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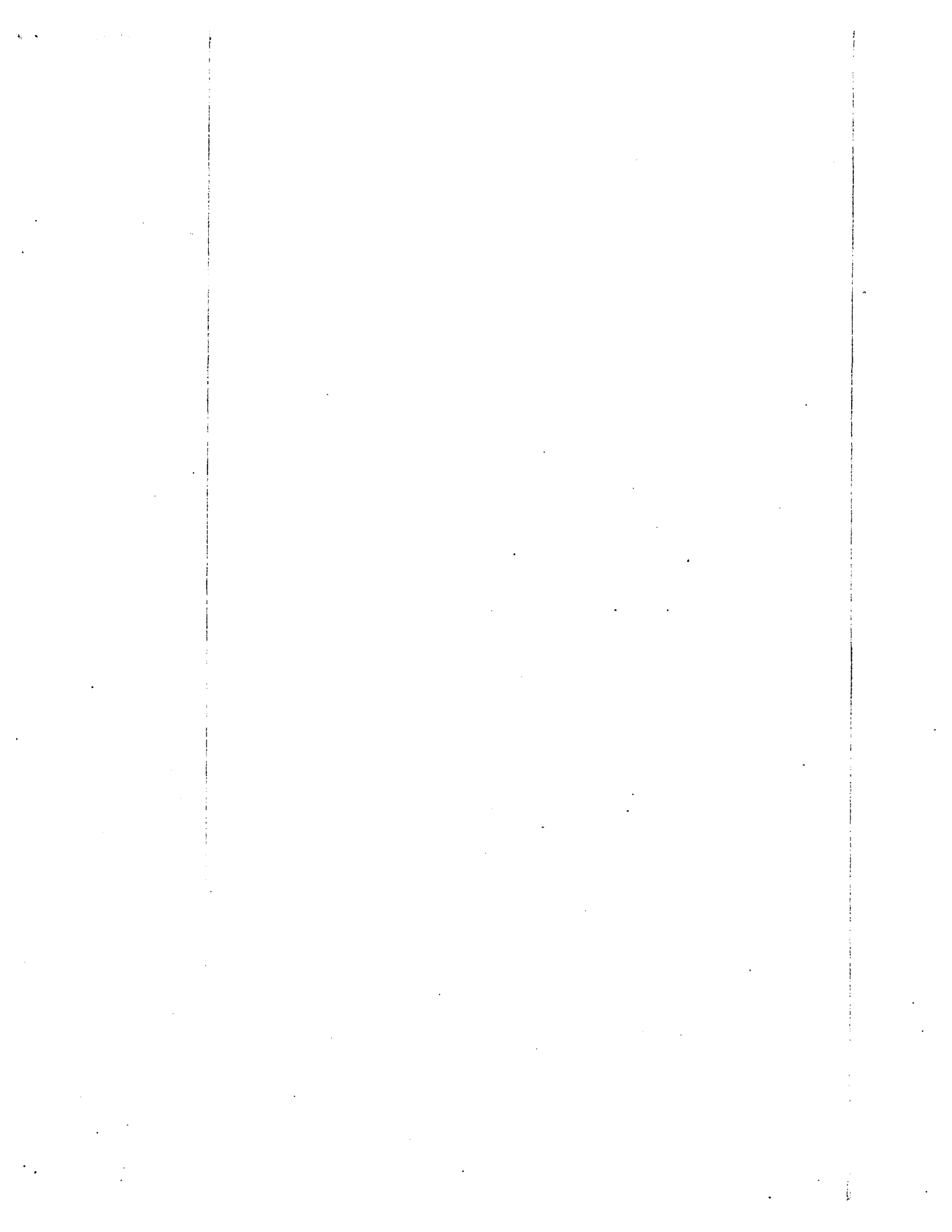
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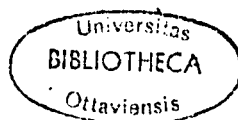
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*The Moral Obligation of Civil Law  
According to Suarez*

An extract from a thesis submitted to the Faculty of Theology of the University of Ottawa in partial fulfilment of the requirements for the degree of Doctor of Theology. This extract contains the Foreword, the Table of Contents, Chapter III, The Obligation in Conscience of Civil Law, the Conclusion, and the Bibliography.

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## **Foreword**

Human society can be neither well ordered nor prosperous unless it has some people invested with legitimate authority to preserve its institution and to devote themselves as far as is necessary to work and care for the good of all.

These words from the Encyclical *Pacem in Terris* of Pope John XXIII form the inspiration for undertaking this study. This message of Pope John to the citizens of the world is a reminder of the need for authority and for respect due towards it. It is only when citizens realize that they have an obligation to obey their civil rulers that they will be able to contribute in a positive manner to the society in which they live. The Church has always encouraged obedience to civil laws because She sees in the civil legislator power which comes from God.

However, it is difficult for men to maintain a proper attitude towards the State, its authority and laws, and their own duties in relation to the State. Many times throughout the history of man there has been, if not open rebellion against the State, at least a disrespect for its authority and its laws.

To point out the reasons why citizens are obliged to obey their legitimate superiors is one of the ends of this study. Thus, moral theology is primarily concerned in this matter with what can be called the moralization of law. It is within the competence of the moral theologian to treat fundamentally of the moral obligation of civil laws and the integration of obedience towards civil authority into the New Testament Law of grace and love.

In order to have a sound idea of the necessity of civil law with its moral obligation, it is helpful to see how the moralists in former times proceeded in solving this problem; to see how they explained the moral obligation of civil law. Studies concerning the moral theology of the medieval and the modern periods have become very useful for present day moralists. There was a time when the moral theology of the last centuries was considered to be unimportant. However, this opinion has now been replaced by a fairer judgment of the value of this theology. This new appraisal of the doctrine of former moralists has been brought about by historical moral studies in recent times. It is the purpose of this

dissertation to add to those studies by considering the moral obligation of civil law according to the doctrine of Francis Suarez, S.J.

The method of this thesis is mainly doctrinal, that is to say, the doctrine of Suarez concerning the moral obligation of civil law will be investigated by presenting the mind of Suarez through his texts. The reasons for his doctrine will be given and the principles from which he derives this doctrine will be explained. Moreover, the texts of other authors who seemed to have had an influence on his teaching will also be considered. Finally, a judgment of his contribution will be given.

This dissertation is also historical in as much as a general idea of the circumstances at the time of Suarez will be given. Moreover, whenever it seems helpful, the historical background will be given in order to make some particular doctrine of his more understandable.

In general the arrangement of the material will be given in the same manner that Suarez himself has presented it so that his total plan will not be lost. However, the material has been rearranged to a certain extent in order to make a better synthesis of his doctrine. It is believed that this method has not in any way hindered a true presentation of Suarez's doctrine but rather has helped to show more clearly his doctrine on the moral obligation of civil law.

Suarez treated canon law along with his consideration of civil law under the more comprehensive title of human law. Therefore, it is necessary at times to refer to his doctrine relating to ecclesiastical law in order to find out what he held concerning civil law. However, whenever reference is made to the canonical texts in this study, it is only done so in order to clarify his position on civil law and not to include his teaching on canonical laws.

The writer wishes to express his gratitude to the Right Reverend Leonard Schwinn, O.S.B., and the members of Holy Cross Abbey for the opportunity to pursue advanced studies in Theology. He also wishes to thank all those who have generously offered their assistance in the preparation of the dissertation, and especially the Dean of Theology, Reverend Roger Guindon, O.M.I., S.T.D., under whose direction this dissertation was written, and the other members of the Faculty of Theology for their many helpful suggestions and corrections.

## CHAPTER III

### *The Obligation in Conscience of Civil Law*

In developing his doctrine on obligation in civil law, Suarez clearly outlines in his introduction to this section of his work what he plans to treat.<sup>1</sup> He has already treated the obligation as the principal effect in Book I on law in general.<sup>2</sup> As Esteban Romero remarks, Suarez cannot conceive of a law without an obligation.<sup>3</sup> Moreover, having shown that civil power is true legislative power, Suarez has concluded that civil law is true law.<sup>4</sup> Therefore, in this section of his work, he is not interested in proving that civil law has an obligation as this is already presumed by him. What interests him is the obligation with respect to its quality and, therefore, he asks the question as to whether civil law can oblige in conscience.<sup>5</sup> Therefore, supposing that a civil law is a true law, it remains to be shown that its obligation is one of conscience. Suarez answers this question in Book III, Chapters XXI and XXII.<sup>6</sup>

#### I. — THEORIES OF NO OBLIGATION IN CONSCIENCE.

Suarez puts forward some of the arguments that have been raised to show that civil laws do not oblige in conscience. These arguments have been raised by heretics such as Wicliffe and Huss.<sup>7</sup> Luther also was in favor of doing away with an obligation in conscience and for this reason he separated law from morality. The end sought in Lutheranism is to procure peace of conscience

<sup>1</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 1: *Opera Omnia*, Vol. V, p. 256-257.

<sup>2</sup> *De Legibus*, L. I, Cap. XIV, n. 1: *Opera Omnia*, Vol. V, p. 56. See pages 71-72 in Chapter I.

<sup>3</sup> See A. Esteban ROMERO, *Concepcion suareciana de la Ley*, Sevilla, Editorial Catolica Espanol, 1944, p. 67.

<sup>4</sup> Suarez's doctrine on civil law as a true law has been explained in Chapter II, p. 92-96.

<sup>5</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 1: *Opera Omnia*, Vol. V, p. 256-257: "... ideo non dubitamus in genere de obligatione, sed illam supponimus: inquirimus autem modum seu speciem ejus, et in hoc sensu quærimus an humana lex, præsertim civilis, possit in conscientia obligare."

<sup>6</sup> *De Legibus*, Cap. XXI-XXII: *Opera Omnia*, Vol. V, p. 256-265.

<sup>7</sup> Propositions of these men held that civil authorities while in mortal sin cannot oblige in conscience. Their propositions were condemned by the Council of Constance. See DENZINGER-SCHONMETZER, *Enchiridion Symbolorum*, 32nd edition, Freiburg, Herder, 1962, n. 1165 concerning proposition n. 595 of Wyclif and n. 1230 concerning Huss' proposition n. 656.

for the person who believes in Christ. The Christian, illuminated by the Holy Spirit, enjoys absolute liberty.<sup>8</sup> Luther tries to free the conscience from all legal obligation. "No law, as Luther would say, is capable of imposing itself internally or externally on man. By his faith the Christian becomes a living law."<sup>9</sup>

Suarez does not specify which heretics he considers but he mentions in general the doctrine of those who deny that the civil magistrates can oblige in conscience. Moreover, he seems to be more concerned with Gerson's doctrine on obligation in conscience of civil law.<sup>10</sup>

Suarez is commenting on Gerson's doctrine which is found in the latter's tract on the Spiritual Life. Gerson states that:

From the fact that someone sins mortally by transgressing some constitutions of human traditions, it is not sufficient to conclude that these constitutions oblige with the penalty of a mortal sin.<sup>11</sup>

Gerson, explaining what he means by this statement, gives the example of a doctor ordering someone not to drink wine for the sake of his health. If this person disobeys the doctor's order he does not sin because he is disobeying the doctor but because he is harming his health. Gerson concludes that civil laws are similar to the prescriptions of the doctor. Thus Gerson states:

... human laws and civil laws as such are only for the ordination of human politics, ecclesiastical or civil which regard the body and thus they only merit temporal punishment for their violators. The observers are given a temporal award. Nevertheless, from a consequent and mutual connection and mixing which they have with divine laws, the result is that a crime makes the violators themselves worthy of eternal punishment.<sup>12</sup>

<sup>8</sup> See Louis VEREECKE, *Conscience Morale et Loi Humaine selon Gabriel Vazquez, S.J.*, Tournai, Desclée, 1957, p. 38.

<sup>9</sup> J. PAQUIER, "Luther", in *Dictionnaire de Théologie Catholique*, Vol. IX, col. 1310.

<sup>10</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 4: *Opera Omnia*, Vol. V, p. 257: "In hac re fuit sententia negans posse magistratus civiles per leges suas in conscientia obligare. Ita sentiunt a fortiori hæretici, qui negant esse in principibus veram potestatem ad leges ferendas: sed contra hos satis disputatum est. Inter Catholicos ergo videtur ita sentire Gerson in 3 p. tract. de Vit. spirit., lect. 4, alphab. 62, ubi dicit solum Deum posse dare præcepta affirmativa vel negativa obligantia sub poena mortis æternæ." Refer to the Introduction for circumstances in regard to Gerson's teaching.

<sup>11</sup> GERSON, *Liber de Vita Spirituali Animæ*, Lectio 4: *Opera Omnia*, Vol. III, col. 41: "Ex hoc quod aliquis peccaret mortaliter transgrediendo Constitutiones aliquas humanarum traditionum; non sufficienter concluditur quod illæ Constitutiones obligent ad mortale delictum: [...]"

<sup>12</sup> *Liber de Vita Spirituali Animæ*, Lectio 4: *Opera Omnia*, Vol. III, col. 41: "...Leges humanæ et civiles ut tales sunt, sint solum pro ordinatione Politicæ humanæ, Ecclesiasticæ vel Civilis in eis quæ corpus respiciunt; et ita solum

Gerson gives these laws some obligation but no moral obligation in conscience when they are considered as purely civil laws. His reason is that they have their own human end and their own human sanctions.

Therefore, according to Gerson, the legislator cannot attach to his laws a moral obligation nor can he attach a moral penalty. Since God alone can punish spiritually, Gerson thinks that it is rather ridiculous for a human legislator to force his subjects with a spiritual penalty.<sup>13</sup> Thus Gerson concludes that "no transgression of a human law, considered as human, is in fact a mortal sin."<sup>14</sup>

This is the doctrine of Gerson which Suarez considers. He organizes his material on this doctrine in order to show that Gerson's opinion is false. Thus, in commenting on Gerson's doctrine he states that the role of human law is reduced to nothing more than an explanation of its obligation which is from the divine law.<sup>15</sup> Suarez intends to explain more fully how civil laws oblige in conscience for, as he says, Gerson is not the only person to have such ideas. Suarez refers to the doctrine of Jacques Almain, a theologian of the 16th century who became known for his controversies with Cajetan.<sup>16</sup> Almain, in discussing Gerson's doctrine, distinguishes the forum in which the person is acting. By this distinction, he refutes Gerson's opinion and says that the Pope as Vicar of Christ can bind in conscience. However, Almain agrees with Gerson when it comes to explaining the power of civil legislators. Thus, he holds that civil legislators do not have the power to bind in conscience because it was not given to them by Christ.<sup>17</sup>

merentur punitionem temporalem violatores earundem, et observatores præmio temporali donantur; nihilominus ex consequenti et mutua colligatione ac mixtione quam ad leges divinas habent, resultat crimen faciens reos æternæ damnationis ipsos contemptores."

<sup>13</sup> GERSON, *Liber de Vita Spirituali Animæ*, Lectio 4: *Opera Omnia*, Vol. III, col. 38: "Rursus frustra darentur leges cum appositione poenarum quas legislator infligere nequiret, nec de eis in foro suo cognoscere; alioquin poterit legislator omnes fere leges suas sub poena quantalibet possibili, quam absurditatem dicere quis audeat."

<sup>14</sup> *Liber de Vita Spirituali Animæ*, Lect. 4: *Opera Omnia*, Vol. III, col. 38: "... nulla transgressio legis humanæ ut humana, est de facto, peccatum mortale."

<sup>15</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 4: *Opera Omnia*, Vol. V, p. 257: "... unde non videtur aliquid tribuere legi humanæ, nisi explicationem ejus obligationis quæ continetur in lege divina, ut patet ex exemplo medici, quo utitur."

<sup>16</sup> See V. OBLET, "Almain", in *Dictionnaire de Théologie catholique*, Vol. I, col. 895-897.

<sup>17</sup> J. ALMAIN, *Expositio circa decisiones Magistri G. Occam super Potestatem Summi Pontificis, de potestate ecclesiastica et laica*, Cap. II: *Opera Omnia Gersonis*, Vol. II, col. 1051: "Nullus legislator potest condere legem, cum adjunctione et appositione alicujus poenæ, quam non potest in suo foro infligere, ut argutum est de laico, qui non potest statuere aliquod statutum observandum sub poena excom-

Suarez also mentions that Castro did not seem convinced of the moral obligation of civil laws.<sup>18</sup> Alfonso de Castro was one of the famous professors at the University of Salamanca and he treated this question in his work *De Potestate Legis Poenalis*.<sup>19</sup>

## II. — SUAREZ'S DOCTRINE ON OBLIGATION IN CONSCIENCE.

Suarez, being very much aware of authors, Catholics among them, who did not hold that civil laws oblige in conscience, wishes to defend the common opinion of theologians that civil laws do oblige in conscience. Thus, he categorically states that "human civil law has the force and efficacy of obliging in conscience."<sup>20</sup>

Suarez, saying that this is the common opinion of Catholics, refers to St. Thomas<sup>21</sup> where the latter states that just human laws have the force of obliging in conscience from the eternal law from which they are derived. Besides referring to many others as an external authority for him, Suarez also shows that his assertion is either *de fide* or *proxima fidei*.<sup>22</sup> He quotes St. Paul: "whosoever resists the authorities sets himself in opposition to what God has ordained, and those who oppose Him will bring down judgment upon themselves."<sup>23</sup> By this reference Suarez shows that those who disobey civil authorities will receive a spiritual punishment and, therefore, it is not only out of fear but also to avoid sin that all should obey. To live in such a manner is the Will of God, according to Suarez referring to I Peter 2: "Submit to all human authority for the Master's sake; to the emperor, as supreme, and

municationis. Distinguo, nam si talis legislator non habeat auctoritatem ab aliquo qui possit eam infligere in suo foro, verum est, sed ubi habet auctoritatem ab illo qui potest cognoscere de crimine et poenam condignam illi infligere, negatur. Unde dico quod Summus Pontifex, quia est vicarius Christi habet auctoritatem ab illo cognoscendi in suo foro de crimine, et aliquid etiam præcipiendi sub obligatione ad poenam æternam. Et non est simile de prælato civili, puta rege vel alio temporali jurisdictionem habenti in temporalibus, cum talis non habeat potestatem aliquam obligare ad aliquid cujus transgressio inducat poenam æternam quia non est immediate vicarius Christi sicut Summus Pontifex cui potestas immediate ab ipso Christo commissa et collata est."

<sup>18</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 4: *Opera Omnia*, Vol. V, p. 258.

<sup>19</sup> See Marcelino Rodríguez MOLINERO, *Origen Espanol de la Ciencia del Derecho Penal*, Alfonso de Castro y su sistema penal, Madrid, Editorial Cisneros, 1959, p. 3-5.

<sup>20</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 5: *Opera Omnia*, Vol. V, p. 258: "...legem humanam civilem habere vim et efficaciam obligandi in conscientia."

<sup>21</sup> St. THOMAS, I-II, q. 96, art. 4: "...leges positæ humanitus vel sunt justæ vel injustæ. Si quidem justæ sint, habent vim obligandi in foro conscientie a lege æterna, a qua derivantur."

<sup>22</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 5: *Opera Omnia*, Vol. V, p. 258: "Et videtur assertio vel de fide vel proxima fidei; nam fere aperte colligitur ex illo Pauli ad Roman. 13: [...]"

<sup>23</sup> St. PAUL, *Romans*, 13, 2.

to governors sent by him to punish evildoers, and to encourage those who do right. For it is the will of God.”<sup>24</sup> Thus, Suarez shows that Scripture favors the idea that civil laws oblige in conscience. But since this is rather a general proof, Suarez gives some specific reasons why civil laws oblige in conscience. Before explaining Suarez’s reasoning on this question, it is interesting to notice how Vazquez approached this same question in a similar manner.

Vazquez also states that it is Catholic teaching that civil laws oblige in conscience.<sup>25</sup> He proceeds in a manner very similar to Suarez, using Scripture to show this obligation.<sup>26</sup> Verecke summing up Vazquez’s doctrine, says that the State has the right to oblige its subjects in conscience since any transgression of a just law is an injury to God. This is a conclusion from the Pauline principle that all power comes from God. To refuse obedience to the State is to refuse obedience to God.<sup>27</sup> This doctrine of Vazquez is very similar to that of Suarez. Moreover, they agree on many of the reasons why civil laws oblige in conscience.

Thus, one reason that Suarez gives for an obligation in conscience as the effect of civil laws is that the civil legislator makes laws as the minister of God from whom he has received his power.<sup>28</sup> If a person resists the civil legislator, he offends God whereby a moral offense is committed. Thus, the law itself obliges in conscience. Suarez refers to Samuel<sup>29</sup> to show that when one resists lawful authority he is really resisting God.

<sup>24</sup> I *Peter*, 2, 13-15.

<sup>25</sup> VAZQUEZ, I-II, disp. 152, n. 10: “Cæterum his locis non definitur aperte potestatem civilem leges condendi penes principes sæculares esse, ex scriptura tamen et Ecclesiæ traditione non minus aperte probatur, quare, fide catholica, hæc potestas sæcularis asserenda est, sicut etiam est ecclesiastica.”

<sup>26</sup> VAZQUEZ, I-II, disp. 152, n. 20: “Ex quibus verbis plane colligitur esse auctoritatem præcipiendi et juben di et leges ferendi in principibus sæcularibus, primum quia dicitur ‘Deo resistere ejusque ordinationibus qui potestati principis resistit’; tum etiam, quia dicit: ‘necessitate subditi estote’, ac si dicat necesse est parere et obedire [...] ergo non reliquit liberum obedire ordinationi.”

<sup>27</sup> LOUIS VERECKE, *op. cit.*, p. 43: “Résumons cette doctrine en quelques mots. Il faut reconnaître à l’Etat le droit d’obliger ses sujets en conscience; tout manquement à des lois justes sera une faute morale qui rend coupable devant Dieu; simple conclusion du principe paulinien qui voit en Dieu la source de toute autorité; refuser d’obéir à l’Etat, c’est refuser d’obéir à Dieu.”

<sup>28</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 6: *Opera Omnia*, Vol. V, p. 258: “...quia etiam legislator civilis fert leges ut minister Dei per potestatem ab ipso acceptam: ergo obligat in conscientia ad parendum; [...]”

<sup>29</sup> I *Samuel*, 8, 7: “...for they have not rejected you, but they have rejected me.”

Suarez admits that authority is not given immediately to the legislator from God but through the community. When this power is transferred to the legislator it is perfect power.<sup>30</sup>

Another reason given by Suarez to show that civil laws oblige in conscience is that both divine and natural law demand that just laws of legitimate superior be observed. Whoever disobeys these laws acts against God's will.<sup>31</sup>

Suarez says that it is in this sense that St. Thomas holds that human law obliges in conscience. That is, human laws participate in eternal and natural law in as much as they are founded in the will of God and the dictates of the natural law.<sup>32</sup>

Antonio Furcic says that Suarez considers the relationship between human law and natural law in this same manner.<sup>33</sup> He points out that Suarez shows that human law gets its efficacy from the eternal law as its ultimate source and, therefore, obliges inasmuch as it participates in the natural and eternal law.<sup>34</sup>

However, Suarez adds that this does not mean that the guilt is properly against the natural law nor is the obligation only a natural one. The human law, by acting as the secondary cause of the obligation, leaves the eternal law as the primary cause of the obligation. The effect which is the obligation comes from the primary cause but in such a way that it cannot arise without the secondary cause and, therefore, the obligation even though it is in conscience, is from the human law.<sup>35</sup>

Suarez gives another reason for the moral obligation of civil laws which is mainly derived from experience or, one could say, from a sociological point of view. Thus, Suarez says that the power to oblige in conscience is necessary in imperfect communities such as the case in which parents can command with the force of obliging in conscience their children to perform some just act. This being so, it would seem that this necessity is greater in a

<sup>30</sup> This doctrine of Suarez has been explained in Chapter II.

<sup>31</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 7: *Opera Omnia*, Vol. V, p. 258: "...quia jus divinum et naturale dictat servandas esse justas leges a legitimis principibus positas; ergo qui illas non servat, agit contra divinam voluntatem."

<sup>32</sup> *De Legibus*, L. III, Cap. XXI, n. 7: *Opera Omnia*, Vol. V, p. 258.

<sup>33</sup> Antonio FURCIC, *Ratio Intima Originis Legis apud Suarez*, Roma, Proto-Coenobii, 1947, p. 15-16.

<sup>34</sup> SUAREZ, *De Legibus*, L. II, Cap. IV, n. 8: *Opera Omnia*, Vol. V, p. 98-99.

<sup>35</sup> *De Legibus*, L. III, Cap. XXI, n. 7: *Opera Omnia*, Vol. V, p. 259: "lex humana se habet ut causa proxima et secunda, quæ nititur in lege æterna tanquam in causa prima: effectus autem, qui proxime est a causa secunda, ita ut prima non feret, nisi per illam, secundæ simpliciter tribuitur, et ideo obligatio hæc, etiamsi sit in conscientia, simpliciter est a lege humana."

perfect community for its temporal government. The reason for this greater necessity is, as Suarez puts it:

... because government without the power of forcing is inefficacious and is easily despised: however force without the power of obliging in conscience is either morally impossible because just coercion presupposes a fault which is very probable [...] or is very insufficient because by it the republic cannot be sufficiently aided in many necessary cases.<sup>36</sup>

Vazquez has a similar argument in showing the necessity of a moral obligation in civil laws. He stresses the necessity from the natural law and says without such an obligation there would be nothing but confusion.<sup>37</sup>

Suarez in showing that the civil legislator has the power to oblige in conscience, repeats much of the doctrine that was commonly accepted by the majority of Catholic theologians. However, he develops this doctrine and goes into some detail because of his apologetic approach to the problem. He wishes to make it clear why civil laws have an obligation in conscience. Summing up his reasons, Davitt states that:

... in regard to civil law, Suarez takes a stand against the position of Gerson and others. Civil laws oblige in conscience, and for various reasons. First, the legislator acts through the power received from God, hence as His minister. Secondly, the divine and natural law demand that just laws be observed. Whoever violates them acts contrary to the divine will. Thirdly, this power is necessary for the fit government of the human commonwealth.<sup>38</sup>

### III. — SUAREZ'S CRITICISM OF GERSON'S THEORY.

Suarez points out that in Gerson's thought nothing can be prescribed by civil law which is not prescribed by the natural law, at least from a necessary deduction of a natural principle.<sup>39</sup> Suarez

<sup>36</sup> *De Legibus*, L. III, Cap. XXI, n. 8: *Opera Omnia*, Vol. V, p. 259: "...quia gubernatio sine potestate cogendi inefficax est, et facile contemnitur: coactio autem sine potestate obligandi in conscientia, vel est moraliter impossibilis, quia coactio justa supponit culpam, quod est valde probabile [...] vel certe est valde insufficiens, quia per eam non posset in multis casibus necessariis sufficienter reipublicæ subvenire."

<sup>37</sup> VAZQUEZ, I-II, disp. 152, n. 32: "Nam cum princeps, in aliqua republica, jure principis aut regis, superior sit, cæteri inferiores, ipso jure naturali, debent obedire; ad hoc enim constitutus est, ut eorum rempublicam in pace et tranquillitate conservet, et ad hunc finem, quidquid judicaverit honestum, jure præcipere potest, quilibet igitur debet ei obedire, alioquin esset magna confusio."

<sup>38</sup> T. E. DAVID, S.J., *The Nature of Law*, St. Louis, Herder, 1951, p. 99-100.

<sup>39</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 9: *Opera Omnia*, Vol. V, p. 259: "... nihil posse præcipi per legem humanam seu civilem quod per legem naturalem præceptum non sit, saltem per discursum et deductionem necessariam ex principiis naturalibus."

is referring to Gerson's doctrine which is found in the fourth lesson of his *Liber de Vita Spirituali Animæ*. In this treatise Gerson points out that a transgression against a human law is only morally wrong inasmuch as the human law is joined to the divine law.<sup>40</sup> Suarez says that Gerson's manner of explaining the obligation leads to ambiguity in its meaning and leads to erroneous thinking; moreover, it is contrary to customary teaching. Gerson's doctrine, according to Suarez, indicates that the obligation of such laws is not founded immediately in the power of the legislator but rather from some evident or revealed principle, or even from a dubious proposal pertaining to pious belief or edification.<sup>41</sup>

Suarez is referring to the manner in which Gerson explains the different grades of human laws according to their connection with divine law. Gerson has these categories in order to show whether a human law pertains to the divine law and if the human law doesn't have a connection, then it doesn't oblige in conscience.<sup>42</sup>

Gerson gives as laws of the first category those which have been made immediately by God but are not immediately apparent.<sup>43</sup> These have a strong connection with the natural law and definitely bind in conscience.

The second class of laws in Gerson's categories are those which have not been made immediately by God but which are so evident that they cannot be rationally denied.<sup>44</sup> Gerson considers in the third category those laws which require dubious propositions for their deduction from divine law. These propositions, however, promote piety and edification.<sup>45</sup>

<sup>40</sup> GERSON, *Liber de Vita Spirituali Animæ*, Lectio 4: *Opera Omnia*, Vol. III, col. 40: "Quantum lex aliqua habet admixtum de lege divina præceptiva, tantum et non amplius est ejus transgressio mortaliter vitiosa."

<sup>41</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 9: *Opera Omnia*, Vol. V, p. 259.

<sup>42</sup> GERSON, *Liber de Vita Spirituali Animæ*, Lectio 4: *Opera Omnia*, Vol. III, col. 42.

<sup>43</sup> *Liber de Vita Spirituali Animæ*, Lectio 2: *Opera Omnia*, Vol. III, col. 25: "Primus gradus continet leges quæ licet latæ fuerint a Deo immediate vel ab autorizatis immediate ab eo, tamen non constat nisi per historias aut revelationes quæ proprie non sunt de fide, quamvis ipsæ negari nequeant absque scandalo et protervia manifesta."

<sup>44</sup> *Liber de Vita Spirituali Animæ*, Lectio 2: *Opera Omnia*, Vol. III, col. 25: "Secundus gradus continet leges quæ non latæ sunt immediate a Deo, tamen coassumptis aliquibus, quæ rationabiliter et absque scandalo negari non possunt, illæ inferuntur a legibus pure divinis."

<sup>45</sup> GERSON, *Liber de Vita Spirituali Animæ*, Lectio 2: *Opera Omnia*, Vol. III, col. 25: "In tertio gradu sunt leges, quæ ad sui deductionem per leges divinas requirunt propositiones dubias, quæ tamen plus incitant et ædificant ad devotionem et religionem quam oppositæ, aut quæ tutius est concedere quam negare..."

In the fourth category Gerson groups those laws which cannot be deduced from the divine law anymore than their contraries.<sup>46</sup> This type of human law, however, does have a connection with the divine law. Thus, having presented these categories, Gerson states that unless a human law pertains to one of these categories it cannot oblige in conscience.<sup>47</sup>

Suarez states that Gerson's manner of reasoning is false because the obligation will not arise without human legislation in those cases where the action could probably aid piety or devotion.<sup>48</sup> The act, though pious in itself, will never have an obligation unless the legislator wishes it to oblige. As an example, Suarez gives a fasting rule as one which definitely could aid piety but does not become obligatory because of this reason. It has its obligatory effect from the law which is made by the will of the legislator. He adds that this is the way that civil laws gain their obligatory effect. Therefore, he concludes that:

... although it may be true that the obligation of human law is founded in some way in the principles of the natural law and presupposes some natural honesty or sufficient basis and material, nevertheless, the human law itself immediately adds the obligation in conscience which is not contained in the principle of the natural law without the means of the command of human power.<sup>49</sup>

As Ambrosetti remarks, Suarez insists on the natural reasons for an obligation in conscience in order to avoid the confusion caused by Gerson's manner of explaining how the obligation must be deduced in some way from a revealed principle.<sup>50</sup>

<sup>46</sup> *Liber de Vita Spirituali Animæ*, Lectio 2: *Opera Omnia*, Vol. III, col. 25: "Postremus gradus continet leges quæ ex legibus divinis non plus deduci possunt quam oppositæ. Exemplum istius: talliæ magnæ et tributa concedenda sunt huic principi et similis."

<sup>47</sup> *Liber de Vita Spirituali Animæ*, Lectio 4: *Opera Omnia*, Vol. III, col. 42: "Nulla lex appellanda est neque ferenda tamquam necessaria ad salutem æternam, quæ non est de jure divino in aliquo quatuor graduum quos lectio præcedens exposuit."

<sup>48</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 9: *Opera Omnia*, Vol. V, p. 259: "Hoc autem in rigore falsum est, quia nisi lex humana addat obligationem, illa probabilitas, vel pietas, quæ apparet in tali materia non sufficeret ad obligationem..."

<sup>49</sup> *De Legibus*, L. III, Cap. XXI, n. 9: *Opera Omnia*, Vol. V, p. 259: "... licet verum sit obligationem legis humanæ fundari aliquo modo in principiis legis naturæ, et supponere aliquam naturalem honestatem, vel sufficiens fundamentum et materiam, nihilominus ipsa lex humana immediate addit obligationem in conscientia non contentam in principiis legis naturæ, nisi medio imperio potestatis humanæ."

<sup>50</sup> See Giovanni AMBROSETTI, *La Filosofia delle Leggi di Suarez*, Roma, Editrice Studium, 1948, p. 132.

#### IV. — SUAREZ'S EXPLANATION OF RELATIONSHIP OF CIVIL AND NATURAL LAW IN REGARD TO OBLIGATION.

In order to understand Suarez's criticism of Gerson's doctrine and his explanation of the obligation in conscience of civil laws, his doctrine on the relationship between the natural law and civil law must be more fully considered.

Suarez does not deny that the obligation of civil law is derived from the natural law. Agreeing with St. Thomas' doctrine<sup>51</sup> on this derivation, he explains how civil law is related to the natural law in regard to the obligation.<sup>52</sup>

There are two types of civil law in Suarez's explanation. Civil law can be merely a declaration of a natural obligation. Civil laws of this type are those which prescribe or prohibit that which is necessarily deduced from the principles of the natural law as necessary for moral honesty.<sup>53</sup>

The other type of civil law, according to Suarez, adds a special obligation which cannot be deduced from natural principles alone. These laws are determinations made by the legislator.<sup>54</sup>

Both types of civil laws are deductions of the natural law but they are deduced in a different manner. Suarez, agreeing with St. Thomas, says that one is in the manner of a conclusion from principles while the other is through a determination. This determination is necessary in order to oblige because the natural law only prescribes something in general which must be determined in particular cases.<sup>55</sup>

Suarez shows how the human legislator has a part in this obligation. Since the determination of a general norm must be made, the legislator, therefore, makes this determination according to his prudent judgment and with the power given to him by God.

<sup>51</sup> St. THOMAS, I-II, q. 95, art. 2 and art. 4.

<sup>52</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 10: *Opera Omnia*, Vol. V, p. 259: "Tandem intelligi potest ex dictis quomodo in omni lege humana quoad obligationem ejus locum habeat quod D. Thomas docet q. 95, art. 2 et 4, omnem legem humanam a lege naturali derivari."

<sup>53</sup> *De Legibus*, L. III, Cap. XXI, n. 10: *Opera Omnia*, Vol. V, p. 260: "...illa quæ præcipit vel prohibet aliquid, quod per necessariam illationem deducitur ex principiis legis naturalis, tanquam necessarium ad morum honestatem."

<sup>54</sup> *De Legibus*, L. III, Cap. XXI, n. 10: *Opera Omnia*, Vol. V, p. 260: "...alia lex humana est quæ addit obligationem specialem, quæ ex solis principiis naturalibus deduci non posset, nec evidenter, nec probabiliter."

<sup>55</sup> *De Legibus*, L. III, Cap. XXI, n. 10: *Opera Omnia*, Vol. V, p. 260: "Item duplex est deductio ex lege naturali, ut idem D. Thomas notat, una est per modum conclusionis ex principiis, quæ satis nota est, alia est per modum determinationis."

In this way, this second type of civil law is also derived from the natural law.<sup>56</sup>

Suarez points out the different role which the legislator plays in these two types of civil law. Moreover, to show the difference in the source of the obligation of these two different kinds of civil law, he says that in the first type of civil law, that is to say, the one which is only a declaration of a natural law, the human legislator only proposes the already existing obligation and in some way increases the obligation, at least extensively.<sup>57</sup>

The other type of civil law, which is properly called a human law, is also derived from the natural law but, as Suarez says, only as a determination of the natural law. This type of law obliges in conscience from the determination made by the human legislator. Suarez adds that this obligation in conscience can increase the obligation which was from the natural law alone. Therefore, there would not be this added obligation over and above the divine and natural law if there were not the determination made by the human legislator.<sup>58</sup>

This manner of solving the problem is not unique for Vazquez uses the same references from St. Thomas and follows the same arguments and explanations.

Vazquez considers that human laws are of two different types<sup>59</sup> and says that they both have obligations in conscience. He points out that, according to some, purely human laws also must conform with the natural law.<sup>60</sup>

Just as Suarez states that the obligation would not arise unless the human legislator made a determination on a general norm

<sup>56</sup> *De Legibus*, L. III, Cap. XXI, n. 10: *Opera Omnia*, Vol. V, p. 260.

<sup>57</sup> *De Legibus*, L. III, Cap. XXI, n. 10: *Opera Omnia*, Vol. V, p. 260: "...leges deducuntur priori modo, scilicet, per modum conclusionis ex lege naturali [...] ex vi rationis naturalis habent obligationem suam primariam quam magis inculcat, seu proponit legislator humanus, et ex parte sua aliquo modo auget obligationem illam saltem extensive."

<sup>58</sup> *De Legibus*, L. III, Cap. XXI, n. 10: *Opera Omnia*, Vol. V, p. 260: "Posteriores autem leges, quæ propriissime humanæ sunt, derivantur a lege naturali solum posteriori modo, scilicet, per modum determinationis, et secundum illam determinationem obligant immediate ex vi potestatis legislativæ, quæ obligationem illam in conscientia potest addere supra obligationem legis naturalis, vel divinæ [...]"

<sup>59</sup> VAZQUEZ, I-II, disp. 154, n. 10: "Sic igitur intellecta quæstione, dicendum est legem positam ab homine duobus modis derivari a lege naturali præcipiente aut prohibente, uno modo, tamquam conclusionem ex principiis naturalibus necessario deductam."

<sup>60</sup> VAZQUEZ, I-II, disp. 154, n. 14: "Nonnulli contendunt leges, posteriori, collectas, deduci etiam per necessariam consequentiam ex lege naturali, quia id quod lege posita ab homine præcipitur, debet esse secundum legem naturæ."

of morality so also does Vazquez point out that it depends on the legislator whether his command is a law or not.<sup>61</sup>

Thus, Suarez and Vazquez seem to agree on the role of the human legislator as a cause of the moral obligation of a civil law. They also both insist on the natural law as the primary source of the obligation and that every civil law must be derived from the natural law in some manner.

Suarez, however, is not satisfied in concluding at this point in the discussion. He extends his arguments by answering particular objections that can still arise. This is typical procedure in the methodology of Suarez who approaches every question in an analytical manner, trying to solve as many difficulties as he can in order to make the doctrine clearer to his readers.

Thus, he presents the difficulty that arises from confusing the forums when one is considering an obligation in conscience. Although human legislation pertains to the external forum in regard to its execution and judgment, Suarez says that this does not mean that it has no obligation in conscience. Human legislation has the force of applying, in its own way, God's will and, therefore, has the efficacy of obliging in the internal forum, that is, in conscience. In other words, when men act as ministers of God they can oblige in the forum of God.<sup>62</sup>

Moreover, Suarez adds that as often as the matter and the obligation to observe this matter can be considered as honest, the civil law can oblige in conscience. This is possible because civil law by sharing in divine power, can put a spiritual bond on this matter.<sup>63</sup>

There seems to be some difficulty in seeing how a civil law can impose a spiritual penalty. However, Suarez explains this in the following manner. First of all, the civil law being made immediately by some legislator directly imposes the penalty.<sup>64</sup>

<sup>61</sup> VAZQUEZ, I-II, disp. 158, n. 33-34: "Quia obligatio præcepti non est ipsa essentia præcepti, nec aliquid illius, sed effectus ejus, substantia autem præcepti prior est, nimirum insinuatio voluntatis superioris, ut fiat aliquid. Ex legislatore solum pendet, ut sit præceptum aut lex, aut non sit."

<sup>62</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. II: *Opera Omnia*, Vol. V, p. 260: "...simpliciter negandum est homines non posse obligare in foro Dei, quia quando operantur ut ministri Dei, in foro ejusdem Dei obligant."

<sup>63</sup> *De Legibus*, L. III, Cap. XXI, n. II: *Opera Omnia*, Vol. V, p. 260: "Potestas autem civilis potest facere illam mutationem in materia. Adde potestatem illam esse participationem divinæ potestatis, et sub ea ratione posse includere vim quamdam quæ spiritum ipsum et rationem liget."

<sup>64</sup> *De Legibus*, L. III, Cap. XXI, n. 13: *Opera Omnia*, Vol. V, p. 261: "Primo, quia lex illa, ut est a proximo legislatore, directe imponit talem poenam."

Secondly, civil law inflicts the penalty only as a consequence. By this statement Suarez means that the legislator cannot oblige to a spiritual penalty which he cannot inflict in any way. But the legislator can oblige to a penalty as a consequence to the transgression of the law. God wishes that the laws which are made by his ministers be observed. Transgressions of these laws are an offense against God and, therefore, are guilty of a spiritual punishment.<sup>65</sup>

Vazquez explains this same question in a much clearer way. He points out that when it is said that the legislator can oblige to a penalty which he cannot inflict, he is not talking about an arbitrary penalty but of a penalty which occurs from the transgression of a law. In this sense, there arises a spiritual penalty since the obligation is derived from the eternal and natural law.<sup>66</sup> Vazquez concludes in a similar fashion to Suarez, saying that civil power can oblige to a spiritual penalty because this power is from God.<sup>67</sup>

Suarez speaks more of God's will in showing that an obligation arises in civil law whereas Vazquez states clearly that it is from the nature of things, or the natural law, that civil laws have an obligation in conscience. Both have the same conclusion but they use different terminology to express their ideas. Suarez refers frequently to the eternal law as the source of this obligation. For example, in showing that it is a real sin to transgress a civil law, he bases his argument on the fact that the force of the obligation is founded on the eternal law. Thus, he says that whoever violates a civil law, virtually violates the eternal law. Therefore, a violation of the eternal law being definitely a sin, Suarez concludes that the violation of the civil law is also a sin.<sup>68</sup>

<sup>65</sup> *De Legibus*, L. III, Cap. XXI, n. 13; *Opera Omnia*, Vol. V, p. 261: "Nam Deus voluit observari leges a suis ministris latas, etiam sub poena alterius vitæ, quia transgressionem earum continent veram culpam, et in offensionem ipsius supremi legislatoris redundant."

<sup>66</sup> VAZQUEZ, I-II, disp. 158 n. 11: "Cum vero dicimus legislatorem obligare posse ad pœnam quam ipse non potest infligere, non loquimur de pœna arbitraria, quam ipse pro majori custodia legum imponit, sed de pœna quam quis ex natura rei absque ullo consensu legislatoris ob transgressionem incurrit, et qua dignus efficitur, eo quod obligatio præcepti humani derivatur ab æterna et naturali lege [...]"

<sup>67</sup> VAZQUEZ, I-II, disp. 158, n. 13; "Si quidem non constat Pontificem peculiarem potestatem expresse accepisse ad hoc, ut posset ad æternam pœnam obligare, sed ideo obligare potest ad hanc pœnam, quia accepta potestate in Ecclesiam, jure ipso superioris, præcipere potest, et ei non obtemperare iniquum est, hoc autem etiam locum habet in principe sæculari."

<sup>68</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 15; *Opera Omnia*, Vol. V, p. 261: "Nam quia vis obligandi legis humanæ principaliter nititur in lege

As Rommen points out, Suarez wishes to stress the inner "oneness" of natural law and the eternal law. He does this by recognizing God as the Lawgiver who wills that actions correspond to their essential nature. Vazquez regards rational nature, irrespective of the positive will of God, as the primary ground of the obligation to obey the natural law.<sup>69</sup>

This difference can be seen in the manner by which both authors arrive at the conclusion of eternal punishment. Suarez concludes that since one of the divine precepts is to obey superiors and other human rulers, whoever does not observe human laws does not keep God's law and is guilty of eternal punishment.<sup>70</sup>

Vazquez agrees on the eternal punishment as a result of violation of a civil law but not because it is a transgression of a divine law but because it is a violation of the natural law.<sup>71</sup>

Vereecke states that for Vazquez a transgression of a human precept is a violation of the natural law and the sin consists precisely in this violation and not as a result of a transgression of a supernatural law. Thus Vazquez treats the question more as one which pertains to moral philosophy than to moral theology.<sup>72</sup>

Suarez, on the contrary, tries to answer the problem in a theological manner by referring to the relationship between human law and the eternal law. He stresses the connection between the human legislator and the Divine Legislator.

Therefore, it can be concluded that Suarez definitely holds that there is an obligation in conscience when considering the force of civil laws. Whether this obligation in conscience must be present in every civil law is another question.<sup>73</sup>

æterna, ideo qui illam transgreditur, virtute violat legem æternam et divinam, et hoc modo convenit etiam illi transgressioni definitio peccati."

<sup>69</sup> See Heinrich A. ROMMEN, *The Natural Law*, St. Louis, Herder, 1959, p. 64.

<sup>70</sup> SUAREZ, *De Legibus*, L. III, Cap. XXI, n. 15: *Opera Omnia*, Vol. V, p. 261: "...enim ex divinis præceptis est obedire superioribus et principibus humanis, et ideo qui non servat leges humanas, neque omnia Dei mandata servat, ac subinde damnationem sibi acquirit."

<sup>71</sup> VAZQUEZ, I-II, disp. 71, n. 7: "In his vero quæ sunt jure naturali prohibita, cum lex et regula naturalis sit ipsa natura, idem est formaliter: esse contrarium legi et inconveniens naturæ et tunc ratio offensæ respectu Dei legislatoris magis intrinseca erit peccato ut peccatum est, quia in his ratio offensæ nascitur ex ipsa malitia quæ est inconvenientia cum natura, in aliis vero potius ex ratione offensæ et transgressionem præcepti nascitur ratio malitiæ."

<sup>72</sup> See Louis VERECKE, *op. cit.*, p. 55 and 57.

<sup>73</sup> Suarez's doctrine on merely penal law will not be considered since it does not directly come into the scope of this study. Moreover, sufficient investigation has been made on this aspect of Suarez's doctrine. See Angel Morta Figuls,

## V. — SUAREZ'S DOCTRINE ON THE GRAVITY OF THE OBLIGATION

What is more pertinent to this study on Suarez's doctrine on the moral obligation is the gravity of this obligation. Is it possible to have a civil law with a grave obligation in conscience so that a violation of this law would be a mortal sin?

As Suarez says in the introduction on this doctrine, the question can be raised as to whether civil laws oblige in conscience in only a wide sense or can they also oblige under the pain of mortal sin.<sup>74</sup> To point out that there is a distinction in the degree of obligation, Suarez refers to Cajetan's doctrine on the word *præceptum*.<sup>75</sup>

Cajetan claims that the terms employed to declare a law are not evident or universal enough to give an exact account of their gravity as regards their obligation. Cajetan, commenting on the object of obedience, says that it is difficult to decide whether the object of obedience is a precept obliging under the pain of mortal sin or a precept, understood in a wider sense, as obliging to a grave or slight sin. This doubt is reasonable he holds, because not every will of the superior indicates that the precept obliges grievously.<sup>76</sup>

Cajetan concludes that the object of obedience is a precept commonly taken whether it be a precept binding under mortal or venial. He draws this conclusion by making the distinction between a precept and a counsel.<sup>77</sup>

Thus, in other words, a precept can demand obedience even though it is only imposing a light obligation, such as fasting, or it can oblige under pain of mortal sin as when it forbids adultery. Therefore, as Cajetan says, the word *præceptum* does not give a clear criterion as to the measure of the obligation.<sup>78</sup>

"Suarez y las Leyes Meramente Penales", in *Revista Espanol de Derecho Canonico*, Vol. 5, 1950, p. 503-599; this is an excerpt from Father Morta Figul's thesis which was defended at the Gregorian University, Rome. The title of the thesis was: *Origen de la obligacion de las leyes humanas y la teoria de las leyes meramente penales en Suarez*.

<sup>74</sup> SUAREZ, *De Legibus*, L. III, Cap. XXIV, n. 1: *Opera Omnia*, Vol. V, p. 268-269: "Hinc ergo oritur questio an lex civilis solum includat rationem præcepti large sumpti, vel etiam possit ex suo genere magis obligare, et necessitatem imponere vel parendi, vel mortaliter peccandi."

<sup>75</sup> CAJETAN, II-II, q. 104, art. 2.

<sup>76</sup> CAJETAN, II-II, q. 104, art. 2: "...dubium occurrit, an objectum obedientiæ sit præceptum obligari ad mortale peccatum: vel præceptum communiter, sive obliget ad mortale sive ad veniale, [...] constat enim quod non omnis voluntas superioris nota est præceptum obligans ad mortale."

<sup>77</sup> CAJETAN, II-II, q. 104, art. 2: "...ideo obedientiæ et inobedienciæ objectum est præceptum communiter sumptum, ut distinguitur contra consilium."

<sup>78</sup> CAJETAN, *Summula*, art. *Præceptum*, Lyon, 1596, p. 465: "Præcepti transgressionem peccatum esse constat. Sed quia præcepti nomen ut distinguitur

Suarez, in stating that there is a question as to whether civil laws can oblige under the pain of mortal sin, refers to those authors who have already denied that civil laws have any obligation in conscience. That Gerson and Almain deny a grave obligation in conscience in civil laws is evident to Suarez since they have already denied these laws any obligation.<sup>79</sup>

Suarez, in showing that civil laws can oblige in conscience, did not conclude that these laws must necessarily oblige in conscience under the pain of mortal sin. Therefore, he develops his doctrine on the moral obligation of civil law by showing how civil laws can oblige under the pain of mortal sin.

Suarez refers to many authors to support his opinion that civil laws can oblige under the pain of mortal sin.<sup>80</sup> In order to understand Suarez's position more clearly, reference will be made to those authors who have influenced his thinking.

First of all, Suarez bases his doctrine on St. Thomas<sup>81</sup> where the latter speaks of the necessity of obedience on the part of inferiors in relation to their superiors.<sup>82</sup> Suarez uses St. Thomas' doctrine to point out to his adversaries that even Christians are bound to obey civil authorities. As St. Thomas states, Christ didn't come to destroy the order of justice but rather to strengthen it. Therefore, justice demands that inferiors obey their superiors.<sup>83</sup>

St. Thomas adds in the following question that disobedience to the precepts of the superior is a mortal sin, as being contrary to divine love.<sup>84</sup> St. Thomas concludes that not every disobedience is

contra consilium, confusum invenitur, dum quandoque proprie secundum suam significantionem sumitur, ut imperat necessitatem obediendi [...] Quandoque autem autonomastice, ut imponit necessitatem talem, scilicet mortaliter peccandi si non pareatur [...] Et utroque modo in Jure invenitur, ideo obscura redditur discretio transgressionis præceptorum, quando est mortalis et quando venialis."

<sup>79</sup> See the first part of this chapter for the doctrine of Gerson and Almain on this matter.

<sup>80</sup> SUAREZ, *De Legibus*, L. III, Cap. XXIV, n. 2: *Opera Omnia*, Vol. V, p. 269.

<sup>81</sup> St. THOMAS, II-II, q. 104, art. 1 and art. 6; q. 105; q. 147, art. 3.

<sup>82</sup> St. THOMAS, II-II, q. 104, art. 1: "Unde etiam oportet in rebus humanis quod superiores moveant inferiores per suam voluntatem, ex vi auctoritatis divinitus ordinatæ. Movere autem per rationem et voluntatem est præcipere. Et ideo, sicut ex ipso ordine naturali divinitus instituto inferiora in rebus naturalibus necesse habent subdi motioni superiorum, ita etiam in rebus humanis, ex ordine juris naturalis et divini, tenentur inferiores suis superioribus obedire."

<sup>83</sup> St. THOMAS, II-II, q. 104, art. 6: "Et ideo per fidem Christi non excusantur fideles quin principibus sæcularibus obedire teneantur."

<sup>84</sup> St. THOMAS, II-II, q. 105, art. 1: "Et ideo etiam inobedientia qua quis inobediens est præceptis superiorum, est peccatum mortale, quasi divinæ dilectioni contrarium."

equally sinful and, therefore, there are different grades of sins according to different grades of disobedience.<sup>85</sup>

As an example of a precept which does not oblige always under the pain of mortal sin, St. Thomas uses the precept of fasting. This is a human law which determines a precept of the natural law. St. Thomas points out that if this precept is not observed because of a reasonable cause, this transgression does not constitute a mortal sin. Therefore, in this sense not everyone who disobeys such a precept always sins mortally.<sup>86</sup>

The authors who influenced Suarez after St. Thomas are mainly moral casuists who are searching for ways in which to determine the gravity of the obligation. The fifteenth and sixteenth centuries were the period in which casuistry had a great role in the development of moral doctrine. It is certain that the moralists were not unanimous on the manner of determining the gravity of this obligation. Vereecke distinguishes two groups among these theologians. The first, composed of Cajetan, Alfonso de Castro and Juan de Medina, taught that the terms of the law do not give us an exact measurement of the obligation. According to the theologians of the second group, which is composed of the Summists, the positive determinations of the Church constitutes a general rule of law which applies just as well to civil legislation as it does to canonical legislation. This being the case the State can make a vocabulary which indicates the values of the obligation. This implies that the legislator can also determine the measure itself of the obligation.<sup>87</sup>

Suarez refers to these authors in his development of how civil laws can oblige in conscience under the pain of mortal sin. He does not agree with everything they say but follows the same argumentation. He follows their manner of explanation especially in the discussion of the criteria of a grave obligation. Before presenting his doctrine on the manner of recognizing a grave obligation, the possibility of a grave obligation is considered.

Thus, the first assertion made by Suarez on this question is that "civil law, in itself, can oblige under the penalty of mortal

<sup>85</sup> St. THOMAS, II-II, q. 105, art. 2: "Sic ergo oportet secundum diversos inobedientiae gradus diversis peccatorum gradibus comparare."

<sup>86</sup> St. THOMAS, II-II, q. 147, art. 3, ad 2: "Si autem ex aliqua rationabili causa quia statutum non servet, praecipue in casu in quo etiam si legislator adesset, non decerneret esse servandum: talis transgressio non constituit peccatum mortale. Et inde est quod non omnes qui omnino non servant jejunium Ecclesiae, mortaliter peccant."

<sup>87</sup> See Louis VEREECKE, *op. cit.*, p. 84.

sin.”<sup>88</sup> He stresses that the civil law can oblige *ex genere suo* but at the same time makes it clear that many civil laws do not have this grave obligation. It is true, Suarez contends, that if the subject matter is proportionate and the will of the legislator intervenes, a civil law can impose a grave obligation in conscience.<sup>89</sup>

This doctrine sounds very similar to that of Driedo, one of those authors quoted by Suarez. Driedo states that the gravity of the obligation does not depend only on the intention of the legislator but more on the quality of the precept and on the reason and end of the law.<sup>90</sup>

Alfonso de Castro also insists on sufficient matter in order to oblige under the pain of mortal sin, but he seems to allow the legislator to determine the gravity.<sup>91</sup>

Though Suarez refers to these authors, this does not mean that he agrees with everything they say. Therefore, his reasoning must be seen in order to find out what he believed to be the solution to this problem. Thus, Suarez reasons in the following manner:

... human law, in itself, obliges in conscience; therefore it can also impose, in itself, an obligation proportionate to the material, if it is absolutely imposed concerning that matter. Thus, in itself, it can validly induce an obligation under the pain of mortal sin.<sup>92</sup>

Suarez says that this argument is reasonable because natural reason tells us that parents are to be obeyed and, if they are disobeyed, this transgression is, in itself, a mortal sin. In a similar manner it is clear that civil legislators are to be obeyed and thus, their laws can oblige, in themselves, under the pain of mortal sin.<sup>93</sup>

<sup>88</sup> SUAREZ, *De Legibus*, L. III, Cap. XXIV, n. 2: *Opera Omnia*, Vol. V, p. 269: "...lex civilis ex genere suo obligare potest sub reatu mortalis culpæ."

<sup>89</sup> SUAREZ, *De Legibus*, L. III, Cap. XXIV, n. 2: *Opera Omnia*, Vol. V, p. 269: "Dicitur ergo lex civilis ex suo genere obligare sub mortali, quia, si ex parte materiæ sit capacitas, et voluntas legislatoris interveniat, ex parte legis non deest efficacia seu potestas ad obligandum."

<sup>90</sup> JEAN DRIEDO, *De Libertate Christiana*, Louvain, 1553, fol. 84v: "Ad hoc ut culpa transgredientis humanam legem aut præceptum sit aut venialis aut mortalis, non pendet solum ex intentione prælati intendentis, nunc venialiter, nunc criminaliter obligare transgressores, sed longe magis ex qualitate et dignitate præceptorum, ex auctoritate præcipientium, ex ratione et fine legum [...]"

<sup>91</sup> ALFONSO DE CASTRO, *De Potestate Legis Pœnalis*, L. I, Cap. V, Lyon, 1556, p. 80 and p. 85: "Nulla lex humana quantumlibet justa sit, obligare potest illius transgressorem ad culpam mortalem, nisi sit circa materiam talem quæ possit sufficientem causam præbere ad jungendam talem obligationem. [...] Lex humana justa, et de re gravi aliquid statuens, obligat illius transgressorem ad culpam mortalem aut venialem, juxta variam legislatoris voluntatem."

<sup>92</sup> SUAREZ, *De Legibus*, L. III, Cap. XXIV, n. 2: *Opera Omnia*, Vol. V, p. 269: "...lex humana ex se obligat in conscientia; ergo ex se inducit obligationem materiæ proportionatam, si circa illam absolute feratur; ergo ex se inducere valet obligationem sub mortali."

<sup>93</sup> *De Legibus*, L. III, Cap. XXIV, n. 2: *Opera Omnia*, Vol. V, p. 269.

Suarez adds that the power to prescribe in this manner is not given to secular rulers as a special concession by God. Rather this power exists according to the very nature of things so that good order can be obtained. Just as a father can impose a grave obligation, the material allowing, on his children, so also can the civil legislator impose a grave obligation on his subjects.<sup>94</sup>

Referring to St. Paul,<sup>95</sup> Suarez shows that this power has not been given by Christ but rather that these rules of obeying apply to all men, even pagans, and, therefore, authority everywhere has the power to oblige in conscience under the pain of mortal sin.

Suarez also makes reference to the Book of Wisdom where it is stated that kings have received their power from God.<sup>96</sup> Suarez concludes from these scriptural references that this power to oblige in conscience is not a special concession added to nature since it is common to pagan rulers. Therefore, the power to oblige under the pain of mortal sin is intrinsic to natural power and not received through some special concession.<sup>97</sup>

Ambrosetti remarks that when Suarez affirms with great care that this obligation is not obtained through a special concession of God or through Christ, but through the nature of things, and that these rulers have the power to establish an obligation as rigorous as one in conscience, and that this power does not come from a special concession distinct from the power to rule society but is included in its essence naturally, he not only reaffirms an essential aspect of the rationality of political power and the basis of order radically rational but he also indicates that all natural life along with political power forms a firm bond with the author of being, God.<sup>98</sup>

Suarez insists on this power as being inherent in the very nature of civil legislation in order to oppose the opinion of some of the writers who came before him. One of those to whom he refers

<sup>94</sup> *De Legibus*, L. III, Cap. XXIV, n. 3: *Opera Omnia*, Vol. V, p. 269: "Atque hinc infertur potestatem hanc sic præcipiendi cum tam rigorosa obligatione non convenire principibus secularibus ex speciali Dei aut Christi concessione, sed ex natura rei consequi ad illam potestatem quam habent a Deo ad gubernandam rempublicam in suo ordine."

<sup>95</sup> St. PAUL, *Romans*, 13, 1.

<sup>96</sup> *Book of Wisdom*, 6, 3.

<sup>97</sup> SUAREZ, *De Legibus*, L. III, Cap. XXIV, n. 3: *Opera Omnia*, Vol. V, p. 270: "...quia talis potestas inventa est in legitimis regibus infidelibus, nullam revelationem vel supernaturalem notitiam habentibus: est ergo intrinseca potestati naturali [...]"

<sup>98</sup> See Giovanni AMBROSETTI, *Il Diritto Naturale della Riforma Cattolica*, Milano, Editore Guiffre, 1951, p. 157-158.

is Medina. Juan de Medina was a professor of the University of Alcalá at the time of the counter-reformation. He also was trying to defend the rights of the authority both in the Church and in the State.<sup>99</sup> However, he held that lawful superiors had their power given to them in a special way from God since no one could inflict a spiritual penalty without divine authority.<sup>100</sup>

In his comments Suarez says that Medina bases his doctrine on Gerson's doctrine which held that no one can impose a penalty which he cannot inflict. Since God can only inflict this penalty, anyone else would need a special commission from God to do likewise.<sup>101</sup>

Suarez also refers to Almain who is in agreement with Medina that in order to oblige with an eternal penalty one must have a special power given to him by Christ. For this reason Almain believed that the Church authorities can oblige under the pain of mortal sin whereas civil authorities are lacking this power.<sup>102</sup>

Suarez, in response to this distinction made by Almain, states that although there is a difference in the power given to the Vicar of Christ and the power which belongs to the civil legislator, nevertheless, they are the same in the fact that neither has been given a special power to oblige under the pain of mortal sin but they both have this power inasmuch as it is included in the nature of the power of governing.<sup>103</sup>

If Medina only meant that there must be some participation in divine power, for example acting as the minister of God, in order to oblige in conscience under the pain of mortal sin, then Suarez

<sup>99</sup> See E. AMANN, "Medina", in *Dictionnaire de Théologie catholique*, Vol. X, col. 485-486.

<sup>100</sup> JUAN DE MEDINA, *De penitentia, restitutione et contractibus*, Tractatus IV, Quæstio 7: Ingolstadii, 1581, Vol. I, p. 295: "Nemo potest legem facere sub aliqua pœna obligantem nisi qui pœnam illam potest transgressoribus infligere, veritatem habet de his, qui propria seu humana et non potius divina auctoritate legem faciunt. Prælati autem, immo et principes sæculares, ex quo legitime sunt ad dignitatem promoti, a Deo habent auctoritatem qua leges hujusmodi pœnales possint instituere."

<sup>101</sup> SUAREZ, *De Legibus*, L. III, Cap. XXIV, n. 4: *Opera Omnia*, Vol. V, p. 270: "Nititurque in illo fundamento Gersonis, quod nemo potest sub reatu pœnæ æternæ imperare, nisi qui illam pœnam potest infligere, et ideo solus Deus id potest, vel qui ab illo habet talem potestatem specialiter commissam."

<sup>102</sup> J. ALMAIN, *Expositio circa decisiones Magistri G. Occam super Potestatem Summi Pontificis, de potestate ecclesiastica et laica*, Cap. XI: *Opera Omnia Gersonis*, Vol. II, col. 1051; for text see page 151, footnote 17.

<sup>103</sup> SUAREZ, *De Legibus*, L. III, Cap. XXIV, n. 5: *Opera Omnia*, Vol. V, p. 270: "... nihilominus in hoc conveniunt, quod neutri data est peculiaris potestas imperandi in sua materia et foro sub reata pœnæ æternæ per specialem concessionem, sed solum quatenus ex natura rei includitur in potestate gubernandi unicuique concessa."

admits that this is true because otherwise a transgression would not be an offense against God. If there is no offense against God, there can be no eternal penalty.<sup>104</sup>

Besides the fact that civil laws according to their very nature can oblige under the pain of mortal sin, Suarez mentions the way this obligation can come into effect. Though contempt is one possible way that a transgression of civil laws can be a mortal sin, Suarez holds that there are also many other possible ways. Thus, Suarez states that a transgression of a civil law can be a mortal sin as often as it is done with sufficient knowledge and deliberation.<sup>105</sup>

Since a civil law can oblige under the pain of mortal sin, it is evident to Suarez that a transgression can be a mortal sin even though it is not done out of contempt. Suarez points out that he is speaking of formal contempt since virtual or material contempt is included in every transgression of the law.<sup>106</sup>

Suarez concludes that one can sin mortally against a human law in the same manner in which one violates grievously the natural or divine law. Thus he states:

... one can sin mortally against the human law through one act, or omission, in all the ways in which one can sin against the natural and divine law, namely either through malice, that is, from certain knowledge and a depraved will, or from passion which does not exclude sufficient deliberation, or through crass or supine ignorance, that is, produced from notable negligence. This is evident because in all these ways there can be an act sufficiently voluntary and nothing else is required, presupposing an obligation of law ...<sup>107</sup>

<sup>104</sup> *De Legibus*, L. III, Cap. XXIV, n. 6: *Opera Omnia*, Vol. V, p. 270: "Neque fortasse Medina aliud sensit: nunquam enim dixit hanc esse specialem concessionem, sed solum voluit explicare non potuisse quamcumque ex his potestatibus extendi ad obligandum sub reatu pœnæ æternæ, nisi utraque aliquo modo divina, et per eam operaretur homo, ac præciperet ut minister Dei."

<sup>105</sup> SUAREZ, *De Legibus*, L. III, Cap. XXIV, n. 7: *Opera Omnia*, Vol. V, p. 270: "... non solum posse peccari mortaliter contra legem civilem, quando ex contemptu formali non servatur; sed etiam quoties cum sufficienti cognitione ac deliberatione violatur [...]"

<sup>106</sup> *De Legibus*, L. III, Cap. XXIV, n. 7: *Opera Omnia*, Vol. V, p. 271: "ergo si lex de se obligat sub reatu æternæ pœnæ, in transgressione ejus committitur peccatum mortale, etiamsi non fiat ex contemptu formali. Loquor autem semper de formali contemptu: nam virtualis, seu potius materialis, in omni transgressione legis includitur: [...]"

<sup>107</sup> *De Legibus*, L. III, Cap. XXIV, n. 7: *Opera Omnia*, Vol. V, p. 271: "... posse peccari mortaliter contra legem humanam per unum actum, vel omissionem, omnibus illis modis quibus potest peccari contra legem naturalem vel divinam, scilicet, vel per malitiam, seu ex certa scientia et pravo usu libertatis, vel ex passione, quæ sufficientem deliberationem non excludat, vel per ignorantiam crassam et supinam, seu ex notabili negligentiam profectam. Patet, quia omnibus his modis potest esse actus sufficienter voluntarius, et nihil aliud requiritur, supposita obligatione legis [...]"

Suarez, in showing how a civil law can oblige in conscience under the pain of mortal sin, points out that this law, like every other law, has the force necessary to obtain its end. Suarez criticizes those theologians who hold that this power belongs only to those who have a special concession from God. He maintains that civil law of its very nature can and does oblige in conscience. Moreover, if the matter is adequate, civil law can also oblige under the pain of mortal sin. In this way Suarez protects the authority of the State from being disregarded. At the same time, however, he stresses that this power must be in conformity with the divine and natural law in order to have its obligatory effect. Thus, by arguing from the nature of things, Suarez unites the obligation of civil law to the obligation of the eternal law.

It is interesting to notice how objective Suarez's argumentation is in this particular question. He seems to be insisting that human law of its very nature has the power to oblige in conscience, even under the pain of mortal sin if the matter is proportionate. By the fact that he was opposing theologians who were somewhat nominalistic in their thinking, Suarez followed a very objective explanation to show the weaknesses in their position.

Moreover, he contributed to the moral doctrine concerning this matter as he developed more precisely how civil laws actually differ from the natural law. Suarez, in this question, was not so much interested in showing how much human law depends on the natural law for its obligation but rather how it is distinct from the natural law in regard to its own obligation. He stresses that the determination made by the legislator is the proper and proximate cause of the moral obligation of civil law. This is not only necessary, according to him, so that good order can be maintained but it is according to the very nature of human laws.

If his doctrine on the obligatory effect of law in general (as treated in chapter one), and the doctrine concerning the intention of the legislator (given in chapter two), is compared with this doctrine on the moral obligation, one is somewhat surprised not to find a more subjective approach in his argumentation. In fact, it seems as though Suarez had put aside his subjective arguments and planned to follow a very objective course in his explanation. Definitely, this particular section of his doctrine is very good and contributes a great deal to the exact nature of how civil law obliges.

## **Conclusion**

In order to underline the main characteristics of Suarez's doctrine on the moral obligation of civil law, this conclusion is not intended to be only a summary of what has already been said but rather it is desired that the overall plan and development of Suarez's doctrine be pointed out. The most evident characteristic to be found in his doctrine is surely the emphasis that he gives to the obligation as the principal effect of law. He clearly points out in his introduction to *De Legibus* that the main theological question to be considered in regard to civil law is the question of its obligation. He includes the study of civil law within the scope of theology because it is for the theologian to explain the moral obligation that arises from civil law. Moreover, the notion of man's salvation and God's authority being connected with this doctrine on civil law, he definitely places this question within the realm of theology.

In order to show why a civil law has an obligation, Suarez first shows the necessity of the law itself. He does this by referring to the nature of man and the nature of human society. Because of the mutable character of human society Suarez shows how civil law helps it to become stable in its existence. In this manner the purpose of civil law is shown which purpose in turn serves as a criterion for evaluating the qualities required to have a true law.

From the necessity of civil law Suarez moves to the effects of civil law. If laws are necessary in order to conserve peace and good order, then they must have some force to achieve this end. Thus, their obligation follows as their primary effect in achieving and securing public order.

The reasons for his insistence on the obligation as the primary, adequate effect of law has been explained historically and doctrinally. The heretical doctrine concerning man's freedom from the obligation of law was still an issue to be fought. Moreover, Suarez was combatting the doctrine of Gerson which claimed that civil laws do not oblige in conscience. He, therefore, insisted on the obligation as the primary effect of every law.

It has also been shown that from his doctrine on the role of the will in the constitution of the law, emphasis on the obligation as the principal effect would logically follow. Because of this doc-

trine, the obligation receives more consideration than the ordination of acts.

Because of this insistence on the obligation as the main effect of law, Suarez overlooks the more positive aspects of law. His explanation of law becomes legalistic and negative by creating the notion that law constrains one's actions and that individual rights are taken away in favor of the rights of society. There is no mention of the idea that law frees man to act more in accord with his nature and that by law man is aided in the use of his rights. If Suarez would have followed St. Thomas' doctrine concerning the intellect as the primary cause of the law, he would have been able to make more meaningful his explanation on how law intends to make men good. If the ordination of acts would have been considered as the primary effect of law he could have made a better comparison of civil government with the Divine Economy.

Suarez does connect civil authority with God's authority by showing how man shares in God's power of ruling. In fact his argument from authority is one of his main themes in showing that civil law obliges in conscience. He elaborates at length concerning the existence and necessity of civil authority. His arguments for its necessity, just as his explanation for the necessity of civil law, are based on the nature of man and his society.

In order to show that civil authority has true legislative power he gives an explanation of its participation in the eternal power of God and how this power is transferred to the civil authorities. It is in his doctrine on the transference of power that he opposes the doctrine of divine right of kings which was defended by James I of England. Suarez places the power of the civil authority first in the society itself and secondarily in those who become the active subject of this power.

Suarez stresses the connection between civil authority and God's authority in order to show that civil law pertains to the field of morality. He constantly refers to God's Will in the sense that the necessity of civil authority is according to God's plan of universal order. Hence Suarez's doctrine appears to be theocentric by his insistence on God as the source of all law, even civil law. Thus, civil power is only true power as long as it is in accord with God's will. This being true, Suarez reminds civil legislators to be aware of their positions as vicars of God and students of the natural law.

From this line of argumentation Suarez again emphasizes the moral obligation of civil law. Man must obey God's authority. If

this authority is shared by men, then these men must also be obeyed by their proper subjects. In this way Suarez makes the civil legislators a proximate cause of the obligation of civil law. The natural law which demands obedience to lawful superiors is the ultimate cause of the obligation but the legislator becomes the proximate cause by the fact that his intention is necessary in order to bring a human law into existence.

Thus, Suarez gives both subjective and objective reasons for the obligation that arises from civil law. He also gives a rather complete explanation of how both God and man play a part in effecting the moral obligation of civil law. However, his doctrine does have some weaknesses. By emphasizing the intention of the legislator in regard to the obligation he seems to give more importance to the intention of the legislator than to the common good of the community. Because of this the superior-subject relationship is emphasized which results in a rather legalistic explanation of authority. Moreover, by insisting on the will of the legislator as the cause of the obligation his doctrine becomes voluntaristic in the sense that more depends on the will of the legislator than the nature of things rightly demands. It is true that the circumstances of the times caused Suarez to stress the role of authority in making laws which oblige in conscience. It is also true that he does refer to the common good as the norm to determine whether a law is just or not. But, in spite of this, a more objective line of argumentation would enhance his doctrine on civil authority.

Suarez does follow a more objective argumentation in his doctrine on the moral obligation itself of civil law. In fact his main argumentation on the possibility of an obligation in conscience centers on the intrinsic nature of society and the participation of civil law with the eternal and natural law.

In response to those theologians, such as Gerson, Almain, and Castro, Suarez explains the relationship between civil law and the natural law in regard to the obligation in conscience. Moreover, Suarez shows that the force of obliging in conscience is derived from the eternal law. In developing his argument Suarez makes use of those scriptural quotations which demand obedience to human authority. However, Suarez's use of Scripture is very elementary as he simply quotes texts without any further development. His main argumentation lies in his philosophical explanation of how human law shares in the power of eternal and natural law inasmuch as it is founded in the will of God and the dictates of reason. Thus, for

Suarez, human law has its efficacy from the eternal law. This power to oblige in conscience is proper to human law because the nature of society demands this degree of efficacy in order that peace and honesty be maintained. Suarez insists that this obligation in conscience is the proper effect of human law since it would not exist if the human legislator had not imposed it.

This argumentation of Suarez is very similar to that of Vazquez. The only difference is that Vazquez treats the question more as pertaining to moral philosophy whereas Suarez includes it within the scope of moral theology. Both authors use arguments from the nature of things and both derive the efficacy of civil law from the natural law. Suarez also refers to the eternal law in order to stress the inner oneness of the natural law and the eternal law.

In order to point out the force proper to civil law Suarez adds that this obligation in conscience can be grave, and therefore, a violation of this grave obligation would result in a mortal sin. Suarez follows the doctrine of St. Thomas in order to show that disobedience can be either light or grave depending on the gravity of the matter. Suarez does not accept the opinion that a special concession must be given by God in order that man oblige under the pain of mortal sin but rather insists that this power is already present in the legislator according to the nature of society and civil authority. Thus, by arguing from the nature of things Suarez unites the obligation of civil law to the eternal law.

In his explanation of the criteria of a grave obligation Suarez again proceeds from an objective basis and shows that the matter in itself and in relation to its end serves as the best criterion of the gravity of the obligation. It is true that this question concerning the gravity lends itself to a casuistical approach but Suarez definitely explains his position in an objective manner. He uses the nature of things as his norm and does not allow himself to be influenced by nominalistic tendencies in determining the gravity of the matter.

The influence of the Summists is seen in his question of whether words can be a criterion of the gravity of the obligation. Suarez develops this doctrine to the extent that he shows the usefulness of the words but also demands that the matter be sufficient.

A difficulty arises for Suarez in his doctrine concerning the intention of the legislator as a criterion of a grave obligation. He has been using objective arguments to explain this obligation and to show the criteria of the obligation. However, in his explanation

of the intention as a criterion he becomes inconsistent and uses a subjective process of reasoning rather than an objective one. This is evident in his disagreement with Vazquez. Vazquez claims that it is against the nature of things for the intention of the legislator to declare a light obligation concerning something which really concerns grave matter. Suarez, however, believes that the legislator can do this and still be within reason. This conflict seems to arise from the two different fundamental arguments that Suarez uses throughout his doctrine. On the one hand he bases the obligation in conscience from the nature of things and on the other he says the obligation of the law comes from the will of the legislator. Suarez would not be faced with this incongruity if he had followed St. Thomas' doctrine which considers law more as an act of the intellect than as an act of the will. In general Suarez develops his arguments from the nature of things and because of this it is very sound. In this instance, however, his doctrine is open to criticism because of his doctrine on law as an act of the will.

Another characteristic of Suarez's method is his analytical approach to every question treated. In many ways it is his analytical method which gives his work so much authority. He takes the principles which are for the greater part thomistic and applies them to many different situations. In this way he makes this doctrine clearer and also more helpful to the theologian wishing to solve an actual problem. This analytical process is evident in his doctrine on the extent of the obligation. Suarez is concerned with what matter can be the proper object of the obligation of civil law. Insisting on honest matter he opposes the Machiavellian theory of moral indifference in political actions. Here again the importance of the natural law is stressed as the norm to be followed. Also natural reasoning is shown to be the best manner of determining proper matter for human legislation.

Using the nature of man's knowledge, Suarez distinguishes between acts which are *per se* and *per accidens* occult. With this distinction he excludes acts which are *per se* occult from the scope of human legislation. In this manner Suarez places a limitation on the human legislator, restricting him to the legislation of acts which are within the human capacity of natural communication.

Suarez's analytical mentality is also seen in his doctrine on the extent of the obligation in regard to subjects. He definitely protects the rights of subjects but at the same time insists that all men are subject to some human laws. This doctrine is also apologetical in

character as he opposes the heretical doctrine which claims that the just are freed from the obligation of the law. Suarez uses both revelation and natural philosophy to show that man is subject to human authority.

This doctrine can be criticized for being rather legalistic in its presentation. He considers the rights of both superior and subjects and tries to show how law is necessary to protect those rights. His analytical method also directly encourages a casuistical approach to moral problems, though the philosophical principles are usually presented along with every analysis.

In his doctrine on the manner of the act required in order to fulfill the obligation, Suarez follows St. Thomas' doctrine and holds that a virtuous manner of acting is not required. This opinion is based on the nature of human actions.

Suarez's doctrine on the rigor of the law shows his ability to work from principles and arrive at a conclusion which is applicable to an actual situation. Suarez chooses a middle course between two extreme opinions and arrives at a very pleasing solution to a difficult question. He holds that civil laws usually do not bind in danger of death but at the same time a situation can arise when such heroism would be demanded of the subjects. Suarez's eclectic method is evident in this doctrine and it is to his credit that he usually chooses the opinions of other authors in such a way that his doctrine generally remains unified and in conformity with the dictates of reason.

At the same time it is his eclecticism that causes the weaknesses that are to be found within his system. He seems to lack over-all unity at times when he rejects the opinions of some authors while he accepts related opinions of the same authors in another question. For example, he definitely opposes nominalistic theories which deny that an obligation of human law comes from the nature of things. However, this is a consequence of their fundamental theory concerning the constitution of a law which Suarez followed. Therefore, it is difficult to understand why he allowed himself to be persuaded to follow a voluntaristic concept of the constitution of law. Without this conflicting opinion his doctrine on the moral obligation of civil law would be more unified.

Thus, his work did not reach the synthesis of St. Thomas but did develop some important distinctions as to the very nature of civil law itself. Suarez's doctrine is not to be considered as a mere repetition of the thought of St. Thomas but rather as an application

and a development of the more fundamental principles to the questions pertinent to the age of Suarez.

Moreover, it is possible to trace to a certain extent the development of his doctrine concerning the moral obligation of civil law. In explaining his position, he develops his argumentation along two different lines of thought. The fundamental argument that he uses to show that there is an obligation in conscience is an objective one. He bases this necessity on the nature of man and the nature of society. He then shows how human reason is the interior principle upon which the obligation of the law is founded. He constantly refers to reasoning as the rule or criterion by which a judgment is to be made concerning the necessity of the obligation, the gravity of the obligation, and the extent of the obligation. This judgment of reasoning is based on the nature of things. This first argument could be summed up by stating that if a law is reasonable it obliges in conscience.

The other fundamental argument used is extrinsic and subjective. He points out that human authority is the exterior principle upon which the obligation of civil law depends. He explains how human authority is derived from the authority of God. He then shows that human authority must conform to God's will which establishes an order to be observed. From this line of argumentation Suarez again emphasizes the moral obligation of civil law. Man must obey God's authority. If this authority is shared by men, then these men must also be obeyed by their proper subjects. In this way Suarez makes the civil legislator a proximate cause of the obligation of civil law by the fact that his intention is necessary in order to bring a human law into existence.

It is in this explanation of the exterior principle that his voluntaristic tendencies have been discovered. For example, he implies that the role of authority is more of a superior-subject relationship than a functional one of conforming acts to their proper end. Moreover, he places great importance on the will of the legislator when he must decide the gravity and manner of the obligation. When his fundamental position on the constitution of law is considered along with his development of the moral obligation, conflict is sensed and the harmony sought is not perfectly realized. By the fact that Suarez did use the nature of things in his argumentation, it seems that he was aware of the objective order as the ultimate basis of the obligation. However, his doctrine on the will prevented him from offering a consistent foundation for the obligation of civil law.

Nevertheless, Suarez offers us many valuable insights into the nature of the obligation of civil law and shows us the reasonableness and necessity of such an obligation. The faithful need to be reminded from time to time that civil rulers have authority from God to govern them, and that they must obey the reasonable commands of these superiors. They must be warned that unless they obey the civil legislation they cannot be called virtuous. They must be reminded that civil laws are intended as a help toward their eternal and temporal happiness. Citizens should be told that if their actions conform to the true norms made by their rulers they will be called good. On the other hand, those who refuse to recognize the divine authority which lies behind civil laws, rightfully imposed, cannot be called virtuous.

Even though we agree with Suarez's conclusion as to the moral obligation in conscience, we have pointed out the weaknesses and inconsistencies within his argumentation so that the same mistakes will not be made by others. Many who hold St. Thomas's opinion on the intellect as the source of law also explain the notion of obligation according to the doctrine of Suarez. Thus, it seems that they are not fully aware of the contradiction involved.

Therefore, it is hoped that from this presentation of Suarez's doctrine there is offered a better knowledge of the nature of the moral obligation of civil law. It is also desired that the historical and doctrinal reasons given throughout this dissertation will increase one's appreciation of the doctrine offered by Suarez. At the same time it is intended that, by seeing some of the weaknesses in Suarez's doctrine within his overall, well developed argumentation, the same mistakes will be avoided in the future. Thus, using the many excellent arguments of Suarez and perfecting the points which weakened his explanation, it is desired that the doctrine of the moral obligation of civil law will be better understood and respected.

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