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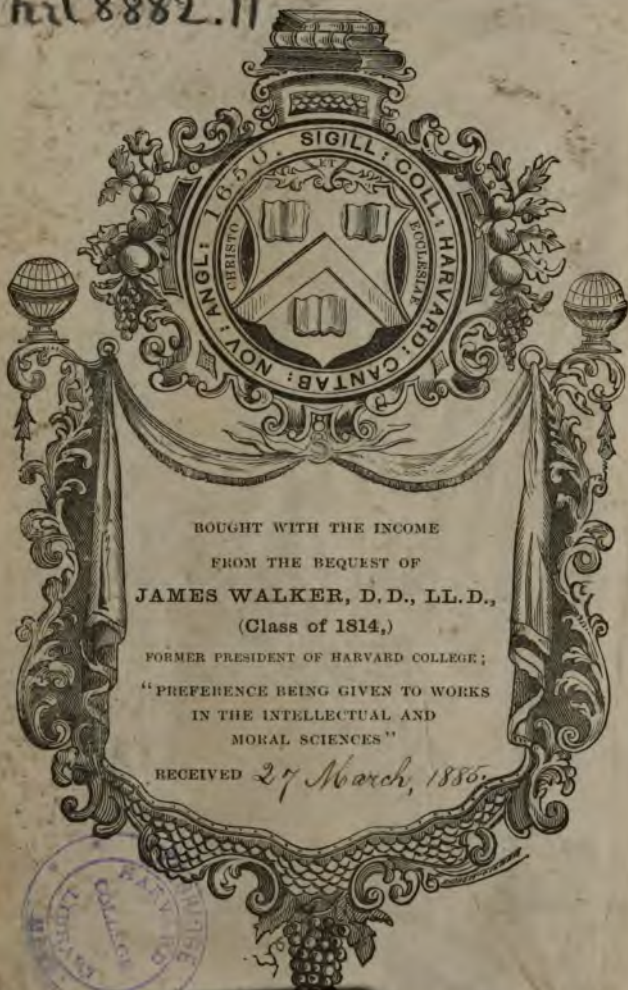
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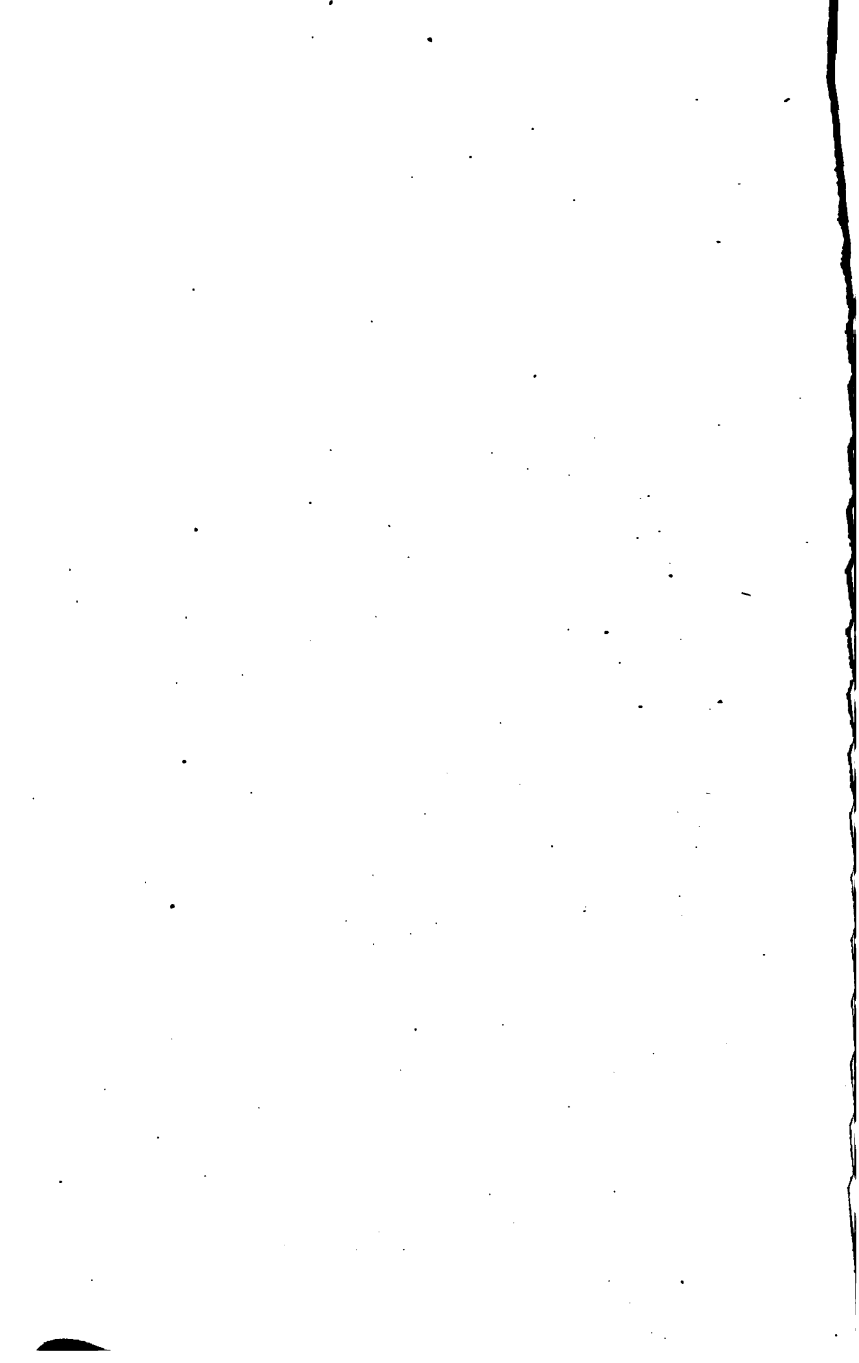
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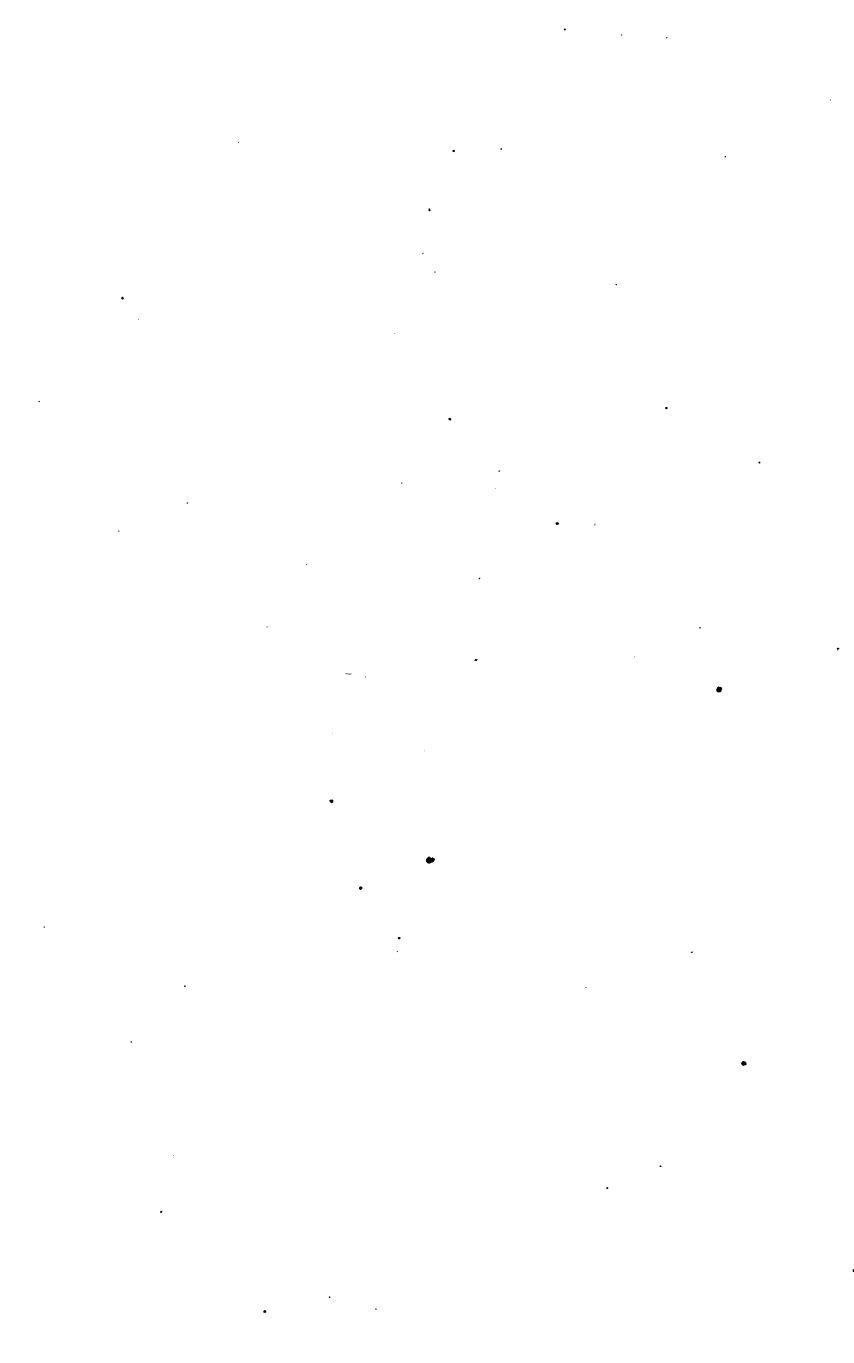
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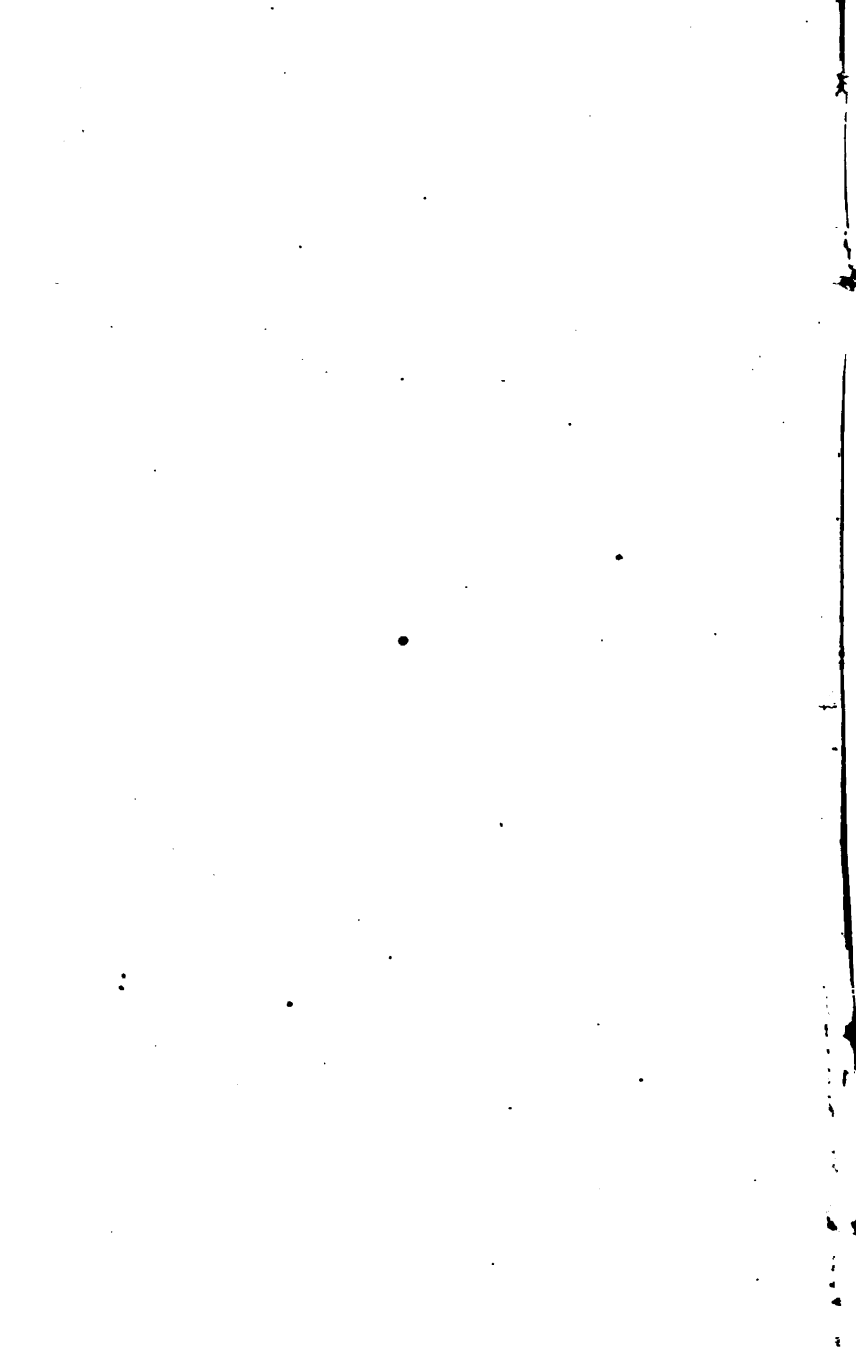














# ETHICS

OR,

## MORAL PHILOSOPHY.

BY

WALTER H. HILL, S. J.,

PROFESSOR OF PHILOSOPHY IN THE ST. LOUIS UNIVERSITY.

*Author of "Logic and Ontology or General Metaphysics."*

*NEW EDITION,  
REVISED AND ENLARGED.*



BALTIMORE & NEW YORK:  
PUBLISHED BY JOHN MURPHY & CO.,  
182 BALTIMORE STREET.  
LONDON: R. WASHBOURNE, 18 PATERNOSTER ROW.  
1884.

~~III 3070~~

Phil 8882.11

1885. Mar. 27,

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## PREFACE.

A NEW edition of this treatise on "Ethics, or Moral Philosophy," with corrections and improvements, is herewith respectfully offered to the public. It was not possible, amid numerous duties from which the author could not disengage himself, to rewrite the entire work; yet, some new matter is incorporated into the text, as, for instance, citations from St. Thomas, *contra* Gentiles, lib. II., cap. 28, wherein the relation between right and duty, absolutely considered, is explained, in terms substantially identical with those previously used in this work. The preceding editions having been exhausted, the present one is issued to supply a further demand for the book. No higher merit is claimed for the present volume than that of helping to prepare the way for more complete and thorough treatises on the same subjects, by writers better favored for such undertaking.

It is the end of philosophy to show truth as coming from its first, most absolute, and most universal principles; and it is for ethics to explain the intrinsic and essential constituents of moral action in man, as naturally known to human reason. Among the subjects pertaining to ethics herein discussed, it was deemed expedient, in a work primarily intended for use where all citizens have some voice in political affairs, to examine the nature, properties, and scope of civil law and authority, at as great length as the limits of such a book could becomingly allow.

Practical instruction on particular matters of positive duty is the special office of the many excellent didactic and doctrinal writings that are composed for general use among the people: ethics has for its proper aim to furnish demonstrative reasons to prove the truth and justice of the chief, fundamental principles from which all the more special rules of natural rectitude or morality are deduced. By not sufficiently or correctly discriminating between the wholly distinct ends of the ethical treatise, and the Christian catechism, one might produce a book, and name it philosophy, which, in reality, would justly merit the censure of being, "not philosophy, but theology not proved." Truth supernaturally taught, and all laws and duties based on it, have Divine revelation for the foundation of their certainty; but the arguments of philosophy are discovered by the natural light of reason. Yet, truth that is divinely revealed, and truth proved by natural reason, can never be really opposed to each other, both having God for their author. Nor, on the other hand, is it anything inconsistent that philosophy should be guided and perfected by revealed doctrine, at least

indirectly, and in matter that is of itself obscure to man's unaided natural reason. When the human mind is truly logical, it will always derive the same conclusions from the same premises; still there is not a little diversity of opinion concerning some subjects of moral philosophy, which is apparent especially in questions that regard the application of ethical principles to certain social and civil matters. It can scarcely be doubted that the predilections of education, and the peculiar influence of national customs on the mind, have some share in causing this difference of thought which exists even among the well meaning.

The criterion of scientific and philosophical truth is not authority, but evidence; namely, the evidence of propositions as following necessarily and demonstratively from their certain principles; but, even in scientific and philosophical matter, recognized authority is required for some minds, as a guaranty of correctness. The well thought sayings of great authors, especially of St. Thomas, the master of the schools, are often cited on the margin, both as confirmatory of the reasoning advanced in the text, and as suggestive of other arguments. The fact should not be unknown to the ingenuous student of philosophy, however, that, especially in more recent times, the words of St. Thomas, like those of the sacred Scriptures, are sometimes quoted in proof of the most contradictory assertions, and for sustaining the most opposite systems; a circumstance which serves, at least, to show the weight that his authority still has among the learned. Nevertheless, it is a peculiar excellency of the scholastic language that it is neither equivocal nor indefinite. It is, perhaps, not saying too much to affirm that the old scholastic metaphysicians are never at fault in their reasoning, when it is a question of what must be true in the nature of things, or of what can be determined by the canons of strict argumentation. Truths that spring necessarily from the very nature of man and of human society, never change, though things that are extrinsic and accidental to them may change. Those venerable philosophers of the olden times reached their conclusions by rigorous logic; and their conclusions were right and true, because derived by necessary sequence from matter not subject to mutation. St. Thomas and the illustrious authors in succeeding centuries that studied his writings and developed their meaning, had no opposite opinions concerning the natural origin and constitution of civil society. Indeed, there is little doubt that nothing is gained by theorists who reject the teachings, and the axioms received as certain among those sagacious thinkers, at least, in the truths of social ethics which are mainly dependent for their proof on speculative or abstract reasoning.

WALTER H. HILL, S. J.

*St. Louis University, Feb. 5, 1884.*

## INTRODUCTION.

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A purely speculative science has for its object only the contemplation of truth; its subjects belong exclusively to the intellect, having no direct or immediate reference at all to practical things; yet, such science may be remotely useful, in a greater or less degree, to the practical. Ethics is not a speculative science, except under some particular respect; its object pertains to the will, and its aim is to perfect the will with the good that is true. Though ethics, viewed under a certain respect, or as to the mode in which it demonstrates *a priori* some truth, may be called speculative science; yet, that truth is referred by it more or less immediately and directly to the practical, or to the objects of the will's deliberate action. Moreover, the fundamental principle of this science is man's ultimate destination, his *summum bonum* or chief good, as an object to which he can freely tend, by using proportionate means. Hence, ethics is properly styled a practical science, since it is concerned about an end to be gained, and the means of attaining to it.

Ethics, from the Greek word *ἠθικός* (Latin, *mores, morals*, whence the name *moral* philosophy,) is so called, because it aims at what ultimately perfects man as a *moral* being. What ultimately perfects man as a moral being, is the acquiring of his *summum bonum*, or of that object, the possession of which constitutes for him the state of perfect beatitude or happiness. What ultimately perfects man in the present order of his existence, is intellectual and moral virtue; or, from the stand-

point of ethics, it is chiefly moral goodness, since in ethics the intellectual virtues are regarded as having for their end to subserve and perfect the moral virtues. On this account ethics is often said to be the fruit of all the sciences, since it ultimately perfects man, by ordering those sciences, and all things else in respect to an ultimate end that is absolutely supreme.

Since the various objects about which man's knowledge and action can be exercised, are related to each other in many different manners, we may distinguish several kinds of order and connection among things which human science regards and proposes; for example, there are many kinds of order and real connection in things which reason does not devise or found, but which it discovers as facts. The physical sciences, whose objects are real things, have for their proper matter relations of this kind; as, that the tides follow the moon's movement around the earth; that hydrogen burns; the earth's orbit around the sun is an ellipse, etc. There is also an order of connections and relations among things which reason devises, and establishes for itself artificially, founding it, however, on real things. Of this kind are grammar, logic, etc., which are man's work; they propose artificial relations among things; but yet they are not "baseless fabrics," though those systems are contrived, and built by man's ingenuity. To make "Socrates the nominative case," "Europe the minor term," etc., is to conceive Socrates and Europe, not as real beings in their real relations; but as placed in an order of artificial relations with which human reason invests them, for the purposes intended by the arts of grammar and logic.

There is also an order and relationship among objects of the will, and in its acts, which reason makes for itself;\* but

\* "Est ordo etiam quam scientia facit in actibus voluntatis, unde oritur nostra ethice. Inde patet ethicam esse de rationabilibus scientiis, non ex realibus; id est eam esse ex iis, quorum objectum pendit a ratione, etsi aliter, imo minus, quam Logicæ, et Grammaticæ objectum; ideoque magis est realis, quam Logica vel Grammatica." Irenæus Carmelit. *Eth.*, cap.

which it truly finds, however, on the true and positive relations of those things. Nature does not infuse into man's reason the science of ethics, with its principles and conclusions; or, it is not innate to man; and, the moral character that is in the objects which surround him, is not in those objects as a real physical quality. Wherefore, human reason, by its natural power, puts an order of relations and connections into the will's objects, analogously to the manner in which it finds the system of relations and connections among concepts and judgments that constitutes logic; or the manner in which it finds a system of relations and connections among words and phrases in a sentence that makes grammar; and thus ethics has some likeness of nature both with real or physical science, and with rational science.

Finally, there is an order which reason puts into outward works and operations; and this is art, which takes its name according to the objects that the work or operation concerns; as, art of music, art of grammar, art of agriculture, etc.

It may be said, then, that ethics is a rational science, which is conversant about moral good; and its principles are deduced by man's reason from the objects that concern the free will; it has for its ulterior end the art by which man may live uprightly or conformably to right reason.

The plan pursued by Aristotle in his *Ethics*, and *Politics*, was adopted in many subsequent schools; and in substance it is the one followed by most writers on moral philosophy at the present time. Aristotle made ethics preliminary to his politics. He argued that the end is first and principal among causes; that there is an ultimate objective end, or "summum bonum," at which man is ordained by nature to aim; and the possession of this chief good constitutes man's last perfection,

I, § 2. There is also an order which science makes in the acts of the will, and from that our ethics arises. It is plain, then, that ethics is a rational science, and not a real or physical science; that is, it is of those sciences the object of which depends on reason, though in another manner, and even less so, than does the object of logic and grammar; and it is, therefore, more a real science than is logic or grammar.

and his complete beatitude. He explains the nature and the principles of morality; and also of the virtues, which are means of fitting man for beatitude; beatitude itself being produced by the contemplation of what is highest and best. Man, as alone or solitary, is not sufficient for himself; he is, therefore, a social being, or is intended by nature to live in society; and he must exist in civil society. After considering man as a member of the family, he then discusses, at some length, the different forms of civil government, contrasting their various advantages and disadvantages.

The following treatise is similar in its plan and scope to numerous modern works of the kind which are modeled on the writings of this illustrious Grecian philosopher. Accordingly, the first part regards what ultimately perfects man; or, it treats of final beatitude, and the nature and principles of that moral goodness necessarily required to be in the means by which man attains to ultimate bliss. In the second part human action and moral goodness are considered as applied to more specific matter; as, man's relation to God, to his fellow man, to the family, and to civil society.



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# ETHICS, OR MORAL PHILOSOPHY.

## PART I.—GENERAL ETHICS.

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### CHAPTER I.

#### ULTIMATE END, OR DESTINY OF MAN.

##### ARTICLE I.

ALL THE DELIBERATE ACTION OF MAN, AS WELL AS THE NATURAL ACTION OF IRRATIONAL THINGS, IS ON ACCOUNT OF AN ULTIMATE END.

The end, according to a general meaning of the term, is that for the sake of which an act or an operation is performed;\* and the ultimate end, in the intention of an intelligent agent, is that to which all other ends intended by it are subordinate, and to which they all tend, as means.

The end thus understood is one of the four causes,† as explained in works on general metaphysics: it is the first and the highest among causes; for, though it influences only morally towards the production of the effect wrought by the efficient cause, yet it is directive of the other causes, and they are subordinate to it. The ultimate end, or the final purpose for the accomplishment of which all the means are coördi-

\* “*Finis est id cuius gratia aliquid fit, in quo quiescit, et satiatur agens; ergo est aptus appeti.*” The end is that for whose sake any thing is done, and in which the agent rests satisfied; it is, therefore, fitted to be desired by appetite.”

† “*Bonum habet rationem causæ finalis.*” 1 p., qu. 5, a. 2, ad 1. Good has the nature of final cause. “*Verum est in anima, sed bonum est in rebus.*” 1 p., qu. 16, a. 1, ad 4. The true is in the mind, but the good is in things.

nated, rules all the intermediate actions and intentions;\* like the first mover that controls the action of many dependent agents, which it causes to move in obedience to an impulse given by it to the proximate or nearest one, and which is then communicated from one to another till the last. Hence it is that the ultimate end is often styled "the principle of intention;" for all other intentions in the rational agent are subject to the supreme influence of the object ultimately aimed at, and all other action of such agent is related to this ultimate end as means; or it reduces to unity all action of the agent, causing all movements to tend towards it as their last term.

All things in the world exist and act on account of an end. The special end for which some things exist is easily discernible by us; and one important advantage furnished by physical science is the aid which it gives us in discovering and interpreting the plan and order that are in the works of nature. We cannot conceive a being created to endure perpetually in the condition of *tendency* to an end, without ever reaching a final state, or, at least, without ever fulfilling the purpose of its existence. But though all things have some ultimate end, which is proportioned to their nature, yet they tend to it in different manners, for their action is according to their specific nature—"modus agendi sequitur modum essendi." Irrational things move towards their ultimate end in obedience to a law implanted in them by the author of their being. The brute animal can apprehend an end,† as materially such, and tend to it by the impulse of sensible appetite; but it cannot know an end, formally as an end, which is a rational act. An intelligent being can apprehend an end, as an end; and it can select and arrange the means for its fulfillment.

\* "Primum principium in operativis, quorum est ratio practica, est finis ultimus." P. 1. 2, qu. 90 a. 2, in C. In practical things, which are the object of practical reason, the first principle is the ultimate end. The end is always first in the intention, and it directs the agent's action; but that end is last in the execution of the work.

† "Finem apprehendunt, sed non rationem finis." They apprehend an end, but not its nature as an end.

Not all man's action is performed by him for an end. Here we may distinguish four kinds of action in man, answering to four grades of essential perfection that are combined in him: 1. that which he has in common with inanimate natures—v. g., minerals; 2. that which he has in common with vegetable natures; 3. the action which he has in common with irrational animals—beings whose action is wholly limited to these three kinds can tend to an end, as an end, only when directed by an intelligent agent that is extrinsic to them and superior to them; 4. man can act as a rational being; he can apprehend an end precisely and formally as an end, and select and use appropriate means for its attainment. He has some actions of the first three kinds, and they are really actions of man, inasmuch as he is their principle; but they are not styled *human actions*, since by them he does not tend to an end differently from inanimate things, nor from the vegetable, and the irrational animals, which move towards an end without knowing its nature as an end. Man's action is specifically and completely human only when it is on account of an end intended by him, or when it is rational and deliberate.\*

Man naturally tends to happiness; or, man ultimately aims at happiness, in all he does, whether his will acts with deliberate choice, or naturally, spontaneously, and without deliberation. The will cannot love evil, as evil; but, by the physical and necessary law of its nature, it embraces what is apprehended and offered to it precisely and purely as good. When good is understood in this general sense as the undetermined object towards which the will necessarily tends in all its particular acts, it is sometimes called by authors, man's chief good, man's beatitude, or the ultimate end of man's actions, etc.; and there is a respect under which all these forms of expression are

\* "Homo est dominus actuum suorum per rationem et voluntatem; unde et liberum arbitrium esse dicitur facultas voluntatis et rationis." I. 2 p., qu. 1, a. 1. Man is the master of his actions through his reason and will; on this account, freedom to choose is called a faculty of the will and the reason.

"In omni malo est aliquid boni." I p., qu. 49, a. 3. In every evil there is something of good.

true and proper. But further on, we shall see more precisely what object and what action of rational nature are required in order to constitute perfect human bliss.\*

Reflection on the operations of our own faculties manifests the fact to us that in all our voluntary action, we tend to one dominant and supreme end; and that we always either explicitly or implicitly intend that end, in whatever we do as rational agents. This end, which is always thus intended by us, is our own happiness, our own good; and at this we ever aim, whether the means selected by us to accomplish our purpose be, in themselves, good or bad. From that end, understood in this general sense, we cannot, by any physical possibility, avert our wills; for this simple good is the proper object of the will, just as color is the connatural and proper object of the eye, or sound is that of the hearing; and no faculty can turn away from its own specific object to one which is totally separated from its whole sphere of action.† It is in accordance with this truth that the philosophical axiom is to be understood, “*finis non cadit sub electione* ;” the end does not fall under our choice, or it is not subject to choice: the end here meant is that happiness or good for self which we ultimately intend by all that we do. All the other ends which man wishes, regard particular things; they are subject to choice and they are only means in respect to what is ultimately intended by him; to these particular and special ends, which may be freely intended by way of means, is applied the axiom, “*media cadunt sub electione* :” the means fall under election, or the means are subject to free choice.

This ruling principle in man, by which he is irresistibly

\* Observe, then, that the expressions, “man’s ultimate end,” “man’s beatitude,” “man’s chief good,” are applied, under different respects, to that simple but indeterminate good towards which the will is naturally and necessarily inclined, and to which it is conceived to be always tending in its acts. But when we conceive God as the real object of happiness, and the real chief good, then those expressions are applied accordingly.

† “*Nulla potentia potest ferri extra suum objectum adæquatum.*” Suarez’ *Metaph. Disp.* 30, sec. 11, no. 2. No power or faculty can be carried beyond its own adequate, commensurate object.



impelled towards a supreme end or chief good for him, must, in the very nature of things, have its ultimate term or object; for this natural tendency in man to a term which he never reaches in this life, is conclusive proof that he is destined for a future state of existence, and that, in respect to it, his present one is preparatory and transitional.

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## ARTICLE II.

### WHAT CONSTITUTES PERFECT HUMAN BLISS; OR IN WHAT GOOD COMPLETE BEATITUDE CONSISTS.

In order the more clearly to understand the operation of man's rational nature, and the object of his action, in a state of perfect bliss or complete beatitude, we should distinguish between *objective* beatitude and *formal* beatitude. Objective beatitude, is that thing, or object, the possession of which will render man perfectly happy; formal beatitude, is that action or operation of man's own powers, by which he will really and truly possess that thing or object that is to make him happy.

Since perfect bliss or beatitude should be the ultimate complement of the rational or intellectual nature's perfection, it must include, as essential to it, the highest and most noble action of that intelligent being. What is the highest and the noblest act of an intelligent being? It cannot be that of reasoning; for all reasoning is progress toward an end, or to what is more perfect; or it is a means of attaining to an end, and not the act of possessing it. The highest and noblest act of an intelligent being, is the vision or contemplation of truth; and from this act of the intellect, there result love and fruition in the will, which are greater or less, according to the degree of beauty and goodness in the object contemplated. Man's highest faculty is that one which rules over all his other powers, which is first to act; which gives light and offers objects of action to all his superior faculties, and which gives him his nearest likeness to the divine nature: all this is true only of

his intellect; and, by consequence, the intellect is principal among the powers of man's rational nature.

When we consider the objects which the action of the intellect may concern, its operation in knowing may be distinguished into two kinds; the practical and the speculative. The intellect itself as capable of acquiring both practical and speculative knowledge, or of knowing both practical and speculative things, is also distinguished into the practical intellect, and the speculative intellect.

Practical knowledge regards the feasible, what can be done physically, or what ought to be done morally; such knowledge, consequently, has for its object concrete, individual things and contingent truths. Speculative knowledge principally regards necessary things, and therefore its object is that which is absolute and immutable. It is manifest that an object has greater or less perfection in its own species, according to the greater or less degree in which the goodness of that object is exempt from contingency or mutability. Now, in order for that operation of the soul required for perfect bliss or beatitude to be the highest and noblest action of the soul's principal faculty, it must also have for its object that which is highest, noblest, and most necessary.

It may be affirmed, then, that human beatitude consists, principally and essentially, in the most perfect operation of man's superior powers, in regard to the highest and noblest object. In order for this object to be the highest and noblest, it must be absolutely perfect, absolutely good, and absolutely ultimate, and thus leave nothing ulterior to be conceived and desired which is greater; because the object must fill the capacity of the understanding for truth, and that of the will for goodness; otherwise, these faculties could tend towards a further term or a greater object. Also, since the intellect can not know the essence of all things till it knows the essence of their cause, it follows that its ultimate objective end must be the first cause that exists *a se*, or independently of all cause. Finally, the intellect and will are not limited for their objects to the finite; they can tend to what is greater and greater;

nor will this movement cease in them till it terminates in the infinite. All relative perfection implies dependence, limitation, mutability ; and, by consequence, cannot be what is most desirable. Therefore, the objective end of man which is absolutely ultimate, is God ; and his beatitude will be the contemplation and love of God as infinitely true, beautiful, and good.

The knowledge of God which a disembodied spirit might naturally have, would be greatly superior to that which man can acquire in this life ; but we have no sufficient reason to suppose that it would become that of immediate intuitive vision, except by a supernatural elevation of the soul's faculties. Though it is not simply impossible for God to make a creature so perfect that intuitive vision of the divine essence would be connatural to it ; yet, as a fact, man is not such a creature.

Man's knowledge naturally begins with sensible things, which he perceives through his external organs, and the images of their objects formed in the fancy ; he ascends to the knowledge of higher things by reasoning on those that are sensible. In his present state, he also understands supernatural things, only by comparing them to things naturally known. The ideas or concepts which reason can form for itself of superior beings, must always present those objects to him only in an abstract manner ; for, the conclusion of a syllogism, in the very nature of things, expresses what is abstract ; at least, in as much as it is precisely a logical conclusion ; and man can form concepts of such beings only by means of reasoning. The conclusion of an argument is not derived from the object immediately ; but from premises, at least one of which is universal, and therefore abstract.

Our knowledge of God is called *abstract knowledge*, because our ideas or concepts of him are not derived from him as immediately visible to our understandings ; but they are acquired through a medium ; or by way of conclusions which present him logically to our intellects. This truth explains the fact that we have not any one concept with its name, which ade-

quately expresses to our minds what God is; but we must needs employ a number of names which we apply to Him by way of predicates that vary in meaning, according to the species of objects and nature of the reasoning which furnish them to us: v. g., 1, we give to Him such names as express unity, simplicity, absolute being, etc.; 2, negatives in form; as infinite, immutable, immense, etc.; 3, relative predicates; as Creator, Lord, Providence.

The primary and most connatural object of man's intellect, then, is the essence, or the intelligible idea of sensible things;\* from the ideas of sensible objects, and by reasoning he rises to the knowledge of what has a higher order of existence. If we suppose the soul to be separated from the body, it should then also, in the very nature of things, have its primary and connatural object of knowledge. The object proportioned to that state of its existence would be its own essence or substance, as that which is next above man's corporeal nature; his reason would ascend from the knowledge of his own soul, to the knowledge of superior beings and of God; for man is naturally rational, and not purely intelligent, or capable of knowing all things intuitively.

If the foregoing explanations be correct, it follows that when the human soul is separated from the body, it could naturally know God only in an abstract manner; for, what is known by way of logical inference from other truths, is known in an abstract manner.

The concept of God or the idea of his essence, derived from, or founded on, man's soul as the intellect's primary or beginning object, would be far superior, in every respect, to any idea or concept which it is possible for the reason of man to form, while it is wholly dependent on the senses and fancy for the presentation of its objects. But yet the knowledge of God by means of such idea, would not be the intuition of his essence; He would still be known through the medium of

\* Man's intellectual ideas of sensible things are formed by help of the fancy; but yet the intellectual ideas have no sensible quality in them; they are immaterial acts, though their objects be material things.

analogy, and abstractly. To this doctrine the objection may occur to the mind: "Man could desire to see God intuitively; by what was before said, then, the abstract knowledge of God cannot be in ultimate beatitude, which leaves nothing ulterior to be desired." The present investigation pertains only to natural, not to supernatural beatitude: it does not follow that because the soul would know the nature of intuition,\* that it could desire to see God intuitively; for, it could not positively desire what would be not natural and wholly disproportioned to its own species; one cannot, except irrationally, desire to be of another and specifically different nature.

We know from Revelation, however, that the souls of those persons who fulfill the positive conditions in this life which God has prescribed, will possess supernatural beatitude, in which they will see God intuitively, and as He is in Himself; for, the *lumen gloriæ*, light of glory, which is a supernatural medium of intellectual vision, will so elevate the intellect, that it will be made able to apprehend the divine essence immediately.

Man does not necessarily tend to God as the object of his ultimate beatitude; nor can he tend, at the same time, to more ultimate objective ends, than one.

It is true that the human will necessarily loves good, and, by consequence, man necessarily tends to what his reason

\* We perceive an object *intuitively*, only when that object, through its own real and immediate evidence, is present to the mind. The term "intuition," as formerly used by the best English writers, was limited for its object to self-evident, necessary first principles and the evident conclusions as necessarily and proximately sequent from them; no self-evident fact or truth in contingent matter was regarded by them as included in the proper object of the mind's intuitive perceptions. Many authors of the present day employ this term in a less restricted sense, so as to include within its matter the direct and immediate perceptions of the senses and consciousness; and this use of the word is conformable to its original meaning in the Latin language, and also to the sense given to it in most modern languages that have adopted it. The advantages of general uniformity in philosophical terminology, amply justify this change by which the term intuition is now made to include within the scope of its objects whatever is directly apprehended through its own immediate evidence.

apprehends as good, in all his actions. But that good to which man thus necessarily tends, is indeterminate; or it is simple good in general, but not as actually referred to a specific or particular object. The will is by its nature predisposed, or inclined beforehand to whatever is offered to it as good; the appreciation or judgment of that good, as an object, belongs to the rational faculty or intellect. But since the will and the understanding are faculties of the same soul, when the intellect apprehends an object as good for us under one respect, and evil under another respect, the soul can then deliberate, and choose, or refuse to make a choice or act at all. But in this case the object of choice is not that simple good towards which the will naturally and necessarily tends when it is apprehended as such; it is a mixed good, or good that is marred with evil, and it is only a means to that good or happiness which is the connatural end of the rational appetite.

Though we speculatively conceive and admit God to be the real and only ultimate object of our beatitude, as He was above shown to be; yet, owing to the fact that this truth is not immediately evident—God being known to us only by means of a logical conclusion—that it is, in itself, more or less obscure, and that there are impediments which must be surmounted in actually tending to Him as our future ultimate objective end, we can, as a fact which experience teaches us, avert from Him, and seek our bliss in present and mixed good, even so as practically to ignore Him.

That we cannot simultaneously tend to two ultimate objective ends that are distinct, or are nowise related to each other, is true, in the very nature of things. In the same manner that every being is one, “*omne ens est unum* :” so every nature is one; and, therefore, its essential operations are reducible to unity of principle.\* As the arrow cannot move towards the east and the west, at one and the same time, similarly, the total operation of a being’s nature cannot,

\*“*Natura non tendit nisi ad unum.*” P. I. 2, qu. I, a. 5. A nature tends to but one principal object.

at one and the same time, tend to two distinct and separate ultimate ends or objects.

It may be said that in man the intellect and will tend towards the same essential end; the intellect to apprehend it as the supreme truth, and the will to love or desire it as the chief good. But man does not, in every act, explicitly think of his ultimate end, even when the whole plan of his life is so ordered as to make God the object of his beatitude; just as no one thinks, at every step he takes, concerning the town to which he is walking.

We may conclude, then, that man cannot avert from his ultimate end or beatitude, understanding by this ultimate end the connatural object of his will; but when we consider his ultimate end or beatitude as including a determinate object, it must be said that the will is free to choose for itself an objective end; and, by consequence, even God, who is absolutely good, does not necessitate the will of man while on earth to love Him as the object of his ultimate beatitude or perfect future bliss. For man's present knowledge of God, as already observed, is more or less obscure and confused, owing to his complete dependence on his senses for all he naturally knows, even of God; and, besides, man can easily permit himself to be enticed by particular good that is immediately present to him.

The perfection of the will does not consist in liberty of indifference alone; for this is perfection only under a respect; its perfection is in loving good, which is evidently apprehended as such; in loving infinite good necessarily, or, while on earth, loving the means to it freely. Liberty of indifference in respect to good and evil is a mixed perfection; or it is, under different respects, both a perfection and an imperfection. Man does not love Infinite good necessarily while he is on earth, because he apprehends that good but obscurely and imperfectly. If he saw Infinite good evidently and perfectly, his will would love it necessarily, and with its highest and most perfect act. The exercise of rational liberty in the choice of true means to good is man's highest operation in his mortal life.

## ARTICLE III.

WHETHER THE GOODS OF THIS WORLD OR THIS LIFE CAN  
BE THE OBJECT THAT IS ADEQUATE OR PROPORTIONED  
TO A STATE OF PERFECT BLISS FOR MAN.

In order to satisfy the mind more fully as to the object and the state required to render man perfectly happy, it is necessary to consider the question as to whether or not the possession of any goods of the present life on earth could constitute for him the state of perfect beatitude. This inquiry is all the more necessary, from the fact, that since our sensible feelings and animal appetites naturally incline to present things,\* they greatly sway our judgments, and they give an occasion of irrational prejudice in the mind against any object of happiness that is conceived to be remote from us and difficult of attainment.

No goods of this life can be that object the possession of which suffices to constitute bliss proportioned to the capacity of man's rational nature. First: the objective cause of perfect bliss for man cannot be the goods of fortune, or exterior goods; as, riches, fame or glory, honor, rank or authority to rule.

That riches cannot be the object of beatitude is easily shown: a thing which, by its nature, is only the means to an end, cannot be the ultimate objective end of man's beatitude; but riches are only a means to an end, since their whole value and aim are in this, that they may be used as means of purchasing or acquiring good things: therefore, they are valuable or good, only as means to an end.

The object of man's beatitude cannot be fame or glory

\* "Operationes sensuum quia sunt principia nostræ cognitionis, sunt magis perceptibiles: unde delectationes sensibiles a pluribus appetuntur." P. I. 2, qu. 2, a. 6, ad 2. As the actions of our senses begin our knowledge of things, they make more impression on us: hence it is that sensible pleasures are so desired by many.



among men. Fame or glory consists in being known and praised by many persons, "est clara cum laude notitia." The merit or the excellency, on account of which one becomes known and praised among men, is either truly and really possessed, or it is not thus possessed at all. In the first case, the merit or excellency causes the fame or glory among men, and it is a superior good to the glory itself, which is its effect, and is its light shed abroad. But if the merit or excellency be not really possessed, then the fame of it is false: hence, in neither supposition, can fame or glory be that ultimate object required for perfect human beatitude. Also, what may be lost, cannot be the ultimate objective end of man's beatitude, which, if perfect, must be stable and inamissible; but the fame among men, even of genuine merit and noble deeds, may be lost; or it may fail to be acquired. Man's knowledge depends on the object which is its cause; he may not rightly apprehend what he sees, and he may forget things which he knows;\* but God's knowledge precedes the object, and is its cause: hence, glory before God brings bliss to man; glory before men is, at the best, not the substance, but the shadow of good.

Neither can honors be the object of perfect beatitude, as similar arguments serve to prove. In the praise which constitutes fame, testimony of excellency is given only in words or equivalent signs; honors give testimony of excellency or merit, both by words and deeds; v. g., genuflexion before majesty is honor paid in action to supreme authority; all marks showing high esteem or great preference to one that is eminent in superior things, give honor to such person. The praise that goes with fame, is more proper to relative merit; honor is more proper to absolute merit or excellency in comparison with all other persons in the community. The good on account of which one is honored is the cause of that honor, the honor itself is an extrinsic effect, and it cannot, therefore, be the

\* "Notitia sæpe fallitur, et præcipue in singularibus contingentibus, cujusmodi sunt actus humani." P. I. 2, qu. 2, a. 3. Our thoughts are often mistaken, especially concerning contingent, particular things, such as human actions may regard.

cause of man's final perfection or the object of his complete ultimate beatitude. Honors do not produce that excellency to which they are paid, but they presuppose the good or merit in him that receives them. Besides, as Aristotle observes,\* honor is rather in him that exhibits it, than in him that is honored; but beatitude is in him only who is perfectly happy. Finally, it is not morally, or even physically possible for all to become preëminent in what entitles them to exclusive honors; but beatitude should be physically attainable by all persons. A like argument shows that the object of the beatitude in question cannot be rank or authority to rule over a multitude; for, in the very nature of things, high rank and authority must be limited to a few, and the inquiry concerning the object of perfect beatitude regards all mankind. Authority in a man to rule over a community has not for its principal and proper end special happiness for the ruler; its essential aim is the general good of that community,† even if perchance this authority should prove an irksome burden to the ruler. The object of perfect beatitude must be *per se* good; and not what is good or bad *per accidens*: but authority vested in man is susceptible of being used either for good or for evil.‡ Therefore, authority, unlike virtue, is not *per se* good, since it can be used for evil.

Neither can perfect beatitude, which is the ultimate end of man, consist in earthly pleasures or enjoyment.

Pleasure is in appetite when possessing its proper good. Desire, as well as every act of appetite, follows the power of apprehension which is proportioned and connatural to it; therefore, the action of sensible appetite depends for its object on sensible or organic power of apprehension; and that of

\* I Eth. ch. v.

† "Semper finis excellit id quod est ad finem; et quanto aliquid efficacius ordinatur ad finem tanto melius est." P. 2. 2, qu. 152, a. 5. The end always excels the means to that end; the more efficacious the means, the more perfect it is.

‡ "Potestas se habet ad bonum et ad malum." P. 1. 2, qu. 2, a. 4. The power is capable of good and it is capable of evil.

rational appetite, depends for its object on rational or intellectual apprehension. It may be concluded, then, that man is susceptible of two species or kinds of pleasure; that of the body, which is sensible pleasure; and that of the rational appetite or the will, which transcends the sensible. The singular,\* concrete and corporeal thing, is all that sensible power can apprehend; and consequently, none but material objects are proportioned to, and ordained for, sensible appetites.

But the only proper object of the intellect is the supersensible, as truth, intelligible essence; consequently, the good which is proportioned to rational appetite, must be immaterial good.

Pleasure in the rational appetite, or joy in the will, is surely essential to complete beatitude, since the soul must possess its object by contemplation and love, whence fruition or pleasure will necessarily result in the soul. It was already shown that the principal operation of the soul in perfect beatitude is contemplation of God: it is disputed in the schools whether the operation of the will, which is dependent on that of the intellect, and follows it, should be termed an essential, primary *constituent* of perfect beatitude, or rather an essential *property* of it.† In either hypothesis, however, complete beatitude must necessarily include love and fruition in the will.

That perfect bliss or beatitude cannot consist in the bodily pleasures of this life, is well known among mankind from the facts of experience: for, such pleasures are incomplete and unsatisfying; they are not lasting, are not exempt from sadness and misery; and it is not even by them that man is distinguished from the brute or irrational animal, to which they are likewise common. Indeed, beatitude, which is the ulti-

\* “Singulare non repugnat intelligenti, in quantum est singulare, sed in quantum est materiale: quia nihil intelligitur, nisi immaterialiter. Ideo si sit aliquid singulare et immateriale, sicut est intellectus, hoc non repugnat intelligenti.” P. I, qu. 86. a. 1 ad 3. It is not opposed to the nature of the intellect to apprehend the singular as singular; but it is the singular as material that is thus opposed to it. What is singular and immaterial, as the intellect is, can be intelligible.

† P. I, 2, qu. 2, a. 6, et qu. 3.

mate perfection of an intellectual nature, cannot in any rational supposition, consist principally of bodily pleasure; for, even if we consider man as he will be in a future and better state than that of this life; and if, moreover, we suppose with Suarez\* that the resurrection of the body can be proved as a conclusion from principles known to natural reason; yet, the share of the body in beatitude, from what is already shown in the preceding Article, could be only an integral part of perfect happiness,† or could at the most be only secondary, and accidental to it. The body, having only material action, could not attain to the principal object of beatitude; therefore it could be affected by that object only through the medium of the soul's action. But the present question is of perfect beatitude, as to its substantial, principal, and essential constituents; not as to what may perfect it extrinsically and accidentally.

It may be concluded from the above reasoning that, *a fortiori*, perfect beatitude cannot consist in any gifts or endowments of the mortal body: as, long life, beauty, strength, agility, and the like.

\* "Status in corpore est magis naturalis animæ: licet resurrectio eo modo quo nunc fit, et respectu finis ad quem ordinatur, sit absolute supernaturalis, attamen etiam inter leges naturæ sistendo, naturalis conditio hominis videtur postulare ut habeat finem aliquem perpetuum, non solius animæ, sed totius compositi." Suarez, De Anima, lib. 6, c. 8, No. 2. The state of union with the body is more natural to the soul: although the resurrection in the manner it now takes place, and in respect to the end for which it is ordained, is absolutely supernatural; yet even arguing from the plane of nature's laws, the condition of man seems to postulate that he have a perpetual state not only for his soul, but for the whole compound.

† "In corporali bono non consistit beatitudo sicut in objecto beatitudinis; sed corporale bonum potest facere ad aliquem beatitudinis decorem vel perfectionem." P. I. 2, qu. 4, a. 6 ad. 1, 2, 3. Beatitude does not consist in corporeal good as in the object of beatitude; but corporeal good can add something befitting beatitude and perfective of it.

Et ibid. in c. "Cum naturale sit animæ uniri corpori, non potest esse quod perfectio animæ naturalem ejus perfectionem excludat." Since it is natural for the soul to be united to the body, it cannot be that the soul's perfection should exclude its natural perfection: its natural perfection requires that it be in union with the body.

The virtues being only means to an end, cannot constitute man's ultimate beatitude. Virtues are habits or qualities which perfect a rational or intellectual nature for operation; and they are, therefore, ordained to fit man for possessing perfect beatitude, by giving his superior powers greater facility in action. The highest powers of such a nature, are intellect and will; and they alone are capable of becoming the subject of virtue most properly so called. The intellect may be said to have for its object two kinds of matter: First, *Contingent* matter, which is mutable, because it depends for its existence on a free cause. Two virtues of the intellect regard contingent matter; namely, *art*, which is concerned about what can be done physically or mechanically; and *prudence*, which regards what can be done morally, or what ought to be done.

Secondly: the intellect includes also, as its object, *necessary* matter, which may be divided into three kinds: 1. Self-evident axioms, or necessary and immutable first principles which the mind sees to be true, intuitively, or without reasoning; v. g., "it is impossible for the same thing to exist and not to exist, at one and the same time:" it is for the virtue of intelligence, "*intellectus seu habitus primorum principiorum*," to give facility to the understanding in apprehending and assenting to these first principles. 2. There are conclusions which follow necessarily and demonstratively from first principles which are absolutely true: these conclusions constitute the object of scientific knowledge, which knowledge being a permanent effect, or a habit in the mind, is appropriately styled a virtue. Thirdly, the intellect also includes, as a part of its object, the highest and most universal causes of all things, or the most absolute and essential predicates of all being, together with the necessary conclusions derived from them as principles: these form the object of the intellectual virtue, wisdom.

The moral virtues, which are comprised under the four cardinal or principal virtues, prudence, justice, fortitude and temperance, perfect the will, giving it facility in right action. Both of man's highest faculties are enabled, by means of these

virtues, to tend more efficaciously to their proper objects, the intellect to the *true*, and the will to the *good*.

It is manifest from the foregoing definitions and description of the virtues, that their only end or effect is to perfect their subject for operation, in which the chief principle of action is not the virtue; but it is the nature which is informed with the virtue that is such principle. The virtues may be said also to adorn or beautify man's rational nature; but yet, this is only a secondary end of virtue; its primary aim or end is to aid the power in that action by which it tends to its principal object. Hence it may be argued: that cannot be the object of perfect beatitude which, by its very nature, is only a means of tending with increased facility of action to that object; but all the virtues are only means by which the powers of an intellectual nature can tend to and attain the object of its ultimate beatitude with greater promptness and alacrity; therefore, virtue cannot be the ultimate object, in the possession and fruition of which perfect beatitude consists.

There is, indeed, a species of bliss in virtue—not complete or perfect, however, although the stoics taught that “virtue is its own reward.” But this maxim of stoic philosophy is not true of the virtues in general, as Lessius\* observes; nevertheless, it must be conceded that the most perfect bliss attainable in this life consists in the intellectual and moral virtues, and principally, as Aristotle shows,† in that contemplation of the highest truth, which is the exercise of wisdom. A thing does not act merely for the action itself, but on account of an object, for the attaining of which that action is the means; and this holds true in all the operations both of nature and art. Just as seed is not put into the ground for the sake of that action, but for the fruit that is to grow from the seed; so, the virtues are not practiced simply for the beauty and goodness that are in them as assistant principles of noble action, but for the superior good to which they are ordained as means; i. e., for the ultimate object of beatitude, which is apprehended by the

\* Opuscul. De Immort. Animæ: Ratio 17.

† Eth. lib. 10, sect. 10 et 11.

virtuous mind as the supremely beautiful, true, and good that may be gained through them. Besides, the exercise of many virtues, nay, all of them, is accompanied with not a little pain and difficulty; and even when acquired in the highest degree of perfection naturally attainable here on earth, they do not leave man at rest. This is true, because, by their nature, the virtues are but means of tending further and higher than present things: to do this perseveringly requires effort which is never exempt from all pain. Hence, virtue has not condign reward, either in present objects, or in itself; i. e., in its own exercise.

A created thing, great enough and perfect enough to be the adequate object of man's ultimate beatitude, is even simply impossible.

It is manifest that formal beatitude, which is the operation or action by which the soul possesses the object of perfect beatitude, is something created, since the action of a creature is itself a creature; but the present question is of that good or object, the possession of which constitutes man's perfect beatitude, or of his *summum bonum*. The human understanding is not limited, as to the objects of its cognition, to this or that species of being; it knows many genera and species of things; nor are these universals that it knows limited in their own order, or as to the number of their inferiors. While the intellect of man is not limited either to any definite number or species of finite objects, which are all that it is capable of knowing; by transcending created things, it rises even to the knowledge of absolute and infinite being, or God: It follows, by consequence, that the will is likewise unlimited as to the objects of its love; for the will's capacity to love is commensurate with that of the intellect to know; and it can love as good even the objects of the intellect as well as the operation of contemplating the beautiful and the true. Hence, as there is no limit to the objects, whether in number or greatness of perfection, which the intellect can know as true; so, there is no limit in the power of the will to love the good.

It may be inferred, then, from the very nature of the soul's

faculties, that, in order for the object of its perfect beatitude to be such as to leave nothing ulterior, and greater to be known by the intellect, and no greater good to be desired by the will, it must possess the following properties: 1. It must be *per se*, or simply good; i. e., it must be necessary, not contingent; therefore, not mutable and amissible good. 2. It must be *per se* complete; i. e., it must include, as a necessary property of itself, every perfect good that can be known by the intellect and desired by the will; and, therefore, there should be in it no privation and no deficiency of any simple good that is conceivable. Now, since God is the only real being whose attributes are simply absolute; that is, necessary, independent of all cause, and therefore infinite, it follows that God alone is that complete and simple good, which is the object of perfect beatitude.

Every created being has only contingent existence, and, therefore, every created being is only a contingent good; consequently, it cannot, by any possibility, possess the properties which are essential to an object of complete and perfect beatitude, that will leave nothing further or greater to be known or desired.

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#### ARTICLE IV.

WHETHER THE ATTAINMENT OF FINAL BEATITUDE, IN ANY MANNER, DEPENDS ON MAN'S FREE ACTION; AND WHETHER FORMAL BEATITUDE IS THE SAME FOR ALL. THAT THERE IS A RELATIVE THOUGH IMPERFECT BEATITUDE ATTAINABLE IN THIS LIFE; AND IT IS THE PROXIMATE END OF MAN.

It is evident that both the ultimate end or destiny of every creature, and the appointed means to that end must be proportioned to the nature of such being; and we find this principle actually verified in the action and tendency of the created things around us. Inanimate matter, the vegetable



kingdom, brute animals, are all plainly seen to tend towards, and fulfill destined ends, in the movement towards which they are impelled and directed by physical laws imposed on them naturally, and which they necessarily obey. The Power that made them, and fashioned their nature, and appointed for them their destiny, or the end to be accomplished by them; also prepared and ordered the means by which they infallibly execute his purpose. In moving towards the end for which they exist, then, they are ruled and guided by assistant intelligence, the intelligence of their Maker working through second causes.

With regard to man, the case is different; he can know an end, and can intend it by chosen means; and while he must necessarily tend to that good in general which is the connatural and specific object of his will, he can choose for himself a particular, determinate object,\* and freely use the means of tending to it as his chief good. The physical law, by which the will naturally, spontaneously and necessarily loves what is apprehended merely or simply as good, is a help for man in tending towards the true object of his beatitude, and it thus supplements his tardy and short-sighted reason. While it is demonstratively certain that God alone is the ultimate object of perfect human beatitude, yet it is within the limits of man's powers, as a free being, practically to seek his beatitude in other objects, or in created things, as, v. g., in sensible pleasure, in honors, etc. It follows, then, that man's ultimate destiny is, in some degree, really and truly in his own hands,† and that its happy issue must be his own work. This is manifest, since nature fits him for tending to his ultimate end as a rational and free being; he can intend the right object of perfect beatitude, can judge, select and use the means of

\* "Voluntas est quidem secundum naturæ ordinem ad unum commune, quod est bonum; sed indeterminate se habet respectu particularium bonorum." P. I. 2, qu. 13, a. 8. The will indeed, by the law of nature, tends to one general thing, which is good; but it is not thus determined in regard to any particular good.

† "God made man from the beginning, and left him in the hands of his own counsel." Ecclesiasticus, 15, 14.

reaching it: these being his distinctive and specific operations as an intelligent creature, it is by them that he must attain to the fulfillment of his destiny; "modus agendi sequitur modum essendi:" the action of a being follows the nature of that being, and especially must that action by which it fulfills the end for which it exists be connatural and proper to the being. In man, therefore, such action must be rational and free. Even the agent that is supernaturally elevated in itself still acts according to its own nature,\* which is not intrinsically changed by such exaltation of its state, its powers and action.

Is ultimate and perfect beatitude the same in all who attain to it?

We must distinguish between that object, the possession of which constitutes beatitude on the one hand; this object is God, as already proved, and is, therefore, the same for all; and, on the other hand, formal beatitude, which is the action of possessing and enjoying the object; this, it must be admitted, cannot be, under every respect, the same in all. Though beatitude will be relatively perfect in all, in as much as it will be fully sufficient, according to each one's capability of happiness; yet, since all will not be equally disposed and prepared for it by previous exercise of the intellect and will in the virtues, so they will not be equally capable of receiving

\* "Intellectus concurrat ad visionem (beatificam) per suam virtutem naturalem, ut naturalis est et non solum ut obedientialis est. . . . eget auxilio supernaturali ad actus supernaturales, non ad naturales." Beccanus, p. 1, ch. 9, qu. 4, no. 4. The intellect concurs in the beatific vision, with its own natural virtue, and not merely by its *obediential* virtue. It needs supernatural help for supernatural acts, but not for its natural action. Suarez Met. Disp. 30, sec. 11, no. 46, says the intellect then acts by "obediential virtue;" but his reasoning is less satisfactory.

By "obediential" virtue or power, is meant that capability which is in every creature of being used as an instrument by a superior agent, for producing effects which wholly exceed whatever that instrument itself can cause as principal agent. But no instrument can be made to do what would imply a contradiction; and hence, for a creature to be used as an instrument to create from nothing; for a mineral instrumentally to elicit intelligent action, are operations which would wholly exceed the instrumental or "obediential" power of those objects.

their object. For, beatitude will not destroy nature, to which it accedes; but it will perfect nature.

But difference in formal beatitude may be conceived as arising from two causes: 1. substantial difference in souls, by which one is physically superior to another; 2. difference of disposition and acquired perfection in the powers of the soul, arising from merit and virtues. The question as to whether or not one human soul is superior in substantial entity to another, was long and hotly disputed in the mediæval schools of philosophy, and without ever having been definitively settled. The difficulty in their controversy turned mainly on the question, whether the principle be true, as proposed in many contemporary works on metaphysics, and accepted by one party as an axiom; namely, different degrees of perfection, in substantial forms, found different species in those forms; or, in other words, any spiritual beings which differ in the degree of their substantial perfection, differ also in their species. Hence, it was argued that if one man's soul is substantially more perfect than that of another man, these two souls are two different species of substance; but it cannot be admitted that the souls of men differ in species; therefore, it cannot be that one human soul is ever superior to another human soul, in substantial entity. The other party denied that difference in substantial perfection, between the souls of men, causes difference of species. In this dispute, let the ingenuous reader choose his own opinion: "Unusquisque in suo sensu abundet."\*

All must agree, however, that there is a manifest difference of rational power in men, as they are actually constituted here on earth, arising from greater or less perfection in bodily organization, especially in the fancy and sensible memory; and also from discipline, or education. Moreover, final beatitude will have the nature of a reward; therefore it must bear some proportion to man's personal merit acquired by practical

\* "Let every man abound in his own sense;" i. e., let each choose the opinion that he judges more reasonable.

rectitude of life; and, at the same time, merit is of various degrees; or, it is greater or less in different men.

It may be concluded, then, that, as already declared, final beatitude will be different in souls, arising from the fact that they will be variously disposed to receive the object of beatitude; and moreover, as it is not improbable that one soul may be naturally and physically superior to another within the same species; so, it is not improbable that their individual natures may found some difference in their degree of subjective or formal beatitude.

What, then, is the relation, as regards this subject matter of man's final destiny, in which he is placed to all those things of whatever kinds around him here on earth, which he knows, and in respect to which he has power of rational and free action? Since no created things can be the object of his perfect beatitude, as already proved, it follows that they can be no more, at the best, than subordinate ends for him to intend; because, as regards him, they can answer no other important purpose, and can serve no other real and final use, than that of means to his ultimate state; and beyond this, they can have, for him, no meaning or genuine value.

Man has a proximate end which is to be attained by him in this life: it is to perfect himself as a rational and free being.\*

Aristotle, and other philosophers of ancient times, taught that man's beatitude consists in superior or perfect virtue; and their inquiries as to what constitutes the "summum bonum," or chief good of man, were limited to those objects of happiness that are attainable by man during his mortal life. Indeed, it is an undeniable truth, proved by reason, and confirmed by the experience of mankind, that a well ordered and virtuous life produces the most perfect bliss that is attainable

\* "In hominibus secundum statum præsentis vitæ, est ultima perfectio secundum operationem quâ homo conjungitur Deo; sed hæc operatio nec continua potest esse, nec per consequens unica; quia operatio intercessione multiplicatur." P. I. 2, qu. 3, a. 2, ad 4. There is an ultimate perfection of man relatively to his present state, and it is in the action by which he is united to God; but this action can neither be continuous nor simply one; for, action is multiplied by ceasing and then beginning again.

in this world,\* at the same time that it has the nature of a means towards man's ultimate beatitude.

The perfection, then, which is ultimate in respect to this life, or the chief good, "summum bonum," which can be reached by man while in this world, is virtue. Virtue is aptly styled, "dispositio perfecti ad optimum," the disposition in a being that is made perfect, by which it is fitted for what is most excellent; because, virtue is a beautiful quality that finally perfects man for his ultimate end, by preparing him for the highest action in regard to the greatest and noblest object. It is true that all persons are not equally capable of the same virtue, nor of the same degree in virtue, if judged by an absolute standard: but all responsible persons can perfect their intellects with the knowledge of necessary truth, and their wills in the upright love of God, in a degree proportioned to their ability, peculiar character, circumstances, and opportunities. The pursuit of virtue causes approval of conscience and joy in the will; the acquisition of it gives peace to the soul, and firm hope of the perfect bliss to come; there result moderation in deportment, and benignity of demeanor towards other persons, which diffuse a happy influence on neighbors. When genuine virtue is acquired, it is proof against all opposition and misfortune, and it can withstand the severest adversities; whence it was judged by Cicero that virtue which can rise superior to the worst trials, is something divine. Helped on by hope in the future beatitude, and impelled by love for superior things, one can coördinate all his aims and actions to an overruling ultimate end, and thereby acquire the virtues that perfect his intellect with necessary knowledge, and his will with the right love of good. The man who can, through his virtue, either neutralize or reduce to complete subjection, all disturbing passions, thus elevating himself to a certain supremacy over the things around him, and over his own pow-

\* "Si loquamur de beatitudine imperfecta, eadem est ratio de ipsa et virtute, in cuius actu consistit." P. 1. 2, qu. 5, a. 6. As to the question what is imperfect beatitude, it is of the same nature as virtue in whose act it consists.

ers and inclinations ; such man thereby acquires happiness which is the best that is attainable on this earth. But such happiness is not perfect beatitude, for, it is incomplete, unlasting, and is, by its nature, only a means to the good which is perfect, or the "summum bonum" which is to give him unmarred and unfailing bliss. Concerning this matter the words of Job (xiv. 1.) express the well-attested experience of mankind : "Man born of a woman, living for a short time, is filled with many miseries." There is no virtue which frees life on earth from all pain and suffering ; yet, virtue does give the exactest likeness of perfect happiness, which can ever possibly be found on earth, under God's present providence.

## CHAPTER II.

### ARTICLE I.

#### HUMAN ACTIONS; OR OF THOSE ACTIONS WHICH FALL UNDER THE EMPIRE OF MAN'S REASON.

Man has some actions which are specifically the same that minerals have; v. g., to gravitate towards the earth's centre, to reflect light, etc.; it is evidently not by such actions that he differs from the mineral. He has, also, actions which are essentially the same in him and the vegetable, v. g., growth by intus-susception and assimilation of nutriment; and similarly, he has sensible actions which are identical with those of brute animals; as to see, hear, suffer bodily pain, etc.\* Hence, none of these actions common to him and the three inferior forms of material beings are *per se human*; for that is not *human* by which he agrees with those different natures; but that is human by which man is specifically or essentially superior to them, and differs from them. What are the perfections by which man is elevated in his actions above them? The peculiar perfections of man, are his intellect or reason, and his will. It follows from these distinctions, then, that only those actions are specifically and properly human, which proceed from man's rational nature; that is, from his intellect and will.

The empire of reason does not extend over all things, but over a few only; of those things or beings which man knows, many both without and within himself are not subject to his control; nay, even not all action of his reason and will can

\* "Sub imaginatione non cadit nisi corpus." 1 p., qu. 5, a. 1. Nothing except what is corporeal falls under the imagination. The brute has fancy, but the fancy has only matter for its object; it is a bodily faculty.

be controlled by him; v. g., his reason necessarily assents to the evident truth,\* and his will necessarily loves what is presented to it as good in general, or as simply good.† Since this kind of action in the reason and will is merely natural, just as the action of material substance is also merely physical and natural in its species; it is of man physically, but it is action comprehended under the general physical law of created nature, of which he is not master. It is clear, then, that only that action is properly and adequately human, which is *deliberately* willed, and which, therefore, proceeds both from the intellect and the will, as having empire over it. Of indeliberate acts in his faculties, man, as a substantial and living nature, is the principle, to be sure; but as he has not dominion over them, they are not properly termed human, since they are not completely his actions, as lord over them. It may be said, then, that a human action is one which is deliberately put or elicited by the will. It is entirely man's act, for, over it, he is master.

The action of the will by which it tends to good in general, and therefore to any particular good, when first offered to it precisely as good, is variously termed its necessary action, natural action, spontaneous action, according to the respect under which it is considered; but it is indeed the same operation of the will which is thus differently named. Such action of the will is also termed *voluntary*, inasmuch as it is physically from the will, or the will is the principle that elicits it, although it is not subject to the will, or under its control.

The will, as capable of freely choosing, is termed in the

\* The intellect assents to the evident truth, with *physical* necessity; as all *natural* or merely physical agents act with physical necessity, when all the conditions required for them to act are fulfilled.

† "Illæ solæ actiones vocantur proprie humanæ, quarum homo est dominus. Si autem aliæ actiones homini convenient, possunt dici quidem hominis actiones, sed non proprie humanæ, cum non sint hominis in quantum est homo." I. 2, p., qu. 1, a. 1. Only those actions are properly called human, of which man is master. If other actions agree with man, they can, to be sure, be called actions of man, but not properly human, since they are not of man, precisely as man.



Latin language, "liberum arbitrium;" for, the power to choose was defined to be a "faculty of reason and will;" because this elective power in the will, or its power to choose, connotes reason also; or, it implies both intellect and will; and hence, *free choice*, in the very nature of things, is a deliberate act, since it necessarily supposes comparison to have been made.

When an act is considered as put by a power, or as coming intrinsically from the power as the living principle that caused it, such power is said to *elicit* that act, and the act itself is termed an *elicited act*: hence, an "elicited act" is one which is immediately put by a living power: non-living things are not said to *elicit* acts. Again: man's members, both his external and internal senses, and even the intellect itself, are all in some manner subject to his will; and, as every one knows by experience, they can be made to act, or can be directed in their action, by the reason and the will; v. g., when the hand reaches for the pen, and then writes down your thoughts; when you call before the imagination the scene which you wish to contemplate or describe; both the hand and the imagination, in such actions, obey the will, and their acts are termed *commanded* acts, or, with Hale,\* they may be appropriately styled "imperate acts." An imperate act, therefore, is the act of any member or faculty of man which it puts in obedience to his will; the act is in itself elicited by the power which puts it; but it is elicited by command of the will.

The multiplied distinctions in the acts of the will that are made by theologians are useful for a thorough analysis of its nature; but ethics or moral philosophy is primarily and directly concerned only with those actions of man which are *deliberate*, and therefore free.

Deliberation, and election or choice, regard the means to the ultimate end or beatitude, not that beatitude itself, as already observed. Man's most perfect action in this life is that by which he freely chooses the means to his future beatitude;

\* "Those imperate acts wherein we see the power of the soul."

his most perfect act in his bliss, is that by which he contemplates and loves God.

To the preceding definitions and explanations it may be objected thus: "When man actually possesses beatitude, the will must love the object necessarily, not deliberately or freely; but only a deliberate act of the will is a human act; therefore the act of the will in loving the chief good in beatitude will not be a human act; but this seems not to be admissible."

Observe that *deliberation* implies, under different respects, both perfection and imperfection, as before explained; that man, while on earth, is concerned only about the means to his perfect beatitude, and, by consequence, all *deliberate* action regards an imperfect object, or a perfect object, only as imperfectly understood. Hence, distinguish the minor, "only a deliberate act of the will is specifically a human act," when it regards the means to beatitude, is true; but not when it is the act of possessing the perfect object of beatitude. It will then be really a necessary action; yet it will still be specifically and most perfectly human; because it will be elicited by the intellect and will, acting according to the complete perfection of their nature. Beatitude does not change man's nature, but perfects it, enabling it to operate in the most perfect manner; i. e., to contemplate and love good that is an absolutely perfect object.

It may be objected further: "In order for an action to be properly styled human, it should, according to the explanation given, be put by man as man, and not by man taken according to a part only of his definition; but the acts of the soul in beatitude are of the soul as separated from the body; therefore, either those acts will not be acts of *man*, or else the body must rise again, both of which propositions are philosophically false." Man is such principally and preëminently by means of his soul; and his actions are said to be his, whenever they are deliberate, because all action is attributed chiefly to the formal principle in a being. Besides, if some proof for the resurrection of the body can be founded on the very nature of

man\* as a complete being, this contradicts no genuine conclusions of philosophy; for, philosophy does not teach that there will be no resurrection of the body.

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## ARTICLE II.

### OF VOLUNTARY AND INVOLUNTARY ACTIONS.

Ethics or moral philosophy, as already observed, has for its proper object man's deliberate or free actions, and it is not concerned about any other operations of his nature or powers, except in a secondary manner, and as in some manner related to his free will. *Mores* means manners; and *moral* action here includes within its extension all man's actions, both habitual and particular, which are subject to his reason, and which may be regulated by it. For the sake of clearness, then, it is necessary to draw with precision the line that separates voluntary and involuntary action.

That act, and only that act, is voluntary, which is elicited by the will; i. e., every act is voluntary which is elicited by the will, and no act is voluntary unless it is elicited by the will. But since the will cannot elicit any act unless the end or good to which that act tends for its term, be previously

\* "Etsi corpus nihil conferat ad illam operationem intellectus, qua Dei essentia videtur; tamen posset ab hac impedire; et ideo requiritur perfectio corporis, ut non impediatur elevationem mentis." "Ad perfectam operationem intellectus requiritur quidem abstractio ab hoc corruptibili corpore quod aggravat animam; non autem a spirituali corpore quod erit totaliter spiritui subjectum." I. 2, p., qu. 4, a. 6, ad 2, 3. Though the body contributes nothing towards that operation by which the essence of God is seen, yet it can impede that operation; and therefore the perfection of the body is required, in order that it may not impede the elevation of the mind. The intellect requires, for its perfect action, freedom from the corruptible body, which weighs down the soul; but not from the spiritual body, which is wholly subject to the spirit. The body, as made perfect and immortal, is here styled a spiritual body.

known,\* this essential requisite may be included in the definition; whence we may say, "that act is voluntary which is elicited by the will with previous knowledge of the end."†

The voluntary act, as thus defined, is either necessary, i. e., physically determined by the object of the act, as already explained in regard to man's ultimate end; or it is deliberate and free, as happens in regard to the means of happiness which are subject to the dominion of man's rational nature.

A voluntary act is either elicited, i. e., is immediately and intrinsically from the will; or it is imperate, i. e., a commanded act; in which case it is elicited immediately by the organ or power that puts it, but it is put in obedience to the command of the will, and it is styled voluntary, from its dependence on the will.

An act is *directly* voluntary when the will positively puts that act, v. g., when you wish to study astronomy to-day, wish to take a ride, etc. The will is said *indirectly* to wish or to choose, when it could act but does not act, permitting the object to pass by without making a positive choice. But distinguish between wishing not to act, and not wishing to act; the first is a direct act; the second is said to be an indirect act.

An act of the will, considered in itself, may be perfect or imperfect. For, since both the intellect and the will must concur in the putting of a voluntary act, imperfection may result from two defects: 1st, from ignorance in the understanding; 2d, from reluctance and incompleteness in the action of the will; for it may wish either simply and absolutely, or it may wish only under a certain respect. The *moral perfection* and goodness of acts, can be explained more advantageously in another place.

\* "Ignoti nulla cupido. Nihil volitum nisi præcognitum." There is no desire of the unknown. Nothing is wished, unless it be previously known.

† "Voluntarium est actio ab interno principio procedens cum cognitione finis." A voluntary action is one proceeding from an internal principle with knowledge of the end; i. e., with knowledge of the end intended by that action. According to the most general usage in English, the term *voluntary* means *free*.

Although the will may be necessitated\* to elicit an act, as already observed, yet, it cannot be forced, by any agent †, to elicit an act. It may *suffer* force which proceeds from an extrinsic cause; but its elicited act must be intrinsically from itself. Similarly, the members of the body, which are capable of putting imperate acts, may suffer force and be compelled by it to put acts instrumentally and mechanically; but their acts, considered precisely as elicited by them, are not strictly and formally produced by the extrinsic force, though they are necessitated to act, or act involuntarily.

#### IMPUTABILITY OF ACTIONS.

When the term *agent*, or efficient cause, is understood in the most general sense, the effect produced by its action is said to be *attributed* to it or *ascribed* to it; but when that agent or efficient cause is intelligent and free, and acts as such, we use more definite terms, and say that the effects caused by such an agent are "to be imputed, to be credited to, put to the account of it." Because an intelligent being has dominion over its action, it thereby becomes capable of moral proprietorship in the praise or blame justly due to its deliberate acts, according as they are seen to be good or bad. Hence, it may

\* "Voluntarium dicitur non solum actus qui est immediatè ipsius voluntatis, sed etiam actus a voluntate imperatus. Quantum ad actum qui est immediatè ipsius voluntatis; violentia voluntati inferri non potest; sed quantum ad actum imperatum voluntas potest pati violentiam; et quantum ad hunc actum, violentia involuntarium facit." P. I. 2, qu. 6, a. 5, ad 1. "Quidquid Deus potest facere per causas secundas etiam potest facere per se ipsum, nisi effectus debeat esse a principio vitali quod suppleri non potest; atqui lumen gloriæ non est a principio vitali; ergo suppleri potest." Not only is the act, which is immediately from the will itself, styled voluntary; but the imperate or commanded act is styled voluntary. As to the act which is immediately from the will itself, the will cannot receive violence or be forced; but the will can suffer violence as regards the imperate or commanded act, and such violence makes the act involuntary.

God can do immediately whatever He can do through second causes, unless the effect must come from a living principle which cannot be replaced; the lumen gloriæ not being a living effect, can be supplied.

† "Imperatus," i. e., commanded by one having authority.

be said that man's deliberate actions are truly and justly imputable to him as worthy of approval, if good, or of disapproval if bad. The truth of this proposition is so evident that all mankind impute to each individual man his deliberate actions, and hold him accountable for them, when they are such as affect his fellow-men.

If the foregoing definitions and explanations be understood, it will be easy to see the truth of the following propositions :

PROPOSITION I.—Simple ignorance of a law or a fact is not something which is imputable to a person as worthy of praise or blame. Simple ignorance of a thing is the absence of all knowledge of it; hence, it is a mere negation.

PROPOSITION II.—Ignorance of a thing which is related to the free will, as its direct or indirect cause, is imputable to the person.

PROPOSITION III.—It is not the ignorance, precisely considered, which founds imputability; but it is the deliberate knowledge to which that ignorance is related that really founds its imputability.

Though ignorance is something negative, yet we give to it positive predicates, since we conceive it to influence the action of the will; it may be considered a cause, then, which influences *morally* in positive action of the intellect and will, though its influence be indirect and negative.

PROPOSITION IV.—Simple ignorance, whether of the law or a fact, prevents an act, put in respect to either, from being voluntary; or, simple ignorance renders an act involuntary. To understand clearly how ignorance may make an act, under different respects, either voluntary or involuntary, distinguish between antecedent ignorance, consequent ignorance, and concomitant ignorance. In respect to a given act which we may suppose man to put, it could happen that he had no knowledge that it was an unlawful act, before it was put; this would be antecedent ignorance that the act was unlawful. Hence, we may define antecedent ignorance to be, the absence of all knowledge of some law or fact relating to an

object of the will's action; v. g., should a well-meaning person shoot a deer, having beforehand no knowledge whatever that the act was prohibited by the game laws, this breaking of the law would be involuntary; and this ignorance is also termed invincible ignorance. In this case it may be said, with some propriety of language, that the ignorance is a *concomitant* of the will's act when the deer is shot, but yet it is not what is technically termed concomitant ignorance; should a man, having the will and resolution to kill another man, if the opportunity came to him, shoot at an object which he had no doubt whatever was a deer, the fact being, however, that it proves to be the enemy whom he hated that is killed instead of a deer, this would be concomitant ignorance: such act of manslaughter should rather be said to be *non-voluntary*, than *involuntary*; for, what is "involuntary," most properly, is something opposed to the inclination or wish of the will; "not voluntary" here means merely that the will did not then actually wish that homicide.

"Consequent ignorance" is in some measure wilful,\* or, it results from the will either directly or indirectly; it may be either what is termed "affected ignorance," as where one purposely avoids knowing the laws, so as to escape the burden or the trouble of keeping them or obeying them; or, it may be "supine ignorance," as when one is ignorant of the law through negligence, indolence, contempt, etc. But neither "affected ignorance" nor "supine ignorance" makes disobedience to the law involuntary. Hence, we may affirm—

PROPOSITION V.—Non-obedience to any law, caused by either *antecedent* or *concomitant* ignorance, is not imputable to the person; but non-obedience to any just law through *consequent* ignorance, whether it be affected or supine ignorance, is imputable to the person as blameworthy.

\* "Verba oris ejus iniquitas et dolus; *noluit intelligere ut bene ageret.*" Ps. 35, 4. The words of his mouth are iniquity and guile; he would not understand, that he might do well; i. e., he was unwilling to understand, because he wished to avoid the obligation of doing well.

## ARTICLE III.

WHETHER SENSIBLE APPETITE OR CONCUPISCENCE PREVENTS VOLUNTARY ACTION BY OVERPOWERING THE WILL; WHETHER FEAR OR ANGER RENDERS MAN'S ACTION INVOLUNTARY.

Man is susceptible of two species of pleasure; one species which is properly termed joy, and is produced by intelligible good, which is an object that transcends the material order, since it is in the understanding; the other species of pleasure proceeds from sensible good, and it is common to man and brute. Concupiscence is capability of pleasure in the sensible appetite,\* and is a craving for its pleasurable objects, along with an impulse towards them. Observe that, as already seen, an extrinsic agent cannot, strictly speaking, force a living power to *elicit* an act; but yet, the connatural object of a power may *necessitate* that power to act, and it always does so, except in case of the will when acting deliberately. In order to answer with precision the question proposed, "whether concupiscence renders man's action involuntary," we must distinguish between the action of the will as naturally and spontaneously inclined to good, and actually moved towards good when presented to it, on the one hand; and on the other hand, the deliberate action of the will. When the will is considered under the first respect, it is clear that concupiscence, or the sensible appetite, both helps and intensifies its action; when the will is considered under the second respect, and as opposing concupiscence, its power to resist is more or less weakened, in proportion to the greater or less degree of opposition which it must overcome. But yet, the action will always remain voluntary, unless the empire of reason be lost,

\* "Concupiscentia est appetitus delectabilis." I. 2, p., qu. 30, a. 1. Concupiscence is pleasurable appetite.



as happens in insanity.\* It is manifest, too, that the concupiscence itself is voluntary, when it is wilfully caused: it is then said to be concupiscence which is *consequent*.

Does fear render an act involuntary? Fear concerns, for its object, evil that is apprehended either as imminent or as approaching. It is clear, then, that the object of fear, being apprehended as evil, is opposed to the natural inclination of the will; while, on the contrary, the object of concupiscence, which is pleasure, agrees with the natural bent of the will, and, by consequence, fear is more opposed to the natural or spontaneous action of the will than is concupiscence.

To act *with* fear is not the same thing as to act *from* fear; a person may act with fear, and yet have such pleasure in the act that it would be put, even if the fear were removed. An act which is put *from* fear, would not be put at all, if the fear were removed. Now, it is evident that man's action, whether it be an elicited action, or an imperate, i. e., commanded action, is voluntary though put *with* fear. Hence, the difficulty in the question regards only the action which comes *from* fear, and of which the fear is a cause. When the robber with a deadly weapon ready for immediate use says to the unarmed traveler, "Your money or your life!" and the person delivers up his money, in order to escape death; or, when the seaman, in order not to perish in the storm, throws his valuable goods overboard: are these actions, which come from fear, and but for the fear would not be put at all, truly and properly voluntary?

They are truly and properly voluntary; and yet, under a certain respect, "secundum quid," they are involuntary.

In each case there is in the intellect the knowledge of an end, and it is wished for along with what is chosen as neces-

\* "Si concupiscentia totaliter cognitionem auferret, sicut contingit in illis qui propter concupiscentiam fiunt amentes, sequeretur quod concupiscentia voluntarium tolleret." I. 2, p. qu. 6, 7, ad 3. If concupiscence should wholly take away knowledge, as happens in those who become demented through concupiscence, then the concupiscence would take away freedom of the will.

† "Sunt voluntaria quatenus procedunt a principio intrinseco singula cognoscente." I. 2, p., qu. 6, a. 6. They are voluntary in as much as they proceed intrinsically from a principle knowing singular things.

sary means to it. Under this respect, such actions are, in themselves, truly and properly called voluntary.

On the other hand, these actions are put against the inclination of the will and with reluctance; and although the person cannot say, "I will not," he could truly say, "I would I could not." Hence, actions which come from fear, are under a certain respect, involuntary.

Similar reasoning may be applied to all the feelings and passions of man and their connatural objects, as will readily appear when the virtues and passions will have been explained. It is a well-known truth that man's feelings and passions do not always, nor even generally, await the decision of reason in their action; but they anticipate all deliberate choice. Man's chief responsibility to himself, to his fellowmen, and to his Maker, regards the manner in which he directs and governs those principles of action in his nature, especially his confining them to their legitimate objects. To move them to action, to restrain them, or to indulge them, falls under the empire of reason, and is therefore imputable, though their action which anticipates choice is plainly not imputable.

When a person, instead of ruling his natural feelings and passions by right reason, puts little or no restraint on them, he may ultimately become more or less enslaved to them, and thus there will be produced in him the permanent effects termed vices, or vicious habits. An act of sudden and violent passion, which is put by one who is habitually ruled by his feelings and passions, may be imputable; since the vice or habit which is a principle that efficiently causes his action, is imputable.

Hence, the disorderly acts of violent passion, the excitement and perturbation accompanying them, are essentially different from the similar effects observable in the insane person.

The specific and distinctive symptom of intellectual insanity is a more or less permanent inability, when wide awake, to discern the unreality of mere images in the fancy. A person in that state is incapable of distinguishing the pictures which are produced only by the diseased organ, the fancy, which is

an organ in the brain, from those images which truly represent really existing objects.

Insanity is, therefore, a diseased state of the brain which interrupts all healthy operation of the imagination or fancy; and since the intellect cannot naturally have any normal action, except dependently for its objects on the images of the fancy, when these images are disordered and false, i. e., not founded on reality, the intellect is cut off from all communication with the real order of things. Its conclusions in such a case, are consequent; but its premises are either wholly or partially false, according to the extent of the ailment in the organ.

The affections of the will, which depend for their objects and their direction on the intellect, may become equally abnormal in their action.\*

It is clear that the reason of one who is in such condition of bodily health has lost its empire. But passion, though it lead to violent and unreasonable action, is not real insanity merely on that account; for, such conduct is always imputable in its cause, at least in some degree, unless one be in that state in which reason has entirely lost its sway.

\* This abnormal state of the will is by some styled "affective insanity."

"*Insania animæ accipitur per hoc quod anima humana recedit a debita dispositione humanæ speciei. Quod quidem contingit et secundum rationem, puta cum aliquis amittit usum rationis; et quantum ad vim appetitivam, puta cum aliquis amittit affectum humanum.*" 2. 2, p., qu. 157, a. 3, ad 3. Insanity is taken for this, that the human mind falls away from that due condition which man's nature requires; it is either by losing the use of reason; or it is in the power of appetite, as when one loses human affection. Thus Nabuchodonosor seems to have suffered. Dan. 4.

In some cases of affective insanity, the reason seems to retain its ability to judge correctly; this sometimes happens, for example, in kleptomania, nymphomania, etc.

## CHAPTER III.

### ARTICLE I.

#### MORALITY OF HUMAN ACTIONS.

Morality pertains, primarily and most properly, to deliberate acts of the will; dependently and secondarily it refers likewise to all other things necessarily relating to these acts, whether they concur positively as causes, or only as indispensable conditions, to the putting of these acts. As intellectual or logical truth is conformity of the intellect knowing to the object known; so we may define moral goodness to be conformity of the will to the good which is its true object. Hence, it is evident that for moral goodness\* the act of the will must include all the subjective requisites for its perfection; and in like manner, the object also must possess all that is essential to constitute it the truly good. Therefore morality is: 1, from the intrinsic order and goodness in things related to man; 2, from his own rational nature as knowing and using that order. Hence, we may say of morality, that it is objectively true. The principles which concur to make the morality of an act are the end intended, the object, the circumstances; the natural or eternal law is for the will the norma of the good; but this will be explained to better advantage in a succeeding chapter.

We saw in the first chapter that man's freedom of will is limited to the means of tending to his ultimate end or beatitude; and in the second chapter, it was shown that all his deliberate action, in respect to these means, is imputable to him

\* "Bonitas moralis est ordo conformitatis ad morum principia." Moral goodness is well ordered conformity to the principles of morality.

It may now be affirmed that all man's deliberate acts are either morally good or morally bad, according as they make him tend to his ultimate end, or avert him from it. Again, it is shown in general metaphysics that all evil consists in the privation of good that ought to be, or that is due.\* It may be said, therefore, that a human action is good when it includes all due perfections; and it is bad when deprived of any perfection due to it.†

Before examining how it is that a human action is good when the end intended, the object, and the circumstances are all good, and that the action is morally bad, when any of these principles is wanting, observe that what is a means to the ultimate end, may also be properly termed an end, when considered under some particular respect; for all means are subordinate ends, when regarded as immediate objects of choice. Observe also that *rectitude of reason* as speculative, or as concerned about objects which are evident and necessary, consists in truth, taken absolutely, as when it enunciates the thing as that thing really is: the evil of reason as speculative, would be any falsity. The rectitude of the reason as *practical*, is also truth; not truth taken absolutely, however; but truth taken conformably to good will, or with rectitude in the reason, and rectitude in the will: hence, in selecting means uprightly, the reason and the will co-operate. Rectitude in the reason as judging of the practical is often styled "loyalty to truth," in popular language.

It will be readily admitted that error in the decision of practical reason is imputable, whenever it is voluntary, or is attributable to the will as a cause.

PROPOSITION I.—Morality is not founded, in its essence, on what is useful for temporal prosperity and happiness as an end.

\* "Malum est privatio boni debiti." Evil is the privation of good that is due.

† "Bonum ex integra causa, malum ex quocumque defectu." A thing is good when its entire principle is good; it is evil from every defect. The entire principle of a human action is made up of the object, the end intended, and the circumstances.

Temporal prosperity and happiness are of this life alone and therefore are not man's ultimate end; they themselves, then, are at the best among the means to his final beatitude. If man were to co-ordinate all his actions towards securing these goods as an ultimate end, this would be a perversion of them and of his own reason, which would be moral evil.

*Utility*\* is that goodness which is in means to an end; for, utility essentially connotes an end, and the usefulness is itself perfection in the means to that end. The means depends for its dignity and perfection on the end to which it is ordained; and the means is good when it is ordained by its nature to a good end:† hence, both the end must be good, and the means must be good. To suppose that bad means were essential for a good end, or that a good end were absolutely dependent on evil means; is to suppose evil in the nature of things, which would, therefore, be referable to the author of nature; whence the supposition is absurd. God ordains no bad end; nor does he ordain any bad means to a good end; but man is capable of perverting some means and ends.

If *utility* be understood more absolutely, and be made to express that goodness in things by which they are intrinsically fitted and ordained as means to be used by man for reaching his ultimate end, then the proposition, "morality is utility," might be interpreted‡ so as to exclude error; but, it would not be philosophically accurate language, for the end is above the means to it, and therefore morality of action should be related rather to the end than be related to the means; hence,

\* The student will easily refute this saying, "The end justifies the means," which has a ridiculous history. It is a jest from the anti-Jesuit, Pascal; not intended for belief, but often told as if true.

† "Medium est vel per se necessarium ad finem, vel ad melius esse." "In operativis, quando id quod est ad finem, adæquat, ut ita dixerim, finem, non requiritur quod sit nisi unum tantum." P. I, qu. 47, a. 1, ad 3. A means may be either *per se* necessary for the end, or it may be advantageous. In practical things, when the means, so to say, equals the end, then only one means is required.

‡ Distinguish between the proper meaning of a term and the meaning which it may be made to bear by interpretation, i. e., by attributing to it an accommodated signification.

utility cannot be, even then, an adequate and proper definition of morality.

PROPOSITION II.—The distinction of moral good and evil, or the difference between them, is not founded on the opinions of men; but it proceeds from the nature of man and the nature of the objects over which he has rational empire.

The intrinsic difference between good and evil is known because it exists and is knowable; it does not, on the contrary, derive its existence from its being known by man, since it is something objectively real.

That which depends for its existence merely upon the opinions of men, as do various customs, fashions, tastes and the like, is by its nature mutable, and is often changed or entirely discontinued. But that which depends on the very essence of man and on the natural rectitude of his faculties, cannot change in this manner. All mankind know that there is an intrinsic difference between right and wrong, because that difference is real and is evident: this fact affords testimony to the truth, and is an extrinsic proof of it; yet it does not found that distinction, but supposes it.

Hence to the proverb, "*vox populi, vox Dei*," we must answer by a distinction: when the voice of men expresses what is both naturally and necessarily done and manifested by them, it is true; but when it is the deliberate "*voice of men*," we must distinguish; when it is from right reason, it is in accordance with the "*voice of God*"; but when it is against reason, it is then opposed to the voice of God. Human reason knows both speculatively and practically the intrinsic difference between moral good and moral evil; not by way of an uncertain opinion, but by an evident judgment. As man can know an effect by means of its habitude or relationship to its cause; so, there is a habitude, or a fitness in all the objects subject to his choice to serve him as a means to good, or the contrary; this character in those objects is evident to him by the light of reason; it determines for him their moral nature, and it is intrinsic to those objects as causes or principles of moral action, for the object is a principle in all man's moral

action.\* We may therefore conclude that the difference between moral good and moral evil does not arise either from any positive law; but it is, on the contrary, presupposed to that law, and is founded in the immutable essences of things.

PROPOSITION III.—The power by which moral good or evil is perceived is the intellect, and not a “spiritual sense,” or an instinct.

Every judgment is an act of the intellect, and conversely, the intellect alone is capable of a judgment; but to know an action as morally good or bad is a judgment in which a predicate is affirmed or denied of its subject; therefore, the knowing of moral good or evil is a rational act. It is a well known fact, the induction of which is as complete as it is possible for contingent physical truth of the kind to be, that no irrational animal can apprehend the morality of an action. Also, the object of a sensible power which is *per se* organic, is only the singular or concrete and material object; but moral good or evil is in itself wholly immaterial; therefore, it is not a sensible object, and consequently it cannot be apprehended by an organic power.

Instinct is a perfection which is added to a power, and impels that power to action; instinct, like appetite, is in itself blind, but it requires, in order to cause an action, that its subject apprehend, either sensibly or intellectually, the object of this instinctive action. Instinct, therefore, is not a power,†

\* “*Ex objecto et potentia oritur actio.*” An act proceeds both from the power and the object.

† The acute thinkers in the old schools of philosophy maintained that there is in the animal a special faculty or sense for apprehending the good and the noxious characters or properties in objects of their action. They named and described that faculty as an internal sense: “*Potentia æstimatoria est facultas animæ sensitivæ intentionum insensatarum apprehensiva.*” The power of sensibly appreciating is a faculty of the living compound which can apprehend intentions (meanings) not apprehended by the external senses. The sheep runs away from the wolf, because by this faculty it apprehends the wolf as something harmful; the bird gathers straws, because it apprehends those straws as good for its nest. “*Necessarium est animali quod percipit hujusmodi intentiones, quas non percipit sensus exterior.* Ad



but a perfection in the power, moving that power to action. It may be concluded, then, that instinct, not being an apprehensive faculty, but only some accidental virtue of a faculty, cannot, under any possible supposition, be the principle or power which knows moral good and evil. Conscience, which is rational action, is sometimes erroneously confounded with the sensible feeling, that may accompany it; but neither is it by this feeling that the morality of an action comes to be known. There seems to be no objection to saying that there is an instinctive quality or virtue in man's reason, giving it facility in knowing the morality of an action, a readiness or aptitude for apprehending the moral character of objects. But the quality or virtue which would be thus styled, is more generally called by a different name among the philosophers, as will appear by the explanation now to be given of this help naturally bestowed on reason, to discern moral good and evil.

The habit in the intellect called "light of reason," like the intellect itself which it perfects, has two objects, the speculative and the practical. As having speculative matter for its

apprehendendum autem intentiones, quæ per sensum non accipiuntur, ordinatur vis æstimativa. Considerandum est autem quod quantum ad formas sensibiles, non est differentia inter hominem et alia animalia; similiter enim immutantur a sensibilibus exterioribus. Sed quantum ad intentiones prædictas differentia est. Nam alia animalia percipiunt hujusmodi intentiones solum naturali quodam instinctu, homo autem per quandam collationem: in homine dicitur vis cogitativa, quæ per collationem quandam hujusmodi intentiones adinvenit." S. Th., I. p., qu. 78, a. 4. It is necessary for the animal to perceive these intentions (meanings or uses) which the external sense does not perceive. For apprehending these intentions or meanings, not received through the external sense, this *power of estimating* is ordained. In the acts of the external senses, there is no difference between man and other animals; for their external senses are affected by objects in the same manner. But as regards the above mentioned intentions or meanings, there is a difference. For, other animals perceive those intentions or meanings by a certain natural instinct; man uses a sort of comparison. In man, this power is styled the *cogitative faculty*, or the *particular reason*, which, by means of a certain comparison, comes to find out those intentions or meanings in things that are learned through the external senses.

Instinct, from the same root as *instigare*, seems not to be the correct name for this faculty of knowing; instinct being impulse to action.

object, it was termed "intellectus seu habitus primorum principiorum," the faculty of first principles; as having evident practical moral principles, or the first principles of morals for its object, it was termed, "synteresis." The truth is well known that man can know promptly and with facility the evident first principles of morality, whether one admit or deny that the principles concerned in knowing them are thus rightly described and named. The "synteresis"\* may be defined, then, to be a habit or light put by nature into the intellect, by which the intellect is strengthened to give its assent promptly and with facility to practical principles that are first and universal. The act which the intellect, as thus strengthened, puts, in practical matter, is called conscience; and hence conscience is an act of reason; or, conscience is nothing else than an actual dictate of reason in regard to something that is morally good or morally evil; it is not a feeling.

To know moral good or evil is, therefore, an act only of reason or intellect; and morality, consequently, transcends the adequate and entire object of sensible power.

In popular language, it is said of certain persons that "they have a delicate moral sense;" or, of others, that "they have lost moral sense;" in these cases, the sensible emotions that often accompany acts and affections of the will, and which may be considered as caused by action of the will, are attributed to that faculty, instead of being referred to their proximate principle, which is the body. In like manner, operation of the intellect or rational faculty, as well as this faculty itself, is frequently called "sense;" in this use of the term, "sense,"

\* "Synteresis est habitus a natura inditus, seu lumen naturale quo confortatus intellectus possibilis præbet assensum primis ac universalissimis principiis practicis." Irenæus Carmel. De Anima, page 119. Synteresis is a habit given by nature or a natural light by which the intellect is made more capable of assenting to first and most universal practical principles. "Potentiæ rationales se habent ad opposita; synteresis autem non se habet ad opposita, sed ad bonum tantum inclinatur: ergo synteresis non est potentia, est ergo habitus." I. p., qu. 79, a. 12. Powers are capable of contrary things; synteresis is not capable of contrary things, but it inclines only to good: therefore, synteresis is not a power, but it is a habit.

or "good sense" is equivalent in meaning to "faculty of first principles," *intellectus seu habitus primorum principiorum*. "Good sense" may also mean quickness of perception and accuracy of judgment, especially in practical matter. "Common sense" may mean either the faculty of first principles, as common to all sane men; and also it may be used to signify that degree of correctness in judgment, and prudence in action, common to the mass of mankind. In all these uses of the word "sense," an effect is named in place of its cause; an indispensable condition or an instrument is named, in place of what is principal. These forms of expression, which attribute to the sense action belonging principally to the superior powers, will and intellect, are not positively faulty; though they are inaccurate negatively; or, if it be our aim to use terms with philosophical strictness. Mankind, in general, stop with the knowledge of proximate causes, or with principles which are immediately evident to them; the tracing of effects and phenomena to their remote or first causes, is the office of science and philosophy. It may be concluded, then, that the phrase, "moral sense," as generally understood in English, is correct in its meaning; nor is that meaning really opposed to the truth that no merely sensible power can apprehend the morality of an action.

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## ARTICLE II.

### THE PRINCIPLES WHICH PROXIMATELY CAUSE MORALITY.

There is order which is intrinsic to all things, because all things are made by an intelligent cause, that shaped them with design. Order is equally essential to their relations among themselves, to the whole, and to their Author. Man can know the order in things, and the relations of those things, so far as it is necessary for him to use them as means of tending to-

wards his ultimate end. On these things, with their relations to him and to his ultimate end, is founded morality, as to its objects.

The morality of an act arises from the object of the act, the circumstances, and the end intended by the agent.

The object here meant is the *formal* object; that is, the object precisely as it is apprehended by the intellect, or precisely as the intelligible idea expresses it to the intellect; for it is the object only, as thus understood, that proximately influences rational and moral action.

No power can act without an object as the term of its action, and as a cause that must specify that action: this is what the axiom expresses, "actus specificantur ab objectis," acts are specified, determined, by their objects; even the will cannot elicit an act of free choice which concerns no object at all. Hence, the act of an intelligent agent, that concerns no formal object at all, is inconceivable, i. e., it is nothing. Also, an object, though it is good in itself and in respect to the end for which it exists, is not good as perverted from this end, and when it is coördinated and used for an end that is alien or opposite to the true end of its being. Again, it requires no proof for us to admit that many objects may be used by man, either rationally or perversely, according to his deliberate choice. Every real thing is intrinsically good; "omne ens est bonum"; but when it is the term of a rational or deliberate act, it becomes relatively good, or bad, according as it is thereby made to tend to its own proper and legitimate end, or is made to divert from it to another end for which it is not intended.

The term "object" may be understood less strictly, and more comprehensively, so as to include under it the relations, adjuncts, and all the accidents of the object. Since an object does not exist without its connected accidents, over and above what constitutes its substance or essence, it is manifest that all its accidents, which are usually called "the circumstances," in this connection, must also concur in moral action, and therefore the circumstances enter as an essential principle

into the morality of a human action. From this it follows that the circumstances may affect, and even change, the entire moral character of a human action: v. g., suppose the object is ten dollars in money; now we may annex to this object a variety of circumstances, as, for instance, it belongs to a poor person, it is stolen by some one not in need, or it is lost, then found, etc. These, and many such circumstances, affect this sum of money, regarded as becoming an objective term of deliberate action, so that such action would be morally good or bad, solely on account of the circumstances connected with it.

As circumstances or adjuncts perfect or deform physical objects, according to their nature, v. g., color, stature, integrity of members, blindness, etc., so, in the moral order, they perfect acts, or sully them, and even make them positively bad, by new malice.

Therefore, no human action can be good, when either the object, or any circumstance joined to it, is bad; since both the object and the circumstance are principles that truly concur in that action. It must be observed, however, that if the circumstance be remote, or not sufficiently adjacent, to form a part of the total object of the action, it may not influence the moral character of the action at all. Circumstances affect the moral character of the object in various degrees, according to their nature. A circumstance may add another species of morality to a good or bad object; v. g., a given injury offered to a parent is specifically worse than it is when offered to a stranger. Circumstances, then, are of two kinds: 1st, those that put the object in relation to a new rule of order, which the object in itself, or *per se*, does not possess; 2d, circumstances which do not thus affect the object: those of the first kind may be either good or bad in their effect on the object.

Among the principles that produce the morality of a human act, the one that is chief or superior to the others is the end intended, "opus sequitur naturam intentionis;" a work follows the nature of the agent's intention; for, the morality of an act, especially as something which is imputable

is most directly and immediately from the act of man as rational, or from the deliberate will. A human act depends principally upon the end, since it is the end that directly influences man to act; and hence the end is said to be the first and the highest of the causes.\* Observe, however, that the end intended is properly identical with the formal object, or the object towards which the will moves; and, therefore, it should not be confounded with the material object which the act regards. When it is said by some authors that "the morality of a human act proceeds principally from the object," the meaning is that it proceeds principally from that formal object which is identical with the end intended.† Distinguish, therefore, between the end which the agent intends, and the end which is intrinsic to the object: "*finis operantis; finis operis:*" for example, the end which is proper to the virtue or habit of temperance, is temperate action, for habit is ordained for action; but the agent may intend, by his temperance, health, avarice, etc. An act of kindness, with its circumstances, may be good, while the act intended is theft. Hence, the end intended by the agent, and the end proper to the object, may differ in their moral species.

It is plain from what has been said that a human action is not morally good, unless the intention, or the end intended, be good. Since the human act, in order to be good, requires that the object, the circumstances, and the end intended all be good, it follows that the action is bad when any one of those principles is bad; or as briefly said in the axiom, "*bonum ex integra causa; malum ex quocumque defectu:*" a thing is good when its entire cause is good; it is bad when there is any defect.

\* "*Finis est prima et altissima causarum.*"

† "*Objectum etsi sit materia circa quam terminatur actus, habet tamen rationem finis secundum quod intentio agentis fertur in ipsum.*" I. 2, p., qu. 73, a. 3, ad I. Though the object be the matter about which the act terminates, nevertheless it has the nature of an end, in as much as the intention of the agent bears on it.

## ARTICLE III.

## MERIT AND DEMERIT OF HUMAN ACTIONS.

A good or a bad act, considered as benefiting or harming another person, deserves some return or retribution from that other person, in order that the equality of justice be kept. An act, as deserving reward, is termed meritorious; if it deserve some sort of punishment, it is a demeritorious act. The conditions required for merit may be reduced to these: 1, it must be a good act that benefits some other person or persons; 2, it must be in some manner a free act, i. e., not done by special agreement or contract, as for example, to repay money that was lent, without retaining any part of it; 3, on the other hand, the reward and the merit must agree or be equal according to some proportion of justice: gratitude and reward of merit are founded on the same principle.

Observe that a general obligation to do the act, is not opposed to the second condition laid down; on the contrary, to comply with general duties, or obey just general laws, is meritorious; also, the deed which is performed by agreement, may be made meritorious by adjuncts to it, v. g., to return borrowed money, promptly, with cheerfulness, gratitude, etc. The peculiar act of justice, is to give to each person his own: we may distinguish justice as commutative and distributive; commutative justice is that between private persons, according to which debts are paid exactly, promises kept, etc. Distributive justice, is that which rules the public or the community in its relations to individuals or private members, rewarding them according to service rendered, or degree of merit acquired in promoting the public welfare. It follows from these principles, that a good citizen merits; a virtuous person merits; a patriot merits; a benefactor of the poor merits, etc.

Merit or demerit is a consequence of the imputability of acts, or of that moral proprietorship or ownership which a

person has in his own deliberate acts, on account of which they may be attributed to him in praise or blame, because he is their responsible author; that which is good, is laudable; that which is bad, is not to be approved.

An act has rectitude, if it is ordered rightly in respect to the ultimate end, or to moral good. An act is meritorious, which justly deserves reward from another party in respect to whom it is a favor or brings an emolument.

**PROPOSITION I.**—Man's deliberate actions can be meritorious or demeritorious in respect both to individual persons, and to society.

Man can perform good acts to which he is not bound by special agreement or peculiar obligation, and which redound to the advantage of individuals, or to that of the public at large; but such actions deserve reward, and they are therefore meritorious. A man who is both a private and public benefactor, merits a becoming return for his good deeds from those parties that gain by them, and this return is due to him. A physician who would, even in performing the duties of his calling or profession, expose his own life during an epidemic in relieving the suffering, would thereby do a work justly entitling him to some proportionate reward. Justice requires some species of equality between good which is given, and good which is received; for, it requires equilibrium of good among those who naturally have equal rights and duties in respect to each other. Order and justice require that communication of good should have some corresponding return, when that good is a real benefit that is bestowed. Similar reasoning, and like proportion, hold in those cases in which the actions are of an opposite nature, i. e., are bad; a wrong deed which is detrimental to others, thereby destroys the equality of justice, and subjects the author to an equitable penalty in reparation.

**PROPOSITION II.**—Human actions which are good or virtuous merit well of society, merely because they are good; and bad actions are in a corresponding manner demeritorious.



Besides the general proof arising from the truth that moral goodness in man is *per se* laudable, and deserving of good as a fitting reward, human actions merit well of society: 1, because good actions perfect the agent, and the perfection and civil well-being of the members constitute the principal end of society; 2, upright or virtuous actions, by perfecting the agent, have a beneficial influence on others, and thus contribute to the well-being of the whole society, and the increase of that happiness which it is designed to promote. It follows, that bad or vicious actions are, of their nature, detrimental to individuals, and to the whole society, and are, therefore, demeritorious, and deserve correction.

PROPOSITION III. Man considered even naturally, can acquire merit or demerit, before God, by his deliberate actions.

It has been said that merit gives a just right to reward that is proportioned to it; nevertheless justice cannot be absolutely founded in man, for man is not an absolute being, but is a relative, and therefore a dependent being; hence, absolute justice regards only God. It is manifest, then, that God could not become an absolute debtor to any of his creatures, since they cannot give to him anything which they have not received from him, or which is absolutely their own.

Yet there is justice, truly such, that is not absolute but depends on a condition or hypothesis; the condition being fulfilled, the conditionate justly follows. Man knows right and wrong, and has empire over his own action in respect to them; the voice of nature itself teaches him that he should perfect himself by good action and virtue in order thereby to reach the true object of his final beatitude. The condition, and the promise, are easily discernible; and it is no wonder, therefore, that this truth is universally known, with greater or less distinctness, by all nations of mankind.

Though man is entirely dependent on God both in existing and acting, yet his action is truly his own, and as such is truly imputable to him.

Merit before God, though it depends on divine ordination,

i. e., an order of providence which God freely instituted, may nevertheless be founded in justice, since the conclusion follows necessarily when its condition is put. God being in himself infinitely perfect, cannot receive an addition to his perfection; or, as it is more precisely expressed in the technical language of the schools, he cannot receive any additional perfection *ad intra*. It must be granted, however, that he may receive, and he does receive, an additional perfection, *ad extra*, proceeding especially from the intelligent beings created by him, who know him and love him, and thus extrinsically honor him.

Hence, the argument may be stated thus: in order to found the merit of human actions in divine justice, it suffices that they render an extrinsic good to God; but human actions which have rectitude do render such good to God. We may legitimately conclude, then, that man's actions can have the nature of true merit in respect to God. Since he can give an extrinsic honor to God, and cause others to do so, he thus may merit reward.

It may be objected that, "man can have no rights before God; he can have only duties." We must distinguish; man can have no absolute rights in respect to God, is true; that he can have no rights dependently on an hypothesis, or a condition which God puts, is not true. Man's capability of *owing duty* to God, and his capability of *owning rights* before God, rest in the last analysis on the same conditions. As regards himself, he is able to merit just reward because of his rational nature, and his proprietorship in his own acts, and in their proper effects: the due effect of good done to another is a return of good; and the due effect of evil done to another is that retribution which equalizes justice between them.\*

\* "Justitia ordinat hominem in eis quæ sunt ad alterum: importat enim æqualitatem quandam." . . . 2. 2. p., qu. 57, a. 1. Justice orders a man in those things which relate him to another person; for, it implies a certain equality.

## ARTICLE IV.

## INDIFFERENT ACTIONS.

There are human actions which are morally indifferent in their species; and yet an individual human act cannot be morally indifferent; but it must be either morally good or morally bad.

The meaning of this thesis is that there are human actions, which, if considered in the abstract, or in general, and as to their species, are neither good nor bad; and, in order for them to become either good or bad, some circumstance, or the intention of the agent, must accede to them. The moral character of such acts frequently depends only on the intention with which they are done. To walk, to write, to read, etc., are species of action; being conceived as species, they are universals, and therefore are abstractions founded on the things which they express. Thus understood, it is evident that they will, when they become concrete individual acts, be either good or bad according to the circumstances connected with them, or according to the intention with which they are performed; and it is equally manifest, that, apart from circumstances or the intention which determines their moral nature, they are in themselves indifferent, i. e., equally capable of becoming good or bad. Some human actions are specifically bad, v. g., to lie, to blaspheme, to do injustice; others are specifically good, v. g., to love God, to honor one's parents, honestly to pay just debts, etc.

In regard to the actions which are indifferent in their species, as to walk, to write, to read, when they become individual and concrete by being performed: 1, they must necessarily have their concomitant accidents or circumstances; 2, they must be put with some intention by the agent, since the question is concerning human actions, i. e., man's deliberate actions. Now, the circumstances must be either good, or bad, or indifferent; it is plain that it may depend on either good or bad circumstances to determine the moral species of

the act, so that if they are good, the act is not bad on their account; if they are bad, however, the act is bad. If both be indifferent, the act is then not determined in its moral nature or species either by the object or the circumstances, but it will depend entirely on the intention with which it is put.

One may write prudently to suitable persons; or he may write useless, frivolous matters to parties with whom correspondence is not beneficial; similarly, in order to "walk," to "read," some conditions must be added so as to have the concrete act, and they will suffice in part to determine the action in its moral species; they do not, however, constitute the action good in concrete, unless the intention be good also.

It has already been seen that in order to intend with rectitude, all actions should be ordered in respect to the ultimate end of man's being;\* God fits the objects of action for this purpose, but it is for man to select and use those that are made subject to him. Yet he cannot always think explicitly of his ultimate end: what, then, is required on the part of his intention in order to make actions which are indifferent in their species, good when they are really put?

Man may be said truly to intend his ultimate end by his actions, in three manners; explicitly, virtually, implicitly:

1. Explicitly; he intends in this manner, when he actually thinks of that end, performing his acts directly on account of it.

2. Virtually; a cause acts only virtually, when that cause is not present, but the influence which it gave to objects present to it, continues, and is communicated to other objects; hence, the mind may habitually or virtually continue to direct its intention without at all thinking explicitly of the end first intended, v. g., a man often continues his work by the influence of the intention with which he began it, but without thinking of what he then intended, and yet all his acts have relation to the end first intended.

\* Man's present state being a probationary one, all his deliberate action evidently must bear on his future and permanent condition.

3. Implicitly or interpretatively; one intends the end implicitly or by interpretation,\* when it was not previously intended explicitly, and it is not now thought of, but yet he intends explicitly or virtually an end which by its nature is coördinate to the ultimate end, and which, on that account, may be said to include implicitly the ultimate end; v. g., when one fulfills his duty, but without thinking of the obligation to which he is subject. Actions which in their species are indifferent, implicitly or interpretatively tend to a good end, when they are put with some becoming degree of moderation. When one acts merely because he is free to do so, the act is good, because liberty of the will is a good which is *per se* ordained to one's ultimate beatitude; and hence, such exercise of liberty is not indifferent, but is good. An "idle word" is not implicitly ordained to good, if we understand by it a word spoken without being related to any necessary or useful purpose; for it is thus uttered without any rational motive; hence, it is deprived of that goodness which comes from rectitude of reason, though the object and its circumstances be otherwise good.

It may be objected that "man's end on earth is rational enjoyment; or, such as comes from innocent pleasures, from the sciences, the fine arts; therefore he acts well, when he seeks such pleasure."

Man's ultimate end or final beatitude pertains to an order of existence which will begin for him after his present life shall have ended. His proximate end is so to order and direct the conduct of his present life that he will thereby tend to his ultimate beatitude. To the objection given we must answer, then, by distinguishing: if by "rational enjoyment, innocent pleasures, pleasures coming from the sciences, fine arts, etc.," be meant that enjoyment or pleasure which proceeds from using those good things as means which are subordinate to his ulti-

\* Observe that words may sometimes be interpreted by giving to them an *accommodated* meaning, which must not be confounded with the meaning which they implicitly and really have. It may be legitimate to attribute an *accommodated* sense to a term under certain circumstances; but, it is often done fallaciously, and not legitimately.

mate beatitude, and using them, therefore, with rectitude of the reason, the assertion is then true; if it be meant that man can rightly intend them as an end with which he can stop, and without any respect to an ulterior end, it is not true. It is with wise design that many acts and works performed by man naturally have pleasure annexed to them; for he is thus enabled to do with facility and alacrity, what he would otherwise either totally omit as an irksome duty, or would execute imperfectly; but it is clear that the pleasures which are designed to alleviate the pains felt under burdensome duty, cannot, without disorder, be sought after for their own sake, since this would be to change them from a means to an end. For example, it is plainly the duty of some men to study and cultivate the arts and sciences; but such occupation is laborious, requires much effort, and much self-denial; the persevering student, however, is encouraged with pleasure of an elevated kind, that which comes from the contemplation of the true and the beautiful.

# CHAPTER IV.

## ON THE PASSIONS.

### ARTICLE I.

#### GENERAL NATURE OF PASSION.

The passions are natural principles in man, which influence his action; they are, on that account, related to the morality of human actions.

Passion, as applied to the present subject-matter, is used in several distinct senses: 1st. The capability of being moved by love, hatred, fear, or any such affection, is often termed passion; and it takes the name of the affection, as passion of love, passion of fear, etc. The subject of any such affection is the human compound, i. e., an organ or appetite of the living body, but neither the material body, nor the soul taken separately from each other. 2d. Any degree of such feeling, as love, sadness, fear, etc., whether the feeling be slight, remiss, or intense, is termed passion in popular language. 3d. Corresponding acts in the will, or rational appetite, are less properly termed passions; they are more accurately styled affections, inclinations, or acts of the will, according to its particular operation. 4th. Finally, any immoderate, or violent and excessive excitement, in sensible appetite, is styled passion, and it takes its specific name from the species of objects which produce the commotion. This is passion, properly so called; and it is, as thus understood, specially pertinent to ethics, since it is capable of influencing human action in no small degree.

Passion is a movement or disturbance in sensible appetite, which is vehement and more or less excessive, and which follows the imagination of good or evil.\*

\* "Passio est motus appetitivæ virtutis sensibilis in imaginatione boni aut mali; seu, est motus irrationalis animæ per susceptionem boni aut mali."  
"Passiones sunt motus appetitus sensitivi, qui sunt contra naturam vel con-

Hence, passion, which is more or less impulsive excitement or emotion, is something sensible, and is not in the will or rational appetite as its subject, but it has sensible appetite for its subject; it follows the apprehension by the imagination of some good or evil; and it may, therefore, be caused either by a real good or evil, or by one that is purely of the imagination, as when one is excited to anger by some trivial word or act to which he attributes an imaginary and unreal meaning. It is defined to follow "the imagination of good or evil," because sensible appetite is moved directly by what is in the imagination; and whatever is apprehended, either sensibly or intellectually, must necessarily be imaged in the fancy or imagination.

The passions, as thus described, are frequently called "animal passions," because they are common to man and the brute, or are proper to all animals. Man, in common with the perfect irrational animal,\* has two sets of organic principles that serve him; namely, his organic powers of cognition, as the five external senses, the internal senses, v. g., the imagination and the sensible memory. Also, he has various sensible appetites, or sensible powers of appetition, by which he is impelled to action when their objects are apprehended and duly presented, v. g., love, sadness, fear, etc. Universal experience attests the fact that the seat of these feelings or sensible yearnings is either the heart, or it is in the immediate vicinity of the heart; and it is from this circumstance that the heart is frequently styled the instrument of the passions.†

tra rationem." "Passiones sunt motus quidam irrationalis appetitus." I. 2, p., qu. 124, a. 1. Passion is movement of sensible appetite on the imagination of good or evil; or, it is movement of the irrational soul, through the reception of good or evil. Passions are movements of sensitive appetites that are against nature or against reason. Passions are certain movements of irrational appetite.

\*The *perfect animal* is one that has five external senses; it is thus distinguished from the *imperfect animal*, as the oyster, which has fewer senses than five.

† "Cor est instrumentum passionum animæ." I. 2, p., qu. 48, a. 2. The heart is the instrument or organ of the soul's passions.



The ancient stoics did not distinguish between the intellect and the senses; between the will, which is the rational appetite, and the sensible appetite, which is organic. They regarded all the passions as a species of insanity, and therefore as in themselves evil; and hence Seneca (liber 1, de Ira), says that anger, being a kind of insanity, cannot exist in a wise man. The peripatetics distinguished between rational and sensible action; they maintained that the passions, when reduced to subjection and moderated by reason, are good and not bad; that they are bad only when they are permitted to overpower reason and rule man. In this, it is clear that the doctrine of the peripatetics was correct in its principle.

Owing to the poverty of language, we give the same name to the passion and the sin or vice to which it tends,\* if it incline to evil; v. g., the passion of anger, the sin or vice of anger. If the passion tend rather to good, we give its name also to the virtue to which it inclines; v. g., the passion of love, the virtue of love. Although some passions tend to good, and others tend to evil, yet, when considered in themselves, or apart from all coöperation of the deliberate will, they are neither morally good nor morally bad; but they become good or bad according to the deliberate action of the will in ruling and directing them, or in declining to control them. The passions may be reduced to subjection, and ruled by reason; but since the power of appetition, of which they are the operations or acts, is a property of human nature, the stoical notion of their total eradication supposes a physical impossibility, i. e., that it is possible totally to extirpate an essential property of human nature.

In order to understand precisely the manner in which the

\* "Quædam vitia innominata sunt, et similiter quædam virtutes (Aristotle, 4, Eth.); et ideo oportuit in quibusdam passionibus uti nomine virtutis et vitiorum, etc." 2, 2, p., qu. 127, a. 1, ad 3. Certain vices are nameless, as likewise are certain virtues; and therefore, in some passions, we use the name of virtue and vice given to these passions.

Some popular writers now call the passions "emotions;" but, properly speaking, emotion is an effect of the passion.

operations of any passion become imputable, it will be useful to distinguish accurately between the acts of what writers on ethics style the inferior will, and those of the superior will: not that there are really two wills in man; but the one will has action of two kinds, which are quite distinct. The inferior will and the superior will are distinguished from each other by two kinds of motive to action: when the will is moved to desire good or to avert from evil, by objects precisely as apprehended or imaged in the imagination, it is then styled the inferior will; it is not a rational act, for there is neither deliberation nor judgment. When the motive is what can be apprehended only by the intellect, as happens in judgments of composition and division, and in reasoning, then it is the superior will that desires the object or averts from it. The first indeliberate action of the will is towards what the imagination apprehends as good, and away from what it images as an evil; its deliberate action, or that of the superior will, may just reverse its natural or spontaneous action, which was first; v. g., it may choose what gives pain, and it may avert from what gives pleasure.

Since the passions follow immediately after their objects are apprehended by the fancy, and are distinctly presented, their action is antecedent to the action of reason or judgment; in other words, they anticipate, in such case, all deliberation or choice of the will. They can be freely excited, also, by bringing their objects into the imagination, or deliberately retaining them there. Similar feelings, but in a remiss degree, are caused by the contemplation of truth and beauty of the intellectual order, and especially by affections in the will, even when the object is intelligible good.

Owing to the control which the reason possesses over the passions, which it can exercise either directly or indirectly, the heart, which is the seat of passionate feeling, is often spoken of as the will, or as being the will itself.

Man is a perfectible being, whether we consider him as an individual, or view him specifically; and the work of his moral

perfection is placed, to a great extent, in his own hands; of this work, the ruling and directing of his passions constitutes a chief part.

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## ARTICLE II.

### CLASSIFICATION OF THE PASSIONS ACCORDING TO THEIR PROPER OBJECTS AND THEIR DISTINCTIVE ACTS.

Writers usually enumerate eleven passions to which all other passions may be reduced: love and hate, desire and aversion (anxiety to escape), joy and sadness, hope and desperation, courage and fear, anger.\*

All the passions proceed radically from love, for all appetite tends to good under some respect, either as its immediate or its ultimate object; but as the modes of moving towards the good which is intended by nature are various, according to circumstances, means, and the like, hence the classification of the passions. The passions are divided into two classes, the "concupiscible" and the "irascible:" the first, which are love, hate, desire, aversion, joy and sadness, regard good and evil as, in some respect, immediate; the second, or the irascible, which are hope, desperation, courage, fear, and anger, regard good and evil as accompanied with difficulty, or as beset with impediments to be surmounted. Love is the inclination of the appetite towards the good which is apprehended by the imagination; desire impels the agent to seek it; joy is the pleasure or fruition that comes from the possession of the good. In hatred, there is opposite action in the appetite: hatred is an inclination of the appetite against, or away from, what is apprehended by the imagination as an evil; aversion impels the agent to escape or remove from evil which is imminent; sadness is the sorrow or grief that follows the apprehension of evil as present or oppressing. Hope fol-

\* Amor, odium, desiderium, fuga, gaudium, tristitia, spes, desperatio, audacia, timor, ira.

lows the apprehension in the imagination of good which is absent or future, but yet it can be reached or attained to with difficulty; it is future, but it is a possible good; desperation follows the apprehension of good as not attainable, or as beset with difficulties which are too great to be overcome; courage emboldens the agent to conquer the opposition and difficulty; fear follows the apprehension of evil which is future; anger impels the agent to rise up against evil that is present; and hence, sadness and anger both concern present evil. These eleven passions may be regarded as *simple* passions; all other passions are either compounded of several simple passions, or they are species pertaining to some one of the primitive and simple ones. Pity, for example, is caused by sadness for another's evil, and lest the like evil may come to self, and it includes *love*; *impudence* regards what is unbecoming, and it proceeds from *desire* and *boldness* in respect to its object; *shame* is from *sadness*, and *fear of disgrace*; indignation is caused by anger or sadness, at misplaced good or undeserved evil, etc. Also, one passion may sometimes counteract or neutralize another. Hence, all the passions are different modes of action in the internal sensible appetite, which depend for their species on the objects that are apprehended by the fancy. Since the object is presented to the appetite and to the intellect simultaneously,\* the appetite acts before the deliberate will can choose; and hence, the first movement

\* "Motus sensitivi appetitus prævenit rationem, et eo quod eodem momento sensus interni objectum exhibeant appetitui et intellectui; unde fit ut appetitus in actum prorumpat antequam voluntas quicquam de tali objecto acceperit ab intellectu. Qui defectus in innocentia non contigisset, sed gratia ita ligasset appetitum sensitivum, ut objectum non percepisset, vel perceptum nec probasset nec reprobasset, nisi ex imperio rationis." Irenæus Carmelit. In Aristot. Eth. Movement of the sensitive appetite anticipates or goes before reason, because the internal senses exhibit their object to appetite and to the reason at the same moment; hence, the appetite hurries into action before the will is at all affected through the object from the intellect. This defect would not have existed in a state of innocence; but grace would have bound the appetite so that it would not perceive the object, or, perceiving it, would not have approved or disapproved it without the command of reason.

of appetite is said to precede *rational action*. The passions are in themselves, therefore, blind principles, which it is the office of reason to subdue, moderate, and direct.

They are more adjacent to the will than are the external members of man;\* or, they are more intimately connected with the will; therefore, action and reaction of the will and passion are more immediate. Hence, since external members may be made to put commanded or "imperate" acts, *a fortiori*, the passions may be moved to action by command of the will. Yet, as mere feelings of sense, they may both begin and continue, against the choice of the will.

The passions, when considered as principles of action which are natural to man, or in respect to the end for which they are naturally intended, are evidently good, since all God's works are good as coming from His hands. But, as already observed, they are neither morally good nor morally bad in relation to man, antecedently to any deliberate action of his will.

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### ARTICLE III.

#### IMPUTABILITY OF PASSION.

Observe that every action which proceeds from the deliberate choice of the will, and which is intended or consented to in itself or in its cause, is imputable; no other action is imputable.

\* "Propinquior enim est appetitus sensitivus ipsi rationi et voluntati quam membra exteriora, quorum tamen motus et actus sunt boni vel mali moraliter secundum quod sunt voluntarii, unde multo magis et ipsæ passionēs secundum quod voluntariæ dici possunt bonæ vel malæ moraliter. Dicuntur autem voluntariæ, vel ex eo quod a voluntate imperantur, vel ex eo quod a voluntate non prohibentur." I. 2, p., qu. 24, a. 1. The sensitive appetite is more adjacent to the reason and will than are the exterior members, whose movements or acts, however, are good or bad, morally, according as they are voluntary; much more, then, are the passions good or bad morally when they are voluntary. They are called voluntary either because they are commanded, or because they are not restrained by the will.

PROPOSITION I.—Passion which precedes all deliberate action of the will, is not imputable.

PROPOSITION II.—Passion which is deliberately unresisted, and also passion which is deliberately opposed or resisted, are imputable.

PROPOSITION III.—Passion which is deliberately excited, is imputable.

PROPOSITION IV.—Antecedent passion renders man's action, which it helps to cause, less imputable; but consequent passion, i. e., passion deliberately caused, makes the action more imputable.

PROPOSITION V.—Praise or blame, and merit or demerit, are due to all human actions which spring from passion that is imputable.

PROPOSITION VI.—Passions, when considered according to the intention of nature, are good.

In practice, it is sometimes difficult even for a candid mind to decide whether the will has deliberately consented to an emotion of passion or not. This obscurity comes, in general, from two causes: 1st, the action of the will is, in the nature of things, less evident than that of the intellect, and when the consent is not fully deliberate, or is not completely given, the obscurity is still greater; 2d, when the person is unable to distinguish the feeling or inclination which is sensible, and the consent of the will, which is a spiritual act, owing to ignorance of their distinct natures.

Against the foregoing doctrine it might be objected thus:

OBJECTION I.—“The passions are good in themselves; therefore they should not be opposed and repressed.”

ANSWER.—We should distinguish, that passions, when considered in their species, or in the abstract, as powers, acts, or qualities, are good, it is true; when they are considered in the concrete, we must subdistinguish: that they are good in respect to the end for which God intends them, or as ruled by reason, is true; that they are good when they are deliberately left uncontrolled, is not true. The passions are designed to perfect man in moral goodness, by affording him the oppor-

tunity and the objects for virtuous action; he accomplishes this end, when he subjects his passions to the law of reason.

OBJECTION II.—“Man’s actions, which proceed from the physical laws of nature, being necessary, are not imputable; therefore, murder, theft, etc., are, in general, not imputable.”

ANSWER—Those actions of man which come wholly from the mere physical laws of nature, are not under his control; but merely physical actions may be indirectly subject to him, in as much as he can influence their causes. But the conclusion which is here derived from this principle must be distinguished: that the passions may act necessarily, as regards their movement which immediately follows the first apprehension of their objects in the fancy, is true; that their continued action, and the operations to which they impel, are not subject to reason, we should subdistinguish; in the irrational animal and the insane man, they are not subject to reason; in the sane man, they are subject to reason, and are therefore imputable to him.

But it may be further insisted, that, “a man who acts from violent passion, is then insane; therefore his action is not imputable to him as morally good or bad.”

ANSWER.—That a man when he is under the influence of strong passion is insane in the proper sense of the term, is not true; that he may be such when the brain is organically diseased, is true. We must distinguish violent passion, which is imputable in its cause, from that which is not imputable in its cause; also, we must distinguish passion which entirely deprives reason of its empire or power to control, and that which does not entirely overpower reason. Passion which entirely overpowers reason is imputable, if its cause be imputable; but not otherwise. This dethronement of reason from violent passion, as regards a sane man, is, at the worst, transitory and momentary.

OBJECTION III.—“There can be insane operations in the affections of the will, even when the intellect itself is sane; therefore the will may act according to disorderly passion or

appetite, even when the reason is sane, and reprobates the evil that is done."

ANSWER.—If it be meant that the will can, when the reason is sane, deliberately wish what is not, at the same time, free and imputable to the person, it is not true; if it be meant that the will can wish what is against right reason, this is true; but the supposition is not true, namely, that this constitutes mental insanity; the deliberate action of the will is always imputable when the reason is sane. Observe, that the imagination does not present the object of sensible appetite immediately to the will; this is done by the idea of the object as in the intellect: the object as in the fancy is presented directly to the inferior appetite, by the fancy. Experience teaches that there can be abnormal states of sensible appetite, and that insanity may be caused by passion; but the theory that the affections of the will itself can be insane, when the intellect is sane, is not tenable: reason and will are intrinsically united in one simple nature. Some recent authors who, with the ancient stoics, admit no distinction between sensible action and intellectual or spiritual action, confound disorderly operation in sensible appetite with mental insanity, as Seneca did; but this is to err in the simple elements of philosophic thought.

OBJECTION IV.—With John Stuart Mill: "Given the motives which are present to an individual's mind, and given likewise the character and disposition of the individual, the manner in which he will act may be unerringly inferred:" the particular motives coming from passion, along with the disposition of the person being given, then the action or conduct of such person may be unerringly inferred.

ANSWER.—The antecedent must be distinguished; if the given motives include *simple* good or *simple* evil, that is, either absolute good, or evil which excludes all good; it is true that "the manner in which the individual will act may be unerringly inferred." But if the supposed case be one in which the will is wholly free to choose, and, at the same time, one in which the same person, and all persons, choose differently at differ-



ent times ; it is not then true that the knowledge of all the conditions extrinsic to the will's act of that kind enables us to infer its action unerringly, since such action would be purely contingent and it could be absolutely foreknown to God alone. There are objects, however, really subject to man's free will, in regard to which we may foreknow with a high degree of *moral* certainty, how a particular person would act here and now, by reasoning from what he and persons in general are known to do in such case.\* But if "the motives, character and disposition of an individual" unerringly determine his choice, then it is not the will that freely and intrinsically determines the choice ; a supposition which destroys the true liberty of the will, and makes its action necessary ; or, as it is expressed, makes of it in such case, "quid determinatum ad unum."† The conclusion derived from Mr. Mill's assertion is not true, except it be understood only of the will's indeliberate action ; or, as it is also termed, the will's *natural* action. Finally, it is not any disposition of the will that determines its choice which is free ; it is the will itself that determines its own free act.

\* Mr. Mill's supposition assumes the action of the free will to be physical or mechanical and not moral.

† What is determined to one ; that is, what cannot choose between one thing, and another thing.

## CHAPTER V.

### ARTICLE I.

#### THE VIRTUES.

Because the natural virtues are permanent effects produced by human actions which are good, as will be explained; when acquired, they become important principles which essentially influence the moral character of all deliberate action put by their possessor. It follows, therefore, that an explanation of the virtues cannot properly be omitted in an accurate treatise on ethics.

Distinguish between virtue, and the acts which produce it; the virtue itself is a habit which is acquired by repeated acts that directly regard the proper or specific object of that virtue; v. g., one who practices justice in all his words and deeds will, after a time, acquire the virtue of *justice*, the effect of which will be to give him facility and promptness in fulfilling all the requirements of that virtue. Virtue is a habit, as is also its opposite, which is vice. Habit is a permanent effect in man's superior powers, the intellect and will, produced by repeated acts of the same kind, and in regard to the same objects; it renders the putting of those acts more easy, and when it is possessed in a high degree, it even makes the acts pleasant. The capability of acquiring habits, as thus explained, is peculiar to rational natures. It is manifest from experience that habit is a principle which really and positively influences those acts of the intellect or will which concern its objects; for it truly co-operates in those acts.

The virtues regarded as habits\* which have good for their

\* "Habitus est in genere qualitatis, cujus est proficere, disponere et facilitare. Aliæ qualitates, v. g., sanitas, pulchritudo, etc., disponunt subiectum ad bene esse; sed virtutes animi disponunt ad bene operari." Gotti. t. 7. Habit is of the genus quality, and it prepares, disposes, facilitates; other qualities as health, beauty, etc., dispose the subject to exist well; but the virtues of the mind dispose it to operate well.

object, are either of the intellect, or of the will; and they are conceived to exist in those powers as qualities which perfect them for action, and which are not easily destroyed or removed; whence they are appropriately styled, a "second nature." The virtues which have the intellect for their subject, or which reside in the intellect, give it facility in knowing the *true*; they are termed the intellectual virtues. Those virtues that reside in the will as their subject, render its various acts in loving the *good*, more easy, and less painful; and when acquired in a perfect degree, they make the will's virtuous acts pleasant: they are termed the *moral virtues*.

The intellectual virtues are five in number; they are intelligence, (*intellectus*, i. e., *habitus primorum principiorum*)\* scientific knowledge, wisdom, prudence, and art. Intelligence, which by many is said to be a virtue that is naturally infused, enables the understanding to perceive self-evident, necessary and absolute truths promptly and with ease. These truths are first principles which constitute the basis of all demonstrative reasoning; and back to them the mind returns when examining reflexly its conclusions in order finally to verify them. These first principles are known *per se*, i. e., they are self-evident, known in themselves and independently of all other truths.

Scientific knowledge, is rational cognition of truth as coming necessarily from its first principles; or it is the knowledge of a thing as proceeding from its specific and necessary cause or causes. As there are different species of knowable things, so there are different species of science depending for their distinction on the particular and specific classes of those knowable things. Scientific knowledge is metaphysical, when its object wholly transcends the material order; it is mathematical when its object transcends the material and sensible, but not quantity; it is physical when its object is sensible; but yet it abstracts from the singular, and is the universal, although the object be material and sensible.

Wisdom is also rational knowledge; but its object tran-

\*Intellect, that is, the faculty of first principles.

scends the particular species of causes which are the object of scientific knowledge: it includes the highest and most universal causes of all things; its first principles are the absolute predicables of all being; i. e., of everything that is, or is possible. Its object is the most abstract of all; and its principles are the most necessary and immutable of all principles. Wisdom and scientific knowledge agree in this, that both derive conclusions from their first principles; but it has this peculiar to itself, that it judges all reasoning, and all principles; and on that account wisdom, that is, philosophy, is styled the queen of the purely rational sciences. Hence, the principles of wisdom are absolutely first; those of scientific knowledge are first in their respective species or genera, and are therefore only relatively first.

These three virtues of the intellect are concerned only about speculative matter; i. e., matter which is the object of intellectual vision, and which has no direct or proper relation to rational appetite; its principles are not contingent and mutable, but they are necessary and invariable.

Prudence is also an intellectual virtue; it gives facility to judge rightly concerning matter which constitutes the object of human action; i. e., action as deliberate and imputable. Prudence enables the understanding to judge with facility what ought to be done; "*prudentia est recta ratio agibilium*," uprightness of the reason in respect to things that ought to be done. In human action, the ends to be intended are the principles from which conclusions are derived, just as self-evident and necessary truths are the principles from which science and wisdom draw their conclusions. Prudence supposes rectitude in the rational appetite or the will; hence, no practical conclusion can be deemed prudent which is deprived of any requisite for complete rectitude of reason. It is manifest, then, that prudence may be considered under different respects, both an intellectual virtue, and a moral virtue, since it is the medium in which the two families of virtue, the intellectual and the moral, unite, or become intimately connected. Prudence is, on this account, often called the ruler

of the virtues: "prudentia magistra virtutum." Art is a virtue in the sense that it gives facility to do what is good as a work of reason, "ars est factibilium;"\* art has for its object that which can be done physically; but it includes no relation to rectitude of intention in the will. For this reason it is said that one artist may merit more praise for offending against his art wilfully, than another does, for offending without wishing it; but, on the contrary, the man who is wilfully imprudent is always more blamable than is the one who offends against prudence without wishing to do so: this is because prudence necessarily requires rectitude in the will and art does not. (P. 1. 2, qu. 57, a. 4.)

As already observed, intelligence as the habit or faculty of first principles, scientific knowledge, and wisdom, have necessary or absolute truth for their object; or, they regard matter which is immutable. Prudence and art concern only contingent matter, or that which is mutable; and therefore their object is the *practical*; i. e., what ought to be done, morally speaking, and what can be done physically.

The intellectual and moral virtues agree, in the general concept of virtue, in so far as they incline the supreme powers

\* As art requires correctness of reason in ordering means for the effecting of an end, it is also called, "recta ratio factibilium," reason as correct in devising works that can be done. The old philosophers thus defined and named the liberal and mechanical or useful arts: "Artes illæ solæ liberales dicuntur quæ ad sciendum ordinantur. Illæ quæ ordinantur ad aliquam utilitatem per actionem habendam, dicuntur mechanicæ sive serviles." They are named in the following distich:

"Lingua, tropus, ratio, numerus, tonus, angulus, astra; (the seven liberal or fine arts);

Rus, nemus, arma, rates, vulnera, lana, faber; (the seven mechanical or servile arts)."

"Only those arts are styled liberal which are ordained to improve us in superior knowledge. Those which are ordained for something useful to be accomplished by labor performed are called the mechanical or servile arts." The liberal arts are: Grammar, rhetoric, logic, arithmetic, music, geometry, astronomy. The useful or, servile are: Agriculture, the chase, the military, navigation, surgery, weaving, architecture.

in man, the intellect and will, to what is in itself good, and facilitate their action towards it; but they differ in this, that the intellectual virtues, with the exception of prudence, do not essentially include moral goodness in their end, and in their exercise; for they can be used for an evil purpose, without changing their nature. But the moral virtues essentially require, for their normal act, rectitude both of the reason and the will; or, as it is expressed, the moral virtues give both faculty of action and rectitude in the use made of that faculty; whereas, although the intellectual virtues give the faculty, or facility of action also, yet they do not give the right use of that perfection. Hence, moral virtue is often defined to be, "a good quality of the mind, by which one lives well, and which *no one uses amiss*,"\* it gives not only natural or physical goodness of action as do the intellectual virtues; but also the moral goodness which proceeds from rectitude in the superior powers of the soul, the intellect and will

Virtue is defined to be "a quality of the mind," because virtue, being a "habit," is of the genus or category, quality; it is "of the mind," i. e., its subject is the powers of the soul. "By which one lives well, and which no one uses amiss, or for evil," are members of the definition which specify the distinctive characteristics of moral virtue.

A sense, being by its nature only an organic power, cannot become the subject of a virtue; for, a sensible power cannot have either intellectual or voluntary action which proceeds from itself; its commanded or "imperate" action is always determined and directed by a principle which is superior to itself, i. e., the rational power. The power of imagination does not, in its act, attain to the true, as true, so that it can distinguish the true from the false, the good from the bad; for, the true, and what is morally becoming, transcend the sensible order, and can be attained to only by powers which are proper and intrinsic to rational natures. It is true that organic powers may, by exercise, acquire some physical effects of habit, by which they become the better dis-

\* "Bona qualitas mentis quâ recte vivitur, et nemo male utitur." S. Aug.

posed to serve as instruments for the higher powers. But this is not to acquire virtue, or to be capable of a virtuous act; for, the perfection which is in the action of the instrumental cause comes, not from itself, but from the principal cause. Sensible appetite cannot desire good as morally befitting, or as consentaneous to reason; because the moral character of an object is beyond the sphere of its action, since it pertains only to rational power, or will.

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## ARTICLE II.

### THE MORAL VIRTUES.

The moral virtues have, as already observed, the will for their subject, or they are habits which reside in the will. They are as numerous as are the species of formal objects which moral action concerns: and as these objects are of many kinds, so the virtues are of many kinds. For the sake of clearness and simplicity, all the moral virtues are usually included under the four cardinal virtues, Prudence, Fortitude, Justice and Temperance. Some of the moral virtues regard the rights of other beings; v. g., justice, religion, piety, gratitude; others moderate passion, as fortitude, temperance, etc.; it may be said that all moral virtue is concerned either about passion, or about operation, i. e., deliberate action which may not directly regard an object of passion or sensible appetite.(1.)

PROPOSITION I.—The perfection or goodness of moral virtue proceeds from its being the mean between excess and de-

(1.) "Justitia et partes ejus proprie sunt circa operationes sicut circa propriam materiam." 1. 2, p., qu. 60, a. 2. Justice and its parts are concerned about operations as their proper matter.

fect; or, perfect moral virtue consists in a prudent medium between extremes.\*

There are various proverbs in popular use which embody the same truth more or less explicitly; v. g., "virtue chooses the middle course; "virtue is in the middle;" "avoid extremes," etc.

Just as a work of art is perfect when it can be truly said that it has nothing superfluous, and that nothing is wanting to it; so, a moral virtue is perfect when its act or operation is free from every excess and every defect: it is evident that what is exempt both from excess and defect must be perfect in its species. Hence, it may be argued thus: those virtues consist in a middle course of action, against which no fault can be committed, except by excess or by defect; but there can be no offence against moral virtue, except either by excess or by defect; therefore, perfect moral virtue consists in prudent medium action, which avoids both excess and defect.

This medium† in which virtue consists is a rule or measure which is determined by reason, but which is founded on the objects of moral action. For most of the virtues, this medium is that of equal ratios in geometric proportion; v. g., as virtue is removed from excess, so by equal ratio is it removed from defect. To‡ determine this ratio, or the medium of virtuous action, is the peculiar office of prudence, and hence the supremacy of prudence over all the moral virtues; from

\* *Bonum virtutis moralis consistit in adæquatione ad mensuram rationis. Manifestum autem est quod inter excessum et defectum medium est æqualitas sive uniformitas.*" I. 2, p., qu. 64, a. 1. The good possessed by moral virtue consists in its exact agreement with the measure of reason. Now, it is plain that the medium between excess and defect is equality or uniformity.

† "*Medium est propriè inter contraria.*" A medium is, properly speaking, between contraries.

‡ "*Est finis uniuscujusque virtutis moralis attingere medium in propria materia quod quidem determinatur secundum rectam rationem prudentiæ.*" I. 2, p., qu. 66, a. 3, ad 3. It is the end of every moral virtue to reach the medium in its proper matter, which medium is determined by a right measure of prudence.



it comes rectitude of moral action: "prudentia est recta ratio agibilia." "

Since the medium, or mean line for perfect virtue, must be estimated by reason, according to the nature of the objects, according to the circumstances, disposition of individuals, etc., it will not be the same for all persons; v. g., a temperate meal cannot have the same measure for a delicate person as it had for Milo of Crotona, who ate an ox per day; therefore, the measure of temperance is not the same for all persons. Similarly, the ratio, or the medium for virtuous action in general, depends on a right estimate of all these conditions.

In commutative justice, by which individuals are required to pay their just debts, the object itself precisely determines this measure, or the medium for the virtuous action; hence, in this case, there is said to be a "*medium rei*," a medium in the thing itself; v. g., when a man borrows a hundred dollars, the payment of this sum in the manner, and at the time specified, are objects which commutative justice concerns; the sum is one, determinate thing, arithmetically, and it must also determine the exact estimate which reason, in such case, makes for just action. In this species of matter, the medium as regards the object, and the medium for perfect virtue, will be one and invariable, with respect to all persons.

PROPOSITION II.—For perfect rational operation in man, there is required virtue; or, man as a rational being, is perfected only by virtue.

Man is perfected only by rational action, and rational action is perfected by virtue: action, and the corresponding virtue, reciprocally perfect each other.

The perfection of a being is measured by the perfection of its action. It is by this measure that we judge and estimate the perfection and the goodness of everything around us. Man is peculiarly a perfectible being; when he begins life, his rational nature is, as it were, a blank. By growth of body, and development of mind, he becomes, from a helpless and unreasoning infant, far the most powerful being on earth, and the ruler of all that is on earth.

Man's superiority is from the perfection of his rational nature; and his rational nature is made perfect in its operation by the intellectual and moral virtues which give rectitude of action to his superior powers. Virtue, as moral, has for its essential end to regulate human action by right reason, and to moderate the passions: the intellectual virtues are prerequisite to perfect him in the knowledge of truth, for the norma of the good is the perfect, which is apprehended as the true.\* Between the ignorant man, or the vicious man, on the one hand, and the wise philosopher, or the man of great moral goodness, on the other hand, there are many grades of human perfection, the difference proceeding wholly from the unequal degrees of intellectual and moral virtues in mankind. Hence, every man is more or less perfect as a rational being, according to the degree of intellectual virtue which is in his reason, and the moral virtue that is in his will. The virtues are, by their very nature, habits or qualities, which complete man's superior powers for operation, or perfect their action in regard to their proper objects, the true and the good.

PROPOSITION III.—The intellectual virtues are absolutely more perfect and noble, in their species, than are the moral virtues; but the moral virtues are superior, under a certain respect, to the intellectual virtues.

The excellency of a virtue is from the intrinsic superiority of its object, and from a greater perfection in the power which is the subject of that virtue. The intellect is the supreme power in every intelligent being, as already shown; its act precedes that of any other spiritual faculty; and on it all the higher powers of the being depend, in acting, for their object and for their direction: it is manifest that even the will

\* "Sicut imaginatio formæ sine æstimatione convenientis vel nocivi non movet appetitum sensitivum, ita nec apprehensio veri (per intellectum) sine ratione boni et appetibilis." I. 2, p., qu. 9, a. 1, ad 2. As the imagination of an object, without any estimate made of it as pleasant or harmful, causes no movement in sensitive appetite, so neither does the apprehension of the true (by the intellect) without the relation of what is good and desirable.

can have no act, except dependently on the reason for its object and its direction.

Again, the object of the intellectual virtues includes absolute truth, and the highest universals;\* whereas the proper and immediate object of the moral virtues is rather that which is contingent and particular; this means, and that means, to an end. Also, prudence, which is an intellectual virtue, is supreme over the moral virtues, since it is the function of prudence to judge to counsel, to prescribe the choice in all moral action.

It follows, therefore, that the intellectual virtues, both as regards the power which they perfect, and as regards the objects of their action, are simply or absolutely superior to the moral virtues.†

The moral virtues are superior to the intellectual virtues under a certain respect. When virtue is considered in relation to human action, the moral virtue is more noble; for it perfects the will or rational appetite; and it is the peculiar excellency of the will that it commands the other powers of man to act. Any one of the powers which co-operate in cognition, may be made by the will to put a commanded or "imperate" act;‡ hence the will and the virtues that perfect it, are, under this respect, the most noble.

We may regard virtue either simply as a genus of perfection; or we may consider it strictly in its own species as virtue, according to which it is a means to good or is a good

\* "Notitia quæ est minus certa de altioribus et majoribus præfertur ei quæ est magis certa de inferioribus rebus." I. 2, p. qu. 66, a. 5, ad 3. Knowledge which is less certain concerning higher and greater things, is preferable to that which is more certain concerning inferior things.

† "Secundum eas (virtutes intellectuales) quodammodo inchoatur in nobis beatitudo quæ consistit in cognitione veritatis." I. 2, p. qu. 66, a. 3. ad 1. By means of them (the intellectual virtues) there is begun in us after some manner beatitude, which consists in the knowledge of truth.

‡ "Voluntas movet alias potentias animæ ad suos actus; utimur enim aliis potentiis cum volumus." I. 2, p. qu. 9, a. 1. The will moves the other powers of the soul to their acts; for we use the other powers when we wish.

quality, as above said : in the order of perfection, intellectual virtue is higher. But under the precise respect of virtue, such perfection is most properly of the rational appetite, whose formal object is good as perfecting man. We do not denominate a person good on account of science or wisdom ; one is made good by prudence, justice, fortitude, and temperance. We may conclude, therefore, that the moral excel the intellectual virtues in that which strictly and specifically constitutes virtue.

Observe that no rule can be given which assigns the limits of the medium between excess and defect in virtuous action, with mathematical exactness for all cases ; nor is it practically necessary. It is the office of prudence to estimate that medium according to the object, the person, and the circumstances which concur to make up each particular case ; the judgment of prudence in such instances is contingent and moral, not metaphysical. It is an error which is not always sufficiently guarded against, to apply principles of moral prudence, which are modified by circumstances, as if they were metaphysical principles, which are absolute and immutable. As no eye can trace with absolute precision the lines which really divide the colors of the rainbow ; so no human power can apply a metaphysical gauge to the object of a particular moral action, so as to subject it to absolute measurement.\*

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### ARTICLE III.

#### THE CARDINAL VIRTUES.

The four cardinal or principal virtues, when named in the order of their relative dignity or superiority, are prudence,

\* “ Quandoque autem medium rationis non est medium rei, sed accipitur per comparationem ad nos, consistit in medio per conformitatem ad rationem rectam.” I. 2, p. qu. 64, a. 2. When the medium of reason is not the medium that is in the thing, but is understood by way of a comparison to us, it then consists in a medium of conformity to right reason.

justice, fortitude, and temperance.\* These four virtues are cardinal or principal under several respects: 1. Every virtue participates in the perfections of these four; viz., every virtue must be prudent, else it would err in the choice of means; it must be just to God, to neighbor, to self; it must be firm and constant, despite difficulties; it must be moderated so as to avoid any excess or defect. 2. These four virtues are cardinal, because they are general principles of moral conduct which direct man's entire life. 3. They are cardinal also because each one of them possesses its own peculiar perfection or species of rectitude. 4. They are cardinal, finally, because they regard distinct matter, under which may be included the objects of all the moral virtues.

The relative dignity of these virtues is estimated by the degree of perfection in the act of each one, and in the object of the act; according to this standard, prudence ranks first, and temperance is the last.

Though prudence is an intellectual virtue, since it is a perfection of the intellect; yet it is also here enumerated among the moral virtues; because it supposes uprightness of the reason in reference to the objects of action, it is styled "*recta ratio agibilium*," i. e., right reason in matters of duty. It is treated as a moral virtue, because rectitude of the reason, in respect to what is practical, is inseparable from rectitude in the will. It is evident that the mind cannot *deliberately* and *practically*, judge the medium of virtue, except by the concurrence of the two faculties, reason and will,† since the matter

\* "*Virtus moralis versatur circa ea quæ sunt ad finem.*" "*Prudentia est pro attingendo finem.*" Moral virtue concerns means to the end. Prudence is for attaining the end. It is directive of all moral virtue.

† "*Ratio, secundum quod est apprehensiva finis, præcedit appetitum finis; sed appetitus finis præcedit rationem ratiocinantem ad eligenda ea quæ sunt ad finem, quod pertinet ad prudentiam: sicut etiam in speculativis intellectus principiorum est principium rationis syllogizantis.*" I. 2, p. qu. 58, a. 5, ad 1. The act of reason by which it apprehends an end, precedes the act of the appetite or will; but the desire of the end precedes the operation of reason inferring the means to be chosen for the end, which pertains to prudence; just as in speculative matter intelligence, or the first principles, are presupposed to the action of reason as deducing conclusions.

of moral virtue relates to appetite, and the will therefore must be affected towards it when it is practically judged; i. e., judged as something to be done freely or not done. It is easy to see that prudence, whose function is to consult, to judge, to prescribe the choice which is best to be made, is supreme among moral virtues.

Any act which is morally wrong is, at the same time, imprudent; consequently, it supposes some error of the reason,\* for he that deflects from rectitude thereby really errs. Since the intellect does not err *per se*, i. e., it does not produce the error by its own proper act, we must ascribe the erroneous judgment to an impulse or command of the will; therefore, error in the reason is primitively from the will. This action of the will is either deliberate, or it is indeliberate; in the one case, it is imputable; in the other, it is not imputable.† The virtue of prudence excludes precipitancy, inconsiderateness, inconstancy, and negligence, which are opposed to the virtue by defect: cunning or craft, fraud, excessive solicitude, are opposed to prudence by excess.

#### JUSTICE AS A CARDINAL VIRTUE.

Justice is a virtue by which a person gives to every one his due. Its subject is the will, which it renders constant or perpetual in its purpose of paying every debt, or of giving all that is due. Since its proper function is to direct the rational appetite, not the intellect in cognitions, we may rightly conclude that its subject is not the intellect, but the will. For, a

\* "Voluntas in suis liberis actionibus non necessario determinatur a practico iudicio intellectu sive quoad exercitium sive quoad speciem actus.... voluntas potest suspendere et non eligere quod intellectus iudicat eligendum esse: hinc Ovidius: Video meliora proboque, deteriora sequor." Beccanus de Lib. Arbitrio. The will, in its free actions, is not necessarily determined by the practical judgment of the intellect, whether as regards exercise or as regards the species of choice. The will can remain in suspense, and not choose what the intellect judges ought to be chosen; hence, Ovid says, "I see and approve what is better, and I follow what is worse."

† "Unusquisque iudicat prout affectus est." Every one judges according as he is affected.

virtue belongs to that power whose acts it is ordained to direct; and justice directs volition, not the reason, since "the giving to another his due" is an operation or a deed which is commanded by the will, to which the execution must be referred as an act of obedience in the other powers. Therefore, the proximate principle of the action is the rational appetite or will.

Justice regards another person; it is concerned about things as its matter. It relates also to the public or the commonwealth, and likewise to God. *Commutative* justice directs the payment or satisfying of all dues from one individual to another; it is the office of *distributive* justice to direct the giving of all dues from the public or the government to meritorious and to demeritorious individuals. When justice causes a person to render due homage to God, it is styled the virtue of religion.‡ Justice, when it impels children duly to honor their parents, is termed piety, which, by figure of speech, is often used as synonymous with the virtue of religion. Obedience to the command of legitimate authority, and patriotism, are also reducible to the virtue of justice; as are also gratitude, friendship, veracity.

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## ARTICLE IV.

### FORTITUDE.

Fortitude is a virtue, that gives facility in restraining fear and moderating boldness or hardihood: i. e., daringness or

‡ "Religio est virtus quæ debitum cultum Deo tribuit tamquam primo omnium principio."—Gonet. "Sicut objectum justitiæ non est persona sed jus personæ, sic objectum religionis non est immediate Deus, sed jus Dei. Virtus moralis attingit Deum mediante actu creato non immediate." Billuart. Religion is the virtue which renders due homage to God as the first principle of all things.—Gonet. Just as the object of justice is not a person, but the right of a person; so, the object of religion is not God, individually, but God's right. Moral virtue attains to God through the medium of a created act, not immediately.

audacity. When boldness is reduced to a rational medium, it is usually styled courage.

The sensible powers of cognition, as the external senses, the internal senses, v. g., the fancy, the sensile memory, etc., are not susceptible of any quality or improvement by custom which makes them better disposed to virtuous action; or, use of them does not give them greater inclination towards virtuous or good objects, as such. The reason of this peculiarity in them is that their action naturally precedes that of the intellect, since the intellect depends on them for its objects; and, on the other hand, they have no such dependence. But the sensible appetite, within certain limits, is obedient to reason; it may be forced to act, or to cease action, by command of the will; v. g., motions of anger may be suppressed, or excited and increased, on certain occasions, merely by one's own choice.\* It is a well-known fact of experience, also, that the more absolutely the sensible appetite is ruled by reason, the more completely subject it becomes to control; and although it cannot be totally eradicated as a principle of human nature, thereby inducing a state of apathy, according to the theory of the Stoics; yet, it may be made submissive, in its operation, to the government of reason.

The foregoing explanation being understood, it will be readily seen why the internal sensible appetite, as irascible, is usually said in philosophy to be the subject of fortitude, which is the third cardinal virtue; and why the appetite, as concupiscible, is the subject of temperance. Though the will is truly and properly the subject of these virtues, yet, when they are developed by exercise into perfect habits, their effect on the corresponding sensible appetites is to give them facility and promptness in obeying the control of the will or rational

\* "Potentiæ cognoscitivæ sensitivæ non sunt capaces virtutis, quia sunt naturaliter præviæ rationi; sed potentiæ appetitivæ naturaliter sequuntur rationem quia appetitus inferiori obedit superiori." - D. Th. De Virtut. The sensible powers of knowing are not capable of virtue, because naturally they act before reason; but the powers of appetite, or the appetites, naturally follow reason, for the inferior appetite obeys the superior, or, at least, in a certain degree.



appetite. These permanent effects produced in the sensible appetite are conveniently termed fortitude and temperance, since these two virtues, as moral principles, regard the same objects, respectively, that the appetites concern.

While justice regards operations or external deeds as its proper objects; for, to pay what is due to another, to render due return for good received, are operations or works; the virtues, fortitude and temperance, regard the passions; that is, the acts of the sensible appetite, which is an internal principle. Their function is to moderate the passions, by reducing them to the medium which prudence or right reason prescribes, whereby the acts consequent upon passion will be rendered truly conformable to the norma of moral good. Passion itself is not virtue,\* because it is indifferent to good and evil; or, it is equally disposed to the one and to the other; whereas, the object of virtue is only good, and its action is *per se* good; since it is of its nature to give, not only faculty of good action, but also right use of that faculty.

Fortitude is a virtue that gives the rational medium between the extremes of fear and boldness; it also confers the facility to accept and endure painful things, which it is becoming and useful to bear.

Fortitude includes under it patience, confidence and perseverance, in spite of hardships; and magnanimity.

Patience is a virtue by which a person willingly bears long enduring and painful things, when it is becoming or morally good to accept and suffer them. Longanimity is a perfection of patience by which the soul preserves its equanimity or evenness of temper, when relief which was expected or hoped for is further delayed. Confidence and perseverance are produced by well ordered courage.

Magnanimity, i. e., greatness of soul, is a virtue which inclines to what is great in every species of virtue. The cardinal virtue to which it is usually referred as its principle, is

\* "Passio non est virtus, sed indifferenter se habet ad bonum et malum."—(Philos. passim.) Passion is not virtue, but is indifferent to good and evil.

fortitude; but it has this perfection special to itself, that its object is *the great*, in every kind of virtuous operation; on which account it may be considered as, under some respect, a distinct species of virtue.

Magnanimity is a higher perfection in all virtue, and therefore it may be considered an ornament of all virtue. The doing of that which is great in every species of virtue, is generally called "heroic virtue;" hence, heroic virtue, and magnanimous virtue, are really the same thing. Observe, however, that heroic virtue does not differ in its specific essence from ordinary virtue; it differs only in degree; for any virtue as ordinary differs from that virtue as magnanimous, only by greater or less, i. e., only in degree, since their objects differ only in this manner.\* It follows that a man cannot be truly great without magnanimity. A man is styled great, in some instances, however, on account of one virtue which is exercised in a pre-eminent degree; as, Aristides the Just; or for excellency in some virtues that are intellectual, as, Cyrus the Great, Alexander the Great, etc.; they were great by their excellency in the military art. But for Christian heroism in virtue, one must be magnanimous in every virtue which the exigencies of his life require him to exercise at all. There are three vices opposed to magnanimity by excess; *presumption*, or excessive confidence in one's strength, proceeding from culpable ignorance or inconsiderateness; *ambition*, which is an inordinate desire of honor as a testimony of excellency; and *vainglory*, which regards praise, fame; and it tends to them inordinately, or not by doing well the things that merit praise. *Pusillanimity* is opposed to magnanimity by defect; it induces the person to conceive all things as exceeding his ability; and hence, he shuns all undertakings having any difficulty; imagining them to transcend his power. Cowardice, or irrational timidity is opposed to fortitude by defect; and rash boldness is the opposite extreme.

\* "Gradus non mutat essentiam rei." The degree of more or less does not change the essence of the thing.

## TEMPERANCE.

Temperance, which is the fourth cardinal virtue, primarily regards tangible things which affect sensible appetite with pleasure, as its material object; and its formal object is the moderating of sensible pleasure by the measure of prudence or right reason, especially that pleasure which is produced through taste and touch. Aristotle\* distinguishes two kinds of pleasures, those which are directly caused by material objects acting on the external senses; and those that are produced by the mental powers, which, through their control over the fancy, can excite pleasurable emotions or feelings by its imagery of the beautiful, etc. The proper object of temperance, however, is limited to the things of taste and touch; and this virtue regards other pleasures which differ in species only by accident. Yet, meekness and humility are reduced to temperance; not, however, on account of their objects; but owing to the *manner* in which they moderate passion.†

This virtue moderates those passions which directly incline to sensible good or pleasures; fortitude moderates those passions, v. g., fear, rashness, that tend to remove what the fancy apprehends as evil; but good is presupposed, however, to the action of all appetite, as its object. Sensible pleasures, when considered in themselves, are not evil; for they are designed as instruments or means of good. But no sensible power can apprehend that order which is essential to moral goodness; this is the function only of practical reason; therefore, the use of those pleasures, according to the end for which they are intended, or the good which they are ordained by nature to produce, must be the work of moral virtue; and the moral virtue which effects this end is temperance. All moral virtue derives its goodness or special perfection from the order which

\* Ethics, b. 3. c. 10.

† D. Th. 2, 2., q. 142, a. 1.

is put into man's operations by reason; since the beauty of virtue is the light of reason that is in it.\*

The medium or rule of temperance is, that real natural necessity which there is of sensible pleasures, as means to a good end.

Nature intends certain ends for the good of man, considered both individually and specifically, for the perfect accomplishment of which, pleasure is actually a necessary means. Within such limits, and for such purpose, pleasure of sense is good; because it is a necessary means to a necessary end. It is for reason, informed with the virtue of prudence, to assign that mean between excess and defect, in which temperance, in common with all moral virtue, consists.

We may conclude, therefore, that the rule or norma which is directive of temperance, is some befitting degree or measure of necessity for sensible pleasure.

Temperance, primarily and most properly, concerns individual members of society, since it has for its object to moderate pleasures which pertain to the man himself; whereas, both justice and fortitude are related to others and to the public. It is on this account principally, that the virtue of temperance is considered to be less noble than the virtues,† justice and fortitude; since, what concerns the multitude, is more exalted than that which regards individuals only.‡ The diffi-

\* “*Pulchrum in rebus humanis attenditur prout aliquid est ordinatum secundum rationem.*” 2. 2, p. qu. 142, a. 2. Beauty in human things depends on the works being ordered in accordance with reason.

“*In intemperantia, minus apparet de lumine rationis ex qua est tota claritas et pulchritudo virtutis.*” Ibid, a. 4. In intemperance the light of reason appears lessened, and from reason comes the whole glory and beauty of virtue.

† “*Maximæ virtutes sunt, quæ aliis maxime sunt utiles : et propter hoc fortes et justos maxime honoramus.*” 2. 2, p. qu. 141, a. 8, cum Aristot. The greatest virtues are those that are most especially useful to others; and, on this account, we greatly honor the just and firm.

‡ “*Bonum multitudinis divinius est quam bonum unius.*” 2. 2, p. qu. 141, a. 8. The good of the whole multitude is something more divine than is the good of one person.

culty of restraining appetite, which tends directly to what is apprehended as good, is great; and also, the medium of this virtue is quite variable,\* unlike to commutative justice; it has, on that account, much dependence on prudence. Sins against temperance have less malice than there is in sins against the other virtues, because they partake less of rational nature; but they are more debasing, because they assimilate man to the brute, in as much as they are peculiarly animal operations, which are, therefore, specifically common to man and brute.

There are virtues which are referred to temperance, and which are more or less intimately related to it; as, abstinence, which is moderation in food; sobriety in drink, chastity, modesty, or comeliness of exterior conduct; continence, which keeps the will firm against opposing concupiscence; meekness, which restrains anger; humility, which corrects inordinate self-esteem or pride, etc.

It is important to bear in mind that moral virtue is only in the will as its proper subject, not in sensible appetite: that no feeling or organic action which is not from the free will can be imputable either as good or bad, morally. Sensible feeling, and emotion which is merely natural and spontaneous, and which is therefore purely physical in its origin and causes, must not be confounded with action of the will. Such mistake would cause delusion, and might lead to much perplexity in minds that mean well and esteem virtue.

\* "Medium rationis est illud quod est divisibile variaturque pro loco, tempore, et persona, juxta prudentis æstimationem; et propter hanc *æstimationem*, vocatur medium rationis." Des Charmes, de Virtut. The rational medium is that which is divisible, and is varied as to place, time and person, according to the estimation of a prudent mind, and it is in reference to this estimation that it is called the rational medium, or the medium of reason. It is the peculiarity of the extreme mind, to make the medium of moral virtue a metaphysical rule, instead of a rule which is variable according to circumstances; this error is the more mischievous since it seems to favor virtue.

## CHAPTER VI.

### ARTICLE I.

#### THE ETERNAL LAW; THE NATURAL LAW.

The eternal\* law is nothing else than that perfection of the Divine wisdom, according to which it is directive of all action and movement. An exemplary and eternal idea in the all-wise mind of God expresses the essential constituents and perfections of every being that is possible, or that will be created; so, it also defines the absolute measure or rule for every being's operation that is in actual existence. This concept of every being's essence and proper mode of action is co-eternal with God, and it is the primitive exemplary origin or type of all law. Therefore, all law is really and truly such, only in so far as it is conformable to this eternal law; since it is the primitive archetype of all rectitude in action, and from it all

\* "*Lex æterna nihil aliud est quam ratio divinæ sapientiæ secundum quod est directiva omnium actuum et motionum.*"—P. I. 2, qu. 93, a. 1. The eternal law is nothing else than a respect of the Divine wisdom, according to which it is directive of all actions and motions. "*Sicut ratio rerum creandarum nihil aliud est quam conceptus Divinæ mentis, quo concipit rem, et judicat quomodo illa facienda, sic ratio rerum gubernandarum, quam vocamus legem æternam, nihil aliud est quam conceptus divinæ mentis quo concipit et judicat quomodo unaquæque creatura debeat suas functiones obire, adjuncta simul voluntate eam obligandi, vel imprimendam inclinationem ad suam regulam servandam.*"—Becanus *De Leg.*, c. ii, qu. 1. As the nature of things to be created is nothing else than a concept of the Divine mind, by which it conceives the thing, and judges how it is to be made; so, the nature or respect of things as requiring government, which we call the eternal law, is nothing else than a concept of the Divine mind, by which it conceives and judges how every creature must fulfill its functions, including the will to oblige it, or else impress on it the inclination to obey its law.

other law is a derivation.\* The eternal law may be regarded, then, as ultimately founded in the Divine essence itself, in which we must conceive the Divine intellect to apprehend it, and to express it in an idea or mental word. Hence, it may be said that law is fundamentally from the nature of things; it originates in the mind of the law-giver by way of a practical judgment;† by means of a volition and command, it is actually imposed on its subjects as binding them to comply with the duty ordained and declared by the law. Law is in the mind of the rational subject only by way of a practical judgment that is directive of action, but without necessitating that action: it is as a known object that guides the subject in what he should do, just as the exemplar is the known object that guides the mind of an artist who copies it.

The question is sometimes disputed, as to whether law pertains principally to the intellect or to the will of the law-giver. But law may be considered under different respects; we may consider law, 1st, precisely as it is in its own essential entity as law; 2d, as it is in the law-giver; 3d, as it is in the subject. When law is considered precisely as it is in itself, it is fundamentally in the nature of things themselves; it first originates in the mind of the law-giver as a practical judgment; and hence St. Thomas, with whom most authors agree, regards law, when considered precisely in itself, as pertaining

\* "*Lex humana in tantum habet rationem legis, in quantum est secundum rationem rectam; et secundum hoc manifestum est quod a lege æterna derivatur; in quantum verò a ratione recedit, sic dicitur lex iniqua.*"—1. 2, p., qu. 93, a. 3, ad 2. Human law truly has the nature of law only in so far as it is according to right reason; in this respect, it is manifest that it is derived from the eternal law; but, in so far as law recedes from reason, it is called iniquitous law.

† "*Nihil aliud est lex quam dictamen practicæ rationis in principe, qui gubernat aliquam communitatem perfectam.*"—1. 2, p., qu. 91, a. 1. Law is nothing else than a dictate of practical reason in the ruler who governs any perfect community.

The "perfect community" is any civil community as distinguished from a private family.

principally to the intellect: \* “lex est aliquid ratiōnis;” I. 2, qu. 90, a. 1; law is something from reason; though some other authorities regard it as being principally from the will. It is only as a wise and prudent judgment, however, that law is any certain rule of what is just and right in action.

When law is considered as actually imposed on subjects, it necessarily supposes these acts in the mind of the law-giver; the judgment that the thing is good and ought to be done; the volition, and the command.† The first of these acts is essential to the very concept of law; the two other acts are of authority to govern, and they are indispensably necessary for all law as positive, or as actually binding subjects. The law is in the subject, as already observed, by way of a practical judgment, since its essential office is to direct the subject's action in respect to an end.

It may here be asked, does the eternal law bind God? The eternal law is not anything that is superior to God, or extrinsic to Him; nor is it really distinct from His infinite intelligence and perfection; therefore, He is not bound as by something superior to Him, or above His own essence. Yet, we may rightly conceive God to be guided, in all His works *ad extra*,

\* “Lex ita est actus rationis, ut per se in suo essentiali conceptu non includit actum voluntatis.”—Gotti, *De Lege* Dis. 1, sect. 1. 2. “Etiam si, per impossibile, non accederet voluntas divina ad præcepta legis naturalis obligans, adhuc lex obligaret.”—Billuart. *De Lege*, Dis. 1, Art. 1. Law is so an act of reason, that strictly in its essential concept it does not include an act of the will.—Gotti. Even if, by an impossible supposition, the Divine will did not accede to the precepts of the natural law as binding, the law would still bind.”—Billuart.

† St. Thomas, in p. I. 2, qu. 17, a. 1, after quoting these words of St. Greg. Nicen., “appetitus obedit rationi; ergo rationis est imperare;” appetite obeys reason, therefore, it is of reason to command; says: “Imperare intimando vel denuntiando, est actus rationis præsupposito actu voluntatis in cuius virtute ratio movet per imperium ad exercitium actus.” To command by making known or declaring, is an act of reason to which is presupposed an act of the will, in virtue of which the reason moves through a command to the putting of the act.

It is evident, as he notices elsewhere, that this action of the will presupposes another act of intellect, judging the thing to be good.



by His infinite wisdom. An indispensable condition for the binding force of law is, that it be imposed by one having the authority to command; as there is no being that can have jurisdiction over God, He cannot become the subject of a law.

Is the eternal law properly styled law; or, is it truly a law at all? It is manifest that if we define the essence of law so as to include in the very concept of law its actual application to subjects, then the eternal law is not, under all respects, properly termed law. But is it of the essence of law that it be actually imposed on its subjects, or that it be positive? Is law truly such, when it exists only in the mind of the ruler? God intended from all eternity to create the universe, and to impose His law on all the beings made by Him; we may legitimately conceive that there were eternally in the Divine mind the judgment and the volition that must be presupposed by us to this work, together with the purpose of actually promulgating His law to the universe, in time. These requisites, it must be granted, fully comprise all that is necessary for law, when considered precisely as it is in itself; for, a law is such, not only when it is here and now actually obeyed; but also when it is hereafter to be obeyed. For the concept of law, its positive application to subjects is not required; its fitness or proximate capability of being thus applied suffices. The eternal law is, however, not *immediately* published to creatures, but *mediately*, or through the medium of natural law, as will be explained further on. All other laws are derived from the eternal law. The question here is only of those laws that are directive of rational or intelligent creatures, and that impose on them the obligation to obey. Just as all creatures are wholly dependent on God for their existence, so are they equally dependent on Him for their action; and therefore God is not only their absolute cause, but He is also their supreme ruler, directing the operation and movement of each one by a law impressed on its nature. As man's rational soul is a likeness of God, so is the practical dictate of right reason in him like to the eternal law in the Divine mind, from which it is derived as an image is derived from its prototype.

Hence, the practical dictates of right reason, "parents should be honored; injustice should not be done," etc., are true, not only now that man actually exists; but these principles are, in themselves, eternally true. Therefore, all just law is conformable to the eternal law, and is a derivation from the eternal law.\*

As we can infer the idea that was in the mind of the architect, from the plan or design in the house built by him; and as we can conclude, from the works of God in the visible creation around us, to some true notion of His nature and attributes; so, we can form our concept of the eternal law, by first knowing the likeness of it which is imprinted on our own rational nature; and then rising to some right conception of the eternal prototype which it represents. Hence, as just said, we come to a knowledge of the eternal law by reasoning to it from the natural law, just as we reason to the existence and attributes of God from His works.

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## ARTICLE II.

### NATURAL LAW.

All created things are subject to the absolute power of God, on which they depend both for existence and for action. † The law of their action is rooted in their nature, or it results from the very constitution of their essence; they have no

\*"In temporalis lege nihil est justum ac legitimum quod non ex lege æterna homines sibi derivaverunt."—St. Aug. 1, De Lib. Arbit.; et D. Th., p. 1. 2, qu. 93, a. 3. In temporal law, nothing is just and legitimate which men do not derive for themselves from the eternal law.

† "Deus imprimit toti naturæ principia priorum actuum, et ideo per hunc modum Deus dicitur præcipere toti naturæ . . . et per hanc etiam rationem omnes motus et actiones totius naturæ legi æternæ subduntur." P. 1. 2, qu. 93, a. 5. God impresses on all nature the principles of its proper action, and in this manner, therefore, God is said to rule all nature. . . . Through this means, likewise, all the movements and actions of entire nature are subject to the eternal law.

action, and they can have none, except in accordance with this law originally implanted in them, at their creation. We may say, then, that they are, by their very nature, subject to the eternal law, in conformity to which they were made. This law, which is essentially inherent in the very nature of every creature, may be styled natural law, agreeably to the most general meaning of the terms.

The expression, "natural law, law of nature," is not used in precisely the same sense by all classes of the learned. The Roman jurists, included under natural law only those inclinations and principles of action which are common to man and the brute creation, as instincts of animal nature; v. g., to love their own kind. In the English language, the expression is limited by many writers on popular science to the general physical laws that govern the action of material substances or bodies; e. g., "by the law of nature, heavy bodies gravitate towards the centre of the earth; vapors ascend," etc. Blackstone, whose Commentaries\* contain the doctrine on such matters that is generally upheld by English jurists, defines natural law to be "the rule of human action, prescribed by the Creator, and discoverable by the light of reason." Theologians also employ the phrase "natural law" to express what is common to mankind by way of a rational instinct, as is the practical dictate of reason in regard to what is right or wrong; and hence natural law is often defined by them to be the natural dictate of right reason.† In all that follows in this treatise the name, "natural law," will be employed as synonymous with the rule of right reason that is naturally known to man.

The rule of right reason as naturally known to man, may

\* Introduction to Book I, sec. 1.

† "Jus naturale nihil aliud est quam naturale dictamen rectæ rationis." Becanus, De Lege. The natural law is nothing else than the natural dictate of right reason.

"Lex naturalis in dictamine rationis naturalis consistit." Suarez, De Legibus. The natural law consists in the dictate of natural reason.

be still more philosophically defined, thus:\* Natural law is nothing else than a participation of the eternal law in a rational creature; or, natural law is the light of natural reason, by which we distinguish what is right and what is wrong. Ethics is specially concerned about natural law as the norma of right moral action. This norma is appropriately styled "natural law," because it is an inborn virtue and light, helping and directing the right exercise of man's rational nature. This law may be regarded as an essential perfection or property of man's intellect, since it is a principle that is *per se* necessary for the operation of right reason; and hence, its names, the *natural* dictate of reason; the *natural* light of reason, etc.

In what sense of the term can natural law be legitimately styled a "participation of the eternal law?" A being is said, in the technical language of the schools, to possess by *participation* existence, this perfection or that perfection, when such existence or perfection in that being is derived from a superior cause, which possesses the same thing *essentially*, and in a pre-eminent manner:† thus, creatures are said to possess existence, goodness, beauty, intelligence, etc., by *participation*; because those realities are in creatures as effects that are derived from a cause in which they are absolutely essential, and are, therefore, as simple perfections. The natural law, then, is styled "a participation of the eternal law," because it is derived from the eternal law, whose perfection it imitates, as every created effect imitates, in its own degree and species, the first cause, from which it receives its being. Through the

\* "Lex naturalis nihil aliud est quam participatio legis æternæ in rationali creatura . . . . lumen rationis naturalis, quo discernimus quid sit bonum et quid sit malum." P. I, 2, qu. 91, a. 2. The natural law is nothing else than a participation of the eternal law in the rational creature . . . . it is the light of natural reason by which we discern what is good from what is evil.

† "Si enim aliquid invenitur in aliquo per participationem, necesse est quod causetur in ipso ab eo cui essentialiter convenit." P. I, qu. 44, a. 1, in c. If anything is found in one by participation, it must necessarily be that it was caused in him by one to whom that thing belongs necessarily.

natural law, which is in man as a dictate of right reason, he resembles God by what is highest in the grade of perfect action, the intellectual; for, it is especially by his rational nature that man is made according to the likeness of God. Hence, it is only the natural law as it is in a rational creature, that is most properly a participation of the eternal law. The eternal law is in man, only according to the sense in which a divine perfection is communicable to the creature. All knowledge of truth may be regarded as some participation of the eternal law: \* the natural law is its light shed upon the created intellect, by which this absolute norma of the true and the good is promulgated to the rational soul, enabling it to discern good and evil.

While no person possessing the use of sane reason can doubt, or be ignorant of those self-evident conclusions from the natural law which are principles of right action that are common to mankind, or which apply to all persons in every condition of life; † yet, there may easily be doubt or ignorance in regard to remote conclusions from the natural law. To see such deductions as \* logically true or consequent, requires power of reasoning in a degree of which all are not equally capable.

The question is disputed as to what precisely and formally is the natural law in itself; or what principle it is as defined in itself. Many answers are proposed, their very number and diversity showing that the subject is obscure; v. g., it is variously defined as in some obscure manner identical with the eternal law, or with the divine will, with human reason, with a dictate of reason, etc. It is certain that the natural law essentially supposes uprightness or rectitude of reason, and that the dictate of right reason is that law, even when the judg-

\* "Omnis cognitio veritatis est quædam irradiatio et participatio legis æternæ." P. 1. 2, qu. 93, a. 2. All knowledge of truth is a certain radiation and a participation of the eternal law.

† "Veritatem omnes aequaliter cognoscunt, ad minus quantum ad principia communia legis naturalis." P. 1. 2, qu. 93 a. 2. All know truth at least as to the common principles of the natural law.

ment is *per accidens* erroneous in its matter.\* Absolutely and perfectly, the natural law is a dictate of right reason, truly founded in the nature of things as related to God, to fellow-creatures and to self; whence results its exact agreement with the eternal law, and its obligation also. Reason cannot be the sole principle of the natural law, since the act of reason requires an object; reason does not make the norma of rectitude in action, but it knows that norma, just as reason knows, but it does not make the truth that the "shortest distance between two given points is a straight line." Hence, the autonomy of practical reason, propounded by Kant, is not tenable as true.

When this principle, natural law, is styled "the light of natural reason," it is then conceived by way of a real and positive perfection given to reason, that proximately fits it for actually discerning right and wrong in conduct or deeds to be done. It was styled natural light of reason by the acute metaphysicians of former times;† they argued that the Author of nature must give to the creature, not only existence and power; but He must also give *first operation* to the power: this is accomplished, for the intellect, by means of a natural habit, without which that faculty would be indifferent to truth

\* "Billuart Dis. II. a. II. De Lege, thus proposes the question: "Quid sit istud ens participatum quod in subjecto regulato dicitur lex naturalis?" What can be that participated entity which in a regulated subject is called the natural law? He thinks it not to be a mere act, as is the dictate of reason, for the natural law is in the idiot and infant; it is published by discourse of reason, and they are incapable of reasoning.

† "Mihi sane videtur quæstio de modo loquendi et non dubito quin in actuali judicio mentis propriissime existit lex naturalis. Adde vero, etiam lumen naturale intellectus expeditum de se ad dictandum de agendis posse vocari legem naturalem: quia quamvis homines nihil cogitent, aut judicent, naturalem legem retinent in cordibus suis." Suarez De Leg. lib. 2, c. 5. To me it really seems to be a question about a manner of talking, and I do not doubt but that the natural law is, most properly, in an actual judgment of the mind. I add, however, that also the natural light of the intellect proximately prepared to dictate what ought to be done, can be called the natural law; for, even when men are not thinking or judging of anything, they retain the natural law in their hearts.

and to falsity ; “*potentiæ se habent ad opposita.*” This natural habit proximately fits it for assenting to evident truth promptly. The will, however, requires no natural habit for its first operation ; since its nature is determined to its proper object, through a connatural inclination by which it follows the intellect. Hence, natural law may be legitimately conceived as including some virtue, over and above that which is required merely to constitute the bare physical being of reason, and which really, by way of an intellectual light, helps reason to discern moral right and wrong in action ; for this law directly regards, not the existence of reason, but the operation of reason.\*

The precepts of the natural law remain habitually or permanently in the mind, in the same manner as other judgments of reason continue habitually in the mind : hence, although natural law is in the reason most properly as an act, yet, it may also, under an another respect, be considered as sharing in the nature of a habit.†

\* “*Verius videtur legem naturalem nihil aliud esse quam lumen naturale ut impressum et participatum a ratione æterna seu lege æterna.*” Billuart, *De Lege*, Dis. II. a. II. “*Est lex æterna ut participata in subjecto regulato.*” Ibid. It seems more true to say that the natural law is nothing else than natural light impressed on the intellect and communicated by the eternal reason or the eternal law ; it is the eternal law, as shared by a regulated subject.

† P. 1. 2, qu. 94, a. 1. “*Potest dici habitus id quod habitu tenetur : hoc modo quia præcepta legis naturalis quandoque considerantur in actu a ratione, quandoque autem sunt in ea habitualiter tantum : secundum hunc modum potest dici quod lex naturalis sit habitus.*” That can be called habit which is kept by means of habit ; on this account because the precepts of the natural law are sometimes considered as actual in the reason, and sometimes as in reason only habitually : under this respect it can be said that the natural law is a habit.

## ARTICLE III.

## MOST GENERAL PRECEPT OF THE NATURAL LAW; IMMUTABILITY OF THE NATURAL LAW; ITS UNITY.

The question, is there one most universal precept of the natural law, from which all its other precepts are logically deducible? is not identical with the question concerning the formal constituent principle of the natural law. This intrinsic principle that may be conceived as informing the dictate of right reason, is presupposed to the practical habits or precepts of natural law, which concern actual conduct; and it founds and gives to those precepts their obligation. The present inquiry is as to whether there is some one general rule of conduct, prescribed by right reason, which in its extension applies to all objects and all action, and which consequently comprehends under it all rules of rational conduct. There is such precept of the natural law, and it is, "Do good and avoid evil." Just as the first and most universal object of intellectual apprehension or knowledge, is *ens*, being; so, the first and most universal object of the will's action, is good. Whatever is perceived by the intellect, has this property or nature, "ens," being, intrinsic to it; and similarly, whatever is loved or intended by the will, must be apprehended as good.\* The

\* "Sicut ens est primum quod cadit in apprehensione simpliciter, ita bonum est primum quod cadit in apprehensione practicæ rationis quæ ordinatur ad opus. Omne enim agens agit propter finem, qui habet rationem boni: et ideo primum principium in ratione practica est quod fundatur supra rationem boni, quæ est, bonum est quod omnia appetunt. Hoc est ergo primum principium legis, quod bonum est faciendum et prosequendum, et malum vitandum." P. I. 2, qu. 94, a. 2. "Just as 'being' is what first falls under intellectual apprehension simply, so good is what first falls under the apprehension of practical reason which is ordained to practical work. Every agent acts for an end having the character of good: and therefore the first principle for practical reason is founded on the nature of good, which is what all things desire. This, therefore, is the first principle of the law; good is to be done and sought after, and evil is to be avoided."



principle of judging speculatively and of knowing conclusions as right and true, which is metaphysically and absolutely first and the most universal, is the principle of contradiction as applied to "ens," being; namely, "quodlibet est vel non est," anything either is, or it is not; "it is impossible for the very same thing to be, and not to be, at one and the same time." This is the first and most universal of all logical rules or principles, and by it we may ultimately judge the correctness of all reasoning and all rules of demonstration; for, all forms of argument are derivable from it, and are reducible back to it, as to their first principle or origin.

It follows by like reasoning that, since the primary and most universal object of the will, as the rational appetite, is good, "bonum est quod omnia appetunt," good is what all things tend to; the first and most universal rule which practical reason affirms and prescribes to the will, must regard that object of the will which also is first and most universal; and that object is good. Hence, the precept of the natural law which is the first and most general of all, must regard the will's first and most general object: "do good; avoid evil;" or, "do good, tend to good, and avoid evil." That tendency towards good which is from a spontaneous or natural and necessary inclination of the will, is caused by the physical law of nature. But the general command, "do good, and avoid evil," prescribes for man that he tend to the true object of beatitude by the appointed means; and it therefore ordains what is subject to the empire of his reason. From this most general precept, all other precepts of the natural law are deducible; v. g., that "it is good to honor parents; it is good to be just, kind; to pay supreme homage to God; it is evil to injure others; to murder; to blaspheme," etc.

There are usually said to be many first principles of natural law; v. g., the decalogue, or the ten commandments, are often spoken of as first precepts of the natural law; though some of them are for us really conclusions from natural law; \* this

\* Suarez, De Legibus, lib. 2 ch. 7.

fact, however, is not really adverse to the truth of what is above affirmed, namely, that there is one most general of all natural precepts from which all the others spring, or in which they have their immediate origin.\* The other common or general precepts of natural law are so proximate to this first one, "do good, and avoid evil;" they are so evident, and so necessary in their matter, that all minds see and assent to them as to self-evident truths: they may, therefore, be appropriately styled first principles, though they are, in themselves, immediate deductions from a precept that is, in strictness, logically prior to them.†

Some have held that this first and most universal precept of the natural law is, "follow order, or keep order." But order is not the first object of the will's action; good is that object, and order in things founds the norma of moral rectitude in the use of means to it; hence, "observe order," is one of many general precepts of natural law; yet it is not that precept which is primary, and to which all others are directly reducible. The first precept of the natural law, "do good and avoid evil," regards the object of the will which is first; the precept, "keep order," pertains to the manner of using all the means; and it is therefore not the first precept, but is a consequence from the first one.

Many conflicting answers are given, by different philosophers, to the question, "what is the first and most universal precept of the natural law?" On this matter, some opinions have been expressed which are so erratic as naturally to excite surprise; v. g., that of Fichte, who inculcates, as the first duty, "complete independence, together with love of self above all things, and love of other persons on account of

\* "Omnia ista præcepta legis naturæ in quantum referuntur ad unum primum præceptum habent rationem unius legis naturalis." P. 1. 2, qu. 94, a. 2, ad 1. All those precepts of the natural law, in as much as they are referred to one first precept, have the nature of one natural law.

† "Sunt multa præcepta legis naturæ in se ipsis, quæ tamen communicant in una radice." 1. 2. p., qu. 94, a. 2, ad 1. There are many precepts of the natural law in themselves, but yet they communicate in the one radix.

self." The following are adduced as instances of more plausible solutions to the problem under consideration: 1st. Bentham says, "tend to the useful;" 2d. Thomasiaus says, "seek long and happy life;" 3d. Grotius makes this first duty, "social good, or perfect sociality;" 4th. Cousin answers, "be free, or act with liberty;" 5th. Others of the French schools say, "evolve all the faculties of your nature;" 6th. Epicurus, and other ancient philosophers, said, "follow nature: *sequi naturam, summum bonum est*;" 7th. the stoics laid down, as the first and greatest precept, "seek for virtue; eradicate passion and sentiment, or feeling."

It readily appears that, 1st, "seek what is useful," cannot be the first precept of natural law, even when the useful is referred to man's ultimate end, if we reflect that the "useful"\* includes in its comprehension only means; therefore, the precept which also prescribes the end for those means, namely, "do good, tend to the true object of good, and avoid evil," is principal, and it regards what must be prior in the intention. 2d. "Long and happy life," cannot be more than an intermediate end for man's rational intention and action, since our present life is something transitory, at the best; besides, it is an object that is not directly subject to human choice, and it is, therefore, an uncertain good. To the 3d, it must be said that the good of society may be, under some respect, first or principal in the intention of the law-giver; but, for the private individual, the first duty is proximate to himself, and it binds him not only in regard to a special good to be intended, as is the social good; but he is bound by the natural law to aim at every species of good for him, duly befitting his rational

\* The useful, or the expedient, may be understood as simply and absolutely such; i. e., as useful or expedient in respect to man's ultimate end: or, these terms may be understood in a relative sense; i. e., as expressing what is referred to some merely temporary end to be gained. *Utility* or *expediency* in this second meaning may be good or bad, according as the end, object and circumstances are perfect or imperfect. Bentham intends "utility" for whatever serves as means to *present pleasure* of this life. Principles of Morals and Legislation; by Jeremy Bentham: Oxford, 1876; chaps. i, ii.

nature; and of this more general good, that of society is but a part. In answer to the 4th, "be free," it must be observed that liberty, as capable of choosing either good or evil, is, under different respects, both a perfection and an imperfection; its right use as a perfection is prescribed in the general precept, "do good, and avoid evil;" it would be absurd to affirm either that a precept of natural law prescribes the free choice of evil, or that such choice is good because it is free: on the contrary, it is bad because free. The precept 5th, "evolve, or develop the powers of nature," prescribes only one particular work or object, and that work regards the faculties of man's nature; namely, that they be enlarged by exercise, or be expanded; but the faculties of man's nature may be "evolved" so as to acquire either good or bad habits, virtues or vices; hence, this precept does not determinately command good; or, even if favorably interpreted, it prescribes only a part of what is good for man, or a part of what is comprised in his whole duty. To the principle laid down by Epicurus, and other ancient philosophers (6th), "to follow nature is the chief good: *sequi naturam, summum bonum est;*" it may be answered, man's nature is inclined both to what is good and what is evil for him as a rational or moral being; it follows, then, that, contrary to the doctrine of Epicurus, man's natural inclinations are not the true guide of his reason in what pertains to his chief good; but it is his reason that must direct and control the inclinations of his nature. If we interpret this saying of the pagan philosophers so as to make it mean, "follow the natural dictates of right reason," the precept will then have for its matter the natural law itself; or, it will command the natural law to be followed. But the natural law is presupposed by us to be subjectively in the human reason; and the present question is, what precept of natural law constitutes its most general application to its own matter?† The answer, as often declared already, is, "do

† "*Præceptum importat applicationem legis ad ea quæ a lege regulantur.*" P. I. 2, qu. 90, a. 2, ad I. Precept imports an application of law to those things regulated by the law.

Hence, precept is law, considered as proximately or immediately regulating moral action, and natural law is applied to its matter by means of precepts.

good; avoid evil;" for, good is the first, principal, and most universal object which the practical dictate of right reason concerns.

To the stoic principle (7th), "acquire virtue; eradicate passion and feeling;" it may be replied, that since virtue has for its end to perfect the powers of the soul for good action, virtue is only a means to good; and, consequently, the natural precept making it a duty of man to acquire virtue, is not concerned immediately about that good which is the object of the first and most universal precept of natural law, but it has for its end a means to that good. It is not physically possible for man in this life to eradicate all passion and feeling from his nature; and even if it could be accomplished, the destruction of these natural qualities would be injurious, both in its moral and physical effects upon him. It is a natural duty of man, however, to subject passion and feeling to the government of his reason.

Finally, it may be objected that "the saying, 'do good, and avoid evil,' seems rather to declare man's natural inclination to good, which is not free, but spontaneous and necessary; whereas, the precept in question is one which he should obey freely." To this it may be answered: it is not *good*, as it is the object of the will's natural and spontaneous action, which this precept, "do good, avoid evil," directly regards at all; but what the precept concerns, as its matter, is the true *object* of man's chief good, and the *means* of attaining to that object. As shown in Chapter I., man can freely choose this object; and he can freely use or not use the means of reaching it: now, as said, the precept, "do good and avoid evil," regards this object of his beatitude, and the means to it.

#### THE NATURAL LAW IS, IN ITSELF, IMMUTABLE.

The obligation of the natural law proceeds intrinsically and necessarily from the very nature of things; but the natures of things are immutable; therefore, the obligation of natural law, which necessarily arises from them, is also immu-

table. Natural law, as already shown, is nothing else than the natural dictate of right reason; but right reason is, in its essence, immutable; therefore, natural law, which is the necessary dictate of right reason, is also immutable.

In order for the natural law to be changed in itself, that which by its very nature is according to right reason, and that which by its very nature is against right reason, must, while all else remains the same, be positively reversed, so that one becomes the other; the right being converted into the wrong; and the wrong being in itself changed into the right. But this would be a contradiction; therefore, it is simply impossible for the natural law to be in itself changed. What is conformable to right reason, is conformable to natural law; and, conversely, what is conformable to natural law, is also conformable to right reason, and it is, at the same time, intrinsically good. Now, the essential goodness in things is immutable; so, therefore, is the natural law, which is founded on that goodness in things immutable.

The foregoing arguments also prove that there can be no dispensation or abolishment of the natural law, considered as the practical dictate of right reason. For, simply to dispense in a law, is nothing else than to allow any one to act contrary to that law, while it is in force and obliges; or, to act contrary to the law, while all the circumstances which give force to that law, and make it binding, remain unchanged: this cannot be done without changing the law; but the natural law is immutable; therefore, the natural law is not susceptible of dispensation.

Against the doctrine above advanced, the objections will occur to the mind: 1st, that God commanded Abraham to immolate his own son, Isaac, as a holocaust; but, to kill an innocent child is against the natural law. 2d. The Israelites were allowed, by dispensation of natural law, stealthily to carry off with them the goods of the Egyptians, as, gold, gems, and other precious objects. Therefore, according to fact, God can dispense with the natural law.

In answer to the first objection, observe that it is in accord-

ance with the actual law of man's nature for him to die; the mode of death, and its immediate physical causes, are directed and ruled by the general providence of God, who gives to all created nature its law; God may cause a particular person to die, either in accordance with His general providence, or in obedience to a special providence; for, in Him is the perfect dominion of life and death. The command imposed on Abraham to sacrifice the life of his son Isaac, was by a special providence, which made no change in the natural law as the rule of right reason; it was a change only in that which, by its very nature, is mutable, and may be variously regulated by positive divine precept. As regards the goods taken from the Egyptians with Divine approval: man's dominion over his temporal possessions here in the world is not absolute; he owns merely a passing and dependent use of them; the absolute dominion in them belongs only to God, who can change the temporary and dependent ownership of them at will. The right and title to perfect dominion over the goods taken from the Egyptians was not injured; it was only the transfer from one to another of a relative or conditional right to the temporary use of those objects.

The natural law is one; and it is in itself identical for all nations of mankind. Natural law is one, when we regard it: 1st, as natural rectitude of practical reason; 2d, when we view it in respect to its most general precepts, or those which are common to all men; 3d, when we consider the knowledge of these precepts as possessed by the different races of mankind, both civilized and uncivilized.

The unity of the natural law, considered as a likeness of the eternal law impressed on human reason, seems plain, in the very nature of things; for, it has one end,\* and it perfects a nature which is one; whence it must be one in its essence.

There are first principles, both in speculative and in practical matter, which are seen as true, and are recognized as

\* "Primum principium in operativis, quorum est ratio practica, est finis ultimus."—P. 1. 2, qu. 90, a. 2, in c. The first principle in works to be performed, which belong to practical reason, is the ultimate end.

such, by all nations and races of mankind. But the conclusions from these first principles may be more or less perfectly known to different minds; and many minds may even not see them at all as consequent from their principles: v. g., though every person of sane reason is capable of knowing, in some manner, what a triangle or three-sided figure is; yet, all men do not understand the demonstrated truth, that the sum of its angles is equal to two right angles. Evident and certain conclusions, in necessary matter, are seen alike by all persons that truly know them as conclusions; and this suffices to make their knowledge of such truths identical, or one and the same in its kind. It is a fact, that all minds likewise know the most general principles of right and wrong, and that they understand them substantially in the same manner. But all people do not see with equal clearness the conclusions which follow from these first principles so universally known by mankind. When the first principles of natural law are actually applied to the particular objects and actions of human life, this is done by way of conclusions; this particular matter which these conclusions concern is something contingent and mutable. Hence, when deductions from natural law that regulate practical things are remote from their first principles, even superior human intellects can, in many cases, know only with probability what are right and true conclusions,\* for this or that matter. Results analogous to these take place in respect to principles even of the purely speculative order: when the absolute truths of mathematics are actually applied by man to material physical objects, the work which he does in practice can only approximate metaphysical exactness. For example, the most perfect wheel which man can construct of wood or metal can never be

\* “*Ratio practica negotiatur circa contingentia, in quibus sunt operationes humanæ; et ideo si in communibus sit aliqua necessitas, quanto magis ad propria descenditur, tanto magis invenitur defectus.*”—P. I. 2, qu. 94, a. 4. Practical reason is concerned about contingent things in respect to which there are actions; and hence, although there is some necessity in the common or universal law, the more there is a descent to what is proper of particular, the more is defect found.



made by him absolutely and certainly to conform, in all its parts, to what the circle is strictly and abstractly defined in geometry to be. We may conclude, then, that man is physically unable to measure, with absolute strictness, particular and practical things by metaphysical rules, though he can attain to a precision that is sufficiently perfect in practice.

Suarez\* appropriately distinguishes the general principles and precepts of natural law into three classes: 1st, those which contain the most general principles, or such as are evidently common to every species of moral goodness in human action; v. g., "do good; avoid evil; do as you would be done by," etc.; 2d, precepts which regard more determinate or particular matter, and which are therefore conceived to be more special, less general; † v. g., "be just; live temperately; worship God; honor parents," etc. These principles are all self-evident to any mind that understands the terms in which they are expressed. 3d. Those precepts that follow by necessary and evident illation from natural principles, or by means of reasoning; of these precepts, some are more easily seen as following from their principles, and are known as consequent by most minds; v. g., "theft is evil; adultery is evil," etc.; others, though in themselves certain precepts of the natural law, are less easily seen to be such; v. g., "lying is always evil; fornication is always evil," etc.

While it is not possible totally to erase from the mind of man the general or common principles of the natural law; yet, depravity of manners can, as experience testifies, obscure

\* De Legibus, lib. 2, cap. 7.

† "Si propriè loquamur, magis exercetur lex naturalis in his principiis, vel conclusionibus proximis, quam in illis principiis universalibus, quia lex est proxima regula operationis; illa autem communia principia non sunt regulæ nisi quatenus per particularia determinantur ad singulas species actuum, seu virtutum."—Suarez, De Legg., lib. 2, c. 7, no. 7. Strictly speaking, natural law really acts more in those principles or proximate conclusions than in the more universal principles, because law is a proximate rule of action; even those common principles are not rules, except in as much as they are determined by particular things to concretè kinds of action or virtue.

and pervert the reason, as regards the application of obvious deductions from them to the conduct of life. Thus authors explain the fact mentioned by Cæsar (De Bello Gallico, lib. 6), that the ancient Germans believed robbery to be a good work ; we may in like manner account for the vicious reasoning which led many ancient nations, and among them the Carthaginians, to offer human victims on the altar, a practice which the Greeks compelled the Carthaginian people to discontinue. Their argument in proof that human victims should be immolated to their gods was this: the best objects on earth are the most befitting offerings to the divinity ; but human beings are the best objects on earth ; therefore human beings are the most fit objects that can be offered to the divinity. Yet, it is evident to natural reason that murder is unjust ; and it is a conclusion which is proximate to first principles, that an act of great injustice to man cannot be any acceptable homage to God.

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## ARTICLE IV.

### POSITIVE LAW.

Positive law is not innate to man, as is the natural law ; but it is law which is *laid down* by supreme authority, commanding expressly and explicitly what is left undetermined by nature, or what is only implicitly contained in the natural law. Hence, positive law\* has for its special matter those

\* “ Lex est ordinatio rationis, ad bonum commune ab eo, qui curam communitatis habet, promulgata.” P. I. 2, qu. 90. Law is an ordinance of reason, for the common good, and promulgated by him who has care of the community.

“ Lex est commune præceptum justum ac stabile sufficienter promulgatum.” Suarez, De Leg. lib. 1, c. 12. Law is a common precept that is just, stable, and is duly promulgated.

“ Illa lex vocatur positiva quæ non est innata cum natura, sed ultra illam ab aliquo principio extrinseco habente potestatem posita est ; inde enim positiva dicta est, quasi addita naturali legi, non ex illa necessario manans.”

rights and duties pertaining to the common good which are not expressly and evidently dictated by nature to all minds as are the universal first principles of natural law, or the first self-evident judgments of right reason. Things that are not determinately prescribed by natural law, therefore, are defined by positive law; or, positive law regards only that matter which is left undetermined by the natural law.

Law is divided into the eternal law, natural law, and positive law. The positive law is subdivided into the divine positive law, and the human positive law. The explanation of divine positive law, with whatever pertains to its scope and matter, is the office of theology; human positive law, which is necessary for man as naturally social, and as a member of political society, belongs to the proper subject matter of ethics.

The nature and properties of law as a positive and proximate rule of action for man living in organized society, are specified in the following definition: Law is an ordinance of reason, for the common good, promulgated by him who has charge of the whole community.

Law is a rule by which the action of intelligent subjects is directed to an end intended by the lawgiver; but it is for the reason, which is the first principle or radix of human action, to measure and order means to an end; law is therefore the work of reason. Command is a locution, or it is the speaking of something, for it is a mental word; and therefore it is true

Suarez, De Leg. lib 1, c. 3. That law is called positive which is not inborn with nature, but is afterwards laid down by extrinsic principle having the power; for it is called *positive* law because it is, as it were, added to the natural law, not flowing from it necessarily.

“Cum totus populus consentit quod aliquid habeatur quasi adæquatum et commensuratum alteri, vel cum ordinat princeps qui curam populi habet et ejus personam gerit, hoc est jus positivum.” S. Thomas. P. 2. 2, qu. 57, a. 2, ad 1. When all the people agree that one thing shall be considered adequate and commensurate in respect to another, or when the prince so ordains who has care of the people and bears their person, and represents them; this is positive right.

and just, only when it is conformable to right reason.\* It is of reason to enunciate the true, and to measure the just and right: hence, speech is usually named as a specific note of rational nature; while it is the office of reason to constitute and prescribe the rule or measure of action that is according to order, or is designed for an end; yet, an action of the will is presupposed as moving the reason to this operation. Hence, to ordain a law is the work of reason;† but law presupposes, at least as positively imposed, an act of the will.

When it is said that law is made binding by the will of the ruler, "*quod placuit principi, legis habet vigorem,*" what pleases the prince, has the force of law; this can be true only when the will of the ruler is regulated and directed by reason; for, law which is not devised and prescribed by reason, is iniquitous, and it cannot impose a true or just obligation. To the merely arbitrary law, is frequently applied the well-known

\* "*Intimare seu annuntiare, est manifestare et loqui, quod etiam pertinet ad intellectum.*" Billuart, *De Act. Hum. Dis. III., a. 7, sec. 2* To intimate or announce, is to manifest and speak, which also pertains to the reason.

† "*Regula autem et mensura humanorum actuum est ratio quæ est principium primum actuum humanorum. Rationis est ordinare ad finem qui est primum principium in agendis.*" P. I. 2, qu. 90, a. 1, in c. et 66, a. 1. The rule and measure of human actions is reason, which is the first principle of human acts. It is of reason to ordain for an end, which end is the first principle in moral action.

"*Causa et radix humani boni est ratio.*" The cause and radix of human good, i. e., good which man produces, is reason.

"*Imperare autem est quidem essentialiter actus rationis . . . ordinare per modum intimationis cujusdam est rationis. . . . Radix libertatis est voluntas sicut subjectum; sed sicut causa, est ratio: ex hoc enim voluntas potest libere ad diversa ferri, quia ratio potest habere diversas conceptiones boni.*" P. I. 2, qu. 17, a. 1, ad 2. To command is indeed of its essence an act of reason . . . to ordain, by way of a certain declaration, is of reason. The radix of liberty, as to the subject in which it resides, is the will; but as to the cause, it is the reason; (the subject of liberty is the will; the cause is the reason); for, therefore can the will be carried to different things, because the reason can have different conceptions of good.

line: "Hoc volo, sic jubeo, sit pro ratione voluntas;"\* I wish this; I thus command; my will must be the reason for it.

It must be concluded, then, that to frame and pronounce a law is the work of reason; for law, which is not a judgment of reason, is not a rule of rational action; and command is not an arbitrary act, but it is essentially a work of reason.

Law must have for its end, the common good. Law, as an ordinance of reason, has for its necessary and only legitimate end, that order which is a means to the common good of society or the community: it follows, then, that law is by its nature ordained to the general welfare of the community, or that it can prescribe only what is for the common weal.† The public or supreme authority has for its end, the welfare of the whole community: it may be concluded, then, that the laws by which the supreme power ordains and rules all things with the intention of promoting the common good, must have the same end. Hence, no law is just which has only a private end, or which benefits only a particular person or part of the community; for, the public or common welfare is the essential end of just law; in the same manner that the supreme authority in the community cannot have for its principal and essential end, only the particular good of one individual, or one class of that community; because the only principal and essential end for which human authority exists, and to which all its particular ends are subordinate, is the good of the whole community.

\* Juvenal, Satir. VI, line 223. "Voluntas de his quæ imperantur, ad hoc quod legis rationem habeat, oportet quod sit aliqua ratione regulata: et hoc modo intelligitur quod voluntas principis habet vigorem legis: alioquin voluntas principis magis esset iniquitas quam lex." P. I. 2, qu. 90, c. 1, ad 3. In order for a will concerning things which are commanded to have the nature of law, it is necessary for it to be regulated by some reason; in this manner is understood the saying, "The will of the prince has the force of law;" in any different sense, the will of the prince would rather be iniquity than law.

† "Est de ratione legis humanæ quod ordinetur ad bonum commune civitatis." P. I. 2, qu. 95, a. 4. It is of the essence of human law that it be ordained for the common or general good of the nation.

We should here distinguish different kinds of "community," which may exist among human beings; v. g., we may regard all mankind as making up a community, because they agree in the same specific, rational nature: the natural law pertains to this community; for, its common, self evident precepts bind all races, nations and tribes of men. There is also the political community which is kept in union by a moral bond; as, the State, the Republic, the Kingdom, etc. A political body of this sort among mankind, which is not subject to the authority of any superior nation, is styled a "perfect community"; hence, a perfect community is a political union among mankind which possesses within itself supreme power of legislation and jurisdiction. A household of persons, or the family constitutes what is termed an "imperfect community," the ordinary ruler of which is the father of the family, who is differently related, however, to its members, the wife, children, and servants. The father of the family can govern by private precepts, by which he may even principally intend his own interest; but his precepts cannot bind any except inmates of his own house; he has not equal authority over all members of the family, and his power to coerce obedience, is limited. The ruler of the "perfect community" has supreme authority, with all its essential prerogatives, as will be more fully explained in another place; but his laws must have for their end the well-being of the whole community, nor can they intend as principal either his own good, or what is good in respect only to a part of the community.

We may conclude, therefore, that none but a "perfect community" is susceptible of law; and that the common good, or good of the whole community, is the essential end of all law.\* The privilege is not really an exception to this truth.

A privilege is a private or particular and special law, con-

\* "Omnis lex ad bonum commune ordinatur." P. 1.2, qu. 90, a. 2. All law is ordained for the common good.

Salus populi suprema est lex. The welfare of the people is the supreme law.

ferring some benefit, right or immunity on a person or on some persons,\* which is not enjoyed by all in the community. What a privilege directly concedes, is always something favorable; but it may be indirectly odious, in as much as it may be offensive to other particular persons. Law is of this same species which prescribes what is necessary for the common good, but is harmful to a few. But no privilege is a just law unless it have for its principal end, the common good or general welfare of the community; it may have for its proximate end a private good; but law that is just can intend private good only as ordained to the public or common good. In this case, though the privilege is a private law, under one respect, or in as much as it grants a favor to particular persons; yet, its principal end is still the public good, which can never be rightfully postponed to merely private good.† Besides, public authority, as already said, has for its only just and proper end the good of the community; therefore, its laws, which are means, have the same end: "Finis autem humanæ legis, est utilitas hominum." (P. I. 2, qu. 95, a. 3.)

It is disputed as to whether or not it is strictly of the essence of law that it have the good of *a community* for its principal end; some affirming that law may be complete in what is essential to it, and yet be imposed on but one person, having the good of that one person as its only principal end. But our present question is of positive law imposed by public authority on men living in society, or living as social beings. It is true that there may be private precepts which are binding on individuals without imposing any obligation on the rest of

\* "Quædam sunt communia quantum ad aliquid, et singularia quantum ad aliquid: hujusmodi dicuntur privilegia quasi leges privatæ, quia respiciunt singulares personas; attamen potestas eorum extenditur ad multa negotia." P. I. 2, qu. 96, a. 1, ad 1. Some things are common under one respect, and particular under another; such are called privileges, or a sort of private laws, because they regard individuals; yet, their effect extends to many things.

† "Bonum totius gentis divinius est quam bonum unius hominis." D. Th. in I Eth. Arist. The good of the whole race is something more divine than is the good of one man.

the community; but, notwithstanding this, the public authority cannot place the burden of law on a private member of the community, in matter which is not at all related to the general good of the community. Hence, in the language of jurisprudence, no command or precept has the nature of law, or is so styled, unless it regard what is related to the public welfare of a "perfect community." To argue whether or not an individual man, having no real connection with any society or multitude of human beings, be capable of law, is merely a question concerning the use of a term, as Suarez indicates.\* As a fact, only common precepts, or such as have for their matter what is related to a perfect community, are styled laws; whatever may be conceived as abstractly or metaphysically possible concerning the existence of only one intelligent creature as subject to authority. All law is general or universal, in virtue of its matter, and as declaring what is right in action.

\* "Hæc controversia potest multum pendere ex usu vocis. Nihilominus simpliciter dicendum est, de ratione legis, ut hoc nomine significatur, esse, ut sit præceptum commune, id est, communitati, seu multitudini hominum impositum."—Suarez, *De Leg.*, lib. 1, c. 6. This controversy may depend on the use of a term. Yet, simply it must be said that it is of the essence of law, according to what the word signifies, that it be a common precept; that is, it must be imposed on a community, or a multitude of men.

† "Lex est regula et mensura operationis, quasi ex parte materiæ, et mediæ virtutis: nam hoc modo dicitur regula 'justorum et injustorum.' Est ergo lex quasi regula constituens, vel ostendens in sua materia, seu operatione, circa quam versatur, medium servandum ad recte convenienterque operandum. Hæc autem regula de se universalis est, ad omnes cum proportione pertinens; ergo lex de se est generalis: ut ergo aliqua sit propria et perfecta lex, hæc conditionem habere debet."—Suarez, *De Leg.*, lib. 1, c. 6, no. 12. Law is the rule and measure of action, as it were, on the part of the matter, and the medium of virtue; for, it is in this manner that it is called "the rule of things just and things unjust." Law is, therefore, as it were, the rule constituting and showing in the matter, or the action concerning it, the medium to be kept in order to operate rightly and in a becoming manner. But this rule is of itself universal, pertaining, in due proportion, to all, and therefore law is of itself general; hence, for law to be properly and perfectly such, it must have this condition, or be a general, common precept.



The law must be decreed and duly promulgated, by the supreme authority in the community, whether this supreme authority remains in the multitude, or is transferred to a person or body of persons, thereby empowered to provide for the common good.\*

It is plain, from the very nature of things, that it is for the supreme power having charge of the whole community to prescribe the laws that must direct and govern all its members. Since law has for its proper or special end to secure that order which is necessary for the welfare of the whole people, it pertains either to the people themselves as a body, or to some public person representing the people, to frame and execute necessary laws. It is impossible that each private citizen should be a law for himself, in matter which pertains to the public good; nor can legislation be the work of any particular party in the community that does not include within its aim and scope the good of the whole community. Law must, therefore, come from that authority which is supreme over all, and whose office it is to promote the good of all, with justice and impartiality. Hence, the objection may occur; "the multitude is not superior to itself; therefore the authority to make laws cannot reside in the multitude." The multitude, acting collectively, can prescribe laws that distributively bind its members; hence, the multitude, as a collection or organized body, may be superior to its members as individuals.

The promulgation of the law is necessary in order that the existence of the law may become known to the people for whose benefit it is made. The promulgation is an indispensable requisite for applying the law to those for whom it is a

\* "Ordinare autem aliquid in bonum commune est vel totius multitudinis, vel alicujus gerentis vicem totius multitudinis; et ideo condere legem vel pertinet ad totam multitudinem, vel pertinet ad personam publicam quæ totius multitudinis curam habet." P. I. 2, qu. 90, a. 3. But to ordain anything for the common good, belongs either to the whole multitude or to some one acting in place of the whole multitude; and therefore to enact law either pertains to the whole multitude, or to some public person that has care of the whole multitude.

rule of action. Hence, the promulgation does not pertain to the intrinsic essence of law itself; but it is necessary by way of condition, in order for the law actually to bind its subjects.

The manner of publishing or promulgating law is regulated by the special laws or customs of different nations; but the necessary end of promulgating laws is accomplished, or they are in force, when their existence is known or it morally can be known by the people. We may consider the natural law to be promulgated to all men, through its self-evidence to them, as the practical dictate of right reason. Positive law is actually less binding on the conscience than the natural law is; because it is less plainly published to reason than the natural law is; and also because its matter is contingent, or, in other words, its matter is less necessary than is that of the natural law.

## CHAPTER VII.

### NATURE AND PROPERTIES OF CIVIL LAW.

#### ARTICLE I.

##### NECESSITY OF CIVIL LAW.

General laws for the government of the civil community are necessary; government solely by the arbitration of judges, who are directed in their decisions by no established or fixed laws and customs, would not be expedient for the public good.

It is a sufficiently obvious corollary from what is thus far said, that laws are necessary means to the good of the whole community. It is now to be shown that laws are necessary on account of reasons furnished by the nature itself of man,\* when he is regarded as an individual member of the nation; and that by reason of this truth also there should be general laws, for the government of all the people.

When man is considered as he now actually is in himself, the wants and imperfections that render positive law necessary for his guidance and maintenance in good, may be referred mainly to deficiencies in the superior powers of his soul, the understanding and will. Owing to imbecility of intellect in apprehending, and feebleness of reason in following out principles to their legitimate consequences, many persons are unable to apply the general precepts of natural law with truth and certainty, even in much practical matter that necessarily concerns both their own good and that of the public, or the

\* "*Necessitas legum ex ipsa natura hominum oritur: cum enim natura humana sit ex se defectibilis et a vero fine deficere possit, necesse est ut per leges ad suum finem dirigatur.*" Billuart, *De Leg. Disp. I., a. i.* The necessity of laws arises from the very nature of man; for, since human nature is of itself liable to fail in duty, and can fall away from its true end, it is necessary that it be directed to its end by laws.

commonwealth. Such individual members of the state would err in duty to themselves and to others, through ignorance ; still more impossible would it be for them to prescribe for themselves safe or just rules of conduct in matter concerning which even the most prudent need counsel and direction. Therefore, man needs laws as rules for the direction of his life, owing to ignorance and weakness in his reason.

There is necessity for positive law arising also from the disorderly inclinations, passions and vices which many persons permit to control their wills. Being ruled by selfish feeling, and devoid of moral rectitude in action, the conduct of many persons would be injurious both to themselves, and to the community : hence, positive law is needed, not only to declare what is good and right ; but to restrain evil,\* and compel obedience to necessary duty towards the public.

The government of the community solely by the arbitration of judges, who both make the law and decide the fact, would not, in practice, be for the public good.

It is more easy, as Aristotle contends, to discover a few wise men who can devise prudent general laws, than it is to find many able and upright judges who can legislate with justice and impartiality on all particular cases that will come before them. They who make general laws for the nation, can take time to reflect, and judge deliberately what is best for all the people ; whereas, the judge must decide both the fact and the rule of justice that is applicable to it, with the least delay possible. The one judges of what is general and abstract, in which reason is less exposed to error ; the other must deal with concrete and particular things, in relation to which, feeling and passion are easily excited so as to warp the judgment. In order, therefore, to secure the good of all the people in the community with prudence and certainty, some general laws are necessary. It must be granted, however, that such judges are very competent to determine whether or

\* "Knowing this that the law is not made for the just man, but for the unjust and disobedient.." 1 Tim. ch. i., v. 9.

not a particular fact is here and now proved.\* In England and in the United States, the jury is a body of twelve men whose special office it is to decide concerning the sufficiency of testimony adduced before a court in proof of facts that are litigated, or that regard persons at law. In the very nature of things, the testimony of witnesses regarding particular facts that are contested at law, should be estimated by some impartial person or persons, who will decide equitably as to its sufficiency for founding certainty; for, thus alone can the abstract law be duly or efficiently applied to its concrete matter of the kind.†

The fact that it is the civil courts in England and the United States which govern the people in nearly all the affairs of their social life, as citizens, and that the courts themselves are, in many things, not guided by a written law, is no real exception to the preceding theses. The law that mainly directs and controls all proceedings of those courts, is the Common Law of England, or, as it is also styled, the *lex non scripta*, the law not written; so called, because it did not originate as a written law, or statute enacted in form and promulgated by the legislative power; but it originated by way of a custom. The common law, then, derives its authority from immemorial usage and universal reception; and it is preserved in the traditions of the courts and written reports of judicial decisions. It may be truly said that the common law is written in the hearts of the people, "jus non scriptum tacito et illiter-

\* "Quædam tamen singularia, quæ non possunt lege comprehendi, necesse est committere iudicibus: v. g., utrum tale factum sit an non, et alia hujusmodi." P. I. 2, qu. 95, a. 1. It is necessary to commit to judges certain particulars that cannot be comprehended under law; for example, whether such be the fact or not, and the like.

† "Although the jury, in ordinary language, are said to be judges of the fact only, yet a general verdict in a civil or criminal case ordinarily decides both the facts, and whether the law, as stated by the judge, is immediately applicable to those facts: v. g., the verdict 'guilty,' on a charge of murder, implies both that the act was committed, and that it included what amounts to murder."—Brande. In some parts of the United States, the jury also assess the penalty of criminal offences.

ato hominum consensu et moribus expressum ”\*—an unwritten law expressed by the tacit and unlettered consent and by the customs of the people: this law retains its power to rule the affairs of civil life, even when political disturbance or revolution prevails, as the facts of history attest. During past centuries, when the people felt aggrieved at some new and oppressive statute, they besought their rulers to restore the “laws of Alfred and good King Edward”: and thus it happened that not even the Norman Kings could suppress the common law of England.

The common law, therefore, has the force and value of an established custom which dates back, as expressed in the quaint phraseology of olden writers, “to a time whereof the memory of man runneth not to the contrary.” Some of its rules and precepts may have originated in statute law; it was modified and perfected by learned Christian jurists who had studied the Justinian Code or Roman Law. It is for the judges to know the rules and principles of the common law, and to decide exactly according to them; for, the judge can declare, but he cannot make the law. If, by exception, a judge decides contrary to common law, his decision will be reversed in another court, where it will be shown, by reference to tradition and to former decisions, what the law is for that case, and that it has always been the custom to observe it. Since former decisions † are the best testimony as to what the law is for particular matter, it is laid down, as a general rule, that “the decisions of courts of justice are evidence (reliable or credible testimony) of what is common law.” These decisions, faithfully reported and printed, are preserved; and they form the principal part of the lawyer's library.

The common law is at the basis of most statute law ‡ that

\* Aulus Gellius: see Fortescue, “De Laudibus Legum Angliæ,” chapt. 17; Cincinnati: Robert Clarke & Co., 1874.

† See Kent's Commentaries, Vol. I, Lecture XXI.

‡ Statute law, which is enacted and promulgated with due formality by the legislative power, is, in the language of Roman jurists, variously styled “constitution, edict, law, precept,” according as it is the work of

finally prevails or permanently survives; for, statute law that contravenes the common law is likely to be evaded by the courts; and, in many cases, it is even practically annulled by the courts.

This law still retains much of its pristine, universal authority over the people, throughout the English-speaking nations; for it follows the race, and it is embodied in their language. While genuine law does not *per se* depend for its validity or binding force on its acceptance by the community, except when so provided in the constitution of the government; yet, the peculiar efficacy and permanency of the common law are, without any doubt, greatly due to the universal love for it in the hearts of the people, as a wise and safe rule of what is right and just among citizens.\*

The body of law published by the emperor Justinian, usually styled the Justinian code, was slightly modified and improved by succeeding emperors; the emended and complete collection, together with some comments of learned Christian jurists, was subsequently published under the title, "Corpus Juris Civilis"; constituting what is generally styled, "Roman Law," or "the civil law."† This body of civil law, which Blackstone

the emperor, a king, an inferior or subordinate ruler; and a command to one person is a "mandate." In English, statute law is distinguished from *common law* as being a written law; it is distinguished also from *constitutional law*, which is a fundamental law determining the form of government, or defining the powers and duties of its legislative, executive, or judiciary departments.

\* For a clear and sufficiently comprehensive account of the common law, or the *lex non scripta*, see Blackstone's Commentaries, Introductory Essay, especially Section III; or, Sir Francis Palgrave, "Essay upon the Original Authority of the King's Council: Printed by command of His Majesty King William IV., 1834." He says, p. 10: "The common law jurisdiction may be considered as emanating from the people. Not that our institutions were democratic; but the Folk-moots (the courts of the hundred, and the borough and the shire, and those institutions on which jury trial was grounded,) had descended from that distant age when the name and office of king were alike unknown to the rough German."

† See Kent's Commentaries, Vol. I, Lecture XXIII; or, "The Institutes of Justinian, by Thomas Cooper."

praises as "a collection of written reason," was studied in all the universities both in England and on the continent of Europe, until the rise of the present political order that prevails in nations; and it was accepted and quoted as authority, in questions of civil right, even by the theologians, who studied it along with canon law. This venerable system of written jurisprudence is frequently referred to by our English law-writers under the title of "the civil law." It consists partly of laws that were copied from different foreign national codes, some merely transcribed, some altered and accommodated to the manners of the Romans; partly of new provisions, and partly of the laws and usages that had come down from their ancient Kings. It is, perhaps, not too much commendation of the Roman Law, to say that it is the masterpiece among the collections of written civil law. In such esteem was it held during the existence of the Roman Empire, or till after the reign of Charles V, rather till the peace of Westphalia, in 1648,\* that it was often styled "Jus commune," or the general civil law of nations; and many were of opinion that it possessed binding force in any nation that was, by some cause, actually bereft of its own special or peculiar laws and customs; † so that a community, without any law of its own, was, from that very fact, under the "civil law," in virtue of the general authority possessed by that "civil law." While those laws, compiled by Justinian, no longer retain their pristine authority over nations, yet they have lost none of their value as embodying the sound reasoning and prudent judgments of many wise minds, concerning the practical affairs

\* The title of Roman Emperor was not finally abolished till the time of Napoleon I.

† Billuart reflects this opinion, when he says, *De Legibus*, Dis. III, a. I: "Jus civile (Jus Romanum) habet auctoritatem apud eas nationes et provincias quæ illud adoptarunt, nec moribus contrariis reguntur: apud eas etiam quæ usibus contrariis reguntur ubi usus deficit jus commune allegatur." The civil law has authority over those nations and provinces which have adopted it, and are not ruled by different customs: over those likewise which are governed by contrary customs; when their customs cease, this common right succeeds them.



of social and civil life; and their study may advantageously accompany that of Blackstone, Littleton, Fortescue, Kent, Story, Grotius, Vattel, etc.

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## ARTICLE II.

**HUMAN POSITIVE LAW DOES NOT INCLUDE WITHIN THE SCOPE OF ITS MATTER EITHER ALL GOOD, OR ALL EVIL; NOR IS IT MERELY THE NATURAL LAW APPLIED.**

Since human positive law has for its only peculiar specific end, the public good or the common weal; it can neither forbid all things that are evil, in respect to individuals, nor can it command all things that are good.

The natural law, which is the eternal law as impressed on man's reason, and is known by him as the rule of natural rectitude, forbids everything that is morally evil: this prohibition, then, is universal; it admits no exception; or, before the natural law, evil is in itself never licit. But human law cannot prohibit all that is forbidden by the natural law, nor is it capable of reaching what is merely internal action of a person. Positive human law is for the whole community, and its observance must, therefore, be possible to all the citizens; but all men have not equal moral strength to abstain from every vice; yet, all can avoid those evils which, besides being grievous in themselves, are clearly and more or less seriously detrimental to the community. In practice, such law can efficaciously restrain only those disturbances of moral order, which are external or public, and which are injurious to the general welfare of the community. We may conclude, therefore, that human positive law is, by its nature, competent to prohibit only those defections from rectitude of action or behavior, which it is in the power of the less virtuous to avoid,

which are not entirely private, and which are injurious to the community.\*

The positive law cannot command all things that are good, or all virtuous works: since such law has for its special and proper object only the general public good, it can legitimately require only what is judged to be positively and certainly related to that general public good, as means. It is manifest, however, that there are many actions, both good and bad, of individual persons, which have no positive connection whatever with the general interests of the community; and there are many good deeds which exceed the strength of all but a few persons. It follows, then, that to require by positive law, from the whole multitude or nation, the exercise of all the virtues, would be to prescribe what is not morally or physically possible in practice; and such requirement is, therefore, beyond the true office and sphere of human law.

Even the positive or affirmative precept of the natural law does not bind, as it is expressed, *semper et pro semper*: i. e., at every successive moment; or, a positive precept, as, "pay due homage to God, honor parents," etc., does not require the acts which it commands, to be performed without any intermission or cessation. Indeed this would be physically impossible for man, since it is not in his power to be always, or at every instant, actually performing the positive works that are prescribed by an affirmative precept. But a negative or prohibitory precept, on the contrary, does bind *semper et pro semper*, or always, and for every moment of time. It is never

\* "Lex humana deficit a lege æterna: unde omnia non potest prohibere quæ prohibet lex naturæ, sed tantummodo quæ sunt in nocumentum aliorum, sine quorum prohibitione societas humana conservari non posset. . . alioquin imperfecti hujusmodi præcepta ferre non valentes, in mala deteriora prorumpunt." P. I. 2, qu. 96, a. 2. Human law falls below the eternal law; hence it cannot forbid all that is forbidden by the law of nature, but only those things that are injurious to others, and without the forbidding of which human society could not be conserved. . . otherwise the imperfect not being able to bear such precepts, would rush into worse evils.

He quotes Prov. xxx. 33, and Matt. ix. 17, in which the evil of overdoing, in such things, is reproved.

legitimate to do an action that is simply or absolutely forbidden by a precept of the natural law; and such prohibition is always binding, or its obligation never ceases so as to allow the contrary, even for a moment. The positive law cannot reach and regulate all the details and particulars of the individual's practical conduct; or, it is not the office of civil authority to govern either the individual or the family in all things.

Although there is no concrete individual or particular human action which is morally indifferent; that is, which is neither good nor bad morally; yet, the natural law leaves much matter so subject to the empire of each man's reason, that he can either choose or reject, and at the same time do thereby what is morally good; as shown in a preceding chapter. There are many objects about which the private conduct of individual persons and that of families is concerned, which are not within the sphere of human laws: by this arrangement of God's general providence the individual is left, in some things, to the guidance of his own prudence, or to the counsel of wise preceptors:\* hence, the perfecting of each particular person does not belong wholly to the province of human positive law.

Human positive law is not always merely the natural law applied.

The natural law has for its peculiar object what is good or bad in the very nature of things, or what is necessarily and evidently good or bad. What is dictated or prescribed by the natural law, may be known to us either by way of first principle, as "good should be done, evil should be avoided"; or, it may be known by way of evident, necessary, and immediate inference; as, "to blaspheme is evil; it should therefore be avoided." Such conclusion is merely an application of the

\* "Nullo privato commodo, sed pro communi utilitate civium lex debet esse conscripta. . . . Ad singulares enim actus dirigendos, dantur singularia præcepta prudentium." P. I. 2, qu. 96, a. 1, ad 2. Law should not be made for any private advantage, but for the common welfare of the citizens. For the direction of particular actions, there are particular precepts of prudent persons.

natural law. The old writers on ethics regarded what they styled the "Jus gentium," or the common law of nations\* as, under some respect, the natural law applied by means of demonstrated conclusions from it to the practical direction of civil communities: the "law of nations," will be further explained in a succeeding chapter of this treatise. But all positive law is not, in the same sense, a mere application of the natural law to the social direction of communities.

Much matter, about which human positive law is concerned, is more or less remote from what the first principles of natural law, with their first conclusions, directly and immediately regard. But positive laws are derived from the natural law in two manners; first, by way of demonstrated conclusions, as the laws comprised in the "Jus gentium" were considered to be; such demonstrated conclusions derived from the first dictates of right reason may, for the present, be regarded as the natural law; though some of them are mutable, because of their matter being mutable.

Secondly, a conclusion may be derived from the law of nature, by way of a *determination*, or specification, as it is styled.† The word "determination" expresses, in its general meaning, a decision and definition of limits; when it is applied to logical, and therefore, abstract matter, it most properly expresses that limitation which is made by adding the specific difference to the genus, or applying the universal to the particular. When it is said of some positive law, that it is "a determination of natural law," it is meant that what is a general, abstract or universal principle of the natural law, by being applied to particular matter, thereby founds for such matter, a specific, determinate rule or law. It was already observed that man cannot apply

\* "Quod naturalis ratio inter omnes homines constituit, idque apud omnes gentes custoditur: vocaturque jus gentium."—P. 2. 2, qu. 57, a. 3, in c. What natural reason establishes among all men, and is observed among all races: that is called jus gentium, or the common law of nations.

† "Omnis lex humanitus posita in tantum habet de ratione legis, in quantum a lege naturæ derivatur."—P. 1. 2, qu. 95, a. 2. Any law laid down by man has the true nature of law, only so far forth as it is derived from the law of nature.

abstract, or metaphysical truths and definitions to contingent and particular things with absolute strictness and precision ; v. g., he could not produce a marble or metallic sphere, that will absolutely agree with the geometrical definition of the sphere ; so, in the particular matters of political economy, civil conduct of individuals, etc., he can apply common or general truths only with approximate, not with absolute accuracy. It is not difficult to see that the following general truths are legitimate conclusions from the natural law ; “ theft should be punished ; the murder of an innocent person in the community deserves condign punishment ; ” to decide and define the particular penalty, as, “ imprisonment, hard labor for life, death inflicted in this or that manner,” etc., is a “ determination ” of these general principles, “ theft and murder should be punished,” which constitutes human positive law for such matter.

The natural law does not dictate the particular penalty ; this is determined by a human judgment, and that judgment itself is, in such matters, mutable or variable ; for, these particular things are differently decided in different nations ; and differently decided at different times, in the same nation.

Hence, positive law is not always a necessary or demonstrated conclusion from the principles of natural law ; it is, in many cases, only probable that such law declares what is for the public good ; oftentimes it may have only that value possessed by a prudent opinion in practical, but doubtful matter.\* The determination made by the lawgiver as to what shall be the action of the citizens in particular cases, by which positive law is constituted, is directed and authorized by an absolute principle ; for instance, in the example adduced, “ the mali-

\* “ Appositely to this subject, St. Th. says, p. 1. 2, qu. 96, a. 1, ad 3 : “ Non est eadem certitudo quærenda in omnibus ; unde, in rebus contingentibus, sicut sunt naturalia et res humanæ, sufficit talis certitudo, ut aliquid sit verum ut in pluribus, licet interdum deficiat in paucioribus.” See, also, qu. 91, a. 3, ad 3. We must not seek for the same certainty in all things ; hence, in contingent things, as are natural objects and human affairs, the certainty suffices when anything is true in nearly all cases, even if it do not hold in a few instances.

cious murder of an innocent citizen should be punished," is a necessary conclusion from natural law, which is in itself, absolutely certain and immutable; and it is directive of the law-giver, as the absolute premise of his reasoning, in determining a just penalty for the crime of murder.

It may be concluded, then, that the human positive law, as just described and explained, is, under one respect, an application of natural law; under another respect, it is the work of human reason, and thus it derives something from natural law, and something from man. Hence, human positive law is not merely an application of natural law; for, what is merely the natural law applied, is natural law itself, and not human law. Human law is mutable, natural law is immutable. In stating this truth, the Roman law makes the following distinction: "The laws of nature, which are observed much alike in all nations, being constituted by divine providence, always remain fixed and immutable. But the laws which every state has enacted for itself, suffer frequent changes, either by tacit consent of the people, or by some subsequent law."\*

As man's reason is perfectible in speculative knowledge, so is it also perfectible in the knowledge of practical things, especially by means of experience; † as the earlier attempts of wise men in exact science are improved on by those who come after them and enjoy the benefit of their speculations and discoveries, so, in legislation, jurists and lawgivers are improved by the experience of mankind that preceded them. As a nation advances in genuine civilization, so is there a corresponding progress in the perfection of its laws. It is observed that, in many cases, laws increase both in number and in

\* *Instit.*, lib. i, Tit. ii, § xi: "Sed naturalia quidem jura, quæ apud omnes gentes peræque observantur, divina quadam providentia constituta, semper firma atque immutabilia permanent. Ea vero, quæ ipsa sibi quæque civitas constituit, sæpe mutari solent, vel tacito consensu populi, vel alia postea lege latâ."

† "Humanæ rationi naturale videtur, ut gradatim ab imperfecto ad perfectum perveniat: in speculativis, in operabilibus."—P. I. 2, qu. 97, a. 1. It seems natural to human reason, that it should progress gradually from the imperfect to the perfect; in speculative matter, and in the practical.

harshness, when a community is declining in civilization, or tending to an inferior state of morality.\* But the multiplication of laws in such instances is, perhaps, more a symptom of degeneracy in manners, than it is the cause of such evil; though it cannot be doubted that a nation may often be injured by bad laws, as well as it can be improved by wise and good laws.

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### ARTICLE III.

JUSTICE IS INTRINSICALLY ESSENTIAL TO LAW; THEREFORE AN UNJUST LAW IS REALLY NO LAW AT ALL. HUMAN LAWS THAT ARE JUST, BIND THE CONSCIENCE OF ALL ON WHOM THEY ARE LEGITIMATELY IMPOSED, IN VIRTUE OF THE NATURAL LAW FROM WHICH THEY ARE DERIVED. IN THE SAME MANNER, SUCH LAWS ALSO BIND THE LAWGIVER WHO ORDAINS AND PROMULGATES THEM.

It was seen in the preceding chapter that all law governing created things originates in the eternal law. All human law is said to be derived from the natural law, because it is through the natural law that it is conceived to originate from the eternal law.

Only that law is just,† then, which is derived from the natural law; and, conversely, any law is just which is truly and really derived from the natural law.‡ But no law can be a

\* “Et corruptissima republica, plurimæ leges.”—Tacitus, *Annals.*, lib. 3, no. 27. It is in the most corrupt republic, that laws are most numerous.

† “Augustinus dicit in 1 de Lib. Arbit., ‘non videtur lex quæ justa non fuerit’: unde in quantum habet de justitia, in tantum habet de virtute legis.”—P. 1. 2, qu. 95, a. 2. Augustine, *De Lib. Arbit.*, says, that does not seem to be law which is unjust: wherefore, it is law only in so far as it is just law.

‡ Hence, Suarez makes it of the definition of law that it be just: “Lex est commune præceptum, justum ac stabile, sufficienter promulgatum.”—Suarez, *Le Leg.*, lib. 1, c. 12. Law is a common precept, just, stable, and duly promulgated.

derivation from natural law, unless it be conformable to right reason; it may be concluded, therefore, that no human law can be just, if it disagree with right reason, the rule of which is the natural law. It may be affirmed, also, that in order for any law to be just, it must be conformable to right reason, and thus be derived from the natural law.

A law must be just, first, as regards its essential *end*, which is the common or general good of the community;\* secondly, in regard to the authority of the lawgiver, as when the law does not exceed the power committed to him; thirdly, in respect to its *form*, as when it distributes burdens equitably, and proportions them according to what is required for the public welfare; finally, law is just as to its matter, when it does not command what is against the laws of God, or the precepts of natural law. No government has the authority or moral power to make any but just laws; and unjust laws, which are iniquitous and mere violence, can found no obligation in conscience; but, on account of extrinsic reasons, as when obedience to them is a less evil, it may become a duty to obey laws even when they are unjust.

Just law being a derivation from the natural law, is binding in conscience,† by virtue of the natural law. Conscience is nothing else than an act of right reason by which it applies the absolute rule of rectitude, here and now, to some particu-

\* “Injustæ sunt leges vel ex fine, sicut cum aliquis præsidens leges imponit onerosas subditis, non pertinentes ad utilitatem communem, sed magis ad propriam cupiditatem vel gloriam. Vel etiam ex auctore, sicut cum aliquis leges fert ultra sibi commissam potestatem; vel etiam ex forma, puta cum inæqualiter onera multitudini dispensantur, etiam si ordinentur ad bonum commune: et hujusmodi magis sunt violentiæ quam leges.”—P. 1. 2, qu. 96, a. 4. Laws may be unjust on the part of their end, as when a ruler imposes on the subjects onerous laws that do not pertain to the public good, but rather to his cupidity or ambition. Also, on the part of the law-giver, as when one makes laws that exceed the power committed to him. Also, on the part of their form, as when burdens are dispensed to the multitude unequally, even if they are otherwise ordained for the common good: such laws are violence more than laws.

† “Obedientia est virtus moralis, cum sit pars justitiæ.”—P. 2. 2, qu. 104, a. 2, ad 2. Obedience is a moral virtue, since it is a part of justice.



lar and real matter included under that rule. Since a just law prescribes only that which is required for the public good, its obligation on each citizen is founded in truth and justice, whether we consider the well being of that citizen as an individual, his connection with the whole community and his duty towards it, or his obligation before God to obey the dictates of his own right reason; under all these respects there is reason why he ought to obey the laws rightfully imposed on him. That duty binds in conscience, which one owes as a matter of justice; but obedience to just law is a duty arising from justice; and, therefore, obedience to just law is a duty that binds in conscience. Also, right reason dictates that duty of obedience to just law, as all agree; but a dictate of right reason in practical matter is morally binding.

Such laws are necessary; therefore it is also necessary that they be obeyed; or, in other words, they impose a moral obligation, for, without that obligation, they would be practically inefficacious and useless. When we consider man as he is now actually constituted, human positive law is necessary for him in the very nature of things; for, natural law does not determine in particular all his duties to himself and to society; but it leaves much to be determined by human positive law: in like manner, man's consequent moral duty or obligation in conscience to obey just positive law, arises also from the nature of things, and with equal necessity. Now, that duty which arises from the very nature of things, springs from the natural law; it follows, then, that just human laws bind in conscience by virtue of that natural law from which they are derived. We may say that the obligation of a positive human law is proximately from the law itself; but nevertheless, such law has no virtue or moral power to bind, except what it derives from the natural law.\*

\* Billuart, De Leg., Dis. ii, a. iii, thus reasons in proof that all obligation is at least a remote effect of natural law: "Ideo lex positiva obligat, quia lex naturalis dicit et præscribit esse obtemperandum legitime præcipienti; et ideo docent Theologi neminem averti a Deo ut auctore supernaturali, quin simul avertatur ab eo ut Auctore naturali, quod verificari non

A difficulty may here arise in the mind of the inquisitive reader: "In order for human law to be just, it must be derived from the natural law; but the natural law is immutable; so therefore must the laws logically deduced from it be immutable." In answer, it must be conceded that rules of human action which are demonstrated conclusions from natural law, share the necessary truth of the principle from which they come; and hence, such conclusions, like the natural law, are immutable.

Natural law is the practical dictate of right reason; and human law is not otherwise derived from it than as a prudent judgment in some particular practical matter, not necessarily possessing any greater logical value in the order of certainty, however, than what belongs to the discreet yet fallible decisions of human reason when it judges concerning contingent and practical things.\* Human law changes, one while bepotest, nisi quia transgrediendo legem supernaturalem, simul transgreditur legem naturalem." Positive law, therefore, binds, because the natural law dictates and prescribes obedience to one legitimately commanding; and hence, theologians teach that no one is averted from God as supernatural Author, without at the same time being averted from Him as the Author of Nature, which cannot be verified, unless it be that, by transgressing the supernatural law, one at the same time transgresses the natural law.

This can apply, however, only to actual, not to original sin; for, we should rather hold, with Becanus (*De Auxil. Gratia*, qu. 5, a. 5, *Objectio* 5,) and other safe guides, that man is not averted from God, as the Author of Nature, by original sin; in order for man to become averted from God, as the author of his nature, actual sin is required; by original sin, man is averted from God as his supernatural end; but he is not averted from God, as his natural end, by original sin.

\* "Ratio practica est circa operabilia, quæ sunt singularia et contingentia, non autem circa necessaria, sicut ratio speculativa; ideo leges humanæ non possunt illam infallibilitatem habere, quam habent conclusiones demonstrativæ scientiarum. Nec oportet quòd omnis mensura sit omnino infallibilis et certa, sed secundum quod est possibile in genere suo."—P. I. 2, qu. 91, a. 3, ad 3. Practical reason is concerned about works to be done, which are singular and contingent, but not about necessary matter, as speculative reason is; therefore, human laws cannot have that infallibility which the demonstrated conclusions of sciences have. Nor is it required that every measure or rule be wholly infallible and certain, but only that it be what is possible in its kind.

cause its matter is changed; another while, because the legislator discovers some truth not before known by him; but such law is a just rule of action, at least, so long as no positive and solid reasons cast doubt on its validity; and in virtue of its justice as a prudent dictate of reason, positive law is derived from the natural law.

The lawgiver is bound in conscience to obey the laws imposed by him on the community.

We may distinguish between the laws which, by their nature, more or less directly and immediately regard the whole community; and those special regulations which proximately concern the supreme ruler alone, as, what pertains to his legal titles, insignia of office, the court ceremony, etc. The present question is only of those laws which positively bind the whole nation.

Law as a rule of action for the whole community, may be considered as capable of both *directive* and *coercive* action; or, law may be considered either as a rule which is directive of human action, or as including in itself the power to compel obedience by means of some extrinsic force moved by it.

The essence of law consists in its being a just rule of human action; and for this object its principal virtue is in this, that it is *directive* of such action. Compulsion to obedience by means of force or punishment, is not *per se* intended by law; nor is any coercion, therefore, *per se* necessary in order for law to induce uprightness of conduct; because, force or punishment is necessary only secondarily and hypothetically.

The laws, when regarded as directive of human action and as obliging the whole community, bind the supreme ruler in conscience, no less than they bind the citizen on whom he imposes them; but the laws as being *coercive*, are not applicable to the supreme ruler, owing to extrinsic reasons and circumstances. This obligation on the legislator to obey the laws of the community, even those promulgated by himself, arises, as Suarez shows,\* from the nature of law itself, which

\* "Principes obligatur ad servandam suam legem proximè ab ipsamet lege, et ex virtute, et efficacia ejus. . . Lex positiva habet efficaciam con-

is a rule of rectitude for the whole community, without excepting any one that is capable of moral duty. In this case Aristotle's axiom was always explained, "*lex in republica debet dominari*:"\* law should have full sway over the commonwealth. The general law is, by its nature, an ordinance of reason, for the common good; and it determines and constitutes a norma and rule of right action for all persons in the nation, of every rank and condition. It is but just also that the lawgiver should bear the burden with which he loads others; especially as his power of legislation and jurisdiction is intrusted to him not for his own sake, nor to exempt him from the restraints of just law; † but the power to govern is committed to him as to a minister and viceroy of the community: "*ordinare aliquid in bonum commune est vel totius multitudinis, vel alicujus gerentis vicem totius multitudinis*; (1. 2. p., qu. 90, a. 3); to ordain anything, belongs either to the whole multitude, or to some one holding the place of the multitude. The ruler is for the community; the community is not for the ruler; or, the welfare of the commonwealth is the end, in respect to which its ruler is to serve as means. Hence, laws that burden the people with an onus which the ruler has no part in bearing, are unjust; and in their way and degree, such laws are really tyrannical, since *stituendi materiam suam in tali specie virtutis et præscribendi medium necessarium ad honestatem talis virtutis. Postquam illud medium constitutum est, absolute in illo consistit virtus. . . . Quia vis directiva ordinatur ad bonos mores; et ideo comprehendit etiam ipsum legislatorem.*"—Suarez, *De Leg.*, lib. iii, c. 35, no. 8, 11, 17. The prince is obliged to obey his own law proximately from the very law itself, and from its virtue and efficacy. . . . Positive law has the power of constituting its matter into a special kind of virtue, and of prescribing the medium for what is becoming in that virtue. . . . After that medium is constituted, the virtue absolutely consists in it. Law, as directive, is ordained for good works; it, therefore, comprehends the law-giver himself.

\* 3 Polit., c. 7.

† It is in this meaning that the well-known rebuke to the Pharisees is generally understood: "They bind heavy and insupportable burdens, and lay them on men's shoulders; but, with a finger of their own, they will not move them."—Math. xxiii, 4. St. Th., p. 1. 2, qu. 96, a. 5.

their principal end is not simply the common good, but also, and mainly, the special private good of the ruler.\*

It may be concluded, therefore, that since just law commands what is right in action, then by its own virtue as a rule of rectitude, it is binding in conscience on the whole community; and this obligation extends with no less force to the lawgiver himself. But this truth, which is universally conceded, that the lawgiver is bound in conscience to obey his own laws, is not founded on extrinsic reasons; the obligation arises, as said, from the law itself. The arguments in proof of this obligation which are drawn from what is becoming or decorous in him who is observed by all the people, and from his consequent duty to set an example of order and rectitude in action, are only extrinsic reasons which do not found a strict obligation in conscience always, in public and in private, to obey the laws, though these reasons corroborate the truth of that duty; he is, therefore, bound by the law itself, whose virtue and efficacy extend to the whole community, including its supreme legislator.

When law is considered as coercive, or as including power of compelling obedience by means of punishment, it is not applicable to the supreme ruler; not that disobedience to just law is less imputable to him than it is to the private citizen, for it may actually happen to be more so; but it is only because he himself is the highest tribunal, and, therefore, there is no authority above him in the community either to enforce obedience, or to inflict punishment on his disobedience to the laws. Yet, the essence of law is in this that it is a just rule of right human action, which, therefore, binds the subject of it in conscience; law does not directly and necessarily intend punishment, since punishment is required only conditionally and *per accidens* for rectitude of action.† It follows, then, that

\* "Regimen tyrannicum non est justum; quia non ordinatur ad bonum commune, sed ad bonum privatum regentis."—2. 2, p., qu. 42, a. 2, ad 3. Tyrannical government is not just; because it is not ordained for the common public good, but for the private good of the ruler.

† "Poena non est *per se* intenta, neque *per se* necessaria ad honestatem morum; et ideo obligatio ad illam, etiamsi in conscientia oritur respectu

while law as directive has universal application to the community; law as coercive, has not universal application to the community; for, good citizens obey the law without coercion, because it is just, and it is an ordinance of reason that founds duty; it does not apply as compulsory to the lawgiver, owing to his supremacy over its administration. But his disorderly action will be censured by public opinion; and there is no man so strong or great, nor sunk so low, as not to fear condemnation before the moral tribunal of wise and just men; and before that bar the highest earthly potentate that rules amiss must submit to be tried and judged.

It will be advantageous to notice, in this place, that Justinian begins his Institutes, which comprise the more important part of the civil or Roman law, by defining justice as the basis of all law: "justice is the constant and perpetual will of giving to every one what is rightfully his."\* He defines jurisprudence, or the science of law, to be "the knowledge of things divine and human; the science of what is just and unjust."

Three cardinal precepts of the natural law are then assigned, from which we may conceive all laws to be derived, and under which they may all be classified; these principal precepts which furnish the ground of all positive human law, are: "to lead a becoming life, to harm no one, to give to every one his due."† These three principles state the just and valid proxi-

aliorum, non est tam universalis, sicut obligatio ad materiam per se intentam in lege."—Suarez, *De Lege*, lib. iii, c. 35, no. 19. Punishment is not in itself intended, nor is it necessarily required, for correctness of morals; and, therefore, obligation to it, even if it arise for some in conscience, is not universal, as is the obligation in respect to the matter which of itself is intended by the law.

\* "Justitia est constans et perpetua voluntas jus suum cuique tribuendi. Jurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia." The necessity of knowing "Divine things" is here specially mentioned, because of the close union between Church and State in the Roman Empire of that period: on this account, the learned jurist of that day was versed both in canon law and civil law, where Roman law was in force.

† "Juris præcepta sunt: honeste vivere, alterum non lædere, suum cuique tribuere."—*Lib. I., Tit. I.*

mate reason for all law that commands either what is necessary or useful to the general good of the commonwealth.

The following are the necessary qualities of genuine human law, as they are usually given by writers on ethics; 1, it must require only what is morally correct; 2, it must be just, or conformable to reason;\* 3, it must prescribe only what is naturally possible: i. e., it must not command what makes too heavy a burden, or what is exceedingly difficult without great necessity; and the laws must not be too numerous, or be needlessly multiplied; "prælati abstinere debent a multitudine præceptorum:" p. 2. 2, qu. 105, a. 1. ad 3; rulers should avoid a multitude of laws. 4, The law must command nothing opposed to the reasonable and general customs of the nation, lest obedience to it prove too difficult, and it thereby become "a dead letter" or inefficacious; 5, the law must be clear and free from ambiguity, so that its meaning is plain or easily understood; 6, it must ordain what has the common good of the nation for its end, and what it commands must be either necessary or really useful in respect to that specific or essential end. To these requisites for genuine human law, Roman jurists usually added that the law must be *written*; but this is not always necessary for law, as is clear from the explanation hitherto given of the English common law, or *lex non scripta*. See Art. I, of this chapter.

The *act* of law, is to command, to forbid, to permit, to punish: † it commands what is good for the commonwealth; it forbids what is contrary to the public good; it permits what is indifferent, or what does not concern the public at all, whether it be done or not; it determines and appoints the punishment to be inflicted contingently on disobedience, thus supplementing its virtue as directive, with the force coming

\* "Lex est dictamen rectæ rationis in præsentente, quo subjecti gubernantur."—P. 1. 2, qu. 92, a. 2. Law is the dictate of right reason in a ruler, by which his subjects are governed.

† "Legis actus est imperare, vetare, permittere et punire."—P. 1. 2, qu. 92, a. 2.

from fear of punishment, in order morally to compel the refractory and self-willed to be dutiful and orderly citizens.

The *effect* of the law\* which is proper to it, is to render its subjects good or virtuous citizens, and thus be fitted to enjoy that happiness which it is the end of law to secure for the whole community: it is the essential end of law to produce good.

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## ARTICLE IV.

### SANCTION OF LAW.

When reward and punishment are regarded as confirming law by adding extrinsic means for persuading or enforcing obedience, they constitute what is styled the sanction of law. Mankind could not be impelled to obedience by a precept which offered neither the hope of good, nor the fear of evil as a motive for action. This double motive, which law as both directive and coercive proposes, constitutes the sanction of law, thereby giving it the ability actually to effect that good which is the essential end of all law.

Some recent authors seem to make the sanction of law consist principally in punishment, not in reward. It is not easy to assign any good reasons for this opinion, since the contrary doctrine appears to be evidently true, from the very nature of law whose essential end and effect must be good, as above shown. Law *per se* intends the good; it intends punishment contingently, or *per accidens*; and hence the definition of law declares that it is, "an ordinance of reason, for the common good." It is true that human law specifies no particular re-

\* "Cum virtus sit quæ facit bonum habentem, sequitur quod proprius effectus legis sit bonos facere eos quibus datur."—P. I. 2, qu. 92, a. 1. Since it is virtue that makes its possessor good, it follows that the proper effect of law is to make those good for whom it is given.



ward for obedience\* to it; because obedience to the law is sufficiently rewarded by the good which it does for the whole community, and for every one in the community; nor is it possible for human government otherwise to reward obedience to its laws. It is, perhaps, from this circumstance that some authors are led to conceive that the whole sanction of law consists in punishment. It is true also that the law appoints and inflicts a penalty for disobedience, if by exception some refuse to comply with the requirements of the law; but the punishment is ordained to secure that good which is the principal end of the law. Moreover, it is a debatable question, whether the hope of reward, or the fear of punishment, be generally the stronger, or, at least, the more efficacious, incentive to compliance with duty. But it is a misconception both of law, and of duty to obey it, to suppose that what is principal in the sanction of law, is punishment. That which is the principal end of law, is, at the same time, its principal sanction; but good or reward is the principal and direct end of law, or the end which law *per se* intends; therefore, reward is the principal sanction of law, and punishment is part of the sanction, only secondarily and contingently, or *per accidens*. Owing to the character or disposition of particular persons, or multitudes of people, the fear of punishment may prove for them a more effectual inducement to orderly conduct, than does the hope of reward or the direct desire of any good intended by the law; but this proves only that both reward and punishment are necessary for the complete sanction of law. Without punishment as part of the legal sanction, the ill-disposed could defy all legitimate authority.

In order for law to regulate the action of its rational sub-

\* Blackstone (Introductory Essay, Sect. II.,) says that the law does not specify any reward for obedience to it, "because the quiet enjoyment and protection of all our civil rights and liberties, which are the sure and general consequence of obedience to the municipal law, are, in themselves, the best and most valuable of all rewards; nor could the State confer any other." He is quite inaccurate, however, when he says of punishments: "Herein is to be found the principal obligation of human law."

jects, or to impose on them a moral obligation to do what is commanded, it must necessarily include some fit sanction. What the law proposes as its sanction, is, in reality, ultimately identical with the essential end of law as affecting each person.

Hence, since there cannot be a law without some just end which it proposes as a motive for obedient action, and the sanction of the law is only that end considered under another respect, it follows that there cannot be a law which has no sanction.

The reasoning in proof that the sanction of law consists principally in good or reward, and only secondarily in punishment, is made still more clear and conclusive by the kindred truth, that no human law can be purely vindicatory; in other words, no law can intend punishment as its principal end, since such law would spring from ill-ordered hatred, or evil, as its principle. Punishment, like every other act of law, must have good as its only principal end.\*

The natural law must also have its perfect sanction; in other words, there is reward due to him who keeps the natural law, which is proportioned to the merit thereby acquired; and

\* "*Vindictio fit per aliquod pœnale malum inflictum peccanti. Si vindicantis intentio feratur principaliter in malum illius, de quo vindictam sumit, et ibi quiescat, est omnino illicitum: quia delectari in malo alterius pertinet ad odium. . . . Si vero intentio vindicantis feratur principaliter ad aliquod bonum, puta ad emendationem peccantis, quietem aliorum, justitiæ conservationem, etc. potest esse vindictio licita, aliis debitis circumstantiis servatis.*—P. 2. 2, qu. 108, a. 1, ad 1: "*Si autem præter ordinationem divinæ institutionis, aliquis vindictam exercent, usurpat sibi quod Dei est, et ideo peccat.*" Vindicative punishment is by means of some penal evil inflicted on the offender. If the intention of the one who punishes aim principally at the pain itself of him who is punished, and there terminate, that would be entirely unlawful; for, to take pleasure in the pain of another belongs to hatred. But if the intention of the one punishing aim principally at something good: for examp'le, the correction of the offender, the peace of others, the defence of justice, etc.; the vindicative justice can then be licit, other due circumstances being included. If, against the order divinely instituted, any one exercises vindicative justice, he usurps to himself what belongs to God, and therefore sins.

"Revenge is mine, and I will repay them in due time."—Deuteronomy, ch. xxxii, v. 35.

punishment proportioned to demerit is due him who disobeys the natural law; and thus, moreover, reward and punishment as the sanction of the law will be actually apportioned. The arguments already adduced, and which were drawn from the very end and essence of law itself, prove that the natural law has a fit sanction. The natural law, primarily and principally intends the direction of man in the right use of means for reaching his ultimate end, or final beatitude. This law operates morally, not physically; and hence, the reaching of beatitude under its direction, is a work which, speaking in the light of pure reason, man can do with his own natural resources, or which he can wholly or partially omit.

The sanction of the natural law, like that of all law, consists principally in reward; it consists secondarily and conditionally, in punishment. This is true in the nature of things;\* for, to intend punishment principally, or for its own sake, would be malevolent, or to love evil; whereas, to intend reward for its own sake or principally, is to love and prefer good.

The reward which is the principal sanction of the natural law, is the perfect bliss or happiness which constitutes the ultimate end of man: the ultimate end of man, or his perfect final beatitude was explained in Chapter I.

We know what is to be the punishment of the wicked in the present actual providence of God; it is to be that † which was

\*“Est autem concedendum quòd pœnæ inferentur a Deo, non propter se, quasi in ipsis Deus delectetur; sed propter aliud: scilicet, propter ordinem imponendum creaturis, in quo bonum universi consistit.”—*Contra Gentes*, lib. 3, c. 144. But it must be conceded that God will inflict punishments, not for their own sake, as if God could take pleasure in them; but on account of something else: for the order that must be imposed on creatures, in which the good of the universe consists.

† *Matt. xxv. 41*: Observe our Lord's words: “Depart from me, you cursed, into everlasting fire *which was prepared for the devil and his angels.*” The commentators notice that this punishment was prepared principally for the fallen angels: “Hinc patet ignem inferni primo et per se paratum fuisse a Deo dæmonibus.” Hence it is plain that God prepared the fire of hell in the first place and of itself for the demons.

See the striking words of Socrates, Plato's *Phædo*, Nos. 143-145. He, perhaps, speaks tradition coming down from primeval days.

prepared for the everlasting punishment "of the devil and his angels." But what the punishment of a wicked life would be, under the supposition that man had none but a purely natural destiny, cannot be precisely and certainly determined by mere reason, though reason is competent to demonstrate that punishment is necessary for the sanction of natural law. We cannot by reasoning ascertain what, as a fact, would be the particular species and exact measure of that punishment; because that is a question regarding contingent matter, which God could dispose and determine in more ways than one, or variously.

That the natural law has a sanction, or that there is a future state of rewards and punishment, is shown to be true, not only by the preceding arguments *a priori*, and from the nature of law itself; but it may be proved also by induction from facts and by moral reasons. Assuming, as we have a right to do, that the time of man's probation, and consequently the time of merit and demerit, terminates for him with this life, and that it is to be succeeded by a permanent state; then it would be against truth and justice to suppose that one who has lived a good and meritorious life to the end, will have the same final condition, as one whose entire life was bad.

The immortality of the human soul is here supposed, as a preliminary truth; for, its proof is the proper office of psychology. It is there shown that the soul being a simple substance, cannot naturally die or perish; then, from its rational and substantial nature, from the attributes of God, and his providence as manifested in his works, the positive truth is logically deduced, that the human soul has an immortal destiny, or that it will not be annihilated.

It is clear to reason that, as a fact, man's life on earth, which is transient, is a probationary one; or, that it is a state in which his main duty is to perfect himself with a view to an order of existence that is future, and that will be unending, by educating himself duly in virtue both intellectual and moral. Thus all races of mankind understand and explain the obvious facts that merit is not always duly rewarded in this life, and

that crime does not always receive here its condign punishment. Oftentimes the most virtuous suffer wrongs and injuries which are not redressed, or they languish in poverty and sickness; while, on the other hand, it happens equally often that the wicked prosper; that their injustice results in gain and temporal plenty; that they deny themselves nothing which is grateful to passion, regardless of moral rectitude in action. These facts are manifest, and they are generally observed and admitted by mankind as proving the same conclusion. For, they argue, justice must be done; but justice is not done in this life; therefore, it must be done in the future life; or, merit will be duly rewarded, and demerit condignly punished only in a future state of existence. This conclusion is also proved by the fact, equally well known, that man can not attain to any object of happiness, in this life, which is at all proportioned either to the dignity of his nature, or the greatness of his capacity: for this end, no object is adequate, but one that is perfect and unfailing.

It cannot be proved demonstratively from unassisted natural reason, either that punishment in the future state is actually eternal, or that it is not eternal; nor could we naturally come to the certain knowledge of the fact that man's probationary state, or the time of merit and demerit for his soul, ceases immediately with the present life in this world. The truth of these statements is all the more evident and certain from the fact generally conceded, that God could, if he had chosen so to do, have saved every human being:\* but while inquiry concerning these matters would here be out of place and useless, it is appropriate to examine whether or not unending punishment of the wicked is repugnant to reason.

Although, as conceded, it cannot be proved from natural reason that the punishments of the future state are to be actually eternal or unending; yet, it is not contradictory to reason that there should be such punishment; or, that loss of beati-

\* Some have denied the possibility of demonstrating that God could not justly, and in virtue of his absolute dominion over his creatures, annihilate the wicked, though it be strictly provable that the good will be immortal.

fied life through demerit, should constitute a state of existence that will be permanent.

It may be argued thus: as the reward for keeping the natural law is proportioned in justice to the merit thereof; so is the punishment of not keeping the natural law proportioned in justice to the demerit acquired thereby; but the due reward of such merit is the state of beatitude, or an immortal life in happiness; therefore, by parity of ratio, the demerit incurred by refusing to be governed by the natural law, can be a corresponding loss or privation of beatitude that is irreparable. Hence, just as beatitude will be a permanent state; so the privation of beatitude can, by like reasoning, be a permanent state.

This argument seems to be perfectly conclusive, as regards the simple, abstract principle of justice. Hence, merely reasoning *a priori*, it may be said: that principle is not repugnant to reason, which is founded in the very nature of things; but that there can be unending or unrepaired privation of beatitude, in punishment of a life that is morally evil, is true from the very nature of things. When, from some defect or privation in man, life leaves his body; there is not either in his soul or body a power capable of restoring the principle of life to the body; this can be done, in the nature of things, only by a power that is superior to both soul and body, it can be done only by divine power. Hence, it may be said generally, that whenever a principle is totally destroyed, the defect is not naturally reparable; v. g., when the organ of vision is radically and totally destroyed, there is no virtue natural to creatures which is able to remedy this evil; for, if there be power in such being or in any creature to restore the lost faculty, it cannot then be said to have been under all respects, radically and totally destroyed. Restoration of life here on earth is not naturally, or merely from the nature of things, due to the dead; nor is power of seeing, here due to the eye that is totally destroyed as an organ. Similarly, no conclusive reason can be given to prove that the soul will not exist permanently in a state corresponding to its merits or demerits after death.

The principle of the soul's life, which is essential in order for it to live in beatitude, is that virtue or moral good quality, with which it is informed and perfected by the actual fulfilling of the natural law. If there be a defect or privation which totally and radically destroys this essential principle of the soul's beatified life, such evil is irreparable, it is manifest, through any principle or power that is intrinsic to man, or even to any other creature; the evil can be repaired only by a special exercise of divine power, but which is not, in itself, something due from God. Moreover, since the loss of beatitude is imputable to man as coming by his own deliberate choice of the known cause, he cannot claim reparation of the evil by any title of justice or merit. It follows, then, that in the nature of things, forfeited beatitude cannot be redeemed or regained through any virtue or principle in man, for the principle in his soul that is essential in order to make it capable of living in beatitude, is wholly destroyed. By analogy, when civil government punishes murder of the innocent citizen, with the murderer's death, such penalty constitutes unending punishment; for, the state of death is in itself permanent; it is not naturally mutable or reparable, since the principle of life in the body is totally gone from it.

It may be concluded, then, that when one loses his claim to final happiness by his own deliberate great fault, he cannot, in the nature of things, rise by his own power from his fallen condition; nor can he claim as his right the restoration of this lost blessing. Therefore, it is not repugnant to natural reason that there should be punishment of evil, or privation of beatitude, that is, in the nature of things, unending,\* or is a permanent state of existing. Yet, this reasoning does not demonstrate the fact that any future punishment will actually be eternal; for the proof of this, other arguments are required: it is made certain by revelation.

Can it be correctly said that the malice or guilt of moral

\* In popular language, unending punishment is usually styled "eternal punishment;" but, strictly speaking, nothing except God can be eternal. The phrase is herein used according to this popular sense.

evil is infinite; or, in more general terms, can the *infinite* be a real and true predicate of any moral act or quality that is imputable to man?

In order to avoid an equivocal use of the term, we must distinguish the different meanings which are attributed to the word "infinite." In its most proper sense, according to which it can be correctly applied only to God, "infinite" expresses absolute perfection; that is, perfection which both excludes all imperfection, and includes all simple or unmixed perfection. Also, that which has unlimited succession of parts added to parts, or which is a perpetually increasing series, and which may be expressed by number constantly added to number, is often termed *infinite*; though it is, perhaps, more appropriately styled, under different respects, the "potential infinite," the "negative infinite," the "indefinite," etc. Again; that which is vaguely and indeterminately great or small, is, in popular language, often termed "infinitely great, infinitely small." Finally, when a rational action has God for its direct object; as, to perceive intellectually, or to love; such action, when considered only in respect to its object, which is God, is sometimes called "infinite;" or, what is more accurate language, "objectively infinite." The term "infinite," in these last three meanings, agrees only by a species of remote analogy with "infinite," as predicated of God; and hence, it is illogical to apply the term indiscriminately to God, and to what is not God, as if it were univocal in its meaning. This error, with its false consequences, will be avoided by attending to the rule laid down by logicians for right reasoning or legitimate argumentation concerning this matter: "ab infinito syn-categorematicè, ad infinitum categorematicè, non valet illatio;"\* i. e., we cannot validly conclude from what is not strictly and really infinite, to the real absolute infinite. God alone is really infinite; and whatever is really not God, is really finite.

The question, "is the malice or guilt of moral evil infinite?" can now be answered both briefly and clearly: the malice of

\* From what is not specifically infinite, to what is specifically infinite, illation is not valid.



evil, or sin, is, in itself, necessarily finite. Both the malice of sin, and the goodness of a genuine religious act, may be styled "objectively infinite," since they regard an infinite object, which is God; but in themselves, they can be only finite, for God alone is really infinite.

A common fallacy against the foregoing explanation should here be refuted: "A given offence is greater or less, according as the dignity of the person offended is greater or less; but the dignity of God is infinite; therefore, an offence against God is an infinite offence."

This syllogism is fallacious, since it really has four terms; hence, the conclusion does not follow from the premises.\* The terms in the major premise express only what is finite, or what can be greater or less within the same species or series, all the words used in the comparison having only a univocal meaning; in the minor premise and conclusion, a transition is made to another species or order of being, the simple, absolute infinite; whence the middle term as in the minor premise, does not occur at all in the major premise: therefore, the syllogism is not in form, or it is not a valid argument. If the minor premise be so given as not to introduce a second middle term, as, for example, "but the dignity of God is the greatest dignity;" then the conclusion, "therefore an offence against God is the greatest in the species or series of offences,"

\* This apparent argument misleads some minds; it is thus disposed of by Becanus (*De Peccat.*, c. 2, qu. 6): "*Iste modus argumentandi non valet quando fit transitus ad res diversi ordinis et speciei. Non enim sequitur, eo perfectior est amor, quò versatur circa perfectius objectum; sed amor noster, quo amamus Deum, versatur circa objectum infinitè perfectum: ergo amor noster est infinitè perfectus. In antecedente agitur de amore rei creatæ, in qua datur magis et minus; at in consequente de amore rei increatæ, in qua non datur magis et minus.*" That manner of arguing by transition to a different order and species of things is not valid. It does not follow that, because love is the more perfect in proportion as its object is more perfect; but our love for God has an object that is infinitely perfect; therefore, our love for God is infinitely perfect: in the antecedent, the question regards love of a created thing, in which there is more or less; but in the consequent, the question is changed to love for an uncreated object, which is not susceptible of more and less.

follows legitimately. From the infinity of God it can be inferred only that the offence is *objectively infinite*, as is any other act that has God for its direct object ; but the offence, in itself as an entity, is finite.

When it is said that the loss of beatitude, or punishment, is "eternal," the word "eternal" is to be understood as expressing a duration by successive moments, which is unending. Duration which is conceived to increase by perpetual or constant succession of moments, can be termed *infinite* duration, only according to the second meaning of the word as above distinguished ; or, it is *negatively infinite* ; since, while in itself it must be ever actually finite, yet there is no limit or end to what it will receive by successive addition or increment of moments.

Punishment consisting in the state of lost beatitude, privation of beatitude, is not something merely negative ; or, it is not only the absence of perfect happiness, but it must also include positive pain, from the very nature of such a state. To lose the condition of the blessed must cause pain ; for, it supposes that all man's powers or faculties will be degraded to inferior objects, instead of being exercised on that which ennobles and gives bliss, but which he forfeited by preferring other things to the true object of beatitude.

It may be concluded, then—1. that positive law and natural law essentially require a sanction ; 2. that this sanction consists principally in reward, secondarily and conditionally in punishment ; 3. that this sanction proposes, as the principal motive of obedience, that good which constitutes the essential and proper effect of law.

## CHAPTER VIII.

### ARTICLE I.

#### APPLICATION OF NATURAL LAW BY THE INDIVIDUAL REASON TO PARTICULAR OBJECTS OF ACTION; CONSCIENCE.

In order to understand clearly what conscience is, it is necessary to ascertain precisely what it is psychologically; or, what it is when considered as a principle whose subject is the soul; and also, its special function in human action must be distinctly known. Accurate knowledge of this subject is important, both for ethical science, and for rightly estimating human action in the concerns of man's life.

The matter to be examined, in order to determine what conscience is in itself, is proposed with distinctness in the following questions: Is conscience a special power of the soul? Is conscience either an acquired or an innate habit? Or, finally, is conscience an act?

Conscience is not a special and distinct power of the soul: we conclude the truth of this assertion both from the nature of a power, or faculty to act; and from that action which we attribute to conscience. The distinctive peculiarity of a power is that, by its nature, it is capable of action towards opposite objects;\* for example, the will, which is a power, can choose either good or bad objects: the intellect may be made either to err, or to judge truly. But a habit has only one specific object, which is either good or bad; and with that good or bad object as its cause, the species of the habit is either good or bad. While the will can elicit either a good action or an evil action, in respect to the same object; a virtuous habit cannot

\* "*Potentia se habent ad opposita; habitus autem non se habent ad opposita, sed ad unum tantum.*"—Powers are capable of acting towards contrary objects; but habits are not thus capable of contraries: they are for only one object.

become the principle of an evil action, any more than a vicious habit can be the principle of a good action. Now, the conscience, as such, or as the proximate rule of upright action, has but one proper object, and it cannot have a contrary or opposite object to that one; as a little reflection suffices to render clear. Conscience tends *per se* only to moral good, and most properly, to the moral good of the person that is its subject; for, conscience, though it is fallible, and its dictate may even be disobeyed,\* is naturally ordained for what is morally good and right in the objects of choice. This will become still more clear, when we shall have considered the obligation of following the real dictate of conscience.

It may be concluded, therefore, that the conscience is not a distinct power or faculty of the soul. Is it a habit, then, or is it an act? Conscience is really an act of the reason; it may be said, however, that a habit in the reason is presupposed, as a concurrent principle † of that act which conscience is affirmed to be: what that habit is, will be made clear by the reasoning which is to follow. It is true that uprightness of the conscience supposes rectitude also in the will; but yet conscience is of the reason, since its chief office is to judge ‡ in practical matter, and to testify; both of which are acts of the reason.

The conscience is sometimes called “actus synteresis,” an act of synteresis; by which it is meant that conscience is an act of reason as informed with this natural, innate habit called the “synteresis”; and by some, the conscience itself is iden-

\* “Sed contra, Conscientia deponi potest, non autem potentia; ergo conscientia non est potentia.”—P. I. qu. 79, a. 13. Conscience can be put aside, but not a power; therefore, conscience is not a power.

† “Quia habitus est principium actûs, quandoque nomen conscientie attribuitur primo habitui naturali, scilicet synteresi.”—D. Th., p. I, qu. 79, a. 13, in c. Because habit is a principle of action, the name of conscience is sometimes given to the natural habit, called synteresis.

‡ “Conscientia recta coincidit cum actu prudentiæ qui dicitur iudicium; sunt enim tres actus prudentiæ, scilicet, consultare iudicare et imperare.” Billuart, De Act. Hum. Dis. V. Upright conscience coincides with the act of prudence which is called judgment; for, there are three acts of prudence, namely, to consult, to judge, to command.

tified with this habit. It will be advantageous briefly to repeat in this connection an explanation already given in a preceding chapter. The intellect has for its proper object, truth; as the will has for its proper object, good. But in order for the intellect to become proximately and completely able to attain with promptness and facility to its proper object, it requires an infused or superadded virtue, which, as philosophers teach, both gives it the ability thus to act, and, at the same time, serves it as a medium of action: hence, this naturally infused habit of virtue is often styled "the natural light of reason," "lumen naturale rationis." This first habit, which is naturally infused, has for its object evident and immutable or absolute first principles; and, for this reason, it is also called "habitus primorum principiorum" — faculty of first principles. It is the only habit that is naturally infused.

This primitive habit or virtue given by nature to reason, is well said in English, by the expressions, "natural intelligence," or "gift of natural intelligence;" and as including also practical first principles, it is termed, "common sense,"\* in the English language. Again, truth and its first principles may be divided, according to the distinct species of their objects, into two kinds: namely, speculative or necessary first principles, and practical first principles. When the faculty of first principles has practical matter or truth for its object, it is more generally styled the "synteresis;" and by some, it is less correctly called the "natural conscience." It is not really the conscience; for, conscience being directive of moral action, we must include in the true concept of it an act of rational knowledge; whereas, the habit or virtue in question, which we also called "the natural light of reason," is not an act of knowledge; but it is a means or help to that act. It is not amiss, however, to term conscience an act of this virtue or habit, "conscientia est actus synteresis;" for, since the

\* "Common sense," as in the English language, must not be confounded with the "sensus communis" of the philosophers, which is the bond of all the senses, or a sense that gives to the other senses a unity, and is called by some "sense-consciousness."

habit is truly a helping or concurrent principle in the production of the act; the act is justly attributable to it, under this respect.

We must conclude, then, that conscience is, in itself, truly and properly a practical dictate of right reason; for, it is neither a distinct faculty, nor is it habit or virtue that perfects a faculty for action, since it is essentially an act of knowledge. But, as conscience is affirmed to be a practical dictate of right reason, is it, then, identical with the natural law? For, the natural law is defined to be the practical dictate of right reason. A general distinction between them is indicated, when the natural law is defined to be *the* practical dictate of right reason, and conscience is defined to be *a* practical dictate of right reason; for, they differ somewhat as that which is specific or general differs from a particular individual that is included under it.

Conscience more precisely defined is, the act by which the individual reason applies the natural law or some certain general principle of rectitude, to a particular object or matter, as here and now related to the person, by means of a judgment that the action should be done or omitted. Or, more briefly, the conscience is that act or practical dictate of right reason, by which it applies a general principle of rectitude to particular matter, here and now.

It is manifest that the natural law, or any general rule of right action, can be actually applied, only by a dictate of the individual right reason, which regards some particular object, here and now; it is only through these conditions that law can actually bind, or that there can be a human action that is regulated by law.

The conscience, or practical reason by its acts, performs the function of applying knowledge or of applying the natural law, thus: 1, in respect to a thing that is past, it testifies, or bears witness; 2, it blames, giving remorse, or it approves, causing joy; 3, it instigates to action, here and now, or it restrains from action; all of which it does, through particular judgments or dictates of practical reason. When conscience dictates something to be done or omitted, here and now, this

is a practical judgment ; but when conscience is an act of reason which regards a past fact, to which it testifies, the judgment is a speculative one \*

It may be said that conscience is the practical and particular conclusion of syllogism, whose premises are practical truths ; for example, " evil must be avoided ; fraud is evil ; therefore, I must not now practice this fraud, on this person ; " the illation or conclusion here expresses that particular dictate of practical reason, which is conscience.

Conscience is called the proximate rule\* of human action, "*conscientia est proxima regula morum* ; " because it is only through that particular dictate of reason, which is conscience, that any law can immediately and actually bind man ; for, it is only through this same dictate of particular reason that the law is promulgated to the individual soul ; or, it is only through this act of knowledge that the law can become known as positively binding. It is manifest that the law can be neither more nor less, here and now, than right reason sees it to be.

The following general definition may, perhaps, be now appropriately given : conscience is a practical judgment, regarding a universal principle of morality as actually applied to particular matter comprehended under it ; by which one decides that an individual action ought here and now to be done or omitted by him ; or, it testifies to a like fact of him in the past, which it either blames or approves.

It will be noticed by the observant reader that conscience is often spoken of herein, just as if it were a faculty, rather than merely the act of a faculty ; it is plain that, in such cases, the word " conscience " is used for the right reason itself as actually dictating or judging practically. This manner of conceiving and speaking of conscience, is not object-

\* "*Synteresis est regula morum infallibilis sed remota, quia legem tantum generaliter et in communi proponit : conscientia autem est regula fallibilis, sed proxima, quatenus explicat et applicat legem ad actus particulares.*" Billuart, *De Act Human. Dis. V.* Synteresis is an infallible rule of morals, but it is a remote one, because it proposes the law only in general or in common : conscience, however, is a fallible rule, but it is a proximate one, since it explains and applies the law to particular acts.

ionable; for, since the act which we define conscience to be, has no existence apart from the reason, it is not incorrect thus to transfer the name of the act to the faculty as eliciting the act; the mind thereby makes the idea of conscience less abstract; for, then its idea represents that act which conscience is explained to be as concrete in the reason.

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## ARTICLE II.

### CAN PERFECT RECTITUDE, AND ERROR, CO-EXIST IN THAT PRACTICAL JUDGMENT WHICH IS CONSCIENCE ?

There is perfect rectitude of conscience whenever it is a practical judgment that is upright, sincere, and certain; or, when such practical judgment is formed in perfectly good faith. But we may consider any judgment of reason, under a twofold respect; namely, as it is in the mind, and also as it is when compared to its matter. It is a plain fact of general experience, that a judgment may be right as compared to the reason alone, and at the same time be erroneous or untrue, as regards its real matter; or, as it is also expressed, a judgment of the reason may be formally right, and materially erroneous. In forming this upright ultimate dictate, conscience is both the *judge* and the *witness*. A judgment, when considered in respect to the matter, which is its extrinsic term, may be formed erroneously in two manners; first, by mistaking either the law, or the fact; that is, either by falsely supposing that there is or is not a law, or else by falsely supposing that the fact does or does not come under the law. Secondly, a judgment may also be erroneous by illogical reasoning, or because it is an inconsequent conclusion. It is only ignorance that is invincible, and, therefore, not imputable, that can give rise to such unintended errors of judgment: hence, the conscience is said, in such cases, to be invincibly erroneous.



There are two fundamental and universal principles which, when understood and duly attended to, simplify all questions and difficulties that rise in regard to the right direction of conscience in practice. The first one of these principles is by its nature so evidently true, that it requires neither proof nor explanation; it is this, the will is bound to avert from evil proposed to it. This is part of the first, most general, and best known precept of the natural law; consequently, it is self-evident.

The other one of these two general principles is this: The judgment of the intellect is the proximate rule of the will;\* or, conscience is the proximate rule which the will is bound always to follow. This truth comes as a direct and necessary conclusion from the very nature of the human mind; for, the will is absolutely dependent for its object, which is the good, on the understanding; its object is apprehended, determined, and proposed to it, by the intellect, "*bonum intellectum est objectum voluntatis*"; good as apprehended by the intellect is the object of the will. Hence, the moral goodness of the will itself depends on its being subject or obedient to the dictate of reason.† A defection of the will from the judgment of the intellect, is a defection from its rule of right action; therefore, when the will goes against the dictate of conscience, it becomes, by necessary consequence, deficient in moral rectitude.

Is the will bound to obey the conscience when it is invincibly erroneous? Is it thus bound even when that is judged to be good which is, in itself, intrinsically evil?

The principles explained above, provide for the answer to

\* "*Judicium intellectus est proxima regula voluntatis.*" "*Bonum prius pertinet ad rationem sub ratione veri, quam ad voluntatem sub ratione appetibilis.*"—P. 1. 2, qu. 19, a. 3, ad 1. The judgment of the intellect is the proximate rule of the will. Good, under the aspect of the true, pertains to the intellect before it pertains to the will under the respect of something desirable.

† "*Bonitas voluntatis dependet ex hoc quòd sit subjecta rationi.*"—P. 1. 2, qu. 19, a. 3. The goodness of the will depends on this, that it be subject to the reason.

these questions. The dictate of conscience which is invincibly erroneous, must be obeyed, under all possible suppositions; even if it judge that to be good which is, in itself, intrinsically evil. For, the will can never choose that which is known certainly to be evil, without a defection from rectitude; but the will wishes evil whenever it wishes that which is opposed to an upright dictate of conscience, as is that practical judgment which is formally true and certain, though erroneous materially, or as regards the object. It follows, then, that the will cannot legitimately wish that which is opposed to an upright dictate of conscience. To wish that which the conscience as certain prohibits, or to refuse what it then commands, is surely to wish evil; and to wish what is apprehended by the reason as certainly evil, is a direct and explicit aversion of the will, from its guide to moral good; for, the will, which is not a power capable of judging, is bound to follow the conscience as its rule of action.

When we consider moral things as they are really in themselves, or as they are in their objective truth, it is manifest that the mind may be variously related to these things; or, it may be in very different states in respect to them, if we compare its degree of knowledge, and its want of knowledge, to the objects themselves. For example: 1, the mind may know some object of moral action, clearly and certainly as it is in itself; 2, it might be totally ignorant of the object's moral character or its relation to the rule of rectitude; 3, it might be partially ignorant of the object, or ignorant of it only under a certain respect; 4, the mind's ignorance may be either vincible, in which case it is imputable; or invincible, in which case it is not imputable. It is easy to see that the practical judgments which the mind forms, are greatly influenced by these states just enumerated. Dependently on these causes, the conscience may be, as regards a given object of moral action, in any one of the following states: it may be certain, doubtful, perplexed, irrationally fearful or scrupulous.

The conscience is said to be *certain*, when the matter which is judged is presented as being so evident to the mind, that all

doubt, and all prudent fear of error, are excluded. Prudence may happen to be speculatively and metaphysically erroneous, in its judgment; or, in other words, prudence may be defective, when compared to an absolute and abstract standard, and yet be, at the same time, relatively perfect, or be perfect relatively to the knowledge and ability of the individual human mind. For the rectitude of human actions, judgments that are formally certain, suffice; even, when such judgments of reason happen to be materially erroneous; for, the rule of right human action, is a moral, not a metaphysical one. In contingent and practical matter, absolute certainty is not required for perfect action: "Intellectus non potest infallibiliter conformari rebus, in contingentibus, sed solum in necessariis;"\* the intellect cannot be conformed to contingent things with infallible accuracy or exactness; it can thus know only necessary things. A dictate of conscience may be right, prudent, and certain, then; and, at the same time, be untrue or erroneous in its matter.

The conscience is said to be *doubtful*, when the mind sees probable reasons, both for and against, some practical judgment of the intellect; so that the reason wavers, or is suspended between two opposing judgments, with some fear of

\* "Verum intellectus practici aliter accipitur, quam verum intellectus speculativi; nam verum intellectus speculativi accipitur per conformitatem intellectus ad rem. . . . verum autem intellectus practici accipitur per conformitatem ad appetitum rectum, quæ quidem conformitas, in necessariis locum non habet quæ (necessaria) voluntate humana non fiunt, sed solum in contingentibus, quæ possunt a nobis fieri."—P. I. 2, qu. 57, a. 5, ad 3. Truth, in the practical intellect, is taken otherwise than truth in the speculative intellect; because truth in the speculative intellect is taken for conformity of the intellect to the thing; but truth of the practical intellect is taken for conformity to right appetite or good will, which conformity has no place in necessary things that are not subject to the human will, but it has place only in contingent things which can be done by us.

Observe how differently the mind is conformed to its objects in such judgments as the following: "The sum of the three angles in any rectilinear triangle is equal to two right angles. This tree at which I am now looking is a maple. This letter of advice which I have written will be good for James."

mistake if it decide, either affirmatively, or negatively. It is not morally right to follow a doubtful conscience, or conscience doubting whether the thing be commanded or forbidden; for, he that follows a doubtful decision of conscience, consents to evil, at least implicitly; virtually making his choice thus: "I doubt whether this action be right or wrong; but whether right or wrong, I will do this action." This manner of reasoning is necessarily implied, whenever a doubting conscience is either obeyed, or forced to decide practically.

The conscience is said to be *perplexed*, when it is between two evils, and sees no escape from doing wrong; if the action be put, the evil will be committed; and, on the other hand, there will be evil, in the estimation of the mind, if the action be omitted; thus the conscience is embarrassed since it is in a dilemma between two evils, both of which cannot be avoided, though one of them can. Both the doubtful conscience, and the perplexed conscience may decide with certainty concerning the matter that puzzles rational choice, by recurring to some reflex principle, or extrinsic rule for such case, as will be explained further on.

The conscience is *scrupulous*, when the person, on account of slight or groundless reasons, imputes serious guilt to himself; or, when there being no rational cause for it, he is fearful and anxious about things which neither require nor even deserve attention, imputing them to himself as if they were grave and culpable. This condition of the mind oftentimes proceeds from a certain degree of imbecility, of which it may be justly considered the real symptom. The surest remedy for such ailment of the conscience, is for the person to follow strictly the decisions and direction of a prudent adviser; and to keep himself cheerfully and usefully employed.

It is manifest that all doubt, and all error imply a greater or less degree of ignorance; for, the intellect cannot assent to what is false, except when the object is only apparently or imperfectly evident to it; and it is always impelled by the will when it elicits assent in doubt. Since ignorance is either vincible or invincible, it may be affirmed that, when the matter of action

is practical, every person is bound in conscience to relieve his mind of that doubt or ignorance which, besides being vincible, is an obstacle to the right performance of his moral duty.

Reason can rightly and certainly direct human action, only when it is duly informed with the necessary knowledge of the end to be attained, and of the legitimate means to that end. To assert that man is bound to act rationally, is merely to affirm in different words that he is bound to obey the natural law; and it evidently follows from this general obligation to act rationally, that he is bound by the additional obligation of acquiring the knowledge necessary to fulfill all that duty. Vincible ignorance can be considered a cause of evil, only in a negative sense, as all moral evil, which is a privation of good that is due, is a cause. The evil which results from wilful or vincible ignorance, is foreseen in its cause, and it is imputable to the person. Hence, the obligation to avoid such evil, falls most directly on the negative or indirect cause of such evil; that is, on the vincible or wilful ignorance.

In case such partial ignorance or doubt cannot be relieved with evident or certain knowledge of the matter to be acted on, then the mind must recur to some true and appropriate reflex principles, which indirectly, but yet rationally and determinately, solve its difficulties, by enabling it to derive its practical conclusion from what is both evident and true. The manner in which a certain dictate of conscience is derivable from a reflex principle that is legitimately applied to doubtful matter, can be made clear by an example of such argumentation: when the testimony in a criminal suit before the civil court, affords only *doubtful proof* that the accused is guilty, the jury are instructed that, "one accused, is entitled to the benefit of doubt; and if there be solid doubt of this man's guilt, the verdict should be *not guilty*;" a verdict of acquittal, let us suppose, is rendered by the jury. The jury reason thus, in making up their verdict: "He is innocent before the law, whose guilt is not certainly proved; the guilt of the accused is not certainly, but only doubtfully, proved; there-

fore, the accused is *not guilty*." Here the conclusion is deduced from premises that are certain; not from the doubtful testimony that was given. In a great deal of analogous matter, the conscience which, as already declared, is for the individual soul both witness and judge, may rightfully reason in a similar manner. To most of the cases which can arise, under the supposition here made, the following well known axioms will apply: "a doubtful law, is no law; *lex dubia, lex nulla*;" "choose the less of two evils; *minus malum præferendum est*." These truths, known evidently and certainly, constitute the reason, or the principle, which gives certainty to the practical conclusion or dictate of conscience, when the conscience must recur to an extrinsic rule in order to decide, here and now, what is right and good to be done.

When the invincible doubt or uncertainty regards the existence of the law, then the law is not duly promulgated to such mind; but, as shown in a preceding chapter, the promulgation of the law is indispensably necessary, in order to give it obligation or binding force; since the law must be in the subject, in order to bind that subject. Only that law is actually and positively such, which is a *known* rule of action; but a doubtful law is not a known rule of action, since the knowledge of a thing excludes both ignorance and doubt concerning the existence of that thing. Therefore, when the existence of the law remains positively doubtful, the conscience is not bound by that law. The conscience is often styled the *forum internum*, as distinguished from the *forum externum*, which is the human tribunal having authority to administer the law over such person. Since human judges can know only what is manifested externally, a decision before the public tribunal, and that before the secret court of conscience, may not adjudge a particular fact related to law in the same manner; for, though public authority presumes the law to be known which was promulgated in due form; yet, as a fact, the existence of the law, by accident, may actually be unknown to some individual conscience. Just rulers do not punish an act against law, which they know to be innocent or guiltless.

Should the doubt in one's mind regard the existence of a law commanding something that is necessary, "de necessitate medii," for reaching ultimate beatitude; the axiom of prudence then to be applied is, "choose what is safer: tutior pars sequenda est;" or, the doubtful law must then be certainly obeyed. A means is said to be necessary "de necessitate medii," only when it is so indispensable, both as a means, and a "conditio sine quâ non," that the end is not attainable without it, even should failure to use such means be not at all imputable. What another law commands, may be necessary only so far as actually commanded; nor is it thereby made necessary for one to whom the existence of the law cannot become known. But a means that is required "de necessitate medii" for reaching ultimate beatitude, is unconditionally necessary, even for a person that is entirely ignorant of such means, or of the law prescribing it. Means that are necessary in this manner, pertain, in the very nature of things, only to an end, or a good to be gained, not naturally due; or, which is "bonum indebitum naturæ humanæ." It does not seem possible for means to be made necessary "de necessitate medii," in respect to an end naturally due, or to purely natural beatitude, since such means would not be duly proportioned; for, it does not appear that a person would truly and really forfeit the befitting natural end for which he was created, merely by failing through invincible ignorance, and therefore blamelessly, to obey a law that is not promulgated to him.

It may be concluded, then, that whenever the doubt of conscience relates to the existence of a law prescribing means to our ultimate beatitude which is necessary "de necessitate medii," the safer course should be followed, and, therefore, that doubtful law should be obeyed, owing to the special nature of such means. But a law prescribing any other species of means, does not oblige the conscience, unless certainly promulgated to it. An obligation to obey may arise, however, from some extrinsic or accidental reason; v. g., when the obedience is necessary in order to avoid greater evil.

When the conscience is *perplexed* between two evil alterna-

tives, one of which must be chosen, and the mind is unable to relieve its embarrassment by obtaining further knowledge of the matter to be decided; then the good sense of mankind inculcates the prudent and just axiom, "choose the less\* evil." But if it cannot be determined as to which is the less evil, in such case, another reflex principle evidently holds true: "In dubiis, libertas:" in doubt between two evils of the kind, the person is of right free to choose either side. This is a certain rule; for, first, he must, as is supposed, necessarily choose one side or the other; secondly, it is absurd to say that a person can ever be under the simple necessity of doing what is morally wrong, or of making a choice that is morally evil; therefore, to choose either side in virtue of the principle, "in dubiis libertas," when the conscience is in such perplexity, is an action that is lawful and morally good. Jurists and moralists lay down a rule for determining the scope and equitable application of law, which is pertinent to this matter; namely, "law must be interpreted strictly;" that is, the obligation must be restricted to what the law distinctly and certainly requires, when it imposes a burden, in order that its onus may not be unnecessarily augmented; but when the law confers favors, its scope and limits, they teach, are not to be narrowed with equal rigor. In this meaning, the maxim is often repeated that affirms, "favores ampliandi sunt; odiosa restringenda sunt."

#### WHAT LIBERTY OR FREEDOM OF CONSCIENCE REGARDS.

The conscience being an act of reason, is not, as such, free at all; for, freedom or liberty is of the will, not of the intellect. It is true that the will can either follow or reject the dictate of conscience; but when this practical judgment of reason is evidently true or certain for the mind, it is a necessary act of the intellect; not a free, or imperate act. Yet, when evidence of the truth, or the sufficiency of its motive for assent, does not

\* "Minus malum est aliquod bonum." The less evil is some good; it is, therefore, worthy of choice.



necessitate the judgment of the intellect, in such case, the will can so control the reason, as to compel it either to affirm or deny ; decide, or not decide.

While the will can either follow or reject any dictate of conscience, in virtue of that liberty of indifference which is natural to it ; yet, the will is not free, however, to choose either good or evil, in the sense of having the moral right to choose arbitrarily and indiscriminately either the one or the other ; this would suppose moral good and evil to be indifferent in their species, which is absurd. The legal or public liberty of conscience which regards action affecting others, may be justly determined and limited by positive law, according to what is necessary and useful for the common good, and for the protection of mutual rights and duties among citizens. The conscience, as to its purely internal acts, is regulated by the natural law and all known principles of rectitude ; but every one is also bound in conscience to conform his external conduct to the just public laws promulgated by authority for the direction of the community. Liberty of conscience in the sense of license to do every outward action without legal restraint, would be lawlessness of conduct fully authorized.

Since laws regulating human action must operate as moral principles, not with physical or metaphysical necessity and mathematical universality, men will often, from the very nature of such things, reason differently concerning the medium between right and wrong in matters of conscience. It will be useful here briefly to contrast the two extremes which are to be avoided, and between which the rational medium is always to be sought ; namely, laxism and rigorism.

The *laxist*, for reasons that are really of little or no value, rejects the law as not binding ; and by the misuse of a word, he styles his principles *liberality*. The *rigorist* exacts the most strict obedience to the law unless it be demonstratively proved that the law does not actually exist ; or, he permits no degree of counter probability, or mere uncertainty of the law's existence, to invalidate nor even weaken the actual obligation of law ; a doctrine which is all the more mischievous, because,

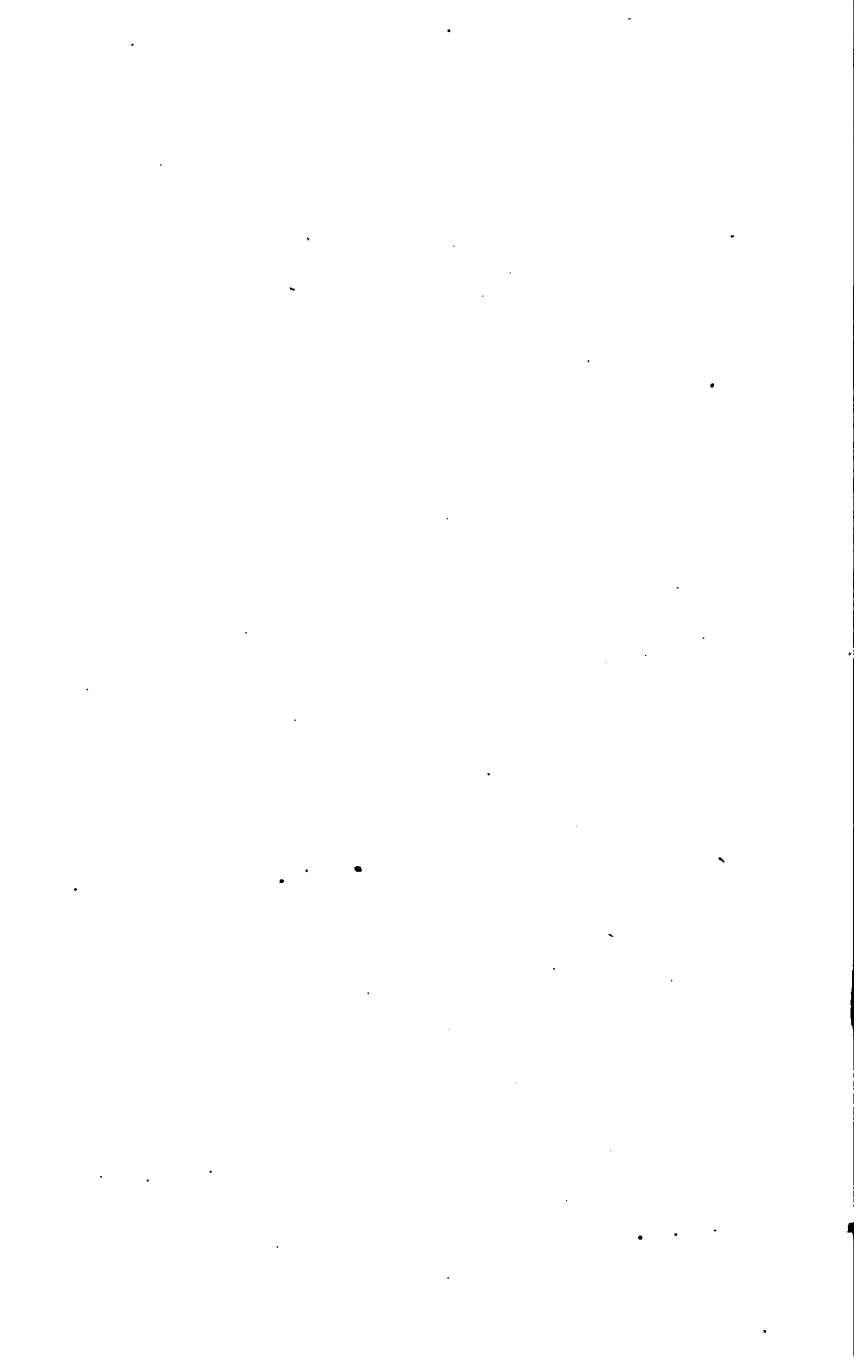
with the pharisee of old, he stickles for the law, thereby assuming the guise of stern virtue, which accredits his false teaching with the simple. While the laxist tends to throw off all restraint on conscience, the rigorist tyrannizes over the conscience, by loading it with unjust burdens. The principles of the one, directly and openly destroy the rights of others, by practically annulling the laws that protect them; the principles of the other, accomplish the same result indirectly, by inflicting wrongs concealed under the semblance of duty, and love for the law. The laxist and the rigorist agree in this, then, both are by their false theories enemies of the common good; but they employ very opposite means.

It will be noticed by the attentive observer that, in reference to this matter, men whose intellects are unduly influenced by passion, or by affection in the will, as also men of feeble judgment, are apt, when arguing, or especially when opposing each other in opinion, to affirm *universal contraries*. When their subject of dispute is some moral virtue, their universal contrary propositions, which declare or define the medium of that virtue, will, in general, both be false. This is evident, since moral virtue, by its very nature, consists in the medium between opposite extremes; "virtus est in medio." In proportion as moral action recedes from this golden medium, in a corresponding degree will it be disorderly and deficient in genuine moral perfection. For example, should one extreme mind contend that the unrestricted use of intoxicating drinks is never evil, and another extreme mind were to oppose this error by affirming that any use at all of alcoholic drink is evil for all persons: both of these contrary propositions assert that which is against the nature of temperance as a moral virtue; but the second extreme, by denying the very action to be lawful, in the moderating of which the virtue consists, really annihilates the essence of temperance as a specific moral virtue, at least as regards that part of its matter. It is true that total abstinence is, for some persons, a necessary means for avoiding insobriety; but this truth is not adverse to what is here affirmed concerning the virtue of temperance.

Yet,\* since some excess, in the use of strong drink, seems more opposed to temperance than would be a corresponding degree of abstinence, or lessening of the moderate or medium quantity, it is easy to comprehend the fact that well-meaning but simple minds are deceived by the extreme austerity or rigorism that would prevent the evil by preventing, in a given case, even the action in which the moral virtue consists. Hence, the extreme, called rigorism, is generally more harmful in practice; for, besides tending to bring about even the opposite evil, it really deceives simple minds, since it is less obviously opposed to virtue, and is more restrictive of action. But such errors are not always opposed to each other by way of *utmost* opposite extremes; they may differ only as too much and too little, that are less removed from the medium; yet, their falsity is always in this, that both of them practically deny the medium in which genuine moral virtue consists.

In whatever pertains to casuistry, or the deciding in matters of conscience, true and ingenuous minds, especially when judging for other persons, will always strive so to shun each extreme as, in imitation of our Lord, to make goodness exceed justice; and rather to be generous, than severely exacting.

\* "Virtus majorem convenientiam videtur habere cum uno oppositorum vitiorum, quam cum alio: sicut temperantia cum insensibilitate; et fortitudo cum audacia."—P. 2. 2, qu. 21, a. 3 in c., cum Aristot. in 2, Eth. Virtue appears to have more agreement with one of two opposite vices than with the other; as temperance with insensibility of appetite, and fortitude with boldness.



## PART II.

### *Special Ethics, or Ethics Applied.*

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It is the object of special ethics to explain rights and duties as applied to man. Natural law is the absolute rule or measure of those rights and duties, and it is treated in general ethics.

The revealed law is not herein considered, it being legitimate subject matter only of theological science.

Man, as a moral being, is now to be viewed in his relation to God, to the human family, to civil society, and also as conceived to have some relation to himself. It is only by means of these relations in which he is placed that the natural law, with its precepts, has actual application to man as directive of his moral action. It is the office of ethics to demonstrate first and most general principles of human action considered under these respects. Particular matters of positive duty and law, are beside the scope of philosophy; they are appropriate to special treatises that have for their peculiar aim the giving of prudent counsel on minute details of man's practical conduct.

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## CHAPTER I.

### ARTICLE I.

#### GENERAL NOTION OF RIGHT AND DUTY.

The term "right" is used in several distinct senses: v. g., right is often synonymous with law; it may also mean the just, equitable thing that founds the law. Since law is based

on what is just and right; and when it has the complete requisites of law, it must be declaratory and directive of what is equitable, good, right; the name of that right which it defines and ordains, is given to the law which is based on it. Hence, what is in itself really law, is often termed right: thus natural right, positive right, civil right, general national right, "jus gentium," international right, etc., are all expressions that are frequently used in the sense of law.\*

Right, as related to duty, is the moral faculty to have and to keep what is one's own, because really one's own. This moral faculty may have for its object the acquiring of an end by its just means. This right, as to its object is really identical with the just, equitable, or good, truly and rightfully possessed. In what follows, the term "right" will be employed according to this second meaning attributed to it; i. e., the moral faculty to have and to hold what is justly one's own, because one's own.

Duty is the moral obligation always to act with right reason; to do good and avoid evil; to render due service and equitable return for good received to God, and to all rational creatures with whom we are anywise connected as objects of our deliberate action.

Since a subject is well understood, only when it is known in its first principles, it is necessary for accomplishing that purpose to consider carefully and answer precisely the fundamental question: Is all right prior to its correlated duty; or, on the contrary, is the duty prior to the right? Does right primarily and originally found duty; or, *vice versa*, does duty thus found right?

One who has studied a few learned and elaborate treatises on the subject of "Rights and Duties," will scarcely deny

\* Law is styled "right" or "just," not because it creates or primitively founds the *right*; but because it defines, declares, and enforces the right: "Jus primò impositum est ad significandum ipsam rem justam; postmodum autem derivatum est ad artem quâ cognoscitur quid sit justum."—P. 2, 2, qu. 57, a. 1. Right, in the first place, is used to signify the just thing itself; but afterwards, by derivation, it is for the art by which the just thing is known.

that the remark of Leibnitz has some justification in fact: "The doctrine of right, which is included by nature within certain limits, is, by the ingenuity of man, spread out into the immense."\* Hence, it is all the more necessary to ascertain with certainty the true basis of all right and duty.

Right may be considered either as absolute, or as relative and dependent. Right, as simply absolute, does not connote duty to another: God alone, in His own absolute independence, is capable of right as thus understood. If we choose to conceive simply absolute duty, it could be affirmed only of that duty which God may be conceived to owe Himself; for, in a creature, neither right nor duty can be simply absolute.

Dependent right necessarily supposes, and it founds some duty, at least from the receiver to the giver of that right; and, it is manifest that all created rights are originally from God, and they are, in themselves, purely gratuitous gifts.

It was already explained, when speaking of merit and demerit, that perfect equation of justice from man to God is impossible; † since God is infinite and absolute Being, and man is only a dependent being, and is God's creature, but yet, it was there said, when God puts the condition, and makes man capable of rational action which is his own, though that action

\* "*Juris doctrina, certis a natura inclusa limitibus, humano ingenio in immensum diffusa est.*"

Some extreme minds conceive man as having no rights, but only duties; others, that man has rights, but not duties.

† Some of those authors who maintain that man has no rights but only duties, assert that the essence of right consists "in conformity to the law." They claim that the term right, "*jus*," is derived from "*jubere*," to decree or ordain. By that etymology of the term they wish to show that the word was not originally employed to express right, "*jus*," or the just thing, as presupposed to law, and founding law. They argue that, instead of right, or the just, founding law, the law, on the contrary, founds right; and, therefore, right is nothing but duty to obey law. The theory by which all right is thus reduced to duty, seems to have been adopted by the Roman jurists, who dared not utter doctrines inconsistent with the claim of their kings and emperors to divinity; a primeval claim, dating from the deification of Romulus as Quirinus. Such method of explaining the nature of right and duty, served to give some semblance of justice to all the ordinances of those absolute rulers; but the reasoning for it, however, is based on a false conception both of right and law; as will be seen in the following article, where it will be shown that law may originate right, under a particular respect, and secondarily; but not simply and absolutely.

is done in absolute dependence upon his Creator, yet he may thereby acquire merit before God, the reward of which will become justly due.

In answer to the question, "Is all right founded on duty; or, on the contrary, is all duty founded on right?" it is now to be shown that,

Absolutely, or in the nature of things, right is simply first, and duty is consequent upon it; but, under a certain respect, duty may precede and cause right; i. e., in the order of efficient causes, or in the order of execution by use of the means, the duty of employing the means precedes the actual possession of the related right. The meaning, scope and truth of this thesis will be made clear by what is to follow.

Man, through his creation, became, by the gratuitous gift of God, a complete rational or personal being, with the right to be himself, "*sui juris*,"\* and to put action which is really his own; or, as it is expressed in the schools, he was made a "*substantia rationalis, undique completa, sui juris, et alteri incommunicabilis*;" a rational substance, with proprietorship of self, and incommunicable to another. "By creation, the thing created first begins to have something as its own; *per creationem res creata primo incipit aliquid suum habere.*"† Therefore man's rational being is a purely gratuitous gift from God; but because it is truly a gift, it becomes man's right, to possess and to use, but dependently on God, of course. This right in his personal being is man's first right, which founds all his duties, and which has no duty presupposed to it, or anterior to it.

Man's duty to God follows immediately and necessarily from the gift of personal nature; logically, therefore, the gift or right, as in him, was first; the duty was second and consequent upon it. This first duty is that of supreme homage to God, thanks, and service. As there can be no right in man which is prior to that of personal existence, so there can be no

\* "*Corpora obnoxia sunt et adscripta dominis; mens quidem est sui juris.*" The body is subject and bound to its master; but the mind is its own master. (Seneca, *de benef.*, lib. 3, c. 30.)

*Contra gentiles*, lib. II., cap. 28.



duty which is prior to that which is first consequent upon his possessing by his creation a personal nature with action which is really his own. This, then, is the first origin or basis of all rights and duties which are in man as relating him to God, to self, and to all his fellow-beings so far as really connected with him. For, what duty in man can precede this first right? and what duty can he owe antecedently to the duty consequent upon this first right?

Hence, to conceive of duty which is in no sense founded on right, is to conceive of that which cannot have being; namely, a relation which has neither basis nor term. As there can be no reward due, unless the merit or benefit precede it; no debt, without value received, or to be received; no accountability, without a trust to answer for: so, there can be no duty where there is simply and absolutely no right which founds it; in other words, duty without co-related right is impossible, is nonentity. Since a gift includes, in its essential concept, the bestowal of the right to some ownership in the thing given, we may legitimately and truly call the gift of personal existence a right under God, and, as said, it is man's first right. God's right is both antecedent and absolute; but the present inquiry is only of dependent and human rights.

St. Thomas, (*Contra Gentiles*, lib. II., cap. 28,) states the principle on which the relation between right and duty is absolutely founded in substantially the same terms as above used. His aim, in the chapter referred to, is to show that the creation of the universe was not done, on the part of God, as a duty or debt owed, or as a work of justice to which any other being had a right. After saying, "Justice,\* according

\* "Justitia enim secundum Philosophum (eth. 5, c. 3), ad alterum est, cui debitum reddit. . . Ille actus quo primo aliquid suum alicujus efficitur, non potest esse actus justitiæ. Sed per creationem res creata primo incipit aliquid suum habere, non igitur creatio ex debito justitiæ procedit. Præterea, nullus debet aliquid alteri nisi per hoc quod aliquo modo dependet ab ipso, vel aliquid accipit ab eo vel altero, ratione cujus alteri debet; sic enim filius est debitor patri, quia accipit esse ab eo; dominus ministro, quia ab eo accipit famulatum quo indiget; omnis homo proximo propter

to the philosopher, is to another person, to whom it renders what is due," he continues; "That act by which something is first made any person's own property, cannot be an act of justice; but by creation the creature first begins to have something which is its own; therefore, creation does not proceed from a duty or debt of justice. Moreover, no one owes anything to another person, except for this that he under some respect depends on the other, or receives something from him or another person, by reason of which he is indebted to him or that other person: thus, for instance, is the son a debtor to his father, because he received existence by him; a master is debtor to his servant, because he receives from him service which the master needs; every one owes duty to his neighbor, on account of God from whom we receive all good things." St. Thomas then cites the Scripture to confirm and further explain his own reasoning; Job xli. 2, "who hath given me before, that I should repay him?" Romans xi. 35, "who hath first given to him, and recompense shall be made him?"

It follows, by this reasoning, that something given to be owned as a right, is absolutely presupposed to duty, which is of its essence a debt of justice; and duty thus depends on presupposed right as necessarily and absolutely, as an effect depends on its presupposed cause. It is impossible that something should be owed for nothing; because such a debt or duty would intrinsically contradict both truth and justice. If we make the impossible supposition of an intelligent being who never received anything from God, neither would such being owe any duty to God, as the above scriptural texts imply. It may be inferred also that duty cannot simply exceed the right which founds it; right and duty are related by way of cause

*Deum a quo bona cuncta suscepimus.*" Again, he says, "*Dicitur aliquid alicui debitum ex ordine alterius ad ipsum quod scilicet in ipsum debet referre quod ab ipso accipit; sicut debitum est benefactori quod ei de beneficiis gratiæ agantur, in quantum ille qui accipit beneficium hoc ei debet.*" That is, something is said to be due to any one, from the order or relation of another person to him; thus it is due to a benefactor that thanks be given him for benefits, inasmuch as he that receives the benefits owes this to him.

and effect; and they are functions of justice. As Billuart says,\* "what is due, is due to a right, for right and duty are correlatives."

When we consider men as related to other men, it will be found that right and duty are always referable to each other, radically and *a priori*, in the order of cause and effect: i. e., the right is logically and by its nature first; and the duty which derives its being from it, is second and consequent upon it. For, a duty which is, in no sense, dependent on and founded by a right, is impossible, since such duty would not be founded in justice. The gift to each man of personal existence with proprietorship in his own deliberate action, founds in him the first actual created object of justice; † or it is the "jus," from "justum," or the "res justa," which is first. The equation of right and duty is an equation of justice; and as right necessarily connotes some respect of justice, so also does duty; and the thing owned as a rightful good, "bonum rectum," is the object of the virtue justice, as well as it is the objective basis of right and its co-related duties. Hence, the good, is logically presupposed to the just.

We may now answer the questions, (1.) Can man have any rights before God? Man can have no absolute right before God; but he may have conditional rights; i. e., if God gives them to him, he possesses and owns them so far as they are given. Neither can man, who is a dependent being, have any absolute duty, for his duty is commensurate with his right, and they are both, in themselves, something finite and dependent, as in man. (2.) Can a right in one man found a duty in another man? or can one man's right originate another man's duty? The question is pertinent, since it is an essential property of right to be inviolable.

\*"Quod est debitum est juri debitum; sunt enim correlativa jus et debitum." De jure et justitia, Dis. I, a. I.

† "Isidorus dicit quòd 'jus' dictum est quia est justum; sed justum est quod est objectum justitiæ. . . . Jus primo impositum est ad significandum ipsam rem justam."—2. 2, p., qu. 57, a. I. Isidore says that right is so named because it is the just; but the just is that which is the object of justice. Right is first employed to signify the thing itself which is just.

It may be said that the right in one man *proximately* founds duty in another man; but all man's duties to other men originate, primarily and absolutely, in his first duty; which is that owed by him to God through the gift of personal existence. Hence, duty cannot be originally and adequately founded in what belongs to another man, or in another man's right.

It was said above that while right is simply prior to its co-related duty, yet duty may precede and found right under a certain respect; i. e., relatively to the order of means or efficient causes.

Right, considered as God's first gift to man, may be considered as twofold: first, the gift by creation of a rational or personal nature, which, as already explained, founds in man his first duty of paying to God supreme homage, thanks, and love, and this right and this duty are necessarily the first right and duty in man. Secondly, God proposes to man, as the complement of his existence, the state of future beatitude by way of a good or right for him to acquire, through the means which God ordains, and which man can freely use. It is manifest that this act of God's bounty to man founds for him two principal duties towards God: one of which is supreme homage, thanks, and love, as for the gift of his being; and the other is that of obedience to God by tending to this ultimate state through the means which God prescribes to his reason. In this second case, the good is proposed as a right to be acquired by man's own coöperation; and it is, therefore, made dependent on man's free action. Observe, however, that this gift, with the duty on which it depends as a necessary condition, has presupposed to it man's personal existence with rational empire over self.

The right in man to possess and own the gifts of God to him, is, as already defined, a *moral* faculty in him; and as a *moral* faculty, it originates in God's intention, as we may truly conceive it, and must conceive it. Now, it is the final cause which is the first principle of right, and which first gives it being; for the final cause is the first and chief among causes, and to it every effect is principally to be attributed; in respect

to the final cause, the other causes belong to the order of means, and they have only instrumental and secondary virtue. It is for this reason that the end is styled the cause of causes, "Finis est causa causarum." Hence, the moral faculty which we term right, comes primarily and principally from the intention of God, who gives it; and, therefore, right must be presupposed as conditionally to be given, in the order of intention, or in the order of final cause, before we can have any basis on which to found the duty of tending to that gift through the means prescribed; how could man tend to it, unless it were, at least in this sense, made his? But, since the full acquisition and possession of the proposed gift, depend on his using the means, and thus fulfilling the condition; and also, since the means precede the end as a work that depends on them, under this respect, the end is last; for, the end is always last in the execution: "Finis est primum in intentione, ultimum in executione."

We may conclude, then, that when the future right to be acquired, is considered in the order of final cause, which is the first principle of this moral faculty, it precedes and first founds all duty related to it; but when right is considered in the order of execution, or as a *work* dependent on the order of intermediate efficient causes, the duty of using the means to it precedes the right as a *work* to be effected by them. Therefore, right cannot originate simply and absolutely from duty; but yet, right may proximately, and under a certain respect, have its origin in duty; besides the duty of tending to the future state of beatitude presupposes man to have personal existence with rational self-movement; and on this right, which is first, all that is subsequent depends. This may be regarded as a reason *a priori*, why the future state proportioned to human nature, is often styled, among philosophers, the "*debitum naturæ humanæ*," something *due* to human nature: it is *due*, whether we consider man's nature as it is in itself *a priori*, or consider it related to the attributes of God as its creator. Hence, right is simply first; but duty may be first under a certain respect.

## ARTICLE II.

HOW LAW IS RELATED TO RIGHT AND DUTY; WHETHER LAW CAN CREATE OR PRIMARILY ORIGINATE RIGHT AND DUTY; IN WHAT SENSE OF THE TERMS LAW CAN BE SAID TO FOUND RIGHT AND DUTY.

It is sometimes convenient, and it is also sufficiently accurate in much practical matter, to attribute an effect to only one of its proximate causes, although that cause is not the complete nor the chief principle from which the effect proceeds: thus, we frequently assign any one of the four causes, the efficient, the final, the formal, or the material, as sufficiently accounting for the origin of some effect, without specifying the others; and, in many cases, this mode of explaining things is just and rational, as well as satisfactory. In like manner rights and duties may often be legitimately ascribed to a proximate principle really pertaining to the order of means, though they are most properly and duly referable to the final cause, which is first and supreme among causes. Hence, law is correctly said to cause rights; though law is, in fact, subordinated to that good which is its end, as every means is subordinate to the end served by it; for, it is the rule by which rights and duties are made known, and are practically enforced.

The natural law, which was defined to be a participation of the eternal law in a rational creature, and which is promulgated in the dictate of right reason, cannot properly and truly be said to constitute that rectitude which is in the nature or essence of things as in the eternal concepts of Divine wisdom: it is the means by which that rectitude which is its proper object, is determined and made known. Therefore, we might say, in other words, that the natural law is the law of right reason whose object is that rectitude which is in the intrinsic nature of the things that are made subject to rational

empire or government. Hence, the natural law does not create that object of justice which is termed right, but supposes it, and makes it known: for, as seen in another chapter, moral goodness or morality, does not arise from the will or law of God; but it depends intrinsically on the eternal essences of things, which are immutable.

It may be affirmed, then, that, *a fortiori*, no human law, which of its essence must be a derivation from the natural law, can create a right, or can primarily and completely originate a right or duty. But human law is competent to define and declare a right; and thus it can be said, in some sense, to produce that right. Since the positive law must be a derivation from the natural law or from the natural rule of rectitude, it may be said to produce the right, somewhat as the premises of the argument are said by logicians to produce the conclusion. Although not every positive human law is a necessary conclusion from the natural law; yet, it must be prudently judged by the legislator to agree with the natural law as its essential norma; and, unless the contrary is evident, in practice it is wisely accepted as just, or as following from the natural law.

Human law may proximately and really found right and duty. Let us here distinguish again the object of human positive law from matter not included within it. Those first conclusions from the natural law which impose a common obligation on all mankind, as, v. g., the precepts of the decalogue, do not, as such, fall under human legislation, since it would be preposterous, and therefore absurd, for a human lawgiver to reënact them. Yet, in virtue of a still further conclusion from the natural law, human law may prescribe and inflict penalties on those violations of these first conclusions derived from natural law, when such punishments are necessary to maintain or preserve the common good. As already noticed, there are some laws, regarding matter thus proximate to the natural law of rectitude, in the substance of which all nations of mankind agree; and they constitute what is styled the "jus gentium." It may be said that such laws are human laws

only under a certain respect or in a limited degree.

There are other laws which, by their nature, are more purely positive and human; hence, they are not the same in all nations, but they are various according to the character of the people, their form of government, etc. In regard to laws of the first kind, which were always generally accepted among the nations of mankind, they may be truly considered as the natural law practically applied with certainty to what is more or less immediately its proper object. In respect to laws of the second kind, their matter, in itself, may be indifferent as to its species, or have no determinate relation to rectitude. It is in this species of matter that positive laws can most properly be said to make the right and the duty—the good or the evil—by commanding or forbidding: in this case, some things will become good because commanded; other things become evil, because forbidden; “*bona, quia mandata; mala, quia prohibita.*” Yet, the positive law is not, in such instance, the adequate and total principle from which the right and the duty, the good and the evil, proceed. Since law cannot be truly and correctly called law at all, except in so far as it is just, or in so far as its formal object is a just thing,\* it is evident that while such law makes that to be good which was indifferent before, and that to be binding which was not binding before—yet the chief act of the law is to declare and direct, and thus make that a definite, explicit and bounden duty, which was otherwise undetermined. Therefore the right or duty must be conceived as preëxisting, at least in its principles, namely, the just things that the law is concerned about; somewhat as an effect is precontained in its cause, or as a form is conceived as precontained in the subject matter from which it is educed. We may conclude, therefore, that law does not create right and duty; nor, by consequence, is law the intrinsic formal principle that absolutely originates and constitutes right and duty.

By similar reasoning it follows that human law cannot annihilate right and duty; though it is competent to abrogate them for a sufficient and equitable reason, where their matter is included in the legitimate object of such positive law.



There are rights which are by their nature inalienable; there are rights of this kind pertaining to the multitude, some to the family, and others to the individual man. Hence arises a special necessity for the lawgiver to know the object, the nature and the limits of the power which is vested in him as a means to the common good;† and to use it as a faithful minister, only with a view to the essential end of all just law and government, according to the ordination of the Supreme Ruler, to whom all right and duty must be ultimately referred for their principal and essential value.

To the foregoing explanation of right and duty, the objection may be raised, "A being which depends absolutely upon God, owes absolute duty to God; man absolutely depends on God, and he therefore owes absolute duty to God."

A similar instance of false reasoning, by which a predicate or attribute is transferred from God to the creature, was already adduced in a former chapter, when answering the question, "Is the malice of moral evil infinite?" Absolute, as applied to God, expresses His positive, independent and all perfect existence; the phrase, "absolute dependence of man" is privative, and it excludes from man all sufficient reason of his own existence; "absolute duty," as well as "absolute right," says nothing that is really predicable of a creature; hence the term "absolute" has two meanings in the premises. The objection is refuted in unequivocal terms, thus: a being that has not absolute existence, cannot owe absolute duty, man has not absolute existence, and he therefore cannot owe absolute duty.

Observe, however, that duty is not proximately and directly founded by *dependence*; for then all irrational creatures would owe duty; which cannot properly be said of them. Man's first duty is founded on the gift of rational or personal exist-

\* "Lex, in quantum habet de justitia, in tantum habet de ratione legis." 1, 2, p., qu. 95, a. 2; also, 2, 2, p., qu. 57, a. 2, ad 2. So far forth as a law has justice, that far has it the real nature of law.

† "Lex est aliquid rationis."—1, 2, p., qu. 90, a. 1. Law is essentially an act or work of reason: and, therefore, a law that is purely arbitrary, is no law at all.

ence, which ultimately reduces, however, to his relation of total dependence on God; all creatures are equally dependent; but only intelligent creatures owe duty.

From what is thus far said it may be legitimately inferred that neither any rights nor duties, as in men, can be absolute; nor can they be complete within their species, if they be not founded in man's relation to the Author of his being, which is ultimately that of total dependence for all he possesses and all that he is.

Rights are simply inviolable, only in as much as they are divinely given; and duty simply binds the rational creature, only so far as it is truly derived from that creature's duty to the first Author of right and duty. Positive justice may be said to have for its primary object under God that right, "jus, justum," which is comprised in the gratuitous gift of creation with its prerogatives and conditions. From this all other rules or precepts of justice proceed, as from their real source. It is a dependent and hypothetical right before God; it is a complete and inalienable right in respect to creatures, or as against creatures.

## CHAPTER II.

### OF SPECIAL DUTIES.

#### ARTICLE I.

##### MAN'S DUTY TO GOD.

God's dominion over man is absolute.

The truth of this proposition is evident; for, creation from nothing, and conservation of the creature in being, found absolute dominion and ownership, but man is totally dependent on God both for the beginning and for the continuance of his existence. That which a being makes or produces, in the very nature of things, belongs by first right to that being. The title to ownership of the thing made, will be more or less complete, according as the thing is more or less completely produced by the agent or maker of the thing. Man may make a watch out of his own materials, i. e., of gold, steel, glass, etc, which he owns; he may make a watch for another person out of materials belonging to that person. In both cases he has some right in the work of his hands, but the right is not the same in each; and it is not absolute in either. For, man not being a purely efficient cause, cannot totally produce any object; nor can it, therefore, become totally his own property; it is his only under a certain respect—i. e., to be used by him. God creates man's soul totally from nothing; his body, too, is primitively from God in the same manner: therefore, man absolutely belongs to God, in the very nature of things. God chose to create man, for His own all-wise designs, and He did this work, not compelled by necessity, but freely. He gave to man personal being, which, by its very nature, is, as to its spiritual and formal principle, immortal; and this gift was, under all respects, purely gratuitous. Man is wholly a dependent being.

Man's dominion over himself is limited, under every respect.

This truth follows necessarily and evidently from his total and absolute dependence for existence. But his rational nature is made able, within a certain sphere of objects, to rule its own action, and to choose the objects of that action: its responsibility is limited to this sphere of its operation.

Man owes to God supreme homage.

The proof of this proposition is from God's supreme dominion over man and from man's empire over his own rational action.

Homage is strictly supreme only when it is both directed to the Supreme Being, and is such as, by its very nature, can be rendered only to the Supreme Being: v. g., when God is acknowledged and revered as the Author of our being, of our life, and death; this is to put an act of supreme adoration or homage; for it is manifest that God alone can truly and justly be the object of such an act. This species of worship is usually styled *latria*; it is offered to God alone. *Dulia* expresses an inferior homage that may be offered to creatures.

Man owes God supreme homage by the first and highest claim of justice. God's right to it is absolute, for the gift to man of his rational being was purely gratuitous; and man has nothing except what is a gift of God; a proportioned return for this gift is due to God from the very nature of justice itself. But the return from man which is proportioned, is the highest service which man can bestow: the highest service which man can pay to God, is that of supreme homage. This return does not equal God's absolute right, but it is proportioned to man, who can do nothing greater. The virtue or good habit which is produced in man by repeated acts of honoring God as supreme, is called the virtue of religion. This virtue of religion, from the argument above given, is generally regarded as pertaining to the cardinal virtue, justice. None but intelligent creatures can owe supreme homage to God, since none but intelligent beings are able to put an act of justice; they alone, therefore, can be bound by justice. Irrational beings manifest God's perfections; they thus become means which God's in-

telligent creatures may use for knowing and honoring God; they themselves honor God instrumentally. It is evident, then, that God should be actually preferred to all creatures: this is the love of God above all things.

Man's life on earth should be so ordered as to become a homage to God. The reasons which prove that man owes to God supreme worship, at the same time show this proposition to be true; since man's return of service to God is not all man can do morally, and ought to do, unless the plan and main purpose of his life be directed to that end. An additional reason which is conclusive, and most powerful, comes from the doctrine of the future state, or man's ultimate destiny, for which the present life is a preparation. This was sufficiently explained in Chapter I of General Ethics.

Man owes to God both internal and external homage.

Man, as a *person*, owes supreme homage to God; but man is a personal being,\* only as consisting of both soul and body. Therefore, since it is man as a personal being that owes service to God, both his soul and body should share in paying supreme homage to God: this is fitly done, only by the union of interior and exterior acts. Both the soul and body are gifts from God; for this reason both should contribute to the homage which is justly due to God.

It is true that an internal act of adoration includes an act of the human compound, or the body; for, the imagination, which is an organic power, must coöperate in all of man's rational thought, by presenting its objects in its images, since man does not think without the fancy; but yet, such act is merely internal, and, therefore, it is, in itself, a secret operation. Our homage should be manifested in external acts and signs, in order that it may be a public tribute to God. Though the external act does not *per se* add to the merit or the demerit of a moral act, nevertheless it does so *per accidens*, in as much as it gives an occasion for intensifying or repeating the internal act.

\* A personal being is one that is *intelligent*, and is a complete substance.

It is according to the nature of man that he should express outwardly the highest acts of his superior powers: this is evidently included in the end for which the power of speech was bestowed upon him. When friendship, love, wisdom, valuable knowledge, adorn his heart and intellect, these excellent acquirements are productive of but partial good, if they be not communicated for the improvement and happiness of others. There is fitness, then, in the public worship of God. Although homage to God should consist principally in the internal acts of adoration, obedience, etc., yet it will not be complete or fully sincere, unless it be, on suitable occasions, outwardly testified. Besides, visible example is necessary for the instruction of the young and the simple; it serves to sustain the virtuous in duty, and it impels the imperfect to seek for better things: "Exempla trahunt."

The two principles, then, from which man's duty to God follows as a necessary conclusion, are: first, God's absolute dominion over man, founded on creation from nothing and conservation in being; secondly, the future great good, or perfect beatitude, the attainment of which is made dependent on man's leading a life of moral rectitude, by duly exercising the virtue of religion. Obedience to this law of rectitude, as was sufficiently evinced heretofore, is an indispensable condition for meriting beatitude, as regards every person who has the use of reason. It should here be added, however, as a conclusion clearly deduced from God's attributes and his visible providence, that he deals benignly with the frailties and imperfections of men who strive with good will, and according to the best lights of their reason, duly to honor God.

There are no exterior ceremonies, except that of sacrifice, which, of their nature, have God alone for their object. The signs and ceremonies by which external homage is paid to God, are either conventional,\* or are of positive institution. To repudiate duly approved practices of external worship, or

\* It is alleged that the word *adoration* is from *ad os*, "to the mouth," from the circumstance that the putting of the hand to the mouth once meant an act of homage to God.

to reject them when they are legitimate, merely because they are conventional and arbitrary, would be eccentric, just as it would be an oddity to condemn, or refuse obedience to the becoming rules of social life.

It does not fall within the scope of a work on natural ethics to treat the subject of supernatural revelation; in it, man is taught the true history of his origin; supernatural beatitude is proposed to him, with duly proportioned means for reaching it. The proof and explanation of revealed religion constitute the proper subject matter of theological science, for the accurate and thorough understanding of which, however, he alone is well prepared who has mastered natural ethics. To the theologians the student is remitted for questions the discussion and answer of which are proper to theology. Yet, it is not alien to the present topic here to affirm that:

Supposing God to reveal a law, man is evidently, and in the very nature of things, bound to accept and obey it. This proposition requires no proof. The question may be asked, Was supernatural revelation necessary for mankind?

In answer to the question, we must distinguish between an ultimate end or destiny, which is proportioned to man's nature, as a rational being; and an ultimate end which is supernatural, or is by its essence above what is proper or due to man's nature. What is necessary for man in order that he may be really capable of reaching his ultimate end as a rational or moral being, is natural, and not something supernatural. For a supernatural end, supernatural means are proper; on the simple principle, that man cannot formally tend, in his rational action, to a supernatural end, unless he know that end, and be provided with means proportioned to it. Hence, the authors who prove by arguments from reason the necessity of a special revelation to man, in order that he may be enabled to render becoming homage to God, are to be understood as assuming for men, what is true in fact, a supernatural destiny; and in this supposition, such revelation is truly and simply necessary, for the reason already given.

It is manifest, then, that the religious homage which is due from man as limited to a natural state and a natural destiny, differs from the religious homage which is due from man as elevated to a supernatural state and destiny, just in the same proportion as those two orders differ from each other. To the question, then, "Was supernatural revelation necessary for mankind?" we answer: Supposing man to have a supernatural destiny, it was necessary; but if man had been left to a merely natural destiny, then only natural means were required for him to reach it; and what is necessary naturally, is itself natural.

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## ARTICLE II.

### DUTY OF MAN TOWARDS HIMSELF.

Man's first duty, under that to God, is to himself.

This follows from the truth, which is an evident fact of universal experience, that man has direct control over his own moral action, and he has no direct empire over any other person's moral action; therefore, it is only his own moral action that is directly imputable to him. The action of another person is imputable to a man, only through his own action as a cause of the other's act; hence he is directly responsible or accountable, only as master of his own action.

It was observed already that duty always includes some respect of justice; and it is also an admitted principle that justice properly regards another as distinct from self. The question arises, then, how can man owe duty to himself?

In answer it must be said that commutative justice and distributive justice always regard another person, as is evident from the definition and explanation of justice given in the article on the cardinal virtue, justice. Nevertheless, justice as commutative, and justice as distributive, are not the whole of justice, but they are justice only under those respects. Justice includes much more, and it enters as a principle into all moral



rectitude of action. Man can be just to himself—and the duty of being just to self is inculcated even in the proverbs of the people—because such duty is easily known, and is important. The will can freely choose some things that are injurious to the person or subject, and this is an act of injustice to self; and similarly, the will can choose some things that are right and necessary to self, and to do this is just and virtuous action. Also, the rational principle in man rules over him, or governs his personal and substantial nature; therefore, the reason in him can operate for the good or the evil of the man. Hence, we may say that his rational power can put action which pertains to justice; his superior powers can be just or unjust to him, at least under a particular though real respect of justice.

As all moral duty is reduced to the one general precept, "Do good, and avoid evil;" so, we may enunciate man's special duty to himself, by the same principle as applied to him, "Do good to self, and avoid what is evil to self." It seems preferable, however, and is, perhaps, more determinate, to express his whole duty to self by the rule of "well ordered love of self." Man loves himself naturally and necessarily; and he is physically unable to love that which is evil to himself, precisely as evil. Yet, he has many actions, and there are many objects related to him, over which he can exercise free control; and they constitute the matter out of which he can choose that which is good for him, or that which is good for him under one respect, and evil for him under another respect. He must choose only that which is rationally and morally good for him.

Man's duty to himself may be considered more particularly, as regards the cultivation of his understanding, that of his will, and the due care of his person, or the health and life of his body.

The understanding is perfected by knowledge, and the will is perfected by the moral virtues; or, man's rational nature is perfected by the intellectual and the moral virtues. Since powers are perfected by their proper action, it may be said,

then, that the intellect and will are perfected and adorned with their distinctive virtues by prudent exercise; for, the virtues are habits, and are habits that may be acquired by those acts which they regard, and for the putting of which they give, when acquired, increased facility.

Aristotle gives directions for acquiring the moral virtues,\* which are generally accepted by subsequent philosophers as both true, complete and adequate, at least in respect to the natural virtues which are acquired by repeated acts of those virtues. Besides using the prudence required to attain to that medium between excess and defect, which is essential for the act of moral virtue, the good acts which are to produce the virtue, (1.) must be put knowingly, not ignorantly or by chance; (2.) the agent must operate *by choice*, not from passion, necessity, and the like; (3) he must act on account of the virtue, not on account of pecuniary gain, vainglory, praise, or any other foreign motive: (4.) he must act firmly and steadily: this fourth condition pertains rather to the habit as already acquired. These are general conditions which must be observed, in order to have physical and moral perfection in an act of virtue.

It may be affirmed that all persons should strive to acquire virtues, especially such as are proper to their state in life. All persons cannot reach the same degree of virtue; yet all should acquire the knowledge of their duties, and of the means which are necessary for the performance of those duties. But few can acquire the intellectual virtues in a high degree, since scientific knowledge, philosophy, and the liberal arts require much labor, and a long time, as also a natural aptitude for superior things. But all are capable of acting with right reason; and hence, while the moral virtues are more necessary for all persons, so all persons are capable of acquiring them in some befitting degree, and according to the exigencies of their

\* "Vide S. Th. in 2 Eth., seet. 4, lit. c.: "Si operatur sciens; deinde si eligens, et eligens hæc; tertium autem si firmè et immobiliter," etc. One acts virtuously, if he operates knowingly; if he chooses, and chooses this good, firmly and immovably.

condition in life. Virtue is therefore necessary for all persons who are capable of rational operation; and it is the chief means of perfecting man. Virtue as an acquired habit is produced by repeated good acts of the species which it is the proper object of the virtue to render easy and pleasant, as was already explained.

The soul must rule the body according to the law of right reason; for man has dominion over much action which is of the body. Man has despotic authority over the members of his body, as it is usually expressed;\* but over its appetites and passions, he can exercise only political control.

A ruler governs despotically, when his authority and power are such that his subjects are compelled to obey without ever resisting, because they have no means nor capability of resisting. A ruler governs politically or regally, who controls subjects that are free, and have the ability to refuse obedience to his behests; nor can they always be compelled against their choice to submit simply because commanded.

Now, it is manifest that the members of the body, as the hands, the feet, etc., obey the commands of the will, without hesitancy, without any resistance, or with complete servility. It is not thus, however, with bodily appetite and passion; they have action of their own, and they do not always directly obey commands of the reason. In order for them to obey, a prudent use must be made of means which are various, according to many circumstances; v. g., averting or removing from their objects, directing the apprehensive powers to other things, sometimes to things contrary, then to things totally distinct from the objects of the appetite or passion. Hence, bodily appetite and passion are not controlled despotically by the reason; but they must be ruled prudentially or politically,

\* "Anima quidem corpori dominatur despotico principatu; intellectus appetitui, politico et regali."—I. p., qu. 81, a. 3, ad 2. The soul rules over the body with despotic supremacy; but the intellect rules appetite with prudential and regal superiority. The despot rules with power that cannot be resisted by his subjects; the king governs by law those who are free and can disobey.

because they are capable of disobeying, or of action which is not directly subordinate to reason.

When the action of bodily appetite or passion is opposed to right reason, though its movements or action be not directly subject to the command of reason, yet the will is competent to deny the possession and enjoyment of its illicit object, and this is a duty in such case.

Man has not dominion over the life of his body; and, therefore, suicide, or willful self-murder, is a grave evil.

Distinguish between that which is intrinsically and absolutely evil, and that which is evil from extrinsic and positive reason. What is intrinsically evil, is said also to be *per se* evil, that is, of its nature evil; it could not become lawful under any condition that is possible; v. g., to hate God, to blaspheme. That which is evil on account of external and positive reasons, may cease to be evil by a change of circumstances; of this kind are all those things that are forbidden by the positive laws. As God has actually constituted man, He has not left to man any direct dominion over his own life; though it is not something impossible, in the nature of things, for God to confer such power on man; but it is a plain truth that he has not done so; for, in fact, God has done the contrary.

This truth is naturally manifest; first, because man never knows when the assigned task of his life is finished; for who can know, before the moment of his natural death has come, that no further good, or no other act of virtue is left for him to do? Secondly; a provision is made to terminate each man's life according to the physical laws of nature; therefore, the ending of his life is not made dependent on man's own choice, but upon a law of nature. Thirdly; every animal has an instinctive fear of death; and though man may conquer this fear of death, yet the principle itself cannot be eradicated. This fact, that nature abhors death, is proof that nature intends every animal to avert promptly and with all its strength from death, which it is made to apprehend as the greatest of physical evils. Therefore, suicide or self-murder, is plainly against the positive teaching of nature.

It can be verified as a historical fact that mankind, in all ages, the records of which have descended to us, expressed a horror for suicide as a crime against nature. This crime is so abhorrent to the better feelings of man's nature, that many persons are unable to conceive suicide to be the deed of a sane mind, though it is evident that not all self-destroyers are insane. Self-destruction is an act of moral cowardice which is exceedingly pusillanimous; hence this ignoble deed is justly infamous among all the wise and good of mankind.

The Stoics, who did not teach that moral virtue consists in the middle or the medium operation between too much and too little, authorized suicide in one who is miserable and hopeless. Their theory of moral goodness in action, included two extremes, both of which are false; i. e., man must destroy all passion or feeling which is adverse to virtue; but this is impossible. If man cannot eradicate his natural feelings at all, he may destroy himself; and through this deed of self-murder, they helped themselves to stifle natural feelings with vanity, by affecting to meet death fearlessly and even cheerfully.

Life is given only for a good end; and it follows from the preceding arguments that no case can arise under the natural law in which man is authorized directly to terminate his own life; consequently man never can intend his own death as an end directly to be sought by him.

In a case of due necessity for the public good, or even for private good, a person may expose or risk his life. The necessity which justifies one in thus indirectly causing his own death, exists when such risk of life is the only means of preventing great public or private evil, or also when it is a necessary means of promoting some great interest. Hence, soldiers, they who attend the sick in time of plague to cure and comfort them, they who venture upon dangerous voyages in order to make useful discoveries, are justly honored by mankind as deserving public gratitude. Also, they who in the practice of laborious and difficult virtues, or who by austerity of life in order to conquer the appetites and passions of the body, or the inferior principle in man, thereby impair their health, may

be worthy of commendation, provided the injury to health be not the end which is directly intended.

It is a duty incumbent on every person to take at least moderate and reasonable care of his bodily health. This duty is complied with most perfectly, when the care taken of health is a prudent medium between excess, which causes anxiety; and defect, which leads to rashness or stolid indifference. It requires no proof that health and strength of body constitute a great natural good; the soul depends greatly for the normal and equable operation of its superior powers, upon the general health of the body. This is manifest from the fact that the reason cannot naturally operate at all, unless served for its objects by the imagination, which is an organic power in the brain, and by other senses; and therefore disturbance in the object, caused by ill-health, leads to corresponding disturbance in the action of the intellect. Besides, all man's duties in life are subserved by physical health and vigor; while feebleness and disease unfit him for the regular occupations of life. Therefore, every person is bound to employ reasonable means for preserving health of body.

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### ARTICLE III.

#### OF SELF-DEFENCE.

A person may employ any legitimate means which is necessary to preserve his own life. The right of self defence includes in its object not only one's own life, but the members of his body, the goods or property necessary to sustain life, and good name or reputation.

The means of self defence must be legitimate in their species, and they must be duly proportioned to the end intended. Hence, that which is *per se* evil, i. e., essentially and absolutely evil, cannot be used as a means of self-defence; the means must be such as is authorized by natural law for the

purpose, "cum moderamine inculpatæ tutelæ," according to the measure of blameless defence.

In case of necessity a person may defend his own life by killing an unjust aggressor. Reason: a man may rightfully prefer his own life to that of an unjust assailant who is certainly and actually intending his death, and when as a fact the one or the other must die or will be killed.

What is technically styled "moderamen inculpatæ tutelæ," measure of faultless defence, requires the following conditions to be verified for the justification of manslaughter or other violence used in self-defence; 1, that the person attacked employ no more force than is necessary to defend himself against the danger; 2, the danger of injury or death must be certain, and the defence must be made *in* the danger, not really before it exists, nor *after* it is past; 3, that there be no other means of escaping from the danger, as flight, help, etc.; 4, that the person defending himself do not directly and principally intend the death of the aggressor, but the preservation of his own life.\* It is manifest that when two effects come from the same action, one of those effects may be intended, and the other one be beside the intention; v. g., the surgeon does not directly intend the pain which comes from lancing the ulcer, but the relief which will follow. In this case the moral nature or species of the action comes from the effect which is intended, not from the one which is beside the intention. Observe, however, that an action can never be legitimate when one effect of it is *per se* evil; i. e., of its essence evil, even should the other effects of it be good.

It is the office of public authority to defend the life of a pri-

\* "Nihil prohibet unius actus esse duos effectus, quorum alter solum sit in intentione, alius vero, præter intentionem. Morales autem actus recipiunt speciem secundum id quod intenditur. Potest tamen aliquis actus ex bona intentione proveniens illicitus reddi, si non sit proportionatus fini." 2. 2 p., qu. 64, a. 7. There is no reason why two effects may not come from one act, one of which is in the intention, and the other beside the intention. But moral acts receive their species from what is intended; yet, an act coming from a good intention may become illicit by not being proportioned to the end.

vate citizen against the unjust aggressor; but when the duly constituted authority is physically unable to perform this duty, the right of defending his life reverts to the person unjustly attacked. Besides, if this right of self-defence be denied, we must admit the obligation in the person whose life is attacked, of preferring the life of his assailant to his own; but this is opposed to the principle of well ordered love for self.

One should not defend himself in the spirit either of hatred or revenge. One is not bound in all cases to defend his own life against the murderer; he may, for laudable reasons, under certain circumstances, freely forego his right; v. g., being prepared to die, he may generously spare his enemy, in order that he may repent of his crime afterwards.

Since the right to one's own life manifestly includes the right also to the necessary and legitimate means of preserving life, it follows by the same arguments that one can defend the members of his body, and his property which is necessary for sustaining life, in like manner against the unjust aggressor. In this case it must be supposed that the injury intended is very great, and that all the conditions before assigned for justifying the use of violence in self-defence, are observed. To be seriously maimed, or to have one's goods which are necessary for his sustenance unjustly destroyed, are great injuries, which a person may avert from himself as he would avert death from himself. It is clear, however, that when the injury of this kind is not grievous, then great violence to the aggressor would be disproportioned to his injustice. .

#### THE DUEL.

A duel, according to the general meaning of the term, is a battle with deadly weapons between two persons, the conditions of the fight being deliberately agreed to by both parties, and each intending to kill the other.

Duels may be distinguished into those that take place by private agreement between the parties and their friends; and those which are either permitted or required by the public



authority. The duel which has the approval of public authority is either that which is usually styled by historians the "single combat," the end of which was to spare bloodshed by placing the decision of the general battle which was to be fought, on the issue of the battle between two men; or else it is that deadly contest between two which is designed to afford gratification to the populace, as were the ancient fights of the gladiators.

With regard to the single combat which was intended to avoid the evils and disasters of a general battle, such duel was evidently in accordance with natural right, at least as regards the army that was engaged in a just war, and feared its ability to cope with the enemy. For, if nations can rightfully wage war, in which the choice of their youth may fall in battle; *a fortiori*, they can legitimately lessen the evil by exposing one life to certain risk of death instead of many lives.

As to other duels authorized by public authority, v. g., the gladiatorial contests; they are against the natural law, and are morally evil. The public authority has no dominion over the lives of the people, except so far as the power to levy just war, to punish certain crimes with death, may imply some respect of imperfect dominion. That which is opposed to justice and right reason, is at the same time, opposed to the natural law, as is evident from the definition and properties of natural law; but to sacrifice the lives even of slaves for the amusement of the multitude, is unjust and against right reason. No government has the natural right proximately to expose the life of a citizen, except it be necessary for the common good; and these contests, authorized for such an end, are not ordained to good, but their proper effect is evil. ~

In this connection the question is sometimes proposed; when two criminals are justly sentenced to die, and the public authority offers them liberty of fighting a duel, with the condition that the survivor in the combat shall escape the legal death penalty, or have his life spared: is such duel morally evil? In answering, we must distinguish the matter as it is

related, first, to the civil authority proposing such mortal contest; and secondly, as it is related to the two criminals. It is difficult to assign a principle on which to justify such an act of authority, since that, as a mode of exercising clemency, would be capricious and unreasonable; hence, this form of showing mercy, being irrational, is morally wrong. Therefore it would be more consonant with reason for the criminals to refuse the proffered condition and not fight the duel. If they accept the condition, the animal instinct of self-preservation may be such as to excuse the choice; but a refusal would better accord with right reason. If such doom between persons must be decided by a merely contingent fact, it is more correct in principle that it be done by lot, otherwise it would not differ essentially from the gladiatorial contests.

Since publicly authorized duels are no longer practiced at all, in any civilized nation, at least; while the private duel is still of frequent occurrence; it is a more important and interesting question to ask, can the private duel become legitimate, in any case?

The duel fought by private agreement is evil in all cases.

For man to expose his own life to the certain risk of death, without a just cause, is evil; also for a man to kill, or intend to kill, his fellowman without a just and legitimate reason, is evil; but in a private duel each party exposes his own person to certain risk of death without legitimate reason, and at the same time he endeavors to kill his fellowman without a just and legitimate reason; therefore, the duel is morally wrong on account of two reasons, each of which is a conclusive proof. The duel is neither the proper nor the proportioned means to any end which can be intended by it. Also, man has no such dominion either over his own life or over that of his fellow man. If the motive of the duel be hatred or revenge, the act proceeds from mere ungoverned passion; if it be to defend one's honor, it is not a means to that end, and all the motives of the private duel can be reduced to the ones named; therefore, the private duel cannot be the legitimate means to any good end.

At the present day, the duel is generally regarded by those who approve it, only as a means of defending "honor;" and the rules that govern the duellist are styled, "the code of honor." The argument given to justify the duel, is this: a gentleman will defend his honor at the risk of his life, since he must prefer his honor to his life; but the duel, which is a deadly combat, is sometimes the only means of defending one's honor; therefore the duel is sometimes legitimate. In reply, it must be conceded that every person has a natural right to defend his good name and credit with his friends by all just and legitimate means; it may also be granted, that when considered in themselves, death is sometimes preferable to dishonor. But the argument is erroneous, because the minor is false in matter. The duel is never a means to that end; the issue of the fight depends only on the perfection of the weapons and the skill with which they are used, or else on the want of these requisites; or, in other words, the result of the fight as regards the persons of the combatants, depends only on events that are purely contingent and physical, having no connection whatever with the honor which is defended or avenged.

If the injurer always fell in the combat, and the aggrieved party always escaped, there would then be a natural connection between the termination of a duel, and the defence of one's honor, but, as a fact, the one seeking redress for wrongs in the duel, may be the person that is killed, and the injurer may escape unhurt. Who accepts the death of one combatant as any proof that the other one was in the right?

It is evident, then, that the duel is not a means at all either of defending or retrieving honor. This truth being so clear in itself, the real and sufficient motive of the duellist is to be sought for in other matter.

An erroneous public opinion, which is a remaining vestige of barbaric times; false friends, by their mischievous intermeddling; and vicious newspapers; have, in many instances, no doubt, the chief moral guilt of the duel; for the purpose of bringing about a duel, they use the natural pride, and the

passion of revenge, in the persons at variance. The duellist, thus stimulated to take the step, meets his adversary reluctantly, and against his conscientious judgment of what is morally right. It cannot be denied, then, that the conduct of the duellist, in such case, is, in reality, moral cowardice. One is guilty of cowardice, who yields to unreasonable and ignoble fear, and is thereby prevented from doing some action that is either laudable, or is a matter of duty. Such fear is usually styled moral cowardice, when the cause which excites it, is false public opinion, the erroneous reasoning, the ridicule, or persuasion used by others, impelling one to do what is morally wrong; and he yields to this influence against the dictate of his conscience, from fear of censure or of giving offence. This is moral cowardice; and that it is, as a principle of human action, base and unmanly, requires no proof; for, there can be no true honor in a deed which is devoid of moral rectitude; and it is base, because it is proper only to brute animals to be ruled by fear.

That the duel, as a work of revenge, is wrong, follows from the truth that to inflict punishment by death to the culprit, belongs only to public authority. Therefore, the duel is a wrong to self, a wrong to the adversary, a wrong to society, and, consequently, it is a grievous offence against the natural law, and against God.

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#### ARTICLE IV.

##### MAN'S DUTIES TOWARDS HIS FELLOW MAN.

All man's duties, to God, to himself, and to his fellow man, can be reduced to well-ordered love. In this mode of conceiving duty, all the virtues and all the rules of rectitude must be understood as means of rightly ordering and perfecting love. This is a generalization which is both legitimately and conveniently made.

As man's action must start from himself, he best understands what pertains to others by comparison with what he perceives in himself; hence, his duty towards his fellow-beings is fitly enunciated in rules which include a comparison to himself; "love thy neighbor as thyself; do unto others as thou wouldst have others do unto thee."

These are clear and simple principles, the meaning and the plain limits of which, all persons having any ability to judge, can easily understand. It is manifest that the affirmation of a duty or a rule, is an implied prohibition of what is contrary to it, since what is contrary destroys the good intended; v. g., the command to love his neighbor implies the prohibition of man's hating his neighbor: "do not to another that which thou wouldst not have another do unto thee; do no harm or injury to thy fellow man."

Love as a passion was already explained; it was then seen that nature intends good by all the passions; for, nature can never directly intend evil. But love has this peculiar to itself, which distinguishes it from all other principles of action; namely, that it directly intends good as its proper object.\* But good cannot be loved unless as apprehended; † and since there is both a sensible power of apprehending, and also an intellectual power of apprehension, so, both sensible and intellectual objects of love may be apprehended. To love, as an act, is to tend to the good which is apprehended. ‡

\* "Illud est proprie causa amoris, quod est amoris objectum; amoris autem proprium objectum est bonum."—I. 2, p., qu. 27, a. 1. That is properly the cause of love, which is the object of love; but the proper object of love is good.

† "Bonum non est objectum appetitus, nisi prout est apprehensum."—I. 2, p., qu. 27, a. 2. Good is not an object of appetite, except in so far as it is apprehended.

‡ "Sicut cognitio naturalis semper est vera, ita dilectio naturalis semper est recta, cum amor naturalis nihil aliud sit, quam inclinatio naturæ indita ab auctore naturæ. Dicere ergo, quod inclinatio naturæ non sit recta, est derogare auctori naturæ."—I. p., qu. 60, a. 1. As natural knowledge is always true, so is natural love always right; since natural love is nothing else than an inclination given to nature by the Author of nature. To say, therefore, that the inclination of nature is not right, is to derogate from the Author of nature. It is for man to direct and control this inclination in him with right reason.

It is clear that love, as operative, always tends to unity, as a term; or, it tends to union of the object or good which is loved, and the subject loving; hence the axioms which are often repeated by philosophers, "unio est opus amoris;" (Dionysius) "amor est virtus unitiva;" (Aristotle).

Man's love starts with himself, and is stronger for himself than it is for his fellow man; first, because he is one substance with himself, and is, therefore, nearest to himself;\* and secondly, because his fellow-man is only like to him in specific nature. Man naturally loves himself in a greater degree than he is able to love a likeness of himself. Indeed, all animals naturally love their own species, and tend, therefore, to union with them; because they love that which is like to themselves. This truth is generally known, and is recognized in popular proverbs; v. g., "birds of a feather flock together." But irrational animals are determined to one mode of action, for they are not free in any operation. Man,† being a rational animal, can choose, or he can make elective judgments. Hence, man, in loving his own species, is required to govern and direct the principles of action which are natural to him, by reason. Man may love the good that is in himself, or in another; or, if a good be wanting to either, he may desire that it be acquired and securely possessed; in the first case, the love is styled the love of benevolence or friendship; in the other case, it is called the love of concupiscence.

It may be said, then, that to love a person is to wish good to him; ‡ that the good be enjoyed, if it is already possessed;

\* "Magis autem unusquisque seipsum amat quam alium; quia sibi unus est in substantia, alteri vero in similitudine alicujus formæ."—I. 2, p., qu. 27, a. 3. One loves himself more than another, because he is one with himself in substance; but he is one with another by likeness of nature or quality.

† "Solum illud quod habet intellectum potest agere judicio libero, in quantum cognoscit universalem rationem boni, qua potest judicare hoc vel illud esse bonum."—I. p., qu. 59, a. 1. Only that being which has an intellect can act with free choice coming from judgment of comparison; knowing the general nature of good, by which such being is able to judge either this or that thing to be good.

‡ "Amare est velle alicui bonum."—I. 2, p., qu. 26, a. 4. To love, is to wish good to some one.

or, if it is wanting, that it may be gained. Observe, however, that man can rationally wish for himself or another, only that which is good under all respects; for, a thing that is wished, is completely good, only when all the principles that enter into it are good; it is vitiated by any important defect: "bonum ex integra causa; malum a quocunque defectu."

It follows, therefore, that the duties of men towards others which arise from commutative and distributive justice, though they are the most necessary for the well-being of society, are not by any means all man's duties; nor are they man's noblest operations which regard his fellow-men. Well ordered love to others, is the highest norma of moral action which relates to one's fellow-men. But it may be objected: "this seems to be true when the persons with whom we treat are good; but how can we love evil or vicious persons?"

In answer, we must distinguish between the evil that is in a person by way of accident or quality, or rather the privation of good quality, and the person himself as a substantial and rational being. Now, the evil that is in a vicious person, as a privation of good, cannot be loved; for all evil is the privation of good, and it is the proper object of hatred. But the substantial and rational nature of which man consists is specifically identical with our own nature, and in its degree it is a likeness of its Creator; under this respect a man is intrinsically and essentially good, and is therefore worthy of love. Hence, every man should be loved, in as much as he is good. Also, we should sometimes prudently do that office of love which may improve or correct the evils of our neighbors, especially when this is surely feasible.

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## ARTICLE V.

PERSON IS BOUND TO VERACITY OR TRUTHFULNESS;  
A LIE IS, OF ITS OWN NATURE, EVIL.

The agreement between the words or other signs by which a person intends to manifest what is in his mind, and that

which is actually in his mind, is what is meant, in general, by moral truth, or veracity. The words or signs are false, at least under a respect, when they do not express what is in the mind. When the disagreement between the outward signs, and the thought in the mind, is by mistake, there is then only material falsity in the signs; when voluntary, such falsity is formal. This distinction can be made more strictly a little later.

The faculty of speech, or the power of manifesting one's thoughts in outward signs, is intended by nature and ordained only for truth; it is the means of making that known to other persons which ought to be known, and which cannot otherwise become known, at least naturally and directly.

The thoughts of the intellect, as they are in the faculty itself, or as they are in its immanent acts; also, the affections and wishes of the will, which are not manifested by means of some extrinsic sign or operation, cannot naturally be known by any creature; not even by the highest angel; they are known only to God. It is not difficult to see that these operations of the soul must be known to God, or that God must see them just as they are intrinsically and immediately from the faculties, for those powers absolutely depend on God, both in existing and in acting. Hence, since no creature can act without God's concurrence as first cause, it is subject to him, dependent on him, and intimately present to him, in its most hidden essence, and is therefore wholly seen by him under all conditions.\* The angel may know what is in the fancy; and the human intellect has no normal action naturally, except dependently on the fancy as a mirror which furnishes it with the images of all the objects of its intelligent ideas. But no

\* "Solus Deus cogitationes cordium et affectiones voluntatum cognoscere potest; quia voluntas rationalis creaturæ soli Deo subjacet et ipse solus in eam operari potest, qui est principale ejus objectum ut ultimus finis." S. Th. I. p., qu. 57, a. 4. God alone can know the secret thoughts of hearts, and affections of wills; because the will of a rational creature is subject to God alone, and He alone can act on it, who is its principal object as ultimate end.



creature can know the action of the fancy or of any other member, precisely as it is related to the intellect and will; for, the reason can intend variously, by the same imperate or commanded acts. Therefore, in order for the thoughts that are inmost in the soul, or immediate to it, to become known to our fellow creatures, they must be truthfully manifested by means of words or other signs. Certain things may be manifested involuntarily by the countenance, or through different physiological facts and symptoms, to experienced and sagacious men. But yet, the knowledge is by way of inference, and is oftentimes merely conjectural; it is imperfect, and partial; it does not directly reach what is in the soul, and, on account of different contingencies, it is liable to error. We are dependent, then, for our knowledge of what is in the minds of others, upon their truthfulness or veracity in manifesting their secret thoughts.

Now, the existence of human society would not be possible, if there was in its members no reverence for the sacredness of truth, or if veracity were not generally and practically recognized as a virtue. Where there is no truth, there can be no justice: and the observance of justice is essential to the existence of society. Also, where there is no truth, there is, in like proportion, no rectitude; and rectitude of action is the distinctive or the specific constituent of practical morality. The man who is devoid of veracity or truthfulness is thereby destitute of moral rectitude, since there can be no moral rectitude of action in which truth is wanting. Hence, truthfulness or veracity, is generally referred to the cardinal virtue, justice.

Man cannot be bound to manifest at all times, and to all persons, the thoughts that are in his mind; nor is this required for veracity. Veracity is not opposed to just and prudent secrecy, but it is opposed to mendacity or to lying. Although lying is, by its own nature, evil, since it is a privation of moral goodness or rectitude; yet, not all truth is always to be manifested, for silence is sometimes of strict duty, and, by consequence, the manifestation of some truth may itself be an act of injustice.

Evil is the privation of good that is due or ought to be. This definition is metaphysically precise; for, it includes all evil, and it excludes everything that is not evil. Any particular or specific evil is the privation of that specific good which is its opposite. In accordance with this sense of the terms, a lie may be defined to be the privation of truth that is due or ought to be; "*mendacium est privatio veri debiti*;" or, in other words, since the lie is a species of evil, it must be the privation of that special due good to which it is opposed; but the species of good that is due, to which the lie is opposed, is truth that is due. Hence, admitting these definitions to be precise, it follows that the privation or absence of good which is not due, is some limitation of good, but it cannot be properly styled evil;\* so the privation or absence of truth that is not due, is, under some respect, a limitation of the true, but it cannot be properly styled a lie. For, the lie is evil, and there cannot be evil, properly and strictly so called, where there is no privation of that which is due or ought to be. Truth may be directly due to God; it may be due proximately to society, to legitimate authority, to our neighbor, or in respect to ourselves; and all such truth, it is a duty to manifest. Before God there can be no secrecy; but some privileged knowledge is not due to man, and it is sometimes a sacred duty to conceal what is known in the mind.

The preceding principle by which evil is defined and explained by metaphysicians, cannot be legitimately denied. Yet, in applying this definition, and every other definition of the lie, a peculiar difficulty exists in some cases, arising from the fact that the privation of truth that is not due may be brought about not only by silence, but by a positive denial of that which is really in the mind. Then, wilfully to utter words that deny the thought which is actually in the mind with the intention of deceiving, appears to be a good definition of the lie. Hence, it would seem to follow that even the privation of truth which is not due, may also become a lie; namely by the positive denial of that truth.

\* *Malum est omnis et sola privatio boni debiti; mendacium est malum, et, omnis et sola privatio veri debiti.*

It is worthy of being observed in this matter, that the end intended by a denial of what is in the mind, or of speaking contrary to one's knowledge, is, in many cases, rather the concealment of an objective truth, than the deception caused by it ; or the intention to deceive is secondary, and is ordained by the person as a means to what is principally intended by his denial, which is secrecy.

That the refusal to manifest truth which is not due by concealing it in silence, is not a lie, no one doubts; for it is evident that merely to be silent, in regard to matter that ought not to be communicated, is not opposed to veracity.

But is the positive denial of what is in the mind, to be accounted a lie, even when it is either a duty or a right to conceal what we know? It is generally agreed that a lie is intrinsically evil; it is manifest, then, that if to deny what is in the mind be *per se*, or of its nature, a lie, it never can be lawful to do so. It is also right to say that a lie is intrinsically evil; for the privation of any moral good that is due is essentially evil; and the lie, as seen, is a privation of moral truth that is due.

Two facts will prepare the way for a conclusive answer to the question proposed; namely, "is the positive denial of what one knows, always a lie, even when the concealment of the truth known is, in itself, a right or a duty?" First: throughout that part of the civilized world, in which the English language is spoken, and English principles regulating personal rights and duties, are accepted and enforced in practice, it is admitted that no one can be bound even by oath and in a public court of justice, to criminate himself. Hence, when a criminal is interrogated as to his guilt, and he answers, "not guilty:" though his answer be contrary to what he knows to be the fact, it is not regarded, in a legal sense, as being a lie. It is also settled by the courts of the United States that knowledge acquired officially by the priest, the physician, or the lawyer, is "privileged knowledge;" i. e., its manifestation cannot be legally exacted, even in court. Secondly; all who believe sacramental confession to be of divine institution, also believe

that the seal of secrecy binding the priest to whom confession is made, is likewise a divine ordinance. Now, it is universally admitted to be the consequent duty of such priest, though put upon his solemn oath in court, as a witness for or against one arraigned as a criminal, to answer, should it be necessary to do so, that he knows nothing of the matter asked about, even if the accused has actually manifested his guilt to him by confession, and, in his own mind, therefore, the priest knows him to be really guilty. In other words, the knowledge of crime committed, which is acquired by sacramental confession, is simply incommunicable.

Also, if the lie is intrinsically evil, and such it surely is ; then it is immediately against the natural law, since that alone is intrinsically evil, which is evil in the very nature of things, and, conversely, what is evil in the very nature of things, is against the natural law. But the natural law is absolutely immutable ; therefore, what is immediately against the natural law, or, in other words, that which is intrinsically or *per se* evil, cannot be made legitimate, even by Divine ordination. Yet, the priest, in the case supposed, must, of bounden duty, answer by positively denying that which is actually in his mind ; and he does this, replying to the question, as proposed, and with the intention of concealing that truth.\*

These two facts which are adduced, show that both human and Divine legislation authorize the concealment of some known truth by a positive denial that the thing in question is known, or by speaking contrary to what is in the mind.

The conclusion may be legitimately drawn, then, that the positive concealment of truth in the mind, when the manifestation of it is neither a right, nor a duty, and the truth ought to be concealed, is not a lie ; for that alone is properly and really a lie which is a privation of truth that is due, or, which

\* "As oaths are designed for the security of the imposer, it is manifest they must be performed and *interpreted* in the sense in which the imposer intends them, otherwise they afford no security for him. And this is the meaning and reason of the rule, 'jurare in animum imponentis.'"—Paley's *Philos.*, ch. xvi.

is a positive concealment of a truth that ought to be manifested. Every one has, or he may have, truth in his own mind, which concerns himself alone, and which no one else can justly require him to manifest; but he cannot rationally suppose that he is thereby exempted from any duty of truthfulness or candor towards other persons. For truthfulness, or veracity, is a sacred duty prescribed by the natural law; and a lie is intrinsically evil.

They who prefer the definition of a lie, which affirms it to be "something said against what is in the mind of the speaker, with the intention of deceiving," do not deny that what is in the mind may be concealed, in the cases above specified, and in the manner described. But some of them, with Paley,\* prefer to say, in order to explain the exceptional matter, that a lie, or a falsehood, is lawful in certain cases; others explain the exceptions to that definition by a theory of "mental reservation," in which the words uttered, after all, declare the contrary of what is known in the mind of the speaker. But that which is intrinsically evil, and such the lie is admitted to be, cannot become lawful by any exception or dispensation. For these reasons, it seems to be both more simple and more consistent, in the judgment of many persons, to give a definition of the lie which is metaphysical and absolute, and which is, therefore, not entangled with exceptional matter: "*malum est privatio boni debiti; mendacium est privatio veri debiti.*" Evil is the privation of good that is due; the lie, which is a particular evil, is the privation of the true that ought to be manifested; and the truth which is due is the particular good opposed to the lie. Consequently, when one possessing privileged or incommunicable knowledge, is asked to manifest what must be kept hidden under the sacred seal of secrecy, and when necessary he answers that he does not know any thing of such matter, his answer is not opposed to moral truth or veracity; or, he does not tell a lie, and such an answer contravenes no right and no duty. If one prefer to say that the incommunicable matter is concealed, in such case, "by

\* Principles of Moral and Political Philosophy, ch. xv.

legitimate mental reservation," i. e., by uttering one thing with the tongue, and at the same time meaning a contrary thing in the mind, it is then for him to reconcile this language with the definition: "The lie is saying the contrary of what is in the mind of the speaker, with the intention of deceiving."

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## ARTICLE VI.

HOW EXCLUSIVE OWNERSHIP OF PROPERTY FIRST ORIGINATED AMONG MEN; OR, THE FIRST ORIGIN OF DOMINION IN PARTICULAR PERSONS OVER THE MATERIAL OR CORPOREAL GOODS OF THIS LIFE; ACTUAL DIVISION OF THESE EARTHLY GOODS WAS BY HUMAN LAW. THE COMMUNIST THEORY IS FALSE.

The dominion, or exclusive ownership of property, which is now to be explained, is the right to have, to hold, and to dispose at liberty of a corporeal thing, unless it be prohibited by law. \*

Dominion, as the word implies, gives a lordship or mastership over the object owned, as, for example, a house or home; and this empowers the possessor rightfully to do with it whatever he may choose, rationally; or if he do not trouble the right of another person thereby, it makes him civilly free to use it or dispose of it, even irrationally.

We may distinguish two classes of corporeal goods over which man can acquire dominion or ownership; the one, those that can be used, or fully appropriated at once, to serve his actual wants, as food and raiment; the other class may comprise such as he can preserve, claim, or hold for future

\* "Dominium est jus perfecte disponendi de re corporali, nisi lege prohibetur." Bartolus. This is the definition generally given by writers on this matter; it directly applies, however, to that ownership of property which is in organized society, and which has its immediate origin under the laws of that society.

use. Again, all such objects may be considered first as physical natures depending for their existence and action on the Creator. When viewed under this aspect, God alone can exercise and hold dominion over these things, since He alone can change, rule, or own them as existing and acting natures that, as such, are wholly subject. Secondly, such objects may be considered in respect to the use which man can make of them; man has no physical power to use the things around him except as means or instruments for the accomplishment of an end. It is only under this second aspect that man has, or is capable of acquiring, any ownership or dominion over the material goods that are made subject to him. Hence man can control and dispose of the use, not the nature itself, of things which he owns; or, in other words, his dominion over the material goods of life is not that of absolute ownership or lordship, but is by its very nature limited wholly to some particular and special use of those things.

Naturally and originally, the material or corporeal goods of this life belong to men in common; the rightful division of these exterior goods came about by human law, or it was made conventionally.\*

With regard to those necessary objects belonging to no one in particular, which are required for the relief of present

\* "*Dominium et prælatio introducta sunt ex jure humano.*"—Div. Th., p. 22, qu. 10, a. 10, et qu. 12, a. 2. Particular dominion over external goods, and superiorship in authority of any one person, or body of persons, over a multitude of persons, were introduced by human positive law.

"*Communitas rerum attribuitur juri naturali, non quia jus naturale dicitur omnia esse possidenda communiter, et nihil esse quasi proprium possidendum; sed quia secundum jus naturale non est distinctio possessionum sed magis secundum humanum conductum, quod pertinet ad jus positivum. Unde proprietates possessionum non est contra jus naturale; sed juri naturali superadditur per adinventionem rationis humanæ.*"—P. 2. 2, qu. 66, a. 2, ad 1. Community of goods is attributed to the natural law, not that the natural law dictates that all things should be possessed in common, and that nothing is to be owned by an individual; but because, according to the natural law, there are not distinct possessions; this comes rather by human agreement, which pertains to positive law. Hence, exclusive ownership of possessions is not against natural law, but it is superadded to the natural law through an invention of human reason.

actual wants, as food, clothing, etc., it is manifest that one coming into possession of them can justly consume them or directly apply them to his own use; for the actual want of what is necessary to sustain life would justify his using them even if they were owned by another person. Hence, extreme present need of the means to support life even abrogates conventional dominion or ownership of property. The right of one who is in such want depends on possession or occupancy, however, only by way of necessary condition; it depends for its origin and validity on his extreme need, and on the truth that before the law of nature the goods of the earth are for the use of mankind. \*

Mere occupancy, as occupancy, cannot *per se*, or of its own nature, and apart from all law or other superadded cause, found real ownership or dominion in landed or immovable property. For occupancy, as such, is only an extrinsic accident or circumstance, which can as truly and really exist when such property is not owned as when it is owned; and, on the other hand, one can as truly own land which he does not occupy at all, as land which he actually does occupy. Therefore, mere occupancy of such property is an accident which is too purely contingent and indeterminate to found that dominion which constitutes real ownership of landed property. It follows, then, that when occupancy is said by jurists to give a title, or to found dominion in property, though they attribute the effect nominally and proximately to occupancy, yet it is by means of the causes annexed to mere occupancy that such dominion is really and *legally* founded. One who

\* Therefore, Cajetan observes, p. 2. 2, qu. 66, a. 2, ad 1, that while dominion over the goods of the earth was originally common, negatively, they were also positively common in case of extreme necessity. But, apart from special cases of the kind, the dominion is only negatively common: "Hinc discite quod hujusmodi propositiones, scilicet, *secundum jus naturale omnia sunt communia*, exponuntur negative, non affirmative."—Vide p. 1, qu. 14, a. 3, ad 1. Summæ D. Thomæ,

Goods are said to be negatively common when, though owned by all, yet it does not belong to the individual to determine his own share for himself.



should enter and settle in an uninhabited and unclaimed district of country might be said to acquire, concomitantly with actual occupancy, a negative dominion over the territory ;\* if we add, as another cause founding just right, that he cultivates a spot of land and builds a house, the fruit of his industry will surely belong to him, so far as it is something which he is capable of appropriating and possessing, but not farther. The common right of mankind to share the goods of the earth is not positively abrogated, either in respect to that whole district of country or the spot of land itself which he has cultivated, unless it be so determined conventionally or by law.

\* For if we suppose this territory, with its solitary inhabitant occupying his tract of cultivated land, now to be rightfully acquired, for example, by the United States government, there appears no valid reason, coming merely from the nature of things, why this person should not become subject to all just laws, like every citizen, even including the law which imposes conditions for acquiring "the pre-emption right." Man as a member of society can acquire ownership to a particular spot of land only in the manner prescribed by the public law. Where, in fact, is there a member of civil society who now owns land independently of all positive law, and the absolute title to which he acquired merely by first occupancy ?

Since there is no reason in the nature of things, or *a priori*, why one man should own a particular piece of land rather than another man, and also since men must live in society as rational beings, it follows that because the apportionment of land is not made by nature, it must be done, when division becomes expedient or necessary, by a positive convention or agreement, i e., by equitable general laws.

If it be determined as in Roman law that occupancy under certain conditions shall found a right of ownership in such

\* It is negative dominion, in as much as there is no other occupant of the land. Cowper makes the lonely Alexander Selkirk thus declare the true nature of his dominion over all the island of Juan Fern : :

"I am monarch of all I survey;  
*My right there is none to dispute.*"

property,\* then the community will define what shall be those special conditions that must accede to mere occupancy, in order for it to establish a legal title; and it will be determined by the same authority as to what extent or quantity of land may in this manner be legitimately acquired by one person.† In practice, occupancy could not otherwise, than as defined and regulated by positive law, be an equitable and peaceful mode of establishing for individual persons exclusive ownership of landed property. In the United States all unoccupied landed property within the territory of the nation is assumed to be public domain; and such land was thus regarded from the beginning of the Union. Occupancy of land in the undivided or unconveyed public domain establishes for the first actual settler or occupant, there dwelling and cultivating or improving the land, “a pre-emption right,” or the first right to *purchase* the quarter of that section‡ which includes the settler’s domicile.

The “right of eminent domain,” *dominium altum*,§ which is

\* “Sicut divisio rerum est de jure gentium, ita de jure gentium est ut quæ adhuc nullius sunt, fiant de primo occupante.”—Becanus, De jure, c. 5, q. 3. Ita etiam Cardin. Toleti in 2. 2, q. 66, a. 2, et alii communiter. Just as division of goods is from human law, (the common law of nations,) so it is by human law that things, which as yet belong to no one, become the property of the first occupant.

† For what pertains to the manner in which a nation acquires dominion over vacant territory, and what concerns the right of discovery, as actually settled by international law, see Wheaton, “Elements of International Law,” ch. iv; or, Vattel, “Law of Nations,” book I, chap. xvii or, other approved authorities.

‡ A section is one mile square, or 640 acres.

§ Judge Dillon, of the United States Circuit Court, in his treatise, “Municipal Corporations,” ch. xvi, defines and explains this right, and the laws for applying it. He says: “The maxim, *salus populi suprema lex*, has an important meaning in its application to private rights, and in limiting the absoluteness of any possible ownership of private property. . . . This (supreme power to maintain the general welfare) is a right inherent in every government. One branch of this governmental prerogative is known by the name of taxation, and the other arm of this transcendent

held to be inherent, remains in the State, or supreme public authority; and, therefore, when really necessary for the common good, the government can, in virtue of that original and natural right existing in the community, and exercised by the government as representing the community, condemn private property for public use, by making equitable compensation for it, in order that an undue burden be not imposed on a particular person or part of the community; also, property left without an heir-at-law reverts to the commonwealth; and all immovable property is liable to forfeiture for just taxes. This paramount right or authority over all real estate or landed property belonging to the individual citizen, being necessary for the government in the very nature of things, is therefore originally derived by the community directly and immediately from the natural law itself.

But while the goods of the earth are given by nature to all mankind, the division itself of those goods is left to the rational, just, and prudent determination of mankind; and what thus pertains to mankind for its decision, does not belong to the individual to decide for himself independently of the community; it is always the office of public authority to determine in such matter what is best for the common good, since in no other manner can justice, and, consequently, social peace, be maintained. There is no precept of the natural law prescribing a division of property as, *per se*, necessary for every community of mankind. Such division is not thus necessary under every hypothesis; in a state of innocence, or of integral nature, a division of property would not become necessary, nor perhaps even useful.\* In a small community, common proprietor-

and underlying authority is now familiarly known as the power of eminent domain. The Constitution of the United States provides that private property shall not be taken for public use without just compensation."—P. 438. To impose a special burden on the property of a private party for the benefit of the public, would not be just; if no compensation were made, it would be an unfair exaction.

\* "In statu naturæ integræ et eo perseverante probabilius permansisset bonorum communitas. Quia in illo felici statu, summaque hominum inter se concordia, nulla fuisset causa seu necessitas dividendi qualis est post lap-

ship might even now happen to be advantageous under certain conditions.

The principle that particular dominion or exclusive ownership of property is by human convention, "dominium et prælatio introducta sunt ex jure humano," was generally taught as certain in the old universities. The opinion of the best English and American jurists concerning this matter will be found briefly and clearly enunciated in the two citations which are here subjoined; their theory, it will be noticed, agrees in substance with what was held by St. Thomas and the scholastics.\*

sum : imo decens erat et ad dignitatem atque magnificentiam generis humani pertinens ut hujusmodi bona communiter donata communiter possiderentur."—Billuart, de dominio; with theologians more generally, in Div. Th., p. 2. 2, q. 66, a. 2, ad 1. In this state of integral nature, and it continuing, it is more probable that community of goods would be permanent. For, in that happy state and perfect concord of mankind among themselves, there would be no reason or necessity for a division such as there is since the fall: nay, it would become the dignity, and belong to the generous spirit of mankind, to possess the goods of the earth in common, as they were given in common.

\* Billuart, "De modis acquirendi Dominium," thus states the doctrine of the Scholastics concerning this matter: "Divisio rerum facta est non jure naturæ, quia jus naturæ neque eam præcipit neque ad eam inclinat ut ad quid simpliciter necessarium sed ut ad quid magis conveniens tantum; non jure divino positivo, cum neque in Scriptura neque in Traditione ullum de ea extat præceptum; sed jure gentium, quatenus homines, dum attenta corruptione naturæ, quæ est sui amans, alieni negligens, cupiditati et ambitioni serviens, viderent gravia et plura incommoda sequi occasionaliter ex communitate bonorum, divisionem, non dico præceperunt, alioquin peccarent monachi, sed ut vitæ sociali et bonorum administrationi magis convenientem *communi consensu formali vel tacito* introduxerunt. Unde L. I. Digestorum dicitur; ex hoc jure gentium discretas esse gentes, regna condita, dominia distincta, agris terminos positos." The division of things is not made by the law of nature, for the law of nature neither commands it nor persuades it as something simply necessary, but only as something more suitable or expedient; it is not from divine law, since there is no precept concerning it, either in the Scripture or from tradition; but it is by human law, in as much as men, considering the corruption of nature which inclines man to be selfish, unmindful of others, following cupidity and ambition, saw the grave and numerous inconveniences occasioned by commu-

Timothy Walker, LL.D., *Introduction to American Law*, fourth edition, p. 282, thus states and explains this matter: "We know, as a matter of history, that in the beginning God gave to man a general dominion over the earth, and all things appertaining thereto; but this would only make the first inhabitants *owners in common* of the world, and not exclusive owners of any specific part. The historical inference, therefore, is that exclusive ownership did not commence until some subsequent period, when a division of the common property was made,\* either by compulsion or voluntary agreement. In other words, the right of exclusive ownership is conventional, and not divine or natural; and the same inference results from our theory of the social compact. An island or continent, for example, which no man had ever seen, would be the property of no one; but if a number of persons should be cast upon it, and take possession of it, they would own it in common until some agreement would be made concerning it, after which the nature of their ownership, whether exclusive or common, would depend upon their agreement. In either view, therefore, it would seem that the exclusive ownership of property is a social, and not a natural right."

James Kent, *Commentaries on American Law*, vol. iii, p. 501, § 378, twelfth edition, shows how the government, which represents the nation, is the source of particular ownership in property. "It is a fundamental principle in the English law, de-

nity of goods. I do not say mankind prescribed it as being of natural law, for then the monastic orders would be doing wrong; but they introduced division of goods by common consent, either formally or tacitly given, as better suited for social life, and for the right management of its goods. Whence it is said in the Digests, L. I., from this common law of nations distinct civil communities come, kingdoms are founded, ownership of property begins, and farms have their limits determined.

\* The following texts of Scripture are usually cited as bearing on this matter: "And to Heber were born two sons; the name of the one was Phaleg, because in his days the earth was divided."—I Paralipomenon, i. 79. "By these (the descendants of Noe) were divided the islands of the Gentiles in their land, every one according to his tongue and their families in the nations."—Genesis x. 5.

rived from the maxims of its feudal tenures, that the king was the original proprietor or lord paramount of all the land in the kingdom, and the true and only source of title. In this country we have adopted the same principle, and applied it to our republican governments; and it is a settled and fundamental doctrine with us that all valid individual title to land within the United States is derived either from the grant of our own local governments, or from that of the United States, or from the crown, or royal chartered governments established here prior to the Revolution. This was the doctrine declared in New York in the case of *Jackson v. Ingraham*, and it was held to be a settled rule that the courts could not take notice of any title to land not derived from our own State or colonial government, and duly verified by patent. This was also a fundamental principle in colonial jurisprudence. The title to land passed to individuals from the crown through the colonial corporations, and the colonial or proprietary authorities."

Particular dominion or exclusive ownership of property is from the natural law only according to the sense in which all just human law is derived from the natural law.\*

When people became numerous on earth and the means of living were thereby made relatively less abundant, division of property was rendered morally necessary. † Many men are

\* "Est de ratione legis humanæ, quod sit derivata a lege naturæ. Et secundum hoc dividitur jus positivum in jus gentium et jus civile; secundum duos modos; sicut conclusiones ex principiis, et alio modo sicut determinationes quædam aliquorum communium."—P. I. 2, q. 2, a. 4, et a. 5. It is of the essence of human law that it be derived from the law of nature. And under this respect positive law is divided into the common law of nations, and the civil law according to two manners of deriving positive law from the natural law, namely, as conclusions from first principles, and as certain particular determinations (or applications) of some common or general principles.

† "Distinctio possessionum et servitus non sunt inductæ a natura, sed hominum ratione ad utilitatem humanæ vitæ."—P. I. 2, qu. 9, a. 5, ad 3. Distinct possession of material goods, and slavery, were not introduced by nature, but through the reason of man for the advantage of human life. S. Thomas. "In statu naturæ læpæ nedum licita, sed conveniens fuit rerum et dominiorum divisio."—Billuart, with scholastic writers generally.

either slothful or selfish, and, therefore, considering the present actual state and character of the human race, together with the disorderly inclinations that are so often dominant over mankind, it is, in practice, more favorable to the general good that each one be left to provide for himself what is necessary, and that he become the owner of what he legitimately acquires; then, every one's rights and duties being maintained justly by public authority, there will exist fewer causes of contention or quarrelling, and consequently there will be greater peace and security. Men will labor with more alacrity, and preserve with more care the fruit of their industry, when they work for themselves or their own particular advantage, than they would if all things belonged only to the community; for, in the latter case, each would leave this task to be performed by another, and hence there would result confusion in employments, insufficiency in necessary things, discontent, and many other evils.\* But, in the present actual state of man's nature, a fair and orderly division of property would not be possible, in practice, except as regulated by just law; and hence from this truth a valid argument is derived also to prove the necessity of supreme authority in human society. Consequently upon the fact of a legitimate agreement to make the division, each person in the community has the right to some determinate and equitable share of the property first given in common by nature; but that right, if considered in itself *a priori*, can positively be determined and defined as to its particular and actual object, not by the individual for himself, for thus he would take law into his own hands, which would lead to confusion; but only by that authority which is duly empowered to provide for, and protect the general good. †

In the state of fallen nature, the division of goods or exclusive ownership of property is not only permitted by the law of nature, but it is also something expedient.

\* Aristotle uses similar reasoning in his "Politics," book ii, ch. 5, against the theory of communism proposed by Plato, in his "Republic."

† "Nota quod propositio, *communitas rerum est de jure naturæ quoad usum*, potest dupliciter intelligi, scilicet positivè et negativè. Et si intelli-

It may be concluded, therefore, that man's natural reason dictated the division of property according to which each one has his own, and is defended in the possession and enjoyment of it, as a moral necessity for the common good, at least for large communities; and hence, although the actual division of property is from human legislation, yet it is founded on the natural law. Against this assertion the objection may here arise in the mind of the inquisitive reader: "What right reason dictates to be done, as something necessary for the common good, should rather be called the natural law itself than human law; but, as just alleged, the division of property was originally made, reason dictating its necessity, 'dictante lumine naturalis rationis,' in order to avoid the inconveniences and evils arising from common ownership of goods; therefore, 'the division of property is made by the natural law.'" Since the natural law or right reason does not dictate the division of property to be simply and under all conditions necessary, the argument objected proves only that this division was made in accordance with the natural law, and that the necessity or expediency of it was a just conclusion from the natural law, agreeably to the sense in which all laws comprised in the "jus gentium," "common law of nations," are conclusions

gatur positive, sensus est quod jus naturale dictat quod omnia sunt communia; si vero intelligatur negative, est sensus quod jus naturale non instituit proprietates rerum, et in utroque sensu propositio est vera, si sane intelligatur. In primo quidem, scilicet, positive, verificatur in casu scilicet extremæ necessitatis; quando enim aliquis est in extrema necessitate, potest, undecumque sibi occurrit, sibi vel alteri hujusmodi subvenire, quia sua tunc naturæ jure re usus est. In secundo, scilicet negative, verificatur absolute; nam, extra casus loquendo, jus naturæ non fecit aliquid esse proprium alicui, et aliud alteri."—Cajetan, in p. 2. 2, qu. 66, a. 2, ad 1. Cardinal Toletus speaks similarly in commenting on that same passage. "Observe that the proposition, *by natural law, goods are in common as to the use of them*, may be taken either positively or negatively, and in both senses it is true, if rightly understood; it is verified positively when one in extreme necessity helps himself with the relief which is within his reach, or when he does this for another in like want; in that case, he uses what is his by the law of nature. The proposition is verified negatively, in that, apart from the case mentioned, the law of nature does not make one thing the property of one person, and another thing the property of another person."



from the natural law. Such laws are not simply immutable, since their matter is not simply immutable; whereas the natural law and the strictly demonstrated conclusions derived from it are simply immutable.\*

The reasons above given in proof that the goods of the earth should be divided, show its expediency and necessity as a means to secure the greater good of society: it now only remains to adduce the arguments which demonstrate the falsity of modern communism, or the theory proposing a return to common ownership of property as a measure that is expedient and even necessary for the common good of nations.

In order for the communists to advance any valid argument in proof that their theory proposes what is true or legitimate in practice, either they must show that nature dictates community of goods as necessary, or else they must prove that it is expedient and good for nations now to establish common ownership of property. These are the only arguments bearing upon the subject that can be devised or offered by them; no other assignable reasons would be pertinent.

Now, neither does nature dictate common ownership of property to be necessary, as was already explained, nor is a return to primitive community of goods possible in practice for any nation; and hence it is justly charged that this wild scheme has nothing in it which can seriously commend it to any but indolent, improvident, and vicious members of civil society.†

\* Some of the older philosophers and jurists put "jus positivum" in contradistinction to "jus gentium;" but they did not intend by this technical use of the terms to imply that the "jus gentium" was not a human positive law, or that it is simply the natural law. The general truth which nature teaches, and in which all nations concur, not by express agreement, but because they judge the same matter in the same manner, namely, *the goods of the earth should be divided by us*, is of the "jus gentium;" the special laws, or rules by which that division is actually made, and maintained in force, are civil laws, or positive laws, as opposed to the common laws of nations, "jura gentium." But this "jus gentium" must not be confounded with the code of positive law now styled "international law."

† It is a notorious fact that when the communists got control of Paris temporarily, in 1871, they sought, not a community of goods, but to enrich themselves individually.

That is neither rational nor legitimate which cannot be done without destroying peace, order, and justice in civil society ; but a return to common ownership of property cannot be effected in any nation without causing the evils named, and others along with them, which would lead to social anarchy ; therefore the theory of communism is false and impracticable, and it was always repudiated by the natural good sense of mankind, no nation ever having actually attempted in practice so unreasonable a system.\*

The communist argues that " what comes by human convention can be undone by human convention ; but division of property is something merely conventional, and therefore it can be undone by convention." It is not true that all things done by convention or general agreement can be arbitrarily changed by human authority ; only those things can be thus changed or undone which are not thereby converted into what is evil, or which, in other words, are, by their own nature, susceptible of change, provided there are due and legitimate reasons for it. There can arise no reasons to justify the reëstablishment of common dominion in property, nor is it perhaps possible as a fact that any nation of mankind will ever agree to do so. The reasons originally making the division of property necessary or expedient now militate with still greater strength for adhering to separate or exclusive ownership of property ; or if community of goods was not for the general welfare in the beginning of nations, still less can it now be good for nations to institute that state of things.

To answer the communist's reasoning above given, however, by asserting that individuals acquire, and actually hold, their right to particular property immediately from the law of nature, appears to be the denying of one error merely by affirming another one, but without really meeting the point of

\* Although the *agrarian* movement under the Roman commonwealth continued, during several centuries, occasionally to excite popular commotions, and some just concessions were made to the plebeians, yet there never was a return to common ownership of property, nor were all the goods possessed by the people ever redivided.

the difficulty raised. Nor will it do to affirm that community of goods or common ownership of property was, in itself, impossible from the beginning, since this would be to prove too much. In the case of monastic orders, the property of their members is actually converted into common property, no one retaining exclusive ownership of anything whatever.\* It is to be observed, however, in answer to any inferences that may be drawn therefrom by the communist for the right and feasibility of reinstating primitive community of goods in nations of mankind, that there is no parity between a monastic body and a nation. Such a community does not, like a nation, include a large number of entirely different persons collected together, as it were miscellaneously; nor is it a body politic; but it is a peculiar *private* association that is governed by a special system of rules; it has none but adult members, who attach themselves to it voluntarily, and its members still owe duty to the civil government of the nation in which they dwell. For such a society which, owing to its peculiar aim, is actually adapted only to a small number of persons, the common ownership of property is indispensable, and in such a community it works harmoniously in practice, a result, however, which would not be morally possible in a large civil community. It follows, then, that the theory of communism is false, not because all common ownership of property is evil or impossible, and not because a community of goods is, under all suppositions, wrong or impracticable, but for this, that division of property having been made by the nations of mankind, because they found it expedient and even necessary for the common good, a return to common dominion in property would now, for still greater reasons, be utterly impracticable; and even if it could be actually effected, a thing that is perhaps utterly impossible, the change would be productive of

\*The first Christians also made their goods common property. While common ownership of property would now scarcely be possible in a large civil community, yet in small ones it may easily obtain, as was the case in the French colony of upper Louisiana or Missouri, before that territory was purchased by the United States government.

the greatest evils and no real good. If a widespread and numerous nation of mankind could not, in practice, continue to prosper or even subsist, without instituting separate or individual ownership of property, how, then, would it be possible to establish a community of goods in a nation which never adopted such system, because never expedient or even practicable for it to do so?

Let us here recapitulate: God gave the goods of earth in common to mankind. Determinate and exclusive ownership of property was introduced by human convention or agreement.\* The natural law does not dictate that the goods of the earth should be held in common by mankind; nor does it dictate that division of them is simply necessary. Right reason teaches that it is expedient, and in practice it is also necessary for the good of large communities or nations of mankind, that there should be made an equitable division of the goods given in common by nature. After the division of those goods is once actually made, because found by a community to be necessary for the common good, then *a fortiori* will it be necessary for the general welfare of such community that this condition of things be permanently maintained; by consequence, the theory of communism as teaching that common dominion or ownership of property should be re-established, is false, and in actual practice it would surely prove to be disastrous.

The doctrine of the communists concerning the rights of

\* In order to be further assured that this is the doctrine commonly taught in the schools, see Cajetan and Cardin. Toletus, in Sum. D. Th., p. 2, 2. qu. 66. a. 2; also Billuart, Becanus, or other scholastic authors on the same article. Suarez, De Legibus, lib. II. c. 18, No 4, simply accounts it to be received as the doctrine in the schools: "Item divisio agrorum, seu terrarum ac sedium et terminorum in communi dicitur esse de jure gentium, quæ manifeste supponit institutionem humanarum societatum, et illa supposita, ex vi solius rationis naturalis omnia illa licent, licet simpliciter necessaria non sint." Also the division of fields or lands, as well as homes, and boundaries in general is said to be of human right, which manifestly presupposes the institution of human societies, which being supposed, by force of natural reason, all these things are lawful, though not simply necessary.

property is herein refuted; but some of their leaders advocate other principles still more iniquitous, which have served to bring much discredit on them and their extravagant theory in all enlightened communities of mankind. As for those among them who actually attempt to destroy marriage and the family, the legitimate answer to them is not by appeal to the canons of logic; such matter pertains rather to the authoritative decisions of criminal jurisprudence, to the bar of civil justice, where convicted culprits that violate the essential and well-known laws of social life are arraigned, to have passed on them the sentence merited by their misdeeds.

Finally, some less extreme minds object that "a portion of the abundance possessed by the rich, who have more than they need, should in natural justice be taken from them and given to the poor, who have less than they need, for nature intends that all shall have a living from the goods which nature provides for all."

This objection is a mixture of truth and error, and it presents a difficulty which it is not expedient to slur over, and which at the same time it is not easy to answer in very precise terms, for the obvious reason that it belongs to legislative power to define the specific means of meeting that emergency under its particular and actual circumstances. The general reply is, that it is the duty of public authority, and not the office of private parties, to provide for the necessary well-being of the whole community, and therefore to provide the means necessary to save a deserving and innocent portion of the people from starvation in a time of such adversity. It is true that "nature intends all to have a living from the goods which nature intends for all," but nature intends this, as so regulated and measured, that the rights of all may be duly defended. Nature does not intend to confer a private communistic authority or right on individuals of appropriating to themselves exclusively goods in which others also have a right. Hence a particular part of the community can have only that right which is consistent with the rights of others, and which, therefore, must be regulated by general laws of the community.

This is another one of those difficulties in human affairs, on account of which public authority, whose office it is to maintain the general good, is indispensably necessary for every civil community. On the hypothesis, however, that individuals derive their right to exclusive ownership of property immediately from the law of nature, and not through the positive law of society, there would, in this case, be no certain means of averting the desperate multitude from violence and anarchy; for, in such theory, it does not appear how even the government could rightfully provide for the emergency.

In considering the matter proposed by the above objection, it will help towards clearness of thought to distinguish different classes of poor people. Under the first may be included all industrious laboring or working people who, we shall suppose, wish to live only by upright and legitimate means, but who, here and now, cannot obtain wages that suffice for their support. It is, without any doubt, the solemn duty of public authority to protect them in their natural right to the necessary means of living.

Secondly, there is a class of the helpless and afflicted poor, comprising such, for example, as are reduced to want by sickness, or by any of the various misfortunes and disasters that may befall even the most virtuous and worthy persons. There surely never was an enlightened nation in which all the good and generous among the people did not look on it as a duty, even of private benevolence, to befriend the suffering poor and relieve their wants, though oftentimes this can be done only at the risk of being imposed on by the false stories of undeserving vagabonds. For this class of the poor public authority provides hospitals, homes, asylums, etc., in which, according to the particular form of their miseries, they may find shelter and comfort in their wretchedness.

A third class may comprise all those more or less indigent people who are idle and vicious, as thieves and lazy vagrants, the improvident and sensual drones of society that collect in the large cities, where they haunt the dens of low pleasure and amusement, who would live above their social condition,

and seek the means of maintaining themselves in their excessive habits by various dishonest arts and tricks of fraud. It is not work, even for high wages, that such people desire; their wish is to lead a reckless and self-indulgent life in idleness and debauchery. They shun the duties of life, leaving toil and the employments of Industry to other hands, though they would have a full share in the fruits of that industry, despite the Scriptural behest, "If any man will not work, neither let him eat."\* Even if they should come into the possession of wealth and abundance, with their dissolute and extravagant habits, and their heedlessness of the future, it would be quickly squandered in the excesses of maudlin, low-bred pleasure. All they require for turbulent action or outbreaks is, that they be headed by the bold, dangerous spirits which rise up in troubled and evil times from the dark, low depths to the surface, to plan and execute desperate deeds of violence. They are practical communists; the system of communism favors them; they have nothing to lose, no home, no goods providently laid up; and any change is for them an improvement. It can scarcely be doubted, therefore, that it is chiefly on this unruly and mischievous element of society that the communists, whose leaders are either wild theorists or else men of desperate fortune, must depend for enlisting numbers into their ranks. Could any redress of social troubles possibly arise from a violent and revolutionary return to primitive community of goods brought about by this class of mankind, and that, too, with all the calamities and wrongs to persons which would be necessarily caused by such a change in the very constitution of society?

Well-administered government and wise laws are the means intended by nature for protecting and securing all classes of citizens in their genuine civil rights. But the principles of communism can remedy no evil, and remove no social grievance. Nay, to reduce that execrable theory to practice would be to substitute for occasional troubles that can be quieted by authority of just law, manifold evils that could not be endured in any but a savage nation.

\* 2 Thessal., chap. iii., v. 10.

## CHAPTER III.

### MAN AS A SOCIAL BEING; THE FAMILY.

#### ARTICLE I.

##### THE FAMILY IS THE FIRST SOCIETY; OR, MAN'S FIRST SOCIAL RELATION, IS TO THE FAMILY.

Man's first relation to other human beings is that which he has to the family. This is manifest; for he has his origin in the family, in the sense, that, by the law of nature, he is born and reared in the family.\* Therefore, man is naturally or according to his genetic origin as a rational animal, a member of human society. But, because the family in which he is born is presupposed to him, the series of preceding families goes back till it reaches the first family; which must have been created, since a series actually infinite, is absolutely impossible. Hence, man's social relation that was simply first, was that of man and woman; and this is the first basis of all social relations. Man is a social being, then, by his natural origin; and society is necessary for his perpetuation as a species.

Man being physically unable to provide for himself in his infancy and childhood, indeed, among all the animals, he is, at his birth, the least capable of helping himself; it follows, then, that man is also dependent on others for the preservation of his life. Nay, it is only under peculiar and exceptional conditions that a man, even of mature age and vigorous strength, could subsist for a great length of time, entirely without aid or comfort from other persons. Whence it follows that as man is born in society, so he is naturally ordained to

\* "Homo est naturaliter animal sociale, eo quod sibi non sufficit ad vitam." p. 2. 2, qu. 129, a. 6, ad 1. "Man is naturally a social animal, because he has not of himself alone what suffices for life:" and this is true, whether we consider the origin, or the continuance of his life.



live in society, though he should choose to live solitary for a part of his life, on account of special and unusual reasons.

Since the components are logically prior to the compound which results from their union, it is evident that the family is presupposed to civil society, or is logically prior to it; for, civil society is a multitude of families, ordinarily inhabiting the same territory, and reduced to unity by government and laws that are common to them.

It is man and wife that principally and most properly constitute the family, the essential end of their union, intended by nature, being the preservation of the human species; as thus united and forming the family, man and woman constitute, under a particular respect, but one person civilly.\* As will be explained in a succeeding article, the family is, under a certain regard the unit of civil society; yet, since civil authority and government have for their essential end the good of the whole community, the unit of civil society is ultimately and simply the individual, not the family.

Man is naturally the head of the family; or, the woman is naturally subject to her husband; but she is not his servant, however. Observe that there are two distinct manners in which a person may rule as superior over others; † first, he may govern others so as principally to intend merely his own advantage; and, in this case, the condition of his inferiors is that of servility or slavery. The woman is not the servant of her husband, nor is she at all subject to him in this manner. ‡ Secondly; there is a superiority of one person over others arising from greater natural power or more of special gifts from nature, as prudence and fortitude, by which he is fitted to direct the action of others for their own advantage: it is

\* "And they shall be two in one flesh." Genesis ii.

† I p., qu. 92, a. 1, ad 2.

‡ "Servus in hoc differt a libero: *liber est causa sui*; servus autem ordinatur ad alium." I p., qu. 96, a. 4 in C. The free man is the cause or master of his own action; the slave is ordained to another; i. e., he acts not for himself, but for another person.

only in this second sense that man is superior to his wife, or that she is naturally subordinate to him; for, as regards other things, they are equal.\* But that man is naturally principal or head in the family, may be shown by way of induction from well known facts; for, just as we learn from the powers and perfections of any created thing, as manifested in its action, the end for which it is naturally designed, so, the respective duties for which man and woman as constituting the family are intended by nature, are made evident by their distinct virtues and qualities. Each one of them is endowed by nature with special and characteristic qualities, both of body and mind, as Aristotle and Xenophon point out. Man has intrepidity of soul, and strength of body; the first enables him to conquer the fear of danger; the second empowers him to endure the hardships of toil and exposure to the weather; his inclination is to be abroad, and engaged rather in outdoor employments. The woman is more timorous of spirit, and more weak and delicate of body; and she is inclined to the shelter and retirement of home. The virtue of fortitude in man, verges farther towards extreme boldness; that in woman, naturally inclines more to patience, and it more easily yields to fear.† It may be said, then, that the medium or mean for the virtue of fortitude, in them, is not precisely identical. It is for a purpose that nature gives to man and woman these opposite qualities: they are thus fitted for different duties

\* It is worthy of notice, that the word *family*, is from the Oscan word, *famel*; which signifies a slave, as does the Latin word *familia* mean a collection of slaves. The wife and her children were slaves, till Christianity restored the family to its primitive unity and dignity. Previously, the penalty of man's primal fall was especially heavy on woman, as De Maistre observes. (Du Pape, liv. 3, c. 2.)

†“ Quòd una virtus magis declinat ad unum extremum quam ad aliud, contingit ex hoc quod virtutis medium est propinquius uni extremo quam alteri; sicut fortitudo est propinquior audaciæ quam timiditati.” P. 2, qu. 109, a. 4. That a virtue leans rather towards one extreme than towards another, happens from this that the medium of that virtue is nearer to one of the extremes than to the other; for example, fortitude approaches nearer to rash boldness than it does to cowardice.

which contribute, by different means, to the good of the whole family. What is a perfection in the one, may thus be an imperfection, if it exist in the other; and for this reason, an "effeminate man," or a "masculine woman," are expressions which, in popular language, have an opprobrious meaning. It is beside the intention of nature for a person of one sex, to assume duties which are proper only to one of the opposite sex.

It is plain, then, from the nature of things, that man is principal in the family; and that he is its chief ruler and guardian.

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## ARTICLE II

### UNITY OF THE FAMILY.

Unity is necessary for the family, since it is a community.

Every community must be one, both as regards the principal end which is intended for it; and also as regards the special or proper means to that end. The end intended by nature for the family is its good, which is the welfare of all its members. The good of the family or welfare of all its members, is gained only by those means that perfect the whole family as a community; or, what preserves its integrity and unity.

Unity is opposed to division. But a thing may be contrary to the unity of the family, in very different degrees of opposition; for, first, it may be wholly destructive of that unity; secondly, it may be destructive only of what is integral to it; or, finally, it may be detrimental merely to its accidental perfection. It is manifest that although a family may continue to subsist, even when in an imperfect state, yet, what destroys its essential unity, at the same time causes its dissolution, or destroys its existence.

The internal bond of family unity, is well ordered love; so long as love that is pure and strong rules the family, it is in-

destructible, except by extrinsic physical violence which forcibly separates its members from their happy union.

Both polygamy and divorce are opposed, not only to the perfect unity of the family, but to the purity of that love which is the bond of union among its members. Are polygamy and divorce prohibited, then, by the natural law ?

Before answering this question, it will be necessary to distinguish and explain two different manners or degrees in which any action or work done by man, may be opposed to natural law, or be contrary to what is intended by nature.

Nature, either through certain instincts that are inborn, or through the light of human reason, dictates some things which concern man merely as an animal being ; and nature also dictates some other things which concern him according to his specific nature as a rational animal. In other words, some things are natural to man, on account of his genus, which is animal ; v. g., to eat, to sleep, to reproduce his species, and the like, are of this kind. Other things are natural to man, on account of his species or specific nature, as a rational animal ; of this kind are reasoning, willing, loving rationally, virtue, peace of mind, etc. A thing is said to be opposed to the first principles or precepts of the natural law, when it is against the first and principal end intended by nature for that thing. A thing is opposed to the secondary principles of the natural law, when it is against a secondary end intended by nature for that thing. For example, the principal end of eating food as intended by nature, is to sustain life ; the secondary end is to work well, to study, to be agile, etc. : the first is necessary in order for man to live at all ; those second ends are necessary for the perfection of his life.\*

The first or principal end of marriage, is the perpetuation of the human species ; and this is natural to man, or it is intended by nature for man, as an animal being. The secondary end of the marriage state is mutual happiness of man and

\* "*Aliqua necessaria sunt ad esse rei ; alia, ad melius esse.*" Some things are necessary for the existence of a being ; other things are necessary for its better existence.

woman, contentment, the blessings of peace, means of virtue, etc.; and such good belongs to man, or is proper to him, only as having a rational nature.

Polygamy is opposed to the secondary ends intended by nature for the conjugal state; but it is not directly or immediately against the primary end of marriage.\*

That polygamy is opposed to the secondary ends intended by nature for the conjugal state, appears to be certain and undeniable; for, first, the rational love and the attention which are naturally due from the man to his family would, if he were a polygamist, be divided; and, on that account, his duty as head of the family, would be complied with only in part. † Secondly; the woman would be degraded to personal inequality with her husband; while, in justice, she should be his consort and equal, not his servant or merely an abject instrument. Thirdly; it would render peace and happiness in the family morally impossible, since it would afford undue occasion and incentive to envy, jealousy, hatred, and all the vices and violent passions whose effect is to destroy domestic contentment and union. Also, it is a truth confirmatory of this reasoning that the superior races of mankind, as the Aryan or Japhetic families, never publicly or generally authorized polygamy; among them, the practice was always regarded as vicious and debasing. Finally, the intention of nature as regards the family seems to be indicated in a manner and a

\* Vide D. Th., 4 Sent., 29 et sequ., or also his doctrine as stated for him in Suppl., qu. 65, a. 1 and a. 2: "Pluralitas uxorum non est contra prima præcepta naturæ; sed est contra præcepta secundaria" Plurality of wives is not against the first precepts of nature, but it is against the secondary precepts.

† "S. Thomas, p. 2. 2, qu. 154, a. 2, notices the fact in natural history, that all those animals whose young require the attention of both the male and female parent, unite in pairs and remain together; as is done by many species of birds. It is not thus, however, with the grosser kinds of brutes, as the dog, the cow, the hog, etc. Since the child in the human family needs the help of both parents in order to be rightly reared and educated, an argument is thus furnished by the analogies in nature against polygamy: it is an argument, likewise, against divorce, though less cogent.

sense even still more comprehensive than asserted in the thesis, by the significant fact that the numerical proportion of the sexes to each other among mankind, is always that of equality; except when there is a transient disturbance of that equilibrium, arising from accidental causes, as war and emigration.\*

It may be concluded, then, that the secondary end is necessary to the family; and, by consequence, polygamy is forbidden by dictates of right reason or principles of the natural law, possessing corresponding necessity.

Polygamy is not intrinsically and absolutely against the natural law; because what is thus opposed to the natural law is intrinsically evil; for the natural law absolutely forbids only what is intrinsically evil; and that which is intrinsically evil, cannot be made lawful by any dispensation, since both the natural law and the necessary conclusions from it are simply immutable, as was already seen. On the other hand, polygamy was divinely authorized under the old law; though, in the new dispensation, it is forbidden by Divine positive law.

While polygamy is not prohibited by the first precepts or proximate conclusions from the natural law; yet, it is forbidden by other principles or conclusions from the natural law that are more remote, and which follow from their premises with less strict necessity: such conclusions teach man what is conformable to right reason and what should, therefore, be observed by him. † It was by such rule of conduct that the

\* The original institution of marriage as recorded in Gen. ii, is thus declared: "Wherefore a man shall leave father and mother, and shall cleave to his wife; and they shall be two in one flesh."

† "*Secundaria præcepta juris naturæ non habent vim coactivam, nisi specialiter a Deo vel ab aliquo principe sanciantur; sed solum obligant quatenus recta ratio docet ita esse faciendum.*" Becanus v. Matrim, c. 46, qu. 2, No. 7. The secondary precepts of natural law have not coercive power, unless God, or else some earthly ruler specially command them; but they bind only in so far as right reason teaches that what they prescribe should be done.

As already said, the universal or common precepts of the natural law which are primary conclusions from it applying to every person that can judge rationally, as those of the Decalogue, are ordained to secure the first or principal end which nature intends in any good work. The secondary precepts of natural law, which are derived from the first, regard the secondary ends intended by nature in good works.

superior races of mankind always rejected polygamy as opposed to reason ; that they even prohibited it by law, in some instances. These remoter deductions from the natural law as applied to the affairs of human life, are more or less strict and unchangeable, according to the nature of their matter ; but because that matter is less necessary or more contingent, the precepts regulating it may permit dispensation, at least by Divine power. The primary conclusions from the natural law proximately regard man's rational nature, in those things that are immutable ; v. g., "pay due homage to God ;" "do no injury," etc. There are other natural precepts which proximately regard an extrinsic order of actual things that are related to man, but which may be changed by Divine power without any change in the natural law itself : when Abraham was commanded to immolate Isaac : when the Israelites were ordered to take the valuable goods of the Egyptians, and the peculiar command was given to the prophet Osee,\* there was in these instances, a change in the relation of exterior things towards man's rational action, which God can make at will, even unto their annihilation, or the substitution of others, thus constituting a different order of means to action. But the question of polygamy regards matter that is still farther removed from the one most general precept of the natural law, "do good ; avoid evil ;" and, even all mankind do not judge this subject to have the same relation to natural law, as is evinced by the fact that to-day, more than half of the entire human race, being degenerate and imperfectly enlightened, recognize polygamy as legitimate. But that polygamy is against the better teachings of right reason, and opposed to man's superior rational instincts, is a truth that admits of no well-founded doubt.

Since polyandria plainly defeats both the primary and the secondary ends of matrimony, it is evidently, and immediately, against the natural law ; hence, among all the races of mankind, polyandria was always regarded as a crime against nature.

\* Osee, ch. i.

Is there a precept of the natural law binding all persons to marry when the time and circumstances are opportune? Marriage as a natural duty of man, imposes an obligation on the human species collectively, but not distributively. The right reason of each person dictates many things that are necessary for his own perfection; and such teachings of reason bind the person. But while every one can see many things that are necessary for the common welfare, as agriculture, navigation, the mechanical arts, etc.; yet the public need of these various employments places no obligation on every one who sees their necessity for the general good; else every one should be lawyer, merchant, farmer, etc.

It is manifest, then, that there are duties pertaining to men in general, which do not impose an obligation on every individual man in particular. It is for the public authority, when necessary for the common good, to use such efficacious and becoming means as may induce compliance with those duties to the community that all avoid. But there is a general providence according to which the various tastes, necessities, interests, etc., of different individuals, direct them to occupations which are suitable for them, and good for the community at large. As water naturally tends to its equilibrium, similarly, the judgments and the inclinations, which rule particular persons that are variously disposed, lead them, under this controlling providence, to the respective vacancies which they can advantageously fill.

It is the natural duty of most persons, as it is also their reasonable preference, to marry; but if there be an insuperable impediment to the marriage state for some individuals, they will rightly lead a single life; as others may justly do, who wish to apply their time and energy, with greater freedom, to superior pursuits.

#### DIVORCE.

Divorce appears to be less universally, and less proximately, opposed to the ends intended by nature for the conjugal state, than does polygamy. The secondary precepts



of the natural law do not directly and *per se* allow any case of polygamy even by exception; nor is one authorized by the Divine positive law, under any circumstances. The christian law permits divorce *a vinculo*, or perfect divorce with the right to marry another partner, whenever one party having become a Christian, is no longer able to live in peace with the other:\* such person is free to separate from that infidel consort, and choose another partner. All grant, moreover, that for just reasons, there may be divorce *a toro et mensa*, from bed and board, or imperfect divorce, consisting either in temporary or permanent separation; but however, without the right of marrying other parties, a right that exists only when there is divorce *a vinculo*. Bellarmine † remarks correctly, that if we consider marriage merely as a duty prescribed by nature, and apart from all positive Divine ordinance, the case might arise when no conclusive reason could be assigned why divorce should not then be legitimate. Hence, the only certain and demonstrative reason proving the divorce *a vinculo* or perfect divorce to be illicit under all circumstances, except for the case specified by St. Paul, is the Divine positive law; it cannot be demonstrated by arguments derived from natural reason that no other exception is allowable.

But, on the other hand, when we consider this matter in general, and *a priori*, the legitimate union in matrimony is a contract which, by its very nature, is permanent. That it is intended by nature to be a permanent contract, may be inferred from the truth that the primary or principal end of matrimony is the rearing of offspring; and the perfect accomplishment of parental duty to children imposed on them by nature, requires that their entire lives be dedicated to the

\* 1 Cor., ch. vii. vs. 12-15.

† “Si consideremus matrimonium ut officium naturæ ad propagandum sobolem, ægre potest reddi ratio cur ob sterilitatem conjugis non liceat eam dimittere aut aliam ducere.” De Matrim., lib 1, ch. iv. If we consider matrimony merely as a duty of nature for propagating the race, it is not easy to assign the reason why it is not lawful to put away the sterile consort, or choose another.

task.\* The most important part of education is that which is received from the parents at home; so much so, that the loss of parental home instruction, can scarcely ever be supplied by that of any extraneous tutor; and this duty of educating the children rests on both parents. Even when their children have reached their majority, and have departed from the home in which they were reared, they still need counsel from the experienced; and their parents alone can, with well-founded hope of good, give those wise and acceptable monitions which benefit their children, because known by them to come from those that love them, are able to advise them, and truly wish their welfare.

Neither can the secondary ends intended by nature for the conjugal state, which were mentioned when speaking of polygamy, be practically realized in marriage, unless it be an indissoluble contract. If the bond of matrimony could be really severed on account of any reasons that ordinarily occur in human life, then neither party would have security against the other's defection: thus confidence, and therefore genuine love, would fail; their union would be only a precarious one, and by consequence, perfect peace and happiness in the family would be impossible.

Marriage is a sacred union between two persons, man and woman, who are thereby made, in a moral sense of the term, one; and the bond of that union, is love that is pure. The only system of laws that can certainly, generally and efficaciously defend the unity, purity, and sacredness of the marriage state, are the laws of sacramental matrimony. It cannot be reasonably doubted that the increased facility now given by statutes enacted in many States of the American Union, for obtaining divorce under numerous pretexts,

\* "A parentibus tria habemus, scilicet, esse, nutrimentum, et disciplinam." D. Th. cum Aristot. We have three things from our parents, namely, existence, sustenance, and education.

Some animals only give existence to their young; others, give both existence and food. It is only human parents that give to their offspring existence, sustenance, with education in knowledge and virtue

is an important step towards degeneracy of manners. Some defend this departure from the wiser and better laws inherited from our forefathers, by saying that "since the great majority of our population is non-christian, the State cannot here regard marriage as being anything more than a civil contract; and the state has no power to render a civil contract indissoluble, by its human authority, when it is not so by its own nature; and marriage, if regarded only as a natural contract, is not *per se* indissoluble."

Surely the state has no power thus to constitute any contract immutable, when it is of its own nature mutable; and it is also true that the public authority has, here in the United States, to deal only with the civil relations of marriage; but yet, the State could continue now, as formerly, to recognize marriage as a sacred contract, which, by its original terms, as well as by its own intrinsic nature, is not a temporary bargain, but is permanent and indissoluble, at least, *quoad vinculum*. When this just and reasonable ideal of marriage was practically recognized in the laws, discontented couples arranged their private troubles without applying for divorce. Marriage being thus guarded by law as something sacred, was entered into with more prudence and uprightness; unions that now originate and are completed in sudden and capricious feeling, or in maudlin passion, were then prevented, or at least their number was diminished. Even in pagan Rome, true to the higher instincts of man's rational nature, there was no instance of divorce, till the morals of her people were corrupted by contact with the voluptuous nations of Asia. The increase of divorce, in any country, is a sure indication of declining morals.\* The social manners and customs of the decayed Semitic races, never sank to their low standard, before polygamy and divorce had destroyed among them the purity of the conjugal state, and thereby debased the family.

\* When the Redeemer of mankind said to the Jews, "What God hath joined together, let no man put asunder;" they replied that Moses allowed divorce. He answered that it was permitted on account of their hardness of heart; "*but from the beginning it was not so.*" Matth. 19.

It may be concluded, then, that it is for our wise and good statesmen that are sent to the halls of legislation, to oppose, not to follow, this downward tendency of the modern family; and it is for them, therefore, to defend the unity, purity, and sacredness of the marriage state.

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### ARTICLE III.

#### RESPECTIVE DUTIES OF PARENTS AND CHILDREN.

It is the natural duty of parents to provide suitable means of living for their children during their minority. This duty follows from the truth, that, 1st, the parent is, under nature, the free efficient cause of the child's existence; 2d, the child is physically unable during its minority to provide for itself the means of living. Therefore, nature manifests, under this two-fold respect, the duty of parents to feed and clothe their offspring. The like intention of nature is evident in the analogous action of irrational animals towards their young, in which they are impelled and guided by an instinct naturally implanted in them. The young of all animals are, in a greater or less degree, dependent for a time, on the progenitors that gave them life; and of all animals, the young of the human species are the most incapable of providing for themselves, and their helpless state endures longer than that of any other animal species. It is, therefore, a natural and necessary duty of parents to support their children during minority.

Parents are also bound to give their children suitable education. The duty of educating their children naturally rests on parents, for the same reasons that make the providing of food and raiment a duty naturally incumbent on them. The preserving, developing, and perfecting of the human species, both physically and morally, are thus made by nature greatly dependent on parents. To this work of early education, the government of the community may contribute indirectly; but

its execution is directly the duty of the parents only.\* The duty of parents to educate their children, implies the right, also derived directly from the natural law, not to be unjustly prevented from fulfilling this obligation towards their children.

Education has for its proper object the physical, intellectual and moral welfare of the children, both as regards the time being, and the future when they are to act for themselves. Hence, the health of children should be guarded; they should be inured to habits of well ordered industry; their understanding should be developed by exercise, according to their capacity, and informed with the knowledge of things that ought to be known by them in the state of life in which they are to be placed. Parents are bound to teach their children, both by precept and by example, to practice virtue and avoid evil; to know and to fulfill their duty to their Maker, to those having authority over them, to their equals, and their inferiors. Therefore, education is both of the intellect and the will or heart. A defective or vicious education in childhood has been styled "a second original sin;" for, as by the first one, human nature lost many gifts that exalted it preëminently, so, the privation of so great a boon as good education in childhood, lowers the future man far beneath what naturally he ought to become.

Parents have authority over their children, and they are thereby empowered by nature to govern their children during minority. This authority is an essential means for parents to discharge their duty towards their children. Its justice and necessity arise also from the natural inability of children rightly to direct their own conduct. They can coerce the obedience of their children; but, unlike the rulers of *perfect communities*, they have not the power of life and death. In the government of their children, prudent parents avoid the extremes of excessive indulgence and leniency, on the one hand; and of cruelty or tyranny, on the other. It cannot be legitimately doubted that rewards and punishments which are discreetly and equitably proportioned to the conduct, consti-

\* See Vattel's "Law of Nations," Book I, ch. xi.

tute the most efficacious means of ruling human beings Experience teaches that, by what seems to be nature's penalty, children reared in families, in which no proper discipline or order is preserved, evince, in after life, little affection for their parents.

Children have some duties towards their parents which are, by their nature, perpetual; they have other duties to their parents that are temporary. They owe unfailing love to their parents: filial love is a natural and instinctive principle in man; but the love for parents which is a perpetual duty, is rational affection for them. They should reverence them as, under some true respect, their superiors to whom acts of deference are always due. They should comfort them in the sufferings of declining life, and amply supply their wants, if they be reduced to poverty; for, children justly owe support to needy parents, who sustained and reared them, when unable to provide for themselves. Not even the follies or errors of parents exempt their children from the proper exercise of these sacred duties.

Children, during their minority, owe obedience to their parents in what pertains to their education and to domestic discipline; provided, however, that parental authority does not require what is evidently evil; in which case, obedience is not lawful.\*

While children have a right to inherit the goods of their parents; † yet, as jurists agree, this does not exclude the right in parents to give a portion of their goods for other laudable objects; or even to disinherit the vicious and incorrigible

\* According to the law of the Roman Empire, the majority was reached at the age of twenty-five years. In accordance with the laws of most nations at the present time the child's majority begins at the completion of the twenty-first year from birth.

† In Roman law, Justinian Instit., lib. II, Tit. xviii, "De Inofficioso Testamento," it is provided for setting aside a will that arbitrarily or unreasonably omits giving anything to the child. The Athenians before the time of Solon, and the ancient Germans, believed children to have a natural right to inherit the goods of their parents.

heir. This right in children to inherit the property of their parents, is more generally regarded as a civil right, however, and not simply as a natural right; the civil rights of primogeniture, and various laws regulating inheritance and testaments in different nations, may be adduced in proof of this assertion. (See Blackstone's Commentaries, Book II, ch. 1.)

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## ARTICLE IV.

### THE SERVILE STATE, OR SLAVERY; RIGHTS AND DUTIES OF MASTERS AND SERVANTS.

Just as man has not, under the natural law, any arbitrary dominion over the life and members of his own body, but possesses a right only to their lawful use; so, neither can he hold any such dominion over the life or body of another person. The only dominion which one person can acquire over another person as his servant, is right of ownership to the lawful and useful service which that person is able to render. Therefore, the slave owner's right is limited to the legitimate and reasonable work commanded of the slave, and which that slave is both morally and physically able to perform.

Natural law does not dictate to mankind that there should be slavery; nor did it positively or directly, ever induce nations to originate that condition of servility.\* The state of slavery was begun conventionally, or by human law; but slavery is

\* "Aliquid dicitur esse de jure naturæ dupliciter; uno modo, quia natura ad hoc inclinatur: sicut, non esse injuriam alteri faciendam. Alio modo, quia natura non inducit contrarium. . . . . Distinctio possessionum et servitus non sunt inductæ a natura, sed per hominum rationem ad utilitatem humanæ vitæ." P. I. 2, qu. 94, a. 5, ad 3. A thing is said to be of natural law, in two manners: first, because nature inclines to that; as, injury should not be done. Secondly, because nature does not induce what is contrary to that thing. The distinct ownership of possessions, and slavery, are not prescribed by nature, but they come through man's reason for the advantage of human life.

not *per se* or of its very nature, against the natural law. The law of nature, then, does not in any case prescribe the state of slavery, as something good and useful; but natural law permits it, under circumstances and conditions which will be described; and thus the lawfulness of slavery is deduced indirectly from natural law.

Prior to the rise of Christianity, slavery appears to have existed in all nations, and to have been authorized as legitimate by every race of mankind. The type of human civilization undergoes changes, whether by rising or falling in its standard of perfection; and there are numerous signs that the nations of the earth, very soon after their original formation, all rapidly sank below the manners and customs, and the correcter ethical knowledge, transmitted to them from Noe. At the present day, more humane sentiments prevail among nations in regard both to instituting the state of slavery, and its continuance where it actually exists. This change for the better is mainly due, it cannot be doubted, to the gentle yet strong moral influence of Christianity; by which the master has been gradually elevated to nobler conceptions of man's natural dignity, and the enslaved have been progressively fitted for manumission, and prepared to enjoy their liberty rationally. During the long dark night of pagan rule over the human mind and civil society, the family, which comprised the child, the woman, and the slave, was the property of the man; and he was its tyrannical master.\* He alone was recognized by the public authority as having any rights before the law; for he alone was a citizen, and he alone was a unit in the body politic. The Christian church arose, and taught that the child, the woman, and the slave, all have equal right with their human lord to redemption and heaven; that the Christian laws and sacraments, are for all ranks of society equally: doctrine which presented a new idea of the family. This work then begun, of overthrowing the old but degenerate system of

\* The fact that some Pagan nations, as the Spartans and the Persians, treated the child as public property of the government, is not a substantial exception to this statement.



the family and social life, is not yet wholly finished, nor is it equally advanced among all peoples; for, the progress of great truth is slow, and it is hard to eradicate prejudices and customs that are old and wide-spread. Since the condition of the child and its mother was somewhat less debased than was that of the slave, they were sooner disenthralled than the slave could be.

Is it to be affirmed, then, that the state of slavery is *per se* unjust? In answer, it will be proved that,

The natural law does not simply and absolutely prohibit all slavery; or, the state of slavery, is not intrinsically opposed to natural equity.\*

Civil society, through its supreme authority, has the right, in self-defence, to punish certain enormous crimes with death to the culprit; but the enslavement of a criminal for life is a milder penalty than is that of death; therefore, for a still stronger reason, can society punish such criminal with slavery at hard labor for life.

By similar reasoning, in all those cases in which prisoners taken in just war can be legitimately put to death, *a fortiori*, they can be subjected to the lighter sentence of slavery for life. This argument indicates the reasoning by which the nations of old justified the first introduction of slavery; and admitting, as we must, that the laws of war then in force legitimately authorized the slaughter of prisoners taken in just war, their reasoning was perfectly logical and consequent. The wives of the soldiers should, in such case, naturally share the condition of their husbands, it was agreed, and thus they became bondwomen.

It must be observed, however, that the present laws and usages of war as agreed upon by civilized nations, forbid the execution of prisoners, except in case of extreme necessity; as, when such means is strictly required for self-preservation.

\* "Servitus ex quadam æquitate introducta est ex jure gentium." Because. Slavery was introduced with a species of equity by the common law of nations.

Also, the reducing of prisoners to slavery, is now forbidden by the laws of war.\* It would seem to follow, then, that by the present law of nations, the state of slavery, which is perpetuated from parents to children cannot now originate or begin anew, in a nation that has no slavery. If so, under what legitimate title could people that are free be now made slaves? It is now conceded that superiority in power and intelligence can found no right to enslave a race that is weak and unenlightened. It was once admitted that persons could become slaves by their own free choice; as, for example, when this was done by one in order to secure a permanent home and certain means of living. Such contract was not right nor valid, however, when prohibited by the laws of the nation.

Although a right to personal liberty may be validly founded on prescription, yet, one person cannot acquire ownership over another as his slave, by right of prescription; or, there can be no right of prescription against the personal liberty of any man that is otherwise free.† This principle, which was also a rule of the Roman law, seems to be a necessary deduction from natural equity; for, it is not reasonable that a boon so sacred and precious as is personal liberty, should be forfeited merely by prescription. At the best, a right of ownership which is purely prescriptive, is not founded on simple commutative justice; but it rests on certain respects of expediency and general utility, which are conceived by jurists to supply for the deficiency of strict justice in some mat-

\* For the present laws of war generally agreed on by nations, and which govern the matter in question, see Vattel, "Law of Nations," Bk. 3, ch. viii; or, Wheaton's "Elements of International Law," Part IV, ch. i.

† "Servitus mere personalis, quæ debetur personæ a persona, nullo tempore præscribi potest. Ratio est, quia æquitas non patitur hominem liberum fieri servum ex errore opinionis; servus tamen præscribit libertatem contra dominum." Becanus, De Jure, ch. ix. qu. 9. Merely personal slavery, which is due from one person to another, cannot become prescriptive by any lapse of time. The reason is that equity does not suffer a free man to become a slave through mere error of opinion; a slave may, however, acquire his liberty by prescription against his master.

ters.\* Against those goods which are the most sacred, precious, and necessary among all the goods of man, it is admitted that there is no prescription: v. g., there can be no prescription against one's life, peace of conscience, etc.; and of this kind is, personal liberty, which, therefore, cannot be taken away, merely by right of prescription. Yet, on the other hand, it might happen that the circumstances, under which a race is still detained in slavery that by its origin was unjust, would be such that the master himself could not change their condition without causing greater evil; and thus slavery might actually become, as regards the individual master, the less of two evils.

It was always a rule, wherever the state of slavery was introduced, that the slave offspring inherited the condition of the mother; if the mother was a slave, the child was a slave, even if the father was a freeman; and if the mother was free, her child was thereby free; hence, it was an axiom among the old jurists, "*partus sequitur ventrem*;" i. e., the condition of the child, as free or not free, follows that of its mother. In practice, this is a necessary rule; for, the children of slave mothers could not, especially when there is a large number of such mothers enslaved for life, have the rights and immunities of freedom; nor, *vice versa*, could the children of free mothers be, in practice, treated as slaves: and thus the condition of slavery was transmitted from parents to their offspring.

To the foregoing statements it might be objected that "all men are naturally equal; therefore, it cannot be rightly said that one is born a slave."

It is true that "all men are naturally equal," in all those things that are essential to man when he is considered specifically, or in the abstract. All men are naturally equal, in the

\* For example, according to the civil law, when land is acquired in good faith, and held in good faith during a certain period of time, no one disputing the title to it, these circumstances found prescriptive right of ownership in such property, though in fact it actually belonged to another before: this is a right which is founded on equity, and not on strict commutative justice.

sense that all have the same nature, all are destined for the same ultimate state or end, with the same essential means to it. But when we consider men as actually related to the various circumstances and concrete particular things around them, they are not all equal, in respect to those things; men differ in health, talent, temporal goods, inheritance, and all those particular things that accede to men as individuals. Hence, to be a slave by birth, is not against natural right, when the mother is legitimately a slave; any more than it is against natural right for one to be born poor, of plebeian parents, of feeble body or mind, etc., for, as regards these things which are extrinsic to man's nature, he is born to the rank, circumstances, or condition of his parents. Hence, in what is essential to human nature, all men are born equal; in what is extrinsic and accidental to human beings, men differ, and all are not equal as to such things.

“All the proofs given in justification of slavery, constitute but a sorry argument; and since it is not demonstrated that slavery ought to exist, it should rather be said that slavery is against nature.”

It cannot be demonstrated that slavery ought to exist in any nation; for, nature does not prescribe slavery; but it is shown that slavery may be legitimate, under some circumstances; or, that slavery is not simply or absolutely prohibited by the law of nature. Its existence, then, as legitimate, is proximately from human law as not opposed to the natural law; and it is in this sense that it was said to be derived indirectly from the law of nature.

## CHAPTER IV.

### OF CIVIL SOCIETY.

#### ARTICLE I.

##### NECESSITY OF CIVIL SOCIETY.

The social state is natural to man ; and, by consequence, the civil or political state is also natural to mankind, since a multitude of human beings could not live in a social state, unless they be united into a body politic.

In order to affix a precise meaning to the term "natural," as here used, observe that the word "essence" expresses all those invariable and immutable constituents of a being without which its existence is not possible or even conceivable. "Nature," in its first and most proper sense, expresses the essence, as empowered to operate ; for, every being, in order to act, must possess the requisite properties and powers that fit it for action : now, when a being is considered as having both what is necessary for its existence, and for its own proper or specific action, it is, under that respect, a *nature*.\* We may say with propriety, therefore, that action, inclination

\* "Alio modo dicitur natura quælibet substantia, vel quodlibet ens ; et secundum hoc, illud dicitur natura rei quod convenit ei secundum suam substantiam, et hoc est quod *per se* inest rei." I. 2 p., qu. 10, a. 1. A substance or a being is said to be a nature in another manner ; thus, that is called the nature of a thing which agrees with it according to its substance, and this is that which is said to be *per se* in a thing.

"Aliquid potest esse naturale dupliciter ; uno modo secundum naturam speciei, sicut naturale est homini esse risibilem ; alio modo secundum naturam individui ; sicut naturale est Sorti vel Platoni esse aegrotivum vel sanativum secundum propriam complexionem." P. I. 2, qu. 51, a. 1, in c. Any thing may be natural in two manners : first, according to the nature of the species, and thus it is natural to man to be *risible* ; secondly, according to the nature of an individual ; thus, it is natural to Socrates or Plato to be sickly or healthy, according to the character of his bodily constitution.

to act, power to receive action, are *natural* to every substance. But a thing may be predicated as natural to a being in different senses, and in very different degrees of necessity; v. g., something may be predicated as natural to man, because it is an essential constituent of his substantial being; \* as when we say, "it is natural to man that he has a soul," or "a body;" in this case, we predicate what is *per se* necessary, by way of essence or part of essence. Again, we may say that † "risibility and the faculty of rational language are natural to man;" in which instances, we predicate what is *per se* necessary to man, by way of properties or attributes, which are the complements of his being, flowing from his essence, and indispensably required in order duly to fit him for action. Finally, we may say, "it is natural to man that he seek the company of other men; that he live in society," etc. In this case, it is manifest that we predicate what is *per se* necessary for men in general or as a species; though not, as happens with the two predicates that precede, declaring what is intrinsic, essential, or *per se* necessary, as regards every individual man under all circumstances and hypotheses. Since the social state is natural to man partly on account of his specific nature as a rational animal, and partly on account of reasons which regard men individually considered, it is not impossible that this or that particular man might live solitary, on account of reasons that are special to him.

When it is affirmed, then, that the civil social state is necessary or natural to man, it is meant, that man's nature requires as necessary for him specifically, or for mankind generally, ‡

\* "Prædicatum *per se*, idem est ac prædicatum non contingens." The predicate *per se* is the same thing as a predicate that is not contingent.

† "In contingentibus sicut naturalia et res humanæ, sufficit talis certitudo ut aliquid sit verum in pluribus, licet interdum deficiat in paucioribus." P. I. 2, qu. 96, a. 1, ad 3. In contingent matter, as are physical agents and human affairs, certainty is sufficient for us when anything is true in most cases, though it happen to fail in a few instances.

‡ "Homo magis est naturaliter conjugale animal quam politicum; sed homo est naturaliter animal politicum et gregale." Div. Th. cum Aristot. Man is more inclined by his nature to conjugal life than to civil life; but men are naturally civil and gregarious.

that they live in a civil or political state; but yet, it is not impossible for this or that individual man, under special conditions, to exist and act naturally, even if not a member of the body politic.

In order to apprehend the proofs of the thesis, "The civil social state is natural to man; or, man is naturally ordained to live in civil or political society," as perfectly conclusive, attend to the force of the principle according to which all such truths must be demonstrated; namely, we know the nature of no being, except so far as the action\* of that being manifests to us its nature. For example, we come to know what "magnetism" is, only by ascertaining, through experiment and inquiry, what its action is; we are aided also in determining the limits of its nature, by learning some species of action which it has not; which is to know indirectly what it is. Our knowledge of "magnetism" is then enunciated in positive and negative propositions, which describe or define its nature. Similarly, we find the proofs that man is naturally destined for society made evident to us, by the actions and inclinations which manifest his nature to us.

The proof: Those things in which all men agree, as a species,† or which are substantially identical in all men, are natural to man; but all men as a species agree in those things which render civil social life necessary for them; therefore those things are natural to man. It will be seen that, by consequence, man being naturally social, "naturaliter animal gregale et politicum," is ordained by his nature for civil life.

Man is naturally ordained, then, to live in civil or political society, because, first; neither is the individual man sufficient for himself, nor is the family able to sustain and protect itself

\* "Modus agendi sequitur modum essendi." Manner of acting follows the manner of existing.

Hence, when we know the nature of a being's action, we may conclude from it to the being's own nature or essence.

† "Non enim omnes homines conveniunt, nisi in eo quod est eis naturale." P. 2. 2, qu. 57, a. 3. All men do not agree except in what is natural to them.

independently of other families around it : therefore, mutual support is necessary for human beings. Nature clothes the brute or irrational animal, by the operation of purely physical law ; its senses and natural instinct direct it to the objects that supply all its wants, as regards food, rest, medicine, etc. Man's guide in such things is not any natural instinct ; but it is reason which can learn what is best for food and raiment, for health, remedy of disease, etc., only through the experience of many persons.

Secondly, the faculty of language,\* by which knowledge and experience are mainly acquired, diffused and transmitted, indicates clearly that nature intends men to live in community, since this gift would otherwise lose its principal end and value.

Thirdly ; man, unlike the irrational animal, is perfectible, not only as an individual, but the human species is also perfectible, by means of increased experience and knowledge. This fact that the human species is perfectible because man is a rational animal, is itself a conclusive proof that nature intends the perfection of the human species, as an end ; for, nature bestows no good gift in vain. But the human species cannot tend to its own perfection, except by means of that union which constitutes human society. It follows, then, that society is necessary for man, because he is perfectible, and he can attain his greatest perfection only when he is in society.

Fourthly : man's strong inclination to live in society, to seek the companionship of his fellow men ; nature gives no strong inclination which has not a proper object and a commensurate end. Hence, man's natural love of society and horror of solitude, which are innate in him, furnish striking proof that he is naturally designed for society.

Fifthly : man's capability of rational love and works of benevolence and generosity, also indicates that he is made for a social state ; his noblest virtues both of intellect and heart

\* Capability of using language is peculiar to rational beings ; it is in this meaning that Homer often repeats such expressions as, “ γενεαὶ μερόπων ἀνθρώπων ; ” generations of word-dividing men. *Iliad*, lib. I, line 250.



or will, v. g., wisdom, science, art, love and the virtues that spring from it, can, in the very nature of things, have their most perfect exercise and reach a high degree of development, only in the society of his fellow men.

We may justly conclude, then, that man is intended by nature for the social state; and this truth derives further confirmation from the fact that mankind have always lived in more or less perfectly organized society.

Conceding the explanations and reasoning above given to be correct, a brief statement will suffice to refute the theories advanced by Hobbes and Rousseau, regarding the primitive and natural state of mankind.

According to the doctrine of Hobbes, the natural state of man is that of warfare. Admitting man's natural condition and occupation to be that of war, we must, by consequence, grant that man naturally hates his fellow men, or that he is, by his nature, a misanthrope; that, by the law of his own nature, he must abhor peace; that is, he must love the things that are of war, or lead to war, and hate the things that pertain to peace. The consequences follow necessarily, if we assume it to be true that war or warfare is the natural and only congenial state of mankind. But these consequences, considered in themselves, are simply and evidently false in fact; man's nature and inclinations tend to peace; and it is only as a necessary means to peace or security, that war is generally admitted to be at all justifiable.

According to the hypothesis of Rousseau, man's natural state is that of the wild animal in the forest; or, he is, by his original nature, a wild man of the woods. In the still more fanciful theory of Rousseau's contemporary, Lord Monboddo, man's primitive original nature was that of the monkey. These wild and gratuitous assertions were, perhaps, sufficiently replied to at the time when they were first advanced, by the celebrated Doctor Johnson, who, in his own characteristic style, said to Boswell, "Sir, Rousseau *knows* that he is talking nonsense, and laughs at the world for staring at him. But I am afraid Monboddo *does not know* he is talking nonsense."

Whether Rousseau was in earnest or not in proposing his hypothesis, it is certainly a fanciful one. All that can be said in its favor is, it is purely a hypothetical manner of explaining the primitive condition of mankind and the origin of civil society, for the truth of which no conclusive fact or principle can be alleged. It belongs to the domain of philosophy to argue *a priori* the question, "was man originally created from nothing?" and it can be proved demonstratively that man must have been created from nothing, as to his soul or spiritual part. But the question as to whether one man and one woman, or many couples were originally made, and as to what was the precise state of the first rational creatures, are matters which it is the office of history or revelation to settle, since the whole is an inquiry concerning contingent facts which cannot be determined by *a priori* reasoning, because they could have been accomplished in divers ways. We actually know, on testimony which founds perfect certainty, that all mankind are descended from one couple as first parents or progenitors; and the testimony of the Bible to the unity of the human race is corroborated for us by legitimate conclusions from ethnology and comparative philology.

But abstracting from our positive knowledge of the historical facts, and reasoning only from the nature of things, we must reach the conclusion that a number of human beings created and placed without knowledge or language in the forest, would possess little more ability than infants to provide for their own wants. Under this respect, they would be greatly inferior to the brutes around them, which are guided by instincts naturally implanted in them; and it would be physically impossible for them to survive, unless they were preserved under some special providence; which, however, the theory does not suppose. The system of traditionalism, asserts that man can acquire no idea, and learn no truth, except through the ministry of oral terms; for, it holds, there can arise no thought in the understanding, except as expressed by a name in language. While this hypothesis affirms too much, and is therefore false; the other extreme is

equally untrue, that the human race, beginning as wild men in the woods, without any experience, and without infused knowledge, could continue to subsist, and could, without being aided, form for themselves articulate language.

It was seen in the preceding chapter that man is a social being, primarily by his origin as a member of the family; and that his first relation to other persons is that which he has as a member of the family, in which he had his origin. The arguments adduced in the present article prove that it is natural and necessary for the families of mankind to live in society. It follows by a further inference that the social state which is thus necessary for mankind in general, is that of civil or political society. For, the end\* of society, in the very nature of things, is the common good of all its members; and that common good cannot be attained, unless the multitude composing the society be united under the direction and government of authority, or power of jurisdiction that is supreme over the entire community.

Supreme authority of jurisdiction is that power in the person, or in the moral body, that is superior over the whole community, in virtue of which such head or superior is able to make and enforce just laws for maintaining the common good. It was already shown that all just law has for its essential end this common good; it may now be rightly said that supreme authority in the civil community, or body politic, is also a means that is ordained to the common good, as its essential end.

\* Here distinguish between an end that is relatively ultimate, and an end that is simply and absolutely ultimate. The end of all things, that is simply and absolutely ultimate, we must place in God, the first cause of all that is. An end is relatively ultimate when it is ultimate in its own order, or is the one to which all the other ends in that series are subordinate; for example, in human society the end of its civil law or polity, which is relatively ultimate, is the welfare of the community, or the common good of the people.

## ARTICLE II.

HOW GOVERNMENT BY SUPREME AUTHORITY IS NECESSARY FOR CIVIL SOCIETY. WHETHER THE INDIVIDUAL PERSON, OR THE FAMILY, IS THE UNIT OF HUMAN SOCIETY.

The necessity of government for civil society will be more clearly and satisfactorily understood, if we consider the whole matter in the light of first principles.

Could a nation of human beings exist, by any hypothesis, without authority in a visible superior ruling over them? It was not intrinsically impossible for the Creator,\* by choosing another providential dispensation from the beginning, so to order and perfect man's rational nature with knowledge of the true and the good and with rectitude in his reason, that man would act with faultless wisdom and uprightness in all things regarding himself, his neighbor, society at large, and God. In other words, God could, if he so chose, make rational beings who would be subordinate to him through their own rational nature, without any intermediate ruler between them and Him, and they would thus tend to a common end, without the ministry of a human ruler. In such hypothesis, however, man would not be created a perfectible being, but rather a perfect one; such state would rather be the ultimate term of his being, than that of tending to it by the acquisition of the intellectual and moral virtues, and thus perfecting himself for a final state of existence.

Again; we may suppose man's nature to be made *integral*, as it is expressed; but that under other respects he still has it in his power to perfect himself: or, we may even suppose that he possessed the additional prerogatives constituting *the state of innocence*: would civil government and positive laws

\* For a brief, clear and accurate explanation of the different states in which man's nature can be conceived to have been created, or constituted, see Becanus, *Summa Theologiæ Scholasticæ*, De Auxilio Gratæ, Disput. II.

be necessary, in such conditions of human nature, for a multitude of mankind living in society?

Man's nature would be *integral*,\* according to the sense generally attributed to the term, if, besides having all his members and powers complete, that is, his rational and organic powers, his stature, strength; all the properties and qualities of his nature perfectly balanced and proportioned, thus fitting him to tend with facility towards his final state or ultimate end; if, besides all those perfections, he had this in addition, namely, freedom from all struggle or opposition arising from his sensible appetites, and from all sensible inclinations that are against the decision and choice of the superior rational power. It follows, then, that, in the state of integral nature, all the passions would be promptly and exactly obedient to the will; and that they could not, in their action, anticipate the choice of the will, nor ever incline man to what is contrary to his wishes. As thus gifted in his nature, it would, however, still remain for man to perfect himself as a rational being, capable of moral action.

The *state of innocence*, considered as something within the limits of nature, or apart from the supernatural order or the order of Grace, includes over and above the prerogatives of the *integral state*, immortality of the body; freedom from involuntary error; the gift of impassibility, or exemption from pain or suffering. Whether man were in the state of integral nature, or in that of innocence, he would nevertheless live in society; for, man is by nature a social being. It would still be his duty to perfect himself for his final condition of existence, or for his ultimate beatitude; but yet, he would have it

\* "Sicut status naturæ integræ præcise sumptus non dicit ordinem ad finem seu beatitudinem supernaturalem, ita nec status innocentiae, cùm privilegia omnia quibus continetur sine ordine ad hunc finem divinitus conferri possint." Becanus, De Auxil. Grat. Disput. I, qu. 3, Art. IV. As the state of integral nature precisely considered does not say reference to an end or beatitude that is supernatural, so neither does the state of innocence necessarily suppose such ultimate end, since it would not exceed God's power to confer the privileges peculiar to that state of innocence without ordaining man for a supernatural destiny.

in his power to avert from God as his ultimate objective end; for, he would not be impeccable. Man's need of direction and government under superior authority, in such case, would arise from this; 1st, that he would be in the state of tending to his ultimate end; 2d, he would be liable, even in those favored states, to fall away from duty; 3d, in those conditions of his nature, he would remain a social being.

It may be affirmed, then, that civil government would be necessary for mankind, even in the state of innocence, which includes the prerogatives or perfections peculiar to the state of integral nature, over and above those that are proper to itself.

Mankind in such a state of existence would require government and law as *directive*, in what is necessary for the common weal, as the proofs that are to follow will show; but law as *coercive*, could then scarcely become necessary for man,\* owing to the perfect subjection of his passions and inclinations to the superior powers of his rational nature, in such a state.

Many different persons necessarily intend many different

\* "Tunc dominatur aliquis alteri ut libero quando dirigit ipsum ad proprium bonum ejus vel ad bonum commune. Tale dominium fuisset in statu innocentiae: primo, quia homo naturaliter est animal sociale, unde homines in statu innocentiae socialiter vixissent. Socialis autem vita multorum esse non posset, nisi aliquis praesideret qui ad bonum commune intenderet. Secundo; multi *per se* intendunt ad multa, unus vero ad unum. Hinc philosophus: quandocunque multa ordinantur ad unum, semper invenitur unum principale et dirigens. Tertio; quia unus homo habuisset super alium supereminentiam scientiae et justitiae, et inconveniens fuisset nisi hoc exequeretur in utilitatem aliorum." 1 p., qu. 96, a. 3. One person governs another one as a free man when he rules for the good of the governed, or for the common good. There would be such government in a state of innocence: first, because man is naturally a social animal, and hence, man in a state of innocence would live socially. But there could not be social life of many, unless some one were over them to intend the common good. Secondly, many persons necessarily intend many things, but one person intends one thing. Hence, the philosopher says, when many things are coordinated to one, there is always found one thing that is principal, and directive of them. Thirdly, because one man would have superiority of knowledge and justice over another, and it would be inconsistent if this superiority were not employed for the advantage of the others.

things; for, just as the persons differ individually, so will the objects which they intend, differ among themselves. Each member of society, even in the state of innocence, would, by the law of his nature, be principally and primarily concerned only about those things that would pertain more or less immediately to himself, to his own welfare; and he would care only in a secondary and accidental manner for what regards the community at large. Yet, the common good far exceeds the good of any one person; hence, the axiom of the schools says, "*bonum multitudinis est majus et divinius quam bonum unius.*"\* It follows, then, that if there were no supreme authority or director of society or the multitude, the principal and most necessary good, which is that of the whole community, would be intended only as an end that is secondary and accidental, even if it were intended in any manner at all. Therefore, it would be necessary that some person or body of persons should have the special duty, and the power, to intend the common good of the whole community and to provide for it efficaciously, as a principal end.

Again, it is evident that the end which is ultimate for civil society, and which must be dominant over the entire multitude, is the common good; but, in order that there should be unity of action in tending towards that end, there must, in the very nature of things, be some one ruling principle that moves and directs all the members of the community to that end; and this can be done only by authority and law that are supreme over such community. Hence, society can not exist as such unless it have unity of action in respect to its essential end; and it cannot have this unity of action and tendency, except through some principle that is one, and acts alike on all; and, finally, this principle can only be that authority which intends the end that is common to all the multitude, and positively directs all the citizens to its attainment.

We may conclude that government and law would be necessary for man, even if he were in the state of innocence;

\* The good of the whole multitude is something more divine than is the good of one person.

because he is naturally a social being, who would be tending to his ultimate perfection or beatitude, from which he, not being impeccable, would be capable of averting his choice and action. A society of mankind necessarily requires government and law both as the bond of its union, and as the directive norma of its action.

For still greater reasons are supreme authority and government necessary for mankind, as men are now actually constituted.

There are additional and special reasons on account of which mankind as now actually constituted require government and law. The principal cause of this greater necessity, is in the fact that, instead of the passions and sensible inclinations of the human compound being subordinate to reason in man, as he actually exists, those principles of his nature now anticipate the decision of reason and the choice of the will. It follows, then, that owing to the manner in which man's nature is now ordered, in respect to those inferior principles of action in him, the control of his passions is oftentimes a difficult work for him. Since men are prone to crimes and disorderly action, the injustice, violence, and various vices and excesses of evil citizens, would destroy the peace, security, and well-being of the community, and render the very existence of human society impossible, unless there ruled over it some supreme authority, whose laws possessed the two-fold virtue of being both *directive* and *coercive*; or, in other words, unless there was over it a superior power which would be fully competent to enact just laws, and to compel obedience to them.

The question may be now appropriately asked, what is the unit or component of human society? Is this unit or component, the family; or, is it the individual person? In other words, it is now to be examined whether the individual person, or the family is the subject of law, of right and duty.

In order correctly to answer this question, it is necessary to distinguish different respects under which human society may be considered. First: we may regard the entire human race as one society, whose members have the same rational nature,



and who are all subject to the natural law: since the natural law is published immediately to each individual reason, the unit of the human race as directly and immediately bound by the natural law, is the individual person. Secondly: we may consider the family,\* of which the parent is the natural head; it is plain that the unit of the family is the individual; since it consists only of individual persons. Thirdly: we may consider the body politic, or civil society; under a certain respect, the family is the unit of civil society; but ultimately and essentially, civil society intends the good of all its individual members as its end. † Supreme authority in the civil community, governs mainly and proximately through the heads of families, because it is necessary, in the actual order of things, thus to apply most laws to the community; when we regard the laws as directed proximately to these heads of families, the families may be considered as, under that respect, the units of civil society. Laws that have for their proximate end the necessary rights and duties of individual persons, are not concerned with the family except *per accidens*, or indirectly; for example, the law is directly defensive of the minor's person against any unjust aggressor, even its own parent.

It may be concluded, then, that families are under a particular respect, the units of civil society; but simply and ultimately, those units are the individual persons that make up

\* It is manifest that if we regard mankind only in a material sense, most persons are members of a family; for, as, a fact, every one is born in the family; and nearly every one remains, under some respect or other, an actual member of the family. We may say, then, that the material components of human society are families; but we can also, with as good reason, say that individuals are such components.

† “Est de ratione legis humanæ quòd ordinetur ad bonum commune civitatis.” P. I. 2, qu. 95, a. 4. It is of the essence of human law that it be ordained for the common good of the State.

The end which is essential to law is the common good of the community, not only as a collection, but as taken distributively; otherwise, law would have for its end only an abstraction; for, the common good, except in so far as it is realized in the individual members of the community, is only an abstraction.

that society. Also, if the family were simply and ultimately the unit of civil society, then the civil authority could directly reach and govern only the heads of families ; by consequence, these heads of families should have supreme political authority over their own households, whereas it was already seen that the parent has only economic authority over his own family.

According to a theory followed in practice by some pagan nations of antiquity, only the head of the family was a citizen : the members of his household were his property, and he had over them even the power of life and death. While such system is false in principle and unjust in practice, it is, on the other hand, true that there are rights and duties of parents immediately and necessarily relating to the maintenance and education of their children, which are derived by them from the natural law, and which, therefore, are not derived from civil law, any more than they can be rightfully abrogated by civil law.

The natural defender of the child's rights against the unjust parent by whom it is totally neglected and abandoned, or would be gravely injured in its rights as a member of the community, or would be destroyed, is the civil authority ; since it is for such ends that the civil authority is naturally ordained. By the Christian or supernatural dispensation, the Church has the right divinely given, of requiring that the children of her fold be duly educated through her ministry, in what pertains to faith and morals. This right of the Church is not opposed to the power conferred by nature on the civil government ; but on the contrary, it is perfective of the civil order.\*

\* There is a respect under which the family may also be considered as the unit of the Church ; namely, in so far as she governs through the heads of families ; but, simply and ultimately, the individual is the unit of any society.

## ARTICLE III.

## ORIGIN OF AUTHORITY TO GOVERN CIVIL SOCIETY.

While the different kinds of irrational animals are united into herds and flocks, and are directed in their gregarious action, by principles which are only physical and mechanical in their operation; rational animals, or human beings, who judge and choose, must be united and directed, by a principle that is rational and moral in its action. It is evident that the principle of union must be according to the nature of the beings united; in the brute, this principle is mere animal instinct, while in man, it originates as a dictate of reason; and it is through such dictate of right reason that authority to direct and coerce, comes naturally and necessarily to human society.

This authority may be regarded, under different respects, both as a formal, and a material principle in human society; it is formal, as being an active constituent of society by holding it united, and empowering it to govern its members; it is material, in respect to its end, which is the common good of the community or society, since a means is related to its end, as matter is related to form.\*

Authority may be considered either as it is in itself absolutely and *a priori*, under which respect, it, like all good things in their origin, is immediately from God. Or, authority may be considered as a moral faculty actually existing in human society; under this respect also it originates from God, who has so constituted things that it arises naturally and necessarily in human society, for its preservation and welfare; hence, as the natural law, that is implanted in man's reason, is from God,

\* "Finis comparatur ad id quod ordinatur ad finem, sicut forma ad materiam . . . sic rectitudo voluntatis est quasi materia; beatitudo perfecta est forma." P. I. 2, qu. 4, a. 4, in C. The end is compared to what is ordained for that end, as matter to form. Thus, rectitude of the will is quasi matter; perfect beatitudo is the form.

so is that authority with which human society is naturally endowed, also from God. Or finally, authority may be regarded as it is in the person that rules over the community. Concerning authority as considered under this last respect, supposing the government of a nation to be now first organized by the people, and that they are left to act naturally or without any special Divine intervention, the question may be asked; from whom does the ruler proximately or immediately receive his supreme authority; from the people that choose him to govern in their stead, or directly and immediately from God? \*

It has commonly been taught in the schools, especially since the time of the great Angelic Doctor, that civil authority is received by human society immediately from God; but the person that rules over civil society, receives his supreme authority to govern, immediately from the people, and mediately, or through the people, from God. This thesis enunciates the true and sound doctrine concerning the origin of civil authority, as will be shown.

In order precisely to apprehend the scope of the proposition, observe that civil authority is here spoken of as to its ordinary and natural origin; or, its origin in the nature of things. By a special and supernatural providence, as in the case of Saul, authority may come to the ruler immediately

\* "*Dominium et praelatio ex jure humano introducta sunt.*" P. 2, 2, qu. 10, a. 10, and qu. 12, a. 2. Actual and exclusive ownership of property, and superiority in authority of a particular person over a multitude of persons, are from human positive law.

"*Ordinare aliquid ad bonum commune, est vel totius multitudinis, vel alicujus gerentis vicem totius multitudinis.*" P. 1, 2, qu. 90, a. 3, in C. To ordain anything for the general good is the office either of the whole multitude, or of some one holding the place of the whole multitude.

"*Qui (princeps) non habet potestatem condendi legem, nisi in quantum gerit personam multitudinis.*" P. 1, 2, qu. 97, a. 3, ad 3. He (the ruler) has not power of making law, except in as much as he bears the person of the multitude; that is, he has power to legislate only in so far as he represents or impersonates the community intrusting him with his authority to act for them.

from God, and not naturally, or by means of a transfer made by the multitude.

Before advancing reasons in proof that the thesis declares the only manner in which civil authority naturally originates in human society, it will help towards a clear understanding of the whole matter, first to give a brief account of the opposition made to it by different classes of thinkers, especially within the last three centuries. It appears that the first influential opponent of this doctrine was Louis of Bavaria: \* he maintained that kings receive their authority to rule immediately from God, and not through the medium of human society; at the same time engaging able scholars to defend this opinion with learned arguments.. His aim, it would seem, was to prove that the Roman Pontiff had no power to depose him; he argued that what God himself directly and immediately bestows, cannot be taken away by any earthly tribunal. Despite all that was said in proof that his authority, like that of the Pontiff to rule over the Church, was immediately from God, he was, nevertheless, deposed by Clement VI. James I, of England, more than a century later, wrote a work in which he maintained the "Divine and indefeasible right of Kings"; or, that their power comes to them immediately from God, not through the medium of the people; and that "the King † can do no wrong." The learned Spanish Jesuit, Suarez,

\* "The notion of the divine right of kings had been promulgated in England previous to the time when Fortesque wrote. A parliamentary title to the throne, however, became established on more than one signal occasion. . . . Neither did the opinion of a divine and indefeasible right in kings make much progress, until a comparatively late period." See "De Laudibus Legum Angliæ," by Sir John Fortesque, chancellor to Henry VI, ch. xv, with notes by Andrew Amos: published by Robert Clarke & Co., Cincinnati, 1874.

Sir Thomas More maintained, in spite of the tyrant, Henry VIII, that the king held his crown by parliamentary title. See Lives of the Chancellors, by Campbell.

† "The right Divine of Kings *to govern wrong*," is the witty and expressive language in which the poet, Alexander Pope, condemns as absurd this opinion defended by King James.

in his work, "Defensio Fidei Catholicæ," lib. 3, answered King James, declaring the opinion defended by him to be novel and singular; and that it appeared to have been devised in order to exaggerate the power of temporal rulers, and to lessen the spiritual power of the Church. This theory of King James, which is a consistent argument for cæsarism or absolutism, was defended both in England and in Germany, till it was found by those who preferred juster notions of the common good, even to favor at court, that the giving of absolute and inamissible authority to fallible kings, not merely lessened the power of the Church: it also destroyed the just rights of the people; and, therefore, that the theory of "the Divine and indefeasible right of Kings," under this respect, at least, *proves* too much.

In France, Louis XIV propounded substantially the same notions concerning kingly authority; "L' état c'est moi;" I am the state. There were not wanting at his service courtly philosophers of learning and ability to defend this claim of absolute power, as of Divine right; and to denounce any contrary opinion as unchristian. They argued that the supreme civil authority must come immediately or proximately from God to the temporal sovereign, since the opposite doctrine would authorize revolution at the choice of the people; whereas, that which God himself gives immediately, no earthly power can take away, for any cause. They cited in their favor the text from St. Paul, Rom. xiii. 1; "There is no power but from God:"\* and, had it been authoritatively and defini-

\* On this text Cornelius à Lapide expresses what may be regarded as the doctrine generally taught in the Christian schools, and he proposes it as if undisputed: "Potestas sæcularis est a Deo mediate, quia natura et recta ratio, quæ a Deo est, dictat et hominibus persuasit præficere reipublicæ magistratus, a quibus regantur: potestas vero ecclesiastica est a Deo instituta — est immediate a Deo." Secular power is mediately from God; because nature and right reason, which are from God, dictate and persuade men to place over the commonwealth magistrates by whom they are governed; but ecclesiastical power is immediately from God, by Him immediately was it instituted. See also Wirceburgenses, de Sacram. Ord., no. 33, p. 327.

Similarly Billuart, Dissert. I, a. 4, De Leg., explains this text as applied to civil and spiritual power; as do authors generally.

tively settled that the Apostle therein teaches a'l power to come *immediately* from God to the civil ruler, his words would have long since decided the dispute, at least for Christians.

At the present time, few minds belonging to any school of thought, believe in the "divine and indefeasible right of Kings," or that the temporal ruler derives his authority immediately from God, and not mediately or through the people. There are many at this day, to be sure, who strive to magnify the prerogatives of the civil power, and to diminish those of the spiritual order; they do so, however, not by claiming that civil rulers derive their authority immediately from God; but rather that its origin is from the will of the people, and that the will of the people is the supreme and ultimate law of all human society. \*

Since the days of Rousseau, many writers, ignoring, or else positively denying, all Divine character or virtue in supreme civil authority, make of it merely the creation of that original pact by which the multitude agrees to become a body politic, or to live together as a civil society; not duly attending to the fact that authority and law, which are thus purely human in their first origin, and by their entire nature, can impose on the consciences of the people no obligation to obey.

Opposed to all these opinions concerning the origin of civil authority, is the sound doctrine, affirmed by Suarez† to be commonly taught and certain, "*sententia communis et certa*;" namely, that God gives authority to civil society immediately; society may either retain this authority, and

\* As before said, excited and passionate minds, and also minds of limited ability to distinguish and generalize, are apt to dispute by asserting universal contraries, both of which, in moral matter, are generally false. The theory of false liberalism, and that of cæsarism or absolutism, appear to be opposites or contraries of the kind described.

† "*Dicendum est ergo hanc potestatem, ex sola natura rei, in nullo singulari homine existere, sed in hominum collectione: conclusio est communis et certa.*" Suarez, *De Leg.*, lib. 3, c. 2, No. 3; et cap. 4, No. 2. It must be said, therefore, that this power does not exist, from the very nature of things, in any particular man, but it thus exists in a collection of men. This conclusion is common and certain.

govern itself democratically; or else make it over in trust to a ruler chosen by the people to represent the community, and to provide for the common good. But not otherwise can any one, except by special Divine intervention, justly and validly acquire this authority, than through the consent of the community, either proximately or remotely given, to the transfer of it from their hands.\* Nor does it by any means follow that because the civil ruler receives his authority immediately from the people, and, therefore, receives it only mediately from God, revolution in government at the mere will of the people is thereby authorized; in fact, the lawfulness or unlawfulness of revolution depends on a different order of reasons, as will be shown in a succeeding article.

Observe that we attribute to God as sole and immediate cause, † only those effects and operations that intrinsically, or

\*In defending this manner of explaining the origin of civil authority, against the innovators of their time, Bellarmine (*De Laicis*, lib. 3) and Suarez (in his answer to King James I, of England, and in his work, *De Legibus*), have treated this whole matter so ably and fully, that little is here said, or, indeed, can be said, on either side of the question, which may not be found well expressed by them.

“*Sequitur ex dictis, potestatem civilem quoties in uno homine vel principe reperitur legitimo, ex ordinario jure, a populo et communitate manasse, vel proxime vel remote; nec aliter posse haberi, ut justa sit.*” Suarez, *De Leg.*, lib. 3, c. 4. It follows from what was said that whenever civil power is found in one man or legitimate prince, by ordinary right it came from the people and community, either proximately or remotely; it cannot be otherwise possessed, so as to be just.

“*At jus divinum nulli homini particulari dedit hanc potestatem; ergo dedit multitudini.*” Bellarmine, *De Laicis*, lib. 3, c. 6, where he develops this conclusion. Divine right gave this power to no particular man; it, therefore, gave this power to the multitude.

† “*Creatio et justificatio impii, etsi a solo Deo fiant, non tamen proprie loquendo miracula dicuntur: quia non sunt nata fieri per alias causas, et ita non contingunt præter ordinem naturæ, cum hæc ad facultatem naturæ non pertineant.*” P. I, qu. 105, a. 7, ad 1. Though creation and justification of the impious are from God alone, yet they are not, properly speaking, called miracles; because they are not of a nature to be done at all by other causes, and thus they do not happen by exception to the order of nature, since these things do not pertain to the powers of nature.

The subtle intellect of Horace saw this truth, and he accordingly lays



at least actually, and as a fact, exceed the power of created nature. This rule is in accordance both with perfect prudence and sound philosophy. But it does not thence follow that miracles are the only immediate divine works; for, there are other works which are not miracles, and which, nevertheless, God alone can perform: the creation of human souls is not a miracle, and yet God alone can create from nothing. In such works, God may be said to act by way of a natural cause. Hence, the first cause is not to be introduced without necessity, or when the question is only of a principle that is first in an order or series of second causes.

Agreeably to the foregoing rule, we must not conceive God as conferring authority on civil society, by a special act distinct from his creation of men's rational souls, any more than we should conceive the natural law to be imparted to the human reason by any such special and distinct creative act. Such an act could not be known to us, except by revelation; just as it can be known to us only through revelation, that spiritual power is communicated to the Church by a supernatural act;\* but civil power is natural to human society, and, therefore, like the law of nature, its existence should be evident through the natural light of reason, or without the help of supernatural revelation. Hence, civil authority comes to human society, not in a miraculous or in a supernatural manner; but it comes naturally; or, like the natural law, through a dictate of right reason; when it sees that God, in providing what is necessary for man, must have conferred this power upon political or civil society: "*qui dat formam, et dat consequentia ad formam*"; to give a nature is to give also the things that must necessarily belong to that nature. When considering this authority under different respects, we may conceive it either as coming to civil society by way of an

down his rule for the plot of a drama: "*Nec Deus intersit nisi dignus vindice nodus Inciderit*:" Do not make God take part in the work, unless he alone can solve the difficulty.

\* Authority in the Church is not of natural origin; it comes through a special and supernatural providence.

essential property, or as a necessary consequence of man's nature, or as originating through a dictate of right reason.

Authority is, in itself, from God. That authority is, in itself, from God. is proved not only by its being naturally necessary for human society; for God alone can give existence or being to a rational nature, and to that nature's laws and properties; but also, its power to punish crime with the death of the culprit; its ability to bind the conscience, show a virtue in supreme civil authority which it could not possess, except as coming from God, for no purely human power can have any such prerogatives. Although that union of the people by which they become a body politic or form a civil society supposes a voluntary agreement among them; \* yet, the authority which is necessary for governing them, comes, not by their choice, or by their pact, as Rousseau erroneously asserts; but it comes in the very nature of things, and, therefore, necessarily. By consequence, authority is naturally and necessarily in the community, even if, by absurdity, the people willed to constitute themselves into a civil community, that would be intended by them to exist without it; so soon as they consent to unite and become a community, thereupon and consequently the authority is actually and immediately in that community.

We may consider a multitude of human beings under two respects; first, merely as a large collection or great number of men who, however, are not united together by any species of bond: in such a multitude of men, authority does not exist, except radically or potentially, as an effect may be conceived

\* "Prius est tale corpus politicum constitui quam sit hominibus talis potestas, quia prius esse debet subjectum potestatis quam potestas ipsa, saltem ordine naturæ. Semel autem constituto illo corpore, statim ex vi rationis naturalis est in illo hæc potestas—per modum proprietatis resultantis." Suarez, *De Leg.*, lib. 3, c. 3, No. 6. The body politic, or the community, must be actually constituted before there is in men such power; because the subject of the power ought to be prior to the power itself, at least in the order of their origin. The community being constituted, immediately, through a dictate of natural reason, this power is in it, by way of a permanent property.

to prëexist in the cause that can produce it; secondly, we may consider such multitude of men as having agreed, for the sake of securing their common welfare, to be united into one community; they thus become a perfect community, or a body politic; and it is as a community of rational beings that they are made capable of moral action that is regulated by law, and it is as such community, also that they constitute a subject that is susceptible of authority. By consequence of this agreement, and in the nature of things, they possess authority which is a necessary means for realising the common good; this moral faculty, authority, does not begin to exist by the mere choice or only through the will of the people; it originates by way of an essential property in the body politic, and it is published, like the natural law, in the dictate of right reason, and it is, therefore from the Author of nature. Hence, as all just law is derived from the natural law; analogously, when we consider the merely natural order of things, all civil authority that is justly acquired, is derived from that power to govern, which originates naturally and necessarily with the civil community, and belongs to it as a necessary means for it to subsist.

Political power or authority to govern, then, is naturally and originally in the whole community, and not in any particular person, since all are equal in this regard; and no one can acquire this authority, therefore, except by the agreement of the people.\* It will be conceded that it depends on the free choice of the people to determine whether they will exer-

\* Some have denied that this authority can exist at all in a community; they affirm that since the families distributively taken can have only "economic authority," so, when they are taken collectively, they can have no other authority. But this reasoning is not logical; and besides, even if admitted to be correct, it would prove too much; for, it would equally prove the impossibility of all corporate faculty or right, all common dominion, etc. The argument is not logically valid, since a multitude without any corporate unity is specifically different from one that is an organic body or community; and hence, illation from one to the other is not here legitimate. This is like to the sophism, "each witness taken alone gives only probable testimony; therefore, many witnesses taken collectively, give only a collection of probable testimony"; herein there is also conclusion from one specific object to another different specific object; which is illogical.

cise this authority themselves democratically, or give over its exercise to one ruler, or to a union of several men who will thus personate the community and provide for the public weal. In the latter case, we must, both in propriety of language and truth of fact, say that the authority is thus *committed, transferred, or made over*, by the community to the person charged by them with its exercise for the common good. Just as subordinate officers are truly and justly said to *derive or receive* their authority from the supreme ruler who commits it to them, nor is this against the nature of the moral faculty, which authority is; so, it is equally consonant with fact, and with the nature of things, to say that the ruler *derives or receives* his authority immediately from the community. Just as the *selling*, and the *letting*, of one's house, agree in this, that both are acts of dominion, for both suppose him to own the house; so, for the community to give its authority over to a ruler, and for that ruler to delegate authority to a subordinate, agree in this that both actions consist in *transferring* authority. Besides, to assert that it is repugnant to the nature of authority that it should be *transferred* by the people to a ruler chosen by them, is to affirm too much; since, that being true, we should cease to speak of rights, titles, ownership of property, etc., as being *given, sold, made over*, and the like, from man to man; for they too are moral faculties that come originally from God. The very arguments which are drawn from the nature of authority as having God for its author, to prove that a community of mankind cannot *give* it, or *transfer* it, will be equally conclusive against the intrinsic possibility of *giving*, or *transferring*, any right, title, or moral faculty, no matter what be its special object.

That the people forming the civil community immediately confer the supreme authority on the ruler whom they elect to exercise it in their behalf, is shown also by the fact, admitted by all, that the people in organizing their government, can restrict the authority given to the ruler by various limitations and conditions; and they can even provide for its withdrawal

and its reversion to them ; for example, if the original terms on which its retention was made essentially to depend, be violated by him ; or if his term of office was limited to a specified period of time, and the like provisions of law. On what principle, and by what right, could the people thus modify, add to, and take from, authority, which God himself bestows immediately on the ruler, and even go so far as to regulate its use ?

A ruler who receives his authority immediately and absolutely from God, is not responsible to any earthly power for the use of that authority ; since a trust is *per se* to be accounted for, only to him from whom it really comes ; but it is against reason for any man, who is not infallible in teaching and prescribing what is *per se* necessary to be known and done by the community, to possess absolute authority, for the use of which he is answerable to no power on earth. In fact, however, temporal rulers are responsible also to power that is on earth for the use made by them of their authority to govern ; and this is so, because they are liable to abuse it by making laws that are unjust, criminal, and tyrannical, on the one hand ; and, on the other hand, because they receive their authority immediately from the people in solemn trust for the community : therefore, St. Thomas speaks of the ruler, as, “gerens vicem totius multitudinis ; non habet potestatem condendi legem, nisi in quantum gerit personam multitudinis ;” (p. 1, 2. qu. 97, a. 3. ad 3. et passim) : a vicegerent of the multitude, he has no power of making law, except in as much as he represents the multitude.

The theory teaching the “divine and indefeasible right of kings,” or that they hold their authority immediately from God and not mediately or through the community, really exalts the mere personal interest of a ruler above the common good of the nation ;\* but this is to place a means above the

\* “Semper enim finis excellit id quod est ad finem ; et quanto aliquid efficacius ordinatur ad finem, tanto melius est.” P. 2. 2, qu. 152, a. 5. The end always excels the means to that end ; and the more efficaciously any thing is ordained to the end, the better it is.

end to which that means is ordained, or it is a conversion of what, by its nature, is only a means, into the principal end. Such authority being, according to the hypothesis, indefeasible and inamissible, because absolutely independent of all earthly power, no matter how far it may be perverted from the objects on account of which it was divinely given; nevertheless, the ruler invested with it must prevail, even if the nation perish. Against this false notion concerning the nature and true end of civil authority stands the truth that is contradicted in the theory of absolutism or *cæsarism*; "*regnum non est propter regem; sed rex est propter regnum*;" the king is made for the community, not the community for the king. (De Regim. Princ. lib. 3, c. xi.\* It is an absurdity, therefore, in those theorists who make the common good of a civil community something that is only secondary to the merely personal or family interests of a particular dynasty.

Here it may be asked, cannot civil government, with its supreme political authority, be of patriarchal origin? For example, if we suppose the father of a family, with his children and servants, first to occupy a region of the earth: would not the authority of the father be *per se* supreme civil power, and could not this authority be transmitted by hereditary right, in accordance with a law which he could himself enact?

In answer to this question we must distinguish between the *imperfect* community or family; and the *perfect* community, or the only one which is properly and really a body politic or civil community: these two communities differ from each other specifically or essentially, † as was shown in a preceding chap-

\* The same holds true of spiritual rulers: "For every high priest taken from among men *is ordained for men in the things that appertain to God*, that he may offer up gifts and sacrifices for sins." St. Paul to Hebrews, ch. v, v. 1.

† "Sicut homo est pars domus, ita domus est pars civitatis: civitas autem est communitas perfecta . . . unde ille qui gubernat aliquam familiam, potest quidem facere aliqua præcepta, vel statuta; non tamen quæ propriè habeant rationem legis." P. I. 2, qu. 90, a. 3, ad 3. As a man is part of the household, so the household is part of the State; but the State is a perfect community. Hence, he that governs only a family can, indeed, make certain precepts or statutes, but not what properly has the nature of law.

ter of this work. The father of a family, as such, and in the nature of things, has only "economic authority;"\* or, he has, as head of a family, only that limited authority which suffices to direct and govern a household, and it does not naturally or *per se* extend beyond that household with its dependent members. His children who have reached their majority and have families of their own, are no longer subject to him, just as he is not subject to his father whom he has left in order to set up for himself. When these families inhabiting the same territory, but not actually subject to any civil ruler, become sufficiently numerous, they would naturally unite and agree among themselves upon a means of preserving order, and of promoting their common welfare: that means could be no other than supreme civil authority which is competent to provide for the general good both by directive and coercive laws. They would then determine the form of their government, and elect their ruler:† it follows, therefore, that if the first progenitor become a political sovereign or supreme civil ruler over his descendants, it can naturally take place, only by some general agreement among them, either explicitly or tacitly made. The fact of Adam's being the first father of the human family, did not constitute him the political head of mankind; indeed, as St. Augustine observes, (*de civit. Dei*, 15, c. 8), Cain was actually the first man to exercise political authority or to rule with civil authority over a perfect community.‡ A father has no

\* "Economic prudence" is defined to be that prudence which is required in the head of a family, in order that he be capable of rightly administering the affairs and governing the members of that family. "Political prudence" is necessary for the ruler of a body politic or civil community. But political and parental authority have prerogatives that differ specifically, as their objects differ specifically.

† Whether authority is transmitted by election or by succession, yet it always remains true that this authority is immediately from the multitude, and it is mediately or through the multitude, from God; or it retains this relation still subsisting, even when it descends from one ruler to another by hereditary law.

‡ "And Cain went out from the face of the Lord and dwelt as a fugitive on the earth, at the east side of Eden. . . . And he built a city, and called the name thereof by the name of his son, Henoch." Genesis iv.

inherent right to be the civil ruler of his descendants; nor could he justly become such, unless they confer on him supreme political authority, either by an express or an implied agreement.\*

It would not be correct to say that the subject possessing the supreme authority, and also the form of government are *per se* determined by a preëxistent fact, and they are determined *per accidens* by the consent of the multitude. The phrase, "preëxistent fact," is vague and equivocal; and since this sort of fact is indeterminate, variable, and contingent, it is the thing that is really accidental. To establish or originate a government, the consent of the multitude is *per se* necessary. • It is proper only to irrational animals to have their manner of life and their union into herds determined by accidental facts that operate physically and mechanically. † Since the principle of union should be according to the nature of the beings that are to unite, it befits man's rational nature to act intelligently in this matter; and, hence, it is a work of understanding, for a multitude of mankind to become a civil body, which they will do, therefore, by rational consent, and under the light and direction of the natural law.

Does not the doctrine herein proposed favor the theory of Rousseau, who reduces civil society and its government to a purely human contract, freely entered into by the multitude; which binds, therefore, only so far as they wish to bind themselves?

\* "Quia hæc potestas ex natura rei est immediate in communitate, ergo, ut juste incipiat esse in aliqua persona tanquam in supremo principe, necesse est, ut ex consensu communitatis illi tribuatur." Suarez, De Legibus, lib. 3, c. 4, No. 2. Because this power, from the nature of things, is immediately in the community, therefore, in order for it justly to begin to exist in any person as Supreme ruler, it is necessary that it be given to him by consent of the community.

† The reigning Pontiff, Leo XIII., in his encyclical of June 29th, 1881, declares it to be the faith always held in the church, that all legitimate authority to govern human society, is from God; and he condemns as false the opinion of those who, with Rousseau in his Social Contract, and contrary to what is explicitly revealed in the Scriptures, maintain that civil authority is only human in its origin.



Rousseau's error is not in saying that a body politic, or a perfect community, supposes, as proximate or remote, a pact or agreement; for, how could men, who are rational beings, and, as such, not ruled by necessary physical law, be induced to live united into a community, unless they somehow consent to do so? But his chief error is in founding authority and law, for their origin and moral value, on this agreement, which is from man; instead of founding that authority and law, on the law of nature, which is from God. The agreement to live together in a community is a human action; but the authority which is to rule the members of that community and direct them to a common end, is from God; it is not a creature of the human will, it is superior to the human will, and can bind it with moral obligation. It is not even possible that authority and law, as possessing a moral power to bind the conscience, could have their first origin in the will of the people, or in any human will; all such authority is, in itself, from God; and all just law is derived from the natural or eternal law.

The supreme civil authority, of its essence or very nature, possesses all the qualities and prerogatives which are necessary to constitute it the due and sufficient means of accomplishing its proper end, which is the general good of the body politic or civil community; and it effects this end by means of just laws and precepts. It cannot be either more or less than this.

The absolutists, who defend the "divine and indefeasible right of kings," might here object that this making of the people confer the authority on the ruler, whereby he receives his power only mediately from God, favors the wild theories of liberalists and revolutionists; in as much as it weakens the authority of all government.

In answer, it must be said that the doctrine objected to, according to which civil authority naturally comes to human society immediately from God, and it can be acquired justly and validly by a particular person, as supreme ruler, only by the consent of the multitude, given either proximately or re-

motely;\* this doctrine is the medium between the two opposite extremes, liberalism and revolutionism, on the one hand ; and absolutism or cæsarism, on the other hand : in such matter, the just medium between opposite extremes is the rule both of truth and rectitude : “ *virtus est in medio.*” The theories of the liberalists and revolutionists are mischievous and evil, for one kind of reasons ; and absolutism or cæsarism is mischievous and evil, for reasons of an opposite kind ; and thus these extremes meet, as all extremes meet. While the one extreme party would take from the ruler his power to make and enforce just laws ; the other extreme party gives to the ruler, the power that is independent of all earthly tribunal, to make and enforce unjust laws ; each of these theories is destructive of the common good.

It is proper also to state a truth in this place, though already briefly mentioned before, which cannot fail to have its influence on the minds of most persons that will reflect on it, namely, that what has been herein proposed as the moderate and sound doctrine concerning the origin of civil authority, is that which was taught in all the great schools, especially from the time of St. Thomas.† It is true that the criterion of philosophical certainty is, not authority, but evidence of the truth as following necessarily from its absolute first principles ; yet, it is an extrinsic guaranty for truth, which is useful to those minds that are not prepared to judge the matter by the strict canons of philosophical reasoning.

\* The authority is committed by the community to the ruler *proximately*, when they choose the ruler ; it is given by the community *remotely*, when it is taken away or lost by the just penalty of war, and thus passes into other hands ; in this last case the consent of the people is rationally and justly due ; but yet, it is not immediate or proximate, since it is on account of an extrinsic reason.

† The learned Bishop Ullathorne, in his answer to Mr. Gladstone’s “ *Expostulation*,” bears indisputable testimony to the same fact : “ According to the traditional teaching of Catholic divines from the days of St. Thomas Aquinas, the temporal power has its immediate derivation from the people.” “ *The Expostulation Unveiled*,” p. 26.

One passage is here cited from an eminent schoolman, wherein he states briefly the main theory of authority and civil government, as commonly taught by the old scholastic authors. "But because this governing and legislative power cannot be easily exercised by the entire multitude, since it would be difficult for all without exception to assemble at the same time, as often as it might be necessary to consult for the common good and pass laws; on this account the multitude usually transfers its right, or governing power, either to some persons selected from all ranks of the people, and this is called *democracy*; or to a few of the best citizens, which is called *aristocracy*; or to but one person, whether for himself alone, or also for his successors by hereditary right, and this is styled *monarchy*. Hence it follows that all power is from God, as said by the Apostle, Rom. xiii; it is indeed immediately and by natural right in the community; but it is only mediately and by human right in kings and other rulers, unless God himself should immediately confer this power on some others, as he conferred it on Moses over the people of Israel, or as Christ gives power to the sovereign pontiff over the whole Church."\* Thus wrote Billuart, in his theology according to the Summa of St. Thomas, De Legibus, Dissertation I, art. iv.

Besides this scholastic author, and other schoolmen whose sayings have already been given in this article, no others need be quoted, since it is not denied by the learned scholar that such was their teaching.

\* "Verum quia hæc potestas gubernativa et legislativa non potest facile exerceri a tota multitudine, difficile namque foret omnes et singulos simul convenire toties quoties providendum est de necessariis bono communi et de legibus ferendis; ideo solet multitudo transferre suum jus, seu potestatem gubernativam, vel in aliquos de populo ex omni conditione, et dicitur *democratia*; vel in paucos optimates, et dicitur *aristocratia*; vel in unum tantum, sive pro se solo, sive pro successoribus jure hæreditario, et dicitur *monarchia*. Ex quo sequitur omnem potestatem esse a Deo, ut dicitur Apost., Rom. xiii; immediate quidem et jure naturæ in communitate, mediate autem tantum et jure humano in regibus, et aliis rectoribus, nisi Deus ipse immediate aliquibus hanc potestatem conferat, ut contulit Moysi in populum Israel, et Christus summo pontifici in totam ecclesiam." Billuart, in Sum. Div. Th. De Legibus, Diss. I, Art. iv.

## ARTICLE IV.

## DIFFERENT FORMS OF CIVIL GOVERNMENT ; RIGHT OF SUFFRAGE.

There are three simple forms of government, which were already defined ; namely, monarchy, aristocracy and democracy. These simple forms may be combined in various proportions, as is actually done in the different kinds of mixed government. It is found by the experience of mankind that no one of the simple forms of government long works well in practice. Writers on political ethics generally agree that, in the abstract or theoretically, simple monarchy is the most perfect form of government ; since its complete unity gives to the body politic the greatest strength, and constitutes it the exactest likeness of divine government. But, as a fact, owing to the imbecility, ignorance and vices of men, it seldom or never proves the best in actual practice.\* Owing to the same causes, it is not best for the common welfare to invest a few men with unrestricted authority ; for, in practice, neither is pure aristocracy a good or successful form of government. Pure democracy, except for a small community like Attica in ancient Greece, is, perhaps, actually impossible in practice ; for, how could the vote of all the people in a great nation be awaited in every matter requiring an authoritative decision ? Pure democracy has been objected to as not even being really an original type of government ; on the alleged ground, that

\* Aristotle makes complete happiness, or the *summum bonum*, consist in the perfect exercise of all the virtues ; he considers that community to be best fitted for happiness, in which the middle class, or they who are neither very rich nor very poor, are the great majority, and are the principal end of the laws, at the same time that they have a principal hand in shaping and directing civil polity. He states this objection to absolute monarchy : " He who bids the law to be supreme, makes God supreme ; but he who entrusts a man with supreme power, gives it to a wild beast, for such his appetites sometimes make him ; passion, too, influences those who are in power, even the very best of men ; law is intellect free from appetite." Polit., bk. III, ch. XVI.

it is absurd to regard the community as capable of being its own superior. But this objection is false under a double respect; for, first, superiority is not incompatible with the duty of obeying the law, though the superior himself make the law that binds him, as already seen. Secondly, the community as a collective and organized body, is truly superior to that community as distributively taken, or distributively bound by the laws; and, therefore, it is not against the nature of things for a community to be both superior and inferior, under different respects.

Which is the best form of government for a given particular community that is now free to make a choice of one?

It is manifest that, since many circumstances must combine to make up a particular concrete fact, it would pertain to political prudence, or the wisdom of the multitude, in the event supposed, to estimate them and decide according to them what is best for the individual case. One legitimate form of government would be better or worse than another for this or that community, relatively to those circumstances. Yet, there are two truths taught by the experience of mankind which would give important direction in the first formation of a civil government. First, it is dangerous to the welfare of the community for any ruler to have absolute or unlimited power; consequently, the power of the ruler should be clearly and precisely defined by prudent law which is unchangeable except by common consent. Secondly, government which is itself regulated by law, not by arbitrary will, or the mixed form of government, is the most perfect in practice; in other words, the species of civil government, which is the best of all in practice, is that mixed form which duly combines the perfections of all the pure or simple forms in the proportion which justly and fitly adapts it to the community for which it is designed.

St. Thomas (P. 1, 2, qu. 95, a. 1, ad 2,) calls attention to the fact that, in the beginning, God did not place a king over the Israelites; for the reason that the Jews as a people were cruel and avaricious, two vices that specially lead to tyranny.

Hence God, 1 Kings, ch. viii. rebuked the Israelites because they asked to be governed by a king. To these truths we may also refer the last sentence in the Book of Judges, ch. xxi. v. 24: "In those days there was no king in Israel; but every one did that which seemed right to himself." Simple monarchy, then, though perfect in its species when considered abstractly, is not such relatively, or in the concrete; and for this reason the great Doctor proceeds to show \* how the three simple forms may be so combined as to constitute the most perfect government † in practice, each of the pure forms being inexpedient.

May it not be correctly said that, in the concrete and relatively, the best among the genuine forms of government for a particular nation is the one which is therein actually and legitimately established?

If the question be meant to imply, that superiority in the form itself of any government arises from its being actually in force, together with the fact that its origin was legitimate; this would be a mixing or conjoining of predicates that do not belong to the same subject, and the confounding of a necessary condition for the validity of a government, with the constituent principle of that government. Greater or less perfection in the form itself of any particular government, does not depend on the legitimacy of its origin, except by way of condition; indeed it arises from an entirely different order of things. The form alone is the subject considered, when the question is argued, "which is the most perfect, or the best form of civil government, the monarchy, the aristocracy, the democracy, or the mixed government?" Legitimacy of

\* P. 1, 2, qu. 95, a. 1.

† "Est aliquod regimen ex istis commixtum (scilicet ex formis simplicibus), quod est optimum: et secundum hoc sumitur lex, quam majores natu simul cum plebibus sanxerunt, ut Isidorus dicit lib. 2." P. 1, 2, qu. 95, a. 4, ad. 3. There is another government mixed of them (the three simple forms), which is the best of all; and according to this one, that is taken to be law which the older citizens, together with the populace, enact; as Isidore says.

origin is an indispensable condition for any genuine form of government to be justly established or validly imposed on a nation; but superiority in that form itself, no more proceeds from the legitimacy of its origin, than does suitability of plan or shape in a dwelling house, proceed from the fact that the house has been duly paid for.

The preference which a nation has for one form of government over another one, is not determined by mere theoretical abstractions, nor by the speculative opinions of philosophers concerning the nature of political power; but the people choose according to their notions of what is practically best for their social and temporal interests. It is certain that the efficiency and strength of a government depend, not only upon the legitimacy of its origin; but also on the rational love which the people at large have for it; since the union which perfects the body politic, and makes it completely one in power and virtue, necessarily requires that there exist and dominate in the hearts of the people, a genuine love for their government as good for them, and as their own government. It follows, then, that any form of power which is unjustly forced upon a community; and whose laws are abhorrent to the customs and traditions of the people, can scarcely make of them a community that is united and happy, even if it should retain more than a short, precarious, and violent existence.

In the mixed kinds of government, one of the simple forms may so prevail over the others as to impose its name on the form itself of that government. Thus it is that the English government, though constituted of all the simple forms, is styled a monarchy; while the United States government, is called a republic; because it is a union of commonwealths in which the democratic form or element is predominant over the other constituent forms.

The fundamental rule or type of a government, or the essential and specific form that determines its nature and kind, must not be confounded with the written constitution of the nation, if it have one. This fundamental law or essential

form of a government, when it is really established in a community, is written in the hearts of the people; it can persist in being, and govern their civil life, even when the laws written on parchment have perished. Such life and virtue are rightfully claimed for the form of government, and the *lex non scripta* or common law, which, with only occasional and transient interruptions, have ruled the English nation for a thousand years.\*

#### CONCERNING THE RIGHT OF SUFFRAGE.

Suffrage, in itself, as an action, is nothing else than the expression, in due form, of a choice or an opinion by which a member of the community manifests his preference for something as good, or his opposition to something as not good, for the public welfare; or, it is the giving of his vote for or against something made subject to popular choice as thus expressed.

Suffrage may be considered under two respects; first, as the expression of that primitive and formative consent by which the members of the unorganized multitude agree to constitute themselves into a body politic or civil society under some special form of government; and secondly, we may consider what suffrage is when it exists as an ordinary legal right, or what that right is when it is an organic act in the perfected body politic. Again, we may examine whether there can be any right of suffrage at all, which is antecedent to positive law; whether or not all persons in the community naturally possess an equal right to suffrage, and what species of matter is capable of being decided by suffrage, or can be subject to choice by vote of the community.

Anterior to all positive law or convention, the right of suffrage, as something ordinary, is not determinately and exclusively in any particular individuals of the multitude. Primarily, it would be determined by general agreement among an unformed or unorganized multitude wishing to become a civil community, what species of government should be adopted;

\* For some pertinent reflections on this subject, see Brownson's Review for July, 1852, p. 355, et seqq.



and there is no reason *a priori*, or arising from the very nature of things, why any one in that multitude, capable of exercising rational choice, should be excluded from a share in this first work of organizing, since it would concern all. Such primitive right of suffrage, like that to dominion over the corporeal goods of the earth, is given by nature to the community in common; its exercise is regulated by positive law. Hence, the individual's right of giving suffrage, like exclusive ownership of property, is derived by the individual person from the positive law, or it has a conventional origin. In simple monarchy, the people retain no right of suffrage. But if, instead of committing the whole care of the community either to one sovereign ruler, or to a body of persons, it was determined to decide matters pertaining to the common good by vote of the people, or to elect all rulers by suffrage; it would then be conventionally fixed as to what persons could most fitly and advantageously exercise this ordinary function of the community or body politic.

The multitude would argue, and indeed consistently and truly, that in order actually to exercise the right of suffrage, a certain measure of prudence is necessary; since, by its very nature, the giving of suffrage should be a work of sane and mature reason. Hence, both the actual right of voting, and the right of being voted for, are made dependent by positive law on certain conditions which usually restrict them to a class of the community. It is plain that children, and also adults that are mentally imbecile, are physically incapable of performing such action. It was never looked on as duly becoming the modesty and domestic habits of women, for them to exercise a right of political suffrage; unless, perhaps, the story of the Amazons be not a fiction. The laws regulating the exercise of suffrage are various in different nations, where this species of power is retained by the people in their own hands. But this right is not naturally and inherently in any particular members or individuals of the community, to the exclusion of other persons from it; for, it can be thus acquired by such individual members of the community only as a civil right; or, they can actually come to possess it, only through positive law.

Since suffrage by the people is only a special form or mode of exercising civil power, it is, in itself, capable of having for its legitimate object, whatever can be the legitimate object of civil laws; or, its subject matter may be commensurate in extension with that of civil law; as would actually be the case in a simple democracy, in which no laws are enacted except by a vote of the people. But as an unjust law which is promulgated by a king is, in itself, no law at all; so, an unjust law which is enacted by a vote of the people is, in itself, really no law at all. While there is some matter in regard to which we may say that the proverb holds true, "vox populi, vox Dei;" yet, that saying does not hold true, and it is even absurd, if the voice of the people be for an unjust law, or for anything else that is, in itself, morally wrong.

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## ARTICLE V.

### FACULTIES OF THE SUPREME AUTHORITY; ITS RIGHT USE; NECESSARY QUALITIES OF THE GOOD RULER.

In order for supreme authority in the body politic to be a means capable of effecting its end, which is to advance and maintain the common good of the community, it must possess the following virtues or powers: the legislative power, the judiciary power, and the executive power.

It is manifest that the supreme authority cannot practically or efficaciously direct and control the community, unless it be able both to prescribe the rule of action for the people, and compel obedience to it; in other words, it must be competent to ordain or lay down the law, define the matter which it comprehends, and make it actually operative. It is of the legislative power to make or ordain the law; it is the function of the judiciary power to define its scope and meaning and right application to its object; and it is the office of the executive power to enforce the law in practice.

Since absolute supreme power in the hands of one man, or power which is restricted by no positive principle as a safeguard, is against all prudence, whether we consider man as he actually is in himself or the experience of nations; it is generally inexpedient and unwise in practice for all these faculties of supreme authority to be combined in one individual person. Legitimate power to rule over rational beings, which is purely arbitrary, or authority which is of blind will or caprice, cannot exist in the nature of things as something rightful; and it is more likely that one man will be arbitrary in governing, than that several men will conspire to rule arbitrarily or by blind caprice.\* It follows, then, that while the supreme civil authority is, in itself, necessarily one; the organs through which it acts on the community not only may be more than one, but in practice they should generally be diverse; nor, at the same time, is this opposed to the evident truth that all the powers of government must be coördinated to the same common end, which is the public good.

Just and wise government is essential for perfect union, peace, and prosperity in the social community. The justice and wisdom of the government, are really the justice and wisdom of the ruler, and of the laws. The proverbs of mankind enunciate the truth learned by general experience that the character of a nation, as good or bad, depends for its formation, to a greater or less extent, on the head that rules and directs its citizens. † This is but natural; for the ruler is perpetually exhibited to the people in the laws and decisions by which he is positively controlling or influencing the daily action of the community; and they often behold the example of his own conduct especially as expressed in the manners

\* See Aristotle's Politics, Book III, especially ch. xvi.

† "What manner of man the ruler of a city is, such also are they that dwell therein." Eccles. x. 2.

"The King that judgeth the poor in truth, his throne shall be established forever." "When the wicked shall bear rule, the people shall mourn." Prov. xxix.

"Qualis rex, talis grex." "Tel maitre, tel valet."

learned at his court and made fashionable by his ministers. These causes are powerful in their action; and their effect is not only to regulate the public demeanor of the people, but, in an important degree, to form their moral habits, and to shape all their practical judgments of what pertains to the affairs of social life.

Every ruler is bound in justice both to know the duties of his office, and to fulfill them with equity.

The graveness of an obligation is in proportion to the sacredness and importance of the duty which founds it; also the sacredness and greatness of a duty depend upon the proper object of that duty. Now the proper object of a superior's duty, and that to which alone his office is ordained by virtue of lawful authority, is the welfare of the community over which he is appointed to preside. Hence, in so far as the welfare of a community is something great and sacred, that far forth is the obligation on the conscience of the ruler, also something sacred and weighty. It follows, then, that gross and culpable ignorance of his duty in important matter; or any serious abuse of authority, is something criminal in a ruler: "*corruptio optimi, pessima est perversio*," the corruption of the best, is the worst perversion.

Experience proves the truth, and it is also conformable to reason, that the ruler who ordinarily follows an equitable medium between the opposite extremes of rigorous severity, and laxism in governing, exercises his authority with most prudence and efficacy.

Prudence and all moral virtue, as shown in a preceding chapter, consist in a just or right medium between the extremes of too much and too little; "*virtus est in medio*." On account of the intrinsic goodness and excellency of virtue, this middle line of action by which the extremes, too much and too little, are duly avoided, is often called "the golden mean." The virtue that is principally required in the ruler who governs a civil community, is "political prudence;" styled *political* prudence, because it concerns the welfare of the body politic, as its proper object.

Prudence is, under different respects, both an intellectual and a moral virtue, as already sufficiently explained. He alone is a good ruler who governs according to that just, true measure or golden medium in which the virtue, "political prudence," consists; and following this middle course, he will decline from the extreme, laxity, on the one hand; and from extreme rigor, on the other.

This medium cannot be precisely defined or particularly described, so as to reduce it to an assignable mathematical formula which is plainly applicable to all individual cases. For while mathematical knowledge or scientific knowledge regards only necessary truth; or it regards contingent matter only under that respect in which it is related to necessary truth; prudence, on the contrary, is concerned about the contingent only as something variable, that may happen in this manner, or in that manner. The particular and actual circumstances of time, place, means and persons, which the prudence of a ruler must estimate, are, by their very nature, so numerous and variable, that they cannot be subjected to a given definite rule or determinate measure. On this account, the knowledge of what is essential to civil law; the possession of the cardinal virtues, especially prudence and justice, are necessarily required in the superior of the body politic or civil community, in order that he be proximately and rightly fitted to perform the duties of his office with well founded hope of success.

As there are many contingent human things that ordinarily happen in the same manner, whenever their principal circumstances are the same; there are certain axioms and conclusions regarding such matters derived from the experience of mankind, which convey wise instruction to the ruler; as do also the annals of history. For instance, he may learn from the example of Alcibiades and that of Roboam, that counsel must be sought from men of experience and maturity of judgment; from the history of Cæsar, Pompey, and Anthony, that the republic which is divided by unpatriotic and selfish leaders into contending factions, must fall; from the history of "Good

King Edward," that a wise and virtuous ruler, practically loves the people, makes a happy realm, etc.

It can scarcely be doubted that the best and happiest communities may be well governed, by a few simple laws that are wise, and are faithfully observed, better than by a great mass of codes and statutes; and, on the other hand, it is equally certain that as the morals of a nation decline, so its laws, at the same time, must increase both in number and severity.

A sovereign who declines from that medium in which perfect or consummate prudence consists, to the extreme of laxity, is more likely to begin this species of misgovernment by omitting to enforce the existing laws, than by failing to decree new ones. The laws themselves are defective in their substance, however, when they do not prohibit some public disorders which are seriously injurious to the community; or, also, when they do not command all that is necessary for the public good.

While law should be so administered with truth and equity\* that the extremes too much and too little are both avoided; yet, as already seen, in certain moral things, some virtues may properly and legitimately favor one excess more than the other; † or, they may incline rather to one of two opposite extremes, than to the other. The virtues of a sovereign or supreme ruler are more noble, and partake more of divine perfection, when mercy and goodness in him are predominant over rigorous justice that exacts the last farthing due. Coercive measures must needs be used by him for the refractory; but, as before observed, it is rather the certainty that guilt will be punished, than the greatness of the penalty inflicted, that makes punishments efficacious in preventing crimes among the citi-

\* "Mercy and truth preserve the King, and his throne is strengthened by clemency" Prov. xx. 28.

† "Necesse est ut multos timeat, quem multi timent." Publ. Syrus. He necessarily has many to fear, whom many fear.

zens; thus his leniency may mitigate the severity of strict penal justice.\*

A supreme ruler may tend to extreme rigor, in the exercise of his authority, either by making the laws more numerous and burdensome than is necessary for the general good of the nation; or, by being needlessly harsh and exacting in the execution even of laws which, in themselves, are good and wise. As moderation in the exercise of superior power, wins the hearts of the multitude; so does undue severity provoke in them hatred and opposition. A numerous body of onerous laws, † enforced by a hard master, will, perhaps, be as much mechanical in their action as they will be moral; for they will be obeyed, in such case, rather through animal fear and the compulsion of physical force, than from any rational choice or conviction of duty arising from respect for the ruler's authority, or the subject's own mental approbation of those laws. It becomes a government over human beings to elevate the people into good and orderly citizens, by an enlightened direction and control of their superior or rational nature: or, by ruling them as moral agents that are perfectible. Moreover, when laws are excessively numerous, they must unduly intermeddle with various personal and private affairs, the direction and control of which properly pertain only to the individual. ‡ For, as already seen, human law cannot regulate, or even reach, all the details and particulars of the indi-

\* Mercy is an exercise of goodness, which is not required by justice; or which is not due in justice. Though the *medium* of justice is not something that is variable; yet, goodness can mitigate pure justice in what regards the manner, time, place, and other circumstances; as also by wholly or partially remitting the debt; and this is forgiveness.

† "Prælati abstinere debent a multitudine præceptorum." P. 2. 2, qu. 105, a. 1, ad 3. Superiors should abstain from a multitude of precepts.

To this matter the expressive words of Tacitus, already cited in this work, are also pertinent: "In corruptissima republica, plurimæ leges." In a very corrupt republic, laws are most numerous.

‡ "De minimis non curat prætor." The ruler does not trouble himself about trifles.

vidual's conduct ; but he must be left, as regards many things, to his own prudence, to the guidance of his own conscience,\* and the counsel of wise persons.†

The idea sometimes becomes more or less prevalent in particular communities, that men can be made good and orderly citizens by a multitude of searching laws rigorously enforced ; and even that the youth can be most successfully formed to virtue, by methods of discipline which will render evil physically impossible for them. It cannot be justly doubted, however, that this is a mistaken mode of governing human beings, the almost certain effect of which is to engender extreme evils, by arousing and irritating dangerous passions that break out with greater force because their extreme violence is a revulsion of nature from undue restraint. In such things, one unreasonable extreme tends to produce its opposite extreme. It is sure that all moral evil can never be made physically impossible through mere power of human laws ; and neither can all moral good ever be made physically necessary by a mechanical use of positive laws.

It may be concluded, then, that too much government, and too little government, are both evil ; and in this case, therefore, as in all others, "extremes meet."

\* "Sub lege rationis continentur omnia ea, quæ ratione regulari possunt." P. I. 2, qu. 94, a. 2, ad 3. All those things are included under the law of reason, which can be regulated by reason.

† "Ad singulos enim actus dirigendos dantur singularia præcepta prudentium: lex est præceptum commune." P. I. 2, qu. 96, a. 1, ad 2. For the direction of particular actions, there are particular precepts of the prudent ; law is a common precept.

"Et ibid. a. 2, ad 3: "Lex humana non omnia potest prohibere quæ prohibet lex naturæ." Human law cannot prohibit all things which the law of nature prohibits.



## ARTICLE VI.

PRIVATION OF LAW AND GOVERNMENT ; OR, CONCERNING THE STATES OF ANARCHY AND TYRANNY IN THE BODY POLITIC. IS IT EVER LEGITIMATE FOR THE COMMUNITY FORCIBLY TO RESIST TYRANNY OF GOVERNMENT ?

When laxism and rigorism in civil government have reached their uttermost extremes of abuse, they then lead directly and certainly to the two great social evils, called respectively anarchy and tyranny.

Anarchy is a state of lawlessness, in which the multitude is ruled by no authority ; the public welfare is not effectually defended by any law ; and the worst social disorders are not repressed. By anarchy, therefore, the community is put into a state of violence, arising proximately from the crimes and grave wrongs committed by its own members ; but attributable, primarily and chiefly, to the privation of necessary law and efficacious government. Failure to execute the laws is an immediate occasion of anarchy ; since law that is not obeyed by those for whose government it exists, is practically no law at all, and general disorder in a community, proceeding from the want or absence of all operative law, is that which constitutes the state of anarchy. Failure to enforce laws necessary for governing the community, may sometimes arise from a false conception and wrong application of mercy, by which justice is not only mitigated, but its essence is destroyed ; it may proceed, in other cases, from weakness of character in the persons having either legislative, or executive power. But in commonwealths and free governments, a more ordinary and far more dangerous cause for failure of the law, is venality in the officers of government ; for, when the ministers of public authority are seduced by bribes and presents, and are thus made openly to circumvent the laws, their example will gradually but surely destroy that truth and justice among the people without which no form of civil

government can long peaceably endure. Then the public authority will favor the rich, and oppress the poor; the laws, like spider webs, will hold the weak, but the strong will break through them. In a state of complete anarchy, if the mass of the people be poor and wretched, while the wealth of the land has accumulated in the hands of a few, they may grow desperate and reckless; sometimes new and dangerous spirits rise up from the depths of society, becoming the leaders of wild and infuriated mobs that produce a condition of brutal violence which, while their vengeance rules supreme, constitutes what is appropriately styled, "the reign of terror." History attests the fact that anarchy is often succeeded by the despotic rule of one man; as, on the other hand, despotism or tyranny is, in its turn, sometimes followed by anarchy; for, indeed, one of these two opposite extremes naturally leads to the other. Though anarchy always has presupposed to it as its indirect cause, more or less weakness and incompetency in the supreme ruling power; yet, it may have its origin in the demoralized multitude, whose minds are misled by false teachers, and whose passions are kindled by the fiery eloquence of demagogues aiming to produce social disorder and confusion. Also, revolution in government is seldom exempt, at least, from transitional anarchy; and it is mainly on this account that moderate and virtuous minds generally oppose any radical change in established governments.

Tyranny is also the privation of law and government;\* but it is brought about by extreme causes, that are the opposites or contraries of those which give rise to anarchy. In this condition of civil society, the ruler ignores or practically denies the truth that the general public good is the essential and

\* "Aliud autem est regimen tyrannicum, quod est omnino corruptum; unde ex hoc non sumitur aliqua lex." P. I. 2, qu. 95, a. 4. Another government is that of tyranny, which is wholly corrupt; hence, in it there is no law.

The tyranny being only the corruption of government, has no law at all; it is government without law, because it is government without justice. It is essential to the justice of a law that it command only what is for the common good, and the tyrant's laws intend only his own private advantage.

only end of all human law; and he oppresses the people with unjust regulations which have no other aim than to advance his own personal interest. Tyranny, by its very nature and definition, is abuse of authority through unjust and oppressive law, that has not for its end the common good; and, therefore, tyrannical rule is a violent and iniquitous use of power to govern. Tyranny is the privation of law and right government; because it is of the essence of law and right government, to have for their only end the common good of the community; and the ordinances of the tyrant and his exercise of the supreme power, have for their final aim his personal interest, to the exclusion of the general public welfare as principal.

Such a despot assumes, implicitly at least, that he is the state, and that the community is for him; \* that his will is the law, and the end of the law is to gain for him the objects of his selfishness and his uncontrolled passions. Practically, he regards the people as his property, and assumes that they are in the relation towards him of irrational animals, which must be compelled physically and mechanically to obey the bidding of their owner and master. When the unjust laws of the tyrant become so numerous, and the burdens which they impose on the people grow so heavy, as to be unendurable, and to defeat and destroy the very end of civil government; then, such ruler may be truly styled an intolerable tyrant, and his government may be rightly called unendurable tyranny.

There may also be only partial tyranny, which is lighter, and which is endurable; as when the ruler publishes some particular despotic laws, or he slightly abuses his authority, so as to prescribe what is detrimental to the public welfare, in some degree, but does not wholly destroy the essential end of government. There may be a tyranny of the majority over the minority in the community; as sometimes happens in

\* "Regimen tyrannicum non est justum; quia non ordinatur ad bonum commune sed ad bonum privatum regentis." P. 2, 2, qu. 42, a. 2, ad 3. The tyrannical government is not just: because it is not directed for the common good, but for the private good of the ruler.

democratic forms of government. In the aristocracy, there may be tyranny of the minority over the majority. Since monarchy may be either simple and absolute, or limited and regulated by law; so, the tyranny of a king may either violate the natural law alone, or it may be opposed both to the natural law, and to human law.

Is it ever legitimate or right for subjects to disobey, or to resist the tyrant?

I. It is plain that when any ruler or superior commands what is forbidden either by the natural law, or the positive law of God, his subjects are bound in conscience not to obey such command.

II. Rebellion against lawful government, besides being in itself criminal, is a great social evil; since it causes anarchy which is more or less complete and lasting.

III. Tyranny caused by particular acts through which authority is abused, but which neither injures many important rights of the people, nor is most heinous and grievous, is evidently not of itself a just and sufficient reason for forcibly resisting the tyrant; since this remedy for the evil would, in general, surely be worse than the evil itself.

IV. Serious abuse of authority in governments whose powers and functions are defined and regulated by constitutional law, should be corrected according to juridical forms, and before the tribunal which is legitimately empowered to adjudge the matter.

But, is forcible resistance to the supreme absolute ruler, or a revolution in the government, ever justifiable, even when there is that total privation of just law and equitable government which constitutes in the body politic what may be correctly denominated intolerable or extreme tyranny?

Modern writers on social and political ethics do not all give the same answer to this question. The school of authors who defend absolutism, or the theory that the civil ruler's authority is not restricted by any condition or limitation, simply deny that forcible resistance to supreme civil power or revolution in the government can ever be a legitimate undertaking, from

any degree or species whatever of tyranny; provided the supreme ruler or sovereign originally acquired his authority to govern by a rightful title. The reasons which they advance in proof of this opinion are principally the following: 1. Revolution, with its concomitant anarchy and crimes, is a greater evil than any possible tyranny. 2. The sovereign or supreme ruler being superior over the community, cannot be judged by the community, it being inferior and subject. 3. To justify the right of revolution for any one case, is practically to license all revolution, since such principle would be liable to abuse. 4. Because all such authority to govern comes immediately from God to the ruler; not man, therefore, but God alone can take it away. 5. To affirm that the multitude can forcibly resist even the most ruinous tyranny, is to maintain that civil authority is radically democratic. Wherefore, the defenders of this theory conclude that the only right and duty of the people in such event, how grievous soever may be the tyranny under which they suffer, are prayer and longanimity.\*

The opposite extreme opinion is held by a class variously styled revolutionists, liberalists, socialists, etc., who maintain that since all law and government originate in the popular will, and have no other validity than that which is attributed to them by the popular wish, they can, therefore, be changed or set aside arbitrarily by dominant parties among the people; or, the people have a right to overthrow their existing government at any time, whether with a reason, or without a reason.

Both of these extreme hypotheses are false, just as all other extreme opinions are likely to be false, when they concern moral or practical matter. The arguments adduced to prove that the tyrant's authority is inamissible, † and that he cannot

\* "A kingdom is translated from one people to another, because of injustices, and wrongs, and injuries, and divers deceits." Eccles. x. 8.

† He "prays amiss" who asks God himself to do a work directly and immediately, for the accomplishing of which God has already provided a natural means which the suppliant can employ.

be rightfully resisted, even should he be a destroyer of the nation, are not conclusive. The first one, that, "revolution is accompanied with anarchy, and it is, therefore, a worse evil than any possible tyranny," is, at the least, a misuse of words; "revolution" which is a return to the reign of law and order by the removal of insufferable tyranny, is not anarchy; but it is a relief from anarchy, and a restoration of government by just law. It is true, however, that resistance, even to the worst tyranny, is not justifiable, when it would surely fail to render the state of the community any better; as St. Thomas says.\* The second argument; "the superior cannot be judged by the inferior;" "superior est potior pars communitatis;" seems to be nothing more than an equivocation, or a play on words; these courtly sayings are fallacious, when applied according to the meaning attributed to them in this argument.

The ruler is superior officially; that is, in the order of jurisdiction or authority to govern by just law; but outside of that order, or personally, he is not superior; nay, he may be personally inferior to all good citizens. So long as he tends by just means to the end for which he is invested with authority to rule the community, he is acting formally and officially as superior, and as such he is not to be judged by his subjects, but he is to be obeyed by them. Should he cease to employ his legitimate authority as a means of promoting the common welfare, and use violence and injustice in

\* "Regimen tyrannicum non est justum: quia non ordinatur ad bonum commune, sed ad bonum privatum regentis. Et ideo perturbatio hujus regiminis non habet rationem seditionis, nisi fortè quando sic inordinate perturbatur tyranni regimen, quod multitudo subjecta majus detrimentum patitur ex perturbatione consequente, quam ex tyranni regimine. Magis autem tyrannus seditiosus est." P. 2. 2, qu. 42, a. 2, ad 3. Tyrannical government is not just; because it is not ordained for the common good, but for the private good of the ruler. And, therefore, the perturbation of such government has not the nature of sedition, unless, perchance, when the tyrant's government is disturbed in a manner so disorderly that the multitude subject to him suffer more harm from the consequent confusion than from the tyrant's government. It is rather the tyrant himself that is seditious.

order to accomplish his own private and personal aims; he would not then be acting as superior, for he is not superior in the order of unjust law and violence against the common good, and all men are inferiors as regards the precepts of the natural law. When the superior ceases to act as officially such, and becomes an enemy of the public, or a dangerous aggressor on the community, the community not only has a right to judge him and forcibly resist his destructive violence; but, if necessary for self-preservation, it is then plainly a duty of the community to do so. When the superior commands what is in itself evil, it is the duty of every subject to judge that the superior orders what is evil, and that such command is not to be obeyed. When the superior is a destroyer of the common good, it is for the whole community to judge and decide what is necessary for its defence, and what is to be done in that emergency.

Hence, in order to avoid an equivocal use of words, and the fallacious reasoning which it gives rise to, observe that God alone can be styled personally and naturally superior over mankind, and over all law; superiority in a human ruler, is only official; it is not personal, but is a trust, and it has superior law over it, to which that human ruler must be subordinate and obedient in governing, in order validly to exercise his authority and office as superior; under that law, which is supreme over all creatures,\* his personal conduct, when he is a wicked tyrant, may be condemned; and, if necessary for the public safety, his arbitrary and tyrannical acts may be forcibly resisted.

\* "It is unmeaning to say, they (princes) have no superior but the law of God; for that is to play with words. A law is no superior without an authority to judge and apply it." "The civil ruler is for the defence of the people; but if he should make war on the people, the right of self-defence would justify resistance." Cardinal Manning, "Vatican Decrees," ch. I.

If the people cannot judge the tyrant's abuse of power, there results the inconsistency of *law* that is really such, even when it must of right be a *nullity*; for, it is actually a nullity, if the people cannot rightfully enforce it in the case supposed.

Another argument urged by the absolutists to prove that a community has no right to defend itself with force against any species or degree of tyranny, is: "the authorizing of forcible resistance to any kind or degree of tyranny, is practically to license revolution under all pretexts, since such principle would be liable to abuse." But this is reasoning on a false assumption; the conclusion here logically and certainly follows, only provided it be granted that every thing is wrong and forbidden by the natural law, which is liable to be abused by excess; this, however, is a false principle. Indeed, every moral principle requiring the exercise of prudence for its right application is liable to abuse. It follows, then, that the argument is not valid, since it proves too much.

The argument for the duty of passive submission to extreme tyranny, founded on the false assumption that supreme authority comes to the civil ruler directly and immediately from God, is sufficiently answered in the preceding article of this chapter. It surely does not strengthen the moral power of human law in practice, to exaggerate the prerogatives of civil authority.

When it is said that to admit the right in a community of resisting extreme tyranny, is to affirm the doctrine that "the body politic is primarily democratic, and that the supreme authority always remains radically in the multitude;" it may be replied that this objection also merely raises up a difficulty concerning the use of words. The authority of civil rulers, primarily and naturally speaking, comes to them immediately from the people, mediately from God; if this be what is meant by the proposition, "government is primarily democratic," it is a true proposition in that sense. The expression, "authority remains radically in the multitude," may be understood so as to imply either a true or false assertion; if it be made to imply that when the supreme authority is transferred by the community to the sovereign, it is not wholly and really transferred, or that the community is always free to withdraw it arbitrarily, this assertion is not true. If it mean that there is in the community an inherent right to resume the supreme



authority, when such a step becomes clearly essential for self-preservation, in this sense it is true.

The more reasonable and true doctrine, concerning this subject of dispute, and, at the same time, the doctrine that is taught by the best and safest guides, is a medium between the two extreme theories ;\* that of the absolutists or cæsarists, on the one side ; and that of the revolutionists, liberalists, socialists, etc., on the other ; and thus again the rule holds true, that, in moral things, both of two extreme contraries, are most generally false.

It may be affirmed, then, that a civil community has the natural right of necessary self-defense against tyranny that is grievously or extremely oppressive and morally unendurable ; and, by consequence, such community has the right to depose or remove the tyrant, when such course of action is necessary for self preservation.

All men have a natural right to defend their lives, and their goods necessary for living, against an unjust aggressor, even by taking the life of the unjust aggressor, if that be the necessary and only means of defense. That every man has this right of self-defense against an unjust aggressor, is universally admitted to be a certain and demonstrated conclusion from the very law of nature. That the tyrant is an unjust aggressor on the community, requires no proof, nor is it denied ; the conclusion follows necessarily, then, that a civil community has the right of self-defense against the destroying tyrant,† and

\* It can scarcely be doubted that exaggerated and inflammatory writings from these extreme partisans, whether by magnifying or lessening the prerogatives of civil authority, have much influence towards exciting the civil commotions from which some nations are seldom entirely free : just as extreme rigor, and extreme laxity in moral matters, both conduce to irreligion among the people, though they produce this result in opposite manners.

† “Si rex justam suam potestatem in tyrannidem verteret, illâ in manifestam civitatis perniciem abutendo ; posset populus naturali potestate ad se defendendum uti : hac enim nunquam se privavit.” Suarez, *Defens. Fid.*, lib. 3, c. 3. If a king were to turn his just authority into tyranny, abusing it to the manifest destruction of the State ; the people can use their natural right of self-defence ; for, of this they never deprived themselves.

And Bellarmine, *De Laicis*, lib. 3, c. 6, says : “Nota, in particulari

consequently, the people can depose or remove him, when that is the necessary and only means to the end. Nay more, it being true that every person has the natural right of self-defense against an unjust aggressor; *a fortiori*, or for a still stronger reason has a whole community of men the right of self-defense against an unjust aggressor, since the existence and well being of a whole community are of more importance than are the life and peace of an individual person; "bonum multitudinis est majus et divinius, quam bonum unius."

This reasoning is conclusive, and hence Suarez declares the right of self-defense to be a full justification of armed resistance to tyranny, when such means becomes necessary for the preservation of the community. In the same manner, and for the same reasons, that an individual is competent to determine what defense is necessary for the preservation of his life or his goods of life, when unjustly imperilled by such aggression; so, speaking before the bar of natural reason, a community of mankind can judge the facts and the degree of necessity which authorize forcible resistance, in the analogous case of dangerous tyranny. In extreme necessity, positive forms and laws yield to natural law; or, as the axiom expresses this truth, "necessity knows no law;" that is, necessity abrogates what is merely of human right or institution. In such exigency as extreme tyranny constitutes, the often misused saying, "the superior cannot be judged by the inferior,"\* which is true in

*singulas species regiminis esse de jure gentium, non de jure naturæ; nam pendet a consensu multitudinis constituere super se regem vel consules, vel alios magistratus, ut patet; et si causa legitima adsit, potest multitudo mutare regnum in aristocratiam, aut democratiam, ut Romæ factum legitimus.*" Take notice particularly that the special forms of government come by human law, not by the law of nature; for it depends on the consent of the multitude to place over themselves a king, consuls, or other magistrates, as is plain: and if there be a legitimate reason, the multitude can change a kingdom into an aristocracy, or a democracy, or the contrary, as we read of having been done in Rome.

\*This saying, as here applied, and others of like import, as, "Rex est optima pars," "Superior est potior pars," are of modern origin; they are true only under a particular respect, and are, therefore, equivocal. They are often cited in argument as if they were simply true, and they thus serve the purposes of false reasoning.

the sense that the inferior cannot be an ordinary and authoritative tribunal before which the superior is to be judged under positive law, loses its application and becomes a nullity. It is evident, however, that no degree of necessity, and no exigency of human things, can change or annul the law of nature, or any precept thereof.

Who could deny the right of the passengers on a ship out at sea, to remove from authority the desperate commander that would be plainly and directly striving to sink the vessel with all on board, if they could at all effect his removal, and thereby save their lives? Their right to use that necessary means of self-preservation is a plain dictate of natural reason. An individual person has the right of self-defence against the unjust aggressor; a small number of persons, and an imperfect community, are admitted to possess this natural right of self-defence: then, by what principle of justice or truth can it be shown that a whole nation of human beings has no right to defend itself against the tyrant that would destroy it; and that the only right and duty of the people, in such case, are to pray and to suffer the destruction, without the use of any human means? And even granting the theory disproved in the preceding article, which makes authority originally to have come, not mediately, but immediately from God to the ruler who is now a tyrant: does not the right of self defence, or the right to self-preservation, also come immediately from God to all mankind? Is that right really possessed by every individual person; and must it nevertheless be granted that it does not exist in a multitude or nation of persons? The truth is that every community has the natural right of self-defence against any unjust aggressor. It is certainly not licit for subjects to resist lawful authority; but for a community to resist extreme tyranny, is not resistance to authority; it is resistance to violence. For the ruler to make a tyrannical law, is not an act of authority; it is an act of injustice and violence, which can never proceed from that sacred principle, authority from God to govern by just laws that bind in conscience.

The ruler holds his authority *for* the good of the nation ; he has no authority *against* the welfare or existence of the nation. The tyrant whose government is oppressive and ruthless, may be truly regarded as putting himself, practically and morally, outside of the community, and thus making himself as an extraneous foe to its safety and its very existence ; against him, therefore, thus making himself as an external enemy and an aggressor, the community has the natural right efficaciously to defend itself. Moreover, the ruler, on becoming a tyrant, thereby ceases to be officially and formally a ruler ; and thus, to all practical intents and purposes, he leaves the community without any true and real government at all. But a community that is deprived of true and real government, has a right, in the very nature of things, to provide for the common good ; and, consequently, to restore, or again institute genuine government. In such event, we may affirm with St. Thomas (p. 2. 2, qu. 42, a. 2. ad 3), “*Magis autem tyrannus seditiosus est ;*” it is then rather the tyrant himself that is seditious.

The end is above the means that serve it, and which exist only on account of that end ; but the civil ruler, as such, is only for the community, and this is the real relation between the rulers and their people, in the body politic. Hence, the end, or the good of the community being that which is truly and really principal, if the means to it, which is secondary and is necessary only on account of that end, should entirely fail ; then, it is evident, another means that will be efficacious can be chosen by the community. It follows, therefore, that when a civil ruler utterly fails to accomplish the essential end of government, by making of himself an arbitrary and lawless tyrant, another can be selected ; or, the community has a natural right to remedy the evil, by providing means for realizing its essential end.

It will be useful here to remark, in regard to the chief object of civil government, that the ancient pagans made the state, as a power against other nations, that which is principal ; and the people belonged to the state as its property. The

absolutists or cæsarists, make the supreme ruler, as a power against the people or his subjects, what is principal: "rex est pars potior et melior." The legitimists, make perpetuation of the dynasty, the principal end to be secured.\* The socialists and liberalists, make license as opposed to restrictive and coercive law, and to controlling authority or ruling power, the principal end to be gained. The only true principal end of the government, is to maintain the common good of the people, by means of wise and just laws equitably administered; and hence, the goodness of a government depends less on its particular form, than on the prudence, fidelity, and justice with which its authority is exercised, or its proper functions are performed.

Since the theory of absolutism teaches that the monarch holds his authority immediately from God, or by "divine and indefeasible right;" and that his authority is absolute, that is, free from any condition or exception that limits it before the community; it follows from the theory that such monarch has no law above him, but the divine law; and that he alone has a right to explain and apply that divine law to himself, or to his own acts. It is in this sense the defenders of absolutism affirm, as quoted above, that "the inferior cannot judge the superior." As this doctrine virtually constitutes the monarch, "pontifex;" the theory of cæsarism, "Cæsar Imperator et Pontifex Maximus," is a logical conclusion from that of abso-

\* The following language of the illustrious Pius IX, though not an official utterance, has, nevertheless especial weight, as coming from such a source. It was spoken at an audience in 1876, the report of which was published in the press at the time; for example, see *New York Tablet*, January 13th, 1877; the "Record" (Monthly), Philadelphia, March 10th, 1877. After specifying the main duties incumbent on temporal rulers, he then speaks of legitimism, and, among other things, says: "How many legitimate reigning families have not lost, by dispensation of Providence, their claim to their thrones?—The principle of legitimacy is not at all to be considered; but are we not falling into an error in imposing its vindication, under any circumstances, upon the Pope, especially, then, when it was forfeited by reason of the wrongs done by such families; or, is it presumed that the functions of the bishops and priests differ in one State—whether monarchy or republic—from another?"

lutism. Hence, the two theories being identical in their principle, are herein mentioned together, just as if they were not distinct from each other.

The opposite extreme, or the notion advocated by the liberals, socialists, and revolutionists, ultimately leads to a denial of all genuine government and law as necessary for the community or as having any binding power over the consciences of the citizens; and on this account their theory is more directly and evidently false. It is only as a power that is stable and efficacious in maintaining order and enforcing the respective rights and duties of the people among themselves, that government affords general security, or is any certain and reliable means of defending the common good. The proofs advanced, in a preceding part of this work, to demonstrate the strict necessity of supreme government and law for civil society are, at the same time, a sufficient refutation of this extravagant doctrine. These theorists confound civil liberty with civil license. The people of no nation have the right, not to be bound by just and necessary law; and, indeed, just law can not be opposed to true liberty; it is only unjust law that is opposed to genuine civil liberty. That nation has civil liberty, whose people are so required to do their duty as citizens, that their rights are in nowise taken away or abridged; and they are burdened with no laws which are unnecessary, or which are truly inexpedient for the general public welfare. This being true, the people may enjoy perfect civil liberty, under any legitimate form of government. But no good citizen of any nation can wish for that liberty which consists in the privation of necessary law and order; for, this would not be liberty; but it would be the license of crime and bad passion, along with general disorder or anarchy.

One who reads the treatises of many writers on ethics or morals, will hardly fail to observe how some of those authors insist on law, rather as being a principle that is *directive* of moral action; while others insist on law, more as a power that can be made *coercive* of man's action. The former, show only the truth and justice of the law, as the reason for obedi-

ence; the latter, portray the penalties of its infraction, as furnishing the principal motive for obedience to the law. This difference in their manner of apprehending law, and proposing it to other minds, may come, in some instances, from peculiar personal character, or bent of education; but others thus treat the subject on theory. It is surely the nobler conception of law to make its dignity and excellency consist principally in its virtue to direct rational and moral action; yet, the perfection of law is not complete or integral, unless it can also be made coercive of obedience.

It may be concluded, then, that all narrow, one-sided, or extreme theories for explaining authority and law, and the respective rights and duties of rulers and subjects, are erroneous; and what is false or exaggerated, can serve no good purpose; can produce no real or lasting benefit to any laudable object; nor can it be of any genuine advantage, either to truth or virtue.

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## ARTICLE VII.

### OF THE COMMON LAW OF NATIONS, AND INTERNATIONAL LAW.

**PROPOSITION I.**—The common law of nations, or the “*jus gentium*” as explained in the old schools, is not the same as the modern international law, except under a respect.

**PROPOSITION II.**—The civil government has not, of its own nature, any authority to prescribe rules of spiritual conduct or religious worship.

The evident, necessary, and immediate conclusions from the natural law; or, as they are often styled, the first conclusions from the natural law, do not fall under positive legislation; and they are binding on the nations of mankind, as well as they are on the private individual conscience. Such conclusions from the natural law, are not a part either of the common law of nations or of international law; for, both the

common law of nations, "jus gentium," and international law, are positive law; whereas, these principles or conclusions pertain immediately to the substance of the natural law, and they are, therefore, presupposed to all positive law.

It will help towards better understanding the nature and proper object of positive law, to distinguish precisely and clearly between this common law of nations, the "jus gentium" of the old schools, and what is now understood by "international law."

The common law of nations, or the "jus gentium" of the old schools, comprised certain principles or rules of justice, which were recognized as laws in all, or in nearly all, nations; not, however, by any compact either expressed or implied which they entered into. These laws were common to nations, only because their utility or necessity was evident, and was, therefore, seen alike by all nations of mankind. Hence, such laws were *common*, not by convention, but by coincidence of judgment. To this kind of law was referred the division of property; also, the introduction of slavery; the transferring of supreme authority from the multitude, to which it is primitively and naturally given, to a ruler, who, for the ends of government, impersonates the multitude; the punishment of certain enormous crimes with death, etc. This common right of nations was understood to include not only general laws regulating internal order among the citizens of each nation; but other laws also which governed the intercourse of nations with each other, but which had the force of law, however, rather because their justice and necessity were evident to all men,\* than because they were conventionally agreed upon. While there were a few plain and simple principles of comity and justice on which ancient nations were, at least, implicitly agreed, yet, they had no complete code, or system of interna-

\* "Quod naturalis ratio inter omnes homines constituit, et apud omnes gentes peræque custoditur; vocaturque jus gentium." P. 2, qu. 57, a. 3, in C.; see also Suarez, De Legibus, lib. I, c. 17. The common law of nations: what is laid down by reason among all mankind, and is kept by nearly all nations.



tical law. Hence, international law as a special and complex department of jurisprudence, is of more recent origin. It is not morally possible for all nations of mankind persistently to approve and defend anything as true and just, which is, in itself, really false and unjust; for this reason, the fact of all nations agreeing in a rule of civil justice, was always accepted as conclusive proof that such rule follows by valid deduction from the law of nature.\* While this argument from the testimony of mankind is only extrinsic proof, for, it is not drawn from the intrinsic nature of law and its matter; yet, the agreement among nations in seeing the same principle of justice, in the same manner, affords certain, though indirect proof that their inferences from natural law are consequent; and this is why the common law of nations, "*jus gentium*," is often spoken of as comprising demonstrative conclusions from the law of nature; † though, in reality, they are not strictly and simply such.

Since the essential principles of natural justice and moral rectitude bind nations of mankind in their conduct towards each other, as well as they bind individual persons; it may be concluded that international law, and municipal or civil law,

\* "*Sicut in una civitate vel provincia consuetudo introducit jus, ita in universo humano genere potuerunt jura gentium moribus introduci. Eo vel maxime quod ea quæ ad hoc jus pertinent, et pauca sunt, et juri naturali valde propinqua, et quæ facillimam habent ab illa deductionem, adeoque utilem, et consentaneam ipsi naturæ, ut licet non sit evidens deductio tanquam de se necessaria ad honestatem morum, sit tamen valde conveniens naturæ et de se acceptabilis ab omnibus.*" Suarez, *De Leg.*, lib. I, c. 19. As in one State or province custom introduces law; so, among all mankind, the laws of nations may be introduced by custom; more especially since the matter pertaining to such laws, which are few, and quite adjacent to natural law, is very easily deduced from the natural law, is so useful, and consentaneous to nature itself, that though it is not so evident a deduction that it is necessary for correctness of morals, yet it agrees well with nature, and is of itself acceptable to all men.

"*Ad jus gentium pertinent ea, quæ derivantur ex lege naturæ sicut conclusiones ex principiis.*" P. I, 2, qu. 95, a. 4. Those things pertain to the common law of nations which are derived from the natural law as conclusions from their principles.

ultimately rest on the same basis, which is justice; and, therefore, the definition of the one must agree in substance with the definition of the other. All nations are bound, it is plain, by the natural law; and as there can be no positive law which is not derived from the natural law, it follows that there can be no genuine law of nations which is not derived from the law of nature, or which is not a dictate of right reason.\*

The definition of international law given by President Madison declares its origin, nature, and object accurately and precisely, at least, as international law is understood by the best jurists of the present day: "International law, as understood among civilized nations, may be defined as consisting of those rules which reason deduces, as consonant to justice, from the nature of the society, existing among independent nations; with such definitions and modifications as may be established by general consent." †

The laws that now direct and control the intercourse between nations, in peace and in war, comprise, besides the necessary general principles always practically in force, a large body of conventional rules regulating what pertains to the mutual rights and duties of nations, in various and manifold matter. So different is the present mode of warfare from the ancient; so extensive is commerce; so great the increase of travel by land and on the high seas, for pleasure, business, and improvement; so changed is the whole type of civilization from that which marked early periods of civil history, that international law is now something quite distinct from what it was in the olden times as a part of the "*jus gentium*;" and, as before said, it is now a comprehensive system of jurisprudence.

\* "*Omnis lex humanitatis posita in tantum habet de ratione legis, in quantum a lege naturæ derivatur.*" P. I. 2, qu. 95, a. 2. Every law laid down by human authority has the true nature of law, just so far as it is derived from the law of nature.

And qu. 93, a. 3: "*Omnēs leges in quantum participant de recta ratione, in tantum derivantur a lege aeterna.*" All laws participate of right reason, in so far as they are derived from the eternal law.

† See Wheaton's *Elements of International Law*, chap. I.

Bentham\* founds international law primarily on utility or expediency for the temporal prosperity and happiness of nations. Were it, at the same time, granted by him that nothing is truly or simply useful and expedient in respect to these ends except what is a just and right means; and were it granted by him also that no national prosperity and happiness constitute a good and legitimate end, unless they accord with justice, then we might concede his assertion to be true. But even as understood in that manner, still his principle would not be philosophical; since the first reason for international law, is the end intended by it; † not the means to that end. The law of nations, is on account of a common or general end to be gained by it, namely, the good or welfare of nations; the law does not originate in the means, but in the end; for, law, of its very nature, first intends a just end, and then, secondarily and consequently, it intends the suitable and legitimate means to that end. Means may be useful, and, in that sense, expedient, and yet be bad; it is not enough that means subserve an end efficaciously; they must do it also legitimately. To the contrary of what Bentham's theory seems to imply, the end does not justify the means.

Since all nations are independent of each other, and equal before the law of nature, no one of them naturally has any authority over the others. Yet, on the other hand, they have

\* Bentham, "Principles of Morals and Legislation," chapter I, says: "The principle of utility is the foundation of the present work; it will be proper, therefore, at the outset to give an explicit and determinate account of what is meant by it. By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question; or, what is the same thing in other words, to promote or to oppose that happiness. I say of every action whatsoever; and, therefore, not only of every action of a private individual, but of every measure of government."

† "Finis respondet principio . . . Primum autem principium in operativis, quarum est ratio practica, est finis ultimus." P. 1. 2, qu. 90, a. 2; it. qu. 2. a. 5. The end corresponds to its principle. But the first principle in work, which falls under practical reason, is the ultimate end.

some common interests; they have rights and duties, in respect to each other, arising, from the very nature of things, which impose certain mutual obligations on them before the law of nature. Indeed, the necessity for laws regulating the conduct of nations towards each other, is plainly deducible from this truth, that they have important common interests, and that they are related to each other by mutual rights and duties. As no nation has authority over other independent nations, and, in practice, power could not be committed to one nation to legislate for all others; it follows that international authority to legislate, must, ordinarily, be republican in the mode of its exercise. It is, perhaps, on this account that some authors have gone so far as to affirm that all the nations of mankind naturally constitute one great republic. But this is to affirm too much; for, international government is not instituted by nature, it is introduced by human convention; and besides, all the nations of mankind were never actually united into such republic under any system of international laws. It may be conceded, however, that the nations of mankind possess some natural aptitude or capability for such union under general or common laws agreed upon by all. For, as Suarez observes,\* though mankind are divided into various nations, they possess not only a specific unity as one race descended from Adam, but they also possess a certain moral and political unity. This is indicated by the fact that they have, under the law of nature, certain mutual rights and duties common to all civil communities.

There are some plain and essential principles of justice and rules of international conduct that are not subject to change,

\* "Humanum genus, quantumvis in varios populos et regna divisum, semper habet aliquam unitatem non solum specificam, sed etiam quasi politicam et moralem, quam indicat naturale præceptum mutui amoris, misericordiae, quod ad omnes extenditur, etiam extraneos et cujuscumque nationis." Suarez, *De Leg.*, lib. I, c. 19, No. 9. The human race, how much soever divided into various peoples and kingdoms, always retains a certain unity, not only a specific unity, but a kind of political and moral one, which is indicated by the natural precept of natural love and mercy, which extends to all men, even to foreigners of every nation.

and which, it must be assumed *a priori*, no nation is rationally free to disregard. The observance of them is sometimes compelled by force on a particular nation that disturbs the general safety by refusing to obey them. The only penal sanction annexed to international law, is the risk that other nations may combine to punish its infraction. A nation can, as a fact, refuse, in virtue of its sovereignty as a nation, compliance with any laws of the kind ; but it always does so at the risk of suffering vindictive justice at the hand of other powers.

Some jurists distinguish the laws of nations into the primary or necessary, and the secondary or voluntary. The primary are explained by them to be certain and undeniable deductions from the law of nature ; the secondary are such as are voluntarily or conventionally agreed on by nations.

But these primary or necessary principles of the natural law that are evident to the entire mass of mankind are not properly styled "laws of nations ;" they are rather the law of nature as manifestly applying to its own matter ; whereas, the laws of nations are human positive laws. Those first and evident conclusions can be truly styled "laws of nations" only in the sense that all nations of mankind assent to them as dictates of natural justice, and thus they are common to nations by coincidence and through the specific identity of human reason, not by positive convention. International law, or the law of nations, rightly and strictly so called, is positive human law, which is either explicitly or implicitly agreed to by nations ; and, therefore, it has the force of law, not of its own intrinsic nature, like the natural law and the necessary conclusions from it ; but it requires as a condition for its validity as law, that it be voluntarily or conventionally agreed to by nations.

It may be concluded, then, from all that has been thus far said, that the common law of nations, or the "jus gentium" of the old schools, was not the natural law ; nor was it, except for a few of its principles, international law as positively agreed on by nations. In itself, it mainly consisted of civil laws that were common to most nations ; but without having been adopted conventionally by them, as is generally required in

order for international law to be validly constituted. Hence, this "jus gentium" was said by the old writers on jurisprudence, to be a medium between natural law and civil law;\* it is not absolutely immutable, as is the natural law; and it is, on the other hand, far less mutable than is mere civil law in general. The distinction between these three species of law will be readily understood if we reflect that there are some perfectly evident and immutable principles of justice, and of moral rectitude, which nature implants in every reason,† and which, on that account, belong to the substance of the natural law itself; for example, "injustice should not be done;" "do good;" "honor God," etc. There are other general principles directive of man's social conduct, which most nations see alike, and recognize in practice; but yet, they are not absolutely certain and immutable truths following by necessary deduction from the law of nature: authors usually mention as instances of such principles, the introduction of slavery; the division of property; the institution of the special forms of government, etc. Such principles are not so universal, neces-

\* "Jus gentium est veluti medium inter jus naturale et civile; nam cum primo convenit aliquo modo in communitate et in universalitate et facili illatione ex principiis naturalibus; licet non per absolutam necessitatem vel evidentiam, in quo convenit cum humano jure." Suarez, *De Leg.*, lib. I, c. 20, No. 10. The common law of nations is a sort of medium between the natural law and the civil law; for it agrees in some manner with the first, in its generality and universality, and its easy deduction from natural principles, but not by its absolute necessity and evidence; and under this respect it agrees with the human law.

† "Lex naturalis est quam opinio non genuit, sed naturalis evidentia, ut Cicero dixit; ergo omnis lex quæ non hoc modo generatur, positiva est et humana: tale est jus gentium, quia non per evidentiam, sed probabilitatem et communem æstimationem hominum introducitur." Suarez, *De Leg.*, lib. I, c. 19, No. 4. It is not opinion, but natural evidence, that begets the natural law, as Cicero said; therefore, all law that is not generated in this manner, is positive and human: such is the law of nations which is introduced, not through evidence, but probability and the general estimation of men.

sary, and absolute,\* as are the demonstrated conclusions from natural law ; but yet they are far more so than are numerous and variable civil statutes regulating the details of conduct among citizens of this or that nation ; for, civil laws of the kind are susceptible of frequent change.

Some international laws now in force were introduced by more or less general treaties among nations ; others were adopted successively by different nations, and thus they gradually acquired the authority of general laws. The present law of blockade is an example of international law coming into vogue by degrees. The conditions now required for the blockade of an enemy's coast or seaport, are : 1st, the blockade must be duly promulgated ; 2d, it must be made actually efficacious by a sufficient naval force. According to the treaty of Paris, signed March 30th, 1856, by all the principal nations of Europe, letters of marque will not again be issued by those powers to privateers ; but in this agreement finally to abolish privateering, the government of the United States did not concur.

Privateering and " guerrilla warfare," in which none but the unarmed and defenceless are attacked, and that only for the sake of private booty as inducement for the lawless aggressors, seem not to be in themselves plainly justifiable before the bar of reason and natural equity, as becoming means of weakening an enemy ; especially since experience has shown that these practices are demoralizing ; that a part of their actual effect is to vitiate and deprave.

The laws of nations that now prevail may be learned from the following authoritative sources : 1st, treaties of peace, †

\* " Sic enim jus gentium de servitute captivorum in bello justo in ecclesia mutatum est, et inter christianos non servatur ex antiqua ecclesiæ consuetudine, quæ est veluti speciale jus gentis fidelis." Suarez, De Legibus, lib. I, c. 20, No. 10. For thus the law of nations which enslaved prisoners taken in a just war is changed in the Church, and it is not done among Christian nations, by an old custom of the Church, thus making a sort of special common law among those Christian nations.

† Wheaton's " Elements of International Law," chapter I.

alliance, and commerce, declaring, modifying, or defining pre-existing international laws; 2d, ordinances of particular governments prescribing rules of conduct for their commissioned cruisers and prize tribunals; 3d, decisions of international tribunals, such as boards of arbitration and courts of prize; 4th, written opinions of official jurists given confidentially to their own governments; the archives of the department of foreign affairs in every country contain a collection of such documents. In the United States, writings of the kind are published, like other State papers; but, in most nations, they are not made public; 6th, authors of authority showing what is approved by general usage of nations; what definitions, modifications, etc., have been introduced by general consent. It is manifest, however, that the works of these writers on international jurisprudence, can have no positive value or authority except in so far as giving reliable testimony concerning what has actually been done by nations.

Does the common law of nations, or the "jus gentium," include within its proper object, a system of religion? Or, in other words, is it the office of civil government, under the law of nature, to rule or to guide man in things directly relating him to God, and to his ultimate destiny?

It is not naturally within the jurisdiction of civil authority to prescribe rules of religious worship, nor to govern in purely religious or spiritual matters.

Civil authority and law have for their special and proper end, to regulate the conduct of the people towards one another, as citizens. Religious matter and laws regulating religious worship, or things which directly relate man to God, do not primarily and immediately pertain to civil government at all. It is the office of religion and of the divine law to govern man in all these things that directly pertain to God, and to the future life. Civil law and government, when restricted to their own intrinsic and essential end and order of things, ultimately terminate in the common civil good of the body politic, which is a temporal and earthly object. Religion and the divine law intend, as their special object, man's



future and final state, which will be unending. As civil government has not for its own peculiar and distinctive end man's supernatural beatitude; so, neither would it, in a state of pure nature, have for its own special or proper end man's natural beatitude in a future life.\* It must be concluded, therefore, that the direction of man in his duty to God, or in religious matter, does not naturally pertain to the specific or proper end of civil law and government; and, by consequence, it is not the office of civil authority as such to institute a system of religion.

As a fact, even the ancient pagan governments practically recognized the principle that man's religious obligations are founded on divine law, and that they do not originate in human authority. They all assumed that there was in the world a medium in some respect elevated above the mere civil order, through which the will and behests of the divinity were authoritatively manifested to the nation; such their oracles, priests, conjurors, etc., were believed to be. When a nation and its government degenerated to such abasement that the civil ruler purchased his own apotheosis, he claimed, and his pretension was not disputed, that his authority to govern in matters of religion, was superior to his power as merely a civil

\* "Potestas civilis non solum non respicit felicitatem aeternam vitæ futuræ ut finem ultimum proprium, verum etiam nec *per se* intendit propriam spiritualem felicitatem hominum in hac vita, et consequenter nec *per se* potest in materia spirituali disponere aut leges ferre." Suarez, De Legibus, lib. 3, c. XI, No. 6. Civil power not only does not regard the unending happiness of the next life as its own proper ultimate end, but it even does not necessarily intend the spiritual well-being of men in this life, and consequently it cannot of itself dispose of religious matter or make laws for it.

Et *ibid*: "Potestas civilis etiam in pura natura spectata, non habet pro fine intrinseco et *per se* intento felicitatem naturalem vitæ futuræ." Even considering only the state of pure nature, civil authority has not for the end intrinsic to it and necessarily intended for it, man's natural bliss in future life.

"Id quod ita pertinet ad privatam felicitatem, ut non redundet in bonum communis, ad hanc potestatem, vel legem civilem non pertinet." *Ibid*. No. 7. What so pertains to private happiness as not to redound to the public good, does not pertain to such power, or to the civil law.

ruler. These statements being true, though the actual induction from history proving them to be true must be left to the ingenuous reader, it follows that the nations of mankind never regarded religious direction, or the prescribing and regulating of purely religious matter, as belonging to the province of merely civil authority ; but they believed that religion and the divine law pertained to a tribunal that was of a superior order, thus admitting the specific end of civil legislation and government, and that of religion, to be entirely and essentially distinct.\*

God has made both religion and civil government necessary for mankind, but in respect to different ends ; namely, for man's temporal good as a citizen or as belonging to the body politic, on the one hand ; and, on the other, for his future good as possessing a spiritual and immortal nature. Neither one of these powers to rule, can exclude or destroy the other, without averting from the end for which it was instituted, and thereby sacrificing the general good for what is false and pernicious. There can be no conflict between them, if neither order ever directly intervenes in what really pertains to the other. Civil government is not naturally ordained to provide for, and accomplish, both these ends ; for, civil government is only an external power, and it is concerned only with the external conduct of citizens. It is the function of religion interiorly to direct and rule the mind and will of the people by the principles of right reason and morality. Indeed, religion is really efficacious, only in so far as it is an internal virtue or force in the faculties of the soul. Religion being purely a moral power, or having not the faculties of civil or municipal authority, it is not naturally ordained to control affairs of the community that are merely civil. On the other hand, however, civil government cannot make a community truly virtuous and happy, nor keep it such, without the aid of genuine

\* It is a fact, however, that the civil government in past times always exercised a certain control over the *external* practices of religious worship, and also over all matters mixed with both religious and civil relations ; except in those Christian nations which recognized the authority of the Church as supreme in all that pertains to religion.

religion, since there is no real basis for moral rectitude apart from religion as relating man to God.

The merely civil virtues do not suffice to make the individual morally good. Moral goodness is founded on complete rectitude of reason, by which the person tends, in all his deliberate action, only to what is dictated by right reason. Hence, since moral goodness comes from internal uprightness, and is essentially dependent on acts as internal, it is matter which, of its very nature, cannot belong to the specific or proper object of civil legislation, which is something public or external. The civil law is concerned with the individual's internal acts, only as made external, and thereby affecting other citizens. It may be concluded, therefore, that it is the office of civil law to regulate men's conduct towards each other as citizens; it is that of religion to regulate the conduct of men as owing duty to God. Since man's duty to God is, in the very nature of things, above the duty which he owes to men,\* it follows that religion necessarily transcends the purely civil order, and is superior to it both in dignity, and in the species of its authority. While it is not competent for religious authority to intervene in purely civil matter; on the other hand, civil laws that directly regard spiritual or religious matter, have, in themselves, no validity or force. Such legislation can come only through a power that is divinely and specially authorized to direct man's internal moral acts.

In Christian nations there are laws which, under some respect, give religious direction; in as much as they regulate the conduct of the citizen in certain public matters pertaining to religious worship; as, for example, when they require a sus-

\* "*Lex Divina principaliter instituitur ad ordinandum homines ad Deum; lex autem humana principaliter ad ordinandum homines ad invicem: et ideo leges humanæ non curaverunt aliquid instituere de cultu divino, nisi in ordine ad bonum commune hominum.*" P. I. 2, qu. 99, a. 3; also, Suarez, *De Legibus*, lib. 3, c. 11, No. 8. The divine law was instituted principally for directing man to God; human law, principally for regulating men's conduct among themselves; and, therefore, human laws are not concerned about anything belonging to divine worship, except in so far as it is related to the public good.

pension of ordinary daily employments on the Sunday. But such laws derive their efficacy, as imposing any obligation on the individual conscience, really from the authority which is in the Christian Church to direct the religious conduct and worship of the people composing such body politic or civil community. Civil government has no such authority natural and intrinsic to itself; it can exercise such power only in virtue of an authority that is extrinsic to it, and is superior to it, in that order of matter. The natural rule of religious action for man, is the upright individual conscience as informed with the law of nature. For the Christian, the guide in religious action, is that same conscience as also furthermore informed with truth supernaturally revealed, and duly proposed.

Civil authority, if considered precisely in itself, is not greater in a Christian nation than it is in a non-Christian nation, nor is it of different species in these two nations.\* That the civil government in a Christian nation can exercise any right or power over religious matter, is from a faculty communicated to it by supernatural religious authority; which is extrinsic to the civil order, and is superior to the civil order, in all that pertains to man's duty towards God.

\* "Haec potestas, ut nunc est in principibus christianis, in se non est major nec alterius naturæ, quam fuerit in principibus ethnicis; ergo ex se non habet alium finem, nec aliam materiam." Suarez, *De Leg.*, lib. 3, c. XI, No. 9. This power as it now is in Christian princes, is not in itself either greater than it was in Pagan princes, nor is it of a different nature; therefore, of itself, it has neither a different end, nor different matter.

*Ibid.* No. 4: "Potestas civilis non per intrinsecam habitudinem, sed per relationem et imperium extrinsecum, ordinatur ad finem æternum supernaturalem." Civil power is not ordained for supernatural beatitude by its own intrinsic habitude for it, or relation to it, but by extrinsic relation and command.

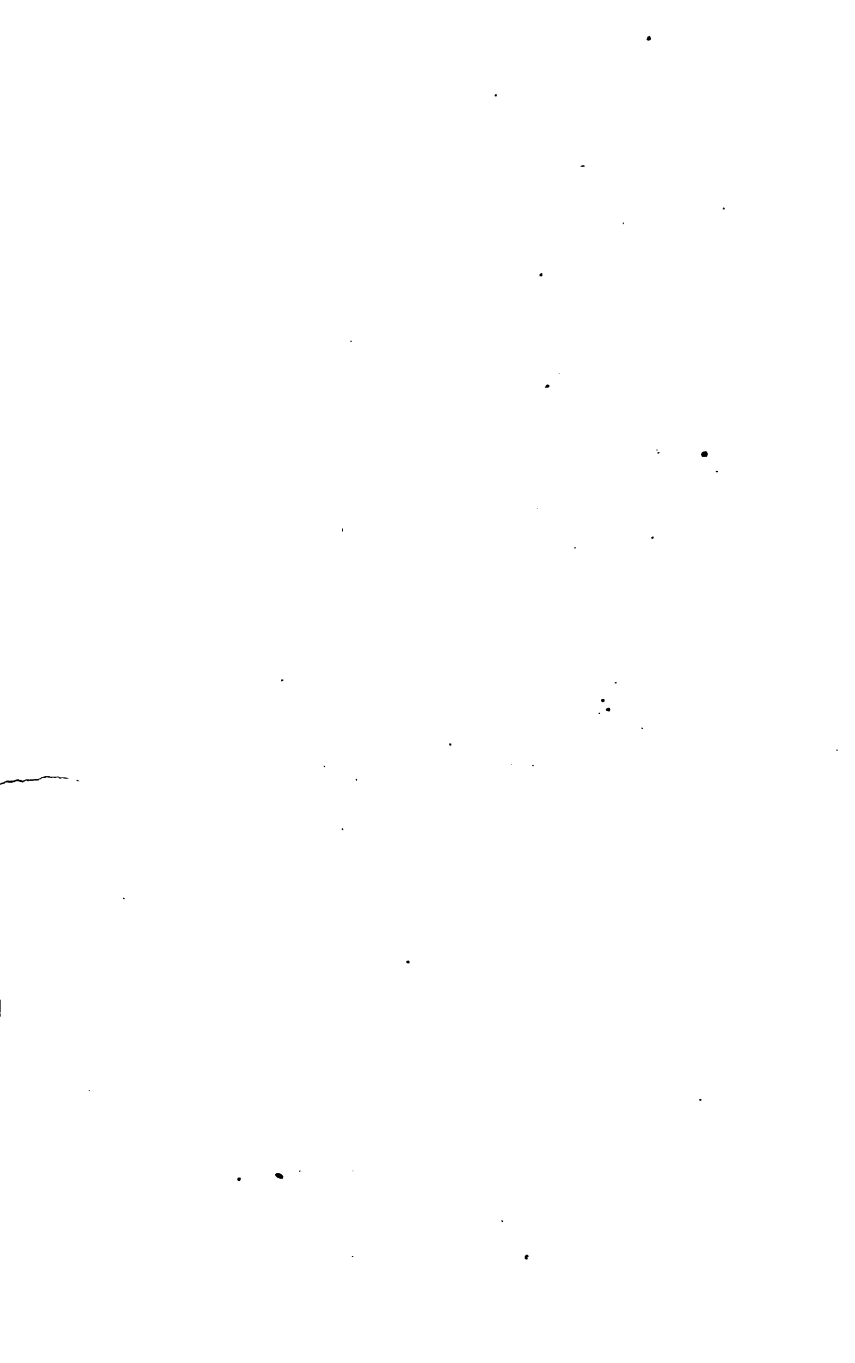
## CONCLUSION.

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The task proposed to himself by the author is now finished, though the subjects of ethics have not all been even touched upon. It was not herein aimed to describe the various theories of social science, nor to devise and build up a theory of the kind; but merely to explain and prove some important elementary truths which must be understood in order to reason correctly on the moral conduct of men, whether they be considered as individual persons, as members of the family, or as making up civil society. Truths of this kind are not partisan, are not changed with change of climate; nor do they vary with race or nationality. Indeed, no one can theorize on morality, or on man's social nature, with any real advantage, who adopts mere hypotheses for principles that are certain; because this would be to substitute fanciful notions and opinions in place of the genuine truth proved by its reasons.

In conclusion, the great fundamental principle of ethics regarded as a practical science, with which this treatise began, may be here repeated as summing up all its precepts; "*in omnibus operibus tuis, respice finem*"; but the true and only end of our being, to which all legitimate society on earth must, by its nature, be subordinate, is that final and permanent beatitude or state of happiness, which consists in union with God.

THE END.



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