A

Aquinas (On Natural Law)

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Introduction

In presenting the natural law theory of Thomas Aquinas (1225–1274), primary attention shall be given to its most mature formulation, which is contained in Questions 90–97 of the First of Second Part of the *Summa theologiae* (Aquinas 1947; for the evolution of this theory cf Vendemiati 2011). However, the Treatise on Law shall not be separated from the context in which is inserted. Law is only one aspect of a broader design concerned with studying human actions where man is deemed to be the principle having free-will and control of his action (I–II, *Prologue*). In this context, the structural part concerns the definition of the ultimate end and of the actions that lead to it, while the dynamic part deals with the principles of human action, which in turn are intrinsic (habits) and extrinsic (law and grace). The Treatise on Law is therefore functional to a general theory of human action. This must never be forgotten. For Aquinas, natural law is not a separate theme.

Over the centuries there have been many interpretations of Aquinas' thought on natural law, and not infrequently they are incompatible with one another. Quite often they have been influenced by the culture of the day and by the desire to defend this conception of natural law from the objections coming from later philosophical visions. Although every exposition is inevitably an interpretation, my intention is to approach the text in its bare simplicity. If the basic framework of Aquinas' approach could no longer be proposed today, any attempt to update it would be misleading or vain.

I will only dwell on these four absolutely essential themes: the definition of law, the issue of the application of this definition to natural law, the role of natural inclinations, and the precepts of natural law and their immutability.

The Definition of Law

While Cicero and St. Augustine derive the term *lex* from *eligere* (to choose) and Isidorus from *legere* (to read), for Aquinas it derives from *ligare* (to tie): the law has a binding force that compels people to act (90, 1, c). Under this aspect, it is distinguished from *habitus*, which is an internal disposition to act well (virtue) or badly (vice). The law serves to strengthen the possibility that men act well: those well-disposed through a reasonable guide to the common good (*vis directiva*) and those ill disposed also through the threat of punishments (*vis coactiva*) (cf. George 1993). Hence "the notion of law contains two things: first, that it is a rule of human acts; secondly, that it has coercive power" (96, 5, c). Nevertheless, the principal or peculiar characteristic of law is the

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directive one, so much so that the *vis coactiva* is not present – as we will see – in its general definition.

The first thesis, an absolutely central one, is the following: the binding force of law derives from its being a work of reason that directs action to its end, which is the first principle of action. The will necessarily aims at the ultimate end and renders normative the dictates of reason, which prescribes what leads to the end. In this sense, practical reason is normative. Its object concerns "those things that are ordained to the end" (*ea quae sunt ad finem*). But this must not be seen as if we were talking about extrinsic means or even as intermediary ends, but as that in which the end itself is respected and attained, even if not all its potentialities are fulfilled. The end in its most comprehensive meaning concerns the flourishing of the human being and in this sense is ultimate end. Practical reason orders the actions that the ultimate end demands or implies. The rules of reason are in turn prescriptive for the same will. Among these dictates of reason, there are laws. If this were not the case, the will of the prince would be arbitrary *(magis esset iniquitas quam lex:* 90, 1, ad 3m). Hence the interpretation by Francisco Suárez (1548–1617) is not a faithful one: he essentially derives obligation from the will of the legislator (*Tractatus de legibus ac Deo Legislatore*, I, c. 5).

Law seen as a rule is the work of reason *alone*, which in virtue of its normative character for the will induces or inclines people to act, that is to say is found in a participatory way "in that which is measured and ruled" (90, 1, ad 1m). In the first sense, which is the main one, law is an extrinsic principle of action, and in the second sense, the participatory one, it is intrinsic. The two senses are closely connected; otherwise law would become pure action of constraint. Indeed, an action is free only if the principle of action may be found in the agent itself. Only free actions can be compulsory.

This is the general definition of law: "an ordinance of reason for the common good, made by him who has care of the community, and promulgated" (90, 4, c). The *ordinatio rationis* is only the genus of law, but it is not enough for identifying the law, since in all human actions reason has this ordering function.

The first specification is that of the end. Law concerns a multitude of participants to a political community. Then the end to which law tends is the common good (90, 2, c), that is the good of all the political community and of each of its citizens as such. This does not mean that law deals with all human affairs or all human good but only with what is functional to the common good or oriented towards the latter as its end.

The second specification concerns the author of law. Who is competent to legislate, or whose reason can be valid as a producer of true laws? Ordering in relation to an end shall be proper of those whose end is involved (90, 3, c). This is an antipaternalistic principle that is proper to all rational beings. They would not be such if they did not have in themselves, in their reason, the resources for attainment of their end. But in the case of the common good, this end concerns not single individuals but a multitude of people united in a political community. Thus it will be this same people as a whole, or those who represent it, that can legitimately make laws. This is the justification of the role of the political authority.

The third specification logically derives from the second. Since the single citizen is not the author of law, in order to be guided by it, that is to say to follow it as his or her guide of action, he or she must first know it. Hence law has to be public, and this happens through promulgation, oral, or written (90, 4, c). In this way, exterior law becomes internal. Obedience to law becomes participation in its realization for attainment of the common good.

In this definition of law, there are all the elements for a philosophical foundation of the principle of the *rule of law:* nonarbitrariness of law, free of privileges, emanated by a legitimate authority, and made public (Viola 2011, pp. 15–75).

Once the concept of law in general has been established, the various types of law are distinguished on the basis of the author's criterion: eternal law, natural law, and positive law (human and divine). These are not separate forms of law but stages of the work of practical reason in its ordering task. With positive law (human and divine) this work finds its term and its fulfilment. This explains why the definition of law has been

laid down taking as its model precisely positive law and certainly not natural law. Aquinas' intent is to show what positive law presupposes and brings to its completion. It is significant that only one question is dedicated to eternal law (q. 93) and also only one to natural law (q. 94), while three questions are dedicated to human law (qq. 95–97) and much more to positive divine law (qq. 98–105). Positive law is the arrival point, it is the general rule closest to human action, which is always particular and contingent, that is to say that it can be different from what it is. In the light of this general design the role of natural law must be framed.

Is Natural Law True Law?

One is immediately struck by an anomaly of natural law. In relation to the definition of law, it lacks a necessary element. Eternal law derives from divine reason (*summa ratio*), which directs all things, necessary and contingent, rational and irrational, to their proper end. Human law derives from the practical reason of the governors, who with the legislative artifice make up for what man lacks for his survival (95, 1, c). Natural law lacks authority of its own, and moreover, it seems to lack real promulgation. Yet Aquinas thinks that natural law has in itself the nature of law to the highest degree. The issue of promulgation is resolved as God has inserted natural law into men's minds, as something to be naturally known (90, 4 ad 1m). The author of natural law is the same as that of eternal law. This is confirmed by the well-known definition of natural law as "the participation of the eternal law in the rational creatures" (91, 2, c). Hence it should be concluded that natural law is not true law in itself, but rather the presence of eternal law in the human mind. God is the authority which enacts it; and it is God who promulgates it in the human mind (Donagan 1969, pp. 328–329).

Accordingly, it would seem that recognition of natural law as law is linked to knowledge of the existence of God and His creative work. Nevertheless, it is necessary to distinguish the order of being from the order of knowing. In the latter, the primacy belongs to the first principles of practical reason, which are nothing but natural law itself, even if it is not yet known from where they originate. These principles are "natural" in the sense that they are evident and do not imply any knowledge regarding God. In fact among these principles, there are those that direct men towards the search for truth and God (94, 2, c). If God were already known as the basis of natural law, it would make no sense to maintain that natural law itself addresses the good of knowledge and the search for God.

Hence one should wonder why these first principles of practical reason are ever considered as true law. In the case of natural law, there is already something internal, written in the heart (or in the mind), that has the character of law in that it does not find its justification in our own will and is not produced by us, so the search for its basis remains open. Human reason itself is considered in its "nature" (*ratio ut natura*).

Interpreters of Aquinas addressing the problem of whether in this context natural law can be considered true law or not are divided into two opposing groups.

The first group of interpreters follows on from the pioneering interpretation by Odo Lottin (1950). Since in q. 94, dedicated to natural law, there is no reference to eternal law, they believe that Aquinas defends an intrinsic morality founded upon right reason, which prescribes doing good and avoiding evil. Within this interpretation, there are those that only admit the analogical character of natural law, since the definition of law is only fully satisfied by positive law (Grisez 1969; Finnis 2011, p. 280; Adler 1942, pp. 226–236). There are others that defend its full character as law, arguing that participation in eternal law is to be seen in an active and not a passive way, that is as participation in the authority of God and His legislative power, which enables man to specify natural obligations and to create new ones with positive law (O'Donoghue 1955, p. 93).

The second group of interpreters believes that the obligatory force of the first principles of practical reason is not fully evident until it is linked to eternal law (Fortin 1983, pp. 605–611). Only in this way, natural law can be considered true law,

although knowledge of it being "natural" does not imply knowledge of eternal law. This leads to greater emphasis being placed on promulgation of natural law, which is not to be seen as mere divulgation, but has mandatory force, a sign of the will of the supreme legislator (Lira 1979, p. 125). Authors belonging to this second group highlight that Aquinas maintains that natural law "proprie lex vocatur" (91, 2, ad 3m). A duty with a peremptory moral meaning is not intelligible outside eternal law (Anscombe 1958).

From this very brief overview, it is clear that the first group of interpreters follows the order of knowledge of natural law, while the second group follows that of justification and foundation. In this perspective, these two interpretative approaches are compatible. It is more correct to follow the order of knowledge, because it is the one that corresponds most closely to the general procedure adopted by Aquinas: since the essence of things is unknown to us, we need to start from actions and get from them to the principles behind them (*De Veritate* q. 10, a. 1). In order to know the nature of human being, we first have to know human good, and this is found first of all in the principles, known in themselves, of natural law. But it must not be forgotten that the *Summa theologiae* is a work of theology and therefore that the exposition looks forward to what must be shown, and "law" is only what will prove to be such at the conclusion of the investigation.

Hence natural law appears in the guise of the first principles of practical reason. These principles are connatural to reason itself, and they are provided with preceptive force, that is to say they are unwritten laws, whose origin – as Antigone affirms – is not yet known (Sophocles 1912, pp. 348–349). Indeed, human reason cannot justify itself all the way. Human reason is the proximate measure of human actions, but it is not their ultimate and supreme measure (I–II, q. 21, a. 1, c).

The Role of Natural Inclinations

The second interpretative problem concerns the identification of the precepts of natural law and first of all of the principles of practical reason.

The very first principle of practical reason has a structural scope, in that it is because of it that reason is "practical." If reason grasps something as good, at the same time it realizes its normativity, that is to say sees it as something that must be done (or must be avoided) or as an end of human action: *bonum est faciendum et prosequendum, et malum vitandum.* We can consider this as the principle of normativity of action, which for practical intellect has the same founding role that the principle of noncontradiction has for speculative intellect. But it is still not known what things are good for the human being.

For this purpose, Aquinas brings natural inclinations into play as an object of the judgment of reason regarding the good to be pursued and the evil to be avoided. The fundamental thesis, the object of controversial interpretations, is expressed as follows: "And since good has the nature of end, and evil the nature of the contrary, reason by nature understands to be good all the things for which human being have a natural inclination, and so to be things to be actively sought, and understands contrary things as evil and to be shunned. Therefore, the ordination of our natural inclinations ordains the precepts of the natural law" (94, 2, c).

The main questions are the following: how are these "natural" inclinations to be seen? Do they precede or follow the apprehension of reason? What is their role in identifying the precepts of natural law?

The traditional interpretation sees in the natural inclinations the meeting point between the speculative dimension and the practical one. Nature is in some way normative (Hittinger 1987, 8; cf. also Jensen 2015). The inclination is natural because it derives from the form of the being and from its essential ontological structure. The formal cause is also a final cause of the development of the being. Nevertheless, it must immediately be specified that in human inclinations reason is already present, since "forma per quam homo est homo, est ipsa ratio et intellectus" (*In II Sent.*, d. 39, q. 2, a. 2, c) and "qui dicit hominem, dicit rationale" (94, 2, c). For this reason, "there is in every man a natural inclination to act according to reason" (94, 3, c). Hence we are not talking about a

naturalistic vision since to grasp the good (*ratio boni*) the intellect has to reflect on itself and to judge whether what is proposed is good, arousing in the will the desire for the good apprehended (I, q. 16, a. 4, ad 2m). Good has a force of attraction but not every force of attraction derives from true good. There is therefore a circular movement: at first one is inclined towards or attracted by one's rational nature itself towards something that reason judges good and therefore that the will, which is the intellectual appetite, desires to reach. Moreover, these inclinations are also "natural" in another sense, that is to say in that they incline towards absolutely fundamental goods that can be ordered according to the various degrees of being (cf. Composta 1971). As we have already seen, giving order is the specific task of reason. Hence the inclination is natural in that it is judged to be such by reason. It is not the inclination as such that constitutes law but the rational order of the inclinations: "it is universally right for all men, that all their inclinations should be directed according to reason" (94, 4, ad 3m).

According to Aquinas, the human being is representative of all creation because of his or her nature at once corporeal and spiritual. Like all substances, the human being tends to keep himself or herself alive (and therefore life is a fundamental human good and everything that defends it belongs to natural law); like all animals he or she tends to perpetuate himself or herself in the species and to educate the offspring (hence another sphere of natural law concerns the relationship between the generations); there is finally the third sphere, which is specifically human, concerning the specific work of reason, that is to say living in society and seeking the truth on God (and therefore knowledge is a fundamental human good).

As can be noticed, Aquinas does not specifically formulate the precepts of natural law, but only the fundamental human good at which they are aimed. There is not a list of norms but the indication of spheres of fundamental values that must be pursued and constitute the first principles of natural law. They are common (*principia communia*) to all men in that everyone knows them and approves them (94, 4, c). From them, it logically derives that behaviors are prescribed or forbidden in so far as they are either necessary for the attainment of these values or instead an obstacle to this end. But Aquinas does not commit himself to showing the articulations of these first principles, although they fully belong to the theme of natural law (O'Connors 1967, p. 73).

The fact that Aquinas is concerned to emphasize the communication between human nature and all creation is explained by the presence of eternal law in the background (93, 6, c), of which natural law is participation. Natural law concerns human goods, but in these it is manifested and enacted the creative plan of God, with which man is called on to cooperate (Dewan 2008, pp. 199–268).

We have seen that the traditional interpretation links natural inclinations to the ontological structure of the being and that, as we are talking about inclinations of human nature, it considers them as already marked by the presence of reason, which, reflecting on itself, grasps its *ratio boni.* But another interpretative approach is also possible, the one that considers these inclinations prerational, that is as preceding and independent of the specific work of reason (*contra* cf. Brock 2005, p. 61).

According to some interpreters of the text mentioned above, inclinations, precisely because they are "natural," in themselves are oriented towards goods suited to human nature. These goods are perceived by inclinations themselves in a way that is still preconscious, but not ungrounded. Reference is thus made to knowledge "through inclination" and a judgment "by connaturality" (Maritain 1951, p. 92, 1986, pp. 27–32). At a stage in the human conscience that is still unreflexive, certain behaviors are perceived as being in accord with human nature and others as being in sharp contrast to it. We perceive that killing a human being is something evil even before demonstrating it. This undoubtedly confers greater meaning and weight to the affirmation that natural law is written in the heart. Nevertheless, a psychological explanation of the development of the moral conscience cannot replace the philosophical foundation of natural law. In any case, attraction or repulsion in

relation to a single action is not yet knowledge of a general law.

Other interpreters, precisely considering the prerational character of natural inclinations, reach opposite conclusions: they exclude them having a significant role in the foundation of natural law. These natural tendencies have a factual character but the judgment of reason on the good in itself is native and does not derive from any other judgment. Natural inclinations are only a condition of factual possibilities (Finnis 2011, p. 73). "The basic forms of good grasped by practical understanding are what is good for human beings with the nature they have" (Finnis 2011, p. 34). Nevertheless, it is to be noticed that the inclination to act according to reason cannot be considered as purely factual.

Despite the variety of these interpretations, there is a firm point that is succinctly expressed by Aquinas: "whatever is contrary to the order of reason is, properly speaking, contrary to the nature of man, as man; while whatever is in accord with reason, is in accord with the nature of man, as man" (I–II, q. 71, a. 2, c). But how can we establish what conforms or is contrary to the order of reason?

The Precepts of Natural Law and Their Immutability

Aquinas always speaks of natural law in the singular as a category that encompasses a certain number of precepts. These are united by being known by natural reason, which in turn is to be understood both in an ontological sense, that is as reason proper to human nature, and in an epistemological sense, that is as a way of knowing. The ontological issue has concerned natural inclinations, but now we have to deal with the epistemological issue. From the way of knowing such precepts we can establish their content.

Until now we have met the first principles of practical reason, which are also called *common principles* or, elsewhere, "universalia praecepta iuris" (e.g., *In II Sent*., d. 24, q. 2, a. 4, c), and are the content of *synderesis*, that is to say, of the habit of the first principles. Aquinas considers these principles of practical reason as precepts and as a unitary whole. We have seen that such principles include both what expresses the transcendental character of the good (*bonum est faciendum et prosequendum, et malum vitandum*) and has a constitutive function of normativity, and those linked to human good: all those things which practical reason understands to be human goods are, therefore, to be done (or to be avoided).

Between the very first principle and the others, there is not a relationship of logical derivation. The first principle does not say what good is, but that the *ratio* of good as such is being assumed as the end of action and being enacted. "For practical reason, to know is to prescribe" (Grisez 1969, 378). If this principle did not exist, the accusation of naturalistic fallacy would be very difficult to reject. The other principles – as we have seen – indicate fundamental goods or general ends at which human action must aim. They concern the human good (Flippen 1986), which however implies willingness to accept the good as such (*bonum universale*) (Grisez 1969).

It must at once be noticed that there is a great distance between the very general character of these first principles and the singleness and contingency of human action, aiming to realize the good here and now. The first principles establish the fundamental criterion of practical judgment, which is founded upon the ultimate end at which action aims, but they could not guide human action without necessary mediations.

Hence further precepts will be necessary to guide people towards the actions to perform or to avoid performing in the light of the first principles. These are precepts that Aquinas calls "quasi conclusiones principiorum communium" (94, 4, c), to indicate both that they are logically connected to the first principles, and that they do not have that absolute logical stringency that is proper to the conclusions of speculative reason. That we have to act according to reason is true and correct for everybody, but the work of practical reason (*ordinatio rationis*) is not a pure deduction from the first principles, but rather a teleological evaluation of the relationship between the action to be performed and the ultimate ends indicated by the first principles. There are types of action that

clearly favor or prevent attainment of the fundamental good and that, therefore, will be compulsory or forbidden. As an example – though Aquinas is very sparing with examples – we can think of the prohibition of homicide, which is a type of action that can immediately be judged contrary to the fundamental good of human life.

But the action to be performed or avoided is always particular and, therefore, the general types of action are not sufficient to guide it, because the circumstances and the particular cases will have to be taken into account. For this purpose, further evaluations and deductions will be necessary. Here *ordinatio rationis* is also at work. It is interesting to notice that the whole process, from *principia communia* to what is obligatory in particular cases, is part of the set of problems of natural law, providing that we remain on the plane of rules.

If we ask ourselves how all these precepts of natural law are known, a distinction has to be made between knowledge of the first principles of practical reason and knowledge of the further precepts connected to them. The first principles are per se *nota* both in themselves and in relation to us (*quoad nos*). The first principles are evident. But this does not mean that they are innate, because in order to know them, we always need sensible experience and memory (*In II Sent.,* d. 24, q. 2, a. 3). For the further precepts we have to take two different parameters into account in an interweaving way: that of knowledge of the precept and that of its rightness.

A precept could be evident by itself, but not such for all men. The reason of some could be impeded in its correct exercise by ignorance or passions or bad habits or bad natural dispositions. In this case, such precepts will only appear evident to those that Aquinas considers "wise" (94, 2, c). Since the appropriate use of reason is proper to the wise (*sapientis est ordinare*), in the practical field this will also imply exercise of the virtue of *prudentia*.

From the point of view of the rightness of the precept, that is of its moral objectivity, while the first universal principles are unchangeable and valid for all men and in relation to every possible action, the further ones are valid in most cases, but for particular cases, they can be subject to exceptions when their application would lead to unreasonable results in the light of the first principles. The closer we move to the particularity of the action to be carried out, the more these exceptions increase, since the measure of reason has to appraise whether particular circumstances do, or do not, induce one to reexamine her or his practical judgment. And here Aquinas gives the well-known example of the deposit, which is not to be returned if this is clearly detrimental to the common good (94, 4, c).

In conclusion, the precepts of natural law, which come after the first principles of practical reason, may not be equally known by everybody and can be subject to exceptions in particular cases. These are not to be seen as exceptions to natural law, but as what it is correct to do every time that those particular circumstances occur. The method of specification and concretization of the first principles of natural law has a deliberative character. It consists of the choice of right ways to reach the ultimate end in particular circumstances.

In the exploration of natural law Aquinas never abandons the practical point of view. He is not interested in listing norms, but in the dynamics of human action, which starts from broad horizons of good, and which to be enacted needs to be specified through the ordering work of reason. In this pathway, impediments and particular circumstances may be encountered. The immutability of the first principles gives rise to precepts that are subject to exceptions as we draw near to practical judgment close to action. From the beginning to the end of this pathway, natural law, that is the natural use of human reason, is at work. Hence, the precepts of natural law depend on the correct way of applying the epistemology of practical reason. On this point, Aquinas' thought differs clearly from the rationalist epistemology of modern natural law theories, grounded on deductivism.

Conclusion

The work of human reason does not have a private or monological character. The search for truth and good, and therefore for natural law itself, presupposes social life, both because *ordinatio rationis*

aims at common good (*iustitia est ad alterum*), and because the exercise of reason is by definition dialogic and communicative. Thus human sociality is at the same time founded upon natural law and its presupposition. But this is still not enough to fully guide human action. The political dimension is also required, that is to say a common search for the common good, which is the condition for the flourishing of people (Finnis 1998). Then natural law will need further specifications, which this time will depend on the authority in a regime in which unanimity is impossible. In this way, natural law gives rise to human law, in which the pathway is completed. Natural law continues to live as the ultimate justification of human law itself. Natural law is the right reason of positive human law.

This entry is only an outline of a theory of natural law which shall be intended as a section of Aquinas' broader general theory of law. Two relevant issues have been left aside. The first one concerns the relation among fundamental goods. The second relates to the ways of inferring the other precepts of natural law from the principles of practical reason. These last two issues have not received a systematic treatment by Aquinas. This has resulted in the great varieties of interpretations and natural law theories inspired by the thought of Thomas Aquinas.

Cross-References

- ▶ Common Good
- ▶ Finnis, John
- ▶ Justice
- ▶ Law as Reason for Action
- ▶ Natural Law in the Middle Ages
- ▶ Natural Law Theory (Contemporary)
- ▶ Positive and Natural Law
- ▶ The Rule of Law

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