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## Francisco Suárez: On Preaching the Gospel to People Like the American Indians

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# Francisco Suárez: On Preaching the Gospel to People Like the American Indians

John P. Doyle

## **Abstract**

In this Article, I will trace Suárez's thoughts on the natural equality of all men as well as the natural character and equality of their republics. Then, in a context of natural law and the limits of state power, I will consider Suárez's positions on the *jus gentium* (law of nations) and war. Next, I will consider Suárez's divisions of non-Christians and his views on preaching the Gospel to people like the American Indians.

## ARTICLES

# FRANCISCO SUÁREZ: ON PREACHING THE GOSPEL TO PEOPLE LIKE THE AMERICAN INDIANS

*John P. Doyle\**

### INTRODUCTION\*\*

As is well known, the century following Columbus's discovery of the New World was, for Spain, *El Siglo de Oro* (The Century of Gold). The appellation was well deserved. In just about every area, Spain led the way. Politically, first with the Catholic sovereigns Ferdinand and Isabella, and then with the Habsburg monarchies of the Emperor Charles V (1516-1556) and his son King Philip II (1556-1598), Spanish hegemony was at its zenith.<sup>1</sup> For most of the century, Spain's military might in Western Europe was unequalled. Its ability to project that might across thousands of sea-miles to the Americas, the Philippine Islands, and the Far East was astonishing even as we contemplate it today. In ecclesiastical politics, in theology, and in spirituality, Spanish influence was clear before, during, and after the Council of Trent (1545-1563).<sup>2</sup> In broader fields of university education, humanistic learning, literature, and art, Spaniards excelled.<sup>3</sup> With the 1534 founding and then the ex-

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\*\* The footnotes of this Article contain extensive Latin quotations from Suárez's writings. The bulk of Suárez's writings are not widely available in English. Translations for much of the Latin in succeeding footnotes can be found in *SELECTIONS FROM THREE WORKS OF FRANCISCO SUÁREZ, S.J., Vol. II, The Translations*, prepared by Gwladys L. Williams, et al., in *20 THE CLASSICS OF INTERNATIONAL LAW* (James Brown Scott, ed., 1944). The author, while conversant with the James Brown Scott translation, is not in full agreement with all of the translations; consequently, we are providing cross-references, rather than translations. Wherever available, such cross-references have been indicated by page references to this volume in brackets following the quotations.

1. For an overview here, see generally JOHN LYNCH, *SPAIN UNDER THE HABSBURGS. VOLUME ONE: EMPIRE AND ABSOLUTISM, 1516-1598* (2d ed. 1981).

2. Some names here might include: Cardinal Ximenes de Cisneros (1436-1517), St. Thomas of Villanueva (1488-1555), St. Teresa of Avila (1515-1562), St. John of the Cross (1542-1591), Andrés de Vega (1498-1560), and Alfonso Salmerón (1515-1585).

3. In theology and philosophy, leading all others is the "Spanish Socrates,"

pansion of the Jesuits, by the end of the sixteenth century that excellence and influence was waxing stronger.

Throughout the golden century, however, ethical doubts festered with regard to the newly encountered peoples and territories. By what right had the Spaniards assumed dominion over the nations and lands of the Americas? Was it in any manner moral for one nation without provocation simply to impose its rule upon another? Asked in an exclusively European context, a query like this would receive a negative reply. But what of barbarous unbelievers? Could they not be conquered for their own good? That is to say, could they not and should they not be subjected to the Spaniards in order to receive civilization and Christianity? Indeed, did not the Spaniards have a natural imperative, rooted in humanity itself, to civilize such people, as well as a supernatural one, rooted in Catholic Faith, to evangelize them?

By the time Francisco Suárez came to address them, the main questions raised by the evangelization of the American Indians were pretty much settled for Catholic theologians. The renowned "Father of International Law," Francisco de Vitoria, O.P., in his famous *Relectiones de Indis*, delivered at Salamanca in January and June of 1539, had laid down what became the common view.<sup>4</sup> In brief, for Vitoria and his successors the Indians were human beings, lords of their own lives and possessions, and it was not lawful to subjugate and despoil them without just cause—even in order to civilize and to Christianize them.

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Francisco de Vitoria (1483-1546). Among the Dominican successors of Vitoria, deserving special reference are Domingo de Soto (1494-1560), Melchior Cano (1509-1560), and Domingo Bañez (1528-1604). Of the Jesuits, one must mention Francisco de Toledo, also known as Toletus (1533-1596), Gabriel Vázquez (1549-1604), Luis de Molina (1535-1600), and, of course, Francisco Suárez (1548-1617). Others outside this context include Antonio de Nebrija (1442-1522), Juan Luis Vives (1492-1540), and Miguel de Cervantes (1547-1616). In art, there is first the adopted Spaniard El Greco (1541-1614), and in the 17th century Francisco de Zurbarán (1598-1664) and Velásquez (1599-1661) as well.

4. For the critical text of the *Relectiones de Indis*, see Francisco de Vitoria, *Relectio de Indis, o libertad de los Indios*, in 5 CORPUS HISPANORUM DE PACE (Luciano Pereña and J.M. Pérez Prendes eds., edición bilingüe 1961) [hereinafter CORPUS HISPANORUM DE PACE], and Francisco de Vitoria, *Relectio de Iure Belli o paz dinámica. Escuela española de la paz. Primera generación 1526-1560*, in 6 CORPUS HISPANORUM DE PACE (Luciano Pereña et al. eds., 1981). For a recent English translation, see FRANCISCO DE VITORIA, *POLITICAL WRITINGS* 233 (Anthony Pagden & Jeremy Lawrance eds., 1991).

As we shall see, this squares with the beliefs of Suárez. While the position Suárez took was general and made almost no mention of the American Indians, its application to them is unmistakable. In this Article, I will trace Suárez's thoughts on the natural equality of all men as well as the natural character and equality of their republics. Then, in a context of natural law and the limits of state power, I will consider Suárez's positions on the *jus gentium* (law of nations) and war. Important at that juncture is Suárez's emphasis on the international character of the *jus gentium* and its influence on his attitudes towards non-Christians and their political arrangements. Next, I will consider Suárez's divisions of non-Christians and his views on preaching the Gospel to people like the American Indians. Here his questions concern the Church's right to preach the Gospel to all nations and especially the extent of that right when it comes to non-Christian peoples and rulers not subject to Christian power. But first let me fill in some of the background on Suárez himself and on the sources for this Article.

# I. SUÁREZ—THE MAN, HIS WORK, AND HIS INFLUENCE

Francisco Suárez was born at Granada in Spain on January 5, 1548.<sup>5</sup> In the autumn of 1561 he enrolled at what was then the finest university in the world, Salamanca.<sup>6</sup> Here he studied law until at sixteen years of age he heard the call of God and entered, on June 16, 1564, into the fledgling Society of Jesus.<sup>7</sup> After three months in the novitiate at Medina del Campo, his Jesuit superiors sent him back to the Society's College at Salamanca to begin at seventeen the study of philosophy.<sup>8</sup> In October 1566, following his first vows as a Jesuit, Suárez went on to

5. See 1 RAOUL DE SCORRAILLE, S.J., FRANÇOIS SUÁREZ DE LA COMPAGNIE DE JÉSUS 3 (1911). This work is still the chief source on Suárez's life. In English, see JOSEPH FICHTER, MAN OF SPAIN, FRANCIS SUÁREZ 6 (1940). For a briefer but still accurate presentation, see P. MONNOT, *Suarez, François. I. Vie et oeuvres*, in 14 DICTIONNAIRE DE THÉOLOGIE CATHOLIQUE, 2<sup>e</sup> partie, cols. 2638-49 (1941). On Suárez's ancestry, see José de Duenas, S.J., *Los Suárez de Toledo*, in 133 RAZÓN Y FE 91 (número extraordinario 1948).

6. 1 DE SCORRAILLE, *supra* note 5, at 30; FICHTER, *supra* note 5, at 29.

7. 1 DE SCORRAILLE, *supra* note 5, at 45-46; FICHTER, *supra* note 5, at 48-50. It is cited as "a matter of later history" that Suárez asked to remain a lay brother in the Society of Jesus "since he himself was convinced that he could not successfully complete even the fundamental course in philosophy." *Id.* at 52.

8. 1 DE SCORRAILLE, *supra* note 5, at 52; FICHTER, *supra* note 5, at 53.

theological studies, still at Salamanca.<sup>9</sup>

At that time the Jesuits did not have enough theologians to staff the faculties under which their students were enrolled, so Suárez's class received a rather eclectic, but nevertheless first-rate, training from professors on the University faculty of theology.<sup>10</sup> Chief among Suárez's mentors here was the Dominican, Juan Mancio (1497-1576), who was himself first a pupil and then, in Salamanca's principal chair (*cathedra de prima*) of theology, a successor of the great Vitoria.<sup>11</sup>

Following his theological studies, Suárez in 1570 began to teach philosophy, initially at Salamanca as a Scholastic tutor,<sup>12</sup> and then as a regular professor at the Jesuit college in Segovia.<sup>13</sup> It was here that he was ordained a priest in March of 1572.<sup>14</sup> After ordination, he continued to lecture in philosophy until September 1574, when, at the Jesuit college in Valladolid, he commenced his main life's work as a theology teacher.<sup>15</sup> Later he taught his subject at Avila (1575), Segovia (1575), Valladolid again (1576), Rome (1580), Alcalá (1585), and Salamanca (1593).<sup>16</sup>

Meanwhile, in 1581 Philip II of Spain had united the kingdoms of Spain and Portugal.<sup>17</sup> Sixteen years later, Suárez, complying with a request by Philip to the Jesuits, assumed the

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9. 1 DE SCORRAILLE, *supra* note 5, at 84.

10. FICHTER, *supra* note 5, at 79.

11. *Id.* at 79-80 explains that

[p]erhaps in no other university in the world is there to be found so brilliant a succession of professors as that which filled the principal chair of theology at Salamanca during the sixteenth century. Suárez' teacher, Mancio, was the fifth of the line which started with the great Francis Vittorio in 1526, and ended with the controversial Dominic Bañez in 1604. In the order in which they followed Vittorio these outstanding Dominican scholars were: Melchior Cano, Dominic de Soto, Peter de Sotomayor, John Mancio, Bartholomew de Medina, and Dominic Bañez. All of these men enter intimately into the life of Francis Suárez; those before Mancio, his teacher, because of their influence on his development; those after Mancio because he knew them personally and was sometimes at odds with them.

*Id.*

12. 1 DE SCORRAILLE, *supra* note 5, at 118.

13. *Id.* at 130; FICHTER, *supra* note 5, at 94.

14. 1 DE SCORRAILLE, *supra* note 5, at 133; FICHTER, *supra* note 5, at 96.

15. 1 DE SCORRAILLE, *supra* note 5, at 149; FICHTER, *supra* note 5, at 107.

16. See generally FICHTER, *supra* note 5, at 107-98.

17. See LYNCH, *supra* note 1, at 322-30.

principal chair of theology at the University of Coimbra.<sup>18</sup> Here he remained, teaching and participating in theological discussions, until his retirement at the end of the academic year, 1614-15. Two years later, on September 25, 1617, he died in Lisbon.<sup>19</sup>

From 1590 on, Suárez's literary production was Herculean, with volume after volume appearing in his own lifetime or published posthumously by his friend and literary executor, Baltasar Alvarez.<sup>20</sup> One can see the extent of this labor in any of the several editions of Suárez's *Opera Omnia* published after 1617. The most accessible of these, and the one to which I will refer in this Article, comprises twenty-six volumes of text, most running close to 1000 pages, in quarto!<sup>21</sup> One author, who "conservatively estimated" Suárez's output at "upwards of twenty-one million words," has commented:

This would account for more than two hundred and eighty novels of seventy-five thousand words apiece. Truly a gigantic task for any author, but when we consider that all of Suárez's work was done in the highly precise and technical fields of theology, philosophy, and law, the comparison between him and a modern novelist limps badly. Prolific is a weak adjective to apply to him.<sup>22</sup>

Among the volumes of his writings, the great majority are naturally of a theological character. This, however, is not to say that they lack importance outside the field of theology it-

18. 1 DE SCORRAILLE, *supra* note 5, at 335; FICHTER, *supra* note 5, at 208.

19. 2 DE SCORRAILLE, *supra* note 5, at 223; FICHTER, *supra* note 5, at 325-27.

20. In this connection,

Suarez laissait un certain nombre d'ouvrages tout préparés pour l'impression; mais l'apparition de tel d'entre eux se trouvait différée *sine die* par l'interdiction de rien publier sur le sujet des controverses *de auxiliis*. Les autres, pendant les dix ans qui suivirent la mort de Suarez, furent presque tous édités par le P. Balthazar Alvarès, son collègue et son ami, qui édita aussi les cours que Suárez avait laissés sans pouvoir lui-même en faire la révision.

MONNOT, *supra* note 5, col. 2641. For a succinct account of the controversy, "*de auxiliis*," in which, however, the name of Suárez is unfortunately omitted, see Antonio Astrain, *Congregatio de Auxiliis*, in 4 CATHOLIC ENCYCLOPEDIA 238-39 (1913). On Baltasar Alvarez, see CARLOS SOMMERVOGEL, 1 BIBLIOTHÈQUE DE LA COMPAGNIE DE JÉSUS 221-22 (1890).

21. See FRANCISCUS SUÁREZ, S.J., *OPERA OMNIA* (Carolus Berton, ed., 1856-66 & Supp. 1878) [hereinafter *OPERA OMNIA*]. Unless otherwise noted, later references to and citations of Suárez will be from this edition.

22. FICHTER, *supra* note 5, at 327.

self. Quite the contrary. Some of this majority have had widespread influence even up to our time, especially in areas of philosophy and jurisprudence. For particular mention here, let me single out the *De Legibus Seu de Deo Legislatore* (On Laws or on God the Lawgiver) (*De Legibus*), published at Coimbra in 1612, and the *Defensio Fidei Catholicae* (A Defense of the Catholic Faith) (*Defensio Fidei*), published at Coimbra in 1613. About both of these I will say more in the immediately following section. But to emphasize the importance of Suárez's output, especially for modern international law, one may recall that, in the opinion of Hugo Grotius, our Jesuit doctor was a philosopher and theologian of such penetration "that he hardly had an equal."<sup>23</sup>

## II. THE SOURCES FOR THIS ARTICLE

As already mentioned, for Catholic theologians the question of the evangelization of the Indians was largely settled in the wake of Vitoria.<sup>24</sup> While there is no mistaking the fact that he was thinking of Vitoria and the American experience, Suárez, to my knowledge, unambiguously referred to the American Indians and their conquest only once, apart from citations of the titles of Vitoria's works. Moreover, he made no reference to the well-known advocate of the Indians, Bartolomé de las Casas,<sup>25</sup> to Las Casas's celebrated encounter with Sepúlveda in 1550-51,<sup>26</sup> or to people such as his Jesuit order-brother José de Acosta.<sup>27</sup> In this, he moves—even more

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23. See 2 DE SCORRAILLE, *supra* note 5, at 437. For some of Suárez's influence on Grotius as well as on international law generally, see J. Larequi, S.J., *Influencia suareciana en la filosofía de Grocio*, in 88 *RAZÓN Y FE* 525, 525-38 (1929); Isidoro Ruiz Moreno, *El derecho internacional y Francisco Suárez*, in 2 *ACTAS DEL IV CENTENARIO DEL NACIMIENTO DE FRANCISCO SUÁREZ* (1548-1948), at 331 (1949).

24. See *supra* note 4 and accompanying text.

25. See B. DE LAS CASAS, IN DEFENSE OF THE INDIANS: THE DEFENSE OF THE MOST REVEREND LORD, DON FRAY BARTOLOMÉ DE LAS CASAS, OF THE ORDER OF PREACHERS, LATE BISHOP OF CHIAPA, AGAINST THE PERSECUTORS AND SLANDERERS OF THE PEOPLES OF THE NEW WORLD DISCOVERED ACROSS THE SEAS (Stafford Poole, C.M. ed. & trans., 1974); see also B. de Las Casas, *De regia potestate, o, Derecho de autodeterminación*, in 8 *CORPUS HISPANORUM DE PACE*, *supra* note 4.

26. See generally LEWIS HANKE, ALL MANKIND IS ONE: A STUDY OF THE DISPUTATION BETWEEN BARTOLOMÉ DE LAS CASAS AND JUAN GINÉS DE SEPÚLVEDA IN 1550 ON THE INTELLECTUAL AND RELIGIOUS CAPACITY OF THE AMERICAN INDIANS (1974). See V. Beltrán de Heredia, O.P., *El maestro Domingo de Soto en la controversia de Las Casas con Sepúlveda*, in 45 *CIENCIA TOMISTA* 35-49, 177-93 (1932).

27. See Acosta, *De procuranda Indorum salute: pacificación y colonización*, in 23-24

strikingly than Vitoria did earlier—away from a case-by-case consideration of particulars and toward principles involved at a more universal level.<sup>28</sup> He does this almost entirely in eight works.

First and most important is the *Tractatus de fide* (Treatise on Faith) (*De Fide*). Originally composed in 1583 at the Jesuit *Collegium Romanum*<sup>29</sup> as lectures on the opening questions of Thomas Aquinas's *Summa Theologiae I-II*, this treatise was recently edited from four manuscripts and published in three parts.<sup>30</sup> The second of these parts contains the one unambiguous reference just mentioned.<sup>31</sup> The *De Fide* itself was revised again for lectures at Coimbra in 1613-14, Suárez's last year of teaching.<sup>32</sup> Finally, all that the master left behind was combined and published by Alvarez in a 1621 volume, which also included shorter treatments of hope and charity from the period of Suárez's Roman teaching.<sup>33</sup> Along the way, the men-

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CORPUS HISPANORUM DE PACE, *supra* note 4. Luciano Pereña, in his "Estudio preliminar" to this work, tells us that at one point Suárez, with a letter to the Cardinal Archbishop of Toledo, did play some role in a dispute involving Acosta. Luciano Pereña, *Estudio preliminar*, in 23 CORPUS HISPANORUM DE PACE, *supra* note 4, at 25 & n.35 (1984). I have not as yet been able to see a copy of this letter. De Scorraille has translated some parts of this letter and has summarized the part which directly relates to evangelization. 1 DE SCORRAILLE, *supra* note 5, at 267. However, in neither the translations nor in the summary is there any mention of Acosta. Henri Bernard, S.J., *La théorie du protectorat civil des missions en pays indigène. Ses antécédents et sa justification théologique par Suarez*, in 1937 NOUVELLE R. THÉOLOGIQUE 261, also links Suárez with Acosta but offers only the De Scorraille summary to support that linkage.

28. For this thought in connection with Vitoria, see GUILLERMO FRAILE & TEÓFILO URDÁNOZ, 1 HISTORIA DE LA FILOSOFÍA ESPAÑOLA 293-94 (1985). In my opinion it is even more fitting with respect to Suárez.

29. On the Jesuit College in Rome, see RICCARDO G. VILLOSLADA, S.J., STORIA DEL COLLEGIO ROMANO DAL SUO INIZIO (1551) ALLA SOPPRESSIONE DELLA COMPAGNIA DI GESÙ (1773) (1954). For Suárez's teaching at the Jesuit College, see Nikolaus Öry, S.J., *Suarez in Rom: seine römische Lehrtätigkeit auf Grund handschriftlicher Überlieferung*, in 82 ZEITSCHRIFT FÜR KATHOLISCHE THEOLOGIE 133 (1959), and more recently Félix Rodríguez, *La docencia romana de Suárez (1580-1585)*, in 7 CUADERNOS SALMANTINOS DE FILOSOFÍA 295 (1980).

30. See Franciscus Suárez, S.J., *De Fide, Secunda Pars, 1583*, in 33 ARCHIVO TEOLÓGICO GRANADINO 191 (Karl Deuringer ed., 1970) [hereinafter *De Fide III*]; Franciscus Suárez, S.J., *De Fide, Secunda Pars, 1583*, in 32 ARCHIVO TEOLÓGICO GRANADINO 79 (Karl Deuringer ed., 1969) [hereinafter *De Fide II*]; Franciscus Suárez, S.J., *LECTIONES DE FIDE, ANNO 1583*, in COLLEGIO ROMANO HABITAS (Carolus Deuringer ed., 1967) [hereinafter *De Fide*].

31. Suárez, *De Fide II*, *supra* note 30, at 131.

32. See MONNOT, *supra* note 5, col. 2647; see also 2 DE SCORRAILLE, *supra* note 5, at 163.

33. 2 DE SCORRAILLE, *supra* note 5, at 163. For Alvarez's own rather cryptic com-

tioned reference was unfortunately removed, perhaps by Alvarez, but more probably by Suárez himself.

The treatise on charity in the Alvarez volume<sup>34</sup> is also important for our present purposes. More specifically, Disputation XIII (*De Bello*) of that treatise contains Suárez's teaching on just war.<sup>35</sup> Delivered at Rome in the spring of 1584,<sup>36</sup> the treatises on charity and hope were apparently not revised, at least in any significant way, before their 1621 publication.<sup>37</sup> Nevertheless, the disputation on war is an obviously mature piece of work. Its particular relevance here may be seen immediately if one recalls that the second of Vitoria's *Relectiones de Indis* was on the right of war.<sup>38</sup>

Next in order of importance for us is the already mentioned *De Legibus*. The fruit of Suárez's teaching at Coimbra between 1601 and 1603, the *De Legibus* was edited by its author in 1612 and published that same year at Coimbra.<sup>39</sup> In the *Proemium* to the work, Suárez contended that, inasmuch as all paternal and legislative authority is derived from God, the universal Father and Lawgiver, a discussion of all law is not surprisingly within the province of a theologian.<sup>40</sup> This was fur-

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ments about its provenance, see 12 OPERA OMNIA, *supra* note 21, at vi-vii, 154, 219, 244, 333.

34. See Franciscus Suárez, S.J., *Tractatus tertius de Caritate* [hereinafter *De Caritate*], in 12 OPERA OMNIA, *supra* note 21, at 634-763.

35. *Id.* at 737-63.

36. See Öry, *supra* note 29, at 142, 149; Rodríguez, *supra* note 29, at 308.

37. Balthasar Alvarez, S.J., *Ad lectores pro auctore*, in 12 OPERA OMNIA, *supra* note 21, at vi ("Licet vero reliquas de spe et charitate disputationes antequam ad Conimbicensem hanc Academiam vocaretur, in Hispania vel Italia pressius (nimirum pro schola) explanaret, non possunt tamen auctoris martem et artem non olere.") [730]. The only revisions that I have noticed are cross-references to some of Suárez's own works later than 1584.

38. See *supra* note 4 and accompanying text.

39. 1 DE SCORRAILLE, *supra* note 5, at xx; 2 DE SCORRAILLE, *supra* note 5, at 156; see 5-6 OPERA OMNIA, *supra* note 21 (reprinting *De Legibus*). For a modern critical edition, see Francisco Suárez, *De legibus*, in 11-17, 21-22 CORPUS HISPANORUM DE PACE, *supra* note 4.

40. Franciscus Suárez, S.J., *Tractatus de legibus et legislatore Deo, Proemium*, in 5 OPERA OMNIA, *supra* note 21, at ix [hereinafter *De Legibus*]. Suárez stated

Nulli mirum videri debet si homini theologiam profitenti leges incidant disputandae. . . . Haec tamen non magni momenti sunt, et unico fere verbo diluuntur, considerando sicut omnem paternitatem, ita etiam omnem legislatorem a Deo derivari, omniumque legum auctoritatem in eum esse ultimo refundendam. . . . Non immerito igitur sub hac saltem ratione omnium legum discussio est theologicae facultatis . . . .

ther evident inasmuch as law is the rule of conscience and it is the business of theology to provide for consciences.<sup>41</sup> And finally, to Suárez the Catholic faith taught not only how the commands of God must be obeyed, but also how all natural, civil, and ecclesiastical law must be observed. Accordingly, it was a task of the theologian to consider the various kinds of law.<sup>42</sup>

Closely allied with the *De legibus*, both in the time and place of its composition as well as in much that it treats, is the *Defensio fidei catholicae adversus anglicanae sectae errores, cum responsione ad apologiam pro juramento fidelitatis et praefationem monitoriam serenissimi Jacobi Angliae Regis* (A Defense of the Catholic Faith Against the Errors of the Anglican Sect, with a Reply to the "Apology" for the "Oath of Fidelity" and the "Warning Preface" of James, the Most Serene King of England), which appeared at Coimbra in 1613.<sup>43</sup> In the year of its appearance this work was condemned by the English King James I and publicly burned in London, for the reason that in it Suárez had opposed the absolute right of kings and had defended the indirect power of the papacy over temporal rulers, as well as the legitimate resistance of the citizenry against a tyrannical monarch—even to the point of tyrannicide in the case of a monarch whom the Pope deposes for heresy.<sup>44</sup>

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*Id.* [14].

41. *Id.* at x ("[d]einde theologicum est negotium conscientia prospicere viatorum; conscientiarum vero rectitudo stat legibus servandis, sicut et pravitas violandis, cum lex quaelibet sit regula") [14].

42. *Id.* Suárez stated:

Tandem catholica fides non solum docet, quatenus parendum sit Deo supernaturaliter praecipienti, sed etiam quid natura vetet, jubeat vel permittat; et quatenus obediendum sit potestatibus sublimioribus, ut Paulus dixit, atque adeo quatenus parendum sit tum ecclesiasticis legibus, tum laicis, ante oculos nobis ponit. Ergo ex his fidei fundamentis, theologi est colligere quid in hoc aut illo legum genere habendum.

*Id.* [13].

43. The text takes up the whole of 24 OPERA OMNIA, *supra* note 21. For critical editions of parts of this work, see FRANCISCO SUÁREZ, DEFENSIO FIDEI III. PRINCIPATUS POLITICUS O LA SOBERANIA POPULAR (Eleuterio Elorduy & Luciano Peña eds., Latin & Spanish ed. 1965) and Francisco Suárez, *De juramento fidelitatis*, in 19 CORPUS HISPANORUM DE PACE, *supra* note 4.

44. 2 DE SCORRAILLE, *supra* note 5, at 193; *see id.* at 165-221; FICHTER, *supra* note 5, at 290-303. On the general background of Suárez's controversy with King James, *see* Francisco Elías de Tejada, *Suárez y el pensamiento inglés contemporáneo*, in HOMENAJE AL DR. EXIMIO P. SUÁREZ, S.J., EN EL IV CENTENARIO DE SU NACIMIENTO, 1548-1948, at 27-43 (T. Andrés Marcos et al. eds., 1948).

In fifth place is a work that is broadly classified as Scriptural commentary, the *De opere sex dierum* (On the Work of the Six Days [of Genesis]).<sup>45</sup> Stemming from lectures given in Spain during the 1570s,<sup>46</sup> the *De opere sex dierum* was revised by Suárez and was ready at the time of his death for publication by Alvarez in 1621 at Lyons.<sup>47</sup> Of special interest here is Book V, chapter 7, entitled "On Political Life in the State of Innocence."<sup>48</sup>

Next is the *Tractatus de Baptismo* (Treatise on Baptism). Originally composed as lectures at Alcalá in 1585, the work was published at Salamanca a decade later.<sup>49</sup> Most important in the present context is Disputation 25, sections 3 and 4.<sup>50</sup> In that place, Suárez is concerned with the widely discussed medieval question of baptizing children in contravention of the desires of their unbelieving parents.

Finally are two works that are partially parallel. Edited in 1958 from a single manuscript<sup>51</sup> is a series of questions entitled *De Justitia et Jure* (On Justice and Right).<sup>52</sup> Representing lectures dictated by Suárez most probably at Rome in the summer of 1584,<sup>53</sup> these questions in part anticipate material published by the master himself in 1599 under the title *Disputatio de justitia qua Deus reddit praemia meritis et poenas pro peccatis* (A Disputation on the Justice by Which God Gives Rewards for Merit and Punishments for Sin).<sup>54</sup>

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45. See FRANCISCUS SUÁREZ, S.J., *De opere sex dierum*, in 3 OPERA OMNIA, *supra* note 21, at 1-460.

46. 1 DE SCORRAILLE, *supra* note 5, at 149.

47. See MONNOT, *supra* note 5, col. 2645.

48. See generally Suárez, *De opere sex dierum*, in 3 OPERA OMNIA, *supra* note 21, at 413-19 ("Quod genus vitae corporalis, seu politicae, homines in statu innocentiae profiterentur").

49. See 1 DE SCORRAILLE, *supra* note 5, at 246, 328-29; MONNOT, *supra* note 5, col. 2643.

50. See Franciscus Suárez, S.J., *Tractatus de Baptismo*, in 21 OPERA OMNIA, *supra* note 21, at 428-36 [hereinafter *De Baptismo*].

51. Codex 534 of the *Archivio Università Gregoriana*.

52. See generally FRANCISCUS SUÁREZ, DIE GERECHTIGKEITSLEHRE DES JUNGEN SUÁREZ: EDITION UND UNTERSUCHUNG SEINER RÖMISCHEN VORLESUNGEN "DE IUSTITIA ET IURE" (Joachim Giers ed., 1958) [hereinafter *DE JUSTITIA ET IURE*].

53. *Id.* at 27. For the problems encountered both by Giers and Öry in dating this treatise, see Rodríguez, *supra* note 29, at 308-10.

54. 1 DE SCORRAILLE, *supra* note 5, at 319. The text appears in 11 FRANCISCUS SUÁREZ, S.J., OPERA OMNIA, *supra* note 21, at 514-82.

## III. SOME PRELIMINARY POINTS OF DOCTRINE

A. *The Natural Condition of Human Beings*

Any sixteenth century discussion of the Indians of the New World was bound to take place, at least in part, against the background of Aristotle's division of men into those fitted by nature to rule and those who were by nature "slaves."<sup>55</sup> Picked up and benignly interpreted by Thomas Aquinas,<sup>56</sup> the Aristotelian division of human beings was at hand for the academic discussions of the nature of the newly discovered people of America and the consequent attitudes of Europeans toward them.<sup>57</sup> Most probably the first Scholastic doctor to address such questions was the Scottish theologian John Major (1469-1550).<sup>58</sup> Writing in 1510, Major regarded the Indians of the New World as being among the natural slaves to which Aristotle alluded. By implication, then, they were naturally destined to be ruled by more advanced Europeans.<sup>59</sup> Cardinal Cajetan opposed this opinion of Major in 1517<sup>60</sup> as did Vitoria<sup>61</sup> and his disciples quite explicitly later.<sup>62</sup>

Suárez was, of course, very much aware of Aristotle's division of men and the division of sixteenth century Scholastics

55. See ARISTOTLE, POLITICS, 1254a18-1255a2, in THE BASIC WORKS OF ARISTOTLE (Richard McKeon ed., 1941).

56. See THOMAS AQUINAS, IN LIBROS POLITICORUM ARISTOTELIS EXPOSITIO I, lectio III, & nos. 56-74 (R. Spiazzi, O.P. ed., 1951); see also Thomas Aquinas, *Summa Theologiae*, in 2 BASIC WRITINGS OF SAINT THOMAS AQUINAS II-II, question 57, art. 3, ad. 2 (Anton C. Pegis ed. & Laurence Shapcote, O.P. trans., 1945).

57. To English readers this subject is perhaps best known from the work of Lewis K. Hanke. See, e.g., LEWIS K. HANKE, ARISTOTLE AND THE AMERICAN INDIANS (1959); LEWIS K. HANKE, THE SPANISH STRUGGLE FOR JUSTICE IN THE CONQUEST OF AMERICA (1945); HANKE, *supra* note 26.

58. See OBRAS DE FRANCISCO DE VITORIA: RELECCIONES TEOLÓGICAS 498-99 (T. Urdáñez ed., 1960) [hereinafter OBRAS DE VITORIA] ("La primera obra teológica conocida que plantea expresamente el tema de la legitimidad de la conquista de los pueblos infieles que 'los españoles encontraron en el mar Atlántico' es del nominalista Maior o Juan Mair. Se trata de su *Libro II de los Sentencias*, publicado en 1510.").

59. For this, see JOHN MAJOR, COMMENTARIA IN II SENT., disp. 44, question 3; *id.* question 9, no. 4; see URDÁÑEZ, *supra* note 58, at 499 n.13 (citing MAJOR).

60. THOMAS AQUINAS, SUMMA THEOLOGIAE, *supra* note 56, II-II, question 66, art. 8, no. 1, where Major and the American Indians are plainly implied, even though neither is mentioned by name.

61. See *supra* note 4 and accompanying text. On the issue as between Major and Vitoria, see Pedro de Leturia, *Maíor y Vitoria ante la Conquista de América*, in 11 ESTUDIOS ECLESIASTICOS 44 (1932).

62. See Demetrio Ramos et al., *Francisco de Vitoria y la escuela de Salamanca: La Ética en la conquista de América*, in 25 CORPUS HISPANORUM DE PACE, *supra* note 4.

relative to it.<sup>63</sup> His own view was simple and direct. It was incredible, he believed, to say that all the people (*homines*) in any region or province have been born "monstrous and in a way that contradicts the natural disposition" of human beings to be free.<sup>64</sup> In fact, he believed all men were equally capable of dominion over themselves and their possessions inasmuch as all were made in the image of God.<sup>65</sup> No natural law or positive divine law existed by which some could be excluded from this privilege, and no conditions were required for dominion that may not be found in all human beings.<sup>66</sup>

### B. *The Natural and Yet Voluntary Origin of the State*<sup>67</sup>

Indeed, from the very beginning of the human race in the Garden of Paradise, man was by nature free.<sup>68</sup> Had man not sinned, there would have been no want in Paradise. As a result, even though one man might in charity have served another, no one would have been slave to any other.<sup>69</sup> And yet Suárez affirmed that even if men had remained sinless in the Garden, some political power to direct and to govern would have eventually existed.<sup>70</sup> For, as Aristotle well put it, man is

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63. For places in which he has referred to it, see SUÁREZ, *DE JUSTITIA ET JURE*, *supra* note 52, at 77, question 6; Franciscus Suárez, S.J., *Tractatus de Fide*, in 12 *OPERA OMNIA*, *supra* note 21, at 449, disp. 18, § 4, no. 2 [hereinafter *De Fide*]; Suárez, *De Caritate*, in 12 *OPERA OMNIA*, *supra* note 21, at 747, disp. 13, § 5, no. 5.

64. SUÁREZ, *DE JUSTITIA ET JURE*, *supra* note 52, at 77 ("Dicere autem generaliter in aliqua regione aut provincia omnes homines nasci monstrosos et contra naturalem dispositionem incredibile est.").

65. See, e.g., *id.* ("Quia omnes homines sunt ad imaginem Dei facti, ratione cuius sunt capaces domini, Gen. 1 (2)."); see also Franciscus Suárez, S.J., *Defensio fidei*, in 24 *OPERA OMNIA*, *supra* note 21, at 203, III, ch. 1, no. 2.

66. SUÁREZ, *DE JUSTITIA ET JURE*, *supra* note 52, at 77 ("Neque est aliquod jus naturale vel positivum divinum, quo aliqui sint exclusi. Neque conditiones ullae ad dominium requiruntur, quae non in omnibus hominibus inveniuntur.").

67. For Suárez's teaching on the state, see HEINRICH ROMMEN, *LA TEORÍA DEL ESTADO Y DE LA COMUNIDAD INTERNACIONAL EN FRANCISCO SUÁREZ* (V. García Yebra trans. from the German, 1951).

68. See SUÁREZ, *De opere sex dierum*, in 3 *OPERA OMNIA*, *supra* note 21, at 416, V, ch. 7, no. 10 ("libertas est homini naturalis, et magna ejus perfectio"); see also SUÁREZ, *De Legibus*, in 5 *OPERA OMNIA*, *supra* note 21, at 180, III, ch. 2, no. 3.

69. SUÁREZ, *De opere sex dierum*, in 3 *OPERA OMNIA*, *supra* note 21, at 415, V, ch. 7, no. 10; *id.* at 417, no. 16.

70. *Id.* at 416 n.11 ("Secundo dicimus, dominium directivum, seu gubernativum futurum fuisse inter homines in statu innocentiae."); see SUÁREZ, *De Legibus*, in 5 *OPERA OMNIA*, *supra* note 21, at 179, III, ch. 1, no. 12. Note however that this power was not conferred by nature upon any one man, even Adam. See *id.* at 180, ch. 2, no. 3.

by nature a political animal.<sup>71</sup> Thus, coming together into a city-state was not the result of sin, but was instead essential to human beings and consonant with their perfection.<sup>72</sup> *In fine*, the state, political authority, governance and subjection were not punishment for sin but rather arose from nature.<sup>73</sup> Important for this Article is the point that, in such a naturally emanating state a common rule of faith, in fact a common Church, would be most fitting.<sup>74</sup> Finally, while a human community as such has political power naturally, it could exercise it in different ways voluntarily.<sup>75</sup>

This last thought is uppermost in both the *De Legibus* and the *Defensio Fidei*. At its very origin, Suárez believed, the state is natural but also voluntary.<sup>76</sup> As Suárez saw it, free men, naturally impelled to political association, must nevertheless agree to it. Accordingly, the state itself arises out of a social contract, or, better, "a consensus," either explicit or tacit, freely entered upon by all.<sup>77</sup> Furthermore, it is the prerogative of those entering it to limit the contract in greater or lesser degree.<sup>78</sup> For this reason, men are not forced by nature to

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71. SUÁREZ, *De opere sex dierum*, in 3 OPERA OMNIA, *supra* note 21, at 414, III, ch. 7, no. 5; see SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 176, III, ch. 1, no. 3 ("Primum est hominem esse animal sociale et naturaliter recteque appetere in communitate vivere."); see also ARISTOTLE, *supra* note 55, 1253a2.

72. SUÁREZ, *De opere sex dierum*, in 3 OPERA OMNIA, *supra* note 21, at 415, V, ch. 7, no. 6 ("conjunctio hominum in unam civitatem, non per accidens tantum ratione peccati, aut corruptionis naturae, sed per se convenit homini in quocumque statu, et ad perfectionem ejus pertinet").

73. *Id.*; see *id.* at 416, no. 12.

74. *Id.* at 415 no. 7 ("Nam oporteret homines habere communem regulam fidei etiam externam, ut eandem fidem conservare perpetuo possent, et secundum illam colere Deum, non solum privatim, sed etiam cultu publico totius communitatis, seu Ecclesiae. Haec autem ecclesiastica unitas supponit communitatem civilem statui hominum accommodatam."). For a fuller understanding of this point, see SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 331-32, V, ch. 2, nos. 3-4. For much the same thought, see OBRAS DE VITORIA, *supra* note 58, at 280, question 4, no. 1.

75. See SUÁREZ, *De opere sex dierum*, in 3 OPERA OMNIA, *supra* note 21, at 416, V, ch. 7, no. 13.

76. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 184, III, ch. 4, no. 1 ("licet haec potestas absolute sit de jure naturae, determinatio ejus ad certum modum potestatis et regiminis est ex arbitrio humano" [382]).

77. SUÁREZ, *De opere sex dierum*, in 3 OPERA OMNIA, *supra* note 21, at 414, V, ch. 7, no. 3; see SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 182-83, III, ch. 3, nos. 1, 6, 7; SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 210, 212, III, ch. 2, nos. 11-12, 19.

78. See SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 184, III, ch. 4, no.

choose any particular form of state,<sup>79</sup> and in fact there are different kinds of states existing in different regions.<sup>80</sup> But, important for our present purpose, Suárez believed that there is a natural equality among all of these states and the political power they exercise.<sup>81</sup> Concretely, this will mean that civil power, precisely as such, will not be greater in Christian princes than in pagan princes.<sup>82</sup>

While democracy had a certain natural priority,<sup>83</sup> in practice democracy was not the best kind of government for Suárez. Rather, he believed that this label belonged to some form of monarchy.<sup>84</sup> What form a monarchy took and how much power any monarch would have would depend upon the terms of the initial grant of the people.<sup>85</sup> In this way, civil authority or power was ultimately from nature, and nature's God, but immediately in different ways through the people.<sup>86</sup>

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1. ("est major vel minor juxta varias consuetudines et judicia hominum: pendet ergo tota haec res ex humano consilio et arbitrio") [383].

79. *Id.* ("Stando ergo in jure naturali non coguntur homines eligere determinatum unum ex his modis gubernationis.") [383].

80. SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 208, III, ch. 2, no. 7.

81. SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 739, disp. 13, § 2, no. 1 ("in omnibus enim est eadem ratio") [806].

82. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 214, III, ch. 11, no. 9 ("potestas haec ut nunc est in principibus Christianis, in se non est major, nec alterius naturae quam fuerit in principibus ethnicis"); *see id.* at 189, ch. 5, no. 7 ("sequitur reges gentium priusquam ad Ecclesiam veniant esse veros reges, si justo titulo regna possident" [808]); *see also* SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 740, disp. 13, § 2, no. 4. ("quae omnia, cum in lege naturali fundata sint, communia sunt Christianis et infidelibus"); *id.* at 747, § 5, no. 3; SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 449, disp. 18, § 4, no. 3 [hereinafter *De Fide*]; *id.* at 451, § 5, no. 8; SUÁREZ, *Defensio Fidei*, in 24 OPERA OMNIA, *supra* note 21, at 348, III, ch. 30, no. 4; Suárez, *De Fide II*, *supra* note 30, at 196, disp. 5, question 2.

83. SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 208-09, III, § 2, nos. 8-9. For Suárez's general teaching here, *see generally* Antonio Alvarez de Linera, *La Democracia en la doctrina de Suárez*, 4 PENSAMIENTO 509 (1948).

84. *See* SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 184, III, ch. 4, no. 1.

85. *See* SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 212, III, ch. 2, no. 18.

86. *See id.* at 211 ("Deus est qui distribuit regna et principatus politicos, sed per homines, seu consensus populorum, vel aliam similem institutionem humanam."); *id.* n.17; SUÁREZ, *De Baptismo*, in 21 OPERA OMNIA, *supra* note 21, at 435, disp. 25, § 4, no. 5.

C. *Limitations on State Power*

On a number of occasions, Suárez spoke of the state as "supreme in its own order."<sup>87</sup> This means that the state as such has power to enact laws from which there is no appeal to any tribunal beyond itself.<sup>88</sup> As we shall see, even when Suárez considered the *jus gentium* as a law among the nations, it was not coupled with any notion of a super-government or a world court to which one might look to overturn a sovereign state's laws. Yet, the supremacy of a state or a prince was not absolute.<sup>89</sup>

Although the people in theory retained power over their government, Suárez believed that ordinarily the gift of political power is all but irrevocable.<sup>90</sup> At the same time, we already noted the fact that people could transfer political power to a greater or lesser degree.<sup>91</sup> In accord with this, as the common good demands, that power could be in different times and different circumstances changed or limited.<sup>92</sup> Connected here is the mentioned power of the Pope to depose a tyrannical ruler.<sup>93</sup>

87. E.g., SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 225, III, ch. 5, no. 2; *id.* at 226 no. 6; *id.* at 350, ch. 30, no. 11; SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 177, III, ch. 1, no. 6; *see* SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 443, disp. 18, § 2, no. 6; *id.* at 449, § 4, no. 3. On the meaning of "supreme in its own order," *see* LUIS SÁNCHEZ AGESTA, *ESPAÑA AL ENCUENTRO DE EUROPA* 96-108 (1971).

88. SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 740, disp. 13, § 2, no. 4 ("signum supremi jurisdictionis est, quando apud talem principem, rempublicamve, est tribunal, in quo terminantur omnes causae illius principatus, neque appellatur ad aliud tribunal superius") [808].

89. For Suárez's general doctrine here, *see* Georges Jarlot, *Les idées politiques de Suarez et le pouvoir absolu*, in 18 ARCHIVES DE PHILOSOPHIE, cahier 1, at 64 (1949). For reference to the Spanish encounter with the peoples of the New World, *see id.* at 71-72. At this place, I note that Suárez explicitly opposed the doctrines of Machiavelli. *See* SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 215, III, ch. 12, no. 2.

90. *See* SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 186-87, III, ch. 4, nos. 6, 11.

91. *See supra* note 78 and accompanying text; *see infra* note 92 and accompanying text.

92. *See* SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 216, III, ch. 3, no. 13 ("Potestas autem regia vel cujusvis supremi tribunalis temporalis, potuit a principio major vel minor constitui, et successu temporum poterit mutari aut minui, prout ad bonum commune expediens fuerit, per eum qui ad hoc habuerit potestatem."). In context, the one "who would have power for this" is the Pope. *See* SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 183-84, III, ch. 3, nos. 7-8.

93. *See* SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 183-84, III, ch. 3,

Other limitations occurred inasmuch as state power stopped short of the private zone of families and individuals,<sup>94</sup> for these are by nature prior to the state.<sup>95</sup> Moreover, human beings are not just citizens of this world. While not denying a republic's legitimate concern for the virtue of its members, Suárez suggested that even at a natural level, each person aims at a final happiness that transcends the reach of civil power and civil laws.<sup>96</sup> And beyond this natural destiny, in fact God gave men a supernatural revelation and a Church, through which He called all to a supernatural goal of union with Himself.<sup>97</sup> Much less, then, will state power and laws reach to this level of human reality.<sup>98</sup> An example of this limitation is furnished by Suárez's dismissal of any right of Christian temporal rulers to forcibly baptize the children of non-apostate unbelievers, whether these are politically subject to them or not.<sup>99</sup> At the same time, he did think that Christian lawgivers could, and in part should, look to the supernatural destiny of men and should relate their very activity of lawmaking to it.<sup>100</sup> In agree-

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nos. 7-8; see also *supra* note 44 and accompanying text. For Suárez's view on the deposition and execution of tyrants, see SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 675-82, VI, ch. 4.

94. See SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 214, III, ch. 11, no. 8 ("Potestas autem civilis per se ordinatur ad gubernationem politicam, . . . et ideo per se non dirigit oeconomicum regimen, nisi in his quae redundant in commune bonum civitatis, et illud possunt impedire aut promovere: reliqua enim quae ad privatam familiam spectant, non per leges civiles, sed per uniuscujusque patris-familias prudentiam ordinantur. Ergo simili proportionem ac rationem non spectat ad leges civiles monastica directio, seu privata honestas singulorum, ut tales sunt, sed solum ea morum rectitudo per has leges constituitur, quae bono civili vel necessaria, vel valde utilis est."); see also SUÁREZ, *De Baptismo*, in 21 OPERA OMNIA, *supra* note 21, at 436, disp. 25, § 4, no. 6.

95. See SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 176, III, ch. 1, no. 3.

96. *Id.* at 214, ch. 11, no. 8 ("Ad felicitatem autem etiam naturalem uniuscujusque hominis, ut singularis persona est, non sufficit virtus illa civilis, . . . ergo non spectat felicitas privata ad finem proprium legis civilis seu potestatis legislativae mere naturalis.").

97. On the distinction between natural and supernatural happiness as the goal of human existence, see SUÁREZ, S.J., *De ultimo fine hominis*, in 4 OPERA OMNIA, *supra* note 21, at 43-44, disp. 4, § 3, nos. 1-4.

98. See SUÁREZ, *De Legibus* in 5 OPERA OMNIA, *supra* note 21, at 214, III, ch. 11, no. 9 ("dico potestatem hanc civilem . . . non extendi in materia vel actibus suis ad finem supernaturalem seu spirituales vitae futurae vel praesentis").

99. SUÁREZ, *De Baptismo*, in 21 OPERA OMNIA, *supra* note 21, at 435, disp. 25, § 4, no. 4.

100. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 214, III, ch. 11, no.

ment with this, on a number of occasions he assigned a "ministerial" role to civil power with respect to the higher order of Christian life and religion.<sup>101</sup>

This last brings us to the question of Church and state. For Suárez, as we have seen, while temporal power was ultimately from God, immediately its origin was natural and human.<sup>102</sup> In contrast, the power of the Church was directly of divine origin, "from the special promise and grant of Christ."<sup>103</sup> Although there were in fact many temporal states throughout the world, there is only one Church.<sup>104</sup> Between any state and the Church there was a clear difference of purpose. While the end of a state is the common temporal good, which Suárez called "political happiness" and which does involve the natural moral goodness of its members,<sup>105</sup> the end of Church power is the eternal salvation of its members.<sup>106</sup> Although each is "supreme in its own order,"<sup>107</sup> the fundamental relation between the two is hierarchical. According to Suárez, just as the body is to the soul, so the temporal state should be subordinate to the Church.<sup>108</sup> The power of the state was directly and exclusively within the temporal order.<sup>109</sup>

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9 ("licet ipsi legislatores fideles in suis legibus ferendis, intueri possint et ex parte debeant supernaturalem finem, et actum ipsum ferendi legem in supernaturalem finem referre").

101. See, e.g., SUÁREZ, *De Baptismo*, in 21 OPERA OMNIA, *supra* note 21, at 438, disp. 25, § 4, no. 10; SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 455, disp. 18, § 5, no. 9; SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 205, III, ch. 1, no. 7.

102. See *supra* note 86 and accompanying text.

103. See SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 236, III, ch. 6, no. 17 ("potestas ecclesiastica est de jure divino positivo, et ex speciali promissione et concessione Christi"); *id.* at 239, ch. 7, no. 4.

104. See *id.* at 228, III, ch. 5, no. 11; *id.* at 234, ch. 6, no. 11.

105. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 55, I, ch. 13, no. 7 ("finis humanae reipublicae est vera felicitas politica, quae sine moribus honestis esse non potest"); *id.* at 30, ch. 7, no. 4. On the end of the state, see ROMMEN, *supra* note 67, at 201-24.

106. See SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 236-37, III, ch. 6, no. 17 ("Potestas autem ecclesiastica ad aeternam salutem consequendam ordinatur"); see also SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 362, IV, ch. 8, no. 2.

107. See SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 350, III, ch. 30, no. 11.

108. See SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 366, IV, ch. 9, no. 3 ("ergo necesse est ut ei subdatur temporalis potestas, sicut corpus animae").

109. *Id.* at 223, III, ch. 13, no. 3.

That of the Church is directly within the spiritual order.<sup>110</sup> Indirectly, however, the Church had power over a Christian state even in temporal matters.<sup>111</sup> Conversely, civil power, at least in Christian states, should be indirectly dependent upon and at the service of the higher goal of the Church.<sup>112</sup> Suárez acknowledged in this a certain inequality between Christian and infidel princes inasmuch as the latter are not in principle subject even indirectly to the Church. However, he considered it a plus for Christian states and sovereigns that their power is raised to a new height in its subordination to the Church.<sup>113</sup>

Yet another limitation on the power of the temporal state came from the existence of other states. As each was "supreme in its own order," none had an unconditioned right to encroach upon another. The power and laws of one end where those of another begin.<sup>114</sup>

#### D. *The Jus Gentium or The Law of Nations*<sup>115</sup>

##### 1. Some Background

Despite their diversity, states, to Suárez, were not so independent or exclusive of one another as to be subject to no common law. Instead, he believed that however much it is divided into various peoples and kingdoms, the human race itself had a unity that was not only specific but also "quasi-political and moral."<sup>116</sup> An indication of this was a natural impulse,

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110. *Id.* at 366, IV, ch. 9, no. 3.

111. *Id.* at 192-93, III, ch. 6, nos. 3-4; see SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 309-10, III, ch. 22, nos. 5-7.

112. See SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 224-25, III, ch. 5, no. 2; *id.* at 351, ch. 30, no. 11; see also *supra* note 101 and accompanying text.

113. See SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 348-49, III, ch. 30, no. 5 ("[e]t non est imperfectio, sed potius excellentia illius potestatis, ideoque non addit gravamen vel impedimentum"); *id.* at 349, nos. 3-6.

114. See SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 300, III, ch. 31, no. 8; *id.* at 301, ch. 32, no. 4.

115. On this subject, the best overall treatment I know is SANTIAGO RAMÍREZ, O.P., *EL DERECHO DE GENTES: EXÁMEN CRÍTICO DE LA FILOSOFÍA DEL DERECHO DE GENTES DESDE ARISTÓTELES HASTA FRANCISCO SUÁREZ* (1955). Santiago Ramírez's treatment of Suárez at pages 172-78, however, is rather brief and I think too critical. For a fuller and more laudatory view of Suárez here, see ROMMEN, *supra* note 67, at 447-506.

116. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 169, II, ch. 19, no. 9 ("quia humanum genus quantumvis in varios populos et regna divisum, semper habet aliquam unitatem non solum specificam, sed etiam quasi politicam et moralem").

which amounted to a precept, to have love and compassion for all our fellow human beings, even strangers or foreigners.<sup>117</sup> Therefore, though each city-state, republic, or kingdom may be in itself a perfect community,<sup>118</sup> nevertheless, each, insofar as it was human, is also in some way a member of the wider world.<sup>119</sup> Coupled with this, Suárez said:

even though the totality of men were not gathered into one body politic, but were divided into various communities, nevertheless, in order that those communities might help one another and be kept in justice and peace among themselves (which was essential for the good of the universe), it was imperative that they observe some general laws as it were by common treaty and consent among themselves—and these are what are called “the laws of nations”—which have been introduced more by tradition and custom than by some constitution.<sup>120</sup>

Before considering this in more detail, we should say a few words about Suárez’s general division of law and about the members of that division which are presupposed by these “laws of nations.”

## 2. A General Division of Law

In the *De Legibus*, Suárez divided law first of all into eternal

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117. *Id.* (“quam indicat naturale praeceptum mutui amoris et misericordiae, quod ad omnes extenditur, etiam extraneos, et cujuscumque rationis”).

118. For Suárez’s understanding of “a perfect community,” see SUÁREZ, *De opere sex dierum*, in 3 OPERA OMNIA, *supra* note 21, at 413, V, § 7, no. 1; see also SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 740, disp. 13, § 2, no. 4; SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 28, I, ch. 6, no. 19.

119. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 169, II, ch. 19, no. 9 (“Quapropter licet unaquaeque civitas perfecta, respublica, aut regnum sit in se communitas perfecta, et suis membris constans, nihilominus quaelibet illarum est etiam membrum aliquo modo hujus universi, prout ad genus humanum spectat”) [348].

120. *Id.* at 181-82, III, ch. 2, no. 6. Suárez stated that

licet universalitas hominum non fuerit congregata in unum corpus politicum, sed in varias communitates divisa fuerit; nihilominus ut illae communitates sese mutuo juvare, et inter se in justitia et pace conservari possent (quod ad bonum universi necessarium erat), oportuit ut aliqua communia jura quasi communi foedere et consensione inter se observarent: et haec sunt quae appellantur jura gentium, quae magis traditione et consuetudine quam constitutione aliqua introducta sunt . . . .

*Id.* [377].

and temporal.<sup>121</sup> He then divided temporal law into natural law and positive law.<sup>122</sup> Positive law in turn would split into human law and divine law.<sup>123</sup> Human law could be either civil or canon.<sup>124</sup> Finally, divine positive law was either that of the Old Testament or the New Testament.<sup>125</sup> As we shall see, the "law of nations," or the *jus gentium*, would be extremely close to and yet distinct from natural law. Ultimately, it would be a matter of human positive law. But first, let us briefly speak of the eternal and the natural law.

### 3. The Eternal Law

For Suárez, all law stemmed from the "eternal law," which he considered "a free decree of the will of God establishing the order to be observed either generally by all parts of the universe in relation to the common good . . . or especially to be observed by intellectual creatures in their free operations."<sup>126</sup> In so emphasizing the Divine will, he deliberately distinguished himself from Thomas Aquinas, who identified the eternal law with the divine reason inasmuch as it governed the whole created universe.<sup>127</sup> The voluntaristic cast of Suárez's legal theory has been recognized, criticized, explained, or defended, by many others.<sup>128</sup> It is not our task to go further into the matter

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121. *Id.* at 8, I, ch. 3, no. 6 ("colligi potest prima divisio legis, in aeternam et temporalem") [40].

122. *Id.* at 9, no. 7 ("secunda divisio legis colligitur, quae est subdivisio legis creatae, in naturalem et positivam") [40].

123. *Id.* at 11, no. 15 ("traditur a theologis tertia divisio legis positivae in divinam et humanam") [45 NUMBERED AS 14 IN SELECTIONS].

124. *Id.* at 13, no. 21 ("haec positiva lex in civilem et ecclesiasticam distinguitur") [49 n.20].

125. *Id.* at 11, no. 16 ("lex divina positiva, prout nunc de illa loquimur, ordinarie versatur circa actus exteriores, ut videre licet in lege veteri et in nova" [46 n.15]). Suárez considered the Old Law in Book 9 of the *De Legibus* and the New Law in Book 10, which is the last book of that work.

126. *Id.* at 94, II, ch. 3, no. 6 ("infertur . . . legem aeternam esse decretum liberum voluntatis Dei statuentis ordinem servandum, aut generaliter ab omnibus partibus universi in ordine ad commune bonum, . . . aut specialiter servandum a creaturis intellectualibus quoad liberas operationes earum") [163].

127. THOMAS AQUINAS, *SUMMA THEOLOGIAE*, *supra* note 56, I-II, question 91, art. 1(c).

128. See, e.g., THOMAS DAVITT, S.J., *THE NATURE OF LAW* 86-108 (1960); Ph.I. André-Vicent, *La notion moderne de droit et le voluntarisme. (De Vitoria et Suarez à Rousseau)*, in 7 *ARCHIVES DE PHILOSOPHIE DU DROIT* 238 (1963); F.C. Apellániz Valderama, *Sobre el pretendido voluntarismo jurídico de Suárez*, in *ESTUDIOS JURÍDICO-SOCIALES* 449 (1960); William E. May, *The Natural Law Doctrine of Francis Suarez*, 58 *NEW SCHOLARSHIP* 449 (1960);

here. We will touch it again a little later on. But now, having simply noted it, let us pass to the natural law which immediately emanates from the eternal law.

#### 4. The Natural Law

As Thomas Aquinas viewed it, the natural law is a participation of the eternal law in a rational creature.<sup>129</sup> Suárez accepted this and interpreted it to mean that the natural law resides in the human mind in order to discern what is morally good and what is evil.<sup>130</sup> He further agreed with Aquinas that natural law was proportionately in human beings what natural instinct is in brute animals.<sup>131</sup> It was called "natural" not only in distinction from "supernatural" but also in contrast to "free."<sup>132</sup> For Suárez, while persons did not follow it necessarily in the way brutes follow their natural inclinations, wherever human nature was found natural law was necessarily present like an essential property placed in it by God.<sup>133</sup> Following Thomas Aquinas, and to quote St. Augustine, Suárez regarded it as God's law, which is written in the hearts of men.<sup>134</sup>

The details of Suárez's treatment of natural law are in *De Legibus*, Book two, chapters five to sixteen. In chapter six, Suárez suggested that the natural law is not only indicative of good and evil but with regard to these it is also prescriptive and proscriptive.<sup>135</sup> The core of chapter seven, which con-

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LASTICISM 409 (1984); Antonio Messineo, *Il voluntarismo suareciano*, 100 LA CIVILTÀ CATTOLICA 630 (1949); A. Truylol y Serra, *La filosofía jurídica y política de Suárez, con especial referencia al problema del voluntarismo*, ACTAS I CONGRESO NACIONAL DE FILOSOFÍA 501 (1950).

129. THOMAS AQUINAS, *SUMMA THEOLOGIAE*, *supra* note 56, I-II, question 91, art. 2.

130. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 9, I, ch. 3, no. 10 ("Lex ergo naturalis propria . . . est illa quae humanae menti insidet ad discernendum honestum a turpi, . . . ut explicuit D. Thomas, d. quaest. 91, art. 2, ubi concludit legem naturalem esse participationem legis aeternae in rationali creatura.") [42, N.9 IN SELECTIONS].

131. *Id.*

132. *Id.* ("[i]ta ergo haec lex naturalis dicitur, non solum prout distinguitur a supernaturali, sed etiam prout distinguitur a libero" [42 N.9]).

133. *Id.* ("quia lex illa est veluti proprietas quaedam naturae, et quia Deus ipse illam naturae inseruit") [42 N.9].

134. *Id.*; see THOMAS AQUINAS, *SUMMA THEOLOGICA*, *supra* note 56, I-II, question 94, art. 6. On St. Augustine, see SAN AUGUSTIN, *Confessiones* II, ch. 4, in 2 OBRAS DE SAN AUGUSTIN 136 (P. Angel Custodio Vega O.S.A. trans., bilingual ed., 1955).

135. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 105, II, ch. 6, no. 5

cerned the content of natural law, is a division of natural law precepts into three classes. Suárez first identified such general moral principles as "Good must be done and evil avoided," and "Do not do to anyone else what you would not want done to you."<sup>136</sup> Next came principles more determined or particular, but still self-evident from their very terms, such as "Justice should be observed," and "One should live with self-control."<sup>137</sup> In the third place came conclusions which were evidently inferred from these principles. These conclusions may be more or less easily or broadly known. Thus it is more easily and more widely known that such things as adultery and theft are wrong.<sup>138</sup> Requiring more reasoning, and he thought not easily known to all, were conclusions like "Fornication is intrinsically evil," "Usury is unjust," and "Lying could never be justified."<sup>139</sup>

In chapter eight, Suárez asserted something most important for our present concern. In one and the same way, the natural law obliges all men, in all conditions, in all times, and in all places.<sup>140</sup> Expanding this, he suggested that no one in any way can be invincibly ignorant about the first principles of the natural law.<sup>141</sup> He allowed that more particular precepts, including the second class of principles and the first class of conclusions mentioned in the last paragraph, could be unknown—but not for very long without fault.<sup>142</sup> For he believed that nature itself, as well as conscience, so urged these

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("Lex naturalis non tantum est indicativa mali et boni, sed etiam continet propriam prohibitionem mali et praeceptionem boni.") [191].

136. *Id.* at 113, ch. 7, no. 5 ("quaedam sunt prima principia generalia morum, ut sunt illa, *honestum est faciendum, pravam vitandum; quod tibi fieri non vis, alteri ne feceris*, et similia") [211].

137. *Id.* ("alia sunt principia magis determinata et particularia, tamen etiam per se nota ex terminis, ut, *justitia est servanda, Deus est colendus, temperate vivendum est*, et similia") [211].

138. *Id.* ("quaedam facilius et a pluribus cognoscuntur, ut adulterium, furtum, et similia, prava esse") [211].

139. *Id.* ("aliae majori indigent discursu, et non facile omnibus notae, ut fornicationem esse intrinsece malam, usuram esse injustam, mendacium nunquam posse honestari, et similia") [211].

140. *Id.* at 117, ch. 8, no. 5 ("dicendum est hanc legem naturalem esse unam in omnibus hominibus, et ubique") [220]; *id.* at 118 n.8 ("dicendum est hanc legem naturalem etiam esse unam in omni tempore et statu humanae naturae") [222].

141. *Id.* no. 7 ("mea sententia breviter est prima principia ignorari non posse ullo modo, nedum invincibiliter") [221].

142. *Id.* ("praecepta vero particularia quae vel per se nota sunt, vel facillime ex

precepts that man could not without fault remain ignorant of them.<sup>143</sup> As for natural law conclusions, Suárez admitted that they could be invincibly unknown, at least by the common people, who presumably would be lacking education and subtlety.<sup>144</sup>

In chapter thirteen, he suggested that the natural law was intrinsically immutable. A quasi-property of human nature, it would remain completely the same as long as human nature remained rational and free.<sup>145</sup> Extrinsically it could change because of what is in fact a changed set of circumstances, what the Scholastics would call "*mutatio materiae*."<sup>146</sup> In chapter fourteen, he asked whether there was any human power or authority sufficient to change the natural law or to dispense from it.<sup>147</sup> By way of reply he adopted "the common opinion of theologians": that natural law in none of its true precepts could be taken away, diminished, dispensed from, or in any similar way changed, by any human law or power.<sup>148</sup> In chapter fifteen, Suárez went on to ask whether God, using absolute power,<sup>149</sup> could dispense in a particular matter of natural law.<sup>150</sup>

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per se notis colliguntur, ignorari quidem posse, non tamen sine culpa saltem per longum tempus") [221].

143. *Id.* ("natura ipsa et conscientia ita pulsant in actibus eorum, ut non permittant inculpabiliter ignorari, et hujusmodi sunt praecepta Decalogi, ac similia") [222].

144. *Id.* ("[a]lia vero praecepta, quae majori indigent discursu, ignorari possunt invincibiliter praesertim a plebe") [222]. For essentially the same divisions of natural law precepts and ignorance thereof (but without mention of the *plebs*), see SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 431-32, disp. 17, § 2, no. 7; SUÁREZ, *De Fide II*, *supra* note 30, at 139-42, disp. 3, question 3.

145. See SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 132-33, II, ch. 13, no. 2.

146. *Id.* at 134-35, nos. 6-10.

147. *Id.* at 135, ch. 14 ("Utrum jus naturale mutari vel dispensari potest per humanam potestatem.") [265].

148. *Id.* at 137, no. 5 ("Nihilominus contraria opinio docet jus naturale in nullo vero praecepto suo tolli, diminui, dispensari, aut alio simili modo posse mutari per aliquam legem vel potestatem humanam. Haec est sine dubio sententia communis theologorum . . .") [268-69].

149. For discussion of the absolute and the ordained power of God up to Luther, see Richard P. Desharnais, *The History of the Distinction between God's Absolute and Ordained Power and Its Influence on Martin Luther* (1966) (unpublished Ph.D. dissertation, Catholic University of America); see also Mary Ann Pernoud, *The Theory of the Potentia Dei According to Aquinas, Scotus, and Ockham*, in 47 ANTONIANUM 69 (1972).

150. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 144, II, ch. 15 ("Utrum Deus dispensare possit in lege naturali etiam de absoluta potentia.") [285].

In his answer some limits of Suárez's voluntarism become evident. William of Ockham (1290-1349) and others, he stated, have held that God could dispense with all the commands of the Decalogue.<sup>151</sup> Indeed, these theorists believed that God could abrogate the whole natural law.<sup>152</sup> Suárez and other theologians dismissed this opinion as false and absurd.<sup>153</sup> A different opinion is that of Duns Scotus (1266-1308) and his followers. They believed that while God could not dispense with the precepts contained in the first table of the Decalogue, He could dispense with the seven precepts in the second table, which regard our fellow human beings or other creatures.<sup>154</sup> Suárez rejected this,<sup>155</sup> and ultimately opted for an opinion that maintained that all the precepts of the Decalogue are indispensable, even by the power of God.<sup>156</sup> *In fine*, Suárez's "voluntarism" in no way equated with an absolutely arbitrary view of law in relation even to God.

### 5. The *Jus Gentium* More Specifically

As Suárez saw it, the "law of nations" or the *jus gentium* was a quasi-medium between natural law and the positive law of individual states.<sup>157</sup> Closely following upon the natural law, the *jus gentium* was not as necessary as this latter.<sup>158</sup> In fact, Suárez believed it had the character of positive law.<sup>159</sup> Yet its

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151. *Id.* no. 3 ("Est ergo prima sententia generaliter affirmans posse Deum dispensare in omnibus praeceptis Decalogi.") [287].

152. *Id.* ("[q]uae consequenter ait non solum posse Deum dispensare, sed etiam abrogare totam illam legem") [287]. For more about Ockham on law, see DAVITT, *supra* note 128, at 39-54.

153. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 144, II, ch. 15, no. 4 ("[h]aec vero sententia tanquam falsa et absurda a reliquis theologis rejicitur") [287].

154. *See id.* at 145, no. 6 ("Praecepta secundae tabulae dicuntur reliqua septem, et in universum omnia quae circa proximos vel creaturas versantur, de quibus omnibus sentit Scotus dispensabilia esse.") [289]. For more on Duns Scotus on law, see DAVITT, *supra* note 128, at 24-38.

155. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 146, II, ch. 15, no. 9 ("mihi valde displicet haec sententia") [290].

156. *Id.* at 148, no. 16 ("Est . . . opinio, quae absolute et simpliciter docet, haec praecepta Decalogi esse indispensabilia etiam per potentiam Dei absolutam.") [297]; *id.* at 149, no. 19 ("Haec igitur sententia formaliter, et proprie loquendo, vera est.") [298].

157. *Id.* at 159, ch. 17, no. 1 ("quasi medium inter naturale jus, et humanum") [325].

158. *See id.* at 162, ch. 17, no. 8.

159. *Id.* at 167, ch. 19, no. 3 ("Unde tandem concludi videtur jus gentium simpliciter esse humanum ac positivum.") [343]; *id.* no. 4.

precepts differed from those of civil law inasmuch as they were unwritten and had been established by the customs not of a single state or province but rather by those of all or *almost* all nations.<sup>160</sup> For just as custom established a law in one state or province, so over the whole human race it could introduce the "laws of nations."<sup>161</sup> In this way, like the state itself, the *jus gentium* had its origin in human consensus.<sup>162</sup> And while, like the state, it took a lot to change it,<sup>163</sup> insofar as it depended on human will in principle it could be changed.<sup>164</sup>

In contrast to his fellow Jesuit, Gabriel Vázquez (1549-1604), Suárez viewed the *jus gentium* as not merely concessive, but also prescriptive and proscriptive.<sup>165</sup> It contained various precepts and regulated a variety of matters among and within different states. Suárez never in any one passage listed these precepts or the contents of the *jus gentium*. About as close as he came was to give from the *Etymologies* of St. Isidore of Seville (562(?)-636), the jumbled hodgepodge that was the common medieval inheritance.<sup>166</sup> Isidore's list, which itself reflected the traditions of Roman law,<sup>167</sup> defies literal translation. It included (the rights) to take up residence or to occupy territory (previously unoccupied), to build (dwellings), to defend (that occupation and building) with fortifications, (to wage) wars, to take prisoners (in those wars) as well as to make slaves (of those prisoners). It further extended to peace treaties and armistices, the restoration of rights for those freed from captivity (that is, the Roman *postliminia*), the inviolability of ambassadors, and a prohibition of miscegenation.<sup>168</sup>

160. *Id.* at 168, no. 6 ("[p]raecepta juris gentium in hoc differunt a praeceptis juris civilis, quia non scripto, sed moribus non unius vel alterius civitatis vel provinciae, sed omnium vel fere omnium nationum, constat") [345].

161. *Id.* at 169, no. 9 ("Nam sicut in una civitate vel provincia consuetudo introducit jus, ita in universo humano genere potuerunt jura gentium moribus introduci.") [349].

162. *Id.* at 162, ch. 17, no. 8 ("praecepta juris gentium ab hominibus introducta sunt per arbitrium et consensum illorum, sive in tota hominum communitate sive in majori parte") [332]; see *id.* at 182, III, ch. 2, no. 6.

163. See *id.* at 171-72, II, ch. 20, nos. 6-8.

164. *Id.* at 171, no. 6 ("colligitur jus gentium esse mutabile quatenus ex hominum consensu pendet") [354]; see *id.* at 146, II, ch. 15, no. 10.

165. See *id.* at 163-66, ch. 18.

166. For Isidore's role in the development of the "law of nations," see RAMÍREZ, *supra* note 115, at 29-33.

167. See *id.*

168. See SAN ISIDORO DE SEVILLA, *Etymologiae* V, § 6, in I ETIMOLOGÍAS 512 (José

As it stands, Isidore's cryptic list was not satisfactory for Suárez. It needed nuancing in the way of what I have tried to do in part by means of parentheses in the last paragraph.<sup>169</sup> It also needed pruning. Specifically, Suárez thought that some of Isidore's items taken with rigor belonged more to natural law.<sup>170</sup> For example, while no nation was required absolutely by natural law to admit ambassadors from another, and while the requirement of their admission was thus a matter of *jus gentium*, once these were admitted under a somehow understood pact (*sub pacto subintellecto*), their immunity became a matter of natural law.<sup>171</sup> Similarly, while treaties themselves were matters of the *jus gentium*, once they had been agreed upon their required observance fell under natural law.<sup>172</sup> On the other hand, items such as *postliminia* and strictures against miscegenation were much more matters of positive civil law than of *jus gentium*.<sup>173</sup>

But even with nuancing, Suárez found Isidore's list to be incomplete. Among topics it did not address and which Suárez believed belonged in various ways to the *jus gentium* were: the actual division of peoples and kingdoms themselves,<sup>174</sup> the di-

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Oroz Reta et al. eds, bilingual ed. 1982) ("Jus gentium est sedium occupatio, aedificatio, munitio, bella, captivitates, servitutes, postliminia, foedera pacis, indutiae, legatorum non violandorum religio, conubia inter alienigenas prohibita. Et inde jus gentium, quia eo jure omnes fere gentes utuntur.").

169. Suárez himself did some nuancing in SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 164-65, II, ch. 18, nos. 5-9.

170. *Id.* at 166, ch. 19, no. 1.

171. *Id.* at 168, no. 7. Suárez explained:

Nam consuetudo recipiendi legatos sub lege immunitatis et securitatis absolute spectata non est de necessitate juris naturalis, quia potuisset unaquaeque communitas hominum non habere apud se legatos alterius, nec velle illos admittere: nunc tamen admittere est de jure gentium, et illos repudiare esset signum inimicitiae, et esset violatio juris gentium, esto non esset injustitia contra rationem naturalem. Quocirca, licet, supposita admissione legatorum sub pacto subintellecto, contra jus naturale sit non servare illis immunitatem, quia est contra justitiam et debitam fidelitatem: tamen illa suppositio, et pactum illud sub tali conditione jure gentium est introductum.

*Id.* [346-47] It is worth emphasizing here that the requirement of admission under the *jus gentium* would be for Suárez the basis of any Christian claims of injury against a pagan nation that refuses to admit evangelists.

172. *Id.* at 169, no. 8.

173. *Id.* at 165-66, no. 10.

174. *Id.* at 164, ch. 18, no. 4 ("ipsamet gentium discretio et regnorum divisio est de jure gentium") [336 N.3 IN SELECTIONS].

vision of goods or possessions,<sup>175</sup> private property,<sup>176</sup> buying and selling,<sup>177</sup> the use of money,<sup>178</sup> and free commerce among nations.<sup>179</sup> Again, although the natural law required worship of God and while positive law, both divine and human, prescribed the details, there were religious matters that belonged to the *jus gentium*. These were prescribed by neither natural nor positive law but were commonly found among almost all peoples. Examples would be religious sacrifices and the existence of priestly classes.<sup>180</sup>

Connected immediately with its content, for Suárez the "law of nations" or the *jus gentium* was twofold. In one way, it was *jus gentium inter se*—a law that different nations maintain and are obliged to observe *vis-à-vis* one another.<sup>181</sup> Such items as ambassadors and free commerce, as well as the "right of war" (*jus belli*), belonged to the *jus gentium* understood in this way.<sup>182</sup> In a second way, it was *jus gentium intra se*—the law that individual states and kingdoms commonly observe within themselves.<sup>183</sup> Most other items mentioned, including religious sacrifices and priestly classes, belonged to the *jus gentium* taken in this second way.<sup>184</sup> The first way, which was effectively an international law, was most properly called *jus gentium*

175. SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 683, disp. 7, § 3, no. 2 ("haec bona ex Dei institutione sunt communia: jure autem gentium sunt divisa").

176. SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 210, III, ch. 2, no. 14 ("Nam immediate non dedit Deus (ordinarie loquor) alicui homini proprium et peculiare dominium alicujus rei . . . ; privata autem dominia partim jure gentium, partim jure civili introducta sunt . . ."). On this subject, see also Antonio Ferreiro López, *La naturaleza de la propiedad privada en las doctrinas de Suárez*, in 4 PENSAMIENTO 449 (1948).

177. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 168, II, ch. 19, no. 7.

178. *Id.* at 170, no. 10.

179. *Id.* at 168, no. 7.

180. *Id.* at 169, no. 10. For basically the same division (without actual mention of the *jus gentium*), see FRANCISCO DE VITORIA, *Relectio de potestate Ecclesiae prior*, in OBRAS DE VITORIA, *supra* note 58, at 276, question 3, no. 3. On the natural character of religion within political society, see *supra* note 74 and accompanying text.

181. SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 168, II, ch. 19, no. 8 ("Adde . . . duobus modis . . . dici aliquid de jure gentium: uno modo quia est jus quod omnes populi et gentes variae inter se servare debent . . .") [347].

182. *Id.* at 169.

183. *Id.* ("alio modo quia est jus quod singulae civitates vel regna intra se observant") [347].

184. *Id.* at 169-70, no. 10.

or "the law of nations."<sup>185</sup> Suárez believed that it derived from the natural law and, as such, was not abrogated by the Christian faith.<sup>186</sup>

## 6. An Item of *Jus Gentium*—War

Like all other Catholic theologians of his day, Suárez did not regard war as intrinsically evil or think it was in every instance prohibited for Christians.<sup>187</sup> On the contrary, although he thought that war was deplorable and should be avoided wherever possible,<sup>188</sup> at times he found it necessary and the only moral option open for the preservation of the republic.<sup>189</sup>

For any war to be just, Suárez believed certain conditions had to be met. First, legitimate and supreme public authority was required in order to declare a war. Second, a just cause or claim of sufficient gravity was needed. And third, right conduct (*debitus modus*) was to be the rule in the beginning of the war, in the prosecution of the war, and in the victory afterwards.<sup>190</sup>

Justification for war could be offered under the *jus gentium*, insofar as any republic or state had a right and even an obligation to defend itself.<sup>191</sup> As we shall see, Suárez thought this

185. *Id.* at 169 ("prior modus videtur mihi proprissime continere jus gentium re ipsa a distinctum a jure civili") [347]. On the originality of Suárez here and its subsequent importance for modern international law, see ROMMEN, *supra* note 67, at 458.

186. SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 219, III, ch. 4, no. 7 ("hoc etiam est de jure gentium a naturali derivatum, quod fides non tollit"). For the thought that faith and the order of grace do not destroy nature, see SUÁREZ, *De Baptismo*, in 21 OPERA OMNIA, *supra* note 21, at 435, disp. 25, § 4, no. 5; SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 748, disp. 13, § 5, no. 6.

187. SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 737, disp. 13, § 1, no. 2 ("bellum simpliciter nec est intrinsece malum, nec Christianis prohibitum") [800].

188. *Id.* at 738 no. 3; *id.* at 743, § 4, no. 1; see *infra* note 193 and accompanying text.

189. See SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 164, II, ch. 18, no. 5; SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 738, disp. 13, § 1, nos. 4-5.

190. SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 737, disp. 13, § 1, no. 7 ("ut bellum honeste fiat, nonnullae conditiones sunt observandae, quae ad tria capita revocantur. Primum, ut sit a legitima potestate. Secundum, ut justa causa, et titulus. Tertium, ut servetur debitus modus, et aequalitas in illius initio, prosecutione, et victoria . . .") [805]. Suárez developed these conditions in sections 2 through 8 of disputation 13 of *De Caritate*. See *id.* at 739-59.

191. *Id.* at 738 no. 4 ("Dico secundo: bellum defensivum non solum est licitum, sed interdum etiam praeceptum.") [802].

right would also extend to the defense of innocent persons. But in addition, under the *jus gentium*, war could be sanctioned as a matter of vindictive justice.<sup>192</sup> That is to say it might be allowed as based upon one state's power or authority to punish, avenge, or repay an injury done to it by another.<sup>193</sup>

Let us note this. The power involved here is not, as Vitoria earlier said, "by the authority of the whole world."<sup>194</sup> Despite what we have seen Suárez say about the unity of the human race as foundation for the *jus gentium*, he was not thinking of any international political authority, much less any definite arrangement along the lines of a United Nations or a World Court. Each state, "supreme in its own order"—here the temporal order—with no tribunal beyond, had the authority forcibly to redress injuries against itself.<sup>195</sup>

Nevertheless, that such authority be in an injured republic was not absolutely necessary. As Suárez saw it, human beings could have chosen another way of vindication or they could even have entrusted that authority to a third prince as a quasi-arbiter with coercive power.<sup>196</sup> But because the current prac-

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192. *Id.* at 744, § 4, no. 5. For Suárez's views on vindictive justice, see SUÁREZ, *DE JUSTITIA ET JURE*, *supra* note 52, at 107-09, disp. 4, question 4; see also SUÁREZ, *De Justitia Dei*, in 11 *OPERA OMNIA*, *supra* note 21, at 569-77, § 5.

193. SUÁREZ, *De Legibus*, in 5 *OPERA OMNIA*, *supra* note 21, at 169, II, ch. 19, no. 8 ("quatenus fundatur in potestate quam una respublica vel monarchia suprema habet ad puniendam vel vindicandam, aut reparandam injuriam sibi ab altera illatam, videtur proprie esse de jure gentium") [348]; see SUÁREZ, *De Caritate*, in 12 *OPERA OMNIA*, *supra* note 21, at 743, disp. 13, § 4, no. 1 ("Rursus causa haec justa et sufficiens est gravis injuria illata, quae alia ratione vindicari aut reparari nequit.") [816]; SUÁREZ, *De Justitia Dei*, in 11 *OPERA OMNIA*, *supra* note 21, at 572, § 4, no. 7.

194. See Francisco de Vitoria, *Relectio de jure belli*, in 6 *CORPUS HISPANORUM DE PACE*, *supra* note 4, at 136, IV, § 1, ch. 5 ("principes non solum habent auctoritatem in suos, sed etiam in extraneos ad coercendum illos, ut absterneant se ab iniuriis; et hoc jure gentium et orbis totius auctoritate").

195. SUÁREZ, *De Caritate*, in 12 *OPERA OMNIA*, *supra* note 21, at 744, disp. 13, § 4, no. 5 ("in orbe, ut diversae respublicae pacate vivant, necessaria est potestas puniendi injurias unius contra aliam. Haec autem potestas non est in aliquo superiore, quia nullum habent, . . . ergo necesse est, ut sit in supremo principe reipublicae laesae, cui alius subdatur ratione delicti.") [818] Not far from this is a thought on world government in a slightly different context. See SUÁREZ, *De Fide III*, *supra* note 30, at 192, disp. 6, question 1 ("Respondetur ad primum in unaquaque gente et republica eam potestatem esse apud supremum principem illius, quodsi ille male se gerat, reipublicae habent potestatem in illum; si tamen omnes in malo consentiant, vindicta remittenda est Deo, qui est vindex in omnibus, . . . neque enim potuit humano modo commodius universus mundus gubernari.") On the difference here between Suárez and Vitoria, see OBRAS DE VITORIA, *supra* note 58, at 764-68.

196. See generally SUÁREZ, *De Legibus*, in 12 *OPERA OMNIA*, *supra* note 21, at 169, II,

tice of one state having the power to avenge itself by war upon another was "more manageable and more consistent with nature," it was accepted as just and the power of the injured state could not be resisted without violating the *jus gentium*.<sup>197</sup>

A special situation existed among Christian nations and their rulers inasmuch as the Pope, exercising his indirect power in the temporal order, could intervene in their disputes.<sup>198</sup> More than that, he could decide these disputes in such a way that, absent any patent injustice, the contending parties would be obliged to accept his decision.<sup>199</sup> For this reason, Vitoria's friend and successor, Domingo de Soto, O.P., (1495-1560) had thought that among Christian princes just wars were rare.<sup>200</sup> Even so, said Suárez, the Pope did not always intervene, and Christian rulers were not obliged to press him to do so.<sup>201</sup> Moreover, in the absence of papal intervention, a ruler or a republic that had suffered an injury had a right under the *jus gentium* to look to itself for satisfaction.<sup>202</sup>

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ch. 19, n.8 ("potuissent enim homines instituere alium modum vindictae, vel committere illam potestatem alicui tertio principi, et quasi arbitrio cum potestate coactiva") [348].

197. See *id.* ("tamen quia hic modus, qui nunc servatur, facilius est, magisque naturae consentaneus, usu introductus est, et ita justus, ut non possit illi jure resisti") [348].

198. See Suárez, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 740, disp. 13, § 2, no. 5; see also SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 313, III, ch. 22, no. 14.

199. See SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 740, disp. 13, § 2, no. 5 ("[Supremus Pontifex] habet jus advocandi sibi causam belli, et potestatem ferendi sententiam, cui partes tenentur obedire, nisi manifestam faciat injustitiam.") [808].

200. See *id.* ("quapropter Soto, ad Rom. 12, dixit raro inter principes christianos esse bellum justum, quia aliam viam expeditam habere possunt ad terminandas causas communes") [809].

201. *Id.*

202. *Id.* ("quamdiu non prohibentur, possunt jus suum prosequi") [809]. Suárez said it is self-evident that injury makes a debtor of the one who causes it. See SUÁREZ, *De justitia Dei*, in 11 OPERA OMNIA, *supra* note 21, at 571, § 5, no. 6 ("per injuriam vero constituitur debitor is qui facit, non qui recipit, ut est per se notum"). Along with this, a state or prince that perpetrates an injury is subject only to the one who receives it. Thus each may pursue the vindication of injury to itself but no one is empowered to police the world. See SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 744, disp. 13, § 4, no. 3. ("is qui facit injuriam sit factus subditus, sed tantum offensus. Unde, quod quidam aiunt, supremos reges habere potestatem ad vindicandas injurias totius orbis, est omnino falsum, et confundit omnem ordinem, et distinctionem jurisdictionum: talis enim potestas, neque a Deo data est, neque ex ratione colligitur.") [817].

This last would seem *a fortiori* to be true in the case of war between non-Christian states, or between a Christian republic and one that is non-Christian, inasmuch as the indirect temporal power of a Pope presupposes his direct spiritual power.<sup>203</sup>

As was noted above,<sup>204</sup> civil power, precisely as such, would not be greater in Christian princes than in pagan princes. The immediate corollary from this is that Christian princes could have no more reason for a just war than other princes could have.<sup>205</sup> All persons could defend themselves. All persons could avenge injury or defend the innocent. But Christian states and Christian sovereigns could not claim any further rights beyond this.<sup>206</sup> Specifically, they could not make claim to war against unbelievers solely because they chose not to follow Christianity.<sup>207</sup>

#### IV. THE DIVISION(S) OF UNBELIEVERS

Looking through Suárez's volumes, I have found different, but not mutually contradictory, divisions of unbelievers. The order in which I will now present these divisions is atemporal. If that serves to emphasize his two treatises "On Faith," so much the better.

##### A. *The De Baptismo—1595*

First, in his treatise "On Baptism," published at Salamanca in 1595, Suárez divided unbelievers into "apostates" and "non-apostates." The former would be all those who having been baptised as Catholic Christians had left the Church. Suárez believed that all of these, whether they had since become heretics, Jews, or pagans, remained subject to the direct spiritual jurisdiction of the Church. This subjection would extend, he thought, even to the right of the Church to baptize

203. See SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 747, disp. 13, § 5, no. 4.

204. See *supra* note 82 and accompanying text.

205. See SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 748, disp. 13, § 5, no. 6 ("Dicendum est ergo nullum esse titulum belli ita proprium christianorum principum, qui non habeat fundamentum aliquod, vel certe proportionem cum lege naturali, atque adeo qui suo modo non etiam conveniat principibus infidelibus . . .") [826].

206. *Id.* ("quod ut explicem, dico primo: christianus princeps non potest indicare bellum, nisi vel ratione injuria, vel ob defensionem innocentium") [826].

207. See *id.* at 746, § 5, no. 1.

their infants whether they themselves agreed or not. "Non-apostate unbelievers" would be those who had never been baptised—including Jews, Saracens, and pagans generally. These were not directly subject to the Church and, as we remarked above,<sup>208</sup> Christian rulers (as well as the Church itself) had no right to forcibly baptize them or their children. Without prejudice to this, a subdivision was in order with respect to these non-apostate unbelievers. Some of them were in fact subject to the temporal power of Christian rulers. Others were in no way subject, either spiritually or temporally.<sup>209</sup>

### B. *The Defensio Fidei*—1613

Jumping to 1613, Suárez, in one place within the context of the *Defensio Fidei*, divided unbelievers into three groups. Some were subject, directly or indirectly, to the Church only in temporal matters. Examples, he believed, were the Jews (or the Muslims) who commonly lived in Christian lands. Others were subject to the Church spiritually, including baptized heretics and apostates. Third were those who were not subject in any way, either temporally or spiritually. These presumably would be all non-baptized persons living in territories outside Christian jurisdiction.<sup>210</sup>

### C. *The First Lectures De Fide*—1583

Going back to the 1583 lectures "On Faith," we encounter two threefold divisions of "unbelief." The first is into Judaism, paganism, and heresy.<sup>211</sup> The second occurs within a discussion of evangelization, or more specifically, within a discussion of the sin of infidelity and the possibility of excusing ignorance.<sup>212</sup> There were those who had never heard of the Christian faith. There were those who had heard it but not well enough. And then, there were those who had heard it well

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208. See SUÁREZ, *De Baptismo*, in 21 *OPERA OMNIA*, *supra* note 21, III, § 3 ("The Limitations of State Power").

209. See SUÁREZ, *De Baptismo*, in 21 *OPERA OMNIA*, *supra* note 21, at 428, disp. 25, § 3, no. 1.

210. See SUÁREZ, *Defensio fidei*, in 24 *OPERA OMNIA*, *supra* note 21, at 219, III, ch. 4, no. 8.

211. See Suárez, *De Fide II*, *supra* note 30, at 150-51, disp. 4, question 1.

212. See *id.* at 127, disp. 3, question 2 ("Quaestio secunda: Utrum haec ignorantia vel error possit interdum excusari a peccato infidelitatis.").

enough and who despite this remained in their unbelief.<sup>213</sup>

From a text immediately following this division, it appears that in 1583 Suárez regarded the American Indians as generally belonging to the second class—at least during the first decades of the Spanish conquest of the New World. This earlier mentioned text, which contains Suárez's single unambiguous reference to the American Indians, concerns the reason that, despite hearing about the Christian faith, the Indians might have remained invincibly ignorant of it. It reads as follows:

if the Faith is proclaimed not in a pious and Christian way—but rather tyrannically and cruelly as was done in the beginning by the Spaniards among the Indians—this is not enough to remove invincible ignorance of that Faith. For on account of [such tyranny and cruelty], people like these [Indians] cannot and should not consider that Faith to be holy and religious and pertaining to the true God.<sup>214</sup>

We have, of course, no way of interpreting this “beginning” of which Suárez speaks. Most likely it would extend from 1492 at least up until Vitoria's lectures in 1539. In this way, it would encompass the excesses of the earlier Conquistadors, for example, Cortés in Mexico, and Pizarro in Peru. Possibly, it could extend a little later to the famous “New Laws” of 1542-1543.<sup>215</sup> If we restrict the relevant period to a date before 1539, it would be difficult to account for the apparent currency of Vitoria's remarks at that time. But if we advance it much beyond 1543, it is difficult to think of a “beginning” and still leave room for a middle and end of the time between 1492 and Suárez's lectures in 1583. But admittedly this is speculation. What is certain is that, in the one reference he made to

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213. *Id.* at 129 (“Distinguendi ergo sunt tres status hominum: quidam sunt, qui nunquam audierunt fidem, quidam audierunt sed non sufficienter, quidam vero sufficienter.”).

214. *Id.* at 131 (“si fides non annuntietur pio et christiano modo, sed tyrannice et crudeliter, ut in principio ab Hispanis apud Indos factum est, non sufficit illud ad tollendam ignorantiam invincibilem fidei, quia non potest ea de causa talis gens nec debet illam fidem concipere ut piam et religiosam et ad verum Deum pertinentem”).

215. For these, see *Las Nuevas Leyes de 1542-1543. Ordenanzas para la gobernación de las Indias y buen tratamiento y conservación de los indios*. (Edición, estudio y notas por Antonio Muro Orejón, 1941); see also Juan de la Peña, *De bello contra insulanos: intervención de España en América: Escuela Española de la Paz, segunda generación, 1560-1585*, ed. por Luciano Pereña, et al., 2 vols., in 9 *CORPUS HISPANORUM DE PACE*, *supra* note 4, 33-38 (1982); 10 *CORPUS HISPANORUM DE PACE*, 102-27 (1982).

the Spaniards spreading the Gospel in the New World, Suárez is bluntly and harshly critical. What is problematic is his attitude regarding New World activities in his own time and in the decades immediately preceding. Again, what remains a mystery is his silence on that score after 1583.

D. *The De Fide Published by Alvarez—1621*

Two divisions occur in the *De Fide* text published by Alvarez. The first division is a general split of "infidelity" or unbelief into three types: paganism (including Islam), Judaism, and heresy.<sup>216</sup> Suárez allowed a possible coupling of all three types with apostasy, here meaning the deliberate abandonment of once accepted Christian belief.<sup>217</sup> The second division related to non-apostate unbelievers. These were divided in a manner similar to that of 1583, into: (1) those who understood the Christian faith sufficiently but still did not accept it; (2) those who had never heard anything about it, and (3) those in the middle, who had not heard enough about it.<sup>218</sup>

Interesting in the second group within this division is the composition of its members. The actual composition was formerly a matter of controversy among theologians. Reading the Scripture literally, St. John Chrysostom and others had believed that at the time of St. Paul<sup>219</sup> the Gospel had been preached all over the world. However, said Suárez, "today it is known from experience that there were, and still are, many provinces and kingdoms of the world to which neither the preaching nor the news of the Gospel had come."<sup>220</sup> But even if one were to grant that the Gospel was preached by the Apostles in all parts of the world, Suárez believed one could still say that it had not been sufficiently proposed to all individual persons.<sup>221</sup> According to Suárez, "this was true not only at the

216. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 415, XVI, § 4, no. 3.

217. *Id.* at 417, no. 9; see *id.* at 420, § 5, no. 1.

218. *Id.* at 425, disp. 17, § 1, no. 6.

219. See *Romans* 10:18.

220. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 425, disp. 17, § 1, no. 6 ("Quin etiam hodie experimento cognitum est, multas fuisse et nunc esse provincias, et regna orbis, ad quae nec praedicatio nec fama Evangelii pervenerat.") For St. John Chrysostom, see *Commentarius in Epistolam ad Romanos, Homilia XVIII*, in 60 *Patrologia, Series Graeca* col. 574 (J.P. Migne, ed., 1859).

221. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 428 no. 13.

time of the Apostles but also, as is known from experience, in all time following up to the present."<sup>222</sup> The second group in the division could include the lands and peoples of the New World.

This impression is strengthened when we look at the third group, those in the middle, who have heard some but not enough about the Christian faith. For when Suárez listed some of those in this category, in contrast to his 1583 lectures, he did not include the American Indians. Instead, he spoke of persons living "among the Turks or the Saracens or in the provinces of India when the Faith began to be preached there."<sup>223</sup>

From this one thing should be emphasized and another may be fairly inferred. First, in the 1613 revision of his lectures Suárez dropped explicit reference to the Indians of the New World. And second, teaching in 1613 at Coimbra in Portugal, he seemed inclined to take his cues not so much from Spain in the New World as from the experience of the Portuguese in India and parts east. But let us now pass to our principal source, Disputation 18 of the Coimbra *De Fide* text.

#### V. SUÁREZ ON PREACHING THE GOSPEL TO NON-APOSTATE UNBELIEVERS

Although there may be some question about where Suárez would ultimately locate the American Indians, when the Spaniards encountered them, of course, they were unbelievers and, just as obviously, they were not apostates. As such, they appeared to be immediately, even if not expressly, the concern of the questions raised in Disputation 18. The first five of these questions are of particular interest for us. Let us then follow them in order.

##### A. *Does the Church Have the Power and the Right to Preach the Gospel Everywhere to All Unbelievers?*<sup>224</sup>

Suárez says that there are two words in this question—

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222. *Id.* ("quod non solum est verum de tempore Apostolorum, sed etiam de toto posteriori tempore usque ad praesens, ut experimento etiam cognitum est").

223. *Id.* at 425, no. 6 ("inter Turcas et Saracenos, et in provinciis Indiae, quando in eis coepit praedicari fides").

224. *Id.* at 436, disp. 18, § 1 ("Utrum Ecclesia habeat potestatem et jus

"power" (*potestas*) and "right" (*jus*)—that do not mean the same thing. First, one could have power (*potestas*) to do something: when one is allowed to do that thing even though one does not have an explicit right (*jus*), or dominion (*dominium*), to do so. For example, I may be allowed to enter another's house. In a second way, power could exist together with a right (*jus*), for example, the power of using my own house or using something common to all.<sup>225</sup>

As Suárez saw it, in this case the Church had not only a simple "permissive" empowerment (*facultatem*). It also has a right with a special power (*jus cum speciali potestate*) to preach the Gospel everywhere. The basis for this was that Christ had such a right over all men as his very inheritance and—because He was by himself not about to teach all men—He communicated that right to his Apostles and then through his Apostles He gave it to His Church.<sup>226</sup> All of this, Suárez thought, was inferred from both the Old and New Testament. For in the *Psalms*, in the person of Christ it was said: "By him I have been appointed King over Sion, his holy mountain," and the way he would obtain the kingdom was indicated by the addition: "preaching his commandment."<sup>227</sup> Then the same Psalm further added: "Ask of me, and I will give you the nations for your inheritance and the ends of the earth for your possession."<sup>228</sup> The fulfillment of this in and through Christ, Suárez thought, was attested to in the *Gospel of Matthew*—"All power has been given to me in heaven and on earth,"<sup>229</sup> and "Going therefore teach all nations."<sup>230</sup> In line with this, said Suárez,

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praedicandi Evangelium omnibus infidelibus ubique." [739]); see Suárez, *De Fide II*, *supra* note 30, at 216, disp. 5, question 4.

225. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 436, disp. 18, § 1, no. 1. To this I add that generally, but not always, Suárez and other scholastics contrasted *potestas* as power in the sense of right, jurisdiction, or authority with *potentia* as power in the sense of physical force.

226. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 437, disp. 18, § 1, no. 2 ("Fundamentum est, quia Christus Dominus habuit hoc jus in universos homines in haereditatem suam, quam mediante praedicatione fidei erat acquisiturus, et quia non erat per se ipsum docturus omnes gentes, illam potestatem cum jure et auctoritate suis Apostolis, et per eos Ecclesiae communicavit; . . .") [741].

227. See *Psalms* 2:6.

228. *Id.* at 8.

229. *Matthew* 28:18.

230. *Id.* at 19.

St. Paul could write: "We are ambassadors for Christ."<sup>231</sup> But an ambassador represents his prince and shares in His power. Hence, the Church has a special right to spread the Gospel. But, more than this, it had a necessary *obligation* as well. For Christ Himself *commanded*: "Go into the whole world and preach the Gospel to every creature,"<sup>232</sup> and St. Paul exclaimed: "Woe to me if I preach not the Gospel, for a necessity lies upon me."<sup>233</sup>

Moreover, although such a special power could not be proven by natural reason, it was, Suárez thought, quite consistent with natural reason because, the right to teach the ignorant was, as it were, connatural to every man. Thus, if one supposed, as Suárez did, the necessity of Christian faith for salvation,<sup>234</sup> it is very much in line with natural reason, that the author of that faith would have left to his ministers, especially to the Pope, a special right to teach men the Gospel truth.<sup>235</sup>

Immediately ensuing from this, Suárez asserted that the Church had the right to protect its preachers and to punish those who through physical power or force impeded their preaching.<sup>236</sup> If the Church had the right to preach everywhere, those who by physical power impeded the exercise of that right did injury (in the physical or temporal order) to the Church. Therefore, the Church could repulse that power and defend its right.<sup>237</sup> This reasoning, he thought, was strengthened by a principle of both civil and canon law: A grant of

231. See 2 Corinthians 5:20.

232. Mark 16:15; see Matthew 28:19; see also SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 357, disp. 12, § 4, no. 18; *id.* at 360, no. 25.

233. 1 Corinthians 9:16; see SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 437, disp. 18, § 1, no. 2; see also SUÁREZ, *De Baptismo*, in 12 OPERA OMNIA, *supra* note 21, at 429, disp. 25, § 3, no. 1; SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 190, III, ch. 6, no. 1.

234. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 340, disp. 12, § 2, no. 5 ("Nihilominus dicendum primo, actum fidei ita esse necessarium ad salutem omni adulto, ut nullus omnino in ullo tempore, loco, vel occasione sine illo justificari poterit; itaque ab hac regula nulla admittenda exceptio.") [742]; *id.* at 355-56, § 4, no. 14.

235. See *id.* at 438, disp. 18, § 1, no. 3 ("jus docendi ignorantes est quasi conaturale cuicumque homini; ergo, supposita necessitate fidei, est valde consentaneum rationi, quod auctor fidei suis ministris, et praesertim Vicario suo relinquere speciale jus ad illuminando homines in doctrina fidei") [743].

236. *Id.* no. 4.

237. *Id.* ("si Ecclesia habet jus praedicandi ubique Evangelium, qui per vim et potentiam usum illius juris impedit, injuriam facit Ecclesiae; ergo potest Ecclesia il-

jurisdiction brings with it all that is morally necessary for its exercise.<sup>238</sup> A "third and best reason" was taken from the belief that, under the *jus gentium*, each republic was empowered to defend innocent persons who may be suffering grave injury from those more physically powerful than themselves. But for Suárez, those who impeded the preaching of the Gospel were inflicting a *most serious* harm upon many persons, who perhaps would be converted if they heard it and who would willingly hear it if it were preached. Therefore, the Church (which he termed a "spiritual republic") was *indirectly* empowered to defend such persons, who in this case would be innocent and would be suffering serious injury.<sup>239</sup> This, he thought, was reasonable inasmuch as every republic had the right, under the *jus gentium*, to send ambassadors of peace to another republic and had consequently the authority to defend them, and to avenge injury, if they were mistreated. Therefore, Suárez believed, much more did the Church have this right with regard to its ambassadors, who were the preachers of the Christian faith. This was especially so, he thought, inasmuch as Christ empowered the Church to increase and to expand over the whole world.<sup>240</sup>

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lam propulsare, et jus suum tueri") [743]. Note *potentia* as power in the sense of physical force.

238. *Id.* ("declaratur amplius haec ratio ex alio principio utriusque juris, quod, concessa jurisdictione, conceduntur omnia quae ad exercitium ejus moraliter necessaria sunt, quia alias concessio diminuta esset et inefficax") [743].

239. *Id.* Suárez explained:

Tertia ratio est optima de quadam potestate quasi naturali, licet indirecta: nam unaquaeque respublica habet potestatem defendendi innocentes, qui gravem a potentioribus patiuntur injuriam; sed qui impediunt Evangelii praedicationem, gravissimum nocumentum inferunt multis, qui fortasse converterentur, si illud audissent, et libenter audirent, si praedicatum fuisset; ergo habet Ecclesia potestatem defendendi illos qui in ea parte innocentes sunt, et injuriam gravem patiuntur.

*Id.* [743] For Suárez's views on the right to defend the innocent, see SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 748, disp. 13, § 5, no. 7; see also SUÁREZ, *De Baptismo*, in 21 OPERA OMNIA, *supra* note 21, at 429, disp. 25, § 3, no. 1. For Suárez's views on the Church as a "spiritual republic," see SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 245, disp. 9, § 1, no. 3; SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 231, III, ch. 6, no. 2; *id.* at 244, ch. 8, no. 4; see also SUÁREZ, *De Censuris*, in 23 OPERA OMNIA, *supra* note 21, at 5, disp. 1, § 2, no. 5; *id.* at 8, no. 15.

240. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 438, disp. 18, § 1, no.

4. Suárez stated that

unaquaeque respublica habet jus mittendi legatos pacis ad aliam rempubli-

For Suárez, the supreme and universal empowerment for sending preachers was in the Supreme Pontiff, because he alone was the supreme pastor of the entire Church of Christ and had the principal task of propagating the Church and spreading the Christian faith.<sup>241</sup> Accordingly, the right of protecting (*jus tutandi*) those preachers, if necessary by means of war and physical force, belonged to the Pope.<sup>242</sup> The reasoning was that the Pope had the prerogative to defend the universal rights of the Church. This is because such defense, even by means of war if necessary, required the kind of supreme authority needed for war. But this kind of authority did not belong in this instance to temporal sovereigns. Rather, in this case it flowed from a spiritual right, the very right to send preachers, that is not granted to temporal sovereigns. As such, the right to protect its preachers was joined with the Church's spiritual power, which then extended indirectly to temporal things.<sup>243</sup>

It must be added that, for Suárez, this right did not belong to the Pope in such fashion that he could exercise it through clerics.<sup>244</sup> Instead, he was empowered to commit this defense

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cam, et consequenter habet potestatem defendendi illos, et vindicandi injuriam, si male tractentur; ergo multo magis habet Ecclesia hoc jus circa legatos suos, qui sunt fidei praedicatores, praesertim cum habeat Ecclesia potestatem a Christo datam, crescendi et occupandi totum orbem ut supra probatum est.

*Id.* [743] As we have seen, *supra* note 171 and accompanying text, no nation was required by *natural law* to admit legates. The requirement, and perhaps strictly speaking the correlative right to send legates, was a matter of *jus gentium*.

241. See SUÁREZ, *De Fide*, *supra* note 21, at 439, disp. 18, § 1, no. 6. In this connection, at one point Suárez mentioned the "New World" (*novus orbis*) coupled with "The India of the East" (*Orientis India*) as places for which the Pope has appointed bishops. See *id.* at 301, disp. 10, § 2, no. 23.

242. *Id.* at 439, no. 7 ("multo majori ratione dicendum est munus illud defendendi hoc jus etiam per coactionem et bellum, si fuerit necessarium, solius esse Summi Pontificis") [746].

243. *Id.* Suárez stated that

tum quia ad illum pertinet universalia jura Ecclesiae defendere; tum etiam quia haec defensio per bellum requirit, per se loquendo, quamdam supremam potestatem; haec autem potestas non convenit per principibus temporalibus, quia ex jure manat spirituali, quod non est principibus temporalibus concessum, sed conjunctum est cum potestate spirituali, quae indirecte extenditur ad temporalia.

*Id.* [746].

244. See *id.*; see also SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 741-43, disp. 13, § 3 ("Utrum indicare et exequi bellum liceat etiam clericis") [810].

of preachers to temporal sovereigns, whom he may even command to assume the task. Hence, also, as Major and Vitoria both have rightly noted:

the Pope can distribute the provinces and kingdoms of infidels among temporal princes and kings, not that they may occupy them arbitrarily—for that would amount to tyranny . . . but that they would procure preachers of the Gospel to be sent to those infidels and that they would protect those preachers by their power, even by declaring just war, if reason and a just cause demand it. And in this regard, the Pope can pre-fix for each prince certain boundaries, which afterwards may not be crossed without injustice, as we read was done by Alexander VI between the kings of Portugal and Castille.<sup>245</sup>

Although Suárez in this place still did not name the American Indians, the reference to Pope Alexander's May 4, 1493 Bull, *Inter coetera*,<sup>246</sup> brings them and the New World clearly within the purview of the question here in the *De Fide*. Further, it gives insight into Suárez's interpretation of what the Pope did and what that tells us about papal power.

Like Vitoria before, Suárez did not regard the Pope as ruler of the world. The Pope could not, therefore, simply hand lands and peoples over to the jurisdiction of whomever he pleased. But he was charged with protecting the interests of

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245. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 439, disp. 18, § 1, no. 7. The original reads

potest Pontifex inter principes seu reges temporales distribuere provincias, et regna infidelium, non ut illas suo arbitrio occupare possint, hoc enim tyrannicum esset, . . . sed ut praedicatores Evangelii ad illos mittendos procurent, et sua potestate illos tueantur, etiam justum bellum indicendo, si ratio et justa causa postulet. Et quoad hoc potest Pontifex unicuique principi certos terminos praefigere, quos postea sine injustitia transgredi non poterit, sicut factum esse legimus ab Alexandro VI inter reges Lusitaniae et Castellae.

*Id.* [746]; see SUÁREZ, *De Fide II*, *supra* note 30, at 218-19, disp. 5, question 4.

246. See 5 BULLARUM DIPLOMATUM ET PRIVILEGIORUM SANCTORUM ROMANORUM PONTIFICIUM 361-64 (Augustanae Taurinorum ed., 1860) [hereinafter BULLARUM DIPLOMATUM]. For an English translation, see 1 JOHN H. PARRY & ROBERT G. KEITH, *NEW IBERIAN WORLD: A DOCUMENTARY HISTORY OF THE DISCOVERY AND SETTLEMENT OF LATIN AMERICA TO THE EARLY 17TH CENTURY* 271-74 (1984). For the provenance (or perhaps better the "*Herkunft*") of *Inter coetera* (which was not actually signed by Alexander himself), see Joseph Höffner, *KOLONIALISMUS UND EVANGELIUM: SPANISCHE KOLONIALETHIK IM GOLDENEN ZEITALTER*, IN *VERBESSERTE AUFLAGE* 210-12 (1969).

the Church, which at times would require him to step into the temporal sphere. Thus, in the case of Alexander VI, the division of the world was for the purpose of procuring and protecting missionaries. The overall reason was to insure that this most serious matter of spreading the Gospel be carried out in an orderly way, in a way that would keep peace among the Christian sovereigns themselves, and also help each of them to take better care of those unbelievers (*genti*) committed to him.<sup>247</sup> Hence, said Suárez, in this matter the Pope was like a principal mover and kings were "like his tools or instruments" (*veluti organa et instrumenta ejus*). Accordingly, none of these kings could transgress the boundaries prescribed for them.<sup>248</sup>

The question now was whether this defense of preachers of the Gospel was permissible only after an injury had been inflicted or some obstacle had been placed in the way of their preaching. Or, variantly, was it permitted by way of "anticipated security" so to speak—by sending soldiers beforehand, lest injury be done to the preachers or lest their ministry be impeded.<sup>249</sup>

Some had said that a Christian prince could with justice occupy the kingdom of a pagan (*gentilis*) prince simply in order that under Christian rule the Gospel could be preached there more successfully and securely.<sup>250</sup> But because this was on its face incredible, others, like Major, had moderated it by saying

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247. See SUÁREZ, *De Fide*, in 5 OPERA OMNIA, *supra* note 21, at 439-40, disp. 18, § 1, no. 7 ("Et ratio omnium est, quia ita expedit ut haec res, quae in Ecclesia gravissima est, ordinate fiat, quod maxime est necessarium, tum ad conservandam pacem inter ipsos christianos principes, tum etiam ut unusquisque majori sollicitudine procuret bonum genti sibi commissae.") [746-47]. For Suárez's denial of a universal temporal power on the part of the Pope and for the statement that the only power and right the Church has with regard to non-apostate infidels is the right to preach the Gospel, see SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 192, III, ch. 6, no. 1; see also SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 747, disp. 13, § 5, no. 4.

248. See SUÁREZ, *De Fide*, in 5 OPERA OMNIA, *supra* note 21, at 440, disp. 18, § 1, no. 7.

249. *Id.* no. 8 ("an haec defensio praedicationis, seu praedicatorum Evangelii, solum liceat post irrogatam injuriam ab infidelibus, seu impedimentum praedicationi fidei positum, aut etiam liceat per anticipatam securitatem (ut sic dicam), praeveniendo per milites ne injuria fiat praedicatoribus, vel ne ministerium eorum impediatur") [747].

250. *Id.* ("Aliqui enim dixerunt posse principem christianum juste occupare regnum principis gentilis, solum hoc titulo, ut sub principe christiano majori commoditate et securitate ibi Evangelium praedicetur . . .") [747].

that Christian princes could send preachers with a sufficient army, not to wage war but in order to secure safe entry for those preachers. They also allowed that a Christian prince could build strongpoints and fortresses in the territories of unbelievers, at least at the borders of their provinces, so that entry to those unbelievers could be more easy and more secure. Then finally, they said that princes could exact from nonbelieving kingdoms the expenses which they incurred in these matters, because such had been incurred for those unbelievers' advantage. Consequently, if they were denied, they could extort these expenses by force and war, which they could pursue up to the occupation of the kingdom, if that were necessary.<sup>251</sup>

Suárez agreed with Vitoria and others that the overall doctrine here should not be accepted. First, he found it to have no basis in the teachings of Christ. Indeed, Christ said: "Behold, I am sending you like sheep among wolves"<sup>252</sup>—by which words He plainly showed that the word of faith could not be introduced by force of arms, but by meekness and patience, by efficacy of word, and by example of life, according to St. Paul's sentence: "The weapons of our army are not carnal, but the power of God."<sup>253</sup> Second, it was against the customary prac-

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251. *Id.* Suárez's exact words were:

[S]ed quia hoc per se incredibile est, ut ex dicendis patebit, alii id moderati sunt, dicentes posse principes christianos mittere praedicatores cum sufficienti exercitu, non ut bellum inferant, sed ut praedicatores securi incendant. Addunt praeterea posse christianum principem aedificare turres et arces munitas in terris infidelium, saltem in terminis provinciarum, ut introitus et ingressus [sic] ad infideles sit facilius et securior fidelibus. Denique dicunt posse principes, expensas quas in his rebus fecerint, a regnis infidelibus exigere, quia in eorum commodum expenduntur, et consequenter posse per vim et bellum extorquere, si negentur, atque ita procedere usque ad occupationem regni, si oportuerit. Ita sentit Major, in secundo, distinctione quadragésima quarta, quaestione secunda; et solum fundatur in majori favore fidei.

*Id.* [747] For Major's view, see MAJOR, *supra* note 59, disp. 44, question 3 ("[r]espondetur cum linguam hispanicam non intellexerunt nec concionatores verbi divini sine magno milite admitterent necesse erat arces munitas hic et illic exstruere, ut successu temporum effrenis populus ad mores christianorum assuesceretur"); see HÖFFNER, *supra* note 240, at 336, no. 51. For some idea of the expenses incurred from Spanish efforts to evangelize the New World, see generally Ricardo García-Villoslada, *Felipe II y la contrarreforma católica*, in 3 *HISTORIA DE LA IGLESIA EN ESPAÑA* 101-02 (2d ed. 1980).

252. *Matthew* 10:16; see *Luke* 10:3.

253. 2 *Corinthians* 10; see SUÁREZ, *De Fide*, in 12 *OPERA OMNIA*, *supra* note 21, at 440, disp. 18, § 1, no. 9. For other references to this text, see *id.* at 121, disp. 4, § 3,

tice of the Church—as for example, even after the conversion of Constantine, when Pope Gregory I sent unprotected preachers to England.<sup>254</sup>

Third, to Suárez this was not defense but rather an aggression. It was a virtual coercion to the Christian faith, or at least to hearing the faith. Indeed if preachers were sent with an army, those to whom they were sent, ordinarily and with obvious reason, would presume that these preachers were being sent more for occupying their territory than for taking care of their spiritual salvation. Reasonably, therefore, they could have cause for a just war against such preachers and their accompanying army. And if some were unable to resist and they allowed it from fear, that in itself would be maximum coercion. Moreover, in Suárez's view this was hardly a fit way to introduce the faith. To be sure, he said, it could lead to its injury and infamy, inasmuch as unbelievers would think that the faith sanctioned the violation of the *jus gentium*, and even of the natural law, by occupying foreign lands, against the will of their rulers, and by waging war without a just title. As a result, they could also become obdurate and more indisposed to accept that faith.<sup>255</sup>

(In contrast to his thoughts here in 1614, for the exposition of which he devoted almost a whole page, in 1583 Suárez

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no. 4; *id.* at 446, disp. 18, § 3, no. 6; see also SUÁREZ, *De Censuris*, in 23 OPERA OMNIA, *supra* note 21, at 5, disp. 1, § 2, no. 3.

254. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 440, disp. 18, § 1, no. 9.

255. *Id.* Suárez stated:

Tertio, quia revera non est illa defensio, sed aggressio; unde est virtualis coactio ad fidem, vel saltem ad auditum fidei, quae non est licita, ut statim dicemus. [Quia si praedicatores mittantur cum exercitu, illi ad quos mittuntur, morali modo, et non sine apparenti ratione, praesument mitti potius ad occupandam provinciam, quam ad procurandum salutem spiritualem eorum. Unde loquendo etiam regulariter, juste defendi poterunt, juxta prudentem presumptionem; ergo datur illis occasio justi belli, et ita illa reducitur potius ad aggressionem quam ad defensionem. Quod si alii non possint resistere, et timore cedant, jam illa est maxima coactio. Unde confirmatur, quia illud medium non est aptum ad introducendam fidem, nam cedit in injuriam et infamiam ejus; existimabunt enim infideles nostram fidem dare licentiam violandi jura gentium, imo et jus naturae, occupando res alienas, invitis dominis, et inferendo bellum sine titulo justo. Unde duriores etiam fient, et magis indispositi ad fidem suscipiendam.]

*Id.* [748] On the "most absurd" hypothesis of a war that would be just on both sides, see SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 744, disp. 13, § 4, no. 1.

barely touched this issue. At that time, he did not explicitly speak of "anticipated security," and he made no distinction among those who would employ such a notion. Instead, he contented himself with declaring simply that "those people were very much in error who said that a Christian prince could occupy a province of the Gentiles solely in order that the Gospel be more expeditiously preached there."<sup>256</sup> Then, more concisely than in 1614, he went on to say that their view was clearly against the teaching of Christ and the practice of the Church. Besides that, the course they proposed would lead not to the Gospel's being better promoted [*persuadendum*] but rather to its being despised [*odiosum*].<sup>257</sup>

For these reasons, Suárez believed that peaceful means should first be attempted. Unbelieving princes and republics could be invited and asked (more than once if necessary) to permit the Christian faith to be preached in their realms. They could also be asked to provide or permit security for persons entering their realms or dwelling in them for such a task. But if these nonbelieving princes resisted and were unwilling to allow the entrance of preachers, then, said Suárez, they could be forced—by sending preachers with a sufficient army.<sup>258</sup>

If, similarly, after preachers had been admitted, these unbelievers killed them or injured them solely on account of their

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256. Suárez, *De Fide II*, *supra* note 30, at 220, disp. 5, question 4 ("sequitur valde esse deceptos eos, qui dixerunt principem christianum occupare posse provinciam gentilium hoc solo titulo, ut commodius possit ibi praedicari evangelium").

257. *Id.* To my mind, Suárez's development between 1583 and 1614 lends some support to the thesis of Henri Bernard, S.J. that Suárez in 1614 was thinking of the controversy occasioned by the Jesuit, Alonso Sánchez, who had encouraged Philip II to extend the realm of Christianity and his own dominions by making war upon China (and in the process exploiting the enmity that existed between the Chinese and the Japanese). See generally Henri Bernard, *supra* note 27. Because he did not have the 1583 lectures, Bernard was not able to comment upon them or use them in any way to bolster his thesis.

258. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 440, disp. 18, § 1, no. 10. Suárez stated:

Quapropter dicendum est prius esse tentanda media pacis, invitando et rogando semel atque iterum infideles principes et respublicas, ut permittant in suis regnis praedicari fidem, et offerant vel permittant securitatem personis qui ad illud munus praestandum sua regna ingredientibus, vel in illis commemorantibus. . . . Quod si principes infideles resistant, et ingressum concedere nollent, tunc existimo cogi posse, mittendo praedicatorum cum sufficienti exercitu.

*Id.* [748].

preaching, then Suárez saw even more basis for a just defense or sometimes even reason for just vengeance because it was consistent with natural law and not against any command of Christ. And if the early Church did not use this manner of coercion, he thought it was not because it would have been unlawful, but because the Church did not then have the temporal forces to resist the enemies of the faith. Moreover, to Suárez, Christ in the beginning wished to subdue the world by the efficacy of the word and of miracles, in order to better show his might and the truth of his doctrine.<sup>259</sup>

B. *Is It Permissible for the Church or for Christian Princes to Force These Unbelievers to Listen to the Faith?*<sup>260</sup>

To this question, Suárez suggested, there are two opposite answers. The first says flatly that this is licit. Major seemed to think this, although he did not say so explicitly. The initial argument, as Suárez reports it, is that if unbelievers could not be forced to hear it then the commission to teach would be pointless or nugatory. Another argument in support of the first answer could be made *a simili*. For when Christ gave His disciples power to forgive sins, the Church, it is reasoned, rightly inferred that the faithful should confess their sins. So here, when Christ gave the command to teach all nations, the Church rightly inferred that He gave it the power to force them to listen. Yet another argument turns on the lawful use of force if there be any resistance to the preaching of the faith. But if the unbelievers did not want to listen, they were necessarily resisting.<sup>261</sup>

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259. *Id.* at 440-41, no. 10. Suárez stated:

[E]t simili modo, si, post receptos praedicatores, eos, sine culpa, et absque alia causa, propter praedicationem Evangelii interficiant, vel injuriose tractent, tunc etiam augetur ratio justae defensionis, imo justae vindictae, quae interdum necessaria est ut alii infideles principes coerceantur, et similes tyrannides exercere vereantur. Nam hoc est consentaneum juri naturali, et non est contra aliquod Christi praeceptum. Quod si in principio Ecclesiae non habebat temporales vires ad resistendum hostibus fidei. Voluit etiam Christus Dominus in principio vincere mundum efficacia verbi et miraculorum, ut potentiam suam et veritatem suae doctrinae magis ostenderet.

*Id.* [749].

260. *Id.* at 441, § 2 ("Utrum liceat Ecclesiae vel principibus christianis cogere hos infideles ad audiendum fidem.") [749].

261. *Id.* no. 1.

A second answer simply says that it is not right to force unbelievers to listen to the faith, whether or not they are temporally subject to the Church or to Christian princes. For one thing, there is no record that Christ gave this power to the Church—nor can one infer that He did. Second, this kind of coercion seems contrary to the example of Christ himself. Third, beyond this, the faith is voluntary—therefore the means used to spread it should be voluntary. Fourth, such coercion, whether direct or indirect, demands a jurisdiction that the Church or Christian rulers obviously do not have over non-subject unbelievers. But even if the Church has temporal jurisdiction over some unbelievers—in view of the earlier discussed limits of such jurisdiction, it would not extend to a spiritual matter such as forcing them to listen to the Faith.<sup>262</sup>

A third and middle answer, with which Suárez agreed, distinguishes between those unbelievers who are subject and those who are not subject to Christian princes. It is, he said, acceptable for Christian princes to force unbelievers subject to them to listen to the faith.<sup>263</sup> In this, he said, he was much moved by “the Roman example”—i.e., the Popes forcing the Jews subject to them at Rome to listen once a week to the preaching of the Christian faith. Specifically, he mentions two papal bulls: *Vineam*, issued by Pope Nicholas III in August of 1278, and *Sancta mater Ecclesia*, from Pope Gregory XIII on September 1, 1584.<sup>264</sup>

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262. *Id.* n.2. Suárez often said that the Church simply lacks jurisdiction over non-subject unbelievers. See SUÁREZ, *De Baptismo*, in 21 OPERA OMNIA, *supra* note 21, at 428, disp. 25, § 3, no. 1; *id.* at 434, § 4, no. 3; SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 443, disp. 18, § 2, no. 6; SUÁREZ, *De Legibus*, in 5 OPERA OMNIA, *supra* note 21, at 192, III, ch. 6, no. 1; see also SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 747, disp. 13, § 5, no. 4; SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 349, III, cl. 30. In the last, he said that the Church has no power over infidel princes except in a case where they would block the preaching of the Gospel. On the voluntary nature of faith, see Suárez, *De Fide II*, *supra* note 30, at 81, disp. 6, question 2; see also SUÁREZ, *De Baptismo*, in 21 OPERA OMNIA, *supra* note 21, at 429, disp. 25, § 3, no. 1; SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 133, disp. 4, § 5, no. 5; *id.* at 184, disp. 6, § 5, no. 5.

263. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 442, disp. 18, § 2, no. 3 (“Unde dico primo licitum esse christianis principibus cogere infideles sibi subditos ad fidem audiendam.”) [751].

264. *Id.* (“me multum movet exemplum Romanum; nam Summi Pontifices cogunt Judaeos sibi subditos, ut semel in hebdomada praedicationem fidei audiant, poena imposita his qui audire recusant; qua de re extat Bulla Nicolai III, quae incipit *Vineam*; et alia Gregorii XIII, quae incipit *Sancta mater Ecclesia*”) [751]). For more on

It is noteworthy that Suárez's position here changed from that of his 1583 lectures. At that time he mentioned the Roman example, but only in the course of an argument advanced by others in favor of forcing unbelievers to the faith.<sup>265</sup> He then rejected that argument but withheld judgment about the Roman example.<sup>266</sup> Later in the same lectures, he flatly denied that the Church can force non-apostate unbelievers to listen to the preaching of the faith.<sup>267</sup> This discrepancy between 1583 and 1614 is at least in part explained, of course, by the fact that *Sancta mater Ecclesia* did not appear until eight full months after Suárez's last Roman lecture *De Fide* in January 1584. At the same time, in his 1583 reference to the papal example, he could certainly have had *Vineam* in mind. Most likely, however, any provisions in that 1278 bull were by 1583 largely a dead letter. But after the appearance of *Sancta mater Ecclesia*, Suárez, a strong supporter of papal authority,<sup>268</sup> probably felt constrained to modify his opinion. In any event, his position in 1614 visibly hardened beyond that of 1583.

Indeed, even aside from papal authority and practice, in 1614 Suárez said (with clear if unstated implications for unbelievers in the conquered regions of the New World) that reason itself could confirm the view that subject infidels could be forced to listen. For subjects could be forced to obey a just precept of a temporal ruler. In Suárez's view, it was very defensible that a precept to listen to the faith was just and within the scope of temporal power, because the act of hearing some

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*Vineam*, see 4 BULLARUM DIPLOMATUM, *supra* note 246, at 45-47. For more on *Sancta mater Ecclesia*, see 8 BULLARUM DIPLOMATUM, *supra* note 246, at 487-89. In this context, it is noteworthy that Suárez did not refer to Pope Sixtus V's "softening" in 1586 of Gregory XIII's decree of the year before. See Pope Sixtus V, *Christiana pietas*, in 8 BULLARUM DIPLOMATUM, *supra* note 246, at 788 ("Li uomini maschi ebrei siano tenuti andare ad udire prediche e sermoni di cristiani tre volte l'anno, quando saranno invitati o chiamati da' predicatori, e tre altre volte l'anno in qualche solennità, quando paresse o fossero invitati dalli ordinari; nel resto del tempo niuno sia astretto, ma possi andarvi à suo beneplacito anco non invitato.").

265. Suárez, *De Fide II*, *supra* note 30, at 185, disp. 5, question 1. ("Tertio sumi potest ex Ecclesia Romana, quae compellit Judaeos subditos ad audiendam fidei praedicationem, non posset autem compellere ad hoc medium, nisi posset compellere ad fidem.").

266. *Id.* at 192 ("quidquid sit de antecedenti, negatur consequentia").

267. *Id.* at 219, question 4 ("Dico tertio: Non potest Ecclesia cogere infideles non apostatas ad audiendam suam praedicationem.").

268. For Suárez's views on the Jesuits' "fourth vow," of obedience to the Pope, see SUÁREZ, *De Societate Jesu*, in 16 OPERA OMNIA, *supra* note 21, at 854-66, VI, ch. 4.

preaching was not directly and intrinsically supernatural, and subjects could be shown that it was good. As a matter of fact, it could be related to the republic's advantage which the ruler is obliged to procure. Thus it could lead to greater concord and peace among all subjects; or the unbelievers themselves could be liberated from errors against natural reason. Or, as in the case of the Jews, they could be "liberated from errors at odds with other things which they themselves admit and believe."<sup>269</sup> Or finally, Suárez contended, listening to the faith could be commanded so that those subjects could choose the true religion and the true worship of God—which, consistent with what we have seen, he believed should be promoted in every well-managed republic.<sup>270</sup>

The arguments in support of the second answer, inasmuch as they might be restricted to non-subject unbelievers, do not conflict with this. Suárez further agreed that no special empowerment from Christ forces unbelievers to listen. On the opposite side, he maintained that such empowerment is not necessary; the ordinary power of a temporal prince was enough.<sup>271</sup> Therefore, the example of Christ is not relevant. In response to the argument about coercion to the faith, Suárez granted the antecedent, but denied the consequence. He believed that someone could be coerced into hearing without being coerced to believe.<sup>272</sup> Again, to Suárez, a command to hear the faith need not be imposed under the precise rationale of believing a supernatural faith. To Suárez, it might well be imposed under the general rationale of choosing the true religion and avoiding errors repugnant to reason, and would evidently thus fall within the purview of the temporal power of the state.<sup>273</sup>

As regards unbelievers *not subject* to Christian authority, it was in Suárez's view unlawful to force them to listen to the faith. This, he believed, was more certain than that which was

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269. SUÁREZ, *De Fide*, in 12 OMNIA OPERA, *supra* note 21, at 442, disp. 18, § 2, no. 4 ("vel quia contra alia militant, quae ipsi admittunt et credunt, ut Judaeis contigit").

270. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 442, disp. 18, § 2, no. 4.

271. *Id.* no. 5 ("fatetur non fieri hoc speciali potestate a Christo data, sed sufficere ordinariam potestatem principis temporalis") [753].

272. *Id.* ("dato antecedente, negatur consequentia, tum quia potest quis cogi ad audiendum, non autem ad credendum") [753].

273. See *id.*

just asserted about subject unbelievers, and it is commonly accepted. He thought the arguments of the second opinion proved it. Every coercion, direct or indirect, requires in the one coercing some jurisdiction or authority over the one he is coercing.<sup>274</sup> But, from the facts of this case, Christian princes would have no power or jurisdiction over these unbelievers. Likewise, the Church had no power over them, spiritual or temporal.<sup>275</sup> Indeed, this last is in the princes and kings of the unbelievers themselves, who for Suárez were "supreme in their own order."<sup>276</sup>

Suárez next replied to the reasons advanced by those who would indiscriminately force all unbelievers to listen. To him, the efficacy of preaching lies not in any capacity to coerce, but in the power of the word itself and in the example of life and virtue of those preaching it.<sup>277</sup> Moreover, it does not follow that, without force, the power of preaching would be frustrated. For if someone preached, he thought, generally speaking there would be others who would voluntarily listen. As for the argument *a simili*: the power to remit sins is a power of jurisdiction, and in this it is very far from the power to preach. Finally, to Suárez there was a great difference between resisting those who sinfully impede preaching and forcing people to listen, because the first was a morally necessary means and it presupposes an injury, which it is permissible to repel, whereas neither of these is true as regards the second.<sup>278</sup>

Someone may object to this last point that if the rulers of some unbelieving kingdom refuse to admit preachers of the Gospel and if the Church cannot coerce them to allow the Gospel to be preached there, then the people of that kingdom would not be properly provided for.<sup>279</sup> To this objection

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274. *Id.* at 443, no. 6 ("omnis coactio, sive directa, sive indirecta sit, requirit in cogente aliquam jurisdictionem seu potestatem in eum quem cogit") [754].

275. *Id.*; see *supra* note 249 and accompanying text.

276. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 443, disp. 18, § 1, no. 6 ("haec est in principibus et regibus eorum, qui in suo ordine sunt supremi") [754].

277. In at least one place Suárez stated that the task of preaching the Gospel requires "learning and righteousness" (*doctrina et probitas*). See SUÁREZ, *De Societate Jesu*, in 17 OPERA OMNIA, *supra* note 21, at 975-76, IX, ch. 1, nos. 19-20; see also *supra* note 244 and accompanying text.

278. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 443, disp. 18, § 2, no. 7.

279. *Id.* no. 8.

Suárez allowed that, "morally speaking" (*moraliter loquendo*), there were some cases like this in which coercion would be permitted. For example, if an unbelieving republic wished to hear preachers and its unbelieving king stood in the way, the republic itself could resist him. In this it could be aided by Christian princes—to the end that the unwilling king permit the preaching of the faith. For in acting as he did, he was, for Suárez, doing injury to his subjects, by blocking their way to salvation.<sup>280</sup>

By the same reasoning, Suárez thought, if a king desired to hear preaching, and was resisted by nobles or by the kingdom, he could physically force his subjects, and if he lacked the power to do so, he could also be helped by Christian princes.<sup>281</sup> Finally, if both the king and the kingdom resisted, Suárez thought they could be compelled to permit preachers of the Gospel to work in their territories. This, he believed, was required by the *jus gentium* and it should not be impeded without just cause.<sup>282</sup> Therefore, the king and kingdom could be forced to admit preachers, who could themselves without force or fraud speak the word of God to those wanting to listen. There would always be some such listeners and in this case there would not be any coercion to hearing the faith, but only to not impeding the preaching of the Gospel.<sup>283</sup>

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280. *Id.* at 443-44 ("Nihilominus existimo, moraliter loquendo, tunc esse licitam aliquam coactionem, et imprimis si respublica infidelis velit habere praedicatores, et rex infidelis impediat, potest respublica illi resistere, et in hoc potest juvari a principibus christianis, ut rex invitus fidei praedicationem permittat, quia in hoc injuriam facit subditis . . .") [756]; see Suárez, *De Fide II*, *supra* note 30, at 221, disp. 5, question 4.

281. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 444, disp. 18, § 2, no. 8 ("et eadem ratione, si rex consentiat seu desideret, et non audeat propter resistantiam primatum, seu regni, potest per vim cogere subditos, et si vires illi desint, potest in hoc etiam juvari a principibus christianis") [756]; see Suárez, *De Fide II*, *supra* note 30, at 221, disp. 5, question 4.

282. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 444, disp. 18, § 2, no. 8 ("Denique si rex et regnum resistant simul, arbitror cogi posse ut permittant praedicatores Evangelii versari in terris suis, quia hoc est debitum jure gentium, et non potest sine justa causa impediri") [756].

283. *See id.*

*C. After Sufficient Presentation of the Gospel, Is It Permissible to  
Force Those Unbelievers to Believe Who Have Heard It  
Enough?*<sup>284</sup>

This question can be raised about unbelievers subject or not subject to the temporal power of the Church. The first opinion is that it is licit to force unbelievers, even those not subject, to accept the Christian faith if it has been sufficiently proposed to them. This, Suárez explained, was the view of Major,<sup>285</sup> and, "as is reported, a certain Ginés Sepúlveda in the time of Charles the Fifth vehemently defended it with respect to the business of the Jews."<sup>286</sup> This opinion can be based first upon the words of Christ in the parable of the great feast: "Compel them to enter."<sup>287</sup> It can be further confirmed by the example of Christ, who forced St. Paul to receive the faith. Again, it could be argued rationally inasmuch as those unbelievers were sinning most seriously in not accepting the sufficiently heard faith. Therefore, they could be justly punished for that sin, and through that punishment forced to accept the faith. Again, an argument was made to the effect that in such coercion one could hope for a great advantage, especially in future generations. For, the reasoning ran, even if those who are forced to convert do so in a faithless or fraudulent way, their descendents, who would be much more numerous, will more easily believe, and many innocent children would be saved through baptism.<sup>288</sup>

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284. *Id.* at 444, § 3 ("Utrum post sufficientem propositionem Evangelii, liceat cogere ad credendum hos infideles qui illud sufficienter audierunt."). Note that this question does not seem to have been raised in the 1583 lectures, in which Suárez considered the idea of "sufficiently heard" or "sufficiently preached" in the context of invincible ignorance rather than force.

285. See MAJOR, *supra* note 59, at f. 188v, disp. 44, question 4.

286. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 444, disp. 18, § 3, no. 1 ("ut fertur, tempore Caroli V, in negotio Judaeorum, hanc partem vehementer defendit quidam Genesius Sepulveda.") [757].

287. *Luke* 14:23.

288. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 444, disp. 18, § 3, no. 1. For other mentions of Sepúlveda (whose name definitely suggests the American Indian question), see *id.* at 449, § 4, no. 2; SUÁREZ, *De Baptismo*, in 21 OPERA OMNIA, *supra* note 21, at 429, disp. 25, § 3, no. 1; SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 747, disp. 13, § 5, no. 5. On the conversion or expulsion of the Jews from Spain, by the order on March 31, 1492 of Ferdinand and Isabella, see José Luis González Novalín, *La Inquisición española*, in II-2° HISTORIA DE LA IGLESIA EN ESPAÑA, *supra* note 250, at 134-35.

The second opinion held that the Church or Christian princes could compel unbelievers *subject* to them to accept the faith. This opinion was held principally by Duns Scotus in IV *Sentences*, disputation 4, question 6. It is founded initially on the arguments supporting the first opinion. To this could be added the example of the practice of the Church—in the case of Spain. Spanish kings have used this power. For example, Ferdinand forced the Moors to accept the Christian faith, and King Sisebutus did the same centuries earlier with the Jews. And for that, this latter king was praised at the Fourth Council of Toledo in the year 633 (chapter 56) and is referred to in the *Decretum Gratiani* (chapter *De Judaeis*, dist. 45), as well as in the *Decretales Gregorii IX* (chapter *Majores*, para. ult. *De Baptismo*). In other places also this opinion is favored.<sup>289</sup>

For this second opinion, a particular argument could be added as regards subject unbelievers. Advocates contend that this coercion does not contradict the faith, and the Church lacks neither the power (*potestas*) nor a reason to coerce such unbelievers. That such coercion is not contradictory of the faith would thus be proven from the example of heretics whom the Church had forced to adopt the faith. That that power would not be lacking is proven inasmuch as such unbelievers were here supposed to be subjects of Christian princes, who then would have power to force them, especially in matters necessary for their salvation. Again, a lower prince could force a subject to obey the law of a higher prince—in this case the law of the heavenly Prince. A prince could force his subjects not to blaspheme the Christian religion or to do any injury to it, but these unbelievers by not believing would then be blaspheming the faith proposed to them, and could be punished and forced to convert. Also, those supporting this position expected many good results from coercion, either for the

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289. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 444, disp. 18, § 3, no. 2. For the authorities cited, see 1 CORPUS JURIS CANONICI 161-62 (Aemilius Friedberg ed., 1879-81) (citing *Decretum Gratiani*, *De Judaeis*, I, disp. 45, ch. 5); 2 *id.* at 646 (citing *Decretales Gregorii IX*, *Majores*, lib. 3, tit. 42, ch. 3); J.D. MANSI, 10 SACRORUM CONCILIORUM NOVA COLLECTIO 633 (1759) (citing CONCILIUM TOLENTANUM IV). For Ferdinand's order of March 14, 1502 forcing the Moors to choose between conversion and expulsion, as well as for treatment of the Moors in Spain in the sixteenth century, see Rafael Benítez Sánchez-Blanco & Eugenio Císcar Pallarés, *La Iglesia ante la conversión y la expulsión de los moriscos*, in 4 HISTORIA DE LA IGLESIA EN ESPAÑA, *supra* note 251, at 253-307.

parents or children and generations to come. Accordingly, the argument here was that it is better for these unbelievers even to feign a conversion to Christianity rather than remain in worse error.<sup>290</sup>

The third opinion was common among theologians and was also Suárez's own view. Under this view, non-apostate unbelievers, whether subjects or non-subjects, could not be forced to accept the faith, even though it might have been sufficiently proposed to them.<sup>291</sup> This was the position of Thomas Aquinas<sup>292</sup> and also, among others, of Vitoria, in his *Relectio(nes) de Indis*. Suárez explained it through its parts: first as regards non-subject unbelievers and then with regard to those who are subject. Again, he first spoke about direct coercion and then about indirect coercion.<sup>293</sup>

It was, he said, intrinsically evil to force non-subject unbelievers to accept the Christian faith. Such coercion, he believed, could not be employed without legitimate power (*potes-tas*)—otherwise, any act of violence could be justified. The Church, however, did not have legitimate power with regard to these unbelievers, because Christ did not give it such power. Had he granted power to force these unbelievers to hear the faith, he certainly did not grant power to force them to accept it. Secondly, this could be proven by "negative authority"—for neither in the tradition and practice of the Church nor in Scripture is there any evidence of such power. For that passage of *Luke*, "Compel them to enter," has a quite different sense, which we will see below. Third, Suárez thought it could be proven positively from the words of St. Paul: "What to me are those who are outside? For God will judge them."<sup>294</sup> This doubtless is because they are not subject to Christian jurisdiction, which is the way Pope Innocent III in the *Decretals* (chap-

290. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 444, disp. 18, § 3, no. 2.

291. *Id.* at 445 n.4 ("Nihilominus tertia et communis sententia Theologorum est, infideles non apostatas, tam subditos quam non subditos, ad fidem suscipiendam cogi non posse, etiamsi sufficientem illius propositionem habuerint.") [760]; see SUÁREZ, *De Baptismo*, in 21 OPERA OMNIA, *supra* note 21, at 429, disp. 25, § 3, no. 1.

292. THOMAS AQUINAS, SUMMA THEOLOGIAE, *supra* note 56, II-II, question 10, arts. 8, 12.

293. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 445, disp. 18, § 3, no. 5.

294. 1 *Corinthians* 5:12-13.

ters *Majores* and *Gaudemus*) understood it. Also the *Council of Trent*, Session fourteen, chapter two, has said: "The Church exercises judgment over no one who has not first entered by baptism."<sup>295</sup> Again, Christ, in *Matthew*, instructed the Apostles that they should not carry a staff or a sword—in which place St. Jerome noted that he prohibited instruments of coercion and taught peace.<sup>296</sup> And at the end of the same passage, Christ said: "To those who do not receive you it will be required on the day of judgment,"<sup>297</sup> signifying that God reserved punishment of this sin for Himself.

The same thing is proven according to Suárez on the basis of canon law. This coercion was prohibited with respect to the Jews in the *Decretals* (chapter *Sicut Judaei*) and in the *Decretum* (chapters *Sincere* and *de Judaeis*, dist. 45). And in the *Decretals* (chapter *Majores*), about Baptism, it is said to be against the Christian religion. If this power had been given by Christ, reasoned Suárez, it would not be found immediately in temporal princes but in the bishops and the popes. But these have not said that they have such power nor have they ever used it.<sup>298</sup>

Finally, argued Suárez, this way of drawing men to the faith was not fitting. Instead, much more appropriately, the first acceptance and profession of the faith should be completely spontaneous. This should be so that the efficacy of the divine word and the grace of God might be shown in this work. It is especially the work of God, as Christ has said, and therefore St. Paul has said: "The weapons of this army are not carnal."<sup>299</sup> Again, that way of coercion is exposed to many disad-

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295. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 445, disp. 18, § 3, no. 5. For the authorities cited, see 1 CORPUS JURIS CANONICI, *supra* note 289, at 646 (citing *Majores*); *id.* at 723-24 (citing *Decretales Gregorii IX*, *Gaudemus*, lib. 4, tit. 19, cl. 8); *Concilium Tridentinum*, sess. XIV, ch. 2, in ENCHIRIDION SYMBOLORUM 392 n.1671 (Henricus Denzinger & Adolfus Schönmetzer eds., 1963).

296. *Matthew* 10:10; for Jerome, see *S. Hieronymi Presbyteri Commentariorum*, in *Matheum Libri IV*, in 77 CORPUS CHRISTIANORUM, SERIES LATINA 66 (D. Hurst & M. Adriaen, eds., 1969) ("Qui habemus auxilium, baculi praesidium cur quaeramus?").

297. *Matthew* 10:10.

298. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 445, disp. 18, § 3, no. 5. For references, see 2 CORPUS JURIS CANONICI, *supra* note 289, at 774 (discussing *Decretales Gregorii IX*, *Sicut Judaei*, lib. 3, tit. 42, ch. 3). I note that "*Sincere*," discussed in the text accompanying note 298 should be "*Qui sincera*." See 1 CORPUS JURIS CANONICI, *supra* note 289, at 160 (discussing *Decretum Gratiani*, I, disp. 45, ch. 3); *supra* note 287 and accompanying text (discussing *De Judaeis* and *Majores*).

299. 1 *Corinthians* 1:36.

vantages. Most likely it would lead to many simulated conversions and innumerable sacrileges. Moreover, the unbelievers would be scandalized and they would blaspheme the Christian religion, if they were forced into it.<sup>300</sup>

That the Church has no special supernatural power regarding non-subject unbelievers needs no proof here—for he is supposing that they are not its subjects. Therefore, it has no other power over them. For in Suárez's view, there existed no other power immediately from God, or as a right of nature. Instead, he considered all temporal power in human republics to be by means of human convention and the *jus gentium*. Hence no republic or prince had this power with respect to foreigners, but only with respect to members of that republic. These unbelievers not only were not members of the Church, but were also supposed not to be members of any civil republic subject to a Christian prince. Therefore, no temporal power of Christians extended to them.<sup>301</sup>

Nor could the Church *directly* coerce unbelievers temporally subject to it to accept the faith. Such direct coercion required power and jurisdiction, and from what has been said it is evident that the Church does not have such jurisdiction. The Church is not forbidden to have civil power over these subject unbelievers, for they could be members of a civil republic over which the Church might exercise such power, such as in the case of the Papal States. Nevertheless, to Suárez that power did not extend to punishing subjects for the sin of not accepting the faith if it has been sufficiently proposed to them.<sup>302</sup> Suárez believed that power as it is given immediately to men is ordained only for such natural ends as peace in the republic and the natural justice and honesty compatible with that, but that this sin of infidelity is altogether outside that or-

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300. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 446, disp. 18, § 3, no. 6. For allusions to dissembling on the part of "new Christians," see SUÁREZ, *De Baptismo*, in 21 OPERA OMNIA, *supra* note 21, at 440-41, disp. 25, § 5, nos. 3-4. For other references to this verse of *Corinthians*, see *supra* note 247 and accompanying text.

301. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 445, disp. 18, § 3, no. 6; Suárez, *De Fide II*, *supra* note 30, at 201-02, disp. 5, question 2.

302. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 446, disp. 18, § 3, no. 7 ("nihilominus tamen illa potestas non extenditur ad hunc actum puniendi subditos propter peccatum non suscipiendi fidem ipsis sufficienter propositam" [763]).

der and end.<sup>303</sup>

Nevertheless, *indirect* coercion to accept the Faith is not intrinsically evil, Suárez believed, if it is done with proper limitations. Coercion is indirect when a right abridged or a punishment suffered under one title, or on account of one fault, is secondarily ordered by the one inflicting that punishment to induce the one receiving it to do something else. But in the present case there is power to punish or to coerce for some just end, and to Suárez the other secondary end of conversion to the faith is not bad; indeed of itself it is good. Therefore, also that indirect coercion of itself is not bad but indeed it can be good.<sup>304</sup>

The question now is with what limitations should indirect coercion be employed. Suárez found two. One is that in imposing the burden, or in inflicting evil, one must not overstep the bounds of justice. So, for example, a tribute or a penalty may be increased for just reason up to a certain point, beyond which it would become excessive. Similarly, Catholic princes could, if they have just reason, exclude unbelievers from their kingdom—for example, if they were harming the faithful. Or, if they were conquered in a just war, they might by that title be expelled and, as it were, punished by exile. Or if they were guests or travelers, they might be denied permanent residence. In such cases a Christian prince could refuse to permit unbelievers to dwell in his kingdom, unless they were converted, and then that would be a kind of indirect coercion. However, it was necessary in all cases that the exclusion or expulsion be for just reason.<sup>305</sup>

A second necessary condition was that the outcome of conversion be pursued prudently. This coercion, even though indirect, carries with it the danger of false conversion. Therefore, one must completely avoid admitting these unbelievers to the faith, or to the Sacraments, without sufficient examination and the moral certitude that the conversion is real. But care for this belongs more to the pastors of the Church than to tempo-

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303. *Id.* at 446-47 ("quia illa potestas sicut est proxime ab hominibus, ita solum ordinatur ad naturalem finem, et praesertim ad servandam pacem reipublicae, et naturalem justitiam, ac honestatem ad illum finem convenientem. At vero illud peccatum infidelitatis est omnino extra illum ordinem et finem . . .") [763].

304. *Id.* at 447, no. 8.

305. *Id.* no. 9.

ral princes.<sup>306</sup>

At this point, Suárez replied to the arguments of those who said it is licit to force unbelievers to the faith. Their first argument was taken from Christ's words: "Compel them to enter." Suárez believes the correct interpretation of this to be that these words refer to the situation at the end of the world—when those who are left will be compelled by signs and miracles and by the efficacy of the word of God. Their second argument is taken from the power to punish sins. To this Suárez replied that God did not give anyone power to punish all the sins of others, or else the human race could not be governed in peace and justice. Instead, he said, God reserved some matters for his own judgment, and that among these was infidelity. To the argument that forced conversion would result in those coming after being more easily and more faithfully converted, his reply was that one should not do evil to gain a good result. But he also believed that experience shows that through coercion that result is not achieved—indeed, just the opposite happens.<sup>307</sup>

Turning to the arguments of the second opinion, Suárez answered as follows. In these arguments, the best examples adduced of the kings of Spain concerned indirect compulsion employed with a just title, such as it was employed by their Catholic Majesties, Ferdinand and Isabella. As regards King Sisebutus, who apparently acted to excess, what was praised was his intention but not his deed. To the argument about a superior law: this would be true with respect to subjects if there were a commission from a supreme prince. Here, however, Suárez noted that God had not committed such power to men. Finally, he believed, it was not enough to present faith as evidently credible; in order to justify coercion, there was also required empowerment, which would be lacking in this case.<sup>308</sup>

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306. *Id.*; see Suárez, *De Fide II*, *supra* note 30, at 192, disp. 5, question 1. For more on what Suárez required of evangelists, see SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 135, disp. 4, § 5, no. 10.

307. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 448, disp. 18, § 3, no. 12.

308. *Id.* no. 13.

*D. May Infidels Be Forced to Abandon Their Errors or Their False Religious Practices When These Are Contrary Not Only to the Faith but Also to Reason?*<sup>309</sup>

Suárez's question at this point presupposes an earlier division of the subject matter of faith.<sup>310</sup> One part related to entirely supernatural mysteries while the other related to things naturally knowable. Coinciding with this division, infidelity was twofold: a person could disbelieve only supernatural truths or he could also disbelieve matters naturally knowable. Up to this point, Suárez had treated only the first kind of infidelity. But now he considered the second as well. More precisely, the question is whether unbelievers could be forced to believe that which is reasonably right, or right merely on the basis of human, as opposed to divine, faith. Coupled with this was the question of whether unbelievers could be forced to abandon external religious rites, such as idolatry, which are contrary to that. Once more, the distinction between unbelievers who are temporally subject and those who are not so subject applies.<sup>311</sup>

In his answer, Suárez stated that Major and Sepúlveda had argued that non-subject pagans could be forced to worship one God and to abandon idolatrous rites. If they were unwilling, they could be justly punished and deprived of their liberty and their kingdoms. The basis of this argument was that a Christian republic could defend the honor of God and impede and avenge blasphemies against God. Major and Sepúlveda supported this argument with a reference to Thomas Aquinas,<sup>312</sup> but they also offered an argument from reason. One man could rightly defend the honor or the life of another, and therefore, much more could a man defend the honor of God.<sup>313</sup> This rule applied particularly if pagans were sacrificing adults and children to their gods; they could be forced to stop, at least for the reason of a "defense of innocents."

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309. *Id.* at 448, § 4 ("Utrum infideles cogi possint ut errores suos vel falsos ritus, non solum fidei, sed etiam rationi contrarios, derelinquant.") [767].

310. *Id.* at 429, disp. 17, § 2, no. 1.

311. *Id.* at 448-49, disp. 18, § 4, no. 1.

312. THOMAS AQUINAS, *SUMMA THEOLOGIAE*, *supra* note 56, II-II, question 94, art. 3, ad. 1.

313. SUÁREZ, *De Fide*, in 12 *OPERA OMNIA*, *supra* note 21, at 449, disp. 18, § 4, no. 2.

Therefore, Christian princes could do the same with respect to any pagans for the reason of a defense of God's honor.<sup>314</sup> Finally, they held, certain peoples are so barbarous and so ill-adapted to gaining knowledge of God by themselves that they seem as it were by nature born to slavery, as Aristotle said. Therefore, particularly on this account, they could be coerced to a true knowledge of God and good morals.<sup>315</sup>

In common with that of most other theologians, Suárez's own reply to the question of forcing non-subject unbelievers to abandon their errors was negative. A persuasive argument for this might be taken, he thought, from the fact that God did not permit the Israelites to war on the inhabitants of the Promised Land because of their idolatry, but rather because of the injury of their refusing peaceful transit through their territory. From this, he said, there follows a general rule, which would preclude an otherwise unmerited forcing of non-subject unbelievers to abandon their idolatry: "it is not lawful for any prince to make war 'on these nations,' except to repel or to avenge an injury done by them to him or his people."<sup>316</sup>

The reasoning then is the same as that touched upon above. To Suárez, there was in the Church no jurisdiction over these non-subject unbelievers, and coercion or punishment without jurisdiction was not just. Therefore, even as one private person could not punish or coerce another private person, or one Christian king punish or coerce another, or one unbelieving king punish or coerce another, so neither could the Church punish an unbelieving republic, which is "in its own

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314. *Id.* ("Confirmatur primo, quia si gentiles sacrificent homines vel infantes Diis suis, possunt cogi ne id faciant, saltem propter defensionem innocentium; ergo idem facere principes christiani respectu quorumcumque gentilium, propter defensionem honoris Dei.") [768].

315. *Id.* ("Denique confirmatur, quia quaedam gentes sunt ita barbarae et ineptae ad Dei cognitionem per se obtinendam, ut videantur quasi a natura genitae ad servitutem, ut dixit Aristoteles, 1 Polit., cap. 1 et 3; ergo vel hoc titulo cogi possunt ad veram cognitionem et honestos mores.") [768-69]. Note Suárez's hesitation here in stating an opinion that he himself will reject. With his use of "quasi" and "videantur," he appears to suggest that Major and Sepúlveda did not really believe what they were saying.

316. *Id.* n.3 ("[U]nde ibi colligitur generalis regula, non esse licitum principi bellum facere his nationibus, nisi ad propulsandam vel vindicandam injuriam sibi aut suis factam; ergo sola ratio tollendi idolatriam non est sufficiens ad justam coactionem.") [769]; see SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 743, disp. 13, § 4, no. 1; *id.* at 747, § 5, no. 2.

order supreme," on account of the republic's transgressions, despite the fact that these may be against natural reason.<sup>317</sup>

It is hardly relevant that such transgressions could be against God. For, as noted earlier, God did not set men up as judges to avenge injuries to Him in all things with respect to all men. Instead, in this He wished to preserve an order. Accordingly, said Suárez, so that subjects would obey their princes and lest otherwise greater evils would follow, God reserved for himself judgment of supreme princes even in these matters which belong to the natural order.<sup>318</sup>

To the argument of Major and Sepúlveda about blasphemy, Suárez replied that although idolatry is not properly blasphemy, an occasion for a just war could arise from blasphemy in some circumstances. This might be, for example, when these non-subject unbelievers blaspheme not just God, but do so in contempt of the Church, and injure Christians in the process.<sup>319</sup> Likewise, Christian princes need not be defending God's honor to prevent human sacrifices. For to intervene and wage war on this count, it is enough "to be defending innocent persons."<sup>320</sup> That is to say, in order to prevent these unbelievers from sacrificing children to their gods, to wage war would be lawful as a matter of charity—indeed, it was a com-

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317. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 449, disp. 18, § 4, no. 3. Suárez stated:

Ratio autem est eadem quae in superioribus tacta est, quia in Ecclesia non est jurisdictio super hos infideles, et coactio vel punitio sine jurisdictione non est justa. Quocirca sicut unus homo privatus non potest alium etiam privatum punire vel cogere, neque unus rex fidelis ab alio fideli, neque infidelis ab infideli, ita neque respublica infidelis, in suo ordine suprema, potest puniri ab Ecclesia propter sua delicta, etiamsi contra rationem naturalem sint . . .

*Id.* [769].

318. *Id.* no. 4 ("Deus non constituit homines iudices ad vindicandas suas injurias in omnibus respectu omnium hominum, sed in hoc voluit ordinem servari, ut subditi principibus parerent, supremos autem principes suo iudicio reservavit in his quae ad naturalem ordinem pertinent, quia majora mala ex opposito sequerentur.") [770]; see Suárez, *De Fide III*, *supra* note 30, at 192, disp. 6, question 1; *supra* note 195 and accompanying text.

319. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 449, disp. 18, § 4, no. 4 ("deinde dicitur tunc posse principem christianum cogere hos infideles ne blasphemant, quando id faciunt in contemptum Ecclesiae, et injuriam religionis christianae; quia tunc jam inde oritur titulus justae belli, sicut etiam cogi possunt ne Christianis sint infesti, neque illos in errorem inducant, aut fidem deserere cogant") [770].

320. See *supra* note 206 and accompanying text.

mand, if it could be done successfully.<sup>321</sup> Suárez added that this may be done not only to liberate children, but also adults—even if they themselves consented and wished to be sacrificed to idols. For in this, he thought, these adults were worse than madmen. Moreover, to Suárez they were not the lords of their own lives, for which reason anyone could be constrained by another not to kill himself.<sup>322</sup>

A limitation on this power, he said, was that it applied only when the killings are unjust. For if these unbelievers customarily sacrificed to their idols only criminals justly condemned to death, Suárez believed, they could not be compelled to desist on the basis of that alone. While such a custom might be a sin of idolatry it would not be a sin against justice, and so the “defense of the innocent” reason would not be present.<sup>323</sup>

As for Aristotle’s dictum about natural slaves, this would be appropriate, Suárez said, if there were men so uncivilized that they would not dwell together in one republic and could not be governed. For then, not by any title of religion, but by a title, so to speak, of “defense of human nature,” they could be forced into some polity. Up to that time, however, Suárez thought, people so barbarous had not been found.<sup>324</sup>

In the *De Caritate*, he had gone farther, or at least into slightly more detail. Thus, in the context of asking whether

321. *Id.* at 449-50 (“nam ad defendendos innocentes, licitum est vim inferre his infidelibus, ne sacrificent infantes Diis suis, quia hoc juxta ordinem charitatis licet, imo praeceptum est, si commode fieri possit”) [770]; see SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 747, disp. 13, § 5, nos. 2-3; Suárez, *De Fide II*, *supra* note 30, at 204, disp. 5, question 2 (referring also to cannibalism).

322. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 450, disp. 18, § 4, no. 4 (“Addo etiam id fieri posse non solum ad liberandos infantes, sed etiam adultos, etiamsi ipsi consentiant et velint sacrificari idolis, quia in hoc pejores quam amentes sunt, et quia non sunt domini propriae vitae, propter quod quilibet potest ab alio cogi ne se occidat.”) [770]; Suárez, *De Fide II*, *supra* note 30, at 204, disp. 5, question 2.

323. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 450, disp. 18, § 4, no. 4 (“Limitandum autem hoc est, quando talis occisio est injusta; nam si infideles haberent consuetudinem sacrificandi idolis solos malefactores juste damnatos ad mortem, non possent illo solo titulo compelli; quia in eo non contra justitiam, sed tantum contra religionem peccant, et ita cessat defensio innocentis.”) [770].

324. *Id.* no. 5 (“Dictum vero Aristotelis . . . haberet locum, si essent aliqui homines adeo rudes, ut nec in unam rempublicam convenirent, nec possent gubernari; tunc enim non titulo religionis, sed titulo, ut ita dicam, defensionis humanae naturae ad aliquam politiam compelli; hactenus tamen, ut existimo, tam barbarae gentes inventae non sunt.”) [771].

Christians could make war upon barbarian unbelievers, under the title that they were "by nature slaves" who should be ruled by wiser men, Suárez said:

This title cannot be general, first, because it is evident that many infidels are more naturally gifted and more adapted for political affairs than are Christians. Second, in order that this title have validity, it is not enough to think that some nation has inferior natural talent. Rather it must be so miserable that it ordinarily lives more in the manner of beasts than of men—such as they are said to be who, inasmuch as they have no human polity, go about completely naked, eat human flesh, etc. And if there are any such—they can be warred against—not so that they may be killed, but that they may be educated in a human way, and they may be ruled with justice. Rarely, however, or never should such a claim be admitted, except where innocent people are being killed and similar injuries are taking place.<sup>325</sup>

Suárez never identified by name the non-subject infidels he had in mind when he wrote this in 1584. But of the passage quoted three things may be said. First, Suárez seemed loathe to admit a situation that would be at complete variance from what we have already witnessed him say is the natural condition of mankind, i.e., its coming together in political societies. Second, if such a situation did exist, any right that it could engender to enforce the natural law would not be proper to Christians but would be shared by every ruler who would want to do so.<sup>326</sup> And, third, any motive of simply getting out to the

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325. SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 747, disp. 13, § 5, no. 5. The original reads:

At enim hic titulus primum non potest esse generalis, nam evidens est multos esse infideles ingeniosiores fidelibus, et aptiores ad res politicas. Secundo, ut hic titulus habeat locum, non satis est existimare aliquam nationem esse ingenio inferiorem, sed esse ita inopem, ut regulariter potius ferarum more quam hominum vivat, quales dicuntur ii qui, cum nullam habeant humanam politiam, nudi prorsus incedunt, carnibus vescuntur humanis, etc. Et si qui tales sunt, debellari poterunt, non ut interficiantur, sed ut humano modo instituantur, et juste regantur. Raro tamen aut nunquam admittendus est talis titulus, nisi ubi intercedunt occisiones hominum innocentium, et similes injuriae . . .

*Id.* [825-26] On the rarity of obligation connected with the "defense of the innocent" title itself, which seldom can be pursued without a costly war, see Suárez, *De Fide II*, *supra* note 30, at 205, disp. 5, question 2.

326. SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 748, disp. 13, § 5, no. 5 ("intelligitur hunc titulum, si quis est, non esse proprium Christianorum; sed

New World and civilizing "savages" hardly appealed to Suárez as a just reason for making war. Again, for war some injury to Christians on the part of those barbarian infidels was obviously necessary—which injury, as is also obvious, could be supplied by their resistance to the Gospel.

But what of *subject* unbelievers? These, he believed, could be forced by Christian princes to profess a (natural) worship of the true God and to abjure errors which, beyond being contrary to the faith, are also against the order of natural reason. This is what Thomas Aquinas and other theologians believed, and, Suárez thought, it could be supported from Scripture.<sup>327</sup> Again, this could be shown, he believed, from the practice of the Church. Christian emperors, given the opportunity, followed this practice, as did, for instance, Constantine, Jovinianus, Justinian, and Theodosius. This was further approved by St. Augustine and St. Ambrose and many Church councils, such as those in Africa and in Spain.<sup>328</sup>

But in Suárez's view it was also confirmed by reason. For the princes in question had jurisdiction over these subject unbelievers and such coercion did not exceed that jurisdiction. This last was proven because by reason and by natural law, it was appropriate that a true worship of God be preserved within the republic. Therefore, he reasoned, there is in the republic directive power to govern men to that end. Equally, the republic has coercive power to punish contrary transgressions. For directive power is inefficacious and of little use (outside the Garden of Paradise) without coercive power. But this power, insofar as it is natural, resides in Christian princes as well. To be sure, he believed it to be in accord with the ultimately divine origin of power in the state, that it has been granted especially as ordered toward the honor and worship of the one God, whose ministers then, as St. Paul said, all human

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eumdem pertinere ad omnem regem, qui velit servare legem naturae, ex qua praecise considerata hic titulus oritur") [826].

327. SUÁREZ, *De Fide*, in 12 OMNIA OPERA, *supra* note 21, at 450, disp. 18, § 4, no. 6 ("et probari potest primo ex Deuteronom., decimotertio, ubi Deus praecipit interfici huiusmodi infideles propter talia delicta, nimirum quando sunt aliquo modo subjecti, . . .") [771]. See *Deuteronomy* 13:12-16.

328. *Id.* no. 6. For Suárez's sources here, see Suárez, *De Fide II*, *supra* note 30, at 196, disp. 5, question 2; *id.* nn. hz, ia, ib, ih, ii, il (editor's notes).

princes are.<sup>329</sup> To Suárez,

[t]his is confirmed inasmuch as the purpose of this power is to keep the republic in peace and justice, which cannot be done unless it is brought to live in accord with virtue. But men cannot live according to moral and natural virtue without true religion and the worship of the one God. Therefore, the natural power and jurisdiction of a human republic extends also to this end.<sup>330</sup>

The first inference from this doctrine is that even a pagan (*ethniscus*) king, if he has knowledge of the one God, could pressure (*cogere*) his subjects toward believing in the same, either by their own reasoning or, if they are incapable of that, by their putting human faith in those wiser than themselves. Consequently, he could force them to forego their idols as well as their superstitions contrary to natural reason.<sup>331</sup> This is because in such a king there would be the whole power, which according to natural reason belongs to a human republic.<sup>332</sup> Second, to Suárez it followed that princes of this kind not only could, but were obliged to use their power in this way, which is in line with its purpose and for the good of their subjects. Further, he said, it followed that this obligation was greater in Christian princes, because they have a greater knowledge of the truth, and in Christian kingdoms this coercion was more necessary for the good of the faithful themselves. Hence, to Suárez, Christian princes were obliged to enact laws prohibiting transgressions of this kind, because in orderly fashion they could not punish these unless first they prohibited them with

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329. *Romans* 13:4, 13:6; see SUÁREZ, *De Caritate*, in 12 *OPERA OMNIA*, *supra* note 21, at 748, disp. 13, § 5, no. 6.

330. SUÁREZ, *De Fide*, in 12 *OPERA OMNIA*, *supra* note 21, at 450-51, disp. 18, § 4, no. 7. The original reads:

Et confirmatur, nam finis hujus potestatis est continere rempublicam in pace et justitia, quod fieri non potest, nisi etiam inducatur ut secundum virtutem vivat; non possunt autem homines vivere secundum virtutem moralem et naturalem, sine vera religione et cultu unius Dei; ergo potestas naturalis et jurisdictio reipublicae humanae etiam ad hunc finem extenditur.

*Id.* [773]; see Suárez, *De Fide II*, *supra* note 30, at 196, disp. 5, question 2.

331. SUÁREZ, *De Fide*, in 12 *OPERA OMNIA*, *supra* note 21, at 451, disp. 18, § 4, no. 8; see SUÁREZ, *De Caritate*, in 12 *OPERA OMNIA*, *supra* note 21, at 748, disp. 13, § 5, no. 8.

332. SUÁREZ, *De Fide*, in 12 *OPERA OMNIA*, *supra* note 21, at 451, disp. 18, § 4, no. 8 ("Probatur, quia in tali rege est tota potestas, quae secundum rationem naturalem humanae reipublicae convenit.") [773].

laws.<sup>333</sup>

Should then the religious rites of unbelievers be tolerated under Christian rule? With regard to this question, Suárez followed Thomas Aquinas and distinguished two kinds of infidel rites.<sup>334</sup> Some—for example, idolatry—were against natural reason and against God, as He is known by the natural light. (One easily thinks also of the human sacrifices connected with the religion of the Aztecs.) Others were, indeed, superstitious in comparison with the Christian faith, but not, however, intrinsically evil or contrary to natural reason. Suárez mentions here “the rites of the Jews and perhaps many rites of the Saracens.” He saw no room for tolerance for the first kind of rites, because he thought in such tolerance there was no benefit either for the infidels or for the republic. However, there were, he felt, cases in which Christian princes, unable to root out such practices without great loss to the kingdom and to other Christian subjects, could look the other way and permit them. This, he said, had a basis in the words of Christ: “Let the cockle grow along with the wheat, etc.”<sup>335</sup> Also, he said, the Church for this reason tolerated serious sins among the faithful themselves, lest greater troubles follow; for prudence teaches that, of many evils, the lesser should be chosen. And charity demands that correction not take place without effect; therefore, much less, should coercion take place when it comes with greater damage.<sup>336</sup>

With respect to rites opposed not to natural law and reason but only to the Christian faith, Suárez thought that even unbelievers subject to Christian rule should not be forced to abandon them because such rites were not intrinsically evil under natural law. Hence, the power of a temporal prince did not extend directly to their prohibition. The only reason to prohibit them would have been that they were contrary to the faith. But this is not reason enough with respect to these unbe-

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333. *Id.* Also see SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 748, disp. 13, § 5, no. 7, for the defense of innocents and the avenging of injuries as belonging in a special way to Christian princes.

334. THOMAS AQUINAS, SUMMA THEOLOGIAE, *supra* note 56, II-II, question 10, art. 11.

335. *Matthew* 13:29.

336. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 451, disp. 18, § 4, no. 9; Suárez, *De Fide II*, *supra* note 30, at 199-201, disp. 5, question 2.

lievers, who are not subject to the spiritual power of the Church.<sup>337</sup>

*E. May Those Infidels Be Dispossessed of All Power Which They Have Over Faithful Christians?*<sup>338</sup>

The question here principally concerns the political power of rulers, and it goes to the heart of the Spanish conquest of the New World. Again, it can be discussed with respect to rulers subject and non-subject to the spiritual power of the Church. Also in both, subject and non-subject, distinction can be made as regards the deprivation of this power. This deprivation can be direct because of the infidelity of the rulers themselves or indirect because of the faith of their subjects.<sup>339</sup>

First, with regard to unbelieving princes, a number of whose subjects are converted to the faith, Suárez said that they could not be *directly* deprived by the Church of their power and jurisdiction over those Christian subjects. This view, he said, was common, and taken especially from Thomas Aquinas.<sup>340</sup> The reasoning is as follows. Either those princes could be deprived of their power because now *de facto* by divine law they would not have it, or, even though they do have it, they could be justly stripped of it because of their unbelief. But neither of these can be said.<sup>341</sup>

It is most certain to Suárez that these princes could not be deprived of this jurisdiction for the reason that *de facto* by divine law they do not have it. This was proven, he said, in the *Defensio Fidei*. Briefly, the reasoning was that Christ did not deprive these princes of this power. Neither did the fact of baptism exempt a Christian from the power of his king, even though that king might be an infidel. Anything else would be

337. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 451, disp. 18, § 4, no. 9.

338. *Id.* at 452, § 5 ("Utrum isti infideles privari possint omni superiori potestate, quam habent in Christianos seu fideles.") [776].

339. *Id.* no. 1.

340. THOMAS AQUINAS, SUMMA THEOLOGIAE, *supra* note 56, II-II, question 10, art. 10.

341. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 453, disp. 18, § 5, no. 4 ("Fundamentum hujus veritatis est, quia vel isti principes possunt privari de facto hac jurisdictione et potestate, quia ipso jure divino illam non habent, vel quia, licet illam habeant, propter infidelitatem sunt illa indigni, et ideo juste possunt ab illa dejecti; neutrum autem horum dici potest") [778].

against Scripture and the tradition of the Church.<sup>342</sup>

For Suárez, the best philosophical argument for this position was that given by Thomas Aquinas. Political power, it was argued, arose ultimately from natural law and the *jus gentium*, but faith derived from divine supernatural law. But one law did not destroy or affect the other. Neither was the natural law founded upon divine positive law. Rather, it was something presupposed as a kind of substratum for this. Accordingly, political (*positiva*) power was not founded upon faith, in such a way that someone would lose it on account of infidelity. On the other side, political subjection did not contradict faith, or the baptismal character, and therefore it is not lost by the fact of baptism.<sup>343</sup>

It followed evidently that unbelieving princes in possession of political power could not be stripped of that power because of their unbelief. For, Suárez reasoned, those princes could not, without just title, be rightly deprived of their possessions. But among their possessions was this power that they were supposed to have over Christian subjects, and unbelief was not a just title by which they could be deprived of it. For if unbelief was considered precisely as an absence of faith, it did not destroy the foundation of political power. But if unbelief was considered a sin worthy of punishment, it was not the business of the Church to punish these unbelievers, over whom it did not have jurisdiction.<sup>344</sup>

At this point Suárez suggested that the Church could *indirectly* deprive unbelieving princes of their power over Christian subjects. Such could be done if the benefit or the defense of those subjects required it.<sup>345</sup> He touched upon this, he said, in

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342. See SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 218-19, III, ch. 4 & nos. 4-7.

343. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 453, disp. 18, § 5, no. 3. On Christian liberty *vis-à-vis* political power and subjection to it, see SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 223, III, ch. 4, no. 18.

344. See SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 453, disp. 18, § 5, no. 5.

345. *Id.* at 454 no. 6 ("Nihilominus dicendum est secundo, posse Ecclesiam indirecte privare hos principes infideles sua potestate in subditos fideles, si ad bonum vel defensionem eorum necessariam fuerit.") [780]. Note that the condition was the good of the subjects and not that of the Church.

the *Defensio Fidei*.<sup>346</sup> The reason is that baptised Christians were subjects of the Church in spiritual things, and consequently the Church had power to rule them insofar as was necessary, "or very much fitting," for the good of their souls. Accordingly, if for this end it would have been necessary to liberate them from the power of unbelieving rulers, the power to do this was in the Church. This is comparable to the case of "the Pauline privilege,"<sup>347</sup> in which the Church for the good of the faith of a Christian spouse could dissolve his or her marriage to an implacable pagan.<sup>348</sup> Indeed, said Suárez, the Church's right was stronger in the case before us, because the marriage bond is more indissoluble than the bond of political subjection.<sup>349</sup>

Continuing, Suárez saw two ways Christian subjects could be liberated from the power of unbelieving princes. The first was by a simple change of residence on the part of those subjects, who might pass to a Christian kingdom. This, he said, was a most just and easy way, one which was open to any Christian on his own authority, because he was not obliged always to remain in the same country. Hence, if a prince were to block Christian subjects from transit of this sort, he could be forced to grant it by Christian princes who could then justly war against him in defense of the faithful, inasmuch as these were being deprived of a right which they wished to exercise.<sup>350</sup>

The second way would be to deprive a nonbelieving prince either of his kingdom or of power over Christians remaining in his territory, which itself could hardly be accomplished without a change of princes. This was the more difficult way, one which Suárez believed had to be exercised with

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346. SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 321, III, ch. 23, no. 21.

347. See 1 Corinthians 7:15.

348. *Id.*; see SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 321, III, ch. 23, no. 22; *id.* at 220, ch. 4, no. 9; Suárez, *De Fide III*, *supra* note 30, at 205, disp. 6, question 3. On the "Pauline privilege," see CODE OF CANON LAW: LATIN-ENGLISH EDITION 412-15, canons 1143-47 (1983).

349. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 454, disp. 18, § 5, no. 6 ("ergo multo magis in nostro casu, quia vinculum matrimonii de se magis est indissolubile, quam politicae subjectionis") [781]; SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 220, III, ch. 4, no. 9. This is evidently a corollary from the primary natural character of the family. See *supra* notes 94-95 and accompanying text.

350. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 453, disp. 18, § 5, no. 7; Suárez, *De Fide III*, *supra* note 30, at 208, disp. 6, question 3.

great caution.<sup>351</sup> Thus, conditions had to be taken into account here. For example, he thought, the number of the faithful involved would have to be large, or, if it were small, they should be unable to change residence. Again, the hope of success should be morally certain, "lest wanting to get rid of the cockle, they root out the wheat."<sup>352</sup>

As to the need for some injury inflicted by a nonbelieving prince, Suárez agreed with Thomas Aquinas that even before an actual injury there was in the Church power to remove princes of this kind on account of "the moral danger" to the faithful. This, he said, was the position he took in Book III, chapter 30, number 6 of the *Defensio fidei*.<sup>353</sup> I suggest that, although this position does not contradict Suárez's stand above against "anticipated security," to a casual observer the two together might be paradoxical.

A final question here is: In whom does this indirect power reside? It is, Suárez said, evident that such power must be public and not private. His reasoning seems plain enough. We are talking about a power to wage war, which always requires a proper public authority. Ultimately, Suárez said, this power resided in either the Pope or any supreme Catholic king. It would be in the Pope "by virtue of his supreme spiritual jurisdiction in order to secure and defend the salvation of souls."<sup>354</sup> In a temporal king, who does not have such jurisdiction, it would exist only for the defense of his "neighbors,"

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351. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 454, disp. 18, § 5, no. 8 ("hic modus difficilior est; et ideo, quamvis ad illum non desit potestas, nihilominus ad executionem ejus magna circumscriptio necessaria est") [781].

352. *Id.*; see also MATTHEW 13:29.

353. See SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 349, III, ch. 30, no. 6; see also SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 454, disp. 18, § 5, no. 8; Suárez, *De Fide III*, *supra* note 30, at 208-09, disp. 6, question 3. Note that in the *Defensio fidei* passage Suárez also said that the indirect power involved here is not immediately over an unbelieving prince but over their Christian subjects and in defense of their rights: "At vero circa principes ethnicos non est per modum jurisdictionis in ipsos principes, sed in eorum subditos christianos, propter quos tuendos potest infideles arcere, vel in officio continere, et ideo quidquid circa illos operatur, est per modum defensionis fidelium, non per modum vindictae, aut punitionis infidelium." SUÁREZ, *Defensio fidei*, in 24 OPERA OMNIA, *supra* note 21, at 349, III, ch. 30, no. 6.

354. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 454, disp. 18, § 5, no. 9 ("In Pontifice est ex vi jurisdictionis supremæ spiritualis ad procurandam et defendendam salutem animarum; . . .").

especially Christians.<sup>355</sup> Hence, a temporal sovereign could not exercise this power by his own authority unless the unbelieving king brought force against his Christian subjects. The Pope, however, or a king who is acting as his instrument, very well could move before an injury because his power of jurisdiction would extend to prevent evils, lest they occur.<sup>356</sup>

### CONCLUSION

As we have seen, with one exception, Suárez did not mention the American Indians and the Spanish conquest of the New World. Although his doctrine regarding the evangelization of non-apostate unbelievers is consistent overall with that of Vitoria, it is noteworthy that he nowhere asked Vitoria's principal question about the legitimacy of Spanish claims to rule the lands and peoples of America.<sup>357</sup> The natural inference from this is that, both in 1583 and then later in 1614, Suárez had no pressing problem about the morality of the conquest and the continued occupation of American territories. He apparently accepted the "facts on the ground" and contented himself with a largely speculative inquiry about the right and the limits of preaching the Gospel.

It does seem obvious that the question in its historical setting was applicable to the American Indians and their conquest. It was further relevant to the then-current case of the Philippine Islands, to which the absence of any reference by Suárez is also remarkable.<sup>358</sup> Again, after the 1581 merger of Spain and Portugal, the question related to Africa, India, and

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355. *Id.* ("in rege vero temporali, solum est per modum defensionis proximorum, praesertim fidelium, . . .").

356. SUÁREZ, *De Fide*, in 12 OPERA OMNIA, *supra* note 21, at 454-55, disp. 18, § 5, no. 9.

357. See, e.g., 2 RELECTIO DE INDIS RECENTER INVENTIS PRIOR 667 (Teófilo Urdánoz ed.) ("Supposito ergo quod [isti barbari] erant veri domini, superest videre quo titulo potuerint hispani venire in possessionem illorum vel illius regionis. Et primo referam titulos qui possint praetendi, sed non idonei nec legitimi. Secundo, ponam alios titulos legitimos quibus potuerint barbari venire in ditionem hispanorum.").

358. This seems even more so inasmuch as Suárez's younger brother, Gaspar de Toledo, also a Jesuit, died in 1581 on a missionary voyage from Acapulco to Manila. De Scorraillé's comment on his passing is quite relevant to our present concern: "Quand on voulut rassembler ce qu'il laissait, on ne trouva qu'un livre, le *Contemptus mundi*, son chapelet et ses instruments de pénitence. Il avait appris de Xavier et de ses imitateurs que, pour les conquêtes qu'il ambitionnait ces armes suffisaient." 1 DE SCORRAILLÉ, *supra* note 5, at 181.

the Far East, including Indonesia, Southeast Asia, China and Japan.<sup>359</sup> At the same time, the Spanish experience in America, whether in 1583 or in 1614, would have been the longest and the most prominent for a Spanish Jesuit, even for one transplanted to Coimbra. It is that experience which springs to mind wherever there is talk of naked barbarians, human sacrifice, cannibalism, the right of intervention in defense of innocents, or the experience of gains in number and devotion of Christian descendents.

As for the internal developments we have witnessed in Suárez between 1583 and 1614, the impression they leave us with is that over time his views changed in ways both positive and negative. The absence of any mention of the American Indians after 1583 seems negative. Even though what he wrote in 1614 clearly applied to them, today most would like it better if he had been more specific. In this connection, his retreat from the specificity of the *De Caritate*<sup>360</sup> was disappointing. Again, his shift on the "Roman example" seems to us a negative. Logically and historically it is understandable. But for a modern lover of Suárez, as I confess I am, to defend it and its implications for people in the conquered regions of the New World is not easy. In contrast, the development of his position on "anticipated security" seems positive and easy to praise. When compared with the opposite view that he rejected, it was a step, however modest, toward a more peaceful and just international order.

Other thoughts concern the clear difference between Suárez and Vitoria on the issue of the authority to make war. To me Vitoria's position appears to be in fact *supernational*. I have no wish to overstate the case, but on this one particular, I think Vitoria is closer to that outlook so much associated with medieval Christendom, which especially after the work of Arquillière has been often called "Augustinian."<sup>361</sup> Contrariwise, Suárez's position here appears more *international*. He recognized the reality of many nations, non-Christian as well as

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359. For an initial consideration of what is involved here, I would recommend the article by Henri Bernard, discussed *supra* notes 27 and 257 and accompanying text.

360. See *supra* note 326 and accompanying text.

361. See H.-X. ARQUILLIÈRE, *L'AUGUSTINISME POLITIQUE: ESSAI SUR LA FORMATION DES THÉORIES POLITIQUES DU MOYEN-ÂGE* (2d ed. 1955).

Christian, each "supreme in its own order." Consequently, he also recognized that there is no supernatural temporal power beyond that which has been explicitly or tacitly agreed to by those many nations according to the *jus gentium inter se*. When authority is then needed to justify the use of force among such nations, it would be found in each one of them itself. Specifically, it would be based upon each one's right to seek satisfaction from those who have injured it in some serious way. In the present matter of preaching the Gospel, while the Church is not a temporal state, it is, as we have noted,<sup>362</sup> a "spiritual republic," which in the temporal order can be injured and which indirectly can seek satisfaction under the *jus gentium inter se*. The universal and transcendent character of the Church provides a basis for the particular right of sending and defending preachers; but this last is to be done, it seems, primarily according to the provisions of the *jus gentium inter se*.

It is easy to be cynical about Suárez's concern for preaching the Gospel. Surely to many it will seem little more than a cloak for European expansionism. I would not deny all traces of that. But simply to reduce Suárez to some kind of imperialistic dupe or pawn would be most unfair. It would also be untrue. One need not read many pages of Suárez in order to realize how unlikely he was to be duped. And as for his being a willing pawn or a duplicitous tool, if we quite reasonably take account of the faith of a man like Suárez, as well as his overriding conviction about the importance and the necessity of belief in the Christian Gospel,<sup>363</sup> even when we disagree with him we should be able to understand his position and to respect it as well-intentioned.

But more than this, there is an obvious, enduring, positive, and universally admirable side to what he has written. There is no denying that Suárez, along with Vitoria and other Spaniards of the time, was conscientiously concerned for both the rule of law and the welfare of the newly encountered peoples. Coupled with that, he clearly accepted the dignity and the natural equality of all human beings. In this, he also accepted and affirmed a properly spiritual dimension in every human life and community. Human beings and their political

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362. See *supra* note 233 and accompanying text.

363. See *supra* note 228 and accompanying text.

institutions are something more than material objects to be coveted and seized. Even barbarians, along with their political choices, are to be respected as equals, at the levels of nature and the *jus gentium*, to the persons and choices of Spaniards or other Europeans.

Not separate from this, though Suárez embraced the medieval thought of subjection, albeit indirect, of the temporal power of Christian sovereigns to the spiritual power of the Pope, he recognized the reality of nations not subject to the Pope, of nations which had not done injury to Christians. While a present-day critic may not be too impressed by a new injury of not receiving preachers, most likely that critic would expect nations today to be open to receive peaceful legates, to accord them a hearing, and not to mistreat them. From Suárez's viewpoint an expectation of that kind would be the simple corollary of people's natural freedom and their right to choose their own polity. That is to say, the very fact of freedom implies an obligation for both individuals and states to exercise it in a responsible and moral manner.

Two final points should be added on this. First, as we have seen above,<sup>364</sup> law for Suárez provides the rule of conscience and morality. In the present case, the weight of this may be well gauged from the role assigned to both the natural law and the *jus gentium*. And second, while one might be tempted to say that turnabout is fair play, in this instance Suárez would not agree. While he did accept the natural equality of all peoples and states, he was absolutely convinced that Christianity alone is the true religion. For that reason, his whole argument proceeded from a Christian perspective. From that perspective, it was objectively right for Christians to send and defend missionaries to pagans, but not vice versa.<sup>365</sup> While twentieth century critics might be more impartial here than sixteenth century Suárez, the inner logic of his position should be apparent even to those who reject it.

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364. See *supra* note 41 and accompanying text.

365. SUÁREZ, *De Caritate*, in 12 OPERA OMNIA, *supra* note 21, at 748, disp. 13, § 5, no. 7 ("Ratio est, quia impedire legem Christi est revera gravis injuria, et damnum: prohibere vero aliam legem, nulla est . . . atque hoc modo certum est non spectare hoc jus ad infideles.") [826-27].