

*‘Good, Rich, or Secure?’
Spanish Scholasticism and
Law’s Development of Virtue*

*‘¿Bueno, rico o seguro?’ La escolástica
española y el desarrollo de la virtud por la ley*

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DOI: <https://doi.org/10.15366/bp2021.26.006>
Bajo Palabra. II Época. N°26. Pgs: 123-140



Recibido: 20-10-2020

Aceptado: 10-11-2020

Abstract

In this paper, I argue that the work of Vitoria, Soto, and Suárez presents a sustained tradition arguing that the proper end of civil law is formation in true virtue of the citizens, making citizens capable of achieving natural happiness. Although this development in virtue may prepare citizens to obtain the supernatural happiness made possible ultimately by God's grace, it still contains its own integrity and moral importance.

Keywords: Vitoria, Soto, Suárez, law and virtue, Second Scholasticism, civic virtue.

Resumen

En este artículo se argumenta que el trabajo de Vitoria, Soto y Suárez presenta una sostenida tradición que defiende que el fin propio de la ley civil es la formación del ciudadano en la verdadera virtud, haciendo ciudadanos capaces de conseguir la felicidad natural. Ahora bien, este desarrollo de la virtud puede preparar a los ciudadanos para alcanzar la felicidad sobrenatural, lo cual, en último término, es solo posible por la gracia divina, que mantiene su integridad propia e importancia moral.

Palabras clave: Vitoria, Soto, Suárez, ley y virtud, Segunda Escolástica, virtud cívica.

THE LAST FEW DECADES HAVE SEEN A REVIVAL of interest in the connection between virtue and law in both popular and philosophical discussions. These contemporary virtue-oriented legal theories all share the conviction that the proper end of law is not simply to be a sword coercively restraining evil doers or even a shield protecting individual rights, but rather a social instrument promoting the common good. The common good is pursued not by coercive policies but rather by the individuals developing stable dispositions which will consistently guide their actions towards excellence and thus towards the common good. For example, Lawrence Solum describes how a virtue-based theory of legislation contributes constructively by “setting the goal – providing opportunities for rational and social activities that express the human excellences.”¹ Kathleen Kaveny argues for the substitution of a view of law as “pedagogue” in place of law as “policeman.”²

The idea of law as virtue is not the exclusive purview of any one theological or philosophical school, but rather appears in different forms in a vast array of approaches, including “Aristotelian, Humian, Stoic and Confucian.”³ For many Christians, the Aristotelian tradition, especially as developed by Thomas Aquinas, has proven particularly appealing. Many Christian virtue ethicists interpret the Thomistic view of law’s development of virtue as compatible with crucial traditions of liberal democracy such “as the ideas of society as a fair system of social cooperation in which citizens see each other as free and equal, and the idea of reasonable pluralism, which holds that in any free society, citizens acting in good faith will affirm a wide range of comprehensive religious, ethical, and philosophical views.”⁴ However, a movement of Catholic theologians and philosophers have recently begun to challenge this approach as a surrender to modernity, which compromises traditional Catholic teachings on the proper relationship between the church and the state, and fails to recognize the state’s

¹ Solum, Lawrence, “Virtue as the end of law: an aretaic theory of legislation”, *Jurisprudence*, Vol. 9, No. 1, 2018, pp. 6 – 18, 13.

² Kaveny, Kathleen, *Law’s Virtues*, Washington D.C., Georgetown University Press, 2012, p. 17.

³ Solum, “Virtue as the End of Law”, op. cit., p. 7.

⁴ Schwartzman, Micah, & Jocelyn Wilson, “The Unreasonableness of Catholic Integralism”, *University of San Diego Law Review*, Vol. 56, 2019, pp. 1039 – 1067, p. 1043. See also Kaveny, *Law’s Virtues*, op. cit.; Porter, Jean, *Ministers of the Law: A Natural Law Theory of Legal Authority*, Grand Rapids, Eerdmans, 2010; George, Robert, *Making Men Moral: Civil Liberties and Public Morality*, Oxford, Oxford University Press, 1993; Maritain, Jacques, *Man and the State*, Chicago, University of Chicago Press, 1951.

proper subservience to secular power.⁵ They argue that if Vatican II documents such as *Dignitatis Humanae* are read as providing theological justification for full separation of the state from the guidance of the church they result in an impermissible departure from church teaching. Instead, these theologians and philosophers, often self-described as integralists, argue that to describe civil law as promoting a natural happiness alone results in the sacrifice of any true grasp of the common good. In fact, the failure to “baptize” political institutions to ensure that they direct towards sanctification can even be understood as leaving them under the sway of demonic influences.⁶

In this essay, I will provide a counter example to this narrative by describing one sustained tradition of interpretation of Aristotle and Aquinas focused specifically on the question as to how civil law can promote virtue – that of Spanish scholasticism as exemplified by Vitoria, Soto, and Suárez. I will argue that in this focused example, each of these theologians builds on a solid virtue ethic framework to describe the integrity of civil law in advancing virtue in a theologically robust way. These theologians do not fall into the trap of a liberalism which views the good which civil law promotes as simply negative liberty or morally neutral. Instead, they provide theological arguments for civil law, oriented only to a natural happiness, is in fact capable of forming citizens in true virtues which can be appropriately oriented towards obtaining supernatural happiness by other means.

1. Aquinas on Law’s Effects

ONE OF THE KEY THEORETICAL PASSAGES in this tradition considering how law forms virtues is the distinction made by Aristotle in *Politics* between the good person and the “good citizen,”⁷ especially as this distinction was elaborated by Aquinas in his discussion of the effects of law. Although Vitoria, Soto, and Suárez all engage directly with Aristotle on this question, their reflections primarily are structured by St. Thomas’s reception of Aristotle on this question. Having established that the end of law is the promotion of the common good in I-II Q. 90 a. 2, Aquinas continues on to consider the effects of this end, which, necessarily, are that the lawmaker

⁵ See specifically Thomas Pink, “In Defense of Catholic Integralism,” *Public Discourse*, <https://www.thepublicdiscourse.com/2018/08/39362/>. See also the resources on contemporary Catholic integralism gathered at <https://thejosias.com/>.

⁶ Waldenstein, Edmund, O.Cist., “What is Integralism Today?,” *Church Life Journal*, October 31, 2018, <https://churchlifejournal.nd.edu/articles/what-is-integralism-today/>.

⁷ Aristotle, ed. Stephen Everson, *The Politics*, Cambridge, Cambridge University Press, 1996, p. 65.

intends to make the subject good. However, is the how the subject is made good: “simply” or “in some particular respect”?⁸ In the corpus, Aquinas argues that a good law will of necessity makes a person good. However, his answer appears to change in response to Objection 3, when he considers Aristotle’s distinction between a good person and a good citizen.⁹ Here, Aquinas claims that the only goodness truly necessary for the common good to flourish is that the citizens who are engaged in government be virtuous. Otherwise, the only virtue required of the citizen is the virtue of obedience. “Thus, according to Aristotle, (Polit. ii, 2), “the virtue of a sovereign is the same as that of a good man, but the virtue of any common citizen is not the same as that of a good man.”¹⁰ This apparent tension -- between a claim that law can make people good absolutely when ordered to the true good – and the claims the laws simply makes good in terms of obedience for most citizens or only as far as the acquired virtue– sparked the discussion in the second scholastic which is the topic of this essay

In addition, Aquinas considers the relationship between the infused virtues and the acquired virtues in the formation of the Christian citizen specifically. The civil law, Aquinas argues, cannot cause the infused virtues, which is “produced in us by divine operation alone.”¹¹ Rather, its only causal power is to the creation of the acquired virtues. However, it can “dispose” to infused virtue, as well as “preserve and foster it when it already exists.”¹² However, Aquinas does not specifically address how this understanding of the role of law as only productive of acquired virtue relates to the claim that law can make people good absolutely or how this disposition to infused virtue should be fostered or developed.

2. Francisco de Vitoria, OP

VITORIA’S INNOVATION OF DELIVERING HIS INTRODUCTORY THEOLOGY LECTURES ON the *Summa* rather than on the sentences of Peter Lombard laid the foundations for the general tradition of Thomistic interpretation at the University of Salamanca.¹³ Although these lectures were not published during Vitoria’s life-time, they circulated as manuscripts for twenty years following their delivery, and thus had a

⁸ Thomas Aquinas, *Summa Theologicae*, England, Benziger Bros., 1947, I-II Q. 92, a. 1.

⁹ Ibid., I-II Q. 92, a. 1, ad. 3.

¹⁰ Idem.

¹¹ Ibid., I-II 62.3.

¹² Ibid., I-II 92.1 ad 1.

¹³ Langella, Simona, *Teología y Ley natural*, Madrid, Biblioteca de Autores Cristianos, 2011, p. 60.

continuing impact on later treatments of law and justice in Spanish scholasticism.¹⁴ Vitoria begins his commentary on the passage in the *Summa* at issue on law's effect by asking whether the civil lawmaker's intention should be to "make men good, wealthy or secure?"¹⁵

Vitoria's concern is the rejection of those who read this passage as promoting some morally minimalistic view of the law – viewing laws goals as simply wealth or security. One of Vitoria's concerns in addressing this question undoubtedly lies in his rejection of Lutheran views of civil law and the role of the church. Based on the Lutheran rejection of human access to God outside of revelation, Vitoria (followed by Soto and Suárez) seeks to rebut an accompany rejection of the idea that civil law can promote any type of real good without direct revelation from God.¹⁶

However, Vitoria also realizes that the ambiguity of the Thomistic text creates additional problems of interpretation. Therefore, he seeks to address what he views a depredation of the value and significance of civil law, expressed in three different ways. First, Vitoria identifies an understanding of the legislator as simply a craftsman like others – crafting laws which are capable of producing "not moral but technical excellence."¹⁷ According to this theory, laws should seek to achieve the bare minimum of communal standards necessary to enable people to live together in a community so that they have the opportunity to achieve the natural goods of which we could not achieve alone. Citizens do not grow in "a moral good but [rather] a natural good:" explicitly wealth or security.¹⁸ A second approach, not necessarily contradictory to the first, focuses on the importance of ecclesiastical law over civil law. According to this approach, to make the claim that civil law advances virtue ignores the need for ecclesiastical law and the sacraments to make people absolutely good in any moral sense. This theory also hold that civil law can only promote growth in moral virtue in a minimal sense.

The third approach appears to be supported by the statement made by St. Thomas in I – II Q. 92: that a person may have evil conduct in his personal life but "may nevertheless be good and law-abiding as far as the common good and civil

¹⁴ Scattola, Merio, "La Virtud de la justicia en la doctrina de Domingo de Soto", *Anuario Filosófico*, Vol. 45, No. 2, 2020, pp. 313-341, p. 314.

¹⁵ Vitoria, Francisco de, "On Law: Lectures on ST I-II. 90 – 105", *Political Writings*, Cambridge, Cambridge University Press, 1991, p.165.

¹⁶ Skinner, Quentin, *The Foundations of Modern Political Thought, Vol 2.*, Cambridge, Cambridge University Press, 1978, 139.

¹⁷ Vitoria, "On Law", op. cit. p.165.

¹⁸ Idem.

laws are concerned.”¹⁹ In addition, Thomas seems to double down on this statement with his other claim in ad 3 that “the common good can flourish so long only as the princes are good. This phrase seems to concede that the common good can flourish even if everyone else is evil, because it is possible to be a good citizen without being a good man.”²⁰ Thus, the law can point towards some limited virtues appropriate to life in the public square, but cannot touch the internal private life of the person.

Vitoria finds all of these claims concerning. First, claiming that morally bad behavior is not the concern of law, and that the law only exists to advance wealth or security seems hopelessly naïve: “so long as there are quarrel-makers, money-grabbers, or common thieves about, the common good cannot flourish, because it is made up of individual acts of goodness. You cannot make a good house out of bad parts.”²¹ Even natural good is unobtainable under this logic and assuming that simply the goodness of the ruler is enough is insufficient because the ruler’s virtue in issuing good laws is incapable of remedying the moral failures of the populace.

In addition, the claim that the law should only create the conditions necessary to obtain the goods of wealth and security goes against the actual purpose of the law which (as Thomas discusses in 1-II 90.2) is the common good. According to Aristotle, things like wealth can “contribute” to happiness, but “the substance of happiness is founded in virtue.”²² This claim also ignores the theological justification for obeying the law at all. For example, in Romans 13:2, St. Paul writes that political power is from God. “If laws effect nothing but natural benefits, who does he who resists the king resist the ordinance of God?” In addition, Paul is clear that obeying the powers is intended to lead their subject to “do what is good” rather than towards fear of that power, a similar point to the admonition in I Peter 2:13.²³ Vitoria reads this verse as arguing that “the intention of the king is without doubt to make men good absolutely speaking and to direct them to virtue.”²⁴

However, arguing that the point of the law is to make people virtuous absolutely does not mean that all laws make people virtuous in the same way. Rather than seeing the ecclesiastical law as the sum source of virtue, Vitoria argues, contra the second critique, that the civil law and ecclesiastical law are complementary in their

¹⁹ Ibid., p. 166.

²⁰ Idem.

²¹ Idem.

²² Ibid., p. 167.

²³ Ibid., p. 166.

²⁴ Idem.

aims. “Civil princes intend to make men good in terms of human contentment (*Felicitas*) while the pontiffs of the Church direct them to eternal happiness...”²⁵

This concern to preserve the church’s power leads Vitoria to not contest the third charge – that these limits mean that a break exists between the public and private morality. “let us concede the points, though difficult, that a man may obey all the civil laws but still not be absolutely good, since a fornicator does not break any of his laws either. So, the prince does not intend to make men happy absolutely but only in terms of human happiness.”²⁶ This approach therefore accords with the limited view of happiness which he presents contra those whom want to give all power to ecclesiastical laws.²⁷ However, although Vitoria feels bound to concede this point in intellectual honesty, it is clear that he is still uncomfortable with it. There is a disjunction in his instance that the law promotes some form of the moral good but equating this only with human happiness and with such a limited type of natural morality.

2. Domingo Soto, OP

UNDOUBTEDLY INFLUENCED BY HIS TEACHER and fellow Dominican Vitoria, Soto considers the same line of questions in his interpretation of this question. However, since Vitoria delivered his lectures, a different and apparently contradictory reading in Cardinal Cajetan’s influential commentary on the *Summa* published in 1568 has gained prominence. In his commentary, Cajetan interpreted Thomas to say that the actual transformation of goodness should be understood to mean only by following all types of laws – natural, divine and civil – can a person actually become good. Soto reads Cajetan as belonging to those who disparage the goods obtainable by civil law by giving all significance to divine law – according to this view, only true virtue is possible if a person follows divine law, thus civil law does not promote true virtue. In other words, this raises the same concerns that Vitoria had with those who saw law as simply creating *techne* not real virtue. In critiquing Cajetan, Soto points out that this claim fails to provide a careful reading of Thomas’s actual

²⁵ Ibid., 167. Vitoria elaborates his claims of the power of the church against the theology of the Lutherans in his two relections on the power of the Church.

²⁶ Idem.

²⁷ As I will discuss later, my reading of Vitoria’s separation of the two types of happiness is largely the same as that of Anabel Brett, in contrast to Bernice Hamilton which argues that Vitoria sees the two types of happiness as the same. See Bernice Hamilton, *Political Thought in Sixteenth Century Spain*, Oxford, Oxford University Press, 1963, p. 56. See Annabel Brett, “Later Scholastic Philosophy of Law”, *A Treatise of Legal Philosophy and General Jurisprudence*, Vol. 6, Dordrecht, Springer, 2005, 359.

statement, which instead implies that a person following any type of just law will become morally better. There is therefore no grounds to argue that he meant that only the “combination of all laws” can create true goodness. Rather, Soto argues

the true sense of St. Thomas is that the effect of all laws is to make good to the men in their order and grade: that is regarding the peculiar end of each law: just as the law of justice makes just, the law of fortitude strong, and the law of temperance sober, etc. and thus the good conclusion would be that if a good subject were made, a good man could be made in the same way. From this it follows that the natural and eternal law which teach and require all the virtues make men complete everywhere.²⁸

The true Thomistic approach focuses on law fostering virtue in terms of grades, rather than replacement. There is one good which all laws helps us achieve, but in different degrees.

Like Vitoria, Soto also engages with the argument that it is only ecclesiastical laws which can make men good in terms of their souls. Theorists supporting this view claim that the princes, in making laws, are only supposed “to care for the peace and quiet of the state and the tranquility of the republic,” not any virtue in the citizen, while the church cares for souls.²⁹ Soto argues that this claim constitutes a mis-reading of the Aristotelian tradition. The classical philosophers were clearly not considering the role of ecclesiastical rulers in advancing the claim that law could create virtue. Rather, they believed that the laws (contra skill at the arts) should be intended to create “the good of the citizens and the honesty of the customs.”³⁰ The arts only make a citizen well equipped for doing a job well. The laws however encompass more than this, and are intended for the formation of the good of the soul – which is necessary for the cultivation of human happiness. As Aristotle says “the city was founded in order to live, but exists by the grace of living well.”³¹ Even the ancients Soto argued, saw that since the purpose of “the union of the citizens [was] not only lend help and ease to the corporate life but also to the spiritual,” then the laws must be ordered to the same end.³² In other words, all the elements of living together become crucial for development of virtue. In fact, being formed as a good citizen is crucial for complete formation in virtue, since the person living in

²⁸ Soto, Domingo, *Tratado de la justicia y el derecho*, Madrid, Editorial Reus, 1922, p. 46. This edition was translated from Latin to Spanish by D. Jaime Torruiano Ripoll. Translations to English are my own.

²⁹ *Ibid.*, p. 47.

³⁰ *Idem.*

³¹ *Idem.*

³² *Idem.*

solitude cannot be taught or reprovved. Being created to be social animals is in fact an essential element of humans as created for happiness, not an accident.

Thus, Soto argues, the ordering of the laws to virtue does not view secular laws and the spiritual laws to be ordered to different types of happiness, which is how he reads Cajetan and which is the concession Vitoria felt compelled to make. Rather, the spiritual perfects the secular but the secular does promote a true virtue ordered to supernatural ends.³³ The ancients did not fully understand what the spiritual encompassed, although they pointed towards its importance. Soto also uses St. Paul's claim that the civil power is God and should refer to good. However, whereas Vitoria uses the text broadly to claim "that all human laws should be made for the sake of felicitas," Soto uses it to tie together the natural and supernatural goods. "But if the laws achieve nothing other than natural convenience, why then would he who resists the king resist the ordinance of God?" The true reading of Romans 13 depends on the understanding that the commonwealth is directly positioned within the moral teleology of human life³⁴. Thus, the spiritual may correct this secular prince if he makes laws which depart from direction towards the true happiness. This limitation of the civil power by the spiritual is appropriate since, with all the scholastics, Soto argues that all power comes from God and thus the prince only exercises that power and subjects have the responsibility to obey as part of God's natural plan and order for creation. Soto is unclear however whether the correction is coercive or conciliar.

Despite his development of Vitoria's argument and rejection of the split between the two goods, Soto's ultimate view of the formation in virtue to which laws should direct citizens are limited, and focused primarily on the law's ability to form "quick compliers."³⁵

3. Francisco Suárez, SJ

SUÁREZ, WRITING A GENERATION LATER, follows Vitoria and Suárez in beginning with St. Thomas's description of the law's final cause as promoting the common good, and the effect of this final cause as the subjects being made good as well.³⁶ He

³³ Anabel Brett, "Later Scholastic Philosophy of Law", op. cit., p. 359.

³⁴ Idem. Jaime Brufau Prats provides a similar description of Soto's subordination of the natural to the supernatural end. Prats, Jamie Brufau, *El pensamiento político y su concepción del poder*, Salamanca, University de Salamanca, 1960, pp. 168 – 169.

³⁵ Soto, *Tratado de La Justicia*, op. cit., pp. 50 -51.

³⁶ Suárez, Francisco, *De Legibus*, Madrid, Consejo Superior de Investigaciones Científicas, 1975, I.xiii.1.

then considers whether the virtue which the law promotes goes beyond Aristotle's description that the end of the law "consists only in maintaining the present life in exterior peace and justice."³⁷ Can law do more than provide "a certain exterior correction which makes the good citizen," but actually help change the content of a person's character?³⁸ Like Vitoria and Soto, Suárez seeks to avoid the moral minimalism of civil law promoted by "some Thomists" by carefully defining Thomas's distinction between goodness understood simply or in relative form.³⁹ In Suárez's time, this question remain of pressing importance, given the claims of Machiavelli that the law and political power in general only exist for the advancement of the state.⁴⁰

Suárez also has an additional concern: a "new and singular idea born of a certain ambiguity and imprecise confusion of the terms."⁴¹ According to Martin de Azpilcueta, Christian rulers and emperors have the power and obligation to direct civil law beyond its direct end of the natural good to the end of true eternal happiness.⁴² In a similar way, Fortunio García de Ercilla claims that Christian rulers, elevated by faith, are capable of making laws which direct citizens to supernatural happiness, resulting in civil laws and canon laws having the exact same end.⁴³ Given these opposing approaches, Suárez seeks to remain faithful to the view of de Soto and Vitoria that law can form people in some type of moral good without subscribing to the novel view that civil law can direct citizens to the virtues necessary for salvation.

Suárez begins by considering Thomas's delineation of being good simply (or absolutely) and good as a citizen. He makes the novel claim that opposing the goodness of the citizen and of the person created a false dichotomy. In order to be valid, a law must be just. In order to be just, the law must promote the common good as the end proper to the community. For this reason, citizens should only submit to law when the law is oriented to the good ends, which means that by obeying they will inevitably acquire good customs and be made good in virtue of the law.⁴⁴

³⁷ Idem. I.xiii.2.

³⁸ Idem. I.xiii.2..

³⁹ As Hopfl points out, Suárez's account of political power "was explicitly designed to harmonize the received Thomist accounts, especially those of Vitoria, Soto, Navarrus, Molina, Vasquez, Azor and Bellarmine." Suárez's commitment to this approach is apparent in his work to synthesize Cajetan and Soto on this question. Hopfl, Harro, *Jesuit Political Thought: The Society of Jesus and the State, c. 1540 – 1630*, New York, Cambridge University Press, 2004, 248.

⁴⁰ Ibid., III.xii.2.

⁴¹ Suárez, *De Legibus*, op. cit., III.xi.4.

⁴² Ibid., III.xi.2.

⁴³ Ibid., III.xi.3.

⁴⁴ Ibid., I.xiii.3, 73.

How then should we understand Thomas's use of the terms relative and simple? Like a good scholastic, Suárez differentiates terms. It is first sense of relative which Thomas undoubtedly means when he discusses the law of burglars to which, if burglars adhere, they become good burglars. However, Suárez argues that Thomas uses relatively differently in relationship to civil law, within "the genre of the moral."⁴⁵ In this context, relative refers to the good achieved by one virtue alone as relative as opposed to the absolute good achieved by the unity of all the virtues. For example a sober man may be relatively good by his possession of the virtue of temperance, but not absolutely good because he lacks the virtue of justice.⁴⁶ The second sense of absolute is only demanded of the sovereign, who should have his laws participate in all virtues, when considered as a complete corpus.⁴⁷ Suárez argues that Aristotle gestures to this distinction when he affirms that the end of the society is "to live well and participate in the honest thing" and that "all citizens ought to possess the moral virtues."⁴⁸

The happiness advanced by this possession of relative virtue may include wealth and security but goes beyond it to include the moral good. The end which the law advances is

the proper natural happiness of the perfect and autonomous human community that it governs and each one of the men and as much as they are members of the community. That is, it looks to that they live politically in peace and justice, with the abundance of the goods sufficiently for the maintenance and the comfort of their material life and with the normal rectitude of the customs that is necessary for the social peace, the public prosperity and the adequate conservation of human nature.⁴⁹

Rather than reading Aristotle's distinction of the good man and the good citizen as competing categories, Suárez reads them as stages in completion in growing in virtue towards true happiness. "More virtue is required of the good man than of the good citizens; although the virtue of the good citizen may be moral and honest in itself, in exact terms it is only relative in the second sense which we have explained; and this alone is not enough to make the man absolutely good."⁵⁰ The law can therefore direct the citizen in acquiring the virtues needed to be truly, but not

⁴⁵ Ibid., I.xiii.6, 75.

⁴⁶ Idem.

⁴⁷ Ibid., I.xiii.6, 76.

⁴⁸ Idem. Citing Aristotle, *Politics* lib II, cap 6; lib 5, cap 5.

⁴⁹ Ibid., III.xi.7.

⁵⁰ Ibid., I.xiii.7, 76. See also Pace, Paul, SJ, "Francisco Suárez and Justice: A Common Good Perspective", *Gregorianum* (Vol. 93, No. 3, 2012), pp. 497 – 525, p. 520.

completely, good. Suárez's therefore builds on the understanding of the unity of happiness in Soto, while departing from the view of Vitoria.

The next question, raised by the innovators whom Suárez has already identified, is whether or not civil law should go all the way and directly promote the virtues requires for supernatural happiness, when instituted by those who possess the light of faith. Suárez rejects this view on the grounds that it includes insufficiently nuanced view of human happiness. All happiness is ordered to God and therefore ultimately to supernatural happiness, because it is grounded in God's plan at creation. However, the different types of happiness are ordered to happiness in God in different ways.⁵¹ Some types are ordered: "through [their] intrinsic form of being (*per intrinsecam habitudinem*) or [some] only in virtue of a relationship or exterior imperative."⁵²

In considering civil power's orientation to supernatural happiness, Suárez follows in the footsteps of Vitoria and Soto by describing how civil law-making power comes from God at creation and is granted to the perfect community (*the corpus mysticum*) united to the end of the common good before it is entrusted by the community to rulers.⁵³ Since power arises from this type of arrangement in this type of community, "the power comes especially ordered to the common good of this organism and to its own happiness, such that the end of the thing is proportional to its principals."⁵⁴ While both natural and temporal, this grant of civil law-making power has its own intrinsic limits as well.⁵⁵ For civil law to directly regulate towards supernatural happiness would be to go beyond the principles of its own creation.⁵⁶ Rather, civil law is empowered to "only regulate that good customs that is necessary or very useful for the good of the society... civic virtue."⁵⁷

The civil law is not ordered to the end of supernatural happiness in virtue of "proper nature or proper acts."⁵⁸ This does not mean that political power is separa-

⁵¹ Ibid, III.xi.4.

⁵² This recognition of the connection between the natural and the supernatural end of humans at the least troubles Millbank's claim that for Suárez, that in identifying to distinct ends (a natural and other supernatural) Suárez innovates in describing the natural as "substantially independent of the latter... this was seen as an entirely legitimate exercise, within the bounds of 'pure nature' so long as it was undertaken in ultimate expectation of 'serving' the higher truth of faith." Millbank, *Beyond Secular Order*, Chicester, Wiley-Blackwell, 2013, 34.

⁵³ For further discussion of Soto and Vitoria's articulation of this theory of the origin of political power, see Prats, Jaime Brufau, *El pensamiento político de Domingo de Soto y su concepción del poder*, Salamanca, Acta Salmanticensia, 1960, 150 – 151.

⁵⁴ Suárez, *De Legibus*, op cit., III.xi.7.

⁵⁵ See Viera, Monica Britta Viera, "Francisco Suárez and the Principatus Politicus," *History of Political Thought* (Vol. XXIX, No. 2, Summer 2008), 291 – 293, for a similar discussion of Suárez's discussion relationship between the secular power and the spiritual authority of the pope in *Defensio Fidei*.

⁵⁶ Idem., III.xi.6.

⁵⁷ Ibid., III.ix.6

⁵⁸ Suárez, *De Legibus*, op. cit., III.xi.5.

ted completely from the supernatural end. In fact, there is a proper way for political power

to be ordered to the supernatural happiness as to its ultimate end in virtue of an extrinsic relation of god or of man that this power possess... With relationship to God it is the true that all the goods –including the natural ones – which he has given to the man he has given them with a view to the gaining of the supernatural happiness, and in this sense also he has given the political power with a view to this end.⁵⁹

The question becomes how and by whom. First, on our own natural capacities, any person lacks the discernment “in virtue of only the natural light” to discern exactly how the civil law should be ordered to the supernatural end.⁶⁰ Rather, since the acquired virtues may prepare people to receive infused virtues or develop an inclination to God’s grace even as they are ordered to the end of natural happiness, the civil law should only seek to the acquired virtues which, if properly developed, may eventually prepare the person for the fullness of virtue and happiness. Thus, while the civil power cannot direct to an ultimate end, it can provide preparation.⁶¹

It is the role of canon laws to fulfil the formation in virtue which the civil law instantiates rather than creating a whole different type of goodness. Suárez describes the role of canon law, and all spiritual guidance provided by the church as, with the assistance of the Holy Spirit and through God’s grace, “to plant and water and thus direct people through laws toward the supernatural end.”⁶² Canon laws complete the work begun in civil law and other types of law, rather than making most people perfectly good instead of civil law, i.e. “in all aspects of the good... since [no law] order[s] all which is good, but only a part, excepting the law of charity, which encompasses, virtually, all types of the good.”⁶³ Suárez seeks to reconcile the opposing position of Cajetan and Soto discussed above, arguing that each seeks to say that each law should be understood as making good in a relative sense, and “the conjunction of all laws make good in the plain sense.”⁶⁴ This reliance between the different types of laws for full formation is why the canonists compare civil law

⁵⁹ Ibid., III.xi.4.

⁶⁰ Ibid., III.xi.5.

⁶¹ Ibid., III.xi.6.

⁶² Suárez, *de Legibus*, op. cit. IV, c. 1 §11. Cited in Thomas Pink “Suárez and Bellarmine on the Church as Coercive Law Giver,” *Legge e Natura I dibattiti teologici e giuridici fra XV e XVII secolo*, Arricia, Aracne Editrice, 2016, pp 287-332, 196. Sadly, further discussions of the points made in Pink’s claims related to the coercive power of the church are behind the scope of this essay.

⁶³ Suárez, *De Legibus*, op. cit., I.xiii.8, 77.

⁶⁴ Idem.

with the body and canon law with the soul and spirit – each is crucial for human flourishing and each needs other for full perfection. Suárez finds additional support for his position from the claim made by St. Thomas I-II 99.3: “when he says that the divine law is established fundamentally in order to walk humans to God; the human law, in contrast, principally to regulate the interhuman relationships, for this the human laws are not to give rules related to the divine worship but to order humans to the common good.”⁶⁵

This analogy may be clarified by considering Suárez’s theory of the virtues. In his discussion, he draws an analogy between civil law and canon law based on the infused and acquired virtue of faith. Just as the acquired virtues dispose us to the infused, the civil law can dispose us to pursue supernatural happiness, as Thomas describes in I-II Q. 92, a. 1 ad 1. For example, while infused faith is perfectly ordered to the supernatural happiness, acquired faith may dispose the person to growth if it is properly directed simply to the natural good.⁶⁶ For example, the child who develops the acquired virtue of a faith in a good and loving parent is better disposed to receive the gift of supernatural faith from God.

Suárez makes the same point in his consideration of natural love and infused charity in his treatise on the virtue of charity. First, he argues that natural acts of love to God as the author of nature are possible, and that each human is able “to acquire habits to incline him to similar acts. The reason is because it is established that the will has natural inclinations to the love of God greater than itself” although of course there are other natural sinful inclinations which interfere with and complicate our natural love of God.⁶⁷ The development of the natural love of God and others is a true virtue and oriented to supernatural happiness, but requires the gift of infused charity to achieve the perfection of loving God for God’s own sake. Both acquired and infused charity are oriented to the same goal: love of God, but achieved in different ways.⁶⁸

Given this distinction, and contrary to the novel viewpoint which concerns him, Suárez argues that not even Christian legislators are able to direct this power to supernatural ends. They receive their power in the same way as pagan rulers: nothing more or better, and that power cannot extend beyond its limits.⁶⁹ However kings can provide direction to the supernatural end through external power. First, throu-

⁶⁵ Ibid., III.ix.6.

⁶⁶ Ibid., III.xi.4.

⁶⁷ Suárez, Francisco, *De Charitate*, Paris, Vives, 1858, Disputatio III. Section 5, chapter 1, 657.

⁶⁸ Idem.

⁶⁹ Ibid., III.xi.11.

gh counsel – by explaining the supernatural happiness for which civil laws can prepare citizens by growth in natural virtue. While Christian rulers can only give laws which promote acquired virtue, they are free and, indeed, encouraged, to provide direction and point beyond the acquired virtues to the supernatural. So, although power is tempered, for Suárez the public square is far from empty.⁷⁰ Secondly, as in canon law, they can ensure that the civil laws leave the proper space for the development of the infused virtues through God’s grace and according to the direction of the church.⁷¹ Laws can promote temperance by prohibiting vices that go against nature. So, for example, they can prohibit the waste of food or impose measure and moderation in food.⁷² This proper relationship with food can prepare for infused temperance by promoting a culture not disposed to excess or careless materialism and therefore more open to surrendering all for the sake of God. In a similar way, laws can prepare people to receive the infused virtue of charity by teaching citizens how to love people according to acquired love, for example by “command[ing] acts of almsgiving, and of communal solidarity or love of one’s neighbor.”⁷³

Conclusion

IN CONCLUSION, VITORIA, SOTO, AND SUÁREZ offer a rich meditation on the question as to how civil laws can create virtue in a citizen. Although all agree on the fact that civil laws can inculcate a moral good, Soto and Suárez depart from Vitoria in arguing that this good can in fact orient the citizen to supernatural happiness. Suárez then develops the argument further to claim that while civil laws are by their nature oriented to supernatural happiness, they maintain their own integrity and importance in moral formation, a role which should not, on theological grounds, be sublimated in the power of the church, but rather constitutes a lower, but still significant and important, gift in the heavenly economy of grace. This gift should encourage Christian participation in the fullness of contemporary civic life, not a rejection.

⁷⁰ Idem.

⁷¹ Ibid., III.xi.10.

⁷² Ibid., III.xii.8.

⁷³ Ibid., III.xii.9.

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