

Question 105. The reason for the judicial precepts

Article 1. Whether the Old Law enjoined fitting precepts concerning rulers?

Objection 1. It would seem that the Old Law made unfitting precepts concerning rulers. Because, as the Philosopher says (Polit. iii, 4), "the ordering of the people depends mostly on the chief ruler." But the Law contains no precept relating to the institution of the chief ruler; and yet we find therein prescriptions concerning the inferior rulers: firstly (Exodus 18:21): "Provide out of all the people wise [Vulgate: 'able'] men," etc.; again (Numbers 11:16): "Gather unto Me seventy men of the ancients of Israel"; and again (Deuteronomy 1:13): "Let Me have from among you wise and understanding men," etc. Therefore the Law provided insufficiently in regard to the rulers of the people.

Objection 2. Further, "The best gives of the best," as Plato states (Tim. ii). Now the best ordering of a state or of any nation is to be ruled by a king: because this kind of government approaches nearest in resemblance to the Divine government, whereby God rules the world from the beginning. Therefore the Law should have set a king over the people, and they should not have been allowed a choice in the matter, as indeed they were allowed (Deuteronomy 17:14-15): "When thou . . . shalt say: I will set a king over me . . . thou shalt set him," etc.

Objection 3. Further, according to Matthew 12:25: "Every kingdom divided against itself shall be made desolate": a saying which was verified in the Jewish people, whose destruction was brought about by the division of the kingdom. But the Law should aim chiefly at things pertaining to the general well-being of the people. Therefore it should have forbidden the kingdom to be divided under two kings: nor should this have been introduced even by Divine authority; as we read of its being introduced by the authority of the prophet Ahias the Silonite (1 Kings 11:29, seqq.).

Objection 4. Further, just as priests are instituted for the benefit of the people in things concerning God, as stated in Hebrews 5:1; so are rulers set up for the benefit of the people in human affairs. But certain things were allotted as a means of livelihood for the priests and Levites of the Law: such as the tithes and first-fruits, and many like things. Therefore in like manner certain things should have been determined for the livelihood of the rulers of the people: the more that they were forbidden to accept presents, as is clearly stated in Exodus 23:8: "You shall not [Vulgate: 'Neither shalt thou'] take bribes, which even blind the wise, and pervert the words of the just."

Objection 5. Further, as a kingdom is the best form of government, so is tyranny the most corrupt. But when the Lord appointed the king, He established a tyrannical law; for it is written (1 Samuel 8:11): "This will be the right of the king, that shall reign over you: He will take your sons," etc. Therefore the Law made unfitting provision with regard to the institution of rulers.

On the contrary, The people of Israel is commended for the beauty of its order (Numbers 24:5): "How beautiful are thy tabernacles, O Jacob, and thy tents." But the beautiful ordering of a people depends on the right establishment of its rulers. Therefore the Law made right provision for the people with regard to its rulers.

I answer that, Two points are to be observed concerning the right ordering of rulers in a state or nation. One is that all should take some share in the government: for this form of constitution ensures peace among the people, commends itself to all, and is most enduring, as stated in Polit. ii, 6. The other point is to be observed in respect of the kinds of government, or the different ways in which the constitutions are established. For whereas these differ in kind, as the Philosopher states (Polit. iii, 5), nevertheless the first place is held by the "kingdom," where the power of government is vested in one; and "aristocracy," which signifies government by the best, where the power of government is vested in a few. Accordingly, the best form of government is in a state or kingdom, where one is given the power to preside over all; while under him are others having governing powers: and yet a government of this kind is shared by all, both because all are eligible to govern, and because the rules are chosen by all. For this is the best form of polity, being partly kingdom, since there is one at the head of all; partly aristocracy, in so far as a number of persons are set in authority; partly democracy, i.e. government by the people, in so far as the rulers can be chosen from the people, and the people have the right to choose their rulers.

Such was the form of government established by the Divine Law. For Moses and his successors governed the people in such a way that each of them was ruler over all; so that there was a kind of kingdom. Moreover, seventy-two men were chosen, who were elders in virtue: for it is written (Deuteronomy 1:15): "I took out of your tribes wise and honorable, and appointed them rulers": so that there was an element of aristocracy. But it was a democratical government in so far as the rulers were chosen from all the people; for it is written (Exodus 18:21): "Provide out of all the people wise [Vulgate: 'able'] men," etc.; and, again, in so far as they were chosen by the people; wherefore it is written (Deuteronomy 1:13): "Let me have from among you wise [Vulgate: 'able'] men," etc. Consequently it is evident that the ordering of the rulers was well provided for by the Law.

Reply to Objection 1. This people was governed under the special care of God: wherefore it is written (Deuteronomy 7:6): "The Lord thy God hath chosen thee to be His peculiar people": and this is why the Lord reserved to Himself the institution of the chief ruler. For this too did Moses pray (Numbers 27:16): "May the Lord the God of the spirits of all the flesh provide a man, that may be over this multitude." Thus by God's orders Josue was set at the head in place of Moses; and we read about each of the judges who succeeded Josue that God "raised . . . up a saviour" for the people, and that "the spirit of the Lord was" in them (Judges 3:9-15). Hence the Lord did not leave the choice of a king to the people; but reserved this to Himself, as appears from Deuteronomy 17:15: "Thou shalt set him whom the Lord thy God shall choose."

Reply to Objection 2. A kingdom is the best form of government of the people, so long as it is not corrupt. But since the power granted to a king is so great, it easily degenerates into tyranny, unless he to whom this power is given be a very virtuous man: for it is only the virtuous man that conducts himself well in the midst of prosperity, as the Philosopher observes (*Ethic. iv, 3*). Now perfect virtue is to be found in few: and especially were the Jews inclined to cruelty and avarice, which vices above all turn men into tyrants. Hence from the very first the Lord did not set up the kingly authority with full power, but gave them judges and governors to rule them. But afterwards when the people asked Him to do so, being indignant with them, so to speak, He granted them a king, as is clear from His words to Samuel (*1 Samuel 8:7*): "They have not rejected thee, but Me, that I should not reign over them."

Nevertheless, as regards the appointment of a king, He did establish the manner of election from the very beginning (*Deuteronomy 17:14, seqq.*): and then He determined two points: first, that in choosing a king they should wait for the Lord's decision; and that they should not make a man of another nation king, because such kings are wont to take little interest in the people they are set over, and consequently to have no care for their welfare: secondly, He prescribed how the king after his appointment should behave, in regard to himself; namely, that he should not accumulate chariots and horses, nor wives, nor immense wealth: because through craving for such things princes become tyrants and forsake justice. He also appointed the manner in which they were to conduct themselves towards God: namely, that they should continually read and ponder on God's Law, and should ever fear and obey God. Moreover, He decided how they should behave towards their subjects: namely, that they should not proudly despise them, or ill-treat them, and that they should not depart from the paths of justice.

Reply to Objection 3. The division of the kingdom, and a number of kings, was rather a punishment inflicted on that people for their many dissensions, specially against the just rule of David, than a benefit conferred on them for their profit. Hence it is written (*Hosea 13:11*): "I will give thee a king in My wrath"; and (*Hosea 8:4*): "They have reigned, but not by Me: they have been princes, and I knew not."

Reply to Objection 4. The priestly office was bequeathed by succession from father to son: and this, in order that it might be held in greater respect, if not any man from the people could become a priest: since honor was given to them out of reverence for the divine worship. Hence it was necessary to put aside certain things for them both as to tithes and as to first-fruits, and, again, as to oblations and sacrifices, that they might be afforded a means of livelihood. On the other hand, the rulers, as stated above, were chosen from the whole people; wherefore they had their own possessions, from which to derive a living: and so much the more, since the Lord forbade even a king to have superabundant wealth to make too much show of magnificence: both because he could scarcely avoid the excesses of pride and tyranny, arising from such things, and because, if the rulers were not very rich,

and if their office involved much work and anxiety, it would not tempt the ambition of the common people; and would not become an occasion of sedition.

Reply to Objection 5. That right was not given to the king by Divine institution: rather was it foretold that kings would usurp that right, by framing unjust laws, and by degenerating into tyrants who preyed on their subjects. This is clear from the context that follows: "And you shall be his slaves [Douay: 'servants']": which is significative of tyranny, since a tyrant rules his subjects as though they were his slaves. Hence Samuel spoke these words to deter them from asking for a king; since the narrative continues: "But the people would not hear the voice of Samuel." It may happen, however, that even a good king, without being a tyrant, may take away the sons, and make them tribunes and centurions; and may take many things from his subjects in order to secure the common weal.

Article 2. Whether the judicial precepts were suitably framed as to the relations of one man with another?

Objection 1. It would seem that the judicial precepts were not suitably framed as regards the relations of one man with another. Because men cannot live together in peace, if one man takes what belongs to another. But this seems to have been approved by the Law: since it is written (Deuteronomy 23:24): "Going into thy neighbor's vineyard, thou mayest eat as many grapes as thou pleasest." Therefore the Old Law did not make suitable provisions for man's peace.

Objection 2. Further, one of the chief causes of the downfall of states has been the holding of property by women, as the Philosopher says (Polit. ii, 6). But this was introduced by the Old Law; for it is written (Numbers 27:8): "When a man dieth without a son, his inheritance shall pass to his daughter." Therefore the Law made unsuitable provision for the welfare of the people.

Objection 3. Further, it is most conducive to the preservation of human society that men may provide themselves with necessaries by buying and selling, as stated in Polit. i. But the Old Law took away the force of sales; since it prescribes that in the 50th year of the jubilee all that is sold shall return to the vendor (Leviticus 25:28). Therefore in this matter the Law gave the people an unfitting command.

Objection 4. Further, man's needs require that men should be ready to lend: which readiness ceases if the creditors do not return the pledges: hence it is written (Sirach 29:10): "Many have refused to lend, not out of wickedness, but they were afraid to be defrauded without cause." And yet this was encouraged by the Law. First, because it prescribed (Deuteronomy 15:2): "He to whom any thing is owing from his friend or neighbor or brother, cannot demand it again, because it is the year of remission of the Lord"; and (Exodus 22:15) it is stated that if a borrowed animal should die while the owner is present,

the borrower is not bound to make restitution. Secondly, because the security acquired through the pledge is lost: for it is written (Deuteronomy 24:10): "When thou shalt demand of thy neighbor any thing that he oweth thee, thou shalt not go into his house to take away a pledge"; and again (Deuteronomy 24:12-13): "The pledge shall not lodge with thee that night, but thou shalt restore it to him presently." Therefore the Law made insufficient provision in the matter of loans.

Objection 5. Further, considerable risk attaches to goods deposited with a fraudulent depositary: wherefore great caution should be observed in such matters: hence it is stated in 2 Maccabees 3:15 that "the priests . . . called upon Him from heaven, Who made the law concerning things given to be kept, that He would preserve them safe, for them that had deposited them." But the precepts of the Old Law observed little caution in regard to deposits: since it is prescribed (Exodus 22:10-11) that when goods deposited are lost, the owner is to stand by the oath of the depositary. Therefore the Law made unsuitable provision in this matter.

Objection 6. Further, just as a workman offers his work for hire, so do men let houses and so forth. But there is no need for the tenant to pay his rent as soon as he takes a house. Therefore it seems an unnecessarily hard prescription (Leviticus 19:13) that "the wages of him that hath been hired by thee shall not abide with thee until morning."

Objection 7. Further, since there is often pressing need for a judge, it should be easy to gain access to one. It was therefore unfitting that the Law (Deuteronomy 17:8-9) should command them to go to a fixed place to ask for judgment on doubtful matters.

Objection 8. Further, it is possible that not only two, but three or more, should agree to tell a lie. Therefore it is unreasonably stated (Deuteronomy 19:15) that "in the mouth of two or three witnesses every word shall stand."

Objection 9. Further, punishment should be fixed according to the gravity of the fault: for which reason also it is written (Deuteronomy 25:2): "According to the measure of the sin, shall the measure also of the stripes be." Yet the Law fixed unequal punishments for certain faults: for it is written (Exodus 22:1) that the thief "shall restore five oxen for one ox, and four sheep for one sheep." Moreover, certain slight offenses are severely punished: thus (Numbers 15:32, seqq.) a man is stoned for gathering sticks on the sabbath day: and (Deuteronomy 21:18, seqq.) the unruly son is commanded to be stoned on account of certain small transgressions, viz. because "he gave himself to revelling . . . and banquetings." Therefore the Law prescribed punishments in an unreasonable manner.

Objection 10. Further, as Augustine says (De Civ. Dei xxi, 11), "Tully writes that the laws recognize eight forms of punishment, indemnity, prison, stripes, retaliation, public disgrace, exile, death, slavery." Now some of these were prescribed by the Law. "Indemnity," as when a thief was condemned to make restitution fivefold or fourfold. "Prison," as when (Numbers 15:34) a certain man is ordered to be imprisoned. "Stripes"; thus (Deuteronomy 25:2), "if

they see that the offender be worthy of stripes; they shall lay him down, and shall cause him to be beaten before them." "Public disgrace" was brought on to him who refused to take to himself the wife of his deceased brother, for she took "off his shoe from his foot, and" did "spit in his face" (Deuteronomy 25:9). It prescribed the "death" penalty, as is clear from (Leviticus 20:9): "He that curseth his father, or mother, dying let him die." The Law also recognized the "lex talionis," by prescribing (Exodus 21:24): "Eye for eye, tooth for tooth." Therefore it seems unreasonable that the Law should not have inflicted the two other punishments, viz. "exile" and "slavery."

Objection 11. Further, no punishment is due except for a fault. But dumb animals cannot commit a fault. Therefore the Law is unreasonable in punishing them (Exodus 21:29): "If the ox . . . shall kill a man or a woman," it "shall be stoned": and (Leviticus 20:16): "The woman that shall lie under any beast, shall be killed together with the same." Therefore it seems that matters pertaining to the relations of one man with another were unsuitably regulated by the Law.

Objection 12. Further, the Lord commanded (Exodus 21:12) a murderer to be punished with death. But the death of a dumb animal is reckoned of much less account than the slaying of a man. Hence murder cannot be sufficiently punished by the slaying of a dumb animal. Therefore it is unfittingly prescribed (Deuteronomy 21:1-4) that "when there shall be found . . . the corpse of a man slain, and it is not known who is guilty of the murder . . . the ancients" of the nearest city "shall take a heifer of the herd, that hath not drawn in the yoke, nor ploughed the ground, and they shall bring her into a rough and stony valley, that never was ploughed, nor sown; and there they shall strike off the head of the heifer."

On the contrary, It is recalled as a special blessing (Psalm 147:20) that "He hath not done in like manner to every nation; and His judgments He hath not made manifest to them."

I answer that, As Augustine says (De Civ. Dei ii, 21), quoting Tully, "a nation is a body of men united together by consent to the law and by community of welfare." Consequently it is of the essence of a nation that the mutual relations of the citizens be ordered by just laws. Now the relations of one man with another are twofold: some are effected under the guidance of those in authority: others are effected by the will of private individuals. And since whatever is subject to the power of an individual can be disposed of according to his will, hence it is that the decision of matters between one man and another, and the punishment of evildoers, depend on the direction of those in authority, to whom men are subject. On the other hand, the power of private persons is exercised over the things they possess: and consequently their dealings with one another, as regards such things, depend on their own will, for instance in buying, selling, giving, and so forth. Now the Law provided sufficiently in respect of each of these relations between one man and another. For it established judges, as is clearly indicated in Deuteronomy 16:18: "Thou shalt appoint judges and magistrates in all its [Vulgate: 'thy'] gates . . . that they may judge the people with just judgment." It is also directed the manner of pronouncing just judgments, according to Deuteronomy 1:16-17: "Judge that which is just, whether he be one of your own

country or a stranger: there shall be no difference of persons." It also removed an occasion of pronouncing unjust judgment, by forbidding judges to accept bribes (Exodus 23:8; Deuteronomy 16:19). It prescribed the number of witnesses, viz. two or three: and it appointed certain punishments to certain crimes, as we shall state farther on (ad 10).

But with regard to possessions, it is a very good thing, says the Philosopher (Polit. ii, 2) that the things possessed should be distinct, and the use thereof should be partly common, and partly granted to others by the will of the possessors. These three points were provided for by the Law. Because, in the first place, the possessions themselves were divided among individuals: for it is written (Numbers 33:53-54): "I have given you" the land "for a possession: and you shall divide it among you by lot." And since many states have been ruined through want of regulations in the matter of possessions, as the Philosopher observes (Polit. ii, 6); therefore the Law provided a threefold remedy against the regularity of possessions. The first was that they should be divided equally, wherefore it is written (Numbers 33:54): "To the more you shall give a larger part, and to the fewer, a lesser." A second remedy was that possessions could not be alienated for ever, but after a certain lapse of time should return to their former owner, so as to avoid confusion of possessions (cf. ad 3). The third remedy aimed at the removal of this confusion, and provided that the dead should be succeeded by their next of kin: in the first place, the son; secondly, the daughter; thirdly, the brother; fourthly, the father's brother; fifthly, any other next of kin. Furthermore, in order to preserve the distinction of property, the Law enacted that heiresses should marry within their own tribe, as recorded in Numbers 36:6.

Secondly, the Law commanded that, in some respects, the use of things should belong to all in common. Firstly, as regards the care of them; for it was prescribed (Deuteronomy 22:1-4): "Thou shalt not pass by, if thou seest thy brother's ox or his sheep go astray; but thou shalt bring them back to thy brother," and in like manner as to other things. Secondly, as regards fruits. For all alike were allowed on entering a friend's vineyard to eat of the fruit, but not to take any away. And, specially, with respect to the poor, it was prescribed that the forgotten sheaves, and the bunches of grapes and fruit, should be left behind for them (Leviticus 19:9; Deuteronomy 24:19). Moreover, whatever grew in the seventh year was common property, as stated in Exodus 23:11 and Leviticus 25:4.

Thirdly, the law recognized the transference of goods by the owner. There was a purely gratuitous transfer: thus it is written (Deuteronomy 14:28-29): "The third day thou shalt separate another tithe . . . and the Levite . . . and the stranger, and the fatherless, and the widow . . . shall come and shall eat and be filled." And there was a transfer for a consideration, for instance, by selling and buying, by letting out and hiring, by loan and also by deposit, concerning all of which we find that the Law made ample provision. Consequently it is clear that the Old Law provided sufficiently concerning the mutual relations of one man with another.

Reply to Objection 1. As the Apostle says (Romans 13:8), "he that loveth his neighbor hath fulfilled the Law": because, to wit, all the precepts of the Law, chiefly those concerning

our neighbor, seem to aim at the end that men should love one another. Now it is an effect of love that men give their own goods to others: because, as stated in 1 John 3:17: "He that . . . shall see his brother in need, and shall shut up his bowels from him: how doth the charity of God abide in him?" Hence the purpose of the Law was to accustom men to give of their own to others readily: thus the Apostle (1 Timothy 6:18) commands the rich "to give easily and to communicate to others." Now a man does not give easily to others if he will not suffer another man to take some little thing from him without any great injury to him. And so the Law laid down that it should be lawful for a man, on entering his neighbor's vineyard, to eat of the fruit there: but not to carry any away, lest this should lead to the infliction of a grievous harm, and cause a disturbance of the peace: for among well-behaved people, the taking of a little does not disturb the peace; in fact, it rather strengthens friendship and accustoms men to give things to one another.

Reply to Objection 2. The Law did not prescribe that women should succeed to their father's estate except in default of male issue: failing which it was necessary that succession should be granted to the female line in order to comfort the father, who would have been sad to think that his estate would pass to strangers. Nevertheless the Law observed due caution in the matter, by providing that those women who succeeded to their father's estate, should marry within their own tribe, in order to avoid confusion of tribal possessions, as stated in Numbers 36:7-8.

Reply to Objection 3. As the Philosopher says (Polit. ii, 4), the regulation of possessions conduces much to the preservation of a state or nation. Consequently, as he himself observes, it was forbidden by the law in some of the heathen states, "that anyone should sell his possessions, except to avoid a manifest loss." For if possessions were to be sold indiscriminately, they might happen to come into the hands of a few: so that it might become necessary for a state or country to become void of inhabitants. Hence the Old Law, in order to remove this danger, ordered things in such a way that while provision was made for men's needs, by allowing the sale of possessions to avail for a certain period, at the same time the said danger was removed, by prescribing the return of those possessions after that period had elapsed. The reason for this law was to prevent confusion of possessions, and to ensure the continuance of a definite distinction among the tribes.

But as the town houses were not allotted to distinct estates, therefore the Law allowed them to be sold in perpetuity, like movable goods. Because the number of houses in a town was not fixed, whereas there was a fixed limit to the amount of estates, which could not be exceeded, while the number of houses in a town could be increased. On the other hand, houses situated not in a town, but "in a village that hath no walls," could not be sold in perpetuity: because such houses are built merely with a view to the cultivation and care of possessions; wherefore the Law rightly made the same prescription in regard to both (Leviticus 25).

Reply to Objection 4. As stated above (ad 1), the purpose of the Law was to accustom men to its precepts, so as to be ready to come to one another's assistance: because this is a very

great incentive to friendship. The Law granted these facilities for helping others in the matter not only of gratuitous and absolute donations, but also of mutual transfers: because the latter kind of succor is more frequent and benefits the greater number: and it granted facilities for this purpose in many ways. First of all by prescribing that men should be ready to lend, and that they should not be less inclined to do so as the year of remission drew nigh, as stated in Deuteronomy 15:7, seqq. Secondly, by forbidding them to burden a man to whom they might grant a loan, either by exacting usury, or by accepting necessities of life in security; and by prescribing that when this had been done they should be restored at once. For it is written (Deuteronomy 23:19): "Thou shalt not lend to thy brother money to usury": and (Deuteronomy 24:6): "Thou shalt not take the nether nor the upper millstone to pledge; for he hath pledged his life to thee": and (Exodus 22:26): "If thou take of thy neighbor a garment in pledge, thou shalt give it him again before sunset." Thirdly, by forbidding them to be importunate in exacting payment. Hence it is written (Exodus 22:25): "If thou lend money to any of my people that is poor that dwelleth with thee, thou shalt not be hard upon them as an extortioner." For this reason, too, it is enacted (Deuteronomy 24:10-11): "When thou shalt demand of thy neighbor anything that he oweth thee, thou shalt not go into his house to take away a pledge, but thou shalt stand without, and he shall bring out to thee what he hath": both because a man's house is his surest refuge, wherefore it is offensive to a man to be set upon in his own house; and because the Law does not allow the creditor to take away whatever he likes in security, but rather permits the debtor to give what he needs least. Fourthly, the Law prescribed that debts should cease together after the lapse of seven years. For it was probable that those who could conveniently pay their debts, would do so before the seventh year, and would not defraud the lender without cause. But if they were altogether insolvent, there was the same reason for remitting the debt from love for them, as there was for renewing the loan on account of their need.

As regards animals granted in loan, the Law enacted that if, through the neglect of the person to whom they were lent, they perished or deteriorated in his absence, he was bound to make restitution. But if they perished or deteriorated while he was present and taking proper care of them, he was not bound to make restitution, especially if they were hired for a consideration: because they might have died or deteriorated in the same way if they had remained in possession of the lender, so that if the animal had been saved through being lent, the lender would have gained something by the loan which would no longer have been gratuitous. And especially was this to be observed when animals were hired for a consideration: because then the owner received a certain price for the use of the animals; wherefore he had no right to any profit, by receiving indemnity for the animal, unless the person who had charge of it were negligent. In the case, however, of animals not hired for a consideration, equity demanded that he should receive something by way of restitution at least to the value of the hire of the animal that had perished or deteriorated.

Reply to Objection 5. The difference between a loan and a deposit is that a loan is in respect of goods transferred for the use of the person to whom they are transferred, whereas a deposit is for the benefit of the depositor. Hence in certain cases there was a stricter

obligation of returning a loan than of restoring goods held in deposit. Because the latter might be lost in two ways. First, unavoidably: i.e. either through a natural cause, for instance if an animal held in deposit were to die or depreciate in value; or through an extrinsic cause, for instance, if it were taken by an enemy, or devoured by a beast (in which case, however, a man was bound to restore to the owner what was left of the animal thus slain): whereas in the other cases mentioned above, he was not bound to make restitution; but only to take an oath in order to clear himself of suspicion. Secondly, the goods deposited might be lost through an avoidable cause, for instance by theft: and then the depositary was bound to restitution on account of his neglect. But, as stated above (ad 4), he who held an animal on loan, was bound to restitution, even if he were absent when it depreciated or died: because he was held responsible for less negligence than a depositary, who was only held responsible in case of theft.

Reply to Objection 6. Workmen who offer their labor for hire, are poor men who toil for their daily bread: and therefore the Law commanded wisely that they should be paid at once, lest they should lack food. But they who offer other commodities for hire, are wont to be rich: nor are they in such need of their price in order to gain a livelihood: and consequently the comparison does not hold.

Reply to Objection 7. The purpose for which judges are appointed among men, is that they may decide doubtful points in matters of justice. Now a matter may be doubtful in two ways. First, among simple-minded people: and in order to remove doubts of this kind, it was prescribed (Deuteronomy 16:18) that "judges and magistrates" should be appointed in each tribe, "to judge the people with just judgment." Secondly, a matter may be doubtful even among experts: and therefore, in order to remove doubts of this kind, the Law prescribed that all should foregather in some chief place chosen by God, where there would be both the high-priest, who would decide doubtful matters relating to the ceremonies of divine worship; and the chief judge of the people, who would decide matters relating to the judgments of men: just as even now cases are taken from a lower to a higher court either by appeal or by consultation. Hence it is written (Deuteronomy 17:8-9): "If thou perceive that there be among you a hard and doubtful matter in judgment . . . and thou see that the words of the judges within thy gates do vary; arise and go up to the place, which the Lord thy God shall choose; and thou shalt come to the priests of the Levitical race, and to the judge that shall be at that time." But such like doubtful matters did not often occur for judgment: wherefore the people were not burdened on this account.

Reply to Objection 8. In the business affairs of men, there is no such thing as demonstrative and infallible proof, and we must be content with a certain conjectural probability, such as that which an orator employs to persuade. Consequently, although it is quite possible for two or three witnesses to agree to a falsehood, yet it is neither easy nor probable that they succeed in so doing: wherefore their testimony is taken as being true, especially if they do not waver in giving it, or are not otherwise suspect. Moreover, in order that witnesses might not easily depart from the truth, the Law commanded that they

should be most carefully examined, and that those who were found untruthful should be severely punished, as stated in Deuteronomy 19:16, seqq.

There was, however, a reason for fixing on this particular number, in token of the unerring truth of the Divine Persons, Who are sometimes mentioned as two, because the Holy Ghost is the bond of the other two Persons; and sometimes as three: as Augustine observes on John 8:17: "In your law it is written that the testimony of two men is true."

Reply to Objection 9. A severe punishment is inflicted not only on account of the gravity of a fault, but also for other reasons. First, on account of the greatness of the sin, because a greater sin, other things being equal, deserves a greater punishment. Secondly, on account of a habitual sin, since men are not easily cured of habitual sin except by severe punishments. Thirdly, on account of a great desire for or a great pleasure in the sin: for men are not easily deterred from such sins unless they be severely punished. Fourthly, on account of the facility of committing a sin and of concealing it: for such like sins, when discovered, should be more severely punished in order to deter others from committing them.

Again, with regard to the greatness of a sin, four degrees may be observed, even in respect of one single deed. The first is when a sin is committed unwillingly; because then, if the sin be altogether involuntary, man is altogether excused from punishment; for it is written (Deuteronomy 22:25, seqq.) that a damsel who suffers violence in a field is not guilty of death, because "she cried, and there was no man to help her." But if a man sinned in any way voluntarily, and yet through weakness, as for instance when a man sins from passion, the sin is diminished: and the punishment, according to true judgment, should be diminished also; unless perchance the common weal requires that the sin be severely punished in order to deter others from committing such sins, as stated above. The second degree is when a man sins through ignorance: and then he was held to be guilty to a certain extent, on account of his negligence in acquiring knowledge: yet he was not punished by the judges but expiated his sin by sacrifices. Hence it is written (Leviticus 4:2): "The soul that sinneth through ignorance," etc. This is, however, to be taken as applying to ignorance of fact; and not to ignorance of the Divine precept, which all were bound to know. The third degree was when a man sinned from pride, i.e. through deliberate choice or malice: and then he was punished according to the greatness of the sin [Cf. Deuteronomy 25:2. The fourth degree was when a man sinned from stubbornness or obstinacy: and then he was to be utterly cut off as a rebel and a destroyer of the commandment of the Law [Cf. Numbers 15:30-31.

Accordingly we must say that, in appointing the punishment for theft, the Law considered what would be likely to happen most frequently (Exodus 22:1-9): wherefore, as regards theft of other things which can easily be safeguarded from a thief, the thief restored only twice their value. But sheep cannot be easily safeguarded from a thief, because they graze in the fields: wherefore it happened more frequently that sheep were stolen in the fields. Consequently the Law inflicted a heavier penalty, by ordering four sheep to be restored for

the theft of one. As to cattle, they were yet more difficult to safeguard, because they are kept in the fields, and do not graze in flocks as sheep do; wherefore a yet more heavy penalty was inflicted in their regard, so that five oxen were to be restored for one ox. And this I say, unless perchance the animal itself were discovered in the thief's possession: because in that case he had to restore only twice the number, as in the case of other thefts: for there was reason to presume that he intended to restore the animal, since he kept it alive. Again, we might say, according to a gloss, that "a cow is useful in five ways: it may be used for sacrifice, for ploughing, for food, for milk, and its hide is employed for various purposes": and therefore for one cow five had to be restored. But the sheep was useful in four ways: "for sacrifice, for meat, for milk, and for its wool." The unruly son was slain, not because he ate and drank: but on account of his stubbornness and rebellion, which was always punished by death, as stated above. As to the man who gathered sticks on the sabbath, he was stoned as a breaker of the Law, which commanded the sabbath to be observed, to testify the belief in the newness of the world, as stated above (Question 100, Article 5): wherefore he was slain as an unbeliever.

Reply to Objection 10. The Old Law inflicted the death penalty for the more grievous crimes, viz. for those which are committed against God, and for murder, for stealing a man, irreverence towards one's parents, adultery and incest. In the case of thief of other things it inflicted punishment by indemnification: while in the case of blows and mutilation it authorized punishment by retaliation; and likewise for the sin of bearing false witness. In other faults of less degree it prescribed the punishment of stripes or of public disgrace.

The punishment of slavery was prescribed by the Law in two cases. First, in the case of a slave who was unwilling to avail himself of the privilege granted by the Law, whereby he was free to depart in the seventh year of remission: wherefore he was punished by remaining a slave for ever. Secondly, in the case of a thief, who had not wherewith to make restitution, as stated in Exodus 22:3.

The punishment of absolute exile was not prescribed by the Law: because God was worshipped by that people alone, whereas all other nations were given to idolatry: wherefore if any man were exiled from that people absolutely, he would be in danger of falling into idolatry. For this reason it is related (1 Samuel 26:19) that David said to Saul: "They are cursed in the sight of the Lord, who have cast me out this day, that I should not dwell in the inheritance of the Lord, saying: Go, serve strange gods." There was, however, a restricted sort of exile: for it is written in Deuteronomy 19:4 [Cf. Numbers 35:25 that "he that striketh [Vulgate: 'killeth'] his neighbor ignorantly, and is proved to have had no hatred against him, shall flee to one of the cities" of refuge and "abide there until the death of the high-priest." For then it became lawful for him to return home, because when the whole people thus suffered a loss they forgot their private quarrels, so that the next of kin of the slain were not so eager to kill the slayer.

Reply to Objection 11. Dumb animals were ordered to be slain, not on account of any fault of theirs; but as a punishment to their owners, who had not safeguarded their beasts

from these offenses. Hence the owner was more severely punished if his ox had butted anyone "yesterday or the day before" (in which case steps might have been taken to butting suddenly). Or again, the animal was slain in detestation of the sin; and lest men should be horrified at the sight thereof.

Reply to Objection 12. The literal reason for this commandment, as Rabbi Moses declares (Doct. Perplex. iii), was because the slayer was frequently from the nearest city: wherefore the slaying of the calf was a means of investigating the hidden murder. This was brought about in three ways. In the first place the elders of the city swore that they had taken every measure for safeguarding the roads. Secondly, the owner of the heifer was indemnified for the slaying of his beast, and if the murder was previously discovered, the beast was not slain. Thirdly, the place, where the heifer was slain, remained uncultivated. Wherefore, in order to avoid this twofold loss, the men of the city would readily make known the murderer, if they knew who he was: and it would seldom happen but that some word or sign would escape about the matter. Or again, this was done in order to frighten people, in detestation of murder. Because the slaying of a heifer, which is a useful animal and full of strength, especially before it has been put under the yoke, signified that whoever committed murder, however useful and strong he might be, was to forfeit his life; and that, by a cruel death, which was implied by the striking off of its head; and that the murderer, as vile and abject, was to be cut off from the fellowship of men, which was betokened by the fact that the heifer after being slain was left to rot in a rough and uncultivated place.

Mystically, the heifer taken from the herd signifies the flesh of Christ; which had not drawn a yoke, since it had done no sin; nor did it plough the ground, i.e. it never knew the stain of revolt. The fact of the heifer being killed in an uncultivated valley signified the despised death of Christ, whereby all sins are washed away, and the devil is shown to be the arch-murderer.

Article 3. Whether the judicial precepts regarding foreigners were framed in a suitable manner?

Objection 1. It would seem that the judicial precepts regarding foreigners were not suitably framed. For Peter said (Acts 10:34-35): "In very deed I perceive that God is not a respecter of persons, but in every nation, he that feareth Him and worketh justice is acceptable to Him." But those who are acceptable to God should not be excluded from the Church of God. Therefore it is unsuitably commanded (Deuteronomy 23:3) that "the Ammonite and the Moabite, even after the tenth generation, shall not enter into the church of the Lord for ever": whereas, on the other hand, it is prescribed (Deuteronomy 23:7) to be observed with regard to certain other nations: "Thou shalt not abhor the Edomite, because he is thy brother; nor the Egyptian because thou wast a stranger in his land."

Objection 2. Further, we do not deserve to be punished for those things which are not in our power. But it is not in man's power to be an eunuch, or born of a prostitute. Therefore it

is unsuitably commanded (Deuteronomy 23:1-2) that "an eunuch and one born of a prostitute shalt not enter into the church of the Lord."

Objection 3. Further, the Old Law mercifully forbade strangers to be molested: for it is written (Exodus 22:21): "Thou shalt not molest a stranger, nor afflict him; for yourselves also were strangers in the land of Egypt": and (Exodus 23:9): "Thou shalt not molest a stranger, for you know the hearts of strangers, for you also were strangers in the land of Egypt." But it is an affliction to be burdened with usury. Therefore the Law unsuitably permitted them (Deuteronomy 23:19-20) to lend money to the stranger for usury.

Objection 4. Further, men are much more akin to us than trees. But we should show greater care and love for these things that are nearest to us, according to Sirach 13:19: "Every beast loveth its like: so also every man him that is nearest to himself." Therefore the Lord unsuitably commanded (Deuteronomy 20:13-19) that all the inhabitants of a captured hostile city were to be slain, but that the fruit-trees should not be cut down.

Objection 5. Further, every one should prefer the common good of virtue to the good of the individual. But the common good is sought in a war which men fight against their enemies. Therefore it is unsuitably commanded (Deuteronomy 20:5-7) that certain men should be sent home, for instance a man that had built a new house, or who had planted a vineyard, or who had married a wife.

Objection 6. Further, no man should profit by his own fault. But it is a man's fault if he be timid or faint-hearted: since this is contrary to the virtue of fortitude. Therefore the timid and faint-hearted are unfittingly excused from the toil of battle (Deuteronomy 20:8).

On the contrary, Divine Wisdom declares (Proverbs 8:8): "All my words are just, there is nothing wicked nor perverse in them."

I answer that, Man's relations with foreigners are twofold: peaceful, and hostile: and in directing both kinds of relation the Law contained suitable precepts. For the Jews were offered three opportunities of peaceful relations with foreigners. First, when foreigners passed through their land as travelers. Secondly, when they came to dwell in their land as newcomers. And in both these respects the Law made kind provision in its precepts: for it is written (Exodus 22:21): "Thou shalt not molest a stranger [advenam]"; and again (Exodus 22:9): "Thou shalt not molest a stranger [peregrino]." Thirdly, when any foreigners wished to be admitted entirely to their fellowship and mode of worship. With regard to these a certain order was observed. For they were not at once admitted to citizenship: just as it was law with some nations that no one was deemed a citizen except after two or three generations, as the Philosopher says (Polit. iii, 1). The reason for this was that if foreigners were allowed to meddle with the affairs of a nation as soon as they settled down in its midst, many dangers might occur, since the foreigners not yet having the common good firmly at heart might attempt something hurtful to the people. Hence it was that the Law prescribed in respect of certain nations that had close relations with the Jews (viz., the

Egyptians among whom they were born and educated, and the Idumeans, the children of Esau, Jacob's brother), that they should be admitted to the fellowship of the people after the third generation; whereas others (with whom their relations had been hostile, such as the Ammonites and Moabites) were never to be admitted to citizenship; while the Amalekites, who were yet more hostile to them, and had no fellowship of kindred with them, were to be held as foes in perpetuity: for it is written (Exodus 17:16): "The war of the Lord shall be against Amalec from generation to generation."

In like manner with regard to hostile relations with foreigners, the Law contained suitable precepts. For, in the first place, it commanded that war should be declared for a just cause: thus it is commanded (Deuteronomy 20:10) that when they advanced to besiege a city, they should at first make an offer of peace. Secondly, it enjoined that when once they had entered on a war they should undauntedly persevere in it, putting their trust in God. And in order that they might be the more heedful of this command, it ordered that on the approach of battle the priest should hearten them by promising them God's aid. Thirdly, it prescribed the removal of whatever might prove an obstacle to the fight, and that certain men, who might be in the way, should be sent home. Fourthly, it enjoined that they should use moderation in pursuing the advantage of victory, by sparing women and children, and by not cutting down fruit-trees of that country.

Reply to Objection 1. The Law excluded the men of no nation from the worship of God and from things pertaining to the welfare of the soul: for it is written (Exodus 12:48): "If any stranger be willing to dwell among you, and to keep the Phase of the Lord; all his males shall first be circumcised, and then shall he celebrate it according to the manner, and he shall be as that which is born in the land." But in temporal matters concerning the public life of the people, admission was not granted to everyone at once, for the reason given above: but to some, i.e. the Egyptians and Idumeans, in the third generation; while others were excluded in perpetuity, in detestation of their past offense, i.e. the peoples of Moab, Ammon, and Amalec. For just as one man is punished for a sin committed by him, in order that others seeing this may be deterred and refrain from sinning; so too may one nation or city be punished for a crime, that others may refrain from similar crimes.

Nevertheless it was possible by dispensation for a man to be admitted to citizenship on account of some act of virtue: thus it is related (Judith 14:6) that Achior, the captain of the children of Ammon, "was joined to the people of Israel, with all the succession of his kindred." The same applies to Ruth the Moabite who was "a virtuous woman" (Ruth 3:11): although it may be said that this prohibition regarded men and not women, who are not competent to be citizens absolutely speaking.

Reply to Objection 2. As the Philosopher says (Polit. iii, 3), a man is said to be a citizen in two ways: first, simply; secondly, in a restricted sense. A man is a citizen simply if he has all the rights of citizenship, for instance, the right of debating or voting in the popular assembly. On the other hand, any man may be called citizen, only in a restricted sense, if he dwells within the state, even common people or children or old men, who are not fit to

enjoy power in matters pertaining to the common weal. For this reason bastards, by reason of their base origin, were excluded from the "ecclesia," i.e. from the popular assembly, down to the tenth generation. The same applies to eunuchs, who were not competent to receive the honor due to a father, especially among the Jews, where the divine worship was continued through carnal generation: for even among the heathens, those who had many children were marked with special honor, as the Philosopher remarks (Polit. ii, 6). Nevertheless, in matters pertaining to the grace of God, eunuchs were not discriminated from others, as neither were strangers, as already stated: for it is written (Isaiah 56:3): "Let not the son of the stranger that adhereth to the Lord speak, saying: The Lord will divide and separate me from His people. And let not the eunuch say: Behold I am a dry tree."

Reply to Objection 3. It was not the intention of the Law to sanction the acceptance of usury from strangers, but only to tolerate it on account of the proneness of the Jews to avarice; and in order to promote an amicable feeling towards those out of whom they made a profit.

Reply to Objection 4. A distinction was observed with regard to hostile cities. For some of them were far distant, and were not among those which had been promised to them. When they had taken these cities, they killed all the men who had fought against God's people; whereas the women and children were spared. But in the neighboring cities which had been promised to them, all were ordered to be slain, on account of their former crimes, to punish which God sent the Israelites as executor of Divine justice: for it is written (Deuteronomy 9:5) "because they have done wickedly, they are destroyed at thy coming in." The fruit-trees were commanded to be left untouched, for the use of the people themselves, to whom the city with its territory was destined to be subjected.

Reply to Objection 5. The builder of a new house, the planter of a vineyard, the newly married husband, were excluded from fighting, for two reasons. First, because man is wont to give all his affection to those things which he has lately acquired, or is on the point of having, and consequently he is apt to dread the loss of these above other things. Wherefore it was likely enough that on account of this affection they would fear death all the more, and be so much the less brave in battle. Secondly, because, as the Philosopher says (Phys. ii, 5), "it is a misfortune for a man if he is prevented from obtaining something good when it is within his grasp." And so lest the surviving relations should be the more grieved at the death of these men who had not entered into the possession of the good things prepared for them; and also lest the people should be horror-stricken at the sight of their misfortune: these men were taken away from the danger of death by being removed from the battle.

Reply to Objection 6. The timid were sent back home, not that they might be the gainers thereby; but lest the people might be the losers by their presence, since their timidity and flight might cause others to be afraid and run away.

Article 4. Whether the Old Law set forth suitable precepts about the members of the household?

Objection 1. It would seem that the Old Law set forth unsuitable precepts about the members of the household. For a slave "is in every respect his master's property," as the Philosopher states (Polit. i, 2). But that which is a man's property should be his always. Therefore it was unfitting for the Law to command (Exodus 21:2) that slaves should "go out free" in the seventh year.

Objection 2. Further, a slave is his master's property, just as an animal, e.g. an ass or an ox. But it is commanded (Deuteronomy 22:1-3) with regard to animals, that they should be brought back to the owner if they be found going astray. Therefore it was unsuitably commanded (Deuteronomy 23:15): "Thou shalt not deliver to his master the servant that is fled to thee."

Objection 3. Further, the Divine Law should encourage mercy more even than the human law. But according to human laws those who ill-treat their servants and maidservants are severely punished: and the worse treatment of all seems to be that which results in death. Therefore it is unfittingly commanded (Exodus 21:20-21) that "he that striketh his bondman or bondwoman with a rod, and they die under his hands . . . if the party remain alive a day . . . he shall not be subject to the punishment, because it is his money."

Objection 4. Further, the dominion of a master over his slave differs from that of the father over his son (Polit. i, 3). But the dominion of master over slave gives the former the right to sell his servant or maidservant. Therefore it was unfitting for the Law to allow a man to sell his daughter to be a servant or handmaid (Exodus 21:7).

Objection 5. Further, a father has power over his son. But he who has power over the sinner has the right to punish him for his offenses. Therefore it is unfittingly commanded (Deuteronomy 21:18, seqq.) that a father should bring his son to the ancients of the city for punishment.

Objection 6. Further, the Lord forbade them (Deuteronomy 7:3, seqq.) to make marriages with strange nations; and commanded the dissolution of such as had been contracted (Ezra 10). Therefore it was unfitting to allow them to marry captive women from strange nations (Deuteronomy 21:10, seqq.).

Objection 7. Further, the Lord forbade them to marry within certain degrees of consanguinity and affinity, according to Leviticus 18. Therefore it was unsuitably commanded (Deuteronomy 25:5) that if any man died without issue, his brother should marry his wife.

Objection 8. Further, as there is the greatest familiarity between man and wife, so should there be the staunchest fidelity. But this is impossible if the marriage bond can be sundered. Therefore it was unfitting for the Lord to allow (Deuteronomy 24:1-4) a man to

put his wife away, by writing a bill of divorce; and besides, that he could not take her again to wife.

Objection 9. Further, just as a wife can be faithless to her husband, so can a slave be to his master, and a son to his father. But the Law did not command any sacrifice to be offered in order to investigate the injury done by a servant to his master, or by a son to his father. Therefore it seems to have been superfluous for the Law to prescribe the "sacrifice of jealousy" in order to investigate a wife's adultery (Numbers 5:12, seqq.). Consequently it seems that the Law put forth unsuitable judicial precepts about the members of the household.

On the contrary, It is written (Psalm 18:10): "The judgments of the Lord are true, justified in themselves."

I answer that, The mutual relations of the members of a household regard everyday actions directed to the necessities of life, as the Philosopher states (Polit. i, 1). Now the preservation of man's life may be considered from two points of view. First, from the point of view of the individual, i.e. in so far as man preserves his individuality: and for the purpose of the preservation of life, considered from this standpoint, man has at his service external goods, by means of which he provides himself with food and clothing and other such necessities of life: in the handling of which he has need of servants. Secondly man's life is preserved from the point of view of the species, by means of generation, for which purpose man needs a wife, that she may bear him children. Accordingly the mutual relations of the members of a household admit of a threefold combination: viz. those of master and servant, those of husband and wife, and those of father and son: and in respect of all these relationships the Old Law contained fitting precepts. Thus, with regard to servants, it commanded them to be treated with moderation--both as to their work, lest, to wit, they should be burdened with excessive labor, wherefore the Lord commanded (Deuteronomy 5:14) that on the Sabbath day "thy manservant and thy maidservant" should "rest even as thyself"--and also as to the infliction of punishment, for it ordered those who maimed their servants, to set them free (Exodus 21:26-27). Similar provision was made in favor of a maidservant when married to anyone (Exodus 21:7, seqq.). Moreover, with regard to those servants in particular who were taken from among the people, the Law prescribed that they should go out free in the seventh year taking whatever they brought with them, even their clothes (Exodus 21:2, seqq.): and furthermore it was commanded (Deuteronomy 15:13) that they should be given provision for the journey.

With regard to wives the Law made certain prescriptions as to those who were to be taken in marriage: for instance, that they should marry a wife from their own tribe (Numbers 36:6): and this lest confusion should ensue in the property of various tribes. Also that a man should marry the wife of his deceased brother when the latter died without issue, as prescribed in Deuteronomy 25:5-6: and this in order that he who could not have successors according to carnal origin, might at least have them by a kind of adoption, and that thus the deceased might not be entirely forgotten. It also forbade them to marry certain women;

to wit, women of strange nations, through fear of their losing their faith; and those of their near kindred, on account of the natural respect due to them. Furthermore it prescribed in what way wives were to be treated after marriage. To wit, that they should not be slandered without grave reason: wherefore it ordered punishment to be inflicted on the man who falsely accused his wife of a crime (Deuteronomy 22:13, seqq.). Also that a man's hatred of his wife should not be detrimental to his son (Deuteronomy 21:15, seqq.). Again, that a man should not ill-use his wife through hatred of her, but rather that he should write a bill of divorce and send her away (Deuteronomy 24:1). Furthermore, in order to foster conjugal love from the very outset, it was prescribed that no public duties should be laid on a recently married man, so that he might be free to rejoice with his wife.

With regard to children, the Law commanded parents to educate them by instructing them in the faith: hence it is written (Exodus 12:26, seqq.): "When your children shall say to you: What is the meaning of this service? You shall say to them: It is the victim of the passage of the Lord." Moreover, they are commanded to teach them the rules of right conduct: wherefore it is written (Deuteronomy 21:20) that the parents had to say: "He slighteth hearing our admonitions, he giveth himself to revelling and to debauchery."

Reply to Objection 1. As the children of Israel had been delivered by the Lord from slavery, and for this reason were bound to the service of God, He did not wish them to be slaves in perpetuity. Hence it is written (Leviticus 25:39, seqq.): "If thy brother, constrained by poverty, sell himself to thee, thou shalt not oppress him with the service of bondservants: but he shall be as a hireling and a sojourner . . . for they are My servants, and I brought them out of the land of Egypt: let them not be sold as bondmen": and consequently, since they were slaves, not absolutely but in a restricted sense, after a lapse of time they were set free.

Reply to Objection 2. This commandment is to be understood as referring to a servant whom his master seeks to kill, or to help him in committing some sin.

Reply to Objection 3. With regard to the ill-treatment of servants, the Law seems to have taken into consideration whether it was certain or not: since if it were certain, the Law fixed a penalty: for maiming, the penalty was forfeiture of the servant, who was ordered to be given his liberty: while for slaying, the punishment was that of a murderer, when the slave died under the blow of his master. If, however, the hurt was not certain, but only probable, the Law did not impose any penalty as regards a man's own servant: for instance if the servant did not die at once after being struck, but after some days: for it would be uncertain whether he died as a result of the blows he received. For when a man struck a free man, yet so that he did not die at once, but "walked abroad again upon his staff," he that struck him was quit of murder, even though afterwards he died. Nevertheless he was bound to pay the doctor's fees incurred by the victim of his assault. But this was not the case if a man killed his own servant: because whatever the servant had, even his very person, was the property of his master. Hence the reason for his not being subject to a pecuniary penalty is set down as being "because it is his money."

Reply to Objection 4. As stated above (ad 1), no Jew could own a Jew as a slave absolutely: but only in a restricted sense, as a hireling for a fixed time. And in this way the Law permitted that through stress of poverty a man might sell his son or daughter. This is shown by the very words of the Law, where we read: "If any man sell his daughter to be a servant, she shall not go out as bondwomen are wont to go out." Moreover, in this way a man might sell not only his son, but even himself, rather as a hireling than as a slave, according to Leviticus 25:39-40: "If thy brother, constrained by poverty, sell himself to thee, thou shalt not oppress him with the service of bondservants: but he shall be as a hireling and a sojourner."

Reply to Objection 5. As the Philosopher says (*Ethic. x, 9*), the paternal authority has the power only of admonition; but not that of coercion, whereby rebellious and headstrong persons can be compelled. Hence in this case the Lord commanded the stubborn son to be punished by the rulers of the city.

Reply to Objection 6. The Lord forbade them to marry strange women on account of the danger of seduction, lest they should be led astray into idolatry. And specially did this prohibition apply with respect to those nations who dwelt near them, because it was more probable that they would adopt their religious practices. When, however, the woman was willing to renounce idolatry, and become an adherent of the Law, it was lawful to take her in marriage: as was the case with Ruth whom Booz married. Wherefore she said to her mother-in-law (*Ruth 1:16*): "Thy people shall be my people, and thy God my God." Accordingly it was not permitted to marry a captive woman unless she first shaved her hair, and pared her nails, and put off the raiment wherein she was taken, and mourned for her father and mother, in token that she renounced idolatry for ever.

Reply to Objection 7. As Chrysostom says (*Hom. xlviij super Matth.*), "because death was an unmitigated evil for the Jews, who did everything with a view to the present life, it was ordained that children should be born to the dead man through his brother: thus affording a certain mitigation to his death. It was not, however, ordained that any other than his brother or one next of kin should marry the wife of the deceased, because" the offspring of this union "would not be looked upon as that of the deceased: and moreover, a stranger would not be under the obligation to support the household of the deceased, as his brother would be bound to do from motives of justice on account of his relationship." Hence it is evident that in marrying the wife of his dead brother, he took his dead brother's place.

Reply to Objection 8. The Law permitted a wife to be divorced, not as though it were just absolutely speaking, but on account of the Jews' hardness of heart, as Our Lord declared (*Matthew 19:8*). Of this, however, we must speak more fully in the treatise on Matrimony (*SP, 67*).

Reply to Objection 9. Wives break their conjugal faith by adultery, both easily, for motives of pleasure, and hiddenly, since "the eye of the adulterer observeth darkness" (*Job 24:15*). But this does not apply to a son in respect of his father, or to a servant in respect of

his master: because the latter infidelity is not the result of the lust of pleasure, but rather of malice: nor can it remain hidden like the infidelity of an adulterous woman.

Second Part of the Second Part

Question 40. War

Article 1. Whether it is always sinful to wage war?

Objection 1. It would seem that it is always sinful to wage war. Because punishment is not inflicted except for sin. Now those who wage war are threatened by Our Lord with punishment, according to Matthew 26:52: "All that take the sword shall perish with the sword." Therefore all wars are unlawful.

Objection 2. Further, whatever is contrary to a Divine precept is a sin. But war is contrary to a Divine precept, for it is written (Matthew 5:39): "But I say to you not to resist evil"; and (Romans 12:19): "Not revenging yourselves, my dearly beloved, but give place unto wrath." Therefore war is always sinful.

Objection 3. Further, nothing, except sin, is contrary to an act of virtue.

But war is contrary to peace. Therefore war is always a sin.

Objection 4. Further, the exercise of a lawful thing is itself lawful, as is evident in scientific exercises. But warlike exercises which take place in tournaments are forbidden by the Church, since those who are slain in these trials are deprived of ecclesiastical burial. Therefore it seems that war is a sin in itself.

On the contrary, Augustine says in a sermon on the son of the centurion [Ep. ad Marcel. cxxxviii]: "If the Christian Religion forbade war altogether, those who sought salutary advice in the Gospel would rather have been counselled to cast aside their arms, and to give up soldiering altogether. On the contrary, they were told: 'Do violence to no man . . . and be content with your pay' [Luke 3:14. If he commanded them to be content with their pay, he did not forbid soldiering."

I answer that, In order for a war to be just, three things are necessary. First, the authority of the sovereign by whose command the war is to be waged. For it is not the business of a private individual to declare war, because he can seek for redress of his rights from the tribunal of his superior. Moreover it is not the business of a private individual to summon together the people, which has to be done in wartime. And as the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom or province subject to them. And just as it is lawful for them to have recourse to the sword in defending that common weal against internal disturbances, when they punish evil-doers, according to the words of the Apostle (Romans 13:4): "He

beareth not the sword in vain: for he is God's minister, an avenger to execute wrath upon him that doth evil"; so too, it is their business to have recourse to the sword of war in defending the common weal against external enemies. Hence it is said to those who are in authority (Psalm 81:4): "Rescue the poor: and deliver the needy out of the hand of the sinner"; and for this reason Augustine says (Contra Faust. xxii, 75): "The natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who hold the supreme authority."

Secondly, a just cause is required, namely that those who are attacked, should be attacked because they deserve it on account of some fault. Wherefore Augustine says (QQ. in Hept., qu. x, super Jos.): "A just war is wont to be described as one that avenges wrongs, when a nation or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly."

Thirdly, it is necessary that the belligerents should have a rightful intention, so that they intend the advancement of good, or the avoidance of evil. Hence Augustine says (De Verb. Dom. [The words quoted are to be found not in St. Augustine's works, but Can. Apud. Caus. xxiii, qu. 1): "True religion looks upon as peaceful those wars that are waged not for motives of aggrandizement, or cruelty, but with the object of securing peace, of punishing evil-doers, and of uplifting the good." For it may happen that the war is declared by the legitimate authority, and for a just cause, and yet be rendered unlawful through a wicked intention. Hence Augustine says (Contra Faust. xxii, 74): "The passion for inflicting harm, the cruel thirst for vengeance, an unpacific and relentless spirit, the fever of revolt, the lust of power, and such like things, all these are rightly condemned in war."

Reply to Objection 1. As Augustine says (Contra Faust. xxii, 70): "To take the sword is to arm oneself in order to take the life of anyone, without the command or permission of superior or lawful authority." On the other hand, to have recourse to the sword (as a private person) by the authority of the sovereign or judge, or (as a public person) through zeal for justice, and by the authority, so to speak, of God, is not to "take the sword," but to use it as commissioned by another, wherefore it does not deserve punishment. And yet even those who make sinful use of the sword are not always slain with the sword, yet they always perish with their own sword, because, unless they repent, they are punished eternally for their sinful use of the sword.

Reply to Objection 2. Such like precepts, as Augustine observes (De Serm. Dom. in Monte i, 19), should always be borne in readiness of mind, so that we be ready to obey them, and, if necessary, to refrain from resistance or self-defense. Nevertheless it is necessary sometimes for a man to act otherwise for the common good, or for the good of those with whom he is fighting. Hence Augustine says (Ep. ad Marcellin. cxxxviii): "Those whom we have to punish with a kindly severity, it is necessary to handle in many ways against their will. For when we are stripping a man of the lawlessness of sin, it is good for him to be vanquished, since nothing is more hopeless than the happiness of sinners, whence arises a guilty impunity, and an evil will, like an internal enemy."

Reply to Objection 3. Those who wage war justly aim at peace, and so they are not opposed to peace, except to the evil peace, which Our Lord "came not to send upon earth" (Matthew 10:34). Hence Augustine says (Ep. ad Bonif. clxxxix): "We do not seek peace in order to be at war, but we go to war that we may have peace. Be peaceful, therefore, in warring, so that you may vanquish those whom you war against, and bring them to the prosperity of peace."

Reply to Objection 4. Manly exercises in warlike feats of arms are not all forbidden, but those which are inordinate and perilous, and end in slaying or plundering. On olden times warlike exercises presented no such danger, and hence they were called "exercises of arms" or "bloodless wars," as Jerome states in an epistle [Reference incorrect: cf. Veget., De Re Milit. i].

Article 2. Whether it is lawful for clerics and bishops to fight?

Objection 1. It would seem lawful for clerics and bishops to fight. For, as stated above (Article 1), wars are lawful and just in so far as they protect the poor and the entire common weal from suffering at the hands of the foe. Now this seems to be above all the duty of prelates, for Gregory says (Hom. in Ev. xiv): "The wolf comes upon the sheep, when any unjust and rapacious man oppresses those who are faithful and humble. But he who was thought to be the shepherd, and was not, leaveth the sheep, and flieth, for he fears lest the wolf hurt him, and dares not stand up against his injustice." Therefore it is lawful for prelates and clerics to fight.

Objection 2. Further, Pope Leo IV writes (xxiii, qu. 8, can. Igitur): "As untoward tidings had frequently come from the Saracen side, some said that the Saracens would come to the port of Rome secretly and covertly; for which reason we commanded our people to gather together, and ordered them to go down to the seashore." Therefore it is lawful for bishops to fight.

Objection 3. Further, apparently, it comes to the same whether a man does a thing himself, or consents to its being done by another, according to Romans 1:32: "They who do such things, are worthy of death, and not only they that do them, but they also that consent to them that do them." Now those, above all, seem to consent to a thing, who induce others to do it.

But it is lawful for bishops and clerics to induce others to fight: for it is written (xxiii, qu. 8, can. Hortatu) that Charles went to war with the Lombards at the instance and entreaty of Adrian, bishop of Rome. Therefore they also are allowed to fight.

Objection 4. Further, whatever is right and meritorious in itself, is lawful for prelates and clerics. Now it is sometimes right and meritorious to make war, for it is written (xxiii, qu. 8, can. Omni timore) that if "a man die for the true faith, or to save his country, or in defense

of Christians, God will give him a heavenly reward." Therefore it is lawful for bishops and clerics to fight.

On the contrary, It was said to Peter as representing bishops and clerics (Matthew 16:52): "Put up again thy sword into the scabbard [Vulgate: 'its place'] ["Scabbard" is the reading in John 18:11."] Therefore it is not lawful for them to fight.

I answer that, Several things are requisite for the good of a human society: and a number of things are done better and quicker by a number of persons than by one, as the Philosopher observes (Polit. i, 1), while certain occupations are so inconsistent with one another, that they cannot be fittingly exercised at the same time; wherefore those who are deputed to important duties are forbidden to occupy themselves with things of small importance. Thus according to human laws, soldiers who are deputed to warlike pursuits are forbidden to engage in commerce [Cod. xii, 35, De Re Milit.].

Now warlike pursuits are altogether incompatible with the duties of a bishop and a cleric, for two reasons. The first reason is a general one, because, to wit, warlike pursuits are full of unrest, so that they hinder the mind very much from the contemplation of Divine things, the praise of God, and prayers for the people, which belong to the duties of a cleric. Wherefore just as commercial enterprises are forbidden to clerics, because they unsettle the mind too much, so too are warlike pursuits, according to 2 Timothy 2:4: "No man being a soldier to God, entangleth himself with secular business." The second reason is a special one, because, to wit, all the clerical Orders are directed to the ministry of the altar, on which the Passion of Christ is represented sacramentally, according to 1 Corinthians 11:26: "As often as you shall eat this bread, and drink the chalice, you shall show the death of the Lord, until He come." Wherefore it is unbecoming for them to slay or shed blood, and it is more fitting that they should be ready to shed their own blood for Christ, so as to imitate in deed what they portray in their ministry. For this reason it has been decreed that those who shed blood, even without sin, become irregular. Now no man who has a certain duty to perform, can lawfully do that which renders him unfit for that duty. Wherefore it is altogether unlawful for clerics to fight, because war is directed to the shedding of blood.

Reply to Objection 1. Prelates ought to withstand not only the wolf who brings spiritual death upon the flock, but also the pillager and the oppressor who work bodily harm; not, however, by having recourse themselves to material arms, but by means of spiritual weapons, according to the saying of the Apostle (2 Corinthians 10:4): "The weapons of our warfare are not carnal, but mighty through God." Such are salutary warnings, devout prayers, and, for those who are obstinate, the sentence of excommunication.

Reply to Objection 2. Prelates and clerics may, by the authority of their superiors, take part in wars, not indeed by taking up arms themselves, but by affording spiritual help to those who fight justly, by exhorting and absolving them, and by other like spiritual helps. Thus in the Old Testament (Joshua 6:4) the priests were commanded to sound the sacred trumpets in the battle. It was for this purpose that bishops or clerics were first allowed to

go to the front: and it is an abuse of this permission, if any of them take up arms themselves.

Reply to Objection 3. As stated above (23, 4, ad 2) every power, art or virtue that regards the end, has to dispose that which is directed to the end. Now, among the faithful, carnal wars should be considered as having for their end the Divine spiritual good to which clerics are deputed. Wherefore it is the duty of clerics to dispose and counsel other men to engage in just wars. For they are forbidden to take up arms, not as though it were a sin, but because such an occupation is unbecoming their personality.

Reply to Objection 4. Although it is meritorious to wage a just war, nevertheless it is rendered unlawful for clerics, by reason of their being deputed to works more meritorious still. Thus the marriage act may be meritorious; and yet it becomes reprehensible in those who have vowed virginity, because they are bound to a yet greater good.

Article 3. Whether it is lawful to lay ambushes in war?

Objection 1. It would seem that it is unlawful to lay ambushes in war. For it is written (Deuteronomy 16:20): "Thou shalt follow justly after that which is just." But ambushes, since they are a kind of deception, seem to pertain to injustice. Therefore it is unlawful to lay ambushes even in a just war.

Objection 2. Further, ambushes and deception seem to be opposed to faithfulness even as lies are. But since we are bound to keep faith with all men, it is wrong to lie to anyone, as Augustine states (Contra Mend. xv). Therefore, as one is bound to keep faith with one's enemy, as Augustine states (Ep. ad Bonif. clxxxix), it seems that it is unlawful to lay ambushes for one's enemies.

Objection 3. Further, it is written (Matthew 7:12): "Whatsoever you would that men should do to you, do you also to them": and we ought to observe this in all our dealings with our neighbor. Now our enemy is our neighbor. Therefore, since no man wishes ambushes or deceptions to be prepared for himself, it seems that no one ought to carry on war by laying ambushes.

On the contrary, Augustine says (QQ. in Hept. qu. x super Jos): "Provided the war be just, it is no concern of justice whether it be carried on openly or by ambushes": and he proves this by the authority of the Lord, Who commanded Joshua to lay ambushes for the city of Hai (Joshua 8:2).

I answer that, The object of laying ambushes is in order to deceive the enemy. Now a man may be deceived by another's word or deed in two ways. First, through being told something false, or through the breaking of a promise, and this is always unlawful. No one ought to deceive the enemy in this way, for there are certain "rights of war and covenants, which ought to be observed even among enemies," as Ambrose states (De Officiis i).

Secondly, a man may be deceived by what we say or do, because we do not declare our purpose or meaning to him. Now we are not always bound to do this, since even in the Sacred Doctrine many things have to be concealed, especially from unbelievers, lest they deride it, according to Matthew 7:6: "Give not that which is holy, to dogs." Wherefore much more ought the plan of campaign to be hidden from the enemy. For this reason among other things that a soldier has to learn is the art of concealing his purpose lest it come to the enemy's knowledge, as stated in the Book on Strategy [Stratagematum i, 1 by Frontinus. Such like concealment is what is meant by an ambush which may be lawfully employed in a just war.

Nor can these ambushes be properly called deceptions, nor are they contrary to justice or to a well-ordered will. For a man would have an inordinate will if he were unwilling that others should hide anything from him

This suffices for the Replies to the Objections.

Article 4. Whether it is lawful to fight on holy days?

Objection 1. It would seem unlawful to fight on holy days. For holy days are instituted that we may give our time to the things of God. Hence they are included in the keeping of the Sabbath prescribed Exodus 20:8: for "sabbath" is interpreted "rest." But wars are full of unrest. Therefore by no means is it lawful to fight on holy days.

Objection 2. Further, certain persons are reproached (Isaiah 58:3) because on fast-days they exacted what was owing to them, were guilty of strife, and of smiting with the fist. Much more, therefore, is it unlawful to fight on holy days.

Objection 3. Further, no ill deed should be done to avoid temporal harm. But fighting on a holy day seems in itself to be an ill deed. Therefore no one should fight on a holy day even through the need of avoiding temporal harm.

On the contrary, It is written (1 Maccabees 2:41): The Jews rightly determined . . . saying: "Whosoever shall come up against us to fight on the Sabbath-day, we will fight against him."

I answer that, The observance of holy days is no hindrance to those things which are ordained to man's safety, even that of his body. Hence Our Lord argued with the Jews, saying (John 7:23): "Are you angry at Me because I have healed the whole man on the Sabbath-day?" Hence physicians may lawfully attend to their patients on holy days. Now there is much more reason for safeguarding the common weal (whereby many are saved from being slain, and innumerable evils both temporal and spiritual prevented), than the bodily safety of an individual. Therefore, for the purpose of safeguarding the common weal of the faithful, it is lawful to carry on a war on holy days, provided there be need for doing

so: because it would be to tempt God, if notwithstanding such a need, one were to choose to refrain from fighting.

However, as soon as the need ceases, it is no longer lawful to fight on a holy day, for the reasons given: wherefore this suffices for the Replies to the Objections.

Question 57. Right

Article 1. Whether right is the object of justice?

Objection 1. It would seem that right is not the object of justice. For the jurist Celsus says [Digest. i, 1; De Just. et Jure 1 that "right is the art of goodness and equality." Now art is not the object of justice, but is by itself an intellectual virtue. Therefore right is not the object of justice.

Objection 2. Further, "Law," according to Isidore (Etym. v, 3), "is a kind of right." Now law is the object not of justice but of prudence, wherefore the Philosopher [Ethic. vi, 8 reckons "legislative" as one of the parts of prudence. Therefore right is not the object of justice.

Objection 3. Further, justice, before all, subjects man to God: for Augustine says (De Moribus Eccl. xv) that "justice is love serving God alone, and consequently governing aright all things subject to man." Now right [jus] does not pertain to Divine things, but only to human affairs, for Isidore says (Etym. v, 2) that "'fas' is the Divine law, and 'jus,' the human law." Therefore right is not the object of justice.

On the contrary, Isidore says (Etym. v, 2) that "'jus' [right] is so called because it is just." Now the "just" is the object of justice, for the Philosopher declares (Ethic. v, 1) that "all are agreed in giving the name of justice to the habit which makes men capable of doing just actions."

I answer that, It is proper to justice, as compared with the other virtues, to direct man in his relations with others: because it denotes a kind of equality, as its very name implies; indeed we are wont to say that things are adjusted when they are made equal, for equality is in reference of one thing to some other. On the other hand the other virtues perfect man in those matters only which befit him in relation to himself. Accordingly that which is right in the works of the other virtues, and to which the intention of the virtue tends as to its proper object, depends on its relation to the agent only, whereas the right in a work of justice, besides its relation to the agent, is set up by its relation to others. Because a man's work is said to be just when it is related to some other by way of some kind of equality, for instance the payment of the wage due for a service rendered. And so a thing is said to be just, as having the rectitude of justice, when it is the term of an act of justice, without taking into account the way in which it is done by the agent: whereas in the other virtues nothing is declared to be right unless it is done in a certain way by the agent. For this

reason justice has its own special proper object over and above the other virtues, and this object is called the just, which is the same as "right." Hence it is evident that right is the object of justice.

Reply to Objection 1. It is usual for words to be distorted from their original signification so as to mean something else: thus the word "medicine" was first employed to signify a remedy used for curing a sick person, and then it was drawn to signify the art by which this is done. On like manner the word "jus" [right] was first of all used to denote the just thing itself, but afterwards it was transferred to designate the art whereby it is known what is just, and further to denote the place where justice is administered, thus a man is said to appear "in jure" [In English we speak of a court of law, a barrister at law, etc.], and yet further, we say even that a man, who has the office of exercising justice, administers the jus even if his sentence be unjust.

Reply to Objection 2. Just as there pre-exists in the mind of the craftsman an expression of the things to be made externally by his craft, which expression is called the rule of his craft, so too there pre-exists in the mind an expression of the particular just work which the reason determines, and which is a kind of rule of prudence. If this rule be expressed in writing it is called a "law," which according to Isidore (Etym. v, 1) is "a written decree": and so law is not the same as right, but an expression of right.

Reply to Objection 3. Since justice implies equality, and since we cannot offer God an equal return, it follows that we cannot make Him a perfectly just repayment. For this reason the Divine law is not properly called "jus" but "fas," because, to wit, God is satisfied if we accomplish what we can. Nevertheless justice tends to make man repay God as much as he can, by subjecting his mind to Him entirely.

Article 2. Whether right is fittingly divided into natural right and positive right?

Objection 1. It would seem that right is not fittingly divided into natural right and positive right. For that which is natural is unchangeable, and is the same for all. Now nothing of the kind is to be found in human affairs, since all the rules of human right fail in certain cases, nor do they obtain force everywhere. Therefore there is no such thing as natural right.

Objection 2. Further, a thing is called "positive" when it proceeds from the human will. But a thing is not just, simply because it proceeds from the human will, else a man's will could not be unjust. Since then the "just" and the "right" are the same, it seems that there is no positive right.

Objection 3. Further, Divine right is not natural right, since it transcends human nature. On like manner, neither is it positive right, since it is based not on human, but on Divine authority. Therefore right is unfittingly divided into natural and positive.

On the contrary, The Philosopher says (Ethic. v, 7) that "political justice is partly natural and partly legal," i.e. established bylaw.

I answer that, As stated above (Article 1) the "right" or the "just" is a work that is adjusted to another person according to some kind of equality. Now a thing can be adjusted to a man in two ways: first by its very nature, as when a man gives so much that he may receive equal value in return, and this is called "natural right." On another way a thing is adjusted or commensurated to another person, by agreement, or by common consent, when, to wit, a man deems himself satisfied, if he receive so much. This can be done in two ways: first by private agreement, as that which is confirmed by an agreement between private individuals; secondly, by public agreement, as when the whole community agrees that something should be deemed as though it were adjusted and commensurated to another person, or when this is decreed by the prince who is placed over the people, and acts in its stead, and this is called "positive right."

Reply to Objection 1. That which is natural to one whose nature is unchangeable, must needs be such always and everywhere. But man's nature is changeable, wherefore that which is natural to man may sometimes fail. Thus the restitution of a deposit to the depositor is in accordance with natural equality, and if human nature were always right, this would always have to be observed; but since it happens sometimes that man's will is unrighteous there are cases in which a deposit should not be restored, lest a man of unrighteous will make evil use of the thing deposited: as when a madman or an enemy of the commonweal demands the return of his weapons.

Reply to Objection 2. The human will can, by common agreement, make a thing to be just provided it be not, of itself, contrary to natural justice, and it is in such matters that positive right has its place. Hence the Philosopher says (Ethic. v, 7) that "in the case of the legal just, it does not matter in the first instance whether it takes one form or another, it only matters when once it is laid down." If, however, a thing is, of itself, contrary to natural right, the human will cannot make it just, for instance by decreeing that it is lawful to steal or to commit adultery. Hence it is written (Isaiah 10:1): "Woe to them that make wicked laws."

Reply to Objection 3. The Divine right is that which is promulgated by God. Such things are partly those that are naturally just, yet their justice is hidden to man, and partly are made just by God's decree. Hence also Divine right may be divided in respect of these two things, even as human right is. For the Divine law commands certain things because they are good, and forbids others, because they are evil, while others are good because they are prescribed, and others evil because they are forbidden.

Article 3. Whether the right of nations is the same as the natural right?

Objection 1. It would seem that the right of nations is the same as the natural right. For all men do not agree save in that which is natural to them. Now all men agree in the right of nations; since the jurist [Ulpian: Digest. i, 1; De Just. et Jure i] "the right of nations is that which is in use among all nations." Therefore the right of nations is the natural right.

Objection 2. Further, slavery among men is natural, for some are naturally slaves according to the Philosopher (Polit. i, 2). Now "slavery belongs to the right of nations," as Isidore states (Etym. v, 4). Therefore the right of nations is a natural right.

Objection 3. Further, right as stated above (Article 2) is divided into natural and positive. Now the right of nations is not a positive right, since all nations never agreed to decree anything by common agreement. Therefore the right of nations is a natural right.

On the contrary, Isidore says (Etym. v, 4) that "right is either natural, or civil, or right of nations," and consequently the right of nations is distinct from natural right.

I answer that, As stated above (Article 2), the natural right or just is that which by its very nature is adjusted to or commensurate with another person. Now this may happen in two ways; first, according as it is considered absolutely: thus a male by its very nature is commensurate with the female to beget offspring by her, and a parent is commensurate with the offspring to nourish it. Secondly a thing is naturally commensurate with another person, not according as it is considered absolutely, but according to something resultant from it, for instance the possession of property. For if a particular piece of land be considered absolutely, it contains no reason why it should belong to one man more than to another, but if it be considered in respect of its adaptability to cultivation, and the unmolested use of the land, it has a certain commensuration to be the property of one and not of another man, as the Philosopher shows (Polit. ii, 2).

Now it belongs not only to man but also to other animals to apprehend a thing absolutely: wherefore the right which we call natural, is common to us and other animals according to the first kind of commensuration. But the right of nations falls short of natural right in this sense, as the jurist [Digest. i, 1; De Just. et Jure i] says because "the latter is common to all animals, while the former is common to men only." On the other hand to consider a thing by comparing it with what results from it, is proper to reason, wherefore this same is natural to man in respect of natural reason which dictates it. Hence the jurist Gaius says (Digest. i, 1; De Just. et Jure i, 9): "whatever natural reason decrees among all men, is observed by all equally, and is called the right of nations." This suffices for the Reply to the First Objection.

Reply to Objection 2. Considered absolutely, the fact that this particular man should be a slave rather than another man, is based, not on natural reason, but on some resultant utility, in that it is useful to this man to be ruled by a wiser man, and to the latter to be

helped by the former, as the Philosopher states (Polit. i, 2). Wherefore slavery which belongs to the right of nations is natural in the second way, but not in the first.

Reply to Objection 3. Since natural reason dictates matters which are according to the right of nations, as implying a proximate equality, it follows that they need no special institution, for they are instituted by natural reason itself, as stated by the authority quoted above

Article 4. Whether paternal right and right of dominion should be distinguished as special species?

Objection 1. It would seem that "paternal right" and "right of dominion" should not be distinguished as special species. For it belongs to justice to render to each one what is his, as Ambrose states (De Offic. i, 24). Now right is the object of justice, as stated above (Article 1). Therefore right belongs to each one equally; and we ought not to distinguish the rights of fathers and masters as distinct species.

Objection 2. Further, the law is an expression of what is just, as stated above (1, ad 2). Now a law looks to the common good of a city or kingdom, as stated above (I-II, 90, 2), but not to the private good of an individual or even of one household. Therefore there is no need for a special right of dominion or paternal right, since the master and the father pertain to a household, as stated in Polit. i, 2.

Objection 3. Further, there are many other differences of degrees among men, for instance some are soldiers, some are priests, some are princes. Therefore some special kind of right should be allotted to them.

On the contrary, The Philosopher (Ethic. v, 6) distinguishes right of dominion, paternal right and so on as species distinct from civil right.

I answer that, Right or just depends on commensuration with another person. Now "another" has a twofold signification. First, it may denote something that is other simply, as that which is altogether distinct; as, for example, two men neither of whom is subject to the other, and both of whom are subjects of the ruler of the state; and between these according to the Philosopher (Ethic. v, 6) there is the "just" simply. Secondly a thing is said to be other from something else, not simply, but as belonging in some way to that something else: and in this way, as regards human affairs, a son belongs to his father, since he is part of him somewhat, as stated in Ethic. viii, 12, and a slave belongs to his master, because he is his instrument, as stated in Polit. i, 2 [Cf. Ethic. viii, 11. Hence a father is not compared to his son as to another simply, and so between them there is not the just simply, but a kind of just, called "paternal." On like manner neither is there the just simply, between master and servant, but that which is called "dominative." A wife, though she is something belonging to the husband, since she stands related to him as to her own body, as the Apostle declares

(Ephesians 5:28), is nevertheless more distinct from her husband, than a son from his father, or a slave from his master: for she is received into a kind of social life, that of matrimony, wherefore according to the Philosopher (Ethic. v, 6) there is more scope for justice between husband and wife than between father and son, or master and slave, because, as husband and wife have an immediate relation to the community of the household, as stated in Polit. i, 2,5, it follows that between them there is "domestic justice" rather than "civic."

Reply to Objection 1. It belongs to justice to render to each one his right, the distinction between individuals being presupposed: for if a man gives himself his due, this is not strictly called "just." And since what belongs to the son is his father's, and what belongs to the slave is his master's, it follows that properly speaking there is not justice of father to son, or of master to slave.

Reply to Objection 2. A son, as such, belongs to his father, and a slave, as such, belongs to his master; yet each, considered as a man, is something having separate existence and distinct from others. Hence in so far as each of them is a man, there is justice towards them in a way: and for this reason too there are certain laws regulating the relations of father to his son, and of a master to his slave; but in so far as each is something belonging to another, the perfect idea of "right" or "just" is wanting to them.

Reply to Objection 3. All other differences between one person and another in a state, have an immediate relation to the community of the state and to its ruler, wherefore there is just towards them in the perfect sense of justice. This "just" however is distinguished according to various offices, hence when we speak of "military," or "magisterial," or "priestly" right, it is not as though such rights fell short of the simply right, as when we speak of "paternal" right, or right of "dominion," but for the reason that something proper is due to each class of person in respect of his particular office.