

*The Act of  
Social Justice*

**Rev. William Ferree, S.M., Ph.D.**



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An Analysis of the Thomistic Concept of Legal Justice, with special reference to the doctrine of Social Justice proposed by His Holiness Pope Pius XI in his Encyclicals *Quadragesimo Anno* and *Divini Redemptoris*, to determine the precise nature of the Act of this virtue.

IMPRIMI POTEST:

WALTER C. TREDTIN, S.M.

*Superior Provincialis*

NIHIL OBSTAT:

IGNATIUS SMITH, O.P., PH. D.

*Censor Deputatus*

IMPRIMATUR:

†MICHAEL J. CURLEY, S.T.D.

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## PREFACE

The traditional discussion of Social Justice, which is now generally recognized as identical with the Thomistic "General" or "Legal" Justice, has been limited very largely to the examination of the formal object of the virtue: the direct procuring of the common good. As to the material object, the treatment has been sketchy, since it appears to be rather idle to go into detail concerning a material object which embraces every act of virtue which can be referred to the common good. Most moralists and philosophers have therefore been content to let their whole treatise on the moral virtues stand *implicitly* as the development of their doctrine on the material object of the virtue of legal or social justice.

The same sketchiness has attended the discussion of the act of social justice. Beyond calling special attention to the acts of making and obeying laws, performing such public acts as voting, and having the intention of furthering the common good in one's acts of particular virtue, little analysis has been attempted.

In the face of the great and ever growing social disorder of the last century, the further analysis of both the material object and the act of social justice became an urgent necessity. The term "social justice" was invented by a sort of common consent since the older term "legal justice" had suffered almost total eclipse in the six centuries of mere repetition that had elapsed since St. Thomas Aquinas borrowed the term from Aristotle and built around it a coherent doctrine.

The many efforts, most of them very tentative, to define and further develop the concept of social justice attained what appears to be definitive success in the two Encyclicals of Pius XI, *Quadragesimo Anno* and *Divini Redemptoris*.

It is now possible to integrate the seven-hundred-years-old analysis of the Angelic Doctor with this modern development; a task to which philosophers are urged (in *Quadra-*

*gesimo Anno*) by the author himself of the modern development:

48. That justice called commutative commands sacred respect for the division of possessions and forbids invasion of others' rights through the exceeding of the limits of one's own property; but the duty of owners to use their property only in the right way does not come under this type of justice, but under other virtues, obligations of which cannot be enforced by legal action. . . .

49. Those, therefore, are doing a work that is truly salutary and worthy of all praise who, while preserving harmony among themselves, and preserving the integrity of the traditional teaching of the Church, seek to define the inner nature of these duties and their limits whereby either the right of property itself, or its use, that is the exercise of ownership, is circumscribed by the necessities of social living.(1)-

To this should be added the observations of the most famous of the commentators of the Encyclical *Quadragesimo Anno*, Oswald von Nell-Breuning, S.J.:

The Encyclical *Quadragesimo Anno* has finally and definitely established, theoretically canonized, so to speak, social justice. Now it is our duty thoroughly to study this concept, according to the strict requirements of scientific theology, and to give it its proper place in the structure of the Christian doctrine of virtue on the one hand, and in the doctrine of right and justice on the other. Much remains to be done in this respect in spite of valuable contributions already made.(2)

It is easy to miss the significance of these exhortations to further analysis and research. Most investigators who discover that the new word "social justice" simply names the long-neglected Thomistic "legal justice," have been content to investigate carefully the Thomistic texts themselves for the development of the complete doctrine. One of the best

studies of this nature is that of Hyacinthus M. Hering in the *Angelicum*.<sup>(s)</sup>

But to follow this course is to disregard an important indication of the *status quaestionis* left by St. Thomas himself. When he wanted to leave a question open for further analysis and research, he rather consistently indicated this by proposing his own as yet incomplete doctrine in a sort of figurative way, making liberal use of the particles *quasi* and *tamquam*, and of the indefinite adjectives, and employing synonymous expressions to illustrate different aspects of the question he was not yet prepared to settle. A celebrated example of this is the *Vis cogitative*. "which is said by some" to be particular reason (4) and proceeds per "*quamdam*" *collationem* (5) "*quasi*" *sylogistice inquirendo praeteritorum memoriam* (5) per "*aliquant*" *affinitatem et propinquitatem ad rationem universalem, secundum "quamdam" refluentiam*.<sup>^</sup>

This studious choice of figurative language is perhaps nowhere employed more consistently by St. Thomas than in those places where he must touch on the act of legal justice: *Est in principe principaliter et "quasi architectonice"; in subditis autem secundaria et "quasi administrative."* (7) *In principe quidem est "sicut" virtus architectonica, "quasi imperans et praecipiens" quod, justum est; in subditis autem est "tamquam" virtus "executiva et ministrans"* Such expressions are a standing invitation to further research; and where St. Thomas uses them consistently, such research will have to be undertaken *outside* the letter of his text.

Other investigators do indeed go beyond the letter of the text, but only to set up intermediate objectives by which the common good is to be attained. One of the most representative examples of this procedure is Merkelbach's treatment of the "*Objectum materiale justitiae legalis magis speciatim spectatum in necessitatibus hodiernis.*" Following the Encyclical *Rerum Novarum* he lists the following objectives: "*morum probitas,— recte atque ordine constitutae familiae,— custodia religionis— ac justitiae,— onerum publicorum cum moderata irrogatio turn aequa partitio,— incrementa artium*

*et mercaturae — florens agrorum cultura*"<sup>w</sup> Such subjects are really a more detailed consideration rather of the formal object than of the material; for they are ends of action—intermediate, it is true, but still in the same final relation to the actions as "the common good" itself, which is their ultimate end. From the development of such intermediate ends we learn nothing new concerning "the inner nature of these duties and their limits" (1) which is the real task pointed out to philosophers by the Holy Father.

Even when this need for a new development has been discovered and explicitly pointed out, it is still possible for a serious student of social justice to leave the real problem untouched. Thus, in a sort of epilogue to his very good historical study of the meaning of the term "social justice," Dr. Leo W. Shields takes care to point out where the real problem lies:

We have seen that the notion that social justice is an extremely ambiguous term is founded on the fact, not that it is used with too many different meanings, but that it is commonly and primarily used to mean something that is not very well understood. The remedy for this condition is a wider and sounder understanding of the *precise nature* of the end, *obligations, and acts* of the general justice with which social justice must be identified.<sup>(10)</sup> (Italics added)

At the very end of his study, Dr. Shields has occasion to set forth briefly his own idea of what should be the *precise nature of the obligations and acts* which he had indicated thus as the most important question of study. Evidently no great development could be expected in what is after all only an epilogue to his real object of research (the history of the term); yet it is certainly legitimate to call attention to his answer as an example of how even those who correctly state the problem can fail to treat it:

How is it (social justice) to be revealed in practice? In a democracy every voter, far more every influential person, has to have social justice *prin*

*cipally*, as a ruler. In fact, this is largely impracticable, because not every voter has the political prudence required of a ruler. But he can dispose himself by ridding himself of the private vices of greed, cowardice, and hatred which hinder the operation of a general virtue. He can try to vote conscientiously without regard to rancour or private interest. And each member of the community can develop social justice *participatively* by obeying the laws, acting justly in private matters, and referring all his social actions to the moral well-being of the society.(11)

What we are here offered, then, is eradication of private vice, conscientious voting, obedience to laws, particular justice and a good intention regarding the common good;—hardly that “wider and sounder understanding of the precise nature” of the obligations and acts of social justice for which Dr. Shields himself asks with such abundant reason. The answer of course, is correct as far as it goes, but it does not go at all beyond the traditional development.

Is it possible to go farther in analysis of the act itself of social justice; to point out the exact characteristics by which it can be distinguished from acts which are not of social justice? Can we express in literal terms of social realities what St. Thomas analyzed as a “*virtus architectonica*,” without further specification of its characteristics?

It is the purpose of this dissertation to set forth an analysis of social justice in the light of modern advances in the study and control of social forces, and above all in the light of the truly remarkable advance in social analysis set forth in the two great social Encyclicals of Pius XI. At the same time, care will be taken to integrate this analysis with the surprisingly complete one which can be pieced together from various phases of the teaching of St. Thomas Aquinas. I say surprisingly complete, because St. Thomas was dealing with a relatively simple and stable social structure which has little in common either with the extremely complex structure of

modern society, or with the great social forces that in our day work such bewildering and violent changes in the lives of nations and of continents.

For the sake of order it has seemed good to aim at an understanding of the act of social justice according to the four causes: Material, formal, efficient and final; though of course these terms are used analogically at two removes from their proper signification in regard to substances; for an *act* of virtue as such is accidental being, and the fact that it is a *social* act is a further accidental determination. It is with this "accident of an accident" that we are properly concerned, and into whose four "causes" we wish to inquire. The considerations already brought forth in this preface will suffice to indicate both the necessity and the timeliness of such a study, here attempted, I believe, for the first time.

The investigation will involve the following objectives: 1) To free the notion of legal justice from certain confusions arising from the erroneous assumption that the notion is identical in Aristotle and St. Thomas; 2) To show how lacking in foundation is the commonly accepted theory that St. Thomas excluded the possibility of an immediate and proper act of legal justice, and to show, in fact, what this act really is; 3) To vindicate the "social justice" of Pius XI (increasingly and correctly being recognized as a renaming of legal justice) as an exact and rigorously scientific term based on the heretofore unrecognized immediate and proper act of the older "legal justice"; 4) To inquire into the theory of society that apparently underlies this great advance in the theory of "legal justice": Society is revealed as real being in the accidental order, to be defined as an operation and not as a "thing"; and 5) to assay provisionally some of the implications and consequences of Pius XI's work which in so many ways is a radical advance over previous theories.

The writer takes this opportunity to acknowledge his indebtedness to the School of Philosophy of the Catholic University of America, especially to those of its Professors who by their teaching and guidance are endeavoring to "regain

the initiative”—lost now for centuries—of Christian thought in social matters, responding thus to the almost desperate appeals of one whom later ages will recognize as one of the most clear-visioned social thinkers of our times, or of any time:

145. To ward off such great evils from human society, nothing, therefore, is to be left untried; to this end may all our labors turn, to this all our energies, to this our fervent and unremitting prayers to God! For with the assistance of Divine Grace the fate of the human family rests in our hands.

146. Venerable Brethren and Beloved Sons, let us not permit the children of the world to appear wiser in their generation than we who by the Divine Goodness are the children of the light. . . (12)

And again, with even greater urgency:

62. . . . But for the solution of the present problem, all this effort is still inadequate. When the country is in danger, everything not strictly necessary, every thing not bearing directly on the urgent matter of unified defense, takes second place. Every other enterprise, however attractive and helpful, must yield before the vital need of protecting the very foundation of the Faith and Christian Civilization.(13)

For the inspiration of their example and the guidance of their instruction in social matters, a special mention is due to the Rev. Dr. Ignatius Smith, O.P., under whose direction this research was carried out, and also to the Right Rev. Drs. Donald A. McLean and Fulton J. Sheen, and the Rev. Drs. Joseph R. Slavin and William McDonald.

Special gratitude is likewise due to the Religious Superiors who made this research possible by their disposition of the time and the means necessary to carry it to a conclusion.

✦Pius XI: *Quadragesimo Anno*. In quotations from this Encyclical and the *Divini Redemptoris*, the number of the paragraph will always precede the citation, as above. The translation of *Quadragesimo Anno* is

one made at The Catholic University of America to permit a more scientific study than is possible with the press edition now current.

② Oswald Von Nell-Breuning; *Reorganization of Social Economy*, Milwaukee, Bruce, 1936; p. 5.

Ⓕ *Angelicum*, Vol. XTV (1937), pp. 464—488: "De Genuina Notione Justitiae Generalis seu Legalis Iuxta S. Thomam."

Ⓖ *Summa Theologica* 1:81:3,c. All future references to the *Summa* of St. Thomas Aquinas will be indicated simply by the numerical reference, which is sufficiently characteristic in its form to make constant repetition of author and title needless.

Ⓖ1:78:4,c.

Ⓖ1:78:4,5m.

Ⓕ2-2:58:6,c.

Ⓖ2-2:60:1,4m.

Ⓖ Benedictus Henricus Merkelbach, O.P.: *Summa Theologiae Moralis* (ed. 3a), 3 Vol.; Paris, Desclee de Brouwer, 1938; Vol. II, pp. 268-9.

Ⓖ Shields, Leo W.: *The History and Meaning of Social Justice*; Notre Dame, 1941; p. 62

Ⓖ Op. cit. p. 72.

Ⓖ *Quadragesimo Anno*, par. 145, 146.

Ⓖ *Divini Redemptoris*

It had originally been planned to bring out a second edition of this work with a considerable revision towards a more popular treatment; but a continuing demand for it long after the first edition was exhausted has prompted this second printing which is identical with that of 1943. In its original form it constituted Volume 72 of the *Philosophical Studies* of the Catholic University of America.

## CHAPTER I

### ST. THOMAS' ANALYSIS OF LEGAL JUSTICE

#### *Argument*

To Aristotle's concept of a "legal justice" which was simply another name for the whole of virtue considered in its relation to law, and hence to the political community, St. Thomas added a completely new concept of a "*determinata virtus habens speciem ex hoc quod intendit bonum commune.*" Aristotle's meaning occupies a secondary place in St. Thomas' theory, insofar as any act of virtue, directed by the special virtue to the common good, can also be called "legal justice." To apply Aristotle's remarks to St. Thomas' theory is to invite misunderstanding and confusion.

## CHAPTER I — ST. THOMAS' ANALYSIS OF LEGAL JUSTICE

### THE DOCTRINE OF ARISTOTLE

It seems probable that we are indebted to Aristotle for the term "legal justice," as the expression seems to occur first in his *Nicomachean Ethics*.(11) Except with a certain benignity of interpretation, however, it would be impossible to maintain that the doctrine of legal justice was developed by Aristotle; rather it seems to be the work of St. Thomas himself.

Aristotle begins his considerations of the Fifth Book of the *Ethics* with a distinction between the various senses of "justice." He points out rightly that there is a sense in which "justice" is "not a part of virtue, but virtue entire" (15 — and then goes on to say: "But at all events, what we are investigating is the justice which is a part of virtue; for there is a justice of this kind, as we maintain. Similarly, it is with injustice in the particular sense that we are concerned."

A passing reference to this justice which is synonymous with rectitude still prefaces almost unfailingly all formal treatises on the Virtue of Justice; and it is still handled as Aristotle handled it — only to get it out of the way so as to get on to the real business in hand; namely, that justice "which is a part of virtue" or "specific justice."

Since Aristotle states *ex professo* (16) that he is investigating only specific justice and injustice ("that which is a part of virtue"), we may well expect a certain lack of detail and definition in his passing treatment of the justice which is "virtue entire", and to which he gives the name "legal justice." A careful scrutiny of the text, as a matter of fact, will reveal no trace of a legal justice with its own specific object, and therefore *specifically different* from every other virtue. Yet this is the most important part of the doctrine of legal justice as it is set forth by St. Thomas Aquinas, and it is the

part which is of supreme interest at the present time, when the question of "social justice" has become a universal and urgent preoccupation of thinking men. Before going on to show how St. Thomas completed Aristotle's teaching, it may be useful to give a short summary of the latter. To avoid misunderstanding, however, it will be good to integrate with this teaching the doctrine of "metaphorical justice" which Aristotle gives at the very end of his long chapter on justice. Ordinarily it is this "metaphorical justice" which is identified with the idea of "rectitude" or "virtue entire", but Aristotle himself does not make the identification expressly, and as a matter of fact, separates the two ideas by the whole length of his treatise on justice; that justice which is the whole of virtue being treated in Chapter One of Book Five, and metaphorical justice occupying the last paragraph of Chapter Eleven. It is obvious, however, that metaphorical justice must also involve somehow the whole of virtue.

Thus there are three different formal aspects under which the whole of virtue is considered: 1) as legal justice; 2) as simply the whole of virtue; and 3) as metaphorical justice. Aristotle explained the three different formalities as follows:

1. This form of justice (i.e. legal justice), then, is complete virtue, but not absolutely, but in *relation to our neighbor*. (17)

2. What the difference is between virtue, and justice in this sense, is plain from what we have said; they are the same, but their essence is not the same; what, as a relation to one's neighbor, is justice, is, *as a certain kind of state without qualification*, virtue. (18\* (Ross' translation is not a happy one at this point; see the Latin translation below, since it was on this that St. Thomas elaborated his own theory.)

3. Metaphorically and in virtue of a certain resemblance there is justice, not indeed between man and himself, but *between certain parts of him*; yet not every kind of justice, but that of master and servant, or that of husband and wife. For these are the

ratios in which the part of the soul that has a rational principle stands to the irrational part.(19)

What is the distinction between these three aspects of the whole of virtue? Evidently they are separated by a logical distinction only: that same thing which is the whole of virtue, considered simply as a habit; is legal justice when considered in relation to another, and metaphorical justice when considered in the ordering and subordination of powers within the one possessing it.

Furthermore, it is fairly easy to pass from one to the other losing sight even of the logical distinction. Thus Aristotle links his investigation of legal justice with the problem of whether "the good citizen" and "the good man" are synonymous;(20) and states that it is "complete virtue in the fullest sense because it is the actual exercise of complete virtue." <21) This would seem to indicate the state itself of "the good man" as legal justice. But it is precisely this *state* which is metaphorical justice. Again, St. Thomas speaks of metaphorical justice in the following terms:

.. It names rather (than a virtue) a certain proper state according to which man is disposed in due order, to God, to his neighbor, and to himself, that is, that in him the lower powers are subordinated to the higher.(22)

But the "disposing of man in due order towards his neighbor" is the attribution of legal justice, not of metaphorical justice.

This lack of definition in Aristotle's concept of legal justice makes the first two chapters of Book five of the *Ethics* very hard reading indeed. It is at least doubtful whether from the text of Aristotle as it stands an objective interpretation can arrive at a notion of a legal justice which is not only identical with the whole of virtue, but is also "a determined virtue having its specific nature." (23)

This lack of precision in Aristotle might be expected to have its effect on the study of legal justice in subsequent ages, and even after (as we shall see in a moment) St. Thomas

had completed Aristotle's treatment. If indeed, legal justice becomes confused either with the complexus of all virtues taken simply as habits, or with metaphorical justice, then there is no reason for giving it any more attention than Aristotle himself did; and he brought it up only in order to make it clear, as we have seen (page 10), that that sort of justice was *not* what he intended to talk about.

Lessius reports a continuing controversy on the point after the development by St. Thomas:

But the whole difficulty is, what this justice may be, what its duty may be, and how it may be distinguished from others; for St. Thomas (2-2:58:5) and Soto (*De Justitia*, Book 3, q. 2, a. 3) think it to be a certain particular virtue (*virtutem particularem*) distinct from all others, which procures the common good. On the other hand Andreas Vega (Book 5 in *Cone. Trident*, c. 4) and many others (*multi alii*) think it to be the complexus of all virtues.(24)

Lessius himself agrees that Aristotle meant no more than the latter opinion, and that any attempt to discover a *special* virtue of legal justice in his text could lead only to the virtue of obedience:

If, however, there is question of the meaning of Aristotle, it seems that legal justice in the subject is nothing more than the complexus of all virtues, insofar as it obeys the law; in the superior it is the same complexus of virtues insofar as it is watchful to have the laws observed.(-3) If some particular virtue is to be called legal justice (in the sense of Aristotle), the name best seems to fit the virtue of obedience.(26)

Thus we need not be too surprised if a certain vagueness and misunderstanding has plagued the notion of legal justice down to our own day — it was not clear from the beginning.

Aristotle also uses the term "that which is just legally" (translated "*justum legale*" in the *Versio Antiqua* and in St. Thomas' Commentary).(27) Both this term and the judg

ment. of a court of law ("vindicta") ~~28~~ are translated by Ross as "legal justice" also, thus giving a fair indication of the precision which the term would appear to have even to one who had studied the text closely.

St. Thomas however is careful to point out that Aristotle's "*justum legale*" is synonymous with "*jus positivum*", (29) as is evident from Aristotle's description of it: "That which is originally indifferent, but when it has been laid down is not indifferent," \*30\* and from the fact that it is divided against "*justum naturale*" or the object of natural law. This "*justum legale*" has three divisions: the objects of positive law, the objects of particular decrees, and the objects of sentences by judges. (31)

Now the very fact that Aristotle used this term "*justum legale*" in such a sense is further evidence that his doctrine of "*justitia legalis*" was undeveloped. The terms should obviously be correlative, with *justum legale* indicating the object of *justitia legalis*. As a matter of fact, St. Thomas inserts the term *justum legale* into his commentary in precisely this sense, calling it "the object of legal justice." (32) This later leads to a certain embarrassment when he comes to comment on Aristotle's much more limited *justum legale*. Note how' the italicized reduplications in the following passage betray a struggle between a desire to be faithful to Aristotle's terminology, and a desire to remove its almost unavoidable confusion:

Est autem hic considerandum, quod *justum legale sive positivum* oritur semper a naturali. Dupliciter tamen potest oriri a jure naturali. Uno modo sicut conclusio ex principiis; et sic *jus positivum vel legale* non potest oriri a jure naturali: praemissis enim existentibus, necesse est conclusionem esse; sed cum *justum naturale* sit semper et ubique, ut dictum est, hoc non competit *justo legali vel positivo*. Et ideo necesse est quod quicquid ex *justo naturale* sequitur, quasi conclusio, sit *justum naturale*; sicut ex hoc quod est, nulli est injuste nocendum, sequi-

tur non esse furandum; quod quidem ad naturale pertinet. Alio modo oritur aliquid ex justo naturali per modum determinationis; et sic omnia *justa positiva vel legalia* ex justo naturali oriuntur. Sicut furem esse puniendum est justum naturale; sed quod sit etiam puniendus tali vel tali poena, hoc est *legale positivum*.<sup>(S)</sup>

To return for a moment to the *justum legale* which is the correlative of *justitia legalis*, Aristotle offers an alternate meaning which is frequently given to the modern term "social justice"; namely, the social equivalent of metaphorical justice: that *state* of a society by which it is called good through the proper ordering of its parts. As Ross' translation here is not particularly helpful, we will have recourse to the *Verisio Antiqua* and St. Thomas' Commentary:

Quare secundum unum quidem modum *justa* dicimus *factiva* et *conservativa* felicitatis et particularum ipsius politica communicatione." (34)—Wherefore indeed in one sense we call those things just which are productive or conservative of happiness and its components in the political intercourse.

St. Thomas undertakes a certain enumeration of these *factiva felicitatis*: "principally the virtues, and instrumentally such things as riches, and other exterior goods of like sort." (35) These things can be called *justa legalia* because the social intercourse founded on them will exemplify legal justice.

It is to be noted, moreover, that though Aristotle treats in some detail of *epicheia*,<sup>(36)</sup> he does not correlate it with legal justice, but only with what St. Thomas calls "*justitia communiter dicta*,"<sup>(37)</sup> a generic concept embracing all species of justice. It should be noted also that St. Thomas, apparently in deference to usage built up on Aristotle's *justum legale* in the sense of *jus positivum*, admits a secondary meaning of legal justice, which consists simply in obedience to human law/<sup>87\*</sup> in addition to the proper meaning with which we are concerned.

And finally, for Aristotle it does not appear that every man can practice legal justice. For him, legal justice embraced both "all the acts of virtue commanded by law" (38) and "all the things with which the good man is concerned"; (39) or, to put it more briefly, all the acts of a *good citizen* and of a *good man*. Now, in his pagan conception of the value of the human person, some men were naturally unfit to be citizens or to practice virtue.

In the ruler the good citizen and the good man are identified:

But will there be no case in which the virtue of the good citizen and the virtue of the good man coincide?

To which we answer that the good *ruler* is a good and a wise man.(40)

In states which are rightly constituted; that is, where the virtuous take turns in ruling and being ruled, and where tourists, resident aliens, mechanics, laborers, and slaves are kept in their proper place, the citizens also can share the proud distinction of uniting in themselves the virtues of the good citizen and the good man:

In states where the virtue of a good man is the same as the virtue of the good citizen . . . it is not every citizen who is a good man, but only the statesman and those who have or may have, alone or in conjunction with others, the conduct of public affairs.(41)

States otherwise constituted would by that fact be defective; whence it would seem reasonable to conclude that both they and their citizens would fall short of full legal justice:

In ancient times, and among some nations, the artisan class were slaves or foreigners, and therefore the majority of them are so now. The best form of state will not admit them to citizenship; but if they are admitted, then our definition of the virtue of a citizen will not apply to every citizen, nor to every free man as such, but only to those who are freed from necessary services. The necessary people are either slaves, who minister to the wants of individ-

uals, or mechanics and laborers, who are the servants of the community/4.'

In fact, Aristotle is harder on laborers and mechanics than he is on slaves when it comes to their inability to practise virtue:

The mechanic and the laborer. . . will not be citizens in aristocracy or the so-called government of the best (if there be such a one), in which honors are given according to virtue and merit; for no man can practice virtue who is living the life of a mechanic or a laborer/43\*

A slave is useful for the wants of life, and therefore he will obviously require only so much virtue as will prevent him from failing in his duty through cowardice or lack of self control. Some will ask whether, if what we are saying is true, virtue will not be required also in the artisans, for they often fail in their work through lack of self-control? But is there not a great difference in the two cases? For the slave shares in his master's life (i.e. the *master* is the source of a certain excellence in the slave); the artisan is less closely connected with him, and only attains excellence in proportion as he becomes a slave. The meaner sort of mechanic has a special and separate slavery. (44)

It is good to insist on these aspects of Aristotle's teaching to bring home to ourselves the tremendous distance that must be traversed — and it is much more than a mere question of centuries — from such a conception of human society, to that which is set forth in *Quadragesimo Anno*, where a very large share of the work for the common good, and hence of legal justice, is entrusted precisely to these classes which the world of Aristotle outlawed even from the "practice of virtue."

We are now in a position to make a sort of diagram of Aristotle's teaching. Evidently, where so many points are open to interpretation, it would be presumptuous to pretend

*Fig. I* Outline of Aristotle's teaching in the *Nicomachean Ethics*. Legal Justice is not a special virtue but is another name for all virtue in its reference *ad alium*.

that such a diagram is definitive and complete. It will nevertheless have a certain utility in showing the general outline of Aristotle's thought, and in serving as a ready basis of comparison with subsequent developments by St. Thomas and by Pope Pius XI.

#### THE TRANSITION TO THE DOCTRINE OF ST. THOMAS:

Since it is evident even to a casual observer that St. Thomas' conception of legal justice is much more precise and clear-cut than that which we have just been examining, we may expect to find in his *Commentary* on Aristotle's *Nicomachean Ethics*, and in the development he later gave to his doctrine in the *Summa Theologica* an interesting example of his method of "constructive commentary" whereby he kept very close to the text of "The Philosopher," and yet managed to find or to make opportunities to perfect or complete the earlier doctrine.

Nor will we be disappointed, for we are here confronted with as interesting an example of such constructive commenting as is to be found anywhere in his work. Almost every aspect of Aristotle's teaching receives a certain transformation, yet the whole is done so unobtrusively that one must really be looking for the changes to find them.

Aristotle, for instance, speaks consistently of legal justice as "the whole of virtue" or "complete virtue", having in mind the complexus of all virtues as we have already seen:

Aristotle:

Ipsa quidem igitur justitia  
virtus quidem est perfecta,  
sed non simpliciter, sed ad  
alterum.(4#)

St. Thomas:

Dicit ergo primo, quod ipsa  
justitia est *quaedam* virtus  
perfecta non simpliciter, sed  
in comparatione ad alterum.(50)

The insertion of the single particle *quaedam* in the *Commentary* turns the meaning from "complete virtue" to "a certain complete virtue" thus preparing the way for St. Thomas' great contribution to the theory: namely, a *specific*

virtue of legal justice in addition to the general virtue of Aristotle.

Nor does it take him long to follow up this lead. A few lines further on Aristotle asks how legal justice differs from virtue itself. He answers, of course, that there is only a logical distinction. The very same thing which is justice when considered in relation to another, is virtue without qualification when considered simply as a habit:

Aristotle:

Quid autem differt virtus et justitia hoc manifestum ex his, quae dicta sunt. Est quidem eadem esse subjecto, ratione autem non idem. Sed secundum quod ad alterum quidem, justitia; secundum autem quod tabs habitus, simpliciter virtus.(51)

St. Thomas:

Manifestat quoddam quod potest esse dubium circa praemissa. Et dicit quod ex dictis manifestum est, in quo differunt virtus et justitia legalis. Quia secundum substantiam est eadem, sed secundum rationem non est idem; sed per comparisonem ad alterum dicitur justitia; in quantum autem est habitus operativus talis boni, est simpliciter, virtus.(52)

So far, St. Thomas could hardly follow the text more literally and still call it a commentary; but whereas Aristotle's text ends here, St. Thomas goes quietly on as if still commenting:

Hoc autem intelligendum est quantum ad ipsum actum justitiae et virtutis. Actus enim idem subjecto producit a justitia legali et a virtute simpliciter dicta, puta non moechari; tamen secundum aliam et aliam rationem. Verum, quia ubi est specialis *ratio* objecti etiam in materia generali, oportet esse specialem habitum, inde est, quod ipsa *justitia legalis est determinata virtus* habens speciem ex hoc quod *intendit ad bonum commune*.153

But this is a doctrine which is simply not found in Aristotle. And more than that, it is, as we have already noted, the most important part of the whole doctrine! Whether St. Thomas had come across it in some other source, or whether it is the fruit of his own profound analysis when he perceived a certain vagueness in the Aristotelian text is a question which I am not at present prepared to decide. What is most interesting is the method by which he hands over this personal addition to "the Philosopher" as if it belonged to the latter. The illusion is created with the equivocal use of the word *ratio*. Aristotle's use of it is clearly "substantially the same but *logically* different" as St. Thomas points out in his "*secundum rationem*" of the parallel passage. In the supplementary passage, St. Thomas uses the word twice: the first use (*secundum aliam et aliam rationem*) is non-committal in itself, but in the context probably still means "only logically" though out of this particular context it could equally mean "specifically" different. The next use, (*specialis ratio objecti*) however, can only mean "specifically," and he immediately proceeds to point out then from Aristotle's own principle announced shortly before,<sup>(54)</sup> that if there is a specific object, then there must also be a specific and determinate habit or virtue. The casual reader could hardly escape the impression that the whole doctrine is actually contained in Aristotle's text, and he would not be set right by the words which immediately follow:

Postquam *Philosophus ostendit* (!) qualis sit justitia legalis, quae est communis [What Aristotle actually said was "tota" (55)] virtus; hic ostendit quod praeter earn est quaedam particularis justitia.. 36

To send out one's own contributions to knowledge in a way so completely integrated with former teachings as to hide the very fact that they are new contributions, is admirable scientific detachment indeed, and is moreover a pow

erful instrument for moulding a constructive continuity of human thought; yet it is not without its disadvantages, not the least of them being that the earlier incomplete teaching is kept so much in honor that it is still studied in itself without the subsequent developments, and its very incompleteness is thus perpetuated. Some such influence is almost certainly at work in the centuries of neglect which the doctrine of legal justice has encountered at the hands of philosophers and moralists; for if Aristotle's conception of it is once accepted, then it really deserves no more attention than he himself gave it.

What we have seen so far is a fundamental addition to Aristotle's doctrine; but there are many other points where St. Thomas has strengthened Aristotle's teaching without altering it. Usually this is done by shifting emphasis from one aspect to another which actually occurs in the earlier text though it occupies there a subordinate position. An example is furnished in the second-last passage quoted above where St. Thomas characterizes legal justice by the fact that it is directed to the *common good*.<sup>(53)</sup> Aristotle's ordinary characterization of it is that it be *towards another*, which is the generic note of all justice <sup>(57)</sup> and hence the proper designation of Aristotle's concept of legal justice which was not a specific virtue, but the whole of virtue. Ordinarily, of course, St. Thomas, faithful to his role as commentator, sticks to Aristotle's generic designation,<sup>(58)</sup> but he is careful to insert at strategic points a greater emphasis on the common good:

Ad alterum enim et in communicatione jam princeps. Propter hoc autem ipsum, et alienum bonum videtur esse justitia sola virtutum quoniam ad alterum est.<sup>(59)</sup>

Ille enim qui est princeps jam se habet in communicatione ad alterum, quia ad eum pertinet disponere *ea quae ordinantur ad bonum commune*. Et ex hoc habetur quod perfectio virtutis ostenditur ex hoc, quod unus se habet ad alterum.<sup>(60)</sup>

Notice that in the second sentence St. Thomas carefully in-

dicates genus and species; pointing out that it is specifically from the ordering to the common good that *this kind* of "ad alteram" (the generic mark of justice) can be called *virtus perfecta*. Aristotle had no need to insist on this since his legal justice was precisely the whole of virtue, (*tota virtus, virtus perfecta*) and the generic designation was sufficient. Again:

Quare manifestum, quod justitia praeter totam, alia in parte. Univoca autem, quoniam definitio in eodem genere. Ambae enim in eo quod ad alteram habent potentiam.(61)

Dicit ergo primo, quod justitia particularis est univoca, id est conveniens in nomine cum legali. Et hoc quidem quia conveniunt in definitione secundum idem genus, in quantum utraque est in eo quod est ad alteram: licet justitia legalis attendatur in ordine ad aliquid quod est bonum commune, justitia autem particularis ordinatur ad alteram quod pertinet ad aliquam personam privatam. (62)

Note here once more that for Aristotle the *difference* between the two justices is that one is part of the other. This idea runs consistently through his discussion.(63) Even when, as in the passage immediately following the one quoted, Aristotle attempts a more detailed explanation of the difference, he remains in this field of *extension* (part to whole):

sed haec quidem circa honorem, vel pecunias, vel salutem vel si quodam habeamus uno nomine comprehendere haec omnia: vel propter delectationem, quae a lucro. Haec autem circa omnia circa quaecumque studiosus.(64)

Closely connected with this "difference of part and whole" is the fact that for Aristotle legal justice *contains* the other virtues, while for St. Thomas it *directs* them, by a sort of dominion, towards its own specific end, the common good. "Each virtue, according as it is directed by the above virtue (special in essence but general in its sway) towards the com

mon good, may be called legal justice." (66)

Incidentally, the immediate continuation of this text makes it quite clear that St. Thomas knew exactly what he was doing; i.e. that he was developing the doctrine of legal justice far beyond anything contained explicitly in the text of Aristotle: "In this sense legal justice is the same in essence with all virtue, but is logically distinct; *and it is in this sense that The Philosopher speaks.*" (66)

To go on with other points of development, it should be noted that Aristotle's concept of legal justice is rigidly dependant on law;(66) so much so that, as we have seen(26) Lessius suggests that if any specific virtue is to be looked for in his concept, it will have to be the virtue of obedience.

Secundum quidem igitur totam virtutem ordinata justitia et injustitia; haec quidem totius virtutis existens usus ad alium, haec autem malitiae; dimittantur. Et justum, et injustum secundum has enim manifestum quomodo determinandum. Fere enim multa legalium tota virtute praecepta sunt. Secundum unamquamque enim virtutem praecipit vivere, et secundum unamquamque malitiam prohibet lex.(67)

Et dicit quod dimittenda est ad praesens justitia legalis quae ordinatur secundum totam virtutem, in quantum ad eam pertinet usus totius virtutis ad alium. Et similiter dimittenda est injustitia ei opposita, in quantum ad eam pertinet usus totius malitiae. Manifestum est enim quomodo debeat determinari id quod dicitur justum vel injustum, secundum hujusmodi justitiam vel injustitiam, quia ea sunt quae determinantur lege. Major enim pars legalium praeceptorum praecipuntur secundum quod conveniunt toti virtuti, in quantum scilicet lex praecipit vivere secundum quamcumque virtutem, et prohibet vivere secundum quamcumque malitiam. Sunt vero quaedam lege determinata quae non pertinent directe ad usus alicujus virtutis, sed

ad aliquam dispositionem exteriorum bonorum.(68)

It would appear from this text of the *Commentary* that St. Thomas accepts Aristotle's rigid dependent correlation with law, yet there are other passages where it appears that for St. Thomas legal justice is rather *analogous* to law (positive human law, of course) than dependent on it. Thus in the *Summa Theologica*, after explaining how every act of virtue whatever can somehow be directed towards the common good, he makes the following comment:

And *because* it is the function of law to ordain matters towards the common good, *therefore it is* that such justice which is general in the sense just stated (i.e. which can direct any act of virtue whatever towards the common good) is called legal justice; namely, because by it man is made conformable with law which orders the acts of all virtues to the common good.169

This would seem to indicate a conception in which legal justice, as a virtuous *habit* has the same function in regard to all other virtues that law has as a *public ordinance*; from which identity in function (the direction of all virtues) and in object (the common good) the analogical designation "legal" applies appropriately to both.

However, it cannot be maintained that the difference between St. Thomas and Aristotle on this point is a clear-cut one. There are times when St. Thomas seems to make legal justice as rigidly dependent on law—"political" law — as did Aristotle. An example of this is supplied in the discussion of the place of *epicheia* in relation to legal justice:

It must be maintained that *epicheia* corresponds properly to legal justice, in one sense being contained under it, and in another sense going beyond it. For if that is called legal justice which obeys the law, whether it be according to the words of the law, or according to the intention of the legislator, which is higher, then *epicheia* is the more excellent part

of legal justice. If, however, that only is called legal justice which obeys (obtemperat) the law according to the words of the law, then epicheia is not a part of legal justice, but is a part of justice generally speaking (communiter dictae), divided against legal justice as going beyond it.(70)

In both cases legal justice in this passage would be a virtue "which obeys the law" (quae obtemperat legi), and in both cases also, since it is either "the words of the law" or "the intention of the legislator" that is obeyed, the law referred to is positive law. The body of the article in question confirms this impression, which might otherwise be considered intentionally incomplete, since it is contained in what is after all only a limited reply to a direct objection:

Epicheia ergo est pars justitiae communiter dictae, tamquam justitia quaedam existens, ut Philosophus dicit. Unde patet quod epicheia est pars subjectiva justitiae; et de ea justitia dicitur per prius quam de legali; nam legalis justitia dirigitur secundum epicheiam.(71)

Here once more *legalis justitia* would seem to be directly concerned only with positive laws. In other texts it is clear that this positive law with which legal justice is concerned is both human and divine:

Bonum autem sub ratione debiti pertinet proprie ad justitiam: ad legalem quidem si debitum accipitur in ordine ad legem divinam vel humanam; ad specialem autem justitiam, secundum quod debitum consideratur in ordine ad proximum.(72)

Thus, although St. Thomas offers the very interesting and fruitful suggestion as we have seen(69) that legal justice may be rather analogous to law than rigidly dependent on it, he does not follow up this suggestion; and seems in the majority of passages to accept Aristotle's more limited view, that legal justice is the virtue that obeys positive law. This point is particularly interesting because, as we shall see later,

it is in regard to it that the greatest modern advances in the theory have been made.

There remain a few matters of detail to complete the comparison of St. Thomas' doctrine of legal justice with that of Aristotle. It will have been noted above (70) (71) that St. Thomas integrates the doctrine of *epicheia* with that of legal justice, whereas Aristotle said simply that *epicheia* "was it self just and was better than one kind of justice," (73) without further determination. He calls it, indeed a "*directio iustitiae legalis*" 174\* but we have already seen that for him *justum legale* was a much more restricted notion than *justitia legalis* 3) The importance of this point is that it makes clear that the term "legal justice" is used in several analogical senses. A comparison of the following diagram with the indicated texts (cited above) will make clear a few of these meanings:

Justitia communiter dicta  
(70,71)

Justitia legalis (72)  
(debitum in ordine ad legem)

justitia particularis (72)  
(debitum in ordine ad proximum)

(Cf. parallel development under human law)

Justitia legalis:  
(obtemperat legi sive quantum ad verba sive quantum ad intentionem legislatoris) (70)

Epicheia

- 1) Pars potior legis
- 2) Pars iustitiae c  
visa contra just: \_\_\_\_\_

quae obtemperat legi  
secundum verba legis) (70)

Fig. II Some of the analogical meanings of the term "legal justice."

In addition to the above meanings of legal justice, we have seen also that the *justitia communiter dicta* would be *justitia legalis* in Aristotle's primary sense (*tota virtus*) and St. Thomas' secondary one;(65) and that *justitia particularis* would also be *justitia legalis* in the sense that "each virtue, according as it is directed (by the special virtue of legal justice, which is St. Thomas' primary sense (53)) towards the common good, may be called legal justice." (65) Thus we have here five different meanings of legal justice — six indeed if we accept and follow out St. Thomas' rather casual suggestion that "legal" is analogous in its predication to law and to virtue,(68) and thus probably capable of certain independent developments in one or both meanings.

It is at least possible that this abundance of meanings, and the great difficulty which results from them in the analysis of legal justice, comes from St. Thomas' great deference to Aristotle's doctrine even after he had radically improved it. Here we meet a second field for modern development.

Another point of special interest is the ability — or lack of it — of slaves, laborers, and mechanics to practice virtue. Since the purpose of law is to make men good, it would follow that the good citizen would be a good man; but Aristotle refused to admit this if any of the above classes were admitted to citizenship;(42) for they could not be good men even if, in some poorly organized state, they should be admitted to citizenship. St. Thomas, in commenting on Aristotle's passing reference in his treatment of legal justice, goes only so far as to admit that

there are indeed certain forms of government, not rightly ordered, according to which one may be a good citizen, who is not a good man; but according to the best political science no one is a good citizen who is not a good man.(75)

In his treatment of prudence, which is correlative with justice, St. Thomas seems to soften somewhat the rigidity of Aristotle's doctrine by applying it to the slave "only insofar as he is a slave," and to the subject "only insofar as he is a

subject," and then pointing out that both, insofar as they are men, are rational, and therefore participate in governing according to the rule of reason and possess prudence.(76) The same argument can evidently be applied to legal justice.(77) No Christian, of course, could maintain anything less, and it is quite possible that here too, his attention to the Philosopher prevented St. Thomas from attending fully to reality. On this point also, we will look for further clarification, when we come to examine modern developments.(78)

Finally, we have already noted(85) that St. Thomas in his sense of "*Justa Legalia*" (the object of legal justice), enumerated "principally the virtues, and instrumentally such things as riches, and other exterior goods of like sort." This is particularly interesting in relation to another passage which St. Thomas inserts into his commentary:

But there are some things determined by law which do not pertain directly to the exercise of any virtue, but rather to some disposition of exterior goods.(79)

Would such texts suggest the possibility of an act of legal justice which is not at the same time an act of some other virtue? For Aristotle such a possibility obviously could not even be considered, since legal justice was simply another name for virtue taken as a whole, a name which applied to the whole of virtue insofar as it was "towards another," and for this reason an act of some other virtue would *always* have to be present before legal justice could be present, for legal justice would be *that act of some other virtue* in its relation to one's neighbor. It may, indeed, be seriously questioned whether it is proper at all to speak of an "act" of legal justice in Aristotle's sense, any more than it would be proper to speak of an "act" of metaphorical justice.

In St. Thomas' conception of legal justice, however, the question is quite different. For him, legal justice is a *specific* virtue, "having its specific nature in the fact that it is directed towards the common good." (53) Thus any act performed expressly for the common good would be an act of legal jus-

*Fig. III St. Thomas' Analysis of Legal Justice.*

tice; and the question now arises whether this act would have to be in every case, an act of some *other* virtue *before* it could be legal justice.

As this inquiry, not only because of its intrinsic importance, but also because of its controversial nature, will require considerable space, we will devote to it an entire chapter, immediately following. We may pause here, however, to attempt a new schematic outline of legal justice as it has come forth transformed in the development given it by St. Thomas Aquinas.

The principal points to be noted are 1) the introduction of a *specific* virtue of legal justice;<sup>(53)</sup> 2) having a specific object: *the common good*, instead of the generic *ad olum*<sup>(58)</sup> <«°»; 3) and hence differing from particular justice not merely as whole to part, but as directed towards *common and particular* good (62); 4) and *directing* the acts of all virtues to its own end, rather than simply containing them all as the whole its parts<sup>(65)</sup>; 5) possibly being *analogical to law* in that both it and law have the common good as direct end, rather than being simply "the virtue which obeys the law" (#8); 6) probably applying to all *men*, but still somehow lacking in slaves "as such" (78); and 7) itself an analogical term<sup>(75)</sup>.

af>Book V, Chapters I and II (1129a—1130b30) Lessius attributes the first use of the term to Aristotle in his *De Justitia et Jure*, Cap. I, Dub. m, 10.

°@1130a10

a««The justice, then, which answers to the whole of virtue, and the corresponding injustice, one being the exercise of virtue as a whole, and the other that of vice as a whole, we may leave on one side." 1130b17

af>1129b25

a8) 1130a12. "Quid autem differt virtus et justitia hoc manifestum ex his, quae dicta sunt. Est quidem enim eadem esse subjecto, ratione autem non idem. Sed secundum quod ad alterum quidem, justitia; secundum autem quod talis habitus, simpliciter virtus." From the *Ver-sio Antiqua*, as printed in the Marietti edition (1934, Turin) of St. Thomas' *In Decern Libros Ethicorum Aristotelis ad Nicomachum Expositio*.

(19) 1138b5

(20) 1130b25—30: "Secundum unamquamque enim virtutem praecipit vivere, et secundum unamquamque malitiam prohibet lex. Factiva autem totius virtutis sunt legalium quaecumque lege posita sunt circa disciplinam, quae ad commune. De ea autem quae secundum unamquamque disciplinam, secundum quam simpliciter vir bonus est, utrum politicae est, vel alterius, posterius determinandum. Non enim forte idem, et viro bono esse, et civi omni."

⊲ 1129b30: "In iustitia autem simul omnis virtus est, et perfecta maxime virtus, quoniam perfectae virtutis usus est." Note that this "usus virtutis" might with a certain amount of good will be translated "direction" of virtue (i.e. to the higher end of the common good). But this does not seem to be Aristotle's intention, and St Thomas, even though looking for an opportunity to attribute a complete doctrine to "The Philosopher", does not appeal to this passage). Cf. also 1130b19

⊳ *De Verit.* q.28,a.1.

⊲ *In Ethic.* 912

⊳ Lessius: *Tractatus de Justitia*, Sec. 1, De Justitia et Jure, C. 1, Dub. 3, 10; in Migne: *Theologiae Cursus Completus*, Vol. 15, 450.

*Ibid.* 15 (Migne, 452)

i20) *Ibid.* 19 (Migne, 453)

m 1134b19; *In Eth.* 1016

⊳ 1134a31: "Vindicta enim iudicum iusti et iniusti — for legal justice is the discrimination of the just and the unjust."

(2) *In Eth.* 1016, 1017.

(3) 1134b20.

(a) 1134b21—24; *In Eth.* 1020—1022.

(b) *In Eth.* 900: "Postquam Philosophus distinxit iustitiam, hic determinat de iustitia legali. Et primo determinat de ipso iusto legali, quod est objectum legalis iustitiae. Secundo de ipsa legali iustitia determinat"

(c) *In Eth.* 1023. In the *Summa Theologica* (2-2:57:2,c) St Thomas simply abandons Aristotle's terminology and substitutes his own *jus positivum*, except in the *sed contra* argument, where he quotes Aristotle literally, but with an explanatory note.

⊲ 1129b18

⊳ *In Eth.* 903

(6) 1137a32 — 1138a3

(8) 2-2:120:2,1m

im 1130b24; 1129b23

⊳ 1130b4

(4) 1277a14-16

⊲ 1278b3-5

⊲ 1278a6-12

<# 1278a17-21

W1260a33-1260b

1134a25-30; In *Eth.* 1004

1134b16-r18

<# 1134b9-16

<>1134a29

1129b26

In *Eth.* 906

1130a12

In *Eth.* 912

Ibid.

1129a18; In *Eth.* 892

1130all

In *Eth.* 913

1130a34: "Univoca autem, quoniam definitio in eodem genere. Ambae (justitiae) enim in eo quod ad alterum habent potentiam" St. Thomas (2-2:47:10, first objection) quotes Aristotle as saying "virtus relata ad bonum commune est justitia," but I have not found the passage. It is probably a "constructive commentary" on Aristotle 1130a4; or, perhaps 1129b15.

1129b15, 1129b25, 1129b32, U30a8, 1130a13, 1130b20.

1130a3-5

In *Eth.* 909; cf. also 1010

1130a33 - 1130b2

In *Eth.* 918

1130a10, 1130a14, 1130a34, 1130b7, 1130b10, 1130b13, U30b14.

1130b2 - 1130b5

2-2:58:6,c

1129a33, 1129b13-15, 1129b24, 1130a23, 1130b23-25.

1130b19-25

In *Eth.* 924

2-2:58:5,c cf. also the passage quoted further on in note 2:28.

2-2:120:2,1m cf. also 2-2:79:2,c: "ad propriam rationem justitiae legalis pertinet attendere debitum praecepti."

2-2:120:2,c

2-2:79:3,c. cf. also 2-2:79:1c

1137b34

1137b12; In *Eth.* 1090

In *Eth.* 926

2-2:47:12,c

m But it will be clouded by the various distinctions of "ad alterum" as in 2-2:57:4^m

It is, of course, always difficult to estimate St. Thomas' own teaching from his commentaries on Aristotle, except in those cases (cf. for

example note 53) where he deliberately sets out to correct or complete the doctrines of the Philosopher. On the whole, however, it must be admitted that in his commentary on the *Politics*, he seems to accept to a large extent Aristotle's "rationalization" of Athens' slave economy. The following passages can be compared with the corresponding texts of Aristotle as indicated by the footnotes of this study:

(42) "Unde in antiquis temporibus viles artifices, et etiam peregrini, apud quasdam civitates erant servi, sic etiam et modo multi sunt tales. Deinde cum dicit "propter quod" Manifestat praedictum solutionem: quia etiam in civitate optime disposita non possunt esse opifices cives. Et si dicatur quod opifex est cives aliquomodo; tunc dicendum est, quod virtus civis, quam determinavimus, ut scilicet bene principari et subjici, non est civis, licet civis sit quomodocumque dictus: sed oportet, ad hoc quod ad eos pertineat hujusmodi virtus, quod non solum sint liberi, sed etiam sint dimissi, idest absoluti ab operibus necessariis vitae. Illi enim qui sunt deputati talibus necessariis operibus, siquidem in his ministrent uni tantum, hoc est proprie servorum: consueverunt enim servi hujusmodi ministeria exhibere dominis suis. Si autem haec ministeria exhibeant communiter quibuscumque, hoc pertinet ad mercenarios et sordidas personas, quae serviunt quibuscumque pro pecunia." — *In Polit.* Lib. III, Lect. IV.

(43) "In aliqua politia, scilicet in populari statu, in qua quaeritur solum libertas, mercenarii sint cives: poterunt enim ad principatum promoveri, cum sint liberi: sed in aliquibus politiis est hoc impossibile, sicut maxime contingit in optimatum statu, in quo dantur honores dignis secundum eorum virtutem, illi qui vivunt vita mercenaria non possunt civitati exhibere in suo regimine ea quae pertinent ad virtutem, quia non sunt in talibus exercitati." — *Ibid.*

(44) "Dictum est enim supra, quod servus est utilis ad necessaria vitae: unde indiget quidem virtute, sed parva; et tanta, ut non deficiat ab his quae debet operari, propter intemperantiam concupiscentiae, vel propter timiditatem." — *Ibid.* Lib. I, Lect. X.

"Est enim dubitatio de hoc quod supra dictum est. Si enim verum est quod oportet servum habere virtutem, ne propter intemperantiam aut timorem deficiat ab operibus; pari ratione videbitur, quod artifices, ad hoc quod sint boni artifices, oporteat habere aliquam virtutem; cum multoties contingat, quod propter intemperantiam, vel alia vitia, defectum faciant in suis operibus, utputa negligenter agentes dum aliis intendunt . . . Solvit propositam dubitationem et dicit, quod magna differentia est inter servum et artificem: et hoc probat per duas rationes: quarum prima est, quia servus in aliquo est particeps vitae, idest conversationis humanae in quantum est servus. Dictum est enim supra, quod servus est instrumentum in his, quae pertinent ad actionem, id est ad conversationem hominum. Et ideo cum virtutes morales per-

ficiant hominem in conversatione humana, oportet quod servus, ad hoc quod sit bonus, participet aliquid de virtute morali: sed artifex remotius se habet a conversatione humana: non enim operatio artificis, inquantum hujusmodi, est circa agibilia conversationis humanae, sed circa aliqua artificiata, quae dicuntur factibilia: unde aliquis dicitur bonus artifex, utputa bonus faber ex hoc, quod sciat, et potest facere bonos cultellos, etiam si male utatur, vel negligenter sua arte: sed tamen intantum immittit de virtute in sua operatione, inquantum exhibet de servitute ad conversationem humanam. Sicut videmus, quod aliqui artifices, idest mercenarii, utputa coqui, habent quandam determinatam servitutem, dum deputantur ad quaedam specialia ministeria, et serviunt: et secundum hoc indigent virtute morali, ad hoc quod sint boni in ministerio." — *Ibid.* Lib. I, LectXI.

Evidently these passages contain considerable reservations: "ut, scilicet, bene principari et subjici"; (42) and in the next passage (43): quia non sunt in talibus exercitati; and in the final passage (44): operatio artifices inquantum hujusmodi (a reservation similar to that we have already noticed for prudence); but these reservations simply place Aristotle's position in the best light possible — they do not reject it.

↵ *In Eth.* 924

## CHAPTER II

### IS THERE SUCH A THING AS AN IMMEDIATE AND PROPER ACT OF LEGAL JUSTICE?

#### *Argument*

It seems to be a common opinion that St. Thomas excludes the possibility of an immediate and proper act of legal justice, so that only acts of other virtues can be matter of this virtue. The texts alleged do not sustain this opinion, but leave the question open. As a matter of fact, there is proper and immediate matter for this virtue: As the object of particular justice is "operations and things", so is the object of legal justice the "*organization* of operations and things."

## CHAPTER II — IS THERE SUCH A THING AS AN IMMEDIATE AND PROPER ACT OF LEGAL JUSTICE?

Just before summing up the doctrine of St. Thomas on legal justice, at the end of the preceding chapter, the question was raised as to whether there is, in the theory of St. Thomas, place for an act of legal justice which is not at the same time an act of some other virtue.

Tilts is not by any means an idle question. If the answer is negative, then the long neglect that has befallen the treatise on legal justice in moral philosophy since St. Thomas' time is, in a sense, justified; since the whole discussion of the moral virtues in *specie* is then an implicit treatment of legal justice.

But if there *is* such a thing as an act of legal justice which is not materially identical with some other virtue — in which case it would introduce into the acts of other virtues that legal justice commands, some change other than that of mere finality — then it should have been the subject of a fruitful development after St. Thomas' revolutionary suggestions; and at the present time it will be necessary to give a great deal more attention to legal justice than philosophers and moralists have been accustomed to give it in the past.

At the present time, at least among those who defend the thesis that the modern "social justice" is simply a new name for St. Thomas' "legal justice," it must be admitted that the common opinion seems to be that *there is no such thing* as a proper elicited act of legal justice, either in the theory of St. Thomas, or in actual fact.

This is the position taken, for instance, in the historical study by Dr. Shields already referred to:(10)

Consequently legal justice is a general virtue which commands all the other virtues and orders them to the common good. General with regard to its ef

fects, it is special with regard to its essence, since it has a special object. As a special virtue, is it one of those virtually contained in itself as a general virtue, or in other words, does it have, as a special virtue, any special acts which are not the acts of the other virtues? The answer must be negative. It is all virtues, properly ordered to the virtuous life, which comprise the common good; general justice has only to command and order them; its proper acts are the acts, of these virtues informed by a higher end. The common good is not an object which can be directly attained, simply because it consists of the virtuous life of the citizens.(1)

The extraordinary limitations of this theory are inadvertently pointed out in the last sentence of this quotation: "The common good is not an object which can be directly attained"! What an admission to have to make! Yet it is an inexorable conclusion if it is once admitted that Social Justice has no proper act of its own.

Nevertheless, the theory that Social Justice does not have any proper act of its own seems to be rather generally held by those who have given any attention at all to the question.

Therefore, strictly speaking, general or legal (social) justice has no *proper act*, since its object is precisely to further the acts of the other virtues to the common good. The acts of general (social) justice are, then, referred immediately to the exercise of some other virtue: general (social) justice commands and ordains these acts in view of the general good that it must procure.

This conclusion is most important, for it reveals the inadequacy of those theories that claim social or legal justice alone confers the title to a familial wage. For since the debt of legal or social justice is, as has been said, nothing else than the necessity of *doing or omitting for the sake of the common good some thing which already pertains to a particular virtue*,

it is necessary to specify the virtue which, it is thought, legal or social justice commands. St. Thomas says that the "*virtus imperata a justitia legali, justitia legalis dicitur.*" According to all that has been said, therefore, *the virtue ordinarily connoted by social or legal justice, relative to the wage, is commutative justice.*(2) Italics of original.

A similar doctrine concerning the absence of any proper act of legal justice is upheld by C. Damen, C.S.S.R. in his "De Recto Usu Bonorum Superfluum." (8)

A careful and well-documented development of this thesis is set forth in the work of Hyacinthus M. Hering already referred to in the preface to this dissertation. Oddly enough, he places most of the blame for the modern misunderstanding of legal justice on what he presents as a widespread belief that there is a specific act of legal justice which is not already an act of some other Virtue. Here is the way he states the question at the beginning of his long article:

Scarcely any other question is being so universally discussed today as the social question; for peace, towards which all aspire, is declared to depend on its solution. Whence it is that public orators, magistrates, philosophers, and theologians discuss social justice, asserting that social order cannot be restored except according to the principles of this justice which they call *social*, and which very commonly is identified with legal justice. However\* even though all are found unanimous in affirming the necessity of this justice, they are by no means agreed in defining its notion. It is not always clearly explained what comes under the name of legal justice, and how it is related to commutative and distributive justice. And more than that, we think we can find not a few errors, and those commonly held, in this matter.

We believe that the origin of this confusion and error is founded in this, that the authors consider justice solely as a *particular* or cardinal virtue, di-

vided against the other virtues; and they attribute ordinarily *three* species to it, namely, commutative, distributive, and legal. Hence, according to this division which they call classic, legal justice would be nothing but a species or subjective part of the cardinal virtue of justice, that is, a particular virtue which would have a particular and determined matter, and to which particular sins would be opposed, just as commutative and distributive justice are particular virtues, and to each of them a particular matter and particular vices are attributed. This error about the concept of justice, as Aristotle had already pointed out,<sup>(4)</sup> seems to arise from the fact that the word justice is used in different senses, namely, of legal or general justice, and of particular justice, and since these concepts have a great affinity between them, their difference is not readily perceived, and conse-

- quently escapes many.

That some clarity be introduced into so momentous a question, which is today so much disputed, our purpose is to show that according to the doctrine of St. Thomas, legal justice is not a particular virtue, but a *general* one, which therefore orders to the common good the acts of all virtues, and therefore is concerned with the whole matter of moral philosophy, and is in a certain sense all virtue.<sup>(5)</sup>

In summing up his findings at the end of his article, Hering offers the following propositions on the point with which we are here concerned:

4. Although it is a special virtue by reason of its proper object, legal justice *is not a particular virtue* by reason of its matter, as if it had a particular and determined matter; but it is a general virtue, the whole of virtue, and is concerned with the whole matter of moral philosophy, ordering to the common good the acts of all virtues.

5. Likewise legal *injustice* (the sin against legal justice) is not a particular vice but is universally all sin.

6. 'As there is nothing in a genus which is not in some species, thus everything that is done according to *legal* injustice is reduced to some *particular* malice.'\*>

7. In like manner, every act that is said to proceed from legal justice must be reduced to an act of some *particular* virtue, e.g., of temperance, of commutative or distributive justice, or of obedience.(7)

It is unfortunate that Hering does not explain just how he conceives that the doctrine of a specific *act* of legal justice is so dangerous, and how his own conclusion that there is no such thing will set matters right again, in the particular historical circumstances for which he is writing. Perhaps if he had addressed himself to this problem he would have seen that whatever it is we actually *need* to know about social justice at the present day, it is certainly *not* the merely negative information he offers, even though it be clear. What we need to know, in the words of Pius XI already quoted, is "the inner nature of these duties and their limits" whereby the exercise of particular justice "is circumscribed by the necessities of social living." & But if their *whole* "inner nature and limits" is simply particular virtue with a good intention towards the common good, it is difficult to see why anything more than a study of particular virtue is necessary.

Of course, this is not to quarrel with Hering's conclusion— it may well be the only one that can be drawn from a textual study of St. Thomas, and we will address ourselves to this textual study in a moment. Nor is it to quarrel with a mere textual study as such, — it is only by such study that harmony can be preserved with the traditional teaching of the Church, according to the admonition of Pius XI.(1:1) Rather it is a quarrel with his introduction; that is, with his apparent belief that his negative conclusions are just what the

world needs in the particular historical situation which that introduction sets forth.

Evidently it is of great importance to the purposes of the preceding chapter which deals not so much with legal justice itself as with St. Thomas' analysis of it, to determine whether or not Hering's conclusions are actually sustained by St. Thomas' text. For this reason, the first section of this Chapter will be devoted entirely to an analysis of his conclusions in relation to the texts he alleges in their support. The second section will go beyond the text of St. Thomas.

DID ST. THOMAS *Exclude* THE POSSIBILITY OF AN IMMEDIATE AND PROPER ACT OF LEGAL JUSTICE?

This discussion, let us recall once more, has nothing to do with Aristotle's text. It should be abundantly evident from what has gone before that he *does* exclude such a possibility — not because he does so explicitly, but because for him the question itself would be without meaning, much as if one should ask whether there could be a particular act of metaphorical justice.

But St. Thomas, as we have seen, introduced a radically new conception into the theory of legal justice: that of a *determinate virtus habens speciem* (1:53) a determinate virtue specifically different from every other act of virtue. It is beyond discussion that for him also it extends its dominion to every other act of virtue, and hence "in *this sense* is the same in essence with all virtue." (1:65) But it is still possible to ask whether *besides* "every other act of virtue" it *also* has some acts of his own.

And this is the problem now before us.

The simplest procedure will be to give in order the texts which Hering considers convincing proof of the correctness of his own conclusion that any acts of this nature are completely excluded from St. Thomas' conception:

1. The good of any virtue whatever, whether ordering man towards himself (such as fortitude and tem

perance) or ordering him towards other singular persons (such as commutative and distributive justice, piety, obedience) can be referred to the common good towards which justice disposes. And according to this, the acts of all virtues can pertain to justice according as it orders man to the common good. And according to this justice is called a *general virtue*. And because it pertains to *law* to ordain matters towards the common good, therefore it is that such justice which is general in the sense just stated is called *legal justice*; namely, because by it man is made conformable with law which orders the acts of all virtues to the common good.(9)

The first part of this quotation leaves the question open. It is not legitimate to conclude from the statement that the acts of all other virtues can pertain to justice, the *additional* notion that general justice can have no acts of its own. As for the second part, we have already seen (1:69) that it suggests rather an analogy of legal justice with law, than a rigid dependence upon law. St. Thomas however, as we have also seen,(10) does not follow up this suggestion, so we may accept the next text, which argues from the nature of law:

2. Justice taken in this sense (as it is a common virtue) looks to a special kind of good: that is, insofar as it is owed in reference to divine or human law.(11)  
There is no virtue concerning whose acts the law cannot prescribe.(12)

Taken just as it stands, this text would leave the question open, as noted above. A statement to the effect that the law commands every virtue, offers no information on whether or not it commands *anything else besides*. But here we, do not have this text alone to judge from — St. Thomas himself offers a direct statement precisely on the point at issue: “But there are some things determined by law which do not pertain directly to the exercise of any virtue, but rather to some disposition of exterior goods.” (1:79) Now this is most interesting: Such a “disposition” is evidently for the common

good, and therefore it would clearly fall within the definition of legal justice. Yet in St. Thomas' own words, it does "not pertain directly to the exercise of any virtue." It is easy to remove the apparent contradiction from the point of view of the subject, for it pertains to the virtue of obedience once *the law has been passed*; i.e. indirectly, through the medium of the law. But how about the ruler who passed the law? If that "disposition" of economic affairs is legal justice in the subject, who only has this virtue "secondarily and as it were administratively," (1:1) must we not *a fortiori* call it legal justice in the lawmaker in whom this virtue exists "principally and as it were architectonically?" (1:8) But in that case, to what "particular" virtue will we assign it, if it *must* be some particular virtue before it can pertain to legal justice? Would it not be much simpler to recognize in this "disposition" of economic affairs a direct and specific act of legal justice? And if we would do so, would this not give form and substance in a very literal manner to St. Thomas' figure of speech "sicut virtus architectonica," constructing, in this case, the very institutions of the economic life by which the common good is sustained? We shall certainly have occasion to follow out this line of thought in subsequent chapters.

3. Nothing prevents an act which is of one virtue elicitive, from being attributed to another virtue which is so to say commanding and ordering it to its own end. An act which is materially the same (*idem subjecto*) is produced by legal justice and by virtue without qualification (*a virtute simpliciter dicta*); yet by reason of two different motives (*secundum aliam et aliam rationem*)

On the basis of these two texts, Hering puts forth the following argument: "Therefore, legal or general justice presupposes acts of the other virtues, and orders them to the common good." (14)

From the first quotation, such a conclusion obviously does not follow: It is one thing to say with St. Thomas that nothing prevents an act from being attributed to two virtues; it is

quite a different thing to say that therefore every act must be attributed to two virtues! The second text is simply beside the point: for the "virtue without qualification" of this text happens to be Aristotle's "*tota virtus*" — general virtue considered in itself as contrasted with general virtue *ad alium or* legal justice. The example given (*non moechari*) by St. Thomas in this text would be to the point if lifted out of the text, since it would then be a particular virtue; but it would then prove exactly as much as the first quotation already disposed of, and no more than that.

4. A thing may be called general in another way, *according to its power*: as a universal cause is general to all its effects; thus the sun is to all the bodies which are illuminated or transformed by its power. And a thing which is general in this manner need not be the same in essence with those things to which it is general, because the essence of cause and of effect are not the same. Now in this manner, according to what has been said, legal justice is called a general virtue: insofar, that is, as it ordains the acts of the other virtues towards its own end, for this (Le. ordination) is to move by dominion all other virtues. (*inquantum scilicet ordinat actus aliarum virtutum ad suum finem, quod est movere per imperium omnes alias virtutes*). For just as Charity can be called a general virtue insofar as it orders the acts of all virtues to the divine good, so also legal justice insofar as it orders the acts of all virtues to the common good. Therefore just as charity, which looks to the divine good as its proper object is a certain special virtue according to its essence, so also legal justice is a special virtue according to its essence, according as it looks to the common good as its proper object.(15)

From this Hering draws the conclusion: "Legal Justice, therefore, is a *special* virtue, not indeed by reason of its

matter (for thus it is a *general* virtue), but by reason of a proper object, which is the common good." (16)

By this he means, we must remember, that it cannot possibly have *any* matter of its own except the matter of the other virtues. But to get that idea from this text, one would have to have it as a preconceived notion, or else read too hastily the sentence which occurs in the middle of the paragraph: "*inquantum scilicet ordinat actus aliarum virtutum ad suum finem, quod est movere per imperium omnes alias virtutes.*" Such a hasty reading might leave the impression that it is the very *end* of legal justice thus to move by dominion all the other virtues, but both the syntax and the context show that *quod* refers not to *finem*, but to the whole clause which precedes it. It would be impossible to notice this in a literal translation in any modern language, and some sort of explanatory word or note would have to be added to make the meaning clear. In the true meaning of the sentence, however, the question at issue is, as we have noted several times before, an open one: any conclusion either that there is or is not matter *besides* this general matter, would be invalid, as exceeding the premisses.

But all the rest of the paragraph is against Hering's conclusion. If this virtue which exercises dominion over all others has no matter (direct act) of its own, is it not suspiciously like that famous grin on the cat that isn't there? What precisely is it, then, which exercises this dominion on such a supposition — a pure form? But there is no such thing in the world of accidents, with which we are here exclusively concerned. To put the question in a more practical way; suppose the "ordering to the common good" is reduced to what is undoubtedly its absolute minimum: a real "good intention" towards society coupled however with an invincible ignorance in the agent which makes his action in fact entirely harmful to the common good, though he means well. This good intention *itself* is a human act, and since its object is the common good, it is an act of legal justice, even though the external act over which it "exercises dominion" is mat

ter that is by supposition entirely vicious. From what *other* virtue would this (interior) act of legal justice then have its matter? If the comparison in St. Thomas' text between the sun and the illuminated bodies is to be taken as fully relevant, the answer would seem to be that it no more needs the matter of another virtue for its existence, than the sun needs the matter of the other bodies. It has its own. We will not, however, be content with this minimum and interior act; but will direct our research towards the discovery of an exterior and effective act which is proper to social justice.

And finally, St. Thomas compares legal justice with charity, which is similarly both a special virtue and a general one. Would it also lie under the same restriction that Hering would like to impose upon legal justice? St. Thomas certainly does not think so:

There are two ways in which an act is derived from charity: in one way, as elicited by it, and such a virtuous act does not require another virtue besides charity, such as to love the good, to rejoice in it, to be saddened by its opposite; in another way an act proceeds from charity, as under the dominion of charity, and thus, because this virtue commands all virtues, in that it orders them to its own end, an act proceeding from charity can also pertain to another special virtue.(Y)

Thus this whole quotation, if it proves anything, proves that legal justice does have acts of its own, *besides* being able to command the acts of all other virtues. It is immediately followed in Hering's article by another text from St. Thomas comparing legal justice to sanctity:

5. Sanctity is a certain special virtue according to its essence: and according to this it is in a certain manner the same as religion. However, it has a certain generality according as the acts of all virtues by its dominion are ordered to the divine good; just as legal justice is called a general virtue, insofar as it orders the acts of all virtues to the common

good.(18) Sanctity is compared to the other virtues in the same way as legal justice; because as legal justice does the acts of all virtues because of the common good, so does sanctity because of God.(19)

St. Thomas' reserve in speaking of sanctity ("est *quaedam* specialis virtus secundum essentiam; et secundum hoc est *quodammodo* eadem religioni. Habet autem *quamdam* generalitatem ") should warn us to go softly with this comparison, but let us see what it has to offer. First of all, a look at the body of the article for which the quotation aduced is the answer to the first objection:

Sanctity is the name for that by which the mind of man applies itself and its acts to God. Whence it does not differ from religion according to its essence, but only logically. For it is called religion according as it offers to God a service owed in those things which pertain especially to the divine worship, as in sacrifices, oblations, and other things of the sort; it is called sanctity however, according as man refers to God not only these, but also the works of the other virtues.(20)

"Not only these," be it noted, "but also the works of the other virtues." And "these" are evidently *direct* acts of sanctity itself, with their *own* matter as well as formal object. And if this should not be clear enough, let us turn to religion, "from which it does not differ essentially, but only logically":

Religion has two sorts of acts: certain ones, indeed, proper and immediate, which it elicits, through which man is ordered to God alone, such as to sacrifice, to adore, and other acts of the like. However, it has other acts, which it produces by means of virtues which it commands, ordaining them to the divine reverence; because a virtue to which an end pertains, commands the virtues to which those things pertain which are towards the end.(21)

Once more, therefore, if the quotation which Hering offers

in support of his theory is relevant to the matter in hand, then what it proves is the exact opposite of his theory, and legal justice has after all "certain acts, proper and immediate, which it elicits," as well as those which it commands.

The next quotation is altogether precious because of the short but revealing phrase with which it is introduced: "*Ut autem modo loquendi Aristotelis sese conformet, haec notatu digna addit Angelicus*": (22)

6. In order, however, to conform himself to Aristotle's way of speaking, the Angelic Doctor adds the following remarks which are worthy of attention: "However, each virtue, according as it is directed by the above virtue (special indeed in its essence but general in its sway) towards the common good, may be called legal justice. In this sense *legal justice is the same in essence with all virtue, but is logically distinct*; and it is in this sense that the Philosopher speaks" (23) (Italics inserted by Hering).

This, of course, is a clear-cut example of the danger pointed out on page 22 of this dissertation, where it was suggested that the very detachment of St. Thomas, in allowing his own great contribution to be attributed to Aristotle, constituted a trap for unwary scholars, who might gather the impression that St. Thomas was always talking about the same thing that Aristotle was. Far from "conforming himself to Aristotle's way of speaking," we have already seen (pp. 21 and 24) that St. Thomas is here issuing the only explicit warning he saw fit to issue concerning the rather important fact that he and Aristotle were *not* talking about the same thing. Aristotle's *whole* discussion is only a secondary *part* of the completed theory of St. Thomas, where first place is held by a legal justice which is a "*determinata virtus habens speciem*," (1:53) and which simply cannot be found in Aristotle's text.

Amusingly enough, St. Thomas apparently thinks all this is so clear from the very article from which Hering is quoting, that he doesn't even consider it necessary to answer the

first objection to it; and Hering did not notice that this very objection, which was dismissed with a mere *patet responsio*, represents the thesis which he himself is trying to defend! Here is the first objection:

It seems that justice, insofar as it is general, is the same by essence as all virtue. For the Philosopher says that "virtue and legal justice are the same for every act of virtue, but not the same in *esse*. But those things which differ only according to *esse*, that is logically, are not different according to essence. Therefore justice is the same in essence as all virtue.(24)

And the response is indeed, as St. Thomas says, quite evident: "Certainly, *insofar as it is general*." Whether St. Thomas' addition of a *special* virtue of legal justice does or does not admit of proper and immediate acts, certainly is not decided in the text under discussion, and the question is still open.

7. The justice which orders to the common good is general by dominion, because it orders all the acts of virtues to its own end; namely, to the common good. Virtue, however, according as it is commanded by such justice, also receives the name of justice. And thus virtue does not differ from legal justice except logically.(25)

But this text speaks explicitly, and solely, of *commanded* acts; it cannot be adduced to prove the non-existence of *elicited* acts, which is the only question at issue.

8. Virtue, insofar as it orders an act to the common good, towards which also the intent of the legislator is directed, is called legal justice because it serves the law (*quia legem servat*): as a strong man who fights bravely in an army for the safety of the state. Thus therefore it is evident that although all virtue is in a sense legal justice, yet not every act of virtue is an act of legal justice, but only that one

which is ordained to the common good: and this can happen with any act of virtue.(26)

This is quoted with the introductory sentence that legal justice is in this way all *virtue* with only a logical distinction from it.(27) This is substantially the same text as was already examined (9), and need not occupy us again,(28) for as we have seen, it leaves the question open. It might, indeed, even be alleged against Hering's position, for its reservation that *not* every act of virtue is a *commanded* act of legal justice raises very clearly the problem of what the *elicited* act is *by which* some, but not all, are commanded, unless we are content to be haunted once more by "the grin on the cat that isn't there" (Cf. p. 46) — a dire fate that hardly seems necessary in view of St. Thomas' clear assignment of *both* commanded and elicited acts to other "general" virtues.(29)

Yet Hering sums up his discussion as follows: "From all of these texts it is legitimate to conclude that legal justice is *not* a *particular* virtue, which has a particular and determinate matter as many (*plerique*) moderns think; but that it is concerned with the whole matter of moral philosophy as St. Thomas says:" (30)

9. Unde manifestum est quod iustitia legalis non est quaedam particularis virtus, sed ad eam pertinet tota virtus.(31)

It is certainly legitimate to conclude that it is not a particular virtue in the sense in which St. Thomas here uses it; i.e. in a literal commentary on Aristotle's text *before* he even mentions his own revolutionary concept of a legal justice which is a "*determinata virtus habens speciem*" (32) It is also legitimate to conclude that insofar as it is a *commanded* or general virtue its matter is general or commanded, though one might still wonder why a "conclusion" is necessary for anything so obvious. But neither from the last text cited nor from any that went before is it legitimate to conclude to the real point at issue: that as a "*determinata virtus habens speciem*" it *has not*, and *cannot have* certain acts, proper and immediate, which it *elicits*.

This concludes the part of Hering's study which directly treats this point at issue, but there are in the remaining parts of his study several other texts of at least equal interest, if not greater. His purpose in this part of the article is to show that besides legal justice there must be a particular justice. "It should not be maintained, he warns, that legal justice disposes man sufficiently in all things that are *ad alterum*": <33

10. It does indeed sufficiently dispose man in those things which are *ad alteram*, insofar as the common good is concerned, *immediately*; but only *mediately* in what concerns the good of a single person. And therefore there must be some particular justice, which immediately disposes man according to the good of a single person.(34)

This may be taken in two ways: in the first and more obvious sense, legal justice would directly attain the common good, and this common good would then be a certain advantage for each member of the society individually. In this way, the argument would not interest us here, for it would fall entirely outside our problem. But starting from the standpoint that actual goods exist, both individual and common, towards which men must be disposed, the text could be read that the disposing of man toward particular good is done by legal justice only instrumentally, to attain *by means of these particular goods* its own direct object, the common good. The argument in this case would be that the acts for these particular goods would have to be *elicited* by some particular justice before they could be *commanded* by legal justice. Could not the same sort of argumentation be used in passing from the particular goods to the common: i.e., before these acts of particular justice could serve the higher end of the common good (i.e. become *commanded* acts of legal justice), there would have to be some *elicited* act of legal justice to (so to say) do the commanding? And in the absence of any formal and explicit statement that there can be no *such thing* as an elicited act of legal justice, must we not attribute such

an argument to St. Thomas in the following text:

Every virtue according to its own nature (*secundum propriam rationem*) orders its act to the proper end of that virtue; but that it should be ordered to a higher end, either always or once in a while, this it does not have from its own nature. Instead, there must be another superior virtue, by which it is ordered to this (higher) end; and thus there must be one superior virtue which orders all virtues to the common good, namely, legal justice, and it is different essentially from all (other) virtue.(35)

It may be objected that I am here confusing issues: that up to the present I have been using the words "elicited acts" and "commanded acts" in the sense of St. Thomas' texts on charity (17) and religion (21) where both kinds of acts are obviously complete acts that stand independently. In the present instance, however, the "elicited act" would not be a complete act that stands by itself, but would only be a formal element introduced into another act of virtue which would be to it as the material element. And thus we seem to be led exactly to Hering's conclusion!

But the case is not so simple! If there is such a thing as an elicited act of legal justice even in this attenuated sense (and I do not see how it can possibly be denied in the text<sup>(35)</sup> just quoted), *then it can just as well be the formal element to an act indifferent in itself as to an act of another virtue.* And such an act would be an elicited act of legal justice *alone* in the full sense noted above. If this point is taken now in connection with the criticism of Hering's second quotation (pages 43 and 44), we find ourselves in possession of almost all that we need for a real and, I believe, definitive solution. But before attempting to set this forth, there is another long quotation which Hering proposes towards the end of his article, and which seems to have more cogency, at first sight, than any other that he has alleged in support of his thesis:(36) He calls special attention to it as being of considerable importance and in the explicit words of St. Thomas, and re

marks that the modems ought to take it into account:

11. As there is nothing in a genus which is not in some species, thus everything which is done according to legal injustice is reduced to some particular malice. If someone acts against legal justice by adultery, this is referred to the vice of impurity. If, however, a soldier deserts his leader in war, this is attributed to the malice of cowardice. If, however, one strikes his neighbor without reason, this is reduced to the malice of anger. But if anyone enriches himself unduly by filching the goods of others, this is not reduced to some other malice, but to injustice alone. Hence it remains that there is a certain particular injustice, besides another injustice which is the whole of malice. And by the same reason, there is another particular justice, besides legal justice which is the whole of virtue.(37)

There is no doubt that this text is more to the point than anything we have examined so far; and that of all we have examined, it is the only one which seems to support Hering's contention, for most of the others, being really beside the point, either left the question open or supplied an opportunity for going on to more relevant texts which indicated at least the possibility of an opposite conclusion.

The present text consists of two parts: the first sentence inserted by St. Thomas to show the kind of argument employed (this being the third of a series of three parallel arguments), and its general drift; and then the rest of the paragraph which is properly his commentary on Aristotle's text. Now this second part offers no difficulty whatever: Aristotle examines *particular cases* of legal injustice, and finds that all except one (filching) are also cases of some particular malice *other* than justice. This one exception is also a particular case, however, like the others, and it is in justice like the others; so that if it won't fit under any *other* particular malice, it must be a *particular form* of injustice itself. It will readily be seen that this inductive approach

would not even touch our problem: so long as he found even *one* particular example of legal injustice which was nothing else but injustice, he could come to the same valid conclusion: that there was a particular sort of injustice besides the general sort. To have touched our problem by this method he would have had to *propose to himself*, along with his other four particular vices (adultery, cowardice, anger, cheating) a particular instance of the thing we are discussing: an elicited act of legal justice; and as we have already seen, he did not even possess the concept of a *special virtue* of legal justice (38) so he could hardly be expected to look around for an elicited *act* of it to put in his catalogue! This leaves us once more, therefore, with the question open.

The introductory sentence inserted by St. Thomas, however, offers a different sort of problem, for it states a general principle which would apply to all acts, including, of course, the one we are here discussing: "For as there is nothing in a genus which is not in some species, thus everything which is done according to legal injustice is reduced to some particular malice." Aristotle's text (39) refers back to the preceding sentence ("Therefore, he is unjust by reason of his making gain by his act") and continues: "Again, all other unjust acts (i.e. besides making gain) are ascribed invariably to some particular kind of wickedness;" so that if St. Thomas had kept to that text we would have no problem.

Did he therefore insert his general principle to forestall just such an attempt as we are here making to find an immediate and proper act of legal justice?

Hardly, for every indication points to the fact that he expected to find such an act, but could not succeed in imagining to himself an example. One of the most revealing indications of this is to be found in a comparison of his article on whether legal justice is a special virtue with similar articles on whether charity, sanctity, religion, obedience (all general virtues like legal justice) are special virtues. In each case an objection is made, in answer to which he can point out, usually with examples, the difference between the elicited

acts which belong immediately and properly to the special virtue, and the commanded acts (i.e. acts of all other virtues done under its *impervum*) which make it a general virtue. We have already seen this procedure in regard to sanctity (18) and religion (21). The procedure is slightly different in regard to Charity because he inserts a whole Question (40) on the principal elicited act, followed by other questions on secondary acts or "effects" of this principal act. Hence in the article on whether Charity is a special virtue he makes the same sort of objection, indeed; but does not insist on the elicited act which is to be explained in such detail later. He does however point out that the other acts which make it a general virtue are commanded and not elicited:

A virtue or art to which an ultimate end pertains commands the virtues or arts to which secondary ends pertain . . . And therefore, because charity has for object the ultimate end of human life, eternal happiness, for this reason it extends itself to the acts of the whole of human life by dominion, not as immediately eliciting the acts of all the virtues.(41)

In another place however, he summarizes the whole doctrine in one response as we have seen.(17)

He follows a somewhat similar method in his consideration of whether obedience is a special virtue: Although this particular response is rather long, we shall quote it *in extenso* for we shall have occasion to refer to it later:

Nothing prevents two special motives, towards which two special virtues are directed, from concurring in one and the same material object; as a soldier defending the camp of a king, on the one hand does a work of fortitude, not fleeing the danger of death in order to do good, and on the other hand paying a service owed to his lord. Thus therefore the motive of the precept, which obedience follows, concurs with the acts of all virtues, not however with all the acts of the virtues, because not

all the acts of the virtues are the object of precept, as has already been shown.<sup>(42)</sup> Similarly also, certain things at times come under precept which pertain to no other virtue, as is evident from those things which are not evil except that they are prohibited. Thus, therefore, if obedience is taken in its proper sense, according to which it regards with a formal intention the motive of the precept, it will be a special virtue, and disobedience a special vice; but for this it is required that one perform an act of justice or of another virtue, intending to fulfill the precept; and for disobedience it is required that the precept be actually contemned. If, however, obedience is taken in a broad sense for the execution of every thing that can come under the law, and disobedience for the omission of the same from any motive whatever, thus obedience will be a general virtue and disobedience a general sin.<sup>(48)</sup>

Note in this passage that what we are concerned with is not the last mentioned metaphorical and improper sense in which obedience is a general virtue, but the general virtue of obedience in a proper sense, mentioned in the first part of the paragraph: "*Sic igitur ratio praecepti quam attendit obedientia, concurrit cum actibus omnium virtutum. . . .*" The elicited acts would be those direct acts of obedience "*quae ad nullam aliam virtutem pertinent*"

If we now compare this procedure of St. Thomas in regard to other "general virtues" with his procedure in the parallel article and objection concerning legal justice, we will note a curious hesitation to attempt a solution even though he faithfully makes the proper sort of objection to bring out the same distinction as in all the cases we have just been examining. This objection is as follows:

Besides, every virtue which is not identical in its essence with all virtue, is a part of virtue. But the justice under discussion, as the Philosopher says, 'is not a part of virtue, but the whole of virtue.'

Therefore, this justice is the same essentially with all virtue.(44)

Now if St. Thomas had had any definitive doctrine at all on the question of either the existence or non-existence of an 'immediate and proper elicited act' of legal justice, this objection would surely have brought it out into an explicit statement. How then did he answer it?

With a *patet responsio* referring back to body of the article.

And when we reread the body of the article looking for the expected distinction we find what amounts to the following: Legal justice is at once a *special virtue*, "which is in the ruler principally and so to say architectonically; but in the subjects secondarily and so to say administratively," (1:7) and a *general virtue* embracing all other virtues as *commanded acts*. The sudden resort to figurative language in the first part of this doctrine is altogether too significant to be entirely fortuitous: he simply has not yet succeeded in isolating the elicited act of social justice, and is far too good a philosopher to make the mistake of saying that therefore there can be no such thing. Instead, he carefully leaves a pigeon-hole into which it will nicely fit, if anybody ever does succeed in analyzing it satisfactorily.

There are other places where similar openings can be found, as, for instance, in the following:

Justice is divided against the other virtues and enumerated with them, not insofar as it is *general*, but insofar as it is a *special* virtue, as will be here after set forth.(45) (Italics added.)

Note that the word St. Thomas uses is *special*, not *particular* (46), and that not only particular justice is a special virtue, but *legal justice itself*. In fact, the doctrine' that legal justice is a special virtue is set forth in the *very next article* to the above quotation, so that it would be rather gratuitous to maintain that this use of the word special had escaped St. Thomas' notice. Now if the special virtue of legal justice should have a proper and immediate elicited act of its own, it would certainly be "divided against the other virtues and

enumerated with them" (i.e. *under* the virtue insofar as it is *general*), and that passage makes perfect sense as it stands. On any other supposition it would require some devious explaining, since it occurs so near to St. Thomas' *ex professo* teaching that legal justice is special.

There is another passage of the same sort, where, however, a misunderstanding would be excusable, for in it St. Thomas apparently uses the word "special" in the restricted sense of "particular" justice:

Omission implies the neglect of some good; not, however, of any good, but of good which is owed. Good however, under the aspect of something owed, pertains properly to justice: to legal justice indeed if the debt is considered in relation to divine or human law; to special justice however, according as the debt is considered in relation to one's neighbor. Whence, in that way in which justice is a special virtue, as has already been explained (*ut supra habitum est*), omission also is a special sin distinct from the sins which are opposed to other virtues.(47)

Because of the limited purpose of this discussion—to fix a special sin of omission—"legal justice" is taken in the restricted sense of "obedience to law," and "special" justice is characterized by its generic note of being *ad proximum* without specifying whether in common or in particular, for if there is a special virtue in both varieties (in common and in particular) then a sin of omission is possible in both, as the text goes on to state. Failure to note this limited manner of speaking, however, would lead to the conclusion that here St. Thomas is identifying "special" with "particular" justice, even though the next sentence is clear enough; for the "*ut supra habitum est*" refers habitually not to anything in the same article, but to the previous articles where the question was fully treated. Hence it would here refer to Question 57, articles 6 (legal) and 7 (particular) as the editors of the Marietti Edition (4f) here correctly indicate. Now if a proper sin of omission is possible in the special virtue of legal jus

tice, then it would seem necessary that provision be made for some sort of proper act of the virtue; and it would be hazardous to maintain that St. Thomas excludes the possibility of such an act.

We may now conclude this section whose object was to criticize Hering's conclusion that no proper and immediate act of legal justice is possible in the theory of St. Thomas. Our conclusion is that there is no evidence to support such a conclusion. A truer statement of the case would be that there is place in the text of St. Thomas for such an act *if only one can be found to fill the place*. This is the meaning of the general principle which St. Thomas inserted into his commentary on the *Ethics* (37), and which at first sight seemed to be the most conclusive text which Hering brought forward in support of his thesis: "As there is nothing in a genus which is not in some species, thus everything which is done according to legal injustice is reduced to some *particular malice*." Evidently! If we can offer a proper and immediate act of legal justice to fill the place for it left by St. Thomas, we will find in its opposite a sin with the *particular malice* of legal injustice, and with the possibility of its having no other malice besides.

Before going on to search for such an act, it may be well to note that Hering's thesis is by no means an isolated phenomenon. In a review of it printed in the *Bulletin Thomiste* a critic who signs himself simply "J.T." (perhaps the Rev. J. Tonneau, O.P.) Hering's conclusion is summarized and accepted without hesitation or reserve:

General or legal justice has no domain that is proper to it; it extends its dominion over the whole domain of the moral virtues, and supposes therefore, under its command, the activity of the other virtues, including particular justice both commutative and distributive. General justice is nevertheless a distinct virtue through the special formal object which defines it, namely, the common good, to which it orders every kind of virtuous acts. The acts, therefore, which are

said to proceed from general justice, must pertain to the domain of other virtues.(48)

It is quite certain, at least, that this represents Tonneau's real position, as is evident from a signed review in the same periodical of J. Gemmel's *Die Justitia in die Lehre des hi. Thomas* (49). Without going into explanation, Gemmel suggests that legal justice might be divided into "essential legal justice" and "general legal justice." It is at once evident that such a distinction could be legitimate only on the basis of the recognition of an immediate and proper act of legal justice, such as that with which we are here concerned; and Tonneau immediately goes to battle at the mere suggestion:

This last (legal justice) appears capable in its turn of being divided into two parts: a *justitia legalis essentialis* (*unmittelbare Gemeinwohlgerechtigkeit*) and a *justitia legalis generalis* (*mittelbare Gemeinwohlgerechtigkeit*). Here the author has not been content to expose the Thomistic doctrine of 2-2:qq.58, 60,61; but he has completed it with an elaboration of his own. Unfortunately, although he is at great pains to prevent equivocation on the word *legalis*, he does not give much attention to the distinction established by him between *essential* or immediate legal justice, and *general* or mediate legal justice. We wonder if the author didn't get his inspiration for this from 2-2:58:7,1m (34), where St. Thomas admits, besides general or legal justice which aims immediately at the common good, other virtues and especially particular justice, through which in a mediate sort of way, general justice itself would take particular goods into consideration. But this expression of the Angelic Doctor would in no way authorize the distinction between an essential legal justice and a general legal justice. In his thought there is perfect coincidence and mutual exigence of the *legal* and of the *general*, in this justice. What remains true is that legal or general justice is not general by essence, as

would happen if it were essentially the same as all virtue; it is general by its dominion, by the influence which it exercises generally upon all virtuous activity. But it is to this very virtue of legal justice, essentially distinct by reason of its special object, that the title of general belongs. There truly is no place, according to St. Thomas, for any distinction whatsoever between a justice which would be *legalis essentialis* and another which would be *legalis generalis*.<sup>(50)</sup>

“There *truly* is *no* place for *any* distinction *whatsoever!*” Once more (see pages 41 and 42) my curiosity is aroused not so much by the actual conclusion, as by the vehemence with which it is put forward. What terrible depths can lie hidden under the mere supposition that legal justice like every other specific virtue can have a proper and elicited act of its own? And what profound purpose is served by refusing to investigate such a possibility?

Nor is my curiosity lessened by the fact that Father Tonneau goes on almost immediately to set forth in some detail precisely what an elicited act of legal justice should be and should accomplish; even though he insists on its being called political prudence! Does he himself, perhaps, offer an explanation in the sentence which follows:

If more attention would be paid to political prudence which is always bound up with the exercise of general justice, *there would he no need to dislocate the traditional framework of the treatise on justice to force social justice somehow into it.*<sup>(51)</sup> (Italics added.)

But why should a follower of St. Thomas, after we have seen what *he* did to Aristotle’s teaching on this point<sup>(1:53)</sup>, ever hesitate for a moment to “dislocate a traditional framework” if he can thereby find a place for the truth? Besides, in this particular case, we have seen rather clearly (see page 58) that there need be no “dislocation of framework” whatever. If we can isolate an immediate and proper act of legal

justice, there is a place waiting for it in St. Thomas' "framework."

Let us get on, then, to see if we can find such an act to fill the place that is waiting for it. It is understood that in this second part of the present chapter, we will have as little hesitation in going beyond the *text* of St. Thomas as he had in going beyond that of Aristotle in his own deliberate advance. Nor will we be any less faithful to his teaching.

#### WHAT IS THE IMMEDIATE AND PROPER ACT OF LEGAL JUSTICE?

In order to discover what characteristic of this act (if it exists) made it so hard to analyze and isolate, let us first examine more carefully a usage which we have permitted ourselves of the terms *elicited* and *commanded* acts; particularly of *elicited* acts that are *exterior*. In the primary sense of these words an elicited act is one that pertains *per se* to a faculty, e.g. to the will, and is produced by it immediately as a proper action, e.g., to will, to consent, to choose: commanded acts of the will would then be acts of other faculties as these latter would be moved by the will. (52) In an extended sense, the same words can be used of habits or virtues, as we have seen in the quotation (21) from St. Thomas on the acts of religion: "Religion has two sorts of acts: certain ones indeed, proper and immediate, which it elicits. . . such as to sacrifice. . . However it has other acts, which it produces by means of virtues which it commands." In this sense the *elicited act* itself is complex, consisting of elicited (act of will ordering creature to God) and commanded (external act by which the sacrifice is consummated) elements. Now it is important to notice that in this sense it remains in the category of an elicited act, *only if the commanded element is in itself indifferent*. If it is another virtue which is used as the commanded element, then it is called a *commanded act* of the higher virtue, and an elicited act only of the lower. Thus, for instance, if a soldier facing death in the performance of his duty were to "offer up" his acts

as a “sacrifice” to God, his act would be a commanded act of the virtue of religion which is exercising dominion over his act of legal justice (defense of the common good). Moreover, in this case, it would not be an elicited act of this latter virtue (legal justice), but again a commanded one, for legal justice would be exercising its dominion over an act of fortitude (facing death courageously), which last virtue would be the one eliciting the act. And according to the principle enunciated above, the commanded element of this elicited act (the mere physical facing of death) is *in itself indifferent*<sup>3</sup> and according to circumstances might be an unavoidable accident, a necessary risk, rash foolhardiness, heroic charity, attempted suicide, or the ordinary course of events.

Now let us go a step further. If we were to find the commanded element in what we are looking for (an elicited act of legal justice), by instituting a deliberate search for it, we would know *before even starting* that we would have to limit our search to the field of *things that are in themselves in different*. No act of another virtue could ever be anything other than a commanded act of legal justice. This is evidence itself.<sup>(53)</sup>

And that is also the reason why it has taken mankind—including even the philosophers — so long to discover the elicited act of legal justice! After all, is *that* where one should look for the matter of that justice which according to Arisotle:

therefore is often thought to be the greatest of virtues, and “neither the evening nor morning star” is so wonderful; and proverbially “in justice is every virtue comprehended”.<sup>(54)</sup>

or with St. Thomas:

I answer that if we speak of legal justice, it is evident that it is preeminent among the moral virtues, inasmuch as the common good is of superior excellence to the good of a particular person.<sup>(55)</sup>

The following quotation is first-hand evidence of how the fact that the acts would be in themselves “indifferent” would

blind even a serious student of social problems to their significance:

Independently of the civil law, the citizens practice the general or legal virtue whenever they act as good men for the formal motive of the common good.

Father Vermeersch does not share this opinion. In his concept, legal justice inclines to the execution of those acts which are owed for the common good, either for the *common necessity*, or by the *use of jurisdiction*. Those acts are formally virtuous (be cause indifferent acts, as such, do not conduce to the common good) and are acts of various virtues. It is from this that legal justice is called *general*, because it does not have a special matter to which to attribute the primary virtuousness, like charity and chastity; but rather it does its acts, already virtuous for an other reason or even the object of a precept, (precisely) as owed for the common good. As for the greater part they are made necessary by the law, it is called legal justice because it inclines to obey the laws. . . .

To piety and other virtues pertain the different acts of the good man which the citizens do *freely* for the common good. This escapes the notice of many writers who attribute them to legal justice.<sup>(56)</sup>

The third sentence of the second paragraph of this quotation is precious. Acts owed for the common good are *always* acts of some other virtue than legal justice because otherwise they would be in themselves indifferent, and "indifferent acts, as such, do not conduce to the common good."

But why in the world should that limitation "as such" be insisted on here. The only question is what would happen if they were done precisely *for the common good!*

Now before we go on to show what tremendous significance can be in indifferent things, it may be well to remind our selves of the significance that is in discoveries. The really fundamental things are used whether they are discovered or

not; whether it be M. Jourdain's discovery of prose, or that other famous Frenchman, who would not believe, anent the the syllogism, that God had made man a two-legged creature, and then waited for Aristotle to make him rational.

As a matter of fact, we have pointed out, several times already, that St. Thomas had hooked his fish without pulling it in, as, for instance in the following commentary on the text of Aristotle:

Quare secundum unum quemdem modum, justa dicimus factiva et conservativa felicitatis et particularum ipsius politica communicatione.(57)

Et quia omnis utilitas humana finaliter ordinatur ad felicitatem, manifestum est quod secundum unum modum *justa legalia* dicuntur ea quae sunt factiva felicitatis et particularum ipsius, idest eorum quae ad felicitatem ordinantur, *vel principaliter sicut virtutes, vel instrumentaliter sicut divitiae, et alia hujusmodi exteriora bona*; et hoc per comparationem ad communitatem politicam ad quem respicit legis positio.(1:35)

The "virtutes" are of course the whole of moral virtue in Aristotle's sense of legal justice; "riches" is fairly obvious in its signification; and the "other external goods of like sort" since they are to be understood "in comparison with the political community" would probably be means of communication, methods of production and distribution, media of exchange, the externals of government, in fact, all the externals of social life in general.

Another text that we have seen (58) has almost a modern ring, for it would not be too far-fetched to translate its "dispositio externorum bonorum" as "organization of social economy." Now this is not bad at all, for as we shall soon see, it is clear today that if the matter of particular justice is "exterior actions and exterior things" (59), the matter of social justice is the *organization* of exterior actions and exterior things.

Cajetan also came so close to the truth that it is difficult to see how he missed it:

Under legal justice or general justice nothing comes except indifferent things and what pertains to other virtues and vices. For in Book V of the *Ethics* it is expressly taught that every particular goodness or malice which comes under legal justice, necessarily must be contained under some other virtue or vice. (60)

It might even seem — but it is quite accidental — that Aristotle gives what is very close to a definition of the matter of an elicited act of legal justice:

Of political justice part is natural, part legal — natural, that which everywhere has the same force and does not exist by people's thinking this or that; legal, that which is originally indifferent, but when it has been laid down is not indifferent." (61)

The accident consists in the fact that in Aristotle's conception of legal justice there was, as we have seen, no room for any immediate act, since there was no special virtue. Hence he used the term "*justum legale*" not in reference to legal justice (as Ross mistakenly translates it) but in the sense of "*jus positivum*" in particular justice. What is more to the point is that the whole of Aristotle's *Ethics* and *Politics* offers a mine of interesting developments of our idea once it is discovered; for few men have been more preoccupied with *organization for the common good* than was Aristotle.

But granting everything that we can to the past in these and other hundreds of instances that can be brought forward, it still remains that the discovery of an immediate and proper act of legal justice, and the moral theology that will be built upon that discovery, is of tremendous significance. What was not noticed by the older theologians and philosophers in dismissing so casually those things that were "indifferent" and keeping only "the virtues" for legal justice, was that they were theoretically tossing out, so to say, the *matter of the whole temporal order*. Yet in the order of individual virtue they kept the "indifferent" things without hesitation: A

thousand dollars has *in itself* absolutely no significance either for heaven or for hell; but as a *matter of human acts* it might conceivably get a man to either place. Hence it was clear that particular justice would have to be “about exterior actions *and things*,” (59) no matter how indifferent the things might be in themselves.

Of course, they did not live up to this theoretical dismissal of those “indifferent” things of which alone social order can be constructed; they included them under individual morality, specifically under the morality of that individual who was king, or statesman, or somehow in charge of public affairs, and in whom, as a consequence, “the good man” and “the good citizen” were allegedly identical.\*62> On the whole, it made a workable system, except perhaps when it came to explaining the abominable morals of the general run of kings. In that case, the theory of law could offer a refuge; and in it, in one way or another, most social necessities could be accounted for:

He who bids the law rule may be deemed to bid God and reason to rule, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of rulers, even when they are the best of men. The law is reason unaffected by desire.\*63

The fact that law as Aristotle meant it (human law) had itself a rather spotty history, was not so serious a difficulty at least in theory, for appeal could always be made from its many deficiencies—one might say its manifest deficiencies—to the higher natural law which by definition would always “save the appearances” of social necessities. But the natural law is not immediately operative in the concrete contingencies of social life, and when a philosopher or a philosophy has to appeal to it *immediately*, to save the appearances, then something is drastically wrong. Perhaps an example is in order. The following is as good a one as has yet come to my attention to show how helpless an inadequate theory of justice can be in the face of social realities. It is taken from the

“Catholic Hour” address of November 16, 1941, in which the speaker sets up the following problem:

I know many business men, lawyers, physicians who lament the trend to the unethical in the special worlds in which they operate. They tell me that the tide is running against them, that too many of their rivals have reduced business ethics and professional ethics to three principles: 1) Everybody’s doing it; 2) If you don’t do it, someone else will; and 3) You can’t do business nowadays with old-fashioned principles. Especially in metropolitan cities, they say, the degeneration is obvious. They blame this set of persons and that, but they all seem agreed that decline, if not actual decay, is upon us.

“It’s easy enough,” they add, “for you preachers to tell us to stand firm, to hew to the line, and all that. But we have families to support, homes to maintain, food and clothing to buy. To do business with the morals of a past generation is as impossible as to do business with the methods of a past generation. We must do what the others do or be sunk. The crowd is running all one way; we cannot forever buck the stream!”

Now, except for some confused thinking about the “morals of a past generation,” this is a perfectly sincere and straight forward statement of a problem as common as any to be met at the present time. I would add only one more detail to bring it completely up to date: the laws of our secularized society are usually in favor of the crowd which is running all one way!

And here is the speaker’s answer: “Right is right if nobody does it. Wrong is wrong if everybody does it. What the business man needs, and what the professional man needs is a new declaration of independence.”

Now the first part of this answer is, of course, stupid. When a business man says, in effect, to a priest, “In the present system I, as an individual, am helpless to insure justice;

I know the system is wrong and I detest it, but I simply do not know how to buck it," it is not only beside the point, but is something approaching mockery, to recite the self-evident first principle of the natural law. If he didn't know *that* perfectly well already, he would never have called the system *wrong* and degenerate! What he wants to know is how to buck it, and he has a right to an answer to *that* problem, not to a clouding of the issue by changing the problem to the self-evident one of whether or not there is such a thing as right or wrong!

The second part of the reply is more to the point, but is no more intelligent than the first; for that "new declaration of independence" which sounds so nice in a speech, is *precisely* what the business man meant by the last three words of his complaint: "We must do what the others do, *or be sunk*"! The radio speaker evidently felt well satisfied with his solution of the problem, but he might be somewhat disconcerted to learn that Pope Pius XI, in his Encyclical *Divini Redemptoris* (C) had publicly placed himself on the side of the business man, at least insofar as the statements of the problem was concerned: that individuals can be, in fact, "all too frequently are" *helpless* to insure justice in an unjust system.

I have since proposed this problem to various people who ought to know an answer for it, and would recommend the same practice to anyone laboring under a consuming zeal to prevent at all cost any "dislocation of the traditional framework" of justice. The answers I received may be summarized as four stupid ones, and one which was intelligent but hopeless. They are as follows:

1) The business man should "use his own judgment" or "do the best he can."

But this is simply dodging the issue by throwing the whole problem back upon a man who from the beginning has admitted that he does not know the answer.

2) "Right is right when nobody does it, etc., etc."

We have already said enough about this answer.

3) The business should go ahead with his work, because his "helplessness to insure justice" throws the resulting in justice into the category of "indirect volition," which in the circumstances is rendered licit by the operation of the "principle of double effect."

But this is a deliberate abandonment of society to the forces of evil; for it leaves the evil in full possession of the field, with the individual business man precariously balancing on a "good intention" to save his individual soul in the midst of it.

4) The business man should get out of the messy business, no matter what the cost to himself; for if it is really so bad that he is "helpless to insure justice," then he cannot without sin "strengthen that injustice by his collaboration." (This, it will be noticed, is the "declaration of independence" of the speaker himself).

But this is to abandon society even more drastically to the forces of evil, with even the inefficacious "good intention" removed from it — by way of bankruptcy, perhaps; or of the monastic life.

5) And finally, the intelligent, but hopeless answer: It came from the author of one of our best college text-books on religion, who professed complete dissatisfaction with the radio response; but, when pressed for an *adequate* answer, he replied: "There are some questions for which there is no answer." And if any *intelligent* answer is to be found in the field of *individual* justice, this is it! None of the others, as we have seen above, could be put forward with self-respect by one who really recognized their insufficiency or foresaw their consequences.

Only, the sentence should be slightly amended to be completely intelligent. It should be: "There are some questions for which there is no answer in my philosophy," and that would have left an opening to paraphrase Hamlet to the effect that there might be "more things in the world than are dreamed of" in an individualistic philosophy.

Pope Pius XI, at the same time that he stated the same “insoluble” problem, gave an evidently satisfactory answer; but it was entirely outside the field of individualistic morality and effort. We can surely do no better than to quote this passage directly:

53. It happens all too frequently, however, under the salary system, that individual employers are helpless to ensure justice unless, with a view to its practice, they organize institutions the object of which is to prevent competition incompatible with fair treatment for the workers. Where this is true, it is the duty of contractors and employers to support and promote such necessary organizations as normal instruments enabling them to fulfill their obligations of justice . . .

54. If, therefore, we consider the whole structure of economic life, as we have already pointed out in Our Encyclical *Quadragesimo Anno*, the reign of mutual collaboration between justice and charity in social-economic relations can only be achieved by a body of professional and inter-professional organizations, built on solidly Christian foundations . . .(65)

To these paragraphs should be added, perhaps, for the sake of clearness, the first introductory sentences to the long passage on social justice of which the paragraphs cited form the closing:

51. In reality, besides commutative justice, there is also social justice with its own set obligations, from which neither employers nor workmen can escape. Now it is of the very essence of social justice to demand from each individual all that is necessary for the common good . . .(66)

These passages point out very clearly two distinct fields of justice, one individual and one social, each with its own different and determined obligations. In the first field (of individual or commutative justice) an individual in the face of an unjust organization of society may indeed be, — all *too frequently is*, to use the words of the encyclical, — helpless

to insure justice; and in that case, let it be noted, the individual in question would *not* sin in paying a wage objectively unjust. In so far, the third unsatisfactory answer listed above (p. 71) is Correct.

But *besides* this field of individual justice (where the individual as we have seen can be helpless in the face of an unjust system), there is another and higher field of social justice, where each one, no longer as an individual, but as an *organizer*, as a distinctly *social* being, is capable of modifying the *very system itself* by organized and institutional action. This action of *organizing*, moreover, and the institutions which result from it, are *necessary* and *normal* instruments, *enabling* the exercise of particular justice, and hence of primary and immediate significance for the common good. And since the very essence of social justice is to demand from each individual all that is necessary for the common good, it demands this act of *organization* as a strict *duty*.

Here certainly we have found exactly what we are looking for: an act which is *social* in its very essence; which *in itself* is not an act of prudence, or particular justice, or fortitude, or temperance; and which, therefore, if performed with the common good as direct object, will have to be a *particular act of legal justice itself*, according to St. Thomas' principle that there can be nothing in a genus which is not in some species.(37)

But there is one more bit of controversy to dispose of before we can go on to our analysis of this act. It is maintained by Tonneau (51) that the act of organization is an act of political prudence, and that therefore it enters into legal justice in the same way as any other virtue, i.e., as a commanded act and not as a proper and immediate one:

However, both of these authors (whose work he is reviewing) could profitably have made use of a passage too little noticed, of a letter addressed by Cardinal Pacelli to M. E. Duthoit, for the *Semaine Sociale* of Nice (1934). The Cardinal Secretary of

State there makes allusion to the *organizing* function of social justice (and perhaps also of social charity). This indication would doubtless be worth keeping in mind; why not reintegrate the traditional virtue of political prudence in studies of social moral philosophy? In modern usage (we speak of scientific language and not of journalistic jargon) the word social calls to mind mass phenomena. It is admitted that their collective character differentiates social phenomena, and gives them, so to say, a new dimension, irreducible to the dimensions of the individual phenomenon. To speak of social justice is, in effect, to propose the problem of a just equilibrium between masses, between classes, between categories; that is to say, ultimately, between individual persons, but considered as bound up in collective relations. On the other hand, this justice is exercised by operations of a social character: by institutions, organizations, statutes, contracts of a collective character. Now this preoccupation, this effort of organization and of collective realization, so characteristic of social justice (and of social charity) belongs indeed to justice, in this sense, that justice inclines wills to it which, if they were unjust, would never feel impelled to devote themselves to it. But under the animating impulsion (*imperium*) of justice, this activity flows expressly from the reason, and belongs specifically to the virtue of political prudence. This seems to us to be the real solution." (67)

Now this is extraordinary! If we said above that it was difficult to see (60) how Cajetan came so close to the truth and still missed it, we must confess here that it is astounding to see Tonneau describing the proper act of social justice with admirable scientific precision — and still denying its existence! Now what is the value of his contention that the act of organization belongs *specifically* to prudence, i.e. as an immediate and proper elicited act in the language we

have been using in this study and which we borrowed\*21\* from St. Thomas?

Unfortunately he does not give his reasons for such a conclusion, 60 we cannot criticize them directly; but it seems rather evident that he has simply *reversed the roles* of legal justice and of political prudence which were assigned by St. Thomas:

For political prudence has the same relation to legal justice that prudence without qualification has to all moral virtue.(68)

And what is this relation? It is best seen in St. Thomas' objections and responses concerning the question of whether prudence is a special virtue:

In the definition (of moral virtue) is rightly placed an intellectual virtue, namely prudence, which communicates with it in matter; for as the subject of moral virtue is something participating reason, so moral virtue has the nature of virtue, insofar as it participates intellectual virtue.(69)

From this reason (that in every virtue there are things to be done for an end) it results that prudence helps all virtues, and works in them all; but this is not sufficient for showing that it is not a special virtue, because there is nothing to prevent that in some genus there be a certain species which somehow is at work in all the species of the same genus; just as the sun somehow exercises an influence in all bodies.<70)

Thus prudence is clearly *directive* of legal justice, just as it is of every other moral virtue, by definition itself of moral virtue. It is for this reason that, as we saw in a former quotation from the same author (61) "political prudence is always bound up with the exercise of general justice." Tonneau, however, by a clear inversion of function, makes it *commanded* by legal justice, and thus succeeds in finding what he *must* find at all costs if his theory is to be sustained:

the matter of some *other* virtue which will prevent the act in question (social organization) from being in itself indifferent, and therefore, when directed towards the common good, from becoming an evidently elicited act of legal justice itself.

But for all that, political prudence is still *directive* of legal justice as St. Thomas maintained, and not *its matter* as Tonneau would have it, so we will keep for the immediate and proper *matter* of legal justice the social *organization* which is so designated in the Papal Encyclicals.

It should be noted, however that “organization” is here used in an active or dynamic sense: “the *act* of organizing.” It should not be confused with the static meaning of “organization”: the relatively permanent *state of things* which results from such acts. This *state of things* in a community, is analogous to “metaphorical justice” in the individual; and should be named social order rather than social justice.

The kernel of truth in Tonneau’s theory is this: since the philosophical pigeonhole for the proper matter of social justice was left empty, it is almost certain that the one for political prudence, which “communicates in matter” (69) with it, was overworked.

In the next Chapter, after a very brief historical review of developments since St. Thomas in the field of legal justice, including the extraordinary popularity of the term “social justice” for the idea in modern times, we will review the use of the term “social justice” in Pontifical Documents. In this Pontifical use we will discover a rigidly scientific concept built upon the “immediate and proper act” — the act of social organization—to which the reasoning of this chapter has led us.

*m*Leo Shields: *The History and Meaning of the term Social Justice*, p. 16

*æ*J. Callahan: *The Catholic Attitude toward a familial Minimum Wage*; p. 108

↳Ibid., page 72.

④ 1129a26: "Now justice and injustice seem to be ambiguous, but because their different meanings approach near to one another, the ambiguity escapes notice and is not so obvious as it is when the meanings are far apart. . . The just, then, is the *lawful* and the fair"

↳Hering: Op. Cit.; *Angelicum*: Vol. 14, pp. 464, 465

↳Quoted from St. Thomas: *In Eth.* 917

∞Hering: Loc. Cit. p. 486

∞Note 1 of first chapter. Such cross references will hereafter be indicated with a number indicating the chapter followed by a colon and the number of the footnote in the chapter. Thus, 1:1.

w 2-2:58:5,c

∞See Chap. 1: footnotes 70, 71 72.

m) 2-2:79:1,c; Cf. 2-2:79:3,c

m)1-2:96:3,c

as) 2-2:32:1,2m

∞Hering: Loc. cit. p. 470

tt) 2-2:58:6,c

tt) Loc. cit. p. 471

∞3:85:2,1m Cf. 2-2:23:4,2m

a\*) 2-2:81:8,1m

a) *In III Sent.*: D 33, q 3, a 4, sol 6. (In Paris edition, 1933, # 429)

∞) 2-2:81:8,c

∞) 2-2:81:1,1m

∞) Loc. cit. p. 472

∞) 2-2:58:6,c

∞) 2-2:58:6, first objection.

∞) 1-2:60:3,2m

*De Vent*, q 28, a 1.

∞) Loc. cit. p. 472

∞) Except, perhaps, to note that the analogy of legal justice with law (1:69) is even more clearly suggested here than in the former text, though it is immediately clouded by the phrase *quia legem servet*, which could just as well be translated "because it obeys the law" and thus would return to Aristotle's conception of a rigid dependent correlation with law.

∞) See notes 17, 20, 21

∞) Loc. cit. p. 473

<mln *Eth.* 911

∞) St. Thomas makes his contribution to the theory in the very next paragraph (*In Eth.* 912) following the one quoted.

∞) *Loc. Cit.* p. 474

∞) 2-2:58:7,1m

∞) 2-2:58:6,4m

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- ⌘ Loc. cit. p. 479
- ⌘ In *Eth.* 917
- ⌘ See 1:65 and the discussion of Hering's sixth quotation in the present chapter
- ⌘ 1130a29
- ⌘ 2-2:27: (eight articles)
- ⌘ 2-2:23:4,2m
- ⌘ 1-2:96:3,c
- ⌘ 2-2:104:2,1m
- ⌘ 2-2:58:6, second objection
- ⌘ 2-2:58:5,1m
- ⌘ The editors of the Marietti edition (Turin 1939) refer it to particular justice.
- ⌘ 2-2:79:3,c
- ⌘ *Bulletin Thomiste*, Vol. 5, No. 7 (July-Sept., 1938); p. 448
- ⌘ J. Gemmel: "Die Justitia in die Lehre des hi. Thomas," in *Scholastik*, Vol. 12 (1937); pp. 204—228.
- ⌘ j Tonneau, OP., in *Bulletin Thomiste*, loc. cit. p. 446.
- ⌘ Loc. cit. p. 448.
- ⌘ *In lib. III Sent.*, Dist. 27, q2, a4, sol.3c
- ⌘ Here, of course, we are abstracting from the two virtues, Prudence and Charity, "which are placed in the definition" of every virtue (2-2:47:5,1m; 2-2:23:4,1m) including the virtue of legal justice.
- ⌘ 1129b26
- ⌘ 2-2:58:12,c
- ⌘ Resume by N. Noguer in *Razon y Fe*, XCIX (1932), p. 322, of the teaching of Vermeersch (*Theologia Moralis*, Vol. II, n264)
- ⌘ 1129b18
- ⌘ See 1:79 and discussion following Hering's second quotation in this chapter (p.24)
- ⌘ 2-2:58:8,c
- ⌘ Cajetan: *De Monte Pietatis*, Chapter 14 (#188 in edition of 1934, Rome)
- ⌘ 1134b18
- ⌘ Aristotle: 1277a14-16, and 1278b3-5
- ⌘ 1287a28-32
- ⌘ Paragraph 53
- ⌘ Pius XI: Encyclical *Divini Redemptoris*
- ⌘ *Ibid.*
- ⌘ Tonneau: loc. cit. pp. 477, 448.
- ⌘ 2-2:47:10,1m
- ⌘ 2-2:47:5,1m
- ⌘ 2-2:47:5,2m

## CHAPTER III

### *THE MODERN SOCIAL JUSTICE IS LEGAL JUSTICE*

#### *Argument*

After St. Thomas' great development of Aristotle's incomplete theory, legal justice suffered an extraordinary eclipse in the scholastic tradition, probably the result of confusion with Aristotle's theory, and of failure to study any aspect except the formal one of the virtue. In the last century, under pressure of increasing social disorder, a new term "social justice" sprang up, generally and spontaneously, to cover the study of what tradition had neglected. It is now clear that Social Justice is the same thing as the old legal justice, since it has exactly the same end, the common good. In the hands of Pius XI it received scientific redefinition in terms of the material and efficient cause as well as the formal or final one to which the older philosophers had limited their consideration. It is that virtue which *organizes normally* (i.e. according to the social necessities of human nature itself) all external human acts.

### CHAPTER III: THE MODERN SOCIAL JUSTICE IS LEGAL JUSTICE

The history of legal justice since the great development represented by the difference between the text of St. Thomas and that of Aristotle, has been neither spectacular nor glorious. Commentators of the *Summa Theologica*, of course, dutifully paraphrased the doctrine found there (1); and all writers on justice devoted a few paragraphs at the beginning of their treatises to the division of justice into its "subjective parts," where a cursory treatment of legal justice can hardly be avoided. But one will look in vain through six centuries of the literature following St. Thomas for anything more than a *textual* preoccupation in this question. The writers simply do not seem to have been in touch with the vital *reality* of legal justice, and their remarks on it reflect simply their deference to tradition, on a point on which they themselves seem to have nothing particular to say.

Perhaps the height (or the depth, rather) of this tendency is to be discovered in Waffelaert's *De Justitia*, where, in a work on the moral virtues intended to be of monumental proportions, legal justice is accorded one paragraph and one footnote. The paragraph, a bit shorter even than the footnote, is worth quoting here *in perpetuum ret memoriam*:

Justitia legalis seu generalis est virtus specialis justitiae quae describitur: Habitus supematuralis per quem unusquisque reddit quod debitum est rei publicae cujus ipse pars est, sive caput sive membrum, i.e., sive leges ferendo, etc., ad commune bonum, sive obediendo legibus ob bonum commune.—Haec *virtus* perfectior est justitia particulari, quoniam nobilius objectum, bonum commune respicit; est tamen *justitia* minus perfecta, quia, ut facile intelligitur, non ita perfecte habet triplicem supra

expositam rationem quae ad justitiam requiritur.

De hac justitia generarii nihil amplius specialiter dicendum habebimus.(2)

“Of this general justice we shall no more have anything special to say.” And yet there are philosophers who wonder why the modern study of sociology has started — and kept going — so far from any sound philosophy. At the present time the general run of sociological thinking is so shot through with fundamental errors, and with the naive assumption that philosophy began in modern times (if there is any), that a scholastic philosopher need only read a few pages of it to have a sort of automatic feeling of superior virtue. Yet the time has certainly come when the scholastic philosopher must ask himself whether the vast intellectual effort that modern sociology represents, really *could* have developed among men capable of reducing the whole treatise on social justice to a few pages or even a single paragraph. This will become clearer as the full significance of this doctrine is brought out; but without any further development we may remark the uncomfortable fact that the greatest speculative advance in Christian social thinking since the thirteenth century, came *not* from the investigations of the philosophers, but from the supreme teaching authority of the Church!

But if the “official philosophers” as they might be called, were at a stand-still in this matter of legal justice, there yet was a great deal of intellectual activity, after the middle of the nineteenth century, about a new concept which seems to have arisen more or less spontaneously in all ranks of society and schools of thought — the concept of “social justice.”

It would be a difficult task, if, indeed, it is possible at all, to trace the genesis of this term, for its appearance is so spontaneous and so widespread that its sources must necessarily be sought in the broadest and most general forces of the time: reaction against the dominant individualism of modern society; indignation at the desperate conditions of poverty and inequality which had resulted from the Industrial Rev

olution; the gathering strength of the various socializing movements which were to challenge and perhaps liquidate the individualism which had been on a steady increase since the time of the Renaissance; the ever-growing complexity and interdependence of modern civilization which brought into sharp relief the deficiencies of older and simpler notions of "social control."

Nor, for that matter, is it likely to be a particularly fruitful task to trace this genesis, even if it should prove possible; for in the hands of so many protagonists of divergent backgrounds and interests, its definition would be more suitable matter for a bibliography than for a synthesis.

By limiting one's study, however, largely to Catholic writers, who have a sufficient community both of thought and of terminology to make such a study profitable, one could at least classify the major positions that have been taken, and indicate the general trend of continuing investigation. Fortunately several interesting studies of this sort have been made, and we will have occasion to summarize their findings. It does not, however, enter into the purposes of this dissertation to extend this particular field of investigation, or to place much emphasis upon it. It is abundantly clear to any one who has analyzed carefully the work of Pius XI, both in his social encyclicals and in the great work of his life, Catholic Action, that here is sounder, more profound, and more coherent doctrine than can be drawn from any other literature in the field.

And we can anticipate somewhat by putting forth immediately the proposition that the "Social Justice" of this teaching is without any shadow of doubt the legal justice which formed the subject of our first two chapters, and that if it seems to contain certain divergences which have troubled investigators, these divergences are usually revealed to be nothing more than a continuation and perfection of those outlined on page 31 of this dissertation, by which St. Thomas himself went beyond the teaching of Aristotle.

As much as this dissertation has insisted, and will con

tinue to insist, on the necessity of attending to what we are to call the material, efficient, and final cause as well as the formal, when there is question of coming to grips with reality; we must insist also that for purposes of classification, it is the formal element which alone is significant. Hence, since it is a question of classification, it is as true now as when St. Thomas wrote it that:

Legal justice *alone* directly looks to the common good. (S)

Nor is this fact changed by the further one that any serious discussion of the common good will set forth the necessity of distributive justice, (and of commutative justice as well as all the other virtues), for what else is meant by the "imperium" that legal justice exercises over all the other virtues, ordering them to the common good? Thus all those are ill-advised from the start, who, so to say, mark out on the map of virtue every point mentioned in the encyclicals, and then try to gerrymander a "proper field" of social justice which will include them all. Social justice and legal justice coincide in their formal object (4) since both look to the common good, and therefore they are the same thing unless the common good itself is equivocal.

#### THE HISTORY OF THE MODERN TERM

It is quite possible that the words "social justice" may be found joined together in almost *any* period of Christian philosophy, much as there is an antecedent probability that if one would look for them he could find the words "rational men" juxtaposed; but those who have searched for the first occurrence of "social justice" have not yet found earlier instances than that of the *Saggio Teorico di Diritto naturale* published by A. Tapparelli in 1845. (5) The point is of no great importance except that it emphasizes the lateness and suddenness with which the term entered philosophical literature.

Of greater interest is the fact that within a half-dozen years we find the term clearly used in the sense we have indicated (p. 76) for the immediate and proper act of legal

justice: the *organizing* of the social body:

The remedy thus suggested . . . reduces to that act of social justice demanded throughout civilized Europe today by a sense of nature as well as by science and experience, the abolition of the excess of centralism.(6)

Unfortunately the article in which this statement occurs is not signed, and so it is impossible to search further to discover whether this statement on the *act of social justice* was the result of scientific analysis or a mere chance of expression. It is interesting to compare, however, this statement at the very beginning of the modern development, with one by Cardinal Pacelli in a letter written at the command of Pope Pius XI:

It is necessary to infuse into the whole social organism a new blood to which Pius XI was referring when he recommended in the *Quadragesimo anno* to render as efficacious as possible the action of social justice *which organizes normally the social relations*, and of Social charity, which tends to make of society,' as it were, a great family, where solidarity is not an empty name.(7)

But what a mass of controversy, cross-purposes, and misunderstandings lie between these two clear and similar statements almost a hundred years apart! Three of the best places in which the discussion can be studied are two articles written in 1936 and the much more complete dissertation of Dr. Leo Shields already referred to.(1:10)

The first of the two articles in point of time is that of A. Brucculeri, S.J. published in three sections in *La Civiltà Cattolica*,(8) the last of which, however, is largely devoted to social charity, rather than social justice. In it he reports the opinions of Michel, Vermeersch, Otto Schilling, Messner, Loria, Heinrich Pesch, G. C. Rutten, Antoine, Gillet, Azpiazu, Portal, Narcisco Noguera, and I. Kleinhapel.(9)

As a result of this study, in which he incorporates a number of texts from the Encyclicals, Brucculeri concludes that

he sees no necessity in any of them or in the pontifical documents, for the creation of a new virtue, different from legal justice.(10)

In the second article, that by Eduardo M. Lustosa, in the review *Estudios* of Buenos Aires (11), social justice fell into the hands of one much more willing to tinker around with intermediate classifications and dynamic and static aspects. Thus the article pays more attention to divergencies of opinion, and merits the observation of Tonneau that this article is "completely edifying on the uncertainty of vocabulary and conceptions in the matter of social justice." (12) Yet his conclusions largely coincide with those of the other studies:

1. Only by attenuating the content of legal justice can one succeed in isolating social justice from its orbit. In reality, they are spheres which compenetrates each other, and at the least they have many points of intersection.

2. The consideration of the subject, term, or material object is foreign to the one and permanent criterion of division of virtues, and Kleinhapel reduces and narrows even these to create differences.

3. The Encyclical intends to remain within the current of tradition and to accommodate itself to the ordinary language understood by all. Hence the expression *common good* is to be understood as that of legal justice which is thus not excluded from the pontifical text.

4. An antinomy between coordination (legal justice) and dispersion (social justice) can subsist only if one forgets the double function of social justice and its dynamic aspect.(13)

As we will see later, much of the useless distinctions between dynamic and static aspects of legal and social justice, come precisely from the fact that there has been no adequate analysis of the act of legal justice (the *organization* of social life), with the result that legal justice has appeared far too abstract and static, these aspects being, in fact, the

only ones traditionally treated. Hence even the slight reservations which Lustosa seems to make may be discounted, and social justice is revealed as identical with legal justice.

Lustosa cites the opinions of the following writers on the subject of social justice: Priimmer, Schilling, Noldin-Schmitt, Messner, Schratzenholzer, Schuster, Renard, Tonneau, Heinen, Faidherbe, and Genicot-Salsmans.(14)

The third study, much more complete than those of Bruculeri and Lustosa, is that of Leo Shields.(1:10) Even this, however, is no attempt at a catalogue of all the various significations that have been given to the term under consideration: Shields makes this clear in his preface:

The purpose of this study is not to enumerate all the things that social justice has ever meant, but to see whether among the multitude of usages there is some meaning of the term sufficiently common to justify the use of it in a precise sense.(15)

An interesting feature which sets this study off from the others is a large section devoted to usage of the term by non-Catholics — “outside the Leonine Tradition” as Shields entitles the section.(16) The only non-Catholic writer included in the two other studies is Loria.(9)

We can do no better here, since a merely historical study does not enter into the purposes of this dissertation, than to report Shield’s conclusions:

#### 1. *The Commonest opinion among Catholic Writers:*

Interest in Legal justice had so declined since the middle ages that almost no writers had an adequate understanding of it. The confusions... as to the nature of legal justice resulted from over-simplification based on superficial analyses of the problem. Most of the controversies about the meaning of social justice were to spring from this source.

Since Poittier(18) the commonest opinion among moral theologians has been that social justice is identical with legal justice.(17)

In support of this conclusion Shields refers to the testimony of the following writers: Poittier, Vermeersch, Tumulo, Iorio, Merkelbach, Prummer, the general usage of the "Semaines sociales", Janvier, Gillet, Delos, Spicq, Bernard, Hering, Hyland, H. Pesch, Lechtape, Callahan, and Muhler.(18)

2. *Dissenting opinions among Catholic Writers:*

We have seen that all these authors who have distinguished social justice from legal justice have done so through not understanding what legal justice is. Our review of their opinions has shown that if there is any one thing they mean by the term social justice, it is legal justice as properly understood. No valid arguments have been brought forward to justify a new division of justice. Our conclusion must be that the commonest opinion is the right one and that social justice as a scientific term must be a new name for legal justice.(19)

In arriving at this conclusion he analyzes the opinions of Tanquerey, O'Hanley, Antoine, Genicot-Salsmans, A. Michel, Haas, Gundlach, Rocaries, Ryan, Messner, Schilling, and Noldin-Schmitt.(20)

3. *The Usage of the Encyclicals:*

It is true that the use of the term leaves its meaning in a certain obscurity, but this is in accordance with the way in which the encyclicals are written. The views of the German Jesuits . . . were not in accord with other widespread and well-defended views. Accordingly the term was used to convey a meaning consisting so far as possible in what was common between the various most probable opinions. Nevertheless, I think the meaning of legal justice makes the best sense in these passages simply because other meanings tend to be contradictory.

Six years after the publication of *Quadragesimo Anno*, Pius XI issued his encyclical on Communism, *Divini Redemptoris*. A long passage discussed the

nature of social justice in terms very favorable to our interpretation.(21) But as far as definitive statement was concerned, it again left the question open . . . not entirely excluding the possibility of interpreting social justice to mean distributive justice or even a new virtue, anything in fact that can be distinguished from commutative justice.

The kind of approbation of a scientific tenet, however, that can be expected from the encyclicals is surely given to the view that social justice is legal justice in the proper sense of that term. A formal statement does not appear; nevertheless the texts make it easy to refute those who base some other notion of the term on what they regard as a necessary interpretation of the encyclicals.(22)

We will have occasion to corroborate these findings, and even to remove a few of his reservations, in the second section of this chapter.

#### 4. *Popular Usage:*

But unfortunately, it is not the Popes or scholars who fix terminology, but those who use the terms. A brief summary of the interpretations given to social justice by the Catholic writers who used the term incidentally or popularly will . . . (offer) clear enough statements of the subjects, object, and most relevant matter of social justice as we have understood it.(23)

Shields then concludes his historical study with a few remarks on what, after all, we should look for in such a term as social justice, if it is to be of any real scientific significance:

Now the most important thing in definition is to name *one thing*; and that is why conceptions of social justice as some new species or combination of virtues, though they could conceivably obtain some use in history or sociology, can never be adopted by political or ethical science. The next most important thing

is to come as close as possible to the most common usage, both popular and technical. There is no one virtue to which social justice as the term is used could be more readily equated than legal justice; a majority of the meanings are reducible to legal justice as properly understood. Therefore if the term is to be used at all (and his concluding pages testify to its value) it should be used to mean legal, general justice. (24)

And there is no doubt that in Catholic circles this usage is gradually gaining ground. It suffices to read such a summary as we have just given of studies made in recent years, to be fully convinced of this fact. Even more convincing, of course, is the persistent reference of both social and legal justice to the *common good*, for the end in the order of action is what the form is in the order of being. (25) Thus if these two virtues have formally the same end, then they are without question the same virtue; and we must adopt as a principle of method in analyzing them, that the explanation of apparent differences is to be found in *our* more or less perfect understanding of one or the other, *not* in some essential distinction between them.

But this general view, of course, possesses a certain clearness and simplicity that we must not expect to find in the actual field of debate. There still exist differences of opinion, and they are not unmixed with emotion, as may be evidenced perhaps by certain criticisms in this dissertation of other people's approach to the problem (see pages 41, 42 and 62); and perhaps also in the criticisms that this dissertation will call forth, when it is discovered that it maintains the existence of a proper act of legal justice! A delightful example of high blood-pressure that can still be aroused in this field of controversy is to be found in the *Bulletin Thomiste*. (26) Father Tonneau, after listing the works of four good men and true, (27) refuses to consider any of them, in words whose pungency is untranslatable: one must indeed get angry in his own language! "The reading of these works," he snaps, "is painful and disappointing."

La lecture de ces travaux fatigue et degoit. On a l'impression que la confusion la plus complete regne dans les esprits au sujet de la justice sociale. Pour ne desobliger personne et aussi parce que nous n'avons pas le courage de decrire en detail chacune de ces positions, nous nous bomerons a dire pourquoi, selon nous, on a tant de peine et par quelle voie peut-etre on parviendrait a inserer la justice sociale dans le traite traditionnel de la justice.(26)

Really, however, the case is not quite so desperate, nor is it quite certain that the particular remedy he goes on to suggest (a clear distinction of the *bonum alterius* which is the object of each kind of justice) is the great solution which will set all this feverish inquiry at rest. It is precisely because philosophers did not go *beyond* the study of the formal object that we are in the mess we are in (see the first three paragraphs of the Preface to this dissertation). What all these people *want* who are striking out in all directions, is to find out what social justice *looks like* and how it can be done, and they will find no answer to their aspirations in a narrow limitation to the one aspect of the thing which, after all, has received a traditional attention. To insist in effect that the imposition of that limitation is the only way they can remain Thomists, is to invite them to leave the fold (see pp. 80-81). Tonneau is indeed correct in his criticism of the diversion of the study of social justice into a mere exercise in individualistic casuistry: "what are the different degrees of obligation, the variable modalities of that obligation; who is obligated, towards whom, in what way, in what measure, under what penalty; . . . whether or not it is strict justice, whether it demands restitution"; but that is by no means the whole story in the rather hectic development that the doctrine of social justice has enjoyed — or suffered. There is a large field of legitimate inquiry — even necessary inquiry — which is opened up by the modern investigation of the old legal justice under its new name, and especially by the Encyclicals of Pius XI; and the duty of those who have at heart

“the traditional framework of the treatise of justice” is to have a real anxiety to keep in contact with this new field of inquiry so as to guide it in the light of tradition — not to deny categorically its existence.(28)

And especially is this true when the attempt to restrict the modern investigation to a preconceived notion of what it is about creates real difficulties as Tonneau himself frankly admits:

Let us not pretend: it is known that the Encyclical *Quadragesimo Anno* utilized the term social justice in its popular meaning. It could not be otherwise. One should not regret that it has adopted the language of the general public if that permits it to be understood by the general public; a document of this nature should not be reserved to the attention of a few specialists. Nevertheless, one may regret that the qualified representatives of moral theology, who ought to have a truly scientific preoccupation to use only a very apt terminology, were not equal to the task of furnishing the ordinary magisterium with a body of technical formulas which, if not more expressive, would be at least more logically united. It is to be feared that the expression social justice may remain as poor and vague in signification as that other journalistic formula: social questions.(29)

We will now examine the usage of the Encyclicals and other official documents to see if we cannot find in them exactly what the above quotation professes to find absent: a scientific and apt terminology, expressive and logically consistent.

#### THE DOCTRINE OF POPE PIUS XI

It may be maintained without hesitation that the revolutionary significance of Pius XI's work has not yet become clear. His activity was directed to so many sectors of life, and he touched each of them so profoundly, that we must await a certain work of synthesis and of development before his work can be fully appreciated and evaluated.

As an example of the necessity of coordinating different fields of activity to arrive at a full understanding, our problem of social justice will serve as well as any. To one who knows both fields, it is very difficult to see how the idea of *social justice* can ever be seen in its full clarity and significance by one who has not a clear grasp of *Catholic Action* also; for only in the latter can one acquire the profound sense of social realities which the former takes for granted.

Yet if one were looking for a group of men well versed in Catholic Action, he would not be well-advised if he went to a meeting of philosophers. Perhaps the philosopher, like the preacher, is an individualist by profession; and must not be expected to come to grips with problems of organization. Yet it is difficult to see how they will ever see clearly in the matter of social justice without an intimate knowledge—even if vicarious—of these problems. The reason for this will become evident as this study progresses, but there is sufficient evidence in the Encyclicals themselves where the teaching on social justice is developed. Both in *Quadragesimo Anno*(30) and in *Divini Redemptoris* (31) it is made clear that the establishment of social justice is predicated on the previous establishment of Catholic Action — not that the latter has the former as a direct end, but that it offers a particular sort of Christian Social formation which is the indispensable basis of a Christian social order.(32)

Both the energy and persistence of Pius XI in promoting Catholic Action, and the active and passive resistance he encountered, have been extraordinary. The former is very likely without parallel in the history of the Papacy. A partial compilation of his pronouncements directly promoting Catholic Action fills a six-hundred page volume (33) covering only the first two-thirds of his reign. This unprecedented “promotional campaign” continued unabated to the very eve of Pius XI’s death, when *L’Osservatore Romano* published his *Apostolic Letter to the Episcopate of the Philippine Islands*,(34) so that the total volume of his pronouncements is yet to be measured. As has just been suggested, it may well

be that so much attention, concentrated for so long a time on a single idea, is a unique occurrence in the history of the Papacy: It will remain for historians to judge whether, perhaps, certain Pontiffs in the ages of the Crusades exhibited a comparable singleness of purpose; but it is not likely.

As for the opposition he met from outside the Church, the Encyclical *Non Abbiamo Bisogno*, stands as an immortal testimony. Active opposition from within could only be appreciated by a complete study of his pronouncements, but the very volume of these, as noted above, is already a suggestive indication. To quote only one passage on a point (unity and organization) closely related to this study:

71. To all Our children, finally, of every social rank and every nation, to *every religious and lay organization in the Church*, We make another and more urgent appeal for union. Many times Our paternal heart has been saddened by the divergencies—often idle in their causes, always tragic in their consequences—which array in opposing camps the sons of the same Mother Church. Thus it is that the radicals, who are not so very numerous, profiting by this discord are able to make it more acute, and end by pitting Catholics one against the other. In view of the events of the past few months Our warning must seem superfluous. *We repeat it nevertheless once more, for those who have not understood, or perhaps do not desire to understand.* Those who make a practice of spreading dissension among Catholics assume a terrible responsibility before God and the Church.  
(35) (Italics added)

The full force of this may not be apparent to those who do not know the long struggle in which it finds its place; but it may be sufficient to point out here that it is *not* directed to enemies of the Church but to what we like to designate as “people of good will” even though, as in the instance, they may prefer their own good will to Pontifical direction. The following testimony, written on the day of the

death of Pius XI by Father Martindale, S.J., may also help focus the picture:

What possibly he ought to be most remembered for is his insistence on that enigmatic idea: Catholic Action.

Why enigmatic? Because hardly anyone professes to understand the notion thoroughly, though may that not be partly because many do not like what they understand of it? They may not like the almost rigid organizational form of Catholic Action that the Pope prefers. They may not like the idea of being so much as "active"—after all, most men are lazy. And the clerical-minded certainly do not like the enormous position assigned by Pius to the laity who are, within his scheme, constantly to be "presidents" with an ecclesiastic for "assistant" only.

But after all, the Pope is only declaring that the Church, clergy and laity, is One, and is Alive, and therefore must act as a whole . . . The Pope's work will endure, unless he have enemies within his own household; and even then it will.(36)

As for passive resistance, perhaps one of the best examples is closest home: It is well-nigh incredible that after twenty years of such a "promotional campaign" as was outlined above, by the supreme authority of the Church, no single Catholic of the United States has yet published a serious work covering the subject!(37)

On the other hand, so profound and powerful are the ideas systematized in this same Catholic Action, that it can truthfully be maintained that no country in the whole world has escaped from its vitalizing influence,(38) and in some of them it has worked miracles of transformation.

Now there is a striking parallel between the general status of Catholic Action in the practical field, and of social justice in the theoretical. It is a profound disturbance of established theories and manners of thinking, hence an "enigmatic" idea in much the same way that Catholic Action is "enigmatic":

not only because it really does require a profound effort of comprehension,—being so opposed to habitual ways of thinking,—but also because there are people who for one reason or another — always with good will, of course — do not like what they do understand of it.

These considerations are important to explain a certain air of polemic which is almost unavoidable in discussing social justice seriously, and which, for that matter, this dissertation has made no great effort to avoid. We may note, finally, that just as Pius XI accepted the term Catholic Action from the past and radically redefined it, so he did with “social justice”. The only reasonable place to study either notion is in the work of Pius XI, and in works inspired by his teachings; for it is only here that the words are surely used with a definite and precise signification.

The term “Social Justice” occurs several times in official documents before the publication of *Quadragesimo Anno*. The first two occurrences are entirely non-committal, so that it would be idle to attempt to draw any speculative conclusions from them. (39) The first is from the pen of Pius X (1904), the second from that of Cardinal Gasparri only a few weeks after the election of Pius XI, and consequently hardly yet under his effective influence.

The next two occurrences are from the pen of Pius XI himself, both occurring towards the end of the month of June, 1923. On the 24th of that month, the Holy Father wrote to his Secretary of State a letter setting forth the necessity of a reconsideration of the question of reparations “in that Christian spirit which does not separate the field of justice from that of social charity, on which rests the perfection of civil living together.” (40) The Pope’s argument is that once sufficient proof of good will has been given, then “social charity and justice, as well as the very interests of the creditors themselves and of every nation . . . seem to require that there be not exacted of the debtor what it cannot give without entirely exhausting its resources and productivity, to its own irreparable damage and that of the creditors themselves, with

danger of social perturbations. . . great risk to Europe as a whole, . . . continual threat of new and more destructive conflagrations.” (40)

It is very clear from this passage that what is uppermost in the Holy Father’s mind—as the object of “*giustizia e carità sociale*” is the *common good* of Europe and of the world. While noting the coincidence of this object with that of the older legal justice, let us also note its extension to a much more general common good than that of the state. Older writers are all too prone to identify the common good and the state. The state, especially in its modern nationalistic form, is only one level of the common good, and there are other levels both above and below it.

The next use of the term occurs just four days later, in the Encyclical *Studiorum Ducem*. (41) It is remarkable for the fact that it is the only text which contains explicit mention of both the old and the new term (legal and social justice). Unfortunately it is simply an item in a long list of the accomplishments of St. Thomas Aquinas, and no development is given; but even so, it is extremely suggestive when weighed against the other texts which Pius XI left us:

. . . in disciplina morum, in re sociali, et in jure recte principia ponendo de justitia legali aut de sociali itemque de commutativa aut de distributiva, et quae justitiae cum caritate sint rationes explicando. . . (41)

It seems evident that here both legal and social justice are set apart from particular justice, whether commutative or distributive; yet it seems evident also that some kind of distinction is indicated between legal and social! What this distinction is seems suggested by the text itself: *in re sociali et in jure*. We have already seen (p. 27 and p. 31) that the notion of legal justice in St. Thomas is analogical. Moreover, after the long neglect of legal justice by philosophers and moralists, the term “legal justice” had become identified with “courtroom justice”: the conformity of actions with the letter of the law. Now this latter notion is, in fact, one of the

analogical notions (the narrowest of them all) contained in St. Thomas' definition.(1:70) What Pope Pius seems to do, therefore, in this passage, is deliberately to accept the popular limitation of "legal justice" to "courtroom justice," and then to assign the new term "social justice" to the former and much broader meaning. After this time he abandoned the term legal justice completely to the jurists, and in the elaboration of his social theories limited himself entirely to the new term.

Subsequent occurrences are from well within the reign of Pius XI , and unmistakably bear the stamp of his thought; the following is from Cardinal Gasparri:

Charity, instead of weakening the reign of justice, realizes it. . .

All the more since, along with justice, it is prudence, fortitude, and temperance, these moral virtues so necessary to the social order, which draw from charity their hidden power. Obedient to the interior invitations of Charity, the true sons of the Church will strive without ceasing, *by means best fitted to the work, by the most powerful levers of influence, by institutions most wisely planned, to find a better organization (amenagement) of society.* Following the strong and expressive statements of Pius X whom you recall with good reason in the noteworthy letter which you asked me to bring to the attention of the Sovereign Pontiff, they are striving with perseverance to "*organize the machinery of society* in such a way that by its natural functioning, it will paralyze the efforts of wicked men and *render accessible to every man of good will his share of temporal happiness*" Indeed, in the measure in which charity triumphs over egoism, the social sense becomes more alert, and *social justice — that virtue which orders to the common good the exterior acts of all the others*—acquires a more practical efficacy.(42) (Italics added.)

There can surely be no doubt here that Cardinal Gasparri

identifies social justice with what St. Thomas called legal justice: "that virtue which orders to the common good the exterior acts of all others":

The common good is the end of the individual persons existing in the community; as the good of the whole is the good of each of the parts. But the good of one singular person is not the end of another. And therefore *legal justice, which is ordained to the common good*, is better able to extend its influence to the interior passions, by which man is so to say disposed in himself, than particular justice! which is ordered to the good of some singular person, although legal justice *extends its influence principally to the other virtues in regard to their exterior acts*, insofar, that is, as the law prescribes "to do the works of a valiant man, and of a temperate one, and of a kind one," as it is said.<sup>(43)</sup> (Italics added.)

This almost verbal identity of the descriptions of the traditional and modern virtue is especially significant when it is remembered that Cardinal Gasparri, one of the greatest jurists of all time, would be very unlikely to use in a loose manner terms which had been consecrated by the tradition of centuries.

But in addition to this traditional element, we have the suggestion that this justice — under the imperium of charity as are all other virtues — has to do with "institutions most wisely planned, to find a better organization of society," with "the organization of the social machinery" (*organiser les rouages sociaux*). This is solid doctrine, of which we caught only a glimpse here and there in St. Thomas (see page 66) who envisioned the common good in a much more abstract fashion. But there is nothing in St. Thomas to prevent this development of his thought, for his (and Aristotle's) "architectonic" evidently lends itself to this interpretation.

The next official use of the term which I have been able to discover is in a letter of the Sacred Congregation of the Council to Bishop (later Cardinal) Lidnart of Lille:

The Sacred Congregation has learned with great pleasure of all that the *Consortium* (of industrialists) has done for the lessening of the misery of the workers; as well as the magnificent works of employer-beneficence which it has already *organized; especially by the development of "Family Allowances"* a work of high charity, and at the same time of *social justice.*<sup>44</sup> (In all subsequent citations, italics should be understood to be added, unless otherwise indicated.)

Here once more, abstracting so to say from the part which is of Charity, it would seem that the part assigned to social justice is the *organization and development* of the works in question. Even more, perhaps, the dominant consideration is that with this added security it will be possible for the workers to *organize their own lives* in a Christian manner; as is brought out a few paragraphs later in the same document:

May all antagonisms therefore be put aside, and, with a mutual harmony and reciprocal confidence, and above all with a great charity, *may institutions be set up* which draw their inspiration from the principles of Catholic morals and assure to the workers, with their economic interests, the *liberty* to declare themselves Christians, and the *possibility* to fulfill all the duties that result.<sup>45</sup>

If this linking of the two passages is legitimate, then the end of this latter passage would throw a brilliant light on the profound significance of *social justice*. If before the establishment of these new institutions which assure this liberty and this possibility, the *institutions then in existence did not assure them*, then the *very organization and structure* of that industrial life was *unjust*, and this would be a *social injustice* in the most strict and scientific sense of the word. By the same token, the *correction* of that very organization and structure would be *in itself* an act of justice, a reorganization, a reconstruction, of the social life itself, and therefore

an act of *social justice*, in the strict and scientific sense. These passages are not yet definitive, but they are pointing in a definite direction, and in subsequent passages we must see whether this idea is carried out consistently.

The next occurrence of the term in order of time is in the *Letter to Eugene Duthoit* of Cardinal Gasparri, of July 20, 1929:

It is the same Christian spirit which has inspired you in the choice of the subject which you are preparing to study in the coming *Semaine Sociale*, in face of the new methods of industrial organization.

You have avoided taking an attitude of systematic opposition, faithful in that to the recommendation of St. Paul: "Omnia probate: quod bonum est tenere."

But, in your preoccupation with the moral and religious problems implied in these *technical advances which take so tight a grip on human life* (*progres techniques qui mettent une si puissante emprise sur la vie humain*) you have undertaken to recall and clarify the *exigencies of personal morality, of social justice, and of charity*. Thus, in these new forms of the organization of work, of the management of factories, as well as in those vast economic coordinations (*larges ententes economiques*) which, within the various professions, or beyond the frontiers from country to country, aim all together to facilitate production, *to develop the common prosperity*, it suffices to glance through the program of the lessons proposed for the *Semaine sociale* to be held at Besancon, to recognize the diligent care with which you have taken it to heart to *harmonize, by proper subordination, the useful ends of production with the superior ends which the Divine Master has assigned to human life.* ◀

Here there is hardly any room for reasonable doubt. We are face to face with a clear and precise scientific concept

of social justice: Because the organization of economic life, and even technical progress, *take so tight a grip on human life*, there are certain *reasonable norms of organization*, to be discovered by diligent study, to which they must conform, and the act of setting up institutions *adequated to these norms*, or of bringing existing institutions into equation with them, would presumably be an *act of social justice*.

The next official use of the term occurs in the letter of Cardinal Gasparri to Mgr. Walterbach of Munich, President of the *Reichsverband der Katholischen Arbeiter- und Arbeiterinnenvereine Deutschlands*. Two passages in this long letter are of particular interest to us. The first uses the word justice without the qualifier "social," but a reference of it to "the social question" shows what sort of justice is meant:

Of this fundamental renovation, our modern society has today greater need than ever before; for, having turned away from Christ and from the Evangelical precepts of justice and of charity, it led an immense number of individuals to *exploit the existing economic system to the exclusive advantage of their personal interests, but to the detriment of those of others*; they have thus given to the social question an aspect (une tournure) and a solution which truly cannot be qualified as Christian.(47)

Here we have an example of *social injustice* in its technical sense: once more a clear question of organization, for the "exploitation of the system" was a question of a long series of organizations and reorganizations of the elements of economic life, each time in view of some new personal advantage without any other consideration, and hence against the common good. Social justice will be the "fundamental renovation" of the whole "system" which now exists in organized injustice.

The next passage of interest to us uses the explicit term social justice:

The Holy Father is happy to find pointed out in your address the services which the Catholic Asso

ciations render in fostering opportune public measures or protective laws, in encouraging the collaboration of workers' organizations, in wisely regulating consumption by a prudent building up of reserves, in constructing healthy dwellings, which are of such great importance for the honor and happiness of households and families,—all things which contribute to defend the rights of the workers and to *raise the level of their welfare, especially when they are faced by the gigantic preponderance of modern industrialism*. But here is something that is of even more importance: *all the good which you have achieved is a consequence of social justice, of social charity, and not of class warfare, for this latter can engender no thing hut mutual hatreds or but an exaggerated passion for the goods of this world. . . .*

The Holy Father is certain that you will work in the future, not less than in the past, *to found a more perfect economic and social structure* (etat économique et social plus parfait); thus you will procure for the workers a greater welfare, but at the same time you will strengthen the concord between them and the industrialists. In this way you will have *fostered the cordial and peaceful collaboration of the various agents of economic production.*<sup>49</sup>

Here once more is the same specific idea: the organization, the construction of new and sound institutions for the welfare of people whose lives are crushed by the gigantic preponderance of the institution of modern industrial "civilization." The idea is strengthened by contrasting this organized and institutional action which is social justice (as an act) with the false solution of class warfare which can only breed hatreds and arouse passion, but cannot construct a society.

Before going on, now, to the many occurrences of the term social justice in the Encyclical *Quadragesimo Anno*, it may be interesting to inquire how much influence Pope Pius XI actually had in the formulations we have been examining.

All were, of course, written at his direction, in response to communications addressed to him; but they still might be, conceivably, the personal formulation of his Secretary of State. Without direct evidence on the point, we can only deal in probabilities; but these probabilities are in favor of a rather Strong influence of the Pontiff himself. On points which he had greatly at heart he preferred to fight his own battles, and one might add — to put it mildly — that he was not uninterested in a good fight. His *discourse to the University men and women* (May 18, 1931) on Fascist attempts to suppress their organization, (4) is full of the most edifying details on how not to take it lying down; and the Encyclical *Non Abbiamo Bisogno* which he published a little over a month later (June 29, 1931) by having it smuggled out of the country so that the Fascists could not stop its publication, is ample evidence that he practiced what he preached—and with some gusto!

Now it so happens that we have an insight into how he collaborated with his Secretary of State on points which he had at heart, and on which he was meeting a certain active or passive resistance. One such point was the position of the older Catholic organizations in relation to Official Catholic Action — a struggle which even today is by no means ended. On March 30, 1930, the Secretary of State, Cardinal Pacelli, addressed a letter to Commander Ciriaci, General President of Italian Catholic Action, setting forth the Pontiff's ideas clearly and forcefully. (5) On the same afternoon, in an audience granted to the Sodality, Pius XI himself reiterated the provisions of the letter, and stated furthermore that they were the result of long and serious thought and meditation. When, therefore, The Secretary of State's letter on such a point begins "The Holy Father has learned. . .," we are justified in considering it much more than a mere epistolary formula.

To turn now to the use of the term social justice in the encyclical *Quadragesimo Anno*, where it is certainly much more under the personal influence of the Pontiff, we will find

no fewer than ten explicit occurrences. There are also certain other passages which obviously treat the same idea without using the term; but we will not concern ourselves with these.

56. . . . "However the earth may be apportioned among private owners, it does not cease to serve the common interests of all." This same doctrine We our selves also taught just above in declaring that the division of goods which results from private ownership was established by nature itself in order that created things may *serve the needs of mankind in a fixed and stable order*. Lest one wander from the straight path of truth, this is something which must be continually kept in mind.

57. But not every distribution among human beings of property and wealth is of a character to attain either completely or with a satisfactory degree of perfection, the end which God intends. Therefore, the riches that economic-social developments constantly increase ought to be *so* distributed among individual persons and classes *that the common advantage of all*, which Leo XIII had praised, will be *safeguarded*; in other words, that the *common good of all society will be kept inviolate*. *By this law of social justice*, one class is forbidden to exclude the other from sharing in the benefits.(51)

It may seem incredible that so clear and scientifically exact a statement should be interpreted that social justice must somehow straddle the traditional fields of both legal and distributive justice, dipping now into one and now into the other (52) but it has been so understood. Evidently "this law of social justice" is concerned directly and immediately that "the common good of all society be kept inviolate," — *precisely* the object of the traditional legal justice in St. Thomas' theory (1:53) and of no other virtue whatever.(3) The distribution mentioned in the passage is *directed* towards the common good *by* this social justice, precisely what one would expect in a general virtue.(2:9,35)

Pius XI's reasoning here is most interesting. He has occasion to express certain "laws of social justice" in the course of the encyclical, and one of the "most weighty" is as follows:

79. . . . Still, the most weighty principle, which can not be set aside or changed, remains fixed and unshaken in social philosophy: Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them.(53)

Now he bases the right of *private* property squarely upon this law of *social* justice: "The division of goods which results from private ownership was established by nature itself in *order* that created goods *might serve the needs of mankind* in a fixed and stable order!" This is a very striking restatement of the truths alleged by St. Thomas (54) and is capable of considerable development in setting forth the social obligations of ownership, but it is beyond our present scope.

Since in this dissertation we wish to correlate the main elements of the modern doctrine with the teaching of St. Thomas, it is in place here to remark that the "most weighty principle" of social justice above quoted (53) is to be found almost textually in the *Summa Contra Gentiles*:

The optimum in any government is that things should be provided for according to their own measure, for in this does the *justice of an administration* consist. Accordingly it would be against the principle of human government if men were to be prevented by the governor of the commonwealth from carrying out their own functions, unless perchance for a brief time because of some emergency.(55)

This "justice of an administration" as here defined (in

another context it would be better applied to distributive justice) is, of course, exactly the concept of social justice which we have been analyzing: the adequation of social organization to the common good. St. Thomas, however, probably still under the influence of Aristotle's imperfect notion, seems to have failed to integrate this aspect into his theory of legal justice.

It is hardly necessary to point out how consistent the passage we are examining (51) is with those official uses already examined: There is a definite *norm* of organization ("Not every distribution ... is of a character ... to attain the end"), and social justice is the *adequation of actual organization with it*. It is precisely on this point that the next passage, closely related to the foregoing one, insists:

58. To each, therefore, must be given his own share of goods, and the distribution of created goods, which, as every discerning person knows, is laboring today under the greatest evils due to the few exceedingly rich and the unnumbered propertyless, must be effectively called back to, and *he brought into conformity with, the norms of the common good, i.e. social justice.*'56'

And yet there are people who maintain seriously that social justice is not a scientific concept!(29) It matters not at all, that in the above passages it is applied to the organization of distribution (distributive justice) and in the next to be quoted it is applied to the organization of wages (which belong to commutative justice): in both cases it is *one thing* which is named: the adequation of the organization itself to the norms of the common good, no matter what it is that is being organized. One can hardly refrain here from pointing out the possibly similar meaning of St. Thomas' "dispositio bonorum externorum" (1:79) and the "distribution of created goods" of the above passage. (See also discussion on page 66) If these two expressions do name the same thing, St. Thomas came very close indeed to a complete theory, but without developing it.

70. Conclusions of the greatest importance follow from this two-fold (individual and social) character which nature has impressed on human work, and it is in accordance with these that *wages ought to be regulated and established.*

71. In the first place, the worker must be paid a wage sufficient to support him and his family. That the rest of the family should also contribute to the common support, according to the capacity of each, is certainly right, as can be observed especially in the families of farmers, but also in the families of many craftsmen and small shopkeepers. But to abuse the years of childhood and the limited strength of women is grossly wrong. Mothers, concentrating on household duties, should work primarily in the home or in its immediate vicinity. It is an intolerable abuse, and to be abolished at all cost, for mothers on account of the father's low wage to be forced to engage in gainful occupations outside the home to the neglect of their proper cares and duties, especially the training of children. Every effort must therefore be made that fathers of families receive a wage large enough to meet common domestic needs adequately, but *if this cannot always be done under existing circumstances, social justice demands that changes be introduced as soon as possible* whereby such a wage will be assured to every adult workingman. — It will not be out of place here to render merited praise to all, who with a wise and beneficial purpose, have *tried and tested various ways* of adjusting the pay for work to family burdens. . . . (¶7)

The amount of futile discussion that has centered around this passage on whether wages were due by social or commutative or even distributive justice, is a brilliant vindication of the discursive nature of reason — what St. Thomas called “defectus intellectus.” (58) If social justice is conceived as some *thing* which one somehow owes to *someone* else, the

confusion is indeed hopeless; but there is nothing in the official texts to support such a conception. From the beginning of the above passage it is evident that what is under discussion is what we call "the wage *structure*"— not any given wage to this man or that. The consideration on the individual aspects of family life, the functions so to say of the various members, are introduced to show how one must go about establishing the *norm for that structure*. Then if the "existing circumstances" (i.e., the industrial set-up, "the going concern") fall short of that norm (and consequently put the members of the family in an impossibility of performing their family functions), "social justice demands that changes be introduced"— *not*, be it noted, in the individual pay envelope of each individual head of a family (for it is precisely that which "*cannot always be done under existing circumstances*"), but in the "going concern" itself, in the *organization* of the whole enterprise, procurement, financing, management, production, distribution, and merchandising, so as to *accommodate a wage structure adequate to the norm* of social justice, (i.e., a structure within which it is possible to meet the demands of individual justice for *all* concerned). In the little digression ("It will not be out of place. . .") tacked on to the end of this passage, the thing is as clear as words can make it: The Pope would not "render merited praise" to those who have *tried and tested various ways*, if he were not dealing with a difficult and profound problem of reorganization, requiring great prudence as well as "beneficent purpose."

In the next two paragraphs of the tencyclical, without using the term social justice, the Pope applies the same principles to the business itself, and shows how it too can be the victim of an unjust organization. The norm of social justice for the wage structure, therefore, must be set in such a way as to safeguard the social functions not only of the families, but also of the business itself.

Finally, placing the problem on a much higher plane of social organization, he shows that the norm of social justice for the wage structure cannot be rightly set without taking

into consideration also the requirements of the whole vast and complex structure of "the common good."

74. "Lastly, the amount of the pay must be *adjusted to the public economic good*. . . . Another point . . . especially vital in our times, must not be overlooked: namely, that the opportunity to work be provided to those who are able and willing to work. *This opportunity depends largely on the wage and salary rate*, which can help as long as it is kept within proper limits, but which can be on the other hand, an obstacle if it exceeds those limits. For everyone knows that an excessive lowering of wages, or their increase beyond due measure, causes unemployment. This evil, indeed, especially as we see it prolonged and injuring so many during the years of our Pontificate, has plunged workers into miseries and temptations, ruined the prosperity of nations, and *put in jeopardy the public order, peace, and tranquility of the whole world*. Hence it is *contrary to social justice when, for the sake of personal gain and without regard for the common good, wages and salaries are excessively lowered or raised*; and *this same social justice demands that wages and salaries be so managed, through agreement of purposes and wills, in so far as can be done, as to offer to the greatest possible number the opportunity of getting work and obtaining suitable means of livelihood.* (59)

In this passage, it will be noted that the term social justice is used twice, and a careful comparison of the two uses will reveal an interesting difference in what might at first glance seem almost equivalent statements. The first is what might be termed "an open and shut case" — completely disposed of once the solution is offered: "It is contrary to social justice when, for *the sake of personal gain and without regard for the common good*, wages are *excessively lowered and raised*." This is evidently a case of what we call "bad will" or malice, and it is simply and always wrong. But how about the men

of "good will" — or, to put it more specifically, how about that famous "good intention" for the common good (1:11) which is about all philosophers seem to have been able to wring out of an exclusive attention to the "final cause" (or, since we are dealing with an operation, the "formal object") of legal justice. To tell the truth, it fares rather badly: *this* social justice could not be said to "demand a good intention" except in the very narrow field of that one elicited act of the will itself; i.e. if one were to abstract from every other consideration whatever and place himself before the abstract "problem" of whether he should "intend" the common good or not, then social justice would "demand a good intention." But in every other situation of life, that "good intention" is only the starting point: what social justice *demand*s — far beyond this mere elicited act of the will — is "*management, through agreement of purposes and wills, in so far as can be done, to offer to the greatest possible number the opportunity*" of a full human life. Evidently we are here face to face with what can never be a "closed case" in this world. If that is the nature of the demands of social justice, then a constant and serious preoccupation with *social organization*, in all its forms, and in all its levels, is the *duty*, according to his capacity, of every man living in society; and (allowing for the natural and all too evident limitations of discursive reason) that duty binds him in every exterior act of his life,<sup>(42)</sup> extending even<sup>(43)</sup> as we have seen, to the interior acts.

But is this really anything very new? In one sense, no; it suffices to re-read the texts we have been quoting from St. Thomas, to see that it *could* all be accounted for already in the thirteenth century. In another sense also, no; God did not, to paraphrase a famous Frenchman, make man a two-legged creature, and then wait for Pius XI to make him social! But in another and very real sense, yes! It is profoundly new, and constitutes a veritable revolution of human thought. Is it not a common experience, in any convention of Catholic (or non-Catholic) economists, sociologists, or even philosophers and moralists, to find on every hand earnest

men who are preoccupied with “bringing economic science back to ethics,” but without seeing too clearly how it is to be done? Imagine a philosophical individualist, with the rules available in his system, trying to “regulate” what is now known as the “intangible property” (not “incorporeal property”) of a great corporation! We don’t have to imagine an individualistic moralist “regulating” what is sometimes called “the pressure of institutions,” since we have already had the opportunity of seeing one at work. (See pages 68-72)

After Pius XI, no Catholic can be consciously an individualist and keep his intellectual self-respect. He could still do so after St. Thomas (by means of a “good intention”) and *a fortiori* after Aristotle; for neither of them was dealing with a social structure complex enough to make it necessary for them to “show up” the limits of individual action, and to explore the vast field of social action *as such*. It was sufficient for their needs to explore it *as politics* where it could, as in Plato, or even in Aristotle, ~~(2-42)~~ be intensely individualistic. Moreover, much as we must admire the advance already described in the first chapter, of St. Thomas’ theory over that which he found in Aristotle, we must still confess that in many ways St. Thomas seems in this matter more under the influence of Aristotle, than under that of the social life that surged around him. Coming upon the following passage, for instance, in the Encyclical we are examining:

97. . . . For there was a social order once which, although indeed not perfect or in all respects ideal, nevertheless met, in a certain measure, the requirements of right reason, considering the conditions and needs of the time. If that order has long since perished. . . , ~~(60)~~

one might recognize that it is the guild system of the middle ages that is being praised here, and turn eagerly to St. Thomas with a feeling of gratitude that so competent an observer was there to analyze so interesting a social development. Curiously enough, there is little, if anything, in St. Thomas to reward such a search.

This divergence — not to say divorce — between social analysis and social life in the Thomistic tradition at its beginning, certainly was not removed in the course of centuries. It may even be wondered (6) if this is without influence in the historical fact that so much of the so-called “scientific” sociology has developed outside the scholastic tradition and even in opposition to it. This is not to maintain that the scholastic tradition neglected the social problem — by no means; a truer statement would be that it worked at the problem with one dimension missing, to borrow a figure of speech from Father Tonneau.(2:67) The work was done, so to say, by going beyond the premisses — something like a geometrical line scratching its own back. These reflections will be seen in a clearer light in the epilogue at the end of this dissertation, when the full extent of the “revolution of thought” operated by Pius XI can be outlined. Let us return to our examination of the use of the term social justice in the Encyclical:

The next occurrence places social justice in its high role of directing principle of all economic or “temporal” life:

88. Attention must also be given to another matter that is closely connected with the foregoing (the corporate organization of society). Just as the unity of human society cannot be founded on an opposition of classes, so also *the right ordering of economic life cannot be left to a free competition of forces. . . . a truth which the outcome of the application in practice of the tenets of this evil individualistic spirit has more than sufficiently demonstrated. Therefore it is most necessary that economic life be again subjected to and governed by a true and effective directing principle.* This function is one that the economic dictatorship, which has recently displaced free competition can still less perform, since it is a headstrong power and a violent energy that, to benefit people, needs to be strongly curbed and wisely ruled. But it cannot curb and rule itself. *Loftier and nobler prin*

principles — *social justice and social charity* — must, therefore be sought *whereby this dictatorship may be governed firmly and fully. Hence the institutions themselves of peoples, and particularly those of all social life, ought to be penetrated with this justice, and it is most necessary that it be truly effective, that is, establish a juridical and social order which will, as it were, give form and shape to all economic life. Social charity, moreover, ought to be as the soul of this order, an order which public authority ought to be ever ready effectively to protect and defend... (62)*

In this long passage, which has not been quoted here in its entirety, both free competition and economic dictatorship are admitted to have utility: what is denied them is that they can ever be a *directive* principle, either of themselves or of the economic life in general. Both of them, and especially the latter because of its extraordinary power, must *be ruled by social justice and social charity*. So far, except for the very lucid discussion of the necessity and laws of organization which immediately precedes this paragraph, it might well be written in the old tradition which felt that it was somehow clarifying the problem by endlessly repeating in various phrasings that social acts must be done “for the common good.”

But it is not like Pius XI ever to *rest* in final causes and think that “what is first in intention” is sufficient for execution. He goes on immediately: “*Hence the institutions themselves of peoples (i.e. public or governmental ones and others with public status) and particularly those of all social life (apparently those of “private order and private right” described in the preceding paragraph as “preparing the way” for the new organic society) ought to be penetrated with this justice. We have already seen what this penetration means in our consideration of the preceding text, (59) and lest any lingering doubt remains that the condition might be satisfied by everyone in these institutions “having a good intention,” he hastens to insist that “it is most necessary that*

*it be truly effective*” It is in explaining this effectiveness that he brings us back once more to the master-idea of *organized and institution-building* action without which “social justice” is a mere bandying about of words: “This Justice must *“establish a juridical and social order* which will, as it were, *give form and shape* to all economic life.” This expression “give form and shape to life” recurs several times in Pius XI’s work, as, for instance, in paragraph 103 of this same encyclical. We shall have occasion later to discuss its full significance in a theory of “social habits,” but what is most interesting for our present investigation in this paragraph, is the theory set forth on the *relation of social justice with law*. We have already seen that for Aristotle, legal justice was the virtue that obeyed the law a:66’ in the subject, and saw to it that it was obeyed, in the ruler. Likewise, we have seen that for St. Thomas (1:69) the question may be considered somewhat open whether it is thus dependent on law, or rather analogous to it, in that both seek the common good.

What is Pius XI’s theory in the matter? In the passage we are discussing, it is *social justice which must “establish a juridical (as well as a social) order”* and it is the role of public authority (Aristotle’s “ruler”) *“effectively to protect and defend”* this order established by social justice! To put it quite bluntly, *the law is simply one of the institutions that social justice creates* or establishes! Thus the Holy Father could maintain that “a new branch of law wholly unknown to the earlier times has arisen” (63); he could charge “those at the helm of State” in those times with “criminal injustice” although they administered only too well the laws they made/64 not in a spirit of social justice, but of interest; he could charge corporation law with “giving rise to the most sordid license” (65^ and lawmakers with “not only tolerating, but at times sanctioning violations of justice.” (66) In other words, Pius XI criticises positive law itself on the basis of its realization of social justice (the norm of the common good which the law is designed to attain); whereas the older tradition had at least a tendency to judge what was legal justice

by its realization of the law.

One cannot overlook the fact that the two systems were equivalent *theoretically* in that positive law in the older theory "partook of the nature of law" only in so far as it derived from the natural law; but there is a tremendous practical difference in this, that the older theory was designed speculatively to "save the appearances," (263) while the newer one is designed practically to realize justice. This point, however, will receive a fuller discussion in the next section of this chapter. Here we are concerned only with noticing the much greater dynamism and effectiveness of the new conception: Every institution of public and private life — and we will see afterwards that this extends practically to every exterior act of any importance — must be continually criticized and so to say readjusted to the norm of social justice; and as each institution becomes penetrated with this justice it becomes material of the juridical order,— i.e., the legislators sanction and direct with public laws the social order that has thus been built, and then protect and defend it. Not only the positive law, as we have just seen, is an institution that is thus built up or organized by social justice, but *the state itself in all its majesty is of the same nature*, being that institution which is built up for the purpose of "directing, watching, urging, restraining, as occasion requires and necessity demands" all the public and private institutions that give form and shape to life. (68)

It should be noted that here, as elsewhere in the encyclical, although social justice is the directive principle of social life, (organizing it, so to say, into an organic and functioning unity) nevertheless *social charity* is its soul." This concept of "social charity" is as much in need of analysis and "incorporation into the traditional framework of the virtues" as is social justice itself — indeed it is in greater need; for whereas Pius XI adopted for his concept of social justice a term which was already in current use and had, as we have seen, acquired a fairly consistent meaning suited to his purpose, he seems to have invented the term "social charity" out of whole cloth.

I can find no use of it whatever before his letter to Cardinal Gasparri of June 24, 1923. However, it is beyond the scope of this dissertation to undertake such an analysis.

The next occurrence of the term social justice in the Encyclical comes in Pius XI's discussion of the changes which have occurred in capitalism since the time of Leo XIII:

101. With all his energy Leo XIII sought to adjust this economic system according to the norms of right order; hence it is evident that this system is not to be condemned in itself. And surely it is not of its own nature vicious. But it does *violate right order* when capital hires workers, that is, the non-owning class, *with a view to and under such terms that it directs business and even the whole economic system according to its own will and advantage, scorning the human dignity of the workers, the social character of economic activity and social justice itself, and the common good.*(69)

Here the "violation of right order" includes both justice and charity, for the human dignity of the workers is in itself the object of charity, and it is a terrible perversion of order to *use* human persons as a mere instrument of economic gain, a *means* towards material wealth; for human personality is the *end* towards which material creation is ordained.(70) The Pope will return to this accusation later with a ringing indictment: "Thus bodily labor, which Divine Providence decreed . . . for the good at once of man's body and soul, is being changed everywhere into an instrument of perversion; for dead matter comes forth from the factory ennobled, while men there are corrupted and degraded." (71)

Here, however, it is the doctrine on justice in which we are interested. It is to be noted that once more, the exact point at issue is a question of *deliberate organization*: "*with a view to and under such terms*" as to capture the very system of economic life for their exploitation. The Pope then analyzes the malice of this act of *social injustice* in three stages: 1) *in fact*, it "scorns the *social character* of economic

activity”; i.e., disregards the fact that the organization of the industry “takes so tight a grip” (46) on the lives of the workers that it largely determines whether and to what degree “their share of temporal happiness” will be even *accessible* (42) to them as men of good will; 2) in *principle*, it “scorns social justice itself”; i.e., formally denies that any obligation lies upon the industry *to be so organized* that each worker’s (and the community’s) “share of temporal happiness” is accessible in so far as its “grip on human life” is concerned; and 3) as a *consequence*, it plunges the workers into miseries and temptations, ruins the prosperity of the community, and puts in jeopardy public order, peace, and tranquility, (cf 42)

The next use of the word social justice occurs in paragraph 110 of the Encyclical, which is an excellent summary of the whole Second Part of that document, paragraphs 41 to 98, hence, it will offer nothing which we have not already seen:

110... Since the present system of economy is founded chiefly upon ownership and labor, the principles of right reason, that is, of Christian Social philosophy, must be recognized in theory regarding ownership and labor and *their association together*, and must be put into actual practice. First, so as to avoid the reefs of individualism and collectivism, the *two-fold character*, that is individual *and social*, both of capital or ownership, and of work or labor must be given due and rightful weight. Relations of one to the other must be made to conform to the laws of strictest justice — commutative justice, as it is called — with proper support, however, of Christian charity. Free competition, kept within definite and due limits, and still more economic dictatorship, must be effectively brought under public authority in these matters which pertain to the latter’s function. *Public institutions themselves, moreover, ought to make all human society conform to the needs of the common good, i.e. to the norm of social justice.* If this is done, *that most important division of social life, namely economic*

activity, cannot fail likewise to return to *right and sound order.*(72)

In the reference to the justice to which “the relations of capital to labor must conform; namely, strictest or commutative justice,” anyone who has not yet got the right idea is going to accuse the Pope of inconsistency, or at least of confusing the issue, for in an earlier passage (57) he had somehow linked up the question of the family wage with social justice. The answer is that a *direct* appeal was made to social justice only when “such a wage was impossible under existing circumstances”; and the direct object of the action of social justice, as we pointed out in commenting on the former passage, was *NOT* (the emphasis is justified, in fact it should be printed in red) a change in the “individual pay envelope of each individual head of a family,” but a change in the *ORGANIZATION* of the whole “going concern” so that once the organization is just (“social” justice) then it is *possible* for the pay to be just (“commutative” justice). As long as it is *not possible* for the pay to be just, it is idle to allege the claims of commutative justice; but after social justice makes it possible, it is still commutative justice which obliges that it be paid. Exactly the same reasoning is set forth in paragraph 53 of the Encyclical *Divini Redemptoris.* (265)

It will once again be noted that the power to “make all human society conform to the needs of the common good, i.e., to the norm of social justice” is vested in *institutions*, in *organizations* of men, not in men as isolated individuals. A completely isolated man is utterly incapable of an act of social justice — though his withdrawal from the community might be an act of social injustice. Public institutions alone are mentioned in this summary, not because they are the only ones that count, but because it is their particular role to direct the rest of the institutions. This is supremely true of that public institution which we call “positive law” as we have seen (page 114); but it is also true of such other public institutions as electorates, assemblies, courts, arbitration boards, AAA, CAA, USHA, EHFA, or FHLBB.

The last occurrence of the term social justice in the Encyclical *Quadragesimo Anno* comes in an invitation to those who have left the Church for the purpose of espousing socialism, to return once more; it contains no special doctrinal significance;

126. . . . May they lend ready ears to our voice! May they return whence they have left, to the home that is truly their Father's, and may they stand firm there where their own place is, in the ranks of those who, zealously following the admonitions Leo promulgated and we have solemnly repeated, *are striving to restore society according to the mind of the Church on the firmly established basis of social justice and social charity.*

We have thus seen ten explicit occurrences of the term social justice in the Encyclical *Quadragesimo Anno*, and in not one of them, or in the seven or eight official statements which preceded the encyclical, is there the slightest deviation from a most rigorously scientific concept of what social justice is. Yet thousands of earnest and learned men have seen without seeing and have heard but have not understood, because they either cannot or will not admit that the techniques of organization: meetings, recruitment, drawing up statutes, collecting dues, common manifestations, campaigns, committees and subcommittees, formation, mutual assistance, etc. — all those “exterior and dissipating” activities which the philosopher and the scholar and the preacher are so prone to deprecate or even to disdain — *are the immediate matter of the highest moral virtue!*(74) Perhaps they habitually think of these “exterior activities” in a context apart from the fundamental issues of life, — fraternal organizations, publicity rallies, and such like things, — but the point is that the same techniques must be used in a clerical conference, a Directors' Meeting, the Senate of a University, professional associations, and a thousand other strategic places where the life of the community and of the whole of society is either built up or allowed to degenerate.

Anyone who would wish to spend a few hours investigating the power of formation in the field of ideas — intellectual blind-spots might be a more apt expression — should pick a few studies at random from the long list included in this chapter in footnotes 8 to 27, and try to find one that points out and analyzes this master-idea of *organization* in its study of social justice. Or better, select only those published since *Quadragesimo Anno* and which quote directly from it the passages dealing with social justice; and then compare the *underlinings and omissions* (i.e., what the authors think are the important and unimportant parts of the text) with the underlinings and omissions of the same quotations in the preceding pages of this chapter. Or, for a shorter exercise, read the long commentary of Father Vermeersch following the text of *Quadragesimo Anno* in the *Periodica de Re Morali, Canonica, Liturgica*. In it, he makes a list of the most important points covered by the encyclical, but *social justice (which happens to be the subject of the whole document: the setting up—“Instauratio”—of Social Order) is not mentioned* among those points! Then he makes a longer list of new things in the encyclical, and believe it or not, he includes the following among them:

13. Necessarium pronuntiat directivum oeconomiae principium. Ad hoc constituendum, Pontifex exoptat ut variae nationes studia laboresque consocient. (75)

This can refer only to paragraphs 88 and 89. Since we have already quoted a large part of 88, (62) it suffices to turn back to it to see very clearly that the Pope not only “pronounces that a directive principle of economy is necessary”; but he *clearly and unhesitatingly names what it is!* Furthermore he does *not* “ask that the various nations associate in study and work to constitute this principle.” What he does say is that *they are bound by social justice towards the world community* just as every smaller institution within themselves is bound by social justice towards them:

89. Furthermore, since the various nations largely depend on one another in economic matters and need

one another's help (i.e. since they too have a common *good*), they should strive with a united purpose and effort (i.e. by *organized action*) to *promote* by wisely conceived pacts and *institutions* a prosperous and happy international cooperation (i.e. a world *community*) in economic life.(76)

It is inconceivable that anyone who had read and studied the encyclical carefully could have failed to grasp the notion of social justice at least sufficiently to recognize the bearing of this paragraph. But nevertheless it happened!(76) The simple fact is that it was so very, very new that it could not be included in the list of "new things" — it had (with justified recourse to slang) "whizzed right by."

But if the real meaning of social justice thus escaped so eminent a commentator, what in the world did he think it was? Luckily, though social justice itself did not "make" either the "list of most important things" or the "list of new things" it still managed to get in the back door (second last page of the commentary) in some "varia quaesita" concerning a wage controversy. Note how the marvellously clear and vigorous language of the Pontiff "becomes sicklied o'er with the pale cast of thought" under the pen of the commentator:

Ex istis locis perspicitur sollicitudinem de justitia sociali eandem esse ac sollicitudinem de bono communi. Est igitur virtus quae bono communi consulit, seu rationes boni communis tuetur. Vocatur justitia, quatenus res et personas ad bonum commune aequare conatur: justitia facit aequalitatem.

Verum haec non est una virtus specialis, cum bono communi tutando variae virtutes praeficiantur. Quare quaenam specialis virtus generali isto nomine designatur nondum apparet sed in singulis casibus explorandum manet.(77)

There surely must be some conclusion regarding the depth of our social thinking to be drawn from the fact that a serious explanation of social justice consisting of four repetitions of

its final cause and a statement that it is nothing special, could even be thought of!

Yet there is no reason why anyone, especially in Rome, should have missed what the Pope was driving at. In the Chronological index of *L'Action Catholique* the Encyclical *Quadragesimo Anno* is the ninety-first official document or discourse (and the collection is not complete!) which pleads with ever-increasing insistence and urgency the necessity of organizing the whole Catholic life. To take but one example written about two years before *Quadragesimo Anno*, the *Letter to Cardinal Hlond* of May 10, 1929:

. . . His Holiness approves and encourages . . .

(your) application to the very wise work of rallying the faithful to group them in compact and disciplined organizations . . . to defend, propagate, and apply the principles of Catholic doctrine, not only in individual life, but also in domestic and civil life, offering thus their valorous contribution to the restoration and the extension of the reign of Christ in the whole of society.

But the Holy Father thinks it proper to confirm once more what he has already said in so great a number of documents; namely, that Catholic Action ought to be an organization essentially religious in nature and end, comprising all Catholics, without distinction of sex, culture, or social condition, and grouping them in specialized organizations which, though each one has its own immediate ends in conformity with the special conditions of the associates, all work together unanimously for the common good, in all the domains of action of religious and civil society, of the family, of the school, of private or of public life.<sup>(78)</sup>

And more than that: *at the very time* Vermeersch was "commenting" the encyclical, the storm of Fascist opposition to Catholic Action (mostly on the precise point of its organization) was raging about his ears; and the Pope was having the Encyclical *Non Abbiamo Bisogno* smuggled out of Italy

to marshal world opinion to save what he could from the wreckage! And in this second Encyclical the Pope defended his work by appeal to a fact too evident to be contested:

. . . Let us note quite simply, with all those who know and who live the life of our times, that there is no initiative and no activity — from the most spiritual and most scientific to the most material and the most mechanical — which does not need organization and acts which build up this organization.. , (79)

These considerations, which might seem to some to be foreign to the purpose of this dissertation, are in fact very necessary for it. Only in this way can it be shown that the greatest *present* difficulty in the matter of social justice is not in the *idea* at all — it is in the *minds* that have been so moulded (God help us!) by an individualistic formation, that the problem is not so much that of analyzing the idea, as of even seeing it when it is there.

To continue now our task of examining the principal official usages of the term social justice: the first that has come to my attention is of June 28, 1934, in the *Letter to M. E. Duthiot*, of Cardinal Pacelli. As this has already been quoted (7) it suffices here simply to call attention to the definition in it of social justice as that which “*organizes normally the social relations*” — certainly in complete accord with the interpretation of the proper act of social justice which we have been following in the former documents.

The next occurrence is in the long passage of the Encyclical *Divini Redemptoris* which has already been quoted in part, and discussed in its most obvious elements. (265) Since this passage, however, was rather obviously intended to be a summation of the whole teaching of *Quadragesimo Anno*, and a response to at least some of the fuzziest “commentators,” it deserves to be quoted in full:

51. In reality, *besides* commutative justice (which is strictly enjoined in the two preceding paragraphs, 49 and 50) there is *also* social justice *with its own set obligations*, from which neither employers nor work

ingmen can escape. Now it belongs to social justice to *demand from each individual all that is necessary for the common good.*(80)

This is the general statement of principle. It evidently silences forever all those who in their gerrymandering had straddled social justice into the field of commutative justice, but what does not appear so readily is that it is also aimed at all gerrymandering whatever: “with its *own set obligations*” This is, of course, simply a more forceful statement of a truth already clear enough in St. Thomas.(81)

51. But just as in the living organism it is *impossible to provide for the good of the whole* unless each single part and each individual member is given what it needs for the exercise of its *proper functions* (the most important of which, be it noted, is to procure the good of the whole), so *it is impossible to care for the social organism and the good of society as a unit* unless each single part (probably subordinate institutions) and each individual member — that is to say each individual man in the dignity of his human personality — is supplied with all that is necessary for the *exercise of his social functions.* (parentheses, but not dashes, added) (82)

From this it appears that this virtue with its *own set obligations* has among *those obligations that of commanding the acts of other virtues.* The Pope chooses the virtue that best suits his purpose in the encyclical he is writing; namely, distributive justice; and shows, by example and explanation, how without it the common good cannot be attained at all. The thing is so obvious that he does not even bother to draw the conclusion explicitly: therefore *social justice commands* (among other things) that there be a just distribution.

And lest there be any lingering doubt about whether this *command* could not, after all, be *morally satisfied* by a sincere, but inefficacious, “good intention,” he makes haste to state clearly the only criterion that he will permit:

51 *If social justice is satisfied, the result will be an*

*intense activity in economic life as a whole, pursued in tranquillity and order. This activity will be proof of the health of the social body, just as the health of the human body is recognized in the undisturbed regularity and perfect efficiency of the whole organism.*(83)

What this amounts to in the world of contingent things, is simply a *condemnation* (if one insists on looking at it that way) *to ceaseless effort*. (see the discussion on page 110). Whether that *proof* ever was, or will be, in fact realized is a problem for history or prophecy; the only problem for social philosophy is that *as long as it is not in fact realized*, there can be no excuse and no mercy for lack of effort. And there can be no excuses for “cases of conscience” (Cf. *any* manual of them) which, if they touch the social order with some application of the “principle of double effect,” do not invariably end as the case ends which the Pope himself will propose and solve in paragraph 53: “they must support and promote necessary organizations as normal instruments enabling them to fulfill their obligations” of whatever particular virtue is at stake

Not content with the example and the explanation already given,\*& the Holy Father then returns to the same ground in an even more specific way:

52. *But social justice cannot be said to have been satisfied* as long as workingmen are denied a salary that will enable them to secure proper sustenance for themselves and for their families; as long as they are denied the opportunity of acquiring a modest fortune and forestalling the plague of universal pauperism; as long as they cannot make suitable provision through public or private insurance for old age, for periods of illness and unemployment.(84)

Evidently, for *how could* people who are starving or undernourished, who have no opportunity for responsibility and self-respect, who are a prey to uncertainty and insecurity in the most necessary things of life — how could they *organize*

*their contribution to the general welfare, to whom "their own share of temporal happiness" is not "accessible."* ¶

This terminates, so to say, the statement of the principle, the part of his teaching on social justice that after all can be found in tradition, even though it was at times rather strangely neglected. ¶ The Pope then links this up with *Quadragesimo Anno* by quoting from that document:

52 In a word, to repeat what has been said in Our Encyclical *Quadragesimo Anno*: "Then only will the economic and social order be soundly established and attain its ends, when it offers, to all and to each, all those goods which the wealth and resources of nature, technical science, and the *social organization of economic life* can furnish. And these goods ought indeed to be enough both to meet the demands of necessity and decent comfort, and to advance people to that fuller and happier condition of life which, when it is wisely cared for, is not only no hindrance to virtue, but helps it greatly." (85)

It is interesting to note what might be called the elements of the economic life in the middle of this passage; 1) the wealth and resources of nature, 2) technical science, and 3) the social organization of economic life. The first of these elements is fixed and stable, God's gift about which man can do nothing whatsoever, since it is not in his power to annihilate or to create. The second is partly so, for there is such a thing as "natural capacity" for science, which is not uniform and not rapidly changed. Yet man enjoys a considerable control over it by that "social organization" known as education. The third element, social organization itself, is entirely under man's control. Hence it appears that the only *controllable* factor is this third, both in itself and in its influence on the two others; and the role we have assigned it — the immediate matter of the act of social justice — is easily understood. It is also easily understood how the formal element of social justice — attention to the common good — can "inform" this matter in its "elementary" state (the mere

establishment and manipulation of social contacts and relations), or in a "secondary" state (the commanding of acts already possessing the formal character of virtues).

It is this element of organization that the Pontiff then goes on to deal with in the second part of this text (paragraphs 53 and 54) and here we must note a situation very similar to the one to which we have already called attention in passing from Aristotle to St. Thomas. St. Thomas started from Aristotle's position(1:52) and added an entirely new thing, a special virtue.(1:53) In just the same way, Pius XI has begun with St. Thomas' position, as we have just seen and now goes on to a new thing, the elicited act of social justice which we have already discussed at such length (in Chapted Two):

53. It happens all too frequently, however, under the salary *system*, that *individual* employers are *helpless to insure justice* unless, with a view to its practice, they *organize institutions* the object of which is to prevent, competition incompatible with fair treatment of the workers. Where this is true, it is the *duty* of contractors and employers *to support and promote such necessary organizations as normal instruments enabling them to fulfill their obligations* of justice. But the laborers, too, must be mindful of their duty to love and deal fairly with their employers, and persuade themselves that there is no better way of safe guarding their own interests.(86)

As we already had occasion to comment on this paragraph, (2:65) it will be sufficient here to forestall two possible misunderstandings. As this passage has in mind directly only the employers, it simplifies considerably the *active* role that workers also must play, and which is outlined in some detail in *Quadragesimo Anno*, paragraphs 29 to 36; as well as in paragraphs 138 to 140, and in other places.

The second possible misunderstanding lies in the fact that the pontiff here illustrates the tremendous "pressure of institutions" on individual action by an example of a single kind

— unjust competition. It would be the worst sort of mistake to suppose that the same situation could not arise in a completely Christian society by institutional pressure from outside (the characteristic mark of what is sometimes called a “colonial” economy), or by lack of intelligence or energy within. This is clear in paragraphs 72 and 73 of *Quadragesimo Anno*; and the general law, covering all possible cases, is stated in paragraph 69 of that Encyclical:

69. . . . Man's productive effort *cannot* yield its fruits *unless a truly social and organic body exists*, unless a *social and juridical order* watches over the exercise of work, unless the various occupations, being interdependent, *cooperate with and mutually complete* one another, and, what is still more important, *un-*less mind, material things, and work *combine and form as it were a single whole*. Therefore, *where the social and individual nature of work is neglected, it will be impossible to evaluate work justly and pay it according to justice.* (87)

Just as for the first part of this section on Social Justice in the *Divini Redemptoris*, so also for the second part, the Holy Father concludes with a statement to show how his teaching here is linked up with that of the *Quadragesimo Anno*:

54. If, therefore, We consider the *whole structure* of economic life, as we have already pointed out in Our Encyclical *Quadragesimo Anno*, the reign of mutual collaboration between justice and charity in socio-economic relations can *only* be achieved by a *body* of professional and inter-professional *organizations, built* on solidly Christian foundations, *working together* to effect, under *forms adapted to different places and circumstances*, what has been called the *Corporation*.m)

Thus, as this whole quotation which we have been examining piecemeal clearly shows, *organization* and *institutions* furnish the key for the understanding of social justice;

and even the growing realization of the identity of social justice with legal justice will contribute *no effective insight* into social justice without this key. The last paragraph,(88) more over, shows how *profoundly* the idea of organization enters into this conception of justice, as does also the paragraph (87) immediately preceding.

A digression may perhaps be made necessary by the occurrence of the word "Corporation" at the end of the above passage. It does not occur in the Latin text, but has received considerable currency in translations. It does *not* mean the "Corporative State" on the Fascist model. In *Quadragesimo Anno*, describing what he does mean, at least in the preparatory stages, the Holy Father succeeds in using the word "free" seven times in less than a dozen lines, and with a few synonymous expressions thrown in for good measure; though as we have seen earlier (62) this very freedom of organization, directed by social justice, is to establish a *juridical* order as well as a social one.(89) Of the Fascist experiment, while granting that it has "obvious advantages" he expresses a discreet but unmistakable distrust.(90)

The long and clear passage we have been studying is immediately followed by a salutary *exhortation to study* — a rather understandable sequence of ideas in view of some interpretations of the encyclical *Quadragesimo Anno* which we have already examined:

55. To give to *this social activity* a greater efficacy, it is necessary to promote a wider *study of social problems* in the light of the doctrine of the Church, and under the aegis of her constituted authority. If the manner of acting of some Catholics has *left much to be desired*, this has often come about because they *have not known and pondered sufficiently* the teachings of the Sovereign Pontiffs on these questions. Therefore it is of *the utmost importance to foster* in all classes of society, an *intensive program of social education* adapted to the varying degrees of intellectual culture. . . (91)

T." -last occurrence of the term social justice in the writings of Pius XI was in the *Letter to the Hierarchy of the Philippines* already mentioned (34) as having been published almost coincidentally with the Pontiff's death. It is rather concerned with sympathy for the working classes and a desire to protect them from further dangers, than exploratory of new doctrine: in fact, the Pontiff makes it clear that he considers the findings of *Quadragesimo Anno* and *Divini Redemptoris* to be definitive in the matter:

Your paternal solicitude should moreover extend with a particular attention to the workers both of the factories and of the fields. They are the dearest to Our heart, because they live in a social condition which Jesus chose during His mortal existence. On the other hand, their material situation exposes them to the greatest sufferings: often, in effect, they *haven't sufficient* resources to create for themselves *conditions of existence worthy of a Christian*, and they lack also that tranquility of soul which comes from security concerning the morrow. (Cf.(84)) . . . They are easily accessible to theories which pretend, it is true, to defend the good of the worker, and of humble people in general, but which- are filled with dangerous errors. In fact, they combat the Christian Faith, which guarantees the foundations of right and of *social justice* and reject the spirit of fraternity and of charity taught by the gospel which, alone, can assure a sincere *collaboration between the social classes*. . .

... We exhort you again to meditate what We have written in Our Encyclical *Quadragesimo Anno*, and also in the *Divini Redemptoris*. . . We have indicated there on what Christian principles *there can be established a society* where the worker has a *situation worthy of a creature made in the image and likeness of God* and destined to eternal glory.

Therefore it is necessary to provide for the spir-

itual needs of the working class. . . and then for its material needs with an equal solicitude, by *means of those organizations and institutions* which we have already recommended with insistence in the Encyclical *Quadragesimo Anno*. (92)

In more ways than one, this text of the dying Pontiff marks the end of the battle. Not only is it the last word he will say on the subject, but it seems to take it for granted that *the term social justice now has a definite meaning*. A glance at the italicized phrases in it will reveal ideas which have all been linked to the definition of social justice in the texts we have already studied, but in this text there is no *grammatical connection at all between them and the term social justice*, which is mentioned almost in passing and without explanation. He has waged a long battle (and it has been a good one), and he can trust the idea to make its way on the basis of documents that are public property. The situation is much the same as that which obtains in the "social columns" of newspapers: when a name is continually followed by the phrase "the well-known this or that," it is quite evident that the person in question is *not* well-known — that is a characteristic only of people whose names are mentioned without comment.

This, in fact, seems to be the status of Social Justice since the death of Pius XI. In his Encyclical *Summi Pontificatus*, Pius XII puts his finger on the reality as unerringly as did his Predecessor, but without insisting on the name. His usual expressions are "justice and charity," "justice and equity," "justice and peace," the first being a general designation including of course the social aspect; and the other two being rather definitely of social connotation. The explanation — if one is needed — is probably the difference of character between the two Pontiffs. It has already been suggested that Pius XI was not uninterested in a good fight (page 103). His commonest tactic, as a matter of fact, was a frontal assault. The result was that there were quite a few people whose pet theories or ways of thinking seemed to be roughly han-

died, and even when they were of good will, they felt such a necessity to explain their own position that they didn't really hear what was being said at all.

It is surely not without significance in the many fights that were raging around the work of Pius XI, that his successor is one of the most successful Diplomats that the Vatican has had. Some learned doctor, for instance, who had gone so "far out on a limb" in "explaining" social justice that he had to start looking to his defenses at the first sound of the word, would be much less disturbed in reading the following paragraph if the word were not there:

If, in fact, the State lays claim to and directs private enterprises, these, ruled as they are by delicate and complicated internal principles which guarantee and assure the realization of their special aims, may be damaged to the detriment of the public good, by being wrenched from their natural surroundings, that is, from responsible private action. (93)

Evidently this is the same "delicate and complicated" balance of institutions and organizations which Pius XI wove into his theory of social justice; the difference is that the message here is imparted from an academic study, not from a field of battle. Or again:

*The idea* which credits the State with unlimited authority is not simply an error harmful to the life of nations, to their prosperity, and to the larger and well-ordered increase in their well-being, but like wise *it* injures the relations between peoples, for *it* breaks the unity of supra-national society, robs the law of nations of its foundation and vigor, leads to the violation of other's rights, and impedes agreement and peaceful intercourse.

A *disposition*, in fact, of divinely-sanctioned *natural order divides* the human race into social groups, nations or States, which are mutually independent in organization and in the direction of their internal life. But for all that, the human race is bound together

by reciprocal ties, moral and juridical, into a great commonwealth directed to the good of all nations and *ruled by special laws* which protect its unity and promote its prosperity.(94)

This, on the international level is *exactly* the doctrine of organization which we have been studying, only it is viewed as abstract, universal principle. Pius XI was not in the habit of talking about *ideas, dispositions of natural order, and special laws* doing things — the subjects of his sentences were men. And this is true even when he uses abstract language, as is remarkably shown in the following passage not too far removed from the passage we are here discussing:

109. The ultimate consequences of the individualistic spirit in economic life are those which you yourselves, Venerable Brethren and Beloved Children, see and deplore. Free competition has destroyed itself; economic dictatorship has supplanted the free market; unbridled ambition for power has likewise succeeded greed for gain; all economic life has become tragically hard, inexorable, and cruel. To these are to be added the grave evils that have resulted from an intermingling and shameful confusion of the functions and duties of public authority with those of the economic sphere — such as, one of the worst, the virtual degradation of the majesty of the State, which although it ought to sit on high like a queen and supreme arbitress, free from all partiality and intent upon the one common good and justice, is become a slave, surrendered and delivered to the passions and greed of men. And as to international relations, two different streams have issued from the one fountain-head: On the one hand, economic nationalism or even economic imperialism; on the other, a no less deadly and accursed internationalism of finance, or international imperialism, for which, where profit is, there is country.(95)

All the subjects in this paragraph are abstract — but they are still at each others' throats!

To draw the final moral from this long chapter, the battle over the meaning of social justice is now over, and it is time to turn the swords into ploughshares, or, as we say today, to "win the peace." The following Chapter will attempt to show what materials we now possess for a social philosophy, or a "scientific sociology," which will not be a stepchild who is at the same time a problem child in the house of ethics and moral theology, but will be normal, and entirely at home.

(1) The work of Domenico Soto: *De Justitia et Jure* (Book in, qq 1-5) is particularly well done.

↪ G. J. Waffelaert: *De Justitia*, Vol. I, p. 19.

↪ 1-2: 61:5, 4m

(4) "In actibus voluntatis, id quod est ex parte finis est formale" S. Thomas: *De. Verit.* q 10, a 3, c.

↪ A. Vermeersch, S.J. *Quaestiones de Justitia*, Brussels, 1901; p. 14 n., and Leo W. Shields, op. cit, p. 26.

↪ In *La Civiltà Cattolica*, An. 5 (1851), p. 507 "Ordini Rappresentativi Nel Loro Soggetto *La Nazione*"

(7) Pacelli: Letter to M. E. Duthoit, president of the Semaine Sociale of Nice, June 28, 1934. Quoted in *La Civiltà Cattolica*, 87th year (1936) Vol. 2, p. 119.

↪ A. Bruculeri, S. J.: "La Giustizia Sociale" in *La Civiltà Cattolica*, 87th year (1936), Vol. I, pp. 353-364; Vol. II, pp. 111-123 and 186-198.

↪ A. Michel: *La Question Sociale et les Prindpes Theologiques*; Paris, Beauchesne, 1921; p. 216.

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J. Messner: "Sociale Gerechtigkeit" in *Staatslexikon* (5th ed.), Vol. IV, col. 1664-5. col 1667-9.

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M. S. Gillet, O. P.: *Conscience Chretienne et Justice Sociale*; Paris, 1922; Italian edition, Turin, 1927, p. 96.

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α) *hoc. cit.* Vol. II, p. 187.

μ) Eduardo Lustosa: "'Justitia Socialis' Problemas terminologicos alrededor de un concepto nuevo." in *Estudios* (Buenos Aires) LV (1936) f pp. 124-138.

(υ) *Bulletin Thomiste*: "Bibliographic Critique" #539; Vol. V (1937-39), p. 448.

' (ϑ) Lustosa: *Op. cit.*, p. 137.

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♣ Shields: Op. cit. p. 3.

(16) The following are the authors "outside the Leonine Tradition" whose opinions on social justice are reviewed in this work: See References in General Works of the Bibliography: W. W. Willoughby, *Social Justice*; A. Loria, *Verso la giustizia sociale*; Roscoe Pound, "The End of Law. . ." and *The Spirit of Common Law*; T. N. Carver, *Essays in Social Justice*; Paul Elmer Moore, *Aristocracy and Justice*; Stephen Leacock, *The Unsolved Riddle of Social Justice*; Sherwood Eddy, *Religion and Social Justice*; M. Hauriou, *Precis de Droit Constitutionnel*; D. H. Robertson, *Money*; L. T. Hobhouse, *The Elements of Social Justice and The Labor Movement*; I. Babbitt, *Democracy and Leadership*; C. W. Pipkin, *The Idea of Social Justice*; Isidor Singer, *Social Justice*; P. V. Jones, *Social Justice*. It is needless to note that these are only representative selections, not an exhaustive list.

♣ Shields: Op. cit. pp. 29-30.

♣ A. Poittier: *De Jure et Justitia*, Diss. 3, n. 33 (Leodii, Ancion, 1900).

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M. S. Gillet, O.P.: ♣ French edition, Paris, Jeunes, 1922, p. 141-2. Also: "Responsabilite en matiere de placements de capitaux" in *Semaine Sociale de Toulouse*, 1921, 342-3; and "Le probleme social et la justice sociale" in *Revue de Philosophie*, 33 (1936), pp. 180-184.

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r9 Shields: Op. cit. pp. 45-46.

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⊙ Paragraphs 51 - 54.

^ Shields: Op. cit., pp. 49, 50.

⊘ Shields: Op. cit. pp. 50 and 53.

*Ibid.* p. 61.

⊘ 2-2:47:11,c.

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⊘ Schmitt, A., S.J.: "Soziale Gerechtigkeit in der Enzyklika 'Quadragesimo Anno'." in *Das Neue Reich*, XTV (1931-1932), p. 563. — O. Schilling (2) — J. Kleinhappel, S. J. (9) — W. Heinen a4

⊘ See Chapter n, footnotes 49, 50, 51.

⊘ *Bulletin Thomiste*, loc. cit.

⊘ Paragraphs 96 and 138-147.

ra Paragraphs 64-72.

⊘ E.g., in *Quadragesimo Anno*, 96: To achieve this latter lofty aim (the reconstruction and promotion of a better social order), and in particular to promote the common good truly and permanently, We hold it is first and above everything wholly necessary that God bless it and, secondly, that all men of good will work with united effort toward that end. We are further convinced, as a necessary consequence, that this end will be attained the more surely, the larger the number

of those ready to contribute toward it their technical, occupational, and social knowledge and experience; and also, what is more important, the greater the contribution made thereto of Catholic principles and their application, not indeed by Catholic Action, but by those sons of Ours whom the same Catholic Action imbues with these principles and trains for carrying on the apostolate under the leadership and teaching guidance of the Church — of that Church which in this field also that We have described, as in every other field where moral questions are involved and discussed, can never forget or neglect through indifference its divinely imposed mandate to be vigilant and to teach."

3) *VAction Catholique*; Paris, Bonne Presse, 1934; pp. 11-600.

m) In *UOsservatore Romano*, Feb. 10, 1939.

4) *Divini Redemptoris*

(awjn *Catholic Herald*, London: Special Edition, Feb. 10, 1939; Reg. Ed., Feb. 17.

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5) McGuire, Paul: *Restoring All Things*, London, S. & W., 1939; p. 76: "No great social movement in all history has grown as this is growing."

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4) Cardinal Gasparri: *Letter to Eugene Duthoit*, July 7, 1928. In *L'Action Catholique* (Paris, Bonne Presse) p. 206-7.

4) 2-2:58:9,3m.

4) A. A. *Sedis*, 1929, p. 501 Letter of June, 5, 1929.

4) A.A.S. pp. 503-4.

im'Letter to M. Eugene Duthoit of Cardinal Gasparri, July 20, 1929. in *L'Action Catholique*, p. 220-221.

4) In *VAction Catholique*, p. 223.

U8) *Ibid*: pp. 225-6.

4) *Ibid*: pp. 321-333.

3) *L'Action Catholique*, p. 226.

5) *Quadragesimo Anno* (because of our practice of always indicating in the citations themselves the number of the paragraph of the Encyclicals *Quadragesimo Anno* and *Divini Redemptoris*, it would not

be necessary to give footnote references, but they assist in making easy cross-references).

(1) Cf. N. Noguera, "Que Significa Justicia Social?" in *Razon y Fe*. 99 (1932), p. 316, 7. Also J. Ryan: "The New Things in the New Encyclical" in *EccL Review* 85 (1931), p. 2; and Genicot - Salsmans <sup>4</sup> This last antedates the encyclical.

<sup>5</sup> Q.A.

<sup>6</sup> 2-2:66:2,c

<sup>7</sup> Contra. Gent. III, 71. The encyclical itself gives this reference at par. 84.

<sup>8</sup> Q.A. 58.

<sup>9</sup> Q.A. 70-71.

<sup>10</sup> 2-2:49:5,2m

<sup>11</sup> Q.A. 74.

m) Q.A. 97.

<sup>12</sup> Cf. the quotation of footnote 2 of this chapter, and the discussion following it in the text.

<sup>13</sup> Q.A. 88.

<sup>14</sup> Ibid. 28.

m) Ibid. 30.

<sup>15</sup> Ibid. 132.

<sup>16</sup> Ibid. 4.

<sup>17</sup> Cf. *Quadragesimo Anno*, 78, 109, 114 for the influence on this institution of both social justice and injustice.

<sup>18</sup> Ibid. 80.

<sup>19</sup> Q.A. 101.

<sup>20</sup> Cf. 2-2:64:1,c

<sup>21</sup> Q.A. 135. Cf. par. 51 of *Divini Redemptoris*

<sup>22</sup> Q.A. 110.

<sup>23</sup> Q.A. 126.

<sup>24</sup> 2-2:58:12,c

<sup>25</sup> *Periodica* Vol. 20 (1931) p. 235.

<sup>26</sup> Q.A. 89 Cf. footnotes 40, 59, 72 of this chapter.

<sup>27</sup> *Periodica*: Loc. cit. pp. 238-239.

<sup>28</sup> *Action Catholique*, p. 218

in *Ibid.* p. 276.

<sup>29</sup> *Divini Redemptoris*, par. 51.

<sup>30</sup> 2-2:58:6,c: "Justitia legalis est quaedam specialis virtus secundum suam essentiam, secundum quod respicit bonum commune ut proprium objectum." Cf. 1:53.

<sup>31</sup> *Divini Redemptoris*, 51.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.* 52.

<sup>34</sup> *Ibid.*

¶ *Ibid.* 53.

¶ *Quadragesimo Anno* 69.

¶ *Divini Redemptoris* 54.

¶ "Moreover, just as inhabitants of a town are wont to found associations with the widest variety of purposes, which each one is quite *free* to join or not, so people engaged in the same industry or profession *have the right* to combine with one another into associations *equally free* for purposes connected in some manner with the pursuit of the calling itself. Since these *free* associations are clearly and lucidly explained by our Predecessor of illustrious memory, We consider it enough to *emphasize this one point*: People are quite *free* not only to found such associations, which are a matter of *private* order and *private right*, but also in respect to them '*freely* to adopt the organization and the rules which *they judge appropriate* to achieve *their purpose*.' The *same freedom* must be asserted for founding associations that go beyond the boundaries of individual callings. And may these *free* associations, now flourishing and rejoicing in their salutary fruits, set before themselves the task of preparing the way, in conformity with the mind of Christian social teaching, for those larger and more important Guilds, Industries, and Professions which we mentioned before and make every possible effort to bring them to realization."

—*Quadragesimo Anno* 87

¶ "Lest we neglect anything in a matter of such great importance... We are compelled to say that to Our certain knowledge there are not wanting some who fear that the State, instead of confining itself as it ought to the furnishing of necessary and adequate assistance, *is substituting itself for free activity*; that the new syndical and corporative order savors too much of an involved and political system of administration; and that (in spite of those more general advantages mentioned above...) it rather serves particular political ends than leads to the reconstruction and promotion of a better social order." 95

It might not be out of place to indicate that it was above all the Pope's doctrine of organization that the totalitarians opposed. The culminating accusation in the wild-eyed diatribe that drew the Encyclical *Non Abbiamo Bisogno* for a reply, was that there existed the "absurd situation" of a strong organization which took orders from the Vatican! The Nazi Paper *Angriff* accused the Pope on his death of having "under French and American" (i.e. democratic) influence, "directed the zeal of the faithful to questions of organization" . . . "leaving His Church more threatened than it has been for fifteen years." (Cf. *Action Catholique*, 267; *The Catholic Herald*, Feb. 17, 1939, p. 3).

¶ *Divini Redemptoris* 55.

*imLe Dernier Document Pontifical de Pie XI*; Vatican, Polyglot, 1939; pp. 12-13.

<sup>(63)</sup> Pius XII: *Summi Pontificatus*, Washington, N.C.W.C., 1939; p. 25.

<sup>(64)</sup> *Summi Pontificatus* p. 29 (N.C.W.C. edition)

<sup>(65)</sup> *Quadragesimo Anno*, 109

## CHAPTER IV

### THE COMPLETED THEORY OF SOCIAL JUSTICE

#### *Argument*

Underneath the theory of social justice lies a theory of "social habits" which are known in the broadest sense as institutions. Just as a man is not called good without qualification because of good acts done now and then, even though they be heroic; but only because of his good habits, i.e., his virtues; so a society is to be called good without qualification, not because of good individuals in it, or some isolated good collective act, but only because of its "good social habits," i.e. its good institutions. A theory of social justice is as incomplete without a theory of institutions as a theory of individual virtue would be without a theory of habit.

## CHAPTER IV: THE COMPLETED THEORY OF SOCIAL JUSTICE

Almost in the exact center of the Encyclical *Quadragesimo Anno*, occurs a transitional paragraph which in a way summarizes the whole Encyclical, — and a large part of Pius XI's claim to a permanent place in the history of social philosophy. It is as follows:

76. What we have thus far stated with respect to an equitable *distribution* of property and *just wages*• concerns *individual persons* and only indirectly touches social order, to the restoration of which according to the principles of sound philosophy, and to its perfection according to the sublime precepts of the law of the Gospel, Our Predecessor, Leo XIII, devoted all his thought and care.

77. Still, in order that what he most happily initiated may become solidly established, and that what remains to be done may be accomplished, and that even more copious and richer benefits may accrue to the family of mankind, two things are especially necessary: *reform of institutions* and *correction of morals*. (1)

This, of course, is a summary of the virtue of justice: First, the justice that concerns *individual persons*, *distributive* and *commutative*, and which only indirectly touches social order; then the justice which directly touches this *social order*, which is apparently divided into *institutional* and *general*. It simply will not do to object that there is no such thing as this latter division in the traditional treatise of justice (2:50); the Pontiff has already said that he has made it "in order that what has been happily initiated may become solidly established, and that what remains to be done may be accomplished," i.e. he is deliberately striking out *beyond* the advances of the past.

But although there is not identity with the past, there is continuity; as the Pontiff himself points out in another place:

25. With regard to civil authority, Leo XIII, boldly breaking through the confines imposed by Liberalism, fearlessly taught that government must not be thought a mere guardian of law and order, but rather must put forth every effort so that "through the entire scheme of *laws* and *institutions*. . . both public and individual well-being may develop spontaneously out of the very *structure* and *administration* of the State." (2) Just freedom of action must, of course, be left both to individual citizens and to families, yet only on condition that the *common good* be preserved, and wrong to any *individual* be abolished.(3)

At this formulation, the lover of tradition might be less disturbed, though it is substantially the same as the former, for the law would fit into his scheme as that which "commanded the acts of all the virtues" and there would be no parallel, as in the former text, to suggest a sort of bi-partite division, with "institutions" as the other member. In fact, it is doubtful if he would give any attention to the word in institutions at all, and if he were pressed to account for them in that sentence by some inquiring modern, the question would probably seem like a mixing of categories: institutions are *social entities*, like the family, the Church, the State, whereas law is a *principle of action*. Or, if he were to think a little faster, he might find a better explanation: institutions being natural to human nature, they somehow partake of the nature of law, for "every act of virtue, as such, pertains to the Natural Law," (4) and participating in institutions is virtuous.

And since that answer is true, the lover of tradition might well look around for another problem to solve; but if the inquiring modern should happen to be, let us say, the business or professional man mentioned on page 69, it is hardly likely that he will feel that his troubles are over.

Nor did Pius XI think they were. It is not by accident that

he quotes the above passage (3) from his Illustrious Predecessor who had indeed "boldly broken through" the social ignorance or indifference of his time, but had not developed fully his own statement of the problem which his Successor here quotes. Let us hear a competent witness: the remarks of Oswald Von Nell-Breuning on the passage cited at the opening of this chapter:

In the present chapter the Pope deals with the *reform of social conditions*, namely, the new conditions comprising the "institutions" that are intended to take the place of faulty and unsound existing institutions.

The introductory statements refer to the State.(5) Leo XIII had previously concerned himself in detail with the state, bringing the philosophical and economic doctrine of government to a perfection that has so far remained unsurpassed. Leo XIII's statements contain everything that can be said about the institutional aspects of the state. The institutional aspects of social life, however, especially economics, we do not find treated by Leo — even in *Rerum Novarum* — or at best, only by way of suggestion. Thus we can rightfully state that Pius XI is here complementing Leo XIII's doctrine of the state by the doctrine of social and economic institutions. Pius XI had announced his intention of developing more fully some points of Leo XIII's teaching, as well as giving the "more precise application and amplification of Leo's doctrine" made necessary by "changed conditions"; the accomplishment certainly far surpasses the announcement.(6)

Far surpasses the announcement indeed! Pope Pius XI's modest "develop it more fully as to some points" (7) is almost, but not quite as great an understatement as St. Thomas' "*Postquam Philosophus ostendit*" at a similar juncture of the history of thought.(1:56) For this doctrine of social and economic institutions was to fill a gap that had been calling

for attention in St. Thomas' improved doctrine of legal justice for all of seven hundred years; (p. 60) namely, a *proper matter* for the *special virtue* of legal justice. Before going on, now, to discuss and analyze this theory of the institution more fully, it might be interesting to digress a bit to see how St. Thomas came to miss it.

#### HOW DID ST. THOMAS OVERLOOK THE ROLE OF THE INSTITUTION IN LEGAL JUSTICE?

We have already had occasion several times to speculate on the exact relation that legal justice had to law in the theory of St. Thomas. In Aristotle it is the virtue that *obeys* the law or sees that it is obeyed. In most texts, St. Thomas seems to follow Aristotle, though there are occasions when he seems to suggest that *both* law *and* legal justice look to the common good, the first as an ordinance, the second as a virtue, both directive of operations. In Pius XI, it is legal or, as he calls it, social justice which *establishes* the law, just as it establishes every other institution in its direct relation to the common good. St. Thomas, therefore, seems either to agree with Aristotle (which is most probable) or to occupy a sort of middle position, in which he finds Aristotle's formulation not entirely adequate, but does not attempt a definitive formulation of his own. The question is probably not one that can be settled definitively, for it is bound up with the fact that St. Thomas incorporated into his social philosophy elements of both Greek and Roman Law based on the profoundly divergent conceptions of the Greek and Roman State.

When he writes "homo non ordinatur ad communitatem politicam secundum se totum et secundum omnia sua" (8) he is drawing on a different tradition entirely from that of Aristotle, whose doctrine appears rather in such texts as "ipse totus homo ordinatur ut ad finem ad totam communitatem, cujus est pars." (9) It is possible by taking the texts as they stand here to reconcile them, by the simple device of insert

ing the formal qualification "praecise ut pars communitatis" after "homo" in the second quotation (though even then it must look a bit odd to have "totus" before and "praecise ut pars" after the same noun!); but such a procedure will do nothing to unravel the tangled consequences of those two views that run through our problem.

And that is not all. A glance at the chart on page 30 reveals four different meanings of legal justice according to the various analogical acceptations of "law." Statements could be made about any one of these which would be false about the others. By combining a few texts (p. 27) we have been able to see how St. Thomas distinguished between some of these meanings, but no such diagram is appended to the occurrences of the term "legal justice" in the text of St. Thomas with an "X" marking the one under discussion.

The safest rule of interpretation to adopt would be to understand always "political law" (in his sense of "justum politicum" which embraces both conclusions from the Natural Law and determinations of it) (10) when speaking of Aristotle's legal justice; to have in mind Natural Law when interpreting St. Thomas; and when St. Thomas quotes Aristotle, to try to straddle. This, of course, is only for those passages which do not contain in the context itself some evident determination to one meaning or another.

Now the "juridical order" that is established by social justice in Pius XI's theory is of course a practical order: the body of legislation and administration in force in a given community at a given time; so that in order to compare his theory with that of St. Thomas, it will be necessary to examine what relation the legislation of a community has to the Natural Law in St. Thomas' conception. To discover this it will not do to turn to a place where he treats this subject *ex professo*, as for instance, in 1-2:95:2:

Every law humanly set up possesses the nature of law in just so far as it is derived from the law of nature. If however in some respect it should be dis

cordant with the natural law, it would no longer be a law but a corruption of law.(11)

For in such a passage we are not in contact with the practical order at all, but only with the abstract natural law, which, so to say, is named twice: once in itself and once as it gives the nature of law to "whatever there is of law" in human law. This abstract approach sometimes makes jurists very angry when they are struggling with the problem of human law. Thus for instance Edwin N. Garland in his *Legal Realism and Justice*:

Tourtoulon delimits it (i.e. "legal justice" in the lawyer's sense of "court room justice") when he says: "The law must be just even though justice is not good. Justice and good are not identical cases." . . . This is a conception which has played a long and sometimes bitter role in human affairs. Thomas Aquinas reconciles himself to the idea by filing its harsh edges at the cost of leaving almost nothing of the doctrine. Justice, it is argued, is obedience to law, but no law need be obeyed unless it is just in a "proper" sense. Such circumlocution either begs the question or destroys the distinction between legal (courtroom) justice and "proper"; in effect it denies the validity of the legal doctrine. But in so far as the doctrine is strictly held, it usually purports to impose on law a requirement of order, certainty, and, particularly, impartiality and equality, in terms of which the others are frequently made relevant — in short, the attributes of "strict" law. . . .(12)

A certain obscurity of style may leave some doubt here as to what, exactly, he means; but at least it is evident that he is not pleased. The general criticism, moreover, seems to be that which we have already made — that the passage we have just quoted (11) does not really touch the practical (court room) level at all; it names the natural law twice. It is only from the practical point of view that this is something to criticize, moreover; for from the philosophical point of view,

the statement is correct and adequate. Instead of criticizing it, therefore, Garlan should have looked somewhere else for his answer, as we have already suggested we would do. We cannot, however, be too hard on Garlan for thinking he was supposed to take the philosophical principle and settle cases with it immediately in his courtroom. One cannot escape the impression that neither St. Thomas himself, nor *a fortiori* Aristotle, avoided the same pitfall in their discussion of legal justice (in St. Thomas' sense now, not Garlan's). This will be clearer after we have seen, in the study we are now to undertake, *how few of the actions of life are directly under the law*.

St. Thomas has excellent material on this point, but in his synthetic preoccupation he never brought it together so that its full force was apparent. Each single case taken by itself seems negligible — an exception from the rule, something that might happen accidentally or *ut in paucioribus*. But by conscientiously going through his whole treatise on law and making a synthesis of these separate things that can happen *ut in paucioribus*, a picture emerges which has every mark of being *ut in pluribus* — as indeed it is: the *temporal* order in all its exasperating contingency, over against the unchanging order of the natural law.

Of those things which are virtuous, all, without exception, in so far as they are virtuous, pertain to the Natural Law. Thus the Natural Law is the adequate rule of all human acts, since all human acts should be virtuous.

If therefore, we speak of the acts of virtue, in so far as they are virtuous, then all acts of virtue pertain to the natural law. . . for to the natural law pertains everything towards which man is inclined according to his nature. . . And since the rational soul is the form proper to man, there is a natural inclination in every man for him to act according to reason, and this is to act according to virtue.(13)

Now the question is, *how much* of this law appears in that law which is promulgated for the common good of a political

community? On the answer to this question must depend the relation of this kind of law to social justice, whose office it is to direct the acts of all virtues to the common good. We will make use of a system of decimals in arranging this material so as to avoid too long an exposition:

I Of the things that come under the natural law, some fall under the enactments of political law also (see 2, below); yet there are some things which fall outside the enactments of human law: Human law is said to permit some things, not as approving them, but as not being able to direct them. For many things are directed by divine law which cannot be directed by human law; for more things are under a higher cause than a lower . . . whence we cannot conclude that human law is not derived from eternal law, but that it is not able to follow it perfectly.(14)

II And of these, some indeed are determined by custom (see below, 12) but others are not determined either by custom or by human law:

III And of these latter some should indeed be determined by human law, either written or unwritten, but have not been, either from some particular impediment or from: ignorance or negligence:

But as for certain things proper to the natural law, which are as conclusions from the common principles . . . the law can sometimes (*ut in paucioribus*) be defective both in regard to rectitude . . . and also in regard to knowledge of the law; because some men have a reason which is depraved from passion, or from bad habit, or from poor natural endowment.(15)

112 Others, however, cannot be determined by human law at all.(1416)

1121 Of these, some indeed are determined by pub-

lie persons (see below, 1122), but others must be left to private initiative. Cf. Aristotle:

Now it is best that there be a public and proper care of these matters [i.e. nurture and occupations]; but if they are neglected by the community it would seem right for each man to help his children and friends toward virtue; and that they should have the power, or at least the will, to do this.(17)

11211 Of these things left to private initiative, some result from the fact that existing law is no longer adequate to changed conditions (see below, 11212) but others from the fact that no law at all has as yet been enacted:

112111 And some of these are not under the law from the nature of the people (see below, 112112); but others from the very nature of the things themselves:

1121111 Of which some are matters of little importance:

Certain acts by their very nature are indifferent, and in respect of these, the law's function is to permit. And all those acts also may be called indifferent which are only slightly good or only slightly bad.(18)

1121112 But in others, the common good either is not affected (or is not yet clear): However, law does not prescribe all the acts of all the virtues, but only those which affect the common good, either immediately, . . . or mediately.(10)

112112 Not only are some things not under the law from the nature of the things themselves (112111), but others are not under it from the condition of the people ruled ("because of the hardness of their hearts"):

Many things must be permitted to men not yet perfect which would not be tolerated in virtuous men.

But human law is enacted for the generality of men, in which the greater part consists of men not perfect in virtue. And therefore not all vices from which virtuous men abstain are prohibited by human law; but only the graver sort, from which it is possible for the greater part of the multitude to abstain; and especially those which harm others, and without whose prohibition human society could not be conserved. (20)

11212 Not only are some things left to private initiative because no law at all has as yet been enacted (11211), but others are so left because existing law is no longer adequate to changed conditions of the community:

112121 And of these, some indeed must apparently be allowed to remain defective (see below, 112122): but others are to be corrected as soon as the legislative power can be made conscious of the deficiency:

1121211 The present lack of consciousness of the deficiency may result from the very discursiveness of human reason:

Law can rightly be changed because of the nature of the human reason; because it seems natural to the human reason that it arrive at perfection gradually from less perfect things. (21)

1121212 Again, it may result from the dynamic nature of society, whose changes can outstrip the vigilance of the rulers:

Law can rightly be changed because of changes in the conditions of men, for whom, according to their different conditions, different things are expedient. (22)

112122 Not only, when the law has become inadequate, are there some things which ought to be corrected as soon as the legislative power has become

conscious of the deficiency (112121); but there are other things which must be allowed to continue defective even after they are recognized as such:

1121221 Some indeed are to be allowed to continue only after an unsuccessful attempt at correction has been made (see below, 1121222); but others are to be allowed to continue from considerations of social stability:

When established law is changed, the binding force of law is diminished, in so far as customary action is thus disrupted (*tollitur consuetudo*); and therefore human law should never be changed unless in some other way as much is made up to the common good, as is taken away by the disruption of custom. This condition, indeed, is verified only in case:(23)

11212211 Some very great and most evident good (*maxima et evidentissima utilitas*) comes from the new statute;

11212212 There is a very grave crisis (*maxima necessitas*);

11212213 The established law contains a manifest iniquity (*manifestam inaequitatem*);

11212214 The observance of the established law is harmful to very many people (*plurimum*), (23)

1122 Of the things that cannot be determined by human law, some are left to private initiative (1121); but others are determined by public persons:

11221 Judicially, in questions of fact and matters of detail:

Certain singular things, which cannot be comprehended under the law, must be handed over to judges, as, for instance, questions of fact and such like things.(24)

11222 Others administratively:

112221 By a particular decree in special circumstances (privilege):

Law must be defective owing to its universality. . . In fact, this is the reason why all things are not determined by law; viz., that about some things it is impossible to lay down a law, so that a decree is needed. . . adapted to facts.(25)

112222 By dispensation from the general law:

It pertains to the rulers to determine what is useful, what not useful, for the city; who for such cases have the power of dispensing from the laws.(28)

12 Of those things which fall outside the enactments of human law, some are not determined by custom either (11); but others have a certain determination by custom:

Customary laws have more weight, and relate to more important matters than written law.(27)

2 Of the things that come under the natural law, some indeed fall outside the enactments of human law (1); but others fall within these enactments:

Public control is plainly effected by laws, and good control by good laws, whether written or unwritten would seem to make no difference.(28)

21 Of these enactments of human law, some are unwritten:

And in this way custom has the force of law, and abrogates law, and is interpreter of law.(29)

22 Others of these enactments are written:

. . . Legal justice which obeys the law, either according to the words of the law, or according to the intention of the lawgiver, which is higher.(30)

221 Of these laws, some may be obeyed according

to the intention of the lawgiver, even though the words of the law are not observed (see below, 222); but others are obeyed according to the words of the law:

2211 Indirectly as in particular decisions of courts and magistrates which the law commands to be obeyed (Cf. 1122).

2212 Directly in those cases which fall under the universal provisions of the law:

Every law is ordained to the common welfare of men, and insofar as it is so ordained, obtains the nature of law,<sup>(31)</sup> and its force.

22121 But besides these human laws which thus partake of the nature and force of law (see below, 22122); there are others which for one reason or another are unjust:

221211 Some of these, indeed, are against the divine good (see below, 221212); while others are against merely human good:

2212111 And of these, some may, per accidens, command obedience:

When a law is unjust in its end, . . . in its author, . . . or in its form, it might perhaps still be binding in conscience (for the same reason that a man must some times renounce his rights); i.e.:<sup>(32)</sup>

22121111 In order to avoid giving scandal to others;

22121112 In order to avoid public disturbances (*turbationem*).

2212112 But if the above accidental reasons (2212111) should not exist for obedience, the unjust law, in se, is not binding:

When a law is unjust in its end, . . . in its author, . . .

or in its form, it is a violence rather than a law, . . . hence such laws do not bind in conscience.(33)

221212 Of unjust laws, besides those against human good, some may be against divine good, and these must be disobeyed:

In another way, laws can be unjust, by opposition to the divine good. And such laws it is never licit to obey.(34) Judgment is not to be rendered according to such laws.(35)

22122 Though some written laws fall short of the nature and force of law (22121); those which are ordained to the common welfare partake of this nature and force:

221221 *Directly and in themselves these laws bind in conscience:*

*If laws are just they have force of obligation in conscience from the natural law, from which they are derived. And laws are called just from their end, . . . from their author, . . . and from their form.(36)*

221222 Yet when a good act must be done which involves as an effect the contravention of a just law, such a law may licitly be contravened if the intention is right and the good proportionately great.(37)

222 Besides obedience to the law according to the words of the law (221); the law may be observed in the intention of the lawgiver, but against its words:

2221 Legislators give their attention to normal occurrences, and make the law accordingly. But in some cases it would be against the equality of justice to observe this, and against the common good which the law aims at. . . In such cases it is wrong to follow the promulgated law; and good, apart from the words of the law, to do that which the nature of justice and the common good demands.(38)

2222 The same principle may demand moderation from strict legal rights:

The man who is no stickler for his rights in a bad sense, but tends to take less than his share, though he has the law on his side, is equitable.(39)

The above outline, of course, does not pretend to be complete; as the subject occupies only a subordinate place in this dissertation. But even in its possible incompleteness it presents a remarkably different aspect of law from that philosophical abstractness and simplicity (U) which we had previously discussed and which will bear repeating:

Every law humanly set up possesses the nature of law in just so far as it is derived from the law of nature. If, however, in some respect, it should be discordant with the natural law, it would no longer be a law, but a corruption of law.

Now St. Thomas' mistake — and I believe we can call it a mistake — was to base his *practical* doctrine of legal justice, or "common-good justice," on this abstract formulation; and not on the contingent and discursive formulation which we have just reviewed. To do this is to *invite a fatal confusion between this abstract formulation and the one single paragraph which embodies it perfectly in all the forty paragraphs or so of the other (exactly equivalent) formulation; i.e.:*

221221 If laws are just they have the force of obligation in conscience from the natural law, from which they are derived.

And the tendency to make this confusion would certainly not be lessened by the fact that St. Thomas developed his theory under the strong influence of Aristotle and of the totalitarian Greek theory of the "polis," for which, if it were consistent, political law and natural law would be practically identical, even though such a theory might require as many embarrassed explanations as would the morals of kings(203)

Now we can answer the question which stands as a title to

this section: How did St. Thomas overlook the all-important role of the institution in his doctrine of legal justice? Quite simply, by the confusion just outlined — but be it noted that by “confusion” we do not mean error in thought: the abstract formulation is *true*. But by employing it directly in a theory of the common good (legal justice) which is practical (*“circa operationes”*), the whole latter theory was circumscribed within the abstract order; without “reference” as the moderns would say. And this is an error of method, which is to be explained largely, I believe, by his fidelity to Aristotle; for it suffices to glance through the texts we have collected (pp. 150 to 157) to see that St. Thomas himself had plenty of material for an institutional theory of the common good.

To make the transition now, from St. Thomas to Pius XI, it suffices to leave aside the abstract formulation of human law (11) as speculatively true but not practically useful, and turn to the equivalent formulation which St. Thomas himself made, but never used in his theory of legal justice.

And here we meet a moral order in which there is place for permitting things “slightly bad” (18); permitting things “which would not be tolerated in virtuous men” (20); employing admittedly imperfect and defective solutions on the way to something better (21); discovering a once perfect solution no longer just (22); preoccupation with social stability rather than (up to a certain point) right or wrong (23); an imposition by the ordinary acts of life of an obligation to “conform” (26:29) the community; an obligation to obey the provisions of a law that is unjust (32); and the setting aside of the provisions of one that is just. ~~37:38~~ This is indeed a moral world with a new dimension, — the dimension of “the common good,” which is characteristic of what sociologists pretty generally call “the institution.”

We must now devote a few pages of analysis to this idea of the institution, before bringing our study to a close with an analysis of the act of social justice based on the preceding chapters of this study.

We must, of course, limit ourselves only to the essentials of this thing we are calling the institution. It is sufficient for our purpose to see only so much as will be of immediate aid in discussing the act of social justice; but in itself it is as vast a field as can be found still awaiting exploration and research.

## INSTITUTIONS OR SOCIAL HABITS

Since we intend to touch so vast a field in such a casual way, let us deliberately try to simplify the ideas. Just as Aristotle in the Fourth Chapter of the Fifth Book of the *Ethics* (40) had recourse to one of the simplest ways of showing that "the equal is intermediate between the greater and the less" — namely, three straight lines of the proper lengths — so let us search for a simple example of a common good.

We will suppose two men on an absolutely desert island who cannot swim, and whose only hope of reaching the main land (and food) is a heavy wooden beam — too heavy for either one to lift alone — that has somehow been left in the center of the island, several miles from the water.

We will suppose (to be very exact) that the beam weighs 300 pounds, and that the men, because of their weakened condition, cannot possibly lift more than 210 pounds and 105 pounds respectively. Since we know this, we know also that they will never get the beam to the water unless the stronger one takes hold of it half as far from the center point as the weaker one, and in the opposite direction. But the men themselves have no idea what the beam weighs or what they can 'Carry. What they have is simply a common task (to get the beam to the water) and a common good (to save their lives).

We may suppose that first the men try to carry it individually. The weaker one finds he cannot budge it at any point (for we know that the minimum lift necessary would be 150 pounds at one end); but the stronger one, though he cannot lift it at the center (which of course he would try first from a habit acquired in past experience at lifting things),

finds he can easily lift it at one end, while the other is resting on the ground. He tries dragging it, but quickly sees that that will be too much for him. Both together find it easier, but it is still too hard because of the great friction of the loose soil. In working their grip towards the middle of the beam so as to lessen the weight of the end dragging in the soil, they discover that there is a point where they can actually get it entirely off the ground and walk with it; i.e., they have found the relative positions outlined above which make the task possible, or to put it in technical language they have *organized* their effort. The first few times they stop to rest, they may have to experiment a bit once more, before they can find the right positions, but after that they will find the balance immediately each time they start, even though one of them would change by a few feet his own relative position at his end of the log. The other would simply make a corresponding adjustment at his end, from the physical impossibility of doing anything else and still getting the log off the ground. This *facility of mutual adjustment* to the conditions of a common task is a very simple and ephemeral instance of an institution, which is nothing more than a *social habit*. Neither person any longer has individual liberty of action: each can adjust his position only insofar as the other is willing to make a corresponding adjustment, for neither can do without the other and their contributions must always be in a definite relation to be effective. They may have spent a half-hour experimenting with the beam the first time they tried to lift it; and if they had to repeat the same process each time they rested and picked it up again, they would probably never get it to the water at all; but now that they have the *common habit* of mutual adjustment under the physical conditions of the task, the exasperation and discouragement and loss of energy of all those half-hours of experimenting, are saved for the common good.

But we deliberately left them a certain amount of possibility for individual action. Together they can lift 315 pounds, and the beam weighs only 300. Therefore if they could be clever

enough about it, the stronger might be able to shift five pounds of his share of the load to the weaker one who would then be taxed to his absolute capacity; or the weaker one could shift ten pounds of his load to the shoulders of the stronger. Thus, even in this desperate situation where both their lives are in the balance, each has a certain chance to exploit the other and thus lessen his own burden. There is a certain difference, however: the stronger, since he never reaches the end of the beam, can always shift his grip to restore a proper balance if the weaker tries to make him carry too much; but the weaker, since he is at the end of the log, cannot adjust his grip beyond it and could be forced by the stronger to carry every ounce he could bear. Yet the weaker still has an ultimate resource: what they are working for is a common *good*, and the weaker can deny it to the stronger by being desperate enough to give it up himself. He can say, in effect, that rather than be worked to death, he would prefer to die in leisure; and if the stronger still wanted to live he could be forced to carry every ounce *he* could stand, to the relief of the weaker.

In this way, a social habit is not only a *facility in reaching the common good*; but it is also a possible instrument of exploitation, for it offers a *means of controlling individual action* by the organization of the group. This explains how, in some of the points of the summary above, injustice can be accepted in theory and allowed to continue ~~2023;S2~~, and this acceptance and allowance to continue could itself be an act of justice. For instance, in our somewhat artificial example; if either of the parties were victimized as we have •supposed above; he could obviously accept it *for the common good*, knowing that insistence on his rights or prolonged discussion about them could frustrate the efforts of both to reach safety.

On the other hand, the acceptance of such an added burden (considering that both are supposed to be almost exhausted and carrying a load very close to their limit of endurance) might well lead to the complete exhaustion of the

one victimized, and the consequent failure of both to reach safety: so that the exploiter himself, by seeking a small unjust advantage, loses his own greatest good in the common good which he has destroyed.

This is an example of how inextricably both individual, and common good are bound up together, and how the organization of the common good requires correct distribution and (since only two are involved and each one can get an advantage only at the direct expense of the other) a sort of correct commutation. Furthermore, if one of the men should give signs of weakening there would be the problem of "morale" or fortitude, without which safety would be as unattainable as without justice.

But we must not make our case too complicated by exploring all its possibilities, which are well-nigh unlimited even in such a case as this which is simplified beyond all verisimilitude. It should already be evident that in the social order properly so called, there hardly exists such a thing as a simple case.

What we want to get from whatever simplicity we have, however, in the example alleged, is an insight into the nature of an organized group. It is a common enough opinion that society is an *ens rationis cum fundamento in re* (41);

Society is called a moral person from analogy with a physical person. Many recent jurists, like de Gierke (1841-1921), say that a moral person is a real being, but others, like de Savigny, say that it is a mere fiction. . . . It is evident that a moral person, which society is, if it is considered formally, is logical being with a foundation in reality; for it is constituted formally by rights and duties, which are relations of reason with a foundation in reality. Materially, of course, society consists in men, who are the subjects of rights and duties."42\*

The author of this opinion refers in it to his doctrine on right, as evidence for the logical nature in question:

As the subject of a right (an owner) is referred to the object as to a thing which is his own, so this object is referred also to the subject of the right. These relations are relations which are not real, but logical. For he who acquires a right over some object, is not changed thereby, nor is the object changed. They are, however, relations which are really founded in the law and in the acts by which, according to the law, any right is acquired. (48)

Now it suffices to read this last paragraph with our simplified "society" in mind, to see immediately that something is wrong: *there is simply no connection* between our "facility of mutual adjustment to the conditions of a common task" in view of the common good; and his "right of dominion." There is no right of dominion that entered anywhere into our example, yet it was definitely of the nature of a society; so that, barring a possible mistake in print referring us to the wrong paragraph for an explanation of the "rights and duties" that "formally" constitute society, we must simply say that the reasoning of this author is not pertinent to the matter in hand.

But is it "rights and duties" that "constitute" a society at all? Doesn't the concept "society" apply much more properly to a community of *action* than to an association of *goods*; unless, perhaps, the ideal society be a joint-stock company whose "members" know the address of the Stock Exchange, but not of the enterprise they are supposed to own?

In our example, at least, we were dealing with a community of action, which was formally constituted, as all operations are formally constituted, by its end. It was the end of these two men (their common safety away from the desert island) which dictated every action we examined that was really of the group: the possible acts of injustice for private advantage were against the interests of the group and destructive of it.

Now is the particular society which we examined an *ens*

*rationis cum fundamento in re*, or is it real being? I think it can be maintained without the slightest hesitation that it is real; and in this way:

There is at least no question that the two *men* would be real, since they are substantial.

There is no question either that their *actions* are real, being accidental and really distinct from the substances in which they inhere.

Now the question at issue is whether the *organization* of their actions is real, and here once more, in the simple example we have constructed, there can be no question: The fact that *each time* the two men pick up the beam after a rest, the stronger one grasps it at half the distance from the center at which the weaker one grasps it, but in the opposite direction, *is no "ens rationis."* No matter what kind of theories of social organization the two men might have — for instance, on a kind of "one man, one vote" theory they might think it essential for justice that both share equally in the common burden, i.e. grip the beam at both ends and not in any other way — or they might think that in a well-ordered society there ought to be a continuity of effort obtained by staggering the work, one working while the other rests, and vice versa — or they might have any other reasonable or hare-brained theory you wish — the fact still remains that if they are to succeed in their common effort at all they must grasp the beam in the manner indicated, except for the very slight modifications we deliberately permitted them for purposes of illustration.

In other words, the conditions imposed by the very nature of their task upon the *organization* of their action, are entirely independent of their minds — they are *in no sense an "ens rationis."* There is, of course, an "intentional" element — the end of their action; for if they wanted to use the beam as a sort of table to shoot craps on, they would organize their action quite differently — but this intentional element is in *exactly* the same relation to the organization of action as the end is to *any* operation whatever (i.e. its formal element

which places it in this or that "species" of action); and to maintain that in our case the presence of such an intentional element makes the whole organization an *ens rationis cum fundamento in re* is to uphold the absurd conclusion that there are no actions whatever in the real order!

This is not to say that in a complete society there will not be aspects or elements that are only logical being, as in the text we have already quoted from Pope Pius XI (1):

. . . seek to define the inner nature of these duties and their limits, whereby the *right of property itself*, or its *use, that is the exercise* of ownership, is circumscribed by the necessities of social living.

The "right itself" certainly comes under Gredt's classification and might come under his theory (but even that would be hotly contested by what is known as "institutional economics" (44); but the "use and exercise" is clearly an operation and has nothing to do with his theory: it is in the real order without the shadow of a doubt, and it is "circumscribed by necessities of social living" which can be so rigorous, as we have seen, that they will not so much as permit a variation of a few inches in where one grasps a log!

But it might be argued that the intentional element we admitted above — the end of the action — is precisely what *constitutes* the organization in question, is its *formal* element; and that therefore the whole organization is intentional. The best reply to this is a comparison: The formal element of man is spiritual; — but do we call him a spirit, or an animal?

Now if that "community of action" (45) which is an institution, is real being and not logical being; what kind of real being is it? It is *not substantial*, evidently, for the only substantial elements in it are the men themselves who Compose it, and perhaps secondarily, the physical things which impose conditions upon their action.

But in that case, it may be objected, it *cannot* be real; for if it is not a substance itself, it must adhere, as an accident, in some substance; and to have an accidental "society," a

*social substance* must be postulated in which it can inhere; and there is no such thing as a social substance in the real order — what exists in the real order is *individual men*.

This objection is simply a repetition of an objection which St. Thomas himself proposed to his question "*Utrum circumstantia sit accidens actus humani*" (46):

Besides, there is no such thing as an accident of an accident. But human acts themselves are accidents of a sort. Therefore, circumstances are not accidents of acts. (47)

St. Thomas' own answer to this objection is the solution! of the question: what kind of reality is society?:

An accident is said to be an accident of an accident because of their coming together in the same subject. This may happen in two ways: in one way according as two accidents are referred to one subject without any order, as to be white and to be a musician could be referred to Socrates; and in another way with a certain order, for instance, because the subject receives one accident through the medium of another, as a body could receive whiteness through the medium of its surface. And in this latter manner, one accident is also said to be in another; for we say that color is in the surface. But in both ways, circumstances can actually stand in relation to acts; for some circumstances ordered to an act pertain to the agent without the mediation of an act, such as the place and condition of the person; but others *through the medium of an act itself, as a manner of acting.* (48)

Now we have already seen that an institution is a *manner of acting*, i.e., an *organized* manner. Therefore it inheres in the individuals *not directly*, but *through the medium of their acts*.

We can now finish the argumentation begun on page 113, by resuming the first two propositions:

There is at least no question that the two *men* would be real, since they are substantial.

There is no question either that their *actions* are real, being accidental and really distinct from the substances in which they inhere.

And finally, there can be no question that the *organization* of their actions is real, since this is, as we have just seen, the *manner* of acting, and the manner or mode of an act is really distinct from the act itself by what is known as the minor or *modal* real distinction.

Thus an organization of action — an “institution” in all its unlimited forms from the most primitive “*adunatio ad aliquid agendum*” up to human society itself “*adunatio ad vitam humanam perfectam agendam*” — is real accidental being.

The long history of this controversy is mostly a history of that “abstractionism” which has plagued social theories for centuries, and which has been “the enemy” on almost every page of this rather polemical dissertation. People who, in their approach to social problems, *limit* themselves to final causes for any purposes other than mere classification, should be spanked.

But in Thomism, it (society) is certainly a “logical being,” and yet a reality. To use a distinction: it is not a purely logical being (*ens rationis ratio-cinantis*), but a being constituted by practical reason (*ens a ratione practica constitutum*); for, for Aristotle and St. Thomas, the practical reason, principle of the moral order and of human life, is its *true and unique* cause. For the rest, there is no difficulty in calling the social being an “intentional being,” provided only that the idea “intention” is understood in a moral sense, that is, for what is practically reasoned and willed, *intentum.ii9*)

Perhaps, besides this “abstractionist” habit of approaching the problem, the perennial vitality of the “logical being” theory arises from a sort of *fear* that if it is once admitted that society is real it will want to be substantial. The fear is cer

tainly not ungrounded that the state will pretend to substantiality, as history testifies from the "*polis*" to the "*Drittes Reich*" but that is no reason for hiding from the truth. The proper way to resist the tendency to totalitarianism is to keep insisting that the state is *not a substance*, not to maintain that it is *not real*. To do the latter is to play into the hands of the totalitarians by offering them a solid objective basis for their already exaggerated conviction that their opponents are stupid.

The idea of the institution in modern social theory has a remarkable history whose development, however, lies outside the scope of this dissertation. Let the briefest sort of mention suffice here for those who wish to refer to it or make it the object of research.

As a general rule, more material (unorganized) can be found outside the Catholic tradition than in it, for the simple reason that the whole positivistic tradition, which is characteristic of "scientific" sociology, was a conscious revolt against final causes, and hence a deliberate concentration on the others. For anyone with philosophical insight, however, most of this scattered and unorganized material is almost too painful to be recommended, — except perhaps as a punishment for not having already organized it correctly, — so we will limit our indications to a few of the more interesting references:

The first Catholic who began exploring the institution *ex professo* was probably Jaime Balmes — at least he thought he was first:

This delicate and important question is, I will venture to say, untouched; at least I do not know that it has yet been attempted.<sup>(50)</sup>

Balmes was especially interested in its *constraining power* on individual action, and hence called it a "public conscience": "which survives the shipwreck of private morality, and does not allow unblushing corruption to reach the height which it did in antiquity." Thus his real interest was its polemic value against Protestantism, not its significance as a social theory, although he himself pointed out in passing that it

could become a social theory. We can do no more than give a few quotations to show the general bearing of his thought:

To form the public conscience, and to make Christian morality regulate it, it was not enough to announce this doctrine (of Christian morality); there was still required a society, not only to preserve it in all its purity, but to preach it incessantly to man, and apply it continually to all the acts of life. We must observe that ideas, however powerful they may be, have only a precarious existence until they are realized, and become embodied, as it were, in an institution which, while it is animated, moved, and guided by them, serves them as a rampart against the attacks of other ideas and other interests. . . . Thus it is that all ideas, even the greatest and the loftiest, begin to fall into oblivion when they have no outward expression — no organ by which they can make themselves heard and respected. They are then confounded and overwhelmed amid the confusion of the world, and in the end disappear altogether. Therefore all ideas that are to have a lasting influence on society, necessarily tend to create an institution to represent them, in which they may be personified; not satisfied with addressing themselves to the mind, and with descending to practice by indirect means, they seek to give form to matter, they represent themselves to the eyes of humanity in a palpable manner. (51)

Note, in this passage, the preoccupation with visibility, palpability, matter, operation in the real world. Now for a passage which shows he had contemplated application of the theory not only to "The Visible Church," but to all society:

Those who vaunt so much the native force of ideas, should point out to us, in ancient or modern history, one idea which, without going out of its own circle, that of the purely philosophical order, is entitled to the glory of having materially contributed to the

amelioration of individuals and society. . . No great change is worked (indeed) in society without first being realized in the order of ideas; all that is established contrary to our ideas, or without them, must be weak and passing. But it is by no means to be supposed that every useful idea contains in itself a constructive force capable of dispensing with all institutions; that is to say with support and defense, even during times of social disorder. Between these two propositions there is a gulf which cannot be closed without contradicting all history.(52)

The fact that in the last few lines he seems to limit the role of the institution to "support and defense" shows that he is still thinking of "The Visible Church" and has not grasped the full force of his idea as a theory of society; but even so, these passages are remarkably clear and to the point.

The one usually credited with a conscious formulation of the modern theory outside Catholic circles is that disconcerting economist Thorstein Veblen. The following passages and comments of economists will be sufficient to indicate something of his thought and influence on this one point. The rest of his philosophy has very little that could be useful to a sound theory of society. John Ferguson, in his *Landmarks of Economic Thought*, points out the newness of the theory in the history of economic research:

More recently another group of economists has come into prominence, especially in the United States, which professes little or no use for any kind of theory thus far developed, and is working in a tentative sort of way towards the building up of an ostensibly novel variety of doctrine. Their criticisms are directed especially against the assumption of the classical and neo-classical schools that the production, consumption, and exchange, and distribution of wealth are determined by economic laws. They assert, on the contrary, that these economic processes

are determined by what they call institutions, and that in the study of these institutions the economist must search for his facts, not only in the field of history, but also in the realms of psychology, biology, archeology, and anthropology. Hence the newly coined term "institutionalist economics" has been pinned upon them.(63)

Veblen clearly professes this theory, as is evident from the following passages:

The institutions are, in substance, prevalent habits of thought with respect to particular relations and particular functions of the individual and of the community . . . Institutions must change with changing circumstances, since they are of the nature of an habitual method of responding to the stimuli which these changing circumstances afford. The development of these institutions is the development of society.(54)

Any community may be viewed as an industrial or economic mechanism, the structure of which is made up of what is called its economic institutions. These institutions are habitual methods of carrying on the life process of the community in contact with the material environment in which it lives. When given methods of unfolding human activity in this given environment have been elaborated in this way, the life of the community will express itself with some facility in those habitual directions. The community will make use of the forces of the environment for the purposes of its life according to methods learned in the past and embodied in these institutions.(55)

And finally, Mr. Paul Homan, another historian of economic thought, has this to say of Veblen's influence:

Whatever be the deficiencies of Veblen in the scientific role which he assumed, the effect of his work has been to stimulate some of the best scientific work of the present century in the field of the social sci

ences. Economists are engaged more exclusively in describing and interpreting the run of the facts. The "economic man" and "competitive normality" are in danger of obsolescence through disuse. Economic science is less committed to the discovery of hypothetical economic laws, and more committed to a realistic explanation of economic behavior and of the processes of the economic order. The most various factors have led to this change of direction. But no single individual has had a larger hand in it than Veblen. (66)

A much more interesting application of the theory of the institution to economic life is to be found in John R. Commons' *Institutional Economics*. (7) He sets out deliberately to find a common science of economics, ethics, and law; and despite his reporting a puzzled reception of his work at the beginning of his first chapter:

. . . criticisms . . . that they could not understand my theories, nor what I was driving at, and that my theories were so personal to myself that perhaps no body could understand them. . . (58)

he offers a study that will really repay a philosopher's analysis; though most of the professed "philosophy" which is scattered throughout the book will hardly be useful: for him philosophy begins with Locke. He states the scope of his science:

Thus, institutional economics consists partly in going back through the court decisions of several hundred years, wherein collective action, not only by legislation, but also by common-law decisions interpreting the legislation. . . takes over. . . the customs of business and labor, and enforces or restrains individual action. . . .

Such an interpretation also consists in going back through the writings of economists from John Locke to the Twentieth Century, to discover wherein they have or have not introduced collective action. Col

lective action, as well as individual action, has always been there; but from Smith to the Twentieth Century it has been excluded or ignored, except as attacks on trade unions—or as postscripts on ethics or public policy. The problem now is not to create a different kind of economics—“institutional economics”—divorced from preceding schools, but how to give collective action, in all its varieties, its due place throughout economic theory.(59)

If we endeavor to find a universal principle, common to all behavior known as institutional, we may define an institution as Collective Action in control of Individual Action.(60)

Collective action ranges all the way from unorganized Custom to the many organized “going concerns” such as the family, the corporation, the holding company, the trade association, the trade union, the Federal Reserve System, the “group of affiliated interests,” the State. The principle common to all of them is more or less control of individual action by collective action.

This control of the acts of one individual always results in, and is intended to result in, a benefit to other individuals. . .(61)

It is a temptation to go on quoting from this book, and especially to outline his highly ingenious theory of social control(62) but these are supposed to be only references for further study, not a historical survey of the theories.

There is some excellent historical material, but no formed theory of institutions, in Amintore Fanfani’s *Catholicism, Protestantism, and Capitalism*,(63) especially in the first two chapters. The following quotation will show the author’s preoccupation with our problem:

In order to avoid a number of objections, otherwise inevitable, it must not be forgotten that the manifestation of a certain economic spirit in an exception

al individual is a very different thing from the manifestation of the same spirit in a group of men who have control of social life and can compel it to move in accordance with the spirit with which they are informed. It must always be remembered that, in our investigations, we are concerned with a social force, not an individual passion. So long as the capitalist spirit remains the "sin" of the individual, it is not a force that will organize the world. It is only when it becomes the ideal of successive generations that it can concern us. If this is remembered — and it has often been overlooked — it will save many from announcing to the world that they have discovered the capitalist spirit (as understood by Weber, for example) in some Tom of the fourth century, or a Dick of the twelfth. (64)

One of the most interesting institutional theories of all (except for that of Pius XI in his tremendous synthesis of "Social Justice" and "Catholic Action") is to be found in Georges Renard's *Theorie de l'Institution*, and his shorter *l'Institution*. He applies the theory of the institution brilliantly to the Philosophy of law; but has not yet discovered, at least in the two works above mentioned, that what he has in hand is a theory of all society. A veritable school of thought had sprung up around his work shortly before the war. One could quote from almost any page, but the following passages are perhaps among the most characteristic:

The institution and the human person:— the Social Order in its entirety and all the science of law are between these two terms. Let us grasp firmly, first of all, these two ends of the chain.

But have we not already guessed what the link is which joins them? do we not know that if the institution goes beyond the human person, it is still from it that it takes its movement? The institution is like a detached fruit of the human personality — the fruit of a juridical birth which we call the *founda-*

tion. There is the link which holds the ends together. <<>

We who are interested in the larger aspects of the theory can note that this "link" is unduly limited because he is talking *only* of a juridical order. In its most elementary forms as social habit (facility of mutual adjustment in common action towards a common end) it is "founded" in every social activity which attains such facility, and the link between it and the persons is permanent while the common activity endures, permitting them to strengthen, perfect, weaken, or dissolve it as well as "found" it, always by common, or social, action. To continue the interrupted text:

A foundation is the act of a human personality which gives birth to an institution. Man founds because his nature is social, and because to have a social nature is something far more profound than merely entering with one's neighbor into relations of exchange: — it is to mix in some fashion one's existence, one's activity, one's destiny with that of one's neighbor — to integrate oneself into a community. To be social is to receive communion.

A foundation is the taking of an obligation, but it is something more besides: "Every time," wrote Dicey, "that individuals oblige one another to act in a certain way to fulfill a common end, they create a body which, wot *by virtue of a fiction of law, but by the very nature of things*, differs from the individuals who compose it." (67) To found a family, to found a state, to found a religious order, to found a charitable institution or to found a business — is first of all to have an *idea*, and then to will not to take it with oneself to the tomb; it is to envelop this idea with *ways and means* appropriate to a perpetual renovation, to endow it with revenues, to give it an organic structure, to see to it that it will be assured representatives indefinitely. . . . To found is to implant

into a work the spark of a development — almost of a life — which will continue long after the founder is no more.” (8)

The institution is the visible testimony of this truth that man is not alone upon the scene of social life — there are also ideas. They did not get there all alone; it is men who placed them there; but once they have been installed, at least those which were solidly established, they endure, they act in virtue of a marvellous dynamism, they plow their furrow into which they draw still other men. Men institute the ideas, and the ideas, once instituted, gather size like a rolling ball of snow. Foundation and then new members joining, — that is the institutional rhythm. The institution is the radiation of a conquering idea. (9)

Renard, moreover has seen the connection between such a theory of common action and the treatise on justice of Thomistic philosophy; but he has not yet succeeded (once more: at least in the two works here reported) in placing it exactly as the missing “proper matter” of the long-neglected legal justice:

After all, the theory of the institution is nothing more than a development of the treatise on justice. It is enough to examine carefully this latter, to perceive the outlines of a juridical entity which has its roots in the human person, and which nevertheless goes beyond it in duration, in continuity, in permanence: men die, generations succeed one another, but the family remains, and the nation remains, with their patrimony and their debts, with their spirit and their traditions, perhaps with their vocation and their destinies. That is the institution.

There is in the institution, at least in the most vigorous institutions, a force of conservation and of development, a being and a becoming, which challenges the usury of time and the contradiction of men. There is in it some sort of invisible power

which resists every destruction and every oppression, which defies all prisons and powers; a "something" very real and very great, "something" that makes itself loved with a powerful love, and which imposes its service imperiously upon the individual conscience. . . (7#)

Thus we have moved from our ridiculously simplified "institution" of chance and necessity on a desert island to the highest institutions of human life; and we find one theory running through them all, and one principle of operation: the social justice which we have already examined in previous chapters.

We have already seen enough of Pius X's grasp of this theory to forbear further quotations at this point from his work; and will content ourselves with pointing out here that there is more fruitful material for study in the religious aspect of his theory: "Catholic Action," than there is in the temporal aspects — "social justice" — which we have so far examined. The institutional elements—at least on the local level, abstracting from the institutional functioning of larger groups like the diocese, the nation, and Christendom as a whole—of the theory of Catholic Action are admirably summarized in a *report of a Study Session* of the Chaplains of the Youth Section of Catholic Action of France (Jan. 23 and 24, 1936) entitled *Notion de Milieu*.(71) As the whole book is already a summary it is rather a hopeless task to attempt to convey an idea of its contents by a page of quotations, as we have done for the other works mentioned. Special attention however should be called to the Chapter *Milieus sociaux et institutions* pp. 53 to 82. The significance of this distinction is that the network of institutions in the widest sense is too complicated to be worked on directly, but that certain key organizations can be exploited to "hierarchize" and control the thousands and thousands of them of which social life is made up. The amorphous and in itself largely uncontrollable complex of social habits, or of "institutions" in the broad sense is known technically as the "milieu," a word which has

been taken over directly from the French, though it is capable of an English translation; the “natural medium” of human life (much as we say that water is the natural medium of the fMi, or air the natural medium of birds). The key institutions which can be manipulated to control and direct any complex of social habits (“natural medium”) are the “institutions” properly so called. This relation is shown in the following analysis from *La Notion de Milieu*:

By its very framework — within a territory, a family, a profession — by the whole complex and intermingling of moral, religious, philosophical doctrines that are spread through it, *every concrete social medium exercises upon its members a continuous influence*, an influence more or less confused, but very real. The great differences in “types” of men — the “peasant,” the “laborer,” the “business man,” the “sailor” — all bear witness to this.

But the social “medium” is not and cannot be an amorphous mass of individuals. Within it there are constituted centers of activity and influence: *the institutions*.

Their role is of primordial importance: they characterize, stabilize, strengthen for good or evil — or sometimes resist’ — the influence of a given “natural medium.”

As a consequence, it is impossible to grasp the notion with clearness of a “real medium” and to solve the problems of Catholic Action which it creates, without taking into account the institutions. . .

The institution is a social solidarity organized. . . .

The social solidarity is a fact which is the ground work of the institution. . . It flows from the very nature of the human person. . .

But the simple discovery that a real solidarity exists doesn’t make it an institution. . . *The free and intelligent intervention of man must construct the*

*institution by organizing what he has found.*(72)  
(Italics of the original.)

What sets these "institutions" in the strict sense off from the other "social habits" (institutions in the broad sense) is a dear cut *finality* of an *enduring* nature (The simple example alleged above would not do, for it will be totally at an end as soon as the men get the beam to the water, to be replaced by another complex of habitual action adapted to reaching the shore or attracting attention), and an *authority* of some kind to coordinate efforts towards the end in view, and to supervise the adoption of adequate *means and rules of action*. It is to be noted, however, that a sort of authority or superiority exists in every institution even in the broad sense, from the very nature of things; but in all those outside the deliberately organized and strict institutions, it is fluctuating, rather vague, and indecisive. International society in modern times offers an example of this state; and if an international institution in the strict sense is ever achieved it will include some sort of real authority. In our simpler example of the two men and the beam, the stronger had a sort of authority since the task was largely one of strength, and he could not be coerced except, as we have seen, by a direct attack upon the common good. If the problem of "morale" which was suggested at the end of the example should arise, the one who best practiced the necessary virtue of fortitude would naturally be in command.

#### THE SIGNIFICANCE OF SOCIAL HABITS OR INSTITUTIONS

Some sort of doctrine of institutions is a commonplace of any sociology except, perhaps, a purely idealistic one. Aristotle's profound distrust of foreigners and resident aliens was due not only to a totalitarian conception of the political community, but also, in part, to the fact that such people introduced a disturbing element into the native institutions. In this latter consideration St. Thomas followed him rather closely:

The city should be self-sufficient because . . . this is

more conducive to civic life. For a city which must engage in trade with foreigners in order to supply its needs, also has to put up with the presence of many foreigners. Now intercourse with foreigners, according to Aristotle's *Politics*, is particularly harmful to civic customs. It follows inevitably that strangers, brought up under other laws and customs, will in many cases act as the citizens are not wont to act, and thus, since citizens are drawn by their example to act likewise, their own civic life is upset.(73)

Modern social studies, "positivistic" as they are as a rule, have devoted great energies to the description and analysis of institutions. The following passages, excerpted from the *Encyclopedia of the Social Sciences*, are typical except that they leave out the frequent references to the Catholic Church, liturgy, and dogma in which most such descriptions take a genuine delight:

"Institution" is a verbal symbol which for want of a better describes a cluster of social usages. It connotes a way of thought or action of some prevalence and permanence, which is embedded in the habit of a group or the customs of a people. In ordinary speech it is another word for procedure, convention, arrangement; in the language of books it is the singular of which the mores or folkways are the plural. Institutions fix the confines of, and impose form upon, the activities of human beings. The world of use and wont, to which imperfectly we accommodate our lives, is a tangled and unbroken web of institutions.

The range of institutions is as wide as the interests of mankind. Any simple thing we observe, — a coin a time-table, a cancelled check, a baseball score, a phonograph record, — has little significance in itself: the meaning it imparts comes from the ideas, values, and habits established about it. Any informal body of usage — the common law, athletics, the higher learning, literary criticism, the moral code — is an insti-

tution in that it lends sanctions, imposes tabus, and lords it over some human concern. Any formal organization — the government, the church, the university, the corporation, the trade union — imposes commands, assesses penalties, and exercises authority over its members. Arrangements as diverse as the money economy, classical education, the chain store, fundamentalism, and democracy are institutions. They may be rigid or flexible in their structure, exacting or lenient in their demands; hut alike they constitute standards of conformity from which the individual may depart only at his peril.

About every urge of mankind, an institution grows up; the expression of every taste and capacity is crowded into an institutional mold. . .

Our culture is a synthesis—or at least an aggregation—of institutions, each of which has its own domain and its distinctive office. The function of each is to set a pattern of behavior and to fix a zone of tolerance for an activity or a complement of activities. . .

It is impossible to discover for such an organic complex of usages a legitimate origin. Its nucleus may lie in an accidental, an arbitrary, or a conscious origin. . . Even if it is deliberately established an institution has neither a definite beginning (i.e. it grows out of institutional elements of the past which the founder can pick and choose—to a certain extent—but cannot create) nor an uncompromised identity (i.e. it represents the institutions of the past which it incorporates, as much as it represents the idea of the founder). . .

In fact, as an aspect of a *continuous* social process, an institution has no origin apart from its development. . . In the course of events file fact arrives before the word, and new wine must be put into old bottles. . .

The pages of the law reports reveal the ingenuity with which, in spite of professions that the law remains the same, old rules and standards are remade to serve changing notions of social necessity. An institution which has enjoyed a long life has managed to make itself at home in many systems of thought. . .

In this continuous process of the adaptation of usage and arrangement to intellectual environment an *active role* is assumed by *that body of ideas taken for granted* which is called common sense. Because it determines the climate of opinion within which all others must live, it is the dominant institution in a society. . .<sup>(74)</sup> Italics and parentheses added.

It would be more vain to search through all this for a final cause than to search through tradition for a proper material one! The closest one could come to one would be in the last paragraph: At any given time a certain body of ideas (different in different times, of course) enjoys a certain privileged position of being taken for granted. As long as they happen to enjoy this position (but not before or after) they are called common sense and exercise an active, determining role towards the whole complex of institutions. From this, the final cause of society would appear to be conformity to this changing and elusive "common sense;" and the latter in its turn would exercise the role of "directive principle" which Pius XI assigned to social justice; though at the same time it would somehow be the product of itself and of the complex of institutions which it directs.

Sad as this is as philosophy, its confusion and intellectual tail-chasing should not blind us to the fact that the whole passage *has* analyzed aspects of reality which a philosophy that admitted final cause had either neglected or treated *in globo* (hence casually) as in the example from *De Regimine Principum* quoted above,<sup>(73)</sup> and as set forth throughout the whole first two chapters of this dissertation.

The confusion and tail-chasing can be removed with surprisingly little disturbance to the rest of the analysis by the

supposition that the way culture “wobbles” is not an end in itself, but a more or less intelligent and well-intentioned striving towards a culture that will correspond fully to the *necessities of human development and perfection*. This “end” could then give “form” to the chaotic and indescribable “matter” which the positivists attempt with such touching earnestness to describe, as in the long passage just above. This, as a matter of fact, is exactly what we are seeing done in the various “institutional” theories we have examined, and above all in the “Social Justice” and “Catholic Action” of Pius XI. We now want to give brief attention to these chaotic institutions *in themselves*; to show what their significance is in the completion of the old theory of “legal justice.”

We will start with an affirmation: All social acts whatever are highly organized. To some, this may come as a shock; but let us take the simplest sort of act in the most material aspect of life: the act of buying and selling.

Some people might think that this requires no prolonged and arduous training — but it does. What a difference in procedure from such an act in a “bargaining” tradition, to the same act in a “fixed price” tradition! So great is this difference that it may take years for a man to make the transition from one to the other, even under the driving force of daily economic losses. Perhaps the easiest way to bring this truth home quickly, is to transcribe a few paragraphs from a report of one of my friends in China:

In business, one Chinese is supposed to be able to get the best of ten westerners. In the old days there were very few Jews in China, and they are said to have died of starvation . . . Missionaries in China have, naturally, a great deal of business to do with the people, and their presence in a neighborhood is welcomed as much as a fox might welcome the advent of a chicken fancier. After a few years the stupid foreigner learns to take care of himself, and often achieves the honor of paying less than two or three times the price of an article.

The first thing any new missionary must do in a new area is to secure a piece of land. He looks about for a suitable location which the owner is willing to part with. I don't remember the procedure in America. Quite possibly the buyer might even approach the owner and ask him the price. Such a step in China would be ridiculous and disastrous. One fine morning the missionary sends one of his friends down to look over "that barren waste just north of the woods." He occasionally makes slighting remarks about the property being unfit for his purpose. Finally he might confide (under pledge of great secrecy) to his No. 1 man that he would take the property if the owner would sell it at five dollars an acre. All these harmless machinations are unknown to the world at large except for the few thousand people in the surrounding villages.

The owner of the property carries on his part of the deal in much the same way as the missionary. This may continue for as long as two years until everyone is perfectly satisfied that everyone else knows his intentions. As soon as it is clear that the missionary will not take the land at any price, not even as a gift, and that the owner will never part with his property, not even at the price of 10,000 yuan (\$3,000) an acre, the way is open for the transaction, which may be carried through with remarkable ease.(76)

To the "westerner" of this quotation such bargaining technique must be simply incomprehensible at the start, even though, perforce, he must submit to it — but it cannot be nearly so incomprehensible as our "fixed price" technique is to those who bargain. The "*aestimatio communis*" of a theoretical "just price" is a much more highly organized social phenomenon than the apparently much more complex and deViquis procedures of bargaining. The apparent simplicity of the former is in reality the facility of acquired habit.

If we were to examine instead of a simple exchange, the systems of property tenure, we would find incomparably more extensive and complicated institutions giving "shape and form" to human activity:

What divers forms has property had, from that primitive form among rude and savage peoples, which may be observed in some places even in our times, to the form of possession in the patriarchal age; and so further to the various forms under tyranny, — We are using the word tyranny in its classical sense; — and then through the feudal and monarchical forms down to the various types that are to be found in more recent times.\*70\*

And in every one of these forms the individuals within them had to "conform" to the institutional pattern, exactly as the missionary in China had to conform, if they wanted to participate in the common life. For this is what it means to "participate in the common life"; — without a common expectation of a certain pattern of activity during transactions, no social intercourse is possible at all; just as individual life becomes impossible (except insofar as it is sustained by outside help) in that strange disease in which all the common habits become somehow jumbled in the mind's control of them. Thus a victim of this disease, in picking up a telephone receiver, has no assurance at all that his hand will carry it to his ear — it will just as likely go through the motions of brushing his teeth; and an attempt on his part to correct the action may result in motions of combing his hair or sticking the receiver in his tie. On the other hand, when he grasps a glass of milk, his hand may upset it against his ear like a telephone receiver. With all expectation of normal response removed, he is no longer able to meet the necessities of life.

This profound derangement of normal processes reveals two orders of individual habits: the order which deals with *normality and abnormality* of action itself; and then, built upon the normality of this order, another order of *facility*

or *difficulty* of operation, which is the world of art and virtue and their opposites.

It is much the same in the social order: There is one level of social habit (or institutions in the broad sense) which by offering *expectation of normal response* makes social intercourse *possible*; and another level, (institutions in the strict sense) which is built upon this first level, which makes that social intercourse in fact *good or bad*; and this last is the order of social justice.

Now this suggests a very interesting and fruitful parallel: just as an individual is called "good" without qualification, not because of this or that good act or good quality, even though it be of heroic proportions, but because of his *good habits, i. e. his moral virtues*; so a society is not to be called "good" without qualification for the good individuals in it or for some great collective act of generosity or valor, but for its *good institutions, i. e. its social justice*.

And just as vice is as much a habit as virtue; so bad institutions are as much organized as good ones. The only difference is in the *kind* of organization and that is determined by its end: the good to secure the development and perfection of the full human life, and the bad to grasp some sort of immediate advantage regardless of the consequences.

Thus the individualist who detests the "machinery" of organization, and will have (in theory) none of it, is completely deluded: neither he nor anyone else has any choice between organization and no organization in social life; the only choice anyone can exercise in this matter is between *accepting* responsibility for the organizations he already participates in (whether he will or no); and deliberately *abandoning* them to the forces of evil (while still participating in them, of course). It is here that the obligation of social justice can be seen at its clearest. Man has the same obligation to form and to direct institutions he necessarily uses in the social order, that he has to form and to direct the habits that he necessarily uses in the individual order.

Now we can see the full significance of institutions in the

synthesis of social philosophy: *There can no more be a social philosophy without a theory of institutions than there can be a moral philosophy without a theory of habits!*

And more: there is no such thing as "bringing sociology and economics back under ethics." They are there already, and the problem right now is to get ethical philosophy—or rather, ethical philosophers—to recognize what should long have been obvious: — when institutions, and society itself are recognized as organized *actions* of men, it is quite obvious that they are "under ethics" as much as any other *actions*.

Nor is the problem one of *changing* the traditional social philosophy: on the ground which it chose to investigate—that of *formal* causes, which in operations are immediately determined by final causes—it is as clear-sighted and apt today as it was, or will be, at any other age of history. The problem is to choose to investigate the other causes as fully as it investigated the formal one!

Or, to put it more bluntly, we must not allow such "analyses" as the following to parade through our philosophic literature as analyses of "society." They should be labeled for what they are: studies that have the same relation to reality that logic has, studies of abstract formalities only and *not* of reality at all.

There is only one conclusion left: The state, considered formally (its matter being the multitude or organized in inferior unities) is a logical whole, a universal, an ideal which has no existence except in the intelligence, but which is founded on the common nature of the human persons, and precisely on a proper accident, upon their quality of sociability. This basis makes of the state a necessary ideal.

This conception is articulated, as is evident, to the theory of universals. And the author (J. Stepa) concludes his article with great brilliance by outlining a historical synthesis of all social theories. Individualism in sociology belongs to nominalism; metaphysical realism produces sociological universalisms.

The extreme idealism of Plato and Hegel, which recognizes no reality but the idea, engenders a radical universalism which makes of the state a being subsisting apart, outside the human multitude. Between these two extremes, there is place for a moderate universalism, of the type Aristotelico-Thomist. The State as a universal, in this perspective, *would have all the reality, and would not have any but the reality of an idea*, of an idea necessarily engaged in human individuals and founded on the essential reality of their social nature/77 (Italics added)

Shades of Roscelin and Abelard! Have we really traversed eight centuries since those heroic times without yet discovering that the whole controversy about universals from first to last is enclosed within the formal confines of logic, and has nothing to do with ontology. What earthly difference does it make to anyone, when he is seated at table, with his knife and fork in his hand, whether beefsteak “as a universal, would have all the reality, and would not have any but the reality of an idea, of an idea necessarily engaged in individual beefsteaks, and founded on the essential reality of their beefsteak nature”? Of course! but the question is what reality they possess as *beefsteaks*, not as *universals*!

And the question is what reality society possesses as *society*, not as a universal *formality*.

Strangely enough, Stepa apparently excludes the real answer, so as to be left with nothing but the logical problem on his hands. Here is the sentence which immediately precedes the above quotation:

St Thomas attributes to the State a unity *secundum quid*; but Mr. Stepa excludes the idea of an accidental whole, which he understands to mean a whole that is insecure and contingent. Therefore there is only one conclusion left: the State considered formally is a logical whole. . . (78)

Only the State happens to be an accidental whole, and it is real being/48 We should not leave these two quotations

without pointing out the impossibility of finding in them any reference to *action*, as this is a good way to detect almost immediately all the Roscelins and Abelards of "social philosophy" as they understand it. It is hardly probable that anyone ever tried to define society without some essential reference to action: "adunatio hominum ad aliquid communiter *agendum*" — "ad vitam humanam perfectam *agendam*" — "ad unum aliquid communiter *agendum*" etc. yet instead of basing their theories on the coordinated *actions* of men, which can very easily form an accidental whole in the real order, these people insist on basing it directly on a logical abstraction: "the common *nature* of individual persons — the *quality* of sociability — the *essential* reality of their social nature." Society is based *immediately upon the actions*, and, through these actions, *mediately upon the individual persons*,<sup>(48)</sup> in whom, of course, it has its ultimate, and in that ultimate sense, its *only subjectum inhaesionis*.

It is unjust to blame this particular form of abstractionism upon St. Thomas. As we have already seen in the second chapter; he was too good a philosopher not to leave a question *open* when he did not see clearly; and these people are *closing* it in the logical order precisely because they do not see clearly anywhere else. It would be quite plausible, as this dissertation has attempted to show, to maintain that St. Thomas simply could not discover an immediate and proper act of Social Justice, and so proposed only the commanded acts; it would be equally plausible to maintain (see the beginning of this chapter) that his great confidence in the *basis* of human law in natural law led him to overlook the material which he himself had gathered on its institutional *character* in the temporal order. But these shortcomings are not errors, they are only incomplete statements of the truth. They leave us the task of filling in, when we are wise enough to manage it, the parts that were left blank, so to say, in a whole work that is well-ordered and well conceived.

It has surely been evident, throughout the last two sections of the present chapter, how intense a preoccupation

runs through all the "institutional" theories that have been asking for a place in Catholic thought (and in the work of Pius XI demand that place), to come to grips not only with final and formal causes, but with material and efficient ones as well, and thus escape from sterile and contemplative concentration on abstract formalities in social thought. We can do no better, therefore, than to conclude our study with a gathering together in brief statements of the "four causes" of the act of social justice, and a brief indication of the consequences of Pius XI's work in Catholic social philosophy and moral theology.

α Quadragesima Anno 76-77

β Quoted from *Rerum Novarum*, par. 26.

γ Quadragesimo Anno 25

1-2:94:3,c

Quadragesimo Anno 78, 79.

δ Von Nell-Breuning, *Reorganization of Social Economy*, p. 200.

ε Quadragesimo Anno 15.

ς 1-2:21:4.3m

ζ 2-2:65:1,c. Cf. also 2-2:61:1,c; 2-2:64:1,c and 5,c.

η 0,1134b18 to 25

θ In corp. articuli.

ι Edwin N. Garland, *Legal Justice and Realism*; N.Y., Columbia, 1941; p. 76, 77.

κ a) i\_2:94:3)C

λ 1-2:93:3,3m

μ 1-2:94:4,c ad fin.

ν Cf. Arist. 1287b17-20.

ξ Arist: 1180a29

ο 1-2:92:2,c

π 1-2:96:3,c & 1m

ρ 1-2:96:2,c

σ 1-2:97:1,c

1-2:97:1,0

1-2:97:2,c

τ 1-2:95:1,3m; Cf. Arist. 1287b22

υ >1137b27-31; *InEth.* 1021; 1-2:96:1, 1m

1-2:96:6,c & 97:4,c

φ 1287b5; cf. 1-2:97:3,c

χ 1180a33; cf. 1-2:90:2, 3m; 1-2:91:3,c; & 1-2:94:2,0



Georges Renard: *La Theorie de VInstitution*; Paris, Recueil Sirey, 1930; *V Institution*; Paris, Falmmarion, 1933.

(4) *VInstitution*, p.44

(5) Dicey: *Rapports entre le droit et l'opinion publique en Angleterre pendant le XIXe siecle*; trad. Jeze, p. 143

(6) *VInstitution*; p. 45-46

(7) *Ibid*: pp. 153-154

(8) *VInstitution*: pp. 40-41.

(9) *La Notion de Milieu*, Paris, A.C.J.F., 1936.

(10) *Ibid*: pp. 54-56.

(11) *De Regimine Principum*: English translation: *On the Governance of Rulers*; Toronto, 1938; p. 117.

(12) Walton H. Hamilton in *Encyclopedia of the Social Sciences*; N.Y., Macmillan, 1935; (15 Vols.) Article "Institution." Vol. VII, pp. 83-85

(13) Joseph McCoy, S.M.: " 'Buy-Sell' in China" in *Catholic Digest*, Dec. 1941, p. 26.

(14) *Quadragesimo Anno*, 49

(15) J. Stepa "Le caractere total de Tetat d'apres S. Thomas d'Aquin" in *Magister Thomas Doctor Communis* (Studia Gnesnensia, XII), pp. 429-441. Quoted from critical review in *Bulletin Thomiste*, Vol. 5, pp. 521-522.

(16) *Ibid*.

## CHAPTER V

### *CONCLUSION: THE ACT OF SOCIAL JUSTICE VIEWED IN RELATION TO THE FOUR CAUSES*

#### *Summary*

*Efficient Cause:* Only the member of a group is capable of an act of social justice, and all men, regardless of class distinctions set up by Ancient Philosophy, are so capable. *Material Cause:* the immediate and proper matter of social justice is the organization of human acts into social media and institutions (social habits) of which society is composed; when acts of other virtues become commanded acts of social justice, they take on the new material aspect of organization. *Final Cause:* the Common Good is the direct object of the act of social justice. The Common Good is the perfection of the vast hierarchy of the institutions of human life. *Formal Cause:* the final cause is to an operation as a form is to matter; therefore the specific formality of the act of social justice is that it be done *for* the common good. This formality should not be construed as a mere “good intention” added to individual acts, for it must give “form and shape” to life in the real order.

## CHAPTER V: CONCLUSION

In summing up the findings of this dissertation under the heading of the "four causes," it should be remembered that we are dealing with these "causes" in an analogical sense. Primarily they refer to substances, but they are used also of accidents. Our subject of investigation is, as we have seen, an "accident of an accident"; (4:48) namely, the *organized* (a mode) *actions* (accidents) of men (the substances in which the accidents inhere).

A more scientific way of presenting the material, since we are dealing with operations, would be according to subject and objects, the latter being both formal and material. Yet we have nevertheless chosen the analogical framework for our summary, both because it enables us more easily to insist on certain aspects undoubtedly neglected by tradition, and because it is closer to the thinking of those who maintain that the State is "only logical being" and hence never conceive of it as an operation at all.

### THE ACT OF SOCIAL JUSTICE VIEWED IN RELATION TO THE FOUR CAUSES.

#### I. *The Efficient Cause:*

It is surely nothing new to suggest that man is the efficient cause of the act of social justice; but something that has not been sufficiently adverted to is that *only the member of a group* is capable of such an act. A completely isolated individual *cannot* practice social justice, even though he be a man in possession of all his powers. All he is capable of in the social order is an act of social injustice; e.g., if the society he had left should really *need* his collaboration or direction, and he should deliberately continue to withhold it.

*All men*, utterly regardless of any theories Aristotle m?t

have had about foreigners, resident aliens, slaves, mechanics, and laborers, are efficient causes of social justice, insofar as they can perform any act of virtue, i.e., be in possession of the "use of reason" and exercise of their will.

We may conveniently however, and for practical purposes (i.e., without even considering the problem of whether or not they may give rise to distinct species of social justice) distinguish the person carrying on an ordinary activity of social life (exercising social justice in the *natural medium* of his life in the language of Catholic Action); one consciously directing the influence of organized *institutions* (in the strict sense) in the transformation of such a "social medium"; and one directing the destinies of that special institution, "the state," whose function it is to coordinate the other institutions of the temporal order. All three sorts would admit both *participative* acts and *directive* (or "architeconic") acts.

How this corresponds with St. Thomas' *implicit* division (through his division of social prudence) into *economic* and *political*, and the latter once more into *legispositiva* and what we may call *civic* (political in the subjects as contrasted with rulers) will be a vexed question for future study. Under modern systems of universal suffrage and short tenure of elective office, with many private institutions exercising a profound influence on political life (a thing that was true of many merchant guilds even in St. Thomas' day), the distinction between *legispositiva* and *civic* is by no means clear. And even the distinction between *economic* and *political* is under something of a cloud from its Aristotelian origin; for there it was not only a question of different degrees of "otherness" as between citizen and citizen ("politicum justum"), between husband and wife ("uxorium justum"), between parent and child ("justum paternum"); but also between master and slave ("justum dominativum"), and between citizens and those (in his system) philosophical misfits, the laborers and mechanics, who are the "slaves of the community" "with a special and separate slavery" who "ought to become slaves" so as to fit into the system. All of these except the

“politicum justum” were only “quoddam et secundum similitudinem justum” not only for the Christian reason that St. Thomas gave (that their relations were *properly* governed by charity more than justice), but also for the pagan reason Aristotle had, that in ever descending order as enumerated above they had lesser rights and lesser “capacity for virtue” by reason of their exclusion from the political community of life.

For the time being it suffices for our purpose to abstract from this whole question and simply record the fact that Pope Pius XI addressed his Encyclical on “Reconstructing Social Order” not only to “Our Venerable Brethren and Patriarchs, Archbishops, Bishops, and other ordinaries in peace and communion with the Apostolic See,” which is the custom in most Papal Encyclicals, but also and explicitly “to *all the faithful of the Catholic world*” This unusual extension of the circle to whom encyclicals are usually addressed was fully deliberate, and stems from the Pontiff’s own theory on the efficient cause of social justice.(2) The Salutation “Venerable Brethren *and beloved Children*” is used not only at the beginning of the letter but also in paragraphs 10, 15, 39, 44, 100, 146, and 148; and a large part of its instructions are addressed precisely to the “little people” whom older theories would have excluded from an influence on society. One must know something of the achievements of the *Jeunesse Onrriere Chretienne* to realize the full import of this passage from the Encyclical:

140. Moreover, the ranks of the workers themselves are already giving happy and promising signs of a social reconstruction. To Our soul’s great joy we see in these ranks also the massed companies of young workers, who are receiving the counsel of Divine Grace with willing ears and striving with marvelous zeal to gain their comrades for Christ. No less praise must be accorded the leaders of workers’ organizations who, disregarding their own personal advantage and concerned solely about the good of their

fellow members, are striving prudently to harmonize the just demands of their members with the prosperity of their whole occupation, and also to promote these demands; nor do they let themselves be deterred from so noble a service by any obstacle or suspicion.(3)

Among these young workers whose achievements for the common good the Pontiff points out "to his Soul's great joy" are not only "laborers and mechanics," but also, in large part, "immature youths," and a large number of girls and young women — precisely the classes that the pagan theory, based as it was on social status and not on the dignity of the human person itself, would have excluded, in a greater or lesser degree, from the care of the common good!

This emphatic inclusion of *all* among the agents of social justice flows directly from an institutional theory of society. Since society *as such* is composed *immediately* of habitual modes of common action (*social media* and *institutions* in the strict sense) and only *through them* rests upon the *individual*, it is evident that action for the common good (i.e. on society as such) must proceed in inverse order: The individual must work *directly* upon the social medium in which he is incorporated and upon the institutions by which it can be controlled, and only *through them* upon society as a whole.

Now the very nature of a social medium, being an organized mode of common action, is such that it can be *effectively* influenced only by its *participants*, whence the principle is clear:

141. That these whole classes of men may be brought back to Christ whom they have denied, we must recruit and train from among them, themselves, auxiliary soldiers of the Church who know them well, and their minds and wishes, and can reach their hearts with a tender and brotherly love. *The first and immediate apostles to the workers ought to be workers;*

*the apostles to the industrialists and merchants ought to be from among them themselves.*(4)

The same idea is contained in the Encyclical in a slightly different form which we have already quoted, but which will bear repetition:

96. To achieve this latter lofty aim (the reconstruction and promotion of a better social order), and in particular to promote the common good truly and permanently, we hold it first and above all wholly necessary that God bless it and, secondly that *all men of good will* work with united effort toward that end. We are further convinced, as a necessary consequence, that this end will be attained the more certainly the larger the number of those ready to contribute toward it *their technical, occupational, and social knowledge and experience*----- (5)

Now no man could meet those requirements except in his own "natural medium,, of life: it is there alone that he is an expert, and everywhere else he is an amateur and a dilettante. And every man coming into that medium from outside is an amateur who knows less about its fundamental needs and purposes and hopes and fears than he does who is an expert because his very life is inextricably bound up in it. And this is true even though the man who "comes in from the outside" be the head himself of the State and in direct charge of the common good, as the Successor of Pius XI the presently reigning Pontiff, has clearly pointed out in a passage also quoted previously:

If in fact the State lays claim to and directs private enterprises, these, *ruled as they are by delicate and complicated internal principles which guarantee and assure the realization of their special aims*, may be damaged to the detriment of the public good, by being wrenched from their natural surroundings, that is, from responsible private action.(6)

A rather obvious corollary to this doctrine that the realization of the common good *depends* on the active collabora

tion of every person in his own social medium, is that every person has a *duty* of social justice which he is morally bound to fulfill, and from which he can be excused only by ignorance or some other cause which destroys the voluntary nature of action.

A correlative of this duty is the *freedom of association* on which Pius XI insists with such extraordinary vehemence,<sup>7</sup>; for if no institutions can be formed within the constant flux of all the different social media, these latter are uncontrollable and any effective social direction an impossibility, for the simple reason that it will all be in the hands of "amateurs" as outlined above.<sup>(8)</sup>

It is still true, of course, that the ones officially "in charge of the common good" — i.e., the heads of the state and the directors of public institutions — are the "principal" architects of the common good in the temporal order, because it is their specific function to organize the institutions among themselves; but if they should understand their "charge of the common good" to mean that *they* produce it directly and hence can displace the institutions, they would be guilty of the gravest social injustice:

80. The supreme authority of the State, therefore, ought to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly. Thereby it will more freely, powerfully, and effectively do all *those things that belong to it alone because it alone can do them: directing, watching, urging, restraining, as occasion requires and necessity demands.*<sup>(9)</sup>

Now, leaving out the men of ill will, including the indifferent and the lazy, what men of good will are rather habitual offenders against social justice despite their "good intentions"?

First of all, we must point out those who hold a theory which might be called "legalistic complacency." Impressed by the great mass of social disorder and the difficulty of re

form, they consider that responsibility can apply to *personal life only*, since the very complexity of social control constitutes a "moral impossibility," and social disorder is an evil effect that must be "indirectly willed," in order to perform any actions of social life at all. Thus if they buy a daily newspaper or a magazine for *necessary* information they can not obtain elsewhere, they support a publication which disseminates subtle anti-Christian propaganda; if they rent a small apartment because they *cannot* afford anything better, they prolong a fashion in building which is slowly strangling the family; if they invest their hard-earned savings in the hope of *essential* security for the future, they find themselves a partner in a financial system which has contributed powerfully, and is still contributing, to an unjust distribution of this world's goods; If *instead* they take out life insurance, they may find their participation in the system not less, but greater, since the insurance business is somewhere near the core of the modern separation of ownership from management; if they vote for even the *best* candidate proposed in an election, the great probability is that they will still find in him one who in many ways is of the present disorder and intends to continue it; if they pay their taxes, certainly a *necessary* act, they find themselves supporting, among other things, a paganized and secularistic education of children, and relief workers who advise the poor to practice "family planning" and tell them what instruments are "safe." So it goes on and on through every exterior action of life, and the "legalists" conclude that the only thing they can do is to lead the best personal life possible by careful application of the "principle of double effect" by which, for sufficiently grave reasons, they are permitted to participate in institutions which they recognize as unjust and permit to remain so, because they have no individual power to change them. This may indeed be the only solution in an individualistic view of responsibility, but it is a sin against social justice because it abdicates leadership in the very institutions which it itself perpetuates by its participation:

In this grave hour of the world's history, it is not merely the Catholic Church but the whole social fabric that is assailed by those poisonous ideologies which are helped on by all those forces opposed to Almighty God, and not by those only, but by all the indifference and sluggish complacency of that great number of the children of God who are not alive to the dangers which threaten our civilization.(10)

There is another class, not so widespread but of even greater "good will," which rather consistently fails against social justice. Its members add to the lack of solidarity (social charity) of the former class, a lack of appreciation also for the very complexity of life which so impresses these former. While thus tragically simplifying the problem of responsibility to individual means only, they throw the whole crushing weight of social disorder upon unsupported and isolated individual consciences, and upon personal "heroism" in resisting evil. They preach therefore a doctrine which they often call "Radical non-participation" in evil; namely, a tactic of abstention and of solitary self-immolation, believing that the power of individualistic example and the fruits of "martyrdom" will somehow break down the massed evil of society and lead men to virtue. There is probably no doubt that most of these earnest people will get to heaven on Chesterton's definition of innocence ("until we have lost our innocence; i.e., our invincible ignorance. . ."); but there is no doubt either that materially they are failing against social justice by withdrawing from the direction of the institutions of society and thus leaving that direction completely to the forces of evil. They do *not* of course actually withdraw from *participation in* those institutions whose direction they abandon, no matter what their theory is. They too must get information somewhere, have a dwelling they can afford, provide somehow for the future, vote for the best man, and pay their taxes, even as the "legalist," whose sad case we have just examined, does also.

A third great group which rather consistently fails com

prises those who profess to disdain the work of organization itself as somehow below their dignity or wasteful of their time. Since most of these are scholars of one sort or another their potential contribution to the common good is immense (we are speaking only of those of "good will" who have not espoused a destructive philosophy) and their abstention immensely destructive.

## II. *The Material Cause*

This is the neglected step-child in the house of social justice; or, to put the case more accurately, it is the child of the family whom the step-child has displaced. — and that for seven hundred years, to count only from the time of St. Thomas Aquinas, when social justice, under the name legal justice, was given a house of its own in the city of virtue.

Even from the time of Aristotle it was dear that *all acts of virtues whatever* could be directed somehow to the attainment of the common good, and in this "new formality" would be commanded acts of social justice; but when they thus entered the house of social justice it was not perceived what new garments they would have to wear, or what children were already there by right.

At the present time, however, we know (to leave our rather mixed metaphor behind) that the *immediate and proper matter* of social justice is *the organization of human acts into social media and institutions* (social habits) of which society is composed. When acts which are already acts of other virtues become *commanded acts* of social justice, their material aspect under the new formality is *their being woven into the texture of these social habits*, or their being themselves (as individual habits) *projected into the new dimension of a social habit* by being organized or coordinated with the habits of other persons.

It is to be noted that no reference to the common good occurs in the above paragraph, since the direction of these organized acts to the common good pertains not to the material

cause but to the formal. As we pointed out above, (p. 186) vice is as much a habit as virtue, and bad institutions are as organized as good ones. What makes the difference must be sought in their end, not in their organization as such, which is only the *matter* which the end *informs*.

As we have already indicated, every social act is (by definition) organized; and we had occasion to remark how even the simplest of them are organized in truly surprising complexity. After one has grasped the profound significance of an institutional theory of society, the question may well arise whether there exists such a thing as a *purely* individual act at all in human conduct.

St. Thomas, though of course the question never occurred to him in this institutional sense, would seem to admit a *purely* individual act of virtue:

It is evident that although all virtue is in a sense legal justice, yet not every act of virtue is an act of legal justice, but only that one which is ordained to the common good; and this can happen with any act of virtue.(2:26)

For if the act "not ordained to the common good" were social in nature, it could not abstract from social rectitude (though it could fail to attend to this rectitude through ignorance) and still remain an act of virtue. On the other hand he states explicitly that *any* act of virtue can become social justice and hence is *capable* at least of the organization which is the matter of social justice. The last statement is certainly correct; but there is some doubt whether any human act, above all any exterior act, can escape social organization and hence escape the obligation of being directed to the common good.(11) For interior acts there seems to be a greater possibility, though even this is not clear. The question is one for a specialized study on the material cause alone, and cannot be finally decided here. But the fact that such a question should arise is indication of the new insight that has been attained into the truth that man is a *social* being: it is at least possible, if not probable, that there is no more place in moral theology

for a purely individual act than there is for a purely in different one.

One who would desert the human community entirely (if that be possible) for supernatural reasons would do so as a member of a supernatural community, the Communion of Saints, and would maintain on the supernatural level (prayer, penance, etc. for those left "in the world") a social reference for all his actions.

One who would leave the human community entirely, for purely selfish or 'misanthropic reasons would sin against social justice, in all probability; and would certainly sin against social charity which has the same matter (organization) as social justice, so that his act would still be in the social order.

One who might leave for a time for purposes of discovery, research, exploration, travel, etc. does not really break with the community at all. The new discovery, new location, new strength from temporary inactivity, or whatever else he sought in temporary isolation, would make a real difference in the activity of the community on his return, and the suspension of his affairs would make a real difference during his absence; so that his actions are still correlated, in the real accidental order of being, with the actions of the other members of his social medium, and through it with the whole community or society. And if we would rise from this purely material consideration of his action to the formal consideration of his purposes, his permanence in the community would, of course, be more evident still; but this formal consideration is not our present concern.

Thus it is not only true, as older theories always held, that *any* action whatever can be matter of social justice; but it is possible, and very probable, that *all* actions are such matter. It is still true also that the acts of all *other* virtues are acts of social justice (commanded acts), and that these are the normal or usual matter of this virtue, much as fraternal charity is, while we remain on earth, a sort of normal or usual matter of supernatural charity: "As long as you did it to one of these, my least brethren, you did it to me" (12);

and "If any man say, I love God, and hateth his brother; he is a liar." <13 Yet besides these commanded acts we now know a matter of social justice which is immediate and proper (namely, the act of social organization as such); and Ibis knowledge not only gives vis a much firmer basis for a theory of social direction, but prevents us from defining society in an exclusively formalistic way that throws it out of the field of ethics into the field of logic. In the definition, for instance, "*adunatio hominum ad unum aliquid covnmuniter agendum*" it has practically been the "ad" which has received most attention. If proper attention is given to the "adunatio" as an *action* and to the "*agendum communiter*" itself, then *society as a whole* comes under ethics as a *mode of human acts themselves*. The new knowledge prevents us also from ever again allowing the treatise on the virtues to "stand implicitly" as the treatise on social justice, for we now know that not only formally (i.e. for individual or common good) but *also materially* (i.e. as individual or social habits) individual "fortitude," for instance, differs from social "morale."

### in. The Formal and Final Causes:

In the order of operations, the end is to action as the form is to matter in substances. That is, the end is what gives to actions their "specific" character as good or bad acts of this virtue or of that. Hence for acts and habits these two (formal and final) analogical "causes" coincide in what is ordinarily designated as the "formal object" as divided against the "material object." Following out our analogy, however, we will consider the "formal object" of social justice under its two aspects: as a form and as an end; and *first, as an end*:

The final cause of social justice is "the common good"; which the act of social justice directly intends to attain. This has been clear since the time of St. Thomas Aquinas (1:13) and was implicit in Aristotle, for whom legal justice was the virtue "which obeyed the law or saw to it that it was obeyed," and the law, of course, was for the common good.

It should be noted, however, that an institutional theory of society cannot tolerate a conception of the common good as a sort of general bank account into which one "deposits" when, for instance, he pays his taxes to the State; and "with draws" when he is appointed public coordinator of something or other at \$150 a week, or when the State builds a road past his farm and thus raises its value. It is surprising how many people think that distributive justice is the virtue that assesses taxes and social justice is the virtue that pays them. Both are, of course, distributive (i.e. individual) justice, and become social justice only as its commanded acts.

The common good is the perfection of human living itself, in the natural order, and participation in the divine life in the supernatural order. Limiting ourselves now to the natural order, it is evident that the great "constituent" of the common good is the virtues, constituting as they do, the perfection of human living, and involving all of man's relations with things and with other persons.

And we have already seen that all of these relations with things and with other persons are what constitute what we have been calling the "natural media" or "social media" of life (sometimes called "institutions" in a broad sense) which are subject to directive control by the individual, only through his participation in "institutions" in the strict sense.

Thus to work for the common good is to work for the perfection of the institutions of human life itself; and this can be done *not* by some sort of progress *from* the activities of every day life towards some separate and distant ideal, but only *in* the activities of everyday life in one's *own social medium* and the institutions that control it. The common good is immediately constituted by *good institutions*, good "social habits" of men. Therefore *any* institution in which one's life is incorporated is "the common good" *at that level* in the whole amazing hierarchy of institutions from the lowest and most casual to the highest and most enduring. Thus it is that every human agent, as we have seen, can work *directly* at the common good, no matter what his capacity and his

social position; for every one has own "natural medium" of life where he alone is a "specialist," and where all others, be they kings or emperors, are "amateurs" and not to be trusted to recognize the real problems or solve them rightly.

Next, we will consider this same common good *as a form*. We were careful to point out under the material cause that social organization as such was *not* the formal cause of social justice, but only the material, for "vice is as much a habit as virtue, and bad institutions are as organized as good ones." Therefore it is not organization *as such* which is the formal element in a good institution, but precisely organization *for the common good*. It is the institutional nature of the common good itself, which impresses the formal aspect on the acts by which that common good is attained; and an "act for the common good" is one that is "organized for the common good."

Thus it would not appear that a *mere intention* "for the common good" could give the formal aspect of social justice to any act except to interior acts of the will itself; which would, of course, be acts of virtue, acts of social justice (because of their end), and therefore, considered abstractly in themselves, meritorious; but they might be joined to acts in the exterior order which not only do not further the common good, but are positively destructive of it; as, for instance, Adam Smith's continual reference to "the common good" to justify his hopelessly individualistic economic theories. Such purely interior acts, either in themselves or by abstraction, do not enter into the subject of this dissertation; as it has already been pointed out (page 203) that it is not yet clear what reference they may have to an institutional theory of action. If they should already include an envisioning and choice of means, they would cause no difficulty, for then according to the common rule, they would have the nature of their corresponding exterior acts.

Could some at least general indication be given of how "good organization" would differ from "bad organization"?

This will depend, evidently, upon the very nature of the the common good, since it is this end which gives the form by which an organization is *called* good.

The most frequently recurring negative requirement in *Quadragesimo Anno* is that the organization be *not that of a conflict*. It is for this reason that unlimited free competition is rejected as a guiding principle for society. Nor can the element of conflict be removed by *mere suppression*, as *in dictatorship*, for dictatorship is even more strongly rejected: "This function is one that the economic dictatorship which has recently displaced free competition can still less perform." (14) It is noteworthy, however, that in both paragraph 88 and paragraph 110, a *controlled* competition and even dictatorship are allowed a place in social order; what is denied is that they can ever *form* a social order.

To turn rather to the positive characteristics of "good" organization, the first is that it follow closely the *natural* lines of "social media" and "institutions" of which social life is composed. The fact that the following paragraph occurs in a context which limits its immediate application to economic life should not obscure its altogether general application to anyone who has caught a vision of the institutional nature of society which we have just been discussing:

83. . . . As the' situation now stands, hiring and of fering for hire in the so-called labor market separate men into two divisions, as into battle lines, and the contest between these divisions turns the labor market itself almost into a battlefield where face to face the opposing lines struggle bitterly. Everyone understands that this grave evil that is plaguing all human society to its destruction must be remedied as soon as possible. But complete cure will not come until this opposition has been abolished and well-ordered members of the social body — Industries and Professions — are constituted *in which men may have their place*, not according to the position which each has in the labor market, but *according to the different social*

*functions which each performs. For under nature's guidance it comes to pass that just as those who are joined together by nearness of habitation establish towns, so those who follow the same industry or profession— whether in the economic or other field— form guilds or associations, so that many are wont to consider these self-governing organizations, if not essential, at least natural to civil society.* (15)

With this paragraph should be taken the one already quoted (88) stressing the *liberty* of internal organization of all private institutions. Such *naturalness* and *freedom* of the organization of a "good" society permits institutions to assure themselves a *real human solidarity as their basis* and thus develop as a "common good" group and not as a "pressure-" group of some kind or other. Thus we have seen (89) that the Pope looked with suspicion on the Fascist system, even while admitting that in some respects it followed *natural* lines, because it was *not free*; and thus "to his certain knowledge" it was "feared" to serve particular political ends.

This naturalness and freedom also permit a "good" organization of life to *follow closely the ever-changing conditions of the temporal order*. Otherwise it can too easily be "captured" and held stationary during even fundamental changes by individuals or groups who thus find it possible to reap almost all the benefits of the changes for themselves.

But to be geared thus closely to the actual lives of those whose actions it embodies has this result also, that the institution is closely geared to the other institutions which with it, in ordered hierarchy, compose the whole society, for the most important internal common interest of an institution is that it *have its rightful place* in the higher common good:

85 It is easily deduced from what has been said, that the interests common to the whole Industry or Profession should hold first place in these guilds. *The most important among these interests is to promote the cooperation in the highest degree of every Indus*

*try and Profession for the sake of the common good of the country.*(16)

The attitude toward authority is also characteristic of “good” organization. This does not refer to the *fact* of authority, for authority is characteristic of every institution, be it good or bad. It even exists, though it is fluctuating and vague, in those elements of a social medium which are not institutions in the strict sense, but only in the broad sense of some social action performed in habitual fashion. Authority is, so to say, an essential “property” of all organization. A “good” organization, recognizing this natural position of authority in human life, is *solicitous always to make it perform its proper functions* in relation to the common good; a “bad” organization nearly always betrays itself in *hostility to authority or exploitation of it for ends other than the common good*. Thus the following paternal admonition of the Holy Father to property owners is in itself (i.e., in the very fact that he thought such an admonition necessary) evidence that he considers their particular “social medium” badly organized:

49. . . . Yet when the State brings private ownership into harmony with the needs of the common good, it does not commit a hostile act against private owners but rather does them a friendly service; for it thereby effectively prevents the private possession of goods, which the Author of nature in his most wise providence ordained for the support of human life, from causing intolerable evils and thus rushing to its own destruction; it does not destroy private possessions but safeguards them; and it does not weaken private property rights, but strengthens them.(17)

But above all things else, a sign of a “good” organization is that it permits man to act *in accordance with the dignity of his human personality and for the realization of the perfection of this personality*. (18) Because institutions “take so tight a grip on human life” (3:46) they can not only assist man in realizing his full dignity in his actions; but they can force

his actions and his life below it: "Truly the mind shudders . . . when we reflect upon the universal weakening of that truly Christian sense through which rude and unlettered men, even, were wont to value higher things, and upon its substitution by the single preoccupation of getting, in any way whatsoever, one's daily bread." <19

This constant linking of justice to the human personality suggests a very interesting consideration which we must examine in Appendix B after this chapter, (p. 227) along with a number of other points which the work of Pius XI will inevitably propose to the consideration of philosophers and moralists.

Meanwhile, with the brief outline above of the "four causes" of the act of social justice; the investigation proposed in this dissertation is completed. It is evident to anyone that the field it sketches, sometimes superficially, is vast and of profound significance; and in many ways, as yet unexplored. If this study leads to specialized investigation of some of the many avenues of thought which have been only suggested here from the necessity of keeping to our special and limited subject, the *act* of social justice, the writer will feel that he will have repaid something of a debt to a great and revolutionary thinker, Pius XI, and to men in many countries who are devoting their lives to the realization of his ideas.

## APPENDIX A

### ON THE SIDE OF THE ANGELS

This dissertation has been so busy with people who have misunderstood the revolutionary work of Pope Pius XI, that it might create the false impression that the wilderness in which his voice cried was all desolate. It is true enough that those who heard and understood the full significance of his contribution to the theory of social justice, were few, and that they remain comparatively few even today. But there were some who heard; and this brief appendix will be limited to pointing out a few of these in the United States.

Among these, first place goes to Father Wilfred Parsons, S.J., of the Catholic University of America, in pleasant recollection of the discussion in which we each discovered for the first time someone else who agreed that Pius XI's "*social*" justice was "what it said, i.e. something essentially *social*, something essentially organized."

His interpretation is well expressed in the published summary of a course given during the First Summer School on Social Action for priests, in 1937.<sup>(20)</sup> Speaking of the problem of self-regulation in Industry, Father Parsons writes:

There is some self-regulation in a few of the industries, but on the whole it is negligible.

The difficulty is that we are dealing with a *social* activity, in which the virtue of one or a few individuals is of no avail. We are not dealing with personal or individual morality.

For example: Many people wish to get out of a subway door. All can get out if there is order, but if they all attempt to get out at the same time, the result is that no one gets out. Another example: People wish to draw their money out of a bank. They can all get their money if they do it in an orderly fashion.

But if they all wish to get it at the same time, as a group, they cannot.

Herein lies the obligation on the group as a group. Social justice is a regulating of the group, just as individuals are regulated, or as they regulate themselves. There must be a group regulation, for it is the group which is bound by law, and not the individuals. For example: I manufacture doorknobs, paying good wages, providing for good working conditions and, in fact, doing all that social justice demands of me. Another business man enters the picture. He sees that the business is prosperous and immediately establishes several more factories to make doorknobs. He floods the market with doorknobs and the result is that there is an overproduction of the product and neither he nor I will have a prosperous business. There are too many in the field. Another example: prices are good in a certain field, so producers put on extra crews, work day and night, with the result that the market is flooded, prices are lowered and the good condition of business is shattered. In such cases we can see why there should be an obligation upon the groups themselves to observe group laws. Unless this regulation is present, a few unscrupulous men can ruin the whole industry.

This social activity, mentioned above, must be regulated by *moral law*, just as individuals are regulated (that is, regulate themselves, or suffer the penalty.)

Hence, in social activity, a *body* must regulate, and as a *whole*, since it does no good if a few individuals do it. There must be a moral regulation which will bind groups. A body must be created to meet this social obligation. Today groups do not recognize this fact.

This is a fundamental of social justice. . . .

There is lacking in society anything which can accept the obligation of social justice. It cannot be accepted by the individual, except insofar as he is a member of the group. Society should be organic and not atomistic. At present, society is reduced to atomism with each individual as an atom — there is no organic unity. . . .(21)

There can be no question but that social justice as here illustrated is, as Father Parsons likes to put it, “what it says, i.e., something *social*.”

In the First National Catholic Social Action Conference, held the year following the Summer School for priests, there are two clear-cut references to a coherent doctrine of Social Justice. The first, by Father R. A. McGowan of the Social Action Department of the National Catholic Welfare Conference, is an excellent example of how a straightforward exposition of the teaching of *Quadragesimo Anno* results in a clearer doctrine of social justice than many of the learned “commentaries” and “analyses” we have had occasion to review in the foregoing pages:

*Justice* demands a living wage. *Social Justice* demands of us all that the general welfare requires. In detail it demands that, when a company or industry cannot physically pay a fair wage, its employers and labor shall cooperate, the government helping them, to find a solution. . . .

These demands cannot be met without, first, organization in every industry and profession, and then, interorganization. The task is too complicated for lone individuals, even if — as is not the case — every individual wished to accomplish it. . . . Organizations do a little today and a little tomorrow, growing step by step into a fully organized cooperating society, dedicated to the propositions demanded by justice and social justice. . .

People are obliged to try to make their ownership and work obtain full employment, full output, and a

good living for everybody. To do that they have to organize their work and their ownership. Governmental protection, fostering, and guidance of this organization is also needed. . . .

By saying that people are obliged to try to make ownership and work serve the common good, we are contradicting the idea that the common good is to be attained only if everyone strives for his own interests—first, last, and always—and that the function of government, therefore, is merely to keep people from killing and from violently stealing. It contradicts that newer idea that a little unionism and a little government regulation are all that is needed to make the beneficence of individual greed fundamentally sound. It also contradicts the idea that government should do everything, whether under a system of private ownership or common ownership. . . .(22)

The second reference is contained in an address entitled “An American Opportunity,” by the Most Rev. Edward Mooney, D.D.:

The very preamble of our Constitution enshrines root ideas that come out of the Christian centuries. Our Government, the Constitution said, was to “establish justice.” Our government was to “promote the general welfare.” . . .

As a nation, then, we were baptized with a great formula—the formula of justice and the general welfare. To establish justice is to demand from the citizen the practice of a great virtue, the virtue which makes us give every man his strict due. To promote the general welfare is to demand from the citizen the practice of an even greater virtue, the virtue of lending oneself in considerate cooperation with others to the achievement of purposes that benefit the whole body politic, even at a sacrifice of immediate individual self interest. The general welfare has a far wider scope than a simple justice. It seeks the good

of the community as a whole, the common weal, the *Bonum commune* of the Christian centuries. Theologians of the older day spoke of the virtue it calls for as "general justice"; recent Encyclicals use the more apt and meaningful term "social justice." What it 'implies in the concrete so far as the economic order is concerned is evident from the whole tenor of the Encyclical *Quadragesimo Anno*, where the general welfare is indicated as the dominant norm in determining the use of the means of production, the control of credit, the scale of wages, the division of profits, and the prices of goods. It is clear that the government which undertakes to "promote the general welfare" assumes a delicate and far-reaching task. . . .

In the second place, I would have you note in the pondered words of the Constitution that while the government was to establish justice, it was only to promote the general welfare. To me, there is a world of meaning in that distinction. . . . When we say that the government is to promote the general welfare we . . . connote or imply that the government was to leave to the citizens themselves the initiative in achieving general welfare. . . . I like to think that the Founding Fathers sensed that here was something too personal, too complicated for government alone and in the first instance to undertake. . . . But in undertaking to promote the general welfare, government did retain a function, did assume a duty — to give impetus, to afford guidance, to exercise effective supervision, to the end that in the human relationships of production, distribution, and exchange, social justice should be observed.(23)

This passage is noteworthy for the way it adds Pius XI's contribution ("considerate cooperation with others" or, as we have called it, "organization") unhesitatingly to the tradi-

tional "general justice." This procedure, as the Pope himself pointed out,(1:1) is the normal and praiseworthy one, and is to be preferred to the air of polemic which this dissertation has sometimes permitted itself, addressed as it is, rather to special students of the problem than to the general public.

In the non-Catholic field, the most comprehensive and suggestive treatment of the subject by a contemporary of Pope Pius XI is probably that of Charles Wooten Pipkin in the *Epilogue* of his rather factual study of Social legislation: *The Idea of Social Justice*, listed in the first section of the Bibliography.

In almost any work which deals with specifically social forces, passages can be found which can be "fitted into" the theory of Pius XI on Social Justice, — for much the same reason that almost anyone who writes will necessarily write prose, — so no attempt will be made to collect such instances. Neither has any attempt been made at completeness in this Appendix.

## APPENDIX B

### "THE PASTORAL THEOLOGY OF ANOTHER DAY WILL NOW NO LONGER SUFFICE"™ — Pius XI

It would be an interesting study in itself to go through all the utterances of Pius XI to pick out the recurrences of the phrase "now no longer." The title of this section is one of the most interesting—and perhaps startling—examples, but there are others: "The personal apostolate can no longer suffice, if indeed it can be so much as maintained that it ever did suffice. . . ." (25) "We simply cannot ignore the fact that to repair the evils or ruins of modern society the action of the clergy, no matter how active and earnest it can be, is no longer enough. . ." (26) And to these must be added all the reiterations of the phrases of "in our times," in the "changed conditions of the present day," and so forth. From what we have seen of the significance of an institutional theory of society, this consciousness of change, and the preoccupation to meet the necessities of change, is entirely understandable. And conversely, until one has caught the vision of this change, and has seen that the most solid, and secure, and "immutable" things of the temporal order: property, the family, the state itself, the body of laws by which it is ruled—all are as subject to this change, but at a different rhythm, as the fleeting fashions of day;—until one has caught this vision, he can never understand why the State should be defined as an *operation* and not as a thing, albeit a logical thing. Yet in the institutional theory of society, the State is indeed an operation, a mode of action, as we have seen; and its seeming solidity and immobility in human affairs is simply that "*qualitas de difficili mobilis*" which is habit.

This section which is to indicate briefly some of the consequences of Pius XI's work cannot do better than to start

with that vision in the very words of the Pontiff, in a discourse given five years before *Quadragesimo Anno*, and both quoted and referred to in that Encyclical: (Take all Discourses, this one is reported in the third person, but sets forth nevertheless the words of the Pontiff).

. . . The Holy Father adds that he is certain that his listeners are not expecting from him, after these reminiscences concerning the Pontiff of *Rerum Novarum* a real and proper commemoration of *Rerum Novarum* itself [the Discourse was delivered the day after the anniversary of that encyclical, in 1926]; since such a commemoration could only be a repetition of . . . [what they had already been discussing in their commemorative days of study, viz.] to give their full and true efficaciousness to the principles contained in the encyclical, by adapting them to new conditions, to the changes in things and in institutions which the vicissitudes of time necessarily produce. . . .

Nevertheless the Holy Father thinks himself in conscience bound to these dear sons who have come here in the expectation of some direction relative to their role as leaders of Catholic Action. That is why he will tell them in all confidence what the Lord inspired him to say at the moment when, kneeling before Him, he had repeated the beautiful prayer of Saint Thomas: *Da mihi, Domine, sedium tuarum assistricem sapientiam*. And this time once more<sup>(27)</sup> he experienced the sweet consolation of feeling that God was with him, to aid him in carrying the enormous burden which Providence has placed on his shoulders, with the help also of the prayers of all the faithful of the Church, as in those first days when the Church prayed for Peter: *Ecclesia orabat pro Petro*. The Lord also inspired him to give to these good sons several instructions which seemed to him particularly appropriate to the present task of Catholic Action:

The first reflection bears upon the instability of human affairs, and not only of the small ones, but also the great; not only of those which are contingent circumstances of social life, but also of those which seem to relate to the very substance itself of things, and which we are not in the habit of conceiving in any other way than as immutable.

There is indeed an instability from which no single thing can escape, for it is in *that* where lies the essence of created things: they have not in themselves the reason for their own being. Thus it happens that even for the greatest things, for those that are closest to the substance of certain institutions, instability is possible, and sometimes inevitable, — and that it is even, in fact, commonplace, especially if we do not stop at the consideration of each fact in particular, but extend our view to the great considerations of history and of the road travelled by the human race.

The fact is that precisely in those social elements which seem fundamental, and most exempt from change, such as property, labor, capital, a great number of changes in the attribution of relations is not only possible, but is real, and an accomplished fact. It suffices to examine the course of history.

Of course, the fundamental principle, "Thou shalt not steal" remains immutable, and in disregard of it there is only violation of the divine precept. But what diverse concrete forms property has had, from that primitive form among rude and savage peoples, which may be observed in some places even in our time, to the form of possession in the patriarchal age, and so further to the various forms under tyranny (We are using the word tyranny in its classical sense); and then through the feudal, and later the monarchical forms, to the various types that are to be found in more recent times! How many and how different attitudes in what concerns not only the great

collectivities (Note that the above is at the same time a review of changing forms and ideas of the State — note added), but even the family, and individuals!

It is the same with labor. From the primitive work of the man of the stone age, to the great labor organizations of today, how many transitions, ascensions, complications, diversities! Without going back to the too distant examples of the beautiful, good, and admirable corporations of mediaeval times, it suffices to think of those colossal organizations of labor which the Germans call *Riesenindustrien* (giant organizations) of modern industry. . . .

What an enormous difference! It is therefore necessary to take such things into account, and to prepare oneself, by an enlightened foresight and with complete resignation, to this instability of things and of human institutions, which are not all perfect, but necessarily imperfect and susceptible of changes: and these latter will enjoy or will not enjoy success according as they are executed or not under that light whose aid we must always seek.

But on the other hand, a reflection presents itself which is full of consolation. It concerns the two marvellous prerogatives which the Church will always enjoy: the prerogative of a solidity, an immutability, an unalterableness which have always been the despair of those who willed to fight against it, and which will be their despair forever, for the ways of the Church are the ways traced out by the hand of God, within which the Church really needs to make no effort to declare to the world, "there is no passing here." To this immutability is added still another prerogative: a gift of adaptation not less great, the despair likewise of the enemies of the Church, who planned often indeed to force it to the wall to render it inactive; but who were always forced to acknow

ledge that despite them it had found a way to be very active indeed. Hence that possibility of adaptation to all circumstances, from which it could procure that good of souls which is the supreme end of the Church, and for which it ought always to take into account both what can be and what is. This is so to say one of the miracles of its divine constitution. Thus it is entirely consoling to see how, from the very beginning, the Church knew how to exploit the social institutions which were within her reach. Even though these institutions had developed in the most complete paganism of Rome, the corrupted and corrupting; the Church yet found its way by addressing itself to the burial societies *popinari* . . . and others of the same sort, which correspond to a certain degree to those of today, for nothing in the present is entirely new, just as nothing of the past is entirely lost. Thus is explained the history of the Church . . . which goes on, defying the indifference of the various ages, exercising its varied activity by following the diversities of the times, uniquely attentive to its supreme end: to bring souls to God. Such are the lessons of the History of the Church.

. . . As collaborator of the Church in the work of the apostolate. Catholic Action can have no better role, and no more fortunate position than that of the Church itself. . . . Never should it lose sight of the ideal of the most perfect and most complete good . . . but it ought to resign itself also to directing its activity in the field which reality assigns to various possibilities according to the plans of Divine Providence. To *tend to perfection*, and to *do what is possible*: there you have the program to which human forces are permitted to pretend. If God demands something more, then He does it Himself, and gives extraordinary graces and assistance. In this case He acts upon human vicissitudes; the course of history

is modified; human events take the most unexpected forms; and the impossible of today becomes the possible of tomorrow. (28)

This is a remarkable passage, and shows clearly the analysis of social phenomena on which Pius XI based his doctrine both of social justice and of Catholic Action. A philosopher trying to analyze the former doctrine, or a priest trying to analyze the latter, will get nowhere unless he is willing to face reality with open eyes, even as Pius XI here faces it. Here there is none of the false security and stability that a philosopher can attain at any time by the simple expedient of prefixing his observations with "considered formally..." or "as a universal..." or some equivalent expression such as we have encountered more than once in the course of this dissertation. The moral is that the philosopher should always remember that in reality there are *four* causes and not just one, even though that one may indeed be his favorite.

It is hardly worth while to deny—the evidence in the traditional handling of legal justice is too overwhelming—that philosophers in the scholastic tradition after the brilliant work of St. Thomas Aquinas, allowed themselves to be trapped within formal causes almost exclusively in social philosophy. The violence and success of the positivistic revolt is not altogether inexplicable on this supposition, and a comparison of the text just quoted from Pius XI with the latter part of the very positivistic quotation on page 180 may reveal some very edifying—perhaps some will say scandalizing — points of similarity. The great dissimilarity is that Pius XI has *also* a final 'cause, and hence a formal one which is not merely chasing its tail. Thus at one stroke, with his theory of social justice, Pius XI has opened the way for a synthesis of the traditional preoccupation with the formal aspects of society and the immense modern and positivistic efforts at the analysis and sorting of facts (material and efficient aspects) in the social order. Evidently so vast an accomplishment will be followed by profound readjustments and reexaminations of traditional expositions of social theory.

The case is well put in an article by Ivo Zeiger, S.J., in the *Periodica de re Morali, Canonica, liturgica* entitled "De Conditione Theologiae Moralis Moderna" which merits quotation here *in extenso*: After pointing out that the great modern efforts in moral theology lie in three fields: that of the adaptation of doctrine to popular presentation, that of clarifying the doctrine of grace, and that of social morality, the author appends a short note on the third field after his treatment of the other two:

...Unfortunately indeed (pro dolor!), in the traditional moral theology, a sufficient attention was not always given to social considerations. And are not the social obligations of citizens in temporal life more and more inculcated by the civil power and by the ecclesiastical *magisterium* as the Encyclical Letter of Pius XI *Quadragesima Anno* demonstrates most conclusively? It is indeed to be conceded that in traditional moral theology also there are to be found at least practically (*quoad rem*) those things which pertain to social necessities. For even though the concept of justice there employed is borrowed from Roman Law, which commonly favors the rights of the individual rather than of society, yet considerations of Christian equity and efficacious charity were always most rigorously inculcated by moralists. Yet notwithstanding all this, no one will deny that our treatise on right and justice must be profoundly revised (*funditus revidendum*) in the light of the social justice taught by Pius XI. *A fortiori*, something similar can be said of each and every part of moral theology. For do not the practical conclusions, e.g. in the profession of faith, in cooperation in a sinful or bad action, in scandal, in veracity, take on an entirely different aspect if they are solved with attention only to the individual good of a single soul, or if instead the obligations of men are considered, as they flow from their essential relation with the

Mystical Body of Christ. From this consideration likewise, a *new hierarchy of virtues* will result, in which a higher place will be occupied by social obedience and devotedness, forgetfulness of self in favor of others, efficacious cooperation in organizations of charity and Catholic Action and in the common exercises of the parish, but above all by social justice and charity, to which virtues all other aspects should be subordinated, according to the prudent judgment of the confessor. Nor should there be too much fear lest, through such a social moral theology, we be led at length into some form of Catholic collectivism; though without doubt, in these subtle questions, there is constant need of the greatest discretion. (29)

No one can have read the material gathered in this dissertation without agreeing in general with this appreciation, despite a certain lack of precision and its immediate flight into the supernatural (the Mystical Body) to find a basis which as we have seen, is philosophically available in an institutional theory of society. It is hardly necessary to point out what excellent material we have in this theory for the development of the doctrine of the Mystical Body itself, as well as of social morality.

A certain number of the results on moral theology of a clear theory of social justice have already been referred to in passing, in the course of this work. In this appendix, we will review a few of the more important ones briefly, and indicate others which will require research.,

The most interesting theoretical consideration (not counting, of course the discovery of an immediate and proper matter of social justice and the redefinition of society as an operation, since these are the source of the consequences we are here enumerating) is a possible recasting of the whole framework of the treatise on the virtues. Our present framework, of course, goes back to pagan times, as it is in the Platonic and, more clearly, the Aristotelian traditions. Now the con-

slant reference of justice to the *dignity of the human person* in the documents on social justice, raises the interesting question of whether the old pagans did not after all “back into” their treatise on justice. They came into it by way of the ideas of “equation,” “otherness,” and “debt”; and our following of them too well on this point still permits such *monstrous* statements as that commutative justice is the “most perfect form” of justice, or justice “in the fullest sense” because it is the only one that “perfectly” meets the requirements of “equation, otherness, and debt” which are characteristic of the idea of justice. The fact is that commutative justice is justice in the *narrowest and lowest* sense, not in the “fullest and most perfect.” Thus Pius XI could write: “How completely deceived, therefore, are those rash reformers who concern themselves with the enforcement of justice alone — and that, commutative justice — and in their pride reject the assistance of charity!” (30) The very *a fortiori* structure of this sentence shows what place he assigns to commutative in regard to the other forms of justice.

Why, indeed, should the *medium rei* be made the touchstone of the perfection of that virtue which is “circa operationes” and “in voluntatem,” when it is obvious that *all* the major activities of the will “fall short” of the *medium rei* standard and thus must be relegated to the category of “potential parts”? Note that the problem here is purely one of the *structure* of the science of justice. No one in his right mind would ever maintain that in *content* religion, for instance, or piety, or gratitude, or friendship, “fall short” of commutative justice! The question then is simply what magic power of the *medium rei* for “perfecting the will” requires that the *heirarchy of structure* of the science of justice should be exactly the inverse of its *heirarchy of content*. Here is the statement of structure by an author who is very careful to reflect traditional structure faithfully:

The potential parts are annexed virtues which in some way are classed (*conveniunt*) with a cardinal virtue, but in another respect *fall short* (*deficient*)

from the *perfect* criterion (ratione) of the virtue; whence it does *not have the full power* (potestatem) of the cardinal virtue. This latter, indeed, deals with the *principal and more difficult matter*, and the annexed virtues with a *secondary and less difficult matter*, in which they imitate the principal virtue. Justice therefore deals with *that which is principal (praecipuum) in operations*, namely, a strict debt which is rendered up to a complete equality; — the adjoined virtues with a debt which either is not strict, or is not rendered up to equality.(31) (Italics added.)

Thus the question is: *why* is the *medium rei* “principal in operations”? — “operations” in this text referring to all the human acts which are done *“ad alium*

Justice consists in this that it renders to another a debt up to equality. But many virtues *coincide with justice in this that they are “ad alterum,”* which yet fall short of justice (a justitia deficiunt).(32)

Really, there is no answer to that *why*, except in the *mere words of the definition* which has come down in unbroken tradition from pagan times. Yet everything referring to human personality in a pagan tradition is suspect from the start: as Dr. Rudolph Allers likes to put it: “In the whole psychology of antiquity, the Chapter on the Ego is missing.” The revelation of personal Redemption and the certitude of personal immortality had to precede in history any adequate doctrine on personality and personal dignity.

For this reason the direct assignment by Pius XI to the virtue of justice of the sublime role of *supporting the dignity of human personality* itself(18) is most interesting and suggestive, and accords perfectly with his constant linking of justice with charity. Does it suggest a reexamination of the “operationes ad alium” which are the proper activity of the will, to distinguish *two* virtues which govern them, one directed to the human personality *as such* (i.e. to that value which can be treated only as an end and never as a means)

and the other directed to those things which could all be classed together as *supporting values* of personality ,(i.e. all those things which are not only (intermediate) ends, but also means: wealth, prestige, fame, power, etc.). The first of these would, of course, embrace those acts which in the Christian dispensation are assumed into the theological virtue of charity, but would take place on the natural level in a dispensation not Christian; the second would take in the whole field of justice as we now know it, but without the curious concentration on the *medium rei* as if it belonged somehow to the whole field instead of being limited, as it really is, to a narrow and relatively low part of the vast field covered by justice.

The fact that the first is covered on the *theological* level in the Christian dispensation undoubtedly would explain how a faulty *philosophical* structure could pass so long unnoticed; but since "grace perfects nature, it does not destroy it"; there must be a *natural basis* of human action (a "natural charity" if we may use the expression) on which the theological virtue of fraternal charity rests. The necessity for some moral virtue directed towards the secondary object of charity (created personal relations) will become much clearer as soon as philosophical and sociological research takes up another great idea of Pius XI — *Social Charity*.

In this view there would be *five* "cardinal virtues": one about the practical intellect; two about operations "ad alterum"; and two about the sensitive appetite. Moreover, of the two about operations "ad alterum," one would be about *the value of personality in itself*, and the other would be about all the *things that support the value of personality*.

In this connection there is a remarkable passage in Aristotle's ethics which is very suggestive:

Evidently, therefore, there is apart from injustice in the wide sense another, "particular," injustice which shares the name and nature of the first, because its definition falls within the same genus; for the significance of both consists in a relation to

one's neighbor, but the one is concerned with honor or money or safety — or *that which includes all these, if we had a single name for it* — and its motive is the pleasure that arises from gain; while the other is concerned with all the objects with which the good man is concerned.(33)

What we have actually done is to suggest “a single name for it”: *the supporting values* of personal dignity; and if the next phrase were changed accordingly to “and its motive is the *absolute psychological necessity for consciousness of personal worth*” (the “formal intrinsic glory” of the human personal ity) we would have linked up at a stroke the whole vast and wayward field of modern “psychoanalysis” to the traditional moral doctrine, and clarified many a knotty problem of power, prestige, and ambition. Moreover, with justice thus in essential reference to human personality, its necessary relation with charity, so much insisted on by Pius XI, would be completely understandable.

It is a seductive suggestion, which could be legitimately followed out from hints contained in the doctrine of social justice which we have been examining; but once more, and in capital letters to make sure there is no misunderstanding, these suggestions relate to the STRUCTURE of the traditional treatise on justice, and have nothing to do with its CONTENT.

And while we are on the subject of the structure of moral treatises, it has already been suggested that the other virtues, as commanded acts of social justice, take on a new (i.e. socially organized) material aspect also, so that it is *not enough* simply to “add” a new final cause (“for the common good”) to the virtue in the individual order, and let that stand for the “social” virtue. There must probably be a *new tract* on each virtue as a *social virtue*. The problem of “national morale” as contrasted with that of individual courage is a striking case in point, as is also what the French call “un peuple sain” as contrasted with a temperate man.

Now to turn from questions of structure to questions of doctrine. It can be said almost without hesitation that the "principle of double effect" as it is traditionally formulated is complete *only for the individual order*. Before it can be applied to the social order, it *must be revised*. As it stands now, it can be formulated as follows: "It is permitted to perform an action in itself good or indifferent, which has a double or multiple effect, namely, one or the other good effect and one or the other bad, on condition that: 1) the good effect is immediate, 2) the end of the agent is honest, and 3) there exists a proportionately grave cause." (84) The net result of the application of this principle is to free the individual conscience from responsibility for the evil effect in directly willed, and thus permit the accomplishment of the normal and necessary duties of life. The ultimate reason, of course, for the absence of responsibility, is the absence of power to impede the evil effect: "No one is held to the impossible; whence no one, if he does not do that which he cannot do, sins by omission." (35) Thus when a doctor can stop an otherwise fatal hemorrhage *imply* by ligating a blood vessel which at the same time sustains the life of a non-viable fetus, the fact of the matter is that the life or death of the fetus is then simply beyond his control, and hence outside his responsibility; so that when he ligates the blood vessel to stop the hemorrhage and the fetus dies as a consequence, there is nothing more to be said or done. If some means were open to his art to preserve that life after the ligation, the responsibility of the surgeon would still be engaged. (36)

Now comes the crucial question: Is this absence of power to impede the evil effect *ever* verified in the social order? If the answer is no, then the effect will be far-reaching indeed: it will mean that *the principle of double effect does not apply to the social order in the same way that it does to the particular or individual order*. And of course, the answer is no; as we have seen in the whole study of social justice, but especially in the interesting "case of conscience" (265) proposed and solved by Pius XI, in which the individual em

ployer was indeed "helpless to insure justice" in the individual order (and therefore obviously freed *from responsibility in that order*); but *still engaged by the duty to organize institutions*, so as to recover his individual "possibility" and consequent responsibility. No statement of the principle that I have ever seen (except the one in Pius XI), contains this most important clause relating to the social order; yet the principle cannot be called complete unless that clause is added. It need hardly be pointed out that this observation applies equally to all those principles which in one way or another can be reduced to this one of "double effect: material cooperation in evil, "leaving in good faith," unfulfilment of a positive precept which is "morally impossible," etc.

It is to be noted that this completion of the principle of double effect shows a clear way in which the responsibility of *social reform* rests upon the personal *responsibility of the individual*. Up to the present this has been by no means clear; and social reform has been regarded as something of a "special vocation" like the priesthood or the religious life. That Pius XI did not share this view is shown by the very address of his encyclical; "to *all* the faithful of the Catholic world."

A number of doctrines are much more capable of convincing proof in the social order than in the individual; to give only a few examples: that of veracity, fidelity to a pledged word, etc., as also such doctrines as the evil of divorce and remarriage after the children are fully grown. This, however, is only a question of method of exposition, not of doctrine itself. On some other questions, for instance, the controversy over the existence of "leges mere penales"; a clear doctrine of social justice probably makes a doctrinal difference. Viewed from the standpoint of social justice, there are some strange things about taxes, customs duties, and such like things under the heading "leges mere penales" in some text books!

And finally, a few matters of pedagogical tactics. Preachers should realize that the pulpit is, perhaps necessarily, an individualistic instrument. Those who preach to the people to do things which can really be done *only by organization* (see pages 69 to 73) have a duty to place their instruction *in some relation with this necessary organization*. It is exactly for this reason that the "Pope of Social Justice" was also the "Pope of Catholic Action." There is a lesson here, not only for preachers, but for schools and institutes of preaching!

And finally, moral theology should not be written *principally for the confessional*. If the pulpit is individualistic, in tendency, the confessional is perhaps individualistic in essence. The strict sacramental secret, the prohibition concerning the *nomen complices*, the regulations concerning the place of confession, the freedom accorded the penitent in the choice of confessors — all the regulations so wisely designed to make Confession a matter between the soul and God alone — all these leave Confession with only an *indirect* social influence. There must be also a pastoral theology of *direct* social influence. It is probably this more than anything else that Pius XI had in mind when he said "The pastoral theology of an other day is now no longer enough," and when he insisted with such extraordinary energy that Catholic Action was inseparable from the pastoral charge:

Catholic Action belongs incontestably to the pastoral ministry and to the Christian life; to such an extent that everything that is undertaken to develop or restrain it constitutes in itself a guarantee or a violation of the rights of the Church and of souls. (S7)

It is God Himself who demands this Catholic Action, which constitutes not only a right, but a need — the most transcendent need that can be imagined, a need which is legitimate, which is inescapable. It is necessary because the episcopal apostolate of today, a continuation of the primitive apostolate of the Twelve, cannot suffice of itself. . . It is an indispensable

ble apostolate. Catholic Action is such because in the material order, the general rule is to adapt one's activities according to the necessities of human society. And Catholic Action is social according to the development of human activity itself. . . . (38)

This is indeed a new kind of "pastoral theology," which lives with the Christians in their homes, in the market places, in the shops, in public life itself; and does not wait for them in the pulpit and the confessional. It is for this reason that both of the "Encyclicals on Social Justice" (*Quadragesimo Anno* and *Divini Redemptoris*) devote their final pages to an exhortation to Catholic Action.

a) Cf. footnotes 42, 43, 44 of Chapter I. Also footnote 78 of the same Chapter.

↪ Cf. Von Nell-Breuning: *Reorganization of Social Economy*. p. 14. The same extension was made by Pius XI in two other Encyclicals »that obviously concern all men — those on Marriage and on Christian Education.

③ *Quadragesimo Anno* 140.

↪ *Q.A.*: 141.

③ *Ibid.* 96.

↪ Pius XII, *Summi Pontificatus*, p. 25 (N.C.W.C. ed.).

↪ See footnotes 89, 90 of Chapter III.

⑤ For right of association, see also *Q.A.* 30, 35, 86.

↪ *Q.A.*: 80.

ao) Cardinal Pacelli: *Letter to Liverpool Conference on Catholic Action*. 1938.

W) Cf. footnote 43 of Chapter III.

↪ Matt. 25; 40.

↪ I John, 4; 20.

↪ *Quadragesimo Anno* 88.

ao) *Ibid.* 83.

↪ *Quadragesimo Anno*, 85.

↪ *Q.A.* 49.

as) Cf. footnotes 45, 46, 69, 71, 82 of Chapter III.

↪ *Q.A.* 135.

↪ *Summer School of Social Action for the Clergy*. St. Francis, Wis., 1937. (2 Vols. Mimeo.).

ft) *Op. Cit.* Vol. I, p. 104-105.

(2 Rev. Raymond A. McGowan: "Government and a Christian Social Order" in *Proceedings of the First National Catholic Social Action Conference*, Milwaukee, 1938; pp. 41-46.

(3 The Most Rev. Edward Mooney, D.D.: "An American Opportunity" in *Proceedings of the First National Catholic Social Action Conference*, Milwaukee, Wis., 1938; pp. 395, 396.

(4 Pius XI: Discourse to the Ecclesiastical Assistants of the U.C.F.I., July 19, 1928. Quoted in Civardi: *Manual of Catholic Action*, S&W., N.Y., 1936, p. 178.

(5 *Action Catholique*, p. 422.

(6 *Letter to Philippine Hierarchy*, p. 6.

(7) As is well known from frequent allusions in the Pontifical Discourses and documents, Pius XI attributed the whole idea of Catholic Action to some sort of divine inspiration, as, for instance in the following discourse of March 19, 1927: "It is a high and sublime mission to collaborate in Catholic Action, for it should always be remembered that the Holy Father, consciously and deliberately — one may even say, not without divine inspiration — defined Catholic Action thus in his first encyclical: 'The participation of the Catholic laity in the genuine and proper apostolate of the Church.'"

He confided to certain leaders of Catholic Action that the occasion of the inspiration was a Pentecost Sunday, "when he was praying for the immense needs of the Church." Here he seems to link his insight into the nature of society somehow to this inspiration.

(8) Discourse to Dioc. Congress of Catholic Youth, May 16, 1926; *Cath. Action* pp. 107-112.

(9) Ivo Zeiger, S.J.: "De Conditione Theologiae Moralis Moderna" in *Periodica*, Vol. 28 (1939); pp. 188-189.

(10) *Quadragesimo Anno*, 137.

(11) Merkelbach: *Summa*; Vol. II, p. 259 (n.257).  
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(12) Aristotle: *Ethics*; 1130a32—1130b5.

(13) prummer: *Manuale Theologiae Moralis*, Vol. I No. 57 (p. 45) (5th ed).

(14) 2-2: 79: 3: 2m.

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(16) Pius XI: Consistorial Allocution, May 23, 1923; in *Action Catholique*, p. 66.

(17) Pius XI: Discourse to the Catholic Associations, April 19, 1931; *Ibid.* p. 314.

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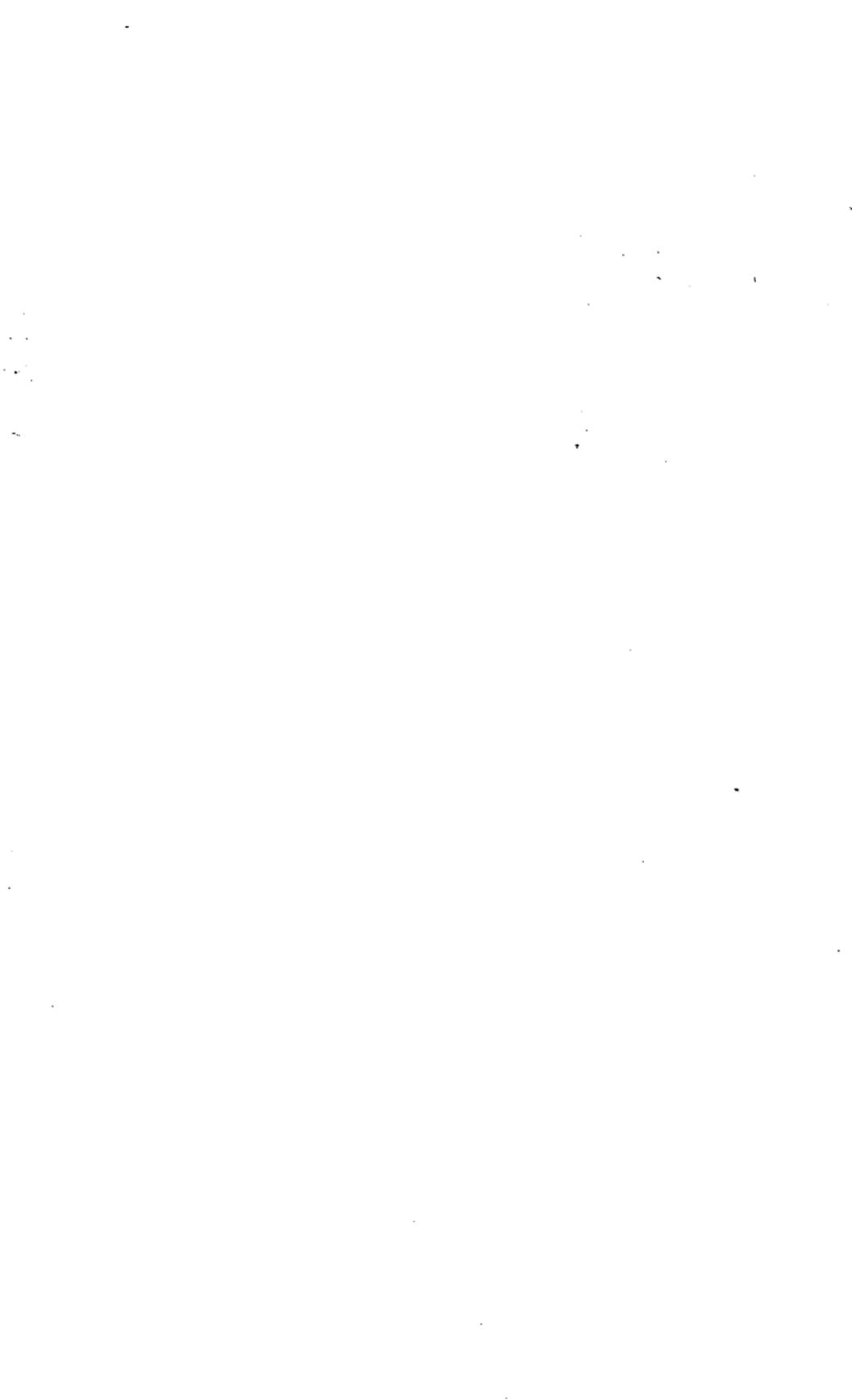
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