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LAW AS MEANS TO END—THOMAS AQUINAS

THOMAS E. DAVITT, S. J.*

The importance of a man can be judged by his influence on the thinking of other men. Periodically during the course of the centuries men have appeared who exercised this power to a commanding degree. The presence of "great" names in all fields of human endeavor attests to this.

These are the adventurous spirits whom men of lesser mettle choose to follow as their leaders. They are the men of stature whom others recognize as masters and by whom they allow their minds to be formed and their thinking influenced. Not that these pioneers are to be followed slavishly to the last detail and no independent thinking done after them. That would be the death of any future progress. But it is from these men of exceptional insight, imagination and vision that others take their first inspiration and general direction of thought.

Such a man was Thomas Aquinas. He was a trail blazer in many regards, one of them being especially his work on law. His was the first systematically organized treatise on law and its philosophical roots, and over the years it has been recognized as a masterful accomplishment. Consequently, during succeeding generations this work has been a powerful factor in shaping the minds of countless men on the nature and significance of law.¹

By way of an overview of this article, it may be said that its purpose is to present Aquinas' philosophy of law to the average lawman, who is not necessarily trained in this type of legal thinking. This entails an obvious difficulty for which there is no ready solution. All that can be done, it seems, is to set out Aquinas' thinking on this subject and let him speak for himself.

A comprehensive treatment of law includes an inquiry into its nature and promulgation, its end, content and source, and its sanction and the reason why it obliges. Aquinas examines these characteristics of law first in regard to man-made law, for man-made law is easily observable, and second in regard to God-made law. The interrelation between the two is then indicated. His treatise on legal philosophy is not without grounds for observations and comments which, consequently, will be made. Finally, because the practical value of principles can best be seen in their application to fact situations, the

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1. On the life (1225-1274) and works of Aquinas see MARITAIN, ST. THOMAS AQUINAS (1948); CHESTERTON, ST. THOMAS AQUINAS (1933); CHENU, INTRODUCTION A L'ÉTUDE DE SAINT THOMAS D'AQUIN (1954).

impact of Aquinas' thinking on certain contemporary legal problems will be pointed out.

Although Aquinas wrote as a theologian and his principle work is a "Summa of Theology," nevertheless within this framework he addressed himself to problems that were philosophical in nature and were solvable according to observable data and reasoning thereon.² On this basis rests his philosophy of law as such, even though at times he applies it to matters known from theology.

MAN-MADE LAW

Before any of the other aspects of law can be profitably investigated, what law is in itself must be examined. Aquinas ascertains this by examining man-made law. Law is seen to be a rule or measure of human actions, since by it men are either induced to act or are restrained from acting in a certain way.³ A speed law, for instance (and to use a modern example), is such a rule. Embodied in this rule is a means-end relationship: a certain maximum speed limit is needed to ensure safe driving conditions. This relation of speed to safety can be almost scientifically determined by tests conducted by traffic engineers. The basis of the means-end relationship of law is, then, an objective fact situation and Aquinas' entire concept of law is anchored in this relationship.

Nature

But is a law merely the words by which it is made known, or is it something much more important that is expressed through the words? Because words or symbols are but a medium of communicating ideas in the mind of the speaker or writer, the words of a law are only the expression of something of much greater significance in the minds

2. AQUINAS, *SUMMA THEOLOGIAE* I, Q. 1, art. 3. (1267-1273). See the English translation, *SUMMA THEOLOGICA OF ST. THOMAS AQUINAS* (Benziger ed. Dominican transl. 1947). All reference to Aquinas, unless otherwise specified, will be to this major and most readily available work. Hereinafter it will be cited as ST.

The basic distinction between theology and philosophy should be recalled. Theological convictions are based on the authority of divine revelation and faith therein. Faith is an assent of the mind to a proposition, not because of evidence, but because of the trustworthiness of the one speaking—whether he be human or divine. Philosophical conviction, on the other hand, is based on observable phenomena and reasoning thereon. This may be about the order found in nature and about its cause, God. Although God is not a directly observable datum, as far as the working of the human mind is concerned, he is the one intelligible explanation of this phenomenon of order which is observable.

Those who would rigorously exclude all other ways of acquiring knowledge except the scientific method, which is indispensable in certain types of inquiry, should critically examine the inevitable non-scientific assumptions and commitments in the scientific method itself. See especially POLANYI, *PERSONAL KNOWLEDGE* (1958); and his *THE STUDY OF MAN* (1959).

3. 1-2 ST 90, 1.

of lawmakers. The words of a law communicate the directive judgment of the lawmakers (or a majority of them) that a certain means is in some degree factually necessary for obtaining a desired end—that a speed limit of 65 miles per hour, for instance, is necessary for safe driving conditions. Essentially, then, law is an act of lawmakers' reason and not of their will. For it is the function of men's reason and not of their will to order means to an end.⁴

True, the will of lawmakers plays an important part in the desire to enact a law, which in turn inspires the drafting, introduction and passage of new laws. But the core of law is not what lawmakers desire. It is rather the resulting directive judgment of their reason which embodies the perceived necessity of certain means for the common welfare. This directive judgment may be called a "command," provided law is taken in this sense of a directive judgment of reason,⁵ and not merely as an expression of the sovereign will to be carried out by force.⁶ This kind of law Aquinas calls *human law*.⁷

Promulgation

Promulgation of a law is necessary if the law is to have its intended effect, the guidance of the people. They cannot be directed by a rule of which they have no knowledge.⁸ Promulgation, being the application of the directive judgment of lawmakers to the people,⁹ cannot be designated as part of the law itself. What is applied must already be constituted before it can be applied to something else.¹⁰ This distinction between law and its promulgation will be of capital importance when we examine "natural law."

End

The end or purpose of law is the common good of the people.¹¹ The common or public good consists principally of peace (the condition of unity among the people brought about by order) and security (the condition of assurance engendered by a sufficiency of the necessities of life and of safety resulting from adequate protection of the country).¹² Certain institutions which contribute to peace and security also pertain to the common good, such as legislation and its sanctions, good

4. *Ibid.*

5. 1-2 ST 17, 1.

6. See AUSTIN, LECTURES ON JURISPRUDENCE OR THE PHILOSOPHY OF POSITIVE LAW, 12-13 (Campbell ed. 1875).

7. 1-2 ST 91, 3; 1-2 ST 95-97.

8. 1-2 ST 90, 4.

9. *Ibid.*

10. 1-2 ST 16, 1; 1-2 ST 17, 3. See also 2 LOTTIN, PRINCIPES DE MORALE 97 (1947).

11. 1-2 ST 90, 2; 1-2 ST 95, 4; 1-2 ST 96, 1; 1-2 ST 96, 3.

12. AQUINAS, DE REGIMINE PRINCIPUM 1, 15 (1267). See the English translation, ON KINGSHIP 63-67 (Eschmann ed. Phelan transl. 1949).

appointments and elections,¹³ and just adjudication.¹⁴

Peace and security in turn possess their value because they are, in the last analysis, ends related to men's last end. They are the conditions necessary for men to live responsible, knowingly decided lives through which they can develop and perfect themselves.¹⁵ Looked at from this comprehensive viewpoint, the purpose of law can be said to be to bring about right living among men, that is, to make men good.¹⁶ Not that a law by itself can make men do what is right and at the same time make them desire to do it. But it can at least induce men to refrain from doing what is wrong because of the fear they have of incurring punishment.¹⁷

The whole concept of the common good refers to that type of good which is communicable to all the people,¹⁸ in contradistinction to a proper or private good, say food, which is communicable only to single individuals.¹⁹ As far as political life is concerned, the public good is pre-eminent to proper or private good.²⁰ For, it is only within the matrix of the common good that the proper good is attainable.²¹

The common good is obviously, then, not a sum total reached by adding together the proper, say consumer, goods of individuals. It is a good of a completely different nature. Neither is the common good a collective good, such as would be the meal a group is about to consume. This would have to be divided if each is to receive a share. If the number of participants increases, the amount of food available for each decreases. This is not the case with the common good of peace, security and the like. These are not decreased by the number of those who share and the number of participants does not result in each one having less.

In this view, law is a helpful, protective guide. Its necessarily restrictive aspect is only for the purpose of accomplishing a good in which the people can participate. The sole reason for air lane and altitude restrictions on aircraft is that safer flying conditions may be enjoyed by all and that all may thereby more certainly reach their destination.

Content

The content of law for Aquinas is, in general, justice or that which is just.²² This may be commutative or exchange justice which should

13. *Ibid.*

14. 2-2 ST 60, 6.

15. AQUINAS, DE REGIMINE PRINCIPUM 1, 15 (1267).

16. 1-2 ST 99, 1; 1-2 ST 92, 1.

17. 1-2 ST 96, 3, 2; 1-2 ST 107, 1, 2.

18. 1-2 ST 28, 4, 2.

19. 2-2 ST 58, 7.

20. 2-2 ST 58, 6, 3.

21. 2-2 ST 47, 10, 2.

22. 1-2 ST 95, 3; 1-2 ST 96, 4.

obtain between individual and individual but which has an indirect relation to the common good, for instance, the matter of today's tort or contract law.²³ Or it may be contributive or legal justice which ought to prevail between individuals as members of a community regarding those things which are directly promotive of the common welfare, for example, the provisions of criminal law.²⁴ Or it may be distributive justice which should exist between those who govern and the governed concerning the administration of the common good; for instance, benefits such as social security or burdens such as taxes.²⁵

Only matters of moment, and not the inconsequential or trivial, should be considered as fit content of a law.²⁶ Implicit in the concept of a just law, then, is its necessity for the common welfare and its possibility of fulfillment by the people.²⁷ Hence, for the content of a law to be just it must be related to the common good, be proportioned to the needs of the people, and be enacted by those with lawmaking authority.²⁸

A prime over-all requisite for a law from the viewpoint of Aquinas' philosophy of law, then, is that it be just. If it is not just, if it lacks this essential element, it is no law at all. It is rather perversity, corruption, violence and tyranny.²⁹ To most lawmen, it may seem unintelligible to say that an unjust law is no law. For, from the lawyer's standpoint a statute or judicial decision is "law" until it is respectively repealed or overruled, regardless of any other consideration as to its justness.

There are two possible explanations of the lawman's difficulty with the proposition that "an unjust law is no law." First, his philosophy of law may be positivistic and he may hold that "is" and "ought" in law coincide. By the very fact that a law exists, it is just. Or, second, while his philosophy of law may not be positivistic and may be similar to that of Aquinas, as a lawyer he may feel that a law cannot be said to be "no law" until it is superseded by another legal rule. If such be the case, it would profit him to advert to what is occurring here. Two different approaches to law are resulting in two different evaluations of law. What is taken to be a legally valid law by lawmen may be considered to be a morally bad law by philosophers. The philosophers of law presuppose that beyond man-made law there are other norms or rules according to which law can be evalu-

23. 2-2 ST 61, 1 & 2.

24. 1-2 ST 96, 3; 2-2 ST 58, 5 & 6.

25. 2-2 ST 61, 1 & 2.

26. 1-2 ST 96, 2.

27. 1-2 ST 95, 3.

28. 1-2 ST 96, 4.

29. 1-2 ST 92, 1, 4; 1-2 ST 93, 3, 2; 1-2 ST 95, 4; 1-2 ST 96, 4; 2-2 ST 60, 5, 1.

ated and judged just or unjust and that these other norms should be brought to bear on the question of a "just" law. For in this view the "is" is not necessarily identical with what "ought to be" in law.³⁰ This will be discussed later under *Obligation*.

The determination of what the content of law will be is law in the making. This determination involves the stages of deliberation, evaluation and decision. It has to do with ascertaining what means will contribute most to the common welfare. For instance, there may be a question of determining the best means of preventing smog from enveloping a city, again to use a modern example. Various techniques and devices for controlling fumes from automobile exhausts and industrial stacks will have to be examined and evaluated. Finally, a decision will have to be made and a directive issued to the people. This directive judgment, as we saw above, is the law. The process of deliberation, evaluation and decision which led to it is prudence.³¹ Hence, the directive judgment which is law is an act of political prudence.³²

The important conclusion for modern lawmen is that lawmaking is prudence and therefore it is not science. Science is the knowledge we have of the necessary and constant. It can be substantiated by induction and deduction. Scientific conclusions are verifiable by checking with observable data. Prudence, on the other hand, is the judgment we make concerning the right use of means to an end in contingent and variable human situations. Prudential conclusions are corrected by conformity with right intention.³³

Take the decision of the father on vacation with his family to take a train instead of some other means of transportation, because he judges it to be the safest mode of travel. A journal on one of the cars is cracked, the train is wrecked, and his family is killed. Was his decision a prudent one? Yes. He could not have had scientific knowledge regarding every piece of equipment on the railroad. His intention was to choose the means of transportation that, according to the best information available to him, was the safest. From the viewpoint of the fact situation, his decision was not a good one and his good intention does not protect him from incurring the physical consequences of his mistake. But from the standpoint of himself, his decision, the only one possible in his situation, was both a good decision and a prudent judgment. In law, the judge's determination regarding which facts in a case are to be admitted as material and

30. The reasoning of the court in the Nürnberg trials (irrespective of its jurisdiction) has, more than any other recent event, thrown into clear relief the issue of "is" and "ought" in law.

31. 1-2 ST 57, 4-6; 2-2 ST 47, 8.

32. 1-2 ST 17, 3, 1.

33. 1-2 ST 19, 3, 2; 1-2 ST 57, 5, 3; 1-2 ST 63, 2, 3; 1-2 ST 65, 2.

which excluded as immaterial is many times a prime example of prudence, not science, in action in daily lawmaking.

Source

The source of law for Aquinas is principally legislation, although decisions by judges and customs established by the people also play their part. For law is made mainly by the people or by their representatives who have been given public authority.³⁴ Only such persons are capable of directing actions which are related, immediately or mediately, to the common good.³⁵ For this reason those particularly charged with the care of the common welfare have the special duty of steadily desiring the common good.³⁶ Legislators should be ready to change laws when it will benefit the common good. Such changes, however, should not be made hastily but with caution, since laws derive much of their efficacy from their habitual observance by the people. Hence, the habits that the people have formed of obeying a certain law should not be broken except for reasons that clearly benefit the public welfare.³⁷

The people also make law by establishing customs.³⁸ They have the basic authority to make law and their directive judgment regarding something as necessary for the common good is law providing it is clearly manifested. This manifestation is made through the repeated actions of custom. For external actions make known the internal acts of reason and will. The constantly repeated actions of the people then, constitute the promulgation of custom-law.³⁹ If the custom is established notwithstanding a statute to the contrary, the custom may render the statute nugatory or require a particular construction of it. In such a situation the toleration of the custom by the lawmaking representatives of the people is tacit approval and implicit adoption of the custom as law.⁴⁰ Hence, custom may make law, interpret it or

34. 1-2 ST 90, 3; 1-2 ST 91, 1; 1-2 ST 97, 3, 3.

35. 1-2 ST 96, 3.

36. 1-2 ST 19, 10; 1-2 ST 58, 5; 2-2 ST 47, 7.

37. 1-2 ST 97, 2.

38. 1-2 ST 97, 3, 2. There may be those who have difficulty in seeing custom as a source of law, especially if they have adopted Austin's view that law is a command of the sovereign to be enforced through power. If so, two facts should be recalled. First, custom is a source of law inasmuch as it determines the construction to be put upon certain parts of common and statute law. Mercantile law is an example. See *Adams v. Pittsburgh Ins. Co.*, 95 Pa. 348, 355, 40 Am. Rep. 662 (1880). Second, custom taken as a body of governing regulations, such as it is especially among primitive peoples, has its own form of punishment which in effect is legal sanction. Such are the sanctions of ridicule, discrimination, ostracism and exile which can mean death, and the like. This striking fact, born out by anthropological and ethnological data, has caused a realization of the inadequacy of Austin's definition of law and the necessity of its abandonment. See GLUCKMAN, *THE JUDICIAL PROCESS AMONGST THE BAROTSE OF NORTHERN RHODESIA* xiii-xvii (1955).

39. 1-2 ST 97, 3.

40. 1-2 ST 97, 3, 3.

abolish it.⁴¹

Judges also, as mentioned, make law. Adjudication by someone with public authority is necessary for the settlement of disputes among litigants,⁴² when they are not able to compose their differences among themselves.⁴³ The very title judge⁴⁴ implies the determination of what is just.⁴⁵ The judge is the interpreter of what is just; he is "living justice."⁴⁶ One of his main qualifications, therefore, is that he be capable of judging rightly.⁴⁷ His prudential decision regarding what is just, if it is not to be arbitrary, must be reached according to written laws, for these embody both natural and positive rights.⁴⁸ Such a procedure is the application of written law to a particular case and the judge's decision can be looked upon as a particular law concerning some particular fact.⁴⁹ And because it is public authority that is being exercised in both legislation and adjudication, the decision of the judge is to be obeyed and enforced in the same manner as the enactments of legislators.⁵⁰

The construction that a judge will give to a piece of legislation should be guided by humane discretion, because the best of enactments can not possibly include all the imaginable cases that could arise under it. Hence, where a literal construction of a statute would work harsh injustice in individual cases, the judge's decision should not follow the letter of the law. It should rather be according to equity—the intention of the law.⁵¹

Legislation is superior to adjudication, according to Aquinas, for three reasons which make interesting reading during these days of large legislatures and judicial review. First, it is easier to find a few wise men who are capable of framing right laws than it is to find many men who would be required to judge rightly in individual cases. Second, legislators deliberate at length on what is to be the content of a law, whereas judges must make decisions regarding single facts in situations that arise suddenly. It is easier for men to see what is right from a consideration of the many facets of a problem than solely from some one fact. Third, legislators judge universally and about future events, whereas judges decide about the present regarding which they are affected by love or hate or the desire to promote their

41. 1-2 ST 97, 3.

42. 1-2 ST 104, 1, 1.

43. 2-2 ST 60, 1, 3.

44. *Judex: jus dicens* (literally, "declaring what is right").

45. 2-2 ST 60, 1.

46. 1-2 ST 95, 1, 2; 2-2 ST 67, 3.

47. 2-2 ST 60, 1, 1.

48. 2-2 ST 60, 5.

49. 2-2 ST 67, 1.

50. 2-2 ST 60, 6; 2-2 ST 67, 1.

51. 2-2 ST 60, 5, 2; 2-2 ST 120, 1 & 2.

own interests. Because the living justice which should be embodied in the judge is not to be found in many men and is flexible, legislation should determine how matters are to be judged in as many instances as can be and leave as few things as possible to the decision of judges.⁵²

Sanction

The consequences or sanction of obeying and disobeying a law are the reward and punishment that ensue thereupon.⁵³ Our actions are good or bad according to whether or not they are ordered to a right end.⁵⁴ In law this is the common good. Men have the power of intelligent, voluntary free decision in their actions.⁵⁵ This decision can be affected by ignorance, violence, fear, passion and the like.⁵⁶ Inasmuch as men have freedom of decision they have dominion over their actions and are responsible for them. Hence, their actions are imputable to them as their authors. To impute the goodness or badness of actions is to praise or blame.⁵⁷

Further, our actions affect society directly or indirectly, just as "he who hurts the hand, hurts the man."⁵⁸ If the actions are good, they benefit society. If they are evil, they injure society. And because of this relation between our actions and their effect on society, justice demands a return by way of reward to those who benefit society and by way of punishment to those that injure it. This is the merit or demerit that is due for good or bad actions.⁵⁹

In this manner and to this extent there is a "reintegration of the equality of justice."⁶⁰ Those who observe the law are rewarded first and foremost by the common good that the law is intended to procure. Those who obey speed laws, let us say, are rewarded with safe driving conditions. Some laws also add specific rewards, such as bounties. Violators of speed laws are punished by the deprivation of safe driving conditions, the common good the law is designed to bring about. Further deprivations may be affixed by the law such as fine or imprisonment.

A balance is thus re-established between the violator's defiance of public authority and his eventual submission to it. He preferred his own desires, in his act of violating the law, to those of public authority. Now he is compelled to subject his desire to that of public authority insofar as he must undergo punishment, of one kind or

52. 1-2 ST 95, 1, 2.

53. 1 ST 22, 2, 5.

54. 1-2 ST 21, 1.

55. 1 ST 19, 10; 1-2 ST 1, 1.

56. 1-2 ST 6.

57. 1-2 ST 21, 2.

58. 1-2 ST 21, 3.

59. 1-2 ST 21, 3; 1-2 ST 114, 1.

60. 1-2 ST 87, 6.

another, against his desire.⁶¹ Hence, punishment is the deprivation of a good, consequent upon the violation of a law, and against the will of the violator.⁶² Such would be the deprivations, affixed by law, of property by fine, of liberty by imprisonment, of physical well-being by flogging, and of life itself by capital punishment.

In a word, a man's punishment for a violation such as we have exemplified would be twofold: first, he is deprived of the safe driving conditions that the law was designed to bring about (an intrinsic sanction) and, second, he is deprived of other goods as stipulated by law (extrinsic sanctions).⁶³ Punishment would not be necessary in human living, according to Aquinas, if it were not for the historical incident when the first man put himself beyond the law by disobeying it.⁶⁴

Obligation

Obligation, for Aquinas, is based on the necessity of a means for an end.⁶⁵ If a man desire to cross the ocean and the only means of doing so is by ship (air or water), then it is necessary that he use a ship.⁶⁶ He is free not to use a ship, but if he does not, he will not get across the ocean. It is of the very nature of duty or what is due, therefore, that there be an order of exigency or necessity of a means to the end to which it is ordered.⁶⁷ In other words, obligation in Aquinas is based on the supposition of a desired end and can be defined as the moral necessity (not physical necessity) of choosing the means necessary for a desired end.⁶⁸

At first glance this concept of obligation may appear to be purely relative and hypothetical—I am obliged to choose to take a ship if I wish to cross the ocean. As will be seen later regarding obligation, such is not the case. Obligation is ultimately absolute and categorical.

The manner in which a means may be necessary for an end varies. Some things are more necessary for good human living than others.⁶⁹ Without speed restrictions on automobile driving, safe driving conditions on streets and highways would be impossible. Without various

61. *Ibid.*

62. 1-2 ST 87, 2 & 6.

63. The simplistic confusing of all punishment with revenge or the *lex talionis* implies a failure to understand punishment in its relation to law's purpose, law's infraction and law's enforcement. This failure is largely the result of that segment of psychiatric thinking which interprets men as irresponsible beings who are not to be blamed, and therefore not to be punished, for what they do. See the *Durham* case, (*Durham v. United States*, 94 App. D.C. 228, 214 F.2d 862 [1954]) discussed under "Crimes" below. See also DAVITT, *THE ELEMENTS OF LAW* 195-216 (1959).

64. 1-2 ST 87, 7; 2-2 ST 163, 2.

65. 1-2 ST 99, 1.

66. 1 ST 82, 1.

67. 1 ST 21, 1, 3; 2-2 ST 58, 3, 2.

68. *Ibid.*

69. 2-2 ST 80.

other traffic rules, say double parking regulations, although conditions of safety would be more or less possible, they would not be so to the same degree.

GOD-MADE LAW

Laws made by human lawmakers presuppose another kind of law, that made by a divine lawmaker. The existence of the divine legislator can be known by reasoning from observable data.⁷⁰ The evident order that is observable in all things indicates that they are governed by a governor, for order wherever found bespeaks an intelligent orderer.⁷¹ But what can be known by reasoning from evidence can also be revealed and known through faith.⁷² Hence, since all men are not capable of such reasoning, the existence of the divine lawmaker has been explicitly revealed so that each and every man can know with certainty the end to which his life must be related if he is ultimately to attain happiness.⁷³

Nature

The supreme plan in the mind of the eternal lawmaker regarding the government of the universe is a law,⁷⁴ for it is a directive of all things to their proper end or good.⁷⁵ The eternal lawmaker is in a position of authority; since all things are created by Him, all things are subject to His authority and direction.⁷⁶ And because whatever the mind of God conceives is eternal and not temporal, this supreme plan of direction for created things is fittingly called the *eternal law*.⁷⁷

Promulgation

The promulgation of the eternal law occurs in two ways: *implicitly* in created natures and *explicitly* through revelation. Implicit in the dynamic nature of men, as in all living beings, are drives both for completion or perfection as well as for the means that will lead to this end.⁷⁸ Put another way, men have an urge to seek what is good in general for them and for certain elementary goods in particular that are necessary for them. These inclinations or tendencies constitute a directive principle of action intrinsic to the very nature of a thing.⁷⁹ They are a participation and reflection of the eternal law,⁸⁰

70. 1 ST 2, 3.

71. 1 ST 103, 1. See POLANYI, *THE LOGIC OF LIBERTY* 154 (1951); and his *PERSONAL KNOWLEDGE* 34 (1958).

72. 1 ST 1, 1. See GILSON, *THE CHRISTIAN PHILOSOPHY OF ST. THOMAS AQUINAS* 13-14 (Shook transl. 1956).

73. 1 ST 1, 1.

74. 1-2 ST 91, 1.

75. 1-2 ST 93, 1; 1 ST 103, 1.

76. 1 ST 103, 5.

77. 1-2 ST 91, 1.

78. 1-2 ST 91, 2.

79. 1-2 ST 93, 5, 1.

80. 1-2 ST 91, 2; 1-2 ST 93, 2.

and as such are in fact its promulgation.⁸¹ This promulgation of the eternal law through the dynamic nature of created beings is designated by Aquinas as the *natural* law.⁸²

Explicit promulgation of the eternal law is had in the revelation of the Old and New Testaments.⁸³ Such a special divine promulgation was necessary because men cannot know with absolute certainty by their natural capacities either what their end actually is or what they ought to do regarding all actions, even interior ones, in order to reach it.⁸⁴ This explicit promulgation of the eternal law, known only through faith in the One revealing, is called by Aquinas *divine* law.⁸⁵

End

The common good which is the end of the eternal law has various aspects some of which are known through natures and others only through revelation. All beings manifest in their natures an inclination to act in a manner perfective of themselves, as we have just seen. The resultant order of the universe is a common good in which all participate.⁸⁶ This master drive is for what is good for men, that is, for that object or good which will completely satisfy their desires and thereby make them perfectly happy.⁸⁷ Men's nature being the same, this end must be common to them all. Hence, this ultimate end of men is a common good.⁸⁸ What it is specifically we shall see below.

Other drives of men indicate other ends that have the nature of a common good, but which eventually are limited ends, ends related to men's ultimate end. Men have a drive to preserve themselves and their kind in existence. The resultant continued existence of the human race is a common good.⁸⁹ Men also have basic drives to live together with other men in community and to do so rationally, that is, by using their powers of intellect and will. The consequence of this is a social condition in which at least an elemental sense of justice and order prevail. This is a common good in which all share.⁹⁰

From their basic drives men have a clear and connatural knowledge that what is good for them and will make them happy is an end for which they should strive.⁹¹ But any further knowledge about what

81. 1-2 ST 93, 5, 1.

82. 1-2 ST 91, 2. Whether natural law is right reason has been the subject of some controversy. On this point see "*Law' as Knowledge of Law*" *infra*; see also 1-2 ST 74, 7.

83. 1-2 ST 91, 4.

84. *Ibid.*

85. 1-2 ST 91, 4, 1.

86. 1 ST 15, 2.

87. 1-2 ST 90, 2; 1-2 ST 94, 2; 1-2 ST 2, 8.

88. 1-2 ST 90, 2, 3.

89. 1-2 ST 91, 6, 3; 1-2 ST 94, 2.

90. 1-2 ST 57, 3; 1-2 ST 94, 2.

91. Connatural knowledge is "knowledge through inclination." 1 ST 1, 6, 3.

their end actually is or what the means of reaching it are must come through reasoning and revelation. Men can reason that eventually their drive for happiness can be completely satisfied only by something extramundane.⁹² They can further reason that the attainment of the object or good that will bring this condition about must pertain to their highest powers—intellect and will.⁹³ But how this can actually take place, men can know with certainty only through the explicit divine promulgation of the eternal law.

It is through divine revelation that men learn with certainty what the object is that will satisfy their desire for happiness and how its possession is possible. For it is through revelation that men ascertain that this object is God, who is the perfect good itself, and that the possession of God is possible for men in a manner that completely exceeds all human power.⁹⁴ Final and perfect happiness is had by men only when they meet God face to face and come to know Him as He is in himself.⁹⁵ Although the manner in which the perfect good is possessed by the individual is the same as it would be if he were the only human being in existence,⁹⁶ nevertheless, because factually it is communicated to others, this supreme good has the aspect of a common good.⁹⁷ This common good is the final end and purpose of all the directives of the eternal law.⁹⁸

Content

The content of the eternal law promulgated through nature is indicated by the demands of the basic inclinations.⁹⁹ These drives, to

It is the knowledge that we have which results from our judging, without any reasoning process, that what is in agreement with our basic inclinations or drives is good and that what is in disagreement with them is bad. 1-2 ST 58, 5; 1-2 ST 94, 2. Thus we connaturally judge, conscious of our basic drive for self-preservation, that preserving our lives is a good and not an evil. On this matter see Maritain, *On Knowledge Through Connaturality*, 4 REV. OF METAPHYSICS 473 (1951).

92. 1-2 ST 2, 8.

93. 1 ST 26, 2; 1-2 ST 3, 3, 5.

94. 1-2 ST 5, 5.

95. 1-2 ST 3, 8.

96. 1-2 ST 4, 8, 3.

97. 1 ST 60, 5, 5.

98. 1 ST 103, 2.

99. The *locus classicus* for the matter of this and the next paragraph is 1-2 ST 94, 2. Other citations will be added, however, where pertinent.

Anthropological and ethnological data abundantly attest to the existence and functioning of these drives. See, e.g., GILLIN, *THE WAYS OF MEN* 227-29 (1948); LINTON, *THE STUDY OF MAN* 133-50 (1936). Paleontological-biological evidence also attests to the presence and working in men of these dynamic inclinations and to their relation to evolutionary processes. "In man, considered as a zoological group, everything is extended simultaneously—sexual attraction, with the laws of reproduction; the inclination to struggle for survival, with the competitions it involves; the need for nourishment, with the accompanying taste for seizing and devouring; curiosity to see, with its delight in investigation; the attraction of joining others to live in society. Each of these fibres traverses each one of us, coming up from far below and stretching

which we have just briefly alluded, are: first, the master drive for what is good or perfective, that is, for that object which once permanently possessed will cause complete happiness;¹⁰⁰ and second, the drives for the fundamental requisites for attaining this end. These are: to preserve self in existence, to continue the race by sexual propagation,¹⁰¹ to live with other men in community and therein to distinguish elementarily between justice and injustice,¹⁰² and to use the power of intellectual knowledge in discovering what is true (especially regarding the origin and purpose of life) and the power of free decision in choosing what is good and will lead to this end.¹⁰³

How does a man know of these demands of his basic drives? Are they self-evident to him or does he have to reason to them? The immediate objects of the inclinations are known without a reasoning process.¹⁰⁴ They are known by connatural knowledge. Hence, happiness, self-preservation, sexual union, just communal living, knowledge and self-direction are known as good and not as evil by all men who are from the medical viewpoint normal human beings. How each of these objects is to be sought in individual instances, it should be noted, is a matter for reasoning, as is demanded by the drive for knowledge and self-direction.

The immediate objects of the basic inclination or drives that are known connaturally and with certainty may be said to pertain to the natural law absolutely, while other mediate objects that are known by means of a reasoning process and with the possibility of error, pertain to it relatively.¹⁰⁵ Hence, all men know at least that much of the eternal law with certainty and with their natural powers

beyond and above us. And each one of them has its story (no less true than any other) to tell of the whole course of evolution—evolution of love, evolution of war, evolution of research, evolution of the social sense." TEILHARD DE CHARDIN, *THE PHENOMENON OF MAN* 179 (Wall transl. 1959).

100. 1-2 ST 5, 8.

101. 1-2 ST 91, 6, 3; 1-2 ST 100, 11, 3.

102. 1-2 ST 94, 5, 3; 2-2 ST 57, 2.

103. 1-2 ST 94, 4, 3. These drives are an essential part of men's nature. They have to do with men's existence and with what is good and perfective of men. They are steady and definite in every man. To be carefully distinguished from these essential drives are accidental tendencies to evil. These vary with individuals and are not constant. The proclivity to steal or murder is not definite in every individual man, as is the drive for self-preservation, as even anthropological findings bear out.

The influence of Immanuel Kant has been greatly responsible for the attitude, prevalent during the last three hundred years, that the physical and biological drives of a living being were not to be considered as indications of what was good for that being. See KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* 57-58 (Paton ed. 1947). But this attempt to "purify" philosophy and law of everything empirical and to rule out actual means-ends relationships could not but result in the empty formalism that lawmen especially have found so ineffective in dealing with day to day fact situations.

104. 1-2 ST 94, 2; 1-2 ST 100, 1.

105. 1-2 ST 100, 1; 1-2 ST 100, 11. See also 1-2 ST 91, 4.

alone which is promulgated in the common principles of the natural law.¹⁰⁶

But at this juncture a distinction of vital importance for the understanding of this matter must be made. Do all normal men connaturally recognize the demands of their basic drives as being also demands of the eternal law? Does an atheist or a primitive Ifugao, who are normal men from the medical viewpoint, recognize in their basic drives the natural promulgation of the eternal law of God? Obviously not. For in order to come to such an understanding they would first have to reach the conviction that God exists and that He is a creator-lawmaker. Their minds may change, of course, and they may eventually come to this realization. Failing this, they can only view the demands of their nature as normative directives which oblige because they express an ordering or means necessary for an end—what is good for them. The demands need not be viewed as formal demands of law in order that their obligatory force be recognized.¹⁰⁷

When it is said, then, that the connatural knowledge every man has of the basic demands of his nature is actually a natural recognition of the demands of the eternal law, it must be remembered that such an insight implies the vantage point of a conviction already reached that the eternal lawmaker exists and that in every created nature, including that of the atheist and primitive, the promulgation of His eternal law is recognizable. Only a man who is convinced that God exists as creator and has philosophized however rudimentarily on this fact, can see in the basic drives the natural promulgation of the eternal law. The working of the eternal law in its dynamic promulgation in natures is always there, but it is not always identified as such by all men.

The content of the eternal law as promulgated through divine revelation is clear and explicit. It includes the decalogue and the added precepts. Thus, for example, to the commandment regarding the keeping of the sabbath day are added the ceremonial precepts. And to the commandment concerning theft are added the precepts concerning usury and fraud.¹⁰⁸ Knowledge of these directives is had solely through faith. Faith, be it recalled, is an assent of the mind to a proposition, not because of evidence, but because of credibility of the authority of the person presenting the proposition.¹⁰⁹

106. 1-2 ST 93, 2.

107. But unless the demands are ultimately seen as related to the eternal law, the rational (men) would have to be considered as receiving direction from the irrational (natures). The rational is seen to be guided by the irrational only when the ordered drives of natures are recognized as an expression of the divine mind's plan of creation.

108. 1-2 ST 100, 11.

109. 2-2 ST 1, 4. See note 2 *supra*.

Source

The source of the eternal law is, then, the divine lawmaker. It is God as governor of the universe.¹¹⁰ As creator of natures with their dynamic inclinations He is the source of the eternal law naturally promulgated;¹¹¹ and as revealer in the Old and New Testaments He is the source of the eternal law divinely promulgated.¹¹²

Sanction

The sanction for observing or violating the eternal law is the gain or loss of its end. This reward or punishment, then, is intrinsic to the means-end relation of the law rather than extrinsic and affixed as further inducement to keep the law,¹¹³ as may be the case in man-made law.

The sanction of the eternal law naturally promulgated is the gain or loss in varying degrees of the goods of self-preservation, the propagation of the race, community living with a prevailing sense of justice, and the acquisition of knowledge and the exercise of free decisions.¹¹⁴ The reward for observing the eternal law divinely promulgated is all these goods and beside as a final reward the vision of God permanently possessed.¹¹⁵ The punishment for violating this law is the loss of these goods in varying degrees and the ultimate loss of the possibility of union with God forever.¹¹⁶

Obligation

The obligation of the eternal law rests on a means-end basis. As promulgated through created natures, the eternal law expresses itself in the basic drives of all beings¹¹⁷—whether recognized as such by the individual or not as explained above. These inclinations, inasmuch as they are for means and ends perfective of beings, bespeak the necessity of these means for these ends.¹¹⁸

Such a necessity need not be promulgated in a grammatical proposition only. Symbols, for instance, also convey such an ordering. A large brilliantly illuminated arrow directing me to drive to the right at the beginning of a divided highway is as much an expression of a means necessary for an end as any grammatically expressed proposition, even if I do not know it represents lawmaking authority. It could conceivably have been put there by public minded neighbors who had seen too many accidents occur in front of their homes in

110. 1 ST 103, 5; 1-2 ST 90, 1; 1-2 ST 93, 1.

111. 1 ST 103, 8; 1-2 ST 91, 2.

112. 1-2 ST 98, 2; 1-2 ST 106, 1.

113. 1-2 ST 21, 3-4; 1-2 ST 114, 1-3; 1-2 ST 87, 1-8.

114. 1-2 ST 94, 2.

115. 2-2 ST 175, 3, 4.

116. 1-2 ST 87, 3-4.

117. 1-2 ST 91, 2.

118. *Ibid.*

the absence of proper action by a lax highway commission. But the assumption is that the arrow is an expression of law and pleading ignorance thereof would hardly constitute a defense if I am arrested for disobeying the directive and driving down the wrong side of the highway. So also do drives or inclinations express an ordering.

The necessity of means for an end, as we have seen, is the basis of natural obligation,¹¹⁹ which in turn is the ground for the obligation of all man-made law.¹²⁰ For it is in the first connatural judgment the mind makes regarding action, namely that what is good for me is to be sought, that the necessity of means to end is first recognized by the human mind.¹²¹

Obligation, as noted above, may appear at first sight to be relative and hypothetical—I ought to choose to eat, *if* I desire to preserve my life. But obligation is not relative and hypothetical if it is anchored in an absolutely and categorically desired end. Obligation is, as we have seen, the moral necessity of choosing means necessary for a desired end. But the over-all end of my actions as determined by my master drive is desired absolutely and categorically.

My master drive determines that I cannot but desire and seek what is good for me. According to the way I am structured, whenever I act it must be under the aspect of being for this end. The good is that which is necessary for my self-development or happiness. Implicitly, then, I connaturally judge that I must do whatever is necessary for this end. And because this end is desired with physical necessity and with no choice on my part,¹²² obligation which is based thereon is absolute and categorical.

But how do I know what is good for me, and how do I know what will lead to this end? My other basic drives indicate certain elementary actions that are good and necessary for my self-development. One of these is my drive for self-preservation. Since I connaturally judge that whatever I have a basic drive for is good and necessary for me, I recognize without reasoning that I should preserve my life. (Even when a man has brought himself to the point where he thinks that self-destruction is “good” for him, it is a matter of observation that the drive for self-preservation and a realization that it is a necessary good for him persistently assert themselves up until his act of self-destruction. This is why some degree of inward struggle always accompanies suicide in a medically normal person.) Hence, I am obliged absolutely and categorically to use the means necessary for the preservation of my life.

119. 1 ST 82, 1; 2-2 ST 58, 3, 2.

120. 1-2 ST 93, 3.

121. 1-2 ST 94, 2.

122. 1 ST 19, 10; 1-2 ST 10, 1.

Such likewise is the case regarding all the other possible actions of my life, for they inevitably are either good and necessary for me or they are not. In many instances I will have clear directives, whether these come from the basic drives themselves or from man-made statutes and decisions or from divine revelation. But in many situations I will have to rely on my own reasoning for an evaluation. I am obliged to use some kind of ship, if I desire to cross the ocean, to revert to the example mentioned above. But why should I desire to cross the ocean? Depending principally on the reason why I am making the journey, crossing the ocean could be for me an evil, a good but not necessary, or a necessary good. If, whatever be the reason, I judge that crossing the ocean is good and necessary for me, I am obliged to desire it and to employ means necessary for its accomplishment for I am structured to seek what is good for me and I judge this action to be necessarily related to this end. I am physically free to refuse to do what I recognize is necessary for this end, but I am not physically free to decide what this, my end, is.

The obligation of the eternal law divinely promulgated rests on the same means-end basis. The end is clearly known.¹²³ And the means of obtaining this end are also precisely known in the revelation of the Old and New Testaments. Because of this relation of what is commanded to men's end, the commands and precepts of revelation oblige.¹²⁴

In sum, then, regarding obligation we can say that all men who are normal human beings judge connaturally the obligatory character of the order of means to end expressed in their basic drives, whether they relate this to the eternal law or not, as mentioned above. Some men, who ponder on the nature of men and the world and come to a conviction that an eternal lawmaker exists, may see the drives of nature as the promulgation of the eternal law. Finally, all men who believe in divine revelation can, without too much difficulty, attain this comprehensive view of natures as related to the divine plan of creation.

INTERRELATION

The relation of man-made law to God-made law promulgated in natural drives is one of complement and therefore implicit dependence. From the promulgation of the eternal law in natural drives men know of certain elementary and common principles of action, as we have seen. These principles, while furnishing an elementary guide for human activities, still must be applied to individual cases. This is done either by deducing conclusions from these principles

123. 1-2 ST 3, 8.

124. 1-2 ST 99, 1; 1-2 ST 107, 2 & 3. See also 1-2 ST 21, 1.

(from the principle that one man should not harm another, the conclusion can be drawn that one should not kill another) or by adapting them to particular situations (from the principle that the evil-doer should be punished, a more specific determination must be made regarding what kind of punishment should be administered in particular instances).¹²⁵ Because of the great difference in the needs of various peoples, the common principles cannot be applied to all men in the same way. Hence, there will be a great diversity of man-made law among various peoples.¹²⁶

In view of the role played by man-made law in the application of the naturally known common principles of action, those principles become the very fabric of statutes and decisions, whether recognized as such or not. The concept of obligation itself in man-made law derives from the necessity of means to end expressed in the basic drives, as already noted.¹²⁷ All areas of man-made law have their roots in the demands of the basic drives. Legal enactments regarding health and safety, sex and domestic living, ownership and contract, to mention but three areas of law, take their meaning and value from the fact that the preservation of life, the use of sex, the distinguishing of "mine" from "thine" are naturally recognized as good and not as evil. No legislator or judge has ever found it necessary to establish the rightness of these actions in general by legal decree. Men connaturally judge, in law and otherwise, that these actions are not evil in themselves but rather are good.¹²⁸

The relation of man-made law to the eternal law divinely promulgated is one of the relatively certain being clarified by the absolutely certain. Besides the eternal law naturally known and its complement in man-made law, a more clear and precise divine revelation of the eternal law was necessary for four reasons: first, the actual end of men cannot be known by natural powers and a higher directive is needed; second, human judgment regarding contingent and particular matters is uncertain and liable to error and absolute certainty is necessary in these matters; third, human directives can only cover the exterior actions of men and their interior actions as well must be directed; and fourth, human law cannot pretend to punish all evils for if it did so it would do away with many good things, and all evils must eventually be punished.¹²⁹

The comprehensiveness of Aquinas' thinking on law becomes evident at this point. The primordially of the eternal law naturally pro-

125. 1-2 ST 91, 3; 1-2 ST 95, 2.

126. 1-2 ST 95, 2, 3.

127. 1-2 ST 94, 2; 1-2 ST 99, 1.

128. 1-2 ST 94, 2.

129. 1-2 ST 91, 4.

mulgated in relation to man-made law, the necessity of providing man-made law to complement this naturally known eternal law, and the final insufficiency of both of these which is remedied through the divinely promulgated eternal law, all attest to the sweep of his thought in this most vital matter.

OBSERVATIONS AND COMMENTS

At this juncture certain remarks seem called for regarding Aquinas' treatment of law. Some of these will be by way of general observations, others in the nature of specific comments.

A cursory glance at the references given above in our précis of Aquinas' position will readily show that they have not been drawn exclusively from the relatively small section of his work entitled "On Laws."¹³⁰ This is the section that has been frequently reprinted and which most American lawmen read when they desire to know something of the thought of Aquinas on law. They do not realize that anything like a comprehensive understanding of this man's position on law can be achieved only by going far beyond this section to other parts of his entire work. This is understandable since his thinking on law is organically integrated, as it should be, with his thinking regarding the meaning of existence and of human nature.

The nature of the common good and of obligation, for example, is nowhere developed in specific treatments by Aquinas. There were good reasons for this. The common good was accepted in his time as a "dictum authenticum," that is, a valid concept that needed no verification. It was something like the notion "common welfare" is today. But unlike the broad and vague notion of "common welfare," the idea of the common good has a concise and technical meaning which could be and was stated by Aquinas. This was not done, however, in any one locus. Only by ranging over the entire works of Aquinas, where the common good is found discussed obiter in relation to other subjects, can anything resembling a rounded idea of the common good be obtained.

Similarly, there is no explicit treatment of obligation in the works of Aquinas and understandably so. Law for him entailed the relation of means necessary for an end. If an end was desired and a certain means was necessary to attain it, one would be obliged to choose this means in order to reach the end, as we saw. In such a view, obligation is no problem and, once again, Aquinas touched on it obiter when treating some related matter. Obligation becomes a problem only when the objective relation of means to end grounded on a fact situation is blocked off from functioning as a basis of obligation, and

130. 1-2 ST 90-96.

obligation is said to arise solely from the subjective will's "ought for ought's sake."¹³¹ Hence, a knowledge of the meaning of obligation in Aquinas can be acquired only by going beyond the section entitled "On Laws."

More pointedly, however, certain comments need to be made. These will be only briefly mentioned here rather than being extensively developed, since the lengthy treatment which their complexity demands would be out of place in an article of this scope. These comments will have one thing in common: they will call attention to differing ways in which Aquinas uses the word "law."

"Law" as Directive Judgment

First, Aquinas' main division of law is into eternal law, natural law, human law, and divine law.¹³² But, as we have already mentioned above and will note again below, he explains both natural law and divine law as promulgations of the eternal law. If this is the case, "law" is being used in his principal division in two different senses: one refers to human and eternal law, the other to the two ways in which the eternal law is promulgated, namely, natural law and divine law.

The use of the word "law" as a designation for both man-made and God-made law is the division of "law" that we have employed in this article. If law is an ordering or directive judgment of reason, the main distinction of law should be between those directive judgments that are formed in the minds of men and those that are formed in the mind of God; for the most fundamental division possible of existing things is that between created beings and uncreated being, which in this context implies the distinction between created minds and uncreated mind. On this basis, the first and controlling division of law is into man-made or human law and God-made or eternal law. In each of these instances, the word "law" is used to designate a *proportional* fact situation in which there is an actual similarity between the directive judgment in the mind of men and the directive judgment in the mind of God. There are, obviously, proportional differences also such as the differing sources of lawmaking authority and differing common goods.¹³³

"Law" as Promulgation

Second, if natural law and divine law are called "law," in what sense is the word used? What Aquinas designates as "natural law" is, according to his own explanation, the natural promulgation of the

131. See KANT, *op. cit.* *supra* note 103, at 68.

132. 1-2 ST 91.

133. On the analogy of law see DAVITT, *THE ELEMENTS OF LAW* 150-52 (1959).

eternal law.¹³⁴ What he titles "divine law," again on his own accounting, is but the revelatory promulgation of the eternal law.¹³⁵ But can the promulgation of a law be termed "law"; and, if so, with what meaning?

When Aquinas gives his definition of law, he seems to include promulgation as part of it.¹³⁶ Promulgation, however, as he explains in this same article, is the "application" of a rule to individuals according to which they are to be guided. This application takes place when the rule is made known to them.¹³⁷ Promulgation, then, as explained by Aquinas and in spite of the fact that he seems to include it in the definition of law, is not part of the essence of law. What is applied must be already constituted what it is before it can be applied, as already noted. For instance, a cane is a cane before it is applied or used by an old man.¹³⁸ Promulgation, therefore, is but a prerequisite condition for a law to become an effective guide.¹³⁹

Accordingly, if the natural promulgation of the eternal law is called "law" (natural law) and the revelatory promulgation of the eternal law is called "law" (divine law), the word "law" in these instances is not being used in a sense based on proportional facts as is the case concerning man-made (human law) and God-made law (eternal law). But because of the relation of promulgation to the directive judgments of lawmakers, as the necessary condition for their efficacy, promulgation does in a way partake of the effectiveness of law. For this reason "law" is *attributed* to promulgation as when we call the written statute "law." When "law" is used at all regarding promulgation, then it has to be understood as being attributed to it.

"Law" as Knowledge of Law

Third, besides saying that "natural law" refers to the inclination through which the eternal is naturally promulgated, as we saw above, Aquinas also says that "natural law" is the "light of natural reason" by which we discern what is good and evil.¹⁴⁰ This apparently inconsistent explanation of the nature of "natural law" presents a problem. To call our reason (by which we know the naturally promulgated eternal law) "law," is to extend the use of the word "law" beyond the directive judgment of the lawmaker, and beyond its promulgation, to the subject's knowledge of the law. But in what sense can the word "law" be used to denote the subject's knowledge

134. 1-2 ST 91, 2; 1-2 ST 93, 2; 1-2 ST 93, 5, 1; 1-2 ST 94, 2; 1-2 ST 94, 3.

135. 1-2 ST 91, 4; 1-2 ST 91, 4, 1; 1-2 ST 98, 3, 3.

136. 1-2 ST 90, 4.

137. *Ibid.*

138. 1-2 ST 16, 1; 1-2 ST 17, 3.

139. 1-2 ST 90, 4. See also 2 LOTTIN, *PRINCIPES DE MORALE* 97 (1947).

140. 1-2 ST 91, 2; 4 AQUINAS, *COMMENTARY ON THE SENTENCES OF PETER LOMBARD* 33, 1, 1 (1256).

of the law?

When I learn what the traffic law is from its promulgation through a roadside sign or symbol such as mentioned above, can the judgment I thereby make be termed "law"? It would seem not. My knowledge of the law is not the law. Hence, if the connatural knowledge I have of the eternal law expressed in the ordering of my basic drives is termed "law," it is in a sense that has no relation to the manner in which "law" is used in ordinary legal parlance. At this point, communication breaks down between those who use the word in this sense and the legal mind.

Why, it should be asked, did Aquinas say in one place that natural law is the light of reason and in another place that it is the basic inclinations? This seeming discrepancy has long since been noted.¹⁴¹ Although these two meanings are interrelated, they are not the same. "Reason" refers to knowing and "inclination" pertains to seeking.¹⁴²

An answer may be that it was merely a matter of emphasis for Aquinas. Men's inclinations are rational inclinations inasmuch as man is rational and his reason is what specifies him uniquely as a man. Reason is that part of man that is like his creator. The only way that men can act is according to what they judge is good for them and it is only through a judgment of reason (with or without a syllogistic process) that men recognize an action as good or bad. Without this judgment of reason, the relation of agreement or disagreement between the action and some norm would not be recognized.¹⁴³ In this sense reason, judging with good intention, is the norm of the goodness or badness of human action and can be said to "participate" in the divine reason's lawmaking.¹⁴⁴

But if this relation between an action and its norm is not to be merely a subjective one originating solely within reason itself (as Kant said it was), it must be grounded on an objective basis, one which is outside reason and according to which reason judges. This is recognized by Aquinas. For when he explains how reason can be a rule for human actions, he says that its guide "is derived from the created things that man knows naturally" as well as from divine revelation.¹⁴⁵ And according to Aquinas himself, as we have seen,

141. See LECLERCQ, *LA PHILOSOPHIE MORALE DE SAINT THOMAS DEVANT LA PENSÉE CONTEMPORAINE* 391-392 (1955).

142. 1-2 ST 94, 2.

143. Moreover, the part that reason plays in men's lives needed stressing in Aquinas' time. There were those who felt that men's minds were either darkened by paganism or enlightened by revelation. The function of reason, especially as a prerequisite to faith in revelation, needed emphasis and Aquinas supplied this to no small degree.

144. 1-2 ST 90, 1, 1; 1-2 ST 91, 4, 1; 1-2 ST 93, 2.

145. 1-2 ST 74, 7.

these "created things" are men's basic drives or inclinations.

Men do participate in the divine reason's law-ordering, dynamically expressed in their nature, by connaturally recognizing it through their own reason and by directing their actions accordingly. But they do not participate in the divine reason's law-ordering in the sense that their own reason is a co-planner, co-creator of nature and drives, and co-lawmaker with the eternal reason. Man is not God.

"Law" as Reasoned Conclusions

Fourth, if the inclinations are not retained as the starting point of reasoning regarding the goodness and badness of human action, there will be a tendency to allow the "light" of reason to take their place. All judgments concerning the goodness and badness of human actions will be said to belong to the natural law inasmuch as these judgments depend on their relation to "reason" which is the "proper principle of human acts."¹⁴⁶ Thus, Aquinas explains, reason starts with naturally known principles and proceeds in various ways to judge in diverse matters.

Some judgments are reached immediately and with very little consideration, for instance, that parents should be honored and that no one should kill or steal. Other judgments are reached only after much consideration, for example, that the aged should be honored.¹⁴⁷ This is the basis for the traditional distinction between primary, secondary, and tertiary precepts of the natural law.¹⁴⁸ All of these judgments, not only those connaturally known through the inclinations but also those that are reached by way of reasoned conclusions from these primary judgments, "belong to the natural law."

But, as Aquinas recognizes, many of the judgments that need consideration may be in error. In fact, this is the precise reason why revelation is necessary.¹⁴⁹ If this is the case, in what sense can these reasoned conclusions be called "law"? They are not certain knowledge of the law as are the connatural judgments and even these cannot with accuracy be termed "law," as we have just seen. Further, it is an immemorial axiom that a law about which there is a doubt does not bind. The reason is that if there is doubt, the law has not been clearly and certainly promulgated. And if a law is not fully and undoubtedly promulgated to us, we cannot be expected to be obliged by it. But when error is possible in knowing what a law is, it has not been clearly promulgated.¹⁵⁰ Hence, it would seem better

146. 1-2 ST 100, 1.

147. *Ibid.*

148. On the inutility of continuing this distinction see LOTTIN, *MORALE FUNDAMENTALE* 120-125, 183-188 (1954).

149. 1-2 ST 91, 4; 1-2 ST 100, 11.

150. This is not the same as "ignorantia non excusat." The ignorance of the law which does not excuse presupposes that there exists a law that has

not to designate as "law," not only the connatural judgments by which we know the eternal law, but also the conclusions we reach by reasoning from these principles.

Rather, these reasoned conclusions should be termed what they actually are: attempts to determine what is good and bad regarding human actions, say using nuclear bombs, in the absence of clear and specific directives. These judgments should be in conformity with divinely revealed eternal law and with the statutes and decisions of human law. But in the absence of such specific directives or of a knowledge of them, all that men can do is reason, deductively and inductively, from the connaturally known elementary demands of their basic drives and conclude what seems best to them in particular situations. These judgments are obligatory on individuals, not because they represent certain knowledge of a law, but because they are the only norm of goodness or badness the individual has according to which he may guide himself. This norm he must follow since for him personally in many circumstances there is no other.

This is the situation whether the reasoning be done by private persons or by those with public authority. The conclusions that legislators and judges arrive at when reasoning from the basic demands of men's nature can be, upon occasion, no more certain and free from error than those of the people who elected them. For, although the people can give their representatives the authority to govern them politically, they cannot give them what they do not have, namely, the insight always to reach reasoned conclusions that are free from error. The authority which the people have to direct their own actions, which is delegated in part to their representatives, does not derive from a certain knowledge of the minutest possible demands of their nature. Rather it comes from the necessity of determining, in the absence of other guides as we have just noted, what is best in a given situation.

It can therefore be said that the conclusions reached by legislators and judges take on the aspect of law because they are embodied in a prudential judgment which is a legal directive of the people concerning means necessary for their common good. For this purpose the people have delegated lawmaking authority and it is many times by this type of judgment alone that lawmakers can guide the people. Although as far as the lawmakers themselves are concerned their judgments are rectified by conformity with right intention, as we

been properly promulgated and concerning which this particular individual is ignorant. Although he may not be morally guilty of committing a crime, nevertheless on account of evidential expediency he cannot be held to be legally excused. On the other hand, the principle "lex dubia non obligat" calls in question the very existence of the law. If the law existed, it can be assumed to have been properly promulgated. Otherwise, it does not oblige.

saw above, nevertheless in reference to the fact situation at hand these judgments are quite often only relatively certain and may quite possibly be in error.

It should be noted that Aquinas does not attempt to show how judgments regarding killing, stealing, honoring parents and the aged, and the like, are deducible from the certainly known principles which he has already established as the point of departure for any reasoning concerning the goodness or badness of human activities.¹⁵¹ It is conjecturable that if he had made this attempt, which would have meant keeping the demands of the drives in center focus, a more careful statement would have resulted regarding the status of conclusions reached by the reasoning of individuals as natural "law."

Aquinas, however, did not have the opportunity to revise this section of his work. He died a few short years after it was written. As has been remarked, "It is unfortunate for the clarity of his views toward natural law that Aquinas, who died at the age of forty-nine (or forty-seven), did not live longer so as to be able to elaborate the full implications of his philosophy of the natural law."¹⁵²

Another result of keeping the inclinations fixedly in view would undoubtedly have been a more limited concept of natural law which, taken in its strict sense, would be confined to those judgments that are known connaturally from the basic drives. Such judgments are common to all men who are normal according to medical standards and therefore have universal validity. If, on the other hand, the accent is put on "reason," this can be wrongly interpreted and "natural law" can come to mean what is common among "reasonable" (or even civilized) people. Such an interpretation could be the explanation of why more candid and critical attempts have not been made to ascertain what the universal judgments of the natural law actually are.

It has been said that emphasis on "reason" has

for two thousand years tempted thinkers away from the search for universal elements. The trouble is that therewith our own interpretation of what is reasonable decides the outcome of our research in advance. We are naturally always inclined to consider our own ideas about justice reasonable and those of others that conflict with ours, unreasonable. Whenever reasonableness is the issue, we cannot decide it in an intersubjectively plausible manner by referring to our own reason Therefore it is most important to stick to the identification of those elements in the sense of justice that are universal and invariant in *all* people, and not only in those whom we call reasonable.¹⁵³

151. 1-2 ST 94, 2.

152. BROWN, *THE NATURAL LAW READER* 100 (1960).

153. BRECHT, *POLITICAL THEORY* 394-395 (1959). See also 386, 490, 492.

"Blue-Print" Theory

Further, it is only when the word "law" is restricted to its proportionately factual use regarding man-made and God-made law and to its attributive use concerning their promulgations, that the "blue-print" notion of natural law fostered by Locke and others can be avoided.¹⁵⁴ This is the idea that natural law is some sort of a formal code of specific ideal precepts, deducible with mathematical certainty, which human law must match and reflect if it is to be just.

Such a "natural law" is actually moral philosophy turned legal discipline. Instead of recognizing man-made law as the complement and development of relatively few certain moral principles, men began to look on the conclusions deduced from these principles as "original" law in conformity to which the provisions of man-made law were a duplication or a "copy." The view was that somewhere behind or above legal rights, which pertained to "law," there was an explicit code of natural rights, which was a matter of "morality." Such thinking could not but produce a sharp distinction between law and morality.

It must be admitted that sometimes the interpretation put on Aquinas' natural law can sound like that of Locke. Such is the case, for instance, when it is said that natural law is "a code levied on all men"¹⁵⁵ or that "by examining his nature with the light of reason man develops the natural law into a formal code of moral principles."¹⁵⁶ It may be true that Aquinas' use of the word "law" regarding reasoned conclusions has misled some into holding the "formal code" interpretation. But his express recognition of the possibility of error in these conclusions should be enough to alert the perceptive reader to be wary of adopting any such position.

In Aquinas' mind natural law, far from being a mechanical archetype of man-made law, is rather its organic *élan vital*. The implications of the natural demands of men's nature are "open" to a continuous evolving through the human legal process. Aquinas' position is, therefore, "far from an abstract rationalism which seeks to deduce by reason a solution for every specific concrete question. Thus there is plenty of scope in his construction for a sociological-realistic form of legal politics."¹⁵⁷

In sum, as far as this "comment" goes, Aquinas uses the word "law" in reference to four different data: the directive judgment of law-makers (human and eternal law), the promulgation of this judgment

154. See LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING, bk. 4, c. 3, n. 20 (Pringle-Pattison ed. 1934); GROTIUS, DE JURE BELLI AC PACIS, bk. 2, c. 20, 43, 1 (Whewell ed. 1853).

155. HIGGINS, MAN AS MAN 115 (1949).

156. FAGOTHEY, RIGHT AND REASON 187 (2d ed. 1959).

157. ROSS, ON LAW AND JUSTICE 245 (1959).

(natural law and divine law), the knowledge acquired without reasoning that we have of the eternal law naturally promulgated ("primary knowledge of the natural law"), and conclusions reached by us through reasoning from these primary principles ("secondary and tertiary knowledge of the natural law"). From our above examination, it is evident that the word "law" is used analogously and validly in the first two instances; proportionately so regarding man-made and God-made law, attributively so concerning the promulgation of law. Its use in the other two instances is such that, as far as the legal mind is concerned, no communication takes place.

APPLICATIONS

One of the most important applications of Aquinas' philosophy of law relates to its main presupposition. This is his philosophy of human nature according to which men are essentially composed not only of matter but also of spirit with its two powers of intellect and will. This unique nature sets men apart from all else in creation. Each man is a distinct, separate entity with a dignity peculiar to him and to him alone.¹⁵⁸

Individual and Society

When the question is raised, then, whether the individual man or society is the more important and whether man-made law should favor the one or the other, the basis for an exact answer is at hand. Inasmuch as men need and must work for the temporal, political common good of peace, security and the like, society is more important and individual men are subject to the laws that are designed to bring these ends about.¹⁵⁹ But insofar as by their very nature men have a destiny that transcends the temporal and the political, individuals are more important than society and should not be restrained by man-made law from pursuing those activities that pertain directly to this higher and ultimate end.¹⁶⁰

This interpretation of the nature of men is the lode star that guides all thinking regarding life and law. Aquinas himself did not draw the implications of his philosophy of law regarding the various areas of law as we know them today, for this was not his purpose. But because it is fairly obvious what some of these applications would be at least in broad outline regarding certain controlling points in law, they will be briefly indicated.

Constitutional Law

Constitutional law, besides establishing the type of government

158. 1 ST 75-83; 1-2 ST 2, 8; 1-2 ST 3, 3.

159. 1-2 ST 21, 3, 2; 1-2 ST 90, 2; 1-2 ST 96, 4.

160. 1-2 ST 2, 8; 1-2 ST 3, 4; 1-2 ST 21, 4, 3.

we have and fixing the limits of its authority, is also concerned with the protection of the rights of individual citizens. The method by which this is accomplished is principally "due process." In its procedural aspect, due process presupposes the substantive claims of individuals. In its substantive aspect, it attempts to strike a balance between private claims and public needs. But what are the grounds on which rest the validity of the so-called "inalienable" rights of individuals?

According to the thought of Aquinas, the grounds for the "inalienable" rights of men can be found in the basic drives of their nature which demand certain elementary things as necessary for men's self-development and eventual perfection. In other words, the "inalienable" rights of men do not derive from a contract made by men when they supposedly transferred from a hypothetical "state of nature" to a state of political government.¹⁶¹ They derive, rather, from the demands of men's political nature as it is now and always was. The demands of men's nature (and in this sense "natural law") naturally coexist with man-made law. They are not in unnatural competition with it. They are in fact its leitmotiv.

Nor do the "inalienable" rights derive from some sort of basic norm arrived at by international agreements which must be kept.¹⁶² For the question can be immediately raised: why should agreements be kept? The answer must be either that they should be kept simply because they should be kept, which is no answer at all; or it must be that keeping agreements is necessary for the common good of men as demanded by their very nature.¹⁶³ It is only when an interpretation of human nature such as that of Aquinas is rejected, that men are driven to such strained and far-fetched notions concerning the origin of men's natural rights.

Criminal Law

In criminal law the thrust of Aquinas' philosophy of man and law can be seen most clearly. This is especially true in the light of certain contemporary trends such as those represented in the *Durham* decision.¹⁶⁴ The thinking of the court in this case works dead against the grain of Aquinas' entire thought. The underlying assumption of this decision is that, for all practical purposes, only the mentally defective or diseased commit crimes.¹⁶⁵ This assumption rests on the further one that the "modern science of psychology" has ruled out as

161. See HOBBS, *LEVIATHAN*, pt. I, c. 13 (Molesworth ed. 1839); LOCKE, *TWO TREATISES ON GOVERNMENT*, 2d Treatise, c. 2, 6 (Cook ed. 1947); ROUSSEAU, *THE SOCIAL CONTRACT*, bk. I, c. 6 (Watkins transl. 1953).

162. See KELSEN, *GENERAL THEORY OF LAW AND STATE* 369 (1945).

163. See *Contract Law* below.

164. *Durham v. United States*, 94 App. D.C. 228, 214 F.2d 862 (1954).

165. 214 F.2d at 875, 876.

passé the interpretation of men as beings who, although perfectly sane, can be led by the condition of their will and desires to choose knowingly and freely to go against what their reason judges to be the right thing to do.¹⁶⁶

As we have already seen above in discussing the sanction of man-made law, Aquinas holds that men are responsible beings because they have the power of knowing and freely deciding. Actions that are knowingly and freely decided are caused by their doers, they belong to them, and are therefore imputable to them as good or bad. Sanity, like knowledge, is a prerequisite condition for a crime. A lack of it, insanity, is not a cause of crime but may rather be the reason why the accused is not guilty of committing a formal crime at all. Factors such as ignorance, violence, fear, anger, passion, compulsions, mental defect and the like may affect both knowledge and the freedom of decision. Insofar as they do, responsibility and imputability are lessened or completely nullified. Absolute freedom is not required and relative freedom can be sufficient.

But this does not mean that every time a crime is committed one of these factors must have been at work. When this is the case it has to be proved, not presumed. For instance, an accused may be mentally defective but this condition will have to be established on medical evidence. What the commission of every crime does signify, however, is that the condition of the accused's will was such that he chose to put himself above the law and egotistically preferred his desires to those of society as expressed in the law. Such would be the case if the judge himself who wrote the *Durham* decision chose to violate a speed law, which would be at least a misdemeanor if not a felony under some circumstances.

The presence of mental disease is an abnormal condition. The presence of a lawbreaking disposition in our will is not a disease nor is it abnormal. It is as normal as is a law-abiding state of will, though obviously of an entirely different value. To give the word "normal" a statistical meaning in this context and to label the nonconformist a "sociopath," is to betray a superficiality unworthy of reputable psychiatry.

Tort Law

In torts also the force of Aquinas' thought can be seen in relation to a contemporary tendency and again this is in reference to the root problem of responsibility. This is logically consistent since "the general principles of criminal and civil liability are the same . . ." ¹⁶⁷ Absolute or strict liability, where the ability to pay is often a relevant

166. 214 F.2d at 871.

167. HOLMES, THE COMMON LAW 44 (1881).

factor in determining liability, plows head-on against the current of Aquinas' thinking. This theory assumes that in cases where there is no intended harm or negligence, liability cannot be related to any blameworthy act on the part of the tortfeasor. He has committed no fault, such as occurs when there is intended harm or negligence. In undertakings such as keeping dangerous animals, using high explosives or poisonous sprays, or bringing upon land dangerous quantities of substances not naturally there, liability is said to be "without fault" and must be related, not to the defendant's "fault" which does not exist, but to some extrinsic factor such as his ability to pay.

Again, as we have seen above, for Aquinas, responsibility originates in the doer's decision to perform the action. He is thus the cause of the act and of what follows as a result of the act. On this basis rests his responsibility and liability. There is an intrinsic relation between liability and the decision to act. Hence, the consistent explanation from this point of view is that, although there may be no fault in strict liability cases (if there were it would be morally wrong to engage in such enterprises), nevertheless there is assumed responsibility in them. On the decision to engage in these activities and thereby assume responsibility for them is grounded the tortfeasor's liability. This, it is now conceded, is the principle of law expressed in *Rylands v. Fletcher* and not ability to pay, which appears to have been born of a misinterpretation of this famous case.¹⁶⁸

The importance of locating the grounds of responsibility in torts is the same as it is in crimes. Either it must be held that the basis of responsibility is ultimately some factor within the actor or that it is something outside him. Either it will be his knowing and free decision to do the act as explained above or it will be something like "ability to pay" in torts and "society's failure" in crimes. These alternatives represent two different philosophies of responsibility and law.

Property Law

In property law there is an assumption made in one half of the legal world that is totally rejected in the other half—that men have a natural right to private ownership especially of the means of production such as land, ore, coal, oil, gas, uranium and the like. Aquinas' position in this matter is cognate with the legal thinking prevalent in what is now termed "the free world."

First, in general it is natural for man to have dominion over things external to himself. This is why things were made. The imperfect

168. *Rylands v. Fletcher*, L.R. 3 H.L. 330 (1868). See PROSSER, *SELECTED TOPICS ON THE LAW OF TORTS* 179-80 (1953).

is for the sake of the perfect¹⁶⁹ and through his reason and will man can put them to his own use.¹⁷⁰ This he must do if he is to sustain his own life.¹⁷¹ There is, then, a common aspect to things according to which all things are made for all men.

Second, in particular it is natural for men to own things as their own for several reasons. Men work more solicitously when expending their efforts on something that is their own. This causes affairs to be conducted in a more orderly fashion. As a consequence, each man being content with his own, a more peaceful condition is ensured. For it is when things are not possessed by men as their own that quarrels arise more frequently.¹⁷²

It could be objected that according to nature all things are common to all men and that to possess things as one's own is contrary to this common ownership of goods. Aquinas explains that the natural law does not "dictate" that all things should be possessed in common and that nothing should be possessed as one's own. Rather, men recognize the practical necessity of possessing external things as their own for the reasons just mentioned and establish the institution of private ownership.¹⁷³

Third, an important qualification is added by Aquinas. Although men may possess things as their own, they must never lose sight of the common aspect of things as noted first above, that is, that all things are created for all men. Hence, men must be prepared to share what they have with others in their need.¹⁷⁴ The Marshall Plan of giving economic aid to needy countries (apart from the political motives that to some degree inspired it and the manner in which it has at times been administered) could perhaps be pointed to as an example of this principle in action on the national level.

Contract Law

Contracts, or more specifically the part played by one type of consideration in contracts, is one final area of law in which the implications of Aquinas' thinking may be indicated here, although there are many more such areas which cannot be treated within the confines of this article. Contracts are promissory agreements. Contracts are said to oblige in Anglo-American law because of consideration. Consideration, in its most important form, is the price bargained and paid for a promise. Such bargain and exchange consideration is evidence of intention to enter upon a legal contract and as such is

169. 2-2 ST 64, 1.

170. 2-2 ST 66, 1.

171. 2-2 ST 66, 1, 1.

172. 2-2 ST 66, 2.

173. 2-2 ST 66, 2, 1. See also 2-2 ST 57, 4, 2. For a further developed rationale of property, see DAVITT, *ELEMENTS OF LAW* 259-69 (1959).

174. 2-2 ST 66, 2.

designed to prevent fraud.

As is well known among lawmen, consideration is an Anglo-American contractual phenomenon. It is not part of the contract of non-English speaking countries. In these countries the doctrine of "cause," as evidence of intent to contract legally, is prevalent. The cause of a contract is taken to be the immediate end which the contractor has in view: the intent to exchange jural relations of title, claim and duty regarding some particular object. This intention obviously carries the implication of benefit to another party and, as such, is not too much different from consideration as has often been pointed out.¹⁷⁵

For Aquinas a promise is the means by which one man binds himself to another. It entails an act of reason by which one man directs what he himself is to do for another.¹⁷⁶ This mental act is manifested by words, oral or written. Words are the natural, external signs of interior mental acts as we have already noted.¹⁷⁷

The keeping of the promise that one man makes to another is a form of natural honesty and truthfulness.¹⁷⁸ If a man changes his mind and thereby redirects his actions towards the promisee otherwise than he had manifested by his words, he is guilty of a form of deception and lying. For it is unnatural for a man to signify by his words something other than what he has in his mind.¹⁷⁹ Men are social animals who owe one another whatever is necessary for the preservation of human society, and it would be impossible for men to live humanely in society unless they trusted each other as speaking the truth one to the other.¹⁸⁰ The keeping of promises is demanded, then, by the nature of men's power of speech and its relation to social needs. It is because the keeping of contractual promises is a means necessary for the common good, then, that contracts oblige.

In other words, if contractual obligation is said to derive from consideration, something outside the nature of the contractual promise itself is made the basis of the obligation. If, on the other hand, contractual obligation is seen to arise from the very nature of a promise itself, the ground of this duty is intrinsic to the nature of the contractual promise and its relation to the common good. True, evidence of the intention to contract and bind legally is necessary. Consideration can be evidence of this intent—as can cause, a writing or a seal. But taken in this evidentiary capacity, consideration is not

175. See SALMOND, JURISPRUDENCE 374 (8th ed. 1930).

176. 2-2 ST 88, 1; 2-2 ST 88, 4; 4 AQUINAS, COMMENTARY ON THE SENTENCES OF PETER LOMBARD 38, 1, 1, 1 (1256).

177. 2-2 ST 110, 3.

178. 2-2 ST 88, 3, 1.

179. 2-2 ST 110, 3, 5.

180. 2-2 ST 109, 3, 1.

the reason why contracts oblige. It is merely evidence of the intention to bind legally.

CONCLUSION

The work of Aquinas can furnish us with the firm guide lines in our thinking regarding law. As noted above, it is undoubtedly a masterful accomplishment. Nonetheless, being a pioneer endeavor it has, to use an expression of the French, the defects of its qualities. Its main outlines are solid and will stand foursquare as the test of the centuries has proved. On the other hand, clarifications of terminology are needed; adjustments are called for; details must be filled in. But the main inspiration and direction of Aquinas' thought are as right and valid today as they were the day he first put pen to paper and began to write "On Laws."

Undoubtedly one of the most important aspects of his contribution is natural law and its relation to eternal law. The vitality of natural law is shown by its history which is a series of eclipses and revivals from the Greeks to the present time.¹⁸¹ And it is important to note in this regard that "the natural law which today dominates the greater part of legal philosophy is not a revival of the eighteenth century rationalist systems, but a thread of scholasticism that has been picked up again."¹⁸²

But it must be remembered, in assessing the practical value of Aquinas, that his thought is an integral whole. It is a synthesis organically related to his philosophy of being and of man. This fact has sometimes been overlooked as when it is said, for instance, that "If we disregard the metaphysical and the dogmatic [in Aquinas], there are favorable opportunities for an understanding between this trend [Thomism] and a realistic study of law."¹⁸³ This is much like saying that if we only prescind from the economics and the dialectical materialism in Marxism there are great possibilities for accepting this ideology as a way of life.

No, the thinking of Aquinas, like that of any consistent man, must be taken in its entirety if it is to be comprehended at all. More discerning are the remarks that "what has really been revived is a strong sense of the need which gave rise to the doctrine of natural law in the past: the need for a standard of justice by which to evaluate the positive law, a standard firm and yet not subject to the criticism which destroyed the older natural-law doctrines" and that this is "a broad philosophical problem" to which only a tradi-

181. See BRECHT, *POLITICAL THEORY* 138-142 (1959).

182. ROSS, *ON LAW AND JUSTICE* 255 (1959).

183. *Id.* at 245.

tion such as that of Aquinas "has a coherent metaphysical answer."¹⁸⁴ It is only when Aquinas is approached on this radical level that an insight is possible into the profound implications of his thought on law.

184. FREDRICH, *THE PHILOSOPHY OF LAW IN HISTORICAL PERSPECTIVE* 188 (1958).

