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SUAREZ AND ROSMINI: LAW, STATE, CONSCIENCE

The paper focuses on the key influence of Francisco Suárez on Antonio Rosmini's philosophy of law; it establishes a dialogue between them, in order to highlight a shared conceptual framework rooted in the rationalist tradition of the Second Scholastic Movement. In particular, it emphasizes their convergence on the primacy of the human person, the ethical foundations of law, and the intrinsic connection between freedom and property. In his Filosofia del diritto, *Rosmini quotes extensively from Suárez's masterly treatise,* De legibus ac Deo legislatore. *These references are not casual, but express a systematic engagement with Suarez's theory of law, authority, and natural law, especially in relation to the foundation of legal normativity and the moral architecture of property. It is precisely in his more organic legal writings that Suárez's scholastic legacy emerges most clearly, as an essential theoretical reference point for Rosmini. Suárez's influence, however, is not isolated. Rosmini also engages with other prominent exponents of late scholasticism, particularly the Jesuits Leonardus Lessius (1554–1623) and Juan de Lugo (1583–1660), whom he himself specifically cites. Their works on moral theology and jurisprudence helped clarify some central themes of Rosmini's thought. As Gian Piero Soliani recalled in his presentation in Trento in 2023, Rosmini directly refers to the famous treatises of Lessius and de Lugo, recognizing their fundamental role in the development of natural law and justice even before Grotius.*

Francisco Suárez is a figure whose profound influence on Antonio Rosmini's legal philosophy; by placing Suárez and Rosmini in dialogue, the article seeks to illuminate a shared juridical framework rooted in the rationalist tradition of Second Scholasticism, highlighting their common emphasis on the centrality of the human person, the ethical foundations of law,[1] and the

[1] M. NICOLETTI, *Aspetti teologici nel pensiero politico di Antonio Rosmini*, in K. MENKE, A. STAGLIANÒ (eds.), *Credere pensando: domande della teologia contemporanea nell'orizzonte del pensiero di Antonio Rosmini*, Morcelliana, Brescia 1997, p. 509-531; ID., *Politica e trascendenza nel pensiero di A. Rosmini* in G. CAMPANINI, F. TRANIELLO (eds.), *Filosofia e politica: Rosmini e la cultura della Restaurazione*,

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intrinsic relationship between freedom and property.[2]

Indeed, Rosmini's *Filosofia del diritto*[3] contains multiple and substantive references to Suárez's magisterial treatise *De legibus ac Deo legislatore*.[4] These citations are not incidental; rather, they reflect a sustained intellectual engagement with Suárez's theory of law, authority, and natural right, especially as it pertains to the foundations of legal normativity and the moral architecture of property. It is within the framework of these legal writings – where Rosmini's jurisprudential thought is most systematically articulated[5] – that Suárez's scholastic legacy is most visibly operative.

Beyond Suárez, attention must also be given to other prominent exponents of the late scholastic tradition whose work informed Rosmini's legal and philosophical outlook, most notably Leonardus Lessius and Juan de Lugo. These two Jesuit thinkers, active during the sixteenth and seventeenth centuries respectively, are explicitly mentioned by Rosmini himself. Their works, especially in moral theology and jurisprudence, appear to have contributed to the refinement of certain key dimensions of his thought. As Gian Piero Soliani recently emphasized in his 2023 presentation in Trento, Rosmini explicitly refers to the well-known treatises of both Lessius (1554–1623) and de Lugo (1583–1660), underscoring their enduring relevance within his own legal framework. «And how many among the ecclesiastical writers composed, even before Grotius, treatises *De iustitia et de iure*, in which, following in the footsteps of Aquinas, doctrines pertaining to natural law are subtly examined – among whom it is worth mentioning, if only in passing, a Lessius and a De Lugo? ».[6] Of particular note is Rosmini's engagement with Cardinal de Lugo's reflections on the right to property[7] – an issue of central importance in *Filosofia del diritto*, and

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Morcelliana, Brescia 1993, p. 263-286; P. MARANGON, M. ODORIZZI (eds.), *Da Rosmini a De Gasperi. Spiritualità e storia nel Trentino asburgico Figure a confronto*, Università di Trento Ed., Trento 2017.

[2] M. NICOLETTI, *La riflessione rosminiana sulla libertà*, in «Cosmopolis», XVIII, 2021, vol. 1; F. GHIA, *L'ecclesiologia di Rosmini e il liberalismo religioso*, in G. GOISIS, I. ADINOLFI (eds.), *Insegnare il cristianesimo nel novecento: la ricezione di Kierkegaard e Rosmini*, Il Melangolo, Genova 2012, p. 79-86.

[3] A. ROSMINI, *Filosofia del diritto*, Boniardi-Pogliani, Milano 1841. Two critical editions must be mentioned: R. ORECCHIA (Padua, Cedam, 1969) and the later edition by Michele Nicoletti and Francesco Ghia (Roma, Città Nuova, 2016).

[4] For instance in Vol I: p. 12 on Eternal Law ('Legge eterna'); p. 155-156 on Natural and Postive Law; Vol. II: p. 883 on Criminal Law; p. 888-889 on Matrimonial Law.

[5] M. NICOLETTI, *Rosmini, la persona e i diritti*, in «Rosmini Studies», 2022, vol. 9, pp. 55-67.

[6] «E quanti fra gli scrittori ecclesiastici non iscrissero prima di Grozio de' trattati *de iustitia et de jure* dove, sulle tracce dell'Aquinate, le dottrine del naturale diritto appartenenti si trovano sottilmente discusse, fra' i quali giovi sol nominare un Lessio e un De Lugo ?», ROSMINI, *op. cit.*, Vol I, p. 32 (own translation).

[7] ROSMINI, *op. cit.*, Vol I, p. 311.

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one that underscores the intricate interplay between theological principles and juridical categories in early modern scholasticism. Rosmini on contract Law refers to Lugo, of course, but also to Vasquez, Sanchez and Molina.[8]

The intellectual triad composed of Suárez, Lessius, and de Lugo should occasion no surprise, given their pivotal role as mediators between scholastic thought and the evolving legal rationality of early modern Europe. Their influence on Rosmini is equally unsurprising when considered in light of their capacity to synthesize the philosophical and legal currents of their time.[9] Both Lessius and de Lugo stand out not only as moral theologians but as jurists of exceptional clarity and precision, whose contributions to private law exemplify the broader jurisprudential ambitions of the Second Scholasticism.

In the domain of private law, the foundational contributions of the Second Scholastics have been the subject of substantial scholarly attention. Eminent legal historians such as Michel Villey, Robert Feenstra, Franz Wieacker, and Giovanni Ambrosetti have investigated the extent to which modern private law is indebted to scholastic jurisprudence. A key moment in this historiographical rediscovery occurred during a landmark conference held in Florence half a century ago, initiated by Paolo Grossi. That event played a decisive role in reviving scholarly awareness – so evident in Rosmini's own thought, yet often neglected in the twentieth century – that the Second Scholastics must be recognized not merely as theologians and philosophers, but as legal thinkers of remarkable depth and influence.

This rediscovery underscores the urgent need to reconsider the complex and multilayered relationship between theology, philosophy, and law in early modernity. The scholastics operated within a normative framework that sought to reconcile moral imperatives with juridical precision, producing legal doctrines that continue to resonate within contemporary debates on natural rights, property, and the moral foundations of legal systems. In Rosmini's legal writings, this intellectual lineage is not merely acknowledged – it is reactivated and transformed, making visible once more the enduring relevance of a scholastic tradition that shaped the very categories through which modern legal thought continues to operate.

During the aforementioned conference, in a paper specifically devoted to the theme of property, Paolo Grossi offered a particularly illuminating insight into the juridical orientation of the jurists associated with the Second Scholasticism. According to Grossi, the types of human relationships that these authors sought to understand and regulate – relationships fundamentally rooted in economic exchange, social hierarchy, and moral obligation – were, through the prism of their legal scholarship, elevated and transformed into relationships of a strictly juridical

[8] Ivi, Vol I, p. 512. See also on contract Law, Vol II, p. 335.

[9] F. TODESCAN, *Considerazioni sulla relazione del principio morale col principio religioso nella filosofia del diritto di Rosmini* in G. BESCHIN, A. VALLE, S. ZUCAL (eds.), *Il pensiero di Antonio Rosmini a due secoli dalla nascita*, Morcelliana, Brescia, 1999, t. I, pp. 421-429.

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nature.[10] The crucial observation made by Grossi was that, in the intellectual framework of these scholastic jurists, the entirety of social reality was not merely intersected by law but was conceived as fully intelligible and governable *only* through legal categories. That is, the social world, in all its complexity and dynamism, was rendered legible, interpretable, and orderable exclusively through the logic and language of law. Grossi further emphasized this point by asserting – aptly and memorably – that the predominant mode of analyzing the structure and behavior of social reality among these authors was one fundamentally anchored in the *scientia juris*, that is, in the highly sophisticated and conceptually nuanced science of law. As he put it, and to quote him directly, «The predominant approach to the analysis of social reality is the one that pivots on the technical and conceptual tools developed by the *scientia juris*».[11] This legal rationality, embedded in scholastic thought, did not merely accompany theological or philosophical reasoning – it often preceded and structured it, thereby establishing a juridical architecture within which broader moral and social questions could be framed.

There is no need to linger here on the now-classic work of Wim Decock, whose outstanding monograph dedicated to the contractual doctrines of these scholastics remains a benchmark in the field. His contribution has definitively demonstrated the juridical richness of their thought and the internal coherence of their normative systems. What emerges from such scholarship is the recognition that the great scholastic treatises entitled *De Iustitia et de Iure* – so well known to Rosmini – are not to be understood merely as speculative theological exercises or abstract philosophical meditations.[12] On the contrary, they are to be read as thoroughly juridical texts: carefully structured, analytically rigorous, and systematically organized according to the intellectual standards of the legal science of their time.

These treatises, which proliferated throughout the late sixteenth and early seventeenth centuries, form a substantial corpus that flourished within the broader legal and moral literature of the early modern period. While they often take inspiration from Thomistic sources, they should not be regarded as mere restatements of Aquinas's teachings. Rather, they are marked by a deep engagement with contemporary social transformations and seek to provide conceptual order in response to emerging socio-economic and political phenomena that were without precedent in the medieval world. The authors of these texts – learned, methodical, yet confronted with unprecedented complexity – strove to domesticate a rapidly changing world through the precise instruments of legal thought.

It is important to recognize the historical distance between the world of the Second Scholastics and that of their medieval predecessors. The intellectual context in which Suárez, Lessius, Lugo, and their contemporaries operated was vastly different from that of St. Thomas Aquinas.

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[10] P. GROSSI, *La proprietà nel sistema privatistico della Seconda Scolastica*, in ID. *La Seconda Scolastica nella formazione del pensiero giuridico moderno*, Quaderni Fiorentini per la storia del pensiero giuridico moderno, Milano, 1973, p. 118.

[11] *Ibidem*, pp. 117-118.

[12] These treatises are defined by C. PETIT, "excrecencias juridicas de la enseñanza teológica", in ID. *Mercatura y ius mercatorum*, Madrid 1997, p. 68.

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The sixteenth century, often described as the "century of all transformations", was characterized by profound and far-reaching upheavals across multiple domains. Cosmographic revolutions altered humanity's understanding of the universe; scientific innovations reshaped the epistemological landscape; theological ruptures, such as the Protestant Reformation, disrupted centuries of ecclesiastical authority; and the rise of new forms of communication – most notably, the printing press – created previously unimaginable pathways for the dissemination of knowledge. This was an era defined by flux, contestation, and the destabilization of established frameworks.

The Second Scholastics, positioned at the intersection of tradition and transformation, developed conceptual tools capable of responding to these changing realities. Their legal doctrines reflected a sustained effort to reconcile the legacy of medieval communitarian ethics with the growing pressures of modern individualism, economic liberalization, and state centralization. Drawing on a now consolidated body of historiographical research, one can reasonably claim that sixteenth-century scholasticism occupies a liminal position between two worldviews: on the one hand, the organic, relational, and theologically grounded communitarianism of the medieval period; on the other, the atomistic, rights-based individualism that would come to define modernity.

This interpretive framework was succinctly captured by Giovanni Ambrosetti in his remarks during the aforementioned Florentine conference. Ambrosetti aptly characterized the intellectual project of these authors as one committed to articulating an «autonomy of individuals for the public good».[13] Their legal theories, in this respect, do not merely mediate between the individual and the collective; they seek to construct a normative space in which individual rights are affirmed not against the social fabric, but within it and in service to its flourishing. In this regard as well, the Second Scholastics occupy a nuanced and transitional position. On the one hand, they remain deeply rooted in the intellectual and theological framework of medieval communitarianism, wherein the human being is fundamentally understood as a member of a broader, organically integrated social whole. Within this paradigm, individual identity is not conceived in isolation but derives its meaning and purpose from its embeddedness in the collective structure of society, particularly as shaped by ecclesiastical and natural law traditions.

On the other hand, however, these thinkers also predict and embrace the emergent modern emphasis on individual agency and personal initiative. They exhibit a remarkable degree of confidence in the capacity of the individual to act autonomously within the social and legal order, and thus begin to construct conceptual and normative tools that are finely attuned to the recognition and facilitation of individual rights and responsibilities. In betting, as it were, on the dignity and potential of the individual person, they pave the way for legal and theological developments that resonate with the nascent ethos of modernity. Wim Decock's outstanding monograph *Theologians and Contract Law* offers a masterful account of how these tensions and

[13] G. AMBROSETTI, *Diritto privato ed economia nella Seconda Scolastica,* in GROSSI, *La Seconda Scolastica nella formazione del pensiero giuridico moderno*, cit. p. 35.

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transitions are reflected in the legal thought of the period.[14]

A possible scholarly interpretation – increasingly accepted – is that the convergence of seemingly divergent conceptual frameworks during the Spanish Renaissance culminated in the development of a remarkably modern and intellectually refined system of private law. This legal system, though progressive in its formal structures and mechanisms, remained deeply anchored in a normative and ethical discourse, reflecting the enduring influence of theological and philosophical traditions.

Nevertheless, the form of «new individualism»[15] that emerged in Renaissance Spain; a cultural shift long acknowledged by twentieth-century historians in the aesthetic achievements of figures such as El Greco, the musical innovations of Tomás Luis de Victoria, and the literary genius of poets like Luis de Góngora and Francisco de Quevedo. This Renaissance has, until recently, received considerably less attention within the field of legal historiography. While art historians and literary critics have celebrated this cultural flowering as emblematic of a unique and introspective humanism, legal historians have been comparatively slower to recognize its significance within the evolution of jurisprudential thought. A central voice in the legal field is that of Michel Villey, whose critique of the individualistic orientation of law emerging from the Second Scholastic tradition exerted substantial influence over subsequent interpretations. His skepticism toward the compatibility of individualism with classical legal order is well documented, and has been insightfully examined in the work of Franco Todescan, particularly in his refined study on Villey's interpretation of Second Scholastic legal thought.[16]

This historiographical stance may in part explain why research on sixteenth-century Spanish private law has struggled to gain prominence within legal historical scholarship. The growth of such studies appears to have been driven more by the interests and methodologies of economic history than by those of legal historiography proper. In particular, scholars of economic thought, drawn early on to the so-called School of Salamanca, have engaged more directly with the legal theories and practical doctrines of the Second Scholastics. In contrast, legal historians have devoted greater attention to questions concerning the emergence of international law, natural law theory, and human rights discourse – especially in relation to seminal figures such as Francisco de Vitoria, Francisco Suárez, and Bartolomé de Las Casas – while largely overlooking the substantive contributions of these thinkers to the field of private law.[17]

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[14] W. DECOCK, *Theologians and Contract Law. The Moral Transformation of the Ius Commune (ca. 1500-1650)*, Brill, Leiden 2012.

[15] A.F.C. BELL, *El Renacimiento español,* SPDC Universidad Málaga, 2004, pp. 167-220.

[16] F. TODESCAN, *Michel Villey et la Seconde Scolastique*, in «Droit & Philosophie», 2016, vol. 8, pp. 33-74.

[17] Between others: A. BRETT, *Liberty, right and nature: Individual rights in later scholastic thought*, Cambridge University Press, Cambridge 1997; J.P. COUJOU, *Refondation du droit des gens et humanité cosmopolitique, la paix, le droit des gens et la juridicisation de la guerre chez Suàrez et Vitoria*, in «Recherches Philosophiques», 2011, vol. 7 pp. 45-90; E. PAOLINI, *Filosofia politica e diritto*

It is thus primarily through the lens of economic history that the legal dimensions of Second Scholasticism have been recovered and re-evaluated. This disciplinary asymmetry has shaped the trajectory of research, compelling scholars to address private law not as an isolated doctrinal system, but as a critical intersection between moral theology, economic reasoning, and juridical innovation.

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The specifically juridical analysis of this tradition, by contrast, emerged at a later stage, perhaps galvanized by the provocative and influential critiques advanced by Michel Villey. Villey articulates his thesis in explicit opposition to the dominant nineteenth-century historiographical narrative, which posited a fundamental rupture between the legal thought of the Middle Ages and that of the Renaissance. In deliberate contrast, Villey emphasizes a profound continuity linking the late medieval Scholastic tradition – particularly the work of Duns Scotus and William of Ockham – with the early modern Scholastics, most notably Francisco Suárez, and further extending to the seminal figures of modern political philosophy, such as Thomas Hobbes and John Locke. Within this continuum, Villey identifies a progressive transformation in legal theory: the ascendancy of an individualistic conception of law, one that no longer reflects an inherent or immanent order embedded within things themselves, but rather imposes an external and voluntaristic will upon them. In this view, law becomes less a discovery of rational structures internal to reality and more an expression of subjective intention – marking a decisive shift with far-reaching consequences for the development of Western legal and political thought.[18]

For Villey, it doesn't matter that Hobbes, Locke, and other modern philosophers secularized the thoughts of the 16th century's jurist-theologians. The result was still a "theology of law",

internazionale in Francisco de Vitoria, Curcio, Roma 2011; N. BRIESKORN, G. STIENING, (eds.), *Francisco de Vitorias «De Indis » in interdisziplinärer Perspektive*, Actes du colloques, Frommann-Holzboog, Stuttgart 2011; C. COVELL, *The law of nations in political thought: a critical survey from Vitoria to Hegel*, Palgrave Macmillan, 2009; L. MORA RODRIGUEZ, *Bartolomé de las Casas: conquête, domination, souveraineté*, PUF, Paris 2012; L.A. CLAYTON, *Bartolomé de las Casas and the conquest of the Americas*, West Sussex, Chichester 2011; V. LAVOU, (éd.), *Bartolomé de Las Casas face à l'esclavage des Noires en Amériques-Caraïbes*, Presse Universitaire de Perpignan, Perpignan 2011; M.A. ANDIÓN HERRERO, *Los indigenismos en la Historia de las Indias de Bartolomé de las Casas*, Consejo Superior de Investigaciones Científicas, Madrid 2004; J.P. COUJOU, *Droit, anthropologie et politique chez Suárez*, Artège, Perpignan 2012; J. P. DOYLE, V. M. SALAS, (eds.), *Collected studies on Francisco Suárez, S.J., 1548-1617*, Leuven University Press, Leuven 2010; J. PEREIRA, *Suárez: between scholasticism and modernity*, Marquette University Press, Milwaukee 2007.

[18] L. BRUNORI, *Michel Villey*, in O. DESCAMPS, R. DOMINGO OSLE (eds.), *Great Christian Jurisits in French History*, Cambridge University Press, Cambridge 2019, pp. 447-463.

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for which the 16th-century Second Scholasticism is highly responsible.[19] According to Villey, it is mainly the Second Scholastics of the 16th century who handle the degeneration of law through the harmful spread of the ambiguous and deceitful notion of «subjective rights».[20] These epistemological errors led to deviations in the conception of the role of law, for which the successors of Saint Thomas are blamable. Ultimately, it was Thomism that betrayed Saint Thomas. This was due to the Second Scholastic doctors' misunderstanding of the true value of Thomism, and to the Spanish inclination toward pragmatism, utilitarianism, and voluntarism.[21] These mistakes are primarily epistemological, according to Villey, and the Second Scholasticism inaugurated the modern legal thinking tendency to favor the analytical, individualistic and voluntarist approach forgetting the dialectical approach in composing subjective positions in law.[22]

Villey believes these epistemological errors caused serious distortions in the understanding of the content of law, especially the notion of subjective rights, which is a product of an individualistic civilization that views law from the perspective of the individual rather than the community. This grave responsibility derives from the voluntarist excesses of the Second Scholastic authors' law – clearly visible in their private law – which led to a "deification of human being" and his will.[23]

Consequently, Villey criticizes the Second Scholasticism for an erroneous distinction between "being" and "ought to be", an equally mistaken opposition between "theoretical reason" and "practical reason", and a flawed articulation of the particular and the universal in modern legal concepts.[24] Moreover, Vitoria, Suárez, Molina, and the others, in Villey's view, diverted Saint Thomas's dialectical objections, causing a monolithic dogmatism. Because of these distortions, a deplorable legal positivism[25] based on human consensus and will (a kind of privatization of the entire law, one might say) was combined, along with the harmful distinction between *ius*

[19] M. VILLEY, *La promotion de la loi et du droit subjectif dans la Seconde Scolastique*, in P. GROSSI, *La Seconda Scolastica nella formazione del diritto privato moderno*, cit., p. 55; F. TODESCAN, *Michel Villey et la Seconde Scolastique*, cit.

[20] VILLEY, *La promotion de la loi et du droit subjectif*, cit.

[21] G. PECES-BARBA MARTINEZ, *Michel Villey et les droits de l'homme*, in «Droit et société», 2009, vol. 1, pp. 93-100.

[22] M. VILLEY, *Questions de Saint Thomas sur le droit et la politique*, Puf, Paris 1987; M. BASTIT, *Villey et Perelman: argumentation avec ou sans ontologie?*, in «Droit & Philosophie», 2016, vol. 8, pp. 75-89.

[23] P. DUBOUCHET, *Critique du droit chez Michel Villey et René Girard. Pour une épistémologie négative*, L'Harmattan, Paris 2016, p. 85.

[24] M. VILLEY, *Philosophie du droit*, Dalloz, Paris 2001, p. 86.

[25] M. VILLEY, *Le positivisme juridique moderne et le Christianisme*, Giuffré, Milano 1984.

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and *lex.*[26] Francisco Suárez is, for Villey, one of the most blameworthy founders of modern subjective rights.[27]

However, historians and legal philosophers propose an attentive and admiring approach to the private law of the Second Scholasticism. Indeed, whether on family law,[28] inheritance law, [29] personal law, [30] property law, [31] economic law, [32] obligations, [33] errors and unjust

[26] Some specialists have radically challenged Villey's historical analyses: one can only adhere to his theses on the formation of legal thought by accepting a priori his main thesis on the fundamental division between classical natural law and modern thought, which Villey situates in the thinking of William of Ockham. Moreover, according to Villey, the notion of "subjective rights" originated from Ockham's philosophy. This assertion is difficult to verify for some specialists and openly contested by other authors as it presents too rigid a view of the concept's evolution: S. PIRON, *"Congé à Villey". L'Atelier du Centre de recherches historiques* 01/2008, http://journals.openedition.org/acrh/314 (consulté le 3.2.2020); A.S. BRETT, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought*, Cambridge University Press, Cambridge 1997; B. TIERNEY, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150–160*, Scholars Press, Atlanta 1997.

[27] P.-F. MOREAU, *Michel Villey lecteur de Hobbes*, in «Droits», 1999, 29, pp. 105-117.

[28] D. SCHWAB, « Ehe und Familie nach den Lehren der Spätscholastik », in GROSSI (ed.), *La Seconda Scolastica nella formazione del diritto privato moderno*, cit., p. 73-116; A. DUFOUR, Alfred, *Un scolastique espagnol face au "divorce" d'Henry VIII - J. G. de Sepulveda et son 'de ritu nuptiarum et dispensatione'* (1531), in GROSSI (ed.), *La Seconda Scolastica nella formazione del diritto privato moderno*, cit., p. 403-440.

[29] J.M. PEREZ PRENDES, *Los principios fundamentales del derecho de sucesión 'mortis causa' en la tardía escolástica española*, in GROSSI (ed.), *La Seconda Scolastica nella formazione del diritto privato moderno*, cit., pp. 241-281.

[30] J. DE AZCÁRRAGA, *Balthasar Gomez de Amescua: 'Tractatus de potestate in se ipsum'*, in GROSSI(ed.), *La Seconda Scolastica nella formazione del diritto privato moderno*, cit., pp. 441-456.

[31] P. GROSSI, *La proprietà nel sistema privatistico della Seconda Scolastica*, in ID. (ed.), *La Seconda Scolastica nella formazione del pensiero giuridico moderno*, cit., p. 117-222.

[32] G. AMBROSETTI, *Diritto privato ed economia nella Seconda Scolastica,* in GROSSI (ed.), *La Seconda Scolastica nella formazione del diritto privato moderno*, cit., p. 23-52.

[33] F. WIEACKER, Contractus *und* Obligatio *im Naturrecht zwischen Spätscholastik und Aufklärung*, in GROSSI (ed.), *La Seconda Scolastica nella formazione del diritto privato moderno*, cit., pp. 223-240.

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enrichment[34] or insurance law,[35] the excellent level of private law analysis is underlined.

For example, the *dominium sui*,[36] – an example that matters a lot for our proposes on Rosmini – celebrated philosophically by Suárez and his colleagues of the Second Scholastic, also finds its translation on the "active" level, namely in law, manifesting as *dominium rerum externarum*, as indicated by Suárez in his Roman lectures, and reaffirmed, for instance, by Leonard Lessius in his *De Iustitia et de Iure.*[37] Subjectivity, valued by the Renaissance cultural context, individualism, and voluntarism – which contrasted with Saint Thomas – manifests in these scholars as *potestas*, the exclusive freedom to exercise *dominium*. The notions of *dominium* and *potestas* therefore summarize personal rights in the development of subjective rights.[38] That is why *dominium* «*pertinet ad Dignitatem*» according to Domingo Bañez and Francisco Suárez: property is the extension of the individual in the realm of things,[39] and it is the manifestation of human freedom and dignity in a liberating dimension of individual will, which is not blind arbitrariness but a positive contribution to the well-being of the community.

Several years ago, the opportunity arose to collaborate with Wim Decock on a study dedicated to the private law thought of Francisco Suárez. That experience, both intellectually enriching and personally rewarding, laid the foundation for deeper engagement with a figure who, more than any other among the Second Scholastics, accompanied Antonio Rosmini in the development of his own philosophical and legal reflections. In what follows, attention will be devoted to Suárez himself, whose legal thought – despite frequent characterization as primarily metaphysical – reveals a nuanced and often underappreciated juridical pragmatism. The conclusions reached in the course of that joint research were, at first glance, somewhat unexpected: Suárez, often regarded as the most rigorously philosophical thinker of the Second Scholastic movement, must also be recognized as a jurist with a sophisticated and distinctly pragmatic sensibility. His treatment of legal questions – far from being abstract or merely speculative – demonstrates a careful engagement with the concrete realities and functional structures of legal life.

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[34] R. 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 GROSSI (ed.), *La Seconda Scolastica nella formazione del diritto privato moderno*, cit., pp. 377-402.

[35] C. BERGFELD, *Die Stellungnahme der spanischen Spätscholastiker zum Versicherungsvertrag*, in GROSSI (ed.), *La Seconda Scolastica nella formazione del diritto privato moderno*, cit., pp. 457-474.

[36] «*Idem esse censetur nostros actus esse liberos et nos illorum haber dominium*», F. SUAREZ, *Quaestiones de iustitia et de iure*, quaestio XII, 1584, in J. GIERS, *Die Gerechtigkeitslehre des jungen Suarez*. Edition und Untersuchung seiner römischen Vorlesungen *De iustitia et iure*, Freiburg in B., 1958.

[37] L. LESSIUS, *op. cit.*, Lib. 2, Caput IV «Quibus & in quæ dominium competat».

[38] J. GIERS, *Die Gerechtigkeitslehre des jungen Suarez*. Edition und Untersuchung seiner römischen Vorlesungen *De iustitia et iure*, cit.

[39] P. GROSSI, *cit.*, p. 144.

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Suárez's juridical acumen becomes particularly evident in his discussions of a wide array of private law domains, including the theory of *dominium*, the legal dimensions of family relations, inheritance, commercial transactions, and, notably, the law of contracts. His handling of these topics illustrates not only a mastery of juridical theory but also a deep awareness of the practical considerations that inform and shape legal norms in lived experience. This pragmatic dimension of Suárez's thought emerges organically from his texts, despite the absence of a dedicated treatise on private law or a formally delineated section devoted exclusively to it. The lack of such a systematic exposition may have contributed to the relative neglect of Suárez's contributions to private law within legal historiography, particularly when viewed through the lens of his broader reputation as *Doctor eximius* – a title which, while honoring his extraordinary intellectual stature, risks overshadowing the concrete juridical insights that permeate his work. Suárez's writings thus invite reconsideration not only as monuments of scholastic philosophy, but also as sophisticated legal interventions attuned to the complexities of normative life.[40]

Let us stay on the notion of property because it is one of the points on which Suarez's influence on Rosmini is very visible. It is necessary to specify that Suárez did not develop a specific study on the notion of *dominium*, unlike the other scholastics in the early modern period.[41] However, the numerous considerations on the concept of property scattered throughout his works allow us to consider that the *dominium* «is occupying a position of paramount importance», to use the expression of Paolo Grossi.[42] According to Grossi, this supreme qualification is crystallized by Suárez in the expression *principale ius*, and he points it out saying that the small but decisive detail that distinguishes the owner from a mere administrator is that the owner's exercise of power over the thing is based on the use of his own reason and virtue.[43] This is why Suarez

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[40] L. BRUNORI, W. DECOCK, *The Pragmatic Suárez: Private Law in the Work of the* Doctor Eximius, in D. BAUER, L.C.H. LESAFFER (eds.) *History, Casuistry and Custom in the Legal Thought of Francisco Suárez (1548-1617)*, Brill, Leiden 2021, pp. 54-75.

[41] A. BRETT, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought*, CambridgeUP, Cambridge 2003, 1st ed. 1997), in particular pp. 10-48 (the chapter 'Right and Liberty: the equivalence between *dominium* and *ius*') and pp. 123-164 (the chapter 'Liberty and nature: subjective right and Thomism in sixteenth-century Spain'); W. DECOCK, *Law of Property and Obligations. Neoscholastic Thinking and Beyond*, in H. PIHLAJAMÄKI, M. D. DUBBER, M. GODFREY (eds), *The Oxford Handbook of European Legal History*, Oxford UP, Oxford 2018, pp. 611-631, in particular pp. 613-617 (§ II 'Property' and its selection of secondary literature).

[42] GROSSI, *La proprietà nel sistema privatistico della Seconda Scolastica*, in ID. (ed.), *La Seconda Scolastica,* cit. 1973 (n. 1), p. 196.

[43] F. SUÁREZ, *Opus de virtute et statu religionis*, pars II, lib. VIII, cap. V, n. 5, in C. BERTON (ed.), *R.P. Francisci Suarez e societate Jesu Opera Omnia*, t. XV, Louis Vivès, Paris 1859, p. 563: «*addidi vero illam particulam* principale, *ut dominum ab administratore distinguerem, ac denotarem dominium proprie*

attaches so much importance to the notion of *potestas* as the exclusive freedom of exercise of the *dominium*.

The subjective approach to property is clear in Suárez's thinking which defines the *dominium* on the basis of the relationship between the individual and the thing: an act is qualified exercise of human property by reason of that it is simply free,[44] because the property consists intrinsically in the power to act freely,[45] so it is not possible to have a complete property if one does not have free of his own faculties.[46] The indissoluble link between freedom and property is expressed thus by Suárez, who emphasizes the fact that the *dominium* is the representation of the freedom of the human as an individual.

From this point of view, Suárez follows the path of the individualism which is distinctive of the period between the sixteenth and seventeenth centuries and he gives a translation into legal terms which gives freedom a dynamic quality through the concrete exercise of the *dominium*, thanks to the specific attributions of the *dominus*: «*propria virtute*», as Suárez says,[47] using an expression not dissimilar to the one used by Molina, «*propria authoritate*».[48] That means that the legal position of *dominium* requires the essential quality of independence. The *dominus* must be able to carry out every operation within his competence by virtue of a volitional process that is born, evolves and resolves within his autonomy.[49] *Dominium* is for Suárez the principal right to dispose of things (*ius principale disponendi*), the highest expression of subjective positions because is the principal right to dispose of the thing in any way that is not prohibited: «*est principale jus disponendi de re aliqua in quemcumque usum non prohibitum*».[50] As a result, it is impossible, even useless, to fix the content of the right of ownership, since, as Suárez says - the nature of human

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dici illum, qui est veluti causa principalis cujuscumque usus rei, quia propria virtute, ut sic dicam, illum exercere potest».

[44] SUÁREZ, *Quaestiones de iustitia et de iure*, q. XII, in GROSSI, cit., p.148: «*actus… vere est sub hominis dominio, quia simpliciter est liber*».

[45] *Ibidem*: «*dominium … in intrinseca facultate libere operandi consistit*».

[46] *Ibidem*, «*nihil deest … ad perfectam dominii rationem*» as long as one has «*libera et propria facultas*».

[47] SUÁREZ, *De virtute et statu religionis,* pars II, lib. VIII, cap. V, nr. 5, in C. BERTON (ed.), *Opera Omnia*, t. XV 1859 (n. 7), 563; GROSSI, cit., p. 149.

[48] L. DE MOLINA, *De iustitia et iure*, t. I (Antwerp: Ioannes Keerbergius 1615, original 1593-1600), tract. II, disp. 3 (Dominium quid sit & quotuplex sit), n. 2.

[49] GROSSI, cit., p. 149.

[50] F. SUÁREZ, *De virtute et statu religionis*, pars II, lib. VIII, cap. V, n. 3, in C. BERTON (ed.), *Opera omnia*, t. XV 1859 (n. 7), p. 562.

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property consists in being able to use the thing freely in any way,[51] stating what Domingo de Soto and Francisco de Vitoria had already mentioned, that is that the property consists in the fact that the thing can be used in any way.[52]

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At this stage of the analysis, the intellectual consonance between the legal thought of Francisco Suárez and that of Antonio Rosmini emerges with greater clarity – ironically, brought into sharper focus by the critical lens of Michel Villey.

Villey's rigorous critique of the individualistic turn in legal theory, which he attributes to the Second Scholastics, serves as an unintended guide to recognizing the philosophical and juridical affinities between Suárez and Rosmini. Both thinkers place a foundational emphasis on

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[51] F. SUÁREZ, *Quaestiones de iustitia et de iure*, q. XII, in P. GROSSI, *La proprietà nel sistema privatistico della Seconda Scolastica*, in ID. (ed.), *La Seconda Scolastica,* cit. 1973, vol. 6, p. 157: «*natura dominii humani est illa, cuius usus omnis est in nostra potestate libera*». The pragmatism observed in Suárez's account of *dominium* is also evident in his approach to other matters of private law. Regarding the legal doctrine on civil law, once again we must observe that, in the absence of a systematic study by the *Doctor eximius*, we must look for scattered reflections in Suárez's immense production. Indeed Suárez treats, with great legal competence, rents, *restitutio*, profits, annuities and pensions, religious' property rights and so on. On these topics he will be often quoted for example in De Iustitia et Iure by Juan de Lugo. But perhaps the most interesting issues on which Suárez proves his qualities as a civilist are questions about family law, inheritance law, marriage law and business law. Actually, Suárez's pragmatism on *dominium*, family law, inheritance law, commercial law and contract Law is clear from his writings. It has been proved that while Francisco Suárez's stature as a philosopher of law has long been acknowledged across the disciplines of philosophy, theology, and jurisprudence, his engagement with more technical aspects of legal doctrine – particularly within the domain of private law – has remained comparatively underexplored. The enduring portrayal of Suárez as a towering speculative thinker, ostensibly disengaged from practical legal concerns, can be traced back to early modern receptions of his work. However, a closer examination reveals that Suárez possessed a sophisticated and nuanced understanding of complex legal matters, ranging from questions of inheritance and succession to the regulation of monetary exchange and the binding force of contractual obligations. These lesser-known dimensions of his legal thought not only underscore the pragmatic orientation within his juridical writings but also point to his foundational role in shaping key elements of modern private law. L. BRUNORI, W. DECOCK, *The Pragmatic Suárez: Private Law in the Work of the* Doctor Eximius, *op. cit.*, passim.

[52] D. DE SOTO, *De iustitia et de iure* (Salamanca 1553-1554), lib. IV, q. I, art. 1: «*verum dominium* (...) *in hoc consistit, quod in omnem usum res possit assumi*»; F. DE VITORIA, *In secundam secundae, de iustitia*, q. LXII, art. I, n. 52, in V.BELTRÁN DE HEREDIA (ed.), *Comentarios a la Secunda Secundae de Santo Tomás*, Apartado 17 (Salamanca: Aldecoa 1932).

freedom, understood not merely as a moral or metaphysical attribute, but as a juridical principle of the highest order.[53] In Rosmini's *Filosofia del diritto* (*Philosophy of Law*, 1841–1845), this treatment of freedom assumes central importance and is addressed from an explicitly legal perspective.[54]

Within the chapter devoted to the natural rights inherent to the human being (cf. *Filosofia del diritto*, §224 ff.), Rosmini articulates a theory of freedom and property that mirrors, in both structure and normative intent, the ethical-rationalist framework advanced by Suárez and the broader Second Scholastic tradition. The rank Rosmini assigns to these rights – as primary, inviolable, and co-constitutive of legal order – corresponds to the philosophical system of Suárez, wherein both liberty and ownership are grounded in rational anthropology and moral theology.

Rosmini's legal philosophy begins with a decisive postulate: that the person, by virtue of their very nature, embodies all the constitutive elements of law. The person, in this formulation, is not simply a subject of rights but is *subsistent law* – the very essence of juridical being. This ontological-legal claim situates Rosmini within a tradition of rationalist individualism that Villey had already identified – and sharply criticized – in Suárez. Indeed, the foundational principle that «the human person is the subsistent human right, and thus also the essence of right» (*persona diritto essenziale*, in *Filosofia del diritto*, §224) reflects a vision of law deeply rooted in the metaphysical dignity and autonomy of the individual. The close interconnection between personhood, legal normativity, and rational order in Rosmini's *Filosofia del diritto* reveals unmistakable traces of Late Scholastic rationalism,[55] particularly as articulated by Suárez. The conceptual apparatus employed – linking human dignity,[56] legal subjectivity, and moral agency – rests upon the same intellectual foundations that structured the Second Scholastic approach to natural law.[57]

Moreover, as the treatise unfolds, Rosmini advances a theory of property and *dominium* that bears a strong resemblance to Suárez's own positions. In both systems, property is not merely an economic institution but a moral-legal category intrinsically bound to the dignity of

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[53] M. NICOLETTI, *La libertà e le sue garanzie nel costituzionalismo rosminiano*, in A. AUTIERO, A. GENOVESE (eds.), *Antonio Rosmini e l'idea della libertà*, EDB, Bologna 2001, pp. 171-203.

[54] M. NICOLETTI, *Diritto e diritti nella filosofia di Antonio Rosmini*, in U. MURATORE, M. NICOLETTI, F. CONIGLIARO (eds.) *L'uomo e la società: la politica nel pensiero di Antonio Rosmini*, Salvatore Sciascia Editore, Caltanissetta- Roma 2009, pp. 53-74.

[55] F. GHIA, P. MARANGON (eds.), *Rosmini e l'economia*, Università di Trento Ed. Trento 2015.

[56] P. BONAFEDE, *Ritornare alla persona. Suggestioni pedagogiche nel confronto fra Rosmini e Maritain*, in S. CATALANO, F. MEROI, (eds.), *La filosofia italiana: Tradizioni, confronti, interpretazioni*, Firenze, Leo S. Olschki, 2019, pp. 61-86.

[57] M. NICOLETTI, *Cittadini e non cittadini: diritti universali e diritto di preoccupazione nel pensiero di Rosmini*, in M. FERRONATO, A. PERATONER (eds.), *Profili della libertà in Antonio Rosmini*, Mimesis, Milano-Udine 2024, pp. 163-176.

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the person. For Rosmini, property constitutes «a sphere around the person, of which the person is the center» – an image that encapsulates the notion of property as a protective and regulative extension of personal identity and freedom. It functions as a structural principle of civil coexistence, offering both a practical mechanism for social organization and a metaphysical recognition of human autonomy.[58]

Given these profound affinities, it is most illuminating to allow Rosmini's own words to articulate the depth of Suárez's influence on his thought. The following passage, rendered in translation, offers a clear and eloquent testament to this intellectual inheritance: «We can say with certainty that the primary and proper seat of legal freedom is the human person; and that the primary and proper seat of property is human nature, insofar as it is considered as pertaining to and naturally subordinate to the person, it is proper to it».[59]

And even more, we can hear the echoes of Suarez and his doctrine on *dominium* and *potestas* when Rosmini, just a line below, says, «Legal freedom is a simple thing: it consists in the supreme faculty of action». (*La libertà giuridica è una cosa semplice: consiste nella facoltà suprema di operare*, § 61 p. 227).[60]

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[58] M. NICOLETTI, *Il governo senza orgoglio. Le categorie del politico secondo Rosmini*, Il Mulino, Bologna 2019.

[59] ROSMINI, *Filosofia del diritto*, cit., p. 227.

[60] M. NICOLETTI, M. DOSSI (eds.), *Antonio Rosmini tra modernità e universalità*, Morcelliana, Brescia 2007.

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