

Companion to the Commentary

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CAMBRIDGE
UNIVERSITY PRESS

32 Avenue of the Americas, New York, NY 10013-2473, USA

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www.cambridge.org

Information on this title: www.cambridge.org/9781107029392

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First published 2014

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The *Commentary on Thomas Aquinas's* Treatise on Law is self-contained. However, this *Companion to the Commentary* offers additional resources and reflections for those who wish to investigate further.

First, extra commentary on selections from the *Treatise on Law*, Questions 100, 105, and 106, over and above what is provided in the *Commentary* itself; second, additional topics of discussion on Questions 90–97 as well as the selections from Questions 100, 105, and 106.

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The Context of The Selections From Questions 98–108

“Just as the principal intention of human law is to created friendship between man and man; so the chief intention of the Divine law is to establish man in friendship with God.”¹

I have paraphrased the titles of the Articles, which express the queries to be investigated (the *ultras*, or “whethers”). The *ultras* of the six Articles included in this Commentary are in boldface: [Question 100, Articles 1](#) and [8](#); [Question 105, Article 1](#); and [Question 106, Article 1](#).

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The Old Law (Questions 98–105). The Old Law is, so to speak, the first edition of Divine law, given by God to the Hebrew people. According to St. Thomas, the chief purpose of the Old Law was to direct external actions. It was good, but incomplete – a preparation for the coming of the Messiah. (Question 98, Article 1)

The Old Law in Itself (Question 98)

(1) Was the Old Law good? (2) Was it from God? (3) Was it given through the angels? (4) Was is appropriate that it was given to the Jews alone? (5) Are all men bound to follow it? (6) Was it fitting that it was given in the time of Moses?

The Precepts of the Old Law (Questions 99–105)

How the Precepts Are Distinguished from One Another
(Question 99)

¹ Q. 99, Art. 2.

- (1) Does the Old Law contain several kinds of precept, or only one? (2) Does it contain moral precepts? (3) Does it contain ceremonial precepts? (4) Does it contain judicial precepts? (5) Does it contain any other kinds of precepts besides moral, ceremonial, and judicial? (6) Was it appropriate that it induced men to follow its precepts by means of promises and threats concerning this life?

Each Kind of Precept in Turn (Questions 100–105)

The Moral Precepts (Question 100). Moral precepts directed the people in the acts of virtue.

- (1) **Do all of the moral precepts of the Old Law belong to natural law?** (2) Do they concern all of the acts of virtue? (3) Can all of them be derived from the ten precepts of the Decalogue? (4) Have the traditional authorities correctly listed these ten precepts? (5) Do they include everything fitting and nothing unfitting? (6) Are they appropriately ordered? (7) Are they appropriately formulated? (8) **Are they dispensable – can exceptions be made to them?** (9) Do they direct in what *way* a virtue is to be exercised? (10) In particular, do they direct in what way the virtue of love or charity is to be exercised? (11) Are there any other moral precepts besides those in the Decalogue? (12) Does the observance of the moral precepts make men just?

The Ceremonial Precepts (Questions 101–103). Ceremonial precepts directed the people in worship.

The Ceremonial Precepts in Themselves (Question 101)

- (1) Are the ceremonial precepts about the worship of God? (2) Were they intended literally or figuratively? (3) Was it fitting that they be so numerous? (4) Is it correct to classify them into sacrifices, ceremonies for holy things, sacraments, and ceremonial observances?

The Causes of the Ceremonial Precepts (Question 102)

- (1) Was there any reason for the ceremonial precepts? (2) Was the reason for them literal or figurative? (3) Was there a reason for the sacrifices? (4) Was there a reason for the ceremonies concerning holy things? (5) Was there a reason for the sacraments? (6) Was there a reason for the ceremonial observances?

The Duration of the Ceremonial Precepts (Question 103)

- (1) Were the ceremonial precepts in existence before the Old Law? (2) At the time of the Old Law, had they the power

to make men just? (3) When Christ came, did they expire?
(4) Now that Christ has come, is it a mortal sin to follow them?

The Judicial Precepts (Questions 104–105). Judicial precepts instructed the people in maintaining justice in the mutual relations among the members of the community as well as “strangers.”

The Judicial Precepts in Themselves (Question 104)

(1) Is it correct to understand the judicial precepts as the ones that directed the relations of one man with another? (2) Were they intended literally or figuratively? (3) Are they binding for all time? (4) Is there a uniquely right way to classify them?

The Reasons for the Judicial Precepts (Question 105)

(1) **Did the judicial precepts include appropriate precepts concerning rulers and the form of government?** (2) Were they suitably formulated for the direction of men in their relations with their neighbors? (3) Were they suitably formulated for the direction of men in the relations with foreigners? (4) Did they include suitable precepts concerning relations with the members of the household?

The Law of the Gospel, Called the New Law (Questions 106–108). The New Law, or Law of the Gospel, is the fulfillment of Divine law, given to the Church by Jesus, the Messiah. According to St. Thomas, its chief purpose is to transform the interior motive with which the exterior actions commanded by the moral precepts of the Old Law are performed. In essence, it is the grace of the Holy Spirit, given to those who have faith in Christ, called a “law” because we are commanded to receive it.² However, the New Law also contains certain instructions that keep us in a proper condition to continue to receive the gift, and that instruct us in its use.³ This does not mean that there is anything we can do by our unaided

² This statement should not be taken to refer to faith *apart* from love. Certainly faith precedes love, because our ultimate purpose in God must be present to the intellect before it is present to the will (II-II, Q. 4, Art. 7); on the other hand, faith without love is incomplete faith which does not yet deserve the name of virtue (I-II, Q. 65, Art. 4). At a number of points in the *Summa*, St. Thomas quotes St. Paul’s remark that for salvation, what matters is neither being circumcised (like the Jews) nor being uncircumcised (like the gentiles), but “faith working through love” (Galatians 5:6, RSV-CE).

³ Q. 106, Art. 1.

powers to *deserve* the gift; but we may certainly choose whether to cooperate with it or spurn it.⁴

The New Law in Itself (Question 106)

- (1) **Concerning what kind of law the New Law is: Is it written, or implanted in the heart?** (2) Concerning its power: Does observing it make men just? (3) Concerning its beginning: Was it fitting that it was given at the beginning of the world? (4) Concerning the fulfillment of its purpose: Will it last until the end of the world, or will yet another law be promulgated?

The New Law in Comparison with the Old (Question 107)

- (1) Is the New Law distinct from the Old? (2) Does it fulfill the Old? (3) Is it contained in the Old? (4) Is it more burdensome than the Old?

The Things Contained in the New Law (Question 108)

- (1) Is it fitting that the New Law prescribes and forbids external acts? (2) Does it direct external acts sufficiently? (3) Does it direct internal acts sufficiently? (4) Was it appropriate that it provided not only precepts, but also counsels?

Before Reading the Selections From Questions 100, 105, and 106

Long before reaching this point in the *Treatise on Law*, St. Thomas had discussed the underlying structure of the human moral intellect. Just as every human body has bones, even if only a few physiologists can describe them, so every deliberating mind has natural dispositional patterns, even if only a few philosophers can describe them. The spinal column of deliberation is the general precept to do good and avoid evil, which it is impossible not to know. Nor are we mystified by what this good is, for we are naturally inclined to seek it in three dimensions, one that we share with all “substances” or organisms, one that we share with all animals, and one that comes only with rationality. This is why no one has to be taught, for example, to shun death, to be interested in his posterity, or to ask, with others, what life ultimately means. Whether or not he does such things well, in some manner he already does them. So by these three

⁴ See I-II, Q. 114, Art. 5, “Whether a man may merit for himself the first grace?” Compare I, Q. 95, Art. 1, ad 6: “We merit glory by an act of grace; but we do not merit grace by an act of nature.”

kinds of natural inclinations, or dispositional patterns, we enter into the natural law – and by deep conscience we recognize that it really is law.

As illuminated by God, these patterns in the moral intellect are what make morality intelligible to us – what enable us to “see” it. Although they serve as first principles, we don’t prove a set of theorems to decide, say, that it is a good and proper thing to honor our parents or be faithful to our spouses. The point is that when asked “*Why* do you do that?” we can answer. However haltingly or stumblingly – for the simplest questions are the hardest – we can, in fact, tell why. Each of the specific precepts of the natural law can be traced back to its foundations in the knowledge of what is good, what is fulfilling, what is perfective, for beings of our kind.

By contrast with natural law, Divine law comes to us by Revelation. One might then suppose that it would come as a bolt out of the blue with no discernible connection with what our minds can recognize as good – that it would be unintelligible and seem arbitrary. The great surprise (though it should not be a surprise) is that this is not so. Echoing Christ, St. Thomas holds that all of the moral content in Divine law flows from the Two Great Commandments, to love God and to love neighbor. But these Two Great Commandments turn out to grow from the same great spine as natural law – that good is to be done and evil avoided. For to what is love directed? To what is good. And what is good? This turns out to be twofold, for the Supreme Good is God Himself, our final end, but our neighbor is a created image of that Good. So loving God and loving neighbor go together, and the notion of loving God but not loving neighbor is simply nonsense:

Now since good is the object of dilection and love, and since good is either an end or a means, it is fitting that there should be two precepts of charity, one whereby we are induced to love God as our end, and another whereby we are led to love our neighbor for God’s sake, as for the sake of our end.⁵

Nor is the leap from the Two Great Commandments to the more specific moral precepts of the Decalogue, such as faithfulness to spouses, too great for our minds to follow. In commending God’s commandments to the Hebrews, Moses asks the people, “And what great nation is there, that has statutes and ordinances so righteous as all this law which I set before you this day?”⁶ There would be no point in asking the people such a question unless the human mind can recognize the body of laws being

⁵ II-II, Q. 44, Art. 3. See also ad 3: “To do good is more than to avoid evil, and therefore the positive precepts virtually include the negative precepts. Nevertheless we find explicit precepts against the vices contrary to charity.”

⁶ Deuteronomy 4:8 (RSV-CE).

set before it as a more perfect expression of what it already dimly knows. How then does it know it? Consider again the precept to be faithful to one’s spouse. The notion of marital faithfulness presupposes the knowledge and experience of marriage. But this in turn presupposes the natural inclination to procreative union between the sexes. So the natural inclinations, which play such a starring role in natural law, are at work behind the scenes in Divine law too.

Should these parallels and links between Divine and natural law surprise us? St. Thomas would say that we should have expected them. For don’t both natural and Divine law reflect the same eternal Wisdom in the mind of God? Perhaps these connections should not be pushed too hard, because the Divine law does have a much higher source of illumination, directing us not only to goods within reach of our natural powers, but to the Supreme Good, God Himself, who is not to be attained by any means but His own grace. Without grace, the natural mind is forlorn, bereft of all hope of knowing its Author. Yet even so, it knows *about* Him; it experiences both inward and outward pricklings of the light of a Sun it cannot see. It recognizes that it comes from Him; it perceives its debt to Him; it desires to know the truth about Him; it feels its own desperate incompleteness. The ancient Athenians who inscribed an altar TO AN UNKNOWN GOD were much to be pitied that they did not know Him.⁷ Yet how much more fortunate they were than beasts and atheists, for at least they knew how the altar should be inscribed!

So we see that nature has premonitions of grace, and despite nature’s limits, the partnership of natural and Divine law is very deep. Natural law may even be said to prepare, in a way, for Divine. This pattern is repeated, for the Old Divine Law prepares for the New. One who reflects seriously will see further into the Divine law by considering the natural law – and perhaps we may dare to say that he will see further into the natural law, by considering the Divine.

**St. Thomas’s Prologue To Question 100:
Of The Moral Precepts Of The Old law**

TEXT:

We must now consider each kind of precept of the Old Law: and (1) the moral precepts, (2) the ceremonial precepts, (3) the judicial precepts.

PARAPHRASE:

Our investigation of the Old Law must cover each of its three kinds of precept: moral, ceremonial, and judicial. We turn now to the moral precepts.

⁷ Acts 17:23.

Much earlier in the *Treatise*, in [Question 91](#), St. Thomas established the reality of eternal, natural, human, and both Old and New Divine law (as well as the so-called law of sin, which we must always remember is not a law in the strict sense, but a disorder in the human faculties resulting from alienation from God). Then, in [Question 93](#), he began again, discussing each of these kinds of law in greater detail. Having put each of the other kinds under the microscope, at last, in [Question 98](#), he begins a very close scrutiny of Divine law. Since only one part of the audience for this *Companion to the Commentary* is theologians, we include only those few Articles most crucial to an understanding of the place of Divine law in relation to ethics, jurisprudence, and salvation. Salvation is final reconciliation with God, the healing of the breach brought about by sin – not only the dislocation between man and God, but the interior dislocation within man himself.

The first of the Questions included in this *Companion*, [Question 100](#), falls midway through the examination of Old Law. By the time St. Thomas reaches it, he has already reintroduced the topic of the Old Law and established that it includes three kinds of precepts: moral, concerning the acts of virtue; ceremonial, concerning the worship of God; and judicial, concerning the just regulation of civic affairs. He now zeroes in on the moral precepts.

[1] *Under the first head there are twelve points of inquiry: (1) Whether all the moral precepts of the Old Law belong to the law of nature? [2] (2) Whether the moral precepts of the Old Law are about the acts of all the virtues? [3] (3) Whether all the moral precepts of the Old Law are reducible to the ten precepts of the Decalogue? [4] (4) How the precepts of the Decalogue are distinguished from one another? [5] (5) Their number; [6] (6) Their order; [7] (7) The manner in which they were given; [8] (8) Whether they are dispensable? [9] (9) Whether the mode of observing a virtue comes under the precept of the Law? [10] (10) Whether the mode of charity comes under the precept? [11] (11) The distinction of other moral precepts; [12] (12) Whether the moral precepts of the Old Law justified man?*

Concerning the moral precepts, twelve points await our investigation:

(1) Do all of the moral precepts of the Old Law belong to natural law? (2) Do they concern all of the acts of virtue? (3) Can all of them be derived from the ten precepts of the Decalogue? (4) Have the traditional authorities classified them correctly? (5) Do they include everything fitting and nothing unfitting? (6) Are they appropriately ordered? (7) Are they appropriately formulated? (8) Are they dispensable – can exceptions be made to them? (9) Do they direct us in the *particular way* in which a virtue is to be exercised? (10) In particular, do they direct in the particular way in which the virtue of love or charity is to be exercised? (11) Are there any other moral precepts besides those in the Decalogue? (12) Does the observance of the moral precepts make men just?

[1] Does the Old Law include any moral teaching that we could not have found out just by making use of the God-given gift of natural reason? Notice that even if the answer turns out to be “No,” this will not make the Old Law superfluous. Among other things, from the fact that we *could* have worked something out for ourselves, it does not necessarily follow that we are likely to do so; we may not be paying attention. This Article is the first of the two from [Question 100](#) included in this commentary.

[2] Granted that the purpose of the moral precepts is to command the acts of the virtues, do they command acts of *every* virtue? There are a number of good reasons to ask this question. One is that at first the precepts might seem to command the acts of only one virtue, the virtue of justice. Another is that the tradition distinguishes between precepts, which are addressed to everyone, and counsels, which are addressed only to those who are called to them (and given the additional grace to follow them). The most famous Scriptural example of counsel, as distinguished from precept, comes not in the Old Law but in the New. A certain young man approaches Christ, asking what he must do to have eternal life. Christ tells him to keep the commandments – that is, the precepts of Divine law. The young man replies that he has always done so – what does he still lack? It is most interesting that he perceives this lack; he has a certain vague awareness of a call to something more. Christ replies that if the young man wishes to be perfect (*teleios*, “complete”), he should sell all he owns, give the proceeds to the poor, and follow Christ Himself. The young man – who is wealthy – finds these counsels too much, and goes away in sorrow.⁸

[3] The Decalogue, or Ten Commandments, has a special place in all discussions of natural as well as Divine law. According to St. Thomas, although every moral precept of the Old Law is “contained” in the Decalogue, not all of them are contained in it explicitly. Some, such as the love of God and neighbor, are contained by it in the sense that they are the axioms from which the precepts of the Decalogue follow. Others, such as showing respect for one’s elders, are contained by it in the sense that they follow from the precepts of the Decalogue as still more remote conclusions.

[4] Holy Scripture declares the Ten Commandments in two different places, Exodus 20:2–17 and Deuteronomy 5:6–21, but how to get exactly

⁸ Matthew 19:16–22.

ten from what is said in these passages is not specified in either one, and the traditional authorities have disagreed about the matter. For example, St. Augustine considered “You shall have no other gods before me” and “You shall not make for yourself a graven image”⁹ as branches of a single commandment, but Origen viewed them as two different commandments, instead grouping together the prohibitions against coveting one’s neighbor’s wife and against coveting his worldly possessions. St. Thomas weighs the pros and cons of the various divisions.

[5] To express the same thought today, we would not say “their number,” but “what they include.” Each of the objections complains that something should have been included but wasn’t, or that something was included that shouldn’t have been. For example, Objection 5 argues that since the commandments include a precept concerning parents, they also should have included precepts concerning children and other neighbors. St. Thomas’s rationale for what the Decalogue does and does not include embodies several important arguments about how some of the precepts should be read. For example, he holds that the duty to honor parents should be read as requiring one to pay everything that is due to others, and that the prohibition of adultery should be read as forbidding one to do anything harmful to the procreative union. We might say that the Decalogue uses the *single greatest* debt to others to symbolize *all* debts to others, and the *single greatest* duty among spouses to symbolize *all* aspects of marital integrity, indeed sexual purity in general. Each of the commandments then is a synecdoche or placeholder, a part that stands for a whole.

The figurative relation in which part stands for whole is not the same as the logical relation in which premise leads to conclusion. For example, though marital faithfulness is a synecdoche for the other aspects of chastity, it is not a premise from which the other aspects of chastity can be logically inferred. The logical connection between love of spouse in particular, and chastity in general, requires recognition of the unitive and procreative goods embodied in sexuality, and how unchaste acts and habits damage and sully them.

A placeholder approach is also taken in rabbinical exegesis of the Decalogue. Traditionally, the great rabbis viewed Torah as including 613 discrete commandments, divided into ten categories. These 613 include not only the precepts St. Thomas calls moral, but also the ones he calls

⁹ Deuteronomy 5:7–8a (RSV-CE).

ceremonial or judicial. Each of the ten categories is associated with one of the precepts of the Decalogue, part standing for whole.

[6] Not just for the sake of logical neatness, but even more for the sake of teaching, it matters a great deal in what order a set of precepts is listed. Each of the Objections gives some reason for thinking that the Ten Commandments are *not* ordered well, and to each Objection St. Thomas responds. For example, Objection 1 complains that because our neighbor is better known to us than God is, the commandments concerning love of neighbor should have come before the ones concerning love of God. St. Thomas explains that these commandments are ordered not in terms of how obvious they are, but in terms of how grave it is to violate them. He points out that although, in this life, by using the senses, we know our neighbor better than we know God, even so the love of God is the *reason* for the love of our neighbor, who is made in His image.

[7] For various reasons, one might suggest that the Ten Commandments are poorly formulated. For example, why isn't each precept presented along with the reason for obeying it? St. Thomas is curt and sharp in the *respondeo*, holding that because the Decalogue came directly from God, He must have known what He was doing. But his replies to the Objections are as careful and respectful as always. In particular, he explains the underlying considerations that make it necessary to give reasons for certain precepts, even though reasons need not be given for the others. There is no need to give reasons for the purely moral aspects of the precepts, but some of the precepts include ceremonial matter too, for which reasons do need to be given.

[8] This Article is the second of the two from [Question 100](#) included in our Commentary. The difficult problem of whether exceptions may be made to the law has come up before, with respect to both natural and human law, and it is entirely fitting that it should be discussed with respect to Divine law too. This is where St. Thomas considers what to be made of such things as the commandment to Abraham to sacrifice his son Isaac. Was that an exception to the precept forbidding murder, as so many readers assume? Or was it something else?

[9] The “mode” in which a virtue is observed is the *particular way* in which it is performed. Does the Old Law care about the mode at all? Does it command that acts of virtue be done gladly, without sorrow, and from a virtuous motive, or does it command that they be done and leave it at that? Does it take any account of whether they are done knowingly,

deliberately, and from a firm principle? St. Thomas answers these questions, and, while developing his argument, considers how Divine law differs from human law in these respects.

[10] Still more particularly, does the Old Law command that the acts of virtue be done *from the motive of love*? In one sense, yes: Failure to love God and neighbor certainly violates the commandments to love God and neighbor. But in another sense no: If, say, I honor my parents from a motive other than love, I have not violated the specific command to honor my parents.

[11] As we have seen, St. Thomas argues in Article 3 that in a certain sense the Ten Commandments “contain” all of the moral commands of the Old Law. If they were already contained in them virtually and tacitly, then why was it necessary to set them down explicitly? Why not set down the Big Ten, and then stop? Because even though all of them could be worked out by reason alone, they are not *equally easy* to work out. St. Thomas distinguishes among precepts of different grades. Precepts of the first grade, such as the command to love God and neighbor, are so obviously right that it is impossible for anyone to get them wrong. These need to be promulgated, not to tell us what to do, but to explain to us the end to which all the other precepts are directed. Precepts of the second grade, the Ten Commandments, are obviously right taken in themselves, but need to be promulgated to keep them constantly before the mind, lest human judgment be “led astray concerning them.” St. Thomas is thinking of people like the ancient Germans discussed in [Question 94, Article 4](#), who knew the wrong of theft in general, but cut a loophole, excusing banditry against other tribes. Precepts of the third grade, such as the prohibition of hatred and of the solicitation of prostitutes, are obvious to those who are wise, but they need to be promulgated because they are not at all obvious to most people. Consider, for example, how many people see the wrong of murder but think it quite all right to harbor hatred, or who see that they should not commit adultery but take other forms of sexual impurity for granted.

[12] The root meaning of justification is *causing man to be just*, putting him into a condition of righteousness. St. Thomas argues that keeping the Old Law can certainly make our outward actions just, and can even develop in us a habitual tendency to perform just outward actions. But can keeping the Old Law heal the dislocation in the heart of man which results from the Fall, which militates against holiness, and which keeps

us from God? No, for only the grace of God can do that, through faith in Christ. Then must we say that the Old Law has nothing to do with such grace? No, for in two ways the Old Law anticipated it: Not only did it symbolize what was to come, but it also prepared for it. For the Old Law was itself a gift of grace; so was the desire to please God; so was the trust in His promise of the Messiah. By yielding to such grace, man could be put into the right condition to receive the further grace of which the New Law speaks. (By the way, St. Thomas in no way denies salvation to the faithful in times before Christ. He says they were acceptable to God through faith in the Messiah *who was to come*.¹⁰)

**Question 100, Article 1:
Whether All the Moral Precepts of the Old law
Belong to the Law of Nature?**

TEXT	PARAPHRASE
<i>Whether all the moral precepts of the Old Law belong to the law of nature?</i>	Is every moral precept in the Old Law also a precept of natural law?

Eternal law is brought within range of the finite intellect by its reflection in both the words of Scripture, which is Divine law, and by its reflection in the order of our created minds, which is natural law. Divine law in turn has two parts, corresponding to the commands God gave to the Hebrew nation under the Old Covenant, called the Old Law, and the commands He gave to the Church under the New Covenant, called the New Law. The New Law brings to completion the project which the Old Law begins.

Are the moral precepts in the Old Law also precepts of the natural law? We are compelled to ask this question by a dilemma. If all of the moral precepts of the Old Law *do* belong to natural law, then we could have known them all by reason alone. In that case, why was it necessary for God to add words? But if any of the moral precepts of the Old Law *do not* belong to natural law, then they would seem arbitrary to us – unintelligible decrees without any basis other than that they were decreed. In that case, how could they count as true law? For in order to be truly promulgated or made known, doesn't law have to be recognizable as an ordinance of reason?

To ask whether all the *moral* precepts of the Old Law belong to the natural law is not the same as asking whether all the *precepts* of the Old Law belong to it, because the Old Law contains not only moral precepts,

¹⁰ I-II, Q. 107, Art. 1, ad 3.

concerning virtue, but also ceremonial precepts, concerning worship, as well as judicial precepts, concerning government.

[1] **Objection 1.** *It would seem that not all the moral precepts belong to the law of nature. For it is written (Sirach 17:9¹¹): “Moreover He gave them instructions, and the law of life for an inheritance.” [2] But instruction is in contradistinction to the law of nature; since the law of nature is not learnt, but instilled by natural instinct. Therefore not all the moral precepts belong to the natural law.*

Objection 1. Apparently, the moral precepts of the Old Law are *not* all precepts of natural law. Speaking of the Revelation of the Old Law, the book of Sirach says God taught His people discipline, so that they possessed the law of life as their heritage. Now something that is *taught* is different than the natural law, because natural law is not learned by teaching; it is held in the mind by the instigation of nature. So not all Old Law moral precepts are precepts of natural law.

[1] The seventeenth chapter of Sirach is about God’s goodness to man in general, but especially his care for Israel, with whom He established an everlasting covenant. So “them” refers to the people of the covenant, and the “law of life” refers to the Old Law.

[2] In the Objector’s view, the knowledge of natural law is preinstalled in us; we don’t need *additional* teaching because it has already been taught to us by our own natural inclinations. So if the Old Law moral precepts did require additional teaching, they couldn’t be part of natural law.

The Latin term *instinctu* does not have the mechanical connotations of its English cognate “instinct.” It can refer to any sort of impulsion or incitement, including the impulsion of reason.

[1] **Objection 2.** *Further, the Divine law is more perfect than human law. [2] But human law adds certain things concerning good morals, to those that belong to the law of nature: as is evidenced by the fact that the natural law is the same in all men, while these moral institutions are various for various people. [3] Much more reason therefore was there why the Divine law should add to the law of nature, ordinances pertaining to good morals.*

Objection 2. Moreover, Divine law is more complete than human law. But human law makes certain provisions for virtuous conduct over and above what natural law prescribes – we see this from the fact that although natural law is the same for everyone, these customary arrangements vary among nations. If even human law, which is less complete, adds to natural law for the sake of virtuous conduct, then how much more should Divine law do so!

¹¹ In most modern translations, this corresponds to Sirach 17:11. The word in the Vulgate translated “instructions” is *disciplinam*, discipline or training.

[1] In English, “more perfect” means “more nearly without flaw,” but the primary meaning of the Latin term *perfectior* is “more fully accomplished” or “more complete.” The purpose of moral discipline is more fully accomplished in Divine law than in human.

[2] The term *mores*, from which we get the English term “morals,” refers to customs or conduct; *bonos mores*, or good *mores*, refers to virtuous conduct. By the things human law “adds” to natural law to promote virtuous conduct, the Objector is referring to those things derived from natural law by what [Question 95, Article 4](#), calls “determination” – designation of one possibility among many – as it were, “filling in the blanks.” For example, natural law commands courtesy in general, but human law, either enacted or customary, may require specific acts of courtesy such as pulling over if one is moving slowly and other vehicles need to pass. Courtesy in general is obligatory everywhere, but specific institutions of courtesy may vary among nations and peoples.

[3] The Objector reasons that since human law finds it necessary to “add” things over and above natural law in order to accomplish its moral purpose, and since Divine law accomplishes its moral purpose still more fully, we should expect Divine law to “add” things over and above natural law too.

[1] *Objection 3. Further, just as natural reason leads to good morals in certain matters, so does faith: [2] hence it is written (Galatians 5:6) that faith “worketh by charity.” [3] But faith is not included in the law of nature; since that which is of faith is above nature. Therefore not all the moral precepts of the Divine law belong to the law of nature.*

Objection 3. Still further, not only does natural reason introduce certain kinds of virtuous conduct, but faith does too. This is what St. Paul means when he writes in his letter to the Galatians that faith works through delighted love. But since faith is above natural reason, it is not part of natural law. Consequently, not every moral precept of Divine law is part of natural law.

[1] The argument works like this:

1. We are led to certain aspects of good conduct just by natural reason.
2. But we are also led to certain aspects of good conduct just by faith; such are the moral precepts of the Old Law.
3. The latter must be different from the former.
4. Therefore the latter do not belong to natural law.

[2] The Objector may seem to have chosen a surprising passage to make his point, because St. Paul is *contrasting* the New Law of love with the Old Law of works: “For in Christ Jesus neither circumcision nor uncircumcision is of any avail, but faith working through love.”¹² But the “working” of love is the *conduct* to which love prompts us, and love of God and neighbor is the root not only of the New Law but also of the Old. So although St. Paul is contrasting the conduct prompted by love with the *ceremonial* conduct required by the Old Law, such as circumcision, he is certainly not contrasting the conduct prompted by love with the *moral* precepts commanded by the Old Law. Rather he is speaking of a shift in motivation. As St. Thomas will explain later, although both Laws command the works of love, the Old Law urged these works by blessings and curses, the New Law prompts them by imparting the grace of love itself, to which faith in Christ opens the door.¹³

The English translation obscures an interesting minor point. St. Paul uses the Greek word, *agape*, for love. The Vulgate translates this by the Latin term *caritatem*, from which we get “charity” – love in the sense of holding the beloved dear. But the word for love which St. Thomas puts in the Objector’s mouth here is actually *dilectionem*, love in the sense of taking delight in the beloved, which is why I have paraphrased the word as “delighted love.” Of course, holding the beloved dear and taking delight in the beloved are closely connected.

[3] Faith is an infused rather than an acquired virtue. Although the human will must cooperate with divine grace, the actual cause of the virtue of faith is grace, not will. The very ability to cooperate is a gift of grace.

[1] *On the contrary*, The Apostle says (Romans 2:14) that “the Gentiles, who have not the Law, do by nature those things that are of the Law”: which must be understood of things pertaining to good morals. [2] Therefore all the moral precepts of the Law belong to the law of nature.

On the other hand, in his letter to the Romans, St. Paul speaks of Gentiles who do not have the law, but who do by nature what it requires. We must take this statement as referring to the conduct which the moral precepts of the Old Law require. It follows that all the moral precepts of the Old Law are precepts of natural law too.

[1] The *sed contra* takes the “things that are of the law” in the same sense that the third Objector took the “works of the law.” Both expressions

¹² Galatians 5:6 (RSV-CE).

¹³ See Deuteronomy 30:15–20.

refer to the *moral conduct* required by the precepts of the Old Law – to what they instruct us to *do*.

[2] If, when Gentiles follow the moral precepts of the Old Law, they do so by nature, then these moral precepts must also be precepts of natural law.

[1] *I answer that, The moral precepts, distinct from the ceremonial and judicial precepts, are about things pertaining of their very nature to good morals. [2] Now since human morals depend on their relation to reason, [3] which is the proper principle of human acts, [4] those morals are called good which accord with reason, and those are called bad which are discordant from reason.*[5] *And as every judgment of speculative reason proceeds from the natural knowledge of first principles, so every judgment of practical reason proceeds from principles known naturally, as stated above (94, A2, 4): [6] from which principles one may proceed in various ways to judge of various matters. [7] For some matters connected with human actions are so evident, that after very little consideration one is able at once to approve or disapprove of them by means of these general first principles: [8] while some matters cannot be the subject of judgment without much consideration of the various circumstances, which all are not competent to do carefully, but only those who are wise: just as it is not possible for all to consider the particular conclusions of sciences, but only for those who are versed in philosophy: [9] and lastly there are some matters of which man cannot judge unless he be helped by Divine instruction; such as the Articles of faith.*

Here is my response. The moral precepts of the Old Law differ from its ceremonial and judicial precepts in that they concern the promotion of virtuous conduct. Human conduct is designated [as having the qualities it has] according to its relation to reason, which is the distinctive starting point of human acts. So, morals concordant with reason are called good, and morals discordant with it are called bad. Now just as every judgment of theoretical reason develops from naturally known first principles, so it is in practical reason too – a point I have explained previously. But the way human reason gets from first principles to judgments differs according to the sorts of things that we judge:

1. In the light of the first principles, the moral character of some human actions is so obvious that one can approve or disapprove them right away, without much reflection.
2. Others need a great deal of reflection to be judged properly, because all of the various circumstances need to be considered. Not everyone is able to do this, but only those who have wisdom – just as not everyone is able to reflect upon the findings of the fields of knowledge which proceed by demonstration, but only philosophers.
3. Still others can be judged only if man is assisted by Divine teaching. Such are those which pertain to the domain of faith.

[1] St. Thomas has explained in Question 99, Article 2, that the moral precepts are the ones that command acts of virtue. For “the chief intention of the Divine law is to establish man in friendship with God,” and “there cannot possibly be any friendship of man to God, Who is supremely good, unless man become good.”

[2] The Dominican Fathers translation is misleading here. *Humani mores dicantur in ordine ad rationem* does not mean that human conduct depends on its relation to reason but that it is *designated* by its relation to reason – it is called what it is called according to whether it is rightly or wrongly ordered to reason.

[3] Why *should* human conduct be called what it is called according to its relation to reason? Because, as St. Thomas has explained in [Question 90, Article 1](#), the governing ordinance and measuring rod of distinctively human acts is the source from which they spring. Because reason is the source of distinctively human acts, it is also their criterion of judgment.

[4] To say that human conduct is called what it is called *according to its relation* with reason is to say that it is called good or bad *according to whether it is well ordered or badly ordered* in relation to reason.

[5] Since St. Thomas has drawn this parallel many times, it need not be explained again here. Throughout the passage he uses the expressions “first principles” and “principles” interchangeably; no significance should be attached to the difference. A principle is something that comes first.

[6] As we are about to see, reason may proceed either immediately or only after pondering, and it may proceed without help or with the help of Revelation.

[7] Some acts can be evaluated easily and quickly, without any special qualifications. A normal human mind leaps right away from first principles to the correct judgment about them.

[8] Some acts are more difficult to judge, not everyone is qualified to judge them, and the process of judgment takes more time. The Latin term paraphrased “fields of knowledge which proceed by demonstration” is *scientiarum*, which has a somewhat different meaning than its English cognate, “science.” St. Thomas did not share our view that science and philosophy are different things; he would have said that the sciences include all of the theoretical disciplines.

[9] Notice that St. Thomas does not say these acts are judged by Revelation *instead* of by reason; rather reason judges them *with the help*

of Revelation. The idea is not that reason is shut out from the process, but that in order to do its work it needs additional data, which it cannot supply by itself.

[1] *It is therefore evident that since the moral precepts are about matters which concern good morals; [2] and since good morals are those which are in accord with reason; [3] and since also every judgment of human reason must needs be derived in some way from natural reason; [4] it follows, of necessity, that all the moral precepts belong to the law of nature; [5] but not all in the same way. [6] For there are certain things which the natural reason of every man, of its own accord and at once, judges to be done or not to be done: e.g. "Honor thy father and thy mother," and "Thou shalt not kill, Thou shalt not steal"; and these belong to the law of nature absolutely. [7] And there are certain things which, after a more careful consideration, wise men deem obligatory. Such belong to the law of nature, yet so that they need to be inculcated, the wiser teaching the less wise: e.g. "Rise up before the hoary head, and honor the person of the aged man," and the like. [8] And there are some things, to judge of which, human reason needs Divine instruction, whereby we are taught about the things of God: e.g. "Thou shalt not make to thyself a graven thing, nor the likeness of anything; Thou shalt not take the name of the Lord thy God in vain."*

With this light the picture becomes clear, for from the following three premises – (a) the moral precepts of the Old Law concern the promotion of good morals; (b) good morals are morals concordant with reason; and (c) every judgment of human reason is somehow drawn forth by our natural powers of reasoning – this conclusion follows necessarily: All of the moral precepts of the Old Law are also precepts of natural law – *but not all in the same way.*

Why not all in the same way? Because though every judgment is drawn forth by reason, a given judgment may be drawn forth from it in more than one way. Thus, 1. There are some things which each man, by his own natural reason, immediately judges to be done or not to be done: For example, "Honor your father and your mother," "You shall not kill," "You shall not steal." Things of this sort belong to the natural law *absolutely*.

2. There are other things which the wise judge as to be done only after subtle consideration. These too belong to the natural law, yet in such a way as to require training, in which those with greater wisdom teach those with less: For example, "Rise in the presence of white hair, and honor the person of the aged man" – things of that sort.

3. And there are still other things which human reason can judge, but only with the Divine teaching mentioned previously, which educates us about matters pertaining to God: For example, "You shall not make for yourself a graven image, or any likeness of anything [as an idol]" and "You shall not speak the name of the Lord your God in a futile and irreverent way."

[1] Now St. Thomas begins to tie up the strings of his argument. Here we are merely reminded that moral precepts are precepts that promote virtuous conduct.

[2] This time we are reminded of the criterion by which conduct is deemed virtuous, which is reason. St. Thomas means *human* reason (something he might have made a little plainer.) True, the ultimate standard is the Wisdom of God. But unless, to some degree, the judgments of the Divine Intellect could be traced by our finite reason too, we would not be able to grasp the Divine commands *as law*; they would be opaque to us, whimsical edicts of a power able to hurt us if we disobey. But our finite minds *can* to some degree trace the Divine Reason, because He has made us in His image.

[3] Here we are reminded that all human reasoning depends on the intellectual powers given us by God through His creation of human nature.

[4] As we learned in [Question 91, Article 3](#), natural law is nothing but the participation of the created rational being in eternal law. Only by this rational participation do we recognize the moral precepts of the Old Law as law; in fact, only by this rational participation *are* they law for us, because law is among other things an ordinance of reason, which is promulgated or made known ([Question 90, Articles 1 and 4](#)). If it is not an ordinance of reason, or not made known, then it is not truly law.

[5] Not all in the same day, because, as we saw earlier in the *respondeo*, from first principles our minds proceed in *various* ways to judge of various matters. The three classes of moral precept St. Thomas is about to list correspond to the three ways in which reason reaches judgments.

[6] These are the judgments reason reaches in the *first* way – everyone grasps them, without any need for special training, and grasps them immediately, without lengthy pondering. St. Thomas’s examples show that contrary to a common misinterpretation of his view, these include not only such ultra-general precepts as “Good is to be done, and evil avoided,” but precepts such as those in the Decalogue.

[7] These are the judgments reason reaches in the *second* way – only after pondering. Only those with wisdom recognize acknowledge them on their own. It is not that those who are imperfect in wisdom cannot grasp them, but that to do so they need the training of the wise – training that may either help them to see why they are true, or encourage them to take them to heart.

As I was working on this Article, a doctoral student studying St. Thomas¹⁴ addressed to me the intriguing question of why the Angelic Doctor should include “Rise up before the hoary head, and honor the person of the aged man,” among the precepts that need to be inculcated by the wise. For haven’t almost all men in almost all times and places venerated persons of advance years? I think perhaps St. Thomas would agree that in almost all times and all places, they have been taught to do so by the wise, but the wise are often in short supply. In some traditional societies, the old were abandoned or killed. With modifications, the same irreverent impulse lives on in youth-worshipping, change-craving societies like ours, which lay scant value on either age or wisdom. Though people may dimly see that those of advanced years deserve honor, most are more struck by their infirmities. Their dominant reaction is not to venerate, but to pity, or even to hold in contempt. Many physicians have come to think of euthanasia as though it were a medicine. White-smocked shepherds herd white-haloed grandmothers into the valley of the shadow of death. Not content to lead them beside the still waters, they push them in.

[8] As usual, St. Thomas quotes only enough of the two passages to spur memory. For poor modern memories like ours, this can be troublesome. The full text of the latter prohibition reads, “Thou shalt not take the name of the Lord thy God in vain: for he shall not be unpunished that taketh his name upon a vain thing.” To take God’s name in vain is to invoke Him or speak of Him in a futile and irreverent way.¹⁵ As to the former prohibition, the full text reads, “You shall not make for yourself a graven image, or any likeness of anything that is in heaven above, or that is on the earth beneath, or that is in the water under the earth; you shall not bow down to them or serve them.” Thus the Old Law prohibited not all images, as the truncated quotation may seem to suggest, but only idols. Indeed, the Old Law includes detailed instructions for a pair of golden cherubs to adorn the Ark of the Covenant, containing the two tablets of the Law, which was placed in the sanctuary of the tabernacle.

Notice that these prohibitions are *moral* precepts, concerning virtue, not ceremonial precepts, concerning the fitting mode of worship of the true God. To worship a creature instead of the Creator, to take God’s name in vain – to do such things is not merely to reverence God in an unfitting manner, but to turn from reverencing Him and by doing so to

¹⁴ Dr. William McCormick, author of *On the De Regno of St. Thomas Aquinas* (dissertation, University of Texas at Austin, 2013).

¹⁵ Deuteronomy 5:8–10 (DRA); Exodus 25:17–20; Deuteronomy 5:11 (DRA).

practice evil. It is to commit treason not just against an earthly king but also against the King of Kings, the Author of our being, to whom loyalty is owed beyond anything we could ever render.

At this point we may seem to have hit a wall. If natural reason hasn't even an inkling of the wrong of worshipping idols or speaking irreverently of God – if all our knowledge of them comes from Revelation – then how could such precepts belong to natural law? But St. Thomas doesn't say that natural reason hasn't even an inkling of these things. In fact he thinks it does. We need Divine instruction about them *even though we do* have an inkling of them.

This is one of those places where one might wish that St. Thomas's remarks had been less terse. He is counting on the reader to remember a number of matters he has explained much earlier, concerning natural reason and the nature of faith. Let us look into the matter more closely.

At the very beginning of the *Summa*, St. Thomas says that “To know that God exists in a general and confused way is implanted in us by nature, inasmuch as God is man's beatitude.” What does this mean? We naturally long for beatitude, for that complete and utter happiness which would leave nothing further to be desired. Since nature makes nothing in vain, there must be Something that could satisfy this longing. So we naturally know God *as that Something*, as the supremely loveable object of the longing for beatitude.

Ah, but how far short of knowing what God is such knowledge falls! If we know God only as the object of the desire for beatitude, then if we suppose beatitude to lie in, say, pleasure, then we will take pleasure as our “god.”¹⁶ Can we do further? Fortunately, yes, for experience shows that pleasure and all other natural things do leave something further to be desired. It follows that if the object of the longing for beatitude is real, it must lie not within nature but beyond it.¹⁷ If so, then to make idols of natural things is wrong. But will we persevere in reasoning long enough to reach this conclusion? Not many do. Failure to persevere may not be precisely a philosophical difficulty, but it is a grave one.

At other points, St. Thomas explains that natural reason is able to know God “through His effects,” meaning through his handiwork in Creation. Here St. Thomas invokes St. Paul, who wrote that “Ever since the creation of the world His invisible nature, namely, His eternal power

¹⁶ I, Q. 2, Art 1, ad 1.

¹⁷ See the *Treatise on Man's Last End*, I-II, Q. 1–5; and see the Commentary on [Question 90, Article 2](#).

and deity, has been clearly perceived in the things that have been made.”¹⁸ Now if God is the Creator, then He is distinct from everything in the created order. He cannot be identified with anything in the created world, whether riches, pleasures, or things in the earth, sky, or seas. So why can’t natural reason recognize the wrong of idolatry? Just as before, it can, but just as before, we also run into a problem that is not purely philosophical. For there is a difference between what reason is able to know and what the reasoner is willing to assent to.

St. Thomas alludes to a passage in the Old Testament book called Wisdom, which offers a poignant comment on this baffling obstacle:

For from the greatness and beauty of created things comes a corresponding perception of their Creator. Yet these men [who are ignorant of God] are little to be blamed, for perhaps they go astray while seeking God and desiring to find him. For as they live among his works they keep searching, and they trust in what they see, because the things that are seen are beautiful. Yet again, not even they are to be excused; for if they had the power to know so much that they could investigate the world, how did they fail to find sooner the Lord of these things?¹⁹

As the passage suggests, from one point of view, they are little to be blamed; yet from another point of view, they are greatly to be blamed. Because natural reason suffers from such infirmities even about things that in some way it is able to know, natural reason is plainly not enough. But if it is not enough, then it needs help.

What kind of help? The help of faith. St. Thomas holds that although natural reason perceives something of the invisible things of God, “In many respects faith perceives the invisible things of God *in a higher way* than natural reason does.” Consequently, “It is necessary for man to accept by faith not only things which are above reason, *but also those which can be known by reason.*”²⁰ For among other things, faith enables us to recognize and assent to moral truths that are obvious in themselves but not necessarily obvious *to us*. This is the meaning of a paradoxical remark St. Thomas makes a little later, that the rightness of loving God and neighbor is “self-evident to human reason, *either through nature or through faith.*”²¹

So it is that we need Divine instruction about certain matters concerning our moral duty to God, not because natural reason is utterly unable to see what is right – in which case these matters really would lie outside

¹⁸ Romans 1:20 (RSV-CE). For St. Thomas’s use of the passage, see for example II-II, Q. 34, Art. 1.

¹⁹ Wisdom 13:5–9 (RSV-CE); see II-II, Q. 94, Art. 4.

²⁰ II-II, Q. 2, Art. 3, ad 3; II-II, Q. 2, Art. 4; emphasis added.

²¹ I-II, Q. 100, Art. 3, ad 1; compare Art. 4, ad 1.

natural law – but because natural reason needs corrective lenses; or perhaps because it needs the reminder, “Stop turning your face aside – *look there.*”

This suffices for the Replies to the Objections.

How the Objections may be answered should now be clear.

What has been said suffices for the Reply to Objection 1, because natural knowledge is not inconsistent with the need for Divine instruction. Just as the point of human instruction in arithmetic is to bring the child to the point where he can say, “Now I see it – one, two, three, four – of *course* two and two make four,” so the point of Divine instruction in morals is to bring us to the point where we can say, “Now I see it – the Creator is not something created – of *course* idolatry is wrong.”

It suffices for the Reply to Objection 2, because although the Objector is right that Divine law adds moral precepts to natural law, he misunderstands what this means. Consider for example the saying “Rise in the presence of white hair, and honor the person of the aged man.” This is really two precepts in one. The latter, veneration of the aged, belongs to natural law *per se*, but the former, rising in their presence, is something added, for natural law does not specify the manner in which respect is to be shown. Yet just because rising is a *way* to show respect, we see that the thing that has been added is not completely unrelated to natural law, as the Objector seems to think; it is still rooted in it.

And it suffices for the Reply to Objection 3, because although the Objector is right that faith is a supernatural gift, he fails to distinguish between the ways in which faith works in doctrine and in morals. Yes, faith leads us to accept many things altogether beyond what natural reason could have found out by itself, such as the plan of salvation, how we can be *reconciled* to God after having cut ourselves off from Him. But our duties to God are not like that. Natural reason is quite able to recognize that there is a Creator and Divine Ruler to whom, in justice, we owe everything, and all our moral duties to God follow from this premise. The problem is not that natural reason cannot see this, but that it does not particularly want to. It is like an obstinate mule that is perfectly capable of walking, but sits on its haunches and refuses to go. Revelation, accepted through the Divine gift of faith, removes this balkiness, for faith joins our knowledge with assent.²² We are able to grasp the moral truths concerning God more firmly, because we are no longer placing our hands over our eyes to keep them from seeing what is obvious.

²² Concerning faith as the union of thought with assent, see II-II, Q. 2, Art. 1.

Question 100, Article 8:
Whether the Precepts of the Decalogue are
Dispensable?

TEXT	PARAPHRASE
<i>Whether the precepts of the Decalogue are dispensable?</i>	Can the precepts of the Decalogue ever be set aside, so that for certain people, or in certain cases, they need not be obeyed?

For example, could any person ever be allowed to dishonor his parents, permitted to steal or murder, or excused from being faithful to his wife?

<i>Objection 1. It would seem that the precepts of the Decalogue are dispensable. For the precepts of the Decalogue belong to the natural law. But the natural law fails in some cases and is changeable, like human nature, as the Philosopher says (<i>Ethic. v, 7</i>). Now the failure of law to apply in certain particular cases is a reason for dispensation, as stated above (96, 6; 97, 4). Therefore a dispensation can be granted in the precepts of the Decalogue.</i>	Objection 1. Apparently, the precepts of the Decalogue can indeed be set aside. True, they are precepts of natural justice, but in some cases precepts of natural justice fail to apply. As Aristotle points out, this is because even what exists by nature is subject to variation – so natural justice varies, just as human nature varies. Now we saw earlier in the <i>Treatise on Law</i> that an exception can be made whenever a precept fails to apply. So it follows that an exception can be made whenever a precept of the Decalogue fails to apply.
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Aristotle’s example of variation in nature is that even though by nature the right hand is stronger, some people are ambidextrous; something that holds *by nature* has failed to hold *for them*. The Objector reasons like this:

- 1. If anything that holds by nature can fail to hold, then any natural law can fail to hold.
- 2. Because the precepts of the Decalogue belong to the natural law – something we saw in Article 1 – then they too can fail to hold.
- 3. In every case in which a precept does fail to hold, a person can be excused from obedience.
- 4. So whenever a precept of the Decalogue fails to hold, a person can also be excused from obedience.

Notice, though, that premise 1 clouds an important distinction. To speak of the properties a thing has “by nature” is equivocal, for we may be

speaking of either its essential properties or merely its statistical properties. Essential properties are those that *define* things of that kind; when we say that by nature man is a rational animal, we are speaking essentially. Statistical properties are merely those that things of that kind *usually* have; when we say that by nature man's right hand is strongest, we are speaking statistically. Aristotle is not saying that essential nature can vary, but only that statistical nature can vary. There are a few men who are ambidextrous, and they are still men. But there are no men who are not rational animals, and anything that is not rational or not animals – for example, an angel, a tree, or a heap of rocks – is not a man.

The Objector simply ignores this distinction, treating statistical nature as all there is. Many skeptics of our own day would approve. In their view, there are no such things as essential properties, definition is a mere convention, and statistical nature is all there is. For example, they say that obviously *not* all the beings whom essentialists call men are rational, for some are brain-damaged or immature. We should either stop saying all men are rational, or go ahead and say it, but deny the brain-damaged and immature entrance to the human club. But this sort of skeptic misunderstands the essentialist's point. To say that by nature all men are rational is not to say that in all men the potentiality for rational function is *actualized*, but to say that all men are *aimed* at rationality, so that an impairment of rational function really is an impairment. Brain damage is not a different kind of brain health; immaturity really does fall short of maturity. So the brain-damaged and the immature man are still men, but they are not fulfilled men; they are not flourishing.

[1] **Objection 2.** *Further, man stands in the same relation to human law as God does to Divine law. [2] But man can dispense with the precepts of a law made by man. Therefore, since the precepts of the Decalogue are ordained by God, it seems that God can dispense with them. [3] Now our superiors are God's vicegerents on earth; [4] for the Apostle says (2 Corinthians 2:10): "For what I have pardoned, if I have pardoned anything, for your sakes have I done it in the person of Christ." Therefore superiors can dispense with the precepts of the Decalogue.*

Objection 2. Moreover, man has the same relation to the laws man ordains that God has to the laws God ordains. It seems, then, that since man can authorize exceptions to the laws he ordains, God can authorize exceptions to the precepts He ordained in the Decalogue. In fact, not only may God do so, but so may those who are set over us [in the Church], because on earth, they stand in His place. St. Paul invokes this authority when he says to the Corinthians that if he has forgiven them anything, he has done so in the person of Christ.

[1] The parallel proposed by the Objector is that just as God enacts Divine law, so man enacts human law. Therefore – he thinks – whatever is true of the relation between man and human law must also be true of the relation between God and Divine law. This argument blurs the difference between the sense in which God enacts and the sense in which man enacts. God is identical with the Eternal Wisdom by which His law is ordained; man is not identical with it, but only participates in it. The created intellect of man *follows and imitates* the standard; the uncreated Intellect of God *is* the standard.

[2] St. Thomas explained in [Question 96, Article 6](#), and [Question 97, Article 4](#), that human legislators can make exceptions to their laws whenever literal compliance would defeat the purposes for which they were enacted. The Objector reasons that if this is true, then the Divine legislator can make exceptions to *His* laws whenever literal compliance would defeat the purposes for which they were ordained. As we will see in the Reply, however, everything depends on the meaning of that “whenever.”

[3] The participle translated “superiors” is *praelati*, literally “prelates,” which St. Thomas normally employs to mean ecclesiastical rather than civil superiors. Almost certainly, the Objector is also thinking of ecclesiastical superiors too.

As in [Question 90, Article 3](#), I have corrected the term used in the Dominican Fathers translation of St. Thomas’s text, substituting “vicegerent” (from *gerentisvicem*, one who carries on in place of another) for “viceregent” (one who assists a regent).

[4] In his second letter to the Corinthians, referring to his previous letter, St. Paul says “For this is why I wrote, that I might test you and know whether you are obedient in everything. Any one whom you forgive, I also forgive. What I have forgiven, if I have forgiven anything, has been for your sake in the presence of Christ.”²³ Apparently he means that he has excused certain Corinthians from the penalty for disobedience to his own previous instructions. The Objector, however, takes him to mean that he has released them from the very obligation to obey the precepts of the Decalogue. Further, the Objector reasons that if St. Paul can release them from this obligation, then so can our other superiors in the Church, because they act by the same Divine authority.

²³ 2 Corinthians 2:9–10 (RSV-CE). As usual, the text paraphrases rather than strictly quotes the Vulgate, but the differences in wording are trivial.

The Objector's use of 2 Corinthians 2:10 shows again that he is thinking of ecclesiastical rather than civil superiors. Had he been thinking of civil superiors as well, he might have cited Romans 13:2, "he who resists the authorities resists what God has appointed." Indeed, in II-II, Q. 105, Art. 1, citing the same passage, St. Thomas treats obedience to ecclesiastical superiors as a special case of obedience to superiors in general. However, St. Thomas has made quite clear elsewhere that the authority of the state does not include declaring exemptions from the laws of God Himself.²⁴

***Objection 3.** Further, among the precepts of the Decalogue is one forbidding murder. But it seems that a dispensation is given by men in this precept: for instance, when according to the prescription of human law, such as evil doers or enemies are lawfully slain. Therefore the precepts of the Decalogue are dispensable.*

Objection 3. Still further, one of the precepts of the Decalogue forbids murder. But men seem to have authorized exceptions to this prohibition. For example, human statutes allow evildoers and enemies to be killed by due process of law. This shows that the precepts of the Decalogue are dispensable.

The Objector takes murder in the sense prohibited by the Decalogue to mean any taking of human life whatsoever; he thinks all killing of humans is alike. In our day, this view of the commandment "You shall not kill" is sometimes called the "seamless garment" view. If it is true, then the Decalogue's prohibition of murder forbids even such things as capital punishment and just war. Yet human laws do allow such things as capital punishment and just war, and according to the Objector, no one suggests that in doing so they exceed their authority. It follows that human authorities may suspend the precepts of the Decalogue.

If the Objector is right, then it is hard to see how to escape the view expressed by Judge Richard Posner in a widely quoted address at Harvard University:

[M]orality is local. There are no interesting moral universals. There are tautological ones, such as "Murder is wrong," where murder means "wrongful killing," and there are a few rudimentary principles of social cooperation – such as "Don't lie all the time" or "Don't break promises without any reason" or "Don't kill your relatives or neighbors indiscriminately" – that may be common to all human societies. If one wants to call these rudimentary principles the universal moral law, fine; but as a practical matter, no moral code can be criticized by appealing to norms that are valid across cultures, norms to which the code of a particular culture is a better or worse approximation. Those norms, the rudimentary principles of social cooperation that I have mentioned, are too abstract to serve as standards

²⁴ See for example Q. 96, Art. 4.

for moral judgment. Any meaningful moral realism is therefore out, and moral relativism ... is in.²⁵

Objection 4. *Further, the observance of the Sabbath is ordained by a precept of the Decalogue. But a dispensation was granted in this precept; for it is written (1 Maccabees 2:41²⁶): “And they determined in that day, saying: Whosoever shall come up to fight against us on the Sabbath day, we will fight against him.” Therefore the precepts of the Decalogue are dispensable.*

Objection 4. Besides, an exception was made to the precept of the Decalogue which requires Sabbath observance. As Scripture records, “So they made this decision that day: ‘Let us fight against every man who comes to attack us on the Sabbath day; let us not all die as our brethren died in their hiding places.’”²⁷ Plainly then, exceptions can be made to the precepts of the Decalogue.

When the Greek, Antiochus Epiphanes, became overlord of Israel, he desecrated the Temple and tried to impose pagan practices upon the people. After many faithful Jews retreated to the wilderness to escape his abominations, he ordered his forces into the wilderness to rout them. Because it was the Sabbath day, which the Decalogue reserves for rest and worship, the resisters refused to fight, and so, in consequence, they were massacred. When the friends and sons of Mattathias heard of the slaughter, they resolved that in the future, to escape death, they would fight even on the Sabbath. Thus began the Macabean Revolt. The Objector regards the decision of the friends and sons of Mattathias to set aside Sabbath observance as a communal enactment bearing the authority of law, and so concludes that by human authority, the precepts of the Decalogue can be suspended.

On the contrary, are the words of Isaiah 24:5, where some are reprov'd for that “they have changed the ordinance, they have broken the everlasting covenant”; which, seemingly, apply principally to the precepts of the Decalogue. Therefore the precepts of the Decalogue cannot be changed by dispensation.

On the other hand, the prophet Isaiah rebukes those of his day who have violated the statutes and broken the everlasting covenant. Taking the passage in context, it would appear that he is speaking mainly of the precepts of the Decalogue. From this it follows that exceptions must *not* be made to the Decalogical precepts.

The point, of course, is that those who claimed freedom from Divine law were condemned rather than approved for doing so. The context of the

²⁵ Richard Posner, “The Oliver Wendell Holmes Lectures: The Problematics of Moral and Legal Theory,” *Harvard Law Review* 111 (1998), p. 1640.

²⁶ Correcting the Dominican Fathers translation, which gives the citation as 1 Maccabees 2:4.

²⁷ 1 Maccabees 2:41 (RSV-CE).

quotation makes this clear, for the prophet says “*The earth lies polluted under its inhabitants; for they have transgressed the laws, violated the statutes, broken the everlasting covenant.*”²⁸

[1] *I answer that, As stated above (96, 6; 97, 4), precepts admit of dispensation, when there occurs a particular case in which, if the letter of the law be observed, the intention of the lawgiver is frustrated. Now the intention of every lawgiver is directed first and chiefly to the common good; secondly, to the order of justice and virtue, whereby the common good is preserved and attained. [2] If therefore there be any precepts which contain the very preservation of the common good, or the very order of justice and virtue, such precepts contain the intention of the lawgiver, and therefore are indispensable. [3] For instance, if in some community a law were enacted, such as this – that no man should work for the destruction of the commonwealth, or betray the state to its enemies, or that no man should do anything unjust or evil, such precepts would not admit of dispensation. [4] But if other precepts were enacted, subordinate to the above, and determining certain special modes of procedure, these latter precepts would admit of dispensation, in so far as the omission of these precepts in certain cases would not be prejudicial to the former precepts which contain the intention of the lawgiver. For instance if, for the safeguarding of the commonwealth, it were enacted in some city that from each ward some men should keep watch as sentries in case of siege, some might be dispensed from this on account of some greater utility.*

Here is my response. I have explained previously that exceptions may be made to legal precepts in just those cases when following the literal instructions of the law would produce a result contrary to the intention of the lawmaker. First, and above all, the intention of the lawmaker is directed to the common good. Second, it is directed to justice and virtue, because these are the means by which the common good is brought about and preserved – to promote them *is* to promote the common good, because these are the things in which the common good consists.

It follows that whenever a legal precept embraces *the very idea* of the direction of affairs to the common good, or toward justice and virtue, then it is impossible to make an exception to it, because it *coincides* with the lawmaker’s intention. For example, exceptions could never be authorized to such laws as “No one may tear down the commonwealth,” “No one may betray the city to its enemies,” or “No one may commit evil or injustice.” But matters stand differently with respect to subordinate legal precepts, which merely specify the *ways* in which affairs are directed toward the great ends just mentioned. To such precepts, exceptions are allowable so long as they are not to the detriment of those precepts which do coincide with the lawmaker’s intention. Suppose, for example, that a commonwealth established a law for its preservation, specifying that if the city is under siege, guards must be posted in each street. Certainly some persons might be exempted from guard duty if they could be used in a better way.

²⁸ Isaiah 24:5 (RSV-CE).

[1] Every true law is enacted for the sake of the common good. In turn, justice and virtue are *elements* of the common good. They are means to its preservation and attainment, not in the sense that opening the curtains is a means to illuminating a room, but in the sense that light itself is a means to illuminating a room. A room can be illuminated without opening the curtains – for example, I might turn on a lamp or kindle a fire – but it cannot be illuminated without bringing in light. To say “For the sake of the common good, one must sometimes commit acts of injustice or vice,” makes no more sense than saying “For the sake of illumination, one must sometimes shut out light and make it dark.”

[2] Suppose my supreme intention were to keep a certain room illuminated as brightly as possible. Then precepts such as “Do not block the light,” “Do not destroy what is used to give light,” and “Do nothing to diminish the light” could be said to “contain” the idea of illuminating the room and my intention that it be illuminated. It would be inconsistent with my supreme intention to authorize any exceptions to them. In just this way, certain precepts “contain” the idea of preserving the common good, and the law-maker’s intention that it be preserved, and so they cannot be suspended.

[3] The third of these examples requires a bit of clarification, because a law stating simply “No one should do anything unjust or evil,” without specifying the kinds of acts that fall under that description, would not be well-promulgated. St. Thomas probably means any law of the form “No one should do X,” where X is something intrinsically unjust or evil: For example, “No one should murder.”

[4] There are no circumstances under which anyone could be allowed to act against the protection of the city, but many circumstances might be imagined under which someone could be exempted from a *particular way* of protecting the city, because he could be put to better use in another capacity.

[1] *Now the precepts of the Decalogue contain the very intention of the lawgiver, who is God. [2] For the precepts of the first table, which direct us to God, contain the very order to the common and final good, which is God; while the precepts of the second table contain the order of justice to be observed among men, that nothing undue be done to anyone, and that each one be given his due; for it is in this sense that we are to take the precepts of the Decalogue. [3] Consequently the precepts of the Decalogue admit of no dispensation whatever.*

The precepts of the Decalogue do coincide with the intention of the lawgiver, who is God. For the precepts of the first tablet, which direct us to God, express the very idea of right relationship with the ultimate common good, which is God Himself; and the precepts of the second tablet in turn express the very idea of right relationship among men, which is justice (that each man is rendered everything that is due to him and nothing that is not). This is how we should understand what the precepts of the Decalogue are about – and for this reason, no exceptions to them may be made whatsoever.

[1] God's commands are not arbitrary decrees; they are shaped by His purposes, purposes that cannot fail to be good, because He is Himself the ultimate good on which all lesser goods depend.

[2] To say that the precepts of the first and second tablets "contain the very order" to God and to justice is to say that they express the very meaning of being rightly ordered to God and to our neighbors. As St. Thomas has already explained, the intention of every lawgiver, whether human or Divine, is directed first to the common good. But the common good includes not just the temporal common good, but also the ultimate common good, which is God Himself, for "the community for which the Divine law is ordained, is that of men in relation to God, either in this life or in the life to come" (Article 2). So there need to be two classes of precepts. The point is further elaborated in Article 5:

[J]ust as the precepts of human law direct man in his relations to the human community, so the precepts of the Divine law direct man in his relations to a community or commonwealth of men under God. Now in order that any man may dwell aright in a community, two things are required: the first is that he behave well to the head of the community; the other is that he behave well to those who are his fellows and partners in the community. It is therefore necessary that the Divine law should contain in the first place precepts ordering man in his relations to God; and in the second place, other precepts ordering man in his relations to other men who are his neighbors and live with him under God.

[3] Just because these precepts do express the very meaning of being rightly ordered to God and to our neighbors, their violation is *intrinsically* wrong. No good result of violating them could make violation right; no exception to them can be authorized. So, for example, we may never steal, covet, or give false testimony, and we may never give ourselves to anything else in the way that we should give ourselves to God.²⁹

[1] *Reply to Objection 1. The Philosopher is not speaking of the natural law which contains the very order of justice: for it is a never-failing principle that "justice should be preserved."* [2] *But he is speaking in reference to certain fixed modes of observing justice, which fail to apply in certain cases.*

Reply to Objection 1. The venerable Aristotle is not speaking of those precepts of natural justice that embody the very idea of just social order, for the precept "Justice is to be preserved" can never fail; it holds without exception. Rather he is speaking of certain specified *ways* of doing justice, to which there are, in some cases, exceptions.

²⁹ To the latter point it may be objected that in the Christian view, spouses are to give themselves to each other. This is true, but even so they are not to be idols to each other. Their mutual gift to each other is a *mode* in which they offer themselves mutually to the God who has joined them.

[1] “The natural law which contains the very order of justice” is the requirement that those things which belong intrinsically to justice, those things which cannot be distinguished from it, should always be done. The principle that “justice should be preserved” should be taken in exactly this sense. Since what is intrinsically just must always be done, any precepts that do coincide essentially with justice, such as those of the second tablet of the Decalogue, must be obeyed without exception.

[2] For example, natural justice requires that persons accused of crimes be convicted only on a sufficient presentation of evidence, but it does not specify what counts as a sufficient presentation. Human law fills out the contours of natural justice by setting down rules of evidence, for example, that hearsay is inadmissible. But there might arise a case in which the exclusion of hearsay is unreasonable, and in such cases exceptions might be made.

[1] *Reply to Objection 2.* As the Apostle says (2 Timothy 2:13), “God continueth faithful, He cannot deny Himself.” [2] *But He would deny Himself if He were to do away with the very order of His own justice, since He is justice itself.* [3] *Wherefore God cannot dispense a man so that it be lawful for him not to direct himself to God, or not to be subject to His justice, even in those matters in which men are directed to one another.*

Reply to Objection 2. We will be guarded against misinterpreting St. Paul’s statement to the Corinthians if we reflect on something he said to Timothy – that God remains faithful, for He cannot deny Himself.³⁰ God *would* deny Himself if he were to cut off the very order of His justice, since He is justice itself. Consequently, not even God can exempt anyone from directing himself to God, or from submitting to His justice.

[1] St. Paul, instructing Timothy, says “The saying is sure: If we have died with him, we shall also live with him; if we endure, we shall also reign with him; if we deny him, he also will deny us; if we are faithless, he remains faithful – for he cannot deny himself.”³¹ “He” in this passage is Christ, who according to the later words of the Nicene Creed is “God from God, Light from Light, true God from true God.”

[2] God’s justice is not something He *has*, so that He could lose it and yet be Himself, as a man can lose his hair. It is something He *is*, inseparable from Him, just as He is inseparable from His wisdom, love, beauty, and other qualities. (His qualities, by the way, are distinguishable only from our point of view, not His.)

³⁰ 2 Timothy 2:13 (RSV-CE).

³¹ 2 Timothy 2:11–13 (RSV-CE).

It is important to realize that St. Thomas is not saying that God is an abstract quality, justice, rather than a personal being. Rather he is saying that God is *Justice Himself, in person*. The finite, created relations we call justice, and that may seem like mere formulae to us, derive all of their reality and force from His infinite, uncreated, personal Being. At the heart of justice – as at the heart of wisdom, the heart of love, the heart of beauty and so on – we find not something, but Someone. Indeed we find a fiery unity of three Someones, the Father, Son and Holy Spirit, all of them one God.

[3] God’s omnipotence does not mean that He can be other than He is. He cannot release us from the requirement to direct ourselves to Him, because He *is* our end. But to direct ourselves to Him entails submitting to His justice, because He *is* His justice. So He cannot release us from submitting to His justice either.

[1] *Reply to Objection 3. The slaying of a man is forbidden in the Decalogue, in so far as it bears the character of something undue: for in this sense the precept contains the very essence of justice.* [2] *Human law cannot make it lawful for a man to be slain unduly. But it is not undue for evil-doers or foes of the common weal to be slain: hence this is not contrary to the precept of the Decalogue; and such a killing is no murder as forbidden by that precept,* [3] *as Augustine observes (De Lib. Arb. i, 4).* [4] *In like manner when a man’s property is taken from him, if it be due that he should lose it, this is not theft or robbery as forbidden by the Decalogue.*

Reply to Objection 3. The Decalogue forbids killing anyone *to whom death is not due*. It is in this sense that the precept embodies the very idea of justice. Nor can human law concede that a man could ever be put to death if he did not deserve it. But the killing of evil-doers or enemies of the commonwealth does not deprive them of anything due to them. Therefore it does not violate the precept of the Decalogue, nor does it constitute homicide in the sense forbidden by the Decalogue’s prohibition – a point made by St. Augustine. Similarly, to confiscate property that a man deserves to have taken is not to commit theft or robbery in the sense the Decalogue forbids.

[1] St. Thomas has explained that the precepts of the second tablet coincide with the very meaning of justice. But justice is giving to each person what is due to him – punishment for doing wrong, honor for doing right. So if the commandment “You shall not kill” meant that one must not kill even those deserving of death, it would not be just; it would be just only if it forbade the killing of those *not* deserving of death. This is the sense in which the commandment “You shall not kill” it is to be taken.

[2] Because the commandment does not prohibit the slaying of those truly deserving of death, the Objector is mistaken in thinking that the authorization of such things as capital punishment and just war requires a dispensation from it. What the commandment prohibits is killing in the specific sense of *murder*.

Judge Posner is right to say that if murder meant only the sort of killing we must not do, then the commandment “Do not murder” would be tautological; it would say nothing more than “You must not commit the sort of killing that you must not commit.” But the commandment is not tautological, because the meaning of “undue” killing can be specified in a universally valid way. Murder is primarily the killing of *innocent* human beings; it also includes the killing of the guilty without public authority, or without adequate proof of guilt, or for offenses for which the punishment would be disproportionate to the guilt of the offense.

[3] Here is the context of the observation:

EVODIUS: If murder is killing a human being, it can sometimes happen without sin. For instance, a soldier kills an enemy; a judge or his agent executes a convicted criminal; someone throws his weapon by chance imprudently and against his will. They do not seem to me to be sinning when they kill someone.

AUGUSTINE: I agree. But they are not usually called murderers, either.³²

One might have left the matter here, but St. Thomas has more to say.

[4] Just as such things as capital punishment and just war are not the *kind* of killing, murder, forbidden by the commandment “Do not kill,” so such things as just fines and taxes are not the *kind* of taking of property forbidden by the commandment “Do not steal.”

We must be careful to take each commandment of the Decalogue in the sense in which it is intended. In the cases we have just considered, the mistake lies in taking it too broadly, but error also lies in taking it too narrowly. For example, the fact that public authority may authorize putting criminals to death does not imply that it may authorize killing the old, the sick, the weak, or those not yet born; and the fact that it may authorize just fines and taxes does not mean that it may confiscate any property it pleases for any reason it wishes. In the sense of the respective commandments, the former is still murder, and the latter is still theft.

³² Peter King, trans., *Augustine: On the Free Choice of the Will, On Grace and Free Choice, and Other Writings* (Cambridge: Cambridge University Press, 2010), p. 8.

[1] *Consequently when the children of Israel, by God's command, took away the spoils of the Egyptians, this was not theft; since it was due to them by the sentence of God. [2] Likewise when Abraham consented to slay his son, he did not consent to murder, because his son was due to be slain by the command of God, Who is Lord of life and death: for He it is Who inflicts the punishment of death on all men, both godly and ungodly, on account of the sin of our first parent, and if a man be the executor of that sentence by Divine authority, he will be no murderer any more than God would be. [3] Again Osee, by taking unto himself a wife of fornications, or an adulterous woman, was not guilty either of adultery or of fornication: because he took unto himself one who was his by command of God, Who is the Author of the institution of marriage.*

And so when the children of Israel carried off plunder from the Egyptians at God's precept, they were not stealing, because by the divine verdict, the Egyptians deserved to give it up. Again, when Abraham agreed to kill his son at God's command, he was not agreeing to murder, because by the very fact that the boy's death was mandated by the Lord of life and death, death was due to him. Bear in mind that because of the sin of our first parents, God punishes all men with death, the just as well as the unjust, so if a man carries out the sentence by the authority of God Himself, he is no more a murderer than God is. Yet again, when Hosea married a "wife of fornications" – that is, an adulterous woman – he was committing neither fornication nor adultery, because he married her by the mandate of the divine author of the institution of matrimony.

[1] This statement refers to an event in the release of the Israelites from bondage in Egypt. God says to Moses that He knows the king of Egypt will not willingly allow the slaves to leave, so He will compel him to release them by causing terrible calamities to befall the land. Moreover, the Israelites are to ask for precious things in parting, and the Egyptians will be glad to give them: "And I will give this people favor in the sight of the Egyptians; and when you go, you shall not go empty, but each woman shall ask of her neighbor, and of her who sojourns in her house, jewelry of silver and of gold, and clothing, and you shall put them on your sons and on your daughters; thus you shall despoil the Egyptians."³³ According to St. Thomas, in demanding these precious things from the Egyptians, the Israelites were not guilty of theft, because God, the always-just Judge, had decreed these spoils as a punishment. The Egyptians deserved to give them up because of the wrong they had done to the Israelites.

³³ Exodus 3:21–22 (RSV-CE).

[2] The argument is *not* that if God commands murder, it isn't murder. Nor has there been what Kierkegaard called a "teleological suspension of the ethical."³⁴ God is the ethical; not even He can allow a man to kill another just because the man wishes to do so, because to allow it would be contrary to that justice which is Himself. There is no such thing as an act that is "ethically wrong but religiously right"; right is not divided, because God is not divided.

The argument works like this:

1. For their sin, God sentenced our first parents to the justly deserved penalty of eventual death.
2. Because of the community of human nature, all human beings share in the guilt of our first parents' rebellion, and so all are subject to the same penalty.
3. As Supreme Judge, God Himself decides for each human being when this sentence is to be carried out.
4. If a human being consents to carry out the sentence against someone, not to please himself, but by God's own command, then he is consenting not to be a murderer but to be a duly appointed executioner; he is not acting unjustly, but carrying out a decree of justice itself.³⁵

[3] The first three chapters of the book of Hosea relate that God commanded the prophet to marry first a whore, then an adulteress, as a shocking dramatization of Israel's shocking unfaithfulness to God. St. Thomas might easily have used the incident to state a fifth objection: "Still further, adultery too is forbidden by a precept of the Decalogue. But a dispensation was granted in this precept; for it is written, 'Go, take thee a wife of fornications,' and again, 'Go yet again, and love ... an adulteress.' Therefore the precepts of the Decalogue are dispensable."

The idea of serving as an executioner of Divine justice does not come into the case of Hosea as it came into the case of Abraham, for although St. Thomas holds each human being to be under sentence of eventual death, he certainly does not suggest that any human being is under sentence of marrying badly! The key to the argument about Abraham is that God is the Divine judge, but the key to the argument about Hosea is that

³⁴ The expression comes from the third chapter of Kierkegaard's work of 1843, *Fear and Trembling*.

³⁵ Concerning the command to sacrifice Isaac, see also the commentary on [Question 94, Article 5](#).

He is the Divine Author of marriage, the Creator who imbued it with order.

Then is St. Thomas saying that because God is the Author of marriage, he can violate the very order that He has ordained? No, not even God can permit a man to join sexually with a woman who is not his wife, for again, to deny the very order of His justice would be to deny Himself. But as St. Thomas explains in [Question 94, Article 5](#), whenever a man and woman are joined by God, she *is* his wife. So again, the question is not whether God can suspend the precepts of the Decalogue, but whether He can *apply* them, and of course He can.

[1] *Accordingly, therefore, the precepts of the Decalogue, as to the essence of justice which they contain, are unchangeable: [2] but as to any determination by application to individual actions – for instance, that this or that be murder, theft or adultery, or not – in this point they admit of change; [3] sometimes by Divine authority alone, namely, in such matters as are exclusively of Divine institution, as marriage and the like; [4] sometimes also by human authority, namely in such matters as are subject to human jurisdiction: for in this respect men stand in the place of God: and yet not in all respects.*

It all comes down to this: With respect to the very idea of justice that they embody, the precepts of the Decalogue cannot be changed. But with respect to the “determinations” by which these precepts are applied to particular acts – for instance that such and such an act *is* or *is not* a murder, a theft, or an adultery – they can be changed. Sometimes – in things that have been instituted by God alone – the exception is declared by divine authority alone. But sometimes – in things God commits to human jurisdiction – the exception can be declared even by human authority. For although human authorities do not stand in God’s place in all respects, in this respect they do.

[1] God cannot make it right to do any of the things the precepts of the Decalogue forbid, or to omit any of the things they require. For instance, He cannot make it right to murder, steal, or commit adultery.

[2] But the application of the precepts of the Decalogue *can* change. This does not mean that they can reverse their meaning; it would not be a mere change in application for God to say, “In this case, unfaithfulness to your spouse is not adultery,” or “In this case, killing a man who has not earned the penalty of death at your hands is not murder.” But all sorts of more detailed secondary precepts inform how to apply these broad commandments, by telling me who is my spouse, and who does deserve the penalty of death at my hands. The broad commandments have no exceptions. Albeit rarely, though, such secondary precepts do have exceptions.

[3] In matters that God Himself has instituted, only He can authorize exceptions to the secondary precepts. St. Thomas mentions the institutions of marriage “and the like”; another example might be family. Marriage involves the relation of wife and husband with a view toward possible children; family involves the relation of the mother and father to their children. As God joined Hosea to a woman who would otherwise not have been accounted his wife, so we might say that He sometimes joins parents to children who would otherwise not have been accounted their sons and daughters. Our name for this dispensation is adoption.

[4] Just now we were speaking of matters that God Himself has instituted. But in rules that human authority has “added” to God’s rules by way of determination, or in details of application that God does not specify, mere humans can authorize exceptions. In this way God has delegated to such rational creatures as ourselves a share in His Providence, though He remains the ultimate Governor of the universe.

[1] *Reply to Objection 4. This determination was an interpretation rather than a dispensation. [2] For a man is not taken to break the Sabbath, if he does something necessary for human welfare; as Our Lord proves (Matthew 12:3, seqq.).*

Reply to Objection 4. This explanation was more an interpretation of the precept than an exception to it. For as the Lord proves in the twelfth chapter of the Gospel of Matthew, doing something necessary for human well-being is not a violation of the Sabbath.

[1] “Determination” is a mistranslation. St. Thomas does not use the Latin term *determination*, which refers to a precept arrived at by specifying in which of the various ways a more general precept is to be followed. Instead he uses the term *excogitation*, which means literally a thinking out, an explanation. So what he is saying here is that in the incident from the Maccabean revolt mentioned by the Objector, the friends and sons of Mattathias were working out what the Sabbath precept meant, not authorizing an exception to it. In ordaining a Sabbath rest, God had never intended that His people rest even from preserving their lives.

[2] To confirm that the friends and sons of Mattathias had interpreted the Sabbath rest correctly, St. Thomas refers to another incident, this one from the Gospels. Jesus and his disciples walked through a grain field on the Sabbath. The disciples, who were hungry, picked and ate some of the

grain, and were criticized by the Pharisees because Sabbath day labor is prohibited. Christ called their attention to two dispensations mentioned in Scripture, and then remarked, “if you had known what this means, ‘I desire mercy, and not sacrifice’” – an allusion to Hosea 6:6 – “you would not have condemned the guiltless.” He concluded, “For the Son of Man is Lord of the Sabbath,” implying His authority to interpret the Sabbath precept with finality and certainty.³⁶

St. Thomas’s Prologue to Question 105: of the Reason for the Judicial Precepts

TEXT:	PARAPHRASE:
<i>We must now consider the reason for the judicial precepts, under which head there are four points of inquiry.</i>	In this Article we look into the rationale for the judicial precepts. Four particular matters will engage us.

The judicial precepts included what we would call criminal, civil, constitutional, and household law. They were directed toward maintaining justice in relations among both members of the community and non-members (foreigners or “strangers”).

[1] (1) <i>Concerning the reason for the judicial precepts relating to the rulers [Article 1]; [2] (2) Concerning the fellowship of one man with another [Article 2]; [3] (3) Concerning matters relating to foreigners [Article 3]; [4] (4) Concerning things relating to domestic matters [Article 4].</i>	(1) Did the judicial precepts include appropriate precepts concerning rulers and the form of government? (2) Were they suitably formulated for the direction of men in their relations with their neighbors? (3) Were they suitably formulated for the direction of men in the relations with foreigners? (4) Did they include suitable precepts concerning relations with the members of the household?
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[1] The “precepts concerning rulers” correspond to what we would call constitutional law. St. Thomas focuses on the form of government, the choice of persons who are to fill offices of authority, and the requirements for their conduct.

[2] These precepts concerned such things as the holding, exchange, and inheritance of property; the institution of judges; and the guarantee of fair judicial procedures. They also directed that certain goods should belong

³⁶ Matthew 12:1–8 (RSV-CE), quoting from the last two verses.

to all in common. For example, one could enter into a friend’s vineyard and eat some of the grapes (though one could not take any away), and grain and fruit that had been overlooked in harvesting were reserved for the use of the poor.

[3] Relations with “strangers” might be either peaceful or hostile, and the Old Law included precepts concerning both kinds. Peaceful relations took in foreigners passing through the land as travelers, foreigners coming to live in the land, and foreigners who wished to become full members of the community. Hostile relations took in war and the treatment of defeated enemies. Thus, for example, an offer of peace was to be extended to the enemy before war could begin; St. Thomas views this in relation to the just war requirement of “just cause.” Moreover, the victors were directed to spare not only the enemy’s women and children, but even their fruit trees. Although the Old Testament records certain deviations from this rule, St. Thomas does not discuss them. Presumably they would fall under the heading of dispensations, which he has considered in the context of the moral precepts in [Question 100, Article 8](#). He discusses dispensations from the judicial precepts only briefly, in Question 105, Article 3, Reply to Objection 3, where he considers admission of foreigners to full membership in the community.

[4] These precepts concerned the mutual relations among the members of the household directed to the everyday necessities of life. They directed the conduct of masters and servants, husbands and wives, and parents and children.

Question 105, Article 1:
Whether the Old Law Enjoined Fitting Precepts
Concerning Rulers?

TEXT	PARAPHRASE
<i>Whether the Old Law enjoined fitting precepts concerning rulers?</i>	Did the Old Law make appropriate arrangements concerning those who would rule the people?

The expression “precepts concerning rulers” is almost equivalent to the expression “constitutional laws.” It includes such things as how many rulers there are, how and from whom they are chosen, and how they exercise their authority.

[1] **Objection 1.** *It would seem that the Old Law made unfitting precepts concerning rulers. Because, as the Philosopher says (Polit. iii, 4), “the ordering of the people depends mostly on the chief ruler.” But the Law contains no precept relating to the institution of the chief ruler; [2] and yet we find therein prescriptions concerning the inferior rulers: firstly (Exodus 18:21): “Provide out of all the people wise [Vulgate: ‘able’] men,” etc.; again (Numbers 11:16): “Gather unto Me seventy men of the ancients of Israel”; and again (Deuteronomy 1:13): “Let Me have from among you wise and understanding men,” etc. Therefore the Law provided insufficiently in regard to the rulers of the people.*

Objection 1. Apparently, the Old Law made inappropriate arrangements for human government. Aristotle rightly observes that how the people are governed depends above all on the highest ruler, but we find nothing in the Old Law about how the highest ruler should be chosen. All we find are instructions about subordinate rulers: First Jethro advises Moses to select wise men to assist him, then God commands Moses to choose seventy such men from the elders, and subsequently Moses instructs the tribes to send him wise, understanding, and experienced men whom he would appoint to the office. So the law of old did not provide adequate instructions concerning rulers.

[1] A “precept relating to the institution of the chief ruler” could be any instruction that pertains to the chief ruler in any way – whether there is to be a chief ruler, what qualifications he must have, how far his authority extends, and so on.

“Chief ruler” translates the phrase *supremus princeps*. Earlier in the *Treatise*, the Dominican Fathers translation has rendered the term *princeps* by such words as “prince” or “sovereign,” and I have preferred to render it more literally as “foremost man.” Here, though, the term “ruler” is better, because it more easily accommodates itself to St. Thomas’s distinction among higher and lower *principes*.

[2] Jethro, Moses’ father-in-law, advises him, “Moreover choose able men from all the people, such as fear God, men who are trustworthy and who hate a bribe; and place such men over the people as rulers of thousands, of hundreds, of fifties, and of tens. And let them judge the people at all times; every great matter they shall bring to you, but any small matter they shall decide themselves; so it will be easier for you, and they will bear the burden with you.”

Later, when Moses complains to God of the burden of ruling the people alone, God replies, “Gather for me seventy men of the elders of Israel, whom you know to be the elders of the people and officers over them; and bring them to the tent of meeting, and let them take their stand there

with you. And I will come down and talk with you there; and I will take some of the spirit which is upon you and put it upon them; and they shall bear the burden of the people with you, that you may not bear it yourself alone.”

Much later, reflecting on the past, Moses reminds the people that he instructed them, “Choose wise, understanding, and experienced men, according to your tribes, and I will appoint them as your heads,” and that with their agreement, “I took the heads of your tribes, wise and experienced men, and set them as heads over you, commanders of thousands, commanders of hundreds, commanders of fifties, commanders of tens, and officers, throughout your tribes.”³⁷

[1] **Objection 2.** Further, “*The best gives of the best*,” as Plato states (*Tim. ii*). Now the best ordering of a state or of any nation is to be ruled by a king: because this kind of government approaches nearest in resemblance to the Divine government, [2] whereby God rules the world from the beginning. Therefore the Law should have set a king over the people, and they should not have been allowed a choice in the matter, [3] as indeed they were allowed (Deuteronomy 17:14–15): “When thou ... shalt say: I will set a king over me ... thou shalt set him,” etc.

Objection 2. Moreover, as Plato remarks, the best gives rise to the best. The best arrangement for a city or people is to be ruled by a king, because this kind of rule fully reflects the best rule of all, the Divine rule in which one God governs the world. So the Old Law should have set up a king over the people from the beginning; it should not have left the matter to their own decision, as in Deuteronomy 17, where Moses provides instructions to be followed *when the people ask* for a king.

[1] Today Plato’s best-known work is the *Republic*. In the Middle Ages, however, his best-known work was unquestionably the *Timaeus*. The Objector is probably thinking of the remark of the character after whom the dialogue is named that “God desired that all things should be good and nothing bad, so far as this was attainable.... Now the deeds of the best could never be or have been other than the fairest.”³⁸ The Objector draws the conclusion that God’s rule is the ground of all human rule, and that the best human government is shaped by imitation of His.

[2] The translation here is inaccurate, for in the actual text of Objection 2, the phrase “from the beginning” belongs to the sentence about how the Old Law should have set things up, not to the sentence about how God

³⁷ Exodus 18:21–22, Numbers 11:16–17, Deuteronomy 1:13, 15 (RSV-CE).

³⁸ Plato, *Timaeus*, trans. Benjamin Jowett (public domain).

rules the world.³⁹ However, this makes little difference to the Objector's point. What he means is that just as God ruled over the human race from the moment they were made, without their choice, so the king should have been set over the people from the moment they were made to be a nation, without their choice.

[3] The Objector protests that the people were allowed a choice, for as Moses said to them, "When you come to the land which the LORD your God gives you, and you possess it and dwell in it, and then say, 'I will set a king over me, like all the nations that are round about me'; [then] you may indeed set [him] as king over you."⁴⁰ According to the Objector, this is to be read as meaning that until the people asked to have a king, they did not have one.

[1] *Objection 3. Further, according to Matthew 12:25: "Every kingdom divided against itself shall be made desolate": [2] a saying which was verified in the Jewish people, whose destruction was brought about by the division of the kingdom. [3] But the Law should aim chiefly at things pertaining to the general well-being of the people. Therefore it should have forbidden the kingdom to be divided under two kings: [4] nor should this have been introduced even by Divine authority; as we read of its being introduced by the authority of the prophet Abias the Silonite (1 Kings 11:29, seqq.).*

Objection 3. Further, as Christ says in Matthew 12, "Every kingdom divided against itself is laid waste."⁴¹ In the case of the Israelites, this became clear through experiment, for the division of their kingdom led to its destruction. Because the guiding intention of law is the people's common good, the Old Law should have forbidden dividing the kingdom under two kings. Not even by Divine authority should this change have been brought in, as we read that it was brought in through a prophet, Ahijah the Shilonite.

[1] After Jesus had healed a certain man who was blind, unable to speak, and oppressed by an evil spirit, the Pharisees made the accusation that He was able to cast out demons only by the prince of demons. Jesus replied, "Every kingdom divided against itself is laid waste, and no city or house divided against itself will stand; and if Satan casts out Satan, he is divided against himself; how then will his kingdom stand?"⁴²

[2] In the Objector's view, the disunity brought about by division into a Northern and Southern Kingdom was ultimately responsible for the

³⁹ *A principio igitur lex debuit regem populo instituere; et non permittere hoc eorum arbitrio, sicut permittitur Deut. XVII, cum dixeris, constituam super me regem, eum constitues, et cetera.*

⁴⁰ Deuteronomy 17:14–15a (RSV-CE).

⁴¹ Matthew 12:25 (RSV-CE).

⁴² Matthew 23b-26 (RSV-CE).

defeat and exile of the people of both kingdoms. (In several waves, some of the exiles eventually returned and rebuilt their national culture.)

[3] The Old Law in no way commanded that the kingdom be cut in two. But since this division was contrary to the common good, the Objector thinks it should have forbidden it.

[4] The division of the kingdom seemed to have been authorized by the authority of the prophet Ahijah, or Ahiah, the Shilonite, and whatever a true prophet did by the authority of his office was done by the authority of God. The story begins with King Solomon, during his later life, turning aside from the wisdom for which he had previously been celebrated, to practice idolatry under the influence of his many pagan wives. Coming across Jeroboam, one of Solomon's high officials, Ahijah, symbolically tears the new garment he is wearing into twelve pieces to represent the twelve tribes of Israel. Giving ten to Jeroboam, he declares "thus says the LORD, the God of Israel, 'Behold, I am about to tear the kingdom from the hand of Solomon, and will give you ten tribes.'" God says He is doing this "because he has forsaken me ... and has not walked in my ways, doing what is right in my sight and keeping my statutes and my ordinances, as David his father did." After Solomon's death, the ten northern tribes revolt against his son and heir, Rehoboam, taking as their king Jeroboam, who promptly leads them into further idolatry. This leaves only two tribes to Rehoboam in the south. The northern kingdom continues to be called Israel; the southern kingdom comes to be called Judah, because at first only the tribe of Judah remains loyal to Rehoboam (later joined by the tribe of Benjamin).

[1] *Objection 4. Further, just as priests are instituted for the benefit of the people in things concerning God, as stated in Hebrews 5:1; so are rulers set up for the benefit of the people in human affairs. [2] But certain things were allotted as a means of livelihood for the priests and Levites of the Law: such as the tithes and first fruits, and many like things. Therefore in like manner certain things should have been determined for the livelihood of the rulers of the people: [3] the more that they were forbidden to accept presents, [4] as is clearly stated in Exodus 23:8: "You shall not [Vulgate: 'Neither shalt thou'] take bribes, which even blind the wise, and pervert the words of the just."*

Objection 4. Still further, just as priests are established for the people's good in Divine affairs (something made clear by Hebrews 5), so rulers are established for their good in human affairs. The Old Law set aside many things for the living of priests and Levites, such as tenths and first fruits of the harvest. However, similar arrangements should have been made to sustain the people's rulers. This was especially necessary because Exodus 23 forbade them from taking bribes: "You shall not take bribes, which blind even the prudent, and undermine the judgments of the just."

[1] In the passage cited by the Objector, the unknown author of the letter to the Hebrews, meaning the Jewish converts to faith in Christ, is beginning a long passage suggesting that the institution of the high priest, under the Old Law, foreshadowed the coming of Christ, under the New: “For every high priest chosen from among men is appointed to act on behalf of men in relation to God, to offer gifts and sacrifices for sins.” The Objector argues that just as priests were designated to care for the people’s divine good, so earthly rulers are designated to care for their temporal good.

[2] Levites were members of the tribe of Levi who assisted the priests and fulfilled lesser sacred duties. The Objector reasons that because the Old Law made provision for the support of priests and Levites, it should have made provision for the support of governmental rulers too, but it did not.

[3] The word translated “presents,” which can mean gifts, offerings, and tributes of all sorts, is a form of the word used below for “bribes.” The Objector is not approving bribery; he is merely observing that had the rulers been allowed to accept such offerings, they would have had less need for other income. How to support public officials is a perennial dilemma of government, for the payment of salary to each and every one of them is an expensive luxury that most states throughout history have been unable to afford. Among the other things that have been tried are giving them some of the king’s land; restricting choice to those who have wealth of their own; letting them take a cut of the taxes and fees they collect; and, what is almost the same thing, letting them take bribes. This is why, over most of the world, bribery is so deeply entrenched.

[4] “The words of the just,” *verba iustorum*, is a figurative expression for their judgments.

[1] *Objection 5. Further, as a kingdom is the best form of government, so is tyranny the most corrupt. [2] But when the Lord appointed the king, He established a tyrannical law; for it is written (1 Samuel 8:11): “This will be the right of the king, that shall reign over you: He will take your sons,” etc. Therefore the Law made unfitting provision with regard to the institution of rulers.*

Objection 5. Still further, just as kingship is the best government, so tyranny is its most thoroughly debased corruption. But when the Lord instituted a king, He instituted a tyrant: For as the prophetic words of Samuel declare, “This shall be the right of the king that shall reign over you: He will take your sons,” and so on. So when the Old Law set up arrangements for rule, it did so poorly.

[1] As Aristotle had written in his comparison of political regimes, “That which is the perversion of the first and most divine is necessarily the worst.”⁴³ The Latin adage, *corruptio optimi pessima est*, “the corruption of the best is the worst,” would have been ringing in the ears of St. Thomas’s readers.

[2] If tyranny is worst, then it should have been prohibited; yet, the Objector complains, tyranny was not only permitted, but commanded. For when the people of Israel asked through their elders for a king, the prophet Samuel, speaking with Divine authority, told them, “These will be the ways of the king who will reign over you: he will take your sons and appoint them to his chariots and to be his horsemen, and to run before his chariots; and he will appoint for himself commanders of thousands and commanders of fifties, and some to plow his ground and to reap his harvest, and to make his implements of war and the equipment of his chariots.”⁴⁴ The full chapter is reproduced in the online *Companion to the Commentary*.

[1] *On the contrary*, The people of Israel is commended for the beauty of its order (Numbers 24:5): “How beautiful are thy tabernacles, O Jacob, and thy tents.” [2] *But the beautiful ordering of a people depends on the right establishment of its rulers. Therefore the Law made right provision for the people with regard to its rulers.*

On the other hand, in the book of Numbers the prophet Balaam extols the people of Israel for being so beautifully set in order: “How fair are your tabernacles,⁴⁵ O Jacob, and your tents, Israel!” But how beautifully a people is set in order depends on how well their rulers are set up. From this it follows that the Old Law did set up good arrangements for rule.

[1] These are the first words of an inspired blessing pronounced by the non-Israelite seer, Balaam, which concludes, “Blessed be everyone who blesses you, and cursed be everyone who curses you.”⁴⁶ His blessing of Israel is even more impressive because he speaks it against his will, having been offered money by Balak, the Moabite king, to curse them.

[2] The orderly beauty of Israel’s tents and encampments in the wilderness expresses the orderly beauty of its life under God. But how could

⁴³ Aristotle, *Politics*, trans. Benjamin Jowett, Book 4, Chapter 2 (public domain).

⁴⁴ 1 Samuel 8:11–12 (RSV-CE).

⁴⁵ Tabernacles are light or temporary constructions, suitable to a nomadic people; the term refers especially to the tent that housed the Ark of the Covenant.

⁴⁶ Numbers 24:9 (RSV-CE).

it have enjoyed such beauty, unless God's law had made inadequate provision to preserve it?

[1] *I answer that, Two points are to be observed concerning the right ordering of rulers in a state or nation. One is that all should take some share in the government: for this form of constitution ensures peace among the people, commends itself to all, and is most enduring, as stated in Polit. ii, 6. [2] The other point is to be observed in respect of the kinds of government, or the different ways in which the constitutions are established. For whereas these differ in kind, as the Philosopher states (Polit. iii, 5), nevertheless the first place is held by the "kingdom," where the power of government is vested in one; and "aristocracy," which signifies government by the best, where the power of government is vested in a few. [3] Accordingly, the best form of government is in a state or kingdom, where one is given the power to preside over all; while under him are others having governing powers: and yet a government of this kind is shared by all, both because all are eligible to govern, and because the rulers are chosen by all. [4] For this is the best form of polity, being partly kingdom, since there is one at the head of all; partly aristocracy, in so far as a number of persons are set in authority; partly democracy, i.e. government by the people, in so far as the rulers can be chosen from the people, and the people have the right to choose their rulers.*

Here is my response. Concerning sound ruling arrangements in a city or people, two things must be kept in mind:

One is that everyone should have some share in ruling. As Aristotle points out, such an arrangement keeps the people at peace, and everyone loves and protects it.

The other concerns the *species* of government, the ways in which they are organized. Aristotle explains that even though these species are diverse, two of them come first: (1) Kingship, in which one governs according to virtue; (2) aristocracy, or rule of the best, in which a small number govern according to virtue.

So the best form of government in a city or kingdom is as follows: One is put in charge according to virtue, and presides over everyone. Under him are a number of others who also govern according to virtue. Yet all this is done in such a way that the government involves everyone, for anyone may be chosen to rule, and everyone shares in the choice.

This then is the best constitutional mixture, a fine blend of three elements: Kingdom, because one presides; aristocracy, because a number rule according to virtue; and democracy, or rule of the people, because not only are the rulers chosen from the people, but it is up to the people to choose them.

[1] St. Thomas's interpretation of Aristotle actually pulls together reflections from a number of places in the *Politics*. The philosopher states as a universal principle, common to all forms of rule, that "the portion of the state which desires the permanence of the constitution ought to be stronger than that which desires the reverse." At another point, he defines

citizens as those who have some share in both deliberation and the administration of justice, though not necessarily an equal share, because this must depend on their ability. The manner in which they share in these offices may take many different forms. For example, they may meet as a body or hold offices in rotation, and they may deliberate on all things, on some things, or on who should be chosen to deliberate on all things. Ideally, each citizen has the qualities of prudence and virtue necessary both “to be governed and to govern with a view to the life of virtue.” If perfect virtue is difficult to attain, “we need only suppose that the majority are good men and good citizens, and ask which will be the more incorruptible, the one good ruler, or the many who are all good? Will not the many?” Besides, if not every citizen shares fully in these qualities, some understand one thing and some understand another, so that taken together, they are a better judge than any one man. “There is still a danger in allowing them to share the great offices of state,” he cautions, “for their folly will lead them into error, and their dishonesty into crime. But there is a danger also in not letting them share, for a state in which many poor men are excluded from office will necessarily be full of enemies. The only way of escape is to assign to them some deliberative and judicial functions.”⁴⁷

[2] Though St. Thomas refers to Aristotle’s *Politics*, Book 3, he does not actually specify a chapter; the reference to Chapter 5 is inserted by the translators. A more likely source than Chapter 5 is Chapter 7, where the philosopher writes as follows:

The true forms of government, therefore, are those in which the one, or the few, or the many, govern with a view to the common interest; but governments that rule with a view to the private interest, whether of the one or of the few, or of the many, are perversions. For the members of a state, if they are truly citizens, ought to participate in its advantages. Of forms of government in which one rules, we call that which regards the common interests, kingship or royalty; that in which more than one, but not many, rule, aristocracy; and it is so called, either because the rulers are the best men, or because they have at heart the best interests of the state and of the citizens. But when the citizens at large administer the state for the common interest, the government is called by the generic name – a constitution (*politeia*).⁴⁸

⁴⁷ The quotations are from Aristotle, *Politics*, trans. Benjamin Jowett, Book 3, Chapters 11, 13, and 15, and Book 4, Chapter 12, though not in this order (public domain).

⁴⁸ Aristotle, *Politics*, trans. Benjamin Jowett, Book 3, Chapter 7 (public domain).

St. Thomas says that in kingship and aristocracy, one or a few “rule according to virtue” (*principatur secundum virtutem*). The Dominican Fathers translation renders the passage differently, saying that in kingship and aristocracy, the “power of government is vested” in one or a few, probably because the term *virtus* can sometimes be translated “power” rather than “virtue.” In this context, however, it should not be. Virtue in the moral sense is precisely what distinguishes kingship from tyranny, and aristocracy from oligarchy.

[3] Again, St. Thomas does not say that under the king others “have governing powers,” but that under him are others “who rule according to virtue” (*principantes secundum virtutem*). Interestingly, for the king he uses a weaker verb: The king *presides*. Apparently, though a good king orchestrates, he does not play all the instruments himself. The sort of order that we now call “subsidiarity,” discussed in the commentary on [Question 96, Article 5](#), exists even among the levels of the government itself.

Interestingly, St. Paul too seems to distinguish between different modes of exercising authority, although the context of his remarks is the household rather than the polity. For the sort of authority that the husband exercises, he uses the Greek verb *proistemi*, which means “preside” or “stand before,” and has overtones of protecting, superintending, maintaining, helping, and acting as patron (1 Timothy 3:4,5,12). By contrast, for the kind of authority that the wife is, he uses the noun *oidodespotes*, which means literally the “despot” or ruler of the household (1 Timothy 5:14). It seems that the husband is more like the chairman of the board, and the wife is more like the chief executive officer.

At first, the view of kingly rule as “presiding” seems utterly at odds with the view expressed by Objector 2 that the best human government imitates the Divine government. Probably that is not what St. Thomas means, for in his work *On Kingship*, he expresses the same view of Divine and human government himself. Unlike Objector 2, however, he qualifies it. He expresses one qualification in his Reply, below: Fallen men suffer the temptation to become tyrants. But another qualification may be drawn from how he describes the Divine government in [Question 91, Article 2](#). As we saw there, God prefers to govern rational beings not by jerking them around or pulling their strings, but by drawing them into His own providential care of things, enabling them to share in it; that is the whole point of natural law. If even the omnipotent King of the Universe chooses so to govern, how much more should finite human kings?

[4] The term translated “polity” is *politia*. This Latin word, like the corresponding Greek word, *politeia*, has both a broad and a narrow meaning: It can refer to constitutional government in general, or to the particular kind of constitution formed by mixing and balancing the elements of other kinds of government.

[1] *Such was the form of government established by the Divine Law. For Moses and his successors governed the people in such a way that each of them was ruler over all; so that there was a kind of kingdom.* [2] *Moreover, seventy-two men were chosen, who were elders in virtue; for it is written (Deuteronomy 1:15): “I took out of your tribes wise and honorable, and appointed them rulers”: so that there was an element of aristocracy.* [3] *But it was a democratical government in so far as the rulers were chosen from all the people; for it is written (Exodus 18:21): “Provide out of all the people wise [Vulgate: ‘able’] men,” etc.;* [4] *and, again, in so far as they were chosen by the people; wherefore it is written (Deuteronomy 1:13): “Let me have from among you wise [Vulgate: ‘able’] men,” etc.* [5] *Consequently it is evident that the ordering of the rulers was well provided for by the Law.*

And that is precisely what the Old Divine Law established. For here is what we find:

(1) Moses and his successors governed the people in such a way that each of them ruled over everyone – that was a species of kingship.

(2) Seventy-two elders were chosen according to their virtue, for as Deuteronomy says, “From your tribes I selected wise and worthy men, and made them rulers” – that was aristocracy.

(3) Yet it was democratic that these men were selected both *from* all the people and *by* all the people. In support of the first point is the Jethro’s suggestion to Moses to provide wise men from among the people (Exodus 18), and of the second, Moses’ command to the people themselves to provide these wise men (Deuteronomy 1).

Obviously, then, the Old Law did make sound provision concerning rulers.

[1] We see already that contrary to the view of Objector 2, Israel did have “a kind of” kingdom from the beginning, though the Judges who exercised authority between Joshua and Saul were certainly not human kings in the conventional sense. Some led Israel in battle, some were prophets, some only adjudicated cases brought to them by the tribes. Besides being “raised up by God,” the only element they shared was that each of them held authority over all the tribes in common. Precisely because they did, however, St. Thomas considers them “a kind of” kings.

[2] St. Thomas views this small number of men, esteemed for their character and wisdom, as an aristocratic element in the constitution. At first, the number seventy-two seems to be incorrect, for as St. Thomas’s previous

citation of the passage in Numbers 11:16 makes clear, only seventy elders were chosen to assist Moses. The seventy-two cannot refer to the seventy plus Moses and Aaron, because Moses is distinguished from them; they were chosen to assist him. Probably St. Thomas is thinking of Exodus 24:1, where God instructs Moses to come and worship him at a distance, “you and Aaron, Nadab, and Abihu, and seventy of the elders of Israel.” We learn from Exodus 6:23 that Nadab and Abihu were sons of Aaron.

[3] The government was democratic in part because the elders were selected from all the people, rather than only from the rich or well-born.

[4] The government was also democratic because the people themselves decided whom to choose for this role.

[5] And so finite wisdom is able to discern the lineaments of Divine wisdom in this matter after all.

[1] *Reply to Objection 1. This people was governed under the special care of God: wherefore it is written (Deuteronomy 7:6): “The Lord thy God hath chosen thee to be His peculiar people”: and this is why the Lord reserved to Himself the institution of the chief ruler.*
 [2] *For this too did Moses pray (Numbers 27:16): “May the Lord the God of the spirits of all the flesh provide a man, that may be over this multitude.” Thus by God’s orders Josue was set at the head in place of Moses; and we read about each of the judges who succeeded Josue that God “raised ... up a saviour” for the people, and that “the spirit of the Lord was” in them (Judges 3:9–15).* [3] *Hence the Lord did not leave the choice of a king to the people; but reserved this to Himself, as appears from Deuteronomy 17:15: “Thou shalt set him whom the Lord thy God shall choose.”*

Reply to Objection 1. The people of Israel were ruled with God’s special attention. As He says to them in the book of Deuteronomy, “the Lord, your God, has chosen you to be a people for his own possession.”⁴⁹ For this reason, He reserved the choice of the highest ruler to Himself. We read in the book of Numbers that Moses prayed for this very thing, asking the Lord, the God of the spirits of all flesh, to appoint someone over the great throng of people. God responded by setting Joshua in place as Moses’ successor, and we read in Scripture that in turn, each of the Judges who succeeded Joshua was raised over the people as their preserver by God Himself, and was filled with His Spirit. The Objector, then, has missed the point: The reason God did not set out rules for the choice of a king is that He chose the king Himself. Deuteronomy makes this clear where it says, “you may indeed set as king over you him whom the Lord your God will choose.”

⁴⁹ Deuteronomy 7:6 (RSV-CE).

[1] God Himself chose the king, although this must not be taken as a blueprint for other nations, because He had chosen Israel for a special role in the history of redemption. The word “peculiar,” from Latin *peculiaris*, should be taken not in its contemporary English sense, “strange,” but in the sense “unique, set apart as God’s own.”

[2] Concerned about who would care for Israel rule after him, Moses prays for a successor. In response, God first appoints Joshua to succeed him, then “raises up” a series of Judges. Several of these men, Othniel and Ehud, are called in Scripture “saviors,” not in the spiritual sense that they saved the people from their sins, but in the military sense that they delivered the people from their enemies.

[3] Concerning what to do after he is gone, Moses instructs the people, “When you come to the land which the LORD your God gives you, and you possess it and dwell in it, and then say, ‘I will set a king over me, like all the nations that are round about me’; you may indeed set as king over you him whom the LORD your God will choose.”⁵⁰

At first it seems that Moses is anticipating the incident in 1 Samuel 8, when the people demand a king “like all the nations” because they are dissatisfied with the Judges. However, that cannot be the case because in 1 Samuel 8, the people are not acting in obedience but in rebellion. For this reason, St. Thomas takes a different view. According to St. Thomas, the words of Moses actually look forward to the rule of Joshua and the Judges themselves. They were “a kind of” kings – though not the kind wrongly demanded in 1 Samuel 8 – because they were set over all the people. And they fulfilled Moses’ instructions concerning kings, because God chose them and the people accepted his choice. Since the Old Law provided instructions concerning kings after all – and we see more such instructions below – Objection 1 fails.

[1] *Reply to Objection 2. A kingdom is the best form of government of the people, so long as it is not corrupt. But since the power granted to a king is so great, it easily degenerates into tyranny, unless he to whom this power is given be a very virtuous man:[2] for it is only the virtuous man that conducts himself well in the midst of prosperity, as the Philosopher observes (Ethic. iv, 3).*

Reply to Objection 2. The best government is the rule of a king, provided that it is not corrupt. But because such broad authority is relinquished to him, if his virtue is less than complete the regime easily slips into tyranny. Just as Aristotle says, none but the virtuous bear good fortune well.

⁵⁰ Deuteronomy 17:14–15 (RSV-CE).

[3] *Now perfect virtue is to be found in few: and especially were the Jews inclined to cruelty and avarice, which vices above all turn men into tyrants.*

[4] *Hence from the very first the Lord did not set up the kingly authority with full power, but gave them judges and governors to rule them.* [5] *But afterwards when the people asked Him to do so, being indignant with them, so to speak,* [6] *He granted them a king, as is clear from His words to Samuel (1 Samuel 8:7): “They have not rejected thee, but Me, that I should not reign over them.”*

Unfortunately, few pass the test of complete virtue. Now the particular moral weaknesses of the Israelites were hardheartedness and desire for gain, and these, even more than other vices, make men into tyrants. This is why the Lord did not give them a king with full authority from the beginning, but rather Judges and governors to restrain them. Later, when the people petitioned Him for a king, he conceded, but as though He were angry with them. This is shown by His words to the prophet Samuel: “They have not rejected you, but they have rejected me from being king over them.”⁵¹

[1] In thinking that the best form of government places all power in the hands of one man, the Objector had overlooked the peril of corruption. Considering this danger, kingship is good only when blended with elements of aristocracy and democracy.

[2] Aristotle is speaking of the man of crowning virtue, who among other things “will also bear himself with moderation towards wealth and power and all good or evil fortune, whatever may befall him, and will be neither over-joyed by good fortune nor over-pained by evil.” Compare St. Paul: “I have learned, in whatever state I am, to be content. I know how to be abased, and I know how to abound; in any and all circumstances I have learned the secret of facing plenty and hunger, abundance and want.”⁵²

[3] This is not a racial characterization of the Jewish people, but a portrait of the moral and cultural condition of the ancient Israelites. St. Thomas’s words are harsh, but Old Testament history is harsh too. Notice that he does not say that the Israelites were less virtuous than other nations of that era. Through the Law, they enjoyed moral training superior to that of neighbors. But as certain vices tempt men to bow their necks to tyrants, others tempt them to become tyrants themselves. And

⁵¹ 1 Samuel 8:7 (RSV-CE).

⁵² Aristotle, *Nicomachean Ethics*, trans. W.D. Ross, Book 4, Chapter 3 (public domain); Philippians 4:11a-12 (RSV-CE).

as each people has its own besetting vices, so he thinks the Israelites had these two moral faults.

It is likely that the prophets and holy men of ancient Israel would have agreed with him, for Hebrew Scripture is rich in incidents of blood and greed which it frankly records without approving. Concerning these vices, Deuteronomy warns, “Cursed be he who perverts the justice due to the sojourner, the fatherless, and the widow,” and the Proverbs wisely counsel, “A ruler who lacks understanding is a cruel oppressor; but he who hates unjust gain will prolong his days.”⁵³ All of the classical historians emphasized that the education of a people must be fashioned with a view to its own moral character, uprooting what is evil, strengthening what is good. According to St. Thomas, this is exactly what the Old Law did. For a chilling exercise, the reader may consider what are the besetting vices of his own nation.

[4] Although from the beginning Israel had “a kind of” kingship, Moses and his successors were far from having full regal authority, for they did not exercise one-man rule over everything.

[5] “So to speak” (*quasi*): Since God is not subject to emotional changes as we are, he cannot be literally indignant. The point is that He disapproved.

[6] Though deploring their rejection of His personal guidance through the Judges, God granted the Israelites’ foolish demand for a human king who, though inevitably flawed, had full regal authority.

[1] *Nevertheless, as regards the appointment of a king, He did establish the manner of election from the very beginning (Deuteronomy 17:14, seqq.):*
 [2] *and then He determined two points: first, that in choosing a king they should wait for the Lord’s decision; [3] and that they should not make a man of another nation king, because such kings are wont to take little interest in the people they are set over, and consequently to have no care for their welfare:*

Yet from the beginning, the Lord did determine two points concerning the selection of the king. First, to wait for His own choice; second, never to make a man from another nation their king, because such kings are usually but little moved by the people over whom they are placed, so that they fail to look after them.

⁵³ Deuteronomy 27:19, Proverbs 28:16 (RSV-CE).

[4] *secondly, He prescribed how the king after his appointment should behave, in regard to himself; namely, that he should not accumulate chariots and horses, nor wives, nor immense wealth: because through craving for such things princes become tyrants and forsake justice.* [5] *He also appointed the manner in which they were to conduct themselves towards God: namely, that they should continually read and ponder on God's Law, and should ever fear and obey God.* [6] *Moreover, He decided how they should behave towards their subjects: namely, that they should not proudly despise them, or ill_treat them, and that they should not depart from the paths of justice.*

He also provided instructions for how kings should bear themselves toward themselves, toward God, and toward their subjects. Toward themselves: They should amass neither chariots and horses, nor wives, nor immense riches, because by coveting these things rulers decay into tyrants, abandoning justice. Toward God: They should always read and reflect upon God's Law, in constant fear and obedience to Him. Toward their subjects: Never to hold them in proud contempt or oppress them, and never to stoop to injustice.

[1] When the Objector quoted from the Deuteronomy 17, he quoted selectively, as though God had said only that the people could have a king when they wanted one. St. Thomas points out that actually the passage says a good deal more.

[2] Verse 15 says "you may indeed set as king over you him *whom the LORD your God will choose.*"⁵⁴

[3] The verse continues, "One from among your brethren you shall set as king over you; you may not put a foreigner over you, who is not your brother."

[4] Verses 16–17 instruct, "Only he must not multiply horses for himself, or cause the people to return to Egypt in order to multiply horses, since the LORD has said to you, 'You shall never return that way again.' And he shall not multiply wives for himself, lest his heart turn away; nor shall he greatly multiply for himself silver and gold." Needless to say, these instructions were often disregarded, but the point in question is whether they were given, not whether they were always followed.

[5] We read in verses 18–19, "And when he sits on the throne of his kingdom, he shall write for himself in a book a copy of this law, from that which is in the charge of the Levitical priests; and it shall be with him, and he shall read in it all the days of his life, that he may learn to fear the

⁵⁴ Emphasis added. This and subsequent quotations from the Deuteronomy 17 are from the RSV-CE.

LORD his God, by keeping all the words of this law and these statutes, and doing them.”

The commands to “read,” “ponder,” and “obey” are clear enough, but contemporary readers often trip over the word “fear.” Even a good king will suffer dreadful retribution for sin, as when the great David yielded to the temptation to commit adultery with Bathsheba and murder her husband Uriah.⁵⁵ Yet the admonition does not mean that God should be dreaded as though He were a tyrant Himself. Rather He should be approached with the awed reverence of a child for his father, who chastises him when he does wrong because he loves him. The book of Proverbs teaches, “The fear of the Lord is the beginning of knowledge; fools despise wisdom and instruction.” But as it later exhorts, “My son, do not despise the Lord’s discipline or be weary of his reproof, for the Lord reproves him whom he loves, as a father the son in whom he delights.”⁵⁶

[6] The king should study God’s law not only that he may fear God, but also (verse 20) “that his heart may not be lifted up above his brethren, and that he may not turn aside from the commandment, either to the right hand or to the left; so that he may continue long in his kingdom, he and his children, in Israel.”

[1] *Reply to Objection 3. The division of the kingdom, and a number of kings, was rather a punishment inflicted on that people for their many dissensions, [2] specially against the just rule of David, than a benefit conferred on them for their profit. [3] Hence it is written (Hosea 13:11): “I will give thee a king in My wrath”; [4] and (Hosea 8:4): “They have reigned, but not by Me: they have been princes, and I knew not.”*

Reply to Objection 3. In view of their many quarrels, especially against the justice of David’s rule, the division of the kingdom and the multiplication of kings were given to the people more for their punishment than for their advantage. This is why God says through the prophet Hosea that He will give them a king “in my anger,” and that “They made kings, but not through me; they set up princes, but without my knowledge.”⁵⁷

⁵⁵ 2 Samuel 11:2–5, David commits adultery with Bathsheba; 11:6–25, he deliberately brings about the death of Bathsheba’s husband; 11:26–27, he takes Bathsheba in marriage; 12:1–10, the prophet Nathan confronts him about the sin; 12:11–12, God, through Nathan, decrees David’s punishment; 12:13a, David repents (see also Psalm 51); 12:13b–18a, God spares David from death but not from other punishments, including the death by illness of the son who resulted from his adultery.

⁵⁶ Proverbs 1:7, 3:11–12 (RSV-CE); see also Hebrews 12:5–6 and Revelations 3:19.

⁵⁷ Hosea 8:4 (RSV-CE), splicing the two sentences with a semicolon.

[1] The Objector had complained that the division of the kingdom was contrary to the common good. But if it was a just punishment, intended to bring the people back from their wayward paths, then it was for the common good after all.

[2] Though David sinned spectacularly in the incident with Bathsheba, he profoundly repented, and was viewed as a superior king.

[3] In its entirety, the verse reads, “I will give thee a king in my wrath, and will take him away in my indignation” (DRA). Usually it is viewed as a reference to the events following the incident in 1 Samuel 8, discussed in the preceding text, for after the people rebelliously demanded a king, God, through Samuel, appointed Saul, but later deprived him of the kingship for disobedience. St. Thomas seems to view the verse differently, taking “I will give you a king in my wrath” to mean “I will give you *another* king in my wrath,” or perhaps “I will give you *yet more* kings in my wrath,” so that it refers to division of the kingdom.⁵⁸

[4] God is omniscient. The expression “and I knew not” is to be taken not in the literal sense, but in the figurative sense, meaning that God was not consulted. During the period of the divided kingdom, the biblical narrative portrays most of the kings of Judah, and all of the kings of Israel, as disloyal to God.

[1] *Reply to Objection 4.* The priestly office was bequeathed by succession from father to son: and this, in order that it might be held in greater respect, if not any man from the people could become a priest: since honor was given to them out of reverence for the divine worship.

[2] *Hence it was necessary to put aside certain things for them both as to tithes and as to first_fruits, and, again, as to oblations and sacrifices, that they might be afforded a means of livelihood.*

Reply to Objection 4. Men were assigned to the duties of priesthood by inheritance from their fathers, because that way the priesthood would have greater reverence – more of the honor that belonged to them because of their role in divine worship – than if anyone of the people could be made a priest. For this reason, it was necessary that special things be set aside for their living: Tenth and first fruits of the harvest, offerings and sacrifices.

⁵⁸ St. Thomas’s case may be strengthened by the fact that according to some translators, the word “kings” in the verse should be plural: In the RSV-CE, for example, the verse reads “I have given you *kings* in my anger, and I have taken *them* away in my wrath” (emphasis added).

[3] *On the other hand, the rulers, as stated above, were chosen from the whole people; wherefore they had their own possessions, from which to derive a living: [4] and so much the more, since the Lord forbade even a king to have superabundant wealth to make too much show of magnificence: both because he could scarcely avoid the excesses of pride and tyranny, arising from such things, [5] and because, if the rulers were not very rich, and if their office involved much work and anxiety, it would not tempt the ambition of the common people; and would not become an occasion of sedition.*

But as we have seen, rulers were accepted from the whole people. This made a difference, because, for their living they had certain possessions of their own. The reasons for treating them differently are even more compelling in view of the fact that the Lord forbade them extravagant wealth and splendid pomp. He did this not only because arrogance and tyranny are so difficult to resist in the face of such enticements, but also because, if the rulers were not very rich but weighed down with labor and solicitude, their countrymen would not burn so strongly with envy, and the fuel of sedition would be taken away.

[1] St. Thomas is giving his opinion as to why priesthood was a hereditary office among the Israelites. Perhaps there would have been no other way to ensure reverence among the people for the priest's divine duties. However, he is not suggesting that the same arrangement would be best under all circumstances. Indeed, the Church forbids priests to marry partly to *prevent* priesthood from being a matter of inheritance.

[2] St. Thomas reasons that because serving in divine worship was the family business, so to speak, the priests would have no other business from which they might make a living (such as farming).

[3] In St. Thomas's era, political power was tied to ownership of land, so it is natural for him to think that rulers who are chosen from the people would have means of livelihood already. Where political power is not tied to ownership of land, this might not be the case

Such rulers as the seventy elders, chosen from the people to assist Moses, would have had means of livelihood already. One can hardly regard the kings from Saul onward as "chosen from the people," because the office quickly came to be viewed as hereditary, like the priesthood. However, St. Thomas is not considering what actually happened, but what the Old Law directed, and the Old Law did not direct that the office be hereditary.

[4] There was no danger that the kings would have insufficient possessions; the real danger was that the pride of wealth and greed for yet more of it would turn them into oppressors.

[5] Though St. Thomas insists that the reason for law *as such* is to uphold the common good, we must not think he is naïve. As this remark shows, he is quite aware that men generally seek high public office to serve themselves.

[1] *Reply to Objection 5. That right was not given to the king by Divine institution: rather was it foretold that kings would usurp that right, by framing unjust laws, and by degenerating into tyrants who preyed on their subjects.* [2] *This is clear from the context that follows: "And you shall be his slaves [Douay: 'servants']": which is significative of tyranny, since a tyrant rules subjects as though they were his slaves.* [3] *Hence Samuel spoke these words to deter them from asking for a king; since the narrative continues: "But the people would not hear the voice of Samuel."* [4] *It may happen, however, that even a good king, without being a tyrant, may take away the sons, and make them tribunes and centurions; and may take many things from his subjects in order to secure the common weal.*

Reply to Objection 5. This right was not given over to the king by God's enactment. Rather God was warning, through Samuel, that the kings would take to themselves a right that was not theirs, decreeing injustice and plundering their subjects. The concluding words of His announcement make this obvious: "Then you shall be his slaves." This is the characteristic mark of tyranny, for tyrants rule their subjects as slaves. Samuel spoke as he did in an unsuccessful attempt to discourage the people from asking for a king, for the passage goes on, "But the people refused to listen to the voice of Samuel."

Yet we should not misunderstand, for circumstances can arise in which even a good king, without acting tyrannically, takes away the people's sons to make them "captains of thousands and of hundreds." In order to look after the common good, he may take many things from his subjects.

[1] Misreading the passage and forgetting that not everything recorded in Scripture is approved by Scripture, the Objector has mistaken the Divine warning in 1 Samuel 8 as a Divine instruction. The same misinterpretation was famously made later by the early modern political thinker Thomas Hobbes.⁵⁹

[2] Although the Latin word *servi* can mean either "servants" or "slaves," in this passage the meaning "slaves" is intended. Just as the aim of tyranny is the private interest of the ruler, so the mode in which tyranny operates

⁵⁹ "Concerning the right of kings, God Himself, by the mouth of Samuel, saith, "This shall be the right of the king you will have to reign over you This is absolute power, and summed up in the last words, you shall be his servants." (Thomas Hobbes, *Leviathan*, Chapter 20.)

is to treat all the subjects as his tools. St. Thomas explains elsewhere, “a power is called despotic whereby a man rules his slaves, who have not the right to resist in any way the orders of the one that commands them, since they have nothing of their own. But that power is called politic and royal by which a man rules over free subjects, who, though subject to the government of the ruler, have nevertheless something of their own, by reason of which they can resist the orders of him who commands.”⁶⁰

[3] “Would not hear him” means “would not heed him.”

[4] “And make them tribunes and centurions” refers to the warning, “and he will appoint for himself commanders of thousands and commanders of fifties.” St. Thomas reminds us that a tyrant will need commanders in unjust wars, but even a good king will need commanders – and many other things besides – in just wars.

St. Thomas’s Prologue To Question 106:
of the Law of the Gospel, Called the New Law,
Considered in Itself

TEXT:	PARAPHRASE:
[1] <i>In proper sequence we have to consider now the Law of the Gospel which is called the New Law; [2] and in the first place we must consider it in itself [Question 106]; [3] secondly, in comparison with the Old Law [Question 107]; [4] thirdly, we shall treat of those things that are contained in the New Law [Question 108].</i>	Having completed our discussion of the Old Law, we now take up the Law of the Gospel, which is also called the New Law. Three points about the New Law need to be investigated. First we must consider it in itself, and second we must consider its relation with the Old Law which preceded it. We will conclude by looking into the precepts and counsels that it includes.

[1] The law of the Gospel is called the New Law because it is the law of a New Covenant between God and His people, and also because of Christ’s statement to the Disciples, “A new commandment I give to you, that you love one another; even as I have loved you, that you also love one another.”⁶¹

⁶⁰ I, Q. 81, Art. 3, ad 2.
⁶¹ The New Covenant is mentioned in Luke 22:20, 1Corinthians 11:25, 2 Corinthians 3:6, Hebrews 8:8–13 (quoting Jeremiah 31:31–34), 9:15, and 12:24. Christ’s statement about the new commandment is quoted in John 13:34–35. St. John alludes to it in 1 John 2:7–11 and 2 John 1:5–6, where he plays with the idiom of “old” and “new.”

[2] To consider it “in itself” is to consider it in its essence. In itself, the New Law has already been taken up briefly in [Question 91, Article 5](#), but here four full Articles are devoted to it.

[3] Although the selections in this *Companion* do not include Question 107, I do take up the relations between the moral precepts of the Old Law and New Law, not only in the present Article but also in [Question 100, Article 1](#). St. Thomas’s discussion includes separate Articles on whether the Old and New Law are truly distinct, whether the New Law “fulfills” the Old, whether in essence it is “contained” in the Old, and whether its requirements are heavier or lighter than those of the Old. The latter question arises because on the one hand, Christ says that His yoke is easy and His burden is light (Matthew 11:30), but on the other hand, the New Law is much more exacting concerning the spirit of love in which everything is to be done.

[4] This Article takes up why the New Law contains any instruction about external acts at all, whether it says enough about them, whether it says enough about the inward acts or movements of the heart, and whether was fitting that it provided not only “precepts,” which indicate what is required for salvation, but also “counsels” for those who seek spiritual perfection (such as it can be achieved in this life). The distinction between precepts and counsels has historically been disputed by most Protestants, on grounds that if something is good, then it *must* be required, and neglecting it must be a sin. Anticipating this objection, St. Thomas replies that the New Law makes some things a matter of counsel rather than obligation precisely because it is a law of liberty rather than bondage. The precepts concern things without which we cannot achieve eternal beatitude with God at all, while the counsels concern things that help us to reach this end in a better way, unencumbered by the things that weigh us down.

[1] *Under the first head there are four points of inquiry:*

(1) *What kind of law is it? i.e. Is it a written law or is it instilled in the heart?*

[2] (2) *Of its efficacy, i.e. does it justify?*

[3] (3) *Of its beginning: should it have been given at the beginning of the world?*

[4] (4) *Of its end: i.e. whether it will last until the end, or will another law take its place?*

Concerning the New Law in itself, we have four matters to discuss:

The first question concerns its essence.

Is it written, or implanted in the heart?

The second concerns its power. Does observing it make men just?

The third concerns its origin. Was it fitting that it was given at the beginning of the world?

(4) Concerning the fulfillment of its purpose. Will it endure until the end of the world, or will God promulgate yet another law?

[1] The Latin word *indita* means “put into,” which may be rendered by a variety of words. The English translators prefer the term “instilled,” which in English suggests the introduction of something into us drop by drop. I have used the term “implanted,” which in English suggests rooting something deeply in our soil.

[2] A pivotal issue in the New Testament is how we can be “justified” – literally, how we can be made *truly and inwardly just* and acceptable to God. In some places the New Testament uses the term “justification” for the beginning of this process, in other places for its continuation, in still other places for its fulfillment. The God of Truth not only *declares* His followers just, but also *makes* them just, through the perfect integrity of Christ, with whom He joins them. St. Thomas responds to various objections to the New Testament view that the Law of the Gospel carries in it the Divine grace that makes this possible.

Although historically, most Protestants have rejected St. Thomas’s Catholic view of justification – treating God’s declaration that His followers are just as a sort of legal fiction at variance with their actual condition, and reserving the word “sanctification” for their being made actually just – during the last generation this objection has begun to fade as a result of renewed investigation by Protestant exegetes into the New Testament texts.

[3] If the New Law is so good, the question naturally arises why God did not give it from the beginning. Why did He first prepare a single nation through the old covenant, before inviting all nations into the new covenant?

[4] The New Law is not completely novel, unrelated to the Old Law; it is the very fulfillment of the Old Law. For this reason there is no need for another Divine law still. However, just as sometimes ancient Israel kept the Old Law well but at other times ignored it, so the condition in which Christians stand with respect to the New Law may change according to place, time, and person, “according as the grace of the Holy Ghost dwells in man more or less perfectly.”

Question 106, Article 1:
Whether The New Law is A Written law?

TEXT	PARAPHRASE
<i>Whether the New Law is a written law?</i>	Is the new law a written law, or is it implanted in us?

The *ultrum* or “whether” is usually posed in such a way that the traditional answer is “Yes.” It seems at first that this is one of the few cases in which St. Thomas departs from that procedure, because the query is phrased *Utrum lex nova sit lex scripta?* (“Whether the New Law is a written law?”) But in the Prologue to Question 106 it was phrased a bit differently, *Utrum scilicet scripta vel indita?* (“Whether the New Law is a written law, or is introduced inwardly?”). Latin has three words for “or.” *Vel*, the one used here, is the inclusive “or,” allowing the possibility that both of the alternatives are correct. This turns out to be just what St. Thomas thinks, for he argues that in one sense the New Law is a written law, but in another sense it is not, and he explains which sense is primary.

Objection 1. *It would seem that the New Law is a written law. For the New Law is just the same as the Gospel. But the Gospel is set forth in writing, according to John 20:31: “But these are written that you may believe.” Therefore the New Law is a written law.*

Objection 1. Apparently, the New Law is written, because the New Law is the Gospel itself, and the Gospel is written. For John 20 describes the Gospel by saying that “These things are *written* that you may believe.” We conclude that the New Law is a written law.

Near the conclusion of St. John’s Gospel, the author remarks, “Now Jesus did many other signs in the presence of the disciples, which are not written in this book; but these are written that you may believe that Jesus is the Christ, the Son of God, and that believing you may have life in his name.”⁶² To “do a sign” was to perform a miraculous deed that signified and confirmed His identity as the promised Messiah.

[1] **Objection 2.** *Further, the law that is instilled in the heart is the natural law, according to Romans 2:14–15: “(The Gentiles) do by nature those things that are of the law ... who have [Vulgate: ‘show’] the work of the law written in their hearts.” [2] If therefore the law of the Gospel were instilled in our hearts, it would not be distinct from the law of nature.*

Objection 2. Moreover, the implanted law is the natural law. We draw this inference from St. Paul’s remark that the gentiles “do by nature what the law requires” and “show that what the law requires is written on their hearts.”⁶³ It follows that if the law of the Gospel really were an implanted law, it would be no different than natural law; [yet it is.]

[1] St. Thomas certainly thinks Scripture attests to the reality of natural law, although as I have suggested earlier, the Objections tend to show

⁶² John 20:30–31 (RSV-CE).

⁶³ Romans 2:14–15 (RSV-CE).

a greater fondness for this particular proof text than St. Thomas does himself.⁶⁴

[2] The Objector and St. Thomas agree that in some sense the natural law is put into our hearts. But in this case, the Objector protests, the New Law could not be put into our hearts, because that would make the New Law and the natural law the same thing, and we know that they aren't.

[1] *Objection 3. Further, the law of the Gospel is proper to those who are in the state of the New Testament. But the law that is instilled in the heart is common to those who are in the New Testament and to those who are in the Old Testament: [2] for it is written (Wisdom 7:27) that Divine Wisdom "through nations conveyeth herself into holy souls, she maketh the friends of God and prophets." Therefore the New Law is not instilled in our hearts.*

Objection 3. Still further, the law of the Gospel, strictly speaking, is the law of those who are under the New Testament, not of those who are under the Old Testament. But the law implanted in those who are under these two Testaments is exactly the same. For as the book of Wisdom teaches, "in every generation [Divine Wisdom] passes into holy souls and makes them friends of God, and prophets."⁶⁵ It follows that the New Law is not this inward law that "passes into" us, but something else.

[1] The terms "Old Testament" and "New Testament" are used here not for the two parts of the Christian Bible, but for the two covenantal relationships or "testaments" between God and His people which they describe: The first covenant between God and a single nation, the Jews, and the second covenant between God and all who put their trust in the Messiah, who was promised through the Jews. To be "in" the New Testament, then, is to have been drawn into the new covenantal relationship.

The Objector points out that God speaks of putting his law into the hearts of the people not only in the context of the Old Testament, but also in the context of the New. If a law is implanted into us under *both* covenantal relationships, then how could it be the Law of the *new* covenantal relationship?

[2] The force of this quotation is that although it is found in the scriptures of the old covenant, it does not make explicit reference to either of the covenants; therefore it seems to apply to both of them.

⁶⁴ See esp. the Commentary Q. 91, Art. 2, *sed contra*.

⁶⁵ Wisdom 7:27 (RSV-CE).

[1] *On the contrary, The New Law is the law of the New Testament. [2] But the law of the New Testament is instilled in our hearts. For the Apostle, quoting the authority of Jeremiah 31:31-33: "Behold the days shall come, saith the Lord; and I will perfect unto the house of Israel, and unto the house of Judah, a new testament," says, explaining what this statement is (Hebrews 8:8-10): "For this is the testament which I will make to the house of Israel ... by giving [Vulgate: 'I will give'] My laws into their mind, and in their heart will I write them." Therefore the New Law is instilled in our hearts.*

On the other hand, the New Law is the law of the New Testament, and the law of the New Testament is implanted in the heart. We see this from Hebrews 8, where the Apostle, quoting the authority of Jeremiah 31, writes "The days will come, says the Lord, when I will establish a new covenant with the house of Israel and with the house of Judah." He explains this new covenant by continuing the quotation, for God says that He will bring about the new covenant by putting His laws into the people's minds and writing them in their hearts. It follows that the New Law and this implanted law are the very same thing.

[1] Protestant readers may find it strange to call the Gospel a new *law*, because they view the Gospel as a matter of grace, which they contrast with law. As we will see, however, St. Thomas does not deny that Gospel is grace; he merely denies that law and grace are utterly antithetical. Unlike the Old Law, the New Law not only commands the deeds of love, but also makes us able to do them. This is a gift of God's grace.

[2] The anonymous author of the Letter to the Hebrews,⁶⁶ which belongs to the New Testament, is quoting the book of the prophet Jeremiah, which belongs to the Old Testament. Quoted more fully, the Jeremiah passage reads:

Behold, the days are coming, says the Lord, when I will make a new covenant with the house of Israel and the house of Judah, not like the covenant which I made with their fathers when I took them by the hand to bring them out of the land of Egypt, my covenant which they broke, though I was their husband, says the Lord. But this is the covenant which I will make with the house of Israel after those days, says the Lord: I will put my law within them, and I will write it upon their hearts; and I will be their God, and they shall be my people.⁶⁷

What exactly is the author of the Letter to the Hebrews trying to show by quoting this passage? According to the Jeremiah, God *will* put his law into the hearts of His people, but He has not yet done so; this prophecy,

⁶⁶ The fact that the *sed contra* calls the author "the Apostle" suggests that St. Thomas thinks he is St. Paul.

⁶⁷ Jeremiah 31:31-33 (RSV-CE).

made under the old covenant, will be fulfilled only under the new. But according to the author of the Letter to the Hebrews,

Jeremiah's prophecy has finally come to pass; the old covenant has been fulfilled by the new. So God does place His law into the hearts of His people – and the law that He implants there is the same as the New Law, the law of the Gospel.

[1] *I answer that, "Each thing appears to be that which preponderates in it," as the Philosopher states (Ethic. ix, 8). [2] Now that which is preponderant in the law of the New Testament, and whereon all its efficacy is based, is the grace of the Holy Ghost, which is given through faith in Christ. Consequently the New Law is chiefly the grace itself of the Holy Ghost, which is given to those who believe in Christ. [3] This is manifestly stated by the Apostle who says (Romans 3:27): "Where is ... thy boasting? It is excluded. By what law? Of works? No, but by the law of faith": for he calls the grace itself of faith "a law." [4] And still more clearly it is written (Romans 8:2): "The law of the spirit of life, in Christ Jesus, hath delivered me from the law of sin and of death." [5] Hence Augustine says (De Spir. et Lit. xxiv) that "as the law of deeds was written on tables of stone, so is the law of faith inscribed on the hearts of the faithful": [6] and elsewhere, in the same book (xxi): "What else are the Divine laws written by God Himself on our hearts, but the very presence of His Holy Spirit?"*

Here is my response. As Aristotle writes in the *Nicomachean Ethics*, each thing is most truly identified with the element that is most eminent in it. Now the element which is most eminent in the law of the New Testament – the very thing in which all its power and excellence consists – is the grace of the Holy Spirit, bestowed on us by faith in Christ. In the first place, then, the New Law is the grace of the Holy Spirit itself, bestowed upon the Christian faithful.

This fact is clear shown in St. Paul's remark in Romans 3, "What becomes of your glorious boasting? It is shut out. By what law? Your own "works" or accomplishments? No, by the law of faith." For notice that he calls the grace of faith itself a "law." His meaning is elaborated in Romans 8, where he says "the law of the Spirit of life in Christ Jesus has set me free from the law of sin and death."

In the same vein, St. Augustine writes in *The Spirit and the Letter* that just as the law of "works" was written on tablets of stone, so the law of faith is written in the hearts of the faithful. He asks elsewhere in the book, "What are God's laws, written in hearts by God Himself, but the very presence of the Holy Spirit?"

[1] The term "preponderates" (*potissimum*) should be taken here in the sense of the highest or most eminent, not in the sense of the biggest or most conspicuous, for St. Thomas is quoting Aristotle to make the point that everything should be understood in terms of the most authoritative

element in its nature. Aristotle himself develops the point in the context of a discussion of which persons are most accurately called “lovers of self.” Although most people apply the term to those who seek to grab as much wealth, honor, and bodily pleasure as they can, Aristotle thinks it ought to be applied to those who seek to act virtuously, because only they obey the noblest and most authoritative element that their nature contains. He concludes, “Just as a city or any other systematic whole is most properly identified with the most authoritative element in it, so is a man; and therefore the man who loves this and gratifies it is most of all a lover of self.” Elaborating on the passage in his *Commentary on Aristotle’s Ethics*, St. Thomas writes “In the state it is the most authoritative part that especially seems to be the state,” so that “what the rulers of a state do is said to be done by the whole state.” In the same way, “in man it is his reason or intellect, his principal element, that especially seems to be man.”⁶⁸

[2] We have just seen that each thing is most truly identified with its most eminent element. Applying this principle, St. Thomas says that since the highest element in the New Law is the grace of the Holy Spirit, in the most important sense the New Law *is* the grace of the Holy Spirit. This equation of the New Law with grace may disconcert those who view law and grace as opposites.

The word translated “efficacy” is *virtus*, from which we derive “virtue.” Both the Latin and the English word have two meanings: power and excellence. The Dominican Fathers translation, “efficacy,” chooses the former meaning; my paraphrase, “power and excellence,” seeks to preserve both meanings.

[3] St. Paul is arguing that it would be ridiculous for the faithful to take pride in their salvation, as though they had won a high score in performing the deeds required by the Old Law. On the contrary, salvation is a gift of grace, made possible through trust in the Redeemer, Jesus Christ. Paradoxically, this does not make deeds unimportant, for the very life of faith is to follow the law of love. The difference is that now one is empowered to do so by the inward renewal that grace brings about.

⁶⁸ Aristotle, *Nicomachean Ethics*, trans. W.D. Ross, Book 9, Chapter 8 (public domain); Thomas Aquinas, *Commentary on Aristotle’s Nicomachean Ethics*, Book 9, Lecture 9, trans. C.J. Litzinger, O.P., rev. ed. (Notre Dame, Indiana: Dumb Ox Books, 1993), p. 567.

[4] According to St. Paul, the Old Law was good, but it did not have the power to liberate us from the power of sin. It indicated what should be done, but did not make it possible to do it. This should not be misunderstood; certainly moral discipline makes a difference. Yet even the most virtuous and godly persons find, when they examine themselves honestly, that their motives are mixed, their virtues are full of holes, and their hearts are divided against themselves. The deeper the Old Law's instruction, the clearer this fact became, for as Jeremiah wrote, "The heart is deceitful above all things, and desperately corrupt; who can understand it?"⁶⁹ St. Augustine reflected long afterward, in his commentary on St. Paul's letter to the Galatians, that God "had given a just law to unjust men to reveal their sin, not remove it."⁷⁰

St. Thomas has discussed the terrible and continuing tendency to do wrong even despite knowing what is right in several places, especially [Question 91, Article 6](#). Here, his point is that there is a solution: The New Law of grace. To be sure, inward renewal is not often completed in this life. But now it can begin.

[5] St. Thomas is paraphrasing a longer statement, in which St. Augustine writes, "As then the law of works, which was written on the tables of stone, and its reward, the land of promise, which the house of the carnal Israel after their liberation from Egypt received, belonged to the Old Testament; so the law of faith, written on the heart, and its reward, the beatific vision which the house of the spiritual Israel, when delivered from the present world, shall perceive, belong to the New Testament."⁷¹

[6] Another partial quotation. St. Augustine writes, "What then is God's law written by God Himself in the hearts of men, but the very presence of the Holy Spirit, who is 'the finger of God,' and by whose presence is shed abroad in our hearts the love which is the fulfilling of the law, and the end of the commandment?"⁷²

⁶⁹ Jeremiah 17:9 (RSV-CE).

⁷⁰ *Iustam scilicet legem iniustis hominibus dando ad demonstranda peccata eorum non auferenda*. Augustine of Hippo, *Commentary on the Letter to the Galatians*, Preface, 2.

⁷¹ Augustine of Hippo, *On the Spirit and the Letter*, trans. Peter Holmes and Robert Ernest Wallis, rev. Benjamin B. Warfield, Chapter 41 (public domain). Because of the length of this sentence, I have changed a comma to a semicolon to distinguish the two main clauses more clearly.

⁷² *Ibid.*, Chapter 36 (41).

[1] *Nevertheless the New Law contains certain things that dispose us to receive the grace of the Holy Ghost, and pertaining to the use of that grace: such things are of secondary importance, so to speak, in the New Law; [2] and the faithful need to be instructed concerning them, both by word and writing, both as to what they should believe and as to what they should do. [3] Consequently we must say that the New Law is in the first place a law that is inscribed on our hearts, but that secondarily it is a written law.*

Even so, the New Law includes things that prepare us to receive the grace of the Holy Spirit and show us how to enjoy its benefits. These things are in a way secondary to the New Law, but believers need to be taught about them, both by spoken and written word, concerning both what is to be believed, and what is to be done. For this reason, we conclude that the New Law is first and foremost an implanted law, but in a secondary sense a written law.

[1] This does not mean that without grace, one can prepare oneself to receive grace; the ability to prepare for further grace is itself a gift of grace, one which, in this case, is helped along by explicit Divine instruction.

[2] “By word”: That is, by spoken word.

“By writing”: That is, by written word.

“As to what they should believe”: Today it is fashionable to consider it more humble and holy *not* to believe; “Who are we,” we ask, “to know what is true?” St. Thomas considers it more humble and holy *to believe*: Who are we to reject what God offers to teach us? Another fashionable view has it that truth is found in relationships, not propositions. St. Thomas agrees that we must be in right relationship with God, who is Himself the living Truth. But unless we know certain things about who He is, how can we be?

“As to ... what they should do”: We cannot receive the grace of the God, whose very Being is love, unless we are willing to conform ourselves to that love, both inwardly and in our deeds.

[3] In its root the law of the Gospel is something implanted in our hearts by grace, but indispensable instructions about receiving and using this grace have been set down in the Gospel writings.

[1] *Reply to Objection 1. The Gospel writings contain only such things as pertain to the grace of the Holy Ghost, either by disposing us thereto, or by directing us to the use thereof.*

Reply to Objection 1. The Gospel *books* do not contain the Gospel *itself*, the grace of the Holy Spirit. Rather they contain instructions concerning this grace. Some of these instructions help make us ready to receive it, others direct us in its employment.

[2] *Thus with regard to the intellect, the Gospel contains certain matters pertaining to the manifestation of Christ's Godhead or humanity, which dispose us by means of faith through which we receive the grace of the Holy Ghost: [3] and with regard to the affections, [4] it contains matters touching the contempt of the world, whereby man is rendered fit to receive the grace of the Holy Ghost: [5] for "the world," i.e. worldly men, "cannot receive" the Holy Ghost (John 14:17). [6] As to the use of spiritual grace, this consists in works of virtue to which the writings of the New Testament exhort men in divers ways.*

As to how the grace of the Holy Spirit is received, the things contained in the Gospel affect us in two ways, one concerning the intellect, the other the feelings. Concerning the intellect, the Gospel contains teachings about the manifestation of the divinity and humanity of Christ. These teachings dispose the mind to receive the grace of the Holy Spirit, which is given to us through faith. Concerning the feelings, it contains teachings which influence us to hold worldly things in contempt. This contempt in turn makes man fit to receive the Holy Spirit's grace. The latter point is explained by Christ in John 14, where He says that "the world" – meaning those who love the world – "cannot receive" the Holy Spirit. As to the employment of spiritual grace, this lies in virtuous deeds, to which men are urged by a multitude of New Testament scriptures.

[1] As the Objector insists, the Gospel certainly sets things in writing, so in a secondary sense, yes, the New Law is a written law. However, all of these written things pertain to the grace of the Holy Spirit, implanted in our hearts, and that is the primary sense in which the expression "New Law" is to be taken.

My paraphrase of this Reply is much freer than usual, because the Latin phrasing is so different from how such thoughts are most naturally expressed in English.

[2] In English, the "or" in the statement "the Gospel contains certain matters pertaining to the manifestation of Christ's divinity or humanity" seems a little strange. St. Thomas is using the inclusive "or," *vel*. His meaning is simply that some passages testify to Christ's divinity, others to His humanity, and others, perhaps, to both at once. But the Gospel instructs us in many matters. Why then does St. Thomas single out this one? Probably because unless we grasp the unity of Christ's Divine and human natures, we will find it difficult or impossible to see how He can be our mediator and advocate, how He heal our age-old breach with God.

[3] The Latin word translated “affections” is *affectum*, meaning feelings or emotional dispositions.

[4] The expression “the world” does not refer to creation as such, but to creation in alienation from its Creator; after all, God Himself called His what He had made “very good.”⁷³ But one must resolutely bear in mind that the visible beauties of this life are valuable to us only insofar as we see in them the reflection of the invisible glory of the God who made them. To have contempt for “the world,” then, is not to hate or reject creation, which would be a heresy, but to hate and reject the wrong attitude to creation, which glorifies it in place of the Creator. One who has contempt for the world regards it not as worthless per se, but as worthless in comparison with Him. The expression is hyperbolic.

The rhetorical device of hyperbole would have been very familiar to St. Thomas, not least from his study of the New Testament. For example, when Christ says “If any one comes to me and does not hate his own father and mother and wife and children and brothers and sisters, yes, and even his own life, he cannot be my disciple,” He is not urging literal hatred, but dramatizing a difference in degree of love. Likewise, when St. Paul writes that for the sake of Christ he has suffered the loss of all things and counts them as *skubala* – garbage or excrement, in the Latin translation *stercora* or dung – he does not literally mean that such things as love for his friends are no better than what is thrown to the dogs, but that all else is worth losing for Christ.⁷⁴

[5] St. Thomas does not say precisely “worldly men,” but “those who love the world.” To love the world is to have an undue attachment to it, to place one’s ultimate trust in it, to seek in it that fulfillment that is to be found only in God Himself. In the passage from which St. Thomas is alluding, Christ says to His disciples, “If you love me, you will keep my commandments. And I will pray the Father, and he will give you another Counselor, to be with you for ever, even the Spirit of truth, whom the world cannot receive, because it neither sees him nor knows him; you know him, for he dwells with you, and will be in you.”⁷⁵

[6] Grace is not given to us pointlessly, but for a reason: To make us imitators of Christ. To suppose that we could be conformed to the God of love without actually practicing love would be absurd.

⁷³ Genesis 1:31.

⁷⁴ Luke 14:26 (RSV-CE); Philippians 3:8.

⁷⁵ John 14:15–17 (RSV-CE).

[1] *Reply to Objection 2.* There are two ways in which a thing may be instilled into man. First, through being part of his nature, and thus the natural law is instilled into man. Secondly, a thing is instilled into man by being, as it were, added on to his nature by a gift of grace. [2] *In this way the New Law is instilled into man, not only by indicating to him what he should do, but also by helping him to accomplish it.*

Reply to Objection 2. There are two ways in which something may be implanted in man. One way is to put it into his very nature: That is how natural law is implanted in us. The other way is to graft it onto his nature as something extra, a gift of grace: And that is how the New Law is implanted into us. Rather than merely showing which deeds must be done, it also helps us to fulfill them.

[1] Objector 2 had argued “If therefore the law of the Gospel were instilled in our hearts, it would not be distinct from the law of nature,” which is also instilled in our hearts. The tacit premise, which St. Thomas here refutes, is that if both are instilled in our hearts, they must be instilled in the same way. Actually they are *not* instilled in the same way, so there is no reason whatsoever to think that they are the same thing. One is instilled in us through the nature that God gave us; the other is instilled in us through how God crowns that nature with superadded grace.

[2] Just because grace is added to our nature, it heals our nature, lifts our nature above itself, and enables us to do what we cannot do by our natural powers alone. This is the sense in which the New Law is an implanted law.

[1] *Reply to Objection 3.* No man ever had the grace of the Holy Ghost except through faith in Christ either explicit or implicit: [2] *and by faith in Christ man belongs to the New Testament.* [3] *Consequently whoever had the law of grace instilled into them belonged to the New Testament.*

Reply to Objection 3. No one at any time has had the grace of the Holy Spirit, except through explicit or implicit faith in Christ. Faith in Christ, in turn, is how man comes under the New Testament. Therefore, anyone has had this law of grace implanted in him has by this very fact come under the New Testament.

[1] The Old Testament saints had *implicit* faith in Christ: They looked forward to the promised coming of the Messiah, putting their trust in the one who was to come. The New Testament saints have *explicit* faith in Christ: They look back upon the fulfillment of the promise, putting their trust in the one who has now come. So both the faithful before Christ and the faithful after Christ are saved through Christ.

[2] Although the holy Jews of old lived during the time of the old covenant, by anticipating the new covenant they were already under it essentially.

[3] From what was said previously, it follows that the law implanted in the hearts of the Old Testament saints, through anticipation of the new covenant, *was* the law of the new covenant. So the Objector is mistaken in thinking that the New Law is something different than the law that was implanted in their hearts.

The upshot of the Article, and the closing theme of the *Treatise on Law*, is that grace does not destroy nature, but heals and uplifts it. Readers interested in how a Thomist might view the implications of the relations among sin, grace, natural law, and the New Law for public life may pursue them in the additional topics for discussion, found later in this *Companion*.

St. Thomas's Prologue to Questions 90–92: Of the Essence of Law Discussion

The Architecture of Law

The kinds of true law and so-called law that St. Thomas identifies in Q. 91, and to which he returns in great detail in Q. 93–108, are *eternal*, *natural*, *human*, and *Divine*, as well as something he labels the *law of sin*. He makes yet finer distinctions as he proceeds.

It is hard not to be distressed by how badly the differences and relations among these kinds of law are usually understood. Often, even articles about St. Thomas in standard reference works commit such egregious errors as blurring eternal law with Divine law, treating things that are merely analogous to law as true law, and assuming that the various senses in which certain kinds of law are derived from others are all one thing. Perhaps we should not be so shocked, because these matters are difficult, and scholars were confused about them in St. Thomas's time too. What ought to amaze us is how well he drains the morass.

Let us resist the temptation to try to disentangle every confusion right away. That must come later, but for now we content ourselves with a picture: a geographical survey of the kingdom of law, an overview of the realm and of the roads that run through it. With map in hand, we will find it easier to stay on the path and keep from getting lost as we travel.

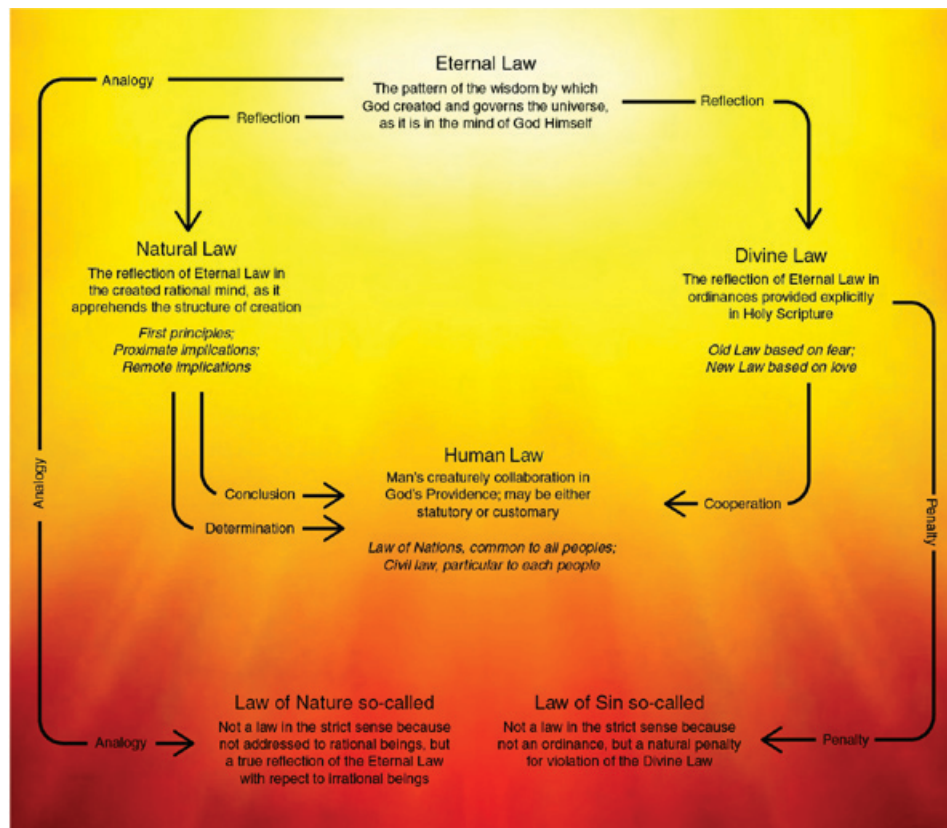


DIAGRAM OF THE ARCHITECTURE OF LAW

Question 90, Article 1:
Whether Law Is Something Pertaining to Reason?
Discussion

The “Dialectical” Movement of Question 90

Because of the disputational form – objections, *sed contra*, *respondeo*, replies to the objections – first-time readers may get the impression that St. Thomas thinks we begin the inquiry without knowing anything and have to be taught everything. Nothing could be further from the truth. In St. Thomas’s view, we have to know something, or we are not ready to begin inquiry; if we don’t know something already, then we would have neither a starting point nor a way of getting on. Who is it that knows this “something”? All of us; there are some things that everyone really knows, and these supply the starting points for thought. On this view, the task of the philosopher is not to push common opinion aside, as modern thinkers do, but to stand upon it to reach higher. Not everything in common opinion is true, but there is always some grain of truth in it, or it could never seem plausible in the first place. The philosopher’s task is to separate that grain from the chaff – to sift, purify, rectify, elevate, and ennoble it.

This movement of thought is properly called dialectic, although the meaning of the term has been distorted by Marxists, Hegelians, and so-called dialectical theologians. It is the method that the classical thinkers use when they are doing philosophy. The literary genre most suited to dialectic is the dialogue, whether formal, like the dialogues of Plato, in which one character speaks and another responds, or virtual, like some of the treatises of Aristotle, in which various abstract views take the stage in succession and “converse” back and forth as characters would. For this reason, it may also be called “dialogical.”

The literary genre perhaps *least* suited to dialectic, or dialogue, is the one that St. Thomas has chosen, the disputation. Yet a surprise awaits us, for the way that he uses the disputational form is essentially dialogical. A great example of how he uses it meets us here at the beginning of the *Treatise on Law*, in [Question 90, Article 1](#).¹ When he says, “Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting,” he is presenting a sort of broad and general definition, a

¹ Yves R. Simon has called attention to the dialectical movement of Q. 90 in *The Tradition of Natural Law: A Philosopher’s Reflections* (New York: Fordham University Press, 1965, 1992), trans. Vukan Kuic, pp. 71–82. I am suggesting that such movement is characteristic of his thought more generally.

starting point for better definition, yet he offers it without argument. Why? Because no argument is needed; he isn't trying to convince us of something we might not know, but putting into words what everyone already means by law without thinking about it. The questions that he goes on to ask in the next four articles are real ones, not just occasions for him to opine. Their purpose is to unpack and clarify this everyday idea, as though we were having a conversation with St. Thomas and he asked, "Now if you agree that this is true, then wouldn't you also say so-and-so?" We answer, "Why, yes," and so the conversation builds to its conclusion, laying assent to assent as a builder lays brick to brick. By the end of Article 4, the unpacking and clarifying is finished, and in place of the rough notion with which we began, we have a much more precise definition that is ready to do some work.

We must not assume that St. Thomas proceeds dialogically only when he is doing philosophy. He proceeds dialogically when he is doing theology too. One might expect that he wouldn't, for dialogue begins with what we already know, but theology is about revelation, which discloses things that we *don't* already know; Revelation declares "Thus says the Lord" in a way that unaided reason cannot. Yet even here, dialogue does not just drop out. Why not?

The first reason is that Revelation is not composed *only* of things that we don't already know – far from it. When God declares, as a prologue to the Ten Commandments, "I am the Lord thy God, who brought thee out of the land of Egypt, out of the house of bondage,"² He is reminding the Israelites of His mercy and arousing their sense of indebtedness. They know He is merciful, and they know they are indebted; they just need to be reminded. When He asks the Israelites what other nation is so great as to have laws like the ones He is giving them,³ the question presupposes that they are able to make the comparison. And so they are.

The second reason is that even when Revelation does disclose things we don't already know, it often builds on what we do already know, on premonitions and starting points that are present within us. The traditional way to put this is to say that nature is a preparation for grace. St. Paul, for example, builds on the natural experiences of conscience and godward longing, among others. Writing to the Christians of Rome, he says that when gentiles who do not have the law of Moses do what it requires, they show that the work of the law is "written on their hearts,

² Exodus 20:2.

³ Deuteronomy 4:8.

while their conscience also bears witness and their conflicting thoughts accuse or perhaps excuse them.” Speaking to pagans in the Areopagus of Athens, he comments on their altar to “an Unknown God” and continues, “What therefore you worship as unknown, this I proclaim to you.”⁴ The movement in these discourses is certainly dialogical, albeit in a modified sense. Even though it seeks assent to something not yet known – something that will turn the world inside out and provide the believer with a new identity in which he no longer lives, but Christ lives in him⁵ – the starting point of the process of being turned inside-out is recognition of something quite well known already.

**Question 90, Article 2:
Whether the Law Is Always Something Directed
to the Common Good?
Discussion**

What Is the Common Good, Anyway?

The idea of the common good is dimmer today than in the time of St. Thomas, and we are the poorer for it. I have met students of law and government who have never heard the expression “common good.” One told me that every one of her previous professors had taught her that law and politics are nothing but the expression of private interests. My use of the phrase “common good” during lecture had baffled her.

A charitable interpretation is that the young woman’s professors were trying to make James Madison’s point, the Constitutional framer who famously wrote that “the regulation of ... various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.” He added, “It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm,”⁶ and he called for “a policy of supplying, by opposite and rival interests, the defect of better motives,” saying that “ambition must be made to counteract ambition.”⁷ But on closer examination, not even Madison believed in universal selfishness as the basis of law. In his view,

⁴ Romans 2:15 (see 2:14–16); Acts 17:23 (see 17:16–34).

⁵ Galatians 2:20.

⁶ James Madison, *The Federalist*, No. 10.

⁷ James Madison, *The Federalist*, No. 51.

pitting ambition against ambition was only a backstop, a way to make what little virtue there is more effective. As he declared, “the aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust.”⁸

Among the chief enemies of devotion to the common good are envy and selfishness. Some would add pride; perhaps it would be more accurate to say that both envy and selfishness are rooted in pride. Let us first consider envy, defined by John of Damascus as “sorrow for another’s good.”⁹ Strictly speaking, where what I have called “strongly” common goods are concerned, the members of the community cannot really be in competition. Yet there is a paradox, for they may feel as though they are – and feel envy – even if they aren’t. Suppose I envy you for being wiser than I am. This is irrational, because the greatness of your wisdom doesn’t leave less wisdom for me; I might even gain wisdom from your teaching and example. But the envious man is thinking relatively, not absolutely. Even though the greatness of your wisdom does not diminish the absolute amount of my wisdom, it does diminish the relative amount of my wisdom, for the wiser you are, the lower I rank in comparison, especially in the eyes of others. I may therefore sorrow that we cannot trade places; I might wish that you were less wise, and I were more. Although we cannot really be in competition for wisdom, we can certainly be in competition for rank, and so, unexpectedly, something that has no room for rivalry in one sense becomes a motive for rivalry in another sense. We may call this fact the Paradox of Envy.

The Paradox of Envy has political applications too. To see this, consider another strongly common good, national security. As we saw in the Commentary on [Question 90, Article 2](#), if the country is invaded for anyone, then it is invaded for everyone, so there is no possibility of competition. Yet even though citizens cannot be unequally protected from invasion per se, they may be unequally protected from the burdens that result from invasion – they may be unequally likely to be drafted into the army, unequally taxed to pay for it, or dwell unequally close to the places where fighting is likely to occur. They may well compete about

⁸ James Madison, *The Federalist*, No. 57.

⁹ John of Damascus, *Exposition of the Orthodox Faith*, Book 2, Chapter 14. St. Thomas quotes this definition in II-II, Q. 36, Art. 1, *sed contra*.

these things, fighting to shift the burdens of conscription, taxation, or dangerous locale onto others. As St. Thomas remarks in II-II, Question 36, Article 1, “Nothing hinders what is good for one from being reckoned as evil for another.”

Although the classical moral teachers recognized that private goods have a place in human life, they urged us to put common goods first. Dante makes one of the characters in his *Purgatorio* cry out, “O human race, why do you set your heart on things you are prohibited to share?”¹⁰ The lesson seems to be that I should seek wisdom per se, but not comparative wisdom; I should aspire to be as courageous as I can be, but not worry about which of us is more courageous. If your merit has won you greater honor than mine, I should try to emulate your merit, but not steal your reputation.

So much for envy; what of selfishness? I don’t have to be envious to be selfish; even if I am not sorrowful for your good, I may be indifferent to it. Why should I care about your well-being at all? Why shouldn’t I “look out for Number One”? This view is sometimes called rational egoism, though St. Thomas would consider it irrational. If I am a rational egoist, then I may well be willing to do you good, but only if I receive good from you in return; I don’t care *for your own sake* whether you are doing well. Consequently, it would never enter my mind to sacrifice for you. For example, I may be perfectly willing to agree that the love between mother and child is a good they both share, but if I am a rational egoist, then I still won’t see why a mother should dash in front of a speeding truck to push her child to safety. We may reply to the rational egoist, “But if the child is crushed to death, won’t she be unhappy?” He replies, “She can always have another child, and be happy again. But if she herself is crushed to death, then the option is closed.”¹¹

People who say such things have never loved. What would a mother say if you told her that in the long run it doesn’t matter whether her child lives or dies, because she can always have another? The very suggestion is an insult; it implies that she does not really love. If she condescended to answer at all, she would say that another child is not *this* child. Loving someone is not like owning a television set, a mere source of pleasurable

¹⁰ Dante Alighieri, *Purgatorio*, Canto 14, lines 86–87. In the translation of Anthony Esolen (New York: Modern Library, 2003), these lines appear on p. 155.

¹¹ Of course St. Thomas denies that all possibilities of happiness and unhappiness end when a person dies, because he believes in an afterlife. The question, however, is not about whether there is an afterlife (which so-called rational egoists deny), but about the meaning of love and the nature of happiness.

experiences that can be replaced with another. Nor is it like having a favorite chair to which I am sentimentally attached. St. Thomas remarks, “since he who loves another looks upon his friend as *another self*, he counts his friend’s hurt as his own, so that he grieves for his friend’s hurt as though he were hurt himself.”¹² We may call this the Paradox of Another Self.

This paradox is exceptionally delicate. To speak of “another” self is in some sense to make a distinction. Yet to speak of another *self* is in some sense to deny the distinction. Because of love, the very identity of the one who loves is shaken; the relationship between the happiness of the lover and the happiness of the beloved is blurred. “Looking out for Number One” simply makes no sense, because the lover no longer experiences himself or herself as Number One. To say that we are social beings is in part to say that human experience is open to love and requires it for fulfillment; the good life is only good when we enjoy it in common with others; when we throw in our lot with theirs; and when, by doing so, we expose ourselves to the possibility of sacrifice and loss. Openness to love is the only complete solution to the supposed conflict between private happiness and the common good. This solution just is obviously more effective in personal friendship than in civic friendship, which is less intense and more watery. Yet insofar as civic friendship is a compound of many personal friendships, even in that case the solution is more effective than one might think. Even a soldier who has doubts about the Roman maxim “It is sweet and fitting to die for one’s country”¹³ may not hesitate to throw himself on a grenade to save his buddies.

The concept of the common good is very old, having been discussed by such thinkers as Aristotle, Cicero, and St. Augustine. With an air of rediscovering the wheel, some contemporary thinkers have returned to the idea. In particular, economists have made much of the property that is central to what I have called strongly common goods, a property they call “non-rivalry,” as well as to another property, “non-excludability.” A good thing is non-excludable if no one can be prevented from using it (provided, of course, that some of it exists in the first place). Not all strongly common goods are non-excludable. For example, literacy possesses the

¹² II-II, Q. 30, Art. 2, emphasis added; compare I-II, Q. 77, Art. 4, ad 4. St. Thomas cites Aristotle, *Nicomachean Ethics*, Book 10, for philosophical authority, and St. Paul, Romans 12:15, for theological authority.

¹³ Horace, *Odes*, 3.2.13.

property of non-rivalry, but *not* the property of non-excludability – my becoming more literate doesn't make you less, but on the other hand I can use force to prevent you from learning to read. By contrast, national defense possesses *both* non-rivalry and non-excludability – whatever affects the risk of invasion for either of us affects it in the same way for all, and protection against invasion cannot be provided for anyone without providing it for everyone else too.

Economists call strongly common goods that do not possess non-excludability “club goods,” and strongly common goods that do possess non-excludability “public goods.” Public goods present a particular problem for economists, because the motive of self-interest, on which markets rely, cannot produce public goods in what are called “optimal” amounts, optimal in the sense that we have exhausted the possibilities of making anyone better off without making anyone worse off. Up to a point, mutual and voluntary exchange tends toward optimality, just because nobody will agree to an exchange that makes him worse off. Eventually, though, the markets clear – that is, the opportunities for such exchanges are used up – because the only remaining way to make anyone better off is to pull down someone else against his will.

Presumably, St. Thomas and the economists would agree that when spontaneous exchange fails to reach optimality, the common good is impaired, and we have a good case for regulation – that is to say, for law. In several other respects, their perspectives are significantly different.

One difference in perspective is that although, in principle, economists concede the reality of all sorts of public goods, in practice they tend to overlook the virtues, the goods of character. This is a grave shortcoming, for goods of character are the most important of all public goods. Not even the market, which is commonly supposed to be driven by self-interest alone, can work properly if competitors lack qualities like honesty. It is a staggering understatement to say that the market produces the virtues in suboptimal quantities, for it does not produce them at all. In fact, to the extent that it rewards self-interest without either uplifting its vision or moderating its choice of means, it discourages the virtues. For example, markets do not punish fraud as such; they only punish the clumsy sort of fraud that tends to be discovered. The crafty sort of fraud may be quite remunerative.

For this reason, to the two paradoxes already mentioned, we must add yet another, which we may call the Paradox of Markets: Although markets work best in a virtuous society, they tend to erode its foundations. This is why the Thomistic view of the purposes of law differs from the

contemporary economic view. To be sure, St. Thomas is very far from being a socialist, and understands the surprising fact that the institution of private property is necessary for the common good. Even so, in the Thomistic view of things, it is not enough for the law to steer markets toward optimality. Law must encourage men to be *good* – something that is all the harder, because although law is expressed in commands, goodness as such cannot be commanded. He returns to this large problem later on in the *Treatise*.

Another difference in perspective between St. Thomas and the economists arises from the fact that there are two ways to be at odds. One way is sheer conflict, when we seek incompatible goals; I want the stream to flow through my land, but you want it to flow through yours. The other is lack of coordination, when we seek the same goals in incompatible ways; if we follow my plan to provide water to the city, then we cannot follow yours. Most thinkers today view law as a response to sheer conflict. Though St. Thomas is keenly aware of this problem, he views law primarily as a response to the lack of coordination. The latter problem is more fundamental, because it would exist even if conflict were unknown. Human activities often interfere with each other, even when they are all directed toward good ends – in fact even when they are all directed to the *same* good ends. For this reason, law is not solely a consequence of sin. Its yoke – lighter than the yoke we experience – would have been needed even in an unfallen world.

Question 90, Article 3:
Whether the Reason of Any Man Is Competent
to Make Laws?
Discussion

Do-It-Yourself Lawmaking

The respondeo in this article takes up a mere sixty Latin words, making it one of the shortest. To some it may still seem too long. Isn't St. Thomas making a mountain from a molehill? Of course law requires public authority, but who could think otherwise? Who would imagine that as a private person, he could set speed limits on the public highways, or inflict penalties on people who act in a way that displeases him? Perhaps people were prey to such delusions in a feudal era, when the authority of the government was dispersed, disseminated, and divided among a swarm of barons, baronets, knights, and other quasi-private personages. But surely no one would reason so today.

Or would they? Many do. The times are well supplied with people who imagine that simply as private persons they can make unchallengeable rules, adjudicating the cases that fall under these rules with no possibility of appeal from their judgments. The way in which such rules are made today is to assert novel kinds of rights.

The abortion right is an excellent example. One might object that the assertion of an abortion right is no more an attempt to make law than the assertion of a right to chew gum. No one is commanded or coerced; no one is punished or penalized; it is merely a liberty to do something. On closer examination the analogy between procuring an abortion and chewing a wad of gum falls to pieces. The so-called abortion right is a private power to use lethal violence against an innocent and unprotected person, for reasons the State is not allowed to second-guess. We do not concede such vast prerogatives even to governments; an abortion is a very different thing than capital punishment or just war, because the child is innocent. It seems, then, that St. Thomas's question about who may do what the government does when it makes true law is more timely than at first it appears.

What if social order were so rudimentary, or so broken down by disaster, that the commonwealth did not exist, and families were all there were? Couldn't a family or its head *then* make true laws for it, even without public authority? That is not the right way to frame the question. It is true that if the commonwealth did not exist a family could make true laws for itself, but not even then could it so without public authority, for in that case public authority would devolve upon the family itself. Of course the family or family head would not have an arbitrary and unlimited authority of life and death, like the supposed authority of the early Roman *paterfamilias*, because the making of laws and the infliction of penalties would have to be ordered by justice. But his authority would be the authority of law. One might object that the family or household could not make laws even in that case, because it is not a "perfect" or complete community. True, it is incomplete. But St. Thomas does not say that only a complete community can make true laws; what he says is that *if there is* a complete community, then the responsibility for making laws resides in it. The reason is that not until we reach that level are all the prerequisites for the *full* care of the common good fulfilled. If a complete community has not yet developed, or if it has disintegrated, then public authority devolves on incomplete communities. Of course, for the sake of the common good, they should attempt to establish a commonwealth as soon as possible.

Question 90, Article 4:
Whether Promulgation Is Essential to a Law?
Discussion

Secret Laws, Vague Laws, and Other Failures of Promulgation

I paraphrased the principle that law must be promulgated to be true law by saying that there is no such thing as a secret law. However, there are many ways in which an enactment may fall short of being authentically promulgated because of secrecy. The most obvious way is that the enactment is *literally* secret. Public authorities may refuse to divulge to the people the rules and regulations by which the people will be judged.

Consider the ordinances against revealing state secrets in the People's Republic of China. Astonishingly, many of the rules and regulations about state secrets are themselves secret, so there is no way for a person to know whether or not he is in violation. Trials held under the law are also held in secret. Among those punished have been Shi Tao, a newspaper reporter, sentenced in 2005 to ten years in prison for "illegally supplying state secrets abroad"; Tohti Tunyaz, a University of Tokyo doctoral student studying Chinese ethnic minority policy, sentenced in 1998 to eleven years in prison for "illegally procuring state secrets"; and Rebiya Kadeer, an advocate for the Muslim Uighur minority, sentenced in 1999 to eight years for "illegally providing state secrets overseas." What were their crimes? Tao had posted online a summary of official restrictions on Chinese press coverage of events related to the fifteenth anniversary of the Tiananmen Square massacre. Tunyaz had retrieved fifty-year-old records from a library. Kadeer had mailed Chinese newspaper clippings to her husband in the United States.¹⁴

But the expression "secret law" should also be extended to laws that are secret in effect even though not secret literally. Consider ex post facto enactments, rules that are retroactively applied to acts that were not forbidden at the time they were committed. Or consider vague enactments, rules cast in language so elastic that no one is sure of their meaning. To promulgate is to make known, but no one can be said to "know" a law that has not yet been enacted, nor can anyone be said to "know" a law the meaning of which is unclear. The Chinese state secrets ordinances

¹⁴ See Mark Magnier, "Chinese Secrecy Laws Often Snare the Unsuspecting," *Los Angeles Times* (June 12, 2007), online at <http://articles.latimes.com/2007/jun/12/world/fg-secrets12>, and Phelim Kine, "Beijing's Peculiar Definition of State Secrets," *Financial Times* (July 23, 2009), online at <http://www.ft.com/cms/s/0/b3358162-77bd-11de-9713-00144feabdco.html#axzz1Xrotl8EE>.

fail in these ways too,¹⁵ but the most thoroughly studied and systematic instance of these two kinds of promulgation failure was probably the Nazi regime. As Ingo Müller has written,

National Socialist polemics were directed not only against every effort to make the criminal code more humane, but also and equally against its constitutional foundations, particularly the principle *nulla poena sine lex* (“no penalty without law”). This fundamental principle sums up several limitations of the state’s power to impose punishments: nothing may be prohibited retroactively (only an act which was punishable at the time it was committed may be punished); nothing may be prohibited by analogy (only what the wording of the law specifically declares to be punishable is punishable); nothing may be left unclear (the statute must be worded precisely and must make it possible to recognize what is a punishable offense and what is not); and finally the right to impose punishments must be granted exclusively to an independent judiciary, since any system of justice can be undermined if sanctions are permitted to exist outside it. Every single component of this fundamental legal principle was quickly abolished during the Third Reich. Retroactive punishment became possible with passage of the Law on the Imposition and Implementation of the Death Penalty, the so-called Van der Lubbe Law, and more than twenty other statutes and ordinances of the Nazi era also contained provisions for retroactive penalties. A possibility for sanctions outside the criminal courts was created by the institution of “preventive detention,” over which the police had sole control. And finally the prohibition against declaring an act criminal by analogy was eliminated in June 1935 by the rewording of paragraph 2 of the Criminal Code: “That person will be punished who commits an act which the law declares to be punishable or which deserves punishment according to the fundamental principle of a criminal statute or healthy popular opinion.”¹⁶

Yet another way in which a so-called law may fail to be authentically promulgated is that even though the words of the regulation may not seem

¹⁵ In response to international pressure to reduce the vagueness of the state secrets ordinance and promote transparency, the People’s Republic of China adopted a new state secrets rule in April, 2010. The new rule defines secrets as “Information concerning state security and interests [which], if leaked, would damage state security and interests in the areas of politics, economy and national defense, among others” (Li Huizi and Cheng Zhuo, “China Narrows Definition of ‘State Secrets’ to Boost Gov’t Transparency, Xinhua News Agency [April 29, 2010], online at http://news.xinhuanet.com/english2010/china/2010-04/29/c_13272939.htm). This definition is so vague that it seems more an endorsement than a reform of the status quo; the effect of concluding the definition with the phrase “among others” is to say, “state secrets are whatever we say that you have revealed when we arrest you.” Tao, Tunyaz, and Kadeer could have been imprisoned under the new ordinance just as easily as under the old one.

¹⁶ Ingo Müller, *Hitler’s Justice: The Courts of the Third Reich*, trans. Deborah Lucas Schneider (Cambridge, MA: Harvard University Press, 1991). I am quoting from Chapter 5, “Nazi Jurisprudence,” pp. 43–74.

particularly vague in themselves, their reach is unpredictably extended through excessively supple rules of interpretation. Vagueness of language and elasticity of interpretation have much the same effect, because in both cases it is impossible to tell what the rule will be taken to mean and how it will be applied. Words have been promulgated, but law has not. Thanks to the documentary labors of Aleksandr Solzhenitsyn, perhaps the most well-known case of this sort of thing is the infamous Article 58 of the old Soviet criminal code, which was interpreted in such an elastic way as to justify the punishment of anything whatsoever that the rulers wished to punish.

Paradoxically enough, every act of the all-penetrating, eternally wakeful *Organs* [of State Security], over a span of many years, was based solely on *one* article of the 140 articles of the nongeneral division of the Criminal Code of 1926. One can find more epithets in praise of this article than Turgenev once assembled to praise the Russian language, or Nekrasov to praise Mother Russia: Great, powerful, abundant, highly ramified, multiform, wide-sweeping [Article] 58, which summed up the world not so much through the exact terms of its sections as in their extended dialectical interpretation.

Who among us has not experienced its all-encompassing embrace? In all truth, there is no step, thought, action, or lack of action under the heavens which could not be punished by the heavy hand of Article 58.

The article itself could not be worded in such broad terms, but it proved possible to interpret it this broadly....

Wherever the law is, crime can be found.¹⁷

The glories of elasticity are often trumpeted even in liberal democracies that fancy themselves avatars of rule of law. In the United States, they are sung in paeans to the so-called living constitution, and in the abominable theory that “law is whatever judges say it is.” But liberal democracies have invented a new failure of promulgation, a novel kind of “secret law” for which credit is theirs alone. For promulgation can fail; the rules can be unknown – not only when they are literally secret, retroactively applied, excessively vague, or arbitrarily interpreted, but even when they are simply too complex. To put it another way, the very impulse to turn everything into law can be prejudicial to law, for then the rules become so vast, multiform, and changeable that no one can learn them, much less grasp what they mean.

¹⁷ Aleksandr Solzhenitsyn, *The Gulag Archipelago* (New York: Harper & Row, 1973), pp. 60, 67.

In 2010, investigators for the U.S. Treasury Department, pretending to be taxpayers, found that employees at Internal Revenue Service Centers set up for taxpayer assistance gave either no answers, incomplete answers, or (apparently) incorrect answers to their questions 43 percent of the time.¹⁸ The root of the problem is not simply that taxpayer assistance workers are insufficiently trained, but that the tax code has become too complex for anyone to learn as a whole.

The community has entrusted the power of making laws to Congress, but Congress long ago gave up the principle *delegata potestas non potest delegari*, “the one to whom a power is delegated may not delegate it to another.” Congressional enactments alone run to three or four thousand pages, but if we add in the regulations drawn up by the administrative agencies, the tax code comes to twenty volumes. Bear in mind that taxation is only one of the fifty subject headings in the Code of Federal Regulations, which is now tens of thousands of pages in length. And that does not even count the decisions reached in administrative courts.

As early as 1788, James Madison had foreseen such a possibility. Mutability of the laws is “calamitous,” he warned. “It poisons the blessing of liberty itself,” for

It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?¹⁹

Worse yet, the copiousness of the laws undermines the common good because only narrow segments of the community have the time to monitor them, or the wealth to hire people to do so on their behalf:

Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and unformed mass of the people. Every new regulation concerning commerce or revenue, or in any way affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens. This is a state of things in which it may be said with some truth that laws are made for the *few*, not for the *many*.²⁰

¹⁸ Mary Dalrymple, “IRS Can’t Do the Math,” www.cbs.news, May 15, 2010, copyright 2010 by Associated Press.

¹⁹ James Madison, *The Federalist*, No. 62.

²⁰ *Ibid.*

The rule of law, it seems, is not the same as the rule of a multitude of regulations, and there is a difference between publishing the rules and promulgating them. If the law is so copious and profuse that the people cannot take it in, so intricate and involved that they cannot understand it, or so mutable and mercurial that they cannot keep track of it, then it has not been truly promulgated; and so it is not truly law. What does this fact suggest about the legitimacy of the modern administrative state?

St. Thomas's Prologue to Question 91: Of the Various Kinds of Law Discussion

Are These the Only Kinds of Law There Are?

Although we have considered St. Thomas's reasons for asking just these six questions, he could have expanded his list with no violence to his view of the relationships among the various kinds of law. Already he supplements the question about whether there is a Divine law by asking whether there is one or more than one kind of it. Had he wished, he could have supplemented his questions about other kinds of law in the same way.

For instance, couldn't St. Thomas have asked whether there is one or more than one kind of *natural* law? Although he never poses that question, later on he does ask whether natural law contains one or more than one *precept*, concluding that it includes a variety of precepts, which can be classified and ranked according to the natural inclinations on which they are based. Some direct the inclination to preserve ourselves, which we share with plants and animals; some direct the inclination to such things as procreation, which we share with animals; and some direct the inclination to seek the truth and to associate in a manner that is meaningfully shaped by it, which is a privilege of rationality.

And couldn't St. Thomas have asked whether there is one or more than one kind of *human* law? In fact, later on he does pose that question, for in [Question 95, Article 4](#), he considers whether Isidore was right to distinguish civil law and law of nations as kinds of human law. We might view him as returning to the question of how many kinds of human law there are when he asks still later, in [Question 97, Article 3](#), whether custom has force of law. For if it does, then we must distinguish between declaratory law, enacted in words, and customary law, enacted in habits.

There is no particular reason why St. Thomas could not have posed these questions here. But suppose he *had* asked them here. What conclusions would he have reached?

For several reasons, it would *not* be accurate to view St. Thomas's three categories of natural law precepts as three different kinds of natural law. This will be fully explained in the commentary on [Question 94](#), after everything necessary to the explanation has been set into place.

On the other hand, he concludes that Isidore was right to distinguish between civil law and law of nations, and to the question whether custom has the force of law, he answers, "Yes." Taken together, these answers give us two cross-cutting distinctions among human laws, and thus four sub-species of human law: Declaratory civil law, customary civil law, declaratory law of nations, and customary law of nations.

**Question 91, Article 1:
Whether There Is an Eternal Law?
Discussion**

Does the Eternal Lawmaker Really Exist?

St. Thomas's exploration of eternal law takes for granted that God is real, that He is the Creator, and that He exercises providence, governing the things He has created according to the Divine Reason. But why should we believe any of this? He has discussed the reasons for believing it much earlier.

In I.2.1, St. Thomas argues that "to know that God exists in a general and confused way is implanted in us by nature." What he means is that we naturally desire our complete and perfect happiness; that anything we naturally desire must be possible, because otherwise we could not have a natural desire for it; but we do not arrive at complete and perfect happiness through anything in the created world. Therefore, the source of complete and perfect happiness must be beyond the created world, and we call this source God. When St. Thomas calls this knowledge "general and confused," he does not mean that it isn't real knowledge, but that it falls short of what a philosopher means by "self-evidence," for our minds do not *directly* perceive God. We may put it like this: We are not able to perceive *what* God is in His very essence. The grace required for this beatific vision awaits the redeemed in heaven. Nevertheless, God has equipped our finite minds to reason out *that* He is. Indeed we are able to reason out not only that He exists, but also that He is perfect, that He is

good, that He is the Creator, and many other things, which St. Thomas demonstrates about Him in the First Part of the *Summa*.

We cannot discuss all of those demonstrations here, but we would be remiss not to consider St. Thomas's demonstrations that God exists. These are found in the First Part, Question 2, Article 3. He offers five. These are not the only ways to show that God exists, but they are good examples. Each is a bit like the argument from the desire for happiness discussed earlier, because although they show us that the being we call God is real, they aren't like seeing God as He is in Himself. If we say "That is good, but I want more – I want to see God face to face!," St. Thomas tells us, in effect, "So do I! The redeemed will see Him face to face in heaven. In the meantime He has given us minds to reason with, and for those things we need to know but cannot determine by reason alone, He has also given us Revelation."

Each of the arguments begins with a very simple, common-sense idea, but works it out with extreme care. These arguments have occupied the greatest minds for centuries, and will continue to do so; skeptics will generate new objections, and theists will generate new responses. That is what always happens when the stakes are high. Needless to say, it does not get us off the hook of deciding, in the end, "Do I believe this to be true?"

We may paraphrase the first arguments as follows.

1. *The Argument from Motion*. Many things in the universe change. St. Thomas calls change "motion," but he is speaking of change in various kinds of qualities, not just change in physical location. Since anything that changes has to be changed by something else, we might think of a chain of changers: A is changed by B, B is changed by C, and so forth. But no such chain could be infinite – there would have to be some first unchanged changer, because otherwise, change could never get started. This first unchanged changer is what we call God.
2. *The Argument from Causation*. This proof is much like the Argument from Motion. Instead of a chain of changers or "movers," however, we are asked to consider a chain of causes: A is caused by B, B is caused by C, and so forth. Again, the chain could not be infinite. To propose an infinite regress of prior causes amounts to saying that ultimately, things have no cause, which is absurd.
3. *The Argument from Possibility and Necessity*. The universe contains many things that don't have to exist – the sun, for example, or

for that matter each of us human beings. If something doesn't have to exist, then there could have been a time when it didn't exist. Is it possible that *everything* is like that? No, because if *none* of the things in the universe have to exist, then there could have been a time when none of them did exist – and in that case, nothing could have ever come to be, because there would have been nothing to make it come to be. So, there must be at least one thing that does have to exist – one thing that exists “necessarily.” Now if something that does have to exist is made that way by something else, we have another chain, like the ones in the previous two proofs – A has to exist because of B, which has to exist because of C, and so forth. But this chain must come to an end in something that makes other things have to exist, something that does not owe its necessity to any other being. This something is what we call God.

4. *The Argument from Gradation.* When we say that a thing has more of some quality than another thing does, what we are really saying is that it more fully resembles and shares in the maximum or uttermost or best of that quality than the other thing does. For example, when we admiringly say “Dusty is a better horse than Loco,” we are presupposing that Dusty shares more fully in Uttermost Horsiness than Loco does. If there were no such thing as uttermost horsiness, then it would make no sense to say Dusty is a better horse than Loco; since it does make sense to say so, there is such a thing as uttermost horsiness. Now if a thing does derive its degree of a quality from sharing in the maximum of that quality, then the maximum is the *cause or source* of that quality in it. Uttermost horsiness is in this sense the *cause or source* of Dusty's and Loco's degrees of horsiness. Our previous example concerned only one genus, horse; one quality, horsiness; and one maximum, uttermost horsiness. But the general proposition we have stated applies to all genera. Among other things, it applies to the universal genus, beings; to the universal quality, Being; and to the maximum of that quality, Uttermost Being. Uttermost Being is then the *cause or source* of whatever degree of being any being has. Furthermore, to have a degree of being is equivalent to having a degree of good and to having a degree of truth. Therefore this Uttermost Being is also the Uttermost Good and the Uttermost Truth. This Uttermost Being, Good, and Truth is what we call God. Since it would be absurd for that which has Being to the greatest degree *not to be*, it exists, and does so necessarily.

Each of the preceding four arguments for the reality of God is important. For purposes of exploring eternal law, however, the most pertinent is the fifth:

5. *The Argument from the Governance of the World.* St. Thomas reasons that the universe is not a hectic, buzzing confusion in which nothing makes sense and nothing hangs together. On the contrary, we see that things have purposes, and they nearly always act in such a way as to bring those purposes about. For example, hearts exist for the purpose of pumping blood, and they nearly always do pump it. But such things as hearts cannot direct *themselves* according to their purposes, because they have no intelligence. Therefore, however long it may have taken to do so, some being with intelligence must have arranged the purposeful order that we see in nature, and we call this being God.

For two main reasons, many people of our own day reject the Argument from the Governance of the World out of hand. One reason is that there is evil in the world. Surely, they say, if it were really true that a good God governed the world, then evil could not exist, yet it does. St. Thomas anticipates and replies to this objection in the First Part of the *Summa*, where he points out that although someone who has care of one thing tries to make that thing perfect, someone who has care of everything may permit certain defects to remain in particular things for the sake of the good of the whole:

[F]or if all evil were prevented, much good would be absent from the universe. A lion would cease to live, if there were no slaying of animals; and there would be no patience of martyrs if there were no tyrannical persecution. Thus Augustine says (*Enchiridion* 2): "Almighty God would in no wise permit evil to exist in His works, unless He were so almighty and so good as to produce good even from evil."¹

¹ I, Question 22, Article 2, ad 2. Recent discoveries in biology have made an extension of this argument plausible, for at least some natural evil appears to have resulted from genetic change. For example, some bacteria that were not originally virulent may have become virulent, either by the loss of some genetic information, or by the incorporation of mobile genetic elements, such as plasmids, bacteriophages, and transposons, from other organisms in which these elements performed different functions. Suppose, just for purposes of discussion, that all virulence came about in this way. This possibility would change the form of the question: Instead of asking "Why would God create virulent organisms?" we would have to ask "Why would God create a universe in which originally nonvirulent organisms could become virulent?" But if all changes in genome were

From this point of view, God's goodness does not require that He eliminate every evil; it requires that evil not have the last word. From any evil He permits, He must bring forth some great good – and He does. The persecution of the martyrs is a dreadful thing to consider, yet they welcomed it; a world without any occasion for the heroic exercise of virtue would be poorer, not better, than the one we are in.

The other great reason proposed for rejecting the Argument from the Governance of the World is the supposed discovery that purposeful order can arise spontaneously, without any need for directive intelligence. In each field of study, this claim takes a different form. One mechanism of spontaneous order is proposed for markets, another for the origin of biological processes, yet another for the crystallization of molecules. But a distinction is needed. If the hypothesis of spontaneous order means that contingent forms of order – forms of order that might not have been – can come to pass without continuous, interfering micromanagement, it is certainly true. But if it means that such order can come to pass without *prior* order, that it can be *altogether* spontaneous, then it is certainly false.

To see this, consider what happens if I toss nine three-inch-square blocks into a nine-inch-square box, then jostle the box. The blocks will spontaneously arrange themselves into a symmetrical three-by-three block grid. But they will do so only because they are just the right number, shape, and size to fit, a set of features unlikely to arise by chance. In general, the more elaborate the spontaneous order, the more prior contrivance is necessarily to make it come to pass “on its own.” Evidently the maxim that you can't get something from nothing applies not only to the matter and energy embodied in an arrangement, but to the order embodied in it too.

Now if each instance of contingent order does require prior order, then we must ask whether the prior order is also contingent. If it is, then we must ask whether *its* prior order is also contingent. To avoid an infinite regression of forms of order, we must assume a First Principle of Order, the existence of which is *not* contingent. So it is that St. Thomas speaks of the *ratio*, the reason or wisdom, of the governance of things in the intellect of a being that exists necessarily, the being we call God.

impossible, then much good would be absent from the universe, for organisms would have far less ability to adapt to environmental changes. I wish to express my appreciation for the patience of Professor Scott Minnich, a microbiologist at the University of Idaho, in answering my questions about his research on plague bacteria; any error is mine.

Let us consider the matter from another perspective. The Argument from the Governance of the World *begins* with the recognition of purposeful order and worked up to the conclusion that God must be real. However, we can also argue in the other direction. Suppose that, from other considerations, we have already reached certain conclusions – that God exists, that He created the world, and that He is the source of all the good that created things possess (all of which is demonstrated in the First Part of the *Summa*). From these premises, we can *work up* to the conclusion that God must govern the world. The former argument moves from the recognition of providence to the recognition of God; this one, however, presented by St. Thomas in I, Question 22, Article 1, moves from the recognition of God to the recognition of His providence. Here is the critical passage:

It is necessary to attribute providence to God. For all the good that is in created things has been created by God, as was shown above. In created things good is found not only as regards their substance, but also as regards their order towards an end and especially their last end, which, as was said above, is the divine goodness. This good of order existing in things created, is itself created by God. Since, however, God is the cause of things by His intellect, and thus it behooves that the type of every effect should pre-exist in Him, as is clear from what has gone before, it is necessary that the type (*ratio*) of the order of things towards their end should pre-exist in the divine mind: and the type of things ordered towards an end is, properly speaking, providence.

It would be hard to miss the resemblance of the statement just above,

... it is necessary that the type [*ratio*] of the order of things towards their end should pre-exist in the divine mind: and the type of things ordered towards an end is, properly speaking, providence.

to the statement we discussed earlier in the commentary on the present Article,

... the very Idea [*ratio*] of the government of things in God the Ruler of the universe [so that they are ordered to their end], has the nature of a law.

What St. Thomas suggests by this resemblance is that divine providence and eternal law are *the same thing*, viewed from two different perspectives. Viewed as God's foreknowing care for created things, this one thing is called divine providence. Viewed as a rule and measure for human acts, it is called eternal law.

But the fact that it is a rule and measure for *human* acts tells us that human providence is meant to *mirror* God's providence. The rule and

measure of human acts is not imposed harshly, from the outside, as though God were to say, “Do as I say and shut up about it.” Rather God allows man to participate in His own providence, draws him up into His own governance of things, and says to us, “Do as I do. See, I have made it easy; I have implanted my way in your nature.” With this, we turn from the eternal to the natural law.

**Question 91, Article 2:
Whether There Is in Us a Natural Law?
Discussion**

If the Natural Law Is Really Natural, Why Bring God into It?

The central claim of the classical natural law tradition can be expressed in just a few sentences. Law may be defined as an ordinance of reason, for the common good, made by legitimate public authority, and promulgated. Nature may be conceived as an ensemble of things with particular natures, and a thing’s nature may be thought of as the design imparted to it by the Creator – as a purpose impressed upon it by the divine art, so that it is directed to a determinate end.² The claim of the tradition is that in exactly these senses, natural law is both (1) true law and (2) truly expressive of nature.

Natural law is *law* because it has all that all true law has. It is not an arbitrary whim, but something reasonable; it serves not some special interest, but the universal good; its author has care of the universe, for He created and governs it; and it is not a secret rule, for He has so arranged this Creation that the basics of right and wrong are known to every human being.

Natural law is *natural* because it is built into our deep structure, into the constitution of the human person. In the first place, it is built into the inclinations of the moral intellect. We spontaneously recognize such

² St. Thomas adds, “It is as if the shipbuilder were able to give to timbers that by which they would move themselves to take the form of a ship.” Thomas Aquinas, *Commentary on Aristotle’s Physics*, Book 2, Lecture 14, trans. Richard J. Blackwell, Richard J. Spath, and W. Edmund Thirlkel, rev. ed. (Notre Dame, IN: Dumb Ox Books, 1999), p. 134. One must be careful in quoting from St. Thomas’s commentaries, because it is not always clear when he is merely reporting the author’s view and when he is agreeing with it. In this case, St. Thomas is certainly agreeing. The point about the divine art is his own, and he introduces his remark not with “He says” but with “Hence, it is clear that.”

things as the right of being grateful for good done to us, the wrong of deliberately taking innocent human life, and the good of knowing the truth. In the second place, it is built into the rest of our inclinations. Consider how each sex completes and balances the other, how they are partners in turning the wheel of the generations, so they are drawn to each other. In the third place, it is sewn into the fabric of experience. Lives that go with the grain of the created universe tend to prosper; lives that go against it suffer loss, usually even by their own reckoning of “loss.” Those who betray their friends are betrayed by them. Those who abandon their children have no one to comfort them when they are old. Those who suppress their moral knowledge become even stupider than they had intended.

Obedience to natural law is a condition of authentic freedom, for to disobey the law of our nature is to be untrue to our very selves – and what kind of freedom could that be?

But this opens a larger question. Why not just say “Follow the natural law because it is naturally good for you,” and leave it at that? Why bring God into the picture? One answer is that we don’t *bring* God into the picture; He is in it already. There wouldn’t be a nature without God; there wouldn’t be natural goods without God; there wouldn’t be anything without God. The natural law depends on God in the same way that everything depends on God.

This answer is good so far as it goes, but it is incomplete. It shows how natural law depends *ontologically* upon God, but it doesn’t show how it depends *practically* upon God. Someone might suggest that for practical purposes, God can be ignored. Even conceding that He made our nature, still, now that we have been made, we should seek what is naturally good for us, just because it is naturally good. Yes, He commands it, the Objector says, but that is not the *reason* we obey.

Yet this suggestion too is incomplete. It supposes that God is one thing, and good another. What if God *is* our good? What if, in some sense, friendship with Him is our *greatest* good? That is exactly what St. Thomas proposes. But in that case, even if we do pursue the good “because it is good,” it isn’t redundant that He commands it. Now friendship with God might mean either natural friendship with God, which lies in the concordance of wills, or supernatural friendship with God, which lies in union. St. Thomas puts off the latter until Article 4, because it transcends the capacities of our nature. Here we are considering the former.

But even natural friendship with God would be a colossal good, if only it could be achieved.³

Consider just the good and beauty of mortal friendship. We enjoy it, yes. But we also appreciate it, and this fact itself is a good; it reflects and thereby doubles the original enjoyment. Did I say doubles? Say rather triples, quadruples, quintuples, as the enjoyment of friendship reverberates in the strings of memory, gratitude, and delight. If we never remember of our friends, have no gratitude for them, and are never moved to joy just because they *are*, we can scarcely be said to have experienced friendship at all. We are diminished, impoverished, mutilated; something is wrong with us. But if all that is true even in the case of goods like mortal friendship, then isn't it still more true in the case of friendship with God? If we cannot take joy in remembering Him, being grateful to Him, and delighting in the thought of Him, aren't we missing the very note on which the chord of good is built?

We are, and this fact alters and deepens the motive for obeying the natural law. True, the natural law directs us to nothing but our good. The Objector responds, "Then we should have done it anyway, even apart from God's command." But is it possible that *part* of what makes it good for us lies in doing it just because He commands it?

What lover has not known the delight of doing something, just because the beloved asked? What child has not begged Daddy to give him a job to do, just so he could do it for Daddy? What trusted vassal did not plead of a truly noble lord, "Command me!" just in order to prove himself in loyal valor? If in such ways, even the commands of mere men can be gifts and boons, then why not still more the commands of God?

Question 91, Article 3: Whether There Is a Human Law? Discussion

Why Not Base Human Law on a Social Contract?

Just how St. Thomas views human law and government is difficult for many modern readers to understand, because something strange happened in the early modern era. Although the new "social contract"

³ I am setting aside the obstacles brought about by the Fall, to which we return in Article 6.

thinkers, like Thomas Hobbes and John Locke, continued to use the expression “natural law,” they meant by it something quite different than St. Thomas did. Moreover, they were such skillful propagandists that even to this day, few educated people are aware that there was ever another view of natural law. When I mention natural law to undergraduates, they say, “You mean like in Hobbes and Locke?” When I lecture about it in law schools, the faculty say “Don’t be silly. Nobody believes in the state of nature and the social contract anymore.” Compounding the problem is that although today scarcely any political philosophers still believe in social contract theory, the myth of a social contract lives on in the political culture. Considering that it once ignited revolutions, this is hardly surprising. Even today, the myth is so much a part of the air we breathe that every important piece of legislation is hailed as “a new social contract.” All this makes it difficult for many people *not* to think in contractarian terms – and this difficulty makes it all the more important to make the effort.

According to the theory of social contract, government and authority and laws are all things that human beings invented. Our natural condition, called our “state of nature,” was anarchic. There was no government, and in some versions of the theory there were not even any social relations. Just because no one is the natural superior of anyone else, as queens are natural superiors of the other bees in their hives, men were both free and equal. But this was an unhappy freedom and equality, because without human authority to enforce reasonable standards, life was precarious, chaotic, and unjust. Men agreed to submit to political authority just to escape this condition, and social contract thinkers viewed everything about authority through the lens of this supposed agreement.

According to the Hobbesian theory, for example, life in our original condition was “solitary, poor, nasty, brutish, and short,” because, driven by fear, glory, and competition, everyone was at war with everyone else. Men could reason out “theorems of prudence” that would allow everyone to keep from being murdered if only everyone else followed them too, but nobody did follow them, just because there was no one to compel them to do so. Even though these theorems of prudence were conclusions of natural reason, they were not natural *laws* because law is the command of the sovereign, and because, though in the long run God is sovereign, for everyday purposes there is no sovereign. Hobbes thinks the solution to this dreadful problem was to conjure up a sovereign. Practical speaking, this meant that in exchange for security, everyone gave up his

natural liberty – meaning his unrestricted ability to do whatever in his solitary judgment seemed good – and submitted to some overweening power. Once this surrender and submission took place, for the first time the theorems of prudence could be enforced, so for the first time they counted as true laws. How did people know that they would be enforced? Because enforcement was in the sovereign's interests too: If the sovereign *failed* to enforce them, then sovereignty itself would disintegrate, because the state of war would return.

To see why St. Thomas would reject such theories, let us see how he would challenge the Hobbesian answers to four different questions.

Is anarchy really our natural condition? The state of affairs *natural* for human beings is the one they require to live well, the one in which their natural potentialities can be fulfilled. But without a shared concern for the common good under the authority of law, a good life is impossible, so our natural condition is not anarchy, but political society. Even Hobbes admits that people who live in anarchy are desperate to get out of it; but if anarchy were our natural condition, then wouldn't they want to stay in it?

St. Thomas himself does not use the phrase "state of nature." Though he uses the expression "state of the *law* of nature," *statu legis naturae*, he uses it for the age of the Patriarchs. The distinction between the state of the law of nature and subsequent ages is not that there were no institutions of human authority, but that God had not yet promulgated the Divine law.⁴

What is the purpose of the political community? Aristotle had written – and St. Thomas agrees – that although the commonwealth may have *come into existence* for the sake of mere life, it *exists* for living well. Hobbes fails to make the distinction, thinking that if it came into existence for the sake of mere life, then it exists for mere life too – which simply does not follow. Not all social contract thinkers agree with Hobbes about *what* one thing the commonwealth is for; Locke, for instance, thinks the one thing it is for is not mere life, but the protection of rights against aggression. But they all think the commonwealth is for *some* one thing, rather than regarding it, like St. Thomas, as a multifaceted partnership in living well.

Is it possible to suspend judgment about goods and evils? I have described Hobbes as holding that the common good is nothing more

⁴ I-II, Question 102, Art 3, ad 12, and III, Question 60, Article 5, ad 3.

than staying alive, but actually he reluctant to admit even that. What he actually says is that there is no point talking about the greatest good, because people disagree about it; all they really agree about is the greatest evil, death. There are two problems with this view. First, the fact that people disagree about goods does not imply that we must suspend judgment about them. People may disagree about whether it is safe to drive sixty miles per hour in a school zone – but it isn't. Second, it is impossible to suspend judgment about goods anyway. Hobbes thinks he is suspending judgment about the greatest good, but by asserting that death is the greatest evil, he is merely implying that the greatest good is staying alive. Notice, by the way, that calling death the *greatest* evil goes far beyond merely calling it evil. Very few people have difficulty thinking of things worse than death. Most even agree about *which* things are worse than death; for example, most would die willingly if the alternative were watching their families die. Since we cannot avoid judgments about goods – since even the pretense of suspending judgment commits us to judgments – we may as well give up the pretense.

Is consent really the basis for political authority? St. Thomas deeply appreciates the importance of consent. Human beings are most fittingly ruled not as slaves, but as free men; man is endowed with free will precisely so that he can direct himself to what is good by deliberative reason. In the form of government that St. Thomas considers ideal, “the rulers can be chosen from the people, and the people have the right to choose their rulers.”⁵ Yet St. Thomas also has a common-sense understanding of the limits of consent. He agrees with St. Augustine that if the people become so corrupt that they despise the common good, sell their votes, and entrust the government to scoundrels and criminals, “then the right of appointing their public officials is rightly forfeit to such a people, and the choice devolves to a few good men.”⁶ Where possible, rule with consent is far better than rule without consent – but even so, the basis for authority is not simply consent, but the common good. Social contract thinkers reject these common-sense limits on consent; according to them, if there is no consent, then there is no authority either. Paradoxically, this attempt to make consent more important than it is ends up by making it appear that there is consent when there isn't. Hobbes, for instance, is

⁵ I-II, Question 105, Article 1.

⁶ I-II, Question 97, Article 1, quoting St. Augustine, *On Freedom of the Will*, Book 1, Chapter 6; see not only the *Commentary* on this passage, but also the discussion of it in this *Companion to the Commentary*.

driven to say that consent yielded at the point of a sword is still consent, and Locke is forced to invent at least five kinds of tacit or implied consent to patch over the cases in which people have not given explicit consent. By explicitly consenting to live in political society, he thinks people tacitly consent to whatever is necessary to make it possible, such as majority rule. By not refusing a benefit, such as protection of the laws, he thinks people tacitly consent to its provision. By consenting to the provision of this benefit, he thinks people tacitly consent to whatever makes its provision possible, such as enforcement. By following a social convention, such as the use of money, he thinks people tacitly consent to its use. And by consenting to its use, he thinks people tacitly consent the foreseeable consequences of its use, such as great inequalities in wealth. Each of these kinds of tacit consent can be generalized.

The contrasting Thomistic view of the commonwealth as a partnership in living well is often misunderstood. St. Thomas certainly does not think that government may make rules about everything, or supervise all other forms of association; as we will see later, his view of the limits of law is more stringent than Hobbes's, not less. He understands the family, the village, the monastic or mendicant order, the Church, and each of the myriad other forms of association as having its own work, its own calling, its own mode of friendship, something no one rightly may take away. The directive function of human law does not mean that the government absorbs all their callings into its own. Rather, government does what they cannot do, such as providing public justice, just so they can fulfill their callings. When human law tries to go further than this, it suffocates the common good rather than furthering it. Yet even when legislators make this judgment, when they limit their own sphere, when they say "No" to the totalitarian temptation, they are not *suspending* judgment about the universal requirements of the common good; they are *exercising* judgment about them. There is no such thing as neutrality. To fail to make judgments is to judge.

Question 91, Article 4:
Whether There Was Any Need for a Divine Law?
Discussion

The Relation between Natural and Divine Law

How does Divine law differ from the natural law? Certainly there is a great deal of overlap. According to St. Thomas, all of the *moral* precepts

of Divine law (to be distinguished from its judicial and ceremonial precepts) belong to the law of nature too, though “not all in the same way.” As he explains much later in the *Treatise*, where we discuss them in more detail,

For there are certain things [in Divine law] which the natural reason of every man, of its own accord and at once, judges to be done or not to be done: e.g. “Honor thy father and thy mother,” and “Thou shalt not kill, Thou shalt not steal”: and these belong to the law of nature absolutely. And there are certain things which, after a more careful consideration, wise men deem obligatory. Such belong to the law of nature, yet so that they need to be inculcated, the wiser teaching the less wise: e.g. “Rise up before the hoary head, and honor the person of the aged man,” and the like.⁷

Of course not everything in the natural law is promulgated by words in the Divine law; the task would be endless. But everything in the natural law is *presupposed* in Divine law. Consider, for example, the natural law principle that we owe gratitude to those who have done us great good. It is never explicitly stated in Divine law. Yet the words with which God prefaces the Decalogue, or Ten Commandments, “I am the Lord thy God, who brought thee out of the land of Egypt, out of the house of bondage,”⁸ would make no sense unless the people knew the law of gratitude; the whole force of the statement is that because He saved them from slavery, *they owe it to Him to listen*.

According to centuries of custom, the first several commandments of the Decalogue, concerning our duties to God Himself, are called the First Tablet, and the rest of them, concerning our duties to our neighbors, who are made in God’s image, are called the Second Tablet. Each of the examples of moral precepts St. Thomas gives above is from the second tablet. Do the precepts of the First Tablet also belong to the natural law? Certainly not all of them:

And there are some things, to judge of which, human reason needs Divine instruction, whereby we are taught about the things of God: e.g. “Thou shalt not make to thyself a graven thing, nor the likeness of anything; Thou shalt not take the name of the Lord thy God in vain.”⁹

On the other hand, St. Thomas makes clear that human reason can work out many things about God: Not just that He exists, but also that because He is the first source of all that is, we owe Him a special kind of honor:

⁷ Question 100, Article 1.

⁸ Exodus 20:2.

⁹ *Ibid.*

Since virtue is directed to the good, wherever there is a special aspect of good, there must be a special virtue. Now the good to which religion is directed, is to give due honor to God. Again, honor is due to someone under the aspect of excellence: and to God a singular excellence is competent, since He infinitely surpasses all things and exceeds them in every way. Wherefore to Him is special honor due: even as in human affairs we see that different honor is due to different personal excellences, one kind of honor to a father, another to the king, and so on.¹⁰

It seems then that the underlying moral principles of the First Tablet, as well as their implications, can be worked out by human reason and belong to natural law. These include the principle that God and only God is to be worshipped as God. Why then does St. Thomas say that about certain other precepts concerning God, we need Divine instruction? For at least two reasons.

One reason – to anticipate a distinction that St. Thomas has so far only mentioned but discusses in detail later on – is that some precepts are “determinations” of natural law rather than “conclusions” from it. “Determination” occurs when more than one way of doing things might have been compatible with the underlying principles, and public authority – in this case, God’s own authority – settles which of them is to be followed. The prohibition of making visible images of the invisible God seems to be a precept of this kind. For on the one hand, natural reason alone, even without Revelation, is able to work out that God is both real and invisible; but on the other hand, it does not follow *as a conclusion from premises* that He may not be worshipped with visible images. He might, for example, have been worshipped with visible images with a symbolic rather than a literal intent. God, then, seems to have chosen this mode of worship from among several possible modes, perhaps to keep the Hebrew people from falling back into the ways of their idolatrous neighbors. The bearing of this ordinance changes with the Incarnation, of course, because the Son of God visibly assumed human nature.

Another reason is that some precepts concern not our natural but our supernatural end, and these exceed what natural reason could have worked out by itself. Only with the additional data of Revelation, made available by faith, do they become evident to our natural powers of reason. Only Divine law tells us about the inward grace that flows to man from the Holy Spirit, through faith, without which we cannot reach the supernatural destiny that God has appointed for us. Only Divine law

¹⁰ II-II, Question 81, Article 4.

instructs us in the outward acts that God has chosen as channels through which that grace is poured.¹¹

**Question 91, Article 5:
Whether There Is But One Divine Law?
Discussion**

Revelation – Says Who?

A student in one of my classes insisted one day that when St. Thomas speaks of Divine law, he means “one’s own Divine law”: Torah for Jews, the Gospel for Christians, Sharī’a for Muslims, Sheilaism for Sheila,¹² whatever it may be. She was quite offended by the suggestion that this is not what St. Thomas has in mind.

But it isn’t. What St. Thomas means by Divine law is what *really is* Divine law. Whether he is right about the authenticity of Christian Revelation is not a matter of indifference. If a purported Revelation is not really from God – if it is merely a product of the human mind that imagines itself to be from God – then it is wholly incapable of instructing us about matters that transcend what natural reason can work out for itself. It is worse than a harmless mistake; it is a blind guide.

Now the various purported Revelations – there aren’t many, for only a few of the world religions claim Divine Revelation in actual historical time – cannot all be from God, because they say inconsistent things. There is no “your truth” and “my truth” for St. Thomas; we inhabit the same reality, whether we like it or not. What then is his judgment? That the Old Law, given to the chosen nation, is truly from God, but preparatory, and that the New Law, given to the Church, is truly from God, and is its fulfillment. It follows that even if Sharī’a may include some good things – even the pagans, who knew much less, knew some good things – nevertheless it is a regression from that fulfillment, and it is not truly from God.

If St. Thomas is right that the truth about Revelation is simply a matter of fact, like whether the nucleus of the atom really does contain

¹¹ Question 108, Article 1.

¹² In his book *Habits of the Heart: Individualism and Commitment in American Life* (University of California Press, 1985, 1996, 2008), p. 221, sociologist Robert N. Bellah reports his interview with a young nurse he calls “Sheila,” who received a lot of therapy, made up her own religion, and actually named it after herself: “My own Sheilaism.” The term “Sheilaism” is now used generically for a personally invented mix and match religion.

protons, or whether gravity really is weaker than electromagnetism – then there is no reason for anyone to be offended by this fact. Suppose we are at the buffet, and Gertrude is about to dip into the tuna salad. Felix says, “Better not. The last three people who ate it got sick.” Gertrude replies, “Stop judging me!” Is her response reasonable? Of course not, because the truth about the tuna salad is not about personal preferences; it is about how things stand in reality. Even if Felix is mistaken about the tuna salad, he has not offered Gertrude an insult. In fact, he has exercised concern for her. *She needed to know* that the tuna salad might be spoiled.

Someone might say, “The analogy with tuna salad is nonsense, because we cannot know anything about God.” Why not? If the agnostic says that religious truth is specially resistant to rational inquiry, he contradicts himself, for to know God’s rational unknowability would be to know something about Him. Indeed it would be to know a great deal about Him. First one would have to know that even if He exists, He is infinitely remote, because otherwise one could not be so sure that knowledge about Him were rationally inaccessible. Second one would have to know that even if He exists, He is unconcerned with human beings, because otherwise one would expect Him to have provided the means for humans to know Him. Finally one would have to know that even if He exists, He is completely unlike the Biblical portrayal of Him, because in that portrayal He does care about us, and has already provided such means – not only through Revelation, but even, in part, through the order of creation itself. So, in the end, the so-called agnostic must claim to know quite a number of things about God just to prop up his claim to not knowing. The problem is that, on his assumptions, he cannot rationally justify any of these things.

The hypothetical someone may go on, “But even if we *can* know a good many things about God by rational inquiry, as St. Thomas claims, we cannot know what to make of purported Revelations.” But we can. In the first place we can say something negative; any purported Revelation that *contradicts* what reason can tell us must be false. For example, we must not believe a religion that denies the unity of God’s wisdom and goodness, any more than we may believe a religion that denies that two things equal to a third thing are equal to each other. As St. Thomas explains, though these truths of reason are not articles of faith, they are “preambles” to the articles, “for faith presupposes natural knowledge, even as grace presupposes nature, and perfection supposes something

that can be perfected.”¹³ In the second place, even about teachings to which we cannot employ philosophical reasoning, we can employ historical reasoning. For example, we can ask whether the original witnesses to God’s alleged revelatory deeds are credible. In the third place, even in cases in which an alleged Revelation goes beyond the matters we could have figured out without it, even so we should expect it, if authentic, to provide deeper insight into these matters, so we can apply a test: Does it? Finally, one can put the alleged Revelation to the test. Christian faith forbids “putting God to the test” in the sense of presumption, but in another sense, it encourages it. The psalmist implores, “O taste and see that the Lord is good!” St. Paul instructs, “Do not despise prophesying, but test everything; hold fast what is good[.]”¹⁴ Suppose, then, that I live *as though* I believed the New Law. I ardently try to follow it; I live, pray, and worship as it directs; I rely utterly on the grace of Christ that is said to make this possible; I seek Him with all my heart; and I say to Him, “If you are real, you may have me” – what happens?

Question 91, Article 6:

Whether There Is a Law in the *Fomes* of Sin?

Discussion

The Architecture of Law, Revisited

The so-called law of sin, which is a law not in the strict but in an analogical sense, is best understood in relation to the other kinds of law. We may sum up the conclusions we have reached in the *Commentary* as follows.

Law. Anything properly called law is an ordinance of reason, for the common good, made by public authority, and promulgated or made known.

Eternal law. God created things in time, but the rational pattern by which He created them, endowed them with natures, and guides each one toward the goods that are proper to it has been in the Divine Intellect from eternity. Because God is the ruler of the universe, not only is this divine idea the ultimate source of all true law, but also it may itself be viewed as a law. It is the ordinance of reason *par excellence*, because it is the reason of God. He ordained it to the good of all His creatures; He is its author, so much that it cannot be separated from Him, or He from it; and in diverse ways, He has made it known.

¹³ I, Question 2, Article 2, ad 1.

¹⁴ Psalm 34:8, 1 Thessalonians 5:21 (RSV-CE).

Natural law. One way in which God has promulgated His eternal law is through his creation and care for the universe itself; all created things participate in the eternal law, just because they are governed by it. Irrational things follow their inclinations unintelligently, but man follows his inclinations intelligently, for he is made to be guided by reason, and his reason is impressed with inclinations of its own. Since law is an ordinance of reason, his mode of sharing in the eternal law may itself be called a law.

Divine law. As natural law is the reflection of eternal law in man's rational nature, so Divine law is its reflection in ordinances provided explicitly in Holy Scripture. It completes man's engagement with the eternal law because it accomplishes four things that natural and human law cannot achieve by themselves: First, to guide us to our supernatural end, beatitude; second, to provide greater practical certainty about certain detailed points of conduct; third, to bring not only outward actions but interior movements of the heart under direction; and finally, to complete the condemnation of sins, because human law cannot forbid all bad things.

Divine law is in turn divided into *Old Law* and *New Law*. The Old Law began man's instruction in divine things, mainly by directing his outward acts, and mainly by promising rewards and warning of punishments in this life. The New Law culminated man's instruction in divine things, but with a radical shift in perspective, for it addressed itself mainly to his inward acts, and its chief promise was not something in this life, different from God, but union with God Himself, in the next.

Human law. Eternal law reflects the Providence of God. If it is really true that man shares, through his reason, in this Providence, then we would expect him to make use of his reason to provide in his turn for the persons and things committed to his care. When human authority works out and enforces the implications of natural law in more detail, these more detailed implications are human law.

The law of nature so-called. Each kind of created thing has its own nature – God's purpose for it, impressed on it in what are called inclinations, by His Divine workmanship in creation. Strictly speaking, these inclinations are a law only for rational beings, but even for irrational beings we may call them a law in an analogical sense, just because to be governed by eternal law is in a way to share in it.

The law of sin so-called. The disorder we find in our passions and appetites, so that they flare up at the least spark and resist the guidance of reason, is not a law in the sense of an ordinance, but it too may be

called a law in an analogical sense; it participates in eternal law by way of penalty for the *violation* of eternal law. Our first parents thought it insufficiently exalted to participate, through their own minds, in the eternal law of God. Demanding more, they received less; by misusing reason, they impaired reason's power to govern their sensual impulses.

From these comments, the main lines by which each kind of law is derived from eternal law should be clear: Natural and Divine law are derived by *reflection*, the so-called law of nature (plants grow, animals breed, gravity holds everything down, and so forth) is derived by *analogy*, and the so-called law of sin (our ignitability) is derived by *penalty*, which is another kind of analogy. More questions remain to be asked and answered. Moreover, further details about the two paths by which human law is derived from natural law – and about the relation of human to Divine law – await the later parts of the *Commentary*.

St. Thomas's Prologue to Question 92:
Of the Effects of Law
Discussion

The Elemental Operations of Law

I mentioned earlier in the *Commentary* that many readers today would lengthen St. Thomas's fourfold list of the operations of law, for along with commanding, prohibiting, permitting, and punishing, they would add such acts as honoring, taxing, recognizing, subsidizing, facilitating, promoting, and "setting national goals." It takes but a little thought, however, to see that this proposal is a little like suggesting that table salt, vinyl, and peppercorns be added to the periodic table of the elements. Table salt, vinyl, and peppercorns are not themselves elemental substances; they are made from elemental substances. In the same way, honoring, taxing, and so on are not themselves elemental operations of law; they are accomplished by means of the elemental operations of law.

For example, the law honors the courageous war dead by *commanding* that a memorial be erected in their honor; it ensures obedience to the command to pay the tax by *punishing* those who do not pay; and it recognizes and promotes the institution of marriage, which turns the wheel of the generations, by *permitting* a man and woman to register their marriage with the state, *commanding* spousal support, *forbidding* bigamy, and *punishing* parental neglect of children.

Question 92, Article 1:
Whether an Effect of Law Is to Make Men Good?
Discussion

Making Men Good

The idea of law “making men good” arouses such trepidation today that it may be good to review what is and isn’t being said in this Article, and to consider a few additional objections.

Like any form of discipline, law inevitably has an effect on moral character. Of course no form of discipline is perfectly effective; law can impart the seeds of virtue, but it cannot guarantee that they germinate. For this reason, the statement that law makes men good should be taken in the sense that it *tends* to make men good.

We may object that we do not wish law to make men good: “Law should not enforce morality.” But what else does law enforce, if not some kind of morality? Its whole point is to induce citizens to perform certain kinds of acts and avoid others. Rather than complaining that it does so, we ought to make sure that it is inducing them to perform good acts rather than bad ones, and to avoid bad acts rather than good ones.

We may further object that laws influence only outward conduct, not inward character. But these two things are inseparable, because conduct *shapes* character. Citizens do not merely perform certain acts; they become habituated to performing them. To become habituated to performing them is to acquire an inward disposition to their performance.

Just what effect on character the laws have depends on what kinds of laws they are, and this in turn depends on what kind of regime they are enacted for. For example, legislators in a free republic aim at inducing citizens to behave in a way that is good for a free republic, but legislators in a tyranny aim at inducing citizens to behave in a way that is good for tyranny. Unless the legislators are utterly inept, then, laws always make men good in a *relative* sense: Good for that kind of regime, and good for whatever function each class of citizens performs in that regime (such as growing crops or teaching school).

Whether the laws make men good *simply*, rather than just for that kind of regime, is another question. Law tends to make men good *simply* only in a *good* regime – a regime in which the good man and the good citizen are identical. The greater the divergence between the good man and the good citizen in that regime, the lesser the tendency of the laws to make men good simply.

The statement that law makes men good must be qualified in several other ways as well. We see in this Article that law cannot impart infused virtue, which depends on the grace of God; nor can law by itself impart the prudence to *make* good laws, for greater virtue is required to make them than just to obey them. Earlier in the *Treatise*, St. Thomas has already qualified the statement that law makes men good; for instance, in [Question 91, Article 4](#), he has explained that law cannot command interior movements of the heart. Later on in the *Treatise*, he will qualify the statement further; in [Question 96](#), Articles 2 and 3, for instance, he will show why law does not must not attempt to suppress *every* vice, nor command *every* act of virtue.

These qualifications do not arise from the liberal ideology of making laws morally neutral; to be a law is already to be other than neutral. Rather they arise from realistic consideration of what law can and cannot achieve.

Question 92, Article 2:
Whether the Acts of Law Are Suitably Assigned?
Discussion

Is There Anything Law May Not Command?

When St. Thomas writes that “law a dictate of reason, commanding something,” he is only reminding us that among other things, law is a command. He is not telling us *what* law may command. Are there matters that law may *not* command? Certainly, for law is also an ordinance of reason *for the common good*. Law may command only what reason really can show to pertain to the common good.

Ah, but here we have another difficulty. If contemporary social engineers believe in the common good at all, they view it quite differently than St. Thomas does. They tend to assume that any law which brings about a desirable state of affairs is for the common good. What could be more obvious? But St. Thomas does not agree. We must not do what is intrinsically evil – not even so that good will result. Why? Because the good is not so important after all? No, precisely because it is so important. Closely examined, the common good of human beings turns out to be of such a nature as to constrain the means employed by law. Justice is not just a means to *bring about* the common good; it is one of the chief *elements* in the common good. No arrangement of society that permits unjust means is appropriately sought as an end.

But why? One reason lies in the relationship of the commonwealth to the individual person. Persons are subsistent beings, but the commonwealth is not a subsistent being. When persons come together to form a commonwealth, they do not cease to be subsistent beings. They are not like cookies running together on a cookie sheet, or lead soldiers melting together in the fire; they retain their irreducible distinctness, and a certain inviolability. Even an erring conscience deserves a certain respect, because among other things it is wrong to violate the certain judgment of conscience.¹ This does not confer absolute immunity to law, because a wrong act performed in the conviction that it is right is still wrong. Even so, the law should be extremely reluctant to compel anyone to do what his conscience tells him is wrong.

Yet another reason lies in the relationship of the commonwealth to the various communities that make up the commonwealth, such as families. The domestic good does not simply dissolve into the political common good, like sugar stirred into water. In fact, the family has its own proper work, which larger and more powerful associations, right up to the commonwealth, should protect, not absorb. According to St. Thomas, not even the Church may baptize a child against the will of the parents,

¹ “[T]o inquire whether the will is evil when it is at variance with erring reason, is the same as to inquire “whether an erring conscience binds.” ... [A]bsolutely speaking, every will at variance with reason, whether right or erring, is always evil.” S.T., I-II, Q. 19, Art. 5. “[I]t does not seem possible for a man to avoid sin if his conscience, no matter how mistaken, declares that something which is indifferent or intrinsically evil is a command of God, and with such a conscience he decides to do the opposite. For, as far as he can, he has by this very fact decided not to observe the law of God. Consequently, he sins mortally. Accordingly, although such a false conscience can [and should] be changed, nevertheless, as long as it remains, it is binding, since one who acts against it necessarily commits a sin.” *Disputed Questions on Truth*, Q. 17, Art. 4, trans. James V. McGlynn, S.J. (Chicago: Henry Regnery Company, 1953), available at <http://dhspriory.org/thomas/QDdeVer17.htm>. “So it is clear that something licit in itself becomes illicit for one who does it against his conscience, even though his conscience is erroneous.... [A]n erroneous conscience binds, even in matters per se evil.... [T]he binding force of even an erroneous conscience and that of the law of God are the same. For conscience does not dictate something to be done or avoided, unless it believes that it is against or in accordance with the law of God. For the law is applied to our actions only by means of conscience.” *Lectures [Commentary] on the Letter to the Romans*, trans. Fabian Larcher, ed. Jeremy Holmes (Naples, FL: Aquinas Center for Theological Renewal, Ave Maria University, 2008), Chapter 14, Lecture 2, Section 1120, discussing Romans 14:13–20, available online at http://nvjournal.net/files/Aquinas_on_Romans.pdf. See also *Commentary on the Sentences of Peter Lombard*, III, Dist. 38, Q. 2, Art. 4, Qc. 3; IV, Dist. 27, Q. 1, Art. 2, Qc. 4, ad 3 (which is also found in S.T., Supp., Q. 45, Art. 4, ad 3); S.T., I-II, Q. 19, Art. 6; and *Commentary on the Letter to the Galatians*, Chapter 5, Lecture 1.

because natural law appoints the parents the child's guardians.² If guardianship of the parents may not be subverted by the Church, still less may it be subverted by the state. The identity of interest between parents and children is so strong that parents experience harm to their children as though the injury had been to themselves; even though their children are separate beings, they feel as though their children were part of them, as a friend feels a friend as another self.³ Nothing like that can be said of the relationship between children and bureaucrats. I am reminded of an election-year scuffle between a father and a social service functionary, each of whom was also a candidate. "No government bureaucrat could love my children as I do," the father said. "That's not true," protested the functionary, "I love them just as much." "What are their names?" the father asked.

But the most important reason of all lies in the relationship of the individual person to God. As St. Thomas memorably states in the *Treatise on Human Acts*, "Man is not ordained to the political community, according to all that he is and has."⁴ All that he is and has should be directed, rather, to God. The state may not *make* itself God, and it may not even presume to guide men to God, for that is the vocation of the Church. The law of the commonwealth guides the community only to its natural end.

² II-II, Q. 10, Art. 12.

³ It is in this sense that St. Thomas approves Aristotle's statement that "parents love their children as being a part of themselves," I-II, Q. 100, Art. 5, ad 4. He is certainly not denying that the child is a subsistent rational being, as though he were no more than a parent's arm or leg.

⁴ I-II, Question 21, Art. 4, ad 3, substituting "political community" for "body politic" where St. Thomas writes *communitatem politicam*.

St. Thomas's Prologue to Question 93: Of the Eternal Law Discussion

Eternal Law, Original Justice, and Original Sin

The first readers of the *Treatise on Law* could be expected to remember what St. Thomas thought about original sin, because the exploration of that theme had come not far from the end of the immediately preceding section of the *Summa*. Since we are in a different position, a summary may be helpful. Each of the following points builds on the previous ones.

Man was created in the condition of “original justice,” a condition of friendship with his Creator, in which he was also in harmony with his own nature, with his fellows, and with the rest of creation. Original sin is the *loss* of original justice – not friendship, but alienation from our Creator.

Although original sin infects all human beings and affects them in all sorts of ways, there is only one original sin, rather than many different kinds of it. It is one in cause, because it results from the first sin of our first parent, Adam,¹ and it is one in essence, because it arises from the withdrawal of his mind from subjection to God. Because all of us share with their first parent in a community of nature, we also share in that withdrawal; thus, even without *personal* sin, we too are alienated from God, unless and until this breach is healed by Divine grace.

The *result* of original sin is a habitual tendency to disorder, which afflicts human nature in much the same way that sickness afflicts the

¹ Although Eve sinned first, Adam's sin was more primordial, because he was the first human being; through the community of nature, all subsequent humans may be considered as present in him virtually, or in potentiality. This order of things does not change until the Incarnation, when Christ takes our nature upon Himself and so becomes the New Adam.

human body. Just as sickness makes the body a stranger to health, so original sin makes the soul a stranger to integrity; it destroys the original harmony and equilibrium that characterized our original condition. By original justice, “not only were the lower powers of the soul held together under the control of reason, without any disorder whatever, but also the whole body was held together in subjection to the soul, without any defect.”² The deprivation of this gift was like the removal of the keystone in an arch.

Because original sin gives rise to so many kinds of sin – even to opposite kinds of sin – the unity of original sin can easily be overlooked. The reason one sin can give rise to so many kinds of sin is that once the harmony of original justice has been ruined, the various powers of the soul, which were formerly held in balance, push us in different and even opposite ways.

Although the formal element in original sin is the destruction of the harmony called original justice, its material element – that in which it consists – is the turning of each power of our nature away from the supreme and eternal good, God, toward lesser and changeable goods. At bottom, the disorder of our desires is nothing but this turning away. Specific disordered desires, such as lust, are only its manifestations.

But this turning away manifests itself in other ways too. Because reason is no longer properly ordered toward truth, we suffer ignorance; because the will is no longer properly ordered toward the good, we suffer malice, the desire for what is evil because it *seems* to us good; because what is called the concupiscible appetite is no longer properly ordered toward “delectable” goods, we suffer concupiscence; and because what is called the irascible appetite is no longer properly ordered toward “arduous” goods, we suffer weakness. These consequences are called the “wounds” of sin.

If reason is truly sovereign, then one might ask how it is possible for the irascible and concupiscible appetites to be insubordinate to reason in the first place. The answer lies in *how* reason exercises its sovereignty. Borrowing an analogy from Aristotle, St. Thomas says reason commands the lower powers not by a “despotic sovereignty,” the way slaves are commanded by their master, but by a “royal and political sovereignty,” the way free men are ruled by their governor. Even though they are sub-

² I-II, Q. 85, Art. 5; see also II-II, Q. 164, Art. 1.

ject to his rule, they “have in some respects a will of their own,” so that they can resist his commands.

As the Philosopher says, the reason, in which resides the will, moves, by its command, the irascible and concupiscible powers, not, indeed, “by a despotic sovereignty,” as a slave is moved by his master, but by a “royal and politic sovereignty,” as free men are ruled by their governor, and can nevertheless act counter to his commands. Hence both irascible and concupiscible can move counter to the will: and accordingly nothing hinders the will from being moved by them at times.³

Original sin is passed on in the same way that life is passed on, simply because, like everything else in us, generation has become disordered too. Since generation of children from parents is original sin’s transmission path, the contagion of original sin is especially apparent in the three things connected with generation: (1) The generative power itself; (2) the desiring power that serves the generative power, and (3) the sense of touch, just because it is the most potent object of the desiring power.

Original sin affects everyone equally. In the first place, it does so because original justice has been completely destroyed, and there are no degrees in complete destruction. For the subordination of the lower powers to reason to be just a little bit destroyed is like being just a little bit pregnant; either they willingly obey, or they do not. The second reason why original sin affects everyone equally is that it equally connects us with its origin in the sin of our first parent, and there are no degrees in the relationship of the origin to what it originates. The first man is the first parent of everyone.

Both our bodies and our wills are affected by original sin. However, if we are asked whether it lies more in our wills or in our bodies, we ought to say “in our wills.” The reason is that the disorder to which original sin gives rise in our bodily desires is merely a penalty for the withdrawal of our minds from God’s governance. By contrast, when the will consents to a sin, it actually incurs guilt. Of all the soul’s powers, the will is the power that original sin concerns first, because that is where the inclination to commit a sin nestles.

Although the sin of our first parents did not take away our original nature and give us a different nature, a “sin nature,” as some mistakenly suppose, it is easy to see how this error arises. As we have said, original justice was a gift of grace to human nature, superadded to the principles that God built into it, and original sin is the deprivation of this gift.

³ See I, Q. 81, Art. 3, ad 2; I-II, Q. 17, Art. 7; and I-II, Q. 56, Art. 4, ad 3; quotation from I-II, Q. 9, Art. 2, ad 3.

Although man has not literally lost his nature, the disharmony, dislocation, and disequilibrium that result from the deprivation of original justice are “like a second nature.”⁴ Yet even so, “sin cannot entirely take away from man the fact that he is a rational being, for then he would no longer be capable of sin. Wherefore it is not possible for this good of nature to be destroyed entirely.”⁵ We return to this important subtlety in Article 6.

The doctrine of original sin reminds us of a fundamental difference between Christian and pagan natural law theory. Although the pagan can theorize about human nature and its laws, he is at a grave disadvantage in understanding them. Just because he does not know about original justice and original sin, he is apt to think that our disharmonious, dislocated, disequilibrated state is our *normal* state – that original sin is our original condition. At the level of those deep intuitions that are expressed in myths of primal ruin, even he senses that something is wrong with us, that something is not as it should be. Yet at the level of theory, he does not know what to make of these intuitions. For though he may know all about the present human condition, he lacks the history of how it came to be.

Question 93, Article 1:
Whether the Eternal Law Is a Sovereign Type [*Ratio*]
Existing in God?
Discussion

God as the Originator of Reality; Truth as Correspondence with Reality

St. Thomas’s adherence to the *correspondence* theory of truth – that “an opinion is true or false according as it answers to the reality” – is apt to provoke protests in our day. We are told that truth is a “social construction,” which lies not in the agreement of intellect with reality, but in mere consensus among different intellects. It would seem that even on its own terms, this *consensus* theory of truth could be true only if everyone agreed that it were true, for otherwise there would be no consensus. Not everyone does agree that it is true; therefore it is false. Since the incoherency of the consensus theory seems not even to make a dent in its vogue,

⁴ I-II, Q. 82, Art. 1.

⁵ I-II, Q. 85, Art. 2.

one wonders what kind of consensus its proponents think it does enjoy. Perhaps this kind: “Everyone *I* talk to thinks truth lies in consensus!”

I was once privileged to hear a lecture by a visiting scholar in defense of the consensus theory of truth. During the discussion period afterward, someone asked him quite soberly whether poisonous mushrooms would still be deadly if everyone thought they were harmless. Four things were noteworthy: First, that he said a great many erudite words in response; second, that despite these many words he never answered the question; third, that everyone recognized the evasion; and fourth, that despite recognizing the evasion, nearly everyone continued to take him seriously.

When I teach Thomas Aquinas to students, the objection to his correspondence theory of truth often takes a form something like this: “You say if we think dogs are cats, we’re mistaken, because dogs are not cats. But ‘dogs’ and ‘cats’ are just words. We can define words any way that we like. If some language used the word ‘dogs’ to mean both dogs and cats, who is to say they are wrong?”

I do not think St. Thomas would find it necessary to deny that some people might speak a language in which the same word were used for both dogs and cats. The problem is that such a language would be inconvenient, for it would be missing a distinction that actually exists in reality. If speakers of the language imagined that dogs and cats were the same species just because they used the same word, “dog,” for both of them, they would be mistaken. One sort of “dog” would pant and wag its tail; another sort of “dog” would purr and lick itself clean. The first sort of “dog” would chase the second sort, but the second sort would rarely chase the first. The two sorts of “dog” would be unable to interbreed, and people who liked one sort as pets would often dislike the other. Yes, one can use words any way one wishes, but not every way of using words is fitting, because not every way corresponds to reality. Truth really does lie in the equation of intellect with thing.

The idea of calling both cats and dogs “dogs” may seem silly. But there is such a thing as motivated error: Often, when people keep asking the same silly questions, there is a reason, rooted in desire. For though no one in our culture seriously proposes to call cats “dogs,” people in our culture do earnestly seek to have us all call animals “persons,” some persons “non-persons,” some non-marriages “marriages,” and so forth. Because the case for these ways of thinking is difficult to make, proponents fall back on sophisms about words meaning whatever we say they mean and about reality being whatever we want it to be. Or they resort to insults, in the currently fashionable psychotherapeutic style. Those who resist

“saying of what is that it is not, and of what is not that it is,” are said to have a “phobia” or irrational fear.

Then again, perhaps those who warn of phobias are onto something, for a certain irrational fear does seem to be abroad. Perhaps we might call it *aletheiaphobia*, fear of acknowledging the truth of how things really are; *logophobia*, fear of the supreme *Logos*; or *nomophobia*, hostility to eternal law.

Question 93, Article 2:
Whether the Eternal Law Is Known to All?
Discussion

How the Finite Intellect Knows What It Knows

Things are beginning to become complicated, for St. Thomas weaves into his exploration remarks about the powers by which the human intellect works; the principles that serve as its starting points; the Divine illumination by which it “sees” what it knows; and, through all this, its participation in, or reflection of, the Mind of God. How is all this sewn together? Collecting the conclusions of arguments presented earlier in the *Summa*, we might describe the tapestry as follows.⁶

The human intellect is not naturally gifted with the knowledge of truth, but only with the ability to gather such knowledge. It has to gather it from individual things, by way of the bodily senses. Yet something strange happens on the way from sense to knowledge, something that transcends the bodily starting point. The bodily senses present to us merely corporeal images, or phantasms, of particular things: *This* man, *this* hand, *this* tree. By themselves, these phantasms are not knowledge. We might say that although universal forms such as *man* and *hand* and *tree* are darkly concealed in them, these forms must be “lit up” so that the mind can “see” them. For this reason, St. Thomas says, above the intellect there must be a superior intellect from which the soul acquires the light of understanding, and this superior intellect is God. Just as our eyes do not see the sun in itself, but rather by means of its sensible light, so our minds do not see the Ideas in the Divine Mind itself, but rather by means of the Divine intellectual light.

⁶ The relevant treatise is the *Treatise on Man*, comprising I, Q. 75–102. I am relying on the sections on the powers and operations of the soul, Q. 77–89, in particular Q. 79, Art. 4; Q. 84, Art. 5; and Q. 85, Arts. 2 and 5.

This is staggering enough, yet it could not be the end of the story. Why not? Because knowing is the intellect's proper act – what actualizes the intellect, what it is *for* – and nothing can perform its proper act except by means of some power inherent in it. So the intellect must have some power of its own: not a power that makes it independent of God's superior intellect, but a power God gives it to *reflect* His superior intellect, to reflect Truth itself. This inherent power, which St. Thomas, following Aristotle, calls the "active intellect," performs the work of abstracting *from* sensual phantasms the universal forms that make the things we perceive what they are, be these things men, hands, or trees. Afterward, we exercise another power, the "passive intellect," to retain and consider them. It would be incorrect to say that we know these forms ("intelligible species," as they are called) *instead* of knowing external objects; rather, we know external objects *through* the intelligible species. We reason, in turn, by comparing them.

St. Thomas holds that ultimately, active and passive intellect are the only two fundamental intellectual powers there are. Such powers as memory and imagination are real, but they are subordinate powers that "concur" in the acts of these two master powers. What about practical and speculative reason, which we have met earlier in the *Treatise on Law*? Aren't these additional powers? Strictly speaking, no; they are the very same powers, but directed to different ends. Speculative reason is a name for the intellect when it is directed to consideration of truth, of *what is the case*; practical reason is a name for the intellect when it is directed to consideration of operation, of *what is to be done*.

Now when the intellect is considering what is to be done, it is sharing or participating in the eternal law. What makes such participation possible is the fact that God has endowed the intellect with certain deep patterns or "principles" that provide the foundations for all practical reasoning whatsoever. Because these principles are the mind's natural habits, they make up the common principles of the natural law.

"Ha!" it may be objected. "The mind is only a physical mechanism. There is no need to drag in nonsense like God and Divine illumination." That would be a silly thing to say even if the mind were only a physical mechanism. We would not say that the power of sight has no need of physical light; why should we say that the power of knowing has no need of intellectual light?

Besides, there are so many things that physicalist or materialist theories cannot explain: How the mind attains knowledge of things that

transcend its sense impressions, how it is aware of itself, how it knows what it perceives, how it even knows that it knows. It is one thing to have a switch that closes when light of a certain frequency falls on a photoreceptor; it is quite another thing to *think of red*, much less to know that one is thinking it. When we come to the knowledge of immaterial realities – the true, the good, the beautiful – the gap becomes wider still.

The inability of materialism to account for mental experience has become so notorious that some philosophers have opted for what is called “eliminative” materialism. This is a spectacular example of trimming the facts to fit the theory, for whenever eliminative materialists find something their theory cannot explain, they simply deny that it is real – “eliminating” it from the list of things to be explained. So we cannot explain consciousness? Don’t worry; there is no such thing. Experience is such an inconvenient thing. Let us make it go away.

**Question 93, Article 3:
Whether Every Law Is Derived from the Eternal Law?
Discussion**

Law and the “Appearance of Law”

Nothing in Article 3 provokes such consternation among contemporary readers as the second part of his Reply to Objection 2, “Nevertheless even an unjust law, in so far as it retains some appearance of law, through being framed by one who is in power, is derived from the eternal law; since all power is from the Lord God, according to Rm. 13:1.” In its entirety, the Pauline passage to which he alludes reads as follows:

Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore he who resists the authorities resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Would you have no fear of him who is in authority? Then do what is good, and you will receive his approval, for he is God’s servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain; he is the servant of God to execute His wrath on the wrongdoer. Therefore one must be subject, not only to avoid God’s wrath but also for the sake of conscience. For the same reason you also pay taxes, for the authorities are ministers of God, attending to this very thing. Pay all of them their dues, taxes to whom taxes are due, revenue to whom revenue is due, respect to whom respect is due, honor to whom honor is due.⁷

⁷ Romans 13:1–7 (RSV-CE).

St. Thomas does not hold that an unjust so-called law must always be obeyed; on the contrary, in [Question 96, Article 4](#), he argues the case for qualified civil disobedience. However, it seems that in his view, a certain kind of respect is due to government just for being government, even when it forfeits the further respect that would be due to it for being just. Unjust so-called laws *violate* eternal law to the degree that they are unjust, because God commands justice. But they *reflect* eternal law to the degree that they are made by public authority, because God also ordains that there be government.

Could it be that this respect due to government for being government is due only to *good* government, which makes an unjust law, so to speak, by mistake? Perhaps. We might view the “appearance of law, through being framed by one who is in power,” as some remnant of what we call the rule of law. By contrast, in the case of extreme tyranny, as under Hitler, Stalin, Mao, and Pol Pot, even the semblance of rule of law has been destroyed. Perhaps in such cases one should say that there is nothing of government left to respect.

But as we find in his work *On Kingship*, St. Thomas distinguishes between extreme tyranny and what might be called everyday tyranny. Tyranny *per se* is simply rule by a single man for his selfish interest, utterly without concern for the common good. Although a greater depth of evil can be reached by tyranny than by any other form of government – and in this sense “the dominion of a tyrant is the worst” – one must consider not only what can happen, but also what usually happens. Here St. Thomas distinguishes among tyrannies of different origins. The sort that result from the corruption of monarchies do not usually reach their utter limit of depravity. On the other hand, the sort that result from the corruption of “polyarchies,” in which several classes vie for power and the conflict gets out of control, usually do reach theirs.⁸ The everyday tyrant is not trying to destroy public order; he is merely lazy about promoting it, because his interest lies in himself. He does not carry a grudge against justice; he simply sets it aside when it gets in his way. Though the wrongs of his reign may be grave and numerous, they are casual rather than malignant, occasional rather than programmatic.

One might speculate (though St. Thomas does not) that everyday tyranny is one of the most common lots of the human race throughout history. Whatever he may think of this conjecture, however, here he treads carefully. One should certainly seek to depose a tyrant, he

⁸ Thomas Aquinas, *On Kingship, To the King of Cyprus*, esp. Book 1, Chapters 4 and 6.

argues, even to the extent of going outside the commonwealth and seeking help from supranational authority (“the emperor”), should that be necessary. Even so, one may seek the tyrant’s removal only by means which themselves respect the rule of law, never through acts of private violence – which rarely succeed anyway, since their usual outcome is to set in place a new tyrant who is even worse than the one who preceded him.

St. Thomas reasons that though everyday tyranny is a bad state of affairs, there are still more terrible states of affairs, such as civil war. Besides, he reasons, if all legitimate attempts to depose their tyrant have failed, then the people ought to be searching their own hearts, asking “Could it have been our own moral corruption that gave this evil man the opening to seize and hold power?” In that case, even before political action, their first need is prayer and repentance. For though God abhors tyrants and will ultimately destroy them, His eternal justice sometimes permits them to rule for a time, just to punish nations that have lost their virtue. This too is a manifestation of eternal law.

**Question 93, Article 4:
Whether Necessary and Eternal Things Are
Subject to the Eternal Law?
Discussion**

Could God Have Created a Different Nature?

The upshot of Article 4 is simply this: Matters pertaining to God’s essence are not subject to eternal law; rather His essence *is* the eternal law. On the other hand, eternal law does regulate *created* necessities. The notion of created necessity is rather difficult to wrap the mind around. Perhaps we might creep up on it through a series of questions.

Could God have created a different universe than He did? Yes. As St. Thomas writes, “the Divine goodness is an end exceeding beyond all proportion things created. Whence the Divine wisdom is not so restricted to any particular order that no other course of events could happen. Wherefore we must simply say that God can do other things than those He has done.”⁹

But didn’t God’s goodness require Him to create the best possible universe? No, for there is no such thing. Because His goodness exceeds any-

⁹ I, Q. 25, Art. 5.

thing He could create, a better universe could always have been created no matter how good the universe is.¹⁰

Then does God's goodness require *anything* as to His creation? Yes, two things. It requires that whatever He does choose to create, He arranges in the most fitting way, for "what is of God is well-ordered"¹¹ and His Wisdom "orders all things sweetly."¹² Moreover, it requires that His good purposes cannot be frustrated.¹³

Could God then have created different *necessities* than He did? With this query we reach the heart of the matter. It breaks into five sub-queries, one for each of the five kinds of necessity.

1. Could God have created different intrinsic *material* necessities? These are the cases in which the cause of necessity lies in the thing itself and results from its matter. St. Thomas's example is that a thing composed of contraries is necessarily corruptible.¹⁴ Now God cannot make a thing composed of contraries incorruptible, because, of their own nature, contraries tend to come apart. But He could have declined to create such a thing, or created something with a different nature instead.
2. Could God have created different intrinsic *formal* necessities? These are the cases in which the cause of necessity lies in the thing itself, but results from its form. This time St. Thomas's example is that a triangle's three angles are necessarily equal to two right angles.¹⁵ Today we would say that a triangle's three angles are necessarily equal to two right angles *in a Euclidean geometry*, because we have discovered geometries such as the spherical and hyperbolic in which this is not the case. Now God could not have made a triangle's three angles not be equal to two right angles in a Euclidean geometry. But He could have created a space with a geometry other than Euclidean – in fact, as it surprisingly turns out, He has (the one we inhabit!). Sometimes one hears questions like, "Could He have made a universe in which geometric relations themselves did not exist?" So framed, the question is ambiguous; it is not clear what we are trying to ask. If we are asking whether God could

¹⁰ *Ibid.*, Art. 6.

¹¹ III, Q. 35, Art. 8, and Q. 36, Art. 2.

¹² Wisdom 8:1; for St. Thomas's interpretation, see esp. II-II, Q. 165, Art. 1.

¹³ I, Q. 103, Arts. 7–8.

¹⁴ I, Q. 82, Art. 1.

¹⁵ *Ibid.*

have *not created space* – whether He could have declined to give geometrical relations a spatial realization – the answer is “Yes.” To be given spatial realization, however, the Idea of such relations must have pre-existed eternally in His mind. So if we are asking whether He could have *not had* the Ideas that He has, the answer is “No.”

3. Could God have created different necessities of coercion? In general, necessity of coercion is when one is compelled to do something so that he cannot do otherwise; for example, a prisoner is necessarily confined, by coercion, to his prison. Here, though, we are speaking not of human coercion, but coercion through the order of creation – when one’s *nature* compels him to do something so that he cannot do otherwise. For example, human beings necessarily draw breath; not only must they breathe in order to live (which is necessity of end), but if someone tried to hold his breath until he died, he would be unable to do so. Could God create a human being who did not need to breathe? Strictly speaking, no; that is like asking whether He could create a human of a nonhuman nature. But so far as we know, nothing would have prevented God from creating a rational being who resembled humans in everything *except* that he did not need to breathe.
4. Could God have created different necessities of end in the sense of what is fitting? These are the cases in which, without something, a natural end can be achieved, but not so well. It is in this sense that the father and mother are necessary to the raising of a child. Although the child can be brought up with one or both parents missing, this is much less suitable. Now God could not have created *human* beings who had no need of parents, because someone who had no need of parents would just by that fact have a nature other than human. But God could have created *beings* who were otherwise like us but had no need of parents. For example, He might have endowed them with a nature such that their young were born fully mature, knowledgeable, and ready to assume adult responsibilities. The care of parents, which is a necessity of end for us, would not be a necessity of end for them.

But perhaps we should say instead that *so far as we know* God could have created beings who were otherwise like us but had no need of parents. *A priori* conjectures about what would be most fitting for God to do are

risky and prone to error. Rather than guessing wildly, we should observe what He has actually done, then consider how it might have been fitting. What He has actually done is make parents necessary to their children; a child needs a mom and a dad. Why? Perhaps because God who is love, having chosen to make us in His image, has therefore arranged that we image his love. The most fitting way for children to learn to love might be to receive and return parental love – and therefore to be endowed with a nature that makes this necessary.

5. Could God have created different natural necessities of end *per se*? These are the cases in which, without something, some natural end cannot be achieved at all. Among mammals, for example, the sexual union of male and female is naturally necessary for conception. Had He chosen, God certainly could have filled the world with animals otherwise like mammals but that procreated asexually. We need not entertain absolute impossibilities to think of creatures otherwise like dogs, but who divide instead of mating, or otherwise like cats, but who bud.

The case seems to be different concerning ourselves, for again, God willed to make us in His image. Although God has no sex, He might not be so fully and sweetly reflected by beings of asexual nature. Why not? Because this God who is One in Substance is an eternal burning union of Three Persons. Though St. Thomas himself does not consider the possibility, other thinkers in his tradition have suggested that a husband, a wife, and the living love between them provide a flashing, finite glimpse of how Three might be infinitely One. But this brings us back to natural necessity in the sense of the fitting, which we considered above.

How far can such speculations go? Let us be radical: Could God have created a universe with entirely different *forms* of necessity – a universe in which causes operated other than final, formal, and efficient, and material?

The answer depends on how the phrase “other than” is taken. If the question is whether God could have created a universe from which one or more of the forms of order that the four causes signify were simply absent, then we must consider each kind of cause separately. Could the universe contain no final causes? Apparently not, because final causes are the purposes for which things are made, and any universe God created would be a realization of His purposes. Could it contain no formal causes? Again it seems we must demur, because to create is to create beings with determinate natures, and determinate natures are

forms.¹⁶ Could it contain no efficient causes? Once more the answer seems to be “No,” because an efficient cause is what brings something into being or maintains it in being, so to create *simply is* to act as an efficient cause. But God could, perhaps, have created a universe without material causes. Although the universe we know contains all sorts of beings, there does not seem to be anything absurd in the supposition of a universe filled exclusively with beings that are incorporeal and that are not composed of parts. Nor – so far as we know, which is not very far – would the creation of such a universe seem to be unfitting. As we saw earlier, St. Thomas thinks it would have been unfitting had God made corporeal creatures without making incorporeal intellects too, because they fill the gap in the order of being between them and Himself. But had He created only incorporeal beings, there would be no gap to fill.

If on the other hand the question is whether God could have created a universe in which all four causes operated and additional kinds operated too, we simply have no idea. Nothing seems to prevent the supposition that God knows kinds of order besides those disclosed in creation. But because the present order of things is our only source of information about what kinds of order there are, we really cannot say.

So we are mostly blowing smoke. Apart from Revelation, in the end all our knowledge is based on the universe God has actually made, and not even Revelation tells us what could have been. This is certain: God and His eternal law are one; whatever He created is ruled by eternal law; He could have created different things; He could have created different necessities; and if He had, then they would be ruled by Him too. But just how far this “could have” extends is unknowable to finite, dependent minds.

Question 93, Article 5:
Whether Natural Contingents Are Subject to the
Eternal Law?
Discussion

Two Ways of Imposing Order

The difference between imposing direction upon irrational beings, and imposing real laws upon rational subjects, is amusingly illustrated by a

¹⁶ I, Q. 45, Art. 4.

pair of apocryphal stories, one about the first century emperor Caligula, who was trying to show that his power was unlimited, the other about the eleventh century monarch Cnut the Great, who was trying to show that it was not.

When Caligula had brought the Roman army to the English Channel,

Finally, as if he intended to bring the war to an end, he drew up a line of battle on the shore of the Ocean, arranging his ballistas and other artillery; and when no one knew or could imagine what he was going to do, he suddenly bade them gather shells and fill their helmets and the folds of their gowns, calling them “spoils from the Ocean, due to the Capitol and Palatine.” As a monument of his victory he erected a lofty tower, from which lights were to shine at night to guide the course of ships, as from the Pharos [the lighthouse at Alexandria].¹⁷

But when Cnut had attained the “the summit of his power,” having sway over England, Denmark, Norway, and Scotland,

He ordered a seat to be placed for him on the sea-shore when the tide was coming in; thus seated, he shouted to the flowing sea, “Thou, too, art subject to my command, as the land on which I am seated is mine; and no one has ever resisted my commands with impunity. I command you, then, not to flow over my land, nor presume to wet the feet and the robe of your lord.” The tide, however, continuing to rise as usual, dashed over his feet and legs without respect to his royal person. Then the king leaped backwards, saying: “Let all men know how empty and worthless is the power of kings, for there is none worthy of the name, but He whom heaven, earth, and sea obey by eternal laws.” From thenceforth King Cnut never wore his crown of gold, but placed it for a lasting memorial on the image of our Lord affixed to a cross, to the honor of God the almighty king.¹⁸

As only one of these two kings recognized, God’s power vastly exceeds man’s, for though the ocean does not obey us, “He compassed the sea with its bounds, and set a law to the waters, that they should not pass their limits.” Our laws are limited by nature, but by His laws, nature came to be.

¹⁷ Suetonius, “Caligula,” Section 46, in *Lives of the Caesars*, trans. John C. Rolfe (public domain, available at <http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Suetonius/>).

¹⁸ Henry of Huntingdon, *The Chronicle of Henry of Huntingdon*, trans. T.A.M. Forester: London: Henry, G. Bohn, 1853), p. 199. I have modernized the spelling of “Canute.”

**Question 93, Article 6:
Whether All Human Affairs Are Subject to the
Eternal Law?
Discussion**

For this section, I have promised further exploration of two points mentioned only briefly in the line-by-line commentary. One is the importance of St. Thomas's reference to the inward active principle of each kind of nature, be it a barnacle, a fly, or a man. The other is his claim that not even sin can entirely destroy the natural good; the inclination to adhere to eternal law persists even in the wicked, not only in the present life, but even in the life to come.

The “Inward Motive Principle”

Modern thinkers suppose that only a mind, mysteriously shut into itself yet somehow conscious of an “outside” world that it can never reach, can be truly said to have an interior life. Because of this prejudice, we view all things other than minds as mere mechanisms, assemblies of moving parts, fully accessible to inspection, if only we have the right instruments.¹⁹ This way of thinking may lead us to suppose that when St. Thomas speaks of an irrational creature's inward active principle, at most he means that in order to see some of its movements, we have to open up the case and expose the watchwork. Or – if we realize that he does mean something more – we may consider him confused, as though he were attributing mental properties to non-mental things.

But St. Thomas does not share our prejudices. For him, inwardness or interiority is not a psychological but an ontological fact. He is not in any doubt about the possibility of metaphysics, of a science of *what is*. Yet he holds that all things, or at any rate all substances, have, so to speak, an inward life known only to God, which metaphysics can acknowledge but cannot reach. The problem is not that we cannot define essences, but that even when we define them correctly, we do not penetrate to that intimate level at which God knows them; “our manner of knowing is so weak that no philosopher could perfectly investigate the nature of even one little fly.”²⁰ This is what Leo Elders has in mind when he writes,

¹⁹ Indeed, physicalists think even of minds this way, but that is another story.

²⁰ Thomas Aquinas, *On the Apostle's Creed*, Preface, trans. Joseph B. Collins (public domain, available at josephkenny.joyeurs.com/CDtexts/Creed.htm).

Aquinas' metaphysics is a metaphysics of interiority in this sense that in their most intimate depth things are touched by God and flow forth from his causal action. They strive to attain God in whatever they do and pursue ... This Divine causality and cooperation ... works from the inside and depth of things and their actions Those who fail to discover this metaphysical dimension of reality and their own being, remain at the surface of things.²¹

The difference between the inner life of a rational and an irrational creature, then, is not that only rational creatures have inward lives, but that rational creatures have the dignity of *knowing* that they and other things have inward lives. Irrational creatures have inward lives, but lack knowledge of them; they are opaque to themselves.

The idea of interiority is more often associated with the later Scholastic thinker, Duns Scotus, because of his theory of *haecceities* or individual essences, popularized by the poet Gerard Manley Hopkins through his term "inscape." But Scotus went too far. One does not need individual essences to make sense of individuals; worse yet, the hypothesis of individual essences makes it difficult to see how different individuals could have a *shared* essence, a common nature – it makes it seem that individuals are all that exist, and such things as humanity are but constructs of the mind. By contrast, although St. Thomas recognizes that each individual is distinct, he thinks we owe the particular texture of our inwardness precisely to the kinds of beings we are. That tiny fly, which the philosopher has such difficulty understanding, has a different inner life than a man, just because it is a fly, and he is a man.

The Indestructibility of the Good of Nature

Eternal law describes not an alien necessity imposed on our nature, but the pattern of its inward active principles. Though sin dreadfully thwarts their fulfillment, not even sin can obliterate them; our nature, though wounded, persists.

St. Thomas explains the distinction between the *destruction* and the *obstruction* of nature with a pair of analogies. Considering his fondness for the psalmist's cry, "The light of Thy countenance, O Lord, is signed upon us," we should not be surprised that both analogies dwell on the mind's reception of intellectual light. The first analogy is the effect of clouds on clear glass:

²¹ Leo Elders, *The Philosophical Theology of St. Thomas Aquinas* (Leiden, The Netherlands: E.J. Brill, 1990), p. 318.

[The] diminution [of the inclination to virtue] may be understood in two ways: first, on the part of its root, secondly, on the part of its term. In the first way, it is not diminished by sin, because sin does not diminish nature, as stated above (Article [1]). But it is diminished in the second way, in so far as an obstacle is placed against its attaining its term. Now if it were diminished in the first way, it would needs be entirely destroyed at last by the rational nature being entirely destroyed. Since, however, it is diminished on the part of the obstacle which is placed against its attaining its term, it is evident that it can be diminished indefinitely, because obstacles can be placed indefinitely, inasmuch as man can go on indefinitely adding sin to sin: and yet it cannot be destroyed entirely, because the root of this inclination always remains. An example of this may be seen in a transparent body, which has an inclination to receive light, from the very fact that it is transparent; yet this inclination or aptitude is diminished on the part of supervening clouds, although it always remains rooted in the nature of the body.²²

Lest anyone underestimate the gravity of sin, St. Thomas's second analogy is blindness:

Even in the lost the natural inclination to virtue remains, else they would have no remorse of conscience. That it is not reduced to act is owing to their being deprived of grace by Divine justice. Thus even in a blind man the aptitude to see remains in the very root of his nature, inasmuch as he is an animal naturally endowed with sight: yet this aptitude is not reduced to act [is not actualized or fulfilled], for the lack of a cause capable of reducing it, by forming the organ requisite for sight.²³

The fact that not even sin can obliterate the inclination to adhere to God's law may seem comforting. It isn't, for what it really means that the wicked man is divided not only against God, but against himself. In a sense he receives what he sought, but ultimately he does not find it sweet. His actual inclinations are at war with his natural inclinations; his heart is riddled with desires that oppose its deepest longing; he demands to have happiness on terms that make happiness impossible. In the end, his very nature concurs with God in inflicting on him the just punishment that eternal law decrees. He is, in this sense, his own hangman. Perhaps this is what Vergil meant in Dante's *Comedy*, when he says about the damned who leap eagerly from Charon's boat,

And they are prompt to cross the river, for
Justice Divine so goads and spurs them on,
that what they fear turns into their desire."²⁴

²² I-II, Q. 85, Art. 2.

²³ *Ibid.*, ad 3.

²⁴ Dante Alighieri, *Inferno*, trans. Anthony Esolen (New York: Random House, 2002), Canto 3, lines 124–126, p. 27.

Something of the same sort takes place even in the present life. St. Thomas argues that because the wrongdoer disturbs three different orders, his own reason, human law, and Divine law, so he receives a threefold punishment, one inflicted by himself, one by man, and one by God.²⁵ The one that he inflicts on himself, the remorse of conscience, is united to the one that is inflicted by God, because conscience is the interior testimony to God's law; whenever a man acts against conscience, "he has by this very fact decided not to observe the law of God."²⁶

St. Thomas speaks of "remorse of conscience" in several places.²⁷ Perhaps by the expression he means only the mordant sorrow of self-reproach; this is how he is usually understood, and it is the meaning of the English word "remorse." But he might have more in mind, for in Latin, *remorsus* refers literally to a "biting back," a bite of vengeance – and mordant feelings are not the only way that the moral foundations of the mind bite back when they are bitten. Consider what happens to us when we lie to ourselves. As St. Thomas approvingly quotes the comment of Gregory the Great, "It is a common vice of mankind to sin in secret, by lying to hide the sin that has been committed, and when convicted to aggravate the sin by defending oneself."²⁸ But since we offer such excuses not only to placate others but to placate conscience – and since conscience is an act of reason, our reasoning becomes more and more disordered. That is, by the logic of defending one kind of evil, we are forced to defend

²⁵ I-II, Q. 87, Art. 1.

²⁶ Thomas Aquinas, *Disputed Questions on Truth*, Q. 17, Art. 4, trans. James V. McGlynn, S.J. (available at www.diafrica.org/kenny/CDtexts/QDdeVer.htm).

²⁷ See esp. I-II, Q. 85, Art. 2, ad 3, "Even in the lost the natural inclination to virtue remains, else they would have no remorse of conscience," and II-II, Q. 88, Art. 2, ad 2, "Some have held that a subject might break his vow without any remorse of conscience, whenever his superior tells him to ... But this opinion is based on a false supposition." Compare *vermem conscientiae*, "worm of conscience," sometimes also translated "remorse of conscience" (as in the Dominican Fathers translation of I-II, Q. 88, Art. 4). St. Thomas says in Supp., Q. 97, Art. 2, that "the worm ascribed to the damned must be understood to be not of a corporeal but of a spiritual nature: and this is the remorse of conscience, which is called a worm because it originates from the corruption of sin, and torments the soul, as a corporeal worm born of corruption torments by gnawing." *Synderesis*, the habitual knowledge of the first principles of practical reason, and *scientia*, the judgment in which this knowledge is actualized, are discussed further in Q. 94, Before Reading, in Q. 94, Art. 1, and Q. 96, Art. 4. The *vermem conscientiae*, however, is neither the knowledge of first principles nor the act of judgment, but the passion of sorrowful regret.

²⁸ Gregory the Great, *Morals on the Book of Job*, Book 22, Chapter 15, explaining Job 31:33, quoted by St. Thomas in II-II, Q. 69, Art. 1, ad 3.

yet others. Consider just how the defense of abortion has metastasized into a defense of infanticide and euthanasia.²⁹ Having planned only one sort of sin, we leap further into evil than we had planned.

²⁹ I have discussed such phenomena, which I call the “revenge of conscience,” in various places including *What We Can’t Not Know: A Guide*, rev. ed. (San Francisco: Ignatius Press, 2011), Chapter 7, and *The Line Through the Heart: Natural Law as Fact, Theory, and Sign of Contradiction* (Wilmington, DE: ISI Books, 2009), Chapter 1. For an example of the metastasis of the argument for abortion, see Alberto Giubilini and Francesca Minerva, “After-Birth Abortion: Why Should the Baby Live?” *Journal of Medical Ethics*, www.jme.bmj.com, published online 27 February 2012. The authors write, “What we call ‘after-birth abortion’ (killing a newborn) should be permissible in all the cases where abortion is, including cases where the newborn is not disabled.” Responding to a blizzard of criticism, editor Julian Savulescu took to the journal’s blog to point out that “The arguments presented, in fact, are largely not new and have been presented repeatedly in the academic literature and public fora by the most eminent philosophers and bioethicists in the world, including Peter Singer, Michael Tooley and John Harris in defence of infanticide, which the authors call after-birth abortion. The novel contribution of this paper is not an argument in favor of infanticide – the paper repeats the arguments made famous by Tooley and Singer – but rather their application in consideration of maternal and family interests. The paper also draws attention to the fact that infanticide is practiced in the Netherlands.”

St. Thomas's Prologue to Question 94: Of the Natural Law Discussion

The Organization of Question 94

To many beginners – and even some experienced thinkers – St. Thomas's distinctions seem unnecessarily picky. But [Question 94](#) is not a place where one can afford to be careless; the luminosity of his inquiry lies precisely in the care with which he frames the questions and develops the answers. Suppose we lumped his fourth, fifth, and sixth questions together (as some of my students would like to do), under the query “Is morality ‘absolute’?” In one straightforward sense, the answer is plainly “No.” For instance, the moral law commands *me* to be faithful to my wife; it does not command *you* to be faithful to my wife. The problem is that although this answer is correct, it completely misses the point; the answer is worthless to the questioner, because he has not carefully considered what he is trying to ask. There is no art or virtue in pickiness as such, but there is a great art and virtue in knowing when and how to be picky.

Natural Laws and Natural Rights

Before we proceed to the Articles, another issue demands our attention. Though [Question 94](#) is Western civilization's seminal text on natural *law*, many readers can scarcely muster the patience to work through it. For why doesn't St. Thomas also discuss natural *rights*, which have been so important – one might say, such an obsession – to the entire modern era? Didn't he ever think about them? Did he believe in them at all? Or did he deny the whole idea? Let us consider these questions.¹

¹ Several of the following paragraphs are adapted from my article, “Natural Rights,” in the *New Catholic Encyclopedia, Supplement 2012–13: Ethics and Philosophy* (Catholic University of America and Cengage Learning).

Just what St. Thomas does think of natural rights has been clouded and confused by the fact that writers have used the term “natural rights” in a variety of senses. As a result, they often seem to agree when they actually disagree, and seem to disagree when they actually agree. Perhaps the stickiest terminological trap is the common distinction between “objective” and “subjective” rights. The reason this distinction is misleading is that in a certain sense, every genuine personal right is *both* objective and subjective. My rights are objective in the sense that it is objectively right for me to have them; but they are subjective in the sense that they are “mine,” something that I, the subject, “have.” Usually, those who speak of objective and subjective natural rights are not really distinguishing between different *kinds* of rights, but between different *theories* of where rights come from and which rights we actually have.

One camp, which takes its light from the classical natural law tradition, views them as rooted in the eternal principles of right and wrong, so that there could never be a right to commit a wrong. The other views them as rooted in personal autonomy – self-rule, or self-law. Now the classical tradition had certainly viewed persons as governing themselves *under a higher* law, but the “autonomists” view self-rule as the *source* of law, a “law” that each person gives himself. This fact makes it difficult, if not impossible, to distinguish autonomy from self-sovereignty, from the sheer assertion of will; it seems to imply that one may make up one’s own right and wrong. To be sure, the autonomy theorists hold that in the exercise of liberty, individuals should agree not to infringe upon the liberty of others. But if individuals really do make up their own right and wrong, then it is difficult to see the force of this “should.” Why honor promises? Why care about the liberty of others at all? Autonomists have offered a variety of solutions to this problem, such as mutual fear as a motivation for social contract, but to classical natural law thinkers, none of them seem convincing. They implicitly depend on those eternal moral principles, above the human will, which they purport to do without. For without them, why shouldn’t I agree to the supposed contract, but then break my promise? Why not board the train, but refuse to pay?

Although the distinction between objective and subjective rights turns out to be unhelpful, not all distinctions among rights are unhelpful. For example, one may usefully distinguish rights according to their objects – according to what they are rights “to.” Some rights are rights to *have or receive* something; for example, merchants have the right to payment

from their customers, and children the right to care from their parents. Other rights are rights to *do* something; for example, a man and woman have a right to marry if there are no impediments to the union. Another useful distinction is among rights that are permissive, protective, or supportive. Religious liberty is an interesting case, because it is a right in all three senses. It *permits* each person to seek the truth about God, because seeking it is our duty and finding it our highest good; it *protects* each person in seeking the truth about God, by prohibiting others from unreasonably hindering the search; and it *supports* each person in seeking the truth about God, by obligating other people to give the seeker such aid as they reasonably can (though only the first two dimensions of this natural right can be enforced by civil rights).

On this view, natural rights in general exist to safeguard the ability of all persons to do their duties and to have the freedom of action necessary to direct their lives in order to develop their human gifts in community with others, not only for their private good, but also for the good of others. Thus not only individuals, but also certain forms of association, such as families and the Church, have rights, and these rights need to be codified with appropriate legal sanctions in order to protect them against the potential tyranny of other individuals, other social groups, or the state.

Thus far I have been drawing on contemporary thinkers who are inspired by the classical tradition. But where does the epitome of the tradition, St. Thomas, stand in all of this? That is a matter of dispute. Cutting through the clutter, this much seems to be undisputed among those who have written about the matter²:

1. St. Thomas often uses the word *ius*, “right,” to refer both to what is right to have or receive, and what is right to do.
2. Quite often, St. Thomas uses the word *ius* in a sense that makes right personal – in other words, not only does he speak of *what is right*, he also speaks of *what is John’s right*. A conspicuous example is found in [Question 96, Article 3](#), where he speaks of protecting the right (in the sense of rights) of a friend.
3. Though he uses the expression “natural right,” singular, he does not use the expression “natural rights,” plural.

² For a representative slice of the debate as it presently stands, see Brian Tierney, John M. Finnis, Douglas Kries, and Michael P. Zuckert, “Symposium: Natural Law and Natural Rights,” *Review of Politics* 64:3 (2002), pp. 389–420.

4. Yet it seems that such rights as John's rights *are in fact* natural rights, plural, just insofar as they are grounded in natural right, singular. Supporting this point is the fact that in many contexts St. Thomas uses the words *ius*, or right, and *lex*, or law, interchangeably.
5. Various clues as to the character of the connection between natural law and natural rights may be found in St. Thomas's work.
6. Unfortunately, St. Thomas does not actually elaborate any of these clues.
7. On the other hand, any theory of natural rights that St. Thomas might have accepted would be resolutely opposed to the theory that roots rights in radical self-rulership. If natural rights are taken in that sense, St. Thomas certainly does not believe in them; but they need not be taken in that sense.

To these seven points, I would add only one more, a warning against the argument from silence. When we are dealing with an intellect of St. Thomas's power, it is presumptuous to think that just because he does not make his views about something explicit, he must not have thought them out and was writing "unreflectively." If clues to the connection of natural law with natural rights can be found in his work, it behooves us to take these clues seriously.

Then what clues does he offer? What foundations for natural rights are at least compatible with the ways that he speaks of nature, of law, and of rights? The three most interesting possibilities are as follows. Although their proponents sometimes treat them as mutually exclusive, in reality they seem to be complementary.

First, natural rights may be simply implications of natural commands and prohibitions. For example, if the natural law forbids all from taking innocent human life, then each innocent person may be said to have a right not to have his life taken by others. This line of argument has been strongly and urged by John Finnis.³

Second, natural rights may be naturally protected permissions. Suppose, for example, that the natural law permits a man to marry a woman (provided certain conditions are met). Suppose further that the natural law forbids others from preventing him from doing so. Then he

³ Brian Tierney has protested that such concessions on the part of St. Thomas have nothing to do with rights, *ius*, but with the Decalogue. Finnis rightly replies that according to St. Thomas, *all* of the precepts of the Decalogue are precepts of *ius* (II-II, Q. 122, Article 1). *Ibid.*, pp. 393, 409.

may be said to have a natural right to marry her. This trail has been diligently followed by Brian Tierney.⁴

The third complementary possibility is that rights are grounded in essential humanity, in the dignity of human beings as responsible persons. I have in mind what St. Thomas says about the difference between “royal and politic” rule and “despotic” rule, a distinction he borrows from Aristotle:

For a power is called despotic whereby a man rules his slaves, who have not the right [*facultatem*] to resist in any way the orders of the one that commands them, since they have nothing of their own. But that power is called politic and royal by which a man rules over free subjects, who, though subject to the government of the ruler, have nevertheless *something of their own*, by reason of which they can resist the orders of him who commands.⁵

By this “faculty,” this “something of their own,” St. Thomas here means merely the bare ability to resist. But other passages suggest that normally, human beings *ought* to have such an ability – that a certain constitutional respect is due to them just because they are persons rather than things, individual rational substances endowed by God with free will and moral capacities. Because of this dignity, the best human government requires an element of democracy (Question 105, Article 1). Because of this it, subjects may sometimes – in fact *must* sometimes – disobey unjust laws (Question 96, Article 4). Because of it, not only individuals but even their licit forms of association enjoy certain privileges that no human ruler may abridge. And because of it, the Divine governor Himself, whose law is always just and who must not be disobeyed, rules us, His images, not as He rules the animals, but through the participation of our minds (Question 91, Article 2).

But we must step carefully here, for though the right to be ruled in a “royal and politic” manner may be natural, but it does not follow that

⁴ As Brian Tierney points out, *ibid.*, pp. 399–404, the idea is elaborated not only in the work of later Thomists such as Francisco Suarez, but also in earlier juristic writings with which St. Thomas’s was certainly familiar. Surprisingly, Tierney seems to think that St. Thomas ignores their view of the matter – “but of course Aquinas did not employ this language,” *ibid.*, p. 402. On the contrary, in Question 92, Article 2, St. Thomas explicitly defends the view that law includes not only precepts, but permissions, and since he in no way restricts his argument to human law, it seems to cover natural law too. In fact, St. Thomas argues that preceptive law *includes* permissions – for as he says, “every law,” not just command, “is a kind of precept.”

⁵ I, Q. 81, Art. 3, ad 2, emphasis added. Compare I-II, 9, 2, ad 3; I-II, 17, 7; and I-II, 56, 4, ad 3.

it is unconditional. Many natural rights are conditional; for example, the right to a wage is conditioned on performing the labor. Concerning human government, St. Thomas agrees with St. Augustine that when the citizens become so corrupt as to sell their votes, it may be necessary to deprive them of the privilege of choosing their own magistrates ([Question 97, Article 1](#)). And concerning the government of God, he agrees with the tradition that for those who are obstinate to the end, there is hell.

Some Thomists are uneasy with the language of natural rights. The reasons for this disquiet are understandable. As we have seen, however firmly rights may be grounded in what is objectively just, grammatically speaking they *seem* to be subjective, just in the sense that they are “mine.” Of course, the same is true of duties, yet, psychologically, there is a difference. “My” duties direct my attention outward, to the persons toward whom I owe them. By contrast, “my” rights direct my attention inward, toward myself. This makes it very easy to view rights as though they were not really about objective moral realities, but “all about me” – about sheer self-assertion. The fear of these thinkers, then, is that talking too much about rights subtly influences us to accept a false view of rights, which may be true. We return to this problem in the discussion of Article 4, below.

To most Thomists, however, it seems unreasonable that we should avoid the language of natural rights just because the idea is so badly abused. The reality of natural rights, properly understood, is a truth, knowable by reason. In this life, truth is always abused; even liars know that to be persuasive, they must fit as much truth into their lies as possible. Instead of avoidance, then, a better strategy (though perhaps a risky one) would seem to be redemption: To *reclaim* the spoiled language of natural rights, to rescue the concept from its abusers, to uproot it from the theory of radical self-sovereignty and plant it again in the soil of natural law.

Question 94, Article 1: Whether the Natural Law Is a Habit? Discussion

Conscience, conscience, and conscience

As we will have further occasion to discuss in [Question 96, Article 4](#), we tend to think of conscience as one thing, but St. Thomas thinks of it as several different things – although, as he has pointed out earlier in the *Summa*, the terms for these things are sometimes used interchangeably,

as they are here.⁶ One of these two things is *synderesis*, which we might render “deep conscience” or “seeds of conscience.” Though not itself one of the soul’s powers, *synderesis* is a natural tendency of one of its powers – it is the natural disposition of human reason to understand the starting points of human action, such as the indemonstrable first principle that good is to be done and pursued and that evil is to be avoided. As we have seen, it would be a mistake to regard such understanding as a natural *act*, or actualization, because the mind is not always thinking of the first principles. But we may regard it as a natural *habit*, because the mind is always in readiness to think about them; although impediments such as sleep can intervene, they reside in it latently, as a habit. St. Thomas calls this habit *natural* because it belongs to us simply as human beings. Of course we are not born with the actual knowledge of first principles; babies do not reflect on the fact that good is to be done. Yet from birth, the deep dispositional structure is really there; it merely remains latent until it acquires the intellectual equipment that it needs in order to work. For example, if the child does not yet understand the meaning of such terms as “harm” and “other person,” he cannot understand the wrong of gratuitously harming another person, but once he does understand the meaning of all the terms, he grasps the principle spontaneously.⁷

The second thing is *conscientia*, which we might render “surface conscience,” or “conscience in action.” *Conscientia* is not a habit, but the actualization of a habit – the act of applying the habit of *synderesis* to particulars. When I go beyond reflecting that good is to be done – when I grasp that *this deed* is good and so do it – I am performing an act of *conscientia*. *Synderesis* is the underlying cause of *conscientia*, that which *conscientia* brings into play. At the moment of action, however, it is *conscientia* that witnesses, binds, and incites us to do good.

The third thing is the *vermem conscientiae*, or “worm of conscience,” which accuses, torments, and rebukes us when we do evil.⁸ This is neither a habit of the intellect, like *synderesis*, nor an act of the intellect, like *conscientia*, but a passion. To put it another way, it is not something that we

⁶ I, Q. 79, Art. 13. Notice too that in the phrase “conscience or *synderesis*,” he is using neither the exclusive “or,” *aut*, nor the inclusive “or,” *vel*, but the synonymous “or,” *sive*.

⁷ I, Q. 79, Art. 12; see also *Disputed Questions on Truth*, Q. 16, and *Commentary on the Sentences of Peter Lombard*, II, Dist. 24, Q. 2, Art. 3.

⁸ The expression is biblical in origin; see Mark 9:48. See also Q. 93, Art. 6, note 20, and, in this *Companion to the Commentary*, the discussion of Q. 96, Art. 4.

have, or something that we do, but something that we suffer. It does not always correspond, by the way, to the judgment that we think that we tell ourselves; sometimes how we judge deep down differs from the judgment that we think we have made.

Although *synderesis* cannot err, *conscientia* can err in many ways. When this happens, the *vermem conscientiae* will go wrong too. One way *conscientia* can err is insufficient experience, where I don't know enough to reach sound conclusions; another is insufficient skill, where I have never learned the art of reasoning well. Then come sloth, where I am too lazy to reason, and corrupt custom, where it has never occurred to me to do so. Next come passion, where I am distracted by strong feeling from reasoning carefully, and fear, where I am afraid to reason because I might have to face being wrong. Bringing up the rear are wishful thinking, by which I include in my reasoning only what I am willing to notice; depraved ideology, by which I interpret known principles crookedly; and malice, by which I may even refuse to reason because I am determined to do what I want. Yet underneath all of the resulting false convictions is the testimony of *synderesis*, something gripping, profound, and true, however it may have been twisted and falsified on its winding path into present application.

The natural law tradition commonly calls moral education, instruction, and nurture "the formation of conscience." *Synderesis*, or deep conscience, does not need to be formed, because it is a natural disposition; it is, so to speak, already formed. But *conscientia* does need to be formed: We do need to acquire the intellectual and moral virtues that shape the act of moral judgment. Although our upbringing cannot pump in absolutely first principles, it is nonetheless very powerful. It reinforces the first principles, because the mere fact that we know something to be wrong is not enough to keep us from doing it. It elicits the first principles, because we may know many things without noticing that we know them. It guards the first principles, because judgment can err in so many ways. It builds upon the first principles, because only the most general and basic matters of right and wrong are known to us immediately, and second knowledge must be added to first. Finally, it confronts us with the first principles, because sometimes we need to be told "You know better."⁹

In an age like ours, when people are brought up to think that morality is a matter of personal choice, the *vermem conscientiae* is often the first

⁹ I, Q. 79, Art. 13; see also *Disputed Questions on Truth*, Q. 17.

clue that choices are not right just because we have made them – that a moral law really does stand over our wills. Surely morality is a matter of choice in the sense that we must choose to be moral, but it is not a choice in the sense that we can choose for ourselves the content of morality. Suppose John has always “chosen” to be faithful to his wife, but one day he finds himself cheating on her. Perhaps he experiences remorse; such things happen, even among adulterers. But why do they? Perhaps John thinks, “I am remorseful because I made a choice contrary to my long-term preference.” But why *not* choose contrary to his long-term preference? If ethics is nothing but preference, then preferring faithfulness, but committing adultery for a change, should disturb him no more than preferring chocolate, but having vanilla for a change.

Or suppose cheating on his wife *is* John’s long-term preference, and he has always followed it diligently. Even so he begins to feel the worm of conscience. Such things happen too; but if ethics is nothing but preference, then how can there even be a worm of conscience? Would John be remorseful if even though he had always preferred vanilla, he was beginning not to like it any more? Perhaps he might feel surprise, perhaps disappointment, but why remorse? If he can change the standard of judgment to suit himself, then why should he ever feel judged?

**Question 94, Article 2:
Whether the Natural Law Contains
Several Precepts, or Only One?
Discussion**

The Natural Inclinations

At the moment, St. Thomas is not concerned to draw up a list of secondary precepts. Later on he does, for we find that they are well-summarized by the Decalogue, or Ten Commandments, which turn out to belong not only to Divine law, but also to natural law. Right now, though he is trying to work out from what source all the secondary precepts flow.

Still, why all the bother about natural inclinations? Why not simply say that the first principle of practical reason, and the first precept of natural law, is to seek happiness? Hasn’t St. Thomas already declared, all the way back at the beginning of our inquiry into law, that “the last end of human life is bliss or happiness”?¹⁰ He has, and he has not changed his mind. By now, however, we have become acquainted with certain complications.

¹⁰ I-II, Q. 90, Art. 2.

The first complication is that we must distinguish between temporal and eternal happiness. Only eternal happiness qualifies as our final end, because it is completely satisfying, leaving nothing to be desired. Yet so far as it goes, temporal happiness is a real end, in the sense that it is desirable in itself, not just as a means to something else; the Supreme Good, God Himself, has made it so.¹¹ Now to attain our eternal happiness, we depend on the grace of God and the guidance of Divine law. But to attain our temporal happiness we depend on our natural powers and the guidance of *natural* law – on those gifts of God that are not added to our nature, but simply are our nature. So it is that in order to understand our natural happiness, we must consider our natural inclinations.

Another way to think of the matter is to consider what happiness is in itself. Fulfillment, certainly. But here comes the second complication: In what does the fulfillment of our nature consist? Does it consist simply in a feeling, such as pleasure? No, for pleasure is but a grace note – the last crowning touch to our repose in something good in itself.¹² As all hedonists eventually discover, to have the feeling of pleasure *apart* from that good is dreadfully empty. Aristotle pointed out in *Nicomachean Ethics*, Book I, Chapter 4, that happiness is not something we are feeling, but something we are doing. It is the *activity* of living well – living in a way that unfolds our potentialities, that makes us most fully what by nature we are made to be. Again our attention is drawn to our natural inclinations.

Yet the expression “natural inclination” gives rise to such a variety of confusions! It might be helpful to consider a few of the things that natural inclinations are *not*.

They are not necessarily *irresistible* tendencies of action. Not only is it possible to act contrary to natural inclination, but a creature can even acquire an inclination to act contrary to them, as a tree branch can be trained somewhat to grow away from the sun.

They are not necessarily *spontaneous* tendencies of action. We are naturally inclined to virtue, yet vice is easy and virtue is hard; we do not spontaneously act virtuously.

They are not necessarily how we *prefer* to act. Vice may initially seem more attractive.

They are not necessarily how our genes *predispose* us to act, or “how we were born.” The genome of a typical individual may contain many

¹¹ See also the commentary on [Question 90, Article 2](#).

¹² I-II, Q. 31, Art. 8; Q. 33, Art. 4; Q. 34, Art. 1; and Q. 38, Art. 1.

genetic errors, many coding sequences contrary to human fulfillment – not only predispositions to physical illness, such as anemia or heart disease, but also predispositions to act in ways that are bad for him. Suppose I suffer a genetic predisposition to alcoholism, an unusual susceptibility to the temptation to get drunk. Does this make drunkenness natural for me? Not at all. In fact, we recognize drunkenness as an abuse of our faculties precisely because it runs against the grain of our nature. It contradicts all three of our natural inclinations, for it endangers preservation; subverts social, marital, and family life; and undermines rationality.

To say that something has a natural inclination to act in a certain way is nothing more than to say that in view of the kind of thing it is, acting that way is what is fitting for it, what is good for it, what actualizes it, what helps it to develop properly and flourish. Not that it can't act differently. Not that it won't. Not that it won't tend to. Not that it won't want to. Not that it won't like to. But if it does act in those other ways, it will be diminished, and may even break.

The Ruling and Subordinate Powers of the Soul

The debate over “whether morality is rational or instinctual” gets a lot of attention in the popular media, but misses the point, for the natural law is based on all of our natural inclinations, including both our rational inclinations and the ones we share with animals. Is morality then based on *both* reason and instincts? That is a bad way to frame the question, because it depends on what one means by instincts. Do we mean by the term nothing more than the inclinations we share with other animals? Then, of course, the answer is “Yes.” Or do we mean by it blind impulses on which we act just the way animals act? Then, of course, the answer is “No.” Reason transforms the so-called instincts, turning them into meanings. It tells us how, and why, and when, and with whom, and in what manner to act on the instincts. And should two such impulses at the same time say “Follow me,” reason says “You don't make that decision. I do.”

It is just as grave to deny, as to exaggerate, the importance of the impulses we share with animals. But it is also a great mistake to think that what we share with unthinking beasts is shared with them identically. We are not simply beasts with minds tacked on, any more than we are angels with bodies tacked on. Our very rationality is animate; our very animality is rational; our very personhood is embodied; our very bodies are personal.

For a very ancient image of the right relation between the rational, concupiscible, and irascible powers, picture the soul as a rider, a horse,

and a lion.¹³ I must paint this picture twice, the first time in miniature, the second time enlarged to a triptych. Here it is then in miniature: The rider sits tall in command; the horse swiftly and obediently carries him to his destination; and the lion assists him to overcome his obstacles and foes. Though horse and lion are on good terms not only with the man but also with each other, the lion is the nobler of the two beasts, urging on the horse in its exertions. The man is not the soul *per se*, but the power of intelligence, which is the soul's highest power – the one through which the “I” most clearly speaks. The horse is the soul's appetites, or the concupiscible power. The lion signifies its ardor or fierceness, the irascible power. Reason is shown in the saddle because of his calling to be their master. His rule is a royal rather than despotical, because the subordinate powers are able to resist. Yet even someone who scarcely understands what royalty means may grasp that unruly things must be brought under royal rule and law.

So much for the image in miniature. Now by opening it up into three different scenes, we get a glimpse of how such royal rule might be accomplished. In each scene, reason, appetite, and fierceness stand in a different relationship.

Scene one unfolds at night. A muddy road stretches out toward the eastern horizon, but the road is hard to see. In this scene the horse is not a horse, but a shaggy-eared ass, and the lion is not a lion, but a scrawny wildcat. In his right hand, the man is holding the ass's reins, though he doesn't seem to know what to do with them. In his left, he is holding a whip. The ass continually brays, “You had better feed me,” and whenever it does, the man obeys. All down the roadside he walks in search of things for the ass to eat. Every now and then, he thinks it might be more dignified to ride in the saddle, but whenever he tries to climb into it, the ass rears and plunges to dismount him, then drags him around by the reins. As he is being dragged, the wildcat bites him, yowling “Do as the ass says!” Sometimes he strikes back at the two animals with his whip. The ass, knowing that his mood will pass, sits down on its rump to wait him out. The wildcat cringes, but it is only cowed, not tamed. Eyes flaming with anger, it waits its chance to bite again. If anyone asks this poor man what he is doing, he says, “I'm pursuing my happiness.”

In scene two, the man is still there, but the ass has become a brawny mule, and the wildcat a starving leopard. This time the man has some

¹³ The next few paragraphs are adapted from the author's book, *On the Meaning of Sex* (Wilmington, DE: ISI Books, 2012), Chapter 6.

control over his animals, but his command is uncertain because they are more powerful than he is. Although he is seated on the mule's back, trying to direct it down the highway, they are making little progress. Sometimes the mule turns off the road into pasture. At other times it stays on the road and perhaps even gallops, but as often as not, it runs in the wrong direction. Though the man uses whip, reins, and spurs, it detests being checked; twisting its head around to face him, it shows its blocky teeth and brays, "I haven't yet lost my strength. You had better fear me." But then the leopard snarls, punishing the mule by sinking its fangs into its flank. As the mule reverts to sullen obedience, the leopard gives the man dark looks and mutters, "I don't know why I should be helping *you*." The sun has risen, so the man can see the road, but he is ashamed to be seen because he looks so ridiculous. If anyone asks this poor man what he is doing, he says "I'm trying to be good."

In the final scene, the man is clad in knight's armor, laughing and singing fighting songs. The mule has turned into a white stallion, and the leopard into a tawny, noble lion. Thunderously purring, the great cat sidles up to the knight's knee and rumbles, "Where is the enemy? Command me!" Snorting and rearing, the stallion neighs, "Where may I carry you? Let me run!" The man guides the stallion with nothing but his knees and a few quiet words. In place of the whip, he carries a sword for making swift work of foes and barriers. Sometimes at a canter, sometimes at a gallop, the three of them head down the high road, straight toward the sun. Although that great orb is so bright that it ought to blind them, and so blazing that it ought to consume them, instead it gets into them like molten gold. If anyone asks the man where he is going, he answers "Toward joy."

As these three scenes tell the story, appetite and ardor are made to be ruled by intelligence, but appetite can resist intelligence instead of obeying it. The loyalty of ardor in this contest is uncertain – on one hand it may side with intelligence, but on the other hand it may side with appetite, for as we know, a man can become just as angry and ashamed with himself for trying to exert self-control as for not exerting it. Even when ardor does side with intelligence, it may do so resentfully, like a slave, rather than loyally, like a servant. For all these reasons, the first efforts of someone attempting purity and self-command may seem ridiculous, not only to others but also to him. Nonetheless there is something lofty about these efforts, for it is better to try and fail than not to try. Though it may seem at times as though the whole matter were nothing but a mass of difficult rules, the rules themselves are made for a great and beautiful

reason, for removal of the obstacles that keep the soul from riding swiftly to the sun and becoming as resplendent as it is.

A word against overstatement. Very few of us in this life seem much like molten gold. Even those who reject the first scene are more like the second than they would wish. Progress down the road is measured not in miles but in inches. Even so, it is measurable. Our efforts become less and less ridiculous; we begin to catch the golden scent of the burning sun even when still far from it. Siegeworks that once would have stopped us, we begin to be able to scale. About those mightier barriers that still exceed our strength, there are rumors of help from the Emperor; but these reach our ears not from natural law, but from Divine.

**Question 94, Article 3:
Whether All Acts of Virtue Are Prescribed
by the Natural Law?
Discussion**

Just Be Reasonable?

In equating acting according to virtue, acting according to natural law, and acting according to reason, St. Thomas is not simply counseling us “be reasonable” and leaving it at that. We might say that the precepts of natural law *instruct* us toward right ends, the virtue of practical wisdom helps us *apply* ourselves toward right ends, and the moral virtues *incline* us toward right ends. Still more precisely, the moral virtues make our lower faculties docile to reason. By doing so, they complete the inclinations toward right ends which find their beginnings in our nature, and they correct the disordered inclinations that result from the Fall.

If all this still seems a little vague, remember too that St. Thomas has already devoted an entire section of the *Summa* to virtues and vices in general, and he addresses entire sections to particular virtues later on. He addresses the topic here only to address special problems concerning the relation of virtue to natural law. His discussion is not meant to be self-contained.

Consider just how it is “reasonable” to be temperate and courageous. Recalling the images employed earlier in this *Companion to the Commentary*, in the discussion of Article 2, we may say that temperance is what turns the ass into a stallion, making the desire for sensual pleasure docile to reason. It is the virtue that enables us to resist the contrary temptations of self-indulgence on the one hand, and Puritanical abstemiousness

on the other. If I am temperate, I eat only what is good for me, and only when I ought to eat it; I enjoy sexual union only with my wife, and only in a way that truly expresses what sexual union should express. Courage or fortitude, in turn, is what turns the wildcat into a lion, bringing fear and fierceness under rational rule. This is the virtue that enables us to resist the contrary temptations to cowardice, funk, mousiness, and faint-heartedness on the one hand, and rashness, pugnacity, cruelty, and excessive vehemence on the other. If I have fortitude, I do those bold things I ought to do, but hold back when prudence directs. I seek justice rather than personal revenge, and without being harsh, I am firm.

The interaction of reason with moral virtue runs in both directions. How does it run from reason to moral virtue? Reason gives moral virtue its instructions: To determine case by case *just where my action should fall* between the extremes of excess and deficiency requires practical wisdom. But a certain influence also runs from moral virtue back to practical wisdom, for someone who has never acquired the ability to hold his appetites in check will find it far more difficult to acquire good judgment in the first place, and someone who lives in terror of the opinion of other people will consider the independent exercise of such judgment too dangerous to risk. This two-way street between practical wisdom and moral virtue also permits different virtues to influence each other indirectly, *through* practical wisdom, for the condition of each virtue affects the condition of practical wisdom which in turn affects the condition of every other virtue.

The moral virtues and vices act upon each other via other paths too. For instance, just because I lack temperance, which brings sensual appetite under rational control, I may be too weak to resist any dish that delights me. I am ashamed of my weakness, yet because I lack fortitude, which brings anger under rational control, I am angry not with myself, as I ought to be, but instead with those who point out my weakness. Angrily refusing to discipline myself, I become even more the slave of my appetites than I was before. This little dance can go the other way too. Because I lack fortitude, which brings anger under rational control, I become *too* fierce with myself. Then, just to punish myself, I refuse to eat even when I need to.

The solution is to *develop* practical wisdom and to *discipline* the lower powers so that they listen to what it says. Moral virtue is precisely such discipline. This is what it means to say that to act according to virtue is to act according to reason.

So-Called Virtue Ethics

In our own day it has become fashionable to treat “virtue ethics” as a special kind of ethics, one that makes no assumptions about natural laws. By now it should be clear that St. Thomas’s view of the matter is diametrically opposed. Rather than seeing virtues and laws alternative *kinds* of ethics, he sees virtues and laws as closely related *topics* in ethics. Just how the vogue of so-called virtue ethics came about is worth some attention. Its origin lies in a terse, fascinating, and widely misunderstood article written a half-century ago by the philosopher G.E.M. Anscombe.¹⁴

Like St. Thomas, Anscombe believed in both virtues and natural laws, and like him, she believed in God. However, she thought that modern moral philosophers who did not believe in God had backed themselves into a corner. They thought of morality as though it were law, but this made no sense for them because they denied that there was any moral lawgiver. Anscombe thought that such incoherencies were at the root of the various other difficulties that plagued the ethical theories then current. It was as though people were trying to theorize about arithmetic without believing in numbers or numerical relations.

What she proposed to these skeptics was not that they abandon moral philosophy, but that they carry on the enterprise in a different way. Henceforth they would admit that they had no business talking about morality as law; instead they would content themselves with describing the *psychology* of the moral virtues. They would allow themselves to say “This is what it means to have honesty” or “This is the sort of person we admire as being courageous,” but they would not indulge in the conceits that “Be honest” and “Be courageous” were moral laws.

For Anscombe herself, it would not be a conceit. She could speak about moral laws because she believed in the lawgiver, and her suggestion to stop talking about moral law was only for those who didn’t. Surprisingly, many of the new “virtue ethicists” seem to miss her point. They write as though they are not talking about moral law. Yet they tend to write as though one *ought* to do the virtuous thing – which implies, of course, a law.

¹⁴ G.E.M. Anscombe, “Modern Moral Philosophy,” *Philosophy* 33:124 (1958), pp. 1–19. A similar argument was later offered by Alasdair MacIntyre in *After Virtue: A Study in Moral Theory*, 3d ed. (Notre Dame, IN: University of Notre Dame Press, 2007; 1st ed. 1981). The next few paragraphs are adapted from the preface to J. Budziszewski, *The Line Through the Heart: Natural Law as Fact, Theory, and Sign of Contradiction* (Wilmington, DE: ISI Books, 2011).

Every complete theory of moral law requires a theory of virtue. Though Anscombe would disagree, I suspect that every complete theory of virtue requires a theory of moral law. Even Aristotle, who is supposed to be the paradigm case of a moral philosopher who talked only about virtue and not about law, talked about law. He holds that the man of practical wisdom acts according to a rational principle; this principle functions as law. He holds that virtue lies in a mean, but that there is no mean of things like adultery; this implies that there are exceptionless precepts, which also function as law. He holds that besides the enactments of governments and the customs of peoples there is an unwritten norm to which governments and peoples defer; this norm too is a law. Consciousness of law creeps in through the back door even when it is pushed out the front – and Aristotle wasn't even pushing. Neither is St. Thomas Aquinas.

**Question 94, Article 4:
Whether the Natural Law Is the Same in All Men?
Discussion**

The Problem of Common Ground

Contemporary political thinkers, unfamiliar with the natural law tradition, do not usually ask whether the natural law is the same for all, but often they ask a closely related question: Have we any common ground? Is it possible for us to reach sufficient agreement about the elements of social order for us to be able to live together? That is a good, “natural lawsy” question, but natural law thinkers frame it differently than we tend to. Why do they? Because there is a difference between objective and subjective common ground. *Subjective* common ground is whether we agree; it is all about what we believe. *Objective* common ground has nothing to do with what we think or believe; it is what really is, whether we believe it or not.

Human beings have objective common ground in at least five different ways. At one point or another in the *Summa*, St. Thomas discusses each of them, but in the present Article he is discussing only one of them. The others are tacitly understood.

- We have common ground *ontologically*, because we are all contingent beings whose Cause lies outside of ourselves, and who seek to know this Cause.
- We have common ground *practically*, because although we depend on the world and on each other for our physical and social needs, these

needs do not satisfy themselves; we must engage in both physical and cultural labor.

- We have common ground *constitutionally*, that is, in how we are made, because we share the same human nature. As St. Thomas has explained in Article 2, our constitutional common ground has three dimensions: What we share with all “substances,” what we share with all animals, and what we share because of our rationality.
- We have common ground *normatively*, because the ontological, practical, and constitutional commonalities just mentioned have inbuilt meaning for us – they *are* us. So we are all subject to the same natural law.
- Tragically, though, we also have common ground *existentially*, in that we all find ourselves in rebellion. We humans are tormented by the desire to be our own causes. Consequently, we deny both our physical dependence and social interdependence; we are out of joint with our own deepest longings and inclinations; and we are outraged and offended by the laws of our own nature. A law is written on the heart of man, but it is everywhere entangled with the evasions and subterfuges of men.

Our existential common ground makes our ontological, practical, constitutional, and normative common ground slippery and difficult to stand on. We both deny and affirm it. Consequently, despite all our objective commonality, subjective commonality is difficult to achieve. Anyone who knows human beings knows that this is an understatement.

Both classical natural law thinkers, and contemporary political thinkers unfamiliar with the natural law tradition, recognize the difficulty of achieving *subjective* common ground. The great difference is this: Contemporary thinkers tend to deny that we have any *objective* common ground at all, or at least to deny that thinking about it is of any use. Some go even further, making it an ersatz principle of social order that all of us agree *not to think* about objective common ground. That is the meaning of John Rawls’ proposal that we must be “political, not metaphysical.” The Rawlsian supposes that deep agreement can be ungrounded in truth.

Natural law thinkers think that deep agreement ungrounded in truth is a will o’ the wisp, a mirage. They hold that the difficulty we humans face in reaching subjective common ground can be understood and grappled with *only against the background* of our objective common ground. For consider: Unless we do know something about our objective common

ground – unless, for example, we are aware of our social interdependence – then why would we agree to seek subjective common ground at all? If the reason is to live together, then what does it mean to live together? Why not seek rather to conquer each other? Not only has the Rawlsian no answers, but he cannot have any answers, because he refuses, on principle, to seek them.

Are Natural Rights More “Evident” than Natural Duties?

Related to the search for common ground is the question of whether it is easier to find it in duties or in rights. St. Thomas believes that at some level everyone knows the basics of natural *law*, which are in turn the foundation for natural rights. It is of law that he is speaking when he says the general principles of natural law are the same for all both as to rectitude and as to knowledge. We may say that natural rights are rooted in natural laws, not natural laws in natural rights. Somehow, though, in the modern era this proposition was flipped. Universal knowledge was claimed for natural *rights*, which came more and more to be treated as the foundation for whatever might be called natural law.

Coming at the beginning of this movement, the founders of the American republic tried to have it both ways. On the one hand, the U.S. Declaration of Independence appeals to “the Laws of Nature and Nature’s God” as foundational; but on the other hand, it does not say that they are “self-evident,” as it says of natural rights.

In our own day, the movement has culminated. By 1992, a controlling four-judge plurality of the U.S. Supreme Court could write without embarrassment, “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.”¹⁵ This seems innocuous, until one realizes that the plurality was not speaking of an individual right to *think* what one thinks without coercion, but of an individual right to *act* on that thought without coercion, for the case concerned abortion. The plurality was not asserting merely that individuals may view unborn children as nonexistent, meaningless, or nonhuman, but that they may give lethal force to such views. Who else may be defined out of existence? By the logic of the premise, that I may act on my own arbitrary definitions, anyone may be killed, though the plurality did not

¹⁵ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), at p. 851.

seem to notice. The concept of liberty has finally become its own worst enemy, for the concept of one's own rights squeezes out respect for the rights of other persons.

Yet some natural rights are real. Setting misconceptions about rights aside, then, is it really true that natural rights are more "evident," more obvious to people, than natural laws? We seem to think that they are. People who are formed in our kind of political culture tend to consider the truth of any proposition that declares what one *may* do more obvious than the truth of any proposition that declares what one *must* or *must not* do. Any politician who expects to succeed among us must learn to frame his proposals in terms of rights rather than tears and toils; the appeal to what St. Thomas calls the delectable good is in, and the appeal to what he called the arduous good is out. Then again, not all political cultures are like ours. Is the kind of appeal that we prefer to have made to us really about which truths are most evident, or is it just about our headstrong wish to have our way?

The Case of the German Tribes: Is It Possible Not to Know that Theft Is Wrong?

Let us consider a concrete example of the sort of difficulty that we were just now considering in the abstract. According to Thomas Aquinas, certain matters of right and wrong are so obvious that at some level everyone can grasp them. These include all of the precepts of the Decalogue, such as the wrong of adultery and the wrong of theft. If we already know them, then why is confrontation necessary? Because the matter is more subtle than it appears. In one sense, it is impossible to be mistaken about moral basics such as the wrong of theft; they are right before the eye of the mind. In another sense, however, it is quite possible to be mistaken about them, for the eye can be averted.

Attention to this subtlety clears up one of his examples. As St. Thomas famously remarks here in Article 4, following the Dominican Fathers translation, "theft, although it is expressly contrary to the natural law, was not considered wrong among the Germans." Many readers mistakenly take St. Thomas to mean that human reason can completely fail to grasp even precepts as basic as "Do not steal." That is not at all what he means, but it takes some time to dig this fact out.

First let us see what St. Thomas says elsewhere about the knowledge that theft is wrong. One place to start is a statement he makes in his commentary on the *Nicomachean Ethics*, that "in practical matters there are some principles naturally known as it were, indemonstrable principles

and truths related to them, as evil is to be avoided, no one is to be unjustly injured, theft must not be committed and so on.”¹⁶ Although he is explaining Aristotle’s distinction between the natural and the legal just, the point about natural knowledge, as well as the illustrations, including “theft must not be committed,” are St. Thomas’s own. Lest anyone think he means the wrong of theft is naturally known *only according to Aristotle*, or that it is naturally known *only when it is known*, or that it is naturally known *only to some and not to all*, here is what he says later in the *Treatise on Law*:

[A]ll the moral precepts [of the Old Law] belong to the law of nature; but not all in the same way. For there are certain things which the natural reason of every man, of its own accord and at once, judges to be done or not to be done: e.g. “Honor thy father and thy mother,” and “Thou shalt not kill, Thou shalt not steal”: and these belong to the law of nature absolutely. And there are certain things which, after a more careful consideration, wise men deem obligatory. Such belong to the law of nature, yet so that they need to be inculcated, the wiser teaching the less wise: e.g. “Rise up before the hoary head, and honor the person of the aged man,” and the like.¹⁷

This passage shows clearly that St. Thomas does not place the wrong of theft among those things that are plain only to the wise, as he would have to do if the Germans really were naïve about the matter. Rather he places it among the things “the natural reason of every man,” even an ancient German, recognizes “of its own accord and at once.” As another passage shows, that is not the end of the story:

[T]he moral precepts derive their efficacy from the very dictate of natural reason, even if they were never included in the [Divine] Law. Now of these there are three grades: for some are most certain, and so evident as to need no promulgation; such as the commandments of the love of God and our neighbor, and others like these, as stated above (Article [3]), which are, as it were, the ends of the commandments; wherefore no man can have an erroneous judgment about them. Some precepts are more detailed, the reason of which even an uneducated man can easily grasp; and yet they need to be promulgated, because human judgment, in a few instances, happens to be led astray concerning them: these are the precepts of the decalogue [including the precept against theft]. Again, there are some precepts the reason of which is not so evident to everyone, but only the wise; these are moral precepts added to the decalogue, and given to the people by God through Moses and Aaron.¹⁸

¹⁶ Thomas Aquinas, *Commentary on Aristotle’s Nicomachean Ethics*, Book 5, Lecture 12, trans. C.J. Litzinger, O.P., rev. ed. (Notre Dame, IN: Dumb Ox Books, 1993), p. 325.

¹⁷ I-II, Q. 100, Art. 1.

¹⁸ *Ibid.*, Art. 11.

From this passage we see that from the mere fact that everyone is competent to recognize at once the wrong of theft, it does not follow that no one can go wrong about it in any way. But wait: If it the wrong of theft is so obvious, how it even *possible* to go wrong about it? What does the misled person grasp – and what doesn't he grasp?

Plainly, we need to dig further. To do so, let us return to St. Thomas's remark about the Germans. What he actually says is this: "thus formerly, *latrocinium*, although it is expressly contrary to the natural law, was not considered wrong among the Germans." The Dominican Fathers translation renders *latrocinium* as "theft." Actually, though, the term *latrocinium* does not refer to theft at all. St. Thomas distinguishes among a number of offenses against property. *Furtum*, theft, is unjustly taking another's property by stealth, and *rapina*, robbery, is unjustly taking another's property by coercion or violence.¹⁹ *Latrocinium* is neither theft in general, nor robbery in general, nor a particular kind of theft, but a particular kind of robbery. The term is best translated "banditry" or "piracy." A *latro*, in Roman law, was an armed bandit or raider.

In ancient times, *latrones* were commonly compared with those who made war against the state. The particular wickedness of *latrocinium* comes across later on in the *Summa*, in the Article "Whether robbery may be committed without sin?" St. Thomas writes:

It is no robbery [*rapina*] if princes exact from their subjects that which is due to them for the safe-guarding of the common good, even if they use violence in so doing; but if they extort something unduly by means of violence, it is robbery even as *latrocinium* is.

Obviously the final clause makes little sense if rendered "it is robbery even as theft is," or "it is robbery even as robbery is." Still less does it make sense if rendered "it is robbery even as burglary is," as in the Dominican Fathers translation. Rather St. Thomas is uses the term *latrocinium* for an especially heinous kind of robbery. He is saying that rulers who compel the payment of unjust taxes are bandits, pirates, plunderers. In fact they are even worse than everyday bandits, for he adds, "they sin more grievously than [ordinary] *latrones*, as their actions are fraught with greater and more universal danger to public justice whose wardens they are."²⁰ Could it be that St. Thomas considers the Germans ignorant not of the wrong of theft, nor even of the wrong of robbery in general, but only of the wrong of banditry? No. Since banditry is particularly bad robbery,

¹⁹ I-II, Q. 66, Arts. 3–4, 8.

²⁰ II-II, Q. 66, Art. 8, ad 3.

that would be absurd; surely extreme robbery would be *more* likely than mild robbery to impress them as wrong, not less.

To see what St. Thomas does mean, we must turn at last to his source, the sixth book of Julius Caesar's *Commentaries on the Gallic Wars*. Right away we find that Julius himself does not consider the Germans ignorant of the wrong of theft *or* banditry. In fact, he remarks that the Germans considered such crimes as *furtum*, theft, and *latrocinium*, banditry, so detestable that on those occasions when they burned victims to propitiate their gods, they preferred to burn perpetrators of these crimes:

They consider that the oblation of such as have been taken in *furto*, or in *latrocinio*, or any other offence, is more acceptable to the immortal gods; but when a supply of that class is wanting, they have recourse to the oblation of even the innocent.”²¹

If the Germans did know the wrong of *latrocinium*, then what can St. Thomas be thinking? Could it be that he has overlooked the passage altogether? Not at all. When he claims Julian authority for the statement that *latrocinium* “was not considered wrong among the Germans,” what he doubtless has in mind is a somewhat later passage, where Julius explains that the Germans approved not of banditry *as such*, but of raiding *against other tribes*:

Latrocinia which are committed beyond the boundaries of each state bear no infamy, and they avow that these are committed for the purpose of disciplining their youth and of preventing sloth. And when any of their chiefs has said in an assembly “that he will be their leader, let those who are willing to follow, give in their names;” they who approve of both the enterprise and the man arise and promise their assistance and are applauded by the people; such of them as have not followed him are accounted in the number of deserters and traitors, and confidence in all matters is afterward refused them.”²²

The manner in which the judgment of these barbarians was “led astray,” then, was not that they were ignorant of the wrong of plundering their neighbors, but that they failed to recognize the members of other tribes as neighbors. In their own eyes, they may have been bandits, but they weren't

²¹ Julius Caesar, *The War in Gaul*, Book 6, Chapter 16, W.A. MacDevitt, trans., “*De Bellico Gallico*” and *Other Commentaries of Caius Julius Caesar*, available at <http://classics.mit.edu/Caesar/gallic.html> (public domain). For *furto* and *latrocinio*, MacDevitt has “theft” and “robbery.” Though Julius does not mention other, more routine Germanic penalties for theft, such as compensation, these double the proof that they knew theft was wrong.

²² *Ibid.*, Book 6, Chapter 23.

the *bad* sort of bandits, the sort who would plunder even members of their own tribe!

Thus, although banditry is expressly contrary to the natural law, they cut themselves a loophole; they did not consider all forms of banditry wrong. It is much the same with us as it was with them. They cut a loophole in the prohibition of theft by violence, *rapina*; we cut loopholes in the prohibition of theft by stealth, *furtum*. For what is it but theft when the government inflates the currency to finance expenditures which it cannot otherwise pay for? They practiced violence against the members of other tribes, *latrocinium*; we practice violence against our own children, *abortus provocatus*. At least the ancient Germans loved their kin.

**Question 94, Article 5:
Whether the Natural Law Can Be Changed?
Discussion**

Inventions, Innovations, and Nature

Some “inventions” or innovations require legal enactment to be effective. These are the ones St. Thomas calls additions to natural law. For example, the legal innovation of civil marriage (over and above natural marriage) regularizes the mutual obligations within the family and protects the most vulnerable parties. It isn’t natural in the primitive sense, but it is natural in the sense that it serves and upholds nature, helping beings of our nature live decent lives. Or consider traffic rules, which regularize the movements of people and vehicles so that they can get around more easily, quickly, and safely.

Customs often arise spontaneously without enacted rules, just from courtesy and convenience. But courtesy and convenience are not always enough. Suppose, for example, that a great number of pilgrims visit Rome. It might be that some come from countries where it is customary to walk on the right, and others from countries where it is customary to walk on the left, so that there is no agreement, and foot traffic is slow and congested. An enacted law might “add” to the situation and restore order. In fact, the first instance of modern traffic regulations seems to have been the decree of Pope Boniface VIII, during the Jubilee of A.D. 1300, when pilgrims to Rome, crossing the Bridge of San Angelo in both directions, were required to pass on the left.²³

²³ Dante Alighieri mentions the regulation in *Inferno*, Canto 18, lines 25–33. See also the remarks on traffic rules, later in the *Commentary*, in the discussion of [Question 95, Article 2](#).

A good deal of moral confusion results from obfuscating the difference between these two senses of the natural --the primitive and the normative. Some people claim that anything that did not exist in the primitive state is wrong just because it had to be invented; others think that just because not everything that had to be invented is wrong, we may devise any changes in the fundamental patterns of human life that we desire. One side foolishly says "If nature had meant human beings to fly, then it would have given us wings." The other side replies with equal folly, "Since it isn't wrong to build airplanes, it must also be all right to cut off our arms and sew on wings." No, there is a difference between an invention and a mutilation.

Whatever is for the benefit of human life is licit, but the adjective, "human," is indispensable; the innovation must really be humanizing. It must serve, not upset, the inbuilt patterns of the life that make us human. Natural law thinkers like to call these patterns the "immanent rationality" of human nature, its inbuilt rational meaning.

So we may devise all sorts of things for human life. We may fill the cavities in our diseased teeth, set and brace our broken bones, fight infections with antivirals and antibiotics, use eyeglasses and hearing aids to improve our sight and vision, and devise printed language to extend the range of our memory. Yet not all inventions are right. We may not clone ourselves, blend our DNA with the DNA of pigs, conceive children in petri dishes rather than in the loving embrace of their parents, seek ways for two sperm or two ova to fertilize each other, or replace our brains with software that is more to our liking. Why are the "mad scientists" of popular fiction mad? Precisely because they despise human nature as it is, and desire to play God.

The Problem of Slavery

*The bread of angels is made the bread of man,
Heaven's own bread surrendered to put an end to shadows:
O marvelous!
The poor, the slave, the lowly partake of the Lord.*

– Thomas Aquinas²⁴

²⁴ Freely translated from the sixth stanza of *Sacris Solemniis*, one of the five hymns St. Thomas wrote for the Solemnity of Corpus Christi: *Panis angelicus fit panis hominum; dat panis caelicus figuris terminum; O res mirabilis: manducat Dominum pauper, servus et humilis*. The term *figuris*, figure, refers to former things which foreshadowed Christ to come.

A man who rejoices that slaves are fed by the Body of Christ is not a man who despises the servile. Yet St. Thomas accepts Isidore's view of slavery as helpful to human life. If we are to understand this fact, we must make several distinctions that are in the general spirit of St. Thomas's thought, but that he does not make himself.

Today, at any mention of slavery, Americans think immediately of an institution of ownership of human beings such that the good of the slaves is not consulted, and they are entirely shut out of relations of justice. Slavery in this sense, I suggest, is intrinsically irreconcilable with natural law, just because it treats human beings as subhuman beings, as things, not persons.

In the case of grave crime, St. Thomas comes very close to justifying such treatment, though not all the way. In fact, he thinks that to the degree that we hold the human privilege of reason in contempt, we actually lose our human dignity:

By sinning man departs from the order of reason, and consequently falls away from the dignity of his manhood, in so far as he is naturally free, and exists for himself, and he falls into the slavish state of the beasts, by being disposed of according as he is useful to others. This is expressed in Psalm 48:21: "Man, when he was in honor, did not understand; he hath been compared to senseless beasts, and made like to them," and Proverbs 11:29: "The fool shall serve the wise."

For this reason, some readers liken St. Thomas's view with the view of the English political thinker John Locke, who wrote as follows:

One may destroy a man who makes war upon him, or has discovered an enmity to his being, for the same reason that he may kill a wolf or a lion; because such men are not under the ties of the common law of reason, have no other rule, but that of force and violence, and so may be treated as beasts of prey, those dangerous and noxious creatures, that will be sure to destroy him whenever he falls into their power.²⁵

In reality, St. Thomas's views are not nearly as harsh or unqualified as Locke's, because in St. Thomas's view not even the evil man who has lost the dignity of his manhood ceases to be a human being. Although he may fall to the status of an animal in some respects, he cannot fall to their status in all respects. In fact, he requires severe punishment *just because* he is human, "For a bad man is worse than a beast, and is more harmful."²⁶ Even if a wrongdoer merits not just slavery but even death, he is not to

²⁵ John Locke, *Second Treatise of Government*, Chapter 3, Section 16. Public domain.

²⁶ II-II, Q. 64, Art. 2, ad 3. The context of this and the next two notes is a discussion of capital punishment.

be simply exterminated, as though he were a rat infesting a granary. How is capital punishment different? One difference is that it “allows time for repentance to those who sin[,] without grievously harming others.”²⁷ Another is that it may be undertaken only by public authority, for the protection of the community:

A beast is by nature distinct from man, wherefore in the case of a wild beast there is no need for an authority to kill it; whereas, in the case of domestic animals, such authority is required, not for their sake, but on account of the owner's loss. On the other hand a man who has sinned is not by nature distinct from good men; hence a public authority is requisite in order to condemn him to death for the common good.²⁸

Although St. Thomas's view of slavery is also frequently likened to Aristotle's, here too the views are not the same. Aristotle had emphasized that the slave belongs to the master *absolutely* as a part of the whole, having no separate existence. Here is how St. Thomas summarizes Aristotle's own view:

[H]e shows how the slave is related to the master, saying that the relation of property to its owner is the same as the relation of a part to the whole, as we say that a part belongs to the whole absolutely, not merely that it is part of the whole. For example, we do not say only that a human being's hand is part of the human being, but that the hand belongs to the human being.... And so the slave, since he is a kind of property, is not only the slave of the master but belongs absolutely to him.

Yet the definition of slavery that St. Thomas himself presents at the end of his exploration of this passage explicitly reaches the opposite conclusion:

... a slave is a living, *separate* instrument useful for activity, a human being belonging to another by the fact that we call the instrument separate, we *distinguish* it from a part like the hand, which belongs to something else but is not separate.²⁹

In view of St. Thomas's understanding of the human person, it would have been impossible for him *not* to disagree with Aristotle about the slave's distinctness from the master. Other kinds of things can become parts of other things, although by doing so they lose themselves, so to

²⁷ II-II, Q. 64, Art. 2, ad 2.

²⁸ II-II, Q. 64, Art. 3, ad 2.

²⁹ Thomas Aquinas, *Commentary on Aristotle's Politics*, Book 1, Chapter [Lecture] 2, trans. Richard J. Regan (Indianapolis, IN: Hackett, 2007), p. 24, emphasis added.

speak – they become in a sense different things. The cow, for instance, loses itself and is taken into the pattern of its master's life. The reason this is possible is that the cow never truly possessed its own life in the first place.³⁰ Between master and slave, however, matters stand differently, because the slave is a person, a subsistent individual of a rational nature – a being of the very kind that can possess itself. This makes humans *unabsorbable*. So although there can be unity of order between the master and the slave, like the unity between a general and the soldiers in his army, there cannot be “substantial” unity between them, like the relation between a human being and his bodily parts. The slave can certainly be a part of his master's life, but he cannot be an absolute part, as though no life of his own were left to him.³¹ Reason and Revelation concur, for St. Thomas connects this point with the teaching of Genesis 1:27 that man is lovingly made in God's image.³²

These points about the nature of the slave are more than academic. Metaphysics has consequences. For *just because* of the slave's unabsorbability, certain principles of justice are binding between master and slave too, just as between father and son, even though this justice is different from justice among equals:

A son, as such, belongs to his father, and a slave, as such, belongs to his master; yet each, considered as a man, is something having separate existence and distinct from others. Hence in so far as each of them is a man, there is justice towards them in a way: and for this reason too there are certain laws regulating the relations of father to his son, and of a master to his slave; but in so far as each is something belonging to another, the perfect idea of “right” or “just” is wanting to them.³³

³⁰ Such loss of self is to be distinguished from the human person's *voluntary* gift of himself in love to God, which is possible precisely because he has a self to give, and which, paradoxically, is not its loss but its finding. See Matthew 16:25 (RSV-CE), “For whoever would save his life will lose it, and whoever loses his life for my sake will find it.” Compare Luke 15:17, which relates that the prodigal son returned to his Father “when he came to himself.” In a subordinate sense, husbands and wives also give themselves to each other, and this too is not a loss but a finding.

³¹ For further discussion of substantial unity, and unity of order, subsistent being, and unabsorbability, see Q. 90, Art. 2, Q. 92, Arts. 1–2; Q. 93, Art. 1; Q. 94, Before Reading; and Q. 96, Art. 1.

³² See I, Q. 90, esp. Art. 2, *sed contra* and *respondeo*.

³³ I-II, Q. 57, Art. 4, ad 2. In the *respondeo*, St. Thomas says that between husband and wife there is more scope for justice still, because “husband and wife have an immediate relation to the community of the household,” the matrimonial society which they form. This is domestic justice, not civil.

Furthermore, this justice gives the slave certain *rights*, for example the ability to marry without his master's knowledge or consent, something Aristotle would have denied:

[T]he positive law arises out of the natural law, and consequently slavery, which is of positive law, cannot be prejudicial to those things that are of natural law. Now just as nature seeks the preservation of the individual, so does it seek the preservation of the species by means of procreation; wherefore even as a slave is not so subject to his master as not to be at liberty to eat, sleep, and do such things as pertain to the needs of his body, and without which nature cannot be preserved, so he is not subject to him to the extent of being unable to marry freely, even without his master's knowledge or consent.

... A slave is his master's chattel in matters superadded to nature, but in natural things all are equal. Wherefore, in things pertaining to natural acts, a slave can by marrying give another person [his spouse] power over his body without his master's consent.³⁴

Equally important is that in St. Thomas's view, the almost-tyrannical kind of slavery is not the typical case; other models of slavery were known to him as well. In particular, he would have been thinking of bondservice in Old Testament law, which was not a punishment for grave crime, and which had a number of humanizing features. For example, every Hebrew slave was to be set free in the seventh year, and upon his release, the master had to furnish him generously with livestock and other things. Even non-Hebrews were to be freed every fifty years, and fugitive slaves were not to be returned to their masters.³⁵ From the perspective of the New Testament, the Old Law's provisions for slavery are not good in themselves, but ameliorations of evils that at that time could not be eradicated. Many other matters were also treated in this way. For example, the Old Law permitted divorce not because divorce was good, but because otherwise husbands would murder unwanted wives, and it permitted "an eye for an eye and a tooth for a tooth" not because revenge was good, but in order to keep the practice within limits.³⁶

In the most general sense, the term slavery refers simply to involuntary servitude. Surely all involuntary servitude is subject to abuse; in the ancient world, for example, a man could become a *servus* just because he was born to a *servus*, or because he was captured in war and no one stepped forward to buy his freedom. Yet it would be difficult to argue that all involuntary servitude of every sort is contrary to natural law. For

³⁴ Supp., Q. 52, Art. 2, *respondeo* and ad 1.

³⁵ Leviticus 25:10, Deuteronomy 15:12–15, 23:15–16.

³⁶ Matthew 5:38–29, 19:3–9.

example, how is it wrong to force prisoners convicted of serious crimes to perform labor? Penal servitude justly compensates the community for both the harm of the crime and the costs of imprisonment. It can be arranged in such a way as to teach the prisoner useful skills so that he can find gainful employment on his release. Simply through being just, it treats him with the respect due to him as a moral being, for we do not punish termites for eating our timbers, or rocks for rolling over our feet. Simply by treating him in this way and not another, it offers some chance of teaching him respect for justice as such. Even if it fails to do so, it may deter him from future crime. Obviously, whether administered privately or publicly, penal servitude has grave disadvantages. Not only because of inhumane treatment, but even when it is humane, it may make prisoners worse instead of better, because they are thrown together with others as bad as themselves. Yet in itself, however, involuntary servitude may be justly inflicted, and nothing in its nature *requires* that it be administered with indifference to the good of those who are forced to serve.

In the clearest passage in which St. Thomas speaks of the reason for slavery, he is certainly thinking of criminals, for here is how he replies to an Objector who views slavery as contrary to natural law:

[S]lavery is contrary to the first intention of nature. Yet it is not contrary to the second, because natural reason has this inclination, and nature has this desire – that everyone should be good; but from the fact that a person sins, nature has an inclination that he should be punished for his sin, and thus slavery was brought in as a punishment of sin.³⁷

If slavery is contrary to the first intention of nature, then even though involuntary servitude for a criminal is not necessarily contrary to natural law, Aristotle was completely mistaken to think that there could be such a thing as a natural slave. Considered simply as human beings, we are all by nature free. But considered as a human being who has done something wrong, I may nevertheless deserve punishment. For this reason, St Thomas adds:

[S]lavery *which is a definite punishment* is of positive law, and arises out of natural law, as the determinate from that which is indeterminate.”³⁸

The fact that in his view there is no such thing as a natural slave is confirmed by the following passage, which also shows that servitude imposed as a punishment is *not* to be modeled on tyranny:

³⁷ Supp., Q. 52, Art. 1, ad 3.

³⁸ *Ibid.*, ad 2, emphasis added.

Considered absolutely, the fact that this particular man should be a slave rather than another man, is based, not on natural reason, but on some resultant utility, in that it is useful to this man to be ruled by a wiser man, and to the latter to be helped by the former, as the Philosopher states.”³⁹

The passage just quoted is more general in application than the previous two, because there may be more than one reason why it is “useful” to a man to be ruled by a wiser man. The reason we have been considering is incorrigible criminality – such that, if left to rule himself, the servant would harm others. But another reason might be incorrigible laziness or foolishness – such that, if left to rule himself, the servant would be unable to provide for himself. (I am, of course, distinguishing moral disabilities, like these, from blameless, involuntary incapacities, like those due to extreme youth, age, injury, illness, or mental retardation.) This final distinction enables us to put the difference between St. Thomas’s view of slavery and contemporary views of slavery in perspective.

1. Like him, we believe in involuntary servitude to deal with incorrigible wickedness. Though the practice is gravely subject to abuse, it is difficult to think of alternatives short of death.
2. Unlike him, we do not believe in involuntary servitude to deal with incorrigible laziness or foolishness. Instead we use the dole. It is not obvious that this is more charitable.

Question 94, Article 6:

Whether the Law of Nature Can Be Abolished from the Heart of Man?

Discussion

Do Even Sociopaths and Psychopaths Know the Natural Law?

As we have seen, St. Thomas holds that *everyone* – that is, everyone beyond the age of reason and not insane – knows the most important and general precepts of the natural law. These precepts certainly include first principles, such as “never do to another what you would not wish done to you.” Though they do not include the more detailed conclusions that follow remotely from these principles, apparently it does include their most general corollaries, those that follow immediately and hold without exception, such as “Do not murder.”

³⁹ II-II, Q. 57, Art. 3, ad 2.

In our day, first-time readers almost inevitably object, “What about people with so-called antisocial personality disorder? Haven’t psychologists assured us that they have no conscience? Shouldn’t we say that even the most fundamental and universal principles of the natural law have been abolished from their hearts?”

Certainly some human beings *seem* to lack conscience, and there is a long tradition of thought concerning them. Aristotle has them in mind when he writes of “brutish” or “bestial” persons, whose moral condition falls even beneath what we normally call vice. There is something horribly perverted about them, either by custom or congenital flaw; they often take pleasure in shocking things; we are tempted to say of them, not that their better part has been perverted, but that, like animals, they have no better part.⁴⁰ Though St. Thomas does not carry his description of them that far, he too distinguishes what is wrong with them from ordinary vice.⁴¹

But whether we call them brutish persons, bestial persons, or persons with antisocial personality disorder, do they really “have no better part,” as Aristotle almost says – do they really lack a conscience?

If St. Thomas is right, the answer should be “No.” But according to contemporary psychologists such as Robert D. Hare, the answer is “Yes”: “Completely lacking in conscience and feelings for others,” he says, such people “selfishly take what they want and do as they please, violating social norms and expectations without the slightest sense of guilt or regret.” Driving the point home, he writes “Their hallmark is a stunning lack of conscience; their game is self-gratification at the other person’s expense.”⁴² David T. Lykken, perhaps the foremost authority on antisocial personality disorder, distinguishes two forms of it, but insists that in both of them conscience is absent. The “unsocialized sociopath” has “failed to develop conscience and empathic feelings ... because of a lack of socializing experience; the “primary psychopath” has also failed to develop them, but “because of some inherent psychological peculiarity which makes him especially difficult to socialize.”⁴³ The fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV) lists one of the diagnostic criteria for antisocial personality disorder as

⁴⁰ Aristotle, *Nicomachean Ethics*, Book 7, esp. Chapters 1, 5, 6, and 14.

⁴¹ II-II, Q. 154, Art. 11, ad 2, and Q. 159, Art. 2.

⁴² Robert D. Hare, *Without Conscience: The Disturbing World of the Psychopaths Among Us* (New York: The Guilford Press, 1993), pp. xi, 1.

⁴³ David T. Lykken, *The Antisocial Personalities* (Hillsdale, NJ: Lawrence Erlbaum Associates, 1995), p. 115.

“lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another”; the recently released fifth edition (DSM-5) speaks more briefly of “lack of remorse after hurting or mistreating another.”⁴⁴

The difficulty with such statements is that they treat conscience, guilt, a “sense” of guilt, regret, remorse, and lack of normal moral feelings as the same thing, whereas the classical natural law tradition distinguishes all these things. *Conscience* is not about what we feel, but about what we know. *Remorse and regret* are not about what we know, but about how we feel about what we know. *Guilt* is the condition of having done wrong; *awareness* of guilt is the knowledge of being in this state; and the *sense* of guilt is a feeling resulting from such knowledge.

This being the case, it would be entirely possible to have a conscience (to have an inward understanding of the rules) and yet have no remorse (feel nothing when one violates them). So even if the DSM is correct to list lack of remorse as a feature of antisocial personality disorder, this is not the same thing as having no conscience. Indeed, the very fact that people with antisocial personality disorder do rationalize their behavior, as the DSM says they do, shows not only that they know the rules, but that in some sense they recognize their importance.

Despite their incorrect use of the term “conscience,” the authorities I have quoted agree with my point that what sociopaths and psychopaths lack is not normal knowledge but normal feelings. Although Hare disagrees with those who say psychopaths do not know enough about what they are doing to be held responsible for their actions, he agrees with such critics that “they understand the intellectual rules of the game but the emotional rules are lost to them.”⁴⁵ To much the same effect, Lykken explains,

It is an interesting and important fact that most of the diverse criminal types suggested here do tend to justify their conduct in one way or another, at least to themselves. One 15-year old, now residing in a local juvenile facility, took a bus to a suburban neighborhood, hoping to locate a party he had heard about. Unsuccessful, he found that the next bus home would entail an hour’s wait. Having brought his pistol along, he lurked near some cars parked by a store and, when a woman came out with her infant and opened her car door, the boy demanded her keys and gunpoint and drove off. Explaining his offense to the

⁴⁴ DSM-IV-TR: *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. Text Revision (Arlington, VA: American Psychiatric Association, 2000), p. 706; DSM-5: *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed. Text Revision (Arlington, VA: American Psychiatric Association, 2013), p. 764.

⁴⁵ Hare, *ibid.*, p. 143.

corrections officers, he expressed exasperation: “How else was I s’posed to get home, man?”⁴⁶

Notice that the young man was *morally indignant*, something that would have been impossible if he really had no concept of morality. However bizarre his rationalization for his deed, he grasped not just that other people want what they call right to be done, but that right is to be done. He had a conscience. But then what are we to make of those rationalizations? They do not refute the point; they prove it. Wild animals also do whatever they can get away with, but they do not make excuses; rationalization is the homage paid by sin to guilty knowledge. So it seems that the natural law is not abolished even from the heart of psychopaths and sociopaths.

Is Every Apparent Case of Moral Ignorance a Real One?

By now we may have begun to recognize that it is harder to shoot down St. Thomas’s view of the indestructibility of natural law than we may have thought. I wish to offer another argument in the same direction, one that St. Thomas himself does not make, but that is suggested by his allusions to Romans 1, where St. Paul speaks of “suppressing” what one knows to be true.

My proposal is that at least sometimes, when an important and general precept of natural law seems to have been abolished from the heart of man, we are dealing not with genuine moral ignorance, but with moral self-deception. In other words, people often know the wrong of their actions better than they admit, even to themselves. They tell themselves that they don’t know what they do know; they lie to themselves in an attempt to deceive their own consciences. The difficult question is not whether such self-deception can happen, but how far it can go.

Consider the Nazi program of extermination. The evidence is rather clear that even the executioners knew the sacredness of innocent human life. For this reason, they could not simply slaughter without rationale or explanation; like everyone, they needed an excuse. They told themselves that killing Jews was not really taking innocent human life, because Jews were neither innocent nor human; in fact, they deserved to be killed. Thus Nazi injustice drew force from the distortion of the precept of retributive justice itself. In some measure it must have felt *right* to the Nazis to kill.

Yet apparently, not right enough. After all, even small children were being killed, so not even the exterminators could fail to realize that few if

⁴⁶ Lykken, *ibid*, p. 28.

any of their victims were guilty of any sort of crime. The clinical evidence suggests that despite all their denials and self-deceptions, they found guilty knowledge an oppressive and inescapable burden. Psychologist Robert Jay Lifton spoke with a former *Wehrmacht* neuropsychiatrist who had treated many death camp soldiers for psychological disorders. The symptoms resembled those of combat troops, but were worse and more long-lasting. The men had the hardest time shooting women, and especially children. Many had nightmares of punishment for what they had done.⁴⁷

In our own day, the effort to justify abortion produces similar disorders. At a Planned Parenthood conference, abortionist Warren M. Hern and abortion nurse Billie Corrigan presented a survey of fifteen staff. Some of the staff surveyed refused to look at the fetus. Others looked, but felt “shock, dismay, amazement, disgust, fear, and sadness.” Two thought abortion must cause psychological damage to the physician. One reported that she had come to feel increasing resentment about the casual attitudes with which some of the clients approached their abortions, even though she approved of abortion herself – a response that is most revealing, for if there is nothing wrong with the deed, then what could be wrong with viewing it casually? Two described nightmares of vomiting up fetuses, or about protecting other people from seeing them.⁴⁸

One would think that such terrible manifestations of guilty knowledge would move people to repentance, or to forbear from further guilty deeds. They certainly do so move some people. Others, however, respond to guilty knowledge by throwing themselves even more vigorously into what conscience protests, apparently in an effort to silence their awareness of natural law, to convince themselves that they are not doing wrong after all. If we resist the terrible prospect of admitting that we have been wrong, then, paradoxically, the accusation of conscience drives us yet further into evil.⁴⁹

⁴⁷ Robert Jay Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (New York: Basic Books, 1986), p. 15.

⁴⁸ Warren M. Hern, M.D., M.P.H., and Billie Corrigan, R.N., M.S., Boulder Abortion Clinic, Boulder, CO, “What About Us? Staff Reactions to D & E,” presented at the 1978 meeting of the Association of Planned Parenthood Physicians, San Diego, CA, October 26, published in *Advances in Planned Parenthood* 15:1 (1980), pp. 3–8.

⁴⁹ Concerning this phenomenon, see, by the author, *What We Can't Not Know: A Guide*, revised ed. (San Francisco: Ignatius, 2011), Chapter 7, and *The Line Through the Heart: Natural Law as Fact, Theory, and Sign of Contradiction* (Wilmington, DE: ISI Books, 2009), Chapter 1. Several of the preceding paragraphs are adapted from the former.

St. Thomas's Prologue to Question 95: Of Human Law Discussion

Are We Co-Legislators with God?

St. Thomas devotes only one Question apiece to eternal and natural law, yet three Questions to human law alone. Why this great difference? Surely not because human law is more important than eternal and natural law, for it is they that make human law meaningful; without them there would be no human law at all. (Indeed there would be nothing whatsoever.)

So eternal and natural law are matters of deepest concern. Even so, they do not concern us in *the same way* as human law. Eternal Wisdom, in which there is no shadow of change, does not ask us for instruction; created beings do not share in the creation of their natures. God manages those things by Himself. We are not in this sense His co-legislators.

Yet, wonder of wonders, in another sense we are His co-legislators. He, who could have jerked us around and left nothing to our own decision, nevertheless gave us minds and hearts in the image of His own, and invites us to share in His providential care for all things. This finite partnership in governing takes place at many levels. Though He alone made the order of the family, yet He appoints the father and mother its king and queen. Though He alone created the order of friendship, yet He hands friends into their own care. Though He alone is the fountain of redeeming grace, yet He instructs us to work out our salvation in fear and trembling. Even while remaining entirely His, we are given to ourselves; we are handed over neither to either impersonal forces or blind impulses, but to participation in the same care for each other with which He cares for us.

Human law is a part of this care. The reason why it concerns us in such great detail is that the provision, through the state, of rules for the

just order and well-being of the community as a whole is crucial part of our finite partnership in Divine Providence. True, the civic order does not originate the other orders of life – marriages, families, friendships, neighborhoods, the Church, and so on – and must not try to subvert them, or to absorb them into itself. It is profoundly important for rulers to understand this fact. But the laws of a just state do provide a tranquil setting in which the other orders can do their own proper work.

**Question 95, Article 1:
Whether It Was Useful for Laws to Be Framed by Men?
Discussion**

The Futility of Anarchism

The *Commentary* mentioned in passing that although contemporary anarchists oppose laws too, they would replace them not with admonitions, as the first Objector would, but with spontaneous order. Anarcho-socialists propose basing such order on voluntary and spontaneous sharing, while anarcho-capitalists propose basing it on voluntary and spontaneous contracts. Besides differing from the Objector about what would take the place of laws, anarchists also differ with him about the reason for getting rid of them. What anarchists seek is not virtue, but liberty. They understand liberty not in the positive sense, as the rule of reason which frees us from the tyranny of passion (virtue by another name), but in the negative sense, as liberty from restraint (even, perhaps, the restraint of reason itself).

Not many philosophers of law take anarchism seriously. Considering his view of the Fall, it is unlikely that St. Thomas would either. The error of anarcho-socialism has been well described by Chesterton: “And the weakness of all Utopias is this, that they take the greatest difficulty of man and assume it to be overcome, and then give an elaborate account of the overcoming of the smaller ones. They first assume that no man will want more than his share, and then are very ingenious in explaining whether his share will be delivered by motor-car or balloon.”¹ This mistake is a variation on the fallacy of distraction. One’s attention is deflected from the deep problem of motivation, which one does not know how to solve, by dwelling on the shallow problem of technique, which one thinks one does know how to solve.

¹ G.K. Chesterton, *Heretics*, in *Collected Works of G.K. Chesterton*, Vol. 1 (San Francisco: Ignatius Press, 1986), p. 77.

With anarcho-capitalism the problem is somewhat different. Anarcho-capitalists are less sanguine than anarcho-socialists that no man will want more than his share. Just for this reason, they propose that individuals contract with private protection agencies for the defense of what each man calls his own. Should the private protection agencies find themselves unable to agree, their differences would be settled by equally private arbitration agencies. Should arbitration fail – well, the agencies might then go to private war. This is where matters become sticky. Because war would probably leave a single victorious protection agency dominant in each geographical area, and because, for the orderly conduct of business, each dominant protection agency would have to enforce rules for everyone in its territory to obey, it is not easy to see how the anarcho-capitalist scheme would differ ultimately from the enactment of laws by territorial governments. To be sure, anarcho-capitalists deny that this outcome would ensue, but their reasoning is even more paradoxical than that of anarcho-socialists. They first assume that *every man will* want to exceed his contractual rights, and then are very ingenious in explaining how contractual commitments will sort everything out.

This is a good place to recall the point made earlier in this *Companion*, in the discussion of [Question 91, Article 1](#). Spontaneous order – order that does not require continuous, interfering micromanagement – comes to pass only by virtue of deliberate order at another level. The spontaneous order of the market, for example, depends on an agency able to define and protect the market. The only question, then, is whether good forms of spontaneous order can be defined and protected by admonitions alone, or whether the job requires those extra tools called laws. St. Thomas thinks it needs laws.

Question 95, Article 2:

Whether Every Human Law Is Derived from the Natural Law?

Discussion

Discerning the Reasons for the Laws

The maxim *non omnium quae a maioribus lege statuta sunt, ratio reddi potest* – “it is not possible to give a reason for everything established by great men” – can easily be misunderstood. It does not mean that the wise men who preceded us acted without thought, or arbitrarily, as in the

childish method “eenie, meenie, miney, moe.” Even when nature does not tell us how to “fill in the blanks” of general norms, nature informs prudence, by which we are able to judge certain ways of filling them in to be more fitting. Nor does the maxim mean that not even a partial analysis of why wise men did as they did can be attained. Indeed, even when we are dealing with judgments that we cannot get all the way to the bottom of, we do well to penetrate as deeply as we can.² So let us try to penetrate this matter too.

As we have seen, human laws may be derived from natural law in either of two ways, either by “conclusion” or by “determination.” Notice that any given principle of natural law may function in either of these two ways. In fact, for different purposes it may function in both at once. Consider for instance the wrong of theft, which is plainly against natural law. Lawmakers may reason by “conclusion,” as follows:

1. Theft should be appropriately punished.
2. Burglary is a form of theft.
3. Therefore we enact that burglary should be appropriately punished.

But at the same time, and from the same major premise, the legislators may also reason by “determination,” as follows:

1. Theft should be appropriately punished.
2. Two years in prison is an appropriate punishment for theft.
3. Therefore we enact that theft be punished by two years in prison.

The difference in these two syllogisms lies in their minor premises. That burglary is a form of theft follows from the definition of theft, because theft is taking what rightly belongs to another against his reasonable will, and burglary is a way of doing this. If the lawmakers of some country deemed burglary *not* to be a form of theft, they would be simply mistaken. That burglary should be appropriately punished follows necessarily.

By contrast, that two years in prison is an appropriate punishment for theft requires a particular judgment. If the lawmakers of some country

² Perhaps this is what Burke was trying to say when he approved those learned men who, “instead of exploding general prejudices, employ their sagacity to discover the latent wisdom which prevails in them.” Edmund Burke, *Reflections on the Revolution in France*, Part 6, Sections 2a (public domain).

deemed a different punishment to be appropriate for theft – either appropriate as such, or appropriate to their conditions of their own people – they might also be right (though here too it is possible to err). So that theft should be punished by two years in prison does *not* follow necessarily.

Notice that even in the second syllogism, the lawmakers are not acting arbitrarily. If we ask them *why* they consider two years in prison an appropriate punishment for theft, they will almost certainly be able to answer; in that sense, yes, they can certainly give a reason for their enactment. For example, they may appeal to the state of development of the population, explaining that the people would rebel against harsher penalties, or to the principle of desert, saying that the punishment of two years in prison is proportional to the wrong done. The difficulty is that such answers too require particular judgments. If we ask, “Yes, but why *do* you judge that they would rebel against harsher penalties?” or “Why *do* you consider it proportionate?” they may again be able to give an answer, but this answer too will require a particular judgment, and so it goes. Thus in one sense, they can certainly tell why they did what they did, but in another sense they cannot, for each reply goes only a little deeper. No matter how long we keep up our questioning, we can never convert “determination” into “conclusion”; we can never turn it into something like mathematics. So although in one sense the legislators may have good reasons for their decisions – perhaps a great many of them – they may not have any reasons that function *exclusively in that way*.

How then can we tell whether a judgment by determination was right? Since we cannot derive it as a conclusion from premises, we cannot program the problem on a computer. The only adequate judge of whether the lawmakers have judged well are other persons – persons who are rich in experience, rich in years, and hopefully rich in wisdom. Ah, but how are we to recognize *them*? The wise tend to recognize each other, but how are the rest of us to know them? Fools and knaves do not recognize good and wise men. In fact, don’t they prefer to be governed by fellow fools and knaves?

They do, but surprisingly, beyond a certain point of wisdom and virtue, even the merely somewhat wise and virtuous tend to recognize those who are wiser and more virtuous than themselves. It is somewhat mysterious why this is so, but if it were not, then it would be difficult to see how human life could be governed at all.

Question 95, Article 3:
Whether Isidore's Description of the Quality of Positive
Law Is Appropriate?
Discussion

Rationality Is Not the Same as Rationalism

In the period of intellectual history misleadingly called the Enlightenment, influential philosophers talked a great deal about natural law, but from a classical point of view, they seemed to have little idea what it is or how it works. From the fact that the theory employs reason, they drew the mistaken idea that it should be purely deductive; from the fact that some truths are evident in themselves, they erroneously concluded that they are always known *to us*.³ Provoked by these false suppositions, they tried to turn natural law into a body of axioms and theorems that any intelligent, informed mind would consider obvious if only they were properly presented. Though still called natural law, such axioms and theorems would be independent of most of the facts of what was formerly called nature; in particular, they would ignore the inbuilt purposes of things. They would be equally obvious no matter what religion or wisdom tradition the mind followed, or whether it followed any at all. The ability to recognize their truth would not depend on whether the reasoner was prudent or not, had good character or not, or possessed a well-formed conscience. A scoundrel should grasp the virtue of purity just as easily as he grasped the Pythagorean theorem – and if he couldn't, well, perhaps that showed it just wasn't a virtue.

These distortions of natural law doctrine did enormous damage to the credibility of natural law, since if its theorems were really so obvious, then any disagreement with them would seem to be impossible. Consequently, if anyone did disagree, it seemed to follow that natural law must not exist at all. In the meantime, the blight spread from the theory of natural law to the practice of legislating human law, for an expectation developed that lawmaking should depend not on deliberation, but on something more like calculation or technical skill. An example of what this expectation has finally come to is cost-benefit analysis, a technique that suffers under the delusion that every consideration of justice or common good can be converted into monetary values. Lawmaking then involves nothing more than the comparison of the anticipated profits and losses of alternative courses of action.

³ See Q. 94, Art. 2.

To this day, the association of natural law with rationalism persists. Readers of this frame of mind may be frustrated by Article 3's analysis of the qualities to be sought in the law, because it cannot be applied in rationalistic fashion. It does not equate the common good with units of currency; it cannot be done by machines; it cannot even be well done by human beings who lack judgment and good character. Rather than enforcing its edicts from the top down, it tries to learn from the customs of the people. Though it is always reasonable, it is not always deductive. It requires not only "conclusion," but also "determination." It does not expect the same thing of everyone. It outrages our prejudice that everyone is the same. Though it does not try to replace the Church with the State, it cooperates with Divine law and does nothing to undermine it. It respects the patterns latent in our nature. It takes for granted that successful human order depends less on the contrivances of legislators themselves than on following an order that precedes them.

Question 95, Article 4:
Whether Isidore's Division of Human Laws
Is Appropriate?
Discussion

Why Does Classification Matter?

Why is it so important to get the division or classification of human laws right? If it "works for us," isn't that enough? No. An appropriate classification of laws *as laws* depends not on our own convenience, but on the real or essential differences among things themselves. But how could it be convenient anyway, to treat identical things as different, to treat different things as identical, or to treat different things as different in ways other than they really are? Those who enjoy paradox might say that in this sense it is convenient to disregard our convenience; living only by what works for us doesn't work for us.

On the other hand, since things may contain more than one kind of real difference, there can be more than one appropriate way to classify them appropriately. Which of several appropriate classifications we use *does* depend on our convenience, in the sense that we use the one suitable to the particular aspect of things (the particular *real* aspect of things) that we are trying to understand. The really right choice aids understanding, and the wrong one doesn't.

All of this may be obvious, but it is not obvious if our common sense has been turned upside-down. To speak personally: When I began

graduate school, the social science textbooks on which my loutish mind was nourished held that classification *does* depend only on the convenience of the investigator, and that believing in real or essential differences is like believing in leprechauns and elves. This is nothing but a prejudice against reality. The prejudice comes in various colors: for example, that nothing is real but our thoughts; or that although individual things do exist outside our thoughts, the relations among them don't; or that even if such relations exist, we can't ever know what they are so we might as well make them up. It is not a mere prejudice to dismiss such doctrines as prejudice, because they are self-defeating. To say that they are true would be to say that they correspond to the real relations among things – but the possibility of knowing the real relations among things is just what they deny.

I do not think the authors of the textbooks knew the sources of their prejudice. They were under the spell of long dead thinkers they had never read – thinkers who were philosophically incoherent, but spectacularly successful at propaganda. This raises a further question: How could incoherence be persuasive? Because there is such a thing as motivated irrationality. If our lives and social arrangements are strongly out of harmony with reality, we may consider denying reality preferable to amending our lives. Classification of the more detailed motives for such denial may be left as an exercise for the reader.

St. Thomas's Prologue to Question 96: Of the Power of Human Law Discussion

Why Just These Questions?

To paraphrase St. Thomas's six queries in a way that clarifies their relation to the overall question about the reach of law: The first one asks whether law reaches individuals in their particularity; the second, whether it reaches all vices; the third, whether it reaches all acts of virtue; the fourth, whether it reaches into the depths of conscience; the fifth, whether it reaches everyone; and the sixth, whether it reaches things without exception.

Although these six queries are especially pressing, particularly vexing, and cover a great deal of ground, St. Thomas makes no pretense that they are the only questions that need ever be asked about the power of law, for although one can completely "divide" a topic, one cannot exhaustively list the possible questions about it.¹ Indeed, he has already investigated several other limits on law's reach in other contexts. In [Question 91, Article 4](#), for instance, we saw that human law does not issue commands about the invisible movements of the heart, and that its proper charge is the temporal rather than the spiritual common good. The same Article anticipated one of the issues we are about to investigate in detail: Whether human law should seek to repress every vice.

¹ However, questions of the form "What is P?" or "Is there a Q?" can be *based* on a division or proposed division of a topic. If we know that there are four causes (formal, final, and so forth), then we can ask in turn about each of the four causes of law, as St. Thomas does in [Question 90](#). If the tradition has held that there are six kinds of law (eternal, natural, and so forth), then we can ask in turn whether each of them is real. In such a way a list of questions can be exhaustive in one respect even though not exhaustive in every respect.

**Question 96, Article 1:
Whether Human Law Should Be Framed
for the Community
Rather than for the Individual?
Discussion**

Legal “Privileges”

St. Thomas’s remarks on legal “privileges” illuminates a point that our present-day rhetoric tends to obscure. Although we say that the law should treat everyone equally, never discriminate, recognize the same rights and privileges for all, and not be a “respector of persons,” taken literally these statements are absurd. The very fact that there is government requires a distinction among persons. In the first place it distinguishes among persons in their public capacities:

- Only adults may vote in elections to public offices; children and non-citizens are not eligible.
- Only those duly appointed to such offices may exercise their duties; the dogcatcher alone catches dogs, the diplomat alone conducts diplomacy, and the judge alone presides over trials.

In the second place, law distinguishes among persons in their private capacities, whether by bestowing rights and privileges, or by confirming rights and privileges that have already been bestowed by either natural, customary, or Divine law:

- Only the man and woman themselves may consent to be married; no one else may consent for them.
- Only those who pass a driving test may be licensed to operate vehicles on public roads; those who cannot do so are forbidden.
- Only their mothers and fathers may decide whether their children shall be baptized; third parties may not interpose themselves in the decision.
- Only the members of private associations may choose their own officers; the AFL-CIO does not choose the president of the U.S. Chamber of Commerce, or vice versa.
- Only the Church may decide who is to be ordained a priest; the government and the members of other religions have nothing to say about it.

In each of these ways law distinguishes among particular persons; in each it discriminates as to their respective rights and privileges; and in each it

treats them unequally. The parents of little Theodore, for instance, are distinguished from all other parents. They may make decisions about Theodore that no one else may make. But they do not have the same authority over little Bethany, for that belongs to Bethany's parents.

This inequality of rights and privileges also characterizes punishments and deprivations of privilege; for example, only those convicted of crimes are subject to the corresponding penalties.

Rightly understood, then, the principle of equality under the law does not require that everyone be treated the same, but that people who are the same *in the relevant respects* be treated the same *in the relevant respects*. Nor does it require that everyone have identical rights and privileges, but that whenever some do have extra rights or privileges, the underlying reason must be the well-being of all. Thomas Aquinas would counsel us that what we call equality is not about literal equality – at any rate, it shouldn't be – but about respecting human dignity, ensuring consistency, avoiding arbitrariness, and promoting the common good.

Such a counsel would certainly complicate some of the judgments that contemporary Western political arrangements take for granted. Consider our suspicion of hereditary aristocracy. In view of its historical record, perhaps we are right, but surely our reasons are faulty. For our objection is that it treats different citizens differently, but if we really believed that treating different citizens differently were always wrong, then we would let Mr. and Mrs. Jones in on deciding where the children of Mr. and Mrs. Ramirez should go to school. For St. Thomas, the question is not “Does the law distinguish among citizens?” but “On balance, do the distinctions among citizens made by law promote the good of all?” That is a much different question, the answer to which depends not on glib abstractions, but on the facts on the ground. Since our own glib abstractions make it difficult to raise such questions, we find it difficult to view social arrangements honestly.

Question 96, Article 2:
Whether It Belongs to the Human Law to
Repress All Vices?
Discussion

What Counts as Harm to Others?

First-time readers are often surprised by St. Thomas's statement that human law forbids chiefly those vices that hurt or harm others, because according to popular history, the “harm principle” was originated by John

Stuart Mill, with the publication of his 1859 essay *On Liberty*. But John Stuart Mill was not the author of the harm principle; he was merely the author of the liberal brand of harm principle. At the time that he wrote, the old idea that legal prohibitions are framed chiefly to prevent harm to others was already widely accepted, and debate focused on which harms were grave enough to forbid. Mill radicalized the debate, and he did so in two ways. From a Thomistic point of view, in one sense he made the harm principle too broad, while in another he made it too narrow.

The way in which Mill made his version of the harm principle too broad had to do with the fact that as a consequentialist, he did not believe that there are such things as intrinsically evil acts. In his view, anything at all might be done if the results are good enough; any harm whatsoever might be committed for a greater good.² This St. Thomas denies. There are some acts, such as deliberately taking innocent human life, denying God, or violating conscience, that human beings must never do for the sake of any advantage whatsoever. It is not even appropriate to ask whether the good of committing such acts could make up for their evil.

The way in which Mill made his version of the harm principle too narrow had to do with his foolish insistence that most individual conduct has no effects on other people at all. To support this implausible suggestion, he places tendentious restrictions on what counts as harm – harming mores that are essential to the security of human good is not counted as a harm; seducing others to evil is not counted as a harm; harm to which people consent is not counted as a harm; giving unnecessary offense is not counted as a harm; conduct by which a person destroys his abilities to fulfill his duties to others is not counted as a harm; and the risk of harm, distributed in such a way that we do not know on whom the sword will fall, is not counted as a harm. But these *are* harms.

Consider for instance his crafty dispute with Lord Stanley over prohibition of traffic in strong liquors. Though Mill denies it, both men couched their arguments in terms of harm, for as even Mill's quotations show, Lord Stanley held that the sale of strong liquors harmed him, as a representative citizen, in four ways: by endangering his security, by creating a misery that he was taxed to support, by tempting him to what

² Some might hold that Mill's embrace of the "rule" rather than the "act" version of utilitarianism rescues him from this position, but this does not seem to be the case. For discussion, see J. Budziszewski, *Written on the Heart: The Case for Natural Law* (Downers Grove, IL: InterVarsity Press, 1997), Chapter 11.

would threaten his moral and intellectual development, and by weakening and demoralizing society, from which he had a right to claim mutual aid and intercourse. Mill might have argued plausibly that these harms were insufficiently grave to warrant prohibition, or that Lord Stanley should have focused not on the use of alcohol, but its abuse. But that is not what Mill did. Instead, he simply denied that they were harms. Such pretense obscures the issues that divide the different brands of harm principle from one another, and has gone far toward persuading generations of political thinkers that the choice is between the Millian harm principle and no harm principle at all.³

The pretense has also contributed to a debasement of moral discourse. Today, anyone who speaks up against the vice of lust is regarded as a troglodyte, because “it doesn’t hurt anyone.” Really? Consider just a few of the fruits of the sexual revolution: loneliness, because people miss the chance for the heightened personal intimacy that can develop only in a secure and exclusive relationship. Still more loneliness, because sex is like duct tape: If you keep sticking it on and pulling it off, eventually it can no longer bond. Fatherlessness, because single women get pregnant with no one to help them raise the children. Poverty among women and children, because mothers are left to provide for their offspring by themselves. Adolescent violence, because boys grow up without a father’s influence. Venereal disease, because formerly rare infections spread rapidly through sexual contact. Child abuse, because live-in boyfriends tend to resent their girlfriends’ babies. Child neglect, because live-in girlfriends tend to sacrifice their children for their boyfriends’ approval. Divorce, because wantonness leads to betrayal. Abortion, because children are increasingly regarded as a burden rather than a joy.

All this, and yet we say “it doesn’t hurt anyone.” The problem lies not with the harm principle, but with tendentious and dishonest ways of counting harms.

The Need and the Burden of Prudence

An attraction shared by Puritanism at one extreme, and liberalism at the other, is the false promise of making prudential decisions easy. By contrast, properly weighing the undesired harms of vice against the unintended harms of restriction can be quite difficult. All of the reasonably foreseeable harms that vices impose on others must be considered, not

³ For detail, see J. Budziszewski, *True Tolerance* (New Brunswick, NJ: Transaction Publishers, 1992). I have adapted several paragraphs from that work.

just an artificially limited set of them, as in the Millian version of the harm principle. At the same time, all of the ways in which limitations on vice can backfire must be considered, rather than being ignored, as in Puritanism. Myriads of considerations crowd into the balancing pans.

True, not all cases are difficult. Consider abortion. Advocates often make the “coat hanger” argument that in the days before *Roe v. Wade*, prohibition led to many thousands of maternal deaths annually because of the complications of illegal abortions. This argument is obviously invalid. In the first place, it ignores the millions of infant deaths that result from abortion itself; just what greater evil could “break out” is difficult to see. In the second place, the statistical claim on which the argument depends is false. The federal Centers for Disease Control and Prevention report that in 1972, the last full year before *Roe v. Wade*, there were 24 U.S. maternal deaths from legal abortions, 39 from illegal abortions, and 2 from abortions the legality of which is unknown. In 2007, the last year for which data are available, the corresponding numbers were 6, 0, and 0.⁴ If these figures are even approximately correct, then not only have proponents of the “coat hanger” argument grossly exaggerated the number of maternal deaths due to illegal abortions before *Roe*, but there were almost as many from legal ones.⁵ Although today there are fewer in both categories, the downward trend began long before legalization, and was brought about not by changes in the law but by changes in medicine, such as the introduction of antibiotics. In sum, St. Thomas’s recommendation to weigh competing harms provides no ammunition whatsoever to the proponents of permitting the murder of children in the womb.

But other cases are much tougher and more complex. Consider the question of legalizing drugs. One might suppose that because the early twentieth century experiment with the prohibition of alcohol did not turn out very well, because contemporary drug policy is breeding a vast criminal industry, and because the problem with pharmacologically active substances is not the moderate use of them, but only intoxication, all drugs should be legalized. Perhaps – it may seem – only a few offenses, such as being grossly addled by drugs in public, should be forbidden. Not so fast!

⁴ Karen Pazol et al., “Abortion Surveillance – United States, 2008,” *Surveillance Summaries*, November 25, 2011 / 60 (SS15), pp. 1–41, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6015a1.htm>.

⁵ Pro-life activists believe the numbers of deaths from *legal* abortions are seriously underreported, but I have chosen to use a statistical reporting authority accepted by both sides.

In the first place, the pharmacological effects of various substances differ not only in magnitude, but also in kind. Some stimulate; others depress. They may interfere with judgment, with sensory perception, or with motor coordination. Some cause hallucinations, and of these, some are associated with flashbacks. Some damage the reproductive system, others cause birth defects or genetic damage, and still others injure the nervous system.

In the second place, the various substances differ in their potential to cause both physical and emotional dependence. They also differ in the much-disputed question of whether users can develop “tolerance” – the ability to resist, control, or delay some of their effects.

Third, although for most adults the effects of, say, a single glass of wine are mild and fall far short of intoxication, for many substances there may not be any practical equivalent of a single glass. Even minute amounts of some substances produce strong effects; for others, the effects are unpredictable, whether because of differences in purity, or because of the inherent properties of the drug. Some substances build up in the body over time; to others, bodily response changes over time. In the case of certain intoxicants, such as marijuana (although this effect is debated), some users even report “reverse tolerance,” or sensitization, meaning that the more they smoke, the less it takes to get high (or the faster it happens). For all such substances, the idea of “moderate” use is, pardon the expression, a pipe dream.

Fourth, the effects of some intoxicating substances are probably easier to privatize than others, easier to seal off from public harm. Consider someone living alone, who gets into a stupor in the privacy of his home. Except for the damage to his ability to perform his duties toward others, he may not cause much harm to them. But suppose the substance he is using interferes with judgment in such a way that once having become intoxicated, he is unlikely to *remain* in the privacy of his home. That is another kettle of fish.

Fifth, human society has much more historical experience with alcohol than with other intoxicants. One result of the difference is that at least in some societies, customs that moderate its use and ameliorate the dangers of its abuse are much more fully developed. Another result is that people have a much better idea what to expect from the use of alcohol than from the use of, say, PCP. For both of these reasons, they may be in a better position to recognize the signs of addled senses and say “Come on, buddy, let me drive you home.”

The legal question is not just which *substances* to forbid, but which *acts* to forbid. A case might be made for the legal tolerating *some* social uses of *some* substances – but not other uses of other substances. But here we run into a different problem. The substances themselves are endlessly diverse, not only in effects, but also in predictability. So could such a law remain simple?

Suppose it couldn't. Excessive complexity in the law brings about a new set of problems, because it demoralizes the citizens and throws law itself into disrepute. Besides, complex laws become difficult to understand, and, as we learned in [Question 90, Article 4](#), a law that no one can understand is no law at all.

The problem is complicated by other factors too. For example, just what harms a given act causes to other people depends partly on what we have *previously* done about its harms. One of the things that contemporary societies do about them is pool risks, by means of various private and public health insurance schemes. Now in itself, habitual and solitary drunkenness may have little effect beyond the drinker and his family. But with the advent of insurance, the medical costs of his drunkenness become everyone's costs, and so the case for regulating solitary behavior for the sake of the common good becomes much more difficult to resist.

Finally one must ask whether the results we desire from prohibition can be more effectively accomplished by other means, such as voluntary or mandatory workplace drug testing. Maybe in some cases they can.

Then again, maybe not.

**Question 96, Article 3:
Whether Human Law Prescribes Acts of All the
Virtues?
Discussion**

Shared Private Goods

St. Thomas's example of a virtuous act that bears on a private good, protecting my friend's rights, is worth closer attention for two reasons. One reason is that it underlines the law's recognition of the fact that individuals do have rights, and that defending them is not at odds with the common good. We have discussed the question of rights in the Before Reading section for [Question 94](#).

But the second reason why this example is so interesting is what it tells us about private good itself. Not even my private good is "all about

me"! On the contrary, "he who loves another looks upon his friend as another self, he counts his friend's hurt as his own, so that he grieves for his friend's hurt as though he were hurt himself."⁶ The matter goes far beyond friends, for to one degree or another my private good takes in all those whose well-being is bound up with mine: my wife, my colleagues, and so on. So at least in cases like these, what we call my private good is not my *unshared* good, but a good that I share with the members of a community that is less inclusive than the commonwealth. I share in many such communities; different goods are shared in each form of association. The good common to me and my friend is the friendship itself. The good common to me and my wife is our love and our partnership in children. The good common to me and my close colleagues is shared devotion to a task. And so it goes.

The relations among shared private goods and the overall common good are various, complex, and subtle. Only a few people may belong to the chess club or the Smythe family, yet everyone belongs to some voluntary organization and some family. Although the law takes no interest in your family or voluntary association for its own sake, it does protect the goods common to all families and to all voluntary organizations.

The Problem of Toleration

By showing that law does not try to suppress *every* vice or command *every* act of virtue, Articles 2 and 3 bring us to the question of toleration. Liberal political thinkers tend to regard toleration as grounded in the suspension of moral judgment, and are suspicious of natural law. We have now advanced far enough into St. Thomas's argument to see that toleration *requires* moral judgment, and is *grounded* in natural law. For although some evils must be tolerated, no one really suspends judgment; no sane person thinks rape is on a par with the popping of chewing gum in movie theaters. Error lies both in tolerating a bad thing that should not be tolerated and failing to tolerate a bad thing that should be tolerated. Toleration, then, is a moral virtue of the classical type, a mean between opposed vices.

A Thomistic analysis of this virtue begins with the five ways in which St. Thomas qualifies and clarifies the classical idea that the purpose of man is to make man good:

⁶ II-II, Q. 30, Art. 2; compare I-II, Q. 77, Art. 4, ad 4.

1. All law makes men good, but not all law makes men good in the same way. The discipline of the state aims only at the natural good; by contrast, the discipline of the Church aims also at our supernatural good. Human law should be amicable and cooperative toward the Church, but should not try to take its place.⁷
2. Human law can be made only about those things which human beings can judge. However, says Thomas, human beings can judge only outward acts, which can be seen; they cannot judge the interior movements of the heart, because they are hidden. I confess that I cannot go all the way with Thomas on this point. The law *does* take account of interior movements of the heart when they can be inferred *from* exterior acts. For instance, we distinguish murder from manslaughter by evidence as to the presence or absence of malice. Even if the interior movements of the heart can sometimes be inferred, however, it seems clear that they cannot be inferred well enough to become *direct objects* of human command and prohibition.⁸
3. Even though human law opposes vice, it may not repress all vices. One reason is that “while aiming to do away with all evils, it would do away with many good things.” For instance, by attempting to suppress greedy profiteering, the law might also do away with honest efforts to make a living. That has certainly been the experience of the socialist states. The other reason is that “laws imposed on men should ... be in keeping with their condition,” leading men to virtue gradually rather than all at once; imperfect men whose favorite vices have been forbidden will “break out into yet greater evils.”⁹
4. Even though law may command acts of virtue, it may not command all acts of virtue. This is the qualification with which the present Article is concerned. As we have seen, Aristotle held that legal justice is “complete” justice, in the sense that any virtue might become a concern of law – but he had obscurely added that legal justice is complete “not absolutely, but only in relation to our neighbor.” St. Thomas follows Aristotle, but develops the distinction more clearly. Although any virtue might become a concern of law, nevertheless not any *act* of each virtue might become a concern of law.

⁷ I-II, Q. 91, Art. 4.

⁸ I-II, Q. 91, Art. 4.

⁹ I-II, Q. 91, Art. 4, and Q. 96, Art. 2.

The reason is that law may concern itself only with what pertains to the common good, and some acts of virtue pertain only to the private good. Law takes cognizance of truthfulness, but although it may command a public official to speak truthfully before a grand jury, it does not command a teenage girl to write truthfully in her diary.

5. Finally – a point discussed elsewhere in the *Summa*, though not in the *Treatise on Law* – we must never “do evil so that good will result.”¹⁰ It follows that the law may not command intrinsically evil acts no matter what the purported reason, not even to make men good. For instance, it could never be right for human law to command killing people innocent of any crime in order to prevent them from falling into temptation. Though superficially such commands may seem to be directed to law’s purpose, acts with such objects can never be properly ordered to it.

These five qualifications seem to fall under three general categories: right understanding of ends; right judgment in the protection of greater ends against lesser ends; and right judgment in the protection of ends against mistaken means.

Although St. Thomas’s analysis certainly generates a theory of toleration, it does not generate a liberal theory of toleration. In the first place, it requires sound moral judgment, rather than suspension of moral judgment. In the second place, it does not rely on the idea of autonomy in the sense of self-sovereignty. In the third, although it employs a generic harm principle, it is incompatible with the radicalized version of harm principle advanced by John Stuart Mill.

Question 96, Article 4: Whether Human Law Binds a Man in Conscience? Discussion

Conscience, Conscience, and Conscience, Revisited

As discussed more fully in [Question 94, Article 1](#), today’s writers tend to use the single term “conscience” for at least three different things, which St. Thomas distinguishes carefully.¹¹

¹⁰ See especially II-II, Q. 64, Art. 5, ad 3.

¹¹ See also Q. 93, Art. 6, note 20; Q. 94, Before Reading; and Q. 94, Art. 1.

1. *Synderesis*, deep conscience, is the natural and habitual knowledge of the first principles or starting points of practical reason.
2. *Conscientia*, conscience in action, is the actualization of this latent knowledge – the act of judgment by which we bring it to bear upon a particular deed. That is what St. Thomas is discussing in the present Article.
3. The *vermem conscientiae*, or “worm” of conscience, is neither a habit, nor an act, but a passion – it is the penalty I suffer when I violate the judgment of *conscientia*. Such punishment certainly includes the mordant feeling of remorse. I have suggested earlier that it may also include other symptoms of guilty knowledge, such as an urge to self-punishment.

Deep conscience is latent in everyone who is capable of practical reason at all. So long as we have human minds, it cannot be erased or reprogrammed, and in that sense it cannot go wrong. Conscience in action can certainly go wrong, either by innocent mistake or by twisted rationalization. Often, in such cases, we dimly perceive our guilt, but in an effort to avoid the “worm” of conscience, we try not to think about it. Even in this life, the attempt to evade it brings about destructive results of its own, and in the next life it cannot be escaped.¹²

Inviolability of Conscience

Conscience is in the following sense inviolable: It is always gravely sinful to act contrary to the certain judgment of conscience, because it is the interior representative of the judgment of God. What if I am certain, *but mistaken*? Then it depends. Suppose I reason from false principles, or my ignorance of important circumstances is due to negligence; then I am objectively guilty. But suppose I reason from true principles, and through no fault of my own I am ignorant of some circumstance that would have led me to judge differently had I known it; then my error is excusable. St. Thomas explains as follows:

For instance, if erring reason tell a man that he should go to another man’s wife, the will that abides by that erring reason is evil; since this error arises from ignorance of the Divine Law, which he is bound to know. But if a man’s reason errs in mistaking another for his wife, and if he wish to give her right when she asks for it, his will is excused from being evil: because this error arises from

¹² See esp. I-II; Q. 78, Art. 2, ad 3; compare I-II, Q. 85, Art. 2, ad 3; I-II, Q. 88, Art. 4; II-II, Q. 88, Art. 2, ad 3; Supp., Q. 97, Art. 2.

ignorance of a circumstance, which ignorance excuses, and causes the act to be involuntary.¹³

It is an awful thing to commit a culpable error of conscience, because doing the wrong thing is wrong – but violating the certain judgment of my conscience is also wrong, so if my conscience is in error, then I am in the wrong no matter what I do:

[I]t does not seem possible for a man to avoid sin if his conscience, no matter how mistaken, declares that something which is indifferent or intrinsically evil is a command of God, and with such a conscience he decides to do the opposite. For, as far as he can, he has by this very fact decided not to observe the law of God. Consequently, he sins mortally. Accordingly, although such a false conscience can be changed, nevertheless, as long as it remains, it is binding, since one who acts against it necessarily commits a sin.¹⁴

The only way out of this perilous dilemma is to avoid negligence, and conform my moral intellect to Divine wisdom, so that my conscience does not fall into such traps.

The doctrine of the inviolability of conscience is often confused with the doctrine of moral autonomy (broached in [Question 94](#), Before Reading). In reality, no two things could be further apart. According to those who hold the former doctrine, my freedom lies in my willing participation in a law that I did not make, but that I see with my mind to be right. But those who hold the latter view believe that I myself originate the law. Consequently, they view my freedom as consent to nothing but my own will. A person who holds the doctrine of the inviolability of conscience recognizes the dreadful possibility of an erring conscience, but a person who holds the doctrine of moral autonomy cannot see how the individual could really err, as he originates the law that he obeys; there is no “external” standard by which he could be held to be mistaken. To him it seems that obedience to God is just as much slavery as obedience

¹³ S.T., I-II, Q. 19, Art. 6.

¹⁴ Thomas Aquinas, *Disputed Questions on Truth*, Q. 17, Art. 4, trans. James V. McGlynn, S.J. (available at www.diafrica.org/kenny/CDtexts/QDdeVer.htm). See also Thomas Aquinas, *Lectures on the Letter to the Romans*, trans. Fabian Larcher, ed. Jeremy Holmes (Naples, Florida: Aquinas Center for Theological Renewal, Ave Maria University, 2008), Chapter 14, Lecture 2, Section 1120, available online at http://nvjournal.net/files/Aquinas_on_Romans.pdf: “[A]n erroneous conscience binds, even in matters per se evil. For conscience ... binds to such an extent that from the fact that one acts against his conscience, it follows that he has the will to sin. Therefore, [even though fornication is per se evil,] if someone believes that not to fornicate is a sin and chooses not to fornicate, he chooses to sin mortally; and so he sins mortally.”

to the lowest earthly tyrant, for in both cases I submit to something that is alien to myself.

Those words, “external” and “alien,” are the crux. Is God really alien? Is His standard really external? According to St. Thomas, no, because my whole God-given being resonates with God inwardly. Natural law is the mode in which I *share* in the eternal law as a rational creature.

To put it another way, the proponents of the doctrine of moral autonomy recognize but two alternatives. Heteronomy, or obedience to an alien “other,” they view as slavery; autonomy, or obedience to myself, they view as freedom. But St. Thomas recognizes three alternatives. Heteronomy, or obedience to an alien “other,” is certainly slavery. Autonomy, or obedience to myself *in alienation from God*, is still slavery because it is disguised heteronomy. For since I am made in God’s image, if I am alienated from Him, then I am also alienated from myself. Obedience to my *alienated* self is but obedience to yet another alien “other.” The only true freedom is “participated theonomy,”¹⁵ joyful participation in the law of the *God in whose image I am made*. Only in this way can I be fully what I am; and so only in this way can I be fully and truly free.

Conscientious Disobedience to Unjust Laws

As we have seen, St. Thomas’s answer to the question “Must I obey an unjust law?” has two parts. If the law commands me to violate Divine commandment, as expressed either in written Divine law or in natural law, then I *must* obey it. If the law unjust either in its end, its author, or its form, but does *not* command disobedience to Divine commandment, then I *may* disobey it, except perhaps if doing so would cause scandal or disturbance.

Let us consider the latter case more closely. Most first-time readers apply the scandal condition in a static way: If a given act of disobedience would cause grave scandal, then I should not disobey. But nothing prohibits us from applying the condition in a dynamic way instead: If I can find a *way* to disobey that does *not* cause grave scandal, then I *should* disobey. This is how Martin Luther King interpreted the condition in his famous *Letter from Birmingham Jail*, for he believed that bad moral example could be avoided if certain conditions were met.¹⁶ First, protestors are to

¹⁵ This term was not invented until it became necessary for the followers of St. Thomas to explain how Immanuel Kant had erred.

¹⁶ Martin Luther King, “Letter from Birmingham Jail,” in *Why We Can’t Wait* (New York: New American Library, 1964). Available many places on the internet, for example, www.stanford.edu/group/King/frequentdocs/birmingham.pdf.

disobey the unjust law only after attempts to change it through discussion with the authorities have been exhausted. Second, when protestors disobey, they must do so for the sake of justice rather than revenge, they must do so publicly rather than in secret, they must give a public explanation of their reasons for disobedience, and they must publicly accept the legal penalties for disobedience. Protestors should offer no resistance whatsoever, even if spat upon, beaten with nightsticks, sprayed with high-pressure fire hoses, bitten by police dogs, and carried off to prison.

St. Thomas and Martin Luther King both want to know how to keep conscience unstained in the face of unjust laws. King's interest in civil disobedience was moved by a second interest as well: He hoped to make use of it to *change* unjust laws. Was this hope justified? His strategy was spectacularly successful in bringing an end to U.S. laws requiring racial segregation, but has been much less successful in overcoming other injustices, such as governmental protection of abortion.¹⁷ Why?

The argument is often made that although the status quo concerning abortion is unjust, it is literally impossible to disobey, because it does not command people to participate in abortion, but only permits them to do so.¹⁸ This argument is weak, because ultimately a culture of death cannot be sustained by permissive laws alone. It requires that certain monies change hands, certain officials do what they are told, certain voices be silenced, and certain information be suppressed. For a small example, in the 1994 case *Madsen v. Women's Health Center, Inc.*, the U.S. Supreme Court upheld a provision of Florida law establishing a thirty-six-foot zone around an abortion clinic within which demonstrations were permitted if staged by supporters of abortion – but not if staged by defenders of life. For those who hold no office but their citizenship, a possible mode of civil disobedience might have been to pray peacefully and silently within the zone, then accept the legal penalty for demonstration. The manifold regulations and intricate fiscal arrangements of the modern state present myriad opportunities to draw lines against injustice, each of which needs to be patiently and prudently considered.

¹⁷ The next several paragraphs are adapted from J. Budziszewski, "Introduction," in Mitchell S. Muncy, ed., *The End of Democracy? II: A Crisis of Legitimacy* (Dallas: Spence Publishing, 1999), pp. xi–xlvi, reprinted, in part, as "The Future of the End of Democracy" in *First Things: A Journal of Religion and Public Life*, No. 91 (1999), pp. 15–21. The latter, shorter version is available online at www.firstthings.com.

¹⁸ See, for example, Samuel Francis, "First Things Last," *Chronicles*, March 1997, pp. 32–34: "[N]o one is commanded to have or perform an abortion or to suffer or perform euthanasia. [Such laws] are permissive, not compulsive, and how one might 'resist' such permissive laws is never clear."

And yet even though laws and ordinances like no-pro-life-protest zones form part of the support structure for abortion, *in themselves* they are unjust only in the second way, not in the first. They do not directly violate Divine commandments such as *do not murder*; they merely undermine the temporal common good, in this case by imposing inappropriate punishments and burdening the pro-life view with official opprobrium. In such cases civil disobedience is not an unconditional duty but a matter of discretion – something to be weighed according to whether, in the circumstances, it will do more good or harm. For example, a disadvantage of drawing the line against injustice in the particular place suggested, rather than in some other place, is that hostile journalists will do all they can to obscure the difference between praying in the driveway and planting a bomb in the waiting room. Then there is the fact that the knowledge of infant blood flowing freely only a few dozen feet away is such a terrible goad that the distinction may disappear for some demonstrators too.

Such difficulties help to explain why protests against abortion have been less successful than protests against racial segregation. However, they are prudential obstacles, not objections in principle.

We have just been considering the case of “those who hold no office but their citizenship.” What about those who do hold other offices? May *lesser* public officials refuse to comply with unjust laws made by *higher* public officials? Lower judges and magistrates should certainly cooperate in the enforcement of preexisting laws against violence and trespass by persons of all persuasions. But would it be unjust for a judge to refuse to render judgment under a law that imposed harsher penalties on trespassers just because they were pro-life? Could the judge in such a case resist the law in a manner that did *not* involve actual disobedience, by entering a judgment of conviction but suspending the sentence?¹⁹ An objection might be drawn from II-II, Question 67, Article 4, where St. Thomas crisply declares that “the inferior judge has no power to exempt a guilty man from punishment against the laws imposed on him by his superior.” On the other hand, there he is speaking of *just* laws. As we see in the next section, he agrees that public officials are acting properly when they seek to depose a tyrant, so would they not also be acting properly when they seek to invalidate unjust laws?

¹⁹ The latter suggestion is from Michael W. McConnell’s thoughtful essay “Bending the Law, Breaking the Law,” *First Things*, June/July 1997, pp. 13–15 (available at www.first-things.com).

Suppose we answer “Yes.” Even so our agreement must be qualified, for some injustices are more grave and obvious than others. It is one thing for a judge to refuse to render judgment under a law that violates one of the general precepts of natural law, such as “Do not murder” or “Punish only the guilty,” which no one can honestly say he does not know. It is quite another thing to refuse to render judgment under a law the injustice of which is a matter of reasonable doubt. In cases of that kind, a judge who cannot square the law with his conscience should probably resign, rather than resist.²⁰ The great difficulty, of course, is discerning which doubts are reasonable. But the mere fact that men disagree about which doubts are reasonable does not make all doubts reasonable.

Conscientious Resistance to Unjust Governments

In Article 4, St. Thomas discusses disobedience to an isolated unjust *law*. Resistance to an unjust *regime* is a different question, which he treats not here, but in another work, *On Kingship*.²¹ *On Kingship* and the *Treatise on Laws* were written in different genres, the former as a “mirror of princes” and the latter as a formal disputation. However, the underlying principles of *On Kingship* are much the same. One may certainly remove unjust rulers, but not in a way that brings about even greater evils; one may oppose illicit rule, but only in a way that demonstrates respect for licit rule.

First, St. Thomas urges that precautions be taken so that rulers do not fall into tyranny. Though he does not say much in *On Kingship* about what these provisions might be, we learn from what he says later in *Treatise on Law* (in [Question 105, Article 1](#)) that he favors a mixed form of government, partly kingship, partly aristocracy, partly democracy – in the classical motto, a balance among the One, the Few, and the Many, with all three seeking the common good. The most conspicuous way in which such a government can degenerate is to fall into tyranny: The One squeezes out both the Few and the Many, and rules in his own selfish interests.

What should be done if despite all precautions, the government does degenerate into tyranny? The answer depends on what kind of tyranny it is. Extreme, energetic tyranny is the worst possible kind of rule, for the ruler actually attacks the common good. Everyday, lazy tyranny is not as bad, for the ruler merely neglects it.

²⁰ See also the commentary on [Question 96, Article 6](#).

²¹ Especially Chapters 4–7.

If the tyranny is of the everyday sort, however, St. Thomas thinks it is better to tolerate it than resist it, because still worse evils threaten no matter how the resistance turns out. If the resistance fails, it may provoke the ruler to rage and turn into the extreme sort of tyrant. If the resistance succeeds, the most probable result is rule by competing selfish factions, and this state of affairs usually ends with the leader of one of the factions seizing the tyranny for himself. The new tyrant is likely to be much harsher than the old one, if for no other reason than that he fears to suffer the same fate.

What is the tyranny is of the extreme sort? For that case, St. Thomas does propose resistance, but constitutionally, by public authority, not by private presumption. Presumably, the constitutional traditions of various countries may provide various ways to depose a tyrant. By way of example, St. Thomas considers only one such case, in which the assemblies of the people have the constitutional authority not only to appoint the king, but also, by implication, to remove him. Needless to say, the tyrant will probably seek to block any attempt to remove him, for example by preventing the assemblies of the people from meeting. In some constitutional arrangements, further appeal is possible. On the other hand, in an empire, one can appeal against the tyrant to the emperor. Probably St. Thomas would consider all of the sorts of things we call federations empires, so a close parallel to appeal to the emperor would be the provision in the U.S. Constitution that allows any state to appeal to the federal government for a restoration of republican rule.

What if constitutional resistance fails? Would it be permissible for private individuals to take matters into their own hands by attempting tyrannicide? St. Thomas takes the idea seriously, conceding that at first there even seems to be biblical precedent, in Ehud's slaying of the Moabite king Eglon.²² In the end, however, St. Thomas rejects tyrannicide. One of his three reasons is that the killing of Ehud was not actually a tyrannicide, but an act of war; Ehud was not acting as a private individual, but as a soldier under the authority of the nation of Israel in its just war against the invader.²³ This raises an interesting possibility that St. Thomas does not discuss in *On Kingship*, but that would seem to be permitted by his analysis of just war later in the *Summa*.²⁴ Among the just causes of war

²² Judges 3:15–30. The name “Ehud” is sometimes also given as “Aod” (as in the DRA translation of the Bible) or “Aioth” (as in the Gerald B. Phelan translation of *On Kingship*).

²³ Implied in Judges 3:15.

²⁴ II-II, Q. 40, Art. 1, “Whether some kind of war is lawful?”

are “securing peace,” “punishing evil-doers,” and “uplifting the good.” Suppose, then, that for these reasons other nations declare a just war against the tyrant, and a member of the tyrannized country acts *under their commission* to kill him. Assuming that all the other conditions of just war are fulfilled, then his act would be permissible for the same reason that Ehud’s was. It would not be an act of private presumption but of public authority.

The other two reasons St. Thomas gives for rejecting vigilantism are from Revelation and from prudence. From Revelation: That it contradicts Apostolic teaching. From prudence: That if the assassination of undesired rulers by private presumption were an option, then it would more often be seized by wicked men to slay good kings than by good men to slay tyrants. This warning would seem to concern not only solitary rebels, but also rebel armies. Suppose the rebels claim to represent the people as a whole; after all, St. Thomas does hold that a morally competent people should be ruled with their consent.²⁵ Although he does not discuss this possibility that rebels might make such a claim, the tenor of his argument suggests that he would not be impressed with it. Many competing groups may claim to represent the people as a whole; that does not mean that they do. Besides, he has already explained that factional conflict tends to produce tyrannies even more bitter than those it sweeps away.

So if both national and extranational public authority fails to remove the tyrant, then, barring vigilante actions that would make matters still worse, there is nothing left but to pray – something one should have been doing from the start.

“To pray?” we think. “How ridiculous.” But St. Thomas thinks it is very practical. Tyranny is unlikely to arise among a virtuous people; if it does arise, they have probably been softened and prepared for it by a long period of moral decay. Until things get very bad indeed, they may even like tyranny, either because the regime has given certain constituencies private benefits, or because most citizens have not yet been personally hurt, or because the desires of the people are so disordered that they do not clearly see their own condition. God does not often protect people from the natural consequences of their corruption; He more often allows these consequences to ensue in order to bring corrupt nations to their senses. If at last the people repent and mend their ways, then God will hear their prayers, but St. Thomas warns that “to deserve to secure this

²⁵ St. Thomas, *On Kingship*, Book 1, Chapter 3; see also the commentary for [Question 90, Article 3](#), earlier in the *Treatise on Law*.

benefit from God, the people must desist from sin, for it is by divine permission that wicked men receive power to rule as a punishment for sin.”²⁶ Interestingly, the need to couple resistance to tyranny with repentance, prayer, and moral reform was a major theme of colonial preaching during the American quest for independence,²⁷ though whether the revolution fulfilled St. Thomas’s criteria for resistance might well be questioned.

Are There Specific “Rights of Conscience”?

We have asked how the individual should view unjust governmental commands. Let us turn the question around: How should the government view citizens who deem its commands unjust? We have seen that it is gravely wrong for an individual to act contrary to the certain judgment of his conscience, even when that judgment is in error. It might be argued that since the individual has a duty to follow even an erring conscience, and since one of the purposes of rights is to protect the ability to fulfill duties, the government should recognize a *right* to follow even an erring conscience. Is this true?

In favor of rights of conscience, we may consider the “conscientious” aspects of the rights that modern republics already claim to guarantee. There is compelling reason to believe that freedom of debate advances the cause of truth; yet freedom to debate is meaningless unless individuals may espouse either side, even the one that turns out false. There is compelling reason to believe that freedom to seek God advances the cause of finding Him; yet individuals may run down blind alleys toward many false gods before they discover the true one.

On the other hand, neither of the arguments just given was actually based on the duty to follow even an erring conscience. In the case of speech, the premise was not the duty to follow conscience but the good of finding truth; in the case of worship, the premise was not the duty to follow conscience but the good of finding God. One might also point out that no republic does guarantee speech or worship rights in an *unqualified* way. If someone were conscientiously convinced of a duty to speak defamatory lies about others, or if he were conscientiously convinced of

²⁶ Thomas Aquinas, *De Regno: On Kingship, To the King of Cyprus*, Chapter 7, Section 52, trans. Gerald B. Phelan, revised by I. Th. Eschmann, O.P. (Toronto: The Pontifical Institute of Mediaeval Studies, 1949), re-edited by Joseph Kenny, O.P., available at www.diafrica.org/kenny/CDtexts/DeRegno.htm.

²⁷ See, for example, Samuel Langdon, “Government Corrupted by Vice, and Recovered by Righteousness” (1775), in John Wingate Thornton, *The Pulpit of the American Revolution* (Boston, 1860), pp. 233–258.

a duty to murder atheists (or for that matter believers), he would be punished by the law – and rightly so.

Consider too that the citizen has a duty to follow the certain judgment of an erring conscience *because he thinks it is correct*. It does not follow that lawmakers must suspend their own judgment about whether his judgment is correct, for they must answer to their own consciences. Nor have they a duty to believe every claim presented to them that “My conscience tells me so.” A reasonable person might very well conclude that according to the certain judgment of his conscience, he must educate his children himself instead of allowing them to attend the corrupt public schools, or he must refuse to pay the special tax levied by his city to subsidize euthanasia. Yet if St. Thomas is right, no reasonable person – whether in the government or out of it – can truthfully say “According to the certain judgment of my conscience, I may commit euthanasia,” for the wrong of deliberately taking innocent human life is among those general principles that are not only right for all but known to all.²⁸ So it is certainly true that lawmakers must never command individuals to commit acts that are wrong in themselves. On the other hand, they may well have to command individuals to commit acts which *irrational citizens think* are wrong, such as stopping at red lights or moving aside for emergency vehicles.

For reasons such as these, speech, worship and other “conscientious” rights have normally been guaranteed only “within the bounds of just public order.” Yet surely this cannot be the end of the story. Why not? One reason is that in a fallen world, power is an intoxicant. Governments are all too prone to assume that whatever they do is within the bounds of just public order, just because they are doing it. Wise human rulers mistrust themselves, recognizing the paradox that public order requires protecting the citizens from self-serving and arbitrary decrees in the name of public order. For this reason, they will give the benefit of all truly reasonable doubt to those acting in the name of their consciences, and wise law may require them to do so. Of course this requires judgment as to which doubts are truly reasonable. A determinedly unjust government may twist even the doctrine of reasonable doubt, so that no benefit is truly given at all. But there is no absolute procedural guarantee against deficient virtue. One must keep topping off the tanks of moral character.

²⁸ See Q. 94, Art. 4.

For a time, bills of rights, along with procedures such as checks and balances, may encourage rulers of deficient virtue to behave as though they were a little better than they really are, but in the end men must be good – rulers and citizens alike.

Whether erring or not, though, conscience also deserves another kind of protection, and this kind is absolute: The forum of conscience must never be *invaded*. If the law forbids someone from committing an evil act which his erring conscience requires, the interference with his conscience is only external. If it commands him to do something which his erring conscience forbids, the interference is much, much more grave,²⁹ but still, in this sense, external. But suppose instead that the government or some other party were to reach right inside his conscience: To use drugs, torture, surgery, or some not-yet-invented means to break down and *change* his certain judgments so that in reality they were no longer his own. The very attempt to do such a thing – and such things have been tried – is something like rape and something like murder, but worse than both. The human being is violated in the very core of what makes him human, what makes him a *who* and not a *what*. Nothing can justify such an act. It is not like capital punishment, which kills only the body; it assaults the soul. If the perpetrator were to say “But we have done the man a favor by correcting his erring conscience,” the answer must be “No, you have destroyed the very possibility of correcting it, because you have taken his conscience away.”

Even so, many questions remain to be answered. For example, we commonly use the term “torture” for several kinds of painful compulsion: Not only for extreme methods of invading personality to reshape an erring conscience, which are always wrong, but also for extreme methods of compelling a person to release information that his erring conscience forbids him to release. On the face of it these acts appear different in species, but they are often treated as morally equivalent. Are they? This is not an easy question. Suppose a gang of terrorists has secretly planted a nuclear device in the heart of a populous city, and one of the terrorists is captured. Not even a terrorist may be “brainwashed” – but would it be essentially the same kind of act as brainwashing to use violence to make him reveal the location of the bomb?

²⁹ Assuming that acts of omission and commission can be distinguished; see the Commentary to the previous Article.

Question 96, Article 5:
Whether All Are Subject to the Law?
Discussion

Legal “Privileges,” Revisited

Reduced to the simplest terms, St. Thomas’s answer to the question “Is everyone under the law?” is that although *not* everyone is subject to the law’s coercion, *everyone* is under its authority – but that those under its authority are not necessarily under its authority in *all matters*, because in some cases there may be legitimate exemptions.

The most remarkable point about such exemptions turns up in St. Thomas’s response of Objection 2, a passage that contemporary readers are very apt to pass over without noticing its importance. Modern prejudice does not expect to find anything interesting in an ancient Pope’s ruling on a question in canon law. The crux of the Objection, though, is a matter of very great importance indeed: So called “private laws.” The general idea is that *the law itself* exempts *some* people from obedience to *some* laws for certain special reasons. I offered as an example that doctors alone have the privilege of administering certain dangerous drugs; human law itself exempts them from a prohibition that applies to everyone else.

Now it may seem that the possibility of authorized exemptions does not matter much. After all, we may think, it is still up to human lawmakers to decide which exemptions to authorize, and they may revoke them if they wish. But the Objector’s example of a “private law” is much more radical than my example of the physicians’ privilege of administering drugs, for the Objector claims that “spiritual men,” men who are led by the Holy Spirit, are under the private law of God Himself. Why is this so radical? For two reasons. First, the exemption is *independent of human discretion*. In other words, spiritual men are exempt even if the human authorities say they aren’t, because the exemption is established by the higher law of God. Second, the exemption is *universal*. In other words, it exempts spiritual men from obedience not just to some human laws, as in the case of doctors, but to *every* human law.

One might expect St. Thomas to reject the idea that spiritual men exempt from human law out of hand, because if any Tom, Dick, or Harry is permitted to ignore the human law “because the Holy Spirit told me so,” there is nothing left of human government. But his response is much more interesting. First, he *accepts* the reality of the exemption. Second, he *accepts* the claim that it is independent of human discretion. But third, he

denies that it is universal: Spiritual men are released from the guidance of human law *only in those matters that are inconsistent with the guidance of the Holy Spirit*.

The third point may seem to make no difference, for what is to prevent someone from claiming that *everything* the law commands is inconsistent with the guidance of the Holy Spirit? But this problem will seem worrisome only if we have not paid attention while reading Article 5, for as St. Thomas has explained, the same Holy Spirit who authorizes disobedience to certain laws demands *obedience* to laws that lie within the authority God commits to human lawmakers. This includes the laws they make as part of their ordinary care for the temporal common good, by punishing those who do evil, commending those who do right, and fostering rightly ordered peace.³⁰

The Objection also requires overlooking everything else that St. Thomas believes. According to St. Thomas, God does not contradict Himself, so if someone claims that the Holy Spirit has commanded him to violate one of the exceptionless general principles of either Divine or natural law, we should not believe him (St. Thomas returns to this point in [Question 97, Article 4](#), and [Question 100, Article 8](#)). Moreover, the New Testament teaches that not everyone is qualified to interpret the Holy Spirit's leading, and the primary way in which the Holy Spirit works is through the Church itself, which is called "the pillar and bulwark of the truth." Believers are instructed to "test" their personal spiritual experiences rather than blithely assuming that they come from God, and warned that "no prophecy of scripture is a matter of one's own interpretation." Nor is the Church an anarchistic free-for-all, for the Apostles are given authority both to teach and to govern.³¹

It seems then that what the "private law" of the Holy Spirit actually authorizes is the liberty of the Church to govern herself, in those matters that concern her spiritual mission, under the authority of those who have received the charism, or spiritual gift, of ordination. The members of the Church have no exemption against human laws forbidding such things as robbery and murder; but the government may not treat the Church as one of its departments and take it under its wing.

³⁰ See also 1 Peter 2:14 and 1 Timothy 2:1–2.

³¹ Taking these points in order, see 1 Timothy 3:15, 1 Thessalonians 5:21, 2 Peter 1:19–21, Matthew 16:19 and 18:18, Luke 10:16, 2 Corinthians 10:8, 1 Thessalonians 2:13 (RSV-CE). Though it might seem that they would not, Catholic and Protestant translations closely agree. At one point or another in the *Summa*, St. Thomas refers to each of these passages.

This gives rise to a greater question: Are there other things that the government is forbidden from treating as one of its departments and taking under its wing? The answer would seem to be “Yes”: Not only the Church, which derives its Divine charter from Divine law itself, but also institutions such as the family, which derive their Divine charter from natural law. If we consider still further that man’s nature is not only familial but broadly social, and that his flourishing requires not one but many forms of human association, then although some of these forms of association are more important than others, unnecessary interference with *any* form of association compatible with natural law would seem to be against the plan of creation. Later on, in [Question 105, Article 1](#), we will find that a similar principle of noninterference applies even among the levels of the government itself: The highest level of government should not try to rule everything directly, but should leave many matters to be decided at lower levels of government, or even apart from government’s direction.

Over the last several centuries, such reflections have blossomed into a far-reaching doctrine that natural law thinkers call “subsidiarity.” The most famous statement of the doctrine is due to Pius XI:

Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help (*subsidium*) to the members of the body social, and never destroy and absorb them.³²

Although the doctrine of subsidiarity has been developed mostly by Catholic thinkers, similar reflections have taken place among Protestants.³³ Insofar as its underlying principle flows from Revelation concerning the guidance of the Holy Spirit and the mission of the Church, it would be unreasonable to expect non-Christians to accept it. But insofar as it flows from natural law, the Church believes that the justice of the principle should be recognizable by all men of good will, by the ordinary use of reason.

³² Pius XI, encyclical letter *Quadragesimo Anno* (May 15, 1931), Section 80.

³³ For an interesting collection of views on the topic, see Jeanne Heffernan Schindler, ed., *Christianity and Civil Society: Catholic and Neo-Calvinist Perspectives* (Plymouth, UK: Lexington Books, 2008).

Question 96, Article 6:
Whether He Who Is Under a Law May Act
Beside the Letter of the Law?
Discussion

More Difficult Examples

In St. Thomas's example, if the gatekeeper follows the literal direction of the law, the result is the opposite of what the lawmakers intended. That case is easy to understand – perhaps too easy. Let us consider some that are a little more complex.

1. *The case of the reckless town councilman.* The law directs me not to run red lights. I reason that the intention of the law is to prevent accidents, and as I am approaching the red light, I see that nothing is coming. May I drive on through without stopping? No, because there is no sudden danger requiring me to do so. Suppose we add a sudden danger: Nothing is coming across the intersection, but an out-of-control vehicle is approaching at high velocity from behind. In this case, to avoid a collision I may certainly drive on through. But let us add a twist. There is no sudden danger, but I am one of the town councilors by whose authority the traffic lights were set up. I tell myself, "If anyone knows the intention of the law, I do, and it certainly didn't intend making me late for my committee meeting." May I run the red light? No. The traffic law addresses me not in the capacity of a city councilman, but in the capacity of a driver, and by running red lights, I put other drivers in the very danger that the law is intended to prevent.
2. *The case of the merciful dogcatcher.* The law directs me as town dogcatcher to impound every unleashed dog, but I reason that the intention of the law is to keep citizens from being bitten, and some dogs are too old and feeble to bite anyone. May I let them go free? On my own authority, no, because impounding them does not put the community at risk. On the other hand, if I think the law was not intended for such cases, I might consult my superiors and ask for an exemption (see [Question 97, Article 4](#)).
3. *The case of the thoughtful crew leader.* The law directs me as municipal water department crew-leader to repair all breaks in underground water lines as soon as they are reported. A break has been reported on the 3400 block of Maple Street. However, I happen to know that this is the third such break reported on that block in the last several months, and the last break was difficult to repair

because that stretch of pipe was so old that it was crumbling as we worked on it. May I delay repairing the break while I suggest to my supervisor that a longer section of the pipe be replaced instead? Yes. A short delay will cause no danger, and neglecting to delay may cause harm.

4. *The case of the strategic impregnator.* A man who is a citizen of another country has fled to my own country because he has been accused of a crime. While in my country, he has committed a different crime, for which he has been tried and imprisoned. My country has an extradition treaty with the other country, and the other country requests extradition so it can put him on trial. I am the official to whom extradition requests are normally routed. Although in general the law directs me to honor extradition requests from the other country, it also includes several exceptions. One of the exceptions is that the request for extradition should be denied if the person whose extradition is sought has fathered a child by a citizen of my country. Suppose further that the man in question appears to have impregnated a woman *just in order to thwart* an attempt to extradite him. The literal wording of the law requires me to refuse extradition, and doing so would certainly fulfill the law's intention of keeping fathers in the country with their parents. On the other hand, I suspect that the lawmakers would not have intended that accused persons impregnate women just to "game the system." To prevent it from being gamed, may I set aside the wording of the law, sending the man back to the other country despite his having fathered a child by a citizen of my country? On my own authority, no; I must consult my superiors. Now another twist: Suppose I *am* the superior authority. Instead of being a lower official, I am, let us say, the Secretary of State. Then the right course of action would seem to depend on how much discretion the legal traditions of my country give the Secretary of State in interpreting the intention of such laws, for *who has* the discretion set aside the letter of the law is itself, in part, a matter of the law.³⁴
5. *The case of the crusading judge.* Let us consider an even more complex case, at a little greater length. The law directs me as judge to adjudicate cases under the relevant statutes, and the statutes relevant to the case at hand forbid racial discrimination in

³⁴ Although this case is imaginary, a case something it one arose in 2012, in Peru, when the United States requested the extradition of Joran van der Sloot.

government-subsidized colleges. I reason that the intention of the law is to guarantee racial diversity, but it seems to me that admissions to government-subsidized colleges will not be diverse unless “reverse discrimination” is allowed. May I depart from the letter of the law by allowing it? To play with details, I treat this case as fictional, like the other cases, but of course it is suggested by the famous U.S. Title IX controversy.³⁵

Reasoning with St. Thomas, the answer in this case takes more time to work out. If we were to view judges as no different than other non-legislative officials, the answer would obviously be “No, I may not depart from the letter of the law in this case,” because there is no sudden danger requiring instant remedy that precludes referring the matter to lawmakers. The objection might be offered that in St. Thomas’s view, judges are *not* like other non-legislative officials, for the authority to judge is an extension of the authority to legislate: “Now since it belongs to the same authority to interpret and to make a law,” he says, “just as a law cannot be made save by public authority, so neither can a judgment be pronounced except by public authority, which extends over those who are subject to the community.” On the other hand, if judgment is an extension of legislation, then surely judgment must not go to war against legislation: Judgment must be guided by what the lawmakers have laid down. “It is necessary to judge according to the written law,” St. Thomas writes, “else judgment would fall short either of the natural or of the positive right.”³⁶

Another objection to answering “No, I may not depart from the letter of the law in this case” might be drawn from St. Thomas’s view that one of the virtues related to justice is “equity,” the correction of the law’s application in precisely those cases where following its literal meaning would produce results contrary to its intention. Part of the answer to this objection is that even though equitable judgment departs from the letter of the law in one sense, in another sense it is bound by it. For even though the judge is following the intention of the law instead of its letter, the letter is a *guide* to the intention: What the law commands citizens to do is evidence, even if not the only evidence, of what they were trying to accomplish. This seems to be what St. Thomas means in a passage in which he tells judges to interpret “in a way, the letter of the law.”³⁷ The

³⁵ Title IX, Education Amendments of 1972 (Title 20 U.S.C. Sections 1681–1688).

³⁶ II-II, Q. 60, Arts. 6 and 5, respectively.

³⁷ *Ibid.*, Article 6.

other part of the answer to the objection is that to the extent that equitable judgment does look beyond the *specific* intention of the lawmakers in the particular law under examination, what it considers is the *general* intentions they are presumed to have *whenever* they make a law. These intentions include justice, so to use equity as a pretext for violating justice would be wrong.

But would the judge in such a case really violate justice by setting aside the letter of the law? Again reasoning with St. Thomas, the answer seems to be yes. We saw not long ago, in [Question 96, Article 4](#), that distributive justice requires allocating burdens proportionately. Elsewhere, St. Thomas calls this the “equality of justice.” The equality of justice means that those who are equal in the relevant respect must be equally treated; each person must receive what he deserves.³⁸ We return to this principle in the following section, on the equality of justice, but for present purposes we may content ourselves with the observation that it hardly corresponds to equality of justice if students of one race must meet a more difficult set of qualifications than students of another race, just because of the color of their skins. Proponents of reverse discrimination say that unequal treatment of students of one race today is required to offset the results of unequal treatment of students of the other race in the past. However, whether the evil of injustice “offsets” some other evil thing is beside the point, for as we saw above, St. Thomas consistently teaches that we must not do evil so that good will result. Different groups may certainly be treated differently if, as a result, *everyone* is better off. For example, children may be denied the adult privilege of driving automobiles, as we have seen earlier. But that principle has no application to the present case, for if the judge has his way, one race will be made better off at the expense of the other. A person may also be punished for wrongly doing harm to another, but this premise has no application to the present case either, for it does not make it all right to punish some persons today for the wrongdoing of other persons in the past.

The final reason St. Thomas would not allow the judge in this case to set aside the letter of the law is that judgment requires reasonable certainty, and in our example the judge is relying on conjectures.³⁹ Not only is the judge speculating that the law intends something *other* than what

³⁸ See, for example, II-II, Q. 63, Arts. 1, 4; II-II, Q. 79, Art. 1; and II-II, Q. 120, Art. 1.

³⁹ Reasonable certainty is one of three conditions he lays out in II-II, Q. 60, Art. 2, and amplified by the following four Articles. The other two are that the judge must act with justice, and that he must not usurp authority that is not his.

it says it intends – racial balance, rather than the equality of justice – he is also relying on his own inexpert guesses as to what brings racial balance into being. When a judge is acting in his own proper capacity – as a judge, rather than as a witness – St. Thomas does not even consider it permissible for him to make use of his personal, certain knowledge that an accused man is innocent of the charges.⁴⁰ For this reason it seems inconceivable that he would allow the judge acting in his own proper capacity – as a judge, rather than as a legislator – to make use of his personal, contestable sociological theories about the probable results of greater racial diversity in colleges. Even supposing that using his personal theories were permitted to him, we are back to the previous point: Not even the most desirable social goal may be sought at the expense of justice itself.

On the face of it, then, the judicial conversion of a racial non-discrimination rule into a racial discrimination rule seems to lie outside St. Thomas's conception of the judicial office. If the judge is convinced that the welfare of the public requires greater racial diversity in colleges, and that legislators have not done enough to promote it, then he may appeal to them to do more. But he may not turn either the laws, or the principles of justice, on their heads. The Roman jurist Ulpian would have agreed: "Fraud on the statute is practiced when one does what the statute does not wish anyone to do yet which it has railed expressly to prohibit."⁴¹

Equality of Justice

The equality of justice requires not simply that everyone be treated equally, but that everyone be treated equally *in the relevant respects*. Each person must receive what is fitting or due to him. Thus, equally qualified job hunters should have the same chance at the job; unequally qualified job hunters should not. This principle is Aristotelian; it is Thomist; and it is biblical.

In some respects, we are all equal. Because Revelation calls attention to these respects, Christian theorists of justice have been much more attuned to them than were the pagan theorists of justice. Because we bear equally the image of God, we are equally entitled to the respect that is due to that image; because we are equally dependent on God's merciful grace, no human being should put on airs.

⁴⁰ II-II, Q. 67, Art. 2.

⁴¹ Watson, *ibid.*, p. 13, giving MacCormack's translation of *Digest*, Book 1, Title 3, Section 30.

But in other respects, we are not all equal, and should not be treated equally. We rightly give driving licenses only to people who show ability to drive; we rightly award the most demanding jobs to the most qualified; we rightly put only the guilty in prison; we rightly impose stiffer punishments for graver crimes; and we rightly reserve the community's highest honors for its greatest benefactors.

Indeed, certain inequalities attach even to equalities. We bear equally the image of God, but do we equally honor that image even in ourselves? By crimes, don't some of us deface it?

Some readers are disturbed by the equality of justice because it makes reward proportional to desert, and they believe that the Christian ethic of love requires absolute equality. St. Thomas would not regard this view as well considered. In a sense, love goes beyond justice, because to love someone is to act with a commitment of the will to his true good, apart from considerations of desert. But in another sense, love is demanded by justice, because *in itself*, the image of God is equally lovable in each person.

Not only is love demanded by justice, but justice is demanded by love. For how could it be loving to scorn justice? It does me no good to be given a job that I am not capable of handling. Nor does it do me any favor if I am never punished by human law for doing wrong, because this sort of punishment is medicinal; my own good requires it.

Does justice mean we may not practice mercy? We may certainly be merciful, but even mercy must respect the purposes of justice. You may help me to become more qualified than I am, but you should not give me work I am unqualified to do. You may release me from prison before my term is up, but not if I am obstinately unrepentant. In St. Thomas's tradition, justice and mercy, seemingly irreconcilable, meet and kiss. As the Psalmist says, "Great is thy mercy, O Lord; give me life according to thy justice."⁴²

⁴² Psalm 119:156 (RSV-CE).

St. Thomas's Prologue to Question 97: Of Change in Laws Discussion

Why Not Skip Article 1?

Contemporary readers are tempted to skip Article 1 and go straight to Article 2, but St. Thomas does not skip steps. The question of *whether* law may be changed is logically prior to the question of *how readily* it should be changed. So not only does he begin with it, but he also treats it with respect.

Articles 3 and 4 change the direction of the inquiry. Up to this point readers may have been assuming that “change in law” means only change by formal enactment, so that the lawmakers either issue a new law, revise an old law, or revoke the old law altogether. This turns out to be untrue, for there are at least two informal modes of change in law. Article 3 discusses informal change from the bottom up – how laws can be changed by custom. Article 4 discusses informal change from the top down – how the lawmaking authorities themselves can change laws, not by amending them but by “dispensing” from them.

Question 97, Article 1: Whether Human Laws Should Be Changed in Any Way? Discussion

Shielding Laws from Change

Attempts to forbid or at least slow down legal change have been made throughout history, not only in ancient but also in modern times. The ancestral traditions of the ancient Medes and Persians, for example, forbade even the king from rescinding a royal edict once it had been

confirmed in proper form. This fact is the basis of the famous story of Daniel, trusted advisor to Darius, condemned to death by an edict the king desired to rescind but could not:

Then the presidents and the satraps sought to find a ground for complaint against Daniel with regard to the kingdom; but they could find no ground for complaint or any fault, because he was faithful, and no error or fault was found in him. Then these men said, "We shall not find any ground for complaint against this Daniel unless we find it in connection with the law of his God."

Then these presidents and satraps came by agreement to the king and said to him, "O King Darius, live for ever! All the presidents of the kingdom, the prefects and the satraps, the counselors and the governors are agreed that the king should establish an ordinance and enforce an interdict, that whoever makes petition to any god or man for thirty days, except to you, O king, shall be cast into the den of lions. *Now, O king, establish the interdict and sign the document, so that it cannot be changed, according to the law of the Medes and the Persians, which cannot be revoked.*" Therefore King Darius signed the document and interdict.

When Daniel knew that the document had been signed, he went to his house where he had windows in his upper chamber open toward Jerusalem; and he got down upon his knees three times a day and prayed and gave thanks before his God, as he had done previously. Then these men came by agreement and found Daniel making petition and supplication before his God. Then they came near and said before the king, concerning the interdict, "O king! Did you not sign an interdict, that any man who makes petition to any god or man within thirty days except to you, O king, shall be cast into the den of lions?" *The king answered, "The thing stands fast, according to the law of the Medes and Persians, which cannot be revoked."* Then they answered before the king, "That Daniel, who is one of the exiles from Judah, pays no heed to you, O king, or the interdict you have signed, but makes his petition three times a day."

Then the king, when he heard these words, was much distressed, and set his mind to deliver Daniel; and he labored till the sun went down to rescue him. Then these men came by agreement to the king, and said to the king, "*Know, O king, that it is a law of the Medes and Persians that no interdict or ordinance which the king establishes can be changed.*" Then the king commanded, and Daniel was brought and cast into the den of lions.¹

The sentence declaring that the edict "stands fast, according to the law of the Medes and Persians, which cannot be revoked," is sometimes taken to have mean that *no* law could be revoked, but the language is ambiguous; it may have meant only that the prohibition of change in royal edicts could not be revoked. The perpetuity of the edicts themselves is con-

¹ Daniel 6:4–16a (RSV-CE), emphasis added. In the end the prophet is saved from death by Divine intervention.

firmed by another story of political intrigue, this one involving a foiled plan of genocide during the reign of Ahasuerus:

Then King Ahasuerus said to Queen Esther and to Mordecai the Jew, "Behold, I have given Esther the house of Haman, and they have hanged him on the gallows, because he would lay hands on the Jews. And you may write as you please with regard to the Jews, in the name of the king, and seal it with the king's ring; for an edict written in the name of the king and sealed with the king's ring cannot be revoked."²

Nothing in these stories tells *why* the Medes and Persians tried to shield royal edicts against change. However, the hope of shielding certain kinds of laws from change turns up in modern times too, and the modern writers have been more generous in offering their reasoning. Conspicuous examples arise in American history.

At the time of the founding of the republic, some state constitutions included no provision whatsoever for amendment. Although the drafters of the U.S. Constitution wrote a procedure for amendment, the proposal was such a hot potato that at one point, Connecticut delegate Roger Sherman proposed its elimination. As finally adopted, the procedure set the bar pretty high, for proposal of an amendment required the concurrence of either two-thirds of both houses or two-thirds of the states, and ratification required the concurrence of three-fourths of the states. Even more interesting, language was inserted that made certain clauses of the Constitution unamendable. Two clauses, which specified limitations on Congressional power, were to be unamendable only until the year 1808, but the equal representation of each state in the Senate was to be unamendable in perpetuity, unless the affected state or states gave consent.³

It may seem that attempts to shield constitutions from change are futile – that although such attempts may generate psychological and customary barriers that slow change down, they cannot prevent change altogether. Even a clause shielded from amendment can be amended, if only one begins by amending the shield itself. Indeed, the Constitution itself appears to have been an end run of this sort, for it is really the republic's second constitution. The previous constitution, called the

² Esther 8:7–8 (RSV-CE). To the same effect, see 1:19, concerning Esther's predecessor: "If it please the king, let a royal order go forth from him, and let it be written among the laws of the Persians and the Medes so that it may not be altered, that Vashti is to come no more before King Ahasuerus; and let the king give her royal position to another who is better than she."

³ Constitution of the United States, Article 5.

Articles of Confederation, was even more difficult to amend. Eventually, to streamline the process of proposing amendments, Congress agreed to call a constitutional convention, but delegates were strictly forbidden from proposing a new constitution, and of course proposing a new one is exactly what they did. It might be argued that the new constitution was a single, massive amendment to the old one, but in that case it should have been ratified by the procedures for amendment that the old one set forth. Instead, it set forth its own procedure for ratification.

Although the chief movers of the new U.S. Constitution participated in the end run around the Articles of Confederation, we should not think that they were unalloyed believers in rapid legal change in general. They were not even alloyed believers in it; they were disbelievers, who engineered *just one* large and rapid change because, for better or worse, they thought the survival of the republic was at stake. Thomas Jefferson's notion that the nation's constitutional arrangements might have to be reconsidered every generation or so horrified them. Here James Madison explains the basis for his alarm⁴:

The danger of disturbing the public tranquility by interesting too strongly the public passions, is a still more serious objection against a frequent reference of constitutional questions to the decision of the whole society. Notwithstanding the success which has attended the revisions of our established forms of government, and which does so much honor to the virtue and intelligence of the people of America, it must be confessed that the experiments are of too ticklish a nature to be unnecessarily multiplied.

Indeed, the constitutional architects made changes not only in constitutional law but even in ordinary law rather difficult (though not so difficult as under the Articles of Confederation). Although they did not place much trust in what they called "parchment barriers" against unjust change, they certainly believed in dynamic barriers against unjust change, especially checks and balances. Thus, the passage of a law requires either the concurrence of three separate authorities, the Senate, House of Representatives, and President, or two-thirds majorities in both Houses to override a presidential veto.⁵

⁴ James Madison, *The Federalist*, No. 49.

⁵ Concerning "parchment barriers," see James Madison, *The Federalist*, No. 48; see also his *Letter to Thomas Jefferson*, October 17, 1788. Legislative procedure is spelled out in *Constitution of the United States*, Article 1, Section 7.

Such legislative speed limits were not grudging compromises with reactionaries, but points of deep principle. Alexander Hamilton explained as follows:

It may perhaps be said that the power of preventing bad laws includes that of preventing good ones; and may be used to the one purpose as well as to the other. But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws, which form the greatest blemish in the character and genius of our governments. They will consider every institution calculated to restrain the excess of law-making, and to keep things in the same state in which they happen to be at any given period, as much more likely to do good than harm; because it is favorable to greater stability in the system of legislation. The injury which may possibly be done by defeating a few good laws, will be amply compensated by the advantage of preventing a number of bad ones.⁶

Though Hamilton does not go so far as to suggest that human laws should never be changed in any way, his argument might well encourage someone who did.

**Question 97, Article 2:
Whether Human Law Should Always Be Changed,
Whenever Something Better Occurs?
Discussion**

Prototype of a Radical Reformer

If in the previous Article, St. Thomas struck against reactionaries who loathe change, in the present Article he strikes against progressives who make a fetish of it. He depends heavily on a chapter in Aristotle's *Politics*, which is worth our inspection in itself.⁷

The topic of Aristotle's chapter is the ideas and proposals of Hippodamus, a native of Miletus, once the wealthiest of Greek cities, on the coast of what is now Turkey. Aristotle begins by telling us five things about him: He was the first city planner; he laid out the port city of Piraeus, which served Athens; he was given to unconventional ways in dress, ornament, and how he wore his hair; he was interested in gaining knowledge of nature; and he was the first non-statesman to look into the best form of government. As the description of his views unfolds, his portrait comes more clearly into view. A would-be philosopher and reformer,

⁶ Alexander Hamilton, *The Federalist*, No. 73.

⁷ All quotations are from Aristotle, *Politics*, trans. Benjamin Jowett, Book 2, Chapter 8 (public domain).

he was convinced that he could remake society just by his own cleverness, in disregard of custom, tradition, and inherited wisdom. Why Aristotle comments on Hippodamus's affectations of hair and dress, however, is not entirely clear. Perhaps he is hinting that to believe that he can successfully reorganize every other person's life from top to bottom, a man has to be a little too interested in himself, and his affectations are a sign of that.

In Hippodamus's ideal city, the 10,000 citizens would be equally divided into craftsmen, farmers, and soldiers, and the land too would be divided. The farmers would farm their private land; the soldiers, presumably, would farm the military land; and the craftsmen, presumably, would purchase food from the farmers. Although only the soldiers would be armed, each class would have a share in the government. Although Aristotle offers a variety of objections to this scheme, his root complaint is that it is naïvely impractical. For example, if only the soldiers are armed, then surely the craftsmen and farmers will not really share in government (this argument is unlikely to appeal to gun control advocates). But if they don't share in the government, they will not be loyal to it, and the soldiers, outnumbered two to one, will find it difficult to govern them despite their advantage in arms. Another problem is that if the soldiers must do all their own farming, then it is difficult to see why they should be distinguished from the farmers; but if instead the farmers must provide food not only for themselves but for the soldiers, then given the agricultural technology of the time, it is difficult to see how they can manage. "There is surely a great confusion in all this," Aristotle concludes.

In law, too, Hippodamus was a reformer. Among other things, he criticized the procedure according to which a judge on a court of appeals votes either to condemn or acquit. Hippodamus thought it should be possible for each judge to recommend condemning in part and acquitting in part. Again Aristotle criticizes Hippodamus for impracticality, because he does not provide a procedure whereby the judges can decide what to do if each of them proposes something different. Does he have in mind that they confer and reach an agreement? He does not say.

But the most interesting of Hippodamus's legal proposals was that any citizen who discovers something useful to the state should be rewarded. Suppose "discovering something useful" means finding out that a fellow citizen is up to no good. Presumably Aristotle agrees that crimes should be reported. Even so, he asks, is it really wise to encourage citizens to become informers, spying on each other in the hope of personal gain? Or suppose discovering something useful means coming up with a change in

the law. Is it really a good idea to encourage legislators to make constant changes in the law, whenever someone thinks of something better?

The problem is not just that the revised laws may be worse, for Aristotle points out that sometimes the people may end up worse off even if the revised laws are better. Certainly some old ways are very foolish and need changing, but “when the advantage is small, some errors both of lawgivers and rulers had better be left; the citizen will not gain so much by making the change as he will lose by the habit of disobedience.” Aristotle remarks that some persons argue that innovations in politics are no different than innovations in other arts, such as medicine (the art of healing sickness) and gymnastic (the art of maintaining the body in health). But he criticizes this analogy, because “the law has no power to command obedience except that of habit, which can only be given by time, so that a readiness to change from old to new laws enfeebles the power of the law.” Besides, even when laws do need to be changed, many other questions need to be examined, such as who should have authority to change them.

In the end we see that the problem with Hippodamus lies not only in the carelessness and superficiality of his thinking, but also in his facile assumption that good ideas always bring about good results. There is something to be said for a helpful change; but there is also much to be said for smooth and habitual adherence to customary practices that work well enough. As St. Thomas himself comments on the reformer, “For it can happen that what will be innovative is a little better, but growing accustomed to abolishing laws is very bad.”⁸

Question 97, Article 3: Whether Custom Can Obtain Force of Law? Discussion

The Continuing Vitality of St. Thomas’s View of Custom

Whether or not one agrees with St. Thomas that reasonable custom *should* have the force of law, abolish law, and interpret law, it would be difficult to deny that it does. At lunchtime, a crowd of people have lined up to purchase tacos from a street vendor. Mr. Smith, who is on a short lunch break, slips into the middle of the line in front of Mr. Jones. Mr. Jones nudges him back out, saying “Wait your turn.” “Every man for himself,”

⁸ Thomas Aquinas, *Commentary on Aristotle’s Politics*, Book 2, Chapter [Lecture] 12, trans. Richard J. Regan (Indianapolis, IN: Hackett, 2007), p. 143.

responds Smith, slugging Jones on the ear. A *mêlée* develops, a policeman is summoned, and order, for the moment, is restored. The policeman considers whether to arrest one of the men under the law of disorderly conduct. But who started it? "Him," says Jones, "when he pushed me out of line." "No, him," says Jones, "when he broke into line out of turn." The policeman turns to Jones. "Maybe you should have been more patient," he says. But then he turns away from Jones and faces Smith. "But it seems to me the way we do things in this town is 'Wait your turn,' not 'Every man for himself.' So you should have known better than to break into line in the first place. Come along with me." What has happened here? Custom has interpreted law.

Along a certain deserted stretch of private beach the locals call "Hippie Hollow," certain people have taken to swimming nude. Anywhere else in town, a person who went about without clothing would be arrested, tried, and punished under the law of indecent exposure. But the judgment of the people is that trying to stop people from exposing themselves in Hippie Hollow would do more harm than good. No policeman would arrest a nude swimmer at Hippie Hollow; no prosecutor would prosecute; no judge would treat the case seriously; no jury would convict. Custom has exerted the force of law, and custom has abolished it.

Though it is commonly held that custom has force of law only in mundane affairs such as these, questions concerning custom seem unavoidable even in the lofty heights of constitutional law. Where the constitutional design of the country is not written down in a single formal document, for example, in England, this fact may seem obvious. What has been called "the custom of the constitution" is just as important as what has been called the "the law of the constitution." But the fact is no less true in a country that does attempt to write down its constitutional design in single document, for it can never all fit. Consider the guarantees in the Fifth and Fourteenth Amendments of the U.S. Constitution that persons shall not be deprived of "liberty" without "due process of law." Which liberties does "liberty" include, and which procedures of law are "due"? Since the text of the Amendments themselves does not spell out the answer, the answer to the question must come from outside the text. Now it is possible to take such open-ended clauses as license to plug in one's own pet theory of proper liberty and procedural fairness. Some scholars and some judges do. But it seems more likely that the framers of the document would have intended us to consult what we normally view as right, as expressed in the rich inheritance of Anglo-American legal traditions. In this view, instead of asking which liberties it is fashionable

to say “liberty” includes, we should ask which ones have been honored by the ancestral traditions of the people; and instead of asking which procedures we happen to think it a good idea to follow, we should ask which ones have come to be protected and venerated in the slow growth of common law over centuries.

The importance of custom to law deserves emphasis for another reason too: It rectifies a common contemporary misunderstanding of the classical natural law tradition. “How could someone like Thomas Aquinas have such high regard for custom?” we ask. “Doesn’t he promote natural law? Isn’t that something invented by philosophers, high above the clouded minds of the little people and their common ways?” No. It is a philosophical doctrine, but not *that kind* of philosophical doctrine. Recall his insistence in [Question 94, Article 4](#), that the foundational principles of natural law are not only right for everyone, but at some level known to everyone. As this shows, classical natural law doctrine works from the bottom up. It does not pull premises out of nothing and then foist them upon plain people whether they like it or not; rather it tries to “connect the dots” of their common moral sense, seeking to elicit, illuminate, clarify, harmonize, develop, ennoble and unconfuse what they dimly know already.

A certain kind of legal thinker does seem to begin in the vacuum of postulation. He wants to do away with hated custom, or remold it in shapes hitherto undreamed. *Sic volo, sic iubeo, sit pro ratione voluntas*: I will it, I command it, my will is reason enough! Not so the classical tradition, which plants its seeds in the warm and fragrant loam of shared human experience.⁹

**Question 97, Article 4:
Whether the Rulers of the People Can Dispense from
Human Laws?
Discussion**

The Use and Abuse of Dispensation

St. Thomas clearly indicates that those who make the laws may authorize certain dispensations from them. Such exceptions may also be granted by agents whom the legislators empower to do so. In a government of

⁹ A third kind of legal thought pretends to begin in human experience, but filters, censors, deflects, and coerces it, claiming to have reached “reflective equilibrium.” But that is a topic for another time.

separated powers like ours, he might have viewed such agents as including judges and administrators. Here a problem arises. Insofar as such dispensations from law become precedents for future action, they too have the force of law. How then are we to distinguish cases in which agents have properly used their delegated authority from cases in which they have usurped the authority of the legislators themselves? The answer lies in the purposes for which dispensations are granted. St. Thomas strictly limits dispensations to cases in which the application of the law to a particular individual or situation would frustrate rather than implement the legislative intentions. So the agents are guilty of usurpation in just those cases where they substitute their own general or specific intentions for the general or specific intentions of the legislators. In such cases the law has not been interpreted or dispensed, but replaced. In [Question 96, Article 6](#), we have already touched upon the abuse of such powers, but in view of what St. Thomas says in the present Article, a few more words may be in order.

It may seem that legislators would always resist the usurpation of their authority. Such was the assumption of the framers of the U.S. Constitution. In the order of things called the administrative state, however, quite often legislators welcome the usurpation of their authority. This allows them to take credit for enormously vague and even inconsistent statutory goals, while blaming others – judges and administrators – for what is actually done.

Even if every legislator jealously guarded his responsibility, usurpations may take place unintentionally, just because we make too many laws. Since citizens expect their representatives to “do something,” and legislators who leave well enough alone are viewed as idlers, the first layer of rules is already very thick. A second layer is added by the implementing regulations drawn up by executive agencies. Yet a third is added by the decisions reached by courts and administrative judges. A final layer is added by the procedures that agencies require to be followed, and the forms that they require to be filled out, just to verify compliance with the previous directives. The resultant teeming, steaming mass of rules would be far too deep to check for consistency with what was originally enacted, even if none of the many parties who stir this mulch had the least craving to usurp legislative authority. It is also far too fertile, for as the framers warned, all too many of those who stir it do have that craving, and all too often they give in to it.

On the part of the courts, one of the most revealing tell-tales of this usurping lust is adjudicating cases in ways that obscure the meaning of the

law instead of clarifying it. As one U.S. Supreme Court Justice complained of a series of the decisions the Court had reached in Establishment Clause cases under the infamous “three pronged test,” which is still in force,

[A] State may lend to parochial school children geography textbooks that contain maps of the United States, but the State may not lend maps of the United States for use in geography class. A State may lend textbooks on American colonial history, but it may not lend a film on George Washington, or a film projector to show it in history class. A State may lend classroom workbooks, but may not lend workbooks in which the parochial school children write, thus rendering them nonreusable. A State may pay for bus transportation to religious schools but may not pay for bus transportation from the parochial school to the public zoo or natural history museum for a field trip. A State may pay for diagnostic services conducted in the parochial school but therapeutic services must be given in a different building; speech and hearing “services” conducted by the State inside the sectarian school are forbidden, but the State may conduct speech and hearing diagnostic testing inside the sectarian school. Exceptional parochial school students may receive counseling, but it must take place outside of the parochial school, such as in a trailer parked down the street. A State may give cash to a parochial school to pay for the administration of state-written tests and state-ordered reporting services, but it may not provide funds for teacher-prepared tests on secular subjects. Religious instruction may not be given in public school, but the public school may release students during the day for religion classes elsewhere, and may enforce attendance at those classes with its truancy laws.¹⁰

Good court decisions make it less necessary to go to court in order to know what the law means, but bad ones make it more. Citizens have less and less idea what they are permitted to do; activists are more and more emboldened to see what they can get away with. What the Constitutional framers and statutory enactors had in mind for the commonwealth means less and less, and how judges would like to order things means more and more.

¹⁰ *Wallace v. Jaffree*, 472 U.S. 38 (1985), Justice Rehnquist, dissenting. The “three-pronged test” was proposed in *Lemon v. Kurtzman*, 403 U.S. 602 (1971) as the meaning of the Establishment Clause in the First Amendment to the U.S. Constitution means. According to the three-pronged test (pp. 612–13), “First, the statute must have a secular legislative purpose; second, its principle or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster ‘an excessive government entanglement with religion.’” Not only does this test seem to have little to do with the Establishment Clause itself, which merely forbids congress from making any laws “respecting the establishment of religion,” that is, concerning official churches, but it seems difficult to square with the Free Exercise Clause, which prohibits Congress from “prohibiting the free exercise of religion.”

St. Thomas's Prologue to Question 100: Of the Moral Precepts of the Old Law Discussion

The Moral Architecture of the Old Law

The Old Law is the Divine law of the Old Testament. Leaving its ceremonial and judicial precepts aside, let us consider the architecture of its *moral* precepts as viewed by St. Thomas.

The Two Great Commandments

All of the moral precepts of Divine law (according to St. Thomas, of natural law too) flow from the general precepts to love God and neighbor.

A. Love of God:

Hear, O Israel: The Lord our God is one Lord; and you shall love the Lord your God with all your heart, and with all your soul, and with all your might. And these words which I command you this day shall be upon your heart; and you shall teach them diligently to your children, and shall talk of them when you sit in your house, and when you walk by the way, and when you lie down, and when you rise. And you shall bind them as a sign upon your hand, and they shall be as frontlets between your eyes. And you shall write them on the doorposts of your house and on your gates. And when the Lord your God brings you into the land which he swore to your fathers, to Abraham, to Isaac, and to Jacob, to give you, with great and goodly cities, which you did not build, and houses full of all good things, which you did not fill, and cisterns hewn out, which you did not hew, and vineyards and olive trees, which you did not plant, and when you eat and are full, then take heed lest you forget the Lord, who brought you out of the land of Egypt, out of the house of bondage.¹

¹ Deuteronomy 6:4–12 (RSV-CE); compare Deuteronomy 11:1, 11:13, 13:3, and 30:6; Joshua 22:5 and 23:11; and Psalm 31:23.

B. Love of neighbor

B.1. Toward neighbors in the community:

You shall not hate your brother in your heart, but you shall reason with your neighbor, lest you bear sin because of him. You shall not take vengeance or bear any grudge against the sons of your own people, but you shall love your neighbor as yourself: I am the Lord.²

B.2. Toward neighbors outside the community:

The stranger who sojourns with you shall be to you as the native among you, and you shall love him as yourself; for you were strangers in the land of Egypt: I am the Lord your God.³

C. As confirmed in the New Law

C.1. Love of God:

And one of them, asked a question, to test him. Teacher, which is the great commandment in the law?" And he said to him, "You shall love the Lord your God with all your heart, and with all your soul, and with all your mind. This is the great and first commandment.⁴

C.2. Love of neighbor:

And a second is like it, You shall love your neighbor as yourself. On these two commandments depend all the law and the prophets.⁵

The Decalogue

The moral precepts of the Decalogue are still quite general, though not as general as the Two Great Commandments. According to St. Thomas, they flow closely from love of God and neighbor, in such a way that even an uneducated person can immediately recognize their truth.

As we saw, in connection with duties to parents and spouses, St. Thomas understands the moral precepts of the Decalogue as placeholders: Each of them symbolizes much more than it literally decrees. For instance, the fact that the Eighth Commandment mentions only bearing false witness – lying to get my neighbor in trouble, in the context of giving testimony – does not mean that other sorts of lies are all right. The worst sort of lie is used as a placeholder for every sort of lie.

² Leviticus 19:17–18 (RSV-CE).

³ Leviticus 19:34 (RSV-CE).

⁴ Matthew 22:35–38 (RSV-CE); compare Mark 12:30 and Luke 10:27.

⁵ Matthew 22:39–40 (RSV-CE); compare Matthew 19:19, Mark 12:31, Luke 10:27 (as amplified by Luke 10:29–37), Romans 13:8–10, Galatians 5:14, and James 2:8. See also the Golden Rule, Matthew 7:12 and Luke 6:31–33.

Not everything in the Decalogue is a moral precept. For example, setting aside times and places for remission from labor and worship of God is morally obligatory, but the specific requirement to do so on the seventh day belongs to the ceremonial rather than moral precepts. (It also flows from the Two Great Commandments by “determination,” rather than by “conclusion from premises,” for a different day than the seventh might have been designated, and indeed, after the Resurrection, a different day was.)

A. First Tablet: Precepts ordering man in his relations to God as the Divine head of the community⁶

A.1. Fidelity (owed God in deeds)

First Commandment: I am the Lord your God, who brought you out of the land of Egypt, out of the house of bondage. You shall have no other gods before me. You shall not make for yourself a graven image, or any likeness of anything that is in heaven above, or that is on the earth beneath, or that is in the water under the earth; you shall not bow down to them or serve them; for I the Lord your God am a jealous God, visiting the iniquity of the fathers upon the children to the third and fourth generation of those who hate me, but showing steadfast love to thousands of those who love me and keep my commandments.

A.2. Reverence (owed God in words)

Second Commandment: You shall not take the name of the Lord your God in vain: for the Lord will not hold him guiltless who takes his name in vain.

A.3. Service (owed God in thoughts)

Third Commandment: Observe the Sabbath day, to keep it holy, as the Lord your God commanded you. Six days you shall labor, and do all your work; but the seventh day is a Sabbath to the Lord your God; in it you shall not do any work, you, or your son, or your daughter, or your manservant, or your maidservant, or your ox, or your ass, or any of your cattle, or the sojourner who is within your gates, that your manservant and your maidservant may rest as well as you. You shall remember that you were a servant in the land of Egypt, and the Lord your God brought you out thence with a mighty hand and an outstretched arm; therefore the Lord your God commanded you to keep the Sabbath day.

B. Second Tablet: Precepts ordering man in his relations to his neighbors, who live with him under God⁷

⁶ Deuteronomy 5:6–15 (RSV-CE).

⁷ Deuteronomy 5:16–21 (RSV-CE).

B.1. Particular duties: Payment of debts to those to whom one is indebted

Fourth Commandment: Honor your father and your mother, as the Lord your God commanded you; that your days may be prolonged, and that it may go well with you, in the land which the Lord your God gives you.⁸

B.2. General duties: Doing no harm

B.2.a. No harm by deed

B.2.a.i. Concerning another's existence

Fifth Commandment: You shall not kill.

B.2.a.ii. Concerning unity with another for the propagation of offspring

Sixth Commandment: Neither shall you commit adultery.

B.2.a.iii. Concerning another's possessions

Seventh Commandment: Neither shall you steal.

B.2.b. No harm by word

Eighth Commandment: Neither shall you bear false witness against your neighbor.

B.2.c. No harm by thought

B.2.c.i. Through the lust of the flesh

Ninth Commandment: Neither shall you covet your neighbor's wife;

B.2.c.ii. Through the lust of the eyes

Tenth Commandment: and you shall not desire your neighbor's house, his field, or his manservant, or his maidservant, his ox, or his ass, or anything that is your neighbor's.

The Rest of the Moral Precepts

The other moral precepts of the Old Law – too numerous to list here – also flow from love of God and neighbor, but more remotely, so that if they had not been set down in writing, they might have been known only to the wise. Like the precepts of the Decalogue, some of them are

⁸ The commandment to honor parents may be viewed as a bridge between the First and Second Tablets, because the parents are not only ordinary neighbors, but also the first representatives of God to the child. For this reason, some authorities – though not St. Thomas – place the Fourth Commandment in the First Tablet.

probably placeholders. Some may also be “determinations” rather than conclusions from premises. For instance, a different mode of expressing respect for elders might have been designated in place of rising in their presence, but in any case, rising stands for all due expressions of respect.

**Question 100, Article 1:
Whether All the Moral Precepts of the Old Law
Belong to the Law of Nature?
Discussion**

Does What Holds for the Old Law Hold for the New Law Too?

The topic of this Article has been whether the moral precepts of the Old Law belong to the natural law, and we find that they do. What about the moral precepts of the New Law? Although St. Thomas does not devote an entire Article to the question, he answers it in the course of other Articles. In a nutshell, the answer is “Yes.”

“The precepts of the New Law,” he explains, “are said to be greater than those of the Old Law, in the point of their being set forth explicitly. But as to the substance itself of the precepts of the New Testament, they are all contained in the Old.” Since the precepts of the New Law are implicitly contained in the precepts of the Old Law, and since all the moral precepts of the Old Law belong to the natural law, it follows that all the moral precepts of the New Law also belong to the natural law. Still more clearly, St. Thomas writes that “Matters of faith are above human reason, and so we cannot attain to them except through grace On the other hand, it is through human reason that we are directed to works of virtue, for it is the rule of human action Wherefore in such matters as these there was no need for any [new] precepts to be given besides the moral precepts of the [Old] Law, which proceed from the dictate of reason.”⁹

Collecting what St. Thomas says in these and other places, we find two main similarities and two main differences between the Old and New Law. The similarities:

1. They are substantially identical in content, but the New Law is more explicit about the underlying principle of charity or love.
2. They have the same purpose, “namely, man’s subjection to God,” but as we see a bit later on in this Commentary, only the New Law carries with it the grace that makes it possible to obey.¹⁰

⁹ Q. 108, Art. 2 and ad 1.

¹⁰ Quoting from Q. 107, Art. 1; alluding to Q. 106, Art. 1.

St. Thomas believes the relation among the three laws, natural, Old, and New, to have been well expressed by John Chrysostom's commentary on Mark 4:28, that God "brought forth first the blade, i.e. the Law of Nature; then the ear, i.e. the Law of Moses; lastly, the full corn, i.e. the Law of the Gospel." In other words, what is implicit in the natural law is made explicit in the Old Law and brought to glowing maturity in the New.¹¹ The practical implications of this blending of natural and Divine law are brought out in a strangely lovely way in St. Thomas's own commentary on Christ's remark, "But know this, that if the householder had known in what part of the night the thief was coming, he would have watched and would not have let his house be broken into" (Matthew 24:43):

The house is the soul, in which man should be at rest. "When I go into my house," that is, my conscience, "I shall find rest with her [that is, Wisdom]" (Wisdom 8:16). The householder of the house is like the "king who sits on the throne of judgment," who "winnows away all evil with his eyes" (Proverbs 20:8). Sometimes the thief breaks into the house. The thief is any persuasive false doctrine or temptation Properly speaking, the door is natural knowledge, in other words, natural right. Therefore, anyone who enters through reason, enters through its door, but anyone enters through the door of concupiscence or irascibility or some such thing, is a thief. Thieves usually come at night. As Obadiah says, "If thieves came to you, if plunderers by night – how you have been destroyed!" (Obadiah 5). So if they come in the day, do not fear. In other words, temptations do not come when a man is contemplating divine things; but when he relaxes, they come. For this reason, the prophet rightly says, "forsake me not when my strength is spent" (Psalm 70:9).¹²

Why Is Divine Instruction Needed?

The fact that we are directed to the works of virtue *through reason* may make it mysterious why Divine instruction is necessary at all. Here it is good to remember that in St. Thomas's view, faith is not the constriction of reason by blind dogma, as our own time so often views it. Rather it is the unshackling of reason by grace, and its enlargement by the data of Revelation. Reason is not only set free from sin, but also given more to work with.

But the whole point of Revelation is that it exceeds what we could have figured out for ourselves. How can it be *reasonable* to submit to help from *beyond human reason*? In at least five ways.

¹¹ Q. 107, Art. 3.

¹² Thomas Aquinas, *Lectures on Saint Matthew's Gospel*, Chapter 24, Lecture 4 (my translation). All Scriptural quotations RSV-CE.

1. Since the reality, power, wisdom, and goodness of God can be philosophically demonstrated, it is reasonable to consider Revelation *possible*.
2. Since, even though we have a natural inclination to seek the truth about Him, our finite minds, still further weighed down by self-deception, could never equal His infinite mind, it is reasonable to consider Revelation *necessary*.
3. Since He who gave us the inclination to seek Him must desire us to find Him, it is reasonable to consider Revelation *likely*.
4. Since the record of Revelation is well-attested by miracles, it is reasonable to believe Revelation *authentic*.
5. Since faith is accompanied by the experience of grace, it is reasonable to believe Revelation *confirmed*. The Psalmist cries, "O taste and see that the LORD is good!" Expressing the same thought in a different key, St. Paul exhorts, "test everything; hold fast what is good."¹³

By the light of Revelation, the mind is not only able to see more clearly those things that lie within its natural reach, but is also able to understand and explain many other features of the world that would otherwise have remained utterly baffling, such as why our hearts are so divided against themselves. When reason rejects Revelation, it is not being more true but less true to itself; only illuminated by God can it come into its own.

The hope of faith is that one day our thoughts may be lit not only by the reflected light of Revelation, but by the direct illumination of face of God Himself: That although now our minds only smolder, one day they will blaze with fire.

**Question 100, Article 8:
Whether the Precepts of the Decalogue Are
Dispensable?
Discussion**

Difficulties with St. Thomas's treatment of the Divine command to Abraham to sacrifice Isaac, and the Divine commands to Hosea to marry a whore and an adulteress, fall into two categories, false and real. Let us

¹³ Psalm 34:8; 1 Thessalonians 5:21 (RSV-CE).

consider each in turn. The comments offered here should be considered together with the commentary to [Question 94, Article 5](#).

False Difficulties

1. *How can St. Thomas defend the suspension of the ethical?* He doesn't. In his view, no such suspension has taken place. If God commands marrying an adulterous woman, then He is not commanding adultery, for the marriage is real. If He commands taking property or life, he is not commanding theft or murder, for He owns everything. You would be stealing if you drove away my car to serve yourself, but not if you drove it away at my own request.

2. *How can St. Thomas expect human authorities to believe everyone who claims God has spoken to him?* He doesn't. Although God may dispense from the derivative and more detailed precepts of both natural and Divine law, the human authorities are not required to believe everyone who says "God gave me a dispensation." In any case, who to believe is not the subject of this Article.

3. *How can St. Thomas require individuals to accept all seeming Divine communications as authentic?* He doesn't. Trusting God does not mean being credulous; elsewhere in the *Summa*, St. Thomas makes clear that there must be compelling evidence, such as miracles, for the Church to believe that a seeming communication really does come from God.¹⁴

4. *How could God have approved child sacrifice?* He didn't. Since God intervened, the point of the story of the command to sacrifice Isaac is not that He wanted child sacrifice, but that Abraham needed to be trained in absolute trust. Indeed, as we learn when the Divine law is given later in salvation history, God loathes child sacrifice.¹⁵ For Abraham, the issue of trust arises because God has promised to make of his descendants a mighty nation, but now, in Abraham's extreme old age, He instructs him to slay his only descendant. By the way, it may be that not only Abraham's trust, but also Isaac's trust is at stake. In a letter to the Christians at Corinth, St. Clement, one of the Patristic writers, maintains that "Isaac, with perfect confidence, as if knowing what was to happen, cheerfully yielded himself as a sacrifice."¹⁶

¹⁴ For example in II-II, Q. 1, Art. 4, ad 2, and III, Q. 43, Art. 4. Even so, not everyone presented with compelling evidence will accept it; faith is a gift. See II-II, Q. 6, Art. 1.

¹⁵ See references in the commentary to Q. 94, Art. 5.

¹⁶ Clement I, *Letter to the Corinthians*, trans. John Keith, Chapter 31 (public domain).

Real Difficulties

1. *Is greater precision possible?* St. Thomas holds that although God can dispense from the secondary moral precepts of Divine law, the primary moral precepts of Divine law hold without exception. He clears himself easily from the charge of tautology, for precepts like “Do not murder” and “Do not steal” mean something more specific than “You should not destroy life that you should not destroy” or “You should not take property that you should not take.” For St. Thomas, the issue is not some vague, generic wrongness, but *injustice*. Justice requires giving everyone what is due to him. Murder is *undue* killing, taking the life of someone who does not deserve loss of life; stealing is *undue* appropriation, taking the property of someone who deserves to hold onto it.

But even if the exceptionless precepts do have concrete meanings, are these meanings clear enough to do us any good? It may seem that even though we have been saved from tautology, we are still vulnerable to wild evasion and misinterpretation. Consider, for example, the precept against murder. “Commit no undue killing” is an improvement on “Commit no killing of the sort you ought not commit,” but it would be good to know which killings are due – who deserves loss of life and who doesn’t. Can we achieve greater precision?

The answer is “With great effort, yes.” Achieving greater precision is one of the great projects of the natural law tradition. Progress has been made in this task, but it has come slowly.

With murder the task has been pretty easy: Leaving aside questions of authority, undue killing is deliberately or directly taking innocent human life. One may take the life only of someone who has committed grave wrong (but even then the sentence may be declared and carried out only by public authority). With theft the task is more difficult, but most casuists – specialists in the necessary moral distinctions – would now agree that undue taking is deliberately or directly taking what rightly belongs to another against his rational will. With lying the task is very hard indeed. What is the correct definition of lying, of that kind of falsehood that is always wrong?

St. Augustine and St. Thomas hold that lying is saying what one knows to be false with the intention of deceiving. This is also the view of the Catholic Church.¹⁷ However, some natural law thinkers, both philosophers and theologians, think that one more qualifier is necessary: That

¹⁷ St. Augustine, *On Lying*; St. Thomas, II-II, Q. 110, Art. 1; *Catechism of the Catholic Church*, sections 2481–2482.

lying is saying *to one who has a right to the truth* what one knows to be false with the intention of deceiving. In practice, the distance between the two positions is not as great as it may seem, because to one who does not have a right to the truth, one may equivocate without actually lying. Yet the two definitions are different in principle. How so? Whenever deliberate falsehood is practiced, two great problems arise. One is that it perverts the human power of speech, which is naturally directed to truth; the other is that it may deprive someone of his right. The former definition of lying puts greater emphasis on the former problem, while the second puts greater emphasis on the latter. Unfortunately, these two problems are tightly bound, and it is not so obvious that they can be disentangled.

In the United States, the question “What is lying?” has recently become hot because of the strategy of a pro-life organization called Live Action. Live Action workers assume false identities to expose wicked and illegal acts; for example, a pair of activists may present themselves in a Planned Parenthood office as a pregnant young prostitute and her pimp, in order to expose the willingness of the staff to wink at the sexual exploitation of young women and refer underage girls for illegal abortions. Are these activists heroes, promoting the cause of life? Or are undermining the cause of life by “doing evil so that good will result?” The answer depends on which definition of lying is rationally correct.

2. *What about the natural consequences of dispensations?* If God dispenses from one of the secondary precepts of Divine law, then He does not hold the person using the dispensation *guilty* for not following the precept. But remember that the moral precepts of Divine law belong to natural law too. What then happens to the bad *natural* consequences of departing from them? For example, dispensation or no dispensation, one would expect Hosea’s first wife to continue to play the harlot, and Hosea’s children with her to suffer from having such an unsuitable mother. To expose the prophet to such fortune seems hard on him. Does God treat His prophets so badly?

To solve the problem, we must distinguish between two kinds of dispensations. One arises when for some unusual reason God *allows* an act contrary to virtue; the other arises when for some unusual reason He *commands* an act that would have been contrary to virtue had He not commanded it. We may call the former kind dispensation by permission, and the latter kind dispensation by command.¹⁸

¹⁸ These two kinds of dispensation should not be confused with the four kinds of permission St. Thomas distinguishes in Supp., Q. 67, Art. 3.

The Old Law's provisions for divorce were a dispensation by permission. Christ said the Old Law permitted divorce only because of the hardness of the people's hearts; divorce was not God's intention in creating marriage.¹⁹ According to an opinion of St. Chrysostom, what Christ meant by the hardness of the people's hearts was that if men had not been permitted to divorce their wives, they would have murdered them. St. Thomas considers two possible opinions about what to make of this. According to the opinion he considers more probable, although this dispensation freed men from "eternal punishment," that is, from the guilt of breaking up their marriages and the spiritual consequence of separation from God, it did *not* free them from "temporal punishment," from the natural consequences of doing so.²⁰ No doubt they suffered these direly.

On the other hand, God's instruction to Hosea to marry a whore was a dispensation by command. There is some reason to suppose that St. Thomas may have thought that God supernaturally deflected the natural consequences of the deed. In the first place, the argument is plausible within the terms of the allegory, for Hosea's marriage to a whore was symbolically intended to portray not only Israel's unfaithfulness to her Divine lover and her adulterous relationship with the false gods called Baals, but also her ultimate redemption:

Therefore, behold, I will allure her, and bring her into the wilderness, and speak tenderly to her. And there I will give her vineyards, and make the Valley of Achor a door of hope. And there she shall answer as in the days of her youth, as at the time when she came out of the land of Egypt. And in that day, says the LORD, you will call me, "My husband," and no longer will you call me, "My Baal." For I will remove the names of the Baals from her mouth, and they shall be mentioned by name no more.... And I will betroth you to me for ever; I will betroth you to me in righteousness and in justice, in steadfast love, and in mercy.²¹

If Hosea's literal wife was an allegory for Israel, and if the allegory represented not only Israel's wretchedness but her redemption, then for the allegory to be accurate, wouldn't Hosea's literal wife also have had to be redeemed? What other view is compatible with God's grace? In the second place, St. Thomas's theory is compatible with this line of reasoning, for he agrees that in some cases God supernaturally alters nature's ordinary course:

¹⁹ Matthew 19:3–8 (RSV-CE); see also Supp. Q. 67, Art. 1.

²⁰ Supp., Q. 67, Art. 3 and ad 5.

²¹ Hosea 2:14–17, 19 (RSV-CE).

In the commandments, especially those which in some way are of natural law, a dispensation is like a change in the natural course of things: and this course is subject to a twofold change. First, by some natural cause whereby another natural cause is hindered from following its course: it is thus in all things that happen by chance less frequently in nature. In this way, however, there is no variation in the course of those natural things which happen always, but only in the course of those which happen frequently. Secondly, by a cause altogether supernatural, as in the case of miracles: and in this way there can be a variation in the course of nature, not only in the course which is appointed for the majority of cases, but also in the course which is appointed for all cases[.]²²

I suggest, then, that St. Thomas may view matters like this:

1. In the case of dispensation by permission, the person committing the act is spared only from its guilt, not from its bad natural consequences.
2. But in the case of dispensation by command, the person committing the act *may* be spared not only from its guilt but perhaps from some of its bad natural consequences too.

My suggestion is speculative, and should be taken with a grain of salt. From a logical point of view, it seems to provide a neat solution to the problem, and it may, in fact, be what St. Thomas believes. To develop it, however, I have expanded upon hints in the Supplement, which was drawn from St. Thomas's earlier writings and added to the *Summa* after his death. Between the earlier and later writings he has certainly changed his mind about certain applications of his analysis²³; thus we cannot rule out the possibility that he has also changed his mind about the principles of the analysis. In this case, my suggestion would be mistaken.

St. Thomas's Prologue to Question 105: Of the Reason for the Judicial Precepts Discussion

Why Article 1 Is Important Even for Secular Readers

Although each of the four categories of judicial precept is of great interest in the study of law, limitations of space prevent us from addressing them

²² Supp., Q. 67, Art. 2.

²³ For an illustration of such change, in Supp., Q. 67, Art. 2, which was written earlier, he holds that the command to sacrifice Isaac required a dispensation, while in I-II, [Question 100, Article 8](#), which we have been studying, he holds that no dispensation was necessary because the act would not have been a murder.

all. Article 1, on “precepts concerning rulers,” is particularly interesting, because rather than simply appealing to Revelation, St. Thomas provides a rational defense of Old Testament constitutional law. Consequently, his discussion should interest not only those readers who share his faith tradition, but also those who do not.

**Question 105, Article 1:
Whether the Old Law Enjoined Fitting Precepts
Concerning Rulers?
Discussion**

What St. Thomas Really Means by Kingship

St. Thomas’s recommendation of a certain mixed form of government as the best kind of “kingship” or “kingdom” forcefully reminds us of the need to be sure of what he means when he uses these words. He is not thinking of one man who wields all power unchecked. Sometimes he even uses the term “kingdom” as a metonym for *any* rightful form of government, even one that is not literally a kingdom, for he agrees with Aristotle that each thing is most truly identified with the element that is most eminent or authoritative in it.²⁴ We easily overlook this way of speaking, because although we too use metonymy – the figure of speech in which a thing is called by the name of something associated with it – we do not often use the particular metonymy of calling the good by the name of the best. But St. Thomas does, and he tells us outright that he does:

A kingdom is the best of all governments, as stated in *Ethic. viii, 10*: wherefore the species of prudence should be denominated rather from a kingdom, yet so as to comprehend under regnative [*regnative*, “royal”] all other rightful forms of government, but not perverse forms which are opposed to virtue, and which, accordingly, do not pertain to prudence.²⁵

In this sense, a monarchy, an aristocracy, a democracy, or any of their composites may be called a kingdom, and the foremost man in any of them may be called a king. The only forms of government that would not be called kingdoms, or whose foremost men would not be called kings, are the pure and composite varieties of tyranny, oligarchy, and oligocracy – the “perverted” forms.

²⁴ Aristotle offers this remark in *Nicomachean Ethics*, Book 9, Chapter 8; St. Thomas discusses it in [Question 106, Article 1](#).

²⁵ II-II, Q. 50, Art. 1, ad 2.

Of course St. Thomas is not always speaking metonymically. When he says that a kingdom is the *best* of all governments, as he does, for instance, in his work *On Kingship*, he is *distinguishing* kingdoms from the other good forms, so in this case he is using the term literally. Even so, we should not leap to the conclusion that a literal kingdom has to be a *pure* or unmixed kingdom. It may be a composite of several forms of government. St. Thomas normally calls any composite form a kingdom so long as one man is foremost – even if he shares power with others, even if he holds his office only for a fixed period of time, and even if he does not inherit it.

So when St. Thomas says a kingdom is the best of all governments, alert readers will ask, “Which kind of kingdom do you mean?” His answer: A thoroughly blended form of government, borrowing and balancing elements of pure monarchy, pure aristocracy, and pure democracy:

For this is the best form of polity, being partly kingdom, since there is one at the head of all; partly aristocracy, in so far as a number of persons are set in authority; partly democracy, i.e. government by the people, in so far as the rulers can be chosen from the people, and the people have the right to choose their rulers.

Because of our own inherited distaste for monarchies and aristocracies, we would probably call this sort of mixed regime a constitutional republic instead of a mixed monarchy. However, any such comparison must be qualified in two ways.

First, for St. Thomas, although the king or presider is not higher than the constitution, he is the highest authority within the constitution. For contemporary republics, this is not the case. In the American system, for example, the three branches are supposed to be distinct and co-equal, so that the president heads only the executive branch. (At least so it is in theory. In practice, of course, Americans commonly despise their legislators, and call the president not the head of the executive branch but the “leader of the country.” Moreover, our constitutional system exhibits strong drifts toward both *kritarchy*, as the judiciary takes on legislative functions, and *monarchy*, as the executive takes on both legislative and judicial functions.)

The second difference is that for St. Thomas (as for ancient and medieval writers in general), the king is not the “leader” of the country but its *ruler*. To us, the word “ruler” smacks of tyranny, but to him, tyranny is not true rule at all, but the perversion of rule. Ruling is caring for the common good, for *tranquillitas ordinis*, for rightly ordered peace. Leading is taking the nation somewhere, going on a journey, recasting its pattern of

life. For the ruler, laws are instruments of justice; for the leader, they are instruments of change. To be sure, a certain kind of change can take place under the older conception too, for right must be encouraged and injustice must be punished. But the notion of leading suggests a social revolution in which even the most fundamental norms of justice may be set aside or replaced for the sake of “progress” toward an undefined end.²⁶

Background on the Peril of Tyranny

Good as St. Thomas thinks kingship is, he thinks *unmixed* kingship is perilous. To fully understand his argument – especially his dispute with Objectors 2 and 5 – the bleak, ominous, and pivotal incident in which the people of Israel implore Samuel to appoint a king should be read in its entirety.

When Samuel became old, he made his sons judges over Israel. The name of his first-born son was Joel, and the name of his second, Abijah;²⁷ they were judges in Beersheba. Yet his sons did not walk in his ways, but turned aside after gain; they took bribes and perverted justice. Then all the elders of Israel gathered together and came to Samuel at Ramah, and said to him, “Behold, you are old and your sons do not walk in your ways; now appoint for us a king to govern us like all the nations.”

But the thing displeased Samuel when they said, “Give us a king to govern us.” And Samuel prayed to the Lord. And the Lord said to Samuel, “Hearken to the voice of the people in all that they say to you; for they have not rejected you, but they have rejected me from being king over them. According to all the deeds which they have done to me, from the day I brought them up out of Egypt even to this day, forsaking me and serving other gods, so they are also doing to you. Now then, hearken to their voice; only, you shall solemnly warn them, and show them the ways of the king who shall reign over them.”

²⁶ As C.S. Lewis remarks, “In all previous ages that I can think of the principal aim of rulers, except at rare and short intervals, was to keep their subjects quiet, to forestall or extinguish widespread excitement and persuade people to attend quietly to their several occupations. And on the whole their subjects agreed with them. They even prayed (in words that sound curiously old fashioned) to be able to live ‘a peaceable life in all godliness and honesty’ and ‘pass their time in rest and quietness.’ But now the organization of mass excitement seems to be almost the normal organ of political power. We live in an age of ‘appeal,’ ‘drives,’ and ‘campaigns.’ Our rulers have become like school-masters ... And you notice that I am guilty of a slight archaism in calling them ‘rulers.’ ‘Leaders’ is the modern word this is a deeply significant change of vocabulary. Our demand upon them has changed no less than theirs on us. For of a ruler one asks justice, incorruption, diligence, perhaps clemency; of a leader, dash, initiative, and (I suppose) what people call ‘magnetism’ or ‘personality.’” C.S. Lewis, “De Descriptione Temporum,” Inaugural Lecture from the Chair of Mediaeval and Renaissance Literature at Cambridge University, 1954, in C.S. Lewis, *They Asked for a Paper: Papers and Addresses* (London: Geoffrey Bles, 1962), pp. 17–18.

²⁷ Not to be confused with Ahijah, the later prophet of Shiloh.

So Samuel told all the words of the Lord to the people who were asking a king from him. He said, “These will be the ways of the king who will reign over you: he will take your sons and appoint them to his chariots and to be his horsemen, and to run before his chariots; and he will appoint for himself commanders of thousands and commanders of fifties, and some to plow his ground and to reap his harvest, and to make his implements of war and the equipment of his chariots. He will take your daughters to be perfumers and cooks and bakers. He will take the best of your fields and vineyards and olive orchards and give them to his servants. He will take the tenth of your grain and of your vineyards and give it to his officers and to his servants. He will take your menservants and maidservants, and the best of your cattle and your asses, and put them to his work. He will take the tenth of your flocks, and you shall be his slaves. And in that day you will cry out because of your king, whom you have chosen for yourselves; but the Lord will not answer you in that day.”

But the people refused to listen to the voice of Samuel; and they said, “No! but we will have a king over us, that we also may be like all the nations, and that our king may govern us and go out before us and fight our battles.” And when Samuel had heard all the words of the people, he repeated them in the ears of the Lord. And the Lord said to Samuel, “Hearken to their voice, and make them a king.”²⁸

After concluding the assembly and sending the elders back to their cities, Samuel takes steps to appoint a king, and all the things he had warned about come to pass.

St. Thomas’s Prologue to Question 106: Of the Law of the Gospel, Called the New Law, Considered in Itself Discussion

The Relevance of the Gospel to Philosophy

Everything in Questions 106, 107, and 108 is of interest to Christians, to those inquiring into Christianity, and to theologians. However, not everything in them is of equal interest from the perspective of the sheer philosophy of law, and our selections in this *Companion to the Commentary* include only [Question 106, Article 1](#), which goes most directly to the question of what the New Law is and why it exists at all.

Natural law philosophers will find this Article particularly intriguing, because it shows why it makes a difference whether we view human nature merely as we experience it now, or in the context of all three phases of salvation history, Creation, Fall, and Redemption. It is true that our nature *as such* is unchangeable, or it would not truly be our nature. But its *condition* can change, and in the Christian view, if we ignore or

²⁸ 1 Samuel 8:1–22a (RSV-CE).

deny this fact, we run a double risk. Either we mistakenly incorporate the afflictions of our nature into our conception of what it is in itself – or else we mistakenly believe that we can overcome its afflictions by means of our own natural powers without the help of grace, as though a surgeon could sew his own severed hands back on. The former error encourages despair. The latter encourages utopian fantasies that not only inevitably fail, but fail bloodily.

**Question 106, Article 1:
Whether the New Law Is a Written Law?
Discussion**

The Relation Between Nature and Grace

Grace does not destroy nature, but uplifts it. In particular, faith, hope, and love do not replace temperance, courage, justice, and wisdom. But they purify them (since they have been weakened and stained by the Fall), and they give them a new orientation (not just to their natural but to their supernatural end). If all this is true, then to fully understand even natural law, one must understand how grace was lost and how it is regained; thus nature itself must be viewed in the context of the three phases of salvation history, Creation, Fall, and Redemption.

The Old Law, offered to a single nation, was the first stage of redemption. It reaffirms the moral precepts of the natural law, so badly blurred by sin, as well as directing us to God. In this way it begins to draw us into grace. The New Law, St. Thomas writes, is that grace itself, offered to the entire human race because of the work of Christ and through the Church which He founded. Because, in itself, grace is no more written down than the natural law is, it seems strange to call it a law at all. But as human nature has operating principles, so has grace, and these operating principles may certainly be written down.

Since grace is a gift, one might wonder why it should have operating principles at all. The question might turn into an objection: Isn't grace like the food put into baby birds by their parents? Aren't their parents doing all the work? Yes, in a way. But we must be taught to open our beaks to accept it; and even that is a gift of grace.

Implications of St. Thomas's Teaching for the Present World

If St. Thomas is right, then the relation between natural law, New Law, sin, and grace has several clear consequences even for temporal life.

In principle, the human power of reason is quite adequate to work out the moral requirements for living flourishing and robust lives. For this reason, natural law provides a point of contact among all men. By its light, even nations that have never heard of the gospel may be able to achieve more or less decent systems of civil law.

Yet apart from grace, we fall far short of doing what in principle we are capable of doing. Our very minds resist the natural law – resist, so to speak, their own natures – because it reminds us that we did not create ourselves. We resent God for being God and want to be gods ourselves. Consequently, the ability of our minds to command our emotions and desires is also impaired, and our insistence on having no masters but ourselves is the very thing that keeps us from self-mastery. We end up deceiving ourselves even about the moral law, employing our intellects to make excuses for our misdeeds, not because the wrongness of them is obscure, but because we want it to be obscure. To be sure, conscience troubles us. Yet if we are unwilling to repent, the voice of conscience becomes merely another motive to put our fingers in our ears.

Consequently, we need *more* than natural law; we need transforming grace, which, by giving us back to God, gives us back ourselves, restoring us to peace not only with Him, but with our healed natures. Apart from this grace, the natural law may seem to us a curse instead of a blessing. Such is our rebellion against God that the very offer of the grace that lifts the curse may appear to us an insult. This is why St. Paul remarked that although the grace of Christ is a fragrance from life to life among those who are receiving it, it is a fragrance from death to death among those who are perishing.²⁹

We may end with three questions.

1. Can natural law be invoked in conversations in the public square? Yes, but it will often be resisted. If one wishes to have a reasonable conversation at all, then there is no alternative but to invoke it; yet the very appeal to reason unleashes a variety of irrational resentments.
2. Can natural law be invoked in the public square without a willingness to discuss the Gospel too? Probably not very effectively, because among the irrational sources of our resentment against natural law is that we lack the grace to obey it.

²⁹ 2 Cor 2:14–16 (RSV-CE).

3. Can resentment against natural law be removed, then, by invoking the Gospel too? In the long run, among those who yearn for God, yes, but otherwise, no, because the appeal to grace itself unleashes irrational resentments. We resist the natural law in part because we cannot obey it; but if we do not desire to obey it, then accepting the offer of Divine assistance may seem like ignominious surrender to a foe.

Not without reason, then, did St. Thomas follow his great *Treatise on Law* with his *Treatise on Grace*. For it is not enough to offer rational arguments to a mutinous world, expecting them to be heard just because they are rational (the very thing careless readers think he is doing). A delicate diplomacy is needed, a sort of negotiation, not only with the mind, but with the heart. More than that, the envoy must abandon himself to the Father of Lights, without whom all peacemaking fails. Finally, as he appeals to his readers, so he must put his trust in their Author, praying in love not only for their illumination, but for his own. So, I believe, did Thomas Aquinas, and so must we.