

[8 A prince, in waging war, can be equally unjust against his own commonwealth as against foreigners]

This too should be noted: a prince may be equally unjust to his own commonwealth in waging war as he can be to the other commonwealth against which he is preparing to fight. Therefore he should not only consider whether he has a just cause of war against the other commonwealth, but also whether he is not being unjust against his own commonwealth by undertaking such a war. Indeed, if prudent judgment shows that such a war will lead to the greatest harm of his commonwealth, either because his forces are not enough to win, or because, with but little benefit for his commonwealth and the common good, he will expose his subjects to the greatest perils and harm, use up public revenues in the venture, saddle his commonwealth with new taxes and levies, and so on – it would indeed be a deadly sin against the justice due his own commonwealth to declare such a war if he could easily refrain from doing so. For a commonwealth does not exist because of its king, but the king because of his commonwealth, so as to defend, administer, and govern it not for his own whims, vanity, and benefit, but for the common good of the state. To this end the assembled peoples set above themselves kings and princes, so that they might exercise the law and the power which was given to them. Thus Aristotle rightly says in *Politics*, bk. IV, chap. 10, that the distinction between a king and a tyrant is that a tyrant administers the commonwealth for his own profit and benefit, but a king rules for its common and public good.

29

Francisco Suárez (1548–1617)

Justice, Charity, and War

The right to make war is detrimental to others, and the punishment inflicted through war is of the severest kind; therefore, that punishment ought to be inflicted with the utmost restraint.

De bello

Francisco Suárez was among the most systematic of the scholastic thinkers. In comparison to Vitoria, who made reference to the social and political events of his day, the Jesuit Suárez favored a more abstract and speculative style. This was exemplified by his most famous work, the *Metaphysical Disputations* (1597), which had a significant impact on the development of modern philosophy. While showing a detailed knowledge of earlier philosophical and theological thought, Suárez always sought to maintain his independence as a thinker. Thus even though he viewed himself as a disciple of both Thomas Aquinas and his compatriot Vitoria, and like them articulated an ethics of war and peace based on a theory of natural law, Suárez did not hesitate to strike out in new directions, sometimes distancing himself from their views.

An early Christian theorist of democratic governance, he may be credited with other important contributions to scholastic thought: a theory of rights, which he applied to a range of issues (including jurisdiction for declaring war and self-defense), a treatment of non-combatant immunity, and an emphasis on arbitration as an alternative to war.

Suárez's disputation *De bello* is part of a larger work on the theological virtues of faith, hope, and charity (*De triplici virtute theologica*). He follows Aquinas in placing the discussion of war within a part of this work ("De charitate"), which is devoted to the context of the last-mentioned virtue. Yet, in so doing, he took care to situate problems associated with war also in relation to the virtue of justice. Upon distinguishing the exigencies of justice from those of charity, Suárez articulated a concept of vindictive justice, in which one commonwealth comes to have jurisdiction over another by reason of the latter's fault.

After a short preface, which defines the subject matter to be investigated, Suárez proceeds in the first section to explain how Christian moral life allows for (and sometimes even requires) participation in war. Suárez underscores how this applies to both defensive and offensive war. Defensive war is a reaction to armed attack that is under way, whereas offensive war seeks redress for an injustice that has already been committed and is now past.

From Disputation XIII: On War (*De bello*)¹

An external combat (*pugna*)² which is incompatible with external peace is properly called war when it takes place between two princes or two commonwealths; but when it takes place between a prince and his commonwealth, or between the citizens and the commonwealth, it is termed sedition; when it is between private individuals it is called a brawl or a duel. The difference between these [various kinds of combat] appears to be material rather than formal, and we shall discuss them all, as did St. Thomas (*Summa theologiae*, II-II, qq. 40-2) and others who will be mentioned below.

Section I: Is War Intrinsically Evil?³

1 The first heresy [in connexion with this subject] consists in the assertion that it is intrinsically evil and contrary to charity to wage war. Such is the heretical belief attributed by Augustine to the Manichaeans. . . . The second error is the assertion that war is specifically forbidden to Christians, and especially, war against Christians. So Eck maintains (*Enchiridion locorum communium*, chap. 22); and other persons of our own time, who are heretics, advance the same contention. They distinguish, however, two kinds of war, defensive and offensive, which we shall discuss in sub-section 6 of this section. The conclusions that follow will elucidate the matter.

2 Our *first conclusion* is that war, absolutely speaking, is not intrinsically evil, nor is it forbidden to Christians. This conclusion is a matter of faith and is laid

¹ These passages represent an emended version of the English translation by Gwladys L. Williams et al. of *Selections from Three Works of Francisco Suárez, SJ*, The Classics of International Law, no. 20, vol. 2 (Oxford: Clarendon Press, 1944), pp. 800-9, 815-41, 843-55. Latin text in Franciscus Suárez, *Opera omnia*, vol. 12 (Paris: Vivès, 1858).

² "External combat" contrasts with the "internal combat" of the soul, described by St. Augustine (*De civitate Dei*, bk. XIX, chap. 4) in terms of the "war internal to our ourselves." Human activity in this world, he says, is an "unceasing warfare with vices, and those not external vices but internal, not other people's vices but quite clearly our very own."

³ Williams et al. (trans.), *Selections*, pp. 800-5.

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down in the Scriptures. . . .⁴ The same principle is confirmed by further testimony, that of the Fathers quoted by Gratian (*Decretum*, pt. II, causa 23, qq. 1-2), and also that of Ambrose (*On Duties*, various chapters). . . .

[Yet to this last point it may be objected⁵ that] war ordinarily brings with it innumerable sins; and a given course of action is considered in itself evil and forbidden, if it is nearly always accompanied by unseemly circumstances and harm to one's neighbours. [In support of this] one may add that war is opposed to peace, to the love of one's enemies, and to the forgiveness of injuries. . . .

To [this last objection], Augustine replies (*On the City of God*, bk. XIX, last chapter [chap. vii]) that he deems it advisable to avoid war in so far as is possible, and to undertake it only in cases of extreme necessity, when no alternative remains; but he also holds that war is not entirely evil, since the fact that evils follow upon war is incidental (*per accidens*), and since greater evils would result if war were never allowed.

Against the supporting claim that war is opposed to an honourable peace, it must rather be said that it is opposed to an unjust peace. War is a means of attaining a peace that is true and secure. Similarly, war is not opposed to the love of one's enemies; for whoever wages war honourably hates, not individuals, but actions, which are justly punished. And the same reasoning is true of the forgiveness of injuries, especially since this forgiveness is not enjoined under every circumstance, for vengeance may sometimes be exacted by legitimate means, without injustice.

4 *Second conclusion*: I hold that defensive war not only is permitted, sometimes it is even prescribed. The first part of this proposition follows from the first conclusion, which even the Doctors cited above accept; and it holds true not only for public magistrates, but also for private individuals, since all laws allow the repelling of force with force. . . . The reason supporting it is that the right of self-defence is natural and necessary. Whence the second part of our second proposition is easily proved. For self-defence is sometimes prescribed, at least in accordance with the order of charity. . . . The same is true of the defence of the commonwealth, especially if such defense is an official duty. On this, see Ambrose, *On Duties*, bk. I, chap. 7.

5 *Third conclusion*: even when war is offensive, it is not an evil in itself, but may be right and necessary. This is clear from the passages of Scripture cited above, which make no distinction [between offensive and defensive wars]. The same fact is evidenced by the custom of the Church, one that has quite frequently been approved by the Fathers and the popes. . . .

The reason supporting our third conclusion is that such a war is often necessary to a commonwealth, in order to repel injuries and to hold enemies in check. Nor

⁴ In the body of the text Suárez refers to several passages from the Bible, including Genesis 14:19-20 and Epistle to the Hebrews 9:33.

⁵ This is the last of four objections listed by Suárez.

would it be possible, without these wars, for commonwealths to be maintained in peace. Hence, this kind of warfare is allowed by natural law; and even by the law of the Gospel, which derogates in no way from natural law, and contains no new divine commands save those regarding faith and the sacraments. . . .

6 It remains for us to explain what constitutes an offensive war (*bellum aggressivum*),⁶ and what, on the other hand, constitutes a defensive war; for sometimes that which is merely defence may present the appearance of an offensive. Thus, for example, if enemies seize houses or property belonging to others, and are attacked as a consequence, this is not an offensive attack, rather it is a defence. To this extent, civil laws . . . are justified in conscience when they provide that if any one tries to dispossess me of my property, it is permissible for me to repel force with force. For such an act is not offensive, but is defence, and may be lawfully undertaken even on one's own authority. . . .

Consequently, we have to consider whether the injustice is, morally speaking, in progress (*in fieri*); or whether it has already occurred (*facta iam sit*), such that satisfaction is sought through war. In this latter case, the war is offensive. In the former case, war has the character of self-defence, provided it is waged with a moderation of defence that is blameless. Now the injury is considered as *in progress*, either when the injurious action has actually begun, even physically, as when a man has not yet been entirely deprived of a possession that is his by right; or when he has already been so deprived, but immediately (*in continenti*) – that is, without notable delay – attempts to protect himself and to reinstate himself in possession. The reason for this is as follows: When morally speaking a person is actually resisting, and is attempting – in so far as possible – to protect his right, he is not considered as having already suffered injury, in an absolute sense, nor as having been deprived of his possession. This is the common opinion of the Doctors. . . .

7 *Fourth conclusion:* for a war to be honourable, a number of conditions must be observed, which may be grouped under three heads. First, the war must be undertaken by a legitimate power; second, it must have a just cause and title; and third, it must be carried out in a proper manner (*debitus modus*), with due proportion observed at its beginning, during its prosecution, and at victory. All of this will be made clear in the following sections. The underlying principle of this general conclusion, indeed, is that, while war is not in itself evil, nevertheless, on account of the many misfortunes which it brings in its train, it is one of those undertakings that are often carried out badly; consequently, in order to be honourable, numerous circumstances must be met.

⁶ In Suárez's lexicon, *bellum aggressivum* refers to a first use of armed force. It is equivalent to Vitoria's term *bellum offensivum*. Unlike the morally pejorative connotation of the English term "aggressive war" (which, in the aftermath of the post-World War II Nuremberg trials, has come to designate a crime), on Suárez's understanding *bellum aggressivum* is not necessarily unjust. We have thus translated it by the more neutral term "offensive war."

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Section II is devoted to the question of legitimate authority for waging war. Suárez makes clear at the outset that the requirement of legitimate authority applies especially to offensive war. Hence this kind of war constitutes the main focus of the present section. Suárez offers a tripartite definition of legitimate war-making authority (the "power to declare war" in his terminology). It is (i) a power of jurisdiction, (ii) a power for exercising vindicative justice; which is to say that it is (iii) the prerogative of a sovereign commonwealth and/or its prince. The third idea in particular gives rise to a number of difficulties, which are formulated by reference to the writings of earlier authors (e.g. Cajetan and Vitoria). Can subordinate princes rightly declare war if this power has been accorded to them by a very ancient custom? Can such princes declare war without the consent of their superior prince, when the latter has been negligent in avenging a wrong? What, in this regard, is the status of superior princes who are members of a federation ("under one king")? And do Christian princes have an obligation to obtain an authorization from the pope before declaring war? The section concludes with a comment on the obligation of restitution that arises when a war has been waged with just cause, yet without the requisite authority.

From Disputation XIII. Section II: Who Has the Legitimate Power of Declaring War?⁷

1 Our question relates to offensive war; for the power of defending oneself against an unjust attacker is conceded to all.

In the *first* place, I hold that a supreme prince (*supremus princeps*) who has no superior in temporal affairs, or a commonwealth that has retained for itself a like jurisdiction, has by natural law (*iure naturae*) legitimate power to declare war. . . .

A reason in support of this conclusion is, first, that this sort of war is at times permitted by natural law, as we have demonstrated; hence, the power of declaring such a war must rest with someone; and therefore it must rest, most of all, with the possessor of supreme power, for it is particularly his function to protect the commonwealth, and to command inferior authorities.

A second reason is that the power of declaring war is (so to speak) a power of jurisdiction, the exercise of which pertains to vindicative justice, which is especially necessary to a commonwealth for the purpose of constraining evildoers. Hence, just as the supreme prince may punish his own subjects when they harm others, so may he avenge himself on another prince or commonwealth, that, by reason of some offence, has become subject to him. This vengeance cannot be sought at the hands of another judge, because the prince of whom we are speaking has no superior in temporal affairs; therefore, if the offender is not prepared to give satisfaction, he may be compelled to do so by war.

⁷ Williams et al. (trans.), *Selections*, pp. 805–9.

In this first conclusion, I used the words, 'or a commonwealth', in order that I might include every kind of regime; for the same reasoning holds true for all of them. Nevertheless, of a monarchical regime it must be noted that after a commonwealth has transferred its power to a single individual, it is not allowed to declare war against his will, since it no longer enjoys supremacy (*non est suprema*); unless perchance the prince should be so negligent in avenging or defending the commonwealth as to cause public and very grave harm to that commonwealth. In such a case the commonwealth as a whole may take vengeance on the prince, depriving him of his authority, for the commonwealth is always regarded as retaining this power within itself, if the prince fails in his duty.

2 *Secondly*, I hold that an inferior prince, or an incomplete commonwealth, or whosoever in temporal affairs is under a superior, cannot justly declare war without the authorization of that superior. A reason for the conclusion is, first, that a prince of this kind can claim his right from his superior, and therefore has not the right to declare war; since, in this respect, he has the character of a private person. For it is because of the reason stated that private persons cannot declare war. A second reason in support of this same conclusion is that such a declaration of war is opposed to the right of the supreme prince, to whom that power has been especially entrusted; for without such power he could not govern peacefully and suitably.

Victoria [*De iure belli*, q. 1, a. 2, prop. 3, no. 9; see chap. 27, this volume, pp. 312-13], however, sets certain limitations to what has been here stated, as do Cajetan and others.

The first limitation to this second conclusion is this: [subordinate princes cannot justly declare war] provided no contrary practice shall have been observed by very ancient custom. This provision applies when a war has been declared against parties who are not subjects of the king who governs the declarer of war. But if on the other hand the war is declared against another part of the same realm, the custom in question would certainly appear to be contrary to the natural law; for when there exists a tribunal and a power superior to both parties, it is contrary to the law of nature to demand one's right by force, acting as it were on one's own proper authority. [When carried out by] private persons such an attempt would no doubt be contrary to natural law. Likewise, in the case at hand, these two parts of the same commonwealth, although they may be of more importance [than single individuals], are nevertheless both in the position of private persons.

To the same conclusion, Vitoria sets a second limitation, namely: unless the supreme king is negligent in avenging an injury, for in this case an inferior prince may avenge himself. Nevertheless this course of action is not [entirely] commendable, especially when the conflict occurs between two parts of the same commonwealth. For, although a private person, when he cannot obtain his right through a public tribunal, may secretly and without scandal protect himself, nevertheless he may not do so by force and through war; and still less may he avenge himself if he is not able to obtain this through the judge. For to avenge

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oneself, on one's own private authority, is intrinsically evil, and tumults and wars might easily be stirred up within a commonwealth on this pretext. The right of vengeance as possessed by a part of the commonwealth, or by a mere private person, is only incomplete, and on its account these inconveniences mostly arise. Therefore, [an inferior prince] is not to be granted this licence [to exact vengeance], save only within the limits of just defence.

3 But it must be added, first, that when a matter is pressing, and recourse [to the prince] is not immediately possible, it is sometimes sufficient to interpret his will, particularly if the war is to be undertaken against foreigners, and above all if these foreigners are on other grounds overt enemies of the prince.

Second, I must also note that if at any time enemies of this kind are seized within the boundaries of some incomplete commonwealth, not only is it permitted to undertake a just defense against them, but attack, vengeance, and punishment [are allowed] as well; for, by reason of the crime committed in the territory of that commonwealth, they have made themselves its subjects.

Finally, it should be added that more things are allowable to a given city or commonwealth with regard to its own defence than to a private person; because the good defended in the former case is common to many, and is of a higher grade, and also because the power of a commonwealth is by its very nature public and common; therefore, it is not strange that more things are permissible to a commonwealth than to an individual.

4 But it may be asked, what is a complete commonwealth (*respublica perfecta*); or, who is a supreme prince? The reply is, first, that all kings are in this respect supreme. . . . Many counts also claim this supreme power. Hence, certain of the canonists are mistaken in saying that only the emperor is supreme in this fashion. Consequently, the issue depends on the mode of jurisdiction exercised by each particular prince, or commonwealth; and it is the mark of supreme jurisdiction when, under such a prince or such a commonwealth, there exists a tribunal before which all cases of litigation in that realm are decided, and from which there is no appeal to any superior tribunal.

But when there is room for an appeal, which is the mark of an incomplete commonwealth, since an appeal is the act of an inferior towards a superior. Hence it must be noted, first, that not all commonwealths that are subject to one and the same king are necessarily incomplete. For it may happen that such a union has been established accidentally, a fact indicated by a diversity in laws, taxes, and so forth [from one commonwealth to another under the same king]. And this distinction between a complete and incomplete commonwealth, although it bears no great importance to the power of which we now treat, since the latter is already vested in the king, has, nevertheless, an important relation to the power which such a commonwealth may possess in opposition to its own king, if he lapses into tyranny. For if the commonwealth is complete, it has power against its own king, even when the latter rules also over other kingdoms. But the case is otherwise when the commonwealth is incomplete, and a part of one kingdom; for

then nothing can be done without the consent of the whole. All of the foregoing statements, since they are founded upon natural law, are applicable to both Christians and unbelievers.

5 In the case of Christian kings, however, a second point must be noted, namely, that the supreme pontiff, although he has no direct power in temporal affairs outside of his own domain, nevertheless does possess such power indirectly, as is indicated in certain passages of the *Decretals* (bk. I, tit. vi, chap. xxxiv). Therefore, under this title, he has a right to require that a cause of war be referred to him, and the power to give a judgment thereon, which the parties in question are bound to obey, unless his decision is manifestly unjust. For such [authority on the part of the Pope] is certainly necessary for the spiritual welfare of the Church and for the avoidance of almost infinite evils. Accordingly, Soto said (on Romans 12:18), that war between Christian princes is rarely just, since they have at hand another ready means of settling their mutual disputes.

But sometimes the pope does not interpose his authority, lest perchance greater evils result. In that event, to be sure, supreme princes are not bound to secure any authorization from the pope, and may enforce their own right as long as they are not forbidden to do so. Nevertheless, they should take care lest they themselves be a cause of the fact that the pope dares not intervene; for in that case they will not be free from fault.

6 *Thirdly*, in connection with the preceding conclusion, I hold that when a war is declared without legitimate authority, it is contrary not only to charity, but also to justice, even if a legitimate cause for it exists. The reason supporting this conclusion is that such an act is performed without legitimate jurisdiction, consequently it is illegitimate. Therefore, it follows that a war of this kind gives rise to an obligation of making restitution for all ensuing damages.

Therefore, it is indeed true that if someone merely recovers his own property in such a war, he will not be bound to restore that property; but he will be held liable for all injuries and losses inflicted upon others. The reason for such a distinction is that in the latter case he has done an injustice, since there was no just cause for all that damage; whereas, in recovering his own property, he has not, strictly speaking, committed an injustice – save possibly in the means used (*in modo*) – from which, in a strict sense, there arises no obligation to make restitution.

Whence follows the conclusion noted by Sylvester (word *bellum*, pt. I, q. 10 [q. 11, no. 4]), that he who makes war without the authorization in question, even if he has, in other respects, a just title for so doing, nevertheless incurs the sanctions imposed on those who wage war unjustly; so that if, for example, he be an incendiary, he will incur the excommunication promulgated against incendiaries. . . .⁸

⁸ After elaborating on the special case of a Christian prince who wages war in defiance of papal prohibition (§7), Suárez proceeds to discuss in section 3 (omitted) whether clerics are permitted to declare or otherwise participate in war.

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5 In the case of Christian kings, however, a second point must be noted, namely, that the supreme pontiff, although he has no direct power in temporal affairs outside of his own domain, nevertheless does possess such power indirectly, as is indicated in certain passages of the *Decretals* (bk. I, tit. vi, chap. xxxiv). Therefore, under this title, he has a right to require that a cause of war be referred to him, and the power to give a judgment thereon, which the parties in question are bound to obey, unless his decision is manifestly unjust. For such [authority on the part of the Pope] is certainly necessary for the spiritual welfare of the Church and for the avoidance of almost infinite evils. Accordingly, Soto said (on Romans 12:18), that war between Christian princes is rarely just, since they have at hand another ready means of settling their mutual disputes.

But sometimes the pope does not interpose his authority, lest perchance greater evils result. In that event, to be sure, supreme princes are not bound to secure any authorization from the pope, and may enforce their own right as long as they are not forbidden to do so. Nevertheless, they should take care lest they themselves be a cause of the fact that the pope dares not intervene; for in that case they will not be free from fault.

6 *Thirdly*, in connection with the preceding conclusion, I hold that when a war is declared without legitimate authority, it is contrary not only to charity, but also to justice, even if a legitimate cause for it exists. The reason supporting this conclusion is that such an act is performed without legitimate jurisdiction, consequently it is illegitimate. Therefore, it follows that a war of this kind gives rise to an obligation of making restitution for all ensuing damages.

Therefore, it is indeed true that if someone merely recovers his own property in such a war, he will not be bound to restore that property; but he will be held liable for all injuries and losses inflicted upon others. The reason for such a distinction is that in the latter case he has done an injustice, since there was no just cause for all that damage; whereas, in recovering his own property, he has not, strictly speaking, committed an injustice – save possibly in the means used (*in modo*) – from which, in a strict sense, there arises no obligation to make restitution.

Whence follows the conclusion noted by Sylvester (word *bellum*, pt. I, q. 10 [q. 11, no. 4]), that he who makes war without the authorization in question, even if he has, in other respects, a just title for so doing, nevertheless incurs the sanctions imposed on those who wage war unjustly; so that if, for example, he be an incendiary, he will incur the excommunication promulgated against incendiaries. . . .⁸

⁸ After elaborating on the special case of a Christian prince who wages war in defiance of papal prohibition (§7), Suárez proceeds to discuss in section 3 (omitted) whether clerics are permitted to declare or otherwise participate in war.

In the next section, under the heading of "just title for war," Suárez takes up the traditional problematic of just cause, in which he analyzes the right and wrong reasons for going to war. The reasons in question are knowable on the basis of "natural reason," and hence are applicable to all human beings regardless of their particular religious convictions. (The question whether or not religious revelation can provide special reasons for going to war is taken up in section V). Again emphasizing that his main theoretical concern is with offensive war, Suárez concentrates his attention on the idea of injury, with an eye toward determining what sort of injuries can warrant resort to armed force. While the notion of just title is framed in terms of the broad category of "seeking redress" (this might include retaking stolen property or land, or regaining a right such as freedom of transit over highways), Suárez seems most intent on explaining how, through war, commonwealths may punish wrongs for which no satisfaction has been offered. On this score, he adds several nuances to the account previously given by Vitoria and sometimes voices strong disagreement with his eminent predecessor (again without mentioning him by name). For instance, the idea that "supreme kings have the power of avenging injuries throughout the whole world"⁹ is denounced by Suárez as "entirely false."

This section also includes an important discussion of the difference between private and public vengeance, wherein Suárez explains how a wronged commonwealth can serve as a judge in its own case. Finally, after renewed consideration of the contrasting exigencies of justice and charity, Suárez concludes the section with a reflection on reasonable hope of success: before undertaking an offensive war, a leader must have a probable expectation of victory.

From Disputation XIII. Section IV: What is a Just Title for War, on the Basis of Natural Reason?¹⁰

There was an old error current among the Gentiles, who held that the rights of kingdoms were based on arms, and that it was permissible to make war solely to acquire prestige and wealth; a belief which, even from the standpoint of natural reason, is most absurd.

1 Therefore I hold, *first* that there can be no just war without an underlying legitimate and necessary cause. The truth of this conclusion is indubitable and clearly evident. Now, that just and sufficient reason for war is the infliction of a grave injury that cannot be avenged or repaired in any other way. This is taught by all of the theologians. . . .

⁹ This view, which Suárez attributes to "some writers," seems to be an allusion to Vitoria's *De iure bello*, q. 1, a. 4, prop. 5; see chap. 27, this volume, p. 316.

¹⁰ Williams et al. (trans.), *Selections*, pp. 815–20, 821–3.

First reason in support of this conclusion: war is permissible in order that the commonwealth may protect itself from harm; for in other respects, war is opposed to the good of the human race on account of the slaughter, material losses, and other misfortunes which it involves; and therefore, if the cause in question should cease to exist, the justice of war would also cease to exist.

Secondly, in war, men are despoiled of their property, their liberty, and their lives. To do such things without just cause is absolutely iniquitous; otherwise men could kill one another without cause.

Third, the concern of the present discussion [about just cause] is chiefly with offensive war. This is ordinarily waged against non-subjects. Consequently, it is necessary that they shall have committed some wrong on account of which they render themselves subjects [of the commonwealth that they have offended]. Otherwise, by what title would they merit punishment or be subject to a foreign jurisdiction?

Furthermore, if the grounds or purposes which the Gentiles had in view (for example, ambition, avarice, and even vainglory or a display of fierce courage) were legitimate and sufficient, any commonwealth whatsoever could aspire to these ends; and hence, a war would be just on both sides, essentially and apart from ignorance. This supposition is entirely absurd; for two opposing rights cannot both be just.

2 But in order that this matter may be explained more clearly, there are several points that should be noted.

First, not any cause whatsoever is sufficient to justify war, but only causes that are very serious and proportionate to the ravages of the war. For it would be contrary to reason to inflict the most serious damage because of a slight injury. In like manner, a judge can punish, not all offences whatsoever, but only those that militate against the general peace and to the good of the commonwealth. In this connection, however, we must remember that not infrequently a wrong which appears to be slight is in fact serious, if all the aspects are weighed, or if other and similar wrongs are permitted [as a consequence], since thereby great harm may gradually ensue. Thus, for example, to seize even the smallest town, or to make raids, etc., may sometimes constitute a grave injury, especially when the prince who has caused the injury treats with scorn the protest that is made.

3 Secondly, it must be noted that different kinds of injuries can cause a just war. These may be grouped under three heads. One of the heads would be the seizure by a prince of another's property, and his refusal to restore it. Another head would be his denial, without reasonable cause, of the common rights of nations, such as the right of transit over highways, trading in common, etc. The third would be any grave injury to one's reputation or honour. It should be added that it is a sufficient cause for war if an injury of this kind is inflicted either upon a prince himself or upon his subjects; for the prince is guardian of his commonwealth and also of his subjects. Furthermore, the cause is sufficient if the wrong is inflicted upon any one who has placed himself under the protection of

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a prince, or even if it is inflicted upon allies or friends, as may be seen in the case of Abraham (Genesis 14), and in that of David (1 Kings 28). For "a friend is a second self," says Aristotle (*Nicomachean Ethics*, bk. IX, chaps. 4 and 9). This must be understood with the proviso that the friend himself has a right to [undertake] such a war, and wills to do so, either expressly or by implication. The reason for this proviso is that a wrong done to another does not give me the right, to avenge him, unless he would be justified in avenging himself and actually proposes to do so. Assuming, however, that these conditions exist, my aid to him is an act of co-operation in a good and just deed; but if [the injured party] does not entertain such a wish, no one else may intervene, since he who committed the wrong has made himself subject not to every one indiscriminately, but only to the person who has been wronged. Wherefore, the assertion made by some writers, that supreme kings have the power of avenging injuries throughout the whole world (*totius orbis*), is entirely false, and throws into confusion all the orderly distinctions of jurisdiction; for such power was not [expressly] granted by God and its existence is not to be inferred by any process of reasoning.

4 Thirdly, we must note that, in regard to an injury inflicted, two arguments may be alleged [to justify a declaration of war]. The first is [that such a declaration is justifiable] in order that restitution for the losses suffered should be made to the injured party. For this cause, indeed, it is not to be questioned that war may legitimately be declared; for if this declaration is to be permitted because of an injury [already done], then it is in the highest degree permissible when the object is that each one may secure himself against loss. Many examples illustrating this point are to be found in the Scriptures (Genesis 14, and similar passages). The other argument is [that war should be declared] in order that the offender may be duly punished; a contention which presents its own difficulty.

5 In the *second* place, then, I hold that a war may also be justified on the ground that he who has inflicted an injury should be justly punished, if he refuses to give just satisfaction for that injury, without resort to war. This conclusion is commonly accepted. In connection with it, and with the preceding conclusion, we must assume that the opposing party is not ready to make restitution, or to give satisfaction; for if he were so disposed, waging offensive war [against him] would become unjust, as we shall demonstrate in the following sections.

The conclusion is proved, first, by certain Scriptural passages (Numbers 25; 2 Kings 10-11), according to which, unconditional punishment for offences was carried into execution, by the command of God.

The reason in support of this same conclusion is that, just as within a commonwealth some legitimate power to punish crimes is necessary to the preservation of domestic peace; so in the world, in order that diverse commonwealths may dwell in peace, there must exist some power for punishing injuries inflicted by one upon another. Such a power is not to be found in any superior, for we assume that these commonwealths have no commonly acknowledged superior; therefore, the power in question must reside in the supreme prince of the injured

commonwealth, to whom, by reason of that injury, the opposing prince is made subject. Consequently, war of this kind [offensive war] has been instituted in place of a tribunal administering just punishment.

6 But, on the other hand, one may object in the first place that to fight in this manner seems opposed to the admonitions in the Epistle to the Romans (12:17–19): “To no man rendering evil for evil,” and “Not avenging yourselves.” The reply to the objection is that the passages quoted refer to acts performed by private authority and with the intention of doing evil for its own sake, to another. But if the acts in question be done under legitimate and public power, with the intention of holding an enemy to his duty and of reducing to its due order that which was disorderly, then they are not only not prohibited but even necessary. Hence, in that same Epistle (Romans 13:4), we find this additional passage: “For he beareth not the sword in vain. For he is God’s minister: to work vengeance upon evildoers.”

Secondly, it is objected that [if our second general conclusion be true,] then, as a consequence, the same party in one and the same case is both plaintiff and judge, a situation which is contrary to the natural law. The truth of the conclusion is evident, since the prince who has been wronged assumes the role of judge through his attack.

The objection is confirmed, in the first place, by the fact that for this reason private individuals are not allowed to take vengeance into their own hands. This is denied them because they would nearly always exceed the bounds of justice. And yet the same danger exists in the case of a prince who avenges himself.

A second confirmation of the same objection is that, by a like reasoning, any private person who might be unable to avenge himself through a judge could assume this right, executing it upon his own authority – since this privilege is granted to princes on the sole ground that there exists no other way of securing a just vengeance.

7 In response, it cannot be denied that in this matter [of public vengeance], one and the same person assumes, in a sense, the role of plaintiff and judge; even as we understand that God, to whom there is some analogy in the public authority, likewise assumes this double role. But the reason for this is simply that the act of vindicative justice has been indispensable to mankind, and that no more fitting method for its performance could, in the order of nature and humanly speaking, be found. This is especially true given the fact that prior to the war, the offending party has shown obstinacy in not wanting to give satisfaction; if he thereby finds himself in subjection to the offended party, he may impute this [misfortune] to himself.

Nor is this case analogous to that of a private individual. For in the first place, such an individual is directed by private judgment, and therefore he will easily exceed the limits of vengeance; whereas the public power is guided by public counsel, to which heed must be paid, and consequently authority of this sort may more easily avoid the disadvantages arising from personal inclination. Secondly,

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this vindicative power has for its essential purpose not private but public good, and hence it has been entrusted to a public and not private person. Therefore, if the former is unable or unwilling to mete out vengeance [on behalf of a private person], such an individual should patiently endure his loss. From the foregoing remarks, then, our reply to the first confirmation of the objection is evident.

As to the second confirmation, it has been said by some persons that in the situation referred to, a private person is allowed to avenge himself secretly; and in the *Code* [III, xxvii] there is a title, *Quando liceat sine iudice se vindicare* [When it is permitted to avenge oneself without recourse to a judge]. But this must be understood as referring to restitution for losses suffered; if referred to the punishment of an offence, it is an inadmissible error. Indeed, the act of vindicative justice falls within a jurisdiction that private individuals do not possess, and cannot obtain by reason of an offence committed by another. For if they could possess it, there would be no need to employ the public power of jurisdiction; or, alternatively, since this power of jurisdiction [could be said to] flow from human beings themselves, each one would have had the power to refrain from transferring it to a magistrate, retaining it, on the contrary, for himself; a conclusion which would be opposed to the natural law, and to the good governance of the human race.

Therefore, we deny the consequent involved in the second confirmation. For laws regard those things which are necessary by themselves; yet private individuals considered in themselves may effectively obtain vengeance for offences through the public authority. If sometimes it happens that they fail to obtain it, this is accidental and has therefore necessarily to be endured, as we have said. But, between two supreme powers, the necessity [of punishing offenses] exists by itself. . . .

8 *Thirdly*, I hold that whoever initiates a war without just cause, sins not only against charity, but also against justice; and hence he is bound to make reparation for all the harm that results. The truth of this conclusion is manifest. . . .¹¹

Finally, turning to the second case mentioned, if one prince begins a war upon another, even with just cause, while exposing his own realm to disproportionate loss and peril, then he will be sinning not only against charity, but also against the justice due to his own commonwealth. The reason for this assertion is as follows: a prince is bound in justice to have greater regard for the common good of his commonwealth than for his own good; otherwise, he will become a tyrant. So a judge who condemns to hanging a criminal deserving of execution but very necessary to the commonwealth, would act in a manner opposed to his official obligations, and, consequently, to justice. Similarly, a physician would sin against the justice required by his profession if he should give medicine which would heal a present disease but would cause more serious diseases to ensue.

¹¹ In the omitted passage, Suárez considers whether “there may sometimes exist a cause for war which absolves one from the charge of injustice, but not from the charge of sinning against charity.”

9 However, with respect to this last point, we must take into consideration the fact that a single king who rules over several kingdoms, can often make war for the sake of one of these to the detriment of another. For though the various kingdoms may be distinct from one another, nevertheless, inasmuch as they are subject to one head, they can and should be of mutual aid, since the defence of one contributes to the benefit of another and in this way, the principle of equality is preserved. For in its own emergency, one kingdom might require the aid of another. In addition to all these considerations, the mere fact that their [common] prince is rendered more powerful, is in itself extremely advantageous to each of the kingdoms involved. In short, greater peace, and other advantages, may perhaps accrue to a commonwealth so supported; and many other [similar] points can easily be perceived upon reflection. There are, then, numerous considerations which may oblige a prince to abandon his right to make war lest his realm suffer loss.

10 Furthermore, we should call attention to the conclusion, drawn from these primary considerations by Cajetan (commenting on *Summa theologiae*, II-II, q. 96, a. 4) namely, that for a war to be just, the prince ought to be so sure of the degree of his power, that he is morally certain of victory. The first reason for this conclusion is the fact that otherwise the prince would incur the evident peril of inflicting upon his commonwealth losses greater than the advantages involved. In the same way, says Cajetan, a judge would do wrong in attempting the arrest of a criminal without a force that, to his certain knowledge, could not be overpowered. Second, whoever begins a war assumes an active role; and the one who assumes such a role must always be the stronger, in order to vanquish the one who plays a passive part.

But this condition [of certitude] does not appear to me to be absolutely essential. First, because, from a human standpoint, it is almost impossible of realization. Second because it is often to the common interest of the commonwealth not to await such a degree of certitude, but rather to test its ability to conquer the enemy, even when that ability is somewhat doubtful. Third, because if the conclusion were true, a weaker sovereign could never declare war upon a stronger, since he is unable to attain the certitude which Cajetan demands.

Therefore, the following rules should be laid down. A prince [who declares war] is indeed bound to attain the maximum certitude possible regarding victory. Furthermore, he ought to balance the expectation of victory against the risk of loss, and ascertain whether, all things being carefully considered, the expectation [of victory] is preponderant. If so great a degree of certitude is impossible of attainment, he ought at least to have either a more probable expectation of victory, or one equally balanced as to the chances of victory or defeat, and that, in proportion to the need of the commonwealth and the communal welfare. But if the expectation of victory is less apt to be realized than the chance of defeat, and if the war is offensive in character, then in almost every case that war should be avoided. If [on the other hand,] the war is defensive, it should be attempted;

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for in that case it is a matter of necessity, whereas the offensive war is a matter of choice. All of these conclusions are sufficiently clear in the light of the principles of conscience and justice. . . .

In this next section Suárez argues that religious teachings (revelation) can provide no special grounds for waging war. Similar in this regard to his predecessor Vitoria, Suárez seems intent on distancing the just war idea from the related notion of holy war, warning princes against taking it upon themselves to avenge sins against God, since "he can easily avenge himself, if he so wills." Suárez does, however, note one possible exception to this rule: If a people subject to a non-Christian ruler wish to accept the faith of Christ, and their ruler prevents them from doing so, then Christian princes may resort to force in defense of this people. This line of reasoning would not, however, be available to Muslims and other non-Christians, since on Suárez's view, Christianity represents the one true religion. Thus, should a people wish to embrace Islam against the wishes of their ruler, Muslim princes would not have license to intervene on its behalf. Suárez tempers this conclusion somewhat, when he asserts toward the end of this section that his overall argument is founded on natural reason. Hence he concludes that even individuals who have never heard of Christ and the Christian religion, yet who sincerely wish to worship God and observe the law of nature, have a right to practice their religion. Significantly, this section represents one of Suárez's most extended discussions on the use of force in defense of the innocent ("humanitarian intervention" in today's parlance).

From Disputation XIII. Section V: Can Christian Princes Have any Just Title for War beyond that which Natural Reason Dictates¹²

1 . . . The first title is that of simple unbelief [on the part of the enemy], that is, a refusal to accept the true religion. But this is a false ground, a point with which we deal in the treatise *De fide*.

The second title is that God may be avenged for injuries that are done to Him by sins against nature, and by idolatry . . . But this opinion is also false, and it is so first of all, even if we speak of "vengeance," in the strict sense. For God did not give to all men the power to avenge the injuries they do to him, since he can easily avenge himself, if he so wills. Moreover, it would not have been well for the human race had men received this power from God, for the greatest disorder would thereby have resulted. The same argument holds true with respect to the plea of defending [the majesty of God]; since the sins against Him would thus

¹² Williams et al. (trans.), *Selections*, pp. 823-7.

be multiplied rather than prevented. On this same ground, moreover, Christian princes could declare war even upon one another, for many of these princes also offend God. Likewise, since such a title for initiating war could never be sufficiently established, those who were so attacked could justly defend themselves, and the war would thus become just for both sides. . . .

3 It must be noticed, however, that the second title mentioned has been virtually accepted by a number of authorities, with respect to cases in which it happens that a state worshipping the one God inclines toward idolatry through the wickedness of its prince; these authorities claim that it is allowable to initiate war against such a prince. Their contention would be valid if the prince forcibly compelled his subjects to practice idolatry; but under any other circumstances, [such a title] would not be a sufficient cause for war, unless the whole commonwealth should demand assistance against its prince. For where compulsion does not intervene, defense has no place.

This position is supported, first, by the fact that, if the reasoning in question were valid, it would always be permissible to declare such a war on the ground of protecting innocent children. Secondly, on the basis of that same reasoning, Christian princes would always be permitted to wage war among themselves, upon their own authority. Finally, by whatever arguments this title for war may be justified, [the title urged] is not confined to Christians alone, but is possessed in common with all unbelievers who worship only the one God; and accordingly, these unbelievers could rightfully defend those who wished to worship the same God, and who were forced by others into idolatry.

4 A third title for war is advanced, namely, the supreme temporal dominion [of Christians]. That is to say, the authorities mentioned above maintain either that unbelievers are not true owners of their possessions; or else that the Christian Emperor, or – at least – the supreme Pontiff, has direct temporal dominion over the whole world.

But all such claims are vain inventions, a point which we discuss elsewhere, on the subject of dominion and laws. In the second place, even if we grant that such a title does indeed exist, still it would be impossible either to demonstrate its existence to the satisfaction of infidels, or to force them to believe in the existence of such dominion; and therefore, they could not be forced to obey. Finally, on that same ground, the pope or the emperor could make war [even] upon all Christian princes. Wherefore, it must be observed that although the pope has indirectly supreme power in temporal affairs, nevertheless, the existence of such temporal power is always based, essentially, upon the assumption of direct power in spiritual matters; and therefore, this indirect power does not essentially extend to unbelievers, over whom no direct spiritual dominion exists even in the pope himself. But I use the term, 'essentially', because 'incidentally' the case may be otherwise, as I shall presently show.

5 A fourth title urged is that unbelievers are barbarians and incapable of governing themselves properly; and that the order of nature demands that men of

be multiplied rather than prevented. On this same ground, moreover, Christian princes could declare war even upon one another, for many of these princes also offend God. Likewise, since such a title for initiating war could never be sufficiently established, those who were so attacked could justly defend themselves, and the war would thus become just for both sides. . . .

3 It must be noticed, however, that the second title mentioned has been virtually accepted by a number of authorities, with respect to cases in which it happens that a state worshipping the one God inclines toward idolatry through the wickedness of its prince; these authorities claim that it is allowable to initiate war against such a prince. Their contention would be valid if the prince forcibly compelled his subjects to practice idolatry; but under any other circumstances, [such a title] would not be a sufficient cause for war, unless the whole commonwealth should demand assistance against its prince. For where compulsion does not intervene, defense has no place.

This position is supported, first, by the fact that, if the reasoning in question were valid, it would always be permissible to declare such a war on the ground of protecting innocent children. Secondly, on the basis of that same reasoning, Christian princes would always be permitted to wage war among themselves, upon their own authority. Finally, by whatever arguments this title for war may be justified, [the title urged] is not confined to Christians alone, but is possessed in common with all unbelievers who worship only the one God; and accordingly; these unbelievers could rightfully defend those who wished to worship the same God, and who were forced by others into idolatry.

4 A third title for war is advanced, namely, the supreme temporal dominion [of Christians]. That is to say, the authorities mentioned above maintain either that unbelievers are not true owners of their possessions; or else that the Christian Emperor, or – at least – the supreme Pontiff, has direct temporal dominion over the whole world.

But all such claims are vain inventions, a point which we discuss elsewhere, on the subject of dominion and laws. In the second place, even if we grant that such a title does indeed exist, still it would be impossible either to demonstrate its existence to the satisfaction of infidels, or to force them to believe in the existence of such dominion; and therefore, they could not be forced to obey. Finally, on that same ground, the pope or the emperor could make war [even] upon all Christian princes. Wherefore, it must be observed that although the pope has indirectly supreme power in temporal affairs, nevertheless, the existence of such temporal power is always based, essentially, upon the assumption of direct power in spiritual matters; and therefore, this indirect power does not essentially extend to unbelievers, over whom no direct spiritual dominion exists even in the pope himself. But I use the term, 'essentially', because 'incidentally' the case may be otherwise, as I shall presently show.

5 A fourth title urged is that unbelievers are barbarians and incapable of governing themselves properly; and that the order of nature demands that men of

this condition should be governed by those who are more wise, as Aristotle (*Politics*, bk. I, chap. 1) has taught, saying that (ibid., chap[s]. 5[–8]¹³) a war is by nature just, when it is waged against men born to be under obedience but who are unwilling to accept that condition. . . .

In the first place, however, such a contention cannot have a general application; for it is evident that there are many unbelievers more gifted by nature than are the faithful, and better adapted to political life. Second, in order that the title in question may be valid, it is not enough to judge that a given people are of inferior natural talents; for they must also be so wretched as to live in general more like wild beasts than like men, as those persons are said to live who have no human polity, and who go about entirely naked, eat human flesh, etc. If there are any such, they may be brought into subjection by war, not with the purpose of destroying them, but rather that they may be organized in human fashion, and justly governed. However, this title for war should rarely or never be approved, except in circumstances in which the slaughter of innocent people, and similar wrongs take place; and therefore, the title in question is more properly included under defensive than under offensive wars.

Finally, Aristotle, in the passage cited above, declares that a war of this sort is permissible only when those men who are subdued in order that they may be governed, are as different from the rest of mankind as is the body from the soul. From this proposition one must conclude, however, that the said title for war, if it really exists, is valid not only for Christians, but also for every prince who wishes to defend the law of nature, which, when understood narrowly, gives rise to that title.

6 Therefore, the assertion must be made that there is no title for war so exclusively reserved to Christian princes that it has not some basis in, or at least some due relation to, natural law, being therefore also applicable to princes who are unbelievers.

By way of explaining this assertion, I conclude, *first*, that a Christian prince may not declare war save either by reason of some injury inflicted or for the defence of the innocent. We have, already given sufficient proof of this fact, by rejecting all the invalid titles for war, [advanced above]. The arguments we have adduced are a proof of this same fact; for the law of grace has not destroyed, but on the contrary completes the natural law.

7 *Secondly*, I must say that the defence of the innocent is permissible in a special sense to Christian princes, and that the same proposition holds true, proportionately, with respect to avenging injuries. For if a commonwealth subject to an infidel prince wishes to accept the law of Christ and the unbelieving king prohibits that acceptance, then Christian princes have the right to defend that innocent people. But if the same commonwealth wishes to submit to the law of

¹³ For the relevant passages in Aristotle, see chap. 3, this volume.

unbelievers – for example, to the Mohammedan [law] – and its prince is opposed to this submission, then an infidel Turkish prince would not have a similar right of war against that other prince. The reason for this distinction is that to prevent the acceptance of the law of Christ does indeed involve grievous injustice and harm, whereas there is no injury at all in prohibiting the acceptance of another law. Likewise, if [a given people] are willing to listen [to the Gospel], they may be convinced through reason that this is the more credible faith and that it ought to be believed; and therefore, it is just to assist them, under these circumstances. . . .

8 I hold, *thirdly*, that all of the foregoing considerations are so founded on natural reason that they may, to a certain extent and in due proportion, be applied to unbelievers. The explanation of this conclusion is that if any commonwealth wishes to worship the one God and observe the law of nature, or to listen to preachers who teach these things, and if the prince of that state forcibly prevents [that commonwealth] from doing so, there would spring up in consequence a just title for war to be waged by some other prince. This holds even if the latter should be an unbeliever, and is guided solely by natural reason, because such a war would be a just defence of innocent persons.

Likewise, if any nation should worship the one God and observe the laws of nature, while another nation practised idolatry and lived contrary to natural reason, then the former state would have the right to send missionaries to instruct [the citizens of the latter state], and to free them from their errors. And if this action were forcibly prevented, then war could justly follow. This holds first, because such a right is entirely in keeping with nature; secondly, because the defence of the innocent would be involved in that procedure, since it is only reasonable to think that, there would not fail to be some who wished to be taught the natural truths necessary for an upright and virtuous life, and who would be wickedly impeded in the attainment of this wish. . . .

The next section continues the earlier investigation into the concept of just cause. The focus is now on private conscience. What degree of certitude must a person have before going to war? What should one do when the justice of one's cause is in doubt, or when there seem to be equally probable arguments for war on the opposing side? The answer to these questions hinges in large measure on one's place in the political-military hierarchy. Political leaders, statesmen, and leading military officers, have a greater responsibility for investigating the causes of war than do ordinary soldiers and citizens. This section also emphasizes the importance of arbitration. In a famous passage (§5), Suárez asserts that human beings are not condemned to settle their disputes by war since God has provided us with other means – including arbitration – for resolving controversies between commonwealths.

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From Disputation XIII. Section VI: What Certitude as to the Just Cause of War is Required in order that War may be Just?¹⁴

Three kinds of persons must here be distinguished, to wit: the supreme king and prince, the leading men and commanders (*duces*), and the common soldiers (*milites*). It is to be assumed that practical certitude is required of all these persons, a certitude which may be expressed in the statement: 'It is permissible for me to make war.' The whole doubt [to be discussed here] revolves around [the issue of] theoretical certitude. This may be expressed as follows: 'This cause of war is just in itself', or, 'This thing which I seek through war is rightfully mine'.

1 I hold, *first*, that the supreme king is bound to make a diligent examination of the cause and its justice, and that after making this examination, he ought to act in accordance with the knowledge thus obtained.

The basis of the first part of this conclusion is that war is a matter of the gravest character; and reason demands that in any matter whatsoever, deliberation and diligence should be applied, commensurate with its importance. Furthermore, a judge, in order to pass judgment in a private matter, ought to make diligent investigation; hence, the necessity for such diligence exists in due proportion in a public cause of war. Finally, if the prince were not bound to make this investigation, the rashness of princes would easily result in universal disturbance. With regard to the first part of this assertion, then, there is no difficulty.

2 The explanation of the second part of the conclusion is as follows. Let us suppose that the ground for a war is the fact that a certain king claims a certain city as belonging to him, or as falling newly to him by hereditary right. Now if, when the matter has been carefully examined, the truth of that claim is clearly established, what I have asserted is obviously true. But when the case of each side contains [an element of] probability, then the king ought to act as a just judge.

Therefore, if he finds that the opinion favouring his own side is the more probably true, he may, even justly, prosecute his own right; because, so I believe, the more probable opinion should always be preferred in passing judgment. For that is an act of distributive justice, in which the more worthy party is to receive the preference; and he is the more worthy party who enjoys the more probable right, as we shall explain below at greater length. For the same reason, however, if the more probable opinion favors the opposing side, the prince in question may on no account proceed to war.

3 If, finally, after diligent investigation, the probabilities on both sides are found to be equal, or if, at least, equal uncertainty exists – whatever the ground of the uncertainty – then, if the opposing party is in possession, he ought to have the preference, because even in a judicial process, that party is favoured, inasmuch

¹⁴ Williams et al. (trans.), *Selections*, pp. 828–32.

as he has the greater right. On this account, the party who is not in possession cannot proceed to war against the possessor; while the latter, on the other hand, is secure [in his conscience] and may justly defend himself. . . .

4 Another aspect of the question regards the situation in which no one is in possession and the doubts and probabilities balance each other. The more common opinion seems to be that either party has the right to seize first the thing in dispute. In accordance with this opinion, the war would become just on both sides; but this point is of no importance, when ignorance intervenes. The reason, indeed, which is offered in support of this opinion is that in a similar case a judge could award the property by his own decision to either one of the parties to the litigation, as he might choose.

However, I am unable to persuade myself that a judge may act thus in the case supposed. For certainly, under those circumstances, the judge is merely a distributor of property over which he personally has no right; consequently, if the rights of the parties in question are at all times entirely equal, there is no reason which would allow him to allot the whole property to either party; and therefore, the judge is bound to divide the property. Or, if this cannot be advantageously done, it will be necessary to satisfy both sides, in some fashion. Hence, in a question involving war, the princes shall be bound to this same attitude. Accordingly, they must either divide between them the thing in dispute, or cast lots for it, or settle the matter in some other way. But if one party should attempt to seize the whole possession to the exclusion of the other party, by that very act he would be doing the other an injury which the latter might justly repel, thus seizing, on this just ground of war, the entire disputed possession.

5 But the question may be asked whether, in cases of this kind, supreme princes are bound to submit the matter to the decision of good men. This question, moreover, arises from the standpoint of natural law only, so that, in our discussion, we shall not include the authority of the pope, of which we have already spoken.

Indeed, I am of the opinion that the affirmative answer to this question is, in all probability, correct. For the said princes are bound to avoid war in so far as is possible, and by upright means. Therefore, if no danger of injustice is to be feared, the above-mentioned [arbitration] is plainly the best means of decision, and consequently resort should be had to it.

This opinion is confirmed as follows: it is impossible that the Author of nature should have left human affairs, governed as they are by conjecture more frequently than by any sure reason, in such a critical condition that all controversies between supreme princes and commonwealths should be settled only by war; for such a condition would be contrary to wisdom and the common good of the human race; and therefore it would be contrary to justice. Furthermore, if this condition prevailed, those persons would as a rule possess the greater right who were the more powerful, and [this right] would have to be measured by arms, which is manifestly a barbarous and absurd supposition.

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6 In this connection, however, we must observe, first, that a supreme prince is not bound by the judgment of those whom he himself has not appointed to render judgment. Therefore, it would be necessary for the arbitrators to be chosen with the consent of both sides. Resort to this method, indeed, is a most rare occurrence, inasmuch as [these princes] seldom favour it; for very frequently one or other of the princes holds the external judges in suspicion.

Secondly, it should be noted that a supreme prince, if he is acting in good faith, should assess what is his right by [seeking the council] of prudent and learned men; then he may follow their judgment, if by [this consultation] his right is made clear to him. Under these circumstances he will not be bound to abide by the decision of an outside judge. The reason in support of this statement is that the right in question must be judicially ascertained, after the fashion of a just legal process. In [rendering] a just decision, two things are intended. One involves [both] an examination of the grievance and an acquaintance with the right of each side. In this process, knowledge and prudence are necessary, not jurisdiction. For since such a judgment is not sought through war, but, on the contrary, as a substitute for war, there is no need to call in an arbitrator. The other involves enforcing the right, after it has been made clear. For this, jurisdiction is indeed required; but such jurisdiction is inherent in a supreme prince when in other respects he is sufficiently certain of his right. In that case, then, there is no reason binding him to await the judgment of an outside arbitrator, although he ought to accept just settlements if they are offered to him.

7 In the *second* place, I hold that generals and other princes of the kingdom, whenever they are summoned for consultation to give their opinion on beginning a war, are bound to inquire diligently into the truth of the matter; but if they are not called, they are under no greater obligation to do so than others who are common soldiers. The first part of this conclusion is clearly true because these generals, having been summoned, are bound in justice to give a just opinion, for if they did not do so, any injustice that there might be in the war will be laid to their charge. The proof of the second part of the conclusion is the fact that, when they are not summoned [to give advice], their part in the affair becomes simply that of private soldiers, since they are merely set in action by others, but do not control action; while it is only incidental that they are wealthy or of noble birth. . . .

8 I hold *thirdly*, that: common soldiers, as subjects of princes, are in no wise bound to make diligent investigation, but rather may go to war when summoned to do so, provided it is not clear to them that the war is unjust.¹⁵

In the next section, Suárez engages in a reflection that ranges across what now goes under the headings of *ius ad bellum* and *ius in bello*. Although he rarely uses

¹⁵ In these passages Suárez considers some objections about the responsibility of individual soldiers, and then takes on a detailed discussion of mercenaries.

the term explicitly, the idea of "right intention," the last of the three conditions for just war mentioned by Thomas Aquinas in *Summa theologiae*, II-II, q. 40, a. 1, is what gives unity to the different topics taken up in the present section. After some preliminary comments on the three main classes of individuals participating in war (princes, intermediate commanders, and ordinary soldiers), Suárez proceeds to explain how the prince has obligations, not only toward his own subordinates, but toward the enemy commonwealth as well. Before declaring war he must first make his grievances known to the enemy commonwealth, affording it an opportunity to avoid war by offering restitution for the wrong done. After dealing with the question of restitution, Suárez moves into the problem of civilian immunity. In one of the first systematic treatments of this theme, he argues that those not engaged in the fighting ("innocents") may not be directly targeted. Yet, they may indirectly be visited with side-effect (now termed "collateral") harm. This, he cautions, should not be done lightly, but only in proportion to the gravity of the cause at stake. Suárez elucidates this idea of civilian side-effect harm by reference to the principle of double effect.

From Disputation XIII. Section VII: What is the Proper Mode (*Debitus Modus*) of Conducting War?¹⁶

1 Three periods must be distinguished: the beginning of war; its prosecution, before victory is gained; and the period after victory. The three classes of persons already mentioned, must also be distinguished, namely: the supreme prince; the intermediate commanders; and the soldiers of the rank and file.

All of these persons may be considered in certain specific relationships. First, with respect to the enemy, that is to say: how may these classes justly conduct themselves toward the enemy? Secondly, with respect to their mutual relations: how should the king conduct himself toward his soldiers? Thirdly, [and again in connection with their mutual relations,] how should the soldiers conduct themselves toward their kings? Fourthly, how should they conduct themselves toward other persons, for example, those persons in whose houses the soldiers are quartered during the march?

At present, we are dealing in the main with the first question; but we shall also treat briefly of the others.

2 With respect to the fourth relationship, then, we may repeat briefly the admonition of John the Baptist (Luke 3:14): "Do violence to no man . . . and be content with your pay." Hence, none of these soldiers may take anything from his hosts, beyond that which has been determined by the king; otherwise, he sins

¹⁶ Williams et al. (trans.), *Selections*, pp. 836-41, 843, 845-6, 847-8, 849, 850-1, 852-3. The editors of the present volume are indebted to Professor Peter Haggenmacher, who assisted us in revising the translation of this section of the *De bello*.

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against justice and is bound to make restitution. The same is true if he does any other damage to houses, fields, etc. To be sure, the intermediate commanders and the princes are bound, by virtue of their office, to prevent such acts in so far as they are able. If they fail to do so, the whole duty of making restitution falls upon them, in default of the soldiers.

Concerning the third head, just as the kings are under an obligation to give pay to the soldiers, so the latter are bound to discharge all the duties pertaining to their office. Hence, justice requires of them brave conduct, even to such a degree that they shall not take to flight, nor desert their stations or fortifications; a matter concerning which there are many laws (in *Digest*, 49, 16). Cajetan, also, should be consulted in his brief treatise on the subject (*Opusculum*, bk. 4, penultimate question [bk. 3, treatise 9: *De vinculo obedientiae*]); for he holds that commanders of forts are under an obligation not to surrender through any fear of death or starvation, since they have made a contract with the prince not to do so, and since they receive their payment because of this contract, whence there arises an obligation binding them in justice. . . .

Only the first head, then, still remains for discussion.

3 I hold, *first*, that before a war is begun the [attacking] prince must present the opposing commonwealth with the just cause of war, and demand adequate restitution. If the other commonwealth offers such restitution, he is bound to accept it, and desist from war; if he does not do so, the war will be unjust. If, on the other hand, the opposing prince refuses to give satisfaction, he may initiate war. . . .

4 But Cajetan¹⁷ limits this conclusion by the following proviso: namely, that the satisfaction shall be offered before the encounter in war [has occurred]. After the hostilities have begun, the [future] victor is not bound to accept such satisfaction, because in war he is like a judge, and once it has begun, he becomes master of the case. He has acquired the right to proceed to the very end; so that the vanquished party has only himself to blame, in that he did not offer to make restitution at the proper time.

But, I ask, what does Cajetan mean by *actual encounter in war*? If he is referring to actually the final struggle in which the whole war will find its conclusion, there is no doubt that, if the affair has already been entered into and victory is beginning to favour the side of the just belligerent, the latter is not bound, under such circumstances, to accept satisfaction short of complete victory; for morally speaking such victory does not seem far off, nay, to treat of peace at that juncture can hardly be expected in moral terms.

If, on the other hand, by *actual encounter*, Cajetan means a war in which several fights have [already] occurred, I do not see how it may be asserted with any solid assurance that [the just belligerent] is more judge of the proceedings at that time than [he was] before the war had begun; for previously, he had

¹⁷ In his *Summula*, "When war should be called just or unjust, licit or illicit" (see chap. 22, this volume).

the same right to begin the war that he now has to proceed with it. The sole difference is that the injury has grown greater, and that consequently an increased right to a greater satisfaction has arisen. Moreover, the arguments set forth above apply equally to both of the situations in question, for the continuance no less than the beginning of the war ought to be dictated by necessity. The more so as [in both cases] similar damages arise to the common good, which should be avoided while preserving one's own right; this however is preserved when satisfaction is offered, since nothing more can be claimed after victory has been achieved, a point which we shall discuss below. In short, the right to make war is detrimental to others, and the punishment inflicted through war is of the severest kind; therefore, that punishment ought to be inflicted with the utmost restraint.

5 Therefore, the contrary opinion to Cajetan's appears to be in every respect nearer the truth; with the sole proviso that complete satisfaction shall include first, that all things unjustly withheld shall be restored; second, that reimbursement must be made for all expenses due to injuries inflicted by the enemy, so that, once the war has been begun, a claim may justly be made for all its costs, to date; third, something may be demanded as a penalty for the injury inflicted, for in war regard must be had not only for commutative justice, but also for vindictive justice; finally, a demand may justly be made for whatever will seem necessary for the maintenance and safeguard of peace in the future, since the chief end of war is to establish such a future peace. It should also be added that this condition of war flows from justice; consequently, if war is made contrary to justice, there will arise an obligation to make restitution.

6 I hold, *secondly*, that after war has been begun, and during the whole period thereof up to the attainment of victory, it is just to visit upon the enemy all losses which may seem necessary either for obtaining satisfaction or for securing victory, provided that these losses do not involve direct intrinsic injury to innocent persons, which would be intrinsically evil, of which we shall treat below, in the sixth conclusion. The reason in support of this conclusion is as follows: if the end is permissible, the means necessary to that end are also permissible; and hence it follows that in the whole course, or duration, of the war hardly anything done against the enemy involves injustice, except the slaying of the innocent. For all other damages are usually held to be necessary for attaining the end to which the war is directed.

7 In the *third* place, I hold that after victory has been achieved, a prince is allowed to inflict upon the conquered commonwealth such losses as are sufficient for a just punishment, satisfaction, and reparation for all losses suffered. The conclusion is commonly accepted and undoubtedly true, both because this is the object of war, and also because in a regular judgment this likewise is permissible. It should however be observed that in computing the sum required for this satisfaction, all the losses endured by the commonwealth in question during the course of the war (i.e. the deaths of men, conflagrations, etc.) must be taken into account. Yet we do not disagree, first, with the additional comment made by

the same right to begin the war that he now has to proceed with it. The sole difference is that the injury has grown greater, and that consequently an increased right to a greater satisfaction has arisen. Moreover, the arguments set forth above apply equally to both of the situations in question, for the continuance no less than the beginning of the war ought to be dictated by necessity. The more so as [in both cases] similar damages arise to the common good, which should be avoided while preserving one's own right; this however is preserved when satisfaction is offered, since nothing more can be claimed after victory has been achieved, a point which we shall discuss below. In short, the right to make war is detrimental to others, and the punishment inflicted through war is of the severest kind; therefore, that punishment ought to be inflicted with the utmost restraint.

5 Therefore, the contrary opinion to Cajetan's appears to be in every respect nearer the truth; with the sole proviso that complete satisfaction shall include first, that all things unjustly withheld shall be restored; second, that reimbursement must be made for all expenses due to injuries inflicted by the enemy, so that, once the war has been begun, a claim may justly be made for all its costs, to date; third, something may be demanded as a penalty for the injury inflicted, for in war regard must be had not only for commutative justice, but also for vindictive justice; finally, a demand may justly be made for whatever will seem necessary for the maintenance and safeguard of peace in the future, since the chief end of war is to establish such a future peace. It should also be added that this condition of war flows from justice; consequently, if war is made contrary to justice, there will arise an obligation to make restitution.

6 I hold, *secondly*, that after war has been begun, and during the whole period thereof up to the attainment of victory, it is just to visit upon the enemy all losses which may seem necessary either for obtaining satisfaction or for securing victory, provided that these losses do not involve direct intrinsic injury to innocent persons, which would be intrinsically evil, of which we shall treat below, in the sixth conclusion. The reason in support of this conclusion is as follows: if the end is permissible, the means necessary to that end are also permissible; and hence it follows that in the whole course, or duration, of the war hardly anything done against the enemy involves injustice, except the slaying of the innocent. For all other damages are usually held to be necessary for attaining the end to which the war is directed.

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Sylvester (word *bellum*, pt. I, qu. 9 [qu. 10]) and by Vitoria (*De iure belli*, no. 51), namely, that movable goods captured by soldiers during the war are not to be reckoned by the prince as part of the restitution. For this rule has become a part of the *ius gentium*, through common custom. The reason underlying it is that, since the soldiers' lives are exposed to dangers so numerous and so grave, they should be allowed something; and the same is true of their prince.

Secondly, it is to be observed with regard both to this and the previous conclusion, that soldiers are not allowed to seize anything on their own authority, whether after or even before the victory is won, because by themselves they have no power, but possess it solely through their prince, as his agents; therefore they may not justly take anything without his express or implied authorization.

Thirdly, it follows from this conclusion that, if all the aforementioned penalties seem insufficient in view of the gravity of the wrong done, then, after the war has entirely ended, some of those among the enemy who are guilty may also, with justice, be put to death, although the killing of a great multitude should not be done without the most urgent cause; also such slaughter may be allowed in order to provoke terror in the rest, as is indicated in the following passage from Deuteronomy (20:13-14): "When the Lord thy God shall deliver the city into thy hands, thou shalt slay all that are therein of the male sex, with the edge of the sword, excepting women and children," etc. Whence it follows that those among the vanquished who are guilty may with much more reason be reduced to captivity and have all their property seized.

Fourthly, it is to be noted that one should interpret in accord with this conclusion the civil laws which assert that, through the *ius gentium*, it has been established that all the property of the enemy, both movable and immovable, passes to the victors. . . . But all of these passages must be interpreted in conformity with the rule previously laid down, equality of justice being preserved, and regard must be had for the future peace, as we shall show below. For in war the same equality as in a just judgment has to be preserved and in [such a judgment] the offender cannot be visited with every sort of punishment nor deprived of all his property without any restriction, but only in proportion to his fault. . . .¹⁸

10 But another doubt remains, namely: whether it is equally allowable to inflict penalties of this kind upon all those who are numbered among the enemy. In answering this question we must note that some of these persons are guilty, and others are innocent. By a kind of natural law the innocent include children, women, and all unable to bear arms; by *ius gentium* [the innocent include] diplomats; and by the positive law applicable among Christians [the innocent

¹⁸ In the omitted passage (§§ 7-8), Suárez considers whether, in the interests of restitution, it is allowable to seize goods from a vanquished enemy, when the enemy is not their rightful owner. In arguing against this practice, Suárez notes how even provisions of positive law alleged to be part of *ius gentium* can sometimes spring from unjust customs, specifically "from the unjust manner in which wars were at that time carried on."

include] members of religious order, priests, etc. (*Decretals*, bk. I, tit. xxxiv, chap. ii). . . . All other persons are considered guilty; for in human judgment those who are presumed to be able to take up arms [are viewed] as if they have actually done so. Now, the opposing commonwealth is composed of both classes of persons [innocent and guilty], and therefore, all these persons are held to be enemies (*Digest*, XLIX. xv. 24). In this respect, strangers and foreigners, since they form no part of the commonwealth and therefore are not reckoned among the enemy unless they are allies in the war, differ from the persons above mentioned.

11 Assuming that the foregoing is true, I hold, *fourthly*, that if the penalties inflicted upon the guilty are sufficient for restitution and satisfaction, they cannot justly be extended to affect the innocent. This fact is self-evident as a result of what has already been said, for one may not demand greater satisfaction than that which is just. The only question that might arise is whether or not victorious soldiers are always bound to observe this order in their procedure, taking vengeance upon the guilty and their property, rather than upon the innocent. The reply is briefly that, other things being equal, and within the limits of the same class of property, they are so bound. For the principle of equity clearly imposes this rule, a fact which will become more evident from what follows.

12 *Fifthly*, I hold that if such a course of action is essential to complete satisfaction, it is permissible to deprive the innocent of their goods, even of their liberty. The reason is that the innocent form a part of one iniquitous commonwealth; and on account of the fault of the whole, this part may be punished even though it does not of itself share in the fault. . . .

15 *Sixthly*, I hold that the innocent as such (*per se*) may under no condition be killed, even if the punishment inflicted upon their commonwealth would, otherwise, be deemed inadequate; but incidentally (*per accidens*) they may be slain, when such an act is necessary in order to secure victory.

The reason supporting this conclusion is that the killing of innocent persons is intrinsically evil. However, one may object that this is true with respect to killing upon private authority and without just cause, but that the case in question involves both public authority and a just cause. Nevertheless, such a plea must be rejected when the killing is not necessary for victory (a condition which we have already assumed to exist), and when the innocent can be distinguished [from the guilty].

The conclusion is confirmed by the difference existing between life and other possessions. For the latter fall under human dominion, and the commonwealth as a whole has a greater right to them than do individual persons. Hence, such persons may be deprived of [their] property because of the fault of the whole commonwealth. But life does not fall under human dominion, and therefore, no one may be deprived of his life save by reason of his own fault. . . .

But one may ask, who actually are the innocent, with respect to this issue? My reply is that they include not only the persons enumerated above [§10], but also those who are able to bear arms, if it is evident that, in other respects, they have

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not shared in the crime nor in the unjust war. The natural law demands that, generally speaking, no one who is actually known to be free from fault, may be killed. But what shall we say, if certain persons are not known to have participated either [in the crime or in the unjust war], and if there exists only the presumption that they were able to bear arms? On this point, I shall speak shortly.

16 . . . These arguments prove beyond a doubt that, after victory has been attained, only those who are known to be guilty may be slain. . . . [T]he slaughter of all those whose innocence is not clearly evident by reason of age or sex is, in general, permitted, as long as the actual combat continues; but the case will be otherwise after the cessation of combat, and the attainment of victory.

17 The latter part of the [sixth] conclusion is also commonly accepted, and is clearly true in the case of certain means essential to victory, which, however, necessarily involve the death of the innocent, as in the burning of cities and the destruction of fortresses. For, strictly speaking, whoever has the right to attain the end sought by a war, has the right to use the means to that end. Moreover, in such a case, the death of the innocent is not directly intended, it follows rather as an incidental consequence. Hence, it is not considered voluntary, rather it is permitted by one who exercises his right in a time of necessity. A confirmation of this argument lies in the fact that it would [otherwise] be impossible to conclude the war. In like manner, a pregnant woman may use medicine necessary to preserve her own life, even if she knows that this will result in the death of her unborn child. From these arguments it is to be inferred that, save out of necessity, the means in question are not permissible.

18 On the other hand, one may argue, first: that in the case described, one really cooperates, as a positive factor, in bringing about the death of an innocent person; hence, one cannot be excused from sin.

In the second place: it may be alleged that to kill an innocent person is as intrinsically evil as to kill oneself; and to kill oneself in this manner, even incidentally, is evil; as, for example, when soldiers demolish a citadel and a wall, although they know with certainty that they will be crushed at the moment [when the fortifications fall]. An indication of this fact is that Samson, who committed such an act [of self-destruction], is exonerated by the Fathers, St. Augustine (*On the City of God*, bk. I, chaps. 21 and 26), St. Bernard (*De praecepto et dispensatione* [chap. 3]), St. Thomas (*ST* II-II, q. 64, a. 5, ad 4) only because he acted at the prompting of the Holy Spirit.

In the third place: evil may not be done that good may ensue. . . .

Fifthly: the innocent persons in question would be justified in defending themselves if they were able to do so; hence the attack on them is unjust. . . .

19 The reply to the first of the foregoing arguments is as follows: if the matter be considered physically, the victor does not really kill, for he is an incidental but not an essential cause (*non est causa per se sed per accidens*); morally he is not responsible for homicide, because he is exercising his own right, nor is he bound to avoid to [his own] great detriment, the resulting harm to his neighbour.

As for the second argument, I deny that [the act in question] is intrinsically evil, basing my denial on that same ground, namely, that the person described does not in fact kill himself, but merely permits his own death. The question of whether or not this may be allowed under such circumstances must be considered in the light of the order of charity; that is to say, one must consider whether the good at stake in the case is to such an extent the common good, that there is an obligation to expose oneself in its defense to a peril so great. There are some who think that Samson's action may be excused from this point of view; but such a reason would not seem to serve as a sufficient excuse for that action, because, if the matter is looked at from a purely human standpoint, the punishment of one's enemies would not seem to be a good so great as to justify Samson in killing himself, even though his death would be only incidental [to the attainment of his end].¹⁹

With respect to the third argument, it is true that morally evil deeds may not be performed that good may ensue, but it is permissible to inflict the evils of punishment [for that purpose]; though, [in point of fact,] in the present case, the evils in question are not so much brought about [with deliberation], as they are allowed to follow [incidentally]. . . .

To the fifth argument, some persons reply that, under such circumstances, the war may incidentally be just for both sides. Excluding cases of ignorance, however, this seems impossible. Accordingly, my reply is that these innocent individuals²⁰ may indeed defend themselves in a purely defensive manner: by preventing the burning of the city, for example, or the destruction of the citadel, etc. Such actions involve solely the protection of their own lives, and this they are allowed to do. I maintain, however, that they may not defend themselves offensively so to speak by fighting against those who are justly fighting, for at bottom they [the non-combatants] do not undergo injury from them [the just enemy combatants]. But these innocent persons may fight against those who are responsible for the war, since from them they truly suffer injury. . . .

20 *Seventhly*, I hold that, in addition to all the losses which have previously been enumerated and which may be claimed as necessary to satisfaction, a prince who has obtained a just victory may do everything with the property of the enemy that is essential to the preservation of an undisturbed peace in the future,

¹⁹ Vitoria (in his commentary on *Summa theologiae*, II-II, q. 64), likewise discusses Samson's action by reference to the principle of double effect, although he finds more justification for it than does Suárez (see John P. Doyle [trans.], *On Homicide & Commentary on Summa theologiae II-II, q. 64* [Milwaukee: Marquette University Press, 1997], pp. 181-3). The case of Samson has provided a Biblical point of reference for contemporary discussions of suicide missions (see Diego Gambetta [ed.], *Making Sense of Suicide Missions* [Oxford: Oxford University Press, 2005], p. 279).

²⁰ Suárez is here speaking of individuals who are in the category of non-combatants. If their nation is engaged in an unjust war, and they find themselves under attack (say in a siege), they may legitimately defend themselves in the manner described.

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provided that he spare the lives of the enemy. Therefore, if it is necessary, he may on this ground seize cities, provinces, etc.

That is the doctrine supported by all, and the rational basis thereof is derived from the very purpose of an honorable war; since war is permissible especially for this reason, namely, as a way (so to speak) to an upright peace.

This reasoning is confirmed by the fact that within the commonwealth itself, wrongdoing is punished in accordance with what is necessary for the public peace with the result that, frequently, some person is ordered into exile, or visited with a similar punishment, etc. From this example it may be inferred that, if a [precautionary] measure of this sort is taken, and at the same time it has the character of a penalty, this measure should be taken for both of these reasons [and not just one of them]; nor is it permissible to multiply without cause the harm inflicted upon the enemy.

21 *Finally*, I hold that a war will not be unjust, if all the precautions that we have enumerated are observed in it, and if at the same time the other general conditions of justice are fulfilled. Nevertheless such a war may still contain some evil element opposed to charity or to some other virtue. . . .²¹

23 A second doubt, according to St. Thomas (*ST* II-II, q. 40, a. 3), is whether stratagems are permissible in war. To this we must briefly reply, in agreement with him, that they are permissible in so far as relates to the prudent concealment of one's plans; but not with respect to the telling of lies. Regarding this point, what we have said elsewhere (*Disp. XIV*, section IV) on the concealment of one's religious faith should be consulted.

From the foregoing, another doubt is resolved *a fortiori*, the doubt as to whether it is permissible in war to break faith pledged with the enemy. For we must say that, generally speaking, this is not permissible, since it involves patent injustice; and consequently, if the enemy suffers loss for this reason, full restitution should be made. However, all this is true only provided that the promise shall have been made from the beginning [of the war], by a just and mutual agreement (as it were) in such a way as to be binding; and it is also necessary that this promise shall have remained and persisted in full vigor and force, since, if one side has perchance broken faith, the other side will be entirely freed from its own obligation. For the equity of law demands that this condition be understood to

²¹ Here Suárez explains how a war that is opposed to charity (although not to justice) has implications for the question of restitution. One such case concerns a situation where the two parties "voluntarily engage in war, without just cause" as a mutually agreed upon method of settling their dispute. This would be developed by later thinkers into the idea that war is analogous to a contract between two sovereigns, in which they agree to let the settlement be determined by the outcome of battle. This view would later be adopted by Immanuel Kant, when he wrote that "[i]f one wishes to find any rights in wartime, one must assume the existence of something analogous to a contract; in other words, one must assume that the other party has *accepted* the declaration of war and that both parties therefore wish to prosecute their rights in this manner"; *Metaphysics of Morals*, §56 (in *Kant: Political Writings*, 2nd edn. [Cambridge: Cambridge University Press, 1991], p. 167).

exist. The same holds true if any change in circumstances has occurred, such that the promises in question cannot be kept without grave loss. In that event, the opposing side must be warned that it is not possible to keep the promise made to it; and, after [either side] has issued this declaration, it is freed from the pledge. However, such a declaration is seldom to be permitted. . . .²²

"Sedition" was the heading under which Scholastic thinkers took up the problem of civil war. Suárez builds his argument around Aquinas's earlier treatment of this theme (especially as interpreted by Cajetan in his commentary on the *Summa theologiae*). Suárez makes an original contribution to this discussion when he explains how a commonwealth may have moral license to rise up in war against a tyrant. His explanation is based on a transmission theory of political authority.²³ The authority to rule resides primarily in the political community as a whole. It is the first bearer of civil authority and from there (the body politic) authority is transferred to king. Hence, if the king does not govern as he should, the whole people may remove this authority from him. Arguing along these lines, Suárez elucidated the medieval notion of just revolt by reference to the emerging ideal of democratic governance.²⁴

From Disputation XIII. Section VIII: Is Sedition Intrinsically Evil?²⁵

I Sedition is the term used to designate general warfare carried on within a single commonwealth, and waged either between two parts thereof or between the prince and the commonwealth. I hold, *first*, that sedition involving two factions of the commonwealth is always evil on the part of the attacker, but just on the defensive side. The truth of the latter statement is self-evident. The truth of the former is proved by the fact that no legitimate authority to declare war is discernible in such a situation, for this authority, as we have seen (section II), resides in the supreme prince.

The objection will be made that, sometimes, a prince will be able to delegate this authority, if urgent public necessity demands that he do so. In such a case, however, the prince himself, and not a part of the commonwealth, is held to be

²² In the omitted section Suárez deals with specialized questions relating to Christians: whether they may fight on feast days; whether Christian princes may call infidel princes to their aid, and so forth.

²³ On this, see Yves R. Simon, *Philosophy of Democratic Government* (Chicago: University of Chicago Press, 1951), pp. 158–76.

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the attacker; so that no sedition will exist in the sense in which we are using the term. But what if one part of the commonwealth actually suffers injury from another part, and is unable to secure its right through the prince? My reply is that this injured part may do nothing beyond that which a private individual may do, as can easily be gathered from what we have said above.

2 I hold, *secondly*, that a war of the commonwealth against the prince, even if it be offensive, is not intrinsically evil; but that the conditions necessary for a war that is in other respects just must nevertheless be present in order that this sort of war may be honorable. This conclusion holds true only when the prince is a tyrant, a situation which may occur in one of two ways, as Cajetan notes (on II–II, q. 64, a. 1, ad 3 [a. 3]). In the first place, the prince may be a tyrant with respect to [the way in which he has assumed] dominion and power; secondly, he may be so merely in regard to [the manner in which he] has governed.

When the first kind of tyranny occurs, the whole commonwealth, or any portion thereof, has the right [to revolt] against the prince. Hence, it follows that any person whatsoever may avenge himself and the commonwealth against [such] tyranny. The reason supporting these statements is that the tyrant in question is the attacker, and is iniquitously waging war against the commonwealth and its separate parts. By consequence, all those parts have the right of defense. Such is the opinion expressed by Cajetan (*loc. cit.*); and this conclusion may also be derived from a passage in St. Thomas's works (on the *Sentences*, bk. II, dist. 44, q. 2, a. 2).²⁶

John Huss upheld the same doctrine with respect to the second kind of tyrant, and, indeed, with respect to every unjust superior. But this teaching was condemned at the Council of Constance (sessions VIII and XV). Consequently, it is most certain that no private person, nor any incomplete power, may justly initiate an offensive war against this kind of tyrant, and that such a war would be sedition in the strict sense of the term.

The proof of these assertions is as follows: the prince in question is, we assume, the true ruler (*dominus*); and inferiors have not the right of declaring war, but only that of defending themselves, a right which does not apply in connection with this sort of tyrant; for the latter does not always do wrong to individuals, and in any attack which [these individuals] might make, they would be obliged to confine themselves to what suffices for self-defense. The commonwealth as a whole, however, may rise in war against such a tyrant; and this uprising would not be a case of sedition in the strict sense, since the word is commonly employed with a connotation of evil. The reason for this distinction is that under the circumstances described the commonwealth, as a whole, is superior to the prince, for the commonwealth, when it granted him his power, is held to have granted it upon these conditions: that he should govern politically, and not tyrannically; and that, if he did not govern thus, he might be deposed.

²⁶ See chap. 16, this volume, pp. 194–5.

However, [in order that such an uprising may justly occur] the situation must be one in which it is observed that the king does really and manifestly behave in a tyrannical manner; and the other conditions laid down for a just war must concurrently be present. . . .

3 I hold, *thirdly*, that a war of the commonwealth against a king who is tyrannical in neither of these two ways, is sedition in the truest sense and intrinsically evil. This is certainly true, as is evident from the fact that, in such a case, both a just cause and a [rightful] authority are lacking. From this, conversely, it is also evident that the war of a prince against a commonwealth subject to himself, may be just, from the standpoint of rightful authority, if all the other required conditions be present, but that, in the absence of those conditions, that same war is entirely unjust.²⁷

²⁷ The last section (omitted) of this disputation consists in an ethical assessment of the practice of dueling.