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NATURAL LAW AND RIGHT IN AQUINAS' POLITICAL THOUGHT

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THIS ARTICLE presents a linguistic analysis of a problem in the history of political thought, Aquinas' theory of natural law and its application to the problem of unjust laws. Although at first sight an unlikely candidate for such an approach, Aquinas' theory can be understood adequately only when careful attention is paid to its specific linguistic features, and in particular to the meaning of the central concept, "right." In the course of the analysis a distinction is drawn between two senses of "right" (what I call "right that" and "right to"). This distinction is of interest not only for the light it casts on an important difference between high medieval and modern political thought, but in itself and for its relevance to contemporary discussions of human rights.

Since the audience to whom this is directed is somewhat broader than those regularly concerned with Thomist political philosophy, the first two sections provide a brief outline of Aquinas' theory of law, with particular reference to the natural law. In the third and fourth sections the central problem is raised — what ought to be done in the face of unjust laws and a tyrannical ruler? — and Aquinas' answer is summarized. The remaining three sections seek to elucidate the basis for his answer that, in most cases, the tyrant must be endured.

THE NATURE AND PARTS OF LAW

According to Aquinas, law is "nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated." (90.4)[1] Each of these elements — reason, the common good, authority and promulgation[2] — places significant limitations on what can rightly be "law."

The requirements of promulgation, authority, and common good limit the scope of law procedurally (it must be promulgated), by source (only the ruler can make law), and substantively (laws must aim at the common good). The requirement that law be made "in accord with some rule of reason" (90.1 ad 3) is a *substantive* limitation.

For Aquinas, the operation of reason is neither arbitrary nor haphazard. Practical reason, reason insofar as it is directed to action (which is the aspect of reason relevant to law), selects means to realize human ends. But not just anything can be a human end. For Aquinas, these ends are specific and determinate, established by man's essential nature.

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[1] References to the *Summa Theologica* follow the standard practice of citation by Part, Question, Article and, where appropriate, Reply. For example, la2ae, 90.1, ad 1 would indicate the first part [la] of the second Part [2ae], Question 90, [90] Article 1 [.1], Reply to the first objection [ad 1]. All citations unidentified by part are to la2ae, 90-97 (The first eight questions of The Treatise on Law). References to these questions have generally been incorporated into the body of the text.

The translation used here is the "Dominican Fathers" translation (London: R. & T. Washbourne, Ltd., 1913-25, 21 vols.).

[2] These four conditions are discussed sequentially in 90.1-90.4.

Everything is viewed as having an end (final cause, *telos*) toward which it is naturally inclined and by which its essential nature is defined. In addition, the *telos* provides a natural standard of value and excellence: that which fosters the realization of the *telos* is good, that which inhibits it is evil. With the ends naturally fixed, the substantive scope of what can and cannot be an ordinance of reason is similarly restricted, since, as we have said, practical reason only selects means to ends.[3]

Clearly then the function of law is to make men good (92.1), i.e., to realize the natural end(s) of man. Legal commands, prohibitions, and permissions are distinguished from other acts and practices aiming at this same goal by their binding character and the backing of coercive public enforcement. "It is the fear of punishment that law makes use of to ensure obedience." (92.2)

For Aquinas, all laws are part of a comprehensive, articulated system which ultimately rests on the divine reason.[4] The most general form of law is the eternal law, from which all other law proceeds and is but a partial reflection. (93.3) *All* human affairs are inexorably subject to this eternal law. (93.6)

God imprints the principles of proper action, the ends of all things, on the whole of nature, animate and inanimate, rational and irrational. (93.5) In this way, all of nature is subject to the eternal law. However, man, the rational creature, participates in the eternal law in a unique way, "though understanding the Divine Commandment." (93.5)

> This participation of the eternal law in the rational creature is called the natural law. . . . the light of natural reason, whereby we discern what is good and what is evil, which is the function of natural law, is nothing else than an imprint on us of the divine light. (91.2)

However, human reason is able to grasp only certain general principles of the perfect divine reason.[5] Therefore natural law, man's participation in the divine reason, is restricted to general precepts. These precepts are then applied to specific and particular circumstances. Aquinas calls these specifications of the natural law human laws.

The twofold function of human law, within the general legal mission of making men good, is to restrain the wicked and to train men to be (more) virtuous. "In order that man might have peace and virtue, it was necessary for [human] law to be framed." (95.1) However, peace and virtue (restraint of the wicked and training of the good and less recalcitrantly evil) are very different in nature, and require different sorts of laws in order to be achieved.

The "peace" which Aquinas has in mind is viewed in primarily negative terms, as is clear in a passage he quotes from Isidore:

> On the contrary, Isidore says: "Laws were made that in fear thereof human audacity might be held in check, that innocence might be safeguarded in the midst of wickedness, and that the dread of punishment might prevent the wicked from doing harm." (95.1)

[3] Aquinas' discussion of the points raised in the preceding two paragraphs is scattered throughout 1a, 79-89; 1a2ae, 6-21, 49-58 and *passim*. An excellent brief discussion can be found in Etienne Gilson, *The Christian Philosophy of St. Thomas Aquinas* (New York: Random House, 1956 [an English translation of the fifth edition of *Le Thomisme*]).

[4] The rational basis of law extends to God as well, for the eternal law is a reflection not merely or predominantly of divine will, as in voluntaristic systems such as Ockham's, but of divine reason.

[5] 1a2ae, 19.10 ad 1.

In such passages, reminiscent of some of the more pessimistic passages in Augustine, there is a profound and disquieting awareness of the evil, sin and passion that need to be held in check by the repressive forces of law and government.

Nonetheless, in Aquinas' thought this strain is counterbalanced by the positive role of law in the development of the human person and human virtue. He even concludes the Article introduced by Isidore with a citation of Aristotle indicating the nobility of man perfected through the discipline and training of law, in contrast to the dread consequences of separation from the law.

Despite their great value, natural and human law alone are insufficient to direct human affairs. They must be supplemented by what Aquinas calls the divine law, the inspired revelation contained in the Bible. The divine law provides the supplemental guidance needed to achieve the supernatural end of beatitude and provides remedies for most of the necessary imperfections in any human system of laws. (91.4)

Man thus has knowledge of the eternal law from two distinct yet complementary sources, the direct imprint of natural law (and its specifications in human law) and the revealed truths of the Bible. All parts of the law[6] are but parts of the eternal law, yet each has its own particular character and content, and all are vitally needed by man.

The separation of divine law from human and natural law is extremely significant, particularly in the medieval context. It highlights the autonomy of human law and, by implication, political life, the sphere in which human law operates. Without a doubt, divine law takes precedence in cases of conflict. However, the Church is limited to regulating only spiritual matters and the stress instead is on the relative autonomy of human law (qualified by the proviso that it always be in accord with the divine law as well as with natural law).[7]

NATURAL LAW

Given a relatively autonomous political realm, natural law can be seen as playing a crucial regulative role in politics. Government is subject to clerical supervision only in its essentially nonpolitical functions. Aquinas' marked preference for monarchical rule largely excludes control by the subjects, although such a possibility is briefly considered.[8] Furthermore, given the legal and moral emphasis of Aquinas' political theory it is not surprising that the empirical restraint of power politics is never really considered. Law, and particularly the natural law, which is humanly accessible yet prior to and above merely human ordinances, is thus left as the only major (non-divine) restraint on abuses of power by the ruler. Natural law serves both as a check on the ruler and as a guarantee to the ruled that justice will be observed (since all law flows from the natural law). This is most clear in the repeated assertions that human laws, and by implication, all political acts, which are not in accord with the natural law are merely acts of violence.[9]

What is the content of the natural law? According to Aquinas, the several precepts of the natural law are all based on a single first principle:

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[6] The one exception is the *lex fomentis* which will not be considered here. Its political significance is minimal, although theologically it is an interesting problem. Aquinas' discussion occurs at 91.6.

[7] 2a2ae, 147.3. However, cf. 2a2ae, 60.6 ad 3.

[8] Cf. *De Regimine Principum,* I, ii, iv, vi.

[9] E.g., 93.3 ad 2, 96.4.

"good is to be done and ensued [*prosequendum*], and evil is to be avoided." (94.2) "All other precepts of the natural law are based upon this, so that whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of the natural law as something to be done or avoided." (94.2)

Aquinas claims that this first principle is self-evident, by which he means that the "predicate is contained in the notion of the subject" of the proposition. (94.2) This claim rests on nothing more than "good" meaning something very much like "that which ought to be done and ensued" and "evil" meaning roughly "that which ought to be avoided." This is a largely formal claim which is essentially unobjectionable.

Aquinas also claims that the first principle is "naturally known." (91.3) This, along with the reference to the principles of natural law as "common" as well as indemonstrable (91.3), seems to imply that it is universally self-evident. However, this cannot be right, for Aquinas holds that the principles of natural law are grasped through *synderesis.*[10]

Synderesis is a habit or disposition through which we grasp the first principles of morals and the natural law. Since it is a disposition, and therefore must be developed through practice, the subjective self-evidence of the principles which we come to know through it cannot be guaranteed. Quite the contrary, this will depend on the degree of development of the *synderesis* in each individual.

Since human law is said to be derived from natural law, such questions of how the principles are known and by whom are of great importance. If the group capable of knowing the self-evident principles of natural law is small, the likelihood that human laws are in fact such derivations is called into question. Furthermore, the ordinary subject's credentials for questioning the correspondence between natural and human laws would seem to be precariously vulnerable.

Aquinas' discussion of whether the natural law is the same in all men (94.4) raises similar concerns, especially when he argues that some of the derivative principles of natural law are "conclusions" which hold "only in the majority of cases." If this is true, how are they to be distinguished from human laws which are likewise determinations of the natural law which are not universally valid? Those secondary, derived principles of the natural law which in fact are not universally apprehended to be certain and self-evident appear to be no different from human laws.

As we have seen, for Aquinas, human laws not in accord with natural law are not binding. Thus, whether a particular law is in fact a human law or a natural law *and how this is to be determined,* can be questions of great significance. How then are human laws to be distinguished from the variable propositions of the natural law? Quite simply, Aquinas does not address this question.

While he believes that the instances of non-universal natural laws are few (94.4, 94.5), this is of little comfort unless it can be shown that there are in fact several universal principles of natural law which cover a wide range of the most important issues faced by the law. Aquinas advances two such principles: to shun ignorance, and to avoid offending those with whom one lives. The first is held to be a consequence of man's desire to know the truth about God, the second of his sociability. (94.4)

Recall that for Aquinas good means roughly that to which one is naturally (teleologically) inclined. Given that man is a rational and social being, not

[10] 94.1 ad 2; 1a, 79.12.

only these two natural laws, but several others are easily derived by means of relatively simple deductive arguments.

If we could accept such arguments our worries about the variability and derivation of at least a very important class of secondary natural laws would be allayed. In addition, this makes clear how the substantial content of the natural law is established. Substance is provided to the formal category of natural law by way of philosophical anthropology (Aquinas' theory of human nature) and ethical or metaethical theory (the teleological analysis of good and moral value).

But *can* we accept such arguments? Needless to say, this is not the place to attempt to answer such a question. What we can do is note that without such propositions as "man is a rational and social being," and "the good of a thing is defined by its end," the natural law remains largely without content. As it stands, alone, the first principle is *merely* self-evident, essentially a tautology.[11]

As our purpose here is primarily interpretative, we must leave unexamined the question of whether Aquinas' definitions are *correct* or *acceptable.* What we can do is stress that in many ways these principles are the real foundation of the substance of the theory.

Changes in the Natural Law

The final two Articles devoted to natural law, which are concerned with its alteration, serve to underscore and further illustrate some of the difficulties which we have been discussing. They will also lead us to our central topic.

Change in the natural law, according to Aquinas, can occur either by addition or by substraction. As for subtractions, the first principles are immutable. Even the secondary principles are subject to change by subtraction only in rare cases. (94.5)

However, the situation is wholly different for additions to the natural law. "In this sense nothing hinders the natural law from being changed, since many things, for the benefit of human life, have been added over and above the natural law, both by the divine law and by human laws." (94.5) This passage is certainly perplexing, particularly in raising the possibility of changes in the natural law made by human laws. Human law is supposed to be *derived from* natural law. For human law to *change* the natural law, even if only by adding new elements on top of those already there, seems to undercut completely the fundamental division between the two by reversing the relations of priority which supposedly exist. Either "every human law has just so much of the nature of law as is derived from the law of nature" (95.2) or not.

At first sight the reply to the third objection might appear to offer a way to rescue Aquinas.

> A thing is said to belong to the natural law in two ways. First, because nature inclines thereto; e.g., that one should not do harm to another. Secondly,

[11] This is not a special shortcoming of Aquinas' theory. All natural law theories (with the exception of some voluntaristic theories) must have recourse to such considerations, particularly conceptions of human nature and human personality. It should also be noted that the problems discussed above concerning how and by whom the natural law is known and the relation of primary and secondary principles are general problems of considerable significance for most natural law theorists, not just Aquinas. In fact, Aquinas is notable for the extent to which he addresses such problems and for the degree to which his theory of natural law is integrated into a comprehensive and well-developed ontology, epistemology and anthropology.

> because nature did not bring in the contrary: thus we might say that for man to be naked is of the natural law because nature did not give him clothes, but art invented them. In this sense, "the possession of all things in common and universal freedom" are said to be of the natural law because, to wit, the distinctions of possessions and slavery were not brought in by nature, but devised by human reason for the benefit of human life. Accordingly the law of nature was not changed in this respect, except by addition. (94.5 ad 3)

If changes by addition are nothing more than changes made in those parts of the natural law which are such solely because the conditions in question exist "naturally," simply because no other positive provisions have been made, then perhaps things are not as bad as they initially appeared. However, three grave problems result from such a move.

First, there is no rational basis for these "natural laws," and yet to be laws they must be ordinances of reason. Second, slavery and private property are advanced as instances of such changes. One cannot help but be troubled by the range of things this seems to leave totally free to human law, let alone by the substance of the claim that slavery is an acceptable addition to the natural law.

Finally, common possession of all things and universal freedom are said to be of the natural law, yet there is no obligation to maintain them. The natural law is thereby stripped of one of the most important characteristics of law, its binding force. Thus we are faced with concerns which go beyond content to questions of the *force* and *function* of the natural law.

Unjust Laws

When human and natural law diverge, which ought to be obeyed? Aquinas repeatedly asserts that if a human law "at any point . . . deflects from the law of nature, it is no longer a law but a perversion of law." (95.2) We will call these purported laws, "unjust laws." Are unjust laws binding or are we obliged to obey the natural law (from which they diverge)? Since they require different, and in most cases contradictory actions, a choice must be made.

Aquinas argues that human laws are binding in conscience if the law in question is just. (96.4) Since right *(ius)* is the object of justice and law is the written expression of right,[12] this is equivalent to saying that human laws are binding in conscience in so far as they are truly laws. This in turn means that they are binding insofar as they do not diverge from the natural law. However, this clear priority of natural law over human law breaks down once again when we look closely at *unjust* laws. Aquinas does not hold simply that unjust laws are not binding, as we would expect from this argument.

A law may be unjust by being contrary to divine law. "Laws of this kind must in nowise be observed." (96.4) Obedience would preserve public order but only at the infinitely greater cost of the loss of eternal beatitude. Human law always must give way to divine law in cases of conflict.

However, a law may also be unjust by way of its end (if it does not aim at the common good), its author (if it exceeds the legitimate power of the lawgiver), or finally, its form (when it does not distribute burdens proportionately.[13]

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[12] 2a2ae, 57.1, 57.1 ad 2.

[13] 96.4. These conditions are slightly different from those in the definition of law. The conditions of accord with reason and promulgation are left implicit. Promulgation is assumed, for unless the law were promulgated the question of obedience could not arise in any serious form. Reason can be taken to be either implied in the notion of ordering to the

> Such laws do not bind in conscience, except perhaps in order to avoid scandal or disturbance, for which cause a man should even yield his right, according to *Matthew v. 40, 41:* 'If a man . . . take away they coat, let go thy cloak also unto him; and whosoever will force thee one mile, go with him another two.' (96.4)[14]

Therefore, these "laws" seemingly are both binding and not binding. The requirements of natural and human law conflict, yet the priority of natural law is not clearly asserted, as is the priority of divine law over human law. Aquinas' view that there are laws which are just, and therefore binding, only with regard to specific regimes[15] presents a further, and a potentially quite large, set of such problematic laws. These unjust laws which are not contrary to divine law will be our focus below.

Tyranny, which can be viewed as rule through systematically unjust laws,[16] presents the practical problems which can be raised by unjust laws in their most acute form. Aquinas' most sustained discussion of this topic is to be found in *De Regimine Principum* (On Kingship), Book I, Chapter vi.

Here his advice is simple, practical and cautious. If the tyrant is not too terrible it is best not to seek to depose him. Should you fail in your attempt he is likely to become even more harsh, while if you succeed, the most likely result is that the society will be torn into factions. Furthermore, success probably will create conditions in which the multitude becomes attached to a deceitful leader who will set himself up as a new tyrant, far harsher and more suspicious than his predecessor.[17]

These strictures are explicitly prudential and apply to a tyranny which is not too excessive to be borne. However, even should the tyranny prove intolerable, this does not, in itself, justify resistance. There is a crucial distinction between public and private action against a tyrant.

> It seems that to proceed against the cruelty of tyrants is an action to be undertaken, not through the private presumption of a few, but rather by public authority. If to provide itself with a king belongs to the right of a given multitude, it is not unjust that the king be deposed or have his power restricted by that same multitude if, becoming a tyrant, he abused the royal power. It must not be thought that such a multitude is acting unfaithfully in deposing the tyrant, even though it had previously subjected itself to him in perpetuity, because he himself has deserved that the covenant with his subjects should not be kept, since, in ruling the multitude, he did not act faithfully as the office of a king demands.[18]

This would be a legitimate public action. Legal authority is present and the natural law provides sufficient moral grounds, although of course prudential considerations might still counsel obedience. However, when this public authority is lacking, the situation is radically altered.

In terms of law and justice, within Aquinas' system resistance to a tyrant can be seen as an act of judgment *(judicium).*

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common good, or so obvious as to require no explicit statement. The one new factor, equality of proportion, is a requirement introduced by the nature of justice, treated most fully in 2a2ae, 58 and 60.

[14] Cf. 93.3 ad 2; 2a2ae, 105.6 ad 3. Scandal for Aquinas is never merely a matter of etiquette or simple propriety. See 2a2ae, 43, especially Article 1.

[15] E.g., 92.1.

[16] Cf. 92.1 ad 4 where Aquinas speaks of tyrannical laws roughly interchangeably with unjust laws.

[17] *De Regimine Principum* I, vi (44). The Phelan-Eschmann translation, *On Kingship: To the King of Cyprus* (Toronto: The Pontifical Institute of Medieval Studies, 1949), has been used here. Paragraph numbers (in parentheses) are those of this edition.

[18] Ibid., I, vi (48, 49).

> Judgment properly denotes the act of a judge as such. Now a judge *(judex)* is so called because he asserts the right *(jus dicens)* and right is the object of justice, as stated above. Consequently the original meaning of the word judgment is a statement or decision of the just or right.[19]

For a judgment to be true and just it must meet rigorous standards.

> Judgment is lawful in so far as it is an act of justice. Now it follows from what has been stated above that three conditions are requisite for a judgment to be an act of justice: first, that it proceed from the inclination of justice; secondly, that it come from one who is in authority; thirdly, that it be pronounced according to the right ruling of prudence. If any one of these be lacking, the judgment will be faulty and unlawful.[20]

Due deliberation and substantive justice alone are not sufficient. When it does not belong to the people to change their ruler, any action against the tyrant is merely private and unjustified, regardless of the degree of tyranny. It would be taking judging and the law into one's own hands; unjust by way of its author and, like the tyrant's rule, no more than violence.

In the absence of the authority to depose him, the tyrant must be endured.[21] Recourse must be had to God alone.[22]

> But to deserve to secure this benefit from God, the people must desist from sin, for it is by divine permission that wicked men receive power to rule as a punishment for sin, as the Lord says by the Prophet Osee: "I will give thee a king in my wrath," and it is said in *Job* that he "maketh a man that is a hypocrite to reign for the sins of the people." Sin must therefore be done away with in order that the scourge of tyrants may cease.[23]

Even more bleakly Aquinas writes, "As the Apostle says, all human power is from God."[24]

For Aquinas, unjustified or unauthorized action against even an unbearably vicious tyrant is not only no better in kind than the acts of the tyrant, but it is much more dangerous. Resistance is likely to produce faction, sedi-

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[19] 2a2ae, 60.1.

[20] 2a2ae, 60.2.

[21] As this interpretation is directly opposed to the familiar interpretation of Copleston some comment is in order. Copleston writes that tyrants "can legitimately be deposed on the ground that they are guilty of abusing their position and power, unless indeed, there is a reason for thinking that rebellion would result in as bad a state of affairs." (F. C. Copleston, *Aquinas,* Harmondsworth, Middlesex: Penguin Books, 1955, p. 232.) However, he advances not a single text to support this claim. The passage he cites earlier in the same paragraph shows only that unjust laws are not binding in conscience, from which it does *not* follow that deposing a tyrant is legitimate.

Copleston continues: "The view that it is legitimate to depose tyrants suggests that the ruler has a trust to fulfill, and that this can be abused. And this was Aquinas' view." (p. 232) It is certainly true that Aquinas believed the ruler to have a trust to act to realize the common good. However, whether a tyrant can be legitimately deposed depends on the source and nature of the trust. Copleston offers no evidence for his view, whereas several passages are presented in this paper to show that the ruler's trust comes from God and that he answers to God directly, in the absence of special provisions to the contrary.

In addition, we can note that (1) earthly honors and glory are not the rewards of the king (*De Regimine Principum,* I, vii) but rather the attainment of the highest degree of beatitude in heaven (I, ix), suggesting that God, not the people supervise the trust and/or "pay" the "trustee;" and (2) the analogy is drawn between monarchy, the rule of the soul over the body, and the rule of God over the universe (I, xii) where rebellion by the "subjects" is most decidedly evil.

[22] *De Regimine Principum* I, vi (51). Note that this appeal to heaven is a prayer, a request, a pleading, not a trial by combat as in Locke.

[23] Ibid., I, vi (52).

[24] 96.4 ad 1. Cf. 93.3 ad 2; *Summa Contra Gentes,* III, 81.

tion and even civil war, thereby forfeiting all the benefits of political society in the attempt to remedy a few of its contingent defects.

For Aquinas, as for Aristotle, society, and particularly political society, is the form of life natural to man, and the only form in which the uniquely human capabilities of man can be realized.[25] Faced with the harsh choice of preserving society or actively following the dictates of justice and right as expressed in the natural law, Aquinas advocates non-resistance. Justice seems to give way. In the end, the tyrant's unjust laws are held to oblige, despite their divergence from the natural law, while the obligation of the natural law is effectively cancelled.

The dilemma in which Aquinas finds himself, and from which he must extract himself in such an unsatisfactory fashion, arises because he is torn between the two central functions of human law, restraining evil and fostering virtue.[26] The tyrant must be obeyed because the alternative is civil strife or anarchy which gives full reign to human weakness and sinfulness. *Any* government at all is better than none, for it provides some checks on the widespread flowering of human evil. However, this choice means renouncing, at least temporarily, the fostering of virtue as a primary goal of the law.

This choice of the negative, restraining role of law is quite puzzling, even disturbing, for it runs counter to the governing idea that the purpose of law in general is to make men good. (92.1; 90 Proemium) It is particularly contrary to his theory of natural law, especially from the viewpoint of the subjects. The subjects are entitled to expect that the natural law, which both states and ordains what is naturally right, will be obeyed by their rulers. They are entitled to a just government and rule by just laws. The priority of natural law over human law is a guarantee that their rights under the natural law will be protected. However, in the end, when Aquinas requires obedience to the tyrant, he deprives them of the protection of the natural law by abrogating its binding force and its priority over human law.

Right and Law

Despite the power of this conceptualization of Aquinas' treatment of the problem of unjust laws, it is seriously misleading in at least one respect: it suggests an embryonic theory of natural or human rights in Aquinas' notion of natural law.[27] In fact, such ideas are totally absent. To see this, we must examine in greater detail the relation of justice, right and law in Thomist thought.

To do this, we will have to step back quite a bit further than we have done so far. Our method will be to highlight what is distinctive in Aquinas' position by comparing it with our own ordinary, intuitive or common sense understandings of the issues. At first sight, this may seem to lead to lengthy digressions from the central topic, particularly in the following section.

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[25] This theme runs throughout Aquinas' writings. Cf. 1a, 96.3, 96.4; 1a, 92.1 ad 2; 2a2ae, 58.7 ad 2; 2a2ae, 188.8, 188.8 ad 5; *De Regimine Principum* I, xv; *In Pol.* I,i; *In Eth.* I,i; etc.

[26] Jeremy Catto, "Ideas and Experience in the Political Thought of Aquinas," *Past and Present*, No. 71, May 1976, pp. 3-21, stresses the important formative role of the unhappy experiences in central and southern Italy in the 1260s in the development of these ideas.

[27] As one reader has suggested that this association of natural law and human rights is not normally made and that therefore I am guilty of resolving a problem which no one has ever raised, it should be noted that the link between Aquinas' theory of natural law and modern notions of human rights is frequently made by contemporary Thomists. For example, see Johannes Messner, *Social Ethics: Natural Law in the Western World* (St. Louis: B. Herder Book Co., 1965), pp. 278, 326; and Jacques Maritain, *Man and the State* (Chicago: University of Chicago Press, 1951), pp. 95, 97ff.

However, it is essential to establishing the precise character and the full implications of Aquinas' theory of natural law.

In English, "law" generally expresses obligation or duty, much in the manner of Aquinas when he derives *lex* (law) from *ligare* (to bind). (90.1) Despite any differences (for example, regarding the requirement of reason or the need for coercive sanctions) there is this fundamental agreement between Aquinas' views and our own. However, when we come to right *(ius)*, substantial differences appear.

As we noted above, right, *ius,* is the good at which justice and the acts of the just man aim. Law, for Aquinas, is the written expression of right; law states the right, the just. Thus right and law are inseparably linked. This is not simply the linkage of correlative notions, nor are laws merely derived from right to protect or sanction it. Rather, right and law, *ius* and *lex,* amount to two ways of looking at the same "thing" and are merely two modes of stating a duty or obligation under which one is placed.

English locutions characteristic of this way of thinking about "right" include "It is right that . . . ," "You've made the right decision," "Justice demands that . . . ," "It is the right thing to . . . ," etc. This sense is not only familiar, but very important, especially in morals.

However, there is a sense of "right" in English quite different from this, a sense wholly absent from Aquinas' concept of *ius.* It appears most clearly when we talk about *rights,* in the plural, and regard them as something which people *have* or hold. Thus, we say "I have a right to . . . ."

When we claim a right in this sense, we often imply the possession of some (generally negative) liberty, such as First Amendment rights ("Congress shall make no law . . ."). Often we mean a special entitlement, as in the case of contractual or property rights. Quite often a combination of the two is implied, as in the right to vote. In fact, this combined sense of *liberty* and *entitlement* is most characteristic, for property rights and other entitlements involve liberties, while civil rights/liberties also entitle us to certain benefits.

Of course, one's right places someone *else* under some obligation. However, such obligations are *only one side of a relationship.* Furthermore, these obligations are essentially correlative to, and/or implications drawn from, the possession of the right. Liberties and entitlements distinguish rights from law so fundamentally that we can say that law and rights point in different directions.

Where we have *two* senses of "right" — "It is *right that* A do x," and "A has a *right to* x" — Aquinas has only one. Thus we are not dealing with a mere problem in translation. Aquinas' *ius* is a different *concept* from our "right."

"RIGHT THAT" AND "RIGHT TO"

Compare the following paradigmatic uses of the word "right."

1. "It *is right that* A do x with respect to B." For example, we might say, "The right thing for you to do is to tell Bill," or "It's just not right to do something like that to him." We will call this "right in the sense of 'right that,' " and speak of it in terms of x *being right.* We are dealing with *judgments of moral rectitude* in such cases.

2. "B *has a right to* A's doing x." Familiar examples of this sense include "I have a right to keep you out of here," and "You have no right to take that from me." We will call this "right in the sense of 'right to' " and speak of *having a right* to x. Such cases are concerned with *special entitlement of persons.*

In both cases A is obliged to do x with respect to B, and in both cases this obligation rests on "right." However, there are two quite different

sources or types of obligation involved, and the relationships between A and B are different in crucial ways in the two examples.

In the first instance ("It is right that A do x with respect to B") A's obligation is *to do x* (in relation to B). Because x is the right thing to do, in the sense of "right that," A is obliged to do x. The moral correctness of doing x, in itself, creates an obligation. That the action is taken in relation to B (rather that C or D) is essentially unimportant. The obligation associated with x *being right* is primarily an obligation to a *performance of action x* (because it is right).[28]

However, in the case where B *has a right* to A's doing x, A's obligation is *to B* (to do x). The focus of the obligation is reversed here. The intrinsic nature of x is unimportant. It is the fact that B has a right to x that obliges A. When dealing with B's right, what is most important is that A stands in a special relation to B, a relation expressed by B's right. The obligation associated with *having a right* is primarily an obligation to a *person* who holds a right (because he has that right).

Of course, in both instances the obligation under which A is placed can be characterized *fully* only by reference to both the act (x) and the person (B). However, the emphases are different depending on the sense of right involved. These points can be illustrated by a few examples.

B, in obvious need of immediate medical attention, comes up to A and asks him for directions to the nearest hospital. Clearly, A is morally obliged to give B directions. That's simply the right thing for him (or anyone else) to do; to ignore or knowingly to misdirect him would be wrong. (For A to assist B is so obviously right, in the sense of "right that," that a refusal would not be comprehensible except in extraordinary circumstances.) It is the act which is demanded, because it is right that one do it. That B, rather than C or D, asks him is largely irrelevant. It is the situation which counts, not the particular persons involved.

Compare this with A contracting to sell B 100 widgets at $1 each and to deliver them on the next day. B pays A $100 and thereby acquires a right to A's delivering the widgets tomorrow. B's right places A under an obligation to deliver the widgets. Neither C nor D has a right to 100 widgets from A; the obligation is to B alone and in particular, because A stands in a special relation to B.

In this example one could even say that it is *only* B's right that obliges A to deliver the widgets. Delivering 100 widgets is, in itself, morally indifferent, neither right nor wrong. A's obligation is totally separate from the intrinsic nature of the act. Only B's right (in the sense of "right to") makes the act right (in the sense of "right that"). This is a characteristic disjunction between the two senses of right: one can have a right to something without it being (in itself) right in the sense of "right that."

The converse is also true. That an act is right in the sense of "right that" does not imply that anyone at all has a right to it. For example, even if it is right that one perform acts of benevolence, such as feeding the needy and hungry, a hungry person does not *ipso facto* have a right to receive food from me or from anyone else. He is not entitled to my food (it is *my* food; *I* have a right to it) and thus we stand in quite a different relationship than if he had a *right* to receive food from me.

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[28] Uses in which we say a person is right either are derivative from the act being right in this sense, or refer to quite a different sense of "right," usually that someone is correct (e.g. "Jane's right, it happened like this."). Thus the restriction to actions is not stipulative but rather is essential to this sense of the term.

At least four questions need to be asked in analyzing situations involving "right:"

(1) What rights (in the sense of "right to") do the parties have and how do these rights enter into their interactions?

(2) What is it right that each of the parties do?

(3) Under what obligations are each of the parties?

(4) How are these obligations related to "right" in both senses of the term?

Together, the answers to these questions will give us a fairly clear picture of the relations in which the parties stand to one another insofar as these relations are connected with "right."

Addressing these questions in the context of an additional, and somewhat more complicated, example may prove helpful. Brown, out jogging, turns a corner and comes upon an elderly man being robbed and beaten after cashing his social security check. Unnoticed he stands behind the mugger.

The victim of the assault (let us call him Smith) has a right to his personal liberty and property. The mugger (call him Jones) has violated Smith's rights in a most vicious fashion. Jones is obliged, *by Smith's rights,* as well as by specific laws and moral considerations of what is right, not to do what he is in fact doing.

This much is clear and quite obvious. However, Brown's position is substantially more complex. The right thing for him to do (in the sense of "right that") is to assist Smith. He has a moral obligation to try to stop the robbery and end the attack, an obligation which arises from the fact that it is the right thing for him to do. That it is Smith who is being attacked is essentially irrelevant; he would be equally obliged to assist anyone in that situation.

However, Brown's obligation is independent of Smith's rights. Brown has adequately respected Smith's rights by not interfering with his personal liberty. Smith needs, hopes for, and on moral grounds may even expect assistance, but he cannot demand, *as his right* (in the sense of "right to"), that Brown aid him. His right to personal liberty obliges others not to interfere with him, but obliges them to nothing more than non-interference.[29]

The differing *sources* of obligation and the resultant relationships between the parties, have some major consequences. Smith is specially *entitled* to his personal freedom and can *demand* of Jones to be left alone. This may be of little aid or comfort at the time, but in the long run it can be used to press special claims for reparations and retribution. Also, of course, moral and legal injunctions connected with the respecting of the rights of others, and/or penalties associated with failure to do so, serve as general protections. That these protections have broken down in this particular case should not obscure their importance.

In addition, it makes a difference for our judgments of Jones and Brown. Jones has not just failed to live up to some high moral standard of conduct, but is guilty of a special, additional and personal affront of violating Smith's basic rights. Brown, however, if he fails to live up to his obligation to aid Smith is subject (only) to moral condemnation, and of quite a

[29] We can also note that Jones has few rights which enter into his relationship with Smith or Brown. However, if they overpowered him and then proceeded to injure or kill him long after he had ceased to resist we would probably say that his rights had been violated. Smith and Brown seem obliged by Jones' human and legal rights to use only that force necessary for self-defense and to leave retribution to the legally constituted authorities, regardless of what Jones deserves, in some moral sense, for his crime.

different sort, for he still will have given to Smith everything to which Smith is *entitled* from him.

Rights provide special protections, create special obligations, and place the possessor in a special position in seeking to achieve that to which he has a right, or to obtain remedy if it is denied. However, often they are also limited in scope compared to right in the sense of "right that." It cannot be determined, apart from the particular case, which protections and obligations are more powerful, those implied by entitlements or those imposed by the requirements of moral rectitude. However, it is clear that what we can expect from others, what they are obliged to do in relation to us, what they are free to do or not do as they choose, etc., depend in large measure on which sense of "right" is involved.

Right and Natural Law

We can now return explicitly to Aquinas' handling of the problem of unjust or tyrannical laws. The key to understanding his views is to recognize that natural law does not give rise to rights in the sense of "right to," but only states what is right in the sense of "right that." Whether the rule of the tyrant is right (in the sense of "right that") is a question which is wholly independent of the entitlement (rights) of the people to change their rulers. The two issues, resting on different senses of "right" are wholly separate.[30]

Let us look at the position of the people and the tyrant in terms of "right," obligation, and the resultant relationships in which they stand. The tyrant is obliged to obey the precepts of natural law in the same way that every man is obliged to obey these dictates. In ruling as a tyrant he has failed to fulfill this obligation. However, it is an obligation to *God* (not to the people) that he has failed to fulfill.

The tyrant, like all rulers, has his power ultimately from God. Unless the people have the specific right to choose and change their rulers, the tyrant's power is *entirely* from God, and thus only God is entitled to call him to task. Although the tyrant is undoubtedly guilty of great crimes, and although it is against the people that these crimes are perpetrated, it is against God and God's law that he has sinned, and only God is entitled to demand redress. In modern terms we might say that God alone "has a right" to correct the tyrant.

The people may be obliged to obey the tyrant for many reasons. They may lack the authority to do otherwise. There may be a partial, residual obligation resting on the tyrant's position as legitimate possessor of the office of ruler (regardless of the legitimacy of his *use* of this office). His rule may be partially just. There also may be considerations of order and scandal and a general presumption to obedience to superiors,[31] to be taken into account. However, the important point is that, in itself, the natural law provides no grounds for action against the tyrant.

When the people lack the authority to change their rulers they cannot press upon the tyrant his obligation to the people, for there simply is no such obligation. They may quite legitimately point out that his rule is prohibited by natural law. They may call upon him to mend his ways and conform to the natural law. They may point out to the tyrant his obligation to do what is

[30] Whether the tyrant has a right to rule as he does is still another question. Nothing in this paper should suggest that Aquinas believes that he does. Quite the contrary, he has no right to be a tyrant and a duty not to be.

[31] Obedience, in itself, is considered a special virtue with a considerable positive value. (2a2ae, 104.2; 2a2ae, 104.3) Aquinas also considers obedience to superiors to be natural (2a2ae, 104.1).

right according to the natural law. They may pray for divine aid. However, all this is quite different from the exercise of a right to change one's rulers. They are not entirely *without* recourse, but their position is greatly affected by the lack of a right.

The exercise of a right involves pressing a claim to something to which one is specially entitled because one is a particular person possessing this right. This sense of special entitlement is crucial. One deserves it not just in the sense of, for example, being one of twenty "deserving" candidates for a position, but in the sense that it is one's desert, what is particularly due to one. Possession of a right, in itself, provides the authority for doing something about it *and* adds an additional aspect to the substance of the claim.

The difference does not lie solely or even primarily in the availability of a remedy. The subject does have one legitimate remedy, recourse to God. Without a doubt, to receiving redress from God (in this life) is much less likely than from an American court of law in case of contract violations. But, is it more likely than, for example, obtaining redress for infringements of basic human rights in countries such as Uganda and Cambodia?

The essential point is that *possession* of a right, the *respect* given to that right, and the ease or frequency of achieving *rectification* when the right is violated, are three distinct issues. What is in question here is not the *availability* of a remedy, but the *grounds* on which it can be sought; i.e., whether one has a right to the benefit in question.

Neither is the issue solely one of authority, for even when Aquinas says that the people have the authority to depose the tyrant, we should be wary of speaking of "a right" to choose or change one's rulers. The Latin perhaps permits such a rendering, but in no sense is it demanded. The texts read: *si ad ius multitudinis alicuius pertineat sibi providere de rege* and *si vero ad ius alicuius superioris pertineat multitudini providere de rege.* Dawson, in the popular D'Entreves anthology, translates these passages with "has the right to" and "the right to . . . belongs." However, the Phelan-Eschmann translation of "belongs" or "pertains to the right of" is definitely more literal. It also seems more natural.[32] For our purposes, the ambiguity, even the leaning in the direction of right in the sense of "right that," is of great interest. Since the question of the establishment of such "rights" is never addressed, at the very least we should be reticent to read too much of an entitlement conception into Aquinas' ideas.

Some corroboration of such a view is provided by Aquinas' usage in other unrelated cases where we would be likely to speak of a right to something. The right of private property is a particularly good example.

Aquinas' discussion of private property is in fact most notable for its failure to consider property rights. It takes place within a general discussion of "the vices opposed to justice" (2a,2ae, 63-79) and under the particular heading *de furto et rapina* (of theft and rapine). Despite this, the D'Entreves anthology introduces several passages under the heading "The Right to Property,"[33] a heading which is to be found nowhere in the text. Actually, Aquinas investigates the questions *utrum naturalis sit homini possessio exteriorum rerum* (whether it is natural for man to possess external things [property])[34] and *utrum liceat alicui rem aliquam quasi propriam possidere* (whether it is legiti-

[32] The relevant passages may be found in A. P. D'Entreves, *Aquinas: Selected Political Writings* (Oxford: Basil Blackwell, 1959), pp. 30-31, 32-33, and paragraphs 49 and 50 of the Phelan-Eschmann translation, *op. cit.*

[33] Ibid., p. 167.

[34] 2a2ae. 66.1.

mate [lawful] for a man to possess anything as his own).[35] The obvious aim is to determine whether private property is right, in the sense of "right that," not whether men have a right to it.[36]

Similar misreadings of Aquinas' text are all too common. For example, in this same anthology, the passage which is said to discuss "The Right to Resist Tyrannical Government" in fact discusses *utrum seditio sit semper peccatum mortale* (whether sedition is always a mortal sin).[37] Once again right in the sense of "right that" clearly is intended.

Perhaps the closest Aquinas comes to our idea of rights is his concept of *auctoritas* ("authority"). It is in such terms that resistance to the tyrant is considered in the passage quoted above from *De Regimine Principum: videtur autem magis contra tyrannorum saevitiam non privata praesumptione aliquorum, sed auctoritate publica procendum.* The similarities between right ("right to") and authority are in fact strong. For example, usually when we say "A has the authority to do x," we could just as well say "A has the right to do x." Nonetheless, the differences are also quite important, expecially given the Thomist view of the world.

At the heart of the notion of authority is the idea of authorization, a grant of legitimate power to act. For Aquinas, all such power ultimately comes from God. This produces a situation rather different from what we think of when we speak of having a right to rule. In fact, it would be more accurate to say that the ruler has no *right* to rule at all; he is not *entitled* to it, but rather authority is a free gift of God, revocable at His pleasure. At most the ruler has only a right to obedience from his subjects. But even this is at best a derivative and contingent right, for the subject is bound to accept him only because he rules by the will of God. Authorization and entitlement, while similar, are rather different ideas.

In addition, for Aquinas, authority is restricted to questions of rule within a context of superior-subordinate relationships.[38] A relationship of authority is one of command and obedience. This is significantly different from the notion of right in the sense of "right to." Aquinas holds authority to be a direct consequence of natural and divine law[39] (which we have already seen involves a different sense of right). Furthermore, our concept of right is the sense of "right to" has a scope of operation far greater than situations of rule, and it is essentially unrelated to hierarchical relationships.

Regardless of the degree of similarity, it is unmistakably clear that authority has a very restricted place in Aquinas' political thought, especially when compared to the prominence of law and right in the sense of "right

[35] 2a2ae, 66.2. In the D'Entreves anthology (p. 169). this is replaced by the heading "The Limits of Private Property," and the first reply is given the editorial heading "The Right to Private Property Derives from Human Law."

[36] Such a confusion is not a rarity. While not reproduced in the translation of the text, it is at least partially present in Appendix 2 to Volume 38 of the newest authorized English translation (Cambridge: Blackfriars, 1963- , 60 vols).

[37] D'Entreves, *Aquinas*, p. 161. I dwell on this anthology not because it is generally poor or out of disrespect for the editor. Exactly the reverse is the case. D'Entreves' work is basically very sound and he deserves special respect for his efforts over many years on behalf of medieval political theory. That such errors occur even here seems to me to stress their unfortunately broad diffusion, and/or a misplaced desire to render Aquinas' "contemporary meaning."

[38] This is particularly clear when Aquinas uses the related notion of *praelatio* which can be translated as "authority." We might also note here that the associated notion of *potestas* also seems somewhat similar to our idea of a right. However, despite its importance in medieval political theory in general, it plays little role in Aquinas' thought and does not appear in the passages which we have been examining.

[39] 2a2ae, 104.1.

that." Questions of authority are rarely addressed, whereas those of law and right are given extended consideration. Of the two senses of "right," "right that" is overwhelmingly preponderant. Furthermore, it is clear that for Aquinas *ius* (right) does not have the sense of "right to."

The differences between Aquinas' views and our own are most striking when we compare his idea of *ius naturale* (natural right, of which the natural law is the written expression) with our notion of natural rights, or as we would say today, human rights. Once again, the example of the legitimate deposition of a tyrant will provide the needed focus.

Let us, for the sake of argument, grant that a right (in the sense of "right to") is exercised by the people legitimately removing the tyrant. *What* right is it, and what is the nature of their claim? The answer is simple: those involved exercise their right to self-government, to establish a ruler.

This is not a right which is natural to them as men. Natural law is not the ground for their action (although of course it is likely to be a reason, or motive for their action). Self-government, while consistent with, is not demanded by the natural law. If there is such a right, it is an arrangement on which the natural law is silent. It is not a deduction from natural law (which would thereby make such a right necessary). Its foundation is human and contingent, not natural or necessary.

Compare such a right to limited self-government with the parallel but radically different modern ideas of rights of national self-determination, self-government or revolution. Such rights are often held to be natural and universally valid. They belong to men *qua* men, and their violation *ipso facto* sanctions remedial actions by the people. Natural rights of this sort do not exist for Aquinas; neither individuals nor groups are naturally endowed with (inalienable) rights on the basis of which they may make claims against others, let alone against their rulers. And even if self-government *were* demanded by *ius naturale,* as we have already seen it would provide no natural or human rights in the sense of "right to."

Thus we find that the requirement to endure a tyrant in the absence of authority to overthrow him is not simply the result of Aquinas' outdated views on monarchy or peculiarities introduced by his religious perspective. Rather, it rests on a view of politics which formulates what is right almost exclusively in the sense of "right that,"[40] and which also wholly lacks the idea of natural or human rights.

The relationship between rulers and ruled is subject to a radically different conceptualization in the absence of natural individual or group rights. In a passage quoted above, Aquinas specifically uses the language of a covenant to justify public removal of tyrants. However, in the absence of such right-conferring transactions, natural law provides the people with no sufficient basis for securing remedy. They have available to them only claims based on general considerations of morality (natural law), claims which they are not entitled to enforce. The demands of natural law may be quite considerable, but the position of the people in a political system based on such a view of natural law, and the operation of the system, would be quite different from one based on natural or human rights.

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[40] Of course it is true that Aquinas' religious views underlie this focus and that the imperatives themselves are theologically based. However, *any* deontological system of ethics, applied directly to politics, is likely to produce such results.