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Suarez on Authority as Coercive Teacher

Thomas Pink

1. Coercive authority – a modern theory

Coercive authority is the authority to issue directives which obligate conformity to them, and to enforce those directives on the unwilling by threats of punishment. What does coercive authority really involve, and what is its basis?

Modern political philosophers characteristically assume that coercive authority is civil, and that its sovereign form is the authority of the state. State authority is not natural, in the sense that it is entirely the product of human artifice. The existence of state authority and the consequent obligation to obey its directives is the product of human agreements or at least conventions that have arisen to meet fundamental human needs for sustenance and security – needs that humans generally, whatever their particular cultures, moral views or religious beliefs, depend on satisfying, and which they will be highly motivated to meet. These are vital ends that individuals could attempt to pursue for themselves, but which they cannot just as individuals easily attain, due to their profound dependence on cooperation with others, the difficulty without a single directive authority of cooperation in large groups, and due to the vulnerability of individuals and small groups to the ill will and aggression of others.

The state enables these ends to be attained, by providing the coordinatory direction that complex forms of cooperation require, and by threatening the ill-disposed with force and punishment. The required coercive legal direction works by addressing the *voluntary* – what is subject to the will, and so what can be done or omitted on the basis of a decision so to act, just as a means to conforming to

whatever the law requires.¹ For example, the law may make legally obligatory what was morally obligatory already, adding fear of punishment to motivate doing what is anyway right. The otherwise ill-disposed are motivated to conform out of a desire to avoid punishment. But such fear of punishment can only motivate compliance, it is natural to suppose, if the punishments attach to the voluntary – to what can be avoided at will, just on the basis of a decision to avoid punishments. Or else the law may make legally obligatory what was not morally obligatory already, engaging a prior moral obligation to cooperate by making a specific means – such as conformity to a particular traffic system – salient as the one for all to follow. Here again conformity depends on a capacity to do whatever the law requires at will, because the law requires it, in this case so as better to coordinate our action with those of others.²

Because of our urgent need for it, state authority may be justified as something that any reasonable person would agree to. Not only conformity to legitimate state authority but individual rights to liberty that limit that authority may also be justified simply in terms of such reasonable agreement. Moreover, just because the state is not only a product of human artifice, but is produced by basic forms of human desire that are universal, the reasonableness of agreeing to its authority can be explained without having to appeal to any controversial metaphysics or morality of the self. The theory of the state can appeal to a political reason detached from metaphysical or ethical controversy.³

On some theories, all people subject to state authority are supposed actually to have agreed to it, the obligation to obey the state being a case of promissory obligation.⁴ On the supposition of an actual promise or contract, the authority of the state might be explained in terms of some transfer of rights to the state by individuals, or some surrender of them in the state's favour. Of course this attempt to explain political obligation as a case of promissory obligation was the object of famous and penetrating criticism by David Hume.⁵ But Hume still shared a fundamental conception of state authority with the appeals to actual contract that he attacked. State authority involves no form of right that could not also be exercised by individuals, and simply facilitates the satisfaction by individuals of vital needs. State authority arises through human conventions as no more than an effect of individuals' motivation to avoid conflict and to facilitate cooperation.

¹ I here use the term 'voluntary' in Hobbes's sense of what is generally subject to a will – what can be done on the basis of a decision to do it as means to any desired end.

² For a highly influential development of this view of law as regulative of the voluntary, see Herbert Hart's conception of law as a 'fair choosing system' in 'Legal responsibility and excuses' in *Punishment and Responsibility* (Oxford: Oxford University Press 1968) 28-53.

³ Consider the Rawlsian idea of a theory of justice as political not metaphysical.

⁴ A view associated with Hobbes and Locke.

⁵ David Hume, 'Of the original contract' in Eugene F. Miller (ed) *Essays Moral, Political, and Literary* (Indianapolis: Liberty Fund 1985), 465-87

Suarez too saw political authority as the product of something like human consent or convention. Suarez also postulated a human need for the state as underlying its emergence and justifying its authority. This has led some to wonder how far Suarez might be viewed as a herald of modern political theory, perhaps as a pioneer of that theory in its contractual form. According to Quentin Skinner, Suarez and other Jesuit writers initiate in their political writings a method which

...helped to lay the foundations for the so-called 'social contract' theories of the seventeenth century. It consists of giving an account of the sorts of lives we might be imagined to live if we made no attempt, as John Locke was later to put it, 'to get ourselves out of a condition of mere nature.'⁶

But Suarez was not a pioneer of the social contract theories of seventeenth century writers such as Hobbes and Locke. This is because Suarez does not view coercive authority as an ultimately political phenomenon, or seek to understand its basis in exclusively naturalistic terms, as Hobbes and his successors did - as a product of ordinary causation, arising through human artifice, the effect of a human motivation to meet need. Suarez's very different conception of the function of the state was instead entirely based on an equally distinctive late scholastic metaphysics of reason and rationality – a metaphysics that did not survive Hobbes into the later seventeenth century English-language contractarian tradition. Suarez as political theorist has to be read as Skinner does not read him – through the Suarez of the *Metaphysical Disputations*, and the account given in the *Metaphysical Disputations*, within the framework of Aristotelian causation, of power or force.

Hobbes is a far more plausible herald of modern political theory. Central to Hobbes's project is indeed an account of earthly coercive authority as the product of human interaction to meet basic need, and the identification of sovereignty with the state. There cannot be any coercive authority exercised by humans that is not state authority or authority derived therefrom. In particular, if there is a Church, she cannot be a locus of a distinct form of authority sovereign over religion that limits state authority to an order that is purely civil. The Church may have the authority to teach. But she cannot on her own authority coercively direct.⁷

There is an obvious link between a conception of coercive authority as exclusively political in nature and the view of it as a simple product of human artifice. If there is a form of coercive authority that is ultimately ecclesial, as part of a religion that really is divinely instituted and true, how can the nature of coercive authority lie in being a product of human artifice?

⁶ Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge: Cambridge University Press 1978) volume 2, 159

⁷ I discuss Hobbes's attack on the very idea of the Church as a coercive *potestas* in Thomas Pink 'Suarez and Bellarmine on the Church as a coercive lawgiver' in *Legge e Natura: I dibattiti teologici e giuridici fra XV e XVII secolo* Riccardo Saccenti and Cinzia Sulas (eds) (Arrocia: Aracne editrice 2016) 287-332

But for Suarez of course coercive authority did take a form that is distinctively ecclesial. Not only is the Church a sovereign authority alongside the state, but on Suarez's account the nature and operation of coercive authority in each case of Church and state is fundamentally alike. Far from being a mere product of human artifice, coercive authority is divinely willed and instituted, and its function is to enable us to attain ends proper to forms of our nature that have also been divinely given.

All this reflects a very distinctive view of coercive authority in general, and of political authority in particular. The state, at the level of nature, directs the civil sphere, but not simply by coordinating cooperation and using fear of punishment to motivate the ill-disposed. Just as the Church is a divinely provided conduit for a kind of supernatural normative power – divine grace, a power that is normative in that it moves us towards the true and good – so the state is a divinely provided conduit for a kind of natural normative power – the power of reason as it concerns the good of a community. And just as the Church as conduit of grace teaches on its behalf, by an authority that is divinely given her, so too does the state teach as a conduit of reason, and by an authority that it too has been divinely given. In fact the state's authority to punish is one aspect of a more fundamental authority to teach. The state is a coercive teacher, with the capacity and right to direct and impose sanctions not just on voluntary actions but also on belief – an attitude that we cannot form or abandon at will simply out of fear of sanction, or the better to coordinate our actions with those of others.

But if the state has affinities to the Church, so too the Church is also like a state. The church is a sovereign coercive authority in matters of religion. She has a jurisdiction she can enforce and protect that is determined by baptism, with an authority that just as in the case of the state also extends beyond the straightforwardly voluntary to the direction of belief. As with the state, the Church's authority to teach includes and can operate through an authority to punish. Nor is the Church's authority to punish restricted to the use of exclusively spiritual means. To enforce her direction, the Church has the right to use punishments that are temporal as well as spiritual. Not only are Church and state supernatural and natural versions of coercive authority in underlyingly similar forms, but they must operate together. The fulfilment of the Church's mission, and the proper functioning of the state will require a union of the two to form a single Christian community as in a single person, with the state standing as body to the Church's soul, so that the Christian flock may be truly one – a single community directed by two sovereign *potestates*, each in ordered harmony with and supporting the mission of the other.

2. Law – obligation and the right to liberty

Central to Suarezian political theory is a wider theory of man as bearing the image of God – as possessed of highly distinctive forms of psychological capacity - and through that image exercising or being subject to forms of power that are different from ordinary causation. This image and these forms of power make law possible, and with law, our subjection to coercive authority in its various forms.

By *power* I mean a very specific capacity – the capacity to produce or prevent outcomes. A brick hits a window; and the brick, or the event of its hitting the

window, has the capacity to produce an outcome – that the window breaks. We think of the brick as involved in exercising power or force, to which the window is subject, and through which it is changed. Much contemporary philosophy supposes that all power is just like this ordinary case of causation. If psychological occurrences, such as human motivations, are produced through any exercise of power, they too can only be effects of the same ordinary causation that operates through bricks to break windows. We find this conception of power as just ordinary causation being pioneered by Hobbes.⁸ This conception of power as no more than ordinary causation is fundamental to his political theory.

But in Suarez not all power is ordinary causation. Even if a power is classed by him as a form of efficient causation, it may operate quite differently from ordinary causes as we now understand them. And the same very much holds for power as a form of final causation, as we shall see. These distinctive forms of power are central to the proper functioning of the special psychological faculties that constitute our bearing the image of God. The entire political theory presupposes this psychology. The state, and indeed the Church as well, both make happiness possible by facilitating a proper exercise of, or responsiveness to, these special forms of power.

Fundamental to what is distinctive of human nature is our possession of a power of freedom, and what that power of freedom presupposes, our capacity to be directed by and moved by reason – our responsiveness to what I shall term normative power.

Freedom as understood by Suarez is a form of efficient causation. But it operates quite differently from ordinary forms of efficient causation. Ordinary efficient causes, such as bricks, necessitate the effects that they produce. If a brick, when thrown at a window, has the power then to determine that the window breaks, it must under those circumstances break it. An ordinary cause's presence with the power to determine an outcome, given that all circumstances required for that power's successful exercise are met, guarantees that power's exercise to produce the outcome determined. An ordinary efficient cause is rather like a cog, guaranteed to operate automatically under given circumstances by its very possession of its power then to determine an outcome. But freedom is efficient causation in free or contingent form. Here the free agent's possession of a power to determine an outcome does not necessitate its exercise. The power's exercise is up to its possessor, and it is contingent whether or how it will be exercised. That is how freedom can take the form of a power under a given set of

⁸ See, among other texts of Hobbes, *The Questions Concerning Liberty, Necessity and Chance, clearly stated between Dr Bramhall Bishop of Derry, and Thomas Hobbes of Malmesbury*, (London 1656) and Jean Jacquot and Harold Whitmore Jones (eds) *Critique du De Mundo de Thomas White* (Paris: J Vrin 1973)

I discuss the debate about power and causation in more detail in Thomas Pink 'Agents, objects and their powers in Suarez and Hobbes' in Constantine Sandis (ed) *The Theory of Action from Suarez to Davidson* (London: Routledge, forthcoming)

circumstances to determine more than one outcome, so that more than one way of acting can be within the agent's power.⁹

Freedom is a power located in the faculty of the will – a practical faculty of motivation that, like the accompanying theoretical faculty of the intellect, is immaterial, not located in any bodily organ, and that will survive bodily death. While the intellect is the locus of rational cognition, the will is the locus of deliberate human action, whereby through taking decisions or making acts of election or choice, we immediately direct ourselves to the attainment of goals, goals that will subsequently be attained through the actions decided upon that occur, in other psychological capacities or through limb motions and the like, on the basis of our having decided so to act.¹⁰

According to Suarez, humans can only possess the power of freedom, to determine for themselves how they act, because they are responsive to another power that is also quite different from ordinary causation. This further power I shall term *normative power*. It is the power of reason to move us with the force of truth in the exercise of the intellect or with the force of goodness in the exercise of the will.

Philosophers nowadays use the term 'normativity' to mean the property that many standards, such as moral standards, have to call on us to meet them, and to provide a basis of criticism of people for failing to meet them. Normativity has two importantly distinct aspects. The first aspect is appraisive, allowing for people and their characteristics to be appraised positively or negatively. In morality moral standards allow for the appraisal of people and their characteristics and actions as morally good or bad, as virtuous or vicious. The second aspect is directive. Standards that are normative guide and direct us, addressing a capacity on our part to respond to that guidance and direction. To the extent that we are responsive, normative standards move us to form certain attitudes and to perform certain actions, and to avoid forming other attitudes or performing other actions.

Where morality is concerned, these directive and appraisive aspects of normativity are intimately related. If I say to you 'It would be very bad of you to do that' I am both conveying a standard of moral appraisal – that action would be morally bad – and using that standard to direct you against the action's performance. Moreover, I am conveying a very strong form of direction; I am implying, or so it seems, that you are under some kind of moral obligation or duty not to perform the action. If it would be very bad of you to do something, then

⁹ See *Metaphysical Disputations*, disputation 19 in Francisco Suarez, *Opera Omnia* Charles Berton (ed) (Paris: Vives 1856-66) volume 25, 687-745. For detailed discussion of the metaphysical questions raised by this theory of freedom, and by Hobbes's sceptical attack on the very possibility of power in this form, see Thomas Pink *Self-Determination (The Ethics of Action, volume 1)* (Oxford: Oxford University Press 2017).

¹⁰ For detailed discussion of Suarez's theory of action see Thomas Pink 'Suarez, Hobbes and the scholastic tradition in action theory' in Thomas Pink and Martin Stone *The Will and Human Action: From Antiquity to the Present Day* (London: Routledge 2004) 127-53

doing it would surely be wrong – a breach of obligation. Any moral theory needs to explain how moral direction and appraisal are so intimately related, and how both are possible, and moral direction in particular.

Suarez and his tradition take quite seriously the capacity of moral standards to direct and move us. This capacity to move us is a power – a capacity to produce outcomes. It is a power of reasons or justifications to produce the attitudes and actions justified, a power to which we are susceptible through our capacity for reason.

The power of reason is normative in that it is constituted by a form of normative ground or value, truth in the theoretical sphere and goodness in the practical sphere, and serves to produce psychological states of belief and will or motivation that are justified in terms of those values. The power operates through the objects of thought, the bearers of the value, which are to be the objects of the beliefs and motivations justified. Potential objects of belief move us to believe them through their apparent truth. Potential objects of motivation or will move us to desire or decide on and intend them through their apparent goodness.

In the case of theoretical reason that is productive of belief the power exercised by the object is a form of efficient causation. But in the case of practical reason that is productive of motivation, the cause, the potential object of desire or will, operates without being something actual as an efficient cause must be. As a potential object of desire or decision and intention, the cause moves us not through its apparent truth or actuality – as something desired or aimed at as a goal, it is not yet actual and may never be – but through its apparent goodness. We are moved by reason to decide on and pursue goals through the goodness that would arise through attaining them. Practical reason involves being subject to the power not of efficient but final causation – a power operating with the force of goodness through objects of our thought that are merely that, and not yet, if ever, actual features of the world.

For there is here a difference between an end and the object of a cognitive power. For the object of a cognitive power contributes to the power's act as an efficient cause, through the medium of some real form by which it is joined, or through its own being if it can be united to the power through that. But a good presented to the will only contributes to the act as a final cause, since it only moves the will metaphorically through attraction, as something cognitively presented even if it does not otherwise exist in reality.¹¹

In the practical sphere, the object – a *finis* or potential end or goal of action - that as final cause carries normative power is purely mental, so that the motion imparted by it, as not involving efficient causation, is termed metaphorical. But this term 'metaphorical' does not imply that the motion is not real. The term is only used to differentiate the motion from causation that is efficient. The power of a final cause is still a genuine form of power, and is just as productive of outcomes as any other power, that of ordinary causes included.

¹¹ Suarez, *Metaphysical Disputations*, disputation 23, section 4, §9, *Opera Omnia* volume 25, 862

This motion is a genuine feature of reality; for it is not something imagined or made up by the intellect; and it is a kind of causality, since it is an origin of operations that are real; so the end [*finis*] is a true and real cause.¹²

And the productive force exercised is that of goodness:

So on this matter it appears to be the common agreement of all the learned that goodness is the immediate basis by which an end moves; so goodness is what constitutes a final cause, imparting (as I shall put it) force to the causation.¹³

The motivating power exercised by final causes can even impose necessity. This it will do at the beatific vision of God when his perfect goodness will engage with our rationality to remove the freedom to refuse him. Our rationality involves a susceptibility to the good, and so to the power of final causes - and so a peculiar susceptibility to the goodness of God himself as our ultimate end. At the beatific vision, in relation to God himself, final causation will take a necessitating form.

But since the matter is theological, I respond briefly, granting that those acts do arise from final causation...But nothing prevents them from being necessary, on the contrary I said earlier that the necessity of that love arises from God as clearly seen, as the ultimate end, whose supreme goodness is so powerful in causing even in its kind as to subject the will wholly to itself. Moreover that necessity does not arise from any imperfection or irrational mode of operation, but rather from the supreme perfection both of the ultimate end itself and of the mode of applying that end to move the will through the most perfect rational or intellectual cognition, and so nothing prevents that motion of the will, though necessary, from being through genuine final causation.¹⁴

¹² Suarez, *Metaphysical Disputations*, disputation 23, section 1 §8 *Opera Omnia* volume 25, 845

¹³ Suarez, *Metaphysical Disputations*, disputation 23, section 5 §2 *Opera Omnia* volume 25, 864.

Contrast Hobbes, for whom ‘goodness’ does not refer to a normative power productive of motivations, but serves simply to express motivations – passions or appetites – that are already present as effects of ordinary naturalistic causation:

But whatsoever is the object of any mans Appetite or Desire, that is it, which he for his part calleth *Good*; and the object of his Hate, and Aversion, *Evill*; and of his Contempt, *Vile* and *Inconsiderable*. For these words of Good, Evill, and Contemptible, are ever used with relation to the person that useth them: There being nothing simply and absolutely so; nor any common Rule of Good and Evill, to be taken from the nature of the objects themselves; but from the Person of the man (where there is no Commonwealth); or (in a Commonwealth), from the Person that representeth it; or from an Arbitrator or Judge, whom men disagreeing shall by consent set up, and make his sentence the Rule thereof. Thomas Hobbes *Leviathan* Noel Malcolm (ed) (Oxford: Oxford University Press, 2012) volume 2, 80-1

¹⁴ Suarez, *Metaphysical Disputations*, disputation 23, section 3 §17 *Opera Omnia* volume 25, 856

Less perfect forms of goodness, those that attract us in this life, may reduce the indifference on which freedom depends. But they never remove that indifference entirely and preclude the power of freedom from operating. In this life, we remain strictly free not to decide on an object of thought and intend it as our goal, even when it and its goodness are clearly presented us:

In this we can discern a great difference between the will and the intellect, for the intellect cannot be undetermined in relation to its own act unless because the object has been imperfectly presented to it. But the will can be indifferent in relation to an object's capacity even when that object is exactly presented to it.¹⁵

The free will may be influenced by the attractive power of a clearly presented good; but it is not determined by it as the intellect is determined by a clearly presented truth. This is because we are dealing here with forms of normative power, and the normative grounds, 'the merits of the object', that truth and goodness provide are importantly different:

And a yet more a priori reason can be taken from the difference between the objects of the intellect and of the will. For truth is the formal object of the intellect; and in one and the same object there cannot be both truth and falsehood, since truth consists in something indivisible, as discussed above, and so both in itself and in respect of the merits of its object, the intellect is determined to one regarding the specification of its act. For which reason, if the intellect is sometimes not sufficiently determined, that is only because its object is not sufficiently presented or apparent, not in truth because of some internal power and control that the intellect itself has over its own act. But the good is the object of the will; however, one and the same object can be at once both good and bad, or fitting and unfitting, in different respects or under different aspects, and so even given a perfect presentation or cognition of the object, the appetitive power can be indifferent regarding its specification in relation to pursuit or rejection of such an object. So indifference with respect to specification is not found in itself or formally in the intellect but in the will.¹⁶

For Suarez, as we now see very clearly, psychological theory is inherently normative in content. Fundamental to the explanation of human attitudes and actions is the operation of normative power, a force of truth or of goodness to which we are susceptible to the extent that we are rational. Reason provides a form of power capable of producing and explaining attitudes within us. This conception of reason as actually moving us is not peculiar to scholasticism, but is a deep feature of common sense psychology. We readily use a vocabulary of power and determination to pick out normativity as well as causation. We talk of being moved by the *force* of an argument. The force of an argument may even be *compelling*. And we use this vocabulary of force just because we think of good arguments as really possessing the capacity to influence or move or even to determine our assent - and to move or determine it through the justifications they present. Our capacity for reason or rationality is a capacity to be moved by argument - and by the normative force of an argument in particular. So reason or

¹⁵ Suarez, *Metaphysical Disputations*, disputation 19, section 5 §15 *Opera Omnia* volume 25, 716

¹⁶ Suarez, *Metaphysical Disputations*, disputation 19, section 5 §15 *Opera Omnia* volume 25, 716

rationality involves responsiveness to a kind of power - the power of good argument and genuine justification.

It is tempting for modern philosophers to dismiss this talk of normative power as mere metaphor, just because the power envisaged seems so clearly not to be ordinary causation. Understood literally, the power operates, after all, only through objects of thought, and its force is not some physical quantity, but a form of value. We have here, it might be alleged, not commitment to a real form of power, but only a manner of speaking. But there is an obvious difficulty with this defusing approach. Power follows from a genuine capacity to determine or move or influence. And surely we think it true that the very quality of an argument can be what moves people to assent to it. But for that to be true the quality of an argument must actually have a capacity to move – to produce real psychological changes such as assent to a conclusion. Good arguments must have genuine force - a power that is not that of ordinary causation because located in the normativity attaching to objects of thought, but which is a genuine capacity to produce outcomes nonetheless.

Practical argument, in particular, is no exception. To have a capacity for practical reason is to have a capacity to entertain objects of thought – possible goals of action – and understand them as genuinely good, and so as justifying action directed at their attainment. When a rational human responds by pursuing the goal in action, it is the fact that the response really is justified – that the goals really are desirable or good - that moves them so to respond. They are moved to respond by the goodness of the object; and their rationality is their susceptibility to being so moved

In the case of decision and intention, Suarez proposes another distinctive feature of normative power in its practical form, as it involves the force of goodness. It can take the peculiar form of directive *law*, imposing obligations on us to act – to decide and intend as directed. Obligation for Suarez, as for the rest of his tradition is a demanding *vis directiva* – literally, a directive force. And it directs the exercise, through actions of the will, of the power of freedom.

Furthermore I add, speaking of law proper, of which we are now treating, that it can only apply to a rational creature: for law is only imposed on a free nature, and only has free actions as its matter...¹⁷

What is the nature of obligation as a special form of directive power, and how is it tied to governing the exercise of the power of freedom?

Law is a directive power – a *vis directiva* - the force of which has to be understood by reference to the moral appraisal which asserts that force to those who are unmoved by it and disregard it. This moral appraisal is moral blame. Moral blame asserts a fault in the agent's action – the action was morally bad – and imputes the fault to the agent as the agent's fault on the basis of the agent's possession of

¹⁷ Suarez *On Laws and God the Lawgiver*, book 1, chapter 3, §1, *Opera Omnia*, volume 5, 7

power, freedom, over the action. Aquinas gave just this characterisation of moral blame – a very important characterisation that was widely cited thereafter:

Hence a human action is worthy of praise or blame in so far as it is good or bad. For praise and blame is nothing other than for the goodness or badness of his action to be imputed to someone. Now an action is imputed to an agent when it is within his power, so that he has dominion over the act. But this is the case with all actions involving the will: for it is through the will that man has dominion over his action...Hence it follows that good or bad in actions of the will alone justifies praise and blame; for in such actions badness, fault and blame come to one and the same.¹⁸

So law and obligation is a directive force to disregard which, without excuse, is to be morally bad. As wrong, or a violation of law, what one did was bad; and as free, with control over one's actions, the badness of the action can be imputed to the agent: it was bad of one to have done it. The nature of obligation as a distinctive form of direction is to be explained in terms of moral appraisal – the morality of personal goodness and badness, of virtue and vice – as applied to the exercise of freedom. So, on this theory, the very notion of obligation, a notion central to understanding coercive authority, is not available independently of moral theory, and in particular it is not available independently of a theory of personal moral virtue and vice. Suarez and his entire tradition reject the modern idea of obligation as a notion available to political theory in a way that can be detached from a morality of virtue and vice. Indeed, in Suarez's view a central function of state authority, and its capacity to obligate us, is to inculcate moral virtue in us.

Suarez is involved in important debates with other early modern scholastics over whether law and obligation is by its very nature dependent on some form of authority structure – whether it always requires the command of a superior. Can, in the case of natural law at least, law or obligation exist independently of any origin in the will of a law-giver? Many early modern scholastics thought that just because obligation can be explained in terms of moral appraisal, as a standard to disregard which is to be morally bad, and because such a standard could be understood without a lawgiver, natural law and obligation under natural law were independent of any legislation, even God's:

Since even if God never gave any command about the matter, it would still be bad to kill a human being without reason, to show contempt for one's superiors, or to expose oneself to clear danger of death, therefore even if natural law did not do so by way of any particular commandment given by God, natural law would still forbid such actions. ... for by the natural law we understand that on account of which some action is good or bad independently of any positive law, and so insofar as there would still be very many good and bad actions even if there were no divine commands, there would still be a natural law even in the absence of such commands.¹⁹

¹⁸ Thomas Aquinas, *Summa Theologiae* (Turin : Marietti, 1950) 1, 2 q21 a 2, resp.

¹⁹ John Punch, commentary on Scotus on the decalogue, *distinctio* 37 in Duns Scotus, *Opera Omnia*, Luke Wadding (ed) (Lyons, 1639), volume 7, 857-77.

Suarez thinks, by contrast, that law or obligation in all its forms does require that the obligation be willed by a superior with the requisite authority to command. The natural law must originate in the legislative will of God. But even in Suarez's case the fundamental dependence of obligation on a morality of virtue and vice is retained. The will of a superior is requisite – but as a condition of a distinctively obligation-related form of personal badness or vice – the vice that is *praevaricatio* or transgression.

I therefore reply that in a human action there is indeed some goodness or badness by virtue of the object positively aimed at, in as much as that object is compatible or incompatible with right reason, so that by right reason the action can be counted as bad, and a fault and blameworthy in that regard, apart from any relation to law proper. But beyond this a human action has a particular character of being good or bad in relation to God, when we add divine law forbidding or decreeing, and in respect of that the human action counts in a particular way as a fault or blameworthy in relation to God by virtue of its breaching of the genuine law of God himself, which particular badness Paul seems to have referred to by the name of transgression when he said, 'Where there is not law, neither is there any transgression'...The natural law precisely prohibits whatever is in itself bad or disordered in human actions, and in the absence of such a prohibition an action would not have the complete and unqualified character of a blameworthy fault and offence against divine law, which character cannot be denied of acts which definitely violate natural law.²⁰

Whether or not Suarez's position is convincing, it is clear that directiveness that is properly law-involving is being characterized by him in terms of a 'particular badness' – a particular moral vice. The peculiarly demanding direction that constitutes moral obligation as moral law is still being characterized by Suarez as it was by his opponents – by appeal to a form of moral appraisal.

So obligation, an essential feature of law in general, and essential to coercive authority in particular, depends on and is explained by three important features of the self and its morality. There is the power of freedom, that humans exercise. Then there is the normative power of reason, to which humans are to some degree subject and responsive. And finally there is a morality of personal good or bad, of virtue or vice, which is used to characterise obligation as a specially demanding form of normativity that directs to virtue and away from vice in the exercise of freedom.

Law for Suarez exists not only as a source of obligation, but also of rights, and in particular of the right to liberty. And this too is a conception fundamental to his theory of coercive authority, by explaining why *authority* is required for coercive direction to be morally permissible in the first place, and by setting limits to the exercise of that authority where it is to be found.

Just as obligation presupposes the power of freedom, so too does the right to liberty or *ius libertatis*. The right to liberty or freedom has its basis in freedom as a power to determine alternative actions – the power that in ordinary English we refer to as *control*, and report by an expression that ranges over alternatives, 'It is

²⁰Suarez, *On Laws*, book 2, chapter 6, §17, *Opera Omnia* volume 5, 110

up to me whether I ... or I...’, as in ‘It is up to me whether I raise my hand or lower it’.

Notice that the intuitive link between the power and the right shows up in the very usage in English of ‘It is up to me whether.. or...’ For the phrase ‘It’s up to me’ need not simply pick out a power or capacity to determine. It may be also used in another way. If someone tells you what to do, and threatens you with some sanction if you do not follow their direction, then, if you think they lack the authority so to direct you, you may very well protest: ‘Don’t tell me what to do; it’s up to me what I do!’ And here we find up-to-us-ness being used not to assert freedom as a power, but as a right. Here we find freedom not as a capacity to determine for ourselves what we do, but as a right to determine for ourselves what we do. This idea of freedom as a right to liberty might comprise various more specific rights. One central such right is the right not to be coerced; that is, the right not to be directed to do something through the threat of penalties if we do not act as directed.

The use of terms such as *up to me* to assert both the power and the right is highly significant. It suggests some intimate connexion between the two phenomena - a connexion that must also be behind the transfer, in Hellenistic philosophy, of a Greek term, *eleutheria*, that originally picked out political freedom, or the normative condition of a free citizen, to apply to freedom as a power. And there is one immediately obvious, indeed almost irresistible, way of understanding the connexion between the power and the right: namely that the right is, fundamentally, a right to exercise the power. Freedom as a right is a right to determine things for oneself; and that is just the right to exercise one’s power of freedom - one’s capacity to determine things for oneself. How could there be a right to determine things for oneself without the capacity to determine things for oneself? And what else could the right be than the right to exercise the capacity?

So the right to liberty is a recognition at the normative level of law of freedom as a power, namely in the form of a right to exercise it. This is exactly the view we find in Suarez. Notice the following passage, in which nature equips man both with *libertas* in the form of a power to determine his actions, and with the right to exercise that power. The right to liberty is a *dominium libertatis* or right over his own metaphysical freedom.

If, however, we are speaking of the natural law of dominion, it is then true that liberty is a matter of natural law, in a positive, not merely a negative sense, since nature itself confers upon man the true dominion of his liberty (*dominium libertatis*).

For liberty rather than slavery is of natural right, for this reason, namely, that nature has made men free in a positive sense (so to speak) with an intrinsic right to liberty, whereas it has not made them slaves in this positive sense, strictly speaking.²¹

The term *dominium* could be used in scholastic discussions with exactly the same shifting reference as attaches to our *up to us*: either to refer to freedom as a power, as in Aquinas’s characterization of blame; or to refer to the right to exercise that power, as by Suarez here.

²¹ Suarez, *On Laws*, book 2, chapter 14, §16, 141

But how might freedom as a power be the basis of freedom as a right? The very nature of freedom as a power shows how, by constituting a normative block to coercive direction – a block that leaves such direction in need of special justification, and clearly wrong in the absence of such justification. The power of freedom is a power over alternatives that has a function – to take us to the good. The function of the power, then, is to provide alternatives by way of the good. But coercive direction is in tension with freedom so conceived. Directives backed by threats of sanction will not remove the power of freedom itself – unless the threats are unusually terrifying. But genuinely coercive direction, by involving threats of sanction that are real, will certainly remove what it is the function of the power of freedom to give us - alternatives that are *good*. The point of coercive threats, after all, is to leave all options but the one directed *bad*. So coercive direction is apt to frustrate the power of freedom, and for that very reason requires special justification.

That justification depends, in particular, on the possession of the requisite authority to direct coercively – the authority to back directives up with threats of punishment or sanction. And this authority to threaten sanctions, for Suarez, very importantly involves a further authority – to teach.

For Suarez, and contrary to the modern view of punishment with which we began, punishment does not operate through fear alone. For Suarez punishment is educative. Fundamental to coercive authority is its function as a teacher – a conception of authority we already find in book 10 of Aristotle's *Nicomachean Ethics*. The point of sanctions is to teach on behalf of truth and goodness, and thereby facilitate the operation on us of normative power.

For many modern political philosophers, as we have already noted, the proper function of law is to channel fear of sanctions, or at least a general motivation of law-abidingness, to motivate us to do whatever the law requires just because the law requires it. So law governs the voluntary – what can be done at will, just as a means to complying with a legal directive. But for Suarez the law can direct and obligate us to attitudes that are not voluntary, in that they cannot be formed at will as means to any desired end. These attitudes are formed instead in response to their objects as really or apparently justifying them - such as through evidence of truth in the case of an object of belief, or through the desirability of a decision or intention's object in the case of that decision or intention. And here the law's use of sanctions cannot be to move us through fear of those sanctions alone. The threatened sanctions must serve instead to direct our attention to the relevant objects of thought and their justificatory character – objects to which we may have been culpably inattentive.

Thus a state may, in principle at least, properly use coercive authority to enforce and make legally obligatory certain forms of belief vital to the happiness of the political community – such as belief in a creator God to whom under natural law we owe a duty of love and worship. But these beliefs are not and cannot be formed out of mere fear, just to avoid sanctions for not holding them. Notoriously belief is simply not subject to the will in this way. I cannot get you to believe things without evidence, let alone get you to believe evident falsehoods, just by threatening you with punishments. The function of the sanctions, then, is not to operate through fear of them alone, but to direct our attention to the object of the belief, God's existence and to the justifications there are for believing it –

justifications that lie in argument and reliable testimony. Sanctions do not rely on a simple desire to avoid punishment. They facilitate and provide a conduit for the operation on us of the power of reason – of normative power:

The confirmation of our argument is that the purpose of this coercive authority [*potestas*] is to maintain the state in peace and justice, which cannot be done unless the state is also induced to live virtuously; but men cannot live according to moral and natural virtue, without true religion and the worship of the one God; therefore, the natural coercive authority and the jurisdiction of a human state are extended to include this purpose... even a pagan—that is, a non-Christian—king, if he has a knowledge of the true God, may coerce his own subjects into believing that truth (*cogere subditos ad idem credendum*), either by their own reasoning if they are educated, or by putting human faith in more learned men, if they are ignorant; and consequently, he may compel those same subjects to cease from the worship of idols and from similar superstitions contrary to natural reason. The proof of this inference is that there resides in such a king all the coercive authority which, according to natural reason, is suitable for a human state.²²

The authority of the state extends then to directing us to form certain beliefs, and to enforcing those directives with threats of punishment. The function of these threatened punishments is very clearly to teach by getting people to respond to reason. The punishments serve to direct attention to available justifications for the beliefs, based on argument or testimony, enabling the force of those justifications to produce the beliefs in us.

Thus the state is not a mere coordinator for the satisfaction of pre-existing human motivations. The state is a teacher on behalf of normative power and the values constitutive of that power, and a facilitator of that power's proper influence on us, directing us not just to perform right voluntary actions but to form right attitudes, such as true beliefs. And just as the state is a coercive teacher, so too as we shall see is that other bearer of coercive authority – the Church.

The authority to punish presupposes then an authority to teach. To explain coercive authority we need then to understand the basis of a right to teach coercively and, in particular, to teach coercively regarding the good of a community – which is what coercive authority exists to protect and further.

Here we meet an obvious difficulty. The project of teaching coercively involves the coercive regulation of belief, But the coercive regulation of belief might seem in conflict with foundational principles of human legality. Just because humanly legislated positive law is the law of a human community, it is a form of law that deals with what is forensically public or external. This link between positive law and the external arises in two ways. First the law attends to the good of a community, not of an individual person – and so is concerned with what is external and public to the whole community, and not what might be private to specific individuals. But secondly the law has to be enforced by the community or its officials. So the actions that law governs must be forensically public. Human courts and their officials must be able to tell whether the law has been broken or obeyed.

²² Suarez *On Faith* disputation 18, section 4 §§7-8, *Opera Omnia*, volume 12, 450-51.

It is tempting for a modern philosopher to conclude that for this reason alone coercive authority, at least of an earthly kind, cannot function as a coercive teacher in the way that Suarez supposed. In particular, coercive authority cannot impose laws on mental attitudes, such as belief, for these mental attitudes are private and internal. Human positive law can only address actions that are public and external – actions such as theft or murder, or clear attempts at such, the kinds of actions that are also uncontroversially voluntary and subject to the will.

But Suarez did not take this view, whether for the Church or for the state. Positive law and its enforcement is directly concerned with the external good of a human community, and so, it is true, primarily addresses external acts. But law addresses the character of those external acts as they affect the community's good. And in Suarez's view external acts can affect the good of a community through being expressive of internal acts – internal acts that then form the public moral character of the external acts that express them, so that positive law may properly address those internal acts as well. In such cases, when so constitutive of the moral character of the external acts, internal acts too can be subject to the direction of human positive law. The only difference between the communities of Church and state, in Suarez's view, lies not in the *modus operandi* of positive law, but in the fact that the spiritual nature of the Church makes the relation of external to internal acts more crucial to the good of the ecclesial community. In performing a public sacramental act, what a priest intends might be crucial to the character of that act within the life of the ecclesial community, for example; which is why canon law may make very specific reference to what the priest does or does not intend in its classification and regulation of sacramental acts.²³

Suarez insists that belief is indeed not a concern of any human positive law, canonical or civil, considered just as an internal mental state.²⁴ But belief is not a purely internal state. For beliefs, especially ethical and religious beliefs, are apt to be asserted. And when asserted, their assertion may very much matter to the good of a community, and not just as an act of speech, but precisely because the expression of what is clearly the assertor's genuine belief. Doubt or disbelief in fundamental religious or ethical truths may, when expressed, deeply harm a community. For this reason, such doubt or disbelief may very well, when expressed, be of concern to the public authority governing the community, and be subject to criminal penalties. So the Church may properly treat heresy – obstinate disbelief in divine revelation on the part of the baptised – when publicly expressed as a punishable crime. And as we have seen the state too may use its own authority to enforce rational monotheism through civil law.

Central to the Suarezian conception of coercive authority are the existence of freedom and normativity as involving powers distinct from ordinary causation. These powers make law possible, and with law the crucial legal phenomena both of right, and the right to liberty in particular, and of obligation and desert of sanction. The power of freedom and its direction through normative power of the

²³ Suarez *On Laws*, book 4, chapters 12 and 13, in *Opera Omnia*, volume 5, 374-387

²⁴ On this point see Suarez *On Faith*, disputation 21, section 2, §4, in *Opera Omnia*, volume 12, 535

good is both a normative block to coercion, as the basis of the right to liberty; and it is also a normative enabler of coercion, as a basis of obligation. Freedom as a power blocks coercive direction that lacks proper authority. But where our direction by the good requires authority structures, and a legitimate authority exists, the power of freedom then enables us to be subject to directive obligation, and fairly subject to threats of sanction for its breach.

And the function of that direction is not simply to facilitate co-operation at the point of the voluntary, but to transmit and teach on behalf of a power that is normative – the force of truth and goodness – a power which God has created us to respond to.

3. Coercive authority – the state

We have seen that coercive authority involves an authority to teach, and to teach in particular concerning the good of a community. Now in Suarez's view, such authority to teach coercively cannot originally belong to individuals, but can only arise at the level of the community itself. And that is because human nature is only properly responsive to the communal good at the communal level, and so the requisite competence to teach on its behalf is only to be found at that level.

The need for authority is not based simply on the fact that to get what they want individual humans happen to need cooperation and protection. It is essential to their very nature that humans flourish only as members of a human community. The need for legal authority

...is founded on the fact that man is a social animal, requiring by his very nature a civil life and intercourse with other people; therefore, it is necessary that he should live rightly, not only as a private person, but also as a part of a community; and this very greatly depends upon the laws of the individual community.²⁵

So, to flourish as individuals humans need to be responsive not simply to their own individual good, but also to the good of their community.

It is furthermore necessary that each person should take counsel not only for himself, but also for others, preserving peace and justice, something that could not be brought about in the absence of appropriate laws. Again, it is necessary that those things which relate to the common good of men, or of the state, should be accorded particular care and observance.²⁶

But individuals are not equipped just as individuals to be responsive to the good of a community.

yet, humans as individuals have difficulty in knowing what furthers the common good, and moreover, rarely strive for that good as a primary object; so that, in

²⁵ Suarez *On Laws*, book 1, chapter 3, §20, *Opera Omnia*, volume 5, 12

²⁶ Suarez *On Laws*, book 1, chapter 3, §20, *Opera Omnia*, volume 5, 12

consequence, there was a necessity for human laws that would have regard for the common good by pointing out what should be done for its sake and by compelling the performance of such acts.²⁷

The same human nature that enables us to be responsive to the power of good as it concerns our own flourishing at the individual level, enables us to be responsive to the power of good as it concerns the community. But human responsiveness to that common good can only properly occur at the level of the community itself, through the institution of structures of communal government:

Finally there is an *a priori* reason in support of this view, a reason touched upon by St. Thomas in the *Opusc.* already cited, namely: that no body can be preserved unless there exists some principle whose function it is to provide for and seek after the common good thereof, such a principle as clearly exists in the natural body, and likewise (so experience teaches) in the political. The reason for this is clear. For each individual member has a care for its individual advantages, and these are often opposed to the common good, while furthermore, it occasionally happens that many things are needful to the common good, which are not thus pertinent in the case of individuals and which, even though they may at times be so pertinent, are then provided for, not as common, but as private needs; and therefore, in a perfect community, there necessarily exists some public authority whose official duty it is to seek after and provide for the common good.²⁸

This is true even in the absence of sin. Direction by public power is required even without presupposing human wrongdoing and its effects. The existence of a common good that can only be properly responded to communally, and not individually, is a built in feature of human nature, not an effect of sin or ill will:

Moreover, our own preceding arguments may be considered as applicable to the state of innocence, since they are based, not upon sin nor upon any defection from order, but upon the natural disposition of man, the disposition to be a social animal and to demand by nature a mode of living in which he dwells in a community, the latter necessarily requiring to be ruled by means of public authority.²⁹

The state is responsive to the power of reason as it concerns the good of a whole community, as individuals cannot reliably be. The state therefore possesses a cognitive competence and so authority, which permits it to teach and direct individuals regarding that common good and what that common good requires – a competence and authority that individuals do not possess.

Linked to that authority to teach and direct, which would exist even without sin, is a further authority, to punish, which is needed only because of sin:

Coercion, on the other hand, presupposes the existence of a certain amount of defection from order, and therefore, with reference to coercion, it may be said that this authority was introduced in consequence of sin.³⁰

²⁷ Suarez *On Laws*, book 1, chapter 3, §20, *Opera Omnia*, volume 5, 12

²⁸ Suarez, *On Laws*, book 3, chapter 1, §5, *Opera Omnia* volume 5, 177

²⁹ Suarez, *On Laws*, book 3, chapter 1, §12, *Opera Omnia* volume 5, 179

³⁰ Suarez, *On Laws*, book 3, chapter 1, §12, *Opera Omnia* volume 5, 179

The authority to punish presupposes an authority to teach and direct for the common good which no individual possesses. The source of that authority lies in a divinely given human nature that is social and that requires communal direction, and in a divinely legislated law of that nature that permits and provides for that direction to be provided at the communal level. So the authority to issue directives that bind with the force of obligation, and to enforce those obligations punitively, can never derive from any rights originally attaching to individuals. The authority must be given by God to a community directly.

Secondly, it is held that this authority embraces several acts which appear to go beyond human capacity as it exists in individuals; and this is an indication that such authority is not from them, but from God.³¹

The peculiar authority of the state is dictated by the proper functioning of a divinely created human nature. Humans are naturally equal, and no one by nature has any political authority over any other. No individuals, considered just as individuals, have any natural capacity or authority over others to represent to them the good of a human community, and exercise authority on its behalf. So political authority requires for its very existence some consent – some agreement or set of conventions establishing a particular form of political authority acquiesced to at the level of a whole community. But the general character of coercive authority, its fundamental rights and limits, is fixed by divine will, in relation to divinely created human nature itself. It is not dependent on or to be varied by the contingent content of any particular agreement.

On this question, the common opinion appears to be that the said authority is given immediately by God, as the author of nature, in such a way that men in a sense dispose the matter involved and cause there to be a subject capable of exercising the authority, yet God as it were bestows the form by giving this authority. ...it can be further urged that, as I remarked above, if we assume that men have willed to gather together into one political community, it is not in their power to set up obstacles to this jurisdiction; and this is an indication that the jurisdiction does not flow proximately from their wills as from a true efficient cause. Thus, in regard to matrimony, we rightly infer that the husband is the head of the wife by grant of the author of nature himself, and not by the will of the wife; for though they may contract the marriage by their own will, nevertheless, if they do contract it, they cannot prevent the establishment of this superiority.³²

It is clear where the basis lies for the very idea of a *communitas perfecta* as sole bearer of sovereign coercive authority. It lies in a view of human nature as dependent on life within a community for its flourishing, and dependent on responsiveness to the good of that community – a responsiveness, both cognitive and motivational, to a normative power to direct us that, as human nature is constructed, can only properly occur, however, at the level of that community. The state is the institution whereby humanity responds to the *bonum commune* at the level of nature. And the function of the state is to teach on behalf of that *bonum*

³¹ Suarez, *On Laws*, book 3, chapter 3, §3, *Opera Omnia* volume 5, 182

³² Suarez, *On Laws*, book 3, chapter 3, §2, *Opera Omnia* volume 5, 182

commune, and to enable us to be properly responsive to that good, both theoretically, at the level of belief, and practically, at the level of motivation.

There is a key question then when looking at Suarez's relation to post-scholastic political theory, contractarian or otherwise. The question is not whether some original consent or convention is required for political authority to arise. The question is whether that authority is seen as essential, by virtue of a God-given human nature, to the proper communication of normative power – a power of reason as productive both of true belief and right motivation – as it concerns the good of a community.

4. Coercive authority - the Church and soul-body union

State authority is that form of coercive authority that is natural to humanity. The authority of the state is based on natural law – that form of law that applies to humans in general, just through their human nature. And state authority serves those ends, natural justice and natural happiness, that are proper to human nature, and that are the concern of any human community.

These ends are not, by nature, exclusive of religion. For natural law and reason provide the basis of religion in its natural form – the love and worship of the one creator God naturally known to us from created things. And had it not been for the coming of Christ, religion might have existed only in this purely natural form, directed by the authority of the state, as an essential component of natural happiness. As we have seen, Suarez envisages as a principled and unproblematic possibility the state enforcement of rational monotheism.

But, thanks to the mission of Christ, there is now a higher end transcending nature made available to us, which we are enabled to attain not by the power of natural reason, but by the power of supernatural grace. This is the beatific vision of God in heaven. To direct us to this end we are given the revealed law of the New Covenant – a law of grace that does not come with human nature, but is the special product of divine positive legislation, revealed to us by Christ. This revealed divine law establishes another kind of authority, that of the Church, which stands to the law of the New Covenant as state authority stands to natural law.

Thanks to the mission of Christ, religion is elevated to take a new form that is supernatural, involving not natural worship to secure the earthly happiness of a political community, but sacraments communicative of grace to direct us to heaven – a radical transformation of religion that removes it from the authority of the state and transfers it to that of the Church. Religion is now to be regulated not by the state on its own authority through civil law, but by the Church through canon law:

For the matter of civil law is more principally and mainly what pertains to human justice: whereas the main concern of canon law is what pertains to divine justice and religion, for almost everything else is ordered to this, as evident from what we have said. As regards this area, civil authority is more limited now within the Church, than it was before the Christian religion; for once the care of religion was oriented towards to the virtue and happiness of the commonwealth, as we noted above from St Thomas; but now religion itself, and spiritual salvation and spiritual happiness are the priority, and the rest for their sake; and therefore once

the care of religion either belonged to the authority of the ruler, or was joined with that authority in one and the same person, or was subordinated to the authority of the ruler: now however the care of religion is specially given to the shepherds of the Church.³³

State authority is based on natural law; so civil law, the positive law of the state, both enforces that natural law and extends and specifies its application. Correspondingly, therefore, since the Church's right to legislate and punish rests on the revealed law of the New Covenant, canon law, the positive legislation of the Church, serves the same function in relation to that revealed law. Canon law both enforces the law of the New Covenant and extends and specifies its application. Though each system of positive law serves different ends, each is a form of humanly created law governing human communities that must support and maintain themselves through earthly or temporal means.

How can human legal direction and correction play a role in salvation, when salvation is a gift of divine grace? For Suarez, the answer is not so puzzling. Just as the normative power of natural reason can be assisted by the threat of corrective sanctions, so too can grace. As elsewhere in the economy of salvation, grace itself uses human agency as its instrument, especially through works of charity – in this case moving humans to assist other humans by teaching and correcting them. Teaching is fundamental, and recourse to punishment is ultimately aimed at teaching – teaching based on an authority that is divinely given. As Suarez put it:

It is replied that men cannot by their own power direct others to the supernatural end, but they can do this with the assistance of the Holy Spirit, from whom they obtain the authority; and although the efficacy and the growth is always given by God, through his grace, yet men too can plant and water and thus direct people through laws toward the supernatural end; and by the same reason they can through spiritual or other congruent penalties restrain people from sins in relation to eternal salvation, which is prevented by sin. And though human coercion cannot just by itself change the internal will, where sin properly is to be found, nonetheless this coercion is necessary; *both because discomfort (vexatio) tends to produce understanding*, and also because once the opportunity or ease of performing the external action is removed, the will abandons the internal affection much more easily; and finally because external observance is necessary to the good of the Church, and to avoiding scandals and dissensions and the like. Therefore the shepherds of the Church use authority that is both directive and coercive, and effect through their laws not only internal justice, but also what is externally virtuous, fitting and well established.³⁴

What establishes that the Church exists as a coercive authority? Obviously, it cannot be natural law. It must instead be revelation that establishes the coercive authority of the Church – the same revelation that communicates the New Covenant law that bases the Church's authority. So Suarez rests his view of the Church's right to coerce on a series of arguments from revelation. The fundamental text, and one that was seen as implying coercion directly, was St John's gospel, chapter 21, in which Christ commissions St Peter to be a shepherd, with the faithful as his sheep - sheep who have gone or are liable to go astray, and need to be rescued by the divine shepherd Christ and his earthly vicars.

³³ Suarez *On Laws*, book 4, chapter 11, §10, *Opera Omnia*, volume 5, 372

³⁴ Suarez, *On Laws*, book 4, chapter 1 §11, *Opera Omnia*, volume 5, 330

At the heart of the New Testament is a pastoral metaphor drawn from non-rational nature, of the shepherd and the sheep, that concerns our predicament as fallen rational beings. This metaphor has coercive implications to which early modern Catholicism was very sensitive. To protect and regulate their flock shepherds do regularly apply or threaten highly temporal forms of force. The coercive nature of shepherding is typified by the shepherd's staff or crook, which is written of as a disciplinary *virga* or rod. The image in the catacombs of Christ the shepherd clasping a wandering sheep about his shoulders portrays a sheep that has been physically picked up and is being forcibly held. Baptized wanderers are compelled by the shepherd to remain faithful to their baptism – to their membership of the flock.

So baptism is the basis of a coercive jurisdiction. This jurisdiction presupposes an authority to teach, and allows for the coercive direction of belief in particular. Baptism brings with it an obligation to faith that can be enforced by sanctions that are temporal, and that go beyond the purely spiritual penalty of excommunication. This view had just been taught dogmatically at session 7 of the Council of Trent, in canon 14 of the decree on baptism:

If anyone says that when they grow up (*cum adoleverint*), those baptized as little children should be asked whether they wish to affirm what their godparents promised in their name when they were baptized; and that, when they reply that they have no such wish, they should be left to their own decision and not, in the meantime, be coerced by any penalty into the Christian life, except that they be barred from the reception of the eucharist and the other sacraments, until they have a change of heart: let him be anathema.³⁵

As Francisco Toledo, the first Jesuit to be made a Cardinal, and who was professor of theology at the new Roman College, where Suarez also taught, stated, taking this to be something beyond controversy:

Fifth conclusion: those baptized as infants before the use of reason are certainly to be compelled when they reach the age of reason to retain the faith...This is against Erasmus, who in a certain preface to a version of the New Testament says it would be more advisable if these infants once they reached the age of reason were questioned about the faith; and if they did not wish to remain in it, were left free, being deprived only of participation in the sacraments. But this view is heresy, and

³⁵ *Council of Trent*, Session 7, Decree on baptism, canon 14, 3 March 1547, in Alberigo and Tanner (eds), *Decrees of the Ecumenical Councils*, (Georgetown: Georgetown University Press) volume 2, 686.

The condemned proposition in favour of toleration is taken from Erasmus's preface to his *In Evangelium Matthei Paraphrasis* (Basle 1522). Of the theologians at Trent who specifically addressed Erasmus's proposal, all condemned it as *damnandus*, or as *falsus*, or as *haereticus*. There is no record of any opposition to the condemnation of Erasmus: see *Concilium Tridentinum Diariorum, Actorum, Epistularum, Tractatum*, ed. Societas Goerresiana, in Stephan Ehses (ed), (Freiburg im Breisgau: Herder 1911), volume 5 838-995; and Hubert Jedin, *Geschichte des Konzils von Trient*, (Freiburg im Breisgau: Herder 1957), volume 2, 316-332.

the conclusion is Catholic. First, this heresy is condemned in the Council of Trent session 7, canon 14.³⁶

The idea of the shepherd was interpreted, then, as licensing the use by pope and bishops not just of spiritual penalties but also temporal force for spiritual ends, and to ensure right belief in particular. The spiritual feeding by pastors of the faithful thus takes the form of educative law:

...and then [Christ] added [to St Peter]: Feed my sheep (John 21) where by the word *feed* is meant the authority to govern and to make laws.³⁷

Linked to that vision of a shepherd and his flock is the fundamental unity of the flock – a unity that implies, in religious matters, a subordination of a Christian state to the Church. Why does the status of being a sheep involve the political as well as the private person of the ruler? The fundamental argument is from the unity of the flock, and so of the Christian community as a whole. This unity means that in matters of religion, while it is true that people retain their temporal rights, no part of that community's temporal or earthly nature, political authority included, is exempt from ecclesial direction for spiritual ends.

Suarez emphasizes that political authority must be included because the flock of the baptised must be *one*:

The principle foundation of this truth is declared both through reason and testimony: for it is taken from the unity of the Church of Christ sufficiently communicated through the Gospel, and declared by Paul, 1 Corinthians, 12, saying: *We are all baptized into the one body...* therefore Christ the Lord founded the Church as one spiritual kingdom, in which there would be one king, and one spiritual ruler; therefore it is necessary that the temporal authority be subject to the spiritual, as the body is to the soul.³⁸ Suarez *De Legibus*, book 4, chapter 9, §3, in *Opera Omnia*, volume 5, p366.

To communicate the unity of the Christian community we find Suarez using in this passage a further and venerable image, in this case relating Church and state – the image of soul-body union. The Christian Church, understood in the widest sense as the community of the faithful, unites the two forms of authority, the spiritual authority of the Church with the temporal authority of the state, as the intellectual soul is united with the body to form a single human person. And in spiritual matters that are higher, the community as a whole must be directed by the higher, spiritual authority - just as in the higher matters that concern the intellectual soul the body must act at the direction of the soul. So all Christians with whatever temporal belongs to them, including their political communities,

³⁶ Francisco Toledo, *In Summam Theologiae Sancti Thomae Aquinatis Enarratio*, question 10, article 8, *Whether unbelievers are to be compelled to faith* (Rome: Propaganda Fide 1869), volume 2, 110

³⁷ Suarez *On Laws* book 4, chapter 3, §1, *Opera Omnia*, volume 5, 334

³⁸ Suarez *On Laws*, book 4, chapter 9, §3, *Opera Omnia*, volume 5, 366.

must be subordinate to the shepherds in spiritual matters, and give their shepherds temporal support where this is required to serve the supernatural end.³⁹

So the Christian state can still be involved in the coercive direction of religion – but no longer, with the coming of Christ, under its own authority, which is now lacking in matters of religion. Instead Christian rulers can now be obligated by their baptism to act on behalf of the Church, to whom the authority to direct religion now belongs, and be called upon in the exercise of their political office to act as the Church’s agents in enforcing her authority, just as the body can be directed by the soul to act on the soul’s authority. The state becomes in spiritual matters the Church’s secular arm (*brachium saeculare*).

The Church needs the support in religious matters of the state. But the state also needs the support of the Church. For we live in a world marked by the Fall. And one effect of the Fall is not to remove entirely, but to damage our receptiveness to the power of reason. So one function of grace as a supernatural normative power is not simply to elevate us to a supernatural end, but to heal – to repair, as *gratia sanans*, or healing grace, our receptiveness to the power of reason, normative power in its natural form.

For grace also has an essence and a nature of its own, as an infused light to which it also belongs not only to direct men towards supernatural action that is right, good, and required, but also to dispel darkness and errors relating to the purely natural law itself and to teach on the basis of a higher reason the observance of that same natural law.⁴⁰

A political community detached from a soul-body union with the Church will be a political community that will not respond as it should to natural reason. No matter that its members may be privately Christian, that will not ensure a proper responsiveness to reason as it concerns the common good. For this responsiveness can only occur at the level of the political community, and needing repair thanks to Fall, can only be repaired at that level too. This requires that the state itself be Christian, to be healed by grace in its public exercise of reason.

Suarezian political theory is of course revived at the magisterial level in the teaching of the nineteenth century popes, and in the teaching of Leo XIII in particular. Here we find the same endorsement of a soul-body union of Church and state:

There must, accordingly, exist between these two powers [of Church and state] a certain orderly connection, which may be compared to the union of the soul and body in man.⁴¹

³⁹ The soul-body model of Church-state goes back to Nazianzen. For another classic early modern Jesuit exposition, see Robert Bellarmine *Tractatus de Potestate Summi Pontificis in Rebus Temporalibus, adversus Gulielmum Barclay*, translated in *On Temporal and Spiritual Authority: Robert Bellarmine*, Stefania Turtino (ed) (Indianapolis: Liberty Fund, 2012).

⁴⁰ Suarez *On Laws*, book 1, chapter 3 §12, *Opera Omnia* volume 5, 10

⁴¹ Leo XIII, *Immortale Dei* §14 (Rome, 1885)

We also find a correspondingly pessimistic view of what will follow, in a fallen world, the abandonment of that soul-body union. State neutrality in matters of religion would be destructive of the state's understanding of and conformity to natural law. It is not enough for individual citizens to be Christian at the private level. The state or political community must itself be Christian and be informed by grace at the public level – otherwise it will fail to be properly responsive to the natural good of the community:

Therefore the law of Christ ought to prevail in human society and be the guide and teacher *of public as well as of private life*. Since this is so by divine decree, and no man may with impunity contravene it, it is an evil thing for any state where Christianity does not hold the place that belongs to it. When Jesus is absent, human reason fails, being bereft of its chief protection and light, and the very end is lost sight of, for which, under God's providence, human society has been built up. This end is the obtaining by the members of society of natural good through the aid of civil unity, though always in harmony with the perfect and eternal good which is above nature. But when men's minds are clouded, both rulers and ruled go astray, for they have no safe line to follow nor end to aim at.⁴²

Or as Pius IX put it in *Quanta Cura*

...where religion has been removed from civil society, and the doctrine and authority of divine revelation repudiated, the genuine notion itself of justice and human right is darkened and lost...⁴³

6. *The naturalisation of political philosophy*

At the heart of Suarez's theory of coercive authority lies a theory of powers that are entirely absent from contemporary political theory. There is a power of freedom – a power to determine alternative actions. Then there are normative powers that guide and motivate the formation of attitudes – the powers of truth and goodness.

Suarezian political theory is unintelligible without a metaphysics and ethics of human nature as exercising of or responsive to these highly distinctive powers that are quite unlike ordinary causation. Just as a theory of the Church requires a theory of grace as a power essential to supernatural happiness, so the Suarezian theory of the state as a *communitas perfecta* requires a theory of reason as a normative power essential to natural happiness, and of the state as essential to our responsiveness to that reason in regard to the communal good. And the Suarezian case for a soul-body union of Church and state again depends on that same theory of responsiveness to a normative power of reason, but as damaged by the Fall.

Someone might, I suppose, wish to propose a theory of the Church while abandoning belief in the existence of grace as a power communicated only

⁴² Leo XIII, *Tametsi Futura* §8 (Rome, 1900)

⁴³ Pius IX, *Quanta Cura* §4 (Rome, 1864)

through the Church – a power that alone enables us to keep the law of the New Covenant that bases ecclesial authority. But then they could not claim remotely to share the same conception of the Church that Suarez had. Equally, so when it comes to Suarez’s theory of the state. Modern political philosophy proposes a theory of the state without any serious account of, or even basic belief in a normative power of reason which is productive of beliefs and motivations at the natural level – a power which, as it concerns the common good, in Suarez’s view, can only be reliably communicated by the state. In ceasing to believe both in normative power, and in the related power of freedom, modern political philosophy has entered into radically new territory, and rejected Suarezian political philosophy in its foundations.

Though lip-service may still be paid to the idea that reasons or justifications move us, no metaphysical account of human nature is provided to explain how this is possible. No wonder. For after Hobbes’s opposition to forms of power besides ordinary causation came later writers such as Francis Hutcheson and David Hume, who argued even more explicitly that reason is not a normative power that actually moves us. All that moves human action are human psychological states, such as desires, that are no more than products of ordinary naturalistic causation and are certainly not the product of any normative force attaching to goodness as a genuine feature of the world.⁴⁴

Without the power of reason to guide us, and a metaphysical account of how that guidance actually moves us to form attitudes of belief or motivation, we lack the rationale for belief in the state as a normatively distinctive *communitas perfecta* at the level of nature. Just as without a serious theory of grace as productive of beliefs and motivation we would lack any rationale for a corresponding belief in the Church as a normatively distinctive *communitas perfecta* at the supernatural level.

This departure from Suarez affects two notions in particular that are crucial not only to understanding the function of the state, but the very idea of coercive authority itself. These are the right to liberty, which makes legitimate authority a condition of morally permissible coercion, and which then limits what forms of coercion are permissible, and obligation, which coercive authority can impose and enforce.

⁴⁴ As Francis Hutcheson clearly insists:

Now we endeavoured already to shew, that “no *Reason* can excite to Action previously to some *End*, and that no *End* can be proposed without some *Instinct* or *Affection*.” What then can be meant by being *excited by Reason*, as distinct from all Motion of *Instincts* or *Affections*? Aaron Garrett (ed) *Illustrations Upon the Moral Sense*, (Indianapolis: Liberty Fund 2002) 179

And as David Hume famously agrees:

Nothing can oppose or retard the impulse of passion, but a contrary impulse; and if this contrary impulse ever arises from reason, the latter faculty must have an original influence on the will, and must be able to cause, as well as hinder any act of volition. But if reason has no original influence, ‘tis impossible it can withstand any principle, which has such an efficacy, or ever keep the mind in suspence a moment. Thus it appears, that the principle, which opposes our passion, cannot be the same with reason, and is only call’d so in an improper sense. Peter Nidditch (ed) *A Treatise of Human Nature* book 2, part 3, section 3 ‘Of the influencing motives of the will’ (Oxford: Oxford University Press 1978) 415

Hobbes was a principal opponent among political theorists after Suarez's death of the very existence of powers distinct from ordinary causation, such as the power of freedom and normative power. And though Hobbesian political theory may not have proved an entirely attractive package to posterity taken as a whole, many crucial elements of his attack on Suarezian political theory remain to characterise modern political philosophy. And these involve the notions of liberty and obligation in particular.

Fundamentally Hobbes denies the existence of law as giving normative recognition to the power of freedom by harmoniously combining, as equal elements of law, right and obligation – a right to liberty in the absence of due authority, and a liability to obligation enforced by sanctions given the presence of that authority. Hobbes disbelieves in the very existence of freedom as a power. Human actions are not determined by their agents through some special power to determine alternatives, but are nothing more than the voluntary effects, produced by ordinary necessitating causation, of prior motivations that are passive and uncontrolled. Since no power of freedom exists for law to recognize, law must be doing something else. And all that law does, for Hobbes, is impose obligations, to prevent conflict and enable cooperation. In this the function of law is not to give us liberty, but only to remove it:

And law was brought into the world for nothing else, but to limit the Natural liberty of particular men, in such manner, as they might not hurt, but assist one another, and join together against a common enemy.⁴⁵

Liberty or freedom is not a power, or a right based on that power, but simply an absence of legal obligation – an absence, that is, of law as an obstacle to satisfying motivating passions. Liberty is no longer an aspect of law, but its opposite:

For though they that speak of this subject, use to confound *Ius*, and *Lex*, *Right* and *Law*; yet they ought to be distinguished; because Right, consisteth in liberty to do, or to forbear; Whereas Law determineth, and bindeth to one of them; so that Law, and Right, differ as much, as Obligation and Liberty; which in one and the same matter are inconsistent.⁴⁶

Here we see established the central features of what Isaiah Berlin later famously celebrated as 'negative liberty', which is, in effect, liberty as a political value or right in post-Hobbesian form.⁴⁷ First, though liberty so understood is still very much a good, it is a good that law only serves to restrict, not to provide. And secondly liberty is entirely detached from free will. Freedom as a right is no longer understood as based on freedom as a power.

⁴⁵ Hobbes *Leviathan* chapter 26, 'Of civill lawes' Noel Malcolm (ed) volume 2, 418

⁴⁶ Hobbes *Leviathan* chapter 14, 'Of the first and second naturall lawes, and of contracts' Noel Malcolm (ed) volume 2, 198

⁴⁷ See Isaiah Berlin, 'Two concepts of liberty' in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969) 121-54.

Hobbes is thus a pioneer of a central project of subsequent English-language ethical and political theory, which is effectively to ring-fence ethics in general, and political and legal theory in particular, from any commitment to the reality of free will – to the existence of freedom as a distinctive form of power to determine for ourselves how we act. But if we cannot appeal to freedom as a power, we may not be able to base freedom as a right on a metaphysics of human nature at all. In which case, the argument for political liberty really will have to be merely political, not metaphysical.⁴⁸

As with liberty as a right, so too with obligation. Obligation is likewise detached from any connexion with freedom as a power, and indeed from normative power as well. Indeed obligation, even moral obligation, is detached from the remainder of ethics as it involves a morality of virtue or vice. We arrive at the idea, quite alien to late scholasticism but very much a feature of contemporary English-language ‘virtue theory’, that the morality of obligation and duty is fundamentally different from, and even detachable from, a morality of the virtues.⁴⁹ The morality of obligation and duty is not what late scholasticism supposed it to be - a morality of the virtues as applied to the exercise of freedom.

Obligation is no longer understood to be directive of freedom as a power over alternatives. Instead obligations simply apply to voluntariness – they are rules governing actions as mere effects of prior motivations so to act. And the demanding nature of obligation is no longer explained as a special force of justification that moves us away from the morally bad. The demandingness of obligation is instead explained in terms that are much less metaphysically and ethically loaded.

Obligation may understood in terms of commands backed by threats of sanction, as in John Locke or John Austin. Nor need the command-giver be divine, or the sanction be formal punishment. In Bernard Williams’s modern adaptation of the view, for example, moral obligation simply consists in standards on voluntary behaviour that are fairly enforced through human social pressure, such as the communication of blame.⁵⁰

Or else there is the account of obligation especially popular in contemporary analytic legal philosophy - the appeal to decision procedures that are

⁴⁸ I discuss whether freedom as a right can be explained in terms of features of human nature other than a power of freedom in Thomas Pink ‘Thomas Hobbes and the ethics of freedom’, *Inquiry*, 54 (2011), 541-63

⁴⁹ For treatments of the morality of obligation as supposedly distinctive in this way, see both Bernard Williams *Ethics and the Limits of Philosophy*, (London: Fontana 1985) especially chapter 10 ‘Morality, the Peculiar Institution’, and Elizabeth Anscombe, ‘Modern moral philosophy’ *Philosophy*, 33 (1958), 26-42. Anscombe’s view of the morality of obligation as quite different from a morality of the virtues has been very influential – but it is quite opposed to late scholasticism, and involves a view of obligation that is profoundly post-Hobbesean, something of which, despite the vivid appeals Anscombe makes to imagined history in her paper, she was quite unaware.

⁵⁰ See *Ethics and the Limits of Philosophy*, chapter 10, especially 174-86.

advantageous to the coordination of action. This is the Razian theory of obligation as an exclusionary reason, where an obligation is characterised as serving rationally to detach individual agents from each deciding for himself what to do on the basis of his own understanding of the reasons, leaving him reliant on a single coordinating say-so.⁵¹ Authority, on the Razian theory, is not about communicating to each subject a better practical understanding, but about excluding subjects from being variously moved by their own potentially differing practical understandings. The emphasis of the theory is coordination, not education.

Obligation – what coercive authority imposes - is being modelled by forms of direction and coordination that could legitimately be exercised by individuals just as members of passing social groups, and frequently are. Individuals can perfectly well use social pressure to deter harm. And any group of people can use the say-so of an arbitrary individual to coordinate some common action. In none of this are we treating obligation and its imposition by the state as normatively distinctive in the way understood by Suarez – as a directive force of reason, a normative power, that is being imposed through an authority with a unique competence to understand and communicate that force as it concerns the common good.

⁵¹ See Joseph Raz, *Practical Reason and Norms* (Princeton: Princeton University Press 1990). For further critical discussion of these post-Hobbesean theories of obligation, and defence of the late scholastic theory of obligation as a distinctive justificatory force, see my ‘Law and the normativity of obligation’, *Jurisprudence Annual Lecture 2014*, *Jurisprudence*, 5 (2014) 1–28