

Panormitanus and the canonists (on X 4.17.13), of St. Thomas (*ST* 1a2ae.90.3, 97.3), of Cajetan (*De potestate papae* 2.2, 9), and of Vitoria (*De potestate civili*), as well as of others cited. The argument we have made for this is that this power naturally belongs to the community first; it can only reside in an individual sovereign prince if it is bestowed on him with the community's consent. [. . .]

Our view may be faulted for implying that royal power is a matter of solely human right, contradicting, it would seem, the language of the Scriptures: "By me kings reign" (Prov. 8:15) and, "For he is God's minister" (Rom. 13:4). Again, it might seem to imply that the kingdom, having given the king his power, is superior to the king, and further, that the kingdom may depose or change its king at will, which is altogether false. This was why Vitoria (*loc. cit.*) held that royal power must be said in principle to be from divine law and granted by God, though on the condition of a human decision. (The contrary is argued by Bertrandi, *De origine iuris* 1, Driedo, *De libertate Christiana* 1.15, and Castro, *De potestate legis poenalis* 1.1.) Vitoria is certainly right if we speak of royal power in an abstract sense, as power located as such in a single person. For the power of government, in its essence as a political phenomenon, is certainly from God as I have said; yet I have also shown how the fact that it resides in *this* individual comes from a grant on the part of the state itself; so in this sense this power is part of human right. Moreover, it is a matter of human decision, as I have shown, that a state or a province is a monarchy, so that the princely office is itself a human institution. As an indication of this, the king's power may vary in extent, depending upon the terms of the constitutional bond between him and his kingdom. So, in the simplest manner of speaking, his power is derived from men.

By the expressions in Holy Scripture two things are meant: (1) that this power viewed as such, is from God and, incidentally, that it is both just and in conformity with God's will; (2) that once power has been transferred to the king, he is *then* God's representative whom we are bound to obey by natural right. When a person sells himself as slave to another, the master's power is, simply speaking, humanly given; but once the transaction is complete, the slave is obliged by divine and natural right to obey his master. And this provides the answer to the argument brought in objection: once the power is transferred to the king, he becomes superior to the kingdom which gave it him, since the kingdom has accepted subjection and stripped itself of its former liberty, as in the analogous case of the slave. That is why the king cannot be deprived of his power, since it is a true lordship that he has acquired, conditional only on his not slipping into tyranny, which would entitle the kingdom to wage a just war against him. Of which more elsewhere.

### The Three Theological Virtues, Faith, Hope, and Charity: On Charity, Disputation 13, War

An open conflict which frustrates public peace is properly called "war" only when

"strife" or a "duel." But the difference between these seems to be material rather than formal, and we shall discuss them all, as did St. Thomas (2a.2ae.40-2) as well as others to be mentioned below.

1. *Is war intrinsically evil?* The first heresy is to assert that engaging in war is intrinsically evil and inconsistent with charity. Augustine attributes this view to the Manicheans (*Against Faustus* 22.74); Wyclif, according to the testimony of Waldensis (*De sacramentalibus*), followed them [inaccurate: Wyclif actually holds the second of these two positions, that war is forbidden *between* Christians]. The second error is that war is specifically forbidden to Christians, especially war against other Christians. So Eck maintains (*Enchiridion* 22), and other heretics of our own time — yet making a distinction between two kinds of war, defensive and offensive. We shall explain this pair of terms in paragraph 6.

[Suárez then advances three propositions: (1) War as such is not intrinsically evil or forbidden to Christians. (2) Defensive war may sometimes be not merely permitted, but required. (3) Even offensive war is not evil of itself.]

It remains for us to explain the difference between offensive and defensive war. Sometimes an act may appear to be offensive, when it is defensive in fact: e.g., if an attacker has seized a community's dwellings or property, and that community then invades the attacker's territory, it is not offensive but defensive. So civil laws that license me to repel force with force when anyone tries to drive me from my possession are morally sound, too (e.g., Cod. 8.4.1 and Dig. 43.16.1, 3). That is not offense, but defense, which one may undertake on one's own authority. The laws extend to someone deprived of what they call a "natural" possession while away, and prevented from recovering it on his return. They establish the principle that one may take arms on one's own authority when wrongfully dispossessed, since that is not really offensive, but a defense of one's legal possession. (See also X 2.13.12.)

The point to establish is whether the injury is, morally speaking, *actually being done*, or whether it has *already been done*, so that what one then seeks to achieve through war is redress. In the latter case war is offensive. In the former case war has the character of self-defense, provided that its conduct does not exceed the limits of innocent self-protection. Now, the injury is considered as "actually being done" *either* while the unjust action itself, physically speaking, is being performed — when, for instance, the victim has not yet been entirely deprived of his rightful possession; *or* when he has been so deprived, but takes immediate steps — i.e., without noticeable delay — to protect and reestablish himself. The reason for this is that when one is to all intents and purposes, actually offering resistance and striving as best one may to protect one's right, one is not deemed to have actually suffered the wrong or been deprived of the possession in a final sense. This is the common opinion of the Doctors (see Sylvester, s.v. *bellum* 2; also Bartolus and the jurists on Dig. 43.16.3.9).

Our *fourth proposition* is: — For war to be conducted justly, several conditions must be observed, which may be grouped under three heads. (1) It must be waged by a legitimate authority. (2) There must be a just cause and reason alleged. (3) It must be properly and fairly conducted at its inception, in its prosecution, and in victory. All of this will become evident in the following sections; but this summary proposi-

much destruction that it is the kind of business that it is very often wrong to undertake. For it to be justified, there are many conditions that must be met.

4. *What is a just cause of war, on the basis of natural reason?* [Suárez proposes, first, that there must be a legitimate and necessary ground, noting (1) that it must be serious; and (2) that there are various kinds of provocation that might constitute it.]

Note (3) that when the wrong has been done [i.e., when the war would be offensive] two kinds of case for war may be made. The first is that reparation should be made to the injured party for the damage suffered. There is no problem with the legitimacy of declaring war for this purpose, for if war is justified in terms of the wrong done, it is clearly justified when the purpose is to secure a remedy for the wrongful loss. There are many examples in the Scriptures (Gen. 14, etc.). The other case is that the wrongdoer may be properly punished; but this presents a problem which requires separate treatment.

*Our second proposition* is that it is a just ground for war that the wrongdoer should be justly punished if he refuses otherwise to give adequate satisfaction for the injury. This view is commonly accepted. In this thesis, as with the preceding one, we must insist on the condition, that the opposing party is not ready to make restitution or give satisfaction; for if he were, the offensive war would be unjust, as we shall demonstrate in what follows. The conclusion is proved in the first place from certain scriptural passages (Num. 25; 2 Sam. 10–11), in which at God's command straightforward punishment was executed on wrongdoing. The reason is that, as within a single state some lawful authority to punish crimes is needed to preserve domestic peace, so in the world as a whole, for the various states to live in concord, there must exist some authority to punish injuries inflicted by one state on another. This authority does not reside in a superior, for they have none, we suppose. Therefore it must reside in the sovereign prince of the injured state, to whom the other is subject on account of the wrong he has done. So this kind of war serves in place of a court administering just punishment.

*Objection 1:* This is contrary to the text in Romans: "Repay no one evil for evil," and "Never avenge yourselves" (12:17, 19). *Reply:* This is interpreted with reference to private authority and the intent to do evil to another for the sake of it. But if it is done by lawful public authority with the intention of holding an enemy to his duty and bringing what was out of order back into line, it is not only not forbidden but is necessary. So Romans continues (13:4): "for he does not bear the sword in vain; he is the servant of God to execute his wrath on the wrongdoer."

*Objection 2:* It follows that the same party in the same case is both plaintiff and judge, which is contrary to the natural law. It is evident that it does follow, since the same prince who has been wronged assumes the role of judge by initiating hostilities. *In support* of the objection it may be argued: (1) that private individuals are denied the right to avenge themselves because in effect they would overstep the limits of justice, but the same danger arises in the case of a prince who avenges himself; (2) that any private person unable to secure such punishment through a judge might, by the same reasoning, take the law into his own hands and execute it on his

*Reply:* — It cannot be denied that in this instance one and the same person assumes paradoxically the dual role of plaintiff and of judge. Public authority is like God in this respect, of whom the same is true. But the only reason for it is that this act of punitive justice was indispensable to mankind, and that no more fitting means for it was forthcoming within the limits of nature and human action. In addition, we must anticipate that before the war the offending party was unyielding and unwilling to give satisfaction; if he then finds himself subject to his victim, he must lay the blame at his own door. The case is unlike that of a private individual in two respects. (1) Guided by his own deliberations he will easily exceed the limits of punishment; but public authority is bound to attend to public deliberations and be guided by them, so that it is easier to avoid the destructiveness of private emotions. (2) The authority to punish is as such directed not to the private but the public good, so that it is entrusted not to a private but to a public agent. If this is unable or unwilling to punish, the private agent shall endure his loss patiently. The reply to the first supporting argument is clear from this.

In reply to the second supporting argument, some have indeed maintained that in that situation a private person may punish the offender secretly. In the *Codex* (3.27) there is a title: "When it is permitted to avenge oneself without recourse to a judge." But this has come to be understood to refer to recovery of loss; applied to the punishment of crime, it is an unacceptable mistake. Acts of punitive justice are the prerogative of a jurisdiction which private persons do not possess and do not acquire through others' offenses. Were it otherwise, there would be no requirement to resort to public jurisdictional authority; or at least, since jurisdictional authority would be derived from men, any individual person could have refused to concede it to the magistrate and retained it for himself — an outcome contrary to natural law and good government of the human race. So we reject the inference in the second supporting argument. Laws treat of the nature of the case. It is of the nature of the case that private individuals are readily avenged for offenses because public authority exists; the fact that sometimes this is not possible is, as we have said, an accident, which, as such, must be borne as a necessity. But the necessity involved in the relationship between two sovereign powers is itself of the nature of the case. (We should understand in this way the civil-law glosses cited by Covarruvias. See also Vitoria, *De potestate civili* 6ff., and de Soto, *De iustitia* 4.4.)

*Our third proposition* is that whoever begins a war without a just ground, sins not only against charity but against justice, too, and so is bound to make reparation for all the damage. This is obvious. [. . .]

It should, however, be noted that Cajetan (on *ST* 2a2ae.96.4) concludes from this that for a war to be just, the prince ought to be so certain of the extent of his power that he is morally assured of victory. For in the first place, he would otherwise be exposed to the obvious danger of doing more harm than good to his own state. Cajetan compares him to a judge, who would be wrong to attempt an arrest without a force that he was certain could not be overpowered. In the second place, to initiate war is to assume the active role; and an active party must always be the stronger, to overcome passive resistance. But this condition does not seem to me absolutely nec-

often serves the common good of the state not to wait for such a degree of certainty but to take the risk, even when the ability to overcome the enemy is in doubt. Thirdly, if it were true, it would never be right for a weaker ruler to make war on a stronger, since the certainty which Cajetan demands would be beyond his reach.

So we should conclude that a prince is obliged to make as sure as possible of victory. He should measure the likelihood of victory against the risk of loss, weighing everything up to see whether the calculation is decisively positive. If he cannot reach as strong a certainty as this, he should at least regard the positive outcome as the more likely, or equally likely, if the danger to the common welfare of his state justifies it. But if the positive outcome is less probable and the war is offensive, then it should almost always be avoided. If the war is defensive, it should be attempted; for then it is a matter of necessity, in the other case a matter of choice. All this follows clearly enough from the principles of conscience and justice.

7. *What is the right way to conduct war?* [Suárez proposes: (1) Before going to war, a prince must declare his grounds and demand restitution. (2) All methods necessary to success may be used, provided they include no intrinsic wrong done to innocent people. (3) After victory damages sufficient for restitution and punishment may be imposed.]

But there remains a further question, whether it is permitted to impose such damages equally on all who are counted as belonging to the enemy. In answering we must note that some persons are said to be guilty, others innocent. The innocent include children, women, and all incapable of bearing arms (by natural law), ambassadors (by the law of nations), and religious persons, priests, etc. (by positive law among Christians) (X 1.34.2, Cajetan on C. 24 q. 3 c. 25, holds that this provision of law has been superseded by custom, which should be observed). All others are considered guilty; for human judgment looks on those who are able to take up arms as having actually done so. Now, the hostile state is composed of both classes; all these persons, therefore, are counted as "the enemy" (Dig. 49.15.24). Strangers and foreigners are in another category, since they form no part of the state and therefore are not reckoned among the enemy, unless they are allies in the war.

Assuming this is true, *our fourth proposition* is that if damages inflicted upon the guilty are enough for restitution and satisfaction, they cannot rightly be extended to the innocent. This is an evident implication of what has been said, for one may not demand greater satisfaction than what is just. The only question is whether victorious soldiers are always bound to proceed in this order, taking reprisals upon the guilty and their property first. The short reply is that they are, other things being equal and within each category of property. For the principle of equity clearly imposes this rule, as will be clearer as we proceed.

*Our fifth proposition* is that it is permitted to deprive the innocent of their goods, even of their liberty, if such a course of action is essential to complete satisfaction. The reason is that the innocent form a portion of one whole and unjust state; and on account of the whole, the part may be punished even though it does not of itself share in the blame. [ . . . ]

*Our sixth proposition* is (a) that innocent persons, as such, may absolutely not

thought inadequate. (b) They may be killed only incidentally (*per accidens*) when such an act is necessary to the pursuit of victory. The logic of the proposition is that the slaying of innocent persons is intrinsically evil. You may say: that is true of killing on private authority and without just ground; but this is different, involving public authority and just ground. But that means nothing if the killing is unnecessary for victory, as we say, and if the innocent can be separated from the guilty.

*Arguments in support of (a):* (1) Life is not the same as other possessions. They fall under human dominion, and the state as a whole has a higher right over them than particular persons; so they may be deprived of their property for the guilt of the whole. But life does not fall under human dominion, so that no one may be deprived of life other than for his own guilt. Which is why, of course, a son is never killed for the sin of his father (Deut. 24:16, cf. Exod. 23:7, "Do not slay the innocent"). (2) The innocent would be justified in defending themselves if they were able; so to attack them is unjust. (3) Ambrose imposed severe excommunication on Theodosius for just such a slaughter of the innocent (C. 11 q. 3 c. 69). You ask, who are the innocent in this regard? I reply that they include not only those listed above, but also those capable of bearing arms if it is otherwise clear that they had no part in the crime or the unjust war, for natural law demands that no one actually known to be guiltless shall as such be slain. [ . . . ]

The second part of this proposition (b) is also commonly accepted, and is clearly true of certain procedures necessary for victory but which necessarily involve the death of innocent persons, such as the burning of cities and the sacking of fortresses. Whoever has a right to the end of the war has a right to these means, abstractly speaking, and the death of the innocent is not intended as such, but is an incidental consequence; so it is not held to be *willed* but simply *accepted (permissa)* by the one who exerts his right at a time of need. *Arguments in support:* (1) It would otherwise be impossible to end a war. (2) A pregnant woman may use medicine necessary to preserve her own life, even if she knows that such an act will result in the death of her unborn child. (But these arguments both imply that such procedures are not legitimate *except* in a moment of necessity.)

*Arguments to the contrary:* — (1) In this case one cooperates positively in securing the death of an innocent person, so one cannot be absolved of blame. (2) To kill an innocent person is no less intrinsically evil than to kill oneself; and to kill oneself in this way, even incidentally, is evil; for example, when soldiers demolish a citadel-wall though they know with certainty that they will be crushed. It is significant that Samson is excused for doing this only because he acted at the prompting of the Holy Spirit (Augustine, *City of God* 1.21, 26; Bernard, *De praecepto et dispensatione* 3; Thomas, *ST* 2a2ae.64.5, ad 4). (3) Evil may not be done that good may ensue. (4) It is forbidden to pull up the tares lest the wheat should be pulled up with them (Matt. 13:29). (5) The innocent persons in question would be justified in defending themselves if they could, so the attack upon them must be unjust. (6) The supporting argument may be reversed: the mother is *not* allowed to use the medicine if she knows for certain that it will cause the death of the child, especially after the infusion of the rational soul. This seems to be the more common opinion (Antoninus, *Summa*

is that if help cannot be given to one without injuring another, it is better to help neither. (On which see C. 14 q.5 c. 10.)

*Replies to the arguments:* (1) Materially speaking, the victor does not actually kill the innocent; he is not the cause of their death as such, but only incidentally. Morally speaking, he is not guilty of homicide, because he is merely exerting his right, and is not bound to incur a very great cost to himself in avoiding any harm that may result to his neighbor.

(2) It is not intrinsically evil for the same reason that the person in question does not really kill himself, but merely accepts his own death. Whether *that* is allowed depends on the order of charity; that is to say, whether there is such a common good at stake that one ought to expose oneself to so great a peril in defense of it. And there are those who think that Samson's deed may be excused in this way. In his case, however, that argument does not entirely serve. Looked at from a human point of view, the good in question, punishing one's enemies, was not so great as to justify him in incurring death, even incidentally.

(3) *Moral* evils may not be done that good may ensue; but the evils of punishment may, though in this case the evils are accepted as a consequence rather than brought about.

(4) Pulling up tares and wheat was not, in the first place, a lawful necessity. There was no authority for it. And, besides, it did not serve the purpose of the head of the household.

(5) There is some support for the reply that the war in this case may, contingently, be just for both sides. But this does not seem to arise apart from ignorance. My reply is that these people may defend themselves, but no more. That is to say, they may try to stop the burning of the city or the sacking of the citadel, since that is merely to defend their lives, which is perfectly proper to do; but they may not adopt an offensive self-defense, i.e., by engaging in combat with the just belligerents, who are in fact doing them no wrong. But these innocent parties may fight those who are to blame for the war, since they are certainly wronging them.

(6) This opinion must be interpreted as applying *either* when the medicine is not strictly necessary to the mother's life, but perhaps simply to improve her health, in which case the life of the child should have preference — this would seem to be the teaching of Ambrose (*Duties of the Clergy* 3.9) — *or* when it is administered with the deliberate intention of killing the fetus. But if there is both necessity and a right intention, there is no doubt that it is permissible. Besides the considerations already adduced, if the mother were allowed to die, usually the child would die as well. It is better to save the mother's life if possible, accepting the death of the child, rather than accept the death of both. There would, however, be significant doubt if the physical life of the mother were weighed against the spiritual life of the child, if, say, baptism were a possibility; but in this we must observe the rules of the order of charity, mentioned above.

*Translation:* Editors, from *Classics of International Law* (Oxford University Press, 1944).