejidos de Medina del Campo para que los rompiesen, sed quia hoc visum fuit esse iniquum, revocavit illud. Unde cum venatio sit communis omnibus, licet rex bene possit facere

Consequently, I say that what can be done by law and by ancient custom can be done from an agreement made with the people, so that some lords can appropriate wild animals to themselves and have a right to hunt them, by agreeing on this with the people and contracting to give a certain amount of money to the people in order to have an exclusive right of hunting, e.g. deer. I know that an occasional prince does this; "pay the duty on it"[45] and then no injury is done to a willing people.[46] But this must be understood only if the agreement is not violent in such way that because of the lord himself the people may not dare to do anything else or otherwise than he wants. But it must be voluntary, either because the subjects receive a greater benefit, or because they freely will to please their lord.[47] In such cases, lords may use that freedom to hunt and may restrict hunting.

6.— We still must answer the arguments which lords, or others on their behalf, make to prove that they can hunt and restrict hunting. First, it is argued that some lords have a donation from the king in these words: *that he is giving them the whole power which he had over an estate, which he gives to some lord with all privileges and conditions necessary for a true appropriation.* But the king could on that estate make laws about hunting and could apportion it. Therefore, the lord also can do so. Again, the king could appropriate hunting for himself. Therefore, the lord also can do so and consequently he can prohibit his subjects from hunting — when the king has given him the whole dominion which he himself had when he gave him the estate.

To this *the answer* is more clear than their argument. "Lords have estates with royal power, etc." — *I distinguish and say* that the king has two powers. There is one power which is common to the king and to others, power as he is a private person. Thus as anyone has power on his own estate, so also does the king. There is another power which is the proper prerogative of the king himself, a power which does not occur in others, like the power of imposing tributes, "assizes and taxes,"[48] as well as of pardoning homicides and limiting the freedom of the people. Hence, if lords have royal power, it is the first and not this second power, because lords cannot remit the punishment required by law for homicide, "they cannot pardon the death of anyone,"[49] as only the king can do. And so I say that lords do not have complete royal power, because to make laws is the prerogative of the king and those who are subject to him, like lords, cannot make them. *Secondly, I say* that, although the king can make laws about hunting, these must not, however, be wicked and irrational. And a law would be wicked if the king were to appropriate to himself or to another things which are common. Thus, the king can make a law about "public lands, that they be ploughed,"[50] but he cannot apportion them to anyone but to all to whom the meadows were common; "like the gifts which he made of the public lands of Medina del Campo in order that they plough them,"[51] but because this seemed to be wicked, he revoked it.[52] Hence, be-

leges de venatione, non tamen leges per quas appropriet venationem alicui domino, quia non esset lex rationabilis, et per consequens nec dominus potest venationem prohibere nec sibi appropriare.

Et si objicias: quia rex alicubi custodit nemora et venationes sibi soli: ergo et dux potest idem facere, postquam rex dat ei suam potestatem. Respondeo: diximus supra quod licet sit venatio communis, non tamen debet ad omnes aequaliter exspectare. Non enim hoc est rationabile, sed quod plus exspectet ad regem quam ad privatos homines. Unde dico quod rex bene potest illud facere, modo rationabiliter faciat. Quia si omnia loca in quibus est venatio arcerentur a rege, esset magna tyrannis, et intolerabilis esset talis lex, sicut si arceret illam in omnibus locis quae sunt dominorum. Quod tamen solum in duobus aut tribus locis prohibeat venationem, hoc tolerabile est. Sed si extenderet hoc ad tot oppida quot sunt dominorum, esset intolerabile. Unde resolutorie dico quod non sequitur: rex potest hoc facere, ergo et domini possunt. Secundo dico, quod rex non potest facere nisi rationabiliter.

7.— Secundo arguunt etiam domini: dato quod de jure communi sint ferae communes, tamen ferae quae habentur in custodia non sunt communes, sed appropriatae, quia ipsi faciunt sumptus ponendo custodiam /273/ ad hoc quod nullus venetur, y que prende a los que cazan, et sub-gravi poena quod flagelletur qui captus fuerit venando.

Respondetur quod hoc est mera calumnia. Leges non dicunt quod ponatur custodia adversus venientes ad venandum, nec isti coercentur a custodia, sed ferae coercentur ab illa. Et sic dico quod illud non est aequum, quia custodia non vocatur quae ponitur ne alii venentur, sed custodia vocatur quae ponitur ipsis feris quando coercentur ipsae ferae ne exeant, sicut olim ab aliquibus magnatibus solebat fieri quia obsidebant nemus; pero agora quierenlo hacer todo a costa agena. En un cercado non nego quin possint custodire feras y penar a los que las cazen, quia hujusmodi ferae sunt appropriatae et non communes. Sed quando ferae sunt communes, non potest dominus illas sibi appropriare, licet ponat custodiam in monte.

8.— Tertio arguunt: dato quod in praediis et montibus communibus non possit dominus sibi appropriare venationem et ponere custodiam, saltem possum illam habere in praedio et monte meo quem ego plantavi, et ponere custodiam et prohibere venationem sicut cessionem lignorum. Ergo in illo monte in quo posui venationem, possum habere custodiam et prohibere illam.

Respondetur ad hoc ex ipsa lege superius habita quae disponit quod non refert venationem exercere in agro proprio sive in alieno, quia licet mons sit

cause hunting is common to all, even though the king can indeed enact laws about hunting, he cannot enact laws through which he would make hunting the property of some lord, for such would not be reasonable law. Consequently, neither can a lord prohibit hunting or appropriate it to himself.

And if *you object* that the king keeps groves and hunting somewhere for himself, and therefore a duke can do the same when the king gives him his own power, *I answer*: we have said above that although hunting is common, still it should not pertain in the same way to all; for this is not reasonable; but the fact is that more belongs to the king than to private men. Hence, I say that the king can indeed do that, provided that he does it reasonably. For if all hunting places were to be fenced off by the king, it would be great tyranny, and such a law would be intolerable, just as if he would fence off hunting in places which belong to lords. However, it is tolerable that he prohibit hunting in two or three places. But if he were to extend this to as many towns as there are lords, it would be intolerable. Hence, by way of resolution, *I say* that this does not follow: the king can do this, therefore so can the lords.

7.— *Second*, the *lords also argue*: granted that from the common law wild animals are common property, nevertheless, wild animals which are kept in captivity are not common, but owned [by those keeping them]. For they go to the expense of posting a guard in order that no one may hunt, "that they arrest those who hunt,"[53] and that whoever be captured hunting be subject to the severe punishment of flogging.

The *answer* is that this is a mere deception. The laws do not say that the guard may be posted against those coming to hunt, nor are they coerced by the guard, but it is wild animals which are coerced by it. And so *I say* that this is not the same, because that is not called a guard which is posted lest others hunt. But a guard is that which is posted for the wild animals when those same wild animals are coerced lest they escape, just as in the past some *magnates* used to do when they enclosed a grove. "But now they want to do it all at someone else's expense."[54] I do not deny that they can keep wild animals "in an enclosure"[55] "and punish those who hunt them,"[56] because animals of this kind are owned and not common. But when wild animals are common, a lord cannot appropriate them to himself, although he may post a guard on a mountain.

8.— *Thirdly they argue*: granted that in common lands and mountains a lord cannot appropriate hunting to himself and post a guard, at least I can do that in my own mountain and land which I have planted, and can both post a guard and prohibit hunting, just as [I may prohibit] cutting trees. Therefore, in that mountain on which I have established hunting, I can place a guard and prohibit it.

From the law mentioned above,[57] *the reply* to this is that it does not matter whether the hunting takes place in one's own field or someone else's. For even

domini et ibi ponat feras, nihilominus ferae si ibi capiantur, ita sunt capientium sicut si mons non esset suus, postquam ferae sunt communes.

9.-Quarto arguunt: quia utile est subditis ipsis prohibere illos a venatione et piscatione, quia multi sunt qui perdunt tempus, et omittunt agriculturam, y dejan de ganar de comer por andar a caza; et dominus debet procurare utilitatem suorum subditorum: ergo bene facit arcendo illos a venatione.

Ad hoc concedo antecedens, et nego consequentiam, quia dato quod sit illis utile non venari, non tamen potest dominus cogere illos ad illud, quia hoc fit cum jactura eorum, que es quitarles la caza. Nec exspectat ad dominum consulere utilitati alterius cum sua utilitate. Non enim dabit dominus nummos agricolis ut emant jumenta ad colendum agros, etsi egeant, licet hoc sit conveniens agricolis. Ergo nec aliud curent. Secundo dico, quod illud non est illis utile, postquam tollunt ab eis libertatem, quia libertas est magis utilis quam illud bonum privatum. Melius est agricolae habere libertatem venandi toto anno, licet nihil venetur, quam quod laboret y gane de comer. Unde postquam in hoc faciunt illis tam /274/ gravem injuriam, nullis certe argumentis nec excusatione se possunt domini defendere quin peccent mortaliter arcendo subditos a venatione.

10.— Ex his quae dicta sunt oriuntur aliqua dubia. Primo, quando domini legitime custodiunt venationem ita quod legitime sunt eis ferae appropriatae, vel ex eo quia est consuetudo antiqua et immemorialis, vel ex rationabili lege, vel ex pacto facto cum populo, dubitatur an tunc liceat eis coercere venationem poena aliqua, so pena de mil maravedis la primera vez, y la segunda de cien azotes al que cazare.

Respondetur quod sic, quia alias dominus non posset conservare jus suum ad venationem nec aliquid haberet. Secundo dico, quod poena debet esse moderata pro qualitate rei. Debet dominus considerare quod fuit venatio communis, et ideo non debet esse poena gravis et atrox, quia esset maxima tyrannis, ut dicit Cajetanus et Silvester. Sufficit quod solvant duos vel tres argenteos, et non alias poenas et flagella, quia hoc tyrannicum esset. Illud enim quod erat commune, nescio unde veniat quod vertatur in gravamen populi. Quando ergo poena est in gravamen populi, non debet imponi.

though a mountain belongs to a lord and he puts wild animals there, nevertheless, if those animals are taken there, they belong to the one taking them just as if the mountain were not the lord's, and the wild animals were common.

9.— *Fourth, they argue*: that it is for the benefit of those subjects themselves to prohibit them from hunting and fishing, because there are many who waste time and neglect farm work, "and do not earn a living because they go hunting,"[58] and a lord should provide for the benefit of his subjects. Therefore, he does well in keeping them from hunting.

In answer, *I concede* the antecedent and *I deny* the consequence. For, granted that it benefits them not to hunt, a lord cannot, however, force them to this, for this is done with loss to them, "which is to deprive them of hunting."[59] Nor does one expect a lord, along with his own advantage, to look out for the benefit of another. For a lord will not give money to farmers to buy animals (*jumenta*) to plow their fields, even if they need them — although this is of benefit for the farmers. Therefore, neither will they [i.e. lords] provide for anything else. *Secondly, I say* that this is not advantageous for the subjects, when the lords take away their freedom, since freedom is more beneficial than that good which is lost [when freedom is exercised]. It is better for a farmer to have freedom to hunt all the year round, even though he may hunt nothing, than that he labor "and earn a living."[60] Hence, when in this they do such great harm to their subjects, certainly lords cannot, with arguments or excuse, so defend themselves that they do not sin gravely by keeping their subjects from hunting.

10.— *Some doubts* arise from what has been said. First, when lords legitimately preserve hunting in such way that wild animals are legitimately appropriated to them, either from an old and immemorial custom, or from a reasonable law, or from an agreement made with the people, the *question* is whether it is then lawful for them to restrict hunting with some penalty, "under pain of a thousand *maravedís*[61] the first time, and the second time a hundred lashes to one hunting."[62]

The *answer is yes*, since otherwise a lord could not keep his right to hunt nor would he have any right. Second, I say that the penalty should be moderate in line with the character of the offense. The lord should consider that hunting was common, and therefore the penalty should not be severe and cruel, for such would be great tyranny, as Cajetan (Tommaso de Vio, O.P. [1469-1534]) and Sylvester (i.e. Silvestro da Priero Mazzolini, O.P. [ca. 1460-1523]) say.[63] It is enough that they pay two or three pieces of silver[64] and no other punishments and floggings, for this would be tyrannical. For I do not know how what was common could be changed into a hardship for people. When, therefore, the punishment becomes a hardship for people it should not be imposed.

11.— Dubitatur etiam, dato quod venatio sit legitime prohibita, an qui capit feram legitime custoditam et prohibitam, teneatur ad restitutionem.

Respondetur quod si ferae sint appropriatae secundum formam legis communis ita quod sint muris obsessae, nescirem aliud dicere nisi quod tenetur ad restitutionem, quia idem judicium est de illis sicut de animalibus muratis, scilicet gallinis et etiam cervis nutritis in domo, quia jam ferae illae habentur sicut mansuetae. Secundo dico, quod si ferae non sint obsessae, sed est prohibita venatio ex antiqua consuetudine, ita quod ferae sunt legitime appropriatae, tunc credendum est quod populus non ita voluit feras appropriare dominis, quod si capiat cuniculum teneatur ad restitutionem. Unde non auderem hoc dicere, maxime quando non est grave damnum, sicut si aliquis exiret onustus cuniculis, quia tunc bene teneretur ad restitutionem. Sed si capiat unum, non teneretur ad restitutionem.

12.— Sed dubitatur, quando dominus habet cervos vel alias feras obsessas, et exeunt ad segetes et faciunt multum damnum ipsi populo, quia triticum et alia vegetabilia destruunt, an dominus teneatur ad restitutionem.

Respondetur quod etsi ponatur custodia, nihilominus si fiat damnum, tenetur de toto damno. Y antes ha de ser mas que menos, quia revera raro vel nunquam faciunt completam restitutionem; quia si eligunt duos homines qui pensent damnum, semper potius favent domino. Sed quid si /275/ dominus non vult restituere? An possit agricola capere cervum: Dico quod sic et occidere illum, nec tenetur ad restitutionem.

13.— Dubitatur ultimo. Diximus quod vel ex lege rationabili, vel ex antiqua consuetudine, vel ex pacto facto cum populo possunt domini arcere subditos a venatione, acotar la caza. Una cosa suya bien la puede el señor arrendar a algunos cum conditione quod ibi non venentur. Sed dubium est quando non constaret de hoc, an liceat eis venari.

Respondetur quod cum ferae sint communes de jure communi, et cum verisimilius sit quod domini faciant injuriam subditis quam econtra, dico quod bene faciunt venando. Itaque quando ferae obsessae vel quae legitime arcentur faciunt magnam perniciem populo, tunc praesumendum est jus potius in favorem populi; et sic dicendum est quod debet et potest populus venari quando libere potest, et hoc esset forte meritorium. Et in summa considerandum est [quod] dicebamus de lignis, quod non debent esse leges ita rigidae ad illa custodienda sicut ad custodiendas oves, quia ligna sunt necessaria ad usus humanos, et aliter non possunt haberi. Ita ferae sunt tales

11.— There is also a *question* whether, granted that hunting is legitimately prohibited, one who takes a wild animal which is lawfully kept and forbidden to him, is obliged to make restitution.

The *answer* is that if wild animals are owned according to the form of the common law so that they are encompassed by walls, I would not know anything else to say except that he is obliged to make restitution, for the judgment is the same for them as for [other] walled animals, e.g. chickens and even domesticated deer, since now those wild animals are regarded as tame. *Second I say*, that if wild animals are not fenced, but their hunting is prohibited by ancient custom, in such way that they are legitimately owned, then we must believe that the people did not wish these wild animals to belong to lords in such way that if one were to take a rabbit he would be obliged to make restitution. Hence, I would not venture to say this, especially when there is no serious damage, such as if one were to go out loaded down with rabbits —for then he would indeed be obliged to make restitution. But if he take only one rabbit, he would not be obliged to make restitution.

12.— But it is a matter of *doubt*: when a lord has deer or other wild animals enclosed, and they get out into planted fields and do much damage to the populace inasmuch as they destroy wheat and other crops, whether the lord is obliged to make restitution.

The *answer* is that even though a guard was posted, still, if damage is done, he is obliged for it all.[65] "And it ought to be more rather than less,"[66], because indeed rarely or never do [lords] make full restitution. For if [people] choose [between] two men, who will pay damages, they rather always favor a lord.

But *what if* a lord does not want to make restitution? Can a farmer seize [that lord's] deer? *I say* that he can and he can kill it and not be obliged to make restitution.

13.— There is a final *doubt*: we have said that either from a reasonable law, or from an ancient custom, or from an agreement made with the people, lords can restrict their subjects from hunting, or "limit hunting."[67] "A lord can rent a property he owns to some tenants"[68] with the condition that they not hunt there. But doubt occurs when this would not be clearly stated (*non constaret de hoc*), would it then be lawful for them to hunt?

In *answer*: since wild animals are common by the common law, and since it it more likely that lords do injury to their subjects than *vice versa*, I say that they are acting right in hunting. Therefore, when enclosed wild animals, or those which are legitimately fenced in, do great damage to people then a right must be presumed in favor of the people. And thus we must say that the people should and can hunt, when they can do so freely, and this would be quite laudable. In summary one should consider what we said with regard to woods, that laws to preserve them should not be as rigid as those to preserve sheep, because woods are necessary for human uses, and they cannot be thought

quod non possunt creari ab omnibus. Ideo semper praesumendum est quod ferae de jure communi sunt communes, quantumcumque custodiantur, nisi arceantur muro, vel sit antiqua consuetudo, vel pactum factum cum populo. Et nihilominus jus commune adhuc est interpretandum in favorem populi. Nec excusatur dominus per hoc quod ipse creet silvam et feras in campo, quia clarum est quod naturaliter ista non possunt creari nisi in campis.

De piscatione et volucribus est dicendum sicut de venatione dictum est. De fluminibus non ita jura loquuntur quod sint communia; sed tamen flumina publica ut flumen Salmanticense est commune omnibus civibus Salmanticae. Unde nec possunt domini appropriare sibi piscationem, quia hoc facere est contra jus naturale. Deberent domini considerare quod subditi sub illis non sunt pejoris conditionis quam sub rege, et tamen reges non facerent tales extorsiones: ergo nec ipsi domini debent facere.

Articulus Secundus

Utrum sit licitum occidere homines peccatores.

1.— Respondet sanctus Thomas per unicam conclusionem: quod homines perniciosos, id est peccatores qui sunt in damnum commune licet occidere. Patet, quia sicut quando manus nocet toti corpori licet abscindere illa, ita ergo licet occidere hominem perniciosum et nocivum communitati.
/276/

2.— In hac materia de homicidio multa sunt consideranda. Et ut ordinate procedamus, arguitur contra conclusionem sancti Thomae: Occidere hominem est contra praeceptum decalogi, *Non occides*: ergo non licet hominem peccatorem occidere. Patet consequentia, quia homo peccator est homo; et non licet occidere hominem: ergo non licet hominem peccatorem occidere.

Pro solutione hujus argumenti est dubium inter doctores, quid prohibetur illo praecepto, *Non occides*, et quomodo intelligitur; an absolute et generaliter prohibeatur occidere quemcumque hominem.

3.— Respondeo quod de hac materia, scilicet quomodo intelligatur illud praeceptum, sunt opiniones. Prima opinio est Scoti et aliquorum sequacium, quod illic prohibetur absolute omnis occisio omnium hominum, sive mali, sive boni sint, ita quod quaecumque occisio hominis absolute prohibetur quacumque auctoritate, sive publica, sive privata, quia praeceptum illud debet intelligi ut jacet: ergo debet intelligi tam de homine innocenti quam de nocente. Prohibetur ergo quaecumque occisio sive hominis innocentis sive

otherwise.[69] So wild animals are such that they cannot be created by anyone. Therefore, we must always presume that wild animals are common by the common law, howevermuch they are guarded, unless they are enclosed by a wall, or there is an ancient custom or a contract made with the people [to the contrary]. And, nevertheless, the common law up to now should be interpreted in favor of the people. Nor is a lord excused by the fact that he may create a forest and wild animals in a field, because it is clear that these cannot naturally be created except in fields.

About taking fish and birds, we must say the same as was said about hunting. As regards rivers, the laws do not say that they are common; but [there are] public rivers, for example the Salamanca river is common to all citizens of Salamanca. Hence, lords cannot appropriate fishing to themselves, for to do this is contrary to natural law. Lords should have to consider that those subject to them are not in a worse condition than they would be under a king; and yet kings would not make such extortions; therefore lords should not make them either.

Article Two

Whether it is lawful to kill sinners.

1.— *St. Thomas answers* with a single conclusion: that it is lawful to kill pernicious men, that is sinners who do damage to the community. This is clear, because just as when a hand is harmful to the whole body it is lawful to cut it off, so it is lawful to kill a man who is dangerous and harmful to the community.

2.— In this matter of homicide many things must be taken into account. To proceed in order — it is argued against the conclusion of St. Thomas: To kill a man is contrary to the command of the Decalogue, "Thou shalt not kill;" therefore, it is not lawful to kill a sinful man. The consequence is clear: because a sinful man is a man; and it is not lawful to kill a man; therefore, it is not lawful to kill a sinful man.

In solving this argument, there is doubt among the doctors about what is prohibited by the command, "Thou shalt not kill," and how it is to be understood. Is it simply and generally forbidden to kill any man at all?

3.— *I answer* that about this matter, i.e., how that command is to be understood, there are opinions. The *first opinion* is that of [Duns] Scotus [1266-1308] and some of his followers: that by that command there is forbidden without qualification every killing of all men, whether they are evil or good, so that every killing of a man by any authority at all, whether public or private, is absolutely forbidden, because that command must be understood literally. Thus, it must be understood about both an innocent and a guilty man.[70] Therefore, any killing whatever, whether of an innocent or of a guilty man, is

nocentis. Secundo dicit, quod infertur ex hac propositione quod si in aliquo casu liceat occidere, est per exceptionem factam et datam a Deo in lege, sicut si Deus absolute prohiberet comedere carnes, non liceret etiam infirmis comedere illas, nisi Dominus exciperet. Et ideo dicit quod sicut Deus in veteri lege prohibuit comedere carnes porcinas, taliter quod tunc non liceret alicui, etiam in extrema necessitate existenti, sine exceptione facta ab ipso Deo, comedere carnes porcinas, ita dicit quod in nullo casu licet alicui occidere, nisi in casu excepto a Deo. Tertio, infert ex hoc quod nunquam licet occidere nisi in casibus expressis a Deo formaliter in scriptura sacra, sicut si quis occideret adulteram, blasphemum etc., qui sunt casus excepti a Deo in lege. In aliis non licet occidere nisi ex exceptione; sed non habetur exceptio nisi ex sacra scriptura: ergo nunquam licet occidere nisi in casu excepto a Deo in sacra scriptura. Quarto infert quod non licet furem simpliciter occidere, id est illum qui non est aliud nisi latro de cien ducados, ita quod solum pro furto non licet furem occidere. Patet, quia iste non est casus exceptus in scriptura sacra. Sed fures puniebantur alia poena, scilicet quadrupli, que pagasen cuatrotanto et non poena mortis. Breviter pro nullo furto licet occidere furem secundum Scotum. Et eadem ratione nec adulteram nunc licet occidere. Patet, quia licet Dominus excepit istum casum in veteri lege quod adultera occideretur et lapidaretur, tamen /277/ illum revocavit in nova lege, ut patet Joan. 8 (v. 11), ubi Christus non condemnavit adulteram, quia postquam adducta fuit ad illum, dimisit eam nullo alio accusante. Ubi videtur voluisse significare non esse occidendam pro uno adulterio quia erat grave. Et ideo dicit Scotus leges esse iniquas quae permittunt occidere adulteram.

4.— Sed contra hanc opinionem Scoti sic intellectam, quia defensores aliter intelligunt, arguitur primo argumento Doctoris. Illud quod est per se bonum et laudabile, non prohibetur jure divino. Sed interficere homicidam et proditorem est de se bonum et laudabile, ut Doctor probavit, quia est perniciosus communitati, quia de jure naturali optimum est quod unus homo moriatur ne tota communitas pereat. Dicere ergo quod illo praecepto illud prohibetur, est absurdum, quia licet Deus nunquam hoc excepisset in lege, id est licet non dixisset, occidite homicidas et perniciosos, nihilominus liceret illos occidere, quia lege naturali constare poterat nunquam illud esse prohibitum, quia illud est per se bonum, et bona non sunt prohibita jure divino, sed mala: ergo illud nunquam est prohibitum a Deo.

Praeterea, vim vi repellere semper fuit licitum jure naturali apud omnes gentes; sed non possum aliter me defendere quam occidendo invasorem meum: ergo non prohibetur illo praecepto occidere invasorem, et per consequens non quaecumque occisio hominis illic prohibetur.

prohibited. Secondly, [Scotus] says that the inference from this proposition is that if in some case it is lawful to kill, it is by a legal exception made and given by God, just as if God would without qualification forbid the eating of meat, it would not be lawful even for sick persons to eat meat, unless God would grant an exception. And, therefore, he says that just as God in the Old Law forbade the eating of pork, in such way that it would not at that time be lawful for anyone, even in extreme necessity, to eat pork without an exception made by God himself, so [Scotus] says that in no case is it lawful for anyone to kill, unless in a case excepted by God. Third, [Scotus] concludes from this that it is never lawful to kill, except in cases formally mentioned by God in Sacred Scripture, such as if one were to kill an adultress, a blasphemer, etc., which are cases excepted in the law by God. In other cases it is not lawful to kill, unless from an exception. But there is no exception unless it is from Sacred Scripture. Therefore, it is never lawful to kill, unless it is in a case excepted by God in Sacred Scripture. Fourth, he [Scotus] infers that it is not lawful to kill a thief, that is one who is only a thief "of one hundred ducats,"[71] so that it is not lawful to kill a thief only for [such] a theft. This is clear, because that is not a case excepted in Sacred Scripture. But thieves were punished with another penalty, that is, quadruple, "that they pay four times as much"[72] [as they stole],[73] and not with the death penalty. Briefly, according to Scotus it is not lawful to kill a thief for any theft. And for the same reason, neither is it lawful now to kill an adultress. This is evident, because, although the Lord in the Old Law excepted the case that an adultress be killed by stoning, still, he revoked that in the New Law, as is clear from *John* 8, v. 11, where Christ did not condemn the adultress, since when she was brought to him and when no one accused her, he let her go. Hence, he apparently wanted to indicate she should not be killed for one act of adultery, because that was harsh. And, therefore, Scotus says that laws which allow the killing of an adultress are evil.

4. — But against this opinion of Scotus so understood (for his defenders understand it otherwise) *we answer* with the first argument of the Doctor [i.e. St. Thomas]. That which is essentially good and laudable is not forbidden by Divine law. But, as the Doctor has shown, killing a murderer or a traitor is of itself good and praiseworthy, because he is dangererous for the community. For, by natural law, it is best that one man die rather than that the community perish. Therefore, it is absurd to say that this is forbidden by that commandment ["Thou shalt not kill"]. For although God never excepted this in the law, that is, although he did not say: "kill murderers and dangerous men," nevertheless, it would be lawful to kill them, because by natural law it could be evident that this was never forbidden, since this is essentially good, and it is not good things which are forbidden by Divine law, but rather bad things. Therefore, that has never been forbidden by God.

Ad hoc argumentum diceret Scotus, et bene, quod bene licet occidere invasorem, non tamen intentione occidendi illum, sed intentione defendendi se, ut etiam dicit infra sanctus Thomas, quia etiam debeo liberare invasorem si possum. Et sic hoc argumentum non esset contra Scotum.

5.— Ideo aliter arguitur contra illum. Ante legem scriptam, id est datam Moysi, aliquando fuit licitum occidere et aliquando non. Et tamen tunc nulla exceptio particularis facta est a Domino nec de adultera, nec blasphemo, quia ante legem scriptam quaero, an posset aliquis occidere? Dices quod non. Sed quaero, nonne licuisset occidere proditorem et homicidam? Et quaero, si licuisset, qua exceptione licuisset? Certe nulla quia tunc nulla erat. Si ergo licuisset illos occidere, sequitur quod illo praecepto non fuit prohibitum omne homicidium. Unde si licet occidere, non est quia Deus excepit illud, sed quia non prohibebat tale homicidium illo praecepto.

Item, illud praeceptum de non occidendo est praeceptum juris naturalis, et etiam ante legem scriptam fuit, ut fatetur Scotus. Et tamen si illo praecepto, ut dicit Scotus, prohibeatur omnis occisio, oporteret dicere quod fuit exceptio et dispensatio facta in lege. Sed hoc est falsum, quia /278/ nec lex Moysi nec lex Christi scilicet evangelica est dispensatio legis naturalis, quia nunquam aliquis dixit quod dispensaret Deus in jure naturali; non enim venit solvere legem nec veterem nec naturalem, sed adimplere (Mat. 5,17). Ergo illud nunquam fuit prohibitum illo praecepto. Et hoc tenent communiter omnes, quod illo praecepto non absolute prohibemur occidere omnes. Et etiam dico quod est licitum occidere aliquem, v. g. furem et homicidam, non quia exceptum est in lege, sed de se licitum est. Ex quo sequitur quod furem simplicem occidere non est contra jus divinum. Sed dato quod liceat occidere furem, verum est quod non est de jure communi, sed fortassis est consuetudo in omni provincia, quod forte accepta est ex falso errore, quia per leges jubentur occidi latrones, non tamen fures; et quia in omni lingua vocantur fures latrones, invaluit ut occiderent etiam furem, licet per aliquam legem non jubeantur fures suspendi, sed latrones, quia leges solum condemnabant latronem poena capitis, et sic ex ignorantia nominis fortassis introducta est consuetudo occidendi fures. Algun alcalde incoepit falli et occidere fures, cum solum

Moreover, by natural law it was always lawful, among all nations, *to repel force with force.*[74] But I may not be able to defend myself in any other way than by killing my attacker. Therefore, to kill the attacker is not forbidden by that commandment; and consequently not every killing of a man is thereby forbidden.

To this argument *Scotus would rightly say,* that indeed it is lawful to kill an attacker, but not with the intention of killing him, but with the intention of defending oneself, as St. Thomas also says below.[75] For I should spare the attacker if I can. Thus, this would not be an argument against Scotus.

5.— Therefore, *an argument* is made against him in another way. Before the written law, that is, the law given to Moses, sometimes it was lawful to kill and sometimes not. And, still, no special exception was made by the Lord, neither for an adultress nor for a blasphemer, since it was before the written law. *I ask*: could someone kill [at that time lawfully]? *You say,* no. But *I ask,* would it not have been lawful to kill a traitor and a murderer? *I also ask,* if it would have been lawful, by what exception would it have been so? By none, certainly, since at that time there was none. If therefore it would have been lawful to kill a traitor and a murderer, it follows that not every homicide has been forbidden by that commandment. Hence, if it is lawful to kill, it is not because God has excepted it, but because such a homicide was not forbidden by that commandment.[76]

Again, that commandment not to kill is a precept of natural law, and it existed even before the written law, as Scotus admits. Yet, if by that commandment, as Scotus says, all killing is prohibited, it would be necessary to say that an exception or a dispensation was made in the law. But this is false, because neither the Mosaic law nor the evangelical law of Christ is a dispensation of the natural law, for no one has ever said that God would dispense in a matter of natural law. Indeed, [Christ] came not to destroy either the Old Law or the natural law, but to fulfill them (*Matt.* 5, 17).[77] Therefore, all killing was never prohibited by that commandment. And all in common hold this, that by that commandment we are not absolutely forbidden to kill anyone. And *I also say* that it is lawful to kill some, e.g. a thief and a murderer, not because an exception has been made in the law, but because it is of itself lawful. From this it follows that to kill a simple thief is not against Divine law. However, granted that it is lawful to kill a thief, it is true that it is not so in the common law. But perhaps it is the custom in every province, because it has been by chance accepted from a false error, since robbers, but not thieves are by law ordered to be killed. And because in every language *thieves* are called *robbers,* it prevailed that they should also kill a thief, although through a certain law robbers, but not thieves, may be ordered to be hanged. For the laws condemn only robbers to capital punishment. And thus, perhaps out of ignorance of the word, the custom of killing thieves was introduced. "Some judge"[78]

latrones deberet occidere, et ita inde manavit in omnes illa consuetudo, cum tamen in toto corpore juris nunquam fures plectantur poena capitis, sed alia poena, scilicet que paguen septenas, sed sólum latrones. Unde qui primo condemnavit furem, deceptus est, quia in jure videbat condemnari latrones. Et quia "furem" in sua lingua vocabat "latronem", sicut etiam in omni lingua vocatur, inde est quod putavit idem esse "fur" et "latro". Verisimile est etiam quod fuerit factum est ignorantia, quia latrones solum vocantur crassatores, los salteadores qui obsident vias vel qui armis invadunt; et fur vocatur alius qui facit simplicem furtum. Et quia latro qui vocatur solum el salteador, vocatur etiam in omni lingua ille qui facit simplex furtum, inde fures pro simplici furto occiduntur. Et rationabiliter occiduntur, quia alias si fures scirent non esse plectendos poena capitis, vergeret in magnum detrimentum commune, cum adhuc vix possunt coerceri furta. Recte ergo faciunt judices occidendo illos propter bonum commune.

Secundo dico de adultera, quod in Hispania solum permittitur occidi, non tamen in aliis provinciis ut Aragonae, Italia, Gallia. Sed bene faciunt Hispani, utuntur enim jure communi, quia leges videntur illud permittere. Et ad argumentum Scoti quo probat illud esse revocatum in lege nova, miror quidem de illo. Ideo dico quod omnia praecepta veteris legis quae non sunt de jure naturali, cessaverunt, et praecipue judicialia, quia caeremonialia etiam cessaverunt. Sed de judicialibus omnes fatentur cessare omnia, et ideo blasphemus modo non occiditur. Bene verum est /279/ quod possent eadem illa praecepta judicialia iterum institui, ut quod latro condemnetur ad septenas; sed tunc non esset praeceptum veteris legis, sed lex humana quae hoc praeciperet. Ergo quod liceat occidere nunc homicidam, non est propter illam exceptionem legis, quia illa exceptio cessavit; et ita illud praeceptum de occidendo cessavit, quia omnia judicialia cessaverunt. Sed tamen quia rex et imperator potest illa civilia jura nunc imponere et tenebunt, hinc est quod si licet occidere homicidam, non est quia sit exceptio in veteri lege, sed quia nunc est lex imperatoris quae praecipit hoc.

Praeterea, de illo quod dicit Scotus de adultera quod revocatum est illud praeceptum Joan. 8, quando Dominus dixit, *Nemo te condemnat, nec ego*, dico quod irrationabiliter hoc dicit Scotus, quia Dominus illic nihil aliud significare voluit nisi quod illi erant indigni condemnandi eam, et forte insufficientes testes. Et item, ut verior opinio est, Christus non habebat po-

began to be deceived and to kill thieves, although he should have killed only robbers, and thus the custom flowed from that to all people, even though in the whole of the law thieves, as opposed to robbers, were never punished by death, but by another penalty, e.g., "that they pay seven times."[79] Hence, the one who first condemned a thief [to death] was deceived, because he saw in the law that robbers were to be condemned. And because in his language, as is done in every language, he called a "thief" a "robber," from that he thought "thief" and "robber" were the same. It is likely also that it was done from ignorance, for only footpads (*crassatores*), "the highwaymen"[80] who block the roads or who attack with arms, are called robbers; while another, who simply steals, is called a thief. And because in every language he who simply steals is called "robber," which is properly said of "the highwayman,"[81] thence it is that thieves are killed for simple theft. And they are reasonably killed, because, otherwise, if thieves would know that they were not going to be punished with death, it would tend to great common detriment — when up to now thefts can scarcely be contained. Therefore, judges do the right thing in killing thieves for the common good.[82]

Secondly, about an adultress, *I say* that only in Spain is she permitted to be killed, but not in other jurisdictions, such as, Aragon,[83] Italy, or France. But the Spaniards are acting rightly, because they are using the common law, for the laws seem to allow that.[84] And with regard to the argument by which Scotus proves that this has been revoked in the New Law, I indeed wonder about it. Therefore, *I say* that all the commands of the Old Law which are not matters of natural law have ceased, and especially "judicial" commands, for "ceremonial" ones have certainly ceased.[85] But with regard to judicial commands, everyone admits that they have all ceased, and for this reason a blasphemer is not now killed. It is very true that those same judicial commands could be re-instituted, so that a robber be condemned to seven fold restitution.[86] But in that case it would not be a command of the Old Law, but rather human law, which would prescribe this. Therefore, the fact that it is now lawful to kill a murderer is not because of an exception to the law, because that exception has ceased and in the same way that command about killing has ceased, since all judicial commands have ceased. But, nevertheless, because the king and the Emperor can now impose laws and they will be binding, hence it is that if it is lawful now to kill a murderer, it is not because it is an exception in the Old Law, but because it is now the Emperor's law which prescribes this.

Moreover, with regard to what Scotus says about the adultress, i.e., that the command was revoked in *John* 8, when the Lord said: "No one condemns you; neither will I," *I say* that Scotus is saying this without reason. For the Lord in that place wished only to signify that those [who accused her] were unworthy to condemn her, and were perhaps faulty witnesses. Again, as the

testatem condemnandi aliquem, sicut ille dixit: *Quis me constituit judicem inter vos?* (Luc. 12, 14). Immo videtur quod approbaverit illam legem et praeceptum de occisione adulterae, quia dixit: *Qui ex vobis sine peccato est, mittat primo lapidem in eam* (Joan. 8, 7); quasi quod liceret illi.

6.— Sed an liceat modo pro aliquo crimine infligere poenam mortis pro quo non fuit talis poena in lege? Dicunt scotistae quod sic, ut posset statui de illo qui daret arma inimicis quod occideretur. Sed quid respondebunt ad Scotum dicentem quod absolute prohibetur omnis occisio? Dicunt quod absolute intelligitur *non occides*, nisi aliter liceat jure naturali. Itaque dicunt quod Scotus non intelligit solum quod liceat occidere in casu excepto a Deo per legem scriptam, sed etiam intelligit quod licet occidere in casu excepto per legem naturalem. Sed vos videtis quod jam hoc non differt ab alia opinione, scilicet communi. Nescio an ita senserit Scotus. Habemus ergo quod illud praeceptum, *Non occides*, non intelligitur absolute.

7.— Et ideo alii dicunt quod illud praeceptum intelligitur, non occides aliquem innocentem nec auctoritate publica nec privata, quia sic expositum est Exodi, 23 (v. 7) et Dan. 13 (v. 53), *Insontem* etc. Sed nec isto modo valet limitatio. Arguitur ergo contra istum modum, quia homo privatus occidens hominem perniciosum, id est hominem qui alias est dignus morte secundum legem, scilicet homicidii, peccat mortaliter, et non contra aliud praeceptum nisi contra illud, *Non occides*; et tamen ille non occidit innocentem ergo illo praecepto non prohibetur praecise occisio innocentis, et per consequens non sic intelligitur.

/280/

8.— Tertius modus est, qui magis accedit ad veritatem, quod in illo praecepto prohibetur solum occidere privata auctoritate; non occides privata auctoritate, bene tamen publica. Sed contra istum modum dicendi arguitur sic: Qui occideret innocentem, quantumcumque publica auctoritate, faceret contra illud praeceptum, *Non occides*: ergo illo praecepto non prohibetur solum occidere privata auctoritate, quia si sic, jam sequeretur quod qui occideret innocentem publica auctoritate non peccaret. Sed consequens est falsum, quia peccat contra illud praeceptum. Patet, quia si rex interficeret innocentem vel praeciperet occidi, esset homicida; et non contra aliud praeceptum decalogi: ergo.

Dicunt isti ad hoc quod in illo praecepto prohibentur duo: primum, prohibetur occidere innocentem quomodocumque, sive privata sive publica auctoritate; secundum, prohibetur occidere nocentem privata auctoritate. Sed

more true opinion holds, Christ did not have power (*potestatem*) to condemn anyone, just as he said: "*Who has appointed me judge over you?*" (*Luke* 12, 14). Indeed, it seems he would have approved that law and command about killing and adultress, for he said: "*He that is without sin among you, let him first cast a stone at her.*" (*John* 8, 7), as though it would be lawful for that man.

6.— But is it lawful now to inflict the death penalty for any crime for which there was not such a penalty in the [Old] Law? The Scotists say yes; for example, it could be established that one who gave arms to the enemy would be killed.[87] But what will they reply to Scotus saying that absolutely every killing is forbidden? They say that "Thou shalt not kill" is understood without qualification, unless it is otherwise lawful by natural law. So then they say that Scotus does not mean that it is lawful to kill only in a case excepted by God through written law, but he also means that it is lawful to kill in a case excepted by natural law. I do not know if this is what Scotus thought. But you see that this now does not differ from the other opinion, which is the common one.[88] Therefore, *we think* that the precept, "Thou shalt not kill," is not to be understood without qualification.

7.— Accordingly, others say that this commandment is to be understood as: "Thou shalt not kill any innocent person, either by public or by private authority," for it has been so explained in *Exodus* 23, v. 7,[89] and *Daniel* 13, v. 53, "*The innocent*, etc."[90] But neither in that way is limitation valid. Against that way, therefore, the argument is that a private person killing a wicked man, that is to say a man who otherwise is worthy of death according to law, commits mortal sin, and this is not in opposition to any other commandment but this, "Thou shalt not kill." Yet he is not killing an innocent man; therefore, what is prohibited by that commandment is not precisely the killing of an innocent man, and consequently it is not to be so understood.

8.— There is a third way which is closer to the truth, that in this commandment only killing by private authority is forbidden. That is, "Thou shalt not kill by private authority, but you may by public authority." But against this way of speaking the argument is as follows: He who would kill an innocent man, with however great public authority, would be acting against the commandment, "Thou shalt not kill:" therefore, by that commandment there is forbidden not just killing by private authority, for if that were so, it would now follow that he, who would kill an innocent man by public authority, would not sin. But the consequent is false, because he is sinning against that commandment. This is clear, for if a king were to kill an innocent man or to command that he be killed, he would be a murderer, and not against any other command of the Decalogue. Therefore.

To this they[91] say that in this commandment two things are prohibited: first, it is forbidden to kill an innocent person in any way at all, either by private or by public authority; and second, it is forbidden to kill a guilty

etiam contra hoc potest argui, quia si quis publica auctoritate occideret nocentem pro parvo crimine, porque le dijo, anda para hi de puta, peccaret contra illud praeceptum, *Non occides*: ergo illo praecepto non prohibetur occidere innocentem quomodocumque, nec occidere nocentem privata auctoritate.

Item, quia qui occidit invadentem se, cum moderamine inculpatae tutelae, id est cum aliter non potest se defendere nisi illud occidendo, non facit nec peccat contra illud praeceptum; et tamen occidit nocentem privata auctoritate: ergo non illic prohibetur occidere nocentem privata auctoritate etc. — Dicunt isti quod iste non occidit invasorem privata auctoritate, sed auctoritate divina et auctoritate publica reipublicae, quia lex divina et lex civilis dat ei licentiam ad occidendum invasorem, et sic non facit contra illud praeceptum. — Sed haec solutio non satisfacit, quia quaero quando dicitur quod qui occidit invasorem, occidit auctoritate divina, quid intelligunt per auctoritatem divinam? Dicunt quod illud intelligitur quod per legem divinam licet, et sic de lege civili. Sed contra hoc sequitur jam quod nunquam licet praeceptoribus flagellare discipulos nec parentibus filios nisi auctoritate publica et divina. Consequens autem est falsum, quia praeter hoc quod licet illis flagellare illos lege divina et humana, quis obsecro diceret quod non liceat illis auctoritate privata flagellare illos? Item, eodem modo sequeretur quod nec liceret comedere auctoritate privata, quia qui comedit, lege divina vel civili comedit. Unde patet quod solutio illa nihil valet.

9. — Ideo relictis opinionibus, pro intellectu illius praecepti, *Non occides*, est primo notandum quod illud praeceptum est de jure naturali, et /281/ non de jure positivo nec humano nec divino. Patet, quia est praeceptum decalogi; et praecepta decalogi sunt de jure naturali: ergo.

Sequitur ex hoc documento quod illud praeceptum, *Non occides*, semper fuit aequale, in lege naturae et in lege scripta et lege evangelica, id est illud quod prohibetur per illud praeceptum in lege naturae, idem prohibetur per illud in lege veteri et in lege gratiae, et econtra, quia jus naturale est quod semper est idem et immutabile, et quod est de jure naturali non mutatur.

Ex quo sequitur contra Scotum, quod si per illud praeceptum prohibetur occidere adulteram, quod nunquam licuit illam occidere, nec etiam nunc liceret. Patet, quia illud praeceptum fuit de jure naturali: ergo semper fuit naturale et immutabile: ergo nunquam licuisset illam occidere, nec modo.

person with private authority. But also against this it can be argued; for if someone with public authority were to kill a person guilty of a small crime, "because he said to him, he is the son of a harlot,"[92] he would sin against that commandment: "Thou shalt not kill." Therefore, by that commandment there is not [just] forbidden the killing of an innocent person in any way, nor the killing of a guilty person by private authority.

Again, because he who kills his attacker "within the bounds of blameless defense,"[93] that is, when he cannot defend himself except by killing him, does not act or sin against that commandment. But, nevertheless, he is killing a guilty person by private authority. Therefore, killing a guilty person by private authority is not forbidden by that commandment, etc.

They[94] say that this man is not killing an attacker by private authority, but rather by Divine authority and by the public authority of the republic, because both Divine and civil law give him permission to kill an attacker, and thus he is not acting against that commandment. — But this solution is not satisfactory. For I ask, when it is said that one who kills an attacker is killing by Divine authority, what do they understand by "Divine authority?" They mean that it is permitted by Divine law and so also by civil law. But against this, it now follows that it is not lawful for teachers to beat students nor for parents to whip their children except with public and Divine authority. However, this consequent is false. For, besides the fact that it is lawful by both Divine and human law for them to beat them, who, I beg you, would say that the same is not lawful by private authority?[95] Again, in the same way it would follow that it would not be lawful to eat by private authority, for one who eats does so in accord with Divine or civil law. Hence, clearly that solution is of no avail.[96]

9. — Therefore, leaving these opinions aside, in order to understand this commandment, "Thou shalt not kill," we must first note that it is a commandment of natural law, and not of positive law, either human or Divine. This is clear, because it is a command of the Decalogue, and commands of the Decalogue are matters of natural law; therefore.

From this it follows that the command, "Thou shalt not kill," was always the same: in the law of nature, in the written law, and in the law of the Gospel.[97] That is, what is forbidden by that commandment under the law of nature is forbidden by it under the Old Law and under the Law of Grace. And, on the other hand, [it follows that] because the natural law is always the same and immutable, what is a matter of natural law does not change.

From this it follows against Scotus,[98] that if by that commandment it is forbidden to kill an adultress, then it was never lawful to kill her, nor would it be lawful now. This is clear, because that commandment has been a matter of natural law. Hence, it always was natural and immutable. Therefore, it was

Sed consequens est falsum, quia in lege naturae et in lege scripta erat licitum illam occidere: ergo sequitur quod etiam modo est licitum occidere adulteram, et saltem illam occidere non est contra illud praeceptum. Item probatur. Quia eodem modo sicut absolute prohibitum est occidere hominem, ita etiam absolute prohibitum est verberare hominem, quia licet sit majus peccatum occidere hominem quam verberare illum, tamen ita unum prohibitum est jure naturali sicut aliud, et sicut prohibitum est abscindere caput, ita et manum. Tunc sic: Si propterea quia prohibitum est jure divino occidere hominem, nunquam liceret illum occidere, nisi esset exceptio facta a Deo in sacra scriptura: ergo sequitur eodem modo quod nunquam liceret verberare hominem vel abscindere manum et mutilare alia membra, nisi esset exceptio facta in sacra scriptura. Quia non habeo majorem licentiam verberandi hominem quam occidendi, quia de per se est malum unum sicut aliud; et tamen nunquam talis exceptio est expressa in sacra scriptura: ergo sicut licet unum, ita et aliud. Item, etiamsi non liceret furem simplicem occidere, ut dicit ipse Scotus: ergo nec flagellare illum, postquam non est exceptum in jure divino. Hoc etiam Scotus deberet concedere; et tamen ipse fatetur quod hoc licet, et etiam verberare et abscindere manum: ergo etiam licebit occidere, dato non sit exceptum in sacra scriptura. Immo qui abscindit manum, facit contra illud praeceptum, *Non occides*, quia totum quod ordinatur ad occisionem hominis, est contra illud praeceptum et per illud prohibetur, como dalle de cochilladas. Non est dubium.

10.— Supposito ergo quod illud praeceptum, *Non occides*, est praeceptum de jure naturali, sequitur ex illo quod quid prohibeatur per illud praeceptum vel quid non, oportet considerare ex ratione naturali; quia licet sit lex scripta, oportet tamen examinare ratione naturali et ex jure
/282/ naturali quid ibi prohibetur vel quid non. Unde pro resolutione materiae pono aliquas propositiones. Prima: Per illud praeceptum, *Non occides*, solum prohibetur homicidium quod de se est malum, et omne tale et solum illud, stando praecise in jure et ratione naturali. Et si arguas, quod hoc est petere principium et declarare ignotum per ignotius, quia hoc est quod disputamus et petimus, scilicet quod homicidium est de se malum: dico quod non est petitio principii nec est declarare idem per idem, nec ignotum per ignotius, quia per praecepta decalogi negativa prohibentur illa quae sunt mala secundum se. Et pro hoc animadvertas illud Philosophi 5 et 6 *Ethicorum* ubi dicit, quod aliqua sunt mala quia prohibita ita quod antequam prohiberentur, nihil referebat an sic vel sic fierent; sicut v. g. comedere carnes porcinas in veteri

never lawful to kill her, nor is it so now. But the consequent is false, because both in the law of nature and in the written law it was lawful to kill her. Therefore, it follows that now it is also lawful to kill an adultress, or at least that to kill her is not against that commandment. Again it is proven: for just in the same way as it is without qualification forbidden to kill a man, so also it is without qualification forbidden to beat a man. For, although it is a greater sin to kill a man than to beat him, nevertheless, one is prohibited as much by the natural law as the other, and in the same way it is as much forbidden to cut off a hand as a head. The argument thus is as follows: if then because it is forbidden by Divine law to kill a man, it would never be lawful to kill him unless an exception were made by God in Sacred Scripture; so it follows in the same way that it would never be lawful to beat a man, or to cut off a hand, or to mutilate other members, unless an exception were made in Sacred Scripture. For I do not have greater permission to beat a man than to kill him, because one is essentially as bad as the other.[99] Yet, such an exception has never been expressed in Sacred Scripture. Therefore, one is as lawful as the other. Again, if also it were not lawful, as Scotus himself says,[100] to kill a simple thief, then neither would it be lawful to flog him, when no exception has been made in Divine law. This also Scotus should concede, and, still, he says that this is lawful: both to beat a man and to cut off a hand.[101] Therefore, it will also be lawful to kill, even without an exception in Scripture. Indeed, there is no doubt, one who cuts off a hand is acting against that precept: "Thou shalt not kill," because everything which is ordered toward the killing of a man, "such as to stab him,"[102] is against that precept and is forbidden by it.

10.— Supposing, therefore, that this command, "Thou shalt not kill," is a precept of natural law, it follows that it is necessary to consider by natural reason what is prohibited by that command or what is not. For, even though there is a written law, it is still necessary to examine by natural reason and from the natural law what is there prohibited or what is not. Hence, to resolve the matter, I am putting forward some propositions.

First: by that command, "Thou shalt not kill," there is prohibited only a homicide which is of itself evil, every such and only such, staying precisely within natural law and reason. And if you argue that this is to beg the question and to explain the unknown by the more unknown, since this is what we are disputing and asking about, namely that homicide is of itself evil: *I say* that it is not begging the question, nor is it explaining the same thing by itself, nor what is unknown by what is more unknown, because by the negative commandments of the Decalogue those things are forbidden which are of themselves evil. And for this, you may notice what the Philosopher [i.e. Aristotle] tells us in Books V and VI of his *Ethics*,[103] where he says that some things are bad because they are prohibited, in such way that before they were prohibited, it did not matter at all whether they would be this way or that. So,

lege et comedere carnes in quadragesima sunt mala quia prohibita, quia ante prohibitionem nihil referebat comedere vel non comedere carnes illas. Alia sunt prohibita quia mala, ita quod antequam prohiberentur erant mala, sicut perjurium et odium Dei. Jam scitis hanc differentiam.

Unde dico quod illo praecepto, *Non occides*, prohibetur solum homicidium quod est malum secundum se, et omne tale, et per consequens non est petitio principii. Itaque illo praecepto, sive nocentis sit occisio sive innocentis, prohibetur homicidium quod est malum secundum se, sive publica sive privata auctoritate occidatur.

Sequitur ex illo quod illo praecepto absolute loquendo non plus prohibetur occisio nocentis quam innocentis, nec auctoritate publica nec privata, quia illo praecepto non declaratur cui liceat et cui non liceat occidere, sed solum agitur illo praecepto quid, id est quem non liceat occidere. Et oportet considerare quod homicidium sit malum ratione naturali.

Unde nota aliam differentiam, quod dupliciter contingit occidere. Uno modo, ex intentione ita quod propositum est occidere, sicut judex qui occidit latronem ex intentione, ut volo occidere, volo quod occidatur. Alio modo, non ex intentione, sed per accidens, ut quando aliquis non dat operam ad occidendum, sed intendit aliud ex quo sequitur occisio alterius. Sicut qui defendit se, cujus intentio est defendere se et non occidere alium, et defendendo se occidit alium, et sicut in bello vult aliquis diruere arcem non intendens occidere aliquem, sed de per accidens ex diruptione arcis sequitur occisio alterius.

Tunc sit secunda propositio: Loquendo de homicidio ex intentione, stando in jure naturali, solum licet occidere hominem perniciosum reipublicae. Hoc declarat sanctus Thomas art. 2, et dicit quod solum peccato- /283/ res qui nocent reipublicae, licet occidere; hominem vero non perniciosum nec nocentem nec innocentem, non licet occidere, nec publica nec privata auctoritate.

Tertia propositio: Hominem talem perniciosum reipublicae, solum licet occidere publica auctoritate et non privata. Quia quare occiditur est quia est perniciosus, et pro defensione reipublicae occiditur, cujus defensio pertinet ad publicas personas. Solum ergo hoc homicidium est licitum.

Quarta propositio: Omne aliud homicidium est prohibitum illo praecepto, loquendo de homicidio ex intentione, et omne tale est malum jure naturali. Nec curo an sit auctoritate publica aut privata, quia omne tale est prohibitum illo praecepto. Dico ergo generaliter quod illo praecepto prohibetur omne homicidium, sive sit auctoritate publica, sive privata, et omne tale est malum

v.g., to eat pork in the Old Law and to eat meat in Lent are bad because they have been prohibited. For, before the prohibition, it mattered not at all to eat or not to eat that meat. Other things are forbidden because they are evil, so that before they were prohibited they were evil, like perjury and hatred of God. You already know this difference.

Accordingly, *I say* that by the command, "Thou shalt not kill," there is forbidden *only* and *every* such homicide which is of itself evil, and consequently there is no begging of the question. And so by that commandment there is prohibited homicide which is of itself evil, whether it be of a guilty or of an innocent person, and whether it is by public or private authority.

It follows from this that by that commandment, *absolutely speaking*, the killing of an innocent person is not forbidden more than that of a guilty one, nor killing by private authority more by public authority.[104] For in that commandment it is not stated for whom it is lawful and for whom it is not lawful to kill. But the only thing in question in that commandment is whom it is not lawful to kill. And it is necessary to consider that homicide is evil by natural reason.

Note, therefore, another difference: that killing can occur in two ways. In one way, from intention so that the purpose is to kill, so that I will to kill or I will that someone be killed, just as a judge from intention kills a robber. In another way, not from intention but by accident, as when someone does not aim to kill, but intends something else from which the killing of another follows. Take, for example, one who is defending himself, whose intention it is to defend himself and not to kill another, who in defending himself kills another. Or also, as in war someone wants to destroy a stronghold not intending to kill anyone, but by accident from the destruction of the stronghold there follows the killing of some other.[105]

Then let there be a *second proposition*: Speaking about an intentional homicide, staying within the natural law, it is not lawful to kill a man unless he is dangerous to the republic. St. Thomas states this in Article 2, and says that it is lawful to kill only sinners who are harming the republic. But it is not lawful to kill, either by public or private authority, a man who is not dangerous or harmful,[106] or an innocent man.

The *third proposition*: It is lawful to kill such a man who is dangerous to the republic only by public and not by private authority. For he is being killed because he is dangerous, and to defend the republic, the defense of which pertains to public persons. Therefore, only this homicide is lawful.

The *fourth proposition*: Every other homicide is forbidden by that commandment, speaking of intentional homicide — and every such homicide is evil by natural law. Neither do I care whether it is by public or private authority, for every such homicide is forbidden by that commandment. Generally, therefore, *I say* that by that commandment every homicide is forbidden,

jure naturali, praeter quam homicidium hominis periculosi, quod est licitum auctoritate publica, et non privata. Unde si homo privatus, per hoc quod aliquis vult ab illo arripere pallium, occideret illum, esset homicida; quia licet ille qui vult arripere pallium sit homo perniciosus, tamen occidit illum auctoritate privata, et hoc non licet, et ideo cadit sub illo praecepto, non tamen si fieret auctoritate publica. Breviter, ad quaesitum principale non potest responderi nisi cum distinctione, scilicet quod tantum licet occidere hominem perniciosum, et publica auctoritate.

Articulus tertius

Utrum occidere hominem peccatorem liceat privatae personae.

1.— Respondet sanctus Thomas negative, quod scilicet solum licet occidere malefactores, non auctoritate privata, sed publica, quia occidere malefactorem exspectat ad bonum reipublicae, et per consequens hoc exspectat ad personam publicam et non privatam.

Potest etiam aliter probari confirmando rationem sancti Thomae. Pro quo notate, quod licet sit de jure naturali et divino punire malefactores, maxime perniciosos, et ad hoc teneantur judices, tamen non est certa poena taxata jure naturali nec divino, ut quod latro, v. g. suspendatur, sed de jure positivo. Unde quod homicida puniatur, de jure naturali et divino est, et si non puniretur esset facere contra jus naturale et divinum. Tamen taxatio poenae, scilicet quod homicida plectatur poena capitis non est de iure naturali et divino, sed est de lege positiva. Tunc arguitur sic: Ista poena qua iste maleficus punitur est de jure positivo; sed nulli /284/ privatae personae licet de jure positivo, nec hoc permisit jus positivum quod occidat maleficum: ergo nulli auctoritate privata licet malefactores occidere.

2.— Ex hoc oritur dubium. Dato quod ita sit, quod nulli licet auctoritate privata occidere maleficum, an per legem civilem possit dari licentia cuilibet occidendi auctoritate privata malefactores, etsi non in genere saltem an in casu, puta quod occidat homicidam auctoritate privata, vel si sit aliquis proditor patriae et praecipit praetor ut quisquis inveniat interficiat.

Respondetur. Primo dico, videtur fortasse et probabile est quod nullo modo liceret dare licentiam illo modo, quod possit quilibet passim interficere malefactores, etiam nominatim, quia nulli licet aliquem occidere inauditum. Debet enim prius audiri, et postea, condemnari, quia videtur de jure naturali

whether it is by public or private authority, and every such homicide is evil by natural law, apart from the homicide of a dangerous man, which is lawful by public, but not by private, authority. Hence, if a private man, for the reason that someone wants to grab his cloak from him, were to kill him, he would be a murderer. For, even though he who wants to take the cloak may be a dangerous man, still, he is killing him by private authority and this is not lawful, and therefore it falls under that commandment, although it would be different if it were done by public authority. *Briefly, to the principal question an answer cannot be given without a distinction, namely, that it is lawful to kill only a dangerous man and only by public authority.*[107]

Article Three

Whether it is lawful for a private person to kill a sinful man.

1.— St. Thomas answers in the negative, it is lawful to kill felons (*malefactores*), not by private but only by public authority, because to kill a felon looks to (*exspectat*) the good of the republic, and thus it pertains to a public and not a private person.

It can also be proved in another way confirming the argument of St. Thomas. In regard to this, note that although to punish felons, especially dangerous ones, is a matter of natural and Divine law, and judges are obliged to do so, nevertheless, a definite penalty, for instance that a robber be hanged, is not assessed by either natural or Divine law but rather by [human] positive law. Hence, that a murderer be punished is a matter of natural and Divine law, and if he were not punished, it would be to act against natural and Divine law. Nevertheless, the assessment of a penalty, e.g., that a murderer be punished with death, is not a matter of natural and Divine law but rather of [human] positive law. Then, the argument is as follows: The penalty by which the felon is punished is from positive law; but for no private person is it lawful from positive law to kill a felon, nor does positive law permit this. Therefore, for no private authority is it lawful to kill felons.

2.— From this there arises *a doubt.* Granted that no one may by private authority kill a felon, the question is whether by civil law permission can be given to anyone to kill felons by private authority. And if not generally, at least in some case, for example that someone may with private authority kill a murderer, or if someone betrays his country and a magistrate directs that anyone who finds him may kill him.

In reply, *I say first*: it seems perhaps and it is probable that it would be in no way lawful to give that kind of permission: that any person could everywhere kill felons, even when designated by name, because it is not lawful for anyone to kill any person without a hearing.[108] For, first that person should be heard,

guod non condemnetur aliquis in absentia; et si condemnaretur, postea debet audiri. Secundo dico, dato quod illud de se non sit malum, nec esset opus exaudiri, nec esset hoc prohibitum, dico tamen quod non expediret reipublicae. Saepe esset occasio inimicitiarum, simultatum et rixarum, quia si quilibet haberet licentiam occidendi, non quilibet posset sine periculo alium occidere, quia fortasse interficeretur ab alio. Item, quia alius vellet se defendere, et habet amicos, et vos etiam habetis amicos, et sic essent simultates. Item, quia non quilibet est potens ad illud, ut si proditor esset valde magnus et praepotens. Tertio dico, quod bene potest committi non solum ministris publicis, sed etiam privatis in casu particulari; sicut si rex concederet licentiam cuilibet filio quod homicidam sui patris interficere possit, tunc bene liceret dare licentiam, sed non passim liceret.

3.— Dubitatur particulariter de adultera comprehensa in adulterio, an liceat illam interficere auctoritate privata. Sit ita quod maritus invenit uxorem in flagranti delicto: an liceat illi auctoritate privata illam occidere. Videtur quod sic, quia lex dat licentiam.

Respondeo, ex communi sententia omnium theologorum, quod ille peccat, quantumcumque lex det facultatem interficiendi illam. Ita tenent etiam juristae. Ratio est quia lex, non solum non dedit, sed nec potuit dare talem licentiam, quia est contra jus naturale et contra jus gentium et civile quod aliquis inauditus, licet pessimus, puniatur et occidatur antequam condemnetur. Posset enim adultera defendere se. Item, quia etiam nec judex posset illam interficere, nisi prius audiret eam et condemnaret. Ergo qui occidunt uxores in flagranti delicto inventas, peccant gravissime.

/285/

Et si dicas: ergo illa lex est iniqua. Patet, quia ut dicitur in cap. finali [*Quoniam*] de praescriptionibus, omnis constitutio quae non potest servari sine peccato mortali, est deroganda; sed illa lex dans facultatem quod vir possit occidere uxorem comprehensam in adulterio non potest servari sine peccato mortali: ergo est deroganda.

Respondeo quod omnino est verum illud quod dicitur in illo capitulo, et quod ita videtur quod illa lex non potest servari sine peccato mortali, quia est contra jus naturale. Patet enim quod est contra jus naturale quod aliquis, ut maritus, sit judex, actor, exequutor et testis. Et illa lex quae hoc permitteret, non solum esset abolenda propter homicidium, sed propter jus naturale cui contradicit. Respondeo ergo et dico, quod lex illa civilis non dat marito facultatem et licentiam nec auctoritatem occidendi uxorem deprehensam in turpi actu, sed tantum dat ei impunitatem, id est quod non punietur si occidat

and only then, condemned, because it seems a matter of natural law that someone not be condemned *in absentia*, or if he were to be condemned, he should afterwards be heard. *Second I say*, granted that this not be of itself evil, and that it would not be necessary that he be heard, and that this would not be forbidden, still *I say* that it would not be in the best interests of the republic. For often it would occasion enmities, feuds, and quarrels. For even if someone had a licence to kill, not just anyone at all could without peril kill another, since perhaps he himself might be killed by that other. Again, because that other would want to defend himself — and he has friends and you[109] also have friends — in this way feuds would result. Again, because not everyone is capable of doing that, for example, if the one who betrays [his country] is very great and very powerful. *Third, I say* that in a particular case permission can indeed be given not only to public ministers, but also to private persons. For example, if the king were to grant permission to some son to kill the murderer of his father, in that case it would be right to give such permission, but it would not be generally right.

3.— In particular, *there is doubt* about a woman taken in adultery: whether it is lawful to kill her by private authority? Suppose a husband catches his wife in the act. Would it be lawful for him to kill her by private authority? It seems so, because the law gives permission.[110]

I answer, from the common opinion of all theologians, that he is sinning, no matter how much the law gives him permission to kill her. The jurists also hold this. The reason is that the law not only has not given, but it could not give, such permission. For it is against the natural law, the law of nations, and the civil law, that even the worst person be punished and killed without a hearing, before being condemned[111] — for an adultress could defend herself. Likewise, not even a judge could kill her, without first hearing and condemning her. Therefore, they who kill their wives caught in the act of adultery sin most grievously.[112]

But *you may say*: therefore that law is wicked [and should be repealed[113]], because, clearly, as is said in the final chapter [*Quoniam*] "On Prescriptions,"[114] every law should be repealed which cannot be observed without mortal sin. But this law giving permission to a husband to kill a wife taken in adultery cannot be observed without mortal sin. Therefore, it should be repealed.

I answer that what is said in that chapter is very true, and that it does indeed seem that that law, since it is against the natural law, cannot be observed without mortal sin. For it is obviously against the natural law that someone such as a husband be judge, prosecutor, executioner, and witness. And the law that would permit this, should be repealed not only because of homicide, but also because of the natural law which it contradicts. *I answer*, therefore, and *say* that the civil law does not give a husband permission, licence, or authority to kill a wife caught in a wicked act. Rather, it gives him only impunity, that

uxorem repertam in flagranti delicto, ita quod lex illa facit virum exemptum a poena homicidii. Et sic lex illa solum permittit, non tamen concedit. Et hoc sine peccato mortali potest fieri, quia revera valde difficile est quod vir honestus reperiat uxorem cum adultero, et quod tali furori et dolori possit resistere; ideo lex permittit. Unde dico quod lex illa servatur sine peccato, quia illa non jubet quod ille occidat illam, sed permittit et facit illum exemptum a poena homicidii.

4.— Sed dubitatur. Dato quod ita sit quod peccat mortaliter occidendo illam auctoritate privata, etiam inventam in flagranti delicto, sed dubium est postquam vir adduxit testes, et illa est condemnata ad mortem a judice, et traditur illi ut occidat illam, si vult: an tunc licite possit illam occidere. Videtur quod non, quia videtur esse contra jus naturale quod aliquis sit accusator et exequutor justitiae. Item, quia maritus non habet mandatum a judice quod occidat illam sicut habet lictor, sed solum habet licentiam. Patet, quia videtur quod judex non det illi nisi licentiam quam dat lex, sed lex dat ei facultatem quod occidat illam repertam in flagranti delicto; et tamen quando in delicto invenit eam non liceret ei auctoritate privata illam occidere: ergo nec nunc licet quando est condemnata et tradita sibi a judice, postquam videtur quod judex non det illi nisi illud quod lex dat.

De hoc est opinio multorum canonistarum quod non licet illam occidere, ita quod peccat etiam interficiendo illam postquam est damnata. Sed ego dico quod omnino bene facit interficiendo illam postquam damnata est. Patet, quia data est ei facultas occidendi sicut datur lictori; sed lictori licet illam occidere: ergo et marito. Item, quia alias, si peccaret oc- /286/ cidendo illam, etiam praetores peccarent quia favent illi et tradent illam illi. Item, quia alius non licite posset defendere illam postquam est condemnata a judice, cui licet tradere illam ligatam ut eam interficiat; et tamen si maritus peccaret occidendo illam, licite posset alius defendere illam, sicut posset quando vellet occidere illam repertam in flagranti delicto. Item, quia si maritus non licite occideret uxorem condemnatam et sibi traditam, jam praetor cooperaretur peccato illius. Et si dicas quod nunc non occurrunt plura quam ante: respondeo quod falsum est, quia nunc fuerunt testes adducti ad condemnandum illam, et sic falsum est quod ille sit testis et judex, sed tantum habet vicem lictoris. Nec est

is, that he not be punished if he kills a wife found in the very act of adultery, so that this law exempts a husband from the penalty for homicide. Thus that law only tolerates, but it does not grant [licence]. And this [tolerance] can be extended without mortal sin, for indeed if a decent man find his wife with an adulterer it would be very hard to resist such fury and pain [as he would feel],[115] and so the law is lenient. Hence, *I say* that such a law may be retained without sin, because it does not command that he kill her, but it tolerates it and exempts him from the penalty for homicide.[116]

4.— But there is *a doubt.* Granted that he commits mortal sin who by private authority kills his wife, even taken in the act of adultery, nevertheless, when after a husband has brought witnesses, and she has been condemned to death by a judge, and is handed over to the husband to kill her if he wants, there is doubt whether he could then lawfully kill her. It seems that he could not, for it seems against the natural law that someone be both accuser and enforcer of justice. Again, [it seems so] because the husband does not have a mandate from the judge, as for instance an executioner has, but he has only permission. This is clear, because it seems the judge may not give him more freedom than the law gives. But the law tolerates him killing a wife discovered in the act of adultery, and still, when he found her in the act it was not lawful for him to kill her by private authority. Therefore, neither is it now lawful after she has been condemned and handed over to him, when it is clear that the judge may give him only what the law gives.

About this the opinion of many canonists is that it is not lawful to kill her, so that he sins even when he kills her after she has been condemned. But *I say* that he is acting in a moral way when he kills her after she has been condemned. This is clear, because permission to kill has been given to him, just as it is given to an executioner. But it is lawful for an executioner to kill her. Therefore, it is also so for the husband. Again, [he is acting in a moral way], because, otherwise, the judges also would sin since they are favoring him when they hand her over to him. Again [he would be acting rightly], because another could not lawfully defend her when she has been condemned by the judge, for whom it is lawful to hand her over bound so that he may kill her. And, yet, if the husband were to sin in killing her, another could lawfully defend her, as he could when [the husband] would want to kill her caught in the act of adultery. Again, [he is acting in a moral way], because if that husband were to kill his wife unlawfully when she has been condemned and handed over to him, then the judge would be cooperating in the sin of that husband. And if you say that this is the same situation as before,[117] *I answer* that this is not so, because now there were witnesses brought forth to condemn her, and thus it is false that he is witness and judge, but he has only the place of an executioner. Nor is it a problem that he is an executioner, espe-

inconveniens quod sit exequutor, maxime quia hoc fit in favorem uxoris, quae traditur marito et non lictori ut illam interficiat, vel parcat ei.

5.— Dubitatur an liceat privata auctoritate occidere tyrannum. Aliquis occupavit hanc civitatem: an liceret cuicumque de republica occidere illum. Videtur quod non, quia, ut diximus, non licet auctoritate privata occidere perniciosum; sed iste non fungitur auctoritate publica interficiendo tyrannum: ergo. Item, quia non licet interficere inauditum et incondemnatum; sed iste, quamvis sit perniciosus, non est auditus nec condemnatus: ergo.

In contrarium est quia semper fuerunt praemia in republica interficientibus tyrannos: ergo est licitum. Item, quia cuilibet liceret interficere invadentem se quando aliter non se potest defendere, quia vim vi repellere licet, cum moderamine inculpatae tutelae. Ergo multo magis licet occidere invasorem reipublicae.

Haec quaestio fuit celebrata Parisius tempore regis Ludovici quinti vel sexti regis Franciae, quando bella aestuabant, et Burgundiae dux occidit Mediolanensem, ducem tyrannicum, patruum regis Ludovici, qui vi et tyrannide occupavit regnum et alias terras, et dux Burgundiae, missis exploratoribus, cepit ducem Mediolanensem et interfecit. Dux Burgundiae confessus est crimen, et quidam frater scripsit in favorem illius; alius doctor scripsit contrarium. Res exacta est in concilio Constantiensi, et Parisius, ubi determinatum est quod non licebat propria et privata auctoritate tyrannum occidere.

/287/

Respondetur ergo quod duplex potest esse tyrannus. Unus est qui gerit se pro rege, et non est, ita quod non habet jus ad terras quas occupat, sed tyrannice occupat; no es suya esta republica, y la toma. Alius est qui est legitimus dominus suae reipublicae et regni, sed tyrannice gubernat et administrat illam ad utilitatem suam et suorum, et non ad utilitatem ipsius reipublicae, sed ad perniciem. Tunc sit prima conclusio: Tyrannum secundo modo non licet personae privatae occidere, ut legitur de don Pedro el Cruel. Respublica quidem posset se defendere ab illo, sed non privatus homo, quia est contra jus naturale quod aliquis inauditus et indamnatus occidatur; sed iste est talis: ergo. Item, quia est contra jus naturale quod quis sit actor, judex et exequutor; sed talis esset qui private occideret tyranuum secundo modo: ergo non licet illum occidere. Item, quia poena est de jure positivo; sed poena illa, quod scilicet

cially since this is done in favor of the wife, who is handed over to her husband, and not to an official executioner, so that he may kill her or may spare her.[118]

5.— There is a *doubt* about whether a tyrant may be lawfully killed on private authority. [For example,] someone has seized this city: would it be lawful for any citizen of the republic to kill him? It seems that it would not, because, as we have said, it is not lawful to kill a pernicious person on private authority. But that citizen does not enjoy public authority in killing the tyrant. Therefore. Again, [it would not be lawful] because it is unlawful to kill anyone without his being heard and condemned. But that tyrant, even though he is pernicious, has not been heard or condemned. Therefore.

Against this is the fact that there have always been rewards in the republic for those who kill tyrants. Therefore, it is lawful. Again [it is lawful], because it is lawful for anyone to kill someone attacking him, when he cannot otherwise defend himself. For it is lawful "to repel force with force, within the bounds of blameless defense."[119] Therefore, it is much more lawful to kill an attacker of the republic.

This was a famous question at Paris in the time of King Louis V or VI,[120] of France, when wars were raging, and the duke of Burgundy killed the tyrannical duke of Milan, the paternal uncle of King Louis, who by force and by tyranny seized the kingdom and other lands, and the duke of Burgundy, having sent out agents, captured and killed the duke of Milan. The duke of Burgundy confessed his crime, and a certain friar wrote in his favor,[121] while another doctor wrote against him.[122] The matter was judged at the Council of Constance,[123] and at Paris,[124] where it was determined that it was not lawful to kill a tyrant on one's own private authority.

The *answer*, therefore, is one can be a tyrant in two ways. One [kind of tyrant] is someone who acts as king when he is not a king, in such way that he has no right to lands he is occupying, but rather is tyrannically occupying them. "This republic is not his, and yet he takes it."[125] A second kind of tyrant is one who is a legitimate lord of his own republic or kingdom, but who tyrannically governs and administers it for his own advantage and that of his relatives, and not for the advantage, but for the destruction, of the republic.

Then let this be the *first conclusion*: It is not lawful for a private person to kill the second kind of tyrant, such as we read was Don Pedro the Cruel [1334-1369].[126] Indeed, the republic, but not a private person, could defend itself from him.[127] For it is against the natural law that someone be killed unheard and uncondemned; but that [tyrant] is such; therefore. Again [it is not lawful] because it is against natural law that someone be prosecutor, judge, and executioner. But such he would be who privately killed a tyrant of the second sort. Therefore, it is not lawful to kill him. Again [it is not lawful], because punishment is a matter of positive law; but that punishment, namely,

tyrannus occidatur auctoritate privata, non est taxata in jure: ergo non licet illum occidere.

Secunda conclusio: Tyrannum primo modo licet cuicumque privato homini occidere, dummodo id facere possit sine tumultu reipublicae et sine majori detrimento ipsius reipublicae. Patet, quia respublica potest gerere bellum contra tyrannum ut defendat se ab illo; sed jam habet bellum cum illo, et nondum est finitum: ergo durante illo bello licet cuicumque privato homini occidere illum. Nec occidit illum auctoritate privata, sed publica, quia bellum non est finitum. Item, licet interficere ipsum pro defensione reipublicae; sed non potest alias defendi respublica nisi ipsum interficiendo: ergo licet illum interficere.

Dico ultimo, quod nihilominus est periculosum quod fiat sine tumultu et sine eo quod vergeret in damnum reipublicae. Unde oportet quod, omnibus pensatis, fiat, pensato commodo reipublicae, et sine seditione et periculo reipublicae, et habita spe de nece tyranni. Vide sanctum Thomam supra, q. 42, a. 2 in solutione ad tertium, ubi credo quod aliquid diximus de hoc.

Articulus quartus

Utrum occidere malefactores liceat clericis.

1.— Respondet sanctus Thomas quod non.

Dubitatur an hoc quod dicit sanctus Thomas sit de jure divino, aut de jure positivo.

Respondetur quod jus divinum dupliciter capitur aliquando a doctoribus. Uno modo, pro omni illo quod continetur et invenitur in sacris lit- /288/ teris, quia tota sacra scriptura vocatur jus divinum; et sic quidquid in illa invenitur, dicitur jus divinum. Et isto modo communitas rerum in principio Ecclesiae non esset de jure divino, quia de illo nihil habetur in ea bene tamen abstinere a sanguine et suffocato est de jure divino, quia continetur in sacra scriptura, scilicet in *Actibus Apostolorum*; et sic multa alia sunt de jure divino quae non sunt necessaria. Et isto modo valde improprie sumitur jus divinum, quia praecepta Apostolorum et ea quae ab illis tradita sunt, non ita sunt de jure divino sicut illa quae praecepit Deus, qui majorem auctoritatem habet, sed de jure positivo. Paulus enim apostolus non habebat majorem potestatem quam nunc habet papa Paulus tertius, loquendo de potestate jurisdictionis, sed tantam habet nunc papa quantam habebat Paulus. Hoc modo loquendo de jure divino, esset clericis prohibitum de jure divino quod non occiderent,

that he be killed by private authority, is not established in the law. Therefore, it is not lawful to kill him.

The *second conclusion*: It is lawful for any private man to kill the first kind of tyrant, as long as he can do this without an uproar in the republic and without greater loss for the republic. This is clear, because the republic can wage war against a tyrant, to defend itself from him. But now it is at war with him, and it is not yet finished. Therefore, while that war is in progress, it is lawful for any private man to kill him.[128] And, since the war is not finished, he is killing him not by private but by public authority. Again, it is lawful to kill[129] in defense of the republic. But the republic cannot otherwise be defended except by killing him. Therefore, it is lawful to kill him.

Last, *I say* that it is, however, difficult that it be done without an uproar and without verging on loss to the republic. Hence, it is necessary that it be done, with everything thought through, weighing the advantage to the republic, and without sedition and danger to the republic, and with hope of the death of the tyrant. See St. Thomas above, at question 42, article 2, in his solution to the third objection, where I think we said something about this.[130]

Article Four

Whether it is lawful for clerics to kill felons.

1.— *St. Thomas answers* that it is not lawful.

There is *doubt* whether what St. Thomas is saying is a matter of Divine law or of [human] positive law.

In reply: the doctors take Divine law in two ways. In one way, it is taken for everything contained in sacred literature, inasmuch as the whole of Sacred Scripture is called Divine law. Thus whatever is found in the Scripture is said to be Divine law. And in this way the community of possessions in the early Church would not be a matter of Divine law, for there is nothing about that in the Scripture. However, to abstain from blood and from what has been strangled is a matter of Divine law, since it is contained in Sacred Scripture, viz., in the *Acts of the Apostles*.[131] And in this same way many other things, which are not [of themselves] necessary are matters of Divine law. But also in this way "Divine law" is taken very improperly, because the commands and traditions of the Apostles are not matters of Divine law in the same manner as are those more authoritative things which God has commanded, but are rather matters of [human] positive law. For, if we speak of the power of jurisdiction,[132] Paul the Apostle did not have greater power than Pope Paul III (1534-1549)[133] has now; but the pope has as much now as Paul had. Speaking in this way about Divine law, it would be forbidden by Divine law for clerics to kill

ut citat sanctus Thomas, quod non sit vinolentus etc.; sed non esset praeceptum Dei, quia non ab illo immediate praecipitur. Alio modo sumitur jus divinum magis proprie, quod est conditum a Deo non interposita auctoritate hominis, id est nullo praecepto humano mediante. Et sic praecepta decalogi sunt de jure divino, et praeceptum de baptismo et de confessione. Proprie ergo jus divinum est illud quod est ex auctoritate divina, id est quod est immediate conditum a Deo non mediante aliquo praecepto humano.

Primo modo loquendo de jure divino, bene est de jure divino quod presbyteri non occidant, nec sint percussores nec percutiantur, quia Paulus dicit: *Oportet episcopum sine crimine esse, non vinolentum, nec percussorem* (1 Tim. 3, 3; Tit. 1, 7). Sed secundo modo loquendo de jure divino, quod clerici non occidant non est de jure divino, sed de jure positivo humano, quia licet sit conditum ab Apostolis quod non occidant, et sicut jejunium quadragesimale dicitur ab Apostolis institutum, tamen hujusmodi praecepta Apostolorum non sunt divina praecepta, sed pure positiva. Et sic de jure positivo humano est quod clerici non occidant. Hoc explicatur ab apostolo Paulo. Nam quando est praeceptum suum, dicit: *Dico ego, et non Deus; praecipio, non Dominus, sed ego*, id est hoc praeceptum est meum et non Dei. Sed quando est praeceptum Dei, dicit: *Praecipit Dominus, non ego; dicit Dominus, non ego, uxorem a viro non recedere.*

2.— Ex hoc sequitur aliud dubium. Dato quod sit de jure positivo, an papa possit in illo dispensare. Hic est notandum quod duo sunt hic consideranda, scilicet prohibitio et irregularitas. Unde dato quod ita sit, quod est praeceptum Apostolorum quod clericus non sit percussor nec occidat, tamen irregularitas quae nunc est in Ecclesia, non videtur quod sit de /289/ praecepto Apostolorum. Prohibitio Apostolorum est quod non ordinetur percussor; sed quod sit irregularis non est de praecepto Apostolorum quia non exprimitur in sacra scriptura ab Apostolis. Dato quod concubinarius ordinetur in clericum, bene posset ministrare sine dispensatione; sed si percussor ordinetur, non posset ministrare sine dispensatione. Non quod ista irregularitas sit ab Apostolis instituta, sed solum videtur quod irregularitas post Apostolos introducta sit in Ecclesia. Prohibitio ergo orta est ab Apostolis; irregularitas vero ab Ecclesia inventa est multo post tempus Apostolorum.

His ergo notatis, respondetur ad dubium. Alterum est prohibitio Apostolorum, et alterum irregularitas instituta ab Ecclesia. Loquamur de praecepto Apostolorum, an papa possit dispensare quod occisor ordinetur sine peccato. Respondeo absolute quod, existente rationabili causa, non solum

— as St. Thomas cites [Scripture], that [a bishop] should not be a drunkard, etc.[134] But it would not be God's commandment, because it was not immediately prescribed by Him. In a second way, "Divine law" is taken more properly for that which is established by God without human authority interposed, viz., with no human commandment mediating. In this way, the commandments of the Decalogue are matters of Divine law, as are also the commandments relating to baptism and to confession. Properly, therefore, Divine law is that which is from Divine authority, that is, immediately established by God, without the mediation of any human commandment.

Speaking about Divine law in the first way, it is indeed a matter of Divine law that priests should not kill, nor be strikers (*percussores*)[135] or be struck, because Paul says: "*A bishop should be without crime, not given to wine, nor a striker*" (I *Tim.* 3, 3; *Tit.* 1, 7). But speaking about Divine law in the second way, that clerics should not kill is not a matter of Divine law, but of human positive law. For although it was established by the Apostles that they should not kill, just as the Lenten fast is said to have been established by the Apostles, nevertheless, Apostolic precepts of this kind are not Divine commandments, but rather purely positive [human enactments]. And thus it is a matter of human positive law that clerics should not kill. This is explained by the Apostle Paul: for when a precept is his, he says: "*I say, and not God,*"[136] or "I command, not the Lord, but I," that is, this precept is mine and not God's. But when it is God's command, he says: "The Lord commands, not I" or "*The Lord says, not I, a wife should not leave her husband.*"[137]

2.— From this there follows another doubt. Granted that it is a matter of positive law, can the pope dispense from it? Here it should be noted that two things must be considered: namely, the prohibition and irregularity.[138] Hence, granted that it is a command of the Apostles that a cleric should not be a striker nor should kill, still, the present irregularity in the Church does not seem to be from an Apostolic command. The Apostolic prohibition is that a killer (*percussor*) not be ordained. But that one be irregular is not from an Apostolic command, since it is not expressed in Sacred Scripture by the Apostles. Given the case of one living in concubinage being ordained a cleric, he could rightly minister without a dispensation. But if a killer be ordained, he could not minister without a dispensation, not because this irregularity has been established by the Apostles, but only it seems because the irregularity has been introduced in the Church after the Apostles. The prohibition, therefore, stems from the Apostles, but the irregularity came from the Church long after the time of the Apostles.

Therefore, these points noted, the *answer* to the doubt is as follows. The prohibition of the Apostles is one thing; the irregularity instituted by the Church is another. Let us speak of an Apostolic precept: can the pope without sin dispense from it so that a killer be ordained? *I answer* without qualifi-

papa potest dispensare in irregularitate, sed etiam in praecepto Apostolorum. Dato quod aliquis sit occisor, potest papa dispensare cum illo quod licite ordinetur ex causa rationabili. Et probatur, quia papa nunc non habet minorem potestatem jurisdictionis quam Petrus et Paulus et alii apostoli habebant. Secundo dico, quod etiam Apostoli ex rationabili causa dispensassent, et forsan Paulus ita fecit, quod aliqui vinolenti et qui fuerunt duces in bello et percussores, dispensavit cum illis quod ordinarentur. Sic nunc Ecclesia etiam in bigamia dispensat, licet Apostolus dicat: *Oportet presbyterum esse unius uxoris virum* (1 Tim. 3, 2).

3.— Sed dubitatur. Si papa sine rationabili causa dispenset, an factum teneat. Clarum est quod peccat, si sine rationabili causa dispenset. Sed an teneat factum, scilicet quod non sit irregularis ille cum quo sine causa rationabili dispensat? Potest dici quod non, quia si ad hoc quod lex teneat oportet quod sit aequa, ut saepe diximus, non videtur dubium quin nihil faceret quando constat de iniquitate, et cum hoc facit. Unde si propter crimen alicujus dedisset illi papa un deanazgo, certe si sine scandalo qui debent dare possessionem non darent, licite facerent. Ergo lex humana, si sit irrationabilis, non habet vim: ergo eadem ratione videtur quod dispensatio irrationabilis non teneat, quia etiam est actus jurisdictionis, et abutitur potestate et auctoritate sua.

Sed licet hoc possit dici, oppositum tamen est verius; et dicimus quod papa dispensante sine rationabili causa, dispensatio tenet et tollitur irregularitas, licet papa peccet, et forte etiam ille cum quo dispensatur, quia habet difformitatem ad alia membra ecclesiastica. Sed nihilominus dispensatio tenet. Quia sicut papa potest in quadragesima dispensare cum aliquo pro libito suo sine rationabili causa, licet peccaret mortaliter, quia /290/ faceret injuriam aliis, et etiam ille cum quo dispensaret saltem venialiter peccaret, quia postquam omnes de communitate laborant pro communitate ad invicem, ille faceret eis injuriam non simul laborando, id est jejunando cum illis, sed nihilominus dispensatio teneret, ita quod ab eo obligatio de jejunio ablata esset; ita licet papa dispenset sine rationabili causa, nihilominus factum tenet, quamvis peccet. Et ita alia praecepta facta ab aliis pontificibus, potest tollere. Et si sine rationabili causa tollat, licet peccet, factum tamen tenet. Verum est quod quantumcumque justo titulo detur dispensatio, et papa tollat irregularitatem, nihilominus semper manet quaedam difformitas naturalis quae non potest tolli. Quia cum clerici sint ministri Ecclesiae repraesentantes passionem Christi,

cation that, when there is reasonable cause, not only can the pope dispense in a matter of irregularity, but also from an Apostolic command. Given that someone is a killer, the pope can, with reasonable cause, dispense him to be lawfully ordained. This is proven: because the pope does not now have less power of jurisdiction than Peter, Paul, and the other Apostles had. Second, *I say* that the Apostles also would have dispensed from reasonable cause, and perhaps Paul acted in such a way that he allowed that some drunkards and some who were leaders in war and killers be ordained. So now the Church also dispenses in a case of second marriage,[139] even though the Apostle says: *"A priest should be the husband of one wife"* (1 *Tit.* 1, 6).[140]

3.— But there is a doubt. If the pope dispenses without reasonable cause, does it in fact hold? It is clear that he is sinning if he dispenses without a reasonable cause. But is in fact one whom the pope dispenses without reasonable cause not irregular? It can be said that he is not [in fact not irregular]. For if in order that a law hold it is necessary that it be fair, as we have often said, it does seem that it would have no effect when it is established in sin and when it prescribes in line with this. Hence, if because of someone's crime the pope gave him "a deanship"[141] and if, without scandal, those who should give him possession were not to give it to him, they would certainly be acting in a lawful way. Thus, human law, if it is irrational, does not have force;[142] and for the same reason it seems that an irrational dispensation does not hold. For it is also an act of jurisdiction and [the one dispensing] is abusing his power and authority.

But although this can be said, still the opposite is more true. And *we say* that, in a case where the pope dispenses without a reasonable cause, the dispensation holds and the irregularity is removed, even though the pope sins, and perhaps also the one who is dispensed, since he has an asymmetry with other members of the Church. But, still, the dispensation holds. For just as the pope can arbitrarily and without reasonable cause dispense someone in Lent, even though he would sin mortally inasmuch as he would injure others, and even he whom he dispensed would sin venially, because when all members of the community are working for their community with one another, he would do them an injury by not working with them,[143] that is by not fasting with them,[144] but, nevertheless, the dispensation would hold, so that his obligation to fast would be removed by it — in the same way, though the pope dispenses without a reasonable cause, still the dispensation is a fact even though he is sinning. Thus, also, he can repeal commandments issued by other popes. And if he repeals them without a reasonable cause, even though he sins, what he has done still holds. It is true that by however just a title the dispensation is granted and the pope removes an irregularity, nevertheless, there always remains a certain natural difformity which cannot be taken away. For, since clerics are ministers of the Church representing the suffering of Christ, who

qui cum percutiebatur non repercutiebat etc. (1 Pet. 2, 23); etiam quia sunt ministri evangelii et debeant praedicare, ideo non debent operibus suis praedicationem suam profligare. Unde si episcopus illum cum quo sine rationabili causa esset dispensatum, ordinasset, peccaret, licet non mortaliter.

4.— Hic possemus loqui de irregularitate.

Sed dubitatur, an hoc quod dicit sanctus Thomas de clericis, sit generale de omnibus clericis intelligendum; quia Paulus solum de episcopis loquitur, per quos clerici et presbyteri intelliguntur. An ergo de conjugatis et primae tonsurae intelligatur. Videtur quod non, quia clerici de prima tonsura eunt ad bellum et occidunt etc.

Respondeo quod de omnibus intelligitur.— Contra, quia Paulus solum de presbyteris intelligit.— Dico quod suo tempore non sic ordinabantur sicut nunc; non enim erant isti minores ordines, non erat tunc prima tonsura, sed Ecclesia ordinavit ad omnes. Sed si ad bellum justum vadant hujusmodi, non peccant mortaliter, licet semper incurritur irregularitas.

5.— Pro quo dubitatur, an si clericus primae tonsurae petat in bellum justum, et occidat sarracenos, an peccet. Dico ut diximus supra, quod aliquando contrahitur irregularitas sine peccato, ut in isto casu. Dico ergo, qui in justo bello occidunt sarracenos v. g. non peccant, sed nihilominus incurrunt irregularitatem. De ista poena irregularitatis quando incurratur et quando non, esset late dicendum; de quo videatis summistas ponentes multos casus in quibus incurritur, quos in medium adducere esset oleum et operam perdere, postquam unusquisque vestrum potest hoc apud illos videre, maxime cum in istis non sit magna difficultas. Dico tamen generaliter, quod incurritur irregularitas per mutilationem membrorum et per homicidium, et generaliter per consensum et concausam ad mortem alterius. Nec videatis quid aliquae glossae dicant, quia si quis /291/ percusit asinum in quo fertur aliquis ad supplicium, non est irregularis, nec si mittat ligna ad comburendum illum. Et tamen aliquae glossae dicunt oppositum, scilicet quod est irregularis. Ideo dico quod non videatis illas, sed jura.

Articulus quintus

Utrum alicui liceat seipsum occidere.

1.— Respondet sanctus Thoma quod non. Probat, quia est contra inclinationem naturalem qua quisque inclinatur ad amandum se et conservandum se in esse. Secundo, quia facit injuriam reipublicae cujus est pars.

when he was struck did not strike back, etc. (I *Peter* 2, 23), and also because they are ministers of the Gospel which they must preach, they should not therefore in what else they do debase their preaching.[145] Hence, if a bishop were to ordain a man whom he had without reasonable cause dispensed, he would sin, although not mortally.

4.— Here we could speak about irregularity.

But there is doubt whether what St. Thomas says about clerics is to be generally understood about all clerics. For Paul spoke only about bishops, by which clerics and priests are to be understood. Is it then to be understood about those who are married[146] and those with simple tonsure? It seems not, because those with simple tonsure go to war and they kill, etc.

I answer that it is to be understood about all. — But against this is the fact that Paul understood it only about priests. — My view is that in his time they were not ordained in the way they are now. For at that time there were not those minor orders and there was not simple tonsure, but the Church [later] ordered these for all. But if persons of this sort go off to a just war, they are not sinning mortally, although an irregularity is always incurred.

5.— With regard to this there is a doubt: whether a simple cleric sins if he takes part in a just war and kills Saracens. *I say*, as we said above, that sometimes an irregularity is incurred without any sin. In this case, therefore, *I say*, those who, for instance, in a just war kill Saracens, do not sin, but nevertheless they incur an irregularity. About this penalty of irregularity, when it is incurred and when not, we should speak at length. [In the meantime,] you may see the *Summists*[147] treating many cases in which irregularity is incurred, which to bring forward would be to lose time and effort, when each of you can see this in the *Summists*, especially since there is no great difficulty in them. But I *say* that irregularity is generally incurred by the mutilation of members and by homicide, as well as generally by consent and cooperation in the death of another. Nor should you trouble yourself about what some glosses[148] say, for if someone whips on an ass upon which some other is being borne to capital punishment, he is not irregular. And neither is he irregular if he brings faggots to burn him. Yet, some glosses say the opposite, which is that he is irregular. Therefore, *I say* that you should not worry about them but about the laws.

Article Five

Whether it is lawful for anyone to kill himself.

1.— St. Thomas answers that it is not. He proves this, inasmuch as it is against the natural inclination by which everyone is inclined to love himself and to keep himself in existence. He proves it, second, because [a person

Tertio, quia homo non est dominus suae vitae sicut est dominus aliarum rerum; non enim Deus dedit ei vitam ad alium usum, nisi ad hoc ut bene vivat, quia Deus est dominus vitae et mortis. Unde qui se occidit, facit injuriam: ergo peccat. Quarto, quia est contra caritatem qua quilibet tenetur seipsum diligere. Qui ergo seipsum occideret, peccaret mortaliter. Non est dubium nisi quod qui occideret se, faceret contra illud praeceptum, *Non occides*, quia ut diximus, solum unum homicidium est licitum, scilicet occisio hominis perniciosi, et hoc auctoritate publica quando damnatus est, et non auctoritate privata. Cum ergo qui seipsum occideret, etiamsi sit perniciciosus, occideret se auctoritate privata, sequitur quod faceret contra illud praeceptum de non occidendo, et per consequens peccaret mortaliter. Non ergo licet seipsum occidere.

2.— Nihilominus contra hanc conclusionem sunt aliqua argumenta. Pro quo est prius notandum quod dupliciter potest haec conclusio sancti Thomae intelligi. Primo, an intelligatur sic quod non liceat plus occidere seipsum quam occidere alium, ita quod non plus extendamus sed quod sicut in aliquibus casibus licet occidere alium, an ita etiam liceat in aliquo casu seipsum occidere. Alio modo potest intelligi extendendo illam valde generaliter, scilicet quod in nullo casu et nullo modo liceat seipsum interficere. In quo ergo sensu intelligit sanctus Thomas, vel primo vel secundo modo? Respondeo quod intelligit illam sicut omnes dicunt quod illa est vera, scilicet generaliter, ita quod nullo modo licet seipsum occidere. Et in hoc sensu intelligendo conclusionem sunt plurima argumenta contra illam, quae probant quod in aliquo casu licet seipsum occidere.

Primo ergo arguitur sic: Licet praeparare ad mortem, immo adhortari alium ad hoc quod ipsummet occidat: ergo licet seipsum occidere. Patet consequentia ex Paulo dicente, quod non solum digni sunt morte qui /292/ mala faciunt, sed qui consentiunt facientibus. Probatur antecedens, quia legimus de Vincentio et de multis sanctis martyribus quod adhortabantur alios ut interficerent illos. — O, dicetis quod erant parati. — Certe non liceret mihi movere alium, etsi ipse esset paratus, ad interficiendum me. Item, probatur etiam quod de facto seipsos occidebant, quia de beata Apollonia dicitur quod, evadens se a manibus tyrannorum, projecit se in ignem paratum; et hoc non solum fuit licitum sed laudabile: ergo licet in casu interficere seipsum.

Respondetur quod ita est, scilicet quod hoc factum de martyribus, non solum fuit licitum, sed etiam laudabile quod adhortarentur alios etc. — Contra, quia consentiebant peccato illorum. — Nego illud, immo dissuadebant

killing himself] does injury to the republic of which he is a part. He proves it, third, because a man is not the master of his own life in the way in which he is the owner of other things. For God did not give him life for any other reason but to live rightly, because God is the master of life and death. Hence, one who kills himself does injury [to God].[149] Therefore, he sins. Fourth, he argues, because it is against the charity by which everyone is obliged to love himself.[150] One, therefore, who would kill himself, would commit mortal sin. *The only doubt* is whether one killing himself would be acting against this commandment, "Thou shalt not kill." For, as we have said, only one homicide is lawful, viz., the killing of a condemned pernicious man by public, and not private authority. Since, therefore, one killing himself, even though he might be pernicious, would be doing so by private authority, it follows that he would be acting against that command, not to kill, and that he would consequently be committing a mortal sin. Therefore, it is not lawful to kill oneself.

2.— Nevertheless, there are some arguments against this conclusion — with respect to which we should first note that this conclusion of St. Thomas can be taken in two ways. First, is it to be so understood that it is not more lawful to kill oneself than to kill another, in such way that we do not extend it further [for one than the other]; but just as in some cases it is lawful to kill another, is it also lawful in some case to kill oneself? But it can be understood in a second way, by extending it most generally, viz., that in no case and in no way is it lawful to kill oneself. In which sense, then, is St. Thomas understanding it — in the first or in the second way? I *answer that* he understands it in the way that all say it is true, that is, generally, so that in no way is it lawful for anyone to kill himself. And understanding the conclusion in this sense, there are against it several arguments to prove that in some cases it is lawful to kill oneself.

The first argument is as follows: It is lawful to prepare for death, and indeed to exhort another to kill oneself. Therefore, it is lawful to kill oneself. The consequence is clear from Paul saying that not only are they deserving of death who do evil, but also those who consent to those doing evil.[151] The antecedent is proven: because we read of Vincent[152] and many other martyrs that they exhorted others to kill them. — Oh, you will say that these others were prepared to do so.[153] — Certainly, it would not be lawful for me to move another to kill me, even though he would be prepared to do so. Again, [the antecedent] is proven also because as a matter of fact [martyrs] did kill themselves. For it is said of St. Apollonia[154] that, escaping from the hands of her oppressors, she hurled herself into the fire that was prepared for her. And this was not only lawful but honorable. Therefore, in some cases it is lawful to kill oneself.

The *answer* is that it is lawful — indeed, what the martyrs did was not only lawful, but it was also laudable that they exhorted others, etc. — But *against this* [it seems unlawful], because they consented in the sin of those oppressors. —[155] *I deny* that. Indeed, they were dissuading others from killing Chris-

aliis quod non occiderent christianos, et cum viderent se nihil prodesse, monebant illos ut ipsosmet occiderent. Nec propter hoc consentiebant peccato illorum, quia ipsi sancti non hoc faciebant ad movendum illos ad malum, sed ad ostendendum et comprobandum veritatem fidei; quia ipsi alias passuri erant, et illa adhortatio solum est non resistere. Unde dico quod qui a sarracenis occideretur et pateretur hoc modo pro fide Christi, licite faceret si illo modo faceret, quia hoc solum est non resistere.

3.— Secundo arguitur: Licet abbreviare vitam: ergo et occidere se. Patet consequentia ex beato Hieronymo. Nihil interest quod subito vel quod multo tempore interimas te. Probatur antecedens, quia licet strictam et asperam ducere vitam per quam appropinquat quis ad mortem. Licet enim alicui per poenitentiam et abstinentiam corporis abbreviare vitam, quia solum comedere panem et bibere aquam licite fit; et tamen per hoc abbreviatur vita: ergo. Et si dicas quod iste ignorat quod abbreviet vitam, dico quod hoc nihil est quia bene scit. Et pono quod illud sciat, et tamen licite facit: ergo. Item patet idem antecedens, quia carthusienses licet sint moniti a medico quod morientur nisi comedant carnes, licite et scienter possunt non comedere carnes: ergo.

Respondeo quod omnino ex intentione abbreviare vitam, est peccatum mortale. De per accidens tamen, bene licet illam abbreviare per abstinentiam comedendo pisces, quia de se bonum est illos comedere. Et quidquid ex illo sequatur, est licitum, etiamsi sequatur abbreviatio vitae, quia ille non dat operam ad abbreviandum vitam, sed ad opus poenitentiae.— O contra, quia veniet in infirmitatem. — Dico quod bene volo, quia ille utitur jure suo comedendo pisces illos, id est licet ei comedere illos, quia Deus creavit pisces ad comedendum. Et ita de carthusiensibus dico, quod licitum est eis non comedere carnes, quia utuntur jure suo, utuntur enim /293/ alimentis quae Dominus dedit ad usum hominis. Non tamen licet comedere toxicum vel solimán, quia Dominus alimentum istud non dedit ad usum hominum. Nec tamen solum per comestionem carnis impeditur mors in infirmis, cum sint alia salubriora medicamenta et cibaria convenientiora. Licite ergo potest quis illo modo vitam abbreviare. Et hoc intelligo quando notabiliter non videt se abbreviare illam, sicut si videret incurrere febrim ex comestione piscium, tunc non liceret illos comedere et vitam abbreviare; secus autem bene licet. Sic etiam si aliquis infirmatur hic, non tenetur ire ad aliam terram, quia sufficit quod vivit in terra habitabili. Ubi tamen modo arctissimo et singulari quis viveret, puta non comedendo perpetuo nisi panem et aquam ut vitam abbreviaret, forte non liceret, vel etiam semel tantum in hebdomada comedere

tians, and when they saw that this was gaining nothing, they admonished those others to kill them. Nor were they on that account consenting in the sin of those people, since the saints themselves were not doing this in order to move those others to evil, but in order to show and prove the truth of faith. For, in any event, they themselves were going to suffer, and that exhortation was only non-resistance.

3.— A second argument is: It is lawful to shorten one's life; therefore, it is lawful also to kill oneself. The consequence is evident from St. Jerome: *it makes no difference whether you kill yourself suddenly or over a long time.*[156] The antecedent is proven, since it is lawful to lead an austere and ascetic life by which one may come close to death. Indeed, it is lawful that someone shorten his bodily life through penance and abstinence. For it is lawful to eat and drink only bread and water; and, still, by so doing, one's life is shortened; therefore. And if you say that such a one is not aware that he may shorten his life, I say[157] that this is nugatory because he knows it well. And I stipulate that he knows that, and still he is acting licitly: therefore. Again, the same antecedent is evident, because Carthusians,[158] even though they have been warned by a physician that they will die unless they eat meat, can both lawfully and knowingly not eat meat: therefore.

I answer, that just intentionally to shorten one's life is a mortal sin. However, it is very lawful to shorten it in an incidental way by eating fish as a matter of abstinence, since of itself it is good to eat fish. And whatever may follow from that is lawful, even a shortening of life, for the one abstaining does not intend to shorten his life, but rather intends to do penance. — *But against this*, [he does intend to shorten life] because he will become sick. — *I say* that I am well disposed toward him, because in eating that fish he is exercising his right, that is to say, it is lawful for him to eat it, since God created fish to be eaten.[159] Thus, with regard to the Carthusians, *I say* that it is lawful for them not to eat meat, because they are exercising their right, inasmuch as they are eating foods which the Lord gave men to eat.[160] It is not, however, lawful to eat poison or "something corrosive,"[161] for the Lord did not give such to men to eat. But neither is it only by eating meat that death is held at bay, since there are other more healthful medicines and more fitting foods. Therefore, anyone can lawfully shorten life in that way. And I understand this when such a person is not noticeably aware that he is shortening it. Thus, if he were to see that he would be feverish from eating fish, then it would not be lawful for him to eat fish and shorten his life; but otherwise it would be lawful. So also if someone is sick in this country, he would not be obliged to go to another country, because it would be enough that he live in a country that is habitable. However, where someone would be living in a most austere and unusual way, for example, never consuming anything but bread and water, with the result that he would shorten his life, perhaps it would not be

non liceret. Sed debet hoc fieri modo communi hominum bonorum, ut praeter intentionem mors sequatur, et non ex intentione.

4.— Tertio arguitur. Licet properare ad mortem, non solum de per accidens, sed ex intentione: ergo solutio praedicti argumenti nulla, et per consequens licet seipsum occidere. Antecedens probatur de beata Apollonia, quia parata pyra ignis coram ipsa, cum vellent lictores persuadere illi quod relicta fide christiana transiret ad sectam illorum, praecipitavit se in ignem; et tamen hoc est ex intentione occidere se: ergo. Quaeritur ergo an hoc fuit laudabile.

Aliqui volunt dicere quod temere fecit non exspectando quod a tyranno infligeretur mors, sed quod excusata fuit per ignorantiam; ita quod non fuit licitum et laudabile se projicere in ignem, sed debebat exspectare quod alii projicerent eam, sed quod excusata fuit per ignorantiam. Sed melius est si dicamus quod lex divina est plana et aequa, id est non utitur sophismatibus. Itaque dico quod Deus non quaerit sophismata et occasiones peccatorum ad condemnandum homines. Dico ergo quod licitum fuit et laudabile quod ipsa projiceret se in ignem, non exspectando illos. Ratio est quia illa erat moritura. Quid enim refert quod ipsa moritura post horam, velit accelerare mortem ante illam horam? Quod ergo nunc moriatur vel post horam, nihil refert quoad Deum. Unde pro certo tenendum est quod et laudabiliter fecit, et quod non est operata ad mortem suam, cum jam decretum esset a tyrannis se morituram. Simile legitur de beato Vincentio, qui non exspectavit ut mitteretur in ignem, sed ipse projecit se, quod certe laudabile factum fuit ad ostendendum robur animi, et ad ostendendum quod libenter pro Christo patiebatur, postquam erat moriturus. Unde dato quod qui suspendendus est ponat restim ad collum, non peccat.

/294/

5.— Sed ex hoc argumento oritur aliud dubium: an illi qui est damnatus ad mortem, liceat praevenire lictores sumendo venenum ad quod genus mortis est damnatus, scilicet ut sumat venenum, saltem apud Athenienses apud quos solet venenum dari malefactoribus. Videtur quod non quia non liceret jugulare se, ergo nec bibere venenum.

Respondeo quod oporteret primo videre an illae leges de dando veneno sint justae, et si sic, certum est quod esset licitum potare venenum. Cum ergo lex illa fuerit, non apud barbaros, sed apud rempublicam bene ordinatam, possumus dicere quod licebat illi potare venenum quando erat condemnatus ad mortem. — O contra, quia ille talis habet se active ad mortem et occisionem suiipsius. — Respondeo quod oportet videre aequitatem, nec oportet respicere ad sophismata, maxime in materia morali. Ideo dico quod nihil refert quod se

lawful. Or, again, eating only once a week would not be lawful. But this should be done in the usual way of good men, in such manner that death would follow unintentionally rather than intentionally.

4.— The third argument is as follows: It is lawful to hasten death, not only in an accidental way, but also by intention. Therefore, the solution of the previous argument is null, and consequently it is lawful to kill oneself. The antecedent is proven from St. Apollonia. For when the fire was prepared before her, although the executioners wanted to persuade her to abandon the Christian faith and to join their sect, she hurled herself into the fire. But this was killing herself intentionally; therefore. The question, then, is whether this was praiseworthy.

Some want to say that she acted rashly in not waiting for death to be inflicted by an oppressor, but that she was excused by her ignorance — so that it was not lawful and laudable to throw herself into the fire, but she should have waited for others to throw her in, and that she was excused by ignorance. But it is better to say that the Divine law is plain and fair and does not employ sophisms. Thus, *I say* that God is not looking for sophisms and occasions of sin in order to condemn people. Therefore, *I say* that it was lawful and laudable that she would hurl herself into the fire and not wait for them. The reason is that she was going to die [anyway]. For what matter that she, about to die in an hour's time, might wish to hasten death before that? Therefore, that she should die now or an hour from now matters nothing with respect to God. Hence, we should be certain that she acted laudably, and that she did not cooperate in her own death, since that was already decreed by her oppressors. We read much the same about blessed Vincent, who did not wait to be thrown into the fire, but threw himself in — which was certainly a laudable deed, done to show both strengh of soul and that he was voluntarily suffering for Christ, when he was about to die. Thus, if someone who is about to be hanged puts the rope around his own neck, he is not committing sin.

5.— But from this argument *another doubt* arises: whether it is lawful for one condemned to death to anticipate his executioners by taking poison, for which kind of death he has been condemned, viz., that he take poison — at least among the Athenians for whom it was the custom that poison be given to felons. It seems that it would not, for it would not be lawful to cut one's throat, and so neither would it be lawful to drink poison.

I answer that it would first be necessary to see whether those laws about giving poison are just; and if they are, it is certain that it would be lawful to drink it. Since, therefore, that law existed not among barbarians, but within a well ordered republic,[162] we can say it was lawful for him to drink poison when he was condemned to death.[163] — *But the opposite seems true*: because such a person is actively killing himself. — *I answer* that, especially in a moral matter, it is necessary to look for equity and not to resort to sophisms. There-

habeat active vel passive, nam tam homicida esset habendo se passive sicut habendo se active. Patet. Si ipse exspectaret lapidem molarem cadentem, ita operaretur ad suam mortem sicut si illum lapidem acciperet supra se et se interficeret. Sic nihil refert quod ego manu mea accipiam venenum et bibam illud, vel quod alius illud infundat in os meum, quando lex est justa. Et sic dico quod Socrates inter Athenienses, si juste fuit damnatus, bene fecit sumendo venenum. Sicut si aliquis esset damnatus ad hoc quod praecipitetur in flumen, que le ahoguen, nihil refert quod ipse exspectet quod praecipitetur, vel quod ipse praecipitet se. Hoc modo potest dici. Si dicatis oppositum, scilicet quod nullo modo licet active se habere nec potare venenum, dicas quod nullus debet subire poenam aliquam quousque illa infligatur ab aliis. Sed melius est dicere primo modo.

6. — Quarto arguitur: Existens in extrema necessitate, potest licite dare panem quem habet ad suam vitam servandam patri suo, vel saltem proximo suo, ut regi patienti similem necessitatem; sed ob hoc interficit se: ergo licitum est alicui interficere seipsum.

Respondeo concedendo antecedens, quod licet dare alteri panem mihi necessarium ad evadendam mortem. Sed nego quod hoc sit occidere se, quia non occidit se ex intentione, sed per accidens per hoc [quod] subvenit proximo. Unde quidquid sequatur, est licitum, quia non ex intentione occidit se, immo multum dolet quod moritur, et non potest esse superstes.

7. — Ex hoc oritur dubium. Simus v. g. viginti in naufragio, ita quod sumergitur navicula quae non potest sustinere nisi decem. An liceat aliis decem praecipitare se in mari ut alii decem salventur. Vel mittatur sors inter omnes viginti qui sunt in illa navicula, et sit casus quod sors ceci- /295/ dit super illos decem. Tunc si praecipitent se, est licitum; et hoc est occidere se; ergo.

Respondetur. Aliqui dicunt quod si servent rigorem sui juris, non est licitum praecipitare se in mari, sed debent exspectare ut alii praecipitent illos. Certe videtur quod alii facerent illis injuriam. Ideo dico quod ex pacto licet illis se praecipitare. Praesertim si ibi esset servus et dominus, licet servo praecipitare se propter salutem domini. Sic si sit filius et pater, vel unus privatus homo et una persona publica. Dico ergo quod licet illis decem praecipitare se in mari ut alii decem salventur. Patet, quia sicut licet mihi praecipitare me in mari ut non pereat pater sed salvetur, ita ergo in illo licet illis decem praecipitare se in mari ut alii salventur, quia tollere vitam est malum temporale et non spirituale.

fore, *I say* that it makes no difference whether he is active or passive, for he would be as much a killer whether he is passive or active. This is clear: for if that man were to wait on a falling millstone, he would be working toward his death just as if he were to take that stone upon himself and kill himself. So, when the law is just, it does not matter whether I, with my own hand, take poison and drink it, or that someone else pour it into my mouth. Thus *I say* that, if among the Athenians Socrates was justly condemned, he did the right thing in drinking poison. So, if someone were condemned to be thrown into a river, "which would drown him,"[164] this now can be said: it does not matter whether he waits to be thrown or that he throws himself. If you say the opposite, namely, that in no way is it lawful to be active and drink the poison, you ought to say that no one should submit to any punishment until it is inflicted upon him by others. But it is better to speak in the first way.

6. — *The fourth argument*: Someone in dire necessity can lawfully give bread, which he needs to preserve his own life, to his father, or even to his neighbor, for instance, to a king suffering a similar necessity. But because of this he is killing himself; therefore, it is lawful for someone to kill himself.

I answer by conceding the antecedent, that it is lawful to give to another bread which I need in order to avoid death. But I deny that this is killing oneself, for such a one is not killing himself intentionally, but by accident through helping a neighbor. Hence, whatever may follow is lawful, since he is not intentionally killing himself. Indeed, it pains him greatly to die and be unable to survive.[165]

7. — From this *a doubt* arises. Let there be, for example, twenty of us in a shipwreck, in such way that a lifeboat (*navicula*), which can hold only ten, is sinking. Would it be lawful for ten to throw themselves into the sea so that the other ten might be saved? Alternatively, lots may be cast among the whole twenty in the lifeboat with the chance that the lot fall on those ten. Then if they throw themselves in the sea, it is lawful; but this is to kill themselves; therefore.

In answer, some say that if they keep strictly to their own rights (*si servent rigorem sui juris*),[166] it is not lawful to throw themselves in the sea, but they should wait for others to throw them in. It seems [however] that the others would [thus] certainly do injury to them; therefore, *I say* that by consent it is lawful for them to throw themselves in. Particularly, if in that situation they are slave and master, it is lawful for the slave to throw himself in to save his master. It would be the same if they are son and father,[167] or a private man and a public person. Therefore, *I say* that it is lawful for those ten to cast themselves into the sea in order that the other ten be saved. This is clear, for just as it is lawful for me to throw myself into the sea in order that my father not perish but be saved, so therefore in that case it is lawful for the ten to throw themselves into the sea in order that the others be saved, because to destroy life is a temporal, and not a spiritual, evil.[168]

8.— Praeterea arguitur: Si sit aliquis damnatus ad inediam, utputa est aliquis comprehensus en un algibe, y danle a comer por onzas ut sic abbrevietur vita. Tunc quando juste est condemnatus, licet illi habito pane non comedere panem. Patet, sicut licet ferre patienter sententiam illam, sic licet ei hoc facere; et sic faciendo interficit se ex intentione: ergo.

Respondetur quod licet varie ad hoc dici soleat, tamen malim tenere quod tenetur comedere, quia non est damnatus ad hoc quod non comedat per sententiam; quia si sic, jam sententia esset iniqua quae diceret quod si haberet panem, non comedat. Et cum in sententia solum habeatur quod condemnatur ad inediam, videtur quod si habet panem, teneatur comedere, et sic male facit non comedendo. Nec est simile de hoc casu et de aliis, eo quod in aliis, sive illud faciant, sive non, id est sive praecipitent se sive non, nihilominus absque dubio morientur. Sed in hoc casu non ita est, quia si non comedat, certum est quod morietur, alias non moriturus si comedat, et ideo tenetur comedere.

9.— Sed est dubium de damnato in carcere ad mortem, qui licet bene faceret fugiendo, an tamen teneatur fugere si potest. Videtur quod sic, quia alias cooperatur morti suae exspectando. Sed de hoc inferius dicemus. Pro nunc dico quod licet sit licitum fugere, non tamen tenetur fugere, etiamsi videat carcerem apertum. Nec hoc est occidere seipsum, sed patienter ferre sententiam latam pro suo crimine. Et per hoc potest responderi ad multa alia, utpote ad illud quod solet argui, quia licet navigare cum periculo mortis: ergo et occidere se. Probatur, quia ponere se in periculo occidendi alium, et occidere alium, pro eodem reputantur. Ad hoc dico, distinguendo antecedens. Cum periculo manifesto et imminente pro negotio particulari ad augendum rem familiarem, non liceret navigare. Sed pro bono reipublicae, ut v. g. liberetur communitas, vel pro /296/ fide, bene liceret. Nihilominus cum periculo probabili mortis bene liceret navigare pro negotio particulari, id est quando periculum est ordinarium sine quo non potest fieri navigatio, licitum est navigare. Secus enim perirent contractationes. Quia tunc dant operam rei licitae, scilicet ad augendam rem familiarem; non enim dant operam morti.

Et ad illud quod solet argui: quia licet exerceri officia militaria, utputa justas y torneos; et tamen ibi est periculum mortis: ergo. Ad hoc dico quod illa exercitia expediunt reipublicae ut strenue se gerant milites in bello; etiam pro bono reipublicae. Nec tamen est ibi manifestum periculum mortis, sed raro et de per accidens sequitur. Unde dico quod licite exercentur, quando non est

8.— *Furthermore it is argued*: If someone is condemned to hunger, as for instance if someone is confined "in a cistern, and they feed him very little,"[169] so that in this way his life will be shortened, then, when he has been justly condemned, it is lawful for him, even if he has bread, not to eat it. This is clear: just as it is lawful for him to patiently bear that sentence, so it is lawful for him to do this. And in doing so, he is intentionally killing himself. Therefore.

The *answer* is that although it is usual to speak to this in different ways, I, however, would prefer to think that he is obliged to eat. For by the sentence he has not been condemned to not eating; because if that were the case, then the sentence would be sinful which would say that though he had food he should not eat. And since in the sentence there is only a condemnation to hunger, it seems that if he has bread, he is obliged to eat, and thus he is acting badly in not eating.[170] Nor is there similarity between this case and the others, for in the other cases, whether they do it or not, that is, whether they throw themselves into the sea or not, they will still without doubt die. But in this case that is not so, because if he does not eat, it is certain that he will die, while, on the other hand, if he eats, he will not die; and therefore, he is obliged to eat.

9.— But there is *doubt* about someone in prison who is condemned to death — even though he might be acting rightly to flee, still, is he obliged to flee if he can? It seems that he is, for, otherwise, he is cooperating in his upcoming death.[171] About this we will speak below,[172] but for now *I say* that even though it is lawful to flee,[173] he is not, however, obliged to do so, even if he sees the prison door open. And this is not to kill himself, but rather to patiently bear the sentence imposed upon him for his crime.[174] Moreover, through this it is possible to answer many other arguments, such as the common contention that because it is lawful to navigate with the risk of death, it is therefore lawful also to kill oneself. This is proven, because to place oneself in danger of killing another, and to kill that other, are judged to be the same. To this *I reply* by distinguishing the antecedent. It would not be lawful to sail, in face of an obvious and imminent risk, on a private enterprise in order to increase one's family fortune. But it would indeed be lawful to sail for the good of the republic, v.g. that the community be saved,[175] or for the Faith.[176] Moreover, it would be very lawful to sail on private business, in face of reasonable danger — that is to say, it is lawful to sail when that danger is of the ordinary kind without which there can be no sailing — for, otherwise, trade and commerce[177] would perish. [Furthermore, it is lawful] inasmuch as in that case [those sailing] intend a lawful thing, namely to increase their family fortune, and they are not looking for death.

And in reply to the common argument, which is: "It is lawful to engage in military exercises, such as jousts and tournaments,[178] although there is danger of death in them; therefore ... " — *I say* that those exercises are useful for the republic in order that its soldiers act vigorously in war for the good of the

periculum imminentis mortis. Et ita de cursu taurorum, quia si sequitur periculum, est de per accidens.

Et ad illud: si aliquis est dives et captivus, non volens aliquid dare ut liberet se a morte, videtur quod cooperetur morti: ergo. An ergo teneatur aliquid dare ut non occidatur. Respondetur quod non, nec ideo occidit se ex intentione, immo nollet mori, nec dat operam rei illicitae, quia alteri imputabitur et non sibi.

10.— Ultimo arguitur: Ad vitandum peccatum mortale licet se occidere. V. g. si aliquis sollicitat virginem, quae habet pro certo quod consentiet et peccabit mortaliter. Huic virgini licet interficere se ut liberet a peccato mortali, cum minus damnum sit incurrere damnum corporale quam spirituale. Ergo licet occidere seipsum.

Respondetur quod non licet occidere se, quia si consentiat, erit ex libertate sua. Itaque dico quod propter hoc absolute non licet homini occidere se, quia quod peccet, sequitur ex malitia hominis, possetque evitare. Unde mors corporalis nunquam est necessaria ad vitandum peccatum mortale. Dico ergo primo, quod nunquam licet alicui ex intentione occidere se, scilicet volo mori. Secundo dico, quod de per accidens bene licet, ut quando quis dat operam rei licitae, si ex illo sequatur mors, non est peccatum, quia non dabat operam morti; sicut si ex hoc quod subvenio patri meo, mihi evenit mors, licite facio.

11.— Pro quo etiam est notandum, ut admonet sanctus Thomas *Prima secundae*, quod dupliciter aliquid est voluntarium: uno modo, formaliter, sicut quod aliquis vult comedere, legere; alio modo, virtualiter, ita quod nolo, sed est in potestate mea vitare et non vito, ut quando possum evitare et impedire mortem et non impedio. Et dicit quod ad hoc quod aliquid sit voluntarium virtualiter, non solum requiritur quod possit quis illud impedire, sed etiam quod teneatur illud impedire; ita quod qui potest impedire et tenetur impedire malum, si non impediat, dat operam /297/

tali malo. Sicut v. g., submersio navis tempore tempestatis non est voluntaria nec imputatur illi qui, licet poterat illam evitare, non tamen tenebatur. Sed de nauta qui deserit navim tempore tempestatis, est dicendum quod illa submersio vocatur virtualiter voluntaria, id est volita, quia licet nauta nollet submersionem illam, tamen quia poterat vitare illam et tenebatur vitare, ideo est voluntaria virtualiter. Sic in proposito: si quis non tenetur impedire mortem, licet non impediat et sequatur mors, non est voluntaria illa mors et per consequens non peccat; sicut quando solum habeo panem necessarium ad vita[m] meam

republic. But neither is there in this any obvious danger of death, for only rarely and by accident does death follow.[179] Hence, I say that these exercises are lawful, when they do not entail an imminent danger of death.[180] And the same is true of bull fights,[181] for if they entail danger it is by accident.[182]

And in reply to the argument: "If some rich man is a captive, and he is not willing to give anything to be saved from death, it seems that he is cooperating in his death; therefore" — the question is whether he is obliged to give something in order not to be killed? The answer is no, and therefore he is not intentionally killing himself. Certainly, he does not want to die, and it is not he who intends anything unlawful, for the deed will be imputed to another and not to him.

10.— Finally, it is argued: In order to avoid mortal sin, it is lawful to kill oneself. For example, if someone were to solicit a virgin, who knows for certain that she will consent and sin mortally, it is lawful for that virgin to kill herself in order to save herself from mortal sin, since it is less to suffer a corporal loss that a spiritual one. Therefore, it is lawful for her to kill herself.

The *answer* is that it is not lawful for her to kill herself, because if she consents, it will be of her own free will. Therefore, *I say* that for this reason it is absolutely unlawful for a man to kill himself, because the fact that he will sin follows from human malice and he could avoid it. Hence, the death of the body is never necessary in order to avoid mortal sin. Therefore, *I say first*, that it is never lawful for anyone intentionally ([saying] that is, "I will to die") to kill himself. *Second, I say*, that accidentally it is indeed lawful — as when someone intends something lawful, if death follows from it, it is not a sin, because he was not intending death. For example, if from the fact that I go to help my father death comes to me, I am acting in a lawful way.

11.— With regard to this, it should also be noted, as St. Thomas in the First Part of the Second Part of his *Summa* advises,[183] that there are two ways in which something is voluntary: in one way, *formally*, as when someone wills to eat or to read. In a second way, *virtually*, such that I do not will, but it is in my power to avoid and I do not avoid, as when I can avoid and impede death and I do not do so. And he says that in order that something be virtually voluntary, not only is it required that someone can impede it, but also that he be obliged to impede it — so that he who can impede and is bound to impede an evil, if he does not impede it, intends that evil. For example, the sinking of a ship in a storm is not voluntary nor is it imputed to one who, although he could have avoided it, was not, however, obliged to do so. But with respect to a sailor, who deserts a ship in a storm, it must be said that its sinking is called virtually voluntary, that is willed. For, although the sailor would not will that sinking, nevertheless, because he both could and was bound to avoid it, it is therefore virtually voluntary. Similarly in the case proposed, if someone is not obliged to impede death, granted he does not impede it and death follows, that death is not voluntary and consequently he does not sin. So also, when I

servandam, et subvenio patri extreme indigenti, et ego morior, non est a me virtualiter volita mors nec pecco, quia tenebar subvenire patri meo in extrema necessitate. Sic potest subvenire regi existenti in extrema necessitate, omisso patri existenti in eadem necessitate, quia in illo casu non tenetur subvenire patri. Et sic illa mors non est illi voluntaria nec illi dat operam. Unde ex his patet quod haec consequentia nihil valet: iste potuit vitare submersionem navis, et non vitavit, ergo sibi imputabitur; quia oportet quod in antecedente dicatur hoc modo: iste potuit vitare submersionem navis, et non vitavit, et tenebatur vitare, ergo sibi imputabitur. Habemus ergo quod duplex est voluntarium, scilicet formaliter, et virtualiter, et quod nullo horum modorum licet alicui occidere se. Sed ad voluntarium virtualiter requiritur quod velit, et possit, et teneatur impedire malum.

12.— Sed dubitatur. Dato quod in nullo casu licet ex intentione occidere se, quaeritur an hoc praeceptum sit ita notum quod non possit ignorari, vel an in illo possit cadere ignorantia. Videtur quod sic, quia Brutus et Cassius et multi alii occiderunt se ne paterentur infamiam, et putabant melius et laudabilius facere quam in vita manere.

Ad hoc primo dicimus quod quantum est de se, male fecerunt et contra jus divinum. Sic beatus Augustinus damnat Lucretiam, quia seipsam interfecit. Arguit enim: si erat innocens, occidit innocentem, quod est peccatum; si erat adultera, cur laudatur? Secundo dico, quod illi excusati sunt per ignorantiam. Unde in illo potest cadere ignorantia, si alias essent boni viri.

13.— Restat respondere ad argumenta sancti Thomae. Vide illa. Circa quartum argumentum probat Thomas Waldensis quod fecerit Sanson instinctu Spiritus Sancti et praecepto et auctoritate divina, etiamsi hoc non inveniatur in scriptura sacra, quia satis est quod Dominus Deus elegerit eum et laudaverit sanctitatem ejus, et sat est quod beatus Paulus /298/ connumerat illum inter sanctos. Dato enim quod non legeremus praeceptum datum Abrahae de occisione filii, si tamen Abraham occideret illum, crederemus quod illud Deus illi praecepit. Ita de Sansone dicendum est.

Hoc bene dictum est. Sed an sit necessarium illum excusare? Videtur quod liceret Sansoni occidere se, etiamsi non praecepisset Dominus. Probatur, quia Sanson erat dux populi Dei, ideo pro illo licebat occidere se ut tam cladem faceret inimicorum. Licebat ergo interficere multitudinem philisthinorum ut liberaret patriam: ergo et seipsum.

have only as much bread as is needed to preserve my own life, and I give it to my father who is in extreme want, and I die, I am not virtually willing my death, and I do not sin, because I am obliged to help my father in extreme need. And so one can help his king, who is in extreme need, while neglecting to help his father in the same need, because in that case he is not obliged to help his father. So also that death is for him not voluntary, nor does he intend it. From this, then, it is clear that this consequence is invalid: that man could have avoided the ship's sinking and he did not do so, therefore it will be imputed to him. For it is necessary that in the antecedent it be stated this way: "that man could have avoided the ship's sinking, and he did not avoid it, and he was obliged to avoid it" — hence it will be imputed to him. *We hold*, therefore, that voluntary is said in two ways: namely, formally and virtually, and that in neither way is it lawful for someone to kill himself. But also to be virtually voluntary there is required that one will, and that one can impede as well as be obliged to impede, an evil.

12.— But there is *doubt*: granted that it is in no case lawful to kill oneself intentionally, the question is whether this precept is so evident that it cannot be unknown, or whether one can be ignorant of it. It seems that one can, because Brutus and Cassius, and many others, killed themselves lest they suffer disgrace, and they thought they were acting better and more laudably than by staying alive.

To this, first *let us say* that, absolutely speaking, they acted wrongly and against Divine law. In line with this, St. Augustine condemned Lucretia, because she killed herself. Thus he argued: if she was innocent, she killed an innocent person; if she was an adultress, why is she being praised?[184] *I say*, second, that they were excused through ignorance. For ignorance can enter into it, if otherwise they were good men.

13.— It remains to answer the arguments of St. Thomas. Look at them. With respect to the fourth argument, Thomas Waldensis (a.k.a. Thomas Netter [1375-1430]) reasoned that Samson acted on the impulse of the Holy Spirit, and by Divine command and authority, even if this is not found in Sacred Scripture. For it is enough that the Lord chose him and praised his holiness, and that St. Paul numbered him among the saints.[185] For, supposing that we would not have read the command given to Abraham to kill his son, if however, Abraham had killed him, we would believe that God commanded him to do that.[186] And so we should say about Samson.

This is well said. But is it necessary to excuse him? It seems that it would have been lawful for Samson to kill himself, even if the Lord had not commanded it. This is proven, because Samson was a leader of God's people; therefore, for that reason it was lawful for him to kill himself, to cause so great a destruction of their enemies. Thus, it was lawful to kill a host of Philistines in order to save his nation, and in consequence also to kill himself.

Item arguitur, quia I Machabaeorum 6 (vv. 44-46) excusatur Eleazarus qui omnino idem fecit, quia submisit se elephanto ut liberaret patriam; metiose debajo, et ipsummet interfecit ut inimicos etiam occideret. Iste licite et bene interfecit se interficiendo elephantum, ut dicit Augustinus. Ergo etiam Sanson licite fecit.

Respondeo quod ita credo, quod liceret ei se occidere, etiam sine praecepto divino. Sed non dubitamus quin Sanson instinctu Spiritus Sancti illud fecit, quia quando accepit columnas, non habebat vires naturales, et oravit Dominum ut restitueret sibi vires. Unde constat quod miraculose illud fecit ex instinctu Spiritus Sancti, postquam viribus naturalibus non poterat tollere columnas. Secundo dico quod etiam sine tali instinctu Spiritus Sancti liceret illi. Sicut Scaevolae licuit ire castra, quia non ex intentione, ita Sanson, quidquid sequeretur, voluit interficere illos, etiamsi sequeretur mors illius quam non intendebat. Hoc modo potest dici. Et sic de Eleazaro et de quolibet qui pro republica sic se interfecit, est excusandus.

Articulus sextus

Utrum liceat in aliquo casu interficere innocentem.

1.— Non quaerit an absolute et de se liceat, sed an in aliquo casu liceat. Ponit distinctionem, quod homo dupliciter potest considerari: uno modo, secundum se. Prima conclusio: Hoc modo non licet illum occidere, quia etsi sit peccator, nihilominus tenemur illum diligere.

Alio modo potest considerari in ordine et in comparatione ad alium. Secunda conclusio: Hoc modo bene licet illum occidere.

Tertia conclusio: quod nullo modo licet occidere innocentem.

2.— Sed dubium est an detur aliquis casus in quo liceat illum occide- /299/ re. Videtur quod sic, quia sanctus Thomas dicit quod hominem peccatorem licet occidere pro bono reipublicae; nec causa propter quam occiditur est peccatum, sed praecise bonum reipublicae: ergo etiam si expediat mors innocentis ad bonum reipublicae, licitum erit illum occidere, utputa si rex turcarum invadens regna christianorum, — quod Deus avertat — promittat quod nullum interficiet si ei tradatur innocens praedicator, qui praedicavit contra sarracenos, ut illum occidat, vel si petat quod ipsi illum occidant, videtur quod liceat illum occidere ad liberandum regnum vel civitatem. Confirmatur,

Again it is argued, because in I *Machabees* 6 (vv. 44-46), Eleazar is excused, who did exactly the same thing, inasmuch as he put himself under an elephant in order to save his country. "He put himself under,"[187] and he killed himself in order to also kill the enemy. As Augustine says,[188] in killing the elephant, he well and lawfully killed himself. Therefore, Samson also acted lawfully.

I answer that I also think it would have been lawful for him to kill himself, even without a Divine command. But we do not doubt that Samson did that on an impulse of the Holy Spirit, for when he grasped the columns he did not have his natural strength and he prayed the Lord to restore his strength to him. Thus, it is evident that he did this miraculously from the impulse of the Holy Spirit, when by his natural strength he was unable to bring down the columns. *I say*, second, that even without such impulse of the Holy Spirit, it would have been lawful for him to do so. Just as it was lawful for Scaevola "to go to the camp," because it was not intentional,[189] so Samson, whatever would follow, wanted to kill them even though his own unintended death would result. In this way, it can be said of Eleazar and of anyone else who has so killed himself for the republic: he should be excused.

Article Six

Whether it is lawful in some case to kill an innocent person.

1.— [St. Thomas] is asking not whether of itself and without any qualification [such killing] is lawful, but whether it is so in a particular case. He makes a distinction to the effect that a man can be considered in two ways: first, in himself as such, [which leads to] a first conclusion: It is not lawful to kill a man considered in this first way, because even though he is a sinner, we are still obliged to love him.

In a second way, a man can be considered in order and comparison to someone else, which leads to a second conclusion: It is indeed lawful to kill a man when he is considered in this way.

A third conclusion is that it is in no way lawful to kill an innocent man.

2.— But there is *doubt* whether there is some case in which it is lawful to kill that man. It seems that there is, because St. Thomas says that it is lawful to kill a sinful man for the good of the republic. And the reason for which he is killed is not his sin, but it is precisely the good of the republic. Therefore, also if the death of an innocent man is expedient for the good of the republic, it will be lawful to kill him. For example, if the sultan of the Turks, invading Christian kingdoms[190] — which may God turn away — were to promise that he would kill no one, if an innocent preacher, who had preached against the Saracens, were handed over to him that he might kill him, or if he asked that they kill him, it seems it would be lawful to kill him in order to save a king-

quia majus malum est quod omnes occidantur quam quod unus. Secundo, quia si peteret rex turcarum unum praedicatorem christianorum ad occidendum ut sic salventur omnes, liceret dare illum illi: ergo et occidere illum. Item, praedicator iste tenetur ponere vitam ut liberet patriam suam: ergo alii quare non possent ponere vitam illius et illum occidere? Item, quia pro salute totius corporis, non solum licet scindere membrum putridum, sed etiam membrum sanum; sic etiam pro liberatione totius reipublicae licebit, non solum nocentem, sed etiam innocentem occidere. Comparatur enim quilibet homo de republica ad totam rempublicam sicut membrum ad totum corpus, et ut dicit Aristoteles, homo quidquid est, est reipublicae, et plus reipublicae quam sui ipsius. Sicut ergo liceret abscindere membrum sanum pro salute totius corporis, ita ergo videtur quod liceat innocentem occidere pro salute totius reipublicae.

Ad hoc absolute respondeo, quod nullo modo licet innocentem occidere, nec invitum nec volentem. — Sed contra, quia vita hujus innocentis est necessaria ad salutem reipublicae. — Nego illud, quia illud est ex malitia alterius, scilicet turcae. Secundo dico, dato concedamus quod sit necessaria vita illius, tamen non licet illum interficere. Non enim est medium necessarium quod isti interficiant illum, quia de se est malum; et non sunt facienda mala ut inde veniant bona. Unde dico quod etiam in illo casu non est licitum, quia ibi, cum ex intentione sequatur mors innocentis, provenit ex malitia et dant operam rei illicitae qui illum interficiunt. Unde dico ad argumenta quod non est necessarium, quia essemus lictores turcae si innocentem interficeremus, et male faceremus. Sicut si turca diceret lictori suo: occide christianum, nisi [i. e., si non occidis], comburam totam civitatem, clarum est quod non liceret lictori occidere christianum ut turca non combureret civitatem. Ita nec aliis liceret occidere innocentem ut liberarent rempublicam. Sanson tamen et alii licite /300/

se interfecerunt, sed illud fuit utendo jure suo et dando operam rei licitae, scilicet defensioni reipublicae. Unde sic bene posset innocens mori; alias non. Et isto modo tenetur innocens se offerre morti defendendo rempublicam.

Et ad illud de membro respectu corporis, dico quod non est simile, quia membrum non potest pati injuriam, cum non habeat bonum proprium ad quod habeat jus. Sed homo potest pati injuriam, habet enim homo bonum proprium ad quod habet jus. Et sic dico quod bene licet abscindere manum, quia illa non de se patitur, sed homo, et quia illa est membrum et bonum

dom or a city. This is confirmed, because it is a greater evil for all to be killed than for one. [It is confirmed] second, because if the Turkish sultan were to ask for one Christian preacher in order to kill him, with the result that all would thus be saved, it would be lawful to give that man to him. Therefore, it would also be lawful to kill him. Again, that preacher would be obliged to lay down his life to save his country. So why could not others lay down that same man's life and kill him? Again, [it is confirmed], because for the health of the whole body it is lawful to cut off not only a rotted member but even one which is sound. So also for the freedom of the whole republic it will be lawful to kill not only a guilty person but even one who is innocent. For each man of the republic is compared to the whole republic as a member is compared to the whole body. And, as Aristotle says,[191] man, whatever he is, belongs to the republic, and more to the republic than to himself.[192] Therefore, just as it would be lawful to cut off a sound member for the health of the whole body, so it seems it would be lawful to kill an innocent man in order to save the whole republic.

To this *I reply* simply that it is in no way lawful to kill an innocent person, whether he is unwilling or willing.[193] — *But against this*, [it is lawful] because the life of this innocent is necessary for the salvation of the republic. — *I deny that*, because this situation obtains from the malice of another, viz., the Turk. Second *I say*, granted that the life of that innocent man is necessary for the salvation of the republic, nevertheless, it is not lawful to kill him. For it is not a necessary means that they kill him, since this is of itself evil and evil things should not be done in order that good things come from them.[194] Hence, *I say* that even in that case it is not lawful [to kill an innocent man], for, in that case, since the death of the innocent person follows intentionally, it results from malice and they who kill him intend an unlawful thing. Hence, to the arguments *I say* that it is not necessary; for we would be the Turk's executioners if we were to kill an innocent person and we would be acting badly. Thus if the Turk were to say to his executioner, "kill the Christian, otherwise [i. e., if you do not kill him], I am burning the whole city," it is clear that it would not be lawful for the executioner to kill the Christian so that the Turk would not burn the city.[195] In the same way, neither would it be lawful for others to kill an innocent person in order to free the republic.[196] At the same time, Samson and others lawfully killed themselves, but this was by exercising their right and intending a lawful thing, namely, the defense of the republic. Hence, in this way an innocent person could rightly die, but otherwise not. And in this way, an innocent person is obliged to offer his life in defense of the republic.[197]

And to the argument about the member in relation to the body, *I say* that it is not similar. For a member cannot suffer injury, since it does not have its own proper good to which it has a right.[198] But a man can suffer an injury, since a man has a proper good to which he has a right. So *I say* that it is indeed lawful to cut off a hand, for it is not the hand which of itself suffers, but

dumtaxat hominis, et non suiipsius. Sed innocens est bonum suiipsius et ipse dumtaxat patitur, et ideo non licet illum occidere.

3.— Sed secundo arguitur: quia rex potest mittere ad bellum innocentem militem, dato quod sit certus de morte ejus; sed illud est occidere innocentem: ergo. Ad hoc dico quod falsum est; quia rex non mittit militem de per se ut occidatur, sed ut debellet inimicos, et hoc licitum est. Si tamen possit evadere, evadat. Alias, quod moriatur, est utendo jure suo et dando operam rei licitae.

4. — Tertio arguitur, quia licet occidere innocentes in bello scienter, id est ex intentione: ergo. Probatur antecedens, quia licet indifferenter occidere omnes homines invadentes, inter quos sunt aliqui innocentes: ergo licet ex intentione occidere innocentem.

Respondetur quod in bello justo omnes praesumuntur nocentes. Sed haec solutio non satisfacit, quia non semper praesumuntur nocentes, immo multoties constat esse innocentes, praesertim quia non exspectat ad illos scire quod rex iniat bellum justum, et tamen tenentur ire, sive sit justum, sive injustum; immo si non venirent, peccarent mortaliter, quia tenentur patere praeceptis regis et aestimare quod bellum sit justum. Unde si imperator invaderet Galliam, Galli tenentur defendere regnum, quia non constat eis quod non liceat regi suo defendere regnum. Non solum ergo faciunt quod licet, sed quod tenentur facere. Ibi ergo multi innocentes occiduntur.

Ad hoc respondetur, distinguo: aut ex intentione, nego; aut de per accidens, concedo. De per accidens enim bene licet occidere innocentes, quia putatur innocens ex ignorantia. Unde de per accidens est innocens, et sic de per accidens licet occidere quia invadit tamquam nocens et tamquam hostis, licet putet se innocentem ex ignorantia; aliter enim non potest geri bellum justum. Sic etiam potest occidi innocens qui defendit rem meam ad quam capiendam habeo jus. Verum est quod haec est una causa propter quam valde timendum est de istis bellis quae geruntur inter /301/ christianos, quia grave est quod occidantur innocentes quando ex utraque parte sunt innocentes. Sed tamen quando aliter non potest recuperari res, licet occidere.

5.— Juxta hoc dubitatur an liceat occidere hujusmodi hostes quos scimus innocentes, quando illos occidere non est necessarium ad victoriam utputa quia jam victoria est obtenta. Sicut v. g., postquam vicimus Gallos, datur civitas in praedam. An tunc quando constat esse innocentes liceat illos occidere. Hic casus est communis in bellis christianorum, sed non in aliis bellis in

rather the man, and because the hand is a member and only a good for the man, and not for itself. But an innocent person is his very own good and alone he suffers, and therefore it is not lawful to kill him.[199]

3.— But, second, it is argued that the king can send an innocent man to war, certain that he will die; but this is to kill an innocent person; therefore. In answer, *I say* that is false. For a king does not send a soldier expressly that he be killed, but rather that he fight the enemy, and this is lawful. Nevertheless, if he can avoid [sending him], he should do so. But in the other event that he should die, [the king] is exercising his right and intending to do something lawful.

4. — Third, it is argued that in war it is lawful to knowingly, i.e., intentionally, kill innocent persons; therefore. The antecedent is proven: because it is lawful indiscriminately to kill all attackers, among whom there are some innocent men; therefore, it is lawful to intentionally kill an innocent person.

One answer is that in a just war all are presumed guilty. But this solution is not satisfactory, because they are not always presumed to be guilty. Indeed, oftentimes it is evident that there are innocent persons, especially inasmuch as it is not their place to know that the king is entering upon a just war, and still, they are obliged to go, whether it is just or unjust. In fact, if they would not go, they would commit mortal sin, because they are obliged to obey the commands of the king and to judge that the war is just.[200] Thus, if the Emperor were to invade France, the French would be obliged to defend their kingdom, because it is not evident to them that it may not be lawful for their king to defend his kingdom. Not only, then, are they doing what is lawful, but also what they are obliged to do. Therefore, in war many innocent persons are killed.

In answer to this, *I distinguish*: intentionally, *I deny*; by accident, *I concede*. For from an accidental condition it is indeed lawful to kill innocent persons. For someone is judged innocent from his ignorance (hence, from an accidental condition he is innocent), and thus from an accidental condition it is lawful to kill him, since he is attacking like a guilty enemy, even though from ignorance he thinks himself to be innocent. Were it otherwise, a just war could not be waged.[201] In this way also an innocent man can be killed who is seeking to retain my possessions which I have a right to take by force.[202] To be sure, this is one reason why we should be very much afraid of those wars which are waged among Christians, because it is painful that innocents on both sides be killed. However, when possessions cannot be otherwise recovered, it is lawful to kill.[203]

5.— In line with this, there is *doubt* whether it is lawful to kill enemies of this kind, whom we know are innocent, when it is not necessary for victory, for instance, because victory has already been achieved. For example, after we have defeated the French, a city is given for plunder — is it then lawful to kill them when it is clear that they are innocent? This is a common question (*casus*) in wars among Christians, although not in other wars in which all are

quibus omnes reputantur hostes. Et sic in bellis christianorum ubi omnes essent nocentes, quia ipsi moverunt bellum licet eos interficere facta victoria.

Ad hoc dico quod si non est necessarium ad victoriam et ad recuperandas res nostras, nullo modo licet, quia nullo modo licet occidere innocentem nisi de per accidens. Ubi tamen est facta victoria, et jam sunt in tuto, si occiderent innocentem, illud esset de per se et non de per accidens, scilicet pro defensione sua, cum jam sint in tuto. Tertio dico, quod etiam peracto periculo, quandiu non sunt in tuto nec sunt multum securi, tunc bene licet occidere innocentes qui praestiterunt auxilium et tulerunt arma, quia tunc illud fit propter defensionem. Timent enim quod innocentes tales, si maneant superstites, rebelabunt et facessent periculum in tali negotio, quia hinc ad annum invadent illos armis. Proceditur enim secundum allegata et probata; ab illis enim timetur periculum: ergo sunt nocentes. Quando tamen nullum est periculum, secus est.

6.— Sed contra hoc instatur, quia in bello sarracenorum licet occidere infantes; et tamen hoc est occidere innocentes ex intentione, quia constat illos esse sine usu rationis. Ita factum est, ut mihi significatum est, in bello Tunicensi a militibus germanis, que un alemán occidit infantem turcum.

Ad hoc posset quis male dicere quod illud licet quia timetur periculum, quod scilicet pueri quando ad provectiorem aetatem pervenerint, arripient arma et facient nocumentum. Sed haec solutio credo quod est falsa et non secura. Unde dico quod nullo modo licet occidere nec pueros nec mulieres in bello sarracenorum, nec in bello christianorum, quia constat ab illis nullum imminere periculum. Constat etiam illos nullo modo nocere. Secundo dico quod jure belli de per accidens licet innocentes pueros occidere, ut quando mittimus machinas contra muros et domos quibus machinis obruitur civitas, et pueri occiduntur, licet, quidquid ex illo sequatur, quia utitur jure belli volendo recuperare res suas.

7.— Ultimo arguitur. Licet expoliare innocentes, ut agricolas, quan- /302/ do constat esse innocentes, et etiam illos captivos ducere in bello justo; et tamen captivitas comparatur morti: ergo licet innocentem occidere. Etiam licet praedari ab innocentibus in bello justo, quia bona omnia reputantur reipublicae et tamquam si a republica auferentur.

Ad hoc respondetur quod hoc licitum est, sed hoc est de per accidens, nam de per se solum in rempublicam nocentem initur bellum. Sed cum innocentes sint membra reipublicae, ut nocumentum inferatur reipublicae, ideo captivantur innocentes et depraedantur. Sed ex hoc non sequitur quod liceat occidere ex intentione.

judged to be enemies.[204] And so, in wars among Christians, where all are guilty because they have made war, it is lawful to kill them when victory has been achieved.

To this, *I say* that if it is not necessary for victory and for the recovery of our possessions, it is in no way lawful, because it is in no way, except from some accidental condition, lawful to kill an innocent person. However, where victory has been achieved, and [the victors] are now safe, if they killed an innocent person, that would be direct [killing], and not by accident such as for their own defense, since now they are safe. *I say*, third, that even when the danger has passed, as long as they are not safe and are not quite secure, then it is indeed lawful to kill innocent persons who have given help and borne arms, because this is then done in defense. For they fear that such innocents, if they survive, will rebel and cause dangerous trouble — [say] that within a year they will attack them with weapons. For according to what is alleged and what is proven, it is argued: danger is feared from them; therefore they are guilty.[205] When, however, there is no danger, the conclusion is otherwise.

6.— But against this last, it is objected that in war with the Saracens it is lawful to kill infants. But this is to intentionally kill innocent persons, since obviously these infants do not have the use of reason. So it was done in the Tunisian war by German soldiers,[206] as it was told to me "that a German"[207] killed a Turkish infant.

To this someone could wrongly say that this is lawful because danger is feared: viz. that children when they get older will take up arms and will do damage. But *I think* that this answer is false and imprudent. Hence, *I say* that it is in no way lawful to kill children and women in war either with the Saracens or with Christians, because it is evident that from these there is no danger threatening. It is also evident that it is in no way lawful to harm them.[208] Second, *I say* that by the law of war, from some accidental condition, it is lawful to kill innocent children. For example, when we employ military machines, by which a city is overpowered, against walls and homes, and children are killed, it is lawful, whatever the consequence, inasmuch as one is exercising a right of war with the aim of recovering his possessions.[209]

7.— Last it is argued: in a just war it is lawful to despoil innocent people, for example, farmers, when it is clear that they are innocent, and even to take them as captives. But captivity is comparable to death. Therefore, it is lawful to kill an innocent person. It is also lawful in a just war to plunder the innocent, because all goods are judged as belonging to the republic and as if they will be taken from the republic.

The *answer* is that this is lawful, but only from an accidental condition. For war is directly waged only against a guilty republic. But since innocent persons are members of the republic, they may, therefore, be taken captive and despoiled, in order to inflict harm on that republic.[210] From this, however, it does not follow that it is lawful to kill them intentionally.[211]

Circa argumenta sancti Thomae, et maxime circa secundum, est difficultas communis, an liceat judici secundum allegata et probata interficere innocentem quem scit esse innocentem. Respondet quod sic, de quo infra, q. 67 facit quaestionem particularem. Ideo nunc supersedeo.

Articulus septimus

Utrum alicui liceat occidere aliquem se defendendo.

1.— Prima conclusio: Occidere invadentem non est illicitum. Ad probationem hujus conclusionis, praesupponit sanctus Thomas quod ex una operatione possunt provenire duo effectus, quorum unus est ex intentione operantis, alius praeter intentionem operantis. Sic ex defensione mea sequitur unus effectus per se intentus, scilicet defensio mea, et alius effectus est vulneratio invadentis, sed est praeter intentionem. Unde hic effectus, quia praeter intentionem, nec imputatur nec est culpabilis.

Secunda conclusio, quae est declarativa primae: Licet alium occidere ad defensionem suam. Intelligitur cum moderamine inculpatae tutelae, id est quod non faciam plus ad defensionem meam quam opus sit, ita quod si sufficit ponere clypeum, non debet stringi ensis nec habere alia arma.

Tertia conclusio: Etiam cum moderamine inculpatae tutelae, non licet intendere occidere hominem tamquam in vindictam ut seipsum defendat, id est requiritur quod non sit intentio interficiendi alium.

2.— Hic sunt multa dubia. Et primo circa conclusionem tertiam dubitatur quomodo intelligatur, utrum liceat intendere mortem invasoris quando alias non potest quis se defendere. Moderni dicunt quod sic. Et arguitur pro eis contra conclusionem: licet velle occidere invasorem: ergo licet intendere, quia non est aliud volitio quam intentio, quia intentio est actus voluntatis. Antecedens probatur. Quia cuicumque licet velle /303/ finem, licet velle medium necessarium ad finem; si enim licet velle navigare, licet conducere navim tamquam medium necessarium. Sed licet velle defendere me et servare vitam meam. Iste est finis; et judico quod non possum servare et defendere vitam meam nisi occidendo istum, quia hoc est medium necessarium ut suppono. Ergo licet velle interficere illum, quia alias occidet me nisi occidam illum.

Ad hoc respondendo ad rigorem possemus primo negare quod liceat velle occidere illum. Patet quia nunquam licet velle occidere aliquem privata auctoritate, nisi sit necessarium ad defensionem ipsius hominis; sed non est necessarium ad defensionem meam quod velim interficere: ergo non licet

With regard to the arguments of St. Thomas, especially the second argument,[212] there is a common difficulty: whether it is lawful for a judge, following what is alleged and what is proven, to kill a person whom he knows to be innocent. St. Thomas answers that it is, and below in question 67, he raises a particular question about this.[213] Therefore, I am now omitting it.[214]

Article Seven

Whether it is lawful to kill someone in self-defense.

1.— *The first conclusion*: It is not unlawful to kill an attacker. To prove this conclusion, St. Thomas supposes that two effects can follow from one operation, of which one is intended by the operator and the other is unintended. Thus, from my defense there follows one directly intended effect, namely, my defense itself, and another unintended effect which is the wounding of my attacker. And this last effect, because it is unintended, is not imputed to me nor is it blameworthy.[215]

The second conclusion, which is explanatory of the first: *It is lawful to kill another in self-defense*, is to be understood "within the bounds of blameless defense." That is to say, that I not do more to defend myself than is necessary, so that if it is enough to use a shield, a sword should not be drawn nor other weapons be used.

The third conclusion: even "within the bounds of blameless defense," it is not lawful to intend to kill a man, as in revenge while defending oneself. That is to say, it is required that there not be an intention to kill another.

2.— There are many *doubts* here. First, with respect to the third conclusion, there is doubt about how it is to be understood — is it lawful to intend the death of an attacker when there is no other way in which one can defend himself? "The moderns"[216] say yes. For them, the argument against the conclusion is: it is lawful to will to kill an attacker; therefore it is lawful to intend that, because willing is the same as intending, inasmuch as intention is an act of the will. The antecedent is proven: because for whomever it is lawful to will an end, it is lawful to will a means which is necessary for that end. For if it is lawful to will to sail, it is lawful to employ a ship as a necessary means. But it is lawful to will to defend myself and to save my own life. That is the end; and I judge that I cannot save and defend my life except by killing that attacker, for I am supposing that this is a necessary means. Therefore, it is lawful to will to kill him, since otherwise, if I do not kill him, he will kill me.

Responding to this with rigor, we could *first* deny that it is lawful to will to kill him. This is clear, because it is never lawful to will to kill someone by private authority, unless it is necessary for the defense of oneself. But that I would will to kill is not necessary for my defense. Therefore, it is not lawful to

velle occidere. Minor probatur, quia sufficit velle me defendere et velle ponere clypeum et pugnare: ergo non est necessarium velle occidere: ergo non licet. Et sic possumus retorquere argumentum contra illos. Et ad argumentum ipsorum possumus negare maximam, quod cuicumque licet velle finem, licet velle medium necessarium ad finem, quando ad consequutionem finis non est necessarium medium, ut in praesenti, quia non est necessarium velle occidere, sed satis est velle se defendere. Quando autem non solum medium est necessarium, sed etiam volitio medii, concedenda est maxima illa. Sed supposito quod non est necessaria volitio medii, licet sit necessarium medium; ut si ad salutem meam sit necessaria abscissio brachii mei, licet sit necessaria abscissio brachii, non tamen volitio illius abscissionis. Secundo, potest dici negando quod bene iudicet esse necessarium quod occidat illum ad sui defensionem, quia falsum est quod sit semper necessaria occisio alterius ad defensionem meam, quia sufficit debilitare illum abscindendo membrum et extenuare vires ejus, amortecello.

Sed quia Deus non respicit ista sophismata, ideo aliter respondetur concedendo quod, sicut licet scienter occidere, ita licet velle occidere invasorem in casu illo. Si enim qui se defendit non habeat alia arma sino un arcabuz, tunc clarum est quod non potest se defendere nisi occidendo. Ergo etiam licet velle occidere. Et quando ultra arguitur: ergo licet intendere: nego consequentiam, quia differentia est inter electionem et intentionem, quia intentio est ejus quod per se intentum est ut finis. Sic ergo non licet propter se intendere mortem alterius, sed solum facere totum quod probabiliter potest ad defensionem suam. Sic etiam infirmus propter salutem vult abscindere brachium, sed non hoc intendit, cum non vellit de per se quod abscindatur brachium. Et breviter, ne in hoc maneat scrupulus, dicimus quod totum quod est necessarium ad defensionem, totum illud licet velle, sed non intendere. /304/

3.— Sed juxta hoc dubitatur an hoc sit generaliter verum, quod licet alicui invasorem semper occidere defendendo se. Et intelligimus semper de invadente injuste et sine causa. An ergo regem qui me invadit injuste liceat occidere; an patre invadente filium, liceat filio occidere patrem defendendo se. Videtur quod non, quia rex est persona publica. Etiam, cum ex illo sequatur magnum scandalum in regno et turbabitur respublica. Et praeterea, quia quilibet tenetur ponere vitam pro rege, quia teneor defendere regem cum periculo vitae meae.

will to kill. The minor is proven: because it suffices to will to defend myself and to will to use my shield and to fight. Therefore, it is not necessary to will to kill, and, hence, it is not lawful. Thus, we can turn the argument back against them, and answering their argument we can deny the maxim — that to whomever it is lawful to *will* an end, it is lawful to will a means necessary for that end — in the present case, when the means is not necessary for the attainment of the end. For it is not necessary to will to kill, but it is enough to will to defend oneself. When, however, not only the means is necessary but also the willing of the means, then the maxim should be conceded. But, on a supposition that the willing of the means is not necessary, even though the means itself is necessary — as when to save my life the amputation of an arm is necessary, the necessary amputation of the arm is lawful, but not the willing of that amputation. In a *second* way, one could respond by denying that he is rightly judging that it is necessary to kill that man in order to defend himself. For it is false that the killing of another is always necessary to defend myself, because it is enough to weaken him by cutting off a member and to reduce his strength, "to disable him."[217]

But because God has no regard for such sophisms, there is another answer which is to concede that just as it is lawful to knowingly kill an attacker, so it is lawful to will to kill in that case. For if someone defending himself has no other weapon "but an arquebus,"[218] then it is clear that he cannot defend himself except by killing [his attacker]. Therefore, it is also lawful to will to kill. And when it is further argued: therefore, it is lawful to intend to kill — I deny the consequence. For there is a difference between a choice and an intention, because an intention is of that which is directly intended as an end. In this way, then, it is not lawful to intend as an end in itself the death of another, but only to do all that can reasonably be done for one's own defense. So also a sick man on account of health wills the amputation of an arm, but he does not intend this, since he does not will that the arm be cut off as an end in itself. Briefly, lest there still be any scruple in this, *we say* that it is lawful to will, but not to intend, all that is necessary for defense.

3.— But in line with this, there is *doubt* whether this is generally true: that it is always lawful for someone defending himself to kill his attacker. And we are understanding this always about one attacking unjustly and without cause. Thus, is it lawful to kill [my] king who is attacking me unjustly? Or if a father is attacking a son, it is lawful for the son to kill the father in his own defense? It seems that it is not, for the king is a public person. Also, [it seems not], since from that there would follow great scandal in the kingdom and the republic will be thrown into disorder. Moreoever, [it seems not], because everyone is obliged to give his life for his king, for I am obliged to defend the king at the risk of my own life.

Respondetur ad hoc quod absolute loquendo, id est si solum ponamus quod est rex, ita quod non veniat periculum in republica ex occisione regis, scilicet turbatio et bellum in regno etc., tunc bene licet subdito defendere se a rege injuste invadente et illum occidere, quia rex non habet jus ad sic invadendum innocentem. — O contra, quia quilibet tenetur ponere vitam pro rege.— Quando est necessarium, concedo; sed in casu non est necessarium, quia potest me permittere vivere in pace. Et quando non est necessarium, non tenetur quis ponere vitam pro rege. Sed ubi sequitur magnum malum in republica et turbatio, et insurgerent bella, sequitur occisio multorum, tunc debet permittere se interimi a rege, postquam respublica esset in periculo; quia si rex moreretur, sequeretur bellum et turbatio in regno, ut suppono.

Sed de patre, quando me invadit, quid debeo facere? Respondetur quod pietas magna esset in filio non defendere se et patienter ferre mortem a patre. Sed an filius teneatur ad servandum hanc pietatem, scilicet non defendere se et non occidere patrem, respondetur quod credo quod non, sed quod potest illum occidere quando aliter non se potest defendere, non magis quam si esset extraneus invadens. Sicut ergo licet occidere alium extraneum, ita et patrem, quia non majus jus habet in hoc pater in filium quam alius extraneus.

4.-Dubium majus est, an teneatur quis defendere se ab invadente occidendo illum; an ergo teneatur quis occidere latronem vel alium invadentem se, quando aliter non se potest ab illo defendere.

Opiniones sunt de hoc. Aliqui tenent quod tenetur se defendere et conservare vitam. Probatur. De jure naturali tenetur conservare vitam; sed occisio illius est medium necessarium et licitum ad conservandum illam: ergo. Item, quia alias videtur occidere se, sicut qui habet panem ad conservandum vitam et non vult sumere. Sicut ergo licitum est comedere panem necessarium ad conservationem vitae, ita ergo videtur quod sit licitum illum occidere.

Oppositum tenet Cajetanus, et est communis opinio quam puto veram, /305/ intelligendo quando occisio est necessaria, quod non tenetur quis pro privata persona, scilicet pro se occidere alium invadentem injuste. Probatur. Quia aliquando martyrium est de consilio et non semper est in praecepto; sed multi patienter tulerunt martyrium de consilio, sicut martyres milites possent defendere se cum essent decem millia martyrum, et tamen noluerunt se defendere: ergo non tenebantur se defendere. Item, quia illa maxima, quod quilibet tenetur servare vitam quando habet medium necessarium et licitum ad illum, multoties est falsa. Si enim esset captivus rex [*lege* dux] Albanus, et non posset aliter redimi a morte nisi dent totum suum majoricatum, clarum

The *answer* to this is that absolutely speaking, that is if we stipulate only that he is the king, in such way that there would be no danger resulting to the republic from his being killed, such as disturbance and civil war etc., then it is indeed lawful for a subject to defend himself against the king unjustly attacking him and to kill him, because the king has no right to attack an innocent man in this way.[219] — *Against this* it is argued that everyone is obliged to lay down his life for his king. — When it is necessary, *I concede*; but in this case, it is not necessary; for he can let me live in peace. And when it is not necessary one is not obliged to give his life for the king. But where great evil and disturbance follows in the republic, and wars would break out, with the killing of many ensuing, and the republic would thus be in peril, then he ought to allow himself[220] to be killed by the king. For, as I am supposing, if the king would die, there would follow war and disorder in the kingdom.

But about my father attacking me, what should I do? One answer is that it would be great piety[221] in a son not to defend himself and to patiently bear death at the hands of a father. But is a son obliged to observe such piety, that is, not defend himself and not kill his father? In answer, *I think not*. Rather, he may kill him, not less than if he were an attacking stranger, when he cannot defend himself otherwise. Therefore, just as it is lawful to kill some stranger, so it is also lawful to kill one's father, because a father does not in this have a greater right against his son than does a stranger.

4.—There is a *greater doubt*: whether someone is obliged to defend himself against an attacker by killing him? Thus, is one obliged to kill a robber or some other attacking him, when he cannot otherwise defend himself from that person?

There are [different] opinions about this. Some maintain that he is obliged to defend himself and to preserve his life. This is proven: He is bound by natural law to preserve his life; but killing his attacker is a necessary and lawful means for preserving his life; therefore. Also, [he is obliged], because otherwise he seems to be killing himself, just as one who has food to preserve his life and wills not to eat it. Therefore, just as it is lawful to eat bread which is necessary for preserving life, so therefore it seems that it is lawful to kill him.

Cajetan holds the opposite,[222] and this is the common opinion which *I think* is true, understanding that when a killing is necessary, one is not just a private person, killing on his own another who is unjustly attacking him. This [i.e. the common opinion] is proven: because sometimes martyrdom is a matter of counsel and it is not always commanded. But many have patiently suffered martyrdom as a matter of counsel. For example, the martyred soldiers could have defended themselves, since there were ten thousand of them, but they were unwilling to do so.[223] Therefore, they were not obliged to defend themselves. Again [it is shown], because that maxim, that everyone is obliged save his life when he has a necessary and lawful means to do so, is oftentimes false. For if the Duke of Alba were a captive, and he could be

est quod non tenetur dare, sed quod potius licet mori. Sic etiam qui habet panem necessarium ad conservandum vitam suam, potest dare patri vel amico et patienter amplecti mortem. Item, qui est in carcere damnatus ad mortem, licite potest fugere et liberare se a morte, quia habet medium necessarium ad conservandum se, scilicet carcerem apertum; et tamen non tenetur fugere, sed patienter ferre mortem licet: ergo. Item, licet pro amico in mari ponere vitam meam, dando illi tabulam ut evadat periculum submersionis et mortis, me manente in illo; sic etiam pro patre possum ponere vitam et pro amico. Ergo etiam pro inimico, licet plus pro amico, quia quod sit inimicus meus non tollit a me libertatem quin possim non occidere illum. Dico ergo quod non tenetur se defendere ab inimico invadente injuste, sed quod licite potest permittere se occidi quando aliter non potest se defendere nisi occidendo invasorem, praesertim considerando malam vitam inimici, qui damnabitur si a me interficiatur. Et hoc confirmatur ex Hugone de Sancto Victore, qui putat esse praeceptum illud Pauli: *Non vos defendentes, fratres, sed dantes locum irae* (Rom. 12, 19).

5.— Sed contra hoc arguitur, quia plus tenetur quisque ex ordine caritatis diligere se quam proximum; patet, quia plus tenetur quis diligere propinquum quam extraneum: ergo plus tenetur ad conservationem propriae vitae quam alienae ex ordine caritatis.

Ad hoc respondetur: quando dicitis quod plus tenetur quisquam etc., dico, ex mente sancti Thomae, quod verum est in spiritualibus bonis, et alias non, quia in temporalibus potest quis cedere juri suo, et consulere bono spirituali proximi cum detrimento corporali. Unde quando non possum servare vitam meam sine periculo spirituali alterius, scilicet sine damnatione, licite possum non me defendere.

/306/

Secundo dico, quod licet omnino occidere furem invadentem, licet ad illud non teneatur. Et ad argumentum, quia non est praeferendum bonum corporale bono spirituali; sed ego quando occido latronem praefero vitam meam corporalem bono spirituali quod perdit propter mortem quia damnabitur: ergo: respondetur quod nihilominus illo non obstante, licet, quia bonum meum corporale non est necessarium ad bonum spirituale alterius; quia si alius non habet bonum spirituale, est ex sua malitia. Unde dato quod fur damnetur, hoc est ex culpa sua.

6.— Dubitatur consequenter, an etiam pro defensionem aliarum rerum temporalium liceat occidere invasorem, ut v. g. latronem quaerentem a me pecuniam.

redeemed from death only if he gave up his whole dukedom (*majoricatum*[224]), it is clear that he is not obliged to do that, but rather it is lawful for him to die. So also, one who has bread which is necessary to sustain his life can give it to his father or to a friend and can serenely embrace death.[225] Again, one who is in prison condemned to death, can lawfully flee and save himself from that death, inasmuch as he has the means necessary to save himself, namely, an open prison door. And yet, he is not obliged to flee, but he can with patience lawfully suffer death; therefore. Again, it is lawful to give my life for a friend, by giving him a plank to avoid the danger of death by drowning, while I remain in the sea. In the same way, I can also give my life for my father as for my friend.[226] Also, then, I can give it for an enemy, although more for a friend, because the fact that one is my enemy does not take away from me the liberty of being able not to kill him. *I say*, therefore, that one is not obliged to defend himself from an enemy who is unjustly attacking. But he can lawfully allow himself to be killed when he cannot defend himself except by killing his attacker — especially considering the evil life of the enemy, who will be damned if he is killed by me. And this is confirmed from Hugh of St. Victor,[227] who thinks that this is a commandment of St. Paul [when he says]: "*Not defending yourselves, brothers, but giving place to wrath*".[228]

5.— But against this it is argued that, from the order of charity,[229] everyone is more obliged to love himself than to love his neighbor. This is clear, because one is obliged to love someone near to him more than a stranger. Therefore, from the order of charity one is more obliged to preserve his own life than the life of another.

In reply to this, when you say that everyone is more obliged, etc., *I say*: according to the mind of St. Thomas,[230] that is true in spiritual goods, but otherwise not. For in temporal things someone can give up his right, and, with some corporal loss, look for the spiritual good of his neighbor. Hence, when I cannot preserve my life without spiritual harm to another, viz., without his damnation, I may lawfully not defend myself.

Secondly *I say* that it is completely lawful to kill a thief (*fur*) who is attacking, although one is not obliged to do so. And to the argument — that a corporal good should not be preferred to a spiritual good; but when I kill a thief (*latro*)[231] I am preferring my corporal life to the spiritual good he is losing inasmuch as in dying he will be damned; therefore — the answer is that, notwithstanding this, it is lawful — because my corporal good is not necessary here for the spiritual good of another. For if that other loses a spiritual good, it is from his own malice. Therefore, granted that a thief will be damned, this is his own fault.

6.— Consequently, there is doubt: whether, also in defense of other temporal goods, it is lawful to kill an attacker, as for example, a robber demanding money from me.

Respondetur quod non solum pro defensione vitae, sed etiam pro defensione rerum temporalium licet occidere invasorem, quia licet defendere pallium et quodcumque bonum temporale. Ita dicit Cajetanus, quia utitur jure suo, id est sibi licet: ergo quidquid sequatur, non ei imputabitur. Secundo dico, quod non est dubium nisi quod multo melius esset permittere se expoliari pallio vel pecunia, quam occidere furem et mittere illum in infernum. Et si res esset parva, ut ducatum, et pro defensione illius occideret latronem, non excusarem illum a peccato mortali, quia videtur contemnere vitam proximi. Si tamen sit magna res, ut viginti vel decem aurei, considerata qualitate personae, tunc liceret occidere. Et si arguas: quia praefero pecuniam vitae alterius: respondetur quod dato illo, licitum est quando pecunia mea non est necessaria ad vitam alterius. Unde tunc licet occidere. Sed hoc scilicet quod licet occidere illum, sane intelligendum est, quando videlicet alias non possum recuperare res meas nisi occidendo. Quia si cognoscerem istum qui vult a me capere pallium, et in judicio possem illud recuperare, tunc non liceret illum occidere.

7.— Est aliud dubium morale gravius. Si possum me defendere ab invasore fugiendo, an teneat fugere, vel an possem exspectare et occidere illum. Videtur dubium, quia si illum et meipsum possum liberare ne moriamur, videtur contra caritatem illum occidere et mittere in infernum, et sic videtur quod teneat fugere.

Respondetur quod quando per fugam venit sibi detrimentum, ita quod amitteret aliquid magnum, ut honorem, si fugeret, como si fuese un caballero, tunc non tenetur fugere. Praesertim si sit vir honestus de cujus honore agitur, esset magna denigratio suae famae, si fugeret. Certe videtur quod non teneatur fugere, quia majus detrimentum est inhonoratio in nobili quam amissio domus suae. Sed pro defensione domus suae ne alius diruat illam et ne perdat illam, potest occidere illum, ut jam dictum /307/ est. Ergo etiam ne perdat honorem. Secundo dico, quod si esset homo infimus ex cujus fuga non sequitur magnum detrimentum in fama, nec agitur multum de fama, tunc tenetur fugere. Tertio dico, quod si res sit parva propter quam alius invadit me, sunt v. g. duo aurei vel tres aurei, tunc tenetur fugere si potest, et non occidere illum; quia quomodo compatiuntur haec duo, scilicet quod ego diligam proximum sicut meipsum, et quod occidam eum pro parva re?

8.— Dubitatur consequenter, si conclusio Doctoris est vera, scilicet quod licet interficere invadentem, scilicet inimicum, an liceat illum praevenire et quaerere eum ad interficiendum et interficere. V. g., si ego essem homo pauper, et non haberem unde emerem satellites et commilitones, et inimicus meus

One answer is that it is lawful to kill an attacker not only in defense of life but also in defense of temporal goods, for it is lawful to defend one's cloak or any other temporal good. This is what Cajetan says,[232] for [such a one] is exercising his lawful right; therefore, whatever may follow, it will not be imputed to him. Secondly, *I say* that there is no doubt that it would be much better to allow oneself to robbed of a cloak or of money than to kill the robber and send him to hell. And if the matter were trivial, e.g., a ducat,[233] and one were to kill a robber in its defense, I would not excuse that person of mortal sin, because he apparently is holding the life of his neighbor in contempt. If, however, it is a large matter, such as ten or twenty gold pieces,[234] taking into account the rank of the person,[235] then it would be lawful to kill. And *if you argue*, that I am preferring money to the life of another, *I answer*: even granting that, it is lawful when my money is not needed for that other's life. Hence, it is then lawful to kill him. But this, that it is lawful to kill him, must certainly be understood as meaning when I cannot recover my possessions otherwise than by killing him. For if I knew [i.e. could identify] the one wanting to take my cloak[236] from me, and I could recover it in a [court] judgment, then it would not be lawful to kill him.[237]

7.— There is another *more serious moral doubt*. If I can defend myself by fleeing from an attacker, am I obliged to flee or can I stand fast and kill him? The doubt is evident, because if I can save myself and him without either of us dying, it seems uncharitible to kill and send him to hell, and thus it seems that I am obliged to flee.

The *answer* is that when by fleeing one would suffer damage, suchwise that, if he were to flee, he would lose something great, for example, honor, "as [would be the case] if he were a knight,"[238] then he is not obliged to flee. Especially if it is a man of honor whose honor is in question, it would be a great stain on his reputation, were he to flee. It seems certain that he would not be obliged to flee, because dishonor in a nobleman is greater damage than the loss of his home. But to defend his home, lest someone else destroy it and he lose it, he can kill that person, as has been said.[239] Therefore, he also may do so in order not to lose his honor.[240] *I say*, second, that if it were a man of lowest rank, from whose flight no great loss of reputation would follow, and who is not much concerned about reputation, then [such a one] is obliged to flee.[241] Third, *I say* that if it is a small thing for which another is attacking me, for instance, two or three gold pieces,[242] then, if it is possible, one is obliged to flee and not to kill him. For how are these two thing compatible, viz., that I love my neighbor as myself and that I kill him for a small thing?[243]

8.— Consequently, there is *doubt*: if the Doctor's [i.e. Aquinas'] conclusion is true, i.e., that it is lawful to kill an attacking enemy, would it be lawful to anticipate him and seek to intercept[244] and kill him? For example, if I were a poor man, and did not have the wherewithal to hire guards and allies, and my

esset nobilis vir vel dives, et scio quod ipse parat satellites et commilitones ad interficiendum me, tunc est dubium an liceat mihi praevenire et interficere illum, matalle antes que me mate.

Videtur quod sic, quia ego habeo jus ad defendendum me et vitam meam cum moderamine inculpatae tutelae; sed non est alia via ad defendendum me nisi praeveniendo ipsum, id est quaerendo ad interficiendum: ergo videtur quod liceat praevenire illum, id est quaerere et interficere.

In contrarium est quia daretur magna ansa hominibus ad interficiendum passim homines. Item, quia hoc nunquam versatur in usum. Item, nec auderet aliquis hoc praedicare et monere nec ad illud exhortari poenitentem ut sic praeveniat inimicum et occidat ipsum. Item, leges obligant in foro conscientiae; sed leges hoc prohibent: ergo non licet inimicum praevenire et interficere.

Respondetur ad hoc. Primo, quod certe est periculosum universaliter hic [sic?] loqui et daretur nimia licentia hominibus ad passim occidendum homines inimicos. Unde oportet cum moderamine et cautela loqui ne insurgant scandala, et ideo hoc nullatenus debet praedicari. Secundo dico, quod si iste habet medium aliquod ad defendendum vitam suam, scilicet fugiendo ad aliam civitatem, sine magno detrimento rei suae ubi erit tutus ab inimico suo, illud debet facere et non praevenire inimicum; quia sic praevenire illum non esset medium necessarium ad se defendendum cum moderamine inculpatae tutelae, cum alias possit defendere vitam suam. Tertio dico, quod si nullum aliud medium sit ut defendat vitam suam nisi praevenire interficiendo illum, utputa quando dato quod /308/ peragretur ad aliam civitatem, scit certitudine scientiae quod quaeret eum et interficiet, tunc licet praevenire et occidere. Et si arguas, quod nulli licet invadere alium; sed iste jam videtur invadere quando quaerit inimicum ad occidendum: ergo: respondetur quod illud non est invadere, sed potius est defendere se, immo alius invadit cum paret seipsum interficere. Unde de hoc non est dubium sic intelligeudo, scilicet quod non supersit aliud medium ad defendendum se nisi praeveniendo ipsum inimicum.

9.— Nota tertium argumentum, circa cujus solutionem adverte quod illud jus allegatum a sancto Thoma est jus antiquum, et sic solutio sancti Thomae procedit secundum jus antiquum. Sed nunc post tempus sancti Thomae fuit determinatum secundum jus novum in clementina unica de homicidio [*Si furiosus*], quod clericus qui interficit non valens aliter se defendere, non incurrit irregularitatem.

enemy were a noble or rich man, and I know that he is recruiting guards and allies to kill me, then the question is whether it is lawful for me to preemptively kill him, "to kill him before he kills me."[245]

It seems to be so, for I have a right to defend myself and my life "within the bounds of blameless defense." But there is no other way to defend myself except to anticipate him, that is to seek to kill him. Therefore, it seems that it is lawful to anticipate him, that is to seek and to kill him.[246]

Against this is the fact that it would give a great excuse to men everywhere to kill other men. Against it also is the fact that this is never put into practice. Again, neither would anyone dare to preach and advise this, nor to exhort a penitent to this that he should preemptively kill an enemy. Again, laws oblige in the forum of conscience;[247] but laws prohibit this; therefore, it is not permitted preemptively to kill an enemy.

To this, *I answer: first*, that it certainly is dangerous to speak so and too much licence would be given to men everywhere to kill their enemies. Thus, it is necessary to speak with moderation and caution lest scandals arise, and therefore, this should in nowise be preached. *Second, I say* that if the man has some [other] means to defend his life, such as flight to another city where, without a great loss of his property, he would be safe from his enemy, he should do that and not preemptively strike his enemy. For so to strike him would not be a means necessary to defend himself "within the bounds of blameless defense," since he could defend his life in another way. *Third, I say* that if there is no other means to defend his life except preemptively to kill his enemy, for example, when, supposing that he has journeyed to another city, he knows with scientific certitude that his enemy will seek him and kill him, then it is lawful to anticipate and kill the enemy. And if you argue: it is not lawful for anyone to attack another; but this man now seems to be attacking when he seeks to kill his enemy; therefore — the *answer* is that this is not to attack, but rather it is to defend oneself. Indeed, the other is attacking when he is preparing himself to kill him. Thus, there is no doubt about this, understanding it in such way that no other means to defend oneself remains except preempting the enemy.[248]

9.— Note the third argument.[249] About its solution, notice that the law alleged by St. Thomas is an ancient law,[250] and thus his solution proceeds according to ancient law. But now, after the time of St. Thomas, it has been decreed according to the new law in the single Clementine passage about homicide,[251] that a cleric who kills, when he is not able otherwise to defend himself, does not incur an irregularity.

Articulus octavus

Utrum aliquis casualiter occidens hominem incurrat homicidii reatum.

1.— Sunt multi casus contingentes, ut si quis scindens arborem in nemore, a casu, ad ruinam arboris puer transiens occisus est: an ille sit irregularis.

Doctor primo ponit unam conclusionem fundamentalem, quod quicumque ponit causam homicidii quam potuit tollere et tenebatur tollere et non tollit, tale homicidium est voluntarium et per consequens peccatum. Consequenter ponit distinctionem, quod dupliciter potest dare aliquis causam homicidii. Uno modo, dando operam rei illicitae, ut si quis sagittaret in loco ubi peragrantur homines et pueri, et sequatur homicidium, imputabitur ei. Alio modo, dando operam rei licitae et adhibita sufficienti diligentia ad hoc quod non sequatur homicidium. Et tunc si sequatur, illud praeter intentionem est et non imputabitur ei.

2.— Dominus Cajetanus sufficienter tractat istud articulum, et ex mente ejus nos ponemus aliqua dubia, notando prius, ut ipse notat, quod illud quod est intentum, nullo modo est casuale; ut si sarracenus sagittaret in nemore ad necandum feras, sed tamen vellet quod a casu transiret christianus ut interficiat eum, si sagitta interficiat christianum a casu transeuntem, erit reus homicidii. Secundo notandum etiam est ex illo, quod quantumcumque quis ponat causam homicidii, si tamen ex illa re non sequatur homicidium, tunc illud homicidium non imputabitur ei; ut /309/ si quis vulneravit aliquem male, et postea ille vulneratus mortuus est ex sua mala dispositione, et quia male se tractavit et rexit, puta quia percussus illo vulnere accessit ad meretricem, tunc homicidium non imputabitur illi qui vulneravit illum.

Sed arguitur contra istud secundum notabile, quia quicumque praeter intentionem facit aliquid cum periculo occidendi, si inde sequatur homicidium, ei imputabitur, quia peccat peccato homicidii, sive sequatur homicidium, sive non: ergo. Probatur, quia actus exterior nihil agit ad actum interiorem quo, dato quod sequatur homicidium, vel non sequatur, adhuc imputabitur homicidium. Respondetur pro Cajetano quod ipse intelligit homicidium causale non imputari ei, si ipse non fuit causa homicidii. Non tamen negaret Cajetanus quod si aliquis dat operam alicui actui ex quo vel sequatur homicidium, vel natum est sequi homicidium, quod iste non sit reus homicidii.

3.— Dubitatur. Si quis percussit aliquem qui ex vulnere mortuus est ex eo quod non vixit temperate, vel quia non quaesivit bonum chirurgum, an sit

Article Eight

Whether someone who kills a man by chance is guilty of homicide.

1.— There are many contingent events, e.g., someone cuts down a tree in a grove, and by chance a passing child is killed by the fall of the tree. Is then the one felling the tree irregular?

St. Thomas first lays down one basic conclusion: if anyone gives cause for a homicide, which he could have removed, and which he is obliged to remove and he did not, for him such a homicide is voluntary and consequently a sin. Accordingly, he posits a distinction to the effect that someone can give cause for a homicide in two ways. One way is by intending something unlawful, e.g., if someone were to shoot arrows in a place where men and boys are passing by and a homicide results, it will be imputed to him. A second way is when one intends something lawful, and uses sufficient diligence in order that a homicide not follow. Then, if it does follow, it is outside his intention and will not be imputed to him.

2.— Master Cajetan treats this article well enough,[252] and it is from his understanding that we will raise some doubts, noting first, as he himself notes, that something which is intended is not at all by chance. For example, if a Saracen were to shoot arrows in a forest in order to kill wild animals, but he were also to wish that a Christian would by chance pass by so that he might kill him, if an arrow kill a chance Christian passing by, he will be guilty of homicide. Second, it should also be noted that howevermuch anyone puts in place a cause of homicide, if the homicide still does not follow from that cause, then that homicide will not be imputed to him. For example, if someone has badly wounded someone else, and afterwards that person has died from his own bad inclination and because he has behaved and conducted himself badly, if, say, wounded he visited a prostitute, then the homicide will not be imputed to the one who wounded him.

But against this second point, an argument is made: that, intention aside, whoever does something with a danger of killing attached, if a homicide follows from that, it will be imputed to him; for he commits the sin of homicide, whether a homicide follows or not; therefore. This last is proven, because the external act adds nothing to the internal act,[253] from which, whether we suppose a homicide to follow or not, a homicide will still be imputed. On behalf of Cajetan, the answer is that he understands that a chance homicide is not imputed to one who was not the cause of that homicide. However, Cajetan would affirm that, if someone intends some action from which either a homicide may follow or a homicide is apt to follow, that man is guilty of homicide.[254]

3.— Here there is a doubt. Is someone irregular, if he has struck another, who died from the wound, because he had not lived in a temperate way or

irregularis. Cajetanus dicit quod non nec imputabitur homicidium. Sed probabilius puto quod sit irregularis, tum quia sufficiens fuit causa homicidii illius, tum quia non ex alio nisi ex ipso vulnere mortuus est, tum quia si percussus quaerit medicum et non invenit et interim moritur, alius qui percussit non est dubium quin sit irregularis. Secundo dico, quod si vulnus non esset letale sed parvus, quod etiam sanaretur absque alio medicamento, tunc, si quia apponit medicamentum noxium vel aliquid malum moritur, non incurritur irregularitas nec homicidii reatus, ut vidi semel contigisse, quod quis propter hoc ex parvo vulnere mortuus est.

4.— Sed dubitatur quomodo intelligitur distinctio Doctoris quam accepit a dominis juristis, scilicet vel dat operam rei licitae, et sic non imputatur ei homicidium, vel dat operam rei illicitae, et si sequatur homicidium, imputabitur ei. Istam distinctionem ponunt juristae generaliter, quod sive adhibeat diligentiam, sive non, dummodo det operam rei illicitae, si sequatur homicidium, incurritur irregularitas et homicidii reatus.

Sed contra hoc arguitur. Et primo, contra illud secundum membrum et secundum intellectum ut juristae intelligunt, scilicet quod qui dat operam rei illicitae, sive apponat sufficientem diligentiam, sive non, si sequatur homicidium, est irregularis. Arguitur sic: Ponamus quod quis scindat die festo unam arborem, et a casu transivit puer, quem arbor ruens interfecit. Tunc talis non peccavit alio peccato nisi peccato de non observatione festi, et non peccato homicidi: ergo.

/310/

Item arguitur. Volo quod quis velit diruere domum inimici ut sic interficiat inimicum, et ponatur diligentia ad hoc quod nullus transeat ne interficiatur, sed a casu transivit puer, et domus ruens eum interfecit. Iste non peccat peccato homicidii: ergo. Probatur, quia si iste diruerat domum suam, secundum hos juristas, adhibita eadem diligentia, non esset reus homicidii, et per consequens nec irregularis: ergo nec diruendo domum inimici.

Item, si quis clericus equitaret equum in via que va en posta, et a casu transivit puer et occidit ipsum, talis non est reus homicidii, ut recte sentienti patet: ergo.

5.— Ad hoc dominus Cajetanus dicit quod dupliciter possumus loqui de hoc homicidio casuali: uno modo, quantum ad culpam; alio modo, quantum ad irregularitatem. Primo, quantum ad culpam dico quod si ille qui dat operam rei illicitae, adhibeat sufficientem diligentiam, non plus peccat quam ille qui dat operam rei licite si adhibeat etiam sufficientem diligentiam. Itaque quan-

because he did not seek the help of surgeons? Cajetan says he is not and that a homicide will not be imputed to him.[255] But *I think* it more probable that he is irregular, because he was the sufficient cause of that homicide, because the man did not die from anything but that wound, and because if as soon as he was struck he sought a medical doctor and did not find one and died in the interim, there is no doubt that [the one who struck him] would be irregular. Second, *I say* that if the wound would not be lethal, but rather a small one, which would heal without any other medical treatment, then, if he dies because he uses some noxious or bad medicine — as I saw once happen, that someone died because of a small wound — an irregularity is not incurred, nor is [the one wounding him] guilty of homicide.

4.— But there is doubt about understanding Aquinas' distinction,[256] which he took from the legal masters,[257] namely, either one intends something lawful, and in that case a homicide is not imputed to him, or one intends something unlawful, and if a homicide follows, it will be imputed to him. The jurists posit this distinction in a universal way, so that whether one exercises diligence or not, as long as he intends something unlawful, he incurs an irregularity and is guilty of homicide.

But there are arguments against this. The first argument is against the second member [of the distinction] understood as the jurists understand it, viz., that one who intends an unlawful thing, whether he uses sufficient diligence or not, is irregular if a homicide follows. The argument then is as follows: let us suppose that on a feast day someone cut down a single tree, and by chance a child passed by, whom the falling tree killed. In that case, such a one did not sin in any other way except by the sin of not observing the feast day — and not by the sin of homicide; therefore.

Again, I would argue: that someone might will to destroy the house of his enemy, so as to kill his enemy, and care may have been taken that no passerby be killed, but by chance a child passed by and the falling house killed him. That man does not sin by the sin of homicide; therefore. This is proven: for if that man destroyed his own house, using the same diligence, then, according to these jurists, he would not be guilty of homicide and, thus, would not be irregular. Therefore, neither would he be so from destroying the house of his enemy.

Again: if some cleric were to ride a horse on a "post"[258] road, and by chance a boy passed by and he killed him, the cleric would not be guilty of homicide, as is clear to any right thinking person; therefore.

5.— To this Master Cajetan says that we can speak of such an accidental homicide in two ways: in one way, with respect to fault and in a second way, with respect to irregularity.[259] In the first way, with regard to fault, *I say* that if one who intends something unlawful exercises sufficient diligence, he does not sin any more than one who intends something lawful if he also exercises the same diligence. Therefore, with regard to fault, the judgment is the same

tum ad culpam, idem est judicium de dante operam rei illicitae et de dante operam rei licitae, posita aequali diligentia.

Alio modo possumus loqui de homicidio casuali quantum ad irregularitatem. Et dicit quod qui dans operam rei illicitae adhibita omni diligentia, si sequatur homicidium, talis esset irregularis. Probatur, quia forte hoc institutum est ita in odium homicidii. Hoc tenet dominus Silvester verbo *Homicidium* 2, s 1, et adducit ad hoc multa jura. Et juristae adducunt sequentia, scilicet cap. *Suscepimus*, et cap. *De caetero* et cap. *Tua*, et *Sicut ex litterarum*, de homicidio; ex quibus omnibus capitulis habetur quod si aliquis dat operam rei illicitae, et sequatur homicidium, adhibita omni diligentia, est irregularis.

6.— Sed certe judicio meo nihil probant illa capitula, precipue in casibus trium primorum capitulorum, quia non ponuntur ibi casus de dante operam rei illicitae. Casus primi capituli est de monachis qui alligaverunt malefactores quosdam repertos in domo sua, qui postea mortui sunt ex illo; vide ibi. Et in cap. *Tua nos* est casus de monacho qui erat expertus in arte chirurgiae, qui curavit quamdam mulierem a gutturi, sed ipsa sua culpa mortua est, quia scilicet vento se opposuit, mandato monachi spreto. Sed dicitur ibi quod daret operam rei illicitae. Sed juristae arguunt a contrario sensu sic: scilicet iste monachus dabat operam rei licitae: ergo si non dedisset operam rei licitae sed illicitae, esset irregularis. Sed ego credo quod papa nunquam somniavit quod si aliquis clericus vel monachus rei illicitae operam daret, sine periculo quod inde sequatur ho-/311/ micidium, et sine intentione perpetrandi homicidium et sine peccato homicidii, quod talis esset irregularis. Sed intelligit quod si quis daret operam rei illicitae cum magno periculo homicidii, quod talis esset irregularis. Probatur, quia istae sunt poenae; sed poenae sunt restringendae et favores ampliandi: ergo. Bene scio quod praetor occidens malefactores est irregularis; sed ibi est aliud, scilicet intentio homicidii.

for one intending something unlawful as for someone intending what is lawful, assuming that both exercise similar diligence.

In the second way, we can speak of an accidental homicide with respect to irregularity. And Cajetan says that he would be irregular who intends an unlawful thing and who exercises all manner of diligence, if a homicide in fact results.[260] This is proven, because perhaps it has been decreed so in order to reprehend homicide. Master Sylvester holds this, at the word "*Homicide,*" 2, s. 1, and brings forward many laws to show it so.[261] And the jurists bring forward corollaries, e.g., the chapter, "*Suscepimus,*"[262] the chapter, "*De caetero,*"[263] the chapter, "*Tua,*"[264] and the chapter, "*Sicut ex litterarum,*"[265] with respect to homicide. From all these chapters it is held that if someone intends an unlawful thing, and a homicide results, even though he has exercised every care, he is irregular.

6.— But *in my judgment,* those chapters prove absolutely nothing. This is especially so as regards the first three chapters, because they do not pertain to cases involving the intention of an unlawful thing. The case in the first chapter concerns monks who tied up some felons discovered in their monastery, and these later died as a result of that; look at it. In the chapter, "*Tua nos,*" the case is that of a monk who was an expert surgeon, who cured a certain woman from a goiter, but she died by her own fault, because, that is, disregarding the monk's prescription, she exposed herself to a draft. — But it is said there that the monk intended something unlawful. — However, the jurists argue from the opposite direction, as follows: that monk intended something lawful: therefore, if he had not intended something lawful, but rather something unlawful, he would be irregular. But *I believe* that the pope never dreamed that if some cleric or monk were to intend an unlawful thing, without danger of a homicide following from it, and without the intention of committing a homicide, and without the sin of homicide, that such a man would be irregular. But he meant that if someone were to intend something unlawful, with a great danger of homicide, that such a person would be irregular. This is proven: because these are penalties; but penalties should be restricted and indulgences should be broadened;[266] therefore. I am well aware that a magistrate who kills felons is irregular; but in that case there is something else, namely, the intention of homicide.

Translator's Notes

[1] Spanish: "segar los prados."

[2] For Ovid's *Metamorphoses* as a probable source of this, cf. Vitoria, *On Temperance,* n. 3, Urdánoz, p. 1020. On Pythagorean vegetarianism and its possible connection of this with metempsychosis, cf. e.g. Frederick Copleston, S.J., *A History of Philosophy,* new revised edition, Vol. I (Westminster, Md.: The Newman Press, 1953), pp. 30-1.

[3] c. 9: 3.

[4] This is puzzling. In Genesis 4: 4, Cain is said to have been a husbandman. But we also read that, after the death of Abel, Cain "dwelt as a fugitive on the earth" (4: 16), which could easily entail his being, at least for a time, a nomadic hunter.

[5] On this, cf. St. Thomas, *Summa Theologiae* I²-II^ae, q. 102, 6, ad 2; and Vitoria, *On Temperance*, n. 3, Urdánoz, 1018-24.

[6] The Scholastic teachers of theology, scripture, and canon law.

[7] Spanish: "las martas."

[8] With this compare: "*Irrational creatures cannot have dominion.* This is clear, because, as Conrad [i.e. Conrad Summenhart (1465-1511) *De contractibus*, I, c. 6] himself says, dominion is a right (*jus*). But irrational creatures cannot have a right. Therefore, neither can they have dominion. The minor is proven, inasmuch as they cannot suffer a wrong (*injuria*); therefore, they do not have a right. A proof of this [last antecedent] is that anyone keeping a wolf or a lion from its prey, or an ox from its pasture, would do them no wrong. Nor would anyone who closed a window to prevent the sun from shining in do any wrong to the sun." *On the Indians*, I, n. 20; ed. Urdánoz, p. 661.

[9] Cf. *In II^a-II^ae*, q. 62, a. 1, esp. nn. 11-12, *Comentarios* ... III, pp. 70-72.

[10] Actually: "nocent." ('*they* are harming')

[11] "porci monteses"

[12] Vitoria's Latin: *Vae terrae cujus principes male comedunt.* The verse in the Douay-Rheims version, "*Woe to the land whose princes eat in the morning,*" obviously translates "*mane*" instead of "*male.*"

[13] Cf. *Decreti Prima Pars, Distinctio 86, V Pars, c. xi, Item Ieronimus in Psalm. XC*, in *Corpus iuris canonici*, editio Lipsiensis secunda, Aemilii Ludovici Richteri et Aemilii Friedberg, *Pars Prior Decretum Magistri Gratiani* (Graz: Akademische Druck-u. Verlagsanstalt, 1959), col. 300.

[14] *Ibid.* For the reference in Jerome, cf. *Brev. in Psalm.* (P.L. 26, 1163).

[15] Cf. *Dist.* 86, V Pars, c. 12; *Corpus juris canonici*, pars prior, ed. Richter and Friedberg, I, col. 300.

[16] *Decretalium Gregorii IX*, lib. V, tit. 24, c. 1; in *Corpus juris canonici, pars secunda*, ed. Richter and Friedberg, II, 825.

[17] Cf. c. 3, 1256b17-27.

[18] Chapter 1 of *Episcopum.*

[19] Here Vitoria's text reads: "exercitium et consuetudo," i.e., "the practice and habit." In my translation, I am taking the "et" (and) to have an exegetic function.

[20] Spanish: "de cualquier caza."

[21] On Church law and the distinction between hunting as such and clamorous hunting, cf. William H.W. Fanning, "Hunting," *The Catholic Encylopedia* (New York: The Encyclopedia Press Inc, 1913), VII, 563-4.

[22] Spanish: "que su vida sea cazar."

[23] *Decreti Prima Pars, Distinctio 86, V Pars, c. xi, Pars Prior*, ed. Richter et Friedberg, I, col. 300.

[24] *Iustiniani Institutiones*, Lib. II, Tit. I, *De rerum divisione*, in *Corpus iuris civilis*, editio sexta decima, volumen primum, recognovit Paulus Krueger (Berolini: Apud Weidmannos, 1954), p. 10.

[25] *Ibid.*, n. 12.

[26] *Ibid.*, n. 1.

[27] *Ibid.*, n. 2.

[28] *Instit.*, L. II, t. I, §§ 1, 2, 12.

[29] With this, cf.: "... since those things which are in no one's possession, by the law of nations (*jure gentium*) belong to the one taking them; cf. the *Institutes*, *De rerum divisione*, § *Ferae bestiae* [II, 1, 12]. Therefore, if gold in a field, or pearls in the sea, or whatever else is in the rivers, is not owned (*appropriatum*), then by the law of nations (*jure gentium*) it belongs to the one taking it, just like fish in the sea. And, indeed, many things seem to follow from the law of nations (*ex jure gentium*), which because it is sufficiently derived from natural law (*ex jure naturali*) clearly has power (*vis*) both to impart a right and to oblige. But even granted that this may not always be derived from natural law, the consensus of the greater part of the whole world seems to be enough, especially when it is for the common good of all." *On the Indians*, III, n. 4; ed. Urdánoz, p. 710.

[30] *Institutes*, § *Ferae*.

[31] *Iustiniani Digesta*, Lib. XLI, Tit. I, n. 1, in *Corpus iuris civilis*, editio sexta decima, volumen primum, recognovit Theodorus Mommsen, retractavit Paulus Krueger (Berolini: Weidmannos, 1954), p. 690. For Vitoria himself citing this law in another place to the same effect, cf. *In II*-II*, q. 62, a. 1, n. 26, in *Comentarios* ... III, pp. 80-81.

[32] *Iustiniani Institutiones*, Lib. II, Tit. I, *De rerum divisione*, in *Corpus iuris civilis*, editio sexta decima, volumen primum, recognovit Paulus Krueger (Berolini: Apud Weidmannos, 1954), p. 10.

[33] On Vitoria's doctrine here, cf. Santiago Ramírez, O.P., *El derecho de gentes: examen crítico de la filosofía del derecho de gentes desde Aristóteles hasta Francisco Suárez* (Madrid/Buenos Aires: Ediciones studium, 1955), pp. 136-45.

[34] Vitoria is never in doubt about the subject of political power — in Aristotelian terminology, its material cause (τὸ ὑποκείμενον); cf. *On Civil Power*, n. 7; ed. Urdánoz, p. 159. Both before and after its transfer to a king, such power is in the republic as such. Rulers, even kings, do not have a different power from that of the republic; *ibid.* n. 8; p. 164. What they have is the authority to exercise the single power given to the republic by Nature, and ultimately by Nature's God. The power would be one and the same whether the republic would be a democracy, an aristocracy or a monarchy; *ibid.*, n. 11; pp. 166-67. As such it would be of natural and ultimately divine origin. Its exercise, however, would be immediately a matter of the republic's choice. Thus he can hold with perfect consistency that the *power* of the king is from God rather than the republic (*ibid.* n. 8; pp. 161-62), while the authority to exercise it is conferred by the republic; cf. *In Ia-IIae*, qu. 105, art. 2, in *Comentarios* ..., VI, p. 483.

[35] Vitoria's blend of Latin and Spanish here reads: "cervi essent de los hidalgos y las liebres de otros." On the class of "hidalgos" in Vitoria's time, cf. Lyle N. McAlister, *Spain and Portugal in the New World 1492-1700* (Minneapolis: University of Minnesota Press, 1984), pp. 27-8.

[36] Spanish: "las liebres y conejos a los hidalgos."

[37] Spanish: "partamoslo desta manera: lleven tanto los hidalgos, y tanto los labradores."

[38] Spanish: "de prendar los que entran a cazar en su monte, y los prenda".

[39] On "*optimates*" or "*magnates*" as the upper caste of *hidalgos*, cf. L. McAlister, *Spain and Portugal* ..., p. 28.

[40] With this, compare: "... other petty kings or princes, who do not rule over a perfect republic but are parts of another republic, cannot carry on or wage war. Examples would be the Duke of Alba or the Count of Benavente; for these are parts of the kingdom of Castille and, as a result, they do not rule over perfect republics." *On the Law of War*, n. 9; ed. Urdánoz, pp. 822-3.

[41] Spanish: "No puede acotar la caza".

[42] Spanish: "lo que puede hacer un concejo para que no se pierda la caza y se acabe."

[43] Spanish: "[ni] con hurones ni con redes, sino con galgos."

[44] This is Vitoria's third mention of an exhaustion or depletion of hunting. His concern, however, is not for endangered animals, but rather for the good of human beings.

[45] Spanish: "quitale las alcabalas."

[46] Cf. the relection, *On Homicide*, n. 22.

[47] Note the parallel here with Vitoria's remarks on a "voluntary election" by the American Indians as an illegitimate title for Spanish sovereignty over them; cf. "There remains another, a SIXTH TITLE, which can be or is alleged, namely, by voluntary election. For when the Spaniards first came to the barbarians, they told them how the King of Spain had sent them for their [i.e. the barbarians'] advantage and they urged them to receive and accept him as their lord and king. And the barbarians answered that this was agreeable to them, and there is nothing so natural as to ratify the will of one owner (*domini*) wanting to transfer his possession to another; cf. *The Institutes, De rerum divisione*, paragraph, *per traditionem* [II, 1, n. 40].

"But I conclude: This title is not valid. This is clear, first, because it would have to be without the fear and ignorance which invalidate any election. But these were especially present in the elections and acceptances in question. For the barbarians did not know what they were doing; indeed, perhaps they did not understand what the Spaniards were asking. Moreover, these standing around armed were asking it from an unarmed and fearful throng." *On the Indians*, II, n. 16, ed. Urdánoz, pp. 701-2.

[48] Spanish: "sisas y pechos."

[49] Spanish: "no pueden perdonar la muerte de uno."

[50] Spanish: "los ejidos que se rompan."

[51] Spanish: "como las mercedes que hizo de los ejidos de Medina del Campo para que los rompiesen."

[52] I have not found an exact reference to this. But on a boundary dispute at Medina del Campo, which grew out of royal cédulas that were brought for revocation before the Royal Council in 1496, see Stephen Haliczer, *The Comuneros of Castille: the Forging of a Revolution, 1475-1521* (Madison, Wis.: University of Wisconsin Press, 1981), pp. 84-85.

[53] Spanish: "y que prende a los que cazan."

[54] Spanish: "pero agora quierenlo hacer todo a costa agena."
[55] Spanish: "En un cercado."
[56] Spanish: "y penar a los que las cazen."
[57] That is, *Institutes*, § *Ferae*; ed. Mommsen and Krueger, I, p. 11.
[58] Spanish: "y dejan de ganar de comer por andar a caza."
[59] Spanish: "que es quitarles la caza."
[60] Spanish: "y gane de comer."
[61] On the value of a *maravedi* as compared with other denominations at the time; cf. "Responding to complaints of money shortages and monetary disorder coming from the Indies, Emperor Charles authorized the establishment of a mint in Mexico City, which began operation in 1536. It struck three kinds of coins, one being the silver *real*, which weighed 3.196 grams, 0.9306 fine, and had a tariff of 34 *maravedis*. It was issued in denominations of 1/4, 2, 3, and 4. A second was a silver *peso* with the same fineness but a weight of 25.56 grams and a tariff of 272 *maravedis*. It was considered to contain eight *reales*, and therefore contemporaries named it the *peso real de á ocho*. ... A third type of coin struck consisted of small copper pieces for petty change, but the Indians distrusted them and threw them into the lakes or melted them down for use in their artisanry. In 1564, therefore, the mint discontinued their coinage." L. McAlister, *Spain and Portugal* ..., pp. 240-2. With this compare the note of V. Beltrán de Heredia on the Latin and Spanish names of monetary denominations mentioned by Vitoria: "*Dipondium* = maravedí; *argenteum* = real = *regale* = 34 maravedís; *libra* = 3 ducados; *aureus* = ducado. El ducado equivale a once reales y un maravedí = 375 maravedís; la dobla a 365, y el florin a 265." *Comentarios* ..., I, xlvii and III, xi.
[62] Spanish: "so pena de mil maravedis la primera vez, y la segunda de cien azotes al que cazare."
[63] I have not found Vitoria's reference here to Cajetan. But for Sylvester, cf.: *Summa summarum quae Silvestrina nuncupantur* (Lugduni: Impressa per Benedictum Bounyn, 1528), *Restitutio III* (II, fol. 234v, b), where he says that lords who would mutilate a man taking a rabbit one time without permission would commit mortal sin.
[64] Cf. note 61, above.
[65] Cf. *Las Siete Partidas del Rey Alfonso el Sabio*, cotejadas con varios codices antiguos, por La Real Academia de la Historia (Madrid: En la Imprenta Real, 1807) VII, titulo xv, ley xxii y ley xxiii (III, 636-7).
[66] Spanish: "Y antes ha de ser mas que menos."
[67] Spanish: "acotar la caza."
[68] Spanish: "Una cosa suya bien la puede el señor arrendar a algunos."
[69] On woods, cf. Vitoria, *In IP-IIae*, q. 62, a. 3, nn. 8-12; *Comentarios* ..., III, pp. 154-6.
[70] Cf. Joannnes Duns Scotus, Doctor subtilis, Ordinis Minorum, *In Sent.* IV, d. 15, q. 3; in *Opera omnia* (Paris: L. Vivès, 1891), XVIII, 374-5.
[71] Spanish: "de cien ducados." For the value of a ducat, see endnote 61.
[72] Spanish: "que pagasen cuatrotanto."
[73] With this, cf. *Las Siete Partidas del Rey Don Alfonso el Sabio*, VII, Tit. 14, Ley 18 (ed. 1807; III, 618); *Las Siete Partidas*, Translation and notes by Samuel Parsons

Scott, M.A., Introduction, table of contents and index by Charles Sumner Lobinger, Bibliography by John Vance (Chicago/New York/Washington: Commerce Clearing House, 1931), VII, Tit. 14, Law 18 (p. 1386).

[74] Cf. *Digesta*, Lib. I, Tit. I, n. 3; ed. Mommsen and Krueger, I, 29. For the phrase itself, cf. *Decretalium Greg. IX*, lib. V, tit. 12, c. 18, *Significasti*; ed. Richter and Friedberg, II, 801.

[75] II²-II^ae, 64, 7.

[76] In all of this there is a related question about natural law, the commandments in the second table of the Decalogue, and God's ability to change them at will. In the Thomistic understanding of Vitoria, even God cannot change the natural law nor prescribe something which of its nature is proscribed by that law or by a command of the Decalogue. Thus, apparent exceptions such as Abraham being instructed to kill Isaac, the Jews being given the spoils of Egypt, or Osee being commanded to marry a harlot are not truly exceptions from the law, because God as master of life and death, the Lord of all creatures, is not subject to laws in their regard. Hence the cases in question simply do not fall under the law. For Scotus, however, such cases do fall under natural law and the exemptions which God may grant amount to his arbitrarily changing the law in certain cases. On the issue here of homicide, where Scotus would say that all homicide is forbidden by natural law and by the Decalogue, unless excepted by God, Vitoria would say that certain homicides were never covered by the proscriptions of the natural law or the Decalogue. Cf. *In IIa-IIae*, q. 104, a. 4, *Comentarios* ... V, pp. 210-211.

[77] Cf. "*Do not think that I am come to destroy the law or the prophets. I am not come to destroy, but to fulfill.*" *Matthew*, 5: 17. Obviously, Vitoria is extending this to cover the natural law.

[78] Spanish: "Algun alcalde."

[79] Spanish: "que paguen septenas." Cf. *Proverbs* 6: 31; *Genesis* 4: 15, 24; *Leviticus* 26: 18, 21. This would seem to be an alternative to the fourfold payment of the *Siete Partidas*.

[80] Spanish: "los salteadores."

[81] Spanish: "el salteador."

[82] While such an observation is harsh, it should be viewed against the background that in Vitoria's time there were no huge prisons or penitentiaries capable of housing thousands of thieves and other criminals.

[83] In this connection, cf.: "La unión de dos naciones perfectas bajo un mismo rey puede ser circumstancial, proveniente de combinaciones matrimoniales y sucesiones hereditarias que en nada prejuzgaban la independencia de esas naciones unidas bajo la misma corona. Cada una de ellas podía tener su propio régimen y legislación y en virtud de la misma podía acordar una declaración de guerra — v. gr., por acuerdo de una asamblea legislativa — que no podría ser anulada por el príncipe común. Es un parecido sistema democrático que piensa sin duda Vitoria, y en la unión *circumstancial* de los reinos de Aragón y Castilla bajo los Reyes Católicos, que aún respetaban la administración autónoma, leyes y cortes propias de cada uno de ellos. En tal situación, una guerra declarada en defensa de los intereses y derechos de Aragón no hubiera podido ser vetada por el príncipe titular del otro

reino; y al contrario, las guerras de Castilla en Indias eran independientes del Gobierno de Aragón." Urdanoz, p. 763.

[84] Compare Domingo Soto (1495-1560), Vitoria's friend, disciple, and successor in the *Catedra de prima* at Salamanca: "There are two questions implied here. The first is whether the law is licit. For in antiquity it was licit for a father to kill a daughter who was taken in adultery (as is clear from the law, *Patri*, the law, *Neque in ea*, ff. up to the law, *Iuliam de adulter.*, and the law, *Castitati, C. in eodem titulo*). But later the law was changed, as is clear in *C. eodem titulo*, in *Aucten. sed hodie*, namely, that having been beaten she should be shut up in a monastery. And that law is in use now in France, and in other countries with respect to a husband, for with respect to a father it has fallen into disuse. But the law of Spain still follows the old law; but not indeed with such rigor that an adultress will necessarily be condemned to death, but that she be handed over to her husband, whose choice it is to kill her if he wishes. And there is no reason to doubt whether the law is just. For besides the fact that the crime merits that [punishment], indeed, from the nature of the Spaniards, satisfaction for such a thing could hardly be made in any other way." (*Duplex autem hic implicatur quaestio. Prior de lege, an sit licita. Antiquitus enim licebat patri filiam in adulterio captam interficere: ut patet l. patri, et l. neque in ea. ff. ad l. Iuliam de adulter., et l. castitati C. eodem titulo. Postea vero mutata est lex, ut patet (?), C. eodem titul. in Aucten. sed hodie, ut scilicet verberata in monasterio occluderetur. Et ista lex in usu est nunc in Galliis, et in aliis multis provinciis respectu mariti: nam illa patris iam abolevit ab usu. Sed tamen lex Hispaniarum sequitur antiquam: non quidem cum illo rigore ut adultera necessaria morte damnetur, sed traditur marito cui facultas sit, si eam velit occidere. Et quod lex sit juste, non est cur dubitetur. Nam praeterquam quod crimen id videtur mereri, profecto Hispanorum de hac re ingenio vix fieri aliter posset satis.*) *De justitia et jure*, V, q. 1, a. 3 (Salamanca, 1556), pp. 390-1, as reproduced in *De justitia et jure, libri decem. De la justicia y del derecho, en diez libros*, por el Maestro Domingo de Soto, O.P., introducción historico y teológico-juridica por el Dr. P. Venancio Diego Carro, O.P., versión española del P. Marcellino González-Ordóñez, O.P. [Madrid: Instituto de Estudios Politicos, 1968]). For a related point on Spaniards defending their honor, see note 241 below.

[85] On "judicial" and "ceremonial" commands, cf. St. Thomas, *Summa Theologiae* I[a]-II[ae], qu. 99.

[86] Cf. note 81, above.

[87] Note that in 1179 the *Second Lateran Council* decreed excommunication for those supplying arms to the Saracens; cf. *Decreta Concilii Lateranensis, cap. 24, in* J. Harduin, S.J., *Acta Conciliorum et epistolae decretales ac constitutiones summorum pontificum* (Parisiis, 1714) Tomi V, Pars II, anno 1179. Also cf. Vitoria, *On the Indians*, I, n. 14; ed. Urdánoz, p. 659.

[88] Here I have reversed the order of two sentences in the Latin text.

[89] "*The innocent and the just person thou shalt not put to death.*"

[90] "*The innocent and the just thou shalt not kill.*"

[91] That is, the proponents of this third way of understanding the commandment.

[92] Spanish: "porque le dijo, anda para hi de puta."

[93] Vitoria uses this legal phrase in a number of places. E.g. in his relection, *On the Indians*, III, n. 6, Urdánoz, p. 711, where speaking of the Spaniards right to defend themselves against attacks by the American Indians, he also explicitly puts a number of things outside the realm of "blameless defense;" also cf. "On the Law of War," n. 4, Urdánoz, p. 819. For the exact phrase, cf. *Decretalium Greg. IX*, lib. V, tit. 12, c. 18, *Significasti*; ed. Richter and Friedberg, II, 801.

[94] Again, the proponents of the third way of understanding the commandment.

[95] On fathers' rights to beat their children and masters' rights to beat their slaves, cf. *Summa Theologiae*, II[1]-II[ae], q. 65, a. 2. For Vitoria's thoughts on this and related matters, cf. *In IIa-IIae*, q. 65, a. 2, nn. 1-11, *Comentarios* ... III, pp. 314-318. On teachers using corporal punishment, cf. esp.: "... there is no doubt that it is a bad education of children to use the rod daily and frequently and to drive them with such hard and servile chiding. Second, if children are of good character, good counsel, good teaching, and reproving words are enough. Third, if however children are stiff-necked, there is need for the rod." (... *non est dubium quin sit mala institutio puerorum, quotidie et frequenter uti virga et eos agitare tam dura increpatione et tam servili. Secundo, si pueri sint bonae indolis, sufficiunt bona consilia, bona doctrina, et verba increpatoria. Tertio, si vero filii sint durae cervicis, opus est virga.*) *ibid.*, n. 4, p. 316. Also, cf. D. Soto: "It is not lawful for parents to mutilate [their children], nor for any mortal [to mutilate anyone] apart from public authority, but [it is lawful for parents] to chastise with a stick or a rod. For a man is introduced to virtue in three ways: he is led by reason, he is forced by fear, and he is lured by reward. Hence, before the star of reason shines, nature has provided that a boy be forced by fear and be influenced by little rewards." (*Mutilare ergo parentibus non licet, neque mortalium ulli praeter publicam potestatem, sed fuste caedere aut ferula. Id enim est illis iure naturae concessum. Homo namque tribus viis ad virtutem instituitur: nam et ratione ducitur, et metu cogitur, et allicitur praemio: antea ergo quam rationis sydus eluceat, natura providit ut puer et metu cogatur et afficiatur munusculis.*) *De justitia et jure*, V, q. 2, a. 2 (p. 413).

[96] For Vitoria, in line with Duns Scotus, rejecting a similar view that human beings would need Divine authority in order to exercise natural functions, cf. *In IIa-IIae*, q. 62, a. 1, n. 52, in *Comentarios* ... III, p. 109.

[97] Here Vitoria is distinguishing the time before the Mosaic law, when human beings had only the natural law to guide them, from the time of the Mosaic law and then that of the Gospel; for this, cf. A. Molien, "Lois," *Dictionnaire de théologie catholique*, IX (1926), esp. 888-9.

[98] That is, against Scotus' position above.

[99] The point being made, i.e. that the question of capital punishment does not differ in kind from that of punishment in general, seems obvious, even though the examples may offend modern sensibilities with regard to "cruel and unusual" punishments.

[100] Cf. *In Sent.* IV, d. 15, q. 3 (XVIII, 375a).

[101] Cf. *ibid.* (pp. 365-6).

[102] Spanish: "como dalle de cochilladas."

[103] Cf. Aristotle distinguishing between what is naturally just (τὸ φυσικὸν δίκαιον) just and what is legally just (τὸ νομικὸν δίκαιον), *EN* V, c. 7, 1134b18-20; and also between what is unjust by nature and what is unjust by ordinance: "ἄδικον μὲν γάρ ἐστι τῇ φύσει ἢ τάξει" *ibid.*, 1135a9-11.

[104] Here to better bring out the sense I have reversed the order within each of Vitoria's couplets: i.e. "guilty and innocent" and "public and private."

[105] With this, cf.: "Indirectly (*per accidens*), however, *it is sometimes permitted even knowingly to kill innocent people.* Take, for example, a justly besieged fortress or city, in which, nevertheless, there are so many innocent people that siege machines and other projectiles cannot be used, nor can buildings be burned, without hurting the innocent as well as the guilty.

"This is proven. For otherwise war could not be waged against those who are guilty, and [the triumph] of those fighting justly would be frustrated. In the same fashion, contrariwise, if a town is unjustly besieged and is justly defended, it is lawful to use war machines and projectiles against the besiegers and against the enemy camp, even though there are among them some children and innocents. Nevertheless, what was said a while before must be taken into account. That is, care should be exercised lest from the war itself there result greater evils than those averted by that war. For, if to obtain total victory in a war, it is not very important to attack a fortress, or a town, where there is an enemy garrison and also many innocent people, it does not seem lawful in order to attack a few guilty persons to kill many innocent ones, by subjecting them to fire or siege machines, or employing any other means which indifferently strikes the innocent together with the guilty. And, finally, it never seems lawful to kill innocent people, even indirectly (*per accidens*) and unintentionally, except when a just war cannot be otherwise furthered and waged, in line with the saying from *Matthew* 13, v. 29: "Suffer the cockle to grow, lest perhaps in gathering the cockle you at the same time root out the wheat." *On the Law of War*, n. 37; ed. Urdánoz, p. 842.

[106] Obviously, neither Aquinas nor Vitoria is thinking about someone not posing a threat because he is being held in maximum security.

[107] On the role of public punishment, Domingo Soto makes a point with which Vitoria would be in agreement: "Public punishment is *not* directed to the correction nor to the good of the one punished, but to the public good, that others be deterred. And because the public good is more excellent than a private good, by the order of charity it should be preferred to that, ..." ("... *punitio publica non refertur in emendam neque in bonum ipsius qui punitur, sed in bonum publicum, ut alii terreantur: et quoniam bonum publicum praestantius est particulari, ordine charitatis prae illo diligendum est: ...*" *De iure et iustitia*, V, q. 1, art. 2 (p. 388a).

[108] With this compare Vitoria on the confiscation of the property of heretics: "*Nevertheless, even though their crime be manifest, before their condemnation it is not lawful for the fisc to seize the possessions of heretics.* — This is again the opinion of all and it is what has been determined in the aforesaid, *Cum secundum* (*Sextus Decretalium*, V, 2, 19; ed. Richter and Friedberg, II, 1077). In fact, it would be contrary to both Divine and natural law (*jus*), if punishment were to be exacted before someone was condemned." *On the Indians*, I, n. 11; Urdánoz, p. 658.

[109] This somewhat inconsistent use of personal pronouns would probably have been revised out of Vitoria's work, had he himself edited it.

[110] On this, cf. "El marido que fallare algunt home vil en su casa ó en otro lugar yaciendo con su muger, puédolo matar sin pena ninguna, maguer non le hobiese fecho la afruenta que diximos en la ley ante desta. Pero non debe matar la muger, mas debe facer afruenta de homes buenos de como la falló, et desi meterla en mano del judgador que faga della la justicia que la ley manda." *Las Siete Partidas del Rey Don Alfonso el sabio*, cotejadas con varios codices antiguos por La Real Academia de la Historia, y glosadas por el lic. Gregorio López, nueva edición (Paris: Libreria de Rosa Bouret, 1854), VII, tit. xvii, ley xiii (IV, 623-4). This passage from law 13 has been translated by Samuel Parsons Scott as follows: "A husband who finds a vile man in his house or in any other place in the act of intercourse with his wife, can kill him without being liable to any penalty, although he may not have given him the warning we mentioned in the previous law; he should not kill the woman, however, but should notify reliable men in what situation he found her, and place her in the hands of the judge to pass upon her the sentence which the law provides." *Las Siete Partidas*, tr. and notes ..., p. 1417. In a Latin note [(1) in 1854 edition (p. 624)] López makes the point that present (i.e. mid-sixteenth century) Spanish law permits, but does not require, the husband to kill both an adulterous wife and her paramour, without distinction of rank, if he find them in the act of adultery. In the 1807 edition (III, 655-6), a note (6) on this passage from law 13 reads: "*Al pie del cód. Acad. se halla la auténtica siguente:* AUTENTICA. Puede hoy el marido et aun el esposo que fuere desposado por palabras de presente, si fallare la muger ó la esposa con otros, matarlos. Et non debe dexar el uno et matar el otro si ambos los podiere matar, segund se contiene en la ley nueva que comienza: Contiénese, en el titulo de los adulterios et de los fornicios." For the law, *Contiénese*, referred to in note 6, as cited, cf.: "Contiénese en el Fuero de las leyes, que si la muger que fuere desposada hiciere adulterio con alguno, que ambos á dos sean metidos en poder del esposo, así que sean sus siervos, pero que no los pueda matar: y porque esto es exemplo y manera para muchas dellas hacer maldad, y meter en ocasion y vergüenza á los que fuesen desposadas con ellas, porque no puedan casar en vida dellas; por ende tenemos por bien, por excusar este yerro, que pase de aquí en adelante en esta manera: que toda muger, que fuere desposada por palabras de presente con hombre que sea de catorce años cumplidos, y ella de doce años acabados, é hiciere adulterio, si el esposo los hallare en uno, que los pueda matar, si quisiere, ambos á dos, así que no pueda matar al uno, y dexar al otro, pudiéndolos á dos matar; y si los acusare á ambos, ó á qualquier dellos, que aquel contra quien fuere juzgado, que lo metan en su poder, y haga de él y de sus bienes lo que quisiere; y que la muger no se pueda excusar de responder á la acusacion del marido ó del esposo, porque diga, que quiere probar que el marido ó el esposo cometió adulterio." *Novísima Recopilacion de las Leyes de España*, dividida en xii libros, en que se reforma la Recopilacion publicada por el Señor Don Felipe II. en el año de 1567, reimpresa últimamente en el de 1775: Y se incorporan las pragmáticas, cédulas, decretos, órdenes y resoluciones Reales, y otras providencias no recopiladas, y expedidas

hasta el de 1804. Mandada formar por el Señor Don Carlos IV. (Madrid, 1805), Lib. VIII, Tit. XXVIII, Ley 2 (IV, p. 424).

[111] Cf. "There follows the case of the husband who kills his wife in the act of adultery, about whom there is no doubt among any of the theologians or canonists that he is morally sinning against the prohibition of homicide for the reason already given: that no one should be condemned to death before he is judged. And one should understand in this case the canon of Pope Nicholas, i.e. *Interfectores*, 33, q. 2, where men of this sort are accounted murderers. ... and expressly the next canon, *Inter haec*, declares that although it may be lawful according to earthly law for a husband to kill a wife, nevertheless, the holy church is not bound by those laws, and the gloss there seems to indicate that it is always a sin." (*"Subsequitur et de viro qui uxorem in flagranti adulterio enecat, de quo nemini aut Theologorum aut Iurisprudentum in dubium cadit, quin contra prohibitionem homicidii moraliter peccet ratione iam dicta: quia nemo antequam iudicetur adiudicandus est morti, et eo casu intelligendus venit Canon Nicolai Papae, Interfectores, 33, q. 2 ubi eiusmodi homines censentur homicidae. ... et expresse canon proximus, Inter haec, explicat quod quanquam liceat marito secundum mundanam legem uxorem interficere, tamen sancta ecclesia non stringitur eisdem legibus: ubi glossa annuere videtur quod semper est peccatum."* D. Soto, *De justitia et jure*, V, q. 1, a. 3 [p. 390b]). For the law, *Interfectores*, cf. *Decreti secunda pars, causa* 33, q. 2, c. 5, ed. Richter and Friedberg, I, col. 1152; and *Inter haec vestra, ibid.*, c. 6.

[112] With this compare the following proposition *condemned* by Pope Alexander VII on September 24, 1665: "A husband does not sin who by his own authority kills a wife taken in the act of adultery." (*Non peccat maritus occidens propria authoritate uxorem in adulterio deprehensam.*), cf Denzinger, p. 452, n. 2039.

[113] This phrase is supplied here to bring out the sense of the objection.

[114] *Decretalium Greg. IX*, Lib. II, Tit. XXVI, c. 20; ed. Richter and Friedberg, II, 393.

[115] This seems in line with "the nature of the Spaniards" to which Soto will refer in *De justitia et jure* V, q. 1, a. 3; cf. note 86, above. Also cf. note 244, below.

[116] For the same doctrine, see St. Thomas, *In Sent.* IV, d. 37, q. 2, a.1, in *Opera omnia* (New York: Musurgia Publishers, 1948), VII, pp. 1000, who asks "Whether it is lawful for a man to kill a wife taken in the act of adultery?" (*Utrum liceat viro uxorem interficere in actu adulterii deprehensam?*), and answers as follows: "I reply that a man can kill his wife in two ways. First, through a civil judgment, in which way there is no doubt that a man moved by zeal for justice and not by revenge or hatred, can accuse a wife criminally in a secular judgment and can seek the death penalty prescribed by law, just as it is also lawful to accuse someone of homicide or some other crime. However, such an accusation cannot be made in an ecclesiastical judgment, because the Church does not have a material sword, as is said in the text [i.e. of Peter the Lombard]. In a second way he can on his own kill her unconvicted in a judgment. And to kill her in this way apart from the act of adultery, howevermuch he may know her to be an adultress, is not lawful either according to civil laws or according to the law of conscience. But civil law regards it as licit that he kill her in the act itself, not as prescribing that, but as not exacting the penalty for homicide, because of the extreme provocation that a man has

in such a case to kill his wife. But the Church is not restricted in this by human laws, that it should judge him to be without liability of eternal punishment or of punishment to be inflicted by ecclesiastical judgment, from the fact that he is without liability of punishment to be inflicted by a secular judgment. And therefore, in no case is it lawful for a man to kill his wife by his own authority." (*Respondeo dicendum quod virum interficere uxorem contingit dupliciter. Uno modo per judicium civile; et sic non est dubium quod sine peccato potest vir zelo justitiae, non livore vindictae aut odii motus, uxorem adulteram in judicio saeculari accusare criminaliter de adulterio, et poenam mortis a lege statutam petere; sicut etiam licet accusare aliquem de homicidio, aut de alio crimine. Non tamen talis accusatio potest fieri in judicio ecclesiastico; quia Ecclesia non habet gladium materiale, ut in litera dicitur. Alio modo potest eam per seipsum occidere non in judicio convictam; et sic extra actum adulterii eam interficere, quantumcumque sciat eam adulteram, neque secundum leges civiles, neque secundum legem conscientiae licet. Sed lex civilis quasi licitum computat quod in ipso actu eam interficiat, non quasi praecipiens, sed quasi poenam homicidii non inferens, propter maximum incitamentum quod habet vir in tali facto ad occisionem uxoris. Sed Ecclesia in hoc non est astricta legibus humanis, ut judicet eum sine reatu poenae aeternae, vel poenae ecclesiastico judicio infligendae, ex hoc quod est sine reatu poenae infligendae per judicium saeculare. Et ideo in nullo casu licet viro interficere uxorem propria auctoritate.*)

[117] Literally: "And if you say that there are not now more things present than before" (Et si dicas quod nunc non occurrunt plura quam ante). The "before" referred to is in the preceding paragraph 3, where Vitoria has stated that it is against natural law for the husband to act as judge, prosecutor, witness, and executioner.

[118] Cf. Domingo Soto: "... [The question is] whether, when this same liberty is conceded to a husband, is it in conscience right for him to avail himself of it? And indeed about this there is little reason to doubt. For although he is not constituted as a necessary minister of justice, he is, however, constituted as a free [minister], whereby a right is given to him to kill her. Wherefore, although it would be an act of mercy to spare her, still it would violate justice neither before man nor before God [to kill her]. And further it is a convincing argument that if only with sin it would be lawful for the husband to kill her, it would be a sin for a prince or a judge to give him permission. Nor is it a valid answer for someone to say that in that case he would not be permitted to kill his wife, but that he could do so with impunity: since he already enjoyed that privilege, even if apart from a [court] judgment, he were to kill her in the act of adultery. When, therefore, condemned with a solemn form of judgment she is handed over to him, it is plain evidence that there is being given to him a right to kill her as a minister of justice." ("... *utrum eadem concessa marito libertate secundum conscientiam liceat ei id persequi: et revera de hoc minor est dubitandi ratio. Nam etsi non instituatur ut necessarius minister iustitiae, instituitur tamen liber: quare ius ei fit ut illam occidat. Quapropter licet opus fuerit misericordiae illi parcere, tamen iustitiam neque coram hominibus violat, neque coram Deo. Et est porro efficax argumentem, quod si marito citra peccatum non liceret eam iugulare, peccatum esset principi et iudici illam facultatem facere. Neque valet solutio si quis dicat, non illi permitti tunc uxoricidium, sed ut impune id*

faciat: quoniam illo privilegio iam fruebatur, etiam si absque iudicio in flagranti delicto illam interficeret. Cum ergo solemni forma iudicii condemnata illi traditur, testimonium apertum est fieri illi ius occidendi ceu ministro iustitiae.") *De iustitia et iure*, V, q. 1, a. 3 (p. 391a).

[119] Cf. the *Digest*, I, I, 3; Mommsen and Krueger, I, p. 29; also *Decretalium Greg. IX*, lib. V, tit. 12, c. 18, ed. Richter and Friedberg, II, 801; and Vitoria in the relection *On the Power of the Pope and a Council*, n. 23, Urdánoz, 487; *On the Indians*, III, 6, Urdánoz, p. 712; *On the Law of War*, 1 and 3, Urdánoz, 817, 819.

[120] Vitoria's uncertainty here may be a sign that he was talking without notes; on this, cf. Beltrán de Heredia, *Comentarios* ..., I, pp. xvi-xvii.

[121] Cf. Joannes Petit (O. F. M.? d. 1411), *Justification du duc de Bourgogne*, Antwerpiae, 1706; as cited by Beltrán de Heredia, in *Comentarios* ..., III, 286.

[122] Cf. Joannes Gerson (d. 1429), *Propositio facta coram concilio generali Constantiensi; Dialogus pro condemnatione proposit. J. Parvi*. Cf. *Gersonis Opera*, Antwerpiae, 1706, t. 2, cols. 319 ss., 386 ss.; as cited by Beltrán de Heredia, III, 286.

[123] *Sessio XVI*, 6 Jul. 1415: *Decr.* "*Quilibet tyrannus*;" cf. Denzinger, p. 326, n. 1235.

[124] February 23, 1413; on this cf. A. Bride, "Tyrannicide," *Dictionnaire de théologie catholique*, XV (1950), 1993-4.

[125] Spanish: "no es suya esta republica, y la toma."

[126] King of Castille, notorious for his cruelty and adulterous life-style, Pedro was assassinated in 1369 by his bastard brother, Don Enrique de Trastamara, who then succeeded him on the throne; cf. "Pedro I de Castilla," *Enciclopedia universal ilustrada europeo-americana*, XLII (Madrid: Espasa-Calpe, 1920), pp. 1328-35.

[127] For the people, as represented by princes, lawfully making an alliance with the king of France to war against Pedro in favor of his brother, cf. *In IIa-IIae*, q. 40, a. 1, n. 6, in *Comentarios* ..., II, p. 281.

[128] Here there seems to be an instance of what medieval canonists called "*in continenti*;" cf. Vitoria: "*Every republic has authority to declare and wage war.* To prove this, it must be noted that there is a difference in this between a private person and a republic. For, as has been said, a private person certainly has the right to defend himself and his possessions. But he does not have a right to avenge a wrong, nor after a certain interval of time to reclaim [by force] things stolen. But it is necessary that [his] defense be in face of present danger, which the lawyers (*jurisconsulti*) call "*in continenti*" [cf. e.g., *Decretalia Greg. IX*, V, tit. 39, c. 3; ed. Richter and Friedberg, II, 890]. Wherefore, when the need for defense has passed, the legitimacy of the war ceases. I believe, however, that one wrongfully struck might be able (*possit*) immediately to strike back, even if the attacker should not proceed farther." *On the Law of War*, n. 5, Urdánoz, 820-21.

[129] Here I omit "him" (*ipsum*) for the sense of the argument.

[130] Cf. *Comentarios* ... II, 300-301; actually in this place Vitoria says he is commenting on St. Thomas' second response, but in fact he is commenting on the third response of Aquinas. Also in this place, he says (p. 301) he will treat "how, for whom, and when it may be lawful to kill a tyrant" when later he comes to treat of homicide.

[131] Chap. 15, v. 20. For Vitoria discussing this prohibition at length, cf. *On Temperance*, 1, 2; ed. Urdánoz, pp. 1010-18.

[132] On the "power of jurisdiction" as distinct within the Church from the "power of orders," see *First Relection on the Power of the Church*, II, nn. 1-2, ed. Urdánoz, pp. 257-9.

[133] In 1537, Paul III would issue the Bull, *Veritas ipsa*, in which he would affirm the humanity of the American Indians and condemn their subjugation, even to advance the Faith of Christ.

[134] Cf. I *Timothy* 3: 2-3, as cited by St. Thomas in IIa-IIae, 64, 4, *Sed contra.*

[135] As Vitoria's argument will continue, "striker" will be synonymous with a violent person or, in the present context, a killer.

[136] Cf. I *Corinthians* 7: 12.

[137] I *Corinthians* 7: 10. For Domingo Soto making the same point about the difference between divine and apostolic commands, cf. *De iustitia et iure*, V, q. 1, art. 4 (pp. 391b-392a).

[138] "An irregularity may be defined as a perpetual impediment established by ecclesiastical authority forbidding primarily the reception of orders and secondarily the exercise of orders already received (c. 968)." T.L. Bouscaren, S.J. and A.C. Ellis, S.J., *Canon Law: A Text and Commentary* (Milwaukee: Bruce Publishing, 1951), p. 428. Cf. L. Godefroy, "Irregularités," *Dictionnaire de théologie catholique*, VII, 2ème part. (1927), cols. 2537-66.

[139] Note that what is being dispensed from here *is* the "irregularity" resulting from a second marriage, not the second marriage itself, and certainly not bigamy in the sense of a second marriage entered upon while a first is still in effect. On this dispensation, cf. St. Thomas Aquinas, IV *Sent.* d. 27, q. 3, a. 3 and *Quodl.* IV, q. 8, a. 2; and Vitoria, *On the Power of the Pope and a Council*, n. 1, Urdánoz, 435 and 441. Also cf., E. Valton, "Bigamie, Irregularité," *Dictionnaire de théologie catholique*, II, 1ère part. (1932), 883-8; and L. Godefroy, "Irregularités," *ibid.*, VII, 2ème part. (1927), esp. cols. 2545-6.

[140] I have substituted this reference to *Titus* for that to I *Timothy*, 3: 2, given by Beltrán de Heredia (III, 289) because in the latter place Paul's concern is with the qualification of *bishops*, whereas in *Titus* there is explicit mention of *priests*. On this, cf. "... les termes episcopos et presbyteros ne sont pas encore bien distincts dans l'Église apostolique. La terminologie ne sera précisée que plus tard." Dom Bernard Botte, O.S.B., *Le nouveau testament, traduction nouvelle d'après le texte grec* (Turnhout: Brepols S.A., 1944), 496, b.

[141] Spanish: "un deanazgo."

[142] Vitoria will repeat this principle in the course of an argument for the right of Spaniards to travel unhindered among the Indians of the New World; cf. "Again, twelfth, if it were not lawful for the Spaniards to travel among them, this would be so either by natural, divine, or human law. But it is certainly lawful by natural and divine law. And if there were a manmade law, which without reason would keep someone from a natural or divine right, this would be inhumane and unreasonable and, consequently, it would lack the force of law." *On the Indians*, III, n. 2, Urdánoz, pp. 707-8. Cf. also: "Because in order that a law oblige, it must be fair, that is just and reasonable; otherwise it would not oblige." (Quia ad hoc

quod lex obliger, oportet quod sit aequa, id est justa et rationabilis; alias non obligaret.), *In IIa-IIae*, q. 125, a. 4, n. 9, *Comentarios* ..., V, p. 365.

[145] Today we might call him a "free rider."

[146] On this, cf. "Such a dispensation would involve injury to others; therefore it is not lawful. The antecedent is clear, because one condition of law is that it be equitable (*aequalis*). But it would not be equitable if without a reasonable cause someone would be exempted from a law while others would be burdened by it, which would happen in cases of imprudent and arbitrary dispensations. Therefore, this is not lawful." *On the Power of the Pope and a Council*, n. 6, ed. Urdánoz, p. 455.

[147] This sentence seems awkwardly attempting to relate Vitoria's concern for dispensations and irregularity with St. Thomas' concern for the reasons why clerics are forbidden by law to kill felons.

[148] This is ambiguous. In context it would seem that he is talking about married clergy, such as in Paul's time. But perhaps he is speaking of non-clerics who are married.

[149] Vitoria has in mind the authors of "*Summae*" or compendia of canon law. On Summists, cf. L. Hödl, "*Summa*, Summenliteratur," *Lexikon für Theologie und Kirche*, Band IX (Freiburg im Breisgau: Verlag Herder, 1964), cols. 1164-7; for emphasis on canon law, see A.M. Stickler, "Kanonistik," *ibid.*, Band V (1960), 1289-1302, esp. 1291-6. For *Summae*, with emphasis on theology and philosophy, cf. William Turner, "*Summae* (*Summulae*)," *The Catholic Encyclopedia* (New York: The Encyclopedia Press, 1913), XIV, 333-4.

[150] On the "Ordinary Glosses," cf. J.M. Buckley, "*Glossa Ordinaria*," *The New Catholic Encyclopedia* (New York/St. Louis, 1967), VI, 515-16. On the glosses added to medieval canon law, cf.: A.M. Stickler, "Kanonistik," *Lexicon für Theologie und Kirche*, V (1960), esp. 1292-4; A. Boudinhon, "Glosses, Glossaries, Glossarists," *The Catholic Encylopedia*, 1913), VI, 588-9; P. Fourneret, "Droit canonique," *Dictionnaire de théologie catholique*, XIV, 2ème partie (1939), col. 1840; and K.W. Nörr, "Glosses, Canon Law," *The New Catholic Encyclopedia*, VI, 516-17. On Scriptural glosses, see Francis E. Gigot, "Glosses, Scriptural," *ibid.*, 586-8; C. O'C. Sloane, "Glosses, Biblical," *The New Catholic Encyclopedia*, VI, 516. For glosses on civil law, cf. M.R.P. McGuire, "Glosses, Roman Law," *ibid.*, 517-18; also, Gaines Post, "Law, Ancient Roman Ideas of," *Dictionary of the History of Ideas* (New York: Charles Scribner's Sons, 1973), II, 685.

[151] That is, he infringes upon God's right (*jus*).

[152] Note that in this article St. Thomas actually gives three arguments, which are the three first conclusions indicated by Vitoria here. The fourth argument here is contained in Aquinas' first argument.

[153] Cf. *Romans* 1: 32.

[154] Vincent of Zaragoza, martyred at Valencia in 304; cf. *The Roman Martyrology*, ed. Canon J.B. O'Connell (Westminster, MD: The Newman Press, 1962), p. 15 (Jan. 22); Bernardino Llorca, S.J., *Historia de la iglesia católica*, Tomo I: *Edad antigua*, cuarta edición (Madrid: BAC, 1964), 298-300; and Donald Atwater, *The Avenel Dictionary of Saints* (New York: Avenel Books, 1981), pp. 335-6.

[153] This is a form of improvised dialogue which Vitoria has used on occasion in Question 64 and generally throughout his lectures to give them a certain dramatic flair; on this, see V. Beltrán de Heredia, *Comentarios* ..., I, pp. xvii-xviii.

[154] Cf. *The Roman Martyrology*, p. 29 (Feb. 9th); Atwater, p. 52; cf. J.P. Kirsch, "Apollonia, Saint," *The Catholic Encyclopedia*, I, 617.

[155] Cf. note 153, above.

[156] See above, the relection, *On Homicide*, note 62.

[157] Note that here, and in the immediately following sentence, Vitoria is speaking in the person of the one arguing against his own position.

[158] Cf.: S. Autore, "Chartreux," *Dictionnaire de théologie catholique*, II, 2ème partie (1932), cols. 2274-2318; Raymund Webster, "Carthusian Order," *The Catholic Encyclopedia*, III, 388-92; and: A Monk of the Grand Chartreuse, "Carthusians," *The New Catholic Encylopedia*, III, 162-7.

[159] It should be remarked here that for Vitoria subjective rights possessed by individuals are derived from an objective order of law and morality — and not just asserted without basis beyond simply wanting it so.

[160] For Vitoria more at length on the Carthusians, cf. *On Temperance*, nn, 8-15, ed. Urdánoz, pp. 1059-69. Also, cf. *In IIa-IIae*, q. 125, a. 4, nn. 16-17, in *Comentarios* ..., V, pp. 370-1.

[161] Spanish: "solimán."

[162] This is of interest in view of Vitoria's doctrine about the "barbarians" of the New World living in societies which were equal to that of Spain; cf. "... they have cities, which display order, and they have well defined marriages, magistrates, rulers, laws, crafts, and commercial exchanges, all of which require the use of reason. Likewise, they have a kind of religion. ... The result, therefore, from all that has been said is that, without doubt, the barbarians were true lords, both publicly and privately, just as much as the Christians." *On the Indians*, I, n. 23; Urdánoz, 664-65.

[163] For a difference between Vitoria here and Cajetan, who has implied that such laws were wicked and should not have been obeyed, cf. Vitoria, *In IIa-IIae*, q. 69, a. 4, n. 9, in *Comentarios* ..., IV, pp. 42-3 and Cajetan, *In IIa-IIae*, q. 69, a. 4, n. 5, in *Sancti Thomae Opera*, Tomus IX (Romae: S.C. De Propaganda Fide, 1897), p. 115.

[164] Spanish: "que le ahoguen."

[165] On a man giving his food to his father or to a friend, cf. also *In IIa-IIae*, q. 26, a. 4, n. 3, in *Comentarios* ..., II, p. 108.

[166] I see at least two possible ways to render Vitoria's Latin here, (1) Ungrammatically, ignoring the reflexive character of *sui*, it may be translated: "If they keep strictly to the law itself," or (2) grammatically, taking the *sui* to refer to the subject (ultimately, "some" [*aliqui*]) of *servent*, it may be translated as I have done. For better understanding of what is involved in my choice, consider the distinction drawn in Vitoria's comment in Article 6, n. 1, below.

[167] On the obligation of a son toward his father rather than toward a stranger in this situation, cf. *In IIa-IIae*, q. 26, n. 4, in *Comentarios* ... II, p. 110.

[168] Here Domingo Soto makes a distinction which puts him at odds with Vitoria, cf.: "... before the son grasps a plank he can leave it for his father, for this is not

positively to kill himself but to allow himself to die. But after he has possession of it, it does not seem licit to throw himself into the waves." ("... *antequam tabulam filius capiat potest illam relinquere patri: quia non hoc est positive se occidere, sed permittere se mori: postquam vero eidem insidet, re vera non apparet licitum esse ut se in fluctus deiiecat.*") *De justitia et jure*, V, q. 1, a. 6 (p. 399a).

[169] Spanish: "en un algibe, y danle a comer por onzas."

[170] For a similar doctrine, cf. St. Thomas, *Summa Theologiae*, II[a] II[ae], q. 69, a. 4, ad 2. Also see Vitoria, In *II[a]-II[ae]*, q. 69, a. 4.

[171] For this, see St. Thomas, *Summa Theologiae*, II[a]-II[ae], q. 69, a. 4, ad 2.

[172] See below: *In II[a]-II[ae], 64*, a. 7, n. 4; and *ibid.*, q. 69, a. 4, nn. 3-8, in *Comentarios* ..., IV, pp. 39-42.

[173] This differs from Cajetan (*In II[a]-II[ae]*, q. 69, a. 4, n. 2, in *Sancti Thomae Opera*, Tomus IX, pp. 113-4) who says that the sentence of death here could involve a sentence to prison before death.

[174] Cf. *In II[a]-II[ae], 64*, q. 69, a. 4, n. 8, in *Comentarios* ..., IV, p. 42.

[175] I am tempted here to translate: "that a community be liberated" and apply it to the enterprises of the *Conquistadores*.

[176] Here there is an obvious application to Vitoria's fellow Dominicans who voyaged to the New World. For a contemporary account of the discomforts and dangers of such a voyage undertaken by Bartolomé de las Casas and 47 other Dominicans, including the author of the account, cf. R.P. Fray Tomás de la Torre, *Desde Salamanca, España, hasta Ciudad real, Chiapas. Diario de viaje, 1544-1545*, Mexico City, 1945.

[177] Translating "contractationes" by "trade and commerce," I am reminded of the *Casa de Contratación* (*House of Trade*) established at Seville in 1503 for the regulation of trade and commerce between Spain and the New World.

[178] On this, cf. *Decretalium Greg. IX*, Lib. V, Tit. XIII, *De Tornamentis*, cc. 1 and 2; ed. Richter and Friedberg, II, 804, prohibiting tournaments and denying Christian burial to those willing participants who may be killed in them. Then see: *Extravagantes tum viginti D. Joannis Papae XXII*, Tit. IX, *De Tornamentis*, cap. un; Richter and Friedberg, II, 1215, lifting the ban of excommunication for those taking part in tournaments and jousts. For Vitoria referring to ecclesiastical prohibition of tournaments, cf. *In IIa-IIae*, q. 40, a. 1, n. 21, in *Comentarios* ..., II, p. 287.

[179] On this, cf. Vitoria's reply to an argument that many killings (*cedes*) result from such tournaments: "I say that many builders die, they fall in the course of building, and still no one says that building is forbidden. Therefore, this is not of itself [decisive for the liceity of tournaments], and commonly [participants] do not die in such exercises. When, however, the deaths of men would commonly follow from one of these exercises, it would be prohibited; but otherwise not." (*Dico quod plures aedificatores moriuntur, aedificando cadunt, et tamen hoc non dicit aliquis quod sit prohibitum. Ergo hoc non est de se, sed communiter non moriuntur in exercitiis istis. Quando autem communiter ex aliquo exercitio istorum sequerentur mortes hominum, illud esset prohibitum; alias non.*) *In IIa-IIae*, q. 40, n. 21, *Comentarios* ..., II, p. 288.

[180] Actually, Vitoria's phrase is "periculum imminentis mortis", i.e. "peril of imminent death."

[181] Cf. above, the relection, *On Homicide*, note 61.

[182] Cf. *In IIª-IIæ*, q. 125, a. 4, n. 17, in *Comentarios* ..., V, p. 371.

[183] I have not found a text which exactly matches Vitoria's citation. But cf. St. Thomas: *Summa Theologiae* Iª-IIæ, q. 6, a. 3; q. 71, a. 5, ad 2; *De Malo*, q. 2, a. 1, ad 2; and *In Sent.* II, d. 35, a. 3, ad 5.

[184] August. *De civit. Dei*, l. I, c. 19 (P. L. 41, 32-33); cf. *La Ciudad de Dios*, edición por el Padre José Moran, O.S.A, in *Obras de San Augustin*, edición bilingüe, XVI (Madrid: Biblioteca de Autores Cristianos, 1964), 36-9. For the story of Lucretia, cf. Livy I, LVII-LIX, in *Livy in Fourteen Volumes*, Books I and II, with English translation by B.O. Foster (Cambridge: Harvard University Press, 1976), pp. 198-209. Later in the century in which Vitoria wrote, Shakespeare used the account of Lucretia as the basis of his 1594 poem, *The Rape of Lucrece*. For Vitoria's own harsh judgment in the case of Lucretia, cf. *In IIa-IIae*, q. 124, a. 4, n. 10, in *Comentarios* ..., V, p. 344.

[185] Cf. *Sacramentalia F. Thomae Waldensis theologiae et Carmelitani Sodalitii professoris celeberrimi: sextum videlicet volumen doctrinalis antiquitatum fidei ecclesiae catholicae contra Witclevistas et eorum asseclas Lutheranos aliosque haereticos* (Parisiis: Imp. Francisco Reginaldo, 1523): Tit. IX, Cap. LXXVI, fol. 163vb, where reference is made to Samson being shorn of his hair and strength; and T. XIII, C. XXVII, fol. 271rb, where the Apostle Paul is quoted to say that Samson acted by faith. These are the only references to Samson which I have found in Netter.

[186] This is the only mention of Abraham which Vitoria makes in this context. In another place, he has briefly concluded that since God himself is the author and owner of human life, in Abraham's case He did not act against natural law or justice, nor did He dispense from any commandment [which would have bound Him]; cf. *In IIa-IIae*, qu. 104, a. 4; *Comentarios* ..., V, 210-211; also cf. *In Ia-IIae*, qu. 94, a. 5 (VI, 427). For a recent discussion of St. Thomas' more detailed treatment of Abraham and its comparison with Kierkegaard on the same issue, cf. Francisco Torralba Roselló, "Santo Tomás y Kierkegaard ante el dilema abrahamico," *Pensamiento*, L (1994), 75-94.

[187] Spanish: "metiose debajo."

[188] Beltrán de Heredia (*Comentarios* ...III, p. 298) gives a reference here to *De civit. Dei*, I, c. 21 (P. L. 41, 35). But I have not been able to verify this, even though in that place, mentioning Samson but not Eleazar, Augustine is speaking of those whose death God has ordered; cf. *ibid.* I, c. 21; ed. J. Moran, O.S.A., *Obras* ..., XVI (1964), p. 41-2.

[189] The text here, ("Sicut Scaevolae licuit ire castra, quia non ex intentione,") seems obviously corrupt. The reference is to Gaius Mucius, whose story is related by Livy (II, 12-13). In Livy's account, Mucius volunteered to assassinate Lars Porsenna, who was besieging Rome in 509 B.C. Penetrating the camp of Porsenna, he killed a secretary, whom he mistook for Porsenna. Taken captive and condemned to death by burning unless he revealed details of his plot against Porsenna, Mucius put his right hand into the fire until it was burned off. Impressed by his courage, Porsenna released him and afterwards the Romans gave him the name "Scaevola," which meant "left handed." In the text we have, Vitoria is evidently referring to his mistaken killing of the secretary.

[190] Suleiman I ("the Magnificent"), Sultan of Turkey from 1520 to 1560, was at the time pressing his invasion beyond the Balkans into Hungary, where he had taken Buda in 1526.

[191] Cf. *Politics* I, 2; 1253a19-39.

[192] For Vitoria in another place so citing Aristotle in support of a position that the republic can force persons to marry against their will, a position with which Vitoria himself does not agree, cf. *On Matrimony*, n. 7; Urdánoz, p. 891.

[193] With this, cf. "ANOTHER TITLE [for Spanish conquest in the New World] could be because of tyranny, either of the barbarian rulers themselves or simply because of tyrannical laws working injury to innocent people. Think, for example, that they are sacrificing innocent men or killing blameless persons in order to eat their flesh. I say that even without papal authority the Spaniards can restrain the barbarians from every such abominable custom and rite, because they can defend innocent people from unjust death. .... Moreover, if the sacrilegious practice cannot otherwise be rooted out, they can change their rulers and establish a new government. .... Furthermore, it is no obstacle that all the barbarians may agree on laws and sacrifices of this kind, and that they have no wish on this score to be delivered by the Spaniards. For in these matters they are not so much in charge of themselves (*sui juris*) that they can hand themselves or their children over to death." *On the Indians*, III, n. 15, Urdánoz, pp. 720-721. Also cf. "It is never lawful directly and deliberately to kill innocent people." *On the Law of War*, n. 35, Urdánoz, p. 840.

[194] Vitoria's point is that evil things cannot be the means for good ends, therefore even less can they be necessary means.

[195] This would be Vitoria's answer to the question, so often raised in twentieth-century cases, of soldiers and others "obeying orders" that are clearly immoral. Cf. also, note 203, below.

[196] Thinking of a similar situation, Domingo Soto writes: "There are those who, although they deny that, ordered by a tyrant, the republic can kill him, say, however, that it can hand him over to the same tyrant in order to be killed. But, then, both are exactly the same; and therefore neither is lawful. Nevertheless, the republic could in such a case not defend him, because the republic is not obliged to defend a private citizen." ("*Sunt qui licet diffiteantur rempublicam tunc iussu tyranni posse eum occidere, fatentur tamen posse ipsum eidem tradere ad occidendum. Porro autem idem est utrumque prorsus: atque adeo neutrum licet. Posset nihilominus eum illo casu non defendere: quia republica cum sui periculo non tenetur defendere privatum civem.*" *De iustitia et iure*, V, q. 1, a. 7 (p. 400a).

[197] With this, cf. "... from the opinion of better philosophers, a brave man should lay down his life for the republic, even if there were no happiness after this life." *First Relection 'On the Power of the Church,'* (*De potestate Ecclesiae prior*), IV, n. 9, Urdánoz, p. 302.

[198] Note this, a part is for the whole; therefore, the good of the part is not its own but that of the whole. Accordingly, the part as such cannot be injured in the sense of being deprived of some good which belongs to it.

[199] On this, cf. Domingo Soto: "But if you argue on the other side by an analogy — if someone were to threaten me with death unless I would offer my hand or my

tongue to him to be cut off, I could trade a member to save my life, even though that member would be necessary [for that saving] only from the malice of another; therefore, in a similar way the republic could hand over its citizen. — the consequence is denied: because a member [of the body] does not have a being distinct from the being of the whole [body]. Nor is a member in any way 'for itself,' but 'for the whole; nor is it by itself capable of [bearing] a right or [receiving] an injury. A man, however, even though he is part of the republic, is nevertheless also a supposit [i.e. a person] existing 'for himself,' and therefore he is by himself capable of [receiving] an injury, which the republic may not inflict upon him." ("*Quod si contra similitudine arguas: Si quis mihi mortem comminaretur nisi manum aut linguam abscindendam illi offerem, possem membrum tradere ut vitam servarem: licet medium illud non sit necessarium nisi ex malitia alterius: ergo similiter posset republica civem suum tradere. Negatur consequentia: quoniam membrum non habet esse distinctum ab esse totius: neque ullo modo est propter se, sed propter totum: neque per se est capax iuris vel iniuriae. Homo autem quamvis sit pars republicae, est nihilo minus et suppositum propter seipsum existens, atque adeo per se capax iniuriae, quam republica non potest illi irrogare.*") *De iustitia et iure*, V, q. 1, a. 7 (p. 400a); also a little before: " ... [the republic] is not like God, absolutely the master of the life of citizens, and thus only God has power over the life of an innocent person." ("*... non est absolute domina vitae civium, sicut Deus: et ideo in innocentis vitam solus Deus potestatem habet.*") *ibid.*

200 While this is not Vitoria's own answer, he does appear to give it a certain probability. But, on the other hand, he is clear about the limits of such conscription of his subjects by a king; cf. "Again, free men differ from slaves in this, as Aristotle teaches in *Politics*, Bk. I, cc. 3 and 4 [I, c. 4, 1254a 11-13], that masters (*domini*) use slaves for their own advantage and not for that of the slaves. But free men are not [to be used] for others (*propter alios*) but for themselves (*propter se*). Wherefore, if princes abuse citizens, forcing them into military service and making them contribute money toward a war which is not for the common good but for private advantage, they make slaves of those citizens." *On the Law of War*, n. 12; ed. Urdánoz, p. 825. Also cf. his opinion on subjects knowingly taking part in an unjust war: "If the injustice of the war is evident to a subject, he may not rightly serve as a soldier, even at the command of his sovereign. This is clear. For it is not, by any authority whatsoever, right to kill an innocent person. But in this case, the enemies are innocent. Therefore, it is not right to kill them." *ibid.*, n. 22; Urdánoz, p. 831. In case of a war of doubtful justice, Vitoria's opinion is as follows: "... it is certain that in a defensive war it is lawful for subjects in a doubtful matter to follow their sovereign in a war, indeed they are obliged to do so. But this is also the case in an offensive war.

"This is proven. First, because the sovereign, as has been said, cannot always nor is he obliged to give his subjects reasons for a war. And if the subjects cannot serve as soldiers except after they are assured of the justice of a war, the republic would be placed in grave danger and it would lie open to injury from enemies. Again, in doubtful matters the safer position should be followed. But if in doubtful cases subjects do not follow their sovereign to war, they expose themselves to the dan-

ger of handing over the republic to its enemies, which is something much more seriously wrong than to fight with doubt against [those] enemies. Therefore, they ought rather to fight." *ibid.*, n. 31; Urdánoz, p. 836-7.

[201] This would be for the reason that a war cannot be just on both sides; on this, cf. "Can a war be just on both sides? I answer [as follows]. The First Proposition: *Ignorance excluded, it is evident that this cannot happen.* For if the right and justice of each side is clear, it is not licit to fight against it, neither offensively nor defensively. The Second Proposition: Assuming a plausible (*probabili*) ignorance, either of fact or of law (*facti aut juris*), there can be on that side on which there is true justice a just war *per se*, but on the other side a just war in the sense of one excused from sin by good faith. For invincible ignorance excuses everything. Again, at least it can often happen on the part of subjects. For, granted that the sovereign who is waging an unjust war knows the war's injustice, still, as has been said, his subjects can in good faith follow their sovereign. And thus subjects on both sides may be fighting lawfully." *On the Law of War*, n. 32, ed. Urdánoz, p. 838.

[202] Cf. Vitoria in the course of discussing what is allowed in a just war, "The Second Proposition: *It is lawful to recover all things lost or their value.* This also is so evident that it needs no proof. Indeed, it is for this that war is waged or undertaken." *On the Law of War*, n. 16, ed. Urdánoz, p. 826; *ibid.*, n. 44, p. 847.

[203] Cf.: "This is most known: it is lawful to recover one's own possessions" (*Hoc est notissimum; licet recuperare bona sua.*), *In IIa-IIae*, q. 40, a. 1, n. 16, in *Comentarios* ..., II, p. 286.

[204] For instance, wars with the Saracens.

[205] On this, cf.: "*Once victory has been achieved, and where there is no danger from the enemy, is it lawful to kill all those who have borne arms on the enemy side?* And it seems clear that it is. For, as was said above, among the military commands which the Lord gave in *Deuteronomy* 20, v. 10, one is that when an enemy city has been taken by storm, all its inhabitants should be killed. The words of this passage are: "If when you come to take a city by storm, you first offer it peace, if it shall accept and open its gates to you, all persons in it will be safe and will serve you for tribute. But if, however, it declines to make peace and it begins war against you, you will attack it. And when the Lord your God shall have delivered it into your hand, you will strike with the edge of the sword all in it of masculine gender, but not women and children." *On the Law of War*, n. 45, Urdánoz, pp. 847-8. Also cf.: "Take a case where the Spaniards have won. They no longer fear danger and the enemy is in flight. Is it lawful to pursue and kill them? I am stipulating that their death is not necessary now for victory. *I answer* that it is entirely lawful to kill them. The reason is that the king has authority not only to recover possessions but to punish the enemy, even after they [i.e. the Spaniards] have taken the city. For example, the king could kill some citizens who had torched the city and not just confiscate their possessions. And this is clear, because if it were not lawful to kill them, wars could not be avoided, but would immediately recur. Second, I say that it would not be lawful to kill all the enemy, but moderation should be used. Just as the king could not punish all the citizens of that city, granted that they had rebelled against him, but he could punish some, in the same way he cannot in

wholesale fashion kill all the enemy. But it should be taken into account whether this was the first war these had unjustly waged against us, or again whether they were moved to do so without cause or with cause. Third, I say that it is not lawful to kill enemies when victory has been attained in a case where they were lawfully fighting if there is now threat of danger from them. Take a case where the king of Spain justly besieges the city of Bayonne; the inhabitants justly defend themselves, for if they would not defend themselves they would be traitors. I say that if the king of Spain takes the city and there is no threat of danger to him from them, he cannot kill them. The reason is because they are innocent. I say unless danger threatens in war, because if they are actually at war, it is lawful to repel force with force and granted that the enemies are innocent, it is lawful to kill them as in the case stipulated." *In IIa-IIae*, q. 40, a. 1, n. 10, in *Comentarios* ..., II, pp. 283-4.

[206] In 1535 the imperial forces of Charles V had culminated an African campaign with the capture of Tunis.

[207] Spanish: "que un alemán."

[208] With this, cf.: "*Is it lawful to kill innocent persons from whom, however, there will be in future a threat of danger?* For example, Saracen children are innocent. But one ought rightly fear that when they become adults they will fight and wage dangerous war against Christians. Moreover, even among enemies adult civilians (*togati puberes*) who are not soldiers are presumed to be innocent; but these may later take up arms and bring danger. Is it lawful to kill such as these?

"It seems that it is, for the [same] reason that it is indirectly (*per accidens*) lawful to kill other innocent persons. Again, in *Deuteronomy* 20: 13, the children of Israel are ordered, when they have captured some city, to slay all adult males; but we cannot presume that they all are guilty.

"*In answer to this*: although it could perhaps be argued that in such a case they could be killed, nevertheless, I believe this is in no way lawful. For evil things should not be done in order to avoid greater evils. Also, it is intolerable that someone be killed for a future sin. Moreover, there are other remedies for warding off future [evils] from such persons, for example, captivity, exile, etc., ... Whence it follows that whether victory has been achieved or whether a war is actually in progress, if the innocence of someone is evident, and the soldiers can let him go, they are obliged to do so." *On the Law of War*, n. 38, Urdánoz, 843. Also cf. *In IIa-IIae*, q. 40, a. 1, n. 14, in *Comentarios* ..., II, p. 285.

[209] See: *On the Law of War*, n. 37, Urdánoz, 842, as cited in note 105 above; cf. *In IIa-IIae*, q. 40, a. 1, n. 11, in *Comentarios* ..., II, p. 284. Also see, Domingo Soto, *De iustitia et iure*, V, q. 1, a. 2 (p. 387b).

[210] On this, cf. "*Granted that it is not lawful to kill children and other innocent persons, is it lawful at least to reduce them to bondage and slavery?* For answer to this, let a single proposition suffice: *As it is lawful to despoil the innocent, it is in the same way lawful to lead them into bondage.* For liberty and bondage are counted among the goods of fortune. Hence, when a war is of such kind that it is lawful to despoil all enemies without distinction, and to seize all their goods, it is also lawful to reduce all enemies, whether guilty or innocent, to bondage. And since a war against pagans is of this kind, inasmuch as it is perpetual and they can never make satis-

faction for the wrongs and damages they have inflicted, it is therefore certainly lawful to reduce Saracen children and women to bondage and slavery. But since by the Law of Nations (*jure gentium*) it seems accepted among Christians that Christians may not become slaves by right of war, this is indeed not lawful in a war among Christians. But if it is necessary for ending the war to make captives of even the innocent, such as children and women, not indeed for slavery, but for ransom, it is lawful. This, however, should not be extended beyond what is demanded by the needs of the war and what the usual practice of those fighting a just war has observed." *On the Law of War*, n. 42, Urdánoz, pp. 846-7.

[211] With this, compare: "*Certainly it is lawful to despoil the innocent of goods and possessions which the enemy would use against us, for example, arms, ships, and [war] machines.*

"This is clear, for otherwise we could not attain the victory which is the goal of war. Indeed, it also is lawful to take the money of innocent people as well as to burn and destroy their grain, and kill their horses, if such is necessary in order to weaken the forces of the enemy. From this a corollary follows, that if a war is perpetual [as, for instance, with the Saracens], it is lawful to despoil all without distinction among the enemy, both guilty and innocent. For from their resources (*opibus*) the enemy is sustaining an unjust war, and, contrariwise, the enemy's forces will be weakened if their citizens are despoiled.

"... *If a war can be satisfactorily waged without despoiling farmworkers or other innocent people, it does not seem lawful to despoil them.*

"Sylvester holds this, at the word *Bellum*, I, n. 10 [ed. Lugduni, p. 89b], for a war is based upon an injury. Therefore, if that injury can be compensated for in some other way, it is not lawful to exercise the right of war against innocent people. Indeed, Sylvester adds that even if there were a just reason to despoil the innocent, once the war was over, the victor would be obliged to restore to them whatever was left.

"But I do not think this is necessary. For, as is said below, if it has been done by right of war, all things yield in favor of and to the right of those waging a just war. Whence, if things were lawfully taken, I think they are not subject to restitution. What Sylvester, however, has said is righteous (*pium*) and plausible. But to despoil travelers and foreigners who are in enemy territory is in no way allowable, unless their guilt is evident. For they are not to be numbered among the enemy." *On the Law of War*, nn. 39-40, Urdánoz, 844-5.

[212] Actually, it is (his reply to) the *third* argument; i.e. *Summa theologiae* II-II, 64, 6, ad 3.

[213] For this, cf. Utrum judici liceat judicare contra veritatem quam novit, propter ea quae in contrarium proponuntur. ("Whether it is lawful for a judge to judge against what he knows to be true, because of what is proposed contrary to this.") *Summa theologiae* II*-II*, 67, 2. The parallel between this and the current American issue of "jury nullification" seems obvious.

[214] Note that Vitoria does allude to this opinion in the introduction to his *Relection on the Indians*, where he balances it with the thought that in forming one's own conscience one should be guided by norms outside his own feeling; cf. "For just as

in a lawcourt (*in foro contentioso*) a judge is bound to pass judgment according to what has been alleged and proven, so in the court of conscience each one is obliged to pass judgment not on the basis of his own feeling, but on account either of a demonstrable reason or of the authority of wise men. Any other way, his judgment is rash and he exposes himself to the danger of sinning, and by this he already sins." *On the Indians* I, Urdánoz, 645-6.

[215] On Thomistic doctrine here, cf. "This involves what becomes known in later Scholastic ethics as the principle of double effect: where a moral action results in two consequences, one evil and the other good, the action *may be done morally*, if the good is in some reasonable proportion to the evil, if the good cannot be attained without the evil, if the two consequences are concomitant, and if the good is directly intended and the evil only permitted." Vernon J. Bourke, *Ethics: A Textbook in Moral Philosophy* (New York: Macmillan, 1966), p. 353.

[216] These would be nominalist followers of the "the modern way" (*via moderna*). For Vitoria identifying Gabriel Biel (1410?-95), Jacob Almain (ca. 1480-1515), and Pierre d'Ailly (1350-1420) as "moderns," cf. *In IIa-IIae*, q. 26, a. 2, n. 5, in *Comentarios* ... II (1932), p. 90. For the "moderns" as sources of Vitoria's doctrine, cf. V. Beltrán de Heredia, *Comentarios* ... III, Introducción, xxvi-xxxi. On "the modern way," cf. E. Gilson, *History of Christian Philosophy in the Middle Ages* (New York: Random House, 1955), pp. 487-545.

[217] Spanish: "amortecello."

[218] Spanish: "sino un arcabuz."

[219] With this, compare the two powers of the king which were distinguished above in the commentary at Article One, number 6.

[220] That is, do nothing to defend himself and in so doing incur no guilt.

[221] For both Greeks and Romans the virtue of filial devotion.

[222] That is, the opposite of the opinion that one is obliged to defend himself by killing his attacker; cf. *In Summam Theologiae*, II^{a}-II^{ae}, q. 67, a. 7, nn. 1-2; in Sancti Thomae Aquinatis, *Opera omnia, cum commentariis Thomae de Vio Caietani Ordinis Praedicatorum, S.R.E. Cardinalis*, IX (Romae: S.C. de Propaganda Fide, 1897), pp. 74-5.

[223] Note that the same example is used in the relection, *On Homicide*, n. 24.

[224] This unusual word is the Latin equivalent of the Spanish "mayorazgo," which Vitoria uses in other contexts; cf. e.g. *In IIa-IIae*, q. 64, a. 6, nn. 9 and 14, in *Comentarios* ... III, pp. 180 and 185.

[225] At this point, Domingo Soto will add an article: "Whether it is lawful to expose one's life for the defense of a friend or of some virtue?" (*Utrum liceat vitam, pro defensione amici aut cuiuscunque virtutis, exponere?*) and will remark: "We have thought it fitting to add this sixth article to the one immediately preceding, although St. Thomas passed it by in silence." (*"Articulo proxime praecedenti operae pretium duximus hunc sextum adhibere: licet D. Thom. silentio hic eum praeterierit."*) *De iustitia et iure*, V, q. 1, a. 6 (p. 396a).

[226] With this compare and contrast Domingo Soto, as cited in note 168, above.

[227] Cf. *Quaestiones in epist. Pauli. Epist. ad Rom.* q. 294 (P. L. 175, 504).

[228] Cf. *Romans* 12: 19.

[229] On this, cf. *Summa theologiae* II^{a}-II^{ae}, qu. 26.

[230] For this, see *Summa Theologiae*, II^{a}-II^{ae}, q. 26, aa. 4 and 5; and Vitoria, *In I^{a}-II^{ae}*, q. 26, aa. 4 and 5, in *Comentarios* ..., II, pp. 105-111.

[231] Note Vitoria's own inconsistency here in using *fur* and *latro* as synonyms; cf. Art. II, n. 5, above.

[232] *In Summam* ..., IIa-IIae, q. 64, a. 7, n. 3 (IX, 75).

[233] Cf. note 61, above.

[234] *Ibid.*

[235] The "person robbed" or the "person robbing"? This is unclear to me.

[236] It is not clear to me whether Vitoria would here regard a cloak as a small or a great possession. Probably, this would depend upon such matters as the cost of the cloak, the rank of the person from whom it is taken, and its necessity for the sustenance of its owner's life.

[237] On the main point here, cf. the following propositions *condemned* under Innocent XI, in a Decree of the Holy Office, dated March 2, 1679: "As a rule (*regulariter*), I can kill a thief in order to keep one piece of gold" and: "Not only is it lawful to defend with a lethal defense those things which we actually possess, but also those things to which we have an inchoate right and which we hope we will possess." cf. Denzinger, nn. 2131-2, p. 461.

[238] Spanish: "como si fuese un caballero."

[239] Possibly this refers to *In I^{a}-II^{ae}*, 64, a. 6, n. 4, above.

[240] With this cf. the proposition *condemned* under Innocent XI, "It is right for a man of honor to kill an attacker who tries to calumniate him, if such ignominy cannot otherwise be avoided; and the same must also be said if someone gives him a slap or strikes him with a stick and afterwards, having done that, flees." (*Fas est viro honorato occidere invasorem, qui nititur calumniam inferre, si aliter haec ignominia vitari nequit: idem quoque dicendum, si quis impingat alapam vel fuste percutiat et post impactam alapam vel ictum fustis fugiat.*), Denzinger, p. 461, n. 2130.

[241] For the same social distinction at work in the case of a blow received in a fist fight (*rixa*), cf. *In IIa-IIae*, q. 41, a. 1, n. 3, *Comentarios* ..., II, p. 296. Also cf. "... he who is attacked has the right to defend himself insofar as there is need for defense. With respect to which it should be noted, and especially with respect to Spaniards, that, as we said in the previous article, an injury is not just a matter of bodily injury, but also a matter of honor, as when someone seriously dishonors another. Hence one who is attacked in either of these ways, either bodily or with regard to his honor, has the right to defend himself both from bodily injury and from dishonor, i.e., the right to defend his honor, which the Spaniards especially do." (... *qui invaditur, habet facultatem defendendi se quantum opus est ad sui defensionem. Pro quo est notandum, et maxime pro Hispanis, quia ut dicebamus in articulo praecedenti, laesio non solum est ex nocumento corporali, sed ex honore, sicut quando aliquis multum dehonorat alium. Unde qui invaditur aliquo istorum modorum, vel corporaliter, vel in honore, habet facultatem ad defendendum se a nocumento corporali et dehonestatione, id est ad defendendum honorem suum, quem maxime Hispani defendunt.*) *ibid.*, a. 2, n. 2, p. 297.

[242] Cf. note 61, above.

[243] On the question of fleeing rather than defending oneself, cf. "...can someone who is attacked by a thief or an enemy strike his attacker back when by fleeing he could escape?

"The Archbishop [i.e. St. Antoninus] answers that indeed he could not. For such would not be to protect oneself within the bounds of blameless defense. For everyone is obliged to defend himself, insofar as he can, with a minimum of damage to his attacker. If, therefore, by resisting, it is necessary to kill or seriously wound his attacker, but he can save himself by flight, it appears that he is obliged to do the latter. But Panormitanus [i.e. Nicolò de' Tudeschi, O.S.B. (1386-1445), Archbishop of Palermo] in the chapter, *Olim. De restitutione spoliatorum* (cf. Decretalia Greg. IX, Lib. II, tit. 13, c. 12; ed. Richter and Friedberg, II, 285-6; Panormitanus: *Commentaria Primae Partis in Secundum Decretalium*, II, 13, 12 [ed. Venice, 1605, n. 17, f. 184 rb-va]) has distinguished: for if the one attacked would suffer great dishonor by fleeing, he is not obliged to flee, but he can repulse the injury by striking back. However, if the flight would not cause a loss of reputation or honor, as in the case of a monk or a peasant attacked by a noble and powerful man, he is obliged rather to flee.

"But Bartolus [de Sassoferato (1312-1357), professor of law at Pisa, and a defender of the Emperor's prerogatives], commenting on the *Digest*, the first law, *De poenis* (cf. *Dig.* XLVIII, tit. 19, 1, ed. Mommsen and Krueger, I, 864; Bartolus: *In Secundum Digesti Novi Partem*, ed. Augustae Taurinorum, 1589, ff. 237-238), and the law *Furem*, *De sicariis* (*Dig.* XLVIII, 8, 9; *ibid.*, I, 853; Bartolus: f. 213 va), holds without any distinction that it is lawful for such a one to defend himself and that he is not obliged to flee, because flight is a wrong (*injuria*), in the law of the *Digest*, *Item apud Labeonem*, *De injuriis* (*Dig.* XLVII, 10, 15; *ibid.*, I, 832). But if it is lawful for the defense of possessions to resist by arms, as in the aforesaid chapter, *Olim*, and in the chapter *Dilecto*, *De sententia excommunicationis*, book 6 [VI, 5, 11, 6], much more is it so in order to prevent bodily injury, which is greater than the loss of things; cf. the *Digest*, the law, *In servorum*, *De poenis* (XLVIII, 19, 10; I, 866).

"And this opinion [i.e. of Bartolus] can be held probably and safely enough, especially inasmuch as civil laws (*jura*) grant this, as e.g. in the mentioned law, *Furem*. But with the authority of the law no one sins, for laws give a right in the forum of conscience. Whence, even though by natural right (*jure*) it would not be licit to kill in defense of possessions, it seems that by civil law (*jure*) it can be made licit. And this would seem to be so, as long as scandal is avoided, not only for a layman but also for a cleric and a religious man." *On the Law of War*, 4; ed. Urdánoz, 819-20.

[244] Here I conjecture the text should read: "ad intercipiendum" instead of Beltrán de Heredia's reading (III, 307) of "ad interficiendum."

[245] Spanish: "matalle antes que me mate."

[246] Here, Beltrán de Heredia has reproduced a marginal gloss, which translates as follows: "This is confirmed. For it is lawful for the emperor for the defense of the republic to get a start on a war, if he knows that another hostile king is conspiring against his kingdom. Therefore, in the same way, it is lawful for me to get a start

on my enemy." (*Confirmatur. Quia imperatori licet praevenire bellum propter defensionem reipublicae, si sciat quod alius rex contrarius faciat comitia adversus regnum suum. Ergo eodem modo licet mihi praevenire inimicum meum.*) If this gloss does represent the thought of Vitoria, it has huge significance for his just war theory as well as for its application here. In effect, it would, at least in some cases, justify a preemptive attack. I know of only one other place in Vitoria's work where such a possibility is mentioned; cf. "...in moral matters a most cogent argument is from authority and the example of holy and good men. But there have been many such men who have protected their homeland and possession not only by defensive war, but who have also by offensive war prosecuted wrongs received from or even intended by their enemies." *On the Law of War*, n. 1, Urdánoz, p. 818.

[247] Cf. *Summa theologiae* I²-II^ae, 96, 4, as cited by Vitoria in *On the Indians* I, n. 9, ed. Urdánoz, p. 657; also cf. *On Civil Power*, n. 15, Urdánoz, p. 181 and nn. 17-24, pp. 185-95. On the exception from this of unjust laws, see *On the Power of the Pope and a Council*, n. 18, pp. 478-480. For the other side of this, cf. Vitoria: "But with the authority of the law no one sins, for laws give a right in the forum of conscience." *On the Law of War*, n. 4; ed. Urdánoz, p. 820.

[248] For the same teaching with distinctions drawn between public and private enemies as well as between enemies who are weaker and those who are stronger, cf. *In IIa-IIae*, q. 25, a. 9, esp. nn. 4 and 6, in *Comentarios* ..., II, pp. 78-9.

[249] That is, *Summa theologiae* IIa-IIae, 64, 7, ad 3. Cf. *ibid.*, *Suppl.*, q. 39, a. 4, ad 2.

[250] Cf. *Decretum*, pars I, d. 50, c. 6, *De his clericis*; ed. Richter and Friedberg, I, 179.

[251] Cf. *Clementi Papae V. Constitutiones*, Lib. V, Tit. IV, Cap. un., *Si furiosus*; ed. Richter and Friedberg, II, 1184.

[252] Cf. *In Summa Theologiam* II²-II^ae, 64, 8; in Sancti Thomae Aquinatis, *Opera omnia, cum commentariis Thomae de Vio Caietani Ordinis Praedicatorum, S.R.E. Cardinalis*, IX (Romae, 1897), pp. 76-8.

[253] For this, cf. St. Thomas, *Summa Theologiae*, I²-II^ae, q. 20, esp. a. 4; *In Sent.* II, d. 40, q. 1, a. 3, in *Scriptum super libros Sententiarum Magistri Petri Lombardi Episcopi Parisiensis*, editio nova, cura R. P. Mandonnet, O.P., Tomus II (Parisiis: P. Lethielleux, 1929), pp. 1015-19; and *De Malo*, q. 2, a. 2, ad 8, in *Quaestiones disputatae*, Tomus II, cura et studio RR. PP. P. Bazzi et P.M. Pession (Taurini: Marietti, 1953), p. 470. Basically, the Thomistic doctrine here is that, while the external act which is intended specifies the choice of the will, from the viewpoint of that choice the external act adds no goodness or malice except incidentally as the act of the will may become better or worse insofar as it is repeated, extended, or intensified when carried over to the external act. For a fuller treatment of the Thomistic understanding of the relation between the internal and the external act, see Vernon J. Bourke, *Ethics*, esp. pp. 142-7, 158 60.

[254] Cf. *ibid.*, n. 4 (p. 77). Literally, Vitoria's sentence here reads: "Cajetan, however, would not deny that if someone intends some act from which either a homicide may follow or is apt to follow that he is not-guilty of homicide."

[255] *Ibid.*, n. 1, p. 76.

[256] Cf. this article, n. 2, above.

[257] Cf. *Decreti prima pars, dist.* L, c. 48, *Quantum dicit* (ed. Richter and Friedberg I, col. 197); and *ibid.*, c. 49, *Hii, qui arborem.*

[258] Spanish: "que va en posta."

[259] Cf. *In IIª-IIæ, 64, 7,* in S. Thomae Aquinatis, *Opera omnia ...*, IX, p. 76, n. 1.

[260] Cf. *ibid.*, n. 3 (p. 77).

[261] Cf. *Summa summarum ...*, *Homicidium* (ed. 1528: I, fol. 290v).

[262] *Decretalium Greg. IX*, Lib. V, Tit. XII, c. 10; ed. Richter and Friedberg, II, 797.

[263] *Ibid.*, c. 11.

[264] *Ibid.*, c. 19 (II, 801).

[265] *Ibid.*, c. 20 (802).

[266] Cf. "Odia restringi, et favores convenit ampliari." *Liber sexti Decretalium, D. Bonafacii papae VIII*, V, cap. ult.: *De regulis juris*, reg. 15, in *Corpus iuris canonici*, ed. Richter and Friedberg, II, col. 1122. And from a text widely used in the middle decades of this century: "A fundamental rule of jurisprudence is to put as broad as possible an interpretation on the words of a favorable law and to interpret unfavorable laws strictly." J. Heribert Jone, O.F.M. Cap., *Moral Theology*, Englished and adapted to the Code and Customs of the United State of America by Rev. Urban Adelman, O.F.M. Cap (Westminster, MD: Newman Press, 1953), n. 55, p. 23. Also cf. Canons 19 and 2219, in *Codex juris canonici*, Pii X Pontificis Maximi jussu digestus, Benedicti Papae XV auctoritate promulgatus (Romae: Typis Polyglottis Vaticanis, 1918), pp. 5 and 599; and Canon 18, in *Code of Canon Law*, Latin-English edition (Washington, DC: Canon Law Society of American, 1983), p. 7.

The Summa theologica

of

St. Thomas Aquinas

Part II.

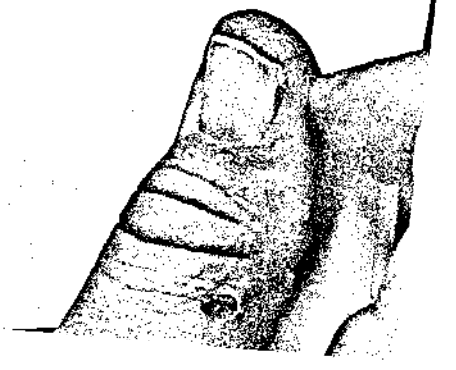
Question 64, Articles 1-8

Literally translated by Fathers of the English Dominican Province

London: Burns Oates & Washboune Ltd.
Publishers to the Holy See

1929

[Pp. 195-212]



Question LXIV.

Of Murder

(In Eight Articles.)

In due sequence we must consider the vices opposed to commutative justice. We must consider (I) those sins that are committed in relation to involuntary commutations: (2) those that are committed with regard to voluntary commutations. Sins are committed in relation to involuntary commutations by doing an injury to one's neighbour against his will: and this can be done in two ways, namely by deed or by word. By deed when one's neighbour is injured either in his own person, or in a person connected with him, or in his possessions.

We must therefore consider these points in due order, and in the first place we shall consider murder whereby a man inflicts the greatest injury on his neighbour. Under this head there are eight points of inquiry: (I) Whether it is a sin to kill dumb animals or even plants? (2) Whether it is lawful to kill a sinner? (3) Whether this is lawful to a private individual, or to a public person only? (4) Whether this is lawful to a cleric? (5) Whether it is lawful to kill oneself? (6) Whether it is lawful to kill a just man? (7) Whether it is lawful to kill a man in self-defence? (8) Whether accidental homicide is a mortal sin?

First Article
Whether It Is Unlawful to Kill Any Living Thing?

We proceed thus to the First Article: —

Objection I. It would seem unlawful to kill any living thing. For the Apostle says (Rom. xiii. 2): *They that resist the ordinance of God purchase to themselves damnation.** Now Divine providence has ordained that all living things should be preserved, according to Ps. cxlvi. 8, 9, *Who maketh grass to grow on the mountains ..., Who giveth to beasts their food.* Therefore it seems unlawful to take the life of any living thing.

Obj. 2. Further, Murder is a sin because it deprives a man of life. Now life is common to all animals and plants. Hence for the same reason it is apparently a sin to slay dumb animals and plants.

Obj. 3. Further, In the Divine law a special punishment is not appointed save for a sin. Now a special punishment had to be inflicted, according to the

* Vulg.,— *He that resisted the power, resisteth the ordinance of God: and they that resist, purchase to themselves damnation.*

Divine law, on one who killed another man's ox or sheep (Exod. xxii. 1). Therefore the slaying of dumb animals is a sin.

On the contrary, Augustine says (*De Civ. Dei* i. 20): *When we hear it said, 'Thou shalt not kill,' we do not take it as referring to trees, for they have no sense, nor to irrational animals, because they have no fellowship with us. Hence it follows that the words, 'Thou shalt not kill' refer to the killing of a man.*

I answer that, There is no sin in using a thing for the purpose for which it is. Now the order of things is such that the imperfect are for the perfect, even as in the process of generation nature proceeds from imperfection to perfection. Hence it is that just as in the generation of a man there is first a living thing, then an animal, and lastly a man, so too things, like the plants, which merely have life, are all alike for animals, and all animals are for man. Wherefore it is not unlawful if man use plants for the good of animals and animals for the good of man, as the Philosopher states (*Polit.* i. 3).

Now the most necessary use would seem to consist in the fact that animals use plants, and men use animals, for food, and this cannot be done unless these be deprived of life: wherefore it is lawful both to take life from plants for the use of animals, and from animals for the use of men. In fact this is in keeping with the commandment of God Himself: for it is written (Gen. i. 29, 30): *Behold I have given you every herb ... and all trees ... to be your meat, and to all beasts of the earth*: and again (*ibid.* ix. 3): *Everything that moveth and liveth shall be meat to you.*

Reply Obj. 1. According to the Divine ordinance the life of animals and plants is preserved not for themselves but for man. Hence, as Augustine says (*De Civ. Dei* i. 20), *by a most just ordinance of the Creator, both their life and their death are subject to our use.*

Reply Obj. 2. Dumb animals and plants are devoid of the life of reason whereby to set themselves in motion; they are moved, as it were by another, by a kind of natural impulse, a sign of which is that they are naturally enslaved and accommodated to the uses of others.

Reply Obj. 3. He that kills another's ox, sins, not through killing the ox, but through injuring another man in his property. Wherefore this is not a species of the sin of murder but of the sin of theft or robbery.

Second Article
Whether It Is Lawful to Kill Sinners?

We proceed thus to the Second Article: —

Objection 1. It would seem unlawful to kill men who have sinned. For Our Lord in the parable (Matth. xiii.) forbade the uprooting of the cockle which denotes wicked men according to a gloss. Now whatever is forbidden by God is a sin. Therefore it is a sin to kill a sinner.

1544 — Pope Paul III calls a General Council for 1545 at Trent in northern Italy.
1545 — Truce of Adrianople between Charles V, Ferdinand of Austria, and Suleiman I.
——— Council of Trent convenes (-1564).
——— Vitoria named by Charles V as a delegate to the Council but is too sick to go.
1546 — Martin Luther (b. 1483) dies (February 18).
——— Vitoria dies (August 12).
1551 — *Junta de Valladolid* made up of fourteen theologians, headed by Domingo de Soto, selected to judge the Spanish conquest of the Indians of the New World. The principal business before the *Junta* was a debate between the humanist Gino de Sepúlveda, the defender of the Spanish role, and its severe critic, Bartolomé de las Casas, bishop of Chiapa in Mexico.
1557 — Boyer edition of Vitoria's *Relectiones* appears at Lyons.

Appendix B

Vitoria's Courses in Theology at Salamanca[1]

1526-1529: *Secunda secundae* of the *Summa Theologiae*

1529-1531: Fourth Book of the *Sententiae* of P. Lombard

1531-1533: *Prima Pars* of the *Summa Theologiae*

1533-1534: *Prima secundae* of the *Summa Theologiae*

1534-1537: *Secunda secundae* of the *Summa Theologiae*

1537-1538: *Tertia Pars* (q. 1-59) of the *Summa Theologiae*

1538-1539: Fourth Book of the *Sententiae*

1539-1540: *Prima Pars* (q. 1-48) of the *Summa Theologiae*.

[1] Cf. Urdánoz, p. 77.