

## THE ETHICS OF NATURAL LAW ACCORDING TO THOMAS AQUINAS

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Thomas Aquinas' concept of law is an example of the application of Aristotelian teleology to the integral theory of ethics, law and governing. Aquinas' concept of natural law is called moral law by many scholars. Man is able to anticipate the law of action in relation to eternal law, and such participation in eternal law Thomas calls natural law. The ethics starts from the principle good is to be done and evil is to be avoided. This principle is the basis for the rest of the ethical precepts concerning what is to be done and what is to be avoided. Man has innate general orientations on how to live and behave in this world. Conscience evaluates and judges the motives and moral qualities of actions. This is the main idea of natural law, which is described in the article.

### *INTRODUCTION*

First of all, Thomas Aquinas is a famous theologian. Nevertheless, it is worth paying attention to his political and ethical doctrines. For instance, Aquinas' theory of natural law embraces elements of Platonism, Aristotle, Roman Law, the teaching of Stoics, the Church Fathers (especially Augustine), the feudal tradition, and the political practice of Holy Roman Empire and Italian cities. That theory was employed in the creation of *The Higher Law Background of the American Constitution*.<sup>1</sup> It helped to transform the traditional, local, customary social system of early feudal society into the centralized policy of the modern world, based on law and logic.

<sup>1</sup> P. E. Sigmund: 'Introduction', in: *St. Thomas Aquinas on Politics and Ethics*, New York: Norton, 1988: xiii–xiv.

As a rule, the moral philosophers, the predecessors of Thomas Aquinas, considered the direct and indirect moral precepts taken from Holy Scripture. Aquinas applied the teleological method of Aristotle to the analysis of fundamental ethical problems, and this way he escaped enslavement by the authoritative text and abuse of deduction. The famous *Treatise on Law* (*Summa Theologiae*, I–II, q. 90–108) is a good example of Aquinas' reliance on Aristotle's teleology in the elaboration of integrated theory of ethics, law and government. In these questions, Thomas presents the structure of four laws: (1) Eternal Law (the divine plan of the universe), (2) Natural Law (through which man, by the use of his reason, participates in eternal law), (3) Human Law (the application of natural law to particular societies by way of "conclusions" and "determinations"), (4) Divine Law (the divine revelation expressed in the Old and the New Testaments which assists man in understanding the requirements of law and morality). This structure unites the neo-Platonic concepts of hierarchy and participation, some ideas of Roman Law, the feudal belief in the common origin of law and power, and the Stoic belief in the world's order, rationality and morality. The integrity of this structure rests upon the belief that man is able to understand nature's aims which correspond to God's intentions. According to Thomas, natural law is related to the perfecting of "natural inclinations" by means of their subordination to the needs of self-preservation, nutrition, reproduction, family life, learning and adoration, when all this is understood as necessities and possibilities given by God and belonging to the realm of natural law. Of course, not all inclinations are "natural", but only those which correspond to the ends of rational human nature. They cannot be deduced, but have to be developed from the notion of an integral and socially responsible human person. I mean a person who seeks to realize the possibilities given by a merciful and purposively acting God.

This Christian, and at the same time Aristotelian, ethical rationalism significantly differs from Augustinian pessimism, which doubted the capabilities of man's reason to know good and his will to strive for it. Aquinas developed his ethics at the time of the Church's need for a method which would enable the solution of practical moral problems. That need came into being when the Fourth Lateran Council (1215) officially instituted obligatory annual confessions, and therefore priests had to be ready to lead believers to moral perfection by assigning a suitable penitence. In *Summa Theologiae* (I–II) Aquinas treats these questions on priestly and lay morality against the background of natural law.

In this article, I will analyze in more detail the ethics of natural law. First of all, I will inquire into the question, what the ethics of natural law is. But, by way of introduction, I will refer to how Thomas understands law and how he divides it.

### *LAW*

Aquinas starts the *Treatise on Law* by indicating that, along with the devil and Grace, law is the principle of acts, and as such has to be inquired into starting from its general meaning. The order of that beginning has to be this: (1) essence of law, (2) kinds of law, (3) effects of law. Concerning the essence, four questions have to be answered: (1) Whether law is something pertaining to reason? (2) What is its end? (3) What is its cause? (4) Whether the promulgation is essential to a law?<sup>2</sup> (q. 90, *prologus*).

In order to answer the first question, one needs to know something of law's quiddity. Aquinas takes into account that the word *lex* 'law' is a derivative of *ligare* 'to bind', and joins this information with the already announced proposition that law is the extrinsic principle of acts, and gets the knowledge that "law is a rule and measure of acts"<sup>3</sup> (q. 90, a. 1, in c). In composition with the already proven statement that "the rule and measure of human acts is the reason"<sup>4</sup> (q. 90, a. 1, in c), it makes the demonstrative syllogism of the fourth figure (mode a, a, i) which concludes that something that belongs to reason is law. That means that law pertains to human reason. Of course, it does not exclude the emotions and will from participation in law, but law essentially belongs to reason as to the first principle of acts. Since the first principle in all matters of action is an end, and the final end of all human actions is happiness or bliss<sup>5</sup> (q. 2 a. 7), "Consequently the law must needs regard principally the relationship to happiness [...]. And since one man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness"<sup>6</sup> (q. 90, a. 2, in c). And, according to Aristotle and Thomas, happiness is a perfect operation<sup>7</sup> (*SCG* I, cap. C

<sup>2</sup> Sancti Thomae Aquinatis: *Summa Theologiae* I–II, La Editorial Catolica, S. A., Martini, 1952: 874 (henceforth: *S.Th. I–II*).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> S. Thomae de Aquino, *Summa contra Gentiles*, Commissio Leonina, Roma, 1934: 582 (henceforth: *SCG*).

[3]) which depends on four things: genus, principle of operation, object of operation, and form of operation<sup>8</sup> (*SCG* I, cap. C [3]). Let us take a closer look at these four as to the factors which lead to the common good “and whatever stands to reason in this sense, has the nature of law”<sup>9</sup> (q. 90, a.2, ad 3).

Following Aristotle, Thomas divides the genus of operation into two species: one that remains in the agent; another that passes over into an external thing. He regards the first as more perfect: “for example, to see and to hear. For these are the perfection of the beings whose operations they are, and can be ultimate because they are not ordered to something made as to their end”<sup>10</sup> (*SCG* I, cap. C [3]).

The perfection of activity, according to Thomas, depends on its principle, i.e., on power. Every being acts through its own form, since “the form of any agent is the principle of its own operation”<sup>11</sup> (*SCG* I, cap. XLVI [2]) whereas “a power is the name of a principle of action”<sup>12</sup> (*SCG* I, cap. XLIII [12]); and the perfection of the activity depends directly on the quantity of that power. Since intellectual nature surpasses all other natures<sup>13</sup> (*SCG* I, cap. XLVII [7]), therefore, the highest perfection of human operation belongs to the intelligible species, i.e., the perfection of human operation depends directly on intellective power. Also, it is necessary to bear in mind that “the intellect does not produce an effect except by means of the will, whose object is a good apprehended by the intellect and which moves the agent as an end”<sup>14</sup> (*SCG* II, cap. XXIII [4]). The sense perceptions direct man to a good, but to some particular good, whereas the good of intellect is the common good. Therefore, Thomas maintains that our happiness is “not according to the operation of sense, but according to the operation of the intellect, and one perfected by a habit”<sup>15</sup> (*SCG* I, cap. C [3]).

In the third case, the perfection of intellect’s activity depends directly on the object of understanding: the higher the nature of a thing understood, the higher the degree of happiness that is attained. “The highest felicity in us consists in understanding the highest intelligible”<sup>16</sup>

<sup>8</sup> *Ibid.*

<sup>9</sup> *S. Th. I-II.*

<sup>10</sup> *SCG.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

(*SCG* I, cap. C [3]). But, according to Thomas, the supreme understandable is “the divine essence, since it is the most perfect act and the first truth”<sup>17</sup> (*SCG* I, cap. XLVII [6]). Therefore, the most perfect operation of man is his attempt to understand divine essence, which gives him the highest kind of happiness.

Finally, the perfection of operation depends on the form of the operation, i.e., “that it *be done perfectly, easily, firmly, and with delight*”<sup>18</sup> (*SCG* I, cap. C [3]). But this mode of operation belongs to God alone, since “He is intelligent, and His intellect is the highest power, nor does He need any perfecting habit [. . .] God is, therefore, blessed”<sup>19</sup> (*SCG* I, cap. C [3]). In this life, man cannot be perfectly happy; for his operation always depends on habits<sup>20</sup> (*SCG* III, cap. XLVIII [7]).

The analysis of the perfection of operation shows that man acts in different directions, which are connected through the common good, i.e., through the commonality of the final cause; for “nothing stands firm with regard to practical reason, unless it be directed to the last end which is the common good”<sup>21</sup> (q. 90, a.2, ad 3). This way, law is directed to the common good. After concluding that law belongs to the order of reason and is directed to the common good, we have to learn if any man is competent to make law and promulgate it, and whether the promulgation is essential to a law.

Since law is directly concerned with the common good, which it strives to protect and to direct the activity of the citizens to the latter, “therefore the making of a law belongs either to the whole people or to a public personage who has care of the whole people: since in all other matters the directing of anything to the end concerns him to whom the end belongs”<sup>22</sup> (q. 90, a.3, in c). The representatives of the common good choose their own deputies who have the right to make laws, demand compliance and punish for their violation. Thomas underlines that “promulgation is necessary for the law to obtain its force”<sup>23</sup> (q. 90, a.4, in c). Every state’s citizen or member of a community can make propositions concerning lawmaking, but these propositions obtain the force of law if and only if they are included in an officially promulgated

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *S. Th. I-II.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

law. The promulgated law is binding to every member of a community, and man, while obeying its demands, becomes its own law. After considering each essential aspect of the law separately, Aquinas unites the results in one definition: the law “is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated”<sup>24</sup> (q. 90, a.4, in c). So, Thomas indicates three essential properties of law: (1) to be directed to the common good, (2) to direct human behavior according to the order of rightness, (3) to urge people to do what is juridically prescribed<sup>25</sup> (q. 91, a.5, in c). After considering the essence of law, Thomas turns to its various kinds.

#### *VARIOUS KINDS OF LAW*

Thomas divides law into four kinds, of which three belong to the divine intellect and one is the product of human reason. Thomas calls them: eternal law, natural law, human law and divine law<sup>26</sup> (q. 91). Eternal law corresponds to Divine Reason, “for granted that the world is ruled by Divine Providence [...] the whole community of the universe is governed by Divine Reason”<sup>27</sup> (q. 91, a.1, in c). Since time does not exist for the Divine Intellect, therefore His understanding is eternal. That is why Thomas proposes to call this law eternal law. But nobody except God and the blessed can know this law in itself<sup>28</sup> (q. 93, a.2, in c). As such, it is beyond human reason. Nevertheless “every rational creature knows it in its reflection, greater or less. For every knowledge of truth is a kind of reflection and participation of the eternal law”<sup>29</sup> (q. 93, a.2, in c). By participation in cognition of truth, man learns something about eternal law, for this law “is *the unchangeable truth*”<sup>30</sup> (q. 93, a.2, in c). So, according to the order of eternal law, all creatures participate in eternal law, because each creature has some imprint of Divine Reason. This imprint directs creatures to their proper operations and ends. This participation of eternal law through the imprint of Divine Reason in the rational creature Thomas calls natural law. In his own words, “the natural law is nothing else than the rational creature’s participation of the

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

eternal law”<sup>31</sup> (q. 91, a.2, in c). Natural law in men, because of the participation of Divine Reason, reveals itself by the inclination to seek for good and shun evil<sup>32</sup> (q. 94, a.2, in c), but first of all it directs human actions to the end<sup>33</sup> (q. 91, a.3, in c). Thomas says that “it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination of certain matters. These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed”<sup>34</sup> (q. 91, a.3, in c). The peculiarity of human law consists of the adaptation of universal principles to the human species and the regulation of its life. Thomas accepts the Aristotelian division of reason into speculative and practical. He maintains that speculative reason is related to reality through phantasms which assist in comprehending forms of actually existing things and in defining their quiddities<sup>35</sup> (*SCG* III, cap. XCVII [12]). Practical reason also reveals the principle, not necessarily the principle “what it is”, but the principle of acting, i.e., the end. Thomas underlines that “the practical reason, which is directed to action, goes further, and its third act is ‘to command’”<sup>36</sup> (q. 47, a.8, in c). In promulgation, law is concerned with justice, which it implements by uniting universality and particularity in a particular kind of action. But despite the light of natural reason, practical reason can err in making the decision *what should be done and what is singular and contingent*. Man possesses the universal principles, which are universal rules and measures of natural reason, but natural reason is a measure of divine wisdom but not human measure, therefore it is unnecessary “for every measure to be altogether unerring and certain, but according as it is possible in its own particular genus”<sup>37</sup> (q. 91, a.3, ad 3). Moreover, since “the law, as to its essence, resides in him that rules and measures”<sup>38</sup> (q. 91, a.6, in c), but in all creatures the law is by way of participation, therefore “the law of man, which, by Divine ordinance, is allotted to him, according to his proper natural condition, is that he should act in accordance with reason”<sup>39</sup> (q. 91, a.6, in c).

<sup>31</sup> *Ibid.*

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

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

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

<sup>35</sup> *SCG*.

<sup>36</sup> *S. Th. I-II.*

<sup>37</sup> *S. Th. I-II.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

In order to reduce the quantity of human errors and to increase the certainty of what should be done and what should be avoided, divine law is given to men<sup>40</sup> (q. 91, a.4, in c). It was revealed by the Holy Scripture. According to Thomas, it was necessary for four reasons: 1) man is ordained to a supernatural end which surpasses his natural reason, 2) because of the uncertainty of human judgments, different and contradictory laws result, 3) human law could not sufficiently direct interior acts, 4) human law cannot punish or forbid all evil deeds. Because of these reasons, the special norms of Christian life and behaviour, i.e., divine law was given through the Holy Scripture in order that men participate in more noble way in divine law<sup>41</sup> (q. 91, a.4, ad 1). Divine Law is given directly by God, therefore it is not the result of human judgment but the gift of Divine Grace<sup>42</sup> (*SCG* III, cap. CXVI[1]). At the same time, Divine Law does not contradict human reason, but completes it by presenting additional rules for life and behaviour<sup>43</sup> (q. 91, a.4, ad 2).

#### *ETHICS OF NATURAL LAW*

Now, we will try to see how Thomas presents the concept of natural law, what important questions arise, and how natural law becomes moral law.

Natural law is considered by Thomas Aquinas metaphysically and epistemologically. The metaphysical aspect of natural law is presented through the principles of contradiction and finality; the epistemological aspect, i.e., the cognition of natural law is presented through the order of the natural inclinations. Thomas underlines that the principle of contradiction enables man to see the difference between being and non-being, and to recognize being and good, the latter is the end of practical reason<sup>44</sup> (q. 94, a.2, in c). While solving the relations between being and good, Thomas solves the relations between reason and will, for the object of reason is being and that of will is good. The transcendental concept of good is the most fundamental concept of the practical sphere, related to the first law of the practical sphere, in other

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *SCG.*

<sup>43</sup> *S. Th. I-II.*

<sup>44</sup> *Ibid.*

words to the first and fundamental precept of natural law that “good is to be done and pursued, and evil is to be avoided”<sup>45</sup> (q. 94, a.2, in c). This precept is the beginning of ethics: all the rest of ethical precepts concerning *what is to be done and what is to be avoided* are based on that precept. Practical reason understands the precepts of natural law as *human good*<sup>46</sup> (q. 94, a.2, in c), and is able to decide how to fulfil them without recourse to evil actions. Thanks to this ability practical reason discerns moral principles, rules and duties, therefore Thomas calls the natural law “the light of natural reason”<sup>47</sup> (q. 91, a.2, in c). This way natural law is understood as practical reason’s innate inclination<sup>48</sup> (q. 94, a.1, in c), which enables reason to make moral decisions; but *synderesis*<sup>49</sup> is law for the human intellect, because “it is a habit containing the precepts of the natural law, which are the first principles of human actions”<sup>50</sup> (q. 94, a.1, ad 2). This is the main idea of natural law developed by Thomas Aquinas in question 94 of *prima secundae* of *Summa Theologiae*. Many scholars call the doctrine<sup>51</sup> of natural law thomist ethics, for it formulates the basic principles of human behavior. Jacques Maritain says that “natural law for man is moral law, because man obeys or disobeys it freely, not necessarily, and because human behavior pertains to a particular, privileged order which is irreducible to the general order of the cosmos and tends to a final end superior to the immanent common good of the cosmos.”<sup>52</sup>

Now we will consider in more detail question 94 “Of the Natural Law”. Its six articles answer the question why natural law is moral law. In the first article, entitled “Whether the Natural Law Is a Habit”, Thomas speaks about morality. In order that human actions are moral, we cannot decide from a definition of the source of virtue, which is the principle of some action<sup>53</sup> (q. 94, a.1, ad 1) and from the precepts of natural law, which being the principles of action are obtained by practical reason, as we have already mentioned, because of *synderesis*<sup>54</sup> (q. 94, a.1,

<sup>45</sup> *S. Th. I-II*.

<sup>46</sup> *Ibid*

<sup>47</sup> *Ibid*.

<sup>48</sup> *Ibid*.

<sup>49</sup> The Greek term *synteresis*, which in the works of Latin authors was modified to *synderesis*, came from Jerome’s (340-420) Commentary on the *Book of Ezekiel*.

<sup>50</sup> *S. Th. I-II*.

<sup>51</sup> V. J. Bourke: *History of Ethics*, New York: Doubleday, 1968: 98.

<sup>52</sup> J. Maritain: *Man and the State*, Chicago: The University of Chicago, 1957: 87.

<sup>53</sup> *S. Th. I-II*.

<sup>54</sup> *Ibid*.

ad 2). In the third article, entitled “Whether All Acts of Virtue Are Prescribed by the Natural Law”, Thomas discusses two statements: reason prescribes to act virtuously; to act according with reason is a natural inclination, and makes the conclusion that all virtuous acts spring from natural law. It is important to bear in mind that here Thomas is concerned not with human actions in general but with virtuous acts, i.e., with the particular species of human acts. That means that evil acts cannot spring from natural law. Thomas explains that evil acts come into being because of errors of reason, which fails to understand rightly the particular phenomena and circumstances of action. It happens “since in some the reason is perverted by passion or evil habit, or an evil disposition of nature; thus formerly, theft, although it is expressly contrary to the natural law, was not considered wrong among the Germans”<sup>55</sup> (q. 94, a.4, in c). There is, according to Thomas, only one possibility to escape evil doing, which is the submission of all the natural inclinations of man to the rule of right reason, or, to put it in the author’s words: “it is universally right for all men, that all their inclinations should be directed according to reason”<sup>56</sup> (q. 94, a.4, ad 3).

In the second article, entitled “Whether the Natural Law Contains Several Precepts, or One Only”, Thomas explains how human reason, which is the rule and measure of human acts, is able to command the inclinations. First of all, he compares speculative and practical reason and says that they differ by the formulas of their principles, but as a power they are the same. Speculative reason formulates the first speculative principle, which cannot be demonstrated, that being and non-being are incompatible, that assertion and negation of the same cannot be done together at the same time. Practical reason formulates the first normative principle that good and evil are incompatible, or that *good is to be done, and evil is to be avoided*. As we have already mentioned, this is the basis for all the rest of the precepts of practical reason. Understanding the inclinations of human nature as good, reason directs them towards corresponding actions. Therefore, the order of natural inclinations corresponds with the order of the directives of natural law. That means that man has innate orientations on how to live and behave in this world. Bearing in mind that man is a natural as well as a rational being, Thomas classifies the natural inclinations. He distinguishes three levels of them. Two of them are both natural and human, the third is properly human.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

The first natural inclination to preserve its own being is common to all substances. Therefore, “whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law”<sup>57</sup> (q. 94, a.2, in c). Hence man is obliged to preserve his own existence. This statement is extremely important for contemporary discussions on suicide, capital punishment and euthanasia. The second level of natural inclination is directed to the preservation of the species “and in virtue of this inclination, those things are said to belong to the natural law, ‘which nature has thought to all animals’, such as sexual intercourse, education of offspring and so forth”<sup>58</sup> (q. 94, a.2, in c). To the third level of inclinations belong those which are according to reason. Thomas indicates two of them: “to know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination belongs to the natural law; for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things regarding the above inclination”<sup>59</sup> (q. 94, a.2, in c). This level involves faith, truth and social relations.

This classification shows that first of all a human person strives for self-preservation; secondly, he seeks to live in community, especially in a family. Life in a family presupposes an understanding of the instinct of self-preservation not only for one’s own sake but also for others. This way the notion of the common good comes into being, which on the third level is understood as the good of society. The classification of inclinations shows that reason, relying on general principles, formulates more particular rules and obligations and obtains a moral significance. That means that the principle of self-preservation, which conditions social relations, has to be ordered by reason, i.e., by law, rules and demands, which have their own moral significance.

The consideration of the classification of natural inclinations and the order of precepts brings up the question: *whether the natural law can be changed?* This question is the title of the fifth article, in which Thomas underlines that natural law can be modified by the addition of divine as well as of human law in order to become more useful in perfecting human life. But this is only a way for modification, since natural law cannot be changed by means of diminution, for, as Thomas writes, “the natural law is altogether unchangeable in its first principles”<sup>60</sup> (q. 94, a. 5,

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

in c). The addition is necessary “because it *supplies what was wanting to the natural law; or because the natural law was perverted in the hearts of some men, as to certain matters, so that they esteemed those things good which are naturally evil; which perversion stood in need of correction*”<sup>61</sup> (q. 94, a. 5, ad 1).

In the last, the sixth, article of question 94, Thomas underlines that natural law is indestructible in its essence, i.e., “as to those general principles, the natural law, in the abstract, can nowise be blotted out from men’s hearts”<sup>62</sup> (q. 94, a.6, in c). But in particular actions a sin can prevent reason from following the precepts of natural law as it is clear in the example mentioned of German thievery. This way, natural law is partially corrupted. Therefore, the compatibility of action with the demands of natural law, i.e., with the common good, is an extremely important criterion for defining its righteousness. Only those actions which meet that criterion, does Thomas call moral, and by this aspect natural law is moral law.

### CONCLUSIONS

The ethics of Thomas Aquinas is developed within theological frameworks. Guiding himself by eternal law, which is a project of Divine Wisdom, Thomas creates the order of morality and law. The totality of creatures participates in the eternal law according to the predestined species and predetermined natural inclinations. As a rational animal capable of anticipating the law of action in relation to eternal law, man is distinguished from other creatures. And his participation in eternal law is called natural law. The instance of morality is conscience, which evaluates the motivations and moral quality of actions.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*