

CHAPTER 18

LAW AND NATURAL LAW

MICHAEL BAUR

IN his often-quoted definition, Aquinas tells us that law is “nothing other than an ordering of reason for the common good from one who has care of the community, and promulgated.”¹ For Aquinas, law is essentially an ordering of reason, and not of will, since law is a rule and measure of acts; the first principle of action is the end; and it belongs to reason to direct things to an end.² Aquinas acknowledges that law would have no motive force, and thus no power to cause or prohibit action, if it were not for the will.³ But without the ordering of reason, the will’s motive force would be without aim or direction. For “to command is essentially an act of reason”⁴ and “to order is the proper act of reason.”⁵ Aquinas’s account of law as an ordering of reason for the common good of a community depends on his mereology (i.e., his theory of parthood relations, including the relations of parts to parts and parts to wholes), and so a fuller exploration of his account of law might well begin with an examination of parts, wholes, and the common good in his thought.

PARTS, WHOLES, AND THE COMMON GOOD

Aquinas tells us that “all who are included in a community stand in relation to that community as parts to a whole,”⁶ and “every individual person is compared to the whole community as part to whole.”⁷ Now for Aquinas, it is possible for things to constitute a plurality of separate, unified wholes in one respect, while being parts of another unified whole in some other respect. Thus, individual human beings are separate, unified wholes insofar as they are individuated living substances capable of performing their own biological and psychological functions and undertaking action on their own behalf; but they may also be parts of some other unified whole

insofar as they belong to a community such as a political order. Aquinas notes that any multitude whatsoever can be regarded as a unified whole in some respect. But he goes on to observe that only substances (such as living organisms) can be regarded as unified wholes absolutely speaking, or without qualification; by contrast, things that are a plurality of substances absolutely speaking, but unified wholes in a certain respect, are not said to be unified through any substantial unity but rather through a “unity of composition or order.”⁸

Significantly, Aquinas holds that the perfection of wholes through the proper ordering of their parts does not entail the elimination of diversity, but in many cases requires diversity. Thus, “the order and perfection of a whole” is not possible if there is not a “disparity among its parts.”⁹ In a whole where each part is essentially the same as every other part (such as in a homogeneous body of water), the parts are interchangeable and the whole can remain what it is, no matter how the parts might be rearranged. This is clearly not the case in a more perfect whole (such as in the body of a living organism), where the whole could not remain what it is if the parts (like eyes and legs) could be switched around indiscriminately. For Aquinas, it is precisely the presence of diverse parts within a whole that accounts for a whole’s greater degree of excellence and perfection. Thus, even if a particular part within some whole were to become more excellent by becoming more like some other, nobler part (e.g., if the foot were to become more like the eye), the whole itself would have less perfection and dignity as the whole that it is.¹⁰ Also, Aquinas asserts that the existence of a genuine ordering among diverse parts does not render the parts merely passive or acquiescent, but in fact requires that the parts be capable of action in their own right: “If we take away the actions of things we take away the order of things to one another, for there is no tying together of things that are diverse according to their natures into the unity of order except by the fact that some are active and some are passive.”¹¹ For Aquinas, a community of merely passive, noninteracting beings would not be a genuinely ordered community, but a mere aggregation of things that had nothing to do with one another and that could not be ordered with respect to one another.¹²

For Aquinas, there are two ways in which we can talk about the ordering of parts within a whole: first, insofar as the parts are ordered with respect to one another; and secondly, insofar as the parts are ordered toward an end.¹³ Corresponding to this twofold ordering of parts within a whole, we can also talk about a twofold good of any whole. First, there is the intrinsic good; this is the form of the whole, which arises through the unity and ordering of the parts within the whole and is the end of generation or alteration. Second, there is the extrinsic good; this is an end that is external to the whole as such and for the sake of which the whole as a whole exists.¹⁴ Aquinas illustrates this twofold good by talking about the form of an army (its intrinsic good), which is the ordering of its parts to one another, and that for the sake of which the army and its internal ordering exists (its extrinsic good), which is military victory.¹⁵ Aquinas also notes that “whenever we find a multitude whose members are ordered to each other, that multitude must necessarily be ordered to some external principle.”¹⁶ Thus, the ordering of a whole’s parts to one another (the

whole's formal cause or intrinsic good) is always for the sake of the ordering of the whole to its extrinsic end (its final cause). As Aquinas says (following Aristotle), the final cause and not the formal cause is properly called "the cause of causes."¹⁷

On Aquinas's account, the good toward which the law directs a community is called the "common good" of that community. Now that which is said to be "common" can be understood in two different ways: on the one hand, something that is "common after the manner of an effect or predication" is found in many things according to one intelligible character, as the intelligible character of "animal" is common to all human beings; on the other hand, something that is "common after the manner of a cause" remains numerically one but extends to many effects.¹⁸ It is in this latter sense that the "common good" toward which law orders a community is said to be "common." In fact, Aquinas says that what is common by way of predication—such as "the unity or community of human nature"—is nothing in reality, but only in the consideration of the mind.¹⁹ While the law directs individuals in their actions, and actions are always particular, it remains the case that law is not directed to the particular good of any individual but rather to the common good of a community. The particular actions of individuals are referable to the common good of a community, not as to a common genus or species, but as to a common final cause or end.²⁰ It is in this sense that Aquinas can use the term, "common good," to refer to: God (as the common end of all creatures²¹), victory in battle (as the common end of an army's soldiers²²), justice (as the common end of citizens²³), and children (as the common end of two parents²⁴).

Notice that, for Aquinas, the common good or common end toward which members of a community are ordered can be the sort of end that the agents bring into existence through their own actions (e.g., justice within a community), or the sort of end (like God) that can exist apart from the actions of the agents whose end it is.²⁵ Furthermore, the common good or end toward which a community is ordered can be an extrinsic common good (e.g., God, victory in battle, or children) or an intrinsic common good (e.g., justice or order within a particular community). In any case, since the final cause (and not the formal cause) is the "cause of all causes," the primary sense in which the law orders a community to a common good is in the sense of an extrinsic and not intrinsic good; this is because a community can be ordered to an intrinsic common good only on account of its being ordered to an extrinsic common good.²⁶ What remains "common" (i.e., "common by way of predication") to any common good is that the common good is the common or shared end or goal (or, in the case of rational creatures, the object of a common or shared willing) at which the community's members aim precisely insofar as they are members of that community.

On Aquinas's account, the common good of a community is not reducible to the particular goods of any of its parts. Furthermore, what is fundamentally good about the common good of a community is not that the common good serves as a means for securing the particular goods, or for coordinating the particular ends, of its various parts. Just as a community has its own kind of being that is distinct from the being of any of its parts, so too the common good of a community is a

distinctive kind of good, not ultimately explainable in terms of the goods of its parts. What is fundamentally good about the common good of a community is that the common good is perfective of the community as a whole, precisely in connection with the kind of unity and being that the community has. For Aquinas, to speak of a whole is to speak “of those things in which something one and perfect emerges from all the parts taken together, and this perfection pertains to none of the parts, as in a house or an animal.”²⁷ Just as we can talk about actions that are attributable to a group taken as a whole but not attributable to any of the individual parts (e.g., “the team won,” “the company issued stock,” “the nation declared war”), so too we can talk about goods that are goods of the whole as such, but not of any of the parts: “For the good that results from the composition of parts, through which the whole is good, is not in any of the parts. Hence the parts are not good by that goodness which is proper to the whole.”²⁸

In virtue of being common (“by way of causation”), a common good on Aquinas’s account remains numerically one and undivided while simultaneously being desired by and perfective of many different parts, precisely insofar as they are parts. In other words, a good that is common by way of causation is essentially a shareable good. When one member of a community enjoys the goodness of a common good, this enjoyment by one part does not in itself entail subtraction from or detriment to the similar enjoyment of the same common good by another part or parts. When Lily and Grace discuss philosophy over a bottle of wine, the particular sips of wine that they imbibe and enjoy while conversing are particular goods. The very same sip of wine (the numerically one and undivided portion of wine) that Lily imbibes and enjoys simply cannot be imbibed and enjoyed by Grace, so when Lily imbibes and enjoys more of the wine, there is less of the wine to be imbibed and enjoyed by Grace. By contrast, the philosophical conversation that Lily and Grace are having (while imbibing the wine) is a common good; it can remain numerically one and undivided while both are enjoying the conversation. In itself, Lily’s enjoyment of the conversation does not entail any subtraction from or detriment to Grace’s enjoyment of the conversation. When Lily enjoys the conversation more, it does not follow that Grace has to enjoy the conversation less. The important point here is that the common good enjoyed by members of a group or community is formally different, and not just quantitatively different, from the particular goods enjoyed by those members: “The common good of the realm and the particular good of the individual differ not only in respect of the *many* and the *few*, but also under a formal aspect.”²⁹ It is on account of this formal difference that a good that is common by way of causation can be enjoyed by many without division or subtraction, while a particular good cannot.

Aquinas also holds that, strictly speaking, the end of some given whole (the common end or good that is a common good for its parts) does not stand in opposition to or in conflict with the end or ends of its particular parts as such; for “the part is not divided in opposition to the whole, but in opposition to another part.”³⁰ But it is certainly possible for there to be opposition or conflict between the end or ends of the whole and the end or ends that a part may have insofar as the part is

regarded as the part of some other whole or as a distinct whole in its own right. To explain this further, we need to recall, as Aquinas observes, that reason may consider a single thing under many different aspects:

therefore, if a man's will wills a thing to be, according as it appears to be good, his will is good: and the will of another man, who wills that thing not to be, according as it appears evil, is also good. Thus a judge has a good will, in willing a thief to be put to death, because this is just: while the will of another—e.g., the thief's wife or son, who wishes him not to be put to death, inasmuch as killing is a natural evil—is also good.³¹

Now insofar as a judge is authorized to act on behalf of an entire community, anything that he or she wills as a judge will be willed under the aspect of the common or universal good (under the aspect of what is a proper end for the community as a whole); and what a wife wills regarding her husband or a son wills regarding his father is something willed under the aspect of its being some particular good, suited to the kind of relationships that exist between wives and husbands, and sons and fathers. Now the very same thing may happen to be good under a universal aspect, and yet not good under a particular aspect. Thus, the will of the judge (in favor of killing the man) and the wills of the wife and son (opposed to the killing of the man) can both be good, even though they seem to will opposite things. For as Aquinas points out, they will opposite things only accidentally, and not under the same formal aspect. It is not the case that the wife and son will that justice be violated; nor is it the case that the judge wills the death of a man precisely as a death. Rather, the judge wills that justice be done, and the wife and son will that the husband and father should live. There is no conflict between these ends as such; the conflict is incidental to what the parties will, formally and properly understood. Or to make the same general point in a different way, when regarded as parts of the whole political community, the wife and son are able to will (along with the judge) that justice be done. It is only when they are regarded as parts of some other whole (e.g., a family) or as distinct wholes in their own right (e.g., as individuals in some respect) that the wife and son can be seen as having ends that stand opposed to the community's end of seeing that justice be done.

Aquinas observes that the wife and son may act in accordance with their proper inclinations as parts of the political whole (that is, they can will that justice be done) while simultaneously acting in accordance with their proper inclinations as wife and son (that is, they can also will that the life of their loved one be spared) if they will the common good (justice) *formally* and the particular good (the preservation of a man's life) *materially*. Here, to will a common good *formally* is to be attracted to a single final cause or goal precisely under its aspect of having many effects, though these many effects remain unspecified or unenumerated; and to will a particular good *materially* is to be attracted to a single final cause or goal precisely under its aspect of having some particular effect on some specific individual or individuals. For Aquinas, the wife and son ought to will formally the common good (that justice be done) and will materially the particular good (that a particular man's

life be preserved), all the while subordinating their material willing of the particular good to their formal willing of the common good. Notice that this does not require the wife and son to engage in any self-contradictory willing; that is, they are not required to will both in favor of some particular action and against the same action in the same respect. However, it does require that they subordinate their material willing of the particular good to their formal willing of the common good, and thus that they be willing to risk losing some particular good that they cherish (e.g., the life of a loved one, their wealth and possessions, or even their own lives) for the sake of the common good, in the event that it becomes impossible in some particular situation for both the common good and the particular good to be preserved.

For Aquinas, a good citizen is one who is willing to subordinate his or her willing of particular goods to his or her willing of the political community's common good. Indeed, Aquinas holds that it is a natural tendency of every part, as such, to subordinate the love that it has for its own particular good to the greater love that it has for the common good of the whole:

each part naturally loves the common good of the whole more than it loves its own particular good. This is evidenced by its operation, since the principle inclination of each part is towards common action conducive to the good of the whole. It may also be seen in civic virtues whereby sometimes the citizens suffer damage even to their own property and persons for the sake of the common good.³²

On Aquinas's account, citizens are generally willing to bear their fair share of a political community's tax burden, since for the most part they recognize that their shared shouldering of the tax burden is essential for the achievement of a common good or goods that could not otherwise be attained.

Of course, it might be objected that: (a) individual citizens would not pay their taxes if they were not reasonably confident that others would do so as well; (b) individual citizens are confident that others will pay their taxes, since the law has established certain mechanisms to punish those who do not pay their taxes; and therefore (c) individual citizens are induced to pay their taxes only because of a generalized threat of punishment and not because they love the common good more than they love their own particular goods. Aquinas would be able to acknowledge that (a) and (b) may both be true, while nevertheless denying that (c) follows. Indeed, on Aquinas's account, the attempt to argue from (a) and (b) to (c) commits the error of mistaking the effect (the establishment of some mechanism for punishment) for the cause (lawfulness). That is to say, (a) and (b) can be taken to support not (c), but rather the conclusion that (d) individual citizens generally recognize that as citizens they share a common end whose importance is sufficiently weighty to justify the establishment of certain mechanisms for coercing those who do not willingly contribute their fair share toward the attainment of this common end. If individual citizens did not willingly and for the most part shoulder their fair share of the overall tax burden, then the very notion of lawfulness would cease to apply. For if tax monies essential to sustaining the common good had to be coercively

wrested from a majority of the citizens, then the community would have to expend large sums of its wealth simply in order to enforce the tax code. But there is a point at which the costs of enforcing the tax code would exceed the gains to be had through such enforcement, in which case the very effort at enforcement would cannibalize itself. Just as an excessive amount of cancer will eventually destroy the body (and thus destroy the cancer itself), and an excessive amount of counterfeit will eventually destroy a currency (and thus destroy the counterfeit itself), so too excessive costs in enforcement will eventually destroy the common good for which such enforcement exists, and thus undermine the whole point of enforcement itself. On Aquinas's account, lawfulness is compatible with the need to compel compliance in some instances, but incompatible with the need to compel compliance in most instances.³³

LAW ESTABLISHES A PRINCIPLE OF ACTION THAT IS INTERNAL TO THE BEINGS THAT ARE SUBJECT TO THE LAW

The preceding considerations point us toward an aspect of Aquinas's account of law that is frequently overlooked, even by his most sympathetic commentators. For Aquinas, the term "law" does not denote an externally imposed command or ordinance, but rather a rule or ordering whose effective force in directing individuals to act for the sake of the common good is present within the individual beings thus directed. Of course, law does involve the direction of one thing by another, for—strictly speaking—one does not make law for oneself, but only for another. But in making law for another, the lawmaker establishes a principle or rule of action that is *internal* to the beings subject to the law.³⁴ It is for this reason, Aquinas asserts, that human beings—notwithstanding their ability to exercise control over nonrational creatures—are unable to make law for nonrational creatures. For when human beings exercise control over nonrational creatures (e.g., when a farmer plows a field by controlling the actions of oxen), the actions taking place are not the actions of the nonrational creatures, but rather the actions of the human beings who are using the nonrational beings as instruments (e.g., thus it is the farmer who plows the field by using the oxen as instruments, and not the oxen who plow the field). The reason why we cannot make law for nonrational creatures is that the principles by means of which we control nonrational creatures are the principles of our actions alone, and not the (internalized) principles of the actions of the nonrational creatures under our control.³⁵

For Aquinas, to be subject to law in its broadest sense is to be a member of a community, and to be a member of a community is to be attracted to the common good of the community in such a way that in acting in accordance with one's own

nature and inclinations (and not merely as an externally controlled instrument of another), the individual also acts for the benefit of the common good. Thus, actions of an individual that might otherwise seem puzzling may become intelligible, when regarded as the actions of an individual that is also a member of a community. Consider the African wild dog (*Lycaon pictus*) whose behavior is typical of many canids. After a successful hunt, the mother dog is greeted in the den by her pups, whose licking of her face elicits from her an instinctive regurgitation reaction: the mother dog instinctively disgorges portions of the flesh that she had just devoured.³⁶ If one regards the mother dog simply as an isolated individual, one might think that this spontaneous regurgitation reaction is a sign of some illness or disease. But if one regards her as a member of a community, such behavior becomes perfectly intelligible: the regurgitated bolus provides partially digested flesh for the pups to eat, and thus contributes to the care of the young and the survival of the species. This natural behavior of the mother dog illustrates what, for Aquinas, is meant by law: law is in the mother dog in the sense that her own actions, emerging from her own natural instincts and inclinations, are directed toward the common good of the community (in this case, toward the survival of the species). As Aquinas observes, even sensuous inclinations in animals have the character of law, insofar as they are ordained to the common good, which consists in “the preservation of nature in the species or the individual.”³⁷

On Aquinas’s account, there are different ways in which law may be said to be in individual beings. If the community under consideration is a biological species, then the source of law is the species as a whole, and—as we have seen—the individual organism is directed to the common good of the species by means of the instinctual makeup that the individual has, thanks to its species membership. If the community under consideration is the entire community of created beings, then the lawgiver is God as creator of the whole universe, and law is in every created being in the sense that every inclination and every action of every created being is an effect of God’s creative and legislative action, and is thereby directed to the common good of the whole universe. For Aquinas, there is nothing in the created universe (whether contingent or necessary) that falls outside the scope of “eternal law,” which is the name that Aquinas gives to God’s creative act of legislation for all things.³⁸ Nothing that pertains to God’s essence, however, is subject to eternal law, since God’s essence is not different from the eternal law itself,³⁹ and to be subject to law, strictly speaking, is to be subject to the governance of another.⁴⁰ Along with eternal law, says Aquinas, we can also talk about “divine law,” but divine law is nothing other than eternal law itself, only apprehended under the aspect of its being made known by God to human beings through revelation, primarily through the Old and the New Testaments.⁴¹

Eternal law is present in, and directive of, every created being, even when one created being is harmed as a result of the activity of some other created being (e.g., when the zebra is preyed upon by the African wild dog); for, according to Aquinas, although it is not something good for the zebra when it is preyed upon by the African wild dog, nevertheless, it is good for the perfection of the universe as a whole that there should exist many different kinds of beings, some of which might

thrive and perfect themselves at the expense of others.⁴² On Aquinas's account, eternal law is the cause of all created beings and all their acts, and it is by virtue of such creative, legislative causality (not by virtue of any legislative act that supervenes upon already existent beings or acts) that eternal law directs all things to the common good of the universe.⁴³ For Aquinas, this common good of the universe is an extrinsic good, God himself,⁴⁴ insofar as every created being is attracted to God and manifests its desire for God in its very act of seeking its own perfection, for in attaining its own perfection, each created being—in its own way—attains some likeness to God's perfection.⁴⁵ But in seeking God, each created being also seeks—again, in its own way—the perfection of the created universe as a whole. This perfection consists in the ordered coming together of the many diverse beings in the created universe which—by being thus ordered to one another and to God—constitute an imperfect likeness of the perfect, fully nondiverse, and undivided goodness of God.⁴⁶ Thus, in being attracted to the extrinsic common good of the universe (God himself), all created beings are also attracted to the intrinsic common good of the universe (the order and perfection of the created universe as a whole⁴⁷).

For Aquinas, there are two ways in which we can talk about the presence of eternal law in a created being: in one way, eternal law is said to be in a created being as in that which is ruled and measured; in a second way, eternal law is said to be in a created being as in that which rules and measures.⁴⁸ Now eternal law is in all created beings in the first way, since all created beings are directed to the common good of the universe and are thus ruled and measured in accordance with such direction. But in addition to this first way, there is also a second way in which eternal law is in some (but not all) created beings: it is in us rational beings as in that which rules or measures. The presence in us of eternal law, in this unique, twofold way, is what Aquinas calls "natural law." It is important to note that, for Aquinas, natural law is not something separate from eternal law.⁴⁹ Rather, for Aquinas, the natural law is the eternal law itself, but regarded under the aspect of its being in us (rational beings) in this unique, twofold way: it is in us as in created beings that are ruled, measured, and directed by means of it, but also in us as in created (rational) beings that rule, measure, and direct (both ourselves and other things) by means of it.⁵⁰

Aquinas identifies yet another way in which we can talk about law, which he calls "human law." Recall that for Aquinas, "natural law" denotes the unique way in which we, as rational beings, are subject to eternal law in a twofold way: as both directed and directive, as both ordered and ordering. As Aquinas notes, it is by virtue of the natural law that we are providential both for ourselves and other beings,⁵¹ which is to say that we rationally direct both ourselves and others to the ends that we apprehend as ends. But when we thus direct both ourselves and others to the ends that we apprehend as ends, it is not necessarily the case that the principles operative in our directive, ordering acts should become the internal principles of the actions of those things that are subject to our acts of ordering and direction. Thus, we can exercise control over nonrational beings and direct them to the ends that we apprehend as ends, but we do not prescribe for them any principles that

become the internal principles of their own actions; as we have seen, we do not make law for nonrational beings. But for Aquinas, there may be instances in which our acts of giving order and direction do include the establishment of principles of action that are the internal principles of the actions of those beings that are subject to our acts of ordering and direction. When, for the sake of some common good, we prescribe principles of action that become the internal principles of action of the beings subject to our direction, we are engaged in acts of lawmaking. While we cannot make law for nonrational beings, we can make law for other human beings. This is because human beings, by virtue of their ability to communicate rationally with one another and persuade one another by means of rational discourse, are able to “imprint” on the minds of others a rule or principle that becomes in these others an internal principle of action.⁵²

For Aquinas, just as natural law is not something separate from eternal law, so too human law is not something separate from natural law. Rather, human law is the special way in which natural law is in us when we not only provide rational direction for ourselves and other beings subject to our control, but do so in such a way that the principles of our directive, ordering activity become the *internal* principles of action in those other (human) beings that are directed by us for the sake of some common good. It is against this backdrop that one must understand Aquinas’s famous statement to the effect that “unjust law is no law at all.”⁵³ The point of Aquinas’s statement is not that individuals have license to disobey legal directives that are unjust or morally defective in some respect, on the grounds that such directives are not really laws at all. The point, rather, is that legal directives have the character of law—properly speaking—only insofar as they are the sort of directives which, for the most part, serve as the internalized principles of the actions of the (rational) human beings subject to them. If legal directives are not, for the most part, internalized, then they must as a rule be externally imposed on individuals, which is to say that they are “violent” and not internally motivating (they are “not binding in conscience”). For Aquinas, legal directives that have to be externally imposed in this way, simply fail to satisfy what it *means* to be law. But even if certain legal directives are, for the most part, externally imposed on individuals and thus lack the character of lawfulness, it may still be the case, so Aquinas argues, that individuals may nevertheless be morally obligated to obey such directives; for individual acts of disobedience may ultimately be more harmful than beneficial to the common good (which, after all, is that for the sake of which law exists).

ETERNAL LAW, NATURAL LAW, AND HUMAN FREEDOM

To say that natural law is in us, is to say that eternal law is in us (and thus that we are attracted and directed to God and the perfection of the created universe) in a twofold way: eternal law is in us as in beings that are ruled, measured, and ordered,

and it is in us as in beings that are also capable of ruling, measuring, and ordering. Now it is tempting to think that the two ways in which eternal law is in us correspond to two different kinds of inclinations in us: (a) inclinations in us by virtue of our “pre-rational” nature, which are inclinations that we share with nonrational beings (including our inclinations toward self-preservation, self-reproduction, the rearing of the young, etc.⁵⁴) and which correspond to the way that eternal law is in us as in beings that are ruled, measured, and ordered; and (b) inclinations in us by virtue of our “rational” nature, which are inclinations that are absent in nonrational beings (such as the inclination to know the truth about God⁵⁵) and which correspond to the way that eternal law is in us as in beings that are capable of ruling, measuring, and ordering. But Aquinas himself would reject any theory that entailed this sort of twofold correspondence. For Aquinas, *all* of our inclinations are in us as a result of the eternal law in us, which is to say that *all* of our inclinations are in us as in beings that are ruled, measured, and ordered by the eternal law. Indeed, for Aquinas, there cannot be any single inclination or action in us at all, except insofar as it is brought into being through the creative, legislative causality of the eternal law (which is nothing other than God’s own essence). For Aquinas, none of our acts can be acts of ruling, measuring, ordering, and causing, without at the same time also being acts that are ruled, measured, ordered, and caused by God through eternal law. Indeed, on Aquinas’s account, all of our acts (whether freely chosen by us or not, whether sinful or not) are caused and directed by God, insofar as they are acts at all. Yet according to Aquinas, we remain solely responsible for our sins, for sin denotes a being or action that is lacking in some due actuality or goodness. While God is the cause of our sinful acts insofar as they are acts, he is not the cause of the privation or lack of due goodness that makes these acts sinful.⁵⁶

For Aquinas, those acts of ours that are identifiable as acts of ruling, measuring, ordering, and causing by us, do not belong to a set of beings and acts that is separate from the set of beings and acts that is ruled, measured, ordered, and caused by the eternal law. Rather, our acts of ruling, measuring, ordering, and causing represent a *unique way* of being ruled, measured, ordered, and caused by the eternal law. Our acts, which are always acts of being ruled, measured, ordered, and caused by the eternal law, can in some cases take on the character of being acts of ruling, measuring, ordering, and causing as well, insofar as they are accompanied by—or perhaps better, they are defined by—a kind of rational knowing that makes them the special kind of acts that they are. This rational knowing does not allow us to evade the all-encompassing, inescapable causality and direction of the eternal law, but rather allows us to continue being caused and directed by the eternal law in such a way that we can at the same time apprehend the appetible objects toward which we are inclined (by the eternal law) under their intelligible or universal aspects.

For Aquinas, when we apprehend a particular appetible object under some intelligible or universal aspect, we are able to apprehend multiple possibilities regarding that object and thus able to make free choices with respect to it. When Daniel imagines a house that he might build, any image that he entertains will be of

some particular house, with some particular shape (for imagination, according to Aquinas, is a sensuous faculty). But the particular image that Daniel entertains need not attract him and move him ineluctably to build the house as imagined. For if Daniel understands what he is imagining and thus (for example) apprehends the image under its formal or intelligible aspect of being an image of a “house,” he thereby apprehends something universal, which remains open to many different possible instantiations (e.g., many different possible shapes). Since the proper object of Daniel’s rational appetite (or will) is not just some particular appetible object, but rather an appetible object as understood,⁵⁷ Daniel may be attracted to and moved by the appetible object as understood by him, and yet nevertheless remain free to build a house that is circular, square, or rectangular. For Aquinas, our actions always have to do with particulars; however, what attracts us about particular objects—to the extent that we have an understanding of what we are doing—is not the particular object that we imagine or experience, but rather some intelligible or universal aspect of the object as understood.⁵⁸ On Aquinas’s account, no particular object as merely imagined or experienced can by itself attract or move our will, any more than a particular object as imagined or experienced can by itself cause the act of understanding in us.⁵⁹

In addition, Aquinas holds that it is within our power as rational beings to think or refrain from thinking about the various intelligible aspects under which we comprehend objects; and so it is within our power to think of the objects that we imagine and experience under one intelligible aspect or another. For example, Daniel can think of the house that he might build under the aspect of its being a possible dwelling for himself, or a marketable piece of property that he can sell, or something that obstructs his neighbor’s view and thus might draw him into a civil lawsuit. For Aquinas, then, the very same object might be apprehended by us as attractive and good in one respect, and yet unattractive and not good in some other respect. Now the human will by nature seeks universal and perfect goodness, and cannot ultimately be lulled by anything other than that which is universally, infinitely, and perfectly good, namely God himself. Every created being is good only by participation, and thus falls short of universal, infinite, and perfect goodness. Thus, every finite appetible object or action, no matter how attractive and good in certain respects, can always be regarded by us as not attractive and not good in some other respect.⁶⁰ Because of this, our will can never be moved of necessity to pursue any finite appetible object or action. Even when being attracted by this or that intelligible aspect of some finite object or action that we are contemplating, it remains within our power as rational beings to consider whether the object or action is unattractive and thus not good in some other respect; and thus it remains within our power to refrain from acting, or to pursue alternative courses of action. Our will can be made to act out of necessity, only if it is “offered an object which is good universally and from every point of view,” and such an object is none other than God himself.⁶¹ For Aquinas, then, our freedom consists in the ability to pursue alternative courses of action with respect to the finite goods that we find attractive, but not with respect to the infinite and perfect good, God, who—if seen by us, as in the

Beatific Vision—will move us toward him of necessity. If, however, our will is thus moved by God, its being moved will not be coercive or violent, since God’s action in moving us is not the transitive action of one being in relation to another, but rather the creative action of God who gives us being in the first place and thus who can never act upon us externally or violently.⁶²

From the foregoing, it follows that none of the finite goods at which we aim on account of the natural law in us—including even the good of self-preservation—is good in every respect. Correspondingly, none of our natural, God-given inclinations—insofar as they direct us toward finite goods—dictates straightforwardly what we ought to do in any particular situation. Of course, Aquinas does hold that every inclination that is in us by virtue of the natural law is an inclination toward what is good and perfective of us as human beings.⁶³ More broadly, he holds that every natural inclination or tendency in creatures (whether accompanied by knowledge or not) is an inclination toward what is good and perfective for the kind of creatures that have such inclinations.⁶⁴ Nevertheless, it would be wrong to think that, on Aquinas’s account, the naturalness of certain inclinations in us can by itself dictate which actions are choiceworthy for us.⁶⁵ After all, the securing of one finite good, which is the proper object of a natural inclination in us, may well impede or prevent the securing of some other good. Thus, while I have a natural inclination to pursue the good of self-preservation,⁶⁶ there may be circumstances under which it would be wrong for me to act with the intention of preserving my own life, for example: if I had a duty to risk my life for the sake of defending the commonwealth,⁶⁷ or if I have been justly condemned to death.⁶⁸ For Aquinas, “reason was given to man that he might ensue those things to which his nature inclines, not in all cases, but in accordance with the order of reason.”⁶⁹

On Aquinas’s account, the rightness or wrongness of our actions is ultimately determined not by the naturalness of the inclinations that incline us toward certain goods, but rather by the rational ordering of the goods toward which we are inclined. For what is natural to us as human beings, above all, is that we act in accordance with reason, and what is proper to reason is to make comparisons of things⁷⁰ and to put things into their right order.⁷¹ But what is the right order? Recall Aquinas’s remark that “whenever we find a multitude whose members are ordered to each other, that multitude must necessarily be ordered to some external principle.”⁷² What this implies, in the present context, is that it is not possible to determine the relative choiceworthiness of two or more goods toward which we are inclined, except by reference to some larger context or whole that allows us to prioritize different and potentially competing goods. While all of our desires and inclinations are aimed at some good, there may be evil in our desires and inclinations to the extent that there is lack of due order or proportionality among them. Thus, human beings perform evil actions, not because they directly intend what is evil, but rather because their actions involve the sacrificing of some greater good for the sake of some lesser good (for “it is impossible that any evil, as such, should be sought for by the appetite, either natural, or animal, or by the intellectual appetite which is will”⁷³). On Aquinas’s account, this “greater” and “lesser” can be measured only by reference to

some larger context or whole, such as a whole life or a whole community. Consider the fact that human beings naturally desire to have friends and to know the truth. Each of these desires, in itself, is aimed at what is perfectly good and choiceworthy; but if considered in isolation and not within the context of some larger whole, it is not possible to determine which of these goods is to be preferred, if the securing of one impedes or prevents the securing of the other. On the face of it, the good of having friends and the good of knowing the truth seem to be altogether “basic” and incommensurable with one another. But as Aquinas notes, it is possible to show that the good of having friends ought to be sacrificed to the good of knowing and honoring the truth, if it is not possible to secure both goods at the same time, since both goods ought to be understood within the context of our overarching vocation as human beings, which is to live a life of virtue. If someone were to prefer the having of friends to the knowing and honoring of the truth, then he or she would also be willing to “make false judgment and bear false witness in their defense,” and that would be contrary to a life of virtue.⁷⁴

For Aquinas, just as the naturalness of certain inclinations does not automatically dictate the choiceworthiness of particular actions, so too the choiceworthiness of certain actions does not automatically dictate the desirability of particular acts of legislation. One can think of a large number of possible actions that would be evil and thus not choiceworthy; but it does not follow from this that the law always ought to prohibit such actions. The reason for this is that, for Aquinas, law exists for the sake of the common good of a community, and not for the sake of the individual goods of the community’s members.⁷⁵ While the legal prohibition of certain evil actions might be a good thing for some individuals, such prohibitions might cause greater harm to the common good than the evil actions themselves would. Thus, Aquinas approvingly cites Augustine to the effect that it would be a mistake to pass laws prohibiting prostitution; for if prostitution were made illegal, then the behaviors to which people would resort in order to satisfy their inordinate sexual desires would cause even greater harm to the common good.⁷⁶ It is worth emphasizing here that Aquinas’s (and Augustine’s) argument against the legal prohibition of prostitution does not depend on any doubts about whether or not prostitution is really evil; and it does not depend on the notion that the law ought to be “value neutral” regarding certain activities. For Aquinas (as for Augustine), prostitution is doubtlessly an evil, and the law is never “value neutral.” But it remains the case that legal commands and prohibitions ought to be contemplated with a view to the common good and not just individual goods. Aquinas further observes that human law, by refraining from prohibiting certain evils and vices, emulates the eternal law of God himself. For as Aquinas notes, God allows certain evils to take place in the universe, since his preventing of them would require the forfeiture of greater goods or the admission of greater evils. Whether one is talking about a political community, or the community of the created universe as a whole, the perfection of a whole community, so Aquinas holds, requires that particular goods are sometimes lost and particular evils sometimes not prevented.⁷⁷

NOTES

1. *ST* I–II q.90 a.4.
2. *ST* I–II q.90 a.1.
3. *ST* I–II q.17 a.1.
4. *Ibid.*
5. *ST* I–II q.17 a.2; see also *SCG* III, 78; *In NE* I, lec.1.
6. *ST* II–II q.58 a.5.
7. *ST* II–II q.64 a.2.
8. *ST* I–II q.17 a.4.
9. *SCG* III, 94; *SCG* II, 39; *QDP*, q.3, a.16, ad 1; *In Meta* XII, lec.12, n.2637.
10. *SCG* III, 94; see also *SCG* II, 44–45; and *Super Sent*, bk.1, d.44, q.1, a.2, ad 6.
11. *SCG* III, 69.
12. See also *QDV*, q.11, a.1; *QDV*, q.5, a.8, ad 12; *Super Sent*, bk.2, d.1, q.1, a.5.
13. *In NE* I, lec.1, n.1.
14. *In Meta* XII, lec.12, n.2627.
15. *Ibid.*
16. *QDV*, q.5, a.3; see also *In Meta* XII, lec.12, n.2630.
17. *In Meta* V, lec.3, n.782; *ST* I q.5, a.2, ad 1.
18. *QDV*, q.7, a.6, ad 7.
19. *ST* I q.39 a.4 ad 3; also *In Meta* VII, lect.13, n.6; *QDP*, q.7, a.4, ad 1.
20. *ST* I–II q.90 a.2 ad 2.
21. *ST* I–II q.19 a.10; *ST* I–II q.109 a.3; *ST* II–II q.26 a.3; *SCG* III, 17.
22. *In Meta* XII, lec.12, n.1303.
23. *In NE* IX, lec.6, n.1839.
24. *In NE* VIII, lec.12, n.1724.
25. *SCG* III, 18.
26. *QDV*, q.5, a.3.
27. *In Meta* V, lec.21, n.1108.
28. *QDP*, q.7, a.1.
29. *ST* II–II q.58 a.7 ad 2.
30. *ST* I q.93 a.2 ad 3.
31. *ST* I–II q.19 a.10.
32. *ST* II–II q.26 a.3; see also *ST* I q.60 a.5.

33. I am indebted to the work of Herbert McCabe for this insight, and for the examples used in illustrating it. See Herbert McCabe, *Faith Within Reason*, ed. Brian Davies (New York: Continuum, 2007), 52–53; and Herbert McCabe, *God and Evil in the Theology of St. Thomas Aquinas*, ed. Brian Davies (New York: Continuum, 2010), 36–39. See also Aristotle, *Physics*, II, 199a34–b33; and Aquinas, *Commentary on Aristotle's Physics*, II, lec.12–14.

34. This dimension of Aquinas's account should make clear that his understanding of law does not stand in tension with, but is in fact closely allied with, a deep appreciation of the role of the virtues in human action.

35. *ST* I–II q.93 a.5; see also *ST* I q.103 a.1 ad 3.

36. See Michael Bright, *Intelligence in Animals* (New York: Reader's Digest Association, Ltd., 1997), 74–75.

37. *ST* I–II q.91 a.6.

38. *ST* I–II q.91 a.1; see also *ST* I–II q.93 a.3; *ST* I–II q.93 a.4–6.

39. *ST I–II* q.93 a.4.

40. *ST I–II* q.93 a.5.

41. *ST I–II* q.91 a.4–5.

42. *ST I* q.22 a.2 ad 2; *ST I* q.48 a.2; *ST I* q.49 a.1–2; *SCG III*, 71.

43. Thus for Aquinas, not only is it the case that eternal law (like every other instance of law) is incompatible with the existence of coerced compliance in most instances. Eternal law is incompatible with any kind of coerced compliance whatsoever; for apart from the creative, legislative causality of God (which is the same as his eternal law), there simply is no created being or created act that is there to be coerced (*ST I* q.103 a.1 ad 3; *ST I* q.105 a.4; *ST I* q.105 a.4).

44. *ST I* q.103 a.1.

45. *ST I* q.44 a.4.

46. *ST I* q.47 a.1.

47. See also *In Meta XII*, lec.12, n.2627–2629.

48. *ST I–II* q.90 a.1 ad 1; *ST I–II* q.91 a.2; see also *ST I–II* q.93 a.6; and *ST I* q.103 a.1 ad 1.

49. *ST I–II* q.91 a.2 ad 1.

50. *ST I–II* q.91 a.2.

51. *Ibid.*

52. *ST I–II* q.93 a.5; see also *SCG III*, 114.

53. *ST I–II* q.96 a.4; see also Augustine, *De Libero Arbitrio*, I, 5. Literally translated, the statement reads: “What will not have been just, does not appear to be law” (“*Non videtur esse lex, quae iusta non fuerit*”).

54. See *ST I–II* q.94 a.2.

55. *Ibid.*

56. *ST I–II* q.79 a.2.

57. *ST I* q.82 a.4.

58. See *QDM*, q.6.

59. See *ST I* q.79 a.3; *ST I* q.86 a.1.

60. *ST I–II* q.2 a.8; *ST I–II* q.17 a.1 ad 2; *ST I* q.105 a.4; *SCG III*, 10.

61. *ST I–II* q.10 a.2.

62. Along these lines, Aquinas observes that it belongs to the perfection of the liberty of the will to be able to choose between opposite things while keeping the order of the end in view; but it is a defect of the liberty of the will for it to choose anything while turning away from the order of the end. Thus, speaking of the beatified angels, Aquinas tells us: “there is greater liberty of will in the angels who cannot sin, than there is in ourselves who can sin.” (*ST I* q.62 a.8 ad 3.)

63. See *ST I–II* q.94 a.2.

64. See *ST I* q.59 a.1; *ST I* q.63 a.4; *QDV*, q.21, a.1–2 and q.22, a.1.

65. Holding that the naturalness of certain inclinations dictates the choiceworthiness of certain actions is, as Josiah Royce suggests, similar to holding that our being subject to the law of gravitation dictates “that we all ought to sit down.” See Josiah Royce, *The Religious Aspect of Philosophy: A Critique of the Basis of Conduct and of Faith* (Boston: Houghton, Mifflin, and Co., 1885), 80.

66. *ST I–II* q.94 a.2.

67. *ST I* q.60 a.5.

68. *ST II–II* q.69 a.4.

69. *ST II–II* q.69 a.4 ad 1; see also *ST I–II* q.94 a.2 ad 2.

70. *ST II–II* q.110 a.1.

71. *ST I–II* q.17 a.2.

72. *QDV*, q.5, a.3; see also *QDV*, q.5, a.1, ad 9; *ST I* q.11 a.3; *In Meta XII*, lec.12, n.2630.

73. *ST I* q.19 a.9; see also *QDM*, q.1, a.3.

74. *In NE I*, lec.6, n.76.

75. *ST I–II* q.90 a.2.

76. *ST II–II* q.10 a.11; see Augustine's *De Ordine*, II, 4.

77. See *ST I* q.22 a.2 ad 2; *ST I* q.48 a.2; *ST I* q.49 a.1–2; *SCG III*, 71. In a similar vein, Aquinas holds that a judge may sometimes be obligated to pronounce a sentence that he personally knows to be an unjust one. The reason for this is that the judge, insofar as he exercises public authority, is obligated to render judgments on behalf of the community and for the sake of the community's common good; accordingly, the judge may legitimately render judgments based only on knowledge acquired by him as a public authority, and not based on knowledge acquired by him as a private individual (i.e., outside the scope of an appropriate public, judicial process). If the judge in a capital case privately knows that a defendant is innocent, but is unable to remove himself from the case and is unable to bring his privately acquired knowledge to light through some appropriate judicial proceeding, then the judge does no wrong in sentencing the innocent defendant to death (see *ST II–II* q.64 a.6 ad 3; *ST II–II* q.67 a.2; *ST II–II* q.96 a.6).