

A Sign of Divine Providence?

Thomas Aquinas' Concept of "Ius" in the Light of Francisco Suárez' (1548-1617) Legal Theology

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Abstract

Francisco Suárez SJ is probably one of the most influential scholars of the early modern period excessively commenting on the works of Aquinas. This article wants to introduce into the concept of "ius" in his De Legibus. Deviating from past attempts, the article suggests that Suárez can only fully be understood if read against the backdrop of Jesuit spirituality and Suárez's adherence to the Doctrines of the Council of Trent, unfolding a renewed perspective on this scholar who saw the works of Aquinas as a binding authority. In the first part, the article therefore introduces into the concepts of "ius" and "lex" showing that "ius" must be understood as an intermediary principle between the legislative will and law as a sign of this will. The second part then turns towards anthropological foundations of "ius" as a moral faculty, followed by an overall interpretative attempt as a final part.

Keywords: *Francisco Suárez, Ius, Law, Thomas Aquinas, Second Scholasticism, School of Salamanca*

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1 INTRODUCTION

Furthermore is it the pursuit of the theologians to take care of the consciences of the travellers; the righteousness of the consciences but consists in the observances of the laws and their depravity in violating them, since a law is overall a rule; if, as it should be, they are kept, the salvation of souls is achieved; if they are violated, it is lost; the investigation into the laws, as far as they are a bond of conscience, belongs thus to the theologians.¹

The Jesuit Francisco Suárez SJ (1548-1617) opens his famous treatise on law with these words highlighting that questions on law and thus in the wider scope on the concept of “ius” seem to be indispensable for theologians. These lines undoubtedly reflect the early Jesuits “involvement”² in legal studies as “a direct consequence of their role as spiritual counsellors and the charisma proper to their order”³. Focusing primarily on social elites, the Jesuits thus from early on engaged with the role of jurisprudence and governance triggering the question for a deeper study on the status of what is right and just to determine vice versa the “rights and obligations that constitute a particular person’s legal and moral position”⁴. Yet this endeavour seems also be connected with particularly commenting and interpreting the ethical, legal and moral works of the Angelic Doctor for their mission of study and education. Thus, the Jesuit order already before its suppression in 1773 administered 800 schools⁵ with its study agenda – the *Ratio Studiorum* of 1599 – clearly highlighting the need to rely on the thought and works of the Angelic Doctor. “The provincial is”⁶ thus “to be especially careful that no one be appointed to teach theology who is not well disposed to the teaching of St. Thomas. Those who do not approve of his doctrine or take little interest in it, should not be allowed to teach theology.”⁷ Given this educational effort that

¹*De Legibus* (= *De Leg.*), *Prooemium*: “Deinde theologicum est negotium conscientis prospicere viatorum; conscientiarum vero rectitudo stat legibus servandis, sicut et pravitas violandis, cum lex quaelibet sit regula, si ut oportet servetur, aeternae salutis assequendae; si violetur, amittendae; ergo et legis inspectio, quatenus est conscientiae vinculum, ad theologum pertinebit” (own translation). Excerpts are taken from: F. Suárez, *Opera Omnia*, Vivès, Paris 1856-1878.

²W. Decock, *Jesuits and Jurisprudence*, in Robert A. Maryks (ed.), *Jesuits Historiography Online*, url=http://dx.doi.org/10.1163/2468-7723_jho_COM_209877, First published online: 2018 (Consulted online on 21 March 2023).

³*Ibid.*

⁴*Ibid.*

⁵C. Casalini, *Rise, Character, and Development of Jesuit Education: Teaching the World*, in I. Županov, *The Oxford Handbook of the Jesuits*, Oxford University Press, Oxford 2017, p. 153.

⁶A. P. Farrell (ed.), *The Jesuit Ratio Studiorum of 1588*, translated into English, with an Introduction and Explanatory Notes, Conference of Major Superiors of Jesuits, Washington 1970, *Rules of the Provincial*, 9.2.

⁷*Ibid.*

was originally “unplanned by the first Jesuits”⁸ and its influence on other religious orders such as the “Barnabites, Somaschian, Congregation of the Oratory of Saint Philip Neri (Oratorians), Lasallians, and so on”⁹, it is no miracle that the Society of Jesus had and still has a major share in the spread and cultural implementation of the intellectual thought and tradition of Thomas Aquinas. In this endeavour, the Jesuit Francisco Suárez SJ (1548-1617) plays a role that cannot be underestimated enough. Already during his lifetime, he was called Doctor Eximius and *Europae atque adeo orbis universi magister*¹⁰ influencing majorly moral theological and legal debates up until the 20th century¹¹. Being on the turnstile between the late Middle Ages and Early Modernity, Gilson famously characterized him as the “Last Judgment of four centuries of Christian speculation”¹². Adding that “Suarezianism has consumed Thomism”¹³, the same author, however, seems to imply an undertone trying to characterize this scholar as a distorter of the works of the Angelic Doctor. Interestingly, this assessment but seems to be anything than understandable for Suárez’s contemporaries characterising his work as being one of the most prolific commentaries on the Dominican who in the eyes of Suárez must count as a binding and venerable authority. Thus the reader of the second volume of the Vivès edition finds a note calling the Jesuit as “alter Aquinas”¹⁴ and thus honouring not only the quality of his work, but also his dedication to the study of the Angelic Doctor. But how did Suárez understand the concept of “ius” then? Are there accentuations in his comment on Thomas Aquinas?

In the following, I want to make the claim that the concept of “ius” in Suárez must be understood as an intermediary principle between “will” and “law”. Since the Jesuit stresses the will of the legislator as the primary cause of laws, there is an ontological gap between law as a *concept of the will* and the actual will of the legislator with “ius” mediating between these two spheres. But why?

⁸C. Casalini, *Rise, Character, and Development of Jesuit Education*, cit., p. 153.

⁹*Ibid.*, p. 155.

¹⁰This quote can be found in: J. Pereira, *Suárez between scholasticism and modernity*, Marquette University Press, Milwaukee 2007, p. 10, referring to J. H. Fichter, *Man of Spain. A Biography of Francis Suárez*, Macmillan, New York 1940, p. 340.

¹¹Cfr. G. Virt, *Epikie, verantwortlicher Umgang mit Normen. Eine historisch-systematische Untersuchung zu Aristoteles, Thomas von Aquin und Franz Suarez*, Matthias-Grünwald, Mainz 1983, p. 172.

¹²É. Gilson, *Being and Some Philosophers*, Pontifical Institute of Medieval Studies, Toronto 1949, p. 99.

¹³*Ibid.*, p. 118.

¹⁴*Encomium*, in F. Suárez, *Opera Omnia*, cit., vol. 2, p. v.

2 THE CONCEPT OF “IUS” IN FRANCISCO SUÁREZ WRITINGS

To elaborate the concept of “ius” as an intermediary between “will” and “law”, one must foremost understand how Suárez thinks about law and how he introduces “ius” in *De Legibus*. Suárez discusses his definition of law thereby at the very beginning of *De Legibus* commenting Aquinas’ understanding of law as “rule and measure of acts, whereby man is induced to act or is restrained from acting”¹⁵. The Jesuit venerably sticks to this definition using Aquinas as a firm and solid ground for his elaborations on this topic. He finds it, however, to “broad and general” (“lata et generalis”)¹⁶. Would Aquinas’ definition not lead to the consequence, that animals, who are not able to enter relationships of obedience, could be bound by law as well?¹⁷ Would not harmful cases fall under this definition¹⁸, further counsels.¹⁹ Suárez thus refers to Plato and his categorisation of artificial, moral and natural laws.²⁰ Concerning the latter, the Jesuit comments that Plato supposes here more a natural inclination rather than a binding law.²¹ Speaking of artificial laws is further misleading. They fall ultimately under the same category as laws of grammar referring to a more relative use of law.²² At the end, only one type of law is left, namely the moral ones. Suárez thus takes this essential aspect of legality into account to clarify Thomas’ definition stating that a law must be understood as “somehow a measure of moral actions, so that by conformity with it, it has a moral rectitude, if, however, it is in discord with it, it is oblique”²³. The reader easily sees that Suárez seems to be faithful to Thomas Aquinas’ definition, yet particularly emphasizes 1.) the role of obedience, but also 2.) the *intrinsic* connection between law and morality. A 3.) element *implicitly* binding both these aspects together is given with the role of the human will. Suárez thus stresses explicitly that the *efficient cause* of laws is the will of the legislator²⁴, the *material cause*, however, consists in an action of will *and* reason. An aspect that particularly counts for the addressee of the norm whose will is bound by a law, but also in

¹⁵ *STh.*, I-II, q. 90, a. 1 resp. Excerpts taken from: Thomas Aquinas, *Summa Theologica, Prima Secundae*, editio altera romana, ad emendatiores editiones impressa et noviter accuratissime recognita, Typographia Forzani et S. Ioannis Bardi, Roma 1923. The English translation is taken from The Fathers of the English Dominican Province, *The Summa Theologiae of St. Thomas Aquinas*, second and revised Edition, Burns Oates & Washbourne, London 1920.

¹⁶ *De Leg.*, I. 1, 1.

¹⁷ Cfr. *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Cfr. *ibid.*, I. 1, 2.

²¹ *Ibid.*

²² Cfr. *ibid.*, I. 1, 5.

²³ *Ibid.*: “mensura quaedam actuum moralium, ita ut per conformitatem ad illam, rectitudinem moralem habeant, et si ab illa discordent obliqui sint” (own translation).

²⁴ *Ibid.*, I. 5, 24: “actum voluntatis justae et rectae”.

need to recognize the norm.²⁵ With every true law having “a moral rectitude”²⁶, it becomes furthermore clear that the moral action it measures has its ultimate ground in the divine will as *summum bonum*. Every true law can thus be interpreted as an expression of the *Eternal Law*²⁷ and has its origin in it.²⁸ The *Eternal Law* is thereby intrinsically linked with divine providence with Suárez identifying it as the source of providence on the one hand, but also as both having the same effect on the other hand. As Marschler observes, the Jesuit strictly differentiates between a *providentia physica* for all creatures and a *providentia moralis* that counts especially for reasonable creatures. Following Elodruy, Suárez seems to be the inventor of this strict differentiation²⁹ distinguishing but only in his legal treatises between the *eternal law* and providence. Therefore, Suárez puts the entire reality under a decree of the divine will³⁰ that reveals itself – like Thomas – via the different types of laws³¹ starting with the *Eternal Law* and finding its way via *Natural Law* (*De Legibus* II), the divine *Positive Law* (*De Legibus* IX and X) to the *Human Laws* (*De Legibus* III). With a law as a measure of moral actions, it becomes obvious that the concept of “ius” must then also somehow be embedded and linked to this hierarchy.

After introducing his readers into the concept of “lex”, Suárez thus shifts to the concept of “ius” itself and starts with a detailed discussion on the etymological significance of it. Following François Connan, the term “ius” can be derived 1.) from “iuxta”. If something is just, it has a proximity (“esse prope”³²), not just an equity (“aequale esse”³³) and “so it is from time to time possible, that it stands for similarity, or equity in some affair, or action”³⁴. But, as Suárez indicates, this use of

²⁵*Ibid.*, I. 4, 2: “ergo multo magis requiritur mens in eo qui per leges debet gubernare. [...] omnibus ergo modis lex ad mentem referenda est. Et hic fuit conceptus legis in omnibus sapientibus, etiam philosophis, ut ex Platone, Aristotele et Cicerone, in locis allegatis constat”.

²⁶*Ibid.*, I. 1, 5: “mensura quaedam actuum moralium, ita ut per conformitatem ad illam, rectitudinem moralem habeant, et si ab illa discordent obliqui sint” (own translation).

²⁷*Ibid.*, II. 1, 11.

²⁸*Ibid.*, II.

²⁹Cfr. *ibid.*, II. 3, 11: “Quia providentia est ratio gubernationis rerum omnium ex aeternitate existens in mente divina: sed hoc ipsum est lex aeterna in sua generalitate sumpta, ut sumitur ex D. Thoma [...]; non videntur ergo distingui ut duo attributa, sed esse idem, quod sub diversis considerationibus diversa nomina recipit”.

³⁰Th. Marschler, *Verbindungen zwischen Gesetzstraktat und Gotteslehre bei Francisco Suárez im Begriff der lex aeterna*, in O. Bach, N. Brieskorn, G. Stiening (eds.), »Auctoritas omnium legum«. *Francisco Suárez’ De legibus ac Deo legislatore zwischen Theologie, Philosophie und Jurisprudenz*, Frommann-Holzboog, Stuttgart 2013, p. 34.

³¹*De Leg.*, II. 4, 9: “legem aeternam non esse per se ipsam notam hominibus in hac vita, sed vel in aliis legibus, vel per illa”.

³²*Ibid.*, II. 2, 1.

³³*Ibid.*

³⁴*Ibid.*: “et licet interdum significet similitudinem, vel aequalitatem in aliquo munere, vel acione” [own translation].

“ius” seems to be much alien from its actual meaning of fairness and equity, thus the deduction that Connan proposes is much to “hard [...] and singular”³⁵. The Jesuit therefore shifts to a second definition. As the Latinists namely widely suggest, “jus” must be derived from “iussum”, i. e. it orders something or, as Suárez further remarks, if we split “iussum”, we are left with “ius” and “sum” showing that the one who orders has a government over others and thus can say: “ius sum”³⁶. In a third etymological derivation, Suárez finally turns to Ulpian and his connection between “ius” and “iustitia”. As Ulpian states, “ius” is called by “justitia”³⁷ triggering questions for a more precise allocation of both terms since “it is something else to name something according to its order, or derivation and causality, another thing according to its denomination or imposed name”³⁸. Pointing thus to the final and formal cause of “ius”, justitia seems to be more dependent from “ius” that brings forth justice³⁹ rather than the other way round, as Ulpian suggests. However, when viewed from the perspective of “denomination” and “appellation”, Ulpian might be right. In the same way as the sight of something tends the vision towards the object, “ius” tends towards “justitia” which necessarily brings forth equity and fairness.⁴⁰ Since “ius” stands thus for everything which is “just and equal”⁴¹ and is therefore intrinsically linked with justice, one needs further to differentiate between two modes of “ius” according to two fundamental modes of “justitia” which can either 1.) stand for all the virtues or 2.) a special virtue. According to the first use of “justitia”, “ius” signifies something that is “equal” or in “consent with reason”⁴² as it counts generally for all the virtues. When emphasizing the relationship of “ius” to “justitia” signifying a special virtue, the distributive aspect of justice, however, is highlighted, i.e. the aspect of debt towards somebody or something. With this in mind, Suárez thus finally shifts to the anthropological basis of “ius”. Given its character of rendering a “debt”, the concept of “ius” ultimately unfolds itself in a net of obligations and “debts” revealing “ius” primarily as a moral faculty (“*facultas quaedam moralis*”⁴³), since “this action, and moral faculty, that everyone has towards his thing (‘*rem suam*’), or towards a thing which belongs somehow to something, is called ‘ius’, and this

³⁵*Ibid.*: “dura [...] et singularis” (own translation).

³⁶*Ibid.*

³⁷*Ibid.*, I. 2, 2: “*Est autem jus a justitia appellatum. Quam etymologiam aliqui impugnant, quia justitia potius a jure derivatur quam e converso*”.

³⁸*Ibid.*: “nam aliud est loqui de ordine, seu derivatione quoad causalitatem, aliud quoad denominationem, seu nominis impositionem” (own translation).

³⁹Cfr. *ibid.*: “Et hoc modo justitia per jus definitur, quia *Jus suum uniuersum tribuit*, lib. *Justitia*, ff. de Justit. et jur.”

⁴⁰Cfr. *ibid.*, II. 2, 2.

⁴¹*Ibid.*, II. 2, 4: “justum et aequum” (own translation).

⁴²*Ibid.*: “consentaneum rationi”.

⁴³*Ibid.*, II. 2, 5.

properly seen is called object of justice”⁴⁴.

Following this discussion, one can consequently conclude that the reader finds the concept of “ius” here as something that 1.) stands for fairness and equity (Connan), thus reveals itself as an 2.) ordering and governing principle (“iussum”) and 3.) is deeply connected with justice (Ulpian), with the latter either being caused by “ius” (perspective of causality) or named after justice as its object (perspective of denomination and appellation). At the end of his discourse and *justitia* revealing “ius” as a special virtue, Suárez finally identifies the concept of “ius” 4.) as a *moral faculty*. But how can this be further understood?

3 “IUS” AS A MORAL FACULTY

As Suárez states in *De Bonitate et Malitia Humanorum Actuum*, a moral action is constituted by a cooperation between reason (“regulans, seu dirigens”⁴⁵) and will (“eliciens”⁴⁶). In order to understand what Suárez ultimately means when he speaks of the concept of “ius” as a *moral faculty*, one must thus briefly look at *epistemological* aspects in his thought. Within his general epistemology, Suárez namely claims that every human action is *formaliter* and therefore with necessity bound to a proposition of reason, yet *materialiter* the human will is free to reject this proposal.⁴⁷ As a consequence, the will is not absolutely free, but *indifferent* towards these propositions.⁴⁸ In doing so, Suárez sees himself in full line with Aquinas⁴⁹ which brings the discussion back to the relationship between “law” and “ius”. Sticking explicitly to *STh.*, II-II, q. 57, a.1, the Angelic Doctor – according to Suárez – “concludes in answer ad 2, that ‘jus’ is not ‘lex’, but more that which is prescribed by law and measured”⁵⁰. In this regard, “ius” and “lex” are not the same. In other passages of *De Legibus* II, however, he seems to argue more for an equality since “according to another etymology, that derives “ius” from “jubendo”, it seems that “jus” rightly signifies ‘law’: because a law is posed with order and command”⁵¹. Furthermore, in order to be a “law”, it must

⁴⁴*Ibid.*: “illa ergo actio, seu moralis facultas, quam unusquisque habet ad rem suam, vel ad rem ad se aliquo modo pertinentem, vocatur jus, et illud proprie videtur esse objectum justitiae” (own translation).

⁴⁵F. Suárez, *De Bonitate et Malitia Humanorum Actuum*, I, 1, 6.

⁴⁶*Ibid.*

⁴⁷S. Schweighöfer, *Die Begründung der normativen Kraft von Gesetzen bei Francisco Suárez*, Aschendorff Verlag, Münster 2018, pp. 56-57.

⁴⁸*Ibid.*, p. 65.

⁴⁹*Ibid.*, p. 87.

⁵⁰*De Leg.*, II, 2, 4: “concludit in solutione ad 2, jus non esse legem, sed potius esse id quod lege praescibitur, seu mensuratur” (own translation).

⁵¹*Ibid.*, I, 2, 6: “Juxta aliam vero etymologiam, qua jus a jubendo dicitur, proprie videtur jus legem significare: nam lex in jussione seu imperio posita est” (own translation).

essentially be “just”⁵². “Ius” and law thus need to be distinguished but cannot be separated. But how can this be further understood? Going back to epistemological considerations, Suárez shares with Thomas the conviction that every human act of cognition can only happen in the form of intelligible species. Thus we humans think and gain knowledge only as conceptual knowledge.⁵³ With Thomas, Suárez also highlights that a “law” as a percept⁵⁴ needs to be understood as a *signum voluntatis*.⁵⁵ In other words: Since the human will is not bound to the propositions of reason and thus not fully intelligible, the epistemological ground of laws, be it the human will or ultimately the divine will, can never be fully understood. A law functions consequently as a *sign* to educate the will of the subject in the fashion of the respective legislator.⁵⁶ As a *sign of the will*, a law but opens an ontological gap between the actual will of the legislator and the *sign* as the will perceived in the subject. Going back to the actual origin of all laws, a just and therefore true law, even if it is legislated by a moral vile legislator,⁵⁷ is — as long as it is just or at least not contradicting justice — thus ultimately a sign of the divine will and consequently a *sign* of divine providence. Applying this *metaphysics of will* on the hierarchy of laws, “ius”, on the other hand, does not seem to be a sign of divine providence as such. It rather functions as an intermediary principle between “law” as *signum voluntatis* and the actual will behind the law. This fact becomes clearer when pointing to Suárez’s discussion of the relationship between “ius”, “aequum” and “bonum”. Since natural reason cannot fail and thus defects can only arise in the matter, the “aequum” appears here rather as a corrective and origin for and of “jus”⁵⁸. This is the consequence of the fact that a law — and thus also the perfect *Natural Law* — is there to “prescribe the equal and just”⁵⁹ and thus what is “ius” to us. Regarding the “ius legalis”, however, it is the exact opposite. Since laws can fail, the “aequitas” seems here to stem from “ius” as the principle of it⁶⁰ and balance between the default legislation and the actual will. What follows is thus a dynamic between “ius” and “law”. Whenever a human legislation fails against the precepts of the divine will enshrined in the *Natural Law*, the concept of “ius” steps into this gap as mediator bringing the default law back into its position as a *sign of divine providence* and thus expression of Gods care for us reasonable beings. And yet, the concept of “ius” seems not

⁵² *Ibid.*, I. 9, 4.

⁵³ Cfr. S. Castellote Cubells, *Die Anthropologie des Suárez. Beiträge zur spanischen Anthropologie des XVI. und XVII. Jahrhunderts*, Alber Verlag, Freiburg 1992², p. 111.

⁵⁴ *De Leg.*, I. 8, 3.

⁵⁵ F. Suárez, *De Deo Uno et Trino*, I. 3, 8, 1.

⁵⁶ Cfr. *De Leg.*, I. 13.

⁵⁷ For the secular legislation see *ibid.*, III. 10; for the ecclesiastical legislation see: *ibid.*, IV. 7.

⁵⁸ *Ibid.*, II. 2, 9.

⁵⁹ *Ibid.*, II. 2, 4: “aequum et justum” [own translation].

⁶⁰ Cfr. *ibid.*, II. 2, 10.

only to appear in this negative sense. So far, this contribution has namely only discussed “ius” from the perspective of the necessity of laws due to the reality of sin and failure. In this regard, “ius” brings indeed forth “justitia” by correcting laws. Suárez, however, states that laws also exist to direct us towards our fulfilment and thus to our flourishing.⁶¹ Consequently, Adam was already under a precept to obey God⁶² and to fulfil his similarity by acting virtuously.⁶³ Being in an original state of justice and therefore in a complete harmony with divine providence, “ius” seems to reveal itself as a consequence allowing Adam to order his life virtuously and thus *justly*, unifying himself by performing these actions with the divine attributes as source and culmination of his existence as being created in the image and likeness of God. The concept of “ius” seems thus also here to be an intermediary between the divine law given to Adam in the paradise garden (obedience), but in a more *positive way* since it relates to the overall flourishing of Adam in pursuing virtuous actions.

This leads ultimately to the question, how Suárez’s comment on the concept of “ius” in Thomas Aquinas needs to be understood. What is the wider intellectual context of his work?

4 A JESUIT ACCOUNT ON AQUINAS’ CONCEPT OF “IUS”?

All in all, Suárez seems to stick to Aquinas’ elaboration on the concept of “ius” as it is given in the *Summa Theologiae*. On a second glance, however, certain emphasis become apparent that particularly count for his stress on 1.) the role of the human will – its freedom and efficient cause for laws – but also on 2.) obedience as the consequence of the former. But how could these accentuations be explained? In the past, there were undoubtedly several interpretative attempts made to understand Suárez. In this regard, Spanish absolutism or nominalist tendencies were brought forth to explain his thought.⁶⁴ Yet questions arise. Why does Suárez emphasize human freedom or a right of resistance making James I burning his works in England?⁶⁵ Regarding nominalist tendencies, Suárez seems to look back on discussions of Scotus and Ockham, yet he explicitly rejects nominalist interpretations such as that of G. Vazquez and his interpretation of the *esse morale*.⁶⁶ At

⁶¹*Ibid.*, I, 3, 3.

⁶²Cfr. F. Suárez, *De Opere Sex Dierum*, III, 21, 8.

⁶³Cfr. *ibid.*, III, 18, 1.

⁶⁴Cfr. N. Brieskorn, *Francisco Suárez und sein Gesetzesbegriff im Kontext*, in N. Brieskorn, *Francisco Suárez und sein Gesetzesbegriff im Kontext*, Steiner, Stuttgart 2008, pp. 105 ff.

⁶⁵Cfr. V. Salas, R. Fastiggi, *Introduction: Francisco Suárez, the Man and His Work*, in Id., *A Companion to Francisco Suárez*, Brill, Leiden 2014, pp. 21 ff.

⁶⁶T. Kobusch, *Die Entdeckung der Person. Metaphysik der Freiheit und modernes Menschenbild*, Herder, Freiburg im Breisgau 1993, pp. 55 ff.

the end of my contribution, I want to suggest, that the actual interpretative context of Suárez's writings is much closer at hand, namely given with his affiliation with the Society of Jesus. Suárez himself wrote with *De Religione Societatis Jesu in Particulari*, ix. 4, 5-7 thereby probably one of the oldest commentaries on the *Ignatian Exercises* remarking at the beginning how much he has benefited from being a member of this new religious order.⁶⁷ In this regard, Gemmeke made already in the past century aware of the fact that his entire thought world can be identified as the application of the Ignatian charism on scientific discussions.⁶⁸ Thus, Suárez followed the call of his master General Claudio Aquaviva who requested particularly him and Molina to make use of the constitutions and study documents of the early Jesuits. Alongside the emphasis on Thomas Aquinas, the *Ratio Studiorum* of 1599 thus recommends the strict adherence to the authority of the Council of Trent since "all theologians should have the decrees of the Council of Trent and the Bible, and they should become familiar with them"⁶⁹. If the Council thus strictly defends the ultimate freedom of the human will towards the propositions of God against the Protestants,⁷⁰ it is much more here the place that might have motivated Suárez to interpret and accentuate Thomas in such a direction rather than following nominalism, scotism or Spanish absolutism.⁷¹

Focusing on his background as a Jesuit, the application and episteme of the concept of "ius", however, seems to reveal an interesting question. Could it ultimately be that the Spiritual Exercises and the *Discernment of Spirits* somehow play a role in the episteme and application of the concept of "ius" as presented above? A first observation seems to speak for this suspicion. Thus, the Jesuit says in *De Legibus* II. 2,8 that jurisprudence must be understood as an "art, by which is discerned what is just"⁷². Transferring this into a theological context, the question arises if this "discernment" could be equated with the *Discernment of Spirits* in the interior realm of the human soul? As it became namely clear, the human

⁶⁷F. Suárez, *De Religione Societatis Jesu in Particulari* (= *De Soc.*), I. Prooemium.

⁶⁸E. Gemmeke, *Die Metaphysik des sittlich Guten bei Franz Suarez*, Herder, Freiburg 1965, p. 20.

⁶⁹A. P. Farrell, *The Jesuit Ratio Studiorum of 1588*, cit., *Rules of the Prefect of Studies*, 30.

⁷⁰Council of Trent, *On Justification*, Sessio 6, Chapter 7. Taken from: H. Denzinger, *The Sources of Catholic Dogma*, translated by Roy J. Deferrari from the Thirtieth Edition of Henry Denzinger's *Enchiridion Symbolorum*, Loreto Publications, Fitzwilliam 1955, p. 258 [815]: "If anyone shall say that after the sin of Adam man's free will was lost and destroyed, or that it is a thing in name only, indeed a title without a reality, a fiction, moreover, brought into the Church by Satan: let him be anathema".

⁷¹On the adherence to Thomas, but also creative ways, see: *Ratio Studiorum* 1599, *Rules of the Professor of Scholastic Theology: The teacher should never* "teach any doctrine that does not accord well with the mind of the Church and her traditions or that in any way might bring about a decline in genuine piety"; *Ratio Studiorum* 1599, *Rules of the Professor of Philosophy*, 6: The teacher of Philosophy should "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".

⁷²Cfr. *De Leg.*, II. 2, 8: "nam ipsa etiam ars, qua discernitur quid sit justum" [own translation].

will seem to be able to reject divine propositions according to Suárez introducing an element of normativity and the need to search the “*ius*” towards the divine in concrete circumstances which lies primarily in the need to *cooperate* with divine grace, and thus implying the “ought” to follow the given divine proposition. One is thus called to fully cooperate and follow divine grace working in the human soul and consequently to order one’s soul by realizing the theological virtues prescribed and caused by the *New Law* as a real type of law, and not just as a New Testament ornament. With Suárez understanding of laws as essentially a *measure of moral actions*, the *New Law* but is not grace itself. It rather relates in a *cooperatio sui generis* to it.⁷³ As perfection of the *Natural Law*,⁷⁴ the *New Law* is inscribed into the heart. Thus, every external aspect it prescribes – such as the existence of the sacraments – only serves towards the realization of the *justitia spiritualis* established by Christ’s death and resurrection mediated via the works of the Holy Spirit in the soul.⁷⁵ The Jesuit consequently calls the *New Law* the *application of satisfaction*,⁷⁶ expressing with this term that it ultimately prescribes the “*ius*” of this new reality of salvation. If he further implies that the *Natural Law* reveals itself as a kind of force in the conscience of the human soul,⁷⁷ and given this close link between *Natural Law* and the *New Law* as its fulfilment, one can thus raise the question, if Suárez would identify the *Discernment of Spirits* as given in the Exercises of Ignatius of Loyola as a possible way to interpret, apply and realize the morality *measured* by the *New Law*. Once again, the *New Law* namely is not grace itself, yet seems to prescribe in its essence that the divine works of grace in the soul must be followed, presenting an interpretation, that also Thomas seems to have in mind when he states that the *New Law* is much stricter than the *Old Law* in prohibiting now interior actions as well.⁷⁸

A first general argument that would thus point into this direction lies in the fact that Suárez himself sees the *New Law* primarily under its justifying aspect.

⁷³*Ibid.*, x, 5, 6.

⁷⁴Cfr. *ibid.*, x, 3, 10.

⁷⁵Cfr. F. Suárez, *De Fide*, ix, 8, 7.

⁷⁶Cfr. *De Leg.*, ix, 13, 24: “Nam mysterium nostrae salutis duo requirit. Unum est solutio sufficientis pretii per meritum et satisfactionem Christi, aliud 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 nostram salutem, ejusque executionem ordinavit, non est sistendum in resurrectione: nam etiam Christus Dominus ascendit propter glorificationem nostram, 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”.

⁷⁷*Ibid.*, ii, 5, 1.

⁷⁸Cfr. *STh.*, I-II, q. 107, a. 4.

Interestingly, the Spiritual Exercises were published one year after the promulgation of the Doctrine of Justification⁷⁹ famously defining the justification of humans exactly as “sanctification and renewal of the interior man through the voluntary reception of the grace and gifts”⁸⁰. Suárez himself, thereby, uses this definition at several occasions in his work.⁸¹ If Suárez therefore follows this definition and further underlines his entire interpretation of the human fall with Ignatian terminology as an interaction of the good and bad spirit⁸² that we fallen creatures are delivered up helplessly,⁸³ one might find a first trace that he also identifies the Spiritual Exercises – that he eagerly comments – as an interpretation to deeper understand and apply the *New Law*. This comes secondly together with the fact that he explicitly characterizes the Spiritual Exercises as an art to interpret the divine sanctifying will⁸⁴ and part of practical theology⁸⁵. The Jesuit thus speaks of the need of us fallen creatures to have instructions and doctrines (“*instructione et doctrina*”)⁸⁶ at hand when it comes to the realization of good actions. To understand the role of the Spiritual Exercises regarding the *New Law* better, one must thus leave the assumption that the theological virtues of faith, hope and charity – and therefore the moral ground with which the *New Law* cooperates – are only intellectual aspects. Faith, Hope and Charity – as in Thomas Aquinas – belong as theological virtues namely not only to the *ens transcendentalis*, but *ens morale*,⁸⁷ that Suárez strictly defends against nominalist interpretations of his Jesuit brother Gabriel Vázquez. The theoretical faith as metaphysical proposition therefore has an intermediate role yet is ultimately not enough to convince and educate the human will to honestly also *wanting* to pursue and finally realize truth on a practical level. The will consequently strives for the *fides formata* as the *experience* of true goodness surpassing the realm of metaphysical theories and thus *affecting* the will by *experience* truth.⁸⁸ If Suárez thus states that humans need instructions and doctrines (“*instructione et doctrina*”)⁸⁹

⁷⁹Council of Trent, *On Justification*, Sessio 6, chapter 7. See: H. Denzinger, *The Sources of Catholic Dogma*, p. 251 [799].

⁸⁰Council of Trent, *On Justification*, Sessio 6, chapter 7.

⁸¹Cfr. F. Suárez, *De Gratia* VI. 4,7; VII. 20, 18; VIII. 23, 6; Id., *De Poenitentia*, IX, 4, 18.

⁸²Cfr. Id., *De Opere Sex Dierum*, IV. 1; as well as *De Soc.*, IX. 5, 31; 39.

⁸³Cfr. Id., *De Opere Sex Dierum*, IV. 1.

⁸⁴Cfr. *De Soc.*, IX. 6, 3

⁸⁵Cfr. *ibid.*, IX. 5, 7

⁸⁶Cfr. *ibid.*, IX. 6, 3.

⁸⁷Cfr. G. Maria Carbone, *Morale della legge, la legge senza timore*, (Anagogia, 9), Edizioni Studio Domenicano, Bologna 2020, p. 31.

⁸⁸Cfr. F. Ricken, *Der religiöse Glaube als Tugend*, in M. Knapp, T. Kobusch, *Religion-Metaphysik(kritik)-Theologie im Kontext der Moderne/Postmoderne*, De Gruyter, Berlin-New York 2001, pp. 127-144.

⁸⁹*De Soc.*, IX. 6, 3.

when it comes to the realization of good actions and that the Exercises as essentially *correctio morum*⁹⁰ — an expression that once again points to the *ens morale* as the pedagogical purpose of the exercises — explicitly provide such and instruction and doctrine, then he seems directly point to this practical understanding of doctrines and instructions. The Spiritual Exercises thus help to build a *Habitus* of faith, hope and charity by establishing an indifference and awareness⁹¹ that is open to actively recognize where God is working in the soul and thus enable the soul to cooperate with his grace. Within this discernment, Ignatius of Loyola himself thereby seems to understand the criteria of consolation as the growth in the theological virtues that, on the other hand, are highlighted in Suárez account of the *New Law* containing and realizing them. Ignatius of Loyola thus writes,

To summarise, I use the word consolation every time hope, faith, love and all interior joy which calls and attracts the soul to heavenly things increase. Consolation occurs when the soul is strengthened in its own salvation and humble and at peace before its Creator and Lord.⁹²

With *Canon Law* as primarily *Human Law*, but especially “*ut annexa*”⁹³ and “*cunjuncta*”⁹⁴ with the *New Law*, one can ultimately ask, if the overall *Episteme* and *Application* of *Canon Law* can only be fully understood, if seen in this wider spiritual-theological context of constant spiritual discernment on the formal level which must be *distinguished*, but cannot be *separated* from *Canon Law* and its main duty of ordering the ecclesiastical community externally and within the boundaries of civil virtues.⁹⁵ The “*ius*” of this type of law thus is not only responsive towards the ordering and implementation of the ecclesiastical community, but faithful to the context of believers who try to live in union and friendship with Christ by means of the realization of theological virtues that rest on the free cooperation of the individual with divine grace, yet must be discerned in this life. Parallel to the civil law in relation to *Natural Law*, an ecclesiastical law can thus only be valid, insofar as it does not contradict the realization of the theological virtues as enshrined in the *New Law*.⁹⁶ This leads to a conclusion.

⁹⁰*Ibid.*, IX, 6, 4.

⁹¹Cfr. *ibid.*, IX, 7, 6.

⁹²Ignatius of Loyola, *The Spiritual Exercises of St. Ignatius of Loyola*, edited by Robert Backhouse, Hodder and Stoughton, London 1989, *Rules of Discernment of Spirits* A 1, p. 110. For the connection between the theological virtues of faith, hope and charity with the criterium of consolation as outlined in the exercises, see: H. Zollner, *Trost - Zunahme an Hoffnung, Glaube und Liebe: Zum theologischen Ferment der ignatianischen „Unterscheidung der Geister“*, in *Innsbrucker theologische Studien*, vol. 68, Tyrolia Verlag, Innsbruck 2004, p. 253.

⁹³*De Leg.*, IV, 2, 12.

⁹⁴*Ibid.*

⁹⁵Cfr. *ibid.*, *Proæmium*.

⁹⁶In *De Censuris* (= *De Cens.*), Suárez interestingly brings two examples that point in this direction. The first can also be found in the contemporary legislation with c.1335 §2 CIC allowing

5 CONCLUSION

In this contribution, I have tried to introduce into the concept of “ius” in Francisco Suárez *De Legibus*. As it became clear, Suárez sticks to Thomas Aquinas’ as venerable authority, yet reveals certain emphasis and accentuations such as his stress on 1.) the ultimate freedom of the human will and 2.) the role of obedience that might better be explained as the consequence of him being a member of the Society of Jesus rather than a distorter and deformer of Thomas Aquinas. Reading Thomas within the authoritative boundaries of the Council of Trent and the spiritual experience of Ignatius of Loyola, “ius” seems to reveal itself not as a *sign of divine providence* per se, but rather as an intermediate principle mediating between laws as the actual *signs of providence* and the will of the respective legislator. With him characterizing jurisprudence and thus the *episteme* and *application* of what is *just* as an art and discernment, the conclusion lies at hand, that Suárez sees the Spiritual Exercises and its *Discernment of Spirits* as an interpretation of “ius” in a theological context embedding the art of *Canon Law* that is necessarily connected with the *New Law* into a wider theological framework. In doing so, Suárez reveals himself as a faithful disciple of Thomas, trying to interpret his concept of “ius” within the motto of his order: *Ad majorem Dei Gloriam!*

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a cleric under an ecclesiastical censure to spend the sacrament of confession in cases of extreme gravity (*De Cens.*, 11, 1, 5). Suárez thereby refers to the precept of love contained in the *New Law* obliging someone to act in this way. The grave connection between the *Natural* and the *New Law* then appears in another exemplification. In the same way as someone is *de natura* obliged to give someone bread in cases of grave starvation, someone is also obliged to spend the Eucharist with Suárez referring to *Jn* 6, 53 (“So Jesus said to them, ‘Very truly, I tell you, unless you eat the flesh of the Son of Man and drink his blood, you have no life in you’”) and explicitly mentioning that the *New Law* – in special circumstance of necessity – can override *Canon Law* as human legislation (*De Cens.*, 11, 1, 17).