

Notes on Aquinas & Politics

1. Thomas Aquinas

a. Synderesis v. Conscience

- i. Synderesis (I.79.12): *Synderesis* is not a power (*potentia*), but rather a “characteristic disposition” (*habitus*). More specifically, it is that characteristic disposition by which we have access to the first principles of practical life. (cf. Aristotelian *archai*) Practical reasoning, like theoretical reasoning, must proceed from certain first principles which it itself cannot found. Theoretically, these are the “understanding of principles” (*NE* 6.6). Practically, they are *synderesis*.

1. *Synderesis* is a strangely obscure word. Is it a corruption of a more regularly observable *syn-* word? Something to do with understanding, perhaps? Is the whole history of synderetic analysis rooted in Thomas’ (and Albert’s) idiosyncratic reimagining of Jerome’s Ezekiel commentary? (Wherein *synderesis* gets to be the allegorical meaning of the one of the four divine ‘faces’...)

- ii. Conscience (I.79.13): Conscience is an act, not a power. (Or a *habitus*, apparently—these are the three candidates, according to Aquinas: *actus*, *potentia*, *habitus*.) More specifically, it is an act of knowing—an act that ‘connects knowledge with things.’ Thus a folk etymology emerges: conscience as ‘knowing-together-with.’ In the case of practical matters, we connect our knowledge to our actions. Thus conscience takes on three roles:
 1. Bearing Witness: declaring that we have or have not done *x*.
 2. Morally Obliging: declaring that we should or should not do *x*.
 3. Excusing or Accusing: declaring that we should have or should not have done *x*.

- iii. Confusion of Conscience with Synderesis arises because we often confuse cause (underlying *habitus* of Synderesis) with effect (*actus* of Conscience).

b. Erroneous Practical Reason

- i. Since conscience is an act of knowledge, and knowledge belongs to the power of reason, then it would seem that to go against reason—even if erroneous—would be evil (morally wrong). This is the price of rooting the act of conscience in the power of reason, apparently. (I-II.19.5)
- ii. To explain this, Aquinas first distinguishes between three kinds of acts: acts good by their nature; acts morally indifferent; and acts evil by their nature. But this is tricky, because he doesn’t care so much about that threefold distinction. What he cares about is the relationship between the will and reason.
- iii. The objects of the will are not given to the will by itself. Instead, they are given to the will by reason. Reason classifies them in advance for the will as ‘good’ or ‘indifferent’ or ‘evil.’ As far as the will is concerned, this is all that matters. The will cannot peek behind reason to see if the thing itself is inherently good or evil. Because of that, it is to be more morally conscientious, it will have to follow the classifications proposed by reason—even if those turn out to be wrong in the long run!

- iv. Here Aquinas chooses some bold examples: if reason proposed abstinence or even faith in Christ to our wills as evil, then it would indeed be evil to ‘will’ abstinence or faith in Christ. (cf. Aristotle, NE 7.9: the man who is intemperate regarding erroneous dictates of reason is still ‘incidentally’ intemperate. If, e.g., reason presented coffee-drinking as evil to us, then it would indeed be ‘evil’ to want to drink coffee, despite the baseless absurdity of such a prohibition.)
- v. Does this mean that we are excused from being accused of evil if we will in accordance with erroneous reason, which later turns out to be evil? (I-II.19.6) In some cases, yes; in others, no. If we are ignorant about something we are obliged to know (like God’s Law), then we are not excused. So not knowing that it’s bad to commit adultery is not an excuse to commit adultery. However, if ignorance is merely circumstantial, then it may excuse some acts, such as if the adulterer (somehow?) fails to recognize that the person they’re sleeping with is not their spouse. (Interesting example...)
- c. Law
 - i. (See Appendix Below.)
- d. Justice
 - i. Justice (*iustitia*) directs humans in their relations with others. Its object is right (*ius*). The aim of law (*lex*) is to establish right. (II-II.57.1)
 - ii. Justice is based on a certain kind of equality: a re-establishment of balance between people. This, of course, has nothing to do with establishing material equality across society or anything like that. Nevertheless, the work of justice must be understood in light of equality.
 - iii. Right is rendering equivalence with others. But equivalence can be established in many ways. (II-II.57.2) The two major ones are:
 1. Natural Right: equivalence or balance according to the things themselves
 2. Positive Right: equivalence or balance based on conventional agreement (in either private or public sphere)
 - iv. Natural Right usually depends on absolute commensurability. This is common to all humans and even to other animals (!). It covers rights of possession and family (e.g. children). (II-II.57.3)
 1. But there is a subsidiary version of natural right, which we can call the “common right of peoples.” This depends not on absolute commensurability but rather on ‘commensurability by consequence.’ That is to say: it has to do not with the intrinsic qualities of the object, but with the activities that will result as a consequence from someone having rights over that object.
 2. In other words, this is heading in the direction of the Labour Theory of Value, although in an Aristotelian vein (NE I.2). Aquinas uses the example of land ownership. There is no intrinsically natural reason why I (as opposed to anyone else) should own this plot of land. Yet my claim to it may be said to be ‘natural’ (via the common right of peoples) if I settle on that land and work it to good use.
 3. cf. questions of property, as well as Locke’s arguments about why the First Nations can be dispossessed of their land in the Americas. Productivity is the key to the common right of peoples, which is what

makes it more than animalistic. The *Wesenskräfte* belong to humankind alone.

- v. Justice need not be the same between all human beings, because different relationships of ‘otherness’ obtain in certain circumstances. Proper otherness is otherness within a political community, when two subjects are subject to one authority but not to each other. In other cases, otherness is not proper otherness, but rather otherness mixed with belonging. This is how it is with fathers and households or masters and slaves (not the same thing, necessarily). In those cases, people can be different without being according the full rights of absolute justice, because their difference is limited by an (unequal) sense of belonging. Thus: paternal and despotic justice do not need to abide by the maxims of absolute justice. (II-II.57.4)
- vi. How does justice fit into the aforementioned power-act-habitus schema? Properly speaking, justice is “the habit whereby one with a constant and perpetual will renders to others what is due them.” (II-II.58.1) Just acts are, unsurprisingly, the *actus* which proceed from such a habitus. So we can call justice to ‘will’ to be just, but only if we understand that the actualization of that will in just acts operates on the basis of justice proper, which is the underlying habitus (or characteristic disposition, à la synderesis above).
- vii. Adding further detail to his definition of justice, Aquinas adds that proper justice must involve different individuals. That is: the habitus of justice can properly be said to take shape only in a social context. (II-II.58.2) Metaphorically speaking, however, we can apply the term ‘justice’ to one person in order to describe the proper ‘balance’ of the various efficient causes within a person (reason, desire, *thumos*). Here Aquinas seems to be allowing some figurative leeway to the Platonists, although he himself cares little for their psychologizing take on justice.
- viii. Justice is not simply ‘a’ virtue (II-II.58.3), but is indeed ‘virtue in general.’ (II-II.58.5) This is because every virtue (even seemingly self-directed ones) ultimately aims at the common good, since individual humans are part of a whole community. And justice is the general name for virtue aiming at the common good of an entire community.
 1. Yet justice doesn’t thereby fade into a vague glob of virtues. It retains both a specific and a general meaning. Specifically, justice remains the habitus specifically concerned with engendering just acts for the sake of the common good directly. Generally, that same habitus acts as a cause for all of the other virtues, which (though not always in an immediately obvious way) eventually contribute to the same teleological goal (the common good). (II-II.58.6)
 2. Specific justice, then, has to do mostly with “external actions” of humans in relation to other humans. (II-II.58.8) Does this mean that justice has nothing to do with, say, the emotions? Can justice judge the heart? No, it cannot. Justice has to do with the external products of the will (cf. reason), whereas the emotions are the internal workings of the sensual appetites (cf. desire & *thumos*). (II-II.58.9)
- ix. Legal v. Particular Justice: Aquinas differentiates between legal justice (aiming directly at the common good) and particular justice (aiming directly at the good of another person). (II-II.58.9, 12; II-II.61)

1. Particular Justice is further subdivided into distributive and commutative justice. Distributive justice regulates relations between the Whole and the Parts (of society). Commutative justice regulates relations between Part and other Parts (of society).
 2. In plainer English: distributive justice deals with the distribution of resources throughout society; commutative justice regulates exchange between members of society.
 3. Riffing on Aristotle, as usual, Aquinas characterizes distributive justice as “geometrically proportional,” commutative justice as “arithmetically proportional.” (II-II.61.2)
 - a. Geometrically proportional means relative to the ‘importance’ of the parts (citizens) to the whole (society). Such importance is clearly determined on the basis of the kind of regime (*regimen*) prevailing in that society. The regime determines how this kind of ‘equality’ will be judged. (What in other words is the decisive criterion in that society? For an oligarchy, it would be wealth, etc. Therefore, the wealthy would not be treated as equal to the poor for purposes of resource allocation—to the benefit of the former.)
 - b. Distributive justice therefore must take into account the organization of a society and how it determines the importance of individuals.
 - c. Arithmetically proportional means numerically, quantitatively proportional. In commutative justice—e.g., exchanges, trade—straightforward quantitative equivalence should prevail. No matter what regime rules in a society, trade and exchange should function in a fair and forthright manner.
 - d. In other words: if an oligarch has more wealth than me, he is entitled to control of more resources within our society. He is not, however, entitled to cheat me in a direct business transaction.
- e. Property
- i. Private Property
 1. First of all: is it even acceptable for humans to claim external things as property? Yes! From a certain point of view, of course, everything is God’s property. Yet from the point of view of Utility, all things in nature are there for the potential use of humankind. This is in line both with philosophy (imperfect things exist for the benefit of the perfect) and theology (God granted humankind dominion over nature—within certain constraints). (II-II.66.1)
 2. Private property or individual ownership is actually good for society. (II-II.66.2) This is especially the case when it comes to ‘managing and dispensing’ resources, because individuals are more likely to take care of what is individually theirs than what is held in common. (cf. Aristotle, as always) Private property leads to greater efficiency, in other words.
 3. In addition to that, private property also reduces confusion (if it was unclear who was supposed to take care of what) and contributes to

peace. This is because strife occurs more frequently between those who hold things in common than it does between those with their own private property. (What about competition, though?)

4. However, when it comes to Using one's private property, a different sensibility appears. Even if you own much property, you still must share that property with those who are in need. (Always? Who decides on the appropriate level of need?) Aquinas here draws a fairly substantial line in the sand between management of property (where private ownership is desirable) and use of property (where restriction to private use is undesirable). (cf. questions of *usufruct* and the Spiritual Franciscan controversy)
5. Theft & robbery can then be understood as properly sinful, since they violate the tenets of justice as 'rendering what is due to others.' And what could be more 'due' to others than what they already own, according to this practice of private property (individual management)? (II-II.66.3-6)
6. However, one may take something they truly need (e.g., food for the starving). This rests on the above distinction between individual management and individual use. The right to property does not erase the duty to share excess resources with those who need to make use of them. However, the giving-away of excess resources should be done by the resource-wealthy individual himself. If, however, that person fails in their almsgiving duty, then it is permitted for the person truly in need to take what is needed. This is not theft, but rather a just act in line with natural law (the giving of what is due). (II-II.66.7)
7. Other economic insights: seeking a mild profit is not wrong, although distorting an item's value when selling it is clearly wrong. Even more clearly wrong is usury: the lending of money at interest. This is to sell 'nothing'—since the giving of the money is the giving of the use of that money, just as the giving of wine is the giving of the use of that wine. To claim interest is to effectively sell nothing—which is a violation of the equality of exchange that should lie at the heart of commutative justice. Generally speaking, even though private possession is not in itself always wrong, it goes wrong whenever it becomes covetousness. Peripatetically, Aquinas defines covetousness as the overstepping of the proper bounds of possessiveness. Private property must be kept in proper proportion; otherwise, it will spiral outward unto covetous sin.

f. War & Killing

1. Just War: Aquinas argues that there are three prerequisites for a war to be just: legitimate authority; just cause; and right intent.
 - a. The ruler who declares war must have the lawful authority to do so. (II-II.40.1)
 - b. The enemy must deserve to face war because it has inflicted some wrong. (The cause of fighting must be just.)
 - c. The intent of the war must be the right one: promoting good and avoiding evil.

- d. All three of these prerequisites must be met! If a legitimate ruler has a just cause and declares war, that war may still be sinful if it is executed with the wrong intention. (e.g., I am king; the enemy has killed my people; yet I am waging war against them so that I can expand my own unjust reign.)
- 2. Capital Punishment
 - a. Killing a human qua human is wrong. (II-II.64.6) But to kill a human qua sinner may not be wrong, given that upholding the common good must be the prime concern of justice.
 - b. Self-defense can also be an excusable reason to kill. But here again the question of intent plays a role. If the killing happens with the intention of saving a life, it is allowable. If the killing happens with the intention of killing, even within a context where one's life could be in danger, then it is not allowable. (II-II.64.7)
- g. Obedience & Rebellion
 - i. Both the natural and the divine laws oblige humans to obey their superiors. The power of authority is ordained by God, and so it operates almost as a natural hierarchy. The higher moves the lower. In this case, the higher reason and will moves the lower reason and will. (II-II.104.1)
 - ii. Obedience is actually the greatest moral (though not quite theological) virtue. This is because it gives up not just external goods (which is a lesser virtue), but even one's own will itself. It is as if we are sacrificing our own will to God's order. (cf. Gregory the Great) This is what makes obedience the greatest moral virtue, one which even adds merit to other apparently virtuous acts (e.g., martyrdom is made great by obedience). (II-II.104.3)
 - iii. Obedience to God thus eventuates in obedience to the superiors whose authority is apparently sanctioned by God's order. There are only two exceptions to such social obedience:
 - 1. If a more supreme authority (esp. God) contradicts
 - 2. If a command is made concerning what lies outside the legitimate sphere of that commander's authority (e.g., regarding one's inner self, rather than external action as the proper sphere of justice) (II-II.104.5)
 - iv. But what is the reason for extending this valorization of obedience to include obedience even to secular rulers? In that case, it would seem to be rather unclear whether or not such rulers really represented the best of the divine plan of God. According to Aquinas, though, obedience to secular rulers is mandated, "since stability in human affairs could not otherwise be maintained." (II-II.104.6) It's all about social stability, after all. (cf. the status quo?)
 - v. But are there no circumstances under which instability would be preferable to social stability? Moments of change, rebellion, revolution? For Aquinas, rebellion is (almost) always a mortal sin. To rebel is to vitiate both justice and its search for the common good. The only exception would be to oppose a proper tyrant, but this would not technically count as rebellion, since it would be resistance in the name of the common good. (II-II.42.2) [And so we are

thrown back into the problem of telling true tyrants from only apparent ones. Everything rests on this—even the possibility of mortal sin!]

h. Politics & Religion

- i. Should non-believers be compelled or coerced to believe? No. In fact, they cannot be so compelled. This is because, according to Aquinas, the *initium fidei* should still be described as a free decision of the will. (One must watch one's language here...) So to fight and capture the unbelievers will do little to force them into faith.
- ii. However, war against unbelievers can still be justified—not as a war to force faith on them, but as a war to prevent them from 'hindering' the Christian faith. This would be the *casus belli* for numerous crusades, etc.
- iii. On the other hand, those who were once faithful but fell away—namely, heretics and apostates—should indeed be 'compelled' to maintain the promises they once made. This is not forcing a change-to-faithfulness, but rather a restoration of a promise. (II-II.10.8)
- iv. Should non-Christian religious practices be permitted by the state? Yes—but only Jewish ones, usually, because they serve as an ongoing testimony to the truth of Christianity. (II-II.10.11) Other religious rites should almost never be permitted, since they are not even an evil that can be used for good. The only exception to this would be if political expediency demands taken a softer approach in order to win converts (say, e.g., if there were far too many nonbelievers to effectively restrain them all from their rites).
- v. Heretics offer a special case here. Considered purely in light of their crimes, heretics deserve two things: (1) excommunication by religious authorities and (2) death via secular authorities. (II-II.11.3) However, the Church is merciful. It will first admonish the heretics 'once or twice.' Only if the heretics persist in spreading their error—which is like 'counterfeit faith'—will they be both excommunicated and executed.
- vi. Generally speaking, spiritual power is higher than secular power, since it pertains to higher and more ultimate goods. However, this should not lead us to denigrate the secular power. In fact, both spiritual and secular powers derive from God. In spiritual matters, we defer to spiritual authorities. Yet in matters of "civic welfare," we turn to the secular authorities. Aquinas takes very seriously Mt 22.21: "Render under to Caesar what is Caesar's..." Only in the office of the Pope do the two powers—spiritual and secular—come together in a unified and divinely rooted authority observable to us in this world. (CS D44 Rep. Obj. 4)

i. Statecraft & Governance

- i. For Aquinas, political thinking belongs to the realm of practical wisdom. Being practically wise doesn't just mean looking out for one's own best end; it must also include working for the "common good of the people." (II-II.47.10) The common good is the highest end, superior to other (admittedly still good) personal goals.
- ii. Speaking more 'specifically,' there are three species of practical wisdom: practical wisdom proper (for the individual); household practical wisdom (family management); and political practical wisdom (aiming at the common good of a city or kingdom). (II-II.47.11)

- iii. Practical wisdom is usually about ruling and commanding. All are in some sense responsible for ‘commanding’ themselves morally (keeping yourself in check). Only rulers with governing power have command over others, which means only they practice political practical wisdom in the full sense. The broader their sovereign realm is, the more they participate in governance. And so if we want to take about political practical wisdom in its fullest sense, we have to look at those who must rule over both themselves and large groups of geographically dispersed people. That is: we have to look to Kings. (II-II.50.1)
- iv. As for those ruled by kings, they too must have a kind of political practical wisdom. But their version of political practical wisdom has to involve their freely choosing to obey the rulers in charge. This is, apparently, the same both for slaves ‘freely’ choosing to obey their masters and subjects ‘freely’ choosing to obey their kings. (II-II.50.2)
- v. So why are Kings so necessary? Here we can look to Aquinas’ work on kingship, addressed to the crusader-king of Cyprus:
 1. Human beings, as intelligent agents, act for the sake of an end. Indeed, their whole lives can be seen as conducted toward some ultimate end or goal. However, there are very many ways to approach such a goal, as human diversity makes clear. Humans thus stand in need of ‘something’ that will help to direct them toward their end-goal. (OK I.1)
 2. God has given humans a tool for reaching their ultimate end: that tool is reason. If humans lived in solitary isolation, they would need little more than this reason, which would allow them to figure out how best to live and so attain their goals. This would be based not on whim, but on the rational development of principles granted directly by God.
 3. However, humans do not live in isolation. As the “political animal,” humankind must live together in communal groups. This necessity is seen in the fact that, unlike other animals, we don’t come ready-made with tools for survival in nature. Instead, we have reason, which allows us to construct substitutes for such natural tools. But since one person could not construct everything, we live together in groups, so that our rational-productive powers can be used in complimentary ways. (cf. Rousseau)
 4. Our access to our ends as humans is thus mediated via relationships with others. There’s no real way around that. (No true anchorites?)
 5. However, individual interests and the common good are not the same thing. Even if living in a community, people pursuing their own interests alone will lead to strife, fragmentation, and disintegration. A higher, ruling power of reason must be brought in, so that the whole community can keep its orientation to the common good. Social stability serves the search we all share for humankind’s collective end.
 6. The rule of reason over a community of free persons (not slaves) can take the form of one ruler, a few, or many. (cf. classical boilerplate) It can also take a just or an unjust form: the former when it directs

- common life to private benefit, the latter when it directs common life to public benefit (i.e., the common good).
7. These distinctions allow Aquinas to run through his breakdown of the types of government:
 - a. First, the unjust:
 - i. Tyranny: one man ruling for his own benefit
 - ii. Oligarchy: wealthy few ruling for their benefit
 - iii. Democracy: wicked many ruling for their own benefit
 1. In this case, “the whole people will be as if a single tyrant.” (cf. the tyranny of the majority in Rousseau, Tocqueville, etc.)
 - b. And now the just:
 - i. Polity: many (warriors?) ruling for common good
 - ii. Aristocracy: few (the best?) ruling for common good
 - iii. Monarchy: shepherd-king ruling for common good
 1. A proper king thus rules over a unified, self-sufficient community. This should either be a city (defined by its self-sufficiency in supplying all of life’s necessities) or a region (defined by its ability to have a foreign policy—to define an enemy and engender mutual solidarity against that enemy).
 2. Here Aquinas allows kings to be ‘analogous’ to fathers, although this may be more sucking-up to the King of Cyprus than toeing the proper Aristotelian line (which wants to maintain distinctions between paternalism, despotism, and monarchy).
 8. Clearly, there is always the possibility that kingship (enlightened one-man rule) will collapse into tyranny (unenlightened one-man rule). How do we prevent this from happening?
 - a. First, take the person’s character into account when making them king. They should be someone after God’s own heart. (cf. 1 Sam. 13.14)
 - b. Second, limits should be placed on kingly power so that it is harder to turn toward tyranny. (How fare does this go? Full constitutional monarchy? Elaboration needed!)
 - c. Third, there should be a contingency plan for how to respond if a king tries to turn himself into a tyrant.
 - d. Of course, there is always the risk that combatting a ‘lesser’ rebellion will lead to even worse situations, such as a tyrannical crackdown or mob anarchy.
 - e. The gospel and the history of early Christianity also seem to imply that much tyrannical rule should be tolerated before violent counteraction is taken. That’s why the martyrs allowed themselves to be virtuously slaughtered, rather than rising up to usurp the emperors of Rome.

- f. In case of tyranny, then, one should not simply resort to private initiative. Rather than rushing to become a revolutionary leader, one should first explore every option to see if there is a public authority that can be used to counterbalance the tyranny.
- g. Only if no such public authority or counterweight is forthcoming can “the people” have “recourse” to God, acting as a “universal king.” (cf. the Appeal to Heaven in Locke and Revolutionary America)
- h. Even then, ideally, God’s intervention would be to change the heart of the tyrant back toward kingship and justice. Still, Aquinas does flirt with the possibility that God would play an active role in liberating His people from injustice. (He did it with Pharaoh, after all!)
- i. In the end, however, Aquinas wants to lay most of the responsibility on the subjected people themselves. If they suffer under a stern ruler, it’s probably because they are so sinful. And so, before rushing to the barricades to overthrow a ruler, we should first make sure we are properly ruling ourselves: “we should eliminate sin if we wish to eliminate the scourge of tyrants.” (OK I.6)

Appendix on Law

*Modified from Notes
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Preliminary Remarks

Much had changed between the time of Aristotle (d. 322 BCE) and that of Aquinas (d. 1274 CE). Rather than foolishly trying to list all the many changes, we should focus in on three that seem especially relevant:

- (1) The relationship between *religion* and *philosophy* shifted radically.
- (2) The *continuity* of thought that united Plato and Aristotle was severed by time and culture.
- (3) The *genres* used by Aristotle and Aquinas to explore ethical themes differed.

Aristotle died over three hundred years before Jesus was born. In his society, religion—though it was not a monolith—mostly revolved around civically minded rituals that reaffirmed the relationships between citizens, the city, and the gods. And yet, as we can learn from reading the *Ethics* and the *Politics*, Aristotle was quite able to discuss ethical and political issues without much reference to the gods or to the ‘lived religion’ of Athenian society.

For Aquinas, things were different. By his time, Christianity had been the dominant religion in Europe for at least 800 years, probably more. Much of society was rooted in Christianity to such a degree that it would have been very difficult to discuss ethical issues without reference to the *Scriptures* (cf. the Sermon on the Mount), other Christian authors (e.g., Augustine and the notion of original *sin*), and, ultimately, *Christ’s* incarnation, death, and resurrection as constituting the cardinal turning point in the history of the world.

Aquinas, teaching theology at the University of Paris, would have had to do his thinking within certain religious conditions that were much stricter than those Aristotle faced. The text we’re taking most of our readings from—the *Summa Theologica*—is first and foremost a work of Christian theology, as its name suggests. But its wide-ranging inquiries involve matters that are best described as philosophy, and which can easily be put into conversation with philosophical works from non-Christian traditions. Still, we should keep in mind the fact that religion and philosophy were *intertwined* for Aquinas in a way that they were not for Aristotle.

Despite the historical and cultural chasm between the two authors, Aquinas was able to make much use of Aristotle’s texts. Those texts themselves, however, were not passed down continuously over the centuries. Only Aristotle’s logical works were widely available in early medieval Europe. The ethical writings disappeared due to a scarcity both of manuscripts and people fluent in Greek. They did not reappear until the *twelfth century* (hat-tip to the Islamic world), just before the time when Aquinas himself was writing. So, in a sense, these millennium-and-a-half-old works from ancient Greece were *fresh material* for Aquinas and his contemporaries. Whereas Aristotle had been able to respond to his own teacher, Plato, on an almost point-by-point basis, Aquinas had to try to re-map his own Christian worldview in light of the strangely convincing arguments of a long-dead and somewhat culturally alien thinker. Aquinas’ reading of Aristotle, then, is not the culmination of centuries of development in thinking about what the *Politics* means; it is instead a relatively ‘new’ encounter with a foreign line of thinking.

Finally, we should note the difference in *genre* that also puts some distance between Aristotle and Aquinas. The *Politics*, which may have consisted merely of lecture notes, is read by us today as a kind of didactic treatise. Aristotle makes arguments, to be sure, but those arguments are invoked so as to move us from one specific claim to another. Seldom does he get bogged down in interminable debates that lead only to more confusion.

Aquinas, meanwhile, writes in the *disputatio* format, which tries to use the model of such *interminable debates* in order to explore philosophical problems from every possible angle. The particularities of this genre are taken from debates that students would actually have about just these kinds of issues: the *quaestio* or question is the disputed matter under discussion; the *objections* are the various arguments or authorities that could be invoked to bear upon this question; and the *responses* to those objections are meant to move the conversation forward in a constructive way.

Ultimately, the structure of Aquinas' writing remains *dialogic*, and in that sense he's more like Plato than Aristotle. Even though he didn't write literal dialogues, his texts move forward by opposing viewpoints and dwelling (at least for a little while) in uncertainty, which shows their indebtedness to the model of dialogue. And so, while Aquinas is undoubtedly more Aristotelian than Platonic (especially when it comes to ethics), we should keep in mind this difference in method that provides a point of connection between the *Summa* and the *Republic*, as well as a point of contrast between the *Summa* and the *Politics*.

General Overview

- I. *What is Law?* (20 min.)
 - a. Aquinas' Initial Definition (p. 11)
 - b. Why is Law Rational? (Teleology)
 - c. What is the Goal of Law and How do we Pursue It? (Common Good)
 - d. Aquinas' Mature Definition (p. 15)
- II. *What kinds of Law are there?* (40 min.)
 - a. Eternal Law
 - i. What is the eternal law? (Providence)
 - ii. Why is it called 'law?' (Because it fits the mature definition.)
 - iii. What kind of access do we have to the eternal law? (cf. natural law)
 - b. Natural Law
 - i. What is the natural law? (effect of eternal law; first principles)
 - ii. What does Aquinas mean by ethical first principles? (good-evil discernment)
 - c. Human Laws
 - i. What are human laws? (rational developments of first principles)
 - ii. How do we rationally develop human laws? (model of theoretical knowledge)
 - iii. How do we get from universal laws to particular applications? (2 ways)
 1. Rational conclusions are derived from first principles.
 2. Specifications are made from general models.
 3. The first is more reliable, the second more provisional.
 - d. Divine Law (Old and New)
 - i. What is the divine law? (OT & NT)
 - ii. Why is the divine law needed? (4 reasons)
 1. Humanity's Supernatural Telos
 2. Ahistorical Standard
 3. Criterion for Internal Acts
 4. Ideal of Universal Prohibition
 - iii. Is there just one divine law? (No: 2; old sensible and new intelligible)
 - e. Law of Concupiscence
 - i. Why is this also 'law?' (2 reasons)
 1. Desire sets the ends for action (like reason does)
 2. We are ruled by our desire 'justly' because of the Fall and its punishment
 - ii. Is this 'law' in the same way as the first four kinds of law? (No)
- III. *What is Law good for?* (20 min.)
 - a. What is the general goal of Law? (direct us to the good)
 - b. Is it as simple as being directed to the good? (No)
 - i. Relative goodness: goodness for... (a particular constitution)
 - ii. Absolute goodness: goodness in itself
 - iii. Best law should direct us to the absolute
 - c. How does law direct us to the good?
 - i. Command the virtuous
 - ii. Forbid the evil
 - iii. Permit the indifferent
 - iv. Punish for obedience

Defining Law

Aquinas begins with an initial definition: “Law is a rule and measure of acts that induces persons to act or refrain from acting.” (p. 11)

But what gives rule or *measure* to acts is that they have a certain purpose, result, or *end*. In that sense, action is teleological. And the only thing that can take into account such ends is *reason*. Reason is the rule of action because it assigns ends to action. Therefore, *law*, defined this way, must have to do with reason.

Considered as a whole, law—as the rational source of teleological action—must aim at an *ultimate end*. All of its particular precepts or ‘laws’ can be considered ‘law’ only insofar as they contribute to this ultimate end. Aquinas, agreeing with Aristotle, thinks that this ultimate end can be described as the *common good*, which he equates with *happiness*. (p. 13)

Aquinas then goes to emphasize the commonality of this *common good*. Lawmaking is best done not by individual experts on law, but by the *community* itself. For practical reasons, this usually means that certain *representatives* of the community have to craft laws that are sure to aim at the common good, rather than at ends beneficial to specific individuals. In short: only the community can properly aim at the common good. The good of the individual should thus be derived from the common good of the community, not the other way around. (p. 14-15)

In addition to being rational, teleological, and community-oriented, law must be *communicated* or publicized. (In the translator’s parlance: ‘promulgated.’) In order for laws to have any binding power on the community they hope to serve, they have to be communicated to the people who constitute that community. (p.15)

So, after those four articles we now have a more complex definition of law: “Law is an order of *reason* for the *common good* by one who has the care of the *community*, and [which is] *promulgated*.” (p. 15)

We should keep in mind that Aquinas’ definition of law is here kept intentionally abstract. This is because it is meant to apply to *law as such*, not to any specific sub-category of law. What is said about law in *Quaestio 90* has to be valid for both *eternal* law and *temporal* law (including natural law, human law, divinely revealed law, etc.).

The Different Kinds of Law

Eternal Law is the highest kind of law, even though it may seem to be something other than law to us. (p. 16) It is not itself a system of precepts (laws) that we can understand and follow. Rather, it is the *providential ordering* of everything in the universe. This is a rational, teleological ordering, in that everything exists up to its assigned end. And this ordering is also for the common good, since it ends with the salvation of the just. And in addition, it has been put in place by someone who speaks for our best interests: God, conceived of as our creator. Finally, the eternal law is communicated to us insofar as we conceive of this providential ordering and purpose of the universe. (cf. the Natural Law for how we receive a partial version of the eternal law)

Since this ordering is rational, teleological, oriented to the common good, and communicated to us (at least to some degree), we can speak of it as a *law* (on the basis of the above, complex definition of law).

However, we only have indirect and partial access to this providential ordering. We cannot clearly see how the ever-changing instability of this world could demonstrate an underlying rational plan. And so we have to keep in mind that, even though eternal law is the supreme law, it is of only limited use to human lawmakers, since they have only limited access to it.

Natural Law is the name for humanity's rational participation in the eternal law. (p. 17-18) Human rationality, though unable to unlock the ends of every last thing in the universe, is at least able to understand its own ends in terms of *good and evil*. For Aquinas, this basic normative discernment can only happen thanks to some slight flicker of the light of God that makes its way into the human mind. Ultimately, natural law consists of certain *first principles* of morality which are broadly shared, and which provide a basis for the historical development of human laws.

Human Laws are derived from the *rational development of customs* on the basis of certain practical first principles. (p. 19-20) Those first principles are intuitively derived from the Natural Law, i.e., from humanity's foundational normative distinctions.

Aquinas here uses the speculative sciences as a model. *Theoretical knowledge* proceeds from basic axioms or principles, which it treats as foundational and no longer questions. On the basis of those axioms, all kinds of rational exercises can be performed, which should lead to more specific—but less secure—kinds of theoretical knowledge. (e.g., geometry proceeds from axioms—what a triangle is—to rational operations—creating and manipulating different kinds of triangles, etc.)

In the same way, *practical knowledge* proceeds from the basis of shared moral principles (taken from the natural law) to the rational development of more specific moral claims. This makes law more broadly applicable, but also less foolproof or unquestionable. Human laws are thus generally *provisional*.

Divine Law might at first seem like a confusing addition to Aquinas' typology of laws. How would divine law differ from eternal law or natural law, both of which seem to derive from the divine? And why would divine law be introduced after flawed human laws, rather than 'at the beginning' with the more certain kinds of law? Aquinas gives *four reasons* for why another kind of divine law was needed, even after human laws began to build upon the remnants of the eternal law found in the natural law: (p. 20-21)

- (1) The rationally assigned end of human life is not in fact natural flourishing, but *super-natural* contemplation of God in the afterlife. Human laws were unable to point beyond human life to this supra-human goal. Divine law was needed to provide this *teleological* direction to humanity.
- (2) Since human laws are provisional and historical, they are often mistaken and even contradict one another. Thus divine law was needed to provide an *ahistorical standard* against which to judge all these different human laws. Divine law acts as a *measure* for human action as well as on human law itself. (In his reply to objection 1 (A4), Aquinas also suggests that divine law can supplement natural law by giving us a few more first principles to work with. But in his reply to objection 3 (A5), he adds that divine law also directs humanity with regard to particulars, whereas natural law was stuck with its general principles. So divine law seems to be more expansive than either natural or human law taken in themselves.)

- (3) Human laws tend to focus on embodied acts: the physical committing of crimes, etc. But our moral claims also suggest an evaluation of other people's internal or psychological states. That's why we talk about intent, motive, and so on. Divine law enables us to include this internal aspect in our systems of justice because it gives us a way of talking about people's *internal acts* or souls.
- (4) Perfect morality would require a *universal prohibition* on all evil activity. But the provisionality of human laws and the facts of human life conspire to make sure that there is always at least some evil activity going on. Still, the divine law is able to provide us with a *regulative idea* of the total obliteration of all evil, which can help ground and orient our moral claims (amidst the imperfection of the world as we experience it).

In general, then, divine law aims at giving added *direction* to human life, which is still somewhat disoriented amidst the variety and changeability of its own laws. It turns out, next, that there are two divine laws: the old and the new. The *old divine law*, which Aquinas associates with the Hebrew Scriptures as appropriated by the Christian tradition, deals with *sensibly perceptible* acts and aims at sensibly perceptible goods. Its effectiveness, meanwhile, is achieved through *fear*. (p. 22-23)

But since the old divine law deals only with the realm of the senses, it is incomplete. It misses out on the intelligible realm of human life, which has just as much to do with morality as our perceptible actions do. The completion of the divine law thus arrives with the new law, which was delivered in the form of the Christian New Testament. The *new divine law*, accordingly, deals with *intelligible* acts and aims at intelligible goods. Its effectiveness is achieved no longer by fear but rather through *love*.

The *Law of Concupiscence* (Desire) is a kind of addendum to Aquinas' typology of law. Desire or impulse is what orients the actions of non-human animals, and so it has its own kind of teleology. In that way, it acts *like a law* for those animals: it is a *rule that motivates their action towards certain ends*. Humans, as rational animals, should be immune from this lower kind of law. Their ends should be set by their own *rationality*, not by impulsive desire. However, the *Fall* happened: humanity used its rational freedom to violate the eternal law of God (his plan for the universe). As a consequence, divine law punished humanity by making it subject to sensual impulses, just like the non-rational animals. Our evil desires, then, rather than being completely unlike the law, have their own kind of law: i.e., their own kind of goal-setting, motivating rule. And this pseudo-law of desire is all the more lawful because it is an effect or *result of the divine law's just punishment of humanity*. (It "has the nature of law insofar as it results from the justice of divine law." p. 25)

The Effects of Law

After laying out the different kinds of law, Aquinas includes a short section discussing the results that law aims to produce in human communities. The main goal of law, as a rule for activity, seems to be to direct that activity towards what is *good*. That is at least what Aristotle states in the *Ethics*. But the unreliability of human laws would seem to suggest that laws don't always make people 'good' in a way that everyone would recognize. So Aquinas introduces a distinction between *relative* and *absolute goodness*. All laws, he suggests, aim to make humans good in a relative sense: i.e., good for the city they live in, virtuous in virtue of the tasks of that city, etc. But since human laws are imperfect and the divine law gives us the idea of perfect goodness, we'd have to admit that some states have laws that make people more evil from the perspective of divine law.

So the question of whether or not law makes people good relies on another question: whether or not the law was made with a view to relative goodness (for the regime in charge) or absolute goodness (as dictated by the divine). What Aquinas is trying to do here is nail down his conception of goodness as something more stable than the varieties of goodness cultivated by all the different kinds of human laws. (p. 26-28)

Law, then, pursues its aim of goodness by way of four *legal acts* or functions. It *commands* what is *virtuous*, *forbids* what is *evil*, *permits* what is morally *indifferent*, and *punishes* so as to induce *obedience* through fear (sadly still necessary even under the new divine law). (p. 28-29)

More on the Eternal Law

After discussing law as such—its definition, its typology, its effects—Aquinas returns to the different kinds of law in order to address the various questions that arise relative to each one. He begins with the eternal law, which he sees as rational in a very literal sense. It is the *ratio*—plan, account, reckoning—in the divine intellect that assigns everything in the universe its duration and appointed *end*. (p.30-31) (This goes even for non-rational things, which are part of the same order; this is obviously quite different from human law, which aims only to bring order to the existence of rational beings; see p. 37) In some sense, the Word—the second person of the Trinity—expresses this *ratio*, although all three persons are involved in it.

But despite the association between the *ratio* and the Word, Aquinas argues that our knowledge of the eternal law is limited. (p. 32-33) We know it only *in its effects*, *not in itself*. Those effects are what we stumble upon as the first principles of the *natural law*. Only in the super-natural afterlife could we know the eternal law in itself, when we have an unimaginable, beatific vision of the Trinity itself.

Still, our lack of full knowledge of the eternal law does not mean that we have no relation to it. Rather, as Aquinas says, “all laws are derived from the eternal law insofar as they partake of right reason.” (p. 34) Another way of saying that is: we do not judge about the eternal law, but only from it or in the wake of it. Human law can never reach the eternal law, yet it remains ultimately *derived* from that same eternal law. All humans, finally, remain *subject* to the eternal law, whether they know it or not. That is: they can be subject to it insofar as they rationally grasp the idea that there is an order to the universe, but they are also already subject to it insofar as they are part of the causal framework of that order. (p. 38-39)

More on Natural Law

Natural law, we recall, is the *effect* of the eternal law. By means of conscience (*synderesis*), natural law is the little bit that humans ‘know’ about the *principles* of ethical conduct. Aquinas expresses how this all works by relating the practical knowledge (of natural law) to the model of theoretical knowledge: “the *precepts* of the natural law in human beings are related to *action* as the first *principles* in scientific matters are related to theoretical *knowledge*.” (p. 42) Such precepts, like the axioms assumed in scientific enquiry, must appear to us as *self-evident*. Only from such a sure basis of self-evidence could we hope to reason to particular claims about what makes a certain action ethical or not.

Just as we have a pre-understanding of being that makes our theoretical projects possible, so we also have a pre-understanding of *the good* that makes our practical projects possible. What guides our action is a fundamental distinction between what we take to be good and what we take to be bad. In other

words, the primary precept of natural law is this: “we should do and *seek good*, and *shun evil*.” (p. 43) From that basic axiom, practical reason can extrapolate other secondary precepts: e.g., it is good to preserve human life; it is good to increase human life; it is good to pursue rational life in community, and so on.

Aquinas does not think, however, that theoretical and practical knowledge parallel each other in every way. One fundamental distinction between the two is that practical truth fails to attain the *universality* of theoretical truth. Theoretical knowledge, proceeding from general axioms to particular applications, is able to establish both general and particular truths that hold for everyone, everywhere, at any time—i.e., universally. (E.g., the Pythagorean theorem [an axiom] holds universally, while the use of that theorem to determine the length of a certain hypotenuse should have a universally constant result.) But practical knowledge, even though it proceeds from universal axioms, does not result in particular applications that have universal validity. Practical truth—natural law—does not vary in its principles, but it does vary when it comes to particular, context-dependent actions. (p. 46-47, 48-49)

More on Human Law

Human law, Aquinas repeats, is needed because the variety of human life demands particular applications of natural law’s unvarying principles. Human law is the messy, contingent, contextual *reasoning-out* from the basic principles that are supposedly self-evident in the natural law. This means that the natural law (the effect of the eternal law) serves as the standard against which the justice of human laws is to be measured. The vagaries of human legislation can always be held up to their axiomatic foundations.

There are two different ways that human laws can be derived from natural law: (1) *naturally binding conclusions* can be drawn from the first *principles* of natural law; or (2) *humanly binding specifications* can be made on the basis of *general* claims found in the natural law. The first kind of derivation is the one that more properly mimics the workings of theoretical knowledge. The second kind is more like the way a craftsman has a general idea of what he’s going to build, but then has to fit that idea to the materials and the space he has to work with. The first derivation is thus more firmly and naturally binding, since it has a more direct relation to the principles of the natural law. The second, meanwhile, is more contextual and so is binding only within the unstable world of human laws. (p. 53-55)

Human law, then, is the lowest on the legal totem pole. Aquinas states that it is *ruled* by two other rules: the natural law (as we have seen) and the divine law. Because it is built on the basis of the natural law, human law can help train us to build on our own natures. And because it is subject to divine law—which is, again, closer to the hidden eternal law—human law has a vested interest in serving religion. (p. 56)

Finally, Aquinas claims that human law can be further subdivided into two categories: the *common law of peoples* and the *laws of particular peoples*. Both of these are derived from the natural law, but according to the two different kinds of derivation introduced above. The common law of peoples is derived from the natural law as a *conclusion* follows from a *principle*, and so has a more *universal* character. The laws of particular peoples, meanwhile, are derived from the natural law as the *specification* of a *generality*, and so it has a more *contingent* character.

That is not the only way of subdividing human laws, however. Aquinas suggests other subdivisions when he summarizes the four *natural characteristics* of human law: (1) to be *derived* from the natural law;

(2) to be oriented towards the *common good* of a political community; (3) to be established by the *rulers* of such a community; and (4) to bear upon human *actions*. It is the third natural characteristic of human law that gives Aquinas the opportunity to quickly list the kinds of human regimes, all of which have their own tendencies when it comes to crafting human laws. Almost in passing, he nods to his most preferred regime: the “mixed form of government is the best,” he says. (p. 58) But we will have to look elsewhere in his writings to see if he has anything else to say about that.

Other Topics for Discussion

1. *Grounding Moral Claims*: Aquinas seems to ground moral claims in a more concrete way than Plato and Aristotle. Both Plato and Aristotle allow us to relativize ‘what is good’ by making it a function of some political goal. Virtue is effectiveness for x ; goodness is being good for x . They are right that humans tend to act in order to actualize the good, but this leaves open the counter-claim that what is good from one person’s point of view could be the opposite for another. Aquinas wants to nail down the normativity of moral claims by way of his *first principles*. These can come from either the natural law (through God-given rationality: x is good, y is evil) or divine law (heteronomic commandments: thou shalt not kill). {On this, see the section of the ‘effects of law,’ and the question of relative vs. absolute goodness.}
2. *Christian supersessionism*: One aspect of Aquinas’ argument that shouldn’t be neglected is its reliance on Christianity’s assumption and appropriation of Jewish moral claims from the Hebrew Scriptures. This constitutes another notable difference between Aquinas and the Greeks, since he is able to draw from this relatively external wellspring of normativity to nourish one portion of his *divine law* (namely, the ‘old divine law’). This stands in contrast to Plato and Aristotle’s mostly intra-Greek perspective on justice and ethics. What might be at stake in this contrast?
3. *Providence and Eternal Law*: Aquinas’ Christianity holds to a doctrine of providence (cf. the *eternal law*), which is something neither Plato nor Aristotle openly endorse. Aquinas grounds his whole understanding of law in the reality of providence. To him, human attempts at living justly approximate (with difficulty) the deeper justice that is the divine order of all things. This is not a derivation suggested by Plato or Aristotle, who generally regard justice as a separate issue from cosmology writ large. {That might be too simplistic: both may have their own ways of relating justice and cosmos; think here of Aristotle’s persistent use of ‘nature’ when describing both.} Yet, strangely, because the eternal law is hidden—because providence is illegible—it doesn’t have a direct bearing on human conceptions of justice. At most, it has an indirect bearing on human laws, mediated by its ‘effect:’ natural law.

Tangentially Relevant Information

- Isidore of Seville (d. 636) was a Christian encyclopedist in Visigothic Spain. He was one of the last scholars that we can describe as ‘classical’ in any meaningful sense. His works passed on a good amount of philosophical and historical information to the medieval period.
- Gratian was a twelfth century Christian who compiled a collection of legal documents and opinions called the *Decretum*, which became hugely influential in subsequent centuries.
- Justinian (‘the Jurist,’ d. 565) was a late Roman (Byzantine) emperor who collected legal texts into a *Codex* and a *Digest* (among other compilations), which were then used as legislative guidebooks in subsequent centuries.