

THE SOURCE OF LAWS AND EFFECTS, HOW CREATION AND MANKIND ARE GOVERNED.

The Angelic Doctor, known to us as St. Thomas Aquinas (“Thomas” or “Aquinas”), discusses the essence, the origin, the effects and the various kinds of law in the *Summa Theologica*, I-II, q. 90.

I. On the essence of law.

The law, as Thomas notes, is a “rule and measure of acts, whereby man is induced to act or is restrained from acting...”. *St. I-II, p. 90. a. 1.*¹ The Latin word for law is “lex,” largely familiar to the public. The term “lex” comes from the Latin word “Ligare” which means to bind. The rule and measure of human acts is reason, as our human intellect is guided by reason, it belongs to us to direct our actions and ultimately our end, which per the promise of Christ, is Heaven. Law must be guided by reason, not whim or our own will.

As the last end of human life is happiness or bliss, as Thomas says, and as law is ordained to the whole human community, therefore the law which is designed for the community not to the individual, thereby law is ordered to the common good. Lawmaking belongs to the people as a whole or to an institution that has “care of the whole people[.]” In the United States and the several States, the lawmakers in the U.S. Congress (or in the State legislature) are instituted with the power to write law that binds the citizens of the United States and each individual State. It also follows that, “in order that a law obtain the binding force which is proper to a law,” the knowledge of the law must be made widely known, through a process known as publication, or promulgation of the law.

A. Kinds of Lex.

1. Eternal Law. As St. Thomas notes, the whole “world is ruled by Divine Providence, ... [and] that the whole community of the universe is governed by Divine Reason.” Due to the truth that God is not subject to time, but is eternal, this kind of law is called the “Eternal Law.” God in His wisdom, is the Creator of all things, He governs the acts and movements of every creature, accordingly the eternal law is nothing else that Divine Wisdom directing all actions and movements. Essentially, the eternal law is God’s will.

The eternal law is “imprinted” on us; yet we can know but only imperfectly. As rational creatures, in this life we can learn and know the truth but limitedly. The eternal law is the unchangeable truth. All laws proceed from the eternal law.

2. Natural Law. As noted in Scripture, the law of nature is written on our heart and in our mind. St. Paul notes that “[w]hen Gentiles who have not the law [of Moses] do by nature what the law requires, they are a law in themselves, even though they do not have the law. They show that what the law requires is written on their hearts, while their conscience also bears witness” Romans 2:14-15.

¹ The *Summa Theologica* (“Summa”) can be cited by Part, Question, and Article, which allows the reader to locate references across any edition of the *Summa*. The Treatise on Law (Questions 90–97) falls within the First Part of the Second Part (I-II); therefore, the Treatise on Law may be cited by the following abbreviation; ST I-II, q. 90, a. 1, et seq. (part, question, article, body of article).

1 -- THE SOURCE OF LAW AND EFFECT, HOW ON MANKIND IS GOVERNED.

St. Thomas notes that all things in creation are ruled and measured by the eternal law, and as a part thereof of the eternal law, the natural law governs rational creatures, e.g., human beings. Thomas states that human “participation of the eternal law in the rational creature is called the natural law [.]” and that the function of the natural law is to aid each person to discern what is good and what is evil. He concludes stating, that “the natural law is nothing else than the rational creature’s participation of the eternal law.”

It can be argued that the 10 Commandments are a written statement of God’s will as to the natural law that governs mankind. God gave Moses the 10 Commandments in the Old Testament, yet promised in the book of Jeremiah: “Behold, the days are coming, says the LORD, when I will make a new covenant with the house of Israel and the house of Judah ... [.] I will put my law within them, and I will write it upon their hearts.” Jeremiah 31:33. “I will put my spirit within you, and cause you to walk in my statutes and be careful to observe my ordinances.” Ezekiel 36:27. Under the New Covenant, the natural law is written on our hearts, “not with ink but with the spirit of the living God, not on tablets of stone but on tablets of human hearts.” 2 Corinthians 3:3. The same Spirit that raised Jesus from the dead, now lives in believers to empower holy living. With this power to obey the Word of God in Christ, we will come to know Him. 1 John 2:3.

The natural law is not a habit, but something concerning reason which may result in a good habit or virtue. As mankind is inclined to act according to reason; acts of virtue are ordained by the natural law, since by nature each person’s reason dictates virtuous acts. In the abstract, the natural law cannot be destroyed in the heart of men; yet where the exercise of reason can be hindered due to concupiscence or other passions (sin), the natural law in the human heart can be blotted out.

3. Human Law. Human law is ordained to the common good. St. Augustine notes two types of law, one eternal and the other temporal. St. Thomas notes that human law has “the nature of law in so far as it partakes of right reason.” Yet, where human law “deviates from reason, it is called an unjust law, and has the nature, not of law but of violence.” He also notes that, “tyrannical law, though not being in according to reason, is not a law, absolutely speaking, but rather a perversion of law[.]” Laws can be unjust in two ways: (1) by being contrary to human good, e.g. burdensome, arbitrary, *ultra vires*, or for the lawmakers own cupidity or vainglory; or (2) by being contrary to the Divine good, where tyrants make laws to induce idolatry, blasphemy, or anything contrary to the Divine law.

Dr. Martin Luther King noted in his 1963 letter from Birmingham Jail, that “A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of Saint Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law.” As St. Thomas states, “... if in any point [any human law], deflects from the law of nature, it is no longer a law but a perversion of law.”

Even where a law is manifestly unjust, it retains the *appearance* of law, as it draws on the eternal law as all power comes from God. The Book of Romans confirms this where it states, “Let every person be subject to the governing authorities. For there is no authority except from God, and those

that exist have been instituted by God. Romans 13:1. Nevertheless, “We must obey God rather than men.” Acts 5:29.

Human law has three conditions by its nature: (1) it must foster religion (in other words, virtue); (2) that it is helpful to discipline; and (3) furthers the *common weal* (or common good.).

Human law is framed by human beings who are not in and of themselves, perfectly virtuous. Human law does not forbid all vices nor mandate all virtues, but only those laws that serve the common good.

In addition to God’s grace, humankind is dependent upon others to learn and be trained, whereby one can achieve the perfection of virtue. There is a natural inclination in young people to acts of virtue, either through a good natural disposition, custom, gift of God, or paternal training. Yet there are those who are depraved, prone to vice, and not easily admonished, and it is necessary to restrain such from evil by the force of law and fear of punishment.

4. Divine Law. “But since man is ordained to an end of eternal happiness . . . , besides the natural and the human law, man should be directed to his end by a law given by God.” ST. II, q. 91, a. 4. Due to the “uncertainty of human judgment, especially on contingent and particular matters, different people form different judgments on human acts; whence also different and contrary laws result.” Therefore, as to avoid any doubt as to what man ought to do, “it was necessary for man to be directed in his proper acts by” the Divine Law as it has no error.

For mankind can only judge outward acts but not matters of the heart or interior matters; yet for perfection of virtue, man must conduct himself rightly in areas of outward acts and interior matters. The Divine Law is the law of the Church as a law of justification. As Holy David prayed:

I will observe your statutes:
 O forsake me not utterly!
How can a young man keep his way pure?
 By guarding it according to your word.
With my whole heart I seek you;
 let me know want from your commandments!
I have laid up your word in my heart,
 That I might not sing against you.
Blessed are you, O LORD;
 Teach me your statutes!
With my lips I declare
 all the ordinances of your mouth.
In the way of your testimonies I delight
 as much as in riches.
I will meditate on your precepts,
 And fix my eyes on your ways.
I will delight in your statutes;
 I will not forget your word.

Psalm 119 (118):8-16.

As St. Thomas noted, the Divine Law was divided into two: (1) the Old Law (the Ten Commandments), which is directed to life on earth; whereas and (2) the New Law, is the law of Christ, directs human acts according to the order of righteousness. Thomas notes that the law should “induce men to observe its commandments.” The Old Law does this by fear of punishment; yet the New Law does this by love, “which is poured into our hearts by the grace of Christ,” freely given under the New Law and foreshadowed in the Old Law.

5. Law of the “Fomes:” inclination to sin. The law of the fomes, as referred to by St. Thomas, is the inherent inclination toward sin and inordinate sensuality that persists in human beings because of original sin. In humanity’s proper and original natural condition, people will act in accordance with reason. Yet “when man turned his back on God, he fell under the influence of his sensual impulses[.]” ST. II, q. 91, a. 6. The more a person strays from the path of reason, that person is justly likened to a beast that is led by the impulse of sensuality.

Mankind’s fallen nature creates in us a conflict over the inclination to sin and the desire to be holy. St. Paul elaborates on this paradox in the Book of Romans, where he states,

We know that the law is spiritual; but I am carnal, sold under sin. I do not understand my own actions. For I do not do what I want, but I do the very thing I hate. Now I do what I do not want, I agree that the law is good. So then it is no longer I that do it, but sin that dwells within me. For I know that nothing good dwells within me, that is, in my flesh. I can will what is right, but I cannot do it. For I do not do the good I want, but the evil I do not want is what I do. Now if I do what I do not want, it is no longer I that do it, but sin that dwells within me.

Romans 7:13-20.

II. The Effects of Law.

A. To make humankind good. St. Thomas plainly states that “a law is nothing else than a dictate of reason in the rule by whom his subjects are governed. . . . But every law aims at being obeyed by those who are subject to it.” ST. II, q. 92, a. 1. The law is concerned with human acts, of which there are three types: (1) acts of virtue or goodness; (2) acts of evil or vice, and (3) indifferent, neither distinctly good nor evil.

The effect of law is to “lead its subjects to their proper virtue: and since virtue is *that which makes its subject good*, it follows that the proper effect of law is to make those to whom it is given, good, either simply or in some particular respect.” Yet, to the extent that the lawmaker is fixed on evil, the effect thereof opposes divine justice. Enforcement of the law causes a fear of punishment, which the law uses to ensure obedience.

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