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The scholastic conception of the natural law and its historical background

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THE SCHOLASTIC CONCEPTION
OF THE
NATURAL LAW
AND ITS
HISTORICAL BACKGROUND

by

Joseph Fleming Gualderon, B.A.

A Thesis Submitted to Assumption College Affiliated With The University of Western Ontario As Partial Requirement for The Master's Degree.

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Throughout the study of political science there has appeared time and again, varied conceptions of the natural law. Now, there is no need to stress the importance derived from a correct conception of the natural law, since all political thinkers know that sound government can only be derived from a body of sound laws and ultimately sound laws must be based upon a sound foundation; and this foundation can be termed synonymously as the natural law. It is an historical fact that a society is good only in proportion to the laws governing it. Therefore, in order to maintain a good society, there must of necessity exist good and just laws; and in order to insure the character of such laws, they must necessarily spring from or be based upon a firm and just foundation.

Thus the purpose of this thesis is to prove in detail that foundation, which the author maintains to be the only foundation - the scholastic conception of the natural law. In order to achieve this purpose two avenues of approach have been deemed appropriate - which account for the thesis being divided into two parts.

In order that this conception might have a firm and sure foundation, it seemed desirable to begin
by assembling into the first part what might be termed an historical back-ground of the natural law. It seemed only fitting to begin such an historical treatment with a study of the natural law as perceived in the minds of the Greeks, the founders of Political Science, and the Stoics, since to them is credited the universalizing of the conception of their predecessors. Since the Romans were the first to codify their laws and stress such an importance of 'jus gentium' which they held to be synonomous with natural law, it was well to treat of their conception.

Following the Roman era, a new philosophy of law came to the fore in the teachings of Christ and the conception of this period is appropriately termed the Christian conception of which the scholastic conception is an emanation.

An historical approach entails quotations upon quotations. However, while it has been necessary in some instances to borrow English versions for the occasion, the majority of the quotations from the Greeks, the Stoics, the Romans and Christians have been drawn from more or less familiar authors and their works.

The crux of this thesis is found in the second part which is based entirely upon the writings of St. Thomas Aquinas and Francisco Suarez. The works of these men were greatly drawn upon in order to prove and clarify
the scholastic conception of the natural law. Thus the first chapter of the second part is given to a treatment of the conception of St. Thomas; and the second chapter of the second part is given to a treatment of the conception of Suarez, which is used more or less to render a final blow to the proof.

The purpose of the introductory chapter is to bring to one's attention the conception of the natural law to be treated which is at once fundamental and universally accepted, albeit oftentimes overlooked because of its very familiarity. Fortunately, though our perception of it may grow dim, truth does not wear out, and there can only be one true concept of the natural law. We may fail to notice it - may even forget it, to our sorrow - but a reminder brings it before us again as enduring and solid as ever. The introductory chapter, then, is a reminder of the truths found in the scholastic conception of the natural law, which, we believe, one cannot ignore without great peril to ourselves and to posterity.
INTRODUCTION

It may safely be asserted that human beings have for untold centuries existed in some form of society. Why? The answer to the question, given more than twenty centuries ago and still accepted, is that man is a social animal, a gregarious being, and that his social needs make him likewise a political being, for he cannot permanently associate with others of his kind, in groups large or small, without some form of social organization. What may have been the first form of social organization we do not know, and it is not within the present field to speculate on that subject.

The admitted fact of that organization, developed by the use of human reason, is our starting point. Now an organization cannot be established, or once established cannot continue to exist, without rules. What does this imply? This implies that at the base of society there must exist a fundamental, universal and immutable law; and these are the main attributes of the natural law.

The question which inevitably confronts us is - What is this natural law? And no answer can be given without further questions concerning origin and development of the natural law. What are the elements that
constitute it? What is its purpose? Wherein does it have its foundation?

Human beings are reasonable beings, and reason is a lamp distinguishing right from wrong. And the human conception of good as distinguished from evil by the light of reason is found in the natural law. Thus the natural law is the foundation of all just laws. "The supreme dictates of conscience," says the most Reverend Archbishop Amleto Giovanni Cicognani, Apostolic Delegate to the United States, in his admirable volume on canon law, "are the same for all mankind and consequently must derive from some common source which is the property of all. And that source is nothing else than the light of reason manifesting to us what is good and what is evil - in a word, the natural law."

The concluding and all important question, whose answer will solve the purpose of this thesis, is: Why was the study of natural law taken as the theme of this thesis? What were the difficulties pertaining to the natural law?

Men all through the ages have recognized the existence of a certain fundamental something hidden in their very natures. From the questions of what that something was, or from whence did it have its origin, or what sanctioned it, there arose many and varied

conceptions.

Man is a rational creature and in his nature God has implanted certain guiding norms or principles to enable him to achieve his last end and fulfill the purpose of his creation. The Greeks strove for the 'highest good' but their guiding norm was based upon pure reason. Therefore, they conceived of the natural law from a rational point of view. Later, the Romans making use of some of the philosophical ideals of their predecessors based their foundation of law on the 'law of nature' meaning that law found its ultimate sanction in nature. Because of such a procedure, the Romans regarded the Imperial Law as the foundation of all law and as a sanction 'legibus solutus'. This idea permeated throughout history. It was found to be at the base of the conception of law in the views of Machiavelli, Bodin, Luther, King James, and a number of others.

The difficulties arising from such a conception of the natural law was that in one case, the law was supreme with a pure rational sanction, unstable as the law itself; in another case, the ruler was supreme and thus the sanction would depend upon the will of the ruler and would thus suffer change in accordance with the changing will of the ruler; in another case, the natural law was considered to be the body of laws still in use developed from time, usage and custom; and therefore, it would
change in accordance with the change of time, circumstances and custom; and in still another case, the natural law was considered to be the common law of the people at that particular time and in that particular place. And as such, no body of law could ever be stable for it would lack the necessary foundation for stability. And a society is stable in proportion to its laws. Therefore, in order to have a sound body of law there must of necessity exist a law that is universal, immutable and eternal in its principles sanctioned by its Eternal Creator.

The most learned of jurists have accepted the Scholastic conception of the natural law for the foundation of a sound system of jurisprudence, the development of a good society with the result - a stable government.

In order to bring out and prove the scholastic stand-point on the natural law, the defense is taken from the works of whom we consider to be two of the most distinguished bulwarks of Scholasticism - St. Thomas Aquinas, the 'Doctor Angelicus', and Francisco Suarez, the 'Prince of Modern Jurists'.

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PART I

Historical Background of the Natural Law
CONCEPTION OF THE NATURAL LAW
IN THE PHILOSOPHY OF THE
ANCIENT GREEKS

Before delving into the conception of the Greeks in regards to the natural law and its effect on the past, the present and the future, it will be well to consider for a moment the Greek civilization prior to the Christian era.

From a political standpoint, ancient Greece was built up of city-states similar to a series of units varying in size and power and form of government, but all of them as small communities which could not be termed states in the modern territorial sense of the word. In this respect they greatly differed from the vast empires of the East, and with rapidly growing Rome, dominated with imperial ambitions. And as their size was incomparable in proportion to modern standards, so also were their populations small in comparison with great cities of other lands and other times. In the Golden Age of Greece, Athens was said to have had a population of 300,000 residents, of whom probably half were citizens and the remaining population consisting of resident aliens and slaves. However, many of the other states were much smaller, a few thousand inhabitants dwelling in a few square miles.
The Greek highly prized the separate and independent status of his community; he cherished the opportunity afforded by the small size of his state to take an active and personal part in the affairs of government. Moreover, he regarded his own small community as not only having an historical continuity with the other Greek communities but a distinct individuality which they were ready to defend to the utmost. The city-state was on the whole a self-sufficient state, often democratic in form, always proud of its independence and of its special characteristics as compared with other states.

The fact that the Greeks sought for the perfection of small political communities rather than a vast empire like the Romans had important consequences for the world of our day, but none was more important than the fact that the small communities made it possible for each and everyone of their inhabitants to feel an immediate and personal interest in the government of his state and to take a direct part in it. Thus government in the democratic states especially became a matter for discussion not by a few but by all citizens.

The Greeks were the first to inaugurate such a theory. For prior to this government meant the rule of one who possessed complete power and jurisdiction over
his subjects.

The environment of the land endowed the Greeks with a great zest for living and with speculative minds. Such problems as concerning man and nature, of laws, of society, of understanding human relations, of discerning and protecting common interests, aroused in them an eager curiosity. They were forever seeking the answers to the questions of 'How' and 'Why'. "They attempted to conceive of the universe in the light of reason." And because they were interested in humanity, they were seldom content to leave to one or to a few the exclusive management of their common affairs. What was the business of one should be the business of all. In the language of a distinguished authority, "The state is in fact, as the Greeks called it, τὸ κοινόν, the common interest or, as the Romans said, 'Res Publica' everybody's business." However, absurd the strict application of such a theory may become, at any rate is far more in keeping with human dignity than contrariwise. The Greek recognition of the truth that man is not only a social but a political being as well opened a way to the future and the complimentary truth that it is indeed a right and a duty for man to take part in political life. The Greeks perceived these truths with their accustomed clearness, and having seen them they unceasingly set their speculative minds to seeking the principles of
government, based upon sound principles of law, principles
developed purely through the channels of reason.

The Greeks left the past behind them, yet they
maintained a deep reverence for their traditions and those
unwritten laws which had claimed their obedience and respect
for many centuries and about which they formed the
principles of their government. They strived for progress,
to build for the future, and what they built was based
on the circumstances of their own day; what they built
has endured and in their building they set forth the
foundation for the governing of cities and of states.

In a few illuminating sentences we can readily
surmise our debt to the Greeks who, some twenty-five cent-
uries ago, faced the fundamental problems of human life
with clearness of thought straight through to logical
and still unassailable conclusions.

"The seeds of almost all that we count best in
human progress were sown in Greece. The conception of
beauty as a joy in itself and as a guide in life was first
and most vividly expressed in Greece, and the very laws
by which things are beautiful or ugly were to a great
extent discovered there and laid down. The conception of
Freedom and Justice, freedom in body, in speech and in
mind, justice between the strong and the weak, the rich
and the poor, penetrates the whole of Greek ethical thought,
and was, amid obvious flaws, actually realized to a remarkable degree in the best Greek communities. The conception of truth as an end to pursue for its own sake, a thing to discover and puzzle out by experiment and imagination and especially by Reason, a conception essentially allied with that of Freedom. One stands amazed sometimes at the perfect freedom of their thought. Another conception came rather later, when the small city-states with exclusive rights of citizenship had been merged in a larger whole; the conception of the universal fellowship between man and man founded upon a universal and eternal principle. Greece realized soon after the Persian war that she had a mission to the world, that Hellenism stood for the higher life of man as against barbarism, for Arete, or Excellence, as against the mere effortless average. First came the crude patriotism which regarded every Greek as superior to every barbarian; then came reflection, showing that not all Greeks were bearers of the true light, nor all barbarians its enemies; that Hellenism was a thing of the spirit and not dependent on the race to which a man belonged or the place where he was born. Then came the new word and conception—humanitas, which to the Stoics made the world as one brotherhood. No people known to history clearly formulated these ideals before the Greeks, and those who have spoken the words afterwords seemed for the most part to be merely echoing the thoughts.
Greek political philosophy seems prone at times to underemphasize the rights of the man in considering the duties of the citizens. However, this defect is largely compensated by the fact that to the Greeks in their Golden Age government was a constitutional procedure, with citizens in public assembly as the ultimate authority, with an administration of the state by chosen officials with specifically limited powers, and with law supreme over everyone. "It is fitting that not the threats of a man but the clear tones of the law should be master of the happy.... The safety of the citizens should not rest upon those who flatter the powerful and deceive the people, but upon confidence in the laws".

Though they held law supreme, the Greeks did not treat of it as a legal science. The philosophical basis of the development of law—morality, justice and equity, and later equality and liberty—they thought out and discussed at great lengths and their views always lacked a definite sanction. In theory the Greeks regarded law as a political science. Even the laws of Plato were more a political than a legal treatise. This conception is the result of the unrecognized infiltration of the principles of the natural law though not taken or understood to be as such. In the study of Greek laws one can readily detect
the absence of an ultimate and eternal end and a similar sanction. Their conception was acceptable as far as it went; however, its distance was bounded in the realm of the mind. For to them law was not an end but a means for promoting goodness and justice among citizens as a part of the larger purpose of the state, which was not "life only", but a "good life". They regarded their state to be essentially a moral society directed toward a moral end, the good life of its inhabitants. The political thought produced by the city-state conceived the state as a moral association, and as a result approached its subject from an ethical point of view. The law which they recognized as their sovereign in the state was therefore "a complex of ethical rules" based firmly upon fundamental and universally recognized principles of morality or based upon what we conclude to be their conception of the natural law, for it was from these principles that their law derived its binding force. Thus law was a means of applying these principles to the relations of human beings living together in society for the sake of a "good life".

Therefore, the Greeks regarded the spirit of the law more important than the letter. For when a dispute arose there were no legal procedure with the fine
points of law but merely a discernment between right and wrong and to administer justice. The Greek philosophers were interested in the relations of laws to the ideas of right and wrong, and to this problem they rendered much thought and attention.

Was an act right, they asked, because it conformed to the law, or were both the act and the law right if and insofar as they coincided with an absolute and eternal standard above the law? One answer was that what corresponded to the latter standard was natural right, but what corresponded to the humanly imposed customary or legal standard was conventional right. Others held that justice was based on convention or enactment rather than upon nature. Thus we have problems concerning the natural law existing as far back as twenty-five centuries ago.

Consequently, two ideas developed concerning their conception of the natural law. On the one hand, their was the idea of law as human wisdom, ascertained and promulgated through the state. On the other hand, there was the idea of law as the manifestation of an immutable and eternal right and justice. In other words, there was the idea of lex and the idea of jus. This double aspect of Greek thinking about law was due in part to the peculiar problem of social control in the Greek
city-state involved in the perennial conflict between oligarchies, hewing to the old traditions, and the demos seeking to use political power as a means of maintaining a standard of life.

For example, in the government of Athens "there was a highly developed political life, with its appropriate and regular organs, which had attained to full self-consciousness. There freedom was claimed as a birth-right; and by freedom men understood the right of living as one liked in social matters, and the sovereignty of the majority in political affairs. Equality was a watchword; and equality meant Isonomy, or equity of law for all; Isotimy or equal regard paid to all; Isagoria, or equal freedom of speech. Upon these principles was based their conception of the natural law."

However, to further the example, Athens had sinned, at least in Plato's eyes, in the want of training for politics which disfigured her politicians; she had sinned still more because the spirit had invaded her laws, and the individual, in his claim for a false freedom and a false equality, had set himself up as the ultimate source of law. Thus the salvation of Greece was to be found in training the citizen for his work and to inculcate upon him his duty to the state, and applying their acts in accordance with an ideal supreme law. Only the just man could be called a citizen; and the man was just in proportion to his reason. For along
with Socrates, Plato maintained that reason, "the rational principle, which is wise, and has the care of the whole soul," should rule the inward man. It is the function of reason, that little part which rules, to direct the other elements of man's nature and thus insure inward unity and self-control. "He is temperate who has these same elements in friendly harmony, in whom the one ruling principle of reason, and the two subject ones of spirit and desire are equally agreed that reason ought to rule." In a word, the just man must be both a reasonable and a reasoning man, for "the sacred and golden cord of reason" is, as Plato tells us, "the common law of the state."

In speaking thus of a "common law" does not, of course mean human legislation, but rather a fundamental law — that 'right reason' which, in a later era, was to become identified with the law of nature. It is, in a sense, but another aspect of the Platonic idea of good which is discoverable by the philosopher through the use of reason, and which corresponds to a certain extent with the modern conception of a law of nature, or of a final cause, or of both in one. This is the fundamental credo which underlies the conception of natural law in the mind of the Greeks. Their supreme law had its beginning, sanction and end based upon pure reason and as such reason could be termed synonymously with their conception of the natural law.
CONCEPTION OF THE NATURAL LAW
IN THE PHILOSOPHY OF THE
STOICS

Now the legal concepts built for the city-states were more or less fundamentally sound, but if they were to be applied to a changing order of things, a certain amount of adaptation was necessary. It is this process which must now be considered for along with the changing order there appears another conception of the natural law.

For its beginning we must turn back a hundred years to the latter part of the fifth century, when a strong patriotic attachment to small political units was common to all Greeks. At this time Antisthenes, a disciple of Socrates, founded the Cynic School, whose members rebelled against the theory and conventions of the city-state, substituting for them the ideals of individual self-sufficiency on the basis of reason, and a vague cosmopolitanism. As such the conception of the natural law was as variable as the reason of the individual varied. However, the social ideal of Diogenes, the great cynic, appears to have been "the removal of all barriers that divide man from man," and perhaps the establishment
of some kind of world state because of an innate certain principle which was the same in all men and which was linked with man's nature.

But on the whole, the philosophy of the Cynics was largely materialistic and concerned with rebellion and denial rather than affirmation. This was found to be true especially with regards to universal principles. The members of the school were radicals in the lengths to which their revolt led them, and the fact that many of them carried their theories to extremes.

For the present purposes, however, the importance of the Cynics lies less, perhaps, in their tenets than in the fact that they are a connecting link between the classical Greek philosophy in the field of ethics and the immediate conception of the Stoics.

The Stoics adopted in some measures the tenets of the Cynics. And like their precursors, the Stoics were Socratic in the belief that knowledge is the basis of virtue, of moral conduct; and thus restricting the natural law to the realm of pure reason with the end to be found in material good. But it was not knowledge derived from abstract speculation so much as from sense impressions which were co-ordinated by reason. To the Stoics, as to Socrates, reason was supreme, but in a somewhat different manner. Zeno, the founder of the
Stoic School, conceived of reason as at once divine and all-pervading. It was his doctrine that

"God is mind, God is soul, God is nature: It is God that holdeth the universe together. The artificer and disposer of the universe is the word, and the word is reason; He is fate. He is the determining cause of all things, He is Zeus."

Thus, "the Stoics asserted that the world is a product of reason, and that all the laws of nature dim in the long run at reasonable ends." Reason here becomes identified on the one hand with a universal mind or soul, and on the other hand with a universal ruling principle, or law and thus making their conception purely materialistic.

Furthermore, Zeno proclaimed that

"In all things is the divine; The law of nature is divine."

A logical conclusion then would seem that the natural law as he conceived it would be merely a thing. Now man was a part of this divine and all-embracing system; thus it was his duty, Zeno taught, to live in harmony with it.

"The fulfillment of a man's life is to live in accord with nature;"
So to live is to live in righteousness,
For nature leadeth to righteousness,
And the end of life is to live in accord with virtue.22

Here it can readily be seen that the end of man is purely naturalistic thus limiting the natural law to the material welfare of the individual. Righteousness, according to the Stoic teacher, was man's true destiny.

"Man is born solely for righteousness,
For righteousness draweth to itself the souls of men
With no lure, no offerings from without,
But of its own splendor.
Virtue of itself is sufficient for happiness;
Righteousness is the sole and only good,
And nothing is evil save that which is vile and base."

Thus accordingly, Zeno taught his followers that they should choose the good and reject the evil. But what of the things that were neither good nor evil? These the Stoics classified as "indifferent":

"Of things there are, some there are
Which are good and some which are evil,
And some which are neither good nor evil.
And the good are these:
Wisdom, Sobriety, Justice and Fortitude.
And the evil are these:
Folly, Intemperance, Injustice and Cowardice."
And things that are neither good nor evil are indifferent.

And things indifferent are these:
Life and death, good repute and ill repute,
Pain and pleasure, riches and poverty,
Sickness and health, and such like."

But man himself could not be indifferent. He must choose between good and evil; But they seemed to overlook the ultimate reason why. By his choice he placed himself into one of two categories into which the Stoics separated mankind.

"And of men there are two sorts,
The upright man and the wicked man;
And the upright man all his life
Will do the things that are right,
But the ways of the wicked are evil." 25

Throughout the study of the Stoic doctrines where good and evil are mentioned one can perceive no norm or measurement upon which a thing is proclaimed good or evil. Zeno regarded men foolish if they were wicked and wise if they were good. However, he makes no mention as to what acts made a man wicked or good. It is true that he speaks of being virtuous and righteous but he evades the question as to what makes or sanctions a virtuous act. He proceeds in saying that
"The wise man is blessed, the wise man is rich;
Only the wise, however needy they be, are rich;
Only the wise, however ill-favored, are beautiful;
For the lineaments of the soul
Are more beautiful than those of the body."

The most fundamental maxim of the Stoic philosophy was that the life of a man should be in harmony with nature. This maxim is subject to diverse interpretation. "Live according to nature is at first sight the most ambiguous of precepts." The Stoics, however, used the expression with a definite meaning. They maintained that all things are subject to a universal order, which is arranged by, or rather is conceived as being, a supreme and all-pervading intelligence.

All creatures are part of this universal scheme of things, but the part of man as a rational creature, differs from that of other animals."Now man, as well as other creatures, has his specific function, or nature in the Stoic sense, as part of the cosmical plan. But, unlike other creatures, he can fulfill it with conscious intelligence and choice. He may know his station in the world, and know also that in maintaining it he is fulfilling the purpose of the supreme Reason. By the very fact of being addressed to an understanding agent the command 'Live according to nature' becomes 'Live according
Thus reason was regarded as a guide or standard for human life. However, one is tempted to ask, "Where is the sanction in the Stoic scheme of morality?" How does it answer the question which some regard as the very first that moral philosophy is bound to answer - Why should I do right? The answer is not without interest to a world troubled over the topic of sanctions in one form or another. However, sanction as existed in the Stoic system was internal and made itself felt in the conscience of the individual. The Stoics taught that the wise man was the good man; but the question comes up as to their conception of goodness. The Greeks regarded goodness as performing one functions well. Here the Greeks fell upon a scientific conception which Phusis, a word which we translate as 'nature', but which seems to mean a process of growth by which every living thing perfects itself. Thus, if one analyzes this process, one will find that Phusis is shaping each thing towards the fulfillment of its own function - that is, towards the good.

To the Stoics this Phusis was at work everywhere. It was like a soul, or a life force, running through all matter as the soul or life of a man runs through all his limbs; it is the soul of the world. This Phusis had
still another aspect. In Zeno's time the natural sciences had made a great advance, especially Astronomy, Botany, and Natural History. This fact had made people familiar with the notion of natural law. Law was a principle which ran through all the movements of what they called the 'Kosmos', or ordered world. Thus Phusis, the life of the world, is, from another point of view, the law of mature; it is the great chain of causation by which all events occur; for the Phusis which shapes things toward their end acts always by the laws of causation. Phusis is not a sort of arbitrary personal goddess, upsetting the natural order; but it is the natural order and nothing happens without a cause; it is a natural law which is alive, which is itself life. It becomes indistinguishable from a purpose, the purpose of the great world process. Thus it is clear then that these concepts contained important implications which were developed into the tenets of the Stoic doctrine. If man is to employ his reason in the attainment of his end he must be free. Not only that but under the universal law is a plain of equality with all other men. And again, since he is a rational creature possessed of freedom and a status of equality, he is individually responsible for his own development. In this sense each man stands alone and the Stoic is an individualist. Yet, on the other hand, he is also part, with all other human beings,
The Prevalence of a philosophy so vigorous and elevating as that of Stoicism could not fail to affect the fundamental conceptions and the habits of
thought of all those persons who were brought under its influence. It will not be difficult for us to find in this system certain doctrines, which, however vague and speculative they may appear in the writings of the Greek theorists were yet capable of a practical application in the hands of Roman jurists, in solving questions regarding the rights and duties of men in civil society and the fundamental law which upheld them as such.

The point of contact between the Stoic philosophy and the Roman laws is to be found in the theory of the law of nature - which the Stoics had deduced from their conception of the universe, and which the Roman jurists employed, under the name 'jus naturale', to indicate the natural or ethical foundation upon which the civil law must rest. With the Stoics, the universe was considered as imbued with an all-pervading soul or power, which was looked upon not only as a dynamical force producing motion, but as a rational principle producing order and perfection. This rational principle is a constituent element of all being. It is revealed not only in the external nature as a law of the physical world, but also in the original nature of all men as a guide for human conduct. The great duty of man is, hence, to discover and confirm to the highest law of reason, as this law is
set forth in the essential constitution of his nature. "To live in harmony with nature" was thus the highest precept of the Stoic philosophy, and the ultimate principle which must guide men in all relations of life. By his original constitution, man is a participant of the Universal Reason, and by the exercise of his rational faculties he can discover the law of nature, so far as it is necessary to control his own conduct. When looked at from a moral point of view, the law of nature can thus be regarded as the highest rule of human conduct, and thus the ultimate standard by which all human actions whether individual, social, or civil, must be judged.
CONCEPTION OF THE NATURAL LAW
IN THE PHILOSOPHY OF THE
ROMANS

The conception of the natural law worked its way into Roman thought, and was used to explain, not only the foundation of individual and social morality, but also the basis of legal rights and duties. From the time of Cicero to that of Alexander Severus, the legal literature of Rome is pervaded with the idea that law has a more ultimate foundation than custom or convention — that it is founded in the very nature of things. The first important attempt made by the Roman writers to ground law upon nature we find in the laws of Cicero, where the fundamental proposition is laid down that man is born for justice, and that law and equity are not a mere establishment of opinion, but an institution of nature. However, the application of this principle in determining the rights and duties was reserved for the jurists of the Empire.

The influence of Stoicism upon the Roman jurists is not to be judged by any servile repetition of particular moral precepts. It is to be judged rather than by the prevalent belief in natural law as the ethical basis of
civil law; by the general recognition of the supremacy of reason as a guide in civil action. It is sometimes claimed that the idea of natural law had little influence upon Roman writers, on the ground that the term was rarely found in their works; and when it is, it is not used in the same sense as that of the Stoics. But as a matter of fact, not only is the term 'natural law' specifically defined by the institutional writers in an ethical sense, but the method of reasoning which is used in their interpretation of the law is founded upon the theory that civil law must be brought into harmony with natural justice - with what is right in the nature of things.

It was the law of nature which supplied the need of a philosophy. Now the law of nature, in its relation to the 'jus gentium', may be looked upon as both a standard rooted in the moral nature of human beings, and as a system of general and universally accepted rules revealed by human reason. It was this conception of a law founded upon human nature and upon human reason, which ultimately found its place in the greatest codification of laws ever known - the Digest of Justinian.
Historically speaking, Rome eventually overcame Greece. If Rome conquered Greece materially, Greece conquered Rome spiritually. In the legal domain, conquest was two-fold, resulting in the Roman acceptance of both the conception of the law of nature and the fundamental ethical doctrines of the Stoics. Thus the Roman jurists were destined to acquire a philosophic background. And it was Greece that supplied the philosophic background for Roman legal thought. The jurists examined their legal questions in the light of the fundamentals of the Greek law of nature which in the course of time had permeated the opinions of one Roman jurist after another.

However, the contribution of the jurists is of profound importance to the philosophy of law in general, and in particular to those who believe that law should neither rest insecurely on the sands of expediency nor remain fast in the bog of tradition, but should grow from age to age toward advancing ideals. The development of Roman law had undergone various stages.

"It must be born in mind that 'nature' did not mean to antiquity what it means to us who are under the influence of the idea of evolution. To the Greek, it has been said, the natural apple was not the wild one from which our cultivated apple has been grown, but rather the golden apple of the Hesperides. The 'natural' object was that which expressed most completely the idea of the thing. It was the perfect object. Hence the
natural law was that which expressed perfectly the idea of law applied to the subject in question; the one which gave to that subject its perfect development. For legal purposes reality was to be found in this ideal, perfect, natural law, and its organ was juristic reason. Legislation and the edict, so far as they had anymore than a positive foundation of political authority, were but imperfect and ephemeral copies of this jural reality. Thus the jurists came to the doctrine of the ratio legis, the principle of natural law behind the legal rule, which has been so fruitful both of practical good and of theoretical confusion in interpretation. Thus also they came to the doctrine of reasoning from the analogy of all legal rules, whether traditional or legislative, since all, so far as they had legal reality had it because and to the extent that they embodied and realized a principle of natural law.

Natural law was a philosophical theory for a period of growth. It arose to meet the exigencies of the stage of equity and natural law, one of the greatest creative periods of legal history. Yet...even the most rapid growth does not permit the lawyer to ignore the demands for stability. The theory of natural law was worked out as a means of growth, as a means of making
a law of the world on the basis of the law of the Roman
cities which were old and strict. But it was worked
out also as a means of directing the law and organizing
its growth so as to maintain the general security. It
was the task of the jurist to build and shape the law
on the basis of the old local materials so as to make
it an instrument for satisfying the wants of a whole
world while at the same time insuring uniformity and
predicability. They did this by applying a new but
known technique to the old materials. The technique
was one of reason; but it was a legal reason identified
with natural reason and worked out and applied under the
influence of a philosophical ideal. The conception of
natural law as something of which all positive law was but
declaratory as something by which actual rules were to be
measured, to which so far as possible they were to be
made to confirm, by which new rules were to be framed
and by which old rules were to be extended or restricted
in their application, was a powerful instrument in the
hands of the jurists and enabled them to perceive in their
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task of legal construction with assured confidence."

Thus we see that the theory of an ideal justice
as contained in the natural law began to pass into pract-
ice in the administration of law at Rome and throughout
its outlying possessions. If the theory did not entirely pass into the practice of the Romans, neither has the theory of to-day become the practice of to-day. Indeed, it is the hope of the future that the entry of theory into practice may never be complete, that theory may always lead and illumine the way in a never-ending process.

"Ideals are not important solely because they triumph, but rather because they furnish some principle of rational guidance, some factor of intelligent control, in a society which, lacking them, would scarcely arise above the instinctive, the habitual, and the brutal." If the ideal of justice embodied in the natural law never became in its full extent the justice administered in the 'jus gentium' and the Roman law, never the less, the law of nature did permeate and guide the 'jus gentium' and the 'jus civile' which Rome handed down to posterity.

It is interesting to note that the early Roman jurists possessed certain philosophical conceptions concerning the moral basis of law which were closely related to the ethical system of the Stoics. To make a few illustrations will be sufficient for the present.

"It is true that Ulpian gave a peculiar definition to the natural law - as that which nature teaches all animals - which conception exercised little or no influence
upon the legal thought of Rome. But even Ulpian in other forms of expression recognized, like his contemporaries, an ethical standard of law; for example, when he defines justice as the 'constant desire to grant each one his right'; when he lays down as a fundamental precept of law, 'to live right, to hurt no one, to give each his due'; when he defines jurisprudence as 'the science of what is just'; and when, in speaking of the duties of the jurists, he says: 'We cultivate justice, and a knowledge of the right, distinguishing right from wrong, the lawful from the unlawful' (D.,1,1,1). But to cite from other jurists: Paulus refers definitely to the law of nature as a moral principle, when, in distinguishing the various meanings attached to the word 'jus', he says; 'That which is always right and good is called 'jus', or rather 'jus' naturale'(D.,1,1,11). The belief that all law is limited and determined by nature is expressly declared by Celsus in the words: 'Things prohibited by nature can be justified by no law' (D.,50,17,188).

It would be futile to attempt to draw an exact description between the 'jus gentium' and the natural law within these few pages. The term 'jus gentium' was originally applied to the body of customs common to Roma and the states subject to Roman dominion. As the
Roman conquests came to be looked upon as universal, the 'jus gentium' was considered to be the law common to all nations. But still there was no philosophical meaning attached to the word. It was simply the sum of the ingredients which were found in the actual laws of existing communities; however, when viewed in the light of the natural law the 'jus gentium' acquired a new significance. The common laws collected by the praetors were now believed to be based upon the natural law which the Universal Reason had instituted for all men. The fact that they were common seemed to prove that they were derived from universal principles inherent in the very nature of man. The tendency thus showed itself among the more philosophical jurists to identify the 'jus gentium' in the greatest sense, with the 'jus naturale'. "In most cases, however, in the later Latin the two expressions - 'jus gentium' and 'jus naturale' - are virtually synonymous" However, whether we are of the same opinion is not at question here.
In the two preceding chapters we learned of the conceptions of the natural law first found among the immortal Greeks, who lay the foundation of political theory, and, second, the Romans who drew from the political and legal principles developed by the Greeks and put them into practice. However, with the passing of centuries, and unfortunately, throughout the epochs of human history, false prophets appeared who stifled the inner spirits of men with their distorted erroneous views concerning the just and right principles of the natural law. "Woe to you scribes and Pharisees, hypocrites: because you tithe mint, and anise, and cummin, and have the weightier things of the law, judgement, and mercy, and faith." There was another and greater need for a prophet to bring back to the minds of men those "weightier matters of the law" and to reveal in universal terms the goal of humanity.

However, He who took upon Himself such a tremendous task was a man of the town of Nazareth, of humble station but with a perfect vision of truth and light. Few among His peoples listened to His teachings. For example, the scribes and Pharisees were rugged
individualists, full of outward show and jealous of the privileges which they claimed as rights. Likewise, the men of law were as bad if not worse seeking to profit by insisting on the letter and hiding the spirit of the law: "Woe to you lawyers also, because you load men with burdens which they cannot bear and yourselves touch not the packs with one of your fingers. Woe to you lawyers, for you have taken away the key of knowledge: you yourselves have not entered in, and those that were entering in, you have hindered."

To these and to their followers the teachings of Christ seemed a menace to the established order of things. But Christ made no attempt to interfere in political matters, telling His listeners "render to Caesar the things that are Caesar's, and to God the things that are God's." But it was inevitable that one who should set aside all material rewards, which the rich and powerful prized so highly, should be regarded with a suspicion that grew into such a hostility that they had Him crucified, thinking to put an end to His truths. But the teachings which they sought to destroy were immortal, as truth is, and the crucifixion but hastened the recognition of their Divine nature and their acceptance as the supreme law of human life. The moral standard of the
New Testament is the standard by which should be measured not only the individual actions of men and women, but also the actions of states and groups of states. Because it is universal, and is for all time, human beings cannot fully attain it - at least in their present state of imperfection. But standards are not lowered by failures to reach them. If they were, the years of our civilization would indeed be numbered.

There is, perhaps no verse in the New Testament more often quoted and assuredly none with more meaning for human beings in society, than the Golden Rule. "All things therefore, whatsoever you would that men should do to you, do you also to them." Here we have the fundamental guiding principle for all human relationships. It is an all inclusive rule, for it demands truth, honesty, fairness, and neighborliness - all the qualities that men and nations would like others to show toward themselves. Thus the Golden Rule is indeed the natural law. It is the basic precept of our social morality, and the hope of the future is that we may one day accept it as the foundation of our political and legal morality, for without its acceptance there cannot be "peace on earth towards men of good will". And it may be added here that it is this conception treated in the light of philosophy that is accepted as the Scholastic conception.
Turning now to the Christian conception proper of the natural law, we find that St. Paul had spoken of the law written in the hearts of men; and the Christian theologians identified this with the law of nature which the world had inherited from Greece and Rome. "For it is interesting to notice that the Fathers frequently...connect their treatment of the natural law with St. Paul's PHRASES in Romans. St. Ambrose, for instance, says that it is the Apostle who teaches us that the natural law is in our hearts." St. Augustine likewise cites St. Paul's "words in a passage in which he divides law into three species"; and, "St. Hilary of Poitiers does the same in describing the scope of the natural law. He defines this as being that a man must not injure his fellowman, must not take that which belongs to another, must keep himself from fraud and perjury, must not plot against another man's marriage" - such faults, it may be added, which are not unknown to-day. And it is interesting to compare this with the definitions of the natural law by St. Ambrose and by St. Augustine. It is clear that these are derived from Cicero and other ancient writers. In this respect, therefore, it may be said that the links between the ancient and Christian worlds are in the nature of a continuous chain.
One last paragraph on the Christian conception of the natural law is that "it is unnecessary to multiply quotations. There seems to be no division of opinion among the Fathers on this subject. Practically they carry on the same conceptions as those of Cicero and the later philosophers, and while they bring these into connection with the suggestions of St. Paul, they cannot be said either to modify these inherited conceptions or to carry them any further."

Here we have the chain completed. Indeed, we find that Cicero is so relied upon by the Fathers of the Church as almost to be considered as a pagan saint.
PART II

Scholastic Conception

of the

Natural Law
The flowering of medieval civilization may be said to be represented in the thirteenth century. It was an era scared by wars and clashing opinions. But these disturbances did not jeopardise the progress of culture. It was an era of high ideals, of awakening art, of flourishing universities. In the realm of mind and spirit the thirteenth century’s crowning achievement was the remarkable development of scholasticism. And for this development the greatest of all schoolmen, the Doctor Angelicus, was in a large measure responsible.

Time has conclusively proved that the theology of St. Thomas was not of his day only. It survived both his lifetime, and the centuries that followed, and in our time the Church has not only officially recognized his philosophy but has also prescribed his teachings in Catholic institutions of learning throughout the world.

It is true that the teachings of St. Thomas have exercised vast influence. In connection with his doctrine it is important to note that he introduced the works of Aristotle to the world of his day. He prepared detailed commentaries on various works of Aristotle, and incorporated
the very best of Aristotelianism into his own philosophy. Thus he became, in the words of one writer, the "Christian Aristotle", authoritatively interpreting the sage of the ancient world to the Christian world of his day and to the future, and combining as far as possible the thought of both worlds. It has been said that his system of philosophy depends "on three main authorities - ...Scripture, Aristotle, and St. Augustine," and in consequence, he left to posterity a masterly synthesis of Christian and pagan ideals.

The works of St. Thomas are many - more than sixty in number - covering the entire field of theology, then considered an all-embracing science. But in this thesis we are concerned mainly with part one of the second part of his Summa Theologica in which he deals at length with the question of law; indeed, so fully did he treat of the subject that the sections referred to as questions 90-108 are appropriately called in the translation on the law a legal treatise. In order to grasp the nature and extent of the contribution which he made in philosophy regarding the natural law, a contribution upon which the schoolmen of the ensuing centuries largely based their legal theories, it is essential to examine a few of the fundamental definitions of St. Thomas.
Before giving the arguments proper in regards to the natural law, it would be well to begin by making two preliminary but fundamental statements. "Law", says St. Thomas, "is a rule and measure of acts, whereby man is induced to act or is restrained from acting": and "the rule and measure of human acts is the reason, which is the first principle of human acts." Thus at the very beginning of the treatise on law we have law and reason identified. Here St. Thomas is clearly speaking of law as a general conception: not any particular kind of law, but law in the abstract. He felt, no doubt, that the matter was one requiring more thorough elucidation, and he therefore proceeded to supplement these statements: "although reason is one in itself, yet it directs all things regarding man; so that whatever can be ruled by reason is contained under the law of reason."

Now the law of reason is closely to the law of nature, which man becomes aware of through his reason. Thus St. Thomas had previously declared that "just as, in the speculative reason, from naturally known indemonstrable principles, we draw the conclusions of the various sciences, the knowledge of which is not imparted to us by nature, but acquired by the efforts of reason, so too, it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination.
of certain matters. These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed."

Of the law of nature, which is a divine law, St. Thomas says that it is "promulgated by the very fact that God instilled into man's mind so as to be known by him naturally" - it is applied to man through the medium of reason; or, to put it in another way, man, by using his reason, participates in the eternal or divine law, for St. Thomas declares expressly that "the natural law is nothing else than the rational creature's participation of the eternal law." It is, as it were, another outlet of the eternal law or, again, the eternal law found in the rational creature. For all things fall under the Providence of God; and therefore, it logically must follow that they are regulated by the decrees of the eternal law. By these decrees everything created is impressed with an inclination towards an appointed end. As we have stated above, the law by which this disposition of things is determined may be considered in God, Who by an act which is virtually transient proceeding from the Divine Intellect, together with His Will and Power, has ordained it in the way which it is; or, it may be considered in the created being who complies with the arrangement prefixed before time by an eternal God.
Thus it is this participation of the eternal law by the rational creature which is known as the natural law.

These passages serve to indicate how St. Thomas links the natural to the eternal law, and how all laws are based on the natural law through the process of human reason. According to St. Thomas the whole universe is "governed by Divine Reason," as stated above, and that government functions through the eternal law, to which "all actions and movements of the whole of nature are subject." Since man by the use of reason participates in the eternal law through the law of nature, St. Thomas enlarges upon this conception by stating that "every knowledge of truth is a kind of reflection and participation of the eternal law," and this leads him to define the eternal law as "unchangeable truth". Therefore it follows that since the natural law is the eternal law in rational beings, of necessity it must follow that it too may be defined as the "unchangeable truth". We readily recognise the combination of the eternal and natural law when St. Thomas states that "all men know the truth to a certain extent, at least to the common principles of the natural law: and as to the others, they partake of the knowledge of truth, some more, some less; and in this respect are more or less cognizant of the eternal law."
The participation in the eternal law which belongs to rational creatures, is in a much more strict sense a law, than that which belongs to the irrational creatures; for it follows according to reason that the higher creatures are subject to this law in a more excellent manner than lower creatures. All creatures share in the eternal law, but each one according to a mode beffitting its nature. Since law is, strictly speaking, an ordinance of reason, the eternal law, as is shared by creatures devoid of reason, can be called a law only by "similitude". The inclination to an end imposed by nature on the irrational creature impels it blindly and by a physical necessity to its end; but owing to the higher mode of participation in the eternal law which is inherent in the rational creature, the law in this instance imposes only moral necessity. It may be also gathered from what has been said here that the concept of the eternal law is wider than that of natural law, for the eternal law subjects to its decrees all acts and motions of all creatures while the natural law in its strict meaning and according to its proper acceptation pertains only to rational creatures.

According to St. Thomas the precepts of the natural law are in the field of 'operabilia', that is to say, they are concerned with the things to be done. Therefore, they belong to the practical reason. But just as being is the first thing which falls under the appreh-
ension of the speculative reason, so 'good' (bonum) is the first thing that falls under the apprehension of practical reason, since an agent acts on account of an end which is presented as good. Thus the first principle of the practical reason is that we must both do and seek after good, and we must avoid that which is evil. Thus St. Thomas gives us the first principle or primary rule of the natural law: "This is the first precept of the natural law, that good is to be done and ensued, and evil is to be avoided. All other precepts of the natural law are based upon this."

However, all those things to which we have a natural inclination are presented to us as good, and among the things which seem good to us we find a certain order. It is upon the relative value of these natural inclinations that the order in natural law is based, and it is because of the order which exists among 'goods' apprehended by the reason that we have a multiplicity of natural laws.

First among the things which we desire as good are things which we seek according to our nature insofar as this nature is common to all substances. Under the impulse of this inclination the law of nature impels us to self-preservation. Furthermore, we are inclined to good which agrees with our nature as it is shared by all animals. Of this St. Thomas says that the law corresponding with this directs us to acts belonging to preserv-
ation of the species and the education of the children; and, finally, there are goods which we crave because they are appropriate to our rational nature, proper to ourselves and to all men. Under the dictate of natural law emerging from this inclination, we seek to know God, to live in society with other men without offence to them, and to avoid ignorance. Thus among the many precepts of the natural law we find existing a certain order.

Following the teaching of St. Thomas, there can be no change in the natural law in the strict sense. For a change in natural law, St. Thomas states, may be understood in two ways: "First by way of addition... since many things for the benefit of human life have been added over and above the natural law, both by the divine law and human laws. Secondly, a change in the natural law may be understood by way of subtraction, so that what was previously according to the natural law, ceases to be so. The possession of all things in common and universal freedom are said to be of the natural law because, to wit, the distinction of possessions and slavery were not brought in by nature, but devised by human reason for the benefit of human life; thus accordingly the law of nature was not changed in this respect except by addition." Immutability is implicit in the concept of natural law because it is nothing else than the impress in men of the eternal law, commanding that the natural order of things be conserved.
This natural order includes the essential relations of things which like essences themselves, are immutable. To quote again from the Doctor Angelicus regarding the immutability of the natural law, he states:

"There belongs to the natural law, first, certain most general precepts, that are known to all; and secondly, certain secondary and more detailed precepts, which are, as it were, conclusions following closely from first principles. As to those general principles, the natural law, in the abstract, can in nowise be blotted out from men's hearts. But it is blotted out in the case of a particular action inssofar as reason is hindered from applying the general principles to a particular point of practice.... 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 or corrupt habits."

Consequently, when we refer to the common first principle of the natural law, we can readily see that there is no possibility of change.

However, in the interpretation of this doctrine, we must exercise caution. It is necessary to draw a line of distinction between first principles and conclusions drawn from these principles. What we have stated above concerning the immutability of the natural law,
applies only to those precepts which are designated as primary. When we consider the secondary precepts of this law, that is, those following as conclusions drawn from the first, St. Thomas insists that even in these the natural law is usually immutable, but that it can in certain cases and for a few, become mutable.

The explanation of this is that the law, when considered in its conclusions, does not always present the proper rectitude which belongs to it in its first principles, and even when the proper rectitude is present, it is not equally known by all. Thus for example, the first principle of the natural law command: that we act according to reason. A conclusion derived from this is that loans must be paid. Ordinarily this law would have obligation, but it may happen that greater harm would result from compliance with the law, and thus it would cease to be according to reason. Likewise, in regards to the conclusions of the natural law, there is sometimes a lack of knowledge caused perhaps by custom, passion, or evil habit, and in this case also we observe that the precepts of the natural law are mutable. For St. Thomas clearly states:

"The natural law, as to general principles, is the same for all, both as to rectitude and as to knowledge. But as to certain matters of detail, which are conclusions, as it were, of those general principles, it is the same
for all in the majority of cases, both as to rectitude and as to knowledge; and yet in some few cases it may fail, both as to rectitude, by reason of certain obstacles (just as natures subject to generation and corruption fail in some few cases on account of some obstacle), and as to knowledge, since in some the reason is perverted by passion, or evil habit, or an evil disposition of nature."

We gather from this that when the matter falling under the precept is extrinsic to the Essence of God, there can be a kind of mutation. But it stands to reason that God "Summum Bomum" cannot will or give permission to anyone to do that which is in itself evil, for example, to blaspheme. This would be contrary to His Justice or Holiness. He can, however, if the matter falling under the law is something pertaining to creatures, withdraw that matter from its inclusion under the law, or in that particular instance remove the obligation to the law without effecting any change whatsoever in the law. This is because He has supreme dominion over all things. In this case it is not actually a change in the law so much as abstraction from the obligation of the law, of things that ordinarily belong to it.

In conclusion, it can readily be seen that the conception of natural law in St. Thomas represents a marked development in the philosophy of the natural law. It is not so easy to determine how great an actual
advance in theory is contained in this exposition. After reading the doctrine of St. Thomas on the subject in discussion, we are impressed with the methodical and analytical treatment which the Angelic Doctor has given to the various phases of his topic. He provides for us a definite answer to the questions and problems which arise in our minds concerning the natural law. He proves its existence, he defines its meaning, he examines its precepts, and he shows its co-relation to the eternal law and other branches of law. Briefly, he considers it from all angles, and whether or not we agree with him, he at least leaves us with no doubt as to his meaning and conception of the natural law. Furthermore, we feel that this treatment of St. Thomas fulfills the end or purpose of this thesis; however to make the scholastic arguments more forceful we shall proceed to make use of the conception of another great scholastic - Francisco Suarez.
Historians have often made the statement that Scholasticism enjoyed its Golden Age during the medieval period, and that thereafter it lapsed into a permanent decline. Yet in certain countries scholasticism rose to new heights during the fifteenth and sixteenth centuries. The truth is that the philosophy of scholasticism is of perennial interest. And even to-day the best elements of scholasticism are winning their way in many quarters. An instance of this was to be seen not long ago in the year 1933 in the action of the Seventh Pan-American Conference, which recognized Francisco De Vitoria, a Spanish schoolman, as having laid the foundation of modern international law, a title which was formerly held by Hugo Grotius.

Francisco Suarez, another Spanish Theologian, sometimes known as 'the last of the great schoolmen'), is coming into his own, although it may be said that his name has long been familiar to the comparatively few who have dealt with the philosophy of law. To-day the esteem of those few for Suarez' work is shared by an increasing number whose opinion has been put into words by a leading American authority in the statement that
Suarez is the 'prince of modern jurists'. Suarez produced three large tomes which contain an exhaustive treatment of legal and political philosophy. The first of these masterpieces is the 'Tractatus de legibus ac Deo legislatore', a large volume of ten books, published Coimbra in the year 1612, Suarez being then prima professor of Theology at the University of Coimbra. The second is the 'Defensio fidei Catholicae adversus Anglicanae sectae errores', published in 1613, also at Coimbra, the occasion for which was the oath of allegiance which James the First of England and Sixth of Scotland had exacted from his Catholic subjects, unjustly in their opinion, in the opinion of the Church, and in the opinion of posterity. The third treatise was the 'Opus de triplici virtute theologica', left in manuscript at his death in 1617 and published four years later.

The great contribution of Suarez was to endow the modern world with an adequate philosophic basis for law in general. However, herein we are concerned mainly with his contribution to the natural law.

In discussing the subject of law, Suarez begins with a general definition of the term, 'law', basing it upon the definition of St. Thomas Aquinas, which, as we have already seen, is 'a rule and measure of acts
whereby man is induced to act or is restrained from acting.' After considering this definition in detail, Suarez expands it for his purpose to read: 'strictly and absolutely speaking, only that which is a measure of rectitude, viewed absolutely, and consequently, only that which is a right and virtuous rule can be called law.' To this definition Suarez adds another, based this time not only upon the authority of St. Thomas but also upon that of the Roman jurist Papinian "law is a common, just, and stable precept, which has been sufficiently promulgated." Justice, as would be expected, is a fundamental element in Suarez' definition. Thus a rule which is unjust is not law in the Suarezian sense. But to Suarez, law must possess stability as well as universality of application and justice, because an unstable law is likely to be neither universal or just in its application. And of course the law, whatever its origin, must be made known, because if it is not promulgated, we cannot expect that it will be observed. Therefore Suarez sums up the latter definition with the following clarification: "it is common in that it applies to all; it is just in that it is equitable and moral; it is a precept, meaning a rule of action; it is stable because of its permanent nature; and above all and beyond all, it is not something secret, for it must be made
known in such a way that, to paraphrase an ancient maxim, ignorance of it will be no excuse."

There are many kinds of law, but in the conception of Suarez there are three, eternal law, divine law, and natural law, which have existed at all times and at all places. First among these three branches of law he places the eternal law, which he describes as the "source and origin of all laws" an emanation from the Creator of the world. The second, or divine law, likewise emanates from the Creator, Who has mercifully revealed its precepts that they may become not only the possession but the guide of all human beings, this revelation being, in the terms of Suarez, a "species of promulgation". The third kind of law and that with which we are mainly concerned herein is termed natural law - meaning that it is in accordance with nature, that is to say, the nature which God Himself has created. Therefore, the natural law is said to be eternal. It is also divine on account of its origin. And finally, it is natural to man as one of God's creatures, and its existence is discoverable by the eye of human reason. To drive this point home, Suarez describes the law of nature as follows:

"...the natural light of the intellect - which is itself at hand, in readiness to describe what must be done - ... since men retain that law in their hearts, although they
may be engaged in no specific act of reflection or
judgement."

Further revealing the relationship between
the eternal and natural law in the human being, Suarez
shows how man is linked to the eternal by natural law
discovered through right reason: for he says that all
men necessarily behold within themselves some sort
of participation in the eternal law, since there is no
rational person who does not in some manner judge that
the virtuous course of action must be followed and the
base avoided; and in this sense, it is said that men
have some knowledge of the eternal law.

Thus as in all the teachings of the scholastics there can readily be seen an inseparable connection
between the law eternal and the law natural. Furthermore
if the natural law is the eternal law in rational nat-
ure it must of necessity be regarded as right reason.
For all those things which natural enlightenment makes
evident, pertain to the natural law. To prove this
point Suarez gives the following: "The exercise of
dominion and the function of ruling are characteristic
of law; and in man, these functions are to be attributed
to right reason, that he may be rightly governed in
accordance with nature; therefore, the natural law must
be constituted in the reason, as in the immediate and
intrinsic rule of human actions."
Natural law resides in man, since it does not reside in God, being temporal and created, nor is it external to man, since it is written not upon tablets but in the heart; neither does it dwell immediately within human nature itself, since we have proved that it does not do so; nor is it in the will, since it does not depend upon the will of man, but, on the contrary, binds and (as it were) coerces his will; hence, this natural law must necessarily reside in the reason.

It can easily be seen that there are things recognized through the light of natural reason. However, those things may be divided into three classes. First, some of them are primary and general principles of morality, such principles as: "one must do good and avoid evil", "do not to another that which you would not wish done to yourself", and the like. There is no doubt that these principles pertain to the natural law. Again, there are certain others, more definite and specific, which, nevertheless, are so self-evident truths by their very terminology. Examples of the second group are these principles: "justice must be observed"; "God must be worshipped"; "One must live temporarily"; and so forth. Neither is there any doubt concerning the fact that this group comes under the natural law. In the third class, we place those conclusions which are deduced from natural
principles by an evident inference, and which cannot be known save through rational reflection. Of these conclusions some are recognized more easily than others, and by a greater number of persons; as, for example, the inferences that adultery, theft, and similar acts are wrong. Other conclusions require more reflection, of a sort not easily within the capacity of all, as in the case with the inferences that usury is unjust, that lying can never be justified, and the like. Strictly speaking the natural law works more through the proximate principles or conclusions than through universal principles; for a law is a proximate rule of operation, and the general principles above mentioned are not rules save insofar as they are definitely applied by specific rules to the individual sorts of acts or virtues. In such a case the natural law and right reason can be regarded as synonymous.

At this point it is appropriate to ask the question, how does Suarez define the natural law? And his answers are composed and collected in the following:

The natural law is the rule whereby each of us is commanded to do to another, what he would wish done to himself, a rule which is contained in the Law and in the Gospel. Further more it is the proximate rule of moral goodness. And still further on in his writing
Suarez continues to speak of the natural law as that law which springs not from human opinion, but from the evidence afforded by nature. And in speaking of its existence he says that it is the actual of the mind that the natural law exists.

The latter definition of Suarez should be expanded upon. As we know, the natural law is not evident as is the ground beneath us and the heavens above us; for the natural law may be called the natural light of the intellect, inherently adapted for prescribing what must be done since men retain that law in their hearts, although they may be engaged in no act of reflection or judgement. The discovery of natural law may be by means of deliberate reflection, but it may also be instinctive; in either case it is the result of the natural light of the intellect. It is a thing inherent in man because written there by the hand of God Himself.

Thus according to the conception of Suarez, the natural law is inherent. So also is the conscience inherent in man. Yet the two are different. For the term law has reference to a rule respecting those things which should be done and framed in general terms; whereas conscience is a practical dictate in a particular case, so that it is the application of the law to a particular act, so to speak, rather than the law itself. Thus,
following Suarez' reasoning and rightly so, the natural law is the general standard and conscience is the standard of the individual.

As an emanation of the eternal law, the natural law carries with it an obligation proceeding from the Divine Will, that men shall be bound to obey that which right reason dictates. In the domain of natural law, a thing is in essence good or bad. The natural law does not make bad what it condemns but prohibits it because it is bad, in other words because it is inherently evil. In this sense the natural law partakes of and indeed is the divine law. Thus as a result, the natural law is a moral law, and therefore, embraces all precepts or moral principles which are plainly characterized by righteousness necessary to virtuous conduct. The converse is also true in that the natural law prohibits those things which are essentially evil. Thus it is evident in Suarez' conception that the natural law is revealed by natural illumination with the consequence that the natural law is binding in conscience for the judge in the forum of conscience is reason itself.

In order to strengthen his views, Suarez continues to define the natural law so as not to leave a doubt as to his meaning of natural law. For he says: "Natural law is a unified whole with respect to all men and in all places....The rational basis of this position is that the law in question is a peculiar quality accomp-
anying not the particular rational faculty of any given individual, but rather that characteristic nature which is the same in all men." Thus the natural law in that it relates to its substance is one and the same among all men, "but...insofar as concerns the knowledge of it, that law is not complete among all."

Although a given condition may demand the application of one precept and not of another, the natural law is nevertheless always the same and comprises the same precepts; since the latter are either principles, or else conclusions derived therefrom by a necessary inference, and consequently possess a necessary quality of which they are not devoid with respect to any condition whatsoever. Finally, it may be asserted that in connection even with the natural law one may consider either its negative or affirmative precepts. The negative precepts must necessarily be and have always been the same for all conditions of human nature; for they prohibit actions intrinsically evil, which are therefore evil for every such condition. Furthermore, they are binding without intermission, and consequently, binding also for every human condition, whenever the proper subject-matter shall be involved.

The affirmative precepts, on the other hand, in like manner prescribe actions which are righteous of themselves, and consequently possess always the same righteous nature; and, nevertheless, since they are not binding without intermission, it may be that in connection
with one particular human state there will arise occasions to observe certain of these precepts, and in connection with another human state occasions for the observance of other precepts. Yet this fact does not suffice to justify the assertion that the law itself is diversified in character. For even in the corrupted state of human nature, a time of peace is one thing, a time of war is quite another thing, and during these times respectively, diverse precepts must be observed. Furthermore, the art of medicine is one and the same art, even though it prescribes that certain things shall be done in the time of health, and other things in the time of illness. It is in such a sense, then, that the natural law is one and the same.

After viewing the definitions of the natural law in the lucid Suarezian style, we are left without a doubt as to what the natural law is; for his style is put before us in the true scholastic manner and that is without a loophole. And since now we know what the natural law is, the next logical and conclusive step is to prove its main attribute - immutability.

It is a truism among scholastics that the natural law is immutable. The natural law being synonymous with rational nature, it "cannot of itself lapse or suffer change, whether in its entirety, or in its individual precepts, so long as rational endures together with the use of reason and the freedom of will."
The natural law, therefore, exists and it continues to exist; but it applies to conditions which are not immutable. The precept is unchangeable; its application may vary from age to age. For according to Suarez the natural law discerns the mutability in the subject-matter itself, and adapts its own precepts to this mutability, prescribing in regard to such subject-matter a certain sort of conduct for one condition and another sort of conduct for another condition; so that law in itself remains at all times unchanged, although, according to our manner of speaking and by an extrinsic attribution, it would seem, after a fashion, to undergo a change.

Suarez maintained that like the divine law, the natural law may not be changed by man because both are the law of the Creator. The natural law, moreover, is the form of the eternal law directed especially to God's creatures in their lives and in their intercourse with one another. And while it is unchangeable, human conditions, as we know, change from time to time; and reasonable beings, such as Suarez and the members of the scholastic school generously considered their fellow creatures to be, would therefore bring into being human laws - in harmony with and based upon the natural law - to meet the changing conditions. Thus as human reason develops, the application of the natural law through human law likewise develops and changes, although the natural law itself remains eternally the same, being,
as we have seen eternal in its nature.

Suarez basis his first proof of the immutability of the natural law in accordance with the conceptions of St. Thomas and St. Augustine in view of eternal truths. For he maintains that the precepts of the natural law are necessary and characterized by eternal truth, since that law comprises self-evident moral principles together with all the conclusions - and only those conclusions - which are drawn therefrom by a process of necessary inferences, whether proximately or through a series of such inferences. But all these elements are eternally true, since this truth in the principles does not subsist apart from the truth of the conclusions in question, the principles themselves being necessarily true by their very definition. Therefore, all of the precepts in question are of a perpetual character. And, consequently, they cannot cease to be, solely through lapse of time.

It follows as a necessary consequence from the immutability of the natural law as such that (to use the words of Suarez) "no human power can abrogate any proper precept of natural law, nor truly and essentially restrict such a precept, nor grant a dispensation from it."

This has been seen from previous statements; for it has been shown that the natural law, insofar as its precepts are concerned, is by its very nature
unchangeable; and men cannot change that which is unchange-
able. Therefore, it stands to reason that men cannot change the natural law. This is true also by the fact that the natural law, in all its precepts, relates to the natural qualities of mankind; but man cannot change the nature of things; therefore, neither can man change the natural law. And what has been seen that in the case of every precept of the natural law, God is the law-giver; and man cannot change a law that God has established, since an inferior cannot prevail against his superior. Therefore it stands to reason that man cannot change the precepts which God has put before him in the natural law. The natural law is the foundation of human law; therefore, human law cannot derogate its own foundation and consequently itself. If human law could derogate from the natural law, it would be possible for the former to make an enactment in opposition to the latter, since one can conceive of no other way of changing the natural law; but human law cannot make such an enactment for such an enactment would be contrary to right reason based upon what has been said previously; and a law contrary to right reason ceases to be law. Furthermore, it has been amply shown that what is contrary to the natural law is intrinsically evil; Therefore, the human law in question would relate to an intrinsically evil matter and in consequence would not constitute a law.
CONCLUSION

In conclusion, one can readily see that the theory of natural law is one which is profoundly important in the philosophy of political theory. We have seen this in the historical approach used in the pages of the preceding chapters that all schools through the ages were influenced by a conception of natural law underlying their doctrines. In the politics of the Greeks, the originators of political science, there permeated the predominance of the idea of 'reason'. Among the Stoics we found that the ultimate principle behind all their conception of law was the conception of 'justice'. The Roman lawyers were so persistent in their teachings that they based their development of law on the 'law of nature'. We also saw the Christian doctrine of natural law as exposed by a long line of Christian teachers in early and medieval times beginning with St. Paul and basing their conception on the teachings of Christ. However, all these give certain testimony of the cardinal significance of the idea of natural law.

In dealing with the doctrine of Natural Law we felt that it was necessary for the sake of clarity to consider the concept historically before addressing ourselves to the examination of the conception of the Scholastics which we maintain to the utmost.
To defend the doctrine of natural law we deemed it fit and proper to use the views and arguments of two of the most recognized scholastics - St. Thomas Aquinas and Francisco Suarez - worthy representatives of the scholastic doctrine of the natural law.

Thus in accord with the historical account of the presence of the natural law in the different eras of history, we have attempted to use only those historical eras which we deemed necessary to fulfill the purpose of this thesis. And, again, the conceptions of St. Thomas and Suarez were used to enforce the scholastic standpoint. If that has been brought to light then the purpose of this thesis has been fulfilled.

Therefore, in view of the preceding pages, we feel convinced that the arguments used have clearly exposed the existence of the natural law; and, what it is, has been sufficiently pointed out. As to its immutability, no more need be said; for after employing the proofs afforded by great minds such as St. Thomas and Suarez to bring out the scholastic conception, we are left without a doubt as to the universal and immutable character of the natural law.

As a concluding thought, let it suffice to say that man is an individual entity and as such has an inclination to preserve his own being, and to safeguard
his own welfare; he is also a being corruptible — that is to say, mortal — and as such is inclined towards the preservation of the species, and towards the actions necessary to that end. And finally, he is a rational being, and as such, is suited for immortality, for spiritual perfection, and for communication with God and social intercourse with rational creatures. Thus, whatever it be, whether for his preservation, or his safety, or his actions towards his end, or social relations, man must act in accordance with the natural law based upon the conception of the scholastics in his relation with God, with his neighbor, actions which are ultimately for his own good.
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   "The greatest legacy which the Greeks have left to the after world is their City-State patriotism. The City-State was the center and inspiration of all their most characteristics achievements, culminating in the great outpouring of literature and art and practical energy, of great men and great deeds in fifth century Athens. The world has seen nothing comparable to it either before or since."

2. Barker, Professor Ernest, 'Greek Political Theory'

   'Plato and His Predecessors' - P.1

3. Zimmern, Alfred, op. cit. in cf. 1 - P.63

4. Taken from an article written by Gilbert Murray 'The value of Greece to the Future of the World,' in the 'Legacy of Greece' ed. by Livingstone - Pg. 21-22. Prof. Murray is recognized by some as an indisputable authority on Greece. He held the position of Regius Prof. of Greek in the University of Oxford for many years.

5. Funeral Oration. Trans. by Wallace E. Caldwell in 'Hellenic Civilization', ed. by G.W. Botsford and E. G. Sihler (New York, 1915), Pg.612. This volume is one of a series ed. by James T. Shotwell under the general title, 'Records of Civilization': Sources and Studies.'
6. Philipson, Coleman, 'The International Law and Custom of Ancient Greece and Rome' Vol. 1, Pg. 33 "The philosopher, the theorizer, influenced the statesman and the legislator more in Greece than elsewhere. It could scarcely have been otherwise, as the Hellenic temperament was marked by an untiring curiosity and yearning to experience the unknown, to apply at once in practice the abstract constitutions of the intellect."


Socrates...I should like to know whether I may say... that not life, but a good life, is to be chiefly valued?

Crito. Yes, that also remains unshaken.

Socrates. And a good life is equivalent to a just and honourable one - that holds also?

Crito. Yes, it does.

8. Barker, Ernest, 'Greek Political Theory' P. 11. The term morality is used here and throughout the present volume in the sense of ethics, as that word was employed by the Greeks.


"Of the politically just, one part is natural the other is legal. The natural is that which everywhere is equally
valid, and does not depend on being or not being received. But the legal is what originally was indifferent, but having been enacted is so no longer.*

11. This idea is taken from Aristotle's op. cit. Vol. II, P. 1 'They say that the just exists by nature and not by enactment.'

12. This idea is based upon the writings of the Sophists where they maintain that 'nothing is just or good or base by nature, but that it is made so by law and convention.'


16. Ibid., P. 442.


20. Taken from Sir Frederick Pollocks illuminating essay on the Stoic philosophy entitled 'Essays in Jurisprudence and Ethics,' Pgs. 314-351, 325.

22. Ibid.
23. Ibid.

24. Ibid., Pgs. 21-22.

25. Ibid., P. 22.

26. Ibid.


28. Ibid. P. #34.

29. This idea is taken from Murray's 'Essays and Addresses' P. 97.

30. Ibid., P. 99.

31. Pound, Roscoe, 'An Introduction to the Philosophy of Law'. Pgs. 31-34.

32. Taken from Messrs. Sabine and Smith's 'Introduction to Cicero, On the Commonwealth'. Pg. 38.

33. Taken from William C. Morey's 'Outlines of Roman Law, Comprising Its Historical Growth and General Principles'. Pg. 111.

34. Taken from the work of a distinguished Latinist, Henry Nettleship, Corpus Professor of Latin in the University of Oxford, who set himself to the laborious task of searching the extant literary remains of Rome, in order to discover the meaning of the 'jus gentium' and its relationship to the natural law. Article entitled "Jus Gentium" in the "Journal of Philology", XLI, P. 172.
35. Taken from the Gospel according to St. Matt.
   Chapt. 23, Verse 23.


37. Taken from St. Mark. Chapt. 12, Verse 17.

38. Taken from St. Matt. Chapt. 7, Verse 12.

39. Taken from St. Paul's Epistle to the Romans 2:14-15.
   "For when the gentiles, which have not the law, do by
   nature the things contained in the law, these, having
   not the law, are a law unto themselves: Which show the
   work of the law written their hearts, their conscience
   also bearing witness."

40. Taken from Dr. Carlyle's "A History of Mediaeval
   Political Theory in the West". Vol.1, P.90.
   "St. Ambrose, Ep. lxxiii.2: 'Esse autem legem naturalem
   in cordibus nostris etiam apostolus docet, qui scripsit
   quia plerumque 'et gentes naturaliter ea, quae Legis
   sunt, faciunt, et cum Legem non legerint, opus tamen
   Legis scriptum habent in cordibus suis'(Rom. xi:14-15).
   Ea igitur lex non scributur sed innascitur: nec aliqua
   percipitur lectione, sed profluo quodam fonte in singulis
   exprimitur, et humanis ingeniis hausitur.' cf. De Jacob
   et vita beata VI."

41. Cf. is taken from Dr. Carlyle's op. cit.
   "St. Augustine, Contra Paustum Manichaeeum XIX.2:
   'Sunt autem legum genera tria: unum quidem Hebraeorum
   quod peccati et mortis Paulus appellat (Rom.VIII:2).
   Aliud vero Gentium, quod naturaliter vocat:
"Gentes enim," inquit,"naturaliter quae legis sunt, faciunt; et huiusmodi legem non habentes, ipsi sibi sunt lex; qui ostendunt opus legis scriptum in cordibus suis." (Rom. II: 14-15.) Tertium vero genus legis est veritas, quod perinde significans, apostolus dicit: Lex enim spiritus vitae in Christo Jesu liberavit me a lege peccati et mortis (Rom. VIII: 2)."

42. "St. Hilary of Poitiers, Tract on Ps. CXXVIII; 119:
'Lex enim veluti naturalis est, injuriam nemini inferre, nil alienum praeripere, fraude ac perjurio abstinere, alieno conjugio non insidiari. Novit et hanc Apostolus legem, dicens: 'Cum enim nationes, quae legem non habent naturaliter secundum legem faciunt...'

43. "St. Ambrose, De Officiis III. 3: 'Haec utique lex naturae est, quae nos ad omnem astringit humanitatem, ut alter alteri quam unius partes corporis invicem deferamus. Nee detrahendum juvare.' St. Amb., De Off. III. 84 'Nihilque judicandum utile, naturae omnibus, nisi quod in commune prosit.... Et enim si una lex naturae omnibus, una utique utilitas universorum, ad conulendum utique omnibus naturae lege constringimur.'

44. "St. Augustine, De diversis questionibus XXXI: 'Natura jus est quod non opinio genuit sed, quaedam innata vis religionem, fraternitatem, gratiam, virotationem, inservit, ut observantiam, veritatem.'

45. Taken from Dr. Carlyle's op. cit. I, 105-106.
46. On the influence of St. Thomas and the history of Thomism much has been written in recent years. For an excellent brief account see D'Arcy, M.C., "Thomas Aquinas" Chapter X.

47. Leo XIII, Encyclical Aeterni Patris; in Acta sancta sedis, XII, 97 et seq.

Pius X, Motu Proprio "Doctoris Angelici"; in Acta apostolicae sedis, commentarium officiale Annus VI, VI, 336 et seq.

Pius XI, Encyclical Studiorum ducem, Annus XV, XV, 309 et seq.

And also found in the index of Canon Law - Canon 589 and Canon 1366 sec. 2.


49. Figgis, John Neville, 'The political aspect of St. Augustine's City of God' P. 94.


51. Ibid. I-II, qu. 94, Art. 2.

52. Ibid. I-II, qu. 91, art. 3.

53. Ibid. I-II, qu. 90, art. 4.

54. Ibid. I-II, qu. 91, art. 3.

55. Ibid. I, qu. 22, art. 1.

56. Ibid. I qu. 75, art. 5, ad. 1.

57. Ibid. I-II qu. 91, art. 1.

58. Ibid. I-II, qu. 93, art. 3.

59. Ibid. I-II, qu. 93, art. 2.

60. Ibid.
"Dicendum, quod aliquid movetur, vel operatur propter finem dupliciter. Uno modo, sicut agens seipsum in finem: ut homo, et aliae creaturae rationales; et talium est cognoscere rationem finis, et eorum, quae sunt ad finem. Alio modo, aliquid dicitur operari, vel moveri propter finem, quasi ab aliquo actum, vel directum in finem; sicut sagitta movetur directa ad signum a sigittante, qui cognoscit finem, non autem sagitta."

St. Thomas gives a philosophical explanation of the natural law but in the Epistles of St. Paul we find the same doctrine expressed in a less technical language.

It should be noticed that the acts belonging to all three of these classes are, in the nature of man, human acts. The rational form dominates the other powers of the soul and hence acts proceeding from man, insofar as they are human acts, are subject to natural law.

Immutability and universality are notes that have been characteristics of the natural law in practically all systems of philosophy. Thus, for example, in the social theory of Plato, virtue is the ideal. But since
virtue is knowledge and knowledge is based on ideas which are eternal archetypes, transcendent, prior to and independent of things, uninfluenced by change, we arrive at an immutability underlying all things. In the system of Aristotle, ethics are based on the necessity of man acting according to his nature, morality consists in the life of reason., and passions must be subject to reason. The individual has an end which does not, in the organism of the state, conflict with the end that belongs to the state. Thus we are reduced again to the essence of things; and these, in the opinion of Aristotle, are immutable.

70. Ibid. I-II, qu. 94, art. 6.
71. Ibid. I-II, qu. 94, art. 5.

"Sic igitur dicendum est, quod lex naturae, quantum ad prima principia communia, est eadem apud omnes, et secundum rectitudinem, et secundum notitiam."

"Sic quantum ad prima principia legis naturae, lex naturae est omnino immutabilis."

72. Ibid. "Potest tamen mutari et in aliquo particulari, et in paucioribus propter alıquas specialıes causas impedientes observantiam talium praeceptorum."

73. Secondary precepts of the natural law which are immediate conclusions from the primary precepts include the ten Commandments of God and can be known even with moderate reflection by the unlearned.
"Omnia praeepta moralia pertinent ad legem naturae: sed diversimodo. Quaedam enim sunt, quae statim per se ratio naturalis conjuslibet hominis dijudicat esse facienda, vel non facienda: sicut "Honora patrem tuum, et matrem et non occides, non furtum facies," et hujusmodi sunt absoluta de lege naturae."

74. Ibid. I-II, qu. 94, art. 4.
75. Ibid. I-II, qu. 104, art. 5, ad 2.
76. This is the verdict of an eminent French philosopher and publicist, Paul Janet. For to use his direct words: "Enfin Suarez est incontestablement l'ecrivain le plus considerable de l'ordre des Jésuites. Ses principes sont élèves et profonds. Il ne paraît pas se servir de la science comme d'un instrument de domination. C'est un homme d'école et non de parti; il représente la grande tradition du moyen âge. Il en a la droiture, la sincérité, la passion logique; c'est le digne élève de Saint Thomas d'Aquin: c'est le dernier des scholastiques."


77. Taken from De lesjibus, book I, Chapt. I, sect. 6
78. Ibid. I, Chapt. 12, sect. 5.
79. Ibid.
80. Ibid. Book II, Intro.
81. Ibid. II, Chapt. 4, sect. 7.
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