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WAR AND SOME OF ITS
PROBLEMS

ALFRED E. SCHWIND, S.J.

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A thesis submitted in partial
fulfilment of the requirements
for the degree of Master of
Arts in Loyola University.

VITA AUCTORIS

Alfred Edward Schwind, son of Charles Schwind and Mary Kaiser, was born at Evanston, Illinois, January 19, 1912. He received his elementary education at St. Nicholas' Grammar School in that city. He attended Evanston Township High School and was graduated from there in June, 1931. In September, 1932 he entered Loyola University from which he withdrew the following year.

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Remaining at West Baden College, he was enrolled in the graduate school of Loyola University at the beginning of the Spring Quarter of 1938.

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INTRODUCTORY

To speak of war today is most certainly to lay oneself open to bitter criticism. Therefore it may be well to state the point of view taken in the present discussion. It is no part of the plan either to attenuate the evil consequent on war, or to minimize the grave considerations incumbent on those who contemplate war; and much less to make light of the opinions of writers who approach or even state categorically the doctrine of the impossibility of a just war in modern times. The approach is rather that of the moralist who tries to consider the problems objectively and impartially in an attempt to reach a true solution, or, because of the complexity of the situations, contents himself with clearing up some of the confusion as a stepping-stone to further clarification or solution by some one else. In such cases he may perhaps hazard a personal opinion indicating the general trend of a possible solution.

Whenever, therefore, exception is taken to the argument of another, an exception which de facto would give a freer hand in the matter of war, it is not made because it is less stringent, but only because such an opinion seems based on invalid, insufficient or irrelevant grounds. Neither are such less severe judgments recommended as ideals; they are, as is usual in treating of moral matters, negative norms beyond which action is definitely illicit.

The general reason for so treating the problems that arise for discussion is the conviction that war cannot be proscribed or avoided by the use of specious or fallacious arguments. More particularly because thus individuals may be misled when forming their conscience, and coercion, the necessary property of a strict right, is altogether condemned between nations or at least denied to those most likely to use it for its intended purpose.

Realization of these facts has found clear expression in an article by Father Joseph Keating, S.J., who despite his repeated pronouncements against war has these statements to make:

It seems paradoxical to say...that the chief moral principle which seems in danger of being obscured is the right of self-defense, inherent both in the individual and in the community. But so it seems. The very belligerency taught by dictators and too readily assimilated in the still democratic countries, has aroused a corresponding reaction, and over against the 'Prussian' doctrine that aggression is always lawful, we find the other extreme that resistance to aggression is never right. 1

Further on in the article he notes that:

It may be that more harm is done by genuine advocates of peace, whose advocacy reposes on emotion instead of reason, or on a sincere though mistaken interpretation of Christian teaching. 2

With these preliminary cautions prefixed we can now turn to the subject of war proper. War, properly so called, as opposed to revolution, or private acts of hostility, is defined by Suarez as an external struggle between two rulers or two countries.

Pugna exterior, quae exteriori paci repugnat, tunc proprie bellum dicitur, quando est inter duos principes, vel duas respublicas. 3

To cover all modern contingencies the Ethics Committee of the

Catholic Association for International Peace defines war in its juridical sense as:

...a contest carried on by force of arms or other instruments of death or injury between two or more independent and sovereign states, or communities having in this regard the right of states, under the authority of their respective governments even though these latter be only provisional.⁴

This definition is in its turn a more amplified and definite expression of the one given by Father Macksey, S.J. in the Catholic Encyclopedia.⁵

The modifications concerning the moral rights enjoyed by the belligerents and the authority competent to declare war introduced into the definition by the Committee apparently include struggles which prima facie seem to be relegated by Suarez to revolution or sedition and not properly included under war, as for example the American Revolution and the Civil War. Still, the Committee also wishes to exclude revolutions and insurrections from war. It merely recognizes that some revolutions should properly be called war. For such recognition it requires that:

the armed forces must represent a considerable portion of a country's population and that the government under which they act and to which they are responsible, must be so organized as to be in a position to meet the duties necessarily incumbent upon belligerents, viz., to maintain law and order within the regions subjected to their control and to conduct war on a large scale by land and sea. Given this requisite minimum, we can speak of war; in its absence, the uprising must be considered a rebellion and nothing more.⁶

Still, when Suarez comes to treat of revolution he speaks of it as of war and subjects it to the same moral principles, so that

mutatis mutandis the two concepts are practically identical:

Bellum reipublicae contra principem, etiam si sit aggressivum, non est intrinsece malum; habere tamen debet conditiones justae belli, ut honestetur. Conclusio solum habet locum, quando princeps est tyrannus.⁷

On only one point is there disagreement: Suarez's inclusion of revolution is limited to a justified revolt, while the other definition does not specifically mention this moral consideration.

Later on in the discussion the elements of these definitions and their implications will be treated more fully. Here the writer wishes only to point out some differences in the usage of the term war to preclude any subsequent confusion.

War is frequently referred to as e.g., "an appalling evil,"⁸ "a scourge worse than plague or famine,"⁹ "the chief weapon of the Prince of Darkness in his age-long campaign against light, goodness, beauty, against God and man;"¹⁰ or it is condemned as an instrument used for political or economic domination. This usage of the word is common to everyday life and may be called war in its physical aspects.

There is, however, another, and for the moralist an essentially different aspect of war-- the moral aspect. Considered thus, war is a species of coercion, the property of a moral right. In this sense war is not "an appalling evil" or "a scourge," nor an instrument for domination. These consequents may accompany or result from war, but they are not the moral constituents of war. War is rather a means, necessary under certain circum-

stances, of making law effective. When, therefore, anything is said about the nature of war, about its licitness, about the acts permissible during war, or about the causes justifying a war, there will always be question of war as a property or a complement of a strict moral right.

Another point on the usage of words may profitably be considered: not infrequently the adjective modern seems to be synonymous with unjust when used of war. Thus Donald Attwater says, "it looks as if modern war, in the full sense of the expression, is in itself irrational, unlawful, sinful."¹¹ So, too we read:

Since 1914 there has been an ever-widening flood of questioning whether the rational man, a fortiori the Christian man, can take part in the thing called modern war, without betraying himself and his faith: whether, in fact, war has not become something in essence different from what it was in the past...¹²

Now there is no doubt that war, wherever or whenever fought, has, de facto, brought in its train moral evil and lawlessness; nor that war today --modern war-- needs a graver cause to justify it and does occasion more widespread havoc morally and physically than past wars. Still, these facts plus the concession that many modern wars may have been unjust do not justify one in identifying modern war with unjust war. Recent wars may have been unjust and modern, but not unjust because modern.

Even when we admit, for the sake of argument, with such authors that the means used in modern warfare justify the identification of modern and unjust, a difficulty presents itself.

The fact that such illicit means have as a matter of fact been used does not of itself permit us to infer, as these authors do, that they must be used. Father Keating, S.J., for example, says that:

One of the strongest arguments against war is that it necessitates a systematic spreading of falsehood in order to circumvent the enemy. The enemy must be painted absolutely black and accused of every imaginable cruelty, as a monster outside the pale of human consideration. If this is not done the hateful work of killing and being killed would be impossible. 13
(Italics added).

The necessity of resorting to such evil means seems just as likely to be traceable to other sources; if it is not, the conclusion that such means are necessary would apply to any war, ancient, medieval or modern, since killing is always the same "hateful work". Is not the employment of such means necessitated by the fact that the soldiers are frequently not aware of the cause for which they are fighting. Or if aware of it, may the cause of war not have been disproportionate, vague, or only a blind for ulterior and illicit objectives? Thus we have no intrinsic necessity arising from modern war, but an extrinsic, illegitimate necessity arising from a failure to verify some other requisite for a just war.

The real reason for making anything of so trivial a matter as incautious use of words is that it would in this particular instance, if taken strictly, degrade coercion, the last legitimate resource of a government in case of extreme necessity, from a moral function to an immoral and hence forbidden measure. Further, it would deny the use of it, as mentioned before, to those

who in the nature of the case alone would be likely to use it legitimately. Consequently, any attempt to introduce the theory that might make right could not be frustrated by the one convincing argument for such proponents: the paradoxical use of might to establish the claims of right.

Another reason for taking exception to such expressions is that they may well be the occasion of worry and concern on the part of numerous individuals. Confronted with a duty to society on the one hand, and these expressions on the other, they may well be led by the excitement or fear of the moment to act with a doubtful conscience. This can hardly be considered desirable, especially since the deterrent to action would, in the case given, be objectively unfounded.

There is one problem extremely perplexing, which must at least be mentioned before going further. Since it presents itself not only when discussing the means employed (which condition is beyond the scope of this paper as far as detailed development is concerned), but insinuates itself into other phases of war as well, it is deemed best to introduce it here. It is the question of the divisibility or indivisibility of war into a plurality of moral acts. Does war constitute only one moral act or many? If only one, then every infraction of morality intrinsically included in that act, whether it continues throughout the act or surreptitiously creeps in later, or is permitted only temporarily, would vitiate the entire act. For the morality of an act is determined by all its components. And the axiom, bonum ex integra

causa, malum ex quocumque defectu, applies to war as well as any other moral entity.

Strict unicity or indivisibility can, then, hardly be maintained. It would expose, for example, the justice or morality of an entire nation's undertaking to the indiscretion or even open injustice of any one of its members.

And yet to delineate clearly and accurately just how war is divisible or constitutes a plurality of acts is a very hazardous undertaking. Father Vann, for example, queries

whether one can repudiate this or that part of a general policy, or whether the policy is 'indivisible' in the sense that any of its elements must be held to affect the whole conduct of the war. 14

And again:

Can we hold, for example, that the killing directa intentione of the civil population is a crime restricted to a particular section of the fighting forces; and that therefore service in other sections can still be licit? Or must we say that any service whatsoever is at least a formal cooperation in the crime? 15

The author of these excerpts hesitates to give any answers and professes only to "suggest lines of consideration--leaving them in the form of questions rather than in the form of dogmatic assertions."16

Faced by such sincere diffidence the writer wishes only to suggest some norms according to which he thinks an answer may be formulated.

First of all let us consider the war objectively, that is, its justice or injustice in itself independently of the subjective evaluation given it by any individual taking part in it. Suppose

the government conducting the war has verified the conditions for a just war-- the cause is just, the intention good, the means intended licit. Such a war at its inception would be just, nor could anything done later vitiate this initial justness. But let us now suppose that as the war progresses the government as such were to change its intention, so that it now planned the utter defeat and humiliation of the enemy even though this was unnecessary and disproportionate to the wrongs committed, or that it commanded the use of intrinsically evil means in whatsoever branch of the service. Surely this change of policy could not vitiate the initial policy since then it did not enter into the plans; and just as surely the war is, under this change of policy and so far as this policy is included, no longer just.

Here we can, it seems, consider such a change as constituting a new moral act--an unjust phase of the war. Were such a policy to predominate even after a just inception, the war would be unjust simpliciter, and just only secundum quid (relative to the conditions at the inception). Were such a deviation on the other hand, to comprehend only incidental and temporary injustice, the war would be just as a whole, and unjust only with respect to these incidents.

If, however, at the inception of the war the government positively included in its policy the use of evil means, or had no just cause for war, then the entire war would be immoral, even though many individual phases would in themselves be legitimate. Thus we may say in general that some phases of a just war may be

unjust without vitiating the entire war, unless they should be in excess of the just; but that the phases of an initially immoral war cannot be moral because of the unjust whole to which they are subordinated.

The above considerations refer only to policies adopted by the highest authority--the government; for it is on its authority and in accordance with its policy that the entire war is undertaken.

If, however, we consider war from the viewpoint of the individuals taking part in it, that is, the subjective moral evaluation given it by them, other norms must be suggested, it seems. In general it can be said that it would be extremely difficult for an individual to determine for himself whether any particular policy or practice observed were sponsored by the highest authorities or not. If he were able to establish as morally certain that the government as such had determined as a standing policy to use any means --good or bad-- he could hardly participate. If he could not do so, he would be obliged, it seems, to give the government the benefit of the doubt and could hardly refuse service just because he witnessed or heard of such illicit actions. Still, if he personally were ordered to execute such an intrinsically evil action, he would have to refuse, provided of course that he were certain the act was illicit. In case of serious doubt, he would again be permitted to form his conscience aided by the clear and certain principle that legitimate authority must be obeyed.

With these general introductory remarks prefaced we can go on to more detailed consideration of the traditional doctrine of war.

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4. Emmanuel, Cyprian, O.F.M., Ethics of War: A Report of the Ethics Committee of the Catholic Association for International Peace, p.5.
5. Macksey, Charles, S.J., "War." Catholic Encyclopedia. XV, p.546-550.
6. Emmanuel, Cyprian, O.F.M., op. cit., p.5-6.
7. Suarez, Francis, S.J., op. cit., S.8, n.2.
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12. Ibid.
13. Keating, Joseph, S.J., "Of Peace When There is no Peace." Month, p.9, Feb. 1922.
14. Vann, Gerald, O.P., "Means of Peace." Commonweal, 29: p.265, Dec. 30, 1938.
15. Ibid.
16. Ibid.

II

WAR AND SOME OF ITS PROBLEMS

The purpose of this thesis is to examine some of the problems arising from the concept of war under present day circumstances. This will necessitate an exposition, in Part One, of the traditional scholastic doctrine on war minus such aspects as no longer apply to contemporary conditions. Special attention is given to the types of war and the just cause of war, together with its implications, in Part Two.

In scope, this thesis confines itself in its detailed development to the problems arising from the just cause and a discussion of the types of war. The question of legitimate authority, the means employed, and numerous other implicated problems are either considered outside the range of the thesis or are adverted to briefly in Part One, where the conditions as laid down by the scholastics are reviewed.

PART ONE

THE TRADITIONAL SCHOLASTIC DOCTRINE ON WAR

Beginning with the early Doctors of the Church there are to be found expressions of opinion on war. As time went on, these expressions accumulated and gave rise to a traditional attitude. The texts of St. Augustine, for example, were codified and included in the Decretum Gratiani, a summary of Canon Law. St. Thomas, to a great extent, drew from this source and gave it methodical and concise expression in the second part of his Summa Theologica. With the discovery of the New World and its resulting wars of conquest, the question of war again came up for special analysis by Spanish theologians. Chief among these were Francis de Vittoria, O.P. and Francis Suarez, S.J. Both wrote a work on war: Vittoria, De Jure Belli, and Suarez, the thirteenth disputation in his tractate on Charity. The former's works are to a great extent the practical solutions given to contemporary problems as they arose. Suarez, on the other hand, took a more philosophical approach and developed a general doctrine on war.

CHAPTER 1

THE NATURE AND END OF WAR

Since this thesis undertakes to examine war as an ethical entity rather than as a physical fact, it will be necessary to examine its juridical origin and nature. Thus considered, the strategy employed and the other factors involved in waging a war are a propos to our approach only insofar as they have a moral character, i.e., insofar as they are licit or illicit means.

War, by definition, is an armed conflict between two independent states. Consequently, its origin, nature, and end will be determined by the nature and end of the state. For this reason, we will have to give an exposition of the state, at least as much as is necessary to understand war.

Moreover, any inquisition into the licitness of war as such will also depend in its turn on the nature of the state, for, as Father Nivard, S.J. puts it:

Sicut norma rectitudinis actus humani ab individuo elicita, est natura individui, sic norma rectitudinis actus socialis est natura societatis. 1.

War is evidently a social act, that is, an act undertaken by man considered as a member of society. For it is one society (or state) in conflict with another juridically equal unit.

The commonly accepted idea of the state is that of a stable multitude of people united under some kind of independent rule for the purpose of furnishing what is sufficient for a full life:

Coetus stabilis hominum sub aliquo regimine independenti perfectae vitae sufficientiae causa sociatus.²

But such a concept gives only a de facto description without any intimation of the state's juridical status. From it we cannot tell whether it be a natural society, i.e., one whose specific essence is determined by nature and whose existence is at least morally necessitated;³ or whether it be only a positive, free association whose essence depends upon the free choice of its constituents.

Building upon the foundation laid down by Aristotle when he described man as a political animal, and the state as one of those societies that originated by nature,⁴ the Scholastics unanimously taught the natural necessity of the existence of the state to be deducible from the insufficiency and perfectibility of the individual man. St. Thomas, for example, in the third book of the Contra Gentes says:

Homo est naturaliter animal politicum vel sociale; quod quidem ex hoc apparet quod unus homo non sufficiat sibi, si solus vivat, propterea quod natura in paucis homini praevidit sufficienter, dans ei rationem per quam possit sibi necessaria ad vitam praeparare, sicut cibum, indumenta, et alia hujusmodi, ad quae omnia operanda sufficit non unus homo; unde naturaliter inditum est homini ut in societate vivat.⁵

In his opusculum De Regimine Principum, after repeating much the same line of argument as above, he adds man's speech as a further proof of the point:

Hoc etiam evidentissime declaratur per hoc, quod est proprium hominis locutione uti, per quam unus homo aliis suum conceptum totaliter potest exprimere.⁶

Having revealed man's insufficiency of himself and his desire to associate with his kind, St. Thomas advances a step and shows that these two inherent characteristics necessitate some form of authority to coordinate the activities of the individual with the common good.

Si ergo naturale est homini quod in societate multorum vivat, necesse est in hominibus esse per quod multitudo regatur. Multis enim existentibus hominibus et unoquoque id, quod est sibi congruum, providente, multitudo in diversa dispergeretur, nisi etiam esset aliquis de eo, quod ad bonum multitudinis pertinet, curam habens. ⁷.

Suarez's argument comes to the same, though the point of departure is somewhat different. Starting with the question whether the power to make laws can reside in men (which can be doubted, he says, since man is free by nature and subject only to God), he shows the natural necessity of such a prerogative. ⁸.

But the concept of the state would not be complete unless consideration were given to that most important element, the end of the state. Whether the end of the state be determined by nature or by man is a question that is already answered as soon as one has determined whether the state is a natural or a positive institution. For nature would not have a predetermined end for an institution which is created by man alone; nor, on the other hand, would it demand such an institution without having an end or purpose in view.

Aber da er (der Stadt) eine in der Natur des Menschen nothwendig begründete und vom Urheber derselben gewollte Anstalt ist, so muss er auch, wie alle natürlichen Anstalten, einen von Natur aus bestimmten Zweck haben. ...Gott konnte den

Staat nicht wollen, ohne ihn zu einem bestimmten Zweck zu wollen. Und dieser Zweck muss durch die Natur selbst vorgezeichnet sein, da der Staat eine natürliche Gemeinschaft ist. 9.

This end will naturally be identical for all states as such since all have the same juridical origin and all men (for whom they exist) have the same needs and capacities. Therefore, the doctrine of Montesquieu that states have only one end in common; self preservation, and determine their own particular ends, is inadequate, and grossly mistakes means for ends.

Quoique tous les états ayent en général un même objet, qui est de se maintenir, chaque état en a portant un qui lui est particulier. L'aggrandissement était l'objet de Rome, la guerre celui de Lacédémone... 10.

In addition to being inadequate, however, it altogether misses the point in question, for we are looking for an end proper to the state, an end which distinguishes it from other societies, and not a characteristic which is common to every being.

The true end of the state as understood and explained by the Scholastics seems self-evident, at least in its general aspects. Since man as an individual has God as his personal, final end, which prerogative endows him with duties and corresponding inviolable rights, and since this same man needs the state for the perfect realization of his capacities, it is evident that the state has man for its end -- it is the means ordained by the Author of nature to provide those aids, conveniences, and protection which man, of himself, cannot provide. In other words, the state is for the good of its members:

addo...eius (potestatis civilis) finem esse felicitatem naturalem communitatis humanae perfectae, cuius curam gerit, et singulorum hominum ut sunt membra talis communitatis, ut in ea, scilicet in pace et iustitia vivant, et cum sufficientia bonorum quae ad vitae corporalis conservationem et commoditatem spectant, et cum ea probitate morum quae ad hanc externam pacem et felicitatem rei-publicae, et convenientem humanae naturae conservationem necessaria est. ^{11.}

The exact determination of the state's prerogatives and duties need not detain us here. The point of importance for us is that the state, as described, is a natural institution ordained by the Author of nature to aid man.

By reason of the unity realized in the formation of the state under a legitimate authority, a new moral entity comes into being. Since it is in accordance with God's will, as mirrored in the objective, final order of creation, it must also have by this same will the moral rights necessary to fulfill its functions and obligations, for, according to the scholastic dictum, also conceded by others, natura nil fecit frustra. The state has, therefore, rights sufficient and proportionate to its purposes; and these rights are natural, i.e., valid independently of any positive, free enactment on the part of man.

Now a right, an inviolable moral claim, is a means, and has for its end some personal good.^{12.} Thus each state, as a sovereign moral personality, has rights which similar societies are obliged by the natural law to respect. From such corresponding relationships there originates a natural juridical order among nations. Father Nivard in his Ethica thus proves the existence of a natural juridical order between nations:

Deus necessariò (supposita creatione) vult adesse civitates et relationes inter eas, hinc etiam ea quae relationes istae exigunt.

Atqui istae relationes exigunt inter civitates vigere quaedam jura et officia iam ex lege naturali determinata. Ergo existit ordo juridica inter gentes. 13.

We may take Timothy Brosnahan's list of duties and rights to get some idea of the main features of the juridical order:

The primary duty of a nation toward other nations is to treat them with benevolence, respect, and justice due to an equal sovereign personality. Its primary rights are the rights of self-preservation, of self-development, of independence and self control, of territorial dominion and of voice in matters affecting the community of nations. 14.

Now these rights, being strictly juridical, carry with them coercion, that moral property in virtue of which the subject enjoying them may use physical force to necessitate their respectful recognition by others.

Here, then, we have the moral nature of war: it is the property of a strict moral right conceded by the natural law and is found in each independent state. But the actual exercise of coercion, limited as it already is in the instance of individuals, is even more restricted when there is question of the state. The qualifying conditions, however, will be considered in the following chapter. For the present it will suffice to show that war has always been considered a natural right by the Scholastics. For illustration we will quote St. Thomas, St. Robert Bellarmine, and Suarez.

In article forty of the Secunda Secundae, where he treats of war, St. Thomas says:

Cum autem cura rei publicae comissa sit principibus, ad eos pertinet rem publicam civitatis ... sibi subditae tueri. Et sicut licite defendunt eam materiali gladio contra interiores perturbatores, dum malefactores puniunt, ... ita etiam gladio bellico ad eos pertinet rem publicam ab exterioribus hostibus tueri.¹⁵

He likewise quotes St. Augustine in confirmation to the effect that:

ordo naturalis mortalium accomodatus hoc poscit, ut suscipiendi belli auctoritas atque consilium penes principes sit.¹⁶

Cardinal Bellarmine gives substantially the same reply in answer to an apparent contradiction between the right to wage war and some texts from Scripture. The part pertinent to our question alone is quoted:

... ergo etiam licebit bello atque armis, quando alia via non potest, defendere eosdem suos cives ab hostibus externis: quia ut possint conservari respublicae, necessarium est omnes hostes, tam internos quam externos, arcere possint; et cum hoc sit jus naturae, nullo modo credibile est per evangelium esse sublatum.¹⁷

When, however, we come to Suarez's doctrine on this point, the issue is not so clear at first sight. The question comes up in two distinct treatises; the De Bello and the De Jure Gentium; the first unequivocally says that the right to wage war is granted the supreme ruler by natural law, whereas the second seems to accord the ruler this right only by reason of the Jus Gentium which according to Suarez is positive human law.

Before attempting to reconcile these two statements, let us first note the pertinent passages from the two works. In the Jus Gentium he says:

Idem censeo de jure belli: quatenus fundatur in

potestate quam respublica vel monarchia suprema habet ad puniendam vel vindicandam, aut reparandam iniuriam sibi ab altera illatam, videtur proprie esse de iure gentium. Nam ex vi solius rationis naturalis non erat necessarium ut haec potestas esset in republica offensa: potuissent enim homines instituere alium modum vindictae, vel committere illam potestatem alicui tertio principi, et quasi arbitrio cum potestate coactiva; tamen quia hic modus, qui nunc servatur, facilius est, magisque naturae consentaneus, usu introductus est, et ita iustus, ut non possit illi iure resisti.¹⁸

The passage from the treatise De Bello, on the other hand, runs thus:

Quaestio est de bello aggressivo: nam potestas se defendendi ab iniusto invasore penes omnes datur. Dico primo: supremus princeps qui in temporalibus superiorem non habet, vel respublica quae similem iurisdictionem apud se retinuit, habet iure naturae potestatem legitimam indicendi bellum.¹⁹

The apparent difficulty, I think, can be cleared up by making a distinction between ius absolute spectatum ad bellum and ius alicuius determinati hominis ad bellum. Now the ius absolute spectatum is never denied to be of the natural law, whereas the ius alicuius determinati hominis is said in the first passage to be of the Ius Gentium, in the second, of the Ius Naturale for this reason: war, since there are so many and such grave evils that accompany it, must be avoided as much as possible. Consequently, it can only be resorted to when all other means have failed. Therefore, it can reside with absolute necessity only in the absolutely supreme ruler. Now, in the first passage, Suarez is considering the absolute necessity of such a right in the individual rulers of perfect states, while at the same time pre-

scinding from the actual organization of nations. From this point of view the individual ruler does not necessarily enjoy it, for, as he mentions, the right could have been entrusted to an arbitrator with coercive power. In that case the ius absolute spectatum, had from the natural law, would have been so restricted as to reside only in the arbitrator and not in the heads of the individual states. For the arbitrator would be, by this arrangement, the only supreme ruler among the three rulers in question, whereas the other two rulers would be supreme only secundum quid and would have in the arbitrator a superior to whom they could appeal. Consequently, their jurisdiction would no longer be supreme nor could they declare war legitimately. Since, however, custom, so to speak, decreed against the establishment of such an arbitrator, it thereby necessarily invested the individual heads of state with the right. Thus considered, the right of individual rulers has been determined by Ius Gentium.

In the second passage, however, in which the right to war is said to reside in the individual ruler by natural law, Suarez does not consider who enjoys the right by absolute necessity, but rather who enjoys it by de facto necessity. That is, he now prescind from the abstract possibility of another arrangement of states and only views the natural right to war under existing circumstances and finds that it resides necessarily in each individual ruler; and, since necessarily, by the natural law. The reason it resides necessarily in the individual ruler when thus considered is because de facto such a ruler has then no

superior to whom he may appeal; every avenue that might preclude war is thus closed and he must vindicate his own rights.

This attempt at reconciliation seems to be borne out when we consider that only a ruler who has no superior in temporal affairs can legitimately exercise what I have termed the ius absolute spectatum. For in Section 4, n.5, of the De Bello he says:

Haec autem potestas non est in aliquo superiore, quia nullum habent, ut ponimus.²⁰ (italics added.)

This seems to indicate that here he is not considering the absolute possibility of another arrangement, but the actual condition confronting him in his day as it does us in ours. And so he can consistently continue:

Ergo necesse est, ut sit (haec potestas) in supremo principe reipublicae laesae.²¹

From the above analysis it is evident that war is not "the outcome of the growth of societies,"²² as the Encyclopedia Britannica is pleased to consider it in accordance with its avowed evolutionary outlook. War may de facto have been occasioned by such phenomena, but such a view is purely historical and gives no insight into war's juridical nature. Neither is war "the blood and iron cure for weakness and idleness,"²³ as Father Stratmann expresses the theory propounded before the World War.

In examining the nature of war we have already to a great extent, at least implicitly, seen its true end or purpose. It is evidently not intended as a means to secure empire, to subjugate other independent states, or to maintain an arbitrary, and

frequently imposed, status quo; neither is it intended as a safety valve when domestic conditions threaten internal trouble. War undertaken with such ends in view is branded by St. Augustine as brigandry on a large scale:

Inferre autem bellum finitimis, et inde in caetera procedere, ac populos sibi non molestos sola regni cupiditas conterere et subdere, quid aliud quam grande latrocinium nominandum est?²⁴

The reason for condemning wars undertaken for such purposes is clear in view of war's nature: coercion. It is intended as the last effective means of guarding actually possessed moral rights or regaining the matter of such rights which in the given instances are altogether lacking.

Suarez uses this fact as a norm according to which one can determine the demands licit after victory:

Post partam victoriam, licitum est principi ea damna inferre reipublicae victae, quae sufficiunt ad iustam vindictam, et satisfactionem et restitutionem omnium damnorum. Conclusio (haec) est communis, et certa, ... quia hic est finis belli...²⁵

For the most part, however, the Scholastics, beginning from St. Augustine, use the term peace when speaking of the end or purpose of war. But this really says the same thing, though it includes at the same time all those social benefits and conditions for whose preservation and maintenance rights were accorded to states. Suarez, in fact, even describes war as a "quasi via ad pacem."²⁶ And in another place he goes so far as to say that peace is the chief end of war. But it is to be observed that it is to preserve and foster peace, an impossible feat unless rights are respected; peace can only be real when based on justice...

pax opus iustitiae:

Denique potest peti (a republica victa) iuste quidquid in futurum necessarium videtur ad conservandam pacem, atque etiam tuendam, quia hic est finis praecipuus belli, pacem statuere in futurum.²⁷

That the Scholastics, one and all, mean a true, genuine peace based on justice and not on impotence is evident from the general trend of their thought. Thus Cardinal Bellarmine, proposing to himself the difficulty that war, rather than bring peace, violates it says:

Bellum sic paci opponitur, ut sit etiam medium ad pacem, sed hoc interesse inter bellum justum et injustum, quod bellum injustum opponitur paci bonae, et ducit ad pacem malam, et ideo tale bellum vitiosum est: at bellum justum opponitur paci malae, et ducit ad pacem bonam.²⁸

From the nature of war, then, as the property of coercion inherent in the natural moral right granted by God to safeguard the social relationships between sovereign nations, we have seen that its purpose is to preclude the unscrupulous from flouting inviolable moral rights. Paradoxically enough, God has thus provided that might shall not be right, by ordaining that right may use might to second its claim. A prerogative fraught with so many tempting possibilities of abuse, however, must be hedged in by conditions and restrictions. These, therefore, will be considered in the following chapter.

NOTES TO CHAPTER I

1. Nivard, Marcellus, S.J., Ethica. P. 319.
2. Donat, J., S.J., Ethica Specialis. p. 122.
3. Ibid., p. 87.
4. Aristotle, Politics. I. 2,6.1253.
5. St. Thomas, Contra Gentes. Bk. III, c. 85.
6. St. Thomas, De Regimine Principum. Bk. I, c.1.
7. Ibid.
8. Suarez, Francis, S.J., V, De Legibus. Bk. III, c.1.
9. Cathrein, Victor, S.J., Moralphilosophie. 5th ed., II, p.507.
10. Montesquieu, Esprit des Lois, Bk. II, c.5., (as quoted by Cathrein, op. cit., vol. II, p. 507.)
11. Suarez, Francis, S.J., De Legibus. Bk. III, c.11, n.7.
12. Leibell, J.F., Readings in Ethics, p. 405.
13. Nivard, Marcellus, S.J., op. cit., p. 405.
14. Brosnahan, Timothy, Digests of Lectures on Ethics. (as edited by J.F. Leibell in Readings in Ethics,) p. 1016.
15. St. Thomas, Summa Theologica. II IIae, 2. 40, a.1.
16. St. Augustine, Contra Faustum. Lib., XXII, c.75.
17. Cardinal Bellarmine, De Laicis. Lib. III, c.XIV.
18. Suarez, Francis, S.J., op. cit., Bk. II, c.19, n.8.
19. Suarez, Francis, S.J., XII, Tract. III, De Charitate, Disp. XIII, De Bello. S.2, n.1.
20. Ibid., S.4., n.5.
21. Ibid.
22. Encyclopedia Britannica. (XIV ed.) XXIII. "War." p. 321.

23. Stratmann, Franziskus, O.P., Church and War. p. 52.
24. St. Augustine, De Civitate Dei. Lib. IV, c.6.
25. Suarez, Francis, S.J., op. cit., S.7. n.7.
26. Ibid. S.7. n.20.
27. Ibid. S.7. n.5.
28. Cardinal Bellarmine, op. cit., Lib. III, c. XIV ad finem.

CHAPTER II
CONDITIONS FOR A JUST WAR

In the last chapter we saw that war, considered ethically, is a species of coercion whose licitness is bound up in the fact that it alone is able at times to induce necessary respect for moral rights. War is, therefore, no end in itself nor is its existence justified by the physical fact of its occurrence; it is the means to an end. In order that an act be morally just, not only must its end be good, but the means employed must be at least indifferent. But the means of proper coercion between nations, war, is, physically considered and in general, force; this latter is held to be indifferent in itself. It derives its morality from the end for which it is employed.

In as far, then, as war, physically viewed, must at least be morally indifferent, in so far as its lawfulness is a matter of primary importance; consequently we must read cautiously such a phrase as:

It is clear that its (war's) own lawfulness is not the first consideration; it is only the means to an end.¹

Viewed in its immediate context, this statement of Father Stratmann evidently does not intend to affirm that the end of war, "the preservation or restoration of justice,"² condones the use of an evil means. In fact he explicitly condemns that principle elsewhere. And yet, when dealing later on with the wars of the Old Testament he seems to concede to God the

prerogative of so acting. Such ambiguity might unwittingly occasion a misunderstanding not only of the particular problem to which he applies it, but to his views of end and means in general.

Immediately after affirming that "God cannot approve of anything immoral even to gain the most holy ends,"³ he continues:

It is possible that something in itself wrong may be ordered by God for some special object, and in that way become right. For instance a child killed by its father.⁴

He evidently means that God as Author of life and supreme Lord of his creatures may licitly command the death of an innocent child by its father for a good reason. But with those qualifications added the slaying is no longer an act which comes under the prohibition of the law. In other words, God can, in virtue of being the supreme Guardian of the moral order and because of His supreme dominion over his creation, so affect the circumstances of an act that it is no longer wrong in itself.

The reason for bringing up this case is that the same author leaves open for misinterpretation a similar statement concerning the question of war. He says:

That war is an evil, almost everyone, certainly every Christian, must allow, but the majority considers it a necessary evil, to be borne as something that cannot be avoided. 5

Here again the ambiguity consequent on using the word 'evil' as a modifier of war might lead to the misunderstanding that evil may be permitted if good comes out of it; for later on the author defends the use of such an 'evil' means as "allowable by

natural law."⁶ It were safer, then, to avoid saying that war's lawfulness is not the first consideration, and insist that it must at least be morally indifferent.

But even after attempting to free war as such from evils intrinsic to it, we must admit that evils, both physical and moral, do follow it. These evils alone would be reason enough for hedging the declaration of a just war around with conditions. Suarez also makes mention of these evils as a reason for demanding numerous conditions before war can be justified:

Ratio vero conclusionis generalis est, quia licet bellum per se non sit malum, tamen propter multa incommoda quae secum affert, ex iis negotiis est quae saepe male fiunt. Et ideo etiam multis indiget circumstantiis ut honestetur."⁷

In addition to this, all rights, but particularly the right of coercion, have limitations arising especially from the purpose for which the rights were conferred.

Thus a treatment of the conditions sine qua non for the legitimate use of the right to wage war is not a procedure peculiar to war, though it has, perhaps, received more lengthy consideration by the Scholastics than the circumstances which condition other rights. For the purposes of this chapter we will consult Suarez in particular. In him we have at once a commentator on St. Thomas' principles as well as a philosopher's presentation and development of the practical conclusions arrived at by some of his contemporaries in answer to the questions raised by Spain's relationships to the New World.

In addition to examining these conditions as laid down by Suarez for his day, an attempt will be made to supplement them in the light of modern circumstances and also to review the expressions of some modern Catholic writers on these conditions.

The first condition, mentioned as a requisite from the time of St. Augustine, is that war be undertaken only on the initiative of the supreme authority.

Ordo naturalis hoc pascit, ut suscipiendi belli auctoritas atque consilium penes principes sit.⁸

Suarez in his turn requires fulfillment of this same condition, giving the following reasons:

Ratio est, primo, quia hoc bellum (aggressivum), ut ostendimus, interdum licet jure naturae; ergo oportet potestatem illud indicendi esse apud aliquem; ergo maxime apud habentem supremam potestatem; nam ad eum maxime spectat tueri rem publicam, imperareque inferioribus principibus. Secundo, quia potestas indicendi bellum est quaedam potestas jurisdictionis...⁹

This first condition offered considerable difficulty in the days when small states were neither wholly dependent nor wholly independent. For the most part such conditions do not prevail today.

And yet an analogous situation may well arise, and has, according to some, already arisen because of the establishment of international tribunals. H. A. Jules-Bois, for example, in an article entitled, "St. Thomas on War," written as late as 1936, says:

Since war has unanimously been placed outside the law, the various peoples and their leaders have no

longer the right legally to embark on an armed aggression, one against the other."¹⁰

So, too, does Donald Attwater maintain that:

If a country binds itself, for example, by the covenant of the League of Nations or the Kellogg-Briand pact, to seek and accept arbitration, machinery for such arbitration being available and then refuses to seek or accept it, that country stands self-condemned."¹¹

The instrument by means of which this restriction was accomplished is said by him to have been the Kellogg-Briand pact to outlaw war. That the nations of the world can and perhaps should cede their right to war in some such manner is true, but that the Kellogg-Briand pact was understood thus by its signatories is hardly a likely conclusion; to maintain such an opinion today in the face of its utter impotence would almost be foolhardy. Concerning the Kellogg-Briand pact Carlton Hayes says in his Modern History:

...and with a great flourish was signed at Paris in August, 1928; the so-called Kellogg-Briand pact. Being but a pious declaration, it was speedily adhered to by almost every nation. What it really amounted to was indicated by the ironic fact that its ratification by the 'United States' Senate was accompanied by the enactment of a bill materially increasing the strength of the American navy.¹²

And the pact carried the name of two Americans! Surely not one of the signatory nations thought itself reduced to the equivalent of a "persona privata" which could not declare war "quia potest jus suum in judicio superioris (i.e., the League and the Hague Tribunal) prosequi."¹³

There is no intention here of calling into question the truth and cogency of the principle underlying Attwater's statement. The only point at issue is that the signatories apparently never understood the contracts in their literal sense. Or, if they did, subsequent developments showed that the League could or would not insure satisfaction with the result that now, for all practical purposes, each nation must again act on its own initiative.

As a consequence, the legislative head of each independent state must still be reckoned the legitimate authority wherein resides the power to declare war. Nor is any other international tribunal likely to supersede the present arrangement until there exists among its sanctions the ultimate weapon of coercion as Pope Benedict XV clearly had provided for in his peace proposals.

The next condition required is the just cause. Owing to the number of problems which can arise under this head, it will be better here to mention only some of the general characteristics of the just cause and leave further treatment to a later chapter.

In general we may say with Vittoria that "there is but one just cause of war, the violation of a right."¹⁴ This seems to be self-evident when we recall the purpose of coercion as it is understood in Ethics. Whether this violation must be a fait accompli or only an imminent threat will be discussed in the following chapter. For the present it is sufficiently clear that a right, a perfect right involving in others an obligation in

justice of deference thereto, must be at stake; for coaction, war, in this instance, is a subsidiary complement of such rights to guarantee their inviolability.

Any such consideration, then, as ambition for empire, an increase of prestige, or maintenance of a balance of power (probably imposed by arms) is an illegitimate and nugatory title to war. First of all no one of these is a legitimate right, and secondly, they almost always will entail the violation of a strict right enjoyed by another.

Neither can untoward internal conditions be rated a cause of war; even if they were to threaten a revolution which could be avoided by diverting attention and energy to foreign enterprise. Here again, there is no right at stake but instead a duty to respect others' rights.

Suarez lists four reasons for requiring a just cause (the violation of a right) as a condition for a legitimate war:

Ratio est prima, quia ideo bellum licet, ut respublica possit se indemnem tueri, alias contra bonum generis humani vergit, propter caedes, ac damna fortunarum, etc.; ergo si ea causa cesset, cessabit quoque belli justitia. Secundo: in bello spoliantur homines propriis bonis, libertate et vita; et haec facere sine justa causa est prorsus iniquum... Tertio, bellum, de quo agimus, praecipue aggressivum est, et saepe inducitur contra non subditos; unde necesse est ut intercedat eorum culpa, ratione cujus efficiantur subditi; alioquin quo titulo essent digni poena, aut subessent alienae jurisdictioni? Tandem si illi tituli, seu fines ad quos gentilitas respiciebat (ambitio, videlicet, cupiditas, atque etiam inanis gloria...) essent liciti et sufficientes, unaquaqueque respublica posset ad illas aspirare; ergo esset bellum ex utraque parte justum per se, et sine ignorantia; quod est absurdissimum; duo enim contraria jura non possunt esse justa."15

Of these, the first and third view war specifically as an ethical act of coercion which must have justifying reasons since the enemy state considered in itself also has a right to independence and peace. Its claim to respect can only be forfeited by a violation on its part of another state's rights. The last reason is teleological, based on an ordered and hierarchical scheme of values in which there can be no genuine, objective conflict between the rights of two parties. Either the one has no right over the other, or the right of one is subordinate and must be ceded in virtue of a higher right in another. The second reason has regard for the physical evils of war which, when inflicted unnecessarily, are imputable to their perpetrators.

Causes which have traditionally been honored as just and sufficient to warrant defense by war are listed by Suarez under three heads: the seizure of territory, refusal to concede international rights, serious damage to a nation's honor:

Secundo advertendum est varia esse injuriarum genera pro justis belli causa, quae ad tria capita revocantur. Unum, si princeps res alterius occupet ac nolit restituere. Alterum, si neget communia jura gentium sine rationabili causa, ut transitum viarum, commune commercium, etc. Tertio gravis laesio in fama vel honore." 16

Aggression, given as the first just cause, certainly is a violation of a perfect right, for it strikes at the very existence of the state. In the second case, Suarez is adverting to the juridical order that exists between nations as such; each sovereign nation as a coordinate unit in the family of nations

has rights before the other nations of the world which cannot be ignored without reasonable grounds. These rights, called by him the ordinary rights conferred by the Jus Gentium, are in reality, as explained in his elaboration of the Jus Gentium, those which are conferred by the natural law and which, he says, belong to Jus Gentium in the most proper sense of that word.¹⁷

The third sufficient reason mentioned, the deep wounding of national honor or good name, presents its own peculiar difficulty. Of course, if by such a wounding is meant the natural result of having violated some other right, there is no difficulty; but then it seems no new category of justifying causes but merely a subordinate item under his first class of causes. If, on the other hand, he means such an action to suffice ratione sui, war seems hardly to be an apt means of repairing the injury. For, as in the case of the duel, war is unable to restore honor or good name. Besides, such a cause could too easily be claimed by both sides and would be open to abuse as the Catholic Association for International Peace points out in its pamphlet on the Ethics of War:

National honor, though ordinarily included among rights sufficiently weighty to justify war if violated, is a much abused term. It is intangible and to a great extent purely subjective. Hence, it is an illusory element with which to deal. In the past it has frequently played the marked role of a handy pretext for war at the bidding of scheming politicians. It is difficult to see how its violation, without the concurrence of other circumstances, can justify war."¹⁸

Though honor and good name are not at all purely subjective creations of themselves, it is true that they can be

manipulated as if they were by those with ulterior ends in view. Still the real difficulty against such a cause is the seeming ineffectiveness of war to restore honor and good name. Nations do need these to fulfil their duties toward their citizens among the other nations of the world; but how war can secure them is not clear. For all practical purposes, however, we can say that their violation will always be accompanied, if not caused, by the violation of a strict right.

Even granting the presence of a just cause for war and its declaration by legitimate authority, there still remains the question of intention. With what intent does the injured party undertake the war? If anything evil be intended, naturally the morality of the entire war will be affected. Examples of evil intent are given by St. Augustine in his work Contra Faustum:

Nocendi cupiditas, ulciscendi crudelitas, impacatus atque implacabilis animus, feritas rebellandi, libido dominandi, et si qua similia, haec sunt quae in bellis jure culpantur.¹⁹

It is evident that if such intentions animate the aggrieved party, they are only using their just cause as a means to a bad end.

To the list of Augustine, St. Robert Bellarmine adds increase of empire, or any cause other than the common good.²⁰ St. Thomas and Suarez likewise demand as a requisite for a just war a right intention, that is, "qua scilicet intenditur vel ut bonum promoveatur, vel ut malum vitetur."²¹

When Father Vann comes to comment on this passage, he

translates vel by and, thus making it necessary for good to be promoted in a direct and positive sense.

A nation resorting to war must, St. Thomas tells us, have an intentio recta, a right intention in so doing, "i.e. that good be promoted and evil avoided." It may be noted that the phrase recta intentio does not mean, according to St. Thomas, merely the presence of good motives and the absence of evil. There is question, in other words, not only of the motive behind the war, but also of the outcome of the war.²²

Good must certainly somehow be promoted, but to demand that this good be over and above the suppression of evil — really only indirectly a good, seems to ask more than the text warrants and more than is ever requisite for the legitimate use of coercion.

He is likewise inclined to interpret the phrase recta intentio so that it will include much more than intention. Despite his notation that the phrase meant more to St. Thomas than the presence of good and the absence of evil motives, there is no indication whatever in the text itself to justify such a remark. Not that the outcome of the war — the good or evil — may be left out of consideration; they may not; but they do not enter into the intention. They are rather questions arising under the head of the proportion between the evil of a right's violation — the cause of war — and the evils likely to ensue if such a violation is vindicated by war.

Cardinal Bellarmine has a special note concerning the right intention which might at first sight seem to make the presence or absence of this condition accidental to the justice of the war. In the De Laicis he writes:

Secundo notandum, differre hanc tertiam conditionem a duabus primis, quod illae si desint, faciunt bellum esse injustum, haec vero si desit, facit bellum esse malum, sed non injustum proprie. Qui enim sine auctoritate vel sine justa causa bellum movet, non solum contra charitatem, sed etiam contra justitiam peccat, et non tam est miles, quam latro: qui vero auctoritatem et justam causam habet, et tamen amore vindictae vel augendi imperii, vel propter alium finem malum bellat, non agit contra justitiam, sed solum contra charitatem, nec est latro, sed malus miles.²³

In the passage he surely does not mean to exclude the right intention from among the requisites for a just war. He is merely taking just and unjust in their strict sense, i.e., pertaining strictly to the virtue of justice which inclines one to give each his due. Thus, the right intention is not against justice. Ordinarily, however, when the scholastics speak of a just or unjust war they mean moral or immoral; and in this sense Cardinal Bellarmine also holds that a war undertaken with an evil motive is unjust. His reason for making the distinction here is because of the question of restitution which arises. An unjust war in the strict sense of the word binds the unjust belligerent to restitution; a just but evilly motivated war would not.

Taking intention in a somewhat wider sense so as to include what a nation intends to demand as restitution or reparation, it seems that the aggrieved nation ought to make public its demands at the outset of the war. This procedure would have several distinct advantages. It would, first of all, serve as a check to later exorbitant and unjust burdens since at the outset of war hatred for the enemy and the urge to crush him would not be

so untractable. Moreover, in the event of an easy victory, the victor could not so easily impose such burdens owing to the world's knowledge of what had at the outset been intended. Such an expression of intention might likewise be conducive to confidence and compromise before the war forced them by utterly exhausting the combatants. And, finally, such a declaration would give to the people of the nation some criterion to judge both their own stand and the attitude of the enemy, besides letting them know exactly why the war was being fought.

Besides the three conditions mentioned above, Suarez and Cardinal Bellarmine fully develop a fourth - the debitus modus. Under this head St. Thomas examined only one specific problem, that of the use of subterfuge. Since his time, however, this condition has presented more and greater problems than any other to most Catholic writers. Father Keating, S.J., for example, says:

One of the strongest arguments against war is that it necessitates a systematic spreading of falsehood in order to circumvent the enemy. The enemy must be painted absolutely black and accused of every imaginable cruelty, as a monster outside the pale of human consideration. If this is not done, the hateful work of killing and being killed would be impossible. ²⁴
(italics added)

If these and other evil means were really necessary, there could be no doubt about a just war being a moral impossibility; but as was noted in the introductory remarks there is no reason which absolutely necessitates the employment of such means. The fact that such means have been, are being, and probably will be used again does not make it impossible for a state to carry on a

war without resorting to them: abusus non tollit usus.

It is difficult, therefore, to see how Donald Attwater, after enumerating six evils, among which propaganda is included, can say:

Yet if only a single one of these six points (there are probably others) is true, that alone is enough to make war under modern conditions unjustifiable for either side (sic), whether aggressor or attacked; and the nation that resorts to war is using an immoral means, for however worthy an end.²⁵

No doubt the circumstances of modern warfare do raise difficulties on this score. But as this thesis is not meant to discuss the problems arising from this condition in detail, it will only give the received doctrine with some general observations.

First of all it is evident that no set of circumstances whatever can give any one licence to do what is intrinsically evil. This Suarez states as the one limit even in case of war:

Post inchoatum bellum, toto tempore ante partam victoriam, justum est inferre hostibus omnia damna, quae vel ad satisfactionem, vel ad comparandam victoriam necessaria videbuntur, dummodo non contineant intrinsecam injuriam innocentum intrinsece malam.²⁶

This restriction in a particularized form is of considerable importance now, since it is closely bound up with one of the evils frequently attributed to either side by the other and is said by some writers to be a necessary phase of war today. It is firstly the question of bombing "open towns" and "strafing" refugee columns with aircraft machine gun fire. Neither of these is permissible because intrinsically evil, if the columns are really refugees and the "open towns" open. Over and above this,

even though one side resorts to such means, the other side could not retaliate in kind; no circumstance permits intrinsic evil. If, however, the violation were a point of positive law, the opposite side would be free to use reprisals.

The second intrinsically evil means forbidden by both St. Thomas and Suarez is mendacity. Suarez briefly answers the question, "an liceat uti insidiis in bello?" as posed by St. Thomas:

Respondendum licere, occultando prudenter consilium, non tamen mentiendo.²⁷

The doctrine is simple and universal among the Scholastics; its application, however, is difficult. The excerpt from Father Keating's article earlier in this chapter expresses his opinion unequivocally and there are not a few who are inclined to agree with him. Propaganda certainly has its black side, but that a just cause must use outright falsehood to be effective seems to be equivalent to denying free will in the originators of propaganda or branding the common people who "must" be so deceived as altogether without spirit.

The second large aspect concerning means that must be mentioned is that they ought to be not in excess of what is necessary to gain their end. This is applicable not only to war, but is a condition imposed on the exercise of coercion in any sphere. It applies as well to single incidents, such as person to person combats, detached battles, as well as to the war as a whole. This restraint is called by the Scholastics, moderamen inculpatae tutelae. Thus, for example, to kill with the inten-

tion of killing is not necessary in any event; it suffices even in the worst conditions to incapacitate the enemy for further aggression.

A third major consideration under the head of means is the use of a good or indifferent means which will have a double effect, one good, from a military point of view, the other morally evil if considered in itself, such as for example, the death of non-combatants. Here again, as in the previous instance, the answer is not peculiar to war alone, but is common to all similar predicaments. Such a means must not be used if the evil effect is a means to the achievement of the licit end, or if there is no sufficiently grave reason for permitting the evil effect.

Over and above the four mentioned conditions, Suarez discusses a fifth which was exacted by Cajetan. Arguing from the principle that a ruler could not undertake a war which he clearly saw would bring greater harm than good to his people, he concluded that before war could be undertaken the ruler must be morally certain of victory. Suarez, on his part, though conceding the principle finds it hard to demand moral certitude. For an offensive war he requires, as a minimum, even chances; for a defensive war he thinks that war can licitly be attempted with less than an even chance because of the straits in which such aggression places a nation.

Sed haec condicio non videtur mihi simpliciter necessaria; primo quia humano modo est fere impossibilis.

Secundo, quia saepe interest ad commune bonum reipublicae non expectare tantam certitudinem, sed tentare potius, etiam cum aliquo dubio, an coerceri hostes possint. Tertio, quoniam alias nunquam liceret regi minus potenti indicere bellum contra potentio-rem, quia illam certitudinem, quam Cajetanus requirit, assequi non potest. Quapropter dicendum est, teneri quidem principem ad procurandam maximam certitudinem, quam possit, victoriae; debet item conferre spem victoriae cum periculo damnorum, atque si omnibus pensatis spes praevaleat. Si vero nequit tantam certitudinem assequi, oportet saltem ut habeat probabiliorem spem, aut aequae dubiam, juxta necessitatem reipublicae et boni communis. Quod si minor sit probabilitas de spe, et bellum sit aggressivum, fere semper est vitandum; si defensivum, tentandum; quia hoc necessitatis; illud est voluntatis. 28

The Ethics Committee of the Catholic Association for International Peace likewise sees the practical impossibility of fulfilling such a condition, and concludes it to be "sufficient that the government should have solid reasons, proportionate to the evil alternative of defeat, for expecting victory." 29

The verification of the conditions enumerated above are, the last excepted, essential prerequisites before a state is justified in resorting to war. In the absence of the first or second condition the ensuing war is wholly a violation of justice. Failure to conduct it according to the demands of the third or fourth condition lays the state open to the guilt of prosecuting a good end with an evil intention or through recourse to evil means. In the latter case the violation is one of strict justice; in the other instances it is against some other virtue. The first will vitiate the entire contest morally; the second that part which is influenced by the illicit element according to the norm suggested in the introductory remarks.

Notes to Chapter II

1. Stratmann, Franziskus, O.P., The Church and War, p. 53.
2. Ibid., p. 53.
3. Ibid., p. 81.
4. Ibid., p. 81.
5. Ibid., p. 47.
6. Ibid., p. 53.
7. Suarez, Francis, S.J., XII, Tract. III, De Charitate, Disp. XIII, De Bello. S.I, n. 7.
8. St. Augustine, Contra Faustum, L. XXII, c. 75 in primo.
9. Suarez, Francis, S.J., op. cit. S. III, n.l.
10. Jules-Bois, H.A., "St. Thomas on War," Commonweal, 25: p.43, Nov. 6, 1936.
11. Attwater, Donald, "This War Business," The Catholic World, 145: p. 12, April, 1937.
12. St. Thomas, Summa Theologica. II IIae. Q. 40, a.1.
13. Hayes, Carlton, Political and Cultural History of Europe. II, p. 1034.
14. Vittoria, Francis, De Jure Belli. XIII, (as quoted by Plater in Primer of Peace and War. p. 219).
15. Suarez, Francis, S.J., op. cit., S. 4. Nl.
16. Suarez, Francis, S.J., op. cit., S. 4, N. 3.
17. Suarez, Francis, S.J., De Legibus, Bk. II, C. XIX, n. 8-9.
18. Emanuel, Cyprian, O.F.M., Ethics of War. p. 23, note 12.
19. St. Augustine, Contra Faustum, L. XXII, n. 74.
20. Bellarmine, De Laicis, L. III, c. 15.
21. St. Thomas, Summa Theologica. II IIae. 2, 40, a.1.

22. Vann, Gerald, "War, a Dilemma." Commonweal, 29: p. 174, Dec. 9, 1938.
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24. Keating, Joseph, S.J., "Of Peace when there is no Peace." Month, February, 1922.
25. Attwater, Donald, "This War Business." Catholic World, 145: p. 12, April, 1937.
26. Suarez, Francis, S.J., XII, Tract. III, De Charitate, Disp. XIII, De Bello, V, S. 7, n.6.
27. Suarez, Francis, S.J., op. cit., S. 7, n. 23.
28. Suarez, Francis, S.J., op. cit., S. 4, n. 10.
29. Emanuel, Cyprian, O.F.M., op. cit., p. 31.

PART TWO
SOME PROBLEMS OF WAR

Besides the traditional doctrine as viewed in its general outlines, there are numerous other questions which come up for consideration under each item, and this without any special attention paid to problems immediately concerned with war today.

In the second part of this thesis, some attempt will be made to discuss first of all the types of war and their licitness. Quite frequently authors state that the only war, if any, that can be justified, is defensive: we will discuss that statement as well as pay some attention to the type of war known as punitive.

The other topic selected for this second part is the just cause and its implications. This condition, on analysis, seems to offer more difficulties today than does even the thorny question of means.

Complete and minute solutions for even the few questions raised is hardly attempted. In fact, the only contribution on some scores is negative and serves only to disclose what seem to be false deductions made in the pursuit of a good end: the desire to avert war as a means of settling disputes and clashes in the field of international rights.

CHAPTER III

TYPES OF WAR

After having analyzed the nature and end of war, and the conditions necessarily observed for it to be just, we must, because of contemporary confusion and open disagreement on the matter, consider the various types or kinds of war.

All Catholic philosophers, as we have seen, admit that the right to wage war is a right conferred by the natural law on independent and sovereign states. This thesis, however, is said by some to refer to war in the abstract only, whereas the actual exercise of this natural right may become impossible under certain circumstances because of other considerations. Those who hold this view will usually restrict even this abstract right to defensive war only.

Others admit the above thesis and add that the right to declare an offensive (or aggressive) war is likewise included among the rights of a nation and that both of these types can still be licitly engaged in under modern circumstances.

Over the third type of war, the punitive war, there is even a greater difference of opinion. Some maintain that the right to undertake such a war is altogether outside the jurisdiction of any state; others again vindicate the inclusion of the right to wage such a war under a state's natural rights, though all recent writers admit that great abuses have been committed in its exercise.

In the present chapter we will examine the basis of the divergent views about defensive and offensive war, and try to come to some conclusions on the matter of punitive war.

The disagreement concerning defensive and offensive (or aggressive) war is largely a matter of definition. Beginning apparently with Father Charles Plater, S.J., the definition for an offensive war became a war which "would always connote absence of provocation or justification."¹ Or, as it is phrased by Father Cronin, it is

a war that presupposes no injury, and, in particular, a war undertaken merely in order to injure or destroy a State, or for purposes of enrichment at the expense of another State.²

This definition is likewise espoused by the Ethics Committee of the Catholic Association for International Peace, and by those writers who decry all but defensive wars. Father Stratmann in his book, The Church and War, admits that "theoretically this kind of war can also be justified."³

From this admission it is evident that he does not altogether subscribe to the previous definitions. Nor yet does he understand it exactly as do Suarez and those who distinguish defensive and offensive wars according to a different norm than the foregoing, as we shall see below. He seems, rather, to include under offensive warfare or aggressive warfare, as he calls it, punitive war as well. This seems evident from the following words which are the clearest expression of his con-

cept of offensive war:

So long as there is no supernational tribunal with international powers of punishment there will be no atonement unless the aggrieved State defends itself and calls the aggressor to account. This happens when the war is carried into the aggressor's country and the aggrieved party takes the law into its own hands, in default of an arbitrator, and gets satisfaction. This since the time of Augustine, has been the tradition of the Catholic Church with regard to the justification of an aggressive war.⁴

No attempt is made to ascribe any intrinsic merit to one definition as against another; but one or the other must be determined on; and the definitions of others must be explained lest there arise misunderstandings with no real foundation in fact.

Suarez defines these two types by distinguishing between the prevention of a violation while it is being attempted, and the vindication of a right already violated.

Quocirca notandum est, an injuria sit in fieri moraliter, an facta jam sit et per bellum satisfactio intendatur. Quando se habet hoc secundo modo, bellum est aggressivum: primo modo habet rationem defensionis, dummodo fiat cum moderamine inculpatae tutelae.⁵

The distinction between these two types, let it be noted, rests on the proximity of a violation of right and its vindication and not on the wholly extrinsic and accidental consideration of who first takes up arms as it does in de Vattel's definition:

Celui qui prend les armes pour repousser un ennemi qui l'attaque, fait une guerre défensive. Celui qui prend les armes le premier et attaque une nation, qui vivait en paix avec lui, fait une guerre offensive.⁶

According to this definition one could not even maintain the licitness of a "defensive" war until after having ascertained whether the defence was a just one or not.

Suarez immediately makes it explicit just what he means by in fieri moraliter as it is used in his definition.

Existimatur autem injuria esse in fieri quando vel revera ipsa actio injuriosa est in fieri, physice etiam loquendo, ut quando homo non est omnino dejectus a possessionis suae jure; vel dejectus quidem est tamen in continenti, id est, sine notabili mora, procurat se tueri ac restituere.⁷

These, then, are the definitions which will be understood in this thesis whenever there is mention made of either defensive or offensive war. The reason for this is that all the classic writers on the subject thus define them. Suarez, in fact, after giving his definitions, says: "ita exponunt communiter Doctores."⁸ Grotius, in his classic, and after him Saint Alphonsus Ligouri, did not change them. Nor have more recent writers among whom may be noted Fathers Cathrein, S.J., Donat, S.J., and Nivard, S.J.

Now we may examine the definition of those who maintain that only a "defensive" war can be just. A fairly recent and perhaps the most comprehensive one is given by the Ethics Committee. It is

a war undertaken in defense of the people or in defense of, or for the recovery of, the territory or property of the State.⁹

On examination it is evident that such a defensive war includes at least as much as both defensive and offensive do

according to Suarez's definitions. In fact we shall see later that when its framers come to interpret their definition it really rolls up into one all three types of war.

With these points noted about the definitions, there is considerably less trouble in discussing the question of licitness so far as this depends on the type of war. For, de facto, all agree that both defensive and offensive as understood by Suarez are in themselves licit. And, on the other hand, those who use his definitions will agree that "offensive war" when defined as "a war initiated without just and sufficient cause"¹⁰ must in all instances be branded as illicit.

The reason for this unanimous opinion, as developed in Chapter one, is that the right to wage such wars is conceded to the individual states by the natural law to enable them to realize their end. So far, then, as these two types of war are concerned, there remains but one question to settle: granted their lawfulness theoretically (or in the abstract), can they be undertaken under modern circumstances? But this question no longer has anything to do with the type of war, and, in so far as it pertains to this thesis, is treated elsewhere.

This brings us to the third kind of war commonly distinguished as punitive war, or, as some term it, vindictive war; it is also at times referred to as a war of retaliation. Since there are difficulties about the licitness of such a war even when it is considered abstractly, we will first of all give an exposition of the doctrine of Suarez pertaining to punitive war

and then examine the objections brought against it by the Ethics Committee which, in reality, merely reasserts the objections of Father Cronin. After this we will offer some suggestions pertaining to the exercise under present day circumstances of this right to punish offending nations.

Before entering upon Suarez's doctrine proper it is to be noted that he himself nowhere speaks of punitive war as such; administration of punishment is viewed by him as a just cause for war. Even when he does not speak of it as divorced from the questions of restoring a violated right and demanding restitution for the damages suffered in war. The punitive action of one state always presupposes injury by another; and concerning this injury, this violation of rights, Suarez asks two questions. Can the injured party demand restitution and indemnity? This is no more than commutative justice and he observes that there is no difficulty on that score.

The second question is: can the offending State be punished? This question, he admits, has its difficulties.

...advertendum (est), circa injuriam illatam duo posse contendere. Primum est, ut restituantur personae offensae damna illata; hac vero de causa nulla est difficultas, posse licite indici bellum. ...Alterum est, ut qui offenderit, debita poena puniatur, in quo sita est difficultas.¹¹

Thus the question for Suarez is not so much the lawfulness of a new type of war, but whether a State can back punitive demands made of the violating state by a renewal of war. Continuing the passage quoted above he goes on to explain this, adding that if the satisfaction demanded be forthcoming, further

punitive action is precisely as unjust as further aggression would be after restitution was promised.

Dico ergo secundo: justa etiam causa belli est ut qui injuriam intulit juste puniatur, si recuset absque bello justam satisfactionem praebere. Est communis, in qua et in praecedenti (concerning restitution in the above passage) est observanda illa condicio, ut non sit alter paratus restituere vel satisfacere; nam si paratus esset, injusta redderetur aggressio belli, ut in sequentibus dicemus.¹²

A careful reading of these two passages plus the pertinent ones in Cajetan's Commentary on the Fortieth Question of the Secunda Secundae hardly warrants the description of "purely punitive" accorded this type of war by those who find difficulty in justifying it.

Now we can advance to the reason given by Suarez for conceding to one State such punitive prerogatives over another State that has inflicted injury by violating the first one's rights. The reason given, be it noted, is based on the necessity of such a power to insure peaceful relationships between nations.

Ratio est, quia sicut intra eandem rempublicam, ut pax servetur, necessaria est legitima potestas ad puniendum delicta, ita in orbe, ut diversae respublicae pacate vivant, necessaria est potestas puniendi injurias unius contra aliam.¹³

Proposing a difficulty taken from St. Paul to the effect that we should not return evil for evil, he lays down the conditions necessary for a right exercise of this punitive right and thus indirectly tells us more explicitly how punitive action favors the peaceful relationships between nations.

Respondetur illud (Sancti Pauli) intelligi de privata auctoritate, et anima inferendi alteri malum per se; attamen si fiat potestate legitima et publica, atque animo continendi hostes in officio, et reducendi quod inordinatum erat ad debitum ordinem, non solum non est prohibitum, sed necessarium.¹⁴

The reason, then, why Suarez (and the same is true of Cajetan) holds the right of punitive war to reside naturally in the state is that it is necessary to insure its well-being. And this is precisely the point ultimately at issue. For the Committee on Ethics itself admits that:

Cajetan's position stands or falls with our view of the connection between the State's right of punishing foreigners and the State's well being. If the State is really an imperfect and incomplete social entity incapable of conserving itself and attaining its purpose in the absence of this right, then, without doubt, the State is fully vested with the right....¹⁵

To attempt a complete proof of this necessity by positive intrinsic arguments is beyond both the scope of this thesis and the ability of the author, since it would necessitate a wide knowledge of international affairs and problems. One reason may, however, be given: such punitive action will deter the guilty state from again violating justice. If this right of punishment were denied, an intransigent state could again renew hostilities as soon as it had the means--and this with impunity. In addition to this reason we will cite Saint Alphonsus Ligouri, Father Macksey, S.J., and Father Cathrein to furnish extrinsic proof.

Saint Alphonsus says:

Potest princeps, pro satisfactione, petere restitu-

tionem ablatorum et expensarum; item aliquid in poenam illatae injuriae.¹⁶

Saint Alphonsus does not explicitly go on to say that the State may proceed with war if the satisfaction is refused, but, if it could not, the right to demand it would be futile.

Father Macksey, S.J., is more comprehensive and explicit.

He unequivocally states that:

Catholic philosophy, therefore, concedes to the State the full natural right of war, whether defensive, as in the case of another's attack in force upon it; offensive (more properly, coercive), where it finds it necessary to take the initiative in the application of force; or punitive, in the infliction of punishment for evil done against itself or, in some determined cases, against others. International law views the punitive right of war with suspicion; but, though it is open to wide abuse, its original existence under the natural law cannot well be disputed.¹⁷

Father Cathrein not only concedes the right but states some reasons for its necessity as well:

Indessen ist auch die Berechtigung zu einem solchen Krieg eine notwendige Forderung der Ordnung und Sicherheit im Volkerverkehr. Wie es innerhalb des Gemeinwesens zur Erhaltung der Ordnung und des Friedens notwendig ist, dass es eine Gewalt gebe, welche das Recht hat, die Verbrechen zu strafen, so ist auch eine solche Gewalt notwendig für den Verkehr der Völker untereinander. Blieben die Verbrechen der Staaten untereinander ungestraft, so würden sie bald so überhandnehmen, dass es um Ordnung und Sicherheit geschehen wäre. Da es nun über den Staaten keine höheren Obern gibt, so können nur die Leiter derselben die Träger dieser, wenn wir so sagen dürfen, internationalen Strafgewalt sein. Jedes souveräne Gemeinwesen hat also das Recht, die ihm zugefügten Umbilden zu rächen.¹⁸

As a negative proof we will take the objections proposed by the Ethics Committee and show that they are by no means new

but have been anticipated for the most part by Suarez himself.

The first difficulty proposed is an a pari argument: just as an individual may, in case of necessity, resort to physical force only to defend his property or to recover it, but cannot go further and punish the wrongdoer; so also the state can but forcibly defend or recover rights, property, or territory.¹⁹

The parallel is not at all clear; first of all, individuals admittedly do not have the natural right of acting as guardians of law and order, but the State certainly has that right over its citizens. Secondly, this natural right existing in the State can and should be appealed to by an individual even when he has been able, of himself, to protect, for example, his property or life. Let us say that such an individual succeeded in thwarting an attempt on his life. Can he not appeal to the State to proceed punitively against his aggressor? And should he not ordinarily do so in the interests of public law and order, even if he does not care to see the would-be assassin punished for the wrong done himself?

But now let us take the example of a State which has suffered unjust aggression or has succeeded in preventing an aggressive attempt; again law and order have been violated. But the State, unlike the individual, has no other recourse than to take the administration of punishment into its own hands. This was foreseen by Suarez and because of it he and Cajetan and the others who defend punitive war maintained that the power must be inherent in the State.

...haec autem vindicta non potest peti ab alio iudice, quia princeps de quo loquimur, non habet superiorem in temporalibus; ergo si alter non sit paratus ad satisfaciendum, compelli potest per bellum.²⁰

But this answer is still insufficient for Father Cronin who urges the difficulty arising from the equality between the one punishing and the one punished.

War, he says, is a fight between equals, neither of whom has authority over the other, whereas punishment is inflicted by superior on inferior, by ruler on subject.²¹

This objection, too, was considered by Suarez and answered by asserting that the guilty state was subject to the aggrieved state by reason of its crime.

...unde sicut supremus princeps potest punire sibi subditos quando aliis nocent, ita potest se vindicare de alio principe, vel republica, quae ratione delicti ei subditur.²²

The same is affirmed in a later section:

Haec autem potestas non est in aliquo superiore, quia nullum habet, ut ponimus; ergo necesse est, ut sit in supremo principe republicae laesae, cui alius subdatur ratione delicti.²³

Suarez himself proposes a more difficult objection. How, he asks, can the same person, the State, act as complainant, judge, and executioner--all in its own cause? This seems clearly against the natural law. Granting all the difficulties involved, he still holds it to be legitimate because of the necessity for some such punitive function. And this function can have no other author, as things are, than the individual States.²⁴ Such is also the conclusion reached by Father Cathrein concerning this difficulty.²⁵

After the majority of the Ethics Committee (for the opinion here noted is not unanimous)²⁶ has given its objections to the doctrine of Cajetan and Suarez, it quotes a passage from Vittoria who, "on the authority of Saint Augustine, Saint Thomas and all the Masters, teaches that 'aggressive warfare must have as its object the punishment of unjust dealing.'"²⁷ Concerning this doctrine of so great an array of authorities the Committee continues:

But if they are speaking of punitive war in the rigid sense of the word, either they must base their doctrine, as Cajetan does, on the necessity of such wars to the well-being of the state, and we argue against them as we did against Cajetan, or they must maintain that the nations have been entrusted with the dispensation and administration of divine justice towards one another.²⁸

That the Committee really means divine justice is explicitly brought out later when it says:

We are justified, then, it seems, in asserting that neither nations nor tribunals established and recognized by nations are, or in the ordinary course of God's providence, can be, the divinely instituted custodians of the international moral order and, hence, that they cannot licitly wage punitive war for the sole purpose of satisfying God's justice.²⁹

We can certainly agree that this alternative is not tenable. The only point at issue is that no one maintains it. The real basis for the right, as mentioned before, is its necessity to maintain law and order, i.e., to protect or restore the violated social order, not the moral order as such. The maintenance of this social order will de facto tend to restore the moral order established by God but this is per

accidens; per se its maintenance by nations is for the purpose of protecting the general welfare. Father Nivard warns against such confusion when he says:

Fontem vero facultatis puniendi ex parte civitatis non alium agnoscas nisi jus istius securitati suae aut alterius populi injuste oppressi providendi, unde ad futura damna praecavenda nocentes deterrendi vel impotentes reddendi.³⁰

So much, then, for the right to wage punitive war considered in the abstract. Turning now to the more practical question of its exercise under modern circumstances, the answers of those who defend and those who deny it practically agree, it seems. Those who defend the right, as we have seen, claim a state's right to include punitive measures in its peace demands; those who deny it, as the Ethics Committee, say that:

If the enemy capitulates, ceases its aggression, and declares its readiness to restore seized property and territory in full or its equivalent and to give adequate assurance of security for the future--and all these points fall within the scope of defensive warfare--the State's well-being can scarcely demand that the State now proceed to inflict punishment. One may cite as a possible objection the instance of a State that is a constant menace and source of trouble to its neighbor State. Such a State, one might say, must experience the horrors of war in order to conceive proper regard and respect for the rights of its neighbor, or even it must be absorbed in its neighbor State before the security of the latter can be adequately assured. Even so, a war carried on under these circumstances would be defensive, not punitive. It would be merely a matter of taking necessary protective measures and of exacting reasonable assurance of future security.³¹

Between the two there seems to be no real practical difference. The defenders of the right call the demands punitive, the others, "adequate assurance of security for the future."

As a matter of fact, the measures of "defence" licitly employed against the recalcitrant State mentioned in the passage are punitive in the extreme, whatever be the technical name given them.

The real difference between the two schools would appear on the supposition that the enemy, though agreeing to restitution, would refuse to make satisfaction for its violation, or as the others prefer, refused "to give adequate assurance..." Cajetan, Suarez, and the others noted, concluded: "compelli potest per bellum." But this could hardly be defended today in its entirety owing to the changed conditions. At the time they formulated their doctrine war was confined to fewer peoples and had fewer repercussions on the world at large besides being less destructive. Thus today it seems likely that similar localized and regional wars alone could be resumed to exact condign punishment. In the cases of more extensive wars the vanquished could not be forced by a new punitive war to submit to punishment for the reason that the resultant good in this case would not be proportional to the evil entailed in again prosecuting the war. The Allies, according to this view, granting the justice of their cause, could licitly include punitive measures in their peace demands in 1919. They could not, however, have resumed the war had Germany refused to submit to them.

Consequently, for all practical purposes, the abstract right to wage punitive war is, under modern circumstances,

greatly limited in its actual exercise. But this limitation comes not from its being a punitive war, as if that were the real reason for restricting its use, but from circumstances and conditions which prevail today. The right itself is no more called into question today than it was in the time of Suarez. It is the exercise of the right that is today curtailed. Therefore, it would be more accurate today, when explaining what may be done in practice, to speak of a punitive peace than to speak of a punitive war.

What those who deny the right to punitive war would conclude to in the supposition made above is not clear; since adequate assurances of security are included under the licit purposes of a defensive war, they could logically maintain that the war could be resumed until such guarantees were forthcoming. But to call such a war a purely defensive war would be a rather loose use of that term. In reality, it would be more closely related to a preventive war, since its finis seems to be none other than the prevention of a similar violation in the future.

In conclusion a few more words may be said of this preventive war. Ordinarily it is understood to be a war whose purpose is to forestall an expected violation of rights. Thus France and Poland might five years ago have argued that the entire Germanic people was being drilled in a new philosophy of life for the sole purpose of forming a strong, unified country whose first aggressive steps must be into their territory. They might further have maintained that to take action then and

there would frustrate such morally certain consequences at a slight cost to themselves and the world at large, whereas delay could but mean, at best, a repetition of 1914 to 1918.

Post factum such reasoning seems to carry weight. But even granting morally certain knowledge that such fears will be realized, there still does not appear to be a just cause for starting war. One state can hardly start a war because of what it knows about another's intentions. There must be some violation of a real and perfect right. In the above supposition we prescind from the technical cause of war supplied Poland and France by Germany's rearming in violation of the treaty of Versailles.

Justifiable wars, then, can come under three heads or one, according as we prefer to limit to one kind of war or extend to three kinds what all agree can licitly be exacted by force under certain circumstances. These latter will, for the most part, depend on the cause for war. Wherefore, the following chapter will be devoted to this important condition.

Notes to Chapter III

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4. Ibid., p. 57.
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22. Suarez, Francis, S.J., op. cit., S.2, n.1.
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25. Cathrein, Victor, S.J., op. cit., p. 743.
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27. Ibid., p. 21, note 10.
28. Ibid., p. 15.
29. Ibid., p. 19.
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CHAPTER IV
THE JUST CAUSE

In a previous chapter more detailed treatment of the just cause was deferred for later treatment. We will now examine this important requisite condition somewhat more closely.

It has already been stated that only the violation of a perfect right can ever constitute a just cause. But immediately the further question of moral proportion occurs; for war, physically considered, will, by its use of force, have both good and evil effects. In fact, not infrequently war, looked at as a whole, to say nothing of its particular phases, will cause evils that seem altogether disproportionate, especially under modern circumstances when any occurrence of importance has its echoes in even remote parts of the world. Nor can all these evils, by any means, be described as merely physical; neither will it suffice to say that war does not strictly cause such results but only occasions them.

For this reason, then, the violation of a right, i.e. the cause, must be grave enough to justify its vindication, even in the face of the evils that will accompany such a step. In other words, to let the right be violated without seeking redress must entail evils proportionately as great as would follow from avenging the offense by war. It is this reason that led Suarez and all who write on the matter to state explicitly that the cause to be just must be grave and necessary: "*Causa haec iusta et sufficiens, est gravis iniuria illata.*"¹ Con-

sequently, it is by no means sufficient to adduce any and every violation of right as a just cause for war. However, it must be noted that the gravity of a given violation may be looked at in a two-fold manner. First of all there is the violation here and now perpetrated; this violation may not in itself be sufficiently grave to justify recourse to war owing to the lack of proportion. Thus, for example, one state might invade and take a very small section of another's country unjustly. If such a piece of territory were of small value and the declaration of war, in addition to the ordinary untoward consequences of war, were to endanger the state, it would be difficult, perhaps, to see such a transgression as a cause immediately proportionate.

But this same relatively minor violation may also be considered more adequately and thus, perhaps, constitute a genuinely grave causa belli. In the example given the supposed invasion might only be an initial act logically leading to further and more serious violations. Or perhaps such a hostile act may be only one of a series of violations no one of which could be branded as surely proportionate, but whose cumulative gravity is unquestionable. Or, finally, such a violation, if not avenged, might serve as a precedent and temptation for other states to attempt the same tactics. Under such circumstances, though the immediate cause might be disproportionate, if considered alone, it might be proportionate if considered in its context.

This view of the matter is explained by Suarez as one of the things to be noted under the just cause:

....primo, non quamcumque causam esse sufficientem ad bellum sed gravem, et damnis belli proportionatam. Contra rationem enim esset ob levem injuriam gravissima inferre damna. Ad haec judex non potest quaevis delicta punire, sed quae militant contra communem pacem, bonumque reipublicae. In quo tamen considerandum est, non raro apparere injuriam levem, quae revera gravis est, si omnia spectentur, vel si similes aliae permittantur, quoniam paulatim inde evenire possunt magna incommoda. Sic occupare vel minimum oppidum, verbi gratia, aliquando gravis injuria erit, vel excursiones facere, et., praecipue quando princeps, qui injuriam fecerat, admonitus contemnit.²

The causa belli, then, must be a grave injury immediately or mediately proportionate to the evils consequent on war whether these evils be directly caused, as physical evils, or only occasioned or permitted, as moral evils.

The restriction placed on the just cause above is one based on justice. Over and above justice, however, Suarez notes that charity as well may claim its due. Should the prosecution of a war, moral as far as strict justice is concerned, inflict extreme hardship on the offender, Suarez maintains that its declaration might be a violation of charity. The supposition under which this would be verified is that the satisfaction wrung from the offender was not necessary for the offended state and that it would burden to an extreme the culprit.

Solum quaeri posset an detur interdum causa belli excusans ab injustitia, non vero a peccato contra charitatem. Respondendumque raro hoc accidere, non tamen quidquam repugnare; sicut enim inter privatos contingit, ut alter ab altero rem sibi debitam accipiat, proindeque non sit contra justitiam, contra charitatem vero aliquando, nimirum si ea de causa debitor incurrat gravissima damna, et res illa creditori non sit valde necessaria, ita posset accidere inter principes et respublicas.³

Suarez grants that the hardships and trials that will result for such a state do not obligate the offended state to particularly great consideration,

quia prava voluntas reipublicae injuriam inferentis fuit causa illius (damni).⁴

He also mentions two other cases in which a just war, taking just in its strict sense, might be against charity:

Secundo (damnum) illius quae bellum infert; tertio denique damnum fortasse totius ecclesiae.⁶

Of these only the first will be considered since the second does not pertain to Ethics proper but rather to Theology. Concerning the damaging results of a war for the state undertaking it, he asserts that a lack of proportion between the vindication of a violation and the embarrassment it causes the state may well be not only against charity but against justice as well since the state is obliged in justice to provide for the common good before everything else:

...si princeps cum majori damno et periculo suae reipublicae infert bellum alteri, etiam cum justa causa, peccabit non solum contra charitatem, sed etiam contra justitiam debitam propriae reipublicae. Ratio est quia princeps tenetur ex justitia magis providere communi bono suae reipublicae, quam proprio; alias tyrannus evadit.⁷

Owing to the existence today of other forms of government besides monarchies a slight interpretation is required. Instead of saying that the king or ruler must provide for the common good in preference to his private advantage, we would understand the government, technically considered, as obliged to concern itself primarily with the good of the people rather than its own

particular advantage.

All these elements, then, must be considered when trying to determine the proportion between the cause of war and the consequent evils. In modern times, as intimated before, a further complication sets in: the evils to the world at large that are sure to follow almost any war owing to the close economic, political, and cultural relationships of modern nations. It is true that these factors are not direct determinants in weighing the proportion, and that they may be subordinated, to some extent, to the vindication of a violated right by war. And yet it cannot be denied that the causa belli, considering only the difficulties about proportionate evil, must today be much more weighty than heretofore.

A second aspect of the just cause leads us to the same conclusion: it must be impossible to rectify the deordination which constitutes the potential cause for war by any other means. In other words, war can only be undertaken as the last means to protect or vindicate rights. This has been the unanimous opinion of all scholastic philosophers from the time of St. Augustine; Suarez cites him with approval when he says:

bellum quoad fieri possit, esse vitandum, et solum in necessitate extrema, quando nullum aliud medium superest, tentandum...⁸

Suarez himself immediately includes this restriction to war in the very first sentence about the just cause. He demands a genuine cause which involves necessity and which cannot be composed in any other manner.

Dico ergo primo: nullum potest esse justum bellum, nisi subsit causa legitima et necessaria. Est conclusio certa et evidens. Rursus, causa haec justa et sufficiens, est gravis injuria illata, quae alia ratione vindicari aut reparari nequit.⁹

Strictly speaking, therefore, no cause, however grave, constitutes a just cause for war of itself; it must be impossible to remove that cause of grievance by any and all other means.

Cardinal Bellarmine, when treating this question, gives one of the reasons for requiring extreme necessity:

Quoniam bellum est medium quoddam ad pacem, sed valde grave et periculosum, ideo non esse mox inferendum bellum, cum caussa existit, sed esse prius procurandam pacem aliis rationibus facillioribus, nimirum pacifice petendo ab hostibus debitam satisfactionem.¹⁰

The basic reason for requiring such preliminary negotiations is to be found in the ethical nature of war. As a species of coercion it is the property of a right which can only be exercised for the protection or restoration of its subject matter in case of necessity. This restriction, therefore, will naturally bring its full force into play in the case of war where many private rights are necessarily subordinated to the common good and where enormous upheavals are quite likely to occur once hostilities have actually begun.

Although the means to compose differences short of war were not as fully developed in the days of Suarez as they now are, still he makes the following demands:

....ante bellum inchoatum tenetur princeps proponere justam causam belli reipublicae contrariae, ac petere restitutionem condignam, quam si altera offerat, tenetur acceptare, et a bello desistere;

quod si non faciat, bellum erit injustum; si alter vero neget satisfactionem, tunc poterit juste bellum inchoare.¹¹

Here, then, we have the minimum requisite before declaring an offensive war; in case of defensive war, according to our definition, there would be no opportunity for such considerations.

Before passing on to mention some of the alternatives to war that are available today, we can note how Suarez answers Cajetan's conclusion that the aggrieved state need not heed offers of restitution and satisfaction if made after war has once been declared. The reason offered by Cajetan is that the aggrieved state, after having been refused its demands, becomes a quasi-judge with power to proceed to the finish without the obligation of accepting the restitution and satisfaction offered. Beyond the difference in the degree of injury to be made good, however, Suarez can see no other change when the matter is analysed: war is only to be declared when one is forced by necessity; otherwise it is unjust. Therefore, if after a war's inception, legitimate demands are satisfied, there is no longer any necessity for carrying it on. It must, therefore, be terminated. (Cajetan had remarked that after the actual joining in battle--*actualem congressum*--the aggrieved state no longer was obligated:)

Si vero per actualem congressum, intelligat bellum illud in quo aliquoties pugnatum est, non video quo firmo fundamento asseratur, magis esse (principem) tunc dominum causae, quam ante bellum inchoatum, quia idem jus antea habebat ad inchoandum bellum, quod nunc habet ad proseguendum. Solum interest quod injuria crevit, et consequenter crevit jus ad

majorem satisfactionem. Praeterea rationes factae aequae procedunt in utroque ex dictis eventis, quia sicut initium, ita continuatio belli debet esse necessitatis. Ad haec, quia similiter sequuntur damna contra bonum commune, quae vitari debent salvo integro jure proprio, quod quidem est salvum, quando offertur satisfactio, quia nihil magis peti potest post partam victoriam, ut dicemus. Denique jus belli est odiosum, et poena ejus gravissima; ergo restringenda est, quoad fieri potest.¹²

Suarez, therefore, insisted on utilizing any means available that gave hope of avoiding actual war. This principle, therefore, and not the means pointed out explicitly by him (since these were relative to his day) is the important matter. And this principle obliges to greater caution today because of the increased means of composing differences short of actual war.

We may here quote a modern interpretation of Suarez's principle as found in the Catholic Encyclopedia:

Furthermore, a clear title is limited to the condition that war is necessary as a last appeal. Hence, if there is reasonable ground to think that the offending state will withdraw its menace, repair the injury done, and pay a penalty sufficient to satisfy retributive justice and give a fair guarantee of the future security of juridical order between the two states concerned--all in consequence of proper representation, judicious diplomacy, patient urgency, a mere threat of war, or any other means this side of actual war itself cannot as yet be said to be a necessity, and so, in such premises, lacks full title. A fair opportunity of adjustment must be given, or a reasonable assurance had that the offence will not be rectified except under the stress of war, before the title is just.¹³

Besides the means explicitly mentioned in the above excerpt there remain the possibilities of compromise or settlement through arbitration, and embargo. The inclusion here of

arbitration does not formally stand at variance with what was said of it earlier. There exception was taken to the opinion that claimed modern states had ceded their right to war to a court of arbitration. Here it is merely meant to indicate that a state before declaring war should consider the possibility of arbitrating through some such organization as long as there is a reasonable hope of effecting an understanding thereby. In fact, Father Macksey is of the opinion that:

when the grievance is not clear, and the public authority has sound reason to think that it can arrange for a tribunal where justice will be done, it would seem that the necessity of war in that individual is not final, and even though international law may leave the state free to refuse all arbitration, the natural law would seem to commend if not to command it.¹⁴

The precise nature of such an obligation, and the degree of assurance of a just decision necessary before accepting its decisions are matters too involved for this thesis. We wish merely to make the point that such means, when available and efficacious, must first be exhausted before war can be legitimately declared.

A further means, approaching, though still short of war, is the use of such economic weapons as will force, at least morally, a serious reconsideration of the advisability of respecting the rights of others. These means, such as the boycott or embargo, may well be unavailing in the case of smaller countries against larger ones; but larger and more important countries could resort to such action rather than immediately

draw the sword. Such measures, even granting they are insufficient of themselves, would nevertheless give a certain period of time for reflection and the abatement of excitement.

Up until now this chapter has concerned itself with the causa belli objectively considered: it must be proportionate to the evils involved in making war and it must be impossible to rectify the violation in any other way. There are, however, a number of problems associated with the cause in its subjective aspects.

Two of these, because they belong neither entirely to an objective nor to a subjective view, may find their place here. The first is the question whether both sides in a war can have a just cause. This is obviously impossible if one means an objectively just cause, for in any circumstances there can be no genuine collision of rights; either the apparently conflicting rights of one are non-existent or they are subordinate to those of another.

*Bellum nequit esse, objective loquendo, ex utraque parte formaliter et materialiter justum.*¹⁵

If, on the other hand, one is questioning the possibility of a subjectively just cause on both sides, there is no intrinsic repugnance to such a state. For it can be that, owing to ignorance, both sides may believe themselves in the right. For example, in 1916, as at the present, England violated what we sincerely considered to be our rights by censoring our mails, using information therein contained, and hindering our commerce.

England then, as now, might have maintained in good faith that this was her prerogative in time of war and no violation of right. Now given these circumstances, if we had decided to defend our rights by war as was actually threatened, she would, in her own view, have justly repelled us as aggressors. In such an event, though a just cause could objectively exist only on one side, still subjectively both might have considered themselves justified.

This very unsatisfactory conclusion was, perhaps, responsible for the opinion of certain contemporary ethicists that formal guilt, as against material guilt, must be established before the opposing side could claim a just cause.¹⁶ That is, the guilty party must know that it was objectively wrong and, in spite of this confession, continue doing the wrong. The arguments adduced to prove this view, though fallacious, sound fairly plausible. Father Stratmann, for example, argues thus: the objective violation (that is, the material guilt) can either be proved such, or it cannot. If it can, eo ipso it becomes formal; if not, it is not even an objective violation and consequently there is not even material guilt. This argument supposes that anything and everything can be conclusively proved to both sides, so that one or the other side must be in bad faith once the proof for the thesis has been given. The view, consequently, that would demand the establishment of formal guilt, desirable as it undoubtedly is, unfortunately cannot be defended, owing ultimately to the very nature of our

finite and clouded intellect, to say nothing of the influence exerted by conditions of high stress and excitement. Consequently, it is difficult to maintain with Father Stratmann that one of the ten points to be verified for a just war is

Gross formal moral guilt on one side--material guilt is not sufficient.¹⁷

In addition it is not without temerity that he claims all ten points (consequently this one also) contain

The principles which constitute a just war according to St. Augustine, the Thomists, and Francis de Victoria.¹⁸

Coming now to a consideration of the just cause as viewed subjectively, we may distinguish two different classes that will be affected: the rulers (or the government) and the common people.

The problem under consideration in either case is whether and to what degree certitude must be had that one's cause in war is just. A general answer that will cover both cases is that in the case of war, as elsewhere, one must have practical certitude one way or the other before one can partake in or decline from action. The whole difficulty lies in the question of speculative certitude. Suarez teaches this in the following words:

...supponendum (est) in omnibus requiri certitudinem practicam, quae explicatur hoc iudicio: Mihi licitum est bellare. Dubium totum vertitur de certitudine speculativa, quae ita explicatur: Haec causa belli justa est in se; vel: Haec res, quam praetendo per bellum, mea est.¹⁹

All then must have practical certitude, but the foundation of

this certitude would seem to differ in the case of the common people and that of governments. In the latter case the certitude must be based on intrinsic motives, i.e., on reasons derived from the nature of the violation itself. As Suarez puts it:

supremus rex tenetur ad diligentem causae et
justitiae examinationem, qua facta, operare
debet juxta scientiam inde comparatam.²⁰

One point in particular concerning Suarez may be noted here briefly, since some have made of it a major issue. In a case where the ruler finds that his causa belli is only more probable, Suarez permits him to wage war. It is evident from his general statement, quoted above, that he refers here to speculative probability; and yet when Father Stratmann comments on this opinion, he is inclined to overlook this distinction and writes as if it might refer to a practical doubt. Moreover, he so colors his presentation that one would think Suarez's position utterly indefensible:

Suarez teaches that a ruler may go to war knowing that a great deal of right is on the opposite side, but considering that, on the whole, more right is on his side! Here we have the first loosening of the old, strict war morality. The terrors of war are to be let loose because the balance is ever so slightly on the aggressor's side! Though even Suarez recommends an umpire. His point of view is most repulsive, for he holds strongly to the punitive character of the aggressor.²¹

He then quotes Vasquez, S.J., as saying:

I could never accept such teaching, on the contrary I have always held its dubiousness and believe that it may do great harm to Christianity. That might is right is simply a return to

barbarism.²²

In the first place, no specific reasons are given by Stratmann for rejecting such an opinion. And secondly, the quotation from Vasquez, which he quotes with approval, condemns the opinion, because it seems to him an espousal of the principle that might is right; whereas such is by no means Suarez's reason for permitting it. His contention is that

in sententiis ferendis sequenda est semper probabilior pars, quia ille est actus justitiae distributivae, in qua dignior est praeferendus.²³

But above all Stratmann's phrase "even Suarez recommends an umpire" is somewhat uncalled for. Far from being dismissed with a phrase Suarez's opinion on the necessity of arbitration and the reasons proposed to validate the opinion are worthy of quotation and praise as a genuine effort to diminish the possibilities of war:

Sed quaeres an in hujusmodi casibus teneantur supremi principes arbitrio bonorum virorum iudicium relinquere. Est autem quaestio, stando in lege naturali tantum, ut omittamus Papae auctoritatem, de qua jam diximus. Censeo vero probabilem valde esse partem quae affirmat: etenim tenentur ii, quoad possunt, vitare bellum honestis mediis. Si ergo nullum periculum injustitiae timeatur, nam impossibile est auctorem naturae in eo discrimine relinquisse res humanas, quae frequentius conjecturis potius quam certa ratione reguntur, ut omnes lites inter principes supremos et respublicas, non nisi per bellum terminari debeant; est enim id contra prudentiam ac bonum commune generis humani; ergo contra justitiam. Praeterquam quod jam regulariter ii haberent majus jus, qui potentiores essent, atque adeo ex armis esset metiendum, quod barbarum et absurdum satis apparet.²⁴

The phrase "probabilem valde partem," "vitare bellum

honestis mediis," and the last sentence are hardly correctly described as a "return to barbarism."

That Suarez's point of view is not literally repulsive may be gathered from the fact that no less an authority than St. Alphonsus Liguori says that, although he himself prefers certitude, still Suarez's opinion is sufficiently probable, and, speculatively considered, is sound intrinsically:

Mihi autem, licet secunda sententia (Suarez's)
satis probabilis, speculative loquendo, etiam
intrinsece videatur.²⁵

As far as the practical conclusion is concerned all seem to agree. Owing to the damages, moral dangers, and actual evils that follow war a ruler must have certitude before he is justified in declaring it. Suarez merely gave as a probable opinion that a ruler might, if no other way were feasible, act on a more probably just cause. He does not advocate this use of probabilism generally, but limits it to an unusual case which would rarely arise in practice. So, even were it admitted that he erred on this subtle point, there is no valid reason for generalizing from it and calling his entire approach into question. The opinion of St. Alphonsus regarding Suarez's position shows that it is not without considerable weight as a speculative opinion.

Turning now from the ruler or government to the common people, practical certitude is again required, but here the motive for certitude need not be intrinsic. For from the very nature of the case, individuals frequently cannot be expected

to deduce the licitness or illicitness of war for themselves. They can only resort to extrinsic sources such as authority to settle their possible doubts. Thus if an individual had a speculative doubt as to the lawfulness of a war, he could resolve it in favor of participation because he must give his lawfully constituted government the benefit of the doubt: he knows with certitude that he must obey legitimate authority in everything that is not sin and over which it has jurisdiction. If, however, an individual knew certainly that a war was unjust, he could not take part in it. Both Cardinal Bellarmine and Suarez affirm this doctrine. The former, in fact, teaches explicitly that if a ruler were to undertake a war without a just cause he would certainly sin. He then goes on to consider the common soldier's position under such circumstances:

.....milites autem non peccant nisi constaret certo bellum esse illicitum; debent enim subiti parere superiori, nec debent discutere imperia ejus, sed potius praesumere debent principem suam bonam causam habere, nisi manifeste contrarium noverint.²⁶

Suarez more explicitly explains just why, even in case of a speculative doubt, an individual can safely form his conscience in favor of the ruler's action:

.....communes milites subditi principum nullam diligentiam adhibere tenentur, sed vocati ad bellum ire possunt, dummodo illis non constet esse injustum. Probatum tum quia quando iis militibus non constat de injustitia belli, consilium commune principis et regni satis illis est ad eundem; tum etiam quia subditi, in dubio (speculativo, scilicet), tenentur obedire superiori, idque optima ratione. Nam in dubiis tutior pars est eligenda; cum autem princeps possideat jus suum, tutius est illi obedire.²⁷

This conclusion holds even today in spite of the danger the individual may run of materially cooperating in evil. To hold otherwise would differ little from demanding of every individual a judicial decision concerning matters which historians and moralists years afterwards find difficult to decide. In addition any other view would practically deprive the state of authority granted it by the natural law over its citizens. The general rule, therefore, for private individuals is that they must obey unless the injustice is evident; to obey in this latter case, even granting that an individual's conscience was de facto erroneous, would be to act against a certain judgment of conscience, which is always illicit.

If the conclusions above pertaining to individuals be true, and it seems that the only other alternative is a moral impossibility (scil., that individuals decide for themselves), then it is rather misleading for a writer like Donald Attwater to say, as he does, that "the man-in-the-street" cannot safely follow his government. He himself avers that:

The rights and wrongs in a particular dispute are usually so complicated and obscured by partisan propaganda that it is virtually impossible for the man-in-the-street to arrive at a decision upon them.²⁸

And yet when the author comments on the advice given "even by Christian clergy," as he says, "that he can safely follow his government," he continues:

With all respect to these clergymen, that is just what he cannot do-- the idea that a man can safely submit his conscience to a secular government is one of the most grotesque perver-

sions that has occurred in contemporary religion.²⁹

Certainly one must concede that today's governments are not exemplary and have little regard for Christian morality. And one would like to see a way out of the high probability of material wrong being done by following such a government. And yet, to make each individual his own judge is equivalent to anarchy and reductively a denial of the natural origin of the state as an essentially needed organism for the full development of man. It is not, then, from choice nor from a desire to further increase the power of the state that one finds fault with his conclusion, but from sheer necessity. This necessity is both social and individual, as already pointed out. Socially, obedience to legitimate authority wherever sin is not commanded is a necessity; while to the individual the clear duty of obedience gives a practical norm without which he admittedly could not, in modern circumstances, resolve the practical doubts which will assail him regarding such questions as war.

Two further points in the quotation may be noted. First of all, the author seems to give the wrong meaning to the word safely. He seems to understand that objective rectitude of action is safely entrusted to the judgment of the government. In seriously questioning this he is quite right; but when safely is used by authors or counsellors who give such advice, it primarily means that it is safe for the individual's conscience to resolve his doubt in favor of the government. It means that by acting thus an individual can acquire the practical certitude

absolutely necessary for moral action. In a word, safely refers not to objective but to subjective morality.

The second point pertains to his concept of the state. A note appended to the quoted passage indicates that the author is uncertain whether the doctrine of the classical theologians, who envisaged a Christian state, can be applied to today's secularist states. The tone seems to indicate that even in essentials a Christian state qua state would have more power in general, or certain specific powers which a non-Christian state does not have. This is hardly true; the purely natural state, the secularist state, or the Christian state are basically societies ordained by God through the natural law, and can all, in their legitimate sphere, claim the obedience of their subjects. This right is certain and binds the citizen in conscience as well as does any other moral behest. Consequently, in cases of necessity this clear moral obligation takes precedence over an individual's speculative doubt concerning the licitness of an action performed or demanded of him by the state.

The reason for the above criticism, let it be repeated, is by no means a desire to abet the state's usurpation of rights. That must be condemned. But to attack the very concept of the state is hardly the right way to effect this. The real reason for maintaining what we do is to avoid insoluble problems in the form of practical doubts from harassing the ordinary people of the world.

Although there are undoubtedly more problems that can and

do come up under the condition of the just cause, those mentioned above may serve as an indication of their nature and general method of solution.

Notes to Chapter IV

1. Suarez, Francis, S.J., XII, Tract. III, De Charitate,
Disp. XII, De Bello, S.4, n.1.
2. Ibid., S.4, n.2.
3. Ibid., S.4, n.8.
4. Ibid., S.4, n.8.
5. Ibid., S.4, n.8.
6. Ibid., S.4, n.8.
7. Ibid., S.4, n.8.
8. Ibid., S.1, n.3.
9. Ibid., S.4, n.1.
10. Bellarmine, Cardinal, De Laicis, L.III, c. 15.
11. Suarez, Francis, S.J., op, cit., S.7, n.3.
12. Ibid., S.7, n.4.
13. Macksey, Charles, S.J., "War." Catholic Encyclopedia,
XV, p. 548.
14. Ibid., p. 548.
15. Meyer, Theodore, S.J., Institutiones Juris Naturalis,
II, p. 794.
16. Stratmann, Franziskus, O.P., The Church and War, p. 64-65.
17. Ibid., p. 79.
18. Ibid., p. 78.
19. Suarez, Francis, S.J., op. cit., S.6, prologue.
20. Ibid., S.6, n.1.
21. Stratmann, Franziskus, O.P., op. cit., p. 63.
22. Ibid., p. 63.
23. Suarez, Francis, S.J., op. cit., S. VI, n.2.

24. Ibid., S.6, n.5.
25. Liguori, St. Alphonsus, Opera Moralia, Theologia Moralis, I. L. III, Tract. IV, a.2, n. 404.
26. Bellarmine, Cardinal, op. cit., L. III, c. 15.
27. Suarez, Francis, S.J., op. cit., S.6, n.8.
28. Attwater, Donald, "This War Business." Catholic World, 145: p. 12, April, 1937.
29. Ibid.

III

CONCLUSION

In the foregoing chapters we have seen that war as a contest carried on by force of arms between two or more independent states or communities is a species of coercion when legitimately employed to defend or regain the subject matter of strict rights. Its end is the defense, maintenance, or restoration of the juridical order as established by, or based on, the natural law. The licit exercise of the coercion in question is conditioned in general by the same determinants as any other form of coercion, scil., the law which confers the right and the end for which the end was granted. So, also, must its employment be necessary and proportioned to the attainment of its purpose.

These general principles have, in the case of war, been embodied in the traditional conditions for a just war. We saw that war, to be just, must be undertaken by legitimate authority; must have a just cause; must be prosecuted by licit means and with a good intention.

Concerning the types or kinds of war that can be justified we concluded that the answer will greatly depend on the definitions determined on beforehand for each kind. In the main we found that most writers agree as far as practical conclusions are concerned and differ only in their views of the name under which these conclusions shall be classified. It was, however,

suggested that punitive war must today be restricted in most cases to the inclusion of punitive stipulations in the victor's demands. Strictly speaking, this restriction does not condemn or nullify the concept of a punitive war. It merely recognizes the impossibility of fulfilling one of the requisites for a just war — the necessary proportion between the evil to be righted by the war and the evils consequent on righting such violations.

On analyzing more thoroughly the requisite just cause for war, it was found that there must be a violation of a strict right, i.e., one which imposes the juridical duty of respecting it in another. There must also be a proportion between the violated right and the means used to restore it, together with its immediate consequences. A third point established was that such a cause, to be sufficient, was not amenable to any other rectification, or, in other words, war, to be just, must be the last resort.

On the verification of all these conditions moralists hold that a war would be licit. As noted throughout this thesis, however, there is a definite trend on the part of some contemporary authors to maintain that modern war can under no circumstances be licitly waged. Their contention, if analyzed, will always be based on the impossibility of realizing all the conditions simultaneously. The means employed in modern warfare, in particular, are singled out by most writers as the one condition no longer verifiable.

To the writer, modern means, taken in themselves, do not constitute the great problem. In themselves these do, it is true, constitute a source of greater devastation and are more easily perverted in their use; in themselves, though, they are to a great extent still indifferent morally. The airplane, machine-gun, submarine, and propaganda have their legitimate sphere of licit activity and influence. It is precisely the question of the use to which these modern means are put that presents the problem. However, the use to which they are subordinated is extrinsic to the particular means themselves and depends entirely on the determination of the respective belligerents.

It is here, then, to the writer's mind, that attention should be focused when analyzing and condemning modern war—the attitude and activity of governments. To attack modern warfare alone is to stigmatize an effect without so much as adverting to the cause whence it takes its origin.

Too often war is looked at by such authors not in its true juridical function, but rather from the erroneous viewpoint of modern statesmen. For many statesmen, and not a few political philosophers outside the scholastic tradition, the state is the creator and arbiter supreme of all rights. Naturally such a doctrine will lead to violations of natural law in the international juridical order. And such de facto violations will not only be condoned but even sponsored by a government whose basic concepts of its own nature are false. Consequently, it

is the modern doctrine of the positivistic state and its corollary that the state grants all rights, that ought to be impugned. For unless the nature of the state be correctly understood in theory, and unless the state, at least in general, conduct itself accordingly in practice, any condemnation or complaint of isolated actions seems doomed to failure. Without undermining this false concept of the state any attempt to thwart its objectively false activity is deprived of all cogency.

The same reasoning may be applied to the question of the just cause and its ramifications. Given a positivistic political creed it is not to be wondered at that states fail to consider seriously the moral obligation of exhausting all means short of war, or to heed the question of proportion. In such a creed there is no morality to be taken into consideration independent of, and antecedent to the state itself. The idea that states and their activities do not come under the ordinary moral law, or any moral law, but rather constitute a-moral entities cannot but end with immoral results: the precision becomes a privation.

However, the fact that there are political philosophers who advocate such views and states that carry them into effect does not justify us in condemning certain activities as such independently of the person who carries them out and the motive with which they are done.

War is one such activity. Essentially, there seems to be

no difference between war today and war two hundred years ago. To be justified, it is true, rights of the gravest kind must be at stake and all available means short of actual war exhausted. Were all states conscious of, and at least theoretically, willing to admit the grave obligations incumbent on them, it is true that war would be practically impossible. But precisely because many have forsaken any adherence to an objective standard of morality will it be necessary for other states to resort to force to preserve their independence, freedom, and corresponding rights by means of war.

There is surely no one who will contend that Finland acted immorally when it resorted to war against the inroads of Russia; or that Belgium was not justified in pitting her entire strength against the Nazi invasion even though it probably knew that, at best, its loss of men and property would constitute not much more than a determined stand against the philosophy of Nazism.

When we come to examine the justifying elements of such wars, it is hard to gainsay their validity, however desirous we may be to outlaw war. The intentions were to preserve and protect the state's very existence; the cause was actual aggression by the enemy and, at least materially, the attempt to prevent the further spread of an outlook that glorified brute force over moral rights in both individual and social relationships — and this on principle. The means used were all the forces available that might repulse the foe, without, at least

to our knowledge, including anything intrinsically evil.

That war was resorted to only as a last measure was evident in the two instances cited. And it is quite conceivable that with the spread and growing influence of some of today's Machiavellian philosophies, war may well become the only resort possible. For with a state-created morality, veracity, the sanctity of agreements, and similar instruments of social security will no longer have independent validity when contracted with such parties.

Whether there can or cannot be a cause proportionately grave with the evil consequences is likewise called into question today. Apart from the evils entailed for the countries actually engaged there is frequent mention made of the disruption of normal relationships caused throughout the world. That this is true is undeniable. But even so, there seem to be causes which are altogether proportionate even to such evils. There are, in fact, indications that such proportionate causes are already in the lists, if not formally at least materially. The two causes that seem proportionate to any amount of damage and material or per accidens evil are the defense of the right to worship God and the concept that moral rights are genuine and valid rights which must be respected. In these cases there is not question of this or that particular right, but of the very idea that a moral right is an objective reality; neither is there question of some particular method of worship or creed, but the basic concept of the right to recognize a supreme Being.

Now these two keystones of individual and social relationships are absolutely sine qua non conditions for any pretense of an ordered and reasonable state of human existence. Without them all other considerations are meaningless; man would be subordinated to the position of a means to an end; his entire orientation and its realization would be frustrated at its very root.

The danger of relinquishing the right to use force to those only who will use it to such nefarious purposes is the primary purpose for finding fault with those who condemn it as morally illicit. The emphasis placed on the nature of the state and its duties and end, and the appeal for a more fundamental approach to the problem of war — these were both stressed because therein lies the real solution to the practical problems confronting us in international affairs.

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