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The Jesuits and the Law of the Church: Francisco Suárez (1548–1617)  
on Canon Law in His Treatise *De legibus* 4

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# The Jesuits and the Law of the Church: Francisco Suárez (1548–1617) on Canon Law in His Treatise *De legibus* 4

STEPHAN HECHT

## Introduction

Referred to by his contemporaries as *Doctor eximius* (Extraordinary scholar) or *Europae atque adeo orbis universi magister* (Teacher of Europe and indeed of the whole world), Francisco Suárez is probably one of the most influential thinkers of early modernity.<sup>1</sup> However, when he was young, there was little to suggest that he would later unfold such intellectual capacities. Born on January 5, 1548, Suárez studied at the University of Salamanca. Listening to the homilies of the Jesuit Juan Ramirez, young Francisco wanted to join the newly founded Society of Jesus yet was categorized as *indifferenter*, that is, someone whose place in the order was still pending because of his intellectual weakness. Finishing his studies in theology with a disputation on the immaculate conception at the “Grand Act”<sup>2</sup>—a public academic exercise in which gifted students or faculty could be examined closely on a range of disputed questions<sup>3</sup>—the young Jesuit, however, soon became a well-known scholar and sought-after teacher with appointments at Valladolid, Rome, Alcalá, Salamanca, and Coimbra, where he started his treatise *On Law (De legibus)* between 1601 and 1603 together with a substantial number of works that are best accessible via the Vivès edition totaling twenty-eight volumes.<sup>4</sup>

The influence of Suárez’s work and particularly *De legibus* can hardly be overstated. Oliver Bach, Norbert Brieskorn, and Gideon Stiening compare his opus and its influence on political theory to Thomas Hobbes’s *De cive* (On the citizen [1641]) and *Leviathan* (1651), stating that the Jesuit determined “the systematic debates of political

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1. See José Pereira, *Suárez between Scholasticism and Modernity* (Milwaukee, WI: Marquette University Press, 2007), 340, who refers to Joseph Henry Fichter, *Man of Spain: A Biography of Francis Suárez* (New York: Macmillan, 1940), 340.

2. Victor Salas and Robert Fastiggi, “Introduction: Francisco Suárez, the Man and His Work,” in *A Companion to Francisco Suárez*, ed. Victor Salas and Robert Fastiggi (Leiden: Brill, 2014), 1–18, here 3.

3. See Catherine Sims Kuiper, “The Last Knight of Scholastic Philosophy,” *Church Life Journal*, University of Notre Dame, October 15, 2019, <https://churchlifejournal.nd.edu/articles/the-last-knight-of-scholastic-philosophy> (accessed November 7, 2023).

4. Cf. Salas and Fastiggi, “Introduction,” 1–18; For more information on Suárez’s biography, see Raoul de Scorraille, *François Suarez de la Compagnie de Jésus, d’après ses lettres, ses autres écrits inédits et un grand nombre de documents nouveaux* (Paris: P. Lethielleux, 1912), 1:43–44; Fichter, *Man of Spain*; Jorge J. E. Gracia, “Francisco Suárez: The Man in History,” *American Catholic Philosophical Quarterly* 65 (1991): 259–66; Carlos Noreña, “Suárez and the Jesuits,” *American Catholic Philosophical Quarterly* 65 (1991): 267–86. Further: Cornelius Zehetner, “Vorwort,” in *Menschenrechte und Metaphysik: Beiträge zu Francisco Suárez*, ed. Cornelius Zehetner (Vienna: Vienna University Press, 2020), 7–18. For the Vivès edition, see the website of Sydney Penner, <http://sydneypenner.ca/SuarLat.shtml> (accessed October 24, 2023).

philosophy in the first half of the seventeenth century.”<sup>5</sup> In unfolding his elaborations, Suárez seems to incorporate “Jesuit” impulses, leading Elisabeth Gemmeke to conclude that the “Suarezian method”<sup>6</sup> could “be considered as the practical application of Ignatian spirituality to science.”<sup>7</sup> Without further clarifying what she understands by “Ignatian spirituality”<sup>8</sup> or the “Suarezian method,” Gemmeke remarks that, together with Luis de Molina, Suárez was commissioned by Superior General Claudio Acquaviva (in office 1581–1615) to make use of the Constitutions and the documents of the order in his academic work.<sup>9</sup> When Suárez speaks admirably about his membership in the Society of Jesus,<sup>10</sup> it is thus no surprise that the reader will find an author who—in accordance with the above-mentioned documents—placed a particular emphasis on the use and interpretation of Thomas Aquinas, whom he not only uses as a preferred discussion partner but as a venerable authority and reference point. Next to Thomas,<sup>11</sup> the use of scripture also seems to be a special concern in his works, corresponding with the *Ratio studiorum* of 1599,<sup>12</sup> followed by extensive use of Aristotle<sup>13</sup> and the decrees of the Council of Trent (1545–63) as an authoritative boundary for argumentations.<sup>14</sup> Given his vast philosophical and theological work and the renewed academic interest in

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5. Oliver Bach, Norbert Brieskorn, and Gideon Stiening, “Auctoritas omnium legum’: Francisco Suárez’s *De legibus* zwischen Theologie, Philosophie und Jurisprudenz,” in *Auctoritas omnium legum’: Francisco Suárez’s De legibus zwischen Theologie, Philosophie und Jurisprudenz*, ed. Oliver Bach, Norbert Brieskorn, and Gideon Stiening (Stuttgart: Frommann-Holzboog, 2013), xiii–xxviii, here xiii. (own translation): “Francisco Suárez’ *Tractatus De legibus ac Deo legislatore* (1612) gehört zu den historisch einflussreichsten und systematisch bedeutendsten rechtsphilosophischen Systementwürfen der Frühen Neuzeit. Neben Hugo Grotius’ *De Iure belli ac pacis* (1625) sowie Thomas Hobbes’ *De Cive* (1641) und *Leviathan* (1651) bestimmt er maßgeblich die systematischen Debatten der politischen Philosophie in der ersten Hälfte des 17. Jahrhunderts.”

6. Elisabeth Gemmeke, *Die Metaphysik des sittlich Guten bei Franz Suarez* (Freiburg: Herder, 1965), 20 (own translation): “Die suarezianische Methode.”

7. Gemmeke, *Die Metaphysik des sittlich Guten*, 20 (own translation): “Als eine Anwendung der ignatianischen Spiritualität auf die Wissenschaft betrachtet werden.”

8. For a discussion of the term “Ignatian spirituality” as a construction, see John O’Malley and Timothy O’Brien, “The Twentieth-Century Construction of Ignatian Spirituality: A Sketch,” *Studies in the Spirituality of Jesuits* 52, no. 3 (2020): 1–40.

9. Cf. Gemmeke, *Die Metaphysik des sittlich Guten*, 15.

10. Soc. (= *De religione Societatis Jesu in particulari*), 1. Proemium: “Cum enim ante quadraginta annos, ex quo haec scribe, scribe autem anno 1595, magno divinae gratiae beneficio ad hanc religionem vocatus sim, et toto hoc tempore in ea educator, nutritus et conversatus, ejus vivendi rationem ac institutum admiratus semper fuerim.” Excerpts from the works of Suárez are taken from Francisco Suárez, *Opera omnia* (Paris: Vivès, 1856–78); available online at <http://sydneypenner.ca/SuarLat.shtml#google> (accessed November 7, 2023).

11. Cf. Allan P. Farrell, *The Jesuit Ratio studiorum of 1599, Translated into English, with an Introduction and Explanatory Notes* (Washington, DC: Conference of Major Superiors of Jesuits, 1970): “On the other hand, he should always speak favorably of St. Thomas, following him readily when he should, differing from him with respect and a certain reluctance when he finds him less acceptable” (“Rules of the Professor of Philosophy,” 6).

12. Cf. Farrell, *Jesuit Ratio studiorum of 1599*: “Great attention should be given to promoting the study of Sacred Scripture” (“Rules of the Provincial,” 5).

13. Cf. John W. Padberg, *The Constitutions of the Society of Jesus and Their Complementary Norms, Jesuit Primary Sources in English Translation* 15, no. 1 (St. Louis, MO: Institute of Jesuit Sources, 1996), [470].

14. Cf. Farrell, *Jesuit Ratio studiorum of 1599*: “All theologians should have the decrees of the Council of Trent and the Bible, and they should become familiar with them” (“Rules of the Prefect of Studies,” 30).

early modern Scholasticism,<sup>15</sup> it is no surprise that a substantial amount of research on the works of Suárez has been published in the past twenty years, focusing particularly on Suárez's idea of the *ius gentium* in *De legibus* 2<sup>16</sup> or other topics surrounding law.<sup>17</sup> Yet little has so far been said about Suárez's account of canon law in *De legibus* 4.<sup>18</sup> This is surprising since Suárez's *De legibus* is a work that seeks to focus on laws from a theological perspective. As a trained canon lawyer, Suárez thus not only comments on Thomas, who famously did not further elaborate on canon law, but delivers a Thomistic account of ecclesiastical law, which he describes as having "the greatest influence on

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15. Cf. Wim Decock and Christiane Birr, *Recht und Moral in der Scholastik der Frühen Neuzeit 1500–1750* (Berlin: De Gruyter, 2016), 12–13.

16. Norbert Brieskorn, "Lex Aeterna: Zu Francisco Suarez' Tractatus de legibus ac legislatore," in *Die Ordnung der Praxis: Neue Studien zur spanischen Spätscholastik*, ed. Frank Grundert and Kurt Seelman (Tübingen: De Gruyter/Max Niemeyer Verlag, 2001), 49–73; Jean-Paul Cojou, "La reformulation de la question de la loi naturelle chez Suárez," in *Francisco Suárez: Das ist der Mann*, ed. Jacob Schmutz (Valencia: Edicep, 2004), 105–32; Matthias Lutz-Bachmann, "Die Normativität des Völkerrechts: Zum Begriff des *ius gentium* bei Francisco Suárez im Vergleich mit Thomas von Aquin," in *Lex und Ius: Beiträge zur Begründung des Rechts in der Philosophie des Mittelalters und der Frühen Neuzeit/Lex and Ius: Essays on the Foundation of Law in Medieval and Early Modern Philosophy*, ed. Alexander Fidora, Matthias Lutz-Bachmann, and Andreas Wagner (Cannstatt: Frommann-Holzboog, 2000), 465–85; Tomáš Machula, "The Way to the Secularisation of the Natural Law," in *Explorations in Late Scholasticism*, ed. Petr Dvořák and Tomáš Machula (Prague: Filosofia, 2016), 41–58; Paul Pace, "Suárez and the Natural Law," in *A Companion to Francisco Suárez*, ed. Victor Salas and Robert Fastiggi (Leiden: Brill, 2015), 274–96; Riccardo Saccenti and Cinzia Sulas, *Legge e natura: I dibattiti teologici e giuridici fra XV e XVII secolo* (Arccia: Aracne editrice, 2016); Gideon Stiening, "Suprema potestas [...] obligandi: Der Verbindlichkeitsbegriff in Francisco Suárez' Tractatus de Legibus," in *Kontroversen über das Recht: Beiträge zur Rechtsbegründung von Vitoria bis Suárez*, ed. Kristin Bunge (Bad Cannstatt: Frommann-Holzboog, 2012), 341–67; Stefan Schweighöfer, *Die Begründung der normativen Kraft von Gesetzen bei Francisco Suárez* (Münster: Aschendorff Verlag, 2018); Szilárd Tattay, "Francisco Suárez as the Forerunner of Modern Rationalist Natural Law Theories," *Cauriensia* 12 (2017): 191–211; Johann Theiner, *Die Entwicklung der Moraltheologie zur eigenständigen Disziplin* (Regensburg: Pustet, 1970); Brian Tierney, *The Idea of Natural Rights: Studies in Natural Rights, Natural Law, and Church Law 1150–1625* (Grand Rapids, MI: Eerdmans, 1997); Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979).

17. Norbert Brieskorn, "Francisco Suárez und sein Gesetzesbegriff im Kontext," in *Transformation des Gesetzesbegriffs im Übergang zur Moderne? Von Thomas von Aquin zu Francisco Suárez*, ed. Manfred Walther, Norbert Brieskorn, and Kay Waechter (Stuttgart: Franz Steiner Verlag, 2009), 105–23; Brieskorn, "Lex und ius bei Francisco Suárez," in Fidora, Lutz-Bachmann, and Wagner, *Lex und Ius*, 429–63; Kristin Bunge, ed., *The Concept of Law (lex) in the Moral and Political Thought of the "School of Salamanca"* (Leiden: Brill, 2016); Jean-Paul Cojou, "Political Thought and Legal Theory in Suárez," in Salas and Fastiggi, *Companion to Francisco Suárez*, 29–71; John P. Doyle, "Suárez and Some Precursors on Lex and Ius," in Fidora, Lutz-Bachmann, and Wagner, *Lex und Ius*, 393–427; Cintia Faraco, "An den Wurzeln eines neuzeitlichen Problems: Der Begriff der Würde (dignitas) im Werk von Francisco Suárez," in Zehetner, *Menschenrechte und Metaphysik*, 105–13; Matthias Kaufmann and Robert Schnepf, eds., *Politische Metaphysik: Die Entstehung moderner Rechtskonzeptionen in der Spanischen Scholastik* (Frankfurt: Peter Lang, 2007); Daniel Schwartz, "Francisco Suárez on Consent and Political Obligation," *Vivarium* 46, no. 1 (2008): 59–81; Berthold Wald, "Die Bestimmung der ratio legis bei Thomas von Aquin und Dunc Scotus," in *Mensch und Natur im Mittelalter*, ed. Albert Speer and Albert Zimmermann (New York: De Gruyter, 1992), 2:662–81; Philip Waldner, "Kommt alle Macht von Gott? Zum Stellenwert staatlicher Gewalt in Suárez' Rechtsphilosophie," in Zehetner, *Menschenrechte und Metaphysik*, 115–28. For further literature, see bibliography at "Sydney Penner: Bibliography of Works on Francisco Suárez, 1850–Present," <http://sydneypenner.ca/bib.shtml> (accessed October 24, 2023).

18. A short elaboration can be found at Norbert Brieskorn, "Ius canonicum modernum: Francisco Suárez über das positive kanonische Gesetz (DL IV)," in Back, Brieskorn, and Stiening, *"Auctoritas omnium legum"*, 231–54.

the moral theological and canonistic literature up until the present age.”<sup>19</sup>

In this contribution, I want to give a brief introduction to Suárez’s treatise on canon law, focusing particularly on the argumentative lines of his thoughts on this type of law. What does Suárez say about canon law, and how does he elaborate this topic within the boundaries of his order’s Constitutions and the *Ratio studiorum*? What are the fundamental aspects of this type of law, and what are its limits?

### Francisco Suárez on Canon Law in *De legibus* 4<sup>20</sup>

#### *On the Spiritual Power of the Church*

That Suárez seems to be more than faithful to the above-mentioned demands of his superior general in his work *De legibus* is immediately clear solely from looking at the table of contents. Being called “alter Aquinas” (another Aquinas),<sup>21</sup> Suárez venerably sticks to Thomas’s differentiation between several types of laws. As an expression of the divine will, the eternal law is incomprehensible and beyond our human capacities. However, it reveals itself in other kinds of laws,<sup>22</sup> with the natural law as the first participation in the eternal law,<sup>23</sup> the Old Law primarily as revelation of the natural law, the New Law as its fulfillment, and the *ius gentium* as ordinary customs that constitute another type of law distinct from the others. Suárez unfolds these types, applying a strict definition of what constitutes a law and its elements in *De legibus* 1. In order to be a law, a norm needs—among other aspects—to have its origin in the human will,<sup>24</sup> to be promulgated,<sup>25</sup> oriented toward the common good,<sup>26</sup> or grounded in a public power.<sup>27</sup> It is the last of these that seems to be of particular interest to Suárez when it comes to ecclesiastical legislation. Already at the beginning of his *De legibus*, Suárez states that canon law is not only a type of human law such as civil law but rests on a *potestas spiritalis* (spiritual power) that clearly separates this type of law from civil law.<sup>28</sup>

19. Günter Virt, *Epikie, verantwortlicher Umgang mit Normen: Eine historisch-systematische Untersuchung zu Aristoteles, Thomas von Aquin und Franz Suarez* (Mainz: Matthias-Grünwald, 1983), 172 (own translation): “Moraltheologische und die kirchenrechtliche Literatur bis zur Gegenwart am nachhaltigsten beeinflusst.”

20. Both parts of this contribution draw on elaborations that can also be found in an earlier contribution on *De legibus* 4 with the title Stephan Hecht, “Missionary Pragmatism? The Apostolic Constitution Praedicate Evangelium in the Light of Power and Participation at Francisco Suárez, S.J. (1548–1617),” *Nomokanon* (2022): 8–13, <https://doi.org/10.5282/nomokanon/219> (accessed October 24, 2023).

21. *Encomium* at the beginning of vol. 2 (Vivès Ausgabe, 1856).

22. *De leg.* 2.4,8: “Legem aeternam non esse per se ipsam notam hominibus in hac vita, sed vel in aliis legibus, vel per illa.”

23. Cf. *STh.* I–II, q. 91, a. 4, arg. 1: “Quia, ut dictum est, lex naturalis est quaedam participatio legis aeternae in nobis” (“Corpus Thomisticum Sancti Thomae de Aquino Summa Theologiae. Prima pars secundae partis a quaestione XC ad quaestionem XCII, Textum Leoninum Romae 1892 editum et automato translatum a Roberto Busa SJ in taenias magneticas denuo recognovit Enrique Alarcón atque instruxit,” <https://www.corpusthomisticum.org/sth2090.html> [accessed October 25, 2023]), at Suárez: “Ibi enim significatur, per lumen rationis participare hominem legem aeternam dictamen quid sit faciendum, quidve vitandum: illud ergo est lex naturalis, quia haec non est nisi quaedam participatio naturalis aeternae legis” (cf. *De leg.* 2.5,10).

24. Cf. *De leg.* 1.4.

25. Cf. *De leg.* 1.11.

26. *De leg.* 1.6,4: “Pro utilitate communi imponendam esse, cuicumque imponatur.”

27. *De leg.* 1.8.

28. Cf. *De leg.* 3.11.

As in other discussions, Suárez justifies the existence of this power via a form of *academic discernment*, which means that he listens to the different voices on the subject before finding the middle ground or pursuing the more convincing argument. Starting with the counter-argument, that is, that the church does not have a specific power as the foundation of canon law, he quotes ancient representatives such as Epiphanius Panarion and Augustine as well as medieval authors such as Marsilius of Padua, Peter Waldensis, John Wycliffe, and Jan Hus, followed by contemporary names like Martin Luther, Philip Melancthon, John Calvin, and Joachim Westphal.<sup>29</sup> The second argumentative line rests solely on biblical grounds. Following this line, opponents of this spiritual power refer to the creation of humans as naturally free. Tyranny and domination thus seem to contradict the essence of humanity, which can further be supplied with Gen. 10:8–10<sup>30</sup> and Nimrod, who reigned over Babylon, as the example of imprisonment and blasphemy. And does not Gen. 1:28<sup>31</sup> further revert the logic of power, where man is created to dominate and not be dominated by someone else? Quoting Isa. 33:22 and James 4:12, Suárez puts forward a further argument referring to the dominion of God over his creation. No ecclesiastical dignitary can thus have power over the faithful. This is an argumentative line that sees Suárez referring to Luther and his idea of the freedom of Christians (*libertas Christiana*), which is also discussed in *De legibus* 4.1,2 and *De legibus* 1.1,6.<sup>32</sup>

That there must be an ecclesiastical power, however, is largely introduced with passages such as Mt. 16:19,<sup>33</sup> Joh. 21:15–17,<sup>34</sup> Lk. 10:16,<sup>35</sup> and Joh. 20:21.<sup>36</sup> It is primarily the latter that Suárez identifies as a clear sign that there must be a *potestas spiritualis* in the church, combined with Lk. 1:33,<sup>37</sup> which states that Christ's reign must also surpass his death and still be present in a deputy. Furthermore, the young church must already have laws. Suárez refers here to Acts 15:28,<sup>38</sup> speaking of “burdens” (*oneris*)

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29. Cf. *De leg.* 4.1,1.

30. “Cush was the father of Nimrod, who became a mighty warrior on the earth. He was a mighty hunter before the Lord; that is why it is said, ‘Like Nimrod, a mighty hunter before the Lord.’ The first centers of his kingdom were Babylon, Uruk, Akkad and Kalneh, in Shinar.”

31. “God blessed them and said to them, ‘Be fruitful and increase in number; fill the earth and subdue it. Rule over the fish in the sea and the birds in the sky and over every living creature that moves on the ground.’”

32. Suárez probably refers to *De leg.* 1.18,2.

33. “I will give you the keys of the kingdom of heaven; whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven.”

34. “When they had finished eating, Jesus said to Simon Peter, ‘Simon son of John, do you love me more than these?’ ‘Yes, Lord,’ he said, ‘you know that I love you.’ Jesus said, ‘Feed my lambs.’ Again Jesus said, ‘Simon son of John, do you love me?’ He answered, ‘Yes, Lord, you know that I love you.’ Jesus said, ‘Take care of my sheep.’ The third time he said to him, ‘Simon son of John, do you love me?’ Peter was hurt because Jesus asked him the third time, ‘Do you love me?’ He said, ‘Lord, you know all things; you know that I love you.’ Jesus said, ‘Feed my sheep.’”

35. “Whoever listens to you listens to me; whoever rejects you rejects me; but whoever rejects me rejects him who sent me.”

36. “Again Jesus said, ‘Peace be with you! As the Father has sent me, I am sending you.’”

37. “And he will reign over Jacob's descendants forever; his kingdom will never end.”

38. “It seemed good to the Holy Spirit and to us not to burden you with anything beyond the following requirements.”



and thus pointing *ex negativo* and together with Acts. 15:41<sup>39</sup> to the existence of true precepts that must have guided the early church. Paul speaks further of the *virga* (stick) in 1 Cor. 4:21.<sup>40</sup> According to Hebr. 13:17<sup>41</sup> and 1 Tim. 5:19,<sup>42</sup> the individual is called to obedience, with 1 Tim. 5:19 further indicating that this power must also imply legislative elements. Alongside scripture, Suárez also draws from rich traditional sources<sup>43</sup> derived from multiple passages taken from the fathers,<sup>44</sup> ultimately referring to Rom. 13:1 and the body of Christ metaphor that he uses similarly, yet in a more profane way, to supply the natural law justification of power underlying civil law in *De legibus* 3.1,5. But does this include a legislative power or just a power to govern the church? Suárez's arguments point to the existence of such a power owing to the fact that it is most suitable for a perfect society (i.e., a society rightly governed according to Aristotle),<sup>45</sup> and if this power also counts for a civil society, then it needs to count for the church as well.<sup>46</sup>

After clarifying the existence of this spiritual *potestas* as the basis of ecclesiastical legislation, Suárez looks at its characteristics. All in all, the power of the church is spiritual and supernatural ("potestas spiritualis et supernaturalis")<sup>47</sup> since it pursues the eternal felicity ("aeterna felicitas"),<sup>48</sup> has no physical quality, and is a power in law and morality ("sed in jure et potestate morali").<sup>49</sup> It is a power that refers to the outer government (*forum externum*) of the church and thus is not grounded in sacramental ordination but in the free election of the pope.

Notably, Suárez emphasizes that this power is given to the pope alone, opening the door for answering a question that is widely discussed among canonists today and seems to find an echo in the promulgation of *Praedicate Evangelium* by Pope Fran-

39. "He went through Syria and Cilicia, strengthening the churches.

40. "What do you prefer? Shall I come to you with a rod of discipline, or shall I come in love and with a gentle spirit?"

41. "Have confidence in your leaders and submit to their authority, because they keep watch over you as those who must give an account. Do this so that their work will be a joy, not a burden, for that would be of no benefit to you."

42. "Do not entertain an accusation against an elder unless it is brought by two or three witnesses."

43. *De leg.* 4.1,5: "Ex Ecclesiae traditione et consuetudine."

44. *De leg.* 4.1,5: "Ex Patribus videri potest Clemens Rom. Epist. 1 ad Jacobum fratrem Domini, ad finem; B. Ignatius, Epistol. 6 ad Magnesiam., circa initium, et in Epistol. ad Trallian.; Hieronymus, Epist. ad Rusticum Monachum; Origenes hom. 20 in Lucam; Cyprian., lib. 1, Epist. 3, Epist. 1; alias Epist. 55 et 58; Epiphani., haeres. 21; Leo, serm. 2 de Jujun.; Chrysost., Hom. 83 in Matth., et Epist. 1 ad Innocent. et Hom. 70 ad Populum; Augustin., serm. 42 et 46 de Verbis Domini, et Epistol. 76 ad Casulanum; Bernard. Lib. de Praecepto et dispens."

45. *De leg.* 1.6,20–22.

46. Cf. *De leg.* 4.1,6: "Quae ex parte confirmate sunt, et censuris munitae in canon. 62 Apost., ut bene expendit ibi Turrec. L. 1 pro Canon. Apostol., cap. 5, et lib. 6, in Const. Apost. Clem., c. 13, ubi auctoritate Patrum hoc confirmat, quibus additur Concil. Aurelianense II, capite 20; Chrysostom., Hom. 33 in Acta; Leo Papa, Epistol. 79, c. 5; Augustin., Epist. 15. Aliud exemplum est de praeecepto quod bigamus non ordinetur, quod latum creditur a Paulo 1 ad Timoth. 3, et ad Titum 1, et tradit Innoc. 1, Epist. 4, c. 2. Ut autem in materia de irregularitate latius diximus, praeeptum illud divinum non est, sed humanum: unde et dispensationem admittit. Denique Paul 1 ad Corinth. 7, distinguit quaedam esse praeepta a Domino, quaedam vero ab ipso Paulo. Atque similia exempla multa habemus ex canonibus Apostolorum, et omnibus decretis quae in jure canonico, et in omnibus conciliis habentur, quae nunc referre supervacaneum est."

47. *De leg.* 4.1,7.

48. *De leg.* 4.1,7.

49. *De leg.* 4.1,7.

cis (r.2013–) and the possibility of laypeople leading dicasteries in the Roman curia.<sup>50</sup> Is the spiritual legislative power ultimately linked to holy ordinations? Quoting Mt. 18:18,<sup>51</sup> Hebr. 13:17,<sup>52</sup> Lk. 10:16,<sup>53</sup> and Rom. 13:1,<sup>54</sup> and further citing authors such as Francisco de Vitoria and Gabriel Vasqu ez, Su rez first mentions opinions that see the power of the bishops intrinsically linked to their ordination. The legislative power of the church thus ultimately has the status of divine law.<sup>55</sup> However, one could also argue for the origin of the legislative power of bishops in human law. Authors such as Durandus of Saint-Pour ain, Domingo de Soto, Tommaso di vio Cajetan, Antonius de Butrio (Antonio da Butrio), Francisco de Vargas, and Thomas<sup>56</sup> would argue that the power of the bishops also rests on the power of the keys and is thus dependent on the pope. Rejecting Mart n de Azpilcueta, who compares the episcopal with the priestly ordination and the power to absolve from sins, which contains juridical elements and acts, Su rez therefore argues that the sheer experience of ecclesiastical life refutes this thesis. Is it not possible in the church that an elected yet not ordained bishop already performs episcopal-juridical acts within the church? Does this not also count for abbots?<sup>57</sup> The Jesuit therefore ultimately claims that the legislative power of the church is not linked to the power of ordination since canon law is essentially human and not divine positive law. In the same breath, however, this theory of ecclesiastical legislation seems also to find its *moral* limits. Su rez immediately mentions that Christ has also installed his apostles as true shepherds.<sup>58</sup> Therefore, it is only appropriate that bishops are normally the ones who are granted this juridical power, even though theoretically it

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50. Cf. Pope Francis, “Apostolic Constitution Praedicate Evangelium on the Roman Curia and Its Service to the Church in the World,” [https://www.vatican.va/content/francesco/en/apost\\_constitutions/documents/20220319-costituzione-ap-praedicate-evangelium.html](https://www.vatican.va/content/francesco/en/apost_constitutions/documents/20220319-costituzione-ap-praedicate-evangelium.html) (accessed October 25, 2023): “The members of curial institutions are appointed from among the Cardinals living in Rome or outside the city, to whom are added some Bishops, especially diocesan or eparchial ones, insofar as they have expertise in the particular matters involved. Depending on the nature of the Dicastery, priests, deacons, those in Institutes of Consecrated Life and Societies of Apostolic Life and lay faithful may also be appointed members” (art. 15). See further: Hecht, “Missionary Pragmatism?”

51. “Truly I tell you, whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven.”

52. “Have confidence in your leaders and submit to their authority, because they keep watch over you as those who must give an account. Do this so that their work will be a joy, not a burden, for that would be of no benefit to you.”

53. “Whoever listens to you listens to me; whoever rejects you rejects me; but whoever rejects me rejects him who sent me.”

54. “Let everyone be subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God.”

55. *De leg.* 4.4.4: “Sed jurisdictio ad ferendas leges est necessario conjuncta cum episcopali munere, quia non potest convenienter pastorale munus exerceri sine tali potestate.”

56. *De leg.* 4.4.5: “Illud autem principium sumitur ex Thoma, 4 contra Gentes, cap. 76, ratione 4, ubi dicit ideo Christum specialiter Petro promississe: *Tibi dabo claves, ut ostenderetur potestas clavium per eum ad alios derivanda ad conservandam Ecclesiae unitatem.* Item sentit 2, distinct. 44, fine, circa expositionem litterae. Et loquens de potestate concedendi indulgentias in 4, distinction 20, quaest. unic., art. 4, quaest. unic., c.3, dicens: *Papa habet plenitudinem potestatis pontificalis quasi rex in regno; Episcopi vero assumuntur in partem sollicitudinis quasi iudices singulis civitatibus praepositi.*”

57. *De leg.* 4.4.10: “Ut certum est de multis Abbatibus et de Praelatis religionum.”

58. *De leg.* 4.4.13: “Voluitque idem Christus Dominus ut illi intermedii gubernatores essent non tantum delegati, et quasi vicarii Papae, sed ut essent veri Pastores ordinarii, et Principes spirituales sub Pontifice summo.”



can be granted to anyone in the church.<sup>59</sup> Suárez thus seems to reveal a kind of *missionary pragmatism* in his work.<sup>60</sup> But how can this be further understood? Are there also limits in the *potestas spiritualis*, and, if so, where?

### *Limits and Boundaries of Canon Law*

As is clear from the previous section, for Suárez, the canon law of the church is a form of human legislation that rests solely on the *spiritual potestas*, with the pope as the bearer of this power. Canon law is thus in its essence positive human law and is therefore embedded in the Scholastic hierarchy of laws starting with the eternal law as an expression of the divine will and gradually declining via natural law and positive divine law. It is remarkable that Suárez speaks in one passage of canon law as attached to (“*ut annexa*”)<sup>61</sup> and connected (“*cunjuncta*”)<sup>62</sup> with the New Law, introducing this type of law in *De legibus* 10 as the fulfillment of the divine positive law.<sup>63</sup> Interestingly, the Jesuit states decisively that this is a real type of law and not just a New Testament ornament.<sup>64</sup> Suárez thus seems to stick to the *Ratio studiorum* and its stress on teaching the documents of the Council of Trent.<sup>65</sup> In the sixth session, canon 21, the council states: “If anyone says that Christ Jesus was given by God to men as a redeemer in whom to trust, and not also as a legislator whom to obey, let him be anathema.” However, his stress on the New Law as a real type of law and Christ as a legislator seems to be much stricter than those of council theologians such as Girolamo Seripando.<sup>66</sup> But what does the connection between canon law and the New Law mean more precisely? All in all, Suárez differentiates between three types of legislative precepts contained in the Old Law, namely moral, ceremonial, and juridical. The latter, according to Suárez, was given in the form of the *spiritual potestas* under the administration of the pope.<sup>67</sup> The ceremonial can further be divided into the *sacraments* as object of the New Law, and their observance as part of canon law.<sup>68</sup> A crucial question, however, arises with the moral precepts. As Suárez defines it in *De legibus* 1, a law is essentially a measure of moral actions.<sup>69</sup> But which morality does canon law need to follow? It is my thesis that Suárez’s conception of the New Law must be read in very close connection to the *Spiritual Exercises* of Ignatius of Loyola, which Suárez himself defines as a moral conversion.<sup>70</sup> When

59. Regarding the discussion of women as bearer of this power, see Brieskorn, “Ius canonicum modernum,” 231–54.

60. Hecht, “Missionary Pragmatism?,” 8–13.

61. *De leg.* 4.2,12.

62. *De leg.* 4.2,12.

63. *De leg.* 10.8,18: “Quia est finis illius, et vetus fuit dispositio seu praeparatio ad novam.”

64. Cf. *De leg.* 10.8ff.

65. Cf. Farrell, *Jesuit Ratio studiorum of 1599* (“Rules of the Prefect of Studies,” 30).

66. Cf. Gottlieb Söhngen, *Grundfragen einer Rechtsstheologie* (Munich: Pustet, 1962), 119, referring to Anselm Forster, *Gesetz und Evangelium bei Girolamo Seripando* (Paderborn: Bonifacius, 1963), 71.

67. *De leg.* 10.2,2: “Quinimo etiamsi in Ecclesia Christi, ut talis est, aliquae leges judiciales sint necessariae ad politicum regimen ecclesiasticum, quod suo modo spirituale est, nihilominus noluit Christus Dominus per seipsum illas leges ferre, sed id vicariis suis commisit, potestatem ad illas ferendas eis tribuendo, et ideo illae leges non sub lege divina, sed sub canonica computantur.”

68. *De leg.* 10.2,17.

69. *De leg.* 1.1,5.

70. Cf. *De Soc.* 9.6,4.

talking about the moral precepts, Suárez stresses the fact that the New Law not only contains the precepts of the Decalogue and prescribes the theological virtues of faith, hope, and charity but also realizes them through the action of divine grace.<sup>71</sup> In this regard, the New Law can be understood as cooperation and as implementing Christ's justification on the cross<sup>72</sup> by means of prescribing a specific type of morality based on the theological virtues. Whereas the Old Law has revealed the real content of natural law and is declarative toward it, the New Law can be seen as the fulfillment of it. As the natural law,<sup>73</sup> the New Law can only be interpreted, not changed.<sup>74</sup> But how could such an interpretation be possible? What is its framework? Interestingly, the role of the theological virtues is mentioned by Ignatius in his *Exercises* when describing the criteria of consolation: "I call consolation every increase of *faith, hope, and love*, and all interior joy that invites and attracts to what is heavenly and to the salvation of one's soul by filling it with peace and quiet in its Creator and Lord."<sup>75</sup> Hans Zollner argues that Ignatius has intentionally taken the theological virtues into account when describing the criteria of consolation and desolation, bridging theoretical theology and practical *lifeworld*.<sup>76</sup> It is thus no wonder that Suárez, on the other hand, calls the New Law, following Aquinas, the law of faith (*lex fidei* [Rom. 3]), the law of the spiritual life (*lex Spiritus vitae* [Rom. 8]), or the spirit of love (*spiritus dilectionis*). Can the spirituality of the Jesuits therefore be understood as an interpretation of the New Law, and what does this mean for canon law? In order to answer this question, two observations can be made. First, the New Law is considered with Soto as the *applicatio* of the *satisfactio* (application of the satisfaction)<sup>77</sup> by Suárez, with Stefan Kiechle rightly mentioning that the dynamic of the Spiritual Exercises can be understood as the subjective appropriation of the objective event of Christ's justification on the cross.<sup>78</sup> Second, Suárez himself talks about Ignatius's Spiritual Exercises as an interpretative *method* to grow deeper into Christ's justification on the cross.<sup>79</sup> But what then follows for canon law? As a law of grace, the

71. *De leg.* 10.5,3: "Gratiam convenire legi novae quasi per se et ex propriis."

72. *De leg.* 10.5,6: "Cooperando aliquo modo ad justificationem in suo genere."

73. Cf. *De leg.* 9.13,24.

74. *De leg.* 10.6,13.

75. Louis Puhl, ed., *The Spiritual Exercises of St. Ignatius: Based on Studies in the Language of the Autograph* (Chicago: Loyola University Press, 1951), 316.

76. Cf. Hans Zollner, *Trost—Zunahme an Hoffnung, Glaube und Liebe: Zum theologischen Ferment der ignatianischen "Unterscheidung der Geister"* (Innsbruck: Tyrolia, 2004), 253.

77. Cf. *De leg.* 9.13,24 discussing the New Law with Soto: "Nam mysterium nostrae salutis duo requirit. Unum est solutio sufficientis pretii per meritum et satisfactionem Christi, alius est applicatio illius redemptionis, non solum ex parte nostrae, sed etiam ex parte ipsius Christi, quoad aliquas actiones quas in ordine ad hanc applicationem in generali spectatam exercuit. Quod ergo ad primum spectat, revera fuit redemptio plene consummata in morte Christi praescindendo a resurrectione. Ab illo enim puncto nihil aliud meruit Christus Dominus, aut satisfacit. [...] Christus Dominus suas actiones et mysteria ad nostrum salutem, ejusque executionem ordinavit, non est sistendum in resurrectione: nam etiam Christus Dominus ascendit propter glorificationem nostrum, et misit Spiritum sanctum ad novae legis promulgationem et confirmationem, et ad perfectam ejus gratiae communicationem quam nobis meruerat; ergo, eadem ratione, non debuit cessare lex vetus, donec ista omnia mysteria perficerentur."

78. Stefan Kiechle, *Kreuzesnachfolge: Eine theologisch-anthropologische Studie zur ignatianischen Spiritualität* (Würzburg: Echter, 1996), 403.

79. *De Soc.* 9.6,3: "Quia in omnibus actionibus suis, tam externis quam internis, indiget homo instructione et doctrina, ut eas recte et utiliter praestare possit."

New Law seems not to be under human authorities and thus never under direct control for us human beings. However, if the criteria of consolation as the practical experience of the theological virtues is suitable, one could draw a negative theological argument, namely that only those canons that supply the spiritual growth of the individual believer and also the growth of the church as such in faith, hope, and charity can be true and valid canons. As a Jesuit, Suárez consequently points to the necessity of *discernment* not only for the ecclesiastical legislator but also for the life of the church and its legislation in total. In this regard, he also mentions that the term *spiritual* can be used not only to designate a substantial power but every use of power that helps to sustain and nurture the spiritual disposition of the believer toward the divine. Thus all material aspects of the New Law (church, sacraments) serve this ultimate spiritual morality that unfolds itself in the theological virtues.<sup>80</sup> It follows that the pope's *potestas spiritualis* is always in need to serve the planting and nurturing ("plantare et rigare")<sup>81</sup> of the church, with the Holy Spirit as the actual director and teacher of it,<sup>82</sup> ultimately subordinating the legal structure of the church as a necessary condition for its functioning to an overall *missionary* purpose of realizing the theological virtues that find their epistemological grounds by Ignatius in the criteria of consolation. This leads to a conclusion.

### Conclusion

In this essay, I have tried to briefly introduce the argumentative course of Suárez's treatise on canon law as given in *De legibus* 4. When looking at this treatise through a broader lens, it becomes clear that Suárez seems to stick to the Constitutions and documents of his order. As shown above, he often falls back on Aquinas as binding authority for his argumentations, but he also uses the decrees of the Council of Trent as authoritative limits for his thought process while integrating Aristotle and scripture to underline further discussions. From this perspective, Suárez indeed delivers a genuine "Jesuit" account on this field of studies, accentuating debates within these "constitutional boundaries" while highlighting the question of the *potestas spiritualis* as the foundation of ecclesiastical legislation. Emphasizing the status of the New Law and the role of the theological virtues, the question arises of whether this type of law might not serve as a corrective for the canonical legislation of the church, finding its ultimate interpretative framework in the need for discerning the virtues enshrined in it and applying them as practical boundaries for ordering the church. With the overall *missionary* character of *De legibus* 4 making use of the Constitutions and documents of

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80. *De fide* (= *De fide theologica*), disp. 9, sect. 8,7: "Rursum, quia omnia quae in lege nova praecipuntur, quamvis externa sint, ad fovendam augendamque spiritualem justitiam referuntur; ideo lex haec spiritualis dicitur; saepe namque spirituale vocatur non solum quod in substantia sua tale est, sed etiam quod spiritui servit, vel illi subjicitur, aut etiam illum imitatur, qua phrase Paulus resurgentium corpora spiritualia vocavit."

81. *De leg.* 4.1,10.

82. *De fide* 1.4,3: "*Cum autem venerit ille Spiritus veritatis, docebit vos omnem veritatem.* Ostendimus autem in superioribus, promissionem illam Spiritus Sancti factam esse Ecclesiae, ut maneat cum illa in aeternum, sicut Christus ipse dixit; ergo Ecclesia semper habet Spiritum Sanctum tanquam rectorem et doctorem, a quo in Veritatis cognitione specialiter regitur et illuminatur; et hinc provenit ut circa veritatem eadem Ecclesia errare non possit."

the early Jesuits, the reader of Suárez thus finds a delicate example of how the Society of Jesus tried and still tries to contribute with its own charism to the overall mission of the church: *Ad majorem Dei gloriam!*