ISSN 1941-8450

Journal of Religion & Society
Supplement Series

The Kripke Center Supplement 25 (2024)

Religion in the Public Square

Edited by Ronald A. Simkins

5. The Privilege of the Forum in Criminal Cases

A Historical Case Study for Roman Catholic Social Ethics

Julia Fleming, Creighton University

Abstract

For centuries, Roman Catholic theology and canon law claimed that clerics and other "ecclesiastical persons" could not be tried as defendants in secular courts. This practice, the privilege of the forum, provides a test case for contemporary Catholic social ethics. Its general history and selected accounts from Vitoria, Suárez, and Caramuel, illustrate the risks of applying an overly narrow theory to an evolving practice. This record also reminds contemporary social ethics to consider the phrasing and context of our questions, the significance of questions we overlook, and our ethical response to the social sin flowing from unintended consequences.

Keywords: privilege of the forum, immunity, Vitoria, Suárez, Caramuel

Introduction

Early in their 2005 article defending church autonomy in the face of the sex abuse crisis, Mark E. Chopko and Michael F. Moses asserted: "It cannot be claimed, nor do we claim, that a clerical collar is a defense to criminal or civil liability by anyone who molests a child" (2005, 390). Today, this assumption seems self-evident, yet for centuries in Western Europe, certain persons connected with the church enjoyed immunity from criminal prosecution in lay tribunals, as part of the privilege of the forum.[1] While largely forgotten in contemporary Christian Ethics, such immunity was important for Early Modern moral theology, when the line separating ecclesiastical and secular jurisdictions was an important boundary debate in the public square. For Early Modern Catholic theologians, the issue posed both theoretical and practical challenges: they devoted the lion's share of their attention to the foundations and extension of the privilege. Unfortunately, these analytical lenses obscured other questions regarding its utility and practicality. The privilege of the forum, especially as illustrated in select discussions from Francisco de Vitoria, Francisco Suárez, and Juan Caramuel, provides a useful case study for contemporary Catholic social ethics by illustrating the importance of a question's phrasing and context, of issues underappreciated or passed over in silence, and of our response to the legacies of unintended consequences.

Consideration of the case study will begin by defining relevant terms and the limitations of this analysis. A précis of the privilege's history will set the problem into context. Next, we will consider what selected texts from Vitoria, Suárez, and Caramuel can contribute to our understanding of the privilege, especially regarding the tension between theory and practice.[2] The discussion will conclude with brief comments regarding the case study's potential lessons for contemporary Roman Catholic social ethics.

Definitions and Limits of this Discussion

In canonical terms, the privilege of the forum, which reserved the judgment of certain persons to church tribunals, was one form of ecclesiastical immunity, a category of legal prerogatives encompassing not only the church's liberty in spiritual matters (e.g., in defining doctrines) but also specific exemptions regarding persons or property, such as immunity from taxation or the right of asylum in sacred places (Cavagnis 1889, 63–66). Arguments for various immunities often overlapped, even though the exemptions were logically and historically distinct. These other forms of immunity lie beyond the scope of the present discussion, which will focus only on the privilege of the forum in criminal cases. It is worth noting, however, that the privilege often extended to civil matters as well, at least when the person claiming the privilege was the defendant (see Borromeo 1988, 89–90).

Second, this discussion will generally avoid referring to the privilege as a *clerical* immunity, although this adjective often appears in the sources (e.g., Cavagnis 1889, 63). This modifier can be misleading for two reasons. First, the privilege of the forum included persons who were

[1] This topic has received consideration from a variety of disciplinary perspectives. Compare, for example, Lea 2020; Ayrinhac 1912; Downs 1941; Wirenius 2012; Tutino 2010, 44–45, 82–88.

[2] The present study is not a comprehensive analysis of the topic in the three authors; instead, it is restricted to three specified discussions.

not clerics, and in the case of women, who were ineligible to become clerics. As will become apparent, during the Early Modern period, the privilege extended to an exceptionally broad range of non-clerics. Second, the meaning of the word *cleric* itself changed dramatically with the abolition of the minor orders in the late twentieth century (Beal, Corriden, and Green 2000, 1195). Before this change, *cleric* usually applied to anyone who had received the tonsure, or any of the minor orders. While the 1917 Code of Canon Law specified that a cleric in minor orders who married relinquished the clerical state, earlier church practice was more generous (Canon 132 §2 in Gasparri 1918, 32; Ricci 1708, 158–62). According to the Council of Trent, married clerics, like others who had received the tonsure or minor orders, enjoyed immunity from secular jurisdiction under some conditions (Session 23, canon 6 in Tanner 1990, 2:747). Even in the eighteenth century, the privilege for married clerics was still a topic of negotiation with secular governments, as the 1741 Vatican Concordat with Naples illustrates (Mercati 1919, 348). Thus, describing the privilege as today a *clerical* immunity can easily obscure its true Early Modern scope.

Third, the privilege of the forum was an evolving practice, shaped not only by canonical and theological developments, but also by agreements negotiated between ecclesiastical and secular authorities. Regarding Early Modern immunities, Harro Höpfl argues, "the political and legal position of the clergy in Catholic countries had been regulated by custom and practice . . . overwhelmingly to the advantage of princes" (2004, 342).[3] Despite canonical and theological language suggesting that its rules were universal, its application was subject to local adaptation. In fact, many disputes regarding the privilege involved secular appeals to longstanding customs or agreements (Wirenius 2012, 440; Bouwsma 1984, 346; Bergin 2014, 6–9). The reality on the ground could diverge from the prescriptions of theory (see, for example, Höpfl 2004, 343).

Finally, this discussion will approach the privilege from the perspective of Roman Catholic social ethics rather than canon law or history, although insights from both disciplines are obviously relevant. Moreover, our inquiry will not focus on the origins of and relationship between secular and ecclesiastical authority—the theoretical questions of greatest interest to Early Modern theologians. Those foci overshadowed two other important ethical questions. If the church has the authority to exempt certain persons from criminal prosecution in lay courts, why should it do so, and who should be exempt? Vitoria and Suárez will serve as sources for these questions, while Caramuel will provide an insight into the theory of the privilege from the perspective of someone charged, as a bishop, with its administration.

Historical Précis: The Privilege of the Forum in Criminal Cases

In 381, the First Council of Constantinople explained its rules for addressing complaints against bishops and other clerics. Relevant considerations included the nature of the charge, and (in spiritual matters) whether the accusers had previously brought their complaint to provincial and diocesan bishops. Canon 6 indicates that the Council will not hear those who

[3] On the situation in France during the Early Modern Period, see Bergin 2009, 64-67; Jervis 1872, 1:74–77. On Venice, see Bouwsma 1984, 77–78, 114; on England and Germany, Lea 2020, 187–92; on Spain, Kamen 1983, 213–14.

have taken such matters to the emperor or secular authorities, since they have "made a mockery of the canons and violated the good order of the church" (Tanner 1990, 1:34).

Instruction that Christians should not take their disputes against one another to secular courts appears in the New Testament itself (1 Corinthians 6:1–7). Thus, it is not surprising that ecumenical councils established internal procedures to settle church disputes and charges of misconduct (see Chalcedon, canon 9; Fourth Constantinople, canon 26 in Tanner 1990, 1:91, 185). However, barring clerics from bringing their bishops to secular courts and later from serving as advocates in such tribunals (under most circumstances) is quite different from claiming that a significant percentage of Christians could not be prosecuted there (Chalcedon, canon 9 in Tanner 1990, 1:91; cf. Third Lateran, canons 12 and 14 in Tanner 1990, 1:218, 219). This is what the privilege of the forum entailed.

As a historical practice, the privilege of the forum has no clear starting point. Anne J. Duggan traces its "deep roots" to imperial law: the functions of the bishop's court following the conversion of Constantine, the sacred status of church property and persons under Justinian, and the Roman legal principle that "in civil matters, . . . a person should be judged by his own judge" (2017, 80, 79). In the nineteenth century, Henry Charles Lea tracked its presence or absence in many patristic and medieval legal sources, both secular and ecclesiastic, noting that the immunity was "acknowledged, sooner or later, in the laws of every nation of Europe" (2020, 184). John Downs concluded that the privilege acquired its "full guarantee" under civil law only with the coronation of Emperor Frederick II in 1220 (1941, 6–20, 23 at 6). By that time, Gratian had discussed it at length in his *Decretum* (ca. 1140–1145), arguing that both canon and civil laws proscribed the trial of clerics before lay tribunals (Duggan 2017, 80–81). In addition, the murder and swift canonization of Archbishop Thomas Becket (in 1170 and 1173), following his acrimonious dispute over the privilege with King Henry II, had given the practice a popular martyr (Wirenius 2012, 423–52; Downs 1941, 21).

As with its history as a practice, there is no obvious starting point for the privilege's history as a topic for theological analysis. Aquinas's most famous reference to such immunities concerns exemption from taxes, which his commentary on Romans 13 describes as existing "from the prerogative of princes (ex privilegio principium)" (1953, 1040.1.193). However, in 1324, Marsilius of Padua attacked the privilege in his *Defensor pacis* and became the face of the opposition for its defenders. Writing in the polemical context of a struggle between Pope John XXII and the emperor, Marsilius claimed that coercive power in this world belongs exclusively to human law and secular judges, whose jurisdiction extends to all citizens. Exempting clerics not only violates the distinction between human and divine law, but also threatens the unity of government necessary for communal well-being (Gewirth 1951, 1:21–22; Marsilius 1956, 1:15.11, 2:8.7–9 [2:66, 159–63]; Koch 2012, 147–48, 153–59). The book and Marsilius himself were quickly condemned, although none of the originally proscribed "errors of Marsilius" concerns the privilege per se (Denziger-Schönmetzer 1965, 289–90).

If Marsilius was the earliest opponent of the privilege typically mentioned by its defenders, Francisco de Vitoria articulated the basic issues they would address in question 6 of his 1532 *De potestate ecclesiastica relectio prima* (2017, 1:24, 584–603). Within his influential and nuanced answer regarding the foundations of the privilege, Vitoria included an important test case,

based upon princes' responsibility to defend their subjects. With Vitoria, the privilege became an important theoretical question for Roman Catholic moral theology.

During its final sessions, the Council of Trent took several actions relevant to the privilege of the forum. Among Session 23's reforms regarding the clergy, canon 4 set criteria for first tonsure, instructing the bishop to make sure that the candidate is not seeking it "to escape secular justice." Canon 6 outlined the standards that the tonsured and those in minor orders, including married clerics, must maintain to enjoy the privilege (Tanner 1990, 2:746, 747). Session 25's canon 20, addressed to secular rulers, asserts: "the immunity of the church and of ecclesiastical persons . . . has been established by the ordinance of God and canonical rulings." It also reminded princes, from the emperor to the rulers of republics, of their duty to obey all canon laws and apostolic rulings regarding ecclesiastical persons and church liberty, and to punish subordinates who violated these precepts (Tanner 1990, 2:795, 796).

Vatican insistence upon the privilege, combined with harsh canonical censures for magistrates and other secular leaders who failed to respect it, played an important role in Early Modern defenses of ecclesiastical immunity. In practical terms, however, the local bishop also had critical responsibilities.[4] The reforming Tridentine bishop's role was both to protect the privilege from secular encroachment and to discipline and punish (or, sometimes, in the case of regulars, to insure the punishment of) those whom the church classified as exempt from secular justice (McNamara 2020, 4–8; Ricci 1708, 284–87, 291–93, 300–303, 575–83).

For these disciplinary tasks, the Early Modern bishop possessed, in theory at least, considerable resources. Some bishops, like the quintessential Tridentine reformer Carlo Borromeo, had their own armed officers, jailers, and prisons; others relied on the staff and facilities of civil magistrates (Borromeo 1988, 89–90, 93–94, 98; Deutscher 2013, 21, 33–34; Ricci 1708, 288).[5] But the practical challenges were still significant. The bishop had to determine whether the accused was entitled to the privilege, a task that might include consideration of prior agreements with secular authorities. In 1516, when officials of Guizpúcoa asked Pamplona's bishop to remit a tonsured defendant (whom we know today as Ignatius Loyola) for secular trial, they invoked recent papal bulls granting Ferdinand and Isabella prosecution rights over such unbeneficed clerics who had not been wearing clerical dress and the tonsure in the four months prior to the crime (nos. 48 and 24 in *MHSI* 1977, 115:229–46, 134–36). Moreover, jurisdictional problems did not come exclusively from secular authorities, since a bishop's court could also find itself in conflict with other ecclesiastical tribunals (e.g., Deutscher 2013, 29–30; Kamen 1983, 214).

Yet perhaps the most consistent impediment to the bishop's disciplinary authority was his relative powerlessness over the compensation/assignments of diocesan clergy. Others, including lay patrons, usually had the right to nominate many, or even most of those holding *benefices* (i.e., lifelong entitlements to specific ecclesiastical revenues, connected to the performance of a spiritual office or duties) within his diocese (Bergin 2009, 54–58, 187).

[4] On the censures for secular authorities who violated the privilege in the papal bull *In Coena Domini*, see Downs 1941, 31–32, 44–45, 65; Ayrinhac 1912, 305; *Papal Bull* . . . 1848; *Papal Diplomacy* . . . 1848, 15–20; however, cf. Bergin 2014, 222.

[5] Ecclesiastical courts still used torture in the seventeenth century. See, for example, Deutscher 2013, 21, 53, 107.

Moreover, most ordained secular clergy did not have a benefice: instead, they received a dedicated portion of family income and often lived at home (Bergin 2009, 62, 65–67, 70–72, 184–86).[6] Their ties to their local communities were stronger than their ties to the bishop. This had important implications for the effectiveness of ecclesiastical discipline. "The clergy partook fully in the life of society and therefore shared all the vices of their flocks," argued Henry Kamen, in his analysis of clerical violence in Early Modern Spain (1983, 211).

The privilege of the forum raised special issues in the papal states, where the pope ruled as temporal prince as well as supreme lawgiver for the Latin Church. Critics asked why the pope allowed lay magistrates to punish clerics in his temporal dominions but denied the same remedy to other governments (Prodi 1987, 62, 66–70, 105–6, 109–14). This practical problem, and the need to protect the privilege, encouraged theologians to ground it in divine law. Stefania Tutino traces the evolution of Bellarmine's thought on this issue, as well as his influential efforts to reconcile the apparently contradictory positions of the theologians and the canonists (2010, 44–45, 82–88). For centuries, explaining the foundations of immunities would be central in evaluations of the privilege (see, for example, Downs 1941, 56–132).

Polemical challenges spurred theological consideration of the privilege in the seventeenth century, especially in response to two crises of its first decade, the Venetian Interdict and controversy surrounding James VI/I's Oath of Allegiance. In 1606, Pope Paul V cited Venice's violations of ecclesiastical immunities, including the prosecution of clerics in secular courts, as grounds for placing its territories under interdict. Venice ordered its clergy to fulfill their duties as usual (Bouwsma 1984, 339–55, 372–75, 382–87). In the ensuing public relations struggle, supporters of Venice and the Vatican attacked or invoked the privilege to justify their positions (Kainulainen 2014, 187–88; Tutino 2010, 88–91, 92–93, 94–95, 96, 102–3, 110).

While the privilege was not initially central to the Oath of Allegiance that James VI/I required of his Catholic subjects, it became more significant when the king included a long "Premonition" to other rulers in his reissued defense of the oath (for background, see Höpfl 2004, 325–26; Pink 2019, xiv–xvi). In this introduction, James reminded his fellow princes (including Roman Catholics) that almost a third of their subjects were ecclesiastics: "What bryers and thornes are left within the heart of your Dominions, when so populous and potent a partie shall have their birth, education, and livelyhood in your Countries, and yet owe you no Subiection, nor acknowledge you for their Soveraignes?" (1609, 21). It was a shrewd strategy. Arguments over the privilege entered the struggle between defenders of ecclesiastical immunity and proponents (Catholic as well as Protestant) of the Divine Right of Kings, or in Venice's case—to use Höpfl's phrase—"the Divine Right of Republics" (2004, 345; see also Tutino 2010, 127–32, 139–48; Kainulainen 2014, 164–65, 177–83).

At the practical level, the seventeenth century also saw significant theological attention to the scope of the various immunities and Vatican rulings regarding them. The first three volumes of Antonino Diana's *Resolutiones morales*, for example, contain three tracts with over 250 questions on immunities—more than fifty concerning the privilege of the forum (1633, 1:1–66, 3:1–21). At the official level, the new Roman Congregation of Immunity issued many

[6] The Council of Trent required secular clerics seeking ordination to demonstrate legally that they had either a benefice or sufficient patrimony for their support. See Session 21, canon 2 in Tanner 1990, 2:728–29.

decisions regarding eligibility for its protections—a task complicated by both the statements and silences of the Council of Trent (Boudhinon 1910, 7:692; Downs 1941, 31; Prodi 1987, 114).

While reiterating previous rulings regarding the privilege, Trent had attempted to clarify its scope regarding only two groups—those who had received the tonsure or minor orders (Tanner 2:747). The Council left many questions open, especially regarding non-clerics. This became a task for the Sacred Congregation of Immunity.

The Congregation did not publish a collection of its decisions. In 1708, the Cistercian Pietro Ricci produced a digest of its decrees and resolutions to date, organized by topic in an alphabetical summa. These entries do not explain the reasoning behind the decisions but do identify the date and source of the inquiry. The book is thus a manual of concrete answers to jurisdictional controversies (Ricci 1708, n.p.).

Ricci's volume suggests that privilege's scope was an ongoing problem for the Congregation. Developments in the church's life raised questions, notably concerning new women's communities that did not take solemn vows. The Congregation concedes the privilege to the Ursulines, for example, but classifies them as "ecclesiastical persons" rather than as women religious (1708, 656). A group of cases addresses a special male group, the *clerici salvatici*, found only in the Kingdom of Naples (1708, 170–173).[7] But perhaps most noteworthy is the Congregation's frequent recognition of the privilege for people connected to clerics, some of whom were clearly lay. The wife and legitimate children of a married cleric, for example, enjoyed the privilege during his lifetime (1708, 657–58, 368). So did a cleric's non-Christian slaves (1708, 607). The bishop's groom, his arborist, and various other members of his household received the privilege's protection (1708, 514, 234, 360–62). Even ecclesiastics' tenant farmers, who paid their rent with a share of their produce, enjoyed the privilege. This coverage extended to their resident family members if the ecclesiastic was a bishop (1708, 180, 185, 370).

Congregational rulings also accorded the benefit to various people working for the church. Salaried employees of a cathedral, including its cantor and musicians, held the privilege during their time of service (Ricci 1708, 603, 96, 487). While one ruling expressed a preference for clerical bellringers, the Congregation agreed that their lay counterparts also enjoyed the privilege (1708, 91). The decision confirming it for sacristans and caretakers of rural churches does not mention their ecclesiastical status (1708, 602). However, if the original case concerned clerics, it is hard to see why it would have come before the Congregation at all. Finally, the privilege covered the staff of episcopal tribunals, including their jailors, police, and messengers (1708, 70, 76, 233, 234, 444, 465, 488, 502).[8] For some of them, immunity extended to offenses committed before service began (1708, 76, 233). Given this range, it is not surprising that the scope of the privilege irritated secular authorities and challenged its theorists.

---

[7] In his 1678 encyclopedia, Pereira admits that he and many scholars he consulted were unfamiliar with this term. Eventually he discovered that it referred to free Neapolitans appointed by the bishop to serve without pay in a variety of roles, including policemen, muleteers, janitors, and bellringers (1678, 92).

[8] Note that Ricci presents the general ruling about tribunal ministers under the term *laicus* (1708, 444).

However, in the eighteenth century, such claims—already aspirational, to some degree—became increasingly so as secular governments asserted jurisdiction at the privilege's expense (Downs 1941, 33, 38–39; Deutscher 2013, 108–9, 187 n. 95). Besides their traditional concerns about public order and temporal authority, some rulers resented the rising number of young men entering the clergy and attributed this growth to the desire to escape lay tribunals' jurisdiction. Deutscher suggests financial security played a greater role, since directing a son into the secular clergy gave him a respectable social position and created a tax shelter for some of the family's wealth. Nonetheless, growing clerical numbers did nothing to improve state attitudes toward the privilege during the Enlightenment (Deutscher 2013, 111–12; Bergin 2009, 67). Soon, the French Revolution and the political/social upheavals of the nineteenth century upended legal relations between church and state, including the privilege of the forum (Downs 1941, 33–34; Boudinhon 1910, 7:692).

In response, Rome defended the privilege and other immunities, denouncing secular encroachments. As an illustration, Pius IX's *Syllabus of Errors* (1864) condemned both the claim that ecclesiastical immunity originated in civil law and the call for abolition of ecclesiastical tribunals for criminal and civil cases, without any consultation of the Holy See or despite its protests (props. 30 and 31 in Denziger-Schönmetzer 1965, 580: for background, see Downs 1941, 38–39, 69–70). Five years later, in its updating of church censures imposed *latae sententiae*, the constitution *Apostolicae Sedis* included excommunication of those compelling lay judges to summon ecclesiastical persons to their courts if this happened outside of the provisions of canon law. As in earlier legislation, absolution was reserved to the Holy See (Ayrinhac 1912, 306; Downs 1941, 40–41).[9]

However, such sanctions explicitly exempted those who acted within the boundaries of canon law, and by the mid-nineteenth century, Vatican concordats had begun to take a different approach to the privilege of the forum. Instead of reserving clerical criminal cases to ecclesiastical tribunals, some concordats ceded jurisdiction to secular courts, calling instead for notification of the bishop, incarceration of the defendant apart from the general population, or other procedures to protect the accused and/or the church's reputation (Downs 1941, 36; see, for example, Mercati 1919, 741, 805, 817, 824, 856, 884, 942–43, 966, 1005). Such provisions were also part of several twentieth-century concordats—most notably, the 1929 concordat with Mussolini—as well as the 1953 and 1954 agreements with Spain and the Dominican Republic (see art. 8 in Coppa 1999, 195; Holy See 1953, 16; 1954, 13). These minimal protections were not always explicitly present in Vatican agreements with modern states.[10] But this approach anticipated or reflected canon 120 §1 of the 1917 Code of Canon Law, which specified that, in both civil and criminal cases, clerics should be tried before ecclesiastical courts, unless "it has been legitimately arranged otherwise for particular places (nisi aliter pro locis particularibus legitime provisum fuerit)" (Augustine 1919, 2:59).

[9] An excommunication *latae sententiae* is imposed as soon as the person knowingly commits the offense, rather than by the sentence of a judge. See Beal, Corriden, and Green 2000, 1535–36.

[10] The concordats with Napoleon and Hitler for example, do not mention them directly (in Coppa 1999, 191–93, 205–14).

At first glance, this provision seemed to exclude countries without concordats. However, by the late nineteenth century, the interpretation of Vatican silence regarding civil laws contrary to the privilege as tacit permission (rather than as restraint in the face of an unavoidable evil) was gaining acceptance among canonists (Downs 1941, 46–51). This theory provided a solution for a public relations crisis in the early twentieth century. *Quantavis Diligentia* (issued by Pius XI in 1911) appeared to extend the excommunication for violating the privilege to any Catholic who brought ecclesiastical persons before lay courts without church permission. Following adverse publicity, important canonists and eventually the Vatican itself explained that this rule did not apply in places with established contrary customs, including the United States (Ayrinhac 1912, 308–15; Augustine 1919, 2:61–62; *Times* 1911; *Catholic Advance* 1912; Walsh 1912, 9–11, 59–63). Yet the debate over *Quantavis Diligentia* illustrated how Catholic traditions regarding the privilege could be exploited polemically (*Tablet* 1911; Walsh 1912, 80–85). When opponents of Irish Home Rule invoked *Quantavis Diligentia* to show the dangers of Catholic power, the claim that Vatican recalcitrance on the privilege threatened public welfare already had a long pedigree (see Walsh 1912, 4–5, 16–18; *Papal Diplomacy . . .* 1848, 5, 23, 41, 42). Lea, who doubted in 1869 that existing tradition would allow even an ecumenical council to abandon the privilege, believed that the Vatican was eagerly waiting for a chance to recover it, even though its loss had saved the church "from the suicidal gratification of her own inordinate desires" (2020, 221).

Yet if one interprets silence as a form of abandonment, the 1983 Code of Canon Law did what Lea believed was impossible, when it simply omitted any reference to the privilege of the forum (or several other traditional privileges) in its canons on the clergy (see John E. Lynch's comments in Beal, Corriden, and Green 2000, 343 n.7). Catholic social ethics no longer needs to treat the privilege as a living issue. Yet we can still draw lessons from its history, as illustrated by the texts of the three Early Modern Spanish theologians, Francisco de Vitoria, Francisco Suárez, and Juan Caramuel.

Lessons from Vitoria, Suárez, and Caramuel

Francisco de Vitoria

Establishing a theological framework for considering the privilege was only one of Francisco de Vitoria's many contributions to Roman Catholic social ethics. The Dominican theologian (ca. 1485–1546) spent the last two decades of his life as the Prima Chair in theology at the University of Salamanca, where he introduced the Parisian substitution of Aquinas's *Summa Theologiae* for Lombard's *Sententiae* as the basic text in theology. Vitoria communicated his political theology in oral form, either in his lectures on Aquinas (preserved in dictations taken down by his students) or in reports of his *relectiones*, public lectures offered to a general academic audience. While the reading (*lectio*) of a particular passage served as the basis for a lecture, r*electiones* (literally re-readings) addressed a general topic (Pagden and Lawrance 1991, xiii–xiv, xvii, xix–xxx).

Vitoria's second *relectio*, delivered in 1528, analyzed the nature and origins of civil power (Pagden and Lawrance 1991, 3–44; Wagner 2018, 86–89). In 1532 and 1533, he considered ecclesiastical power. *De potestate ecclesiastica relectio prima* considers the origins of ecclesiastical authority and its relationship to civil authority, while *relectio secunda* discusses the exercise of

power within the church (2017, 1:423–725). "Whether clerics are exempt from civil power" is the first text's sixth and final question (2017, 1:584-603).[11]

Citing Gratian and the condemnations of Marsilius and Wycliff, Vitoria assumes clerics cannot be summoned to secular tribunals in either criminal or civil cases (2017, 1:584–86). While he occasionally mentions "ecclesiastical persons," he never distinguishes the different classes of people covered by the privilege (see 2017, 1:592, 596). Instead, Vitoria is primarily interested in its foundations, which he explains by invoking his basic theories of civil and ecclesiastical authority.

Vitoria denies that specific scriptural passages (Matthew 17:24–26 and Psalm 104:15) explicitly prove that clerics are immune from taxation or prosecution in lay courts (thesis 2; 2017, 1:586–90). He characterizes the privilege as "very much conformed to divine and natural law (multum conformis iuri divino et naturali)" (thesis 6, 2017, 1:598). In fact, the privilege comes from the authority Christ transmitted to Peter and the apostles. Secular rulers have no authority to settle spiritual issues: the apostles governed the church without the consent of their pagan rulers (thesis 3; 2017, 1:590, 592; see also Mull 2021). The pope can exempt ecclesiastical persons from civil authority, since the church has the power to make laws appropriate for its administration. If such an exemption is appropriate for the church, the pope has the authority to enact it (thesis 5; 2017, 1:596). However, ecclesiastics are not entirely exempt from secular power: as citizens of a commonwealth, they must obey civil laws that do not impede the work of the church (thesis 4; 2017, 1:596). Presumably, Vitoria is referring to a moral rather than a legal obligation.

In contrast to his treatment of the privilege's foundation, Vitoria devotes relatively few words to why the church should enact this exemption. First, if church ministers are dragged into secular courts, they will not be able to fulfill their duties (thesis 5; 2017, 1:596). Second, the power to exempt ministers parallels the pope's power to choose ministers without the state's consent. Third, if a person could be summoned to both an ecclesiastical tribunal and a secular court at the same time, he would be unable to satisfy either one. Fourth, it is inappropriate that ecclesiastics who are pastors—including pastors of secular judges—should be troubled in court by their own subjects (thesis 5; 2017, 1:598). Vitoria lists, but does not develop, these claims.

Though Vitoria believes the church has the authority and sufficient reasons to exempt ecclesiastics and has, in fact, done so, his last two theses consider a possible conflict with the moral responsibilities of secular rulers. What if the "power of ecclesiastics (potestas ecclesiasticorum)" brings obvious harm to the republic, "so that ecclesiastics are free to slaughter lay people without fear of punishment (ita ut ecclesiastici impune vacarentur in caedem laicorum)," and the church is unwilling to apply a remedy? Under such circumstances, Vitoria believes, princes are entitled to take care of their subjects, despite the privilege. A secular commonwealth has the right to defend itself from injuries, and to make and apply laws appropriate for this purpose (thesis 8; 2017, 1:600).

[11] A helpful English translation appears in Pagden and Lawrance 1991, 101–8. Because specific Latin terms are important to the analysis, however, I have relied upon the Latin text in the San Estaban edition and all translations are my own.

Vitoria qualifies this concession by distinguishing the powers of princes from those of magistrates. Princes can preserve their republics from injuries inflicted by other states, not only in the mode of defense, but also authoritatively (thesis 8, 1:600). Their power to counter injuries inflicted by ecclesiastics parallels their power to answer external threats. By contrast, governors and other magistrates sin gravely when they violate clerical privileges by bringing clerics, no matter how destructive, into their courts. Clerics are not their subjects; secular judges have no authority over them. Magistrates are bound by existing laws and cannot abrogate them or dispense from them, as princes can (thesis 9; 2017, 1:602). To prove this, Vitoria invokes the condemned Marsilian propositions and Cajetan's distinction between defending one's life from a papal attacker—licit for any victim—and imposing the death penalty on a pope/murderer, for which no human court has the requisite authority (thesis 9; 2017, 1:602). By the end of the argument, he is again defending the privilege by contrasting self-defense with punishment.

Nevertheless, Vitoria seems to allow the prince significant maneuvering room. It would be helpful, of course, if his text described a situation involving immunity that would justify abrogating or giving dispensations from existing laws—the authority that distinguishes princes from magistrates.[12] However, violent crimes by ecclesiastics were hardly unusual. Rico Callado's recent study of the post-Tridentine episcopal tribunal records from Salamanca (1578–1653) found many cases of violence, although no murders (2019, 14, 21). It seems unlikely that such crimes were rarer forty years earlier, when Vitoria presented his *relectio*. Yet whatever scenario he envisioned, Vitoria's application of self-defense to ecclesiastical immunity became an important legacy for his successors, as they considered the privilege under different, and sometimes more fraught, historical circumstances.

Francisco Suárez

In 1613, the Jesuit Francisco Suárez (1548–1617), widely regarded as the Society's outstanding Early Modern theologian and metaphysical philosopher, devoted the fourth book of his response to King James to ecclesiastical immunity (Höpfl 2004, 248; Lagerlund 2018, 210-–13; Pink xv). That mini treatise, extending from page 354 to 530 in the *Defensio fidei catholicae's* Vivès edition (1859), focuses on immunities of persons and goods (see 1859, 4.1.3).[13] The privilege of the forum receives a systematic and magisterial analysis in Suárez's text.

Unlike Vitoria, Suárez interprets Matthew 17:24–27 as proving the divine foundation of clerical immunity, yet he also grounds these exemptions in the constant tradition of the church, expressed in canon law and eventually recognized by secular statutes (1859, 4.8.16, 4.8.18, 4.9.3–4, 9.19–20). The Jesuit distinguishes possession of the privilege, already enjoyed by Peter and his early successors, from its use, which was impossible under pagan imperial rule (1859,

[12] Recent Castilian history included a potential precedent. In 1526, Charles V had ordered the execution of Bishop Antonio Osorio de Acuña, a leader of the Communeros Revolt, who had led hundreds of his diocesan clergy into battle against the crown. Eventually he was captured and imprisoned. Several years later, after attempting unsuccessfully to buy his release, the bishop murdered his jailor during an escape attempt (Kamen 1983, 201-202; Parker 2020, 139–140, 160, 209, 620 n. 36).

[13] The standard way of citing *Defensio fidei* is to begin with the book number, followed by the chapter number and the section number.

4.6.4–5). Moreover, God entrusts these immunities to the popes to administer. This delegation explains historical variants in the application of the privilege. It also justifies imposing different canonical criteria for enjoying it, depending upon the ecclesiastical status of potential recipients (1859, 4.9.6, 4.9.10).

Suárez systematically analyzes different grades of access to the privilege (1859, 4.10.1). Clerics in higher orders and professed religious enjoy it permanently unless the church removes it as a punishment (1859, 4.27.6, 4.27.21, 4.29.3–4). So do novices, unless they leave or are dismissed from their communities (1859, 4.29.5, 4.29.8). However (as specified by Trent), tonsured clerics and those in minor orders must meet specific criteria to enjoy the privilege at all, and in some cases, it disappears as soon as they fail to do so, e.g., when a cleric marries for a second time (1859, 4.27.6, 4.27.21, 4.28.11).[14] Yet from other persons, such a bishop's household or a cleric's slaves, the privilege requires nothing, emerging instead from custom or canon law alone (1859, 4.29.10, 4.29.12). While he usually describes these differences without comment, Suárez admits that Trent imposes more stringent requirements upon minor order clerics who have no benefice than upon those who do (1859, 4.27.7–8).

It is worth noting the progression in Suárez's justifications for the privilege. One of his primary arguments is analogical: like a chalice consecrated for liturgical use, certain persons (clergy and religious) have been consecrated for divine worship, with their bodies as well as their souls placed under the church's jurisdiction (1859, 4.8.14, 4.9.15, 4.10.15). No one can serve two masters. To avoid competing obligations, the consecrated must be exempt from secular coercive power (1859, 4.9.17). Suárez also appeals to status: for an inferior to judge a superior violates natural reason, and priests are superior to laymen. Lay people ought to honor their superiors, yet they are often hostile to clerics. In fact, prosecution in secular courts degrades the dignity of clerics and exposes them to the contempt of the mob. (1859, 4.8.14–15).

Yet when the Jesuit considers persons with lower grades of immunity, his argument becomes increasingly voluntarist: Suárez simply interprets the canons for his readers. Reasonable custom explains why a bishop's household enjoys the privilege. The property rights of a cleric extend to his human property—slaves! But Suárez denies that law usually extends the privilege to lay servants of churches or clerics—nor does he mention tenant farmers (1859, 4.29.10–12)! The scope of the privilege, as he saw it in 1613, was narrower than it became under the Congregation of Immunity.

Finally, Suárez discusses defense as a possible justification for over-riding the privilege (1859, 4.34.32–45). He concedes the rational force of the argument, and refers explicitly to Vitoria (1859, 4.34.32). However, he argues it is difficult to justify the claim in practice. Dragging someone entitled to the privilege before a secular court is different from using appropriate force to restrain an ongoing attack. The second is self-defense, the first is jurisdictional usurpation. The two cases are not analogous and canon law, despite various authors' claims to the contrary, does not allow such transfers (1859, 4.34.34–449).

[14] Failures to meet other criteria require repetition and warnings before the privilege is lost (1859, 4.27.12–13).

Suárez acknowledges that various commonwealths—explicitly mentioning France and Spain—claim they have received papal permission to try some ecclesiastics in secular courts. While this is theoretically possible, a state must prove such a privilege was given and has not been revoked, since the granting pontiff or his successors retain the right to do so. Suárez offers no opinion about the current existence of such privileges, instead deferring to the Vatican (1859, 4.34.45). Vitoria's test case, for Suárez, seems to be a remote possibility.

Juan Caramuel

Unlike Vitoria and Suárez, Juan Caramuel (1606–1682) never held a university chair, although the Cistercian received his doctorate in theology from Louvain and wrote extensively in the discipline. Appointed in 1657 to serve as bishop of Satriano and Campagna in the Kingdom of Naples, the polymath Caramuel continued to publish works on ethical theory (and many other subjects) (see Dvořák and Schmutz, 2008, 11–17; Fleming 2009, 7–16). While his 1664 *Theologia Praeterintentionalis* is not a study of the privilege or ecclesiastical immunity, it provides a fascinating perspective on the issue from a theologian trying to be a good Tridentine bishop, in a very poor, bandit-plagued Calabrian diocese (see 1664, 85–90). In Caramuel's discussion, the test case developed by Vitoria confronts the reality that a later bishop was facing on the ground.

The *Theologia Praeterintentionalis* develops a method for evaluating actions with consequences foreseen, but not intended, by agents constrained by adverse circumstances, like the person who risks death by jumping to escape a burning tower. While one must never produce evil consequences intentionally, Caramuel argues that certain criteria render undesirable effects beyond intention (*praeterintentionalis*), and hence, morally acceptable (1664, 3-10; Fleming 2012, 207–15). To demonstrate his method's efficacy, he applies it to a variety of cases, arranged according to the order of the Decalogue (1664, 10–184).[15]

Ecclesiastical immunity appears in Caramuel's treatment of the fifth commandment, where he considers various forms of self-defense. In four consecutive cases from this section (numbers 14–17), a secular authority acts to defend the commonwealth from ecclesiastical misconduct. Caramuel appears to have drawn these examples from volume 1 of his friend Antonino Diana's *Resolutiones Morales*, which discusses three of the four cases (in the same order) within its second tract on ecclesiastical immunity (see Diana 1633, 2:7[a], 8, 9, which correspond to Caramuel's cases 14, 16, 17 at 1664, 85–86, 87–90). Using these cases to test his theory, Caramuel explores whether these apparent immunity violations are *praeterintentional* (1664, 85–90).

Case 14, echoing Vitoria, describes Titius, the footpad priest, whom neither the bishop nor the pope can restrain, despite the prince's repeated appeals for action. If there is no alternative, Caramuel believes the prince can defend his commonwealth by capturing or even killing Titius. While secular powers have no jurisdiction over clerics, natural law gives everyone the right of self-defense. Accordingly, the prince's action does not violate ecclesiastical

[15] As the printer's note on 184 indicates, the text was incomplete at the time of publication. Thus, Caramuel's analysis was less thorough than he intended (see Fleming 2012, 208–9).

immunity because he is defending the commonwealth rather than imposing a punishment. The violation of the privilege is foreseen but not intended (1664, 85–86).

In its initial outlines, Caramuel's argument follows Vitoria's. Yet the bishop doubts this option should be restricted to the state's highest authority. If the prince's response represents self-defense, why are lesser magistrates forbidden to carry out their superior's laws in defending the republic, when circumstances prevent them from taking the case to a higher authority? Caramuel suggests the distinction was added to "sweeten (conditur sacharo)" the argument. He does not see a significant moral difference between the prince and his magistrates, although the latter need to inform themselves about the former's statutes regarding such emergencies (1664, 85).

Although Caramuel pushes the argument farther than Vitoria, he too preserves the privilege of the forum by interpreting the case as self-defense rather than punishment. He moves the discussion in a new direction, however, when he responds to commentators who had dismissed the case as unrealistic, particularly the influential Jesuit theologian Juan de Salas, who had described Vitoria's scenario as "metaphysical" and "morally impossible*,"* comments cited approvingly by Diana (1664, 86; Salas 1611, 352; Diana 1633, 1:18).[16] Clerics do not have enough power to threaten the republic, Salas had argued. And if ecclesiastical judges cannot constrain them, the pope can give princes the faculty to punish them (Salas 1611, 352).

Before he ever mentions Salas, Caramuel tries to answer criticism of the case as unrealistic. His first response—perhaps an effort to be diplomatic—invokes geographic/cultural differences. In Italy, Caramuel hopes, the case may be impossible, but it could happen in Germany, where religious divisions and distance from Rome have weakened episcopal control (1664, 85).[17] Eventually, however, Caramuel reveals that his concerns lie closer to home. If Salas does not realize how much reform ecclesiastical tribunals require, Caramuel asserts, he needs more practical experience. In contrast to secular courts, episcopal courts are often run by a single friend or nephew of the bishop, who tries to combine "by hypostatic union (unione hypostatica)" the various offices required by canon law. Before blaming the bishops for this, however, one should consider their circumstances. Many are too poor to buy enough bread, much less to pay the staff necessary for an effective tribunal. Appealing for community assistance is not a practical solution either: all too often, those who should help are relatives of the offending clerics. Caramuel ends his *cri de couer* by wishing for mergers of small Italian dioceses (presumably like his own) to give bishops more resources for ecclesiastical discipline. A poor bishop will not be able to control richer criminal clerics. Either the prince will bring them to heel, or no one will (1664, 86).

In resolving various potential conflicts between self-defense and immunity, Caramuel's answer depends upon each case's concrete circumstances (1664, 85–90). Episcopal or civil prudence, he suggests, can often defuse such situations (see, for example, cases 15 and 17; 1664, 87, 90). But Caramuel becomes impatient when his colleagues hesitate to entertain appropriate hypothetical questions about the limits of immunities or to consider practical

[16] There is an error in Caramuel's reference (1664, 85) to Salas; the relevant passage comes from q. 96, tract. 14, sect. 9, no. 111 (not q. 94).

[17] On Caramuel's years in the Holy Roman Empire, including Germany, see Dvořák and Schmutz 2008, 13–17.

realities. In contrast to Vitoria's prudence, he argues, such approaches reflect "excessive piety (nimia . . . pietas)" (1664, 86, case 15; see also case 14 at 1664, 85–86).

Implications for Our Time

For obvious reasons, no volume in Catholic social ethics today is likely to address the privilege of the forum, which initially seems relevant to the discipline only as an example of past struggles regarding religion in the public square. Yet the long evolution of the privilege and the discussions of Vitoria, Suárez, and Caramuel offer valuable lessons for contemporary social ethics regarding the formulation and context of our questions, the importance of what we fail to consider, and finally, the significance of unintended consequences for moral responsibility in confronting legacies of social sin.

First, how we phrase a question matters. Referring to the privilege of the forum as a *clerical immunity* and emphasizing ordained clergy when analyzing it—as illustrated by Suárez, for example—overshadowed its expanding application to diverse groups of non-clerics. The word *clerical* obscured both the scope of the problem and its variation according to local circumstances. On the other hand, Suárez's objection to classifying the transfer of ecclesiastics to lay courts as legitimate defense also demonstrates the importance of phrasing. What are the boundaries of legitimate self-defense? That question is no less critical for our time than for the Early Modern Period.

Second, how a question emerges shapes its analysis. By the time that Vitoria analyzed ecclesiastical immunity for his audience, the privilege had long been established in both canon and civil law. Taking its legitimacy as a given, he focused instead upon its foundations and its place within a broader theology of ecclesiastical and civil power. These were important questions, which shaped the debate for centuries. Yet these issues overshadowed other questions surrounding its desirability and utility. What the church *could do* (by virtue of its authority over the privilege) received more attention than the ethical question of what it *should do*.

Ironically, Vitoria's view of the privilege's foundation and Suárez's emphasis upon the papacy's power to regulate it created a potential opening for the ethical question. If Christ gave the church the authority to create the privilege (as Victoria argued), or at least to regulate it (as Suárez believed), then why insist upon its use, especially since the Apostolic Age provided a contrary precedent? Yet the focus on church authority seems to have dwarfed consideration of how the privilege contributed to the common good, including its impact on the church and the public square.

From the second lesson, a third logically emerges: *the questions we fail to ask are often more important than the questions we consider.* In applied ethics, theory depends upon the accurate assessment of circumstances. When Caramuel complains that tribunals in poor dioceses cannot fulfill their disciplinary mandates, he is writing, not just as a bishop, but as an ethical theorist. In his view, his colleagues have dismissed Vitoria's argument because they do not see the gap between their principles and practical reality.

Caramuel's objection is not the only evidence of such a gap. Comparing theories of the privilege with historical analyses of its operations sometimes suggests that their authors are describing parallel universes. Marsilius and Vitoria predicted that chaos that might ensue if a person was liable to more than one court. In practice, however, canon and civil law managed

to deal with many potential overlaps in jurisdiction, such as civil lawsuits between clerics and laypersons, or "mixed forum" cases (like adultery) that could potentially belong in either court, depending upon the issues at stake (Suárez 1859, 4.14.4; Diana 1633, 1:51). Assumptions about what should happen are not always confirmed by reality.

Overlooked questions also distort what we can learn from history. Assume, for the sake of argument, that inferiors cannot judge superiors and that clerics and vowed religious are superior to the laity—the Early Modern defense of the privilege most odious to a modern audience. If this is true, why would the church extend the same privilege to many people who were neither clerics nor part of religious communities? Suárez's reliance upon church authority to explain this development suggests that theory often struggles to make sense of evolving practices. In such a context, supposed governing principles render historical realities less, rather than more, intelligible, especially when a focus on authority trumps questions of efficacy.

Yet the questions we no longer ask are also indicators of moral development. It is easy to track modifications in social ethics when our answers change. Yet the disappearance of a question can be even more telling. Evolution comes in silence as well as explicit reversal. The history of Roman Catholic social ethics has its share of quietly abandoned roads.

Finally, even unintended consequences matter for social ethics. The context of the privilege in Early Modern Catholicism illustrates this lesson well. Trent directed bishops to reform their dioceses, including the diocesan clergy.[18] With reason, bishops worried that clerics' mores mirrored those of their families and neighbors: one mode of reform was to create a separate clerical identity (see, for example, Bergin 2009, 62, 64–65, 206–7; Prosperi 1988, 112–13, 123–24, 130–31; Deutscher 2013, 41–43). Assessing this process for Early Modern Spain, Henry Kamen concluded: "The move to make the clergy into a separate caste was not elitist in the derogatory sense, but part of an attempt to pacify the clergy, abstract them from lay society and integrate them more fully into the body of the teaching Church" (1983, 212–13). Similarly, for bishops like Milan's Carlo Borromeo, retaining jurisdiction over the clergy in the episcopal court was a critical tool for their improvement (Borromeo 1988, 88–90). Insistence on ecclesiastics' immunity from secular prosecution dovetailed with a larger ecclesial project.

Setting the clergy apart from the laity proved to be the task of centuries, yet eventually, the church succeeded. While the privilege of the forum initially reinforced this segregation, the mindset behind the project outlived the disappearance of such immunities from the public square. Yet one may reasonably ask whether this identity, promoted as a remedy for ministerial malfeasance in the Early Modern Period, played an enabling role in the modern church's sex abuse crises.[19] If so, this tragic result challenges social ethics to consider our response to unintended consequences and human limitation.

---

[18] The title of Celeste McNamara's book appropriately characterizes this as "the bishop's burden" (2020, see especially 4–5).

[19] See the report authored by Julie Hanlon Rubio and Paul J. Schutz (2022, 33–36). While focusing upon "clergy perpetrated sexual abuse," their analysis references cases perpetrated by a married church professional who might have been enrolled among the *clerici conjugati* in the earlier centuries (2022, 23). See also Wirenius 2012.

Juan Caramuel was only one in a long line of ethicists interested in mapping the criteria that could justify actions with foreseen, but unintended negative results (Fleming 2013). Behind this quest stands the assumption that only anticipated consequences—or those the agent reasonably should have anticipated—are voluntary, and hence, subject to moral assessment. Such a focus makes sense in some contexts, e.g., in separating accidents from malpractice. Yet for social ethics, it obscures an important implication of human finitude. Corporately, we often find ourselves emmeshed in the long-term, destructive consequences of choices made centuries ago. What those who made such choices foresaw or should have foreseen is not inconsequential. Yet it does not change our basic responsibility to respond to social sin—to keep past and present harms from spiraling into future harms. Ethical yet finite human beings must try to ameliorate the effects of unintended consequences. If social ethicists draw this lesson from the privilege's history, its consideration will be worth our time.

Conclusion

Although it no longer exists in civil or canon law, the privilege of the forum in criminal matters provides a useful historical case study for Roman Catholic social ethics. Select discussions by Vitoria, Suárez, and Caramuel illustrate the challenges of building a theory regarding this practice. Their texts, and the privilege's general history, demonstrate how overly narrow foci influenced assessment of the practice's desirability, scope of application, and feasibility. Yet for contemporary social ethicists, this record reminds us of the importance of the phrasing and context of the questions we ask, and the significance of the questions we overlook or let go. Finally, the privilege's historical role within the broader Tridentine project of ministerial reform can encourage us to appreciate the ethical significance of unintended consequences and our responsibilities to face the legacies of social sin. In its own small way, it serves our reflections on the role of religion in the public square.

Bibliography

Aquinas, Thomas, St. 1953. *Super epistolas S. Pauli lectura*, ed. Rafaele Cai., 8th ed., rev. 2 vols. Turin: Marrieti.

Augustine, Chas. O.S.B. 1919. *A Commentary on the New Code of Canon Law*, Volume 2, *Clergy and Hierarchy*, 3rd edition. New York: Herder.

Ayrinhac, H., S.S. 1912. "The Motu Proprio 'Quantavis Diligentia.'" *The Ecclesiastical Review* 47:303–15.

Beal, John P., James A. Coriden, and Thomas J. Green. 2000. *New Commentary on the Code of Canon Law*. New York: Paulist.

Bergin, Joseph. 2009. *Church, Society, and Religious Change in France, 1580-1730*. New Haven: Yale University Press.

———. 2014. *The Politics of Religion in Early Modern France*. New Haven: Yale University Press.

Borromeo, Agostino. 1988. "Archbishop Carlo Borromeo and the Ecclesiastical Policy of Philip II in the State of Milan." In *San Carlo Borromeo: Catholic Reform and Ecclesiastical Politics in the Second Half of the Sixteenth Century*, ed. John M. Headley and John B.Tomaro, 87–111. Washington, D.C.: Folger.

Boudinhon, A. (1910). "Immunity." In *The Catholic Encyclopedia*, 7:690–92. New York: Robert Appleton. Digitized by Google.

Bouwsma, William J. 1984. *Venice and the Defense of Republican Liberty: Renaissance Values in the Age of the Counter Reformation*. Berkeley: University of California Press.

Caramuel, Juan. 1664. *Theologia Praeterintentionalis* . . . Lyon: Philippe Borde et al. Digitized by Google.

Catholic Advance (Wichita) 1912. "News Items of Note from the Eternal City." January 6:16.

Cavagnis, Felix. 1889. *Institutiones iuris publici ecclesiastici . . . Pars secunda specialis*. Revised edition. Rome: Typis Societatis Catholicae Instructivae.

Chopko, Mark E., and Michael F. Moses. 2005. "Freedom to be a Church: Confronting Challenges to the Right of Church Autonomy." *Georgetown Journal of Law and Public Policy* 3, 2:387–452.

Coppa, Frank J., ed. 1999. *Controversial Concordats: The Vatican's Relations with Napoleon, Mussolini, and Hitler*. Washington, D.C.: Catholic University of America Press.

Denziger, Henrich and Adolf Schönmetzer, S.J. 1965. *Enchiridion symbolorum definitionum et declarationum de rebus fidei et morum*, 33rd edition. Freiburg: Herder.

Deutscher, Thomas B. 2013. *Punishment and Penance: Two Phases in the History of the Bishop's Tribunal of Novara*. Toronto: University of Toronto Press.

Diana, Antonino. 1633. *Resolutiones morales recens in tres partes distributae*, 3 vols. Lyon: Jacob Prost. Digitized by Google.

Downs, John Emmanuel. 1941. *The Concept of Clerical Immunity: A Dissertation in Public Ecclesiastical Law*. Washington, D.C.: Catholic University of America Press.

Duggan, Anne J. 2017. "Clerical Exemption in Canon Law from Gratian to the Decretals." *Medieval Worlds* 6:78–100.

Dvořák, Petr and Jacob Schmutz, eds. 2008. *Juan Caramuel Lobkowitz, The Last Scholastic Polymath*. Prague: Filosophia.

Fleming, Julia. 2009. *Defending Probabilism: The Moral Theology of Juan Caramuel*. Washington, D.C.: Georgetown University Press.

———. 2012. "The Analysis of Actions with Double Effects in Caramuel's *Theologia praeterintentionalis*," In *Un' altra modernità Juan Caramuel Lobkowitz (1606-1682): enciclopedia e probabilismo,* ed. Daniele Sabaino and Paolo C. Pissavino, 207–22. Pisa: Edizioni ETS.

———. 2013. "Gury's Sources for His Principles Governing the Indirect Voluntary: A Missing Chapter in the History of Double Effect." *Theological Studies* 74, 2:420–41.

Gasparri, Pietro, Card. 1918. *Codex iuris canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus*. New York: P.J. Kenedy and Sons.

Gewirth, Alan, ed. 1951. *Marsilius of Padua, The Defender of Peace*. Volume 1: *Marsilius of Padua and Medieval Political Philosophy*. New York: Columbia University Press.

Hanlon Rubio, Julie, and Paul J. Schutz. 2022. "Beyond 'Bad Apples:' Understanding Clergy Perpetrated Sexual Abuse as a Structural Problem and Cultivating Strategies for Change." https://www.scu.edu/media/ignatian-center/bannan/Beyond-Bad-Apples-8-2-FINAL.pdf.

Holy See. 1953. *Concordato tra la Sancta Sede et La Spagna*. https://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19530827_concordato-spagna_it.html.

———. 1954. *Concordato fra la Sancta Sede e la Repubblica Dominicana*. https://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19540616_concordato-dominicana_it.html.

Höpfl, Harro. 2004. *Jesuit Political Thought: The Society of Jesus and the State, c. 1540-1630*. Cambridge: Cambridge University Press.

James VI/I. 1609. *An Apologie for the Oath of Allegiance . . .*" London: Robert Barker. Digitized by Google.

Jervis, W. Henley. 1872. *The Gallican Church: A History of the Church of France from the Concordat of Bologna, A.D. 1516, to the Revolution*, 2 volumes. London: John Murray. Digitized by Google.

Kainulainen, Jaska. 2014. *Paolo Sarpi: A Servant of God and State*. Leiden: Brill.

Kamen, Henry. 1983. "Clerical Violence in a Catholic Society: The Hispanic World 1450-1720." *Studies in Church History* 20:201–16.

Koch, Bettina. 2012. "Marsilius of Padua on Church and State." In *A Companion to Marsilius of Padua*, ed. Gerson Moreno-Riaño and Cary Nederman, 139–79. Leiden: Brill, eBook.

Lagerlund, Henrik. 2018. "Francisco Suárez." In *Great Christian Jurists in Spanish History*, ed. Rafael Domingo and Javier Martínez-Torrón, 210–23. Cambridge: Cambridge University Press.

Lea, Henry Charles. 2020 [1869]. *Studies in Church History*. Frankfurt: Salzwasser.

McNamara, Celeste. 2020. *The Bishop's Burden: Reforming the Catholic Church in Early Modern Italy*. Washington, D.C.: Catholic University of America Press.

Marsilius of Padua. 1956. *Marsilius of Padua: The Defender of Peace*, Volume II: *The Defensor Pacis*, translated with an introduction by Alan Gewirth. New York: Columbia University.

Mercati, Angelo, ed. 1919. *Raccolta di concordati su materie ecclesiastiche tra la Sante Sede e le autorità civili*. Roma: Tipografia poliglotta Vaticana. Digitzed by Google.

Monumenta Historica Societatis Iesu (MHSI). 1977. Volume 115, *Fontes Documentales de S. Ignatio de Loyola*, ed. Candidus de Dalmases, S.J. Rome: Institutum Historicum Societatis Iesu.

Mull, Nathaniel. 2021. "Divine Law Divided: Francisco de Vitoria on Civil and Ecclesiastical Powers." *Intellectual History Review* 31:201–23.

Pagden, Anthony and Jeremy Lawrance, eds. 1991. *Francisco de Vitoria: Political Writings*. Cambridge: Cambridge University Press.

The Papal Bull "*In Coena Domini*," Translated into English. 1848. London: John Hatchard and Son.

Papal Diplomacy and the Bull "*In Coena Domini . . .*" 1848. London: John Hatchard and Son. Digitzed by Google.

Parker, Geoffrey. 2020. *Emperor: A New Life of Charles V*. New Haven: Yale University Press.

Pereira, Bento. S.J. 1678. *Elucidarium sacrae theologiae moralis et juris utriusque*. Venice: Combi et Lanovii. Digitzed by Google.

Pink, Thomas, ed. 2019. "Introduction." In Francisco Suárez, *Selections from Three Works . . .* viii-xviii. Indianapolis: Liberty Fund. E-book edition.

Prodi, Paolo. 1987. *The Papal Prince: One Body and Two Souls: The Papal Monarchy in Early Modern Europe*. Cambridge: Cambridge University Press.

Prosperi, Adriano. 1988. "Clerics and Layman in the Work of Carlo Borromeo." In *San Carlo Borromeo: Catholic Reform and Ecclesiastical Politics in the Second Half of the Sixteenth Century*, ed. John M. Headley and John B. Tomaro, 112–38. Washington: Folger.

Ricci, Pietro Andrea. 1708. *Synopsis decreta et resolutiones Sac. Congr. Immunitatis super controversiis iurisdictionalibus* . . . Palestrina: Typis Barberinis apud Antonium Ruzzolum. Digitzed by Google.

Rico Callado, Francisco Luis. 2019. "Las faltas del clero diocesano postridentino en los procesos judiciales. La diócesis de Salamanca (1578-1653). *Historia Social* 94:3–22.

Salas, Juan de, S.J. 1611. *Tractatus de legibus, in primam secundae S. Thomae*. Lyon: Ioannis de Gabaino. Digitzed by Google.

Suárez, Francisco, S.J. 1859. *Defensio fidei catholicae adversus anglicanae sectae errores*, Vol. 24 of *Opera Omnia*, ed. Carolus Berton. Paris: Vivès.

Tablet, The. 1911. "Correspondence: Rome: Difficulties Made in Germany." December 23:1013–14.

Tanner, Norman P., S.J., ed. 1990. *Decrees of the Ecumenical Councils*. 2 Volumes. London: Sheed and Ward.

Times (London). 1911. "Roman Catholics and the Law," 7 December, 6.

Vitoria, Francisco de, O.P. 2017. *Relecciones jurídicas y teológicas*. Edición crítica usando los manuscritos y con nueva versión española dirigida por Antonio Osuna Fernández-Largo et al. 2 volumes. Salamanca: Editorial San Esteban.

Tutino, Stefania. 2010. *Empire of Souls: Robert Bellarmine and the Christian Commonwealth*. Oxford: Oxford University Press.

Wagner, Andreas. 2018. "Francisco de Vitoria." In *Great Christian Jurists in Spanish History*, ed. Rafael Domingo and Javier Martínez-Torrón, 84–96. Cambridge: Cambridge University Press.

Walsh, William J., Archbishop. 1912. *The Motu Proprio "Quantavis Diligentia" and its Critics*. Dublin: Browne and Nolan. https://archive.org/details/motuproprioquant00wals/page/n7/mode/2up?view=theater.

Wirenius, John F. 2012. "'Command and Coercion': Clerical Immunity, Scandal, and the Sex Abuse Crisis in the Roman Catholic Church." *Journal of Law and Religion* 27:423–94.