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# THE RELATION BETWEEN NATURAL LAW AND HUMAN LAW IN THOMAS AQUINAS

RAYMOND BRADLEY\*

The question as to exactly how the natural law is related to human or positive law in the thought of Thomas Aquinas may be answered with the well-known but deceptively simple response: "Consequently every human law has just so much of the nature of law, as it is derived from the law of nature. But if at any point it deflects from the law of nature, it is no longer a law but a perversion of law."<sup>1</sup> For Aquinas all human laws are derived from the natural law, which in turn is a participation in the eternal law of God. What the relation of human laws to the eternal and natural law is and precisely how human laws are derived from the natural law in the legal philosophy of St. Thomas will be examined in some detail.

Thomas defines human laws as "particular determinations [of natural law] devised by human reason."<sup>2</sup> We note first that human laws are further specifications of the natural law and that these are made by man. It is significant that Thomas says that these determinations are made by man's reason; this accords with his general theory of law that it is an "ordinance of reason . . ."<sup>3</sup> He is certainly an intellectualist, as opposed to being a voluntarist, in his legal thinking.

Thomas begins his discussion of how human laws are formulated early in the treatise on law in Question 91, Article 3. He here compares the derivation of human laws from the natural law to its analogue in speculative reason. Just as from naturally known self-evident principles of the speculative reason, *e.g.*, mathematics, we draw specific conclusions that were not self-evident or naturally known, so too from the general precepts of the natural law human reason argues to more particular determinations (*dispositiones*) of certain matters. These particular determinations were discovered or made more explicit by human reason. Although they were

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<sup>1</sup> T. AQUINAS, *SUMMA THEOLOGIAE*, pt. II(I), Quest. 95, art. 2 (Fathers of English Dominican Province transl.) [hereinafter cited as *SUMMA THEOLOGIAE*].

<sup>2</sup> *Id.*, Quest. 91, art. 3.

<sup>3</sup> *Id.*, Quest. 90, art. 1.

implicitly contained in the eternal law, they are now rendered explicit or posited by the use of human reason. They are given a formulation by man as he discovers them by rational processes. Thomas elsewhere uses the same analogy, *viz*, arguing from the use man makes of speculative reason to that use he may make of practical reason, in proving that there are several precepts of the natural law.<sup>4</sup>

In his Second Article of Question 95 on Human Law St. Thomas explains in more detail how the specific determinations are made from the natural law or how human laws are formulated. The first way something may be derived from the natural law is as a conclusion from premises; the second way is by way of determination (*determinatio*) of certain generalities. Each of these methods or modes of derivation must be explained in some detail. An examination of the mode of derivation will shed light on the important problem of the ontological status of human laws as Thomas sees them. The obliging force of these laws will be much clearer after this investigation, for the binding force of a law is a function of its ontological character.

#### THE FIRST METHOD OF DERIVATION

The first way a derivation can be made from the natural law is as a conclusion. It may be called a declarative positive law. Thomas explains that this is the way that conclusions are drawn in the sciences; it is the method of deductive logic. The particular example he gives is that of an abbreviated syllogism: "One should do harm to no man." Hence "one must not kill."<sup>5</sup> This method of deriving conclusions is used both in moral science and in the deriving of human laws from the natural law. It is both a natural law and a human law that men should not murder. A similar example is given by Aquinas in his *Commentary on the Nicomachean Ethics* where he states that from the precept that no harm is to be done to anyone unjustly, it follows that one should not steal.<sup>6</sup> Thus, in this type of derivation of human law from natural law, the conclusion is now stated as a human law and, as he notes is done in the sciences, is a direct logical conclusion of a more general premise. Murder is a more specific type of injury to another. Since the more general is prohibited by the law of nature, the conclusion, whether it is stated as a specific law of nature or as human positive law, is a direct consequence of the premises and is so prohibited.

It is now evident that the conclusions directly deduced from such general principles of the natural law may be viewed under the formality of the natural moral law or under that of human law, but materially they

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<sup>4</sup> See *id.*, Quest. 95, art. 2.

<sup>5</sup> *Id.*

<sup>6</sup> In *V. Ethic*, lect. 12.

are the same—murder is wrong. Such declarative laws either state in so many words what the natural law prescribes or forbids, or else draw conclusions directly from the natural law. Further examples of such laws would be those prohibiting treason, perjury, polygamy, and the like.

Thomas holds that conclusions stated as human laws which are drawn from the natural law in this manner have some force from the natural law and do not emanate from human law exclusively.<sup>7</sup> This is a further development or explanation of his general theory that “the force of a law depends on the extent of its justice.”<sup>8</sup> But anything is just insofar as it is right according to the rule of reason, and the first rule of reason is of course the natural law.

The human laws expressed by civil governments arise from a dual source: the one is the natural moral law and the other is the state itself. Inasmuch as they are directly derived by a process of reasoning from the natural moral law they carry the moral force of this law with them. They are identical to the proper conclusions of the natural moral law; they are materially the same, but only formally distinct. They differ from the natural law not in what they prescribe or forbid but only in their mode of promulgation.

#### THE SECOND METHOD OF DERIVATION

The second type of derivation discussed by St. Thomas, that by way of determination of certain generalities, differs significantly from the first type. This second method of derivation gives rise to what may be called determinative positive laws. His example of this type of derivation is taken from an analogy to arts and crafts. General forms are particularized as to detail, as a carpenter determines the particular style and form of a house he is building. The precise type of house is a more specific example of house in general; it is not, as in the first method of derivation, a conclusion from premises logically deduced. His example is the general fact that evildoers should be punished, but the precise method of punishment is a determination of this general principle. In the Fourth Article of Question 95 Thomas states that the things derived from the law of nature in this way “belong to the civil law, according as each state decides on what is best for itself.” The state has the power from the eternal and natural law to make laws regarding prisoners, but the point here is that the precise type of punishment is left to the civil law to determine. Other examples could well be regulations regarding currency, taxes, traffic laws, etc. These laws have, so to speak, only an indirect relation to the natural law since, as in the example of the punishment of prisoners, they merely specify a law that could be carried out in several different ways. This type of law determines

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<sup>7</sup> *SUMMA THEOLOGIAE*, *supra* note 1, pt. II(I), Quest. 95, art. 2.

<sup>8</sup> *Id.*

various ways of acting in conformity to the natural law in matters that are indifferent, but are not themselves deducible from the natural law. They are not merely echos of the natural moral law, but are indirect determinations of it. As to the moral force of conclusions drawn in this way, Thomas holds that they have no other force than that of human law. More on the binding force of such laws will be presented in the next section.

This distinction of Thomas between the two types of derivations under discussion recalls a similar distinction in Aristotle. The Philosopher, as Thomas likes to call him, taught that some acts are just and others unjust by nature as well as by enactment. His words are worth quoting:

Of political justice part is natural, part legal—natural, that which everywhere has the same force and does not exist by people's thinking this or that; legal, that which is originally indifferent, but when it has been laid down is not indifferent, e.g. that a prisoner's ransom shall be a mina, or that a goat and not two sheep shall be sacrificed . . . .<sup>9</sup>

Aristotle makes a sharp distinction between particular laws and universal law. He identifies universal law with natural law—that which is just by nature. Particular law is the law of each community. The one is natural; the other conventional. Thomas agrees with the Stagarite, but goes beyond him with his Christian viewpoint. For Thomas, it must be remembered, all human laws are either directly or indirectly drawn from the natural law, are ultimately related to the eternal law, and from this law have the power of binding in conscience.<sup>10</sup> For Aristotle, there is no clear higher source of the particular law which the state enacts than the state itself. Aristotle's man is not the creature of God that he is for St. Thomas.

In summary, there are two ways for Thomas that human laws are derived from the natural law. First are conclusions from premises made by deductive logic, analogous to conclusions in the sciences which are derived directly from the natural moral law. They have their obliging force both from the natural law and the civil law. Second are determinations of certain generalities which are the particular laws of individual states or communities and are indirectly derived from the natural law. Their binding force is from the civil authority alone.

#### THE BINDING FORCE OF HUMAN LAW

With an insight into the two types of derivation of human law that Aquinas proposes in mind, we are now in a better position to grasp his thought on the binding force of human law. St. Thomas was imbued with a profound spirit of the orderly progression of authority and the need for

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<sup>9</sup> ARISTOTLE, *Nicomachean Ethics* V, in 7 THE BASIC WORKS OF ARISTOTLE 1014 (R. McKeon ed. 1941).

<sup>10</sup> SUMMA THEOLOGIAE, *supra* note 1, pt. II(I), Quest. 96, art. 4.

obedience to authority on man's part.<sup>11</sup> It is a virtue "more praiseworthy than the other moral virtues."<sup>12</sup> That God governs all things by His providence is demonstrated in several ways in the *Summa Contra Gentiles*, Book III, chapter 64. God, the supreme creator and governor and orderer of the entire universe, rules His entire creation with the eternal law; from this law proceeds the natural law and from these laws, the human law. Orderly procession of authority from the highest to the lowest in a strict hierarchical order is a concept dear to the heart of Thomas Aquinas. He observes:

Since then the eternal law is the plan of government in the Chief Governor, all the plans of government in the inferior governors must be derived from the eternal law. But these plans of inferior governors are all other laws besides the eternal law. Therefore all laws, insofar as they partake of right reason, are derived from the eternal law.<sup>13</sup>

How man, the subject of various levels of authority and various types of laws, is bound to the observance of these laws is an important and practical question to which we now turn our attention. Thomas holds strongly to the view that men are subject to authority; this is a matter of justice. In answer to the question as to whether Christians are bound to obey the secular power, Thomas is unhesitating in his answer that they are. "Now the order of justice requires that subjects obey their superiors, else the stability of human affairs would cease."<sup>14</sup> Loyalty to God does not excuse one from loyalty to his state. He likewise teaches that just laws have also the power of binding in conscience. This power is from the eternal law from which they are all derived. In support of this Thomas quotes *Proverbs* 8:15 "By Me Kings reign, and lawgivers decree just things."<sup>15</sup>

The binding force of declarative positive laws, those directly proceeding from the natural law, is that they are obviously just and as such must be obeyed. They share their moral obligation with the natural moral law. For example, in speaking the truth under oath, one follows the natural moral law and at the same time observes a human positive law which directs him to speak truthfully. Laws such as this one against perjury made by human authority are virtually identical to the natural moral law, just as the Divine law against blasphemy is a positive statement on divine authority in agreement with and in support of the eternal law. The prohibition against perjury arises from both the natural law and the power of the state to make such enactments.

The close parallel of the human law to the natural law against perjury

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<sup>11</sup> His thought on obedience is given in the *SUMMA THEOLOGIAE*, *supra* note 1, pt. II(II), Quest. 104.

<sup>12</sup> *Id.*, art. 3.

<sup>13</sup> *SUMMA THEOLOGIAE*, *supra* note 1, pt. II(I), Quest. 93, art. 3.

<sup>14</sup> *Id.* pt. II(II), Quest. 104, art. 6.

<sup>15</sup> *See id.*, pt. II(I), Quest. 96, art. 4.

is a clear and obvious example of direct derivation. Few would find fault with this example. What happens, however, in cases where the natural law in a given situation is not clear and the corresponding human law is equally obscure? Perhaps in a more perfect world the natural moral law and the corresponding human laws would be universally known and accepted by all men. But such is not the case. For Thomas, only a relatively few precepts of the natural law are universally known. These are the ones he refers to as general principles.<sup>16</sup> The proper conclusions of the natural law are not known by all men, and, we might add, are not accepted by them. These make up by far the greatest number of natural law prescriptions. This widespread lack of knowledge and acceptance of conclusions of the natural law which are far removed from the fundamental principle of "Do good and avoid evil" is a result of the differing educational, religious, and cultural influences on man in the various times and places of his historical development.

If this flexibility is found in the moral governance of man by the natural moral law, it is no surprise that a similar, and in fact greatly expanded situation, holds for human positive law. There simply is not and cannot be one universal positive law applicable to all men at all times. The infinite variety of circumstances even within one geographical area at one time forbids the enactment of laws which have an inflexible and universal application as well as a direct and immediate derivation from the natural moral law. Suffice it to say that the further the conclusions are removed from the fundamental principles of the natural law, the more imperfect becomes the mutual interpenetration of the human law with the natural moral law. Thus many human laws appear to lose their relation to the natural moral law as conclusions from it because both of them are far removed from the general principles that underlie them. Thomas explains: "Although there is necessity in the general principles, the more we descend to matters of detail, the more frequently we encounter defects."<sup>17</sup> The author is writing here explicitly on natural law, but the statement aptly fits the laws made by man. Thomas comments on the problem by observing that the "general principles of the natural law cannot be applied to all men in the same way on account of the great variety of human affairs; and hence arises the diversity of positive laws among various people."<sup>18</sup>

He concedes that, as opposed to the laws of speculative reason, human laws, since they deal with changing and contingent matters and often with singulars, do not have the certitude that belongs to the speculative sciences. Each has its own realm of operation, and it is sufficient that each have the certitude proper to its own realm.<sup>19</sup>

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<sup>16</sup> *Id.*, Quest. 94, art. 4.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, Quest. 95, art. 2, ad. 3.

<sup>19</sup> *Id.*, Quest. 94, art. 3, ad. 3.

We turn now to the binding force of human laws which are determinations of the natural law. These, we recall, may be called determinative and are made on matters which are morally indifferent. Thomas gives the human lawmaker full authority to enact legislation on these indifferent matters. Such laws are those which concern, for example, the type of punishment given to prisoners. These laws which are indirectly derived from the natural moral law have their force from the human law alone. This distinguishes them from declarative laws, laws directly derived, which have their force both from the natural law and from the power of the state such as that authority the state possesses to punish prisoners in the first place. What is the source of the state's authority to legislate on morally indifferent matters? Thomas' reply, as we have seen, is that this power is derived through the natural and eternal law. Without presenting a full study of Aquinas' thought on the origin and exercise of political power in the state, a few fundamental notions must be considered. The study of the development of political power was in an inchoate state in the Middle Ages. It was not until later writers such as Suarez and Bellarmine turned their attention to this problem that theories were developed to explain the source of the political power of the state.

The translation theory is the theory that has become the most widely accepted. Briefly summarized, it holds that the state is a natural society. As such, men must of natural necessity live in such a society. All authority in this state comes from God directly to the people who then transfer or translate this authority to an individual or to a group while also determining the type of government under which they choose to live. The government is thus established by the consent of the governed.

Although this theory was only vaguely and implicitly formulated in the thirteenth century, it was at the basis of the political theory of St. Thomas.<sup>20</sup> While all laws ultimately are derived from the eternal law and have their power from it, "the making of a law belongs either to the whole people or to a public personage who has care of the whole people."<sup>21</sup> The state then is a quasi-instrument of God in governing His people. Positive laws are needed because of the insufficiency of the eternal and natural law to direct man in the practical affairs of his life. Thomas holds that the state, in order to provide the benefits of a well-ordered life, has the power of making laws that oblige the subjects in conscience to obey. The type of laws under discussion are those referred to as determinative, those the state formulates on indifferent matters. The subjects are bound to obey them because of the obliging force we called indirect. Their relation to the eternal and natural law is through the divinely appointed state authority which possesses the right to make laws which the citizens must obey.

Thomas does not differentiate between declarative and determinative

<sup>20</sup> H. ROMMEN, *THE STATE IN CATHOLIC THOUGHT: A TREATISE IN POLITICAL THOUGHT* 444 (1945).

<sup>21</sup> *SUMMA THEOLOGIAE*, *supra* note 1, pt. II(I), Quest. 90, art. 3.



laws in that section of his thought dealing with the binding force of human laws. All just laws are equally binding in conscience in their origin whether they are of the first or second type; their gravity or seriousness will of course greatly vary. Likewise, as Thomas Gilby, O.P., notes, although for Aquinas every matter of law is a matter of conscience, the converse does not hold. Not every matter of conscience could be made a matter of law. Only those moral precepts which affect public order can be made a matter of law. Although every *crimen* might be a *peccatum*, not every moral lapse is a crime.<sup>22</sup>

### UNJUST LAWS

Having worked out in some detail the Thomistic theory of the derivation of human law from the natural law and having viewed briefly his theory of the binding force of laws, we turn now to a consideration of the problem of unjust laws. We may introduce the topic of unjust laws with the insightful observations of the well-known Thomist, Etienne Gilson:

God is a Supreme Lawgiver, but all inferior lawgivers are co-operating with God in extending to human societies the legal structure of the created universe. In this view of the world, human laws are derived from the eternal law, so much so that, because it is not derived from the eternal law, an unjust law is *not* a law. In as much as they are not derived from the eternal law, so-called unjust laws really are not laws at all. Strictly speaking, there are no such things as unjust laws. To issue such prescriptions and to attempt to enforce them is to rule, not by law, but by violence. We are not bound in conscience to obey such orders, or, if we are, the reason is not that such orders are laws.<sup>23</sup>

Thomas sees clearly the two strong demands on man and the obligations imposed upon him. The first demand is to obey laws which are in conformity with the natural moral law and hence with the eternal law, and thus man is obligated not to obey laws which are against these higher laws. The second demand on man is to obey as a subject the laws which the legitimate legal authority imposes upon him. The dilemma is that man may not disobey the higher law, yet he is bound to obey the laws of the civil authorities because their right to make laws and expect obedience to them is ultimately from God.

St. Thomas' solution to the problem of unjust laws is that while recognizing the civil authority and its right to make laws to govern man, we must refuse to follow particular laws when they are contrary to the natural law derived as it is from the eternal law and reinforced by the divine law. "We must obey God rather than man." (*Acts* 5:29).

An unjust law retains the appearance of a just law since it is framed

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<sup>22</sup> T. GILBY, *THE POLITICAL THOUGHT OF THOMAS* 176 (1958).

<sup>23</sup> E. GILSON, *ELEMENTS OF CHRISTIAN PHILOSOPHY* 266 (1960).

by one who has power given to him ultimately by the eternal law;<sup>24</sup> but inasmuch as the law is unjust it is no longer a law and must not be obeyed. There are occasions, however, when the apparent law (which in fact is unjust and hence no law at all) can be and should be obeyed. This obedience to unjust laws should be practiced in situations where by so doing one may avoid scandal or disturbance.<sup>25</sup> These laws would be the type that are against some human good, not against the divine good, as Thomas expresses it, for the latter may never be obeyed. Laws against the human good are ones made, for example, contrary to the common good, or ones imposing burdens unequally on the community, or those conducive merely to the vainglory or cupidity of the lawgiver. An example of laws against the divine good would be laws made by a tyrant commanding idolatry.<sup>26</sup> The unjust law of the first type must be obeyed not because of its intrinsic nature as law (since it lost this in consequence of its being somehow unjust), but rather because of some other accidental consequence of disobeying it such as giving scandal. No accidental consequence can arise which would make it permissible to obey laws against the divine good.

These observations on the binding force of human laws and the distinctions concerning them lead us to two conclusions. First, the lawmaker must use the greatest wisdom and prudence to formulate laws that are in fact just and in conformity with the higher laws, the eternal and natural laws. Not to do so is to invite the breakdown of that order in the state which is necessary to its very existence. Second, the citizen must use care and caution and wise deliberation in deciding what laws are unjust. He must likewise exercise prudence and caution in deciding to obey a law he determines is unjust lest in his attempt to avoid scandal he may in fact give it. In 1963 in his famous letter from Birmingham City Jail, Martin Luther King approved of the position of St. Thomas that an unjust law is a human law which is not rooted in eternal and natural law. He continues with another explanation: "An unjust law is a code inflicted upon a minority which that minority had no part in enacting or creating because they did not have the unhampered right to vote."<sup>27</sup> Wolfgang Friedman criticizes this formula of King and observes that if it were taken seriously such laws as those in the Swiss Constitution denying the right to vote to women, and those laws made in similar situations such as the withholding of certain rights from public servants or those in the military service, might well be held void as contrary to the natural law.<sup>28</sup>

No readymade formula applicable in all cases is available to enable either the lawmaker or citizen to decide the justness or injustice of laws.

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<sup>24</sup> SUMMA THEOLOGIAE, *supra* note 1, Pt. II(I), Quest. 93, art. 3, ad. 2.

<sup>25</sup> *Id.*, Quest. 95, art. 4.

<sup>26</sup> *Id.*

<sup>27</sup> THE NEW LEADER, June 24, 1963.

<sup>28</sup> W. FRIEDMAN, *An Analysis of "In Defense of Natural Law,"* in LAW AND PHILOSOPHY 154 (1964).

Wisdom and experience are two indispensable guides that each must have in order to judge correctly in these matters.

The end and purpose of the state is to provide the necessary conditions under which men may live in justice and harmony with others in that community. The laws of the state must be conducive to its own well-being and that of the spiritual and material lives of its citizens. Good and just laws made with this end in mind are necessary for the attainment of the basic human goals. Human laws, those enacted by the rulers that conform to the basic human justice by which men must live if they are to fulfill their role of citizens of the heavenly city as well as the earthly city, are the *sine qua non* of the good state. Laws lacking this conformity to justice and hence to the higher laws that must govern man are essentially destructive of the good order that must exist in every well-governed state. Rulers and subjects alike must cooperate in the task of providing human laws consistent with the natural moral law. On this theme Heinrich Rommen comments:

All law must be just: only then can it obtain that power which primarily holds together and continually renews every community, and in particular every political community, the power to bind in conscience. But the proper function of the natural-law doctrine is precisely to show forth the connection between morality and law. Consequently it must, for the sake of the very existence of man and his concrete legally ordered communities, ever recur, and it does in fact always return whenever the genius of law seeks out its own foundations.<sup>29</sup>

#### PURELY PENAL LAWS

Once Thomas' view on the nature and binding force of law, as well as his view on unjust laws, are understood, the question of whether or not purely penal laws exist is readily answered. By purely penal law is meant a supposed law which does not bind one in conscience to its observance but only binds the offender to pay the penalty if he is caught. Such laws therefore would not bind *ad culpam* but only *ad poenam*. Violation of traffic laws when there is no danger of harming anyone or passage of goods through customs without paying duties are sometimes cited as examples of such laws.<sup>30</sup> These are laws which are held by some not to bind in conscience; the law does not impose an obligation in conscience, but does carry with it an obligation to pay the penalty if one is apprehended violating it. Thomas Aquinas evidently did not believe in the existence of these laws; nowhere in his treatise on law does he mention the possibility of such a law.<sup>31</sup> He is aware of an analogous case from the rule of the Dominican

<sup>29</sup> H. ROMMEN, *THE NATURAL LAW: A STUDY IN LEGAL AND SOCIAL HISTORY AND PHILOSOPHY* 266-67 (1947).

<sup>30</sup> A. FAGOTHEY, *RIGHT AND REASON: ETHICS IN THEORY AND PRACTICE* 336 (4th ed. 1967).

<sup>31</sup> For a good discussion of this topic see M. HERRON, *THE BINDING FORCE OF CIVIL LAWS* 89-98 (1952).

Order to which he belonged that bound its members to the observance of the rule not *ad culpam* but only *ad poenam*.<sup>32</sup> He did not invoke this principle when he asked the question whether all laws bind in conscience.<sup>33</sup> Since all laws are derived from the eternal law and have their force from this law, all laws in the legal theory of Aquinas bind the subjects of the law to their observance. They are made for the common good, and violations of these laws are injurious to the general welfare and disruptive of society. Laws for Aquinas bind in conscience and violations of them are moral faults proportional to the gravity of the law. A purely penal law does not appear to fit the legal philosophy of Thomas Aquinas.

#### THE GOOD NOT SUBJECT TO LAW

In his discussion of both the eternal law and human law St. Thomas insists that in a very real sense the good are not subject to law, or at least not in the same manner as those who are evilly disposed. Those who refrain from evil and are inspired by love poured into their hearts by the Holy Spirit are not under the law. Here Thomas is speaking of the eternal law.<sup>34</sup> Concerning the human law (in the sense of one being subject to it by force), only the wicked, whose wills are in opposition to it, are under this type of coercion to obey it. But the virtuous, whose wills are in harmony with the law, are not subject to it.<sup>35</sup> Virtue, not law, rules their lives. Gilson explains how in the thought of Thomas the just man is exempt from law. He remarks that

it is clear . . . that he who spontaneously follows natural law is more or less predisposed to acknowledge human law and receive it willingly. When human law is promulgated, it embarrasses the vicious or rebellious man, but the just man conforms to it with so perfect a spontaneity that it is as though, so far as he is concerned, civil law does not exist.<sup>36</sup>

#### THE NEED FOR HUMAN LAW

A few remarks on the need for human law, included in the study of the relation between the natural law and human law, will be helpful in elucidating Thomas' thought. In this connection an analogy or comparison with the general need man has for direction, aid, and encouragement from higher sources may help to develop this concept. In discussing the nature and extent of sacred doctrine, at the very beginning of the *Summa Theologiae* Thomas teaches it was necessary for man's very salvation that a knowledge be revealed by God over and above the purely philosophical

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<sup>32</sup> *SUMMA THEOLOGIAE*, *supra* note 1, pt. II(I), Quest. 186, art. 9.

<sup>33</sup> *Id.*, Quest. 96, art. 4.

<sup>34</sup> *Id.*, Quest. 93, art. 6, ad. 1. *See also id.* Quest. 95, art. 5, ad. 2.

<sup>35</sup> *Id.*, Quest. 95, art. 5.

<sup>36</sup> E. GILSON, *THE CHRISTIAN PHILOSOPHY OF THOMAS AQUINAS* 267 (1955).

wisdom which is devised by human reason.<sup>37</sup> This is principally true since the fact that man is directed to God as an end is not naturally known by man. Revelation is necessary to man to ensure sufficient knowledge on the part of all men to enable them to attain their final end. "Therefore, in order that the salvation of all men might be brought about more fitly and more surely it was necessary that they should be taught divine truths by divine revelation."<sup>38</sup> A sacred science, besides those truths learned through reason, or a revealed science, is a necessary part of God's plan for man's salvation.

In the treatise on law, St. Thomas refers again to the need of what he now calls divine law.<sup>39</sup> This is a revealed law, a law in some respects different from the eternal law. Through the natural law, a participation in the eternal law, the eternal law can to some extent be reasoned to both regarding its existence and content. Now divine law is of course above man's natural knowledge. It is revealed law, and as such must be given to man. In reply to the question as to the need man has for it, St. Thomas reaffirms that because of his supernatural goal, man must have direction to it by means that are above his natural powers. The fact that the divine law cannot err allows it to direct man through the areas of his life wherein eternal law and natural law give him uncertain directions. These areas are the concrete changing affairs of life and many of the interior acts of virtue to which other laws do not extend. Divine law can also sanction and punish those acts men perform that may not in certain cases be prohibited by the natural law. The divine law of God is a further development of the eternal law; it contains explicit statements for the governance of man and direction to his final end. It may be said to be derived from the eternal law or sovereign plan of type of divine wisdom directing the entire universe to its end. Human law too is derived from the natural law which is prior to it. Just as the divine law flows from the eternal law of God, so too is human law derived from the natural law.

There are several points of similarity between the need for human law over and above the natural law and the corresponding need for divine law in addition to the eternal and natural law. Both the divine positive law of God and the human laws made by man are positive laws and must be ordinances of reason, proceeding from the reasonable will of God and man respectively. We have seen that the divine law acts as a supplement to or complement of the eternal law inasmuch as it deals with an aspect of human life and activity to which our human reason cannot perfectly reach, namely our supernatural destiny. It also gives particular prescriptions that otherwise could not be known and adds sanctions. Now the law which man devises for his own government has a similar role in human affairs over and above the natural law. It first provides directions for man in those areas

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<sup>37</sup> *SUMMA THEOLOGIAE*, *supra* note 1, pt. II(I), Quest. 1, art. 1.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*, Quest. 91, art. 4.

of his life that natural law is not able to provide. It gives training in virtue, an important part of the education of the young that the natural law itself is not able to give. Further, human law spells out in far more detail just how this virtue is to be exercised. It delineates what activities are right and just, especially those that lie on the periphery of the natural law where there is little certitude as to the details of good human life.

Just as the divine law makes explicit and certain for man what may be only implicit and vague as far as the eternal law and natural law are concerned (*e.g.*, how God is to be worshipped and served), so too human law performs this same valuable function relative to the natural law, giving more precise and detailed rules governing particular details of his life. Further, as divine law adds sanction to the eternal law, human law adds the dimension of reward and punishment to natural law. By force and fear human laws encourage man to the exercise of virtues to which the natural law alone may not incline him. The divine law by its explicit statements on reward and punishments adds a new dimension to the eternal law and is a powerful incentive to its observance. Divine law is needed, then, to enable man to share, as Thomas puts it, more perfectly in the eternal law. By the divine law we are directed to our supernatural end "in a yet higher way."<sup>40</sup> Human law enables man to live in conformity with the natural law by a similar process. Inasmuch as the positive law perfects the natural law by supplementing it and making further determinations of it, the observance of the positive law enables the citizen to fulfill the precepts of the natural law in a yet higher way.

#### CONCLUSION

The relation between human law and natural law is of course part of the larger question of the relation between law and morality. Taking law in general to mean the legal system or civil code, and natural law to stand for a system of ethics recognizing the basic rightness or wrongness of human conduct from a moral point of view, we may draw some conclusions regarding the relation between these two concepts. Positive law and natural law, or law and morality, would act in harmony with one another in society, both directing and counseling man in his human affairs and directing him to his end. Morality is more ultimate than law as the source and directing principle of law. Samuel Enoch Stumpf contends:

Legal obligation is not nearly so ultimate as is moral obligation. In spite of the intimate relation between law and morality, the law is not the standard of morality. Law and morality are bound together because the function of law as an agency for controlling human behavior cannot proceed without reference to moral imperatives. To a large extent, the direction in which the law will lead human behavior is suggested by the moral tendencies of a community.<sup>41</sup>

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<sup>40</sup> *Id.*, Quest. 1, art. 4, ad. 1.

<sup>41</sup> S.E. STUMPF, *MORALITY AND THE LAW* 239 (1966).

Law simply has to mean more than "the prophecies of what the courts will do in fact."<sup>42</sup> This Holmesian formula, an extreme example of a positivistic and pragmatic outlook, naively overlooks the classical legal tradition of such great thinkers of the past as Plato, Aristotle, Augustine, Aquinas, Hobbes, Locke, Suarez, and a host of others.

To define law in terms of what actually takes place in a court of law is to erect a superstructure without a foundation, to justify practice without a basic norm to ground the practice on and judge it by. Without a grounding norm there can be no logical basis to determine the difference between a just law and an unjust one. Nor does it appear that there can be a just authoritative basis giving the court the power to establish and enforce law in the first place. Perhaps a great deal of the breakdown of respect for law and order in our society today can be attributed to the separation in our recent legal practice of law from any basic moral foundation to establish it, guide it, nourish it, and in general, oversee it. Recent political activity has underscored the need for a moral foundation to the legal system. A return to a closer harmony between the law and morality, perhaps as suggested by Thomas Aquinas, is a pressing need for our legal system if it is to survive and fulfill its divinely appointed function in our governmental system.

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<sup>42</sup> Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 457-68 (1897).