

THE NATURAL MORAL LAW ACCORDING TO
ST THOMAS AND SUAREZ BY WALTER FARRELL, O. P.

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The Natural Moral Law

ACCORDING TO
ST THOMAS AND SUAREZ.

BY

WALTER FARRELL, O.P., S.T.L.R.

A THESIS, BEING AN EXAMINATION
INTO THE TWO CHIEF CHRISTIAN
THEORIES OF LAW AND A DETERMI-
NATION OF THE VALUE OF EACH,
PRESENTED TO THE FACULTY OF
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ERRATA

7	Line 22	for regulated read regulate.
13	5	,, preceeding read preceding.
29	24	,, be read by.
29	25	,, providency read providence.
37	21	,, and at least read at least.
50	2	,, si read is.
57	12	,, excercise read excercise.
71	3	,, oenffder read offender.
76	4	,, , read .
79	27	,, proven read proved.
90	19	,, tuaem read autem.
98	20	,, these thre read these three.
107	3	,, 1 read refers to note 1, p. 106.
117	15	,, varability read variability.
118	8	,, varability read variability.
145	19	,, entive et unive read entis et unius.
145	24	,, attributur read attribuitur.
145	26	,, neququam read nequaquam.
158	Last line	,, Lethielleus read Lethielleux.

The following corrections should be made in the foot-notes :

PAGE.	NOTE.	CORRECTION.
2	3	del. p. 8.
5	2	for f read q.
6	3	,, Ie. read Ib.
10	1	,, Of. read Cf.
24	3	should read Ia zae, q. 91. a 1, et 1a, q. 14, a. 4.
	4	for 24 read 16.
32	3	,, 31 & 32 read 23 & 24.
33	1	,, 35 & 36 ,, 27 & 28.
37	2	,, 34 & 35 ,, 25 & 26.
38	2	,, 45 & 46 ,, 35 & 36.
42	2	,, 45 & 46 ,, 35 & 36.
44	3	,, 14 ,, 7.
45	2	,, rum ,, Ium.
	4	This should be on page 46.
50	4	,, Ib. read Ib. 6.
51	1	,, lib. 4 read cap. 4.
55	2	,, 64 & 65 read 53 & 54.
58	2	,, 63 & 64 ,, 52 & 53.
59	2	,, 64 & 65 ,, 53 & 54.
	3	,, 67 & 68 ,, 56 & 57.
61	1	,, a. 28 et 32 read a. 2, 28 et 32.
63	3	,, 75 ,, 62.
	4	,, 66 ,, 54.
64	3	,, 75 ,, 62.
	4	,, 61 ,, 49.
	1	,, 65 ,, 53.
	2	,, 13 ,, 6.
67	4	,, lib. II 8 read lib. II, cap. 6, 8.
94	1	,, II Sent. d. 24, a. 3, ad. 2 read II Sent. d. 24, q. 3, a. 3, ad. 2.
95	3	,, p. 87, note 2 read p. 88, note 1.
95	4	,, p. 87, note 2 read p. 88, note 1.

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THE NATURAL MORAL LAW

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INTRODUCTION

THE subject of the Natural Moral Law is attracting a great deal of attention to-day in the fields of Catholic philosophy and theology as well as in the natural sciences, such as Anthropology. This statement is borne out by a glance at any of the excellent European Philosophical and theological reviews of to-day, for example "Ephemerides Theologicæ Lovanienses" (April, 1929) and "Revue Des Sciences Philosophiques et Theologiques" (July, 1929). As for the natural sciences, the author has had the opportunity of hearing discussions on this subject by eminent scientists in America and of noting the seriousness of the question from their point of view.

Reasons for this interest are not hard to assign. On the part of Catholic philosophy and theology, the return to the scientific thoroughness of the early Schoolmen which followed naturally on the movement back to Scholasticism, particularly to the doctrine of St. Thomas, has undoubtedly had a great part to play. The advance in scientific knowledge and investigation, giving concrete opportunities of applying and testing existing explanations of the Natural Moral Law, has also been a strong factor in the rejection of much that was little more than unwarranted guesswork and in the earnest effort to put the whole question on a solid basis.

Another element that has added, perhaps unconsciously, to the interest of this question is the

phenomenon of peoples abandoning Christianity, and sometimes even turning to rank atheism, yet maintaining a definite moral code, frequently in open violation of all laws of logic. This has prompted the question as to whether this morality was the result of an unconscious Christian heritage or whether it flowed from nature itself, from a source that no amount of rhetoric could influence.

Whatever the reason for it, the interest is beyond doubt a healthy one and very sadly necessary; for the question of the Natural Moral Law is in urgent need of solution. Ignorance of the nature of this law has gone to incredible lengths outside the Church; and this not only among the people of ordinary education, but among the most learned. It is only such ignorance that allows Dr. Robert Andrews Millikan, winner of a Nobel prize and certainly one of the greatest scientific minds in America to-day, to hail as marvellous discoveries truths that have been commonplace in the Church from the beginning of the Christian era. As he is quoted in "The Literary Digest" for October 12, 1929, he makes such statements as these: "The ancient world, . . . believed that God, or Nature, or the Universe, whichever term you prefer, was a being of caprice and whim. To-day, however, we think of a God who rules through law, or a Nature capable of being depended upon, or a Universe of consistency, or orderliness, and of the beauty that goes with order. This idea has made modern science, and it is unquestionably the foundation of modern

civilization . . . it is not merely the material side of life that this idea has changed. It has also revolutionized the whole mode of thought of the race. It has changed the philosophical and religious conceptions of mankind." etc. etc.

Among our own philosophers there is such a lamentable confusion of theories and opinions that the outsider can well be pardoned his lack of courage to investigate the problem. Leaving aside for the moment the differences between the older theologians, even neglecting all minor questions and difficulties, and considering only the very essence of the Natural Moral Law, we find a modern author¹, in the brief scope allowed to a philosophical textbook, obliged to quote these six opinions: (a) the Natural Moral Law is the Eternal Law; (b) it is the rational nature in itself; (c) it is a habit; (d) it is the intellect itself, the light of reason; (e) it is the dictate of reason showing the good to be done; (f) it is the act of judgment of the reason.

Nor is our task the mere selection of one of these six opinions; the author pauses just long enough, in enumerating these theories, effectively to refute each one. Evidently it is time that some definite, well established ideas be proposed on this subject. Fortunately such ideas have been proposed recently and are still being proposed to-day.

It is not the purpose of this dissertation to add one more theory to the many now flourishing.

1. L. Lehu, O.P., *Philosophia Moralis et Socialis*. p.239.

The aim of this work is not to create, expose or defend a new theory; it is rather to dig out the explanation of St. Thomas from the mass of commentaries and interpretations that are threatening to smother it, to set forth the explanation of St. Thomas, as given by Thomas, and, as far as possible, in the words of the Angelic Doctor.

With this end in view, the principal sources used in this dissertation have been the works of St Thomas himself. The method followed has been

- (1) To give as clear and thorough an explanation as possible of St. Thomas' doctrine on law in general and on the Eternal Law; as these two contain the principles of his teaching on the Natural Moral Law and an understanding of them is quite essential to a full grasp of the Natural Moral Law.
- (2) To expose the theory of Suarez on law, the Eternal Law and the Natural Moral Law, criticizing the first two immediately, the third only at the end of the last chapter when the doctrine of St. Thomas has been fully explained. The purpose of examining the doctrine of Suarez was to further clarify that of St. Thomas and to emphasize the essential elements of the Thomistic teaching by contrast with Suarez' theory which is quite diametrically opposed to it.
- (3) To expose St. Thomas' doctrine on the essence of the Natural Moral Law and on the problems more immediately connected with this key problem, not going contrary to

the traditional Thomistic doctrine, but rather going farther, at times, in the same direction.

It is a well known fact to students of St. Thomas that the Angelic Doctor had, in all its perfection, that scholastic characteristic of brief, comprehensive, exact and very profound definition. This required a complete grasp of the subject as well as the truths immediately connected with it, along with an exact terminology whose meaning was known to the learned world. As a result of this a comprehension of what is contained in these brief, simple looking definitions, can be had only on the same terms that were pre-requisites of their formulation. This is the explanation, perhaps, of why a learned world that has lost not only the terminology but even many of the essential truths, condemns these profound syntheses as vague generalizations. What was once so clear to the great thinkers of Scholasticism has become almost unintelligible to the twentieth century.

Perhaps the best expression of the aim of this dissertation would be to say it hopes to bring out some of the intellectual treasures that St. Thomas put into his profound definitions and explanations of law, the Eternal Law and the Natural Moral Law.

CHAPTER I.

GENERAL NOTION OF LAW.

THE etymological derivation of the word "LAW" is uncertain. The three most famous derivations of the word are those adopted by St. Thomas, St. Isidore and St. Augustine who derive the word respectively from "ligare," "legere" and "eligere"¹. Thus St. Thomas, in his derivation, stresses the essential binding power of law; St. Isidore its permanency; and St. Augustine the prudence with which laws should be framed. Which of these derivations is correct is a question of little importance; certainly each of them expresses some quality which law enjoys, and so all are quite plausible.

Whatever its derivation, the term "law" has been used in widely different senses. In this dissertation we shall make a definite distinction between laws properly so called and improperly so called. Laws properly so called we shall restrict to those laws which regulate the moral actions of men; all other so called laws we shall consider as laws improperly so called, such as physical laws, laws of art, etc., all of which will be outside our consideration.

Taken in this sense, the existence of law is evident from a glance at any modern government. The necessity of law is no less evident from our daily experience. What is not so evident is the

1. 122ae, q. 90, a.1.
St. Isidore, Originum libri, lib.II, c.10.
St. Augustine, Quaest. XX de Levitico.

reason for this existence of law, the *reason* for its necessity, the essential nature of law itself. At least the solution of these problems is not easy for the man outside the Church. For the Catholic these answers are logical, inevitable corollaries deduced from basic Catholic truths, from the teaching of the Church on the creation and government of the world and on the nature of man.

From the Catholic principles—that the world was created and is governed by One, Personal, Supremely Intelligent God¹, and that man is a rational animal² *i.e.* possessing an immortal soul and enjoying reason and free will, yet defectible because he is a creature—we have, as simple deductions, all the essential notions connected with law. Let us consider the Catholic teaching for a moment.

We have held before our eyes as the creator of the world this One Personal God, supremely Intelligent³. What mode of action could be expected, or rather demanded, from such a Supreme Being as He sets about His work of creation and consequent government of the world. At the very least He would have a definite plan of this creation in His mind before beginning the work⁴. We would demand this much from an intelligent man.

Granting this much, which cannot be denied, it follows that in the mind of God there was a very definite choice of means to attain the end that He

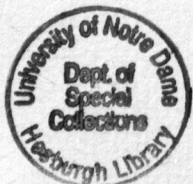
1. Ia,q.4, arts. 1,11,3; Ib. q.44,a.1; Ib. q.103,a.1et a.3.
2. Contra Gent. Lib. II, cap. 56-72; Ia, q.75, proemium; Ib.q.78,a.1.
3. Confer p.8 note 1.
4. Contra Gent. Lib. III, cap. 1 et 2; Ia2ae,q.93, a.1 in initio.

had in view in creating; a choice of efficacious means, rules of guidance of His work to its end, decision as to the manner in which He would direct the work to its end. We must see at once the marvellous scope of these means to attain the end of creation for they must extend to every created thing. At the same time we see clearly how they must be adapted to the diversity of natures created by God, how each creature must be directed to the great end in a manner suitable to the nature given it by the Creator.

These conclusions from the nature of the Creator contain all the essential notions of the Eternal Law, the source of all law; and at the same time they contain the explanation of the existence of all laws among men, as will be apparent from the following pages of this chapter.

From the Catholic doctrine on man we have conclusions no less pertinent. The Church teaches that man is a creature of body and soul¹, the king of creatures in this world because of his spiritual side, because of his great gifts of reason and free will. Yet, for all that, still a creature, capable of failure, defectible². It is evident then that man, being a creature, a part of this work of creation which was intelligently planned for an end, also has some very definite part to play in creation, some definite end to attain. It is no less evident that being by nature defectible, he needs guidance, helpful rules of conduct to assist him in reaching his end.

1. Concil. Toletanum,XV, 688, Protestatio de Trinitate et Incarnatione, Denziger 295, p.133.
2. Ia,q.63, a.1 corp.



This direction of man must, first of all, be a direction of reason since man is a creature of reason, capable of knowing the end and of choosing the means to the end. Because he enjoys free will man can use his freedom to follow this guidance of reason or he can abuse his liberty and refuse to follow—so the compelling force behind these guiding rules must be moral, not physical. In a word, man can be guided to the end for which he was created only by a moral law, a rule of reason given to reasonable creatures and carrying with it a moral obligation. God must have selected some reasonable, moral rules of conduct, applicable to all men—for human nature is everywhere the same—yet at the same time within the reach of every individual human being, known or at least capable of being known by every man. These rules of conduct we know as the Natural Moral Law.

A few more very obvious conclusions from these fundamental truths could be easily drawn, conclusions which would be no more than the short finishing strokes that would complete the miniature of law as contained in Catholic teaching. But the deductions we have already made are quite sufficient for our purpose in this dissertation, as they contain the essential notions of law as far as we shall treat of them.

It is to be noted that this guidance, these rules have the one ultimate source and are all for the one ultimate purpose of helping man to attain the end for which he was created, of guiding him that he might not select means which would rather

divert him from this end. Or, to put the same truth in other words, all true law is for the express purpose of protecting man's liberty, not of limiting or destroying it¹; for liberty, in its ultimate resolution means nothing more than a choice of means leading to an end².

This obvious inclusion of all the essential elements of law in fundamental truths perhaps explains the sporadic nature of the writings of the Fathers on this subject, none of whom wrote a complete and ex-professo tract on laws. It was unnecessary and there were so many other questions which demanded immediate attention and explanation. It remained for the Scholastics (perhaps Alexander of Hales was the first) with their scientific treatment of all doctrine, to give the question exhaustive treatment.

St. Thomas had breathed deeply of this scientific atmosphere; at the same time he had a full knowledge, a profound intimacy with the basic truths upon which law is founded. It was with such a background that he wrote his classical definition of law, which we have only to quote and explain to give a full exposition of Thomistic teaching on law. But before proceeding to this definition, let us note that we are speaking of law in a still more restricted sense than moral law in general. Law, strictly taken, can be spoken of in three ways: as it is in him who makes the law, the legislator, as in the one regulating; as it is in him

1. Prummer, *Manuale Theologiæ Moralis*, Vol. I, 144, p. 101.
2. *1a, f. 62, a. 8, ad 3 um.*

for whom the law is made, the subject, as in the one regulated: finally as it is contained in some permanent external medium, for example in a book or code of laws¹. In this definition, St. Thomas is speaking of law in the first sense, as it is in the legislator as in the one regulating. In this sense law is "a certain ordination of reason for the common good, made by him who has care of the community and promulgated"².

I. "A certain ordination of reason." The word "ordination" shows us that St. Thomas is speaking of the practical intellect as opposed to the speculative intellect; ordination is the work of prudence, which is an act of the practical intellect³. That is, law has to do with things to be done rather than with things merely to be known⁴. It is the term of this act of the practical intellect, not the act itself, the proposition of the practical intellect corresponding to the proposition of the speculative intellect, that St. Thomas means by this first phrase of his definition⁵.

But not every proposition of the practical intellect is a law. This would include counsels and particular precepts, *i.e.* precepts given to individuals by any superior. This proposition of the practical intellect is a precept, *i.e.* the imperium of the intellect commanding that which the will has chosen; an act essentially of the intellect,

1. 1a2æ, q.90, a.1 ad lum; Billuart, Tract. de Legibus, Diss.I,art.1.

2. 1a2æ,q.90,a.4

3. 2a2æ,q.47,a.8; 1e.a.2.

4. 1a2æ,q.90,a.1 ad 2um; Ib.q.93,a.1 corp.

5. 1a, q.79, a.11.

since it is ordinative and regulative, but implying a previous act of the will from which it has its motive power¹. Since precept deals only with the means to the end, not the end itself, it is apparent that St. Thomas limits law to the ordination of means to an end—"ad bonum commune"².

This point, namely of precept being essentially an act of reason, must be particularly stressed for it is the characteristic which distinguishes the teaching of St. Thomas on law from the voluntarism of Suarez. We shall treat of this more fully in our third chapter, in criticising the doctrine of Suarez; for the present it will be sufficient to note that St. Thomas put this doctrine in his usual brief and profound way when he said that "lex . . . est enim preceptum commune"³. With a slight notion of what St. Thomas meant by precept, this short phrase also gives an indication of another characteristic of the Thomistic doctrine on law, which will also be brought out more clearly as this dissertation proceeds; that is, that the primary purpose of law is that it regulated human actions. It is above all a rule or norm of action since it is a precept and so ordains to action⁴; the idea of obligation, though of course essential, is not the element particularly stressed in the thought of St. Thomas; it is rather a corollary from the nature of precept.

To be law this dictate of practical reason

1. 1a2æ,q.17,a.1 corp et ad lum; 2a2æ, q.47,a.8 corp. et ad 3um.

2. 2a2æ,q.47,a.8; Ib. q.50; 1a2æ,q.90, a.4

3. 1a2æ,q.98,a.6 ad 2um.

4. Ib. q.17,a.1

must be efficacious, at least in causing an obligation on the part of the subject, which is again only saying that it must be a true precept¹. It must be firm and perpetual in the sense that it does not cease with the death of the legislator, nor is it made only for present but also for future subjects. The reason for this is that the community, for which the law is made, is considered to be firm and perpetual². St. Thomas himself indicates this when he says: "Constituitur enim communitas civitatis ex multis personis, et ejus bonum per multiplices actiones procuratur; nec ad hoc instituitur quod aliquo tempore modico duret, sed quod omni tempore perseveret per civium successionem, ut Augustinus dicit"³.

The statement that law is an ordination of reason is readily proved by St. Thomas⁴. The distinguishing mark between the acts of man and the brutes is that man's actions are always ordained to an end by man himself; they proceed from the will, under the attracting influence of the end, but are human acts, *i.e.* distinctively from man, only in so far as they are directed, ordained to this end by reason. In other words, human acts are essentially deliberate. It is the reason which does that which the brutes cannot do—see the end, judge the means to that end and ordain and direct these means to the end in view; it is the

1. Quodlib. 5, art. 19; confer. Lottin, "Definition classique de la loi" p. 272.

2. Billuart, Tract. de Legibus, Diss. I, art. 1.

3. 1a2æ, q. 96, a. 1 circa finem.

4. Ib. q. 90, a. 1

reason that makes human acts really such, in a word it is the reason which is the first principle in human acts, as human acts. This ordering of actions to an end is precisely the chief work of law; we have then a perfect parallel between the work of reason and of law so that it follows that law is essentially a thing of reason¹.

This argument is advanced in a metaphysical way by St. Thomas on the basis of the principle that what is first in any order or genus is the rule or measure of that order². Applying this principle to actions, we see that the end is the first principle of every action; without the end no action would be placed and consequently, in accordance with this principle, all actions are judged by the end, according as they do or do not lead to the attainment of the end³. Bringing this principle down still further to the actions of man, we see that for a specific determination of this rule or measure of human actions, we must determine definitely what is the end of human actions.

Since the end of every nature is its ultimate perfection, or in other words the perfection of its form, and the form of human nature is the rational soul, the natural end of man will be the perfection of his rational nature: "Bonum cujusque rei est in hoc quod sua operatio sit conveniens suae formæ. Propria autem forma hominis est secundum quod est animal rationale. Unde oportet quod operatio humana sit bona ex hoc

1. 1a2æ, q. 90, a. 1

2. Ib.

quod est secundum rationem rectam”¹. All the actions of man will be judged good or bad according as they lead to this end or detract from its attainment. But this end, precisely as it is the rule or norm of human actions, is in reason (*finis in intentione*), it is the ideal of his nature for which he is striving. His acts are good or bad, then, according as they are in accordance with this right reason or opposed to it, according as they are reasonable or unreasonable¹. Reason, as containing the end of human actions (*finis in intentione*), is thus the principle of human acts; and, like the first in any order, it is the norm of that order, the rule of human actions. Since this is precisely the work of law, it follows that law is a thing of reason.

This argument brings out very strongly the opposition of St. Thomas to those who maintain that law is essentially the work of the will. It is true that some movement of the will is necessary, namely election, as we shall show more exhaustively later on; and, at least as regards positive laws, also a movement of application. But no such movement of regulation or measuring, such as pertains to the essence of law, is attributed by St. Thomas to the will². Indeed the will is incapable of such a movement for it is a *blind* faculty; so for an act of the will to become a law it would be necessary for the will to have both the movement and the regulation of the intellect,

1. In II Ethicorum, lect. 2. Of. 1a2æ, q. 18, a. 5; Ib. q. 100, a. 1
2. 1a2æ, q. 17 art. 1 corp et lum; Billuart, l. c. Diss. I, art. 1.

while the intellect needs only the movement of application from the will³. St. Thomas himself tells us that the will unregulated by the intellect is rather wickedness than law⁴. It is the opinion of some of the other authors, certainly Sylvius and perhaps Billuart, that even this movement of the will is not required for the efficacy of the Eternal Law⁴. But we will touch on this question in the following chapter.

St. Thomas proposes another argument to prove his position; an argument which shows more clearly the part played by the will in law, as it is drawn from his treatment of the acts imperated by the will¹.

In the first article he asks whether “imperium” or command is an act of the reason or of the will. His answer is that essentially this “command” is an act of the reason because it ordains him, to whom the command is given, to action; and this ordination is by way of intimation or denunciation, which is essentially an act of the reason. There is however an act of the will presupposed, by whose power the reason moves to the exercise of the act. Applying this teaching to law, we find that to give precepts and to prohibit, in other words to command, is the work of law; as has already been proved, to command is the work of the reason, so that law must pertain essentially to reason, though it presupposes a movement of the will by the

2. Cajetan in 1a2æ, q. 90, a. 1 ad 3um.

3. 1a2æ, q. 90, a. 1 ad 3um.

4. Billuart, l. c.; Sylvius in 1a2æ, q. 90, a. 1, concl. III.

1. 1a2æ, q. 17, a. 1.

power of which the reason moves through the imperium to action¹.

A glance at St. Thomas' ex-professo treatment of "imperium" leaves no doubt as to the part he assigns to the will in this act. It is self evident that ordination, taken precisely as such, *i.e.* the orderly arrangement of things in view of an end to be obtained, is the work of intelligence. Consequently it is reserved to reason; it is impossible of accomplishment by a blind faculty such as the will. The question as to the possibility of this act being from the will arises when we add to this ordination the idea of command, the idea of movement ordered, as St. Thomas puts it, "intimando vel denuntiando," *i.e.* by effective command.

The will is unquestionably the first principle of all free movement in man; but St. Thomas leaves no room for equivocation when he develops his thought by saying: "Sed ratio potest aliquid intimare vel denuntiare dupliciter: uno modo absolute; quæ quidem intimatio exprimitur per verbum indicativi modi, sicut si aliquis alicui dicat: Hoc est tibi faciendum. Aliquando autem ratio intimat aliquid alicui, movendo ipsum ad hoc; et talis intimatio exprimitur per verbum imperativi modi, puta cum alicui dicitur: Fac hoc"². That is, not only the ordination contained in "imperium," but also the movement of effective command is essentially the work of the

1. 1a2æ, q.90, a.1 Sed Contra; Ib. q.17, a.1
2. 1a2æ, q.17, a.1 corp et ad rum.

reason. The difficulty of the will is solved by St. Thomas in the same way that he solves the difficulty of the reasonableness of the election of the will; *i.e.* just as the election participates the preceding judgment of the reason and is thus reasonable, so imperium of the reason participates the preceding election of the will and in this way has the power to move. We shall treat this question more exhaustively in our third chapter; here it is only necessary to insist on the true thought of St. Thomas.

II. "To the common good." This is the second part of St. Thomas' definition of law. It refers to the common good of the community, which good is defined by St. Thomas as the happiness of that community¹. This is only another way of saying that the common good of the community consists in the attainment of its final end, *i.e.* in the perfection of the form of that community since the good of every nature is in the perfection of its form² and a society is a moral being or nature.

The final end of man is his happiness; a supernatural happiness it is true, but not all communities have to deal with leading man to his supernatural end directly. Nevertheless they have at least to do with the attainment of his secondary ends of natural or temporal happiness, which are a means to the supernatural final end³. As law is primarily an ordination or regulation of human

1. 1a2æ, q.90, a.2.

2. II Ethic. lect.2; cf. 1a2æ, q.18, a.5; Ib. q.1 a.5.

3. Gonet, Manuale Thomistarum, Tract. VI, cap.1. p. 245.

acts to an end, it follows that it should deal above all with the direction of these acts to the supreme or final end. That this is the purpose of law is proved from the common consent of men who immediately protest the enforcement of a law that is against the common good. It can also be shown by induction, by a momentary consideration of different laws, bearing in mind the fact that the common good can be obtained either directly or indirectly, *i.e.* by benefiting the community immediately or mediately by benefiting certain individuals¹.

St. Thomas proves that the common good is the end of law, the reason for its existence. Law pertains to that which is the principle of human acts—reason—from the fact that it is a rule and measure of these acts, as we have already shown. Just as reason is the principle of human acts, so also in the practical reason itself there is something which is the principle with respect to everything else; hence it is to this principle of principles that law must principally and chiefly pertain. This principle of principles, the very first principle in things to be done, with which the practical reason deals, is the final end of man, happiness or beatitude. Further, since every part is ordained to the whole, as the imperfect to the perfect, and since every man is a part of a perfect community, it is necessary that law properly deal with the order to the common happiness².

1. Billuart, Tract. de Legibus, Diss. I, a. 1.

2. 1a2æ, q.90, a.2.

It is to be noted that the common good mentioned here is that of a perfect community¹, which may be defined as a society, *sui juris*, having in itself its own sufficient means to attain its proper end and independent, in its own order, of every other society². The reason for this restriction of law to a perfect society is pointed out by St. Thomas himself when he says that after all man is a part of society (being by nature social) and it would be unreasonable to invert the welfare of the whole to that of the part, just as it would be unreasonable to order the perfect to the imperfect. It is of a perfect community that man constitutes a part³.

III. "*By him who has care of the community.*" In this third part of his definition, St. Thomas points out the author of law. No private person has the right or power to legislate for the whole community; there is no reason why this individual's command should be imposed on the community rather than the command of any other member of the community. Only the community itself, its vicar or he who has care of it, has the right and power to legislate. Law first and principally has to do with the ordination to the common good or to the final end; and it is the sole right of him to whom the end is proper to ordain the means to that end⁴. Here again St. Thomas is insisting on the rationality of law. It is

1. Ib. art.3 ad 3um.

2. Prummer, Manuale Theologiæ Moralis, 143, p.100.

3. 1a2æ, q.90, a.2.

4. Ib. a.3

not something extrinsic imposed by the will of the superior ; it is the regulation of actions to an end and so is nothing more than the expression of right reason as regards the way in which this end is to be obtained, the expression of the reason of the community for which the law is made.

Cajetan points out here that St. Thomas uses two expressions, namely, "the vicar of the community" and "he who has care of the community." St. Thomas does not use these as synonymous terms ; rather in the use of the former he is speaking in a restricted sense of human legislators, in the use of the latter, he is speaking universally so that the term is universally true, even being applicable to the supreme Legislator, God¹.

IV. "Promulgated." This fourth and last part of St. Thomas definition of law is inserted in the definition, says Billuart², just as "obscurity" is included in the definition of faith ; that is, it does not pertain to the essence of law but is a necessary condition, a proprium³. This is easily seen because law would hardly oblige men if they did not know the law ; which is precisely the purpose of promulgation—to make the law known. That it does not pertain to the essence of law is equally evident from our consideration of law as a rule or measure ; promulgation is rather the application of this rule or measure than a constitution of it⁴.

1. Cajetan, in *Iamzæ*, q. 90, a. 3.

2. Billuart, *Tract. de Legibus*, Diss. I, a. 3 ad 2um.

3. *Ia 2æ*, q. 90, a. 4.

4. *Ib.*

Philosophically this same truth can be proved by a consideration of the nature of essences¹. It is only required that the essence have the power or aptitude required of the particular nature which it constitutes. Law would have this essential aptitude to regulate and measure human acts before its promulgation or without it ; promulgation merely completes the law "in actu secundo," or in other words, it brings it down to actual application, makes it actually oblige here and now. The discussion as to whether promulgation pertains to the essence of law is not of any great value as far as the obligation of the law is concerned. All agree that no man is bound by a law until it has been promulgated. But it may be of some utility in our discussion of the nature of the Eternal Law and the Natural Moral Law.

From this discussion of the definition of law, we see how law differs from a counsel. The latter carries with it no notion of strict obligation, such as is always to be found in law, and counsel can be given by a private person². Thus too we see that law differs from a simple precept (one given to a particular person or persons) in three ways : law is given for the community, precept for particular persons ; law is perpetual in the sense already explained, simple precept is temporal ; law can be framed only by him who has care of a perfect community, precept can be given by any legitimate superior³.

1. Billuart, *l.c.* "Dico" 2, "prob." 2.

2. *Iazæ*, q. 92, a. 2 ad 2um.

3. Gonet, *Manuale Thomistarum*, Tract. VI, cap. I. p. 245.

The difference between law and a common or universal precept (given to the whole community) is not so clear. St. Thomas himself says: "lex . . . est enim preceptum commune"², thus plainly identifying law and common precept. But to-day the term precept does not seem to have the same general meaning attached to it by St. Thomas. There is a great variety of opinion on this question, which after all is not of such great importance. In the sense in which we use the word, this one distinctive mark seems to cling even to the common precept, namely that it is temporal in the sense that it ceases to oblige with the death of the superior; while law is negatively perpetual³. This question will come up again in our discussion of the precepts of the Natural Moral Law, but as St. Thomas clearly defines his terms in speaking of these precepts, we will have no difficulty in this matter.

St. Thomas assigns four "acts" to law⁴; but of course these are not acts properly so called, since law is neither a potency nor a habit and so cannot have an act⁵. The sense meant by St. Thomas is that these things pertain to the integrity of law. They are to be found in all laws; not necessarily at one and the same time, but in the sense that no laws exist that do not contain at least one or the other of these acts. They are:

2. 1a2æ, q.98, a.6 ad 2um.

3. Gonet, l.c.

4. 1a2æ, q.92, a.2

5. Billuart, Tract. de Legibus, Diss. I, art.5, Dico 2, nota.

to command, to prohibit, to permit and to punish¹.

We see at once that these four acts correspond to the different human acts. Thus good acts are commanded, bad acts are prohibited and punished, indifferent acts are permitted. It is to be noticed that "to oblige" is not mentioned among these acts of law; obligation is included in all four acts. Even permission carries with it the idea of obligation in so far as it obliges others not to interfere with the carrying out of the permission². Indeed the notion of obligation is included in the very notion of precept and consequently of law, as St. Thomas tells us; "preceptum importat rationem debiti"³.

The effect of law is to make men good, since its end is to ordain men to their final end⁴. But we must note with St. Thomas, that not all laws make men good, "simply speaking" that is, in the sense that the moral virtues make men good: every law makes men good, at least in the sense that it makes them fulfil one of their duties, that of obedience as citizens⁵.

The division of law, which in its various ramifications need not concern us, can be summed up for our purposes as follows⁶:

1. 1a2æ, q.92, a.2

2. Billuart, l.c. a.5 Dico 2, Inst.

3. Quodlib. 5, a.19

4. 1a2æ, q.92, a.1

5. Ib. corp., Sed Contra, ad 3um et ad 4um; Billuart l.c. Dico 1, nota.

6. Prummer, l.c. 146, p. 101-102.

1. Divine Law—whose immediate author is God:
 - (a) Eternal Law—the reason of divine wisdom according as it is directive of all creatures to their final end.
 - (b) Natural Moral Law—the participation of the Eternal Law in rational creature.
 - (c) Divine Positive Law—contained in the Old and New Testament; promulgated by a special divine revelation.
2. Human Law—law framed by human authority:
 - (a) Ecclesiastical—framed by ecclesiastical authority.
 - (b) Civil—framed by civil authority.

THE ETERNAL LAW.

A THOROUGH grasp of the Eternal Law is essential for a profound understanding of the Natural Moral Law. The same is true, indeed, of all laws, since the Eternal Law is the source from which all are derived¹; but it is particularly true of the Natural Moral Law, not only because of its more immediate derivation from, but also because of its intimate connection with the Eternal Law.

From the point of view of derivation, the Natural Moral Law is derived from the Eternal through the medium of natural reason; while human laws are derived through the mediums of human reason and human authority². But over and above this derivation, the connection between the Eternal Law and the Natural Moral Law is so intimate that St. Thomas could give a comprehensive definition of the latter by simply stating that it was a "participation of the Eternal Law in a rational creature"³; and this definition has been repeated as adequate by philosophers and theologians since the time of St. Thomas.

The connection of these two laws is often stated more strongly. For example the Natural Moral Law is called a "promulgation" of the

1. 1a2æ, q. 93, a. 3.

2. Gonet, *Manuale Thomistarum*, Tract. VI, De Legibus, cap. II, p. 248.

3. 1a2æ, q. 91, a. 2

Eternal Law¹; or it is said that the ordination of all things, in the mind of God, pertaining to rational nature is the Eternal Law, the impression of this ordination on the mind of man is the Natural Moral Law²; or again, that the Eternal Law, passively taken, coincides with the Natural Moral Law³. There is then more than sufficient reason for including a thorough treatment of the Eternal Law in a dissertation dealing with the Natural Moral Law.

EXISTENCE.

The existence of such an Eternal Law is proved by St. Thomas from his doctrine on providence, on the divine intellect and his general tract on law. The world was created by God⁴, an intelligent agent, consequently it was created for a definite end⁵. To attain that end it is governed, directed by God⁶. The order of the world to its end is no less a created thing than the material substance of the world itself; consequently, since this order is the result of an intelligent creation, it postulates a pre-existing plan in the mind of God, *i.e.* providence⁷. Providence, or the order of things to their end existing in the mind of God, being established, the existence of the Eternal Law is evident from a mere application of the

1. Gredt, *Elementa Philosophiæ*, Vol. II, p. 287.

2. Prummer, *Manuale Theologiæ Moralis*, Vol. I, 151, p. 105.

3. Willems, *Philosophia Moralis* (Vol. III), p. 107.

4. 1a, q. 44, a. 1

5. *Con. Gent.* lib. III, cap. 1 et 2; 1a2æ q. 93, a. 1.

6. 1a, q. 103; *Con. Gent. l.c.*, cap. 64.

7. 1a, q. 22, a. 1

general principles of law laid down by St. Thomas and explained in our first chapter.

According to these principles, law is nothing more than the dictate of practical reason in the governor of a perfect community; the "ratio gubernationis" or "ratio providentiæ" as St. Thomas expresses it in other passages¹, has the essential elements of law². The mind of St. Thomas is evident: he is considering providence as one phase of the government of the world, the actual execution of this providence as the other phase, as he has already said explicitly in the *Prima Pars*: "ad providentiæ duocuram pertinent: scilicet ratio ordinis, quæ dicitur providentia et dispositio; et executio ordinis, quæ dicitur gubernatio. Quorum primum est æternum; secundum temporale"³. The "ratio" or foundation of these two aspects, a dictate of the divine practical intellect, is the Eternal Law. St. Thomas is drawing an almost perfect corollary from his general treatment of law, as is evident from the article treating of the existence of the Eternal Law⁴.

This law governing the universe is strictly a law and is eternal. Of the eternity there can be no question; the law exists in the mind of God, Who conceives nothing in time but has an eternal

1. 1a2æ, q. 93, a. 5; ad 3um; *Con. Gent. l.c.*, cap. 115, 121, etc.; *De Veritate*, q. 5, a. 1 ad 6um.

2. 1a2æ, q. 91, a. 1 corp. et ad 1um.

3. 1a, q. 22, a. 1 ad 2um.

4. 1a2æ, q. 91, a. 1

concept³. The claim that this is a law in a strict sense will be abundantly evident when we treat of the essence of this law. One obvious difficulty may suggest itself here, namely that since the law is eternal, it could not possibly be promulgated. We have shown in Chapter I⁴ that promulgation does not pertain to the essence of law, but rather to the application of law, or law "in actu secundo."

Even though the Eternal Law could not be promulgated from eternity, it would still have the essential notes of law from eternity. But there was certainly one element of promulgation present from eternity. Not, of course, on the part of the creature knowing the law, as the creature exists only in time¹; but on the part of God. St. Thomas indicates this when he says that God ordered the government of things foreknown by Him²; this short phrase is a very concise summary of a very profound doctrine. After the decree of the divine will in which God knows all actual things, these things were present to the divine mind as they are in themselves, not through any mental species and for this reason the knowledge of God is said to be intuitive.

The eternity of God includes and far surpasses the whole extent of time. Thus the divine "intuitus" sees all things as they are present to the divine mind, as they are actually in them-

3. Ib. et Ia, q. 14, a. 4

4. vid. supra p. 24 seq.

1. Ia2æ, q. 91, a. 1 ad 2um.

2. Ib. ad 1um.

selves¹. From the part of God, promulgation of this Eternal Law is quite perfect, as the creatures to whom the law is given are actually present to God; the defect comes from the part of the creatures, which do not know the law until they exist in time. As Billuart points out, the promulgation demanded of a law is not necessarily such as would make the law known to every subject actually existing but a promulgation by which the law can be known by a subject when he does actually exist. Thus human laws are promulgated not only for the present but also for the future citizens; in the same way, if man existed from eternity he would know the Eternal Law from eternity².

THE ESSENCE OF THE ETERNAL LAW.

Coming down to a more profound examination of the exact nature of this law, we find St. Thomas has defined it as: "ratio divinæ sapientiæ, secundum quod est directiva omnium actuum et motionum"³. To understand all that is contained in this definition, it is highly important to note that St. Thomas expressly wished to retain, in explaining the Eternal Law, all the essential elements of law which he brought out in Question 90 of this tract on law and which we have explained in our first chapter. So we read: "ratio gubernantis actus subditorum rationem legis obtinet, *servatis aliis quæ supra esse diximus de legis ratione.*"⁴

1. Ia, q. 14, a. 13 corpus et ad 3um.

2. Billuart, Tract. de Legibus, Diss. II, a. 1

3. Ia2æ, q. 93, a. 1

4. Ib.

Thus the Eternal Law will be the product of the divine practical intellect ; moreover a precept of that practical intellect and directive to the common good. All this is clearly brought out in the definition we have given : "recta ratio divinæ sapientiæ" indicates that the law is essentially of the intellect ; in as much as it is described as "directiva actuum etc." it is clearly of the practical intellect as it deals with things to be done⁴ ; and it is a precept for it directs or ordains to an end⁵ ; that it is not only for the common good, but for the supreme common good or ultimate end, is also evident from the fact that it is a precept of the divine wisdom and the divine wisdom necessarily directs all its actions to the divine good, or final end of every created thing⁶.

The one fault that might be found with this definition is its inclusion of all things, not merely of rational creatures. Yet rational creatures are alone capable of receiving law, *i.e.* strictly taken as moral law. This is not an oversight on the part of St. Thomas, as is clear from the rest of the question ; and we shall show that St. Thomas expressly held that only rational creatures were capable of receiving laws strictly so called. But we will leave this discussion until we treat of the scope of the Eternal Law.

It will suffice for the present to get definite ideas of the essential notions contained in the

4. 1a, q. 79, a. 11

5. 2a2æ. q. 47, a. 8 1a2æ, q. 17, a. 1

6. 1a, q. 19, a. 2

Thomistic concept of Eternal Law. We have seen that St. Thomas considers the Eternal Law as an eternal precept of the divine practical intellect ordaining all things to the common or divine good and promulgated, incompletely, in eternity.

Before delving further into this question, we must note carefully the caution St. Thomas himself gives us in the *Contra Gentes* : "non autem sic præmissa intelligenda sunt quasi aliud sit divina bonitas et aliud divina essentia et aliud scientia rerum dispositionem continens, sed quia secundum hoc alia et alia est ejus consideratio"¹. In God all things are one except the subsistent relations ; these distinctions we are making are rather from the part of our manner of consideration than from the part of God, but they are necessary for even our feeble understanding of divine things.

We are now in a position to obtain a clearer and more profound knowledge of the Eternal Law by comparing it with the divine ideas and with providence. This comparison will show us the exact place of the Eternal Law in the divine mind.

The Eternal Law differs from the divine ideas in several ways easily perceived. Divine ideas are concerned solely with the ideal order, the merely possible, while the Eternal Law deals with things in the actual order, things definitely predetermined to exist. Consequently the divine ideas treat of things as possible of creation ; the Eternal

1. *Con. Gent. lib, III, cap. 80*

Law deals with things to be governed. Finally the divine ideas have a certain distinction and plurality in as much as they have reference to the distinct natures proper to singular things; the Eternal Law, ordering all things to a common end, has an essential note of unity. These differences or their equivalents are noted by practically all the authors.

The distinction between providence and the Eternal Law is not so easily seen. St. Thomas' definition of providence as "ratio ordinis rerum in finem in mente divina existens"¹ may seem to come very close to his definition of the Eternal Law as "ratio divinæ sapientiæ, secundum quod est directiva omnium actuum et motionum"². To add to this difficulty, Cajetan says briefly that divine providence, in as much as it is the measure and obligatory rule of all things has the "ratio legis"³.

This difficulty has been rather increased than lessened by the differences, very marked differences, pointed out by many of the authors⁴. Thus three differences are noted: (a) the Eternal Law has obligatory power, providence has not; (b) The Eternal Law deals with the common good of the universe, providence with the particular good of singular things; (c) The Eternal Law is like a principle, providence like the conclusion from this principle.

If we take the first two of these three differences

1. 1a, q. 22, a. 1

2. 1a2æ, q. 93, a. 1

3. Cajetan, in 1 am 2æ, q. 91, a. 1.

4. e.g. Billuart, Tract. De Legibus, Diss. II, a. 1

in the obvious meaning of the words, they are quite opposed to the Thomistic teaching on providence. St. Thomas certainly taught that providence has obligatory power. Thus in his tract on providence, he reduces it to prudence and says providence "est enim principalis pars prudentiæ"¹, which is precept or command². Further on in this same tract we find the following; "Providentia autem, sicut et prudentia, est ratio in intellectu existens præceptiva ordinationis aliquorum in finem"³.

This doctrine is confirmed by the interpretation of the Salamanticenses: "providentia . . . ponitur in actu intellectus, in quo consistit prudentia, nimirum in præcepto et imperio . . . Si autem providentia non esset præceptiva, ac proinde in tali præcepto consisteret, non redderetur a D. Thoma sufficiens ratio quod dixerat, nimirum providentiam esse in intellectu, atque adeo essentialiter esse actum intellectus præsupponentem voluntatem finis; cumque in sententia ejusdem Doctoris . . . providentia non solum præsupponat voluntatem finis, sed etiam Synesim et electionem . . ."⁴. This distinction given by the authors between Eternal Law and providency may be understood of the radical source of this obligatory power, which is the Eternal Law, since the very existence of providence comes from the Eternal Law, as we shall see.

1. 1a, q. 22, a. 1

2. 2a2æ, q. 47, a. 8.

3. 1a, q. 23, a. 4

4. Salamanticenses, Vol. II, De Prædestinatione, Disp. II, Dubium II, Vera Sententia.

As for the second difference noted, *i.e.* that providence is about singular things, the Eternal Law about the common good, here again we find a distinct disagreement from the explicit words of St. Thomas. Thus: "Sed necesse est dicere omnia divinæ providentiæ subjacere, non in universale tantum, sed etiam in singulari"¹. an expression that would seem to leave no doubt as to the mind of St. Thomas as he takes the universal nature of providence almost for granted. Again we find: "Cum igitur Deus sit universalis provisor totius entis, ad ipsius providentiam pertinet ut permittat quosdam defectus esse in aliquibus particularibus rebus, ne impediatur bonum universi perfectum"². This same doctrine is taught expressly in the *Summa Contra Gentes*³.

In the *Contra Gentes* is perhaps the basis of this distinction given by the authors. Here St. Thomas insists that providence extends to the very smallest things, concluding his argument in these words: "ejus igitur providentia est omnium singularium immediate"⁴. In the mind of St. Thomas, providence was not restricted to singular things, though it did extend to the smallest; in this latter respect it differed from the Eternal Law which is concerned *only* with the universal.

The third distinction placed between providence and the Eternal Law seems to be the real concept of St. Thomas: the Eternal Law is the

1. 1a.q.22,a.2.
2. Ib. ad 2um.
3. *e.g.* lib. III, cap. 75.
4. Ib. cap. 76.

general principle, providence is like a conclusion from this principle. We will understand this better if we grasp the basis of this analogy, the other member of which was before the mind of St. Thomas in writing of the Eternal Law. In *De Veritate*, St. Thomas tells us that: "lex enim æterna est consideranda in Deo, sicut accipiuntur in nobis principia operabilium naturaliter nota: ex quibus procedimus in consiliando et eligendo, quod est prudentiæ, sive providentiæ"¹. St. Thomas was drawing an analogy between the Natural Moral Law and its precepts, on the one hand, and the Eternal Law and providence on the other. In the Natural Moral Law we have two fundamental general principles—Bonum est faciendum, malum est vitandum—from these are drawn all the other precepts of the Natural Moral Law; so also the Eternal Law is the general principle from which all the ordinations of providence flow.

That this is indeed the sense of St. Thomas can be shown quite clearly. In *De Veritate* we read: "Dicendum quod providentia in Deo proprie non nominat legem æternam, sed aliquid ad legem æternam consequens . . . Et similiter etiam in Deo lex æterna non est providentia, sed providentiæ quasi principium; unde et convenienter legi æternæ attribuitur actus providentiæ; sicut et omnis effectus demonstrationis principiis indemonstrabilibus attribuitur"¹. The

1. *De Veritate*, q.5, a.1 ad 6um.
1. *De Veritate*, q.5,a.1 ad 6um. cf. Ib. ad 7um.

same doctrine can be found in *Contra Gentes*².

It may be noted that in the whole tract in the *Contra Gentes*, St. Thomas insists again and again on this conception of the Eternal Law as the "ratio providentiæ." In the *Summa Theologica* itself, throughout all of Question 93 (1a2æ) St. Thomas repeatedly speaks of the Eternal Law as the "ratio providentiæ" and the "ratio gubernationis divinæ." By this he means not only the actual government, in its execution, but also as it exists in the divine mind. Even though we did not have *De Veritate* and *Contra Gentes* to assure us of this, there are sufficient indications of it in the *Summa* itself. We have already quoted one text quite explicit in this regard³; and in this Question 93 itself the minor of an objection reads: "Sed ratio providentiæ est lex æterna, ut dictum est"⁴—a statement which St. Thomas in his response not only concedes but defends⁵. In answer to another objection he says expressly "lex æterna est ratio divinæ providentiæ, ut dictum est"⁵.

St. Thomas then placed the difference between the Eternal Law and providence in the difference between a principle and a conclusion, drawing an analogy with the first principles of the Natural Moral Law and the precepts or conclusions drawn from these principles. But it must be remembered that this is only an analogy, not a strict com-

2. *e.g.* lib. III, cap. 97, 115, 121 etc.

3. *vid. supra* p. 31 et 32.

4. 1a2æ, q. 93, a. 3 obj. 3 et resp.

5. *Ib.* a. 5 ad 3um; confer 1a, q. 22, a. 1 ad lum (explicit)

parison, for the things are of different orders. It was perhaps the oversight of this fact that led to the statement that providence was concerned only with singular things.

In the *Summa Contra Gentes* St. Thomas goes even more deeply into this question, determining just in what this basis or principle of divine providence consists. Thus he tells us: "Primum ergo principium in dispositione providentiæ est finis; secundum forma agentis, tertium, ipsa dispositio ordinis effectuum . . ." (here St. Thomas adds the caution which we have already quoted¹). Again he says; "In prædicto autem ordine, secundum quam ratio divinæ providentiæ attenditur, primum esse diximus divinam bonitatem, quasi ultimum finem, qui est primum principium in agendis; dehinc vero, rerum numerositatem, ad quam constituendam necesse est gradus diversos in formis et materiis et agentibus et patientibus et actionibus et accidentibus esse. Sicut ergo prima ratio divinæ providentiæ simpliciter est divina bonitas, ita prima ratio in creaturis est earum numerositas, ad cujus conservationem et constitutionem omnia alia ordinari videntur"².

In these two explanations of this very profound question three distinct steps are placed as the root of providence: (a) the divine goodness; (b) the divine form as it is imitable by creatures, or, viewing it differently as in the second quotation, the multitude of creatures who can

1. *Con. Gent. lib.* III, cap. 80; *vid. supra* p. 35 et 36.

2. *Contra Gentes*, lib. III, cap. 97.

represent this goodness by imitating the divine form; (c) the disposition of the order of effects. Applying the general principles of law laid down by St. Thomas, as he expressly wished them to be applied when he said "Ratio gubernantis actus subditorum rationem legis obtinet, servatis aliis quæ supra esse diximus de legis ratione"¹, we can see that in laying down these three principles St. Thomas not only gave the fundamental reasons of providence and concretely determined his notion of the Eternal Law, he also gave the fundamental sources of the Eternal Law itself, probing this question to the very bottom.

As we have shown in the first chapter of this dissertation, law is a dictate or imperium or precept of the practical reason of one who has care of a perfect community. Applying this first requirement, namely precept of practical reason, we see at once that St. Thomas did not place the Eternal Law in the divine goodness which cannot be called a precept. The same criterion rules out the second principle or the divine form as imitable by creatures. This leaves only the third principle or what St. Thomas calls the "disposition of the order of effects."

Precept or imperium is an act of prudence which follows counsel and judgment in the reason and election in the will². St. Thomas does not admit counsel in God except in a very broad analogical sense³ for counsel implies some doubt,

1. 1a2æ, q. 93, a. 1

2. 2a2æ, q. 47, a. 8; 1a2æ, q. 17, a. 1; Ib. a. 3 ad 1um.

3. 1a, q. 22, a. 1 ad 1um.

some hesitation while all the knowledge of God is infallibly certain. As to the divine judgment and election as bearing on this question he says: "Sic igitur quod Deus suam bonitatem amet, hoc necessarium est; sed ex hoc non necessario sequitur quod per creaturas repræsentetur, quum sine hoc divina bonitas sit perfecta. Unde quod creaturæ in esse producantur, etsi ex ratione divinæ bonitatis originem habeant, tamen ex simplici Dei voluntate dependet. Supposito autem quod Deus creaturis suam bonitatem communicare, secundum quod est possibile, velit per similitudinis modum, ex hoc rationem accipit quod sint creaturæ diversæ; non autem ex necessitate sequitur quod secundum hanc vel illam perfectionis mensuram aut secundum hunc vel illum numerum rerum. Supposito autem ex divina voluntate quod hunc numerum in rebus statuere velit, et hanc unicuique rei perfectionis mensuram, ex hoc rationem accipit quod habeat formam talem et materiam talem. Et similiter in omnibus patet. Manifestum igitur fit quod divina providentia secundum rationem quamdam res dispensat, et tamen hæc ratio sumitur ex suppositione voluntatis divinæ"¹.

The process then, as outlined by St. Thomas would be: (a) the divine goodness as the final end of all things; (b) the divine form showing the ways in which this goodness could be imitated by creatures; (c) the divine will to represent this goodness in creatures, or the will to create;

1. Contra Gentes, lib. III, cap. 97.

(d) the divine judgment as to the order this representation will take; (e) the divine election of that order; (f) the divine imperium or precept, following the election and judgment, and commanding that order's establishment and conservation—the "dispositio ordinis effectuum."

As is plain from our comparison of the Eternal Law with providence, St. Thomas considered this precept—in which the Eternal Law precisely consists—as general in character. In the *Contra Gentes*² St. Thomas shows at some length how all the diversity of the world is deduced, as conclusions from a principle, from the simple diversity of the forms of creatures. So that it would seem to be sufficient if the eternal precept commanded the diversity of forms of actual things and their direction to the final end, or divine goodness. From this basic principle providence could deduce, by way of conclusion, all its ordinations; for, as St. Thomas says, "ad cuius (*i.e.* numerositatis creaturarum) conservationem et constitutionem omnia alia ordinari videntur"².

From this treatment of the essence of the Eternal Law we see that St. Thomas conceived it as answering exactly and completely to the requirements he would demand of all laws—namely, it is essentially of reason, a precept or imperium of the practical intellect but supposing the election of the will; at the same time it is the precept of the governor of a perfect community

1. *Contra Gentes*, lib. III, cap. 97.

2. *Ib.*

and to the common good¹. And all this is included in St. Thomas' definition of Eternal Law as "ratio divinæ sapientiæ, secundum quod est directiva omnium actuum et motionum"².

SCOPE OF THE ETERNAL LAW.

I. By Way Of Participation

The scope of the Eternal Law can be considered either from the point of view of participation in or of subjection to that law. Under the first heading comes the possibility of this law being known, not in itself, but as regards its rational subjects. From what we have said above it is evident that no one, but God and the blessed who see God as He is in Himself, can know this law directly, that is as it is in itself; since it is in God and really identical with the divine essence. A fortiori, no one but God can comprehend it³.

The Eternal Law can, however, be known by what St. Thomas calls a participation or irradiation; in this way every rational creature knows this law, and at least materially, if not formally under the aspect of law. The profound basis for this statement is that every cognition of truth is a participation of the Eternal Law, for each existing thing has truth only in so far as it imitates the divine intellect, in other words, conforms to the Eternal Law which is the measure of things and is the truth itself.⁴

This proof has a profundity that our exposition

1. 1a2æ, q. 90.

2. *Ib.* q. 93, a. 1; *vid. supra* p. 34 et 35.

3. 1a2æ, q. 93, a. 2 corp. et ad 2um.

4. 1a2æ, q. 93, a. 1 ad 3um; *Ib.* a. 2 corp.

of the essence of the Eternal Law allows us to grasp somewhat more easily. St. Thomas gives a thorough exposition of this proof in *De Veritate*. Here he says that truth is to be found in the intellect and in things existing. Truth is found in things in as much as they imitate the divine intellect which is "earum mensura, sicut ars est mensura omnium artificiatorum"; and, in another way, in as much as they, of their very nature cause a true apprehension in the human intellect, which measures things¹. Going still deeper, St. Thomas explains; "Res autem existens extra animam, per formam suam imitatur artem divini intellectus; et per eandem nata est facere de se veram apprehensionem in intellectu humano, per quam etiam formam unaquæque res esse habet; unde veritas rerum existentium includit in sui ratione entitatem earum, et superaddit habitudinem adæquationis ad intellectum humanum vel divinum"². Thus it is the form of the existing thing that is the foundation of its truth both in reference to the divine and to the human intellect; as we have explained above³, the essence of the Eternal Law consists precisely in the precept commanding the diverse forms of things. The direct derivation of the truth of actually existing things from the Eternal Law is thus evident; a fortiori then, the cognition of this truth is a cognition of the Eternal Law.

That this is the meaning of St. Thomas is brought out more clearly in this same tract in

1. *De Veritate*, q. 1 a. 8.
2. *vid. supra* p. 45 et 46.

*De Veritate*¹ when he says: ". . . res naturales, ex quibus intellectus noster scientiam accipit, mensurant intellectum nostrum . . . : sed sunt mensuratæ ab intellectu divino; in quo sunt omnia creata, sicut omnia artificiatæ in intellectu artificis. Sic ergo intellectus divinus est mensurans non mensuratus; res autem naturalis, mensurans et mensurata; sed intellectus noster est mensuratus, non mensurans quidem res naturales, sed artificiales tantum. Res ergo naturalis inter duos intellectus constituta, secundum adæquationem ad utrumque vera dicitur; secundum enim adæquationem ad intellectum divinum dicitur vera, in quantum implet hoc ad quod est ordinata per intellectum divinum . . . Secundum autem adæquationem ad intellectum humanum dicitur res vera, in quantum nata est de se formare veram æstimationem."

The words used by St. Thomas must be noted particularly for they bring out clearly the work of the Eternal Law. Thus "est (intellectus divinus) earum mensura"², "res naturales . . . mensuratæ ab intellectu divino"³, "Secundum adæquationem ad intellectum divinum dicitur vera, in quantum implet hoc ad quod est ordinata per intellectum divinum"⁴. It is the divine intellect, as it is the measure and rule of things, as it is ordinative of things, that is the source of this truth; in other words, it is the divine intellect as

1. *De Veritate*, q. 1, a. 2
2. *Ib.* a. 8.
3. *Ib.* a. 2.
4. *Ib.* q. 1 a. 2.

it is the Eternal Law.

As a final proof of this we may point out that St. Thomas has employed the very same example here in *De Veritate*² that he uses in opening his tract on the Eternal Law: "sicut in quolibet artifice præexistit ratio eorum quæ constituuntur per artem, ita etiam in quolibet gubernante oportet quod præexistat ratio ordinis eorum quæ agenda sunt per eos qui gubernationi subduntur"³.

From this proof it can be concluded that all men know the Eternal Law, at least as regards the first principles of the Natural Moral Law—truths which are universally known. Beyond this, the participation of the Eternal Law under its aspect of knowledge of that Law, varies with the greater or less knowledge of material and formal knowledge of the Eternal Law⁴. This same proof is expressed more simply, though less profoundly, by saying that the Eternal Law can be known by its effects which we can easily see all about us.⁵

Under this same heading of participation falls the derivation of all other laws from the Eternal Law. Taking law formally, as dynamic, moving, directing things to their end, we can see clearly the derivation of all law from the Eternal Law. In every series made up of essentially dependent

2. *De Veritate*, a.2 et 8.

3. *1a2æ*, q.93, a.1

4. *Ib.* a.2.

5. *Ib.* ad 1um.

motive agents, the second moves only by the power of the first, all the power of movement possessed by the second mover is derived from the first. Law is a motive agent directing, moving men to an end and the Eternal Law is the first, the supreme law; every law existing besides that Eternal Law derives its power as law from that first supreme law¹.

This is the same argument as the "prima via" of St. Thomas proving the existence of God² and like that argument, its whole demonstrative power lies in the understanding of the "series of movers" as being dependent, each upon its immediate superior, not only for its being but for the actual movement itself. That is, the members of the series are dependent "per se" not "per accidens."

Thus the meaning of St. Thomas is that this ordinative movement towards an end in derived or subordinate laws, such as the Natural Moral Law and human laws, derives its efficacy from a superior ordinative movement which ordains all things to their end. This subordinate ordinative movement that is derived law, in establishing a rule of action, is itself following a higher rule; and it is precisely from its adhesion to this higher rule that its efficacy as a law is derived. In more concrete terms: a human law has the "ratio legis" only in so far as it is according to right reason³; and in so far as it is according to right reason it is following the higher rule of the

1. *1a2æ*, q.93, a.3

2. *Ia*, q.2 a.3

3. *1a2æ*, q.93, a.3 ad 2um.

Natural Moral Law. This latter, a participation of the Eternal Law, is the rule ordaining man's actions to the perfection of his form, consequently to the "bonum rationis"; and, as we have already seen,² this particular form is the result of the Eternal Law. St. Thomas sums up this teaching very briefly: "Aliquis actus secundum se malus dicitur . . . secundum quod actus discordat a rectitudine rationis . . . Et quia lex naturalis est secundum quam ratio recta est ideo Augustinus dicit . . . quod peccatum dicitur in quantum discordat a lege æterna, cujus expressio est ipsa lex naturalis"³.

We have explained the meaning of St. Thomas here at some length because the words of his argument are open to misinterpretation. Thus taking the idea of movement alone, we might think that St. Thomas was reducing the efficacy of law to the presupposed movement of the will, and from this back to the will of the supreme legislator—a species of voluntarism that would give us a kind of "divine right of legislators," making of law an imposition of will instead of a rule of reason—a notion that is widely accepted to-day. To get the real sense of St. Thomas we must take his argument without mutilating it. Thus he starts off this proof by saying: "lex importat rationem quamdam directivam actuum ad finem"¹ i.e. not *any* kind of movement but an *ordinative movement of reason* to an end. From this

2. vid. supra p. 45 et 46.

3. II Sent. d.42, q.2 a.5.

1. Ia2æ, q.93, a.3.

he argues to a first *movement of reason*. To take only the notion of movement as the basis of the argument would be to destroy the argument altogether, for it would automatically take the notion of law out of the discussion. The point of the argument lies precisely in keeping intact the notion of law *i.e.* an ordinaive movement towards an end, for the argument is trying to prove that that movement which is law, not any kind of movement is derived from the Eternal Law.

This proof also contains the argument, given by many of the authors, from the fact that a law which is such, not by essence but only by participation, is derived from a law "per essentiam," namely the Eternal Law. Billuart notes here that a law might be derived from the Eternal Law as it is the supreme exemplar of all laws; in as much as all laws should conform to it; as it is the efficient cause of legislative power; or in as much as these laws are really dictated and approved by the Eternal Law through the medium of faith and reason¹. But these considerations add nothing substantial to the profound explanation of this derivation given by St. Thomas and indeed seem little more than a superficial statement of St. Thomas' profound reasoning.

It should not be concluded from this that all laws bind "jure divino." A law binds in this way only because it has God for its immediate author; so that laws coming through the medium of human power do not bind "jure divino" though they are derived from the Eternal Law².

1. Billuart, Tract. de Legibus, Diss. II, a.1 2.

2. Ib.

II. By Way of Subjection

From our consideration of the essence of the Eternal Law, its subjects are quite evident. The Eternal Law is the divine precept regulating and ordaining all creatures and their actions to the divine goodness; like all law it deals only with the means to the end³. Consequently it extends to everything capable of direction to that one end, and to nothing else⁴. Everything that pertains to the divine nature or essence is without the scope of this law; rather it is the law itself.

All created things, necessary or contingent, are subject to the Eternal Law, though in different ways. The necessary and natural contingent things cannot be subjects of law in a strict sense, *i.e.* subjects of a moral law, since they are not rational, are not capable of rights and duties. Necessary things have the very reason for their necessity from the Eternal Law¹; contingent things are contingent in the sense that they proceed from secondary causes which are capable of being impeded in their action, and this by ordination of the Eternal Law. Even the actual failure of these causes to produce their effects is the result of the Eternal Law, the law of the Universal Governor. Thus they are contingent, not in regard to the Eternal Law or the first cause, but in respect to human laws and the immediate secondary causes of these contingent things².

In subjecting these natural things to the

3. 2a2æ, q.47, a.8; Ib. q.50. vid. supra p.14.

4. 1a2æ, q.93, a.4.

1. 1a2æ, q.93, a.4 ad 4um.

2. Ib. a.5 ad 3um.

Eternal Law, St. Thomas is using the term "law" in a broad analogical sense for the purpose of indicating that everything is subject to divine direction. A human legislator by his precept imprints something, so to speak, on the mind of his subjects which is the principle of action of these subjects as such, that is the "verbum mentale" is imprinted on the minds of men as the result of the promulgation of the law. In governing the world, God imprints on the whole of creation the natural principles which govern the proper actions of every individual nature¹.

This is the basis of St. Thomas' analogy; but it is only an analogy as he himself makes abundantly clear. Thus in giving the analogy he uses such phrases as "per hunc modum Deus dicitur præcipere toti naturæ," "Unde aliquo modo creaturæ irrationales subduntur legi æternæ, in quantum movetur a divina providentia; non autem per intellectum divini præcepti, sicut creaturæ rationales"². Further on in the tract we find a clear cut distinction between participation of law "per modum cognitionis" et "per modum actionis et passionis," in which latter way alone, *i.e.* in a purely passive manner, irrational creatures can be said to be subjects of law³. In the *Contra Gentes* we find the explicit statement: "quum lex nihil aliud sit quam ratio et regula operandi, illis solum convenit dari legem

1. Ib. a.5 corp.

2. 1a2æ, q.93, a.5; Ib. ad lum et 2um.

3. Ib. a.6.

4. *Contra Gentes*, lib. III., cap. 114.

qui sui operis rationem cognoscunt. Hoc autem
convenit solum rationali creaturæ”¹.

It is then quite clear that St. Thomas limited
law in its strict sense to rational creatures alone ;
it is also clear that in his ex professo treatment of
law in the Summa Theologica he maintained this
same distinction, not only from the texts we have
already cited but from the prologue to the very
first question on law¹ where he tells us : “ qui
(Deus) nos instruit per legem ” and of course it
is only rational creatures who are capable of in-
struction in this strict sense. In treating of the
Eternal Law this distinction was not overlooked
or confused ; but using terms that would admit
of no misunderstanding, St. Thomas treated the
Eternal Law, both in its strict sense and its wider
sense, giving the whole tract a unity otherwise
impossible, yet avoiding any confusion.

The manner in which men are subject to the
Eternal Law is really the subject matter of our
fourth chapter—on the Natural Moral Law.
It may be summed up here briefly by saying that
men are subject to this law in its broad sense, in
so far as they have instincts and instinctive acts,
“ actus hominis ” ; over and above this they are
subject to it in a way peculiar to themselves,
i.e. rationally, for they have a knowledge of the
law, as we have shown. And this last is subjection
to the Eternal Law in the strict sense, taking the
law as a moral law. In this sense the subjection
of men to this law extends to their human acts,
good or bad, for all these acts are subject to divine

1. 1a2æ, q.90, prologue.

government. This is true not only of the acts
themselves but also of their consequences, for
which men must suffer the penalties imposed
by that law or enjoy the rewards established by
it, not only in this life but for eternity¹.

1. 1a2æ, q.93, a.6 ; Ib. ad 3um.

CHAPTER III.

DOCTRINE OF SUAREZ.

IT will be useful, for a good understanding of the Thomistic doctrine on law, to consider well the teaching of Suarez on this question. Suarez is the chief opponent of the Thomistic teaching within the Church and his notion is quite directly opposed to that of the Thomists so that the contrast of one with the other will make both stand out much more clearly. Then too the Suarezian doctrine has received wide acceptance, perhaps as much because of the thoroughness of the exposition from an historical and positive point of view as from the doctrine itself. We shall give as clear an explanation as possible of Suarez' teaching on Law, on the Eternal Law and on the Natural Moral Law, offering a criticism of the first two immediately, the Natural Moral Law according to Suarez will be criticized at the end of our last chapter. In the course of these criticisms we shall point out the chief points of opposition to the doctrine of St. Thomas.

ESSENTIAL NOTION OF LAW.

Taking law in its strict sense—as moral law—Suarez says it is evident that it pertains only to an intellectual creature since it essentially implies moral direction and the intellectual creature alone is capable of this. Moreover it pertains to the mind of that intellectual nature, taking “mind” as including both intellect and will, for it is by the mind that the intellectual nature is capable of moral direction to an end. All this quite evidently refers to the subject of law; but from this it follows a fortiori that law, as it is in the legislator, pertains to the mind¹.

Narrowing the question still further, Suarez finds that law not only pertains to the mind but to some act (*actus secundus*) of that mind. The reason for this further determination is that law has the proximate power of binding its subjects and of moving them; this power cannot exist in a habit or potency, except radically and remotely. Again, “*imperium*” and “*ordinare*” express the notion of act and it is by law that these are constituted (“*fiunt*”)².

To determine the exact nature of this “*actus secundus*,” the author considers law in its different phases. As it is in some outward sign, for example a code of laws, it is quite evident that law consists in some exterior act, such as the written or spoken word which manifests the mind of the legislator. This exterior act includes not only the act itself

1. Suarez, *De Legibus*, lib. 1, cap. IV, 2.
2. *Ib.* 3.

but also the term of that act¹. As it is in its subject, law—or this act in which law consists—si-merely a judgment of the intellect, proposing and proximately applying the law to the will. An act of the will is unnecessary here for law precedes the will of the subject and obliges it². Here the word “act” would not seem to include the term of the act or the “verbum expressum” of the mind. In treating of the exterior act, Suarez says expressly that by “act” he includes the term of that act¹; but here he makes no such statement, but says without qualification “de lege, prout esse potest in homine legi subjecto, certum est consistere in actu mentis, et per se solum requirere iudicium intellectus et non actum voluntatis”³.

Law, then, as it is in some outward sign consists in an external act; as it is in the subject, in the judgment of the intellect. Taking law in its most proper sense, as it is in the legislator, we find that several acts are involved. The first of these is an act of the will intending or willing the common good of governing subjects well⁴. This is followed by an act of counsel in the intellect as to which law is just, and convenient to the end in view. This act of the intellect does not, of course, follow successively in God as it does in man for in God there is no succession. These two acts, of will and of intellect, are the remote foundation of law⁵.

1. Suarez, l.c. 4.

2. Ib. 5.

3. Ib.

4. Ib.

5. Ib.

Following counsel is an act of judgment on the part of the intellect by which the legislator establishes and discerns that such a disposition of things will be for the good of the community and that it is expedient that this disposition be observed by all. It is this act that gives law its rational character, by it law is prudently and rationally framed⁶. This act of judgment is followed immediately by an act of election on the part of the will by which the legislator accepts the judgment of the intellect, chooses it and wills that it be observed by his subjects⁴. *In this act of election precisely consists the essence of law* “... spectando ad rem ipsam melius intelligi et facilius defendi, legem mentalem (ut sic dicam) in ipso legislatore esse actum voluntatis justæ et rectæ quo superior vult inferiorem obligare ad hoc vel illud faciendum”⁵.

Essentially this act of the will does not deal with the actual execution of the law but with the obligation of its subjects; it is a will to oblige those subjects and without it there would be no obligation¹. No act of the intellect is required after this act of the will to make up the essence of law; indeed an act of the intellect by way of “imperium” or command is impossible². All that is required to make the law complete is that it be manifested to the subjects by some outward sign⁶.

3. Suarez, De Legibus, lib. I, cap. 4, 6

4. Ib. 7.

5. Ib. cap. 5, 24; confer etiam, Ib. 8; Ib. cap. 4, 10 seq.

1. Suarez, De Legibus, lib. 4, 8.

2. Ib. 11.

6. Ib. 12.

To accomplish this end, more intellectual acts are assigned, but these all follow the law essentially constituted; thus we have a judgment of the intellect concerning this manifestation and an act of the will putting this judgment into execution¹.

The basis of the exclusion of any "imperium" on the part of the intellect following the election of the will—in which law precisely consists—is the notion of the part played by the intellect in the individual man. Thus the particular potency, which is to execute the "imperium" or command within the individual himself, does not perceive the force of this command (says Suarez) nor does it pertain to the intellect to apply the potency to operation, but only to propose an object to the will; it is the task of the will to apply the other potencies to actual operation. This notion of "imperium" in the individual is extended to the "imperium" concerning other individuals, or the "imperium" of the governor. This is cited as the more common opinion and supposed from 122æ, q.17, a.1².

We now have a clear notion of Suarezian doctrine on law. In its most strict sense—as it is in the legislator—law consists in an act of the will, election, which is preceded by counsel and judgment on the part of the intellect, and of course by the act of the will choosing the end. But it is this election of the will which is essentially and per se law.

1. Suarez, De Legibus, lib. 1, cap. 4, 14.
2. Ib. 11 et 12.

In proof of this explanation of law, Suarez offers no less than eight or nine arguments, citing in his favour all those theologians who hold that "imperium" is an act of the will as against the Thomistic teaching that it is an act of the intellect¹². Passing over the argument from authority, *i.e.* on the grounds that Scripture and the civil codes call the will of God and of a prince law¹³, we find five principal arguments from the properties of law itself. These arguments proceed from the fact that: law is a rule and measure of action¹⁴; that law enlightens and directs the subject¹⁵; that law ordains to an end¹; that law has power to move and apply the subject to the exercise of the act²; and that law has the power to oblige³.

In other details of law, Suarez agrees substantially with St. Thomas. Law is framed by public authority⁴ for the common good⁴ and is perpetual⁵; promulgation is of the essence of external law, *i.e.* law as it exists outside of the legislator as opposed to law as it is in the legislator⁶. The same four acts are assigned to law⁷ and the same end⁸. Coming down to a definition Suarez

12. Suarez, De Legibus, cap. 5, 8.

13. Ib. 9.

14. Ib. 11.

15. Ib. 12.

1. Ib. 13.

2. Ib. 15.

3. Ib. cap. 8, 2.

4. Ib. cap. 7.

5. Ib. cap. 10.

6. Ib. cap. 11, 3.

7. Ib. cap. 15, 2.

8. Ib. cap. 13, 3.

says: "Lex est commune preceptum, justum, ac stabile sufficienter promulgatum". By "commune preceptum" he includes the notion of public authority making the law since it is for the whole community. In this phrase he places the essence of law in a precept but, as we have seen, by a precept he understands an act of the will; specifically, election. And it may be noted here that under this act its term is not included as it was under the first aspect of law, namely as it is in an outward sign where it included the written record.

p

CRITICISM.

The opposition between the doctrines of Suarez and St. Thomas, while evident enough, is not always grasped in its entirety. For purposes of clarity, brevity and completeness we give that opposition in graphic form.

LAW AS IT IS IN THE LEGISLATOR.

St. Thomas.

Suarez

- | | |
|---|---|
| 1. Consists in "imperium" or precept. | 1. Consists in "imperium" or precept. |
| 2. Which is essentially an act of reason. | 2. Which cannot possibly be an act of reason. |
| 3. This act of reason presupposes an act of the will. | 3. "Imperium" is essentially of the will; no consequent act of reason pertains to essence of law. |

9. *Ib.* cap. 12, 5.

- | | |
|--|---|
| 4. This act of reason includes the term of this act or the proposition of reason. | 4. This act of the will does not include its term. |
| 5. Since reason is the cause of the precept it is the cause of its corollary or obligation. | 5. The will to oblige the subjects is the sole cause of obligation; without it there would be no obligation. |
| 6. The notion of ordination, of regulation is primary in law; that of obligation, while essential, is derivative from notion of precept. | 6. Notion of obligation is primary since it is in the act of the will to oblige subjects that law essentially consists. |

With these two expositions of law clearly understood, it is necessary for a judgment of them to examine the proofs adduced for each one. We have already seen the arguments which St Thomas uses to prove his opinion¹; it remains only for us to examine those of Suarez.

Examining these arguments of Suarez² we see that they can all be stated in a single sentence: "imperium" is an act of the will, not of the intellect. And this is exactly the fundamental difference between Suarez and St. Thomas. All the properties advanced by Suarez as proofs that law is an act of the will are given by St.

1. *vid. supra* Chap. I.
2. *vid. supra* p. 64 et 65.

Thomas as properties of "imperium"³. To determine the value of these arguments we must determine the potency which elicits the act of "imperium."

According to St. Thomas the acts of the mind preceding "imperium" are: counsel and judgment in the intellect, followed by election on the part of the will. Then comes "imperium" on the part of the intellect commanding the thing chosen by the will; this in turn is followed by "usus" of the will or the actual application to the potencies executing the "imperium"⁴.

"Imperium" according to Thomists, is made up of three elements: ordination, intimation and motion. The first two of these acts are acts of the intellect, as is plain from the ordinary concept of the soul. It is the work of the intellect to compare objects, to determine the better of two or more (in a word to reason) and to propose these objects to the will and to the other potencies. As regards ordination, plainly it is of the intellect for it is attributed to intellectual virtues such as wisdom, prudence, art, etc., moreover whatever order is found in natural or voluntary things is of the intellect; works of nature are works of intelligence, while in voluntary things the will follows the order of reason, whether that order be true or false. The third element in imperium—motion—is caused by the will which is the first mover "ad exercitium"; but it proceeds immediately from the intellect which participates the motion of the

3. 1a2æ, q. 17, a. 1; 2a2æ, q. 47, a. 8; Ib, q. 50.

4. 1a2æ, q. 13 seq.; Ib. q. 17, a. 3 ad 1um; 2a2æ, q. 47, a. 8.

will just as the election of the will participates the rational judgment that precedes it¹.

An act which proceeds from two potencies, as does "imperium," is elicited by, is essentially from, the potency which gives substance to the act; the potency in which the act is consummated. The substance and material of "imperium" is not motion; but rather ordinative and intimating motion. Motion is rather the form than the substance. The classic example of this is the act of martyrdom. The motive power behind it is charity. It is from charity that the exercise of the act proceeds; but it is the virtue of fortitude that gives substance to the act, that receives this motion from charity and consummates the act. And martyrdom is the elicited act of fortitude².

The reasons for placing these acts of intellect and will ("imperium" and "usus") after election are based on experience; on the fact that there is a great difference in electing or choosing to do a thing and the actual execution of that election. On the part of the will there is the work of the potencies and faculties in the actual execution, the resistance of the appetite and external impediments—all of which election, being a purely internal act, did not have to deal with. These new inconveniences and difficulties did not hinder the election, indeed they could not appear until after

1. 1a2æ, q. 17, a. 1; Cajetan in 1am2æ, q. 17, a. 1; John of St. Thomas, Cursus Theologicus, Disp. VII, a. 2, 6, 7, 14; (in 1am 2æ 8, 17) Billuart De Actibus Humanis, Diss. III, a. 7, 2.

2. 1a2æ, q. 13, a. 1; Cajetan, l.c.; Jno. a St. Thoma, l.c. a. 2, 8, 9, 14, 34; 1a2æ, q. 17, a. 1 ad rum.

it. Consequently they demand a new effort, a new efficacy of motion and application from the part of the will (usus) ; and that this new motion might not be blind but reasonable, a new ordination of reason is necessary to direct it and to deal with these new elements. It is necessary to resort to another tribunal in which the executions themselves will be finally judged and ordained according to this ultimate individuation and these new circumstances. Since it is a question of execution, an intimation of this ordination is a fortiori required by the executive potencies. This ordination and intimation is the work of "imperium"¹.

According to Suarez these last two acts are unnecessary. The judgment preceding the election is sufficient to make the election reasonable, while the force of the election carries the act to completion ; "imperium," with all that it implies, is wholly from the will, is contained in the election itself². That imperium is necessary we believe is evident from the preceding paragraph. But Suarez maintains that any imperium of the intellect is not only unnecessary but impossible after election because the potency involved could not perceive this imperium and the intellect has only to propose an object to the will, not to apply the potencies to actual operation³.

John of St. Thomas calls this statement of the impossibility of intellectual "imperium" ridi-

1. Jno a S. Thoma, l.c. Disp. VII, a.1, 7 et 9. Billuart, l.c. 1.
2. vid. supra p. 63, 64.
3. Ib.

culous⁴ and St. Thomas himself answers it⁵. The will is indeed blind, but it is not necessary for the will or any other potency to understand in order to be moved by the intellect any more than it is necessary for the feet to see in order that a man walk in a certain direction. Just as the physical members operate, not for themselves, but for the whole man, so it is with the potencies of the soul. To be more specific, the intellect moves the will by proposing an object to it ; the sensitive faculties are moved by the intellect through the medium of imagination whose apprehension is subordinate to and moved by reason. From the imagination is regulated the sensitive appetite which in turn regulates the members of the body. As for the actual exercise, the intellect moves these faculties by the movement it participates from the will¹.

To Suarez' contention that the will enlightens and directs the subject, is a measure of human actions and ordains to an end²—all properties of "imperium"—we need only refer to Cajetan's comment quoted above³, for all these qualities are reduced to ordination and intimation.

What would seem to be Suarez' strongest arguments are that the imperium as an act of reason cannot have moving power and cannot oblige⁴. To meet this difficulty it is necessary to

4. Jno a S. Thoma, l.c. 15.
5. 1a2æ, q. 17, a. 5 ad 2um.
1. Jno a S. Thoma, l.c., Disp. VII, a.1 15.
2. vid. supra p. 64 et 65.
3. vid. supra p. 67 et 68.

remember that "imperium" does not consist in mere motion or mere obligation, but in motion and obligation as ordaining things to an end and as manifesting this ordination—both of which elements are supplied by the intellect³. Moreover, "imperium," according to the Thomistic conception, though essentially an act of the reason, is not exclusively so but presupposes and includes an act of the will¹. While it is true that the intellect of itself could only move the will and the other potencies as regards specification, by proposing an object to them, "imperium" of the reason moves not only as regards specification but also as regards "exercitium," here and now to be done, because of its nature it includes an efficacious movement of the will. It participates the preceding election of the will².

It would be just as correct to say that election cannot be reasonable, cannot choose with discretion, because election is an act of the will while judgment is an act of the intellect, as to say that the "imperium" of reason lacks motive power since it is not of the will. Just as the election participates the preceding judgment of the intellect and thus is reasonable, so "imperium" participates the preceding election of the will and so is motive or obligatory. The will, though the first principle of motion in man, can move nothing, neither as regards the potencies immediately subject to it, nor as regards other

3. Cajetan in 1am2æ, q. 17, a. 1; Jno a S. Thoma, l.c. a. 2, 17 et 28

1. 1a2æ, q. 17, a. 1 et Cajetan in loco.

2. 1a2æ, q. 17, a. 1 et Jno a S. Thom., l.c. a. 1 13

individuals, except by means of an intimation denouncing and directing what the will wishes to be done. This directive intimation and denunciation is the material, the substantial element in "imperium" and is the work of reason. So that although from the point of view of movement to actual exercise of an act and in its origin, "imperium" begins from the will, it is materially, substantially and immediately from the intellect¹.

THE ETERNAL LAW.

Suarez distinguishes two states of the Eternal Law: an internal state, the law as constituted in God, the Legislator; and an external state, when it was proposed to creatures². In the first sense it is certainly eternal, as are all things in God. In the second sense it is not less certainly not eternal since it is cœxistent with creatures³. As to the objection that the Eternal Law could not be promulgated from eternity, he agrees with the answer of St. Thomas that actual promulgation is not necessary but it suffices that promulgation on the part of the legislator is from eternity⁴. The reason for this, in the theory of Suarez, is that the decree of God is immutable; consequently, as regards the consummation of law, this is peculiar to Eternal Law alone for the decree of human legislators is mutable. Consequently before promulgation it is rather the determination

1. Jno a S. Thoma, l.c., Disp. VII, a. 28 et 32.

2. Suarez, De Legibus, lib. II, cap. 1, 5.

3. Ib.

4. Ib. 11.

to frame a law than the law itself which is in the mind of the legislator¹.

In scope the Eternal Law does not touch the acts of the divine intellect and will as they regard God². Taking the Eternal Law as a moral law, it does not extend to irrational but only to rational creatures³. All moral acts are the material of this law either by way of precept or prohibition⁴.

Determining the essential notion of this law, Suarez says it is eternal and is in the mind of God⁵. Moreover it consists in some act ("actus secundus")⁶; and this "actus secundus" is a free act⁶. Eternal Law is not a mere idea⁶ but necessarily demands an act of the will because liberty is formally in the will⁷. Eternal Law does not consist in any act of the intellect preceding the decree of the divine will⁸ *It does consist precisely in a free decree of the divine will establishing an order to be observed*, whether we take this law in a broad sense as reaching to all creatures, or strictly as the moral law binding intellectual creatures alone⁹.

As proof of this explanation of the Eternal Law Suarez says that the Eternal Law in its broad sense, as it directs irrational creatures and those acts of man which are not moral, is evidently

1. Suarez, De Legibus, lib. II, cap. 1, 11

2. Ib. cap. 2, 2 et 9.

3. Ib. 13.

4. Ib. 15.

5. Ib. cap. 3, 1,

6. Ib. 3.

7. Ib. 4.

8. Ib. 5.

9. Ib. 6.

in the will of God because God commands these things immediately and proximately, not by speaking but by making them such as they are¹. That Eternal Law, taken as a moral law, is in the will of God, is proved by the same arguments which were given to prove that all law is precisely an act of the will².

CRITICISM.

Since every explanation of the Eternal Law in God is merely an application of our method of understanding to the action of God, a criticism of such an explanation must be nothing more than a criticism of the basic notion of law. If that basic notion is erroneous, then a fortiori its application to God is erroneous. As a result, our criticism of Suarez' notion of law is an effective refutation of his notion of Eternal Law; particularly as he uses the same arguments in its behalf as he used to prove his idea of law in general. As for the argument adduced here in favor of the Eternal Law in its broad sense³, it is based on the idea that any "imperium" of the intellect is merely a sign, a manifestation of an "imperium" of the will. It can therefore be reduced to the basis of all Suarez' arguments, namely that imperium is in the will, not in the intellect; we have already dealt with this contention in criticizing Suarez' doctrine on law in general⁴.

1. Suarez, De Legibus, lib. II, cap. 3, 7 et 8.

2. Ib. 8.

3. Vid. supra p. 75.

4. Vid. supra p. p. 66 seq.

One point worth mentioning here because it is usually emphasized in comparing the Thomistic doctrine with that of Suarez, is brought out clearly in the exposition of Eternal Law we have just given from the latter. When Suarez, in explaining the response to the objection on the promulgation of the Eternal Law, says that before promulgation it is rather a proposal or determination to frame a law than the law itself that is in the mind of the human legislator³, he brings out what many authors have termed the "active" element of his doctrine in contrast to the "passive" nature of Thomistic doctrine. The term is not only misleading, for both are decidedly active, but quite incorrect. Suarez includes under the term "act," in which law consists, the term of that act; but this is true only of the law as it is in some outward sign⁴. As it is in the subjects it is precisely the act of judgment⁵. As it is in the legislator the term of the act is not included¹. It is an act of the will and such an act does not have its term in the will itself; so that if we are to place the essence of law in the will we cannot include this "term" in the essential nature of law. On the contrary the Thomistic teaching is that it is precisely in this term of the act of the intellect—the proposition—that law consists². It is evident at once that both

3. Vid. supra p. 75.

4. Vid. supra. p. 61.

5. Ib.

1. Vid. supra p. 65.

2. Vid. supra p. 13 seq (Chap. I).

these conceptions are active, since both are held to be precepts. The difficulty is really a corollary of the basic difficulty as to the origin of "imperium," whether it is an act of the intellect or the will.

THE NATURAL LAW.

In treating of the Natural Law, Suarez is speaking of law under a different aspect than that taken in his tract on law in general and on the Eternal Law. There he was speaking of law as it is in the legislator; here he is treating of law as it is in the subject, Natural Moral Law, as it is in the legislator is nothing less than the Eternal Law itself¹.

Taken in this light, *i.e.* as it is in the subject, we may distinguish a double element in the Natural Moral Law. The first is human nature itself, the rational essence in as much as by reason of this essence some things are naturally convenient to it, others inconvenient or opposed to it. In this way human nature is the foundation of natural honesty. The second element is the power of human nature to discern the difference between the convenient and the inconvenient, the suitable and unsuitable; this is the Natural Moral Law itself, commanding or prohibiting things to the human will².

This general notion of Natural Moral Law—namely that it is in the human reason—is in perfect accord with Suarez' general tract on law where he held that law in its subjects is a judg-

1. Suarez, De Legibus, lib. II, cap. 5, 14.

2. Suarez, De Legibus, lib. II, cap. 5, 9.

ment of reason¹. This agreement with his general tract is complete when he declares that the Natural Moral Law is an "actus secundus" of human reason, namely judgment; this does not seem to include the term of this act—the proposition—for he says, "non dubito, quin in actuali iudicio mentis propriissime existat lex naturalis"². But he would also admit that the natural light of reason can be called the Natural Moral Law, for even when men do not think or judge, the Natural Moral Law is retained in their hearts. In other words this "lumen naturale" can be considered as the Natural Moral Law permanently within man though most properly speaking the judgment of the intellect is the Natural Moral Law³.

Suarez further clarifies this notion of the Natural Moral Law by saying that this law is not only indicative of good and evil, it also contains a precept of good and a prohibition of evil⁴. Natural Law therefore is that "imperium" which can induce an obligation; and since the human judgment cannot do this, it must merely show an obligation that is already supposed. So this judgment, in as much as it has the "ratio legis," indicates an imperium from which the whole obligation proceeds⁵, namely the divine imperium. This judgment of the natural reason indicating

1. Suarez, De Legibus, lib. I, cap. 4, 5 (vid. supra p. 49)

2. Ib. lib. II, cap. 5, 14.

3. Ib.

4. Ib. cap. 6, 5.

5. Ib. 6.

what is good or bad "per se" for man, indicates that these things are according to the will of God and are to be done, or contrary to that will and are to be avoided⁴.

This will is in God as supreme governor and is the will to oblige his subjects⁵. This will of God to oblige his subjects is not the whole reason for the good and evil which is in the observation of that Natural Moral Law or its violation. It supposes in these acts a certain necessary honesty or malice and to this joins a special divine obligation⁶. The Natural Moral Law is a true and proper divine law whose author is God. The obligation added by the Natural Moral Law to the natural goodness or malice of an act is from the divine will¹.

This statement of Suarez regarding a pre-supposed or natural honesty and malice in human acts, brings up the difficulty of "necessary morality." In the hypothesis that God never commanded or prohibited the things of the Natural Moral Law, they would still be good or evil². Suarez answers that from this we can only conclude that a certain goodness or malice of human acts does not consist formally in their discord or accord with any law or precept. They are evil but are not prohibited in this hypothesis. Besides, it must be remembered, the "natural"

4. Suarez, De Legibus, lib. II. 8.

5. Ib. 9.

6. Ib. 11.

1. Ib. cap. 6, 13.

2. Ib. 14.

goodness and malice and that proceeding from the precept of the Natural Moral Law cannot actually be separated¹.

Yet these acts would be morally evil, since they are free acts, solely on account of discord with right reason, without a law. In answer to this objection Suarez makes some astonishing statements. He says a human act has goodness or malice from its object precisely considered as it harmonizes or does not harmonize with right reason. From this aspect it can be called evil, a sin and culpable without reference to a proper law. Besides this culpability, a human act has a special reason of good or evil, "in ordine ad Deum," added by divine law. In this second way a human act is called sin or "culpa apud Deum" in a special way, by reason of a transgression of the law².

He adds that it is in this way St. Thomas distinguishes sin as against reason and as an offense against God in 1a2æ, q.71, a.6 ad 5um³. Thus he, Suarez, says in this case of an act being against reason, the act would be morally evil, a sin and culpable, not however theologically, "in ordine ad Deum"⁴. Natural Moral Law truly prohibits everything that is per se evil or inordinate in human acts; without this prohibition these acts would not have ("ut sic dicam") the consummate and perfect "ratio culpæ et offensæ divinæ"⁵. As a final answer we may say that this

1. Suarez, De Legibus, lib. II, cap. 6, 15.

2. Ib. 17.

3. Ib. 18.

4. Ib.

5. Ib. 19.

hypothesis is altogether impossible for God could not refrain from prohibiting what is intrinsically evil and commanding what is intrinsically good⁶.

Having established the divine nature of this law and the obligation it imposes, Suarez determines the part played by the judgment of human reason—in which the Natural Moral Law precisely consists. It is a sign of the divine will, it is sufficient promulgation of the will of God and no other is needed to make up the notion of law. The reason for this is not only because the judgment of reason manifests the inconvenience or convenience of these acts, but also because it shows man that the inconvenient acts displease the author of nature, as the supreme Lord and Provider and Governor of this same nature¹.

The material of this law is "bonum ex se honestum" and its opposite; it embraces all the precepts, or moral principles, which have an evident honesty necessary to moral rectitude so that their opposites contain a moral inordination or malice. This is the only law that supposes goodness and malice; other laws make this moral goodness and malice by their statutes².

This material can be divided into three classes: (a) First principles, such as "Honestum est faciendum, pravum vitandum," "Quod tibi fieri non vis alteri ne feceris" and so on; (b) more determined and particular precepts yet still "per

5. Ib. 21.

1. Suarez, De Legibus, lib. II, cap. 6, 24.

2. Ib. cap. 7, 1-4.

se nota," *e.g.* "justitia est servanda," "Deus est colendus," etc.; (c) Deductions from these principles, either easily arrived at such as "adultery is evil," or not easily known by all, as "fornication is intrinsically evil," "a lie is never justified," etc.¹.

As characteristics of this law Suarez points out that it is one; that it is universal as to time and subjects, though in the latter respect we must distinguish the law "in actu primo" (light of the intellect) and "in actu secundo" (actual judgment of the intellect). As regards the light of the intellect, the law is absolutely universal; as regards the actual judgment it is universal at least as regards the first principles².

This law cannot be abolished from the hearts of men and holds for all states of men³; it obliges in conscience⁴ and every obligation in conscience is in some way, at least mediately and remotely, the effect of the Natural Moral Law⁵. Punishment does not properly pertain to this law because, although guilt is incurred by its transgression, natural reason cannot define that punishment, so that the quality or quantity of punishment does not properly speaking follow from the "imperium" of any mere natural law. The guilt or "reatus" rather follows from the natural and intrinsic condition of the fault or

1. Suarez, De Legibus, lib. II, cap. 7, 5.

2. Ib. cap. 8, 5 et 6.

3. Ib. 6 et 8.

4. Ib. cap. 9, 2.

5. Ib. 11 seq.

"culpa" so that although the punishment is not determined by the Natural Moral Law, the offender can be punished according to the judgment of a competent judge. Permission has no place in this law because it deals only with the essentially good and evil¹.

The Natural Law is intrinsically immutable, both in general and in particular as long as there remains rational nature with the use of reason and liberty². This does not of course exclude addition to that law for these are not strictly speaking changes of the law, since the law as it existed before these additions still remains intact³. When St. Thomas and Aristotle say that some precepts of the Natural Moral Law are changed or cease to exist or suffer exception "in paucioribus," they are speaking of change improperly taken, through a mere extrinsic denomination, by reason of the change in the material. Precepts are of two kinds: those which suffer no change either in themselves or in their material, such as the general principles; the other class consists of those which allow of change in the material with which they deal. It is concerning these latter that it is said they are changed or allow exceptions. The precept, considered in itself, allows of no exception; it seems to in these cases because it has not been sufficiently stated⁴.

Although all the precepts of the Natural Moral

1. Suarez, De Legibus, lib. II, cap. 12, 1.

2. Ib. cap. 13, 2.

3. Ib. 1.

4. Ib. 7.

Law are immutable, they are not all equally known. This law cannot be completely erased from the minds of men, but men can remain in ignorance of some of its precepts though it is likely that no one precept is unknown to all men. What one man or one nation is ignorant of, is known by some other individual or nation and *vice versa*¹.

NOTE :—The criticism of Suarez' explanation of Natural Moral Law will be found at the end of the last chapter of this dissertation.

CHAPTER IV.

THE NATURAL MORAL LAW.

IN our consideration of the Natural Law we are limiting ourselves strictly to the Natural Moral Law; the Natural Law in the sense of physical laws, or the laws governing irrational animals, is without the scope of our discussion. It is necessary, in commencing our study of the Natural Moral Law, to notice also the distinction between the subjective and objective aspect of this law. This distinction was given by St. Thomas at the very beginning of his tract on law² and is repeated in almost the same words at the

1. Suarez, De Legibus, lib. II, cap. 13, 10.
2. 1a 2æ, q. 90, a. 1 ad 1um.

beginning of his tract on Natural Moral Law :
“ . . . lex, cum sit regula et mensura, dupliciter potest esse in aliquo : uno modo sicut in regulante et mensurante ; alio modo sicut in regulato et mensurato ; quia in quantum participat aliquid de regula vel mensura, sic regulatur vel mensuratur ”¹.

This distinction is indeed self evident from St. Thomas' doctrine on law in general for it states merely that law, existing in the legislator, has its correlative in the subject. In the first case it is reason ruling ; in the second it is reason ruled. That there is another aspect of the objective law—namely the order established by law as it is in the legislator and in the subject—is also self evident.

The objective Natural Moral Law, *i.e.* as it exists in the legislator, is nothing more than a part of the Eternal Law itself². The Natural Moral Law subjectively considered is found in man himself, in his participation or subjection to the Eternal Law.³ The order established by this law as it exists in God and as it is participated by man, is the order of man to his end and to the means by which that end it to be attained. This is so easily perceived that it is passed over by St. Thomas in his tract on the Natural Law. Every law of its very nature, which is to ordain, establishes an order to the end of the law and to the means to that end ; as the end of the Eternal Law is the direction of the universe to its final end,

1. Ib. q. 91, a. 2 corp. Confer Ib. ad 1um et q. 90, a. 3 ad 1um
2. 1a 2æ, q. 91, a. 2 corp et ad 1um ; vid supra Chap. II.
3. 1a 2æ, q. 91, a. 2

quite evidently, in its application to man, it establishes such an order. We find this order mentioned expressly in *Contra Gentes*: "Deus imposuit actibus hominum ordinem aliquem in respectu ad finem boni . . . Oportet igitur quod si ordo ille recte positus est, incedentes per illum ordinem finem boni consequantur, quod est præmiari; recedentes autem ab illo ordine per peccatum a fine boni excludi, quod est puniri"¹.

The subject matter of this chapter is exclusively the Natural Moral Law subjectively considered. We have already treated the objective Natural Law, *i.e.* as it is in the legislator, in explaining the Eternal Law²; the objective Natural Moral Law, understood as the order established by that law, is a self evident conclusion given the Eternal Law and its subjects. Our object then will be to discover what the Natural Moral Law is in man; to get some essential notions of this law within man.

Because of the examples used to illustrate the nature of this Natural Moral Law, *e.g.* an illumination, radiation, reflection, impression of the Eternal Law, it is sometimes thought that the Natural Moral Law considered as found in man himself is not strictly speaking the law itself. Rather it is an effect of the participation of the Eternal Law, not the participation itself. To determine accurately the subject matter of this chapter we must analyse some of these examples.

The first of these examples calls the Natural Law an *illumination*, a radiation, a reflection from

1. *Contra Gentes*, lib. III, cap. 140.

2. *vid supra* Chap. II.

the Eternal Law¹. In this example the Eternal Law would be considered as a great light playing upon the interior of man, as the sun plays upon things exteriorly. This would light up all that interior, enabling man to see what was to be seen; in other words allowing man to use his power of sight. But it would not contribute to the things to be seen in any objective sense. That is, the things to be seen would have to be there before, or at least concomitantly with the illumination and independent of it taken formally as illumination. If we suppose that in man there is a chart drawn up containing the plan of action he must follow to reach his end; that in man there is also the power to see and understand this chart; then the illumination coming, enables him to see and understand this chart. The question then would be: what part does this illumination play in the Natural Law? It does not seem to be the essence, for it rather supposes the essence, which man sees by its help. Rather it is a "conditio sine qua non" of the law.

This is taking illumination in its strictest sense; but it is quite probable that theologians, in using this example, did not understand it in just this way. Their meaning most probably was: this illumination, coming from God, enlightens man in a superior way, furnishing him not only with light but also with the order which he must see and observe. Taken in this sense we find three elements in this example: (a) the illumination

1. 122æ, q. 93, a. 2 corp; Prummer, *Manuale Theologiæ Moralis*, Vol. I p. 105 note 17.