

THE SCHOLASTIC DOCTRINE OF NATURAL LAW

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Introduction

The purpose of this article is to examine the doctrine of natural law as expounded in the works of Aquinas and Suarez. My reason for choosing these writers may be stated in a few words. Much jurisprudential writing of recent years contains references to natural law. In some cases the doctrine is supported, in other cases it is criticized. In all these cases, however, it seems to me that the phrase 'natural law' is used without much awareness of its meaning and of the different elements which are part of it. The critics of the doctrine often misinterpret an essential feature of it, while the supporters are often inclined to assume without argument such a feature, and to neglect to analyse difficulties to which discussion of natural law gives rise.

It seems necessary, therefore, to return to the texts of those writers who have given the doctrine its classical formulation. This is not just a matter of regurgitating what a past writer has said. It is important that the texts be examined carefully and critically in order to expose and clarify the basic elements of the doctrine.

For this purpose it seems to me that the writings of the Schoolmen provide the best material for our analysis. In the first place, it cannot be denied that the period between the thirteenth century and the seventeenth century is the 'golden age' of the natural law—in this period the theory of natural law was the starting-point for those who took upon themselves the task of describing the foundations of human society. In the second place, although the Schoolmen embark on their enquiry from a common starting-point, various differences are noticeable in the development of the doctrine. It is for this reason that I consider it fruitful to take the texts not of one writer but of two—separated by the span of four centuries: one the founder of the scholastic doctrine, the other its last great exponent.

The article is divided into five parts. In the first part there is a brief discussion of the eternal law. In the second part discussion will centre on the relationship between human inclination and human reason. In the third part I shall examine the meaning of the word 'law' as it is used in the phrase 'natural law'. In the fourth part I shall consider the relationship between the primary and secondary precepts of the natural law and their cognitional status. Finally, in the fifth part, I shall discuss the statement that the natural law is a universal moral code and constitutes the standard for the action

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of the individual. In this way, I hope to show that certain questions which at first sight seem to raise insuperable difficulties are questions to which enlightening answers can be given.

I

Both writers, in initially defining the natural law,¹ regard it as flowing from Divine Providence. Aquinas gives us this definition:

A law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect community. Now it is evident, granted that the world is ruled by Divine Providence . . . that the whole community of the universe is governed by Divine Reason. Wherefore the very Idea of the government of things in God the Ruler of the universe has the nature of a law. And since the Divine Reason's conception of things is not subject to time but is eternal . . . therefore it is that this kind of law must be called eternal.²

The following article is complementary to this statement:

. . . Since all things subject to Divine Providence are ruled and measured by the eternal law, it is evident that all things partake somewhat of the eternal law . . . in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends. Now among all others, the rational creature is subject to Divine Providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law.³

At first sight, this seems to be rather a paradoxical statement and it might be asked how a person, even though he participates in the Eternal Law, can conceive of its Eternal origin. Aquinas employs an analogy to explain this paradox. He says that even though a

¹ On the natural law in general see:

Valensin, *Traité de droit naturel* (Paris, 1922) 1;

Rommen, *The Natural Law* (trans. Hanley, St Louis, 1949);

Messner, *Social Ethics: Natural Law in the Modern World* (trans. Doherty, St Louis, 1952);

and on the scholastic doctrine in particular,

Farrell, *The Natural Law according to Aquinas and Suarez* (1930);

Lottin, *Le Droit Naturel chez St Thomas d'Aquin* (2nd ed., Bruges, 1931);

Lottin, *Psychologie et Morale aux XII^e et XIII^e siècles*. Tome II (Louvain, 1948) especially 71-100.

² *Summa Theologica*, Prima Secundae, Question 91, article 1, cited hereafter in the following way: S-T, I-II, q. 91, art. 1, in *Opera Omnia*, Tome 7 (Leonine Edition, Rome, 1892). Translation used is that of the Fathers of the English Dominican Province (London, 3rd ed. 1942) viii.

With Suarez more emphasis is placed on the Divine Will. See *De Deo Legislatore et de Legibus*, Book 2, Chapter 4, sections 1 ff., cited hereafter as follows: *De Legibus*, 2, 4, 1 ff., in *Opera Omnia*, Tome 5 (ed. Berton, Paris, 1856). A partial translation of the *De Legibus* is to be found in *Selections from Three Works of Suarez* (Classics of International Law, Oxford, 1944).

³ S-T, I-II, q. 91, art. 2.

person may not see the sun he may nevertheless come to know it by its rays: in the same way a person reflecting on the ends prescribed by nature may see these as reflections of a higher end. Aquinas recognizes that some people may be aware only of the immediate ends, just as a person may see light without pondering on its origin.⁴ In effect, the issue raised in this particular article depends ultimately on the position which one adopts in regard to the natural law, viewing it as having autonomous force or as ultimately dependent on a legislator. We will leave the issue here for the present and take it up again in a later section of this article.⁵

II

In one part of his discussion of the *lex naturalis*, Aquinas equates it with inclinations of which he lists three categories: the inclination to self-preservation, the inclination to procreation and education of offspring, and inclinations which are common to man only, such as the knowledge of God and social intercourse based on justice.⁶

This brings to mind a use of the term 'law' which might be employed in a phrase such as the 'law of the species', especially if we consider the first two inclinations apart from the third. Such inclinations would usually be associated with the word 'instincts', and as such would seem to be the very opposite of what we mean by 'law' when we use that word to refer to a binding rule. Such inclinations, it must be said, are the objects of study of the anthropologist but are of secondary importance as far as the study of the moralist is concerned, for the primary mark of the moral law is lacking: obligation. If, however, the emphasis is placed on the third category, we seem to be nearer the concept of obligation, for these inclinations suggest reciprocity and accordingly rights and duties.⁷

Indeed, this very division of categories gave birth to a conception of 'the two natural laws', one based on vital instinct (*ius naturale*) and therefore common to men and animals, and one based on reason and therefore common to man only.⁸ However, a comparison of the use of the word *inclinatio* in the *De Lege* part of the *Summa* with other parts of Aquinas' work, shows that Aquinas did not understand by it, 'instinct'. Rather does he use the word *passiones* to denote the instincts.⁹

Moreover, in article 2 of Question 94, it is clear that Aquinas is speaking of *inclinatio* as associated with a judgment made by man as to what he should do: the *inclinatio* is a first stage, as it were, which leads to a judgment, formulated by man, containing a prin-

⁴ S-T, I-II, q. 93, art. 2.

⁶ S-T, I-II, q. 94, art. 2.

⁸ Ulpian's viewpoint.

⁵ *Infra*, 210-213.

⁷ Senn, *De la justice et du droit* (Paris, 1927) 72.

⁹ S-T., I-II, q. 22 ff.; cf. *De Legibus* 1, 3, 9.

ciple of action. In this section, Aquinas conceives of moral action as being grounded on principles, just as speculative thought proceeds according to certain principles which assist men in making particular judgments. The primary moral notion or principle is to be found in 'the good': seek what is good, avoid its contrary. All the precepts of the natural law are based on this.¹⁰

At this stage, Aquinas asserts that the notion of good is revealed in the '*inclinationes*'. What ought to be done is discovered by reflection on the natural ends. Therefore life is to be preserved, marriage is a worthy institution, justice should be observed.¹¹ But the difficulty of the 'two natural laws' seems to be still with us, for preservation of life and intercourse are inclinations of a different order to those included in the third category.

Aquinas does not satisfactorily solve this problem. In one part of the *Summa*—in his discussion of *Ius* and *Iustitia*—he accepts Ulpian's definition of *ius gentium* as being common to man only, and *ius naturale* as common to man and the animal world;¹² while in the *De Lege* section his views are contradictory.¹³ Suarez, for his part, refers to the explanation of certain Schoolmen to the effect that, while the *subject-matter* of the first two categories is common to man and animals, the *precepts* are applicable to man alone.¹⁴ In another place, he points out that the *precept* of courage is derived from the first inclination, and the *precept* of continence from the second.¹⁵

It seems that we can explain the first two categories of inclination as being included within the natural law only on the basis that their moral significance derives from a judgment on the part of man as to their nature. In this context, it would seem that the inclinations ought to be tempered, in the case of this or that individual, by a realization that the needs of other individuals are involved. One ought not to seek to preserve one's life *at all costs* nor to engage in *promiscuous* sexual intercourse. In saying this, we are, as a result, recognizing that there is a close relationship between all the inclinations, and that the *lex naturalis* has as its end an ordered system of human relations and cannot be identified with spontaneous activity alone.¹⁶ In this case, we see that the precepts of the natural law reside in the judgment of reason, even though such judgment is prompted, as it were, by the *inclinatio*.¹⁷

It may be said: even if one grants this interpretation, in what way

¹⁰ *S-T*, I-II, q. 94, art. 2.

¹² *S-T*, II-II, q. 57, art. 3.

¹⁴ *De Legibus* 2, 17, 5.

¹⁶ *Ibid.* Suarez speaks of the *inclinationes* as being 'elevated by a process of rational gradation'.

¹⁷ *Cf. Messner, op. cit.*, 63.

¹¹ *Ibid.*

¹³ *S-T*, I-II, q. 95, art. 4 *in corp.* and ad. 1.

¹⁵ *Ibid.*, 2, 8, 4.

can man be said to 'acquire' an inclination, which, by some process or another, is 'transformed' into a judgment? At first sight such a transformation seems impossible. Surely, it may be said, the *inclinatio* of itself does not lead to any judgment. This crucial question has scarcely been touched upon by writers previously. It is fundamental if we are to understand the meaning which the Schoolmen attach to the natural law.

In Question 94, article 1, Aquinas poses the question whether the natural law is a habit. And he poses this question before he discusses the actual content of the natural law in article 2. More attention has been paid by writers to article 2. To our mind the central question is discussed in the first article. It would seem that the reason which prompted Aquinas to ask this question is to be found in the general difficulty in talking about principles of conduct or of moral judgments as though they were constructions built up from the principles which *this* person holds, or from the moral judgments which *that* person makes. In this article, Aquinas shows how we can talk about general principles common to mankind, while still recognizing that only *this* or *that* person can make a moral judgment. There is, he says, a natural *habit* of the primary principles or precepts of the natural law, which inclines all men to seek what is good and avoid what is evil. This habit he denotes by the Greek phrase *synderesis*.¹⁸ In another place he speaks of *synderesis* 'inciting' to the good and 'murmuring' at evil. Accordingly, he says, men retain the principles in their minds by means of this habit, while at other times they bring them under actual consideration.¹⁹

The notion of *synderesis* is very similar to the Latin notion of *conscientia*. In both Aquinas' and Suarez's works, reference is made to the authority of Basil ('*synderesis* or conscience is the law of our intellect') and Jerome who speaks of

The law of conscience which is disregarded by the very young and unknown to infants but which, when intelligence begins to assert itself, comes to the fore and lays down commands regarding those things which cannot be made to accord with pure rational nature.

Suarez himself prefers the phrase *recta ratio* (right reason) to explain the habit of the principles of the natural law, and remarks that it is better to use this term to refer to *synderesis*, and to use the phrase *lex naturalis* to signify the precepts, *i.e.*, the moral judgments which are prompted by the habit.²⁰

¹⁸ S-T, I-II, q. 94, art. 1.

¹⁹ S-T, I, q. 79, art. 12. Of course, the word 'habit' is used here to denote something which is inherent in man, as distinct from that which is attained by practice.

²⁰ *De Legibus* 2, 5, 14. On the notion of *synderesis* see Lottin, *Psychologie et Morale aux XII^e et XIII^e siècles*. Tome 2, 103-349, especially 222-235.

Leclercq, *La philosophie morale de saint Thomas d'Aquin devant la pensée contemporaine* (Louvain, 1955) 382-392.

Now the notion of *synderesis*, right reason, or conscience, appears to be the key to the explanation of the inclination-judgment controversy. For it connotes both an inducing and an enlightening factor as the basis of a system of moral rules. It is this notion which is indispensable to our understanding of the word *naturalis* in the phrase *lex naturalis*. If we consider that there is an innate urge and an innate capacity to understand what moral actions ought to be performed, it is not difficult to see in what way the *precepta rationis* are natural to man. The difficulty is to find a suitable English phrase to explain this habit: conscience might seem to fulfil the role, but, as we shall see, this is usually given a more narrow signification than *synderesis* or *recta ratio*.²¹

If we use the word *synderesis* to refer to the natural habit of the first principles of the natural law it is necessary to add that what we are saying is not that 'all men know the precepts of the natural law'. Rather we are making a more complex statement about a capacity for enlightenment, and an urge or drive towards realizing that capacity. Maritain combines these features when he speaks of 'knowledge through inclination'.²² This can only be a 'shorthand' way of saying something which cannot be fully explained until the features pointed out above are elucidated, as we have done in the previous pages.

III

If we restrict the term 'natural law' to designate the judgments which are made as a result of the prompting of right reason, the question remains whether such judgments can be called 'precepts', whether in fact the word law or precept is used in the same sense here as it has been used by the Schoolmen in speaking of law in general. It will be recalled that they considered that natural law was ultimately dependent on the Eternal Law.²³

With Aquinas this issue is not canvassed, while, in the *De Legibus*, it is elevated to a most important place. Indeed, Suarez devotes a whole chapter to the question 'Is The Natural Law In Truth Preceptive Divine Law?'²⁴ It is not difficult to see why the issue is more prominently featured in the *De Legibus*. In the centuries which elapsed between the writing of the *Summa* and the appearance of the *De Legibus*, certain writers had presented an interpretation of natural law which found its nature to reside in the judgment of reason alone, independent of any higher legislator. Such writers were

²¹ *Infra*, 219.

²² *Man and the State* (London, 1954) 82 and n. 2. Contrast Cotta, *Il concetto di legge nella summa theologica di S. Tommaso* (1955) 90.

²³ *Supra*, 206-207.

²⁴ *De Legibus* 2, 6.

wont to make a distinction between natural law as a *lex indicans*, and natural law as a *lex praecipiens* and to assert that, properly interpreted, natural law was of the former type only.²⁵

It is difficult to see how Suarez could have reached any other conclusion on the basis of his initial premiss (Natural Law dependent on the Eternal Will) than that the natural law was preceptive divine law. And that was the conclusion to which he was forced.²⁶ Moreover, believing, as he did, that a superior-inferior relationship was essential to the existence of law, even natural law would seem ultimately to be derived from a legislator.²⁷ On the other hand, his discussion of natural law has clearly shown that he believed that it was not a 'usual' type of law, residing, as it did, more in the subject than in the legislator.²⁸

The vital question which troubled him was the problem of obligation. How could one say that a person was obliged by a rule, if obligation is not ultimately based on a duty to obey *someone*? On the other hand, could one say that a person was obliged to obey the commands of his reason? In answering these questions, Suarez does not make any definite choice. He admits that natural law is indicative in that the judgment points to the evil or goodness of an act.²⁹ Yet he considers that such a judgment is insufficient to found its obligation. The natural law, he says, is related to God's Will.

Therefore whatever is against God's Will is necessarily against the natural law . . . ; hence the natural law includes God's Will, since without an act of will no legislation exists [*sine voluntate non est legislatio*].³⁰

The crucial leap is taken in this last paragraph: in answering his question, he has committed the error of prejudging the whole question by inserting within the terms of his definition the superior-inferior relationship. And yet, in his final conclusion, he asserts that right reason is a sufficient sign of divine volition:

If that volition on the part of God is essential to a fitting and prudent providence and government over mankind, it is in consequence necessary that, by virtue of this same providence, that divine volition shall be capable of being made known to men; and this process is sufficient for the nature of precept and of law, nor is any other form of declaration necessary. Wherefore, it may further be stated that this

²⁵ Hugo de St Victor, Gabriel, *De Legibus* 2, 6, 3.

²⁶ *De Legibus* 2, 6, 5.

²⁷ *Ibid.*, 2, 6, 13.

²⁸ For a criticism of the 'voluntarism' of Suarez, see Farrell, *op. cit.*, 147-155.

Penna, 'Essai critique sur les notions de loi éternelle et de loi naturelle'. *Archives de philosophie du droit et de sociologie juridique* (1936) 92, especially 117-121.

And contrast Blic 'Le volontarisme juridique chez Suarez?' *Revue de philosophie N.S.* (1930) i, 213, 223.

Rommen, *Variaciones sobre la filosofía jurídica y política de Suarez*, 4 *Pensamiento* (1948) 493, especially 498-504.

²⁹ *De Legibus* 2, 6, 5.

³⁰ *Ibid.*, 2, 6, 10. Also see 2, 6, 7.

very faculty of judgment which is contained in right reason and bestowed by nature upon men, is of itself a sufficient sign of such divine volition, no other notification being necessary.³¹

As we have said, the difficulty into which Suarez is forced stems from the fact that his conception of law is centred on the superior-inferior relationship. If he had viewed law merely as a rule binding human beings then his justification of natural law as 'law' would have made more sense. And he would have realized that a different type of analysis would have been proper in any discussion of a rule dependent on right reason or on conscience as compared with an imposed or a commanded rule.

If we say that a rule of law exists when human beings are obliged to perform certain conduct or to abstain from certain conduct, we can then go on and discuss the question of what *types* of rules bind human acts. One type will be a *lex posita*, a rule laid down by a superior for an inferior. *Lex naturalis* will be another type—a type which has its own special features: the judgment of conscience, the moral rule which binds or obliges human beings in their status as such.³² It is only when we have recognized these features that we may ask the question: is the Natural Law dependent on a Higher Legislator? To this question the Schoolmen's answer is almost a confession of faith: assuming Divine Providence, yes. As Aquinas points out, a number of individuals will only see the natural law as a binding, but autonomous, system of rules.

The re-formulation of the question in this manner seems to me to avoid the difficulties into which Suarez and modern commentators have fallen in trying to reconcile 'voluntarism' and 'rationalism'. It enables one to assert that there may be different types of obligation, and consequently to avoid the use of terminology, such as indicative-preceptive, which has the effect of confusing the question to be answered.

If the interpretation presented here is correct, it follows that the obligatory source or binding force of the *lex naturalis* is to be found in the notion of the natural good revealed by right reason, which, according to the natural law hypothesis, imposes itself as the moral goal of every human being. Only secondarily is this source to be found in the authority of a superior lawgiver. It is precisely in this respect that the scholastic concept of obligation differs from that which is to be found in writers such as Hobbes and Austin. With these writers the concept of obligation is related to the authority or power of a supreme legislator to inflict a pain or penalty on the

³¹ *Ibid.*, 2, 6, 24.

³² *Contra*, Gierke, *Political Theories of the Middle Ages* (1938) 173, n. 256, who brackets Aquinas with Suarez in attributing the binding force of natural law to God's Will.

subject as a means of enforcement of the rule. Indeed, the development of the notion of sovereignty applied to both moral rules and legal rules reflects the gradual decline of the natural law thesis, and the gradual ascendancy of the authoritarian thesis, as to the nature of legal and moral obligation.

IV

Our discussion of the natural law in section II prompts the further questions: what is the nature of the precepts of reason which are bound up with the natural inclinations of man? What is their genesis—are they stored up in the mind of every human being from the moment of birth, or are they built up from experience?

We have already referred to that passage of Aquinas where he speaks of the precepts following the order of the natural inclinations.³³ He goes on to compare what he calls the primary precept of natural law with other precepts in such a way that his terminology suggests that there exists a general *precept*, 'Seek the good and avoid the evil', from which certain substantial *precepts* are 'derived' (such as: do not kill, do not steal), as though certain concrete precepts can be derived from a formal principle.³⁴ In other places, he speaks of a self-evident *principle* which leads to immediate *conclusions*, and contrasts the self-evident principle (Seek the good) with the conclusions (Do not kill, etc.).³⁵ Still, in other places, he seems to equate the concrete precepts with the self-evident principle (when they become 'self-evident principles') and to make a distinction between these and other principles which are not immediately self-evident, but are only ascertained after reflection.³⁶

Much of the confusion to which the terminology gives rise seems to revolve around three questions:

1. What is the status of the first principle 'do good'?
2. What is its relationship with the concrete precepts (and inclinations)?
3. What, if any, distinction is there within the concrete precepts themselves?

At first sight, it would seem as if Aquinas uses the expression 'do good, avoid evil' as a moral imperative to denote the duty of every

³³ *Supra*, 208.

³⁴ *S-T*, I-II, q. 94, art. 2 *in corp.* and ad. 1. The expression 'formal' here is used to designate a principle which does not, in itself, inform a person as to the actual course of conduct which he ought to follow. As such it is contrasted with the expression 'concrete' which signifies the course of conduct to which the principle relates. The principle 'do good' is formal as contrasted with the principle 'do not kill'. In the subsequent discussion I will attempt to show that the Schoolmen believed natural law to be of a concrete type, as contrasted, for example, with Kant's universal imperative.

³⁵ *Ibid.*, q. 94, art. 4.

³⁶ *Ibid.*, q. 94, art. 6.

human being to act according to his nature. It is a shorthand way of saying: 'You ought to do *those things* to which your nature impels you and you will find out what those things are by reflecting on the fundamental ends of human existence.' It is necessary, however, to ask what mental activity this implies. Is it an immediate intuition? A process of reflection involving, perhaps, a working out of a system of rules? Or the fruit of experience?

Aquinas' answer seems to involve all three. Man, in effect, through the agency of *synderesis* has a sympathetic understanding of what he ought to do. He acts according to principles, some of which are immediately intuited, others of which are built up by reflection and experience. The values of life and the propagation of the human race, as well as the values of social intercourse and relationship with God, are components of the moral life of every individual. In so far as they therefore constitute ends for man there is an obligation on his part to pursue them. Consequently he will act morally only if he accepts the principles enshrining these values.

It is the use of the phrases 'first principles', 'conclusions', which suggests that the process of moral formation is, with Aquinas, mainly associated with a type of rationalistic system-building, as if men could only commence to act morally once they had worked out for themselves a moral system to guide all their future actions. If we interpret Aquinas' language in this way, we might say that a person deduces the precepts of the natural law from the principle 'Seek the good, avoid the evil'.

Unfortunately, Aquinas does not set out, in his treatise on Law, to explain the manner in which men become aware of the precepts of the natural law apart from saying that *synderesis* incites to the good and murmurs at what is evil. He does not concern himself here with the question of moral formation. On the other hand, he was ready to recognize that moral formation was *not* a question of system-building. He speaks, for example, of the difficulties associated with the discernment of moral obligations and of the liability to error.³⁷ He recognizes that certain precepts were usually immediately recognized by men as being valid, while the recognition of the validity of others depended on a certain amount of reflection (and in respect of which the judgments of wise men were often paramount).³⁸ Accordingly, he was wont to speak about immediate conclusions as compared with remote conclusions, primary principles as compared with secondary principles.³⁹

³⁷ *S-T*, I-II, q. 94, art. 4.

³⁸ *Ibid.* On the contrast between primary and secondary precepts see Rommen, *The Natural Law* 215-229.

³⁹ *S-T*, I-II, q. 94, arts. 4, 5, 6.

Elements of a solution

At this stage we will try to see whether Aquinas believed that the precepts of the natural law were derived from the first principle. In Question 94, article 2, we may find the solution of this puzzle. In this article, Aquinas speaks of the first principle as being the basis of moral action. He continues:

Since, however, good has the nature of an end and evil the nature of a contrary, hence it is that all those things to which man has a natural inclination are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance. Wherefore according to the order of natural inclinations, is the order of the precepts of the natural law.

It seems that the crucial phrase is 'naturally apprehended'. Phrased in a different way: man apprehends or intuits certain fundamental values as having a claim upon him. These constitute the concrete precepts of the natural law. The formal principle is merely explanatory of such moral activity. It is the internal principle of moral action but in no way can it be said to *inform* as to the content of the moral precepts. When we speak of the natural law we are referring to the concrete precepts. The principle 'do good, avoid evil' may therefore be regarded as a preamble to the natural law.⁴⁰

In the *De Legibus*, Suarez, although he uses terminology similar to that of Aquinas, seems to reach this conclusion. He says that

... the natural law works more through proximate principles or conclusions than through universal principles; for a law is a proximate rule of operation; and the general principles mentioned above are not rules save in so far as they are definitely applied by specific rules to the individual sorts of acts and virtues.⁴¹

Suarez, however, distinguishes an intermediate-type principle which is different from the general principle (Seek the good) but is nevertheless of a more general nature than the concrete precepts. As examples of this type of principle he mentions: 'justice must be observed'; 'God must be worshipped'; 'one must live temperately'. Compare the Roman jurists, *Honeste vivere, neminem laedere, tribuere suum cuique*.) Such principles specify the broad content of the concrete precepts without specifying their form (*e.g.*, how is one to live temperately?).⁴²

Of course, the introduction of this type of principle immediately causes us to ask: 'Does one intuit or apprehend the concrete pre-

⁴⁰ Maritain, *Man and the State* (London, 1954) 81.

⁴¹ *De Legibus* 2, 7, 7.

⁴² *Ibid.*, 2, 7, 5.

cept itself (e.g., I should not steal) or the principle (I should be just)? *Vis-à-vis* such precepts, this type of principle would seem to be a principle lacking content, for it does not inform as to the exact duty or type of action which ought to be performed. In itself it is explanatory of the concrete precept: To steal is to be unjust. But it seems to differ from the other principle to which we have often referred ('Seek the good') in that involved in the apprehension of the precept 'one should not steal' is the awareness that one is being unjust to another if such an action is performed. What, in fact, this intermediate-type principle does is to specify the subject-matter or class of virtue to which a concrete precept belongs.

Summing up, we may say that when the Schoolmen use the term 'natural law' in association with the words 'self-evident principles' or 'conclusions' we have to be on guard lest we attribute to these principles the same status and effects. It is necessary to distinguish the preamble to the natural law, certain general principles which specify the subject-matter of the natural law or localize the *bonum morale*, and finally the precepts themselves—the rules which inform as to what one ought to do or abstain from doing.

Awareness of such precepts is not achieved by any type of deductive method from the formal principle to the precepts, for, according to the natural law thesis, moral reasoning is not of this kind. When, therefore, mention is made of 'self-evident principles' or 'manifest conclusions' such phrases must refer to an intuition of concrete moral duties, such intuition being prompted by *synderesis* or sympathetic understanding which man possesses and which, when brought into the sphere of discussion, can be supported on rational grounds. And when mention is made of self-evident or primary principles as compared with *secondary* or *remote* conclusions, the comparison intended is between those precepts which depend on immediate apprehension and others which are discerned only after a certain degree of reflection and debate takes place. While murder is immediately recognized as something involving moral turpitude, usury is *not*. The goodness or turpitude underlying the second class of actions is not immediately apprehended because one must enquire into the nature of these actions and weigh the interests involved, before coming to a decision.⁴³

⁴³ See Coplestone, *Aquinas* (1955) 222-225. It might be asked: how can you say that murder, for example, forms the subject-matter of an immediate intuition? Is it because whenever we form a concept of murder, a mental picture of an action typifying murder flashes through our mind (for example, a person being done to death in a violent way)? It seems that such a mental picture is often involved when we suddenly reflect on the wrongness of such an action, but that it only assists in focusing our attention on the instinctively-felt repulsion (or attraction, in the case of good objects) towards such an action. Such, it seems, is the process by which *synderesis*, or conscience dormant, as it were, for a period is violently awakened when attention is turned towards, or judgment formed on, the morality of such actions.

V

An issue which arises from our previous discussion may be stated as follows. If it be granted that there is an innate capacity to know the precepts of the natural law, what status does this capacity have in respect of the moral thought and action of any *individual* person? Does *everyone* actually know the precepts of the natural law? This question is prompted by the thought that there is a difference between saying that a person is bound by the natural law and saying that a person is aware of its binding force.

Aquinas suggests that no person can be ignorant of the primary precepts of the natural law, but that certain individuals or races can be ignorant of the secondary precepts and of the application of the precepts to particular acts.

As to those general principles, the natural law, in the abstract, can nowise be blotted out from men's hearts. But it is blotted out in the case of a particular action, in so far as reason is hindered from applying the general principle to a particular point of practice, on account of some concupiscence or some other passion. . . . But as to the other, *i.e.*, the secondary precepts, the natural law can be blotted out from the human heart, either by evil persuasions, just as in speculative matters errors occur in respect of necessary conclusions; or by vicious customs and corrupt habits, as among some men, theft, and even unnatural vices . . . were not esteemed sinful.⁴⁴

This particular passage is somewhat ambiguous. If Aquinas means by the general principles the formal principles discussed previously, it would seem that what he is asserting is that to act morally a person must accept the proposition that he ought to seek what is good, or rather, that to act morally is to act according to such a principle. If, however, Aquinas is comparing principles such as 'do not steal' with the more remote principles, then he may mean that all men are aware of the fundamental duties but may be unaware of the less fundamental duties.

This latter conclusion, however, is inaccurate, as is shown by the fact that he recognizes, in the example cited at the end of the above quotation, that certain races may be unaware of the *primary* concrete precepts.⁴⁵ In effect, this is the interpretation which Suarez adopts. Suarez makes the distinction between the formal principles and the concrete precepts, and holds that ignorance of the former is inconceivable,

. . . inasmuch as those principles are by the very terms defining them completely known and to such a degree in harmony with and (as it

⁴⁴ *S-T*, I-II, q. 94, art. 6. See also art. 4.

⁴⁵ For example, of the precept 'do not steal'.

⁴⁶ *De Legibus* 2, 8, 6.

were) fitted to the natural bent of reason and will, that it is not possible to evade them.⁴⁶

As far as the concrete precepts are concerned, Suarez believes that one or other of these may be blotted out (although one is never *totally* eradicated) but he points out that it is inconceivable that such ignorance would continue, in the case of a primary precept, for any great length of time, or without a sense of guilt. As far as the secondary or remote precepts are concerned, this may well be the case, *i.e.*, there may be ignorance for a length of time and without a sense of guilt.⁴⁷

If the Schoolmen had written a little later, they might have been surprised to discover that there was a wider diversity in moral practice than the example of theft, taken from Caesar's *De Bello Gallico*, indicates. Puffendorf, writing in the latter part of the seventeenth century, and with great knowledge of the texts of classical writers, refers to the evidence of writers who cite a great number of perversions practised by certain tribes.⁴⁸ And, indeed, it could be shown on the basis of sociological evidence collected in recent times that among civilized peoples there are a number of aberrations which afflict a number of individuals and which suggest that the natural law is not universally understood.⁴⁹

Does such evidence subvert the basis of the natural law? Not at all. Even though it is asserted that the natural law is binding on every individual as a member of the human race, no assertion is made that every individual is aware of all the precepts of that law. There is one qualification, however, to make. It is inconceivable that a person could act virtuously at all unless he was implicitly aware of the validity of the principle that he should seek what is good. If he said to himself, 'Evil, be thou my good', we would only say that this was a wilful refusal to recognize any form of moral obligation at all.

The difficulty remains that the Schoolmen's terminology occasionally suggests that they are not thinking of the further question, namely, in what way an *individual* is bound by the natural law. And this is not surprising because the use of phrases such as 'right reason' does suggest that there is a type of universal conscience in existence. In some places, they do use the word 'conscience' to describe the individual capacity of each person to discern the right and the wrong,

⁴⁷ *Ibid.*, 2, 8, 7.

⁴⁸ For example: illicit intercourse with mothers and daughters among the Persians, cannibalism among the Scythians, the killing of the aged among the Massagetae: Puffendorf, *On the Law of Nature and Nations* (trans. C. H. and W. A. Oldfather, Oxford, 1934) 191.

⁴⁹ Cf. Deploige, *The Conflict between Ethics and Sociology* (trans. Miltner, 1938) 309 ff.

and it is this phenomenon which might hold the key to the universal-individual problem.

In Question 19, article 6, Aquinas makes the rather strange statement that the Eternal Law cannot err but that conscience may err, and he goes on to distinguish Natural Law from conscience, which is the individual capacity of each person to decide whether *particular* actions are right or wrong.⁵⁰ Suarez approves of this distinction, and asserts that while Natural Law (here used to denote *synderesis*) only looks to the future, conscience takes account of past acts and can 'accuse' and 'admonish'. He concludes by saying that conscience can take account of other rules besides the rules of the Natural Law and therefore may err.⁵¹

In elucidating this distinction between the natural law and conscience, it is necessary to indicate the reasons for assuming the existence of such capacities at all, and the corollary, namely, that one is insufficient without the other. In effect, we are making two distinct statements when we say that a person is bound by the precepts of the natural law. In the first place we are stating that *every* person has a natural inclination to know and act according to certain rules, such an inclination usually issuing in action, other circumstances being equal. In the second place we are also saying that a *particular* person (X) has such an inclination. And yet it is a fact that a person may act in a way which is contrary to the precepts of that law, *thinking*, nevertheless, that he is acting rightly.

Ultimately, we can only judge the particular person according as to whether or not he obeys the dictates of his conscience, that is according to the moral evaluation which he makes in respect of the facts which present themselves for moral appraisal. This does not prevent us from judging the acts themselves according to the standards of the natural law. In such a way it is possible to speak of an erring conscience.⁵²

The assertion that there is a distinction to be made between the binding force of the natural law on members of the human race, and the awareness of its binding force on the part of this or that individual, gives rise to a definite problem. How can an individual, it may be said, be 'bound' by a precept of the natural law of which he is unaware? Even if we regarded the natural law as dependent on the Will of God it would be difficult to say that a person who was unaware of the Will of God was bound in conscience to comply with it.

One way out of this difficulty is to say that the statement 'All

⁵⁰ *S-T*, I-II, q. 19, art. 6, ad. 2. See also *S-T*, I, q. 79, art. 13.

⁵¹ *De Legibus* 2, 5, 15. For example, if it takes account of and follows an *evil* custom or rule of positive law.

⁵² Lottin, *Psychologie et Morale*, *op. cit.*, 415-417.

individuals including X are bound by the natural law', is a statement about X taken as a member of the human race. The statement in effect invokes the standard of the reasonable moral person who is subject to the principles of the natural law. We may find some analogy here with the perception of physical objects. We might say that all persons ought to see objects which are within the normal range of vision. In such a case we appeal to a standard of vision which we deem appropriate in the case of people with normal eyesight, recognizing, of course, that there are some individuals who will be myopic.

It seems that an analogous claim can be made in the case of the precepts of the natural law. They can be recognized by individuals provided that they have, amongst other things, a sufficiently-developed conscience, just as objects can be seen by those whose eyesight is good.⁵³

To take another example, if an individual wants to play a game such as football he must acquaint himself with the rules of football, so too a human being, to be moral, must adhere to the rules of morality. The difference in the two cases is that a particular individual is not obliged to play football while every individual *as a member of the human race* is obliged to adhere to the standards of the natural law. If, however, a particular individual, through ignorance which is not culpable, is unaware of a precept of the natural law, the only judgment we can make is that in the particular circumstances he is bound to follow his conscience which is in discord with the natural law.

It is unrealistic to regard the acquisition of the knowledge of the precepts of the natural law in their entirety as anything but a long and arduous process: the consciences of all of us are to a great extent always struggling to see the light, while new situations present themselves which call for re-examination of the basic interests involved in a moral situation.

The Schoolmen recognized that evil passions and vicious habits often turned certain individuals, and even nations, away from the natural law. It is not very difficult to see how men fall into such habits and ways of acting through not bothering to make use of their consciences in appraising their conduct. But Suarez thought that such practices could not continue for any length of time without a sense of guilt.⁵⁴

As far as the individual person is concerned, the application of

⁵³ Cf. *De Legibus* 2, 5, ss. 1 ff.

⁵⁴ *De Legibus* 2, 8, 7.

He attempted no analysis in his treatise on the natural law as to what the sense of guilt was. It seems that a sense of guilt can express itself in different ways, perhaps most notably in the weakening of the moral fibre of the group in which the practice becomes widespread, e.g., the rapid decline of the Roman Empire.

principles is perhaps just as important as adherence to them. A person may very well give assent to principles without applying them to his daily life. Aquinas suggests that this often happens through the upsurge of some passion: we may add that it is often the case of a person being unable to discern the criteria which are to be applied to an individual set of circumstances.

This indeed brings up the whole question of moral formation. And the virtue *par excellence* in this regard is *prudence* which, as Aquinas puts it, is the virtue which is concerned with actions. It is insufficient, he says, for men to know principles without knowing how to apply them.⁵⁵ The latter type of knowledge can only be attained through experience and constant practice. A tutored conscience is the work of continuous endeavour.⁵⁶

In conclusion, we may point out that the principles of the natural law must not be seen as some type of panacea solving, in an automatic way, every problem which arises. No doubt the language often used by the Schoolmen has the effect of picturing universal-type principles which are *there* to be recognized by every individual. But this cannot turn our attention away from the central features of moral activity, namely, that it is *this* person and *that* person who hold principles and that the task of application is not an easy one.

⁵⁵ *S-T*, II-II, q. 47 ff.

⁵⁶ Cf. G. Marcel, *Men Against Humanity* (1952) 18, whose criticism of a moral formalism which seeks to bring all human acts under general rules, is a necessary antidote to any belief that the sphere of morals is exhausted by general rules. There is always an element of the unique which prevents one from 'taping' moral situations.

See also *S-T*, I-II, q. 94, art. 3, and *De Legibus* 2, 7, 11-14, where the Schoolmen, in discussing the question whether the natural law prescribes the acts of all the virtues, make the point that the content of the virtues, especially the personal ones such as courage and temperance, depends so much on the circumstances in which the moral agent finds himself.