THE LEGAL CHARACTER OF NATURAL LAW ACCORDING TO ST THOMAS AQUINAS

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ABSTRACT

The claim is that Aquinas conceives of natural law as something that perfectly fulfills his general definition of law. It is a law in even a fuller sense than human positive law. The wide range of positions on this question among contemporary interpreters is surveyed and evaluated. It is first argued that for Aquinas, the formal notion of natural law involves a reference to the eternal law, and that nevertheless the complete promulgation of natural law to man does not require his knowledge of divine providence and legislation, or even of God's existence. Next treated is the difference between the promulgation of natural law and that of positive law, with special attention to Aquinas' notion of command; the aim is to show that the effect proper to command, and hence the full institution of a law, does not necessarily require that those who are subject to it make advertance to its author's will. Then taken up is the role that Aquinas assigns to knowledge of the physical world in the understanding of the precepts of natural law, and his general doctrine of the "imitation of nature," in order to determine whether he in some way attributes an authoritative status to nature. Finally, the manner in which natural law carries obligatory force is shown; the connection between obligation and sanction in Aquinas' thought is indicated, and natural law is found to carry its own proper sanction, called "remorse of conscience." The conclusion is that insufficient attention has been paid to Aquinas' doctrine of the eternal law as a principle governing even the very natures of created things.

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INTRODUCTION

The questions with which this study is primarily concerned are whether and in what way the notion of law that St Thomas Aquinas develops, mainly in the *Summa theologiae*, is meant to be applied to what he calls natural law. Anyone moderately familiar with the section on law in the *Summa theologiae*, and not so familiar with the recent literature on Thomistic natural law, may well wonder why this is even a question. Can there be any doubt as to whether St Thomas' classic definition of law in general is fully applicable to natural law? Can there even be any doubt as to how to apply it? Hardly any work of interpretation seems necessary.

Aquinas says quite explicitly, and in the concluding article of his very construction of the definition of law, that "natural law has the nature of law to the highest degree." *Lex...naturalis maxime habet rationem legis.*[1] It is true that he makes this assertion in one of the article's objections, so that it cannot immediately be taken to express his own view. But the reply to the objection, far from denying the assertion or qualifying it in any way, only confirms it. It also seems to indicate rather clearly the precise manner in which natural law possesses the nature of law.

The objection was against the proposition that promulgation belongs to the essence of law. Natural law, it says, is law to the highest degree, and yet needs no promulgation at all. The reply simply denies that natural law is without promulgation. If natural law stands in no need of promulgation, the reason is that it has been fully promulgated already, "by the very fact that God has inserted it into men's minds as something to be naturally known": *ex hoc ipso quod Deus eam mentibus hominum inseruit naturaliter cognoscendam.*

An account of natural law in terms of the definition of law in general seems almost immediately available from this simple statement. The definition of law that Aquinas gives in this article is "an ordination of reason, for the common good, promulgated by him who has care of the community": *rationis ordinatio ad bonum*

commune, ab eo qui curam communitatis habet promulgata.[2] As he seems to conceive it, then, natural law would be an ordination of divine reason, for the common good of the universe, promulgated to man by God, the author and governor of the universe, through the instilling of the natural light of the human intellect.

The subsequent formal demonstration of the existence of a natural law in man only sharpens this formulation.[3] It specifies the relation between the existence of the divine ordination in God's own mind and the existence that this ordination has as something naturally known by man. Taken as a whole and as He Himself possesses it, the ordination by which God governs the universe is called the eternal law. Natural law is nothing but a certain share in the eternal law, the share belonging to the rational creature by the very fact that he is rational. *Lex naturalis nihil aliud est quam participatio legis aeternae in rationali creatura*.

Still, unequivocal as these texts seem, Aquinas' subsequent treatment of natural law does raise one or two questions. The formulation of natural law as the participation of the eternal law in the rational creature is found in Article 2 of Question 91 of the Prima secundae. The subject of this Question is the "division of law." Only a few pages later, Aquinas devotes an entire Question (94) to the subject of natural law. He is evidently addressing the *quid sit* or *quomodo sit* of natural law, as follows logically upon the *an sit* of q.91 a.2. The curious thing is the fact that in the whole of Question 94 the eternal law is mentioned not so much as once. This is one consideration that has led some recent interpreters to regard the definition of natural law in terms of the eternal law as a mere function of Aquinas' theological procedure, and not as something intrinsic to his notion of natural law. Nor is it the only such consideration.

> Yet from the fact that St Thomas, in a theological work, defines natural law theologically, it follows neither that it cannot be defined philosophically, nor that a philosophical definition would be incom-

> plete, as, according to St Thomas, any account of the natural end of man that neglected divine revelation would be incomplete. Although this is not stated in terms by Aquinas, it is implied by his assertion that 'all men know...the common principles of the natural law' (I-II q.93 a.2). It is also presupposed in his derivations of the various precepts of the natural law, in none of which does he make any appeal to revealed theology. Nor does he explicitly draw upon natural theology, except in deriving precepts having to do with divine worship.[4]

It is usually understood that the basis of Aquinas' "derivations of the various precepts of natural law" is presented in I-II q.94 a.2. The method sketched in this article for deriving precepts of natural law is based entirely on the common nature of practical reason and on the natural inclinations of the human agent. The term 'natural law,' as it is used here, appears to signify nothing other than the first principles of practical reason. Moreover, St Thomas certainly does not hold that men need to have learned of God's existence and God's legislative activity before they can grasp the truth of the first principles of practical reason. These principles are naturally self-evident to everyone, whereas not even God's existence, let alone His universal providence and legislation, is self-evident to men. This is the point that Donagan is making with his reference to Aquinas' assertion that all men know the common principles of the natural law. He is by no means alone in seeking a purely philosophical account of natural law, or more precisely, one that borrows nothing from either revealed or even natural theology. Nor, as the survey of interpretations in Chapter One will show, is he alone in holding that Aquinas' thought allows for such an account.

The question that his claim raises is the following. Can an account of natural law that makes no mention of God, or of the eternal law, still present natural law as a law in the full Thomistic sense? As indicated above, it is easy, at

least at first glance, to give a formulation of natural law in terms of the general definition of law, when some reference to divine legislation is permitted. But without such reference, it becomes difficult to see how to apply almost any of the elements of the definition of law to the case of natural law. Who holds the position of the one who has care of the community? Who promulgates natural law? Also, if its author is not God, then the community to which natural law is promulgated can hardly be the universe; what community takes its place? Toward what common good will it aim? Even the first element of the definition, "an ordination of reason," is thrown into some doubt. For by this expression Aquinas intends a certain kind of command.[5] But there can hardly be a command where there is no commander; and it is at least problematic to say that natural law is a command issued by each man's own natural reason. One problem, connected with the question of the community, would be that a natural law issued by a man's own reason would be a law that governs exactly one man. There would be as many natural laws as there are men, even if the content of these laws would be identical. A more serious problem arises from the fact that for Aquinas, command is an act that comes about only as a consequence of deliberation, judgment and choice.[6] If natural law is a command issued by a man's own reason, then it depends upon his own choice to pursue the things commanded. This is problematic because natural law is supposed to consist precisely in the principles of all deliberation, practical judgment and reasonable choice.

Of course, a good deal of further discussion about each of these problems is possible. It would also be possible to say simply that when Aquinas says that natural law has the nature of law to the highest degree, he is thinking of natural law according to its "theological" definition. Perhaps the "philosophical" definition simply has to abstract from some of the elements of Aquinas' definition of law, or to employ a wider notion of law.

However, the considerations raised by Donagan also point to problems even for the "theological" definition of natural law, the definition in terms of the eternal law. For if the literal reading of the text indicates that Thomistic natural law is a law in the full sense, it indicates that it is something natural in a very strong sense as well. Natural law is said to be promulgated to man "by the very fact that God has inserted it into men's minds as something to be naturally known." Yet how is this possible, if God's existence and legislative work are not also naturally known? At least in the case of human law, the promulgation of a law requires making known not only the order contained in the law, but also the authority by which it is enacted. The king's command without the king's seal carries no weight at all. Perhaps some degree of regulative power can be attributed to the first principles of practical reason by the very fact that men naturally understand them to be true; but is this way of understanding them, without the further consideration that they originate from the will and command of the Author of nature, sufficient to give them the full obligatory force of law? For Aquinas, law is nothing if not obligatory. The very starting-point that he adopts in constructing the definition of law is an etymology according to which the term '*lex*' is derived from the term '*ligare*,' to bind or to oblige.[7]

There seems to be a certain tension between the terms that comprise the expression 'natural law.' The natural character of natural law, the fact that its precepts are naturally known, seems to allow for the possibility of considering natural law apart from its supernatural Author, knowledge of Whom does not immediately accompany the knowledge of the precepts; but to consider natural law in this way makes it difficult to ascribe a fully legal character to it. On the other hand, the assertion that natural law is a law in the full sense of the term seems to entail not only that it be something instituted and promulgated by a provident God, but also that this feature of it be known by those whom it rules. Yet Aquinas

gives every indication of thinking that this feature is not something known naturally, at least not with the same degree of naturalness as that which he ascribes to the knowledge of the precepts themselves.

The foregoing discussion is meant to give only an introductory sketch of the question to be pursued in the following investigation. The issues and problems will be set forth in greater detail in Chapter One, in which various contemporary interpretations of the legal character of Thomistic natural law are surveyed. These interpretations are grouped into four basic positions.

In the first two, the legality of natural law is approached with the assumption that natural law can be treated independently of God and the eternal law. Of these, the first to be considered concedes that natural law, so treated, falls short of the full nature of law as Aquinas understands it. This position is asserted most strongly by Odon Lottin. The other chief adherents of it to be considered are Germain Grisez, John Finnis, and Mortimer Adler.

According to the second position, the precepts of natural law retain the full nature of law even when seen independently of the eternal law. Their status as first principles of practical reason immediately endows them with a legal character. Professor Donagan's interpretation is placed here, as are those of Frederick Copleston and Gregory Stevens. The proponent of it who receives the most detailed treatment is D. O'Donoghue.

The other two positions present the account of natural law as inseparable from the doctrine of the eternal law. As indicated in the above sketch, presenting natural law in this way makes possible a straightforward attribution of full legality to it. The issue that divides these two positions is whether the legal quality of the precepts of natural law is as natural as the understanding of the precepts itself. The interpreter who answers negatively is Ernest Fortin. To him, Aquinas shows

indications of wanting to qualify the naturalness of natural law to a significant degree. Some aspects of his interpretation find support in the account offered by Wolfgang Kluxen.

The last position to be considered is that natural law cannot be adequately treated apart from the eternal law, and that it is at once fully legal and fully natural. This seems to be the more traditional understanding of Aquinas, at least since the revival of Thomism at the beginning of the century. It has a rather large number of proponents, though few who address all or most of the difficulties raised by the adherents of the other positions. Those to whom most attention will be devoted are Osvaldo Lira and Walter Farrell. The views of Peter Geach and Elizabeth Anscombe will also be considered in some detail.

Chapter Two takes up the question of Aquinas' understanding of the relation between natural law and the eternal law. Certain historical considerations are brought to bear on the question, and then a resolution of it is sought through a detailed analysis of the relevant texts of the *Summa theologiae*, especially the Question on the nature of law in general and the Article in which the existence of natural law is demonstrated. The conclusion to be drawn is that the formulation "participation of the eternal law in the rational creature" is meant to express the formal notion of natural law, and that therefore natural law is inseparable from the eternal law in Aquinas' doctrine.

On account of this conclusion, it becomes necessary to address the problem of the naturalness of natural law. The question is whether the legal character of its precepts is actual from the very moment that their truth is first understood, or whether they become fully legal only when seen precisely as a participation of the eternal law. This amounts to the question of whether the precepts of natural law become full-fledged laws in the same manner as do precepts of human positive law: by way of the notification of their authoritative institution. The comparison

between natural law and positive law on this point will form the concern of Chapters Three and Four. Chapter Three is devoted primarily to showing that Aquinas' notion of law in general allows for the promulgation of law to come about in ways other than that proper to human positive law. This is shown mainly through an analysis of Aquinas' notion of command and a consideration of the kind of knowledge that someone who is given a command must have about the command in order to be actually subject to its force. Prior to the study of command, general verification is sought for the assumption that the first principles of practical reason do not win the assent proper to them on the basis of any apprehension of authority instituting them. Arguments are also given to show that the acceptance of this assumption does not contradict the claim that the formal notion of natural law involves a reference to the eternal law. Chapter Four then addresses a special problem connected to the question of authority: whether Aquinas' way of accounting for the understanding of the first principles of practical reason does not implicitly grant the status of an authority to nature itself.

If natural law is a law in the full sense, then it must be obligatory; and if its legal character is natural to it, so must be its obligatory force. To see how this is possible is the object of Chapter Five. The analysis of Aquinas' notion of obligation provided there draws a close connection between obligation and sanction. The general nature of punishment is therefore investigated, and the way in which Aquinas conceives the sanctions proper to natural law is determined. This determination provides the last result needed for the conclusion that the legal character of natural law is as natural to it as the understanding of its contents. Chapter Six then concludes the study with evaluations of the positions presented in Chapter One and an indication of the need for a more accurate account of St Thomas' teaching on the eternal law.

NOTES

1. St Thomas Aquinas, *Summa theologiae* I-II q.90 a.4, in *S. Thomae Aquinatis opera omnia*, iussu impensaque Leonis XIII P.M. edita (Romae: ex typographia polyglotta 1888) t.IV ff. (Hereafter the *Summa theologiae* is cited without title; citations of other works of Aquinas will refer to the Leonine edition unless otherwise indicated.)

2. I-II q.90 a.4.

3. I-II q.91 a.2.

4. Alan Donagan, "The Scholastic Theory of Moral Law in the Modern World," in *Aquinas*, ed. A. Kenny (Notre Dame: University of Notre Dame Press 1969) pp.328-329 (hereafter "The Scholastic Theory").

5. See I-II q.92 a.2: *sicut enuntiatio est rationis dictamen per modum enuntiandi, ita etiam lex per modum praecipiendi.*

6. See I-II q.17 a.3 ad 1^{m}; II-II q.47 a.9.

7. I-II q.90 a.1.

CHAPTER ONE

THE QUESTION OF THE LEGAL CHARACTER OF THOMISTIC NATURAL LAW

A. Natural law as law in a qualified sense

The most extreme and most detailed claim for the need to consider natural law in isolation from anything extrinsic to man, including the eternal law of God, is put forth by the Benedictine scholar Dom Odon Lottin.[1] For Lottin, the consideration of the eternal law is not merely incidental to the treatment of natural law; it is positively detrimental to a correct notion of natural law. In his view, the real function of the doctrine of natural law in Aquinas' thought is to provide the foundation for what Lottin calls an "intrinsic morality." This is a system of principles or standards of human conduct that arise directly from the light of man's own reason, and not from any extrinsic impositions, for instance the commands of a divine lawgiver. The truth and the normative character of these principles is intrinsic to them. Their status as true norms can and, in the first instance, must be seen independently of any merely extrinsic impositions or sanctions. In this setting, connecting natural law with the eternal law only obscures the distinctive role of natural law. Indeed, he says, it is hard to see in any case what can be learned from such a connection. No one in this life knows the eternal law as it is in itself, whereas everyone knows natural law. To explain natural law in terms of eternal law is to explain the more known by the less known. It is not necessary to have recourse to such an explanation in order to grasp that natural law is a genuine moral standard and carries genuine obligation. The object of natural law consists in those things that are "commanded because [intrinsically] good, and prohibited because [intrinsically] evil."[2] Lottin stresses the absence of the eternal law from the discussion of natural law in I-II q.94.[3] In his estimation, the reason why natural law is called a participation of the eternal law is simply that the eternal law is the supreme rule of all good and the ultimate source of any other rule.[4]

Lottin's explanation for Aquinas' treatment of natural law in the light of the eternal law is that the *Summa theologiae* is at once a theological work and an effort to synthesize the tradition. It is hardly surprising that a theological study of the various kinds of law should place the eternal law first; and since the eternal law is the first and most universal law, it provides a way of unifying the study of all the other kinds of law dealt with in the tradition. And even so, according to Lottin's historical researches the formal discussion of the eternal law made only a very late entry into the mainstream of scholastic theology, and Aquinas himself felt no need to take it up until he became acquainted with one or the other of two Franciscan works that dealt with it.[5] At the same time, these considerations suggest to Lottin that the presentation of natural law in the setting of the eternal law does not spring from the inner tendency of St Thomas' thought on natural law. The truly personal thought of Thomas Aquinas on the subject of natural law rests in his understanding of reason's natural capacity to grasp a moral order that is intrinsically applicable to human action. That the eternal law of God should be the ultimate origin of this order serves only to underscore the respect that is due to natural reason itself, as to an imprint of the Reason of God. "*On peut donc organiser le traité de la loi naturelle sans partir du concept de loi éternelle*."[6]

> Quand on étudie la loi éternelle avant la loi naturelle, on respecte sans doute l'ordre objectif des choses; mais on ne suit pas l'ordre logique de nos connaissances, lequel va du mieux connu au moins connu; or, la loi éternelle ne nous est connue que par la voie d'analogie, tandis que nous saisissons la loi naturelle en nous-mêmes. D'autre part, quand on place la définition thomiste au début du traité des lois certains lecteurs sont tentés de comprendre la loi naturelle à la lumière de la loi positive, puisque c'est en elle que s'incarne parfaitement la définition thomiste. Or, ce n'est pas dans cette lumière qu'il faut la considerer; car ce qu'il faut avant tout inculquer dans l'enseignement de la loi naturelle, c'est la caractère intrinséciste de

> cette loi ou si l'on veut, du dictamen de la raison naturelle par où elle se définit; or, le lecteur court le risque de ne pas saisir cette note essentielle de la loi naturelle quand il considère l'*ordinatio* de la raison naturelle, immanente à l'homme, dans la perspective de l'*ordinatio* de la raison d'un législateur, fût-il divin, s'imposant du dehors.[7]

Lottin's insistence upon presenting natural law entirely in terms of what is intrinsic to its human subject thus leads him to separate the account of it not only from the eternal law, but also from Aquinas' definition of law in general. Nearly every interpreter of Aquinas' definition of law judges that it is generated chiefly in light of the example of law that is most familiar to us, human positive law. But Lottin goes much further. For him, only human positive law fully satisfies the definition. Since advertance to the work of a legislator is in no way necessary for understanding the precepts of natural law as genuine norms, neither is it necessary that the study of natural law be undertaken in light of the general definition of law as something imposed or promulgated by governing authority. It is only human positive law whose full normative status is perceived only through reference to the promulgation and sanction of a governor. If natural law, formally considered, is nothing other than the principles of action existing naturally in each individual's reason, then its notion does not include the note of a conclusion drawn by practical reason for the direction of action; nor of something essentially brought forth in view of a common good; nor of something instituted by someone who has charge of a community; nor even of something promulgated. Formally considered, it realizes none of the attributes that Aquinas judges to be essential to any true law, except imperfectly and by some sort of analogy.

> Cette définition [de la loi en général] aide-t-elle efficacement à mieux comprendre la loi naturelle? Nous ne le croyons pas; car

> pour l'appliquer à celle-ci il faut en prendre tous les termes dans un sens analogique....Au surplus, en tout ceci voyons saint Thomas lui-même àl'oeuvre. Dans la loi naturelle il voit certes un acte de raison, *aliquid per rationem constitutum, quoddam opus rationis* (I-II q.94 a.1); mais nulle part il n'exploite le concept plus précis d'*ordinatio rationis* par lequel il avait défini la loi en général (I-II q.90 a.1.). Saint Thomas est certes préoccupé aussi de la promulgation de la loi naturelle; mais c'est pour conclure que cette loi n'a pas besoin de promulgation (I-II q.90 a.4 ad 1[m]). Quant aux deux autres éléments de la définition de la loi en général, concernant l'auteur et le but de la loi, nulle part, dans toute sa question consacrée à la loi naturelle, saint Thomas ne songe à lui en faire l'application.[8]

From the manner in which he qualifies the definition of law in general when applying it to natural law, it appears that the analogy that Lottin has in mind would be an analogy of improper proportionality, i.e. a metaphor. The thought would be that, in some respects, the natural dictates of each man's reason function in relation to his actions as laws function in relation to the actions of the members of a community. It would be similar to the metaphor by which, according to Aquinas, the right subordination of the other powers of the soul to reason is called "justice."[9]

Professor Grisez also insists that natural law cannot be understood in the first instance as a command imposed upon man by God. Grisez does not deny, of course, that the first principles of practical reason are in fact derived from the eternal law. But this is not how they first present themselves to the human intellect. In fact, he says, according to their original and natural existence in man's mind, they are not commands at all, divine or human.

> From man's point of view, the principles of natural law are neither received from without nor posited by his own choice; they are naturally and necessarily known, and a knowledge of God is by no

> means a condition for forming self-evident principles, unless those principles happen to be ones that especially concern God.[10]

Grisez calls these principles "precepts" or "prescriptions," to distinguish them from the kind of enunciation called "command." The difference is that command adds the note of a certain impulse derived from the will. This impulse gives the enunciation a moving force or a power of "promoting the execution of the work to which reason directs."[11] He thus draws a sharp distinction between natural law and human or divine positive law.

> Human and divine [i.e. revealed] law are in fact not merely prescriptive but also imperative, and when precepts of the law of nature were incorporated into the divine law they became imperatives whose violation is contrary to the divine will as well as to right reason.[12]

Grisez does not develop further the question of the sense in which natural law, as he presents it, constitutes a law. He tends to stress as much as possible the directive and rational quality of law, and to downplay or even deny any moving force intrinsic to it. As a result, the reader might infer that he sees no obstacle to calling natural law a law in the full sense. But it is not clear that Grisez would be following Aquinas, or even remaining consistent with himself, in saying this.[13]

However, Grisez's collaborator, John Finnis, who by his training is perhaps more sensitive to the strictly legal issues involved, asserts without hesitation that natural law is "only analogically law."[14] There would be no loss of meaning, he says, if one were to speak of "natural right," "intrinsic morality," "natural reason or right reason in action," instead of "natural law." In this regard he refers, evidently with approval at least on this point, to an article by Mortimer Adler. Adler argues that natural law is law "only by analogy of attribution (that is, by a

loose form of analogy, not the strict analogy of proportionality) to the primary analogate, which is human positive law."[15] What Adler means is that natural law is called "law" in the same way that medicine is called "healthy." It provides the understanding that precedes and directs any human work of legislation, expressing those basic needs of man that all human laws seek, or pretend to seek, to satisfy. In another article Adler argues in detail that natural law is neither "promulgated" in the proper sense, nor received from an extrinsic and dominating authority, nor fully coercive, nor relative to the constitution of any actual community.

> Natural law is law only if we look to God as its maker, because, as St Thomas says, it proceeds from the will as well as from the reason of God. But if you consider natural law purely on the human level, whereon it is simply discovered by reason, with no aid from the will, then, being entirely a work of man's reason, natural law does not meet St Thomas's definition of law.[16]

As this quotation indicates, Adler's discussion is restricted to the notion of natural law that he considers to be possible within the limits of philosophy, i.e. without reference to divine legislation. Of course, for the purposes at hand, the real question would be whether such a notion is even possible for Aquinas. But Finnis has no doubt that it is. To him, Aquinas' presentation of natural law in light of the eternal law is "no more than a straight-forward application of his general theory of the cause and operation of human understanding in any field of inquiry."[17] As a merely theoretical reflection, this application does not enter into the proper, suitably practical account of natural law.[18]

A number of other authors can be found who are in explicit or implicit agreement with Lottin's position. Frequently, the treatment of natural law outside the context of the eternal law is presented as fully in accordance with the inner tendency of St Thomas' thought. The notion of natural law is simply identified

with the notion of principles of "intrinsic morality," and this notion is judged to contain only an imperfect or "analogical" realization of the Thomistic criteria of law. Those who wish to be true to the spirit of St Thomas' ethics are urged to rethink the theory of natural law in a way that sets aside the connotations of "law" and places the notion of "right reason" at the center of the discussion.[19]

B. Natural law as a law secundum se considerata

Many interpreters agree with the position of Lottin, that the eternal law is not a necessary item in the proper account of Thomistic natural law. Not all who do so, however, follow him in drawing the conclusion that, at least within the limits of this account, natural law falls short of the full nature of law. According to the interpreters to be considered in this section, Thomistic natural law can be seen as a law in the proper sense of the term even when it is not considered in relation to the eternal law. On the one hand, for them, Aquinas' discussion of the nature of law in general does not produce confusion when applied to the case of natural law. On the other, to call natural law a participation of the eternal law is simply to indicate the ultimate source of its legality; it is not to identify the immediate or proper source of that legality. According to this view, natural law possesses the nature of law just in virtue of its natural origin in human reason. Its derivation from the eternal law is not regarded as the sole or proper basis of its legality. Legality is judged to belong to the first principles of practical reason when considered simply according to themselves. The eternal law enters into the account of natural law only because all legislation is ultimately derived from the legislation of God. The strict definition of natural law does not include a reference to the eternal law. The eternal law "does not enter into the doctrine of natural law precisely as such, but is of paramount importance in what may be

termed the ontological perspective in which the full perfection of the part is seen in its relation to the whole."[20]

A very extensive exposition of this interpretation is presented by D. O'Donoghue.[21] According to O'Donoghue, "St Thomas does not provide a direct definition of Natural Law, but he defines it indirectly, as a participation in Eternal Law."[22] O'Donoghue finds that although knowledge of the eternal law sheds much light on the function of natural law in the economy of the universe, approaching natural law by way of the eternal law is not required by the intrinsic intelligibility of natural law. He sees no justification for simply setting the eternal law aside when treating of natural law, but neither does he think it absolutely necessary to follow St Thomas' procedure and to start from the eternal law.

O'Donoghue criticizes Lottin for denying that natural law is a law in the proper sense of the term.[23] He notes that St Thomas states explicitly that natural law is a law in the proper sense; this is how Aquinas distinguishes between man's participation of the eternal law and the participation of the eternal law in the irrational animals.[24] For the same reason, O'Donoghue criticizes those who make the legality of natural law depend solely upon the eternal law. To present natural law in this way, he holds, is to say that it is nothing but a portion of the eternal law passively received in man.[25] In his view, to call natural law a passive participation of the eternal law is to confuse it with the kind of subjection to eternal law that is common to man and beast, the kind that Aquinas calls subjection *per modum actionis et passionis*.[26] It is to locate natural law in appetitive inclinations, which are passive principles or principles by which something is determined by an agent. Instead, natural law must be understood as an object of cognition, which is prior to appetite and serves as an active principle or a principle by which something determines action. Only by existing as an object of reason can natural law be said to be

a law in the proper sense and to belong exclusively to man. If man has a natural law, it must be because he naturally participates in the eternal law in an active way.

For O'Donoghue, this means that man must naturally participate in the very work of enacting law. Even though natural law shares in the nature of law only to the extent that man participates in the eternal law, the participation in question must be a participation in the very act of legislating. Natural law must be a law naturally instituted or commanded by man's own reason for the direction of human acts. It must receive all of the conditions of legality from reason itself; it must be a law promulgated not only "to" man but also "by" man.[27] Its dependence upon the eternal law cannot be essentially different from the dependence of any other law, for example human law, on the eternal law. In stating precepts of natural law, we are in fact stating precepts of the eternal law;[28] but even though men are not at first aware of this fact,[29] the legal or obligatory nature of these precepts is evident to them right from the start, because it is something for which their own reason is also responsible.[30] O'Donoghue grants Lottin's point that natural law, insofar as it is considered a dictate of mere reason, cannot be seen as issued by a public authority for a common good; but he cites texts from the *Summa theologiae* to argue that in some cases the full nature of law can be attributed to privately issued dictates and to dictates that are concerned with individual goods.[31]

O'Donoghue understands Aquinas' teaching on natural law to entail a doctrine of man's natural autonomy. Whereas the beasts are naturally determined to act in accordance with the eternal law, man's acts are brought into accordance with the eternal law through a law which he himself originates. It is for this reason that his compliance with the eternal law can be said to be free or self-determined. O'Donoghue is by no means alone in holding such a position. His argument closely resembles that of Frederick Copleston.

> For Aquinas...it is the human reason which is the proximate or immediate promulgator of the natural moral law. This law is not without a relation to something above itself; for it is...the reflection of or a participation of the eternal law. But inasmuch as it is immediately promulgated by the human reason we can speak of a certain autonomy of the practical reason. This does not mean that man can alter the natural moral law which is founded on his nature. But it means that the human being does not receive the moral law simply as an imposition from above; he recognizes or can recognize its inherent rationality and binding force, and he promulgates it to himself.[32]

As the quotation from Copleston indicates, this notion of natural law as an expression of man's autonomy or self-legislation is not meant to imply that man has any control over the natural law that he possesses. Natural law is not the fruit of his own deliberation and choice. Rather, the thought is that what natural law requires of man is always and, from man's point of view, first of all something that man requires of himself. His own heart utters its precepts, and it is because these are so deeply rooted in him that he has no power to change or uproot them. This is why the binding or obligatory character of its precepts is immediately apparent to him, even before he becomes aware of their derivation from a higher authority, outside himself, to which he is subject.[33]

It seems in fact that the existence of something called "moral obligation" is central to this line of interpretation. By "moral obligation" is meant a kind of necessity or absolute requirement to which man is subject, and knows himself to be subject, by the very fact of having reason, and without any advertence to external authority, even that of God.[34] This point comes out clearly in a passage from Professor Donagan, who also presents Thomistic natural law in this way. For St Thomas, he says,

> From the point of view of moral philosophy, the natural law is a set of precepts the binding force of which can be ascertained by human reason; from the point of view of theology, it is that part of what God eternally and rationally wills that can be grasped by human reason as binding upon human beings.[35]

He explicity criticizes G.E.M. Anscombe for holding that "morality can intelligibly be treated as a system of law only by presupposing a divine lawgiver."[36]

Thus for this line of interpretation, the question of the legality of natural law is framed not so much in terms of the four elements of Aquinas' final definition of law, as in terms of the proper attribute from which he begins his study of the essence of law. *Lex enim dicitur a ligando, quia obligat ad agendum.*[37] The decisive consideration is that man acknowledges and submits to the obligatory force of natural law's precepts immediately he understands the terms of which they are composed. For this reason, the light of his own intellect, together with the natural impulses of his own will, can be regarded as the immediate source of natural law's obligatory force, and hence also of its legality. For does St Thomas not say that obligatory force is something proper to law?[38]

Gregory Stevens has given clear expression to this view.

> Because the necessity of this [first] principle [of practical reason] is the result of the meaning of the subject and predicate, it does not have to be supported by any outside authority, but is, in a true sense self-sustaining. In fact, the acceptance of authority by the human, moral agent is governed by this principle, and authority is accepted because it shares in the nature of the good, which is asserted in this judgment. Of course, neither this judgment and its necessity, nor anything at all in man and in creation can be fully explained without reference to the Creator, but rationally and philosophically, the necessity of this principle can be discovered and supported without direct recourse to the authority of God.... When this ordination is

> seen as joined with the will in actually moving to operation, the law is designated as a precept, as actually inducing and leading to action.[39]

However, Stevens goes on in the same article to distinguish between what he calls the "inner necessity" of natural law, which is its force of "moral" obligation, and obligation in the proper sense of the term. He in fact applies the same analogy to the obligatory force of natural law as that which Lottin applied to its legality.

> It may be helpful to distinguish the inner necessity of this principle from the more exact use of the term "obligation." This latter involves the notion of being bound, of being under constraint, and brings with it the notions of a superior and inferior, in such a way that the action of the inferior is seen as regulated by the will of the superior. Strictly and formally speaking, this subjection of one's action to the will and determination of another is applicable only to the field of justice....When the terminology of justice is used in regard to the forms of justice other than distributive, the notions of what is due and just are used in a proper analogical sense. When, however, these terms are applied in other contexts, they are to be seen as used in a metaphorical sense, as St Thomas notes. Such would be the case of applying the notions of justice to man's higher, rational self, seen as the superior with rights, and to his lower self, seen as the inferior with duties; or to the relations of intellect and will. Such would also be the case if the terms of justice are used to describe the psychological reaction to objective facts and reality. While in these cases it may be quite true to say that man feels constrained, or under obligation, this does not in any way authorize the philosophical conclusion that the moral law, as such, is a constraint, imposed from without on man's freedom and reason.[40]

For Aquinas, of course, law in the full sense is nothing if not coercive: *lex de sui ratione duo habet*: *primo quidem, quod est regula humanorum actuum*; *secundo, quod habet vim coactivam*.[41] It seems then that this position can treat

natural law as a law in the full sense only because it abstracts from certain aspects of Aquinas' complete understanding of law. So at least in some crucial respects, this position is not very different, after all, from the one represented by Lottin and others. By treating natural law in abstraction from the eternal law, both positions are led to qualify or limit the legal character of natural law somewhat, in comparison with Aquinas' notion of law. And in fact, in a slightly later article, Stevens makes this point explicitly.[42]

C. Natural law as a not-quite-natural law

A somewhat restricted notion of law seems to result from removing the eternal law from the account of natural law. It is therefore not suprising to find other interpreters who insist that reference to the eternal law is an essential element of Aquinas' understanding of natural law. In fact, some go so far as to suggest that the legal force of the first principles of practical reason is not even fully actualized until the divine institution sanctioning them is recognized.

This requirement makes it somewhat difficult to preserve the strictly natural character of natural law. It does so for the same reason that the previous interpretation tended to qualify its legal character, namely, that the first principles of practical reason are naturally self-evident to everyone, whereas the existence and legislative work of God are neither naturally nor universally known.

The most direct enunciation of this position belongs to Ernest Fortin.[43] Explicitly criticizing Finnis, Fortin insists that Aquinas conceives natural law to be a law in the strict and proper sense of the term, and that the Thomistic notion of law includes not only the element of rationality but also the elements of will, moving force and coercion or sanction. He then lays down the following claim:

> What the Thomistic theory essentially requires is not only that the content of the natural law be naturally known to all human beings but that it be known precisely as belonging to the natural law, that is to say, to a law which is both promulgated and enforced by God as the author of nature and hence indispensably binding on everyone.[44]

Disappointingly, Fortin supplies neither arguments, nor texts from Aquinas, in support of this contention.[45] But whatever its status, he continues on the basis of it to suggest that Aquinas should, and in fact does, show some hesitation about the natural character of natural law. His argument turns on the relation between man's knowledge of God and his knowledge of the principles of practical reason, a relation that Fortin presents in terms of the connection between the First and Second Tables of the Decalogue.

> Since all laws draw their effective power from the will of the lawgiver, such a view clearly presupposes that the divine nature is characterized by will no less than intellect. It becomes intelligible only within the framework of a providential order in which the thoughts, words and deeds of individual human beings fall under God's supervision and are duly rewarded or punished by Him. Here precisely is the difficulty to which on its own ground the argument is exposed; for, the truth of the proposition that the God of nature is a solicitous God, entitled to and demanding the love and worship of all rational creatures, would appear to be secured only through the precepts of the First Table, which, by Thomas's own admission, are not universally accessible without the aid of divine revelation.[46]

Since, he concludes, the precepts of the Second Table depend on those of the First for full legal efficacy, it is difficult to see how they can be regarded as fully natural. Yet according to Aquinas, these precepts belong to natural law "absolutely speaking." The knowledge of their truth requires no help from revelation. Fortin therefore suggests the need to distinguish between the knowledge of

the precepts of natural law merely as true, and the knowledge that they are genuinely legal precepts. With respect to the latter knowledge, the naturalness of natural law seems doubtful. Of course, Aquinas regards the precepts of the Second Table as only secondary precepts of natural law,[47] i.e. precepts that require some reasoning, though not very much, from those that are first and self-evident; but the same sort of doubt could be raised also about the primary precepts.[48]

Fortin especially dwells on that accompaniment of law called punishment or sanction. Although Aquinas does not name sanction among the elements of the definition of law, Fortin says, this does not mean that law need not carry sanctions; it means merely that carrying sanctions belongs to law, not as part of its substance, but as one of its essential effects or accompaniments.[49] But Fortin finds Aquinas curiously silent on the subject of sanctions attached to natural law. He notes that Aquinas mentions that violations of natural law are punished, and that natural law itself calls for such punishment; but he finds in Aquinas no actual specification of the punishments for breaking natural law. This omission is made even more significant by the fact that Aquinas does specify punishments for breaking human or divine law. Fortin also observes that Aquinas himself says that the specification of the punishment called for by natural law belongs to positive law.[50]

Fortin suggests an explanation for this silence on the sanctions of natural law. Perhaps Aquinas wants to indicate natural reason's unawareness, or at least uncertainty, not only about what natural law's proper sanctions are, but even about whether the violations of it are punished in any way at all, in each and every case.[51] This reading would corroborate the thought that St Thomas regards natural reason as not fully aware, or not fully certain, that the practical truths that it knows are actual laws. Reason may be unable to discern the existence of sanctions proper to natural law, or more precisely, the universality and inescapability of such sanctions; and this inability would correspond to its

uncertainty as to whether the universe is governed by an omnipotent and provident governor from whose justice no one can escape. This uncertainty in turn leaves reason in doubt as to whether the common practical principles have the character of a divinely instituted natural law. This would mean that while everyone knows the common principles of the natural law, not everyone knows of the existence of the eternal law from which these principles derive and obtain their legal force; and hence the principles do not naturally function as laws, i.e. as rules that win compliance through appeal to the authority of their framer and the certainty of His enforcement.

"To put the matter in more concrete terms, human reason, left to itself, cannot be absolutely certain that crime never pays and that in the end the only people who are happy are the ones who deserve to be happy."[52] There may be wrongdoers who "get away with it" in the human forum, and "short of appealing to retributions in an afterlife, on which the unaided human reason is unable to pronounce itself, the strict natural law theorist has no option but to deny that such a person can ever be at peace with himself."[53] But, says Fortin, it is neither demonstrable nor empirically verifiable that all undetected criminals are afflicted with remorse of conscience.[54] Yet punishment for each and every wrongdoing would be an essential requirement of any theory of natural law as a genuine law; for it is a genuine law only if it is a law of God.

Thus Fortin's doubt as to the naturalness of Thomistic natural law does not extend only to the ability of all men to know its legal character in a wholly natural or immediate way. His doubt also extends to the knowledge about natural law that can be attained even by the few who make full use of natural reason, i.e. by philosophers.[55] Fortin finds it at least highly suggestive that Aquinas should say about sin that it "is viewed by theologians principally as a (punishable) offense against God, but by philosophers only as something that is contrary to reason."[56] This inability of natural reason to make certain of sufficient sanctions would

explain why some thinkers, holding to its naturalness, have wanted simply to identify natural law with the natural principles of practical reason, and to present it independently of both God and the strict notion of law, making it a mere "*lex indicans*" rather than a true "*lex praecipiens*."[57]

Fortin's interpretation is directed against the contention of some historians of political philosophy, with whom he is in agreement on certain basic tenets, that Aquinas' natural law doctrine is a modification and distortion of the ancient, especially Aristotelian, notion of natural right.[58] According to this contention, a clear sign of the difference between Aquinas and Aristotle is the fact that Aquinas attributes universality and indispensability to the first precepts of natural law. Aristotle, on the other hand, attributes a certain variability according to time and place, and a possibility of simple suspension in extreme cases, to all right, including natural right. The right that Aristotle discusses is entirely political, presupposing the existence of civil society and its laws.[59] There is no pre-political right, because there is no pre-political law. 'Natural right' means either that portion of political right that tends to be common to the various régimes, not requiring explicit agreement before it takes effect,[60] or else the very best political order, which would be appropriate under the most favorable circumstances, but which under other circumstances would be impossible or even harmful.

Fortin's claim is that Aquinas is perfectly aware of the difference. Thomistic natural law is natural only as regards its content, not as regards its form as law. It is compatible with the view that the only law that men are naturally certain of is human law. If there is any sense in which the legal character of natural law is somehow natural, for Aquinas, it would be only as something that has been revealed for all men everywhere, Jew and Gentile alike.[61]

Wolfgang Kluxen's position is in at least partial agreement with Fortin's. Kluxen does not really raise the question how a law can be natural if it is not naturally known to be a law. However, he certainly implies that the legal character of natural law is not something that is naturally known in any strong sense. He argues further that even if the formal notion of natural law, i.e. natural law *qua* law of God, can be grasped within philosophy by the metaphysician, it has a practical significance only within revealed theology. This is simply because metaphysics is not a practical science at all. Only revealed theology is a science of God that is both theoretical and practical.[62] At the same time, in Kluxen's view, moral philosophy is independent of both metaphysics and revealed theology, and has no need of, nor even access to, the notion of natural law. Treating moral phenomena simply as they immediately show themselves in human experience, it judges everything in the light of the first principles of practical reason, and does not seek any further foundation for these principles. In sum, it is in virtue of themselves that the first principles of practical reason are understood to be true directives of human conduct. At the same time, it is only by reference to a further foundation, the eternal law, that they can be understood to have the nature of laws. In other words, apart from this reference, natural law can only be known materially, not formally.[63] And outside of revealed theology, the reflection upon the divine origin of the moral order is an exclusively theoretical undertaking.[64]

D. Natural law as a natural law of God

The positions so far considered on the legality of Thomistic natural law may be summed up as follows. First, there are those who make natural law to be a law only *secundum quid*, either by its partial resemblance to true law, which is human positive law, or by its causal relation to true law. Second, there are those

who make natural law to be law *simpliciter*, and not only *simpliciter* but also *secundum se considerata*. Its legal character is manifest according to its intrinsic nature as the set of first truths of man's practical reason. The third position is that natural law is law *simpliciter*, but only *secundum participationem legis aeternae*; and in order for its legal character to be fully actualized, its derivation from the eternal law of God must also be apprehended by those subject to it. For this reason it is law *simpliciter*, but natural only *secundum quid*.

The mere permutation of the terms would suggest another possible understanding of Thomistic natural law. This would be that it is a law in the full sense, that its legal character is owing exclusively to its origin in divine authority, and that it is naturally known to be a law because men are naturally aware of its divine origin. But it is at least very difficult to find anyone who adopts a view.[65] Evidently the interpreters are too conscious of Aquinas' rejection of the proposition that God's existence is naturally self-evident to us, and of the fact that, even as regards the discursive use of natural reason, he considers accurate knowledge of God's attributes to be something attainable without revelation only by a very few.[66]

Still, there is a position actually held by some, according to which Thomistic natural law is at once fully a law, exclusively dependent upon divine institution for its legal character, and wholly natural. It would be a law *simpliciter et secundum participationem simpliciter naturalem et nondum cognitam legis aeternae*. This is in fact the more traditional understanding of the matter.[67] As suggested in the Introduction, it is also the most straightforward reading of the text. Against the position that natural law is law only in a qualified sense, it can adduce "*lex naturalis maxime habet rationem legis*"[68] and "*participatio legis aeternae in creatura rationali proprie lex vocatur.*"[69] Against the notion that reason itself has a hand in making natural law to be a law, it can adduce several passages:

> Nullus, proprie loquendo, suis actibus legem imponit.[70]
>
> Lex naturalis [non est] aliquid diversum a lege aeterna. Non...est nisi quaedam participatio eius.[71]
>
> Lex...divina et naturalis [proficiscitur] a rationabili Dei voluntate.[72]
>
> Homo non est institutor naturae.[73]

As regards the obligatory force of natural law, this position can adduce *nullus ligatur nisi ex aliquo superiori*,[74] and also the fact that when Aquinas presents the dictate of reason or conscience as obligatory, he does so by referring it to the eternal law or to divine judgment.[75] And against the notion that natural law is not altogether natural, i.e. that the natural endowment of man's intellect is not a sufficient promulgation of law, it can adduce the text quoted in the Introduction: *promulgatio legis naturae est ex hoc ipso quod Deus eam mentibus hominum inseruit ut naturaliter cognoscendam*.[76]

According to this position, as according to Fortin's, natural law is on the one hand a law in the proper sense, but on the other, law only as it exists in a secondary way, in those who are subject to law. It is not law considered according to its primary existence, in the one who institutes it and governs by it. This is the position that O'Donoghue criticized for treating natural law as the object of a merely passive promulgation.[77]

Merkelbach, for instance, says that natural law is law, not as it exists in the legislator or ruler, but as it exists in the subjects or in those who are ruled; it is not the eternal law itself, but a certain manifestation and passive promulgation of the eternal law in us.[78] Joseph Collins also insists that natural law cannot be understood except in terms of the eternal law. "It is the eternal law as received

in us."[79] In direct opposition to O'Donoghue, he claims that it is solely an object of passive promulgation, not active.[80] R.G. de Haro judges that according to the Thomistic doctrine of natural law, man neither creates nor invents his law; it is given by God.[81] For him, it is only because natural law is a divine law[82] that we are forbidden to think that it does not acquire vigor in a State until it is incorporated into that State's laws.[83] Similarly, R. Pizzorni argues that in Aquinas' thought, only the eternal law gives an adequate basis for the strict obligation of *giusnaturalismo*.[84] Angelo Scola speaks in the same vein.[85] P.-M. van Overbeke, explicitly criticizing Lottin, holds that Thomistic natural law in no way falls short of the definition of law in general, and that at the same time it is simply unintelligible without the discussion of the eternal law.[86] An autonomous reason is simply out of the question. "*Toute la perspective de la doctrine de saint Thomas est orientée vers l'hétéronomie*."[87] The influence of the tradition appears to him to be virtually incidental to St Thomas' decision to treat natural law in terms of the eternal law: "*même s'il n'avait eu aucune source, saint Thomas n'aurait pas dû changer un iota à sa doctrine*."[88] He finds the distinction between law as it exists actively in the ruler and law as it exists passively in those who are ruled to be one of the very dominant principles in Aquinas' treatment of natural law.[89]

Osvaldo Lira represents this position with an account that sets the Thomistic notion of law within a broad "ontological" perspective.[90] Treating law as a kind of action performed by the legislator upon his subjects, he finds that Aquinas predicates the term 'law' according to a number of analogies. The first and most perfect legislative action is God's work of instituting the eternal law. This action reaches its term in the universe of creatures, and first of all in the establishment of the natural order of the universe and in the impression upon each thing of its natural or intrinsic principles of operation. Owing to their

origin in divine legislation, the natural principles of things may all be regarded as so many natural laws. The primary natural law, however, and the one in which the nature of law remains fully intact, is the natural law of man.[91]

Noting that Aquinas's formulation of the question whether natural law exists, in I-II q.91 a.2, includes the qualification "in us," whereas the question of the existence of the eternal law, in q.91 a.1, is formulated "absolutely," Lira judges that what Aquinas understands by 'natural law' is nothing but the passive and participated side of God's ordination. Eternal law and natural law are really one and the same law, considered as existing in two modalities.[92] All of the elements of Aquinas' definition of law are strictly applicable to natural law, but only insofar as it is viewed as the effect of divine institution. Yet this does not mean that natural law is a 'secondary' instance of law, with eternal law the primary instance; natural law is in fact law in a more proper or formal sense than the eternal law.[93] For "the act of the agent is in the patient." As it exists in God's own mind, His ordination is really only the germ and cause of a law; it has the existence proper to law only as it is found in His rational subjects. Lira goes so far as to say that the eternal law itself has its formal and proper existence in the creatures; it exists in God only in an eminent way.[94]

In Lira's view, there are thus only two legislative orders, divine and human. While insisting that the primary instance of law is the law of God, Lira does not deny that the "point of departure" for Aquinas' formulation of the definition of law is positive human law.[95] Lira's point is that although it is in human law that man first forms the notion of law, the items that distinguish human law from eternal and natural law are not intrinsic to this notion, even in its original application. The law of God precedes and measures positive human law, which is a *lex legislata*. Human law is law by an "analogy of intrinsic attribution" with the law of God.[96] He likens the relation between natural law

and human law to the relation between substance and accident. There is also an analogy of proper proportionality between these laws: natural law is to the divine legislator as human law is to the human.[97]

Concerning the promulgation of natural law, Lira merely remarks that in general, promulgation is an essential element of law, owing to its character as an imposition and a principle of obligation; and that promulgation, as distinct from a mere "divulgation," has an imperative force and so involves the action of the legislator's will. Promulgation must include the manifestation of the legislator's will to make the order that he has conceived obligatory for his subjects.[98] Lira of course insists that the promulgation of the eternal law is a work that involves God's will as well as His intellect; but he does not indicate precisely how it is that the impression of natural principles upon things, especially the natural principles of man's voluntary action, constitutes a manifestation of God's will.

As regards the question raised by the absence of a natural knowledge of the legal character of natural law, several solutions have been proposed within this category of interpretations. Common to all, of course, is the assumption that it is not necessary for man to apprehend that the principles of practical reason are laws, in order for them actually to be laws and to function in his actions as laws ought to function. It is sufficient that he understand the truth of the principles and that this understanding actually be the effect of God's governance over him according to the eternal law, whether or not he is aware that it is such an effect. Thus the content of natural law would not include a formal advertence to God's legislative act, even though the knowledge about this content, that it constitutes a natural law, would require such advertence. Natural law is natural simply because it belongs naturally to man or because it rests upon an apprehension of his nature or of his natural inclinations.[99]

For all of those mentioned so far, natural law can be said to function naturally in the manner of a law because it naturally carries a certain obligatory force. The sole sufficient cause of this obligatory force is taken to be the legislative action of God, with natural reason only somehow communicating that force. But at the same time, for man to know that it is obligatory does not require that he know that it has been imposed by divine authority. Nor, therefore, need he know that it has the nature of law. This does not mean that the precepts of natural law might seem to him not to be laws; it means merely that he need not yet even have raised questions according to which their character as laws comes to light. This position is therefore rather similar to the one presented in Section B. above, with the difference that the name 'law' is allowed application to the natural dictates of reason only insofar as they are viewed as derivations from the eternal institution of God.

What the obligatory force of the precepts of natural law consists in is understood in various ways. For some, e.g. Boyer and Merkelbach, the obligatory force proper to natural law is nothing other than the understanding of its precepts as necessarily true.[100] Both of these interpreters distinguish sharply between obligation and sanction, and Merkelbach explicitly grants that, according to its merely natural existence, natural law lacks a sufficient sanction and is *inefficax*.[101]Presumably he would simply disagree with Fortin that sanction is inseparable from any true law.

For others, the obligatory force of natural law is distinguished from its truth or normative character. Instead, it consists in, or at least involves, a natural knowledge of sanctions incurred by violating natural law, which knowledge does not require any apprehension of an authority imposing the sanctions. It is in rendering man knowingly liable to such sanctions that natural law perfectly fulfills the function of law. The sanctions are sometimes understood to be the

various evils naturally resulting from irrational conduct,[102] and sometimes the remorse that wrongdoing naturally elicits from the wrongdoer's own reason.[103]

The latter is the view of Walter Farrell, who holds that natural reason is the proximate source of the obligation to obey natural law and that nevertheless natural law fulfills the definition of law only according to its divine origin. The obligation of natural law is naturally known, yet the law to which this obligation belongs is a law of God alone.[104] Farrell has nothing to say about the kinds of problems raised by Fortin with regard to the insufficiency of remorse of conscience as the sanction proper to a law of God.

According to Farrell, it is the rational or regulative or normative aspect that is more fundamental or essential to the nature of law, and of precepts generally.[105] Obligatory force is rather a corollary or direct consequence of the nature of precepts. The distinction and relation between the obligatory and normative aspects of law corresponds to the distinction and relation between the roles of will and intellect in the act of precept (*imperium*).[106] Precept is primarily an act of the intellect, since it is essentially a kind of intimation and since its work is to order something to action, both of which operations are proper to reason. What the will contributes to the formation of a command is a certain moving force, giving reason's ordinative intimation the power to initiate the very execution of the action ordained. It is by participating in the act of the commander's will, or more precisely, in his choice of the action to be performed, that his reason's dictate not only measures or regulates action, but also makes it obligatory.

On the basis of this analysis, Farrell argues that natural law, consisting in the primary truths or norms of practical reason, is not only intrinsically normative but also intrinsically obligatory. Man's own reason serves as a genuine, though secondary, cause of obligation. At the same time, Farrell wants to insist

that reason is in no way the legislator of natural law; natural law is purely a law of God, instituted not by man or nature or reason but only by His eternal providence.[107]

By saying that natural law is intrinsically obligatory or that reason is a genuine cause of obligation, Farrell means to oppose the doctrine of Suarez, according to whom natural law merely manifests obligation by serving as a sign of the will of God. In Farrell's view, Suarez's teaching might be valid if precept were, as Suarez holds, essentially an act of will, i.e. the legislator's choice to oblige his subjects to a course of action; but since precept is essentially an act of reason or intellect, there is no reason why the natural dictates of reason should not be precepts according to their own nature. This is true even granted that the sole cause of their existence and preceptive quality is God instilling in man a natural participation of His eternal law. And because the natural dictates of reason are intrinsically preceptive, they are also intrinsically obligatory. No explicit advertence to the will of God is needed in order to appreciate their obligatory force, even if it is needed in order to give a sufficient explanation of that force.

The moving or obligatory force of the natural dictates of reason is derived from the natural inclinations of man's appetite, whose role Farrell likens to the role of choice in the formation of ordinary commands.[108] Together with the natural light of reason, the natural inclinations provide the "proximate sources" of the natural dictates of reason. And since these inclinations, like the dictates themselves, are presented by St Thomas as participations of the eternal law, natural law can be said to owe its whole force to the eternal law.

Although Farrell is more careful to observe the Thomistic criteria of law in his manner of predicating its name of the natural dictates of reason, his position is still exposed to some of the difficulties raised in relation to the interpretation presented in Section B. For one thing, it is not clear that the intrinsic obligatory force of the natural dictates is sufficiently efficacious to suit a law of God. This

would be Fortin's complaint. For another, it does not quite seem to square with the essentially extrinsic character of obligation in St Thomas' teaching. This was why Stevens had concluded that obligation can be attributed to the natural dictates of reason, taken in isolation, only in a metaphorical sense. Presumably this is why Suarez, holding to the strict definitions of law and obligation, felt compelled to locate the obligatory force of natural law in its capacity to serve as a sign of the authoritative will of God.

However, even while granting that it is essential to law to be obligatory, some of those whose position can reasonably be included in this class of interpretations hold that no perception of obligatory force at all need accompany men's grasp of the precepts of natural law. Although he is not directly interpreting Aquinas, Peter Geach speaks, from what seems to be a Thomistic perspective, in defense of the view that awareness of the legality of natural law is not essential to its full possession of legality.[109] He is able to say this, not because he posits some kind of natural awareness of obligation, but because he does not think that the existence of a natural law requires such an awareness. He seems to identify obligation with sanction.[110]

> The rational recognition that a practice is generally undesirable and that it is best for people on the whole not even to think of resorting to it is...*in fact* a promulgation to a man of the Divine law forbidding the practice, even if he does not realise that this is a promulgation of the Divine law, even if he does not believe there is a God.... This means that the Divine law is in some instances promulgated to all men of sound understanding. No man can sincerely plead ignorance that lying, for example, is generally objectionable. I am *not* saying that a sane and honest man must see that lying is *absolutely excluded*; but he must have some knowledge of the *general objectionableness* of lying, and this is in fact a promulgation to him of the Divine law against lying. And he can advance from

> this knowledge to recognition of the Divine law as such, by a purely rational process.
>
> ...As Hobbes said: 'These dictates of reason men use to call by the name of laws, but improperly: for they are but conclusions or theorems concerning what conduceth to the conservation and defence of themselves: whereas law, properly, is the word of him that by right hath command over others. But yet if we consider the same theorems as delivered in the word of God that by right commandeth over all things, then are they properly called laws.'[111]

Geach's position thus opens up a gap between the simply natural knowledge that a certain form of conduct is "generally objectionable," and the reasoned or revealed knowledge that it is "absolutely forbidden." It should be noted that this gap would remain even if the former knowledge also included things that admitted of no exceptions. The dictates of natural law that admit of exceptions all fall under what Aquinas calls the secondary precepts of natural law, about which he admits the possibility of mistakes. Aquinas classes as primary precepts only those very general rules of conduct that reason naturally understands to hold always and everywhere, precisely on account of their generality.[112] But even if men know some forms of conduct to be always objectionable or bad, this knowledge is not the same as knowing the conduct to be forbidden by some superior authority who has the power to punish its performance and reward its avoidance. The difficulty with this position would be that even if the knowledge that the conduct is bad does provide a certain inducement to avoid it, it does not seem to provide the kind of inducement proper to law.[113] It has even less efficacy than the natural law of those who attributed some kind of obligatory force to nature or reason itself. It lacks a full set of legal teeth. Yet Geach shows no hesitation about saying that such knowledge is knowledge of a law.

The same point comes out clearly in a famous article by Elizabeth Anscombe.[114] Her argument is in effect the other side of Geach's coin. For Anscombe, the notion of a moral law or moral obligation, or of an "ought" judgment having a peremptory moral sense, is simply unintelligible outside the perspective of an ethics somehow based on a divine law.[115] Separated from such a perspective, this notion has no intelligible content but only a kind of "mesmeric force." She notes that Aristotle has no such notion, but only the notion of what makes a man bad *qua* man.

> To have a *law* conception of ethics is to hold that what is needed for conformity with the virtues failure in which is the mark of being bad *qua* man (and not merely, say *qua* craftsman or logician)--that what is needed for *this*, is required by divine law. Naturally it is not possible to have such a conception unless you believe in God as a lawgiver; like Jews, Stoics and Christians. But if such a conception is dominant for many centuries, and then is given up, it is a natural result that the concepts of 'obligation,' of being bound or required as by a law, should remain though they had lost their root; and if the word "right" has become invested in certain contexts with the sense of "obligation," it too will remain to be spoken with a special emphasis and a special feeling in these contexts.[116]

The consideration of this mere psychological survival, she says, shows forth what sense there is to be found in Hume's argument against inferring "morally ought" from "is." To the extent that the "moral" use of "ought" has no meaning anyway, it certainly cannot be inferred from "is," or for that matter, from any other real predicate. Anscombe's desire is that if we are not prepared to adopt an ethics based on divine law, moral philosophers should jettison such terms as 'illicit,' 'prohibited,' 'morally wrong,' etc. and instead speak of actions as being conformed

or opposed to specific moral virtues. The virtues could in turn be derived from factual statements about what man is and what his excellence consists in.

Thus Anscombe, and Geach as well, thinks it nonsense to posit some apprehension of moral obligation that is anterior to the acknowledgment of a divine law, an apprehension that would provide the grounds for the very obligation to obey that same law.[117] Thus too, Anscombe cannot hold that any apprehension of strict moral obligation is natural to man; otherwise, the expression 'moral obligation' would not be meaningless when abstracted from the consideration of divine law. Yet neither does this view lead her, any more than it does Geach, to judge that the notion of a natural moral law is inconsistent with itself. For Anscombe also does not think that such a notion requires that men naturally apprehend either the legality or the obligatory force of such a law. Observing that "the thinkers who believed in 'natural divine law' held that it was promulgated to every grown man in his knowledge of good and evil,"[118] so that they satisfied the stipulation that "you cannot be under a law unless it has been promulgated to you," she goes on simply to assert that "it is clear that you can be subject to a law that you do not acknowledge and have not thought of as law."[119]

Evidently not everyone thinks it so clear, especially in the case that one's non-recognition of the law is not his own fault. It is not easy to see how anyone can be under an obligation, which would surely be entailed by being under a law, without some awareness of the obligation, unless the ignorance were his own fault. And even if this is possible, the obligation will at least have no power to induce obedience so long as it is not known. Yet the reason that Aquinas gives for the sanctions of law is that they induce obedience. *Id autem per quod inducit lex ad hoc quod sibi obediatur, est timor poenae; et quantum ad hoc, ponitur legis effectus punire.*[120]

NOTES

1. See especially Odon Lottin, O.S.B., "La valeur des formules de Saint Thomas d'Aquin concernant la loi naturelle," *Mélanges Joseph Maréchal* (Paris: Desclée de Brouwer 1950) t.II pp.345-377 (hereafter "La valeur").

2. "La valeur" p.367.

3. "La valeur" p.369.

4. "La valeur" p.377.

5. Lottin, *Psychologie et Morale aux XII^e et XIII^e siècles* (Louvain: Abbaye du Mont César 1948) t.II pp.63-67. See below, Chapter Two, pp.52-61.

6. "La valeur" p.377.

7. Lottin, *Principes de Morale* (Louvain: Éditions du Mont Cesar 1946) pp.220-221 n.2 (hereafter *Principes*).

8. Lottin, "La valeur" pp.367-369; see *Principes* pp.219-220. In the latter text, he even denies that the eternal law perfectly fulfills the nature of law as defined in I-II q.90; for Lottin, this definition is properly applicable only to positive law. But Aquinas can hardly hold this view; in I-II q.93 a.1, he explicitly lays down the principle "*ratio gubernantis actus subditorum, rationem legis obtinet, **servatis aliis quae supra esse diximus de legis ratione***," and then shows that the *ratio divinae sapientiae* fulfills these conditions.
   It is also difficult to explain how Lottin can read I-II q.90 a.4 ad 1^m to mean that no promulgation pertains to natural law. He makes this same assertion in *Le droit naturel chez St Thomas d'Aquin et ses prédécesseurs* (Bruges: Firme Charles Beyaert 1931) pp.70-71. In *Psychologie et Morale* t.II sect.1 p.38, he does add the qualification that no promulgation "from without" pertains to natural law; the promulgation of natural law is "internal." But this seems almost equally odd; surely if it is God who promulgates natural law, then the origin of its promulgation is "outside" of man. In n.2 on this page, he tries to argue this point on the basis of I-II 100,4 ad 1^m, where St Thomas likens the precept of faith to the first precepts of natural law: *sicut...prima praecepta communia legis naturae sunt per se nota habenti rationem naturalem, et promulgatione non indigent; ita etiam et hoc quod est credere in Deum, est primum et per se notum ei qui habet fidem.* But Aquinas' concluding remark in this reply is almost exactly the same as what was said in I-II 90,4 ad 1^m about the promulgation of natural law: *non indiget alia promulgatione **nisi infusione fidei.***

9. I-II q.100 a.2 ad 2^m; II-II q.58 a.2. See the quotation from Gregory Stevens below, p.22.

10. Grisez, G., "The First Principle of Practical Reason: a Commentary on the *Summa theologiae*, I-II Question 94, a.2," *Natural Law Forum*, 10 (1965) pp.192-193 (hereafter Grisez).

11. Grisez p.192.

12. Grisez p.192.

13. Consider the following assertion. “Those who misunderstand Aquinas' theory often seem to assume, as if it were obvious, that law is a transient action of an efficient cause physically moving passive objects; for Aquinas, law always belongs to reason, is never considered an efficient cause, and cannot possibly terminate in motion” (Grisez p.193 n.66). This sounds strangely like saying that law cannot possibly be a command. (See I-II q.17 a.1 obj.1: *imperare est movere quoddam*. Also *Quaestiones disputatae de veritate* q.17 a.3: *rex est principium motus per suum imperium*.)

14. John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Law Series 1980) p.280 (hereafter Finnis).

15. Finnis p.294. The reference is to Mortimer Adler, "A Question about Law," in R.E. Brennan (ed.), *Essays in Thomism* (New York: Sheed and Ward 1942) pp.207-236, esp.226-236.

16. Adler, "The Doctrine of Natural Law in Philosophy," *University of Notre Dame Natural Law Institute Proceedings* (Notre Dame 1949) vol.1 p.78.

17. Finnis p.399.

18. See Finnis p.390.

19. See e.g. Jacques Leclercq, *La philosophie morale de Saint Thomas devant la pensée contemporaine* (Louvain: Publications Universitaires de Louvain 1955) pp.386-388; S.A. Turienzo, "La doctrina tomista de la ley eterna en relación con San Augustin," *Thomistica morum principia* (Rome: Catholic Book Agency 1960) pp.11-14; V.J. Bourke, "Is Thomas Aquinas a Natural Law Ethicist?," *The Monist*, 58 (1974) pp.52-66; Oscar Brown, *Natural Rectitude and Divine Law in Aquinas* (Toronto: Pontifical Institute of Medieval Studies 1981) pp.30-52, esp. n.22 on 38-39.

20. Patrick M. Farrell, "Sources of St Thomas' Concept of Natural Law," *Thomist*, 20 (1957) p.277 n.160.

21. D. O'Donoghue, "The Thomist Concept of Natural Law," *Irish Theological Quarterly*, 22 (1955) 89-109 (hereafter O'Donoghue).

22. O'Donoghue p.92.

23. O'Donoghue pp.90-91.

24. See I-II q.91 a.2 ad 3m.

25. See below pp.30 ff.

26. I-II q.93 a.6.

27. O'Donoghue p.103.

28. O'Donoghue p.103.

29. O'Donoghue p.96.

30. See O'Donoghue pp.105-107.

31. See O'Donoghue p.104, citing I-II q.90 a.3 ad 1m; 96,1 ad 1m; 97,4 ad 3m.

32. F. Copleston, S.J., *Aquinas* (London: Penguin Books 1955) p.214. See Walter Farrell, *The Natural Moral Law according to St Thomas and Suarez* (Ditchling: St Dominic's Press 1930) pp.80-82, 102-103 (hereafter Farrell); Jacques Lazure, o.m.i., "La loi naturelle en philosophie morale," *Revue de l'Université d'Ottawa*, 28 (1958) section spéciale, p.12 (hereafter Lazure); G. Manser, O.P., *Das Naturrecht in Thomistischer Beleuchtung* (Freiburg: Verlag der Paulusdruckerei 1944) pp.67-74.

33. See Farrell pp.154-155. It should be noted that Farrell carefully distinguishes between the knowledge of the obligatory force of the first principles of practical reason and the knowledge of the legislative act that gives these principles their force and presents them formally under the aspect of laws. His interpretation belongs more properly in the class treated in Section D of this Chapter. See below pp.35 ff.

34. Of course, Lottin does not deny the existence of such an obligation; indeed, it is one aspect of what he calls the "intrinsic" character of natural law. But he will not allow that it warrants giving the name "law," in the full sense, to the rules measuring this obligation.

35. "The Scholastic Theory" p.330. See also Donagan's *The Theory of Morality* (Chicago: The University of Chicago Press 1979) p.6: “The conception of morality as a law common to all rational creatures by virtue of their rationality, although endorsed by the Stoic, Jewish and Christian religious traditions, is not itself religious. Except with regard to divine worship, neither Stoics, Jews, nor Christians found it necessary to resort to premises about the existence and nature of God in stating the reasons for the various provisions of the moral law. All three, it is true, believed that what is grounded on these reasons is part of the universal divine law, because they believed that finite human reason participates in the infinite divine reason. In consequence, they thought that common morality is upheld by God, and so has a religious sanction as well as the purely natural one that violating it violates human rationality.”

36. *The Theory of Morality* p.3; see also "The Scholastic Theory" p.328. On Anscombe's position, see below, pp.38 ff.

37. I-II q.90 a.1.

38. I-II q.90 a.4.

39. Gregory Stevens, "The Relation of Law and Obligation," *Proceedings of the American Catholic Philosophical Association*, 29 (1955) pp.200-203 (hereafter Stevens). See Lazure p.24.

40. Stevens pp.204-205.

41. I-II q.96 a.5. This is not meant to suggest that 'obligation' and 'coercion' are synonymous. See below, Chapter V, pp.197-199.

42. Stevens, "Moral Obligation in St Thomas," *The Modern Schoolman*, xl (November 1962) pp.17-21. Stevens notes that the vocabulary of obligation is much more prominent in Aquinas' discussion of human and divine positive law than in his discussion of natural law. Oddly, he also cites Adler's article (p.18 n.38) in support of the claim that 'law' is predicated analogically of natural law, not merely when treated in abstraction from its relation to the eternal law, as Adler had argued, but also within the *Summa theologiae* itself. But his main point would be that to consider natural law formally or "in itself" (p.20) is to consider it "precisely as interior and not precisely as coming from God" (p.20).

43. Ernest Fortin, "The New Rights Theory and the Natural Law," *The Review of Politics*, 44 (1983) pp.590-612, esp. pp.605-611 (hereafter "New Rights Theory"); see also his "Response" to the criticisms of this article made by E.A. Goerner in the "Communications" section of *The Review of Politics*, 45 (1983) pp.446-449 (hereafter "Response). Much of the material to be examined in this article is a reworking of passages in Fortin's "Augustine, Aquinas, and the Problem of Natural Law," *Mediaevalia*, 4 (1978) pp.179-208.

44. "New Rights Theory" pp.608-609.

45. However, in Fortin's defense, it should be noted that at least up to a point, his position bears a striking resemblance to that of Suarez, who does go to great length to support it with arguments.
Suarez spends much effort in showing that natural law must be understood as a law in the proper sense of the term. (See Francisco Suarez, *De legibus,* ed. L. Pereña & V. Abril (Madrid: Consejo Superior de Investigaciones Cientificas 1974) II.vi.7, v.III p.87; hereafter *De legibus*). His view of what this entails depends to a great extent on his understanding of the nature of obligation, which is a proper effect of law (*De legibus* I.xiv). (He does not choose this effect at random; it plays a very prominent role in Aquinas' analysis of the nature of law in general, as will be seen in the next Chapter.) According to Suarez, the imposition of obligation is a sort of "moral motion toward action" (*De legibus* II.vi.22, pp.104-105). Since the primary moving power in the soul is the will, the proper principle of obligation is the governor's will, his very will to oblige the subjects to the action. It therefore belongs to the legislator's will to bring about the properly legal character of

any rationally conceived order. But "moral necessity" can be "imposed" on the subjects only by an act that informs them of it. This is why the law must be promulgated. But they cannot know the obligation to obey the law except by knowing the governor's will to make it obligatory. The sufficient promulgation of the law must therefore consist in the legislator's providing the subjects with an intelligible sign of his legislative will.

Consequently, in Suarez' estimation, the so-called first principles of practical reason, or reason's spontaneously formed propositions concerning what is naturally "honest and base," constitute a true law only to the extent that they can be treated as certain sufficient signs of the will, on the part of the Author of nature, to oblige man to the order expressed in these propositions. The complete promulgation of natural law must therefore include the notification of its Author and of the promulgation itself, through which it becomes obligatory.

Ergo lex naturalis, prout in homine est, habet vim divini mandati tanquam indicans illud et non solam rei naturam....[R]atio naturalis quae indicat quid sit per se malum vel bonum homini, consequenter indicat esse secundum divinam voluntatem ut unum fiat et aliud vitetur....Ergo lex naturalis in nobis existens est signum alicuius voluntatis Dei. Ergo maxime illius qua vult nos obligare ad legem illam servandam. Ergo lex naturalis includit hanc Dei voluntatem. (*De legibus* II.vi.7, 8, 10, pp.87-89, 91-92.)

46. "New Rights Theory" p.609. The "admission" by Aquinas is found in I-II q.100 a.1 and q.104 a.1 ad 3[m].

47. I-II q.100 a.3.

48. Suarez also qualifies the naturalness of natural law, in accordance with his position that natural law is a law insofar as it constitutes a sign of God's will or of the eternal law. In his view, the order contained in the precepts of natural law is identical with, and a reflection of, the order instituted by the eternal law; but while everyone has some grasp of this order, and so understands something belonging to the eternal law, not everyone interprets his own conception of it as an effect and sign of that law:
non omnes cognoscunt [participationem legis aeternae] formaliter sub ratione participationis legis aeternae, et ita non est omnibus nota lex aeterna per directam cognitionem quae ad ipsam formaliter terminetur. Aliqui tamen eam cognitionem assequuntur vel naturali discursu vel perfectius per revelationem fidei, et ideo dixi legem aeternam quibusdam notam esse tantum in inferioribus legibus, aliis vero non solum in illis, sed etiam per illas. (*De legibus* II.iv.9, pp.55-56.)

49. I-II q.92 a.2. See I-II q.100 a.9: *Praeceptum legis habet vim coactivam. Illud ergo directe cadit sub praecepto legis ad quod lex cogit. Coactio autem legis est per modum poenae.*

50. I-II q.95 a.2.

51. "New Rights Theory" pp.609-610.

52. "New Rights Theory" p.610.

53. "New Rights Theory" p.611. This would presumably be what the two previous interpretations would want to assert, in line with their assertion of a natural "moral" obligation or obligation "in conscience."

54. "Response" p.448.

55. To this extent, Fortin's position is considerably more extreme than that of Suarez. For Suarez, it does require some reasoning to see the first principles of practical reason as signs of the will, on the part of the Author of nature, to oblige man to the order expressed in these principles. But the reasoning required is not very difficult; it is naturally within the power of nearly all men. Once divine providence has been ascertained, no further inquiry is required in order to judge that the precepts of natural law are according to His will. (See *De legibus* II.vi.23, pp.105-106. Cf. St Thomas, I-II q.71 a.2 ad 4^{m}; I-II q.21 a.4 ad 3^{m}; I q.25 a.5 ad 2^{m} & 3^{m}; I q.104 a.8 ad 1^{m}; I q.21 a.1 ad 3^{m}.) And the apprehension of God's existence, providence, and legislation falls well within the power of the natural light of reason itself. Hence the original instilling of the natural light of reason, by which the truth of the precepts of natural law is immediately grasped, is also a sufficient act of notifying man of God's will to oblige him to obey these precepts. (See *De legibus* II.vi.24, pp.106-107.) The only qualification is that this act does not achieve this effect at once, but only tends to initiate a movement in man's mind that terminates in this effect. Thus while granting that someone may be ignorant about God's legislative will, or about natural law considered formally as a participation of the eternal law, Suarez insists that under normal conditions this ignorance must be vincible and culpable. Natural law is something 'natural' in a very satisfactory sense of the term. (*De legibus* II.vi.25. See also Suarez, *De vitiis et peccatis*, in *Opera omnia*, ed. A.D.M. André (Paris: Vivés 1856) vol.IV tract.5 disp.5 #3, pp.558-560.)

56. "New Rights Theory" p.609. Fortin is quoting, with slight modification, I-II q.71 a.6 ad 5^{m}. The word in parentheses is his.

57. See Leo Strauss, "Natural Law," *The International Encyclopedia of the Social Sciences*, ed. D. Sills (U.S.A.: The Free Press 1968) v.11 p.83.

58. The fullest statement of this position is Harry Jaffa's *Thomism and Aristotelianism* (Chicago: University of Chicago Press 1952), esp. Chapter VIII (hereafter Jaffa). The relevant basic tenets that Fortin shares with Jaffa are that the doctrine of natural law requires that natural law be naturally known *qua* law, i.e. as promulgated and sanctioned by God, and that natural reason can never be entirely certain of divine providence. See Jaffa p.169 & p.221 n.9. Like Fortin, Jaffa also fails to give any real support, either by argument or by appeal to texts, for these claims.

59. See Aristotle, *Nicomachean Ethics* V.10 (1134a24-26, 1134b19), trans. H.G. Apostle (Derdrecht: Reidel 1975) p.92.

60. See Aristotle, *Rhetoric*, trans. J.H. Freese, Loeb Classical Library (Cambridge: Harvard Press 1975) v.XXII, I.x.3, 1368b7, pp.104-107; I.xiii.2, 1373b1-18, pp.138-141.

61. "Clearly, then, Thomas must suppose a God who punishes and rewards in another life, in order to enforce the demands of moral virtue, according to Thomas' conception of the *natural* law. Unless one admits a natural knowledge of such a God and such an afterlife, I do not see how one can call such a doctrine 'natural law.' If, in fact, there is no such natural knowledge, what is called 'natural law' is only a species of divine law: 'natural divine law' as contrasted with positive divine law." (Jaffa p.222 n.10.)

62. See I q.1 a.4; II-II q.4 a.2 ad 3^{m}; II-II q.9 a.3; II-II q.45 a.3.

63. For earlier expressions of a similar view, see P. Gury, *Compendium theologiae moralis* (Taurini: Marietti 1866), v.I p.118 n.(a) (hereafter Gury); B.H. Merkelbach, *Summa theologiae moralis* (Paris: Desclée de Brouwer 1935) vol.I p.230 (hereafter Merkelbach).

64. Wolfgang Kluxen, *Philosophische Ethik bei Thomas von Aquin* (Hamburg: Felix Meiner Verlag 1980) pp.236-237.

65. More exactly, there seems to be no one who holds that the divine origin of natural law is naturally known in the strictest sense of the term 'naturally,' or in the sense in which the precepts themselves are naturally known.

66. See I q.1 a.1; II-II q.2 a.4.

67. See, *inter alia*, Gury pp.118-120; Merkelbach pp.224-230; D. Prümmer, O.P., *Manuale theologiae moralis* (Freiburg: Herder 1915) v.I pp.93-96 (hereafter Prümmer); C. Boyer, S.J., *Cursus philosophiae* (Paris: Desclée de Brouwer 1936) t.II pp.429-435, 473-479 (hereafter Boyer); J. Gredt, O.S.B., *Elementa philosophiae Aristotelico-Thomisticae* (Barcelona: Herder 1961) v.II pp.385-392 (hereafter Gredt).

68. I-II q.90 a.4 obj.1.

69. I-II q.91 a.2 ad 3^{m}.

70. I-II q.93 a.5.

71. I-II q.91 a.2 ad 1^{m}.

72. I-II q.97 a.3.

73. I q.22 a.2 ad 3^{m}.

74. *Quaestiones disputatae de veritate* (Romae 1970) v. XXII, q.17 a.3 obj.3 (hereafter *De veritate*).

75. I-II q.19 aa.5-6; I-II q.96 a.4; II-II q.44 a.1; *De veritate* q.17 a.3.

76. I-II q.90 a.4 ad 1[m].

77. See above, pp.18-19.

78. Lex naturalis non est lex quatenus est in legislatore ut regulante, ac proinde non est ipsa lex aeterna, sed est lex ut est in subditis ut in regulatis, ac proinde est participatio, manifestatio, promulgatio passiva legis aeternae in nobis. (Merkelbach p.226.)

79. J. Collins, "God's Eternal Law," *Thomist*, 23 (1960) p.498 (hereafter Collins).

80. Collins pp.526-528.

81. "*El hombre no crea su ley, ni la inventa, se la da Dios.*" R. Garcia de Haro, "La noción teológica de ley natural," *Veritas et Sapientia*, (Pamplona: Ediciones Universidad de Navarra 1975) p.260 (hereafter de Haro).

82. de Haro p.249.

83. de Haro p.268.

84. Il nome vero e completo della legge naturale sarebbe legge divino-naturale, in quanto sia la natura umana da cui deriva (elemento ontologico) che la ragione che la conosce (elemento noetico) sono create da Dio. La legge naturale è così un effetto, una partecipazione della legge eterna nello uomo, e la relazione tra loro, essendo la legge regola e misura, è analoga alla relazione tra regolante e regolato, tra misurante e misurato.--R. Pizzorni, *Filosofia del diritto* (Roma: Pontificia Università Lateranense 1982) pp.216-217.
    See also Pizzorni, *Il fondamento etico-religioso del diritto secondo S. Tommaso d'Aquino* (Roma: Libreria Editrice della Pontificia Università Lateranense 1968) p.190.

85. Il Tommaso della maturità considererà sostanzialmente "lex aeterna" e "lex naturalis" come due facce della stessa legge: l'una così come vive in Dio, l'altra così come Dio l'ha impressa nella creatura razionale.--Angelo Scola, *La fondazione teologica della legge naturale nello Scriptum super Sententiis di San Tommaso d'Aquino* (Freiburg: Universitätsverlag Freiburg Schwerz 1982) p.114.

86. Paul-M. van Overbeke, O.P., "La loi naturelle et le droit naturel selon S. Thomas," *Revue Thomiste*, 57 (1957) p.58 n.1 (hereafter Overbeke).

87. Overbeke p.60 n.1.

88. Overbeke p.61 n.4.

89. Overbeke p.60 n.2.

90. Osvaldo Lira, SS.CC., "El Carácter Analógico de la Ley," *Philosophica*, 2-3 (1979-1980) pp.107-126 (hereafter Lira).

91. Lira p.115.

92. Lira p.115.

93. Lira p.109 ff.

94. Lira p.114.

95. Lira p.108.

96. Lira pp.112, 124. This is the expression that has come to be used for what Aquinas calls analogy *secundum esse et secundum intentionem* (*In I Sent.* dist.19 q.5 a.2 ad 1^{m}, in St Thomas Aquinas, *Opera omnia*, ed. S.E. Fretté & P. Maré (Paris: Vivès 1873) v.VII p.257).

97. Lira p.125.

98. Lira p.125.

99. According to I-II q.94 a.2, the order of the precepts of natural law corresponds to the order of man's natural inclinations. According to I-II q.91 a.2, the natural inclinations of things are derived from the impression of the eternal law upon them. To most, the implication seems to be that it is insofar as man apprehends his natural inclinations, and understands them to be measures of his actions, that his reason possesses that principle of conformity with the eternal law which is called natural law. See Etienne Gilson, *The Christian Philosophy of St Thomas Aquinas* (New York: Random House 1956) p.366 (hereafter Gilson); Collins p.521; Pizzorni p.218-219; Overbeke pp.65 ff.

100. See Boyer p.433; Merkelbach p.229.

101. Merkelbach p.230.

102. Gredt pp.392-394.

103. See Prümmer pp.95-96.

104. Farrell pp.138-141, 154-155.

105. Farrell pp.7,55.

106. Farrell pp.56-61.

107. Farrell pp.138-141, 150-155.

108. Farrell pp.100-101. See also Stevens, "The Relations of Law and Obligation" p.202.

109. Peter Geach, "The Moral Law and the Law of God," in *God and the Soul*, (London: Routledge & Kegan Paul 1978) pp.117-129 (hereafter Geach).

110. This would explain why he readily grants that his stand on the obligation of natural law is "plain power worship": Geach p.127.

111. Geach pp.124-126. Geach's only real argument for this assertion takes the form of an imaginary example (p.125), the conclusiveness of which will be discussed below, Chapter Three, pp.117-118.

112. See I-II q.97 a.1 ad 1[m]. In a way the same might be said in response to Fortin's argument; but Fortin seems to be using the variability of Aristotelian natural right only as a kind of sign of the difference between it and Thomistic natural law. The essential difference would rest in the merely political character of Aristotelian natural right. (See above, p.27.)

113. This is Fortin's point: *id per quod inducit lex ad hoc quod sibi obediatur, est timor poenae* (I-II q.92 a.2).

114. G.E.M. Anscombe, "Modern Moral Philosophy," in *Ethics, Politics and Religion* (Minneapolis: University of Minnesota Press 1981) pp.26-42, reprinted from *Philosophy*, XXXIII (1958) pp.1-19 (hereafter Anscombe).

115. For some bibliography on this question, see Stevens, "The Relations of Law and Obligation" p.201 n.23. See also the study of modern Scholastic attitudes toward the "deontological argument" by Claude Desjardins, S.J., *Dieu et l'obligation morale* (Montreal: Desclée de Brouwer 1963).

116. Anscombe p.30. Curiously, whereas Donagan criticizes Anscombe for speaking as though the notion of a moral law depended on the acceptance of a divine positive law, she explicitly denies this, citing, as does Donagan, the example of the Stoics.

117. Anscombe p.41; Geach pp.117,126.

118. Anscombe p.37.

119. Anscombe p.38.

120. I-II q.92 a.2.

CHAPTER TWO

THE RELATION BETWEEN NATURAL LAW AND ETERNAL LAW

From the survey of the positions on the question of the legal character of Thomistic natural law, the issue that appears to need to be resolved first is St Thomas' understanding of the relationship between natural law and eternal law. The issue is what significance to attach to his judgment that "natural law is nothing other than a participation of the eternal law in the rational creature." Is this a strict definition of natural law? Or is it merely a certain characterization of natural law, one that is brought to light when natural law is eventually viewed in the setting of the doctrine of the eternal law? If it is not a strict definition, or if the eternal law does not enter into the essential notion of natural law, then it becomes somewhat difficult to preserve the full legal character of natural law; and some explanation for Aquinas' way of presenting natural law in the *Summa theologiae* would be required. If it is a strict definition, then natural law might well be able to retain a share of the complete nature of law, by sharing in the legality of the eternal law; and Aquinas' treatment would correspond directly to the nature of the matter. This Chapter will be an attempt to resolve this issue, first through certain historical considerations, and then through a detailed examination of the text in which St Thomas arrives at his formulation of natural law as a participation of the eternal law in the rational creature.

A. The question of the Franciscan influence

It was observed in the last Chapter that Lottin is one of the very strongest proponents of the view that Aquinas does not intend the expression 'participation of the eternal law in the rational creature' to be a definition of natural law. Lottin's defense of this position is of special interest. He has to explain why Aquinas nevertheless presents natural law in terms of the eternal law; and his explanation is not merely theoretical, but also, and even chiefly, historical.

In his judgment, the narrow connection between natural law and the eternal law that appears to be drawn in the *Summa theologiae* is for the most part the result of a rather alien historical influence: a certain Franciscan tract on law. If only in order to form some preliminary expectation, it would seem be worthwhile to see whether the actual comparison between the two works shows St Thomas to be moving with or against his source. This inquiry will provide the background for the formal analysis of Aquinas' texts. The comparison will be restricted to points immediately pertinent to the present question.

As mentioned briefly in Chapter One, Lottin's research showed that the formal treatment of the eternal law entered into the mainstream of scholastic theology only rather late. Its first appearance seems to have been in an anonymous, mid-13th-century Franciscan treatise on law entitled *De legibus et praeceptis*. This treatise was evidently a major source for the treatise on law in the *Summa fratris alexandri*, a treatise now generally attributed to Jean de la Rochelle. In Lottin's judgment, the subsequent influence of the Franciscan treatment upon the *Summa theologiae* of St Thomas is argued by two things. The first is the nearly complete absence of any mention of the eternal law in the earlier works of Aquinas. This suggests that he began to give it detailed consideration only after encountering the Franciscan tract. The second and more decisive consideration is the degree to which the account of the eternal law in his *Summa theologiae* resembles that of the Franciscan treatment. Aquinas preserves both the bulk of the questions on the eternal law raised in the earlier work, and a good measure of their order. His location of the study of natural law immediately after that of the eternal law also follows the Franciscan procedure.[1] For Lottin, the evidence of heavy borrowing from a Franciscan (read Augustinian) source immediately confirms the impression that the setting of natural law in the *Summa theologiae* is at least somewhat at odds with the inner tendency of Aquinas'

thought on natural law. "*Un exposé synthétique est malaisé*."[2]

It is impossible to quarrel with Lottin's claim for the influence of the Franciscan tract on law upon Aquinas' *Summa theologiae*. Still, clear differences between the two treatments remain; and precisely because the evidence for the influence is so strong, these differences can be considered all the more revealing as to what is really proper and characteristic of Aquinas' thought.

In Chapter 7 of the section on the eternal law in the *Summa fratris alexandri*, the author takes up the "derivation of laws from the eternal law." This Chapter is divided into four articles, each showing the derivation of one specific type of law from the eternal law. The specific types of law are unjust law, the *lex fomitis*, human law, and natural law.[3]

This Chapter corresponds to Question 93, Article 3 of the *Prima secundae* of the *Summa theologiae*. Or rather, it almost corresponds. The title of St Thomas' article is "Whether every law is derived from the eternal law." Of course, he is in agreement with the arguments in the *Summa fratris alexandri* in concluding that laws are derived from the eternal law to the extent that they are right and just, i.e. to the extent that they are true laws. But his treatment of the issue still differs from that of the *Summa fratris alexandri*, and the difference is not just that Aquinas has collapsed several specific questions, about specific laws, into one general one, about the derivation of all law from the eternal law. The really striking difference is that, on the particular issue of the derivation of natural law from eternal law, he is completely silent. The body of his article is concerned exclusively with human law. There are also three objections, but they are concerned only with the *lex fomitis*, unjust law, and human law. There is no mention of natural law.

Obviously it is out of the question to suppose that Aquinas' silence about natural law in this article is owing to some conception of natural law as wholly

independent of the eternal law. And even if he did think natural law independent of the eternal law, that would still not explain why the question of derivation from the eternal law is not even granted application to the case of natural law. The explanation for this silence must be sought, instead, in the general nature of the things to which he does grant the question application. These things are what the article calls "other laws besides the eternal law": *aliae leges praeter legem aeternam*, and more precisely, "conceptions of governance in inferior governors": *rationes gubernationis in inferioribus gubernantibus*.

The reason why natural law is not treated in this article, then, seems to be that even to ask whether natural law is derived from the eternal law would imply that natural law is a law diverse from the eternal law, "another law besides the eternal law." This implication would evidently run contrary to the account Aquinas that had already given of the relation between natural law and eternal law. In his earlier proof of the existence of natural law, in I-II q.91 a.2, he had insisted that natural law is nothing "diverse from the eternal law," being only "a certain participation of it."

The laws described in I-II q.93 a.3 as "other laws besides the eternal law" are laws existing in the minds of other governors or legislators besides God. Now, law existing in the mind of the governor is what what St Thomas calls law as it exists in one ruling and measuring: *lex sicut in regulante et mensurante*. But in the proof for the existence of natural law in I-II q.91 a.2, he was careful to represent natural law only as law existing in the mind of someone subject to the government of law, someone ruled and measured: *lex sicut in regulato et mensurato*.[4] Natural law, so understood, is not a new law issued by some governor subordinate to, but distinct from, the author of the eternal law. It seems to be nothing but a new expression of the very same law enacted by God from eternity, the expression naturally impressed by God upon His rational subjects. It is not another law

besides the eternal law; it is only another promulgation of God's law, besides the first and eternal promulgation of that law.

Not surprisingly, Lottin accounts for the absence of natural law in I-II q.93 a.3 somewhat differently. Rather than saying that Aquinas nowhere raises the question of the Franciscan tract, whether natural law is derived from the eternal law, he makes this question correspond to Article 2 of Question 91, i.e. to the very demonstration of the existence of natural law. But, besides the fact that this reading has Aquinas asking two questions at the same time, the exact title of his article is "Whether there be any natural law in us"; and surely what this corresponds to in the *Summa fratris alexandri* is the first chapter in the section on natural law, the chapter entitled "Whether a natural law be instilled in the rational creature."[5] In contrast to Aquinas' order, this article does not precede, but follows, the question of the derivation of laws from the eternal law.

Now, how does the author of the *Summa fratris alexandri* demonstrate the existence of natural law? Not as Aquinas does, by showing that the eternal law is in some way naturally instilled in man; but rather, by simple advertence to the first principles of practical reason, or what he calls "a rule innate to the moving part" of man, analogous to the "principles of truth" innate to the cognitive part.

> Sicut cognitiva habet principia veri sibi innata et notionem illorum, sicut hoc: 'omne totum est maius sua parte' et 'de quolibet affirmatio vel negatio,' ita et motiva regulam habet sibi innatam, per quam regulatur in bonum; hanc autem legem appellamus naturalem.[6]

His argument makes not the slightest mention of the eternal law. It is only in replying to an objection, one which to some extent anticipates Aquinas' first objection in I-II q.91 a.2, that he comes to identify natural law with what he calls the "notion of the eternal law impressed on every soul." This impression of the

eternal law upon the mind of each and every man is in fact something that he had demonstrated earlier, but, significantly, without calling it a natural law. In other words, he treats 'natural law' and 'impression of the eternal law' as expressions that are only materially identical, or convertible. The formal nature of natural law is expressed, instead, in the notion of innate principles of practical reason. His formulation is almost the exact inverse of Aquinas':

> notio...illa legis aeternae impressa animae nihil aliud est quam ipsa lex naturalis in anima, quae quidem est similitudo et imago ipsius divinae legis et divinae bonitatis in anima.[7]

Aquinas' proof for the existence of natural law, on the other hand, is dominated by the eternal law from start to finish. For him, the demonstration of an impression of the eternal law upon man is simply identical with the demonstration of a natural law. To affirm the one is immediately to affirm the other. The expression 'participation of the eternal law in the rational creature' seems to signify the very object held in view when the existence of a natural law is first affirmed. The reality corresponding to each of these expressions is demonstrated in one and the same argument.

By the same token, Aquinas does not treat the identity between the notions of natural law and first principles of practical reason as simply immediate. Even after he has demonstrated the existence of natural law, he finds it necessary to inquire into which one of the things naturally existing in the human soul properly merits the name 'natural law.' He makes this inquiry in the first article of Question 94, where he asks whether natural law is the same thing as the habit of *synderesis*. Even more, when he comes to reject the simple identification of natural law with *synderesis*, the basis upon which he does so is that *synderesis*, a habit, cannot possibly be a law in the strict sense of the term. A law, being a work

of reason, *quoddam opus rationis*, cannot be a habit, but only the object of a habit, an object such as the first principles of practical reason. In Aquinas, then, the identification between natural law and first principles of practical reason is only a mediated or reasoned identification; and the middle term is precisely something belonging to the strict definition of law, the fact that it is a work of reason. He proceeds as though the legality of natural law were its most evident feature, something contained in the very meaning of its name.

This same point can be made from the opposite direction. Readers of the *Summa theologiae* will recall that Question 94 of the *Prima secundae* is by no means the first place in which the first principles of practical reason are discussed. Their existence, together with that of the habit by which they are held, *synderesis*, is demonstrated considerably earlier: Question 79, Article 12 of the *Prima pars*. Now neither in this Article, nor in the one following it, on conscience, is the term 'natural law' to be found. By contrast, the more or less corresponding part of the *Summa fratris alexandri*, which also comes much earlier than the section on law, does invoke the notion of natural law.[8] The fifth Chapter in the part on conscience asks whether conscience is the same as natural law. And the answer treats natural law as simply identical with principles of practical reason.

Thus, unlike the author of the section on law in the *Summa fratris alexandri*, St Thomas evidently regards the proof for the existence of first principles of practical reason, by itself, as somewhat inadequate for a disclosure of something answering to the name 'natural law.' It is, in fact, a rather striking feature of the *Summa theologiae* that neither in the Treatise on Man in the *Prima pars*, nor anywhere in the *Prima secundae* prior to the Treatise on Law, is the term 'natural law' used even so much as once. This restraint is certainly not for want of apparent opportunities. There are several places prior to the Treatise on Law where one might have expected him to speak of natural law, and where he uses other,

convertible expressions instead: expressions such as 'first' or 'common principles of practical reason,' 'order of reason,' 'principles of common right' (*ius*), 'natural right' as contained in the 'natural judgment seat of reason' (*naturale iudicatorium*), 'natural reason' understood as 'derived from the eternal law as its proper image,' 'the natural rule that man, according to his nature, ought to observe,' and even 'the rule of human reason that is taken from created things, which man naturally apprehends.'[9] He even adheres to these expressions, instead of using the term 'natural law,' when he is at the same time explicitly discussing some other kind of law, human, eternal or divine.[10] He appears to have gone quite out of his way to avoid using the term 'natural law' prior to the Treatise on Law. He begins to use this term regularly only when he is able to show, in light of the definition of law and the proof of the existence of eternal law, that there is something natural to man that fully satisfies the criteria of law. And the first use of the term 'natural law' in the Treatise on law is in the sentence "Natural law has the nature of law to the highest degree." *Lex enim naturalis maxime habet rationem legis*.

What would be the general conclusion to be drawn from the closer comparison between the *Summa theologiae* and the *Summa fratris alexandri* on the question of the relationship between eternal law and natural law? Where Aquinas departs from the plan of the other work, it never seems to be in the direction of a more independent or self-contained status for natural law; and it is often toward an even more narrow connection between natural law and eternal law, as well as between natural law and the essence of law in general. It therefore seems very doubtful to maintain, at least on the grounds that he was writing under the influence of this work, that Aquinas' presentation of natural law in the *Summa theologiae* is in any way at odds with the spirit of his own thought on the matter. Far from showing signs of resisting the influence, he seems to have embraced it gladly.

It should be noted that none of the foregoing is meant to suggest that

between Aquinas and the author of the section on law in the *Summa fratris alexandri* there is any serious dispute about the substance of the relation between eternal law and natural law. Thus, the latter states with great clarity that *lex naturalis est in nobis sine nostra cooperatione, sed ex Dei inditione et impressione;...sed in lege temporali nos cooperamur ad hoc quod sit in nobis.*[11] The difference lies instead in how each organizes the account of that relation. The core of this difference is perhaps contained in what seems to be the most glaring departure by St Thomas from the plan of the section on law in the *Summa fratris alexandri*. This departure is his insertion, prior to his study of each type of law in its own right, of two new *Quaestiones*:[12] one "On law in general," and the other "On the division of law," in which the existence of each of the main types of law is demonstrated. By contrast, the treatise on law in the *Summa fratris alexandri* consists entirely in the study of each of the particular types of law. There is no prior study of law in general, and the questions of the existence of each type of law are not grouped together into a preliminary, general overview of the division of law; the existence of each type of law is demonstrated within the section devoted to that type in its own right.

This is not to say that the *Summa fratris alexandri* has nothing to say about the nature of law in general. On the contrary, it has a great deal to say about it, and much of what it says is incorporated into Aquinas' own *Quaestio* on law in general.[13] But it seems to me that by organizing his material on law in general into a separate and prior *Quaestio*, and by following up that *Quaestio* with an overview of the whole division of law, Aquinas seems to be much more at pains to make clear the way in which each kind of law realizes the common nature of law. When he asks whether a given type of law exists, what he seems to be asking is whether there is anything that both satisfies the definition of law and exists in the specific manner signified by the name of that type.[14] This is a particularly

important consideration with respect to the question of the existence of natural law, in which it is all too easy to take the meaning of the expression 'natural law' for granted, rather than letting his way of arguing for its existence show what he means by it.[15]

B. The meaning of the question proposed in Summa theologiae *I-II q.91 a.2*

Surely, then, the best way to approach the interpretation of the expression 'participation of the eternal law in the rational creature' would be to proceed directly to the analysis of the argument in which St Thomas formulates it: *Summa theologiae* I-II q.91 a.2. For what is raised in this article is the question of natural law's existence. The title of the article is "Whether there be in us any natural law."

This formulation of the question gives a very clear indication of the kind of inquiry pursued in the article. According to the Aristotelian logic that informs St Thomas' method, there are about four kinds of questions which can be answered through scientific reasoning. Two of these are asked about a subject, and two about something existing in a subject. Concerning a subject, it may be asked whether it exists: *an sit*, and if so, what it is: *quid sit*. Concerning something existing in a subject, it may be asked whether it belongs to a given subject: *utrum insit rei*, and if so, why it does: *propter quid insit rei*. Clearly the question from which the present article begins is of the form *utrum insit rei*. It is asking whether something called 'natural law' exists in a certain subject, namely, man.

It is especially significant that the formulation of the question contains the word 'any' or 'some' (*aliqua*). This indefinite qualifier indicates that the article does not even presuppose that the term 'natural law' expresses something real. It is not asking whether man is one of the subjects to which the reality called 'natural law' belongs; it is asking whether the existence of any such thing as a

'natural law' can be verified at all. What the article presupposes is only the meaning of the term 'natural law.' If the question of the existence of something called 'natural law' properly falls within the scope of the present inquiry, which is about God, as directing man's acts through law,[16] this is only because the term 'natural law' signifies something that exists only in man, if it exists at all.[17] No definite conception of natural law, no notion of "the" natural law, can be formed, because not even its existence has yet been verified. In general, it is only once something has first been shown to exist that anything pertaining to its essential definition, as opposed to the mere definition of its name, can be formulated.[18]

It should be remembered, of course, that it is only with respect to the present scientific inquiry that the existence of natural law is regarded as not yet known. There is no reason why its existence should not already have been affirmed in some distinct, non-scientific way. As the *Sed contra* of the article shows, the existence of natural law can be affirmed immediately, on authority; it is taught by St Paul, who speaks of a law that serves for the Gentiles in place of the Old Law of the Hebrews. What the present inquiry seeks is a reasoned affirmation of the existence of natural law.[19]

Now if what the article presupposes is the meaning of the term 'natural law,' then a clear analysis of this meaning will be helpful in following the argument. For in the first determination that there is something real corresponding to some name, what serves as the medium of demonstration is the meaning of the name. Every search for new knowledge is directed by knowledge already possessed, the knowledge presupposed in asking the question; and in such cases as the one at hand, the only knowledge that can be presupposed about the thing in question is the knowledge of its name.[20] For instance, in asking whether there is any such being as God, analysis of the meaning of the name 'God' is what shows that it is necessary to find certain universal attributes of the visible world

which would be impossible except under the action of some transcendent governing principle.[21] A clear appreciation of the meaning of the term 'natural law' will be of help in understanding not only why St Thomas thinks that his argument points to a reality that answers to the name 'natural law,' but also why the procedure of the argument is what it is.

St Thomas has not included an explicit analysis of the meaning of the term 'natural law' in his argument for the existence of a natural law. This is not unusual; neither does he analyze the meaning of the name 'God' in his demonstration that there is such a being as God.[22] When a term belongs to common parlance, or at least to common scholarly parlance, he does not seem to think it necessary to state the term's meaning explicitly. However, in view of the obvious dangers of misunderstanding to which contemporary readers are exposed, it would surely be advisable to try to formulate this meaning.

Aquinas has certainly not left his reader without resources. In I-II q.90, he gives a clear notion of the nature of law in general. Nor has he failed to indicate the relevant sense of the term 'natural': in I-II q.10 a.1, he makes it clear that what is natural is what belongs to something in virtue of itself, or according to its own being; the natural is divided against such things as the accidental, the artificial, or the voluntary.[23] It is that to which everything else that belongs to a thing can be reduced, or which is presupposed by and conditions whatever else the thing is.

What is perhaps not so clear is the way in which the conjunction of the terms 'natural' and 'law' is to be understood; for when terms are joined to form a single expression, the meaning of each is somewhat qualified by the presence of the other.[24] To gather their combined significance requires a consideration of the setting of I-II q.91 a.2. Question 91 is concerned with the "diversity of laws." Natural law is one of the divisions of law. Now, any proper division of a subject is made according to some element of the subject's nature. Therefore, by

ascertaining the element of the nature of law according to which law is divided in q.91, it may be possible to determine the way in which the term 'natural' qualifies the notion of law in general. Since the most proper division of a subject is made according to the ultimate differentiating element of its common nature, it may be expected that Aquinas has divided law according to the feature that fully differentiates it. Once it is determined which feature this is, the expectation that it forms the basis of his division can be verified.

C. Natural law as one of the divisions of law

St Thomas brings the essence of law to light in q.90. He does so by a reflection on the unique set of common features that are embraced by the term 'law.'[25] 'Law' signifies at once a measure of human acts: *quaedam regula et mensura actuum,* and something according to which men are effectively "led in to" or "drawn back from" action: *secundum quam inducitur aliquis ad agendum vel ab agendo retrahitur*.[26] Neither of these features by itself is sufficient to constitute a law. Not every measure of acts is something that men are actually induced to follow, and not everything that moves men is a genuine measure, or principle of rectitude, in their acts.[27]

The evidence that St Thomas cites in support of this description of law is the origin of the Latin name for law: *dicitur enim lex a ligando, quia obligat ad agendum*.[28] As he explains in the *De veritate*, the use of the notion of *ligatio* in human things is a metaphorical transfer from the action of binding found among corporeal things. To bind is to impose overpowering limits upon something's movements.[29] It should be stressed that the reference to the work of obliging here is not merely in support of the moving or inducing character of law, as though this were something altogether distinct from its character as a rule; rather, the

notion of obliging in a way signifies the rule aspect of law and its moving aspect simultaneously. This is clear from I-II q.91 a.6 obj.2: *omnis lex obligatoria est, ita quod qui eam non servant, transgressores dicuntur*. A transgressor is one who has overstepped the boundary or exceeded the measure. The reply to the objection is even clearer on this point: *obiectio illa procedit de eo quod est lex quasi regula et mensura; sic enim deviantes a lege transgressores constituuntur*. In other words, to oblige is indeed to move someone, but it is to move him in the precise manner in which a rule and measure is said to move: by regulating and measuring. A law, then, is a rule and measure actually regulating and measuring. This point will be developed further in the discussions of promulgation, later in this Chapter, and of Aquinas' notion of obligation, in Chapter Five.

Aquinas appears to consider law's quality as a rule to be formal or generic in the nature of law, while its moving character is material and specifying. *Lex de sui ratione duo habet: primo quidem, quod est regula humanorum actuum; secundo, quod habet vim coactivam.*[30] Law is more a moving or compelling rule than a regulative or directive mover. This is perhaps because its character as a rule arises from its conformity with right reason. Since reason is the first principle of the moral order or the order of human things, the most fundamental distinction within that order is the distinction between what is according to reason and what is contrary to it, i.e. between moral good and evil. These are the broadest classifications of human things *qua* human. Hence the rational character of law, its goodness and rectitude, should not be taken as differentiating or specifying with respect to its motive character, but rather the reverse.[31]

The working definition of law from which Aquinas begins his inquiry into law's substance, then, is something such as "a rule and measure actually regulating and measuring human acts"; and the first element of the nature of law that St Thomas brings forth, as following immediately from the generic character of law

as a measure of human acts, is that it belongs to reason. Reason is the first inner principle of human acts, and the first principle of a genus is that by which the genus is measured. Of course, not everything that belongs to reason is a law. Law is something issuing from reason in the manner of a measure of acts, and one to which men are moved to be conformed. A measure of acts enunciated by reason is called an ordination; and when its ordination is intimated or applied with a certain moving force, as though inducing reasonable action rather than merely indicating it, it is called a precept or command.[32] Also, of course, a command can fail to lay down a true measure of someone's act, or to constitute a genuine principle of its rectitude; it fails to do so to the extent that it is not reasonable or rational. In calling law an ordination of reason, then, St Thomas is neither lapsing into redundancy, nor merely reiterating his teaching that the power of the soul from which command properly springs is reason; he means to say that law is a command that not only springs from reason, as does all command, but also takes its content from the regulative work of reason deliberating about and ascertaining what is right.[33]

Now it may be asked, can law properly be divided according to its nature as an ordination of reason? It seems not. There are many reasonable ordinations, and even many reasonable commands, that are not laws. For instance, St Thomas points out that while the paterfamilias can make precepts or statutes for his family, these are not laws properly speaking.[34] To be an ordination of reason is merely a generic feature of law. The most proper division of law cannot be a division of the class of ordinations of reason. Law is itself one of the divisions of that class.

The next element of the nature of law is disclosed through a further reflection on law's character as a rule or measure of human acts. Law belongs to reason in virtue of the fact that reason itself is a measure of human acts. Therefore, the nature of law will derive chiefly from the primary principle by which reason serves as the measure of human acts. In general, the first principle

of practical reason is man's last end, which is called happiness; and since each man is a part of a community, the primary happiness is that of the community as a whole. Hence the first principle measuring men's acts is the common good of the complete community to which they belong. What primarily has the nature of law, then, is a dictate ordering things to the common good; and because what primarily has some perfection is the cause why anything else has that perfection, nothing belonging to reason can have the nature of law unless it at least share somehow in the work of ordering things to the common good. An ordination that detracts from the common good cannot have the character of a strict measure of human acts at all; and a dictate whose immediate object is some merely private good can have the nature of law only in a derived or secondary way, insofar as it is in accordance with the order to the common good.[35]

Is the division of law in q.91 made according to law's common feature of directing things to the common good? Again, it seems not. Not every ordination that directs human acts toward the common good is a law. Private citizens can dispose each other to do what is for the public good, but their dispositions cannot be called laws.[36] The common good is the good of the community; and it is only someone who has the community as a whole under his care who can make the final judgment about what is required for its good, and who has ultimate control over the disposition of its parts in view of that good. He alone possesses an agency that is proportioned to the end to which acts subject to law are primarily ordered. "To order things to an end pertains to him to whom that end belongs." This then is the third essential component of law: its origin in public authority. This authority may be either the whole community, or some person or group acting on its behalf. This feature reflects both the regulative and the motive character of law. Only the mind of someone working in the capacity of overseeing a community is in every respect sufficiently informed to formulate the reasonable arrangement of

movements toward its overall good; and only someone in control of the distribution of the common good possesses sufficient power to enforce this arrangement adequately, or to impose it upon others as though making it something from which they cannot escape. That is, only he has the power to make it obligatory.[37]

However, not every ordination conceived by public authority in view of the common good is a law. An ordination of reason, no matter whose, may or may not exercise moving force; that is, it may or may not be a command. Although the moving force of law is somewhat accounted for by its origin in public authority, something further is required in order to exercise that force. To say that law has moving force is to say that the lawgiver's work is a kind of action upon his subjects; law is something "imposed upon others." And since every patient is acted upon by the corresponding agent only through receiving something from that agent, the imposition of law must consist in applying it to those whom it rules.[38] Aquinas had already indicated that it belongs to the nature of law, by the very fact that it is a rule and measure, to be able to exist in things in two ways: either as in the one ruling and measuring, or as in the one ruled and measured.[39] Here, he is indicating that it is not merely possible, but in fact necessary, that a law be determined to exist in both of these ways, in order that it possess the moving quality proper to law.

But the way in which the law moves those subject to it, or the way in which it is imposed upon them, is not in the manner of something physically compelling; rather, as has already been seen, it moves as something obligatory, or in the manner in which a rule and measure is said to move. *Lex imponitur aliis per modum regulae et mensurae*. The moving work proper to law is the work of regulating or measuring. Now, an agent's acts are regulated when the inner source of its acts is made somehow proportioned to the rule or determined in accordance with the rule. To apply a rule to something's acts is to impress upon it "a certain interior

principle of its acts."[40] Furthermore, since the first inner principle of men's acts is their own reason, the way in which a rule and measure is imposed upon them is as something they know, and know in a way that wins their assent or inclines them to judge it as something necessary to obey.[41] It is by way of the very knowledge of the law that men are "led in to" or "drawn back from" action by the law,[42] as by a principle of direction or guidance in their self-directed movements.

In short, *ad hoc quod virtutem obligandi obtineat, quod est proprium legis, oportet quod applicetur hominibus qui secundum eam regulari debent*; and *talis...applicatio fit per hoc quod in notitiam eorum deducitur ex ipsa promulgatione*. Presuming that an ordination possesses the reasonableness, universality, and authority of law, it is finally made into a full command, and so into an actual law, only through a proportionately general and compelling enunciation, which is the solemn public proclamation called promulgation. This is the fourth and finishing element of the general nature of law. Promulgation is the act by which a law first becomes a law in act and not merely in the legislator's intention. *Leges instituuntur cum promulgantur*.[43]

Here at last is something that seems to be proper to law. Every law is something promulgated; and there is nothing that is promulgated, in the proper sense of the term, except law. Promulgation is not just any act of public notification. It is the public notification, and imposition, of a law.[44] It seems reasonable to suspect, then, that the division of law carried out in I-II q.91 is made according to certain diversities among the promulgations of law.

This suspicion is confirmed by simple inspection of St Thomas' way of defending the need for human and divine law as laws distinct from eternal law. His defense gives precision to the proper difference between these various laws. One of the objections to the existence of divine law is that eternal law is itself divine law, and that natural law, from which human law is derived, is a

participation of it. Since a divine law has therefore already been given to man, in the form of natural law, there does not seem to be a need for any other divine law.[45] His reply focuses on the way in which the special divine law that he wants to establish is promulgated. Although it is not unique in having its origin in eternal law, this law is the only one which is "divinely given" (*divinitus data*) to man,[46] first through His angels and then through His own Son made man.[47]

Likewise, the distinctive character of human law is that it is "humanly posited."[48] For a dictate of human reason to become a law, it is not sufficient that it be derived from natural law. It requires the "other conditions of law," and these are summed up in its character of something promulgated by a human authority.[49]

Promulgation seems to be the only possible basis for a consistent distinction between the kinds of law treated in q.91. At least in the cases of eternal and divine law, there is no apparent difference between them with respect to the other features of law. The reason which ordains each of these laws, and natural law as well, is both eternal and divine; the end toward which they direct things is also both eternal and divine, God Himself; and they are both imposed by an eternal and divine governor. It is only as regards the mode of their promulgation that a difference can be discerned. For although eternal law is certainly promulgated by God, the promulgation of divine law in the special sense is not eternal. The Old Law was first promulgated only at the time of Moses, and the New Law was promulgated at the time of Christ.[50] This is by no means an objection to the divine status of these laws; there are numerous acts of God *ad extra* that are attributed to Him *ex tempore*.[51]

Somewhat more accurately, then, q.91 seems first to divide law into law eternally promulgated and law promulgated in time,[52] and then to divide temporally promulgated law into law promulgated naturally, humanly, and supernaturally. Eternal law is distinguished from all other laws by having its proper mode of exis-

tence only in the mind of God; the other laws are distinguished from each other by the diverse instruments through which they come to exist in the minds of men.

Evidently, then, 'natural law' means law promulgated to man naturally. This conclusion also finds support in the text of Aquinas. The very first objection to the thesis that promulgation is essential to law was that although natural law most fully possesses the nature of law, it seems to be in no need of promulgation. His reply is that, far from having had no promulgation, natural law has the nature of law "most fully" only because its promulgation is accomplished by the very act of God's "insertion" of it into men's minds so that it come to be known naturally: *ex hoc ipso quod Deus eam mentibus hominum inseruit naturaliter cognoscendam.*[53] The expression '*ex hoc ipso*' suggests that natural law gets its very name from the manner in which its promulgation is accomplished.[54]

Of course, it is by no means clear as yet what a natural promulgation of law might consist in. This requires study. But it is now possible to follow the argument of I-II q.91 a.2, with a view to determining the significance of the expression 'participation of the eternal law in the rational creature.' It may be hoped that in the process, the meaning of the expression 'natural law' itself, as signifying a law naturally promulgated to man, will also gain in precision.

D. The demonstration of the existence of natural law

St Thomas begins the argument by recalling once again the distinction made in q.90 a.1 ad 1[m], between law as it exists in one who rules by law, and law as it exists in one who is ruled by it. "Since law is a rule and measure, it can exist in something in two ways: in one way, as in the one ruling and measuring; in another way, as in the one ruled and measured; for it is ruled or measured insofar as it shares in something of the rule or measure." Indeed, as was seen in the

discussion of promulgation, it is not only possible but even necessary that law come to exist in this twofold way, in order that it have the moving effect proper to law.

It may reasonably be asked why the question raised in I-II q.91 a.2 moves Aquinas to turn immediately to the distinction between the two modes in which law can exist. Perhaps this distinction is called for by the consideration of something in the very meaning of the expression 'natural law.' 'Natural law' means a law naturally promulgated. Promulgation is a governor's act of directing the law toward serving as a sort of pattern to which the inner principle of the subjects' own acts becomes somehow fitted. In the case of human subjects, this means making the law to be something that its subjects know, and know as something to which they need to conform themselves. As the act through which the law comes to be imposed upon those who are to be measured by it, promulgation thus constitutes the work through which the governor begins to exercise his characteristic action upon his subjects, which is to rule them.

Now the rule of a community according to law can be accomplished by the governor either immediately, or through the mediation of certain instruments.[55] Consequently, if 'promulgation' names the act through which the rule of law is initiated, nothing prevents attributing promulgation not only to the governor, as to the primary agent, but also to any instruments that he uses to complete the imposition of the law upon his subjects. Although the initial promulgation, or the institution, of law must be an action of the governor himself, since the law is issued from his own mind and finds its principal seat there, the process by which it comes to exist in the minds of his subjects may involve certain further, intermediate acts of promulgation or publication on the part of his ministers. *Solius principis est sua auctoritate legem instituere, sed quandoque legem institutam per alios promulgat.*[56] For example, the Old Law was promulgated to the Hebrews by God through the ministry of angels.[57]

What can be concluded from the two-fold existence of law, then, is that a distinction in promulgations need not entail a diversity in the thing promulgated, i.e. imply that a new order has been instituted. One and the same law can have several promulgations, granted that these must all be ordered to one primary promulgation, that by which the law first issues from the mind of the governor himself. These secondary promulgations do not establish the law as something by which the legislator will proceed to rule, i.e. as law *sicut in regulante et mensurante*; they distribute it to the subjects, as something by which they will proceed to be ruled: law *sicut in regulato et mensurato*. It is one and the same law that is the object of these various promulgations; the same, that is, as regards the order that has come to be legally sanctioned, and as regards the agency and end to which the sanctioning of that order is attributed.[58]

The very first objection to the article shows the importance of this consideration. Failure to observe the distinction between the one law promulgated and the manifold acts of promulgating it would lead to the rejection of any natural law. A natural law is a law promulgated by nature. Now there cannot even be a question here of a law that nature herself frames, as opposed to a law framed by God. The framing of law is essentially a work of reason and will, not of nature.[59] Hence nature can be at most an instrumental source of law, something promulgating law only in the secondary way indicated above. Since God is the only voluntary agent whose work precedes nature, any law promulgated through nature must be His law. But neither can natural law be a law that God first institutes through His act of producing nature, as opposed to the law that He institutes from eternity. For, as Augustine teaches, the most perfect order of things is instituted by God in the eternal law; there is no further order left for Him to institute. A further law instituted by Him at creation, i.e. a new law, pertaining to nature, would be superfluous. But nothing pertaining to nature is superfluous.

This objection, St Thomas says in his reply, would be valid "if natural law were something diverse from eternal law." Only the possiblity of distinguishing between modes of promulgation without diversifying the things promulgated can save the claim for the existence of any natural law. The natural promulgation of a law cannot be the kind of promulgation by which that law as a whole is instituted by the legislator and first becomes a law in act. Rather, it must be an act by which this same law, or the appropriate portion of it,[60] is mediated to those who are to be ruled by it.

Returning to the body of the article, we find that immediately following the distinction between law in the ruler and law in the ruled, Aquinas turns to a reflection on divine providence. The reason for this move must be that, as just seen, the proper mode of existence of any natural law is as in something ruled by eternal law. A natural law can exist only in what is ruled by the eternal law and has the eternal law somehow imposed upon it through the instrumentality of nature. As concluded in the previous article, everything governed by divine providence is ruled by eternal law, which is the *ratio gubernationis divinae*. Because the eternal law is the rule and measure of everything ruled by divine providence, it must somehow be impressed upon, or made to exist in, everything subject to divine providence. But things are subject to divine providence just insofar as they participate in being;[61] so too, insofar as they first participate in being, or by nature, they must possess an impression of the eternal law.

What is the effect of this impression? It must be the rule and measure naturally existing within each thing, inclining it toward its own acts and ends, or constituting within it that tendency or order in virtue of which certain acts and ends come to be understood to be "its own." "Since all things which are subject to divine providence are ruled and measured by the eternal law...it is manifest

that all things participate somehow in the eternal law, namely, insofar as from the impression of it they have inclinations toward their own acts and ends."

The term 'somehow' (*aliqualiter*) in this quotation is a reminder that Aquinas must not be understood to mean that this impression, or the inclination that it produces, takes the same form in all creatures, any more than the acts and ends proper to all creatures are the same. The point is merely that all creatures have this in common, that the eternal law has somehow been naturally impressed upon them. Thus, what is natural about any natural law need only be the manner in which it is promulgated to or received by the creature, not the type of acts to which it inclines them. This consideration serves to resolve a further objection to the existence of natural law (*obj.*2). It is true that the role of any law is to order men's acts toward their end, and that men's acts are ordered to an end, not by a physical determination, but by a determination of their reason and will. But the voluntary nature of man's action is quite compatible with his possession of a natural inclination, and hence with his possession of a natural impression of the eternal law; in fact, all reasoning and all willing in man must begin from something natural, in order to begin at all.[62] Since his reasoning starts from naturally known principles, and his willing from a natural desire of the last end, the law through which the acts that originate from his reason and will are first directed must be a natural law.[63] The naturally existing determinations of man's reason and will are not principles of natural acts, but natural principles of voluntary acts. The natural inclination that arises from natural law need be nothing other than an inclination in men to determine their voluntary acts in a manner conformed with eternal law.

However, this advertence to the peculiar nature of man's acts, as originating from reason and will, seems to raise a further doubt about the existence of any natural law in man (*obj.*3). Through reason and will, man has free decision, something found in no other animal. But this suggests that he should be in some

way less subject to law than the other animals: since the free is what exists and acts for its own sake, while what is subject to law is something governed with a view to the common good, what is more free is less subject to law. Yet natural law is understood to be something to which man alone might be subject; none of the other animals is said to be under a natural law.

It is once again through the principle of the two-fold existence of law that this objection can be met. The presumed uniqueness of man's subjection to a natural law would indeed conflict with his superior freedom, if natural law were understood to be law as it exists in the legislator rather than law as it exists in his subjects. This would mean that there is some law of God to which men are naturally subject, from which the other animals are exempt. But because a natural law must be law as it exists in those ruled by a law, no such inconvenience is entailed. The reason why a natural law is not attributed to the other animals is not that they are not naturally subject to any law, but that what their natural subjection to the eternal law produces in them cannot be called a law in the proper sense of the term. In the proper sense of the term, law is *aliquid rationis*; and although what exists in the ruler under the name 'law' must be something of reason, since to rule is to order things to an end, which is proper to reason, the required share in this law on the part of his subjects may or may not have a rational mode of being. It may be something that can be called a law only on account of bearing a certain likeness to law. It can be any inclining principle that originates from the legislator's imposition of the law. The instincts of beasts are such principles.[64]

In man's case, however, the inner inclining principle does retain a rational mode of being, and hence, too, the proper name of law; and this form of subjection to the eternal law is the very thing suited to his freedom. The first principle of freedom is reason, enabling men to be moved to an end through their own apprehension of the end and comparison of it with the means. Because man shares

in the law in a rational way, it is left up to him to determine whether or not to apply the law to his actions, and how to do so. It makes him to be a free subject of the eternal law, one whose acts are conformed to it only through choice, not through a natural determination.[65] The use and direction of his natural inclinations rests with him, since they are inclinations of his very reason and will. In short, all creatures, rational and irrational, are naturally subject to the eternal law; and precisely because man's specific natural subjection to the eternal law takes the form of something existing in him that can properly retain the name 'law,' the government exercised over man by the eternal law, in view of the common good of the universe, can be said to be for his own sake, as befits his free choice and mastery of his acts.[66]

In order to demonstrate that there is naturally in man a genuine law, then, it is only necessary to show that what is naturally impressed upon him from the imposition of the eternal law exists in him in the mode of reason. This is the aim of the rest of the argument of I-II q.91 a.2. It is first shown on the basis of visible evidence, and then from Scripture.

The visible evidence is the superior way in which man is subject to divine providence, as compared with other creatures, to the extent that it is proper to him to become a participant in the very work of providence, "providing for himself and others." The natural tendency in man to become capable of exercising providence is something that St Thomas seems simply to take for granted here. It is nothing mysterious; providence, he tells us elsewhere, is nothing but the principal part of prudence, the part by which men order the workable things presently at hand to the future attainment or conservation of their due end.[67] Evidently Aquinas judges that mere observation suffices for ascertaining that all men have at least some rudimentary disposition or inclination for such activity. This inclination is something that can safely be said to belong to man by nature.

How is it, then, that man's natural inclination to share in the work of providence shows that he naturally possesses a rational participation of the eternal law? It implies that he naturally possesses a likeness of the very principle of divine providence, and does so from the impression of the eternal law itself, through which he, as every creature, possesses his natural inclination to his own acts and ends. Since providence is a work of reason or intellect, its principle must be a certain object of reason, a certain "*ratio*"; and the *ratio providentiae divinae* is nothing other than the eternal law. Hence man's natural participation in the eternal law must be something rational; it is this sort of participation that inclines him to share in providence. And he must have this participation from the imposition of the eternal law itself, since it is from the imposition of the eternal law that each thing is naturally inclined to its own acts and ends.

That the principle of man's share in the work of providence is a rational share in the eternal law becomes even clearer through considering the nature of providence's operation: to order something to its due end and to the action that is due to it by reason of its end. To say that man's proper work is to exercise providence is to say that he has a "natural inclination toward what is a due act and a due end": *habet naturalem inclinationem ad debitum actum et finem*, precisely as due.[68] Such an inclination presupposes or involves the capacity to be affected by things according as they are due. Since the due or owing is what belongs to someone, or is ordered to him as something "needed" or "required,"[69] and since all order is determined according to a measure,[70] this capacity must be something pertaining to reason; for it is proper to reason to formulate measures and to compare things with their measure. This capacity must originate from the rational apprehension of the measure of man's acts and ends.

Of course, the assertion that man's natural understanding of good and bad, due and undue, carries out a work of inclining him,[71] must be understood with

precision. If this understanding serves to incline man to anything, it accomplishes this effect only because man also possesses the capacity to be inclined in accordance with this understanding; this capacity, or power, is what is called the will.[72] But while it would be a mistake to suppose that there is any actual operation of the will that precedes this natural understanding,[73] it would also be a mistake to regard this first direction of the will by the intellect, the direction whereby the will is naturally inclined toward the understood good, as coming about through the intellect's comparing the will with the understood good and ordering the will to it. That is, the natural inclinations of the will do not come about through the intellect's having asked, and answered, the question 'what should I want?' This would make the first principles of practical reason to be the results of inquiry, i.e. of deliberation,[74] and would contradict Aquinas' assertion that "the first act of the will is not from the ordination [=command] of reason, but from the instinct of nature or of a superior cause."[75] The first inclinations of the will follow upon the intellect's natural understanding of the good, not in virtue of the intellect's own deliberate application of that understanding to the will, but naturally.[76]

Now the primary measure of all things is the eternal law. The eternal law is the first principle through which anything is due in creation: *qua iustum est ut omnia sint ordinatissima*.[77] Nothing else can serve as a measure for anything except insofar as it possesses some likeness of the order instituted by the eternal law. Hence, if the "inclination toward the due" is the specific form taken by the "natural inclination toward his own acts and ends" in man; or, in other words, if man is the animal that is "inclined toward his own acts and ends" precisely through understanding them to be his own, then the natural impression of the eternal law in him must be something that attains to a specific likeness of the eternal law as rational or intellectual. *Lex aeterna...innotescit...nobis aliqualiter*

...per rationem naturalem, quae ab ea derivatur ut propria eius imago.[78] To say that it retains the rational or intellectual character of the eternal law is to say that it retains the full form of law; and since it is also something natural, it fully answers to the name 'natural law.'

This conclusion is also in keeping with Scripture. St Thomas shows this by way of treating the question of the existence of natural law as the question of whether the standard by which men discriminate between good and bad, as they manifestly do, can be called a natural law.[79] The understanding of good and bad, he says, is "what pertains to natural law." This is how the Gloss on *Romans* (2.14) which Aquinas cites in the *Sed contra* affirms the existence of natural law: although the Gentiles do not have the written Old Law, the Gloss says, they do have a natural law, "by which everyone understands and apprises himself of what is good and what is bad." This makes sense: law is a measure of human acts, and reason naturally begins the work of measuring human acts from its understanding of what is good and bad for man.[80] The question of natural law, then, is the question whether this natural understanding of good and bad provides the sort of measure of human acts that is called law.

St Thomas arrives at an affirmative answer to this question by showing that, according to Scripture, man's natural understanding of the nature of good and bad is derived from an impression upon him of the divine light of God's intellect. For, in the words of the fourth Psalm, it is God who "shows us good things," by having "shined upon us the light of His countenance." But the things that reason naturally understands, such as the nature of the good, are the things that are made intelligible to it through the operation of its own natural light. Evidently, then, the natural light of reason is a certain impression or participation of the divine light. What can be concluded from this is that the works of the natural light of reason are themselves participations of the works of the divine light, since "the works and

effects of principles are related to each other as the principles themselves are."[81] The work of the divine light is the eternal law. Man's natural understanding of good and bad must therefore be a certain participation or derivation of the eternal law, a participation mediated by the natural light of his own reason. Such a participation, received by man through the instrumentality of his own rational nature, can be understood at once to be a natural promulgation to him of the eternal law, or a natural law. There is no doubt, then, that there is such a thing as a natural law in man; and what it consists in is nothing other than the participation of the eternal law proper to the rational creature.[82]

E. The logical inseparability of eternal law from natural law

In the light of the analysis of I-II q.91 a.2, there appears to be little doubt that St Thomas understands 'participation of the eternal law in the rational creature' to be a strict definition of natural law. In fact, he seems to regard this expression as natural law's one formal definition, or the definition expressing why it answers to the meaning of its name. He does not proceed as though the existence of natural law were already acknowledged, and ask whether it is somehow derived from the eternal law. Nor does he proceed as though the verification of its derivation from the eternal law were merely a removal of obstacles to its retention of the name 'natural law'; i.e. as though something had already been affirmed to be a natural law and then doubt had been cast on this affirmation by the consideration that all law must somehow be derived from eternal law. From the very start, his argument proceeds as an investigation into something whose existence can only be affirmed by reference to the eternal law. This is because he understands 'natural law' to signify something that is a law in an unqualified sense, and because nothing that is strictly natural can be an unqualified law unless it be a law of God

existing in certain beings ruled by God. No reality existing in man can be judged to answer to the name 'natural law' unless it be considered in the light of the eternal law and of the manner in which the eternal law is first communicated to man.

Surely this explains why, until he arrives at I-II q.91 a.2, St Thomas entirely avoids the expression 'natural law' in the *Summa theologiae*, using always some other expression to designate what turns out to be the same reality.[83] This restraint is all the more striking, in view of the frequency of his use of the text from the fourth Psalm to support the claim that the human intellect is a certain participated likeness of the divine intellect.[84] The previous uses of this text indicate clearly that his aim in I-II q.91 a.2 is to set the doctrine of man's possession of natural law squarely within the framework of the understanding of man's soul as image of God, in such a way that it is no more possible to consider natural law apart from eternal law than to consider an image apart from its exemplar.[85] But even more, the absence of any mention of natural law in conjunction with these other uses of the text, especially I-II q.19 a.4, shows how strongly Aquinas felt the need to study the nature of law in general and to verify the presence of the eternal law itself in God's intellect before even mentioning the presence of a natural law in man's.

This last fact also underscores the clarity with which St Thomas presents the question of natural law as a question about something that is a law in the unqualified sense, *maxime habens rationem legis*. Despite the thoroughness of his earlier investigations of the things pertaining to the mind of God, he raises the issue of the eternal law only following a rigorous analysis of the nature of law in general. In view of such a preparation, one would certainly expect that anything meant to be understood as a law only according to some partial likeness would be so stated, as indeed it is in the case of the *lex fomitis*.[86] By contrast, Aquinas is at pains to verify the presence of all the elements of the nature of law in the eternal

law.[87] And in the case of natural law, the presence of all of the elements of the nature of law is not even questioned. What is questioned is only the suitability of such a law, in view of the exhaustiveness of the eternal law and in view of the intellectual and free nature of man.

The foregoing is in no way meant to suggest that nothing can be known about natural law except by reference to the eternal law. On the contrary, as will be argued in more detail in the next Chapter, the inquiry into the specific properties of natural law need not and should not make any advertence to the eternal law. But comparison with the eternal law is certainly required for attributing to it the nature of law without qualification; for natural law does not have the nature of law according to what is specific or proper to it. What is proper to something in a subject is determined according to the nature of the subject, and the nature of man is no more the cause of the legality of natural law than it is the cause of its own being.[88] It may not be necessary simply to dismiss Professor Donagan's distinction between "theological" and "philosophical" definitions of natural law, i.e between a definition of natural law in terms of God and the eternal law, and a definition that remains entirely on the level of nature;[89] but it is necessary to bear in mind that these cannot be definitions serving the same logical purpose, and that it is the "theological" definition that gives the principal explanation for the name given to the thing defined. A definition that leaves God and the eternal law out of the picture cannot express the formal nature of natural law. At most such a definition, e.g. 'first principles of practical reason,' can only express what is material and differentiating in this nature.[90] And a definite order of priority must exists between these definitions. They cannot be accidental to each other, as though emerging from two independent lines of inquiry. Only through the formal definition can the material definition be understood to be a definition of a natural law.

NOTES

1. See *Psychologie et Morale aux XII^e et XIII^e siécles* pp.63-67.

2. "La valeur" p.345.

3. *Summa fratris alexandri* III p.2 inq.1 c.7, in Alexandri de Hales, *Summa theologica,* ed. P.M. Perantoni, O.F.M. (ad Claras Aquas: ex typographia Collegii S. Bonaventurae 1948) t. IV.i, pp.323-329.

4. See I-II q.90 a.1 ad 1^m; I-II q.90 a3 ad 1^m.

5. *Summa fratris alexandri* III p.2 inq.2 q.1 pp.338-340.

6. *Summa fratris alexandri* III p.2 inq.2 q.1, *solutio*, p.339.

7. *Summa fratris alexandri* III p.2 inq.2 q.1 ad 2^m, p.340. Compare this with the closing sentence of the *Respondeo* of I-II q.91 a.2: lex naturalis nihil aliud est quam participatio legis aeternae in rationali creatura.

8. *Summa fratris alexandri* I. l.2 inq.4 tract.1 sect.2 q.3 tit.iv mem.ii c.5, t.II p.499.

9. This last expression is used in I-II q.74 a.7. For the other expressions, see the following places:

   'first' or 'common principles of practical reason': I q.79 aa.12-13; I-II q.58 aa.4-5; I-II q.62 a.4; I-II q.63 a.1.

   'order of reason': I-II q.87 a.1; I-II q.78 a.1; I-II q.71 a.2 ad 4^m; I-II q.21 a.1. Of course, both this and the expression 'rule of reason' include practical principles in addition to those that belong to natural law in the strict sense. But they would still have at least the force of natural law: see I-II q.95 a.2 Note also the expression *'lex rationis*' in I-II q.94 a.2 ad 3^m.

   'principles of common right': I-II q.51 a.1.

   'natural right' in the 'natural judgment seat': I-II q.71 a.6 ad 4^m.

   'the natural rule that man, according to his nature, ought to observe': I-II q.75 a.2 ad 3^m.

   'natural reason' as 'derived from the eternal law as its proper image': I-II q.19 a.4 ad 3^m.

10. See e.g. I-II q.19 aa.4-6; I-II q.21 a.1; I-II q.71 a.2 ad 4^m; I-II q.71 a.6 esp. ad 4^m; I-II q.74 a.7; I-II q.75 a.1; I-II q.75 a.2 ad 3^m; I-II q.78 a.1; I-II q.87 a.1.

11. *Summa fratris alexandri* III p.II inq.1 q.un. c.7 a.4 ad 1^m, p.329.

12. I-II QQ.90-91.

13. For instance, as regards the first three elements of Aquinas' defintion of law, the *Summa fratris alexandri* says ad *quamlibet legem concurrunt tria, scilicet auctoritas, veritas, bonitas*. (III p.2 inq.1 q.un. c.4, p.319.) As regards promulgation, it says *lex habet esse in promulgatione, et tunc meretur nomen legis, quia tunc ligat*. (III p.2 inq.1 q.un. c.1 obj.2, p.314) The author also employs the distinction between law as it exists in the ruler and law as it exists in his subiects: III p.2 inq.1 q.un. c.1 ad 1m et 2m. See Ignatius Brady, "Law in the *Summa fratris alexandri,*" *Proceedings of the American Catholic Philosophical Association* 24 (1950) pp.133-147.

14. Even in the case of the *lex fomitis* (I-II q.91 a.6) his concern is to show how this inclination toward sin can be said to satisfy the definition of law, in a secondary or derivative way, and so suitably retain the name 'law.'

15. See below, p.64.

16. I-II q.90 *proem*.

17. That it belongs to the very notion of natural law to pertain only to man is apparent from the third objection. It is simply assumed that no other animal is subject to any natural law, properly speaking.

18. See St Thomas Aquinas, *In Aristotelis libros posteriorum analyticorum expositio*, L. II, l. vii, #7 (93a25-31), ed. Leo. (Romae 1882), t. I p.353; 1. viii, #6 (93b30-37), t.I p.357. (hereafter *In post.an.*).

19. Of course, it is not to be inferred that St Paul's teaching leaves any doubt on the matter, any more than, in Aristotle's example, the request for a reasoned affirmation of the fact that the moon is sometimes eclipsed implies doubt of the astronomer's authority on the point: *In post. an*. L. I, l. xxv, #6 (79al3-18). The possession of even the firmest certitude, based on authority, does not take away the desire to see the truth for oneself. On the contrary, the certitude is what gives confidence that there is such a truth to be seen; it is what emboldens the believer to adhere to his inquiry. The learner must begin by believing his teacher. Aristotle, *De sophist. elench*., trans. E.S. Forster (Cambridge: Loeb Classical Library 1965) ch.2 p.15 (165b3).

20. *In post. an*. L. II, I. viii, #6 (93b30-37).

21. See I q.2 a.2 ad 2m; q.13 a.8 ad 2 m. Of course, one may know the meaning of a name and yet judge incorrectly as to whether it be truly predicated of something. Someone may call something a god which does not truly fit the name 'god,' and yet mean the seme thing by that name as does someone who predicates it of the true God. (See I q.13 a.10.)

22. I q.2 a.3.

23. See I-II q.10 a.1 ad 1m. It is clear that the other meaning of the term 'natural' indicated in this article does not pertain to the question of natural law. Natural law cannot possibly be something natural in the sense of something springing from an "intrinsic principle of motion and rest in mobile things," i.e. something derived either from matter, or from the form of something

material; for even if it be understood to govern the acts of material beings, law is *aliquid rationis*, and reason is neither matter nor, according to what is proper to it, the form of anything material.

24. See I q.29 a.4: aliquid est de significatione minus communis, quod tamen non est de significatione magis communis.... Unde aliud est quaerere de significatione animalis, et aliud est quaerere de significatione animalis quod est homo.

25. This is one method of arriving at a definition. See In post.an. L.II, l. xiii-xiv (96a20-97a6), pp.373-379.

26. See St Thomas, *Sententia Libri Ethicorum* L.X l.xiv (Romae, ad Sanctae Sabinae 1969) t.XLVII(2) p.60 11.219-222: lex habet coactivam potentiam, in quantum est promulgata a rege vel principe, et est sermo procedens ab aliqua prudentia et intellectu dirigente ad bonum.

27. For instance, the deliverances of moral philosophy are in a way measures of human acts, but by themselves do not necessarily regulate conduct, since the moral philosopher is not always king; and the impulses of fear or concupiscence move men to act, but often cause them to deviate from the right course.

On 'measure' as a principle of rectitude, see I-II q.21 al; *Summa contra gentiles* III.114 (Romae 1926) v.14 p.94. In tahag it for granted that law is a principle of rectitude, what Aquinas seems to trave in mInd is the way in which the authority of law is spoken of in direct opposition to the authoriTy of men. The distinguishing feature is not power but reasonableness. (See *Sententia libRI ethicorum* L.V l.xi, p.301 ll.125-140.) Of course, he is aware of the possibility of error as to whether a given dictate is reasonable; the point is merely that when men give a dictate the name 'law,' they tend to be regarding it as a principle of rectitude and iustice.

On the use of the terms '*inducere*' and '*retrahere*'to indicate how law moves, see I q.103 a5 ad 2^{m}:

> iste [per se agentia] gubernantur a Deo . . . per hoc quod ab eo inducuntur ad bonum et retrahuntur a malo per praecepta et prohibitiones, praemia et poenas.

See also I-II q.92 a.2: id autem per quod inducit lex ad hoc quod sibi obediatur, est timor poenae.

28. On the use of this etymology by Aquinas' predecessors, see Ermenegildo Lio, O.F.M., "Annotazioni al testo riportato da S. Tommaso (S.Th. I-II q.90 a.1) '*Lex . . . dicitur* a l*igando*'," *Divinitas*, I (1957) pp.372-395.

29. *De veritate* q.17 a.3. See St Albert: the "*ratio nominis*" of '*lex*' is '*ligatio.*' (Alberti Magni, *De bono*, ed. H. Kühle et al., *Opera Omnia* (Aschendorff: Monasterii Westfalorum) tr. 5 q.2 a.2 ad 1^{m}. St Thomas' appeal to the etymology of '*lex*,' however, need not be taken to imply that he is starting from some merely nominal definition of law, as though it had not yet even been determined whether any such thing as law exists. He takes the existence of law for granted, as something too obvious to need proof, just as Aristotle takes the existence of nature for granted in his inquiry into the nature of nature: *Physics* II.1 (193a4-9), trans. H.G. Apostle (Grinnell: Peripatetic Press 1980)

p.26. Aquinas proceeds at once to an analysis of the real attributes of law.

30. I-II q.96 a.4. This citation is not meant to suggest that the moving force of law is simply identical with coercion. Coercion is the form taken by the moving work of law when those moved by it are moved unwillingly. The general name for the moving work of law would be 'regulating' or 'ordering.' See below, Chapter Three, pp.109-110.

31. See I-II q. 18 a.2. See also I-II q.17 al: the proper subject of an ordination is reason, while any moving power in it arises from something outside its proper subject, the will. Hence the question of its relation to reason is prior to the question of its moving power.

32. I-II q.17 a.1; see a.2.

33. See I-II q.90 a.1 ad 3m. It is useful to compare this text with I-II q.97 a.4: he distinguishes between an "unfaithful" and an "imprudent" dispenser of the law, the former being one who does not act for the common good; the latter, one who does act for the common good but who ignores the *rationem dispensandi*. Even clearer is I-II q.96 a.4: in order to be "lawful" (*legalis*), a law must not only be ordered to the common good and promulgated by due authority; it must also be formed so as to impose burdens on the subjects according to equality of proportion, i.e. according to distributive justice. This echoes a passage in q.90 a.1 ad 3m: *voluntas de his quae umperantur, ad hoc quod rationem habeat, oportet quod sit aliqua ratione regulata... alioquin voluntas principis magis esset* ***iniquitas*** *quam lex* (my emphasis). The expression '*ordinatio rationis*' in this definition of law seems therefore to mean a rational or prudent ordination, one that disposes the means to the common good in a reasonable or equitable way.

34. I-II q.90 a.3 ad 3m.

35. See I-II q.90 a.2 ad lm.

36. I-II q.90 a3 ad 2m. See II-II q.83 a.1:
ratio dupliciter est causa aliquorum. Uno quidem modo, sicut necessitatem imponens: et hoc modo ad rationem pertinet imperare non solum inferioribus potentiis et membris corporis, sed etiam hominibus subiectis, quod quidem fit imperando. Alio modo, sicut inducens et quodammodo disponens: et hoc modo ratio petit aliquid fieri ab his qui ei non subiiciuntur, sive sint aequales sive sint superiores. Utrumque autem horum, scilicet imperare et petere sive deprecari, ordinationem quandam important: prout scilicet homo disponit aliquid per aliud esse faciendum.

37. I-II q.90 a.3 ad 2m; see *Sententia libri Ethicorum.* L.X l.xiv, p.600 11.216-219: *vim coactivam non habet praeceptum paternu,. neque cuiuscumque alterius hominis persuadentis, qui non sit rex, vel in aliquo alio principatu constitutus*. To oblige is to impose hypothetical necessity on human acts. That is, it consists in some determination by which the one obliged cannot attain his good except through the prescribed course of action. Now, men depend above all upon the common good: *bonum proprium non potest esse sine*

bono communi familiae vel civitatis aut regni (II-II q.47 a.10 ad 2[m]). Hence the agent who has control over the distribution of the common good has the fullest capacity to enforce a certain course of action. Sometimes the action prescribed is something contrary to the subject's inclination; in this case, he is moved to follow it only insofar as it has the loss of something he wants attached to the failure to fulfill it. This is punishment, the threat of which is in a way coercion, since acting through fear is in a certain respect involuntary (I-II q.6 a.6). At other times, the obligation is fulfilled voluntarily, without therefore ceasing to be an obligation; for it is still true that he would be punished, did he not fulfill it. See below, Chapter Five, pp.197-199.

38. See I q.103 a.5 ad 2[m]: *guberatio est quaedam mutatio gubernatorum a gubernante. Omnis autem motus est actus mobilie a movente, ut dicitur in III Phys*.

39. I-II q.90 a.1 ad 1[m]; a.3 ad l[m].

40. - I-II q.93 a.5. See I-II q.21 a.1.

4l. See I-II q.92 a.2, where he equates saying that law induces obedience to itself with saying that it has something whereby it gains assent. Sometimes this is something outside the substance of the law, serving as a kind of principle from which the need to obey the law can be concluded; this is punishment. Law-abiding men, of course, need no such extrinsic inducement; to them it is as though self-evident that it is good to obey the law.

42. I-II q.90 a.1.

43. I-II q.90 a.4 *Sed contra*. See *Summa fratris alexandri*, III p.2 inq.1 q.un. c.1 obj .2: *lex habet esse in promulgatione, et tunc meretur nomen legis, quia tunc ligat*.

44. On the public character of promulgation, see the *Epitome* of Julius Paulus on the *De verborum significatu* of Festus: "*promulgari leges dicuntur, cum primum in vulgus eduntur, quasi provulgari.*"--*Sexti Pompeii Festi De verborum significatu quae supersunt cum Pauli Epitome*, ed. W. Lindsay (Lipsiae: Teubner 1933), p.251. As for its restriction to the publication of a law, i.e. of something obligatory, see Suarez, *De legibus* I.xii.4 (v.II p.69): *haec vox [promulgata] indicat ordinem ad obligationem inducendam*.

45. I-II q.90 a.4 obj.1.

46. I-II q.90 a.4 ad l[m].

47. I-II q.98 a.3.

48. I-II q.91 a.4, q.95 a.2, a.3 etc.

49. I-II q.91 a.3.

50. I-II q.98 a.6, q.106 a3.

51. I q.13 a.7. At the same time, not everything saia of God "*per respectum ad creaturam*" is predicated of Him *ex tempore*. For this reason, Lottin seems mistaken in arguing that no true law can be eternal.

> Dira-t-on avec saint Thomas que la loi éternelle est promulguée *ab aeterno* par le Verbe et par le Livre de vie (I-II q.91 a.1 ad 2[m])? Mais, outre qu'on peut ne pas goûter ces metaphores [!], il s'agit, en l'occurrence, d'une promulgation faite à des créatures, puisque ce sont elles qui doivent être soumises à la loi eternelle; et puisque ces créatures sont créés dans le temps, il est donc impossible qu'*ab aeterno* il y ait eu promulgation de la loi éternelle. (*Morale fondamental* p.220.)

What St Thomas says is the following:

> cum relationes consequantur actiones, quaedam nomina important relationem Dei ad creaturam, quae consequitur actionem Dei in exteriorem effectum transeuntem, sicut creare et gubernare; et talia dicuntur de Deo ex tempore. Quaedam vero relationem quae consequitur actionem non transeuntem in exteriorem effectum, sed manentem in agente, ut scire et velle; et talia non dicuntur de Deo ex tempore. Et huiusmodi relatio ad creaturam importatur in nomine Verbi. Nec est verum quod nomina importantia relationem Dei ad creaturas, omnia dicantur ex tempore; sed sola illa nomina quae important relationem consequentem actionem Dei in exteriorem effectum transeuntem, ex tempore dicuntur. (I q. 34 a.3 ad 2[m].)

Promulgation is a form of utterance or enunciation, which is something that takes place within the agent from whom it originates, even if it is aimed at someone outside of him. This is why St Thomas does not say that the process of drawing law into the knowledge of those subject to it is simply identical with promulgation; he says that law is drawn into their knowledge "from" promulgation (I-II q.90 a.4).

52. This is not quite the same as Augustine's famous division of law into eternal and temporal; by 'temporal law' Augustine means only positive law, i.e. law that can be justly changed in the course of time. *De libero arbitrio*, Bk.I ch.6 (PL 32,1299); see I-II q.95 a.1. It is a law whose justice or rectitude is subject to time and change. Obviously natural law and at least part of divine law do not fall under this category. Nevertheless, St Thomas is in no way adding two other non-temporal laws to Augustine's eternal law; as will be suggested below (Chapter Three, pp.127-129), the most precise account of Aquinas' division of law shows it to be little more than an elaboration upon St Augustine's. The fundamental outlook is the same.

53. I-II q.90 a.4 ad 1[m].

54. If this suggestion is correct, then Aquinas' position is about as far removed as it could be from the account of Lottin, according to which natural law has no promulgation at all. (See Chapter One, n.8.)

55. See I q. 103 a.6. While the original framing of law belongs to the "*ratio gubernationis*," and so belongs to providence (see II-II q.50 a.l obj. 3 & resp.), which is carried out by God without mediators, the imposition of law surely belongs to the *executio gubernationis*.

56. I-II q.98 a.3 ad 3[m]. This text does not contradict the quotation from Gratian adduced in the *Sed contra* of I-II q.90 a.4: *leges instituuntur cum promulgantur*. (The quotation is from *Concordantia discordantium canonum* P.I d.iv append. ad can.3 In istis.) The fact that the legislator sometimes uses his ministers to promulgate the law that he has already instituted does not mean that the institution of it does not itself consist in a certain prior promulgation, one made without the instrumentality of any minister. Indeed, there must always be some such promulgation, since it is necessary for the legislator to enunciate the law to the ministers themselves, before they in turn can communicate it to his subjects. Gratian's dictum need not be simply rejected; it need only be somewhat qualified, to say that laws are instituted when they are promulgated for the first time, in the legislator's initial enunciation of them. The law may have other promulgations besides the one by which it is instituted.

    It is worth noting that the sort of objection to which I-II q.98 a.3 ad 3[m] is addressed is nowhere raised in the case of natural law. While one might mistakenly think that in promulgating the Old Law, the angels were its very authors, there is no danger of thinking that a law naturally promulgated is a law that nature institutes.

57. I-II q.98 a.3.

58. A somewhat similar point is made by St Thomas in his discussion of teaching: *est eadem scientia in discipulo et magistro, si consideretur identitas secundum unitatem rei scitae*. (I q.117 a.1.) As the same truth is the object of both the teacher's teaching and the student's learning, so the same order is the object of both the ruler's promulgation and the subjects' reception.

    However, the law existing in both ruler and ruled enjoys perhaps an even greater identity than the knowledge existing in teacher and student. The very notion of law involves the authority from which it springs and the subjects upon whom it is imposed, whereas the notion of knowledge involves only the one knowing and the thing known, not the communication or reception of the knowledge. As a result, to identify the law existing in the subjects requires some reference to the ruler, whereas to identify the knowledge existing in the student, there is no need to refer to the teacher. The term that more closely resembles 'law' in this respect would be 'doctrine' or 'teaching.'

59. *Omnis lex proficiscitur a ratione et voluntate legislatoris* (I-II q.97 a3). The continuation of this passage is equally interesting: *lex quidem divina et naturalis a rationabili Dei voluntate*.

60. Obviously not everything that the legislator has instituted for all of his subjects needs to be communicated to each of them; nor does what he has instituted for any one of them need to be communicated all at once. What is required is only the communication of the portion required for the direction of each one's acts at any given time. Still, the law that they have received remains the same in substance as the one that he instituted, just as any partial knowledge learned by the studente is still nothing other than the teacher's doctrine.

61. I q.22 a.2.

62. See I-II q.10 a.1.

63. What Aquinas says is *et sic etiam oportet quod prima directio actuum nostrorum ad finem, fiat legem naturalem*. The term '*oportet'* seems to connect this with a passage in the treatise on divine government:

> . . . creatura rationalis gubernat seipsam per intellectum et voluntatem quorum utrumque indiget regi et perfici ab intellectu et voluntate Dei. Et ideo supra gubernationem qua creatura rationalis gubernat seipsam tanquam domina sui actus, indiget gubernari a Deo. (I q.103 a.5 ad 3m.)

Since man's intellect and will "need" to be ruled by God in their work of ruling man, and since their work of ruling man begins from what is natural in them, "it is also necessary" that the first direction of their acts by God come about through something natural in them.

64. This is somethine that St Thomas explained in his first account of the two-fold existence of law: I-II q.90 a.1 ad lm. See l q.18 a.4 ad 2m.

65. See II-II q.47 a.12; q.50 a.2; *Summa contra gentiles* III.114.

66. I q.22 a.2 ad 4m & 5m; I q.103 a.5 ad 2m (quoted above n.38) & ad 3 m (quoted above n.63); *Summa contra gentiles* III.112-114.

67. On providence as the principal part of prudence, see I q.22 a.1; II-II q.49 a.6. On the *finis debitus* as the principle of practical reasoning, see I-II q.58 a.4 and ad 3m; q.65 a.1.

68. It seems to be necessary to take "due" formally in this text. This reading is suggested by the fact that St Thomas uses the singular rather than the plural: he seems to mean that, through participating in the *ratio* of divine providence, man has a natural inclination that is proportioned to the very dueness of the acts and ends that the eternal law makes due to him. Also, if the term 'due' here is taken only materially, no difference between man and the other animals is suggested, and neither the need for the participation's rational character, nor the significance of man's sharing in providence, is explained. Whereas the other animals act instinctively according to a rule, it belongs to man to be the cause of the conformity of his acts with the rule, or to regulate himself. This is his "proper act and end."

69. I q.21 a.1 ad 3m.

70. I-II q.21 a.1.

71. See I q.79 a.12 *Sed contra*: *synderesis . . . ad bonum tantum* ***inclinat***.

72. See I q. 80 a.2: potentia . . . appetitive est potentia passiva, quae nata est moveri ab apprehenso.... Passiva autem et mobilia distinguuntur secundum distinctionem activorum et motivorum, quia oportet motivum esse proportiona-

tum mobili, et activum passivo; et ipsa potentia passiva propriam rationem habet ex ordine ad suum activum.

73. I q. 82 a.4 ad 3[m].

74. See I-II q.14 a.1.

75. I-II q.17 a.5 ad 3[m].

76. See below, Chapter Four, p.161.

77. I-II q.91 a.2 obj.1.

78. I-II q.19 a.4 ad 3[m].

79. The term '*malum*' is usually translated 'evil' rather than 'bad.' However, the English term 'evil' tends to connote only a very special kind of badness, namely, moral badness. People seldom speak of evil birds or evil cars or evil translations; they speak of evil deeds and evil men. But at least in the present context, Aquinas is using the term '*malum*' in its widest possible sense, according as it signifies one of the human intellect's very simplest, most basic and most easily grasped notions. The notion of the morally bad is much more complex and sophisticated.

80. I-II q.94 a.2. See St Albert, *Summa de bono* tr.5 q.1 a.1 ad 16[m]: ius naturale stricte dicta est quod innata vis inseruit, id est universalia morum, quae dictat conscientia ex **ipsa ratione boni**.

81. St Thomas, *Sententia libri Politicorum*, *prologus*, (Romae 1971) t.48 p.A70 (hereafter *In pol.*).

82. Aquinas is not the first to use the fourth Psalm to show the existence of natural law. See St Albert, *Summa de bono*, tr.5 q.1 a.2 obj 8 et resp.
At least in Aquinas, however, the chief purpose of this appeal to the fourth Psalm seems to be something other than to show that the affirmation of natural law is in accordance with revelation. Surely his reference to St Paul, in the *Sed contra*, provides a sufficient grounding in revelation. As noted below (nn.84-85), Aquinas had already used the same Psalm passage in several earlier places in the *Summa theologiae*, each of which is concerned in one way or another with the doctrine that man's intellect is somehow derived from God's. The passage thus becomes a kind of quick reference to that doctrine and all that it entails. St Thomas' chief reason for appealing to it appears then to be that he is not satisfied with showing the existence of natural law merely through a certain effect, that of enabling man to exercise providence; he also wants to show it through its cause, which is the natural light of reason, understood as derived from the eternal light and as mediating to man a certain grasp of the ordination of the eternal law.

83. See above, pp.58-59.

84. On one of these occasions (I-II q.19 a.4) his intention is in fact to show that the goodness of man's will is measured primarily by the eternal law, which is the cause of reason's own power to measure the will; and yet he refrains

from using the expression 'natural law,' presumably because he has not yet set forth his account of the two-fold existence of law. He uses the Psalm on at least four occasions in the *Prima Pars*, first to show that the light of the agent intellect is derived from the divine light (q.79 a.4); second, to show that the human intellect apprehends all things "in the eternal reasons" (q.84 a.5); third, to show that each man possesses a certain image of God in his soul, insofar as the very nature of his mind gives him a certain aptitude for knowing and loving God (q.93 a.4); and fourth, to show that God is the principal teacher of man (q.117 a.1 ad 1[m]).

85. See I-II q.19 a.4 ad 3[m]: *lex aeterna . . . innotescit . . . nobis aliqualiter ... per rationem naturalem, quae ab ea derivatur ut propria eius imago*.
At the same time, the fact that the appeal to the Fourth Psalm in I-II q.91 a.2 is a clear echo of several earlier and more elaborate accounts of the relation between the human and divine minds suffices to remove the suspicion that Aquinas thinks that it is only by revelation that there can be certainty that the light of the human intellect is derived from the eternal light. The argument in I-II q.91 a.2 is not intended to provide a full defense of the claim that man's understanding participates in the divine understanding. This is because it is not directly concerned with the relation of man's intellect as a whole to the divine mind, but only with the consequences of that relation with respect to the practical operation of the human intellect. The question of the relation of man's intellect as a whole to the divine mina is properly raised, in the *Summa theologiae*, in the first treatment of the natural light of the human intellect: I q.79 a.4. There, in addition to appealing to revelation, Aquinas also presents properly philosophical arguments for the claim that man's natural light is derived from the divine right, arguments based on two facts: the immediate production of the human soul by God (which is itself concluded from the very fact of the soul's immaterial and intellectual nature: I q.90 aa.2-3), and the fact that God alone is the object of any true beatitude of man, natural or supernatural (I-II q.2 a.8).

86. I-II q.91 a.6.

87. I-II q.91 a.1 & ad 2[m] & ad 3[m]; I-II q.93 a.1.

88. See the quotation from Augustine's *De libero arbitrio* that Aquinas uses to explain why it amounts to the same thing to say that vice is contrary to nature and to say that it is against the eternal law (I-II q.71 a.2 ad 4[m]): *a Deo habent omnes naturae quod naturae sunt*.

89. See above, Introduction, pp.3-4.

90. See I-II q. 13 a. 1: when an act involves the co-ordination of two powers or agencies, its formal notion is taken from the superior and governing power, while its material notion is taken from the inferior power, which is the immediate source and subject of the act. On the sense in which the formal notion is generic and the material notion specific or differentiating, see I-II q.18 a.7 ad 3[m].

CHAPTER 3

NATURAL LAW AND POSITIVE LAW (1): THE PROBLEM OFAUTHORITY

A. Natural and positive promulgations of law

The study of Aquinas' argument for the existence of natural law leaves little doubt as to what he wishes the reader of the *Summa theologiae* to understand by the expression 'natural law' and by his use of the formula 'participation of the eternal law in the rational creature.' Both the procedure and the setting of the argument indicate that the object of this formula is what must be held in view when the existence of any natural law is first affirmed in a scientific way. This would not be necessary if 'natural law' meant nothing more than first principles of practical reason, or naturally known rules of human conduct, or anything else whose notion did not embrace the full set of conditions for any law. The argument gives as much support as could be desired for the definition of natural law in terms of the definition of law in general that was proposed at the beginning of Chapter One: the ordination of divine reason, for the common good of the universe, as promulgated to man, through the instilling of the natural light of his intellect, by God, the author and governor of the universe. The formal nature of such a law is what 'participation of the eternal law in the rational creature' is meant to express.

It therefore becomes necessary to resolve the questions that were seen to arise from this way of understanding of natural law. These are, first, how natural law, so understood, can remain something fully natural; and whether such a natural law possesses adequate obligatory or compelling force. This Chapter and the two following will be addressed to these questions.

The analysis of I-II q.91 a.2 immediately raises the first question, by indicating that the basic meaning of the expression 'natural law' for Aquinas is law naturally promulgated. For the precise issue is whether or in what way man's strictly natural practical knowledge, the knowledge of the first principles of practical reason, constitutes a sufficient promulgation or notification of God's law.

What brings its sufficiency into doubt is that it seems to exclude explicit knowledge of the authority promulgating the law, His purpose in promulgating it, or the very fact of the promulgation. In short, it seems to exclude the very knowledge that these principles are laws.

This feature of the knowledge of the first principles of practical reason was in fact what led to Lottin's complaint about defining natural law in terms of the eternal law and in terms of the definition of law in general.[1] It is only in the case of positive law, he says, that knowledge of the legislator and of his institution of the law is an essential element in the subjects' understanding of the law's precepts as genuine norms of action. That is, if a law is merely positive, its subjects know the law in such a way that it actually rules and measures their acts only when they know that it is the law; and this amounts to knowing that competent authority has instituted it. Lottin's complaint is that to define natural law in terms of the definition of law in general is to assimilate it too much to positive law, which is the only law that perfectly fulfills the general definition. Nor is it only for Lottin that the difference between the principles of practical reason and the precepts of positive law is problematic. According to the position at the other extreme, that of Fortin, it is only by becoming like precepts of positive law, through the revelation of their origin in divine authority and of their divine sanction, that the first principles of practical reason take on the character of a true law.[2] Thus common to both positions is the judgment that, according to their original and strictly natural existence in the human mind, the first principles of practical reason cannot be termed laws in the full Thomistic sense.

Now if the account of the basis of the Thomistic division of law given in Chapter Two was accurate, and if a natural law is a law naturally promulgated, then there is already good reason to doubt whether Aquinas would subscribe to this judgment. The difference just described, between the principles of practical

reason and the precepts of positive law, is not by itself a sufficient ground for considering the former to be laws in only a qualified sense. If what properly distinguishes the various laws enumerated in I-II q.91 aa.1-4 is the mode of promulgation of each, then there is no reason to suppose that the specific mode of promulgation proper to positive law is the only truly legal one. Perhaps the peculiar mark of the law promulgated naturally is the very fact that its promulgation does not require a notification of the promulgating authority or of the legality of the norms promulgated. Perhaps, that is, the very naturalness of the knowledge of these precepts somehow suffices to give them the degree of force that is secured for other laws only through their formal presentation as laws, as decrees issued or posited by competent authority. At the very least, it seems safe to say that if Aquinas understands 'natural law' to mean law naturally promulgated, then his affirmation of the existence of a natural law is hardly compatible with an intention to suggest that natural law is not really quite natural.

Still, it remains to be seen exactly how the full nature of law can be attributed to rules not yet made known in the manner of positive law. Since the general name for the act of imposing a law is 'command,' the chief area to be explored in this matter would seem to be the nature of command, together with the kind of knowledge about a command that someone needs in order to be said properly to be subject to or governed by it. But first it is necessary to verify the proposition that for Aquinas, the first or natural assent given to the precepts of natural law comes about independently of any advertance to divine authority. Up to now this proposition has simply been taken for granted; nor have any of Aquinas' reasons for adhering to it, if he does, been indicated. After the subsequent investigation of command, it will be possible to conclude with a more general comparison between natural law and positive law within the Thomistic scheme of laws.

B. The definition of natural law and the natural knowledge of natural law

The clearest evidence for the judgment that Aquinas does not think that the understanding of first practical principles involves advertance to divine authority would be the two points adduced by Donagan and others in support of a purely "philosophical" definition of natural law. The first is that Aquinas attributes the understanding of the common principles of natural law to all men, whereas he denies that all men know God's existence and attributes. The second is that there is no reference to divine legislation or to the eternal law in the Question of the *Summa theologiae* devoted to natural law (q.94), and in particular, no mention of a process by which men become aware of God's authority as a part of reason's formation of its first practical principles (q.94 a.2). The account of the genesis of man's possession of natural law requires no consideration of how man acquires knowledge of God. The obvious conclusion is that Aquinas does not think that the legal character of natural law, considered according to the existence in man's mind that is proper to it, depends in any way either upon divine revelation or upon rational investigation of the works of God. He thinks that it is already a law for man, *ex hoc ipso quod Deus eam mentibus hominum inseruit naturaliter cognoscendam*. This means that man is subject to natural law, or ruled and measured by it, even before he has the knowledge by which to judge it a natural law. He apprehends the truth of its precepts, and hence their normative quality, well before he attains any clear knowledge of their authoritative origin. The application of natural law to man is already brought to full completion in this apprehension.

This line of reasoning is so compelling that what is really required is to show that it nevertheless does not compromise the account of the definition of natural law already given. This may be shown on the basis of a certain distinction. Natural law is a certain set of rational propositions or dictates, hence the

expression of a certain body of knowledge. But 'the knowledge of natural law' may mean one of two rather distinct things. It may mean the practical knowledge that natural law itself expresses; or it may mean the rather more theoretical knowledge about this very expression, according to which, among other things, it receives the name 'natural law.' The propositions that constitute natural law are one thing, and the propositions about those propositions, e.g. that they constitute a natural law, are another. The former are norms of action; the latter are theoretical reflections on these norms as objects of knowledge. Natural law and the theory of natural law are not the same thing, even though both are objects of knowledge.

This distinction is important in more than one way. For one thing, as Finnis observes, the theory of natural law may have had, and in fact has had, a long and uneven history; but if any such thing as natural law exists, it cannot have had any sort of history at all.[3] For another thing, more directly related to the present concerns, this distinction must surely be at least part of what allows Aquinas to define natural law as a participation of the eternal law in the rational creature, while at the same time asserting that all men know the common principles of the natural law, and deriving the various precepts of natural law without the least explicit reference to the eternal law.[4] The "theological" definition of natural law, as a participation of the eternal law, obviously belongs to the theory of natural law, which perhaps not everyone possesses; but the constituents of natural law are nevertheless, by definition, within everyone's grasp.

Moreover, some reflection on the distinction casts further doubt upon the claim for the existence of a purely "philosophical" definition of natural law, i.e. one that makes no reference to the eternal law. If it may be granted that Aquinas does not think that everyone knows the "theological" definition of natural law, it must also be noted that he gives no indication of thinking that everyone knows any definition of natural law at all. Surely he does not think that they

know it with the immediacy or naturalness with which they know the principles that happen to comprise natural law. Even a "philosophical" definition of natural law would belong wholly to the theory of natural law, and would fall outside the scope of what all men know about natural law. Indeed, there is no reason to think that everyone even has a distinct concept of a natural law, any more than that everyone has a concept of first principles of theoretical reason, even though everyone somehow knows those principles. The definition of natural law is not obliged to express only those things that everyone knows about natural law. What the definition of natural law is obliged to express is the essential nature of natural law. One of the functions of this definition, of course, would be to provide the explanation for the fact that the precepts of natural law are known to everyone; but there is no reason why everyone should know that explanation.

The universal knowledge of the principles that make up natural law thus says absolutely nothing about the presence or absence of eternal law in the definition of natural law. Does the fact that all men know the existence of some things created by God, without knowing of God, imply that the nature of creation can be defined without reference to God? Surely just as this fact implies only that these men do not know that the things whose existence they know are also God's creatures, so the other implies only that some men do not know that the primary principles of action are also God's laws. It is a confusion between theory and practice, of the very kind that Finnis condemns, to say as he does that because the first principles of practical reason are self-evident, whereas God's existence is not, the theory of natural law does not depend on theology, at least natural theology.[5]

The question as to the place of the eternal law in the definition of natural law is entirely a question about the relation between the various elements of the theory of natural law. It cannot be answered by way of appeal to the contents of natural law itself or to the practical knowledge that natural law expresses. Is

there, then, any further reason to doubt that the study of natural law in I-II q.94 remains within the theological perspective in which natural law is understood as a participation of the eternal law? Has Aquinas suddenly shifted from theology to philosophy, or from theological ethics to philosophical ethics, or to the perspective of what Lottin calls "intrinsic morality"? Does he in fact have an equivocal notion of natural law, one that allows for two more or less independent definitions of it? The lack of procedural clarity that an affirmative answer to these questions would imply is already grounds for leaning toward a denial. And in fact, if the eternal law is not explicitly mentioned in I-II q.94, would the reason not be merely that Aquinas has turned from a consideration of natural law according to what gives it the nature of law, to a consideration of it according to what is distinctive of it or specific to it, i.e. according as it is something natural to man?

The specific grounds for this two-fold consideration have already been established. It was suggested at the end of Chapter Two (n.82) that the reason why the argument in I-II q.91 a.2 continues, even after the existence of natural law has been shown through the effect of man's share in providence, is that Aquinas wants to go on to show the proper cause in man through which natural law exists in him. This cause is the natural light of human reason, which produces natural law according to its character as a participated likeness of the divine light. But the natural light of reason can be considered in two ways: simply on its own terms, i.e. according to its own form, or in comparison with the extrinsic principle from which it originates and in which it participates. It is the second way of considering it that presents it as a cause of natural law in man; for natural law itself is something whose legal character is manifested by reference to its extrinsic origin, the eternal law. Nevertheless, whatever is special or proper to the natural light of reason and to its effects will be determined according to the first way of considering it, namely, on its own terms.

Omne quod recipitur, in modo recipientis recipitur. It is true that natural law exists and is named according to man's subjection to an extrinsic principle, and that it is only for this reason that natural law can be called a law without qualification. But nevertheless the properties of natural law will not directly follow upon the nature of the extrinsic principle from which it derives, but upon the nature of the principle intrinsic to its proper subject, through which its generation in man is terminated. In other words, the eternal law is what places natural law in the genus of law; but its proper subject, man's own reason, is what differentiates or specifies it.

Once it is determined that a derivation of the eternal law naturally exists in man, through the instrumentality of his own intellect, the closer investigation of this reality must proceed in the light of what is known about the natural operation of reason. The inquiry into the special nature of natural law must be an inquiry in which natural law is considered as a certain natural perfection of the rational soul. I-II q.94 is exactly such an inquiry; and this is why it begins with the question of which one among the perfections already known to belong naturally to the rational soul can properly be said to constitute a law. This question seeks the *ratio materialis* of natural law. Once it is determined that natural law consists in the object of *synderesis*, the rest of the inquiry will only differ from an inquiry into the first principles of practical reason as such in that it is undertaken in the light of the judgment that these principles constitute a natural law. While I-II q.91 a.2 provides the original disclosure of the reality of natural law, starting from the criteria for law established in Question 90, I-II q.94 goes on to study this reality according to what is peculiar to it, or insofar as it is natural.

A brief survey of the articles in q.94 confirms the judgment that the function of this question is to determine what can be said about natural law according to what is special about it, i.e. insofar as it is something natural. In Article 1,

it is asked whether natural law is a habit; and the only habit considered is a natural one, *synderesis*. Since law is a work of reason,[6] in the way that a proposition is, natural law cannot be a habit; for a habit is not "what" someone forms, but "that by which" he forms it.[7] Hence natural law cannot be a natural habit, but the object of one.

Article 2 asks whether the precepts of natural law are one or many. This article presents special problems which will be considered in the next Chapter. Here it is sufficient to note that the question is answered entirely by way of an account of the natural order of the notions in man's practical reason and of the inclinations to which practical reason naturally gives rise.

Article 3 asks whether natural law commands all acts of virtue. Once again, the answer is made by way of appeal to what is natural to reason. Because reason is man's proper form and the principal source of his properly human inclinations, it naturally inclines him, above all else, to follow its direction. At the same time, the directives that it is naturally disposed to form only give general guidelines for virtuous or reasonable activity; they do not define each act of virtue in its specific nature.

Finally, Articles 4, 5 and 6 ask, respectively, whether natural law is the same for all men, whether it is free from change, and whether it is a necessary or inseparable accompaniment of man's mind. In none of these does St Thomas even provide a direct defense of the affirmative answers; he merely draws certain distinctions between natural law considered strictly or in the primary sense, and other ways of speaking about natural law. Surely the reason why he feels no need to defend his position more directly is that it is implied by the very term 'natural.'

In sum, the absence of any reference to the eternal law in I-II q.94 in no way implies that Aquinas' formulation of natural law as a participation of the eternal law is anything less than the formal definition of natural law. Nor does it

suggest that he employs the term 'natural law' in an equivocal way, such that its application to the so-called first principles of practical reason is in any way independent from this definition. It also squares with his general teaching concerning the way in which man comes to acquire knowledge about God. The account of the emergence of the precepts of natural law in man's mind, especially as articulated in Article 2, requires no allusion to man's knowledge of God, because the primary precepts of natural law are known altogether naturally: *per se nota omnibus*, while none of man's knowledge about God is simply natural. The intention of I-II q.94 gives no reason to expect any appeal to the eternal law or to God as the author of natural law.

On the contrary, such an appeal might serve only to obscure the treatment, by adding superfluous detail. Reference to the eternal law, for example, might lead someone to think, as some have thought,[8] that the indispensability of natural law can be affirmed solely on the evidence that it is a dictate of God. It might give the impression that in themselves, reason's natural dictates appear to be applicable only for the most part, and that it is only once they are understood to come from God that it becomes clear that one must abide by them always and everywhere, whether it seems reasonable to do so or not. Of course God is the cause of the basic sameness of nature; but, in St Thomas' view, natural law is the same everywhere only because nature is, and only to the same extent.[9] Even more importantly, a reference to the eternal law might make it seem that the precepts of natural law win assent in the same manner that precepts of positive law do, namely, by way of the awareness of the authoritative act, and the coercive power, of the governor instituting them. In Aquinas' view, it is simply impossible that practical reason form its first truths in this way.

C. The assent to the precepts of natural law: ex ipsa ratione boni

A text that shows this point very decisively is the reply to the question "Whether precepts of faith ought to have been given in the Old Law":

> lex non imponitur ab aliquo domino nisi suis subditis; et ideo praecepta cuiuslibet praesupponunt subiectionem recipientis legem ad eum qui dat legem. Prima autem subiectio hominis ad Deum est per fidem.... Et ideo fides praesupponitur ad legis praecepta.[10]

Now presumably in saying that the first subjection of man to God is through faith, Aquinas is speaking about subjections that come about voluntarily. The subjection of man to God through faith is the first subjection in the manner of someone disposed to listen and immediately assent to the word of a superior; for it is through faith that God first becomes the very object with which man's reason and will are chiefly concerned.[11] Clearly man is already in some some way subject to God, by the very fact that he is His creature and the object of His providence. But this is a merely natural and non-voluntary subjection; it does not involve any deliberate submission to God, any act of subjecting oneself to Him. Yet neither does the text imply that there can be no precept by God at all, concerning man's action, until man comes to recognize His authority. It implies only that there can be no precept that governs in the manner of a positive law until then. The text is not concerned with any kind of precept other than precepts of positive law. The only more general point that it makes is that if anyone is to be moved by a governor's command, he must first become subject to the governor. But he need not be subject to the governor knowingly or voluntarily, i.e. "positively"; he must be subject to the governor only in whatever manner it is that corresponds to the manner in which he is to receive the precept. That is, a precept that wins assent

because it has been posited, i.e. because of its authoritative origin, obviously presupposes the acknowledgment of the authority of the one issuing it. But one that wins assent naturally requires only a natural subjection to its author. At most this proves only that it is not through any precept that God acquires the power to govern whatever else might exist. He is naturally in command.

Thus Aquinas is far from thinking that there is no such thing as a precept of faith. What he means is that the precept of faith must precede any precept of positive or written divine law. This is clear from his treatment of the distinction of the precepts of the Decalogue:

> ...praeceptum fidei praesupponitur ad praecepta decalogi, sicut praeceptum dilectionis. Sicut enim prima praecepta communia legis naturae sunt per se nota habenti rationem naturalem, et promulgatione non indigent; ita etiam et hoc quod est credere in Deum, est primum et per se notum ei qui habet fidem.... Et ideo non indiget alia promulgatione nisi infusione fidei.[12]

The point is simply that every precept that wins assent on the basis of authority presupposes some precept by which obedience to the authority is required. Assent to the regulations of God on the basis of their divine authority depends upon a prior assent, not based on authority, to the rule that God is to be believed and obeyed. This is a precept of the supernatural virtue of faith. Faith presupposes the knowledge that is connatural to reason. How much the more, then, does assent based on divine authority, or on any authority at all, depend upon prior assent to the rules connatural to reason.

Reason's first assent to the rules connatural to it cannot come about under a consideration of their authoritative character. One reason why this is impossible is that their derivation from God is not immediately manifest to reason; but there is also an even more fundamental obstacle. This is the fact that to acknow-

ledge or obey precepts on the basis of the authority issuing them is to consider them in relation to a certain special good, that of satisfying the authority. Because obedience is only a specific kind of good, it cannot be the most fundamental principle under which acts take on the character of things due to be performed. For something is due just insofar as it is in any way good and an end.[13]

> Ad obedientiam pertinent omnes actus virtutum prout sunt in praecepto....Nec tamen sequitur quod obedientia sit simpliciter omnibus virtutibus prior, propter duo. Primo quidem, quia licet actus virtutis cadat sub praecepto, tamen potest aliquis implere actum virtutis non attendens ad rationem praecepti. Unde si aliqua virtus sit cuius obiectum sit naturaliter prior quam praeceptum, illa virtus dicitur naturaliter prior quam obedientia: ut patet de fide, per quam nobis divinae auctoritatis sublimitas innotescit, ex qua competit ei potestas praecipiendi.[14]

In short, the first direction of human acts toward an end must come about through man's understanding of the very nature of the good: *ex ipsa ratione boni*, as St Albert says; and his first apprehension of things good for him. It does not require his understanding God as a legislator.

Indeed, it seems rather doubtful that Aquinas would think that men have any clear notion of law at all, at the time when the principles of natural law are first formed in their minds. If a law is above all a rational ordination, then men will come to form the notion of law only through reflecting on the experience of reason's direction of human action. This means that some principles of that direction must already have been understood and exercised.

As will be seen in more detail in the section on command, what Aquinas seems to think necessary is only that those who are subject to a law understand the meaning of its contents and acknowledge them as true, i.e. as normative. Something so understood will have the nature of a law whenever its character as

a rule, and the understanding of it by those whom it rules, are owing to the action of a governing intellect. It is incidental whether or not those ruled by it need to be aware of this action. Aquinas must of course concede that if natural law rules a man's acts in the manner of a law even without his knowledge of its maker, then it is in a rather special category. When he says *etiam oportet quod prima directio actuum nostrorum ad finem fiat per legem naturalem*,[15] he clearly means to grant that the more manifest and properly human way for man to become subject to the command and law of another is deliberately or voluntarily, rather than naturally. But nevertheless this way of becoming subject to law presupposes the natural subjection to some principles of direction. It is because these must be understood as taking their ultimate origin from the command of the eternal law that they are rightly called a natural law.

D. Command

The Question on command in the *Summa theologiae* falls within the investigation of the nature of human or voluntary action.[16] Command is an act concerned with things that are "for the sake of an end" (*ad finem*). It follows upon the choice of something to be done for the end, and precedes and governs the actual execution of the chosen action (*usus*). Its proper work is to "order someone toward doing something," by way of a certain "intimation" or "pronouncement."[17] Since it belongs to reason to "intimate" something to another, command is "essentially an act of reason," i.e. elicited from reason.[18]

However, the "intimation" proper to command serves not merely to inform someone of something, but also to move or order him in a certain way. Aquinas' use of the verb '*ordinare*' in I-II q.17 a.1 is evidently meant to express more than the mere apprehension or conception of order. Of course, it is because the work

of ordering requires having such a conception that it properly belongs to reason. But '*ordinare*' means to apply an order or to move things toward conformity with an order. It is a kind of action by one thing on another. Aquinas makes this clear in a later discussion of another way in which reason orders, the way called '*oratio*,' '*deprecatio*' or '*petitio*':

> ...utrumque autem horum, scilicet imperare et petere sive deprecari, ordinationem quandam important: prout scilicet homo disponit aliquid per aliud esse faciendum.[19]

To dispose something is in some way to cause it. It therefore belongs only to practical reason, not to speculative, as he says earlier in the same article. The difference between command and prayer or petition is that command moves and orders with a certain necessity, because the one commanded is wholly subject to the power of the commander.[20]

Now since the act of command not only intimates but also moves and orders, the will must also be involved in bringing it about; for the will is the first moving power in the soul. The will "moves the commanding reason."[21] That is, a command intimates reason's conception of an order between an agent and some action to be performed by him; but it intimates this conception in a manner that not only causes the agent to understand the order, but also gives him a certain "impetus"[22] to follow it. The command orders the one commanded to act, or "impresses" upon him the order toward the act. *Imperare est imponere ordinem.*[23] In commanding, reason operates as a mover of action, not only by presenting the object to the agent, but also by sharing in the very exercise of the action. Since the exercise of action belongs primarily to the will, among the powers of the soul, any exercise of action by reason must be derived from the will. It is the will that moves reason to intimate the order conceived in a manner that

actually orders the agent. The act of command is seated in reason, because the proximate source of the imposition or impression of order must be whatever it is that contains the order, and it is proper to reason to grasp order; but, in order to be a mover of anything, the command must emerge from reason according to reason's possession of some share in the impulse of the will. It is simply a fact that a man can sometimes speak in a manner that exerts a kind of forceful control over his hearer's action. But a man would not speak in this way unless he wanted the hearer to perform the action; and therefore the force or the moving efficacy of his utterance must be attributed primarily to his will. The will must therefore be the remote source of the act of command.

It is important to be very clear about the role played by the will in the formation of a command. A command is not the same as a proposition expressing one's will, even if such a proposition can be inferred from the fact of the command. "Do this" is not the same as "I want you to do this," even if a man's saying "Do this" implies that he wants you to do it.[24] In other words, the proper function of command is not to inform the hearer of the commander's will; the essential role of the will in command is not that of what is intimated by the command, i.e. what is made known or pronounced in the command. What command essentially intimates is the thing to be done by the one receiving the command. That is, what the command announces or makes known is a certain action, announced as something that the one receiving the command ought to perform. The essential role of the will is to give this intimation moving force or to make it a principle of the exercise of the action. Under the impulse of his will, the commander's reason is endowed with the power of setting forth its conception of what the one commanded ought to do, in such a way that the one commanded is actually moved or inclined to do it. It is incidental whether or not the command also provides the one receiving the command with knowledge of the commander's

will. The commander's will moves his subjects with respect to what Aquinas calls the "exercise of the act," but not necessarily "in the manner of the object" that moves them.

This point deserves stress not only for its intrinsic interest but also because it appears to be crucial in the resolution of the question whether the knowledge required by those subject to a law includes knowledge of the legislator's act of imposing it. This question would have to be answered affirmatively if the moving force of an imperative utterance consisted essentially in its character as a sign of the commander's will.[25] But for Aquinas, the essential role of reason in command is not to signify the commander's will; it is to serve as that which conceives, and from which is drawn, the very order toward the action to be performed by the agent under command. It is to reason that the application of this order is most immediately attributed. What reason derives from the will is the power to act in a way that actually applies the order and impels the hearer to follow it.[26]

Now the impelling mode of intimating reason's conception is signified in speech by the imperative mood of the verb. An order toward action may also be intimated by reason in an absolute, i.e. purely intimative or informative manner; this is signified by the indicative. The indicative expression "you ought to do this," considered apart from any special context, signifies only an act of reason responding to the question "what ought I to do?" Even if its result is that the hearer perform the action indicated, it does not signify reason as working to produce this result. It signifies reason as working in the manner of a counselor or adviser, not in the manner of a governor. The imperative utterance "do this" is what signifies reason as working to govern and somehow to initiate action.[27] Its very form corresponds to the work of subjecting the hearer to the order toward the action intimated and of causing him to perform it.

Another way to distinguish between reason commanding and reason counseling would be by way of the fact that the action performed by a man who is acting under command can be attributed not only to him but also, even primarily, to the commander. The commander is responsible for what is done at his command. Aquinas expresses this by saying that the act of command is in a way one with the act commanded:

> ...in actibus humanis, actus inferioris potentiae materialiter se habet ad actum superioris, inquantum inferior potentia agit in virtute superioris moventis ipsam; sic enim et actus moventis primi formaliter se habet ad actum instrumenti. Unde patet quod imperium et actus imperatus sunt unus actus humanus, sicut quoddam totum est unum, sed est secundum partes multa.[28]

The case is not the same with an action performed on someone else's advice. Responsibility rests with the one in command.

Of course, what the utterance signifies is one thing, and what the one uttering it signifies through it, by way of some circumstance, is another. A governor may very well signify his command through an utterance framed in the indicative mood, the deprecative, or perhaps even in the interrogative. Legislators often frame their commands in the indicative, sometimes even without any term connoting a rule, such as 'ought.'

> Rebus ...rationalibus sibi subiectis [homo] potest imponere legem, inquantum suo praecepto *vel denuntiatione quacumque*, imprimit menti earum quandam regulam quae est principium agendi.[29]

But this proves only that the substance of command is not the external utterance that signifies it. If it were, then the utterance would always have to have an imperative form. The substance of the command is the dictate existing in the

commander's own mind. To say this is not to deny that it belongs to the very nature of this sort of dictate to direct what it expresses toward those who are subject to it. *Nihil est aliud lex quam dictamen practicae rationis in principe*.[30]

Now since a work of imposing order, such as command, presupposes the possession or the grasp of the order to be imposed, it is a work proper to reason and rational beings. Likewise, again because the grasp of order is proper to reason, only rational beings are properly capable of being commanded, i.e. of having an order intimated to them or of receiving the order in the very form of an order. *Ei convenit imperari, cui convenit imperium intelligere*.[31]

Now although Aquinas evidently holds that it is proper to rational agents to be given a command or to be commanded, he also insists that the act of being moved through a command is not proper to reason or to rational beings. Although it is only reason that can receive a command, a command's government can extend to actions of powers other than reason, e.g. the will or sensitive appetite. This implies a certain distinction between being commanded, on the one hand, and being subject to command or being moved by command, on the other.[32] Another way to make this point would be to distinguish between the act commanded, the act of some power, and the agent to whom the command is given.[33] To command is to command someone to do something. The acts of a man's will, sensitive appetite and motive powers can be commanded, but, properly speaking, none of these powers can receive a command; what receives the command is the man's intellect, or rather, the man himself *qua* having intellect. These other powers can be commanded in the sense that the command can be concerned with their acts, and in the sense that they can receive a disposition to carry out the command, but not in the sense that they can receive the command itself or grasp the order expressed in it.

It is in virtue of such a distinction that Aquinas is able to say that even irrational creatures are governed by a certain command, the command of the eternal law, although there is nothing within them that is properly called a law, which is *aliquid rationis*. What they have is some form or impulse to act that conforms to the eternal law.[34] They share in the eternal law *per modum obedientiae*.[35]

> Sicut ...homo imprimit denuntiando quoddam interius principium actuum homini sibi subiecto, ita etiam Deus imprimit toti naturae principia propriorum actuum. Et ideo per hunc modum Deus dicitur praecipere toti naturae.... Et per hanc etiam rationem omnes motus et actiones totius naturae legi aeternae subduntur. Unde alio modo creaturae irrationales subduntur legi aeternae, inquantum moventur a divina providentia, non autem per intellectum divini praecepti, sicut creaturae rationales.[36]

The natural inclinations of both rational and irrational beings are effects of the eternal command of the divine lawgiver. The difference is that the effect of this command upon rational beings is to give them a certain apprehension of the very order contained in the command; their proper natural inclination is the very inclination to act according to this apprehension.[37] It is for this reason that man is able and inclined to be the cause of his own execution of the law, i.e. his own participation in the law *per modum obedientiae*. He can deliberate about and judge his particular action, in the light of his understanding of the general directive provided by the law, and act in accordance with this judgment.[38] The beast is not the cause of its obedience to the eternal law; the conformity of its action to the law that God has pronounced concerning it comes about spontaneously, from the providential action of God himself impressing upon it a natural inclination to carry out the required actions instinctively.

> Quaedam ...secundum suam naturam sunt per se agentia, tanquam habentia dominium sui actus; et ista gubernantur a Deo non solum per hoc quod moventur ab ipso Deo in eis interius operante, sed etiam per hoc quod ab eo inducuntur ad bonum et retrahuntur a malo per praecepta et prohibitiones, praemia et poenas. Hoc autem modo non gubernantur a Deo creaturae irrationales, quae tantum aguntur, et non agunt.[39]

As the mention of *praemia et poenas* indicates, the fact that man is moved by God's command through his own knowledge of the command also makes man capable of merit or demerit in relation to God. To be sure, a commander is responsible for whatever is done at his command, and his subjects are as instruments of his action; but this does not exclude their own responsibility for the action, to the extent that they voluntarily respond to the command in consequence of their own understanding of it.[40]

Yet it is significant that the effect proper to command, which is the ordering of an agent to some act, can extend to both rational and irrational agents. This possibility suggests that the kind of understanding which the rational agents must have about the command, in order to be truly subject to it, may be rather limited. They only need to know the command to the degree required for being moved and ordered according to it. Now a rational agent, as rational, is ordered to action through a desire of his will. Hence in order for him to be moved by a command, his knowledge of it need extend only as far as is required for him to want the action commanded. But the human will is naturally inclined to want whatever reason apprehends as good and suitable; and what reason apprehends as good and suitable, it apprehends as an end, i.e. as something required or due to be pursued through action. Consequently, the knowledge of the command need not include a knowledge of the action as something commanded, i.e. a perception of the very act

of command or a discernment of the commander's will. It need involve nothing more than the knowledge of the action commanded as something good and due.

It is also difficult to see how it could involve anything less. Thus Geach, in trying to show how man may be said to have had a law promulgated to him by God even before he is aware of God and His government, proposes a solution that seems less than satisfactory. According to him, "You have had a city's parking regulation promulgated to you by a No Parking notice, even if you are under the illusion that you may ignore the notice and think it has been put up by a neighbour who dislikes cars."[41] But surely if this illusion were not your fault, if it were impossible for you to avoid it, then even if the regulation in question had been generally promulgated, it would not yet have been promulgated to you; and you surely would be under no obligation to abide by it. To the extent that someone is led to consider a dictate as nothing more than the expression of some powerless person's whim, in what possible sense can that dictate be said to rule and measure him?

In Geach's example, the person receiving the regulation does, in a way, apprehend the regulation and understand its meaning, but he does not apprehend it as a true regulation. He does not, and cannot, understand parking in this place to be in any way wrong or undue. How then is he obliged to avoid it? Surely the genuine promulgation of a law must at least bring it about that those subject to it understand it as a measure of their conduct, or at least that they can be blamed if they do not. Seeing the "general objectionableness of lying"[42] is not like seeing a No Parking notice; it is like seeing the objectionableness of parking where the notice is posted, perhaps on account of seeing the notice. According to Geach's comparison, the dictates of reason have little or no regulative force of their own. They acquire such force only when considered as certain effects or signs of the reasonable will of the almighty God. It is as though a man regarded the dictates of

his own reason as nothing more than so many pieces of data to be observed, and as though it were only when faced with the overwhelming power of God that his actual assent to these dictates is rendered necessary. By contrast, what Aquinas seems to think is that reason naturally formulates certain rules of conduct; that these are accepted as normative in virtue of themselves; and that God is the cause of the mind's natural tendency to work in this way.

Now, over and above the knowledge of the action commanded as something good and due, there does seem to be one further condition for a rational agent to be said to be fully subject to a command. This would be that both his knowledge that the action is due, and the very dueness of the action itself, must somehow be the effect of the command. Otherwise it would not make sense to speak of the knowledge that the action is due as knowledge of a command. The knowledge that the action is due is a knowledge of a certain order of necessity or exigency,[43] and it makes sense to call this the knowledge of a command only if that order is primarily contained in the command itself and is passed on to the knower through the intimative action of the command. But, it seems, in order to move or order someone toward action, a command must become the object of his knowledge only in the sense that it moves him to apprehend the action in such a way that his inclination concerning it becomes conformed to what the command requires; the command may or may not be the object of his knowledge in the sense that he knows about the commander's own act of commanding.

The subject's knowledge of the commanded act as due, and his desire to perform it, must be accompanied by a perception of the governor's act of commanding it, only insofar as the subject forms the knowledge and the desire on the basis of the consideration of his own relation to the governor; i.e. only insofar as he judges the action to be good and due primarily by considering it as something commanded. It is only then, of course, that he can obey the gover-

nor's command formally, i.e. by judging the proposed action to be a matter of obedience to the governor. But his action can be in accordance with the command, and even in some way the effect of the command, without being carried out in view of the command.[44]

It will be seen in Chapter Four that for Aquinas, the understanding of the first principles of practical reason comes about in the human intellect from the perception of the actions and movements of natural things. These provide the mind with its first examples of orderly or reasonable activity, the first material concerning which it is moved to apprehend notions and formulates rules by which to judge action to be due or undue. It may then employ these rules in the formation of the action that is under its own control. Since both the intellectual light by which these notions and rules are conceived, and the material in which they are first and properly considered, are the effects of the eternal law, it is certainly not difficult to see why Aquinas would describe the understanding of these notions and rules as a certain participation of the eternal law, and even as knowledge of the eternal law. It is knowledge, albeit imperfect, of the very order that the eternal law has instituted or imposed upon God's creatures, even if it is not yet a comprehension of this order in its properly divine and eternal being, nor even an awareness of the fact of its eternal institution and imposition by a divine legislator. Now, in the light of Aquinas' understanding of the nature of command and its effects, it is clear that this knowledge can also be said to constitute a proper effect of divine command. For it is a knowledge by which man can judge action to be due or undue, an understanding of what is a due act and a due end, and it is accompanied by an inclination or impulse to act according to this knowledge, the will's natural inclination toward what is good according to reason. God pronounces the order that He eternally conceives in such a way that man by nature both grasps this order and is actually moved and ordered according to it.[45]

Of course, this way of achieving its effect belongs solely to a command of God. One man can intimate something to another only by means of some external sign of what he has conceived, and his own will can move the will of another only *per modum obiecti*,[46] that is, only by constituting or producing a circumstance in view of which the other man comes to regard something as good.[47] Hence the effect of his command always presupposes and draws upon some prior understanding in the subject's own intellect and some inclination in his will. This is why, properly speaking, men do not have command over irrational things, things that "do not manage themselves, but are only managed."[48] To command something is to instill in it a certain inner principle of action, so that it acts of itself in conformity with the commander's intention. God can bring about an inner principle of action even in irrational things, by producing their very matter and form. His control over them is to some extent executed through their own actions, and has the character of a command and of an imposition of law; it satisfies the requirement that a law, as a rule and measure, obtain a certain existence in the thing ruled and measured.[49] By contrast, man's control over irrational things comes about only through his own action upon them. He can instill an intrinsic principle into other things only to the extent that by his action he can induce others to form such a principle for themselves.[50] He can only manage agents which, through intellect and will, can manage themselves.

> Quaecumque ...aguntur circa usum rerum irrationalium homini subditarum, aguntur per actum ipsius hominis moventis huiusmodi res; nam huiusmodi irrationales creaturae non agunt seipsas, sed ab aliis aguntur.... Et ideo rebus irrationalibus homo legem imponere non potest, quantumcumque ei subiiciantur.[51]

Also, more specifically, the way in which a man usually comes to acquiesce to the order expressed in another man's command is through his apprehension

of the act of command itself, his perception of being commanded by someone. As already seen, according to Aquinas, a man becomes subject to a divine command in this way only through faith.[52] The subjection of man to God that pertains to natural law has in common with the subjection of irrational things to God that it comes about through the very production of his nature. It does not come about through any prior act on his part, even an act of his intellect or will, and least of all any deliberate act.

But the fact that the divine imposition of the first principles of practical reason does not exhibit all the peculiarities intrinsic to human command in no way deprives that imposition of the full nature of a command. The fact that the peculiarities mentioned above are essential to human command shows only the limited power and scope of human command. As already argued, the production of an external sign of the governor's dictate is incidental to the substance of command; what is essential is only that the command somehow bring it about that the subject grasp the order toward the action commanded and be inclined to follow this order. He need not grasp the order through any sign of the command. Nor is it necessary that his grasp of the order be accompanied by a perception of the act of command itself. The act of command must move him only with respect to the exercise of his act; it may or may not also move him *per modum obiecti*, i.e. by entering into his judgment that the act is due. What must enter into his judgment is the order instituted by the command.[53]

Moreover, even if the eternal law, as it is in itself, is not the immediate object of man's first practical understanding, it is nevertheless something, in fact the only thing, to which this object is fully subordinate and proportioned. The eternal law is "the incommutable truth,"[54] and it is according to this truth that a man judges of all the things that he judges, "insofar as he resolves them into it as into a mirror, according to the first intelligibles."[55] The divine truth, in itself

or in its reflection, is the only thing in reality over which man can never pass judgment, since it is the only thing to which he is not in some way superior.[56]

So if the dictate of a human governor is called a command because it impels or initiates the exercise of action, and if it impels merely by making the action conducive to the subject's good and making the subject know this fact, then God's dictate is all the more impelling, and hence all the more a command. The eternal law is the source not only of man's understanding of the first principles of practical reason,[57] but also of the dominion that these principles enjoy within the human soul,[58] and even of the very truth of the principles, insofar as it is the cause of the being of things, which is the measure of the truth of man's intellect.[59]

Aquinas also indicates, in a very sharp way, that the command of the eternal law is the cause not only of man's knowledge of what he ought to do, but also of its very dueness, in his treatment of the dictum that there are some acts which, rather than bad because prohibited, are prohibited because they are already or intrinsically bad.[60] This dictum, he says, holds true only if the prohibition in question be understood to belong among the prohibitions pertaining to positive right (*ius positivum*), i.e. to things that are not intrinsically right but become right on the basis of and by reference to some agreement.[61] There are some acts that are bad not only because they oppose such prohibitions, but already or intrinsically. But, he says, if the reference is to natural right (*ius naturale*), i.e. to what is intrinsically right, then every bad act is bad because prohibited. For an intrinsically bad act is nothing other than an act that is intrinsically disordered; and nothing is disordered except by comparison with the proper measure of its order. But the proper measures of the order of human acts are reason and the eternal law. Hence natural right is something "contained," i.e. measured, primarily by the eternal law, and secondarily by the *naturale iudicatorium* of human reason; and it is precisely because an act is prohibited by reason or the eternal law that it is contrary to na-

tural right or intrinsically bad. In other words, what is intrinsically right in human acts is what is right with respect to reason and, above all, to the eternal law. The command of the eternal law does not presuppose any prior order of good and evil in human acts; it constitutes that order.

This is most easily seen by way of the fact that the same holds true of the dictate of reason. The good and evil proper to human acts is moral good and evil; and moral good and evil are nothing other than the good and evil that consist in conformity with, or deviation from, the dictate of reason.[62] Any good of nature or physical good is a measure of human acts only insofar as it falls within the apprehension of reason as something due to be pursued.[63] If, *per impossibile*, reason did not direct man to the pursuit or avoidance of anything, then there would be nothing that could be said to be good for a man, as man, to do or omit, nor, therefore, anything contrary to it.[64] Since the dictate of reason depends entirely on the eternal law, what has just been said is true *a fortiori* of the eternal law.

E. The analogy of 'law' as predicated of natural and positive law

According to the foregoing analysis, Aquinas' understanding of the nature of command in general allows for more than one way in which the act of command might achieve its proper effect, which is the subjection of an agent to the order toward a certain action. The achievement of this effect may or may not entail the agent's apprehension of the commander himself, either with respect to his act of issuing the command or even with respect to his power over the agent. This is true even when the agent is himself rational and becomes subject to an order toward action by receiving the very order itself, i.e. by taking on a likeness of it according to its very nature as order and as an object of reason. What is essential is only that in virtue of the commander's act, such an agent understand

the order and his own subjection to it, or understand the action as something required of him, something that he needs to do.

If this is true of command in general, it is also true of the specific type of command called legislation. A law is nothing but an expression of order toward action, imposed on agents by a governing principle, with the additional note of something conceived reasonably and in view of a common good. It is therefore possible to conceive of some agents, even rational ones, becoming actually subject to a law without understanding it in relation to the complete definition of law. It is even possible to say that agents subject to law in this way are in possession of the law or that the law exists in them in the proper manner of law, i.e. in the manner of an expression of order toward action. This is why it is possible to say that *participatio legis aeternae in creatura rationali proprie lex vocatur*.[65] Nothing said about the nature of law in I-II q.90, or about the proper effects of law in I-II q.92, is excluded from the first principles of practical reasoning or is proper to rules humanly posited.

Still, even when a term is said properly of several things, nothing prevents that it be said "more properly" of some than of others.[66] This will happen to the extent that, granted that what the term properly signifies exists formally in each thing, it nevertheless exists in a fuller or more unqualified way in one than in another. For instance, 'being' is predicated properly both of substance and of accidents, but more properly of substance; for a substance is a being in a more unqualified way. Consequently, although it is now clear that not only positive law but also natural law is properly designated by the term 'law,' it is not yet clear whether one or the other of them is "more properly" law.

Now it is often observed that in constructing his definition of law in general, Aquinas seems to take human law as his model or his chief example of law. From this observation it is sometimes concluded that law, as he defines it, can be

predicated of things other than human law only according to some analogy or proportion that they have to human law, or in other words, that human law constitutes the primary instance of law. But even if the observation is correct, this conclusion does not follow. It rests on a confusion between two orders according to which a common name is predicated of various things: the order according to which the name is "imposed" on the various things, and the order according to which its meaning is more or less perfectly verified in each of them.

The order of the imposition of the name is the order according to which the various things of which it is predicated first enter into the mind's apprehension as falling under the name's meaning. But nothing excludes the possibility that something posterior in this order be prior, or even first, as regards the degree to which it satisfies the name's meaning.[67] For even if the concept that the name signifies is formed from the experience of the thing that comes first in the order of imposition, it is not necessary that anything proper to or distinctive of this thing be included in the concept; the concept may express something potentially common to many things, and, from the standpoint of what is included in it, only happen to have been applied to this one first.[68] Nor, when a concept expresses some feature that admits of degrees, is it necessary that the thing to which it is first applied have that feature to the maximum degree. Hence even if what men first call law is humanly posited law, it may be that other types of law have the nature of law to an equal, or even a higher degree. But the question of the analogical predication of 'law' is not concerned with the order of the name's imposition, but with that of the more or less perfect fulfillment of its meaning. For it is the question whether, or in what way, some things are called law in virtue of their proportion to something else, something that has the nature of law, not in a certain proportion, but without qualification and to the highest degree.

It is already evident that natural law is not what is most properly called law. For its very definition presents it as a law existing in the manner of something shared or distributed or participated, and hence in a somewhat dependent and qualified manner. It is law only "as it exists in one ruled and measured by law." But it may still be called a law in the proper sense, so long as nothing intrinsic to it excludes any of the things that belong to the definition of law.[69] Indeed, it may even be said to be the very same law as that from which it is derived and in whose legality it shares. In contrast to certain other terms that admit of degrees of proper attribution, and that signify things that may exist in manifold ways, it belongs to the very notion of a law to exist in manifold ways. This is because it belongs to the very notion of a law to rule and measure things. *Regula autem et mensura imponitur per hoc quod applicatur his quae regulantur et mensurantur.*[70] Hence natural law may be said not only to be a participation of the eternal law, but also to be nothing "diverse" from it.[71] In a way it simply is the eternal law. Or rather, it is the very law that God has eternally instituted, not insofar as this law of God is eternal, but insofar as it is also something natural. Natural law is not the object of a distinct act of legal institution. In its own way, it contains the whole order of justice instituted in the eternal law.[72] It is but a new instance or expression of the law with which God governs the universe.

Of course, there is a clear order of priority between these instances. Eternal law is the primary and perfect instance, while natural law is a secondary, derived and limited instance. It is only in a way that natural law contains the whole order of justice instituted by the eternal law. As existing naturally in man, the law with which God governs the universe possesses neither the same specificity as it possesses in His own mind;[73] nor the same power to exact obedience;[74] nor the same scope, since only the acts of men are able to be directed and regulated by it. Although it possesses the nature of law in a complete or proper way,

natural law does not possess the nature of a complete law. Its possession of the proper nature of law is owing to, and in accordance with, its proportion to the eternal law.

Now it goes almost without saying that for Aquinas, the name 'law' belongs to the eternal law in a manner that is immeasurably more proper than the manner in which it belongs to any other law. It is in the eternal law that the notion of law is realized in the fullest and most unqualified way. For, assuming that all of the conditions of law are present, something is more a law, just in proportion as it is more a rule and measure according to which the movements and activities of things are ruled and measured.[75] But any rule other than the eternal law is itself ruled and measured by the eternal law. If one were to speak of "the law," simply, without any qualification whatsoever, one would be referring to the eternal law.

At the same time, according to the manner in which it is derived from the eternal law, natural law may also, in a way, be called "the law" without qualification. Natural law is the primary or unqualified law, existing in a secondary or qualified way. It is in this way that Aquinas can say that natural law "has the nature of law to the highest degree."

Something similar may also be said of what he calls the "divine" or "supernatural" law.[76] Like natural law, divine law is law as it exists in someone ruled by law. It is man's supernatural participation of the eternal law. Natural law is the law of God made known to man through the natural light of reason, directing man's acts toward the end that is proportioned to the power of his nature, which God has given him. Divine law is the law of God made known to man through the light of faith, directing his acts toward his unqualified last end, which exceeds his natural capacity and requires the special divine assistance called grace, which God has promised him.

In view of these considerations, it appears that the division of law in I-II q.91 is carried out in a manner that is somewhat more complicated than was

suggested in Chapter Two.[77] There it was noted only that the division seems to be according to the notion of promulgation, and that it divides law first into law eternally promulgated and law promulgated in time, and then into law promulgated naturally, humanly, and divinely. Although this interpretation need not be simply rejected, the more precise explanation of the division would seem to require taking into account the fact that laws distinguished from each other only according as their promulgation is active or passive are not really distinct laws, but only distinct instances of the same law. Aquinas' fourfold division of law appears in fact to have in view no more than two fundamental orders of legal institution. These are the orders of eternal law or law instituted by God, and temporal law or law instituted by man. The expression 'temporal law' here does not mean law promulgated in time; it is used in the sense given to it by Augustine: law that can justly be changed in the course of time, or that regulates its community well only for a while, until the condition of the community changes. This is positive human law.[78] This interpretation also squares with what was seen in the comparison between St Thomas' treatment of natural law and that of the *Summa fratris alexandri*, concerning Aquinas' handling of the "derivation of all laws from the eternal law" and his restriction of the notion of "other laws outside the eternal law" to human laws.[79]

At most, then, it is only in a certain respect that these *rationes gubernationis quae sunt in inferioribus gubernantibus*[80] may be said to be 'laws' more properly than natural law. Natural law is law as it exists in someone ruled and measured by law, whereas 'human law' can also mean law as it exists in one ruling and measuring. But it is not the same law, nor even law of the same order, that is designated by 'natural law' as existing in the one ruled, and by 'human law' as existing in the one ruling. Natural law is the universal law of God existing in His rational subjects, whereas human law is some particular, subordinate enactment existing in a human governor or his subjects. The proper comparison,

then, should be either between the whole order of God's law and the whole order of human law, or else between natural law and the existence that human law has in those subject to it. Seen in this way, natural law clearly enjoys a greater proportion of legality than does human law, so much so that it measures the extent to which any humanly posited order may be considered as truly "legal."[81] The very definition of human law entails its conformity to the principles of natural law; [82] and indeed, even to the extent that the defiition of law in general is judged to have mainly human law in view, it must also be said to contain at least an implicit reference to a higher measure, insofar as it includes the note of reasonableness.

Human law is a "measured measure" of human acts.[83] Nor does this fact become apparent only once the existence of a divinely instituted law comes to light. For the measuring of orders humanly posited, as to whether they constitute true measures of human action and deserve obedience, is a work for which natural reason itself possesses an intrinsic aptitude. For both the making of law and the decision to acknowledge it as a rule are themselves human acts, and "the principles naturally instilled [in reason] are certain general rules and measures of all those things that are to be done by man."[84] A sign of this is the very fact that an order humanly posited, just to the extent that it is merely positive, is not acknowledged as an unqualified rule until at least the authority of its origin is displayed. Even if the submission to this authority is altogether uncritical, i.e. even if, once the ruler has spoken, the subjects in no way take it upon themselves to judge independently of his order's conduciveness to the common good or of its reasonableness, they are still exercising judgment with respect to the order itself, as to whether it is authoritative. And even in this case, rather than saying that the subjects exercise no judgment at all concerning the reasonableness or common utility of the law, it would seem more accurate to say that they make this judgment in advance, in their acknowledgment of the ruler's authority. The notion of

authority, or right of command, seems to involve considerably more than that of the mere control of the instruments of coercion; wherever there is rule of man over man, there is also some distinction between legitimate and illegitimate rule, based on some criteria, however imperfect, for ensuring the wisdom and faithfulness of the holder of power.

It appears therefore that natural law displays a fuller portion of the nature of law than does human positive law, not only insofar as it approaches more closely to the supreme law, but also in virtue of the very fact that it wins the mind's assent without need of any advertence to its authoritative institution. The first principles of practical reason are not subject to any kind of practical judgment on man's part at all. He cannot raise the question whether or not these principles are right and ought to be obeyed, for the simple reason that in asking such a question he could only be appealing to the principles themselves for a determination. The question 'whether something should be so or not' already implies assent to the principles of practical reasoning and judgment. This of course is also the reason why the principles tend to go unnoticed or are not at first distinctly formulated; the chief object of the mind's attention is that upon which it bears judgment. It is the strength of these principles, not their weakness, that they are not at first accompanied by immediate proof of their authenticity. They need no such proof, owing to the efficacy with which their Author has imposed them.

Even taken in abstraction from their origin in divine institution, the first principles of practical reason are more fundamental and more efficacious measures of human conduct than any humanly posited rule. If some reference to authority is needed in order for these principles to receive the name 'law,' according to its full significance, no such reference is needed for them to be understood as axiomatic and normative. When Aquinas defines natural law as the participation of the eternal law in the rational creature, he is not intending to give

an answer to the question 'why is it right to obey the precepts of natural law?' What his definition gives is the full explanation for their existence and their regulative force.

So long as the term 'law' is restricted to human laws, then, the first principles of practical reason will have to be considered as supra-legal rules, measures standing "beyond law." Nor would it be too surprising to find them designated laws even in advance of the ascertainment of a lawgiver;[85] and in the feature with respect to which they receive such a designation, the feature of a rule and measure, they are already more properly laws than human laws, because they are more perfect measures. In fact, they are measures of an altogether higher order, higher by as much as what exists by nature is higher than what exists by the human will.

Thus even if they are taken in abstraction from divine legislation, it would be improper to call the first principles 'law' on the basis of their mere relation to human law.[86] The direction they provide for making and applying human laws does not exhaust their regulative power; it is an effect not fully proportioned to them. They do not exist merely for the sake of human law or of what it achieves. It is not to the guidance of human legislation that the understanding of first practical principles is ordered primarily and as a whole. This is evident both from the fact that this understanding rules in each man not only by way of political determinations but also immediately, and also from the fact that the ruling power of human law falls short of what these principles require of human acts.[87] To call the first principles 'law' in this way would be like calling the natural processes of healing in an organism 'medical,' according to their mere relation to the human art of medicine. The trouble is not that they lack something of what the name signifies, but that to apply the name to them on such grounds as these is to name them according to what is in fact less perfect than and subordinate to them.

These considerations seem to permit a certain qualification of the earlier conclusion, that the existence of a natural law cannot be affirmed except in light of the discovery of divine providence and in relation to the eternal law. This is true insofar as what is at stake is the existence of something natural that answers to the full meaning of 'law.' But it is not true with respect to what is uppermost in the notion of law, i.e. the quality of law on which its proper effects most immediately depend. This is its quality of a rule or measure of acts that men are inclined or induced to follow. The discovery of a natural law in this sense would seem to fall squarely within the scope of the study arising from the discovery of human nature.

NOTES

1. See above, Chapter One, pp.11 ff.

2. See above, Chapter One, pp.23 ff.

3. See Finnis pp.23-25.

4. See the discussion of Professor Donagan's views in the Introduction, pp.2-3, and in Chapter One, p.20.

5. Finnis p.48.

6. This premise, standing at the very beginning of q.94, shows rather clearly that Aquinas is looking at natural law always under the notion of law in general as defined in q.90. If nothing else in q.94 appears to be a properly legal concern, this is only because what gives natural law its legal character is something extrinsic to its proper subject. But the opening question serves to determine which one of the effects of that subject can properly receive the name of law.

7. By saying that natural law is "*quod quis agit*," while *synderesis* is "*quo quis agit*," St Thomas obviously does not mean that reason somehow enacts or legislates natural law through *synderesis*. This is clear from the rest of the article. What he means is merely that reason issues its formulations of the precepts of natural law through the knowledge held habitually in *synderesis*. The act for which *synderesis* provides the "*quo quis agit*" is the act in which the precepts of natural law "are considered" (*considerantur*) by reason. In other words, it does not belong to reason or to *synderesis* to decide that these precepts measure human acts. It is true that they are in a way the work of reason, but only in the sense that it belongs to reason to bring them to light as objects of knowledge and consideration.

8. See above, Chapter One, on the positions of Fortin and Geach, esp. pp.24-25, 48.

9. See I-II q.97 a.1 ad 1[m]:
naturalis lex est participatio quaedam legis aeternae, ut supra dictum est, et ideo immobilis perseverat; quod habet ex immobilitate et perfectione divinae rationis instituentis n a t u r a m . (My emphasis.)
One way in which to make this doctrine seem less "rigid" is by restricting the attribute of indispensability to the very first precepts of natural law; they are always applicable by virtue of their sheer abstractness or generality. The text just quoted continues in this way: *et praeterea lex naturalis continet quaedam universalia praecepta, quae semper manent*. But the first and common precepts of natural law are not the only universal ones, in Aquinas' view. He also attributes universal validity to some rather specific dictates, e.g. the prohibition against lying (II-II q.110 a.3). Whether or not his argument against all lying is persuasive, he clearly does not use the fact of a divine prohibition as one of its premises; he thinks that reason forbids all lying on the basis of nothing other than the understanding of what lying

itself is. He certainly acknowledges that lying is a rather difficult case, one about which it is easy for man's mind to go astray (see I-II q.100 a.11). But this is not an acknowledgement of a possible dispensation from the prohibition against lying; it is only an acknowledgment of possible invincible ignorance about the prohibition.

10. II-II q.16 a.1.

11. See II-II q.1 a.1. It is through faith that man first becomes subject to God's command by means of his knowledge of God commanding him. In other words, it is in and through faith that man first begins to judge things to be good or bad primarily by comparison with God's authority. Without faith, he can only infer the content of God's command from the understanding of good and bad that he already has; and his chief reason for assenting to it will not be God's authority. Faith is the condition of man's reception of God's command in the form of something "spoken" by God, and of his consideration of it as worthy of obedience on that very basis.

12. I-II q.100 a.4 ad 1[m]. Once again, note that he does not say that either natural law, or the precept of faith, is simply without promulgation; what he says is that they do not "need" promulgation, since they have already been "impressed" or "infused." On the precept of charity, see I-II q.100 a.3 ad 1[m].

13. See II-II q.44 a.1. Obedience is too special or particular to be the most primary consideration, even when it is obedience to God. For in this life, He is apprehended only in relation to certain particular effects, and not according to the nature through which He is goodness itself subsisting in perfect simplicity and without limitation. *Illi qui non vident essentiam* [*dei*], *cognoscunt eum per aliquos particulares effectus*. (I q.60 a.5 ad 5[m]. See I-II q.10 a.2.)

14. II-II q.104 a.3 ad 2[m]. See II-II q.4 a.7 ad 3[m].

15. I-II q.91 a.2 ad 2[m].

16. I-II q.17.

17. I-II q.17 aa.1 & 2. Finnis attributes a rather different function to command (Finnis pp.339-340). According to him, command is reason's summing up of the results of deliberation and choice. It provides a final representation of the means chosen, under the end for which they are chosen, which "fully determines" the formulation of the agent's intention and serves to attract the will toward the whole "action-for-the-sake-of-the-end." It thereby serves as the most immediate source of the actual exercise of action. But, aside from the fact that this "representation" sounds remarkably like a judgment or indicative proposition rather than a command, and makes it hard to distinguish between a real commander and a mere adviser, it simply does not correspond to Aquinas' account. Aquinas does not say that the function of command is to order the action commanded to the end; he says that its function is to order an agent to the action: "to order someone toward doing something." Obviously the commander performs this work for the sake of the end to which the

commanded action leads; but the command itself need not make the slightest mention of the end that the commander has in view. See I-II q.100 a.10 ad 2m: *intentio legislatoris est de duobus. De uno quidem, ad quod intendit per praecepta legis inducere, et hoc est virtus. Aliud autem est de quo intendit praeceptum ferre, et hoc est quod ducit vel disponit ad virtutem, scilicet actus virtutis. Non enim idem est finis praecepti et id de quo praeceptum datur.* Finnis appears to adopt this notion of command in order to support his account of obligation as necessity for the sake of the common good. (See below, Chapter Five, pp.201-204.)

18. See I-II q.17 a.1. The burden of this article is to show that command belongs to reason rather than will. It is interesting that Aquinas chooses to rest his argument primarily on the fact that command is a kind of "intimation" or pronouncement (see also ad 1m), rather than on the fact that it is a sort of ordination, which he also regards as something proper to reason (see I-II q.12 a.1 obj.2 & reply). Perhaps this is because, taken generally, the work of "intimation" does not even presuppose an act of the will, whereas the work of ordination does. (See I-II q.17 a.5 ad 3m: the first act of the will cannot spring from the ordination of reason, because reason's ordination pre-supposes some act of the will.) Thus if command belongs to the genus of "intimations," it cannot conceivably be attributed to the will as its subject.

19. II-II q.83 a.1.

20. This makes explicit the notion of ordering that was suggested earlier, when it was argued that the moving or obligatory work of law as identical with its work of regulating and ordering those who are subject to it. (See above, Chapter Two n.30.) Ordering is a kind of moving and acting upon the thing ordered. It also explains Aquinas' description of laws as *propositiones universales rationis practicae ordinatae ad actiones* (I-II q.90 a.1 ad 2m). The expression "*ordinatae ad actiones*" means applied to action or formed to serve as movers of action.

21. I-II q.17 a.2 ad 1m: *voluntas movet rationem imperantem*. It is in this article that St Thomas stresses the nature of command as a kind of ordination, in order to show that it cannot belong to beasts. Lacking reason, the beast cannot grasp the relation between an agent and the action that it suits him to perform, and so cannot order the one to the other.

22. I-II q.17 a.2 ad 2m.

23. Santiago Ramírez, O.P., *De actibus humanis*, in *Opera omnia*, CSIC (Madrid 1972) vol.IV p.400 (hereafter Ramirez).

24. The difference is evident from the fact that a man's saying "Do this" implies that he has some kind of dominion or governance over the one to whom he is speaking, whereas anyone can say to anyone, even to his superior, "I want you to do this."

25. This is the position of Suarez, who treats the legislator's will as moving the subjects chiefly *per modum obiecti*. (See above, Chapter One, n.45.) This is why, for him, the substance of command is an act of will, not an act of reason; and why, in the case of commanding oneself, he sees no need to posit some act of reason following upon the act of will and manifesting its content. See Suarez, *De actibus humanis*, in *Opera omnia*, ed. A.D.M. André, Vivés (Paris 1856) vol.IV tract ii disp. ix #3.

26. Of course this means that a command is a kind of natural sign of the commander's will; but it need not signify his will in the manner of a propositional reference.

27. The same may also be said of utterances framed in what Aquinas calls the "deprecative" mood. See *In Libros Peri hermeneias commentaria*, L.I lect.vii (Romae 1882) t.I p.34 #5.) "I would like you to do this" is not quite the same as "Please do this." The difference from command is that such an expression signifies reason's moving in the manner of something "merely disposing" toward movement, not something "imposing necessity."

28. I-II q.17 a.4. See also I-II q.20 a.6 ad 3^{m}.

29. I-II q.93 a.5 (my emphasis).

30. I-II q.91 a.1. Of course, in ordinary speech, the term 'command' is sometimes used to mean the order enunciated, i.e. the contents of the act of commanding. It would be in this sense that a law is a command. Law is not the act of commanding. Neither is it the act of enunciating or promulgating; rather, it is "what" is promulgated, i.e. the material object of that act, the proposition expressed in the enunciation. This would explain why people speak of enunciating or promulgating the law, whereas no one says "commanding the law."
    Lottin (*Psychologie et morale* vol.2 sect.1 pp.38-47) assimilates promulgation to *usus activus*. This is the initiation of the exercise of action, i.e. the application of the active power to the action. At the same time, he makes promulgation to be preceded by *imperium*, which he identifies with *ordinatio*. Perhaps what prompts this interpretation is that a law is sometimes called a command, and that because it is the object of promulgation, a law is prior to promulgation in a certain way, namely, in the order of specification: see I-II q.18 a.2 ad 3^{m}. But promulgating the law is the same act as commanding the subjects to act according to it; and the law does not precede the promulgation in time. What Lottin calls "*ordinatio*" seems to be what St Thomas calls "practical judgment," which naturally precedes both the governor's choice of action and his command. As for *usus activus*, it is properly attributed to the will, and its object is the power that is moved to action, not the order that is applied to the power. Nothing seems to prevent saying that in commanding his subjects or promulgating the law to them, a governor is using them or moving them to act. But he is doing so precisely by using his reason to move them; and in this respect, *usus* precedes *imperium*. (I-II q.17 a.3 ad 3^{m}.)

31. I-II q.17 a.5 obj.2.

32. See I-II q.17 aa.5, 7, 9.

33. In this respect commanding is like teaching, which, Aquinas says, has a two-fold object: the knowledge communicated and the one to whom it is communicated (II-II q.181 a.3). Just as to teach is to cause someone to know something (I q.117 a.1), so to command is to cause someone to do something.

34. Aquinas makes the impression of this form or impulse upon irrational beings analogous to the promulgation of the law to men: *quia per legis promulgationem imprimitur hominibus quoddam directivum principium humanorum actuum* (I-II q.93 a.5 ad 1[m]). This impression cannot be promulgation properly speaking, since promulgation is a form of pronouncement. Something can be pronounced only to a being capable of hearing and understanding it. Likewise, he speaks of a *cohibitio* of irrational things analogous to the obligation of men: I-II q.93 a.4 ad 4[m]. See I q.22 a.2 obj.3 & reply.

35. I-II q.93 a.5 ad 2[m].

36. I-II q.93 a.5.

37. I-II q.93 a.6.

38. See II-II 50,2: homines servi, vel quicumque subditi, ita aguntur ab aliis per preceptum quod tamen agunt seipsos per liberum arbitrium.

39. I q.103 a.5 ad 2[m].

40. I-II q.21 a.4 obj.2 & reply.

41. Geach p.125.

42. See above pp.37-38.

43. I q.21 a.1 ad 3[m].

44. See above, p.108.

45. Some of the controversy in contemporary discussions of Thomistic natural law could perhaps have been avoided if it were kept in mind that when Aquinas speaks of the precepts of natural law, he means precepts as they exist in one subject to them, not as in one issuing them. For this reason there is no need to distinguish, as Grisez does, between precept and command. (See above, Chapter One pp.12-13.) These terms are altogether synonymous in Aquinas' usage: see J. Schultz, "Necessary Moral Principles," *The New Scholasticism*, LXII.2 (Spring 1988) p.150 n.3. Nor is there any need to posit some act of will that is naturally prior to the first principles of practical reason and that endows these principles with the moving force of command. The precepts of natural law exist in a man's mind, not as commands issued by the man himself, but as certain immediate practical judgments, judgments about what ought to be done and what avoided (see I-II q.93 a.2 ad 3[m]). They are called

precepts because they are proportioned to, and derived from, the precept eternally enunciated by God. This means they are called precepts in a secondary way and according to a certain analogy (see Section E of this Chapter).

46. See I-II q.9 aa.4 & 6. God is the only external agent who can move the will *quantum ad exercitium actus*. Does this contradict the claim that command moves action not only by presenting the agent with his object but also by initiating the very exercise of the action? In other words, on this account, how will a man's command differ from a mere indication to someone of what he ought to do? Perhaps the difference is that a human governor's command not only informs his subject that some action is good for him, but also somehow actually makes it good for him, by bringing about circumstances in which the subject cannot attain his end unless he carry out the action. Thus, it is in virtue of the command itself that the subject becomes liable to judgment, reward and punishment according as he obeys or disobeys the command. In this way it may be said that the subject's obedience comes about directly on account of the command, and not merely indirectly, as in the case of counsel, which only removes ignorance that the action is good. See I-II q.17 a.4 *Sed contra*: *actus imperatus non est nisi propter imperium*.

47. What gives one man dominion over another is that the latter's good depends of necessity upon doing what the former wants him to do.

48. See the quotation from I q.103 a.5 ad 2[m] above, p.116.

49. On the active principle in a natural thing as a measure of its actions, see I-II q.21 a.1.

50. See I q.117 a.1.

51. I-II q.93 a.5.

52. II-II q.16 a.1. See above pp.106-107.

53. The similarity between commanding and teaching noted above (n.33) is also pertinent here. One man teaches another only through presenting some exterior sign of his mind's conception. Hence the student's acquisition of knowledge about the doctrine's subject is always accompanied by an awareness of what the teacher himself thinks about the subject, and of his very act of teaching. But the formation of an exterior sign is not essential to teaching. For the principal teacher of man is God, who teaches interiorly, "insofar as 'the light of thy countenance shines upon us'" (I q.117 a.1), and even before man becomes aware of Him.

54. I-II q.93 a.2.

55. I q.16 a.6 ad 1[m].

56. See I q.16 a.6 ad 1[m].

57. I-II q.91 a.2.

58. I-II q.19 a.4.

59. See I q.16 aa.1,6.

60. I-II q.71 a.6 obj.4. Aquinas' discussion appears to express in very condensed form the thought running through Augustine's *De libero arbitrio*, I.iii-I.vi. Augustine begins by noting certain things that are not evil because temporal law forbids them, but forbidden because evil; and he concludes by affirming the existence of another, eternal law from which everything just and lawful in temporal law is derived.

61. See II-II q.57 a.2.

62. See I-II q.18 a.5; q.19 a.3.

63. I-II q.19 a.1 ad 3[m].

64. There is no vicious circle here. Obviously if reason directs man to the pursuit or avoidance of anything, it is on the basis of judging that thing to be good for him; the point is merely that any voluntary pursuit or avoidance, i.e. any human act, is itself good or bad only by reference to reason's direction. Because it apprehends that something is good for him, reason judges that he ought to pursue it and avoid its contrary; and voluntary actions are designated good or bad *qua* voluntary, i.e. as human or moral, by comparison with such judgment. This proves nothing more than that "evil is in more things than sin" (I-II q.21 a.2) and good in more things than rectitude, and that the objects by which the measures of the goodness or badness of human acts are first determined are not themselves human acts (see I-II q.2 a.7), but some "goods of nature" (I-II q.10 a.1 obj.1).

    On the other hand, the "goods of nature" become measures of moral goodness, i.e. the goodness of the will, by the mere fact of reason's apprehension of them as good. (Again, see I-II q.19 a.1 obj.1 and reply.) The primary object of a good will cannot possibly be its own goodness. (See I-II q.1. a.1 ad 2[m]; q.2 a.7; q.3 a.4 esp. ad 2[m].) To say this is not to subject the will to an inferior order. The expression "good of nature" here does not mean "material good," as opposed to "spiritual good." It means what is good by comparison with man's being, rather than by comparison with his will. All of the basic goods of man, as naturally apprehended by reason, are good in the manner of perfections pertaining to something having a spiritual principle. (See below, Chapter Four pp.162-163 on the distinctive mode of man's natural inclinations.) The reason why the will's own goodness cannot be its primary object is that, for Aquinas at least, there are things both "in and beyond the world" that are better, or more honorable, than a good will. (See II-II q.145 a.1 ad 2[m].)

65. I-II q.91 a.2 ad 3[m].

66. See I q.13 a.2. Thus, in contrast to frequent usage, the proper opposite of 'proper' is not 'analogical' but 'improper' or 'metaphorical.' The opposites of 'analogical' are 'univocal' and 'equivocal by chance.' A term may be predicated analogically of several things and yet also properly of each, though in this case it will be predicated "more properly" of the primary analogate.

67. See I q.13 a.6. A full discussion of this subject would also need to take into account the distinction between "what" a name signifies and its "mode" of signifying (I q.13 aa.3,6.)

    Even more helpful is I q.34 a.1, on the meaning of '*verbum*':

    > *Manifestius autem et communius in nobis dicitur verbum quod voce profertur. . . . Vox autem quae non est significativa, verbum dici non potest. Ex hoc ergo dicitur verbum vox exterior, quia significat interiorem mentis conceptum. Sic igitur primo et principaliter interior mentis conceptus verbum dicitur; secundario vero ipsa vox interioris conceptus significativa.*

    Likewise, among men, 'law' is said more manifestly and commonly of things humanly posited. But things humanly posited that do not derive from the principles of practical reason cannot be called law. Hence 'law' is said more chiefly of these principles.

68. This is most obvious in the formation, from the experience of a few individuals in a species, of concepts expressing the species universally.

69. This is how the participation of the eternal law in irrational things differs from that in man. *In creatura autem irrationali* [*lex eterna*] *non participatur rationaliter*, *unde non potest dici lex nisi per similitudinem* (I-II q.91 a.2 ad 3[m]). It should be noted that the likeness in question is not between the natural inclinations in irrational creatures and the eternal law itself, since even the participation of the eternal law in man is a law only through its likeness to the eternal law; rather, the likeness is between the natural inclinations of irrational things and what exists in rational beings that are subject to law, i.e. law "as it exists in one ruled and measured by law." This is a likeness of improper proportionality, or a metaphorical likeness. The items resemble each other only with respect to the proportion that each has to a particular effect: as irrational things are brought into their due conformity with the eternal law through their natural inclinations, so rational beings are brought into their due conformity through natural law.

    A similar kind of likeness is set forth in I-II q.93 a.5 ad 1[m]:

    > *hoc modo se habet impressio activi principii intrinseci, quantum ad res naturales, sicut se habet promulgatio legis quantum ad homines; quia per legis promulgationem imprimitur hominibus quoddam directivum principium humanorum actuum, ut dictum est.*

70. I-II q.90 a.4.

71. I-II q.91 a.2 ad 1[m].

72. See I-II q.96 a.2 ad 3[m].

73. See I-II q.91 a.3 ad 1[m]; a.4. Among the laws given to man, it is only the divine or supernatural law that dictates all justice with adequate certitude and specificity.

74. See I-II q.91 a.6.

75. See I-II q.90 a.2.

76. See I-II q.61 a.1 ad 1[m]; q.62 a.1 ad 2[m]; q.63 a.3; q.91 a.4 ad 1[m].

77. Chapter Two pp.70-71.

78. Augustine, *De libero arbitrio*, I.vi.6 (PL 32,1229). Understood in this way, the term 'temporal law' may not be fully attributed even to the "positive" portion of the revealed divine law (see II-II q.57 a.2 ad 3[m]), except with respect to the things in which it is assimilated to human law. For the strictly "positive" portion of the divine law consisted in its ceremonial and judicial precepts (I-II q.99 a.5: *debitum ex determinatione legis*); but the former are in fact eternally valid with respect to the truth prefigured in them (I-II q.103 a.3 ad 1[m]). Only the latter, which, like human law, are concerned with relations between man and man (I-II q.99 a.4), are in every respect temporary, owing to the transitory condition of the community that they regulated (I-II q.104 a.3).

79. I-II q.93 a.3. See above, Chapter Two pp.54-56.

80. I-II q.93 a.3.

81. See I-II q.96 a.4 and the expression *leges legales*.

82. Est enim primo de ratione legis humanae quod sit derivata a lege naturae. (I-II q.95 a.4.)

83. Lex autem humana . . . est quaedam regula vel mensura regulata vel mensurata quadam superiori mensura; quae quidem est duplex, scilicet divina lex et lex naturae. (I-II q.95 a.3.)

84. I-II q.91 a.3 ad 2[m].

85. In the *De libero arbitrio*, Augustine even goes so far as to speak of an eternal law, i.e. a rule superior to human law, always and everywhere the same, prior to, and in preparation for, his argument for the existence of a God. (*De libero arbitrio*, I.vi; II.xii-xv.)

86. This is what Adler does (see Chapter One pp.12-13).

87. See I-II q.94 a.3; I-II q.96 a.2. On the impropriety of naming causes by effects not proportioned to them, according to their mere order to such effects, see I q.13 a.6. Such order exists in the apprehension of reason, not in the thing itself: I q.13 a.7.

CHAPTER 4

NATURAL LAW AND POSITIVE LAW (2): THE AUTHORITY OF NATURE

A. The question of the role of nature in the knowledge of natural law

Up to now, the discussion has proceeded on the assumption that the account of natural law given in I-II q.94 does not locate the basis for man's first assent to the first principles of practical reason in any apprehension of authority. However, this assumption is not entirely unquestionable, even granting that the primary basis for the assent is simply the understanding of the terms from which the principles are formed, especially the primary terms 'good' and 'bad.' For even if, once he grasps these terms, a man needs no further knowledge in order to be able to judge that he should seek what is good and shun what is bad, he does still need information as to which things are good and which bad; and to some, Aquinas' way of speaking about reason's first or natural specifications of the good and the bad sounds very much like an appeal to a perception of another extrinsic, authoritative standard: the standard of nature.

> St Thomas was mistaken in looking to Aristotelian natural philosophy for a way of specifying the goods that the natural law bids us seek, and the evils it bids us avoid. . . .I am inclined to conjecture that he was led to make it by his belief in creation: accepting Aristotle's views about natural teleology, and believing that the natural world was created by God, it may have seemed reasonable to treat the ends of natural things and processes not only as divinely appointed, but as divinely sanctioned.[1]

Donagan's criticism of Aquinas' procedure is three-fold. First, he says, not everything that Aquinas treats as the object of a natural inclination really is one. For example, Aquinas judges that speech acts are naturally inclined toward veracity, so that lying is wrong because it is "unnatural"; but, says Donagan, "from the point of view of natural science, a lying speech act is not, *per se*, either

defective or interfered with.... [F]or a thing tends towards its natural end provided there is no impediment, and a lying speech act does not in the least tend towards truth."[2] Secondly, and more to the present point, Aquinas himself grants that it is sometimes permissible to interfere with or obstruct natural tendencies.[3] The third and most fundamental criticism is that it is simply not evident that merely because nature seeks something, men should seek it too; or in other words, it is not clear that every good of nature is *eo ipso* also a human good. Man, the rational and free animal, is not the servant of mere nature. "Let nature look to her own purposes, if she has any. *We* will look to *ours*."[4]

The quick answer to Donagan's second and third criticisms would presumably be that Aquinas is speaking about the inclinations, not of nature in general or of just any natural being, but of the natural being that is man. Man's natural endowment is prior to anything belonging to him through his own, human decisions and efforts; the human good is primarily the good suited to human nature, conditioning and measuring the goodness of anything answering to the acquired or "supervenient"[5] needs of man. To explain why Aquinas sometimes allows for the obstruction of natural tendencies, it would only be necessary to distinguish between the tendencies of inferior natures, including the lower parts of human nature, and those of man as man or man as a whole. In this way the turn toward nature for the specification of man's ends could be seen as implicit in the general precept to do good and avoid evil; "for the goodness of each and every thing consists in this, that it be fittingly disposed according to the mode of its nature: *convenienter se habet secundum modum suae naturae*."[6] In this way, too, the right use of any powers or instruments that are intrinsically ordered to some natural end of man could be said to require the faithful observance of that order. For instance, lying could be said to be "unnatural and wrong" because men

naturally need to share their thoughts to each other, and because speech is essentially an instrument for this purpose.

However, this line of defense faces another obstacle, arising from the fact that many of the precepts that specify the first are also said to be "primary" and "naturally known."

> Omnia illa ad quae homo habet naturalem inclinationem, ratio *naturaliter* apprehendit ut bona, et per consequens ut opere prosequenda, et contraria eorum ut mala et vitanda.[7]

The claim then must be not only that the good and bad for man are specified by advertence to his natural inclinations, but also that this specification is first carried out by the spontaneous operation of everyone's intellect, naturally. The specification requires no methodical investigation, e.g. that of moral science, drawing perhaps upon a teleological science of nature. The difficulty with this claim is the degree of sophistication that it seems to attribute to the natural or spontaneous understanding of the human intellect. It has to hold that all men naturally apprehend their natural inclinations, that they naturally distinguish these from any "supervenient" ones, and that they naturally recognize the natural ones as the chief measures of their conduct. Is it really plausible to attribute such a degree of knowledge to all men everywhere, even to children and to the thorougly depraved?[8]

Besides, not every inclination of a man's nature would seem to provide a satisfactory measure for his conduct; as Aquinas says,

> . . . in homine est duplex natura, scilicet rationalis et sensitiva. Et quia per operationem sensus homo pervenit ad actus rationis, ideo plures sequuntur inclinationes naturae sensitivae quam ordinem rationis. . . .Ex hoc autem vitia et peccata in hominibus proveniunt, quod sequuntur inclinationem naturae sensitivae contra ordinem rationis.[9]

The inclinations of the various parts of man's nature "pertain to natural law" only "insofar as they are ruled by reason."[10] Even the strictly spontaneous or natural inclinations of his nature stand in need of direction: *oportet quod omnes inclinationes naturales ad alias potentias pertinentes ordinentur secundum rationem.*[11] So it appears that not just any natural inclination of man serves as the basis for a precept of natural law; if natural law is founded upon any natural inclinations, it can only be upon those that are right or rational. This is obviously problematic, if the standard of reasonableness is itself supposed to be natural inclination. The problem comes out clearly in a passage from Professor Gilson: "since it is eternal law that makes us what we are, we have only to yield to the *legitimate* inclinations of our nature in order to obey it."[12] The question is precisely how to distinguish between the inclinations that are "legitimate," i.e. conform to God's eternal law, and the ones that are not.

> St Thomas ignores two obvious points. First it is not obvious why a human being is morally bound to do what it [sic] has some inclination to do. (St Thomas did not criticize chastity.) Second, while it is true that most human beings do feel a strong urge [say] to live, the human being who commits suicide obviously feels a stronger inclination to do something else.[13]

It is little wonder that Donagan suspects Aquinas of a certain unconscious appeal to divine authority. Such an appeal would account not only for the reverence toward nature that Aquinas demands, but also for his capacity to distinguish so easily and definitively between parts of nature that really do deserve reverence, and parts that do not.

B. Some prominent answers to the question

It is impossible to enumerate the multitude of interpreters who take it more or less for granted that Aquinas thinks that reason forms the precepts of natural law through naturally understanding man's natural inclinations as measures of human action. But not everyone does so. Some, while granting that the precepts of natural law do somehow follow man's natural inclinations, explain this correspondence in some way other than by presenting the inclinations as standards to which reason looks in the formation of its precepts. Professor Grisez, for instance, eschews any speculative knowledge, such as the knowledge of nature, as a foundation of the primary precepts of natural law. As he sees it, this is ruled out by the very fact that the primary precepts are self-evident. Grisez understands the natural inclinations to be the "felt inclinations" of "sense spontaneity" that emerge in man prior to the advent of intelligence. The function that he attributes to these natural inclinations in the formation of precepts of natural law appears to be twofold: first, they call reason's attention to their objects, which reason then immediately, and not by comparison with the inclination, grasps as intelligibly, and not merely sensibly, good; and second, they display these objects as potential goals of action, by constituting man's very capacities to have them as goals.

> Is reason merely an instrument in the service of nature, accepting what nature indicates as good by moving us toward it? No, the derivation is not direct, and the position of reason in relation to inclination not merely passive. Using the primary principle, reason reflects on experience in which the natural inclinations are found pointing to goods appropriate to themselves. But why does reason take these goods as its own? Not because they are given, but because reason's good, which is intelligible, contains the aspect of end, and the goods to which the inclinations point are prospective

> ends. Reason prescribes according to the order of natural inclinations because reason directs to possible actions, and the possible patterns of human action are determined by the natural inclinations, for man cannot act on account of that toward which he has no basis for affinity in his inclinations.[14]

For Grisez, then, the formation of the precepts of natural law follows man's natural inclinations only in the sense that the latter serve as the occasion for it and provide conditions without which man would not be pliant to the direction of reason. Reason is not taking the inclinations as the very criteria of good and bad.[15]

John Finnis develops Grisez's argument. Like Grisez, he insists that the self-evidence of the precepts of natural law excludes their derivation from any prior understanding of nature,[16] and he takes Aquinas' expression "natural inclination" to refer to spontaneous, pre-rational urges or drives. These inclinations are immediately "felt" or experienced by the one who has them; and "by a simple act of non-inferential understanding one grasps that the object of the inclination which one experiences is an instance of a general form of good, for oneself (and others like one)."[17] He insists that when St Thomas speaks of moral good and evil as conformity or repugnance to nature, this is only as it were a conclusion from the fact that moral good and evil consist in conformity or repugnance to reason, and that reason is what specifies man's nature. The proper measure of moral good and evil is thus reason, not nature, and what is according to nature can be determined only after the determination of what is rational, not before.[18]

Finnis in fact criticizes Aquinas for speaking of an "order of precepts of natural law" that follows the "order of natural inclinations." Natural law precepts may certainly be seen in the setting of the hierarchical universe of being; but such a metaphysical reflection has no practical value, and it might even lead to the conclusion, which Finnis considers erroneous, that there is some practical rank among

the precepts of natural law. For Finnis, there is no practical rank among the precepts, because the "basic human goods" are "equally self-evidently good," irreducible, and each capable of being regarded as "most important." In fact, he says, Aquinas's three-fold ordering "plays no part in his practical (ethical) elaboration of the significance and consequences of the primary precepts of natural law."[19] Finnis goes so far as to imply that there is nothing intrinsically necessary about the "parallelism" or "fit" between man's felt inclinations and his intelligible goods (or what Finnis calls "valuable aspects of human well-being". Its only cause, if it has one, would be the providence of God, giving man a set of urges or drives that serves to direct his attention to the data in which he grasps his basic goods.[20]

One or two questions might be raised about this interpretation. Certainly if the natural inclinations that Aquinas is speaking about in the *Respondeo* of I-II q.94 a.2 are pre-rational urges or drives of man's sensitive part, it would be difficult to think of Aquinas as holding them up as the primary standards of human conduct; for, as has already been seen, he regards such urges as standing in need of direction by reason. Such urges, which are what Aquinas calls passions, are not always good; sometimes they are simply bad and serve as sources of vice and sin.[21] But for this very reason, it seems possible to doubt whether the impulses of the senses are really what Aquinas has in mind. For, whatever he means by "natural inclinations," and even if he does think of them as no more than occasions for the formation of the primary precepts of natural law, he treats them as in perfect harmony with the precepts. The question must also at least be raised, why he would have introduced such an "irrelevant schematization"[22] into his account.

The role that Grisez and Finnis want to assign to natural inclination, understood as spontaneous sense-impulse, is both too weak and too strong to do justice to Aquinas' treatment. It is too strong, because it is simply not true, for Aquinas, that "man cannot act on account of that toward which he has no basis

for affinity in his inclinations,"[23] if by "inclination" is meant sensitive impulse.[24] It is too weak, because, as both Grisez and Finnis admit, not all spontaneous impulses of the senses are toward objects that it is right to pursue. But what Aquinas means by "natural inclination" in the body of I-II q.94 a.2 is something that is always right. It has the quality that he earlier attributed to the natural inclinations of the angels:

> sicut cognitio naturalis semper est vera, ita dilectio naturalis semper est recta, cum amor naturalis nihil aliud sit quam inclinatio naturae indita ab Auctore naturae. Dicere ergo quod inclinatio naturae non sit recta, est derogare Auctori naturae.[25]

There is in fact at least one text in which Aquinas explicitly treats natural inclination as a measure of human action.

> aptitudo ad virtutem inest nobis a natura...licet complementum virtutis sit per assuetudinem vel per aliquam aliam causam. Unde patet quod virtutes perficiunt nos ad prosequendum debito modo inclinationes naturales, quae pertinent ad ius naturale. Et ideo *ad quamlibet inclinationem naturalem determinatam ordinatur* aliqua specialis virtus.[26]

If man's natural inclinations only "happen" to be in harmony with the precepts of natural law, it seems somewhat excessive of Aquinas to speak of virtues as "ordered to" natural inclinations and as existing for the sake of their due satisfaction.

Another way of explaining the relation between natural inclinations and the precepts of natural law is presented by Jacques Maritain. For him, the key notion is what Aquinas calls "knowledge by connaturality" or "judgment through inclination."[27] Although Aquinas does not explicitly introduce this notion into his account of natural law, Maritain thinks that it provides the only way to make sense out of the texts. On this account, the harmony between the inclinations and the precepts would be far from accidental; but it would also not hold in

virtue of any conscious or theoretical reflection on the inclinations, any conceptualization of them as a foundation for practical reason's primary judgments. The inclinations do in a way inform these judgments, but not as objects of apprehension on which the judgments are based. Instead, the function of the inclinations is to move or incline the intellect itself, in the manner in which it can be inclined, toward these judgments. The natural knowledge of the precepts of natural law is, in Maritain's metaphorical language, a knowledge "in which the intellect, in order to bear judgment, consults and listens to the inner melody that the vibrating strings of abiding tendencies make present to the subject."[28] To shift the metaphor, the inclinations might be said to cast a certain light on the objects of the mind's consideration, and the mind judges them in this light.[29]

This interpretation seems to avoid the difficulties faced by that of Grisez and Finnis. It preserves the intrinsic connection that Aquinas seems to want to draw between the natural inclinations and the primary precepts. It also gives a practical significance to the order that Aquinas posits among the precepts: even if, as Grisez and Finnis want to insist, it is not licit directly to violate any of the precepts for the sake of any of the others, nevertheless they could be said to fall into practical reason in a certain order, according as the inclinations prompting their formation are more or less fundamental or deeply rooted in man's constitution. Perhaps some of the strings vibrate more loudly than others. Also, this account could be developed in such a way as to avoid the inconvenience that sometimes the spontaneous impulses of the senses are bad. For since the natural inclinations in question are supposed to be in a way moving reason itself, they would presumably be inclinations of the appetitive power that is "in reason," i.e. inclinations of the will; and Aquinas' view seems to be that the natural inclinations of the will are always right.[30]

This last point, however, sets up a new problem. For if the relevant natural inclinations are those of the will, then it is difficult to see how, in accordance

with Thomistic psychology, they could possibly be actual prior to the formation of the first principles of practical reason. It is a basic principle for Aquinas that a man cannot actually will or want anything except what he has understood to be in some way good. The proper object of the will is the understood good.[31] More precisely, it is practical intellect that presents the will with its object:

> . . . sicut imaginatio formae sine aestimatione convenientis vel nocivi, non movet appetitum sensitivum; ita nec apprehensio veri sine ratione boni et appetibilis. Unde intellectus speculativus non movet, sed intellectus practicus, ut dicitur in III *de An.*[32]

How then can any inclination of the will precede the practical intellect's very first apprehensions? As Aquinas presents it, the only principle governing these apprehensions is God: *principium consiliandi et intelligendi est aliquod intellectivum principium altius intellectu nostro, quod est Deus.*[33] Of course, nothing prevents the natural inclinations of the will from existing potentially, prior to the intellect's first apprehensions. In fact, the will just is the power or potentiality for these inclinations and for the ones that derive from them. But until the intellect presents it with its object, the will is only in potency.[34] It is not easy to see how the intellect could "consult" something existing only potentially.[35]

C. Natural inclination as following upon natural understanding

It appears, then, that a number of serious difficulties emerge when the correspondence that Aquinas draws between man's natural inclinations and the first principles of practical reason is understood in such a way that the inclinations are taken to be prior to and independent of the principles. In view of these difficulties, and especially in view of the general priority of the intellect over the

will that Aquinas maintains, it seems to me that an alternative reading of I-II q.94 a.2 is in order. Now, there are two clauses in this article that, at first reading, might appear to present the natural inclinations as intrinsically prior to the precepts of natural law. The first is this:

> . . . omnia illa ad quae homo habet naturalem inclinationem, ratio naturaliter apprehendit ut bona, et per consequens ut opere prosequenda, et contraria eorum ut mala et vitanda.

The second follws immediately.

> Secundum igitur ordinem inclinationum naturalium est ordo praeceptorum legis naturae.

But is it really necessary, or even faithful to the thrust of the argument, to read these clauses in this way? The first does not say that reason naturally apprehends certain things as good because, or even on the occasion, of man's natural inclinations toward them. Nor does the second say that the precepts themselves are according to the inclinations; it says that the order of the precepts is according to the order of the inclinations. This may indicate nothing more than that the order of the inclinations is in some way better known "to us" than the order of the precepts, so that we can infer the latter from the former, as Aquinas does in the continuation of the article. But it need not mean that in themselves the inclinations are prior to the precepts. Only a closer look at the article can decide the issue.

The question addressed by the article is whether the precepts of natural law are one or many. Very briefly, Aquinas' answer is that there are many precepts of natural law, as many as man's natural inclinations; but that these all depend upon or imply one overarching precept, that "the good is to be done and sought, and the bad avoided." Aquinas reaches this conclusion in three broad stages.

First, after laying it down that the precepts of natural law are certain self-evident practical principles, he gives a general account of the nature of self-evident propositions. He draws a distinction between propositions that are self-evident in themselves, because the predicate is contained in the definition of the subject, and those that are self-evident to us, insofar as we understand the subject and predicate sufficiently to grasp the connection between them. He makes it clear the the precepts of natural law consist in principles that are self-evident not only in themselves but also to all men, naturally.

In the second stage, he explains why the precept to do and seek the good, and to avoid the bad, must be regarded as the very first or most common principle of practical reason. Why is it that nothing falls under the consideration of practical reason except insofar as it is seen in light of the notion of the good, and hence also of the contrary, evil? It is that, first, practical reason is reason directing action; that, since every agent acts on account of an end, the starting-point of the direction of action is the determination of the end for which it is to be done; and, that nothing can be understood as an end except what is understood to be good, since goodness is implicit in finality, i.e. since "end has the *ratio* of good."

It is important to note that up to this point, Aquinas has not yet explained the self-evidence of the proposition that the good is to be done and sought, and the bad avoided. He has merely argued, *a posteriori*, for the primacy of this proposition in practical reason. He means to show that reason is practical, or is an agent *agens propter finem*, only to the extent that it operates according to its understanding of what good and bad are. This is *a posteriori*, because the apprehension of the notions of good and bad is the cause, not a result, of the genesis of practical reason in man.

It is in the third stage of the argument that Aquinas explains the self-evidence of the precept to do the good and avoid the bad, and thereby shows why

there are as many self-evident principles of practical reason as there are things that are self-evidently and naturally understood by reason as good. It is also in this section that appear the lines in which Aquinas correlates the precepts of natural law with man's natural inclinations. He begins in this way:

> Quia vero bonum habet rationem finis, malum autem rationem contrarii, inde est quod omnia illa ad quae homo habet naturalem inclinationem, ratio naturaliter apprehendit ut bona, et per consequens ut opere prosequenda, et contraria eorum ut mala et vitanda.

This sentence has a rather complicated structure. At first glance, it seems to draw two conclusions from the same premise. The premise is that good has the *ratio* of end, and bad the *ratio* of the contrary. The first conclusion, presented as a conclusion by *inde est*, is that all the things to which man is naturally inclined, reason naturally apprehends as good. The second, presented by *per consequens*, is that the things naturally apprehended as good are also apprehended as things to be done and sought, and their contraries as bad and to be avoided.

Now one way to avoid reading this as drawing two conclusions from the same premise would be to see the second conclusion as based on an implicit appeal to the formulation, in the argument's second stage, of the very first principle of practical reason.[36] The sentence would then mean that because good has the *ratio* of end, and bad the *ratio* of the contrary, everything to which man is naturally inclined, reason naturally apprehends as good; and because reason naturally knows that the good is to be done and sought, and the bad avoided, reason also naturally apprehends all of these things as to be done and sought, and their contraries as bad and to be avoided.

But this reading is unsatisfactory on at least three grounds. First, it is not at all clear how it follows, from the fact that good has the *ratio* of an end, and

bad the *ratio* of the contrary, that reason naturally apprehends as good all the things to which man is naturally inclined. It does not follow even if being inclined to something is the same as having it as an end.[37] For the supposed premise means that every good is an end, whereas the supposed conclusion implies only that every end is a good; even less does it imply that every end of nature is something that reason naturally apprehends at all, let alone as an end and as good. Secondly, this reading overlooks the fact that the second stage of the argument did not attempt to show why reason must naturally understand the good as to be done and sought, and the bad as to be avoided. This stage only showed why this understanding must come first in any operation of practical reason. Hence it provides no real ground for the second supposed conclusion, that what reason naturally apprehends as good, it naturally apprehends as to be done and sought, and naturally apprehends the contrary as bad and to be avoided. The third point is that surely the proportionate premise for this conclusion would be precisely the statement that the good has the *ratio* of an end and the bad the *ratio* of the contrary. It is this statement that explains the self-evidence of the proposition that the good is to be done and sought, and the bad avoided.[38] This is self-evident because it belongs to the very notion of the good to have the character of an end. This reading would also be supported by the presence of the terms 'good,' 'bad' and 'contrary' in both the premise and the conclusion. It would only be necessary to point out that to be an end means to be something that ought to be done and sought, and that avoiding something is the contrary of doing or seeking it.

On this view, then, the passage would mean, in part, that because good has the *ratio* of end, and bad the *ratio* of the contrary, everything that reason apprehends as good, it consequently apprehends as to be done and sought, and the contrary as bad and to be avoided. Now, what about the statement that all the things to which man is naturally inclined, reason naturally apprehends as

good? Might it not in fact constitute another premise? The new term that it provides is 'naturally.' It leads to the conclusion that the things that reason naturally apprehends as to be done and sought, i.e. the things with which the precepts of natural law are concerned, are the objects of man's natural inclinations; and that, in the words of the next sentence, "therefore, the order of the precepts of natural law is according to the order of natural inclinations."

What is the status of the premise that all the things to which man is naturally inclined, reason naturally apprehends as good? Perhaps it is taken as self-evident. But if so, then the natural inclinations in question can only be those that exist because of reason's natural understanding of certain things as good; that is, they must be natural inclinations of the will. Otherwise the statement would not be apparent at all. There are many non-voluntary, natural inclinations in man of whose objects reason is not even naturally aware. Innumerable examples could be drawn from among the processes and tendencies only discovered through the researches of physiology. Or perhaps the premise is to be understood as a conclusion from the principle laid down in the previous section, that an end, or object of inclination, has the *ratio* of good. But on this reading as well, the natural inclinations in question could only be those of which reason is the principle. For the dictum *finis habet rationem boni* was meant to show that reason itself acts for, or directs toward, an end, only insofar as it apprehends what 'good' is. It was not meant to show that what other agents are acting for, i.e. other ends, are things that reason itself understands as good. This claim, even if true, would have no direct bearing on the matter at hand, which is the elucidation of the general conditions of reason's own practical activity, its capacity to be an agent acting for any end at all. So whether or not the statement is self-evident, it must mean "all the things to which reason naturally inclines man are things that it naturally apprehends as good."

The passage in question may then be restated in the following way.

> Because in fact good has the nature of an end, and bad the nature of the contrary, everything that reason naturally apprehends as good, it consequently naturally apprehends as to be pursued in action, and the contrary as bad and to be avoided. And because everything to which man, as man, is naturally inclined, reason naturally apprehends as good (since otherwise he could not yet be inclined to it 'humanly,' or through his will), the order of the precepts of natural law, i.e. of reason's natural judgments of things to be done and sought or avoided, is according to the order of man's natural inclinations.

This interpretation, according to which the natural inclinations to which the precepts of natural law correspond are in fact the effects of the precepts, can be defended in as many as five or six ways.

First, it establishes a direct connection between I-II q.94 a.2 and the proof of the existence of natural law in I-II q.91 a.2. There, natural law was described as that participation of the eternal law in man, "through which he has a natural inclination toward his due act and end." Natural law is a source of natural inclinations toward due acts and ends.

Furthermore, the inclinations in question here must all be inclinations common to all men or natural to man according to his species. This is implied first of all in the indication given in I-II q.91 a.2, that natural law is that through which man is first disposed to participate in providence, to provide "for himself *and others*" (my emphasis). The power to provide not only for oneself but also for other men requires some grasp of what is due to any man, and to oneself or another as a man, to do, seek and avoid.[39] It is also implied by the fact that the precepts immediately corresponding to these inclinations are described as common to all men, immutable in themselves, and indelibly written on man's

mind.[40] These characteristics are not attributable to inclinations peculiar to this or that individual or part of mankind, even peculiar inclinations that are natural.

According to Aquinas, the natural inclinations proper to an individual are those that arise from the nature of his body.[41] The inclinations that are natural according to the nature of the species are those that arise from the rational soul, which is the form through which a man is placed is in his species.[42] But the inclinations that arise from the rational soul are those that arise from the apprehension of reason. This is why Aquinas can speak of those who follow the "inclinations of sensitive nature" rather than the "order of reason" as acting "contrary to nature."

> Natura uniuscuiusque rei potissime est forma secundum quam res speciem sortitur. Homo autem in specie constituitur per animam rationalem. Et ideo id quod est contra ordinem rationis, proprie est contra naturam hominis inquantum est homo; quod autem est secundum rationem, est secundum naturam hominis inquantum est homo.[43]

Besides, the inclinations belonging to man according to the nature of the species are those that belong to him as man and as a whole. But the appetitive power belonging to a man as man and as a whole is the will.[44] And again, the will does not actually incline toward anything except under the apprehension of reason. Nor does this exclude the existence of a natural inclination toward the proper objects of each of man's other powers, besides the natural inclination toward the proper object of the will or toward his good as a whole; it means only that, in addition to the inclination that each power itself has, toward its proper object, the man as a whole also has an inclination, of the will, toward that object, at least "in general."[45] But the inclination of the will would naturally bear on the good of any of a man's parts, or follow the inclination of the part, only

insofar as the good of the whole somehow includes that of the part, in accordance with the principle, "generally right among all men, that all the inclinations of men be directed according to reason."[46] Even more importantly, the inclination of the will toward an object is always according to some universal notion, apprehended by the intellect.[47] Thus the inclination belonging to a man from the nature of his species is also an inclination whose very object is presented to it as good for him according to his species, or as what is good for him because he is a man. This would be impossible, were it not an inclination arising in him through the act of his intellect.

Moreover, Aquinas sees nothing wrong with speaking of reason as a source of inclination or as "inclining" man toward things. In speaking of *synderesis*, for instance, he says that *non se habet ad opposita, sed ad bonum tantum inclinat*.[48] Again, in explaining how matrimony is natural or something toward which nature inclines, he says that it is natural "because natural reason inclines (*inclinat*) toward it in two ways."[49] Also, when defending the immutability of natural law, Aquinas says that "something is said to be *de iure naturali* in two ways. In one way, because nature inclines toward this, as 'injury is not to be done to another.' In the other way, because nature does not lead toward the contrary. . . .And in this way...the distinction of possessions and slavery were not introduced by nature."[50] But what does he mean by something of which "nature does not lead toward the contrary"? The answer is provided in a parallel passage in the *Secunda secundae*: he means something that "does not have a natural reason": *non habet rationem naturalem*.[51]

Speaking of reason as inclining is not incompatible with the understanding of the will as the primary moving power in the soul. It means merely that practical intellect inclines, not as exercising movement, but as directing toward movement,[52] and that the will becomes a mover in act only once it has become inclined according to the practical intellect's direction. Since every agent acts for

an end, the will cannot move anything until it is actually inclined toward something. It is through the intellect that the soul first takes on a likeness of the end and is thereby first fully capable of inclinations proportioned to the end.[53] Of course, the will's first or natural inclinations are not commanded by reason or brought about by its acting upon the will, as though one were telling oneself to will something;[54] they are merely elicited from the will spontaneously, in the presence of the understanding of good and bad. One might say that the understanding of good and bad releases the potentiality for willing that naturally accompanies the human soul.

Finally, to say that the natural inclinations of man as man are those that follow immediately upon man's natural understanding of good and bad is in no way incompatible with speaking of some of these inclinations as common to man and other, non-rational beings. This is what Aquinas does in the continuation of the argument of I-II q.94 a.2; and it is perhaps one of the reasons why so many interpreters have been inclined to treat the natural inclinations as pre-rational in some way or another. But St Thomas has already made it clear that there is no reason to do so, in his earlier discussion of natural inclinations belonging to the other intellectual creatures, the angels. The entire response to the question "Whether there be natural love or *dilectio* in an angel" is worth quoting.

> Dicendum quod necesse est in angelis ponere dilectionem naturalem. Ad cuius evidentiam considerandum est quod semper prius salvatur in posteriori. Natura autem prior est quam intellectus, quia natura cuiuscumque rei est essentia eius. Unde id quod est naturae, oportet salvari etiam in habentibus intellectum. Est autem hoc commune omni naturae, ut habeat aliquam inclinationem, quae est appetitus naturalis vel amor. *Quae tamen inclinatio diversimode invenitur in diversis naturis, in unaquaque secundum modum eius.* Unde in natura intellectuali invenitur inclinatio naturalis secundum voluntatem; in natura autem sensitiva, secundum appetitum sensitivum; in natura vero carente cognitione, secundum solum ordinem

> naturae in aliquid. Unde cum angelus sit natura intellectualis, oportet quod in voluntate eius sit naturalis dilectio.[55]

The notion of a diversity of ways in which things possess natural inclination is further clarified in the article's first objection and reply. The objection is that natural love is divided against intellectual love, while the love belonging to angels can only be intellectual. The reply simply distinguishes between natural love that is merely natural, and natural love belonging to a nature that "adds to the *ratio* of nature the perfection of sense or intellect." In the reply to the second objection, he speaks of the natural inclinations in the angels as things instilled in them by the Author of nature. And in Articles 3-5 of the same question, he goes on to indicate that even the angels have some natural inclinations in common with non-intellectual, and even non-sensitive, beings.

What is there to prevent saying that even though some of man's natural inclinations are common to him and things lacking intellect and will, nevertheless they do not exist in him in the same way as in other things, but "according to his own mode"? That they do exist in him in his own mode, the mode proper to intellectual beings, is clear from a few examples. Consider the inclination toward "the conservation of one's being according to its nature."[56] In man, as opposed to things lacking intellect, this inclination takes the form of a desire to endure perpetually. Such a desire is possible only on account of intellect:

> unumquodque naturaliter suo modo esse desiderat. Desiderium autem in rebus cognoscentibus sequitur cognitionem. Sensus autem non cognoscit esse nisi sub hic et nunc, sed intellectus apprehendit esse absolute, et secundum omne tempus. Unde omne habens intellectum naturaliter desiderat esse semper.[57]

Again, the natural desire to preserve the species exists in man in such a way that it can be compatible with the decision not to exercise one's reproductive powers. Men are bound only to make sure that the preservation of the species is being taken care of by someone, and to devote themselves to some other worthy and commonly beneficial task.[58] In other words, the natural desire to preserve the species is, in man's case, an immediate and unqualified inclination toward the good of the species, and it belongs to man himself to determine the means to be applied toward the furtherance of that good; in particular, it belongs to him to regulate the inclination of his sensitive appetite, toward procreative acts, according to the role that he judges suitable for himself in contributing to the good of the species. In the other animals, the inclination toward the good of the species is not immediate or unqualified; they can be said to be inclined toward the good of the species only insofar as they are inclined toward acts that happen to be naturally conducive to that good. They do not perceive the connection between the acts and the end, and cannot determine their own role in the pursuit of the end. If a particular beast has the power to procreate, but is never moved to exercise it, there must be something wrong with it.

Of course, if it is true that the natural inclinations to which the precepts of natural law correspond actually follow upon, rather than somehow give rise to, man's natural understanding of good and bad, then it becomes necessary to explain why, or in what sense, Aquinas gives the inclinations a certain priority, using their order as the basis for inferring the order of the precepts. Again, it is his discussion of the natural inclinations of the angels that sheds light on the matter. For, remarkably enough, his way of showing the existence of certain specific natural inclinations in these incorporeal and purely intellectual beings is from the example of inclinations found in physical things lacking all cognition. In

fact, he lays this method down as a principle. *Inclinatio enim in his quae sunt sine ratione demonstrat inclinationem naturalem in voluntate intellectualis naturae.*[59]

So, it seems, the reason why he gets at the order of precepts of natural law from the order of man's natural inclinations is, first, that 'inclination' is a broader term than 'precept' and expresses something existing in both rational and irrational beings, something according to which they can therefore be compared; and second, that it is possible to get at the natural inclinations in man by way of a consideration of the natural inclinations in irrational things. Assuming that it is possible, the reason for taking this route would presumably be that, in a way, the natural inclinations in other things are more easily known than those of man. In other things, action and movement follow at once upon inclination, in a determinate manner, and in natural accordance with it; and all of their inclinations are natural. In man, on the other hand, a variety of actions and even of acquired desires follow, by way of deliberation, custom, etc. upon the same primary inclinations, and sometimes even without remaining in true harmony with them. His conduct conceals his nature nearly as often as it reveals it.

Now, what does it mean to say that the natural inclinations of merely physical beings demonstrate the natural inclinations of men and even of angels? Certainly it does not mean that all of the natural inclinations found in men and angels can also be found in things lacking cognition. Nor can it mean that all the inclinations found in non-cognitive beings can also be found in men and angels, even "in their own mode." It must mean that cognitive and non-cognitive beings can be presumed to have natural inclinations in common, just to the extent that their natures themselves have something in common. For the natural inclination of each thing is toward the good suited to it according to its nature. This is ultimately owing to the fact that all natures, corporeal and intellectual alike, fall

under the government of the eternal law, "from the impression of which they have inclinations toward their proper acts and ends."[60] Hence Aquinas is able to say

> . . . cum ea quae sunt secundum naturam sint ordinata ratione divina, quam humana ratio debet imitari, quidquid secundum rationem humanam fit quod est contra ordinem communiter in naturalibus rebus inventum, est vitiosum et peccatum.[61]

The text just quoted is only one of several in which Aquinas establishes some special moral virtue, and some rule of practical reason, by appeal to natural inclinations found in merely physical things. Sometimes, in the case of both men and angels, he does this without providing any defense of such a procedure.[62] On other occasions, he indicates that the correspondence between the natural rules of man's practical reason, together with the natural inclinations that result from them, and the natural inclinations of physical things, has an even more immediate source than their common derivation from the eternal law. This source is nothing other than reason's apprehension of the physical things themselves.

> Dicendum quod *ex rebus naturalibus ad res humanas derivatur* ut id quod contra aliquid insurgit, ab eo detrimentum patiatur. Videmus enim in rebus naturalibus quod unum contrarium vehementius agit, altero contrario superveniente; propter quod 'aquae calefactae magis congelantur,' ut dicitur in I *Meteor.* Unde in hominibus hoc ex naturali inclinatione invenitur, ut unusquisque deprimat eum qui contra ipsum insurgit.[63]

Aquinas also states this point in a more general way.

> Manifestum est quod actus humani regulari possunt ex regula rationis humanae, *quae sumitur ex rebus creatis, quas naturaliter homo cognoscit*; et ulterius ex regula legis divinae, ut supra dictum est.[64]

Practical reason does not merely correspond to nature; it imitates nature.[65] The cause of this is that all of man's rational cognition, both speculative and practical, depends in some way upon the experience of physical things provided by his senses.

> Eius autem quod *ars imitatur naturam*, ratio est, quia principium operationis artificialis cognitio est; omnis autem nostra cognitio est per sensus a rebus sensibilibus et naturalibus accepta; unde ad similitudinem rerum naturalium in artificialibus operamur.[66]

D. The meaning of the imitation of nature

These considerations seem to bring the argument back to the starting-point. The question was whether the correspondence that Aquinas proposes, between the precepts of natural law and man's natural inclinations, does not in fact constitute an implicit appeal to nature as an extrinsic authority measuring man's conduct, even an appeal to a natural acknowledgment of this authority on the part of man's reason. It was then shown that the natural inclinations of man to which the precepts of natural law directly correspond are in fact natural inclinations of his will, and that these follow upon his natural understanding of the human good rather than preceding or measuring it. But the search for an explanation for the fact that Aquinas nevertheless uses man's natural inclinations as indicators of the precepts of natural law has hit upon a teaching that seems to point to a standard which, if anything, is even more extrinsic to man than his own non-voluntary inclinations: the standard of natural corporeal things.

Thus the question seems to assert itself more strongly than ever: why should men observe a certain rule in their actions, simply because physical things do in theirs? If it be answered that it is from natural things that reason

first comes to understand the requirements of the eternal law, then man's acknowledgment of nature as a standard seems to require some degree of awareness of his subjection to the eternal law. And if the answer is that this is simply a description of how practical reason works, i.e. that the human intellect just spontaneously takes nature for its model, without needing a reason for doing so, then one may respond that reason would work this way only if it were naturally self-evident that natural things ought to be imitated, and that such a principle is hardly apparent even after some thought, let alone naturally. It may also be objected, in the spirit of Grisez and Finnis, that such a doctrine seems to make even the starting-points of practical reason to be dependent upon a good deal of speculative knowledge.

To address this problem, it would surely prove useful to find some place in which Aquinas treats the doctrine of the imitation of nature at greater length. A very helpful text in this regard is found at the beginning of the Prologue to his commentary on Aristotle's *Politics*. It hardly seems necessary to verify the compatibility of this text with the passages already cited from the *Summa theologiae*; by all accounts, the writing of the Aquinas' commentary on the *Politics* was in fact contemporaneous with the composition of the *Secunda pars*.[67] The text is as follows.

> Sicut Philosophus docet in II *Physicorum*, ars imitatur naturam. Cuius ratio est quia sicut se habent principia adinvicem, ita proportionabiliter se habent operationes et effectus; principium autem eorum quae secundum artem fiunt est intellectus humanus, qui secundum similitudinem quamdam derivatur ab intellectu divino qui est principium rerum naturalium: unde necesse est quod et operationes artis imitentur operationes naturae; et ea quae sunt secundum artem, imitentur ea quae sunt in natura. Si enim aliquis instructor alicuius artis opus artis efficeret, oporteret discipulum qui ab eo artem suscepisset ad opus illius attendere ut ad eius similitudinem et ipse operaretur. Et ideo intellectus humanus, ad

> quem intelligibile lumen ab intellectu divino derivatur, necesse habet in his que facit informari ex inspectione eorum quae sunt naturaliter facta, ut similiter operetur.[68]

The comparison made here seems to provide a clear and fairly satisfactory way of understanding the imitation of nature. The apprentice who examines the work of the master learns more than the mere form given to that work, more even than the process by which it was brought about. If this were all he knew, then at most he would only be able to follow exactly the same steps and to bring about exactly the same form; and in order to do this, or at least in order to produce a good result by it, he would have to be provided with exactly the same material and instruments as those with which the master began. The continuation of the text excludes this reading.

> Et inde est quod Philosophus dicit, quod si ars faceret ea quae sunt naturae, similiter operaretur sicut et natura; et converso, si natura faceret ea quae sunt artis, similiter faceret sicut ars facit. Sed natura quidem non perficit ea quae sunt artis, sed solum quaedam principia praeparat, et exemplar operandi quodam modo artificibus praebet. Ars vero inspicere quidem potest ea quae sunt naturae, et eis uti ad opus proprium perficiendum; perficere vero ea non potest.[69]

What the apprentice learns are certain more general rules, rules according to which the master accomplished his work, but which also apply, in proportional fashion, to the handling of the matters and the use of the instruments at the apprentice's own disposal. The apprentice is not clever enough to conceive the rules without first considering some example of their application; but what he is able to gather from that study is a knowledge enabling him to judge the example itself as something well accomplished.[70] So when he turns to his own work, it will be true in a way that he does what he does in light of the work that he saw; and

his works will in a way resemble it. But what he will primarily be attending to is not the work itself, according to its proper form, but the more general rules conceived through his encounter with it; and the likeness will consist precisely in the common conformity to these rules. His imitation of the master's work is not slavish. It is a certain share in mastery.

If this is how man's practical intellect stands in relation to natural things, then the answers to the questions raised concerning the doctrine of the imitation of nature are rather straightforward. First, there is certainly no appeal to any specially acquired science of nature, let alone metaphysics, in this doctrine. Just as in the case of the first principles of speculative thought, the understanding of the common principles of practical reason would presuppose only the confused and not yet rationally organized conceptions of natural things formed immediately out of the experience of them common to all men. It would only be necessary to add that the experience of physical things could hardly provide material for the formation of practical principles, unless those principles really can be seen to be at work in such things; that is, unless nature is, or at least naturally appears in the manner of, something teleological. It might also be added that unless this were the case, the Thomistic doctrine of the dependence of all human understanding upon sense-experience would simply exclude any actual operation of practical intellect in man.

Without going into too much detail concerning Aquinas' theory of knowledge, perhaps it would be helpful to try to give a more precise account of reason's acquisition of the first practical intelligibles from the experience of natural things. One way to approach this matter would seem to be by considering the role of form; for, according to Aquinas, the proper objects of man's intellect are the quiddities or natures existing in material things,[71] and the nature of each thing is determined by its form.[72]

Now, in saying that the natures of material things are the proper objects of the human intellect, Aquinas does not mean to exclude other sorts of things from man's apprehension. He means that whatever the intellect apprehends, it apprehends somehow in terms of or in relation to sensible things. But if its consideration can extend beyond sensible things at all, this is only because even in its original apprehension of sensible things, it apprehends more about them than what is merely sensible in them. Through its wholly immaterial way of taking on a likeness of them, it is made capable of apprehending them precisely as beings, and of knowing truth about them. This way of receiving the likeness of sensible things is owing to the presence of a light derived immediately from the first principle of all being and truth.[73] But it is the peculiar mark of the human intellect that its apprehension of being and truth is achieved only through the experience of particular, sensible instances of them.

This is true not only of its speculative, but also of its practical knowledge. Indeed, as perfections of the intellect and as true, these kinds of knowledge differ from each other only in an indirect or accidental fashion.[74] In other words, the mind's apprehension of that proper effect of the highest cause which is called "the good," like its apprehension of the effects called "being" and "truth," must be owing to the presence of this effect in the natural things of man's experience; and likewise, its formation of what are called "practical" truths, truths governing the formation of human action, in the light of the notion of the good, must presuppose the discernment of an analogous sort of truths concerning natural things themselves.[75]

That natural things, insofar as they provide the proper and connatural objects of the human intellect, do lend themselves to the apprehension of such truths, truths "in the practical mode," follows from the very fact that what the intellect is naturally formed to grasp in them is their natures or forms. For form

is not only a principle of being and truth, but also a principle of activity and motion. Indeed, the apprehension of a thing's form generally comes about through the experience of its acts and movements; the form is what gives unity and order, or intelligibility, to these. Moreover, form is a principle of activity in two ways. In one way, it is the basic perfection or actuality of a thing, thanks to which the thing has what is needed to be an agent.[76] In another, somewhat more complex way,[77] it serves as the measure or principle specifying certain acts and effects as suitable to the thing. That is, it brings it about that certain further perfections are due to the thing, i.e. belong to it or are ordered to or needed by it, for its unqualified perfection.

> Perfectum...dicitur, cui nihil deest secundum modum suae perfectionis. Cum autem unumquodque sit id quod est, per suam formam;...ad hoc quod aliquid sit perfectum et bonum, necesse est quod formam habeat, et ea quae praeexiguntur ad eam, et ea quae consequuntur ad ipsam.[78]

In this way, form is also a principle of appetite or inclination; for nothing desires anything except what it somehow needs.[79]

> Ad formam...consequitur inclinatio ad finem, vel ad actionem, aut ad aliquid huiusmodi; quia unumquodque, inquantum est actu, agit, et tendit in id quod sibi convenit secundum suam formam.[80]

The notion of good is nothing other than the notion of the due or the needed, considered as an object of appetite, i.e. as something suitable or able to be desired. And because desire or inclination is "as though a certain sort of motion toward a thing," the notion of the good is also the notion of something toward which it is suitable to act, i.e. an end.[81] Hence a thing's form is the measure not only of its being but also of its goodness. *In hoc enim consistit uniuscuiusque rei bonitas, quod convenienter se habet secundum modum suae naturae.*[82]

Thus the intellect's perfect abstraction of the forms of material things, through which it has a certain grasp of the effects following upon form as form, immediately endows it with notions under which to explain or judge the movements, the activities, and even the inclinations of those things, not only in terms of what they are or what they are capable of, but also in terms of what they need or in terms of finality. Natural things spontaneously move toward the attainment of things that they need or that perfect them; and the experience of this example of the way in which something that was not yet actual serves as a measure and explanation of what already was, is enough to allow the intellect to apprehend the general notion of such a measure, the notion of something that is good and an end. We may perhaps say, more accurately, that the observation of natural motion provides the intellect with material in which it is natural to compare the perfect to the imperfect, which motion itself brings together, and to grasp the relation between them, with the imperfect seen as for the sake of the perfect[83] or as ordered toward it or in need of it. The motion toward perfection, and hence also the tendency toward such motion, is then able to be seen as sharing in the dueness of the perfection itself, and as explained by that very dueness.

At the same time, because these notions are common, not restricted to the measurement of any one particular type of thing or action, they also provide the intellect with everything required, on its part,[84] to be not only a judge of the actions of natural things, but also a source or director of actions of its own. These notions are capable of extending beyond, and in fact tend to direct the mind's vision beyond, the particular forms of their realization to which physical agents are determined and restricted. And yet the order that reason established in the acts under its control will naturally resemble the order in the non-rational acts of natural things. For at least the primary terms under which reason's order is developed will have first been conceived out of the apprehension of those things

and for the purpose of judging them; and also, since the primary ends or due perfections of things are determined according to their primary forms, which constitute their natures, reason will also be seen to be governing in the same direction as that in which nature itself moves. But rather than simply reproducing or facilitating the non-rational, natural movements toward these goals, reason in fact picks up where nature leaves off, and goes further in the direction of what befits or is due to nature than non-rational nature itself can.[85]

The crucial distinction, then, is between what is "by" nature or spontaneous, and what is "according to" or what befits nature; and between what impedes nature and what deforms or is discordant with it.[86] In aiming at what is according to nature, reason is not being subordinated to non-rational agencies; for the natures of things are not only their chief active principles, but also their primary *rationes*, to which it is most connatural to reason to respond. This is what Aquinas means when he says that "the principles of [practical] reason are those things that are according to nature; for, with the things that are determined by nature presupposed, reason disposes of other things as it is fitting."[87] The expression "the things that are determined by nature": *his quae determinata sunt a natura*, does not refer to activities that come about naturally or in a determined fashion; it refers to the things that are determinately fitting, by comparison with nature, whether or not these things come about naturally. Practical reason begins from such things, things that are naturally due or right, simply because what is fitting to something is measured by its form, and because the primary form of a thing, and hence the primary measure, is the form giving it its nature.

Thus it is at least very misleading to say that "St Thomas denies that [a man] may voluntarily engage in any natural activity, if he does so in such a way as to prevent that activity from arriving at its natural end."[88] By "natural end," Donagan means the term that the activity will spontaneously reach, if nothing

interferes. In a way his statement is not even easy to make sense of; any activity that is voluntarily engaged in would seem to be a voluntary activity, not a natural one. Nor, as Donagan himself indicates in the same place, can it mean that one may not voluntarily use natural things in such a way as to prevent their attainment of the result that they would attain naturally, i.e. if left to themselves.[89] The only statement resembling it that seems to square with Aquinas' position is that one may not voluntarily use a thing in a manner opposed to the manner in which it is naturally suited to be used. But a use that befits something according to its nature may be something that in no way happens naturally or spontaneously. Thus speech, for instance, as a voluntary action, is neither veracious nor mendacious by nature; both lying and telling the truth are matters of choice. This is why, as Donagan says, a lying speech act "in no way tends toward truth." But the nature of speech is still such that lying is something unfitting or deformed; for an act of speech is by nature a sign or a representation of the speaker's mind, so that if he does not hold the judgment expressed in it, then it is a bad or defective sign, a *mis*-representation.[90]

However, if Donagan overstates the role that Aquinas attributes to non-rational nature in setting boundaries of reasonable conduct, Finnis understates it. In the principle that one must always act according to nature, reason is not the only relevant nature.[91] Indeed, in the order of generation, the grasp of the natures or *rationes* of other things precedes the grasp of reason's own nature; and all the natural *rationes* of things are principles of fittingness or dueness.

Of course, on this account, in order to direct human action, reason will also have had to form some conception of the due perfections or needs of man himself.[92] It will require some apprehension of man's own form, some understanding of human nature. Again, there is no question here of a spontaneously acquired, demonstrative science of human nature. It does not even imply the capacity to formulate a clear and distinct real definition of man.[93] It implies

only the capacity to think in terms of his nature.[94] Is there any great difficulty with attributing to men generally the capacity to think in terms of the three-fold order of things that Aquinas lays down in his account of the order of the precepts of natural law? This would mean only that everyone naturally has some notion of what a substance is; of what it is to be alive or an animal, as well as of male and female, parent and offspring; of reason, at least to the extent that everyone is able to see the point of speech; and of the fact that all of these things belong to man. The primary precepts of natural law, then, will be formed under the consideration of the various needs to which these attributes, to the extent that they are understood, immediately give rise, and according as it is self-evident that what something needs is good for it, or suitable for it to desire and to do or pursue.[95]

It appears, then, that there is a two-fold reason why Aquinas so often appeals to the natural inclinations of physical things in establishing the existence of a certain moral virtue or moral principle. One reason is his general conviction that men and physical things belong within a common, universal order, and that to the extent that man resembles physical things, the actions and inclinations suited to him will also resemble theirs. The other reason is more properly ethical, insofar as the first proximate principle and measure of moral things is reason. The thought seems to be that the manifest presence of a certain order of action in the common world of nature is of itself sufficient grounds for attributing the understanding of that order, and of the rule measuring it, to natural reason; and hence this rule may at once be said to be a universal moral rule.

E. The immediacy of man's subjection to the eternal law

Clearly, this way of understanding reason's imitation of nature does not entail positing a naturally known principle to do what nature does. For one

thing, the intellect is certainly not deliberately turning toward nature in order to find out how to act; its gaze is naturally turned there. And more importantly, the physical things themselves are not quite what constitute reason's standard. The standard is grasped somehow in the things or from the experience of them, but also as something by which they themselves can be explained or judged. It measures the very things in whose presence it is first conceived. The intellect remains superior to all merely physical things by its very capacity for such a conception. For if this conception depends upon sense experience, it is still possible only because what the senses provide is not the only, or even the chief, cause involved. The principal cause is the intellect's own natural light, which is derived immediately from God.[96] And "nothing subsisting is greater than the rational mind, except God."[97]

Even less does the doctrine of reason's imitation of nature imply a natural explicit awareness in man of his subjection to the eternal law. This is not necessary, because the primary criteria of truth, to which he is naturally inclined to refer his judgments, are conceived by his intellect owing to its possession of a light that is in some way already proportioned to the "eternal reasons";[98] and the first things that he is apt to judge are likewise formed in accordance with those reasons. A man sees all things in light of the eternal law, before he sees it or even knows that it exists.

There seems to be no doubt that for Aquinas, the formation of first principles of practical reason in the human intellect does somehow depend upon the apprehension of natural things and their activities. It is in relation to the experience of such things that man's mind first conceives the common notions upon which depend all intellectual judgment and all reasoning, both speculative and practical. Even the primary notion governing practical reason, the notion of the good, is formed in this way. This is in part simply because it is toward natural things that the mind's attention is first turned, so that its natural appetite for

truth is first of all an appetite for the truth concerning such things. But it is also because the notion of the good does have application to the field of natural things as encountered in common experience. Through this experience the intellect is therefore immediately enabled to form judgments of action in relation to an end, i.e. judgments in the practical mode. Also, because the physical things commonly experienced act in a variety of ways suited to attaining various particular ends, the intellect is also naturally provided with material in which to apprehend several specific kinds of ends and several specific rules for practical judgment. This natural attainment of a capacity for practical judgment constitutes an ability actually to direct and initiate action, just to the extent that the needs that the intellect is naturally led to apprehend are needs of man himself, and to the extent that he is naturally formed to desire what he understands to be his good.

In none of this account is nature presented as a source of practical principles in the manner of an authority. Nature does not play the role of a governing agent, whose movements it is reason's task merely to follow uncritically or without judgment. Nature serves as a source of the formation of practical principles only in two ways; first, in the manner of something material, i.e. as that concerning which the principles are first conceived and used; and second, in the manner of an instrument, insofar as the things themselves are formed under the action of divine providence, according to the measure of the eternal law, and insofar as the experience of them terminates in the mind's acquisition of a certain likeness of the eternal law, through the action of a light derived from the eternal light. The only agent naturally governing the human intellect, or whose order is impressed upon the mind naturally, as something which the mind is intrinsically inclined to follow and without first being judged by the mind as a suitable measure, is God.[99]

This consideration, however, suggests that the reason why nature, either in the sense of external physical things, or in the sense of man's own non-

voluntary inclinations, cannot play the role of a standard of human conduct, is not precisely that it is something extrinsic to the human intellect. In a way this is true, if it means that it is alien or unnatural to the intellect to be simply subordinate to such things. But the reason why this is unnatural would seem to be the very fact that these things are in a way not extrinsic enough. Like the intellect itself, they are only parts of reality, only particular kinds of beings.[100] The intellectual powers have priority in the human soul and superiority over all physical powers precisely because through them, a man is ordered toward the reception of the forms of things outside of himself, and toward adjusting his movements to them, to the highest degree. *Quanto enim potentia est altior, tanto respicit universalius obiectum.*[101] Because the intellect's act extends to the whole of reality, no mere part of being is sufficiently universal in its agency to comprehend fully the intellect's potential, or to impress its order upon the intellect naturally and irresistibly. Only the agent that is active in relation to the whole of reality is capable of this, and nothing else can move the intellect except insofar as it somehow shares in or mediates the action of that agent.[102]

But the intellect is not merely able to be acted upon by God; it must be, before it can initiate any action of its own. The human intellect is passive before it is active.[103] Its superiority over physical agencies does not consist in being less passive than they are;[104] nor does the freedom of the actions that it initiates, as compared to the determined character of natural activities, imply that it does not intrinsically and necessarily tend toward conformity with a measure established for it by something outside itself. Rather, both its superiority and its freedom spring primarily from the fact that its subordination to the universal cause of being and to the universal good is something immediate.

> Sola autem natura rationalis creata habet immediatum ordinem ad Deum. Quia ceterae creaturae non attingunt ad aliquid universale, sed solum ad aliquid particulare, participantes divinam bonitatem vel in essendo tantum, sicut inanimata, vel etiam in vivendo et cognoscendo singularia, sicut plantae et animalia: natura autem rationalis, inquantum cognoscit universalem boni et entis rationem, habet immediatum ordinem ad universale essendi principium.[105]

In virtue of this immediacy, both what the human mind receives, and what it does, belong to an order higher, as more universal, than that of any merely physical thing; and also in virtue of this immediacy, it is not subject to a necessary tendency with respect to any merely partial end or good.[106] It is free with respect to any other member of the community of the universe, owing to its immediate relation to the community's prince.[107]

The conclusion drawn in Chapter Three still seems to stand. Even if the precepts of natural law do not first win the mind's assent under the consideration of any authority, they do win its assent authoritatively, or in the manner of things originating from authority, things ordered by a governing principle. It is true that a man's practical use of them, as principles with which to direct action, is limited to the particular agents that fall under his control; but nevertheless the order of things due and undue that they express is universal. It is an order by which the acts and movements of all men, all animals, and even all beings, each in its own way, are measurable; and it is as something universal in this way that it naturally falls within man's consideration, and is expressed in precepts of natural law. But if its universality, from which its absolute or categorical character seems to derive, shows it to be something prior to and measuring any determination of man's will, it also shows that it is an object of apprehension, something gathered through the theoretical act called "understanding," before it is a principle of

practical judgment. To say otherwise would be either to make the human intellect the principle of all things whatsoever, or else to deny the true applicability of this order to the things of which the human mind is not the principle, including the very thing called "man." This would be very problematic indeed, if the first opportunity for apprehending it is the example of things already complying with it, not through any apprehension of their own, but solely in the manner of nature, *per modum naturae*, as reliable instruments of instruction.

NOTES

1. "The Scholastic Theory" p.336.

2. "The Scholastic Theory" p.334.

3. See e.g. II-II q.65 a.1 ad 1[m].

4. Quoted from Richard Robinson in "The Scholastic Theory" p.335.

5. See I q.83 a.1 ad 5[m].

6. I-II q.71 a.1.

7. I-II q.94 a.2 (my emphasis).

8. See I-II q.94 a.1 *Sed contra*.

9. I-II q.71 a.2 ad 3[m].

10. I-II q.94 a.2 ad 2[m].

11. I-II q.94 a.4 ad 3[m].

12. Gilson p.266 (my emphasis). Thus Aquinas is sometimes accused of vacillating between the "order of nature" and the "order of reason" as the standard for moral conduct. See John Mahoney, *The Making of Moral Theology*: *a Study of the Roman Catholic Tradition*, Clarendon Press (Oxford 1987) p.110 n.142.

13. Richard Brandt, "The Morality and Rationality of Suicide," in James Rachels, ed., *Moral Problems* (New York, 1979) p.470, quoted in Douglas Flippen, "Natural Law and Natural Inclinations," *The New Scolasticism* LX.3 (Summer 1986) p.284 (hereafter Flippen).

14. Grisez, "The First Principle of Practical Reason" pp.357-358. Also *A Grisez Reader for Beyond the New Morality*, (New York 1982) pp.165-167.

15. Flippen pp.290 & 312, attributes a similar role to natural inclination. He differs from Grisez in holding that nevertheless reason's specification of the human good comes about by way of a comparison between the objects of inclination and human nature, understood speculatively; through this comparison are grasped the basic elements of man's true perfection "according to the kind of being he is."

16. Finnis p.33.

17. Finnis p.34.

18. Finnis pp.35-36.

19. Finnis p.94.

20. Finnis p.403.

21. Of course, one might distinguish between non-deliberate passions or acts of the sensitive appetites, and the natural inclinations of the sub-rational powers toward their proper objects. The latter are presumably good and right as far as they go. But in themselves these inclinations are not "felt"; they are perceived only by way of the understanding of these powers' proper functions. And it would still belong to reason to direct these powers in such a way that their inclination toward their proper object is exercised in the manner that suits the good of the whole man; one aspect of this direction would be the training of the powers so that the movements spontaneously elicited from them, i.e. their passions, are habitually right.

22. Finnis p.95.

23. See the quotation from Grisez above, pp.147-148.

24. I-II q.59 a.5.

25. I q.60 a.1 ad 3^{m}.

26. II-II q.108 a.2 (my emphasis).

27. See Maritain, *Man and the State*, University of Chicago Press (Chicago 1951) pp.89-94 (hereafter *Man and the State*); "Du savoir moral," *Revue Thomiste* 82 (1982) 533-549; "On Knowledge through Connaturality," *The Review of Metaphysics*, IV.4 (June 1951) pp.473-481 (esp.477-480).

28. *Man and the State* p.92.

29. See I-II q.56 a.3: cum . . . prudentia sit recta ratio agibilium, requiritur ad prudentiam quod homo se bene habeat ad principia huius rationis agendorum, quae sunt fines, ad quos bene se habet homo per rectitudinem voluntatis, sicut ad principia speculabilium per naturale lumen intellectus agentis. Et ideo sicut subiectum scientiae, quae est ratio recta speculabilium, est intellectus speculativus in ordine ad intellectum agentem, ita subiectum prudentiae est intellectus practicus in ordine ad voluntatem rectam.

30. Thus the will needs no habit or virtue in order to be inclined toward the rational good: *de ipsa ratione voluntatis, cum sit "in ratione" . . . est quod tendat in id quod est bonum secundum rationem, ad quod ordinatur omnis virtus, quia unumquodque naturaliter appetit proprium bonum*. (I-II q.56 obj.1)

31. I q.21 a.1 ad 2^{m}: *bonum intellectum* [*est*] *obiectum voluntatis*; I q.82 a.4 obj.3: *nihil velle possumus nisi sit intellectum*; in the reply, *omnem . . . voluntatis motum necesse est quod praecedat apprehensio*. Also I-II q.8 a.1: *ad hoc . . . quod voluntas in aliquid tendat, non requiritur quod sit bonum in rei veritate, sed quod apprehendatur in ratione boni*.

32. I-II q.9 a.1 ad 2[m]. Properly speaking, what always depends on the will is not practical intellect , but practical reasoning. In explaining Aristotle's statement that the good of the practical intellect is the true in conformity with right appetite, he says

> *Philosophus ibi loquitur de intellectu practico, secundum quod est consiliativus et ratiocinativus eorum quae sunt ad finem; sic enim perficitur per prudentiam. In his autem quae sunt ad finem, rectitudo rationis consistit in conformitate ad appetitum finis debiti. Sed tamen et ipse appetitus finis debiti praesupponit rectam apprehensionem de fine, quae est per rationem.* (I-II q.19 a.3 ad 2[m]. See also I-II q.58 a.5 ad 1[m].)

Practical reasoning depends upon the will both as providing the material with which it is concerned, viz. "what a man wants to do," and as moving its exercise, "since from the fact that a man wants an end, he is moved toward deliberating about the things that are for the sake of the end." (I-II q.14 a.1 ad 1[m].)

33. I q.82 a.4 ad 3[m]. This is one reason why the first principles of practical intellect cannot possibly be commands issued by the intellect itself; for these always presuppose some act of the will. (See above, Chapter Three n.18, on I-II q.17 a.5 ad 3[m]. In this text, it is important to distinguish the "ordination" of reason, which is a kind of acting and moving, from the apprehension of reason.) St Thomas' view seems to be that the first conformity of the will to the direction of the practical intellect comes about, not through any command by the intellect, but by a kind of "natural result." On this notion, see I q.77 a.7 ad 1[m].

34. See I-II q.10 a.1 obj.2 & reply. Another way to say this is that the will is a moved mover. *Appetibile apprehensum per intellectum est movens non motum*; *appetitus autem movens motum*. (I q.82 a.4 obj.2; see also I q.80 a.2.) *Et hoc modo intellectus est prior voluntate*, *sicut motivum mobili*, *et activum passivo*; *bonum enim intellectum movet voluntatem*. (I q.82 a.3 ad 3[m].)

35. These considerations would explain why St Thomas speaks of judgment by connaturality only in connection with certain acquired or infused dispositions of the intellect. The acts pertaining to such dispositions, in contrast with those of the intellect's primordial or natural dispositions, may in some cases be preceded and moved by the will. Thus prudence depends on moral virtue, which makes it connatural to man to judge rightly about the particular ends of his actions (I-II q.59 a.5); the gift of wisdom depends on charity, through which it is connatural to him to judge according to divine truth (I-II q.45 a.2); and the "pronunciation of what is just" depends on the virtue of justice, through which it is connatural to judge justly (I-II q.60 a.1).

36. This is how Grisez reads it: Grisez p.356-358.

37. See I q.5 a.4 ad 1[m]: appetitus est quasi quidam motus ad rem.

38. It may sound strange to speak of explaining the self-evidence of a self-evident proposition, especially to those who accept Grisez's and Finnis' account of the "underivability" of the first principles of practical reason. Obviously such propositions are "underivable" in the sense of indemonstrable; but this does not mean that there is no "foundation" for them (see *quod* ***fundatur*** *supra rationem boni*) or that there is no explanation for the connection between the subject and predicate in such propositions, as though it were just a brute fact that reason cannot help assenting to them. The explanation lies in the definitions of the subject and the predicate. It is even possible to go so far as to say that even self-evident propositions have principles, namely, the terms of which they are composed. And even in the practical order, the intellect is passive with regard to the understanding of terms; in Grisez's phrase, it is reality that "calls the turn" as far as judgments following immediately upon the terms are concerned.

39. This consideration provides further grounds for rejecting the notion that the first principles of practical reason are precepts or commands issued naturally by reason itself. For commands always concern the acts of agents subject to the control or government of the commander; but no man is by nature governor of the whole human race, able to dictate what any man must do. At the same time, there is no reason why these principles should not spontaneously give rise to certain commands concerning acts over which a man does naturally have control, namely, his own; to the extent that a man naturally perceives the human good to be his own good, and naturally desires it, he naturally dictates the pursuit of it to himself. But rather than constituting a principle of natural law, such a dictate must be considered a natural use or application of a principle. (See I-II q.90 a.2 ad 1[m].) Indeed, it would be the most connatural use.

40. I-II q.94 aa.4-6.

41. See I q.83 a.1 ad 5[m]; I-II q.51 a.1; I-II q.63 a.1; I-II q.94 a.4 ad 3[m].

42. See I-II q.71 a.2.

43. I-II q.71 a.2. See I-II q.94 a.2 ad 2[m]. It appears then, that to know precepts of natural law implies a natural knowledge not only of things that are good and suitable for men generally, but also of the priority, or more fundamental dueness, of such things over anything that befits oneself or another merely according to his particular disposition or circumstances. See I-II q.94 a.4 ad 3[m]:

    sicut ratio in homine dominatur et imperat aliis potentiis, ita oportet quod omnes inclinationes naturales ad alias potentias pertinentes ordinentur secundum rationem. Unde hoc est apud omnes communiter rectum, ut secundum rationem dirigantur omnes hominum inclinationes.

    On the priority, even as regards an individual's good, of what pertains to the nature of the species in him, see I q.60 a.5 ad 3[m]. The thought seems simply to be that the good of each thing is the perfection of its being, and that what is most fundamental to the being of each thing is that in virtue of which it is what it is.

44. See I q.80 a.1 ad 3m: unaquaeque potentia animae est quaedam forma seu natura, et habet naturalem inclinationem in aliquid. Unde unaquaeque appetit obiectum sibi conveniens naturale appetitu. Supra quem est appetitus animalis consequens apprehensionem, quo appetitur aliquid non ea ratione qua est conveniens ad actum huius vel illius potentiae, utpote visio ad videndum et auditio ad audiendum; sed quia est conveniens simpliciter animali. See also Ramirez p.224: voluntas est appetitus essentialis totius hominis inquantum homo est, quia consequitur animam humanam quae est forma propria totius hominis ut homo est. . . .Naturaliter ergo homo vult esse et vivere secundum triplex genus vitae vegetativae, sensitivae, et rationalis.

45. I-II q.10 a.1. This means that a man naturally wants all of his parts to thrive, but he may not naturally know what the thriving of a given part consists in; indeed, there are some parts whose very existence he does not naturally know, but has to discover.

46. I-II q.94 a.4 ad 3m.

47. I q.80 a.2 ad 2m.

48. I q.79 a.12 *Sed contra*. This text also lends an extremely interesting qualification to the general principle that practical reason by itself is not sufficient to incline toward action, but requires some determination from the will, because reason bears equally upon opposites. (See I q.14 a.8.) This principle pertains only to the determination, or selection, of a special or particular effect from among several that all possess, or appear to possess, the general feature toward which reason naturally or determinately inclines. Of course, since every action is a "particular effect," the principle as stated above is accurate. Reason does not, by itself, incline in a manner sufficiently determinate to accomplish action. But it certainly does incline.

49. III Suppl. q.41 a.1 (=*In IV Sent*. d.xxvi qu.1 a.1.).

50. I-II q.94 a.5 ad 3m.

51. II-II q.57 a.3 ad 2m.

52. I q.79 a.11 ad 1m.

53. See I q.80 a.1. More accurately, it is through the understanding of something as an end that a man is first capable of having inclinations of which he himself is a source, through this very understanding; and it is what comes about according to this sort of inclination that is called 'voluntary.' In other words, it is this sort of inclination, and this alone, that belongs to what is called the 'will.' See I-II q.6 aa.1-2.

54. See I-II q.17 a.5 ad 3m.

55. I q.60 a.1 (my emphasis). I am grateful to Fr. Lawrence Dewan for calling this, and the other texts from the treatise on the angels used below, to my attention. See I-II q.10 a.1 ad 1m: quia voluntas in aliqua natura fundatur,

necesse est quod motus proprius naturae, quantum ad aliquid, participetur a voluntate; sicut quod est prioris causae, participatur a posteriori. Est enim prius in unaquaque re ipsum esse, quod est per naturam, quam velle, quod est per voluntatem. Et inde est quod voluntas naturaliter aliquid vult.

56. I-II q.94 a.2.

57. I q.75 a.6.

58. See II-II q.152 a.2 ad 1^{m}.

59. I q.60 a.5.

60. I-II q.91 a.1.

61. II-II q.130 a.1. The article concerns whether presumption is wrong, and continues as follows:

Hoc autem communiter in omnibus rebus naturalibus invenitur, quod quaelibet actio commensuratur virtuti agentis, nec aliquod agens naturale nititur ad agendum id quod excedit suam facultatem. Et ideo vitiosum est et peccatum, quasi contra ordinem naturalem existens, quod aliquis assumat ad agendum ea quae preferuntur suae virtuti.

For a similar line of reasoning, see II-II q.104 a.1. In II-II q.31 a.3, he even makes the remarkable statement that "grace and virtue imitate the order of nature, which is instituted from divine wisdom."

62. See e.g. II-II q. 133 a.1 (on pusillanimity): illud quod contrariatur naturali inclinationi est peccatum, quia contrariatur legi naturae. Inest autem unicuique rei naturalis inclinatio ad exequendam actionem commensuratam suae potentiae: ut patet in omnibus rebus naturalibus, tam animatis quam inanimatis.

Again, see II-II q.108 a.2 (on *vindicatio*): patet quod virtutes perficiunt nos ad prosequendum debito modo inclinationes naturales, quae pertinent ad ius naturale. Et ideo ad quamlibet inclinationem naturalem determinatam ordinatur aliqua specialis virtus. Est autem quaedam specialis inclinatio naturae ad removendum nocumenta: unde et animalibus datur vis irascibilis separatim a vi concupiscibili. (This should be read together with the quotation from I-II q.87 a.1 on p.165.)

See also II-II q.2 a.3; II-II q.104 a.1; II-II q.104 a.4. Concerning the angels, see I q.60 aa.3-4.

63. I-II q.87 a.1 (my emphasis).

64. I-II q.74 a.7 (my emphasis).

65. I q.60 a.5.

66. Aquinas, *In 8 libros Physicorum commentaria* L.II lect.iv #6 (Romae 1884) t.II p.65b.

67. See James Weisheipl, *Friar Thomas d'Aquino*, Doubleday & Co. (Garden City 1974) pp.361, 380-381.

68. *In pol.*, *prologus*, p.A70.

69. *In pol.*, *prologus*, p.A70.

70. That is, he is able to judge them with what Aquinas calls a "practical" judgment, as "a superior judges of an inferior," as to "whether it ought to be so or not." (I-II q.93 a.2 ad 3[m].)

71. I q.84 a.7.

72. Unumquodque [est] id quod est, per suam formam. (I q.5 a.5.)

73. See I q.84 a.6 ad 1[m,] together with I q.16 a.2; I q.79 a.4.

74. I q.79 a.11.

75. These truths can only be "analogous" with practical truths because none of the truths concerning natural things can be practical strictly speaking; for the human mind is not in a position to make its apprehension the principle of natural things and motions. But it must be capable of apprehending and judging those things in the manner in which a director or governor would judge them, i.e. as things that "ought to be so or not" (I-II q.92 a.3).

76. Unumquodque, inquantum est actu, agit. (I q.5 a.5.)

77. On the notion of good or of final cause as more complex than, and so naturally subsequent to, the notions of a being and an agent, see I q.5 a.4; also I-II q.14 a.5 on reasoning from the end as an analytical process.

78. I q.5 a.5. On the due as what is ordered to something in the manner of a need, see I q.21 a.1 ad 3[m]. In this context, need should not be confused with lack. Having what is needed does not take away the need.

79. *Omnia appetunt suam perfectionem*. (I q.5 a.1.) To say "their own" (*suam*) perfection is to say the perfection that they "ought to have" (*debet habere*: I q.5 a.1 ad 1[m]). (On one's own as what is due to it, see I q.21 a.1 ad 3[m].) This means that every good, insofar as it is good, is something that ought to be. Nor is this merely because 'good' means what ought to be desired. In fact, it would be just as correct to say that 'good' means what is able to be desired. Nothing is able to be desired by any subject, unless it somehow share in the nature of some perfection that the subject ought to have. As for the fact that men sometimes desire things that they should neither desire nor have, it is only necessary to distinguish between what is due to them without qualification, and what is due only in a certain respect. (See I-II q.19 a.1 ad 1[m]; I-II q.78 a.1.)

80. I q.5 a.5.

81. I q.5 a.4 ad 1[m].

82. I-II q.71 a.1.

83. See II-II q.64 a.1.

84. The only other requirement is on the part of man's appetitive capacity. He must be capable of having inclinations formed or elicited through the very understanding of things as appetible or good for him.

85. Ars imitatur naturam, et supplet defectum naturae in illis in quibus natura deficit. (III *suppl.* q.57 a.1=*In IV Sent.* d.xlii qu.2 a.1.)

86. See I-II q.71 a.2. ad 2[m]. Virtue is "according to nature" in the sense that it "inclines toward that which befits nature," not in the sense that it exists by nature; vice is "contrary to nature" in like manner.

87. II-II q.154 a.12.

88. "The Scholastic Theory" p.333.

89. See II-II q.64 a.1; II-II q.65 a.1.

90. II-II q.110 a.3.) Of course, to the extent that the nature of speech is something that reason naturally grasps, it would also be true in a way to say that there is a natural tendency, in reason itself, toward veracious speech; it requires a special circumstance, and some effort, for a man to decide to lie, at least until he has become an habitual liar. But this does not mean that truthful utterances will come about by nature, as opposed to by choice; it is still up to the speaker to select an utterance that represents his mind faithfully, as distinct from one that does not.

91. Finnis p.36.

92. Appetitus nihil aliud est quam quaedam inclinatio appetentis in aliquid. Nihil autem inclinatur nisi in aliquid simile et conveniens. Cum igitur omnis res, inquantum est ens et substantia, sit quoddam bonum, necesse est ut omnis inclinatio sit in bonum. (I-II q.8 a.1.) Quod autem aliquid videatur bonum et conveniens, ex duobus contingit; scilicet ex conditione eius quod proponitur, et eius cui proponitur. (I-II q.9 a.1.)

The principle of likeness, of course, is form.

Would it be possible to interpret the "natural inclinations" discussed in I-II q.94 a.2 as natural needs? This would be far more satisfactory than treating the inclinations as sense-impulses. But it still has one or two difficulties. First, it is not clear that man knows naturally everything that he naturally needs or that is naturally due to him. Another term for 'due,' or '*debitum*,' is '*ius*' (I q.21 a.1 ad 3[m]); and Aquinas makes a special point of noting that not everything that is naturally just is something whose justice is naturally apparent to man. Some even requires revelation. (II-II q.57 a.2 ad 3[m]. See also I-II q.100 a.11.) If *ius naturale* is something "contained," in a secondary way, in the *naturale iudicatorium* of human reason (I-II q.71 a.6 ad 4[m]), this can only be in the manner in which the particular or special is contained in the general or common.

The other objection is simply that, as the first quotation in this note indicates, the notion of need and the notion of inclination are not the same. Something is needed insofar as without it, that which needs it will be imperfect. Need is a principle or a cause of inclination. Something desires a thing, or tends toward the possession of it, only because it somehow needs it; and it may need it without yet desiring it. Of course, nothing prevents a particular desire from causing a particular need, the need to satisfy the desire. But on the whole, need comes first. So the natural inclinations mentioned in I-II q.94 a.2 must be genuine inclinations, and must follow upon the natural understanding of the human good; and this understanding must follow upon man's natural needs, though only to the extent that he naturally apprehends them.

93. See I q.85 a.3 ad 2^{m} & ad 3^{m}.

94. The denial that the precepts of natural law depend on any speculative apprehension, on the grounds that they are self-evident, is simply a failure to understand what self-evidence is. Self-evidence only rules out the kind of dependence with which a conclusion depends on premises, i.e. the dependence of something reasoned to. But just as the understanding of a self-evident truth depends upon the understanding of its terms, so the understanding of its terms may very well depend upon, or imply, the understanding of prior, simpler terms. In this way all practical truths depend upon the understanding of the term 'good,' and the understanding of 'good' depends upon the understanding of 'being' and 'true.' (I q.16 ad 4 ad 2^{m}.) This would seem to be because the notion of the good is the notion of the appetible, which notion requires the capacity to consider things as though not yet had (see I q.19 a.2; I q.59 a.1); and the capacity to consider what is not requires the discernment between a real thing and its mere likeness, which discernment is formed under the notion of 'being' and constitutes the apprehension of 'true.' (I q.16 a.2; I q.84 a.6 ad 1^{m}.)

The same point may be reached by way of Aquinas' characterization of the difference between practical and speculative intellect as merely "accidental." (I q.79 a.11.) Both the one and the other apprehend their objects under the notions of 'being' and 'true.' (I q.79 a.1 resp. & ad 2^{m}.) The only difference is that what practical reason apprehends, it applies to the direction of action; and this comes about simply because the apprehension of its distinctive object, the operable good, has its own distinctive, "directive" mode (I q. 79 a.1 ad 1^{m} & 2^{m}). It should be stressed that the notion of the good is the very cause of this "mode of apprehension." And the understanding of things as a human goods depends upon, and is proportionate to, the understanding of what it is to be human.

95. Presumably the notions of the goods pertaining to the various levels of beings will fall into the intellect in a certain order, beginning with the most common. (See I q.85 a.3.) This fact, together with the fact that the common is prior to the special, not only in the order of understanding, but also in the order of time and generation (I q.85 a.3 ad 1^{m}), seems to suggest that the order of precepts of natural law that Aquinas lays down in I-II q.94 a.2 is eminently practical, in two ways. First, as prior in understanding, the rules pertaining to the more common levels will be more deeply rooted in practical reason, and so have a firmer hold on man's appetite. Secondly, as prior in the order of gen-

eration, the goods pertaining to the more common levels will be the necessary conditions of, and hence intrinsically more urgent than, those of the more special ones. Moreover, it is simply not true that the notion of an order of precepts plays no part in Aquinas' handling of particular ethical questions (see Finnis p.94). To take just one example, he argues for the permissibility of using lethal force to defend oneself against attack, when no lesser force will suffice, on the grounds that "a man is more bound to provide for his own life than for the life of another." (II-II q.64 a.7.) This is not the same as saying that it is permissible to act directly against an aggressor's life, i.e. to go out of your way to kill him, in order to save your own; Aquinas rules that out. There are other ways of conceiving the ranking of the precepts besides that of making one of them to be grounds for violating another.

96. See I q.84 a.6 resp. & ad 3[m].

97. I q.16 a.6 ad 1[m].

98. See I q.84 a.5. Perhaps the simplest way to explain the derivation of the primary criteria of truth from the eternal reasons is to say that the proper object of intellect is being. See I q.84 a.6 ad 1[m].

99. See I q.105 a.3: cum ipse [Deus] sit primum ens, et omnia entia praeexistant in ipso sicut in prima causa, oportet quod sint in eo intelligibiliter secundum modum eius. Sicut enim omnes rationes rerum intelligibiles primo existunt in Deo, et ab eo derivantur in alios intellectus, ut actu intelligant; sic etiam derivantur in creaturas, ut subsistant. Sic igitur Deus movet intellectum inquantum dat ei virtutem ad intelligendum, vel naturalem vel superadditam; et inquantum imprimit ei species intelligibiles; et utrumque tenet et conservat in esse.

100. On the human intellect as a "particular thing," see I q.82 a.4 ad 1[m].

101. I q.78 a.1.

102. I q.79 a.2.

103. "Passive" and "active" here are meant in comparison with the intellect's object, not in reference to the relation between the agent and possible intellects. The point is that the intellect's act does not bear upon things of which it is itself the cause, without having first apprehended things of which it is not the cause, nor without thinking in terms of such things.

104. See I q.79 a.2 ad 3[m].

105. II-II q.2 a.3. This "immediate order toward God," which is natural to man, is not the same thing as that "subjection" to God which first comes about through faith. (See above, Chapter Three, pp.106-107.) To say that man has an immediate order toward God means that he only reaches his end in some attainment of God Himself, not in the attainment of something merely derived from Him or something which in turn is ordered toward Him. But through faith, God becomes not only the end toward which man's life is directed but also the primary object with which his mind is concerned. Faith enables man

to judge not only in a light emanating from and reflecting the first truth, but also through attending to the first truth itself, by having "heard," and discerned the authority of, the Word in which that truth is expressed.

106. See I q.82 a.2 ad 2[m]; I-II q.10 a.1 ad 3[m]. Indeed, since the practical operation of man's reason extends only to the governance of himself and of other men to whom he can communicate his orders and who are willing to accept them, that operation must be judged to be not only dependent upon the passive and theoretical operation of the intellect, but also of an inferior order; for in its theoretical work, the mind is capable of bearing upon the whole of reality, and even upon the first principle of the whole. See I-II q.3 a.5 resp. & ad 3[m].

107. See II-II q.57 a.4.

CHAPTER 5

THE OBLIGATORY FORCE OF NATURAL LAW

At the beginning of the investigation into the meaning of the expression 'natural law,' in Chapter Two, it was noted that Aquinas begins his analysis of the essence of law in general from the essential effect from which law gets its Latin name, the effect called 'obligation.' *Lex enim dicitur a ligando, quia obligat ad agendum.*[1] The account of the legal character of natural law would therefore not be complete without some study of the obligatory force of natural law. This study will aim to resolve the conclusions already reached, concerning natural law's unqualified possession of the nature of law, into the principle from which the definition of law was generated.

In light of the finding that the expression 'natural law,' in its most elementary sense, seems to mean law naturally promulgated, the consideration of the obligatory quality of natural law takes on an even greater interest. Natural law gets its name from the fact that it is promulgated through God's very "insertion" of it into the minds of men as something "to be naturally apprehended."[2] What makes this point significant with respect to the question of obligation is the close connection that Aquinas draws between the promulgation of law and the obligatory quality proper to it.

> Ad hoc quod lex virtutem obligandi obtineat, quod est proprium legis, oportet quod applicetur hominibus qui secundum eam regulari debent. Talis autem applicatio fit per hoc quod in notitiam eorum deducitur ex ipsa promulgatione.[3]

A man cannot be ruled and measured according to the law unless it is promulgated to him; and the very substance of law is to be something according to which men are ruled and measured. Natural law is law as it exists in someone ruled and measured by the eternal law. Presumably, then, natural law is that through which man is naturally subject to the obligation of the eternal law.

The article on promulgation also provides very clear evidence that St Thomas does in fact attribute obligatory force to natural law. It even suggests that he regards natural law as obligatory "to the highest degree." As may be gathered from the second and third objections of this article, he treats the obligatory character of law as a rather more evident feature of it than its need of promulgation. These two objections raise doubts as to the need to include promulgation in the definition of law, and do so on the ground that the obligatory force of law does not require that it be promulgated. Nowhere does he doubt that law is something obligatory; and so close is the connection between law and obligation for him that he wants the definition of law to include only those principles that are indispensable for bringing about the obligatory force of law.[4] But if this is so, then the statement *lex enim naturalis maxime habet rationem legis*, in the first objection in the article on promulgation, leaves very little doubt as to his view of the obligatory force of natural law. He might as easily have said *lex enim naturalis maxime obligat*.

A. The nature of obligation

As it happens, there is no thematic treatment of obligation in the *Summa theologiae*, although it is mentioned there in a few places. Some of the references to obligation in the Treatise on Law have been noted in Chapter Two.[5] In these references, Aquinas was found to present obligation as a certain way of moving someone according to a rule, a work of regulating and measuring his actions. Obligation is also touched upon in a few other places in the *Summa theologiae*, though only very briefly. Happily, however, St Thomas did take up the subject in a rather detailed way in one of the articles in his early *Quaestiones disputatae de veritate*. Of course, this early account of the nature of obligation

can be assumed to express the view that he held at the time of writing the *Summa theologiae*, only if it is not explicitly or implicitly contradicted there. The research for the present study has uncovered no such contradiction; and therefore, for reasons of economy, instead of beginning from the texts on obligation in the *Summa theologiae* and judging the *De veritate* analysis in light of them, the following investigation will begin at once with an interpretation of the *De veritate* text, while noting the comparable *Summa theologiae* passages, and resolving any apparent discrepancies, at the appropriate places.

In Question 17, Article 3 of the *De veritate*,[6] Aquinas raises the question "Whether conscience binds." He arrives at an affirmative answer, namely that conscience binds "with the force of divine precept," by way of an analysis of binding and its place in voluntary action. A somewhat condensed account of this analysis should suffice for the present purposes.

The term 'binding' (*ligatio*), he says, is applied to spiritual or voluntary things by way of a metaphorical derivation from bodily things. To bind something is to restrain it or to prevent it from moving out of its place. Binding therefore implies necessity, or the impossibility to be otherwise, e.g. to be in another place. Moreover, the necessity that it implies is an imposed necessity, one arising from something outside the thing subject to that necessity, some restraining principle. Things that are subject to necessity from themselves, for instance fire as subject to the necessity of tending upward, are not said to be bound according to that necessity. Binding has place only in necessity imposed on one thing by another.

Aquinas then distinguishes between two sorts of necessity that can be imposed from outside: the necessity of coercion, or sheer physical force, and hypothetical necessity or necessity on the supposition of an end, "as when it is imposed on someone that if he does not do this, he will not obtain his reward." Since the simply coerced or forced is directly opposed to the voluntary, the

binding of voluntary acts can only be according to hypothetical necessity. Hypothetical necessity is the only kind of necessity that is both able to be imposed and compatible with the voluntariness of the act to which the necessity belongs.[7]

Now 'to bind' denotes a certain action, an imposition; and just as in the binding of corporeal things, the imposition of hypothetical necessity upon human acts also comes about through a certain action. This action is the command of a superior. *Actio autem qua voluntas movetur est imperium regentis et gubernantis*.

However, it is not sufficient that the governor make a command, in order that his subjects be bound by it. Again just as in corporeal things, the action of one thing actually binds another only through contact with it. The "contact" between the governor's command and his subjects comes about through a reception of knowledge of the command by the subjects. "Whence it is that no one is bound by some precept except by way of knowledge of that precept." A man is not obliged to do what is commanded unless he knows, or at least could and should have known, the command. From this consideration St Thomas concludes that conscience, which is nothing other than the application of the knowledge of divine precept to the judgment of an act, binds with the force of divine precept.

There are at least three important inferences to be drawn from this analysis of obligation. The first is something stated explicitly in the third objection, namely, that no one binds himself. The one who binds is always the someone superior to the one who is bound, someone governing him. If conscience, which is a judgment of the rightness or wrongness of a man's act issuing from his own reason, binds him, it is only because it is a judgment formed in the light of something that is not his, not originating from his own reason, namely, the command of God.[8]

This position squares with the earlier conclusion, that the imposition of natural law cannot be understood to be the work of man's own reason, granted

that it is through or by means of his own reason that this work is brought to completion in him. Neither can it be from reason itself that natural law obtains its binding power. Just as Aquinas' account of law leaves no room for autonomy, strictly taken, in the case of natural law,[9] so his account of obligation leaves no room for a doctrine of moral obligation in the sense of an obligation imposed upon man by his own reason.[10] If there is any such thing as moral obligation in Aquinas' thought, it must either mean "obligation" in a very qualified sense,[11] or refer to an obligation imposed by God to act according to the standards of morality, i.e. according to right reason.[12]

The second implication of Aquinas' analysis of obligation is that obligation is not simply identical with some kind of coercion, even the kind that is compatible with voluntary acts, the coercion of fear.[13] To say that a man is obliged to do something is to say only that he cannot omit it without losing some good or suffering some evil. Such a connection, between performing an action and avoiding something undesirable, can remain intact, whether or not the action is something that the agent finds repugnant. No one has been coerced or forced to do something unless what he does is at least in some respect involuntary. But someone can do what he is obliged to do with perfect voluntariness. Aquinas makes this clear in his discussion of the precepts of charity. The second objection to the fittingness of the existence of any precept of charity is that "charity...makes us free....But obligation, which is born from precepts, is opposed to liberty; for it imposes necessity."[14] The reply is that "the obligation of a precept is not opposed to liberty except in him whose mind is averse to what is commanded; as is evident in those who observe commands from fear alone. But the precept of love cannot be fulfilled except from one's own will. And therefore it is not opposed to liberty."[15]

In other words, the law does not cease to be obligatory merely because the obligation is not the sole motive that the agent has for fulfilling the law. Although what makes the commanded act obligatory is that it has some undesirable consequence attached to its omission, a man need not be performing the act merely from fear of that consequence. Rather than identical with a certain sort of coercion, obligation must be said to give rise to coercion when the fear that it induces is the agent's sole motive for complying with it. The obligatory force of law still exists even if this or that agent does not need to be coerced into obedience, just as the fear of punishment can still exist even when a man wants to obey his superior not only because he will be punished if he does not, but also, and even primarily, because it is wrong not to do so, or because he loves his superior.[16] The law always has the power to coerce when necessary,[17] but the exercise of this power is not always necessary.

The immediate significance of this distinction, with respect to the obligation of the precepts of natural law, is that there is at least no incompatibility between the position that the precepts of natural law are essentially obligatory, and the position that man's primary motive for assenting to and obeying these precepts is not their obligatory force. When a man first acknowledges the necessity of observing the precepts, it is not merely in view of avoiding some undesirable consequence. As already seen, Aquinas holds that the precepts of natural law first win the assent of man's intellect just in virtue of themselves, not in virtue of any premise, least of all a premise concerning some evil consequence to be expected for failing to fulfill them. Likewise, he holds that the natural inclinations of man's will are in perfect harmony with the precepts of natural law, for the simple reason that the natural inclinations and the precepts originate from the same source: the natural understanding of the human good.

Besides, to say that man is first moved to fulfill the natural law by fear would yield an infinite regress. The fear of something presupposes the desire for something else, which the thing feared opposes. Hence the judgment that one ought to perform the act required in order to avoid the thing feared, presupposes the judgment that the thing desired ought to be pursued and that what opposes it ought to be avoided. In other words, if the first principles do not precede all principles formed merely on the basis of an awareness of obligation, then they are not really first.

But this conclusion presents no obstacle to the claim that the principles nevertheless are obligatory. It does not even oppose the claim that the awareness that they are obligatory is simultaneous with the very understanding of them. Of course, neither does it provide any direct support for these claims.

The third implication to be drawn from the analysis of obligation concerns the character of the hypothetical necessity, or necessity of the end, that is involved in obligation. Necessity of the end is the impossibility that something be otherwise if some end is to be attained. But the last portion of Aquinas' analysis seems to restrict obligation to a very specific kind of necessity of the end, by restricting the end at stake to a very specific kind. An action is obligatory when it is required for the attainment of an end, not in any way whatsoever, but in the manner of something without which the end cannot be merited. In other words, what makes an action obligatory is not that without it, the agent cannot produce the end; what makes it obligatory is that without it, the agent's end will be withheld or withdrawn from him by the action of his superior.[18]

Some readers will perhaps regard the restriction of obligation to the realm of reward and punishment as too redolent of "voluntarism." Finnis certainly does. He wants to hold, instead, that Aquinas regards obligation as nothing other than a certain sort of rational necessity for a certain sort of end, namely,

hypothetical necessity for the common good. That is, he makes 'obligatory' all but synonymous with 'due' or 'owing.'[19]

Now, to be sure, this sort of necessity must be a condition of obligation, since nothing can become obligatory or lawful which is not conducive to the common good; the obligatory is always something due, and these notions, when taken in their unqualified senses, are perhaps even convertible. But none of the texts of St Thomas presents obligation as simply identical with duty; he consistently speaks of obligation as something pertaining to the subjects' liability to their superior's sanction, a liability brought about by his voluntary act of imposing an order toward the common good upon them by his command. This imposition does indeed make their fulfillment of the order to be something that they owe, a duty; but its character as a duty, rather than identical with its character as an obligation, is merely the source of it. Because they owe the fulfillment of this order, their failure is liable to reprisal from the one to whom they owe it.[20]

The basis for reading the *De veritate* text in this way is not merely the example of hypothetical necessity that Aquinas provides: "if he does not do this, he will not obtain his reward"; nor is it merely that he ascribes obligation to the command of a superior. The really decisive point is his assertion that no one is bound to do something unless the precept to do it is made known to him. This means that if he is not yet apprised of the command, then his failure to comply with it cannot yet give rise to the loss of his end. This condition makes sense only with regard to actions that attain their end by way of merit. In the case of ends directly produced by the required action, it makes no difference whether or not the agent knows, or even could and should have known, the precept to perform it. Failure to perform the action will obstruct the attainment of the end in either case. Someone invincibly ignorant that he should not eat toadstools will still die from eating them. His ignorance does not absolve him. Only when the

man's end is something to be obtained as a reward for complying with the precept, or lost as a punishment for not complying, does the necessity of complying presuppose that the precept has been made known to him.

In fact, a few questions later, Aquinas states explicitly that it is always with respect to punishment and reward that someone is said to be bound to anything. And in the most strict sense, he says, what we are bound to do is what we cannot fail to do without incurring punishment:

> dupliciter ad aliquid tenemur. Uno modo, sic quod si non faciamus, poenam incurremus, quod est proprie ad aliquid teneri....Alio modo dicimur ad aliquid teneri, quia sine hoc non possumus finem beatitudinis consequi; et sic tenemur ut aliquid ex caritate faciamus, sine qua nihil potest esse aeternae vitae meritorium.[21]

This account provides the only way in which to make sense out of one of the texts on obligation in the *Summa theologiae* that Finnis tries to adduce in support of the view that Aquinas regards obligation as rational necessity for the common good. The text is II-II q.58 a.3 obj.2 & reply. The question is whether justice is a virtue, and this objection argues that virtue is something meritorious, but justice is not meritorious, because what is necessary is not meritorious, and the act of justice, rendering another his due, is necessary. The reply distinguishes between the necessity of simple compulsion, which is incompatible with the will, and necessity "from the obligation of a precept, or from the necessity of an end, namely, when someone cannot attain the end of virtue unless he does this. The latter does not exclude merit; such an action still merits, to the extent that it is done voluntarily.[22] Clearly the expression "end of virtue" here means what is merited by virtuous action. The reply means that the act of justice is called 'necessary,' not as opposed to 'meritorious'; nor as required for the common good, which is not even mentioned; but as that without which merit itself is impossible.

Perhaps it even means "that without which the avoidance of punishment is impossible." The mere performance of the just act keeps one free of demerit and punishment, but positive merit also requires that the performance be voluntary, i.e. arise not merely from the fear of punishment but also from the love of justice.[23] The text gives no basis at all for separating obligation from merit and demerit.

The *Summa theologiae* also provides more direct support for this point. We noted in Chapter Two that for Aquinas, the obligatory force of law is really nothing other than the specific form taken by its work of regulating or ordering or setting boundaries with respect to which a lawbreaker is called a 'transgressor': *omnis lex obligatoria est, ita quod qui eam non servant, transgressores dicuntur.*[24] But what is the effect of being a transgressor of the law? It is nothing other than punishment, as several texts show.

> Actus enim peccati facit hominem reum poenae, inquantum transgreditur ordinem divinae iustitiae.[25]
>
> Quicumque...transgreditur praeceptum legis, meretur poenam.[26]
>
> Qui honorat patrem, licet non habeat caritatem, non efficitur transgressor huius praecepti, etsi sit transgressor praecepti quod est de actu caritatis, propter quam transgressionem meretur poenam.[27]
>
> Homo faciens praecepta legis dicitur vivere in eis, quia non incurrebat poenam mortis, quam lex transgressoribus infligebat.[28]

This restriction of obligation to the sphere of merit and demerit, reward and punishment, provides a clear explanation of the need for law to be promulgated *ad hoc quod lex virtutem obligandi obtineat.* If 'obligation' meant any kind of necessity of the end whatsoever, then it would be difficult to see why a

law should become something obligatory only once it has been promulgated. For the promulgation of the law often presupposes a certain necessity of the end.

> . . . praeceptum legis, cum sit obligatorium, est de aliquo quod fieri debet. Quod autem aliquid debeat fieri, hoc provenit ex necessitate alicuius finis. Unde manifestum est quod de ratione praecepti est quod importet ordinem ad finem, inquantum scilicet illud praecipitur quod est necessarium vel expediens ad finem.[29]

This is the other text that Finnis adduces to show that Aquinas treats the notion of obligation as identical with the notion of a rational necessity of means to the common good. But if anything, the text shows just the contrary. Finnis' reading would mean that the reason why the action that the law concerns "ought to come about" is that this action is "obligatory," i.e. "necessary or expedient for the end," the end being some aspect of the common good. But, first of all, the inclusion of the term '*expediens*' implies that the notion of "what ought to come about" extends beyond what is strictly necessary. Several alternatives may be expedient for the end, and then it is up to the legislator himself to choose; and nevertheless, the precept that follows upon his choice is strictly obligatory. His subjects have no choice but to follow it, if they are to attain their end.

Moreover, what Aquinas calls obligatory here is not the action commanded by the law, as though the action were commanded because it is already obligatory; instead, what he describes as obligatory is the command itself. The term 'obligatory' refers primarily to a quality of precepts, and only secondarily to actions dictated by precepts. Of course it is not the precept that makes the commanded action to be necessary or expedient for the common good; rather it is the necessity or expediency of the action that leads the legislator to order his subjects to that action, and to do so in a binding way. Its necessity or expediency for the end is what makes the action something due or something that "ought to come

about"; and its dueness is in turn the reason why it is dictated in an obligatory way, i.e. in the manner of a legal precept. What the text means is that legal sanction is something proportioned to the dueness of the action sanctioned. If the action were not somehow required for, or at least conducive to, the legislator's end, he would not bother to insist upon its performance.[30]

Prior to its promulgation, a law exists in the legislator's mind as the expression of an order of actions that are necessary or expedient for his subjects to perform, in view of the common good. It is once he has judged an action to be necessary or expedient for the common good that he proceeds to bind his subjects to the performance of it by commanding it.[31] If obligation gave rise to any sort of necessity of the end whatsoever, then it would seem that what the law commands ought to be regarded as obligatory by the mere fact that it is required for the common good, whether or not the legislator has yet commanded it. But if the necessity proper to obligation is necessity for obtaining a reward or, in the strictest sense, for avoiding a punishment,[32] then the need for the actual enunciation of the command, i.e. the need for promulgation, is patent. If a man has no way of knowing the order that his superior has conceived, then his failure to follow it can hardly earn the infliction of evil upon him by his superior. To earn or merit something for one's act requires that the act be voluntary,[33] but invincible ignorance is opposed to voluntariness.[34]

B. Punishment

The *De veritate* text treats obligation as a kind of action, by which it is imposed upon a voluntary agent that unless he act in a certain way, he either cannot obtain some reward or, more properly, cannot avoid some punishment. This action takes the form of command, which is "the action by which the will is

moved." The command's obligatory force comes into effect when it has been made known to the one to be obliged. However, the text does not elaborate upon what kind of knowledge about the command the subject needs to have in order to be brought under the command's obligatory force.

This is obviously a central issue in the matter of man's natural knowledge of the eternal law. This natural knowledge of divine command precedes the knowledge of the existence of the commander, his authority, and his act of command. It contains only a general acknowledgement of the order commanded as a due measure of acts. As seen in Chapter Three, these facts present no real obstacle to the view that the understanding of the first principles of practical reason serves as an adequate instrument to bring man's will somehow under the action of God's eternal command. But does it do so in a way that makes man immediately or naturally liable to punishment for disobedience, and so make him subject to obligation properly so called, in accordance with the *De veritate* text?[35] To answer this requires a look at Aquinas' notion of punishment and its relation to command.

A certain account of punishment is to be found within the very treatise on law in the *Summa theologiae*, in the question on the "effects" or "acts" of law. Numbered together with command, prohibition and permission, the work of punishment is attributed to law according to its nature as a means whereby the law induces obedience to itself. *Id autem per quod inducit lex ad hoc quod sibi obediatur, est timor poenae; et quantum ad hoc, ponitur legis effectus punire.*[36]

However, if taken in isolation, this discussion of punishment would be somewhat misleading with regard to Aquinas' understanding of its essential function. Punishment is not only a kind of medicine, an "accidental spur to moral progress"[37] that the law requires insofar as those subject to it are not moved by its intrinsic rectitude or by the authority of its maker. If this is the only function that Aquinas mentions in the treatise on law, the reason is that he

is looking upon what the law does according to what is required for the achievement of its proper result, "to make men good."[38] The law makes men good by inducing obedience to itself; and it is formed to win obedience, first, through consisting in a proposition framed in the manner of something calling for obedience, i.e. a *dictamen per modum praecipiendi*; and second, through possessing something whereby those who should obey are led to assent to this proposition, namely, punishment or sanction. But this motivating function that belongs to punishment, as an object of fear, is not the sole or even original reason for its existence. To punish first belongs to the law in virtue of the very nature of punishment itself, not in virtue of some mere effect such as fear. Not only the work of inducing obedience, through inspiring a fear of certain consequences of disobedience, but also the work of actually effecting those consequences, even apart from any fear that they might inspire, belongs to the law's task of ruling and measuring.

Aquinas sets forth this more intrinsic reason for punishment earlier on in the *Summa theologiae*, within his discussion of the "effects of sin" in the *Prima secundae*. The question is whether the "debt of punishment" (*reatus poenae*) is an effect of sin. Its analysis of punishment is worth quoting in full.

> Dicendum quod ex rebus naturalibus ad res humanas derivatur ut id quod contra aliquid insurgit, ab eo detrimentum patiatur. Videmus enim in rebus naturalibus quod unum contrarium vehementius agit, altero contrario superveniente; propter quod 'aquae calefactae magis congelantur,' ut dicitur in I *Meteor*. Unde in hominibus hoc ex naturali inclinatione invenitur, ut unusquisque deprimat eum qui contra ipsum insurgit. Manifestum est autem quod quaecumque continentur sub aliquo ordine, sunt quodammodo unum in ordine ad principium ordinis. Unde quidquid contra ordinem aliquem insurgit, consequens est ut ab eo ordine et principe ordinis deprimatur. Cum autem

> peccatum sit actus inordinatus, manifestum est quod quicumque peccat, contra aliquem ordinem agit. Et ideo ab ipso ordine consequens est quod deprimatur. Quae quidem depressio poena est.[39]

Punishment is not something merely tacked on to the order that it serves to defend. It is a natural and intrinsic accompaniment of order, insofar as it belongs to the very nature of order to oppose its contrary, which is disorder. To punish is nothing other than a particular way of engaging in the work of ordering, the way that must be taken when the thing to be ordered somehow resists or deviates from the order proposed. To impose an order upon someone, for instance through a precept of law, is by that very fact to expose him to the risk of repression for anything that he does outside the boundaries that define the order. Perhaps it could even be said that if there is no such risk, then the order has not really been imposed upon him; there is nothing tending to order him according to it.

It is particularly suggestive that the repression of disorder is said to be a consequence of the order itself, *ab ipso ordine*. In keeping with the notion that the tendency to resist disorder is intrinsic to any order, Aquinas sometimes speaks of the law itself as performing the work of punishment.[40] Of course, taken strictly, this is metonymy; law is not an agent but something by which or according to which an agent acts. Nevertheless it is quite accurate, if understood to mean that law itself calls for punishment or directs or inclines toward punishment. One implication of this consideration is that the repressive or retributive function of punishment is not so very far removed, after all, from its function of inducing obedience or of providing a motive for the fulfillment of the law.

Punishment serves as a motive for obedience insofar as it is something expected and feared as a response to disobedience.[41] But evidently the expectation of punishment for disobedience follows naturally upon the very

perception of one's subjection to the order defining what is obedient and what is disobedient. No one, it seems, can truly understand that he ought, of necessity, to follow a certain course of action, and yet be ignorant that in deviating from it he runs the risk of suffering some evil at the hands of the principle under whose order this course of action is required.

Conversely, until he grasps, or at least can and should grasp, the order as something by which he is ruled and measured, a man will not only expect no punishment for transgressing it; he will not even be liable to such punishment. For his transgression will not be voluntary, whereas, properly speaking, punishment is a reply to voluntary disorders.[42] Or rather, he will not even be capable of transgression, in any act that may be genuinely attributed to him as a whole, i.e. any human act. Until he is able to know the law, a man cannot obey it or disobey it except indirectly and materially;[43] he cannot act against the law or break the law, for the simple reason that he has not yet come into contact with it. Although it is a measure, it has not yet become a measure for him, and his acts are not yet fit to be judged according to it. Conforming his acts to the order of the law is not yet something due from him; his acts cannot be described as right or wrong by comparison with it.[44]

Now because a man, as a man, acts from a determination of reason, his acts are subject to order through the apprehension of reason; and because he is subject to order through the apprehension of reason, the way in which an order orders him is by means of some judgment: his own, insofar as he himself acts according to the order, or at least some other's, insofar as he is brought to order by way of suffering something in compensation for having done something disordered. The order and its principle cannot adequately respond to his conduct by way of some physically determined procedure, because the relation between anything physically determined and something initiated by reason is always somewhat indefinite.[45] The response must

spring from something correspondingly rational.[46] Hence Aquinas says that "to punish wrongs pertains to judgment" and that "the law punishes on the basis of judgment."[47]

Of course, the kind of judgment on the basis of which an order punishes is practical judgment, judgment concerning "whether something ought to be so or not," in the manner "according to which a superior judges of his inferior."[48] It is this judgment that "carries with it a certain compulsion" or has coercive force.[49] It belongs to him to whom the order itself belongs.

> Ille qui iudicium fert legis dictum quodammodo interpretatur, applicando ipsum ad particulare negotium. Cum autem eiusdem auctoritatis sit legem interpretari et legem condere, sicut lex condi non potest nisi publica auctoritate, ita nec iudicium ferri potest nisi publica auctoritate, quae quidem se extendit ad eos qui communitati subduntur.[50]

However, this restriction of punitive judgment to public authority does not mean that such judgment belongs only to the legislator himself. It means that it belongs only to someone who, by the legislator's own order, of course, participates in the legislator's authority, and has some share in the legislator's own grasp of the intention of the law[51] and in his control over the distribution of goods and evils in the community according to the law. To punish belongs to the "minister of the law."[52] What is proper to the legislator is to institute the punishments to be administered, together with the very order of judicial authority entrusted with their administration.

It is noteworthy that Aquinas attributes a certain punitive quality to the very act of judging itself. That is, when a judge condemns some crime, his condemnation not only calls for some punishment, but also serves as a kind of punishment in its own right.

> Aliud est iudicare de rebus, et aliud de hominibus. In iudicio enim quo de rebus iudicamus, non attenditur bonum vel malum ex parte ipsius rei de qua iudicamus, cui nihil nocet qualitercumque iudicemus de ipsa....Sed in iudicio quo iudicamus de hominibus, praecipue attenditur bonum et malum ex parte eius de quo iudicatur, qui in hoc ipso honorabilis habetur quod bonus iudicatur, et contemptibilis si iudicetur malus.[53]

Of course, this text is chiefly concerned with the judgment that one man, especially a public authority, passes on the conduct of another, and with the consequent esteem or scorn in which the one judged is held by others. But the good of esteem, and the harm of scorn, do not consist merely in their effects on a man's dealings with others, e.g. his opportunities for employment or friendship. There is also a natural desire for the esteem of others that springs, not from a man's estimation of its usefulness in promoting his standing among his fellows, but from his natural wish to consider himself excellent, his natural wish for self-esteem, for which the esteem of others provides a ground.[54] This point will be of interest in the treatment of the punishment that properly accompanies the first principles of each man's own practical judgment.

C. Punishment and command

From these considerations of Aquinas' understanding of punishment, it should be readily apparent that, in general, the act of command is sufficient of itself to bind those who receive it, on pain of sanction, to the action commanded; and the knowledge of the command that they must have, in order to be bound by it, is nothing other than an understanding of the order expressed in the command as a true measure of their action. First of all, the actual infliction of

punishment for disobedience to the command is really nothing other than a continuation of the ordering that the command itself initiates. Just as the command, of itself, produces a certain impulse toward the action that it concerns, so too it gives rise, of itself, to a tendency to suppress anything resisting or opposing that action. This tendency is nothing but a certain aspect of the command's imposition of order toward the action. Furthermore, as a kind of enunciation, command serves to make its order known to those who are to act upon it. It thereby imposes its order in the manner suited to a measure of voluntary acts, and makes those who receive it truly fit to be judged according to the order, and to receive reward or punishment accordingly, as a matter of justice.[55]

Even more, by making it known to the subjects that a certain course of action is due from them or required of them, command also makes their very liability to punishment to be apparent to them; for, according to the text quoted from I-II q.87 a.1, it is naturally self-evident to everyone that every order and principle of order ought to, and in fact does, tend to redress any disorder that opposes it. In this way the command immediately sets to work the motivating function of punishment, bringing to the subject's own consideration the necessity that the command itself institutes: hypothetical necessity in relation to things obtained or forfeited by way of merit or demerit.

Of course, this does not mean that the risk of punishment is the reason why obedience to the order is due from someone who has received the command. The case is just the reverse. If it is true that the legislator makes certain things to be obligatory, through his law, because they are necessary for, or due to, the common good,[56] it is also true that what makes these things to be due from anyone subject to the law is this same fact of their necessity for the common good. But the point to be stressed is that nothing can be required of them, by comparison with the common good, nor can any participation in the common good be required by them, until they are given a determinate place

within the community[57] and until the furthering of the common good is made somehow dependent upon them. But it is by a foundational act of legislation that those subject to him first participate in the order of things required for the common good.[58] Hence, by making certain things to be due from them, for the sake of the common good, the law simultaneously makes these things to be obligatory for them, i.e. makes their omission of these things to be liable to retributive harm from whomever has care of the community. The due and the obligatory are distinct in notion, but they are convertible, at least whenever what is due from someone is first determined by an extrinsic principle.[59]

But, as seen in Chapter Three, there is nothing that is due from creatures, or to them, that is not made so primarily by the command of God instituting the whole order of the universe. This is why St Thomas says that those who resist some good that befits them, according to their nature or status, are justly punished by God.[60] The deliberate failure to tend to one's proper good is of itself contrary to the order of the universe and its principle, and so immediately earns divinely ordained reprisal.

> Totum quod homo est, et quod potest et habet, ordinandum est ad Deum; et ideo omnis actus hominis bonus vel malus habet rationem meriti vel demeriti apud Deum, quantum est ex ipsa substantia actus.[61]

D. Natural law and punishment

The text from I-II q.87 a.1 makes it clear that the rule that wrongdoing ought to be punished belongs to natural law itself: *ex rebus naturalibus ad res*

humanas derivatur.[62] Natural law directs man to inflict punishment for the violation of any order over which he has supervision. But through natural law man is also made subject to a certain order, the order that constitutes reason's natural share in the divine order of the eternal law. Hence it may be expected that there is some punishment which springs in some way directly from natural law, in reaction to whatever deviates from its order. This expectation is fulfilled in the continuation of I-II q.87 a.1.

> Unde secundum tres ordines quibus subditur humana voluntas, triplici poena potest homo puniri. Primo quidem enim subditur humana natura ordini propriae rationis; secundo, ordini exterioris hominis gubernantis vel spiritualiter vel temporaliter, politice seu oeconomice; tertio, subditur universali ordini divini regiminis. Quilibet autem horum ordinum per peccatum pervertitur, dum ille qui peccat, agit et contra rationem, et contra legem humanam, et contra legem divinam. Unde triplicem poenam incurrit, unam quidem a seipso, quae est conscientiae remorsus, aliam vero ab homine, tertiam vero a Deo.

A certain punishment for wrongdoing is inflicted by the wrongdoer's own reason. Aquinas calls this punishment the "remorse of conscience." Of course, conscience is not the same thing as either the first principles of practical reason or the habit of the soul to which the understanding of these principles is attributed: *synderesis*. Properly speaking, conscience is neither a general rule of action nor the understanding of a rule, but a certain use or application of a rule. Conscience is a judgment of action in the light of some practical principle or principles.[63] Aquinas divides such judgment into three kinds. The first is that by which we are conscious of having performed or not performed some kind of action. This is conscience as "bearing witness." The second is the judgment by which we determine that we ought or ought not to perform some proposed action. This is conscience as "binding" or

"instigating." The third is a judgment of some action already performed, as to whether or not it were well done or right. This is conscience as either "excusing" or "accusing." Another name for the accusation of conscience is 'remorse.'

The remorse of conscience, then, is nothing but a certain kind of judgment of one's own act, the judgment that it was bad or wrong. But this judgment can still be directly attributed to natural law, as to the first principles from which it proceeds. This is why the name 'conscience' is sometimes even applied to the habit of those principles; causes are sometimes named by their effects.

> Proprie loquendo, conscientia nominat actum. Quia tamen habitus est principium actus, quandoque nomen conscientiae attribuitur primo habitui naturali, scilicet synderesi; sicut Hieronymus, in *Glossa* Ezech. I, "synderesim" conscientiam nominat; et Basilius "naturale iudicatorium"; et Damascenus dicit quod est "lex intellectus nostri." Consuetum est enim quod causae et effectus per invicem nominentur.[64]

It is also true, of course, that the judgment of one's act is usually informed by much knowledge in addition to what properly belongs to *synderesis*. But all additional practical knowledge is intelligible to us only in the light of what is in *synderesis*, and it is from *synderesis* that conscience has its force and finality.

> Habitus...ex quibus conscientia informatur, etsi multi sint, omnes tamen efficaciam habent ab uno primo, scilicet ab habitu primorum principiorum, qui dicitur synderesis.[65]

So the punishment inflicted upon a wrongdoer by his own reason, for a violation of reason's order, derives its whole force from the first principles of that order, which constitute natural law. Remorse of conscience is the punishment proper to natural law. It is the reaction, against the violation of the order

contained in natural law, that springs directly from the order itself and from the principle according to which this order exists in the manner of something natural: the natural light of the human intellect. Obviously, a man may also be punished in other ways for doing something against natural law, insofar as this also violates human or revealed divine law. In fact, since natural law is wholly derived from the eternal law, to whatever extent his action is contrary to natural law, it is also contrary to divine law and offensive to God. But the punishments inflicted by reason are one thing, and those inflicted by God, another.[66]

It should be noted that Aquinas does not hold that the rule informing the accusation of conscience is always something considered as a command of God. Sometimes this is true; but the rule may also be taken from some virtuous purpose other than obedience to God. Even atheists have conscience.

> Dicendum quod ratio, quando apprehendit aliquid ut malum, semper apprehendit illud sub aliqua ratione mali; puta quia contrariatur divino praecepto, vel quia est scandalum, vel propter aliquod huiusmodi.[67]

The eternal law or the first truth is not always the proper object of the knowledge informing the judgment of conscience. The first truth becomes a proper object of human cognition only through faith.[68]

Neither, of course, is the rule that informs conscience something considered as the expression of a mere personal preference. Rather, what is common to all accusations of conscience, and in general, to all judgments of the second and third kind, is that the rule employed is considered as dictating something that is good and due, or prohibiting something that is bad and undue, according to truth.[69] This is consistent with its direct derivation from the first principles of practical reason, whose proper effect is to bring man's mind to bear upon the

"proper" object of practical reason as a whole, which is truth concerning the operable good.[70] Conscience is simply the application, to some act, of that understanding by which man "has a natural inclination toward a due act and a due end," together with any knowledge acquired in the light of this understanding.

The reason why every violation of conscience is contrary to the eternal law and offensive to God is simply that all knowledge of truth is from the incommutable truth of God, which is the very eternal law.[71]

> Cum conscientia sit actus proveniens ex habitu naturali ipsius synderesis, dicitur conscientia ex divina immissione esse, per modum quo omnis cognitio veritatis quae est in nobis, dicitur esse a Deo, a quo principiorum primorum cognitio nostrae naturae est indita.[72]

The knowledge informing the judgment of conscience always includes the object of *synderesis*, namely, the human intellect's first practical intelligibles; and through these intelligibles, "as in a mirror," the judgment of conscience is in fact "resolving" the things judged into the first truth, presenting them in a light derived from it and conforming them to it.[73]

Now, what is it that makes the accusation of a man's conscience, his judgment that he has done something wrong or undue, painful to him? It is its opposition to the very "inclination toward a due act and due end" that the natural understanding of the first principles of practical reason elicits. This is the same as the natural inclination toward virtue, which, Aquinas says, must remain present "even in the damned," since "otherwise there would not be in them the remorse of conscience."[74] Because it is through the intellect that a man is naturally inclined toward living virtuously, he also naturally desires to know himself to be living virtuously; and so the very judgment, that he is not, opposes his desire and hurts him. The inclination by opposition to which this judgment is painful is

itself derived from the very principles of the judgment. Here is a remarkable instance of punishment as something intrinsic to the order that it defends: the act of repressing what opposes the order expressed by reason consists in nothing other than the manifestation of that opposition.[75] This manifestation is in turn nothing other than a continuation of reason's expression of its order, now in relation to some action deviating from it.

But does the remorse of conscience truly exhibit all of the characteristics of a punishment? It certainly comes about in answer to voluntary action, and by means of a judgment. It is also something that the one judged suffers involuntarily, to the extent that he would prefer to judge himself to have acted well, but cannot, being constrained by the evidence and by principles over which he has no control.[76] Moreover, with respect to the motivating function of punishment, the accusation of conscience is something that a man can foresee and fear to the very extent that he is actually liable to such accusation; for he is liable to the extent that he has understood the rule informing the accusation, and the accusation itself springs from this very understanding. By knowing that he ought to do something, he is immediately aware that he will regret it if he does not.[77]

Of course, a wrongdoer can to some extent avoid this regret. One way is by refusing to think about what he has done. This is perhaps not always completely possible, since to some degree reason acts spontaneously, and the judgment of conscience does not always require any deliberate effort of examination; but even to the extent that avoidance of it is possible in this way, a man achieves it only by falling into another punishment, the inability to live with himself or to face the truth about himself.[78]

The other way would be by his making use of the considerable flexibility that reason exhibits in contingent matters, such as action, in order to change his opinion about what is right and wrong, or even about what he has actually done,

so as to justify his action. Again, this is not always possible, insofar as some practical truths are self-evident and some acts fall immediately under these truths;[79] and perhaps this self-deception must always involve some element of refusal really to face oneself. But to some extent it does calm the mind; one feels nothing. Still, this does not prove that the remorse of conscience is not really a punishment; a punishment does not cease to be a punishment merely because it can be evaded, and there at least remains the trouble involved in evading it. All it really proves is that reason, as a creature, has only a finite capacity to enforce its government or to maintain its order in everything that ought to be subject to it.

The final condition of any true punishment is that it derive from the authority of the law. *Punire non pertinet nisi ad ministrum legis, cuius auctoritate poena infertur.*[80] The consideration of the manner in which the remorse of conscience fulfills this condition will serve to return us to the question of obligation, which is also something proper to law, and so to conclude this chapter.

E. Obligation and the first principles of practical reason

There is surely little difficulty in determining the mere question whether, within the Thomistic outlook, the punishment inflicted upon a wrongdoer, by the judgment of his own reason, may be properly regarded as the effect of a legal institution. The order of reason, from which this punishment takes its immediate origin, is something erected through the institution of God's eternal law. Remorse of conscience may therefore be regarded as one of the means by which God's eternal command binds or obliges man to the fulfillment of the order expressed in the command. The communication of this order to man, through the instilling of the natural light of reason, brings it about that it is necessary for man to comply with the order on pain of reason's reproach, which

the natural light itself gives him a natural inclination to avoid. This hypothetical necessity belongs within an order of merit and demerit, reward and punishment; for the end in view is something that a man's action attains or loses, not by way of directly producing or failing to produce it, but by way of being judged and found worthy or unworthy of it.[81] Also, reason's office of judge over human acts enjoys the stability suited to a legally instituted juridical order. Even if a man's conscience can be seriously obscured or distorted, it can never be simply overthrown, so long as he is capable of voluntary acts at all. No one ever acts voluntarily without some perception that his action is either good or bad, right or wrong.

What requires closer consideration is the way in which to characterize reason's own work of mediating the eternal law's obligatory force to man. The judgment and punishment of wrongdoing must not be attributed to the wrong-doer's own reason in such a way that the action called "obliging" is attributed to it. As was seen in the *De veritate* text, the obliging agent must always be extrinsic to the one obliged.

Punishment for the violation of an order is a work belonging to an agent to whom the order itself somehow belongs, a principle of the order. But he need not be the first principle of the order. Whereas the first principle of a legal order is the legislator, the one who judges and punishes violations of the law may be only a minister of the law. Nothing prevents the legislator from delegating some share of his care of the community to a subordinate. Sometimes such delegation extends so far as to authorize the subordinate to frame certain laws of his own, though always in accordance with the superior's law. At other times, it authorizes only the work of judging actions by reference to the law. But even to judge according to the law is in a way to be a principle of the law, insofar as it involves the task of interpreting and applying the law. Yet it is to be only a secondary principle; for the judge's authority to interpret and apply the law is itself the effect of a legal institution.

In contrast to the action of judging and punishing according to the law, the action of obliging belongs solely to the one who makes the law. It is he who, by promulgating the law, imposes the necessity that unless the members of the community act in a certain way, they shall be punished. That is, he alone is the cause of the very connection between obeying the order contained in the law and avoiding punishment. The judge does not cause this connection; his work begins only once the connection has already been effected. He serves only as an instrument of its execution. The erection of his office is part of the very work of establishing the connection, and his duties are defined according to it. He is no more the cause of the order's obligatory force, which is really the same as its legality, than he is the cause of himself.[82]

In exercising the office of conscience, then, a man's reason is serving as a minister of the law imposed upon him by God. Reason's possession of this office is itself the effect of divine institution. In a way, then, reason does serve as a principle of this law, but not as a principle enacting the law and making it obligatory. The law framed by God is handed over by Him to a man's reason for the task of regulating his actions in accordance with the law, or for interpreting and applying the law in relation to his particular circumstances. And part of installing reason in this office is investing it with a certain power to constrain or repress recalcitrance. The punishment may be inflicted by reason, but it is instituted by God. A man's own reason may be said to oblige him, not in the sense that it is the agent performing the work of obliging, i.e. of imposing necessity, but only in the sense that it is that with respect to which or according to which a man is subject to necessity.

This is not to imply, of course, that a man has no power to impose certain orders of conduct upon himself through his own deliberation and decision. But to the extent that these orders are only the effect of his personal preference,

they have no simply compelling hold upon him, no obligatory force. Any course that he has adopted by his own choice he can also set aside again by his own choice. Conscience, on the other hand, leads the assessment of his conduct back to principles over which he has no direct control at all. They neither are nor appear to be principles made valid by his own reason; reason serves only to communicate and apply them. And neither is he able simply to set aside the power of his conscience to gratify or wound him by its verdict.

To be sure, by clinging to the path he has taken, and by the kinds of self-deception touched upon earlier, a wrongdoer can weaken and partially avoid the sting of his conscience. There is nothing really surprising in this, even when conscience is represented as an instrument of divine justice. It might be surprising if conscience were the only such instrument. Aquinas certainly holds that it is not; indeed, it is more than likely that when he speaks of conscience as "binding with the force of divine precept," the punishments that he has in mind are chiefly those that issue from God's own judgment, not reason's.[83] And in his view, a man need not be given revelation before he becomes accountable in the divine forum. The very dictates of natural law immediately make him accountable there.[84]

So much stress has been laid on the punitive force of conscience itself because conscience seems to be the judgment that is connatural and proper to the first principles of practical reason. It is also the judgment that a man naturally knows to be imminent, by the very act of understanding its principles. It is therefore the judgment that first fulfills the function of inducing a man, in the manner of punishment, to abide by those principles or to return to them. It would be one of the means of keeping him on the path toward discovering the fullness of God's justice.

The special connection between natural law and conscience would also square with Aquinas' appeal to the text from the *Epistle to the Romans* (2.14) in

support of the existence of natural law. For in the next verse, Paul explains what he means by calling the Gentiles a law unto themselves:

> qui ostendunt opus legis scriptum in cordibus suis, testimonium reddente illis conscientia ipsorum, et inter se invicem cogitationum accusantium, aut etiam defendentium.

In summary, the first principles of practical reason have the nature of something obligatory in the same way that they have the nature of law, namely, according to their derivation from a divine institution. A man is subject to the necessity of abiding by these principles on pain of suffering various kinds of punishment, and the one who has imposed this necessity is God. At the same time, He has distributed to reason itself a certain share in the work of enforcing the observance of His order; and to this extent, the necessity of abiding by these principles, in order to avoid punishment, is known before the question of how that necessity came about even arises. This is parallel with the way in which men know the very truth of the principles, as is not surprising. It is in the very act of understanding the notions of good and bad, due and undue that reason becomes an ordering principle of human action, and "whatever rises up against some order is repressed by that order and the principle of the order." And perhaps it is possible to draw a distinction between obligation as a kind of action, which is the primary sense of the term for Aquinas, and obligation as the necessity resulting from that action. According to this second sense, the knowledge of the obligation to act according to the order of reason is quite natural.

NOTES

1. I-II q.90 a.1. That St Thomas considers obligatory force to be perhaps the most basic and evident feature of law is further indicated by the fact that he chose to draw upon this etymology of '*lex*' instead of the other one at his disposal, the one posited by Isidore: *lex a legendo vocata est, quia scripta est.* (See I-II q.90 a.4 ad 3[m].)

2. I-II q.90 a.4 ad 1[m].

3. I-II q.90 a.4.

4. In other words, as the second objection in q.90 a.4 says, to oblige belongs "properly," or first and in virtue of itself, to law. There is no law without obligation (see I-II q.92 a.2 ad 2[m]), and there is no obligation without law. See II-II q.44 a.1 obj.2: *obligatio, quae ex praeceptis nascitur . . .*

5. Chapter Two pp.64-65.

6. Oddly, this text has received very little attention in contemporary studies of the Thomistic notion of obligation. See Farrell, W., O.P., "The Roots of Obligation," *The Thomist* I (1939) pp.14-30; Farrell, *The Natural Moral Law* pp.130 ff.; Stevens, "The Relation of Law and Obligation," pp.195-205; MacGuigan, M., "St Thomas and Legal Obligation," *The New Scholasticism* XXXV.3 (July 1961) pp.281-300 (hereafter MacGuigan). The text is mentioned in passing in Desjardins, *Dieu et l'obligation morale* p.71 n.3; and it receives a rather curious reading in Oscar Brown, *Natural Rectitude and Divine Law in Aquinas*, Pontifical Institute of Medieval Studies (Toronto 1981) pp.126-128 (hereafter Brown). (See below, n.10.)

7. See I q.82 a.1. It is already clear, then, that obligation is necessity of a rather different sort from that which belongs to so-called necessary truths. (Brown, pp.126-128, treats this very text as though it were identifying obligation with necessary truth; but he gives no justification at all for doing so.) The necessary truth of the precepts of natural law should not be confused with their obligatory force; the proper result of the necessity of their truth is merely that they are obligatory always and everywhere, in contrast to some dictates of positive law, which are only obligatory so long as they remain true or right.

8. See ad 3[m]: quamvis homo seipso non sit superior, tamen ille de cuius praecepto scientiam habet, eo superior est, et sic ex sua conscientia ligatur.

9. See *De veritate* q.17 a.3 obj.1: *homo non facit sibi ipsi legem.*

10. See Brown, O., *Natural Rectitude and Divine Law* p.110 n.13, p.117 n.40. MacGuigan pp.283-285 & 300-301 argues that obligation can be *ab intrinseco*. His first reason is that natural law is obligatory and yet "wholly intrinsic." This may be dismissed. (See *De veritate* q.17 a.5: *conscientia non ligat nisi vi praecepti divini vel secundum legem scriptam vel secundum legem naturae inditam.* Natural law obliges precisely insofar as it is a divine precept.) His second reason is that the obligatory character of law derives

chiefly from its reasonableness, not from the legislator's will. This fact, he says, is what explains the manner in which the legislator himself can be said to be subject to his own law, namely, with respect to its directive force: see I-II q.96 a.5 ad 3[m]. But nowhere in I-II q.96 a.5 does Aquinas say that the prince obliges himself; in fact, when he says "the prince is not absolved from the law with respect to its directive force," he qualifies this statement with the phrase *quantum ad Dei iudicium*, i.e., in the language of the immediately preceding article, *in foro conscientiae*, where human laws have obligatory force *a lege aeterna*. If the prince is under an obligation to obey his own law, this is in virtue of, and with respect to, the authority of God commanding that he do so, not his own authority. What Aquinas means is that it is dictated by natural law that legislators not exempt themselves from their own law, at least not without cause. The legislator obliges himself only in the sense that it is through his own act of legislating that this dictate of natural law becomes actually applicable to him. But this hardly means that he is the very source of the obligation. (See below, pp.219 ff.) MacGuigan's interpretation follows Cajetan's (see MacGuigan n.14).

11. A man's own reason can certainly command his other powers, in Aquinas' view, and so impose a certain necessity upon them, that unless they do what reason has dictated, they will be resisted; and this imposition would have a certain likeness to obligation, just as the subordination of the other powers to reason has a certain likeness to justice (I-II q.100 a.2 ad 2[m]; II-II q.58 a.2). But it is not obligation simply, since what is imposing the order is not simply extrinsic to what receives it. It is extrinsic only as a distinct power of soul. It is seated in the same subject, and its acts belong to the same agent.

12. See I-II q.100 a.2.

13. Of course Aquinas grants that what a man does out of fear is, simply speaking, voluntary, since at the time done, it is what he wants to do (I-II q.6 a.6). But it is still involuntary in a certain respect, as contrary to the man's inclination concerning the thing done considered in general, apart from the evil feared. And this is the only kind of coercion that can be attributed to anything that nevertheless remains a principle of truly human or voluntary acts, anything such as law.

14. II-II q.44 a.1 obj.2.

15. It should be noted that this fact does not make the obligatory force of this precept otiose. For although the precept of charity cannot be wholly "fulfilled" except freely and voluntarily, from the habit of charity itself, nevertheless a man may at least begin to obey this precept even before he possesses charity, and hence perhaps merely out of fear, by doing what he can to dispose himself to have charity. [*Non*] *est impossibile observare hoc praeceptum caritatem non habenti, quia potest se disponere ad hoc quod caritas ei infundatur a Deo*. (I-II q.100 a.10.)

16. See II-II q.19 a.6.

17. See I-II q.100 a.9: praeceptum legis habet vim coactivam. Illud ergo directe cadit sub praecepto legis, ad quod lex cogit.

18. For the distinction between action that is "productive" (*factiva*) of the end, and action that merits the end, i.e. yields the expectation of attaining the end through someone else's gift, see I q.62 a.4.

19. Finnis pp.45-46 and pp.339-342, esp. n.42.

20. For the interpretation of the texts that Finnis adduces in support of his position, see below, pp.201-204. On the question of the "voluntarism" of this account, see below n.48.

21. *De veritate* q.23 a.7 ad 8m. That the term '*tenemur*' is synonymous with '*obligamur*' is clear from the third and fifth objections of this article.

22. A similar argument is made in II-II q.104 a.1 obj.3 & reply.

23. See II-II q.19 a.4 ad 1m.

24. I-II q.91 a.6 obj.2. See above, Chapter Two p.65.

25. I-II q.87 a.6.

26. I-II q.100 a.9 Sed contra.

27. I-II q.100 a.10.

28. I-II q.100 a.12 ad 2m. See also Aquinas' interpretation of a text from the *Epistle to the Romans* (4.15) which reads "*Lex enim iram operatur. Ubi enim non est lex, nec praevaricatio.*" By '*ira*' Aquinas understands Paul to mean '*vindicta*'; *quia per legem facti sunt homines digni Dei vindicta.* And '*praevaricatio*' he takes to mean '*transgressio.*' He continues as follows.
    Et . . . omnis peccator potest dici praevaricator, inquantum legem naturalem transgreditur. . . . Gravius est tamen transgredi simul legem naturae et legem scriptam, quam solam legem naturae. Et ideo lege data sine gratia adiuvante, praevaricatio crevit, et maiorem iram promeruit.--St Thomas, *Super epistolas S. Pauli lectura*, ed. P.R. Cai, Marietti (Romae 1953) p.63 #358 (hereafter *In ep. ad Rom.*).

29. I-II q.99 a.1.

30. See I-II q. 99 a.5: *ipsa . . . agenda sub praecepto non cadunt nisi inquantum habent aliquam debiti rationem.*

31. Of course, the way in which the legislator binds his subjects to some action is by making that action necessary for some end of theirs, some end in his power to distribute or withhold; but this end is not the same as the end in relation to which the act was originally judged due, i.e. the common good as a whole. Thus, in discussing the moral precepts of the Old Law, Aquinas says that that for the sake of which these commands are issued is virtue (I-II q.100 a.9 ad 2m). But what first induces the subjects to obey these commands is not that the things commanded are necessary for the sake of

virtue; rather, what induces them to obey is the fact that they are commanded, by due authority, on pain of some sanction imposedby that authority (I-II q.99 a.5). This sanction is obviously not the loss of virtue: the subjects are not yet virtuous enough to do things for the sake of maintaining virtue, and in any case, this loss would not have the nature of a sanction, since it is not owing to the action of the authority, but to the very nature of the case, that failure to perform these actions impedes virtue.

32. See I-II q.100 a.9: preceptum legis habet vim coactivam. Illud ergo directe cadit sub precepto legis, ad quod lex cogit. Coactio autem legis est per metum poenae, ut dicitur X *Eth.*; nam illud proprie cadit sub precepto legis, pro quo poena legis infligitur.

33. See I-II q.114 a.2: creatura rationalis seipsam movet ad agendum per liberum arbitrium, unde sua actio habet rationem meriti; quod non est in aliis creaturis.

34. I-II q.6 a.8.

35. It is important to note that this is not the same as the questions of the indispensability and immutability of the first principles of practical reason. These questions concern whether the first principles of practical reason are always right, either in every particular case or as general rules. As noted above (Chapter One p.38; Chapter Three pp.105), there are some who suggest, that these features of natural law turn upon its divine origin; but for Aquinas, they depend simply upon the immutability of nature itself and upon the extreme generality or abstractness of those principles that are properly called 'first' (see I-II q.97 a.1 ad 1^{m}). But in any case, this necessity is not the same as the necessity of obligation. Human laws are certainly obligatory, even though they admit of dispensation and change. The obligatory force of the law consists in this, that so long as it is applicable, those subject to it cannot disobey it without incurring punishment.

36. I-II q.92 a.2.

37. Gilson, *The Christian Philosophy of St Thomas Aquinas* p.268. Gilson gives an excellent account of Aquinas' understanding of sanction on pp.268-270.

38. I-II q.92 a.1.

39. I-II q.87 a.1. See II-II q.108 a.2: Est autem quaedam specialis inclinatio naturae ad removendum nocumenta: unde et animalibus datur vis irascibilis separatim a vi concupiscibili. Repellit autem homo nocumenta per hoc quod se defendit contra iniurias, ne ei inferantur, vel iam illatas iniurias ulciscitur, non intentione nocendi, sed intentione removendi nocumenta. Hoc autem pertinet ad vindicationem.

40. I-II q.92 a.2; I-II q.100 a.12 ad 2^{m}.

41. See II-II q.108 a.3: *Cohibentur . . . aliqui a peccando, qui affectum virtutis non habent, per hoc quod timent amittere aliqua quae plus amant quam illa quae peccando adipiscuntur.*
    Of course, the expectation may arise from a mere threat, or it may arise from previous experience of the punishment. Punishment is both a "preventive" (*preservativa*) and a "curative" (*sanativa*) medicine (II-II q.108 a.4).

42. I-II q.87 a.7; II-II q.108 a.4. Punishment in the strict sense is an act of commutative justice (II-II q.108 a.2 ad 1[m]) repairing an injustice, "insofar as he who in sinning has followed his own will excessively, suffers something against his will." What unites the retributive and motivating functions of punishment is its opposition to the evildoer's bad will.
    ...poena . . . infertur ut medicina culpae, et ut ordinativa eius. Ut medicina quidem, inquantum homo propter poenam retrahitur a culpa dum ne patiatur quod est suae contrarium voluntati, dimittit agere inordinatam actionem, quae suae foret placita voluntati. Est etiam ordinativa ipsius, quia per culpam homo transgreditur metas ordinis naturalis, plus suae voluntati tribuens quam oportet. Unde ad ordinem iustitiae fit reductio per poenam, per quam subtrahitur aliquid voluntati.--St Thomas, *Compendium theologiae*, in *Opuscula theologica*, ed. R.A. Verardo (Romae: Marietti 1954) v.I cap.121 p.58.

43. See II-II q.59 a.2.

44. See I-II q.21 a.1.

45. See I-II q.1 a.3 ad 3[m]: fines . . . morales accidunt rei naturali; et e converso ratio naturalis finis accidit morali.

46. See *Summa contra gentiles* III,140 p.422: Sicut res naturales ordini divinae providentiae subduntur, ita et actus humani. . . . Utrobique autem contingit debitum ordinem servari vel etiam praetermitti; hoc tamen interest quod observatio vel transgressio debiti ordinis est in potestate humanae voluntatis constituta; non autem in potestate naturalium rerum est quod a debito ordine deficiant vel ipsum sequantur. Oportet autem effectus causis per convenientiam respondere. Sicut igitur res naturales, cum in eis debitus ordo naturalium principiorum et actionum servatur, sequitur ex necessitate naturae conservatio et bonum in ipsis, corruptio autem et malum, cum a debito et naturali ordine receditur, ita etiam in rebus humanis oportet quod, cum homo voluntarie servat ordinem legis divinitus impositae, consequatur bonum, non velut ex necessitate, sed ex dispensatione gubernantis, quod est praemiari, et e converso malum, cum ordo legis fuerit praetermissus, et hoc est puniri.

47. *Peccata punire ad iudicium pertinet*: II-II q.60 a.6 obj.1. *Ex iudicio lex punit*: I-II q.100 a.10.

48. I-II q.93 a.2 ad 3[m]. See II-II q.60 a.1 ad 4[m]. The act of punishing, then, is something voluntary, a voluntary response to a voluntary act. But this is the only sense in which placing the notion of obligation within the order of merit, reward and punishment might be said to be "voluntaristic." It would be "voluntaristic" in a truly objectionable sense only if the order of merit, and

punishment itself, were not something intrinsic to the order of "rational necessity for the common good." This is the point that seems to have been missed by those who reject the connection between obligation and punishment.

49. II-II q.60 a.6 ad 1^{m} & 4^{m}.

50. II-II q.60 a.6.

51. See II-II q.60 a.5 ad 2^{m}.

52. I-II q.92 a.2 ad 3^{m}. See II-II q.60 a.2 ad 2^{m}: iudex constituitur ut minister Dei.

53. II-II q.60 a.4 ad 2^{m}.

54. I-II q.2 a.2 ad 3^{m}. This wish is in turn nothing but a part of man's very appetite for excellence itself, since this appetite belongs to the will, which naturally desires to attain its object knowingly. Thus Aquinas describes the most complete excellence of man, happiness, as "the perfect good of the intellectual nature, to which it belongs to know its sufficiency in the good that it has" (I q.26 a.1).

55. Of course, if the command is bad, e.g. tyrannical, then to disobey it is unjust only in a qualified way, viz. in relation to the tyrant's rule (I-II q.92 a.1). One might even say that in this case the command itself is only a command in a qualified sense. Command belongs to someone in authority, some superior; one who lacks authority can make pronouncements that have some resemblance to commands, but he cannot really command. But bad and unjust laws do not have unqualified authority over human conduct, since before he is subject to any human ruler, a man is subject to the rule naturally contained in his own reason; a bad regime can gain unqualified sway over his life only to the extent that he first deviates from his primary allegiance. Likewise, since the punishments that human rulers can inflict are always about external goods, they are only punishments in a qualified sense; for the unqualified goods of human life are spiritual things (I- II q.78 a.1).

56. See above pp.203-204.

57. See I-II q.91 a.6.

58. This is most radically the case when the legislator himself is the cause of their very subjection to him, as is the case with God's institution of the order of the universe. Of course, the term 'legislator' is used very broadly here; it need not mean a single person. Nothing is meant to exclude the possibility that men form their community through decisions made by all concerned; the point is merely that such men will not actually be members of the community, nor require and owe the things that members require and owe, until these decisions are made.

59. Insofar as what is due from someone is determined by an extrinsic principle, it is not in that person's own power to waive the requirement or debt. This

is why St Thomas says that it is easy for people, especially the faithful, to grasp that what one man owes to another is "owed of necessity" (*ex necessitate debitum*), whereas at first glance it seems that he is free with regard to what pertains exclusively to himself (I-II q.100 a.5 ad 1[m]). And because a man cannot cancel his debt to another, it is also plainly not in his power to withdraw himself from the burden of paying that debt on pain of reprisal; hence, in a nearly parallel passage, he says *in his quae sunt ad alterum, manifeste apparet quod homo est alteri obligatus ad reddendum ei quod debet* (II-II q.122 a.1). This text would contain a meaningless redundancy if 'obligatory' and 'due' were simply synonymous.

60. I q.103 a.8 ad 1[m].

61. I-II q.21 a.4 ad 3[m].

62. See I-II q.95 a.2; II-II q.85 a.1 ad 1[m].

63. I q.79 a.13. See *De veritate* q.17 a.1.

64. I q.79 a.13.

65. I q.79 a.13 ad 3[m]. See *De veritate* q.17 a.1 ad 1[m]: tota vis conscientiae examinantis vel consiliantis ex iudicio synderesis pendet, sicut tota veritas rationis speculativae pendet ex principiis primis.

66. On this point, it is important to distinguish between punishments inflicted or at least assigned by God, and punishments instituted by Him but assigned and carried out by His ministers. See below, Section E.

67. I-II q.19 a.5 ad 3[m]. The term '*ratio*' is used in this text as equivalent to '*conscientia*.' See also *De veritate* q.17 a.4 ad 8[m]: quando conscientia erronea dictat aliquid faciendum, dictat illud sub aliqua ratione boni, vel quasi opus iustitiae, vel temperantiae, et sic de aliis; et ideo transgressor incurrit in vitium contrarium illi virtuti sub cuius specie conscientia illud dictat. Vel si dictat illud sub specie divini praecepti, vel alicuius praelati tantum, incurrit peccatum inobedientiae conscientiam transgrediens. Brown p.127 somehow judges that *De ver.* q.17 a.3 implies that the divine precept grounding conscience must be apprehended precisely as divine, "through the higher reason's *cognitio fidei*," in order to be held "apodictically certain and universal," i.e., as Brown understands it, obligatory. Again, he gives no justification at all for this view.

68. II-II q.1 a.1.

69. In more recent parlance, this would mean that conscience presents itself as an "objective" judgment. See I q.16 a.6 obj.1: nunc autem [mens humana] omnia iudicat secundum veritatem, et non secundum seipsam. (See also In II Sent. d.39 q.3 a.3 ad 3[m]: *conscientia obligat non virtute propria, sed virtute praecepti divini*; *non enim conscientia dictat aliquod esse faciendum hac ratione, quia sibi videtur*; *sed hac ratione, quia a Deo praeceptum est.*) Certainly a man can form some kind of judgment that something is good or bad, merely in view of his own disposition toward the matter, or in a merely "subjective" way; this differs from conscience by failing to resolve the

question into the general principles of practical truth. See *In X libros Ethicorum sententia*, L.III l.xiii, ed. Leonine v.(1) pp.156-157. Conscience is practical judgment in the theoretical mode: *iudicium conscientiae consistit in pura cognitione* (*De veritate* q.17 a.1 ad 4m). Of course, conscience can also err, often through the influence of one's disposition; but even an erring conscience remains an appeal to truth. *Ratio errans iudicium suum proponit ut verum*. (I-II q.19 a.5 ad 1m.)

70. I q.79 a.11 ad 2m. The term "proper" is in quotation marks because practical reason is not a distinct power from speculative reason (I q.79 a.11). It therefore does not have a proper object, strictly speaking. The operable good can also be considered directly by speculative reason, i.e. without action as the goal of the consideration.

71. I-II q.93 a.2.

72. *De veritate* q.17 a.1 ad 6m in contrarium.

73. I q.16 a.6 ad 1m; I-II q.93 a.2. Thus the text *ratio errans iudicium suum proponit ut verum* (I-II q.19 a.5 ad 1m) continues, *et per consequens ut a Deo derivatum, a quo est omnis veritas*. This continuation is not meant to imply that reason always considers its judgment to have been derived from God; it is only meant to show, in reply to the Objection, that even in deviating from an erring conscience, the will is in a way deviating from something derived from the eternal law; for the mind's very notion of truth, and the rule to act according to truth, are derived from the eternal law. That is, the text should not be read "reason . . . proposes its judgment as true, and hence as derived from God," but rather "reason . . . proposes its judgment as true, and hence as something that is in fact derived from God."

74. I-II q.85 a.2 ad 3m. See *Quaestiones disputatae de malo*, q.1 a.4 corp. (Romae 1982) v.23 p.20.

75. See *De veritate* q.17 a.1: sic dicitur conscientia accusare vel remordere, quando id quod factum est, invenitur discordare a scientia ad quam examinatur.

76. This means that the judgment of conscience can sometimes be involuntary or coercive. See *De veritate* q.22 a.5 ad 3m: operatio intellectus potest esse contra inclinationem hominis, quae est voluntas; ut cum alicui placet aliqua opinio, sed propter efficaciam rationum deducitur ad assentiendum contrarium per intellectum.

77. Once again, it must not be thought that the fear of remorse can ever be a man's sole or even primary motive for doing what is right; for he will have remorse only to the extent that he already somehow wants to do what is right, at least according to the natural inclination toward virtue, through which the remorse itself becomes painful to him. Nevertheless, the remorse is in some way a more vehement assertion of reason's order, and the expectation of it can help remove obstacles to acting upon the desire to follow reason; for the fact that a man is capable of having remorse does not mean that he is perfectly disposed to do what is right. Indeed, he may be altogether obstinate in refusing to do it. Such obstacles may arise either

from the disposition of the sensitive appetite, or even from some imperfection in the will's inclination toward some particular intelligible good according to its particular nature (see I-II q.50 a.5; q.56 a.6).

78. See Aristotle, *Ethics* IX.4 (1166b5-25) p.168. Also Lactantius, *Instit.* 6,8 (PL 6, 660-661): qui non parebit [legi naturali], ipse se fugiet ac naturam hominis aspernatus hoc ipso luet maximas poenas.

79. See *De veritate* q.17 a.2.

80. I-II q.92 a.2 ad 3[m]. Strictly speaking, punishment is something distinct from all private reprisal, or vindication; it is an act of justice in the strict sense, which is something demanded by law (see II-II q.80 a.un.; q.108 a.2 ad 1[m]). This is not merely a question of terminology. As befits the greater necessity of the public welfare, genuine punishment tends to be something much more inescapable than any private action.

81. St Thomas is of course aware that wrongdoing often brings evil upon the wrongdoer in a very direct way, as a kind of physical consequence. But he describes this as evil that follows upon wrongdoing *ex parte substantiae actus*, not *ex parte culpae*, i.e. not precisely as wrong-doing (I-II q.85 a.5 ad 3[m]; q.87 a.2). But punishment, in the proper sense, is always an effect of *culpa*: I-II q.87 a.7; II-II q.108 a.4. At most, these evils might be regarded as a punishment in an indirect way, insofar as God justly permits them to come about. If someone overeats, for instance, he will get sick; and this is true whether or not he knew that he was overeating. But if he knowingly overeats, then in addition to getting sick, he will have the pain of knowing that he behaved stupidly. Perhaps this remorse could be called a natural consequence of his action, in the sense that it does not come about by his own choice; but it is natural only in the sense that it follows naturally upon his apprehension of what he has done, not in the sense that it follows directly from the action itself.

82. For an illustration of the difference between a source of obligation and an instrument of its application, see Finnis pp.330-337. Finnis' aim is to show that the human legislator is not the source of the "moral" obligation to obey his laws, even though his laws are, presumptively, morally obligatory, and have come about by his own choice. The human legislator does not cause the obligation in conscience to obey human laws; he merely brings certain forms of conduct under the sphere of this obligation, by making them into laws. This is certainly Aquinas' view (see I-II q.96 aa.4-5); it means merely that prior to any particular human legislation, there is a general obligation, in natural law, to obey human law. But Finnis moves from this distinction to the conclusion that a legislator's will is never the source of any kind of obligation at all; rather, the source is always the rational order toward the common good. He neglects what was considered earlier: a man's subjection to the order toward a common good already requires some voluntary act of ordering on the part of a governor, and already exposes the man to voluntary acts of compensation for his observation or violation of the order.

83. Thus it is to revealed law, not to natural law, that Aquinas attributes the work of ensuring that no evil go unprohibited and unpunished (I-II q.91 a.4). At the same time, one of these divinely inflicted punishments is nothing other than to compel a sinner to face the truth about himself and so to suffer the full force of his conscience's remorse. In this respect God's act of punishing is nothing other than His sustaining the natural light of reason in its proper office, in fidelity to His ordination. Following Augustine, Aquinas understands the "worm that dieth not" of Scripture to mean the remorse of conscience in the damned: *De veritate* q.16 a.3 *Sed contra* 1; *Summa theologiae supplementum* q.97 a.2=*In IV libros sententiarum* Lib.IV d.50 q.2 a.3 qu^{a}2. See I-II q.85 a.2 ad 3^{m}; I q.64 a.2 obj.3. This last text, together with the reply, also shows clearly that Aquinas considers the remorse of conscience a true *poena*. It hurts because it runs contrary to the natural inclination to act rightly or according to reason. The reason why this worm does not die is that the will of the damned is obstinately attached to the particular thing that happens to have earned condemnation. He is saddened by the condemnation but not to the point of detaching himself from the thing condemned. In other words, he is sorry that his inclination toward what is right cannot be satisfied, but he is not sorry for the fault itself. He wishes that what he wants were not wrong, but he still wants it. He does not use the natural inclination toward what is right to determine his response.

84. See I-II q.21 a.4.

CHAPTER 6
CONCLUSION

As the reader is by now well aware, the basic conclusion reached by this study into the legal character of Thomistic natural law is a simple confirmation of the literal reading of the text, as set forth in the Introduction. For Aquinas, natural law is to be understood as a law in the full sense of the term. Its possession of the various elements of the nature of law is established by way of showing the existence of the eternal law of God, and by seeing that something belonging naturally to man has everything required for being described as another instance of this same law, existing as in an agent ruled and measured by it. What remains is only to make explicit how the various positions presented in Chapter One may now be evaluated, and to indicate what other fruit the study may have borne besides the mere reassurance that Aquinas means what he says.

Four basic positions were distinguished in Chapter One. The first, ascribed to Lottin, Adler, Finnis and Grisez, and others, was that natural law is law only in a certain respect. The proper understanding of natural law makes no reference to the eternal law, and natural law can be called 'law' only because of a certain resemblance that it bears to human positive law, or because it provides a starting-point for the institution of human law.

The second position, with O'Donoghue as it chief representative, was that natural law is a law in the full sense of the term, and that it can be understood in this way even without reference to the eternal law. The obligatory manner in which reason enunciates it is judged to be sufficient to give it the complete character of law. It was noted that this judgment seems to depend upon abstracting from some of the elements of Aquinas' complete definition of law.

According to both the third and fourth positions, natural law is a law in the full Thomistic sense, but only on account of its relation to the eternal law. Both of these positions assert an essential connection between the notion of

natural law and the doctrine of the eternal law. The difference between them is with respect to the question whether a natural law so understood remains fully natural.

In the third position, that of Fortin, it is suggested that for Aquinas, natural law is natural only in a very qualified sense. The chief basis for this suggestion is the claim that a law is not a law until it is fully promulgated, and that the full promulgation of a law must include a notification of its author, of the act of promulgation itself, and of the sanctions attached to the law. That is, no one is subject to a law, in the full sense, until he knows that it is a law. Even if natural law consists essentially in the first principles of practical reason, the strictly natural understanding of these principles does not include the knowledge that they are laws. They are not known as laws until God's providence and legislative action are known. Not even prolonged rational investigation can attain to full certainty about the existence of a divine legislator; among other things, reason lacks adequate evidence that the natural order of good and evil is perfectly enforced by inescapable and infallible sanctions, as it should be if it has been imposed by an omnipotent, omniscient and perfectly just God. Thus a sign that Aquinas does not think natural law simply natural is his silence on the subject of sanctions proper to natural law. Only revelation removes all doubt as to whether the natural order of good and evil is a truly legal order, by giving it explicit legal expression in the moral precepts of the Old Law, and by manifesting the rewards and punishments to be distributed in the next life. In connection with this position was noted the view of Wolfgang Kluxen, that even if metaphysics can arrive at a knowledge of natural law as a true law of God, such knowledge has a practical significance only within the domain of revealed theology.

The final position considered was the more traditional one, according to which natural law is a law in the full sense, depends for its legal character upon its relation to the eternal law, and yet remains altogether natural. Since it is the

position with which the conclusions of this study are in fullest agreement, it seems the suitable one with which to begin the evaluations. The position represented by O'Donoghue will be considered next, followed by that of Lottin, and then by that of Fortin.

A. Support for the traditional reading and resolution of minor problems

On the basis of the present study, immediate and unqualified support can be given at least to the substance of the position described in Chapter One under the heading "Natural law as a natural law of God."[1] The interpreters who adhere to it rightly lay stress on the distinction between law as it exists in the ruler and law as it exists in those who are ruled. Their insistance that natural law is something altogether natural has been borne out, as has the implication that the legal efficacy proper to natural law does not depend on man's first coming to see it as something imposed by a divine legislator. It is only necessary to resolve a few of the secondary issues that accompany this position.

First, Lira seems to have gone too far in describing natural law as more properly law than the eternal law.[2] His basis for doing so is that he understands law to be a kind of action, and that the act of the agent is in the patient. But Aquinas does not use the term 'law' to signify a kind of action; for him, it means a certain object of action, something by which or according to which an agent acts, as heat is that by which a heater heats. Granted that the act of heating, performed by a heater, is in the thing heated, heat belongs more perfectly to the heater itself. Likewise, law exists more perfectly in the legislator than in any of his subjects; and this is especially true of the law of God.

Also understandable now is Lira's lack of clarity concerning the manner in which the will of the divine legislator may be seen to be at work within natural

law. His way of speaking about the legislator's will is as of something that moves *per modum obiecti*, i.e. that causes obedience to the law through being perceived, as a reason or motive for obeying, by the subjects. For Aquinas, the imposition of law does not always require that those subject to it be given knowledge of the legislator's will; this may or may not be the way in which the subjects are given a motive to obey. What is common to all legislation is that the legislator's will serve as a source from which his reason itself draws power to act as a mover, so that his pronouncement of the law takes on the character of a command. Natural law is present in man in a way that can only be accounted for by the action of God's will; for man's understanding of it not only provides him with the capacity to judge according to the order that God has eternally conceived, but also inclines him to follow that order in his conduct. God's enunciation or communication of His order to man has the effect proper to a command, and so involves the action of His will. It is not necessary to look for some way in which the understanding of natural law might include an apprehension of that action.

Moreover, if the moving force of natural law does not depend upon man's apprehension of the will of God, neither does it depend even upon his apprehension of his own natural inclinations. In fact, those natural inclinations of man that directly correspond to the dictates of natural law, namely, the natural inclinations of his will, are naturally posterior to the dictates. They are actualized through the very understanding expressed in the dictates. Natural law is natural, not because it rests upon an apprehension of man's natural inclinations, but because it expresses a measure of conduct which his intellect naturally grasps and which for that very reason elicits inclinations that are also natural. If there is any sense in which man's natural inclinations cause the moving and obligatory force of natural law, it is not by endowing his intellect with the power to function as a mover; the intellect does not need any help from

inclination in order to impose its order upon a man's will. At most the natural inclinations might be said to contribute to the moving force of natural law in the sense that they incline man to use the dictates of natural law in forming his particular practical judgments and choices. By the very fact of depending upon the intellect's apprehension, these inclinations constitute not only dispositions to seek and avoid certain things, but also dispositions to seek and avoid them according to the judgment of reason concerning them. But this means that the order expressed in the dictates has already been impressed, in a general way, upon his will.

The reason why the intellect does not need the help of inclination in order to impose its order upon the will is that, in the first instance at least, the will is brought into conformity with the intellect's order without any act of imposing it, on the part of the intellect, at all.[3] The only agent imposing this order is God, Who forms the intellect to grasp it and the will to receive it. These points indicate how to clarify Farrell's claim that reason plays a role of its own in bringing about the obligatory force of natural law.[4] This claim is not necessarily inconsistent with the extrinsic character that Aquinas attributes to obligation; but it must be understood with precision, as seen in Chapter Five.

For Aquinas, obligation is extrinsic in the sense that it is an action performed by one agent upon another. The agent to whom belongs the act of obliging man to obey natural law, of course, is God. He, and He alone, has subjected man to the necessity according to which he must observe the order expressed in the natural dictates of reason, on pain of reason's own condemnation. Reason itself is certainly not the agent effecting this necessity. Yet the necessity is only brought into effect when reason actually apprehends the order; and in fact its apprehension of the order is sufficient to bring the necessity into effect.[5] Even if man is not obliged to obey natural law by an act of his own reason, the obligation is still with respect to reason and its judgment. Moreover, Aquinas does not understand obligation to be extrinsic in

the sense that discerning the necessity to abide by the order requires considering the order in relation to the agent who imposed it. Aquinas' notion of obligation requires only that the necessity in fact be caused by a superior agent, whether or not the necessity is so understood. The very fact that the necessity to obey the dictates of natural law is somehow intrinsic to them, or is actual even without any advertence to the agent imposing them, is for Aquinas nothing but a testimony to the power of that agent. Farrell is quite right to say that natural law has the force of precept from the very start, according to its natural existence in the human mind; but it is not the human mind that gives it this force. Perhaps Farrell's account could have been improved through a closer consideration of the distinction between precept as it exists in the one issuing it, and as it exists in the one subject to it.

This aspect of Aquinas' doctrine of natural law certainly supports the judgment expressed by Geach and Anscombe, that it is possible for a man to have had a law promulgated to him and to be subject to it, even without his knowing of the promulgation or of its author.[6] Anscombe's complaint concerning the use of the language of obligation outside the setting of a lawgiver and his sanctions also appears to square well with the way in which Aquinas speaks about obligation. Obligation connotes a superior acting upon his inferiors by way of a command. Even if the exercise of the various functions of conscience does not depend upon formal advertence to God's legislative action, it is probably also true that the practice of speaking about these functions in legal terms or in terms of obligation does tend to depend upon such advertance.

Still, Anscombe seems to deviate somewhat from Aquinas' understanding in her claim that apart from belief in divine legislation, there is simply no such thing as an 'ought' judgment, or judgment of practical reason, that carries a special moral sense and and enjoys a certain definitive and authoritative force.

Where she departs from Aquinas may be seen by way of recalling certain of the conclusions in Chapters Three and Four.

If Aquinas' notion of obligation brings with it the notion of a lawgiver or commander, this is because it is primarily the notion of a certain action, the action of imposing an order upon someone's acts and movements. But according to his account, the judgment of someone's acts as due or undue, or as acts that ought or ought not to be, does not always require considering the order as something that has been imposed; it does not necessarily require a consideration of the order's origin at all. Such a consideration is required only insofar as it provides the first basis upon which to discern the order's character as a true measure of action. The judgment that something is due is simply the judgment that it is in order. The very capacity for such judgment concerning his acts is sufficient to render a man subject to the proper effect of the act of obliging. This effect is the necessity of abiding by the order imposed, on pain of suffering the resistance to disorder that the very existence of the order makes imminent.

Now since there is a variety of orders under which the things men do can be judged, the dueness or undueness that may be attributed to their acts can be of several kinds. The way in which a man builds a house can be judged due or undue by comparison with the art of carpentry; the way in which he treats his body can be judged by comparison with health or the art of medicine; and so forth. Another kind of dueness would be what is called 'moral' dueness, which is attributed to men's acts by comparison with the order of practical reason. This is the order that measures human acts as virtuous or vicious and as typical of the character of a good or a bad man.

So far, Anscombe would agree. But she wants to argue further that if the morally due is to have any specially authoritative or categorical character, it is necessary to bring in the note of obligation, of a superior commanding his infer-

iors. Otherwise, moral dueness will not be essentially different from any other kind. But for Aquinas, the characteristic of moral dueness is not merely one kind of dueness among the many that a human act may have; it is the dueness according to which a human act is due, not just in one particular respect, but on the whole and without qualification. The order measuring moral goodness is the order by which men's acts are fit to be measured, not according to some particular or accidental feature of them, but universally and by the very fact of being human acts. A human act that is morally bad is a human act that is bad without qualification. Anscombe would perhaps acknowledge this, but she does not seem to take sufficient note of the fact that what has some feature in an absolute or unqualified way is of an altogether higher order than what has that feature only in a certain respect.

Even more, for Aquinas, the order of reason is in a way an expression of the order measuring the entire universe; and reason naturally understands it as such an expression, just as it naturally understands that the notions of good and bad somehow extend to everything whatsoever. Consequently, when reason uses this order to judge human acts, it is not judging them merely by comparison with the particular needs of human nature; it does use the particular needs of human nature to judge human acts, but it does so because it understands that it is according to the universal order, or according to the very nature of good and bad in general, to judge a thing's acts by comparison with the needs of its nature. To say that a human act is morally bad or undue is to say not only that it is contrary to the order required by human nature, but also that it is contrary to the order of the whole universe. A morally bad act is simply bad, not only in the genus of human acts, or from the point of view of human nature, but also in relation to all that is, or from the point of view of the whole. Nothing is more natural to man than to take that point of view in forming his judgments; and it is difficult to conceive a manner of judging that could reach a more absolute or categorical kind of verdict.

Had Anscombe acknowledged this, she would perhaps have been able to give a clearer account of how it is possible to be subject to a law and its obligatory force without knowing of the legislator or of his promulgation of the law. Man naturally apprehends, at least in outline, the order by which everything in the universe is fit to be measured, including his own conduct; and such apprehension is sufficient to make him naturally exposed to response from the order, and from its principle, according as his action complies with or deviates from it. And his very understanding of the order gives him a certain natural expectation of such response.

B. Qualified support of natural law as law secundum se considerata

Since Aquinas' thought allows for a certain apprehension of unqualified practical rules, and of a necessity to abide by them, independently of any perception of their origin, it appears that there is a good measure of truth in the position set forth in Section B of Chapter One. According to this position, the doctrine of natural law can be developed in abstraction from divine legislation or of the eternal law, and without detriment to the full legal character of natural law. As concluded in Chapter III, it is not necessary to consider the first principles of practical reason in relation to the eternal law in order to see that they possess, if not all the elements of the nature of law, then at least its dominant quality of a rule and measure that is actually ruling and measuring men's acts. Reference to the eternal law would only be required to verify the presence, in the first principles of practical reason, of those elements of the nature of law that provide the full causal explanation for this quality of it. Of course, this is exactly what Aquinas wants to do, before he even begins to use the name 'natural law' to designate the first principles of practical reason. Since all of the elements of the nature of law are in a way signified by its name, it would be at least somewhat hasty, and potentially misleading, to apply the name 'law'

to something in which the existence of all of those elements has not yet been accurately verified.

This is the only strong reservation to be expressed concerning this position. Instead of seeing that in abstracting natural law from the eternal law, it is also abstracting from the causal explanation of natural law, it displays a tendency to provide another, secondary causal explanation of natural law from within the natural order itself. The cause to which it refers is the light of man's own reason. O'Donoghue shows this tendency most clearly, in his lengthy and detailed effort to show that reason has a hand in the very enactment or promulgation of natural law.[7] To say this makes it at least very difficult to avoid regarding man's subjection to natural law, and even the very content of natural law, as effects of his own deliberation and choice. An especially unhappy consequence of attributing the imposition of natural law to reason itself is seen in the rather ironic fact that O'Donoghue has to concede Lottin's point, that to the extent that natural law is only seen as something imposed by a man's own reason, it must be regarded as a merely private law, i.e. a law governing only the man's own acts.[8] To speak of natural law as a private law is at odds with the very way in which its order is naturally apprehended by reason. This order is in fact more common and public than the order instituted by even the most far-reaching of human laws.

O'Donoghue wants to distinguish between man's subjection to the eternal law and the subjection to it found in irrational things. He does not see how it is possible to maintain the distinction while holding that man comes under the rule of the eternal law in a merely passive way, or without any contribution of his own activity. But it was seen in Chapter Two that the distinction can be maintained by way of the very fact that the order instituted by the eternal law is, for man, the object of rational apprehension. He is no more responsible for his original subjection to the eternal law than the beasts are for theirs; but the rational mode of his subjection enables and requires him to contribute to the

formation of the actions that the law dictates. He is the cause of his own obedience to the law, when he obeys, whereas the other animals obey by nature.

C. Rejection of the view that natural law is law in only a partial sense

The position treated in Section A of Chapter One has it in common with the one just considered, that it allows for a presentation of natural law that abstracts from its relation to the eternal law. What is distinctive about this position is that it denies that the term 'law' can be predicated of natural law in its full sense on the basis of such a presentation. Instead, this position permits natural law to be called 'law' only in a very restricted and qualified sense, according to some relation between natural law and human law. According to a relation of comparison, natural law draws the name 'law' from human law in a metaphorical way, or by its partial resemblance to human law. According to a relation of cause and effect, the name 'law' is applied from human law to natural law through an analogy of extrinsic attribution, insofar as natural law expresses the rational principles upon which the formation of any good human law is based.

Despite what they have in common, this position seems to be much less consistent with Aquinas' doctrine of natural law than the one previously evaluated. Both, of course, depart from Aquinas by the very fact of trying to present natural law in abstraction from the eternal law at all. If the previous position errs further, it is by tending to attribute too much of the nature of law to the first principles of practical reason. The present one, however, seems to attribute too little; and this is probably the worse error. To see this requires some explanation.

For Aquinas, natural law is a law in the full sense of the term. The reason why he can attribute the complete nature of law to natural law, of course, is that

he is seeing it as a certain participation of the eternal law, in which all the elements of the nature of law are immediately verified. But even if abstracting natural law from the eternal law impedes the verification of natural law's possession of the full nature of law, this fact does not lead to the conclusion that in the context of this abstraction, natural law must be called 'law' in a merely partial or qualified way. The correct conclusion would be that abstracting from the eternal law simply makes it impossible to give a precise account of the legal character of natural law at all. It justifies neither a full nor a partial attribution of the nature of law to natural law; it calls for more information. The mere lack of evidence for an affirmation hardly warrants a denial.

But since it does turn out to be the case that natural law is a law in the full sense, the rash affirmation of this fact seems somehow preferable to the rash denial. At least the affirmation is true, as far as it goes, even if the understanding upon which it is based is defective. Moreover, it appears to do more justice to the universal and absolutely normative character that the first principles of practical reason possess even in man's most primitive and strictly natural understanding of them. The position according to which these principles fall short of the nature of law seems to suggest, or at least to create the suspicion, that what they require is somehow less fully due and necessary than the things required by the principles to which this position does grant the name 'law,' i.e. the principles instituted in human positive law. But the first principles of practical reason have as much regulative power, and more, than any humanly posited law. If they cannot yet be seen to have all of the other attributes that the name 'law' seems to signify, it will simply have to be said that there are certain rules or measures of conduct that are superior to any rule to which that name has as yet been found applicable.

D. Natural law as not-quite-natural law: two denials and a demurrer

The remaining position on the legal character of natural law that is the one adopted by Fortin. His suggestion is that the first principles of practical reason do not possess the quality of a full-fledged law for man according to their original and most natural existence in the human intellect. They obtain this quality only through man's acquisition of further knowledge. Three premises on which Fortin bases this suggestion can be distinguished. Two of these are inconsistent with the findings of the present study. The third, on the other hand, seems to express something that Aquinas would very readily acknowledge. However, it does not lead him to the conclusion that Fortin suggests.

The first premise is that for Aquinas, the sufficient promulgation of a law must include the notification that its contents have all the characteristics of law. Those to whom the law is given must know that it is a law, promulgated and enforced by a governing authority. Until they know this, what they may have been given does not yet have the full form of law.

It is true that for Aquinas, the existence of any law requires a governing authority who, from the action of his will, issues orders toward action in the form of commands, and provides for the enforcement of these orders through the appropriate sanctions. But while the existence of law requires these acts, it does not always require that those subject to the law be aware of these acts. It requires only that they be aware of certain consequences of the acts. The distinctive feature of natural law is precisely that in its case men are aware of these consequences even before they are aware of the acts. It is not necessary to rehearse again the steps that show this.

The second premise is that all law must be accompanied by sanction, but that Aquinas is silent about sanctions proper to natural law. The silence seems

to suggest that the contents of natural law receive the enforcement of sanctions only when incorporated into human or divine positive law. This in turn suggests that the contents of natural law are not naturally lawful.

The response is simply that Aquinas is not silent on the subject of sanctions proper to natural law. It is true that he does not treat it within the section on natural law in the *Summa theologiae*. But this proves only that it can be rather misleading to read this section in isolation from the rest of the work. There are many things in the *Summa theologiae* that are required for an accurate understanding of Aquinas' notion of natural law and yet fall outside its formal treatise on natural law. The sanction proper to natural law, or the punishment to which man is exposed precisely in virtue of being subject to natural law, is the remorse of conscience.

Fortin's third premise is that even if the contents of natural law receive some measure of enforcement from within the natural order, e.g. from reason and its remorse, nevertheless nothing within the natural order can give them the degree of enforcement suited to the legal rank that they are supposed to enjoy, the rank of laws of God. For them to be laws of God means that they are enforced by a provident governor who is at once all-powerful, all-knowing and perfectly just. Yet the very fact that the natural order provides an insufficient support for the contents of natural law leaves unassisted reason in doubt as to whether there is such a governor; for what unassisted reason can know about God is only what the natural order makes manifest about Him. It is only through revelation that man knows the properly divine sanctions attached to natural law. And since sanctions only have their due effect, which is to induce obedience, when they are known, it even seems reasonable to say that it is only through revelation that the properly divine sanctions attached to natural law are actually instituted. This in turn would mean that natural law only becomes

a full-fledged law through revelation. For it is a law at all only if it is a law of God.

Aquinas' first response to this argument might be to try to clarify the manner in which reason learns about God without the aid of revelation. It is true that left to itself, reason can know about Him only what it can infer on the basis of its experience of natural things, of which He is the cause. But this does not imply that unassisted reason can attribute to Him nothing beyond the degree of perfection to which the natural order is proportioned. The fact that the natural order is limited in its goodness, orderliness, and so forth does not mean that unassisted reason cannot be sure whether, or how far, the first cause of this order is out of proportion to it and exceeds these limits. In Aquinas' view, the failures, disorders, evils and injustices in the natural world do not, at least in principle, prevent reason from arriving at the conclusion that there is a God who is provident over everything, all-powerful, and so forth. The lack of direct evidence as to whether evil and injustice are ever left unhealed and unrectified does not force reason to remain in doubt of the existence of such a God; rather, precisely by coming to know of such a God, reason can attain to the certainty that evil only exists so that good may come out of it and that in the end crime never pays. Of course, this is only knowledge of the general principle; the particulars of how it is to be worked out will often remain obscure.

Moreover, Fortin's argument seems to overlook the fact that natural law is not simply identical with the law of God as a whole. Natural law is not the eternal law itself, but a certain share of the eternal law, a share whose execution has been entrusted to man's own intellect. Hence it is only in an indirect way that the theory of natural law requires the existence of an absolutely infallible and irresistible order of reward and punishment. The theory of natural law entails the affirmation of the existence of an eternal law; and from the eternal

law as a whole there can be no escape. But nothing prevents the possibility of escape from one or another of its particular, created ministers, such as natural reason. The sanctions that accompany natural law according to the very thing that makes it natural do not have to have the power or certitude of something divine. It need only be granted that should these sanctions fail, or should reason not succeed in its task of bringing a man to order, he will be brought to order in some other way, and in the last resort by the action of God Himself. But it is not necessary for a man to know this, in order that his reason begin to function in the manner of a minister of the eternal law. Even if the theory of natural law requires revelation, its legal efficacy requires neither revelation nor even discursive reasoning.[9]

At the same time, Fortin has highlighted certain considerations that must be kept very much in mind for a proper appreciation of Aquinas' notion of natural law. Even if man's subjection to natural law is prior to any theoretical understanding he may have of it, the theoretical considerations that he eventually entertains can have a considerable effect on its hold upon him. And even if it is in principle possible for reason to come to the knowledge of an omnipotent and provident God, despite the imperfections of the visible world, it is also true that these imperfections constitute one of the chief obstacles to the acknowledgment of such a God. It is no accident that the very first objection in the article '*Utrum deus sit*' (I q.2 a.3) is based on the existence of evil; and surely among the evils that prevent men from acknowledging God, the evil of unavenged wrongdoing is very prominent. And in doubting God, men may very well be led back to the doubt of any natural order of right and wrong at all.

For the way in which reason apprehends the order expressed in principles of natural law is not as something measuring only the acts over which reason itself has control; it is as something measuring the acts of everything in the universe. But if this is true, then it means that reason is naturally led to expect

evidence that the universe contains, or is contained by, a higher principle of resistance to disorder than reason itself. For *quidquid contra ordinem aliquem insurgit, consequens est ut ab eo ordine et principe ordinis deprimatur.*[10] When it comes across evidence that seems to lead to the contrary conclusion, the very truth of its apprehension of a universal order of right and wrong is thrown into doubt; if the order really exists, why is it not enforced?

Of course, the very fact that men can be scandalized by the existence of evil and unrectified injustice testifies to their possession of a natural law; without it, they would not judge that evil ought to be eradicated and that any true order ought to resist disorder. One of the very things that might lead a man to the conclusion that there is really no such thing as crime is the fact that he is simply incapable of thinking that any true criminal ought to be allowed to thrive. But the point is not merely to prove that a man knows the precepts of natural law. The point is also to get him to live by them; and he will hardly live by them, or at least he will hardly make much of a conscious effort to perfect his disposition to live by them or to help others to do so, if he is not sure that the order that they express really corresponds to the nature of things.

On the basis of these considerations, it seems possible to speak of a certain practical dependency of natural law on revelation. This does not mean that natural law is instituted by revelation, nor even that it has no strength without revelation. It means that the most complete removal of the obstacles to its achieving its purpose belongs to revelation. Aquinas suggests this in the *Summa theologiae* in his explanation of the need for the promulgation of a divine or supernatural law;[11] and he states it rather explicitly in a remarkable passage from his commentary on the *Epistle to the Romans*.

The text on which he is commenting is *Romans* 5.13: *Usque ad legem enim peccatum erat in mundo. Peccatum autem non imputabatur cum lex non esset.*

Aquinas reads the first sentence to mean that sin, both original and actual, was in the world even prior to the law God gave to Moses. He reads the second sentence as a defense of this claim. The reason why the claim needs to be defended is that, as he says, 'sin' means 'transgression of divine law.' If there is no divine law, how can there be sin? The gist of the defense is that sin existed, but it was not known, "especially as something to be punished by God": *praesertim quasi a Deo puniendum*. What is striking is the explanation that he goes on to give for men's ignorance of the existence of things offensive to God and earning His punishment.

> Fuerunt enim aliqui, ut dicit Philosophus, qui crediderunt quod nihil est justum naturaliter, et per consequens nec injustum, sed per solam positionem legis humanae. Et secundum hoc non imputabatur aliquod peccatum, quasi contra Deum existens, et praecipue peccatum originale, id est non cognoscebatur.[12]

If the denial of things naturally right and wrong leads naturally to the denial of anything offensive to God and of any divinely ordained punishment, this must be because God is understood to be the author of the realm of nature; and if this is so, then the converse would also be true: the denial of anything offensive to God and of any divinely ordained punishment must lead naturally to the denial of things naturally right and wrong. Even if the original understanding of the principles of natural law is immediate and requires no advertence to God whatsoever, the theoretical judgment on the truth of these principles is rather closely connected with the question of their status as laws of God.[13] And their status as laws of God is much more easily grasped with the help of revelation than through any process of human reasoning; for there are few things in which revelation is clearer than in its teaching that God is a giver of law.

Still, even if revelation provides by far the most complete help in achieving an accurate theoretical outlook on the natural law, it does not provide the

only help. Aquinas' conviction of philosophy's capacity to demonstrate God's existence, providence, and other attributes related to His legislative work has already been noted. These considerations are pertinent to the evaluation of Kluxen's restriction of the practical value of the notion of natural law to the domain of revealed theology. Kluxen is of course correct in holding that the formal notion of natural law involves the consideration of divine providence and of the eternal law. He is also following Aquinas in saying that revealed theology is the only *scientia divina* that is not only speculative but also practical. But what Aquinas seems to mean by this is that it is only in revealed theology that man has a knowledge about God that is a properly practical knowledge, i.e. a knowledge directly measuring action. It is only in revelation, as understood by the light of faith, that man apprehends God Himself enunciating rules for human action. But even if the knowledge about God that natural reason can attain is not a properly practical knowledge, it may very well have practical consequences.[14] One of the metaphysician's tasks is surely to analyze the ethical order to its basic principles, and to judge these principles by referring them to their ultimate causes. The demonstration that the first principles of practical reason are laws of God would be of great help in overcoming some of the theoretical obstacles to the acknowledgment of the existence and truth of those principles. This is hardly an insignificant achievement, even from a practical point of view; for even if, in practical matters, mere knowledge is far from sufficient to produce good conduct, ignorance and error are certainly capable of producing the contrary.

E. The intimate dependency of all things on the eternal law

The final conclusion to be drawn from this study is an indication of some of the further investigation that it suggests. The need for this further investiga-

tion is shown by the fact of a certain common thread running through the various unsatisfactory interpretations of Aquinas' understanding of the legal character of natural law. This common thread is a tendency to think of the relation between God's eternal law and His creatures as comparable to the relation between human positive law and its subjects. There is a temptation to conceive of the eternal law as a rule imposed upon agents that are already constituted in their natures and in their essential operative dispositions.

This way of viewing the eternal law is seen most clearly in the arguments that Lottin puts forth in favor of separating the account of natural law from the eternal law.[15] But it is also implicit in the suggestion that reason itself plays a role in legislating natural law. The purpose of this suggestion is to avoid giving the impression that natural law is something merely imposed from the outside as a constraint on man's freedom and reason.[16] There would be no fear of giving this impression if there were not an implicit assumption that the eternal law has the merely extrinsic character of positive law; it would not be necessary to account for the intrinsic character of the principles of natural law by positing an intrinsic legislator of them. Fortin's position also implicitly treats the eternal law in this way. For it makes the proper subjection of man to the eternal law dependent upon his acquisition of the kind of knowledge about the eternal law that a subject of human positive law must have about that law.[17] It assumes that the manner in which the will of the legislator moves those who are subject to the law is *per modum obiecti*.[18] This assumption sometimes even finds its way into the generally accurate interpretations of the legality of Thomistic natural law. It accounts both for Lira's lack of clarity concerning the manner in which God's will moves men through natural law, and for Farrell's tendency to overstate the role played by reason in effecting the obligatory force of natural law.

Probably the chief source of the temptation to conceive of the eternal law as a rule imposed upon agents that are already constituted in their natures and in their essential operative dispositions is the simple fact that the eternal law is something outside of or extrinsic to the creatures. But it is not always true that what is intrinsic is prior to what is extrinsic.

> . . . quia forma rei est intra rem, et tanto magis quanto consideratur ut prior et universalior; et ipse Deus est proprie causa ipsius esse universalis in rebus omnibus, quod inter omnia est magis intimum rebus; sequitur quod Deus in omnibus intime operetur.[19]

Perhaps another source of the temptation is the way in which Aquinas sometimes speaks of the eternal law's status as a measure of human acts. Not infrequently he notes that the rule of human acts is twofold: the proximate measure is human reason itself, while the first and remote measure is the eternal law.[20] This way of speaking may give the eternal law the appearance of a rule added on to reason and making further requirements of human conduct in addition to those that are first made by man's own nature.

To say that man's nature requires things of him even prior to the requirements imposed by the eternal law is, of course, a serious misconception, if the natural light of reason is nothing other than a certain participation of the eternal law. The very fact that man's conduct ought to be measured by reason is, for Aquinas, owing to a directive of the eternal law.[21] There is no demand on man's action made by reason that is not first made by the eternal law. What then does Aquinas mean by speaking of the rule of human action as twofold? Surely he means that the one primary rule of human action, which is the eternal law, exercises its work of ruling and measuring man in two ways. The first is through the mediation of the natural light of reason, which, starting from the

experience of things that exist and act from a certain impression of the eternal law, naturally forms a conception of rules of conduct that constitute a kind of representation or image of the eternal law. The second way in which the eternal law measures human conduct is through the supernatural light of faith. But the proper object of faith is not a mere likeness or image of the eternal law; faith's object is God Himself, Who is His law. Hence the eternal law rules and measures human conduct first through the created participation and reflection of it belonging naturally to reason, and then also through itself, according as the light of faith brings man's mind into contact with it.

This way of understanding Aquinas' two-fold rule is consistent with the fact that in the context of his references to it, what he seems mainly to have in mind is the distinction between the rules that man is naturally capable of understanding, and those that exceed reason's natural light and require faith. Thus in the conclusion of the article in which he argues that the goodness of man's will depends on the eternal law, he says that "it is manifest that the goodness of the human will depends much more on the eternal law than on human reason, and where human reason falls short, it is necessary to have recourse to the eternal reason."[22] Likewise, the chief reason he gives for preferring Augustine's definition of sin, which is in terms of its opposition to the eternal law, over a definition of sin in terms of its opposition to reason, is that "through the eternal law we are ruled in many things that exceed human reason, as in the things that belong to faith."[23]

There is no order in created things that does not depend upon the eternal law, not even the order that follows immediately upon their natures and concerns things that are intrinsically good or bad, due or undue for them.[24] The eternal law's relation to creatures cannot be conceived on the model of positive law's relation to its subjects. If there is any sense in which the eternal law is something positive, it can only be by comparison with the 'law' by which God Himself is 'bound' to want and to do only what befits His wisdom and His

goodness.[25] The reason why the eternal law, taken strictly as a measure of creatures and not as a rule 'measuring' God Himself,[26] might be termed 'positive' is that God's wisdom and goodness are not naturally determined to one or another of the possible created orders that God's intellect conceives.[27] To use Aquinas' distinction, the eternal law's institution of the order of creatures is like a determination of, rather than a conclusion from, the law by which God never deviates from His goodness and wisdom.[28]

What would seem an area for a very useful investigation, then, is the precise way in which Aquinas understands this dependence of the order of intrinsic good and evil in creation upon the ordination of the eternal law. For it can hardly mean that, given the nature that he has, man's due acts and ends could be other than they are, through some divine ordination. But it is also altogether incompatible with saying that the natures of created things set a measure to God's law.

This is of course a very old problem, made thematic by Ockham and his followers. But perhaps the present study contributes in some way at least to finding a suitable formulation for it in Aquinas' terms. The problem is often framed in terms of the relation between God's command, or God's will, and natural law. But at least in a Thomistic setting, it might be better framed in terms of the relation between the divine ideas, or even God's choice to create things corresponding to these ideas, and His institution of the eternal law. For natural law already presupposes both the eternal law and the creation of the rational creature. There is no question at all about its relation to God's will and God's command. The question would be better asked in the form of whether, or in what way, the eternal law may be said to cause the very existence of anything having a human nature, by serving as the measure according to which God selects those agents that are to inhabit the universe.[29] The work of the eternal law is to regulate the actions of creatures. If nothing in the activity of creatures

falls outside its domain, and if the natures of creatures are principles not only of their being but also of their activity, then it seems that the work of the eternal law must extend somehow even to the distribution of the natures of things.[30]

> Est...duplex ordo considerandus in rebus. Unus, quo aliquid creatum ordinatur ad aliud creatum; sicut partes ordinantur ad totum, et accidentia ad substantias, et unaquaeque res ad suum finem. Alius ordo, quo omnia creata ordinantur in Deum. Sic igitur et debitum attendi potest dupliciter in operatione divina; aut secundum quod aliquid debetur Deo; aut secundum quod aliquid debetur rei creatae. . . secundum rationem suae naturae et conditionis. Sed hoc debitum dependet ex primo; quia hoc unicuique debetur quod est ordinatum ad ipsum secundum ordinem divinae sapientiae.[31]

NOTES

1. See above, Chapter One, pp.28 ff.

2. See above, Chapter One, pp.32-35.

3. See above, Chapter Three, n.18; Chapter Four, n.33.

4. See above, Chapter One, pp.36-37.

5. See above, Chapter Five, pp.210-212.

6. See above, Chapter One, pp.38-41.

7. See above, Chapter One, pp.18-19.

8. See above, Chapter One, p.19.

9. Must it therefore be conceded that Aquinas' doctrine is simply opposed to Aristotle's, for whom, at least on the reading of Fortin and Jaffa, natural right lacks the universality and indispensability of Thomistic natural law? Perhaps not, if it is true that Aristotle is speaking only about political right. For Aquinas, following Augustine, very readily grants that it is not in the power of human law to dictate everything required by natural law; in fact, for human law to attempt to enforce the whole of natural law would be contrary to natural right. (See I-II q.93 a.3 ad 3^{m}; I-II q.96 a.2.) The human laws that are naturally right vary according to the conditions of the political bodies that they govern. (See I-II q.97 a.1)

10. I-II q.87 a.1.

11. I-II q.91 a.4.

12. *In ep. ad Rom.* Ch.V l.iv, p.78 #427-428. The reference is to Aristotle's *Ethics*, V.12 (1134b25), p.91.

13. The close connection between the question of the order of nature and the question of God is indicated in a text from *Summa contra gentiles*:

    naturali ratione statim homo in aliqualem dei cognitionem pervenire potest; videntes enim homines res naturales secundum ordinem certum currere, cum ordinatio absque ordinatore non sit, percipiunt ut in pluribus aliquem esse ordinatorem rerum quas videmus. (*Summa contra gentiles* III.38.)

14. See *De veritate* q.14 a.4. See also I-II q.14 a.6 on how counsel or deliberation can borrow from every sort of knowledge, theoretical and practical.

15. See above, Chapter One, pp.11 ff.

16. See the quotation from Gregory Stevens above, Chapter One, p.22.

17. See above, Chapter Three, pp.118 ff.

18. See above, Chapter Three, pp.111-112.

19. I q.105 a.5.

20. See, for example, I-II q.19 a.5, esp. ad 1^{m} & ad 2^{m}; I-II q.21 a.1; I- II q.71 a.6.

21. I-II q.19 a.5.

22. I-II q.19 a.5.

23. I-II q.71 a.6 ad 5^{m}. See I-II q.91 a.4 ad 1^{m}; II-II q.8 a.3 ad 3^{m}.

24. See above, Chapter Three, pp.123-124, on I-II q.71 a.6 ad 4^{m}. See also I q.22 a.2 ad 3^{m}; I-II q.71 a.2 ad 4^{m}; I-II q.93 a.4.

25. See I q.21 a.1 ad 2^{m}.

26. See I-II q.93 a.4.

27. See I q.25 a.5.

28. The distinction is set forth in I-II q.95 a.2.

29. In other words, the question would be whether it would be correct to conceive of providence and the eternal law as presupposing God's will to create the things that they govern. Suarez, for instance, conceives of them in this way, in accordance with his position that the command of the eternal law governs men only through their prior understanding of the natural order of good and evil and through their interpretation of this understanding as a sign of God's will.

> *...supposita voluntate creandi naturam rationalem* cum sufficienti cognitione ad operandum bonum et malum et cum sufficienti concursu ex parte Dei ad utrumque, non potuisse Deum non velle prohibere tali creaturae actus intrinsece malos vel nolle praecipere honestos necessarios. Quia sicut non potest Deus mentiri, ita non potest insipienter vel iniuste gubernare. (*De legibus* II.vi.23, pp.105-106; my emphasis.)

30. See I-II q.71 a.2 ad 4^{m}: *Lex . . . aeterna comparatur ad ordinem rationis humanae sicut ars ad artificiatum. Unde Augustinus dicit . . . quod* "*a Deo habent omnes naturae quod naturae sunt.*"

31. I q.21 a.1 ad 3^{m}. See I q.105 a.6, esp. obj.2 & reply.

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