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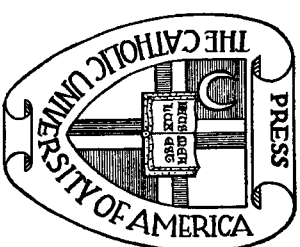
THE POSSIBILITY OF INVINCIBLE  
IGNORANCE OF THE NATURAL  
LAW

BY

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## INTRODUCTION

Moralists have often been accused of legislating for men who exist only as empty abstractions in the minds of the moralists themselves.<sup>1</sup> Theories of morals may be evolved, it is said, but the actions of men, which are morals in practice, admit of no confined codification. The undeniable variability of human conduct and of codes of morality is adduced as evidence that the moralist is divorced from reality; enclosed within the austere monastery of abstract thought, he does not see the changing facts of life.

Though these accusations might conceivably find a target if directed at the followers of Rousseau in the eighteenth and nineteenth centuries,<sup>2</sup> or perhaps at some chimerical scholastic, they would be completely wide of the mark if pointed at the living thought of Thomas Aquinas. One who demonstrated human freedom on metaphysical grounds<sup>3</sup> could not fail to see that nothing in the visible universe is so versatile as man, for he alone is master of his actions. The recognition of these possibilities of variation led St. Thomas to conclude that the nature of certitude obtained in speculative sciences is considerably different from that obtained by the practical science of morals.<sup>4</sup> He saw no less clearly that the pursuit of happiness, necessarily inherent in every human action, would not be directed toward a constant and

<sup>1</sup> "Le premier postulat des moralistes consiste à admettre l'idée abstraite d'une nature humaine, toujours identique à elle-même. Toutes les mores théoriques supposent ce postulat. Il faut que leurs impératifs puissent se présenter comme ayant une valeur universelle, pour tous les temps et pour tous les lieux. Il faut que la loi morale avec toutes ses conséquences se présente comme une système organique dont aucune partie ne dépend de circonstances locales et accidentelles." Lévy-Brühl, L., *La morale et la science des moeurs*, Paris, 1903, p. 67.

<sup>2</sup> Cf. Deplodge, Simon, *Le conflit de la morale et de la sociologie*, Louvain: Institut supérieur de philosophie, 1911, p. 289.

<sup>3</sup> I, q. 59, a. 3, c.

<sup>4</sup> I-II, q. 91, a. 3, ad 3um.

common object in the concrete. Diversity of judgments regarding right and wrong produces diversity of laws.<sup>5</sup> Moreover, even though the general principles of conduct be clear, their application to a particular act may be a matter of only probable knowledge.<sup>6</sup>

Nor is Thomas content merely to observe the variability of custom. Again departing from experimental facts he proceeds to give an adequate solution of the problem. One cause of such variability is the dual, animal-spiritual nature of man. Conflict is inevitable between his spiritual striving for the universal and his animal tendencies to the particular. It often happens that a man sees clearly universal truths but does not act according to his knowledge of them.<sup>7</sup> The disordered passions of his corporal nature entice him toward things of only specious goodness.<sup>8</sup> Other members of the group may accept his example; new principles are formed, and soon perhaps an entire nation follows an erroneous moral principle.<sup>9</sup>

Another cause of the changes in custom is the lack of clear perception of right and wrong. The most general principles of moral conduct are indeed perceived by all, but these principles must be applied to action by human reason, an instrument of varying effectiveness.<sup>10</sup> One individual or group is gifted with sharp intelligence, others are slow and dull-witted. This results in diverse standards of morals in the various cultures.

A legitimate cause of variation is found in actual human situations. These vary considerably, and the moral law must be adapt-

<sup>5</sup> "Propter incertitudinem humani iudicii, praecipue de rebus contingentibus et particularibus, contingit de actibus humanis diversorum esse diversa iudicia, ex quibus etiam diversae et contrariae leges procedunt." I-II, q. 91, a. 4, c.

<sup>6</sup> *Ibid.*

<sup>7</sup> "Experimento patet quod multi agunt contra ea quorum scientiam habent." I-II, q. 77, a. 2.

<sup>8</sup> I-II, q. 9, a. 2.

<sup>9</sup> Compare the present practice of birth control with the statement of St. Thomas concerning unnatural vice among primitive peoples. I-II, q. 94, a. 6.

<sup>10</sup> I, q. 113, a. 1, ad 1um.

able enough to care for them.<sup>11</sup> As an example of this adaptability St. Thomas points out that the virtuous act of one state in life may be vicious in another.<sup>12</sup> Further, though *homicide* is undoubtedly wrong, the *killing* of another is not immoral under certain circumstances.<sup>13</sup> His perception, however, of the marvelous adaptability of the law did not cloud his vision of its essential unity and immutability.<sup>14</sup> Man has not been left to wander aimlessly and alone in an otherwise ordered universe. If there are many wrong roads that man *may* travel, there is only one right road he *should* follow.

This study attempts to point out the existence and the nature of this highway, and then to examine the status of those who deflect their journey into the by-lanes of immoral action. Do they always know they are swerving from the right course of action? If they do not know it, are they responsible for not knowing it? In other words, can there be, and how far can there be, invincible ignorance of the natural moral law?

<sup>11</sup> "Diversificatur ea quae sunt de lege naturali, secundum diversos status et conditiones hominum." *Suph.*, q. 41, a. 1, ad 3um.

<sup>12</sup> "Propter diversas hominum condiciones contingit quod aliqui actus sunt aliquibus virtuosos, tamquam eis proportionati et convenientes, qui tamen sunt aliis vitiosos, tamquam eis non proportionati." I-II, q. 94, a. 3, ad 3um.

<sup>13</sup> "Si aliquis occidat aliquem pro defensione vitae suae, non erit reus homicidii." II-II, q. 64, a. 7.

<sup>14</sup> I-II, q. 94, a. 4 and a. 5.

## CHAPTER I

### ON THE NATURAL LAW'S EXISTENCE AND ESSENCE

#### THE NATURAL LAW'S<sup>1</sup> EXISTENCE

A mere casual reading of the history of political thought in America prior to the Declaration of Independence is enough to demonstrate that Jefferson's document was not the advancement of a new political theory, but the apt expression of ideas already inherent in Western Culture.<sup>2</sup>

Alexander Hamilton expressed the theory which lay behind the Declaration in the following: "God has constituted an eternal and immutable law, which is indispensably obligatory upon all mankind, prior to any human institution whatever. This is what is called the law of nature."<sup>3</sup> In other words, the self-evident truths of the Declaration are part of the natural law. Moreover, the natural law is so bound up with man that rights flowing from it, however denied and abused by the vagaries of human conduct, can never be taken away. The men of the time were convinced that they had come to grips with the only political principles based on the realities of human nature. So strong was this conviction that cautious promulgation of the principles was spurned; they declared them "self-evident."

Less than two centuries later, an Englishman, calling attention to the naive metaphysics of the Founding Fathers, submitted

<sup>1</sup> By the natural law is meant the natural *moral* law as distinguished from *physical* laws.

<sup>2</sup> Cf. McNabb, Vincent, O. P., *Frontiers of Faith and Reason*, London: Sheed and Ward, 1936, pp. 92-95, for indications and authorities on the Thomistic influence to be seen in American political thought at the time of the Revolution. Cf. also Wright, Herbert, *Catholic Founders of Modern International Law*, Washington, D. C., 1934, 25 p.

<sup>3</sup> *Works of Alexander Hamilton*, New York: Senator H. C. Lodge (2 ed.), 1904, V. I., p. 59.

that a contention for the self-evidence of the ambiguous term *equality* in relation to man could find support only in sentimentalism.<sup>4</sup> At the same time, an American, after a thorough investigation into the content, use, and essence of the natural law idea in American History down to the present day, came to the conclusion that "the essential element in the concept of natural law is not its content; certainly it is not a particular content at any given time or place. It is the attempt to answer the problems of politics which seemingly cannot be answered in any way capable of objective proof. In other words, natural law in its essence is the attempt to solve the insolvable."<sup>5</sup>

Wright reflects a school that presumably would have no trouble in recognizing, with Cicero, the desirability of a clear knowledge that rights are based, not on opinion, but on nature itself.<sup>6</sup> However, it would not proceed, as Cicero did, to the recognition of the law's actual existence.<sup>7</sup> It would admire the confidence of Aquinas when he asks whether the natural law is the same among all men and then answers, with scholastic distinctions, in the affirmative,<sup>8</sup> but would be inclined to be skeptical about the validity of any speculative argument in the face of the divergence of views that American history brings forward both as to the nature and content of the elusive idea. When, as a matter of fact, the natural law has meant now the revealed divine law, now the law of reason, now that which is in keeping with established custom or legislation, now the ideal as distinct from the actual, and now the appropriate or useful,<sup>9</sup> a discussion of a natural law which is absolutely the same among all men, at all times and places, would

<sup>4</sup> Hollis, Christopher, *The American Heresy*, London: Burns, Oates and Washburn, 1929, p. 54.

<sup>5</sup> Wright, Benjamin, Jr., *American Interpretations of Natural Law*, Cambridge: Harvard University Press, 1931, p. 254.

<sup>6</sup> "Nihil est profecto praestabilius, quam plane intelligi . . . neque opinione, sed natura constitutum esse ius." Cicero, *De Legibus*, I, 10.

<sup>7</sup> "Est quidem vera lex, recta ratio, naturae congruens, diffusa in omnes, constans, sempiterna." Cicero, *De Legibus*, I, 10.

<sup>8</sup> I-II, Q. 94, a. 4, c.

<sup>9</sup> Wright, *op. cit.*, passim.

seem to be futile when related to the historical fact that men have differed so widely even as to its fundamental meaning.<sup>10</sup>

However, Catholic thought has never succumbed to this defeatism. It has maintained constantly that the existence of the natural law not only can be proved by reason but also has become, by the inspired pronouncement of St. Paul which has been constantly reflected in Christian tradition, an object of divine faith. Catholic theology defines the natural law as a participation of the eternal law in rational creatures.<sup>11</sup> Its existence can be proved from Scripture, Tradition, and reason.

#### SCRIPTURE AND THE NATURAL LAW

Explicit statements concerning the natural law's existence are not to be found in the Gospels, though the precept, "All things therefore whatsoever ye would that men should do to you, do you also to them," is one of its fundamental principles of action. St. Paul explicitly states that "When the gentiles, who have no law, do by nature what the law prescribes, these having no law, are a law to themselves: They show the work of the law written in their hearts. Their conscience bears witness to them, even when conflicting thoughts accuse or defend them."<sup>12</sup> St. Paul speaks here of the Gentiles, pointing out that pagans, who follow a *natural* guide to action, perform the same moral works prescribed for the Jews by positive law. That St. Paul, in referring to the law, speaks of the positive moral law as promulgated in the Decalogue, and not of Jewish ceremonial law, is clearly indicated by his indictment of pagans in the immediately preceding context.<sup>13</sup>

In the Greek text *phōte* (nature) belongs grammatically to *ποιεῖν*. In other words, the Gentiles do *by nature* the things of the law. Had Paul wanted the word *phōte* to modify the

<sup>10</sup> For a discussion and solution of the phenomenon of the diversity of views, cf. Brown, Brendan, *Natural Law's Function in America*, Notre Dame Lawyer, Vol. 15, n. 1.

<sup>11</sup> I-II, Q. 91, a. 2, c.

<sup>12</sup> *Romans*, 2, 14.

<sup>13</sup> *Romans*, 1, 24.

phrase "who have not the law" thus excluding the concept of a natural law, then perforce *phōē* would have had to be placed either before the article *τὰ* or between *τὰ* and *ἔχοντα*.<sup>14</sup> In the actual construction *phōē* can only belong to *ποιῶντιν*. The identity of the Gentiles in the passage is clearly determined by the appositional phrases used in their description. The phrases *τὰ μὴ νόμον ἔχοντα* and *ἄνθρωποι μὴ ἔχοντες* in verse 14 can mean only that Paul is speaking of pagans in the strict sense of the word, i.e., people with, at best, only primitive revelation.<sup>15</sup>

The precise meaning of *phōē* in the passage may be gleaned from the consideration that it stands in opposition to the *νόμος* of the Jews, the divinely revealed law of Moses. This is to say, negatively, that the Gentiles perform the actions *without supernatural revelation*, and positively, that they act by means of natural judgments. That the Gentiles do perform such actions leads Paul to say they are a "law to themselves." This law "written in their hearts," is intimately connected with their rational nature, "their conscience bears witness to them, even when conflicting thoughts accuse or defend them."

Summing up, we know from revelation: first, that men have a norm of moral conduct based on their very nature, secondly, this norm is comparable to the revealed moral law of the Jews or to the commandments of the Decalogue, and thirdly that this norm can be known by the light of natural reason, for it is "written in their hearts."<sup>16</sup>

<sup>14</sup> Quirnbach, Joseph, *Die Lehre des Hl. Paulus von der natürlichen Gotteserkenntnis und dem natürlichen Sittengesetz*, in Strassburger Theologische Studien, Band VII, Heft 4, 1906, p. 67. "Paul ne s'ingénie pas ici du principe des actions, mais de leur norme extérieure. La nature, c'est-à-dire la lumière de la raison naturelle, à défaut de la Loi, a dit aux gentils ce qu'ils devaient faire et éviter." Lagrange, M. J., O. P., *Épître aux Romains*, Paris: J. Gabalda et Fils, 1914, p. 49.

<sup>15</sup> St. Augustine's interpretation restricting the term to unbaptized catechumens may be explained by polemical duress against the Pelagians. *Cont. Jul.* I, 4, c. 3, n. 25; P. I., 44, 750. Cf. also Lagrange, *op. cit.*, *Ibid.*

<sup>16</sup> "Aujourd'hui tous les exégètes sont d'accord; les gentils, quoiqu'ils n'aient pas le Loi écrite, ont en eux-mêmes le principe de l'obligation, cette loi naturelle que Sophocle et Cicéron ont exprimée d'une manière admissible." Lagrange, *op. cit.*, p. 49.

By this explicit and authoritative teaching of St. Paul, the natural law was given a function in the organism of Christian thought, which it has retained ever since.<sup>17</sup>

#### TRADITION AND THE NATURAL LAW

An examination of Christian tradition reveals that the Pauline doctrine of the natural law was accepted at once by Christian teachers. Tradition has deepened our understanding of the original doctrine. The Fathers as a group recognized only a single natural law. This law contains precepts common to men everywhere, the knowledge of which does not emanate from human instruction or promulgation, but from nature itself. Nature is the teacher, the human soul is the scholar.<sup>18</sup> These precepts are substantially identical with the precepts of the Decalogue, and, after a period in which they were somewhat obscured through abuses and sin, they have been restored to their pristine purity by the teaching of Christ. These ethical norms are immutable guides and ideals to which all merely human laws should seek to conform themselves; they prescribe, for example, that God is to be honored, that it is wrong to injure our fellow man. The Fathers were not inclined to give a systematic treatise of all the precepts contained in this law, but they emphasized its chief prescriptions.

Christian writers immediately following Paul have nothing explicit concerning the natural law; when they speak of morals this law is presupposed, as in the moral prescriptions of St. Ignatius († 110) in his letter to Polycarp.<sup>19</sup>

The *Apologues* make a positive advance in their treatment of the natural law by comparing their own doctrine of the "Logos" with that of the Stoics. For the Apologues, the Logos is reason personified in Christ.<sup>20</sup> He is the supreme norm of action, and

<sup>17</sup> Schilling, Otto, *Naturrecht und Staat nach der Lehre der alten Kirche*, in Gorres-Gesellschaft, Sektion für Rechts- und Sozialwissenschaft, Heft, 24, Paderborn: Ferdinand Schöningh, 1914, pp. 42-43.

<sup>18</sup> "Magistra natura, anima discipula." Tertullian, *De Test. an.*, C. 5; P. I., I, 616.

<sup>19</sup> C. 4 & 5; P. G., 5, 721, 724.

<sup>20</sup> St. Justin, *Apol.* II, 6, 8; P. G., 6, 453, 457.



those pagans are to be commended who approach this norm. The Stoics especially have many good norms of action, and live, in part, according to the Logos by following right reason.<sup>21</sup> Tatian, († c. 180) who studied under St. Justin, criticizes the pagans according to the same norm, reason. Civil legislation violates this norm in some instances, as is evidenced by the *de facto* existence of divergent laws about the same matters.<sup>22</sup> Those people who have legislation opposed to this norm are to be censured, for their customs violate not only Christian principles, but right reason itself. For Clement of Alexandria, († c. 215) right reason (*ὁρθὸς λόγος*) is the expression of the Teacher himself. It is a rule based on human nature, and actions must conform to it<sup>23</sup> for he who acts contrary to reason sins.<sup>24</sup> The passions are to be subject to right reason, not reason to the passions.<sup>25</sup> Origen († 249) distinguishes a twofold law, the law of nature, and the law of the State. Christians are bound to obey the former at all times, while the latter depends on its conformity to the natural law for its binding power.

Do you say that law is the ruler of all peoples? If you speak of the laws by which individual states are ruled, your axiom will be false, for in reality the same law is not the ruler of all. Rather one should say, *laws* are the rulers of all. For, although nature is the ruler of all and is law in the proper sense, nevertheless, just as some thieves violate laws, so also some nations fall away from the norm and establish laws which are fit for thieves. We Christians, however, recognize the natural law to be a divine law and seek to conform ourselves to it. We reject laws which are contrary to the laws of nature.<sup>26</sup>

In the Latin tradition, Tertullian, († 245) a lawyer, uses the expression *ius naturae* everywhere. Christians and pagans are

<sup>21</sup> *Ibid.*

<sup>22</sup> *Orat. ad Graec.*, 28; P. G., 6, 864.

<sup>23</sup> *Paed.* 1, 12; P. G. 8, 372.

<sup>24</sup> *Paed.* 1, 13; P. G. 8, 372.

<sup>25</sup> *Ibid.*

<sup>26</sup> *C. Cal.* 5, 41; P. G. 11, 1244, 1245.

brothers according to the natural law, for nature is their common mother. Christians, however, have an extra title of proximity, in that they recognize a common Father.<sup>27</sup> Nature is our teacher and in her school we must learn that her teachings are really the teachings of God.<sup>28</sup> The content of these teachings can generally be expressed by the prohibition of evil thoughts, words, desires and deeds, also by the general law against violation of the rights of others.<sup>29</sup> This natural law, or the law of reason, is the measure of the civil law.<sup>30</sup>

Lactantius († c. 325) "the African Cicero," identifies the natural law with the *ὁρθὸς λόγος* of the Alexandrians. It is a constant and perpetual law prescribing duties and establishing prohibitions. It stands in need of no positive human promulgation and cannot be legislated out of existence. It is the same at Rome and Athens, now and forever. All peoples are included in its extent. It is an expression of God's plan for man. He who disobeys this law, flees himself.<sup>31</sup>

The Cappadocians, of whom we consider St. Basil († 379) and St. Gregory Nazianzen († 390), repeat the Christian tradition of a law of nature known by man independently of positive laws. St. Basil speaks of the virtues to which man is inclined aside from all human instruction, and institutes a comparison between the physical laws which rule the body and the moral laws which rule the soul. Just as the body fights against physical disease, so the natural duty of the soul is resistance to evil inclinations. The objects of the soul's natural inclination to the good are charity, prudence, justice, and fortitude. As a matter of fact, St. Paul has added nothing to the natural law, though he brings higher motives to bear on its object.<sup>32</sup>

<sup>27</sup> "Fratres autem vestri sumus, iure naturae matris unius. . . . At quanto dignius qui unum patrem Deum agnoverunt." *Apol.*, 39, P. L. 1, 471.

<sup>28</sup> *De test. an.* 5, P. L. 1, 616.

<sup>29</sup> "Male enim velle, male facere, male dicere, male cogitare de quoquam ex aequo vetamur." *Apol.* 36; P. L. 1, 616.

<sup>30</sup> "Lex erit omne iam quod ratione lex constat." P. L. 2, 81.

<sup>31</sup> *Div. inst.* 6, 8; P. L. 6, 660.

<sup>32</sup> "Numquid non hoc idem natura praecepit? Nihil ergo novi Paulus hortatur, sed astringit altius vincula naturae." *In Haer.* 9, 4, P. G. 39, 902.

St. Gregory Nazianzen retains the Pauline influence completely. God gave men the Law and the Prophets, but before all he gave them the natural law. It is not to be understood that the advent of later positive law abrogated the natural law, but rather that it restored the fundamental rules of moral relations which had become obscured.<sup>33</sup>

While previous Fathers have treated of the natural law only in passing, we find St. John Chrysostom († 407) giving it a profound and somewhat lengthy treatise. The doctrine of Paul is the fulcrum of his proof,<sup>34</sup> though he insists that revelation is not necessary for a knowledge of the natural law and of its obligation. Knowledge of good and evil is implanted in human nature; we don't have to learn from others that certain things are wrong. From the first use of our rational powers we know these things. This knowledge has to do with those elementary and necessary precepts which are necessary if life is to be lived. These norms are absolute and unchangeable, and bind every human being without exception. His persistence in maintaining the universality of the natural law which emphatically does not depend upon custom is interesting:

We use not only Scripture but also reason in arguing against the pagans. What is their argument? They say they have no law of conscience, and that there is no law implanted by God in nature. My answer is to question them about their laws concerning marriage, homicide, wills, injuries to others, enacted by their legislators. Perhaps the living have learned from their fathers, and their fathers from their fathers and so on. But go back to the first legislator! From whom did he learn? Was it not by his own conscience and conviction? Nor can it be said that they heard Moses and the prophets, for Gentiles could not hear them. It is evident that they derived their laws from the law which God ingrafted in man from the beginning.<sup>35</sup>

<sup>33</sup> "Ille cum maximis in rebus commiseratus est cum ei praeter coetera legem prophetas, ac prius etiam naturalem legem, non scriptam eorum quae geruntur censorem dedit arguens, admonens, castigans." *Orat. XIV*, 14, 27; P. G. 35, 893.

<sup>34</sup> P. G. 49, 1321.

<sup>35</sup> *Ad pop. Ant.* 12, 4; P. G. 132.

St. Jerome († 420), basing himself on St. Paul (*Rom.* 2, 14), maintains that there is a law written in the heart which is common to all nations. No man with the use of reason is ignorant of this law.<sup>36</sup> Jews need not boast, for the Gentiles have the law (of nature) as well. The law of Moses was given only because this first law was disobeyed and almost forgotten.<sup>37</sup> This law rules not only the just, but also sinners.<sup>38</sup> Grace, in the new dispensation, should have the effect that men no longer live according to the letter but according to the spirit, for the natural law is renewed in their hearts.<sup>39</sup> St. Jerome excuses violations of the law by children who have not reached the use of reason. However, they are responsible on coming to its use, for they know the law.

An infant knows not this law; not having the law, if it sins, it is not held to the law of sin. It insults its father and mother, but because it has not received the law, it sins not. However, when it does come to the knowledge of the law, that is, when it understands, it must seek good and avoid evil, then sin begins to be, and the infant begins to die, for he is guilty of sin.<sup>40</sup>

St. Ambrose († 397) was well versed in both Christian and pagan sources, and, as might be expected, his teaching on the natural law reflects his background. His Christian concept of society, wherein he conceived both the State and the Church as organisms in which everyone is related as members to a body,<sup>41</sup> is reflected in his doctrine on the natural law. Nature is the basic guide of society, and he who violates its norms injures the entire organism. He also injures the Church whose members are bound together by the bonds of faith and charity.<sup>42</sup> The laws of nature

<sup>36</sup> *Ep.* 121; 8; C. S. E. L., 56; Vindobonae: F. Tempisky, 1918, p. 33.

<sup>37</sup> *Comm.* in *Is.* 8, 24, 6; P. L. 24, 283.

<sup>38</sup> *Comm.* in *Ecc.* 2; P. L. 23, 1971.

<sup>39</sup> "instaurantem legem in cordibus suis" *Comm.* in *Is.* 74, 51, f., P. L. 24, 486.

<sup>40</sup> *Ep.* 121; 8; C. S. E. L., 56, 33.

<sup>41</sup> *De Off.* 3, 3, 17 f.; P. L. 16, 749.

<sup>42</sup> *Ibid.*

are the laws of God. Consequently, it is false to conclude that an action is licit because it is not forbidden by positive law. The decision in that case is up to nature<sup>43</sup> for actions in accord with nature are good, while those contrary to nature are bad. However, since men did not keep the primitive natural law, positive law has been added to it. The natural law is the unwritten law proper to man, and is not learned through study but flows from nature as from a font.<sup>44</sup>

When treating of the natural law St. Augustine († 430) is easily the master of all previous Christian thinkers. Though no strictly scientific treatment of the natural law in the Scholastic sense of the term is to be found in his writings, the concept of natural law is nevertheless an integral part of his organic synthesis of thought. It is for this reason that his thought cannot be understood without reference to the Eternal Law of God, of which the natural law is but an expression in time. His clarity on this relationship is a definite contribution. The Eternal Law is the divine plan or will commanding that the order established by God in nature be observed.<sup>45</sup>

In the eternal wisdom of God, creation is constituted a marvelously related whole in which each part, by its quest of peace and perfection, shows forth the glory of God.<sup>46</sup> Of all visible creatures, man participates in the Eternal Law in the most perfect way, for his soul is, so to speak, the mirror of the Law, and the ideas grounded therein harmonize with the order prescribed. The natural law is in man's reason and is written in his heart in a natural way.<sup>47</sup> The natural law prescribes that we do unto others as we would have them do unto us. Only thus will justice and order be preserved.<sup>48</sup> The commands of the natural law are hid-

<sup>43</sup> *Ep.* 60, 5; P. L. 16, 1185.

<sup>44</sup> *Ep.* 73, 3; P. L. 16, 1251.

<sup>45</sup> *C. Faust. Manich.* 22, 27, 78. "Lex aeterna est ratio divina vel voluntas Dei ordinem naturalem conservari iubens, perturbari vetans." P. L. 42, 418.

<sup>46</sup> *De Civ. Dei* 19, 12; P. L. 41, 637.

<sup>47</sup> *Enarr. in Ps.* 57; P. L. 36, 373.

<sup>48</sup> *Enarr. in Ps.* 118; P. L. 37, 1574.

den from no one with the use of reason.<sup>49</sup> In this way all peoples know that adultery is wrong, not because there is a law forbidding it, but it is forbidden by law because it is wrong.<sup>50</sup> This is the inner law of man, written in his heart, or rather, imbedded in reason, by which the soul mirrors the light of God.<sup>51</sup> St. Augustine is not afraid of drawing the conclusion; pagans, even when they do not abide by the law, know good from evil.<sup>52</sup> The natural law is the "lex gentium," whose subject is man as man.<sup>53</sup> It is distinguished from the Mosaic law (*lex Hebraeorum*) and the New Law (*lex veritatis*). However, as to content, the natural law is identical with the Mosaic, while the New Law is the fulfillment of both.<sup>54</sup>

These quotations from the Fathers clearly show that the doctrine of the natural law is undoubtedly a part of man's heritage. The various schools and regions represented by the Fathers quoted justify the statement that it is a universal tradition. What tradition holds, reason, in this case, is able to demonstrate. The existence of the natural law is now to be considered from the viewpoint of reason.

#### PROOF FROM REASON

Today, irony is found in the fact that a more general agreement exists about scientific ideas, which make no pretense of being self-evident, than prevails about any axioms which have ever been advanced by metaphysical schools.<sup>55</sup> Nevertheless, a rational demonstration of the natural law's existence presupposes many truths.

That the intellect can receive truth as it exists objectively in the world outside ourselves; that because the mind bears this relation to things it cannot but give assent to certain propositions

<sup>49</sup> *De sp. et lit.* 28; P. L. 44, 230.

<sup>50</sup> *De Lib. Arb.* 1, 3, 6; P. L. 32, 1224.

<sup>51</sup> *Enarr. in Ps.* 145, 5; P. L. 37, 1887.

<sup>52</sup> *De Trin.* 14, 21; P. L. 42, 1052.

<sup>53</sup> *Enarr. in Ps.* 118, 25, 4; P. L. 37, 1574.

<sup>54</sup> *De sp. et lit.* 14, 23; P. L. 44, 215.

<sup>55</sup> Hook, Sydney, *The New Medicinalism*, New Republic, V. 103, n. 18, p.

whose truth cannot be doubted under sanction of absurdity; that words apparently expressing doubt concerning these principles really affirm what they seek to deny; that the intellect from the perception of visible things can rise by this measure to the divine Measure of things themselves, in other words, that the existence of God from the existence of finite things can be proved; that the mind can reason to an Eternal Law that is identified with the essence of God; that this Eternal Law is carried out in respect to creatures by Divine Providence—all these truths are taken for granted in the present dissertation. They are demonstrated by the Catholic masterpieces on the subject.<sup>56</sup>

The rational proof for the natural law's existence begins with experimental facts verifiable in the daily life of everyone. These facts lead us inevitably to the conclusion that man, by nature, has within himself a certain guide or norm of action antecedent to all positive law. Because man is physically free, and consequently can ignore this guide, we call it a moral law in contradistinction to a physical law implying necessary physical conformity, like the law of gravity. Because this moral norm is within man's very nature, independent of any human promulgation, we call it the natural law. The experimental facts which form the basis of the proof are the inclinations to certain modes of action which as history proves, and present experience corroborates, have always and everywhere been the property of man. Men have always built fires to warm themselves in winter, they have followed the hunt and planted the seed in order to bring themselves the food necessary for the conservation of strength and health. That men are alive today is proof they have followed the instincts leading them to mate and to protect and foster the offspring of these unions. They have used their powers of speech to communicate their thoughts to other members of the group.

These facts are bound up with human life. That all men, despite the diversification of time, place, and physical constitution,

<sup>56</sup> Cf. Garrigou-Lagrangé, Reginald, O. P. *God, His Existence and His Nature*, St. Louis: Herder, 1934, 2 v.

Sheen, Fulton. *God and Intelligence in Modern Philosophy* (London: Longmans, Green and Co., 1925).

have acted according to these common inclinations, is proof that they spring not from what is diverse or individual, but from that which is common to all. They emanate from human nature. Analyzed, these inclinations fall into three general categories. The first set of inclinations is had in common with all other *beings*. With these, man tends to the conservation of his own being. The second category of inclinations is common to other *animals* as well as to man. He is led by nature to a common life with a person of the opposite sex, and to all acts in accordance with this instinct, that is, to the act of procreation as well as to the protection and education of his offspring. In the third category of inclinations fall all those actions proper to man as a *rational being*; thus man seeks after truth and lives in society with other men. He recognizes certain norms which have to be followed in order to make this possible.<sup>57</sup>

Thus, by experience, it is known that man has three sets of inclinations by which he tends to preserve his being and his race, and to live in society. Now this threefold inclination is a manifestation of God's plan for mankind. The proof of this statement stands or falls on the proof for the existence of a Supreme Being, the Source of all participated being, who is both omniscient and omnipotent.

Starting from the data of sensory experience, St. Thomas proves the existence of a Supreme Being possessing all perfections, the First Cause of the universe.<sup>58</sup> Being all-wise, God must have created the universe according to a plan by which all things have a definite end. They tend toward that end according to definite norms in accordance with their particular nature.<sup>59</sup> God's plan for a creature is made known from the adaptation of that creature to a particular mode of perfection. The inclinations and the powers of the creature serve to indicate the type of perfection and consequently the creature's end. Consequently, God's plan for man is made known to man through the threefold category of natural inclinations which are part of man's nature.

<sup>57</sup> I-II, q. 94, a. 2, c.

<sup>58</sup> I, q. 2, 4, in toto.

<sup>59</sup> I-II, q. 92, a. 1, c.

Thus far two truths have been seen: (a) the existence of God who created the world according to a rational plan and governs it accordingly, and (b) the existence of certain natural inclinations in men, that are nothing else than manifestations of God's plan. Now if the mind of man recognizes these inclinations as good, independently of any human promulgation, and further recognizes an obligation of acting in accordance with these inclinations under the guidance of his rational nature, then there exists in man a guiding norm of action which is called the natural law. That man does recognize he should act according to these inclinations under the guidance of reason is evident. It is a fact of universal experience that man reflects upon himself and his inclinations. Further, acts in accordance with these inclinations under the guidance of reason are judged good and consequently must be done, while acts contrary to these inclinations are considered evil and must be avoided. Thus, to preserve one's own life in accordance with reason is good and a thing to be done, while actions irrationally tending to the destruction of that life are rightly regarded as evil. In other words, man makes judgments based on these natural inclinations and these judgments are the norms according to which he should act. There are certain natural inclinations in man which are manifestations of God's plan. Man recognizes the inclinations, forms judgments about them which are guides to action. Therefore, the natural law exists.

#### OF THE NATURAL LAW'S ESSENCE

A reading of the authors on the essence of the natural law brings to light what at first sight seems an apparently useless juggling of terms. Following the constant Christian tradition that the law is impressed on the very nature of man and therefore is a *natural law*,<sup>60</sup> moderns hasten to qualify the term *innate* in a

<sup>60</sup> Cf. St. Paul, *Ad Rom.* 2, 14; St. Augustine, *Confess.* 1.2, c. 4; St. Thomas, I-II, a. 106, ad 2um—"Ad secundum dicendum, quod dupliciter est aliquid inditum homini: uno modo quasi pertinens ad naturam humanam, et sic lex naturalis est lex indita homini."

way that undoubtedly justifies the use of the term, but nevertheless excludes a strictly literal interpretation of the word.<sup>61</sup>

This preoccupation with the term *innate* has several underlying reasons that have bearing on an understanding of the essence of the law. In an ordered universe it is unthinkable that man alone is outside the plan whereby all things tend to their ends according to the nature of their being. To deny that man has a mode of action peculiar to his nature is to deny the principle of finality, the doctrine of specific differences, and ultimately, the principle of sufficient reason. Evidently, if man has no action proper to himself by which he tends toward the end his specific nature demands, no sufficient reason can be adduced for his being. In other words man, like all other creatures, must tend to his end according to laws bound up with his very nature. He must have a natural law. Consequently, when Catholic tradition talks about the natural law as *innate* to man it is only stating that man, like every other creature, tends to his end according to laws which agree with his nature.

On the other hand, authors have been careful to qualify the term *innate* on psychological grounds. St. Thomas speaks of law as "aliquid rationis."<sup>62</sup> Thus to use the term *innate* in the strict sense in relation to ideas or propositions is to posit a Platonism discarded by St. Thomas and now generally regarded as untenable. Authors, led by the statement of Thomas that the "natural law is something established by reason, just as the proposition is a work of reason,"<sup>63</sup> have concluded that the essence of the

<sup>61</sup> "Dicitur naturaliter indita non quasi ipsa cognitio, sive in actu secundo sive in actu primo (idea), sit innata, sed quia innata est homini inclinatio et facultas statim, ubi primum rationis usus evigilat, abstrahendi ex sensibilibus notiones communissimas ordinis practici (ut est notio boni et mali) et formulandi ex iis principia universalissima ordinis practici." Gredt, *op. cit.* Vol. II, p. 341. "Non quasi ipsa cognitio sit naturaliter indita, sed quia homo naturaliter ita dispositus est ut sibi illam cognitionem statim postquam ad usum rationis pervenerit, facile acquirat." Damen, *op. cit.* Vol. I, p. 91.

<sup>62</sup> I-II, q. 90, a. 1, c.

<sup>63</sup> I-II, q. 94, a. 1.

natural law lies solely in the proposition of reason,<sup>64</sup> but to this position there is a seemingly unanswerable objection. Ideas and propositions are not innate in the strict sense of the term, yet because of the principle of sufficient reason which has absolutely universal extension, children and those unable to exercise the faculty of reason must come under the natural law. The natural law is the law of man as man. To respond that the intellect assents to the proposition immediately on coming to the knowledge of the terms is to place them only *potentially* under the natural law, while the principle of sufficient reason would seem to require actual participation.

A careful reading of St. Thomas reveals that the essence of the natural law may be understood in a sense that protects both its innate character in the strict sense of the word, and at the same time does not sacrifice the relation of the intellect to being, which is difficult to hold along with the supposition of innate ideas. Farrell<sup>65</sup> and Merkelbach<sup>66</sup> arrive at this solution by distinguishing three elements pertaining to the essence of the natural law, i. e., the natural inclinations, the faculty of reason, and the proposition of reason. The first two are innate to man, the third, though strictly speaking not innate, is natural in the sense that the proposition is accepted once the terms are known. St. Thomas speaks of these elements, now singly, now combining them all according to the point of truth he wishes to illustrate. Speaking of the natural inclinations of man he says:

Wherefore it (human nature) has a share in the Eternal Reason whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law.<sup>67</sup>

<sup>64</sup> Cf. *Lehu, Leonardus, O. P. Phil. Moralis et Socialis*, Paris: J. Gabalda, 1914, T. I, p. 239. Cf. also Aertnys-Damen, *Theologia Moralis*, Turin: Marietti, 1932, T. I, p. 91.

<sup>65</sup> Farrell, Walter, O. P., *The Natural Moral Law*, Ditchling: St. Dominic's Press, 1930, pp. 82-103.

<sup>66</sup> Merkelbach, Benedictus Henricus, O. P., *Summa Theologiae Moralis*, Paris: Deslee, T. I, p. 227.

<sup>67</sup> I-II, q. 91, a. 2.

Treating of the light of reason, or the second element, he has this to say:

Thus implying that the light of natural reason whereby we discern what is good and what is evil which is the function of the natural law is nothing else in us than the imprint of the divine light.<sup>68</sup>

The third element, or the proposition of reason, is illustrated by St. Thomas in the following:

Hence we find in the practical reason something that holds the same position in regard to operations, as, in the speculative intellect, the proposition holds in regard to conclusions. Such universal propositions of the practical intellect that are directed to actions have the nature of law. And these propositions are sometimes under our actual consideration, while sometimes they are retained in the reason by means of a habit.<sup>69</sup>

That all three elements belong to the essence of the law is evident from the following passage in which he combines all three in a single exposition of the law:

Law being a rule and measure, can be in a person in two ways, in one way as in him that rules and measures, in another way as in that which is ruled and measured, since a thing is ruled and measured in so far as it partakes of the rule and measure. Wherefore *since all things* subject to Divine providence are ruled and measured by the eternal law, as was stated above, it is evident that all things partake somewhat of the eternal law, in so far as namely, from its being imprinted on them, they derive their respective inclinations to the proper acts and ends. Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, *by being provident both for itself and others*. Wherefore it has a share of the Eternal Reason, whereby it has a *natural inclination to its proper act and end*; and this participa-

<sup>68</sup> *Ibid.*

<sup>69</sup> I-II, q. 90, a. 1 ad 2um.

tion of the eternal law in the rational creature is called the natural law. Hence, the Psalmist after saying "Offer up the sacrifice of justice," as though someone asked what the works of justice are, adds, "Many say, Who showeth us good things"; in answer to which question he says: "The light of thy countenance, O Lord, is signed upon us": thus implying *that the light of nature* or reason whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine Light. It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law.<sup>70</sup>

The italicized portions indicate how Thomas combines all three elements in giving an explanation of the law. When he says *all things* partake of the Eternal Law from which they derive their *respective inclinations* to their acts, man is not excluded. On the other hand, it is only by the use of his reason, by forming propositions, that he can become "provident both for himself and others." When he says the nature of good and evil is discerned by the "light of reason" he implies the second element of which we have spoken.<sup>71</sup>

St. Thomas defines the natural law as "the rational creature's participation of the Eternal Law." It has been seen that this participation consists in a combination of three elements; the natural inclinations, the light of reason, and the proposition formed by the use of reason. What is the nature of their combination? It is evident both from the definition of law in general,<sup>72</sup> and the specific difference between man and brutes, that the proposition of reason will be the most important element. Because animals do not rationally participate in the Eternal Law, St. Thomas says they only have a law by an analogous use of the term (*per similitudinem*).<sup>73</sup> Animals are ruled; man participates

<sup>70</sup> I-II, q. 91, a. 2, c.

<sup>71</sup> For a multiplication of texts on these points, cf. Farrell, *op. cit.*, p. 82 sq.

<sup>72</sup> "Ordinatio rationis ad bonum commune ab eo qui curam habet communitatis promulgata." I-II, q. 90, a. 1, c.

<sup>73</sup> I-II, q. 91, a. 2, ad 3um.

formally in the Eternal Law by taking part in the ruling of himself. St. Thomas brings the predominance of the proposition of reason into clear light when he says, "the natural law is something constituted by reason, just as the proposition is a work of reason."<sup>74</sup>

However, the superiority of the proposition of reason does not obviate the necessity of the natural inclinations and the light of reason, for the proposition depends for its all-important right ordering of actions to the end on its conformity with the inclinations. Though the correct aligning of the inclinations in relation to the means depends on the practical intellect, "the relation to the natural inclination is the measure of truth in the practical reason."<sup>75</sup>

The light of reason, which has been called the second element, is also important, for the inclination to the end could not be recognized and regulated without it. Summing up this doctrine on the essence of the natural law it can be said that the proposition of reason pertains to the essence in "actu secundo," or as presupposing the other two elements, while the inclinations and the light of reason pertain to the essence in "actu primo," or as necessarily presupposed by the proposition of reason.<sup>76</sup>

#### THE PRINCIPLE "DO GOOD"

The importance of this principle for an understanding of the precepts makes a thorough exposition of it necessary. Its roots are found in the natural inclination of man to the *human* good explained by St. Thomas in his distinction between the will considered solely as a principle of action, and the will considered in its function as a rational appetite.

Every created nature is divinely ordained to the good, and seeks this good naturally. Hence, there is in the will a natural appetite for the good congruent to itself: over and above this it has an appetite to seek things according to its own determination and not of necessity. The

<sup>74</sup> I-II, q. 94, a. 1.

<sup>75</sup> VI *Ethic.* lect. 2 circa media.

<sup>76</sup> Merkelbach, *op. cit.*, p. 227.

object of this second inclination is the good which is sought by the will *qua* will. Moreover, the relation between the objects sought by the will *qua* nature and the objects sought by the will *qua* will are the same as the relation between nature and will. And therefore, just as nature is the foundation of the will, so also the object naturally sought by the will *qua* nature is the foundation of the things sought by the will *qua* will. In the objects of the appetite, moreover, the end is the foundation and principle of those things which lead to the end, since they are sought only in relation to the end. And therefore the object of the will *qua* nature is perfect happiness . . .<sup>77</sup>

This passage, attentively read, contains the explanation of the first moral principle. Its three basic ideas must be coordinated to arrive at an understanding of the principle, i.e., (a) that every created nature is ordained by God to the attainment of the good congruent to its nature, and in man this ordination is toward the human good or perfect happiness, (b) that consequently, every created thing has an appetite for its peculiar perfection, which it seeks of necessity, but man, in addition to this necessary inclination (in the will *qua* nature), has an appetite which he follows by his own determination (in the will *qua* will), (c) that just as in all creation the specific nature is the foundation of its necessary appetite for the perfection of that nature, so in man the object of the necessary inclination of the will *qua* nature to the perfect human good is the foundation or principle of the objects sought by the will considered strictly as the rational appetite.

The relation of all created natures to their peculiar perfection is an idea often repeated by St. Thomas. In the Commentary on the Sentences he says: "Every creature tends to its divinely established goal according to the demands of the nature it has received. And since, according to St. Augustine, everything proceeding from God is good, therefore every creature tends to the good according to the exigencies of its peculiar nature."<sup>78</sup> It follows that the goodness of an object sought is to be judged

according as it is connatural and proportionate to the subject.<sup>79</sup>

Moreover, this universal ordination of creatures to their own perfection includes man. This is to say that man by nature is ordained to the perfect *human* good, just as other creatures are ordained to their own peculiar good. This good, which constitutes the final goal of man, must be an unlimited good, corresponding to the unlimited capacity of his intellect to conceive and his will to desire such a good. In so far as this good is the necessary object of the will *qua* nature, it remains, in the present life, in the abstract (*beatitudo in communum*).

The second idea brought out by St. Thomas concerns the appetites consequent upon the ordination of the various natures to their ends. His thought goes back to the rationality and plan of creation and presupposes an intelligent Creator. If the existence of a God of wisdom is posited, then variety of natures means diversity of purpose. Now, if creatures *themselves* are to obtain their end, inclinations must be present urging them to act toward it, for if these inclinations were not present the plan of creation would be doomed to frustration. The argument amounts to this: either the appetites of creatures to the attainment of their various goals are admitted or they are denied. If they are admitted the order of creation is capable of completion and fruition; if they are not admitted then order is not possible and with the denial of order the rationality of the universe is overturned. All creatures, therefore, have a natural or necessary appetite for the perfection of their being and this includes man as well. In the passage cited above, St. Thomas brings out that there is in man a *natural* appetite for the human good. The connotation of this term is made clear by his contrast between the will *qua* nature and the will *qua* will. The will *qua* will, according to St. Thomas, seeks things in line with its own determination and *not of necessity*. The will *qua* nature, on the contrary, seeks its object necessarily and it is in this sense that the word *natural* is to be

<sup>77</sup> Ver. 22, 5.

<sup>78</sup> In 4, dist. 49, q. 1, a. 3, sol. 1.

<sup>79</sup> "Unicuique bonum est quod est sibi connaturale et proportionatum." I-II, q. 27, a. 1. "Bonum in unquoque consideratur secundum considerationem suae naturae." I-II, q. 59, a. 5, a. 3.



understood in the passage. This necessary inclination of the will *qua* nature is not to be understood in the sense that the will must always act; it may here and now refuse to do so (*libertas exercitii*). It only means that when it does act the will *qua* nature is incapable of selecting imperfect happiness in preference to what is presented as perfect happiness. Succinctly, in scholastic terminology, there is no *libertas specificationis* (*velle hoc vel illud*) in this regard.<sup>80</sup> After noting the appetite for completion that man has in common with other creatures, St. Thomas treats of man's appetite considered in its specific nature—the will *qua* will which seeks its object freely, in distinction to the necessary or natural inclination of the will *qua* nature. The objects freely sought by the will *qua* will are the ultimate end in the concrete and the *means* to the total human good in the abstract which constitutes the necessary object of the will *qua* nature. This is brought out by the principle of St. Thomas that just as everywhere in creation the necessary appetite for perfection is based on the specific nature, so in man the necessary inclination to the total human good is the principle of the objects sought by the will considered strictly as a rational appetite.

This principle is all-important for insight into the function of the first moral principle. The goal of man, perfect happiness, is established by God; nothing can change this. Because he has an end, man seeks the means to the end. As St. Thomas says, "The end is the foundation and principle of those things which lead to the end." However, the dependence of the will *qua* will on the will *qua* nature is not the same as that of the will *qua* nature upon nature itself, for, whereas the will *qua* nature is drawn necessarily toward the goal established by nature, the selection of the final goal in the concrete and of the *means* to the goal, which are the objects of the will *qua* will, are left to man's self-determination. Further, man in his present state can deliberately

<sup>80</sup> The power of the will to refuse to act is easily understood if we keep in mind the fact that the total good is not seen clearly in our present state (we see now through a glass in a dark manner) and thus is presented to the will in a limited manner. Under the influence of the "lumen gloriae" there will be no "libertas exercitii." Cf. Greth. V. I, p. 481.

choose a false goal of happiness and means that do not lead to the true goal of his nature in the concrete. The whole question of the moral order springs radically from man's possession of freedom; if he were not free there could be no moral law. However, because he is free in the selection of the concrete final end and of means to his happiness, the moral law becomes necessary. The principle, "do good," enters here. It is the first principle of the moral order. It is not the mere expression of man's necessary inclination to perfect happiness considered in the abstract. Though it is based on this inclination, in itself it has solely to do with the choosing of the particular end and the means, for only concerning these is man free, and only where man is free can there be a moral law. The principle, "do good," is only another way of saying, "use the means that lead to your end," "act for your true end." As will be seen later, man necessarily perceives the first moral principle, though he does not of necessity follow it.

## CHAPTER II

## OF THE NOTION, OBLIGATION, AND DIVISIONS OF THE PRECEPTS

## PRECEPTS

A discussion of the precepts of the natural law in all their detail would entail the writing of a book treating of the ethical field as a whole, and is beyond the point we are trying to make. However, some general notions of the nature, scope, and mutual relations of the precepts are a prerequisite to any conclusions regarding the possibilities of error and ignorance of the law. These fundamental notions are therefore to be treated according to Thomistic doctrine.

## NOTION OF THE PRECEPTS

The natural law's function in creation is the guidance of man to natural perfection. This natural perfection is obtained by the actuation of potencies—man can gain the purpose of life only by living. Living, moreover, because of the intricate complexity of man's nature, implies an infinite variety of acts. If, therefore, the law is to be a guide for life, then it must be a complex guide, for life itself is complex. The various norms, some general, some particular, ruling this diversity and reducing it to unity are called precepts. The precepts of the law are the lights placed in the labyrinth of life guiding human acts to the right paths and turns. It is of the precepts' nature to guide man to a correct realization of his capacities, to inform him what must be done if he is to arrive at his ultimate end. Through the precepts the general proposition of the law which has to do with the means in general is carried into actual practice. The precepts concern the means used to obtain the total human good that is the object of the will *qua* natural appetite.

Obviously, precept in the active sense, or in the one giving the command, pertains both to the intellect and the will. In so far

as it is a transition from potency to act, it is of the will, as the capacity for motion lies in that faculty. In so far as it implies a particular sort of motion or an ordination of motion to a specific object, it belongs to the intellect. That this act of the intellect is of prime importance in the imposing of a precept, or with more precision, that a precept, in the active sense, is essentially an act of the intellect, becomes more apparent when we consider the function of the command. By following the precepts of the natural law man assumes his correct relations to everything else in the realm of being; order is brought out of the apparent chaos of many conflicting tendencies. The conflict between matter and spirit inherent in the complexity of man's nature,<sup>1</sup> is resolved by obedience to their mandates, and harmony in relation to his prime purpose in life is obtained. When it is further considered that this presupposes a perception of values and relations, it becomes evident that the act of command belongs formally to the intellect. Precepts are judgments concerning the relative values of means to an end; the perception of relation and values is a function of the intellect; therefore precept is of the intellect. However, since a precept not only ordains, but does so *actively*, it presupposes an act of the will in the one who imposes the precept.<sup>2</sup>

In the passive sense, which concerns us here, the precepts are the propositions formed by the act of command. In the case of the natural law the active command is an act of the divine intellect; passively, it is the actual ordination as perceived by the creature. It is well to note that St. Thomas uses the term "precept" in two different senses. Now it is a generic term one of whose species is the term "law";<sup>3</sup> again it is used to denote those propositions by which particular inclinations are brought into harmony by being directed to the common end.<sup>4</sup>

<sup>1</sup> Apparently contrary statements in St. Thomas must be understood in the light of his consideration in these passages of only two states of nature—the *natura integra* and the *natura corrupta*.

<sup>2</sup> II-II, q. 47, a. 8, ad 3um. "Ad tertium dicendum, quod movere absolute pertinent ad voluntatem; sed praeceptum importat motionem cum quadam ordinatione; et ideo est actus rationis non autem voluntatis."

<sup>3</sup> I-II, q. 98, a. 6, ad 2um.

<sup>4</sup> I-II, q. 90, a. 2, ad 1um.

Here the latter meaning is taken, namely, that it implies an application of the law to those things regulated by the law.

#### OBLIGATION OF THE PRECEPTS

A consequence of the very nature of the precept is its binding or obligatory power. Physical science is built on the assumption that certain effects constantly follow certain physical causes, and the science of morals depends no less on the necessary connexion between cause and effect. However, the clean-cut distinction between the objects of physical science and the science of morals makes for diversity in the nature of their laws. Physical science deals with substances intrinsically determined to one mode of action; the material quality of being with which it is concerned precludes variation of action when the same causal conditions are present. Thus its laws are invariable. But moral science has for its object another sort of being; <sup>5</sup> it treats of man as a free agent. This freedom is rooted in the spirituality of a mind able to conceive ideas independent of individual conditions. Because of this universality of concepts the particular things presented to the will are seen to be limited and capable of giving only an inadequate satisfaction. The will, proportioned to the good in general, can accept or reject them. Here the distinction between physical and moral laws becomes apparent. Both are necessary in the sense that they are inherent to the nature of the substance concerned, but laws treating of man as a free agent (moral laws) constrain him by no *physical* necessity.

We say a man "ought" to obey, not that a man "must" obey. Why? Certainly not because the notion of necessity is entirely eliminated. True, by reason of an intellectual nature he is liberated from physical necessity, but he is not thereby free from all necessity—there remains a moral necessity to obey, the "ought." This moral necessity flows from the necessity of his forming certain acts if he is to obtain the true perfection of his being. Though man is free to disregard his proper ultimate end and thus lose the very reason of his being, if he wills his true perfection certain acts are incumbent upon him.

<sup>5</sup> *Supp.* q. 65, a. 2, c.

In modern times the term "ought" has been surrounded with the aura of mystery. It is the object of a moral "sense" more esoteric than any scholastic faculty, by which we "feel" we should do certain things and avoid others. Discussion and controversy about the term "ought" are a large part of what is called the moral problem. On the other hand, we find no such preoccupation in St. Thomas. No explicit treatise on obligation is to be found in his tract on law.<sup>6</sup> The reason for the varying attitudes is to be found in diverse fundamental conceptions of law. When law is merely the expression of arbitrary custom there are obvious difficulties in explaining obligation; it requires ingenuity to prove a rule necessary, when previously defined as arbitrary. Conceived, however, as an ordination of reason expressing necessary means to a necessary end, the natural law contains within itself the concept of obligation.<sup>7</sup> It is then a necessary or obliging norm of action. Hence there is no problem of subjective obligation once the law has been promulgated—the very perception of the law entails the perception of obligation. Our problem, therefore, reduces itself to the investigation of the foundation of obligation.

Moral obligation, said above to be based on the relation of certain acts to man's perfection, becomes more evident through analysis of the nature of this perfection. St. Augustine<sup>8</sup> speaks of the restlessness and discontent of man apart from the possession of God. This is only another way of saying that the will, proportioned to the total good by reason of the spirituality of the intellect, can never find complete satisfaction in particular created things. Man cannot attain the fullness of his being, or perfection, through limited things. St. Thomas brings out the same idea in his treatise on perfect human happiness.<sup>9</sup> He examines created goods to see if any of them have, in themselves, the power of satisfying the will in its pursuit of perfect happiness. The power of riches is examined, then glory, honors, power,

<sup>6</sup> I-II, q. 90 to 109.

<sup>7</sup> "Virtutem obligandi . . . quod est proprium legis." I-II, q. 88, a. 4, c.

<sup>8</sup> *Confess.* I, I, c. 1.

<sup>9</sup> I-II, q. 2, in toto.

health, pleasure, and the development of the powers of the soul. Finally, he asks whether *any* created, or limited, good can satisfy man's quest for happiness, and the analysis reveals that none of these things is sufficient. There is a common reason for their failure; all of them are particular, all leave something to be desired by the spiritual power of a will capable of going beyond them to desire the fullness of perfection.

Total good is the object of the human appetite or the will, just as total truth is the object of the mind. It is evident, therefore, that nothing will satisfy the will unless it be the total good. And this is not to be found in any created thing.<sup>10</sup>

Thus, from the spiritual nature of man, St. Thomas reasons to the perfection to which man is essentially ordained by the Eternal Law. This is the true end of man, the one to which he is directed by his very nature.

Now, if man is ordained *by nature* to the total good he will obtain it only by acts in accord with his nature. The whole order of causality demands that specific natures have specific activities,<sup>11</sup> and this specific activity has an essential relation to the end. Man's nature is rational and only through rational action will he obtain his end. Thus we are confronted with a double necessity; the necessary end to which man is ordained by nature and the necessary relation of certain acts to the attainment of that end. This essential order is the proximate basis of moral obligation.

The psychology of the human act throws further light on the concept of obligation, when it is seen that only in virtue of acting for the supreme good does man act at all. We touch here a deep reality which distinguishes man from the animal. For it is proper to man to act for a definite purpose, which is to say, he acts for an end in the *formal* sense of the term. Other creatures, indeed, have purposes in accord with their peculiar natures. But they do not achieve this purpose of themselves, they are moved

by another, they are acted upon, they have only a material perception of their proper end. Man alone, because of the spiritual nature of his knowledge, moves himself.<sup>12</sup> In this order of intention, the principle of finality reigns supreme; the end and, indeed, the ultimate end is first in the order of intention, last in the order of execution. All human action tends to an ultimate end, for, without the willing of an ultimate end, intermediate ends or means could not be the object of the will act. The very definition of a means or of an intermediate end implies a relation to something ulterior. If every object of the will were wished only as a means or as an intermediate end, the process of volition would never start, and consequently there would be no activity. Again, we see the absolute necessity of the willing of an ultimate end for human activity. The human person is free not to act; but when he does act, of necessity he must tend to an ultimate end. This ultimate end must be the total good of the person as proposed by the intellect.<sup>13</sup> Hence, underlying every human action is the desire for complete happiness. Everything willed is ordained to this ultimate end. From the analysis of St. Thomas regarding the goods which might be considered by the intellect as complete, we found that no created things fitted the definition. Only in the possession of uncreated being, the essence of God, will satisfaction for the will and perfect happiness be found. But here tragedy enters. Man does not always seek the true perfection of his being. He can seek the ultimate in things which, of their nature, are particular,<sup>14</sup> by deliberately turning aside from the true ontological end of his nature.

With this understood, the function of the precept becomes clear. We have seen above that the essence of the precept lies

<sup>12</sup> "Illa ergo quae rationem habet, seipsa movent ad finem, quia habent dominium suorum actuum per liberum arbitrium, quod est facultas voluntatis et rationis; illa vero quae ratione carent, tendunt in finem propter naturalem inclinationem, quasi ab alio mota, non autem a seipsis, cum non cognoscunt rationem finis." I-II, q. 1, a. 2.

<sup>13</sup> "Omnes conveniunt in appetitu finis ultimi; quia omnes appetunt suam perfectionem, adimpleri, quae est ratio ultimi finis." I-II, q. 2, a. 7.

<sup>14</sup> "Sed quantum ad id in quo ista ratio invenitur, non omnes homines conveniunt in ultimo fine. Nam quidam appetunt divitias tanquam consummationem bonum." I-II, q. 2, a. 7.

<sup>10</sup> I-II, q. 2, a. 8.

<sup>11</sup> "Si enim agens non esset determinatum ad aliquem effectum, non magis ageret hoc quam illud." I-II, q. 1, a. 2.

in its ordination of acts to the end. Man must tend to *an* ultimate end; the precepts prescribe that he take the necessary means to his true ultimate end. The transcendental relation between the acts ordered by the precepts and the ultimate end is the proximate source of the natural law's obligation.

This is not to say that the essential order of things is the *ultimate* basis of moral obligation, for this essential order depends in the ultimate analysis on the Eternal Law,<sup>15</sup> but it is the proximate basis.

Though the basis of obligation is to be ultimately found in the Eternal Law, it is not to be supposed that the perception of the idea of obligation depends upon a knowledge of the Supreme Being. St. Thomas holds that the basic precept "do good" is self-evident to all men<sup>16</sup> while God's existence is not self-evident, *quoad nos*.<sup>17</sup> And since this self-evident precept implies obligation, it follows that the concept of obligation may be perceived prior to, or even without, a knowledge of God's existence. In practice, all that is required for the notion of obligation is the general and confused knowledge of human nature and its end together with its essential relations (though not necessarily all of them). Nor is knowledge of a perfect sanction or punishment required; everything necessary is contained in the perception that an action leads to, or is useful for, attainment of the end of human nature<sup>18</sup> and that its contrary, being out of harmony with such an end, leads to unhappiness. This view is not at variance with the doctrine of the Church as expressed in a condemnation by Pius IX,<sup>19</sup> for, as will be seen later in more detail,

<sup>15</sup> "Ut breviter aeternae legis notionem quae impressa nobis est, quantum valeo, veritus explicem, ea est, qua iustum est, ut omnia sint ordinatissima." St. Aug. *De lib. arb.*, I, 6, 15.

<sup>16</sup> I-II, q. 94, a. 4, c.

<sup>17</sup> C. *Gen.* L, 1, c. 11.

<sup>18</sup> "In omnibus honestis, utilitas honestis conincidit." Com. in II Sen. d. 21, q. 1, a. 3.

<sup>19</sup> "Humana ratio, nullo prorsus Dei respectu habito, unicus est veri et falsi, boni et mali arbiter, sibi ipse est lex." 3d prop. condemned by Pius IX in the *Syllabus Errorum*, D. B. U., 1703.

"Morum leges divina haud agent sanctione, minimeque opus est ut humanae leges ad naturae jus conformentur, aut obligandi vim a Deo accipiant." Prop. 56. *Ibid.*, D. B. U., 1756.

though the natural law is a secondary and true cause of moral obligation, it is only a cause in virtue of the Eternal Law. It has the same relation of dependence on the Eternal Law as all secondary causes have upon their first cause.

#### DIVISION OF PRECEPTS

We have spoken above of the obligation or moral necessity contained in the natural law, using the term *law* in the singular. On the other hand, the phrase *laws of our nature* is often recurrent in writings on the subject. The singular and plural are seemingly used interchangeably. Is this due to a lack of precision in terminology, or has the diversified usage a basis in fact? Is unity to be exclusively predicated of the law, or are the terms unity and multiplicity to be used in a comprehensive predication?

In one of the most beautiful, though most difficult, articles of the *Summa*<sup>20</sup> St. Thomas subjects this problem to analysis and concludes that the natural law is both one and multiple; one in the unity of its first principle from which all precepts flow, multiple in the plurality of its precepts that, in turn, participate of the unity of the first principle. St. Thomas finds the basis for his proof in the analogy between the precepts of the moral law and the deductions made in the realm of speculative thought. Both speculative deductions and precepts depend for their validity and objectivity on their relation to self-evident first principles.

The mind directly arrives at the truth of first principles without the intermediation of other judgments. The first principle of the speculative intellect is the principle of contradiction which is based on the most simple concept possible—that of being. In the practical intellect the concept of good is the first thing perceived, and the principle based on this notion is first in the whole field of practical action.<sup>21</sup>

<sup>20</sup> Grabmann, Martin, "Das Naturrecht der Scholastik von Gratian bis Thomas von Aquin," in *Archiv für Rechts und Wirtschaftswissenschaften*, Band 16, Rotschild (Berlin, p. 50).

<sup>21</sup> "Sicut autem ens est primum quod cadit in apprehensione simpliciter, ita bonum est primum quod cadit in apprehensione practicae rationis, quae ordinatur ad opus . . . primum principium in ratione practica est . . . bonum faciendum . . . hoc est ergo primum praeceptum legis." I-II, q. 94, a. 2, c.

That this proposition must be first in action is clear from the nature of action. Rational action is always purposeful; to act rationally means to act for an end.<sup>22</sup> Now, an end is only the last in a series of related goods. Consequently, the principle "do good" is only the expression of the nature of rational action, i.e., to act for an end conformable to human nature or the rational good. If an action is to remain rational in the full sense of the term it must tend toward the rational good. This tendency to the rational good is common to all moral action and therein the natural law finds its unity.

The microcosmic quality of man's nature, virtually including within itself the natures of all creatures below it in the scale of being,<sup>23</sup> and consequently all their inclination to particular goods, is the reason for the multiplicity of the precepts. Because of his multiple nature, man can attain to his ultimate perfection only by the use of various means or particular goods, but this cannot be a helter-skelter, aimless seeking. The precepts which rule these inclinations all participate in the first principle, inasmuch as the general object of all, the rational good, is contained therein.<sup>24</sup> This may be illustrated by reducing a more particular precept to the first principle. If the question is asked whether it is permissible secretly to appropriate to oneself the lawful possessions of another, the answer will be in the negative, for the action described is theft and theft is forbidden by the natural law. But the response may be more deeply probed—why is theft forbidden? To which the reply will be given that theft is incompatible

<sup>22</sup> I-II, q. 1, a. 2.

<sup>23</sup> *De Ver.*, 16, 1.

<sup>24</sup> "Contingit autem ad unum finem multa esse necessaria, vel expedientia. Et secundum hoc possunt de diversis rebus dari diversa praecepta inquantum ordinantur ad unum finem. Unde dicendum est quod omnia praecepta legis veteris sunt unum secundum ordinem ad unum finem, sunt tamen multa secundum diversitatem eorum quae ordinantur ad illum finem." I-II, q. 99, a. 1, c. Though St. Thomas speaks expressly of the Old Law, nevertheless it is to the point, as he considers the moral precepts of the Old Law as proximate conclusions from the first principles of the natural law. Cf. I-II, q. 100, a. 3, c.

with that mutual recognition and maintenance of rights and duties which is essential to the social life of man. And why must man live a social life? The social life is the result of a natural inclination which flows from man's nature as a rational animal, is therefore a good and therefore to be done. Thus must we come, ultimately, in every human action to the foundation stone which supports the whole edifice—the first principle of the moral law—"do good, avoid evil." This principle is founded on no other principle; it is first and gives unity to all others. Metaphysical bases for this principle may be given, but an appeal to another and more ultimate moral principle is impossible.<sup>25</sup>

The natural law is both one and multiple. The diversity of order in its multiplicity is now to be examined. St. Thomas perceived this manifold order, and used it again and again. He speaks now of primary precepts in the order of promulgation or knowledge, and of proximate and remote deductions from them.<sup>26</sup> Again he treats of precepts necessary by their ontological and real connexion with the ultimate end of man, and of those necessary only in a secondary sense, in so far as they are objects of natural inclinations but confer only to the end in the sense of making it more easily obtainable.<sup>27</sup> Further, he speaks of precepts graded according to the natural inclinations. There will be a threefold division here according to the three inclinations arising from nature, animality and rationality.<sup>28</sup>

Different orders of precepts arise from these various aspects. However, every precept is essentially an ordination of reason, regulating man's desire for some particular good, and all are unified by their relation to the first principle by which they are directed to the *Summum Bonum*. To be considered in detail are (a) the division according to their ontological connexion with the ultimate end, and (b) the division according to the order of promulgation or knowledge.

<sup>25</sup> Cathrein, Victor. *Moralphilosophie*, Freiburg, Herder: 1893. Band I, p. 334.

<sup>26</sup> I-II, q. 94, a. 3, c.

<sup>27</sup> *Supp.* q. 95, a. 1, c.

<sup>28</sup> Cf. p. 13.

## (a) ONTOLOGICAL DIVISION OF PRECEPTS

Obviously, there are various degrees of value in human acts; insulting remarks about pet dogs are not taken as seriously as barbs directed at their owners. Moreover, should the object of contempt be, not a mere man, but God Himself, a different evaluation altogether must be employed. We measure the value of acts according to the importance of the end to which they are directed and according to the manner in which they conduce to that end. The rude strokes of a pen guided by a childish hand in a laborious letter to teacher have not the artistic value of Shakespeare's writing in the composition of Hamlet, though the subjective effort may be greater. The sportsman who uses more energy in rowing his boat to a distant part of the lake than the ditchdigger taking his time between lunges is nevertheless performing a less important function. Recreation is less important than the life's work to which it is only a means. It is the same with actions considered in relation to the *Summum Bonum* or ultimate end of human life. Those actions which have God for their immediate object are the most important, and consequently the precepts of the natural law guiding these actions, by reason of their direct connexion with the ultimate end, are first in the hierarchy of precepts. Man, however, encompassed by the material conditions of his present existence, though capable of directing acts to God, can never in this life arrive at the direct vision of the Divine Essence. It is in the nature of man that he realize the potentialities within himself by contact with matter; he must deal with creatures. If he were able to arrive at his ultimate end without this contact, then means themselves would have no meaning.<sup>29</sup>

Thus, if man, of necessity, can arrive at his ultimate perfection only through relations with creatures, these relations take on new meaning, and the precepts guiding these actions necessarily are to be observed. They contain a necessary, though mediate, relation to perfect happiness. An examination of the various acts of love of which man is capable will bring out this point.<sup>30</sup> The

<sup>29</sup> Rousselot, Pierre, *The Intellectualism of St. Thomas*, London: Sheed and Ward, 1931, p. 212.

<sup>30</sup> Merkelbach, *op. cit.*, p. 234, v. 1.

highest act of love proper to man is obviously the love of God, for God is Goodness, while all other beings *have* goodness in varying degrees of participation in the Perfect Good. But, as previously seen, man, because of his dual animal-spiritual nature, must arrive at the *Summum Bonum* by using creatures. Even the love of God is impossible without the necessary predisposition of love of self. This love of self is also the measure of love directed to our fellow man.<sup>31</sup> Man can understand love only from his own irrepressible striving after the realization of self, and this tendency "ad bonum nostrum" is virtually present even in the highest flights of benevolent love of God. Similarly, this love of self is reflected in man's love of his fellow man, for only through the love of neighbor is society possible, and man's attainment of perfection apart from society is impossible. Thus the precepts guiding love of self and love of neighbor are necessary in relation to the *Summum Bonum*, though only *mediately* necessary. In a word, those precepts are said to be *primarily intended* which command all those things that are *necessary* in order that men may attain their true ultimate end, whether those things are immediately concerned with God, or are immediately concerned with creatures and only *mediately* with God.

Those precepts are said to be *secondarily intended* which prescribe those things that, while not strictly necessary for the required direction of men to their ultimate end, render the attainment of the end better and easier, or are directed to the secondary end of a creature. Thus, the primary end of wedlock is undoubtedly the begetting and education of children, and this very conceivably could be obtained by the simultaneous contracts of one man with a plurality of women; but for the successful and harmonious attainment of the primary end, that peace which is a condition for the "bene esse" of men associated in common enterprise would be required. And this is not conceivable or at least is rendered very difficult in the case of a plurality of wives.<sup>32</sup>

<sup>31</sup> Aetius-Damen, *Theologia Moralis*, Turin: Marietti, 1932, V. 1, p. 240.

<sup>32</sup> "Non facile potest esse pax in familia, ubi uni viro plures uxores junguntur; cum non possit unus vir sufficere ad satisfaciendum pluribus uxoris ad votum, et uno officio causari item; sicut fingi corruxantur ad invicem et similiter plures uxores unus viri." *Suppl.* q. 65, a. 1.

Thus, in the case of matrimony a primary and a secondary precept is seen. The former is bound up with the very purpose of matrimony, for without it the natural tendency to the *bonum animale* could not be realized; the precept dealing with it concerns the primary end of the marital state. Secondly, the unity of marriage, or monogamy to the exclusion of a plurality of wives, is prescribed. It has to do with a means conducive to the better and easier attainment of the primary end, and nature inclines us to its observance. Though both are precepts it is evident that their binding force is not on an equal plane; the one binds of necessity, the other by reason of the "bene esse."

The division of the precepts which guide human actions according to their real relationship to the end may also be considered from a negative point of view by specifying the manner of opposition possible to their ordinances. According to St. Thomas this opposition may be twofold:

Everything which renders an action incompatible with the end to which it is naturally ordained is said to be contrary to the law of nature. An action may be incompatible with either the primary end or secondary end and to both in two ways; first it can altogether impede the attainment of the end, secondly it may render the motion toward the end either difficult or less in harmony with it.<sup>35</sup>

This opposition to the ontological division of the precepts results in a series of negative prescriptions. Speech is the human action intended by nature to bridge the aloofness which holds the mystery of the human person and to make possible the life in society which is necessary for man's development. A lie, by its very nature, frustrates the natural purpose of speech as primarily intended by nature, and consequently is forbidden by the primary negative precept "do not lie." Similarly, polyandry is forbidden because it is contrary to the primary end of marriage, whereas polygyny is opposed only to the secondary end, and is therefore forbidden by a secondary precept. The question of

opposition to the secondary ends of actions will be treated below when we inquire into the possibility of defections from the natural law. The possibility of defection may be on one of two counts; either the law itself does not hold, or the subject is ignorant of the law.<sup>34</sup> Ignorance presupposes possible knowledge. This brings out the need for a consideration of the precepts according to their cognoscibility.

## (2) DIVISION OF PRECEPTS ACCORDING TO THEIR

### LOGICAL CONNEXION

Since a precept must be known in order to guide human action to the proper end,<sup>35</sup> it will be seen that this division of the precepts is of the highest importance. The practical reason in man, not less than the speculative, is discursive; it draws conclusions from general principles which are, so to speak, their causes. As principles are better known than conclusions, it becomes evident that some precepts of the natural moral law will be better known than others. There will be a hierarchy of order according to their cognoscibility.

Now just as in the speculative order there are self-evident principles, so also there will be self-evident principles or precepts in the practical order. Here it is well to remember that St. Thomas distinguishes two sorts of self-evident propositions; those which are self-evident considered in themselves, and those which are self-evident in relation to the subject knowing.<sup>36</sup>

A self-evident proposition for St. Thomas is one whose predicate is contained within the subject in such a way that one knowing the subject will necessarily know the predicate; this copulation of the two terms of the proposition must be made, for the predicate is of the subject's essence. From this it does not follow that every proposition that is, of itself, self-evident is also self-evident in relation to intellects capable of knowing it. If the nature of the subject is not adequately known there can

<sup>34</sup> I-II, q. 94, a. 4, c.

<sup>35</sup> I-II, q. 89, a. 4, c.

<sup>36</sup> I-II, q. 94, a. 2, c. "Dicitur autem aliquid per se notum duplifier: uno modo secundum se, alio modo quoad nos."

<sup>38</sup> *Sup.* q. 65, a. 1.



be no knowledge of the relation between subject and predicate.<sup>37</sup> However, some propositions are self-evident not only from their nature but to all men as well because the subject of the proposition is known to all. In the speculative reason such propositions *as the whole is greater than its parts and the same thing cannot be affirmed and denied simultaneously and in the same respect*, are examples of *propositiones per se notae quoad se et quoad nos*. For the determination of a hierarchy or precepts in the natural law according to their cognoscibility, attention will be directed in the first instance to those propositions or precepts that are self-evident *et quoad se et quoad nos*; for they will be first in the order of knowledge.

As this question is psychological, we shall have to draw criteria from the principles of psychology in order to determine the logical relation of these principles. The speculative reason and the practical reason are not two distinct faculties but different functions of one and the same power. The speculative intellect considers being in itself, apart from any relation to action or utility. The practical intellect, on the other hand, considers being as it has a relation to action, or being as the object of the appetitive faculty, for action is always toward the good. Consequently, though this distinction of relation exists between them, the same psychological rules will apply both to the speculative and to the practical intellect.

One psychological criterion which should be of great assistance in determining the logical hierarchy of precepts springs from the nature of the intellect itself: "in the intellect knowledge of the more common is prior to the knowledge of the less common."<sup>38</sup> The Thomistic proof for this principle may be indicated by stating that the intellect is a faculty proceeding from potency to act, which, following the nature of all faculties, arrives at complete actualization through partial actualization, or through "incom-

<sup>37</sup> "Homo est animal rationale, est per se nota secundum sui naturam; quia qui dicit hominem dicit rationale, et tamen ignorant quid sit homo haec propositio non est per se nota." I-II, q. 94, a. 2, c.

<sup>38</sup> I, q. 85, a. 3, c. "Secundum intellectum cognitio magis communis est prior quam cognitio minus communis."

plete acts." This complete actualization to which the intellect is ordained is knowledge of reality as it is in itself. The more completely the individual notes of a thing come within the range of the intellect the more completely it fulfills its function; it does this perfectly when it arrives at a clear and distinct knowledge of its object. The stages of partial realization of the intellect tending toward this distant knowledge will be marked by a process from the more general and more vague to the more particular and more distinct. In other words, the more universal is the first object of our intellect. As an example, St. Thomas cites the fact that the concept of animal as animal is more universal and less distinct than the concept of animal in so far as it is rational or irrational. When he says the concept of animal presents itself to our intellect prior to the concept of man who is a rational animal, it is to illustrate the general principle that our knowledge proceeds from the more universal to the less universal, from the obscure to the distinct.<sup>39</sup>

Another criterion which should be of aid is the influence of natural inclinations on our reason, coupled with the principle that our intellectual knowledge is derived from the senses. The influence of sense perception will become apparent in the formation of those principles which have to do with the sensible order, while facility in the acceptance of a precept guiding an inclination will be in proportion to the strength of the inclination. The more strongly a man is inclined to a certain good, the more vehemently is the desire of the good liable to influence his intellect, which will be inclined to judge the attainment of the good as lawful with a minimum of reflection.

Moreover, the inclination will be stronger in proportion as it is further removed from the conscious activity of man, or the less dependence it has on conscious reflection and consequently upon free will. Since this conscious activity flows immediately from

<sup>39</sup> "Cognoscere animal indistincte est cognoscere animal inquantum est animal. Cognoscere autem animal distincte est cognoscere animal inquantum est animal rationale vel irrationale; quod est cognoscere hominem, vel leonem. Prius igitur occurrit intellectui nostro cognoscere animal quam cognoscere hominem." I, q. 85, a. 3, c.

man's soul, these inclinations will be stronger in those regions farthest removed from the conscious life.<sup>40</sup>

If we take these psychological criteria into consideration we are now in a position to arrive at some knowledge concerning the logical hierarchy of the precepts. As a conclusion from the first criterion, i.e., that the intellect knows the more universal before it knows the less universal, it becomes evident that the practical intellect will be apt to know precepts which deal with human action in general before it becomes aware of those norms which guide particular actions, and the deeper we descend into the realm of particular action surrounded by various circumstances, the more difficulty is encountered by the intellect in determining the correct norm to follow.<sup>41</sup>

A consequence of the second criterion, which has to do with the influence of the natural inclinations on the intellect, will be that inclinations related to a good to which the will is directed of necessity will more easily give rise to the recognition of precepts than inclinations to particular goods to which the will is indifferent. It is paradoxical that the intellect will more easily assent to precepts guiding to the attainment of those goods which are farthest removed from conscious life as such, while the easiest assent of all will be to that precept which guides us to the good which is possible only because of the nature of intellectual apprehension. The reason lies in the strength of the inclination. As we have seen previously, man *must* seek the total human good, or perfect happiness; this is man's strongest inclination, and a precept finding its wellspring therein will most easily find acceptance in the intellect. Moreover, the inclinations to particular goods, even though so strong that, so to speak, we must do violence to ourselves not to seek them,<sup>42</sup> do not physically determine us to seek their objects. These inclinations, because they have a relation to the particular, can be overcome.

Applying now these criteria to the precepts of the natural law

<sup>40</sup> Cf. Kuhlman, Dr. B. C., *Der Gesetzbegriff beim Hl. Thomas von Aquin*, Bonn: Verlag Peter Hanstein, 1912, p. 148.

<sup>41</sup> We see here the necessity for positive law, and the congruity of divine revelation embracing precepts and truths in themselves natural.

<sup>42</sup> *De Ver.*, 22, 1.

we are able to see that the proposition of reason, included within the essence of the law itself, "Good must be done; evil must be avoided"<sup>43</sup> is the first principle to which the mind assents in the order of action. All precepts are derived from this first principle; it is first in both the ontological<sup>44</sup> and the logical orders. We have seen above that this principle is self-evident<sup>45</sup> in the sense that the predicate is contained within the notion of the subject. That it is self-evident "quoad nos" as well becomes evident when we apply the psychological criteria. For the concept of the good in general is the most universal notion possible in relation to the order of action. As the intellect grasps the more universal more easily than the less universal, it will apprehend the self-evident proposition contained in the nature of "the good," easiest of all, for it is the most universal of all. In view, therefore, of the universality of the proposition of reason and the strength of the inclination upon which it is based we conclude that "Good must be done; evil must be avoided" is the first principle of the practical reason in the logical order.<sup>46</sup>

As St. Thomas says, all other precepts of the natural moral law flow from this principle as from their source, for all others are particularizations deriving from this most universal of principles; they qualify the good to be sought. If we seek to descend further in the hierarchy of precepts of this division, we must further determine the good as apprehended by the intellect. From the psychological criteria we know that the precepts next in the order of knowledge will be less universal than the first principle and will be norms guiding man's natural inclinations.

Man, despite the unity of his being, is of a complex nature. He has something in common with everything in existence, with inorganic matter, plants, and animals. But as a rational creature, he is at the same time distinct from all these. Now each distinct

<sup>43</sup> Cf. above p. 19.

<sup>44</sup> "Ontological" is here taken to mean the transcendental relation of an action to an end.

<sup>45</sup> Cf. p. 32.

<sup>46</sup> "Hoc est ergo primum praeceptum legis, quod bonum est faciendum et prosequendum, et malum vitandum: et super hoc fundantur omnia alia praecepta legis naturalis." I-II, q. 94, a. 2, c.

class of being has an inclination to the good which is in conformity with its nature. We find similar inclinations of all these types in man by reason of his complexity.

Common to each existing thing is an inclination to the conservation of its being, which places it in opposition to all that which tends to take it out of existence. This inclination belongs also to man in so far as he partakes, virtually, of the nature of all existing things considered merely as beings. As a being capable of sensation man is considered in a more restricted sense. The good to which he is inclined according to his participation in this realm of being will be more restricted, "and according to these inclinations those things are of the natural law which nature teaches all animals, as the commingling of man and woman, the bringing up of offspring, etc."<sup>47</sup> Beyond these inclinations man has the faculty of reason with its corresponding appetite, which also tend to their own realization. The perfection of man as man is dependent on their actualization. Precisely in order to reach the goal of his higher intellectual nature he possesses, among other inclinations, the natural inclination to live in society. Thereby, with the help of others, he may acquire the perfection to which he, as an individual, may aspire, but cannot reach.<sup>48</sup>

Under the influence of this threefold category of inclinations which man possesses by reason of his complex nature, the reason will deduce a series of precepts which, though less universal and therefore less easily known than the first principle, are nevertheless self-evident to all and therefore constitute with it the first class of precepts. They guide man in a general way but need to be particularized for particular actions. We have therefore:

- a. According to the inclinations of man in common with all other beings—the precept of conservation of being;

<sup>47</sup> I-II, q. 94, a. 2, c.

<sup>48</sup> "Tertio modo in est homini inclinatio ad bonum secundum naturam rationis, quae est sibi propria, sicut homo habet naturalem inclinationem ad hoc quod veritatem cognoscat de Deo, et ad hoc quod in societate vivat; et secundum hoc ad legem naturalem pertinent ea quae ad huiusmodi inclinationem spectant." I-II, q. 94, a. 2, c.

- b. According to the inclinations he has in common with animal life—the general precepts guiding him to the conservation of the species, e.g., the obligation of parents to care for their offspring.

- c. According to the inclinations proper to himself—the general precepts guiding his life in society and his rational nature in general, e.g., *act according to your rational nature, do unto others as you would have them do unto you, give everyone his due.*

Descending from this classification of self-evident general principles to the more particular we find a second group of precepts<sup>49</sup> which are easy deductions from the first class, and which have to do with determined actions or means to the realization of the general goods proposed to man's reason by the various inclinations. St. Thomas places the precepts of the decalogue in this group,<sup>50</sup> expressly omitting the circumstance of time in the third precept. In the consideration of this group St. Thomas gives a further, and striking, exposition of the natural law when he says that all the precepts of the natural law are contained in the decalogue, but in different ways. Explicitly, of course, only the precepts belonging to the second group are included, but implicitly there are to be found both the first precepts, and further deductions from the second group. The first precepts are to be found in the decalogue as principles are contained in conclusions drawn from them, while the remote precepts are contained in the decalogue as conclusions in principles.<sup>51</sup>

<sup>49</sup> It is evident from the psychological criteria that not all the precepts of the first group are recognized with the same ease. The precept for the conservation of being, for example, will be recognized with more facility than the precepts governing man in society, for these latter depend on the perception of a relation to other rational beings, while the former does not. Nor will all the precepts of a group be recognized at the same time. Education and environment play a part here.

<sup>50</sup> "Illa ergo praecepta ad decalogum pertinent, quorum notitiam homo habet per seipsum a Deo. Huiusmodi vero sunt illa quae statim ex principiis communibus primis cognosci possunt modica consideratione." I-II, q. 100, a. 3, c.

<sup>51</sup> I-II, q. 100, a. 3, c.

In the precepts of the decalogue we find that three of them concern man's relation to God. We find that most authors place one general pre-

Further deductions from the principles of the natural law fall into a third class which may be called remote conclusions. Treating of actions in concrete circumstances, they are less universal than the precepts of the Decalogue and are, consequently, known with more difficulty. St. Thomas says these precepts are not evident to the ordinary man who will depend on the judgment of wiser persons and on positive legislation for the correct norm of action.<sup>52</sup> Examples of precepts contained in the third group would be: the deordination of revenge when assumed by a private person; the prohibition of a lie in all circumstances so that no utility can justify it.

Having investigated the existence and nature of the natural moral law, together with the nature and divisions of its precepts, we see that it is not an arbitrary, exterior prescription dictating the mode of human conduct, but a guide springing from man's rational nature and conformable to it. Since the law is "aliquid rationis," the success of man's activity depends on his ability to subordinate the material to the spiritual, or as St. Thomas says, "the good of man is to live according to reason."<sup>53</sup> In the state

cept governing man's relation to God in the first body, i.e., among those which are self-evident to all. Cf. Cathrein, *op. cit.*, p. 338, Mertelbach, *op. cit.*, p. 233, and other manuals of moral philosophy and theology. Strictly speaking, from the viewpoint of the natural moral law which can be known by the individual man's unaided reason, a general precept guiding man's relation to God, though self-evident (predicate contained within the notion of the subject), would not be self-evident for all. For this precept depends on a knowledge of the existence of God to which reason can arrive from sensible data, only after a reasoning process. However, the natural inclination of man to live in society, and the fact that our society is *de facto* largely impregnated with Christian thought, coupled with the fact that children at a surprisingly early age, would seem to warrant the inclusion of some such precept in the very first group. For experimental data on this knowledge of children, cf. "The Moral and Religious Development of the Preschool Child," by Sister Mary, Ph.D., and Margaret Mary Hughes, A.B., in *Studies in Psychology and Psychiatry*, Vol. IV, n. 1, April, 1936, p. 46.

<sup>52</sup> I-II, q. 100, a. 1 & 3, c.

<sup>53</sup> I-II, q. 94, a. 2, c.; II-II, q. 123, a. 12 (the gradation of virtues according to their relation to reason).

of integral nature, characterized by the perfect subordination of man's lower nature to reason as informed by faith,<sup>54</sup> all of man's actions were pervaded by right reason, but the loss of these supernatural gifts through original sin has brought him face to face with the possibility of ignorance and error in human conduct.<sup>55</sup> Our problem is the investigation of these mental states in their relations to that norm of morality which is the natural law. Since error is not the normal fruit of the mind, but necessarily has the character of a defective by-product,<sup>56</sup> and ignorance is a state in which the mind has no relation of being to its object,<sup>57</sup> an understanding of such abnormalities presupposes a preliminary grasp of the normal function of the mind in human action. Consequently, before proceeding to the evaluation and possibility of ignorance in relation to the natural moral law, the following chapter develops (a) the function of intelligence in human action and (b) the states of ignorance and error in general.

<sup>54</sup> The four immunities—from concupiscence, ignorance, pain and death—were consequences of the original elevation of man to the supernatural order; their existence in our first parents is a certain doctrine of the Church. Cf. St. Th. I., q. 94.

<sup>55</sup> It is commonly held today that man, in the state of fallen nature, has the same powers, at least intrinsically, as he would have had in a hypothetical state of pure nature. Cf. Tanquary, *Synopsis Theologiae Dogmaticae*, v, II, p. 569, for the theological opinions.

<sup>56</sup> Cf. *De Ver.* 18, 6, where St. Thomas compares error to "monstrous" births in nature.

<sup>57</sup> It is well to state preliminarily that ignorance and error are distinct states, though moralists and St. Thomas sometimes use them indiscriminately. "... sed intemperatus habet ignorantiam circa ipsum finem, in quantum scilicet iudicat hoc esse bonum, ut irrefrenate concupiscencias sequatur." II-II, q. 156, a. 2 ad 1um.

## CHAPTER III

### OF THE FUNCTION OF THE INTELLECT IN HUMAN ACTION

#### (a) THE FUNCTION OF THE INTELLECT IN HUMAN ACTION

Though man's ultimate perfection in the present supernatural order consists in an act of the intellect<sup>1</sup> by which he sees God "face to face" and the basis of his perfection will be the greater or less clarity of the beatific vision, in his present state intellectual insight into the natures of things ceases to be the criterion of value. There is no intuitive possession of the final end here on earth; only by the progressive realization of potentialities will that end be attained. Consequently, perfection is judged according to the capacity for action. A man is said to be good according to the disposition of his will. The value of the idea, then, will be judged according to its influence over the will, or, according to the extent it is a force in human action. Such phrases as "the primacy of the intellectual," "the will follows knowledge" which recur frequently among Thomists and are used by St. Thomas himself<sup>2</sup> might lead us to suspect that his doctrine falls into a kind of psychological determinism. Closer examination of the theory, however, reveals that he neither abandons freedom nor does he take from the idea its force for action. When St. Thomas speaks of the will act as the effect of knowledge<sup>3</sup> he understands it in the sense of a final causality which by no means forces the will to action. "The good perceived moves the will in the same way as a man who counsels or persuades, that is to

<sup>1</sup> "Consequimur autem ipsum (finem) per hoc quod fit praesens nobis per actum intellectus," I-II, q. 3, a. 4, c.

<sup>2</sup> "Proximum autem motivum voluntatis est bonum intellectum, quod est sum obiectum, et movetur ab ipso sicut visus a colore," *Contra Gentes*, III, 88.

<sup>3</sup> *In Rom.* 7, 3.

say, by pointing out the goodness of an object."<sup>4</sup> Though no action, good or bad, takes place without the precursory intellectual judgment, the will is always the efficient cause while the judgment has the nature of a quasi-material or dispositive cause.<sup>5</sup> This reciprocal causality by which the intellect proposes various goods to the will as capable of attainment, and the will freely chooses between the goods proposed, while retaining within itself the power to direct the intellect to the consideration of particular goods, helps us to understand the statement of St. Thomas that "the judgment which decides that a certain action is to be placed can never be out of harmony with appetite,"<sup>6</sup> and "evil desire is always linked up with some error of practical knowledge."<sup>7</sup> To understand the function of the intellect in action it is important to observe that there are two kinds of knowledge, the universal and the particular. According to St. Thomas, universal knowledge is of much less importance for moral life.<sup>8</sup> It has no value whatever unless particularized for the action itself, which, as concerned with concrete things, is always the result of a particular judgment acting as the dispositive cause.<sup>9</sup>

Thus the closer we come to action or moral life itself, the more important the practical judgment becomes. Further, it may be said that the efficaciousness of the practical judgment depends upon the influence it wields over the entire organism. Thus a man may perform one virtuous act by acting under the influence of a universal principle, but he is not a *virtuous man* unless the

<sup>4</sup> *De Mal.* 3, 3.

<sup>5</sup> *De Ver.* 28, 7.

<sup>6</sup> *De Ver.* 24, 1.

<sup>7</sup> *De Mal.* 16, 6, 11.

<sup>8</sup> *In II Eth.* 1, 4.

<sup>9</sup> People who seem to think the demands of moral life are satisfied by the apprehension of a series of universal principles, are described by Aristotle who says "they take refuge in theory and think they are being philosophers and will become good in this way, behaving somewhat like patients who listen attentively to their doctors, but do none of the things they are ordered to do. As the latter will not be made well in body by such a course of treatment, the former will not be made well in soul by such a course in philosophy." *II Ethics*, 1, 5.

act proceeds from prudence which presupposes certain dispositions even on the part of the body.<sup>10</sup>

However, if the practical judgment is powerful in the cause of virtue, it is no less powerful in inducement to sin. Because it is concerned with the particular it is so closely allied to sense knowledge that, in the case of the intemperate man, ignorance of his whole purpose in life can ensue.<sup>11</sup> In such cases the triumph of the practical judgment over the abstract principles of synderesis is almost complete.<sup>12</sup> This sketch of the function of the intellect in moral action, which will be of aid in the consideration of our main problem, leads us to the investigation of the intellect in relation to morals, when it is not informed by knowledge.

#### THE INFLUENCE OF IGNORANCE ON THE MORAL ACT

The notion of the causal part which the intellect plays in the human act implies, as a correlative, the idea that ignorance, defined by St. Thomas as "a privation of knowledge in a subject capable of knowing,"<sup>13</sup> can have a decided influence on morality.

Ignorance may be considered according to different aspects of its effects on morality; it may be the cause (*causa per accidens*) of sin, it may be an excuse from guilt, or again it may increase guilt, and finally it may be a sin in itself. These various ways in which ignorance affects morality depend on its relation to the subject and to the act itself. Catholic theology through the course of centuries has codified the divisions of ignorance. This traditional usage is followed.

The lack of knowledge a subject could acquire if he used

<sup>10</sup> "Ad prudentiam requiritur moralis virtus, per quam fit appetitus rectus." I-II, q. 5, a. 4; "ex necessitate habet secum adiunctas virtutes morales tamquam salvantes sua principia." *In II Eth.* I, 4; "quod autem habet rectam intentionem finis circa passiones animae, hoc contingit ex bona dispositione irascibilis et concupiscibilis." I-II, q. 56, a. 4 ad 4.

<sup>11</sup> I-II, q. 156, a. 3, ad 1um.

<sup>12</sup> Rousselot, Pierre, *The Intellectualism of St. Thomas*, London: Sheed & Ward, 1935, p. 212.

<sup>13</sup> I-II, q. 76, a. 2, c.

moral diligence, but actually does not possess because of a failure to use such diligence, is called *vincible* ignorance.<sup>14</sup> When, on the other hand, the lack of knowledge which would prevent an action still persists after such diligence has been used, the subject is said to be in a state of *invincible* ignorance. This is also the case when the possibility of error, or the obligation of inquiring further, has not occurred to the subject.<sup>15</sup>

From the standpoint of the relation between the will of the subject and the act which he performs, ignorance may be antecedent, concomitant, or consequent. *Antecedent* ignorance is the cause of the act in such a way, that, if knowledge were present, the act would not have taken place. The will of the subject being habitually contrary to the act which actually takes place, the act is thus involuntary. *Concomitant* ignorance accompanies the act, but has no causal relation to it. Because of the habitual dispositions of the subject the act would take place even if knowledge were present, but since it is not present, the ignorance renders the act *non-voluntary*. *Consequent* ignorance always follows an act of the will, but not the sinful act of which it is the cause.

St. Thomas, both in *De Malo*<sup>16</sup> and the *Summa*<sup>17</sup> asks "whether ignorance can be the cause of sin."<sup>18</sup> In the reply his concern is with the actual deordinations from the objective moral order which may be caused by ignorance, and consequently he abstracts from the *manner* in which it affects the subject of

<sup>14</sup> Moral diligence is the effort a prudent man is wont to use in acquiring knowledge and will vary according to the particular case and the persons involved.

<sup>15</sup> Moralists use the adjectives *vincible* and *culpable* interchangeably when speaking of ignorance, though it might be said that, strictly speaking, *vincible* ignorance is only culpable when there is an obligation to know the truth. Merkelbach, *op. cit.*, p. 81.

<sup>16</sup> q. 3, a. 6.

<sup>17</sup> I-II, q. 76, a. 1.

<sup>18</sup> As an efficient cause, the will performs a double function in the sinful act. It is the *causa per se* of the act *qua* act, and the *causa per accidens*, of the sin *qua* deordination. The inversion of order in the sinful act is caused by the will's defection from the guiding influence of law. I-II, q. 65, a. 1.

action. The causal action of ignorance in sin is determined by its nature as a privation. This privation can be defined only in relation to knowledge. Since rational action is impossible unless an object is presented to the will by the intellect (*nihil volitum nisi praecogitum*), it follows that ignorance, which is the privation of knowledge, can never be a *per se causa* in action. Its part consists in this, that it is the absence of something which, if possessed, would prevent the action.<sup>19</sup> As St. Thomas says, it is a *causa removens prohibens*, and this is the nature of its causality whether the knowledge of which it is a privation is universal or particular.<sup>20</sup> The example of parricide serves to illustrate: ignorance of the principle that parricide is immoral may cause the act, but because the act will always concern a particular case, ignorance that the particular person is father may cause the act as well. St. Thomas limits causality to that ignorance which takes away knowledge that would prevent an act, thus excluding *concomitant* ignorance which merely accompanies the act and has no influence toward its completion.<sup>21</sup>

In his next article (art. 2), St. Thomas considers ignorance, not as a cause of sin, but as a sin in itself. Holding man to his humanity, he says that everyone has an obligation to know those things without the knowledge of which he cannot act as a man.<sup>22</sup> These things would include, for everyone, the universal principles of the law, and the knowledge each individual is bound to have in order to perform his peculiar duties in life. The failure to know these things, provided one is capable of knowing, constitutes a sin of omission. Vincible ignorance is recognized here, though St. Thomas is careful to say that vincible ignorance concerning things not necessary for the conduct of moral life is not sinful, as a lawyer's ignorance of involved mathematical principles.

A somewhat more complicated problem is presented when the

<sup>19</sup> "Et hoc modo ignorantia potest esse causa actus peccati; est enim privatio scientiae perfectius rationem, quae prohibet actum peccati in quantum dirigit actus humanos." I-II, q. 76, a. 1, c.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> "Illa scilicet sine quorum scientia non potest debitum actum exercere." I-II, q. 76, a. 2.

question is asked whether ignorance can be simultaneously an efficient (*per accidens*) cause of an objective moral infraction and a cause which more or less excuses the subject from the guilt of the deordination.<sup>23</sup> From the previous discussion it is obvious that, considered in itself, ignorance as a "*causa removens prohibens*" causes acts which are involuntary<sup>24</sup> and thus relieves the act of any responsibility for sin. However, St. Thomas sees two kinds of acts proceeding from ignorance as a cause in which the agent does incur guilt. In the first sort the ignorance itself is voluntary, in the second, a lack of knowledge concerned with the object excuses the agent from part of the responsibility, though not completely.

When ignorance is voluntary—that is, when it is consequent ignorance—it pertains not only to the intellect, but also to the will in which it is rooted as effect to cause.<sup>25</sup> Ignorance, as an excuse, then, will lose validity in proportion as the will is inclined toward it. When ignorance is the result of an explicit and direct act of the will, as in the case of one who willfully deprives himself of knowledge in order that he may sin more freely, theologians call the resulting state *affected* ignorance. This sort of ignorance, because of the strong inclination of the will from which it proceeds, does not liberate the agent from the guilt of the act, but, on the contrary, increases it. When, on the other hand, ignorance does not result from a *direct* act of the will but follows only *indirectly* because of repugnance to the labor involved in learning the truth, as when other occupations hinder the search for knowledge, or weakness impels to excesses which take away or diminish the powers of reason, the acts resulting therefrom are rendered less guilty in consequence of the ignorance. However, though in one case the guilt is increased and in the other the guilt is diminished, in neither case does ignorance completely exonerate.

The second sort of act mentioned by St. Thomas in which ignorance is a cause, but does not entirely excuse from guilt,

<sup>23</sup> *Ibid.*, articles 3 and 4.

<sup>24</sup> These acts are not only without the necessary knowledge, but the will is contrarily disposed.

<sup>25</sup> *De Mal.*, q. 3, a. 6 ad 5um.

concerns the object. Cases may be imagined wherein some unknown circumstance might be sufficient to repel the sinner from action if he were aware of it, yet sufficient knowledge is present to bring about the sinfulness of the act from another standpoint—v.g. adultery committed with a married person whose status is unknown suffices to excuse from the act of injustice to the other's spouse, but not from impurity.

An interesting development of opinion is to be seen in the concepts of *ignorantia iuris* and *ignorantia facti*. Simon of Tournai was the first of the medieval theologians to use the distinction between the two concepts as advanced by Gratian.<sup>26</sup> Following the jurists closely he held that *ignorantia facti* excuses from sin—as when a stone is hurled and it strikes someone without the knowledge of the one throwing. *Ignorantia iuris* may be twofold: ignorance of the positive law and ignorance of the natural law. Ignorance of the positive law may sometimes excuse from sin—as when a traveler is ignorant of the positive law in a strange land; ignorance of the natural law, however, never excuses from sin, for the natural law is innate to human reason. If, therefore, homicide is committed, and the guilty party pleads ignorance of the natural law, he is not to be excused. The natural law is so easily known that it must be concluded that *noluit enim scire quod naturaliter posset*.<sup>27</sup> Simon of Tournai would therefore hold that ignorance of the natural law never excuses from sin for the very ignorance is a sin in itself.

William of Auxerre († 1220), the first Scholastic to treat systematically of the natural law,<sup>28</sup> had a fully developed treatise

<sup>26</sup> "Est enim ignorantia alia facti, alia iuris. Facti alia quod non oportuit eum scire, alia quod oportuit eum scire. . . . Quod oportuit eum scire, sicut ignorantia Iudeorum . . . haec neminem excusat. Item ignorantia iuris alia naturalis, alia civilis. Naturalis omnibus adultis damnable est; ius vero civile aliis permittitur ignorare, aliis non." Dicta Gratiana ad c. 12, C. I., q. 4. *Corpus Iuris Canonici*, Editio Lipsiensis II (Richter-Friedberg), Leipzig, 1922.

<sup>27</sup> *Paris Nat. Lat.* 14886, f. 20. Cited by Lottin, D. O., "Le Probleme de l'ignorantia Iuris," *Recherches de Théologie Ancienne et Moderne*, Vol.

5, 1933, p. 352.

<sup>28</sup> Cf. Grahmann, Martin, "Das Naturrecht der Scholastik von Gratian bis Thomas von Aquin," *Archiv für Rechts und Wirtschaftsfilosofie*, Band 16, Rotschild: Berlin, 1922-23, p. 25.

on ignorance as well. He distinguished a triplex ignorance: *ignorantia simplicis negationis*, which is the absence of knowledge when there is no obligation to know; *ignorantia privationis*, which is the absence of knowledge one is obliged to possess; and *ignorantia dispositionis qua quis alter opinatur de re quam sit*, which implies not only the absence of knowledge but a positive error to the contrary. This last may be applied either to *ignorantia iuris* or *ignorantia facti*. Though the latter may excuse from sin when it cannot be overcome, the former is always culpable. His formula is absolute—*ignorantia iuris neminem excusat*. According to William, the erroneous speculative judgment which prepares the way for the error of the practical judgment might not be a sin—if it remained purely speculative. As a matter of fact, however, it does result in the erroneous practical judgment and is thus contrary to the virtue of prudence *per subpositionem*. The fact of its being contrary to the virtue of prudence is sinful, for it depends on free will, it is voluntary.<sup>29</sup>

A definite shift of opinion is observable in the early Dominican school. Roland of Cremona, Hugh of Saint Cher, Richard Fishacre, and John of Treves all follow William of Auxerre when speaking of the divisions of ignorance. They expound the concepts of *Ignorantia simplicis, privationis, et dispositionis* in much the same way as William but are unanimous in their suppression of the absolute formula *ignorantia iuris neminem excusat*.<sup>30</sup> Evidently they refuse to follow the rigorism of William in the solution of the question whether *ignorantia iuris* excuses from sin.

<sup>29</sup> "Et iudicium primum, quo indicat ratio quid sit faciendum, et secundum, quo imperat ratio de faciendo quod fact, prudentiae virtutis est; sed secundum eius est per essentiam, primum eius est per suppositionem; et ideo uterque error, et ille qui est contrarius primo iudicio et secundo, contrarius est prudentiae et est peccatum. Error enim qui est in primo iudicio non tantum est contrarius scientiae iuris naturalis quia ei convenit per essentiam, sed etiam contrarius est prudentiae virtuti per suppositionem.

. . . Talis scientia (iuris naturalis) non subest libero arbitrio, sed error ille voluntarius est et ideo subest libero arbitrio." *Summa aurea in quatuor libros sententiarum a subtilissimo doctore magistro Guillelmo Alissiodorensi*, Paris, 1500, f. 93. Here cited from "Le Probleme de l'ignorantia Iuris," *op cit.*, p. 355. (The *Summa* is obtainable in America only at the Boston Public Library.)

<sup>30</sup> "Le Probleme de l'ignorantia Iuris," *op cit.*, p. 357.



In the early Franciscan school John of Rochelle taught that ignorance of a particular fact excuses from sin if it concerns something not pertaining to salvation. With the exception of those lacking the use of reason, however, ignorance of facts pertaining to salvation does not render one inculpable. When treating of ignorance of the natural law he follows the rigorism of Gratian. The natural law is written on the hearts of men; therefore, *ignorantia iuris naturalis nullum adultum excusat, sicut dicit Decretum*.<sup>31</sup>

Alexander of Hales follows this same rigorism in the response to two questions: *quae ignorantia magis excuset et quae minus? and an actus malus per ignorantiam iuris perpetratus sit peccatum?* In response to the former he holds that the more one is held to know the law, the less is ignorance an excuse for transgressions. Since every one has an obligation to know the law of nature, no one who is ignorant of it is excused from sin which flows from that ignorance.<sup>32</sup> The latter question finds its solution in the statement that adults can never be excused from sin due to ignorance of the natural law.<sup>33</sup> Up to this point, we see that the first members of the Dominican school temper the rigorism of William of Auxerre, while the Franciscans mentioned resolutely adopt it. After these men the *Ethics* of Aristotle affects the stream of scholastic thought. We treat of St. Albert the Great, St. Bonaventure and St. Thomas.

In his *Commentary on the Sentences*, St. Albert the Great asks

<sup>31</sup> *Summa de Viuis*, 228, f. 11.

<sup>32</sup> "Quanto plus tenetur homo ad cognitionem iuris, tanto minus excusatur. Quia vero unusquisque tenetur ad scientiam iuris naturalis, ideo nullus adultus excusatur; nulli enim adulto licet legem naturalem ignorare, quoniam ipsa scribitur in corde humano naturaliter." Alexander of Hales, *Summa Theologica*, ed. Quaracchi, 1930, t. 3, no. 325, p. 330.

<sup>33</sup> "Actus perpetratus per ignorantiam iuris divini aut per ignorantiam ratiōis iuris naturalis, aut per ignorantiam iuris divini aut per ignorantiam iuris humani canonici vel civilis. Si per ignorantiam iuris naturalis, actus huiusmodi malus sic perpetratus est peccatum. Ignorantia enim iuris naturalis neminem excusat qui usum potest habere sciendi, sicut dicitur I, quæst. 4, Notandum, ubi dicitur quod 'ignorantia iuris naturalis omnibus adultis damnabilis est', adultis dico, qui habent usum rationis, propter furiosos et huiusmodi." *Ibid.*, no. 679, p. 659.

whether *ignorantia iuris* is a sin. He replies that, in the case of those having the use of reason, ignorance of the moral truth necessary for salvation, for example, those truths relative to fornication and homicide, constitutes no excuse. The same applies to the knowledge necessary for one's state in life.<sup>34</sup>

Further, St. Albert asks whether *ignorantia iuris* excuses one from the sinful nature of the act which follows in its train. The response points out that ignorance contains a double element; the affective and the intellectual. In so far as it is affective or voluntary the consequent act is sinful, in so far as it implies a lack of knowledge, there is an excusing cause. *Ignorantia facti*, moreover, constitutes a complete excuse, for the resulting act is positively involuntary. *Ignorantia iuris* can only partly excuse from a consequent sin.<sup>35</sup> The principle that ignorance, in so far as it is voluntary, does not excuse from sin is applied to the natural law by St. Albert, and it is discovered that ignorance of this law, which can be, and should be, easily known does not excuse from sin. Indeed, it is *ignorantia crassa et supina*.<sup>36</sup> Thus St. Albert abandons the earlier caution of the Dominican school to advocate once more the rigorist position of William of Auxerre.

St. Bonaventure, in his *Commentary on the Sentences*, analyzes the circumstances in which ignorance is a sin. If the ignorance in question concerns some truth of no great importance in the moral order, it may be inculpable; but if it deals with truths

<sup>34</sup> In II Sent. d. 22, a. 7.

<sup>35</sup> "Ignorantiam secundum quod est peccatum . . . aliquid habet in affectu secundum quod affectata dicitur; habet aliquid in intellectu, scilicet privationem habitus regentis in operabilibus pertinentibus ad vitam vel officium. Dicendum igitur quod quantum ad primum, peccatum est; quantum autem ad secundum, non est peccatum et excusat vel a toto, si est particularis et facti; vel a tanto, si est iuris vel universalis, quod idem est; quia ex illa parte facit ignorare circumstantias in quibus est actus et ita est causa involuntarii quod meretur ignoscantiam et misericordiam aliquam." *Ibid.*, a. 9.

<sup>36</sup> "Ignorantia iuris est duplex; quia quoddam est ius universale, ius naturale quod omnibus imponitur ad sciendum; et quoddam est particulare, quod non scitur nisi per studium. Et puto quod prima est crassa et supina, non excusans; secunda autem excusat vel a tanto vel a toto, si est casus multum difficultis." *Ibid.*, a. 10.

necessary for salvation or the moral life, then, if one *can* know them and does not, he is guilty of sin. If he cannot come to a knowledge of them, the person is excused.<sup>37</sup> Although the expression *ignorantia iuris* is not to be found in this exposition, St. Bonaventure is without doubt speaking of the same concept. Does ignorance constitute an excuse from sin? St. Bonaventure responds in the affirmative provided the said ignorance deprives the act of the knowledge necessary for the *voluntarium*. *Ignorantia facti* excuses entirely if the necessary prudent effort has been made to know the truth. *Ignorantia iuris* is vincible or invincible. Vincible ignorance does not excuse entirely from sin, for the ignorance itself is culpable; however it does partially excuse the act. *Ignorantia affectata* no doubt increases the guilt of the consequent sin, but even here the malice of the sin may be less serious in view of the general principle *quod privat cognitionem privat de ratione voluntarii*. Thus, *ignorantia affectata ex una parte excusatur quod ex alia parte magis aggravatur*.<sup>38</sup> *Ignorantia iuris*, if it is invincible, that is, if it does not proceed from previous sin, excuses the subject entirely. Thus, while St. Albert the Great isolates himself from the first masters of the Dominican Order to accept a more rigorous view, St. Bonaventure abandons the earlier narrow views of the Franciscans to advance a milder doctrine.

Texts in St. Thomas might be quoted which apparently prove that he believed *ignorantia iuris* always contained at least some culpability.<sup>39</sup> However if we go to his *ex professo* treatments of ignorance we find that St. Thomas departed from the rigorous teachings of St. Albert the Great to agree with St. Bonaventure. He holds that ignorance considered in itself, and as the cause of the acts, constitutes an excuse from sin, for the consequent act is involuntary as a result of the previous ignorance. True, the ignorance itself may be voluntary and thus a sin, as in the case

<sup>37</sup> St. Bonaventure, *Commentaria in quatuor libros Sententiarum*, in II Sent. d. 22, a. 2, q. 2.

<sup>38</sup> *Ibid.*, q. 3.

<sup>39</sup> "Ignorantia iuris peccatum est." *De Ver.* 17, 4, ad 5um.; "Ignorantia iuris ad negligentiam reputatur," *De Malo* q. 3, a. 8.

of *ignorantia affectata*. Another case in which ignorance itself may be a sin happens when one is obliged to know a truth, but neglects to acquire the knowledge because of laziness. This is true only when the person is obliged to know the truth and *can* know the truth—*dummodo sit eorum quae quis scire tenetur et potest*.<sup>40</sup>

The few texts which can be cited in favor of the view that St. Thomas considered all *ignorantia iuris* as sinful are to be interpreted in the light of the *scire tenetur et potest*. For instance, to the objection that St. Thomas taught that *ignorantia iuris peccatum est* a text in *De Malo* may be cited:

Be it stated that the notion of sin contains the voluntary, and ignorance excuses from sin in so far as it takes away the voluntariness of an act. It is to be considered that ignorance can take away the voluntariness of a subsequent act, not however that of a preceding act. Since ignorance is of the intellect, the relation between ignorance and the voluntary may be considered from the relation of the intellect to the will. The act of the intellect necessarily precedes the acts of the will since the object of the will is the good presented by the intellect, and therefore if knowledge of the good is taken from the intellect through ignorance, the will act cannot follow. Thus, voluntary action is impossible in relation to the thing of which the subject is ignorant. Wherefore, if in the same act something is known and something is not known, it can be voluntary only in relation to the thing known. However, it will always be involuntary in relation to the thing which is not known. As, for example, when a person does not know fornication is a sin. The person in such a state indeed commits fornication voluntarily, but he does not voluntarily commit a sin.<sup>41</sup>

<sup>40</sup> "Dummodo sit eorum quae quis scire tenetur et potest. . . . Si vero sit talis ignorantia quae omnino sit involuntaria, sive quia est invincibilis, sive quia est ejus quod quis scire non tenetur, talis ignorantia omnino excusatur a peccato." I-II, q. 76, a. 3, c. "Si autem ignorantia nullo praedictorum modorum sit voluntaria, puta cum est invincibilis, et tamen est absque omni inordinatione voluntatis, tunc totaliter facit actum sequentem involuntarium." *De Malo*, 3, 8, c.

<sup>41</sup> *De Malo*, 3, 8, c.

The example given by St. Thomas is a clear case of *ignorantia iuris*, and he just as clearly says the invincibly ignorant person was innocent of sin. That St. Thomas arrived at the correct conclusion is to be known from a Jansenistic proposition condemned by the Church. The condemnation implies that persons can be invincibly ignorant of the natural law, and in consequence be free from formal guilt in its transgression.<sup>42</sup>

How is the inflexible rigorism of Gratian, William of Auxerre, Alexander of Hales, St. Albert the Great, and others to be interpreted? The clue is perhaps to be found in their insistence on the phrase *written in the hearts of men* in relation to the natural law. This insistence would seem to indicate an overemphasis on the innate or self-evident character of the law, i.e., they restricted their notion to the first principles of the law and the evident deductions therefrom. Interpreted in this light, their apparently unmitigated rigorism comes very close to the teaching of modern theologians. As we shall see later, it is generally held today that invincible ignorance of such principles and deductions is *not* to be admitted, apart from exceptional circumstances.

#### ERROR

It has been stated previously that error and ignorance, though distinct states of the mind, are, in practice, used indiscriminately by moralists<sup>43</sup> because they affect the morality of the act in the same manner. This has also been recognized by the Church law.<sup>44</sup> It will be seen that when ignorance is the cause of sin, the actual result is an error in the practical intellect, for ignorance, of itself, implies no judgment, and every action is preceded by a practical judgment. Before every sinful action there is an erroneous judgment of the practical intellect, for, according to

<sup>42</sup> "Tametsi detur ignorantia invincibilis iuris naturae, haec in statu naturae lapsae operantem ex ipsa non excusat a peccato formali." D. B. U. 1292.

<sup>43</sup> "Quae de ignorantia diximus applicari possunt . . . error." Merkelbach, *op. cit.*, 84.

<sup>44</sup> "Quae de ignorantia statuuntur valent quoque de inadvertentia et errore," can. 2202, §3.

St. Thomas, "evil desire is always linked up with some error of practical knowledge."<sup>45</sup> This error in the practical intellect consists in a judgment that proposes an apparent good as a true good, though even here there must be some element of truth to solicit the intellect.<sup>46</sup> Now, in order to understand those errors of the practical intellect by which something actually contrary to the natural law is judged to be good, an understanding of the cause of error is necessary.

That error can exist in the human intellect is evident; to explain *how* it happens is not so easy, especially when the intellect's relation to being, so emphasized by St. Thomas and neo-Thomists,<sup>47</sup> is considered. If the function of the intellect is to become actualized by the intelligible thing—*intellectus in actu est intelligibile in actu*<sup>48</sup>—and intelligence is nothing else than the knowing subject's becoming, so to speak, the thing known, how can the mind contain something that does not exist? If the intellect is actuated only by the form of a thing<sup>49</sup> how can it be actuated by anything else? This objection is based on the conviction that simple apprehension, of itself, does not contain the false, and, in a sense, St. Thomas is in agreement with this position.<sup>50</sup> However, the objection overlooks the fact that the form apprehended by the simple act of the intellect is not a perfect likeness of the object's essence; knowledge of that sort would be intuitive and it has been seen that the mind begins with very general and confused concepts<sup>51</sup> which are gradually perfected. The composition of the synthesis presupposes judgments and herein we have the possibility of conceptual error.

<sup>45</sup> *De Malo*, 16, 6, 11. In an interesting passage St. Thomas goes so far as to say that all error is accompanied by some sort of sin—"error manifeste habet rationem peccati." *Mal.* 3, a. 7.

<sup>46</sup> "Omne falsum fundatur in aliquo vero." I, q. 17, a. 4, ad 2um.

<sup>47</sup> Cf. Rousselot, *op. cit.*, passim; Seritlinges, *S. Thomas d'Aquin*, II, c. 2, and ff., 3rd ed., Paris, 1922; Gilson, *Le Thomisme*, c. 13, 3rd ed., Paris, 1927.

<sup>48</sup> *Comment in Vi Met.*, loc. 4.

<sup>49</sup> "Sic enim actu intelligit res, cum species rei facta fuerit forma intellectus possibilis." *Comp. Theo.* 83 fn.

<sup>50</sup> "Circa quod quid est intellectus non decipitur." I, q. 17, a. 3, c. 51 I, q. 14, a. 6, c.

The real problem of error, however, is the problem of the false judgment. Both truth and error belong properly to the judgment.<sup>52</sup> Both affirm their composition exists in reality. How, then, is the false judgment to be explained? The answer is to be found in the nature of our knowledge in which the senses and the will play a part.

The proper object of knowledge in the present state of union between soul and body is the sensible thing which can only become a part of the knowing subject through the avenues of the senses.<sup>53</sup> These avenues are often by-paths which lead to error as they grasp only outer qualities which may be shared by diverse but apparently similar things.<sup>54</sup> It must be carefully observed, however, that the senses are not the cause, but the occasion of intellectual error.<sup>55</sup> If the senses present something to the intellect which has the appearance of gold, there is no absolute necessity for affirming the extrasensory object is gold, however close the similarity. But it will be seen that the intellect's dependence on sense knowledge is a fertile ground for error, especially when it is remembered that the phantasm presented to the intellect is not the work of a single faculty but the collaborative product of a manifold faculty-action in which not only the external senses, but especially the internal senses have a part. Obviously, associations and combinations may be effected which have no corresponding realities, and this disproportion may

<sup>52</sup> "Intellectus autem conformitatem sui ad rem intelligibilem cognoscere potest; sed tamen non apprehendit eam, secundum quod cognoscit de aliquo quod quid est. Sed quando iudicat ita rem se habere sicut est formam de re apprehendit, tunc primo cognoscit et dicit verum." I, q. 26, a. 2 c.; "Quando falsam sententiam iam fert de his quae nescit, tunc proprio dicitur errare." *De Malo*, q. 3, a. 7.

<sup>53</sup> In *De An.* III lect. 8 n. 705, 709, 711 ff.

<sup>54</sup> "Et ideo quando in aliqua re apparent sensibiles qualitates demonstrantes naturam quae eis non subject, dicitur res illa esse falsa, unde Philosophus dicit in VI Metaphysicorum quod illa videntur falsa quae nata sunt videri aut qualia non sunt, aut quae non sunt; ut aurum falsum." *De Ver.* q. 1, a. 10, c.

<sup>55</sup> "In quantum natura est facere falsam aestimationem in intellectu, quamvis non necessario faciat, sicut de rebus dictum est quia intellectus sicut iudicat de rebus, ita et de his quae a sensibus offeruntur." *De Ver.* q. 1, a. 11, c.

be enhanced because the work of the internal senses may be, in part, subconscious and not subject to the direct control of reason.<sup>56</sup>

The influence of the senses on the intellect, though giving us some clue to the existence of error, does not explain it as a cause. If we seek the cause we must examine the judgment itself. The act of judgment for St. Thomas is no mere juxtaposition of concepts which happen to have a similarity with reality. For a genuine judgment the mind must have not only the form of the thing, but also must add something of its own that does not exist outside itself,<sup>57</sup> namely the synthesis by which the mind knows and says the form it possesses really is that of the thing known. This synthesis is called "assent"<sup>58</sup> by St. Thomas and takes place in two ways; according as it is made under the commanding influence of the proper object,<sup>59</sup> or by persuasion on the part of the will.<sup>60</sup> The will act can have place in assent only when it is a case of belief (that is, faith) or error;<sup>61</sup> internal evidence is the motive of every other assent.

<sup>56</sup> Koeler, Leo, S.J., *The Problem of Error from Plato to Kant*, Rome: Gregorian University Press, 1934, p. 93.

<sup>57</sup> "Quando incipit iudicare de re apprehensa, tunc ipsum iudicium intellectus est quoddam proprium ei, quod non invenitur extra se—quando dicit quod aliquid est vel non est." *De Ver.* q. 1, a. 3, c.

<sup>58</sup> *De Ver.* 14, 1.

<sup>59</sup> Under the influence of its proper object the intellect may place the act of assent in two ways, mediately and immediately. "Ab intelligibili quandoque mediate, quandoque immediate: immediate quando ex ipsis intelligibilibus statim veritas propositionum intelligibilem infallibiliter apprehenditur, et haec est dispositio intelligentis principia . . . mediate vero quando intellectus determinatur ad alteram partem contradictionis virtutis primorum principiorum, et ista est dispositio scientis." *De Ver.* 14, 1.

<sup>60</sup> "Quandoque vero intellectus non potest determinari ad alteram partem contradictionis neque statim per ipsas definitiones terminorum, sicut in principis, nec etiam virtute principiorum, sicut in conclusionibus demonstrationis est, determinatur autem per voluntatem quae eligit assentire uni parti determinate et praecise propter aliquid quod est sufficiens ad movendum voluntatem non autem intellectum et ista est dispositio credentis." *De Ver.* 14, 1.

<sup>61</sup> Cf. previous citation from *De Malo*, 3, 7, where St. Thomas says error always involves sin; "dissentire (infidelity) est actus intellectus, sed motus a voluntate sicut et assentire." II-II, q. 10, a. 2.

The psychological process of error and belief, by which the intellect places the act of assent under the influence of the will, are so similar that justification can be found for placing error under the heading of belief. Moreover, as in belief, so in error the part of the will must not be overemphasized; in both cases the act is essentially of the intellect but imposed by the will.<sup>62</sup> Here we see again that reciprocal causality of the intellect and will<sup>63</sup> which results from the fact that they are not autonomous agents but pertain to the one person who is the subject of the action—*actiones sunt subpositorum*. In the case of a false judgment the will acts on the mind by focusing its attention on certain motives to the exclusion of others, making the object more vivid to the mind because of its desire. Since the intellect will never assent unless solicited by at least some semblance of the truth,<sup>64</sup> the good desired by the will must be, under some aspect, a true good. This is especially the case when the will solicits the intellect in a practical judgment under the influence of a sensible good, the possession of which is here and now contrary to the natural law. This would seem to be the doctrine of St. Thomas on error; it will help in the understanding of the next chapter on the possibility of ignorance, and its moral equivalent, error, of the natural law.

<sup>62</sup> "assensus accipitur pro actu intellectus in quantum a voluntate determinatur ad unum." II-II, q. 2, a. 2 ad 2um.

<sup>63</sup> "voluntas quadammodo movet intellectum dum intelligo quia volo, et intellectus voluntatem, dum volo quia intelligo illud esse volendum." III Sen. dist. 23, q. 1, a. 2, ad 3.

<sup>64</sup> "Omne falsum fundatur in aliquo vero," I Sen. q. 17, a. 4, ad 2.

## CHAPTER IV

### OF THE POSSIBILITY OF INVINCIBLE IGNORANCE OF THE NATURAL LAW

In the previous chapter the relation of ignorance to human conduct was investigated and it was seen that, under certain conditions, ignorance excuses the trespasser from formal guilt entirely, in other cases it diminishes guilt, while in still others it increases it.<sup>1</sup> We now consider it in relation to the guidance of human conduct. Since a violation of the natural law caused by invincible ignorance is not a formal sin<sup>2</sup> we treat of:

#### (a) INVINCIBLE IGNORANCE OF THE NATURAL LAW— ITS POSSIBILITY

When it is affirmed that all men know the first principles of the natural law, while there is a possibility of invincible ignorance concerning some others, opponents are found in strangely different camps. Luther and the reformers, Traditionalists, modern rationalists, and even some Catholic theologians of an older school oppose the position for one reason or another. Luther and the reformers admit, indeed, the possibility of invincible ignorance, but, under the influence of dogmatic preoccupations concerned with original sin, deny it as an excusing cause.<sup>3</sup>

<sup>1</sup> Cf. p. 48 ff.

<sup>2</sup> "Si vero sit talis ignorantia quae omnino sit involuntaria, sive quia est invincibilis, sive quia est ejus quod scire non tenetur, talis ignorantia omnino excusat a peccato." I-II, q. 76, a. 3, c.

<sup>3</sup> "Eine (Unwissenheit) heisset man unüberwindlich, die andere grob, die dritte angenommen. Die unüberwindlich ist, wenn ich von beschriebenen Rechten nichts weiss, sie seien göttliche oder menschliche, und die entschuldiget und muht alle Völker und Heiden unschuldiget? . . . entschuldiget bei vernünftigen, weltweisen Leuten, aber in der Theologie gilt nicht. Denn Paulus spricht, 'Sie Sind alzumal Sünder.'" Dr. Martin Luther's *Sämmtliche Werke*, Erlangen: Heyder & Zimmer, 1850, Band 216, p. 84; again, in his *Comm. in Gen.* c. 12 he says: "Scholastici invin-

Traditionalism, a reaction against Rationalism, opposes our position in that it transfers all knowledge of religious and moral truths to the supernatural order, thus denying natural knowledge even of the first principles. It is condemned by the Church.<sup>4</sup>

Again, exponents of modern theories of law, holding that all law is either the dictate of the State,<sup>5</sup> the evolution of custom, or a mere *a priori* conviction of reason,<sup>6</sup> logically decry as futile the affirmation of universal knowledge of first principles.

Christian literature before the time of the Scholastics gives us no explicit treatise on the relation between ignorance and the natural law. The Fathers of the Church, as with the natural law in general, touch it only in passing, and then more particularly from the viewpoint of the universality of knowledge. Few attempts are made to specify the exact content of this universal knowledge. Thus, Tertullian says that the human soul gives testimony of a natural law, which, by its very simplicity, is common and natural, and divine because it is natural.<sup>7</sup> Origen<sup>8</sup> and Ambrose<sup>9</sup> repeat the same idea. St. Augustine is more explicit

cibitem ignorantiam dixerunt excusabilem, quae simpliciter a toto excuset, id est, peccatum prorsus tollat, tota coeclitas est in Papae scholis." Cf. also the condemned proposition of Baius, D. B. U. 1046 wherein he eliminates the notion of the voluntary from the notion of sin, thus cutting under invincible ignorance as an excusing cause.

<sup>4</sup> Cf. D. B. U. 1040, 1050, 1051, 1052.

<sup>5</sup> Hobbes, *De Cive*, c. 12, n. 1.

<sup>6</sup> Savigny, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* (1840) 8.

<sup>7</sup> *Leonings, Richard, Über Würzel & Wissen des Rechts*, Iena (1907), 21. Since these positions inevitably follow from other presumptions their refutation follows from the falsity of their theories. Against Luther's assumption that human nature is totally corrupt through original sin cf. D. B. U. 771. Against the assumptions of modern jurists, cf. proof for the natural moral law's existence, p. 13 ff.

<sup>8</sup> "Haec testimonia animae quanto vera, tanto simplicia, tanto vulgaria, quanto vulgaria, tanto communia; quanto naturalia tanto divina." *De Test. An.*, C. 5. P. L. I. 616.

<sup>9</sup> In Epist. ad Rom. P. G. 14, 890.

<sup>10</sup> "Non scribitur, sed nascitur, nec aliqua percipitur lectione sed profuso quodam naturae fonte in singulis exprimitur et humanis ingeniis hauritur." *Ep.* 73. 3; P. L. 16, 1251.

when he says there is no soul so immersed in evil that conscience is entirely eliminated, since conscience is the natural law which God has written in the hearts of men.<sup>10</sup> He also is concerned with the determination of content:

"Don't do unto others what you would not have happen to you: this forces you to acknowledge an inner law written in your very hearts. . . ."

"Is theft a good action? 'No.' I ask, 'Is adultery good?' All cry that it is an abomination."

"To desire illicitly your neighbor's goods, is that good? There is a unanimous opinion that it is not. Everyone, therefore, when asked concerning the goodness of these actions has a negative reply."<sup>11</sup>

St. Gregory the Great expresses the general opinion of the Fathers when he says, "everyone knows the manner of acting toward his neighbor through natural knowledge."<sup>12</sup> Thus, the Fathers, by affirming the universality of at least some knowledge of the natural law, exclude the possibility of invincible ignorance of the entire law.

The Scholastics consider the question explicitly, though their method of approach varies widely. St. Bonaventure, Scotus, and the Franciscan theologians view synderesis, a habit dealing with the first principles of moral knowledge, as a perfection of the will,<sup>13</sup> while St. Thomas and the Dominican school place it in the intellect.<sup>14</sup> They are unanimous, however, in teaching that the first principles, as the object of synderesis, cannot be invincibly ignored.<sup>15</sup> This conclusion has come down intact through Suarez<sup>16</sup> and the post-reformation theologians and is

<sup>10</sup> *De Ser. in Mon.* P. L. 34, 1283.

<sup>11</sup> *Enarr. in Ps.* 57, n. 1. Cf. also *Enarr. in Ps.* 118, *Serm.* 25, n. 4.

<sup>12</sup> *Hom.* 31 in *Evangel.*, P. L., 76, 1228.

<sup>13</sup> S. Bon., 3, dist. 29, a. 2, q. 2.

<sup>14</sup> *De Ver.* q. 16, a. 1.

<sup>15</sup> "Ilaque si sermo fiat de lege naturae, iuxta priorem acceptationem, ipsa sic scripta in cordibus nostris, ut omnino sit indelibilis." Scotus, 3, d. 37, n. 8; cf. also 3, d. 27; also, St. Bon. 3 d. 29 q. 2, a. 2 and St. Thomas, *De Ver.* q. 12, a. 3.

<sup>16</sup> *Omnia Opera*, V, 5, p. 117.

now unanimous. This constant doctrine concerning the universal knowledge of the natural law restricts itself to the affirmation that first principles are so known.<sup>17</sup> Further, it is concerned with persons who have the normal use of reason, excluding infants, the insane, and all those whose reason, for whatever cause, is impeded.<sup>18</sup> However, these exceptions made, there are no others.

Our position includes all peoples whether they have come under the influence of Christian and Mediterranean culture or not. Here, strict adherers to the positivist's scientific method would be inclined to question our procedure. A statement of this kind would require, for them, an investigation of all peoples, or at least all of the various cultures. A conclusion arrived at by another method would be in their eyes an unwarranted assumption. However, it does not seem that the Fathers and the Scholastics were presumptuous in arriving at the present conclusion by the method of deduction, for it follows from the nature of man. Just as before the advent of modern anthropology it was not an unwarranted assumption to make the statement that all normal men convey their ideas by means of speech, neither were the Scholastics precipitous when they affirmed this universal knowledge. Both statements have a basis in the nature of man. We don't need a series of endless inductions to prove man is a moral being. It is a deduction consequent upon his nature.

St. Thomas explains this universal knowledge of first principles with his doctrine of synderesis.<sup>19</sup> This doctrine is an integral part of the Thomistic synthesis which sees everywhere a gradation of things according to the greater or less participation of being they enjoy in Being itself, or the *Ens a se*. There are no gaps in the universe; each grade of being has some perfection proper to itself, and some perfection which approaches, but does not equal, that possessed by those of a higher degree.<sup>20</sup> As St.

<sup>17</sup> In the present chapter we take first principles to mean those which are first in the logical, as distinguished from the ontological order. For their content, cf. p. 42.

<sup>18</sup> *De Ver.*, 16, 3.

<sup>19</sup> I, q. 79, a. 12; *Sent.* II, d. 24, a. 2, a. 3; *De Ver.*, 16, 1, 2, 3, & 4.

<sup>20</sup> "Unde et inferior natura attingit in sui supremo ad aliquod quod est proprium superioris naturae, imperfecte illud participans." *De Ver.*, 16, 1.

Thomas says, "the top of the lower touches the bottom of the higher."<sup>21</sup> Thus, animals approach, in an imperfect way, the reasoning powers of men<sup>22</sup> and men, by insight into first principles, transcend their ordinary powers of discursive reasoning to approach, imperfectly, the intuitive powers of the angels.

Whence the human soul, in its supreme heights, touches something which is proper to the angelic nature, that is, by insight or intuition it sees certain truths, immediately and without a discursive process of reasoning; however, even in this, it is less perfect than the angelic nature for it must receive these truths through the avenue of the senses.<sup>23</sup>

This immediate insight into certain truths concerns both the speculative and the practical orders, and upon it depends the whole of both. The constant disposition of the intellect by which it immediately sees first principles is called, in the speculative order, intelligence (*habitus intellectus*), in the practical order, synderesis.<sup>24</sup>

The truths which are the objects of intelligence and synderesis, though not subject to direct discursive proof, are not groundless assumptions. They are simply so fundamental that every discursive truth in its respective order is based upon them. Every truth of the speculative order is reducible to the principle of identity, while every truth of the practical order, as we have seen previously,<sup>25</sup> is reduced to the first principle of the practical order, "do good and avoid evil." The intuitional judgment, to which the intellect is disposed by synderesis, sees clearly and affirms at once the truth of the first principles of the moral order, immedi-

<sup>21</sup> *De Ver.*, 16, 1.

<sup>22</sup> *De Ver.*, 1, 9.

<sup>23</sup> *De Ver.*, 16, 1.

<sup>24</sup> In *De Ver.*, 16, 1. St. Thomas is indifferent whether synderesis is called a constant disposition, or the faculty of reason in conjunction with it. In the *Summa*, he considers it solely as a habit. I, q. 79, a. 12. In other places he talks of the "actum synderesis," or the principles themselves. *De Ver.*, 15, 3. Thus when he asks "Whether synderesis can be obliterated," he really treats of our problem—also "omnia mutabilia reducuntur ad aliquod primum (principium) immobile."—"Ex universali iudicio synderesis." I, c. 23. Cf. p. 31.

ately consequent upon the presentation of the concepts. Nor can the concept of the rational good be absent from anyone who has the normal use of reason. The principles based upon this concept are self-evident to all.<sup>26</sup>

St. Thomas finds no difficulty concerning the fact of the acquisition of first moral principles. When he asks whether they can be lost,<sup>27</sup> complications arise. The very question presupposes previous knowledge. However, is it possible, through sin, to lose this knowledge? Of a universal nature, it can be applied to action only by a particularization, and we have already seen the power of the practical idea.<sup>28</sup>

The problem is best considered from the point of view of sinner psychology as brought out by St. Thomas. He distinguishes two sorts of sinners, the incontinent and the intemperate. As the act of sin is according to the election of the will following an intellectual judgment, in every sin there is a more or less syllogistic deduction.<sup>29</sup> Moreover, there is a difference between the syllogism of the incontinent and the syllogism of the intemperate. The intemperate man uses three propositions, while the incontinent uses four, e.g.

#### Syllogism of the Incontinent

Maj. No sin is to be committed.

Maj. Regardless of reason, pleasure is to be enjoyed.

Min. But this sin is a pleasure.

Conc. Therefore it is to be taken.

#### Syllogism of the Intemperate

Maj. Regardless of reason, pleasure is to be enjoyed.

Min. But this action is pleasurable.

Conc. Therefore this action is to be done.<sup>30</sup>

These syllogistic forms, though by no means a complete psycho-

<sup>26</sup> "Ad legem naturalem pertinent quaedam praecepta communissima quae sunt omnibus nota." I-II, q. 94, a. 6, c.

<sup>27</sup> *De Ver.* 16, 3.

<sup>28</sup> Cf. p. 46 ff.

<sup>29</sup> *De Malo*, q. 3, a. 9 ad 7um.

<sup>30</sup> *De Malo*, q. 3, a. 9 ad 7um.

logical analysis, give us an idea of the constancy of action attained by the intemperate man through habit, while revealing the unsteadiness of the incontinent person. It will be seen that knowledge of the universal moral principle still presents itself to the incontinent man in the very act of election. The difficulty lies in the explanation of the *intemperate* man. No consideration seems to be given to a moral principle; the habit of sin is so ingrained that the subject finds a certain equilibrium in sin. His ignorance extends to the end and is, consequently, worse than that of the *incontinent* man, for in him the principle, at least, is conserved.<sup>31</sup> However, not even in the case of the intemperate is ignorance of the first principles to be admitted. True, obscured by habits of sin, the universal moral principles do not affect the immediate question of action. However, speculatively, when no action is involved the intemperate man will still admit the first principles.<sup>32</sup>

#### (b) INVINCIBLE IGNORANCE OF IMMEDIATE CONCLUSIONS

Were men of an angelic nature this problem would present no difficulties, for where now the truths presented by the secondary precepts are deduced by a discursive process, they would, in the hypothesis of an angelic nature, be the object of intuitional knowledge. It is the discursive nature of these precepts that distinguishes the problem from the one we have previously seen concerning the first principles. When we speak of invincible ignorance we bring the problem down into the concrete acts of life, for here and now there is question of excusing the subject from the voluntariness of an act and therefore from culpability. The problem, then, is this: Is it possible after the use of moral diligence, or the sort of application men ordinarily use according to their environment and state of life, that the immediate deductions

<sup>31</sup> "Sed intemperatus habet ignorantiam circa ipsum finem . . . incontinentes est melior intemperato quia salvatur in eo optimum principium." II-II, q. 156, a. 3, ad 1um.

<sup>32</sup> "Ad tertium dicendum, quod ille qui habet habitum alicuius vitii est quidem corruptus circa principia operabilium, non quidem in universali, sed in particulari operabili, inquantum scilicet vitii deprimitur ratio ne universale iudicium ad ejus particulare operabile applicet in eligendo." *De Ver.* 16, 3, ad 3um.



from first principles may remain invincibly unknown, so that the natural law is violated without culpability?

Two factors must be considered in the solution, namely, the variability of human action with its attendant influence on moral knowledge, and the discursive process by which we arrive at the principles.

The particular and contingent quality of the goods which man uses as means to his ultimate end, coupled with man's liberty, make for an infinite variability of human acts. Moral science, therefore, in considering these acts and formulating principles, has variable material as its object and cannot expect to obtain absolute certitude. If, in the speculative reason, the conclusion is made that the sum of the angles of a triangle equals two right angles, its truth will always and everywhere be the same, provided I have committed no logical error in the deduction from premises. However, if in the practical order I reach the conclusion that it is wrong to take another's property, I would be rash to conclude that it is wrong to take another's property in every circumstance. The material object of the science is contingent, and perfect certitude in the application of principles at times cannot be obtained. As St. Thomas repeats again and again, the deductive precepts of the law hold in the majority of cases, but in any particular case circumstances may so change that it no longer falls under the apparently applicable precept.<sup>33</sup> This is the "change in material" of which theologians speak and it in no way militates against the uniformity of the natural law which finds its unity in the universal command to rational action contained in the first principle.<sup>34</sup>

The second factor to be noted about these precepts is their dis-

<sup>33</sup> "Conclusiones practicae a primis legis naturae praeceptis non procedunt, ut semper efficaciam habentes, sed in maiori parte, talis enim tota materia moralis." *Suppl.* q. 65, a. 2, c. Cf. also *Suppl.* q. 65, a. 2, ad 1um; *De Malo*, q. 2, a. 4, ad 13um.

<sup>34</sup> No objective "collision" is to be admitted among precepts of the natural law for they all flow from reason, and reason cannot contradict itself. The apparent collision sometimes seen may be resolved by a more complete enunciation of the principle involved, e. g.: Do not take the goods of others who are rationally unwilling.

cursive nature. Though obtained by an obvious deduction, nevertheless, it has been seen that where composition is present, inordinate will-influence may cause error. It is possible here. When we further consider that the sense faculties vividly entice the will to goods of their own order, the possibility of error is increased.

This last factor alone is enough to justify the conclusion that error concerning the second class of precepts is possible, though, because of their close connection with self-evident truth, we may say that, as a general rule, they will be known by the majority of men.<sup>35</sup> A minority, however, may be in ignorance of one or the other of these precepts considered as a whole or in part. St. Thomas enumerates various causal factors for this ignorance among which are tradition or custom, education, and depraved habits.<sup>36</sup>

Whether this ignorance will be invincible<sup>37</sup> or not depends on the individual person. But when we consider the overpowering weight of long tradition and custom justifying an action which may be objectively contrary to the law and yet the object of a strong lower appetite, inculpable ignorance may be possible. In such circumstances it is only with great difficulty that the conviction of the surrounding culture could be discarded; that is, more diligence would have to be exercised than required for ordinary invincible ignorance. Theologians generally admit the possibility of invincible ignorance in the case of *rudes* or the uncultured. The term *rudes* may very well be applied to the finished products of some modern education where all values are relative and the moral order is considered a collection of taboos and customs.

The possibility of such ignorance is further enhanced in practical action, for circumstances may affect the act in such a way that the subject may conceive it as justifiable in a particular case, while fully admitting the prohibition as a general proposition.

<sup>35</sup> I-II, q. 94, a. 4 & 6.

<sup>36</sup> I-II, q. 94, a. 6.

<sup>37</sup> As will be seen, this problem resolves itself into an analysis of the *potest* of the *scire tenetur* et *potest* of the Scholastics.

Thus, the intrinsic evil of stealing may be overlooked in a particular case when there are seemingly good reasons for its justification.

Summing up, we may say that normally the knowledge of the proximate conclusions is possessed by every human being; however, factors may be present in extraordinary cases which impede this knowledge and render the subject invincibly ignorant. In the next section this conclusion will be compared with the actual practices of men brought out by anthropologists.

### (c) REMOTE CONCLUSIONS

The possibility of invincible ignorance concerning these more remote deductions of the natural law is already contained in the conclusions we have reached concerning the immediate deductions, for all the causes which affect the knowledge of the latter will *a fortiori* influence the former. The distance removed from first principles increases such possibilities. Men occupied chiefly with material things in the struggle for existence are not always capable of correct conclusions in these matters, nor is it given to all to be instructed by good moralists. Hence, prescindng from other causes, the very difficulty of arguing to the conclusions would lend itself to the increased possibility of ignorance. St. Thomas says:

Some matters cannot be the subject of a judgment without much consideration of the various circumstances which all are not competent to do carefully, but only those who are wise; just as it is not possible for all to consider the particular conclusions of sciences, but only for those who are versed in Philosophy.<sup>38</sup>

Examples of these conclusions are multiple; the intrinsic evil of deliberate lies under every circumstance, the justification of occult compensation, the morality of mental reservations, all come under this classification. Several objections to this position have been brought forward by Catholic theologians. One has to do with

<sup>38</sup> I-II, q. 10, a. 1, c. Cf. also q. 100, 94, a. 6.

the cause of this ignorance. Daelman<sup>39</sup> and Steyaert<sup>40</sup> admit that many are ignorant of the natural law, but find the cause of this ignorance solely in the evilly disposed will of the subjects, who, through proper effort in combating bad habits, could arrive at the proper knowledge.

This objection does not consider the intrinsic obscurity of the third-class precepts which remain obscure even after the most forthright efforts to overcome the inclinations of the sensitive appetite. St. Thomas and St. Bonaventure were both of the highest intelligence and moral integrity, yet differed concerning certain remote conclusions, e.g.: St. Thomas<sup>41</sup> held that a judge is bound to condemn a defendant who though known to the judge to be innocent, as a matter of fact, is judicially proved guilty, while St. Bonaventure taught the contrary.<sup>42</sup> Now, both of these men were leading lives of heroic sanctity, yet one of them erred. The obscurity of the involved question, rather than bad habits, was the cause of one's being invincibly ignorant. The whole controversy concerning the principle to be used in a state of positive doubt is another example. If we hold to the objective unity of truth, the defenders of one theory must be in error and invincibly ignorant.

### ANTHROPOLOGICAL EVIDENCE

#### *The Codes*

If the conclusion concerning the universality of the natural law in the order of knowledge is based on the nature of man, an examination of all ethnological divisions is no more needed in concluding to universal knowledge of the first principle than complete experimental evidence is necessary for the conclusion that all normal men are capable of making judgments. Ignorance of the first moral principle is no more to be expected than ignorance

<sup>39</sup> Daelman, Carolus, *Theologia*, Antwerp: Apud Jacobum Bernardum Joret, 1735, Tom. I. Observatis in I-II, p. 12.

<sup>40</sup> Steyaert, Martin: *Opuscula*, Louvain: Martin-Overbeck, 1742, T. 4, p. 4.

<sup>41</sup> II-II, q. 67, a. 2.

<sup>42</sup> Cited by Billuart, Tom. II, p. 471.

of the principle of contradiction. Yet, considerable variation is to be expected in deductions in moral matters. St. Thomas often speaks of the variable factors in the field of morals.<sup>43</sup> Modern anthropology has demonstrated this by the positive scientific method. In modern times, attempts have been made to study all the known peoples and the results of some of these studies will be indicated here.

In the weighing of this evidence caution must be used lest hypothesis be accepted for fact, or mere subjective theory for objective evidence. Anthropologists are usually quite willing to acknowledge that conclusions once accepted as scientific should be modified when more complete evidence is brought to light.<sup>44</sup>

The first accumulation of scientific evidence concerning the moral practices of mankind presented facts proving the variability of moral codes. This led to the belief, still prevalent in some popular works, that the term "morality," though present under the concept of moral obligation among all peoples, had, nevertheless, no definite and universal signification. Moral codes apparently differed as much as dialects; the good to one people was evil to another, and the moral law, in the sense of a universal binding norm, was a fiction foisted on our culture by the uncritical acceptance of Greek and Roman persuasions. With the advent of stricter scientific investigation during the last two or three decades, the idea of hopeless confusion has been giving way to the opinion that a certain basic, even though very general, code exists behind the apparently complete variability.<sup>45</sup> As early as 1915, anthropologists began to speak of a "permanent moral consciousness of mankind."<sup>46</sup> If anthropology now knows no such animal as the "lawless savage,"<sup>47</sup> this is an admission that all primitive peoples lived under codes of morality, some having systems quite as intricate as our own.

<sup>43</sup> *Supp.* q. 65, a. 3, c.

<sup>44</sup> Cf. Cooper, *Primitive Man*, V, IV, n. 3, p. 48, where the important question of primitive dissociation of religion and morals is discussed.

<sup>45</sup> Cooper, *Primitive Man*, V, IV, n. 3, p. 35.

<sup>46</sup> Hobbouse, L. T., *Morals in Evolution*. New York, Henry Holt, p. 422.

<sup>47</sup> Cooper, *Primitive Man*, *Ibid.*

Without examining, at this point, the motivation behind such codes, it may be said that herein can be found the notion of the first principle, "do good" which we have designated as self-evident. The very fact that codes everywhere exist proves this at least, that men everywhere recognize certain actions as good, certain actions as evil. This may not be construed as "reading in." For, if such codes exist everywhere, the least they can do is to distinguish between actions considered good and actions considered evil. They bespeak a definite "oughtness" bound up with certain actions. The realization that actions recognized as good are to be done, is the content of the first principle. To speak of the permanent moral consciousness of mankind would seem to be speaking of the first principle in different terms. Thus, by means of scientific induction, modern anthropology asserts the truth of deductions scholastics had made from the nature of men.

We have previously stated that the content of the obligatory good will be recognized, roughly, in the precepts contained in the Decalogue, though we concede that errors from various causes may arise, and admit the possibility of some ignorance concerning these precepts. Experimental evidence tends more and more to confirm the conclusion. As the high ethical conceptions of Babylon,<sup>48</sup> Egypt,<sup>49</sup> Greece, and Rome are well known, we confine ourselves to more primitive peoples. Duties to the Supreme Being or the gods will be treated first, then duties to neighbor.

The existence of the concept of a Supreme Being and, consequently, the recognition of moral duties among these peoples have been the object of some debate among anthropologists. Thus, after an exhaustive review of the evidence, Hobbouse concludes that: (a) the concept of a Creator certainly has arisen in some peoples of very low cultures apart from the influence of civilization; (b) high gods, as a supreme sun or sky god are more common; (c) a supreme god is very rarely the object of a cult, but high gods are frequently the originators of custom and

<sup>48</sup> *Morals in Evolution*, *op. cit.*

<sup>49</sup> *Ibid.*, p. 454.

concerned with its maintenance. These are occasionally addressed in prayer.<sup>50</sup> In this opinion it would seem that widespread ignorance exists among primitive peoples concerning duties to God.

Schmidt,<sup>51</sup> on the other hand, strenuously holds that, although in primary and secondary cultures the Supreme Being may be conceived as having little or no concern with mankind, primitive man, in general, had not only the concepts of the Supreme Being, but believed himself to have direct relations with Him. These comprised a dependence on Him for life and sustenance together with systems of rewards and punishments meted out for obedience or disobedience to His laws. Primitive man prayed to the Supreme Being now orally, now mentally, with only slight gestures as outward signs, and again in action, by sacrifice. Moreover, he considered himself to have a moral duty to perform these actions.<sup>52</sup>

The conclusions of Schmidt are based on most of the known fieldwork, and it is likely that future investigations will not change the basic theory that primitive man, in general, had quite a thorough knowledge of his duties toward God.

Reciprocal rights and duties of the parent-child relationship comprised in the fourth precept of our Decalogue are taken for granted among primitive man. Provided mothers permit their children to live beyond a certain point, there is no question of their not caring for them. The duties of men to care for their wives and children are also beyond question.<sup>53</sup> Duties, moreover, in the parent-child relationship are not confined to parents alone. When parents grow old, their support, if needed, is incumbent upon the children. Isolated cases of abandonment and patricide may be regarded as exceptions brought about by physical needs

or misapplied kindness.<sup>54</sup> Among existing savage tribes, children, though seldom punished corporally, are subject to parents, principally to the father, secondarily to the mother.<sup>55</sup>

Some idea of the fifth precept is held to be universal among all known peoples. Westermarck<sup>56</sup> cites with approval the statement of Professor Taylor that "no known tribe, however low and ferocious, has ever admitted that men may kill one another indiscriminately." However, as in theft, primitive peoples distinguish between their own tribes and all others.<sup>57</sup>

Anthropology has collected an overwhelming mass of facts concerning the primitive acceptance of the sixth precept, taken literally. Though polygamy and polyandry<sup>58</sup> have been the practice of many peoples, there exists a universal prohibition of adultery. Severe punishments, sometimes the death penalty, are given to those guilty of wife-seduction.<sup>59</sup> To prevent the occasion, and also to avert the extreme jealousy of their husbands, married women, in many tribes, deliberately make themselves ugly. At times this is carried to the point of mutilation.<sup>60</sup> In some tribes young men pray for the virginity of their brides.<sup>61</sup> However, unfaithfulness on the part of the husband is much more prevalent.<sup>62</sup>

The expression of the various duties concerning property rights of others contained in the seventh precept finds an echo

<sup>54</sup> *Ibid.*, vol. 1, p. 534.

<sup>55</sup> *Ibid.*, vol. 1, p. 599.

<sup>56</sup> *Ibid.*, vol. 1, p. 331.

<sup>57</sup> Cf. Cooper, *op. cit.*, p. 36.

<sup>58</sup> Vanoverbergh, Morice C. I. C. M., *The Isew Life Cycle*, Catholic Anthropological Conference, Washington, 1936, p. 137.

Westermarck, V. 1, p. 331.

<sup>59</sup> Polyandry seldom implies promiscuous and simultaneous intercourse of many men with one wife; but rather a succession of men at different periods. Cf. Westermarck, *The History of Human Marriage*, London: Macmillan, 1891, p. 116.

<sup>60</sup> Westermarck, *Ibidem*, pp. 51-133 passim.

<sup>61</sup> *Ibid.*, p. 118.

<sup>62</sup> *Ibid.*, p. 123.

<sup>63</sup> Vanoverbergh, p. 182.

<sup>50</sup> *Morals in Evolution*, p. 396.

<sup>51</sup> *Storia Comparata delle Religioni*, Brescia; Morcelliana, 1934, p. 45.

<sup>52</sup> These are general rules. Exceptions in one or the other point are found in numerous tribes. Conclusions are based on the exhaustive work—*Die Ursprung der Gottesidee*; Münster: Aschendorf, 1933, 6, v.

<sup>53</sup> Cf. Westermarck, *The Origin and Development of Moral Ideas*; Macmillan, London, 1912, v. 1, p. 527, for mass of evidence on these two points.

in the norms of primitive tribes. That theft is quite generally looked upon with disapproval may be inferred from the universal custom of subjecting the thief to punishment or revenge. At the very least, thieves are compelled to restore the stolen property to its owner.<sup>63</sup> Personal effects become so bound up with the personality of their owners that a not infrequent practice of burying them with their owners is extant.<sup>64</sup> The moral evil of theft, however, has very definite limits. In most primitive peoples, respect for property rights does not extend beyond the tribe or clan.<sup>65</sup> Thus, while the concept of property rights and the evil of violating them exists among primitive man, widespread ignorance is prevalent concerning the extent of this norm.

The regard for truth inculcated by the eighth precept is almost universally prevalent among savage peoples, at least within the limits of their own tribes. Though travelers are sometimes deceived, this may be explained by primitive or uncultured man's concepts of right which, at times, do not extend beyond tribal limits, or by his desire to respond in a way which they see is according to the wishes of the inquiring person.<sup>66</sup>

Monsignor Cooper, the noted anthropologist, has this to say about the codes of primitive peoples:

The peoples of the world, however much they differ as to the details of morality, hold universally, or with practical universality, to at least the following basic precepts. Respect the Supreme Being or the benevolent being or beings who take his place. Do not "blaspheme." Care for your children. Malicious murder or maiming, stealing, deliberate slander or "black" lying, when committed against friend or unoffending fellow clansman or tribesman, are reprehensible. Adultery proper is wrong, even though there be exceptional circumstances that permit or enjoin it and even though

<sup>63</sup> Westernmark, *Origin of Moral Ideas*, v. 2, pp. 3-13.

<sup>64</sup> Hobhouse, *Evolution of Morals*, p. 318.

<sup>65</sup> Cooper, p. 36.

<sup>66</sup> Hobhouse, p. 319.

<sup>67</sup> Cf. factual evidence in Westernmark, *Origin and Development of Morals*, pp. 73-86.

sexual relations among the unmarried may be viewed leniently. Incest is a heinous offence.<sup>67</sup>

The actual codes of conduct indicate that primitive peoples have very comprehensive ideas of the natural law's content. When, however, the motivation of actual conduct is examined, another problem is suggested. Can these peoples be said to have knowledge of the natural law when the very term is unknown in their language? It might be claimed that, though codes may be recognized as obligatory, the conviction of *oughtness* may arise from reasons or emotions apparently not even distantly related to the true basis of obligation. In these cases, can it be said that knowledge of the natural law is present, or are the precepts merely accidental similarities of code that happen to follow from peculiar superstitions?

The intrinsic difficulty of motivation analysis is increased by imperfect knowledge of the languages when dealing with primitive peoples, and, as might be expected, varying opinions are presented.

One view holds that the scientific onlooker will see that custom is the real moral force behind the codes, though primitive man may think he acts according to the norms for various other reasons.<sup>68</sup> These subjective notions of obligation arise from the manner in which punishment consequent on the violation of norms is conceived. Roughly, it may be said to follow, now automatically or magically, now from the anger of spirits, or again from a combination of both.<sup>69</sup>

Thus it is given as an example of the automatic sanction that the natives of Rotuma seek to adhere strictly to a code of honesty, but this arises not from any motives civilized people might propose for the virtue, but because enemies might kill them with the stolen food,<sup>70</sup> while the Aleuts avoid contact with women dur-

<sup>67</sup> *Primitive Man*, Vol. IV, n. 3, p. 36.

<sup>68</sup> Hobhouse, *Evolution of Morals*, p. 419.

<sup>69</sup> *Ibidem*, p. 420.

<sup>70</sup> Gardner, *Journal of the Anthropological Institute*, V. XXVII, p. 409.

ing the whaling season, for whales avoid dissolute tribes.<sup>71</sup> Motives connected with the anger of spirits range from the crude animism ascribed to the Roro (Cook Islands) tribes by Selgmann,<sup>72</sup> to the high ideal of the Comanches who believe the Great Spirit punishes them for lying and other offences.<sup>73</sup>

Schmidt, on the other hand, while admitting that a limited number of tribes have apparently very low motives for moral conduct, maintains that the vast majority of the primitive peoples associate the moral order with the Supreme Being. In general, it may be said that the Supreme Legislator is concerned with the observance of the ceremonies, sacrifices, and prayers which he has introduced, together with obedience to parents and elders, and due respect for human life. He forbids sexual immorality and enjoins honesty and the aid of the poor, the weak, and infirm.<sup>74</sup> In this view, the problem whether primitive peoples actually have knowledge of the natural law is almost eliminated, for the majority of them live by the high motivation that the moral order is the result of God's command.

However, some restrictions on this opinion are necessitated by the evidence pointing to certain cases of automatic sanctions, and the question may still be asked: Can those peoples who apparently have no concept of a Supreme Legislator and have only foolish and superstitious motives of action be said to know the natural law?

Before attempting to answer, it is well to consider that two theories concerning the relationship between religion and morality among primitive peoples have arisen. The theory until recently held more commonly by anthropologists speaks of a primitive dissociation, the moral order gradually becoming permeated with religious elements following the evolution of culture. The other proposes that morality and religion were linked together primarily, while the dichotomy, now observable in some instances,

<sup>71</sup> Rocus, "Primitive Fold" in *Comparative Ethnology*, 1889, p. 52.

<sup>72</sup> Quoted by Hobhouse, p. 425. In these tribes excessive quarreling among the women disturbs the ghosts who withdraw hunting luck.

<sup>73</sup> Schoolcraft, *Historical and Statistical Information Respecting the Indian Tribes, 1851-1860*, v. IV, p. 53.

<sup>74</sup> Schmidt, Wilhelm, *Storia Comparata della Religioni*, p. 448.

occurred only later and is to be explained by various factors not yet fully brought to light.<sup>75</sup> It would seem that both theories are proposed with some preoccupation.

The preoccupation of the dissociationist theory would seem to be evolutionary progress. It would say that "custom is binding upon primitive man and binding upon him in truth because it is custom."<sup>76</sup> This custom, though binding, is constantly changing. What men are really working for is a code of ethics which is equally removed both from materialism and the half-naïve creed of the churches.<sup>77</sup> Thus the *thesis* would be the primeval dissociation of human conduct from religion, the *antithesis* the dominance of the moral order by an "overruling Providence," and the *synthesis*, a condition wherein religion in relation "to morality will be increasingly restricted to emphasizing ordinary moral rules and less preoccupied with inculcating special duties to the deity (sic!)." <sup>78</sup> Primitive dissociation fits in with the theory which holds that, if moral codes exist without conscious dependence on God, it follows that no *real* nexus between God and the moral order exists, thus paving the way for theories of a more modern day. This is reasoning beyond the premises, which contain, actually, only material for an "actu ad posse" illation. Moral codes exist and are known without a knowledge of dependent relation on God, therefore they can exist without such knowledge. It does not follow that God is not the Supreme Legislator. A child's ignorance of the dependence of the electric current on a central dynamo has no effect on the real relation between light and the dynamo.

Moreover, a closer examination of automatic bad-effect code reveals that it is capable of explanation in terms of the natural law, when it is remembered that knowledge of obligation (at least in a limited degree) presupposes only a realization of human nature and the essential relations flowing therefrom, though not necessarily all of them. It requires merely a shift

<sup>75</sup> For an exposition of the two theories, cf. Cooper, *op. cit.*, p. 46.

<sup>76</sup> Hobhouse, *Evolution of Morals*, p. 419.

<sup>77</sup> *Ibid.*, p. 637.

<sup>78</sup> Westermarck, *Origin and Development of Moral Ideas*, v. 2, p. 746.

or transfer from the consciousness of having violated the rules of this nature and the consequent subjective feelings of remorse to objectivate them into the physical aspect of a person or thing and a taboo is ready to be formed. Back of every taboo and every custom are actual men who began them. The argument of St. John Chrysostom is so interesting in this connection that it bears repetition. He says, "They say they have no law of conscience, and that there is no law implanted by God in nature. My answer is to question them about their laws concerning marriage, homicide, wills, injuries to others, enacted by their legislators. Perhaps the living have learned from their fathers, and their fathers from their fathers and so on. But go back to the first legislator! From whom did he learn? Was it not by his own conscience and conviction? Nor can it be said that they heard Moses and the prophets, for Gentiles could not hear them. It is evident that they derived their laws from the law which God ingrafted in men from the beginning."<sup>79</sup> The discovery of tribes who hold fast to a moral code without knowledge of a Supreme Legislator does not militate against their knowledge of the natural law.<sup>80</sup>

On the other hand, the preoccupation of Schmidt to prove the primeval association of religion and morality with scientific facts is understandable in the light of Genesis, where primitive man's responsibility to God is stated clearly.<sup>81</sup> For the Catholic there can be no question of a primitive dissociation of God and morality in the order of being, any more than there can be a question of the independence of any form of created being. God is the Creator of all things, visible and invisible, and we are certain from Genesis that there was no such dissociation in the order of knowledge.<sup>82</sup> However, if the part of the divine will is overemphasized in the interpretation of the relationship, confusion of the dependence of the moral order on God in the order of knowledge and being may easily arise. This confusion would spring from

<sup>79</sup> *Ad pop. Ant.*, 12, 4, P. G. 49, 133.

<sup>80</sup> Farrell, *A Companion to the Summa*, v, II, p. 385.

<sup>81</sup> "If thou do well, shalt thou not receive? But if ill, shall not sin forthwith be present at the door?" *Gen.* 4, 7.

<sup>82</sup> This is not to exclude a later dissociation in the same order.

the idea that obligation is an extrinsic dependence on God's will.<sup>83</sup> For St. Thomas the natural law is a participation in the Eternal Law that really causes obligation, though in the order of secondary causes. Those who hold that obligation depends on a special act of the will of God<sup>84</sup> will be disturbed by scientific facts that are alleged to prove a primitive dissociation of morality and religion, provided they also wish to maintain that men everywhere have some knowledge of the natural law. On the contrary, these facts, even if proved,<sup>85</sup> have no bearing on the universality of moral knowledge in the Thomistic system, where the natural law is the true secondary cause of obligation and the first principle of the natural law is self-evident.

The objection that the sanctions proposed by many tribes for moral acts are not the complete sanction of the natural law does not imply they do not know the law, for knowledge of the perfect sanction is not at all necessary. All that is required for a true sanction is the knowledge that unhappiness will in some way follow violations of the law of nature.<sup>86</sup> Summing up, it may be said that the various moral codes discovered by anthropologists tend to confirm the previous deduction based on the nature of man.

<sup>83</sup> For a comparison of the doctrines of St. Thomas and Suarez on this point, cf. Farrell, *The Natural Moral Law*, pp. 152-155.

<sup>84</sup> Cf. Suarez, *De Legibus*, c. 6, 13.

<sup>85</sup> Cf. Cooper, *op. cit.*, p. 48, where the classical dissociative theory is said to have received a body blow.

<sup>86</sup> That frequent aberrations from the natural law may be proved is a manifestation of the moral necessity of supernatural revelation.

## CHAPTER V

SPECIAL PROBLEMS AND PRACTICAL APPLICATION  
OF PRINCIPLES

## SPECIAL PROBLEMS

In treating the essence of the natural law it was seen that every human person participates in this law to a greater or less degree. Everyone has the requisite inherent inclinations and, at least, the latent powers of reason; thus it is possible to declare that all partake of the law at least *in actu primo*. Since, however, not everyone has the use of reason, participation in the law *in actu secundo* admits of limitations. Difficulty will be found in any attempt at a more precise determination of many of these limitations, but since they are of great practical import in the priestly ministry, at least the boundaries of this region must be explored.

In this connection the question of moral maturity arises. Is it possible for a person to be fully developed physically and intellectually and yet remain, to all intents and purposes, a moral infant? The eminent Cardinal Billot distinguishes two classes of adult people: (a) those mature in the formal sense of the term, i.e., physically, intellectually, and morally, and (b) those who, though perhaps mature physically and intellectually, are, nevertheless, quite immature morally. They are called adults only in the material sense.<sup>1</sup> Further, he argues, since these people have no concept of the moral order they have no responsibility and consequently do not sin. An obviously sympathetic, perhaps sentimental, attitude toward modern atheists may be deduced from this opinion.

According to Billot, moral maturity is attained the moment the

<sup>1</sup> Billot, "*La Providence de Dieu*," Etudes, V. 164, 1920, p. 387. Cf. also, Bouaert, S.J., "Tous les athées sont-ils coupables?" *Nouvelle Revue Théologique*, April, 1921, 169-185.

reason of the subject comes to a knowledge of God and of His law.<sup>2</sup> This knowledge of God is necessary for the "sentiment" of moral obligation,<sup>3</sup> for man cannot be the source of his own obligation. If he were, all distinction of good and evil would vanish.<sup>4</sup> Essentially, formally, and precisely, morality is an orientation toward God, the ultimate end. Therefore, those holding that a knowledge of God's existence is unnecessary for moral obligation fall into the categorical imperative of Kant with its autonomy of human reason. Billot<sup>5</sup> quotes St. Thomas in support of his opinion, adducing the text in *De Veritate* where it is stated that conscience obliges in virtue of the divine precept.<sup>6</sup> St. Thomas therefore, according to Billot, implicitly holds that without a knowledge of God's existence there can be no conception of moral obligation.

Further proof is found by Billot in the condemnation of the theory of *peccatum philosophicum* by Alexander VIII.<sup>7</sup> Since, Billot says, the *peccatum philosophicum* does not exist, those lacking a knowledge of God's existence have no moral obligation and therefore, even when objectively transgressing the law of God, do not sin.<sup>8</sup> His opinion is clear—those entirely ignorant of God's existence have no conscience, no moral obligation, and cannot sin.<sup>9</sup>

<sup>2</sup> "La condition d'adulte ne commence qu'à partir du moment où la raison est parvenue à la connaissance de Dieu et de sa loi." *Ibid.*, p. 389.

<sup>3</sup> *Ibid.*, p. 390.

<sup>4</sup> *Ibid.*, p. 391.

<sup>5</sup> *Ibid.*, p. 393.

<sup>6</sup> "Constat quod conscientia ligare dicitur vi praecepti divini." Ver. 27, 3, c.

<sup>7</sup> "Peccatum philosophicum seu morale est actus humanus disconveniens naturae rationali et rectae rationi; theologicum vero et morale est transgressio libera divinae legis. Philosophicum, quamvis grave, in illo, qui Deum vel ignorat vel de Deo actu non cogitat, est grave peccatum, sed non est offensa Dei, neque peccatum morale dissolvens amicitiam Dei, neque aeterna poena dignum." D. B. U. 1920.

<sup>8</sup> Billot, "*La Providence de Dieu*," Etudes, V. 164, 1920, p. 403.

<sup>9</sup> "Répétons de donc encore une fois, sans la connaissance préalable de Dieu e de la loi de Dieu, il n'est aucune conscience possible de l'obligation morale, aucune, aucune." *Ibid.*, p. 395.



In criticism of Billot it may be said that he proposes a seemingly faulty interpretation of Alexander VIII.<sup>10</sup> In effect, he says the condemnation constitutes an absolution of all those objectively sinning while subjectively not averting, either habitually or at the moment, to God's existence. The condemnation would rather seem to point out that, provided the subject knows the act is contrary to the law of morals, he sins in its commission whether he thinks of the existence of God or not.<sup>11</sup> Where Alexander VIII seems to affirm responsibility, Billot denies it altogether.

Nor does it seem consistent with the principles of St. Thomas that he be quoted in support of Billot's opinion. St. Thomas certainly upholds the self-evidence *quoad omnes* of the first moral principle,<sup>12</sup> while his insistence on the contrary for the knowledge of God's existence is well known.<sup>13</sup> Therefore, apart from other influences, the first moral principle will be known before the existence of God. Moreover, when Thomas says that conscience obliges in virtue of the divine precept he does nothing more than state that the obligatory force of the natural law depends *ultimately* and *objectively* on God. The whole point of the article is that conscience really obliges, that it is a real, though secondary and proximate, cause of obligation.<sup>14</sup> When he says it obliges in virtue of the divine precept he affirms the *ontological* and *objective* dependence on God, which, as has been seen previously, does not, of necessity, include the *logical* and subjective dependence. The first objection of the article<sup>15</sup> seems to state Billot's

<sup>10</sup> If the interpretation is applied to one adversative it must hold for the other since both are included. "Philosophicum, quantumvis grave, in illo, qui Deum vel ignorat vel de Deo actu non cogitat." D. B. U. 1290.

<sup>11</sup> "It is a common doctrine of the moralists, who hold that full advertence is required for mortal sin, that it is sufficient to have a confused advertence, in the sense that the quality and quantity of the sin are perhaps seen only indistinctly." Damen, V. 1, p. 165; Merkelbach, V. 1, p. 352.

<sup>12</sup> I-II, q. 94, a. 4.

<sup>13</sup> C. Gen. 1, 11.

<sup>14</sup> "Respondendo dicendum quod conscientia procul dubio ligat." *De Ver.*

<sup>15</sup> 27, 3. c.

<sup>16</sup> *Ibid.*, ad 1um.

case, maintaining that obligation cannot be found in man himself.<sup>16</sup>

Obj. "The obligatory character of acts comes only in virtue of law. But man is not a law unto himself. Therefore, since conscience is the result of a human act, it does not oblige.

Res. "To the first objection be it stated that man himself does not make the law, but is obliged by the act of his own knowledge by which he knows the law made by another."

Again, St. Thomas affirms the truly obligatory character of conscience in the order of secondary causes. The important point is that the law must be known, but not necessarily the one making the law.

When confronted with the possibility that men who deny the existence of God may yet recognize moral obligation, those following the opinion of Billot have recourse to the statement that, in the case described, while God's existence is *explicitly* denied, it is *implicitly* held.<sup>17</sup> It is true that a knowledge of moral principles may lead one to the knowledge of the existence of God, but this is hardly the knowledge of God Billot has previously required for moral obligation.

In Billot's opinion the way seems to be opened to a complete separation between the moral and juridical order, for responsibility is denied men otherwise normally developed.

The whole problem of deliberate but amoral actions involves an analysis of the human act. Though men quite often act in a manner not consonant with their rational nature—and it might be said that human beings are often less than human—it is undeniable that there are certain actions proper to man's specific nature. These actions proceed, proximately or remotely, from reason and rational appetite—powers distinguishing man from merely animal creation. By reason of the intellect's power to recognize and to compare particular goods in relation to the uni-

<sup>16</sup> Billot, *Ibid.*, p. 391.

<sup>17</sup> Bouaert, P. Claeys, S.J., "Tous les athées sont-ils coupable?" *Nouvelle Revue Théologique*, April, 1921, pp. 169-188.

versal idea of good, and the relation of various means to it—*indifferentia iudicii*, as it is called—the will is free, at least to act or not to act, whenever an object is proposed by the intellect as a limited good.

An action becomes moral when it falls under the rule of morals, norms or guides that lead man to the ultimate end of human life. It has been seen that every specifically human act is a free act because it proceeds from an intellect capable of seeing various goods at the same time, thus giving the will an opportunity of choosing between them. To determine the relationship between free acts and moral acts is to answer the question whether every free act falls under the rules of morals. It does. This follows from the nature of free actions. According to St. Thomas, the first principle of rational action is *do the good*, which precept is explained by a comparison between the speculative and practical order. The abstract idea of the *good* is the first idea in the practical order, just as the idea of *being* is the first concept in the speculative order.<sup>18</sup> Now in order to act at all, the rational being must have an end, for "*finis*" is the extrinsic principle of action. To act rationally, man has to act for an end considered under the formal aspect of end, i.e., he must have an abstract idea of the good under which the singular concrete good is placed and in relation to which he judges its goodness. Further, every means to the end must be judged according to an abstract, universal idea of its utility toward the proposed end. These abstract ideas, necessary to free action, give the key to the solution of the problem for, flowing from the general idea of the good, is a self-evident principle of the moral order, which governs every free act.

Obviously, in the theory of St. Thomas, there is a definite correlation between the power of reasoning and the principles of morality for it is the same intellect arriving at speculative truth and giving the command to action.<sup>19</sup> Considering truth in itself, apart from other considerations, the intellect is called speculative, considering truth in relation to action of any kind, it is called

practical. However, one and the same intellect performs both functions. In the speculative order the intellect forms the first principle, the principle of contradiction, by a comparison between being and non-being. By a comparison between good and its contrary the practical intellect forms the self-evident first principle of action; *do good, avoid evil*. Just as the principle of contradiction is contained in the concept of being and must be known when the concept is known, so the first principle of action is contained in the general idea of the good, and must be known when the intellect culls it from material accompaniments.

When discussing synderesis,<sup>20</sup> St. Thomas, again comparing speculative and practical reasoning, points out that just as speculative reasoning is impossible without first principles as bases, so also *rational* action, proceeding from the practical intellect, must rest on the first principles of synderesis.<sup>21</sup> The principles of both orders are equally self-evident, and deliberate but amoral action is as foreign to the mind of St. Thomas as speculative reasoning without the principle of contradiction. The distinction between material and formal adulthood affirmed by Billot, though a courageous attempt at a solution of a perplexing problem of salvation, does not seem to rest on solid ground. The evidence of modern experimental psychology seems to confirm the opinion denying a purely moral immaturity.<sup>22</sup>

It seems to be sufficiently established that a deliberate act cannot be amoral and that there are no adult moral children. But

<sup>20</sup> I, q. 79, a. 12, c.

<sup>21</sup> "Ratiocinatio hominis cum sit quidem motus progreditur ab intellectu aliquorum, scilicet naturaliter notorum absque investigatione rationis, scilicet a quodam principio immobili. Constat autem quod sicut ratio speculativa ratiocinatur de speculativis, ita ratio practica ratiocinatur de operabilibus. Oportet igitur naturaliter nobis esse indita sicut principia speculabilium, ita et principia operabilium." I, q. 79, a. 12, c.

<sup>22</sup> Cf. Moore, Dom Thomas Verner, Ph.D., M.D. *Dynamic Psychology*, Philadelphia: Lipincott, 1926, p. 380, where, after the relation of a case history he states, "A case of this kind approaches as closely to the psychiatric phantom, 'moral insanity,' as anything I have ever met. Normal intelligence and apparently no moral perception. But what we find is not a lack of perception of the difference between right and wrong, but a deficiency of the emotional life."

<sup>18</sup> I-II, q. 94, a. 4.

<sup>19</sup> I, q. 79, a. 11, c.

what of those who are actually children? Are they ignorant of the natural law? No doubt they are included within the scope of its binding force, for they, no less than other men, are human persons. Nor can deliberate amoral acts be admitted in one case more than in another. If children are capable of deliberate action, the same principles and the same arguments apply.

The Canon Law of the Church seems to presume a correlation between deliberate action and responsibility, if we can judge from canon 88, §3.<sup>23</sup> As is the case with all law, this is not intended to be a scientific determination but a practical norm for human affairs. When the child has reached the age of seven years it is *presumed* to have the use of reason and therefore responsibility. However, that this is not intended to be an absolute norm may be seen from the legislation on Holy Communion which applies to children younger than seven provided they have reached the use of reason.<sup>24</sup>

The criterion to be used in an attempted solution of the problems rising from knowledge, or lack of knowledge, of the natural law in children is the deliberate act. The determination of the nature of the deliberate act pertains to Theology, but the actual capabilities in children for such acts can only be learned by experiment. In other words, experimental psychology must supply the facts used by theologians.

A deliberate and therefore responsible act is defined by theologians as an act proceeding from an intrinsic principle with perception of the end.<sup>25</sup> By the intrinsic principle in the case of human acts is meant the will, while perception implies intellectual knowledge. As has been stated repeatedly, every human

<sup>23</sup> "Impubes, ante plenum septennium, dicitur infans seu per vel parvulus et censetur non sui compos; expleto autem septennio, usum rationis habere praesumitur. Infanti assimiliantur quotquot usu rationis sunt habitu destituti."

<sup>24</sup> Cf. Can. 854, § 5. Also, Decr. S. C. de disciplina Sacram., 8 aug. 1910, "De actate admittendorum ad primam Communiam Eucharisticam," cited by Cappello, *Tractatus Canonico-Moralis de Sacramentis*. V. 1, n. 402; also Vermeersch-Creusen, *Epitome Iuris Canonici*, T. II, n. 1178.

<sup>25</sup> Cf. Aristotle's definition, *Eth.* III, c. 1. This definition has been approved by all theologians. Cf. Merkelbach, V. 1, p. 60.

act is directed toward an end in the formal sense of the term. Men apprehend, at least vaguely, the concepts of end and means, and, under the light of this universal knowledge, compare the particular means to the end and concrete ends with each other, thus being able to give reasons why they choose these ends and means. They perceive the proportion of means to end and thus move themselves.<sup>26</sup>

St. Thomas himself does not descend to a precise statement as to the age when children reach the use of reason. However, following the logic of his system, he holds them morally responsible for action when they have reached the use of reason. Since every consciously motivated action is directed to an ultimate end,<sup>27</sup> he states that all those capable of such action should direct it to the true ultimate end—not only mature people, but children as well.<sup>28</sup> The theologians of Salamanca point out that the use

<sup>26</sup> Merkelbach, V. 1, p. 61.

<sup>27</sup> I-II, q. 1, a. 6, c.

<sup>28</sup> "Si vero non ordinet seipsum ad debitum finem, secundum quod in illa aetate est capax discretionis, peccabit mortaliter non faciens quod in se est." I-II, q. 89, a. 6, c. Cf. the contrary view in Scotus, 4, d. 17, n. 18. Thomas' apparently rigorous doctrine is explained by Cajetan and the theologians of Salamanca. Cajetan brings out that the ordination to the ultimate end consists in a right ordination to the essential order of things. "Unde si sibi appetendum (puer) censuerit bonum honestum in confuso, ut aetas illa consuevit, bene deliberavit de seipso, finem suum in vera beatitudine collocans, quamvis imperfecte et inchoative: non plus exigitur a puero." Commentary in l. c. The theologians of Salamanca bring out that even those laboring under invincible ignorance of God's existence are held by the natural law and really fulfill it when in such ignorance. "Communior sententia tenet sufficere amorem Dei finis naturalis implicitum, contentum in ipso amore et electione boni honesti et in proposito vivendi secundum rectam rationem. . . . Multi sunt qui in illa aetate (in primo instanti usus rationis) nondum cognoverunt Deum explicitè neque ejus nomen aut rationem audierunt, sed laborant ignorantia ejus invincibili. Quisque ex- presse et efficaciter diligit bonum honestum et hoc quod est vivere secundum rectam rationem ibi iam implicitè et virtualiter diligit ipsum Deum. . . . Constat omnibus ad tale instans perveniuntibus per lumen synderesis bonum honestum et obligationem amplectendi ipsum, sequendique legem naturalem, neque censetur completum tale instans quousque totum hoc cum plena advertentia et deliberatione innoscat." Sal. *De Virtutibus et Peccatis*, tr. 13, d. 20, dub. 1, n. 17, 18, 19, 20.

of reason is not reached in a physical, but in a moral, moment varying in length according to the capacities of individuals. Moreover, full responsibility cannot be expected until the child can be said to have fully reached the age of reason.<sup>29</sup> Summing up, it is seen that theology requires in the subject a capacity of abstraction and judgment for the deliberate act. In particular are required the universal ideas of the good and of means, together with the capacity to judge concerning them.

Before examining the evidence of experimental psychology it is well to remark that controversies exist among psychologists as to the values of some of the various tests used. As they doubt, it would not be fair for others to claim certainty.<sup>30</sup> The object of the investigation is man at his most variable period. This gives rise to intrinsic difficulties not obviated to any extent by the relativistic attitude toward moral values assumed by not a few modern psychologists.<sup>31</sup>

Experiments on the moral perceptions of children have been carried on in America, Italy, and Germany during recent years, demonstrating the world-wide interest in the problem. Though the experiments do not lay claim to final certainty, they may be indications of strong probability.

The experiments conducted by Galli in the University of the Sacred Heart, Milan,<sup>32</sup> though testing children beyond the presumed age of discretion, are interesting by reason of his insistence that a definite correlation exists between moral judgment capacity and general intelligence. He maintains that the lowest age level capable of moral judgment will certainly bear some

<sup>29</sup> *Ibid.*, D. XX dub. 1, 12.

<sup>30</sup> For a discussion of various methods, cf. Moers, *Zur Prüfung des Sittlichen Verständnisses Jugendlicher* I Zeitschrift für angewandte Psychologie, 34, p. 431 f. Leipzig: Barth.

<sup>31</sup> Cf. Jones, Vernon. *Children's Morals in Handbook of Child Psychology* by Murchison, Clark University Press, Worcester, Mass., pp. 482-533.

<sup>32</sup> Galli, Arcangelo, *Contributo allo studio del Giudizio morale nei fanciulli normali ed anormali* in Pubblicazioni della Università del Sacro Cuore, Serie sesta, Scienze Biologiche, V. 6, pp. 325-367.

relation to the time of general intellectual development.<sup>33</sup> Galli's tests further proved that children in the first years of school life are capable of moral judgments requiring some delicacy of perception.<sup>34</sup>

The experiments carried on by Dr. Moers in Germany<sup>35</sup> proceed from the recognition that the subjective motive of action is of great importance in morals.<sup>36</sup> The motivation of the child is to be determined by objective tests though the difficulties of the attempt are well seen. A series of moral actions are related to the children who judge concerning the relative good or evil of the participants, e.g.:

1. Joseph's parents had forbidden him to skate on a neighboring pond as they feared thin ice. Joseph, however, thought his parents too fearful. That afternoon while his parents were away, he went skating, taking his little brother along. Both broke through the ice, and though Joseph was saved, his brother was drowned.
2. While skating, Ernst saw that Karl approached a dangerous place on the pond. Ernst knew the thinness of the ice in that spot though Karl did not. Ernst would have warned Karl of the danger, but because Karl had insulted him the day before he thought to himself, "Let him skate on; if he breaks through the ice, it serves him right." However, as Karl neared the dangerous place another boy saw his danger, warned him, and thus there were no bad results.

In a series of such tests the children were asked to judge the comparative morality of the participants. The conclusions drawn by Dr. Moers were:

<sup>33</sup> "Se si pone il quesito e il limite inferiori di età entro il quale il fanciullo normale è capace di un adeguato giudizio morale, ci sembra di poter dedurre legittimamente dalle ricerche disritte che quel limite è certamente in rapporto con lo sviluppo intellettuale del soggetto." p. 365.

<sup>34</sup> *Ibid.*, p. 364.

<sup>35</sup> *Zur Prüfung des sittlichen Verständnisses Jugendlicher* in Zeitschrift für angewandte Psychologie, 37, 56-74. Leipzig: Barth, 1930.

<sup>36</sup> "Der sittliche Wert einer Handlung ist bestimmt durch die Motive, von denen sich der Handelnde leiten lässt." *Ibid.*, p. 56.

1. The child in the six- to ten-year bracket is quite capable of judgments concerning moral values. They are able to abstract from the effect and to judge concerning motivation.
2. He is heavily influenced by the mature people around him and is often uncertain in his judgments.
3. Virtue and vice known to him in a practical way (Obedience, Disobedience, Carefulness, Negligence) are the most important standard of moral evaluation in the child's mind. The extraproportional value given to these concepts and the uncertainty of judgment are to be attributed to a lack of life-experience. There is no doubt, however, that children of this age (6-10) are capable of moral judgments.<sup>37</sup>

Experiments concerning the moral concepts of preschool children have also been conducted,<sup>38</sup> and it has been discovered that children apparently have some moral concepts at a surprisingly early age.<sup>39</sup> In the Detroit experiment in which 1218 children were examined, more than one-fourth of the children tested at the two-year level recognized the concept of obedience in response to a direct parental command.<sup>40</sup>

One question asked of the children was interesting from the point of view of obligation. To ask the child, "Why must you do what mamma tells you to do?" is to presuppose the child has some notion of obligation. More than sixty per cent of the answers before the five-year level lacked a reason. However, some

<sup>37</sup> *Ibid.*, p. 73.

<sup>38</sup> Cf. Mary, Sister, I. H. M., Ph. D., "The Moral and Religious Development of the Preschool Child" in *Studies in Psychology and Psychiatry*, Catholic University, vol. LVI, April, 1936. Cf. also "Research Findings in the Moral Development of Children," *The Catholic University of America Educational Research Bulletin*, I, 6, Washington, D. C., 1925, p. 31, and "Some Research Findings in the Moral Development of the Preschool Child" in *The Catholic Educational Review*, Mar. 1926, pp. 145-153, both by the same author.

<sup>39</sup> Piaget brings out clearly the difficulties of children with introspection. Cf. Piaget, Jean, *Judgment and Reasoning in the Child*, New York: Harcourt, Brace and Co., 1928, pp. 136-146. Evaluation of experiments based on a question-answer technique is thus rendered difficult.

<sup>40</sup> *Moral and Religious Development of Preschool Child*, p. 10.

of the children were able to give such reasons as, "You must be obedient," "God wants you to," etc.<sup>41</sup>

Another question presupposed an abstract ideal of goodness—"When are you a good little boy or girl?" Though some very young children recognized right concepts, no more than forty per cent of any level of preschool children had right concepts of the constitutive elements of childhood goodness.<sup>42</sup>

Later in the study<sup>43</sup> the statement of Rand-Sweeney-Vincent concerning the conscience of children is quoted with approval. These authors hold that conscience, or judgment of morality, is clearly evident in children of three, while at four or five, clearly defined notions of right and wrong are present.<sup>44</sup>

Do these experiments signify that very young children have and use the principles of synderesis? Do they know the natural law? The opinion of the theologians of Salamanca, holding that the use of reason is not reached in a physical but a moral moment, is to be remembered. This is to say that the first instant in which a child reached the use of reason is not physically and indivisibly one, but presupposes the whole duration of time needed by the child in order to distinguish between the sensible good and the rational good, and to deliberate which of the said goods is to be chosen. In this moral moment the first act placed by the child is related to the good in general. The personal equation is supreme here; he conceives this good as that which is agreeable to his own person, prescinding from the agreement or disagreement with right reason upon which morality is based.

Consequent upon this perception of the intellect there follows the love-act of the will toward the same object. It also considers it under the same aspect. After these preliminary acts of the intellect and the will, in which the child's reasoning powers find

<sup>41</sup> *Moral and Religious Development of Preschool Child*, p. 12.

<sup>42</sup> *Ibid.*, p. 27.

<sup>43</sup> *Ibid.*, p. 45.

<sup>44</sup> Cf. Rand, Winifred; Sweeney, Mary; Vincent, Lee; *Growth and Development of the Young Child*, Philadelphia: W. B. Saunders Co., 1930, p. 366. With the above conclusions it is also held that "young people have no other judgment for what is right or wrong than a reflection of the beliefs of persons about them." *Ibid.*

their functional beginnings, there follows another act of the intellect by which he distinguishes between moral good and moral evil, or between that which tends to his total happiness in accord with right reason and that which does not. Herein lies the primary function of the practical reason, namely, to distinguish between good and evil. This function is expressed by the first principle of synderesis, *do good, avoid evil*. Consequent upon this there is some determination of the obligatory good and the evils prohibited. The completion of this process marks the attainment of the use of reason, or the fulfillment of the moral moment of which the Scholastics speak.<sup>45</sup> Moreover, full responsibility is not present until the child has fully reached the age of reason, i.e., until the child has completed the moral moment in which the use of reason is reached.<sup>46</sup> Further, if the intellectual activity of young children is distinguished by an absence of conscious realization, general propositions, and deductions,<sup>47</sup> it would be unwary to say absolutely that formal knowledge of the natural law is present, at least in the sense theology demands. The facts as presented by experimental psychology are as yet incomplete.<sup>48</sup> However, there is a strong probability that some

<sup>45</sup> Cardinal Cajetan makes an interesting comment in regard to the principle, *do good, avoid evil*. He holds that the child, on the perception of this principle, will as a rule choose the good and thus turn to the true end of his nature. The reason adduced is that the will process of the child, having its inception in the willing of the general good to himself (*amor concupiscentiae*), sees that his total good will consist in the *bonum rationis* and that all others are only partial goods. Since he began by an ordination of things to himself, he will choose that good which perfects his *entire* being, and not that which is good only in relation to some part—"Et quoniam ipse secundum seipsum est magis amatus, quam ipsemet secundum partes seu partialitates rationes suas, consequens est quod sibi secundum seipsum totum, non secundum hunc vel illum respectum appetendum est." Comm. in I-II, q. 89, a. 3.

<sup>46</sup> Sal., *De Vitius et Peccatis*, D. XX, dub. 1, 12.

<sup>47</sup> Cf. Piaget, Jean, *Judgment and Reasoning in the Child*, op. cit., p. 57.

<sup>48</sup> This does not militate against the value of the conclusions reached by Sister Mary that (a) the bases of some basic moral concepts have their beginnings in the preschool years, (b) considerable progress is made with some of these concepts, (c) heed should be given these facts in preschool education. *Moral and Religious Development of the Preschool Child*, p. 47.

preschool children have a knowledge of the natural law.<sup>49</sup>

#### APPLICATION OF PRINCIPLES TO SOME MODERN PROBLEMS

##### *Birth Control*

The word *control* has a fine human sound about it. In the modern ear it is joined with such forthright words as scientific, rational, and mature. Never, moreover, has it been accepted more heartily than when coupled with the word *birth* to form the phrase Birth Control. That actually the term is a cloak to hide the moral ugliness of contraception<sup>50</sup> only causes it to be drawn more closely around the soul. Birth Control is condemned as a serious moral evil by the Church.<sup>51</sup> Does ignorance exist in the United States concerning the immorality of this practice? Is it widespread? It is understood that actual knowledge in individual cases can only be determined by examination.

<sup>49</sup> If so, they can sin; if they can sin, they should receive Extreme Unction in danger of death, even if they haven't received First Holy Communion. There seems to be at least enough evidence for the conditional conferring of the sacrament spoken of in can. 941. The above experiments also prove that at least a prudent doubt may be had as to whether children under canonical age are completely devoid of the use of reason. When such doubt exists "children (below the age of seven) should be instructed if possible in the essentials of the faith (and the other requisite conditions), before the sacrament of Baptism is administered. On the other hand, children of eight or nine years in danger of death could be baptized conditionally ('si capax est'), even if they have manifested no intention or dispositions. There is a possibility they have not reached the use of reason." Cf. Connell, Francis, C. SS. R., in *The Ecclesiastical Review*, June, 1927, p. 578.

<sup>50</sup> Contraception is defined as the use of carnal copulation in any way that positively (as opposed to negatively) excludes generation.

<sup>51</sup> Cf. Pius XI, "*Casti Connubii*," D. B. U. 2239, 2240, 2241, where it is shown that the abuse of marriage in this way is contrary to Scripture, Tradition, and reason. It is interesting that the Pope's argument from reason is on the basis of an *intrinsic* evil—"At nulla profecto ratio ne gravissima quidem, efficere potest, ut quod *intrinsece* est contra naturam, id cum natura congruens et honestum fiat." The intrinsic evil of Birth Control lies in the deliberate perversion whereby the essential order between the act and the end is destroyed. As all sin, it is an inversion of order. Its gravity is measured by the importance of the end rendered impossible by the act *qua* act, i. e., the being of the human race.

It is well to preface any remarks on this question with the statement that the United States has a culture predominately Protestant in tone. People taking part or interest in current affairs are certain to hear the Protestant view on ethical questions. Now the practical Protestant view of contraception is certainly not inclined to universal condemnation of the evil. Many Protestant ministers actively further the Birth Control movement. As a matter of fact, it may be safely said that the majority of Americans favor artificial contraception.<sup>52</sup> If, in many instances, the only moral teachers they know not only permit the practice but crusade for it as well, this condition is to be expected. But what of Catholics? Can they be in a state of inculpable ignorance of the moral prohibition of contraception?

A distinction must be made here. *Objectively*, and in the abstract, it may be stated that inculpable error of the malice of the practice would seem almost impossible for the average Catholic. The teaching of the Church is well known in this matter. Even in the supposition that a Catholic doubts about the matter, he would normally seek the solution of the doubt from competent authority. In other words, he would advert to the obligation of investigation. Opportunities are not lacking for the resolution of these doubts.

*Subjectively*, the case may be somewhat altered. The average Catholic reads the newspapers every day; he associates with his fellows. He is apt to find that his labor union chief, his doctor, and the local university professors all heartily approve of the idea.<sup>53</sup> Moreover, it is presented as a "means of bettering the present economic order,"<sup>54</sup> as the democratic, the scientific, the

<sup>52</sup> Gallup polls at least indicate trends. Cf. *New York Times*, Jan. 24, 1940, 22: 4, where the *Institute of Public Opinion* (Gallup) holds that 77% of the American people favor "distribution of birth control information to married persons by government health clinics." It also relates that "regardless of the manner in which the issue was stated all studies have found sentiment running between 70 and 80 per cent favorable to the birth control program." Add as cumulative evidence the enormous industry dealing with contraceptive devices.

<sup>53</sup> Cf. *New York Times*, Jan. 24, 1940, 1: 4.

<sup>54</sup> *Ibidem*.

progressive thing to do. It is superfluous to say that Catholics want to be as democratic, as progressive, and as scientific as anyone. Add a circumstance or two or apparent justification in the individual case and it is not difficult to imagine that in a rare case a Catholic (particularly one who is somewhat lax in religious practices) may think Birth Control is not so bad after all, or at least may reason that the malice of the sin under the circumstances would not be grave.

Purely from the standpoint of the natural law, which is to say, from the standpoint of reason as uninformed by faith, the perception of the evil of Birth Control requires the ability to make rather fine distinctions. It is certainly not among the immediate and evident deductions from first principles and it has been seen that even acute minds are capable of erring concerning remote conclusions. The mind must evade such intellectual shoals as, "Birth Control is only the harnessing and controlling of nature and man is made for that purpose," or, "The use of food for pleasure alone generally does not exceed a venial sin, and food concerns a primary inclination to the preservation of individual being." The comparative obscurity of the doctrine itself from the point of view of the natural law, together with the whole weight of environment and the inclinations of the lower appetites involved, would tend to produce error in these matters. This error is a judgment made not in the armchair of abstract thought but in the noisy traffic of daily life. The issue may be presented as a choice between two evils in which the apparent good of the wife or family is at stake. The power of these influences together with the force of public opinion may combine to so obscure the issue that the final miserable error is inculpable. The writer believes this to be true in some instances. This is not to say the condition is to be condoned in Catholics. The solemn duty of pastors and others who have care of souls is clear. Not even the suspicion that the Church may condone these errors may be tolerated.<sup>55</sup> The full truth must be taught.

<sup>55</sup> "Sacerdotes igitur, qui confessionibus audientis dant operam, aliosque qui curam animarum habent, pro suprema nostra auctoritate et omnium animarum salutis cura, admonemus, ne circa gravissimam hanc Dei legem

Another question in the same category of unnatural perversion is *voluntary pollution*. Though objectively a lesser evil than Birth Control,<sup>56</sup> it has its origin in the violation of the same order, i.e., the essential ordination of the sexual act to the procreation of children.

In the sin of self-abuse the circumstances of apparent justification, including public opinion and danger to the life partner or personal possessions, do not obtain as in Birth Control. For this reason the possibilities for invincible error will be much less among adult persons. However, the case might be otherwise among children. They may be invincibly ignorant of the evil of self-abuse from the simple fact that the evil of the action has never occurred to them.

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fideles sibi comisos errare sinant, et multo magis, ut ipsi se ab huiusmodi falsis opinionibus immunes custodiant, neve in illo modo convivant." Pius XI, *Casus Connubii*, D. B. U. 2240.

The Church, in a response of the Sacred Penitentiary (March 10, 1886), while enjoining confessors as a general rule to question penitents concerning this practice when suspicion arises, nevertheless recognizes that in an extreme case the good faith of the penitent may be left undisturbed.

I. Quando adest fundata suspicio, poenitentem, qui de onanismo omnino silet, huic crimini esse addictum, nun confessario liceat a prudenti et discreta interrogatione abstinere, eo quod praevideat plures a bona fide ex-turbandos, multoque Sacramenta deserturos esse: Annon potius teneatur confessarius prudenter ac discrete interrogare?

II. An Confessarius, qui, sive ex spontanea confessione, sive ex prudenti interrogatione, cognoscit, poenitentem esse onanistam, teneatur illum de huius peccati gravitate, aequae ac de aliorum peccatorum mortalium, monere, eumque (uti ait Rituale Romanum) paternam charitate reprehendere, eique absolutionem tunc solum impetire, cum sufficientibus signis consist eundem dolere de praeterito, et habere propositum non amplius onanistice agendi? Sacra Poenitentiaria, attentio vitium infandum, de quo in casu, late invaluisse, ad proposita dubia respondendum consuit, prout respondet:

Ad. I. Regulariter *negative* ad primam partem: affirmative ad secundum. Ad. II. *Affirmative*, iuxta doctrinas probatorum Auctorum.

Datum Romae in S. Poenitentiaria, die 10 Martii 1886.

Cf. also, Damen, *op. cit.* Vol. II, pp. 592 and 593.

<sup>56</sup> "Dicendum est quod gravitas in peccato magis attenditur ex abusu alicuius rei quam ex omissione debiti usus. Et ideo inter vitia quae sunt contra naturam infimum locum tenet peccatum immunditiae (voluntary pollution)." II-II, q. 154, a. 12, ad 4um.

To appreciate the evil quality of self-abuse from the point of view of the natural law, some knowledge of the sex function is necessary.<sup>57</sup> Before the concept of perversion can be had, a knowledge of the purpose of the natural act is necessary. Since objectively the full evil of self-abuse may be present before the age of puberty,<sup>58</sup> the habit may be deeply ingrained before correct knowledge of the natural function is present, which is to say, children may be invincibly, and therefore inculpably, ignorant of the malice of their action.<sup>59</sup>

### *Eulhanasia*

Among the evident deductions from the first principles of the natural law is the precept, *Thou shalt not kill*. Proof that it is an easy deduction may be had by both the *a priori* and the *a posteriori* methods. By the former method it will be seen that the precept is but a combination of two first principles both of which are norms guiding fundamental human inclinations. To arrive at the conclusion, *Thou shalt not kill* is but to apply the self-evident principle, *Do unto others as you would have them do unto you*, to another self-evident principle guiding man to the conservation of his being. The former principle flows from the social nature of man, while the latter is based upon a tendency man has in common with other things. By thus reasoning from self-evident principles based on the very nature of man it is seen that the precept expressed by the Fifth Commandment of the Decalogue will be an evident deduction.

The *a posteriori* argument has been seen previously. No known tribe, primitive or otherwise, has condoned indiscriminate

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<sup>57</sup> It is evident that the evil of self-abuse could be recognized by the child through the strict prohibitions and warnings of parents and superiors (natural law because of the precept of obedience to superiors). However, this is seldom the case—such warnings are not given before the age of puberty for fear of exciting undue curiosity.

<sup>58</sup> Cf. Noldin-Schmitt, *De Sexto Praecepto*. Innsbruck: Pustet, 1932, p. 27.

<sup>59</sup> Aertnys-Damen, *Theologia Moralis*, Vol. I, p. 92; Noldin-Schmitt, *De Sexto Praecepto*, p. 16.



killing.<sup>60</sup> Though primitive peoples have often qualified the general principle, *Thou shalt not kill*, by a distinction between their own tribes and other peoples, this universal condemnation of indiscriminate killing is a powerful argument for the conclusion already made from the nature of man, i.e., that the Fifth Commandment is an evident deduction from first principles.

Contained in the respect for the right to life of others commanded by this deduction is the prohibition of Euthanasia or mercy killing.<sup>61</sup> As in the case of Birth Control the modern world chooses a euphemism to cover up an evil. The aura of refinement and culture surrounding this word with the Greek root, combined with a sentimental reluctance to accept the fact of physical pain have gained wide acceptance for the practice. A similar sentiment prompts the erection of well-equipped dog hospitals while, at the same time, many men lack elemental care.

Euthanasia was practiced by some doctors during World War I,<sup>62</sup> when hopelessly wounded soldiers were drugged in lethal quantities.<sup>63</sup>

This suggests the query whether people can be invincibly ignorant of the evil of euthanasia—the direct killing of a man in

<sup>60</sup> Cf. Westermarck, Edward, *The Origin and Development of Moral Ideas*, Vol. 1, p. 33.

<sup>61</sup> "Denn irgend einen Menschen toten, es sei denn einen ungerechten Angreifer zur Verteidigung aber einen todeswürdigen Verbrecher auf offenkundiger Autorität hin zu Strafe, ist stets ein grossen Verbrechen vor Gott, auch wenn es sich dabei nur um die Lebensverkürzung von einen paar Minuten aber Sekunden handeln sollte." Luhmkuhl, August, *Theologisch-practische Quartalsschrift*, Linz, 1916, Heft 4, p. 804. As is evident, this practice deprives men of the opportunity for repentance; if they are in the state of grace, of the faculty of increasing merit by virtuous acts. It is condemned by Catholic moralists as a direct killing of an innocent party. Cf. Merkelbach, *op. cit.* Vol. 1, p. 360; Damen, *op. cit.* Vol. 1, p. 392.

<sup>62</sup> Luhmkuhl, August, *op. cit.*, p. 802.

<sup>63</sup> Lethal quantities of morphine vary according to individual physical constitutions and the degree of habituation in the subject. The ordinary man can stand in the neighborhood of .01 gram per day. Drug addicts are capable of assimilating from .02 to .05 grams while exceptional cases have been known where even 1.0 gram was not fatal. Cf. Cappelmann-Bergmann, *Pastoral Medicine*, p. 70.

order to eliminate suffering or for the apparent good of the State.

In the theoretical treatment of the possibility of invincible ignorance the conclusion was made that *per se* such ignorance is not to be admitted concerning proximate and evident conclusions from first principles. However, it was conceded that *per accidens* the subject may conceive an action as justifiable in practical action surrounded with all its circumstances while fully admitting the general prohibition. This would hold in the present consideration. The aversion to physical pain that causes men to subvert the value of life to the value of physical well-being is no doubt due to a long series of sins on the part of both individuals and society. However, as has been seen, ignorance which is a consequence of sin is not always culpable ignorance.<sup>64</sup> If it is a result of a previous sin it is not culpable unless it had been foreseen. Though its admission constitutes an indictment of modern society, the possibility of invincible ignorance of the evil of euthanasia is to be admitted. The same principles can sometimes be applied to suicide.

### Divorce

The prevalence of divorce in the United States suggests the question whether inculpable ignorance can be admitted in any of these cases. Here only the complete dissolution of the bond of a ratified and consummated marriage involving freedom to marry again is considered.

Today the vast majority of Catholic authors declare marriage is indissoluble by the precept of the natural law.<sup>65</sup> It is argued that divorce places very serious obstacles in the way of the primary end of marriage, i.e., the procreation and education of children. The dissolution of the marriage bond deprives the child of at least one parent. He needs the care and guidance of both;

<sup>64</sup> Bouquillon, Thomas, *De l'ignorance invincible des conclusions éloignées de la loi naturelle*, p. 9.

<sup>65</sup> Joyce, George Hayward, *Christian Marriage*, London: Sheed and Ward, 1933, p. 28.

nature intends the child to be reared in the normal atmosphere of the family.<sup>66</sup>

Moreover, when it is considered that divorce is contrary to the secondary end of marriage, or the mutual love of the respective parties, the case for the indissolubility of marriage becomes much stronger. The possibility of divorce would militate against that mutual acceptance of lifelong partnership which is a necessary condition of marital peace.<sup>67</sup> However, when it is said that divorce renders difficult the primary, and is incompatible with the secondary, end of marriage, it is to be understood that these precepts are primary and secondary in the ontological order. It may be otherwise in the order of knowledge. Even if the permission of divorce in the Old Law be overlooked,<sup>68</sup> it is well to remember that some prominent Catholic theologians have upheld the licitness of divorce under certain circumstances in a purely natural society, provided it be under the authority of the State.<sup>69</sup>

While there is no doubt that the dissolution of a ratified and consummated marriage is declared by the Church to be absolutely forbidden,<sup>70</sup> the mere fact that absolute indissolubility of the marriage bond from the point of view of the natural law has been questioned seriously by sound theologians is enough to prove it is not an *evident* deduction from first principles. If it falls, therefore, within the class of principles known as remote conclusions, invincible ignorance could be admitted in some cases.

However, the case mentioned is purely hypothetical as far as Catholics are concerned. Marriage attains the dignity of a Sacrament in the New Law, and every valid marriage between baptized persons is a sacrament.<sup>71</sup> To be invincibly ignorant of the evil of divorce, therefore, the Catholic would have to be ignorant

<sup>66</sup> *Supp.*, q. 67, a. 2, c. and ad 1um.

<sup>67</sup> *C. Gen.*, 3, 123.

<sup>68</sup> *Deut.*, 24, 1-2.

<sup>69</sup> Cf. Bellarmine, *De Matr.*, lib. 1, c. 4; Suarez, *De Legibus*, lib. 2, c. 14, n. 20; Sanchez, *De Mat.*, lib. 2, disp. 13, n. 4; Palmieri, *Tractatus de Matrimonio Christiano*, Rome: Polyglot Press, 1880, p. 140.

<sup>70</sup> "Matrimonium validum ratum et consummatum nulla humana potestate nullaque causa praeterquam morte dissolvi potest." Can. 1118.

<sup>71</sup> Cf. Canon 1012.

of the teaching of the Church in regard to one of the sacraments, and such ignorance is rare. If any Catholic doctrine is known in the United States by Catholics and non-Catholics alike, it is the teaching of the Church on divorce.<sup>72</sup> It is difficult to conceive then of any Catholics being in the state of ignorance regarding the sinfulness of divorce. Nevertheless, many applications for divorce are made by Catholics. Prescinding from legitimate petitions of legal separations, are all the remaining Catholics who seek the complete dissolution of the marriage bond consciously guilty?

If the opportunities for knowledge of the moral evil of divorce are considered, corresponding ignorance which is not the result of some sin is hardly conceivable. However, a distinction advanced by Bouquillon might be made here. John of St. Thomas holds that the axiom, "He who *can* do a thing, has an *obligation* to do it and then does *not* do it, commits a sin," is to be interpreted as demanding not only the remote but also the proximate and facile powers of action. If the power is *only* remote and the action can be performed only with great difficulty, then the subject having the obligation to act does not sin by inactivity. In order for an action to be voluntary it must proceed from the will itself.<sup>73</sup> Basing himself on this doctrine, Bouquillon distinguishes between culpable ignorance and ignorance that is purely a conse-

<sup>72</sup> The Council of Baltimore says: "Manifeste apparet gravissimae culpae illos esse reos, qui a magistratu civili matrimonium dissolvi postulant, vel, quod gravius est, divorcio civili obento, novum matrimonium inire attemptant legitimo vinculo posthabito, quod coram Deo et Ecclesia adhuc manet. Ad haec crimina compescenda poenam excommunicationis statuimus, Ordinario reservatam, ipso facto incurrendam ab eis, qui postquam divortium civile obtinuerint, matrimonium ausi fuerint attentare." Tit. IV, C. II. This decree would seem to retain its force even after the publication of the New Code. Cf. Barrett, John, *A Comparative Study of the Councils of Baltimore and the Code of Canon Law*, Washington, D. C.: The Catholic University of America, 1932, p. 22.

<sup>73</sup> John of St. Thomas, I-II, q. 6, disp. 3, diff. 4—"Illud axioma:—qui potest et tenetur et non facit, peccat, intelligo de eo qui proxime et expedite, non remote tantum et impedit, quia ut supra diximus omnino ut sit voluntaria debet procedere ab ipsa voluntate."

quence of sin.<sup>74</sup> Culpable ignorance is always vincible, but ignorance that results from sin is not always in the proper sense vincible, unless the necessity of avoiding the sin lest ignorance follow was foreseen. In almost all countries matrimony has been transferred from ecclesiastical to civil control.<sup>75</sup> All these countries permit absolute divorce.<sup>76</sup> The influence resulting from the prevailing attitudes of government, the wretchedness that will inevitably happen in at least some marriages, and sins from which the effect of ignorance is not foreseen make the above principle applicable in some extreme cases. Though the door is thus left open, it must be stated emphatically that a very strong presumption exists against the admission of invincible ignorance among Catholics concerning the evil of divorce.

### Fornication

Fornication is defined as a sexual relation between two unmarried persons with mutual consent. The demonstration of St. Thomas proving the defined act is contrary to the natural law points out that it is gravely injurious to the good of children and thus to the common good.<sup>77</sup> Those performing the act of fornication will the pleasures of the flesh without the con-

<sup>74</sup> Bouquillon, Thomas, *De ignorance invincible des conclusions éloignées de la loi naturelle*, Arras, Laroche, 1881,—"C'est sur ce principe qu'est fondée la distinction entre l'ignorance coupable et l'ignorance qui est seulement la suite d'un défaut. Toute ignorance qui provient d'une faute, ce qui pourrait être appelé vincible en tant que la faute aurait pu être évitée, n'est point, par cela même, coupable; car elle peut n'être point volontaire." p. 9. Cf. also Francisco de Victoria, *Rel. de Indis*, c. 33; Vasquez, I-II, disp. 120, c. 4; Sanchez, *In Decalogum*, lib. 1, c. 16, n. 35.

<sup>75</sup> Joyce, George Haywood, *Christian Marriage*, p. 21.

<sup>76</sup> Cf. Department of Commerce and Labor, Bureau of Census, *Special Report on Marriage and Divorce*, 1896-1908, Washington, D. C., Government Printing Office, 2 V., Part 1, p. 331. Except in the state of South Carolina. "Divortium a vinculo matrimonii nunquam permittitur in hoc Statu (Constitution, Art. 17, § 3)." Alford, Culver Bernard, *Jus Matrimoniale Comparativum*, New York: Kenedy, 1938, p. 482. This work is an exhaustive comparison between the marriage laws of the Church and the individual States.

<sup>77</sup> II-II, q. 154, a. 2, c.

comitant obligation and burdens of wedlock. This is patently contrary to the good of society, for the education of children demands not only a mother's care, but care on the part of the father as well. Therefore, fornication is clearly contrary to the natural law. If it be objected that in some cases children might be cared for without marriage, the act will still be a sin for "a thing falls within the scope of the law according to that which happens as a general rule, and not according to that which might happen in a particular case."<sup>78</sup>

Is the prohibition of fornication an evident deduction from the first principles of the natural law? Though in a Catholic culture the malice of the sin may be evident to all those capable of receiving instruction,<sup>79</sup> the same cannot be said for a pagan civilization. In two different places St. Thomas states that the Gentiles at the time of the apostles *thought* simple fornication was not evil.<sup>80</sup> The following is an excerpt from the moral code of the Isneg people, a primitive island race.

All Isneg boys should be careful not to render a girl pregnant; this is one of the delinquencies that are abhorred more than anything else among the Isneg. You may be inclined to sow your wild oats; that is but natural, but here you have to look out. You should never under any pretext impregnate a girl whom you could not marry afterwards, and even though you could make her your wife, it would still be a dangerous thing to do; suppose some obstacle comes in the way, you know the consequences; you know very well that the relatives of the offended girl will get the *axax*; they will raid your house and carry away your precious jars, your beads and all that is valuable. There is no mercy for a boy

<sup>78</sup> *Ibid.*

<sup>79</sup> The following proposition was condemned by Innocent XI: "Tam clarum videtur fornicationem secundum se nullam inviolare malitiam et solum esse malum quia interdicta, ut contrarium omnino rationi dissonum videatur." D. B. U. 1198.

<sup>80</sup> "Fornicatio autem prohibetur specialiter quia gentiles non reputabant eam esse peccatum." I-II, q. 103, a. 14, a. 3um. "Quia apud Gentiles fornicatio simplex non reputabatur illicita propter corruptionem naturalis rationis." II-II, q. 154, a. 2, ad 1um.

who has committed a crime like that; so do not be rash; fornication is a dangerous thing.<sup>81</sup>

Evidently the Isnegs do not consider fornication an evil in itself; young men are cautioned against impregnation for the simple reason that circumstances might prevent subsequent marriage in default of which the girl's parents would be certain to take revenge.

The above case has to do with a non-Christian culture. When a de-Christianized civilization is considered, the same ignorance may obtain. Education plays a large part here. With the destruction of other ideals, many young Americans lose the one of chastity as well. *Free-love* sounds much more attractive than *mortal sin*. If the concept of sin is an outmoded convention (and this is taught!) not all of these young people will see the malice of fornication. This would hold for non-Catholics. It is difficult to imagine a Catholic's being in a state of ignorance, even though he had received only very limited instruction.

### Adultery

Adultery is defined as the performance of the marriage act with the spouse of another. It may be *simplex* or *duplex* according to the state of life of the respective parties. If one party is single and the other married, *simplex* adultery is committed. If both are married, both are guilty of *duplex* adultery.

If fornication is contrary to the natural law, *a fortiori* adultery is evil, for the reasons adduced to demonstrate the evil of the former apply to the latter as well. It is said that adultery is *a fortiori* evil for it adds the further malice of a grave sin against justice. By the matrimonial contract the parties acquire exclusive sexual rights over the body of each other. This right concerns acts *per se* apt for the generation of children. Adultery violates this right. If *duplex* adultery is committed, each person is guilty of three sins; one of fornication, the other of injustice toward his

own spouse, and still another against the spouse of his accomplice. According to some theologians, if a married person is guilty of masturbation, this also constitutes the sin of adultery.<sup>82</sup>

As has been seen previously, the sinfulness of adultery is an evident deduction from a first principle of the natural law. It requires no great mental ability to deduce that the prohibition of adultery is a particularization of the first principle, *Don't violate the rights of another*. The evidence of modern anthropology bears out this conclusion. Though polygamy has at times been tolerated, the peoples of the earth have been unanimous in their condemnation of adultery. The grave penalties placed on the act of adultery by positive law are a witness to this universal agreement.<sup>83</sup> It follows that, as a general rule, invincible ignorance of the malice of adultery cannot be admitted.

Is such ignorance possible in particular acts? St. Augustine relates the historical fact that such a case happened shortly before his time. It seems that a certain judge in Antioch promised a citizen that he would be released from the death penalty if the prisoner's wife could be induced to give in to the judge's wishes. As the prisoner was innocent of crime, he consented. Under the circumstances neither he nor his wife thought the act sinful.<sup>84</sup> That St. Augustine thought similar cases possible is evident from a previous passage where he states that adultery may be thought (erroneously) permissible in extreme circumstances when permission is given by the other spouse.<sup>85</sup>

If divorce is thought licit, the consequent adulterous acts of the second marriage may not be thought of as adultery. Persons committing such acts would be invincibly ignorant of this objective evil.

<sup>82</sup> Noldin, *De Sexto Praecepto*, n. 31.

<sup>83</sup> Westminster, Edward, *The History of Human Marriage*, pp. 51-133, passim.

<sup>84</sup> "Nullo modo iudicaverunt, sub istis circumstantiis, actum illum esse adulterium." *De Serm. Dom. in Monte*, I, c. 16, P. I., 34, 1254.

<sup>85</sup> "Quamquam nonnullae causae possint existere ubi et uxor, mariti consensu, pro ipso marito hoc facere debere videatur, sicut Antiochiae factum esse perhibetur ante quinquaginta ferme annos." *Ibid.*

<sup>81</sup> Vanoverbergh, Morrice, *The Isneg Life Cycle*, Washington, D. C.: Catholic Anthropological Conference, 1936, p. 152.

*Abortion*

For the purposes of this discussion abortion will be understood as the violent, voluntary, and complete interruption of the physiological processes leading to the maturation of the human fetus. So defined, it includes not only the delivery of a non-viable fetus or embryo but also operations in which it is destroyed by various means while yet in the womb.<sup>86</sup>

The easiest and most direct argument against the practice of abortion in any and every stage after the first moment of conception rests on the assumption that the rational soul is infused into the embryo immediately upon the fertilization of the ovum by the male sperm. If this assumption is correct then the embryo is essentially a human person and has all the rights consequent upon personality even though incapable of asserting and defending them.

On the other hand, if the embryo is informed with the rational soul only after a certain length of time, then practitioners of abortion before that time cannot be accused of injustice to a human person, for without the soul the embryo is not rational, and without rationality there is no personality. This is not to exclude *other* arguments against the practice, but if at some stage of development the embryo is not possessed of a rational soul, the argument of injustice to an innocent person cannot be brought against an abortion performed in that period, for injustice connects a deprivation of rights bound up with the human person. In the hypothesis that the embryo lacks a soul, there could be no rights, for, strictly speaking, there is no person.

But what sort of evidence bears upon the problem? Is it biological or philosophical? Or a combination of both? At first glance the question would seem purely philosophical, for it has to do with the existence or non-existence of the rational soul. Now

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<sup>86</sup> Conception consists in the fertilization of the female ovum by the male sperm. During a period of six weeks after conception the fertilized ovum is called an embryo. Before the seventh month of pregnancy the fetus is immature and generally non-viable though cases have been known where incubation has saved a child delivered successfully only six and a half months after the time of conception.

the rational soul is spiritual and consequently beyond the scope of the measuring tactics of experimental science. This is true, but the philosophical process must build itself upon the foundation of experience. All processes of reasoning to the nature of a substance must begin with its outward manifestations; for example, the whole doctrine of species is discovered by means of the physically visible variations of activity in diverse classes of being. Likewise, in the present question, the ability to demonstrate the existence or non-existence of the rational soul in the embryo depends upon the evidence available. The proper operations of the rational soul are the processes of intellection and volition; if these operations are present, then a deduction to the presence of such a soul is justifiable and certain. If, however, such evidence is not obtainable, then no *certain* judgment concerning the spiritual soul's presence is possible. Now, the embryo gives no evidence of intellection and volition. Certain responses to stimulation would seem to argue to the existence of a nervous system, but beyond this the evidence warrants no certain conclusion. On the other hand, since the form may be present in a subject only temporarily incapable of exercising its proper activities, we cannot scientifically come to the conclusion that the rational soul is certainly *not* present.

It will be seen that in the lack of conclusive evidence on the subject only a probable judgment concerning the existence or non-existence of the rational soul in the embryo is possible. The opinion which seems to rest more solidly on philosophical principles and biological fact will be the more probable.

The chief argument for the immediate infusion of the rational soul rests on the fundamental unity of the life process of the human being, apparently indicating a unity of the vital force behind it. Since the ultimate result of the process is undoubtedly the human person, if the same vital force is present at the inception of the process, the embryo possesses a human soul. In other words, "This embryo becomes this adult human being by the organizing activity of one and the same living principle which determines growth and development in the embryo, and manifests intelligence and the power to control conduct in the

adult.”<sup>87</sup> Gredt adds the argument that from the very moment of conception the special and proximate dispositions necessary for the infusion of the rational soul are present and sees no reason to believe that it is not infused at the time.<sup>88</sup>

In objection to the above opinions it may be stated that both seem to take for granted the point at issue. If the vital force is one and the same through all stages of development it follows that it cannot be other than the rational soul. But is it one and the same? Likewise, if the matter is properly disposed for the form as presupposed in the second argument, the form or the rational soul will undoubtedly be present provided the theory of hylomorphism is true. But is the matter so disposed? A physical argument against the potential unity of the embryo is the proved biological fact of *polyembryony*. It is a well-known fact that polyembryony normally obtains in some animals and can be induced at various stages of growth. In other words, what is actually *one* as a fertilized ovum, is potentially *many* in reality. If for some reason at the two-cell stage (or later) the cells are separated, the parts will develop into several individuals. This phenomenon has not been physically demonstrated in the case of the human embryo, but arguing from analogy, biologists believe it has a similar structure to the animal. If the analogy is correct, then if a human embryo becomes disjoined at the two-cell stage, each may develop into an individual human being. The phenomenon of identical twins would seem to point this way. Now, if the human embryo is potentially *two*, it cannot be potentially *one*. The fact of polyembryony must be answered by those defending the thesis of the fundamental unity of the embryo.

The arguments of those defending the second theory—that the human soul is infused into the embryo only after a period of time—are based, for the most part, on the theory of hylomorphism. If the specific form actualizes its proper matter, just as every act is the realization of its proper potency, then the human soul can only be the form of a human *organism*, in such

<sup>87</sup> Moore, Dom Thomas, *Principle of Ethics*, Philadelphia: Lippincott, p. 150.

<sup>88</sup> *Elementa Philosophiae Aristotelico-Thomisticae*, Berlin: Herder, 1937, vol. 1, n. 536.

a way that the combination of both constitutes the human person. Since the embryo cannot be said to be a human *organism* at the very moment of conception, proponents of the second theory deny that it is informed by the rational soul until such time as it is sufficiently developed. Moreover, since the form is the *terminus* of generation, not the principle, before the embryo becomes a human organism there can be no justification for positing the infusion of the rational soul.<sup>89</sup> Hence, they believe that for a time the embryo is animated by a merely vegetative or animal soul.

If the arguments are to be judged merely on the basis of the evidence presented it would seem that St. Thomas and the Scholastics have the better of it; it seems more probable that the rational soul is infused into the embryo only after a period of time allowing for proper organic development. Now, in the hypothesis that the Scholastic theory more nearly approaches reality than the more modern theory of immediate infusion, how would the argument against abortion be affected? As we have seen previously, the position that abortion is the killing of an innocent *person* would certainly be weakened, for until an organism capable of receiving the form were evolved, the embryo certainly could not be called a person. However, abortion would none the less remain an intrinsic and grave evil. It is, at least, a violent and unauthorized interruption of the natural process which God intends shall terminate in the formation of a human

<sup>89</sup> Cf. III, q. 33, a. 2, ad 3 um. Cf. also, I, q. 118, a. 2, ad 2um; III, q. 33, a. 2; *Ibid.*, q. 34, a. 2, ad 3um; de Pot., q. 3, a. 9, ad gum; de Anima, a. 11, ad 1um; de Sp. Creat., a. 3, ad 13 um; II, dist. 18, q. 2, a. 3; II, dist. 3, q. 5, a. 2. “L’embryogénie confirme d’une manière frappante ces vues spéculatives des anciens scolastiques . . . De même, s’il est permis de s’en rapporter aux observations de M. Preyer sur la physiologie de l’embryon, les contractions du cœur et la circulation du sang se remarquent, chez le poulet et le cabaye, par exemple, plusieurs jours avant que l’on aperçoive aucun indice de motilité; la motilité elle-même précède les manifestations de la sensibilité, de sorte, que, morphologiquement et physiologiquement, l’ontogénèse, se révèle comme un processus d’évolution de l’indéterminé au déterminé, de la vie organique à la vie sensitive, ainsi que l’avaient présenté les hommes de génie du XIII<sup>e</sup> siècle.” Mercier, Card, *Psychologie*, Louvain-Paris, 1920, pp. 339, 340.

person. If the embryo is not a human person, it certainly is in proximate potency to becoming one, and for the creature to interrupt violently the laws of the Author of life in the serious matter of man's procreation is a grave evil. If artificial contraception is a grave evil, a *fortiori* abortion, even of a non-rational embryo, is to be condemned. Thus, even though the theory of the Scholastics concerning the later infusion of the rational soul be followed, direct and deliberate abortion is always and everywhere intrinsically wrong.

Historically, the Church has always taken a firm stand against the practice of abortion<sup>90</sup> and present legislation is no less rigorous. The present code of Canon Law promulgated by Benedict XV in 1917 states:

1. That all who effectively procure abortion, the mother included, incur excommunication reserved to the Ordinary; and, if they are clerics, they are to be deposed (Can. 2350, §1).
2. That all who perpetrate voluntary homicide or who effectively procure abortion of a human foetus, and all who cooperate thereto, incur criminal irregularity (Can. 985, §4).

It will be noted that no distinction is made in this legislation between a *fetus animatus* and *inanimatus*. The silence of the Church concerning the distinction is not to be understood as an attempted solution of the philosophical question concerning the precise moment the human soul is infused into the embryo. Since even in the hypothesis that the fetus for a time is not informed by the rational soul, the practice remains intrinsically and gravely evil, for *practical* purposes of legislation the human embryo is considered to be informed by a human soul from the very moment of conception. It is to be noted that we are speaking of *direct* abortion, for according to Catholic principle, it is sometimes allowed to give a pregnant woman medical or surgical treatment with the provision that the death or expulsion of the fetus will follow as an *indirect* effect.

<sup>90</sup> For an historical note on the legislation of the Church, cf. Coronata, Martheaues, *Institutiones Iuris Canonici*, Turin: Marietti, Vol. IV, p. 402.

The morality of direct abortion is then certain; any and every act of this kind is intrinsically evil by the natural law. However, a dispassionate view of the moral knowledge possessed by our present civilization leads one to the conclusion that the objective guilt of many abortions is excused by invincible ignorance. Where sentiment rules instead of reason, and where the voice of the Church is no longer heard, sincere judgments concerning the licitness of direct abortion in certain circumstances are possible. In some extreme cases even Catholic theologians taught that direct abortion was permissible.<sup>91</sup> If these masters of moral principles erred egregiously in their desire to save the life of the mother, it is easily seen how the participants in a practical case could do likewise. If reputable physicians practice therapeutic abortion, it is not because they treat the wastage of infant life lightly; as a rule, the medical profession is conscious of its grave responsibility and is anxious to uphold its tradition of high ethical standards. It simply happens that the standard in this case is wrong, and sincere physicians are following it in good faith.

#### INVINCIBLE IGNORANCE AND THE MODERN TOTAL DENIAL OF ABSOLUTE MORAL PRINCIPLES

Mortimer J. Adler, in a recent address to the Conference on Science, Philosophy, and Religion, offered the stock Thomistic indictment of modern thought as exemplified in some present-day educational methods.<sup>92</sup> After an enumeration of eight fundamental truths of philosophy<sup>93</sup> he stated that those denying them "might just as well call philosophy opinion and deny its existence."<sup>94</sup> After a similar enumeration of religious truths he

<sup>91</sup> Ballerini, *Opus Theologicum Morale*, Tom. II, p. 645. Cf. a list of these authors in Coronata, *op. cit.*, p. 459. This opinion was held by some before the decree of the Holy Office on May 28, 1884 (*Collectanea Sacrae Congregationis de Propaganda Fide*, II, n. 1018), which condemned all direct abortion.

<sup>92</sup> A reprint of his text may be found in *The Daily Maroon*, student newspaper at the University of Chicago, Nov. 14, 1940, pp. 3, 4.

<sup>93</sup> *The Daily Maroon*, *op. cit.*, pp. 3-5.

<sup>94</sup> *Ibidem*, p. 4: 1.

maintained that their denial was the teaching of positivism and naturalism which is "at the root of modern secularized culture."<sup>85</sup>

Adler's paper drew viriolic criticism. Professor Wright of the University of Chicago had this to say: "And now abide Positivism, Pragmatism, and Scholasticism, these three; but the worst of these is Scholasticism."<sup>86</sup> Another professor, sensing an invasion of American liberties by the Catholic Church, said: "It is high time to subject this and related matters to thorough study. Such a study might begin with an examination of the relation between the public school administration in Chicago . . . and the Catholic hierarchy."<sup>87</sup> Sydney Hook, a disciple of John Dewey, proffered this in regard to fixed truths: "The history of science shows that it is possible to keep an open house to ideas and at the same time to build up a great body of reliable knowledge commanding universal agreement . . . without the dogma of final and absolute truths."<sup>88</sup> The highly emotional character of the opposition to Adler is the result of very strong convictions against the acceptance of absolute moral truths. To appreciate this it is necessary to have a notion of modern ethical thought which an outline is indicated here.

Modern ethical thought is dominated by the notion that a complete rupture with the past is necessary if it is to be applied to a changing world.<sup>89</sup> Some authors still speak in traditional language, but none of them holds to the traditional meaning of the words.<sup>100</sup> There exists almost a mania to be a man of the times. This is interpreted to mean the possession of a fluid

<sup>85</sup> *Ibid.*, p. 4: 2.

<sup>86</sup> *Ibidem*, p. 5: 4.

<sup>87</sup> Sharp, Malcolm, "Positive Positivist," *The Daily Maroon*, Nov. 14, 1940, 2: 5.

<sup>88</sup> Hook, Sydney, "The New Medievalism," reprinted from *The New Republic* in the *Chicago Maroon*, *ibid.*, p. 1: 5.

<sup>89</sup> Cabot, R. C., *The Meaning of Right and Wrong*, New York: Macmillan, 1936, pp. 1 and 3.

<sup>100</sup> Wieman, N. H.; Meland, B. E., *American Philosophies of Religion*, Chicago: Willet, Clark & Co., 1936, p. viii.

attitude toward all truth, and especially toward moral principles.<sup>101</sup>

As might be expected, these proponents of change themselves exhibit varying attitudes and approaches to morals.<sup>102</sup> Moreover, if any inconsistency is latent here, it is not a source of concern. Variety of opinion in these matters is joyfully embraced as a creative difference more valuable than subjection to any system of absolutism.<sup>103</sup> A good example of these different opinions is found in the modern notions of God. In atheistic naturalism, God is Symbol; in naturalistic theism, God is Process; in Idealism, God is Mind.<sup>104</sup>

The notion that God is Process or an ever-evolving Mind has its effects on the modern concept of man's goal. Since the morality of an act is judged according to its end, the notion of that end is tremendously important. Moderns generally disagree with the predication of personality to the object of worship. It is said that the religions of the past are outworn. In place of the traditional goals the more scientific purpose of a social idealism is to be substituted.<sup>105</sup> Humanity, not God, is man's ultimate end.

Starting from the postulate that the traditional notions of God and the goal of man's life are inadmissible, the new Theology logically abjures any maintenance of absolute values in the moral order: Sin and virtue, it is argued, are relative to the age and development of culture. For if the goal of man is a social idealism and this idealism is always in flux, it follows that the motion toward the goal will have to change in accord with this evolution. It is in this predominant note of change that the bewildering variety of modern ethical opinion tries to find its unity. It is insisted that the musty atmosphere of antiquated

<sup>101</sup> Aubrey, E. E., *Present Theological Tendencies*, New York: Columbia University Press, 1936, p. 10.

<sup>102</sup> *American Philosophies of Religion*, p. 5.

<sup>103</sup> *American Philosophies of Religion*, p. 325.

<sup>104</sup> Cf. Sheen, Fulton John, *God and Intelligence*, London: Longmans, Green and Co., 1935, pp. 47-61; also *American Philosophies of Religion*, p. 10.

<sup>105</sup> Aubrey, E. E., *Present Theological Tendencies*, pp. 167, 238.



doctrine must be exchanged for a new intellectual and moral climate.<sup>106</sup> The insidious character of this doctrine is brought out by Farrell, who in a comparison between Thomism and the new Theology says: "The former rests on the immutable mind of God, is absolute, rational, objective, and personal; the latter, with no unchanging foundation, is relative, irrational, subjective, and collective."<sup>107</sup>

How is this welter of opinion to be related to the natural moral law? Advocates of relativity in the field of moral truth would not only say that they are ignorant of the entire natural law; they would deny its existence altogether. They thus rule the question out of court. Is their denial of first principles to be taken at face value? Are they invincibly ignorant of the entire natural law?

The problem resolves itself into the question asked by St. Thomas, i.e., *whether synderesis can be obliterated from the human mind?*

In reply be it stated that the obliteration of synderesis can be understood in two ways. One way concerns the *habitual light of the intellect* and in this way it is impossible that synderesis be blotted out just as it is impossible that the soul of man be deprived of the light of the active intellect whereby we know the first principles of the speculative and the practical order: for this light is of the very nature of the soul. Through its agency the soul is of an intellectual nature. *The other way* concerns the *act of synderesis* which may be considered under a double aspect. Under the *first* aspect the act of synderesis is blotted out in those not possessing the use of reason. This may happen because of an injury to the corporeal organs used in the act of reason. The *second* aspect concerns the deflection of synderesis to the contrary act of sin, and in this way it is impossible for the universal judgments of synderesis to be blotted out. However, in a particular action it is extinguished when a sin is committed in making a choice; the force

of concupiscence or some other passion so absorbs the reason that the universal judgment of synderesis is not applied to the particular act. But this is not to extinguish synderesis as such but only its application. Wherefore we conclude that synderesis is never blotted out.<sup>108</sup>

This article of St. Thomas contains the solution of the problem presented by relativists. Relativists do not come under the category of those without the use of reason. If they are invincibly ignorant, atrophied cerebra cannot be given as the cause. St. Thomas would therefore say of relativists that "It is impossible for the universal judgments of synderesis [first principles of the natural law] to be blotted out." The reply of the relativists to this will most certainly be: "But this is mere assertion, mere groundless assumption. This is the dogmatism of which we have been accusing you before the world." Here a distinction must be made between *assumption* and *perception*. The intellect of man is capable of arriving at objective truth. It becomes, so to speak, one with the thing known.<sup>109</sup> It does not *assume* the first principles of the speculative or practical order; it *perceives* their truth by an intuitional judgment.<sup>110</sup>

As is evident, these first principles can be proved only by indirect arguments—simply because they are first principles. To deny them is to lapse into absurdity. Men trying to disprove the principle of contradiction by logical argumentation are no less absurd than others who heatedly uphold the right of free speech while simultaneously denying all the principles on which it is based. As an opponent of Professor Adler has surprisingly said: "Positivism (Relativism in morals) is not likely to be taken very seriously apart from verbal disputation, since its central principle is contradicted by any action, including argu-

<sup>106</sup> *De Ver.* 16, 3, c.

<sup>108</sup> "Quanto aliquid magis intelligitur, tanto conceptio intellectualis est magis unum. Nam intellectus secundum hoc quod actu intelligit, secundum hoc fit unum cum intellectu." I, q. 27, ad 2um.

<sup>110</sup> For a discussion of these points cf. Roussetot, Pierre, *The Intellectualism of St. Thomas*, New York: Sheed and Ward, 1935, pp. 17-60.

<sup>106</sup> *Present Theological Tendencies*, pp. 9-12.

<sup>107</sup> Farrell, Walter, *A Companion to the Summa*, New York: Sheed and Ward, 1939, Vol. II, p. 456.

mentation itself."<sup>111</sup> It is difficult to imagine a relativist holding to the logic of his position under the stress of practical action, v.g., when requested by a much smaller (and unarmed) gangster to hand over his ready cash. Only in argumentation can the first principles of the moral order be denied. *In actu exercito* all admit them. Nor can men argue themselves into a practical denial of these principles—not even relativists.<sup>112</sup>

<sup>111</sup> Knight, Frank H., "God and Professor Adler and Logic," *Chicago Maroon*, *op. cit.*, p. 5: 4.

<sup>112</sup> For a practical dialectic to be used in argumentation with relativists, cf. Adler, Mortimer, "A Dialectic of Morals—I," *The Review of Politics*, Vol. 3, no. 1, pp. 3-32.

## CONCLUSIONS

1. Holy Scripture, Tradition, and reason attest the existence of the natural moral law. The entire tradition of Western civilization, with only recent exceptions, holds to the existence of this law which is nothing other than the law of God binding man as man.
2. The natural moral law essentially comprises the natural tendencies inherent in man's nature, the light of reason by which these tendencies are made known, and the proposition of reason by which these tendencies are properly regulated. Of these three elements the proposition of reason is the most important.
3. The precepts of the natural moral law guide man in the right choice of means leading to his ultimate end. They bind man because they indicate the means that must be taken if the ultimate end is to be attained. There are various divisions of the precepts; the ontological division, indicating the gradation of precepts according to the directness and proximity of their relation to the ultimate end, and the psychological division, a series ordered according to the facility by which they can be known, are the most important of these divisions. Under the latter series fall the self-evident first principles, those known by evident deduction from the first principles, and conclusions arrived at only after a difficult and lengthy deductive process.
4. The intellect is very powerful in human action even though it acts only as a dispositive cause. Ignorance may be a cause of sin (*removens prohibens*), a sin itself, or an effect of sin. It may excuse the subject from the guilt of sin entirely, or only in part, or it may increase the guilt. The formula *ignorantia iuris neminem excusat*, rigorously held by many early Scholastics, was modified by St. Thomas and St. Bonaventure.

5. Invincible ignorance of the natural moral law in relation to:
  - (a) The first principles in the psychological order—this is impossible for any normal and mature person, though deep-rooted contrary habits may sometimes take them out of consideration in practical action in particular instances.
  - (b) The evident deductions from first principles—concerning the essence of these precepts no invincible ignorance is to be admitted for the majority of men. Such ignorance concerning certain applications of these principles is easily conceivable among primitive peoples; also when an action is surrounded by many circumstances of apparent justification.
  - (c) Remote conclusions—because of the intrinsic difficulty of knowing these conclusions, invincible ignorance is very easily admissible in their regard.
6. Complete moral immaturity is impossible; no person of normal intelligence can be invincibly ignorant of all moral principles. Many children below the age of seven know some principles of the natural moral law. On the other hand, some children above the age of seven may not have reached a knowledge of moral principles. Though it constitutes an indictment of our present civilization, in practical life many people, including even some Catholics, may be invincibly ignorant of the malice of such practices as Birth Control, Euthanasia, and the possibility of the complete dissolution of the bond of a ratified and consummated marriage. We may regard with relative skepticism the position of relativists who deny first moral principles.

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