

## THE SECOND RELECTIO

### OF THE REVEREND FATHER, BROTHER FRANCISCUS DE VICTORIA, ON THE INDIANS, OR ON THE LAW OF WAR MADE BY THE SPANIARDS ON THE BARBARIANS.

#### SUMMARY.

1. Christians may serve in war and make war.
2. In whose hands lies the authority to make or declare war?
3. Anyone, even a private person, can accept and wage a defensive war.
4. Whether one who is attacked by a robber or a foe may strike back the Assailant, if able to escape by flight.
5. Every commonwealth has authority to declare and make war.
6. A prince has the same authority to declare and make war as a State has.
7. What a State is and who is properly styled a prince.
8. Whether several States or princes, when they have one common lord or prince, may make war of themselves without the authority of the superior lord.
9. Petty rulers or princes, who are not at the head of a complete State, but are parts of another State, can not undertake or make war. And what about cities?
10. What can be a reason or cause of just war? Proof that diversity of religion is not a cause of just war.
11. Extension of an Empire is not a just cause of war.
12. The personal glory, or other advantage, of a prince is not a just cause of war.
13. Wrong done is the sole and only just cause for making war.
14. Not every kind and degree of wrong suffices for making war.
15. When just war exists, everything is lawful which is necessary for the defense of the public good.
16. In just war it is lawful to retake all things that have been lost, or a part thereof.
17. In just war it is lawful to make good, out of the goods of the enemy, all the cost of the war and all damages wrongfully caused by the enemy.
18. After property has been recaptured from an enemy in just war, what the prince may then do.
19. It is lawful for a prince, after gaining the victory in a just war and after retaking property, and even after the establishment of peace and security, to avenge the wrongs done to him by the enemy and to take measures against the enemy and punish them for these wrongs.
20. In order that a war be called just, it is not always enough that the prince believes he has a just cause.
21. The justice of a war must be most thoroughly and carefully examined.
22. Whether subjects are bound to examine the cause of a war; and how, if a subject is convinced of the injustice of a war, he may not serve in it, even though his sovereign commands.
23. If subjects are conscientiously of opinion that a war is unjust, they may not serve in it, whether their opinion be wrong or right.

24. Senators, petty rulers, and, in general, all who, either on summons or coming of their own accord, are admitted to the public council or the king's council, are bound to examine the cause of an unjust war.

25. Who are not bound to examine the causes of war, but may lawfully serve in it in reliance on the good faith of their betters.

26. When ignorance of the injustice of a war would not excuse subjects who serve.

27. What is to be done, when there is doubt about the justice of a war; and how if one prince be in lawful possession, so long as the doubt remains another may not try to turn him out by war and armed force.

28. If there be a city or province concerning which it is doubtful whether it has a lawful possessor, especially where there is a vacancy owing to the death of the lawful lord, etc. -- what is to be done in such a case.

29. How a person who is doubtful about his own title, even if he be in peaceable possession, is bound to make careful examination of his case, if perchance he can arrive at certainty either in his own favor or in favor of another.

30. After the examination of a case, so long as a doubt reasonably persists, a lawful possessor is not bound to quit possession, but may lawfully retain it.

31. In a doubtful case, subjects may follow their prince to battle not only in a defensive, but also in an offensive war.

32. Whether a war can be just on both sides, and how, apart from ignorance, this can not happen.

33. Whether a prince or a subject, who in ignorance has prosecuted an unjust war, is bound to make restitution, if afterwards he becomes convinced of its injustice.

34. Whether it is lawful in war to kill the innocent.

35. Slaughter of the innocent is never lawful in itself and intentionally.

36. Whether it is lawful to kill women and children in a war against the Turks; and what, among Christians, about farmers, civilians, foreigners, strangers, and clergy.

37. The incidental killing of the innocent, even with knowledge, is sometimes lawful, sometimes not.

38. Whether it is lawful to kill the innocent from whom danger in the future is apprehended.

39. Whether it is lawful to despoil the innocent among the enemy, and what things may be taken.

40. If war can be adequately conducted without despoiling farmers or other innocent folk, it seems unlawful to despoil them; and what about foreigners and strangers on enemy territory?

41. How, if the enemy refuse to restore the things which they have wrongfully taken away, and the injured party can not recoup himself in any other way, he can seek satisfaction where he will, whether from the guilty or the innocent.

42. Whether the innocent and children, who are admittedly not to be killed, may at least be led into captivity and slavery.

43. Whether hostages, taken from the enemy in time of truce or on the termination of a war, may be put to death, if the enemy break faith and do not abide by what has been agreed on.

44. Whether it is lawful in war to kill all the guilty.
45. It is lawful to kill without distinction all who resist in the actual heat of battle either in the storming or in the defense of a city, and as long as affairs are in peril.
46. It is lawful to kill the guilty, even after victory has been won and danger has already been removed.
47. It is not always lawful to kill all the guilty, merely in order to avenge a wrong.
48. At times it is both lawful and expedient to kill all the guilty, especially in a war against unbelievers. And what in a war against Christians?
49. Whether it is lawful to kill captives and those who have surrendered, assuming them to have been guilty also.
50. Whether things captured in a just war belong to the captor and seizer; and how these things vest in the seizer up to a sufficient satisfaction for what has been wrongfully taken away and for expenses.
51. How all movables, by the law of nations, vest in the seizer, even though their value more than compensates the wrong done.
52. Whether it is lawful to leave a city to the soldiery by way of booty; and how this is not unlawful, but at times even necessary.
53. Soldiers may not loot or bum without authority; otherwise they are bound to make restitution.
54. It is lawful to seize and hold the lands and fortresses and towns of the enemy, so far as this is necessary by way of compensation for damages done.
55. It is lawful to seize and hold an enemy fortress or city by way of obtaining security and avoiding danger or as a means of defense and in order to take away from the enemy an opportunity to do harm, etc.
56. It is lawful to deprive the enemy of part of his territory on account of the wrong he has done and by way of punishment, that is, revenge; and how on this ground a fortress or town may be seized, so long as due limits are observed.
57. Whether it is lawful to impose the payment of tribute on the conquered enemy.
58. Whether it is lawful to depose the princes of the enemy and put new ones over them or retain the sovereignty for oneself; and how it is not lawful to do this indiscriminately and for every cause of just war whatsoever.
59. When the princes of the enemy may lawfully be deposed, is shown.
60. The canons or rules of belligerency are described.

Inasmuch as the seizure and occupation of those lands of the barbarians whom we style Indians can best, it seems, be defended under the law of war, I propose to supplement the foregoing discussion of the titles, some just and some unjust, which the Spaniards may allege for their hold on the lands in question, by a short discussion of the law of war, so as to give more completeness to that relectio. As, however, the other claims on my time will not allow me to deal with all the points which arise out of this topic, the scope which I can give my pen must be proportionate, not to the amplitude and dignity of the theme, but to the shortness of the time at my disposal. And so I will merely note the main propositions of this topic,

together with very brief proofs, and will abstain from touching on the many doubtful matters which might otherwise be brought into this discussion. I will deal with four principal questions. First, Whether Christians may make war at all; secondly, Where does the authority to declare or wage war repose; thirdly, What may and ought to furnish causes of just war; fourthly, What and how extensive measures may be taken in a just war against the enemy?

As regards the first question, war might seem altogether prohibited to Christians, for there is the prohibition of self-defense in the passage (Romans, ch. 12), "Dearly beloved, avenge not yourselves, but give place unto wrath," and our Lord says in the Gospel (St. Matthew, ch. 5), "Whosoever shall smite thee on the right cheek, turn to him the other also" and "I say unto you not to resist evil," and (St. Matthew, ch. 26), "All they that take the sword shall perish by the sword." And it is no sufficient answer to say that all these matters are not of precept, but of counsel, for it would be a grave enough impropriety if every war undertaken by Christians was contrary to our Lord's advice. The opinion of all the doctors is to the contrary and so is the received usage of the Church.

In development of this question be it noted that, although Catholics are fairly in accord on the matter, yet Luther, who left naught uncontaminated, denies that Christians may take up arms even against the Turks, and he relies not only on the above-cited texts of Scripture, but also on the fact that if the Turks attack Christendom it is the will of God, which may not be resisted. Herein, however, he had not as much success as in his other dogmas in imposing on the Germans, who are born soldiers. Tertullian too, seems not averse from this opinion, for in his *De corona militis* he discusses "whether military service is at all right for a Christian," and in the issue he inclines to hold that military service is forbidden to a Christian, who, says he, "may not even go to law."

1. Passing over outside opinions, however, let my answer to the question be given in the single proposition: Christians may serve in war and make war. This is the conclusion of St. Augustine in the many passages where he thoroughly considers the question, such as: (a) in his *Contra Faustum*, (b) in his *Liber 83 Quaestionum*, (c) in his *De verbis Domini*, in his *Contra Secundinum Manichaeum*, (d) in his sermon on the Centurion's son, and (e) in his Letter to Boniface. And, as St. Augustine shows, this is proved by the words of John the Baptist to the soldiers (St. Luke, ch. 3), "Do violence to no man, neither accuse any falsely." "But," says St. Augustine, (f) "if Christian doctrine condemned war altogether, those looking for counsels of salvation in the Gospel would be told to throw away their arms and give up soldiering altogether; but what is said to them is, 'Do violence to no man and be content with your wages.'"

Secondly, there is proof in the reason of the thing (*Secunda Secundae*, qu. 40, art. 1). To draw the sword and use arms against internal wrongdoers and seditious citizens is lawful according to Romans, ch. 13, "He beareth not the sword in vain, for he is the minister of God, a revenger of wrath upon him that doeth evil." Therefore it is lawful also to use the sword and arms against external enemies. Princes, accordingly, are told in the Psalms,<sup>1</sup> "Deliver the poor and needy, rid them out of the hand of the wicked."

Thirdly, this was also allowable by the law of nature, as appears from the case of Abraham, who fought against four kings (Genesis, ch. 14), and also by the written law, as appears from the cases of David and the Maccabees.

But the Gospel law forbids nothing which is allowed by natural law, as is well shown by St. Thomas (Prima Secundae, qu. 107, last art.), and that is why it is called the law of liberty (St. James, ch. 1 and 2). Therefore, what was lawful under natural law and in the written law is no less lawful under the Gospel law.

Fourthly, since there can be no doubt that in a defensive war force may be employed to repel force (Dig., 1, 1, 3), this is also proved with regard to an offensive war, that is, a war where we are not only defending ourselves or seeking to repossess ourselves of property, but also where we are trying to avenge ourselves for some wrong done to us. This, I say, is proved by the authority of St. Augustine (Liber 83 Quaestionum) in a passage also found in can. dominus, C. 23, qu. 2, "Those wars are described as just wars which are waged in order to avenge a wrong done, as where punishment has to be meted out to a city or state because it has itself neglected to exact punishment for an offense committed by its citizens or subjects or to return what has been wrongfully taken away."

A fifth proof with regard to an offensive war is that even a defensive war could not be waged satisfactorily, were no vengeance taken on enemies who have done or tried to do a wrong. For they would only be emboldened to make a second attack, if the fear of retribution did not keep them from wrongdoing.

A sixth proof is that, as St. Augustine says (De verbo Domini and Ad Bonifacium), the end and aim of war is the peace and security of the State. But there can be no security in the State unless enemies are made to desist from wrong by the fear of war, for the situation with regard to war would be glaringly unfair, if all that a State could do when enemies attack it unjustly was to ward off the attack and if they could not follow this up by further steps.

A seventh proof comes from the end and aim and good of the whole world. For there would be no condition of happiness for the world, nay, its condition would be one of utter misery, if oppressors and robbers and plunderers could with impunity commit their crimes and oppress the good and innocent, and these latter could not in turn retaliate on them.

My eighth and last proof is one which in morals carries the utmost weight, namely, the authority and example of good and holy men. Such men have not only defended their country and their own property in defensive wars, but have also in offensive wars sought reparation for wrongs done or attempted by their enemies, as appears from the case of Jonathan and Simon (I Maccabees, ch. 9), who avenged the death of their brother John on the sons of Jambri. And in the Christian Church we have the conspicuous examples of Constantine the Great and Theodosius the Elder and other renowned and most Christian Emperors, who made many wars of both kinds, although their councils included bishops of great sanctity and learning.

2. Second question: In whose hands lies the authority to declare and to make war?

3. Herein let my first proposition be: Any one, even a private person, can accept and wage a defensive war. This is shown by the fact that force may be repelled by force (Dig., as above). Hence any one can make this kind of war, without authority from any one else, for the defense not only of his person, but also of his property and goods.

4. A doubt, however, arises in connection with this proposition, namely, whether one who is attacked by a robber or enemy can strike his assailant back if escape by flight is possible. The Archbishop, indeed, says, No; this being in excess of the limits of blameless self-defense, since everyone is bound in the exercise of self-defense to do as little harm as possible to his assailant. If, then, resistance would involve the death of or grievous bodily harm to the assailant, but escape by flight is a possible thing, the latter course ought to be adopted. Panormitanus, however, writing on X, 2, 13, 12, draws a distinction. If, says he, the victim would be seriously disgraced by flight, he is not bound to fly, but may repel the wrong by striking back, whereas if flight would not smirch his reputation or honor, as when a monk or rustic is attacked by a noble and powerful man, he is bound to fly instead. Bartolus, however, commenting on Dig., 48, 19, 1, and 48, 8, 9, holds without distinguishing that self-defense is lawful and that there is no obligation to fly, the putting to flight being itself a wrong (Dig., 47, 10, 15). If, then, armed resistance is permissible in defense of property, as appears from X, 2, 13, 12, and from c. 6, tit. II, bk. 5 in VI, much more is it permissible in order to protect the body from hurt, such hurt being more serious than wrong to property (Dig., 48, 19, 10). This opinion can be safely held and with possibility of demonstration, especially as the civil law admits as much, as in Dig., 48, 8, 9. Now, no one sins who acts under warrant of the law, inasmuch as the law affords justification in the forum of conscience. Accordingly, even if natural law does not allow killing in defense of property, this is rendered lawful by the civil law and is available, so long as no scandal is caused, not only to laymen, but to clerics and professed persons.

5. Second proposition: Every State has authority to declare and to make war. In course of proof of this be it noted that the difference herein between a private person and a State is that a private person is entitled, as said above, to defend himself and what belongs to him, but has no right to avenge a wrong done to him, nay, not even to recapt property that has been seized from him if time has been allowed to go by since the seizure. But defense can only be resorted to at the very moment of the danger, or, as the jurists say, in continenti, and so when the necessity of defense has passed there is an end to the lawfulness of war. In my view, however, one who has been contumeliously assaulted can immediately strike back, even if the assaulter was not proposing to make a further attack, for in the avoidance of shame and disgrace one who (for example) has had his ears boxed might immediately use his sword, not for the purpose of vengeance, but, as has been said, in order to avoid infamy and disgrace. But a State is within its rights not only in defending itself, but also in avenging itself and its subjects and in redressing wrongs. This is proved by what Aristotle says in the third book of his Politics, namely, that a State ought to be sufficient unto itself. But it can not adequately protect the public weal and the position of the State if it can not avenge a wrong and take measures against its enemies, for wrongdoers would become readier and bolder for wrongdoing, if they could do wrong with impunity. It is, therefore, imperative for the due ordering of human affairs that this authority be allowed to States.

6. Third proposition: A prince has the same authority in this respect as the State has. This is the opinion of St. Augustine (Contra Faustum): "The natural order, best adapted to secure the peace of mankind, requires that the authority to make war and the advisability of it should be in the hands of the sovereign prince." Reason supports this, for the prince only holds his position by the election of the State. Therefore he is its

representative and wields its authority; aye, and where there are already lawful princes in a State, all authority is in their hands and without them nothing of a public nature can be done either in war or in peace.

7. Now, the whole difficulty is in the questions: What is a State, and who can properly be called a sovereign prince? I will briefly reply to them by saying that a State is properly called a perfect community. But the essence of the difficulty is in saying what a perfect community is. By way of solution be it noted that a thing is called perfect when it is a completed whole, for that is imperfect in which there is something wanting, and, on the other hand, that is perfect from which nothing is wanting. A perfect State or community, therefore, is one which is complete in itself, that is, which is not a part of another community, but has its own laws and its own council and its own magistrates, such as is the Kingdom of Castile and Aragon and the Republic of Venice and other the like. For there is no obstacle to many principalities and perfect States being under one prince. Such a State, then, or the prince thereof, has authority to declare war, and  
no one else.

8. Here, however, a doubt may well arise whether, when a number of States of this kind or a number of princes have one common lord or prince, they can make war of themselves and without the authorization of their superior lord. My answer is that they can do so undoubtedly, just as the kings who are subordinate to the Emperor can make war on one another without waiting for the Emperor's authorization, for (as has been said) a State ought to be self-sufficient, and this it would not be, if it had not the faculty in question.

9. Hence it follows and is plain that other petty rulers and princes, who are not at the head of a perfect State, but are parts of another State, can not begin to carry on a war. Such is the Duke of Alva or the Count of Benevento, for they are parts of the Kingdom of Castile and consequently have not perfect States. As, however, these matters are for a great part governed by the law of nations or by human law, Custom can give power and authority to make war. And so if any State or prince has obtained by ancient custom the right to make war of itself or himself, this authority can not be gainsaid, even if in other respects the State be not a perfect one. So, also, necessity can confer this license and authority. For if within one and the same realm one city should take up arms against another, or one of the dukes against another duke, and the king should neglect or should lack courage to exact redress for the wrongs that have been done, the aggrieved city or duke may not only resort to self-defense, but may also commence war and take measures against the enemy and even kill the wrongdoers, there being no other adequate means of self-defense. For the enemy would not cease from outrage, if the victims thereof were content merely with self-defense. On this principle a private person also may begin an attack on his foe, if there is no other way of safeguarding himself from wrong. This is enough on  
the present question.

10. Third question: What may be a reason and cause of just war? It is particularly necessary to ask this in connection with the case of the Indian aborigines, which is now before us. Here my first proposition is: Difference of religion is not a cause of just war. This was shown at length in the preceding Relectio, when we demolished the fourth alleged title for taking possession of the Indians, namely, their refusal to accept Christianity. And it is the opinion of St. Thomas (Secunda Secundae, qu. 66, art. 8), and the common opinion of the doctors -- indeed, I know of no one

of the opposite way of thinking.

11. Second proposition: Extension of empire is not a just cause of war. This is too well known to need proof, for otherwise each of the two belligerents might have an equally just cause and so both would be innocent. This in its turn would involve the consequence that it would not be lawful to kill them and so imply a contradiction, because it would be a just war.

12. Third proposition: Neither the personal glory of the prince nor any other advantage to him is a just cause of war. This, too, is notorious. For a prince ought to subordinate both peace and war to the common weal of his State and not spend public revenues in quest of his own glory or gain, much less expose his subjects to danger on that account. Herein, indeed, is the difference between a lawful king and a tyrant, that the latter directs his government towards his individual profit and advantage, but a king to the public welfare, as Aristotle says (*Politics*, bk. 4, ch. 10). Also, the prince derives his authority from the State. Therefore he ought to use it for the good of the State. Also, laws ought "not to be enacted for the private good of any individual, but in the common interest of all the citizens," as is ruled in can. 2, Dist. 4, a citation from Isadore. Therefore the rules relating to war ought to be for the common good of all and not for the private good of the prince. Again, this is the difference between freemen and slaves, as Aristotle says (*Politics*, bk. 1, ch. 3 and 4) that masters exploit slaves for their own good and not for the good of the slaves, while freemen do not exist in the interest of others, but in their own interest. And so, were a prince to misuse his subjects by compelling them to go soldiering and to contribute money for his campaigns, not for the public good, but for his own private gain, this would be to make slaves of them.

13. Fourth proposition: There is a single and only just cause for commencing a war, namely, a wrong received. The proof of this rests in the first place on the authority of St. Augustine (*Liber 83 Quaestionum*\* "Those wars are described as just wars," etc., as above), and it is the conclusion arrived at by St. Thomas (*Secunda Secundae*, qu. 40, art. 1) and the opinion of all the doctors. Also, an offensive war is for the purpose of avenging a wrong and of taking measures against an enemy, as said above. But there can be no vengeance where there is no preceding fault and wrong. Therefore. Also, a prince has no greater authority over foreigners than

over his own subjects. But he may not draw his sword against his own subjects, unless they have done some wrong. Therefore not against foreigners either. This is confirmed by the text already cited from St. Paul (*Romans*, ch. 13) about a prince: "He beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil." Hence it is clear that we may not turn our sword against those who do us no harm, the killing of the innocent being forbidden by natural law. I omit here any injunctions inconsistent herewith which God has given in special cases, for He is the Lord of life and death and it is within His competence to vary His dispositions.

14. Fifth proposition: Not every kind and degree of wrong can suffice for commencing a war. The proof of this is that not even upon one's own fellow-countrymen is it lawful for every offense to exact atrocious punishments, such as death or banishment or confiscation of property. As, then, the evils inflicted in war are all of a severe and atrocious character, such as slaughter and fire and devastation, it is not lawful for



slight wrongs to pursue the authors of the wrongs with war, seeing that the degree of the punishment ought to correspond to the measure of the offence (Deuteronomy, ch. 25).

15. The fourth question is about the law of war, namely, what kind and degree of stress is lawful in a just war. Here let my first proposition be: In war everything is lawful which the defense of the common weal requires. This is notorious, for the end and aim of war is the defense and preservation of the State. Also, a private person may do this in self-defense, as has been proved. Therefore much more may a State and a prince.

16. Second proposition: It is permissible to recapt everything that has been lost and any part of the same. This is too notorious to need proof. For war is -begun or undertaken with this object.

17. Third proposition: It is lawful to make good out of enemy property the expenses of the war and all damages wrongfully caused by the enemy. This is clear, for the enemy who has done the wrong is bound to give all this redress. Therefore the prince can claim it all and exact it all by war. Also, as before, there is the argument that, when no other way lies open, a private creditor can seize the amount of his debt from the debtor. Also, if there were any competent judge over the two belligerents, he would have to condemn the unjust aggressors and authors of wrong, not only to make restitution of what they have carried off, but also to make good the expenses of the war to the other side, and also all damages. But a prince who is carrying on a just war is as it were his own judge in matters touching the war, as we shall forthwith show. Therefore he can enforce all these claims upon his enemy.

18. Fourth proposition: Not only are the things just named allowable, but a prince may go even further in a just war and do whatever is necessary in order to obtain peace and security from the enemy; for example, destroy an enemy's fortress and even build one on enemy soil, if this be necessary in order to avert a dangerous attack of the enemy. This is proved by the fact that, as said above, the end and aim of war is peace and security. Therefore a belligerent may do everything requisite to obtain peace and security. Further, tranquillity and peace are reckoned among the desirable things of mankind and so the utmost material prosperity does not produce a state of happiness if there be no security there. Therefore it is lawful to employ all appropriate measures against enemies who are plundering and disturbing the tranquillity of the State. Also, all measures of this kind may be taken against internal foes, that is, against bad citizens. Therefore they are lawful against external foes. The antecedent is clear, for if one citizen does a wrong to a fellow citizen, the magistrate not only compels the wrongdoer to make amends to the injured party, but, if the former is a source of fear to the latter, he is compelled to give bond or quit the city, so as to remove the danger of which he is the cause. This shows that even when victory has been won and redress obtained, the enemy may be made to give hostages, ships, arms, and other things, when this is genuinely necessary for keeping the enemy in his duty and preventing him from becoming dangerous again.

19. Fifth proposition: Not only is all this permissible, but even after victory has been won and redress obtained and peace and safety been secured, it is lawful to avenge the wrong received from the enemy and to take measures against him and exact punishment from him for the wrongs he has

done. In proof of this be it observed that princes have authority not only over their own subjects, but also over foreigners, so far as to prevent them from committing wrongs, and this is by the law of nations and by the authority of the whole world. Nay, it seems to be by natural law also, seeing that otherwise society could not hold together unless there was somewhere a power and authority to deter wrongdoers and prevent them from injuring the good and innocent. Now, everything needed for the government and preservation of society exists by natural law, and in no other way can we show that a State has by natural law authority to inflict pains and penalties on its citizens who are dangerous to it. But if a State can do this to its own citizens, society at large no doubt can do it to all wicked and dangerous folk, and this can only be through the instrumentality of princes. It is, therefore, certain that princes can punish enemies who have done a wrong to their State and that after a war has been duly and justly undertaken the enemy are just as much within the jurisdiction of the prince who undertakes it as if he were their proper judge. Confirmation hereof is furnished by the fact that in reality peace and tranquillity, which are the end and aim of war, can not be had unless evils and damages be visited on the enemy in order to deter them from the like conduct in the future. All this is also proved and confirmed by the authority and examples of good men. For, as said above, the Maccabees made war not only to recover the things which they had lost, but also to avenge their wrongs. And some most Christian princes and most religious Emperors have done the same thing. Moreover, shame and disgrace are not wiped away from a State merely by its rout of its enemies, but also by its visiting severe punishment and castigation on them. Now, among the things which a prince is bound to defend and preserve for his State are its honor and authority.

20. Many doubts are suggested by what has just been said. In the first place, there is a doubtful point in connection with the justice of a war, whether it be enough for a just war that the prince believes himself to have a just cause. On this point let my first proposition be: This belief is not always enough. And for proof I rely, first, on the fact that in some matters of less moment it is not enough either for a prince or for private persons to believe that they are acting justly. This is notorious, for their error may be vincible and deliberate, and the opinion of the individual is not enough to render an act good, but it must come up to the standard of a wise man's judgment, as appears from Ethics, bk. 2. Also the result would otherwise be that very many wars would be just on both sides, for although it is not a common occurrence for princes to wage war in bad faith, they nearly always think theirs is a just cause. In this way all belligerents would be innocent and it would not be lawful to kill them. Also, were it otherwise, even Turks and Saracens might wage just wars against Christians, for they think they are thus rendering God service.

21. Second proposition: It is essential for a just war that an exceedingly careful examination be made of the justice and causes of the war and that the reasons of those who on grounds of equity oppose it be listened to. For (as the comic poet says) "A wise man must make trial of everything by words before resorting to force," and he ought to consult the good and wise and those who speak with freedom and without anger or bitterness or greed, seeing that (as Sallust says) "where these vices hold sway, truth is not easily distinguished." This is self-evident. For truth and justice in moral questions are hard of attainment and so any careless treatment of them easily leads to error, an error which will be inexcusable, especially in a concern of great moment, involving danger and calamity to many, and they our neighbors, too, whom we are bound to love as ourselves.

22. Second doubt: Whether subjects are bound to examine the cause of a war or whether they may serve in the war without any careful scrutiny thereof, just as the lictors had to enforce the praetor's decree without questioning. On this doubt let my first proposition be: If a subject is convinced of the injustice of a war, he ought not to serve in it, even on the command of his prince. This is clear, for no one can authorize the killing of an innocent person. But in the case before us the enemy are innocent. Therefore they may not be killed. Again, a prince sins when he commences a war in such a case. But "not only are they who commit such things worthy of death, but they, too, who consent to the doing thereof" (Romans, ch. 1). Therefore soldiers also are not excused when they fight in bad faith. Again, it is not lawful to kill innocent citizens at the prince's command. Therefore not aliens either.

23. Hence flows the corollary that subjects whose conscience is against the justice of a war may not engage in it whether they be right or wrong. This is clear, for "whatever is not of faith is sin" (Romans, ch. 14).

24. Second proposition: Senators and petty rulers and in general all who are admitted on summons or voluntarily to the public council or the prince's council ought, and are bound, to examine into the cause of an unjust war. This is clear; for whoever can save his neighbor from danger and harm is bound to do so, especially when the danger is that of death and greater ills, as is the case in war. But the persons referred to can avert the war, supposing it to be unjust, if they lend their wisdom and weight to an examination into its causes. Therefore they are bound so to do. Again, if by their neglect an unjust war be entered on, they are consenting parties thereto, for that which a man could and ought to prevent is imputed to him, if he does not prevent it. Again, a king is not by himself capable of examining into the causes of a war and the possibility of a mistake on his part is not unlikely and such a mistake would bring great evil and ruin to multitudes. Therefore war ought not to be made on the sole judgment of the king, nor, indeed, on the judgment of a few, but on that of many, and they wise and upright men.

25. Third proposition: Other lesser folk who have no place or audience in the prince's council or in the public council are under no obligation to examine the causes of a war, but may serve in it in reliance on their betters. This is proved, first, by the fact that it is impossible and inexpedient to give reasons for all acts of state to every member of the commonalty. Also by the fact that men of the lower orders, even if they perceived the injustice of a war, could not stop it, and their voice would not be heeded. Therefore, any examination by them of the causes of a war would be futile. Also by the fact that for men of this sort it is enough proof of the justice of war (unless the contrary be quite certain) that it is being waged after public counsel and by public authority. Therefore no further examination on their part is needed.

26. Fourth proposition: Nevertheless the proofs and tokens of the injustice of the war may be such that ignorance would be no excuse even to subjects of this sort who serve in it. This is clear, because such ignorance might be deliberate and adopted with evil intent towards the enemy. Also, were this otherwise, unbelievers would be excused when they follow their chieftains to war against Christians and it would be unlawful to kill them, it being certain that they deem themselves to have a just cause of war. Also, the soldiers who crucified Christ, ignorantly following Pilate's order, would be

excused. Also, the Jewish mob would be excused which was led by the elders to shout "Away with Him, crucify Him."

27. Third doubt: What should be done when the justice of the war is doubtful, that is, when there are apparent and probable reasons on both sides. First proposition: As regards the princes themselves, it seems that if one be in lawful possession, the other may not try to turn him out by war and armed force, so long as the doubt remains. For example: Suppose the King of France to be in lawful possession of Burgundy and that it be doubtful whether he has or has not right thereto. The Emperor may not try to oust him by arms; nor on the other hand may the French King seize Naples or Milan, if there be doubt who is entitled to it. The proof is that in doubtful matters the party in possession has the better position. Therefore it is not lawful to dispossess the possessor in favor of a doubtful cause. Further, if the matter were being heard by a lawful judge, he would never in case of doubt dispossess the party in possession. Therefore, if we postulate that those princes who are asserting a right are judges in their own cause, they may not lawfully eject a possessor so long as there is any doubt about the title. Further, in the suits and causes of private persons it is never permissible in a doubtful matter to dispossess a lawful possessor. Therefore not in the causes of princes; for the laws are the princes' laws. Therefore, if by human law it is not permissible in a doubtful matter to dispossess a lawful possessor, it can quite validly be objected to princes, "Obey the law thyself hast made, seeing that a man ought to adopt the same law for himself which he has enjoined on others." Also, were it otherwise, a war could be just on both sides and would never be settled. For if in a doubtful matter it were lawful for one side to assert his claim by force, the other might make armed defense, and after the one had obtained what he claimed, the other might afterwards claim it back, and so there would be war without end, to the ruin and tribulation of peoples.

28. Second proposition: If the city or province in regard of which the doubt arises has no lawful possessor, as, for instance, if it were open by reason of the death of the lawful lord and there is a doubt whether the King of Spain or the King of France be the heir and no certainty in point of law can be attained, it seems that, if one party wants to settle and make a division or compromise as to part of the claim, the other is bound to accept his proposal, even if that other be the stronger and able to seize the whole by armed force; nor would he have a just cause of war. The proof is that when the merits of a quarrel are equal, one side does no wrong by claiming an equal part of the thing in dispute. Further, in private disputes also, where the matter is in doubt, one party may not seize the whole thing. Also, in the same way the war would be just on both sides. Also, a just judge would not decree and award the whole thing to either party.

29. Third proposition: He who is in doubt about his own title is bound, even though he be in peaceable possession, to examine carefully into the cause and give a quiet hearing to the arguments of the other side, if so be he may thus attain certitude either in favor of himself or the other. This is proved by the fact that a man who is in doubt and neglects to ascertain the truth is not in possession in good faith. So also, in a matrimonial cause, if the man who is in lawful possession entertains a doubt whether in truth the woman is his or the other's, it is certain that he is bound to examine the question. Therefore the same principle applies in other causes. Also, princes are judges in their own cases, inasmuch as they have no superior. But it is certain that, if any one raises any objection to a lawful possessor, the judge is bound to examine the case. Therefore in a

doubtful matter princes are bound to examine their own case.

30. Fourth proposition: After examination of the case the lawful possessor is not bound to quit possession so long as the doubt reasonably persists, but may lawfully retain it. This is manifestly so, for, firstly, no judge could divest him of it. Therefore he is not bound to give it up, 441 either the whole or part. Also, in a matrimonial cause where the matter is doubtful, the man is under no obligation to give up his possession, as is laid down in X, 5, 39, 44, and in X, 4, 21, 2. Therefore the like is not required in other causes. And Adrian expressly holds (qu. 2, Quotlib. 2) that a party in doubt may retain his possession, and he applies this rule to princes in a doubtful matter. But concerning subjects who are in doubt with regard to the justice of a war, Adrian indeed says (Quotlib. 2, on the first principal argument) that a subject in such a case, that is, one who is in doubt whether the alleged cause of a war is a sufficient one or simply whether there exists some sufficient cause for declaring war, may not serve in such a war, even at the command of his prince. The proof is that he exposes himself to the danger of mortal sin. Also, what is not of faith is sin, a doctrine which, according to the doctors and to truth, is to be understood as condemnatory, not only where the conscience is assured or based on opinion, but also where it is in doubt. Sylvester seems to hold the same doctrine, under the word bellum, I, § 9.

31. But let this be my fifth proposition: In the first place, there is no doubt that in a defensive war subjects may, even though the matter be doubtful, follow their prince to the war; nay, that they are bound to follow him, and also in an offensive war. The first proof is in the fact that, as has been said, a prince is not able, and ought not, always to render reasons for the war to his subjects, and if subjects can not serve in war except they are first satisfied of its justice, the State would fall into grave peril and the door would be opened to wrongdoing. Also, in doubtful matters the safer course ought to be adopted. Now, if subjects in a case of doubt do not follow their prince to the war, they expose themselves to the risk of betraying their State to the enemy, and this is a much more serious thing than fighting against the enemy despite a doubt. Therefore they ought rather to fight. Also, this is manifestly proved by the fact that the licitor is bound to carry out the decree of the judge, even though he has his doubts about its justice, for there would be serious danger in the opposite course. Also, St. Augustine writing against the Manichæans, defends this line of argument, where he says:

"If a righteous person be in the military service of a sacrilegious king, he may consistently go to war at his command, provided that it is certain that the command laid on him is not contrary to the Divine precepts or that it is not certain whether it be so" (C. 23, qu. 1, can. quid culpatur). Here we have St. Augustine expressly declaring that if it is not certain -- that is, if there is a doubt -- whether it be against God's precepts, the subject may lawfully go to the war. And however Adrian may twist and turn, he can not free himself from the authority of St. Augustine, for our proposition is, beyond cavil, the conclusion at which St. Augustine arrives. Nor does it avail to say that such a person ought to get rid of his doubt and make his conscience acquiesce in the justice of the war, for it remains that, mortally speaking, this is impossible, as in other cases of doubt. Now, Adrian's mistake seems to be in thinking that, if I am in doubt whether this war is just for my prince or whether there be a just cause for this war, it immediately follows that I am in doubt whether or no I ought to go to this war. I admit that I am no wise justified in doing what my conscience doubts

about and that, if I am doubtful about the lawfulness of doing any given thing, I sin if I do it. But any doubt of mine about the justice of this war does not necessarily involve a doubt whether I ought to fight or serve in this war. Nay, it is quite the other way about. For although I may doubt whether the war is just, yet the next point is that I may lawfully serve in the field at my prince's command. It is precisely the same as with a lictor who has his doubts whether the judge's decree is just, it does not follow therefrom that he doubts whether or no he ought to carry it into execution; he knows that he is bound to carry it into execution. So, also, if the doubt be whether this woman be my wife; I am, consequent upon such doubt, bound to render her conjugal rights.

32. The fourth doubt is: Whether a war can be just on both sides. The following is my answer: First proposition: Apart from ignorance the case clearly can not occur, for if the right and justice of each side be certain, it is unlawful to fight against it, either in offense or in defense. Second proposition: Assuming a demonstrable ignorance either of fact or of law, it may be that on the side where true justice is the war is just of itself, while on the other side the war is just in the sense of being excused from sin by reason of good faith, because invincible ignorance is a complete excuse. Also, on the side of the subjects at any rate, this may often occur; for even if we assume that a prince who is carrying on an unjust war knows about its injustice, still (as has been said) subjects may in good faith follow their prince, and in this way the subjects on both sides may be doing what is lawful when they fight.

33. Hence arises the fifth doubt: Whether one who has in ignorance gone in an unjust war and subsequently is convinced of its injustice is bound to make amends therefor. This may be asked both about a prince and about a subject. My first proposition is: If the injustice of the war had been within reach of proof by him, he is bound when he learns of its injustice to give back what he has taken away and not yet consumed -- that is, to the extent to which he has been enriched; but he need make no amends as regards what he has consumed, because the rule of law is that a person who is not in fault ought not to be damnified, just as one who in good faith attended a sumptuous banquet given by a thief where stolen things were consumed would be under no obligation to give redress therefor, save perhaps up to the amount that his meal would have cost him at home. Sylvester, however, says, under the word bellum, I, § 9, that if our man was in doubt about the injustice of the war yet followed his lord's authority, he is liable to make good everything, because it was with bad faith that he fought.

Now, let my second proposition, in conformity with the foregoing, be:

Our man is not bound to make good what has been consumed, any more than the other side would be, because (as has been said) his fighting was lawful and in good faith. Sylvester's contention would, however, be sound if the man had really been in doubt whether it was lawful for him to go to the war, for he would then be acting against his conscience. Now, much attention must be paid to the admitted fact that a war may be just and lawful in itself and yet owing to some collateral circumstance may be unlawful. For it is admitted that one may be entitled to recapture a city or a province and yet that, because of some scandal, this may become quite unlawful. For inasmuch as (according to what has been said before) wars ought to be waged for the common good, if some one city can not be recaptured without greater evils befalling the State, such as the devastation of many cities, great slaughter of human beings, provocation of princes, occasions for new wars to the

destruction of the Church (in that an opportunity is given to pagans to invade and seize the lands of Christians), it is indubitable that the prince is bound rather to give up his own rights and abstain from war. For it is clear that if the King of France, for example, had a right to retake Milan, but by the war both the Kingdom of France and the Duchy of Milan would suffer intolerable ills and heavy woes, it would not be right for him to retake it. This is because that war ought to take place either for the good of France or for the good of Milan. Therefore, when, on the contrary, great ills would befall each side by the war, it could not be a just war.

34. With regard to another question, namely, what degree of stress is lawful in a just war, there are also many doubts. The first is: Whether it is lawful in war to kill the innocent. It seems that it is; because, in the first place, the Sons of Israel slew children at Jericho, as appears from Joshua, ch. 6, and afterwards Saul slew children in Amalek (I Samuel, ch. 15), and in both these cases it was by the authority and at the bidding of God. "Now, whatever is written is written for our instruction," as appears from Romans, ch. 15. Therefore, if a war of the present day be just, it will be lawful to kill the innocent.

35. With regard to this doubt, let my first proposition be: The deliberate slaughter of the innocent is never lawful in itself. This is proved, firstly, by Exodus, ch. 23: "The innocent and righteous slay thou not." Secondly, the basis of a just war is a wrong done, as has been shown above. But wrong is not done by an innocent person. Therefore war may not be employed against him. Thirdly, it is not lawful within a State to punish the innocent for the wrongdoing of the guilty. Therefore this is not lawful among enemies. Fourthly, were this not so, a war would be just on both sides, although there was no ignorance, a thing which, as has been shown, is impossible. And the consequence is manifest, because it is certain that innocent folk may defend themselves against any who try to kill them. And all this is confirmed by Deuteronomy, ch. 20, where the Sons of Israel were ordered to take a certain city by force and to slay every one except women and little ones.

36. Hence it follows that even in war with the Turks it is not allowable to kill children- This is clear, because they are innocent. Aye, and the same holds with regard to the women of unbelievers. This is clear, because so far as the war is concerned, they are presumed innocent; but it does not hold in the case of any individual woman who is certainly guilty. Aye, and this same pronouncement must be made among Christians with regard to harmless agricultural folk, and also with regard to the rest of the peaceable civilian population, for all these are presumed innocent until the contrary is shown. On this principle it follows that it is not lawful to slay either foreigners or guests who are sojourning among the enemy, for they are presumed innocent, and in truth they are not enemies. The same principle applies to clerics and members of a religious order, for they in war are presumed innocent unless the contrary be shown, as when they engage in actual fighting.

37. Second proposition: Sometimes it is right, in virtue of collateral circumstances, to slay the innocent even knowingly, as when a fortress or city is stormed in a just war, although it is known that there are a number of innocent people in it and although cannon and other engines of war can not be discharged or fire applied to buildings without destroying innocent together with guilty. The proof is that war could not otherwise be waged against even the guilty and the justice of belligerents would be balked. In

the same way, conversely, if a town be wrongfully besieged and rightfully defended, it is lawful to fire cannon-shot and other missiles on the besiegers and into the hostile camp, even though we assume that there are some children and innocent people there.

Great attention, however, must be paid to the point already taken, namely, the obligation to see that greater evils do not arise out of the war than the war would avert. For if little effect upon the ultimate issue of the war is to be expected from the storming of a fortress or fortified town wherein are many innocent folk, it would not be right, for the purpose of assailing a few guilty, to slay the many innocent by use of fire or engines of war or other means likely to overwhelm indifferently both innocent and guilty. In sum, it is never right to slay the guiltless, even as an indirect and unintended result, except when there is no other means of carrying on the operations of a just war, according to the passage (St. Matthew, ch. 13) "Let the tares grow, lest while ye gather up the tares ye root up also the wheat with them."

38. Here a doubt may arise whether the killing of guiltless persons is lawful when they may be expected to cause danger in the future; thus, for example, the children of Saracens are guiltless, but there is good reason to fear that when grown up they will fight against Christians and bring on them all the hazards of war. Moreover, although the adult male civilians of the enemy who are not soldiers are presumed to be innocent, yet they will hereafter carry a soldier's arms and cause the hazard named. Now, is it lawful to slay these youths? It seems so, on the same principle which justifies the incidental killing of other guiltless persons. Also (Deuteronomy, ch. 20) the Sons of Israel were ordered when assaulting any city to slay "every adult male." Now, it can not be presumed that all of these would.

My answer is that although this killing may possibly be defended, yet I believe that it is in no wise right, seeing that evil is not to be done even in order to avoid greater evil still, and it is intolerable that any one should be killed for a future fault. There are, moreover, other available measures of precaution against their future conduct, namely, captivity, exile, etc., as we shall forthwith show. Hence it follows that, whether victory has already been won or the war is still in progress, if the innocence of any soldier is evident and the soldiers can let him go free, they are bound to do so.

To the argument on the opposite side my rejoinder is that the slaughter in the instances named was at the special command of God, who was wroth against the people in question and wished to destroy them utterly, just as he sent fire on Sodom and Gomorrah which devoured both guiltless and guilty together. He, however, is Lord of all and has not given this license as a common law. And the same answer might be made to that passage in Deuteronomy, ch. 20. But, inasmuch as what is there enjoined is in the form of a common law of war for all future time, it would rather seem that the Lord enjoined it because all adult males in an enemy State are deemed guilty, and guiltless can not be distinguished from guilty. Therefore all may be killed.

39. The second doubtful point is whether in a just war it is lawful to despoil innocent enemy-subjects. Let my first proposition be: It is certainly lawful to despoil the innocent of goods and things which the enemy would use against us, such as arms, ships, and engines of war. This is



clear, because otherwise we could not gain the victory, which is the aim of war. Nay, it is also lawful to take the money of the innocent and to burn and destroy their grain and kill their horses, if this is requisite in order to sap the enemy's strength. Hence follows the corollary that if the war goes on for an indefinitely long time it is lawful utterly to despoil all enemy-subjects, guilty and guiltless alike, for it is from their resources that the enemy is feeding an unjust war, and, on the other hand, his strength is sapped by this spoliation of his citizens.

40. Second proposition: If a war can be carried on effectively enough without the spoliation of the agricultural population and other innocent folk, they ought not to be despoiled. Sylvester maintains this (under the word *bellum* I, § 10) on the ground that war is founded on a wrong done, and therefore the rights of war may not be enforced against the innocent if the wrong can be redressed in another quarter. Aye, and Sylvester adds that, even if there were good reason to despoil the innocent, yet when the war is over the victor is bound to restore to them whatever is left. This, however, I do not think necessary, because, as said above, whatever is done in right of war receives the construction most favorable to the claims of those engaged in a just war. Hence, whatever has been lawfully seized is not in my opinion subject to restitution. All the same, Sylvester's remark is a pious one and not indefensible. But the spoliation of foreigners and travelers on enemy soil, unless they are obviously at fault, is in no wise lawful, they not being enemies.

41. Third proposition: If the enemy refuse to restore things wrongfully seized by them and the injured party can not otherwise properly recoup himself, he may do so wherever satisfaction is obtainable, whether from guilty or from innocent. For instance, if French brigands made a raid into Spanish territory and the French King would not, though able, compel them to restore their booty, the Spanish might, on the authorization of their sovereign, despoil French merchants or farmers, however innocent these might be. This is because, although the French State or Sovereign might initially be blameless, yet it is a breach of duty, as St. Augustine says, for them to neglect to vindicate the right against the wrongdoing of their subjects, and the injured sovereign can take satisfaction from every member and portion of their State. There is, accordingly, no inherent injustice in the letters of marque and reprisals which princes often issue in such cases, because it is on account of the neglect and breach of duty of the other prince that the prince of the injured party grants him this right to recoup himself even from innocent folk. These letters are, however, hazardous and open the way to plunder.

42. The third doubtful point is: Assuming the unlawfulness of the slaughter of children and other innocent parties, is it permissible, at any rate, to carry them off into captivity and slavery? This can be cleared up in a single proposition, namely: It is in precisely the same way permissible to carry the innocent off into captivity as to despoil them, liberty and slavery being included among the good things of Fortune. And so when a war is at that pass that the indiscriminate spoliation of all enemy-subjects alike and the seizure of all their goods are justifiable, then it is also justifiable to carry all enemy-subjects off into captivity, whether they be guilty or guiltless. And inasmuch as war with pagans is of this type, seeing that it is perpetual and that they can never make amends for the wrongs and damages they have wrought, it is indubitably lawful to carry off both the children and the women of the Saracens into captivity and slavery. But inasmuch as, by the law of nations, it is a received rule of Christendom

that Christians do not become slaves in right of war, this enslaving is not lawful in a war between Christians; but if it is necessary having regard to the end and aim of war, it would be lawful to carry away even innocent captives, such as children and women, not indeed into slavery, but so that we may receive a money-ransom for them. This, however, must not be pushed beyond what the necessity of the war may demand and what the custom of lawful belligerents has allowed.

43. The fourth doubtful point is: Whether it is lawful at any rate to kill hostages who have been taken from the enemy, either in time of truce or on the conclusion of a war, if the enemy break faith and do not abide by their undertakings. My answer is in a single proposition: If the hostages are in other respects among the guilty, as, for instance, because they have borne arms, they may rightfully be lulled in that case; if, however, they are innocent, as, for instance, if they be children or women or other innocent folk, it is obvious from what has been said above that they can not be killed.

44. The fifth doubt is: Whether in a just war it is lawful to kill, at any rate, all the guilty. Prefatory to an answer be it noted that, as is shown by what has been said above, war is waged: Firstly, in defense of ourselves and what belongs to us; secondly, to recover things taken from us; thirdly, to avenge a wrong suffered by us; fourthly, to secure peace and security.

45. This premised, let my first proposition be: In the actual heat of battle, either in the storming or in the defense of a city, all who resist may be killed indiscriminately; and, briefly, this is so as long as affairs are in peril. This is manifest, because combatants could not properly effect their purpose save by removing all who hinder and resist them. All the doubt and difficulty, however, is to know whether, when we have won our victory and the enemy is no longer any danger to us, we may kill all who have borne arms against us. Manifestly, yes. For, as shown above, one of the military precepts given by the Lord (Deuteronomy, ch. 20) was that when a city of the enemy had been taken all dwellers in it were to be killed. The words of the passage are: "When thou comest nigh unto a place to fight against it, then proclaim peace unto it. And it shall be if it make thee answer of peace, and open unto thee, that all the people that is found therein shall be saved and shall be tributaries unto thee and shall serve thee. But if it will make no peace with thee, but will make war against thee, then thou shalt besiege it. And when the Lord thy God hath delivered it into thine hands, thou shalt smite every male thereof with the edge of the sword, but not the women and the little ones."

46. Second proposition: Even when victory has been won and no danger remains, it is lawful to kill the guilty. The proof is that, as said above, war is ordained not only for the recovery of property, but also for the avenging of wrongs. Therefore the authors of a past wrong may be killed therefor. Again, this is permissible against our own wrongdoing citizens. Therefore also against foreigners; for, as said above, a prince when at war has by right of war the same authority over the enemy as if he were their lawful judge and prince. And a further reason is that, although there be no present danger from the enemy, yet security for the future can not be had, unless the enemy be restrained by the fear of punishment.

47. Third proposition: Merely by way of avenging a wrong it is not always lawful to kill all the guilty. The proof is that even among citizens it would not be lawful, not even where the wrong was done by the whole city or

district, to kill all the delinquents; nor in a common rebellion would it be permissible to slay and destroy the whole population. Accordingly for such a deed, St. Ambrose interdicted Theodosius from the church. For such conduct would not be for the public good, which is nevertheless the end and aim of both war and peace. Therefore, it is not right to kill all the guilty among the enemy. We ought, then, to take into account the nature of the wrong done by the enemy and of the damage they have caused and of their other offenses, and from that standpoint to move to our revenge and punishment, without any cruelty and inhumanity. In this connection Cicero says (*Offices*, bk. 2) that the punishment which we inflict on the guilty must be such as equity and humanity allow. And Sallust says:

"Our ancestors, the most religious of men, took naught from those they conquered save what was authorized by the nature of their offenses."

48. Fourth proposition: Sometimes it is lawful and expedient to kill all the guilty. The proof is that war is waged in order to get peace and security. But there are times when security can not be got save by destroying all one's enemies: and this is especially the case against unbelievers, from whom it is useless ever to hope for a just peace on any terms. And as the only remedy is to destroy all of them who can bear arms against us, provided they have already been in fault. That is how the injunction in Deuteronomy, ch. 20, is to be interpreted. Otherwise, however, in a war with Christians, where I do not think this would be allowable. For, as it needs must be that scandals come (*St. Matthew*, ch. 18) and also wars between princes, it would involve the ruin of mankind and of Christianity if the victor always slew all his enemies, and the world would soon be reduced to solitude, and wars would not be waged for the public good, but to the utter ruin of the public. The measure of the punishment, then, must be proportionate to the offense, and vengeance ought to go no further, and herein account must be taken of the consideration that, as said above, subjects are not bound, and ought not, to scrutinize the causes of a war, but can follow their prince to it in reliance on his authority and on public counsels. Hence in the majority of cases, although the war be unjust on the other side, yet the troops engaged in it and who defend or attack cities are innocent on both sides. And therefore after their defeat, when no further danger is present, I think that they may not be killed, not only not all of them, but not even one of them, if the presumption is that they entered on the strife in good faith.

49. Sixth doubt: Whether it is lawful to slay those who have surrendered or been captured, supposing them also to have been guilty. My answer is that, speaking absolutely, there is nothing to prevent the killing of those who have surrendered or been captured in a just war so long as abstract equity is observed. Many of the rules of war have, however, been fashioned by the law of nations, and it seems to be received in the use and custom of war that captives, after victory has been won (unless perchance they have been routed) and all danger is over, are not to be killed, and the law of nations must be respected, as is the wont among good people. But I do not read or hear of any such custom with regard to those who have surrendered; nay, on the capitulation of a fortress or city it is usual for those who surrender to try and provide for themselves in the conditions of the capitulation, as that their heads shall be safe and that they shall be let go in safety; that is, they fear that an unconditional surrender would mean their deaths. We read of this being several times done. Accordingly, it does not seem unjust that, if a city capitulates without taking any such precautions, the more notorious offenders should be put to death on the

order of the prince or a judge.

50. Seventh doubt: Whether everything that is captured in a just war becomes the property of the captor and seizor. My first proposition hereon is: There is no doubt that everything captured in a just war vests in the seizor up to the amount which provides satisfaction for the things that have been wrongfully seized and which covers expenses also. This needs no proof, for that is the end and aim of war. But, apart from all consideration both of restitution and satisfaction, and looking at the matter from the standpoint of the law of war, we must distinguish according as the things captured in war are movables (like money, garments, silver, and gold), or are immovables (like lands, cities, and fortresses).

51. This being assumed, let my second proposition be: All movables vest in the seizor by the law of nations, even if in amount they exceed what will compensate for damages sustained. This is clear from Dig., 49, 15, 28 and 24, and from can. 9, Dist. I, and it is more expressly laid down in Inst., 2, 1, 17, where it is said that "by the law of nations whatever is taken from the enemy immediately becomes ours, even so far as that free persons may be made our slaves." And St. Ambrose says (*Liber de Patriarchis*) that when Abraham slew the four kings their spoil belonged to him as the conqueror, although he refused to take it (Genesis, ch. 14, and can. 25, C. 23, qu. 5). And this is confirmed by the authority of the Lord (Deuteronomy, ch. 20), where He says concerning the storming of a town:

"All the spoil thereof thou shalt divide with the army and thou shalt eat of the spoil of thine enemies." Adrian holds this opinion in his quaestio on restitution, in the special quaestio on war. So, also, Sylvester, under the word *bellum*, § 1 and § 9, where he says that he who fights a just cause is not bound to give back his booty (can. 2, C. 23, qu. 7). "Hence it follows that what is taken in war is not used as a set-off against the principal debt, as the Archdeacon also holds (can. 2, C. 23, qu. 2)." And Bartolus is of the same opinion, in his comment on Dig., 49, 15, 28. And this is understood to be so even if the enemy be ready to make amends in other ways for the damages and wrongs suffered. Sylvester, however, limits this, and rightly, allowing it only until a satisfaction sufficient in equity has been taken for the damages and wrongs suffered. For it is not to be imagined that, if the French have ravaged some one district or insignificant town in Spain, the Spanish might also, if they could, ravage the whole of France; they can only retort in a manner proportionate in kind and degree to the wrong done, according to the estimate of a good man.

52. But on this conclusion a doubt arises, namely, whether it is right to give a city up to the soldiery to sack. My answer is, and let this be my third proposition: This is not unlawful in itself, if necessary for the conduct of the war or as a deterrent to the enemy or as a spur to the courage of the troops. So Sylvester, under the word *bellum*, § 10. It is on the same principle as that which justifies the burning of a city for reasonable cause. Nevertheless, inasmuch as such authorization to sack results in many horrors and cruelties, enacted beyond all humane limits by a barbarous soldiery, such as slaughter and torture of the innocent, rape of virgins, dishonor of matrons, and looting of temples, it is undoubtedly unjust in the extreme to deliver up a city, especially a Christian city, to be sacked, without the greatest necessity and weightiest reason. If, however, the necessities of war require it, it is not unlawful, even if it be likely that the troops will perpetrate foul misdeeds of this kind, which their generals are none the less bound to forbid and, as far as they can, to

prevent.

53. Fourth proposition: Despite all this, soldiers may not, without the authority of their prince or general, go looting or burning, because they are themselves not judges, but executive officers; and those who do otherwise are bound to make restitution.

54. Now, with regard to immovable property and things, the difficulty is greater, and let my fifth proposition be: There is no doubt about the lawfulness of seizing and holding the land and fortresses and towns of the enemy, so far as is necessary to obtain compensation for the damages he has caused. For instance, if the enemy has destroyed a fortress of ours, or has burnt a city or vineyards or olive gardens, we may in turn seize his land or fortress or city and hold it. For if it is lawful to exact compensation from the enemy for the things of ours which he has taken, it is certain that by the divine law and natural law it is not more lawful to take recompense therefore in movables than in immovables.

55. Sixth proposition: In order to obtain security and avoid danger from our enemy it is also lawful to seize and hold a fortress or city belonging to him which is necessary for our defense or for taking away from him an opportunity of hurting us.

56. Seventh proposition: It is also lawful, in return for a wrong received and by way of punishment, that is, in revenge, to mulct the enemy of a part of his territory in proportion to the character of the wrong, or even on this ground to seize a fortress or town. This, however, must be done within due limits, as already said, and not as utterly far as our strength and armed force enable us to go in seizing and storming. And if necessity and the principle of war require the seizure of the larger part of the enemy's land, and the capture of numerous cities, they ought to be restored when the strife is adjusted and the war is over, only so much being retained as is just, in way of compensation for damages caused and expenses incurred and of vengeance for wrongs done, and with due regard for equity and humanity, seeing that punishment ought to be proportionate to the fault. Thus it would be intolerable that, if the French raided the flocks of the Spanish or burnt a single district, the latter should be allowed to seize the whole Kingdom of France. Now, the lawfulness of seizing on this score either a part of enemy territory or an enemy city appears from Deuteronomy, ch. 20, where permission is granted in war to seize a city that has refused to accept terms of peace. Again, internal wrongdoers may be punished in this way, that is, they may be deprived of house or land or a fortress, in proportion to the character of the circumstances. Therefore foreigner wrongdoers also.

Again, a superior judge has competence to mulct the author of a wrong by taking away from him a city (for instance) or a fortress. Therefore a prince who has suffered wrong can do this too, because by the law of war he is put in the position of a judge. Again, it was in this way and by this title that the Roman Empire grew and developed, that is, by occupation, in right of war, of cities and provinces belonging to enemies who had injured them, and yet the Roman Empire is defended as just and lawful by St. Augustine, St. Jerome, St. Ambrose, St. Thomas, and other reverend doctors. Nay, it might be held approved by God in the passage, "Render unto Caesar the things that are Caesar's," and by St. Paul, who appealed unto Caesar and who in Romans, ch. 13, gave an admonition to be subject to the higher powers and to princes and to pay tribute to those who at that time, all of them, derived their authority from the Roman Empire.

57. Eighth doubt: Whether it is lawful to impose a tribute on conquered enemies. My answer is that it is undoubtedly lawful, not only in order to recoup damages, but also as a punishment and by way of revenge. This is clear enough from what has been said above and from the passage in Deuteronomy, ch. 20, which says that when the Jews have approached a city with good cause in order to attack it, if the city receives them and opens its gates, all the people there shall be saved and shall serve the Jews with payment of tribute. And this law and usage of war has prevailed.

58. Ninth doubt: Whether it is lawful to depose the princes of the enemy and appoint new ones or keep the principedom for oneself. First proposition: This is not unqualifiedly permissible, nor for any and every cause of just war, as appears from what has been said. For punishment should not exceed the degree and nature of the offense. Nay, punishments should be awarded restrictively, and rewards extensively. This is not a rule of human law only, but also of natural and divine law. Therefore, even assuming that the enemy's offense is a sufficient cause of war, it will not always suffice to justify the overthrow of the enemy's sovereignty and the deposition of lawful and natural princes; for these would be utterly savage and inhumane measures.

59. Second proposition: It is undeniable that there may sometimes arise sufficient and lawful causes for effecting a change of princes or for seizing a sovereignty; and this may be either because of the number and aggravated quality of the damages and wrongs which have been wrought or, especially, when security and peace can not otherwise be had of the enemy and grave danger from them would threaten the State if this were not done. This is obvious, for if the seizure of a city is lawful for good cause, as has been said, it follows that the removal of its prince is also lawful. And the same holds good of a province and the prince of a province, if proportionately graver cause arise.

Note, however, with regard to Doubts VI to IX, that sometimes, nay, frequently, not only subjects, but princes, too, who in reality have no just cause of war, may nevertheless be waging war in good faith, with such good faith, I say, as to free them from fault; as, for instance, if the war is made after a careful examination and in accordance with the opinion of learned and upright men. And since no one who has not committed a fault should be punished, in that case, although the victor may recoup himself for things that have been taken from him and for any expenses of the war, yet, just as it is unlawful to go on killing after victory in the war has been won, so the victor ought not to make seizures or exactions in temporal matters beyond the limits of just satisfaction, seeing that anything beyond these limits could only be justified as a punishment, such as could not be visited on the innocent.

60. All this can be summarized in a few canons or rules of warfare. First canon: Assuming that a prince has authority to make war, he should first of all not go seeking occasions and causes of war, but should, if possible, live in peace with all men, as St. Paul enjoins on us (Romans, ch. 12). Moreover, he should reflect that others are his neighbors, whom we are bound to love as ourselves, and that we all have one common Lord, before whose tribunal we shall have to render our account. For it is the extreme of savagery to seek for and rejoice in grounds for killing and destroying men whom God has created and for whom Christ died. But only under compulsion and reluctantly should he come to the necessity of war.

Second canon: When war for a just cause has broken out, it must not be waged so as to ruin the people against whom it is directed, but only so as to obtain one's rights and the defense of one's country and in order that from that war peace and security may in time result.

Third canon: When victory has been won and the war is over, the victory should be utilized with moderation and Christian humility, and the victor ought to deem that he is sitting as judge between two States, the one which has been wronged and the one which has done the wrong, so that it will be as judge and not as accuser that he will deliver the judgment whereby the injured state can obtain satisfaction, and this, so far as possible should involve the offending state in the least degree of calamity and misfortune, the offending individuals being chastised within lawful limits; and an especial reason for this is that in general among Christians all the fault is to be laid at the door of their princes, for subjects when fighting for their princes act in good faith and it is thoroughly unjust, in the words of the poet, that --

Quidquid delirant reges, plectantur Achivi,

(For every folly their Kings commit the punishment should fall upon the Greeks.)

1. Ps. 81, in Vulgate. In A. V. Ps. 82.