

BOOK REVIEWS

***Law from Below: How the Thought of Francisco Suárez, SJ, Can Renew Contemporary Legal Engagement*, by Elisabeth Rain Kincaid**

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The world of political theory is theologically troubled. Rifts and recriminations exchanged between conservative and progressive critiques of liberalism have opened up new vistas of strife. While disagreements in analysis and diagnosis proliferate, little that is imaginative or new for positive projects has come into view.

It is not surprising that interest in Spanish political philosophy has had a slow but steady growth over the last decade and a half. Writing at the dawn of colonization and religious fracture, Spanish Jesuits and Dominicans are tantalizingly deployable—for positions as varied as religious justification for liberalism's key tenets or in defense of political empowerment for the church. Spain is less philosophically excavated than the rest of western Europe, and its great baroque scholastics offer rich possibilities for political and legal theorists. In *Law from Below*, Elisabeth Rain Kincaid offers one of the most exciting works on Spanish scholasticism's status in the twenty-first century, and undoubtedly the most exciting work on Francisco Suárez's legal thought in the English language.

Kincaid makes an arresting start by referencing a 2019 speech by then–Attorney General William Barr, in which he draws on seventeenth-century English political history to describe the energetic executive favored by America's Founding Fathers. His approach to history highlights the danger of the legislative branch and the need for the law to be checked by the sovereign; this allows him to explain and defend the dramatic use of the executive branch in the Bush and Obama years. As Kincaid reads Barr's position, the executive ought to reclaim power from the legislature and the judiciary for the sake of swift and decisive action that protects American citizens. This sets up two helpful dimensions to Kincaid's project. First, she ties in the contemporary political scene, assessing the Trump era more substantially than oft-expressed concerns regarding the former president's general persona and

demeanor. Second, the executive absolutism favored by Barr hinges on a view of law that is “imposed from above”; those ruled by the law have no way to engage with it beyond the binary of obedience or disobedience (3).

As suggested by the title of her book, Kincaid is interested in the aspect of Suárez’s thought that understands law not merely as imposed from above, but potentially affected and even changed by the activity of those “below” who are ruled by the law. Suárez speaks in surprising ways to modern politics by indicating options beyond voting on officeholders or holding demonstrations of civil disobedience. Kincaid finds evidence for the non-office holding people of a regime to amplify, restrict, or outright change the law in Suárezian political and legal theory. Importantly, she clarifies that her historical retrieval of his thought is a constructive project. Suárez does not explicitly lay out the conclusions that she draws; rather, it is in Kincaid’s bold and attentive reading of his thought that the possibilities therein are revealed.

Politically speaking, Suárez is known for his rejection of absolutist sovereignty. His condemnation of divine-right theory inflamed violent disapprobation in England’s King James I, who ordered public burnings of the Spaniard’s work. Certainly Suárez, with other famous confreres like Mariana and Bellarmine, placed an important authority in the people, such that they could resist the vagaries of unhinged tyranny. But Kincaid’s move from “you have the right to resist tyranny under certain circumstances” to “you are an active participant in the development of your community’s laws” is a striking, perhaps even shocking, claim.

Kincaid makes good on this reading in three separate lines of inquiry. Her accounts of Suárez on custom, interpretation, and the virtue of equity provide insight into his legal theory in ways that not only support Kincaid’s read on Suárezian politics, but indicate that this frail priest was far more radical than previously imagined. King James’s fiery reaction makes more sense when one attends, as Kincaid does, to the leeway Suárez gives to communities to resist and shape law. Suárez uses church history as a resource, reminding readers that the practice of infant baptism began as local custom before it became official church teaching; the custom prompted the official law, which indicates to Suárez a significant measure of insight and authority in the people. He discusses the power of the people to interpret the law, at times defending the possibility of an interpretation contrary to the intent of the lawgiver. Suárez follows Aquinas and the medieval legal tradition in explaining equity as a virtue practiced by judges when exceptions must be made for the sake of justice. He breaks new ground in arguing that this virtue is not only practiced by officials and justices, but must also be practiced by the people. Suárez regards the people’s understanding of their own circumstances and needs as a necessary indication of their authority with respect to the law.

Because the law is always for the sake of the good of the whole community, there are times when the people will need to supply their knowledge and experience.

Kincaid describes the relationship between ruler and ruled in Suárez's thought as "dialectic." The title *Law from Below* does not suggest that the delegated authority of regimes should be replaced by direct rule from the bottom, but it does insist that political and legal action include input from below. Kincaid includes examples regarding immigration, homelessness, and community organizing to show that Suárezian theorizing can add philosophical and theological heft to actions already relevant in our contemporary situation. She concludes with an intriguing gesture toward the church as a model for political action, looking forward to more work done on Suárez's ecclesiology that could help refine both political and ecclesiological frames.

This book is a gift to those looking for a new direction in theology and politics. There is no doubt that Kincaid's commitments to equality and widespread political participation helped her look for what she found (as she foregrounds, this is a constructive project). But there is no doubt that this project also uncovers genuine finds in Suárez that buttress those commitments in surprising ways. I have read and written on much of *De Legibus*, and I was initially skeptical that Kincaid's claims could find convincing textual basis, but her presentation persuaded me that her reading is sound and true to Suárez's understanding of law.

Conservative theorists might object to the insistence on the popular contribution to politics in the face of superior authority. Progressives might balk at the people's continued power in the face of superior expertise. Certainly the consistent presence of the church in Suárez's legal and political arguments might give pause to many. What Kincaid offers, however, is not a new system based on Suárez's thought. It is a message of hope to those who already have organized within the system in peacefully contrary ways, refusing to let the immediate, practical, and systemic message of Christianity be obscured: "By this everyone will know you are My disciples, if you love one another" (John 13:35).

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