

UNDERSTANDING THE CONTEXT OF THE “NATURAL  
INCLINATIONS” AND THE NATURAL LAW:  
THOMAS AQUINAS’S USE OF CICERO’S *DE OFFICIIS* IN  
*SUMMA THEOLOGIAE* I-II, Q. 94, A. 2

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AMONG non-Catholics, non-Christians, and certainly among political theorists and lawyers, the section of St. Thomas Aquinas’s work that has garnered the most sustained attention has always been his so-called “Treatise on Law,” which is the title publishers often give to questions 90 through 97 of the *Prima secundae* of the *Summa theologiae*.<sup>1</sup> For the record, however, if we were to identify a section of the *Summa* “*de legibus*,” on the laws according to Thomas’s own account, it would run from question 90 all the way through the questions on the Old Law and the New Law in questions 98-108 *up to* the questions on grace in questions 109-14, all of which sets the stage for the book-long consideration of the theological and cardinal virtues in the *Secunda secundae*.<sup>2</sup>

<sup>1</sup> See, for example, Saint Thomas Aquinas, *The Treatise on Law [Being Summa Theologiae, I-II, QQ. 90-97]*, trans. R. J. Henle, S.J., Notre Dame Studies in Law and Contemporary Issues, vol. 4 (Notre Dame, Ind.: University of Notre Dame Press, 1993), which is a re-release of an earlier Gateway Edition. So too, there is *The Treatise on Law*, trans. Richard Regan, S.J. (Indianapolis, Ind.: Hackett, 2000), which contains a few fragments from the material after question 97. This is how most students encounter Thomas’s “treatise on law.”

<sup>2</sup> In the prologue to *ST* I-II, q. 90, Thomas indicates the structure of what is to follow, saying: “We have now to consider the extrinsic principles of acts. Now the extrinsic principle inclining to evil is the devil, of whose temptations we have spoken in the First Part, (Q. 114). But the extrinsic principle moving to good is God, Who both instructs us by means of His Law, and assists us by His Grace: wherefore in the first

Within those famous questions, one of the most famous and most discussed sections is found in question 94, article 2 (hereafter “94.2”), with its famous “inclinations,” out of which entire moral systems have been generated. Countless interpretations of this passage have been proposed, so it may seem like a fool’s errand to propose another. My working assumption, however, is that some understanding of Thomas’s historical context can help.

My claim is that the “inclinations” in 94.2 are taken from Cicero’s *De officiis*, and Thomas uses them as a structuring device to catalogue and distinguish different levels or kinds of natural law.<sup>3</sup> This is his version of the lists of the different kinds or levels of *ius naturale* that were ubiquitous in the works of the canon lawyers in the late twelfth and early thirteenth centuries. In what follows I present some of the historical and textual evidence for my claim.<sup>4</sup>

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place we must speak of law; in the second place, of grace.” From this, it is clear that the section on law runs all the way up to the questions on grace, which begin at question 109. Throughout, I will be quoting from what has become the most standard English translation of the *Summa*, namely, the *Summa Theologica*, translated by the Fathers of the English Dominican Province (rev. ed.; London: Benziger Brothers, 1920).

<sup>3</sup> The textual relationship between Thomas’s “inclinations” in *ST* I-II, q. 94, a. 2 and Cicero’s discussion in *De officiis* 1.4.11-13 was first pointed out to me by my colleague, Rollen Edward Houser. Unbeknownst to me until after I had written this article, he had also written an article on the topic. See Rollen E. Houser, “Cicero and Aquinas on the Precepts of the Natural Law,” in *Indubitanter ad veritatem: Studies Offered to Leo J. Elders in Honor of the Golden Jubilee of His Ordination to the Priesthood*, ed. J. Vijgen, preface by Joseph Ratzinger (Budel: Damon, 2003), 244-63. This is an excellent article, but Houser’s concerns are very different from mine. His goal is to engage the work of the “new natural law” theorists. My colleague Steven Jensen has also written on the topic. See his *Knowing the Natural Law: From Precepts and Inclinations to Deriving Oughts* (Washington, D.C.: The Catholic University of America Press, 2015). Jensen is also engaged with the theories of the new natural lawyers. I make no mention of the “new natural law”; my concern is solely with Thomas.

<sup>4</sup> For interesting context and background, see Adam Seagrave, “Cicero, Aquinas and Contemporary Issues in Natural Law Theory,” *Review of Metaphysics* 62 (2009): 491-523; Charles P. Nemeth, *A Comparative Analysis of Cicero and Aquinas: Nature and the Natural Law* (London: Bloomsbury, 2017). Seagrave’s article has a very helpful introduction to the natural law thought of Cicero, but he makes no mention of Cicero’s *De officiis* and its relationship to *ST* I-II, q. 94, a. 2. Nemeth includes a discussion of what Cicero has to say about “Self-preservation,” “Procreation and sexual attraction,”

# I. NATURAL LAW FOR LAWYERS: THE IMPORTANCE OF THE PIONEERING WORK OF WILLIAM OF AUXERRE

In the twelfth and into the early thirteenth century, although discussions of *ius naturale* were common in the works of canon lawyers because their concern was law, in the works of the theologians discussions of natural law were mostly absent. In the whole of Peter Lombard's *Sentences*, for example, that definitive "textbook" for students of sacred doctrine, the term "*ius naturale*" appears only twice, while his discussion of the virtues takes up half of book 3. It was common for theologians in the twelfth century to write moral treatises with scarcely any mention of *ius naturale*, focusing their attention instead on the cardinal and theological virtues, the Ten Commandments, and the gifts of the Holy Spirit.<sup>5</sup> Reflection on the natural law was mostly the domain of canon lawyers such as Gratian and the decretists.<sup>6</sup>

The first medieval theologian to include a more philosophical analysis of *ius naturale* was the Paris master William of Auxerre (1140/50-1231), one of the first theologians to write a *summa*. This *summa*, completed in 1220, was so highly respected and so influential, especially among Dominicans at Paris, that it came to be known as the *Summa aurea*, the "Golden Summa." And although his treatment of *ius naturale* in that work is relatively brief (book 3, tract. 18), he was the first theologian to locate his discussion of the natural law as a

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"Family and care of offspring," "A social communal life," and "Belief in a deity" on pages 89-95 of his book, and he discusses what Thomas has to say about each of those same five topics on pages 112-21. Oddly, however, he does not mention the relevance of Cicero's *De officiis*. Other differences between these two works and my approach in this article will be made clear in due course.

<sup>5</sup> See, for example, Alan of Lille, *De virtutibus et de vitiis et de donis Spiritus sancti*, ed. O. Lottin, in O. Lottin, *Psychologie et morale aux XIIe et XIIIe siècles*, vol. 6 (Louvain: Abbaye du Mont César), 45-92; *De quatuor virtutibus cardinalibus*, ed. I. P. Bejczy, "A Medieval Treatise on the Cardinal Virtues (Cambridge, St. John's College, ms. E.8 [111], fol. 62v-64r)," *Mittelalterliches Jahrbuch* 38 (2003): 239-47.

<sup>6</sup> For example, in Odon Lottin's *Le droit naturel chez saint Thomas d'Aquin et ses prédécesseurs* (Bruges: Beyaert, 1931), the discussion of the developments in the twelfth century is devoted largely to the works of the canon lawyers.

foundation to the virtues, and he was the first theologian to incorporate ideas drawn from the decretists into his moral theology. He was also the first to incorporate Aristotelian philosophical ideas into his discussion of *ius naturale*. It was William, for example, who was the first to suggest the analogy between the first principles of speculative reasoning and the first principles of practical reasoning that Thomas incorporated into his own analysis of the natural law in the *Summa theologiae*.

In his magisterial work *Le droit naturel chez saint Thomas d'Aquin et ses prédécesseurs*, Odon Lottin attributes two important merits to William's work. The first was "to have integrated natural law into the very heart of theology. In fact, he makes it the foundation and norm of the moral virtues." The second merit was "to have made contact with the formulas of the decretists and to have made the theologians benefit from them." This "double merit," he writes, was "all the more notable since his contemporary, Godfrey of Poitiers, is absolutely silent" on these questions.<sup>7</sup> Hence Lottin judges that William was a key transitional figure who made possible the more sophisticated natural law theology one finds in the thirteenth century, most notably in Thomas's *Summa theologiae*.

William was also a pioneer in using his discussion of *ius naturale* as a preface to his much longer discussion of the

<sup>7</sup> Ibid., 33: "Un premier mérite de Guillaume d'Auxerre est d'avoir intégré le droit naturel au sein même de la théologie. Il fait en effet de celui-ci le fondement et la norme des vertus morales. Un second mérite est d'avoir pris contact avec les formules des décrétistes et d'en avoir fait bénéficier les théologiens. Et ce double mérite est d'autant plus notable que son contemporain, Godefroid de Poitiers, est absolument muet sur nos questions" (my translation). There are two exceptions to this general rule. One is Hugh of St. Victor, who includes sections on the natural law (*lex naturalis*) and the written law in *De sacramentis*, book 1, parts 11 and 12. Hugh, however, discusses these in relation to his main topic, the sacraments, and cannot in the same way have been said to have made it "the foundation and norm of the moral virtues," which Hugh does not discuss in this context. Hugh also says nothing about the formulas found in the works of the decretists. Nor does Hugh make use of the Aristotelian texts we will find in William's work. The other exception is the discussion of the natural law in relation to salvation history in Anselm of Laon's *Sentences*, but Anselm has no critical analysis of the natural law. See *Anselms von Laon systematische Sentenzen*, ed. Franz P. Bliemetzrieder (Münster: Aschendorff, 1919), 24-39. As we will see, even in William of Auxerre's *Summa aurea*, the treatment of *ius naturale* is limited to one short section.

"political virtues" (*politicas virtutes*) and the gifts of the Holy Spirit which follows in the rest of book 3 of the *Summa aurea*. This would become a common practice among theologians in the early thirteenth century. Discussion of the natural law was not always included in moral theology texts—it is almost entirely absent from the *Summa contra gentiles*, for example — but when it was present, it was always prefatory to a much longer discussion of the virtues, gifts, and Ten Commandments. Thus, it should come as no surprise that, in Thomas's *Summa*, the brief comments on the natural law in questions 90 to 97 are preliminary to much longer discussions of the Old Law, the New Law, and grace in the remainder of the *Prima secundae*, all of which is preliminary to the questions on the theological and cardinal virtues in the *Secunda secundae*. This does not make these questions unimportant, merely preliminary. What it should tell us, however, is that Thomas never intended to generate an entire moral system out of these few questions, let alone out of one paragraph in 94.2.

## II. THE HISTORICAL CONTEXT OF THE FIRST PARTS OF 94.2

What is going on in 94.2? First, as I have already pointed out, its famous analogy between the first principles of speculative reasoning and practical reasoning is not something Thomas originated.<sup>8</sup> That analogy goes back at least to the *Summa aurea* of William of Auxerre. Without going into detail here, my own view would be that William turned to this

<sup>8</sup> While I find much with which I agree in the article by Seagrave and the book Nemeth cited above, and I can recommend both warmly to readers, in neither work is there any consideration of how Roman legal thought was mediated to canon lawyers such as Gratian and the decretists in the twelfth century by the *Corpus iuris civilis* (Justinian's Code), with its compilation of extracts from major Roman jurists such as Gaius and Ulpian, and by the sections on law in book 5 of Isidore's *Etymologies*. So too, there is no consideration in Seagrave's article or Nemeth's book of how the work of these Roman jurists was mediated to the thirteenth century by Gratian and the decretists of the twelfth. Nor is there any consideration of the importance of someone like William of Auxerre who was one of the first theologians to incorporate Aristotelian concepts and this material from the decretists into his moral theology. I am currently preparing a book in which I trace out these connections in greater detail.

analogy to help resolve a series of conundrums he had inherited from his predecessors. From Gratian, Isidore, and Cicero he had inherited the notion that the *ius naturale* is an “instinct of nature” (*instinctu naturae*) and an “innate force” (*vis innata*) or a “certain force implanted by nature” (*quaedam in natura vis insevit*) impelling us to do good and avoid evil.<sup>9</sup> These assertions caused medieval thinkers to wonder what this “force” or “instinct” could be. Is it the will? The intellect? A habit? William was one of those who identified it (not entirely correctly, as Thomas would later argue) as a “habit of the mind.” But William also proposed the analogy to clarify that the specific role of the particular “habit of the mind” was to grasp the basic principles of speculative reasoning.

By the time Thomas was composing 94.2, this analogy between the principles of speculative and practical reasoning had become something of a commonplace. Even Thomas’s examples of the principle of non-contradiction and that “every whole is greater than its part” had become commonplace. John de la Rochelle, for example, had written the *Tractatus de legibus* in the *Summa fratris Alexandri* (a.k.a. the *Summa halensis*):

It must be said that the natural law exists, as the Apostle says, and is in a rational creature. For just as the cognitive [power] has principles of truth innate to it and the notion of them, such as that “every whole is greater than its own part” and “the same thing cannot be affirmed and denied,” so the motive [power] also has a rule innate to itself by which it is regulated to the good; and we call this the natural law.<sup>10</sup>

<sup>9</sup> See, for example, Gratian, *Decretum*, d. 1, c. 7; Isidore, *Etymologies* 5.4.1; and Cicero, *De inventione* 2.53.161.

<sup>10</sup> John de la Rochelle, *Tractatus de legibus*, inq. 2, q. 1, c. 1: “Dicendum quod lex naturalis est, sicut dicit Apostolus, et in creatura rationali. Nam sicut cognitiva habet principia veri sibi innata et notionem illorum, sicut hoc: ‘omne totum est maius sua parte’ et ‘de quolibet affirmatio vel negatio’, ita et motiva regulam habet sibi innatam, per quam regulatur in bonum; hanc autem legem appellamus naturalem” (Alexander Halesius, *Summa Theologica Halensis: De Legibus et Praeceptis: Lateinischer Text Mit Übersetzung Und Kommentar*, ed. Michael Basse [Berlin: De Gruyter, 2018]; my translation). The volume’s author is listed online and in library databases as “Alexander Halesius.” The volume title itself does not indicate this, but it is made clear inside that the author was John de la Rochelle. This volume has the benefit of a German translation on facing pages. It is important, however, to distinguish what I am calling the *Tractatus de legibus*, the “treatise” on the laws that appeared in the *Summa halensis*, from the

Those who know the famous passage in Thomas's 94.2 will likely recognize the two examples of "innate" principles, or what Thomas describes as "self-evident principles" (*principia per se nota*): "every whole is greater than its part" and "the same thing cannot be affirmed and denied."

Something that had become a commonplace was the claim that all humans "seek the good and avoid the contrary." Indeed, the claim was so common that by the time Thomas was writing the *Summa* there were major treatises that began with the notion of "the good," such as the *Summa de bono* of Philip the Chancellor and another by Albert the Great. It should not be at all surprising, then, to find that Thomas says at the beginning of the *Prima secundae* that

whatever man desires, he desires it under the aspect of good [*sub ratione boni*]. And if he desire it, not as his perfect good, which is the last end, he must, of necessity, desire it as tending to the perfect good, because the beginning of anything is always ordained to its completion; as is clearly the case in effects both of nature and of art. Wherefore every beginning of perfection is ordained to complete perfection which is achieved through the last end.<sup>11</sup>

And yet, adds Thomas, although "all agree in desiring the last end, since all desire the fulfillment of their perfection," the

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*Quaestiones disputatae de legibus*, the series of "disputed questions" that were likely the precursor to the later version that was included in the *Summa halensis*. They are similar, but not the same. There is a wonderful critical edition of the *quaestiones* recently released by the editors at the Collegii Sanctae Bonaventurae. For that version, see: Iohannes de Rupella, *Quaestiones disputatae de legibus*, ed. Riccardo Saccenti, Bibliotheca Franciscana Scholastica Medii Aevi 34 (Rome: Editiones Collegii S. Bonaventurae ad Claras Aquas, 2021). Those earlier "disputed questions" were organized somewhat differently and lack the section on the law of the gospel. I have chosen to discuss the material in the later *Tractatus de legibus*, because this is the version Thomas to which would have had access and by which he would have been influenced.

<sup>11</sup> ST I-II, q. 1, a. 6. Just as it should not be at all surprising, given Thomas's historical context, to find him beginning his discussion here claiming that men desire whatever they desire *sub ratione boni*, so too it should also come as no surprise to find him making the commonsense claim in 94.2 that the natural law has to do with "pursuing the good and avoiding its contrary." One finds the same claim in multiple texts in the thirteenth century all the way back to William of Auxerre's *Summa aurea*. It was simply accepted as a commonplace by the time Thomas was writing the *Summa*.

problem is that all men are not agreed as to what will bring them this fulfillment of their nature.<sup>12</sup> What will bring them the fulfillment of their nature? Thomas's answer: only God. God has put the capacity and desire for an infinite good in the human heart and spirit, and only God can fully satisfy that desire.<sup>13</sup>

In question 91, article 2 of the *Prima secundae*, Thomas first broaches the question "whether there is in us a natural law," and we read that "all things are subject to divine providence" and thus are "ruled and measured by the eternal law . . . insofar as from its being imprinted on them, they derive their respective inclinations to their proper acts and ends."

Now among all others, the rational creature is subject to Divine providence in the most excellent way, insofar as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law.

Why has Thomas introduced the term "eternal law" here? It had been resurrected from the works of St. Augustine by Jean de la Rochelle and had appeared in the section on the laws in the Franciscan *Summa halensis*.<sup>14</sup> But it also works well here because instead of using the term "divine providence" Thomas could use "eternal law" in a discussion of various kinds of "law." A third reason, which has to do with discussions of natural law among Thomas's predecessors, will appear below.

Thus far, we know that, for Thomas:

- a) Our ultimate end is union with God.
- b) Each thing has a natural inclination to its proper acts and ends.
- c) Man is subject to divine providence in a more excellent way, because he can be provident (can provide) for both himself and others.

<sup>12</sup> *ST I-II*, q. 1, a. 7.

<sup>13</sup> *ST I-II*, q. 3, a. 8. According to Thomas, only the vision of the divine essence can satisfy man's longing for happiness (*beatitudo*).

<sup>14</sup> See *Summa halensis*, inq. 1, "de lege aeterna."



d) Man can be provident in this way because God has given him a share in Eternal Reason. That is to say, we have reason, and we can use our reason to understand the natural directedness of things to their proper ends.

e) On this view, all things have natural inclinations to the ends proper to them: e.g., petunia seeds grown into petunias, not oak trees, and act like petunias; tadpoles become frogs, not horses, and act like frogs. Human beings have reason, however, so they can understand the ends proper to them and make choices to realize their ends (or not) by means of their conscious acts.

### III. THE INCLINATIONS IN 94.2 AND IN CICERO'S *DE OFFICIIS*

This brings us to Thomas's assertion in 94.2 that

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

Thus, "according to the order of natural inclinations is the order of the precepts of the law of nature" (*secundum . . . ordinem inclinationum naturalium, est ordo praeceptorum legis naturae*). Or to put it another way: the order of the precepts of the law of nature corresponds to the order of the natural inclinations to the good proper to each nature.

There are, of course, many interpretations of the inclinations in 94.2, but the key to understanding them, I suggest, is recognizing that Thomas borrowed and adapted them from book 1 of Cicero's *De officiis*, and he uses them to catalogue and distinguish the different levels of natural law he inherited from the accounts of his predecessors.

The three "inclinations" in 94.2 are as follows:

Wherefore according to the order of natural inclinations, is the order of the precepts of the natural law. Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature: and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law.

Second, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals: and in virtue of this inclination, those things are said to belong to the

natural law, which nature has taught to all animals, such as sexual intercourse, education of offspring and so forth.

Third, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination belongs to the natural law; for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things regarding the above inclination.

For comparison, here is a strikingly similar passage from book 1 of Cicero's *De officiis* (1.4.11-13):

First of all, Nature has endowed every species of living creature with the instinct of self-preservation, of avoiding what seems likely to cause injury to life or limb, and of procuring and providing everything needful for life—food, shelter, and the like.

[Next] A common property of all creatures is also the reproductive instinct (the purpose of which is the propagation of the species) and also a certain amount of concern for their offspring.

But the most marked difference between man and beast is this: the beast, just as far as it is moved by the senses and with very little perception of past or future, adapts itself to that alone which is present at the moment; while man—because he is endowed with reason, by which he comprehends the chain of consequences, perceives the causes of things, understands the relation of cause to effect and of effect to cause, draws analogies, and connects and associates the present and the future—easily surveys the course of his whole life and makes the necessary preparations for its conduct.

Nature likewise by the power of reason associates man with man in the common bonds of speech and life; she implants in him above all, I may say, a strangely tender love for his offspring. She also prompts men to meet in companies, to form public assemblies and to take part in them themselves; and she further dictates, as a consequence of this, the effort on man's part to provide a store of things that minister to his comforts and wants—and not for himself alone, but for his wife and children and the others whom he holds dear and for whom he ought to provide; and this responsibility also stimulates his courage and makes it stronger for the active duties of life.

[And finally:] Above all, the search after truth and its eager pursuit are peculiar to man. And so, when we have leisure from the demands of business cares, we are eager to see, to hear, to learn something new, and we esteem a desire to know the secrets or wonders of creation as indispensable to a happy life.<sup>15</sup>

<sup>15</sup> English translation and Latin text from Cicero, *On Duties*, trans. Walter Miller, Loeb Classical Library 30 (Cambridge, Mass.: Harvard University Press, 1913).

Although Cicero does not use the word "inclination," the threefold hierarchy is the same in both. There is, first, an inclination to self-preservation; second, an inclination to procreate and raise offspring; and third, the inclination "proper to man," made possible by the power of reason, namely, (a) to search after truth and to know the causes of things and (b) to associate "man with man in the common bonds of speech and life." Given the similarities between the two texts, it would be hard to deny that Thomas has borrowed and adapted Cicero's list for his own use in 94.2.

A scant couple of lines later in *De officiis* Cicero adds:

But all that is morally right rises from some one of four sources: it is concerned either (1) with the full perception and intelligent development of the true [prudence]; or (2) with the conservation of organized society, with rendering to every man his due, and with the faithful discharge of obligations assumed [justice]; or (3) with the greatness and strength of a noble and invincible spirit [fortitude]; or (4) with the orderliness and moderation of everything that is said and done, wherein consist temperance and self-control [temperance].<sup>16</sup>

This is noteworthy because Thomas's catalogue of the cardinal virtues in the *Secunda secundae* is taken mostly from Cicero. In fact, it is not recognized as much as it probably should be that Cicero was one of the most important pagan authorities in the twelfth and early thirteenth centuries, especially with respect to the natural law and the virtues.<sup>17</sup> The first complete Latin translation from the Greek of the *Nicomachean Ethics* by Robert Grosseteste did not appear until 1247, and there were plenty of treatises on the virtues before then. Without Aristotle, thinkers turned mostly to Cicero. Even after Aristotle's *Ethics* was available in Latin, Thomas used Cicero not only for the list of four cardinal virtues, rather than Aristotle's longer list in the *Ethics*, but also for all the parts of the virtues under those four,

<sup>16</sup> Cicero, *On Duties*, 1.5.15.

<sup>17</sup> For more on the importance of Cicero, see Cary Nederman, *The Bonds of Humanity: Cicero's Legacies in European Social and Political Thought, ca. 1100–ca. 1550* (University Park, Pa.: Penn State University Press, 2020).

taken from Cicero's *De inventione*.<sup>18</sup> The passage quoted above is also noteworthy because it is an example of how the natural law tradition in the work of Cicero was tied strongly to the cardinal virtues—which, as mentioned above, were the primary concern of theologians of the period, along with the theological virtues.

#### IV. AMBROSE'S CHRISTIAN RE-INTERPRETATION OF CICERO'S *DE OFFICIIS*

Before addressing the question of why Thomas decided to use Cicero's list from *De officiis* 1.4.11-13 in his own description of the inclinations in 94.2, it is worth considering a text from St. Ambrose. Ambrose wrote his own work *On Duties* (*De officiis*) in conscious imitation of Cicero's work of the same name.<sup>19</sup> For example, early on Ambrose notes that "philosophers have held that duties derive from two sources: one is the need to do what is 'honourable' [*honestas*] and the other is the need to do what is 'useful' [*utilitas*]." This was one of the key distinctions with which Cicero began his *De officiis*. Cicero had argued that, ultimately, only that which was "honorable" should be considered truly "useful." Ambrose extends that claim and argues that nothing should be considered truly useful "unless it helps us attain the grace of eternal life."<sup>20</sup>

The following paragraph from Ambrose's *De officiis* displays interesting comparisons with Cicero's text.

Animals of every kind [writes Ambrose] have an innate instinct to attend to their own safety first of all, to beware of things which might harm them and to go after things which will be advantageous to them, such as food, or places to hide in, where they can take shelter from danger or heavy rains or the sun. This is all evidence of prudence. But then again, we find that animals of every species are also by nature social creatures: they mix first with those which

<sup>18</sup> See Cicero, *De inventione*, 2.160-65.

<sup>19</sup> For an interesting analysis of the different rhetorical approaches taken in these three texts, see Mark D. Jordan, "Cicero, Ambrose, and Aquinas 'On Duties' or the Limits of Genre in Morals," *The Journal of Religious Ethics* 33, no. 3 (2005): 485-502.

<sup>20</sup> Ambrose, *De officiis* 1.9.28. English and Latin from Ambrose, *De Officiis*, trans. Ivor Davidson (Oxford: Oxford University Press, 2001).

share their own species and type, and then with others as well. So we see that cattle are happy in herds, horses in droves, and so on—like tends to be happy with like. . . . As for the desire to procreate and the instinct to produce offspring, or the love that parents feel for their young—what is there to say? In all these things the form of justice is there for all to see.<sup>21</sup>

Ambrose's descriptions of the virtues are similar to Cicero's, but the goal is different, and his exemplars of the virtues are nearly all biblical. For example, Ambrose defines prudence as the virtue "which makes us seek the truth and instils in us a yearning for ever deeper knowledge."<sup>22</sup> This desire for the truth is a fundamental part of human nature, writes Ambrose, since "by their very nature as human beings, all men have an instinct to investigate the truth, for nature herself impels us to show an enthusiasm for understanding and knowledge and instils in us a yearning for enquiry."<sup>23</sup> The loftier the wisdom, the more we should strive for it.<sup>24</sup>

Indeed, "Nowhere is man's superiority to all the other animals more clearly displayed," writes Ambrose "than that man is the only creature to partake of reason, to explore the causes behind things."<sup>25</sup> This is all very Ciceronian. But then Ambrose adds this interesting and important addendum:

Man is the only creature to partake of reason, to explore the causes behind things, *and to take it as his duty to investigate the creator of his being*—the God whose power is so vast that he has the power of life and death over us, the one who rules the world according to his will, the one to whom we know we must give an account of all our actions. (Emphasis added)

For "nothing," says Ambrose, "is a greater inducement to live an honourable life [*vitam honestum*] than the belief that it is he who will be our judge—he whom no secret can ever escape, he to whom all that is unseemly is an offence, and all that is honourable is a delight."<sup>26</sup>

<sup>21</sup> Ambrose, *De officiis*, 1.28.128.

<sup>22</sup> Ambrose, *De officiis*, 1.25.115.

<sup>23</sup> Ambrose, *De officiis*, 1.27.125.

<sup>24</sup> See Ambrose, *De officiis*, 1.26.124.

<sup>25</sup> Ibid.

<sup>26</sup> Ambrose, *De officiis*, 1.27.127.

Who, then, are Ambrose's choices of the prime exemplars of prudence? Abraham and Moses.<sup>27</sup> Why these two? Because, he says, "no one can be called prudent who does not know the Lord," and "the Scriptures say, 'Abraham believed God, and it was credited to him as righteousness' (Gen 15:6)." "How can a person be called wise," he asks, "if he does not fear God, for, as the Scriptures affirm, 'the fear of the Lord is the beginning of wisdom' (Prov 9:10)?"<sup>28</sup> Thus, on Ambrose's account, Abraham excels in the most important things: he knows God, fears his judgment, and heeds him. So too, Moses, "learned as he was in all the wisdom of the Egyptians," did not approve of their idolatry, "but thought that kind of wisdom both harmful and foolish. Turning away therefrom, he sought God with all the desire of his heart, and thus saw, questioned, and heard Him when He spoke."<sup>29</sup> Needless to say, these two would not have been Plato's or Aristotle's prime exemplars of "prudence."

Ambrose defines *justice*—as had everyone else back to Plato (and in the *Republic*, Socrates traces it back to Simonides)—as giving each his due (*ius*) or giving to each what belongs to him (*quae suum cuique tribuit*).<sup>30</sup> But for Ambrose, just as "the first source of duty is prudence," which for him is directed primarily to the knowledge of the highest cause and truth, namely, God, so too justice is called upon to recognize that "there is no better way of fulfilling our duty than to show devotion and reverence to our Creator."<sup>31</sup> Thus, for Ambrose, justice is directed "first, towards God, second, towards our country, third, towards our parents, and lastly towards all."<sup>32</sup> As "part of nature's teaching" (*secundum naturae est magisterium*), he writes, human beings "from the very earliest age at which sense first begins to be imparted to us . . . know what it is to love life as a gift of God, to love our country and our parents, and to love the children of our own age whom we choose as our friends." It is from these

<sup>27</sup> See Ambrose, *De officiis* 1.25.117 (Abraham) and 1.26.123 (Moses).

<sup>28</sup> Ambrose, *De officiis*, 1.25.117.

<sup>29</sup> Ambrose, *De officiis*, 1.26.123.

<sup>30</sup> Ambrose, *De officiis*, 1.25.115.

<sup>31</sup> Ambrose, *De officiis*, 1.27.126.

<sup>32</sup> Ambrose, *De officiis*, 1.27.127.

beginnings, says Ambrose, "that true love [*caritas*] is born, which puts others before itself and does not pursue its own interests; this is where justice has its primary seat" (*in quo est principatus iustitiae*).<sup>33</sup> For Ambrose, *caritas* is now the fundamental principle of justice. As Christian prudence builds on our natural desire to know the truth, so too Christian justice builds on our natural inclination to live in society.

Ambrose has simply reorganized Cicero's list in *De officiis*: self-preservation, procreation, and reason—reason, which (a) searches for causes and (b) "associates man with man in the common bonds of speech and life," giving him also "a strangely tender love for his offspring," and (c) provokes in him an "eager pursuit of the truth." In Ambrose's reorganization, the search for truth is first, which he associates with the knowledge and love of God. Everything else follows from that.<sup>34</sup>

When Thomas incorporates the list from Cicero's *De officiis*, his vision of our ultimate end—union with God—being similar to Ambrose's, he uses Ambrose's "to seek the truth about God" instead of Cicero's simple "to seek the truth" from *De officiis* 1.4.13. But he likely also noted Cicero's claim that, because man is endowed with reason, he "comprehends the chain of consequences, perceives the causes of things, [and] understands the relation of cause to effect and of effect to cause."<sup>35</sup> He may

<sup>33</sup> Ibid.

<sup>34</sup> I have reorganized Ambrose's discussion to correspond to the order that both Cicero and Thomas use.

<sup>35</sup> To be fair to Cicero, we should note that he also says in *De legibus* 1.24 that "so far as we know, among all the varieties of animals, man alone retains the idea of the Divinity. And among men there is no nation so savage and ferocious as to deny the necessity of worshipping God, however ignorant it may be respecting the nature of his attributes" (*Itaque ex tot generibus nullum est animal praeter hominem quod habeat notitiam aliquam dei, ipsisque in hominibus nulla gens est neque tam mansueta neque tam fera, quae non, etiamsi ignoret qualem haberi deum deceat, tamen habendum sciat*). And then in *De legibus* 1.25, he continues: "From whence we conclude that every man must recognize a Deity, who considers the origin of his nature and the progress of his life. Now the law of virtue is the same in God and man and cannot possibly be diverse. This virtue is nothing else than a nature perfect in itself and developed in all its excellence" (*Ex quo efficitur illud, ut is agnoscat deum, qui, unde ortus sit, quasi recordetur ac cognoscat. Iam uero uirtus eadem in homine ac deo est, neque alio ullo in genere praeterea. Est autem uirtus nihil aliud, nisi perfecta et ad summum perducta*

have thought this formulation to be nicely in accord with Aristotle's claim in the *Metaphysics* that "all men by nature desire to know" and that wisdom is to know "the first causes and the principles of things."<sup>36</sup> So too, Thomas may have thought that his shortened form, "to live in society," was nicely in accord with Aristotle's famous claim in the *Politics* that "man is by nature a political animal" (*politikon zoon*).<sup>37</sup>

Thomas's abbreviation of Cicero's text to emphasize the two inclinations "proper to" human beings perfective of their specific nature—to know the truth, especially about the ultimate cause or causes of things, namely God, and to live in society—also helps clarify their connection with what he will later describe as the two "first and common precepts of the natural law" (*prima et communia praecepta legis naturae*): to love God and to love one's neighbor as oneself.<sup>38</sup>

## V. THE IMPORTANCE OF GRATIAN AND THE DECRETISTS

I have argued *that* Thomas used Cicero's list from *De officiis* in 94.2, but the question is *why*. Why not simply mention the inclinations "proper" to mankind—to know the truth about God and to live in society—that he might have easily associated with the two major claims of Aristotle? I suggest that Cicero's

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natura: est igitur homini cum deo similitudo). (Marcus Tullius Cicero, *On the Law [De legibus]*, vol. 2 of *The Political Works of Marcus Tullius Cicero: Comprising His Treatise on the Commonwealth; and His Treatise on the Laws*, trans. Francis F. Barham [London: Edmund Spettigue, 1841-42]; Latin: M. Tullius Cicero, *De legibus* [Paris: Belles Lettres, 1959]).

<sup>36</sup> See Aristotle, *Metaphysics* 1.980a and 1.982a, trans. W. D. Ross.

<sup>37</sup> Aristotle, *Politics* 1.1253a., trans. H. Rackham. It is possible, of course, although I will not argue it here, that Cicero was himself influenced by Aristotle or the Aristotelian tradition.

<sup>38</sup> ST I-II, q. 100, a. 3, obj. 1 and ad 1. It is rare to find contemporary scholars who discuss the relevance and importance of Thomas's discussion of the moral precepts of the Old Law for our understanding of the natural law. For example, neither in Seagrave's article, "Cicero, Aquinas and Contemporary Issues" nor in Nemeth's book, *A Comparative Analysis of Cicero and Aquinas*, is there any mention of the moral precepts of the Old Law. I discuss the relevance and importance in my article, "What the Old Law Reveals about the Natural Law According to Thomas Aquinas," *The Thomist* 75, no. 1 (2011): 95-139.



account provided Thomas with an elegant solution to the problem of how to catalogue different levels of natural law that had appeared in the lists of his predecessors.<sup>39</sup> The following is a small sample.

In the opening lines of the *Decretum*, the most authoritative work on canon law in the Middle Ages, Gratian had famously claimed that:

Natural law [*Ius naturale*] is what is contained in the Law and the Gospel. By it, each person is commanded to do to others what he would want done to himself and prohibited from inflicting on others what he does not want done to himself. So Christ said in the Gospel: "Whatever you want men to do to you, do so to them. For this is the Law and the Prophets" (cf. Mt 22:40).<sup>40</sup>

*Ius naturae* is "common," wrote Gratian in a subsequent chapter, "by reason of its universal origin in an instinct of nature [*instinctu naturae*] and not because it is contained in a constitution." By an "instinct of nature," however, Gratian does not mean "instinct" in our modern sense; rather, he writes that *ius naturae* "began with the creation of the rational creature" (*cepit enim ab exordio rationalis creaturae*).<sup>41</sup>

<sup>39</sup> The definitive work on Thomas's use of Roman law is still Jean Marie Aubert, *Le droit romain dans l'oeuvre de saint Thomas* (Paris: J. Vrin, 1955). Aubert's conclusion, after an exhaustive analysis of every citation of the *Corpus iuris civilis* (the texts of what is popularly known as Justinian's Code) in Thomas's corpus is that his knowledge of these texts was likely not direct but was mediated through the works of the canonists. ("Où a-t-il puisé cette connaissance des textes romains? Les résultats de notre enquête semblent bien indiquer que l'intermédiaire en a été le droit canonique.") Even if true, Aubert's exhaustive analysis shows that Thomas made abundant use of those texts, especially in the *Summa theologiae*, in which Aubert says there are more than 400 explicit citations of Gratian or the Decretals, and even more are implicit. This indicates that there was "une influence sérieuse du droit canon sur la pensée de saint Thomas." See *ibid.*, esp. 128-29.

<sup>40</sup> Gratian: *The Treatise on Laws: (Decretum DD. 1-20)*, trans. A. Thompson and J. Gordley, Studies in Medieval and Early Modern Canon Law, vol. 2 (Washington, D.C.: The Catholic University of America Press, 1993). This passage is at d. 1, c.1.

<sup>41</sup> *Decretum*, d. 5, c. 1. The Latin is from the online version of *Bayerische Staatsbibliothek Decretum magistri Gratiani, editio Lipsiensis secunda, post Aemilii Ludovici Richter curas, ad librorum manu scriptorum et editionis Romanae fidem recognovit et adnotatione critica instruxit Aemilius Friedberg* (Leipzig, B. Tauchnitz, 1879) at <https://geschichte.digitale-sammlungen.de/decretum-gratiani/online/angebot/>.

After Gratian's *Decretum*, most texts on canon law were essentially commentaries on it—so much so that these later canonists are commonly called “decretists.” And yet, although the decretists were scholars of the law, their works were always grounded in theology. For example, one of the most influential of the early “decretists” who commented on the *Decretum* was Rufinus, who taught in Bologna in the mid-twelfth century. Likely influenced by the school of Anselm of Laon (d. 1117), Rufinus warned that, after sin, man remained confused about *ius naturale*, drawn to the view that nothing was sinful. Man's understanding of *ius naturale* was reformed (*reformatum est*) by the Ten Commandments, but not fully. Man still needed the Gospel whereby “the natural right might be repaired in all its generality and, by being repaired, perfected” (*ubi ius naturale in omnem suam generalitatem reparatur et reparando perficitur*).<sup>42</sup> In this manner, says Rufinus poetically, “the rivers of moral goodness [*honestatis*] return to the sea of *ius naturalis* which were almost lost in the first man, revealed in the Mosaic law, perfected in the Gospel, and decorated in good character.”<sup>43</sup>

Rufinus rejects what he calls the “most general” definition of *ius naturale* as “what nature has taught all animals,” the famous definition from the first-century Roman jurist Ulpian found in

<sup>42</sup> Rufinus, *Summa decretorum*, I, d. 1, 1. See *Die Summa Decretorum des Magister Rufinus*, ed. H. Singer (Paderborn: F. Schöningh, 1902), 6. Rufinus goes on in this passage to refer to the importance of equity so that the goods of *ius naturale* may be preserved. *We do not yet have a full picture of justice, but even Rufinus the lawyer understands that mere obedience to the law or to what is required by “ius naturale” is not sufficient.* To compare Rufinus's account with Anselm of Laon, see *Anselms von Laon systematische Sentenzen*, ed. Franz P. Bliemetzrieder (Münster: Aschendorff, 1919), 24-39.

<sup>43</sup> *Ibid.* (Singer, ed., 7): “Et hunc in modum flumina honestatis humane redeunt ad mare iuris naturalis quod in primo homine pene perditum, in lege mosaica revelatur, in Evangelio perficitur, in moribus decorator.” Cf. Bliemetzrieder, ed., *Anselms von Laon*, 24-39. Anselm of Laon (d. 1117), not to be confused with the more famous Anselm of Bec (and later Canterbury), was an extremely able and influential theologian who lived and wrote during the last part of the eleventh and early part of the twelfth centuries. He and his brother Ralph founded a school in Laon which became one of the most influential centers for theology and biblical exegesis in the twelfth century. Anselm is also noteworthy in history for having expelled Peter Abelard from his school in 1113, although he was certainly not the only person to expel Abelard from something.

Justinian's Code, insisting instead that, more properly speaking, *ius naturale* "is ascribed only to the human race" (*humano generi solummodo ascribitur*) and that it is "a certain force instilled by nature in the human creature for doing good and avoiding the contrary" (*Est itque naturale ius vis quedam humane creature a natura insita ad faciendum bonum cavendumque contrarium*).<sup>44</sup> This seems to have been Rufinus's version of Gratian's comment that *ius naturae* is "common, by reason of its universal origin in a natural instinct and not because it is contained in a constitution" (*eo quod ubique instinctu naturae non constitutione alicue habetur*).<sup>45</sup> But Rufinus had also found Cicero's definition of *ius naturae* in *De inventione* 2.53.161: *Ius naturae* is "that which has not had its origin in the opinions of men, but is a certain force implanted by nature" (*quaedam in natura vis insevit*).<sup>46</sup>

After Rufinus, there were various attempts to identify this "force instilled in us by nature." Is it the force of will? Is the force derived from our grasp of goodness in the intellect? Or is this force the force of goodness itself, or perhaps the desire for God which draws us to him? There was plenty of room for disagreement, and later decretists lined up on one side or the other. As authors continued to grapple with this question, they also began to consider the different "forces" or levels or senses of "nature."

Thus, in the *Summa monacensis*, for example, an early text out of the Parisian school (1175-78), we find the author distinguishing different "forces" in nature. The unknown author writes:

*Ius naturale* is sometimes a force inherent in anything by which it is governed; whence the superior things are said to rule inferior by means of natural *ius*, as the sun completes its course.

And sometimes there is an innate force in living beings by which they are drawn to commingle, and to the procreating and education of offspring,

<sup>44</sup> Rufinus, *Summa decretorum*, I, d. 1, 1 (Singer, ed., 5).

<sup>45</sup> Gratian, *Decretum*, d. 1, c. 7. See also Isidore, *Etym.* 5.4.1.

<sup>46</sup> Cicero, *De inventione* 2.53.161. The full sentence is: "Naturae ius est, quod non opinio genuit, sed quaedam in natura vis insevit, ut religionem, pietatem, gratiam, vindicationem, observantiam, veritatem." The English translation is mine.

which belongs both to brutes and rational beings; for man is driven to this without reason, by the impulse of nature.

And sometimes there is a reason innate in every rational person by which he discerns what should be done and what should not be done, as, for example: “What you do not want done to you,” etc.

And sometimes *ius naturale* is called divine because it derives its origin from natural reason.<sup>47</sup>

We can see this author struggling to distinguish “nature” as a force that orders the cosmos from nature as a force that drives creatures (including humans) to procreate, and then to distinguish these from nature as that force in us that impels us to do good and avoid evil.

It is noteworthy, however, that although we generally think of calling something (like a law or a doctrine) “divine” when its source is divine revelation rather than natural reason, here the natural law is called “divine” *because* it derives its origin from natural reason. The author likely has in mind the claim he would have found in Isidore and elsewhere equating *ius naturale* and *ius divinum*: not only Isidore’s “All laws are either divine or human. Divine laws are based on nature, human laws on customs,”<sup>48</sup> but also Gratian’s natural law (*ius naturale*) “is what is contained in the Law and the Gospel.”<sup>49</sup> This author may also have in mind the idea that our reason is a gift from God at our creation when we are made “in the image of God.” But there are clearly still potential confusions here that will need to be clarified by later thinkers.

<sup>47</sup> Lottin, *Le droit naturel*, 107: “Ius naturale quandoque vis cuilibet rei insita qua regitur; unde superiora, et inferiora, media dicuntur regi iure naturali, ut sol cursum perficere. Quandoque est vis animantibus insita qua trahuntur ad commiscendum, ad retum procreationem et educationem, quod perique brutis et rationalibus convenit; homo enim sine ratione, impetus nature, ad id trahitur. Quandoque est ratio cuilibet rationali insita qua discernit quid faciendum quid non, ut: quod tibi non vis fieri, etc. Quandoque divinum ius naturale dicitur, quia originem, trahit a naturali ratione.” The English translation is mine.

<sup>48</sup> *Etymologies* 5.2: “Omnes autem leges aut divinae sunt, aut humanae. Divinae natura, humanae moribus constant.” English translation: *The “Etymologies” of Isidore of Seville*, trans. Stephen Barney et al. (Cambridge: Cambridge University Press, 2006); Latin: <https://www.thelatinlibrary.com/isidore/5.shtml>.

<sup>49</sup> *Decretum*, d. 1, c. 1.

As the years progressed, the lists in these commentaries became longer and the descriptions more detailed. For example, in the standard gloss, the *Glossa Ordinaria* or *Apparatus glossarum* on Gratian’s *Decretum* that most thirteenth-century thinkers would have seen if they had picked up a copy of Gratian’s *Decretum*,<sup>50</sup> they would have found this passage quoted from Isidore’s *Etymologies* (5.4):

Natural law [*Ius naturale*] is common to all nations because it exists everywhere through natural instinct [*instinctu naturae*], not because of any enactment. For example: the union of men and women, the succession and rearing of children, the common possession of all things, the identical liberty of all, or the acquisition of things that are taken from the heavens, earth, or sea, as well as the return of a thing deposited or of money entrusted to one, and the repelling of violence by force.

In the margin, next to that text, readers would have found this gloss among the others:

*Ius naturale*. To understand this, note that the word “nature” is used in several ways. Sometimes nature means a force residing in things [*vis insita in rebus*] so that like propagates like. Second, sometimes nature is said to be the stimulus or instinct of nature proceeding from physical desire [*quidam stimulus, seu instinctus naturae ex sensualitate proveniens*] in respect to appetite, procreation, and child-rearing. Third, nature is said to be an instinct of nature proceeding from reason [*instinctus naturae ex ratione proveniens*], and *ius* proceeding from nature in this sense is called natural *aequitas*. . . . In a fourth way, *ius naturale* are natural precepts [*ius naturale precepta naturalia*], such as “do not kill,” “do not commit adultery.” And [finally] all divine law is said to be natural law [*omne ius divinam dicitur ius naturale*].<sup>51</sup>

We have here what has by this time become a fairly standard hierarchy of “nature” with respect to *ius naturale*. First, a

<sup>50</sup> For a wonderful visual representation of what reading the *Decretum* with the “ordinary glosses” would have been like, see Thompson and Gordley, ed. and trans., *Gratian*. For the statistic that Johannes Teutonicus wrote approximately ninety percent of the glosses, see *ibid.*, xvii.

<sup>51</sup> *Ibid.*, 6. I have taken the liberty of inserting the original Latin text. The original Latin of this marginal note, taken from Johannes Teutonicus’s *Apparatus glossarum in compilationem tertiam*, can be found in Rudolf Weigand, *Die Naturrechtslehre der Legisten und Dekretisten von Irnerius bis Accursius und von Gratian bis Johannes Teutonicus* (Munich: Hueber, 1967), 255, #435.

general “law” or *ius* governing all creation. Second, a *ius* common to all animals which is an “instinct of nature” proceeding from sensuality. Third, a *ius* proper to human beings which proceeds from reason. These two are sometimes joined together into one, but they are distinguished here. Fourth, *ius naturale* is expressed in “natural precepts” (*precepta naturalia*), such as “don’t kill” and “don’t commit adultery.” And fifth, the glossator (probably Johannes Teutonicus) notes, as had everyone before him, that “all divine law is said to be natural law” (*ius divinum . . . ius naturale*). He does not, however, explain how we distinguish “divine law” from the precepts of the Decalogue he mentions (“don’t kill” and “don’t commit adultery”), which are commonly said to be part of divine law. Nor does he explain how we should distinguish those precepts in the fourth category, which are often said to proceed from reason, from *ius naturale* in the third category. These distinctions are interesting and helpful to a degree, but more work needed to be done to clarify how they were common and the basis for their being distinguished from each other.

#### VI. THOMAS’S RENAMING AND REORGANIZATION OF THE LISTS OF THE DECRETISTS

Something lacking in Gratian’s *Decretum* that had to be supplied by his commentators was an account of the different levels of *nature*: nature understood as a cosmic order of all created realities, nature as something pertaining specifically to all living things, nature as something pertaining to all animals, and nature as something pertaining specifically to human beings because they have reason. This account of the hierarchy of nature is precisely what the decretists labored to supply with their lists, but with varied results. There was no agreement on the terminology that should be used for each level of the hierarchy. And they struggled to find a term to describe the relationship between “nature” as that force that governs all creation and God, using phrases such as “nature, that is God” (*natura, id est Deus*) or “our highest nature, which is God” (*summa natura, quod est Deus*), or “True Equity” (*Verus*

*Aequitas*). Some decretists such as Alanus and William of Gascaony even associated the highest level of nature with the *Nous* ("Mind") described in Plato's *Timaeus*. From a theological perspective, there were problems with each term.

It was for good reason, therefore, that Thomas chose instead to borrow the term "eternal law" from John de la Rochelle's *Tractatus de legibus*, which he would have found in the Franciscan *Summa halensis*.<sup>52</sup> Equating the "eternal law" with divine providence let him incorporate the patristic notion that the "eternal forms" exist in the mind of God without making God's freedom subject to the requirements of those forms, as was the case with Plato's demiurge, who was bound in what he could create by what he saw in the realm above him. This made Plato's "god" subject to justice rather than the author of it, a view Christians wished to avoid. So too, as was even clearer in the works of later Platonists, "the One" in Plato's hierarchy was superior to and existed prior to *Nous*. It was important, therefore, for Christian theologians not to incorporate this hierarchical conception of *Nous* into their understanding of the relationship between the three persons of the Triune God. For similar reasons, it was important for Thomas to make clear in the *Summa* what should be held concerning the unity and simplicity of God.<sup>53</sup>

Rufinus, as we have seen, introduced Cicero's term *vis naturae* ("force of nature") in place of Gratian's *instinctus naturae* ("instinct of nature"), but this brought with it a new set of questions revolving around how to distinguish the "force" that governs all creation from other forces in nature. Later decretists sought to distinguish the "force" that makes the sun rise and keeps the stars in their course, the light rise and the heavy fall, and like procreate like from the "force" in animals that drives them to reproduce and to rear their offspring, from the "force" in human beings that allows them to make rational judgments about good and evil, right and wrong. Thomas suggests a different term altogether, "inclination" (*inclinatio*),

<sup>52</sup> See *Summa halensis*, inq. 1, "de lege aeterna." John expends an entire section (*inquisitio prima*) out of only four discussing the eternal law.

<sup>53</sup> See, for example, *ST I*, q. 3.

although it has produced many of the same confusions we have seen with *vis* and *instinctus*. It is crucial with all three terms that one distinguish the level of “force” or “instinct” or “inclination” one is dealing with, otherwise we might equate and confuse the “force” that governs all creation (what we would call the law of physics) with the “force” that governs animals and moves them through desire to procreate and the “force” in human beings that moves them because they have reason.

What we have seen now, examining the work of some of these canon lawyers who produced and compiled commentaries on Gratian’s *Decretum*, is that working out the definitions and distinctions of the different types of law was an important part of any consideration of law. We find similar lists, in fact, in medieval *summae* contemporaneous with Thomas’s, such as those by William of Auxerre, Roland of Cremona, and John de la Rochelle.

So too, in Thomas’s *Summa*, we find similar lists. There is eternal law, natural law, divine law (of which there are two kinds), human law, and the law of the *fomes* of sin. The divine law can be subdivided into the Old Law and the New Law. The Old Law can be subdivided into the moral precepts, the ceremonial precepts, and the judicial precepts. The moral precepts can be subdivided again into three “grades”: the “first and common” precepts, which are to love God and neighbor; the second grade of precepts, which are summarized in the Ten Commandments; and the third grade of precepts, which are conclusions drawn from the basic ten precepts in the Decalogue. The New Law, as it turns out, is essentially God’s grace. So too, when Thomas is discussing the natural law, he distinguishes “primary” and “secondary” precepts and three “inclinations” that characterize different levels of nature and natural law.

## VII. HOW AND WHY THOMAS USED CICERO’S LIST IN 94.2

As we have seen, lists not only of different types of law, but also of different levels of nature, were common among Thomas’s contemporaries. But they were complicated and not always internally coherent, still leaving unclear “which law is



which?" So, when Thomas wrote 94.2, he formulated a clearer series of distinctions among the various kinds of law and then used the passage from Cicero's *De officiis* as a structuring device to help him make a new catalogue of the levels of "nature" and "natural law."

Thomas took the highest level, the order by which all things are governed, which some decretists described as *summa natura*, "the highest nature" or "nature, that is God" and he gave it a new name: the eternal law. It governs all things. In accord with Aristotle's teleological conception of nature, Thomas added the idea that this eternal law governs all things by directing them to their proper ends in accord with their nature as the kind of things they are.

Thomas associated what others had described as the tendency to self-preservation by eating or hunting with Cicero's first level of inclinations. But he deepened it by making it a metaphysical point about all things, not merely animals.

The second level of Cicero's hierarchy is where Thomas put the "instinct of nature" that we share with other animals to procreate and care for offspring. This is also where Thomas put Ulpian's "what nature has taught all animals." But what we learn from reading everyone from Gratian to Thomas is that absolutely no one thought that Ulpian's definition defined the natural law that applied to human beings. To the contrary, most thinkers distanced themselves from it.

Finally, there are the inclinations "proper" to human beings because they have reason. Following Ambrose, Thomas altered Cicero's "search after truth and its eager pursuit" to "to know the truth about God."

What happened to that other level, the natural precepts such as "don't kill," "don't steal," and the other Ten Commandments, and the claim that "all divine law is said to be natural law" and Gratian's claim that the natural law is "what is contained in the law and Gospel"? Thomas distinguished more clearly than the decretists between the natural law and the divine law, showing that they are not completely different but must be distinguished. The divine law has two parts: the Old Law and the New Law.

Since, like Rufinus, Thomas understood that the human nature we have now is no longer the “integral” nature we had at our creation—it is “corrupted”—and we no longer have a clear understanding of our good, nor can we do it even when we understand it,<sup>54</sup> God helps us in a twofold way: he instructs us by means of the law and assists us by means of grace (as Thomas says in the preface to *ST* I-II, q. 90).

What does the Old Law teach us? The Old Law, says Thomas, “showed forth the precepts of the natural law” (*lex vetus manifestabat praecepta legis naturae*).<sup>55</sup> The moral precepts of the Old Law reveal the basic precepts of the natural law—things we could and should know by reason alone but often do not because we are blinded by sin. It teaches us the Ten Commandments and that at the heart of the law are the two commandments to love God and love your neighbor as yourself, about which Thomas says, “These are the first and common principles of the natural law” (*ST* I-II, q. 100, a. 3, ad 1).<sup>56</sup> But even when we know what we ought to do, we still do not do it. As St. Paul says, we do not the good we want but the evil we do not want. So God sends us the New Law, the grace of the Holy Spirit by which charity is spread abroad in our hearts.<sup>57</sup> Thus it

<sup>54</sup> See *ST* I-II, q. 109, a. 2 for a good example of Thomas making use of the distinction between man “in the state of integral nature” (*in statu naturae integrae*) and man “in the state of corrupted nature” (*in statu naturae corruptae*). In the former, “man by his natural endowments could wish and do the good proportionate to his nature, such as the good of acquired virtue; but not surpassing good, as the good of infused virtue”; in the latter, “man falls short of what he could do by his nature, so that he is unable to fulfill it by his own natural powers.” Thomas makes use of the same threefold distinction found in Rufinus and Anselm of Laon, describing a period during which man had only the natural law, during which he fell into “idolatry and the most shameful vices,” after which he was given the written law, which instructed him in what he should do, but he still could not do it. It is in this way that he realized his need for God’s grace. See n. 37 above for the references in Anselm and Rufinus.

<sup>55</sup> *ST* I-II, q. 98, a. 5, co.

<sup>56</sup> For a more detailed discussion of the relationship between the Old Law and the precepts of the natural law, see Smith, “What the Old Law Reveals about the Natural Law.”

<sup>57</sup> For a more detailed discussion, see Randall Smith, “Natural Law and Grace: How Charity Perfects the Natural Law,” in *Faith, Hope, and Love: Thomas Aquinas on Living by the Theological Virtues*, ed. H. Goris et al. (Leuven: Peeters, 2015), 233-57.

is the love of God in the Spirit that helps perfect our ability to know the truth about God and live in society.

The following is a summary overview:

Eternal Law (cosmic order of all things directing them to their proximate ends and ultimately back to God).

Natural Law:

Inclination of all things to preserve themselves in being (Cicero's first level).

Inclination of animals to procreate and raise offspring (Cicero's second level, corresponding to Ulpian's "what nature has taught all animals").

Inclination proper to man due to his reason: to know the truth about God and live in society (Cicero, Ambrose, Aristotle).

But we are fallen creatures, whose reason and will have been corrupted by sin. Thus, we need:

Divine Law (corresponding to Gratian's "Natural law is what is contained in the law and the Gospel"): "God instructs us by means of the law and assists us by means of grace."

Old Law ("the law"): Love God and neighbor ("do unto others . . .") and Ten Commandments (et al.)

New Law ("the Gospel"): grace of the Holy Spirit by which charity is spread abroad in our hearts.

### VIII. WHAT IS THE UPSHOT OF ALL THIS?

For Thomas, as for Aristotle before him, all creatures have a natural inclination to their perfection in accord with their created nature—an inclination to the full realization of their being as the kind of thing they are. Petunia seeds become petunias, not oak trees. Tadpoles become frogs, not dogs. Things have a natural directedness to actualize their inherent potencies.

Plants also need water, nourishing soil, sunlight, and air to realize their end. Dogs also need water, nourishment, sunlight, and air, but in different ways (one does not plant puppies in the soil and pour water on their heads), and they require something more: they need to move about. Horses need many of the same things that dogs do, but they eat oats, not meat.

Having a natural inclination does not mean the beings are passive. Plants must put down roots. Dogs must hunt. Horses graze. So too, things are not simply individual. Mosses grow in patches. Dogs hunt in packs. Horses herd to protect themselves from predators. Creatures must *act* in certain ways in concert with others and in relation to their environment to realize, actualize, and fulfill the potencies of their nature. So too, human beings must actualize the potencies of their specific nature in their own way. Humans are similar to other creatures in certain respects (needing food, water, etc.) but they differ in this essential way: we humans can come to know by reason (or by being taught, which is also a function of reason) what things are appropriate to our nature, and then we can either choose them or not.

Some functions operate “automatically,” as it were: things like heartbeat, respiration, and growth, although even here we need to do our part to nourish these functions properly. We need to eat the right foods, get the right exercise, and stay away from things that stunt our growth and damage our health. So, we can say with Thomas that the order of the natural law is related to the order of nature or, to be more precise, the order and character of the natural inclinations. Thus, although like the dog and horse we need to eat, drink, get sunlight, and exercise, we also need something more.

What are the basic characteristics of human nature that differentiate us—that “specify” us as a “species” in the genus “animal”? For insight, we turn to “the Philosopher,” Aristotle, who made two famous statements: the first, that “all men by nature desire to know,” and the second, that “man is by nature a political-social animal” (*politikon zoon*). Although we need food, drink, and sunlight like other animals, if we have not actualized these other potencies, we will not achieve the flourishing proper to (possible to) human beings.

What about God? Aristotle had said that we want to know not just the truth but also the truth about the highest causes or the first principles of all. Ambrose had said that our first duty is to know the truth about God. Thomas paraphrases all this in 94.2 in his usual concise style, saying that “man has a natural

inclination"—that is to say, an inclination proper to his nature as a human being (not "natural" in the sense that everyone does it)—"to know the truth about God and to live in society."

Crafting his text in this way, Thomas was able to do what none of his predecessors had done. Although they had many of the pieces, they were not able to fit them together. Thomas did. In doing so, he showed himself to be the model of the wisdom he extolled at the beginning of the *Summa contra gentiles* of "those men being called 'wise' who order things rightly," directing them fittingly to their end, because the end of everything is its good." As Thomas understands, the ultimate good of all things is union with God, and because humans have reason and understanding, their ultimate end is the beatific vision, wherein they realize fully the knowledge and love of God within the communion of saints, an end that we participate in and prepare for in this life, to the extent we can, if, aided by grace, we say yes to the love of God and neighbor. That, in the final analysis, is what 94.2 is about.

The comments in 94.2 about *nature* are merely clarifications meant to help Thomas's readers avoid confusion. They help "clear the ground," as it were, for the real work that is still to come. As I suggested above, one thing this analysis shows is that Thomas never intended to generate an entire moral system out of the contents of 94.2. Rather, these comments are mostly propaedeutic. When readers get beyond the standard questions published as "The Treatise on Law" (qq. 90-97), they find that, according to Thomas, what is contained in the natural law is expressed most clearly by the moral precepts of the Old Law. In the moral precepts, God reveals what we could and should know by reason alone but so often do not because we are blinded by sin.<sup>58</sup> Then, even when we know the right thing to do, we often do not have the sufficient will to do it. Hence, we need the New Law, which is the gift of the Holy Spirit by which "charity is spread abroad in our hearts."<sup>59</sup> It is for this reason

<sup>58</sup> It would unnecessarily lengthen this article to go into further detail here. For those interested, see Smith, "What the Old Law Reveals about the Natural Law."

<sup>59</sup> See esp. *ST* I-II, q. 106, a. 1; q. 107, a. 1. See also Smith, "Natural Law and Grace."

that Thomas's discussion of *law* in questions 90 through 108 is followed by the discussion of *grace* in questions 109 through 114.<sup>60</sup>

But as with everything else in the *Prima secundae*, even this material is part of a discussion at the level of the general. As Thomas says in the prologue to question 6, the analysis in the *Prima secundae* is a consideration at the level of "general principles" (*in universali*), whereas the analysis in the *Secunda secundae* deals with "matters of detail" (*in particulari*).<sup>61</sup> So too, in the prologue to the first question of the *Secunda secundae*, Thomas repeats the distinction, saying, "After a general consideration of virtues, vices, and other things pertaining to moral matters"—which he supplied in the *Prima secundae*—"it is necessary to consider each of them in particular [*in speciali*]. For universal moral discourse is less useful, since actions are singulars [*sermone enim morales universales sunt minus utiles, eo quod actiones in particularibus sunt*]."

As the reader will notice, this article focuses a great deal of attention on one small passage in Thomas's *Summa*, as is customary among contemporary scholars and as is required by modern academic publishing. My hope is that the way I have discussed it will draw the reader's attention from the particular to the context of the whole. Even in the excellent treatments one finds in the article by Adam Seagrave, "Cicero, Aquinas and Contemporary Issues in Natural Law Theory" in the *Review of Metaphysics*, and the book-length treatment of the question in Charles Nemeth's *A Comparative Analysis of Cicero and Aquinas: Nature and the Natural Law*, both of which I have

<sup>60</sup> In the preface to *ST I-II*, q. 90, Thomas says that "the extrinsic principle moving to good is God, Who both instructs us by means of His Law, and assists us by His Grace: wherefore in the first place we must speak of law; in the second place, of grace." Hence, the questions "on law" continue all the way up to the questions on grace, which begin at *ST I-II*, q. 109. For the best treatment of the questions on grace, see Joseph Wawrykow, *God's Grace and Human Action: "Merit" in the Theology of Thomas Aquinas* (Notre Dame, Ind.: University of Notre Dame Press, 1995).

<sup>61</sup> I have quoted here, as I have done throughout, the standard translation by the Fathers of the English Dominican Province. I will leave aside whether "general principles" and "matters of detail" are the best translations of *in universali* and *in particulari*.

mentioned several times in the notes, there is a tendency, governed largely by the demands of contemporary scholarship, to focus solely on Thomas's treatment of "the natural law" as if it were a stand-alone entity that can be isolated from the broader context within the *Summa* and from the more proximate historical context of twelfth- and early thirteenth-century thought. Cicero's influence is important, as I have attempted to show above.<sup>62</sup> But as I have also tried to show, Cicero's ideas and those of other Roman jurists such as Gaius and Ulpian were mediated to the thirteenth century by centuries of Christian writers. Ambrose was one, but the influence of others, such as Isidore and the twelfth-century canonists, was even greater.

Another key influence, which I did not think appropriate to introduce in a discussion of 94.2 specifically, was the discussion of the Mosaic Law in book 3 of Maimonides's *Guide for the Perplexed*, a twelfth-century work that, though it was by a Jewish author, would have a profound effect on Christian thought in the thirteenth century, largely due to its being embraced by William of Auvergne (ca. 1180/90-1249, a prominent theologian at the University of Paris and bishop of Paris from 1228 until his death). Inspired by Maimonides's attempt to show that the commandments of the Mosaic Law could be defended as reasonable, William and others at Paris began to write long treatises on the Old Law defending its reasonability.<sup>63</sup> One of the longest of these was John de la Rochelle's treatise *de legibus*, which was incorporated into the *Summa fratris Alexandri* (or *Summa halensis*)—so named after the Franciscan master Alexander of Hales, even though parts of it were not written by him. It was from this section *de legibus* of the *Summa halensis*, for example, that Thomas adopted the

<sup>62</sup> I recommend again Nederman, *The Bonds of Humanity*.

<sup>63</sup> See, for example, Beryl Smalley, "William of Auvergne, John of La Rochelle and St. Thomas Aquinas on the Old Law," in *St. Thomas Aquinas 1274-1974: Commemorative Studies*, vol. 2 (Toronto: PIMS, 1974), 11-71; reprinted in Smalley, *Studies in Medieval Thought and Learning from Abelard to Wyclif* (London: Bloomsbury, 1981), 121-81.

terminology of “eternal law,” which became so crucial in the *Summa*.

Something else Thomas inherited from John de la Rochelle’s treatment of the law and from the intellectual tradition in and around Paris after William of Auvergne popularized the work of Maimonides was an interest in the Old Law. In Thomas’s *Summa*, as in other *summae* of the period, after a brief section of questions setting out some basic definitions and distinctions about the different kinds of “law,” we find a long section on the Old Law with some of the longest articles in the *Summa*, some of them running to 15 objections and responses. In this section of the *Summa* Thomas reveals—or perhaps it would be better to say that he lets the Scriptures reveal—the basic content of the natural law. In these questions, for example, we discover that the two “first and common precepts of the natural law” are love God and love your neighbor as yourself.<sup>64</sup>

Despite the relevance of this material, it is still the case that most treatments of Thomas’s discussion of the natural law never consider the material after question 97 of the *Prima secundae*. And we still find everywhere the claim that the “primary” precepts of the natural law are “do good and avoid evil.” The odd insistence on this notion, however, would be like saying that the primary precept of speculative reasoning is the principle of noncontradiction: that one cannot affirm and deny a proposition at the same time. While it is true that one cannot affirm and deny a proposition at the same time, it is not possible to derive any of the *content* of the speculative sciences from it. The principle merely says that affirmations in the speculative sciences will be either true or false. Analogously, in the practical sciences, affirmations will either be about the good—things to be pursued because they are in accord with human flourishing—or things to be avoided because they are contrary to our good. But this is scarcely helpful when it comes to the *content* of what we should or should not do.

As Thomas points out at the beginning of the *Prima secundae*, all people choose whatever they choose because they

<sup>64</sup> ST I-II, q. 100, a. 3, obj. 1 and ad 1.



think it is good—"under the notion of the good" (*sub rationi boni*). What we disagree about is what the good is. We make mistakes about what will bring human flourishing and *beatitudo*. As Thomas makes clear in questions 1-5, the only thing that can bring us true human flourishing—the only thing that can be our ultimate end — is union with God. Hence the importance of the commandment to "love God" above all else. But Thomas knows that Christ offered a second commandment "like the first": namely, to "love your neighbor as yourself." We embody this love, first, by obeying the basic precepts we find in the Ten Commandments, and then by developing the cardinal virtues of prudence, temperance, fortitude, and justice, all of which are only fully formed when animated by charity.

Although comparisons of Thomas's thought with Cicero's treatment of the natural law are valuable, they often miss other important elements in the moral thought of both men. For example, when we read Thomas's famous discussion in 94.2 against the backdrop of Cicero's hierarchy of natures in *De officiis*, and we see that Cicero moved quickly to a discussion of the four cardinal virtues; and when we realize that Thomas's discussion of the virtues borrowed heavily from Cicero's descriptions of them, especially (but not exclusively) in the later chapters of *De inventione*; and when we recognize that the question of what meaning of "nature" we should attach to human *natural* law was a burning issue among the twelfth- and early thirteenth-century canon lawyers like the Dominican Raymond of Peñafort, and that masters at the University of Paris like William of Auxerre and his students among the early Dominican masters were early adopters of this material which had earlier been of little interest to twelfth-century theologians—all this helps us to recognize that the discussion of the "inclinations" in 94.2, and indeed the entire, relatively brief discussion of the natural law in question 94, is largely propaedeutic, meant to clarify some potential confusions to help prepare the reader to understand how the *content* of the moral law is revealed by the moral precepts of the Old Law, and how the ability to live in accord with the wisdom God has

manifested by means of his law is made possible by the gifts of his grace.

Just as Cicero in *De officiis* moved quickly from his threefold hierarchy of nature to a discussion of the four cardinal virtues necessary for human flourishing, so too Thomas moves from his general discussion of the elements of the moral life in the *Prima secundae* to his more specific discussion in the *Secunda secundae* based on the three theological virtues, the four cardinal virtues, and the beatitudes and gifts of the Holy Spirit.<sup>65</sup> To fail to take into account all this material is to fail to understand Thomas's moral theology. Too often, this failure has resulted in readers' simply selecting a piece of that remarkable edifice—whether the “inclinations” in 94.2, or a passing comment about an act being “proportionate to the end” (in *ST* II-II, q. 64, a. 7), or Thomas's discussion of the cardinal virtues without consideration of his discussion of the moral precepts of the Old Law, grace, and the gifts of the Holy Spirit—and taking that one piece to create a moral system of their own and call it “Thomistic.” Reading Thomas in the context of his predecessors, seeking to understand how he has carefully integrated various voices within the tradition in the *Summa*, can help us avoid such errors.

<sup>65</sup> The late Fr. Servais Pinckaers, O.P., understood and emphasized the importance of this later material. See esp. his *The Sources of Christian Ethics*, trans. Mary Thomas Noble (Washington, D.C.: The Catholic University of America Press, 1995; original French 1985); and *Morality: The Catholic View*, preface by Alasdair MacIntyre, trans. Michael Sherwin (South Bend, Ind.: St. Augustine's Press, 2001; original French 1991). For a good overview of Pinckaers's contributions to contemporary moral theology, see Craig Steven Titus, “Servais Pinckaers and the Renewal of Catholic Moral Theology,” *Journal of Moral Theology* 1, no. 1 (2012): 43-68.