



“Securing the Rational Foundations of Human Living:” The Pedagogical Nature of Human Law in St. Thomas Aquinas

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Abstract

Every form of government, whether by its action or inaction, encourages certain forms of behavior and discourages others. The moral well being of a society necessitates its consideration of civil law’s legitimate role in shaping moral character. In this paper, I will attempt to argue that the Thomistic account of civil law is not merely negative, but entails a positive pedagogy that seeks to nurture the moral virtue of its citizens, for both the viciously inclined and those who are already good. Furthermore, Aquinas’ theory of the common good is such that its role is not merely limited, i.e., through establishing some form of civic tranquility and providing basic goods of the material or economic order with little worry of the moral habits thus cultivated.

The treatment of Thomas’ teaching on human law will not be fully exhausted in this paper. However, from examining the texts from the *Summa Theologiae* and the *De Regno*, it will appear evident that St. Thomas has provided a concise and intelligent framework for seeing and actualizing the necessary relationship between human law and moral virtue.

Keywords

Thomas Aquinas, Human Law, Moral Virtue, *Summa Theologiae*, *De Regno*

Every form of government, whether by its action or inaction, encourages certain forms of behavior and discourages others.¹ The moral

¹ Christopher Wolfe, “Can (and Should) We Legislate Morality?” (paper presented at the Ralph McNerny Center for Thomistic Studies, Washington, D.C., 2009). For contemporary arguments that seek to necessitate a discord between human law and the moral virtue of a community, see H.L.A. Hart, *The Concept of Law*, 2nd ed. (New York: Oxford Univ. Press, 1994); Neil MacCormick, “Natural Law and the Separation of Law and Morals,”

well being of a society necessitates its consideration of civil law's legitimate role in shaping moral character. In this paper, I would like to argue that the Thomistic account of civil law is not merely negative, but entails a positive pedagogy that seeks to nurture the moral virtue of its citizens, for both the viciously inclined and those who are already good. Furthermore, Aquinas' theory of the common good is such that its role is not merely limited, i.e., through establishing some form of civic tranquility and providing basic goods of the material or economic order with little worry of the moral habits thus cultivated.

In part I of the article, I highlight St. Thomas' arguments regarding the very essence of all law, and particularly emphasizing law's rational character. I will also analyze his treatment of the three types of law (Eternal, natural, and human) in order to draw attention to the foundations of human law. In part II, I provide analysis of St. Thomas' account of human law in the *Summa Theologiae*, laying specific weight on the positive pedagogical character of law in relation to developing the moral virtue of all citizens. Finally, I will evaluate paragraphs #114–121 of the *De Regno* in order to show that, for St. Thomas, law is not merely reduced to establishing political peace, but must be genuinely concerned with the cultivation of societal virtue. Like his political philosophy as a whole, the positive pedagogical character of law in Aquinas is nowhere fully presented, but must be pieced together by examining various sections of his work. In my treatment of this vast topic, my aim is not only to manifest the hopelessness of separating moral virtue and vice from civil law, but also to highlight Aquinas' prudential limitation upon the public enforcement of moral principles.

I.

At the beginning of his treatment on law, St. Thomas considers whether law is something pertaining to reason. The purpose of law is to command and forbid, and since commanding belongs to reason, law is therefore an act of reason. Law "is a certain rule and measure of acts in accord with which one is either induced to act or restrained from acting . . . since law obligates (*obligare*) one to act. Now the rule and measure of human acts is reason, which as is clear from what was said above (q. 1, a. 1), is the first principle of human acts. For it belongs to reason to order things to their end—where, according to the Philosopher, the end is the first principle in matters of action

in *Natural Law Theory*, ed. Robert P. George (Oxford: Clarendon Press, 1992): 105–33; Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977); John Rawls, *Political Liberalism* (New York: Columbia Univ. Press, 1993).

(*in agendis*).³ Law belongs to reason because it is an act of a rational being, which is ordered to obtaining a particular end or effect. This is how “we evaluate the rationality of a law and judge its goodness: by looking at its end and at its chosen means to achieve it.”⁴ Since the rule and measure of human acts is reason, the law’s rational character stems from the fact that it is a certain rule and measure. Furthermore, as a commanded act, law must be in some sense regulated by reason (*aliqua ratione regulata*). For Aquinas, defining law as a specific kind of rational act prevents any form of voluntarism or positivist prescription of law.

This understanding of law is rather general, and requires greater specification.⁵ The human mind is not a ruling-rule, but a ruled-rule: reason “is not in its own right (*secundum se*) a rule with respect to things.”⁶ Since the guiding principle of the *Treatise on Law* is not “reason,” but the “exterior principle of human acts,” then the more specific nature of law that Aquinas seems to be referring to is that of an exterior⁷ governing order to the good, namely, the common good. He begins his Prologue to Question 90 with the following:

“We next have to consider the exterior principles of acts. Now the exterior principle that inclines us toward evil is the devil, whose temptations were discussed in the First Part (*ST I*, q. 114). On the other hand, the exterior principle that moves us toward the good is God, who both instructs us with law and assists us with grace.”

Divine Wisdom’s governance has the character of law in so far as it moves all things to their appropriate ends.⁸ Therefore, the principle concern of law will be an ordering toward the common good.⁹ Moreover, since practical reason is ordered to the ultimate end of human life, and considering that law is a certain rule or measure in regards to human action, then the law must concern itself with man’s

³ *ST I-II*, q. 90, a. 1c. in Alfred Freddoso, trans., *Treatise on Law: The Complete Text* (Sound Bend: St. Augustine’s Press, 2009). All subsequent English citations from the *Summa* are taken from this text unless stated otherwise.

⁴ Fulvio Di Blasi, “Natural Law as Inclination to God,” *Nova et Vetera*, Eng. Edition, Vol. 7, No. 2 (2009): 339.

⁵ It is important to recall that the term “law” for St. Thomas is an analogical concept whose prime analogon will be in the Eternal Law; cf. *ST I-II*, q. 93, a. 2; also see Jacques Maritain *Natural Law: Reflections on Theory and Practice* ed. William Sweet, 43–47.

⁶ *ST I-II*, q. 91, a. 3, ad. 2.

⁷ My use of the word “exterior” is intentionally used to support the project of this paper on human law. It is clear from Aquinas that the New Law (grace) is of a radically different order than the exterior nature of human or civic law, and that grace is absolutely necessary for the healing of our wounded human nature. This point is made so as not to purport the idea that God only guides us from without.

⁸ *ST I-II*, q. 93, a. 1c.

⁹ Cf. *ST I-II*, q. 90, a. 2c.

happiness. Aquinas' stresses this point by noting that since every part:

“is ordered toward its whole in the way that what is incomplete (*imperfectum*) is ordered toward what is complete (*perfectum*), and since a man is part of a complete community, law must properly be concerned with the ordering that leads to communal happiness (*ad felicitatem communem*). Hence, in the definition of legal affairs alluded to above, the Philosopher makes mention of both happiness and political communion. For in *Ethics 5* he says, ‘The laws (*legalia*) we call ‘just’ are those that effect and conserve happiness and its elements within the political community.’ For as *Politics 1* puts it, a city is a complete community.”¹⁰

As a dictate of reason in the mode of commanding or forbidding some act that is ordered to the common good, this does not imply that just any person's reason is suitable. To order something to the common good is the “role of either the whole multitude or of someone who is acting in place of the whole multitude. Therefore, establishing a law is something that belongs either to the whole multitude or to a public personage who is in charge of (*habet curam*) the whole multitude.”¹¹ Aquinas' point reveals that law exists not only in the reason of the appropriate authority, but also in “the reasons of citizens who order their own actions through the rule of law. This double existence of law, in the reasons of the ruled as well as the reason of the ruler, supports the idea of a shared or elected government, belonging to the whole multitude.”¹²

The authoritative ordering toward the common good presupposes and affirms both man's natural aptitude for virtue, and his inability to achieve this of his own accord. This is why men must receive from others a necessary training that is required for the proper acquisition of virtue.¹³ The *requisite authority* has the capacity to order a people to their proper virtue, since law is imposed on others in the manner of a rule and measure,¹⁴ and this will be achieved in the mode of *issuing a precept (praecipendi)*.¹⁵ Additionally, the author of law should therefore be vested “with an authority that raises him above the multitude, otherwise his claim would not be founded and his law would not have the power of binding the multitude in conscience.”¹⁶

¹⁰ *ST* I-II, q. 90, a. 2c.

¹¹ *ST* I-II, q. 90, a. 3c.

¹² Daniel A Degan, S.J., “Two Models of Positive Law in Aquinas: A Study of the Relationship of Positive Law and Natural Law,” *Thomist* 46 (1982): 24.

¹³ Cf. *ST* I-II, q. 95, a. 1c.

¹⁴ *ST* I-II, q. 90, a. 4c.

¹⁵ Cf. *ST* I-II, q. 92, a. 2c.

¹⁶ Jean Tonneau, O.P., “The Teaching of the Thomist Tract on Law,” *Thomist* 34 (1970): 72.

Aquinas also points out that certain acts of reason, such as counsel or advice, do not possess the character of law. Let us say, for example, that my wife has been having a particular difficulty. Every time she opens a bottle of Pinot Grigio in the kitchen, she then immediately drinks half of it. I advise her that, whenever opening a bottle of wine, I must be present with her so that she does not consume most of it herself. This counsel is good for her, but could not be enacted for everyone who seeks to open a bottle of Pinot Grigio. It could not be ordered towards the common good of society.

Providing these few preliminary points regarding the essence of law, and particularly highlighting its rational character prescribing acts ordered toward the common good by the appropriate authority, we must now briefly analyze three types of law distinguished by St. Thomas. The “highest ideal plan” of creation (*summa ratio*) is nothing other than the Eternal Law. Since the world is governed by Divine Providence, and following that law is a dictate of practical reason on one who has charge over a community, then the very nature of the governance of things that exist in God as ruler of the universe, have the character of law. The wisdom of God is exemplified in His ordination of things to their appropriate end:

“Just as a conception (*ratio*) of the things made through his craft exists beforehand in a craftsman’s mind, so too in anyone who governs there must exist beforehand a conception of the ordering of the things to be done by those who are subject to the governor’s rule. And just as the conception of things to made through a craft is called an artistic conception (*ars*) or exemplar (*exemplar*) of the artifacts, so too the conception by one who governs the acts of his subjects takes on the character of *law*.”¹⁷

God’s law is not distinct from His nature, which means that the end of His governing is Himself. For Aquinas, there is no such thing as a law that is ordered to itself as end: it must be ordered towards that which everything else is, namely, God.

Furthermore, St. Thomas says that as a rule and measure, law can exist in something in two ways: 1) in that which regulates and measures, and 2) in that which is regulated and measured. As the architectonic principle of all things, the Eternal Law is the measure and rule of all things. With the imprint of God’s image upon him, man participates in the Eternal Law in a more excellent manner as a rational agent. This participation in the Eternal Reason is made manifest in the natural inclinations that orient man to act according to his human nature and ultimately towards happiness.¹⁸ Thomas says

¹⁷ *ST* I-II, q. 93, a. 1c.

¹⁸ Cf. *ST* I-II, q. 91, a. 2c: “Inter cetera autem rationalis creatura excellentiori quodam modo divinae providentiae

that since the rational soul is the proper *form* of man, he has a natural inclination toward acting in accord with reason, which is just to act in accord with virtue.¹⁹ This Divine impression upon man is nothing other than the Natural Law.

The principles of Natural Law instilled upon man are common and indemonstrable, requiring their particularization in a more practical way: “From the precepts of the Natural Law, which are, as it were, common and indemonstrable principles, human reason must proceed to determine certain matters in a more particular way.” Given that man’s reason does not fully participate in the Eternal Reason, he still can come to know certain general principles of the Natural Law, but not their particular determinations contained within these principles. Therefore, human reason is necessary to sanction the particulars of good action in the framework of human law. Protecting the lives of others and seeking to avoid harming them is a common example of a general principle of the Natural Law that must be concretized in the manifest human laws of a society. Regarding the relationship between Natural law and civil law, Aquinas’ point is clear: human law is capable of adding good things pertaining to morals,²⁰ since Natural law is not sufficient to regulate human conduct.²¹ The Thomistic conception of human law stems from its rootedness in the naturally known principles of Natural Law, the rule and measure of everything else, and which require further specification in a legal framework for the citizens of society to help cultivate their moral flourishing.²²

¹⁹ Cf. *ST* I-II, q. 94, a. 3c. For excellent literature on the topic of natural inclinations in Natural Law Theory, see Stephen Brock, *Legal Character of Natural Law According to Thomas Aquinas*, Ph.D. Dissertation (Univ. of Toronto, 1988): 143–166 and Brock’s “Natural Inclination and the Intelligibility of the Good in Thomistic Natural Law,” *Vera Lex*, VI. 1–2 (Winter 2005): 57–78; Douglas Flippen “Natural Law and Natural Inclinations,” *The New Scholasticism* 60, no. 3 (1986): 284–316; Jean Porter, *Nature as Reason. A Thomistic Theory of Natural Law* (Grand Rapids: Eerdmans, 2005); Lawrence Dewan, O.P., “St. Thomas, Our Natural Lights, and the Moral Order,” *Angelicum* 67 (1990): 285–307; Ralph McInerney, “The Case for Natural Law,” *Modern Age* (Spring, 1982): 168–74.

²⁰ Cf. *ST* I-II, q. 100, a. 1; I-II, q. 94, a. 5c.

²¹ Degnan, S.J., “Two Models of Positive Law in Aquinas,” 10. See also Sergio Cotta, “Positive Law and Natural Law,” *The Review of Metaphysics* 37, no. 2 (1983): 265–285.

²² See *ST* I-II, q. 96, a. 4. Thomas maintains three reasons for human laws binding man in conscience: “Dicuntur autem leges iustae et ex fine, quando scilicet ordinantur ad bonum commune; et ex auctore, quando scilicet lex lata non excedit potestatem ferentis; et ex forma, quando scilicet secundum aequalitatem proportionis imponuntur subditis onera in ordine ad bonum commune. Cum enim unus homo sit pars multitudinis, quilibet homo hoc ipsum quod est et quod habet, est multitudinis, sicut et quaelibet pars id quod est, est totius. Unde et natura aliquod detrimentum infert parti, ut salvet totum. Et secundum hoc, leges huiusmodi, onera proportionabiliter inferentes, iustae sunt, et obligant in foro conscientiae, et sunt leges legales.”

II.

Our considerations thus far have been to understand Aquinas' teaching on the essence of all law in order to establish the objective moral foundation of human law as an act of reason, or as one author deems it, an act of "rational persuasion."²³ The positive pedagogical nature of human law must now be examined, particularly focusing on Thomas' answer to whether the effect of law is to make men good.²⁴ St. Thomas offers a number of possible objections to this question. First, men are made good through virtue, and since God infuses virtue within us, it is not law that makes men good, but virtue. Second, law would do no good for man unless he was to obey it. But the fact that man obeys a law stems from his goodness. Therefore man's goodness is presupposed in relation to law. Third, law is ordered to the common good, but we know that some act well in matters pertaining to the common good and yet do not act well in their own proper affairs.

St. Thomas, following Aristotle, responds that the intention of every lawmaker is to make the citizens good.²⁵ Law is nothing other "than a dictate of reason which exists in the one who is in charge (*in praesidente*) and by which his subjects are governed. Now, in general, the virtue of what is subordinate lies in its being subordinated in the right way to that by which it is governed: for instance, we see that the virtue of the irascible and concupiscible parts of the soul consist in their being obedient in the right way to reason."²⁶ Since law is concerned with human action, whose first principle is the ultimate end of human life, then law must regard ordering man to happiness. Furthermore, the law is ordered so *that those subject to it can obey it*. It follows that, for St. Thomas, those who are subject to law will become good and virtuous by being obedient to it.²⁷

The responses to each of the previous objections reveal Aquinas' understanding of the role human law plays in shaping the moral

²³ From Thomas Hibbs', "The Pedagogy of Law and Virtue in the 'Summa Theologiae,'" doctoral dissertation, University of Notre Dame, 1987: 76. "Thomas highlights the intelligibility of law, which he associates with the rational apprehension of goods or ends. It is not merely that laws do in fact correspond to what is good and reasonable, but that this correspondence, or rather identity, is precisely what makes law normative and obligatory. Thomas stresses not only the rational character of law, but also the essential role of exhortation or persuasion: law is an inducement [*inducere*] to action."

²⁴ See *ST I-II*, q. 92, a. 1. The scope and purpose of the present paper is simply to show *that* human law has an intimate and practical pedagogical relationship to moral virtue for St. Thomas. The limitations of my thesis prevent me from *fully explicating how* this takes place in the citizens of society.

²⁵ *ST I-II*, q. 92, a. 1c. See also, *ST I-II*, q. 100, a. 9, ad. 2.

²⁶ *ST I-II*, q. 92, a. 1c.

²⁷ See also the relationship to the virtue of obedience in *II-II*, 105, a. 5.

character of *all citizens*.²⁸ In response to the first objection, St. Thomas states that as a director of human action, the law is concerned primarily with acquired moral virtue. The regularity of actions whereby men are *habituated* to become good is a cause of acquired virtue, whereas it merely disposes one for the infused moral virtues.²⁹ The scope of human law is to be concerned with *acquired moral virtue*, and this also enables Aquinas' legal theory to be practically applied to a variety of societies and capable of analysis from believers and non-believers alike. Recall that, for Aquinas, a virtue is the perfection of a power, a good habit by which we work well. Virtue not only makes the agent good, but the work done good as well. A good habit "is one which disposes one to an act suitable to the agent's nature, while a bad habit is one which disposes to an act unsuitable to nature. Thus, acts of virtue are suitable to human nature, since they are according to reason."³⁰ Thomas' point is quite simple: the more we carry out repeated actions, the easier it becomes to do them. It is best to understand habits as "channels or grooves metaphorically cut into our character that direct our actions in a certain way. The more we use and dig out and deepen those channels, the easier the action becomes."³¹ Aquinas is quite lucid that this habituation of acts through law is extrinsic, and incapable of directing the interior movements of the will; yet it does little for the common good to say that thoughts and inner movements of the will fall *completely outside of it*.³²

St. Thomas indicates that even the fear of punishment can be an inducement to virtue, precisely because "being accustomed to avoiding evil and doing good through fear of punishment, man is sometimes led to enjoy doing good and *to do it of his own will*."³³ Punishment can provide serious motives for deterring one from committing certain types of vicious action. The efforts of legitimate authority to curb evil actions are for the purpose of habituating even the minutest inklings of virtue within the agent, so that the person begins to taste the pleasures of acting well. Even through this habituation of restricting vicious action, there is the intention of leading a person

²⁸ It is important to highlight the practicality of Aquinas' legal theory: while virtue is the *end* of human law, men have various backgrounds that constitute different levels of moral virtue. This is why he is clear that human law, like any good teacher, must lead people to virtue "gradually and not all at once;" Furthermore, while Aquinas does see the necessity of being concerned with moral matters in politics, he does not simply reduce politics to morality.

²⁹ *ST I-II*, q. 92, a. 1, ad. 1.

³⁰ Maria Carl, "Law, Virtue, and Happiness in Aquinas' Moral Theory," *The Thomist* 61 (1997): 431.

³¹ Wolfe, "Can We Legislate Morality."

³² See Pakaluk, "Common Good," 69.

³³ See *ST I-II*, q. 92, a. 2, ad. 4.

to willingly act in a virtuous manner instead of merely through fear only.³⁴ This notion of fear as a beginning and not the end of virtue is fundamental to understanding Aquinas' theory of law as innate to the moral perfection of human acts.³⁵

Concerning those who appear to act well in public, but not in private, Aquinas clarifies that the goodness of a part is seen in relation to its whole. Any part that does not fit in with the whole is bad (*turpis*). Therefore, "since every man is part of a political community (*pars civitatis*), it is impossible that any man should be good without being related in the right way to the common good; nor can the whole consist appropriately of anything except parts that are proportioned to it."³⁶ Broadly understood, law plays a key role as a common guide for all³⁷, not just those who are malicious and in need of correction. Human law is to be framed for the community rather than for the individual because whatever is for an end should be proportionate to that end.³⁸ Now the end of law is the common good, since the common good is "greater and more divine than the private good."³⁹ This Aristotelian dictum expresses the truth that human communities are the highest achievements of nature, for they are unlimited with regard to the *diversity of their perfections*.⁴⁰

Later in the body of the response to the third objection, Thomas says that it would be impossible for the common good of political society to fare well unless, at the least, the rulers were virtuous. It seems as though, at this point, that St. Thomas were positing that only virtuous men can enact the kinds of laws that can further genuine virtue in society; it would be *good men alone that would be capable of making good laws*. This very question arises in his consideration on civil law's utility where, in the first article of his treatment of *lex humana*, Aquinas poses the following question: shouldn't men have recourse to the "living justice" of a virtuous judge than the "non-living" justice of written laws?⁴¹ The prudential response that Thomas offers is that it would be better for things to be regulated by

³⁴ *ST* I-II, q. 95, a. 1c: In addressing whether human law should be changed, Aquinas emphasizes the importance of law gradually becoming better, from imperfect to more perfect, through reflected experience of legislators and citizens, see *ST* I-II, q. 97, a. 1.

³⁵ Cf. Ralph McInerny, "The Principles of Natural Law," in *Readings in Moral theology: Natural Law and Theology*, no. 7, ed. by Charles E. Curran and Richard A. McCormick, S.J. (New York: Paulist Press, 1991): 140.

³⁶ *ST* I-II, q. 92, a. 1, ad. 3: Cf. *ST* II-II, q. 47, a. 10.

³⁷ See *ST* I-II, q. 101, a. 3c.

³⁸ See *ST* I-II, q. 96, a. 1c.

³⁹ Aristotle, *Nicomachean Ethics*, 1.2.

⁴⁰ Yves Simon, *A General Theory of Authority* (Notre Dame: Univ. of Notre Dame Press, 1962), 29.

⁴¹ *ST* I-II, q. 95, a. 1; Russell Hittinger has provided an excellent analysis of this point in "Natural Law in the Positive Laws: A Legislative or Adjudicative Issue?" *The Review of Politics* 55, no. 1 (Winter, 1993): 15–22.

an inanimate written law than through the decisions of judges. He provides three reasons for this:

“First, a few wise men—which is all it takes to make good laws—are easier to find than a large number of wise men—which is what it would take to judge cases correctly one by one. Second, lawmakers spend a long time considering what should be imposed by law, whereas judgments about individual cases are made quickly as the cases arise. Moreover, a man can more easily see what is right if he considers many instances than if he considers just a single instance. Third, lawmakers make judgments that apply to all cases (*in universali*) and are future oriented, whereas the men who render judgments are judging about present matters, concerning which they are affected by love or hate or some kind of excessive desire, and in this way their judgments become perverted.”⁴²

Thomas identifies inanimate justice with written laws because this is how lawmakers are normally capable of directing human acts. Secondly, if laws were enacted on a case-by-case base, with little overarching consideration through the avenue of experience, then law would extend beyond its limits, and be the cause of greater societal frustration and worse evils. Finally, inanimate human laws can provide a necessary constraint on the unrestricted passions of judges. Ideally, the best society would be one in which both the lawmakers and the citizens would be virtuous. However, practical wisdom for Aquinas dictates that just because an individual (or individuals), having the requisite authority, lacks moral virtue does not invalidate a civil law, because the common good of society cannot be solely dependent upon the virtuous or vicious soul of its lawmakers.⁴³

The positive pedagogical nature of law briefly discussed thus far can be further strengthened when considering the example of a school classroom. Elementary and middle school teachers often have to administer their fair share of necessary discipline. This can become a rather disconcerting problem in an institution where the seeds of morality in the student body are severely deficient. One could become so habituated to administering consequences for disobeying classroom or school rules that eventually, those students who were good, or desired to become better, will often be unattended to. They frequently seek paths for greater moral development, but often find none. The ensuing result over and over again is that even the good students start to digress, and break the rules because they believe the rules contain only something negative: restricting them from becoming worse, but not providing something for them to become better. Rewards are rarely dispensed, and virtue seldom recognized, so that

⁴² *ST* I-II, q. 95, a. 1, ad. 2.

⁴³ See *ST* II-II, q. 60, a. 6, ad. 4.

the good students will often act out just to get noticed and this would be a “reward” for them. Teachers in this setting learn rather quickly that the common good of the classroom has to be such that the viciously inclined are habituated to becoming good, and that those already good students be capable of becoming even better. In an analogous way, the good-intentioned people need influence of law and instruction in order to flourish, since they are primarily social by nature.⁴⁴ Furthermore, the example thus mentioned is in congruity with Aquinas’ point concerning the proper subjects of human law:

“There are two kinds of men on whom any law, whatever it might be, is imposed. For some of these on whom a law is imposed are stubborn and proud, and these men are restrained and subdued by the law; and a law is also imposed on those who are good, and these men, instructed by the law, are aided in fulfilling what they intend.”⁴⁵

Thomas has a unique understanding of the law’s necessary relationship to the moral flourishing of its citizens, and his insights require mentioning two inter-related points regarding the effective character of law. First, as a command of reason, guiding human actions toward its ultimate end, it would be odd if law did not contain an effectiveness by which the end could be reached. Even those who obey the law for the fear of punishment do so because they recognize, albeit in a limited sense, that the law ought to be obeyed because of the loss of some good that they desire. This too applies to the virtuous law abiding citizen. The good man is obedient to the law because he is led towards a good to which, separate from the law, he could not acquire on his own.⁴⁶ Therefore, law must be ordained to the common good of society by one who can enforce it *as law*. As the above example concerning my wife’s drinking habits illustrated, private acts of reason such as counsel cannot be posited as law because they are not of the kind that can lead the community to virtue as a *final cause*.⁴⁷

The second point to be made also regards the law’s effectiveness, but presupposes it. The common good of society requires obedience to the promulgated laws enacted by the pertinent authority. Why would one be obedient to a law that he was not confident that its obedience would bring about the common good? The right ordering to the common good through the virtue of obedience brings to light what Fulvio Di Blasi refers to as the *principle of autonomy*, “namely

⁴⁴ Keys, “Aquinas’ Two Pedagogies,” 523. The following classroom example is drawn from the author’s own experience as a former middle school teacher.

⁴⁵ *ST I-II*, q. 98, a. 6c.

⁴⁶ See *De Regno*, 106.

⁴⁷ See *ST I-II*, q. 90, a. 2, ad. 2: Cf. *ST I-II*, q. 90, a. 3, ad. 2; q. 92, a. 2, ad. 2.3.

something belonging to the nature of the agent and determining what for him is good or bad.”⁴⁸ Law understood as being rooted in reason (instead of the will) guides lawmakers so as not to be able to command things that are contrary to it, since reason and law pertain to virtue. For example, it would be simply absurd for a law to command that I hate my wife, or that every time I cross the street, I must dance like Fred Astaire. It is for this reason that human law is derived from the Natural Law, because human law “must operate, in order to achieve its end by binding human beings as *nature itself would have acted*.”⁴⁹

III.

Aquinas’ account of human law considered hitherto seems to reveal a positive capacity to affect the moral habits of its citizens. Yet, the *Summa* treatise must be coupled and integrated with Thomas’ treatment of the role of the governing office as presented in the *De Regno*, since this will offer a more complete and synthesized account of law. In the *De Regno*, Thomas is quite emphatic that the common good of society is not merely limited to establishing a condition of civic tranquility and unity among people. Aquinas provides further support to the view that genuine virtue is the proper aim of any ruler. In paragraph 114, Thomas argues that the ruler is not a rule unto himself, but subject to the Divine Governance. Being cognizant of man’s ultimate end, the ruler is to direct them by the laws enacted through the office of authority given to him:

“As the life by which men live well here on earth is ordained, as to its end, to that blessed life which we hope for in heaven, so too whatever particular goods are procured by man’s agency—whether wealth, profits, health, eloquence, or learning—are ordained to the good life of the multitude. If, then, as we have said, the person who is charged with the care of our ultimate end ought to be over those who have charge of things ordained to that end, and to direct them by his rule, it clearly follows that, just as the king ought to be subject to the divine government administered by the office of priesthood, so he

⁴⁸ Di Blasi, “Natural Law as Inclination to God,” 342; the “effective” character of law in the requisite authority is opposed to the Lockean “state of nature,” whereby all become the arbiters of Natural Law; see John Locke, *The Second Treatise of Government*, ed. Peter Laslett (Cambridge: Cambridge Univ. Press, New American Library edition, 1965), II: 7–8, p. 312.

⁴⁹ *Ibid*; For a further treatment of the essential, integral relationship between law, virtue, and obedience in the thought of Aquinas, see Benjamin J. Brown’s “The Integration of Law and Virtue: Obedience in Aquinas’ Moral Theology” *Irish Theological Quarterly* 67 (2002): 333–51.

ought to preside over all human offices, and regulate them by the rule of his government.”⁵⁰

As those rulers of society are subject to a higher law, so too in an analogous way, the citizens will be subject to human laws which lead to their virtue. Even the human goods of wealth, profits, health, and learning have a hierarchical status that orders them to serving the virtuous life of citizens. Thomas continues by describing the proper role of a ruler as guiding those in his care to their proper end, namely, happiness:

“Anyone on whom it devolves to do something which is ordained to another thing as to its end is bound to see that his work is suitable to that end; thus, for example, the armourer so fashions the sword that it is suitable for fighting, and the builder should so lay out the house that it is suitable for habitation. Therefore, since the beatitude of heaven is the end of that virtuous life which we live at present, it pertains to the king’s office to promote the good life of the multitude in such a way as to make it suitable for the attainment of heavenly happiness, that is to say, he should command those things which lead to the happiness of Heaven and, as far as possible, forbid the contrary.”⁵¹

Notice the emphasis Aquinas places on ordering something to its proper end: something made is constructed in such a particular way because of the end or goal *that its form requires*. Thus, the form of a sword is specifically for fighting, and the form of a house for habitation. A sword or house cannot be used for anything else but that for which they were made, i.e., that *end* which was the guiding principle for how and why it was made.⁵² Likewise, the ruler is to order his citizens in such a way that is fitting to their form, and this is nothing other than genuine virtue. Beatitude is the end of the virtuous life on earth; yet it is acquired moral virtue as opposed to infused moral virtue that the ruler can affect most (since moral virtue is the means and more readily disposes one to infused moral virtue) through the laws enacted and the right ordering of society.⁵³

⁵⁰ St. Thomas Aquinas, *De Regno*, trans. G.B. Phelan (Toronto: Pontifical Institute of Medieval Studies, 1949).

⁵¹ *De Regno*, 115.

⁵² St. Thomas elsewhere discusses this notion of rightly ordering things to their proper end in *ST I-II*, q. 102, a. 1c: “Ad hoc autem quod aliqua sint ordinata, duo requiruntur. Primo quidem, quod aliqua ordinentur ad debitum finem, qui est principium totius ordinis in rebus agendis, ea enim quae casu eveniunt praeter intentionem finis, vel quae non serio fiunt sed ludo, dicimus esse inordinata. Secundo oportet quod id quod est ad finem, sit proportionatum fini. Et ex hoc sequitur quod ratio eorum quae sunt ad finem, sumitur ex fine, sicut ratio dispositionis serrae sumitur ex sectione, quae est finis eius, ut dicitur in *II Physic.*”

⁵³ This is important to call attention to, for the fact that Thomas understands the pedagogical nature of human law has the quality of affecting moral virtue, but is incapable of “reading men’s hearts,” and can’t perfect man in the way that divine grace does through

Given that the goal of any ruler will be the good life of the citizens, Thomas proposes three aspects of society that the ruler must attend to regarding legislation: 1) to establish a virtuous life in the multitude subject to him; 2) to preserve it once established; and 3) having preserved it, to promote its greater perfection. Concerning the first way, he distinguishes fostering the virtuous life of the individual with cultivating virtuous living in the multitude:

“For an *individual man* to lead a good life two things are required. The first and most important is to act in a virtuous manner (for virtue is that by which one lives well); the second, which is secondary and instrumental, is a sufficiency of those bodily goods who se use is necessary for virtuous life. Yet the unity of man is brought about by nature, while the unity of multitude, which we call peace, must be procured through the efforts of the ruler. Therefore, to establish virtuous living *in a multitude* three things are necessary. First of all, that the multitude be established in the unity of peace. Second, that the multitude thus united in the bond of peace, be directed to acting well. For just as a man can do nothing well unless unity within his members be presupposed, so a multitude of men lacking the unity of peace will be hindered from virtuous action by the fact that it is fighting against itself. In the third place, it is necessary that there be at hand a sufficient supply of the things required for proper living, procured by the ruler’s efforts.”⁵⁵

Man is by nature a social animal, and considering that men become virtuous only through the help of others, it is necessary that he form a community in order to achieve a virtuous life. Foundational to establishing the good life of citizens is that they be united in a bond of civic peace, what Aquinas has called “the temporal peace within the political community (*temporalis tranquillitas civitatis*).”⁵⁶ This civic unity is not the *finis* of human law, since this unity is a prerequisite for the purpose of enabling men to act well through legislation. Furthermore, those basic and necessary goods “required for proper living” are a means to further the end of virtue. Calling to mind the example of the builder, it is necessary that his materials be finely ordered to the end of building the house well. If he does not take time to consider how the supplies and tools used tend to this

the infused moral virtues and the Gifts of the Holy Spirit. For Aquinas, the right ordering of society must be understood correctly, namely, that society can become virtuous only gradually, and with much difficulty due to the complexities of political life, and the necessity of prudence, the virtue that deals with contingent particulars. Aquinas’ political realism asserts that although political life is natural to man, and a genuine good in its own order, it is not man’s highest good: “Man is not ordained to the body politic, according to all that he is and has . . . but all that man is, and can, and has, must be referred to God” (I-II, 21.4, ad. 3)

⁵⁵ *De Regno*, 118.

⁵⁶ See *ST* I-II, q. 98, a. 1c.

end, then he will have produced a rather weak home, and be deemed no good at his profession. In like manner, the ruler must reflect upon how the natural and necessary goods for proper living can be more prudentially and definitively oriented towards accomplishing the goal of societal virtue.

After establishing virtuous living in the multitude, it will be necessary that it be conserved over time. Aquinas says that a triple charge (*curae*) is laid upon the king: he must take care to select competent men for the various governing offices (since men are mortal, but the common good is, in a sense, perpetual), he should punish those who commit vice and reward the virtuous, and protect society from external dangers, “since it would be useless to prevent internal dangers if the multitude could not be defended against external dangers.” Aquinas is quite practical in his analysis here, for he is proposing to the king something which is to come about by degrees, and not all at once. Thomas accentuates a non-utopian understanding of society: things will not be perfect, but they must be tended to with great care lest denigration and corruption eat away at political society’s proper orientation. The second point, though, seems central to Aquinas: the laws are to be such that they restrain men from vice and seek to foster virtuous activity.

Lastly, preserving the virtuous living of citizens requires that the king (or rulers) seek to bring about its greater perfection:

“Finally, for the proper direction of the multitude there remains the third duty of the kingly office, namely, that he be solicitous for its improvement. He performs this duty when, in each of the things we have mentioned, he corrects what is out of order and supplies what is lacking, and if any of them can be done better he tries to do so. This is why the Apostle exhorts the faithful to be “zealous for the better gifts.” (1 Cor 12:31)⁵⁷

St. Thomas here provides a coherent account of authentic “progress:” as society grows in the wisdom of experience, there must be signs of maturation through its becoming better. Since the condition of society is one that at this point is already good, perhaps it would be necessary for certain laws to be amended so as to achieve greater effectiveness in enhancing virtue. In regards to the meaning of the “better gifts” that the Apostle Paul mentions, Michael Pakaluk maintains that for Aquinas, “the zenith of accomplishment, for kingly rule, is to have provided for the growth of charity in the state under one’s care.”⁵⁸ This interpretation would align well with Thomas’ point concerning the end of law, where he says that human law aims at establishing

⁵⁷ *De Regno*, 121.

⁵⁸ “Common Good,” 85.

the friendship of men with one another,⁵⁹ which can only be had through genuine virtue.

At this point, we can reiterate that St. Thomas has made it clear that the proper aim of the ruler will be the common good of the polis, and this will be nothing other than the practice of communal virtue (*bona vita*). Furthermore, the moral virtue that is to be inculcated through the legislation of the king, is a means to the further end of eternal beatitude. St. Thomas is seeking to establish a substantial account of the common good, and such a common good is the proximate aim of the ruler. However, as a remote goal, the king must never forget that his subjects are ordered to a common good that transcends the city, namely, communion with God. The point here is that, for St. Thomas, while man is ordained to an end that is suprapolitical, this need not entail giving insufficient accounts of the common good, moral virtue, and the necessary role of human law.

Concerning the *De Regno*, and integrated with the *Summa*, it is clear that Aquinas understands the character of human law to be such that it can, and ought to, foster the moral virtue of society. For the common good of society to be established, conserved, and made better, it is incapable of being limited to instituting civic tranquility or basic human goods. While necessary for the foundation of any lasting society, these goods must be ordered in some type of hierarchy, such that man can acquire the unique quality or habit of moral virtue which will bring about his true flourishing. It will be the habits of moral virtue furthered and brought about through civil law that will be the greatest blockade and remedy against any form of tyranny⁶⁰ or totalitarianism.

IV.

The treatment of Thomas' teaching on human law has clearly not been exhausted in this paper. However, from examining the texts from the *Summa Theologiae* and the *De Regno*, it appears evident that St. Thomas has provided a concise and intelligent framework for seeing the necessary relationship between human law and moral virtue. The positive relationship between law and morality should not be misunderstood, for Aquinas' political realism is such that he does not see it as good that society impose excessively moralistic demands upon a citizenry that is weak in virtue, since they must come to it

⁵⁹ See *ST*, I-II, q. 99, a. 1, ad. 2; q. 99, a. 2c; James V. Schall, S.J., "The Totality of Society: From Justice to Friendship," in *The Mind That is Catholic: Philosophical and Political Essays* (Washington, D.C: Catholic University of America Press, 2008): 114–127.

⁶⁰ This can also refer to what Pope John Paul II, in *Centesimus Annus*, called a "democratic tyranny."

only “by degrees.” St. Thomas is never lacking in reminding us that this life will never fully satisfy the demands of justice, and that participation in political life, although constituting a good in its own order, will ultimately entail recognizing the truth of some levels of moral imperfection. At this point, I would like to briefly summarize some important points concerning St. Thomas’ notion (*ratio*) of law and virtue:

- 1) It is important for the good of society that its rulers seek to become virtuous, but this does not entail that human law cannot inculcate virtue only if the rulers are themselves good.
- 2) The positive pedagogical nature of civil law highlights the fact that it must take into account the viciously inclined and those who are already good and seeking to become better. A society whose primary legal role is to restrict vicious criminals will not be capable of authentic moral and cultural development.
- 3) Human law is not limited to merely establishing and securing civic tranquility, and fostering the “right” for self-determination and self-definition. Such a role for government avoids concerning itself with whether this “self-determination” in fact deteriorates a respect for human laws, and neglects a genuine concern for the moral habits cultivated therefrom.⁶¹ A dualistic approach towards “public” and “private” behavior falsely assumes that the allowance or protection of “private vice” has no causal relationship to “public virtue.”⁶²
- 4) The most comprehensive political philosophies are not going to be strictly concerned with questions of an economic, material, or technological realm, but primarily with how *to secure the rational foundations of human living*.⁶³ This “human living” can only be secured, and enabled to burgeon, when there is an established and right connection between human law and moral virtue and vice.

⁶¹ See Russell Hittinger, “Liberalism and the American Natural Law Tradition” *Wake Forest Law Review* 25, no. 3 (1990): 461.

⁶² Mill does not think that man should, or ought to, have private virtues, but only that he possess “social virtue”, and be allowed to freely live his own “individuality.” It is also important to draw attention to the fact that Enlightenment legal theory has, intentionally or not, bequeathed a more authoritarian model of law. If authority only acts in order to restrain, then the descriptive envisioned will ultimately be negative, in a similar vain to parents who see their primary role as that of only reprimanding their children. See John Stuart Mill, “On Liberty,” in *Essays on Politics and Society*, ed. J.M. Robinson (Toronto: Univ. of Toronto Press, 1977): 276–310; cf., John U Lewis, “The Power of Law: Mill, Devlin, and Aquinas on the Relation Between Law and Morality” *American Catholic Philosophical Quarterly* 53 (1979): 141–49.

⁶³ Charles N. R. McCoy, “St. Thomas and Political Science,” *On the Intelligibility of Political Philosophy: Essays of Charles N. R. McCoy*, Edited by James V. Schall and John J. Schrems (Washington, D. C.: The Catholic University of America Press, 1989): 38.

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