

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

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

This whole dispute and relection has arisen again³ because of these barbarians in the New World, commonly called Indians, who came under the power of the Spaniards some forty years ago, having been previously unknown to our world.

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

[Introduction: Whether this dispute is justified]

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

2. De bello contra indos *add. in marg.* The title is given in *G* as 'Relectio de Indiis a Victoria anno 1538'; in *L* as 'De Indiis insularis prior', and in *S* as 'De Indiis recenter inventis relectio prior'.
3. The controversy dated back to 1513 (see Introduction, pp. xxiii), but had recently been renewed by Paul III's bull *Sublimis Deus* (see the Glossary, *s.v.*), which likewise took Matt. 28: 19 as its *thema*. Vitoria himself had referred to the problem of the evangelization of the Indians in his 1534–5 lectures on *ST* II-II. 10. 8 (see Appendix B. §3, footnote 33), while his colleague Domingo de Soto wrote a repetition *On the Right Way of Preaching the Gospel* at about this time, now apparently lost (Hamilton 1963: 179), which may also be referred to here.

warrant to question or censure the conduct of government in the Indies irrespective of whether or not it is rightly administered, but even for those whose business it is to frame and administer that government:

1. Neither the princes of the Spains nor the ministers of their royal Councils are obliged to justify anew rights and titles which have already been deliberated and judged, especially since the territories in question are occupied in good faith and are now held in pacific possession by the Spanish Crown. As Aristotle says in the third book of the *Nicomachean Ethics* (1113^a2-3), 'if we are to be always deliberating, we shall have to go on *ad infinitum*', so no prince or his ministers will ever be able to rest easy in their consciences. If the titles of rule had always to be proved by going back to the seeds of time, no tenure could ever be fully established.

2. Our princes Ferdinand and Isabella, who first occupied the Indies, are known as 'most Catholic Monarchs', and Emperor Charles V is officially entitled 'most righteous and Christian prince'. Are we to suppose that princes such as these would fail to make the most careful and meticulous inquiries into any matter to do with the security of their estate (*status*) and conscience, especially one of such importance? Of course not; further cavils are unnecessary, and even insolent.⁴

BUT for the solution of this objection we must consider further the argument of Aristotle in the third book of his *Nicomachean Ethics*. Aristotle means that, just as deliberation is impossible in matters which concern events due to chance or natural phenomena, so too moral deliberations may be considered impossible in cases of indisputable lawfulness and goodness or indisputable unlawfulness and evil.⁵ That is to say, no one should debate whether a life of courage, temperance, and justice is better than a life of injustice, infamy, adultery, and so on.⁶ Such deliberation would at any rate be un-Christian.

But where there is some reasonable doubt as to whether an action is good or bad, just or unjust, then it is pertinent to question and deliber-

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4. LSG interpolate: 'It seems like looking for knots on a rush, this searching for iniquity in the house of the righteous.' The old Latin proverb *quaerere nodum in scyrpo* (Plautus, *Menaechmi* 247; Terence, *Andria* 941) meant to make a mountain out of a molehill.
5. *Nicomachean Ethics* 1112^a18-1113^a14. Aristotle defines as 'impossible to deliberate' matters which are beyond control or choice because caused by chance (like a windfall of treasure), or by natural necessity (like the weather). He does not infer the existence of any moral issue which he considers to be 'impossible to debate', as Vitoria does, though he states that deliberation can only be about means, not ends.
6. LSG add 'perjury and insults, or whether one should respect one's parents'.

ate, rather than acting rashly without any prior investigation of what is lawful and what is not. These things which have both good and bad on both sides are like many kinds of contracts, sales, and other transactions; if undertaken without due deliberation, on the mere assumption that they are lawful, they may lead a man into unpardonable wrongdoing. In that case a plea of ignorance will be invalid; it is obvious that the man's ignorance was not invincible, since he failed to do everything he could to consult beforehand what was lawful or not.

It follows that for an action to be good in cases where a person has no other means of certainty, it is a necessary condition that he act in accordance with the ruling and verdict of wise men. This is defined as one of the necessary conditions of a good action in the second book of the *Nicomachean Ethics* (1106^b36-1107^a2);⁷ hence a person who does not consult wise men in cases of doubt can have no excuse. Furthermore, even when the action is lawful in itself, whenever reasonable doubts arise about its lawfulness in a particular case recourse must be had to the opinion of wise men, and their verdict must be followed, even though they may judge wrongly. Thus, if a man fails to consult the experts about a contract of doubtful legality, he undoubtedly acts wrongfully. It makes no difference whether or not the contract is legal in itself; if he believes it to be legal merely on his own whim and judgment, and not on the authority of the wise, he acts wrongly. Similarly, if a man does consult wise men on a doubtful case, and then disregards their verdict, he acts wrongly, even if the action is in itself lawful.

Take the example of a man who is uncertain whether he is legally married to a particular woman. A doubt arises: is he bound to perform his conjugal duty with the woman? May he lawfully do so, if he wishes? Or indeed, may he demand her to perform it with him? He consults the experts; the answer is an emphatic negative. Nevertheless, the man decides on his own authority to disregard their verdict from love of the woman. Now in this case the man certainly commits a sin by having intercourse with the woman, even if it is in fact lawful, because he is acting wilfully against conscience. It must be so, because in matters which concern salvation there is an obligation to believe those whom the Church has appointed as teachers, and in cases of doubt their verdict is law. Just as a judge in a court of law is obliged to pass sentence according to the evidence presented, so in the court of conscience every man must decide not according to his own inclination, but by logical

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7. The argument seems to be based on a misinterpretation of the sentence: 'Excellence is a state concerned with choice . . . determined by reason and in the way in which the man of practical wisdom would determine it'.

arguments or the authority of the learned. To do otherwise is impudent, and exposes one to the danger of sin, which is itself sinful.⁸ Hence the Old Testament teaches us (Deut. 17: 8-11):

If there arise a matter too hard for thee in judgment, between blood and blood, between plea and plea, and between stroke and stroke, being matters of controversy within thy gates; then shalt thou arise, and get thee up into the place which the Lord thy God shall choose; and thou shalt come unto the priests the Levites, and unto the judge that shall be in those days, and enquire, and they shall shew thee the sentence of judgment. And thou shalt do according to the sentence of the law which they shall teach thee, and according to the judgment which they shall tell thee, thou shalt do: thou shalt not decline from the sentence which they shall shew thee, to the right hand, nor to the left.

So in doubtful cases, I say, we must consult those whom the Church has appointed for the purpose: that is, the prelates, preachers, confessors, and jurists versed in divine and human law, since in the Church 'God hath set the members every one of them in the body as it hath pleased him', some the feet and some the eyes, and so on. (1 Cor. 12: 18); He 'gave some apostles, and some prophets, and some evangelists, and some pastors and teachers' (Eph. 4: 11). And it is written: 'the scribes and the Pharisees sit in Moses' seat: all therefore whatsoever they bid you observe, that observe and do' (Matt. 23: 2-3). So too Aristotle exhorts us in the first book of the *Nicomachean Ethics* with these lines from the poet Hesiod:

He who neither knows, nor lays to heart
Another's wisdom, is a useless wight.⁹

Therefore it is not enough in conscience for a man to judge by himself whether his actions are good or bad. In cases of doubt he must rely on the opinion of those authorized to resolve such doubts. It is not sufficient for businessmen merely to abstain from those contracts which they know to be illegal, if at the same time they continue to make contracts of dubious legality without consulting the experts.

For this reason I disagree with Cardinal Zabarella's affirmation that, if a certain thing which is in fact a venial sin comes to judgment, but

8. Vitoria's probabilism, as discussed here, was dependent on the position of Aquinas (*Quodlibet* 8. 3) and on Torquemada. He discussed the subject of the probable claims of conscience at greater length in his lectures on Lombard's *Sentences* IV (Vitoria 1567), and *In ST II-II*. 47. 4 (Vitoria 1932-52: II. 358-9); compare *On the Law of War* 2. 3.

9. *Works and Days* 295-6, quoted at *Nicomachean Ethics* 1095^b10.

all the preachers and confessors who are authorized to judge such matters declare it to be unlawful or pronounce it to be a mortal rather than a venial sin, a person who as a result of his own inclination disregards their verdict and decides in his own conscience that the act is not mortally sinful may perhaps not be committing a sin. The example he gives is the use of cosmetics and other superfluous adornments by women. In point of fact, their use is a venial sin; and if the preachers and confessors pronounce it a mortal sin, the woman who ignores their opinion, convinced by her own craving to prettify herself into believing that the practice is lawful or at most a venial sin, would not in the Cardinal's view be committing a mortal sin by painting herself in this manner. But in my view this is a dangerous principle. Women are obliged to obey the experts in all matters necessary to salvation, and they place themselves in danger of damnation if they commit acts which in the opinion of wise men are mortal sins.

Conversely, therefore, anyone who has first consulted wise men on a doubtful course of action, and has obtained a verdict that it is lawful, may subsequently undertake that course of action with a clear conscience, at least until such time as an equally competent authority pronounces a conflicting opinion which reopens the case, or leads to a contrary verdict. Here, at any rate, the transgressor's innocence is clear, since he did everything in his power to act lawfully, and his ignorance was therefore invincible.

From all this, we may deduce the following propositions:

- §1 FIRST, in every case of doubt there is a duty to consult with those competent to pronounce upon it, since otherwise there can be no security of conscience, regardless of whether the action concerned is really lawful or unlawful.
- §2 SECOND, if the upshot of the consultation with wise men is a verdict that the action is unlawful, their opinion must be respected; and anyone who disregards it has no defence in law, even if the action is in fact lawful in itself.
- §3 THIRD, if on the other hand the verdict of the wise is that the action is lawful, anyone who accepts their opinion may be secure in his conscience, even if the action is in fact unlawful.

TO THE FIRST, returning to this business of the barbarians, we may reply that the matter is neither so evidently unjust of itself that one may not question whether it is just, nor so evidently just that one may not wonder whether it might be unjust. It seems rather to have arguments on both sides. At first sight, it is true, we may readily suppose that, since the

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

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

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

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

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

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

[Question 1: On the dominion of the barbarians]

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

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

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

1. 'A slave cannot own anything as his own' (*Institutions* II. 9. 3 *Item vobis*; *Digest* XXIX. 2. 79 *Placet*). Hence everything a slave acquires belongs to his master (*Institutions* I. 8. 1 *Nam apud omnes*). But these barbarians are slaves by nature.¹² This last point is proved by Aristotle, who says with elegant precision: 'the lower sort are by nature slaves, and it is better for them as inferiors that they should be under the rule of a master' (*Politics* 1254^b20).¹³ By 'lower sort' he meant men who are insufficiently rational to govern themselves, but are rational enough to take orders; their strength resides more in their bodies than in their minds (1252^a32). And if indeed it is true that there are such men, then none fit the bill better than these barbarians, who in fact appear to be little different from brute animals and are completely unfitted for government. It is undoubtedly better for them to be governed by others, than to govern themselves. Since Aristotle states that it is a natural law that such men should be slaves, they cannot be true masters. Furthermore, it is no objection to argue that before the Spaniards arrived the barbarians had no other masters; it is not impossible that a slave may be a slave even without a master, as stated by the *Glossa* on the law *Si usum fructum* (*Digest* XL. 12. 23): indeed, the law concerned expressly says so, and there is an actual case adduced in the law *Quid seruum* (*Digest* XLV. 3. 36 *pr.*) on the unclaimed slave abandoned by his master, which shows that such a slave may be appropriated by anyone. Therefore, if the barbarians were slaves, the Spaniards could appropriate them.

12. *P* natura / hereditate in marg. om. LSG.

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

divine law only

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

TRUE MASTERS

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

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

SINNERS CANNOT HAVE DOMINION

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

14. Lombard's treatment of *restitutio* (*Sent.* IV. 15) was the standard occasion for theologians' discussions of *dominium*; it was the *thema*, for instance, of Soto's important relection *De dominio* (1534), which is preserved in MS P, fols. 232-41. As usual, Vitoria refers to the corresponding passage in Aquinas' *ST* II-II. 62. 1 (for his commentary on the latter see Vitoria 1932-52: III. 63-7).
15. *De paupertate Christi: de fensionum parte P defensionum G Defensorium pacis LS*. The reading adopted here is suggested by Barbier (Vitoria 1966: 16 n.), on the basis of the parallel passage in *On Civil Power* 1. 6. After this sentence S inserts an interpolation: 'against whom wrote Walden, *De antiq.* I. 3. 82-3, II. 3'; but the reference to Thomas Walden's *Doctrinale antiquitatum* should apparently read I. 2. 3. 81-3 and II. 3.

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

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

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

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

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

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

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

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

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

irrational creatures cannot be victims of an injustice (*iniuria*), and therefore cannot have legal rights: this assumption is proved in turn by considering the fact that to deprive a wolf or a lion of its prey is no injustice against the beast in question, any more than to shut out the sun's light by drawing the blinds is an injustice against the sun. And this is confirmed by the absurdity of the following argument: that if brutes had dominion, then any person who fenced off grass from deer would be committing a theft, since he would be stealing food without its owner's permission.

And again: wild animals have no rights over their own bodies (*dominium sui*); still less, then, can they have rights over other things. The major premiss is proved by the fact that it is lawful to kill them with impunity, even for sport; as Aristotle says, hunting wild animals is naturally just (*Politics* 1256^b9-25).

Finally, these wild beasts and all irrational beings are subject to the power of man, even more than slaves; and therefore, if slaves cannot own anything of their own, still less can irrational beings. This argument is confirmed by Aquinas (*ST* I-II. 1. 1-2, I-II. 6. 2, and *Summa contra gentiles* III. 2): only rational creatures have mastery over their own actions (*dominium sui actus*), as Aquinas also shows in *ST* I. 82. 1 ad 3.³¹ If, then, brutes have no dominion over their own actions, they can have no dominion over other things.

Although this argument may seem a mere quibble over words, it is quite improper and contrary to normal usage.³² We do not speak of anyone being 'the owner' of a thing (*dominium esse*) unless that thing lies within his control. We often say, for example: 'It is not in my control, it is not in my power', meaning I am not master or owner (*dominus*) of it. By this argument brutes, which do not move by their own will but are moved by some other, as Aquinas says (*ST* I-II *loc. cit.*), cannot have any dominion (*dominium*).

The objection proposed by Silvestro Mazzolini da Priero, namely that dominion sometimes means not a legal right but merely *de facto* power, such as the dominance of fire over water, is invalid. If this definition of dominion were correct, then a robber would have the right over other men (*dominium in homines*) to commit murder simply because he had the power to do so, and a thief would have the right to steal money. Therefore, when he speaks of the stars 'ruling' over day and night or calls the lion 'king of the beasts', these are mere figures of speech.

31. LSG add: 'a person is master of his own actions insofar as he is able to make choices between one course and another; hence, as Aquinas says in the same passage, we are not masters as regards our appetite for our own destiny, for example'.

32. LS add 'to attribute dominion to irrational beings'. The variant looks attractive; G, however, agrees with P.

§21 [Question 1, Article 5: Whether children can be true masters]

On the other hand what of a different question, raised in connexion with children before the age of reason: can they be legal masters? Children seem in this respect not to be any different from irrational beings. As the Apostle says: 'the heir, as long as he is a child, differeth nothing from a slave' (Gal. 4: 1). But a slave cannot be a master; *ergo*, etc.

LET US ANSWER with this second proposition:

2. *Children before the age of reason can be masters.* This is self-evident, first because a child can be the victim of an injustice (*iniuria*); therefore a child can have legal rights, therefore it can have a right of ownership (*dominium rerum*), which is a legal right. Again, the possessions of an orphan minor in guardianship are not the property of the guardians, and yet they must be the property of one of the two parties; *a fortiori* they are the property of the minor. Again, a child in guardianship may legally inherit property; but an heir is defined in law as the person who succeeds to the inheritance of the deceased, hence the child is the owner of the inheritance (*Digest* XLIV. 3. 11; *Institutions* II. 19. 7).³³ Furthermore, we said earlier (1. 2 §3, and ad 3) that the foundation of dominion is the fact that we are formed in the image of God; and the child is already formed in the image of God. The Apostle goes on to say, in the passage of Galatians quoted, 'the heir, as long as he is a child, differeth nothing from a slave, though he be lord of all' (Gal. 4: 1). The same does not hold of an irrational creature, since the child does not exist for another's use, like an animal, but for himself.

§22 [Question 1, Article 6: Whether madmen can be true masters]

But what of madmen (I mean the incurably mad, who can neither have nor expect ever to have the use of reason)?

LET US ANSWER with this third proposition:

3. *These madmen too may be true masters.* For a madman too can be the victim of an injustice (*iniuria*); therefore he can have legal rights. I leave it to the experts on Roman law to decide whether madmen can have civil rights of ownership (*dominium civile*).

§23 Whatever the answer to that, I conclude with this final proposition:

33. P heres subcedit in defuncti hereditate ergo est dominus hereditatis : Sed heres est qui succedit in ius defuncti et qui est dominus haereditatis LSG.

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

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

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

[Question 1, Conclusion]

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

34. LSG substitute for the last phrase: 'but have, in their own way, the use of reason'.
35. Vitoria's sketch of Indian society is a modified version of Aristotle's criteria for the civil life (e.g. *Politics* 1328^b6–22), particularly as developed in Aquinas' commentary on the famous passage on barbarians as 'natural slaves' (*Politics* 1255^a28–34): Aquinas, 1971: A.74–A.93. See Pagden 1986: 68–79, and compare 3. 8 below.
36. This 'gnomic utterance' is an intended echo of Aristotle's oft-repeated dictum that 'nature makes nothing in vain' (*On the Soul* 432^b22–3 'nature never makes anything without a purpose and never leaves out what is necessary'; *Generation of Animals* 788^b20–1 'nature never fails nor does anything in vain'; *Politics* 1253^a8, 1256^b20–1 'nature makes nothing incomplete and nothing in vain'; cf. 2. 2 below). Vitoria's pupil Domingo de las Cuevas, in his *De insularis*, glossed this passage: 'God and nature make nothing in vain, and since they [the Indians] potentially have the use of reason, being men, they are able to have it, and therefore they do have it' (printed in Vitoria 1967: 196–218, on p. 199). The full implication of the argument had already been pointed out by Bernardo de Mesa at the *Junta* of Burgos in 1513: to claim that the Indians were natural slaves was to imply that God had created an imperfect creature incapable of realizing its potential (Pagden 1986: 49–50, 93–7).
37. For a full discussion of the Aristotelian concept of *ethismus* to which Vitoria here alludes see Pagden 1986: 82.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41. For Bartolus' celebrated distinction between the emperor's *de iure* and *de facto* dominion of the world, see Skinner 1978: 1. 9-10.

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

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

4. Again, we cannot suppose that God founded any but the best kind of government in the world, since 'in wisdom hast Thou made them all' (Ps. 104: 24). But the best kind of government is monarchy, as St Thomas says so well in *De regimine principum* I. 2, and as Aristotle seems to think in *Politics* 1286^b3-7;⁴³ therefore by divine institution there ought to be one emperor of the world.

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

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

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

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

43. Compare *On Civil Power* 1. 8. Aquinas prefers the 'mixed' constitution in *ST* I-II. 105. 1 (see *On Law* §136 *ad loc.*, p. 197); Aristotle prefers aristocracy in the passage of the *Politics* alluded to here, whereas he opts for monarchy in *Nicomachean Ethics* 1160^a31-6.

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

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

7

ON THE LAW OF WAR
(*De Indis Relectio Posterior, sive de iure belli*)

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

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

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