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Limited from the Outside: Francisco Suárez and the External Limits of Political Power

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Abstract: Francisco Suárez has been interpreted both as a champion of absolute power and as an advocate of popular sovereignty. Although not taking a position in this debate, this paper seeks to understand whether Suárez's political thought provides theoretical ground to advance the notion of limited government. It focuses specifically on the question of whether there are, in Suárez's work, external limits to the power of rulers at home. The answer is considered by regarding two elements, which we argue contribute to such a limitation. First, the paper considers how the *ius gentium* hinders the possibility of an all-powerful government at home; then, it focuses on how the hierarchical ordering of the spiritual and temporal spheres limit the scope of the ruler of the latter. It is argued that both elements provide some ground for limiting the extent of power by rulers in their communities.

Keywords: Suárez; *ius gentium*; international law; potestas indirecta; limited government

1. Introduction

Father Francisco Suárez is one of the leading thinkers of late scholasticism. Born in Granada in 1548¹, Suárez studied law in Salamanca, and, after joining the Society of Jesus, in 1564, he went on to study philosophy and theology at the same University. Suárez wrote extensively not only on these subjects but also on law and politics, becoming a prominent figure in the School of Salamanca.

Although the inclusion of Suárez in this school is not free from debate, since even the concept of the Salamanca School is discussed (Alves and Moreira 2013, pp. 2–3), it is useful, for the present purpose, to include Suárez among its members in order to present him in dialogue with this tradition.

Besides Salamanca, Suárez taught at several other universities in Europe. One of the most intellectually productive periods of his career was at the University of Coimbra, in Portugal, where he held the Cathedra Primae of Theology. It was during the years spent at Coimbra that he published the work *De Legibus ac Deo Legislatore* (*On Laws and on God, the Lawgiver*), a legal and political work where the Jesuit presents his theory of the origin of the power to make laws, that is, of political power.

In the field of politics, Suárez's thought has been interpreted both as a champion of absolute power and as an advocate of popular sovereignty transferred to a limited government (Barroso 2020). These are, of course, two opposing positions, and most authors would take an intermediate position. In this paper, although not taking sides in the debate, we argue that Suárez's thought can be read as including features that account for a limited government, both from within the community and from without.

Indeed, stating that a given power or authority is limited may be understood not only as to the internal limitations within a single community (and thus regarding the relationship between a superior—the sovereign or supreme authority—and an inferior—the subjects) but also as to external limitations.

This paper focuses on the second type. The notion of an authority limited from the outside is presented in two sections, one for each element that this paper analyses. First, we explore the role of Suárez's theory of the *ius gentium* in limiting the action of rulers. To that



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end, we study the limits to sovereign power resulting from the relationship between two or more perfect communities with equally legitimate political authority. Then, we analyze to what extent the existence of a spiritual realm and of an indirect power in the Pope also pose a limit to political, temporal power.

Although both Suárez's thoughts on the law of nations and his thoughts on the power of the Pope as relates to the state have been extensively commented upon, this paper provides an analysis of these two aspects in the context of a systematization of the limits to political power as conceived by Suárez. This paper does not, therefore, present a simple, non-discriminatory analysis of these aspects but one that focuses on the elements that are relevant to the conception of a limited or unlimited power.

For the purpose of this study, the main sources among Suárez's works are the second and third books of the already mentioned *De Legibus ac Deo Legislatore*, his masterpiece of legal theory, and the third and sixth books of the *Defensio fidei catholicae adversus anglicanae sectae errores, cum responsione ad apologiam pro juramento fidelitatis et praefationem monitoriam serenissimi Jacobi Angliae Regis (A Defense of the Catholic faith against the errors of the Anglican sect, with a reply to the apology of the Oath of Allegiance and the Admonitory Preface of His Most Serene Majesty James, King of England)*, his main work on political thought².

As the name suggests, the latter is Suárez's response to King James I's Oath of Allegiance. This is an oath that was established in England to distinguish between Catholics that were loyal to the king and those who were considered traitors. Following the Gunpowder Plot and the king's fear of the growing tensions with the Catholics, an oath was established whereby Catholics would swear to obey the king and reject certain prerogatives of the Pope. As a response, the Pope encouraged Catholics not to take this oath.

And although the *Defensio Fidei (DF)* is not particularly focused on the relationship between states or perfect communities, it includes, nonetheless, reflections that are relevant to that topic, namely a thorough analysis of the concept of political power within a community. And it is an essential work to understand Suárez's thought on the separation of the spiritual and temporal powers.

2. The *ius gentium* as an External Limit to Political Power

The topic of the conceptualization of the *ius gentium* was a recurring one among Iberian scholastics of the 16th and 17th centuries. And Suárez was no exception. His analysis of the concept of the *ius gentium* can be found mainly in the second book of the *De Legibus (DL II, XIII–XX)*.

The work of the late scholastics on this concept, following the issues raised by the Discoveries, has been widely recognized among scholars to have significantly impacted the development of international law. As stated in the preface of the collective work of the *Corpus Hispanorum de Pace* on the ethics of the relationship between the discovered peoples and the colonial powers, "the discovery and conquest of America by the Spanish is at the origin of modern international law"³.

In the textbooks of Public International Law, a reference is usually made to the late scholastics (Shaw 2014; Brownlie 1963; Pereira and de Quadros 2000; Dunoff et al. 2015; Henderson 2010; Nussbaum 1958). Thinkers such as Ernest Nys, Camilo Barcia Trelles, and James Brown Scott specifically emphasize Suárez's legacy in the development of the theory of the *ius gentium*. Nys, discussing the origin of international law, considers Suárez one of the most important among the founders of the discipline (Nys 1894, p. 138). Barcia Trelles, in turn, refers to Suárez as a leading figure among the internationalist thinkers of the 16th century (Barcia Trelles 1934, p. 9). Furthermore, in his analysis of the Catholic conception of International Law, Brown Scott considers the Dominican Francisco de Vitoria the "unconscious founder [of the modern law of nations]" (Scott 2000, p. 196) and argues that Suárez was the philosopher of international law (Scott 2007, p. 127; see also Pereña 1973, p. LXVII).

It must, nonetheless, be noted that several central aspects of modern international law are absent from Suárez's customary *ius gentium*. And, indeed, some authors are

more skeptical about assigning the fatherhood of modern international law to the Thomist theologians. Anthony Pagden, for instance, while recognizing the massive impact of Vitoria's contribution to the advance of a theory of the relationship between nations and that the Dominican paved the way for subsequent developments, nonetheless considers it anachronistic to refer to Vitoria as the founder or the father of international law (Pagden 2017, pp. 1–4). Both Heinrich Rommen (1979, p. 270) and Idoya Zorroza (2013, pp. 280–81), among others, add some caveats as well.

What leaves no room for doubt is that Vitoria and his fellow scholastics were committed to the study and development of the philosophical and legal grounds for the peaceful relationship among peoples. If, on the one hand, they were following the tradition of conceiving a distinct *ius gentium*, the reason for studying it also seems to be deeply influenced by the political environment in which they found themselves. The world was witnessing a development that was radically changing the international landscape and its order, when the contact with the Other, following the Discoveries, challenged European assumptions, and brought to the fore the need to develop a theoretical framework for peaceful interaction with the recently discovered peoples. And the context in which these authors are considering the existence of such peaceful interaction requires a new perspective that Aquinas could not possibly have had.

Now, Suárez is not exactly a contemporary of Vitoria, and he was not writing in the exact same context as his predecessor. He was born more than half a century after Vitoria, and, therefore, the subject of the Spanish colonial policy in the American continent was not as pressing to Suárez, who was born near the end of Charles V's reign. As John Doyle explains, “[by] the time Francisco Suárez came to address them, the main questions raised by the evangelization of the American Indians were pretty much settled for Catholic theologians. (...) Francisco de Vitoria (...) had laid down what became the common view” (Doyle 2010a, p. 258). Bernice Hamilton also argues that this accounts for the smaller emphasis placed upon the question of the legal and anthropological status of the indigenous peoples by Suárez. Regarding principles, we are, nonetheless, allowed to assume an agreement between Suárez and his predecessors, both from the Dominican and the Jesuit orders: “(...) Suárez, perhaps because the question was less urgent by his time, has less but much the same thing to say” (Hamilton 1963, p. 110).

What Suárez was chiefly dealing with in his study of society and politics was something quite different from Vitoria. He was worried with the increasingly challenging relationship between the Catholics in England and their king, James I. We must, however, stress that some of the principles underlying Vitoria's approach to the treatment of the Indians can be seen in Suárez's works as well.

To grasp the context of Suárez's writings, one must therefore bear in mind not only the historical fact that peoples from another continent, in no way subject to the spiritual power of the Church, and with totally different civilizations, were known to live in a way that could not be called anything other than political, as we have seen, but also that Europe was changing as well. The *Orbis Christianus* was losing its centrality in the political landscape as the Protestant Reformation shook the relationship between Church and State. In some kingdoms, as happened with England, the combination of the two scepters in the temporal monarch was a motive for worry among Catholics in a context where partisans of a divine right of kings regarded sovereignty as absolute, arguably even beyond the temporal realm (Rommen 1950, p. 554).

Such was the international environment that provides the background to Suárez's political thought. Both facts—the non-Christian communities outside the jurisdiction of the Pope and the absolute monarchs that claimed to be endowed with authority directly by God—would have a profound influence on the way that political power was conceived and the way in which its limits were expressed by the Jesuit priest Francisco Suárez, the Doctor Eximius.

Suárez's response to the issues of his day is not, however, merely applicable to the contingencies of his time, nor is it specific to Catholics, but it has a universal trait, as it is based upon enduring principles, just as Vitoria had done before him.

The principles developed by the Catholic theologians of Iberian scholasticism in defense of the indigenous peoples will prove valuable, first of all, to Suárez's theoretical development of topics that were treated in a new light directly as a result of the Discoveries, such as the *ius gentium* and the *ius belli*, both of which Suárez deals with; and then, to other topics such as the natural sociability of human beings and the foundation of politics on a natural state, among others.

Before Suárez, Vitoria was lecturing on the relationship between the indigenous peoples and Europeans and was arguing for a certain equality among them, as opposed to some arguments that were raised at the time—for instance, by Juan Ginés de Sepúlveda—applying the notion of natural inequality developed in Aristotle's *Politics* to the enslavement of the indigenous peoples in the American continent. Vitoria built his argument upon the notion of a natural equality among all human beings and an equal capacity to own property and to govern themselves, regardless of their civilizational status, their cultural attainments, or their adherence to the Christian faith. This interpretation of Vitoria's thought as objective and, in a sense, universalist, although particularly attractive (Scott 2000), is not free from disagreement (see, for instance, Nussbaum 1958).

In any case, these principles will be particularly relevant to understand Suárez's contribution to the notion of limited government through the establishment of the *ius gentium*.

We shall argue here that this concept, within Suárez's political thought, provides elements for the limitation of power, as has been suggested before by scholars (Truyol y Serra 1970; Rommen 1979; Doyle 2010b, p. 318).

Suárez begins his account of the *ius gentium* by putting forward two meanings:

“(.. .) a particular matter (.. .) can be subject to the *ius gentium* in either one of two ways: first, on the ground that this is the law which all the various peoples and nations ought to observe in their relations with each other; secondly, on the ground that it is a body of laws which individual states or kingdoms observe within their own borders, but which is called *ius gentium* (.. .) because the said laws are similar [in each instance] and are commonly accepted⁴”.

He then argues that the first is the most relevant meaning of the term, distinct both from civil and from natural law: the *ius gentium* as a *ius inter gentes*, a law that all the different peoples must observe among themselves, that is, in their mutual relations, and a step in the direction of the concept of *inter-national law*⁵. This is frequently considered, by scholars of international law, to be one of the Doctor Eximius's major contributions to the concept. Truyol y Serra, for instance, notes that Suárez is the one who clarifies the question of the *ius gentium* for the first time with this significant distinction (Truyol y Serra 1970, p. 22; see also Tierney 2014, p. 210; Nussbaum 1958; Rengger 2013, p. 80).

Thus understood, the *ius gentium* provides customary, human norms, and essentially differs both from natural and from civil law. It differs from the first because it is human in origin, created through the gradual establishment of customs, although it exists, not because human beings determine that such a law should exist, but because the political and moral unity of human beings as such requires it. And it differs from civil law, not because it is based on custom, since the *ius civile* does not necessarily take up written form in every instance, but because civil law is specific to a community, whereas the *ius gentium* is a set of norms arising from customs common to almost every nation (DL II, 19, 6–8).

And although, since it is human law⁶, it is not universal in the same strict sense as natural law is (DL II, XIX, 2), it shares with the latter the feature of universality (DL II, XIX, 1). Indeed, all—or almost all—of the world's communities (DL II, XIX, 6) are, in a way, bound by this common law regulating their external relations.

Therefore, it is to the one who has the care of the community and political power over its members that this *ius* represents a limit to the internal power, while it regulates relations externally. As external rules, directives coming from the *ius gentium* should not be

conceived as restrictions, for they are rather part of the right ordering of external relations that allows these relations to flow freely. Instead, it is to the absolute power of princes within a community that the *ius gentium* and the interaction with other communities represent a relevant limit, for the fact that autonomous communities have obligations toward one another limits the scope of what a ruler can do at home. For instance, he cannot, in principle, without reasonable motive, reject diplomatic immunity within its territory or close its borders to international trade (DL II, XIX, 7).

But both of these instances and the whole concept of the *ius gentium* assume the existence of a community (DL II, XVIII, 4), for it is to human beings organized in a society that this law applies. And, in fact, to understand the meaning of Suárez's *ius gentium* as a limit to internal power, one must first bear in mind his concept of a perfect community, or the *communitas perfecta*, a core notion of Suárez's political theory, which can be deduced mainly, although not exclusively, from the *Defensio Fidei* and the *De Legibus*.

The perfect community is to Suárez a self-sufficient society with political power naturally bestowed upon it that has within it the means to achieve its ends, that is, the common good of its members. This community is necessary because, according to Suárez, man differs from other animals in that he was not born with all the means to provide for his life. He is, by nature, a social and political being, created in need of a society within which to attain his ends. Now, this is true of a human being in isolation and of a family, which is a private society, and thus still lacking something that will bring it to perfection, i.e., to self-sufficiency.

It is from the natural evolution of social life (*multiplicatio domorum seu familiarum*) that the inclusion of human beings in a larger community comes about. This autarchic community is endowed with political authority, essentially distinct from the authority of the *paterfamilias* within the family. This is what Suárez calls a perfect community. And although this community may grow in number of members (DL III, I, 3), it is, from its inception, *per-fecta*, that is, finished (from a natural, earthly perspective), and one is allowed to assume when reading Suárez that no other community can be conceived that represents a later stage in the evolution of man's political life, and no other authority can be appealed to by the subjects beyond the supreme ruler of the community.

Since political life is a necessity of human nature, the political community stems from natural law, which requires both the society and the political power in it. It is this distinctively political power, to whom the government of the society belongs, that makes up the unique feature of the perfect community. Such power is not, however, something that is placed upon a ruler after a community is formed, and certainly it is also not divinely placed. It is inherent in such a community and then transferred by it to the specific ruler. Political life is therefore a result neither of positive divine intervention nor of human free will, but it is required in men *ex natura rei*, that is, by nature, independent of any supernatural ends that may be added. As Suárez explains, legislative power "(...) concerns pure natural law (...) [, and therefore] it would have existed among human beings even if they had been created (...) without being at all ordered to a supernatural end"⁷.

Now, political life conceived as such is able to function as an aggregator of all humanity, a crucial step toward the notion of universal human rights, which are thus made independent from contingent factors such as the faith or the cultural and civilizational attainments of the different peoples. Building upon Aquinas' idea of grace as something that perfects—but does not destroy—nature, it is clear that, to Suárez, the absence of faith cannot diminish the essence of political power. It can perfect power and its use, but it cannot make it more or less what it is nor add to or subtract from its legitimacy, according to natural reason.

This is crucial to create an order where each community—in itself and toward others—recognizes that political power is independent from biblical revelation and grounded upon the nature of human beings (DL III, IV, 2). The fact that political power originates in nature and is, by nature, found in each community, as opposed to a power with a supernatural origin, resulting from a divine transfer, implies that every community enjoys

a certain equality toward the other, for all peoples are subject to an unalienable natural law (for further development of this idea in Suárez, see [Elorduy 1965](#), p. CLI). Therefore, when they relate to one another, they are relating as equals, not hierarchically, meaning that one will not be in a position of superiority.

The establishment of an equal legitimacy regardless of faith or culture will open a path for the *ius gentium* to become more relevant in the sense of a law to govern the relationship between nations and thus to our purpose of analyzing the external limits of sovereign action (which supposes the equality of the members of the universal community).

Indeed, the fact that the different perfect communities are autonomous does not mean, to Suárez, that they do not engage with each other. It does not even mean, we shall argue, that the power of one is absolutely independent from the other. Suárez's conception of the autonomy of the political community will affect how he conceives the relationship between states.

In fact, this relationship is only allowed to exist because of such autonomy and independence that render all political communities equal, since all are founded on nature. If, on the one hand, a community is perfect insofar as it can provide for the needs of its members, on the other hand, Suárez states that it is never so self-sufficient as to not require interaction. And, he adds, it is good—even, in a sense, necessary—for each community to relate to one another. This seems to suggest that something of that sufficiency can still be completed or perfected through *international relations*, which are seen by Suárez in very positive terms.

But if the autonomy of the different societies does not result in their isolation, their supremacy does result, in Suárez's view, in the absence of a single power governing all mankind, for no human transfer or divine donation can be found that justifies its presence in a specific person. Suárez rejects the idea that the perfect community he has in mind can, even if theoretically, correspond to the whole world. What we find in the world, de jure and de facto, are several autonomous political entities with no sovereign power above them (*DL III, II, 5–6; DL III, VII, 4*).

But it is not contradictory to argue that each political community knows no political body above it with an earthly power to which it ultimately answers, and, at the same time, that communities need the *ius gentium* ordering them to maintain peace and justice in international relations:

“(…) these statements are not incompatible with what we have already said regarding the *ius gentium*. On the contrary, they serve to confirm those earlier assertions. For even though the whole of mankind may not have been gathered into a single political body, but may rather have been divided into various communities, nevertheless, in order that these communities might be able to aid one another and to remain in a state of mutual justice and peace (which is essential to the universal welfare), it was fitting that they should observe certain common laws, as if in accordance with a common pact and mutual agreement. These are the laws called *iura gentium*; and they were introduced by tradition and custom, as we have remarked, rather than by any written constitution”⁸.

In this international sphere, all the perfect communities appear as equal members generating relations outside one's borders. By promoting this equality, Suárez is merely concerned with a formal equality of these communities and does not address the question that greater actual power in a community implies leverage in international relations. In any case, the fact that the community is not grounded upon supernatural revelation, but upon nature, accounts for equality and will strengthen the role of sovereign entities as such, Christian and non-Christian alike. And it is this benign interaction with other communities that will impose restrictions on the extent of power of sovereigns at home.

Although Suárez does not particularly elaborate on the correlation between his concept of a perfect community and the implications it has for the relationship between peoples, it is clear that such consequences are present in his *ius gentium*.

For instance, recalling his just war theory, some of such consequences become evident. Again, reflecting on the just war tradition was not an idiosyncrasy of our Jesuit. It was common among Christians. Even dating back to the fifth century, we find in Saint Augustine a leading name of the just war tradition, as was Thomas Aquinas, one of Suárez's intellectual masters, in the thirteenth century. But the reality was radically different in the fifteenth and sixteenth centuries.

Suárez's treatment of the *ius belli*, in his *Treatise on Charity*, is a helpful example of the extension of the *ius gentium* beyond Christendom. There, in a section where he asks for the authority to wage war, Suárez recognizes that his theory applies both to Christians and unbelievers, because it is founded on natural law (*De Bello*, sect. II).

This does not necessarily mean a secularization of the concept but rather a universalization of the doctrines that renders it applicable to Christians and non-Christians alike because it rests upon principles common to humanity. This limitation of government by the *ius gentium* is ultimately grounded on the establishment of universal, objective principles that regulate relationships among peoples and later constitute the basis for international treaties or conventions.

We do not mean to argue that the *ius gentium* limits the notion of sovereignty in itself or is antithetical to the political autonomy of states; on the contrary, it requires such autonomy. What it does is place limits on the extent of power of the ruler of such a community.

Given the fact that there are several perfect communities with supreme power in suo ordine—a fact which is made particularly evident through the contact with the indigenous peoples of America—the conditions are met to speak of the *ius gentium* as positive human law, founded upon natural law, that orders the relationships of different communities (Rommen 1979, p. 276).

In this context, the internal and the external realms, that is, what happens within a community and what happens in the relationship among communities, are two overlapping realities, for not only the latter depends on the evidence of the former, but also the existence of several autonomous, sovereign communities—and especially the contact with the Other in the New World—naturally invites reflection on the relationship between them. The rejection of universal dominion, either papal or imperial, by Suárez (as had been done by Vitoria when denying such a title of political superiority toward the indigenous) helps explain the connection between the development of the notion of sovereignty and the reflection on supranational authority. We find, indeed, a rejection of absolute world dominion (*dominium totius orbis*) both in the Pope and in the political sovereign: neither can claim such vast authority for himself.

3. The Two Spheres: Man as Citizen and as Creature

3.1. The Distinction of the Spheres

The other external element capable of limiting a sovereign authority within its proper realm is, as mentioned above, the existence of another authority whose jurisdiction, though in a different sphere, may overlap it.

In the third book of his *Defensio Fidei*, entitled *De Summi Pontificis supra temporales reges excellentia et potestate* (*On the supremacy and power of the Pope over temporal kings*), Suárez sets out to discuss the relationship between the power of the Pope and the temporal power.

The origin and characteristics of the political power discussed by Suárez in the book aim at containing the power of the ruler by arguing against James I's claim of prerogatives that, in Suárez's view, go beyond his proper temporal sphere. Therefore, the definition of the spheres implies a limitation of the extent to which the political ruler can legitimately exercise his power. So, when Suárez thinks of a supreme ruler, i.e., of a sovereign, he thinks of him within certain boundaries. He will therefore set out to understand the relationship between the two realms, temporal and spiritual, as well as the limits to the first that stem from it.

Suárez states from the outset that the discussion between him and the monarch is not “over the absolute power of the earthly ruler, but simply over its subordination, dependence,

and obedience due to the Pope"⁹. As Scorraille explains, the subject of the third book of the *Defensio Fidei* is the comparison between the power of the Pope and that of the earthly rulers, particularly Christian rulers, as such is the case of James I (Scorraille 1911, vol. 2, p. 177). The comparison may be considered under three perspectives: the origin—divine or human; the sphere—spiritual or temporal; and the mutual independence of these powers—either absolute or limited.

In this sense, the degree to which political power may be extended does not depend on human will, be it the will of the sovereign or even of the community. Even if, through the consent of the community, a supreme ruler is established with extensive powers in the temporal realm, his jurisdiction is ontologically limited by the very nature of such power and of the community. The definition of the scope of the two powers is thus indispensable to an accurate analysis of how Suárez seeks to establish the containment of monarchical power.

We shall now see how this limitation is included in Suárez's thought, as he distinguishes between the temporal and spiritual spheres.

Suárez's distinction is to be understood, in the first place, as an answer to the divine right of kings and to the alleged supernatural origin of political power by the king. However, in itself, it would not be satisfactory provided that even James I, whose Oath Suárez seeks to contest, frequently defends such an Oath on the grounds of an absolute separation of the two realms (James I, *Apology*, p. 86). What James I seems to be using as an argument against the Jesuits is not so much an alleged jurisdiction in spiritual matters but rather a radical independence of the spheres and therefore a rejection of the hierarchy among them. This is why James I considers the two briefs of Pope Paul V a usurpation of royal jurisdiction, since the Pope urges the Catholics to resist what he considers legitimate ordinances (James I, *Apology*, p. 72)

Each side thus accuses the other of interfering in matters not pertaining to its respective authority. The best way of interpreting the disagreement is not so much reading into Suárez's arguments a defense of the distinction of two spheres in opposition to its assimilation by the sovereign (although such assimilation may have been seen by the Holy See as a consequence of the king's actions and, before him, of Queen Elizabeth I's *Act of Supremacy* of 1558) but rather recognizing a different understanding of the boundaries of the temporal and ecclesiastical spheres. And this seems to be the reason why each sees the other guilty of usurpation of one's jurisdiction.

This becomes even more apparent if we consider that Suárez himself argues that James I reduces the scope of the Pope's power and that the king fears this power especially when it relates to temporal matters (*DF* III, XXIII, 1; *DF* III, XXIII, 9).

In the beginning of the third book of the *Defensio Fidei*, Suárez argues that James I usurps the title of supreme head (*caput supremum*) in spiritual matters. Later, in the sixth book, he adds that the oath of allegiance "goes beyond (. . .) the [proper] power [of a king] and, as such, is an usurpation of the jurisdiction of another"¹⁰, as, through it, "(. . .) the king demands more than civil obedience"¹¹.

According to Suárez, James I's problem does not seem to be a failure to recognize God and Caesar as heads of two different jurisdictions, as much as it is his questionable perception of what pertains to each: *quae sunt Dei* and *quae sunt Caeseris*. And this is why Suárez asks if, in the Oath of Allegiance, the English subjects are required to commit to more than civil obedience (*DF* VI, I, 8). He then concludes that they are.

Suárez thus thought about the way in which these realms relate to each other in the context of a response to a monarch who, while arguably failing to distinguish their origins (by arguing for the divine right of monarchy) and the nature of their respective powers (by arguing for the supernatural character of royal government), nonetheless grounds his defense of the Oath in a rigid separation of the spheres.

Responding to this peculiar understanding of the relation between the spiritual and temporal powers, Suárez begins by clearly distinguishing one from the other. He emphasizes the fact that they have a different origin, matter, and nature and that they reside in different people, while also showing how these powers relate to one another and how

one must have precedence over the other when they cross each other's paths. Only if this relationship and hierarchy is established can peace be preserved.

We shall thus present the limits on royal power regarding how it relates to the spiritual power in two points. First, we analyze the distinction of the two realms by Suárez as a response to the union of the scepters and to royal interference in spiritual matters. Then, we analyze the theory of the indirect power of the Pope, which is Suárez's response to James I's attempt to contain papal interference in temporal matters, based on an absolute division of the spheres. This theory of the indirect power of the Pope was indeed commonplace among Catholic scholastics such as Vitoria (*De Indis*), Molina (*De Iustitia et Iure*), and Bellarmine (*Tractatus de Potestate Summi Pontificis*), among others.

As to the distinction of the two spheres, Suárez argues that the powers found in them have different origins: one originates from natural, when considered in itself, and human law, when considered in a specific ruler; the other originates from divine positive law, established through the offer of the keys to the kingdom of God to Peter (*DF III, VI, 17*; cf. *Mt 16, 19*). Accordingly, if the one is deduced from natural reason, the latter is the result of a special grant by Christ (*DF III, VI, 17*), which implies that they follow different legal frameworks and have different characteristics (Sommerville 2014, p. 58). One is temporal, the other spiritual; one natural, the other supernatural; one earthly, the other heavenly; and each governs a different aspect of humanity.

Furthermore, these powers govern upon different universes: one governs a concrete community, in a specific space and time; the other governs all Christians of all times, a universal community not limited to a territory. This, in turn, implies that one varies according to circumstances and the other takes one single, stable form (Rommen 1950, p. 546), for, according to Suárez, there is no one temporal ruler to exercise sovereignty over all people, but there are as many supreme rulers as there are perfect communities (*DF III, V, 6*).

But the main difference among these powers is in their respective ends, as *τέλοι* (*teloi*). Whereas political power aims at the peaceful life of human beings as citizens, spiritual power is not content with less than the salvation of souls for eternity (*DF III, VI, 17*). Human beings are directed to both these ends: to the natural end of social life, men are ordered as citizens; to the supernatural end, they are ordered as sons of God.

Considering that to different ends pertain different kinds of happiness (*DL III, XI, 4*; *De Fine Hominis IV, III, 2*), the power of a given ruler cannot extend, as its proper end, to the attainment of a complete happiness of the members of that community (natural or supernatural; present or future), but it can merely set out to deliver the earthly happiness that can be reached within a political community. An action or law that seeks to go beyond these relatively low stakes is not acceptable, implying that the exercise of power by the sovereign is limited to this natural, temporal end. By arguing that it is not suitable that the political ruler looks after the supernatural happiness of the subjects and that there is, outside of the political sphere, another community whose incumbency it is to do so, Suárez clearly separates the political ruler and the laws enacted by him from the spiritual realm (*DL III, XI, 6*).

Political power is, by nature, directly ordered toward the attainment of the present and natural happiness of the political society (*DF III, V, 2*). If a civil ruler tries to do otherwise, he is illegitimately interfering in a sphere that is outside his jurisdiction (*DL III, XI, 9*).

Suárez thus concludes that, since the two powers are absolutely different (*DF III, VI, 17*), and the monarch's power is exclusively temporal, his authority cannot extend to spiritual matters. In the same way, given the intrinsic perfection of the political community and of the sovereignty of its legitimate ruler, the Pope cannot claim a direct jurisdiction over matters of the political realm and thus interfere, on his own authority, in exclusively civil matters (*DF III, V, 9*; *DL III, VII, 12*).

These are, indeed, two autonomous spheres: ecclesiastical power finds its legitimacy in the divine right and the temporal power finds its legitimacy both in natural law, if considered in general, and in human law, if considered in a specific sovereign. They

don't need each other to justify their existence and one cannot diminish or increase the other's legitimacy.

The distinction between the two powers, together with their autonomy, is crucial to the analysis of the external limits to the political ruler by Suárez (Rommen 1979, p. 13).

We thus begin to understand how the theoretical approach of Suárez to the relationship between the two realms of power serves to restrain unlimited political authority within a community, prohibiting the state from dealing with matters that pertain to the sphere of religion. Being each power autonomous, the risk of interference is substantially reduced, while the perfection of the political community is maintained.

Suárez makes clear his understanding of the autonomy of the political sphere by stating that "(...) according to Catholic doctrine, the royal power of the Christian princes is kept intact in all that is in harmony with natural law"¹², as "(...) Christian kings have supreme civil power in their realm [in suo ordine] and (...), within that temporal or civil realm, they do not recognize one that is directly their superior, from whom they depend in the exercise of their power"¹³.

Therefore, when power is vested in a given person or persons, its exercise enjoys total supremacy in its domain and, at least in principle, is independent from the faith of the ruler and from the Church (DL III, X, 2; DF III, IV, 7). Suárez thus argues that "unjust or infidel"¹⁴ kings may be legitimate.

However, and notwithstanding the teleological limitation of political power that has been mentioned, it must be noted that, just as in men the different types of happiness are not totally separable, so too in a community, where natural and supernatural ends may at times overlap.

Indeed, the natural happiness of the community and its citizens may be, not intrinsically, but extrinsically oriented toward a supernatural end without going beyond the limits of its jurisdiction. Therefore, this teleological approach does not hinder all the dimensions of human life to ultimately contribute to the supernatural end of man. But Suárez does maintain that that is not the proper end of political power, and it is certainly not what legitimates its action.

Furthermore, the action of the sovereign may be such as to harm the prosecution of the supernatural end. Now, the fact that this overlap may occur requires a hierarchical ordering of the two spheres in order that peace is maintained (DF III, XXII, 7). This has inevitable implications in the relation of the two spheres and especially in the doctrine of the indirect power of the Pope (*potestas indirecta*), where both dimensions appear in their hierarchy—at least to some extent.

3.2. Superiority of Ecclesiastical Power

Having established the difference between the two powers, Suárez then developed his thought on the relationship between the powers, arguing for the superiority of the spiritual over the temporal. This is where an external limit to the political power becomes once again clear, for although the bond between the community and its sovereign is, in principle, permanent, it is not so without restrictions (DF III, IV, 9).

Among those that belong to the city of God, some inhabit the world, where they live in political communities, either as subjects or as sovereigns. And every time that overlap occurs, the spiritual sphere must prevail. And this is so because of the higher end of spiritual power.

The subordination of one power to the other is thus a reflection and consequence of the subordination of ends. In this context, the indirect power of the Pope appears as a realization of the theoretical recognition of such superiority (DF III, V, 2). In fact, one of the clauses of the oath established by James I was the condemnation of this doctrine of the indirect power, and therefore, by not considering such an oath a usurpation of the obedience due to the Pope, the king ends up championing a virtually unlimited power, at least as regards this external limit.

Suárez, on the other hand, argues for the indirect submission of the Christian king to the Pope by virtue of the superiority of spiritual power. This doctrine is not something unique to Suárez (*DF III, IV, 7*), but it is commonly found among the theologians of the time.

Since the power of the Pope, according to Suárez, can only be directly applied to Catholics, he cannot claim any direct dominion over an infidel king. Such dominion would be witnessed, for instance, through the power of excommunication, a penalty that belongs to the spiritual realm and is within the scope of papal power, applying to all the baptized. Now, as regards the infidels, the Pope has no such power as he has over the baptized.

This also means that it does not fall within the scope of the Pope's power to oust a legitimate political sovereign grounded on the latter's infidelity. The Pope may only free his subjects from this yoke by making use of an indirect power and by presenting significant spiritual motives, that is, if, for instance, a greater danger may come about for the faith of the spiritual subjects of the Pope.

Of course, James I could not accept that his kingdom was somehow indirectly submitted to the Pope, who claimed authority to intervene in special situations. And even though such authority, according to Suárez, resembles political influence, it will inevitably be spiritual, because the Pope does not have a direct temporal power over the members of the Church (*DL III, VI, 3*), for it is not possible, Suárez argues, to imagine any just title that legitimates a direct temporal jurisdiction over the members of the Church in the Pope (*DF III, V, 11; DF III, V, 20*).

It seems, then, that both Suárez and James I reject the existence of political authority over Catholic subjects vested in the Pope. But the main issue of disagreement between Rome—and the Catholic late scholastics—and the king persists: whether the latter has a power so supreme that no indirect submission to a spiritual authority is conceivable.

Asking how the submission of the ruler to a higher power can be reconciled with the supremacy (*DF III, V, 1*), autonomy, and independence of the temporal sphere, Suárez's response is that such supremacy must be understood merely in human terms, meaning only that the sovereign has no superior on this earth (*DF III, V, 1*), thus excluding submission to God. Thus, the supremacy is understood as referring to the temporal realm (*DF III, V, 1*) and, as such, the supreme ruler of a community is supreme only as regards the remaining public authorities within that community. Supremacy, in this sense, implies merely the absence of any direct submission, that is, within its realm (*I III, V, 3*).

This is precisely where disagreement seems to arise between Suárez and James I, whom the Jesuit accuses of reading this supremacy as both civil and spiritual, since the "king of England (. . .) does not want to be subject to anyone on earth, even in spiritual matters", which the Doctor Eximius considers to be "against (. . .) Christian obedience"¹⁵.

Now, to Suárez, since the Pope has a direct spiritual power over the Catholics, who are in turn submitted to temporal rulers, because of their ordination to a higher end (*DF III, V, 2*), and since the spiritual power of the Pope is ordered to a higher end, he has also indirect power over the king whose subjects are baptized—a power with political implications but not political in itself—through which he can legitimately protect Catholics from what he deems an excessive reach of the civil laws.

This principle is to Suárez an invaluable tool to protect Catholic subjects against sovereigns (*DF III, XXIII, 21*) that are otherwise not subject to the Church, neither spiritually nor temporally, *de jure* nor *de facto*, and over whom the Church has, of itself, no jurisdiction (*DF III, IV, 8; DL III, 6, 3*). But it does not apply to a publicly secularized community, composed of non-baptized subjects and sovereign, because it is through baptism that Christians submit themselves to this power.

Notwithstanding, before an act of tyranny done by a pagan monarch over pagan subjects, the obvious action left to the Pope, as to any other men on earth, is to make use of the right—sometimes even duty—to defend the innocent, which, under certain circumstances, legitimates interference in the internal affairs of another community. He may do so on the basis of natural reason and the equal dignity of all human beings.

However, in such an instance, what is protected is not properly the faith but the bodily integrity of the subjects.

It may thus be argued that the theory of indirect power of the Pope rejects the presence of spiritual power in a monarch and, at the same time, the presence of temporal power in the Pope, for no one sphere has universal domain (Höpfl 2004, p. 350). This is also the spirit of Bellarmine's doctrine (Bellarmine, *De Summo Pontifice* V, I.).

In this context, God and Caesar are not, to Suárez, symbols of two absolutely independent, almost mutually exclusive jurisdictions that never need one another. We are thus allowed to take the words "Give unto Caesar what belongs to Caesar and to God what belongs to God" (Mc 12, 17) a step further, for, according to the Jesuit's response to the monarch, what is God's—*quae sunt Dei*—would greatly surpass what is Caesar's—*quae sunt Caesaris* (DF III, XXII, 5).

This doctrine thus functions as a tool that, in certain circumstances, conceives an external power, outside of a given community, with enough earthly authority to punish the king for failing to live up to his duty. The hierarchical ordering of the spheres means that the king is not totally unbound but may be subject to papal coercion for the benefit of the Catholic subjects and the protection of faith in the community. This power is, however, not only specific to the circumstances we have seen, but also, Suárez recognizes, rarely used, so that greater scandals can be avoided.

This notion of indirect power must also be interpreted in light of a relevant implication in matters pertaining to religious freedom. Within this doctrine, the members of the Church secure their freedom, within the State, to express their faith, which takes the form of a warranty that civil obedience will be in accordance with the rights of the Catholics to attain their proper end and with divine right.

But the focus is not on individual religious liberty. Suárez highlights the right of Church to free her subjects from obedience to a temporal ruler in case certain excesses are attempted by the latter in matters of religion. What Suárez protects is the right of the Catholic Church to look after the salvation of the souls of her subjects when that is hindered by the obedience to a civil law. This does not, in turn, mean that the Pope is superior to the king per se. It only argues that, if faced with the need to choose between an order of a political ruler and that of the Pope, the subject must choose the latter in what pertains to the spiritual realm.

In the context of an imposition of penalties to Catholics, religious freedom becomes a safeguard against the excesses of absolute political power, as required by the specific circumstances in which Suárez writes. As Sabine explains, "as a defense of the right to resist came naturally from a party in opposition to what it regarded as a heretical government, so the indefeasible right of the king was defended by those who were on the side of a national establishment and against a threatening opposition" (Sabine 1961, p. 391).

But we must bear in mind that Suárez's arguments are not based on special privileges of the Church but on universal principles and that he is part of a tradition that condemns evangelization through violence and paganism as motive for war against a people.

Beyond and regardless of the circumstances, the principles developed by Suárez, as well as by other Iberian scholastics of the same school, greatly contributed to the defense of liberty through the separation of powers and the conception of an ordered relationship between communities, both working as external instruments of limitation upon internal political authority.

4. Conclusions

From what is analyzed above, it is clear that the relations among theoretically equal communities, ordered by the *ius gentium*, and the hierarchical relation of spheres, although not sufficient in themselves, help cast light on the reading of Suárez's conception of government as limited.

This is inevitably so because, first of all, communities cannot live in isolation and therefore engage in relationships that call for ordering principles. The respect for common

rules in these relations, as well as the right of assistance to those outside one's jurisdiction on the grounds of belonging to a common humanity, will limit what any sovereign can do at home, even one to whom power was transferred in its entirety. It does not hinder the daily exercise of his power, but it imposes certain restraints.

The second reason is that human beings have different and, at times, overlapping ends. What exists besides the perfect community is not only other similar communities; there is also the Church, with a certain power over the conscience of Catholic subjects of any given ruler, meaning that the political power is confined to the limits of its jurisdiction (Cujou 2015).

It may, therefore, be envisaged that the existence of other political communities and of a Church outside the temporal realm imposes, from the outside, two main limits to the exercise of sovereignty within the community.

The first is that a sovereign cannot act in disregard of human dignity. Even if the subjects have no way to resist or fight against the sovereign, there is a right of foreigners to uphold the respect for human dignity. The second is that the public expression of one's faith is granted to all within a community, and its ruler cannot forbid it without reasonable grounds for that.

These two important points are not sufficient in themselves to provide an interpretation of Suárez's thought as a proponent of a limited government. But they are important elements of that characterization that will certainly enrich the discussion of any debate about Suárez's political legacy.

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Abbreviations

DF *Defensio Fidei*

DL *De Legibus*

Notes

- ¹ A detailed chronology of Suárez's life can be found in Scorraille (1911, pp. XIX–XXI). All the dates regarding Suárez' biography in this paper follow this chronology.
- ² References to these and other works by Suárez will not name the author or date of publication, but only the name of the work (or its abbreviation) and the book and section within it, so that references are easily found across different editions.
- ³ "El descubrimiento y conquista de América por los españoles da origen al derecho internacional moderno". (Ramos 1984, p. 7).
- ⁴ "(...) duobus modis (...) dici aliquid de jure gentium: uno modo quia est jus quod omnes populi et gentes variæ inter se servare debent; alio modo quia est jus quod singulæ civitates vel regna intra se observant; per similitudinem autem et convenientiam jus gentium appellatur". DL II, XIX, 8. English translation from *Selections*, p. 401.
- ⁵ On this, see Rommen (1979, p. 275).
- ⁶ On the distinction between the *ius gentium* and natural law, see DL II, XVII–XIX.
- ⁷ "[Potestas legislativa] (...) pertinet ad purum jus naturale (...): unde futura esset in hominibus, etiamsi crearentur (...) sine ullo ordine ad supernaturalem finem". DL III, X, 2.
- ⁸ "Per hæc autem non excluditur quod supra de jure gentium dicebamus: imo potius inde confirmatur: nam licet universalitas hominum non fuerit congregata in unum corpus politicum, sed in varias communitates divisa fuerit; nihilominus ut illæ communitates sese mutuo juvare, et inter se in justitia et pace conservari possent (quod ad bonum universi necessarium erat), oportuit ut aliqua communia jura quasi communi fœdere et consensione inter se observarent: et hæc sunt quæ appellantur jura gentium, quæ magis traditione et consuetudine quam constitutione aliqua introducta sunt, ut diximus". DL III, II, 6. English translation from *Selections*, pp. 434–35.

- 9 “(...) de absoluta temporali regis potestate nulla lis aut controversia mota [est], sed solum de illius ad Romanum Pontificem subordinatione, dependentia, ac debita obedientia (...)”. *DF III, Proemium*.
- 10 “[Hoc iuramentum] (...) multis modis excedit potestatem [regis], et ita est (...) alienae jurisdictionis usurpatio”. *DF VI, IV, 21*.
- 11 “(...) [apertissime constat, regem] (...) non solam obedientiam civilem (...) exigere”. *DF VI, IV, 21*.
- 12 “(...) potestatem christianorum principum in his omnibus, quae juri naturali consentanea sunt, sartam tectam juxta catholicam doctrinam servari (...)”. *DF III, V, 3*.
- 13 “(...) reges christianos habere potestatem civilem in suo ordine supremam, nullumque alium recognoscere directe superiorem intra eundem temporalem seu civilem ordinem, a quo in actibus suae potestatis per se pendeant”. *DF III, V, 6*.
- 14 “(...) [principes] iniquos vel infideles (...)”. *DF III, X, 1*.
- 15 “(...) [rex Angliae] enim nemini in terris subesse vult, etiam in spiritualibus, quod nos contra fidem et obedientiam christianam esse credimus (...)”. *DF III, V, 1*.

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