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Why Obey?

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Why Obey?*

In the abstract, it is quite simple: we should do good and avoid doing evil.¹ But what rule determines what is good, and who is allowed to determine it? The Middle Ages had adopted the essential approaches from Antiquity: either the commandment can be proved to be one of reason, i. e. it is rationalist, or it is based on the – for whatever reason – decisive will of a legislator. In the Middle Ages, these two currents were associated with the names of Thomas Aquinas and John Duns Scotus as well as William of Ockham,² although this distinction is an oversimplification.

In his seminal contribution to moral and legal philosophy, *De legibus ac Deo legislatore* (1612), the Spanish Jesuit Francisco Suárez (1548–1617) summarized the medieval thinking and developed it further in a specific way. This is the object of Schweighöfer's investigation. Étienne Gilson wrote about Suárez: »On each and every question he seems to know everybody and everything and to read his books is like attending the Last Judgement of four centuries of Christian speculation by a dispassionate judge.«³ Schweighöfer also rightly points out the importance of Suárez for later philosophers, such as Descartes, Grotius, Hobbes, Leibniz, Pufendorf and Christian Wolff, but at the same time draws attention to the difficulty of accessing Suárez, whose work comprises more than 23 000 narrowly printed pages (13). It is therefore meritorious that Schweighöfer not only poses the special question of the justification of the normative power of the law, but also places its answer in a systematic context of the teachings of Suárez. Here, particularly in the consistent consideration of the *Disputationes metaphysicae* but also of other works of Suárez, lies the particular strength of Schweighöfer's work, which aims at a »coherent represen-

tation of [Suárez'] concept of law« by discussing the latter in the context of the theory of action, the doctrine of the morally good and the metaphysical doctrine of causes. Schweighöfer's study thus goes beyond previous research.

Schweighöfer begins the main part of the work (Sections II–V) with a presentation of the concept of law in Thomas Aquinas' *Summa theologiae*, since this was the authoritative basis for Suárez's teachings (27–54). Here Schweighöfer's conception of a strict distinction between *lex* and *ius* in Thomas is noteworthy (37). Schweighöfer sees the latter (with reference to STh II-IIae, q. 57, a. 2, resp.) as a consequence of natural law (38). It is also interesting that he proves that, although reason plays a prominent role in Thomas' concept of law, the will of the legislator is also relevant. Altogether, Section II offers a very useful summary of Thomas' doctrine of law that is based on the primary sources but contains no detailed examination of the literature.

In the third section, Schweighöfer deals with the will and action theory and the moral ability of humans. Here it turns out that Suárez artfully tied together the two concepts of the derivation of the normative binding power of laws mentioned at the beginning, though they appear to contradict each other (55–138). In this chapter, the clarification of Suárez's theory of action and will – which Suárez presupposes rather than explicates in *De legibus* – is valuable as well. Already at the beginning of his treatise, Suárez emphasizes that laws are only rules that contain moral actions, which is a limitation compared to Thomas Aquinas' position (59–61). However, as John Duns Scotus in particular had pointed out, moral actions can only be voluntary or, more precisely, unnecessary actions. Even if

* STEFAN SCHWEIGHÖFER, Die Begründung der normativen Kraft von Gesetzen bei Francisco Suárez (Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters, NF 83), Münster: Aschendorff 2018, 304 p., ISBN 978-3-402-10297-8

1 THOMAS AQUINAS, *Summa theologiae* I-IIae, q. 94, art. 2, resp.

2 Thus expressly FRANCISCO SUÁREZ, *De legibus ac Deo legislatore*, Liber

secundus, ed., introduced and translated into German by OLIVER BACH, NORBERT BRIESKORN and GIDEON STIENING, Stuttgart 2016, II 6, 4, 100–103.

3 ÉTIENNE GILSON, *Being and Some Philosophers*, Toronto 1952, 99, quoted by SCHWEIGHÖFER, 9.

reason gives an unambiguous answer, the will remains free to follow reason or not (63). The judgments of reason can be »necessary« insofar as they interpret the options for action, but free will must make them its own and strive for the effect recognized by reason (83). Without a preceding act of intellect, however, there is no act of will at all (86). The moral quality of an action results from conscience (95, 269). For Suárez, conscience is therefore the place where moral obligation arises, but it leaves the free and rational act of will. Free will as active potency expresses that man is made in the image of God, and (111) therefore also belongs to small children and others who are not capable of reason (112). Actions are only free if they result from reasonable insight and one's own will (113). Regarding this, one can speak of a *via media* between intellectualism and voluntarism.⁴ Only free actions, however, have moral quality. Therefore it is the will that justifies the moral quality, which – as Schweighöfer rightly points out – can be turned against the accusation that natural law is subject to a »naturalistic fallacy« (133). The laws of nature also do not follow from a true fact but from the will of the legislator. Nevertheless, the laws are the result of the *liberum arbitrium* (*De legibus* I 5, 20), which results from reason and will (136).

The fourth section deals with the *entia moralia*, to which the laws are attributed (139–188). Moral laws, then, have real entity and can be recognized like physical things. There are also causalities in the area of morality that have an effect on will, albeit not in the determinant sense. In Section V of his book, Schweighöfer then brings the concept of law

into a more precise relationship with the concept of rights (199–284). In particular, the different types of laws are examined in more detail.

The strength of this book lies in the very source-related analysis of Suárez's theory of law against the background of the theory of action and will that he developed in many other of his works. Schweighöfer has thus succeeded in a further discussion with Suárez. Less convincing is the processing of the research literature on Suárez, which Schweighöfer knows, but on which he only expresses himself very marginally. I missed a subject index. The sparse structuring allows one to (re-)find thoughts, but anyone who wants to look something up beyond the main argument may have to read for a very long time. For example, there are p. 133 on the »naturalistic fallacy« or p. 263 on the question of the duration of a dispute over the variability of natural law or p. 274 on the problem of mass non-compliance with a law. The headlines indicate the contents only to those who already know. Not even the brief summary (285–290) allows an introduction to individual questions of the investigation by cross-references. This is a pity, because it makes the reception of the work more difficult, though it deserves a wide readership.

If one asked Suárez why we should obey the laws, he would answer that the commandments of the laws prove to be a rational will to promote the common good in a community through legitimate political rule. All legislation is tied back to the *lex aeterna*, the archetype of any law. Only laws that participate in the *lex aeterna* are »real« laws and therefore just and binding. ■

4 SUÁREZ (as footnote 2) II 6, 5. See for this especially: GIDEON STIENING, Urheber oder Gesetzgeber. Zur Funktion der Gottesinstanz im Naturrecht des Francisco Suárez, in:

OLIVER BACH, NORBERT BRIESKORN et al. (eds.), Die Naturrechtslehre des Francisco Suárez, Berlin 2017, 91–111, here 92–95.