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Francisco Suárez and the Whig Political Tradition: The Case of Algernon Sidney

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1 Introduction

The publication of Robert Filmer's (c.1588–1653) *Patriarcha* (Patriarch) in 1680 raised many voices in the republican and Whig political world.¹ These included James Tyrrell (1642–1718),² John Locke (1632–1704),³ and Algernon Sidney (1623–83).⁴ All these thinkers, who came from the republican milieu, were resolutely opposed to the political absolutism of the Stuarts, founded on the French notion of the divine right of kings, which found its most mature expression in Filmer's work. In their struggle against the absolutism of Charles II (1630–85, r.1660–85) and its theoretical justifications set out in *Patriarcha*, these republican authors defended precisely those ideas that Filmer aimed to refute, namely the natural freedom and equality of all men, the contractual origin of political power, and the restraints on royal power becoming a tyranny, especially through the deposition, trial, and punishment of the tyrant. It should be noted, however, that Filmer attributed these ideas to Scholastic theologians (the Schoolmen) and to Calvinists, and more specifically “to the Jesuits and jealous defenders of the discipline of Geneva,” “to Persons [Jesuit] and Buchanan [Calvinist].”⁵ In fact, these ideas (of Scholastic and Calvinist origin) clearly constituted the fundamental political principles of the British republicans,

1 Robert Filmer, *Patriarcha or the Natural Power of Kings* (London: Printed by Walter Davis, 1680).

2 James Tyrrell, *Patriarcha non monarcha [...] in Which the Falseness of Those Opinions That Would Make Monarchy Jure divino Are Laid Open, and the True Principles of Government and Property Asserted* (London: Printed for R. Janeway, 1681).

3 John Locke, *Two Treatises of Government* (London: Printed for A. Churchill, 1690).

4 Algernon Sidney, *Discourses concerning Government* (London: Printed and to Be Sold by the Booksellers of London and Westminster, 1698).

5 Filmer, *Patriarcha*, 2–3.

which Sidney solemnly claimed on the day of their execution as the “Good Old Cause” whose defense he had undertaken since his youth.⁶ The political affinity between Jesuits and Calvinists on the one hand and the Whigs on the other is thus evident from the first.

There is a logical sequence to these political principles. Indeed, Tyrrell, Locke, and Sidney believed, contrary to Filmer, that (1) as men are free and equal from birth, (2) they are, consequently, able to conclude collectively a political contract with the king, since they alone, as holders of sovereign political power arising from an original social contract, can cede the exercise of a power that belongs to them; (3) thus, through their representatives, the people control the government of the king, whose power is ultimately derived from the people. Assuming such principles, the Whigs kept alive what Sidney called the “Good Old Cause.” The theoretical foundations of these principles had a long medieval tradition, intensified since the fourteenth century in the nominalist and conciliarist environments and accepted by Catholics (for example John Major [1467–1550], Francisco de Vitoria [c.1483–1546], Roberto Bellarmino [1542–1621], Francisco Suárez [1548–1617], etc.) and Calvinists (such as John Knox [c.1514–72], George Buchanan [1506–82], François Hotman [1524–90], the anonymous author of *Vindiciae contra tyrannos* [A defense of liberty against tyrants (1579)], etc.).⁷

An example of this are the political ideas of Major and Buchanan, the former a theologian in Paris and teacher of Buchanan, who later converted to Scottish Calvinism or Presbyterianism. In his *De iure regni apud Scotos* (The powers of the crown in Scotland [1579]), Buchanan clearly receives Major’s political ideas, expressed particularly in *Historia maioris Britanniae, tam Angliae quam Scotiae* (History of Greater Britain, both England and Scotland [1521]). Major, a Sorbonne *magister* and disciple of the schools of William of Ockham (c.1287–1347) and Jean Gerson (1363–1429), could

6 Cf. Algernon Sidney, *Colonel Sidney’s Speech Delivered to the Sheriff on the Scaffold* (London: n.p., 1683), 7.

7 It is no coincidence that Major’s *Historia maioris Britanniae, tam Angliae quam Scotiae* (1521), Hotman’s *Franco-Gallia* (Franco-Gallia, or, an account of the ancient free state of France [1573]), the *Vindiciae contra tyrannos* (1579), Buchanan’s *De iure regni apud Scotos* (1579), and Mariana’s *Historia de rebus Hispaniae* (The general history of Spain [1592]) abound in extensive medieval historical information.

not fail to take an interest in the political-ecclesiastical doctrines then being debated in France. Thus, Major maintains that the true origin of power lies in the people, that is, the notion of popular sovereignty. The people therefore have the power to invest the king as well as the power to judge and, if necessary, to depose him, for the good of the republic. Major clearly states: "The free people give power to the king, whose power depends on the people as a whole," and "just as it institutes it, the people can withdraw the power of the king and his subordinates because of his abuses." Therefore, "it is lawful for the free people to depose the king [*ejicere a Regno*] and institute a new king," although before his deposition the king is required to be tried. In this regard,

to whom belong the power to create the king also has the power to judge his conduct. Now the power to institute the king belongs to the people, first and foremost through the prominent men and nobles who represent him; then it is up to them, princes, prelates and nobles, to judge the king's conduct.⁸

Here, then, is the testimony of a British author from the early sixteenth century, prior to the confessional split between Catholics and Calvinists, who reveals a common political heritage drawn upon by Catholics and Calvinists alike. These ideas would reach British republicans through, among other channels, Major's disciple Buchanan, who converted to Calvinism.

This anti-absolutist political tradition with medieval roots was renewed in England among Catholics with the ascension to the throne of James I (1566–1625, r.1603–25), particularly through the work of the English Jesuit Robert Persons (1546–1610) (under the pseudonym Robert Doleman) entitled *Conference about the Next Succession to the Crown of England* (1594, reprinted in 1681, with the Exclusion Crisis as

8 John Major, *Historia maioris Britanniae, tam Angliae quam Scotiae* (Paris: Ex officina Ascensiana, 1521), lib. 4, c. 17, fols. 76–77. My translation. On Major's political ideas, cf. Ricardo García Villoslada, *La Universidad de París durante los estudios de Francisco de Vitoria O. P. (1507–1522)* (Rome: Apud Aedes Universitatis Gregoriana, 1938), 156. Cf. also Francis Oakley, "Almain and Major: Conciliar Theory on the Eve of the Reformation," *American Historical Review* 70, no. 3 (1965): 673–90.

background).⁹ An additional factor was the controversy of Bellarmino and Suárez with James I over the king's demand for an oath of allegiance in 1606.¹⁰ On the Protestant side, this anti-absolutist tradition was grounded in the literature of the parliamentary party prior to the Civil War (1642–51) and in John Milton's (1608–74) work during the Commonwealth and reappears vigorously, after the restoration of the monarchy, among the Whigs in the context of the Exclusion Crisis (1678–81). This crisis was once again caused by problems of succession. As Charles II had no legitimate heirs, succession to the throne fell to his brother James II (1633–1701, r.1685–88), a Catholic, who had the support of the king of France, Louis XIV (1638–1715, r.1643–1715).¹¹ The succession of James II, supported by the royalists or Tories, supporters of absolute royal power, was opposed by an explicitly republican, Protestant, and anti-absolutist sector, the origin of the Whig party. This party, led by the earl of Shaftesbury (1621–83), maintained the old contractual notion of royal power, which was shared not only by Presbyterians and Puritans but was also a heritage of Catholic authors, especially the Jesuits.

Thus, a common anti-absolutism, awkwardly known as the monarchomachism, was expressed from opposite confessional

9 Cf. Robert Persons, *A Conference about the Next Succession to the Crown of England* (n.p.: R. Doleman, 1594). Although the place of publication is not recorded in the book, it is known that it was published in Amsterdam.

10 Particularly important in this regard is *Defensio fidei* (1613) by Suárez. To this end, cf. Leopoldo J. Prieto López, "Hechos e ideas en la condena del Parlamento de París de la *Defensio fidei* de Suárez: Poder indirecto del papa *in temporalibus*, derecho de resistencia y tiranicidio," *Relecciones* 7 (2020): 37–53.

11 The Exclusion Crisis refers to the controversy between royalists and republicans that arose after the parliamentary proposal presented by the Whigs of excluding (Exclusion Bill [1679]) the Catholic James II from succession to the throne. The crisis was resolved by Charles II closing the Parliament on several occasions, which only exacerbated the mood of the Whigs. James II succeeded to the throne on the death of Charles II (1685), but only for a short time. After William of Orange's (1650–1702, r.1689–1702) invasion of England in 1688, favored by the Whigs, and the defeat and flight to France of James II (facts that were called the Glorious Revolution), a parliamentary convention determined on February 12, 1689 that the flight of James II amounted to a *de facto* abdication of the crown, and that the vacancy of the throne would be resolved by succession to the throne in favor of his eldest daughter, Mary II (1662–94, r.1689–94), married to William of Orange.

positions: Catholic and Calvinist. It is precisely for this reason that a paradox arises, namely that those with irreconcilable religious differences (Puritans and Catholics) agreed on many ideas of a political nature. Furthermore, it was precisely the Whigs, who shared the views of the most fervent anti-Catholic puritanism, who agreed with ideas of Jesuit political theorists, particularly Suárez, although this Jesuit affiliation was always hidden or disguised. In short, Suárez and the Whigs, and especially Sidney, in reality continued and renewed old medieval constitutionalism although by different paths. The absolutism of modern monarchies and the theory of divine right used to legitimize them, ideas of recent creation, provoked a renewal of constitutionalism in the form of an anti-absolutism common to both schools. Protestant reform on British soil driven by Calvinism (Presbyterianism and Puritanism) had not altered things in this area.

The present work aims to highlight the reception by Sidney and other Whigs of these political principles, both through common medieval traditions and the assumption, discreet, but real, of Suárez's ideas, especially as set forth in *De legibus ac Deo legislatore* (On laws and God the legislator [1612]) and *Defensio fidei catholicae et apostolicae adversus anglicanae sectae errores* (Defense of the Catholic and apostolic faith against the errors of Anglicanism [1613]). Sidney quotes Suárez abundantly, especially in chapter 2 of his *Discourses concerning Government* (1698), whose central idea is that the people elect their rulers by virtue of their natural right to freedom and that the best form of government is one based on the will of the people. Thus, this chapter also aims to explain the paradoxical situation in which Sidney finds himself with Suárez: that is, sharing political principles while necessarily rejecting, on confessional grounds, this conspicuously Catholic theologian, *a fortiori* considering that, in the fight against James I, Suárez had supported the claim of Pope Paul V (1550–1621, r.1605–21) of indirect power, or *in temporalibus*, over the English king. In a Protestant nation, as was England in the seventeenth century, in which the monarchy had also recently been restored in the person of Charles II, royalist (Tory) polemicists would find in this paradoxical situation the opportunity to discredit Sidney, and the Whigs in general, with accusations of being seditious republicans and papists (or even

Jesuits) disguised as Protestants.¹² These accusations were largely false, especially regarding his Protestant faith, but they did contain some element of truth. It is precisely these truths this chapter hopes to highlight. In fact, apart from the pope's indirect power over the king of England, Calvinists, Whigs, and Jesuits were in agreement on notions of popular sovereignty, the transfer of political power to the king by the people, the right of resistance, and so on. Thus, disregarding the enormous confessional and theological differences between them, the royalist pamphleteers would insist on presenting the Whigs and Jesuits as members of the same political tribe, sharing the doctrines of the political contract and the right to resist and depose the king.¹³

This difficult situation, exacerbated by the constant pressure from Tory critics, is the root of Sidney's reticence and concealment of his agreement with Suárez, as shown by his words:

I am not concerned in making good what Suárez says. A Jesuit may speak that which is true; but it ought to be received, as from the Devil, cautiously, lest mischief be hid under it [...]. But as to the point in question [...] nothing [...] can be imputed to the invention of Suárez; for, that Adam had only an oeconomical [i.e., familial], not a political power, is not the voice of a Jesuit, but of Nature and common sense.¹⁴

As mentioned above, there is a substantial overlap in the thinking of Suárez and the Whigs on fundamental political principles. Both Suárez and the Whigs rejected the patriarchal absolutism of the Stuarts posited by Filmer, according to which

12 This royalist anti-Whig literature includes, above all, the following works: Henry Foulis, *The History of Popish Treasons and Usurpations* (London: Printed by J. C. for Th. Basset, 1671); Edward Stillingfleet (1635–99), the famous Anglican theologian versus Locke in Christological matters, author of *The Jesuits Loyalty* (London: Printed by E. Flesher for R. Royston, 1677); George Hickes, *A Sermon Preached on 30th of January 1681* (London: Printed by Walter Hettliby, 1682); John Nalson, *The Present Interest of England or A Refutation of the Whiggish Conspirators* (London: Printed for Th. Dring, 1685).

13 John N. Figgis, *The Divine Right of the Kings* (Cambridge: Cambridge University Press, 1914), 179–81.

14 Sidney, *Discourses concerning Government*, 2, 2, 67.

men are born and always remain the children and subjects of the monarch.¹⁵ They affirmed on the contrary that men are free and equal, distinguishing here the authority of a father (of a private familial or economic nature) and the authority of a prince (political or jurisdictional power). Furthermore, since all men are born free and equal, it is only by their free will, expressed at least tacitly, that they can be subjected to the power of another. As free people and following the social impulse of their nature, men unite in a social body to provide the necessities of life and defend themselves against common enemies. This pact, a social pact, was the first one. It is to this social body that radical political power belongs, or equally, the people hold sovereign political power. However, since a republic cannot survive without a ruler, and as a republic cannot be governed by all, it is necessary to appoint one, or several, magistrates and cede the power of government to them. This is the second pact, a political contract on the transfer of power to the ruler. Finally, should the king, who is ultimately a magistrate elected by the people, go too far and violate the constitutional pact on this transfer of power, the political community can take measures to ensure that justice prevails and the pact is enforced, ultimately, under extraordinary circumstances, to the point of deposing the king.

I will now examine more closely these fundamental principles in both Suárez and Sidney.

15 Cf. Filmer, *Patriarcha*, 2-4, where this author, the theorist *par excellence* of British absolutism, affirms that the opinion held by the Scholastic theology of the papists and Jesuits, later welcomed by the reformed churches, is necessarily the cause of political rebellion and sedition, because "this School-Divinity" affirms that "mankind is naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please, and that the power which any one man hath over others, was at first bestowed according to the discretion of the Multitude." From this view, Filmer believes, one follows "a perillous conclusion," as it is "that the people or multitude have power to punish or deprive the prince, if he transgress the laws of the kingdom, witness Persons and Buchanan." According to Filmer, it is clear that "his desperate assertion [...] follows [...] as a necessary consequence of that former position of the supposed natural equality and freedom of mankind, and liberty to choose what form of Government it please." Thus, from this supposed principle of a natural freedom of men, one could not expect, according to Filmer, more than serious "rebellious consequences."

2 Suárez's Political Principles

As we have seen, there is a clear underlying affinity between the political principles of Suárez and Sidney, a common notion of political contract that has deep medieval roots and that was revived with the emergence of European monarchies, founded on the Christian ideal of the original freedom and equality of men.¹⁶ The conclusion of a contract—including a political contract for the transfer of power to a monarch—presupposes the freedom and equality of the contracting parties. Both Suárez and Sidney had forcefully emphasized this freedom and equality as the foundation of their respective political theories.

2.1 *Natural Freedom and Equality of Man in Suárez*

Suárez's position is clear on the natural freedom and equality of all men. This theologian from Granada affirms that man is not born subject (*subjectus*) to the prince by nature but is rather subjectable (*subjicibilis*) to him.¹⁷ However, being subjectable means that political submission is through one's own will, precisely because of this natural freedom. Political subjection, therefore, is not contrary to human freedom, but rather its expression. Of course, political subjection, contrary to the patriarchal doctrine of James I and Filmer, does not arise immediately from human nature but by the intervention of human will. Such subjectability "is according to the rational [and social] human nature, as in the republic there is someone to be subject to, although political subjection does not derive *per se* from natural law, but from the intervention of the human will."¹⁸ In short, man is free by nature, albeit subject politically according to his freedom.

16 John W. Gough, *The Social Contract: A Critical Study of Its Development* (Oxford: Clarendon Press, 1957), 49–51.

17 Francisco Suárez, *Tractatus de legibus ac legislatore Deo*, in *R. P. Francisci Suárez e Societate Jesu opera omnia* (Paris: Apud Ludovicum Vivès, 1856), 5:3, 1, 11: "Quia licet homo non sit creatus vel natus subjectus potestati principis humani, natus est subjicibilis ei, ut sic dicam." All translations of Suárez's texts are the author's own.

18 Suárez, *De legibus*, 3, 1, 11: "Unde actu illi subjici [...] est consentaneum rationi naturali, ut humana respublica habeat aliquem cui subjiciatur, quamvis ipsum naturale jus per se non effecerit subjectionem politicam sine interventu humanae voluntatis."

Suárez also expresses himself unambiguously about the natural equality of men. Indeed, concerning the question of to whom political power is immediately given, Suárez answers:

It is reasonable to ask whether power is in some particular men or in all, or what is the same in all of them. The former must be discarded, because neither everyone is superior to others nor by nature do some have this power more than others, because there is no greater reason for them to have it instead of each other.¹⁹

However, the fact there is no natural reason for some to have power over others implies that political power, before the transfer from the community to the king, is possessed by all equally. As Suárez goes on to say: “[Political power] necessarily remains in the entire community of men.”²⁰ This idea is reiterated later, in a controversy over the patriarchalism of James I’s notion of Adam’s power over his offspring (*Quam potestatem habuit Adamus in posteris*): “It must therefore be said that this power, by virtue of the very nature of things, does not exist in any particular man, but in all associated men.”²¹ This affirmation, claims Suárez, is true and common (*certa et communis*) to the vast majority of political scholars,²² due, as mentioned, to the fact that “by the nature of things all men are born free and therefore none has either political power or dominion over another, nor is there any reason according to the nature of things why this [power] should be given to them over those rather than in the opposite direction.”²³ Thus, to the

19 Suárez, *De legibus*, 3, 2 (“In quibus hominibus immediate existat ex natura rei potestas haec condendi leges humanae”), 1: “Ratio dubitandi est, quia vel est in singulis, vel in omnibus, seu in tota collectione eorum. Primum dici non potest, quia neque omnes sunt aliorum superiores, neque ex natura rei aliqui habent hanc potestatem magisquam alii, quia non est major ratio de his quam de illis.”

20 Suárez, *De legibus*, 3, 2, 1: “Sed necessario manere deberet in tota hominum communitate.”

21 Suárez, *De legibus*, 3, 2, 3: “Dicendum ergo est hanc potestatem ex sola rei natura in nullo singulari homine existere, sed in hominum collectione.”

22 Suárez, *De legibus*, 3, 2, 3.

23 Suárez, *De legibus*, 3, 2, 3: “Ratio prioris partis est evidens, quae in principio est tacta, quia ex natura rei omnes homines nascuntur liberi et ideo nullus habet jurisdictionem politicam in alium, sicut nec

affirmation that “all men are born free” (*omnes homines nascuntur liberi*), Suárez adds the idea that all men are born equal to the extent that “none has political jurisdiction nor dominion over another.” According to Suárez, this equality is not, of course, psychological but rather juridical and political.

In this way, Suárez continued the path set out decades earlier by Bellarmino in his treatise *De laicis* (On laity).²⁴ The second volume of *Disputationes de controversiis christianae fidei adversus hujus temporis haereticos* (Disputes about the controversies of the Christian faith against the heretics of this time [1605]), of which *De laicis* is a part, is devoted to a Catholic ecclesiology against Protestants (*hujus temporis haereticos*). In this volume, Bellarmino studied the different states of Christian life in the church: “On Clerics and Priests” (*De clericis et sacerdotibus*), “On Monks and Other Religious Persons” (*De monachis et religiosis caeteris*), and “On Laity and Especially on Political Magistracy” (*De laicis ac potissimum de magistratu politico*). In this last book, political power (designated by Bellarmino as political magistracy) is affirmed in relation to equality:

Observe that this [political] power is immediately found in the whole multitude as in its own subject, for such power is of divine right. But the divine right to no particular man has given this power, then given it to the multitude. Moreover, apart from positive law [i.e., the pact for the transfer of political power], there is no reason why among many, all being equal, one should exercise power rather than another. Then this power belongs to the whole multitude.²⁵

dominium. Neque est ulla ratio cur hoc tribuatur ex natura rei his respectu illorum potius quam e converso.”

24 Roberto Bellarmino, *Disputationes de controversiis christianae fidei adversus hujus temporis haereticos* (Ingolstadt: Ex typographia Adami Sartorii, 1605). *De laicis* is actually a part of the second volume of *Disputationes de controversiis christianae fidei adversus hujus temporis haereticos*. Although the original edition is that of Rome (1588), here I follow that of Ingolstadt (1605).

25 Bellarmino, *Disputationes de controversiis christianae fidei*, 844: “Secundo nota hanc potestatem immediate esse tanquam in subiecto in tota multitudine, nam haec potestas est de iure divino. At ius divinum nulli homini particulari dedit hanc potestatem, ergo dedit multitudini.

Also, in relation to freedom, Bellarmino later states:

Bear in mind that, in practice, the various forms of political regime are of law of nations, not of natural law, since it depends on the will of the multitude to constitute a king or consuls or other magistrates over them. And that if given just cause the multitude can change the kingdom into aristocracy or democracy or the opposite.²⁶

Thus, the frequent appeals by Sidney, and Locke, to men's freedom and equality, and even the literality of said authors' expressions of this, were not without Scholastic precedents.

2.2 The Origin of Society: The Social Pact and Popular Ownership of Political Power

The importance attached by Suárez to freedom as the foundation of all political life is also expressed in his theory of the origin of society. Since "man naturally inclines to the political community and needs it most especially for the preservation of his life,"²⁷ he agrees with others in uniting in a political body. Indeed, through an agreement, whether explicit or implicit, men decide to unite and form a society to help themselves to provide the necessities of life and defend themselves from danger. This society is a "multitude of men" (*multitudo hominum*), quite different from the earlier types of groupings (the family and the village), because its members are joined into a perfect political community, the *civitas*.²⁸ Hence the social pact. However, the political community constituted by this pact needs an authority that governs, moderates, and leads it to achieve its goals. It is therefore

Praeterea, sublato iure positivo non est maior ratio cur ex multis aequalibus unus potius quam alius dominetur. Igitur potestas totius est multitudinis." My translation.

26 Bellarmino, *Disputationes de controversiis christianae fidei*, 845: "Quarto nota in particulari singulas species regiminis esse de iure gentium, non de iure naturae. Nam pendet a consensu multitudinis, constituere super se regem vel consules, vel alios magistratus, ut patet. Et si causa legitima addit, potest multitudo mutare regnum in aristocratiam, aut democratiam et e contrario." My translation.

27 Suárez, *De legibus*, 3, 1, 4.

28 Suárez, *De legibus*, 3, 2, 4. Cf. Suárez, *Tractatus de opere sex dierum*, in *R. P. Francisci Suárez e Societate Jesu opera omnia* (Paris: Apud Ludovicum Vivès, 1856), 3:5, 7, 3.

necessary to have a common power to which all its members are subject and must obey.²⁹ Since the political community (the *multitudo hominum*) is the holder of political power, while the exercise of power is better carried out by one than by many, it is necessary for the community to conclude a contract for the transfer of power to the ruler, whether this is one or several. Hence the political contract.

The importance attached by Suárez to freedom must be emphasized. Indeed, both the social and political pacts presuppose and require the freedom of men, first to associate in the political community and then to transfer power to the prince and submit to him. Human freedom (along with equality) is the inescapable foundation of Suárez's theory of these social and political covenants. As we shall see, this was also the case with Sidney.

In the controversy with James I, Suárez recalls that political power is conferred by God on all men united in a political community, not by virtue of a positive institution or a particular act but in the very act of creation, inscribed in human nature as the inclination to unite in society with other men. Political power is therefore not given by God to a single person or group, but to all the people.³⁰ In other words, political power belongs to the people and they own it. Moreover, political power is given by God to all the members of the political community without the intervention of any intermediary, so that "between the community and God there is no intermediary through which this power is transferred."³¹ Political sovereignty thus results from the very fact that men are gathered in a political body "without any intervention of a created will,"³² that is, without intervention of the will of the king. Against James I, Suárez observes that not only is the king not a mediator between God and the people, as the doctrine of the divine right of kings supposes, but that it is the people who mediate between God (from whom he immediately receives power) and the king (to whom he cedes or transmits it if he so chooses). Suárez thus boldly reverses the claims of absolutism

29 Suárez, *De legibus*, 3, 2, 4.

30 Suárez, *Defensio fidei*, in *R. P. Francisci Suárez e Societate Jesu opera omnia* (Paris: Apud Ludovicum Vivès, 1859), 24:3, 2, 5.

31 Suárez, *Defensio fidei*, 3, 2, 6.

32 Suárez, *Defensio fidei*, 3, 2, 6.

of the English king and confirms the doctrine of popular sovereignty.

2.3 *The Origin of the State: The Political Contract for the Transfer of Power and Political Subjection*

As noted above, when men were gathered in a political community, it was necessary to determine who would exercise political power. Political power is necessary for the preservation of the political community, for “the community of men cannot be preserved without justice and peace and justice and peace cannot be preserved without a ruler who has power to command and punish.”³³ The supreme political power (sovereignty) originally lies in the whole community, which has been given by God for the very fact of congregating in a social body. Hence democracy, not the monarchy or the aristocracy, is the original form of government of a political community in which pacts for the transfer of power to a ruler have not yet taken place. Although instituted naturally by God, democracy has not been positively instituted (because in that case it could not be changed), nor could the aristocracy or the monarchy. In fact, Suárez looks to Aristotle (384–322 BCE) in arguing that “democracy is the most imperfect form of government.”³⁴ In short, supreme political power is a natural property of the political community and therefore originally belongs to the entire community, “unless it is transferred to another through a new institution.”³⁵ In fact, the political community, taken as a whole, cannot exercise power. Hence, the community must transfer the exercise of power (not ownership) to a political authority (usually a king or a body of magistrates or *optimates*) capable of exercising that government of which the crowd is incapable.³⁶ The transfer of power to the prince or magistrates was now effected through a political contract, which requires the consent of all members of the community. Thus, against the claims of James I, Suárez affirms that “no king or monarch receives political power directly from God or by divine institution, but through human

33 Suárez, *Defensio fidei*, 3, 1, 4.

34 Suárez, *Defensio fidei*, 3, 2, 8. Cf. Aristotle, *Politics*, 1, 7, 1279 b 6.

35 Suárez, *Defensio fidei*, 3, 2, 8.

36 Suárez, *Defensio fidei*, 3, 2, 9.

will and determination.”³⁷ Simply put, God gives political power to the people and they transfer it (or cede or delegate it) to the king, if deemed appropriate, through a political contract or what we would now call a constitutional covenant. It is precisely from this contract for the transfer of political power that the limits on the king’s authority are established.

2.4 *The Limits of Political Power and Legitimate Resistance*

As we know, *Defensio fidei* was a controversial writ against James I of England. The king of England and Filmer asserted the divine origin of the king’s authority and therefore rejected the notion of popular sovereignty for two essential reasons: first, they regarded this theory as a possible cause of sedition and revolt that could even lead to the deposition and death of the king;³⁸ and second, by this theory the king would always be dependent on the people, whose power would be superior to his own, and so “the people could limit the power of the prince, abrogate their laws [...], and diminish the power of the princes.”³⁹ In short, according to James I, the theory of popular sovereignty would lead to sedition and revolts, on the one hand, and a limitation of royal power, on the other.

Suárez replied that none of the potential ills alleged by the English king truly arose from the notion of the popular origin of political power. That political power has been transferred to the king by the people “gives no occasion for the people to rebel or rise up against legitimate princes.”⁴⁰ In truth, Suárez’s reasoning on this point is not entirely coherent. Suárez appears to propose democratism as to the origin of power, and a degree of absolutism as to its exercise. Indeed, Suárez says: “Once the people have given their power to the king, they can no longer legitimately, appealing to that power, claim their freedom at will [...]. Because if they have granted their power to the king and he has accepted it, for this very reason the king has acquired dominion.”⁴¹ To defend this dubious idea, Suárez

37 Suárez, *Defensio fidei*, 3, 2, 10: “Nullum regem vel monarcham habere [...] immediate a Deo vel ex divina institutione politicum principatum, sed mediante humana voluntate et institutione.”

38 Suárez, *Defensio fidei*, 3, 3, 1.

39 Suárez, *Defensio fidei*, 3, 3, 1.

40 Suárez, *Defensio fidei*, 3, 3, 2.

41 Suárez, *Defensio fidei*, 3, 3, 2: “Nam postquam populus suam potestatem in regem transtulit, non potest juste, eadem potestate

raises the unfortunate notion of the self-alienation of freedom, the voluntary surrender of a person freely becoming a servant, thus regarding the freedom of the people as a politically alienable good, a sort of *dominium* or property to be disposed of at will: “Just as a private person who has renounced his liberty and sold himself or given himself as a servant cannot then be freed at will from servitude, neither can a fictitious person [i.e., a juridical or collective person] or community, once he has fully submitted to a prince.”⁴²

However, in welcoming the notion of the *in habitu* retention of political power by the community, even after being transmitted to the king, as claimed by Bellarmino, Martín de Azpilcueta (c.1491–1586),⁴³ Baldo degli Ubaldi (1327–1400), and Jacques Almain (c.1480–1515), Suárez’s thinking is not consistent with the idea of the political self-alienation of the people’s freedom. Indeed, along with Bellarmino, Suárez affirms that “the people never transfer [all] their power to the king, and by retaining it *in habitu*, they can in certain cases use it.”⁴⁴ Suárez immediately adds that Bellarmino expressed himself “with great reserve and circumspection,” claiming that only in certain cases was it possible for the people to reclaim the power transferred to the king⁴⁵ and that it must always be in accordance with the conditions of the contract of transfer of political power or the demands of justice. Thus, only in exceptional cases can the people exercise the political power

fretus, suo arbitrio, seu quoties voluerit, se in libertatem vindicare. Nam si potestatem suam regi concessit, quam ille acceptavit, eo ipso rex dominium acquisivit.”

42 Suárez, *Defensio fidei*, 3, 3, 2.

43 Martín de Azpilcueta, *Relectio de iudiciis* (Rome: Apud Josephum de Angelis, 1575), 2:76: “Postremo, quod Baldus citatus in.32. coroll. dicebat in tit. de allodiis agens de hac potestate [...] quia non carent omnino iurisdictione, sed eius usu. Habent enim illam, saltem in habitu, licet careant actu. Et ideo quoties incideret casus, in quo populorum gubernationi non provideretur, per eos, quibus electione, hereditate, vel alias concessus est usus iurisdictionis, poterunt ipsi ea uti, ut clare docuit Bald. [...] et clarius, his tamen non adductis, Jacob. Almaynus in lib. de auct. Pap.”

44 Suárez, *Defensio fidei*, 3, 3, 3: “Quod vero Bellarminus ex Navarro dixit populum numquam ita suam potestatem in principem transferre, quin eam in habitu retineat, ut ea in certis casibus uti possit.”

45 Suárez, *Defensio fidei*, 3, 3, 3: “Quia Bellarminus non simpliciter dixit retinere populum potestatem in habitu, ad quoscumque actus pro libito, et quoties velit exercendos, sed cum magna limitatione et circumspectione dixit *in certis casibus*, etc.”

transferred to the king, either due to the king's violation of the covenant, which consists of documents or established custom, or the fundamental demands of justice such as self-defense against a king who has become a tyrant, abusing their power to the ruin the state.⁴⁶ Beyond these conditions, it will never be lawful for the people to reclaim the use of their own transferred political power. As Suárez himself states in conclusion: "Outside of these and similar cases it will never be lawful for the people to abandon the legitimate king [i.e., rise up against the king] by appealing to their own power. Thus, the motive or occasion of any uprising disappears."⁴⁷

In short, Suárez admits only two cases of popular limitation on the power of the legitimate king and reclamation of the power previously transferred to the monarch: the violation by the king of what was agreed in the political contract transferring power,⁴⁸ and the legitimate defense, of one's self or of the state, against the aggression of a legitimate prince turned tyrant.⁴⁹ On the other hand, in the case of a usurper (*tyrannus ab origine* or *in titulo*; tyrant at the origin or in the title), and thus not a legitimate king, Suárez admits the lawfulness of rebellion or even the execution of the king by a private person, but providing a lengthy series of circumstances are met to safeguard the moral rectitude of an action as serious as an uprising.⁵⁰ Beyond these circumstances, therefore, an uprising of the people against the prince cannot be considered just. Suárez thus believes that he has satisfied James I's demand for a faithful and non-rebellious people.

46 Suárez, *Defensio fidei*, 3, 3, 3: "Si rex iustam suam potestatem in tyrannidem verteret, illa in manifestam civitatis perniciem abutendo."

47 Suárez, *Defensio fidei*, 3, 3, 3: "Extra hos vero et similes casus, nunquam licet populo a legitimo rege sua potestate fretus deficere, et ita cessat omnis seditionis fundamentum aut occasio."

48 Suárez, *Defensio fidei*, 3, 3, 4: "Eadem ratione non licet populo semel subiecto potestatem regis magis restringere quam in prima translatione seu conventionem restricta fuit."

49 On self-defense, cf. Suárez, *Defensio fidei*, 6, 4, 5: "Liceatne in defensionem propriae vitae principem occidere." On the other hand, on the legitimate defense of the state, see *Defensio fidei*, 6, 4, 6: "Quid in reipublicae defensionem."

50 Suárez, *Defensio fidei*, 6, 4, 7: "Tyrannus in titulo licite occiditur," and 8: "Quæ requirantur ut tyrannus in titulo licite a privato occidi possit." See also Pablo Font Oporto, *El derecho de resistencia civil en Francisco Suárez* (Granada: Comares, 2018).

3 The Political Principles of Algernon Sidney

We will now turn to the conceptual structure of Sidney's political thinking. Javier Dorado affirms that this is constructed on three pillars: popular sovereignty; contractualist theory, as the legitimization of political power; and the doctrine of resistance, as a guarantee of the constitution and the rights of the people.⁵¹ Here again are the political principles common to so many authors who imbibed from medieval political traditions, logically formalized by Scholastic philosophers and later received by many Calvinist theologians and directly assumed within the British republican tradition of the seventeenth century. Sidney, like Suárez, begins with a radical principle: the natural freedom and equality of men as the foundation of these other three principles. The fundamental purpose of Sidney's *Discourses concerning Government* (hereinafter, *Discourses*) was to justify resistance against a tyrannical monarchy. As resistance is the principle manner of asserting the political contract (or constitutional pact) of the transfer of power to the king by a free and sovereign people, the aforementioned principles are, in Sidney's view, the foundations of the right of resistance.

Discourses is a controversial work, written as a critical commentary on Filmer's *Patriarcha*. Because of this, it lacks order and structure: constant objections to Filmer and cumbersome historical analyses, much to the liking of the Calvinist theorists of the time, cause the work to lose its precise direction and recognizable organic structure.⁵² This is in contrast to Locke's twin work, *Two Treatises of Government* (1689), which has an identical Whig ideology and was also written to refute Filmer.⁵³ This does not, of course, diminish the

51 Javier Dorado Porras, *La lucha por la constitución: Las teorías del Fundamental Law en la Inglaterra del siglo XVII* (Madrid: Centro de Estudios Políticos y Constitucionales, 2001), 429.

52 George Sabine, *Storia delle dottrine politiche* (Milan: Etas, 2003), 394.

53 Locke, *Two Treatises of Government*. The full title of the book, *Two Treatises of Government: In the Former, the False Principles and Foundation of Sir Robert Filmer and His Followers, Are Detected and Overthrown; The Latter Is an Essay concerning the True Original, Extent and End of Civil Government*, shows how Locke attempted to present his political theory in an orderly manner: first a criticism of Filmer; then a proposal of his own, which, inspired by the principles of

value of the *Discourses* as a testimony of Whig ideology and more broadly of seventeenth-century British republicanism. On the other hand, the proximity of the publication of the books by Sidney and Locke was due, as mentioned, to both being responses to *Patriarcha* by Filmer, published posthumously in 1680 by royalists either to combat growing republican literature or to respond to the publication of an English edition of *De legibus* by Suárez, which appeared in London in 1679. In this regard, Francisco Baciero maintains the bold but well-founded hypothesis that

the posthumous publication of *Patriarch* by Filmer is, precisely, a response of the absolutist sectors of England to the publication, by the Whig sectors, of *De legibus* by Suárez [...]; [on the other hand], Locke's second treatise, written fundamentally between 1679 and 1682, is original and deliberately, among other things, a way of vulgarizing a good part of the doctrines contained in *De legibus*, inaccessible to the majority of the public.⁵⁴

3.1 Freedom and Equality of Men

From the beginning of the *Discourses*, Sidney proposed the freedom and equality of men as fundamental principles of his political theory. Indeed, "the principle of Liberty in which God created us, and which includes the chief advantages of the life we enjoy, as well as the greatest helps towards the felicity, that is the end of our hopes in the other."⁵⁵ This was affirmed by Schoolmen, primarily Suárez and Bellarmino, who "though were corrupt, they were neither stupid nor unlearned. They could not but see that which all men saw, nor lay more

Whigs, is similar to that of Sidney and to a large extent also to that of Suárez.

54 Francisco Baciero Ruiz, *Poder, ley y sociedad en Suárez y Locke* (Salamanca: Ediciones Universidad de Salamanca, 2008), 34. In fact, in 1679 an English version of *De legibus* was published in London, which read as follows: "Francisci Suárez, Granatensis, Doctoris Theologi & in conimbricensi academia Sacrarum Literarum Primarii Professoris, TRACTATUS DE LEGIBUS AC DEO Legislatore, in decem libros distributus, utriusque Fori hominibus non minus utilis, quam necessarius, LONDINI, Sumptibus J. Dunmore, T. Dring, B. Tooke & T. Sambridge, ANNO MDCLXXIX." The London publishers purposely omit any mention of its author's Jesuit status.

55 Sidney, *Discourses concerning Government*, 1, 2, 5.

approved foundations, than, that man is naturally free.”⁵⁶ Hence Sidney’s criticism of Filmer’s denial of the natural freedom of men, despite this freedom having been recognized by all Christians, from reformed and unreformed churches alike. Hence Sidney’s further complaint against Filmer who, to make his position before the royalist party plausible, equates Catholics and Puritans, “by joining the Jesuits to Geneva and coupling Buchanan to Doleman, as both maintaining the same doctrine.”⁵⁷ In response, Sidney states that, while Catholics and Calvinists agree on the natural freedom of men, this merely shows “that *Geneva* and *Rome* can agree in any thing farther than as they are obliged to submit to the evidence of truth.”⁵⁸ In other words, faulting Catholics and Calvinists for agreeing on a point when they cannot but coincide is as absurd as equating “the Puritans with the Turks, because they all think that one and one makes two.”⁵⁹

The recognition of man’s natural freedom by Scholastics and Calvinists is not, according to Sidney, merely an abstract truth. On the contrary, it is an effective principle from which the entire political order derives (the social pact, the political contract, and the controls on the transferred political power). Indeed, acknowledging the natural freedom of men, “these men [Jesuits and Puritans] allowed to the People a liberty of deposing their Princes.”⁶⁰ This opinion, which Filmer finds execrable, is logical and fair to Sidney, because “Did the People make the King, or the King make the People? Is the King for the People, or the People for the King?”⁶¹ The reasoning is identical to that of the monarchomachist tradition, either republican or Scholastic. Sidney therefore states: “I am not ashamed in this to concur with Buchanan, Calvin, or Bellarmin, and without envy

56 Sidney, *Discourses concerning Government*, 1, 2, 5. P.-A. [Pierre-August] Samson (d.1748), the French translator of the *Discourses*, uses terms that more resemble a translation of Bellarmino and Suárez than Sidney himself: “Dont il est impossible de douter la doctrine qui enseigne que les hommes sont nez *libres*, l’un n’ayant rien à prétendre sur les autres, étans tous entièrement *égaux*” (*Discours sur le gouvernement*, trans. P.-A. Samson [The Hague: Chez Louis et Henri van Dole, 1702]), 14. Italics are mine.

57 Sidney, *Discourses concerning Government*, 1, 2, 6.

58 Sidney, *Discourses concerning Government*, 1, 2, 6.

59 Sidney, *Discourses concerning Government*, 1, 2, 6.

60 Sidney, *Discourses concerning Government*, 1, 2, 7.

61 Sidney, *Discourses concerning Government*, 1, 2, 7.

leave to Filmer and his associates the glory of maintaining the contrary.”⁶²

In addition to being free, men are equal by nature, a belief that was reiterated by Sidney, according to whom “the natural liberty and equality of mankind” is a truth so beyond doubt that a number of the defenders of the king’s rights, and monarchical absolutism, such as John Hayward (c.1564–1627), Adam Blackwood (1539–1613), and William Barclay (1546–1608), made it their own.⁶³ Thus, if in a well-established society we find subjects and rulers, this can only legitimately come from the free will of the subjects. “’Tis hard to comprehend how one man can come to be master of many, equal to himself in right, unless it be by consent or by force,”⁶⁴ Sidney states. Political inequality between subjects and rulers does not negate the essential equality of men, because such inequality is freely endorsed by them. Such human essential equality is negated, instead, by that other subjection due to mere conquest, because the original equality of men does not consent that brute force is a just basis for a right.⁶⁵

3.2 The Social Pact

Although free and equal by nature, men are wounded by original sin and thus experience a constant struggle between passions and reason. There is an inner rupture in men, which theological doctrine refers to as *concupiscentia*, noted by Saint Paul, and to which Augustinism and Calvinism have always given great importance. “Every man has passions; few know how to moderate, and no one can wholly extinguish them,” says Sidney.⁶⁶ However, passions are tempered by reason, which is the guiding force of human nature. Unlimited freedom, surrendering to the satisfaction of unregulated passions, would destroy society. That is why reason imposes limits on freedom, restrains the passions, and invites men to unite in society.⁶⁷ This is how we arrive at the formation of society and “to join in one body, that every one may be protected by the

62 Sidney, *Discourses concerning Government*, 1, 2, 7.

63 Sidney, *Discourses concerning Government*, 1, 2, 7.

64 Sidney, *Discourses concerning Government*, 1, 11, 24.

65 Sidney, *Discourses concerning Government*, 1, 11, 24.

66 Sidney, *Discourses concerning Government*, 2, 24, 186.

67 Sidney, *Discourses concerning Government*, 2, 20. This chapter has the following title: “Man’s Natural Love to Liberty Is Temper’d by Reason, which Originally Is His Nature.”

united force of all.”⁶⁸ Here is the social pact. However, for Sidney the social pact and the formation of society are preceded by that situation of anguish and danger, so frequently referred to by British thinkers of the seventeenth century. This idea may be due to their common Calvinist theological foundations, which laid great emphasis on the doctrine of Adam’s transgression (the fall) and its devastating moral effect on human nature, remaining thereafter as *natura lapsa*. As Sidney states:

Every man continued in this [pre-civil] liberty, till the number [of men] so increased, that they became troublesome and dangerous to each other; and finding no other remedy to the disorders growing [...], joined many families into one civil body, that they might the better provide for the conveniency, safety, and defence of themselves and their children.⁶⁹

This text contains echoes of Aristotle and Suárez, but also and above all of Thomas Hobbes (1588–1679) and Milton. Already in *The Tenure of Kings and Magistrates* (1649), Milton claimed that the pervasive evil and violence following Adam’s transgression moved men to unite in society.⁷⁰ Indeed, according to Milton: “They agreed by common league to bind each other from mutual injury, and joyntly to defend themselves against any that gave disturbance or opposition to such agreement. Hence came citties, townes and commonwealths.”⁷¹ In any case, as we shall see, for Sidney the social pact is marked by a Calvinist anthropological pessimism similar to that of Milton, Hobbes, and other British authors of the time.

Like Suárez, Sidney also admits a double pact. The first, the agreement of men to join together in a society, is usually called a compact (or mutual compact) by Sidney.⁷² The second, whereby the members of society transfer power to the ruler, is

68 Sidney, *Discourses concerning Government*, 2, 1, 64.

69 Sidney, *Discourses concerning Government*, 2, 1, 60.

70 John Milton, *The Tenure of Kings and Magistrates* (London: Printed by Matthew Simmons, 1649), 8.

71 Milton, *Tenure of Kings and Magistrates*, 8.

72 Sidney, *Discourses concerning Government*, 2, 2, 68: “A civil society is composed of equals, and fortified by mutual compacts”; 2, 5, 79: “When a People is, by mutual compact, joined together in a civil society.”

normally called a contract.⁷³ Calling it a contract, Sidney underlines the juridical and bilateral dimension of this pact and its delegation of political power. It establishes a reciprocity of rights and obligations on both parties, the obedience of subjects and the submission of the ruler to the contract on the delegation of political power, and also provides a justification of measures adopted by the complying party against the breaches of the other.⁷⁴

3.3 *The Political Contract*

Although the notion of a double pact is alluded to throughout the book, it is clearly set forth in *Discourses*, 2, 5, a text that is certainly an unequivocal echo of Suárez's thought. Sidney substantially upholds Suárez's doctrine of the social pact. Although nominally distancing himself from Suárez,⁷⁵ Sidney admits that power rests on the multitude of men (Suárez's *multitudo hominum*), formed by free men who unite in a society to satisfy their needs and interests, establishing laws and rules to which they submit.⁷⁶ Thus,

by this means every number of men, agreeing together and framing a society, became a compleat body⁷⁷ having all power in themselves over themselves, subject to no

73 Sidney, *Discourses concerning Government*, 2, 5, 80–81; 2, 32, 248; 3, 1, 256–57; 3, 4, 268; 3, 10, 297; 3, 17, 323–26; 3, 18, 329.

74 Scott A. Nelson, *The Discourses of Algernon Sidney* (London: Fairleigh Dickinson University Press, 1993), 56, 97. In procedural terms in the Roman legal tradition, the possibility of neutralizing the *actio* (legal resource) of those who, in breach of any obligation of the contract, request compliance by the other party was known as *exceptio inadimpleti contractus* (breach of contract exception).

75 Nelson observes that Suárez's influence on Sidney is clear and that sarcasm in mentions of Suárez is only a resource to avoid the rejection of Protestants. Nelson, *Discourses of Algernon Sidney*, 104.

76 Sidney, *Discourses concerning Government*, 2, 5, 75: "But intending to proceed more candidly, and not to trouble myself with *Bellarmin* or *Suárez*, I say, that they who place the Power in a Multitude, understand a Multitude composed of Freeman, who think it for their convenience to join together, and to establish such Laws and Rules as they oblige themselves to observe."

77 The term "compleat body" is of Aristotelian origin, but Suárez renews it laying on it one of the foundations of his political theory. Thus, while the family and village are imperfect political bodies, only the state (*civitas*) is *the perfect society*, that is, complete, because only it is able to meet all the needs of human life.

other human law than their own. All those that compose the society, being equally free to enter into it or not, no man could have any prerogative above others, unless it were granted by the consent of the whole; and nothing obliging them to enter into this Society, but the consideration of their own good.⁷⁸

The text is decisive. It proclaims, with strong support from Suárez, two principles of enormous political significance: popular sovereignty and the rejection of the notion of the divine right of kings, the two principles on which the whole argument of book 3 of Suárez's *Defensio fidei* is built.⁷⁹ Indeed, the power of government lies in society, that is, in the multiplicity of associated individuals. Here is popular sovereignty. However, in a society thus formed, no one has an innate or natural power over others. The superiority of a magistrate over the subjects can only be based on the contract for the transfer of power stipulated between the whole of society and the magistrate. Here is an explicit rejection of the theory of the divine right of kings.

Once the society is formed, according to the social pact,

'tis lawful therefore for any such bodies to set up one or a few men to govern them,⁸⁰ or to retain the power in themselves;⁸¹ and he or they who are set up, having no other power but what is so conferred upon them by that multitude, [...] are truly by them made what they are; and by the law of their own creation, are to exercise those powers according to the proportion, and to the ends for which they were given.⁸²

This text contains some ideas from which are derived some very important consequences for political theory, but here we

78 Sidney, *Discourses concerning Government*, 2, 5, 76.

79 Leopoldo J. Prieto López, "Vida y pensamiento del padre Francisco Suárez," *Ecclesia: Revista de cultura católica* 20, no. 2 (2006): 187–210, here 202–8.

80 The French version of 1702 says "sovereign authority," *autorité souveraine*, emphasizing that the people are the holder of sovereignty.

81 Sidney thus alludes to the constitution of a monarchical, senatorial, or democratic government in the same way that Suárez had established it in *Defensio fidei*, 3, 2.

82 Sidney, *Discourses concerning Government*, 2, 5, 76.

shall merely highlight the doctrine of the limits of the political contract expressed therein.

3.4 *The Limits of Political Power Transferred to the King*

By virtue of the transfer or delegation of power contained in the political contract, the actions of delegates or deputies holding power must be understood as actions taken by those represented. As Sidney states some pages later: “When a people is, by mutual compact, joined together in a civil society, there is no difference as to right, between that which is done by them all in their own persons, or by some deputed by all, and acting according to the powers received from all.”⁸³ Hence, if the actions of those who receive power do not conform to the limits agreed with the people or to the common good, which is the purpose of political life, the people, as the ultimate and sovereign holder of political power, may judge the rulers and, if necessary, depose them. Ultimately, a government that fails to safeguard the fundamental rights of subjects, or even violates them, can and even must, according to Sidney, be resisted. Although Sidney admits the system of ordinary revocability of power through periodic elections, the focal point of his thinking is on the extraordinary manner of revocation of power, that is, in resistance and rebellion against the iniquitous or tyrannical ruler.

Thus, when a government becomes tyrannical, it behooves the people, according to the “original principles of government in general,”⁸⁴ to take back the political power of which it is the true holder. These “original principles of government,” referred to as the “mysteries of the State,” or *arcana imperii*, by the absolutist Filmer, are in reality no more than the fundamental principles of the political architecture of the state referred to above, namely the original freedom and equality of men, the social pact and popular sovereignty, the political

83 Sidney, *Discourses concerning Government*, 2, 5, 79.

84 Sidney, *Discourses concerning Government*, 1, 3, 9: “The original principles of Government in general.” Sidney continues, adding the following words: “These perhaps may be called *Mysteries of State*, and some would persuade us they are to be esteemed *Arcana*; but whosoever confesses himself to be ignorant of them, must acknowledge that he is incapable of giving any judgment upon things relating to the superstructure, and in so doing evidently shews to others, that they ought not at all to hearken to what he says.” Cf. also 2, 13, 30; 3, 25, 27, 41.

contract and the delegation of power, and, ultimately, the limits of government action. Indeed, “we cannot distinguish truth from falsehood, right from wrong, or know what obedience we owe to the magistrate, or what we may justly expect from him, unless we know what he is, why he is, and by whom he is made to be what he is.”⁸⁵

In short, the order and peace of the state rests on the solidity of these “original principles of government” according to which the magistrate is such, as he is invested with political power by the people in pursuit of the common good. A ruler who seeks their own good rather than the common good makes him a tyrant⁸⁶ and so enables the people to deny obedience, resist, and depose him. On the other hand, according to Sidney, resisting the prince turned tyrant is not only a right but also an obligation of the virtuous citizen.⁸⁷ Legitimate resistance therefore has its ultimate foundation in the “original principles of government,” which are the principles of the political order that we find in Suárez and that we see received in Sidney. On the other hand, as human affairs are continually subject to corruption, it is not surprising therefore that from time to time governments should be renewed by appealing to such original principles. In such cases, renewal usually takes the form of riots.⁸⁸ In them, “the whole people by whom the magistracy had been at first created, executed their power in those things which comprehend sovereignty in the highest degree.”⁸⁹ Resistance, as noted above, is thus the keystone of Sidney’s political theory, as it presupposes the preceding principles and is the ultimate expression of his political thinking.

Resistance, on the other hand, is the legitimate response of the people to the tyrant, who, as we know, is the ruler who acts in favor of his personal interest and not the public good. The doctrine of resistance thus requires Sidney to elaborate a typology of tyranny. The first type of tyranny “is when one or more men take upon them the power and name of a magistracy, to which they are not justly called.”⁹⁰ This usurper,

85 Sidney, *Discourses concerning Government*, 1, 3, 9.

86 Sidney, *Discourses concerning Government*, 2, 3, 70. The idea is Aristotelian. According to the Stagirite, in effect, “tyranny is monarchy ruling in the interest of the monarch” (*Politics*, 3, 1279 b).

87 Nelson, *Discourses of Algernon Sidney*, 126.

88 Sidney, *Discourses concerning Government*, 2, 13, 117.

89 Sidney, *Discourses concerning Government*, 2, 13, 117.

90 Sidney, *Discourses concerning Government*, 2, 24, 175.

whom others have called *tyrannus sine titulo* (tyrant without a title), Sidney, taking his inspiration from Hobbes, and most likely also from Suárez,⁹¹ prefers to call not king nor even tyrant, but rather *hostis et latro* (enemy and thief).⁹² In agreement with the philosopher of Malmesbury, Sidney understands that as a public enemy, “any man may destroy him how he can.”⁹³ The expression *hostis et latro* used by Sidney in referring to the usurper also recalls Suárez, who stated “it is lawful to kill the tyrant *in titulo*” (*tyrannus in titulo licite occiditur*), even for a private person, because “in this case the king or prince is not killed, but the enemy of the republic [*hostis reipublicae*],” and in this sense “Thomas Aquinas defends in *De regimine principum* [The government of the princes] the death of Eglon at the hands of Aod, although this was a private person, because Eglon, king of Moab, was not a true king of the people of God, but an enemy and tyrant [*hostis et tyrannus*].”⁹⁴

This first type of tyrant is followed by two others, both of whom are initially legitimate holders of power but who exceed their authority either due to time or due to the nature of the mandate given. Indeed, a legitimately constituted magistrate who continues in office after the expiration of his term of office is similar to the usurper and as such becomes a private man subject to the same punishment.⁹⁵ There is also the case of the magistrate who,

91 Suárez, *Defensio fidei*, 6, 4, 1: “Duplex ergo a Theologis tyrannus distinguitur: unus est, qui non iusto titulo, sed vi et injuste regnum occupavit, qui revera non est rex nec dominus, sed locum illius occupat et umbram ejus gerit.” See also Thomas Hobbes, *De cive*, in *Opera philophica quae latine scripsit omnia* (London: Apud Joannem Bohn, 1839), 2:237, where Hobbes distinguishes three kinds of wicked ruler, namely usurper (*hostis*), legitimate king who became unjust (*tyrannus*), and legitimate king (*rex*).

92 Sidney, *Discourses concerning Government*, 2, 24, 175.

93 Sidney, *Discourses concerning Government*, 2, 24, 175. A few lines later, Sidney reiterates: “For which reason, by an established law among the most virtuous nations, every man might kill a Tyrant.”

94 Suárez, *Defensio fidei*, 6, 4, 7. Vitoria also gives a treatment similar to the violent death of a *tyrannus sine titulo*. In this regard, see Simona Langella, “Francisco de Vitoria and the Question of Tyrannicide,” School of Salamanca Working Paper Series, no. 2015-04, <http://publikationen.uni-frankfurt.de/frontdoor/index/index/docId/37611> (accessed March 28, 2022).

95 Sidney, *Discourses concerning Government*, 2, 24, 176.

within the time prescribed by law, exercises a power that the law has not given him, for in that respect he is also a private man, because, as Grotius says, *eatenus non habet imperium* [his power does not reach that point];⁹⁶ and may be restrain'd as well as any other [tyrant], because he is not set up to do what he lists, but what the law appoints for the good of the people; and as he has no other power than what the law allows, so the same law limits and directs the exercise of that which he has.⁹⁷

This analysis of Sidney's theory of the limits of political power and resistance has come to an end. We will now draw our conclusions.

4 Suárez and Sidney, in Conclusion

Reduced to its essential elements, the similarity between the political theories of Sidney (and the Whigs) and Suárez is evident. This likeness is not in any particular trait, but rather a structural similarity in the principles and architecture of their respective theories. We know well the logical sequence of these principles: original freedom and equality of men, against the pretensions of the patriarchal absolutism of James I, so fought against by Suárez and the Whigs; the social pact as the origin of society and political power, and hence popular sovereignty; a political contract transferring power to the king; and resistance to unrestricted and tyrannical royal power. The resemblance between Suárez's and Sidney's doctrines appears to be due to both a common source of inspiration and to Suárez's explicit influence on Sidney. On the one hand, as mentioned above, the theses of freedom, the social and political covenant, and limitations of royal power, typical of medieval constitutionalism, are shared by Scholastics and Calvinist monarchomachists alike. These were common doctrines, an expression of a body of ideas that the Reformation had not

96 Hugo Grotius, *De iure belli ac pacis libri tres* (Amsterdam: Apud Iohannem Blaev, 1646), 1, 4 ("De bello subditorum in superiores"), 13: "Si rex partem habeat summi imperii, partem alteram populus aut senatus, regi in partem non suam involanti, vis iusta opponi poterit, quia eatenus imperium non habet."

97 Sidney, *Discourses concerning Government*, 2, 24, 176.

altered and was shared by most philosophers and theologians, Catholic or Calvinist. In this sense, we have referred to Major, Buchanan, Mariana, Hotman, Bellarmino, *Vindiciae contra tyrannos*, and so on. Francisco de Vitoria, Azpilcueta, Luis de Molina (1535–1600), Domingo de Soto (1494–1560), Johannes Althusius (1557–1638), Hugo Grotius (1583–1645) could also be added to this list of convergences. On the other hand, Suárez's dispute with King James I and patriarchalism (especially in *Defensio fidei* of 1613, but also in *De legibus* of 1612), distinguishing private economic or familial power from political power in the public sphere, made Suárez the greatest contradictor of the absolutist doctrines of James I and Filmer in the eyes of the English republicans. James I himself intervened, although unsuccessfully, asking the king of Spain, Philip III (1578–1621, r.1598–1621), to disavow *Defensio fidei*.⁹⁸ No other Scholastic had expressed these old political ideas with such clarity and logical cogency. Suárez had always expressed himself with equal clarity and determination on the foundations of political theory in *De legibus*, in *Defensio fidei*, and also finally in *De opere sex dierum* (On the work of six days [1621]), Suárez's posthumous work published by the Jesuit Balthasar Álvarez (1534–80). Men are born free, that is, unsubmitted to another, specifically the prince, and are equal or what is the same, not born subjects. Hence they can freely agree on the establishment of a society for mutual aid and defense. Once society is constituted, sovereign power belongs to the *multitudo hominum*. It is therefore not God but the

98 Moreover, after its publication James I ordered a series of measures against Suárez, especially the public condemnation and burning of *Defensio fidei*, together with the condemnation of the works of the Jesuit Martin Becanus (1563–1624) and Caspar Schoppe (1576–1649), at a liturgical ceremony held in Saint Paul's Cross (London) on November 25, 1613; the organization of academic events in Oxford to neutralize the ecclesiological and political theory of Bellarmino and Suárez, from which resulted the work published by the Anglican bishop Robert Abbot (1560–1618), entitled *De suprema potestate regia exercitationes habitae in Academia Oxoniensi contra Rob. Bellarminum et Francisc. Suárez* (London: Ex Oficina Nortoniana, apud Ioannem Billium, 1619); and, finally, the deployment of intense diplomatic action, especially directed at France, with the purpose of repudiating the work there too, as finally happened with the public condemnation of *Defensio fidei* by the Paris Parliament on June 26, 1614. See also Prieto López, "Hechos e ideas en la condena del Parlamento de París de la *Defensio fidei* de Suárez," 42–47.

people from whom the king receives sovereign power. The people cede power to the prince to govern according to the demands of justice and the political contract of transfer of power. These are the two essential limits of the king's power: the political contract and the demands of justice. It is therefore no coincidence that Whig circles chose Suárez and published *De legibus* in 1679 to combat the absolutist ideas of the Tories in the controversy aroused with the Exclusion Act.

Naturally, the similarity of logical and political principles between Suárez and Sidney and other Whigs does not preclude considerable differences between them, due to the various cultural, philosophical, and theological reasons that separated them. While not exhaustive, I present here two major differences between Sidney and Suárez before concluding.

Perhaps the most notable difference lies in the anthropological ideas underlying the doctrine of the social pact in Suárez and Sidney. The imprint of Augustinian and Calvinist theology, very profound in reformed England, appears in a characteristic anthropological pessimism. According to Calvinism, due to original sin, human nature is deeply corrupted to the point of its moral destruction.⁹⁹ Henry Parker (1604–52), a prominent publicist of the parliamentary party in his confrontation with Charles I (1600–49, r.1625–49), expressed a similarly characteristic Calvinist anthropological pessimism. In his *Jus populi* (Right of the people [1644]), Parker portrays human nature as so depraved after the fall of Adam and so loaded with misery and sin in its social dimensions that “no creature is now so uncivill and untame, or so unfit either to live with, or without societie, as Man [...] yet neither are wolves nor beares so fell, so hostile, and so destructive to their own kinde, as Man is to his.”¹⁰⁰ Similarly, in *The Tenure of Kings and Magistrates* Milton claimed that the pervasive evil and violence following the Adamic transgression was the reason for men to unite in society and thus conjure up the risk of mutual destruction.¹⁰¹ Sidney starts from an

99 Calvinism, like Protestantism in general, held that Adam's original fall meant a complete moral destruction of man, turned into a creature of anger, incapable of all good.

100 Henry Parker, *Jus populi* (London: Printed for R. Bostock, 1644), 42–43.

101 Milton, *Tenure of Kings and Magistrates*, 8: “All men naturally were borne free, being the image and resemblance of God himselfe, and were by privilege above all the creatures, borne to command and not to obey:

anthropological-political approach similar to that of Parker and Milton, but with an already palpable Hobbesian echo.¹⁰² Indeed, according to Sidney “since the sin of our first parents the earth hath brought forth briars and brambles, and the nature of man hath bin fruitful only in vice and wickedness.”¹⁰³ Since then, men have been creatures born weak and sick for good and prone only to evil.¹⁰⁴ It is not surprising that Sidney characterizes such a state of fallen humanity as “the fierce barbarity of a loose multitude, bound by no law, and regulated by no discipline.” In such a situation, “every man fears his neighbour, and has no other defence than his own strength,” and so “he must live in that perpetual anxiety which is equally contrary to the happiness.” Hence, “the first step towards the cure of this pestilent evil is for many to join in one body, that every one may be protected by the united force of all.”¹⁰⁵ In this regard, Sidney is not far from those words in chapter 13 of *Leviathan* (1651) in which human life is characterized before constituting society, what Hobbes calls the *state of nature*, as “solitary, poor, nasty, brutish and short,” a life proper to “a time of war, where every man is enemy to every man” and in which “men live without other security than that of their own strength and wit,” having no expectation other than “the continual fear and danger of violent death.”¹⁰⁶ Unlike Sidney and his Calvinist sources, Suárez is part of a renewed Aristotelianism in the light of a moderate naturalism and a recognizable Renaissance and Christian optimism. Already in

and that they livd so, till from the root of *Adams* transgression, falling among themselves to doe wrong and violence, and foreseeing that such courses must needs tend to the destruction of them all, they agreed by common league to bind each other from mutual injury, and joyntly to defend themselves against any that gave disturbance or opposition to such agreement.”

102 Sidney, *Discourses concerning Government*, 1, 2, 8, and 1, 17, 43, where the Hobbesian principle *bellum omnium contra omnes* (war of all against all) is explicitly mentioned, although critically presented as a sort of “collective madness” (epidemical madness) as a consequence of divine punishment after expulsion from paradise. Do not forget, on the other hand, that Hobbes presents himself as the defender of the rights of the king and of the royalist cause and, in this sense, is at the opposite end of Sidney’s political position.

103 Sidney, *Discourses concerning Government*, 1, 2, 7–8.

104 Sidney, *Discourses concerning Government*, 2, 1, 63.

105 Sidney, *Discourses concerning Government*, 2, 1, 63–64.

106 Thomas Hobbes, *Leviathan*, in *The English Works of Thomas Hobbes of Malmesbury* (London: John Bohn, 1839), 3:113.

the theological dispute with the Dominicans of Salamanca, known as the *disputa de auxiliis*, Suárez had shown himself a clear defender of the *sufficient grace* and freedom of man, the expression of a human nature that, although wounded by original sin, is capable of achieving by itself certain goods proportionate to its sociable and rational nature.¹⁰⁷

Finally, we will note another considerable difference between the two authors, regarding their respective doctrines on resistance. As we have seen, Sidney's theory of rebellion is bolder than Suárez's, more dominated by the notion of justice than any serene moral reasoning about what is right. Suárez was an academic, theologian, and moralist whose analysis of tyranny and forms of legitimate rebellion is more detailed and also more cautious and nuanced. Sidney equates the usurper (*tyrannus ab origine*) with the king who has become tyrant (*tyrannus ab exercitio*), either by exceeding the terms or the scope of their granted authority, and assigns the same ethical-political consideration and treatment and so legitimates attack by anyone for their destruction. By contrast, Suárez carefully distinguishes the usurper from the true king who has become tyrant. Thus, Suárez states that no private person may legitimately kill the true king, even if become a tyrant,¹⁰⁸ and so reiterating the condemnation by the Council of Constance (1414–18) of John Wyclif (c.1330–84) and Jan Hus (c.1370–1415), concluding that such doctrine has no exception other than the case of self-defense exercised for the benefit of oneself¹⁰⁹ or the political community.¹¹⁰ However, Suárez recognizes that, in the face of the usurper, any private person can rebel and even kill him, if there is no other way to free the state from tyranny.¹¹¹ But even in this case, Suárez establishes

107 Suárez, *De opere sex dierum*, 5, 7. See also Suárez, *De gratia Dei seu de Deo Salvatore, justificatore et liberi arbitrii adjutore per gratiam suam*, in *R. P. Francisci Suárez e Societate Jesu opera omnia* (Paris: Apud Ludovicum Vivès, 1857), 7: *Prolegomena*, especially chapters 4 (“De statibus naturae humanae”) and 8 (“Utrum in statu naturae lapsae homo sit intrinsece debilior ad operandum bonum quam esset in statu purae naturae”).

108 Suárez, *Defensio fidei*, 6, 4, 2: “Dicimus ergo principem propter tyrannicum regimen, vel propter quævis crimina, non posse ab aliquo privata auctoritate juste interfici.”

109 Suárez, *Defensio fidei*, 6, 4, 5.

110 Suárez, *Defensio fidei*, 6, 4, 6.

111 Suárez, *Defensio fidei*, 6, 4, 7.

a lengthy series of cautions that must be taken to avoid any shadow of intemperance or injustice in the violent death of the usurper. According to Suárez, there should be no recourse to a superior of the usurper; that there must be tyrannical, public, and manifest injustice, and that violent death must be the only recourse to free the political community from oppression; that there should be no treaty, truce, or pact between the people and the tyrant ratified by oath; that there should be no prudent fear that the death of the tyrant will be followed by equal or greater evils as those suffered under tyrannical action; that the political community should not expressly oppose the act of killing the usurper.¹¹² In short, Suárez, as is typical of a Scholastic, distinguishes precisely the types of tyrant and as a moral theologian studies in detail the lawfulness of the various forms of response to tyranny. In this way, Suárez's opinion on legitimate resistance to the tyrant differs considerably from that of Sidney.

112 Suárez, *Defensio fidei*, 6, 4, 8–9. The Vivès edition expresses such observations under the following legends: “Quæ requirantur ut tyrannus in titulo, licite a privato occidi possit” (What is required for a tyrant in title may be lawfully killed) and “Alia limitatio. Ultima conditio.” (Another limitation. Last condition). In this regard, see also Leopoldo J. Prieto López, “El derecho de resistencia civil en Francisco Suárez: Un diálogo con Pablo Font,” *Daimon. Revista internacional de filosofía* 80 (2020): 201–8, here 206–7.