

Lecture Notes – Thomas Aquinas (ST 90, 94) and Natural Law

Thomas Aquinas (1225-1274)

Preliminaries:

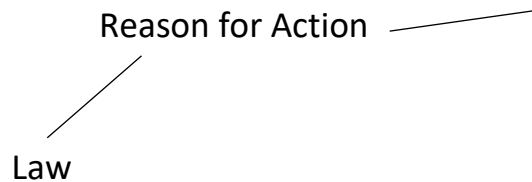
- For Thomas philosophy is *ancilla theologiae* (handmaiden of theology).
 - Aquinas was first and foremost a theologian, though he was quite capable of distinguishing philosophy proper from theology. He held that
 - (1) philosophy can prove by means of reason unaided by revelation some truths proposed by Christian faith;
 - (2) it can clarify truths which cannot be proved;
 - and (3) it can defend the principles of Christian faith against their detractors.
- Context: “Recovery” of Aristotle
 - In the century leading up to Aquinas’s productive period, the works of Aristotle were being translated into Latin and becoming widely available to scholars in Europe.
 - They were never lost. Islamic scholars were reading them, writing commentaries on them, translating them into Arabic, and developing them into new and important doctrines.
 - Scholars (and monks) in Europe couldn’t read Ancient Greek or Arabic, so they couldn’t access many of these texts. Even once translation into Latin began, many were banned by the Church.
 - Aquinas managed a pretty incredible feat. He effectively integrated the dogmas of the Church with the Aristotelian system.
 - This changed both forever. Interpretation of Aristotle has been deeply influenced by Aquinas’s work and Aristotle became the philosopher of the Church...his doctrines became dogma.
 - Thomas would have to depart from Aristotle: chief among them
 - (i) Aristotle's view that the universe is everlasting and
 - (ii) Aristotle's rejection of individual immortality.
- Christian PHILOSOPHY: Philosophy as Thomas understands it depends on this: that there is a natural world; that its substantial components regularly

exercise their own causal powers; that there are intelligent beings capable of understanding the natural world by their own mental powers.

- Grasping some of Aristotle’s ideas will be central in understanding Aquinas on law; so we will return to these.

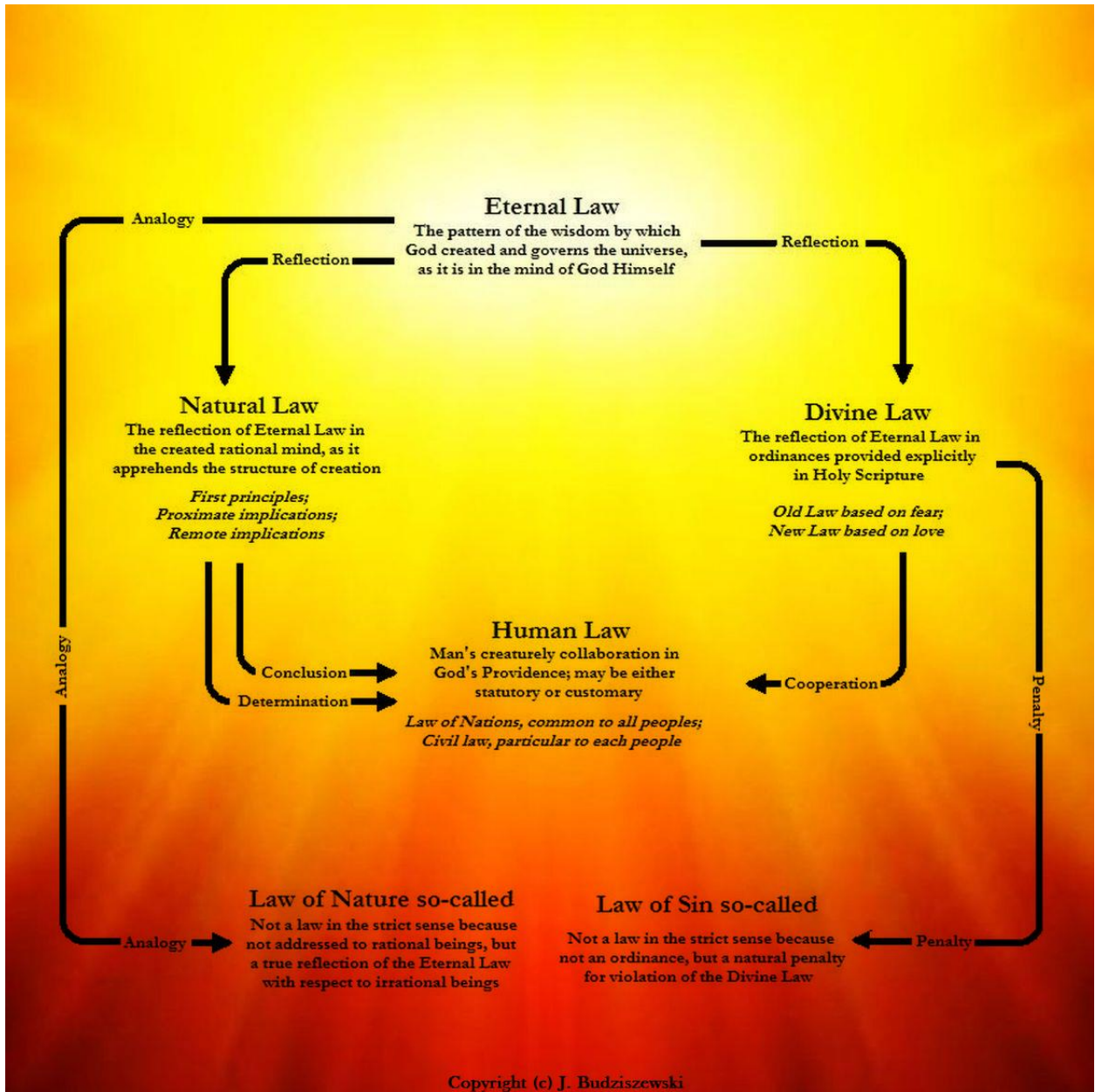
Second Preliminary: Separability Thesis

- **“Lex iniusta non est lex.” - “An unjust law is not law.” – Augustine**
 - Natural law is taken to be committed to rejecting the Separability Thesis.
 - Why and how is going to be a central question for us.
- **Secondarily, we’ll be concerned to see whether natural lawyers also reject the Social Fact and Conventionality Theses.**
 - If legal validity is a matter of justice, then they seem to reject these theses; but it may turn out not to be so simple
 - **Morality (Practical Reasonableness)**



Law gives a particularly strong reason for action...

Third Preliminary: Aquinas's Architecture of Law



- Our focus is on Human Law:
 - Conclusions – Directly copied from Natural Law, the law of peoples common to all. Human rights.
 - Determinations – Civil law, particular to each people.
 - Coordination problems: which side of the road?

- We need to settle these questions, but there are a wide range of ways in which they may be settled without violating natural law.
- Consider an architect who has been commissioned to build a new dorm on campus. There are, of course, certain requirements that will have to be met:
 - It will need to be secure, comfortable, accessible, have enough showers, toilets, sinks, etc. Have enough space in rooms. Have doors wide enough to move furniture in and out.
 - But there are still many decisions to be made. The doors cannot be only 2 feet tall, but they may be 7'4" or 7'6".
- Would a perfect community, a community of saints, need law?
 - Yes; but they would not need coercion. For this reason, Aquinas says, coercion is not part of law's nature, but it is always attendant to law in human communities.

Final Preliminary: The Syllogism

- What's a syllogism?
 - An argument in three claims: Major premise, minor premise, conclusion.
 - All humans are mortal.
 - Socrates is human.
 - Therefore, Socrates is mortal.
 - Speculative Reason vs. Practical Reason
 - What's this talk of First Principles in Q94, Art 2, Respondeo?
 - Self-evidence?
 - Man is a rational being
 - Every whole is greater than its part.
 - An angel is not circumscriptively in space????
 - WHAT's wisdom got to do with it?
 - First Principle of Speculative Reason:
 - "The same thing cannot be affirmed and denied at the same time."
 - First Principle of Practical Reason:

- “Good is that which all things seek after.”
- First Precept of Law
 - **“Good is to be done and pursued, and evil is to be avoided.”**
- **What are the various goods?**
 - Some shared with all substances which seek their preservation:
 - Preserve human life and ward off its obstacles
 - Some shared with other animals:
 - Reproduction, education of offspring
 - Marriage between a man and a woman for the bringing up of children
 - Finally, those which are proper to humans:
 - Knowledge (of the truth about god)
 - Living in fellowship with others (society)
 - Practical reasonableness
- How do we know these first and universal principles?
 - **Synderesis:** the capacity/habit/disposition to know the natural law. This is something that all humans have, but that is muted or overridden in many of us by our appetites/passions.

Let’s turn now to LAW:

- Law, for Aquinas, restricts or constrains action, but not by coercive force (or not only in that way). “lex; is derived from ‘ligare’ because it binds one to act.”
 - Rather, it does so by way of reason: And these reasons are in some important sense, the same for everyone.
 - Law is a rule and measure of acts
 - Reason is the rule and measure of human acts
 - Reason is the first principle of human acts, for it belongs to reason to direct to the end, which is the first principle in all matters of action.
 - The first principle of a genus is its rule and measure.
 - So, law is something pertaining to reason

- THAT IS, law functions by way of reason, not by way of coercion.
 - But how does this work? What does this mean?
 - Well, we need to uncover the relationship between reasons for action and law.
 - Practical reasons, reasons for action, for Aquinas
 - Laws are the universal propositions of the practical intellect. They are to practical reason as major premises are to speculative reason.
 - Ok, but how does that help us to understand law? Which human goods are the ones that are prescribed by law? Which ones are really good rather than just under the aspect of the good? What's its aim? Not every good is to be legislated. Not every good of natural law needs to be.
 - Work through Q90, Article 2
 - Hierarchy of ends, final end: eudaimonia, happiness, bliss
 - Part to whole, perfect vs. imperfect: individual to community
 - Universal happiness
 - “that we call those legal matters “just, which are adapted to produce and preserve happiness and its part for the body politic” since the state is a perfect community.
 - Ok, then, who gets to make the laws?
 - Q 90, Article 3
 - And, finally, promulgation of laws...why is it necessary?
 - Q 90, Article 4
- Definition of Law “is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated.”

Let's return to separability...

Social fact thesis?