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# THE INFLUENCE OF ST. THOMAS AQUINAS ON JURISPRUDENCE\*

BRENDAN F. BROWN †

## ***ST. THOMAS AQUINAS COMPLETED THE TRANSFORMATION OF THE STOIC CONCEPT OF THE NATURAL LAW INTO THAT OF AN ENACTMENT OF A PERSONAL LAWGIVER WITH WILL AND REASON***

St. Thomas has defined law as "an ordinance of reason for the common good, made by him who has care of the community, and promulgated."<sup>1</sup> Law is essentially an ordering principle of the practical, as distinguished from the speculative, reason.<sup>2</sup> Although reason is one faculty, that aspect of it which is confronted principally with ends and means is called practical. Speculative reason has mainly to do with cause and effect.<sup>3</sup>

Law is an external principle which measures and guides actions to the good and restrains them from evil.<sup>4</sup> It is an efficient means toward the good.<sup>5</sup> This end is common to the group or community.<sup>6</sup>

Law is a dictate of reason in the ruler of a perfect community by whom his subjects are governed.<sup>7</sup> Its source must be found in a personal lawgiver, either Divine or human, who has a reason and a will. This lawgiver must have the authority to formulate the law because of his

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<sup>1</sup> *SUMMA THEOLOGICA*, I-II, q. 90, art. 4, concl. The translation used is the First Complete American Edition in three volumes, 1947, literally translated by the Father of the English Dominican Province.

<sup>2</sup> *Id.*, I-II, q. 91, art. 3, concl.

<sup>3</sup> WU, *FOUNTAIN OF JUSTICE* 17 (1955).

<sup>4</sup> *SUMMA THEOLOGICA*, I-II, q. 92, art. 2, concl.

<sup>5</sup> *Id.*, I-II, q. 92, art. 1, ad 1.

<sup>6</sup> *Id.*, I-II, q. 90, art. 2, concl.

<sup>7</sup> *Id.*, I-II, q. 90, art. 3, concl.

superior relation to those for whom the law is intended.<sup>8</sup> In one respect, law is in the lawgiver who rules and measures, but in another sense, it is in those who are subject to the law.<sup>9</sup>

Law must be promulgated or communicated to those upon whom it is to be binding. This may be done through reason, enlightened by faith, as in the case of divine positive law.<sup>10</sup> Again, law may be promulgated through reason unenlightened by faith as in the instance of natural law.<sup>11</sup>

According to St. Thomas, all law originates in the *lex aeterna*, or eternal law.<sup>12</sup> This law is the fountainhead of the moral and physical orders. It is the timeless divine plan of government which wisely directs all actions and movements toward their appointed ends. It rules and measures all things in the whole community of the universe.<sup>13</sup>

The eternal law is the primary analogue so that all other types of law are only limited participations in it. They are derived from the eternal law to the extent to which they share in right reason.<sup>14</sup> One type of law is distinguishable from another by the precise manner in which it shares in such reason.<sup>15</sup>

St. Thomas locates the natural law within the framework of the eternal law. His celebrated definition is that the natural law is "the rational creature's participation of the eternal law."<sup>16</sup> It is the immutable law of

human nature. It proceeds immediately from human reason, but ultimately from God.<sup>17</sup> It is that part of the eternal law which relates only to the actions of human beings.<sup>18</sup> Man participates in the eternal law by recognizing which actions are right and which are wrong.

The supreme law is eternal as existing in God. It is known as the natural law as it exists in men. Hence the eternal law is the cause of the natural law. But the latter comes first in the order of human knowledge.<sup>19</sup> While the eternal law transcends the world, the natural law rules from within. In the case of man, it does this by the rule of reason. Natural law is only an imprint of the eternal law on man's natural reason.<sup>20</sup>

St. Thomas described the hierarchy of moral values of the natural law. The first principle is that of the practical reason, founded on the concept of good, namely, that to which all men tend. All norms of the natural law, therefore, are based on the first precept that good is to be done and evil avoided.<sup>21</sup> This most fundamental precept of the natural law, namely, that man must live in accordance with his rational nature so as to do good and avoid evil, is evident to all.<sup>22</sup> Manifest deductions, such as the precepts of the Decalogue, can easily be deduced by reason. Remote conclusions are reached only after study and considerable reasoning.<sup>23</sup> But the more fundamental principles of the natural law are knowable

<sup>8</sup> *Id.*, I-II, q. 90, art. 3, ad 2.

<sup>9</sup> *Id.*, I-II, q. 90, art. 3, ad 1.

<sup>10</sup> *Id.*, I-II, q. 91, art. 4, concl.; q. 98, art. 2, concl.

<sup>11</sup> *Id.*, I-II, q. 90, art. 4, ad 1.

<sup>12</sup> *Id.*, I-II, q. 93, art. 3, concl.

<sup>13</sup> *Id.*, I-II, q. 93, art. 1, concl.

<sup>14</sup> *Id.*, I-II, q. 93, art. 3, concl.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Id.*, I-II, q. 91, art. 2, concl.

<sup>17</sup> *Id.*, I-II, q. 93, art. 2, concl.

<sup>18</sup> *Id.*, I-II, q. 91, art. 2, concl.

<sup>19</sup> *Id.*, I-II, q. 90, art. 4, ad 1; I, q. 32, art. 1, concl.

<sup>20</sup> *Id.*, I-II, q. 91, art. 2, concl.

<sup>21</sup> *Id.*, I-II, q. 94, art. 2, concl.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Id.*, I-II, q. 93, art. 2, concl.; q. 94, art. 2, concl.; q. 94, art. 4, concl.

proximately through the conscience.

Natural law is truly law.<sup>24</sup> It is an ordinance for the common good of man. It has been promulgated in his intellect by Him Who has the care of the universe.

While animals and matter must obey the eternal law, because that is the way they are made, man may refuse to follow it because he has been given the power of free moral choice.<sup>25</sup> But if he disobeys it, he violates the essential constitution of his nature and rebels against the will and reason of the Creator. Man thus becomes incapable of reaching his final end.

Greek philosophers had reached a primitive notion of the natural law as embodied in the expression *jus naturale*.<sup>26</sup> They had observed the recurring phenomena of nature about them, and everywhere they had beheld a maintenance or ordering principle. They concluded that such a principle was also necessary for human society if cosmos therein was to be attained and anarchy avoided.<sup>27</sup>

The ordering principle of the universe was called *jus* because it was law which was discovered or perceived by the individual person. Unlike *lex*, it was not man-made. It was called *naturale* because it was ordained by nature, and hence beyond the reach of caprice and human will.<sup>28</sup>

The concept of the *jus naturale* was a most important contribution to rational science, postulating, as it did, the existence of an eternal and immutable body of objective principles of moral right and wrong. It

justified a doctrine of inalienable rights and was conducive to the dignity of the human personality. It exerted great influence in shaping the destiny of the Roman law, beginning approximately in the third century, B.C.<sup>29</sup>

But the genius of the Stoics was incapable of solving the difficult problems of the source of this law, its consequences, and its full implications. This was to be expected since they did not have the benefit of divine positive law. Hence many of them believed that the *jus naturale* was derived from nature in the sense of a pantheistic universe. Many were of the opinion that it was a law of instinct, identical with that which moves non-rational creation.

The concept of the natural law was not fully developed even in the period between the Stoics and St. Thomas. Even at the time of Justinian, in the sixth century, A.D., approximately, when Christianity was exerting wide influence in Rome, the distinction between the eternal law and the natural law, and between animal instinct and human reason, was not clearly understood. Thus in the *Institutes of Justinian*, the natural law is amorously defined as "that which nature has taught to all animals, for this law is not peculiar to the human race, but applies to all creatures which originate in the air, or the earth, and in the sea."<sup>30</sup>

It remained for the Angelic Doctor to make the full, final transformation of the rudimentary Stoic concept of the *jus naturale* into the *lex naturalis*, or the divine enactment of a Personal Lawgiver. In doing this, he clarified the meaning of the writings of St. Albert the Great and St. Isidore

<sup>24</sup> *Id.*, I-II, q. 91, art. 2, concl.

<sup>25</sup> *Id.*, I-II, q. 93, art. 6, concl.

<sup>26</sup> See Brown, *Natural Law and the Law-Making Function in American Jurisprudence*, 15 NOTRE DAME LAW. 9 (1939).

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> Brown & Cormack, *The Stoic Philosophy and the Roman Law*, 16 BULLETTINO D'ISTITUTO DI DIRITTO ROMANO 451-58 (1937).

<sup>30</sup> INSTITUTES OF JUSTINIAN, Book I, Title II.

of Seville, and worked them into an original synthesis so as to carry forward the tradition of natural law philosophy to its highest possible pinnacle of development, consistent with the political and sociological experience of the thirteenth century.<sup>31</sup> This tradition enjoyed universal acceptance throughout Christendom until the sixteenth century. It then had to compete with a philosophy which detached human law from both divine positive law and objective natural law.

**ST. THOMAS PERFECTED THE KNOWLEDGE OF THE RELATION OF THE NATURAL LAW TO THE JUS GENTIUM AND THE JUS CIVILE**

St. Thomas placed special emphasis upon human positive law in formulating his brilliant synthesis of legal theory. He has described human law in terms of its relation to the natural law. He postulates that "every human law has just so much of the nature of law, as it is derived from the law of nature."<sup>32</sup> He wrote that "it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determinations of certain matters."<sup>33</sup> These determinations, devised by human reason, are called human laws, provided the other essential conditions of law are observed.<sup>34</sup> These conditions demand that the law be ordained to the common good. It must be made by the whole people,

or their public representatives who have rightful authority over them. Moreover, it must be promulgated.

Human law is necessary for man. It is essential for the proper direction of the community and for the attainment of the common good. Human lawmakers must reinforce the primary and necessary conclusions of the natural law, because otherwise some men might not be sufficiently aware of them, or else inclined to disobey.<sup>35</sup> An example would be the criminal law which forbids murder. Secondly, these lawmakers are obliged to decide upon certain rules which the natural law leaves undetermined, as for example, the precise type of capital punishment.<sup>36</sup> Changing sociological factors will affect their determination.

An enactment contrary to the natural law is not law.<sup>37</sup> The force of a law depends upon the extent of its justice. This in turn is determined by the law's reasonableness: ". . . [T]he first rule of reason is the law of nature."<sup>38</sup> Unjust enactments do not bind in conscience. An enactment will be contrary to the natural law if it is not ordained to the common good, or if the lawmaker exceeds his legislative authority, or if the burden of the law is not properly distributed among the people.<sup>39</sup> But prudence may dictate obedience to certain types of unjust law to avoid public disturbance.<sup>40</sup> Manifestly, St. Thomas had in mind an unjust law which took away a person's right to do the thing forbidden, but did not oblige him to do something intrinsically wrong.<sup>41</sup>

<sup>31</sup> James, *Some Historical Aspects of St. Thomas' Treatment of the Natural Law*, 24 PROCEEDINGS OF THE AMERICAN CATHOLIC PHILOSOPHICAL ASSOCIATION 147 (1950).

<sup>32</sup> SUMMA THEOLOGICA, I-II, q. 95, art. 2, concl.

<sup>33</sup> *Id.*, I-II, q. 91, art. 3, concl.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Id.*, I-II, q. 95, art. 1, concl.

<sup>36</sup> *Id.*, I-II, q. 95, art. 2, concl.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Id.*, I-II, q. 96, art. 4, concl.

<sup>40</sup> *Ibid.*

<sup>41</sup> See Foreword by Brown, DEL VECCHIO, *PHILOSOPHY OF LAW XVI* (1953).

Essentially, human law is variable and not universal. This is so because it deals with contingent and varying facts.<sup>42</sup> Detailed determinations must be more or less proportionate to their ends, but are neither absolutely right or wrong in themselves.<sup>43</sup>

Human law may be divided according to several classifications. Thus it may be either civil or state law (*jus civile*) or the law of nations (*jus gentium*) according to the two ways in which the law is derived from the natural law.<sup>44</sup> The law of nations is the result of the necessary conclusions of the natural law. Civil law, as such, arises as a determination of certain generalities.<sup>45</sup>

St. Thomas utilized the concepts of such legal philosophers as Aristotle, Cicero, and Isidore of Seville, and such Roman jurists as Gaius and Ulpian, in perfecting the knowledge of the relation of the natural law to the *jus gentium* and the *jus civile*. According to St. Thomas, the *jus gentium* is not natural law although it is natural to man as man, and although its conclusions are not very remote from the principles of the natural law.<sup>46</sup> The *jus gentium* is human positive law because it is only man's attempted implementation of the conclusions of the natural law which are necessary for man as a social animal.<sup>47</sup> The implementation may be by widespread usage and practice. But the method of conforming to the conclusions of the natural law varies over the centuries, as for example the precise laws governing commercial transactions of sale and the like.

Manifestly, the *jus civile*, in its strict and proper sense, is not natural law. Here St. Thomas was not referring to civil or state law in its larger meaning of a complete body of national social control, for this would include civil law not only in the Thomistic sense, but also national natural law itself insofar as the positive law had failed to clothe the primary dictates of the natural law with legal sanction. But in the narrow Thomistic sense, civil law is that rather arbitrary part of state law which each people decides is best for itself, and appropriate and effective for its unique needs.<sup>48</sup>

Civil law in the Thomistic sense consists only in *ad hoc* determinations of general norms which flow from the natural law.<sup>49</sup> It has only the force of human law. It may consist of positive law applicable to a group, or it may confer privileges upon certain individuals in special situations, or it may be the judicial application of common laws.<sup>50</sup> Reasonable men may disagree as to what is just in detailed, particular situations.

Thus St. Thomas clarified the position of Gaius who had maintained that the *jus gentium* was a part of the *jus naturale*, because it was universally applied and was not the result of human opinion.<sup>51</sup> Actually the *jus gentium* was not in force among all peoples, but only among those who were civilized. But even though the *jus gentium* was not in effect among certain peoples, yet the *lex naturalis* imposed duties upon all na-

<sup>42</sup> SUMMA THEOLOGICA, I-II, q. 97, art. 1, concl. and ad 2.

<sup>43</sup> *Id.*, I-II, q. 97, art. 1, concl. and ad 1, 2.

<sup>44</sup> *Id.*, I-II, q. 95, art. 4, concl.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Id.*, I-II, q. 95, art. 4, ad 1.

<sup>47</sup> *Id.*, I-II, q. 95, art. 4, concl.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> James, *Some Historical Aspects of St. Thomas' Treatment of the Natural Law*, 24 PROCEEDINGS OF THE AMERICAN CATHOLIC PHILOSOPHICAL ASSOCIATION 147-49 (1950).

<sup>51</sup> *Id.* at 150-51, 155-56.

tions. Thus St. Thomas interpreted the apparent prior divergencies of concept on this subject as different ways of looking at the same thing.<sup>52</sup>

It should be noted that the *jus gentium*, as understood in ancient and medieval times, was not synonymous with international law as now understood. In maintaining that the *jus gentium* was not natural law, St. Thomas was not referring to what was later known as international law, beginning with Suarez and Grotius. In this latter sense, international law, though founded on the analogy of the *jus gentium*, does include both natural international law and positive international law.<sup>53</sup>

History vindicates the Thomistic concept of the *jus gentium*. Prior to this law which emerged in about the third century, B.C., the Roman legal system, then called the *jus civile*, was restricted in its application to certain human beings on the basis of race, creed and civil status. Foreign traders were without legal remedies. Rome had three choices. It might make the *jus civile* available to foreigners. It might exclude them from the country, and thus cut off its foreign trade and lose the enjoyment of imported commodities and the profits occurring from exports. Finally, Rome might build a legal order which would capture the essential ingredients of those legal systems prevailing in the countries from which the foreigners came. Rome chose the third course.<sup>54</sup>

The common denominator of the legal

systems of the peoples, living in the Mediterranean basin, came to be applied in a new court whenever there was a dispute between foreigners, or between a foreigner and a Roman citizen. This new law was known as the *jus gentium*. It consisted of positive law determined by the common legal denominator found in nearby legal systems. It was administered by Roman praetors in Roman courts.<sup>55</sup> As St. Thomas rightly maintained, it was human law, and not a part of the natural law.

#### **THE THOMISTIC CONCEPT OF CUSTOM AND EQUITY MAY BE RELATED TO THE ROMAN AND AN-GLO-AMERICAN LEGAL SYSTEMS**

According to St. Thomas, human law must be changed whenever it becomes obsolete, *i.e.* unsuitable for the achievement of its proper object in the light of new sociological facts.<sup>56</sup> Human ingenuity may discover more effective means for the implementation of the primary norms of the natural law. Again, lawmakers may make better determinations, or choices, in the discretionary area of human law. They may discover more successful ways of carrying out the mandate of those principles of human law, which stem from the necessary premises of the natural law.<sup>57</sup> Legal institutions are at first imperfect and may be improved.

But St. Thomas warns that law should be altered only for the common good. The benefit resulting from a change in a just law must be great and evident.<sup>58</sup> Of course, the advantage would be obvious if the new

<sup>52</sup> *Id.* at 151.

<sup>53</sup> BROWN, *The Natural Law as the Moral Basis of International Justice*, 22 VITAL SPEECHES OF THE DAY 335 (1956); also printed in 120 CONG. REC. A1985 (daily ed. Mar. 2, 1956).

<sup>54</sup> POUND, *OUTLINES OF LECTURES ON JURISPRUDENCE* 5 (5th ed. 1943).

<sup>55</sup> *Ibid.*

<sup>56</sup> SUMMA THEOLOGICA, I-II, q. 97, art. 1, concl.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Id.*, I-II, q. 97, art. 2, concl.

enactment superseded an unjust law, or eliminated an extremely harmful observance. But to abrogate a just law without due cause may be to shake the tradition of obedience which has been built up among the people with regard to that law. When a change in the law is contemplated, the advantage to the common good must outweigh the detriment resulting from a diminution of the binding power of the legal order.<sup>59</sup>

Human law may be changed by legislation, custom, or equity. Legislation is an extrinsic and deliberate changing of the law by an act of the lawgiver. The law is expressly altered or repealed. The legislation takes effect at a specified time.

Custom results from a repetition of external acts, evidencing acquiescence on the part of the lawmaker. Custom may obtain the force of human law, as well as interpret and abrogate it.<sup>60</sup> But it may not abolish the primary principles of the natural law, or divine positive law.<sup>61</sup> Custom derives its power from the fact that the authority of the people to make law is greater than that of the sovereign, who represents them. It expresses the legislative will of the people. Force is lent to the custom insofar as the lawmaker tolerates it.<sup>62</sup> Custom reflects the deliberate judgment of many reasonable men, if it is just.

Equity may change the law intrinsically, for example, by a method of interpretation of an express law, or by applying the natural law in cases of first impression in the judicial process. Lawmakers legislate for general situations, and for typical, abstract,

future events.<sup>63</sup> They are unable to anticipate every possible case that may arise. Hence judges must have an area of discretion in the adjudication of certain cases.

As a matter of equity in a broad sense, the proper authorities may dispense from human law, if by so doing, they benefit the common good.<sup>64</sup> If a precept is not for the common good, when applied to a certain person, or a particular set of circumstances, then the lawgiver may decide that the law is not applicable.<sup>65</sup> It is not merely a matter of respect for the persons involved, therefore, when special treatment is accorded.<sup>66</sup>

It is significant that St. Thomas does not refer to fiction as a mode of changing law. This method was rather frequently employed in the primitive stages of law when men erroneously believed that all law was immutable, contrary to the teachings of St. Thomas. The fiction consisted in pretending that the facts of a particular situation were different from what they actually were, in order to reach a certain result without changing the law.

The Roman and Anglo-American legal systems reached maturity because they followed the methods which the natural law prescribed for change, as explained by Thomas Aquinas. These were the only two systems of national law which were able to develop into bodies of social control, capable of worldwide regulation and general application. The Canon Law of the Church also succeeded in doing this because it closely followed the natural law, and had the additional advantage of the wisdom of the divine positive law.

Custom contributed much to infusing

<sup>59</sup> *Ibid.*

<sup>60</sup> *Id.*, I-II, q. 97, art. 3, concl.

<sup>61</sup> *Id.*, I-II, q. 97, art. 3, ad 2.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Id.*, II-II, q. 120, art. 1, concl.

<sup>64</sup> *Id.*, I-II, q. 97, art. 4, concl.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Id.*, I-II, q. 97, art. 4, ad 2.



natural law into the Roman and English laws. Indeed as late as the third century, A.D., custom was still accorded a large share in the formulation of Roman law. The customs of local communities were not abrogated even by the decree of the Emperor Caracalla, in the year 212, when the Roman law became the official law of the Empire.<sup>67</sup> Custom had the force of law because it rested on the recurring recognition of the authority of the natural law and right reason.

Custom perhaps played an even more important role in English, than in Roman, legal history in integrating positive law and morals. Thus, *lex*, or imperative law, and *jus*, or traditional law which produced custom, were considered together in the works of Glanvill and Bracton, two celebrated English jurists of the twelfth and thirteenth centuries, respectively.<sup>68</sup> They were much preoccupied with customary law, as well as later English jurists. The whole Law Merchant, which Lord Mansfield absorbed into the English Common Law in the eighteenth century, was founded on mercantile custom over the centuries.<sup>69</sup>

Equity transformed the Roman and English laws into world systems. Before the impact of equity, these systems were on the road to decay. They were morally sterile. They could not adjust themselves to the newly rising problems of justice which society created. They resisted change.

Equity compelled the creation of new courts, with new procedures, the Court of

the *Praetor Peregrinus*, in Rome, and the Court of Chancery in England. In these courts, the positive law was again placed in proper relation to the natural law. Positive law again became a means toward an end. The individual person was recognized as the unit upon which the legal order operated, rather than arbitrary classes of men.

Positive law resulted which premised an objective body of moral principles. These were applicable to all men everywhere. Adherence to these principles is the secret of the survival of the Roman law, with all its civil law derivatives, and of the Anglo-American legal system.

#### **ST. THOMAS AQUINAS HAS PROFOUNDLY AFFECTED THE COURSE OF JURISPRUDENCE DURING THE PAST SEVEN CENTURIES**

The genius of St. Thomas reached its highest point of creative power in its capacity to communicate order to what seemed to be chaos. He synthesized what was apparently contradictory and irreconcilable. This always followed an exhaustive analysis of the facts of the problem at hand. By his synthesis of natural law with the eternal law, and with positive law, both divine and human, he set in motion one of the two great parallel lines of juridical development. Modern legal science began in the twelfth century with the revival of the study of Roman law in the newly founded European universities, such as Bologna. Thereafter this science advanced in two ways, first, by the analytical method, and secondly, by that of scholastic natural law.<sup>70</sup> The former was sponsored by the

<sup>67</sup> RADIN, HANDBOOK OF ROMAN LAW 79-80 (1927).

<sup>68</sup> *Lex* and *Jus* appear in the titles of their principle works. Bracton's great book was entitled *DE LEGIBUS ET CONSUETUDINIBUS ANGLIAE*. Glanvill's monumental work was *TRACTATUS DE LEGIBUS ET CONSUETUDINIBUS REGNI ANGLIAE*.

<sup>69</sup> I HOLDSWORTH, A HISTORY OF ENGLISH LAW 568-72 (1931).

<sup>70</sup> POUND, OUTLINES OF LECTURES ON JURISPRUDENCE 6-7 (5th ed. 1943).

lawyers, and the latter by the philosophical jurist-theologians. These were the schoolmen. The greatest of them all was St. Thomas Aquinas.

The superiority of the natural law method over the analytical is manifest. The analytical approach postulated the supremacy of all temporal authority in any particular community. It was primarily concerned with human positive law as an end in itself.

The analytical activity consisted in making notes or commentaries, marginal and interlinear, on the texts of the Roman or civil law, such as the *Corpus Juris Civilis* of Justinian. These notes clarified the meaning of difficult words or obscure passages. These notes or glosses were compiled, arranged and classified. But no attempt was made to evaluate them in the light of reason or justice. Accursius was perhaps the most famous Glossator.<sup>71</sup> He was to the analytical technique what St. Thomas was to the natural law method. Accursius is just a name to the legal historian. But the writings of St. Thomas have endured as a living force in the administration of justice.

St. Thomas conclusively demonstrated that the true philosophy of the natural law could reconcile *lex* and *jus*. In the thirteenth century and thereafter, the late imperial Roman idea, which found expression in codification, imposed the duty on every political ruler to make law. This idea competed with the English concept that the sovereign must rule under God and the law. This concept was emphasized by Bracton, the father of the English Common

Law.<sup>72</sup> St. Thomas demonstrated that there was no conflict between these two legal theories. The state was subordinate to the natural law, which was the foundation of *jus*, but not to the positive law, which it made. But the state is not exempt from the directive force of just positive law. It is the duty of the state to fulfill the law on its own free initiative. If the state makes law which is actually just and for the common good, this *lex* will reinforce rather than destroy *jus*.

In conclusion, the Thomistic concept of the natural law avoids both a jurisprudence of conceptions and an uninhibited philosophy of utility. St. Thomas rejected a psychological relativism which would admit of no objective norms of right and wrong. He repudiated the theory that all ideas a person may hold have cosmic validity. At the same time, he accords a reasonable weight to the useful and the practical. Jhering, one of the founders of the Sociological School of Jurisprudence, in the second edition of his classic book, *Der Zweck im Recht*, or *Law as a Means to an End*, published in 1886, stated with regard to St. Thomas:

Now that I have come to know this vigorous thinker, I can not help asking myself how it was possible that truths such as he has taught should have been so completely forgotten among our Protestant scholars. What errors could have been avoided if people had kept these doctrines! . . . For my part, if I had know them earlier, I probably would not have written my whole book; for the fundamental ideas which I have treated here are found expressed in full clarity and in a convincing manner by this powerful thinker.

<sup>71</sup> 2 HOLDSWORTH, A HISTORY OF ENGLISH LAW 146 (1936).

<sup>72</sup> *Id.* at 252-56.