

St. Thomas Aquinas's Treatise on Law

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St. Thomas Aquinas's "Treatise on Law" is found in the first section of part two of the *Summa Theologiae*, Questions 90-108. The *Summa Theologiae*, translated the summary of theology, was originally a textbook for young students. In this work, Thomas chose to contend with all the theological disputes of the 13th century. The *Summa* refers to just about any abstract idea you can think of, from science, the existence and nature of God, the nature of man, evil, consciousness, love, happiness, morality, virtues, reason, justice, society, and most relevantly, law. He does this in a very disciplined and methodological way. His diligence and meticulousness allow him to exhaust nearly every subject he encounters. His "Treatise on Law" is no exception. By the end of his work, law is defined; it is separated into its proper categories, which are also classified; its parts and precepts are made known; its purpose and power are revealed. A significant claim, then, can be found in Question Ninety, Article Two:

Now the first principle in practical matters, which are the object of the practical reason, is the last end: and the last end of human life is happiness or beatitude, as we have stated above. Consequently, law must needs concern itself mainly with the order that is in beatitude. Moreover, since every part is ordained to the whole as the imperfect to the perfect, and since one man is a part of the perfect community, law must needs concern itself properly with the order directed to universal happiness. (Aquinas *Summa Theologiae* Question 90, Article 2 [1945])

Aquinas contends that law is the proper avenue that leads a community and the individual to what Aristotle called the happy life, that of which Aquinas would call beatitude.

Question Ninety of Thomas's treatise on law is titled, "On the Essence of Law," again giving credence to the idea of Aquinas's ability to exhaust a subject. The word essence implies a much deeper meaning than would a simple definition. Here, he breaks down the meaning of law into four articles. Each represents an attribute of law that is summed up in the fourth article, thus giving us a working definition of *law*. It states,

“Law is nothing else than an ordinance of reason (Article One) for the common good (Article Two), promulgated (Article Four) by him who has the care of the community (Article Three)” (Aquinas *Summa Theologiae* Question 90, Article 4 [1945]).

We can easily see how this ties into our claim. Reason directs one to an end, our end being beatitude. However, the form of reason that establishes the laws must have legitimate concern for the community, the form being either the community itself, a democracy, or a sovereign leader who genuinely cares about his people, a monarchy. This is explained further in *On Kingship*. The common good is our goal plainly stated for the whole community. Just as one man is part of the community, so then will individual beatitude be achieved by law concerning itself with the common good. Finally, promulgation is necessary for law to retain its power. Without power, the proper end will not be achieved.

We now move into the meat of Aquinas’s work in Questions Ninety-one through Ninety-seven that concerns itself with the various kinds of law. In Question Ninety-one titled, “On the Various Kinds of Law,” Aquinas established four varieties of law, which all have the nature of law, but are different enough to be separated. They are eternal law, natural law, human law, and divine law. As one studies these various laws, one must pay particular attention to the congruencies found in them. These laws are linked, and the correlations must be present to understand each one individually.

When Aquinas confirmed the existence of an eternal law, it was subsequent to his verification that there was indeed a divine provider ruling the universe. This “divine reason” ruled without respect to time; thus, eternal law was the name given. Explaining eternal law, we can use the guidelines from our definition of law in Question Ninety. The

sovereign one who is legitimately concerned with his community, in this situation universe, is God. He uses divine reason to reach that desired end. His promulgation is through his Word. The common good of the universe is where his law is directed. To further grasp eternal law, we will jump to Question Ninety-three title, “The Eternal Law.” It is here we discover that the eternal law is the supreme example of which all laws flow and are created. One common reaction would be to ask how unjust laws are derived from a perfectly just God. As stated time and time again by Aquinas, a law not subject to eternal law is not considered a law at all.

To achieve the proper end, beatitude, mankind must participate in this eternal law. This participation is what is known as natural law. My understanding is that the natural law is this perfect law of justice that is self-evident, and it pertains to right and wrong, good and evil. As Arnhart put it in his commentary, “Natural law would be invoked if one wanted to justify disobeying a law by arguing that it was unjust and not truly a law” (Arnhart 2003, 86). Aquinas contends that just as eternal law is dictated by divine reason, so natural law is determined by practical reason. The reason, Aquinas believes, discovers natural law by using self-evident precepts. Also called indemonstrable principles, because of their inability to be proved, Aquinas states that there is a certain order to be found in them. Since our goal is happiness, which Aristotle calls the “chief good”, the first principle or precept of natural law is “that good is to be done and ensued, and evil is to be avoided” (Aquinas *Summa Theologiae* Question 94, Article 2 [1945]). The order, then, is that all other principles of the natural law are based on this. For natural law, any other precept must pertain to doing good or avoiding evil. Aquinas explains why all principles fall under this first principle. He describes a battle of good

and evil, with the intent for man to do good. There are three types of “natural inclinations” that Aquinas describes. One is considered to be applicable to all substances of the universe, this precept being self-preservation. The second inclination ties humans to the animal kingdom. These natural tendencies include sexual intercourse and properly bringing up children. The third inclination in man is found in his reason. These are desiring to know God, living in society, and avoiding ignorance. However, one would not be thought ignorant to contend that good and evil may be subjective and often times are not self-evident. Thomas, adamantly disagreeing with this notion, tried to solve this problem in a couple of ways. First, he implied in Question Ninety-Four, Article Two that natural law should be promulgated by those intelligent enough to see self-evidence when it is brought forth. Also, since practical reason dictates natural law, the reason can use forms of logic and the facts of nature to discover these self-evident principles. After realizing what the fundamentals of natural law are, one could conclude that since God wishes for humankind to participate in the eternal law, natural law is the best form of law that man can use to govern himself.

This idea moves us into the next category of law of which Aquinas calls human law. When introducing human law in Question Ninety-one, Aquinas asserts that human reason needs to “advance to more specific matters of rule” (Aquinas *Summa Theologiae* Question 91, Article 3 [1945]). Simply put, human law is the application of the natural law framed in various societal matters. Could not natural law do that on its own? Well, in Question Ninety-five, titled “On Human Law,” we are told that laws needed to be framed by men in order “that man might have peace and virtue.” This is achieved by hindering those wicked people from doing harm, in fear that they will be punished, and

protecting the virtuous. Human law was also considered a corrective tool for those wicked people that they may become virtuous. By repeating just laws over and over, the wicked may eventually acknowledge the good and deliberately obey law, thus encouraging peace, a prerequisite to beatitude.

Another important designation in the human law is that it can establish the consequences to disobeying the natural law. For example, a rule against stealing is a general principle of the natural law represented in the human law. The consequences of stealing are only represented in the human law. Aquinas gives the lawmakers in society a lot of judicial power in this regard. Lawmakers were often directed by the divine law when deciding on punishment by seeing how God punished sin, especially in the Old Testament.

Aquinas treats human law with a great deal of flexibility with respect to what the natural law forbids. For instance Aquinas was adamant about the sin of sexual lust and lasciviousness. All forms of lust beyond sexual intercourse between a man and a woman were against the natural law, “including masturbation, sodomy, bestiality, and adultery” (Sigmund 1993, 226). However, in Question Ninety-Six, Article Two, Aquinas concedes that most people are not “perfect in virtue.” Thus, in human law, he disallows only the most grievous vices that even the majority can abstain from. He believes that if the majority is unable to bear the most virtuous laws, they will rebel and society will collapse. He supports his claim by again stating another precondition to our goal, “the purpose of law is to lead men to virtue, not suddenly, but gradually” (Aquinas *Summa Theologiae* Question 96, Article 2 [1945]).

We can conclude, then that human law is not perfect, as in some laws are unjust. Aquinas contends unjust laws come in two forms. The first is one that an authority imposes on his citizens for his own benefit and not the benefit of the common good. These laws should only be obeyed if more evil would come from not obeying them. The second is a law that contradicts the divine law, which we will consider shortly. These should never be obeyed because, as Aquinas quotes the apostle Peter, “It is better to obey God, rather than men.” Thomas, as stated above, would consider both forms not laws at all, but “perversions to the law.”

The last subject matter of human law I’d like to focus upon is found in Question Ninety-Six, Article Five concerning whether all are subject to the law. This is one of the few articles where Aquinas concedes to all the objections noted. The first states that just men are not subject to the law, and Thomas agrees that coercion of the law is only pressed upon the wicked, the just man balancing his will with the law’s. The second objection is that those who are under the private law of the Holy Spirit are not subject to state law. Again, Aquinas gives in, this compromise not as surprising since the pope was labeled as the objector. This notion brings context with it. During the late 12th and 13th centuries, the Roman Catholic Church had its own law, totally separate from state law. Its bishops were under a private law of their own and were not about to change. Aquinas would tow the line with the church in this case. Finally, the third objection is that the sovereign ruler is not subject to the law. Here, Thomas concedes with reservation. He contends that the sovereign is above the law in that he can control the law itself and no one is above him to punish him if he disobeys it. However, Thomas says that natural law requires him to obey the precepts that he speaks. Out of free will, the sovereign should

obey the laws that he established to show his interest and concern for the common good of the community.

Lastly, we will quickly look at the last of the laws introduced in Question Ninety-one, that being divine law. This law has the most bearing upon our theme of beatitude simply because, the end of this law is eternal beatitude. Aquinas gives four reasons why divine law should exist. First, man since man is promised a way to eternal happiness, a law is needed to guide men to this final end. Furthermore, a law with an eternal end should not be regulated by the fallacies of men minds, but should be developed by God. Second, this law given by God could be used to correct the errors found in human law. Third, “human law cannot sufficiently deal with spiritual concepts, only extrinsic ones” (Aquinas *Summa Theologiae* Question 91, Article 4 [1945]). Remember, human law is law framed by man to serve societal matters, not spiritual concerns. Fourth, as we have noted above, human law does not hinder all vices because greater evil will result. In order that evil and its consequences are made fully known, a divine law must be established.

The “Treatise on Law” is one of Aquinas' main contributions to political thought. It was a work of systematic categorization of laws and their respective definitions. It has been shown that the various type of laws were directed toward an end, an end which Thomas labeled beatitude. Eternal law, being the supreme example, was directed toward the common good. Natural law concerned itself with equality and justice. Human law encouraged peace and virtue. Divine law, set somewhat apart, focused upon eternal beatitude. All of these wonderful themes play their part in order for society and the individual to achieve beatitude.

St. Thomas Aquinas was one of the most brilliant men I have ever studied. His approach to analyzing an idea or theory was unique to say the least. His methodological modes were sometimes boring, and many of his sentences were overflowing with too much information. Oftentimes, I would reread a paragraph ten times before I felt I had a grasp on his thought process. To take issue with his political abilities would be ignorant. To contend with Aquinas about his views, however, would be more than appropriate as a student of political philosophy.

My main criticism of Aquinas is the flexibility he provides in the human law. It seems almost contradictory in the fact that he was so adamant about preserving the natural law, while at the same time, allowed for its disobedience. Thomas desires a ruler to promulgate this natural law, yet he argues that sometimes many natural laws will not be followed. He wants men to achieve a higher level of virtue by participating in the human law, while simultaneously stating that a number of virtues are left out of the law to preserve society. I understand that, indeed, some laws should not be bound upon a society; free will accounts for those laws.

It seems as if Aquinas wants to have it both ways. He desires that all men would be obedient to the natural law, and he wants to pacify the majority who can revolt if they do not get their way. He does not allow for a check on the majority, like our Constitution does in the United States. He almost approaches the preservation of society as the most important objective, instead of beatitude. Although linked to happiness, a society without moral virtue does not promote it. He is so exacting about the natural laws, and yet, on this point, he gives no boundary that cannot be crossed. The majority of society may have no moral virtue, and Thomas insists that, if the society can stand, it should concede

to the majority's wishes. The majority is simply given too much unbridled power. Was this his intent? I doubt it, but it sure raises the implications. I do, however, see his idea benefiting countries of whom the United States rebuilds. If the U.S. is able to establish law that the majority can handle, then the rebuilding process would become more efficient.

I applaud Aquinas's direct representation on the legislation of morality. So many today believe that it is wrong to make laws based on a sense of moral rule. However, I would reply with the question, "What is murder, but a moral issue?" Aquinas goes further is his claim, arguing that all laws have a moral precept guiding them. Every law, to Aquinas, is in a principle of action for the common good of the community. Furthermore, as stated above, Thomas believes that through the human law, morals such as virtue and peace can be taught and encouraged. For example, the 19th Amendment which allowed all women to vote did not go over very well everywhere in the United States. After being subjected to this law, we understand its appropriateness to our society. Nearly all individuals now agree that women have a right to suffrage just as men do.

His many contributions to political thought are found throughout the *Summa* and many others including the *Commentary of Nicomachean Ethics* and *On Kingship*. His "Treatise on Law" is probably the most known and wrote about among scholars. A contribution that considers the theme of our paper would be how Aquinas brings the together a relationship between the individual good and the common good. Aquinas see the common good as the primary goal of law. Individual good is received by participating in the common good, whether directly by its benefits or indirectly by a

feeling of self-sacrifice to the community. With respect to law in general, Aquinas contends that laws serve to direct society. They are more efficient than a group of judges, because of their look beyond the present and their unbiased character. He defines laws as a principle of action, and what is the political world if not a world of practice and action?

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