Action, Will and Law in Late Scholasticism

Thomas Pink
(King's College, London, UK)

In what follows I wish to discuss a distinctive natural law-based conception of obligation—and the intimate relation which that conception of obligation bears to an equally distinctive theory of human action. I shall concentrate my attention on two early modern thinkers in particular, Francisco Suarez (1548–1617) and Gabriel Vasquez (1549–1604). How widely their conception was shared by other thinkers in their tradition is a question for another time.

When it comes to obligation, Suarez and Vasquez might sensibly be contrasted. For Vasquez, obligations could arise prior to and independently of any act of will or intellectual judgement, of any being, God included.[1] In particular, then, obligations need not be the creations of any law-maker or legislator, whether human or divine. Thus, in Vasquez's view, existed the pre-political obligations of the natural law—moral obligations not to kill and the like. These did not arise through any form of legislative act. Whereas for Suarez, all obligations, all moral obligations included, did presuppose some legislative act. There was no exception to this. For someone to be under an obligation to perform an action, that person must always be subject to a superior; and the superior must have willed that the action be obligatory on the person obliged and have promulgated to that person his will to that effect.[2] In the case of moral obligations of the natural law, the required legislative superior was God.

[1] According to Vasquez (1612), p. 8 (Disputation 150, Chapter 3), obligations under pre-positive or natural law arise in this way: 'Ex quibus omnibus colligere licet, legem naturalem, si pro prima regula naturali actionum creaturae rationalis capiatur, sive in Deo, sive in ipsa natura rationali, non esse imperium, nec iudicium rationis, nec voluntatem, sed quid prius. Hoc autem sequitur ex eorum sententia, qui dicunt quaedam esse bona, quaedam vero mala ante omne praeceptum et iudicium intellectus et voluntatis Dei.' This *regula* or *lex naturalis*, is rational nature; see ibid., p. 7: 'Cum autem lex aut ius sit regula, cui aequare debent actiones, ut iustae sint; naturalis lex, aut naturale ius erit regula naturalis, quae nulla voluntate, sed suapte natura constat ... Haec [regula] non potest alia esse, quam ipsamet rationalis natura ex se non implicans contradictionem, cui tanquam regulae et iuri naturali bonae actiones conveniunt at aequantur, malae autem dissonant et inaequales sunt, quamobrem et illae bonae, hae autem malae dicuntur.'

[2] For law and obligation is required, according to Suarez (1856–78), vol. 5, *De legibus*, p. 15: '…aliquem actum efficacis voluntatis…haec autem voluntas non oportet, ut sit de ipsa

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So for Suarez, moral obligations presuppose some divine will or command. For Vasquez, there is no such presupposition. Nevertheless, I shall suggest that, this difference between them notwithstanding, both Suarez and Vasquez share a common underlying conception of what action and obligation are and of how the two are related. This conception is substantial and intuitive but problematic—and the differences between these two thinkers exhibit alternative ways of resolving the considerable difficulties which arise.

Suarez and Vasquez share a conception of obligation as a special kind of action-specific justificatory force, and this conception rests on a theory of action which I shall term practical reason-based. The conceptual dependence of the theory of obligation on the theory of action is total. Abandon the theory of action, and you can no longer coherently conceptualize obligation in this way. One of the main reasons why such a theory of obligation is no longer current within, for example, modern English language philosophy, is simply that that philosophical community has abandoned and forgotten the practical reason-based theory of action.

The shared conception of obligation is proposed as part of a general theory of law—of *lex* or *ius*. This theory of law was used to do many things; but one at least was to provide a theory of a certain kind of normativity: that special kind of demanding call on us to respond which some moral standards make and which constitutes their obligatoriness—a call to ignore which, without excuse, is to be blameworthy for doing wrong.

The connection between law and obligation is intuitive. Obligation, in the moral sphere, is naturally conceived as a demand specifically on action. We can only be under a moral obligation to do things or refrain from doing them. We cannot be under a moral obligation for things to happen independently of our own agency.

So a body of obligations seems to be a body of demanding directives specifically on action. But a body of demanding directives on action—a body of directives for breaching which without excuse we count as culpable agents or as blameworthy wrongdoers—this seems to be, in some general sense, a law. Therefore, the view that obligation consists in just such a demand specifically on actions and omissions can be described as the view that obligation constitutes a special normativity of law. But under what conditions, and in what ways, can obligation be so conceived? To answer this question, we need to turn to action—to what obligation *qua* law is supposed peculiarly to govern.

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observatione seu executione legis…Per se requiritur ut sit de obligatione subditorum, id est, ut sit voluntas obligandi subditos, quia sine tali voluntate non obligabit illos…'

HUMAN ACTION AS THE PRACTICAL EXERCISE OF REASON

A practical reason-based conception of agency characterizes fully human, fully intentional or deliberate agency (the realm of the perfectly voluntary, as Suarez and Vasquez both put it) as the exercise of a distinctive capacity for rationality—the exercise of a capacity to be moved or directed by a practical or action-guiding reason and thereby to exercise reason practically, in an action-constitutive manner. Such a conception of agency is not current in modern English-language philosophy, nor is it generally identified as a feature of past action theory.[3] But it was such a feature; and is of immense historical and philosophical importance. In the work of Suarez and Vasquez, and of predecessors in their intellectual tradition, such as Thomas Aquinas and Duns Scotus, it took a particular and distinctive form.

Consider Scotus's account, to which Suarez himself referred. In discussing human action, Scotus used the term *praxis*. For him, *praxis* occurs as the exercise of a faculty which has the function of being moved and directed by reason—specifically, by a practical or *praxis*-guiding reason, as it directs the operation of faculties besides the intellect itself:

> Also note that *praxis* or practice is an act of some power or faculty other than intellect, which naturally follows an act of knowledge or intellection and is suited by nature to be elicited in accord with correct knowledge if it is to be right.[4]

In other words, voluntary action occurs as the exercise of a capacity to be moved or directed by practical knowledge or reason—to respond motivationally to thoughts or deliberations and reasonings about what to do, thoughts and deliberations which are intellectual and cognitive, and which direct us to the good or to some other practical value. The exercise of this rational capacity may of course be defective as well as competent: the practical reason-based conception of voluntary agency allows for voluntary action which is irrational.

This faculty where praxis occurs, according to Scotus, is the will—or as we might put it today, our capacity for decision making and intention-formation. According to Scotus:

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[3] The idea of a practical reason-based theory of agency is introduced and explored in Pink (1996) and (1997).

[4] Scotus, *Lectura*, prol. pars 4, qq. 1-2, quoted in Wolter (1986), pp. 126-8: 'Sciendum etiam est quod praxis est actus alterius potentiae quam intellectus, naturaliter posterior intellectione, natus elici conformiter intellectioni rectae, ad hoc quod sit rectus.'

> From all this it follows that nothing is formally *praxis* except an imperated or elicited act of will, because no act other than that of will is elicited in agreement with a prior act of the intellect.[5]

I shall shortly go into this important, indeed fundamental, difference between elicited acts and imperated or commanded acts. The important point for the moment relates to the will—the will is the primary faculty involved in intentional action; it is the faculty in and through which we exercise our capacity to respond to practical or praxis-governing reason.

Scotus's account of *praxis* was noted and endorsed by Suarez, in his commentary on Aristotle's *De anima,* using, relatively unusually for him, Scotus's own term *praxis*. Suarez distinguishes an *actus practicus* of the intellect—an exercise of the intellect which involves arriving at a conclusion about what is to be done—from *praxis* or voluntary action itself:

> …for an *actus practicus* is that exercise of the intellect which orders or directs some action, while *praxis* is the action which is regulated and ordered by the *actus practicus*… [6]

Suarez also entirely shared Scotus's view as to the location of voluntary action in elicited and imperated or commanded acts of the will, as we shall see.

A central feature of a practical reason-based conception of human agency is that it is going to be a dual structure. That is, we are going to have two levels of human action. Besides the first order level, at which we move our hands, look out the window and the like, there can be the prior point at which we decide or form intentions to do these things. And this point of decision making and intention-formation, of *intentio* and *electio*, is going to be an action too—a second order, action-generating action.

For the point at which I decide to look out the window as opposed to continue reading my book is, intuitively, a point at which I am indeed exercising, correctly or incorrectly, a capacity to be moved by practical reason. A natural conception of decisions and intention-formations is that they have the function of applying our prior deliberations or reasonings about what to do, by ensuring that thereafter we are and remain motivated

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[5] Ibid.: 'Ex hoc sequitur quod nihil est praxis formaliter nisi actus voluntatis imperatus vel elicitus, quia nullus actus sequitur actum intellectus cui conformiter elicitur nisi actus voluntatis, quia omnes actus aliarum potentiarum possunt praecedere actum intellectus, sed non actus voluntatis.'

[6] Suarez (1991), vol. 3, p. 250: 'Tam fortis dissensio est de nomine, nam actus practicus dicitur ille actus intellectus quo ordinat aut dirigit operationem aliquam, praxis vero dicitur illa operatio quae regulatur et ordinatur per actionem practicam intellectus, nam "praxis" nomen graecum est, latine "operationem" significans. Et hic videtur communis usus vocabulorum. Et ita communiter praxis est actus alterius potentiae ab intellectu; actus vere practicus est elicitus ab ipso intellectu.'

to act as we have deliberated that we should. Our decision making capacity or will was viewed generally in the schools as a rational motivational power—a motivational capacity which is responsive to reason in practical form, as it concerns the good or some other relevant practical value. And so on a practical reason-based conception of human agency, this makes the exercise of the will itself a case of intentional action—which is precisely what scholastic proponents of a practical reason-based conception of agency held the exercise of the will to be.

The practical reason-based conception is a common tradition uniting a more voluntarist thinker such as Scotus, who allows the will to operate to a fair degree independently of the intellect, with a more intellectualist thinker such as Aquinas, who ties the operation of the will to that of the intellect. The battle between voluntarists and intellectualists about how far the operation of the will is actually determined by or a function of the operation of the intellect can perfectly well be carried on within a wider allegiance to the practical reason-based conception. Aquinas, after all, still characterizes intentional agency in the same terms as Scotus, as the exercise of a particular capacity for rationality, an *operatio rationalis*.[7] The relevant kind of exercise is one which involves the agent being moved by a practically rational cognition—by cognition of an end as good or worth pursuing.[8] And voluntary actions thus characterized are clearly to be found in actions of the will: for an act of will '…is nothing other than a certain inclination proceeding from an internal cognitive principle'.[9] In all these thinkers we find the same view of voluntary agency as located in elicited and imperated or commanded acts of the will. If Aquinas ties the operation of the will far more closely than Scotus does to the intellect, both thinkers share the same conception of voluntary action as involving the exercise of a will-based capacity to be moved by practical reason.

I have argued that Suarez and Vasquez inherit a practical reason-based conception of voluntary agency—a conception which involves a dual structure theory of agency. Not only that. It is also true that decisions and intention-formations—these second order actions of the will itself—are seen as fundamental to agency. Indeed, decisions and intention-formations are taken to be the primary and immediate cases of agency.

Fully human agency was conceived, as we have noted, as the exercise of a rational capacity—a capacity to be moved by reason. But within this tradition, this brought an important kind of dualism to bear on the theory of

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[7] Thomas Aquinas (1950), *Summa theologiae* I–II q. 6 a.1: '…voluntarium est actus qui est operatio rationalis'.

[8] Ibid., I–II q. 6 a. 2: '…ad rationem voluntarii requiritur quod principium actus sit intra, cum aliqua cognitione finis'.

[9] Ibid., I–II q. 6 a. 4 resp: 'actus voluntatis nihil est aliud quam inclinatio quaedam procedens ab interio principio cognoscente'.

action. This was faculty dualism. Intellectual or rational cognition and motivational responses to rational cognition took place in special rational faculties—those of intellect and will. And these faculties, as befitted the dignity of reason which placed it above matter, were immaterial. They lacked a bodily organ and survived bodily death without corruption. In so far as voluntary action involved the exercise of a reason-motivational capacity, its primary occurrence must be within one of these immaterial rational faculties—in particular, the motivational faculty of will.

Suppose someone performs a first order action—take an example which Suarez considers, the action of giving alms: *actus dandi eleemosynam*. Suarez terms this an external act—*exterior actus*—by contrast to internal actions of the will, such as deciding to give alms; and, as an action involving limb motion, this external action is located in the exercise of a corporeal locomotive capacity. The action occurs then, in a corporeal organ. What then makes this first order action a voluntary action?

It cannot be that the exercise of the locomotive capacity of itself constitutes a case of being moved by some cognition of practical reason. For as we have seen, rational responsiveness to such a cognition must take place in an immaterial faculty. Suarez combines the conviction that first order bodily actions, such as giving alms, are exercises of and occur within corporeal locomotive faculties, with the further conviction that the process of responding to and being moved by a rational cognition, and so the primary occurrence of agency, must occur within an immaterial faculty of will. So we cannot explain the voluntary status of giving alms directly in terms of the practical reason-based model.

Instead, we have to explain the voluntary status of a corporeally located action in terms of its being in a certain relation to a prior act of the will to which the practical reason-based model directly applies. Whenever I voluntarily give alms, there is, first of all, an intrinsically voluntary or active event of my willing or deciding that I should give alms, the status of which as agency being explained by its very nature—as my exercise of my immaterial capacity to be moved by reason. This is an *elicited* act of the will—*elicited* in relation to the will because it is an act of the very faculty of will itself. And this elicited act of the will has as its object, as the further action willed or decided on, the first order action of giving alms—an action which it then efficiently causes and informs. The first order action of alms giving then occurs as an *imperated* or *commanded* act of the will. It is imperated or commanded because it is an action performed on the basis of a prior decision to perform it, occurring as an effect and object of that elicited act which occurred within the will itself. The elicited act is intrinsically voluntary; the imperated act is only extrinsically voluntary, by virtue of its standing as the willed effect and object of the prior eliciting action:

> Voluntariness in the way of an imperated act is nothing other than a certain character or denomination of the imperated act received from an elicited act, of which the imperated act is object and effect. For an imperated act is termed voluntary simply because it proceeds from an elicited act of the will and is in a measure informed by it and with it constitutes one morally significant act.[10]

So one effect of faculty dualism is to make unavoidable for this tradition a hybrid account of voluntary agency. The overall theory is practical reason-based. Whenever human action occurs, there must be some intrinsically intentional or intrinsically voluntary action, the status of which as agency arises out of its constituting an exercise of an immaterial rational motivational capacity—a capacity to be moved by some rational cognition. But the status of first order actions which are exercises of corporeal faculties then has to be explained in other terms—by virtue of their being objects and effects of the intrinsically intentional actions of the will.

It might seem objectionable to make intentional action hybrid in this way. Is not raising my hand, an external action according to the theory, at least as much an exercise of my capacity for agency as the earlier internal action of deciding to raise my hand? And as such should there not be something significantly in common between these two actions? But even as actions, deciding to raise my hand and actually raising it seem on this theory to have nothing much in common: one is an exercise of reason, whereas in itself the other is a mere non-rational effect.

Suarez tried to suggest that they did have something significantly in common—both had the property of being *volitus* or willed. Elicited acts of the will, we have seen, are acts of the rational appetite itself—of a capacity to be moved by practically rational cognitions. But it is important that, for Suarez, the voluntariness of these elicited acts involves their possessing a reflexive quality:

> Voluntariness in an elicited act of the will comes to nothing other than being an act which, in coming immediately from the will, is inherently self-willed through a virtual and inherent self-reflexion.[11]

Being willed, *volitus*, is, as we have seen, a characteristic of imperated acts. But for Suarez it is a characteristic of elicited acts too, though not in the

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[10] Suarez (1856–78), vol. 4, *De voluntario et involuntario*, p. 160: 'voluntarium per modum actus imperati, nihil enim aliud est, quam habitudo, seu denominatio quaedam in actu imperato ab actu elicito, cuius est obiectum et effectus, non enim alia ratione actus imperatus voluntarius dicitur, nisi quia procedit ab actu elicito voluntario, et ab ipso quodammodo informatur, et cum illo constituit unum actum moralem ... Tota ergo difficultas revocatur ad actus elicitos.'

[11] Ibid., p. 160: 'esse voluntarium in actu elicito, nihil aliud esse quam esse actum, ita immediate manentem a voluntate, ut per se ipsum intrinsece sit volitus per virtualem, et intrinsecam reflexionem in ipso inclusam'.

same way. In contrast to imperated acts, the inherently willed character of elicited actions does not involve their being the object and effect of any prior and distinct act of will. Rather, it is a reflexive relation they bear to themselves, simply as elicited acts of the will.

Suarez cites Augustine, Anselm and Scotus to vindicate this view of elicited acts of will, appealing to what I shall call the 'reflexion principle' that 'omnis volens ipse suum velle necessario vult'—anyone who wills necessarily wills his own willing.[12]

Suarez thus offers to unite elicited and imperated acts within one and the same category of the *volitus* or willed. But this is something which Vasquez refuses to do. For Vasquez, as for Suarez, elicited acts of the will arise from a cognitive principle or object internal to them. They are perfectly voluntary actions because they are exercises of a capacity to respond motivationally to intellectually presented justifications for action—to the cognitive presentation of an end. This permits the practical reason-based model to apply. Given that status, it is not necessary to suppose that an elicited act must also be *volitus*. Nor is it sensible: willing is something produced by the will, but is no more itself willed through being so produced than seeing is itself seen.[13] Willedness is essential to voluntariness or agency only in the case of imperated actions—only in the case of what is, for both thinkers, an entirely secondary and derivative case of agency.[14]

So Suarez's attempt to unite the voluntary uniformly within the category of the willed is rejected by Vasquez. But the demand to infer from deliberate agency to willedness—to suppose that deliberate agency is in every case done on the basis of being willed or intended—is an old one.[15] It

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[12] Ibid., p. 196.

[13] Vasquez (1611), p. 165 (Disputation 23, Chapter 2): '…ac proinde volitio quidem erit producta a voluntate, sed non volita per ipsam productionem; sicut visio, quae est species et qualitas expressa, non erit visa per fieri et productionem sui ipsius.'

[14] Ibid., p. 168 (Dispuation 23, Chapter 3): 'Deinde ex eadem doctrina colligitur, ut actus voluntatis quicunque sit voluntarius, frustra requiri id, quod recentiores Theologi postulabant, nempe aliquo modo esse volitum: ut enim constat ex definition voluntarii, voluntarium solum postulat principium intrinsecum, et cognoscens, ita ut principium eius sit cognitio: hoc autem habet quicunque actus voluntatis hoc ipso, quod obiectum ipsius cognitum est, et ex tali cognitione principium habet. Nam principium actus facultatis appetentis est obiectum ipsius, actus vero exterioris facultatis, ut sit voluntarius, debet esse cognitus et volitus, quia est voluntarius secundarie ab actu facultatis appetentis, et ita debet esse obiectum illius, esse tamen volitum non est de ratione voluntarie universe, ut voluntarium est.'

[15] As I discuss in more detail elsewhere, the thought that it must at least be possible for deliberate agency to be done on the basis of being willed is often connected within the scholastic tradition to the thought that deliberate agency is something which is within our power or control. For example, in *Summa theologiae* I–II q. 17 a. 5, Aquinas connects the 'up-to-usness' or 'within our power-ness' of the will to its being subject to the *imperium* or

was to be insisted on by the practical reason-based tradition's principal opponent, Thomas Hobbes. In debating with that tradition's local representative, Bishop John Bramhall, Hobbes accused the scholastic tradition of equivocation. It was clear why external or imperated acts are actions. They occur as effects of willings or of intentions that they occur. And Hobbes could understand voluntariness on that basis:

> He [Bramhall] says that Actus Imperatus is when a man opens or shuts his eyes at the command of the will. I say when a man opens and shuts his eyes according to his will, that it is a voluntary action; and I believe we mean one and the same thing.[16]

Imperated or external actions, then, were not a problem for Hobbes. But elicited action, the prior internal action of the will itself, was in Hobbes's view a scholastic fiction. What, after all, could make willings voluntary actions too?

One option, of course, as we have seen, is to explain the status of willings as actions in quite different terms from those which apply to imperated actions. Willings are voluntary actions, not for the reason which imperated actions are—they are not actions because they themselves are effects of prior willings that they occur—but because they constitute exercises of reason in practical form. Willings are special reason-responsive motivations.

Hobbes's criticism of this, the standard scholastic position, is twofold. First, the theory of agency becomes mired in equivocation. We are inconsistently explaining action in two quite different ways—in the imperated case as a kind of willed non-rational effect; and in the elicited case as a mode of exercising rationality. But secondly, and worse, this theory of elicited agency is, in Hobbes's view, simply incomprehensible. He claimed not even to understand what a specifically reason-responsive motivation was, and how it differed from evidently passive motivations—from humble desires and urges such as hunger. Willings—decisions and intentions—are just more motivations, of exactly the same kind as mere desires and urges, the only difference being that compared to urges and desires full-scale willings are motivations which are stronger. For willings are nothing more than those motivations which have proved strong enough to override contrary motivations finally to determine our external action. If, as seems intuitive, humble urges and desires are passive occurrences—

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command of reason—and so also to the acts of the will itself which such commands of reason presuppose, and by virtue of which they motivate what is both willed and commanded: 'Sed contra, omne quod est in potestate nostra, subiacet imperio nostro. Sed actus voluntatis sunt maxime in potestate nostra: nam omnes actus nostri intantum dicuntur in potestate nostra esse, inquantum voluntarii sunt. Ergo actus voluntatis imperantur a nobis.'

[16] Hobbes 1656, p. 236.

passions which come over us without being our deliberate doing—then willings can be no different.

The second option is to avoid the mystery and equivocation—to tell more or less the same story about elicited actions as we told about imperated actions. We appeal to a higher order willedness at the level of elicited acts: they are voluntary actions because they too occur on the basis of having been willed. But in Hobbes's view, that is impossible. Motivations or willings cannot themselves occur on the basis of being willed: 'I acknowledge this liberty, that I can do if I will, but to say, I can will if I will, I take to be an absurd speech.'[17]

PRECEPTIVE LAW

Let us now turn to obligation, and the theory of law or *lex* which was used to characterize it. Essential to *lex,* both Suarez and Vasquez agree, is the property of containing *praecepta*, and not merely *consilia*. And the force of *praecepta* is to demand (or in negative forms, as prohibitions, to forbid), while mere *consilia* only recommend or advise.[18]

The *praecepta* of law are justificatory—to break them is to contravene reason. But legal *praecepta* constitute a force of reason in mandatory, and not merely recommendatory mode. Law can bind and oblige us. And through this binding form of justification law governs human actions—actions which can be imputed to their agents, and so for which their agents can be held responsible. As Suarez claims, 'lex tantum datur de humanis actibus'—law is only given regarding human, that is, perfectly voluntary, intentional agency.[19]

Within the tradition, the distinction between *consilia* and *praecepta* is often illustrated by referring to the absence or presence of a superior-inferior relation. As Aquinas noted:

> On the second point we should say that to advise is not a peculiarly legal act, since it can apply also to a private person who is not in a position to make

[17] Ibid., p. 29.

[18] Vasquez (1611), p. 26: 'primum naturali legi convenit praecipere actus suapte natura bonos, non omnes, sed eos qui necessarii sunt; nam qui dicuntur in consilio, non praecipiuntur lege naturali'.

[19] Suarez (1856–78), vol. 4, *De bonitate et malitia humanorum actuum*. p. 293. He is absolutely insistent that precepts of law only address free, and so perfectly voluntary, acts; see vol. 5, *De legibus* , p. 7: 'Addo praeterea, loquendo de propria lege, de qua nunc agimus, tantum esse posse propter creaturam rationalem: nam lex non imponitur, nisi naturae liberae, nec habeat pro materia, nisi actus liberos…'

> law. Whence too, in giving advice, the Apostle said: 'It is I who am saying this, not the Lord.' And so advice is not placed among the effects of law.[20]

The distinctive authority of obligation-involving *praecepta* is conveyed by referring to the authority of a legal superior. And so it is tempting within this tradition to see, with Suarez, a superior-inferior relation as essential to obligation. Simply to point out that some things are good and others are bad, Suarez urges, is not to speak preceptively, but only indicatively. It is to stay within the realm of advice, and not to attain that of demand and obligation. As Suarez says:

> Finally, a judgement indicating the nature of an action is not the act of a superior, but can occur in an equal or inferior who has no power of imposing obligation; hence, such a judgement cannot have the character of law or prohibition: otherwise a teacher showing what is good or bad would be imposing law, which cannot be said. Law therefore is that command which can introduce an obligation; judgement, however, does not introduce the obligation, but rather exhibits it as something which must already be in place. So to have the character of law, judgement must be referring to some command from which such an obligation derives.[21]

But also within the same tradition the demandingness of obligation can equally be illustrated by reference to the culpability of breaching it—a culpability which is based simply on the moral badness of wrongful actions and their imputability to the agent. As Aquinas again said:

> Hence, a human action is worthy of praise or blame in so far as it is good or bad. For praise and blame is nothing other than for the goodness or badness of his action to be imputed to someone. Now an action is imputed to an agent when it is in his power, so that he has dominion over the act. But this is the case with all voluntary actions: for it is through the will that man has dominion over his action... Hence, it follows that good or bad in voluntary actions alone justifies praise and blame; for in such actions badness, fault and blame come to one and the same.[22]

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[20] Thomas Aquinas (1950), *Summa theologiae*, I–II q. 92, a. 2, resp ad sec.: 'Ad secundum dicendum quod consulere non est proprius actus legis, sed potest pertinere etiam ad personam privatam, cuius non est condere legem. Unde etiam Apostolus, 1 ad Cor. 7,12, cum consilium quoddam daret, dixit: Ego dico, non Dominus. Et ideo non ponitur inter effectus legis.'

[21] Suarez (1856–78), vol. 5, *De legibus*, p. 106: 'Denique iudicium indicans naturam actionis non est actus superioris, sed potest esse in aequali, vel inferiore, qui nullam vim habeat obligandi; ergo non potest habere rationem legis vel prohibitionis: alias doctor ostendens quid sit malum quidve bonum, legem imponeret, quod dici non potest. Lex ergo est illud imperium, quod potest obligationem inducere: iudicium autem illud non inducit obligationem, sed ostendit illam quae supponi debet; ergo iudicium illud, ut habeat rationem legis, debet indicare aliquod imperium, a quo talis obligatio manat.'

[22] Thomas Aquinas (1950), *Summa theologiae* I–II q. 21 a. 2, resp: 'ergo actus humanus ex hoc, quod est bonus vel malus, habet rationem laudabilis vel culpabilis ... nihil enim est aliud laudari vel culpari quam imputari alicui malitiam vel bonitatem sui actus. Tunc autem actus imputatur agenti quando est in potestate ipsius, ita quod habeat dominium sui actus.

And this threatens to leave a superior-inferior relationship inessential to law and obligatoriness—an implication which Vasquez is happy to draw out. To establish the possibility of law prior even to God's making an act of judgement or command, Vasquez asserts the possibility of *culpa*—of blameworthy fault or guilt—prior to any such act. He argues:

> Badness in any action constitutes a fault; and in a free action it constitutes guilt: so if prior to God's prohibition we suppose badness in a free act against rational nature, as must necessarily be granted, by that very fact there ought also to be supposed moral guilt.[23]

Suarez insists that the source of genuine obligation must lie in the will of a superior. But he is aware of the strength of Vasquez's position—indeed, he comes close to conceding the substance of it, as we see from the following rather tortuous passage:

> I therefore reply that in a human action there is indeed some goodness or badness by virtue of the object positively aimed at, in as much as that object is compatible or incompatible with right reason, so that by right reason the action can be counted as bad, and a fault and blameworthy in that regard, apart from any relation to law proper. But beyond this a human action has a particular character of being good or bad in relation to God, when we add divine law forbidding or decreeing, and in respect of that the human action counts in a particular way as a fault or blameworthy in relation to God by virtue of its breaching of the genuine law of God himself, which particular badness Paul seems to have referred to by the name of transgression when he said, 'Where there is not law, neither is there any transgression'... The natural law precisely prohibits whatever is in itself bad or disordered in human actions, and in the absence of such a prohibition an action would not have the complete and unqualified character of a blameworthy fault and offence against divine law, which cannot be denied of acts that definitely violate natural law.[24]

Hoc autem est in omnibus actibus voluntariis: quia per voluntatem homo dominium sui actus habet ... Unde relinquitur quod bonum vel malum in solis actibus voluntariis constituit rationem laudis vel culpae; in quibus idem est malum, peccatum et culpa.'

[23] Vasquez (1612), p. 659 (Disputation 97, Chapter 3): '... malitia in quovis actu facit peccatum; in actu autem libero facit culpam: ergo si ante Dei prohibitionem supponamus malitiam in actu libero contra naturam rationalem, ut necessario fatendum est, debet etiam supponi hoc ipso culpa moralis'.

[24] Suarez (1856–78), vol. 5, *De legibus*, p. 110: 'Respondeo igitur in actu humano esse aliquam bonitatem vel malitiam ex vi obiecti praecise spectati, ut est consonum vel dissonum rationi rectae, ut secundum eam posse denominari, et malum, et peccatum, et culpabilem secundum illos respectus, seclusa habitudine ad propriam legem. Praeter hanc vero habet actus humanus specialem rationem boni et mali in ordine ad Deum, addita divina lege prohibente vel praecipiente, et secundum eam denominatur actus humanus speciali modo peccatum vel culpa ad Deum, ratione transgressionis legis propriae ipsius Dei, quam specialem malitiam videtur Paulus significasse nomine praevaricationis cum dixit, ubi non est lex, nec praevaricatio ... lex naturalis vere et proprie prohibet quidquid secundum se malum seu inordinatum est in actibus humanis, et sine tali prohibitione actus non haberet ...

But if there really is culpability or blameworthy fault prior to any divine prohibition, do we not have enough for obligation? What is an obligation if not a standard which it is blameworthy to breach?

For Suarez the obligatoriness of the action does follow, although indirectly, from the badness of not performing it; for that badness, given the existence of rational created beings, necessarily implies that God has prohibited its performance.[25] Hence, the natural reason by which we determine that our failure to perform the action would be bad can constitute the sufficient promulgation of the law which the action's obligatoriness presupposes.[26]

The voice, then, of pre-positive law in us—the voice of natural law—is the voice of our reason. The demanding force with which law addresses us is the force of our reason, and one which it is irrational for us to disregard. Suarez endorses the view which:

> in respect of rational nature distinguishes two things: one is that nature itself, in as far as it is the basis of the compatibility or incompatibility with itself of human actions; the other is a certain power of that nature, which we call natural reason. Taken the first way, this nature is said to be the basis of natural moral goodness; taken the second way, it is called the natural law itself, which prescribes or forbids to the human will what is to be done by natural right.[27]

We now reach an absolutely fundamental feature of this natural law-based conception of obligation. If we do see moral obligation as addressed to us as a demanding force of reason or justification, then moral obligations must bind the will as much as they bind external, imperated action.

This is because it is a quite general characteristic of features which justify performing some external action such as, for example, giving alms that they also justify, with the same force, deciding or intending or becoming fully motivated to perform that same action. That is how justifications for external actions such as giving alms move us to perform

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consummatam vel perfectam rationem culpae et offensae divinae, quae negari non potest in actibus qui praecise sunt contra legem naturae.'

[25] Ibid., p. 111: '... ideoque supposita voluntate creandi naturam rationalem cum sufficienti cognitione ad operandum bonum et malum, et cum sufficienti concursu ex parte Dei ad utrumque, non potuisse Deum non velle prohibere tali creaturae actus intrinsece malos, vel nolle praecipere honestos necessarios.'

[26] Ibid., p. 112: 'Unde dicitur ulterius ipsummet iudicium rectae rationis inditum naturalitur homini, esse de se sufficiens signum talis voluntatis divinae, nec necessariam aliam insinuationem.'

[27] Ibid., p. 102: 'in natura rationali duo distinguit, unum est natura ipsa, quatenus est veluti fundamentum convenientiae vel disconvenientiae actionum humanarum ad ipsam: aliud est vis quaedam illius naturae, quam rationem naturalem appellamus. Priori modo dicitur haec natura esse fundamentum honestatis naturalis: posteriori autem modo dicitur lex ipsa naturalis: quae humanae voluntati praecipit vel prohibet quod agendum est ex naturali iure.'

the actions which they justify—by providing the same justification for, and so justifying with precisely the same force, the motivation which deliberate performance of the external action would require. A justification which did not address the will with the same force with which it supports the external action justified simply could not move us into action. We would, as rational, justification-sensitive beings, note the justification for giving alms; yet we would be unmoved by it, since we lacked the same justification for being correspondingly motivated to give alms. But it would be quite absurd for a practical justification to bypass the will in this way; for then we would have supposed justifications for action which, however, were incapable of moving even rational, justification-sensitive agents to act. And no genuine justification for action can so lack the force to move us to do what it justifies. Accordingly, if we do conceive of obligation as the force of a justification or reason, that force, like any justificatory force, must apply not only to external actions, but also to motivations of the will.

Suarez and Vasquez, along with others of their tradition, make precisely this assumption of obligation. The obligations of pre-positive, natural law are supposed to lie on the will as much as on external action. We are not only under an obligation, say, actually to help our neighbour, but by the very fact of that obligation we are also obliged to will or intend that our neighbour be helped. Indeed, for Suarez, the will is what obligations primarily bind, precisely because these obligations are addressed to us as the demand of our reason—as a force of justification. 'Lex naturalis in ratione posita est': the natural law is placed in reason. So the right exercise of the will is subject to the prescription and obligation of natural law, and is necessary if we are fully to comply with that law. Suarez puts the point with some emphasis—but asserts it as something quite uncontroversial:

> So teaches Saint Thomas and on this point everyone ... And the point is established because the law of nature is placed in reason and immediately directs and governs the will. So it is on the will first and foremost that, as it were, by its very nature the obligation of the law is imposed. So the law is not kept unless through the exercise of the will.[28]

But if obligation is specifically action-governing—if 'lex tantum datur de actibus humanis'—it means that there must on this conception of obligation be such a thing as an internal agency of the will. There must be a category of internal elicited voluntary acts. This natural law-based conception of

[28] Ibid., p. 123: 'Modus operandi voluntarie cadit sub praeceptum legis naturalis, et necessarius est ad illius observationem. Ita docet D. Thomas q. 100 art 9 et ibi omnes. Et probatur, quia lex naturalis in ratione posita est, et immediate dirigit et gubernat voluntatem; ergo illi imponitur quasi per se, et principaliter obligatio illius legis: ergo non observatur illa lex nisi mediante voluntate ...'

obligation clearly demands a practical reason-based conception of action. And by now it should be becoming clear why.

Obligations, conceived in natural law-based terms, are justifications for action which are action-specific in their force. The existence of such justifications means, then, that our will or motivational capacity, the capacity to which the force of any justification for action perforce applies, must itself be a capacity for action. And what makes it a capacity for action must be precisely its status as a faculty addressed by and responsive to justifications for action such as obligations. Actions of the will must therefore count as actions in practical reason-based terms—that is, they must count as actions because they are motivations addressed by and responsive to the force of practical justifications. The natural law-based conception of obligation as an action-specific force of rational demand and the practical reason-based model of action fit together as hand and tailor-made glove.

OBLIGATION: THE FORCE MODEL VERSUS THE FEATURE MODEL

How can we make sense of a force of reason which is not merely advisory but demanding? Consider how the force of reason ordinarily seems to work. It works purely and simply by justifying what it supports as more reasonable than any alternative. The other options are left less reasonable, or even as downright silly. But that particular kind of rational force, no matter how forcefully it comes—that is, no matter how silly other options are left—is simply a force of recommendation. We are still in the realm of advice, however forceful. We have not yet arrived at obligatoriness or demand; for to do even what is very silly is not *ipso facto* to breach an obligation and do wrong. It is tempting, therefore, to seek to characterize obligatoriness further. But that is not easy to do.

What of the idea, endorsed by Suarez, that the source of all obligation is to be found in the authority of a superior? We might take this idea and seek to use it to provide a reductive account of what obligatoriness is—an account which explains obligatoriness in other terms. Obligatoriness, on this view, consists in nothing other than the property of being commanded by a superior.

But this claim is not very plausible—nor I think is it really Suarez's. It is true that many obligatory actions are commanded by a superior—perhaps it may turn out to be true, as many theists suppose, that all of them are. But that being commanded is surely a feature of the action which generates a justification for performing it—it is not itself the action's obligatoriness,

which is surely something fundamentally different, namely the force with which that feature of being commanded justifies the action. And the features which justify an action are one thing; the force with which those features justify it is quite another. It is a category mistake to confuse the two.

Suppose it is claimed that all actions which are obligatory are so only because they are the subject of the will or command of a superior. To make that claim is not to say anything about what obligatoriness itself consists in. It is simply to say that all obligatoriness must have a very specific source—in the command of a superior. So in making this claim we may be doing no more than making a necessary link—between the justificatory force of obligatoriness or demand and the justification-generating feature of being commanded. And simply to make that link is not to say anything more about what the force of obligation comes to, let alone to reduce obligatoriness to nothing more than the feature which generates it.

Suarez certainly cannot be involved in any reductive account of obligatoriness. He cannot be seeking to explain obligatoriness in other terms. Far from claiming to explain what obligatoriness is in other terms, Suarez happily uses the notion in his specification of the content of the very legislative volition by which a superior imposes obligations. The content of the volition is, not that a given action be performed, but that a given action be obligatory. For Suarez, then, obligatoriness is not being reduced to something else. The notion is instead being assumed; it is presented simply as the justificatory force of demand—a distinctive justificatory force which is already being entertained and employed within the very legislative volition which generates it.

But what is that force? How does demand differ from mere recommendation? If we still seek to answer that question, we can appeal, as in effect Vasquez does, to the badness of not doing what is obligatory and the imputability of that badness to the agent. This is to understand the demandingness of an obligatory standard, plausibly enough, as lying in the fact that we can be held responsible for keeping to the standard, on pain of counting as bad for breaching it. The trouble with this account is that it threatens to render redundant what is central to the natural law theory: the thought that the force of obligation is a force of reason—one which it is irrational to disregard.

Vasquez does try to make the connection between obligation and reason. He ties the badness of performing the wrongful action to the incompatibility of that wrongful action with one's rational nature. But this connection of the badness of wrongful action to the irrationality of performing it is merely asserted. The appeal to rationality is not really doing any work in specifying what obligatoriness comes to. That work is instead being done by the thought that the agent would be bad not to do

what is obligatory. And that thought is all too easily detached from any structure of reason or justification. Wrongdoers can perfectly well be seen as bad for doing wrong, without *ipso facto* being viewed as irrational. This is why later on Hume was happy to characterize the obligatoriness of a moral standard in terms of the badness of breaching it—but precisely as part of his central ethical project of severing entirely the connection between obligation and rational justification. The idea of a force of reason or justification which is, however, not simply advisory or recommendatory, but which is still undeniably a force of reason, remains elusive.

I have said that this natural law-based theory of obligation depends on a specific theory of action—one which permits there to be such a thing as an action-specific justificatory force. We need to be able to conceive action in practical reason-based terms, as an exercise of a motivational capacity for rationality, a motivational capacity which is governed by and responsive to distinctively practical justifications.

In Hobbes, as I also said, we find a developed assault on this practical reason-based theory of action. The assault maintains that there are no special, action-constitutive motivations. The realm of elicited internal agency is abolished, and all we are left with are imperated external actions. This view of action was, eventually, to become a dominant orthodoxy within the English language philosophical tradition. It follows, on this new theory of action, that if all justifications for action must address motivation or the will, as they surely must, there can be no justifications with a force which is action-specific—there can be no justifications which apply to action and action alone. If they are to move us to act, all practical justifications must still address, with the same force, our motivations as well as the actions which those motivations cause and explain. But those motivations are now passions; they are not internal actions.

Even on this new theory of action, we can continue to adopt a superficially Suarezian theory of obligation—a theory of obligation which preserves certain immediately prominent Suarezian claims both about it and about action. Obligation can still remain a kind of law in the sense of being an action-specific standard. And action can still remain obligatory because commanded. And all action can still occur as something *volitus* or willed. But because on this new theory we are restricting agency to genuinely external, imperated acts—because, in other words, we are abolishing the category of internal, elicited motivational actions—we can only preserve these Suarezian claims at a cost. We will be forced to abandon a core element of Suarez's theory of obligation. Obligation can no longer address us as an action-governing force of our reason. We will have to transform obligation from an action-specific justificatory force into something quite different.

We must move from a Force model of obligation, where obligation is a justificatory force, to a Feature model of obligation as a justification-generating feature. Motivations now being passive, they had better not be obligatory, if obligation is to remain tied to action. So we must now identify obligatoriness with the feature of being commanded.[29] Only in this way can we have obligations on external actions which do not immediately translate into obligations on motivations to perform those external actions. And that is because being commanded is a feature which external actions can possess alone, without the feature attaching to motivation as well.

I can perfectly well command you to perform an external action, such as raising your hand, without *ipso facto* also commanding you to will or intend to raise your hand. The justificatory force generated by my command that you raise your hand must, like any such force, actually extend to the will; when my command to raise your hand gives you reason to raise your hand, it must also give you the same reason to intend to raise your hand. But my command to you to raise your hand need not likewise extend to the will. All I have commanded you to do is raise your hand—not intend to raise it. In which case, since being obligatory is now reduced simply to possessing the feature of being commanded, if you are unmotivated to do what I have commanded, you are no doubt indifferent to or even contemptuous of your obligations. But you have not yet actually breached any obligation. For that, you need actually to have failed to raise your hand.

Such a Feature model of obligation has its attractions. This is so especially if we consider, not obligation of a purely moral kind, but obligation in relation to positive law—that is, in relation to the laws passed by human states and legislators; for we use the language of obligation in describing these positive laws too. We talk of actions being made 'legally obligatory' or obligatory under positive law. And in this case obligatoriness does look like another justifying or reason-giving feature of an action. What else, we might wonder, is being 'legally obligatory' or obligatory under positive law but a legislatively created feature of actions—the feature of being decreed or commanded by a government—a feature which then serves to justify performing them?

On the other hand, on more careful reflection, even here it seems absurd to treat obligation as no more than an action-justifying feature. For

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[29] Consider the account of obligation in Austin (1995), p. 22: 'Being liable to evil from you if I comply not with a wish which you signify, I am bound or obliged by your command, or I lie under a duty to obey it. ... Command and duty are, therefore, correlative terms: the meaning denoted by each being implied or supposed by the other. ... He who will inflict an evil in case his desire be disregarded, utters a command by expressing or intimating his desire: He who is liable to the evil in case he disregard the desire, is bound or obliged by the command.'

if we do that, we have lost the idea of demandedness essential to obligation, which seems, as I have observed, to be, not a justification-generating feature of an action, but rather the peculiar force with which some features of an action justify its performance. Take an action such as paying one's taxes. It is not as if, besides its other features, this action has a further, additional feature—the feature of being obligatory—which simply recommends or makes it the more advisable to perform it. Rather, given the other features which the action has, including being commanded of us by the state, supporting the state's welfare services and the like, we *must* perform it: to fail to would be to do wrong. And the action's obligatoriness is the force of that justificatory *must* or demand—a force generated by the feature of the action's being decreed by the state, and so not that feature itself. And this sense of a demanding force arises even in relation to positive legality, as something generated by the decrees of positive law—certainly for those who accept that positive law's claim to impose obligations is genuine.[30]

There is more than one way, then, of conceiving of obligation as a law on action—even of conceiving it as a law commanded by a superior. To conceive of it as a commanded law in the precise way that Suarez did, you will need very distinctive notions of obligatoriness and action—notions that you will share as common property with thinkers such as Vasquez, who do not see law as resting on the commands of a superior at all. You will need to conceive obligation as an action-specific justificatory force, and you will need to conceive of action as a practical mode of exercising rationality—and so as a motivational response to practical justifications. And these conceptions will just as clearly divide you from many others who might well share your particular belief that obligation comes only with a superior's command.

The idea of obligatoriness as an action-specific justificatory force is deeply intuitive. But it is a conception of obligation which has, as I have said, largely disappeared, at any rate from much Anglophone philosophy. And by now it is not hard to see why. The supposed force of obligation

[30] It is, of course, tempting, as does Austin, to relocate the missing justificatory force of demand in some sanction or 'evil' that will meet non-performance of the obligatory. But then a standard scholastic distinction, that between the directive force of obligatoriness, and the coercive force with which that directive force can be accompanied, is thereby abolished. The former, justificatory force comes to be identified with the sanctions which coercively enforce compliance—which is surely a mistake. For the issue of whether something is obligatory is quite distinct, as Suarez realises, from the issue of whether its doing is to be enforced by sanctions; see Suarez (1856–78), vol. 5, *De legibus*, p. 424: 'Ratio autem est, quia legislator potest simul sua lege obligare in conscientia, imponendo poenam transgressoribus, ut in superioribus ostensum est, *et potest etiam obligare in conscientia sine adiectione poenae; ergo etiam obligare in conscientia solum ad debitum poenae* ...' (My emphases)

seems to resist further analysis. It is very hard to show that it really is a force of reason. And this conception of obligation as an action-specific justificatory force rests on a theory of action which, at any rate, in the hands of Suarez or Vasquez, now seems profoundly strange. Action threatens to be dissociated from such familiar observable bodily activities as walking or raising a hand, and to be driven implausibly within, to be left an invisible motion of the mind. These are no small problems to resolve if such a theory of obligation and action is to be made credible again.[31]

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[31] The ideas of obligation as an action-specific justificatory force and of action as a practical mode of exercising reason are explored further and defended in my books, *The Ethics of Action: Action and Normativity* and *The Ethics of Action: Action and Self-Determination* (Oxford forthcoming).