

# The Jesuits and Law

Wim Decock

Wim Decock<sup>1</sup>

wim.decock@kuleuven.be

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## 1. Tensions between the active and the contemplative life

In 1606, Claudio Acquaviva received the results of an enquiry into the state of spiritual health of the Society of Jesus: the *De detrimentis Societatis*. It revealed the main threats and weaknesses to which the Jesuit order was exposed. Generally speaking, the report *De detrimentis Societatis* laid bare a Society suffering from a kind of pubertal crisis.<sup>2</sup> True to its mission of reconciling the active and the contemplative life, the young Society now felt itself torn between the opposites of its ideal. From the earliest days, the gradual institutionalization of the order and the endless flow of administrative norms produced for the sake of its global governance had irritated the more spiritually minded followers of Ignatius.<sup>3</sup> Debates over the right interpretation of the Constitutions, the legal statutes of the Jesuit order, were fierce<sup>4</sup>. Jesuits were so good at counselling businessmen about the moral pitfalls involved in trading, that they became exposed to this risk themselves. At the beginning of the seventeenth century, Claudio Acquaviva found that the overextension of the Jesuits' "out-reach" (*effusio ad exteriora*) was posing threats to the spiritual identity of the Society itself. Tensions arose that stemmed not only from differences in character, race and nationality of individual members, but also from their worldly ambitions and heavy work schedules. The Jesuits were kept so busy saying Masses and performing pastoral duties that their inner relationship to God actually began to suffer from it. It was being reported that in France many Jesuits were more eager to concentrate on academic studies necessary for success in the outer world than to contemplate true Christian doctrine. A lot of them had become experts in legal, economic and political affairs, but their hearts often seemed to have turned away from God.

The early modern Jesuits' excellence in giving political advice and doing economic analysis has seen a remarkable interest in the last two decades among historians.<sup>5</sup> The thoroughly legal framework in which these practical aspects of Jesuit thought were couched, however, has drawn far less attention. Still, the Jesuits have made a most important contribution to the juridical turn witnessed in early modern catholic moral theology.<sup>6</sup> Even when they were not intentionally thinking of making a contribution to legal scholarship, but simply solving

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1 This contribution offers an updated version of Wim Decock, "Towards a Jesuit Science of Law," in *The Jesuits of the Low Countries: Identity and Impact (1540–1773)*, ed. Rob Faesen and Leo Kenis (Leuven: Peeters, 2012), 17–42, an earlier version of which appeared as Decock, "From Law to Paradise: Confessional Catholicism and Legal Scholarship," *Rechtsgeschiede* 18 (2011): 12–34. These articles have formed the basis of the second chapter in Decock, *Theologians and Contract Law: The Moral Transformation of the ius commune (ca. 1500–1650)*, Studies in the History of Private Law, vol. 4 (Leiden: Brill-Nijhoff, 2013), 21–104.

2 An account of this crisis has been given by Michel de Certeau in his "Histoire des jésuites," recently published anew in Michel de Certeau, S.J., *Le lieu de l'autre: Histoire religieuse et mystique*, Hautes Études, ed. Luce Giard (Paris: Gallimard-Seuil, 2005), 155–94.

3 Markus Friedrich, "Ignatius's Governing and Administrating the Society of Jesus," in *A Companion to Ignatius of Loyola: Life, Writings, Spirituality, Influence*, ed. Robert A. Maryks (Leiden: Brill, 2014), 130.

4 For an introduction to the former issue, see Robert J. Kaslyn, "Canon Law and the Society of Jesus," in *The Cambridge Encyclopedia of the Jesuits*, ed. Thomas Worcester (Cambridge: Cambridge University Press, 2017), 134–35.

practical problems within their own order, such as the discrimination of *conversos*, they showed a remarkable mastery of legal argument.<sup>7</sup> Unsurprisingly, the Jesuits are said to have been influenced by the Roman and canon legal tradition even more so than Dominican theologians such as Francisco de Vitoria and Domingo de Soto, the founders of the famous “School of Salamanca.”<sup>8</sup> What is more, from the end of the sixteenth century onwards the Jesuits played a crucial role in systematizing legal doctrine, eventually developing a real science of law by the mid-seventeenth century. Avoiding technical details, it will be the aim of this article to draw attention to scholarship on Jesuits’ major contribution to the development of a systematic body of legal thought. In the absence of comprehensive studies on Jesuits’ legal thought, this contribution will also try to explain why they got so actively involved in legal studies.<sup>9</sup> It will not examine the literature on the internal controversies about the proper law of the Jesuits, for instance the legal status of the Constitutions, but rather their contribution to legal scholarship as an academic discipline. The Jesuits were well-known for their splendid poetry, emblem literature, and art.<sup>10</sup> Their reputation as preachers travelling around the world, as prolific theologians and spiritual writers as well as dedicated scholars in natural sciences is remarkable. But they were equally memorable in producing legal literature of the finest quality, no matter how scarce and scattered the attention that Jesuit legal thought has received in mainstream scholarship.

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- 5 Amongst many other important studies dedicated, at least in part, to Jesuit political or economic thought, see Robert Bireley S.J., *The Counter-Reformation Prince: Anti-Machiavellianism or Catholic Statecraft in Early Modern Europe* (Chapel Hill, NC: University of North Carolina, 1990); Francisco Gómez Camacho, S.J., *Economía y filosofía moral: la formación del pensamiento económico europeo en la Escolástica española*, Historia del pensamiento económico, vol. 1 (Madrid: Síntesis, 1998); Ronald W. Truman, *Spanish Treatises on Government: Society and Religion in the Time of Philip II*; *The De regimine principum and Associated Traditions*, Brill’s Studies in Intellectual History 95 (Leiden: Brill, 1999), 253–360; Toon Van Houdt, “Ethische Überlegungen und wirtschaftliche Analyse in Lessius’ *De iustitia et iure*,” in *Leonardus Lessius’ De iustitia et iure: Vademecum zu einem Klassiker der Spätscholastischen Wirtschaftsanalyse*, ed. Bertram Schefold, *Klassiker der Nationalökonomie* (Düsseldorf: Wirtschaft und Finanzen, 1999), 63–80; Robert Bireley, S.J., *The Jesuits and the Thirty Years War: Kings, Courts, and Confessors* (Cambridge: Cambridge University Press, 2003); Harro Höpfl, *Jesuit Political Thought: The Society of Jesus and the State c. 1540–1630*, Ideas in Context 70 (Cambridge: Cambridge University Press, 2004); Franco Motta, *Bellarmino: Una teologia politica della Controriforma* (Brescia: Morcelliana, 2005); Eric Nelson, *The Jesuits and the Monarchy: Catholic Reform and Political Authority in France (1590–1615)* (Rome – Aldershot: Institutum Historicum Societatis Iesu – Ashgate, 2005); Harald E. Braun, *Juan de Mariana and Early Modern Spanish Political Thought* (Aldershot: Ashgate, 2007); Stephen J. Grabill, ed., *Sourcebook in Late-Scholastic Monetary Theory: The Contributions of Martín de Azpilcueta, Luis de Molina, S.J., and Juan de Mariana, S.J.*, Studies in Ethics and Economics (Lanham: Lexington, 2007); Nicole Reinhardt, *Voices of Conscience: Royal Confessors and Political Counsel in Seventeenth-Century Spain and France* (Oxford: Oxford University Press, 2016); Harald E. Braun, “Jesuits as Counsellors in the Early Modern World,” *Journal of Jesuit Studies* 4, no. 2 (2017): 175–85 (DOI: [10.1163/22141332-00402002](https://doi.org/10.1163/22141332-00402002)).
- 6 With regard to the juridification of moral theology in early modern Catholicism, see Johann Theiner, *Die Entwicklung der Moraltheologie zur eigenständigen Disziplin*, Studien zur Geschichte der katholischen Moraltheologie 17 (Regensburg: Pustet, 1970), 298–310; Servais-Th. Pinckaers, *Les sources de la morale chrétienne: Sa méthode, son contenu, son histoire*, Studien zur theologischen Ethik 14 (Freiburg: Academic Press Fribourg, 1985), 258–82; John Mahoney, *The Making of Moral Theology* (Oxford: Clarendon, 1987), 224–58; Louis Vereecke, “Théologie morale et magistère, avant et après le Concile de Trente,” *Le Supplément: Revue d’éthique et théologie morale* 177 (1991): 7–22; Rudolf Schüssler, *Moral im Zweifel*, vol. 1, *Die scholastische Theorie des Entscheidens unter moralischer Unsicherheit* (Paderborn: Mentis, 2003), and vol. 2, *Die Herausforderung des Probabilismus* (Paderborn: Mentis, 2006).
- 7 A good example is García Girón de Alarcón’s (1534–97) opposition to the purity-of-blood-laws. See Robert A. Maryks, *The Jesuit Order as a Synagogue of Jews: Jesuits of Jewish Ancestry and Purity-of-Blood Laws in the Early Society of Jesus* (Leiden-Boston: Brill, 2010), 190–210.
- 8 Paolo Grossi, “La proprietà nel sistema privatistico della Seconda Scolastica,” in *La Seconda Scolastica nella formazione del diritto privato moderno*, ed. Paolo Grossi, Per la storia del pensiero giuridico moderno 1 (Milano: Giuffrè, 1973), 117–222; Paolo Cappellini, “Sulla formazione del moderno concetto di ‘dottrina generale del diritto,’” *Quaderni fiorentini per la storia del pensiero giuridico moderno* 10 (1981): 323–54.
- 9 For a more technical analysis of Jesuit legal thought, especially in the field of contract law, see Wim Decock, “Jesuit Freedom of Contract,” *The Legal History Review* 77 (2009): 423–58 and Decock, *Theologians and Contract Law*, 105–650.
- 10 John W. O’Malley, S.J., ed., *The Jesuits: Cultures, Sciences, and the Arts 1540 – 1773* (Toronto: Toronto University Press, 1999); John W. O’Malley, S.J. and Gavin A. Bailey, eds., *The Jesuits and the Arts, 1540–1773* (Philadelphia: Saint Joseph’s University, 2005), and John W. O’Malley, S.J. et al., eds., *The Jesuits II: Cultures, Sciences, and the Arts 1540 – 1773* (Toronto: Toronto University Press, 2006).

## 2. making Jesuit spirituality work: the need for law

The Jesuits' involvement in legal affairs can be considered a direct consequence of their role as spiritual counsellors and the charisma proper to their order. At the time of approbation of the Jesuit order in 1550, Pope Julius III saw the work of hearing confessions as one of their main missions.<sup>11</sup> As depicted superbly by John W. O'Malley, the first Jesuits were driven by a ferocious desire to bring back the whole world to its creator.<sup>12</sup> This zeal led them to reach out to people of all walks of life from all kinds of different cultures. Through the sacrament of penance it is possible for man to find consolation and to be reconciled with God, especially by entrusting oneself to the guidance of a Jesuit confessor.<sup>13</sup> For the Jesuits are the confessors *par excellence*. On account of their intellectual capacities and practical mastery of the *Spiritual Exercises*, Jesuits have the knowledge and prudence to show each man how he must live his life in order to follow God's will.<sup>14</sup> To make this general claim applicable to concrete cases, however, a more sophisticated and operational device was needed. These practical tools the Jesuits found in the legal tradition. In light of the "Jesuit penchant for an articulated approach to virtually every phenomenon," to use O'Malley's words,<sup>15</sup> this meant that they were soon going to become some of the finest experts in law.

Present day moral theological reasoning is sparing of legal references. That might be one of the main reasons to explain the scarce interest in the juridical writings of the early modern Jesuits in contemporary theological scholarship. Historically speaking, however, there has always been a very intense relationship between law and moral theology.<sup>16</sup> During the Middle Ages, all monastic orders, even the most contemplative ones, got deeply involved with law in their pastoral practice. In the early modern period, the interaction between legal and theological thought was strengthened in the Catholic tradition by the old religious orders and even more so by new ones like the *Societas Jesu*.<sup>17</sup> It is unwise for an historian to divide the flux of historical events in neatly distinguished epochs, or, worse still, to revise the existing *caesurae*. If it were not, however, then it would be tempting to re-consider the Middle Ages as a thousand-year period beginning with Benedict of Nursia's (480–547) famous maxim "Ora et labora" as expressed in his Rule around 547 CE and ending with the symbolic burning of Angelo Carletti de Chivasso's (c.1414–95) manual for confessors, the *Summa angelica*, by Martin Luther (1483–1546) at Wittenberg in 1520. Benedict's Rule had been an authentic exhortation to reconcile the active and the contemplative life. The tradition of manuals for confessors—which enjoyed a boom at least from the fourth

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11 Thomas Worcester, s.v. "Confession, confessor," in *The Cambridge Encyclopedia of the Jesuits*, ed. Thomas Worcester (Cambridge: Cambridge University Press, 2017), 187.

12 John W. O'Malley, *The First Jesuits* (Cambridge, MA: Harvard University Press, 1993).

13 Compare Michael Maher, S.J., "Confession and Consolation: The Society of Jesus and its Promotion of the General Confession," in *Penitence in the Age of Reformation*, ed. Katharine J. Lualdi and Anne T. Thayer (Aldershot: Ashgate, 2000), 184–200.

14 Accordingly, the first Jesuits were perceived as rivals to secular priests and the religious establishment. The expansion of the order in the Low Countries is a point in case. Cf. Eddy Put, "De stichtingen in de Nederlanden en het Prinsbisdom Luik," in *De Jezuiten in de Nederlanden en het Prinsbisdom Luik (1542–1773)*, ed. Eddy Put and Maurits Wijnants, Algemeen Rijksarchief en Rijksarchief in de Provinciën. Educatieve dienst. Dossiers 2.5 (Brussels: Algemeen Rijksarchief, 1991), 21.

15 John W. O'Malley, S.J., "The Distinctiveness of the Society of Jesus," *Journal of Jesuit Studies* 3, no. 1 (2016): 1–16, here 3 (DOI: 10.1163/22141332-00301001).

16 Paolo Prodi, *Una storia della giustizia, dal pluralismo dei fori al moderno dualismo tra coscienza e diritto* (Bologna: Il Mulino, 2000).

17 Wim Decock and Christiane Birr, *Recht und Moral in der Scholastik der Frühen Neuzeit (1500–1750)*, Methodica: Einführungen in die rechtshistorische Forschung 1 (Berlin: de Gruyter/Oldenbourg, 2016), 23–29.

Lateran Council (1215) onwards<sup>18</sup>—had eventually tried to determine the practical consequences of that ideal by bringing Roman law and canon law to bear on cases of conscience stemming from Christians' perceived tension between faith and secular life. Two thirds of the references contained in the *Summa angelica* (1486) were taken from Roman law, canon law, and Medieval jurists. Angelo Carletti de Chivasso (c.1414–95) himself was a former professor of theology and law at the university of Bologna and a magistrate who eventually became a Franciscan friar.<sup>19</sup>

Martin Luther seems to have succeeded in his *damnatio memoriae* of 1520. Relatively little attention has been paid to the fact that the Catholic Church's reaction against the Protestant movement actually strengthened the very model of the combination of law and theology that had been condemned by Luther.<sup>20</sup> Following the example of Dominicans such as Tommaso de Vio (Cajetan) (1468–1534), who had been directly involved in the controversy with Luther,<sup>21</sup> the Jesuits challenged Luther's heterodox view of morality by doing precisely what he had condemned. They gave spiritual advice to the flock by relying on secular philosophy and secular law. Luther thought that only personal faith, divine grace and the Bible could show man how to behave in order to attain spiritual salvation (*sola fides, sola gratia, sola Scriptura*). The Jesuits, on the other hand, remained faithful to the adage of Thomas Aquinas that grace perfects nature provided that the potential of nature has been developed in the first place (*gratia naturam praesupponit et perficit*). Following the writers of the manuals for confessors in the Middle Ages, and again following in the footsteps of the "School of Salamanca," the Jesuits thought that giving concrete advice to people who wanted to know exactly how to choose the course of action that pleases God in day-to-day life, required technical tools necessary to underpin the teachings of the Gospel. The Jesuits came to recognize that in order to make Christian spirituality operational, it is important to analyze relationships amongst men in a juridical manner. Typically, lawyers analyze social behaviour as consisting of mutual rights and obligations which derive from laws. As a result, Jesuit moral theology emerged from what is generally known amongst jurists as the "law of obligations."<sup>22</sup>

18 See, among others, Pierre Michaud-Quantin, *Sommes de casuistique et manuels de confession au moyen âge (XIIe–XVIIe siècles)* (Leuven-Lille-Montréal: Nauwelaerts-Giard-Dominicaine, 1962); Joseph Goering, "The Scholastic Turn (1100–1500): Penitential Theology and Law in the Schools," in *A New History of Penance*, ed. Abigail Firey, Brill's Companions to the Christian Tradition 14 (Leiden: Brill, 2008), 219–38; Joseph Goering, "The Internal Forum and the Literature of Penance and Confession," in *The History of Medieval Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington (Washington, DC: Catholic University of America Press, 2008), 379–428.

19 For more biographical details, see S. Pezzella, in *Dizionario Biografico degli Italiani* 20 (Rome: Istituto della Enciclopedia italiana, 1977), 136–38.

20 Still there are excellent studies by Miriam Turrini, *La coscienza e le leggi: Morale e diritto nei testi per la confessione della prima età moderna* (Bologna: Il Mulino, 1991); Adriano Prosperi, *Tribunali della coscienza: Inquisitori, confessori, missionari* (Turin: Einaudi, 1996); Elena Brambilla, "Giuristi, teologi e giustizia ecclesiastica dal '500 alla fine del '700," in *Avvocati, medici, ingegneri: Alle origini delle professioni moderne (secoli XVI–XIX)*, ed. Maria L. Betri and Alessandro Pastore (Bologna: Clueb, 1997), 169–206; Wietsje de Boer, *The Conquest of the Soul: Confession, Discipline and Public Order in Counter-Reformation Milan* (Leiden: Brill, 2001); Roberto Rusconi, *L'ordine dei peccati: La confessione tra Medioevo ed età moderna* (Bologna: Il Mulino, 2002); Vincenzo Lavenia, *L'infamia e il perdono: Tributi, pene e confessione nella teologia morale della prima età moderna* (Bologna: Il Mulino, 2004).

21 Decock and Birr, *Recht und Moral in der Scholastik der Frühen Neuzeit*, 19.

22 Cf. Toon Van Houdt, *Leonardus Lessius over lening, intrinst en woeker. De iustitia et iure, lib. 2, cap. 20: editie, vertaling en commentaar*, Verhandelingen van de Koninklijke Academie voor Wetenschappen, Letteren en Schone Kunsten van België 60 (Brussels: Paleis der Academiën, 1998), xxx. A reference work on the history of the law of obligations is Reinhard Zimmermann, *The Law of Obligations: Roman Foundations of the Civilian Tradition* (Oxford: Oxford University Press, 1996).

Contrary to the Protestants, the Jesuits did not think that the New Law (*lex nova*), that is the Gospel, was sufficient a law to decide what a man needs to do in a particular circumstance in order to be justified in the eyes of God. Therefore, they explicitly recognized the existence of other sources of law, next to the Bible. Jesuits like Leonardus Lessius (1554–1623) had a comprehensive and systematic view of the various bodies of law that rule human behavior.<sup>23</sup> The main distinction Lessius makes is between natural law and positive law. Natural law (*ius naturale*) derives from rational nature and the natural condition of things itself. Contrary to positive law, the rectitude of natural law is determined not by a human or divine voluntary disposition, but rather by the nature of things itself. Hence natural law is immutable – it cannot be altered even by God himself. Men would be subject to natural law even if God did not exist.<sup>24</sup> Positive law (*ius positivum*), however, being true to its etymological sense (Lat. *ponere*), derives from a voluntary disposition. As Lessius explains, a positive law depends on the free will of God or mankind. Hence its changeable character, even if all circumstances that make up the nature of a case remain unaltered. Depending on whether a positive legal disposition stems from God or mankind, positive law subdivides into two main categories: divine law and human law. Divine law (*ius divinum*) itself is divisible into old divine law and new divine law. Whereas old divine law (*ius divinum vetus*) coincides with God’s legislation in the Old Testament, for example concerning rituals and governance, new divine law (*ius divinum novum*) encompasses the Gospel and, Lessius adds in a truly anti-Protestant vein, the sacraments. Human positive law (*ius humanum*) subdivides into three categories. Apart from the laws that are common to all nations (*ius gentium*), there exist civil law (*ius civile*) as constituted by secular rulers, and canon law (*ius canonicum*), as issued by virtue of the authority of the pope or the council.

Importantly, then, the Jesuits arrived at a detailed and scientific analysis of the “system” of law.<sup>25</sup> It was moral theologians’ task to understand the interactions within this plural legal system, particularly when different sets of norms diverged on the same subject, for instance on interest-taking, which was tolerated by human positive law, but forbidden by virtue of natural and divine positive law. Understanding those interactions and gaining insight into the complex world of law was not an easy task. Many confessors felt overwhelmed, “trembling because of the multitude of positions concerning positive law, which are continuously multiplying and about which there is much ignorance,” as Juan de Lugo (1583–1645) observed.<sup>26</sup> Confessors started suffering from the same degree of scrupulosity as did penitents. To cope with uncertainty, Jesuits promoted moral probabilism as a method of managing the plurality of opinions existing about the plurality of laws applicable to the case at hand. It would go beyond the scope of this contribution to dwell on the intricacies of moral probabilism, but it is worthwhile noting that this method was profoundly indebted to

23 See Leonardus Lessius, *De iustitia et iure ceterisque virtutibus cardinalibus libri quattuor* (Antwerp, 1621), lib. 2, cap. 2, dub. 2, num. 9, p. 20: “Si [ius] accipiatur secundo modo, pro lege, dividitur sicuti lex. Itaque *ius* aliud est naturale, aliud positivum; *ius positivum* aliud est divinum, aliud humanum. *Ius divinum* aliud est vetus, aliud novum. *Ius humanum* aliud est *ius gentium*, aliud *ius canonicum*, aliud civile.”

24 On the (late) Scholastic origins of the famous “impious hypothesis,” which is usually attributed to Hugo Grotius, see Alfred Dufour, “Les ‘Magni Hispani’ dans l’œuvre de Grotius,” in *Die Ordnung der Praxis: Neue Studien zur Spanischen Spätscholastik*, ed. Frank Grunert and Kurt Seelmann, Frühe Neuzeit 68 (Tübingen: Niemeyer, 2001), 351–80.

25 The same idea has been stressed, in the context of demonstrating the profound indebtedness of Hugo Grotius (1583–1645) to Jesuit moral theological thought, by Peter Haggemacher, “Droits subjectifs et système juridique chez Grotius,” in *Politique, droit et théologie chez Bodin, Grotius et Hobbes*, ed. Luc Foisneau (Paris: Kimé, 1997), 73–130; and by Paola Negro, “Intorno alle fonti scolastiche in Hugo Grotius,” *Divus Thomas* 27 (2000): 200–51.

26 Cited in Stefania Tutino, *Uncertainty in Post-Reformation Catholicism: A History of Probabilism* (Oxford: OUP, 2017), 21.

the legal tradition, borrowing basic principles of Roman-canon procedural law such as the idea that the position of the possessor and that of the defendant are stronger in case of doubt.<sup>27</sup>

As mentioned before, the Jesuits wanted to give advice to Christians of all walks of life. However, counselling those in positions of authority and power (“grandes”) was of special concern to them. According to Ignatius of Loyola, counselling influential laypeople such as “princes and lords and magistrates or administrators of the law” should be a priority, because of the potential multiplying effect.<sup>28</sup> That “elite” perspective even increased the need to have an “elite” understanding of law. The language spoken by the elite was often legal, if only because the standard background training of administrators, judges and princes in the *ancien régime* was in the *utrumque ius*. Among the elite were also many businessmen, who suffered from qualms of conscience about the morality of new business and banking techniques. If we look at the historical context in which the Jesuits emerged, it is obvious that theirs was an age characterized by globalization, especially the explosion of international, cross-continental commercial activity following the discovery of the Americas.<sup>29</sup> In the wake of Dominicans such as Tomas de Mercado, the Jesuits tried to be abreast of the new and complex challenges that merchants across the globe faced, as they felt themselves torn between the actual functioning of markets and the age-old condemnation of interest and speculation. In the complex world of politics, too, the Jesuits tried to find a compromise between the reality of reason of state and the Christian dream of a non-Machiavellian way of doing politics. So even if the basic principle of guiding and confessing Christians was simple, confessional practice required much empathy, careful analysis, and the mastery of legal techniques intended to overcome the complexity of life.

In order to counsel and console Christians living a secular life, a Jesuit must be an excellent lawyer in the first place. He must have knowledge of the objective bodies of law that determine the subjective rights and obligations that constitute a particular person’s legal and moral position. A Jesuit must know the civil law of a concrete city or state, because there are also obligations and rights that follow from those legislative bodies. Suárez’s introduction to his highly influential work on *The Laws and God the Lawmaker* (*De legibus ac Deo legislatore*), published in 1612, is telling in this respect. Theologians have a right and a duty to engage in civil law, according to Suárez, since all secular laws derive from God as from their first cause (*causa prima*)—the direct cause (*causa proxima*) of a law being the legislator, of course.<sup>30</sup>

Laws derive from God as from their first cause, because legislative bodies come into being through a natural process. For there to be order and peace in a society, authority and power must exist out of necessity. From this “necessariness” of power and laws, Suárez derives their “naturalness,” and since nature has been created by God, their indirect “divineness.” All secular societies have been set up by their own members as a means of fulfilling purely

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27 Tutino, *Uncertainty in Post-Reformation Catholicism*, 52–88; Decock, *Theologians and Contract Law*, 73–82.

28 Rady Roldán-Figueroa, “Ignatius of Loyola and Juan de Ávila on the Ascetic Life of the Laity,” in *Companion to Ignatius of Loyola*, ed. Maryks (Leiden: Brill, 2014), 172.

29 Thomas Banchoff and José Casanova, eds., *The Jesuits and Globalization: Historical Legacies and Contemporary Challenges* (Georgetown, DC: Georgetown University Press, 2016), 1–2.

30 Francisco Suárez, “De legibus ac Deo legislatore,” in *Opera omnia*, editio nova a Carolo Berton (Paris, 1856), vol. 5, Prooemium, ix–x; and “De defensione fidei catholicae,” in *Opera omnia*, editio nova a Carolo Berton (Paris, 1859), tom. 24, lib. 3, cap. 2, num. 1, p. 206.

human needs. The necessity and naturalness of political order is deduced by Francisco Suárez from an imagined “state of nature.”<sup>31</sup> Suárez is of the view that human beings will inevitably form a community given their intrinsically social and linguistic nature. Furthermore, in this state of nature, a legitimate form of political power comes into existence for the mere reason that it is necessary for the preservation of the social community. Mankind cannot uphold justice and peace unless it is ruled by an authority which cares for the common good by virtue of its office. Consequently, the legitimacy of political power is made dependent upon its necessity for the safeguarding of the community, even in the state of nature.<sup>32</sup> Put differently, positive legislation issued by a prince is binding in conscience because it indirectly derives from God. But, at the same time, these positive laws can only be binding in conscience on condition that they are not at variance with natural law.

The ambivalent nature of positive legislation which we find in Suárez’s political thought is a direct consequence of his intellectual battle against James I Stuart. The scope of one of Suárez’s main political treatises, the *Defense of the Catholic Faith (Defensio fidei catholicae)*, published seven years after the Gunpowder Plot (1606), was, indeed, to “deconstruct”<sup>33</sup> the Protestant claim of the “divine right of kings,” as promoted by James I in particular. This political theory directly challenged the divine power of the supreme pontiff and the Roman Catholic Church. Hence, Suárez points out that the final conclusion to be drawn from his account of the constitutionalist nature of political power is that the power and ambitions of secular princes need to be restrained.<sup>34</sup> Suárez insists that the idea that political power has a contractual basis must be regarded as an eminent “axiom of theology” (*egregium theologiae axioma*). Suárez stresses that political society is an invention of man himself and not a direct gift from God. In an immediate sense, secular princes derive their power from a contract, not from divine appointment. Subsequent to calculations of self-interest, a public authority is created whose duty it is to promote the common good. The legitimate way in which this happens, is through the establishment of a “social contract” between the ruler and the citizens.

Lessius, who took classes with Suárez at the Collegio Romano, describes the agreement between the citizens and public authority in terms of an employment contract<sup>35</sup>. Commenting on the famous Roman “lex regia,”<sup>36</sup> Suárez concludes that royal dignity must have been determined by a contract, in which the people transferred their power upon the prince on the condition and under the obligation that the ruler bears the responsibility for

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31 The use of the concept of a “state of nature” as a method of considering the basis and necessity of political power first emerges with Suárez and Hobbes; cf. Harro Höpfl, “Scholasticism in Quentin Skinner’s *Foundations*,” in *Rethinking the Foundations of Modern Political Thought*, ed. Annabel Brett, James Tully and Holly Hamilton-Bleakley (Cambridge: Cambridge University Press, 2006), 127–28.

32 Suárez, *De defensione fidei catholicae*, lib. 3, cap. 1, num. 3, p. 203: “Ratio hujus veritatis, quae ex necessitate hujus principatus et potestatis ejus, et consequenter ex fine illius, qui est conservatio humanae ac civilis reipublicae, sumitur. Homo enim natura sua propensus est ad civilem societatem, eaque ad convenientem hujus vitae conservationem maxime indiget [...] Non potest autem communitas hominum sine justitia et pace conservari: neque justitia et pax sine gubernatore, qui potestatem praecipendi et coercendi habeat, servari possunt: ergo in humana civitate necessarius est princeps politicus, qui illam in officio contineat.”

33 This is the term used in Jean-François Courtine, *Nature et empire de la loi: Études suarézienne* (Paris: Vrin, 1999), 22.

34 Suárez, *De defensione fidei catholicae*, lib. 3, cap. 2, num. 10, p. 209: “Ex quibus tandem concluditur nullum regem vel monarcham habere vel habuisse (secundum ordinariam legem) immediate a Deo vel ex divina institutione politicum principatum, sed mediante humana voluntate et institutione. Hoc est *egregium Theologiae axioma*, sed vere, quia recte intellectum verissimum est, et ad intelligendos fines et limites civilis potestatis maxime necessarium.”

35 Lessius, *De iustitia et iure*, lib. 2, cap. 1, dubit. 3, num. 13, p. 11.

36 Dig. 1, 4, 1 and Inst. 1, 2.

the republic and the administration of justice.<sup>37</sup> The power of the ruler is limited and qualified by the conditions contained in the contract by which the people conferred their sovereignty upon him.<sup>38</sup> Moreover, only in an indirect manner can secular power be called divine.

There are at least two practical conclusions to be drawn from this Suarezian political theory. Firstly, a confessor must take into account positive law as a binding source of normativity on account of its indirectly divine nature. Secondly, a confessor must enforce positive law in the court of conscience only to the extent that positive law is not at variance with natural law and if the public authorities remain within the boundaries of their legitimate power<sup>39</sup>. In conclusion, a good Jesuit theologian needs to master the tool of law in order to implement spirituality in the ministry of confession<sup>40</sup>:

The road to salvation passes through free actions and moral rectitude. Since moral rectitude strongly depends on law being, as it were, the rule of human actions, the study of law is a major part of theology. In treating of laws, the sacred doctrine of theology investigates nothing less than God himself in his function as a legislator. [...] It is the task of a theologian to care for the consciences of the pilgrims on earth. Yet the rectitude of consciences is dependent on observing the law just like moral pravity is dependent on breaking the law, since a law is every rule which leads to the gain of eternal salvation if observed—as it must be—and which leads to the loss of eternal salvation when it is broken. The study of law, then, pertains to theologians, to the extent that law binds conscience.

### 3. Every theologian a lawyer: the need for manuals and legal science

The major awareness among early modern Catholic theologians that moral and political advice cannot succeed unless articulated along legal lines, gave rise to a reinforcement of the synthesis of patristic-scholastic philosophy and Romano-canon law that already had characterized the Medieval manuals for confessors.<sup>41</sup> In his seminal work on the sources of orthodox theological reasoning, the Dominican friar Melchor Cano (c.1509–60) recommended theologians to carefully study civil law and canon law.<sup>42</sup> Theologians maintaining that they could solve cases of consciences without knowledge of the *utrumque ius* were deemed arrogant in a dissertation preceding Alphonso de Liguorio's (1696–1787)

37 Suárez, *De defensione fidei catholicae*, lib. 3, cap. 1, num. 12, p. 210.

38 Suárez, *De legibus ac Deo legislatore*, lib. 3, cap. 9, num. 4, p. 202.

39 This is not the place, however, to delve into the well-worn subject of resistance theories in the reformation period. Two recent monographs highlighting the situation in England at the time of Suárez include Victor Houlston, *Catholic Resistance in Elizabethan England: Robert Persons's Jesuit Polemic, 1580–1610* (Aldershot – Rome: Ashgate – Institutum Historicum Societatis Jesu, 2007) and Stefania Tutino, *Law and Conscience: Catholicism in Early Modern England, 1570–1625* (Aldershot: Ashgate, 2007).

40 Suárez, *De legibus ac Deo legislatore*, Prooemium, ix–x: “Quoniam igitur hujus salutis via in actionibus liberis morumque rectitudine posita est, quae morum rectitudo a lege tanquam ab humanarum actionum regula plurimum pendet: idcirco legum consideratio in magna theologiae parte credit: et dum sacra doctrina de legibus tractat, nihil profecto aliud quam Deum ipsum ut legislatorem intuetur. [...] Deinde theologicum est negotium conscientiarum prospicere viatorum: conscientiarum vero rectitudo stat legibus servandis, sicut et pravitas violandis, cum lex quaelibet sit regula, si ut oportet servatur, aeternae salutis assequendae: si violetur, amittendae: ergo et legis inspectio, quatenus est conscientiae vinculum, ad theologum pertinebit.”

41 Miriam Turrini, *La coscienza e le leggi. Morale e diritto nei testi per la confessione della prima Età moderna*, Annali dell'Istituto storico italo-germanico 13 (Bologna: Il Mulino, 1991).

42 Decock, *Theologians and Contract Law*, 39–40.

*Theologia moralis*. As far as the Jesuits are concerned, an evolution can be observed from relatively lean manuals for confessors that used legal concepts chiefly as an instrument for solving cases of conscience to all-comprehensive, systematic and scientific treatises that were dedicated to specific legal subjects, especially in the field of contract law.

The first Jesuit manual for the sacrament of confession, the *Short Directory for Confessors and Confessants* (*Breve directorium ad confessarii ac confitentis munus recte obeundum*) was published in 1554 by Juan Alfonso de Polanco (1517–76), a *converso* who has been said to possess a solid legal background.<sup>43</sup> It was still mostly prophetic in nature, displaying little in the way of a true legal science.<sup>44</sup> But soon, the Jesuits would find a more useful guide in the more extensive, technical-juridical manual for confessors written by Martin de Azpilcueta (1492–1586), a professor of canon law at Salamanca, better known as Dr. Navarrus.<sup>45</sup> His *Enchiridion or Manual for Confessors and Confessants* (*Manuel de confessores y penitentes*) (1552), published in Latin only twenty one years later,<sup>46</sup> was far more adapted to the changed socio-economic circumstances than was Polanco's *Directory*. Dr. Navarrus had taken Angelo Carletti da Chivasso's *Summa Angelica* as a model, thoroughly mixing theology and law, but he took an even more benign stand on many cases of conscience, which made his manual particularly appropriate for the confession of the masses.

Dr. Navarrus's *Manuale* was the first manual for confessors that fully integrated the decrees of the Council of Trent (1545–63) on confession and penance.<sup>47</sup> The fathers of the council reinforced the juridical conception of conscience and the sacrament of penance.<sup>48</sup> They stressed the judicial role of the confessor, besides his twin roles as father and medical doctor.<sup>49</sup> The Roman Catechism which incorporated the doctrines of Trent on confession and penance emphasized that the confessor could not absolve the penitent unless "restitution" was made of the harm caused by him. For example, if a farmer had sold grain above the legal price, the harm caused to the buyer had to be compensated by returning the surplus to him, or if a banker had received excessive interests, he should make restitution of the usurious interests to the borrower. The doctrine of "restitution" became one of the pillars of early modern moral theology, constituting the philosophical background against which the Jesuits engaged with cases of consciences ranging from monopolies through slavery and corruption.<sup>50</sup>

Dr. Navarrus's *Manuale* turned out to be very influential on Jesuit casuistry and moral theology<sup>51</sup>. Francisco de Toledo (1532–96), a former student of Domingo de Soto at

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43 Pierre-Antoine Fabre, "The Writings of Ignatius of Loyola as Seminal Text," in Companion to Ignatius of Loyola, ed. Maryks (Leiden: Brill, 2014), 114.

44 It was even suggested that its spirit prefigured Jansenist thought; see Robert A. Maryks, *Saint Cicero and the Jesuits: The Influence of the Liberal Arts on the Adoption of Moral Probabilism* (Aldershot – Rome: Ashgate – Institutum Historicum Societatis Iesu, 2008), 70–71.

45 Eloy Tejero, "Azpilcueta, Martín de," in *Diccionario general de derecho canónico*, ed. Javier Otaduy, Antonio Viana, and Joaquín Sedano (Navarra: Aranzadi, 2012), 1:610–14.

46 Emilio Dunoyer, *L'Enchiridion confessariorum del Navarro* (Pamplona: Gurrea, 1957), 77.

47 Vincenzo Lavenia, "Martín de Azpilcueta (1492–1586): Un profilo," *Archivio italiano per la storia della pietà* 16 (2003): 15–148, here 75–77.

48 Wim Decock, "Collaborative Legal Pluralism: Confessors as Law Enforcers in Mercado's Advice on Economic Governance (1571)," *Rechtsgeschichte – Legal History* 25 (2017): 103–14, here 108.

49 John O'Malley, *Trent: What Happened at the Council* (Cambridge, MA: Harvard University Press, 2013), 153.

50 Nils Jansen, *Theologie, Philosophie und Jurisprudenz in der spätscholastischen Lehre von der Restitution* (Tübingen: Mohr, 2013).

51 On the good relationship between Dr. Navarrus and the Society of Jesus, see Vincenzo Lavenia, "Martín de Azpilcueta," 103–12.

Salamanca who was to become a professor at the Collegio Romano, drew inspiration from Dr. Navarrus's *Enchiridion or Manual for Confessors and Confessants* as he prepared his own *Instruction for Priests and Penitents (Instructio sacerdotum ac poenitentium)*. From its publication in 1596 it was to become an alternative to Polanco's *Directory* within the Jesuit order, along Valère Regnault's (1549–1623) *Praxis fori poenitentialis* (1616). Interestingly, Regnault expressly modelled his manual for confessors on the structure of Justinian's *Institutions*, the standard textbook on Roman law<sup>52</sup>:

This manual subdivides into three parts according to the three basic elements of jurisprudence in the external courts: persons (*personae*), actions (*actiones*), and things (*res*). The first part concerns the persons in the court of conscience, namely those who participate in the sacrament of penance: the confessor, who is the legitimate judge in this court, and the penitent sinner, who is at the same time the guilty party and the witness, his own defendant and plaintiff, as if he were pleading the cause of God, who is offended by his acts, against himself. The second part concerns the actions that are used in the process of confession. For the penitent, those actions involve inner contrition, oral confession and satisfaction through works; for the confessor, performing the sacrament of absolution. The former constitutes the material of the sacrament of penance, the latter its form. Lastly, the third part concerns the things which the practice of confession is about, namely the sins committed by the penitent after his baptism.

As is obvious from Regnault's far-reaching analogy with the civil courts, in early modern Catholicism conscience was truly thought of in terms of a tribunal (*forum internum*), and the confessor's role as that of a judge.<sup>53</sup> It should not be surprising, then, that references to Roman and canon law are abundant in Jesuit casuistical treatises and books on moral theology throughout the period. For example, Juan Azor (1536–1603) hastens to add to the very title of his famous *Moral Institutes*, that the material of his exposition is based not only on theology, but also on canon law, civil law, and history. He also pays attention not only to the interpretations by theologians, but also to commentaries by canonists, civilians, writers of manuals for confessors and historians.<sup>54</sup> Rather than adding names to the extensive list of Jesuit manuals for confessors and casuistic treatises of moral theology, however, what matters here is to point out, albeit in a merely indicative way, the increasing systematization in the Jesuits' involvement with law.<sup>55</sup>

52 Valère Regnault, *Praxis fori poenitentialis ad directionem confessarii in usu sacri sui muneris. Opus tam poenitentibus quam confessariis utile* (Lyon, 1616), pr.: "Institutiones [...] digessi tripartitas, pro triplice genere attentium ad iudiciale forum: personarum, inquam, actionum, et rerum, ita ut prima pars complectatur spectantia ad personas fori poenitentialis, tanquam eas ex quibus dependet sacramenti poenitentiae usus. Sunt autem confessarius, tanquam iudex legitimus in illo foro; et peccator poenitens, tanquam reus simul et testis, adeoque advocatus accusator sui, tanquam is qui a se offensi Dei causam agat contra semetipsum. Secunda vero pars contineat spectantia ad actiones, in quibus idem usus consistit; quae sunt, quoad poenitentem quidem, contritio cordis, confessio oris et satisfactio operis. Quoad confessarium vero, absolutio sacramentalis. Illaeque sacramenti poenitentiae materiam constituunt et haec formam. Tertia demum pars [...] sit de rebus, circa quas idem usus versatur. Eae autem sunt peccata poenitentis post Baptismum commissa."

53 Harald Maihold, "Himmel und Erde: Die Abgrenzung von forum internum und forum externum in der frühen Neuzeit," in *Das Gewissen in den Rechtslehren der protestantischen und katholischen Reformationen*, ed. Michael Germann and Wim Decock (Leipzig: Evangel. Verlagsanstalt, 2017), 51–71.

54 Cf. Juan Azor, *Institutiones morales, in quibus universae quaestiones ad conscientiam recte aut prave factorum pertinentes breviter tractantur: Omnia sunt vel ex theologica doctrina, vel ex iure canonico vel civili, vel ex probata rerum gestarum narratione desumpta, et confirmata testimoniis vel theologorum, vel iuris canonici aut civilis interpretum, vel summistarum, vel denique historicorum* (Lyon, 1612).

Francisco Suárez (1548–1617) from Granada is a famous case in point, of course. In fact, he counts amongst those rare Jesuits who had not only been trained in philosophy and theology, but also in law.<sup>56</sup> This can be clearly seen from his writings, which include several lengthy works on technical legal subjects, for instance on the criminal law of the Church (*De censuris*, 1603). Although he had almost been refused as a novice when he wanted to enter the Jesuit order in Salamanca, Suárez was to become its most renowned metaphysician. Yet it is worth stressing on this occasion that he also published several brilliant masterpieces on legal and political theory. The most juridical of his works is the aforementioned treatise on *The Laws and God the Legislator* (1612). It contains some of the most thorough and systematic discussions of the concept of “law” that have ever been written. A short overview of the titles of the ten books of *The Laws and God the Legislator* will make this abundantly clear<sup>57</sup>:

Book 1: On the nature of laws in general, their causes, and their effects;

Book 2: On eternal law, natural law, and the law of nations

Book 3: On human positive law in itself (as it can be seen in the pure nature of man), also called civil law;

Book 4: On canon positive law;

Book 5: On the variety of human laws, particularly on criminal laws and laws that are being detested;

Book 6: On the interpretation of human laws, their changeability and ending;

Book 7: On the non-written laws, called custom;

Book 8: On favorable human law, viz. on privileges;

Book 9: On the old divine positive law;

Book 10: On the new divine law.

Suárez’s philosophy of law had a big influence both in Catholic and Protestant countries right from his treatises’s inception.<sup>58</sup> His understanding of natural law foreshadows the theories of Protestant natural lawyers such as Hugo Grotius.<sup>59</sup> Because of his account of the law of nations (*ius gentium*), he ranks among the mythical founders of international law.<sup>60</sup>

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55 An excellent census of early modern Jesuit manuals for confessors is provided by Robert A. Maryks, “Census of the Books Written by Jesuits on Sacramental Confession (1554–1650),” *Annali di storia moderna e contemporanea* 10 (2004): 415–519; see also, Decock and Birr, *Recht und Moral in der Scholastik der Frühen Neuzeit*, 17–18 and 43–48.

56 Maryks, *Jesuit Order as a Synagogue of Jews*, 107.

57 Cf. Francisco Suárez, “De legibus ac Deo legislatore,” in *Opera omnia*, editio nova a Carolo Berton (Parisiis, 1856), 5v–vii (*juncto* 6: vi–vii).

58 Karl Eschweiler, “Die Philosophie der spanischen Spätscholastik auf den deutschen Universitäten des 17. Jahrhunderts,” *Spanische Forschungen der Görresgesellschaft* 1 (1928): 251–325.

He is still important to philosophers of law today.<sup>61</sup> It is also easy to see how many of the ideas Suárez developed, are mirrored, albeit in a secularized form, in contemporary standard textbooks on law. For example, Suárez's insistence on the territorial scope of laws, his theory of subjective rights, legal fictions, presumptions, the distinction between absolute and relative nullity of contracts, the need to promulgate a law in order for it to become binding, and so on, were well-regarded in legal circles. Suárez's *The Laws and God the Legislator* displays a detailed analysis of a lot of the basic legal principles which we now take for granted, but which had not been fully developed until the early modern scholastic period. By the same token, Suárez's thorough analysis of the contractual nature of political power and his methodological conception of the state of nature as developed in his *Defense of the Catholic Faith* (1613), which was geared towards the rebuttal of the theory about the divine right of kings as advocated by James I Stuart, prefigures important strands in modern political theory.<sup>62</sup>

Although Suárez is undoubtedly the Jesuit most widely known to have made a fundamental contribution to legal theory, Suárez was by no means the only Jesuit whose work is of interest to jurists. Perhaps he even borrowed many ideas from his colleagues. This is hardly surprising. Back from a mission to China, François Noël composed a companion to Suárez's theology in which he pointed out that Suárez's mind may have been far too sublime and speculative to be able to dwell on rather vulgar and practical day-to-day affairs.<sup>63</sup> Consequently, he decided to add a summary of Tomás Sánchez's *On Marriage* and of Leonardus Lessius's *On Justice and Right* to the companion.<sup>64</sup> These additions were praised for being the most frequently studied authorities in Jesuit colleges on these practical matters worldwide. One should nevertheless not forget that Suárez was also active as a counsellor in real life cases. Many of these cases concerned practical issues related to marriage law, inheritance, financial contracts and canonical patrimonial law.<sup>65</sup> Moreover, the practical significance of some of the more theoretical discussions on law in Suárez should not be underestimated.<sup>66</sup> For example, in his widely neglected work *De censuris*,

59 Dominik Recknagel, *Einheit des Denkens trotz konfessioneller Spaltung: Parallelen zwischen den Rechtslehren von Francisco Suárez und Hugo Grotius* (Frankfurt am Main: Peter Lang, 2010); James Gordley, "Suárez and Natural Law," in *The Philosophy of Francisco Suárez*, ed. Benjamin Hill and Henrik Lagerlund (Oxford: OUP, 2012), 209–29; Oliver Bach, Norbert Brieskorn and Gideon Stiening, eds., *Die Naturrechtslehre des Francisco Suárez* (Berlin: de Gruyter, 2017).

60 See, among others, James B. Scott, *Vitoria et Suárez: Contribution des théologiens au droit international moderne* (Paris: Pedone, 1939); and John P. Doyle, "Francisco Suárez on the Law of Nations," in *Religion and International Law*, ed. Mark W. Janis and Carolyn Evans (London: Kluwer, 1999), 103–20. For recent bibliography on Suárez in general, see the excellent website run by Dr. Sydney Penner, [www.sydneypenner.ca/suarez.shtml](http://www.sydneypenner.ca/suarez.shtml) (accessed July 3, 2018).

61 Cf. Pauline C. Westerman, "Suárez and the formality of law," in *Politische Metaphysik: Die Entstehung moderner Rechtskonzeptionen in der Spanischen Scholastik*, ed. Matthias Kaufmann and Robert Schnepf, *Treffpunkt Philosophie* 8 (Frankfurt am Main et al.: Peter Lang, 2007), 227–38; Jean-Frédéric Schaub, "Suárez: Les lois," in *Dictionnaire des grandes oeuvres juridiques*, ed. Olivier Cayla and Jean-Louis Halpérin (Paris: Dalloz, 2008), 565–70; Thomas Pink, ed., transl., introd., *Francisco Suárez: Selections from Three Works*, *Natural Law and Enlightenment Classics* (Indianapolis, IN: Liberty Fund, 2015).

62 Among the major recent books on Suárez's political thought, see the above-mentioned work by Courtine, *Nature et empire de la loi*.

63 Noël is known for his *Sinensis imperii libri classici sex* (Prague, 1711), a Latin translation of classical Chinese philosophy which formed the basis for Christian Wolff's observations on Chinese culture. See East Asian Seminar @ University of Zurich, ed., *Der Westen in China – China im Westen: Bibliography and Biography Database*, [http://www.ostasien.uzh.ch/sinologie/forschung/chinaunnderwesten\\_en.html](http://www.ostasien.uzh.ch/sinologie/forschung/chinaunnderwesten_en.html), passim (accessed July 3, 2010).

64 Cf. François Noël, *Theologiae Francisci Suarez e Societate Jesu summa seu compendium in duas partes divisum, duobusque tractatibus adactum: primo de justitia et jure, secundo de matrimonio* (Cologne, 1732), *Appendix ad Suarez*, 1–2. Curiously, the economic historian Raymond de Roover attributes the short discussion on bills of exchange which is included in this anthology to Suarez, while it is actually part of the supplement *On Justice and Right*, which is a summary of Lessius's legal and economic thought; cf. Raymond De Roover, *L'Évolution de la lettre de change (14e–18e siècles)*, *Affaires et gens d'affaires* 4 (Paris: Armand Colin, 1953), 202.

65 Giannina Burlando, "Francisco Suárez como teólogo moral y político: El caso de 'consejos e pareceres,'" *Teología y vida* 57 (2016): 235–55.

about ecclesiastical penal law, Suárez made a seminal contribution to the discussion about the enforcement of contracts concluded with non-Catholics.<sup>67</sup>

The Jesuit and canon lawyer Tomás Sánchez (1550–1610) from Cordoba wrote an influential treatise *On Marriage* (*Disputationes de sancto matrimonii sacramento*) amongst many other important moral-juridical treatises.<sup>68</sup> Because of its vastness and detail, Sánchez's *On marriage* outshines the earlier and rather modest attempt by the Jesuit Enrique Henríquez (1546–1608) to treat the canon law of marriage. Henríquez had dedicated an entire book of his *Summa theologiae moralis* to marriage law, which was simply cited as his *On Marriage* by subsequent authors such as Sánchez.<sup>69</sup> Sánchez's *On Marriage* would remain one of the reference works in post-Tridentine matrimonial law. At the beginning of the twentieth century, Pietro Gasparri (1852–1934), the secretary for the Commission for the Codification of Canon Law, heavily drew on Sánchez as he prepared the new *Code of Canon Law* (1917). This has been clearly demonstrated by Carlo Fantappiè in his important two-volume study *Chiesa romana e modernità giuridica*, which is of great interest to anyone studying the Catholic Church's involvement with law in general, and (Jesuit) moral theologians in particular.<sup>70</sup>

Studying Sánchez requires a certain amount of courage and perseverance, not in the least because his argument is often floating and self-contradictory, even if the general structure of his treatise is systematic and clear. Yet no one runs the risk of being disappointed by Sánchez's stimulating reasoning and prudent counsels in very concrete matters. The expressive terms in which he describes the casuistry surrounding certain impediments to a valid marriage have struck eminent historians of canon law as being almost tantamount to mild forms of pornographic literature.<sup>71</sup> When it comes to the development of contract law, Sánchez's doctrine of the vices of the will, particularly mistake and duress, has been seminal. This is due to the fact that much of Sánchez's detailed analyses with regard to the validity of marital consent were then applied by other Jesuits like Lessius to other contracts. From his work *On Marriage* the table of contents gives a rough idea of Sánchez's systematic approach to marriage law and its relevance to other domains of contract law. It features books on engagements, on the essence of marriage, on clandestine consent, coercion in marriage contracts, conditional consent, donations between spouses, impediments to marriage, dispensations, obligations of the partners, and divorce.<sup>72</sup>

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66 Thomas Pink, "Suárez and Bellarmine on the Church as a Coercive Lawgiver," in *Legge e natura: I dibattiti teologici e giuridici fra XV e XVII secolo*, ed. Riccardo Saccenti and Cinzia Sulas (Ariccia: Aracne, 2016), 287–332.

67 Wim Decock, "Trust Beyond Faith: Re-Thinking Contracts with Heretics and Excommunicates in Times of Religious War," *Rivista internazionale di diritto comune* 27 (2016): 301–28, here 310–14.

68 On Sánchez and his treatise on marriage, see José Miguel Viejo-Ximénez, s.v. "Sánchez," in *Diccionario crítico de juristas españoles, portugueses y latinoamericanos*, ed. Manuel J. Peláez (Zaragoza: Cátedra de Historia del Derecho, 2006), 480–81; Fernanda Alfieri, *Nella camera degli sposi: Tomás Sánchez, il matrimonio, la sessualità (secoli XVI–XVII)*, (Bologna: Il Mulino, 2010); Christoph P. Haar, "Tomás Sánchez and Late Scholastic Thought on Marriage and Political Virtue," in *The Concept of Law (lex) in the Moral and Political Thought of the School of Salamanca*, ed. Kirstin Bunge et al. (Leiden: Brill, 2016), 81–105; Stefania T. Salvi, "Towards a New Era of Modernity?: Late Scholastic Speculation on Bigamy and Polygamy," in *Family Law and Society in Europe from the Middle Ages to the Contemporary Era*, ed. Maria Gigliola di Renzo Villata (Cham: Springer, 2016), 155–85.

69 In the Venice edition of 1600, the canon law of marriage is dealt with autonomously by Enrique Henríquez in book 11 of his *Summa theologiae moralis tomus primus*.

70 Carlo Fantappiè, *Chiesa romana e modernità giuridica*, vol. 1, *L'edificazione del sistema canonistico* (1563–1903), Per la storia del pensiero giuridico moderno 76 (Milano: Giuffrè, 2008), 447–58.

71 See James A. Brundage, *Law, Sex and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1990), 564–67; Marta Madero, "Peritaje e impotencia sexual en el *De sancto matrimonio* de Tomás Sánchez," *Eadem utraque Europa* (2008): 105–36.

72 See Tomás Sánchez, *Disputationes de sancto matrimonio sacramento tomus tres* (Antwerp, 1620), index.

For historians of moral theology as well as philosophers of law it will be useful also to consider Sánchez's *Opus morale in praecepta Decalogi*, but limited space urges us to resist the temptation in order to consider the other Jesuit whose work was thought to of such importance that it must be added to the anthology of Suarezian thought: Leonardus Lessius (1554–1623). Ever since the Renaissance of Thomism at the threshold of the twentieth century, this renowned Jesuit from Antwerp has drawn much attention for his masterpiece *On Justice and Right and the Other Cardinal Virtues* (*De iustitia et iure ceterisque virtutibus cardinalibus*) by historians of moral, economic, and legal thought.<sup>73</sup> Impressed with Robert Bellarmín's (1542–1621) fiery sermons during his studies at the Arts faculty in Leuven, he entered the Society of Jesus in 1572 and soon became a teacher of Aristotelian philosophy at the College d'Anchin in Douai, a job which left him enough spare time to teach himself Roman and canon law.<sup>74</sup> Upon finishing his theological studies at the Collegio Romano, where he studied with Suárez amongst other famous Jesuits, Lessius became a professor of moral theology at the Jesuit college of Leuven in 1585. For the exercises in practical ethics and casuistry, which he considered to be the hallmark of the Jesuit order, he made use of the Salamanca canonist Dr. Navarrus's *Manual for Confessors*. Even if Lessius is best known among theologians for his tenacious defence of Molinism in the debate on grace and free will, his moral theological and juridical masterpiece is the treatise *On Justice and Right*. It enjoyed numerous re-editions across Europe until the nineteenth century.<sup>75</sup>

Lessius's *On Justice and Right* played a vital role in the history of the law of obligations.<sup>76</sup> In his *On the Right of War and Peace* (*De iure belli ac pacis*), Hugo Grotius, the alleged father of modern natural law, frequently gives an elegant summary of the extensive arguments that were first developed by Lessius and other late scholastics. Embarrassingly, this often leads Grotius to copy the same incorrect references as did Lessius.<sup>77</sup> One major significance of Lessius's juridical thought is that it constitutes a synthesis of the Roman and canon legal tradition on the one hand, and Aristotelian-Thomistic moral philosophy, on the other.<sup>78</sup> This synthesis lived on, albeit in a degenerate form, in the Codes that rule modern jurisdictions—thus a brief account of Gordley's thesis.

In any event, in Lessius's *On Justice and Right*, the casuistry of the legal and moral tradition is ordered within a systematic whole. We have already had the occasion to mention Lessius' elaborate concept of law. It should suffice here to point out a further element in the very construction of Lessius's book which is symptomatic of the shift towards systematic legal thinking. Before discussing the particulars of the law of property, Lessius gives an account of justice in general (*de iustitia in genere*) and right in general (*de iure in genere*). By the

73 Bertram Schefold, ed., *Leonardus Lessius' De iustitia et iure: Vademecum zu einem Klassiker der Spätscholastischen Wirtschaftsanalyse*, *Klassiker der Nationalökonomie* (Düsseldorf: Wirtschaft und Finanzen, 1999).

74 For a short biographical introduction in English, see Wim Decock, transl., introd., and Nicholas de Sutter, transl., *Lessius On Sale, Securities and Insurance*, *Sources in Early Modern Economics, Ethics, and Law* 10 (Grand Rapids, MI: CLP Academic, 2016).

75 Van Houdt, *Leonardus Lessius over lening, intrest en woeker*, xviii–xxv.

76 Wim Decock, "Law of Property and Obligations: Neoscholastic Thinking and beyond," in *European Legal History Handbook*, ed. Heikki Pihlajamäki, Markus Dubber and Mark Godfrey (Oxford: OUP, forthcoming).

77 Robert Feenstra, "L'influence de la Scolastique espagnole sur Grotius en droit privé: quelques expériences dans des questions de fond et de forme, concernant notamment les doctrines de l'erreur et de l'enrichissement sans cause," in *La Secunda Scolastica*, ed. Grossi, 377–402.

78 This has been convincingly argued by James Gordley in his *Philosophical Origins of Modern Contract Doctrine* (Oxford: Oxford University Press, 1991), and in his *Foundations of Private Law, Property, Tort, Contract, Unjust Enrichment* (Oxford: Oxford University Press, 2006).

same token, his comprehensive analysis of illicit acts or torts is preceded by a chapter on injustice and restitution in general (*de iniuria et restitutione in genere*). Last but not least, his treatment of particular contracts follows his treatment of general contract law (*de contractibus in genere*). The table of contents of the second book of Lessius's treatise shows how thoroughly and systematically the law of property, torts and contracts were discussed by him, next to selected topics in procedural law, tax law, and canon law.<sup>79</sup>

Lessius's is a relatively concise treatise on legal and moral problems written in a crystal-clear and plain style. The six-volume treatise *On Justice and Right* published over the period 1593–1609 by his friend and colleague Luis de Molina (1535–1600), however, was far more detailed and voluminous.<sup>80</sup> It is obvious from a quick glance at the sheer titles of the six volumes constituting Molina's impressive *On Justice and Right* that this is an extremely rich treatise that not only deals with vast areas of private law, but also of public law.<sup>81</sup> The first volume deals with the concept of justice, property law, family law and successions. The second one with contracts. The third volume includes a part on primogeniture and taxes, and another part on the law of delicts. The fourth and fifth volumes concern torts, the sixth deals with issues of procedural law and the public administration of justice. Molina had been the first Jesuit to adopt the type of moral theological literature known as *On Justice and Right*—the first work of its kind having been written by the Salamanca Dominican Domingo de Soto in 1553–54. These treatises had actually grown out of commentaries on Thomas Aquinas's *Secunda secundae* which then became increasingly independent from their source.<sup>82</sup> This eventually led to the creation of an autonomous genre of moral theological literature at the university of Salamanca, where an important renewal of theological thought took place in the course of the sixteenth century.<sup>83</sup>

In contrast to Soto's work, the Jesuits' treatises *On Justice and Right* were far more systematic, voluminous, and technical. As has been pointed out before, the Jesuits were much more acquainted with the *ius commune* and the juridical thinking of their time. Molina's references to contemporary Portuguese and Spanish law or commercial practices are even more abundant than Lessius's useful observations on contemporary law and commercial customs in the Low Countries. Molina's citations of Scholastic authorities also outnumber those in Lessius. In this regard, Lessius appears to have integrated to a greater extent the humanist critique on scholastic methodology and also he seemed to have cared more about the reader-friendliness of his book. Yet the general scope of both treatises is the same, namely to give a systematic outline of law for the purpose of spiritual guidance. Directors who wanted to judge cases of conscience as adequately and effectively as possible could find an excellent tool in those manuals which had now turned into vast treatises.

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79 Leonardus Lessius, *De iustitia et iure ceterisque virtutibus cardinalibus*, lib. 2, p. 13–14.

80 On Molina, see, Frank B. Costello, S.J., *The Political Philosophy of Luis de Molina* (Rome: Institutum Historicum Societatis Iesu, 1974); Francisco Gómez Camacho S.J., *Luis de Molina: La teoría del justo precio* (Madrid: Editora Nacional, 1981); Diego Alonso-Lasheras, *Luis de Molina's De iustitia et iure: Justice as Virtue in an Economic Context* (Leiden: Brill, 2011).

81 Luis de Molina, *De iustitia et iure tomus sex* (Mogunz, 1614).

82 Wim Decock, "Domingo de Soto: *De iustitia et iure* (1553–1554)," in *The Formation and Transmission of Western Legal Culture: 150 Books that Made the Law in the Age of Printing*, ed. Serge Dauchy et al. (Heidelberg: Springer, 2016), 84–86; Decock, "Luis de Molina: *De iustitia et iure* (1593–1609)," in *The Formation and Transmission of Western Legal Culture*, ed. Dauchy et al., 129–31.

83 Juan Belda Plans, *La escuela de Salamanca y la renovación de la teología en el siglo XVI*, Biblioteca de Autores Cristianos Maior 63 (Madrid: BAC, 2000).

The third Jesuit who wrote a successful treatise *On Justice and Right* was Juan de Lugo, a canon lawyer by training, who went on to become a professor of theology at the Collegio Romano before being created cardinal by Pope Urban VIII (r.1623–44) in 1643, the year after the publication of his *Disputations on Justice and Right* (*Disputationes de iustitia et iure*).<sup>84</sup> With Molina and Lessius he shared a thorough understanding not only of different kinds of law and their application to qualms of conscience, but he also had a tremendous insight into the actual functioning of life, particularly with regard to business and economic affairs.<sup>85</sup> In his *Notitia iuris belgici*, for instance, the jurist Zypaeus (1580–1650) from the Southern Netherlands recommends lawyers to read Lessius in order to get the best analysis of financial techniques used by merchants and bankers at the Antwerp Bourse.<sup>86</sup> Both in regard to form and content, Lugo appears to be heavily indebted to Lessius, although he is certainly not a servile imitator. Lugo further developed the Jesuits' systematic approach to law and morality but sometimes could not avoid the pitfalls of casuistry, which is often associated with the laxist attitude of many Jesuit moral theologians. This supposed laxism exposed many Jesuits to cheap criticism both from within and outside the order.<sup>87</sup>

Although the Jesuits displayed a terrific knowledge of the legal tradition, it is remarkable that only a few among them were actually jurists by training. Besides Francisco Suárez and Juan de Lugo, who had studied law in Salamanca, there is an Austrian Jesuit who stands out for his achievements as a canon lawyer, namely Paul Laymann (1574–1635) from Arzl near Innsbruck.<sup>88</sup> As a professor of moral theology at the Jesuit college at Munich (1609–25) he was the promoter of theses on, for example, the sale-purchase contract, or the fundamental difference between *ius* and *factum*.<sup>89</sup> In Munich he also finished his monumental five books on *Moral Theology*. This is a systematic, methodical, and all-comprehensive overview of moral theology, full of references to Romano-canon law—certainly in the book *On Justice and Right*, which is highly reminiscent of Molina and Lessius's discussions on property, delicts, and contracts.<sup>90</sup>

Laymann's *Moral Theology* is another testimony to the fact that it would be particularly temerarious to distinguish too sharply between law and morality in the Jesuit moral theological thinking of the early modern period. This symbiosis of law and ethics can also be seen in Jesuit treatises dedicated expressly to "morality," say Vincenzo Figliucci's (1566–1622) *Quaestiones morales* or Hermann Busenbaum's (1600–68) *Medula theologiae moralis*. Conversely, Pedro Murillo Velarde (1696–1753), a Jesuit canon lawyer and cartographer in the Philippines, published a two-volume textbook on the canonical, Spanish and Indian "legal systems" (*Cursus iuris canonici, Hispani et Indici*, 1743) which was

84 For further details, see Estanislao Olivares, "Juan de Lugo (1583–1660): Datos biográficos, sus escritos, estudios sobre su doctrina y bibliografía," *Archivo teológico granadino* 47 (1984): 5–129.

85 Fabio Monsalve Serrano and Oscar de Juan Asenjo, "Juan de Lugo y la libertad en economía: El análisis económico escolástico en transición," *Procesos de mercado: Revista europea de economía política* (2006): 217–43; Wim Decock, "Lessius and the Breakdown of the Scholastic Paradigm," *Journal of the History of Economic Thought* 31 (2009): 57–78.

86 Franciscus Zypaeus, *Notitia iuris Belgici* (Antwerp, 1675), lib. 4, p. 61.

87 Jean-Pascal Gay, *Morales en conflit: Théologie et polémique au Grand Siècle (1640–1700)* (Paris: Cerf, 2011).

88 Rainer Florie, Paul Laymann. *Ein Jesuit im Spannungsfeld von Wissenschaft und Politik* (Münster: Aschendorff, 2017).

89 *Assertiones theologiae de contractu emptionis et venditionis*, ad quas praeside Paulo Laymann publice respondebit Valentinus Schublin (Munich, 1616); *Assertiones ex theologia morali de vario discrimine iuris et facti, ad quas praeside Paulo Laymann publice respondebit Johannes Hicken* (Munich, 1619).

90 See Paul Laymann, *Theologia moralis in quinque libros partita, quibus materiae omnes practicae, cum ad externum ecclesiasticum, tum internum conscientiae forum spectantes nova methodo explicantur*, lib. 3, *De iustitia et iure ceterisque virtutibus cardinalibus* (Munich, 1625).

imbued with references to moral theology.<sup>91</sup> But to return to Paul Laymann, he not only wrote moral theological treatises that were heavily imbued with legal thought, he also dedicated himself to studying the canon legal tradition in a systematic way itself. After all, he had obtained a chair in canon law at the university of Dillingen and held it from 1625 onwards. In this period, he undoubtedly started writing his commentaries on the *Decretales* (1234) of Pope Gregory IX (r.1227–41) and on Pope Boniface VIII's (1294–1303) *Liber sextus* (1298). They were published posthumously as *Canon law or Commentaries on the Decretals*.<sup>92</sup> The editor explained the design of the book as a commentary on the decretals, rather than as a systematic study obeying its own inner logic, by appealing to the jurists' ordinary habit to discuss canon law by following that pre-established pattern. He thus wanted to render Laymann's explanations more reader-friendly.

Laymann's attention to the canon law *per se* is significant for a growing trend among Jesuit scholars in the seventeenth century not only to study law primarily for the benefit of moral theology, but also for its own sake. Next to the treatises *On Justice and Right* or *Moral Theology*, by the mid-seventeenth century we witness the birth of vast, systematic, and influential books on various branches of law. An exciting example of this turn towards a Jesuit legal science, notably with regard to contract law, is the Spanish Jesuit Pedro de Oñate's (1568–1646) four-volume treatise *On Contracts*, published posthumously in 1646 (*De contractibus*).<sup>93</sup> Pedro de Oñate, who had been a student of Suárez at Alcalá de Henares, became provincial of the Jesuit order in Paraguay in 1615. By the end of his term, he had co-founded the University of Córdoba (Argentina) and eleven colleges. In 1624, he was designated professor of moral theology at the Colegio San Pablo in Lima (Peru). His treatise *On Contracts* is one of the most extensive treatises on both general and particular contract law that has ever been written. In it, Oñate discusses all contracts from the point of view of Aristotelian-Thomistic philosophy. He borrows extensively from the Romano-canon legal tradition, Molina, Sánchez and Lessius, but has the merit of giving an ultimate synthesis of all the problems pertaining to contract law. It is a three-volume testament to a five-hundred-year-old tradition in scholastic contract doctrine which is unparalleled in its comprehensiveness.

The first volume of Pedro de Oñate's *On Contracts* is a systematic account of general contract doctrine (*de contractibus in genere*), the second deals with gratuitous contracts (*de contractibus lucrativis*), e.g. donations, agency, dowry, etc., while the third offers a meticulous analysis of all onerous contracts (*de contractibus onerosis*), e.g. sale-purchase, rents, bills of exchange, etc. At the outset of his treatise, Oñate warns his reader that contract law is at the same time an extremely vast (*vastissimum*) and difficult (*difficillimum*) field of study. Distinguishing more than thirty particular contracts, he admits that contract law is an immense ocean, or rather, infinite chaos. Contract law is founded upon unstable ground which has prevented any scholar before him to treat it as thoroughly as he did. Moreover, contract law is very difficult. This has to do with the avarice of man, according to

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91 Luis Díaz de la Guardia y López, "Datos para una biografía del jurista Pedro Murillo Velarde y Bravo," *Espacio, tiempo y forma: Historia moderna* 14 (2001): 407–71.

92 Paul Laymann, *Jus canonicum commentario perpetuo explicatum* (Dillingen, 1698).

93 See Ernst Holthöfer, "Die Literatur zum gemeinen und partikularen Recht in Italien, Frankreich, Spanien und Portugal," in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, vol. 2.1, ed. Helmut Coing (Munich: C. H. Beck, 1977), 368 and 491; Italo Biocchi, *Causa e categoria generale del contratto: Un problema dogmatico nella cultura privatistica dell'età moderna*, vol. 1, *Il cinquecento*, *Il Diritto nella Storia* 5 (Turin: Giappichelli, 1997), 271–89; E. Fernández, s.v. "Oñate," in *Diccionario histórico de la Compañía de Jesús* 3:2870–71.

Oñate, which mostly expresses itself through the use of contracts, since contracts are the juridical means by which money and property are exchanged. On top of this, various legislators have tried to rule on the same matter in different ways and by issuing a plethora of different laws.

Yet it is worthwhile to note that Pedro de Oñate also points out that understanding contract law is extremely useful (*utilissimum*).<sup>94</sup> Contract law is essential not only to businessmen, lawyers, judges, and public officials, but to theologians as well. A sound knowledge of contract law is absolutely necessary for theologians, certainly for those who are involved in the sacrament of confession.<sup>95</sup> The reason is simple: on the earthly pilgrimage towards God, it is impossible not to enter into contracts.

Not only was law increasingly studied for its own sake, in the second half of the seventeenth century, Jesuit legal scholarship evolved into a real science of law. This is obvious from the French Jesuit Joseph Gibalin's (1592–1671) systematic and universal treatises on various topics of the law. Gibalin was a professor of canon law and theology at the Jesuit college of Lyon and an occasional counsellor to Richelieu. But on top of that, he wrote voluminous treatises on the entire private and commercial law, probably to counsel merchants in Lyon, which was one of the main places for trade and finance in his time.<sup>96</sup> The mere title of his works are significant of what I would call the turn towards a “Jesuit science of law”: *De universa rerum humanarum negotiatione tractatio scientifica* (1663): a scientific treatment of the whole of human business, focussing on commerce and contracts. Its extended title in the Lyon-edition of 1663 is even more emblematic of the fusion of the entire legal and theological tradition into a single legal science<sup>97</sup>:

A scientific treatise (*tractatio scientifica*) on universal human business, to be used in both courts, and derived from natural law, church law, civil law, Roman law, and French law. In this book, equity in human business is explained in a scientific and solid manner (*scientificae et solide*), namely in all its causes and subjects, in the universal and particular forms of contracts, exchanges and the various kinds of synallagmatic relationships, and in the obligations that are created by them; this book also shows what the right and false use of human sciences and arts are, the essence of the various ranks, offices, and duties. Hence it treats of the whole of economics and politics.

The same turn towards a scientific and all-comprehensive treatment of legal affairs can be witnessed in Joseph Gibalin's systematic treatise on canon law, the title of which is equally indicative of the turn towards legal science: *Scientia canonica et hieropolitica*.<sup>98</sup> Again, the full title of this scientific treatise as can be found in the Lyon-edition of 1670 is telling enough:

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94 Decock, *Theologians and Contract Law*, 68.

95 Pedro de Oñate, *De contractibus tomi tres* (Rome, 1646), tom. 1, tract. 1, pr., num. 3, p. 1.

96 Paola Vismara, *Oltre l'usura: La Chiesa moderna e il prestito a interesse* (Soveria Mannelli: Rubbettino, 2004), 103n58.

97 Joseph Gibalin, *De universa rerum humanarum negotiatione tractatio scientifica, utriusque foro perutilis. Ex iure naturali, ecclesiastico, civili, Romano, et Gallico: In qua negotiorum humanorum aequitas per omnes negotiationis causas, materias, formas universales ac singulares contractuum, commerciorum, atque synallagmaticoona diversa genera, ex iisque ortas obligationes, scientificae et solide explicatur, humanarum scientiarum et artium rectus ac pravus usus demonstratur, singulorum statuum, officiorum ac munerum rationes, atque adeo universa oeconomica et politica traduntur* (Lyon, 1663).

A new treatise on the science (*scientia*) of canon law and hieropolitics. It reduces all singular rules that are scattered over the body of pontifical law to certain and indubitable principles. On the basis of these principles, innumerable questions are solved, albeit not always in a necessarily conformist way, which concern both the internal and the external fore. In this book French private morals are reconciled with Roman morality. Last but not least, universal moral theology is taught on the basis of certain and constant academic principles, the teachings of the Fathers and the law of the church.

There hardly seems to be any place which is better suited for concluding this brief “tour d’horizon” of some major Jesuit works on law in the early modern period than Joseph Gibalin’s epitome of Jesuit legal science. Of course, further examples of Jesuit experts in legal affairs could be cited. For example, Martín Antonio Delrío’s (1551–1608), Joannes David’s (1546–1613), and Friedrich Spee’s (1591–1635) contributions to the early modern debate on criminal law, particularly on witchcraft and magic.<sup>99</sup> Paolo Comitoli (1545–1626),<sup>100</sup> Gregorio de Valencia (1549–1603),<sup>101</sup> and Martin Becanus (1563–1624)<sup>102</sup> wrote important treatises on contract law. Juan de Mariana (1536–1624) was a master of legal analysis, delivering a lasting contribution on monetary law with this *De monetarum mutatione* (1609). The list of Jesuits excelling in law is endless, and, although the seventeenth century was undoubtedly the golden age of Jesuit moral and legal thinking, Jesuits around the world continued to excel in legal studies in subsequent ages. For example, in 1741, of worthy mention would be the Jesuit historian Ignaz Schwarz (1690–1763) from Münckhausen who published his *Institutions of Universal Public Law (Institutiones iuris publici universalis)* as a reply to the natural law treatises of Grotius, Pufendorf, Thomasius, Vitriarius, and Heineccius.<sup>103</sup> In international law, too, Jesuit legal scholarship kept on shining, notably in

98 Joseph Gibalin, *Scientia canonica et hieropolitica opus novum, in tres tomos partitum. In quo singula, quae toto corpore iuris Pontificii sparsa sunt, ad certa, et indubitata principia reducuntur: Et ex illis innumerae quaestiones, ad forum tum internum, tum externum pertinentes, facile et solide, quamvis non semper ex vulgi sensu, explicantur; Privati Galliae mores, ac iura cum Romanis conciliantur: Universa denique moralis Theologia, ex certis, et constantibus scholasticae principiiis, Patrum sensu, et ecclesiasticis legibus docetur* (Lyon, 1670). It should be noted that Carlos Sommervogel, *Bibliothèque de la Compagnie de Jésus* (Brussels, 1892), tom. 3, col. 1401, num. 7 wrongfully made reference to the title of this work as being “Sententia canonica et hieropolitica, etc.”—a mistake copied by P. Duclos, s.v. “Gibalin,” in *Diccionario histórico de la Compañía de Jesús biográfico-temático*, 2:1727, and by Brigitte Basdevant-Gaudemet, s.v. “Gibalin,” in *Dictionnaire historique des juristes français XIIe–XXe siècle*, ed. Patrick Arabeyre, Jean-Louis Halpérin and Jacques Krynen (Paris: PUF, 2007), 365.

99 Cf. Günter Jerouschek, “Für und wider der Hexenverfolgung: Zu Heinrich Kramers *Malleus Maleficarum* und Friedrich Spees *Cautio Criminalis*,” in *Europäische Religionsgeschichte: Ein mehrfacher Pluralismus*, ed. Hans G. Kippenberg, Jörg Rüpke and Kocku von Stuckrad (Göttingen: Vandenhoeck & Ruprecht, 2009), 253–87; Dries Vanysacker, “Un point de vue de juriste, de théologien ou plutôt de jésuite au service de la Contre-Réforme?: L’attitude de Martín Antonio Delrío (1551–1608) et Joannes David (1546–1613) envers la sorcellerie et le mal parmi nous,” in *The Quintessence of Lives: Intellectual Biographies in the Low Countries Presented to Jan Roegiers*, ed. Dries Vanysacker et al., (Turnhout, Louvain-la-Neuve, Leuven: Brepols – Bibliothèque de la Revue d’histoire ecclésiastique, 2010), 63–82. On Spee, see also Sky Michael Johnston, “Pre-Suppression Jesuits in German-Speaking Lands,” in *Jesuit Historiography Online*, ed. Robert A.

Maryks,

[http://referenceworks.brillonline.com/entries/jesuit-historiography-online/pre-suppression-jesuits-in-german-speaking-lands-COM\\_192578](http://referenceworks.brillonline.com/entries/jesuit-historiography-online/pre-suppression-jesuits-in-german-speaking-lands-COM_192578).

100 Decock, *Theologians and Contract Law*, 511.

101 Decock, *Theologians and Contract Law*, 528.

102 Decock, *Trust Beyond Faith*, 315–26.

103 Biographical details on Ignaz Schwarz, who served as a history professor at the University of Ingolstadt, are provided by Carlos Sommervogel, *Bibliothèque de la Compagnie de Jésus* (Bruxelles-Paris, 1896), tom. 7, col. 946–49, and in Harald Dickherhof, *Land, Reich, Kirche im historischen Lehrbetrieb an der Universität Ingolstadt. Ignaz Schwarz 1690–1763*, Ludovico Maximiliana: Forschungen 2 (Berlin: Duncker & Humblot, 1967).

the debates on international law and the law of war and peace. Jesuits like Yves de la Brière (1877–1941) and Robert Regout (1896–1942) are worthy of investigation in this respect.<sup>104</sup>

#### 4. Back to the spiritual roots of Jesuit legal science

Joseph Gibalin's attempt to encapsulate the entire human life into scientific legal structures is nothing less than the pinnacle of a century of Jesuit involvement in legal and moral theological studies. Starting with rather traditional manuals for confessors, the Jesuits gradually felt the need to invest themselves more deeply into the universe of law composed of natural law, the Romano-canon legal tradition, and even contemporary positive law. Instead of interpreting this remarkable phenomenon as an omen of the pernicious *effusio ad exteriora* which Acquaviva had already signalled as a threat to the authentic Christian spirit at the threshold of the seventeenth century—a warning the Jansenists would not cease to repeat afterwards—it may be useful to recall the truly spiritual roots of the Jesuits' involvement in legal scholarship.

The Jesuits wanted to bring back as many people as possible to their creator. As consultants to people of all walks of life, but especially the elites, they tried to give concrete answers on how they needed to act in specific circumstances of life without losing the hope of gaining salvation at the Last Judgment. Put differently, the scientific legal scholarship of the Jesuits was a handmaiden of their pastoral activity and spiritual ministry: *ad maiorem Dei gloriam*. As was beautifully explained by Suárez, law was considered to be an indispensable tool to any theologian, confessor, and spiritual guide with an honest concern to radically solve the most diverse cases of conscience. A sound knowledge of law was deemed necessary for the practical purpose of effectively governing souls in the day-to-day practice of moral counselling.<sup>105</sup> Athanasius Kircher (1602–80), the Jesuit polymath, considered laws a divine gift and the science of those laws (*legum scientia / scientia legalis*) a fundamental prerequisite for good governance.<sup>106</sup>

Even if contemporary scholarship in moral theology may lead one to think otherwise, the pronounced legal outlook of Jesuit moral thinking is not an exception in the rich field of early modern Catholic ethics. With Benedictines, Dominicans, Franciscans, Augustinians, Carthusians and other religious orders the Jesuits shared the view that making Christian spirituality operational in day-to-day life requires the tool of law.<sup>107</sup> Still, the depth of legal analysis attained by Jesuits such as Suárez, Sánchez, Molina, Lessius, Lugo, Laymann, Oñate, and Gibalin remains unparalleled. Because of their massive reception in the work of other theologians, the revival period of Catholic, scholastic moral theology in early modern times

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104 On Regout, see Henri de Waele, "Regout als jurist," in *Robert Regout: Maastricht 1896 – Dachau 1942*, ed. Marc J. F. Lindeijer, S.J. and A. Welle (Drachten: Omnia-Fausta, 2004), 103–23; and Henri de Waele, "Over de grenzen van het volkenrecht. Robert Regout, zijn tijd en de rechtsgeleerdheid," in *Markante jezuiten uit de lage landen: Canisius, Verbiest, Lessius, Regout*, ed. Mark Rotsaert and Barbara Segaert (Leuven: Peeters, 2007), 71–83. It is no coincidence, of course, that a couple of years before de la Brière and Regout published their writings on the just war, Joseph M. Bittremieux had just re-edited Lessius's lectures on law and peace in *Lessius et le droit de guerre: Contribution à l'histoire des doctrines théologiques sur la guerre* (Bruxelles: Dewit, 1920).

105 Wim Decock, "Knowing Before Judging. Law and Economic Analysis in Early Modern Jesuit Ethics," *Journal of Markets and Morality, Journal of Markets and Morality* (2018), forthcoming.

106 Athanasius Kircher, *Principis Christiani archetypum politicum sive sapientia regnatricis* (Amstelodami: apud Jansson, 1672), lib. 2, cap. 9, p. 168.

107 Merio Scattola, "Gewissen und Gerechtigkeit in den Beichtbüchern der Frühen Neuzeit," *Journal of Early Modern Christianity* 2 (2015): 117–58. For an overview of relevant literature by early modern theologians belonging to other religious orders, see Decock and Birr, *Recht und Moral in der Scholastik der Frühen Neuzeit*, 33–57.

has often been referred to simply as the period of “Jesuit scholasticism,” through a kind of *pars pro toto*.<sup>108</sup> The synthesis of law and morality reached in their work was of such high quality that it left its imprint not only on the moral theological tradition until the twentieth century—suffice it to mention Arthur Vermeersch, S.J. and Oswald von Nell-Breuning S.J.—but also inspired lawyers across the world, as can be witnessed in the work of jurists as diverse as Baltasar Gómez de Amescúa (c.1561–1604), Sigismondo Scaccia (c.1564–1634), Hugo Grotius (1583–1645), Giovanni Battista de Luca (1613–83), Samuel Stryk (1668–1715), Robert-Joseph Pothier (1699–1772) and Andrés Bello (1781–1865). More scholarship is needed to improve our understanding of Jesuit legal thought and the imprint it left on the legal tradition.