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THE CONCEPT OF NATURAL LAW IN THOMAS AQUINAS AND JOHN LOCKE

BY

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INTRODUCTION

In the course of Western history, men have argued over many things--some, important; others, not so important. I think, though, that it can hardly be contested that the doctrine of natural law falls into the former category. For one thing, it forms the philosophical basis of the Western legal system--something with which we find ourselves often confronted in our daily lives. For another, it has had a direct influence on the structure of our various systems of government. What I want to emphasize for the moment, though, is that although this problem be a theoretical one in itself, it is a problem which affects every man on a practical level too. Moreover, it is a very vital concept, one which has a particular significance for us all and one which has become such an integral factor in the governing of man's actions. In a sense, then, I can hardly over-emphasize its importance for Western man, and indeed, for mankind in general. This is best summed up in the words of Professor d'Entreves:

> For over two thousand years the idea of natural law has played a prominent part in thought and in history. It was conceived as the ultimate measure of right and wrong, as the pattern of the good life or "life according to nature". It provided a potent incentive to reflection, the touchstone of existing institutions, the justification of conservatism as well as revolution. But recourse to natural law was never entirely unchallenged. The notion was laden with ambiguity even in the days when it was considered self evident. . .Yet natural law has

survived and still calls for discussion.[1]

That natural law "still calls for discussion" is the starting point of this paper; for we categorically reject the two extreme positions of either looking at this doctrine as an issue which has been settled philosophically (a view held by the conservative element in Roman Catholic thought), or as a concept which has ceased to be of value to modern man (a view held by many legal positivists).

Our primary objective in this paper, however, will be neither to defend nor attack, but rather to examine critically and compare the particular points of view on natural law of two outstanding thinkers, Thomas Aquinas and John Locke, who have written extensively on this subject. The choice of these authors was not a purely arbitrary one. I picked them for very special reasons. For one thing, Thomas Aquinas represents for many men the culmination of classical and medieval thought. Through his genius for synthesis, one can trace the elements of the most classic traditions up to his day. John Locke, on the other hand, represents for many the beginning of a new era. He, unlike Aquinas, wrote in the vernacular and was the herald of a new and modern age of analysis. We intend, then, not only to compare but also to contrast these two thinkers by making use of one of the doctrines which they have in common--that of natural law. Moreover, our study will be more

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[1]A.P. d'Entreves, Natural Law (London: Hutchinson Univ. Library, 1951), p.7.

philosophical and analytical than historical. Our primary concern will be not to link up Aquinas and Locke historically on natural law; for, this would be a rather difficult thing to do. Indeed, Locke himself does not refer to Aquinas in any of his major works, nor did he appear to have owned at any time in his life a copy of the Summa Theologica. But rather, we intend to examine critically and note both the similarities and dissimilarities between these two theories of natural law.

To do this, we will have to go back to the ancient world in general and the Romans in particular to get an adequate idea of the stage in man's historical development at which he became conscious of the existence of a natural law. Of particular relevance for our study are Aristotle and Cicero--two thinkers who have treated the subject philosophically--and the Roman jurists Ulpian, Gaius, and Paulus, who have written on natural law more from a political point of view. From the Romans we will follow its development through the various schools up to the time of Aquinas in order to get a clear picture of what St. Thomas found himself confronted with. This, of course, would be a very ambitious undertaking in itself; i.e., a survey of pre-Thomistic theories of natural law. Accordingly, we will try to be as selective as possible in choosing the high points in this era in order to best shed light on the Thomistic doctrine. Then, after a careful analysis of this doctrine, we will move on to John Locke's treatment of

natural law, and finally end up with a comparison of the two. With this in mind, let us begin this intellectual venture by looking to the initiators of the Western philosophical tradition, the Greeks; since it was with them that the doctrine of natural law first came to light.

CHAPTER I

NATURAL LAW THEORIES PRIOR TO THOMAS AQUINAS

The importance of this chapter lies not so much in the factual information that it contains concerning natural law theories prior to St. Thomas. Rather, it lies in showing two things: first, that there were well developed natural law theories available to St. Thomas when he first took up his pen to write in the thirteenth century; secondly, that these same theories provided him with the technical vocabulary and philosophical concepts necessary for the construction of his own theory of natural law.

Natural Law Theory in Greek Philosophy

The first major contribution to natural law theory was by Heraclitus who was the first to formulate philosophically a theory of a law which was common to all men and which was directly linked to the cosmic law that controlled the universe. Such an idea had indeed been expressed in a rather obscure way before the time of Heraclitus by the poets and tragedians, but it was he who first cast this notion into the language of philosophy, thus introducing it

into the Western legal tradition.[1]

The next major step was accomplished by Aristotle. His contribution was two-fold. In the first place, Aristotle posited a rather unique dualism as regards man who was viewed as both part of and master over nature. Being corporeal, man is subject to the physical laws which control all such beings; whereas, being rational, and capable of choosing between good and evil, man is able to rise above the purely physically determined part of himself. This distinction was peculiarly Aristotelian and freed man from the type of determinism which would have destroyed such a concept as a natural moral law. In the second place, Aristotle distinguished between natural and legal justice--the former corresponding to natural law; the latter, to positive law. Natural law is that law which is unwritten and valid everywhere; whereas, positive law is the written law and applies only in particular instances.[2]

The notion of natural law, however, was far from clear in Greek philosophy. The Greeks recognized certain basic elements which are necessary for any common law theory, but they failed to draw the logical conclusions from their doctrines as the Roman Stoics were later to do. This is

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[1]A fuller discussion of this point is given by Alf Ross in On Law and Justice (Berkeley: Univ. of Calif. Press, 1959) p. 232.

[2]For a more technical and detailed treatment of this topic, see Legal Theory by W. Friedmann (London: Stevens & Sons, 1967), pp. 10-12. The exact reference to this distinction in Aristotle can be found in his Rhetoric 1373 b4.

one of the few instances in the history of ancient philosophy where Roman thought actually marked some progress over that of the Greeks.

Natural Law Theory in Roman Philosophy

In turning our attention to Cicero, we encounter perhaps the most classical of all natural law philosophers. His definition of natural law, as set forth in his De Republica, has been quoted by almost every subsequent author writing on this subject:

> True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands. . . . It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it and it is impossible to abolish it entirely. . . . We need not look outside ourselves for an expounder or interpreter of it. . . . God . . . is the author of this law, its promulgator, and its enforcing judge.[1]

Also, in turning our attention to Cicero, we can begin to talk a little about the Latin terminology used in subsequent discussions of natural law; for, it is Cicero who is credited with having been the inventor of much of the philosophical terminology used by subsequent generations of philosophers of natural law.[2] Whereas most of his predecessors contented themselves with using Greek terms or writing in Greek, Cicero chose to translate these terms

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[1]Cicero De Republica III. 22.

[2]For more detail, see Legal Philosophy from Plato to Hegel by Cairns (Baltimore: John Hopkins Press, 1949), pp. 127-162

into the Latin language. He called the particular ordinances of the law "iura". The law in general he referred to as "lex", or "ius". "Lex naturae" or "ius naturae" was used for natural law, which was an ideal law. The actually existing law was called the "ius gentium". In addition to this, Cicero recognized the existence of a "lex caelestis" or heavenly law, and a "lex vulgus" or popular law. Let us now turn our attention from the terminology to Cicero's classification of laws which he divided into three parts: the "lex caelestis", the "ius naturae", and the "lex vulgus".

"Lex caelestis" appears to be nothing more than the law of Reason as the Stoics used the term. It was the supreme guiding principle of all that is, and can be compared to the eternal law of St. Thomas which we will consider later. They are not the same, of course, but they do resemble each other inasmuch as they are both eternal, divine, and supreme.

"Ius naturae", according to Cicero, is reason in its perfected form as it exists in the wise man. Man's reason is only a spark of the universal reason which is the only true law, "lex vera". Thus natural law is implanted in each and every one of us by virtue of our reason and it is the duty of every individual to follow this guide. Moreover, it is this law which directly grounds the various kinds of human laws.

"Lex vulgus" can be roughly equated with the classical notion of positive law. This is a particular formulation

of the natural law. The various constitutions of ancient city-states provide good examples of this type of law. It was also the duty of each Stoic to follow positive legislation because if it were valid then it was a direct expression of "ius naturae".

Before leaving Cicero, two important aspects of Stoic legal theory should be pointed out. In the first place, Stoicism, like no other philosophy before it, had provided for the equality of all men. The world was the ultimate state of which every man was a citizen--a marked liberalization of the narrower Greek notion of citizenship in the city-state. As Professor d'Entreves remarks: "Human equality is the direct consequence of natural law, its first and essential tenet."[1] And nowhere did natural law theory have a better atmosphere in which to fully develop than in Roman Stoicism. The second important aspect of Stoic legal theory is the notoriously ambiguous use of the word "nature". This ambiguity has been the source of many heated controversies in the history of natural law theory, and recourse to the primary texts of such Stoic philosophers as Cicero and Seneca fails to give an adequate solution to this problem. Indeed, this ambiquity was destined to plague almost all subsequent natural law theories.

There are some references to natural law in both

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[1]A.P. d'Entreves, Natural Law (London: Hutchinson Univ. Library, 1951), p. 13.

the Old and the New Testaments. The most explicit reference, though, is that of St. Paul in his Epistle to the Romans:

> Where the Gentiles who have no law do by nature what the law prescribes, these having no law are a law unto themselves. They show the work of the law written in their hearts. Their conscience bears witness to them, even when conflicting thoughts accuse or defend them".[1]

These comments, strikingly similar to the Stoic concept of natural law, were later to be drawn upon by St. Thomas in the formulation of his own natural law theory.

St. Augustine was also an author who was to draw heavily upon Sacred Scripture. For St. Augustine, natural law has two dimensions; the one historical, the other philosophical. Historically, the natural law represented an ideal existing before the Fall only to be corrupted by original sin. It was Christ, by His grace, who restored this law to mankind in its pure form. Moreover, this restored natural law could only be known by the Christian with the aid of grace.[2] Philosophically, the natural law is the eternal law in man. As the Divine Intellect illumines our understanding, so the eternal law illumines the consciences of men. The basic precept of this law is simple enough: the order of nature should be preserved and not disturbed

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[1]Romans 2:14-15

[2]Jean-Marie Aubert, Loi de Dieu Lois des Hommes (Tournai: Desclee & Co., 1964), p. 100.

in any way.[1]

The next contribution of pre-Thomistic philosophers was that of the Roman jurists, such as Ulpian and Gaius. It was they who finally hammered out the formal distinction between "ius civile" which applied only to Roman citizens, the "ius gentium" which was common to both Romans and non-Romans alike, and the "ius naturae" which was based on the reason of man. In fact, though, the merit of these men was not so much that they introduced anything new, but rather, that they applied distinctions already inherent in legal philosophy before them to the formulation of actually existing codices of Roman laws.

A final important contribution was made by the Roman canon lawyers who were to have a rather marked influence on St. Thomas not only because of the similarity of the religious atmosphere in which they worked, but also because they more or less borrowed from the same classical sources. In particular, they both had in common the Pauline, and hence, Augustinian, views of natural law.

Locke, as we shall see, also had access to all these traditions in common with Aquinas, but his viewpoint was a more secular one, adapted to the particular needs of his times. Consequently, the question of sources need not detain us any longer, for a further discussion of the classical

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[1]Etienne Gilson, The Christian Philosophy of St. Augustine (New York: Random House, 1960), pp. 130-131.

and medieval sources would not significantly contribute to the objectives of this study. When we treat of the natural law theory in Locke later on, we will bring out the work done on this theory during the four hundred or so years which separated Aquinas from Locke.

CHAPTER II

THOMAS AQUINAS AND NATURAL LAW

Concept of Law

In embarking upon his discussion of law in the Summa Theologica, St. Thomas tells us that ". . . we have now to consider the extrinsic principles of acts."[1] Now there are two such principles; the devil who inclines us to evil and God who inclines us to good. The devil inclines us to evil through his temptations. God, however, ". . . instructs us by means of His Law, and assists us by means of His Grace."[2] Law and grace, then, are really complementary concepts; for, the latter reinforces the knowledge received from the former. In this chapter, though, we are going to limit our discussion first to law in general and then to natural law in particular; for the question of grace, properly speaking, lies outside the realm of our inquiry.

In its broadest sense, law is a rule or measure which commands or forbids something. Moreover, in addition to its obligatory nature, it has other characteristics. For one

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[1]Thomas Aquinas, Summa Theologica Ia IIae. 90.

[2]Ibid.

thing, it must be reasonable because ". . . it pertains to reason to command."[1] For another, it must also be directed to the common good and not be for the profit of some individual. Thirdly, not just any man, rational though he may be, is capable of making laws. Only the people taken as a whole or someone who has been given charge by the people to legislate for them is capable of doing this. And lastly, in order for a law to be a valid one, it must be promulgated; i.e., once a law has been drawn up, it must be made known and applied.

In his own words, St. Thomas defines law as ". . . an ordinance of reason made for the common good by him who has care of the community and promulgated."[2] According to St. Thomas, this definition would apply to any type of law. According to some of his commentators, however, the choice of the term "ordinance" may have been an unfortunate one; for, it fails to point up the character of obligation--so vital for the effectiveness of any law.[3] An ordinance can either be a counsel which in itself does not require strict obedience or it can be a command which does. St. Thomas obviously meant the latter, and his definition of law must be understood as using the term in that sense. Another

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[1]ibid., 90,1.

[2]ibid., 90,4.

[3]H. Cairns, op.cit. p. 168.

classic objection has been brought against this definition; viz., that it could not properly apply to the eternal law because such a law being eternal could not have been promulgated. St. Thomas himself answers this objection in the following way:

> Promulgation is made by word of mouth or in writing and in both ways the eternal law is promulgated because both the Divine Word and the writing of the Book of Life are eternal. But the promulgation cannot be from eternity on the part of the creature that hears or reads.[1]

In addition to the definition just given, St. Thomas gives a somewhat more restrictive definition of law in which he places the emphasis on the obligatory character of law. This restrictive definition, however, does not appear broad enough to apply to the eternal law; for, he says that law "... is a rule and measure of acts by which a man is induced to act or is restrained from acting."[2] He notes that the word "lex" (law) comes from the word "ligare" which means "to bind". Clearly, though, this definition cannot apply to the eternal law; for, as we shall see, the eternal law embraces not only man but irrational creatures as well.

Finally, St. Thomas notes that the primary effect of the law is to make men good.

Now the virtue of any subordinate thing

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[1]Aquinas. op.cit. 91,1.

[2]ibid., 90,1.

> consists in its being well subordinated to that by which it is regulated. . . . But every law aims at being obeyed by those who are subject to it. Consequently it is evident that the proper effect of law is to lead its subjects to their proper virtue.[1]

Something's proper virtue, though, is "that which makes its subject good;"[2] so, obedience to law has the effect of making someone good.

Eternal Law, Human Law, and Divine Law

From this discussion of law in general, St. Thomas then proceeds to distinguish the four kinds of law; the eternal law, the natural law, the human law, and the divine law. To say, however, that these laws are distinct from one another is not to say that they have nothing in common, for they all ultimately find their basis in the Divine Reason. Moreover, they all occupy a necessary place in God's general providential scheme by which He governs creation.

St. Thomas's justification for the order in which he discusses the various types of law; viz., eternal law, natural law, human law, and divine law, rests on his attempt to provide a metaphysical basis for the moral law and the laws which derive from it. Fr. Copleston warns us, though, that,

> It may be as well to remark at once that if Aquinas starts with the concept of the eternal

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[1]ibid. 92,1.

[2]ibid.

> law of God this does not mean that for him the moral law depends on God's arbitrary choice. This point will, I hope, be made clear in what follows. The reason why he starts with mention of God is that moral law is for him one of the ways in which creatures are directed towards their several ends. He sees the moral life in the general setting of the providential government of creatures. For him the moral law is not something without any relation to anything other than itself; it is a special case of the general principle that all finite things move towards their ends by the development of their potentialities.[1]

The first type of law, then, which we will discuss is the eternal law, followed by the human and divine laws, leaving the natural law to be treated more extensively later on in this chapter.

The first type of law that St. Thomas takes up is the eternal law. This law is identified with "the idea of the government of things in God,"[2] and since the mind of God is not subject to temporal limitation, this law is called "eternal law". St. Thomas then draws an analogy between the artist and the governor and God in order to bring out the necessity for such a law. He reasons that there must pre-exist in the mind of a governor some plan according to which he governs, as there pre-exists in the mind of an artist the model of what he is about to produce. Now, since God both creates as an artist and governs as a governor there must exist in His mind the idea or exemplar of His work. But

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[1]F.C. Copleston, Aquinas (Baltimore: Penguin Books, 1955), p. 212.

[2]Aquinas, op.cit., 91,1.

this idea is not a static concept. It is archetypal; i.e., it moves things toward their end. Thus it takes on the nature of a law.

This eternal law, embedded in the mind of God as it is, is not entirely inaccessible to human reason. Nor, on the other hand, can it be comprehended fully by the finite intellect. We can know the eternal law only in its reflection in creation. To illustrate this, St. Thomas notes that when one looks at the sun, he does not really behold the substance of the sun, rather he sees it by means of the rays of light that it gives off. Thesame holds true for the eternal law. We know it not in itself but in the particular instances in which it is manifested on a finite scale.

From what has been said it is clear that this law; viz., the eternal law, is the supreme law and the source of all other law. Again St. Thomas resorts to an analogy to prove his point. He notes that in any situation involving government, there is first a chief governor who commands a series of inferior governors. Their plans of government ultimately depend on his. Now, the original plan of the chief governor is analogous to the eternal law and the plans of the subordinate governors to the various other types of laws which depend on it. In finishing off this section St. Thomas quotes St. Augustine: "In temporal law there is nothing just and lawful but what man has drawn from the

eternal law."[1]

At this point St. Thomas takes pains to show that although all things created by God are subject to eternal law, ". . . things pertaining to the Divine Nature or Essence are not subject to the eternal law but are the eternal law itself,"[2] thereby, further reinforcing his assertion that the eternal law cannot be said to be ontologically distinct from the Divine Essence. Contingent things, on the other hand, are subject to the eternal law by virtue of their creation by God. And, as we shall see in the next section, in the case of man, this subjection takes on a rather unique form; that of natural law.

Human law, the third type of law mentioned by St. Thomas, is a necessary consequent of natural law. It is the particular formulation of the precepts of natural law which provide the working principles upon which the body of human laws are based. The proof for the existence of such a law is based on an analogy between the relation of the speculative reason to the practical reason and relation of natural law to human law. St. Thomas argues:

> Just as in the speculative reason from naturally known indemonstrable principles we draw 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

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[1]ibid. 93,3. The quotation from St. Augustine is taken from De Lib. Arb. 1,6.

[2]ibid. 93,4.

> it is from the precepts of natural law as from general and indemonstrable principles that the human reason needs to proceed to the more particular determination of certain matters. These . . . determinations . . . are called human laws.[1]

Human law then, as a corollary of practical reason, has a very practical function to perform. It provides the discipline necessary to a society in order to function properly and it does this primarily in two ways. Firstly, it keeps men's minds focused on their immediate goal--the practice of virtue. Secondly, it prevents those depraved individuals who are not interested in this pursuit from bothering those who are.

In view of the particular functions performed by the eternal , the natural, and the human law, there would seem to be very little left that needs tobe explained. Not so, says St. Thomas, for there exists a fourth kind of law, i.e., the divine (or supernatural), which is just as necessary as the other three in order to account fully for the morality of man's actions. This law is necessary for the following reasons: First, since man has a supernatural end which he is incapable of realizing himself, he should be directed to it by a supernatural law. Secondly, man in his formulation of the various human laws is liable to error; hence, the existence of incompatible laws. A divine law then becomes necessary in order to keep manfree from this type of

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[1]Ibid., 91,3.

error. Thirdly, these human laws are capable only of directing man's external movements. Thus a law is necessary to direct his interior movements also. Fourthly, human law cannot be totally comprehensive, in the sense of proscribing all evil. In fact, in trying to do so, it does more harm than good. In order to avoid this a divine law, which proscribes all evil, should intervene.

Actually, there is not one divine law but two; viz., the Old Law and the New Law--the latter being a perfection of the former. All in all, there are three ways in which the New Law is said to be superior to the Old Law. Firstly, the Old Law is concerned with temporal things; whereas, the New Law is concerned with eternal things. Secondly, the Old Law directs our external actions; the New Law, both our external and internal ones. Thirdly, the Old Law induced men to obey out of fear; whereas, men adhere to the New Law out of love.

In summary, then, St. Thomas recognizes four kinds of law, each of which is intrinsically related to the other and all of which ultimately have their basis in the mind of God. All four have their natural places in the Divine plan of creation and, what is more important for St. Thomas, all form part of the economy of salvation. Man, even in his fallen state, is capable of knowing some of the precepts of these laws and in many cases is capable of acting according to this knowledge. However, this is a rather ideal way of

looking at things; for, man in his present situation has need of some fortifying factor in order to clearly see his obligations and to act decisively according to them. This fortifying factor for St. Thomas is nothing other than grace, which works together with law to lead man to his supernatural end.

Natural Law

Before engaging in a discussion of Thomas Aquinas's theory of natural law, it should be noted that his writings on natural law are not as extensive as his writings on the many other subjects that he treated. All in all, he directly refers to natural law in only four of his works: The Commentaries on the Sentences of Peter Lombard, the Summa Contra Gentiles, his Commentary on Aristotle's Nicomachean Ethics, and the Summa Theologica. Indirectly, though, St. Thomas often refers to natural law especially in the Summa Theologica where his doctrine of law had a marked influence on his theory of virtue and other aspects of human action. For the purposes of this thesis, however, we will limit ourselves for the most part to the Summa Theologica; for itis there that the real substance of his theory of natural law is set forth. We will give formal treatment then only to the relevant sections in the Summa Theologica.[1] What is found in the other above named works will be incorporated into

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[1]Thomas Aquinas, Summa Theologica. Ia IIae. 94.

the discussion preceding this formal treatment.

What St. Thomas's discussion may have lacked, quantitatively at least, in his treatment of natural law, is made up for in his very profound and clear insight into the features of this doctrine that he chose to discuss. Most of what he said, however, had been said before and, in some cases, even better said. His contribution in this area then is not so much one of originality as it is one of precision and systematization. Some authors may have expressed some points better than St. Thomas, but certainly no one either before or since the Angelic Doctor has been able to put it together as systematically or succinctly as he did. Natural law theories of other philosophers were coherent enough in themselves, but St. Thomas's particular merit lay in the fact that his doctrine was not only coherent in itself but also that it was fitted very ably into the rest of his philosophy. It did not stick out like an oddity as some have said about the natural law theory of Locke, for example.

From all this we should not infer that St. Thomas lacked originality altogether. But history remembers him more for his systematic presentation of the problem than for any of the particular innovations that he may have made. In this section we will aim to bring out one of the most important contributions of St. Thomas to the history of natural law theory.

Unlike many of his predecessors, St. Thomas was faced

with the particularly urgent task of reconciling the traditional natural law theory to the philosophy of Aristotle, and this without any previous preparation, so to speak. In other words, St. Thomas had to make everything fit together and, in so doing, some features of the traditional natural law theory were dropped and others were added in order to be in perfect harmony with Aristotelian metaphysics and his philosophy of man; something which none of his predecessors had even attempted.

What in effect St. Thomas did was to laicise the traditional notion of natural law, raising it at the same time to its proper metaphysical level. In this way he removed it from the history or economy of salvation by giving to natural law a universal dimension, thereby rendering it valid for both Christian and pagan alike. According to some Western Fathers, there are two types of natural law, one valid before the Fall (this also represents the natural law of the Evangelical ideal), and the other after the Fall. This meant that there is a form of natural law which is out of the reach of non-Christians--a philosophically unacceptable position for St. Thomas, or any Aristotelian for that matter. He did not completely reject this notion, however. On the contrary, he very cleverly inserted it into the Aristotelian metaphysics in such a way that he gave the old theory a new meaning. What he rejected was not the theory itself but rather the consequences of such a theory.

St. Thomas, in effecting this reconciliations, distinguishes two ontological levels in man: one, which he calls generic, and another, which he calls specific, corresponding respectively to his animality and to his rationality. Thus what the Fathers were really trying to say was that before the Fall, man was guided completely by the laws of his specific nature, or his rationality; whereas, after the Fall he is naturally in the state where his animality dominates him. However, all is not lost. Man, through the Gospel, is able to recover his former state, in which reason predominated. In fact, according to St. Thomas, man, by virtue of his complex nature, possesses both of these tendencies. Thus he is at the same time governed by the laws pertaining to his generic and specific natures irrespective of his historical condition.[1]

According to St. Thomas, the human soul, considered in its specific nature, has two fundamental faculties. These two faculties are capable of two fundamental activities, knowing and desiring. Man's desires or natural inclinations are termed "appetites" and they are on two levels: the first or lower level which includes the irascible and concupiscible, and the second or higher level, the will. These two levels correspond to the two levels of cognition in man: the sensitive and the intellectual. Animals, which have

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[1]This discussion was taken from Jean-Marie Aubert, Loi de Dieu Lois des Hommes (Tournai: Desclee, 1964), pp. 98-100.

only the lower level of cognition, have only the lower level of appetites. This type of appetite is an inclination toward its natural end on the sensuous level; i.e., it is inclined toward particular goods presented by the senses. Man, however, as a rational creature, is primarily inclined to the end which is natural to his will and this for St. Thomas is the good in general. Moreover, this inclination constitutes a certain type of necessity; i.e., man is compelled by a necessity intrinsic to his will to seek happiness or the good in general.

From what has just been said, it is clear that like Aristotle, St. Thomas's ethics is teleological; i.e., man acts with a view to his end which is the possession of God in the Beatific Vision. As Fr. Copleston notes:

> Aquinas had a quite definite idea of what constitutes the supreme good for man. And this idea was a Christian idea. The supreme good for man, objectively considered, is God; considered subjectively, it is the possession of God . . . Who perfects man's potentialities in the highest possible way.[1]

The fact that man necessarily wills happiness, however, does not mean that he is not free to choose this or that particular alternative in obtaining it; for, his freedom consists in his ability tochoose his own means to this end. He is not entirely unaided in this act of choosing, though. He is guided by the natural law which is not only this

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[1]Copleston, Aquinas, p. 181.

rational desire that we have referred to but is also the knowledge of the end we are seeking and how we are to obtain it. But not all men have a clear knowledge of all the precepts of this law and that is why free will is a necessary element in the moral life of man.

According to St. Thomas, natural law "is nothing else than the rational creature's participation in the eternal law."[1] This definition, at first sight, appears to be simple enough, especially if one has a clear notion of eternal law. Problems immediately arise, however, as soon as one begins to inquire about the exact meaning of the terms "nature", "rational creature," and "participation." All three are very charged terms in the sense that most philosophical traditions have defined them in the light of their own respective systems of thought. Before anything else, then, these terms must be put in their proper Thomistic context; otherwise, the above quoted definition could very easily be made to mean the opposite of its actual historical sense.

"Nature" in its most general sense in St. Thomas is that which characterizes a being, any being, in its specifity. Thus it is that which gives a being its meaning or significance. This being will have certain properties which are said to belong to it, properties which manifest its na-

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[1]Aquinas, Summa Theologica Ia IIae. 91,2.

ture and are therefore said to be natural. When talking about natural law here we are talking about it as it exists in the rational creature, or man, and what is natural to man is precisely his reason, or that which sets him apart from other living beings.

Man's nature as something both rational and living is not static but dynamic in its manifestations. In virtue of his creation man is inclined toward his final end which is the knowledge and love of God. This he arrives at precisely through the constant manifestation of his rational nature. This dynamism is characterized by two properties: a natural inclination to seek happiness, and the knowledge of his end and the way to use his reason in order to obtain it. But as we have already seen, this is what the natural law is; viz., the natural inclination to and knowledge of what man must do in order to arrive at his ultimate goal, happiness.

Natural law, however, is not something that is capable of standing on its own; i.e., it has, as its ground, something more ultimate, something more basic than itself. What we are talking about, of course, is the eternal law in which, St. Thomas says, man participates. This fundamental assertion concerning the relation between the natural law and the eternal law is well expressed by Etienne Gilson in his The Spirit of Medieval Philosophy:

> Just as in virtue of their existence, they (creatures) participate analogically in the divine

> Being, so, in virtue of the fact that the law of their essence, in the intimate structure of their being, they participate analogically in God's eternal law. . . . The natural law is to the eternal law as being is to Being.[1]

From what has been said it would appear difficult to speak of natural law as something ontologically distinct from the eternal law. In fact, for St. Thomas, the distinction is only a formal one.

However, this participation by man in the eternal law is not unique; rather, it is two-fold. On the one hand, man, along with all other creatures, participates in the eternal law as one who is ruled and measured and this type of participation is called material participation.

> Therefore since all things subject to Divine providence are ruled and measured by the eternal law. . . it is evident that all things partake somewhat of the eternal law, in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends.[2]

On the other hand, man participates in the eternal law as one who rules and measures and this type of participation can be referred to as formal participation.

> Now among all others, the rational creature is subject to Divine providence in the most excellent way . . . by being provident both for itself and others. Therefore it has a share of the Eternal Reason . . . and this participation

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[1]Etienne Gilson, Spirit of Medieval Philosophy, trans. by A. Downes (New York: Scribner's Sons, 1940), p. 335.

[2]Aquinas, Summa Theologica, Ia IIae. 91,2.

> of the eternal law in the rational creature is called the natural law.[1]

As we have seen above, natural law is manifested by the necessity that it produces. On the level of material participation in the eternal law there are three types of necessity: physical, instinctive, and moral. Physical necessity arises from the various physical, biological, and chemical laws which govern a creature's material presence in the universe. An example of this would be the law of gravity. Instinctive necessity arises out of the natural inclinations of all living creatures. An example of this would be the so-called law of the preservation of the species. Moralnecessity arises out of the various inclinations of the rational creature toward his final end, happiness. And this is the natural moral law in its material sense. St. Thomas, of course, did not himself put it quite in this way, but this modernized summation appears to be closest to his own thinking on material participation.

Man's formal participation in the eternal law is a direct consequent of his ability to direct himself to his own end. Whereas, in material participation man is determined by necessity, in formal participation, he is the one who determines. His role then in the former is a passive one; in the latter, it is active. And, if the former is ruled by necessity, the action of the latter is a result of

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[1]ibid.

a free will in man.

An important point should now be raised; viz., the distinction between natural law and natural right. It is particularly important for our study because it occupies a central place in the natural law theory of John Locke. In essence, the distinction is fairly simple and follows immediately upon what we have just been discussing, the formal and material elements of natural law. Natural right is to natural law what matter is to form. Natural right, then, corresponds to that which the eternal law imposes on man by means of moral necessity; whereas, natural law, in its most restrictive sense, is man's formal participation in the eternal law. Together they form what we have been calling natural law in the broader and more popular sense of the word.

In article 94,[1] the section on natural law in the Summa Theologica, St. Thomas considers the following six points: first, whether natural law is a habit; secondly, what are the precepts of natural law; third, whether all acts of virtue are prescribed by the natural law; fourth, whether the natural law is the same in all; fifth, whether it is changeable, and sixth, whether it can be abolished from the heart of man. The first point of inquiry pertains to natural law in itself; the second and third, to the pre-

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[1]ibid., Ia IIae. 94.

cepts of natural law; the fourth and sixth, to its universality; and the fifth, to its immutability.

According to St. Thomas, natural law cannot properly be called a habit. In the first place, a habit is that by which we act. The natural law, however, is what one does, and since that which one does and that by which one acts are not identical, then natural law cannot be said to be a habit. The point St. Thomas is making here at first appears to be a minor one when compared to what he treats in the rest of this section on natural law, but in relation to St. Thomas's overall philosophy of law it is an important one. As we have seen, the Thomistic concept of law is based on the analysis of the human act. Now the question of whether or not natural law is a habit is based on this analysis. Thus before anything else could be discussed the precise relation between natural law and the human act had to be clarified.

For St. Thomas, a distinction must be made between the objective content of a law and the practical reason which makes use of this content. The particular aspect of practical reason that we are concerned with here is the moral conscience which possesses certain fundamental principles or innate tendencies. These make up the objective content of the natural law. The "habitus" of these principles, however, is the particular aptitude that one develops by practice which renders one capable of using these princi-

ples in an active and spontaneous sort of way. Thus in no way could these two be said to be identical. In a way, it is like a mathematician who develops a certain ability or "habitus" to make use of the principles of mathematics that he has learned. Once this distinction has been made, the road is now clear for St. Thomas to proceed to his next point of inquiry concerning the precepts of the natural law.

The question now arises whether the natural law contains several precepts or one only, and, if several, what are they. According to St. Thomas:

> The precepts of the natural law in man stand in relation to practical matters as the first principles to matters of demonstration. But there are several first indemonstrable principles. Therefore there are also several precepts of the natural law.[1]

But what are these precepts and what would be their philosophical foundation? In answering this question, St. Thomas enters into one of the most hotly contested issues in natural law theory.

The precepts of the natural law are said to be self-evident and, according to St. Thomas, a thing can be self-evident in two ways, in itself or in relation to us. Propositions are self-evident in themselves if they are analytic. The terms of these propositions are universally known. Propositions, however, are also self-evident in relation to those who understand the meaning of their terms. Thus

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[1]ibid., Ia IIae. 94,2.

there are propositions which are self-evident to the learned, but not to the ignorant.

These self-evident precepts, however, are not haphazardly worked out; rather, they are discovered in a very orderly fashion. Noting that the first indemonstrable principle that is in the understanding absolutely is that the same thing cannot be affirmed and denied at the same time, the first principle of practical reason is that good must be pursued and evil avoided. This inference is based on the fact that "being is the first thing that falls under the apprehension absolutely, so good is the first thing that falls under the apprehension of the practical reason, which is directed to action; for every agent acts for an end which has the aspect of good."[1] The first principle of the practical reason or the fundamental precept of the natural law is the basis for all the other precepts of this law; for, ". . . whatever the practical reason apprehends as man's good belongs to the precepts of the natural law as something to be done or avoided."[2] From this principle Std Thomas then goes on to deduce the other precepts of the natural law.

Since all things towards which man is naturally inclined are good, they are to be pursued and their opposites

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[1]ibid.

[2]ibid.

avoided. These inclinations follow a certain order. Some are better than others and therefore should be pursued before others. The first of these inclinations that man has is the preservation of his own being, according to his own nature. Thus whatever is used as a means for preserving human life is good and follows the natural law. Whatever tends to destroy life is evil and serves to contravene the natural law. Man's second most marked inclination is that which has been given to all animals. Included in this, according to St. Thomas, are sexual intercourse and education of offspring. Lastly, man is inclined to the good which is proper to his own reason and St. Thomas gives as examples of these the desire to know the truth about God and to live in a society. Now all these primary precepts, diverse as some of them are, ". . . have the character of one natural law because they flow from one first precept."[1]

St. Thomas's third point of inquiry is whether all acts of virtue are prescribed by the natural law. Man, it is observed, is inclined toward virtuous acts. "Acts of virtue are suitable to human nature, since they are according to reason while acts of vice are discordant with human nature, since they are against reason."[2] Virtuous acts, then, since they are according to reason, are natural to man.

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[1]ibid.

[2]ibid., Ia IIae. 94,3.

Since man is inclined toward that which is natural to him, and since the precepts of the natural law follow upon these inclinations, then virtuous acts become precepts of the natural law.

The fourth point of inquiry in Question 94 is the universality of the natural law. Historically, at least, this has been one of the most characteristic features of all the properties of the natural law. All the major authors that we have discussed in Chapter I, from Heraclitus to Augustine, are agreed on this point; viz., that the precepts of natural law apply to all men. Roughly, the traditional argument goes like this: Since all men partake of the same nature, and since natural law is that which is inseparably linked to human nature, then all men, by their very nature, are governed by the precepts of such a law.

St. Thomas's argument for the universality of the natural law, as contained in his reply to an objection, is the following.

> As in man reason rules and commands the other powers, so all the natural inclinations belonging to the other powers must be directed according to reason. Therefore it is universally right for all men that all their inclinations should be directed according to reason.[1]

But as we have seen, inclination directed toward reason is another way of describing natural law; thus, it is universally right that all men possess the natural law.

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[1]ibid., Ia IIae. 94,4.

In the "respondeo" of Article 94, he gives a slightly different argument for the universality of natural law. There he argues that the natural law is the same for all, both with respect to truth and with respect to knowledge. The common principles of the practical reason are known to all men. These principles, however, form the content of the natural law. Thus all men have knowledge of the natural law. Conclusions, though, based upon these principles in their detail are not necessarily known to all men. And this is why in some societies practices are observed which are seemingly contrary to the precepts of the natural law. These practices are said to conform to so-called secondary precepts of the natural law, which are derived from the natural law but are not immediately evident because they are corollaries that have been derived from the primary precepts.

The fifth point of inquiry touches upon the immutability of the natural law. St. Thomas asks the question ". . . whether the natural law can be changed. . . "[1] and in his "sed contra" he gives a quotation from Gratian which is a direct reply to his question. "The natural law dates from the creation of the rational creature. It does not vary according to time, but remains unchangeable."[2]

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[1]ibid., Ia IIae. 94, 5.

[2]ibid, quoting Gratian. PtI, Prol.

In his discussion of this question St. Thomas says that if one talks about a change in the natural law, this can be understood in either one of two ways. In the first place, the natural law can be changed by addition. In this sense, natural law is changeable since many things beneficial to human life have been added in the course of time. As we have seen in Chapter Two, the preservation of human life forms one of the fundamental precepts of natural law, thus anything which pertains to this precept pertains to the natural law. In the second place, natural law can be changed by means of subtraction in such a way that things which formerly pertained to the natural law no longer do so. In this sense, according to St. Thomas, natural law is unchangeable, at least in its primary precepts. In its secondary precepts, some change may take place. Thus in the case of theft, for example, a man who is so perverted or whose nature is so deformed that he cannot reason that theft is wrong cannot really be held to this secondary precept of the natural law. This is the exception, though, not the rule. Incidentally, this point made here by St. Thomas has been the source of much controversy since his time.

St. Thomas's last point of inquiry in Question 94 is whether natural law can be abolished from the heart of man. Here again St. Thomas falls back on his distinction between primary and secondary precepts in order to qualify his response. Primary precepts cannot be blotted out from

the human heart although the secondary precepts can be. In support of his position, vis-a-vis the primary precepts, St. Thomas quotes St. Augustine: "Thy law is written in the hearts of men, which iniquity itself effaces not."[1]

Concerning the secondary precepts, St. Thomas says, ". . . the natural law can be blotted out from the human heart, either by evil persuasions . . . or by vicious customs and corrupt habits, as among some men, theft and even unnatural vices as the Apostle states (Rom. 1) were not considered sinful."[2]

At this point, let us briefly summarize what we have thus far seen concerning St. Thomas's theory of natural law in order to delve more deeply into one of its more prominent characteristics. Natural law is the second of four types of law enumerated by St. Thomas in his Summa Theologica. It is that rule of action implanted by God in us in virtue of our rational nature, which provides us with an objective criterion for the morality of our actions. But it is more than just a criterion; for, it inclines our will toward the observance of its precepts. This law is perpetually and universally binding upon mankind and this, in virtue of the fact that it is an expression of the eternal law of God.

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[1]St. Augustine Confessions II. 9. quoted in Aquinas Summa Theologica Ia IIae. 94,6.

[2]Aquinas, Summa Theologica Ia IIae. 94,6.

What we have said, of course, is all very well and good, but all we have after an exhaustive analysis is nothing more than a very abstract concept which does very little to inform us whether an action is moral or not. St. Thomas was aware of this difficulty and tried to contend with it in talking about the precepts of the natural law; i.e., what they are and to what extent we can know them. As we have seen, the fundamental precept of the natural law is that one must do good and avoid evil. From this fundamental precept, three primary precepts can be deduced: the first, that man, inasmuch as he is a substance, shares with other substances the inclination to preserve himself in his own being; the second, that he is inclined to perform certain actions which conform to his generic nature or animality; and the third, that he is inclined to perform those actions which conform to his specific nature or rationality. Corresponding to each of these primary precepts, St. Thomas gives concrete examples of what he means when talking in the abstract way that he does. What he fails to do, however--and this point is crucial, if one is to really appreciate the practical import of his natural law theory--is to provide us with a method by which we can arrive at the manifold precepts which are necessary to give content to the natural law. In other words, St. Thomas's treatment of this aspect of the natural law is a wholly inadequate one. A contemporary example of just how inadequate this aspect of St.

Thomas's theory is, is the controversy within Roman Catholic thought concerning birth-control. Those who oppose it make use of St. Thomas's theory of natural law to support their position, but this is precisely the source of the ambiguity which has arisen within this context; viz., that it is not really clear whether one is talking about a primary or a secondary, and hence changeable, precept of the natural law when one says that birth-control is against natural law. Other principles are involved, of course, but this is the gist of the controversy. Unfortunately, because of this ambiguity in St. Thomas, one is unable philosophically to resolve this question.[1]

Apart from this difficulty, however, St. Thomas did succeed in formulating a fairly consistent theory of natural law. It was not exactly the traditional view, mainly because of the Aristotelian elements which were introduced into it, but it did conform to the teaching found in Scripture and this is what was really important as far as St. Thomas was concerned. As for his natural law theory in itself, its perennial value is attested to by the fact that the main tenets of this theory went by uncontested in philosophical circles for almost five centuries until the time of Hume, Kant, and the legal positivists. Moreover, it was taken over and adapted by many British and Continental auth-

[1]This presupposes, of course, that one first accept the principles of Thomistic philosophy as being valid.

ors on natural law--most of whom were Protestant and violently opposed to almost anything which hinted of Scholasticism or Catholicism.

In fact, When one talks of natural law in the Middle Ages, one usually has in mind this theory of St. Thomas; for, it is most representative of Christian-Aristotelian thought. So when we talk about this theory as being the traditional one we mean that it is traditional in this sense. In the thirteenth century, of course, it was not the traditional theory of natural law. St. Augustine's was. And as was seen earlier in this chapter, St. Thomas secularized St. Augustine's notion of the natural law, and this to bring it more into conformity to the thought of St. Paul. Also, his aim was to separate from the then traditional notion of natural law the theological elements which had so restricted its scope of application.

Having done this; i.e., having secularized the notion of natural law, the way was now clear for the myriad of natural law theories which were to follow that of St. Thomas. Locke, for example, could not have written what he did on the natural law without the groundwork laid by St. Thomas; for, Locke would have found it very difficult to have worked out his theory from such a base as, say, Stoicism. This is because of the close link between Locke's natural law theory and the Christian concept of morality. St. Thomas's synthesis, then, marked a definite

step in the history of natural law theory and constituted a positive contribution to a field which was destined to be plagued for so long by so many difficulties.

CHAPTER III

JOHN LOCKE AND NATURAL LAW

John Locke's contribution to Western thought is two-fold: as a philosopher, he is generally recognized as the father of the British Empirical school of philosophy and, as a political theorist, his writings on constitutional law have profoundly influenced the Western political tradition. What we want to stress here, though, is Locke's theory of natural law which can be said to lie both in the domain of philosophy and that of political science. His philosophy treats of the epistemological and ethical aspects of natural law; whereas, his political philosophy provides a certain framework within which the practical consequences of such a theory can be worked out. Indeed, the orientation of Locke's general philosophy is practical, not theoretical. As Locke himself says: "Our business . . . is not to know all things, but those which concern our conduct".[1] However, since this chapter is intended to be a study of John Locke's philosophy of natural law, we will be primarily concerned with the philosophical aspects of this theory. Accordingly, many purely political considerations

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[1]John Locke, An Essay Concerning Human Understanding, ed. by R.M. Hutchins, Great Books of the Western World, Vol. 35 (Chicago: William Benton, 1952), p. 93.

associated with his natural law theory will be given only summary treatment.

The chief aim of Locke's theory of law was to provide a sound basis for the state. And in doing this, Locke naturally paid alot of attention to the role of law as a unifying and stabilizing force in man's actions. This attention led him to a consideration of natural law or the nexus, so to speak, of law and man's actions. Only in one place in his writings did Locke systematically set forth the principles of a law of nature and this was in his Essays on the Law of Nature written in 1664, or relatively early in his career. Much of what Locke had to say in these essays also appeared later in both his The Two Treatises of Civil Government and An Essay Concerning Human Understanding, published in 1690 or some twenty-six years after his first draft of Essays on the Law of Nature. Historically, natural law appears to have occupied a place of priority in John Locke's early intellectual life. In his later writings, he scarcely refers to the subject, philosophically at least. Our primary concern then should be with these Essays of the Law of Nature; for, his later works add nothing substantial to what is set forth in them nor does he treat of the law of nature systematically in any place other than in these essays. Indeed, many scholars have looked upon his Essays on the Law of Nature as the first draft of his An Essay Concerning Human Understanding. Accordingly, we will begin our analysis with

a short historical survey of natural law theories from Aquinas to Locke. Following this we will make a few remarks on the relation of Locke's natural law theory to his ethics and then proceed to a discussion of the contents of his Essays on the Law of Nature, only afterwards referring to some relevant passages in his Two Treatises of Civil Government.

From Aquinas to Locke

In addition to the sources mentioned in Chapter I and the Scholastic philosophers of the Middle Ages, John Locke's natural law theory was influenced by two groups of natural law theorists; the one, Continental; the other, British.[1] The Continental theorists included Hugh Grotius[2] and Samuel Pufendorf.[3] The British theorists included Richard Hooker,[4] Robert Sanderson,[5] and Thomas Hobbes.[6] It is difficult, of course, to determine to what extent

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[1]This and the discussion to follow are based on W. von Leyden's introduction to John Locke, Essays on the Law of Nature (Oxford: Clarendon Press, 1954), pp. 7-82.

[2]Dutch jurist, 1583-1645, author of De Jure Belli ac Pacis.

[3]German jurist, 1632-1694, author of De Jure Naturae et Gentium.

[4]English theologian, 1554-1600, author of Of the Law of Ecclesiastical Polity.

[5]Anglican bishop, d. 1663, author of De Juramenti Promissorii Obligatione.

[6]English philosopher, 1588-1679, author of Leviathan.

each of these authors may have influenced Locke, but it is clear from both the direct and indirect references he makes to these men that they did indeed provide Locke with some of the material used in constructing his own theory of natural law.

It is certain that Locke possessed all the major works of Grotius and it is equally as certain that Locke read his De Jure Belli ac Pacis, because he drew upon this work for many of the classical objections to aspects of his own theory of natural law. He also borrowed from Grotius several distinctions concerning obligation and his arguments proving that animals are not bound by the law of nature. He reacted strongly, however, to Grotius' claim that the law of nature can be known from the general consent of men. Also, Locke may have been influenced by Grotius' assertion that the science of ethics is demonstrable in the formulation of his own ideas on ethics; for, Locke himself held that ethics was a demonstrable science. But he could equally have gotten this notion from any one of a number of pre-Lockian philosophers who were agreed with Grotius on this point.

Pufendorf was another Continental author on natural law who influenced Locke's own theory on the subject. Locke owned a copy of Pufendorf's book on the law of nature and seems to have borrowed liberally from this source. In particular, he shared Pufendorf's view that the natural law is

an expression of the Divine Will and that the general consent of men cannot be capable of providing a basis for the natural law.

Hooker's influence on Locke is of particular relevance to this thesis; for, it is through him that Locke was influenced by the Medieval authors on natural law. Hooker was well versed in Scholastic thought and much of his natural law theory was derived from the writings of Thomas Aquinas. Locke's definition of natural law as given in the first of his Essays on the Law of Nature is almost word for word that of Hooker, but since it was Locke's habit to borrow from authors without indicating any reference, it is difficult to determine the exact source of much of what he says.

Sanderson, as professor of Divinity at Oxford, delivered many lectures on natural law. He discussed the light of nature, the divine law, and many other points which were later to be treated by Locke in his own theory of natural law. Even though Locke and Sanderson were at odds over the latter's objection to the Social Contract theory, he influenced Locke's seventh essay concerning the perpetuity of the law of nature.

By far the most important natural law theory to have been advanced from the time of Aquinas to the time of Locke was that of Thomas Hobbes. Locke was definitely influenced by some of Hobbes' contentions concerning the state of nature

and the natural law but he also rejected much of what Hobbes had to say on these points. In fact, one might say that Locke's whole theory of the state of nature and the natural law was a reaction to Hobbes' political theory as set forth in his Leviathan.

For Hobbes, all men are naturally in a state of war, principally because every individual seeks his own preservation regardless of any consideration for the rights of others. In order to achieve peace, men must group together and form a society and in so doing they draw up certain laws of nature which are to form a basis of this agreement to enter into society together. In this scheme the first law of nature is that every man ought to seek peace. In all, Hobbes lists nineteen such laws in his Leviathan. These laws are not purely arbitrary ones, however; for, he says that they are dictates of reason, but they appear to be without any theological or metaphysical significance.[1] This position, of course, at once separates him from almost all the other natural philosophers whom we have discussed. The concept of eternal law becomes superfluous and natural law is deprived of any metaphysical foundation. Indeed, it is difficult to see how Hobbes' laws of nature could be called "laws" at all; i.e., what gives them their obligatory character

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[1]F.C. Copleston, Modern Philosophy: The British Philosophers. Part I Hobbes to Paley, Vol. V of A History of Philosophy (8 vols.; New York: Doubleday & Co., 1959), pp. 41-46.

--so necessary an element in traditional natural law theory? Hobbes' answer to this question was hardly an adequate one. This is perhaps one reason why Locke was to insist that the obligatory character of natural law be founded upon the Divine Will.

Natural Law and Ethics

As we have noted, natural law plays a significant role in the ethics of John Locke. Locke defines "good" as that which procures pleasure, and "evil" as that which produces pain. Moral good, though, is that which conforms to a law and the pleasure that such a good procures arises out of the will of the law-maker. Moral evil, on the other hand, is that which does not conform to a law, thereby bringing down retribution upon the agent as a result of the displeasure of this law-maker. "Moral good and evil then is only the conformity or disagreement of our voluntary actions to some law, whereby good or evil is drawn on us from the will and power of the law-maker; which good and evil . . . is that we call reward and punishment."[1]

According to Locke, there are three kinds of law as enumerated in his Essay Concerning Human Understanding:

> 1. The divine law; 2. The civil law; 3. The law of opinion or reputation, if I may so call it. By the relation they bear to the first of these, men judge whether their actions are sins or duties; by

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[1]John Locke, An Essay Concerning Human Understanding, p. 229.

> the second, whether they be criminal or innocent; and by the third, whether they be virtues or vices.[1]

These laws, however, canat times be at variance with one another. Thus one of them must be the ultimate criterion; otherwise, law could hardly be a firm basis for morality. Locke therefore chooses divine law which he refers to as "the only true touchstone of moral rectitude".[2] Moreover, this divine law concerns itself with human actions and can be known by the light of natural reason. And the divine law when considered in this way is nothing more than the law of nature. The law of nature, however, cannot really be considered the ground of morality; for, as Professor Aaron points out:

> It is sufficient here to notice that the law of nature might well have served as a basis for a rationalist system of ethics and that Locke on occasion . . . does seek to derive from it various ethical truths. But on the whole he seems to have found it too abstract a conception to serve as a ground for a science of morals. He prefers to rest morality upon a more concrete basis, namely upon the being of God. . . . God's will is the true ground of morality.[3]

This last point; viz., that God's will is the ground of all morality, is something that Locke affirms over and over again. He, God, that is, is the eternal lawmaker and it is

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[1]ibid., p. 229.

[2]ibid., p. 230.

[3]R.I. Aaron, John Locke (London: Oxford Univ. Press, 1937), p. 268.

upon Him that we all depend, and it is to the decree of His will that all our actions must conform. All this, of course, is taken up in greater detail in Locke's Essays on the Law of Nature, and it is to these that we must turn our attention now in order to arrive at a satisfactory notion of his theory of natural law.

Essays on the Law of Nature

Locke's first essay on the law of nature bears on the very existence of such a law. He asks, "Is there a rule of morals or law of nature given to us?"[1] His answer to this question is an unequivocal "yes" and in this section he enumerates five arguments for the existence of a law of nature. Before entering into a discussion of these arguments, Locke takes note of the fact that "I assume there will be no one to deny the existence of God",[2] and then proceeds to a rather brief restatement of the cosmological proof for the existence of God. This is important because God's existence serves as a foundation of the moral law. Following this, Locke asks himself what the various names are that men have given to the law of nature and suggests three. In the first place, it may be identified with the virtue that men in past times have sought after. Secondly, it may be called

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[1]John Locke, Essays on the Law of Nature, trans, and ed. by W. von Leyden (Oxford: Clarendon Press, 1954), p. 110.

[2]ibid., p. 110.

"right reason"--reason here meaning certain principles of action which provide the source of all moral virtue. Others still refer to it as a rule of living according to nature.

Whatever we may mean by this term "natural law", however, it must be distinguished from natural right. "Right is grounded in the fact that we have free use of a thing; whereas law is that which enjoins or forbids the doing of a thing."[1] From what has been said concerning the different meanings of the term "natural law" and from his distinction between it and natural right, Locke goes on to formulate a definition of the natural law. "This law of nature can be described as being the decree of the divine will discernible by the light of nature and indicating what is and what is not in conformity with rational nature and for this very reason commanding or prohibiting."[2]

Hence, says Locke, natural law is not really the dictate of reason, because reason itself is not to be identified with this law of nature; rather, it is that which seeks it out as something implanted in our hearts. In other words, reason is the means by which wecome to know that which is already in us. Nor can reason be said to be the source of the natural law, for the natural law comes to us from above (God), as it were, and not from something which

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[1]ibid., p. 111

[2]ibid., .

is already a part of us. Otherwise the concept of natural law could be placed on the level of pure subjectivism.

In what sense, though, can natural law be called a law? According to Locke, it can be described as a law for the following three reasons: First, "it is the decree of a superior will"[1] which is the formal cause of any law; secondly, it decrees what should and what should not be done, thus fulfilling the proper function of a law; thirdly, it obliges men by its very nature.

At this point Locke goes on to the first argument for the existence of natural law which, he ways, comes directly from a passage in Aristotle: "The special function of man is the active exercise of the mind's faculties in accordance with rational principle."[2] and elswhere, "A natural rule of justice is one which has the same validity everywhere."[3] Man's function, then, is the exercise of his reason, but, as we have seen, reason is not itself the law; rather, it is a means of seeking it out; therefore, all men must act according to some universal rule, and this rule is nothing else but the natural law.

Locke chooses at this point to treat of one of the traditional objections to the existence of a natural law; viz., that if reason were capable of knowing the natural

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[1]ibid., p. 112

[2]Aristotle, Nichomachean Ethics I. 7.

[3]ibid., V. 7.

law, why is it that there are many men who act as if they had no knowledge of such a law? His answer to this difficulty is two-fold. In the first place, just because a man is not aware of the existence of a law, it does not mean that this law does not exist; for, there are men who, through some perversion of their reason, cannot know the natural law just as there are blind men who cannot read civil laws when promulgated. In the second place, just because men are not agreed on what exactly the natural law is does not mean that such a law does not exist. The interpretation of civil laws is likewise disputed in the courts but does this mean then that these civil laws do not exist? On the contrary, the fact that men argue so much about the natural law is in itself a proof of its existence.

Locke's second argument for the existence of the natural law is derived from the nature of man's conscience; i.e., from the very fact that man judges his own actions as to their guilt or innocence shows that he must be using some norm to go by. And is such a norm be natural, Locke continues, if must be innate; i.e., not acquired.

The third argument for the existence of a natural law rests on the fact of the orderliness of nature. Locke observes that in nature all things operate according to a fixed law. Man is no exception to this; for, as a part of nature, he is also governed by such a law and this law is called the natural law because it is that law which is

natural to man.

The fourth argument is derived from the nature of human society; for, without the natural law, human society would be very difficult to maintain. Every society rests upon two bases: a constitution or form of government and the duty to fulfill pacts. These two factors, however, in their turn rest upon the natural law. In fact, no constitution would be valid, if the sovereign alone were to answer for the same set of positive laws which he and the people have set up. This is so because positive legislation in itself is not an adequate guarantee of man's welfare, which is the goal of any state. Also, Locke points out, men would not be bound to fulfill their contracts if there were no natural law. The human will is not sufficient as its own source of obligation.

"The fifth argument is that without natural law there would be neither virtue nor vice, neither the reward of goodness nor the punishment of evil; there is no fault, no guilt where there is no law."[1] In such a situation man would not be bound to any norm of action; he could act as his fancy pleased him. Virtue and vice, however, do exist as do reward and punishment. Therefore, natural law, as defined above, must exist.

The second essay on the law of nature is primarily

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[1]Locke, Essays on the Law of Nature, p. 119.

concerned with the epistemological aspects of Locke's natural law theory. The question here is how man can come to know the law of nature. The answer is that he comes to know this law of nature by reason or the "light of nature", and Locke spends the rest of this second essay discussing what he means by the "light of nature". First, what one does not mean by the "light of nature" is that, "This law of nature, written as it were on tablets, lies open in our hearts and that, as soon as some inward light comes near it, it is . . . read . . . by the rays of that light. Rather, we mean nothing else but that there is some sort of truth to the knowledge of which a man can attain by himself and without the help of another."[1]

There are, according to Locke, three ways whereby man comes to a knowledge of things: inscription, tradition, and sense-experience. There is another kind of knowledge which Locke calls divine revelation, but since he says such a knowledge cannot be said to be a proper object of philosophical inquiry, then it is not really relevant to this study.

The first type of knowledge is that of inscription. Locke associates this type of knowledge with the theory of innate ideas, saying that men who admit knowledge by inscription meant hat there are certain ideas which are inborn in us or engraved upon our hearts. The discussion of this

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[1]Ibid., p. 123

problem is, however, left to his third essay, and he appears to limit himself to the observation that in this type of knowledge men using only their inborn faculties are capable of arriving at the law of nature without further assistance.

The second type of knowledge is that of tradition. Locke says that this is equivalent to knowledge acquired by hearsay. In a sense, then, this knowledge is like that of sense experience because we receive both through the senses. There is, however, a difference between the two; for there is an element of faith which is present in knowledge by tradition that isn't present in sense experience. "For example, provided we place confidence in Cicero when he speaks of Caesar, we believe that Caesar, whom Cicero knew to have lived, has lived."[1] Locke then goes on to deny that this type of knowledge can be the source of the natural law; for, he observes that although many precepts of such a law we know through our parents and teachers, others we know after they have been deformed in one way or the other. It must be admitted, however, that many men pay a lot of attention to some of these false precepts as handed down to us through tradition. But this does not disprove the truth that the law of nature does not become known to us through tradition. In fact, Locke gives three arguments which, he says, support his position.

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[1]Ibid., p. 127

Firstly, it would be virtually impossible to determine the law of nature from the many conflicting traditions that have been handed down to us; i.e., it would be difficult to distinguish what is law from what is opinion. Now since it is clear that the natural law is universally the same, it would follow that either there is no law of nature or that the law of nature cannot become known to us by tradition.

Secondly, tradition implies more trust than knowledge since, in effect, it would have to rely more on the authority of a given source than on the truth or falsity of the knowledge obtained. Such a situation would clearly be a chaotic one and run counter to Locke's rational, common sense appreach to natural law.

Thirdly, there is an inherent contradiction in the argument that the natural law is known to us through tradition. In effect, anything handed down to us could be traced back to its source. Thus one could arrive at the original author of the natural law, but such an author could only have received this law through inscription or sense experience since there is no tradition prior to him. Inscription or sense experience, though, are ways of knowing open to all men; so, to talk of an original author in this sinse would be nonsense. Also, it might be said that the original author received his knowledge of the natural law through divine inspiration but in this case such a law would

be a positive, not a natural one.

The last way of knowledge considered by Locke is that of sense experience which, he discloses, is the only way that man receives adequate knowledge of the law of nature. This does not mean, however, that the law of nature is something which can be read like a book or seen like a film or heard like a recording (to use modern examples). Rather, all Locke means is that man, starting from sense experience and using his own unaided faculty of reason can arrive at a knowledge of the natural law. This, then, is the "light of nature", i.e., (an inward process of reasoning starting from sense experience). And this is why not all men arrive at an adequate knowledge of the law of nature, for not all men make adequate use of their faculty of reason.

The third of Locke's eight essays on the law of nature answers the question whether the law of nature is inscribed in the hearts of men. As will be seen, this essay is basically a development of one of the types of knowledge which which he discussed in his second essay. It has already been proved that a law of nature does indeed exist and that tradition cannot be a valid source of the knowledge of such a law; so, the question here is whether inscription can supply this knowledge. Put in another way, Locke's task in this essay is to determine whether the natural law is innate; i.e., is inscribed on the heart of man at birth, or whether man's soul is indeed a blank tablet at birth,

waiting to be written upon by sense experience. Locke, of course, rejects inscription as a valid form of knowledge, and as already indicated, accepts sense experience as the source of knowledge of the natural law. To support this thesis, Locke then advances five arguments against any innate character of the natural law.

His first argument is simply that no one up to his time has proved, ". . . that the sould of men, when they are born, are something more than empty tablets capable of receiving all sorts of imprints but having none stamped on them by nature."[1]

The second argument is that if in fact the law of nature were imprinted on man's soul at birth, why is it that men disagree about its existence and sometimes refuse to obey it? One traditional answer to this objection is that this law, which was originally imprinted on the minds of men, has been partly obscured by the fall of Adam and Eve, thus making it somewhat difficult to recognize. There are, however, two difficulties which immediately arise in connection with such a theory. In the first place, the theory admits that at least some precepts do remain inscribed on the hearts of men, but if this is so, then this partial natural law must be everywhere the same which, Locke says, is not the case, or they are different. If they are

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[1]ibid., p. 137

different, though, then the uniformity of nature would be broken and the moral law rendered impossible. In the second place, if this law has been completely obliterated by the Fall then one could not speak of it as being inscribed on the hearts of men.

The third argument is that primitive, uneducated people living "according to nature" should best be able to know this law; for, ". . . they are all free from notions coming from without which may divert the minds elsewhere."[1] However, Locke cites the witness of many men who have visited and lived with these people and who say that often these primitive men live as though there were no natural law at all, and even if there were, they certainly had no knowledge of it. "What strangers they are to any humane feelings, since nowhere else is there such doubtful honesty, so much treachery, such frightful cruelty, in that they sacrifice to the gods . . . by killing people . . ."[2] There are, Locke admits, some moral principles whose origins we are unable to discover; so, we naturally say that these principles are inborn. An example of this is the existence of an after-life which provides a ground for many of our moral actions.

From all this, it is clear that there can exist many things which anyone may believe to be

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[1]ibid., p. 141

[2]ibid.

> inscribed in his mind by nature, which nevertheless derive their origin from some other source, and that it does not follow that, just because we eagerly believe in something and cherish it as a principle, though we are ignorant of its source, this is the law of nature, written in our hearts by nature.[1]

The fourth argument is that it is obvious that foolish and insane people have no innate knowledge of the natural law because if they had, it would not be able to be seriously affected by physical infirmities.

The fifth argument that Locke sets forth against the innateness of the natural law is that, if one in fact could say that the natural law is innate; then, one must also admit that speculative and practical principles are also innate. This, however, would be very difficult to prove, especially since even the most primary of all scientific principles, the principle of non-contradiction, cannot be proven to be innate.

At this point it may be profitable to take a look at the relationship between this third Essay on the law of nature and the relevant section on innate ideas in An Essay Concerning Human Understanding. As we have just seen in the third Essay, Locke advances five arguments against natural law being innate. In the first place, he says that the doctrine of innate ideas is merely an hypothesis which has thus far not been proved. Secondly, he says that if

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[1]ibid., .

the natural law were innate, all men would acknowledge it, which is not the case. Thirdly, the people who are the closest to things natural, primitive people, are ignorant of it, thus proving that it is not innate. Fourthly, insane people do not know the natural law, but they should if it were innate. And lastly, if one were to accept a principle of the practical reason; viz., the natural law to be innate; then, speculative principles must also be innate, which isn't the case.

In An Essay Concerning Human Understanding, the approach is different. Locke is here not out to prove that the natural law is not innate, but rather, that no knowledge or idea is innate. Thus, he has considerably broadened the scope of inquiry. And his basic argument is positive rather than negative as in his third Essay on the law of nature. Instead of arguing from the fact that the hypothesis of innate ideas has not been proven, he contends that he can prove that all our knowledge comes to us through sense experience, thus making the doctrine of innate ideas superfluous. The rest of his discussion bears a strong resemblance to the same section in his third Essay on the law of nature. In fact, the resemblance is so marked that the Essays on the Law of Nature in general and the third of these Essays in particular are to be considered as early drafts of An Essay Concerning Human Understanding.[1]

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[1]This thesis is set forth by W. von Leyden, the

Locke's fourth essay on the law of nature, in asserting that we know the natural law through sense experience, presupposes the previous two essays in which he disposed of knowledge of the natural law by tradition and inscription. As was shown above, man can know the natural law only through the agency of what Locke calls "the light of nature." "But since . . . this light of nature is neither tradition nor some inward moral principle, written in our minds by nature, there remains nothing by which it can be defined but reason and sense-perception."[1] In fact, Locke continues, these two faculties are best suited to provide the intellect with knowledge because they provide knowledge that is most characteristic of the light of nature; viz., ". . . that things otherwise wholly unknown and as it were looked into."[2] Now these two faculties work together in the following way: Ideas of particular object are given to the reason by sensation; whereas, reason arranges and organizes these ideas in such a way as to render them coherent and capable of providing new knowledge. Furthermore, reason and sensation are organically connected to each other in such a way that one functioning without the other would lead to no knowledge at all. Reason here Locke defines as " . . . the discursive faculty of the mind, which advances

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translator and editor of Locke's Essays on the Law of Nature, in the introduction. pp. 60-67.

[1]ibid., p. 149.

[2]ibid.

from things known to things unknown and argues from one thing to another in a definite and fixed order of propositions."[1] Reason and sense experience, moreover, perform a very specific function inasmuch as they help each other in making known to men two presuppositions of Locke's natural law theory: first, that the knowledge of any law requires the recognition of a law-maker and second, that this same law-maker reveals his will in his laws and that we are obliged to obey them.

In order to prove his first presupposition; viz., that knowledge of any law requires the recognition of a law-maker, Locke enters into a series of metaphysical considerations pertaining to natural theology. Before leaving the purely physical realm, however, Locke specifies the contribution of sense experience to the knowledge of this first presupposition. From the senses we learn that there are qualities all of which can be traced back to motion and art and regularity of everything that exists in the world. This latter fact we learn from the observation of the courses of the stars and the annual rotation of seasons. Reason also has something to contribute. All this regularity observed in nature must have a cause; for, it would be unreasonable to suppose that everything functions according to chance. Man, the most perfect example of an artistic creation, could

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[1]Ibid., p. 149.

not have been created by anything less powerful than himself; otherwise, he certainly would have bestowed upon himself the quality of eternal duration. "For it cannot be conceived that anything will be so unfriendly, so hostile to itself that while able to bestow existence on itself, it would not at the same time preserve it, or would willingly let it go, when a little life's brief course had ended."[1] Therefore, there must exist, according to reason, a most wise and most powerful being which we call God. From what has been said it appears that God can do with us whatever he pleases. But this is the essential quality of a law-maker; viz., that he has supreme power over us and can tell us to do or not to do things. Thus God is our law-maker and reason has recognized this fact with the aid of the senses.

As to Locke's second presupposition; viz., that the law-maker, God, in this case, reveals His will in His laws and that we are obliged to obey them, it follows directly from the content of the first. Since God is most wise and most powerful, He would not have created the world without purpose; for, it would be incompatible with His wisdom for God to work blindly. Man also must act for a purpose. This is clear from man's nature as a rational being. From this, it follows that God intends man to do something.

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[1]Ibid., p. 153

> But what is it that is to be done by us can be partly gathered from the end in view for all things. For since these derive their origin from a gracious divine purpose and are the work of a most perfect and most wise maker they appear to be intended by Him for no other end than His own glory.[1]

In other words, man's actions are to contribute to the glory of God and this man does principally by worshipping Him, contemplating His creation through his senses, and living in society with his fellow man. By doing the will of God, then, as manifested to us in His works and in His laws, we perform our duty.

Locke's fifth essay on the law of nature answers the question whether the law of nature can be known from the general consent or consensus of men. He, of course, answers this question in the negative. General consent, according to Locke, could hardly provide knowledge of the law of nature unless one wants to admit that the law of nature commands impious and treacherous deeds. But this is exactly what the consensus of men had led to in times past. Apart from this, by admitting general consent as a valid source of knowledge of the natural law, one rejects God as the source of this same law; for, God would in effect be at the mercy of what mankind in general thinks of Him.

Before continuing any further, however, a distinction must be made between positive and natural consent, the

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[1]Ibid., p. 157.

two types of general consent.

Positive consent results either from a tacit contract such as free trade or from an expressly stated contract such as treaties governing boundaries. Neither of these types, however, is capable of proving a law of nature. Locke gives as an example of tacit consent the passage of envoys from one country to another and says that from this it can be seen that such a consent is not capable of providing knowledge of the natural law. This is so because the law of nature guarantees that all men are friends unless a state of war should exist between them. Thus there is no reason that an envoy should receive a safe passage or other guarantee, unless as a result of positive law-making in which the natural law plays no part.

Natural consent is that "to which men are led by a certain natural instinct without the intervention of some compact"[1] and there are three types of natural consent. First of all, there is natural consent based on the moral behaviour of men. Natural law, however, could hardly be based on this type of consent. "For, if what is rightful and lawful were to be determined by men's way of living, moral rectitude and integrity would be done for."[2] The essence of this law of nature is not, according to Locke,

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[1]ibid., p. 165.

[2]ibid.

to be found in the actions of men, but rather, in their souls; for, it is there that we find the incorruptible precepts of the natural law. This is why even perverse men find a sense of right and wrong when they look inward into themselves.

The second type of natural consent is that which is based upon man's internal convictions concerning morality. This internal consent, however, is not capable of providing any knowledge of the law of nature. This is evidenced by the historical fact that men have not been able to agree on just what these internal convictions are. There have been many civilizations whose moral principles were directly opposed to those of other civilizations. "Hence if the general consent of men is to be regarded as the rule of morality, there will either be no law of nature at all or it will vary from place to place. . . . But this no one will maintain."[1] Even if general consent could be arrived at concerning some of these internal convictions, this still does not prove that they can be identified with the natural law. "For surely, each single person has to infer the law of nature from the first principles of nature, not from another person's belief."[2] Furthermore, men have been known to agree on something which has nothing to do with the law of nature; e.g., gold is to be more highly valued than lead.

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[1]ibid., p. 175

[2]ibid., p. 177

Locke does admit, though, that even if this type of consent is incapable of proving the existence of a natural law, it can "point" to the existence of such a law.

The third type of natural consent is agreement on the basis of first principles, but since first principles "do not affect moral facts in any respect whatever",[1] this type of consent is dropped from further consideration.

Locke's sixth essay on the law of nature is concerned with proving that men are bound by this law. Thus it is a discussion of the obligatory character of the natural law. This inquiry is occasioned by the fact that there are some who have sought to base the whole law of nature on man's inclination to self-preservation. This would mean that, ". . . virtue would seem to be not so much man's duty as his convenience . . . and the observance of this law could not be so much our duty and obligation, to which we are bound by nature, as a privilege and an advantage to which we are led by expediency."[2] It was to counteract this notion that Locke undertook the discussion of the nature of obligation.

For Locke, obligation "is the bond of law whereby one is bound to render what is due."[3] And by the bond of

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[1]ibid., p. 179.

[2]ibid., p. 181.

[3]ibid.

law he means ". . . the bond of natural law whereby one is bound to discharge a natural obligation, that is, to fulfill the duty which it lies upon one to perform by reason of one's nature."[1] Furthermore, it is a principle that no one can bind us unless he have the right and power to do so, and this point led Locke into the different kinds of debt that one can incur in relation to such a being.

The first kind of debt is that of dutiful obedience to a command. A condition of discharging this type of debt is, of course, that we have sufficient knowledge of the debt. Once this knowledge is obtained, we are bound to conform ourselves to the will of the superior power who is obliging us. This superior power, however, is none other than God.

> For ultimately, all obligation leads back to God and we are bound to show ourselves obedient to the authority of His will because both our being and our work depend on His will, since we have received these from Him and so we are bound to observe the limits He prescribes; moreover, it is reasonable that we should do what shall please Him who is omniscient and most wise.[2]

The second kind of liability that one can incur is a liability to punishment, "which arises from a failure to pay dutiful obedience."[3] In other words, in recognising the sovereign power of God over us, we must at the same time

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[1]ibid., p.

[2]ibid., p. 183.

[3]ibid., p.

recognize that He makes use of this power to enforce the laws that He has decreed.

Furthermore, something can bind "effectively" or "terminatively". It can bind effectively; i.e., by being the formal cause of all obligation as is the will of God. It binds terminatively when it ". . . prescribes the manner and measure of an obligation and of our duty and is nothing other than the declaration of that will, and this declaration . . . we call law."[1]

Besides this, a thing can bind intrinsically or extrinsically. A thing can bind extrinsically when the authority by which it binds is other than the divine will. The divine will alone can bind intrinsically and natural law, as an expression of this same will, also binds in this manner. To support this contention; viz., that the natural law binds men, in virtue of its own intrinsic force, he advances the following three arguments.

In the first place, natural law "contains all that is necessary to make a law binding."[2] Since, as we have seen, all that is really requisite for a law to be binding is that it derive from the authority and power of a law-maker and that he disclose it to us as such, natural law must be binding; for, it is a direct expression of the will of this law-

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[1]ibid., p. 185.

[2]ibid., p. 187.

maker and is available to any man who uses his reason to look for it.

Secondly, ". . . if natural law is not binding on men, neither can positive divine law be binding, and that no one can maintain."[1] The reason for this is that both these laws find their basis in the will of God. They differ only in the fact that we know the former by the light of nature; whereas, we come to know the latter by faith.

Thirdly, ". . . if natural law is not binding on men, neither can any human positive law be binding."[2] This is evident from the dependence of human law on natural law. Hence, natural law must bind of its own force; otherwise, ". . . you banish from among mankind . . . all authority, order, and fellowship among men."[3]

Granted the binding force of the law of nature, Locke then sets out to prove in his seventh essay that this binding force is perpetual and universal. At first sight, this thesis would seem to be untenable for there are many instances where ". . . men's opinions about the law of nature and the ground of their duty are diverse and manifold."[4] Thus, such a law could hardly be universal nor could it be

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[1]ibid., p. 189.

[2]ibid.

[3]ibid.

[4]ibid., p. 191.

perpetual for there have been whole periods in the history of some nations where the moral practices of the day could hardly have been based upon the natural law.

"In spite of these objections, we maintain that the binding force of the law of nature is perpetual and universal."[1] By "perpetual", Locke means that there never existed a time when man could act contrary to the precepts of the law of nature. In other words, natural law came into existence with the human race and will go out of existence only when the human race ceases to exist. There is no "time out" so to speak, as far as natural law is concerned. This does not mean, however, that we are always held to do everything that the law of nature commands. This is because man is just not capable of performing several duties or actions at the same time. What actions we do perform, though, must conform to the natural law, ". . . though often there is a change in both the times and the circumstances of actions, whereby our obedience is defined. . . . In this life's journey rest is sometimes allowed, but straying at no time."[2]

In order to further clarify his position, Locke notes the following four points. Firstly, there are some actions which are always forbidden by the natural law; e.g., murder and theft. Secondly, the law of nature also requires us

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[1]ibid., p. 193.

[2]ibid.

to maintain certain sentiments "such as reverence and fear of the deity, tender affection for parents, love of one's neighbor . . . "[1] Thirdly, the natural law commands certain external actions such as ". . . the outward worship of the Deity, the consoling of a distressed neighbor . . . the feeding of the hungry."[2] We are not continuously obliged, however, to observe these precepts; for it would be unreasonable to suppose that we are obliged to feed every man who might be hungry. "Lastly, there are cases where the action in itself is not commanded but only circumstances accompanying it."[3] An example of the is calumny or talking about others. This action in itself is not bad but the circumstances in which we conduct this conversation may be; e.g., if what is said is injurious to a person's reputation.

The natural law is also universal; i.e., it binds each and every man to obedience to its precepts. At this point, however, Locke makes an important distinction. He says that actually there are two kinds of precepts of the law of nature; the absolute precepts, which include theft, slander, charity, etc., and the circumstantial ones, "which are concerned with the various conditions of men and the relations between them are binding on men exactly in

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[1]ibid., p. 195.

[2]ibid.

[3]ibid.

proportion as either private or public functions demand."[1] Thus a king is not bound by the natural law to be a subject; for, he was born to rule.

To further reinforce his contention that natural law is universally binding, Locke sets forth the argument that if it were not so, ". . . there would be no religion, no fellowship among men, no fidelity and countless other things."[2] There are, however, doubts raised in the minds of some people and these doubts are based on the following three considerations. In the first place, it seems that the natural law can lapse at God's command, and, in fact, this happened when God commanded the Hebrews to steal from the Egyptians when they left for Palestine. According to Locke, though, God merely willed that the ownership of the property be transferred and this he can do since he can "give of Hisproperty to anyone as He pleases," for, ". . . the goods of fortune are never so much ours that they cease to be God's."[3] In the second place, it seems that natural law is not perpetually binding, because there are some cases in which we are not bound to obey our parents. We are, however, says Locke, only bound to obey our parents inasmuch as this obedience is lawful. Thus a parent's command

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[1]ibid., p. 197.

[2]ibid., p. 201.

[3]ibid., p. 203.

that we stay at home when the king has called us up for military service would not be binding. In the third place, a large degree of diversity is observed in the manners and moral views of men and that therefore the natural law isn't binding. Locke answers that the reason for this diversity lies rather in the frailty and irrationality of men as a group than in the structure of their reason.

The eighth and last essay on the law of nature is devoted to the refutation of the assertion that the basis of the law of nature is every man's own interest. Many men, however, have held tenaciously to such a principle; viz., that the only really natural impulse that man has is to seek his own interests. Carneades[1] is a good example of one of those who takes this position. He held that civil affairs were conducted with injustice and that authority should be renounced. Man's inalienable right to his natural liberty must be restored and he must be allowed to act according to his own self interest. This point of view is exactly the one that Locke sets out to refute in this essay. But first of all, he felt it necessary to explain what he meant by the term "basis of natural law" and "each man's private interest". "First, by the basis of natural law we mean some sort of groundwork on which all other and less evident precepts of that law are built and from which in some way they

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[1]Greek Sceptic (214-129 B.C.) and founder of the New Academy.

can be derived . . . "[1] And from this basis these other precepts acquire their binding force.

Secondly, each man's private interest and the natural law are not necessarily opposed to each other. In fact, more often than not, they coincide with each other. But it can hardly be asserted that the natural law is based on each man's private interests for the two are not related to each other in that way. Put differently, the question is as follows: "Is it true that what each individual in the circumstances judges to be of advantage to himself . . . is in accordance with natural law, and on that account is not only lawful for him but also unavoidable, and that nothing in nature is binding except so far as it carries with it some immediate personal advantage?"[2] Locke answers this question in the negative and then proceeds to give three reasons why this can't be so.

In the first place, each man'sprivate interest could not ground the natural law and its binding force unless it also grounds the binding force of other less universal laws, but utility is hardly the base of the various dutiful actions that one must perform in his daily life. "In fact, a great number of virtues . . . consist only in this, that we do

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[1]Locke, op.cit., p. 205.

[2]ibid., p. 207.

good to others at our own loss."[1] Furthermore, if utility were the ultimate basis for man's dutiful actions, such a virtue as generosity would have no real meaning. Again, "If the ground of duty were made to rest on gain and if expediency were acknowledged as the standard of rightness, what else would this be than to open the door to every kind of villainy?"[2]

In the second place, the primary law of nature should be something whose violation is avoidable. But if each person acted according to his or her own interest, then the law must be eventually transgressed for all these different interests could hardly coincide at the same time. Furthermore, the natural resources of the world do not increase in proportion to the number of its inhabitants. Thus if each one was out to get whatever he deemed desirable, then some people would be left with precious little.

In the third place, "It is impossible for any principle to be the basis of natural law, whereby, if it be laid down astrue, all justice, friendship and generosity are taken away from life."[3] Utility would, however, be such a principle. Furthermore, "Utility is not the basis of the law or the ground of obligation, but the consequence of

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[1]ibid.

[2]ibid., p. 209.

[3]ibid., p. 211.

obedience to it."[1]

Natural Law and the Two Treatises of Civil Government

Apart from these Essays on the Law of Nature, there is only one other work in which Locke talks at any length about the law of nature and this is in his Two Treatises of Civil Government. There he no longer speaks of the natural law philosophically; i.e., how it can be, what it is, or how it is known. Rather, he uses it as an integral part of his political philosophy. In fact, in writing Two Treatises of Civil Government, Locke presuposes the existence of such a law. The first Treatise need not detain us here; for, it has very little bearing on the concept of natural law. The second Treatise, though, is a much more important piece of work as far as natural law theory is concerned, and it is to this work that we now turn our attention.

The starting point of Locke's political philosophy is the state of nature. "All men are naturally in that state and remain so till by their own consents they make themselves members of some political society."[2] In this state men are naturally free. They are free from authority

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[1]Ibid.

[2]John Locke, Two Treatises of Civil Government, ed. by R.M. Hutchins, Great Books of the Western World, Vol. 35 (Chicago: William Benton, 1952), p. 28.

and live in a situation of peaceful coexistence. This does not mean, however, that every man can do what he wants. As a rational creature, he must be guided by reason which is naturally capable of discovering the moral law. This moral law, of course, is the law of nature which governs man's actions. "The state of nature has a law of nature to govern it, which obliges everyone, and reason which is that law, teaches all mankind who will but consult it."[1] Moreover, in the state of nature man has certain rights such as the right to live, the right to be free, and the right to possess things. And to each right corresponds a duty to protect these rights.

The state of nature, however, is only an ideal state. It is questionable if Locke looked upon it as an actual historical event. At any rate, civilized nations today do not live in a state of nature. Men have joined together into a society and this transition from the law of nature to society is brought about by means of a compact. The details or mechanics of this transition need not detain us here, but it should be noted that in the process of this transition, man gives up or delegates to others certain of these natural rights. For example, men give their legislative and executive powers, which they possessed in the state of nature, to others in order to more securely enjoy another of their natural rights, liberty. The compact marks the

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[1]Ibid., p. 26.

willingness of the individual to submit to the will of the majority. And at the same time natural law served as a check to tyrants who attempted to go beyond its bounds. It gave the people the right to overthrow such a ruler in certain cases where he had transgressed the precepts of the natural law and thereby voided the compact between him and the people.

One thing remains constant, though, both before and after the compact, and this is the law of nature. It is independent of any political considerations. Whether man lives in the state of nature or in organized society it remains without modification.

However, even though the law of nature remains unimpaired in this transition from the state of nature to society, man, in order to make more explicit the precepts of the natural law, formulates them in the form of civil law. The same is true for the "ius gentium" or international law for which natural law provided a basis. Thus, it could be said that, for Locke, the relationship between the state of nature and society is analogous to that which exists between natural law and civil law. There is also another way of looking at the relationship between the state of nature and the law of nature. The latter canbe considered the fount of morality; whereas, the former, the fount of society. These analogies, of course, aren't perfect, but they are helpful in seeing the interconnection between the two

principal concepts used by Locke in his political philosophy.

CHAPTER IV

COMPARISON OF THE TWO THEORIES

It is evident from what has been said in the preceeding chapters of this thesis that both St. Thomas Aquinas and John Locke had well developed theories of natural law. Moreover, for both of these philosophers, the concept of natural law occupied a fundamental position in their respective ethical theories. Our purpose in this chapter, however, will be to range beyond this purely factual presentation of the two theories of natural law in an attempt to compare the two theories critically in light of the information given in Chapters Two and Three. Our particular attention will be focused upon the following thesis; viz., that in several important respects John Locke's theory of natural law differed from; whereas in other important respects it was identical with, the concept of natural law as set forth by St. Thomas. The most fundamental disagreement between Locke and Aquinas was the ultimate basis of the moral law; i.e., whether it found its ground in God's will or in His intellect. Their most fundamental point of agreement was the concept of the natural law as

a stable and effective factor in the governing of man's actions. There were, of course, both similarities and differences in detail as far as some aspects of the natural law were concerned, but in our present discussion, we will limit ourselves primarily to the more general points of agreement and disagreement between the two theories.

Both Aquinas and Locke had in common the sources given in Chapter One of this thesis; viz., Heraclitus, Aristotle, Cicero, St. Paul, Augustine, and the Roman Jurists. These are to be considered the classical sources on natural law. Unlike Aquinas, however, Locke had at his disposal the works of the Late medievalists such as Ockham, the Continental political theorists of natural law such as Grotius and Pufendorf, and finally, his immediate English-speaking predecessors such as Hobbes[1] and Hooker.

In addition to the classicalsources, Aquinas and Locke also had another very important point in common which should be mentioned at this stage; viz., the theological orientation of their thought. For both of them, all morality, all law, can be ultimately traced back to God whose existence is not subject to the slightest doubt. Now this point is not shared by all natural law theorists;

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[1]Hobbes' influence on Locke, unlike the others listed here, was more negative than positive; i.e., Locke's doctrine of natural law was seen by many as a reaction to the "excesses" of Hobbes' own theory of natural law.

so, the fact that Aquinas and Locke had this basic theological point in common is not without some significance. The particular way, though, in which Aquinas and Locke chose to interpret this fact showed that they were not agreed how the natural moral law is to be regarded as ultimately grounded in the Divine Essence. The significance of this divergance of opinion will be considered later on in this chapter.

Our first point of inquiry is concerned with the approach of both Aquinas and Locke to the problem of natural law and this point necessarily involves us in the more formal elements of their respective presentations of this subject. First, there is Aquinas's tendency to appeal to authority on many of the key questions that enter into the discussion of natural law. The authorities to which St. Thomas most often makes reference in relation to natural law are St. Augustine, St. Isidore of Seville, and the Canonists such as Gratian. This does not mean, however, that St. Thomas based his arguments exclusively on appeal to authority; for, he certainly advanced rational arguments both for and against many aspects of the natural law. It merely means that in corroborating his views he relied heavily upon quotations taken from the works of his predecessors, mainly ecclesiastical, who had written on natural law. Locke, on the other hand, never once quoted a statement of

one of his predecessors--however authoritative such a statement may have been--to support any of his arguments. Rather, he made use of other authors' opinions without naming the sources from which he had taken these opinions. Secondly, Aquinas and Locke both present their matter in a very similar way. Question 94[1] in the Summa Theologica is divided into six articles, each of which trests of some aspect of the natural law. In each article objections are noted and answered and the basic arguments in support of each point are set forth. The same general scheme is true of Locke's Essays on the Law of Nature. Each essay deals with one particular aspect of the problem of natural law, listing the pertinent arguments, objections, and answers to objections. The emphasis here should be placed, however, on the word "similar". The presentations in the Summa Theologica and the Essays on the Law of Nature are not identical in every respect or detail, but there is a strong similarity between the two.

The second point of inquiry in this chapter is the common stand of Aquinas and Locke against relativism in morals; i.e., the theory that morality is not based upon some objective criterion.[2] Moral relativism is the first

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[1]Aquinas, Summa Theologica. Ia IIae, 94.

[2]There is a fair discussion of this point as related to St. Thomas in F. Copleston, Aquinas. p. 219.

thing that any natural law theorist must combat and ultimately refute if he is to achieve any success in establishing the notion of the law of nature. Neither St. Thomas nor John Locke was an exception to this rule. Each in his own way sought to knock the props out from under any moral theory based on relativism. Their approaches to the solution of this problem, however, were different.

Moral relativism rests upon the observation that different men act in different ways; indeed, there have been in history whole civilizations which have differed markedly from each other in respect to their criterion of morality. From this the relativists have deduced that, in fact, one cannot talk of any universal criterion of moral actions. For St. Thomas, the fact that different men have held different moral convictions does not disprove natu- law; for, according to him, no matter how hard we search among these different civilizations, we are still unable to discover any variation of the fundamental precept of natural law, which is to pursue good and avoid evil. On this point, all men seem to be agreed. They may not agree on the precise meaning of the word "good", but in general the principle would still hold. The problem arises, however, when men move from the fundamental principles to the more concrete conclusions; for, in the course of this process, one can err. Reason can be blinded by passion or

bad habits or by physical defects. Thus, men starting out from the same principle could very easily arrive at different conclusions depending upon the conditions in which these conclusions were worked out. For Locke, the fact that different men seem to base their actions on different moral criteria proves that some of these men have failed to make the proper use of their reason which, aided by the "light of reason", is able to arrive at the basic precepts of the natural law. In fact, man is even capable of working out the concrete precepts of the natural law if only he would use his reason properly.

Our next consideration concerns one of the most recurrent problems involved in any system of morals based upon the Divine Being; viz., are actions which are contrary to the moral law wrong because God prohibits them, or does God prohibit them because they are wrong? If we are to accept the first alternative, then God arbitrarily determines the precepts of the moral law which are simply an expression of His commands. And in this case, the moral law would no longer be natural but positive. This has been traditionally called the "voluntaristic" theory of ethics; i.e., the theory that the precepts of the natural law are ultimately based upon the will of God. According to the second alternative, God determines the precepts of the moral law in view of man's rational nature which participates in God's

own reason. Things are right or wrong because reason recognizes them to be so; i.e., things aresaid to be right or wrong in themselves,,independant of the capricious whim of the law-maker. This point of view had been referred to as the "rationalistic" theory of ethics; and it involves the theory that the natural law is ultimately based upon God's intellect or reason. Basically, St. Thomas's theory was rationalistic in the sense that he contended that the moral law was ultimately grounded in the eternal law which is an expression of God's reason. Locke, on the other hand, made no mention of the mind of God or of the eternal law as St. Thomas used the term. Rather, he repeatedly stated that the moral law can ultimately be traced back to the Divine will. He refers to it as a "decree of the Divine will"[1] and in this sense his theory of natural law can be said to be voluntaristic. This, of course, is the basic difference between the natural law theories of Aquinas and Locke that we referred to in the beginning of this Chapter; Aquinas positing a rationalistic theory of natural law and Locke a voluntaristic one.

In fact, however, for Locke the situation was not all that simple. According to R.I. Aaron[2], Locke was

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[1]Locke, Essays on the Law of Nature, p. 111.

[2]R.I. Aaron, John Locke (London: Oxford Univ. Press, 1937), p. 267.

unable to accept a necessary consequence of the voluntaristic theory of law; viz., that natural law was nothing more than positive law. Consequently, he sought a way out of the dilemma in which he had found himself as a result of his theory on the ultimate foundation of the moral law. According to Aaron, Locke suggested the following solution to this problem in a letter to a friend of his, James Tyrell.

> Reason can perceive that it is good for man to obey the natural law, yet it is law, it is obligatory upon man, because it, like all other law, is divinely ordained. In this sense of it being imposed upon us by God, we may say that the law of nature is also a positive law.[2]

The question now arises, whether this suggested solution is compatible with Locke's basic voluntaristic contentions concerning the natural law. All Locke seems to be saying is that since man's reason asserts that it is good to obey the natural law, then the natural law, even though it be the arbitrary product of the Divine Will, must be in some sense reasonable, But in positing this solution, Locke seems to be attempting the impossible; i.e., the reconciliation of what are basically two irreconcilable theories of law--the one rationalistic, the other voluntaristic. Even Aaron, in commenting on Locke's remarks to James Tyrell, said that one searches in vain in Locke's

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[1]ibid.

writings for any thing which would clarify or shed further light upon his suggestion concerning a possible reconciliation between the rationalistic and voluntaristic theories of law.[1] Indeed, Locke's remarks appear to be nothing more than verbal quibbling on his part, but it must be remembered that it was, according to Aaron, only a suggestion. Otherwise, Locke, in making such an assertion would have run into very serious difficulties as regards the clearly voluntaristic position which he had consistently taken. What Locke's remarks do indicate, though, is a certain dissatisfaction on his part with voluntarism and all the logical consequences which follow from such a theory.

Another point of difference is the determination of the precepts of the natural law in both theories. St. Thomas gives a fair discussion of these precepts; whereas, Locke does not have much to say on the subject. Consequently, the comparison here cannot be a detailed one. Instead we will limit ourselves to only general observations concerning the precepts of the natural law as found in these two authors.

According to St. Thomas, there is one fundamental precept of the natural law; viz., do good and avoid evil, and all the other precepts are virtually contained in it.

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[1] ibid., p. 268.

He does give, however, three primary precepts which, he says, can be clearly deduced from this fundamental one. The first one is ". . . an inclination to good in accordance with the nature he has in common with all the substances; i.e., every substance seeks the preservation of its own being, according to its nature."[1] The second primary precept results from ". . . an inclination to things that pertain to him more specially according to that nature which he has in common with other animals."[2] The third primary precept comes from man's inclination to good according to reason. An example of the first precept is man's inclination to self-preservation; of the second, his inclination to educate his offspring, and of the third, his inclination to live in society. In addition to these primary precepts, there are the secondary precepts which are not as obviously deduced from the fundamental precept as are the primary ones. And as we have seen in Chapter Two, the primary precepts are unchangeable, but certain circumstances can alter our obligation to observe them.

Locke's approach to the problem is not at all the same. Nowhere does he systematically set out his ideas on the precepts or dictates of the natural law. In his

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[1]Aquinas, op.cit., 94, 2.

[2]Ibid.

seventh essay on the law of nature, however, he does draw the distinction between absolute and circumstantial precepts of the natural law. The former, such as theft and murder, are forbidden at all times. And in this sense, they correspond to the primary precepts of St. Thomas. In another sense, though, they do not. For St. Thomas, there can be circumstances which would justify theft. At any rate, Locke did not set forth any fundamental precept from which all the others could be deduced.

If we consider now the universality and perpetuity of the natural law, we will notice that both St. Thomas and Locke were in agreement that the natural law came into existence with mankind, that it applies to all men, and that it always was and always will be binding. Locke discusses these points somewhat more extensively than does St. Thomas, but the result is the same. That Locke and St. Thomas agree on these two points is hardly surprising; for, even the most rudimentary formulations of natural law presupposed the universality and perpetuity of the natural law. The fact that historically there were whole civilisations which did not seem to observe the natural law in no way deterred either Locke or St. Thomas from positing these two fundamental characteristics of the natural law.

One point upon which it is clear that St. Thomas

and Locke had something in common is the place that natural law occupied in their respective political philosophies. For Locke, the natural law was an integral factor in the evolution of society. Man, in the pre-political state of nature, needed it to guide and direct his actions in the absence of any positive legislation. For St. Thomas, however, there was no pre-political state of nature as such unless one wants to include man's condition before the Fall, but even before the Fall man is viewed by St. Thomas as having lived in a society. This is how he actually viewed the situation, but this does not mean that natural law as described by St. Thomas is really any different from that of John Locke. St. Thomas's position does not exclude the possibility of the natural law guiding man in such a pre-political condition as Locke's state of nature. After all, it was St. Thomas who secularized thetraditional concept of natural law and raised it to its proper metaphysical level, thus linking it inseparably to the nature of man. This meant that man is guided by the natural law irrespective of the political circumstances in which he finds himself. So it would be unfair to say that Aquinas and Locke differed with each other on this point; for, St. Thomas's view, if pushed to its logical limit, can be reconciled with that of Locke.

There is another important point that both St. Thomas and John Locke had in common, and that is that for them, the moral law is as much a law as physical laws. For some authors, both Aquinas and Locke are guilty of committing the same fallacy; viz., the confusing of two distinct senses of the word "law". As Professor Hart points out, ". . . Thus many modern critics have thought that the claim that laws of proper conduct may be discovered by human reason rested on a simple ambiguity of the word 'law' and that when this ambiguity was exposed, Natural Law received its deathblow."[1] This criticism can, of course, be applied to many other authors on natural law; it is not characteristic of Aquinas and Locke, but since both of these authors have "committed" it, then a short discussion of the nature of this fallacy is not without some relevance.

As was just noted, Aquinas and Locke are accused of having confused the two different senses of the term "law". They have naively assumed that just because a natural physical law, such as the law of gravitation, is binding in the physical sphere, then the precepts of the moral law are binding in the sphere of morality. The fact is that the natural physical laws are "descriptive"

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[1]H. Hart, The Concept of Law (Oxford: Clarendon Press, 1961), p. 182.

in the sense that scientists discover them through observation; whereas, the natural moral law is "prescriptive" in the sense that it commands obedience. According to this theory, in order for a law to be properly called a law, it must be perpetual and universal in the sense that one has no choice but to obey its precepts. In the traditional concept of thenatural law, however, one can act against the natural law. For example, suicide for both Aquinas and Locke is contrary to the natural law; yet man can go against this law and commit suicide.

> Prescriptive laws may be broken and yet remain laws because that merely means that human beings do not do what they are told to do; but it is meaningless to say of the laws of nature, discovered by science either that they can or cannot be broken. If stars behave in ways contrary to scientific laws which purport to describe their regular movements these are not broken but they lose their title to be called "laws" and must be reformulated.[1]

Prescriptive laws then cannot properly be called "laws". Yet in the traditional concept of natural law, the natural law indeed prescribes actions. But if one insists on this precriptive nature of the natural moral law then it cannot really have any obligatory character because it doesn't necessarily have to be obeyed as in the case of a descriptive law. Thus thenatural moral law in order to maintain its obligatory character must

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[1]ibid.

limit itself to a description of how man acts and not try to tell man how he should act, but to admit this would be to destroy the most important characteristic of the natural moral law and consequently the whole concept of the natural moral law in the traditional sense of the term.

This criticism of the traditional concept of natural law was first set forth by John Stuart Mill in his Three Essays on Religion: Nature, Utility of Religion, Theism, and he was quite satisfied that he had succeeded in dealing the fatal blow to the concept of a natural moral law. But did he? I think the answer to this question lies in Aquinas's and Locke's own definition of the word "law". For them, law binds precisely because it is law. It is not a law because it binds as Mill asserts. For Mill, because one observes that "descriptive" laws do not admit of any exceptions, then they can be the only ones which can be called "laws". For Aquinas and Locke, any law, whether it be prescriptive or descriptive, would still be binding if for no other reason than that it is a dictate of the Divine Reason or the Divine will, whichever the case may be. So the question of whether the natural moral law is truly a law or not revolves around how exactly one defines law. Given Aquinas's and Locke's definitions of law, the natural moral law is a law in

every sense of the term and given Mill's definition of law, it is not.

To summarize, let us return to the thesis that we advanced in the beginning of this chapter; viz., that in several important respects John Locke's theory of natural law both differed from and was identical with the concept of natural law as set forth by St. Thomas. We have seen that both Aquinas and Locke posited the existence of a natural law which, as a dictate of man's reason, was characterized principally by its perpetuity, immutibility, and universality. A theory of moral relativism then was hardly compatible with this notion of natural law and both philosophers devoted time and energy to the refutation of such a theory. Aquinas sought to found the natural law on God's reason; whereas, Locke sought to found it on God's will. And this remains probably the most fundamental difference between the two theories. The positions which natural law occupies in the respective political theories of Aquinas and Locke are reconcilable even though at first glance they appear to be at variance with each other. And finally, Mill's criticism of the concept of a natural moral law did not really affect Aquinas's and Locke's theories of natural law; for, as we have seen, his criticism presupposed a theory of law which neither Aquinas nor Locke adhered to.

When all is said and done one cannot help but be struck by the general similarity of views on natural law of Aquinas and Locke. Quantitatively speaking, they agreed on much more than they disagreed upon, but qualitatively speaking, there were fundamental differences between the two which could not be overlooked. It is, of course, much easier to make historical judgements when all the pertinent documents have become available and when others have also reflected on the same questions. And in the case of natural law, one would hope that now, especially since the relatively recent (1946) publication of Locke's Essays on the Law of Nature, historians of philosophy will pay more attention to these similarities in the philosophical positions of Aquinas and Locke and less to the dissimilarities which were the natural result of the nearly four centuries of philosophical speculation which separated them.

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