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# The Ethics of War

Reverend Cyprian Emanuel, O.F.M.  
and  
The Committee on Ethics

DEFINITION OF WAR  
CONFLICTING OPINIONS  
THE RIGHT OF WAR  
DEFENSIVE WAR ALONE JUSTIFIABLE  
THE CONDITIONS OF A JUST DEFENSIVE WAR  
ARMISTICES, CAPITULATIONS, AND TREATIES OF PEACE  
DISARMAMENT

A Report of the Ethics Committee

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**T**HANKS for the issuance of this Report are due to the Faculty and the Students of Trinity College, Washington, D. C., in response to the Holy Father's recent appeal, "May they all unite in the peace of Christ in a full concord of thoughts and emotions, of desires and prayers, of deeds and words—the spoken word, the written word, the printed word—and then an atmosphere of genuine peace, warming and beneficent, will envelop all the world."

THIS is a Report of the Committee on Ethics of the Catholic Association for International Peace and is being issued as a Study from this Committee. It was presented and discussed at the regular annual meeting of the organization. The Committee cooperated in the final form of the Report and it was presented to the Executive Committee which ordered it published. As the process indicates, this Report, being the report only of a committee, is not a statement from the whole Association.

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## FOREWORD

War is an appalling evil. Every thinking man will readily admit it. But until quite recently the majority of men apparently considered it a necessary evil to be borne with patience and resignation as something that cannot be averted; or, at least, they seem to have looked upon it as a matter of fact, merely as an historical event coming to pass with greater or less periodic regularity, as an occurrence that comes and goes as do, for example, pleasure and suffering. For thinking men, however, war is a *problem*. It demands an investigation into its meaning, its metaphysical origin, the possibility or impossibility of its prevention, and its lawfulness or unlawfulness.

If traced to its ultimate source, war is found to be an aberration of two instincts, both auxiliary to the instinct of self-preservation, with which the Creator has equipped human nature. The first of them is the instinct (and also the right) to reach out beyond oneself in order to wrest a livelihood from the material world. So long as it is held within proper limits, it is necessary for man's very existence and hence, also good. But when misguided by greed and avarice, it loses the requisite prospective, becomes extravagant and trespasses upon the like instinct and right of others. It takes or attempts to take what belongs to another. Discord, animosity and litigation are the immediate and inevitable results.

The second instinct that is an issue here is the instinct (and, again, also the right) to guard one's rights against infringement. Again, so long as it is exercised with proper restriction, it is genuinely necessary for man's well-being, and hence, also good. But when misdirected by selfishness and covetousness it strikes out in defense of excessive demands and imaginary rights, it, too, necessarily leads to discord and quarrels. When these deordinations and aberrations find expression among individuals only, we have private quarrels and altercations. But when they assume more extensive proportions and touch national rights and prerogatives, we have war.

That the treacherous instincts under discussion here can be held within requisite check and control by men, both individually and collectively, must be admitted by all who believe

that men are masters of their own actions and accountable to their Creator for them whether they perform them as private individuals or as members of groups, called states. In particular as regards the latter, it is merely a matter of bringing to light the factors that induce men to break through the limits of restraint and of setting up counterfactors, sufficiently influential, that make for restraint and peace.

Never before in the annals of history have such generous and sincere efforts been made on so universal a scale to effect lasting peace by discovering and counteracting the forces that make for war. But while men are studying the economic, the industrial, the political, the racial, and the cultural and educational causes of war with a view to establishing its uselessness and wastefulness, their efforts will be of little avail and permanent peace will continue to be a taunting will-o'-the-wisp until by religious considerations they come to realize also the sinfulness of war, and at the same time reënforce their attack on the demon war at all its points with the tremendous forces for good that lie latent in religion.

Lasting peace is unthinkable until men have learned the real and practical bearing of the oft-cited, and we might add the oft-abused and misapplied, truth of "the Fatherhood of God and the brotherhood of man." One of the primary effects of the proper realization of this truth will necessarily be the consciousness that as God is the Creator and Father of all, so, too, will He exact a rigid account of the actions of all men that are inimical to the brotherhood of man, whether these actions be those of an individual directed against an individual or of a nation directed against a nation.

# THE ETHICS OF WAR

## I

### DEFINITION OF WAR

**W**AR in its juridical sense is 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. In conditions where competent governmental control and organization have not yet evolved, individuals, being strictly independent, may in a very wide sense of the term, be said to go to war against one another. Among primitive peoples war assumes the form of a contest between families, clans, or tribes. But among so-called civilized nations a state does not go to war with individuals or families nor with peoples as opposed to governments, nor with governments as opposed to peoples. It goes to war with a whole state, independent and sovereign like itself. The private persons who make up the belligerent nations may be said to be enemies by accident only, i. e., they are not so as men nor as citizens, but only as combatants.

In the above definition mention is made of "communities having . . . the right of states" and of "provisional" governments. These reservations become necessary if we wish to take cognizance of armed contention between different parts of the same sovereign state, e. g., our War of Revolution and our Civil War. A mere insurrection, rebellion, or even the armed repression of organized outlawry, is not war. Before the armed forces can lay rightful claim to the rights and privileges of belligerents, it would seem at least that they 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.

There has been developing within recent years a doctrine of insurgency which is used to characterize a condition midway between belligerency and mere unauthorized and lawless violence, e. g., the periodic revolutionary outbreaks in certain Latin-American States. Those who struggle for political ends and respect the laws of war can scarcely be branded as mere outlaws or pirates. Hence, the need of granting to insurgency a recognition which, while not relieving the parent state of responsibility for the acts of the insurgents, puts the contest upon a more regular basis and brings into operation the neutrality laws of recognizing states.

Since war is a contest, it follows that mere preparation for future hostility and aggression does not constitute war. Nor is mere commercial aggression or hostility "a contest carried on by force of arms."

Technically speaking, there is a difference between a *state of belligerency* and *war*. The former term is employed to designate a juridical condition of the contending parties, whereas the latter more properly applies to the series of hostile acts of force exercised in the contention. According to this distinction the World War came to a close with the signing of the Armistice on November 11, 1918, but the state of belligerency continued until the signing of the Peace Treaty of Versailles on June 28, 1919.

Wars are *just* or *unjust* according as the conditions for justification are present or not. Wars are also *punitive* (*vindictive*), *defensive*, or *offensive* (*aggressive*). A war is said to be *punitive*, or *vindictive*, when it is carried on by the state for the sole purpose of inflicting punishment for evil done against itself or, in some determined cases, against others. Some writers use the term *defensive* to denote war on the side of the state against which war is first declared or first entered upon, while they use *offensive*, or *aggressive*, to designate war on the side of the state that first declares war or first proceeds to wage it. This characterization, however, loses sight of an important element which must be taken into consideration in every discussion of the morality of war.

It is evident that in a just war the declaration of war always presupposes some previous hostile or unjust act on the



part of the state against which war is declared and, therefore, a war even on the part of the state that first declares it, may be defensive, i. e., a defense against those acts of hostility and injustice that preceded and brought it about and still continue in their effects. It is, therefore, more accurate and better suited to our purpose to apply the term *defensive* to a war undertaken in defense of the people or in defense of, or for the recovery of, the territory or property of the state; the term *offensive* or *aggressive* applies to a war initiated without just and sufficient cause or merely to injure or destroy a state, or for purposes of enrichment or aggrandizement at the expense of another state.

We sometimes speak of a war of retaliation. But retaliation is either a *punitive* act or a *defensive* act undertaken to recover what one has lost in territory or property or its equivalent.

## II

### CONFLICTING OPINIONS

According to the "conscientious objector" and the extreme pacifist, war in all its phases is intrinsically immoral and, hence, the employment of force among nations cannot at any time or under any circumstances be justified.

At the opposite pole of thought stands the theory that the state, being an end in itself (State Absolutism), can do no wrong, that it is in no way responsible or accountable to a Higher Being for its acts either of peace or of war. A natural offspring of this doctrine is the view that the right to declare and to carry on war comes simply from the fact of war itself. It is not considered necessary to attempt to justify it by the ordinary maxims of morality. It is its own justification.

This latter philosophy finds extreme, but logical expression in the case of the nationalist, the imperialist, and the militarist, who, to attain their respective purposes, do not hesitate to put into practice, if they do not openly hold and defend, a political philosophy similar to or even identical with that of the German professor, Heinrich von Treitschke (b. Dresden, 1834). In his work, *Die Politik*, Treitschke propounds and defends the doctrine that war is not merely a remedy against possible evil or justifiable only in rare and

extreme contingencies, but that it is as necessary as is the state itself. He declares that without it, in fact, "there would be no states," that "it is only in war that a people becomes in very deed a people," that war is so integrally part and parcel of human relations that "to expel war from the universe would be to mutilate human nature."

Then, too, there are those who, apparently taking offense at the philosophy of Treitschke with its harsh and bold terminology, seek to cast it in a milder and more acceptable mold. In the article "War" of the *Encyclopaedia Britannica*, we read that "fighting appears to be part of the order or disorder of nature"; on the one hand, war is the natural outcome of civilization and, on the other, it is necessary for its maintenance and expansion; the ideal of perpetual peace falls little short of a tantalizing phantom. It "seems to be that war is the outcome of the growth of societies which can never be uniform, but varies with varying conditions of climate, land, race, religion, and tradition. . . . The establishment of a world-state would no doubt be the end of international wars, but they would reappear as civil wars."

Thomas Hobbes (1588-1679) taught that war of men among themselves (*bellum omnium contra omnes*) is the natural state and that peace is only the suppression of nature by an artificial and free contract. War, then, according to him, is merely the reassertion of temporarily suppressed nature. When we hear that these extreme views are not expounded or practised to-day, we need but recall that it was as late as 1891 that Bismarck said: "War is a law of nature. It is the struggle for existence in a general form and until men become angels, it will not cease."<sup>1</sup> And quite in conformity with the general trend of this philosophy, the financier and the mer-

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<sup>1</sup>Franziskus Stratmann, O.P., *The Church and War* (Kenedy, 1928), 50. A most recent expression of this philosophy is had in the following statement of Gen. J. G. Harbord, former A. E. F. Chief of Staff, made in the course of an address before the American Legion of New York State: "A large number of honest but misguided people believe it possible to bring about that permanent peace which has been the dream of all ages, but which the Prince of Peace Himself failed to achieve 2,000 years ago. There is in war itself something beyond mere logic and above cold reason. There is something in war-made values above social comfort, above ease, and even above religion. It is the mysterious power war gives to life of rising above mere life . . ." Quoted in *Time*, September 14, 1931.

cantilist of to-day, as in ages past, seem to make no scruple of creating and deliberately maintaining and aggravating a complexus of conditions in the financial and commercial world that, in the ordinary course of human events, inevitably leads to war.

Not entirely divergent in principle from these views is the theory that was rather prevalent prior to the World War, *viz.*, that war, in the words of Fr. Stratmann, "is the blood-and-iron cure for weakness and idleness." Hegel (1770-1831) contends that war brings home to us, as nothing else can, the salutary lessons of the vanity of earthly things and translates into action what hitherto had been only edifying talk. Moltke wrote in a letter to Bluntchli, December 11, 1880: "everlasting peace is only a dream, not even a beautiful dream, and war is an element in God's government of the world. It develops in man the noblest virtues—courage and self-denial, love of duty and self-sacrifice. Without war the world would sink into materialism."<sup>2</sup>

Finally, there is "the materialistic concept of history" which teaches that the human race is caught in the grip of inexorable forces as uniform and fatalistic as are the laws of the physical world. The elements and factors that lead to war, and even war itself, are, in consequence, as free from ethical control as is, for example, the law of gravitation. They are lifted entirely out of the sphere where moral right and moral wrong are relevant and controlling factors. Individuals, states, and society at large must then be absolved of all moral responsibility of war in its every phase—its causes, its declaration and progress, and its effects.

In refutation of the preceding opinions and philosophies we need but bear in mind: (1) that the extreme assumption that all employment of force among nations is intrinsically immoral, finds no support either in revelation or in the natural law; (2) that the state, no less than the individual, is dependent upon, and subject and accountable to, the Creator and Supreme Lawgiver of the universe; (3) that man is vested with all the dignity and sacredness that the concept of human personality involves and has not been created for the pleasure or utility or aggrandizement of any other human being or group of human beings; (4) that, if we were to admit that war

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<sup>2</sup>Cf. Stratmann, *op. cit.*, 52, 53.

is necessary for the state in the sense that "to expel it . . . would be to mutilate human nature," we might just as correctly contend that disunion, enmity and violence are necessary among the individual citizens of the state, that to repress them is to mutilate human nature, and that it is the duty of the government to foment civil discord in a state threatened with too much peace; (5) that it is not necessary for men to graduate from the school of war in order to learn the hard lessons of honor and stern duty and self-sacrifice; (6) that the economic laws and world movements that are wont to terminate in war are not to be regarded with a reverence amounting almost to pathetic superstition, nor to be viewed as blind, omnipotent forces over which men can exercise no dominion, but that they are merely the sum-total of more or less constant and uniform, free actions of men along certain definite lines over which men have control; and, finally (7) that men, whether rulers or subjects or whether taken individually or collectively, are masters of their own actions and, in consequence, are morally responsible for them before the bar of justice, both divine and human. Only with these truths clearly and distinctly in mind can we speak of the ethics of war.

### III

#### THE RIGHT OF WAR

The right of war is the natural right of a sovereign state to wage armed conflict against another. It is an instance of the general moral power of coercion. Every perfect right, i. e., every right which involves in others a strict obligation of reverence, respect, and deference to itself, in order to be efficacious and consequently real and not nugatory, carries with it, as a last appeal, the subsidiary, natural right of employing physical force to exact its just claims. This means the right to defend itself against infringement, to recover the subject-matter of the right unjustly withheld or to exact its equivalent, and to inflict material damage and injury in the exercise of this coercion whenever, as is most generally the case, coercion cannot be exercised effectively without such damage and injury.

We may view the state either as a moral person or as a

natural institution having its natural end and endowed with the means necessary for the attainment of that end. Under both aspects it has corporate rights of its own which are perfect. It has also the duty of defending its citizens' rights in case of menace or violation from within and from without, not only against foreign individuals but also against foreign states. It has, in consequence, also the right of coercion in safeguarding its own and its citizens' rights in these cases. In any other supposition its corporate rights would be illusory and its duty towards its citizens impossible of fulfillment, while the individual rights of citizens would be at the mercy of the outside world. The pressure of such coercion may obviously be applied in certain circumstances without going to the extreme of complete international conflict; but when the latter arises, we have war pure and simple, even as the first application of force is initial warfare.

The state's right of war is, as is already quite evident, a natural right. The state receives it directly from the natural law. In giving to the state its essential purpose together with the involved rights and duties, the natural law at the same time vests the state with the subsidiary right of physical coercion without which "purpose," "rights," and "duties" would be mere names.

International law, it is true, may and actually does determine the limitations and extensions of the right of war by contract (either *implicit* in accepted custom or *explicit* in formal compact) among the nations which are party to international legal obligation. By mutual agreement nations may surrender in common a part of the full right and so qualify it, or they may even tolerate a limited abuse of it. But such agreement does not constitute or confer one particle of the original right itself, nor can it taken aught of it away except by the consent of the nations so deprived. The original determination of the right of war comes directly from the natural law alone.

#### IV

#### DEFENSIVE WAR ALONE JUSTIFIABLE

Though the right of war is a necessary and, consequently, a natural right of the state, still it is far from being absolute and unrestricted. As stated before, wars may be *punitive*,

*defensive*, or *offensive*. No state at any time can licitly claim the right to wage offensive warfare as we have defined and are using the term, *viz.*, "a war initiated without just and sufficient cause."

Stratmann,<sup>3</sup> when speaking of wars of aggression, makes the statement that "theoretically this kind of war can also be justified" and cites the traditional teaching of the Church since the time of St. Augustine (354-430) and the authority of St. Thomas, of Francisco de Vitoria, O.P., and of Francis Suarez, S.J. (1548-1617), to bear him out in his contention. It is evident from the context, however, that he understands "wars of aggression," not in the sense in which we are using the term, i. e., as synonymous with offensive warfare, but in the sense of purely punitive wars.

Of the two remaining kinds of war, *viz.*, punitive and defensive, the latter alone can evidently be justified on moral grounds. This appears to be quite clear from the arguments that follow.<sup>4</sup> First, when one man attempts to steal from another, the latter has the natural right to protect his property with physical force if necessary, and, failing in this, he again has the natural right to resort to physical force, if necessary, to recover it. If, however, he is able to regain his goods without violence, he acts wrongly in having recourse to it. He can, therefore, proceed against the aggressor *defensively*, either to *protect* what is his or to *recover* it, but when this goal has been attained, his right ceases. He cannot proceed *punitively* against his equal.

What is here right for the individual is right for the state. If one state threatens to attack, actually attacks, or captures the territory of another, the latter has the right to protect its territory or to recover it respectively. If war is necessary for this, presupposing the verification of the other requisite conditions, war may lawfully be undertaken; if, however, war is not necessary, then war and, in general, all violence are illicit. From this it would appear that war cannot be undertaken as a purely punitive measure, but only in defense, i. e., either to protect the rights, territory or property of the state or to recover them. Were punitive warfare legitimate, it could

<sup>3</sup>Cf. Stratmann, *op. cit.*, 56, 57.

<sup>4</sup>Cf. Michael Cronin, D.D., *The Science of Ethics* (Benziger, 1917), II, 665, 666.

be undertaken even after full compensation and reparation had been rendered by the delinquent state.

Secondly, if it were permissible to wage war for the purposes of punishment merely, it would at times be allowed, not only to incapacitate the enemy combatants for further fighting, but also to put the wounded and the prisoners of war to death, to attack unfortified cities, to assail non-combatants, and to perpetrate similar acts of war which are commonly condemned as unlawful. If a nation is deserving of punishment and a neighbor nation has the right to inflict condign punishment, there appears to be no valid reason to restrict the chastisement to fortified places and to combatants when unfortified cities and non-combatants may well have been the real offenders or, at least, equally guilty. Moreover, since the state has the power of inflicting the death penalty in punishment for certain crimes, why should not the punishing state here have the power of inflicting the supreme penalty upon the wounded and the prisoners of war? Why should its punishing power be restricted to the point merely of rendering the actual combatants incapable of further fighting?

It will be objected obviously that it is the state as the state, and not the individual private citizens, that disturbs the moral equilibrium by offenses against divine and human law; and, hence, that it is the state as represented by its fighting forces that must directly suffer the penalty.

The objection loses its force when we bear in mind that in legitimate warfare the attack is aimed at the repulsion of unjust aggression; hence, of necessity it must be limited to those who in one way or another are actually party to the aggression. But it seems that to be just the administration of punishment to a guilty state must be administered to the entire state, not merely to those citizens, who as soldiers happen to be sent to the front in an effort to ward off the punishment, even though the entire state does, as a matter of fact, suffer ultimately and indirectly.

It appears, then, that the only right of war is the right to render the enemy combatants incapable of further action, i. e., to repel aggression; that its right, therefore, is either to protect or to recover, i. e., to defend itself. As soon as no further question of defense can arise, no further aggression, either as offensive warfare or as punitive, can be lawfully undertaken.

Finally, war is an armed conflict "between two or more

independent and sovereign states," and therefore, between free and equal states. But where there are freedom and equality, it is difficult to see how there can be question of the one's enjoying and exercising authority and jurisdiction over the other. Punishment, however, is inflicted only by superior upon subordinate, by ruler upon subject, by one wielding authority upon one subservient to that authority.

On the contrary, Cajetan (Cardinal Thomas de Vio, 1469-1534), in spite of the acknowledged sovereignty and equality of contending states, asserts that as the state has the right to punish its own subjects so, too, it has the right to subject to punishment foreigners who have sinned against the state, because every state must safeguard its own well-being. If the state, he continues, had not the right to punish foreign princes and peoples, it would be imperfect and incomplete.<sup>5</sup>

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, in keeping with the general principle of the natural law that he, who has the right to the end, has also the right to the means requisite for the attainment of that end. If, on the other hand, such a right is not necessary, then, of course, the state can lay no legitimate claim to it—certainly not on the basis of Cajetan's argument.

The necessity of this is difficult to see. 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 the neighbor state before the security of the latter can be adequately assured. Even so,

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<sup>5</sup>Cf. *Summa S. Thomae*, Comm. il. II., IIae, qu. 40.



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.

Vitoria, on the authority of St. Augustine, St. Thomas and all the Masters, teaches that "aggressive warfare must have as its object the punishment of unjust dealing." Again he says: "The prince has no more authority over foreigners than over his own subjects, but he can use the sword equally against both to punish all unjust deeds."<sup>6</sup>

If Vitoria and the authorities referred to by him mean defensive wars, as we are using the term, when they speak of punishment, there is no difficulty. But if they are speaking of punitive wars 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 nations have been entrusted with the dispensation and administration of divine justice as towards one another.

This latter supposition, however, brings us face to face with practically unsurmountable difficulties. It is no easy task, even under circumstances the most favorable, to determine the degree of human guilt to which justice, if it is to be justice, must ever be proportionate. How then can the guilt of a state be determined in any adequate manner amid the turmoil and confusion of minds invariably occasioned by international entanglements? Even Stratmann, who insists upon the punitive function of war, is forced to acknowledge that "what would be practically impossible is the application of punitive justice, the idea being that only one of the fighting parties should bear the punishment resulting from the war and should submit quietly like a boy being punished by his father."<sup>7</sup> Can we reasonably presuppose that any nation, even in an instance where its guilt has been established with sufficient clearness and fair accuracy, would thus passively and humbly submit to chastisement administered by one of its peers among the nations? Still it would be obliged in justice to do so. Evidently a practically impossible demand! And taking human nature as it is, we might even call it a preposterous

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<sup>6</sup>Cf. Stratmann, *op. cit.*, 59, 60.

<sup>7</sup>*Ibid.*, 56.

and absurd demand. Naturally the nation would bend its every effort to ward off the punishment to the sacrifice of the lives of many of its citizens. One might say that this very sacrifice of human lives is part of the nation's punishment. Be that as it may, what about the lives of the punishing people that must inevitably be sacrificed in inflicting punishment?

When to this loss of human lives, we add the financial cost and other tremendous burdens of modern warfare, the impossibility of determining when sufficient punishment has been administered, the extremes and excesses to which the fighting forces will go when the dogs of war have once been unleashed, and the hatred that is sure to rankle for years to come in the hearts of both parties concerned, we must acknowledge, it seems, that it is the restoration of the violated moral order at too great a cost. The resulting evils, to say the least, outweigh the good accomplished. The attempt to administer justice at the expense of the horrors and cruelties and excesses of modern warfare, and that, too, at a time when the degree of guilt has not been adequately determined, seems itself to be a far greater violation of the moral order than to permit crime to go unpunished for the time being.

We might argue also along slightly different lines. The administration of justice in some of its phases has quite evidently been entrusted to human authorities, but in many others it is unmistakably God's sole prerogative. To this latter class does it not seem far wiser and far more beneficial to international well-being to add the instance of inflicting punishment upon a nation, since it is a matter fraught with such danger of abuse, at least until such time as it can be clearly established that it is incumbent upon a nation as a strict duty? And, again, all administration of human justice is necessarily faulty, either defective or excessive; hence, in all instances there is some portion of human guilt left to be weighed and properly balanced in the scales of God's justice. Now when in a particular instance there is good reason to fear that, after man's attempt to administer justice, there will be more to leave to God's justice than before, it seems only reasonable that man, in the first place, should look upon the entire matter as belonging to the domain of divine justice. Such an instance certainly seems to be that of the moral guilt of one nation towards another. Moreover, there are many ways of punishing and atoning for crime, and it can very readily happen

that God has already exacted the full penalty of a nation's crime in His own way and that the nation, on its part, has offered full atonement before its neighbor nation has taken even the first step to inflict punishment.

Suarez differs from the authorities already quoted merely in this that he is inclined to derive the state's right of punitive war, not from the natural law, since it is not necessary, he says, in the nature of things that this right reside with the aggrieved state (though it should be somewhere on earth), but from international law in the sense that civilized nations have tacitly agreed to adopt the individual state method in preference to the establishment of a supernational tribunal with adequate police powers.

The existence of any such agreement seems to be a mere assumption. But even presupposing its existence, it would fail to establish or confer a valid moral right in this instance unless, to say the very least, the adopted method of administering punishment be fairly just and reasonably adequate. If, however, in practice the method prove to be a source of great evil and abuse and of flagrant injustice, as in fact it apparently has proved in the past, it can find no justification in international law. Reverend Charles Macksey, S.J., who is otherwise a defender of the state's right of punitive warfare, very correctly admits that "international law views the punitive right of war with suspicion," because, he adds, "it is open to wide abuse."<sup>8</sup>

The point is frequently urged that the right of punitive war must be had somewhere on earth and, since there exists no supernational tribunal, it must be enjoyed by the individual states. The antecedent enunciates what seems to be another unproved assumption. We can, it seems, validly argue to the contrary that, if the administration of such a right very generally, not to say always, practically entails gross abuses and injustices that far outweigh the blessings of a restored moral order, or, in other words, if the abuse is the general rule and the proper use is at most the extremely rare exception, it is more in keeping with the general mode of interpreting the natural law to deny its existence.

The contention that the right of punitive war must exist somewhere on earth, i. e., either with the individual states or

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<sup>8</sup>Cf. *Catholic Encyclopedia*, Art.: "War."

with an international or supernational tribunal, is further weakened, not to say rendered positively untenable, by analogy with the state's right of inflicting punishment even upon its own citizens. According to Victor Cathrein, S.J., who in the various editions and versions of his *Philosophia Moralis* is particularly emphatic on this point, and other ethicists and moralists as well, the state is by no means the divinely constituted custodian of the moral order with general and unrestricted punitive powers in relation to its own citizens. In the first place, while it is true that all just punishment by its very nature serves to restore the violated moral order in some way, still the reparation of the disturbed moral order as existing between men and God is entirely beyond the scope and pale of the state's jurisdiction. And, secondly, the restoration of the violated individual moral order, i. e., of man towards himself, so long as it is strictly individual and does not either directly or indirectly touch the public weal at any point, is likewise removed from the scope of civil jurisdiction.

There remains but the moral order as existing between the citizens and the state. Over this and over this alone, to the absolute exclusion of the two previous ones, can the state lay any just claim to jurisdiction. And even within this limited sphere the state's punitive power is not general and unrestricted. On the contrary, it is rigidly conditioned on the common good. The state can punish the criminal only because, and in so far as, it is necessary for the general welfare of its citizens. Both the existence and the extent of its punitive right are determined by this consideration alone. It is true, as mentioned above, that all just punishment serves naturally to restore the moral order, but in meting out punishment to its guilty citizens the state must ever have in mind, not the degree of the criminal's guilt before God, but the emendation of the criminal and the deterring of others from the commission of like crimes. And in the same proportion in which it loses sight of this determining norm in establishing, aggravating, mitigating, or abrogating penalties, threatened or inflicted, it fails according to the nature of the case either by excesses or neglect.

The state then derives its punitive power not from the supposition that it is the custodian of the moral order and the minister of divine justice towards its subjects, but solely from the fact that punitive power is a necessary adjunct of bene-

ficial and effective civil authority. Without it the state would not be adequately equipped by nature to protect its own and its citizens' rights against the criminal onslaughts of its refractory subjects. This latter consideration leads us naturally to the further conclusion that the only punitive power enjoyed by the state is in reality, not strictly punitive at all, but merely a phase of its right of self-defense. It is a right vested with the state in virtue of which the state is empowered by nature to protect itself and its subjects from criminal assaults and to take necessary measures of future security.

In view of the natural and necessary restriction placed upon the punitive function of the state in dealing with its own subjects, it seems but a logical step to conclude that the punitive powers of nations among themselves, as well as of international and supernational tribunals, are hemmed in and restricted by the identical determining and limiting norm—the common welfare. 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 constituted custodians of the international moral order and, hence, that they cannot licitly wage punitive warfare for the sole purpose of satisfying God's justice. They may do so only in so far as the common welfare of nations can demand it, i. e., as previously expressed, only in so far as it might be necessary in order to compel an offending nation to capitulate, to cease its aggression, and to declare its readiness to restore seized property and territory or its equivalent, and to give adequate assurance of security for the future. And this brings us again to a type of warfare which upon closer analysis is found to be not strictly punitive at all, but defensive.

It would almost seem from the efforts that have been made in the past to justify punitive warfare that the inflicting of punishment by one nation upon another is a pleasant task which nations are only too quick to perform if they can but find reasons to justify themselves in undertaking it. Does this not suggest the possibility that there might be lurking here under the guise of the guardianship of the moral order the desire, even though it be unconscious, of giving vent to the human urge for revenge?

The inflicting of punishment is an unpleasant burden even under the most justifiable conditions, and instead of emphasizing it as a right, especially when there are concomitant evils

and difficulties, would it not be more in accord with truth and reality to view it rather as a duty? And, instead of searching for reasons to justify the enjoyment of the right and privilege of punishing, should one not rather limit the discussion to the conditions that go to make it one's bounden duty to have recourse to it? In other words, it should not be a question: When have I the right to inflict punishment? but: When have I the duty to do so? Were this point of view alone rigidly adhered to and properly stressed in international relations, even though one were to reject all other considerations as unconvincing, the ranks of the advocates and defenders of punitive warfare would be considerably depleted.

Probably, after all has been said *pro* and *con*, we should be choosing the better part if we cast our lot with those whom Max Scheler has in mind when he says: "Many consider untenable the Thomistic conception of a punitive war."<sup>9</sup> And it seems perfectly safe to say that such a choice, far from running counter to, harmonizes perfectly with the ideas set forth by Benedict XV in his various appeals for international peace and in his pleas that it rest even more firmly on the basis of charity and good-will among nations than upon the demands of rigid justice.

More than once, perhaps, in the perusal of these pages the question has suggested itself: What is the practical value of

<sup>9</sup>*Der Genius des Krieges und der Deutsche Krieg*. It is to be noted that, if we except Cathrein (*Philosophia Moralis*) and Cronin (*The Science of Ethics*), practically all modern ethicists and moralists uphold the lawfulness of punitive warfare. Slater (*A Manual of Moral Theology*, Benziger, 1908, I, 319) goes so far as to include it in "the certain teaching of Catholic theology." But since the arguments adduced in the preceding pages are applicable to these, as well as to those against whom they are directly aimed, further details are unnecessary here.

The wars of the Old Testament can be adduced neither in support of nor in repudiation of punitive warfare, or, for that matter, of modern warfare in any of its phases. Some of them are to be judged strictly according to the demands of morality as set forth in these pages, and in that light they are to be declared either just or unjust as the circumstances of the individual case warrant. For, we must remember, not all that is narrated in Sacred Scripture is given, either directly or indirectly, the stamp of approval by the inspired writer. In other instances, however, wars were conducted at the express command of God, the Sovereign Arbiter of life and death. The Israelites were but the executioners of His supernatural sentence. The penalty was within God's right to assign and within the Israelites' divinely communicated right to execute.

distinguishing between defensive, offensive, and punitive warfare and of insisting that, at most, defensive warfare alone is justifiable since nations are not guided by such niceties of thought in their declarations of war? Whatever be the attitude of nations in this regard, the distinction is valid and the insistence must be made on ethical and moral grounds. And, in particular, the distinction between defensive and offensive war must be stressed with ever-increasing emphasis in view of the fact that defensive warfare is becoming more than the mere repulsion of unjust aggression. In consequence of modern methods of war it is, in fact, becoming as much a slaughter of human beings as is offensive warfare. And if those who are directly responsible for the fate of nations are prone to close their eyes to these considerations, it is time to preclude from their immediate jurisdiction the momentous question of war and to appeal either to the tribunal of popular opinion by the referendum or to the League of Nations where less selfish interests and more sober judgment prevail.<sup>10</sup>

V

THE CONDITIONS OF A JUST DEFENSIVE WAR

From what we have thus far said it can be readily gleaned that war is not intrinsically evil, except in the sense that in every war, even the most necessary and licit, there is injustice (*objective* and *material*, if not *subjective* and *formal*) at least on one side. Offensive warfare must always be classified as intrinsically wrong and it seems impossible ever to justify a purely punitive war. As for defensive warfare, it is becoming increasingly difficult, if not actually impossible, to justify it as waged between two large states in modern times, especially because of the question of proportionate evil and of the ease with which impartial arbitration can be had in all cases. Nevertheless, it does at times find its justification in the natural law. Just as it is intrinsically wrong for an individual to slay an innocent person, but not evil to slay in necessary self-defense, so, too, the slaying of one nation by another without proper justification is intrinsically evil, but to undertake war in self-

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<sup>10</sup>A minority of the Ethics Committee do not agree with the position defended in the foregoing paragraphs on punitive war.

defense under the requisite conditions becomes the state's prerogative and at times even the state's duty. The very first and most essential condition of a just war, then, is that it be defensive. But there are other conditions that demand fulfillment.

### 1. *UNDERTAKEN IN VINDICATION OF A STRICT RIGHT*

A state may go to war only to protect or to recover (together with reasonable assurance of security for the future) that to which it has a strict right, i. e., that to which it can lay lawful claim on the basis of rigid justice, not on the basis of charity nor of any other virtue.<sup>11</sup> It must be more than an intranational right, i. e., more than a right of private individuals among themselves, or of citizens towards their government, or of the government towards its citizens. It must be a national right, i. e., a right that affects the nation as a nation and not merely the private and selfish interests of groups or individuals. It must at the same time be an international right, i. e., a national right that can rightfully claim to be recognized as such before the tribunal of international justice, not merely an imaginary right which an injured nation in its blind self-interest might be prone to adjudge genuine.

A distinction that seems to be only too frequently overlooked and neglected in practice by nations among themselves, but which must, nevertheless, be made and insisted upon, is that war may be waged lawfully only for points of the common good, but that not all that makes for the common good is of a nature to justify war for its attainment. Over and beyond making for the common good, it must be a point to which the nation has a strict right. Thus, for example, because of the absence of such a right, a war is not morally justified which aims at expanding national territory, at seizing even the surplus and undeveloped territory of another, or at compelling a backward nation to develop its natural resources for its own and for other nations' prosperity, no matter how desirable, beneficial, or necessary these various points may be for a developing state. For the same reason it is illicit to wage war

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<sup>11</sup>We are by no means here excluding the right of a nation in distress to call upon its neighbor nation for needed assistance and the latter's obligation of charity to respond.



for the purpose of enhancing national power and prestige, or of promoting an international "balance of power."

Much less may a just cause be found in the mere need of exercising a standing, martial force, of escaping revolutionary trouble at home, or of assuring the safety of the loans and investments of a country's financial aristocracy. Utterly inadequate, too, are such indefinite formulae as "the good of the community," "necessity," "public peace," "the freedom of the seas," "the preservation of culture," "the making of the world safe for democracy," and similar general terms which readily can be, and frequently have been, distorted into pretexts for unnecessary wars.<sup>12</sup> Likewise, to continue a war longer than is necessary for the protection or recovery of strict rights is quite as immoral as to begin it without sufficient cause.

Before a state is justified in undertaking war, its rights must either have been actually violated or stand in certain and imminent danger of violation. A hypothetical, merely probable, or distantly future menace, such as might be implied in the growth of armaments of other nations, is not a sufficiently justifying cause.

Moreover, the legitimate defense of rights implies that the aggrieved state is not simultaneously violating the rights of the state against which it is contemplating war. Otherwise, the two nations would at once be the victims and perpetrators of mutual injustice. Only that state which is less guilty might possibly have a right to begin war in these circumstances. Consequently, not even theoretically, would the more guilty state be justified either in taking the offense or in repelling the attack of the less guilty, so long as the latter merely sought the vindication of its rights and was willing to refrain from unjust conduct. And, practically speaking, even the less guilty would be prohibited from beginning hostilities until it had

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<sup>12</sup> 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 masked rôle 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. War is as utterly inadequate to vindicate national honor as is a duel to vindicate personal honor. Both serve to determine physical strength and dexterity in the use of arms, but neither has ever decided who was in the right and who in the wrong.

definitely and manifestly ceased to commit lesser, but real, acts of international injustice. Failure to do so would clearly disclose the absence of "the right intention," with which we shall deal later.

At the same time the violation of international rights must appear to the aggrieved state as morally certain. No degree of probability, not even a great preponderance of probability, is sufficient. Such seems to have been the clear teaching of St. Augustine, St. Thomas and all Catholic teachers and theologians until the beginning of the seventeenth century.<sup>13</sup> As Dominicus Bannez, O.P. (1528-1604), expresses it, "the state that wishes to declare war must not entertain a single doubt, the justifying reasons must be clearer than day. A declaration of war is equivalent to a sentence of death; to pronounce the latter with a doubtful conscience is murder." Vasquez, S.J. (1551-1604), is equally emphatic in asserting the same principle.

But with Suarez we find the first relaxation of the old strict war morality. He was the first prominent theologian to hold that in certain instances a ruler may go to war knowing that a great deal of right is on the opposite side but considering that, on the whole, there is more on his side.<sup>14</sup> In technical moral terminology Suarez introduced into war-making the principle of probabiliorism. This weakening of the traditional teaching of the Schools gave rise to a storm of protest. No one was more vehement, however, than his contemporary, fellow countryman, and fellow Jesuit, Vasquez. The latter bluntly repudiates the new doctrine, characterizing it as untenable, capable of great harm to Christianity and implying a reversion to barbarism.<sup>15</sup> He declares unyieldingly that no degree of probability would suffice to justify the initiation of "the greatest evil in Christian society."

So great was the authority of Suarez, however, that his view came to be adopted by a considerable number of theologians in the seventeenth, eighteenth, and nineteenth centuries with the result that excuses for war were made more and more easily, e. g., to maintain the balance of power or to prevent the extension of a neighboring state. But not all the theologians of

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<sup>13</sup>Cf. Stratmann, *op. cit.*, 61, 62.

<sup>14</sup>Cf. *De Bello*, Sect. VI.

<sup>15</sup>Cf. *Com. in Summa S. Thom.*, Disp. 64, Cap. 3.

these centuries departed from the stricter teaching of the old school. Sylvius (1648), in particular, who remained true to its principles, says: "When it is a question of imperiling the lives of a mass of men, the safest side must always be chosen." St. Alphonse Ligouri (d. 1787), while inclining to the new school, nevertheless sympathizes with those who consider a declaration of war so serious a matter that it can be justified only if there be no possible doubt as to the justice of the cause. He says: "War brings such evil with it, such harm to religion and to the innocent, that in practice it is hardly ever justifiable."<sup>16</sup>

Considering the ever-increasing terrors of modern warfare and their results and bearing in mind also that the Catholic Church *as such* has never defined the requisite conditions of a just war, it is certainly permissible, and even obligatory, to follow that line of argument, particularly when it appears at the same time the more logical, which restricts as much as possible the justifiableness of war. Bannez very aptly compares a declaration of war to a sentence of death. If a jury or judge, he argues, is morally forbidden to condemn a man to death unless they have convinced themselves of his guilt beyond all reasonable doubt, it cannot be logically maintained that a civil ruler is justified in pronouncing what is practically equivalent to the death sentence upon hundreds or thousands of men until he has raised the violation of his country's rights beyond the realm of reasonable doubt.

The ruler might, it is true, regard actual injustice as merely probable but future and contingent injustice as morally certain. In other words, while realizing that the evidence of present injustice is merely sufficient to generate a high degree of probability, still he might see that, if he failed to take belligerent action, the probable injustice would, according to all human calculation, certainly become actual. In similar circumstances, an individual would be justified in using extreme measures of self-defense. In both cases there would be moral certainty, not merely a high degree of probability, that one was confronted with a grave evil.

It is not sufficient, however, that the violation of a strict right be unmistakable. It is further requisite that the guilt of the nation involved in the violation be, to borrow the terminology of ethicists and moralists, *formal* and not merely *material*.

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<sup>16</sup>Cf. *Lib.*, III., Tract. IV., Nu. 404.

Guilt is said to be material only, when an act is really and objectively contrary to law, but the agent either is unaware of its malice or, being aware of it, is compelled by external force to place it. Such an act is not strictly an evil deed nor is he who places it an evil-doer. On the other hand, formal guilt is had when the trespasser not only offends against the right or law objectively and as a matter of fact, but at the same time is conscious of the lawlessness of his act and still deliberately performs it.

Luis Molina, S.J. (1535-1600), was evidently the first to break with the mooring of the past in this regard and to teach that a material injustice on the part of the offending state is a sufficient justification for war. In modern times the opinion has reached the stage where some Catholic ethicists hold that the question of formal and material guilt can be entirely disregarded. Cronin, for example, says: "One state can go to war with another if it is clear that its own rights have been violated, without thought of, or care for, the *bona fides* of that other. If wars were disallowed through the *bona fides* of the supposed offending party, few wars would be allowed in natural law."<sup>17</sup>

It is true, of course, that in the case of a merely material injustice, the unjust possession of alien property might be a very important consideration for the holding state. But, as Stratmann argues,<sup>18</sup> either this unjust possession can be proved or it cannot be proved. If it is proved and the state still persists in its refusal to yield what it holds unjustly, then it immediately becomes formally guilty and, in so far as the genuineness of the injustice is concerned, may be justly attacked. If, on the contrary, it cannot be satisfactorily proved, then there is not even an evident material injustice and war is certainly out of the question. To say the least, a wrong or injustice without formal guilt is a most doubtful thing, and the old school is surely right in insisting on proof of formal guilt before plunging into the horrors of war.

Certainly material wrongdoing is to be eliminated from the world in so far as it is possible, but war is not the proper means. If we are told that this sets up an unjust state of things, we can truthfully answer with Stratmann<sup>19</sup> that war

<sup>17</sup>Cf. Cronin, *op. cit.*, II, 666.

<sup>18</sup>Cf. Stratmann, *op. cit.*, 64.

<sup>19</sup>Cf. Stratmann, *op. cit.*, 65, 66.

without proof of formal guilt does so much more disastrously.

Lastly, we must bear in mind that as charity, and at times justice, can demand of us under certain conditions that we come to the assistance of our neighbor in the defense of his rights against an unjust aggressor, so, too, the same virtues can make identical claims upon groups of individuals, called states. In spite of the difficulty of determining in a concrete case whether intervention is forbidden, allowed, or commanded, and notwithstanding the fact that intervention is frequently undertaken for selfish purposes, still the general ethical principle is clear and incontrovertible. Whenever intervention becomes a duty either of charity or justice, it necessarily implies the *right* to intervene. The pretentious assertion that no state ever has such a right ignores the truth that governments exist essentially for the purpose of promoting human welfare and that the right of political independence has neither logical nor ethical foundation when it is claimed by a state which, instead of attaining, frustrates this end. Unless we are willing to embrace the absurd philosophy that political independence is an end in itself, we must insist that it ceases or is suspended as a national right when it persistently and profoundly fails to safeguard the welfare of the state and its members. In the course of the past century this absurdity gained so much ground among certain political writers and so-called liberals that it provoked the formal condemnation of the Church. No. 62 of the condemned principles in the *Syllabus* of Pope Pius IX runs thus: "The principle styled non-intervention is one to be proclaimed and put into practice."

Conditions which justify and, unless the inconvenience involved be disproportionately great, even require intervention by one state in the affairs of another are, for example, grave and long-continued oppression inflicted by a stronger state upon a weaker, the revolt of a people or a nation against intolerable tyranny, the unsuccessful efforts of a state to suppress an unwarranted rebellion injurious to national or international welfare, grossly immoral practices as cannibalism and human sacrifices under the guise of religion, and continued anarchy in a state unable for the present to maintain a tolerably competent government.

In order to justify, and much more, in order to require, intervention, the foregoing evils, or any of them, must be definite, certain, and extreme; hope of any remedy from within

must be wanting; the motive of the intervening nation must be free from selfishness; armed force must not be resorted to so long as milder methods, even those of moral coercion, are sufficient, and finally, the aiding nation, after it has accomplished its task, must be ready to withdraw at the request of the assisted people.

## 2. *PROPORTIONATE EVIL*

As in every other situation where an act is contemplated which will lead to both good and evil results, the rules of ethics require that the value and importance of the national right menaced or violated be in proportion to the magnitude of the damages to be inflicted by the war. In evaluating this proportion the aggrieved state must bear in mind the ravages and devastations of war as affecting not only itself, but the offending nation and neutral nations as well. It must look beyond its own individual welfare and view the evils of war in the light of the solidarity of nations. It is true that its own welfare commands first attention but the common interests of nations must not by any means be considered lightly. This latter consideration is ever waxing in importance because modern methods of transportation and intercommunication are constantly welding nations and international interests more closely together. A striking instance is had in the boycott declared recently by Mahatma Gandhi and his followers against English textile products. Directly it is an act of passive resistance to English domination over India and, as its immediate effect, it cripples a foreign market for English textiles, but it reaches far beyond this so as to affect even the cotton growers of our Southern States.

Hence, while a nation contemplating war places on one side of the scales the disadvantages and losses that its own common good and that of others will suffer directly and indirectly in consequence of foregoing its right in a given instance, it must place on the other side, first, its own probable loss of human lives and of spiritual and material goods, as well as its prospect of victory; secondly, the price of war in all its phases to the other party of the combat; and, thirdly, the losses and disadvantages that the war will bring upon neutral nations. And only when the losses likely to accrue from waiving a national right outbalance, or to say the very least counter-

balance, the ravages of war in all its ramifications can there be thought of justifying a people's going to war on the basis of proportionate evil.

War, particularly in modern times, inflicts so many, such various and such enormous injuries upon innocent and guilty indiscriminately and not only upon the belligerents themselves but upon neutral nations as well, that it cannot be justified on the score of proportionate evil except by very grave reasons—we might even say, by the gravest known to human society. Hence, the rights and interests that are unjustly attacked or jeopardized must be of primary importance to the very existence and proper functioning of the state and essential to the life and well-being of its members. Certainly such minor evils as a slight or temporary offense against national honor or prestige or comfort or property cannot be weighed in the balance with the terrific evils inevitably involved in the devastation of modern warfare.

There is even a conviction rapidly gaining ground, especially among the Catholic moralists of certain European countries, to the effect that no reason, however great, can ever be proportionately grave to justify warfare between two large states in modern times. In other words, it is contended that the rule of proportionate evil is alone sufficient to render war-making by any large state immoral in all instances at the present time.

That the rule of proportionate evil has become more exacting with each step in the development of war implements from their crudest forms to the modern instruments of death and destruction, is perfectly true. It seems also perfectly true that the time must come sooner or later when the very deadliness and destructiveness of war, if they continue to increase, will throw the evils of war out of all proportion to any possible good that may result and, hence, will of themselves outlaw all war except, perhaps, in its simpler forms as we shall continue to find it among small states and among semi-civilized and uncivilized peoples. We may even be justified in asserting, with the European moralists whose contention we have just cited, that such time has already arrived.

This opinion gathers force from the simple consideration that in the calm forum of deliberate reason the sacrifice of a single human life outweighs the mere offended vanity of a king or a people. Moreover, the welfare of the aggrieved

state, as well as that of the aggressor state, is always far better safeguarded through the toleration of relatively small wrongs until such time as they can be satisfactorily repaired through peaceful processes. The Kellogg Pact bears witness to the fact that nations are beginning to realize the seriousness of these considerations.

### 3. *LAST RESORT*

Recourse to war is not justified until all peaceful methods have been tried and found inadequate. A fair opportunity of adjustment must be given or a reasonable assurance had that the offense will not be rectified except solely under the stress of war. Hence, if there is reasonable ground to think that the offending state will withdraw its menace or repair the injury done and give a fair guarantee of the future security of the juridical order between the two states concerned (in consequence of proper representation, judicious diplomacy, patient urgency, a mere threat of war, or any other just means this side of actual war, such as the severance of diplomatic relations, the boycott, and trade embargo), the menaced or aggrieved state must first experience the futility of these pacific means and devices before it can proceed to the extreme of war. Moreover, if an apology suffices and has been tendered, it must be accepted; nor may the offer of adequate reparation and indemnification ever be rejected when the alternative is war. Likewise, if there exists a supernational tribunal which holds out reasonable hope of settling the matter amicably, it must be appealed to and its decision accepted as final.

Whether in the absence of a supernational tribunal the aggrieved state must consent to arbitrate differences of judgment before resorting to war, may in general be a matter of dispute. Nevertheless, when in a particular instance the public authority has sound reason to think that it can arrange for an unbiased tribunal as the alternative of war, the necessity of war in that case is certainly not final, and even though international law leaves the state free to accept or to refuse all arbitration, the natural law makes it strictly obligatory.

Provided the contending parties be properly minded, arbitration reasonably unprejudiced is always possible today, e. g., through the World Court and the League of Nations. Its superiority to war as a means of disentangling international



difficulties lies in its aptness to function on the basis of justice, peace, and good-will, and not, as war, on the basis of might, hatred and bloodshed. War, no more than a duel, has ever decided who was right. Just as individuals are far more likely to get justice by recourse to the courts, instead of staking life and property on the wielding of a sword or the pulling of a trigger, so too nations are far more likely to obtain justice and preserve their material prosperity by recourse to arbitration rather than to war.

Should, however, all these pacific devices prove ineffectual, then "the calm, deliberate judgment of the people, rather than the aims of the ambitious few, should decide whether war be the only solution. Knowing that the burdens of war will fall most heavily on them, the people will be slower in taking aggressive measures and, with an adequate sense of what charity and justice require, they will refuse to be led or driven into conflict by false report or specious argument. Reluctance of this sort is entirely consistent with firmness for right and zeal for national honor. If it were developed in every people, it would prove a more effectual restraint than any craft of diplomacy or economic prudence."<sup>20</sup>

#### 4. REASONABLE HOPE OF VICTORY

A further condition essential to the legitimate declaration of war is that the aggrieved nation should be able to entertain a reasonable hope of victory. Statesmen are not justified in making war if their country is likely to find itself in a worse condition in the end than at the beginning. The reason is clear and simple. To declare war in the face of certain defeat is to betray the public trust and is little short of national suicide.

As Stratmann<sup>21</sup> informs us, Cajetan and Vitoria maintain that the attacking party must be morally certain of victory. Though at times moral certainty can be had, still it does not seem reasonable that the responsible persons should be demanded always to possess so high a degree of certainty of victory, because, in the very nature of the case, it is generally impossible. It seems sufficient that the government should have solid reasons, proportionate to the evil alternative of defeat, for expecting victory.

<sup>20</sup>*Pastoral Letter of the American Hierarchy*, 69, 70.

<sup>21</sup>Cf. Stratmann, *op. cit.*, 67.

## 5. INITIATED BY PUBLIC AUTHORITY

The right of war rests solely with the sovereign authority of the state. It cannot become a prerogative of any subordinate in the state or of a section or province or city or an individual. This is evident for several reasons.<sup>22</sup> First, no one, except the juridical guardian of the common good of all, can have the right to imperil the common good of all the state as happens in war. Secondly, the subordinate parts of the state, as well as the individual citizens, can in the case of a grievance make appeal for redress to the supreme authority of the state; hence, they are not in a position which entitles them to the exercise of coercion either among themselves or against other nations. Thirdly, any such power in hands other than those of the sovereign power would upset the peace and order of the entire state. With the supreme authority lies also the judicial authority to determine when war is necessary and what is the necessary and proportionate measure of damage it may therein inflict. On the one hand, there is no other natural tribunal to which recourse may be had, and, on the other, without this judicial faculty the right of war would be in vain.

It is evident that a person or body designated by the sovereign power through the constitution of the state may also have the right to declare war. In England, the king declares war through his government; in France, the president with the consent of the two chambers; in the United States, war is declared by Congress.

## 6. RIGHT INTENTION

Among the conditions necessary for a just war, we must mention also a right intention. It would not be allowable, whilst outwardly and seemingly waging war in vindication of a right which has been actually violated, inwardly and really to wage it for some such illegitimate purpose as, for example the humiliation of a great military or naval rival, the desire of showing one's prowess, the desire of obtaining promotion, or mere delight in the excitement of war.

The right intention, says St. Thomas,<sup>23</sup> is "the intention to further good and avoid evil. For, says St. Augustine, in *De*

<sup>22</sup>Cf. *Catholic Encyclopedia*, Art.: "War."

<sup>23</sup>Cf. II., IIae, 40, I.

*Verbis Domini*, 'with the true servants of God even wars make for peace, as they are not undertaken for greed and cruelty but for the sake of peace, that the wicked may be restrained and the good protected.' Therefore, it may be that a war is declared by lawful authority and for a 'just cause' and yet may not be justifiable because the intention of those undertaking it is wrong. For what Augustine rightly censures in war is the desire to harm, the cruelty of revenge, a vindictive spirit, the rage of self-defense, the lust of power, and the like." A bad intention can vitiate an act, otherwise good and legitimate in war as well as in every other department of human conduct.

### 7. RIGHTLY CONDUCTED

A final condition necessary for legitimate warfare is that it be rightly conducted. This condition demands that the war be conducted with a moderation which, both in the continuance of the struggle and in its settlement, commits no act intrinsically immoral, nor exceeds in damage done or in reparation exacted the measure of necessity and of proportion to the value of the right involved, the cost of the war, and the guarantee of future security.

The questions here involved are generally thrown into the background by the all-absorbing question of the war itself. When war has once been declared and sane judgment has been tainted and biased, if not actually stifled by false patriotism and national hatred, and victory over the hostile forces by means fair or foul becomes the one supreme objective, the convenient but vicious saying, "all's fair in love and war," only too frequently finds expression in fact. The inevitable result is that international agreements, malicious propaganda, violence to non-combatants, and similar phases of the war scarcely ever as much as present themselves as ethical issues. This consideration forbids us to pass them over in silence.

#### (a) *Observance of International Agreements*

We may conveniently distinguish four general categories of international agreements. Some go to make up international law, others are peace treaties, others are compacts entered upon by two or more nations during times of peace, while the

fourth class comprises the less formal conventions which we might call "gentleman's agreements" or friendly understandings among nations.

They may include any material good or advantage concerning which international disputes may arise, such as international boundaries; trade; jurisdiction over rivers and seas; protectorates over independent peoples; pacific measures of settling international disputes; manner of conducting war with reference to use of poisonous gases and dum-dum bullets, aerial attacks, bombardment of unfortified cities, attacks on non-combatants, conversion of merchant ships into warships, laying of submarine mines, submarine warfare, and aerial attacks; contraband articles; the rights and duties of neutral powers and persons; the treatment of captives and wounded; and the status of public property held by the enemy.

Generally speaking, states have both the right and the duty to form agreements of this character. These agreements once entered upon receive their binding force, as does every promise or contract, proximately from the consent of the contracting parties, but ultimately from the natural law. To attempt to derive the sanctity of international agreements from positive law, from some such formula as "international agreements must be kept" is utterly futile. It merely pushes the question of moral obligation further back. Unless we wish to face the absurdity of an infinite series of postulates, we must admit here the obligatory force of the natural law. The first three categories as enumerated oblige in justice and at the same time also in charity, while the fourth, i. e., friendly understandings, would seem in all cases to oblige in charity. However, this latter may in the course of time, in consequence of long standing and mutual observance, tacitly take on the character and acquire the binding force of a formal agreement.

The consent requisite here to be valid and binding must be internal, externally expressed, freely given, morally possible of execution and not rendered illicit by a higher law, whether this restraining higher law be the divine law, ecclesiastical law or the law of a clearly and unmistakably greater common good. The consent must also be mutual for the simple reason that in almost all international agreements the element of reciprocity in one way or another enters in.

Of the enumerated necessary conditions, the question of

internal consent, though absolutely essential to the validity of the agreement, has but little importance in the practical moral discussion of the subject, since it is invariably taken for granted and insisted upon accordingly, as soon as it is sufficiently expressed by word of mouth, in writing or by some other recognized external sign. The requisite freedom of consent, however, does offer special difficulties in certain cases. The remaining conditions seem quite intelligible and, hence, demand no further explanation.

These agreements no matter to what category they belong generally retain their moral binding force so long as the circumstances that prompted or necessitated their making prevail and the conditions requisite for a binding contract are had. Hence, some of them, such as those referring to international trade relations and in general all those which by their very nature presuppose friendly relations between two or more nations as a basis for their existence, necessarily lose their moral efficacy immediately upon the declaration of war or even upon the severance of diplomatic relations. Likewise, the flagrant violation of the agreement by one of the contracting parties justifies the other party in considering it terminated, if it so desires, though it may in justice still insist upon its observance and even take measures of proportionate severity to accomplish it. This principle obtains certainly in reference to the specific violated article of an agreement and probably also to the entire agreement, i. e., as soon as an agreement has been violated in any one of its phases by one of the contracting parties, whether in time of peace or of war, it would seem that the other party is justified in repudiating, if it so desires, the agreement in its entirety.

But in all instances of the cessation of the obliging force of international agreement for whatsoever reason, there can be question of those obligations only which exist solely in virtue of the agreement. Those points which are at the same time points of the natural law—and they are many—lose none of their natural binding power with the lapse of the agreement. Thus, for example, an international agreement relating to the humane treatment of prisoners of war, to the sinking of merchant vessels, or to the use of dum dum bullets may have been terminated because of its violation by one of the contracting parties. This means merely that those obligations which had their origin solely in virtue of the agreement cease to exist.

The demands of the natural law which have a bearing on these points have in no way been mitigated.

As stated above, the freedom of consent necessary for the validity of agreements offers particular ethical difficulty. Among individuals extortionate agreements can ordinarily be judged and rectified in the civil courts. But in the absence of a competent and authoritative international court, no such recourse is open to the state. It must either unquestioningly submit to the unjust agreement or be morally authorized to decide for itself the question of observance.

The state which has compelled another state to subscribe to unjust commitments has no valid right to their fulfillment. Conversely, the unjustly coerced state is not under obligation to the offending state. The principle is clear, but its application is difficult. According to the prevailing opinion of Catholic ethicists and moralists, international good faith would very soon be shaken to its very foundation if individual states were left ethically free to decide for themselves when and whether any particular agreement was extortionate and when and whether it should be kept. Moreover, there is grave danger that the menace to the common welfare of nations resulting from the concession of such a right to individual states would outweigh the burden imposed upon particular states by the alternative denial. And, again, the common good might well require the unjustly treated state to observe what the offending state has no right to exact.

Dr. Cronin, who accepts the common view with some qualification, declares that an extorted agreement is not morally binding, "if the conditions imposed are manifestly and flagrantly unjust; for instance, if they are such as to reduce a state to the condition of absolute and irretrievable penury and the duress is extreme."<sup>24</sup> Some writers follow Grotius in maintaining that unjustly imposed agreements are binding only when they are as solemn and important as those by which peace is made at the close of a war;<sup>25</sup> if the contrary opinion were generally held, it would render all treaties of peace insecure, cause wars to be more devastating and more prolonged and constitute a continuous menace to international stability.

This impressive argument does not seem to be universally

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<sup>24</sup>Cf. Cronin, *op. cit.*, II, 658.

<sup>25</sup>Cf. Meyer, *Institutiones Juris Naturalis*, II, 770-771.

conclusive. It might be urged in opposition that no state is obliged, entirely against its will and only under compulsion, to promote the common good of nations at the sacrifice of its own vital rights and interests and those of its members, and that, if all unjust peace treaties were universally observed, the stronger states would thereby be occasioned more frequently to inflict unjust treaties upon the weaker.

Possibly the most reasonable is the compromise opinion according to which unjustly imposed agreements covering points of secondary importance are not always morally obligatory, whereas the provisions of treaties that terminate wars or cover matters of like importance are universally binding, unless made under such extreme duress and inflicting such extreme injustice that the very notoriety of the injustice would automatically free the coerced nation from the unjustly imposed conditions.<sup>26</sup>

(b) *No Malicious and Slanderous Propaganda*

"One of the strongest arguments against war," says the English Jesuit, Father Keating, "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."<sup>27</sup>

We are not here concerned with the mere concealment or suppression of the truth effected by severing the means of intercommunication and by news censorship. It makes no essential difference whether the purpose be to prevent the complete facts from becoming common knowledge at home or in enemy territory or among neutral nations. Such restrictive measures may well be warranted by the demands of the common good and, in general, cannot be impugned on moral or ethical grounds. Moreover, it is very doubtful whether news censorship can be made effective in the future in view of modern methods of air communication.

Quite another thing, however, is the systematic spreading of positive falsehood which is so much a part of every war. It may be carried on by paid propagandists, by conspiring

<sup>26</sup>Cf. *International Ethics*, 18, 19. John A. Ryan and Ethics Committee. (Catholic Association for International Peace, Washington, D. C.)

<sup>27</sup>Cf. *Month*, Feb., 1922.

newspapers, or by over-patriotic individuals. Again, it may have as its immediate object the distortion or invention of facts of war or the false imputation of cruelties to the enemy. But by whomsoever it is fostered or sponsored and whatsoever form it takes, its ultimate purpose is to instill into the hearts of the soldiers at the front and the people at home courage, hope of victory, and hatred for the enemy—qualities without which no war could be carried on for any considerable length of time.

The defense of lying, deceit, bad faith, treachery, and even perjury as legitimate in the stratagems of war and diplomacy, where good faith or common convention is not directly violated, seems to be a sequence of the erroneous and pernicious doctrine of Grotius that lying is not intrinsically immoral, but only extrinsically so, i. e., only in so far as those with whom we deal have the right to demand the truth of us.

In the first place, we must bear in mind that the ordinary type of war-time propaganda falls in no way short of a deliberate mis-statement of fact with the express motive of deceiving others. It verifies, consequently, in every respect the definition of a lie and being such it must stand condemned as an act intrinsically evil in the eyes of all thinking people. And what is intrinsically evil is necessarily immoral and remains immoral at all times and under all circumstances.

Secondly, one type of the propaganda here in question has all the earmarks of slander or calumny. Malicious defamation is slander whether it be directed against an individual, a body of individuals or even a nation; as such, it again stands condemned as an act intrinsically immoral.

Thirdly, apparently war-time propaganda with its host of deliberate falsehoods is considered justified on the score that it is employed to serve a good purpose. But regardless of misunderstandings and misinterpretations that stubbornly persist in certain quarters, the "principle" (*sic*) that "the end justifies the means," no matter how vicious they may be in themselves, is absolutely and universally untenable in the code of true morality. An intrinsic evil can never be justified.

(c) *Excessive Violence to Combatants Unjustifiable*

Just warfare is by its nature a series of defensive acts directed against the onslaughts of an unjust aggressor state. The defending state must not even for a moment lose sight of



this point of view. It must judge and direct its every military act in its light. Whatever is reasonably judged to fall under the category of defensive acts is legitimate, provided the damage inflicted be restricted to the necessary minimum and the means employed involve no action opposed either to the natural law or to the international law. Whatever exceeds these limits in any direction reaches out into the offensive and forbidden.

Now the one objective in all instances of legitimate self-defense must be to ward off the assault, to stop the aggression of the enemy, and to render him incapable of further attack here and now and for the immediate future. To attain this purpose the defender may rightfully employ only whatever means (provided they be not intrinsically immoral) prove actually necessary. If the aggression can be evaded by flight or if an outcry suffices to frighten away the assailant the defender may licitly resort to these measures only. If a blow of the fist is sufficient, again the defender must limit himself to that degree of violence. If the infliction of a wound, be it slight or severe, be required to repel the aggressor, the defender may licitly proceed to inflict it, but he may go no further. If, however, the assailant can be halted by nothing short of death, the defender need not hesitate on moral grounds to proceed even to that extreme. Nor can it be said that in this latter instance the defender is employing intrinsically immoral means. It is life pitted against life—innocent life unjustly attacked against guilty life voluntarily in jeopardy. The aggressor has forfeited his right to life no less than has the murderer who is executed by the state.

It seems futile to argue here, as Cronin does,<sup>28</sup> that "no man is empowered to forfeit his life to another, to place it at his disposal; no man has such a right over his own life that he can take it away: and, therefore, he cannot confer this right on another." One might just as well contend that evil under certain conditions can justly claim dominance over right and good.

We must bear distinctly in mind, however, that the defender can lawfully proceed to the extreme of death only when our supposition is verified, namely, that "the assailant can be halted by nothing short of death." When this supposition finds

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<sup>28</sup>Cf. Cronin, *op. cit.*, II, 98.

verification in fact is difficult to state. Possibly the safest position to take is to say *very seldom, if ever*. To attain the one objective of blameless self-defense, i. e., effectively to ward off the enemy aggression, all that is necessary in any case is to produce powerlessness in the assailant. Let the assailant be incapacitated for further attack and the assault must necessarily and invariably come to an end. Now to render the enemy helpless, a wounding, if sufficiently severe, will apparently in all cases prove adequately effective. This means, then, that apparently death *as such* (*in se et per se*) is never necessary in self-defense, and, hence, that the wounding of the assailant, sufficiently severe to be effective, is the limit to which one may rightfully proceed. It is true that the aggressor may later die in consequence of the wounding or that in the heat of the combat the defender frequently finds it impossible to discriminate between what kills and what wounds merely. But in both these instances death results contrary to the intention of the defender (*per accidens*, as the ethicists and moralists express it) and, hence, does not involve moral guilt.<sup>29</sup>

The identical application of general ethical principles obtains whether it be an instance of one individual against another, of a hundred against an equal number, or of a nation against a nation. Hence, in defensive warfare, just as in individual self-defense, the defending soldiers can lawfully employ all measures of violence, but also those alone, that prove actually necessary in any given case for attaining the objective of all defensive warfare, namely, the effective warding off of the enemy attack,<sup>30</sup> provided at the same time they do not trespass upon natural and international law in doing so. If, therefore, the enemy forces could be frightened into capitulation, e. g., by a display of great military power or by a volley of shots above their heads, the defenders would be obliged to refrain from anything more drastic. If wounding, slight or

<sup>29</sup>Cf. Victor Cathrein, S.J., *Philosophia Moralís* (5th ed., 1905), 242, 243, No. 306; Michael Cronin, *The Science of Ethics*, II, 97-100; Aug. Lehmkuhl, S.J., *Theologia Moralís* (10th ed., 1902), I, 494, 495, No. 833; Arthur Vermeersch, S.J., *Theologia Moralís* (1924), II, 517, No. 607, 2.

<sup>30</sup>It is evident that the repelling of unjust aggression is not limited to the bare warding off of actual inimical attacks, but that it extends, if necessary, to the point where the aggressor is sufficiently beaten into submission to restore ill-gotten goods, make adequate reparation for damage done, and give reasonable assurance of security for the future.

severe, is sufficient to repel the attack and to incapacitate the attackers for further aggression, the defenders are forbidden to resort to more violent measures. If, however, at any time the killing of the attacking forces be genuinely necessary for the effectual repulsion of the onslaught, the defenders may proceed without moral scruple to that extreme.

But here, as in private self-defense, the question arises: Is killing *as such* ever really necessary or will not wounding, if sufficiently severe, be at all times properly effective in frustrating the immediate assault and in incapacitating the assailants for future military action? On one's answer will depend one's course of action in this delicate matter. The sufficient effectiveness of wounding seems more in accord with the essential demands of blameless self-defense for the same reason as in individual self-defense. It seems properly adequate at all times to produce powerlessness in the enemy, and this in turn must necessarily lead to the sole licit objective of defensive warfare—the effectual breaking down of aggressive resistance.

We should be inclined to adopt this latter view also on humanitarian grounds. It must be remembered that while the enemy forces in defensive warfare are, of course, unjust aggressors when viewed as a unit, still the individual combatants are not such in the same complete sense as is the assailant in private unjust aggression. The former are often engaged in mortal conflict much against their wills. They are not free to retire at will from the attack and, as individuals, are frequently kindly disposed towards those whom they, as soldiers, are compelled to regard as enemies.

Again as in individual self-defense so also here, death will frequently result from the wounding. Moreover, the suddenness and intensity of the attack, with its mortal danger to the individual combatants, frequently preclude the possibility of distinguishing between what kills and what merely wounds. Frequently, too, the soldier is forced to discharge his instrument of death merely in the general direction of the hostile forces without being able to know in any way beforehand the particular damage it will effect. But in all these cases, provided the combatant be properly minded, death results contrary to his intention (*per accidens*) and, hence, still remains within the limits of blameless self-defense.

While the rule of properly moderated, as opposed to excessive violence may appeal to some as mere casuistry and un-

doubtedly meets with difficulties when seeking practical application on the field of battle, still the rule is valid on moral grounds and a number of instances can be enumerated where unmistakably it can and must be observed in all its bold rigidity. Thus, for example, it is clearly immoral: to fire even a single shot after the flag of truce or surrender has been hoisted by the enemy or any other sign given indicative of truce, armistice or capitulation; to wound or kill an enemy who has surrendered or has been taken captive; or to inflict death upon one already wounded beyond all reasonable possibility of further participation in military activities. Likewise, it is morally wrong for a soldier, from the shelter of his trench, to aim deliberately at a vital organ of an unwary enemy in "no-man's" land when the infliction of a wound would prove amply effective. The same is true of so-called snipers, who, without any particular danger to themselves, have ample occasion to take deliberate aim. The lawfulness of issuing orders that the infantry at the front, irrespective of concrete and individualizing circumstances, direct their bayonets solely to the head or heart of the foe, may be rightly questioned. While the use of gases that produce temporary inertia or powerlessness seems to be within the restrictions of the natural law, their use falls under the ban of international law.

International law steadily aiming at lessening the waste of human life and the miseries of warfare among civilized nations has done much to clarify points otherwise doubtful. Thus, for example, the use of ammunition (poisoned, explosive or dum-dum bullets, etc.) causing excessive destruction of human life, extreme suffering, incurable wounds or human defacement, beyond the requirements for rendering the combatants incapable of further fighting, as well as poisoning and assassination, are barred by international agreement based obviously upon the restrictions of the natural law.

(d) *Violence to Non-Combatants Unjustifiable*

Here, again, the fact that a just war is a series of defensive acts must be our directing norm. While violence to combatants is a necessary defensive act, violence to non-combatants can never be so construed. As combatants we must regard not only the fighting army at the front, but also all

soldiers in uniform or soldiers called to arms and also all those who in any way are actually engaged in the promotion of war or who perform auxiliary military services, such as manufacturers of arms and munitions, scouts, those engaged in the transportation of food supplies and implements of war, the operators of field telegraphy, etc. Mere sympathy with the fighters' cause, however, does not place one in the category of actual combatants. Hence, the defending army cannot regard the populace of the enemy country as combatants because of their known sympathy with the enemy's cause.

The natural law demands that the immunities of non-combatants be extended to women, to children, to the aged and feeble, to those capable of bearing arms but, as a matter of fact, in no way participating in the war, and to the wounded and prisoners. It would seem that to this class must be added also army chaplains, surgeons, and nurses together with the entire hospital personnel, as long as they restrict their activities to their respective duties.

In the prosecution of the war, attacks on non-combatants are barred by the moral law except where their simultaneous wounding or destruction is an unavoidable accident attending the legitimate attack upon combatant forces. That "war is hell" is true only in the sense that a maximum of human miseries inevitably follows in its wake; it is ethically untenable in the sense that it justifies anything and everything that makes for the suffering of the people at war. The defense that it hastens the close of the war through sympathy with the increased suffering, even of non-combatants, will not stand the test of moral principles. It is but another attempted application of the would-be principle that "the end justifies the means." Not only does the natural law forbid that further violence and suffering be inflicted upon the wounded and captives, but common charity and international law both require that they be properly cared for.

The ethical principles that restrict the application of violence to combatants only are equally restrictive in regard to enemy property. All property and such alone, which is destined either directly or indirectly for purposes of war, can be lawfully destroyed and then even if it belongs to private persons. The wanton destruction of the property of non-combatants or even of the state or of combatants, which does not and will not minister aid to the hostile state or to its army,

is therefore illicit. The burning of the Capitol and White House at Washington in 1814 and Sherman's celebrated "March to the Sea" during the American Civil War are very commonly considered violations of this demand of the natural law. International law expressly provides that every care must be taken to avoid the destruction of "edifices devoted to religion, art, science, and charity, historical monuments, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes."<sup>31</sup>

(e) *Prisoners of War*

A prisoner of war is a public enemy who, while armed or attached directly or indirectly to the hostile army for active aid, falls into the enemy's hands by capture or surrender. In general, all those designated before as combatants may surrender or be captured as prisoners of war. Whether army chaplains, surgeons, nurses, and hospital personnel fall under the category of non-combatants or not, it would seem that, because of the peculiar positions they hold, they might rightly claim exemption from capture as prisoners of war on the basis of the natural law. International law expressly exempts them.

When an enemy throws away his arms and asks for quarter, he ceases to be a combatant. The captured enemy when deprived of his arms loses his enemy character. This applies indiscriminately to soldier and sailor, to the able-bodied, the sick, the wounded, and the shipwrecked. Immediately they become entitled to the privileges and immunities, as well as subject to the inconveniences of a prisoner of war.

The natural laws seems to be quite clear in determining the status of the prisoner of war. All violence to a prisoner must cease forthwith upon capture or surrender. Quarter may not be denied him and to put him to death, unless some other very grave circumstance enters in, is sheer murder. His life, person and property are placed under the protection of the captor state. He is not a common criminal nor may he be treated as such. He may licitly be subjected to that degree of confinement only which is necessary to prevent his escape. He must obey the just military prisons laws of the captor state

<sup>31</sup>Cf. *The Hague Convention*, II, Art. 27.

and may be punished for breaches of discipline and shot if he attempts to escape. He may not be compelled to take up arms against his own country. He has a right to requisite food, clothing and shelter. The sick and wounded are strictly entitled to medical treatment. The Geneva Convention of 1906 provides that no distinction shall be made in the treatment accorded by a commander to his own and to enemy sick and wounded.

The status of a prisoner once established continues so long as the captor retains control of his person. It may end by successful escape, by exchange of prisoners, by parole, or by armistice or peace. If a prisoner has been liberated on parole, i. e., freed upon an express promise not to serve in a military capacity against the captor during the continuance of the war, he is obliged to observe this condition. Violation of the parole may be punished, on recapture, by death.

(f) *Air-Raids and Sinking of Merchant Vessels*

War by air is subject to the same general ethical principles as regards excessive violence, non-combatants and the like, as is war by land or sea, whether airships fight airships or engage in battle with land forces. In particular, air raids upon fortifications, arsenals, military barracks, munition factories and other institutions of war are lawful in a just war, provided every precaution is taken to spare the lives and property of non-combatants. This latter restriction is also in perfect accord with international law which demands that "the commander of an attacking force, before commencing a bombardment, except in case of an assault, should do all he can to warn the authorities of what is about to happen;" it demands further, as stated above, that every care should be taken to avoid the destruction of edifices devoted to religion, art, science, and charity, historical monuments, and hospitals.<sup>32</sup> But indiscriminate air-raids upon cities and unfortified places are morally unlawful, because they are undertaken directly with a view to the death of non-combatants and to the destruction of their property. Such acts fall also under the ban of international law which expressly exempts all undefended places "from bombardment or attack by any means whatsoever."<sup>33</sup>

<sup>32</sup>Cf. *Ibid.*, Articles 26, 27.

<sup>33</sup>Cf. *Ibid.*, Art. 25.

The sinking of provision ships destined for the enemy and even of passenger vessels or liners carrying contraband of any nature or engaged in any other belligerent mission is lawful, provided in both cases all possible care is taken to spare human lives. But to sink passenger vessels not connected in any way with the war is entirely illicit; and if loss of life ensues, the act must be regarded as one of deliberate murder.

(g) *Reprisals*

Reprisal is an act of retaliation and consists in applying to the subjects of an offending nation treatment analogous to that which the subjects of the offended states have received. It is resorted to when a specific wrong has been committed and the seizure is by way of compensation in value for the wrong. The things seized are held subject to the termination of the controversy and are restored in kind or in value if the controversy is amicably settled.

A reprisal, though an act of war in fact, is not such in intent. On the contrary, it is resorted to as a means of avoiding war by securing redress without resort to the graver alternative. It may, however, under certain conditions, constitute or lead up to a sufficient cause of war. It generally consists in forcibly seizing from an offending nation property equivalent in value to the wrong inflicted upon the aggrieved nation or in detaining the property of the offender with the intention of forcing the necessary redress. The form of reprisals most commonly employed in recent times consists in placing an embargo on such ships of the offending state as may be lying in the harbors of the aggrieved state, or in the seizure of its ships at sea, or of any property within the jurisdiction of the state whether belonging to the state or to private individuals.

Reprisals are not only lawful, but highly commendable as a preventive of war when less severe measures of coercion have proved futile and provided they are limited to the seizure of enemy property and to other milder forms. But when the evil perpetrated by the offending state is, for example, murder, wanton pillage, or hostile attack upon women and children, reprisals in kind are wholly illicit. The identical principles justify reprisals or condemn them, respectively, even when resorted to in the course of the war.



VI

ARMISTICES, CAPITULATIONS, AND  
TREATIES OF PEACE

An armistice is a temporary cessation of military operations by mutual agreement between belligerents. If its duration is not fixed, the belligerent parties may resume operations at any time, provided only that previous notice of such length as has been agreed upon be given to the enemy. In case of violation of the conditions of the armistice, the other party may renew hostilities without notice.

After agreeing upon or signing a capitulation, the capitulator must neither injure nor destroy the vessels, property, or stores in his possession that he is to deliver, unless the right to do so is expressly reserved to him in the agreement or capitulation.

Upon the termination of war, the belligerents cease to be enemies and the residents of both countries resume their peaceful pursuits as though the war had not intervened. All rights and obligations existing at the outbreak of the war may again be enforced, provided their nature is not such as to render their performance, through lapse of time or change of circumstances, useless or impossible.

War may terminate either by treaty, by cessation of hostilities or by conquest. The treaty is the usual and best method and at times well-nigh indispensable. The parties to the war can and should settle by a careful and formal document the various issues that caused the war and provide for peaceful and harmonious relations in the future.

Charity as well as justice must be manifest on both sides in drafting the terms of peace. Victory does not give the unjust aggressor the right to impose burdens upon the vanquished. On the contrary, the former owes the latter full measure of restitution. If victory crowns the arms of the state whose cause was just, it may in justice exact full reparation of the original injustice suffered, full compensation for all its own losses by reason of the war, and adequate guarantee of security for the future. The appropriation of a part of the territory of the vanquished, or even its entire subjection as a part of, or as tributary to, its conqueror may strictly speaking be exacted at times under these heads. But the history of nations would indicate that this exaction has been enforced far oftener

in the past than was justified by proportionate necessity. Here, if anywhere, must justice be tempered with mercy, and while justice may be well within its bounds in clamoring for its "pound of flesh," charity may require that the obligations of reparations and indemnities be postponed or reduced or entirely condoned and canceled.

Finally, inasmuch as both victors and vanquished always believe they have been in the right and inasmuch as no victorious nation can be assumed to treat the conquered nation with either justice or charity, the natural law indicates, if it does not actually command, that peace treaties should be made under the supervision of a neutral and impartial tribunal.

## VII

### DISARMAMENT

Every state is entitled and obliged to maintain a land and naval force adequate to protect itself and its citizens at any given time against domestic and foreign foes. This right and duty is but the extension of the state's right and duty of employing, when necessary, physical force for the exaction of its rightful claims against an unjust aggressor (right and duty of *coercion*). The right and duty of coercion, with which every state is vested by nature, would be vain and meaningless were the state denied the supplementary right of providing itself with the means without which the exercise of coercion would be unthinkable.

The right of armament is not absolute. As is true of every other state right, both its existence and its extension are conditioned by the common good of nations as well as by that of the individual possessing state. And since armament is far from being an unalloyed asset and blessing (it is simultaneously, both in itself and in its effects, both nationally and internationally, a liability, a burden, and an agent of much evil), it merits serious moral consideration in all its phases.

In the first place, to meet the demands of morality, armament must be intended for legitimate purposes only, i. e., for defensive warfare only. To levy armies or to build navies for purposes of offensive warfare or with the reasonable assurance that such military activities must lead ultimately to unnecessary and offensive war partakes of the immorality of offen-

sive warfare itself since it is but the preparation for the latter or, we might even say, its first stages.

Secondly, because of the tremendous economic burden that preparedness imposes upon the citizens of an arming nation and indirectly upon the world at large, it must be limited to the minimum requisite for national and international safety. When we recall, that, as commonly estimated, the cost of preparedness at the present time (1932) is far in excess of its cost prior to the World War: that, according to figures taken from *The World Almanac*, 20,370,625 trained men constitute the standing armies and the reserve forces of the six Great Powers today; and that, according to the same source, \$1,411,891,441 were appropriated by five of the Great Powers during the year 1930-1931 for naval development alone, we cannot but see how the unbridled race for armaments is annually swallowing up billions of dollars of the public wealth that might otherwise redound to the general welfare of the citizenry in the form of reduced taxes, or be employed in stimulating world trade and prosperity, or be spent to provide the necessities of life for millions of the unemployed, or to promote beneficent public undertakings such as hospitals for the poor sick and decent dwellings for the homeless.<sup>34</sup> One of our most prominent contemporary statesmen has said quite truthfully: "What the nations spend for armament and its upkeep would wipe out the slums of the cities, educate the children of the world, reestablish farms and industry, and restore prosperity to mankind." Moreover, at the present time, the funds released from military expenditures would permit a scaling-down of both war debts and German reparations without financial loss to any of the nations involved and thus help noticeably to solve one of the serious problems that bar the way to world economic recovery. In the light of these considerations, it is clearly the bounden duty of states to limit their machinery of war to the minimum requisite for national and international safety and to apply the staggering sums of public money, now squandered upon instruments of mutual slaughter, to works of genuine common welfare.

Thirdly, and this is the most serious consideration, excessive armaments are a continuous menace to peace because they are a continuous and powerful incitation to war. They

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<sup>34</sup>Cf. Apostolic Letter, Pope Pius XI, Oct. 3, 1931.

tend to foster national egoism, arrogance, aggressiveness and injustice towards weaker states. The error of contending that "might is right" is not committed by unarmed nations. While the armed nation assumes its haughty and offensive attitude provocative of war, the unarmed nation is bent upon pursuing its peaceful course, conscientiously avoiding what might be of offense to its neighbor and charitably ignoring petty occurrences that a more prepared nation would be quick to regard as national insults. The founders of our Union prohibited by a clause in the Constitution the maintenance of armaments by the single States. After our second war with Great Britain, the statesmen of the two countries decided to dismantle the gunboats of the Great Lakes and agreed that the 5,000 miles of Canadian border should remain undefended by warship, fort, or garrison. The peaceful results consequent to the precautions taken in both these instances present a spectacle quite at variance with the European situation where force and the threat of force have only too often been the measures employed by the Great Powers to promote their own interests at the expense of less powerful neighbors and in defiance of justice and equity.

Large armaments also breed fear, suspicion, ill-will, and hostility. During the decade that preceded the World War, German armaments aroused the fear of France, while at the same time French army laws caused suspicion and alarm in Germany. When a nation increases its military forces, the nations against which these instruments of war might conceivably be directed at some future time immediately and quite naturally become suspicious and apprehensive and ordinarily respond with counter-increases. This action in turn provokes new increases on the part of the first nation. When such rivalry becomes acute as it did in Europe between the years 1904-1914, we can expect war to be the one logical outcome.

Finally, excessive armaments have the effect of provoking hasty action in case of disputes and thus of interfering with peaceful negotiations and of precipitating unnecessary conflict. The unarmed nation, as the unarmed individual, knowing the impossibility of violent attack and of armed resistance will at all times think in terms of peaceful negotiations for the settlement of its difficulties and will mold its entire national policy in the light of that philosophy. But whether it be an instance

of armed individuals as, for example, in the frontier days of our country or of armed states, there is ever present the lurking danger of being too ready and hasty with the gun or the sword. In the summer of 1914, when the clouds of war began to gather over Europe, the military authorities immediately urged mobilization on the plea of proximate preparedness. But these military measures had the effect of cutting diplomatic negotiations short and of transferring the concern of statesmen from the peaceful settlement of the political issues at stake to the necessity of being in the advantageous position of striking the first blow.<sup>35</sup>

Since, then excessive armaments are a constant menace to peace because they are a continual incitation to war, nations are in duty bound, also from this point of view to limit their war machinery to the minimum requisite for national and international safety. This obligation binds their consciences with the same rigidity as does their obligation to avoid unnecessary and hence unjust wars in which extravagant preparedness has so commonly reached its natural culmination in the past.

But what is the minimum of preparedness reasonably necessary for national and international safety? Each nation disavows any evil designs upon its neighbors and protests that its armaments are intended for defensive purposes only. But as the attack, justifying the defense, can come only from another state equally emphatic in protesting its readiness to disarm if it were not for its own need of self-protection, the nations become entangled in a vicious circle. Each alleges defense as its object and transfers to some other nation the designs of aggression that alone can necessitate preparedness. The result is that each arms itself against the other and the ensuing race for armaments merely serves to augment the mutual suspicion of each other's motives.

The vicious circle must be broken and the obligation of doing so rests primarily with the more powerful of the nations involved. They must reënforce their verbal disavowals of evil designs against their neighbors by the practical proof of scrapping the very implements needed for the execution of any such designs. This will tend to restore international confi-

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<sup>35</sup>*Cf. Causes of War*, 9, 10. Parker T. Moon and Economic Relations Committee. (The Catholic Association for International Peace, Washington, D. C.)

dence and to create among nations the atmosphere of security so essential to disarmament. When one of the powerful nations decreases its military forces in testimony of its sincerity, the neighbor nations will be more inclined to reply with a corresponding reduction, which in turn, as the sense of security grows, will induce the first nation to look favorably upon a further reduction. Thus again the nations will be operating on the circumference of a circle, but now in a scaling-down process.

It ever remains true, however, that security, arbitration, and disarmament are inseparably inter-associated. Any one of the three is unthinkable on a large scale over a considerable period of time in the absence of the other two or even of one of them. Nations must be brought to realize that, with the possibility and feasibility of developing a system of collective responsibility on the part of all nations as a body for the protection of each, there no longer exists, in the same sense as formerly, the cruel necessity of each state's building up an army and navy adequate to meet all probable, if not all possible emergencies of self-defense. In particular, they must be brought to realize that some form of conciliation or arbitration must always be preferred to war, that existing wrongs can and must find a hearing and receive redress before a common forum of the nations, and that national security can and must be guaranteed by concerted action of all nations against the aggressor. When international security has been thus established and conciliation and arbitration have come to be the accepted methods of disentangling international difficulties, the disarmament problem will no longer be a wrangle over ratios of individual armament, but a matter of such limited forces only as, taken collectively, will suffice to uphold the authority of the community of nations as a whole.

The desideratum of procuring security, arbitration, and disarmament is not merely an idealistic, unattainable utopia. On the contrary, it is a goal well within the grasp of all rightly minded nations at the present time. And apparently it is constantly becoming more and more attainable. As it becomes more and more possible of attainment, however, the obligation of nations to accept it as a substitute for the horrors and savagery of war becomes more and more binding.<sup>36</sup>

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<sup>36</sup>Cf. Apostolic Letter, Pope Pius XI, Oct. 3, 1931.

We must also bear in mind that in matters of this nature obligations are always in proportion to capacity. Hence, the nations that are in a position to control the destinies of the world, are the ones primarily obliged to throw the full weight of their influence on the side of disarmament. In this respect the United States is uniquely outstanding at the present time.<sup>37</sup> In the first place, because of our country's vast industrial, financial and political power, it is preëminently fitted for world leadership—a fact that is becoming increasingly pronounced as other nations look to us for help and guidance. Secondly, our country's very geographic position gives it the assurance of comparatively slight danger and likelihood of armed attack. Hence, it can set the example of disarmament without incurring the risks that confront other nations less advantageously situated. The United States, then, is in a position to work for reduction of armament more effectively than any other nation, perhaps more effectively than all others combined and, furthermore, it is in a position to do so without any particular danger to itself. Its path of strict moral duty is, in consequence, clear and unmistakable.

### CONCLUSION

War in all its phases—in its inception, its progress, and its termination—falls within the controlling and guiding scope of moral principles. Of these principles those that determine the conditions of just warfare are the most important. As we have enumerated them, they are eight in number, namely: (1) defensive warfare alone is justifiable; (2) it may be undertaken solely in vindication of a strict right; (3) there must be adequate proportion between the violated right and the evils of war; (4) recourse may be had to war only as a last appeal; (5) there must be reasonable hope of victory; (6) war may be initiated by public authority only; (7) the belligerents must have the right intention; and (8) the war must be rightly conducted.

Since ethics must look not merely to the past and present but also to the future, one may ask whether or not future wars, with the ever-increasing horrors and miseries which they

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<sup>37</sup>Cf. *Europe and the United States: Elements in Their Relationship*, 24-28. R. A. McGowan and Europe Committee. (The Catholic Association for International Peace, Washington, D. C.)

inflict not only upon the belligerents themselves but upon neutral nations as well, will continue to find their justification and their condemnation in the principles here enunciated. We answer in the affirmative. Whenever the eight conditions necessary for a just war are verified, whatever be the place or time, war is legitimate; whenever they fail of verification, war is illicit. It is true, it is becoming ever more difficult to find all the conditions verified simultaneously in any given case. And in few, if any, modern wars have they been observed; nor has even an honest attempt to observe them been made by the nations that initiated hostilities. It is particularly the growing brutality of modern warfare and the comparative ease with which unbiased arbitration can be had in practically all instances that render the justification of war so difficult at the present time. And, undoubtedly, the time cannot be far distant and it is not improbable, perhaps, to say it is already here, when insistence upon the rule of proportionate evil and the rule of last appeal will outlaw all war on a large scale among the Great Powers.

It is primarily the duty of the powers of government to see to it that the requisite justifying conditions be fulfilled before war is entered upon. But the conscience of the individual soldier is not, in consequence, entirely exonerated. If the soldiers are conscripted or have voluntarily enlisted prior to the outbreak of the war, they are ordinarily not obliged to inquire into the justice of the war. They may presume that their country is in the right unless it is evidently in the wrong, and in doubt they must obey the commands of their lawful superiors. But if the war is clearly unjust, the only course that is open to the individual soldier, provided he cannot evade military service, is to refrain from inflicting injury on the enemy; otherwise, as is evident, he becomes a co-operator in injustice. It will seldom happen, however, that the private soldier will be in a position to declare the war undoubtedly unjust, because of his ignorance of many facts and considerations known frequently only to the country's highest officials.

It is quite different in the case of those who wish voluntarily to enlist after the outbreak of the war. Before these can lawfully consider themselves free to volunteer their services, they must assure themselves of the righteousness of the war, just as they are obliged to form a morally certain conscience about the lawfulness of any action that they undertake.



In the course of a war justice may change sides or it may come to be disregarded by both combatants. The latter hypothesis was apparently verified in the World War when the representatives of both groups refused to heed the peace pleas of Pope Benedict XV.<sup>38</sup>

Whether in the future wars will come within the governing reach of ethics, peaceful conciliation or arbitration become the universally accepted substitute of war for determining issues of public justice, and so great a sense of security prevail among nations as to effect vast reductions of armaments, depends upon the influence that economic, industrial, social, religious, and moral considerations can be made to bear upon the philosophies and consciences of those who control the fate of nations. Will they be forced to acknowledge in a practical way the uselessness, wastefulness and sinfulness of war? If with the passing of time it becomes evident that they are impervious to all consideration of human appeal, then it is for the peoples themselves, upon whom the burdens and horrors of war fall most heavily and surely, to devise some method for the settlement of international disputes more human than war, and by every legitimate means at their disposal to force its acceptance upon the governments of the world.

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<sup>38</sup>Cf. *The Permanent Peace Program of Pope Benedict XV*, Donald A. MacLean. (Catholic Association for International Peace, Washington, D. C.)

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THE Catholic Association for International Peace has grown out of a series of meetings during 1926-1927. Following the Eucharistic Congress in Chicago in 1926, representatives of a dozen nations met with Americans for discussion. In October of the same year a meeting was held in Cleveland where a temporary organization called The Catholic Committee on International Relations was formed. The permanent name, The Catholic Association for International Peace, was adopted at a two-day Conference in Washington in 1927. Three similar conferences were held in the same city in 1928, 1929, and 1930. An all-day regional Conference was held in Chicago on Armistice Day, 1930. The Fifth Annual Meeting was held in New York City in April, 1931. A one-day Regional Conference was held February 22, 1932, in St. Louis, and the Sixth Annual meeting was held in Cleveland on March 28, 29, 1932. Its objects and purposes are:

To study, disseminate and apply the principles of natural law and Christian charity to international problems of the day;

To consider the moral and legal aspects of any action which may be proposed or advocated in the international sphere;

To examine and consider issues which bear upon international goodwill;

To encourage the formation of conferences, lectures and study circles;

To issue reports on questions of international importance;

To further, in cooperation with similar Catholic organizations in other countries, in accord with the teachings of the Church, the object and purposes of world peace and happiness.

*The ultimate purpose is to promote, in conformity with the mind of the Church, "the Peace of Christ in the Kingdom of Christ."*

The Association works through the preparation of committee reports. Following careful preparation, these are discussed both publicly and privately in order to secure able revision and they are then published by the organization. Additional committees will be created from time to time. The Association solicits the membership and cooperation of Catholics of like mind. It is seeking especially the membership and cooperation of those whose experience and studies are such that they can take part in the preparation of committee reports.

The Committees on Ethics, Law and Organization, and Economic Relations serve as a guiding committee on the particular questions for all other committees. Questions involving moral judgments must be submitted to the Committee on Ethics.

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