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Necessary Truths and St. Thomas Aquinas' Definition of 'Law'

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Abstract

What is the nature of law? The question that St. Thomas Aquinas answers in *Summa Theologica* I-II continues to be a crucial question in contemporary philosophy of law. Various scholars of jurisprudence attempt to identify the necessary features of law. Yet they struggle with the question, what kind of necessity is involved? Is it conceptual necessity? Metaphysical necessity? In this paper, I explore an alternative way of distinguishing different kinds of necessity that is found in Aquinas' *Commentary on Aristotle's Physics*. I argue that the three kinds of necessity *simpliciter*, from the formal, material, and efficient cause, and hypothetical necessity, from the final cause, are relevant for understanding how Aquinas' definition of 'law'—an ordinance of reason, for the common good, made by the one who has care for the community, and promulgated—is a necessary truth. This historically interesting approach offers insights for contemporary jurisprudence.

Keywords: *law; kinds of necessity; St. Thomas Aquinas*

I

What is the nature of law? The question that St. Thomas Aquinas answers in *Summa Theologica* continues to be a crucial one in contemporary philosophy of law.[1] Joseph Raz, for instance, tries to answer it by identifying the necessary features of law. He writes:

> A theory consists of necessary truths, for only necessary truths about the law reveal the nature of the law. We talk of 'the nature of law', or the nature of anything else, to refer to those of the law's characteristics which are of the essence of law, which make law into what it is. That is those properties without which the law would not be law. . . . Naturally, the essential properties of the law are universal characteristics of law. They are to be found in law wherever and whenever it exists.[2]

1. See St. Thomas Aquinas, *Summa Theologica*, translated by Fathers of the English Dominican Province (Benziger Brothers, 1947) 995 (Pt I-II, Q 90, a 4) [Aquinas, *Summa*].
2. Joseph Raz, *Between Authority and Interpretation: On the Theory of Law and Practical Reason* (Oxford University Press, 2009) at 24-25.

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The concern with identifying the necessary features of law is not unique to Raz.[3] However, as Yi Tong observes, although many legal theorists agree on the importance of identifying the necessary features of law, they do not agree on what kind of necessity is involved.[4] Is it logical necessity? Conceptual necessity? Metaphysical necessity? Something else? Their failure to resolve this problem leads other theorists, such as Danny Priel, to recommend abandoning the search for necessary features of law altogether. Priel argues:

> The word "law" has been used to describe phenomena that existed thousands of years ago (the laws of Hammurabi) and that exist today (corporate law in Delaware); we talk of law in democratic regimes, but also about law in France of Louis XIV and in the Soviet Union in the days of Stalin. We usually talk about law as something promulgated and enforced by states, but we recognize instances of law (e.g., Jewish law) of which this is not true. We talk about laws that regulate minute technical details like the size of road signs, alongside those that establish the constitutional structure of huge countries. Given this variety, are we likely to find *anything* that is common to all of them, let alone necessarily common to all of them? From this perspective jurisprudence seems doomed right from the start.[5]

Echoing Priel, Tong wonders if law is too mutable to have necessary features:

> For starters, there is something basically paradoxical about making necessary claims about law, a human institution and social practice that varies from country to country, and within each country over time. In what sense can we talk about, in law, *necessity*, a concept that is almost by definition insensitive to *variation*? What makes necessary truths about law necessary, if there are such truths?[6]

Given the mutability of law and the failure of contemporary legal theorists to agree on the kind of necessity involved, Tong proposes a radically different approach. Inspired by Wittgenstein, he argues the necessary truths about law are parochial—that is, necessary only relative to a particular culture's conceptual

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3. In the natural law tradition, see e.g. John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 1980); Michael S Moore, "Law as a Functional Kind" in Robert P George, ed, *Natural Law Theory: Contemporary Essays* (Clarendon Press, 1992) 188; Jonathan Crowe, *Natural Law and the Nature of Law* (Cambridge University Press, 2019). For the legal positivist tradition, see HLA Hart, *The Concept of Law*, (Oxford University Press, 1972) at ch 1; Timothy Endicott, "The Generality of Law" in Luís Duarte d'Almeida, James Edwards & Andrea Dolcetti, eds, Reading *HLA Hart's* 'The Concept of Law' (Hart, 2013) 15; Stefan Sciaraffa, "Constructed and Wild Conceptual Necessities in Contemporary Jurisprudence" (2015) 6:2 Jurisprudence 391. See also Yi Tong, "On the Nature of Necessary Truths in Jurisprudence: Putting Wittgensteinian Hinges to Use" (2021) 34:1 Can JL & Jur 203. I readily acknowledge that different theorists use different methodologies in their attempts to identify the necessary features of law, but a discussion of those important differences is largely outside the scope of this paper.

4. See Tong, *supra* note 3 at 207-08. Joseph Raz comes close to addressing this issue but does not; see Raz, *supra* note 2 at 26. In a subsequent chapter, he admits, "I will leave the question of the kind of necessity involved [in the nature of law] unexplored." Raz, *supra* note 2 at 91.

5. Danny Priel, "Jurisprudence and Necessity" (2007) 20:1 Can JL & Jur 173 at 175 [emphasis in original, footnote removed].

6. Tong, *supra* note 3 at 205-06 [emphasis in original]. Joseph Raz responds to a similar objection: see Raz, *supra* note 2 at 24-36.

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scheme. Since a culture's conceptual scheme can change over time, its parochial, necessary truths about law turn out to be contingent.[7] He argues:

> Unless we are in the rigid grip of the dichotomy of necessity as either analyticity/rules of language or metaphysical necessity of natural kinds, there is no reason to deny the possibility that a necessary truth can at the same time be *parochial*, that is, necessary only *relative to* a particular culture's conceptual scheme. . . . Odd though this may sound, this way of understanding necessary truths entails that they are not only parochial, but also *contingent*, within one society.[8]

It does sound odd.[9] Tong's sophisticated application of Wittgenstein's philosophy tries to show the oddity is only apparent, and it gets much of its impetus from the failure of contemporary legal theorists to explain what kind of necessity applies to an allegedly 'necessary' feature of law. Consequently, if we are to avoid radical alternatives, such as Priel's abandonment of the problem or Tong's Wittgensteinian solution, we need to identify better the kinds of necessity that apply to the necessary features of law.

To this end, I recommend we reconsider what St. Thomas Aquinas teaches about law. As is well known, Aquinas defines 'law' as "an ordinance of reason for the common good, made by him who has care of the community, and promulgated."[10] Although my focus will be on human law, the definition is not limited to human law. Aquinas applies the definition analogically to different levels: that of God (the 'eternal law' and the 'divine law'), that of all humankind (the 'natural law') and that of specific human communities ('human

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7. See Tong, *supra* note 3 at 231-34. His main example is "the change from the fundamental idea that law is the *command of a sovereign*, to be found in the writings of Thomas Hobbes (16th-17th century) and John Austin (18th-19th century), to the basic thought that law is *a system of rules*, *norms*, or *principles*, to be found in H.L.A. Hart, Hans Kelsen, and Ronald Dworkin's writings in the contemporary world." Tong, *supra* note 3 at 233 [emphasis in original].

8. *Ibid* at 232-33 [emphasis in original].

9. Michael S. Moore argues that 'contingent necessity' is no kind of necessity at all, and that it is based on an accidental generalization:

> An accidental generalization is a generalization that is true of a finite sample size of things but that is not necessarily true because of the nature of the kind of things making up the sample. 'All American lawyers are under seven feet tall' is, as far as I know, true about the hundreds of thousands of American lawyers that exist. Yet the generalization is not necessarily true because it does not answer correctly the crucial counterfactual question, 'If someone were over seven feet tall, would he not be a lawyer?' There is, in short, no necessary connection between size and being a lawyer, only an accidental connection. Moore, *supra* note 3 at 199.

Tong could counter that what counts as a correct answer to a counterfactual question depends upon the particular culture's conceptual scheme. Perhaps in the conceptual scheme used by Hobbes and Austin, for example, an affirmative answer is not allowed to the counterfactual question, 'If something is not a command of a sovereign, could it still be a law?'

10. Aquinas, *Summa*, *supra* note 1 at 995 (Pt I-II, Q 90, a 4). Aquinas writes: "*Et sic ex quatuor praedictis potest colligi definitio legis, quae nihil est aliud quam quaedam rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet, promulgata*." RJ Henle, ed, *Saint Thomas Aquinas: The Treatise on Law (Being* Summa Theologiae, *I-II, QQ. 90 Through 97)*, translated by RJ Henle (University of Notre Dame Press, 1993) at 145 (Pt I-II, Q 90, a 4, co §2) [Aquinas, *Treatise*].

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law').[11] Nevertheless, as a definition, it purports to be a necessary truth. But what kind of necessity is expressed in this definition? In what follows, I set out what I think is Aquinas' answer to this question and discuss how he answers the objection that law is too mutable to have necessary features.

In section II, I offer a very brief review of five kinds of necessity found in contemporary accounts—logical necessity, conceptual necessity, physical necessity, metaphysical necessity, and hypothetical necessity.[12] The first four kinds of necessity are distinguished, at least in part, by their subject matter. They are not identical to Aquinas' categories, and it might appear that Aquinas' definition of 'law' fits none of them.

In section III, I discuss the kinds of necessity that Aquinas identifies as necessity *simpliciter* (*necessarium simpliciter, idest absolute*), which is grounded in efficient, material, and formal causation, and hypothetical necessity (*necessarium ex conditione, sive ex suppositione*), which is connected to final causation. Aquinas further explains how, in natural philosophy and in art, necessity *simpliciter* from the formal cause connects with hypothetical necessity from the final cause. Along the way, I note where Aquinas' categories, which might appear quite foreign to contemporary philosophers, connect with their contemporary categories of necessity.

In section IV, I argue that, properly understood, Aquinas' definition of 'law' is an example of necessity *simpliciter*, in as much as it identifies the formal cause, the efficient cause, and obliquely, the material cause, and an example of hypothetical necessity inasmuch as it identifies the end, or final cause.

In section V, I briefly discuss how Aquinas uses his definitions of 'law' and 'human law' to account for the mutability of human laws. The upshot is that Aquinas provides an alternative solution to the problem of identifying what kinds of necessity apply to the nature of law, albeit via a different conceptual framework than used by contemporary philosophers. His solution should be of more than mere historical interest to contemporary philosophers of law. By reframing the ways in which the features of law are necessary, Aquinas' account suggests a way out of current impasses concerning necessity and the law.

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11. See Aquinas, *Summa*, *supra* note 1 at 996-1025 (Pt I-II, QQ 91-97). R.J. Henle, S.J., explains: "The reader will note that St. Thomas's definition, as applied to these four types of law is analogous, not univocal, inasmuch as each type fulfills some part(s) of the definition in a different but similar way." RJ Henle, "Introductory Comment on *Treatise* Q 91" in Aquinas, *Treatise*, supra note 10, 148 at 149. John Finnis discusses the importance of focal meaning for a general theory of law in Finnis, *supra* note 3 at 9.

12. It is far outside the scope of this paper to discuss the many controversies surrounding logical, conceptual, physical, and metaphysical necessity.

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II

Current discussions of 'necessity' distinguish at least five kinds: logical necessity, conceptual necessity, physical necessity, metaphysical necessity, and hypothetical necessity.[13] Logical necessity is the necessity found in statements such as 'either *p* or not-*p*' and 'it is not the case that *p* and not-*p*'. A logically necessary statement is true by virtue of its logical form.[14]

Conceptual necessity is the necessity found in statements such as 'all triangles are three-sided plane figures' and (perhaps less clearly), 'all bachelors are unmarried'. C. Anthony Anderson depicts it this way: "We might say that a proposition is *conceptually necessary* if it is necessary simply in virtue of the essential properties of, and relations between, the concepts it contains."[15]

Physical necessity is the necessity attributed to physical objects and events that fall under physical laws such as 'Increased heat at constant volume necessitates (or causes) higher pressure'. This area of necessity, also known as 'nomological necessity', is especially contentious.[16]

Metaphysical necessity is the necessity found in statements such as (to use a popular example) 'water is H_2O'. Some contemporary philosophers place metaphysical necessity between logical necessity and physical necessity. Kit Fine offers a somewhat Aristotelian account, based on his argument that essence is foundational to many categories of necessity. He writes:

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13. *Cf* Tong, *supra* note 3 at 207. Tong lists three of the five kinds—logical, conceptual, and metaphysical necessity—but acknowledges there are others.

14. See e.g. Benson Mates, *Elementary Logic*, 2nd ed (Oxford University Press, 1972) at 14. Unfortunately, matters are not that simple. Anderson argues there is no fixed notion of logical necessity. See C Anthony Anderson, "Logical Necessity, Conceptual Necessity, and the Ontological Argument" in Mirosław Szatkowski, ed, *God, Truth, and Other Enigmas* (De Gruyter, 2015) at 3.

15. *Ibid* at 5 [emphasis in original].

16. One approach is brought forward by M. Marković, who illustrates the sort of effort (perhaps in vain) one must make to define 'physical necessity' without acknowledging essences. He begins with a general definition of 'necessity':

> First of all we must bear in mind a concrete totality, i.e., a definite system of objects *S* which are relevant for our problem. The system has, on the one hand, some general characteristics that, in any given moment *t* open a field of possibilities *F*, i.e., enable us to project a set of possible states of the system in various other moments (of the future or the past). The system, on the other hand, contains also some particular limiting conditions *LC*, i.e., some rules or laws that restrict the actualization of abstract possibilities. To say then, that an *x* is necessary means that *X* is a nonempty subset of the set of possibilities *F* and that all other possibilities of the field *F* except *x* are excluded by the action of the limiting conditions *LC*. M Marković, "The Concept of Physical Necessity" in Patrick Suppes et al, eds, *Logic, Methodology and Philosophy of Science IV: Proceedings of the Fourth International Congress for Logic, Methodology and Philosophy of Science, Bucharest, 1971* (North-Holland, 1973) 967 at 967-68.

He then defines 'physical necessity': "To say, therefore, that a certain type of event *x* is *physically necessary* means: (a) that *x* is a subset of a field of apriori possibilities of the given field of physical objects; (b) that established physical laws are incompatible with any other possibility of the given field except *x*." *Ibid* at 973 [emphasis in original].

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> For each class of objects, be they concepts or individuals or entities of some other kind, will give rise to its own domain of necessary truths, the truths which flow from the nature of the objects in question. The metaphysically necessary truths can then be identified with the propositions which are true in virtue of the nature of all objects whatever. . . . The conceptual necessities can be taken to be the propositions which are true in virtue of the nature of all concepts; the logical necessities can be taken to be the propositions which are true in virtue of the nature of all logical concepts; and, more generally, the necessities of a given discipline, such as mathematics or physics, can be taken to be those propositions which are true in virtue of the characteristic concepts and objects of the discipline.[17]

Finally, there is a fifth kind of necessity—hypothetical necessity. Hypothetical necessity is the necessity found in such statements as 'if you want to graduate with a bachelor's degree, you must satisfy all the general education requirements'. This is the kind of necessity found in necessary conditions.[18]

Of these five kinds of necessity, logical necessity is clearly inapplicable to Aquinas' definition of 'law'. At the risk of being pedantic, a logician using contemporary predicate logic could analyze 'Law is an ordinance of reason for the common good' as:

$$(x)[\mathrm{L}x \equiv (\mathrm{R}x \& \mathrm{C}x)]$$

under an interpretation where 'Lx' is 'x is a law', 'Rx' is 'x is an ordinance of reason', and 'Cx' is 'x is for the common good'. Obviously, this statement is not a logical truth.

Conceptual necessity also seems inapplicable to Aquinas's definition of law. This is because, on Aquinas' own view, whether law is an ordinance of *reason*, and whether it is for *the common good*, are substantive questions and not merely questions on what the word 'law' means.[19] For instance, Domitius Ulpianus ("the Jurist") suggests law is based on the will of the sovereign—"Whatsoever pleaseth the sovereign, has force of law."[20] Part of Aquinas' response is to clarify how the Jurist's claim must be understood, lest his authority be cited in support of the view that law is based on the will and not on reason. Aquinas insists:

> [I]n order that the volition of what is commanded may have the nature of law, it needs to be in accord with some rule of reason [*oportet quod sit aliqua ratione*

17. Kit Fine, "Essence and Modality: The Second Philosophical Perspectives Lecture" (1994) 8 Philosophical Perspectives 1 at 9-10 [footnote removed]. See also Fabrice Correia, "On the Reduction of Necessity to Essence" (2012) 84:3 Philosophy & Phenomenological Research 639.

18. David Kelley offers the following conventional definition of 'necessary condition': "A given causal factor *a* is a *necessary* condition for an effect *E* when *E* cannot exist or occur without *a*." David Kelley, *The Art of Reasoning: An Introduction to Logic*, 4th ed (Norton, 2014) at 424 [emphasis in original]. *Cf* Aristotle, "Metaphysics" in Jonathon Barnes, ed, *The Complete Works of Aristotle: The Revised Oxford Translation* (Princeton University Press, 1984) 1552 at 1603 (V.5.1015a20-25) [Aristotle, "Metaphysics"].

19. In contrast, Stefan Sciaraffa argues conceptual necessity *is* applicable to the "demarcation project" of determining the necessary features of law. Sciaraffa, *supra* note 3 at 392.

20. Aquinas, *Summa*, *supra* note 1 at 993 (Pt I-II, Q 90, a 1, citing *Lib*. i, ff., *De Const. Prin. leg*. I). "*[Q]uod placuit principi, legis habet vigorem.*" Aquinas, *Treatise*, *supra* note 10 at 122 (Pt I-II, Q 90, a 1).

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> *regulata*]. And in this sense is to be understood the saying that the will of the sovereign has the force of law; otherwise the sovereign's will would savor of lawlessness rather than of law.[21]

This leaves physical, metaphysical, and hypothetical necessity. At first glance, physical and metaphysical necessity also seem inapplicable to any definition of 'law'. Physical necessity might seem limited to physical objects and how their various changes follow from laws of physics and chemistry. Metaphysical necessity might seem limited to the essences and properties of things that exist by nature. But law is neither a physical object nor, with respect to human law, a thing that exists by nature.[22] Finally, hypothetical necessity might seem inapplicable insofar as any necessary features of law are presumably unconditional.

III

These initial appearances are deceiving. The kinds of necessity Aquinas distinguishes in his comments on Aristotle's account of "simple"[23] (*haplōs/ simpliciter*) necessity and hypothetical necessity, although employing a different conceptual framework, connect with contemporary kinds of necessity, and I will show that his Aristotelian-based categories readily apply to his definition of 'law'.

In his *Commentary on Aristotle's* 'Physics', Aquinas defines 'necessity *simpliciter*' as "the necessity which depends upon prior causes."[24] This, in turn, is divided into three kinds of causes—efficient, material, and formal. If I may use Aquinas' example, "because of the motion of the sun it is necessary that day and night alternate" is an example of necessity *simpliciter* that is the necessity from the efficient cause.[25] This kind of necessity seems related to what contemporary

21. *Ibid* at 994 (Pt I-II, Q 90, a 1, ad 3).

22. Moore argues that metaphysical necessity *does* apply to the nature of law. "A natural lawyer should say that the essence of law is such that it includes justice, among other things. *Necessarily*, that is, if some system, norm, or decision is unjust, it is not *legal*. Not as a matter of conventional usage of the word 'law' (analytical necessity); not as a matter of universal social practices (contingent necessity); but as a matter of the nature of one of the things that exists in the world, namely, law." Moore, *supra* note 3 at 200 [emphasis in original]. Sciaraffa counters that "the idea of metaphysical necessity is vexed and contentious as applied to any object, yet no legal theorist has staked out a plausible account of such necessities in general or as applied to law specifically." Sciaraffa, *supra* note 3 at 392. He adds that it "does not saddle legal theorists with implausibly sublime claims about the metaphysically necessary features of law" (*ibid* at 393).

23. Aristotle, "Physics" in Barnes, *supra* note 18, 315 at 341 (II.9.199b33-200b11). Also see Aristotle's definition of 'necessary' in "Metaphysics": "We say that that which cannot be otherwise is necessarily so. And from this sense of 'necessary' all the others are somehow derived." Aristotle, "Metaphysics", *supra* note 18 at 1603 (V.5.1015a34-35).

24. St. Thomas Aquinas, *Commentary on Aristotle's* Physics, translated by Richard J Blackwell, Richard J Spath & W Edmund Thirlkel (Routledge & Kegan Paul, 1963) at 124 (II, L 15, §270) [Aquinas, *Commentary*].

25. *Ibid.*

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philosophers refer to as ‘physical necessity’, but we need not pursue this further.[26]

An example of the necessity *simpliciter* that depends upon the matter is that an animal is corruptible, “For to be composed of contraries is a consequence of being an animal.”[27] It seems this kind of necessity *simpliciter* is related to what contemporary philosophers refer to as ‘metaphysical necessity’, for it seems ‘all animals are mortal’ is a metaphysically necessary statement. Alternatively, ‘all animals are mortal’ might be classified as a physically necessary statement, but again we need not pursue this further.

Necessity *simpliciter* also includes the necessity from the formal cause. “For example, man is rational, or a triangle has three angles equal to two right angles, which is reduced to the definition of triangle.”[28] This kind of necessity seems related to what contemporary philosophers refer to as ‘metaphysical necessity’, for if ‘water is H_2O’ is a metaphysically necessary statement, it is arguably because of the essential structure of water.[29] Moreover, necessity *simpliciter* from the formal cause also resembles logical necessity and conceptual necessity, insofar as the logical form of the statement ‘either *p* or not-*p*’ explains why it is logically necessary, and the meanings of the subject and predicate terms in the definitions ‘a triangle is a three-sided plane figure’ and ‘all bachelors are unmarried’ explain why they are conceptually necessary.

All three kinds of necessity *simpliciter* are relevant for explaining how Aquinas’ definition of ‘law’ is a necessary truth. However, the necessity *simpliciter* from the formal cause needs to be unpacked to see how the definitions of things made by nature and things made by art include final causes. This, in turn, connects with hypothetical necessity, for if the end is such-and-such, then the parts, or means to that end, *must* be so-and-so if the end is to be reached.[30]

Before considering necessity *simpliciter* from the formal cause in things made by nature, Aquinas notes mathematical objects are defined without reference to ends, that is, final causes. In mathematics, the theorem ‘a triangle has three angles equal to two right angles’ follows from, *inter alia*, the definition of ‘triangle’—‘a triangle is a three-sided plane figure’, but it is not as if the definition of ‘triangle’ is for the sake of the theorem about the sum of its angles.[31]

26. To note a further connection, Aristotle’s account of ‘compulsion’ seems to be a subset of physical necessity: see Aristotle, “Metaphysics”, *supra* note 18 at 1603 (V.5.1015a26-33).

27. Aquinas, *Commentary*, *supra* note 24 at 124 (II, L 15, §270).

28. *Ibid*.

29. Aquinas would add that, for material substances such as humans and water, metaphysical necessity must also include the necessity from the material cause. See *ibid* at 82-86 (II, L 4, §§167-75).

30. For a contemporary natural law theorist who recognizes the importance of hypothetical necessity, see Mark C Murphy, “The Explanatory Role of the Weak Natural Law Thesis” in Wil Waluchow & Stefan Sciaraffa, *Philosophical Foundations of the Nature of Law*, (Oxford University Press, 2013) 2.

31. See Aristotle, “Physics”, *supra* note 23 at 341 (II.9.200a15-18); Aquinas, *Commentary*, *supra* note 24 at 126-27 (II, L 15, §273). For discussions on the differences between the natural philosopher and the mathematician—in particular, the way the former investigates forms in sensible matter whereas the latter abstracts from sensible matter—see Aristotle, “Physics”, *supra*

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In things produced by nature, however, their definitions include their ends.[32] Aristotle explains: "And since nature is twofold, the matter and the form, of which the latter is the end, and since all the rest is for the sake of the end, the form must be the cause in the sense of that for the sake of which."[33] So, in the definition 'man is a rational animal', the rational faculty is the specific difference, the rational soul is the form of the human body,[34] and the human generative process is for the sake of developing and exercising rationality.[35]

This leads to another important point about demonstrations concerning things produced by nature. Although it is the business of the natural philosopher to know all four kinds of causes—"the matter, the form, the mover, that for the sake of which [the end]"—it is not always necessary that something follows from a preceding mover or from its matter.[36] Aquinas explains:

> Rather sometimes a thing follows simply or in every case, as in the things mentioned [for example, if something is generated from contraries, it is necessary that the latter be corrupted]. But sometimes a thing follows in most instances, e.g., from human seed and a mover in generation, it follows in most instances that what is generated has two eyes, but at times this fails to happen. Similarly, because of the fact that matter is so disposed in the human body, it happens that a fever is frequently produced because of festering, but at times this is impeded.[37]

Aristotle acknowledges many of the statements we make about things made by nature are true only for the most part (*hōs epi to polu*) and Aquinas is well-aware of Aristotle's explanation why. One of the reasons why such statements hold only for the most part, rather than always, is because of an impediment.[38] A second factor is the indefiniteness of matter. In *Generation of Animals*, Aristotle combines both these reasons:

note 23 at 330-31 (II.2.193b32-194a5); Aquinas, *Commentary*, *supra* note 24 at 78-79 (II, L 3, §§ 159-61).

32. See Aristotle, "Physics", *supra* note 23 at 340 (II.8.199a9-32). See also *ibid* at 341 (II.9.199b34-200b11); Aristotle, "On Generation and Corruption" in Barnes, *supra* note 18, 512 at 549 (II.9.335b5-8); Aristotle, "Parts of Animals" in Barnes, *supra* note 18, 994 at 994, 996 (I.1.639b14-640a10, I.1.640a33-b4).

33. Aristotle, "Physics", *supra* note 23 at 340 (II.8.199a30-33). See also Aquinas, *Commentary*, *supra* note 24 at 120 (II, L13, §260).

34. *Cf* Aristotle, "On the Soul" in Barnes, *supra* note 18, 656 at 656 (II.1.412a20-21).

35. This point is scattered, usually implicitly, throughout Aristotle's corpus. See e.g. Aristotle, "History of Animals" in Barnes, *supra* note 18, 774 at 848, 921, 949 (IV.9.536b2; VIII.1.588a15-b3; IX.1.608b7-13); Aristotle, "Parts of Animals", *supra* note 32 at 995-96, 1030, 1032 (I.1.640a19-b4; III.1.661b15; 662b19-21); Aristotle, "Nicomachean Ethics" in Barnes, *supra* note 18, 1729 at 1735 (I.7.1097b24-1098a17); Aristotle, "Politics" in Barnes, *supra* note 18, 1986 at 1987-88 (I.2.1253a5-18).

36. See Aristotle, "Physics", *supra* note 23 at 338 (II.7.198a23-24).

37. Aquinas, *Commentary*, *supra* note 24 at 114 (II, L11, §247). Aristotle discusses malformed humans in Aristotle, "Generation of Animals" in Barnes, *supra* note 18, 1111 at 1190-91 (IV.3.769b5-30). For a brief discussion of Aquinas' account of monsters, see Steven J Jensen, "Of *Gnome* and Gnomes: The Virtue of Higher Discernment and the Production of Monsters" (2008) 82:3 American Catholic Philosophical Q 411.

38. See Aristotle, "Physics", *supra* note 23 at 340 (II.8.199b1-7).

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> Nature tends, then, to measure the coming-to-be and passing-away of animals by the regular movements of these bodies [the sun and the moon], but nature cannot bring this about rigorously because of the indeterminateness of matter, and because many starting-points exist which impede coming-to-be and passing-away from being according to nature, and often cause things to occur contrary to nature.[39]

As a result, Aquinas argues we cannot demonstrate from 'the human seed is an agent in generation' to 'therefore man will be generated'. However, that does not exhaust the possibilities of demonstrations concerning natural things. We can demonstrate through the formal cause with its end, thereby employing hypothetical necessity. Aquinas explains:

> But then a demonstration should be founded upon that which is posterior in generation in order that something might follow of necessity from another, just as the conclusion follows from the propositions of a demonstration. Thus let us proceed in demonstration as follows: if this should come to be, then this and that are required, for example, if man should be generated, it is necessary that human seed be an agent in the generation. . . . But that which ought to come to be, i.e., that in which the generation is terminated, was (as was said above) 'what the thing was to be', i.e., the form. . . . Hence, it is clear that when we demonstrate according to this mode, i.e., 'that "this must be so if that is to be so"' (198 b 7), we demonstrate through the formal cause.[40]

Aquinas closes Lecture 11 with another example:

> [N]atural philosophy sometimes also demonstrates that something is true because it is better that it be so. For example, we might demonstrate that the front teeth are sharp because as such they are better for cutting food, and nature does what is better. Nature does not, however, do what is better simply, but what is better with reference to what belongs to each substance;[41] otherwise nature would give a rational soul, which is better than an irrational soul, to each animal.[42]

In his final lecture on *Physics* II, Aquinas summarizes the connections between the necessity *simpliciter* from the formal cause and hypothetical necessity from the final cause in the definitions of natural things:

> It is clear that in demonstrative sciences the definition is the principle of the demonstration. And in like manner the end, which is the principle and reason [*ratio*] for necessity in things which come to be according to nature, is a sort of principle taken by reason and by definition. For the end of generation is the form of the species which the definition signifies.[43]

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39. CDC Reeve, *Action, Contemplation, and Happiness* (Harvard University Press, 2012) at 81, translating Aristotle, "Generation of Animals" in Immanuel Bekker, ed, *Aristotelis Opera* (de Gruyter, 1970) (IV.10.778a4-9).

40. Aquinas, *Commentary*, *supra* note 24 at 115 (II, L11, §248) [footnote omitted].

41. That is, nature doesn't act for the sake of an end that is superior *simpliciter*; rather it acts for the sake of an end that is superior relative to the kind of thing in question. For instance, dogs have pronounced canine teeth whereas cattle do not because dogs are carnivores and cattle are not.

42. Aquinas, *Commentary*, *supra* note 24 at 115 (II, L11, §249).

43. *Ibid* at 127 (II, L15, §274).

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These connections apply to things made by art as well. He explains:

> For as the demonstrator in demonstrating takes the definition as a principle, so also does the builder in building, and the physician in curing. Thus, because the definition of a house is such, this [what is in the definition] must come to be and exist in order that a house might come to be, and because this is the definition of health, this must come to be in order for someone to be cured. And if this and that are to be, then we must accomplish those things which must come to be.[44]

He adds another example—a saw.[45] A saw is a tool with a blade of sharp teeth made of hard material (such as iron or steel) for cutting other solid objects (such as wood).[46] This definition includes the formal cause ('blade of sharp teeth') and final cause ('for cutting other solid objects'). Because a hard material is necessary in order for the saw to cut boards, the material of the saw (e.g., 'iron' or 'steel') is also included in the definition. Here is a simple example of the use of this definition in a demonstration:

> All saws are tools with a blade of sharp teeth made of hard material for cutting other solid objects.
> Rip cut saws are saws.
> Therefore, rip cut saws are tools with a blade of sharp teeth, etc.

IV

We are now in a position to determine how Aquinas's definition of 'law' as 'an ordinance of reason, for the common good, made by the one who has care of the community, and promulgated' is a necessary truth. The *formal cause* of law is the ordinance (*ordinatio*)[47] of *practical reason.*[48] For, as Aquinas explains, reason is the rule and measure of human actions, since it belongs to reason to direct human actions towards the end, which is the first principle in all matters of action.[49] In

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44. *Ibid* at 128 (II, L15, §274).

45. There are more recent examples of using simple artifacts to provide insights into the nature of law: i.e., for a discussion of knives, see Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Clarendon Press, 1979) at 225-26; for a discussion of chairs, see Endicott, *supra* note 3 at 31-33.

46. Aquinas' definition is duller than mine: "For if one wishes to define the operation of a saw (which is a division of a certain sort which will not occur unless the saw has teeth, and these teeth are not suitable for cutting unless they are of iron), it will be necessary to place iron in the definition of saw." Aquinas, *Commentary*, *supra* note 24 at 128 (II, L15, §274).

47. "*Ordĭnātĭo: ōnis*,' *f.* [*ordino*]: a setting in order, regulating, arranging; an order, arrangement, regulation (mostly post Aug.)." EA Andrews, Charlton T Lewis & Charles Short, eds, Harper's Latin Dictionary: A New Latin Dictionary Founded on the Translation of Freund's Latin-German Lexicon (Harper Bros, 1841) at 1277, sub verbo "*ordinatio*".

48. *Cf* RJ Henle, "General Doctrinal Background for the *Treatise*" in Aquinas, *Treatise*, *supra* note 10, 38 at 45 [Henle, "Doctrinal Background"]. This part of the definition must be interpreted analogically when the lawgiver is God, in part because His knowledge is not discursive: see e.g. Aquinas, *Summa*, *supra* note 1 at 77, 1004 (Pt I, Q 14, a 7; Pt I-II, Q 93, a, 1, ad 3).

49. See *ibid* at 628 (Pt I-II, Q 9, a 1). Here Aquinas alludes to 'the end being the cause', *ibid* at 584 (I-II, Q 1, a 1, ad 1) and to Aristotle, "Physics", *supra* note 23 at 332, 339-40 (II.3.194b32-195a2; II.8.199a9-19).

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practical reason, the universal propositions that are directed to actions (i.e., the major premises of practical syllogisms) have the nature of law.[50] The necessity in question is the necessity *simpliciter* from the formal cause.[51]

The *final cause*, the end to which the lawgiver is directed, is *the common good*.[52] Just as reason is a principle of human acts, so in reason itself the ultimate end—genuine human happiness (*felicitas*, *beatitudo*)[53]—is the principle of all human actions. "Consequently the law must needs regard principally the relation to happiness" (*Unde oportet quod lex maxime respiciat ordinem qui est in beatitudinem*).[54] Moreover, since humans are by nature political animals oriented towards living in communities, "the law must needs regard properly the relationship to universal happiness" (*necesse est quod lex proprie respiciat ordinem ad felicitatem communem*).[55] The necessity in question is hypothetical necessity. In order for the common good to be realized, it is necessary that laws command particular actions be done (e.g., citizens must serve when called for jury duty), and other actions (e.g., murder) be prohibited.[56]

The *material cause* of law is more difficult to identify. One possibility is the actions that are ordered by the laws.[57] This material, like the matter in generation, is subject to impediments and indeterminateness. In human generation, because of impediments and the indeterminateness of the material, the union of sperm and egg will not necessarily generate a healthy baby.[58] In ethics and politics, human actions are subject to indeterminateness and impediments insofar as the people have a less-

50. See Aquinas, *Summa*, *supra* note 1 at 993 (Pt I-II, Q 90, a 1, ad 2). Aquinas alludes to Aristotle, "Nicomachean Ethics", *supra* note 35 at 1811 (VII.3.1146b35-1147a9). See also Aristotle, "Movement of Animals" in Barnes, *supra* note 18, 1087 at 1091-92 (7.701a6-701b1).

51. Aquinas' reply to the third objection in *Summa*, which I cited earlier, shows that he takes it to be necessary that law is based on reason. See Aquinas, *Summa, supra* note 1 at 993 (Pt I-II, Q 90, a 1, ad 3).

52. The common good in question changes when applied to eternal law, divine law, and natural law. For instance, concerning eternal law Henle writes: "God's relationship to created things is not only in the order of formal causality [as exemplars]. There is need also of a final cause and this is the ordination of all things to the final cause (the end) of all created things. This is the ordination of all things to the Common Good of creation which is the happiness of all mankind." RJ Henle, "Comment on *Treatise* Q 93, a1, ad 1" in Aquinas, *Treatise*, *supra* note 10, 200 at 201.

53. Deferrari et al explain '*beatitudo*' and '*felicitas*' are synonyms: see Roy J Deferrai, M Inviolata Barry& Ignatius McGuiness, *A Lexicon of St. Thomas Aquinas based on The* Summa Theologica *and selected passages of his other works* (Catholic University of America Press, 1948) at 106, sub verbo "*beatitudo*". Since current understandings of 'happiness' are infected with subjectivism, I translate the terms as 'genuine human happiness' to try to capture their objectivity as the ultimate end.

54. Aquinas, *Summa*, *supra* note 1 at 994 (Pt I-II, Q 90, a 2).

55. *Ibid*. Henle comments, "St. Thomas's answer that law is always ordered to the Common Good sharply distinguishes his philosophy of law from that of Positivists, Utilitarians, Realists and similar philosophies. . . . Laws which serve the interests of rulers or of privileged groups, may indeed be called laws *secundum quid*, but they are not laws in the full sense or *simpliciter* since they fail in an essential point." RJ Henle, "Introductory Comment on *Treatise* Q 90, a2" in Aquinas, *Treatise*, *supra* note 10 at 127. Using the terminology of Timothy Endicott, Aquinas is employing a *paradigm-based* account of law; see Endicott, *supra* note 3 at 28-33.

56. *Cf* Aquinas, *Summa*, *supra* note 1 at 1013-18 (Pt I-II, Q 95, a 1 - Q 96, a 1).

57. In the case of eternal law, all actions and movements are subject to it and directed by it; see *ibid* at 1003(Pt I-II, Q 93, a 1).

58. *Cf* Aquinas, *Commentary*, *supra* note 24 at 114 (II, L11, §248).

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than-virtuous character and so resist following the laws.[59] Consequently, although it is necessary that there be some actions subject to the ordering of law, it is not necessary that the law succeed in ordering those actions to the common good.[60] Hence, in manner that is similar to human generation, we cannot demonstrate from the premise 'human actions are ordered by laws' to the conclusion 'the common good is secured'. Nevertheless, we can demonstrate that 'if the common good is to be secured, then actions must be ordered by laws'.

One might object that if matter is the substrate that, together with form, constitutes the matter-form composite (as, for example, the iron and wood are the substrate of the saw), it is implausible to say that Aquinas thinks laws are made out of actions that are regulated by those laws.[61] However, this objection assumes that the actions are alleged to be the matter out of which something is made (*materia ex qua*). There is also the matter about which something is done (*materia circa quam*).[62] The actions ordered by the laws are the material cause of law in this sense. Aquinas develops this in his account of human law:

> [I]t belongs to the notion of human law to direct human actions. In this respect, according to the various matters of which the law treats [*secundum diversa de quibus leges feruntur*], there are various kinds of laws, which are sometimes named after their authors: thus we have the *Lex Julia* about adultery, the *Lex Cornelia* concerning assassins, and so on, differentiated in this way, not on account of the authors, but on account of the matters to which they refer [*sed propter res de quibus sunt*].[63]

The *efficient cause* of law is the proper authority of the community who promulgates the law.[64] This authority, whether it be the people collectively or a viceregent of the whole people (*alicuius gerentis vicem),* has the power to make and enforce laws.[65] It is *necessary* that laws be issued by a proper authority.[66] However, the viceregent's laws might fail to produce the common good. This failure may be due to evil actions and corrupt habits of the people.[67] The failure also may be due to the contingencies of particular cases, where following the letter of the law is harmful.[68] Similarly, in order that law obtain the binding force

59. *Cf* Aquinas, *Summa, supra* note 1 at 110, 1013, 1018 (Pt I-II, Q 94, a 4; Pt I-II, Q 95, a 1; Pt I-II, Q 96, a 2).

60. This limitation does not apply to eternal law; see *ibid* at 1006 (Pt I-II, Q 93, a 5, ad 3).

61. I thank an anonymous referee for raising this objection.

62. *Cf* Aquinas, *Summa*, *supra* note 1 at 664 (Pt I-II, Q 18, a 2, ad 2).

63. *Ibid* at 1016 (Pt I-II, Q 95, a 4).

64. Henle explains, "Promulgation is reducible to two categories of causes. Viewed as active promulgating, it is part of the activity of the lawgiver and so belongs to the efficient cause. Viewed as the result of the activity of the efficient cause, it is reducible to the formal cause, the state of being promulgated." Henle, "Doctrinal Background", *supra* note 48 at 87.

65. In eternal law, divine law, and natural law, the proper authority is God; see Aquinas, *Summa*, *supra* note 1 at 996,998 (Pt I-II, Q 91, a 1, a 2, a 4).

66. Aquinas acknowledges that custom can obtain the force of law, and so serve as the efficient cause of human laws: see *ibid* at 1023(Pt I-II, Q 97, a 3). *Cf* Sciaraffa, *supra* note 3 at 406.

67. Of course, I acknowledge proper human authorities may be mistaken about what promotes the common good or, because of personal corruption, issue laws that are not based on reason. Such laws are laws *secundum quid*, not laws *simpliciter*.

68. *Cf* Aquinas, *Summa*, *supra* note 1 at 1010, 1021, 1694 (Pt I-II, Q 94, a 4; Q 96 a 6; Pt II, Q 120, a 1).

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proper to it, it is necessary that those subject to the law be informed of it.[69] However, to the extent that the promulgation of the viceregents' laws may not be under their control (e.g., when subordinates are negligent in making the laws public), once again there is no necessity that the common good be achieved. Hence, again in a manner similar to human generation, we cannot demonstrate from the premise 'a proper authority promulgates a law' to the conclusion 'the common good is secured'. Nevertheless, we can demonstrate that 'if the common good is to be secured then a proper authority must promulgate laws'.

In sum, Aquinas' definition of 'law' is necessary *simpliciter* due to the formal cause of law, its material cause, and its efficient cause, and is subject to hypothetical necessity due to the end, or final cause, of law. As a fundamental, necessary truth, Aquinas' definition of 'law' can be employed in demonstrations. Here is a simple example:

> All laws are ordinances of reason, for the common good, made by those who have care of the community, and promulgated.
> Human laws are laws.
> Therefore, human laws are ordinances of reason, etc.

V

Now to the objection that we cannot have necessary truths in jurisprudence because law is a human institution that varies from country to country, and within each country over time. Aquinas has much to say in response.[70] A full discussion of his response to this objection is outside the scope of this paper, so a brief account must suffice. But before discussing Aquinas' response, notice the mutability of particular laws does not entail that the essence of law lacks necessary features. Consider, by analogy, clothes. *The Oxford English Dictionary* defines 'clothes' as "[c]overing for the person; wearing apparel; dress, raiment, vesture."[71] Clothing is a social practice that varies from country to country, and within each country over time. Nevertheless, the definition of 'clothes' as 'a covering structured in such a way so as to be worn by the person' identifies some of the necessary features of clothes. The material cause of clothes is the covering, often made of cloth. The formal cause is the structuring of the covering in order that it may achieve its end, which is to be worn. Both the material and formal causes of clothing are necessary *simpliciter*, and the formal cause includes

69. *Ibid* at 995 (Pt I-II, Q 90, a 4). As Joseph Raz notes, "The law must be open and adequately publicized. If it is to guide people they must be able to find out what it is. For the same reason its meaning must be clear. An ambiguous, vague, obscure, or imprecise law is likely to mislead or confuse at least some of those who desire to be guided by it." Raz, *supra* note 45 at 214.

70. See e.g. Aquinas, *Summa*, *supra* note 1 at 1010-25 (Pt I-II, Q 94 aa 4-6; QQ 95-97). While my focus is on human law, let me note that Aquinas would agree with Jonathan Crowe that even the natural law can change over time although perhaps not for all the reasons Crowe gives: see *ibid* at 1011 (PT I-II, Q 94, a 5); Crowe, *supra* note 3.

71. *The Oxford English Dictionary: Volume II C*, (Oxford University Press, 1961) at 524 sub verbo "clothes".

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reference to the final cause. Moreover, the basic definition of 'clothes' can be used in demonstrations such that different types of clothes are explained by variations in the kinds of materials used as coverings, variations in the ways those coverings are structured, and variations in the way the coverings are worn.

In Aquinas' discussion of the mutability of human law, he begins from his definition of human law as a dictate of reason whereby human acts are directed (*lex humana est quoddam dictamen rationis quo diriguntur humani actus*).[72] His definition of 'human law' is clearly derived from his definition of 'law' in general, with the same formal cause—reason—and now the material cause—human actions—made explicit.[73] Next, Aquinas argues that a just change in the law may be due to a cause on the part of reason or due to a cause on the part of the humans whose acts are regulated by the law.

With respect to a cause on the part of reason (*ex parte quidem rationis*), Aquinas explains that it is natural for reason to advance from the imperfect to the perfect. When laws that were established to achieve the common good prove, over time, to be flawed as unforeseen problems arise, it is reasonable for legislators to make improvements to those laws.

Aquinas' explanation builds on previous arguments in his *Treatise on Law*. Since good is the first thing that practical reason apprehends, the first principle of practical reason is "good is to be done and pursued, and evil is to be avoided" (*bonum est faciendum et prosequendum, et malum vitandum*).[74] This is the fundamental principle of the natural law. R.J. Henle, S.J. comments: "This is the first principle of the moral order. It is not a first principle in the sense that all other moral principles and precepts can be deduced from it, but in the sense that by

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72. See Aquinas, *Summa*, *supra* note 1 at 1022 (PT I-II, Q 97, a 1).

73. Danny Priel raises a counterexample to the claim that human law necessarily orders *human* actions:

> In most countries in Europe there used to be a practice of trying animals that caused harm. In these cases pigs, dogs, horses, rats, worms, beetles, and many other animals that caused harm to humans or property had been prosecuted and often condemned to death for their "crimes". These trials were conducted with what seems from remaining court records like the same mix of solemnity and ritual found in criminal trials of humans. There was a judge, a prosecutor, an appointed counsel for the defence; witnesses were questioned; and if convicted the animals were subjected to "human" punishment like hanging. The trials were not concerned only with questions of identity, but also with issues of culpability, and in some cases the animals were even acquitted for lack of the requisite *mens rea*. . . . So we have here what look like legal norms addressed at certain individuals. These individuals were not the owners of the animals but the animals themselves. . . . But how are we to treat these laws? The animals in these cases could not be guided by the law, and therefore these laws did not have the capacity to guide those they were directed at. So are we to conclude . . . that guidance is not a necessary feature of law? Or perhaps that these are laws only because they belong to a legal system that includes other norms that are capable of guiding action of human beings? I am not sure how these questions should be answered. Priel, *supra* note 5 at 183-84 [footnotes omitted].

I think Aquinas would answer that human actions are the material cause of human laws *simpliciter*. Human laws applied to brute animals are laws *secundum quid*.

74. Aquinas, *Summa*, *supra* note 1 at 1009 (Pt I-II, Q 94, a 2).

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stating the intrinsic attraction of the good it supplies the entire moral order with its obligatory nature."[75]

General substantive principles of the natural law, such as "Do no harm to any person" and "Give every man his due," are also self-evident.[76] Practical reason derives, in a quasi-deductive process, many other principles of the natural law,[77] such as "[I]t is in no way lawful to slay the innocent"[78] and "Thou shalt not steal."[79] Over time, practical reason can add precepts to the natural law that are "useful for human life" (*ad humanam vitam utilia*) and adapt the precepts of the natural law to address the peculiarities of some infrequent particular cases.[80] Since every human law has the nature of law to the extent that it is derived from the natural law, either as conclusions derived from principles or as determinations of certain generalities,[81] the advances of practical reason may lead to improvements in human laws.[82]

With respect to the cause on the part of humans whose acts are regulated by the law (*ex parte vero hominum, quorum actus lege regulantur*), it is right to change the law on account of a changed condition of the people, when what was formerly expedient to them no longer is because of differences in their character or circumstances. Citing an example from St. Augustine, Aquinas argues that when the citizens are moderate, responsible, and dedicated to the common good, they can choose their leaders. But if they become so corrupt as to sell their votes and elect scoundrels, they forfeit that right, and the choice devolves to a few good people.[83] This is comparable to the ways the secondary precepts of the natural law can go unrecognized by people because of their evil passions, depraved customs, or corrupt habits.[84]

In short, two of the reasons why laws vary from country to country, and within each country over time, are from the formal and material causes of human law. Rather than undermining Aquinas' definition of 'law' as a necessary truth, these variations in human laws can be explained by that definition.

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75. RJ Henle, "Comment on *Treatise* Q 94, a2, co §3" in Aquinas, *Treatise*, *supra* note 10, 247 at 248.
76. Henle, "Doctrinal Background", *supra* note 48 at 87.
77. See e.g. *ibid* at 87, 263.
78. Aquinas, *Summa*, *supra* note 1 at 1470 (Pt II, Q 64, a 6).
79. *Ibid* at 1479 (Pt II, Q 66, a 5).
80. Aquinas, *Treatise*, *supra* note 10 at 269 (Q 94, a 5).
81. See Aquinas, *Summa*, *supra* note 1 at 1014 (Pt I-II, Q 95, a 2). Finnis discusses the derivation of human (positive) law from natural law in Finnis, *supra* note 3 at 281-90.
82. Finnis offers a very helpful example:

> If material goods are to be used efficiently for human well-being . . . there must normally be a regime of private property. . . . This regime will be constituted by rules assigning property rights in such goods, or many of them, to individuals or small groups. But precisely what rules should be laid down in order to constitute such a regime is not settled ('determined') by this general requirement of justice. Reasonable choice of such rules is to some extent guided by the circumstances of a particular society, and to some extent 'arbitrary'. The rules adopted will thus for the most part be *determinationes* of the general requirement—derived from it but not entailed by it even in conjunction with a description of those particular circumstances. *Ibid* at 285-86.

83. See Aquinas, *Summa*, *supra* note 1 at 1022 (Pt I-II, Q 97, a1).
84. See *ibid* at 1012 (Pt II, Q 94, a 6).

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To summarize, St. Thomas would agree with approaches in contemporary jurisprudence that seek to identify necessary features of law. However, he would not try to shoehorn 'law' into only one of the kinds of necessity commonly employed by contemporary philosophers: logical, conceptual, physical, or metaphysical. Rather, he uses the somewhat different, Aristotelian-based categories of necessity *simpliciter* and hypothetical necessity to explain why his definition of 'law' is a necessary truth. Furthermore, this definition enables him to explain why human laws are mutable. Aquinas' sound answers to the perennial questions concerning the necessary features of law, and what sort of necessity is found therein, warrant consideration in contemporary debates about necessity and the nature of law.

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