Aquinas and Soto on Derogatory Judgment and Noncomparative Justice

Abstract

In one of his by now classical papers, Joel Feinberg has challenged the view that all justice is essentially comparative. As the clearest examples of noncomparative injustices, Feinberg singles out cases of unfair punishments and rewards, merit grading, and derogatory judgments. His contention is that what is unjust about derogatory judgments is that they are contrary to the truth. In this paper, I will examine some views found in Aquinas and the sixteenth-century Dominican philosopher and theologian Domingo de Soto that confirm the importance of noncomparative justice but challenge the analysis that Feinberg gives of the injustice of derogatory judgments. Aquinas holds that it is the neglect of relevant evidence that makes derogatory judgments unjust: judgmental injustice, for him, boils down to judging “rashly”. Soto accepts this view but goes beyond a consideration of the role of evidence for judgmental justice and includes a consideration of natural right. Taken together, Aquinas’ and Soto’s arguments indicate why the notion of judgmental justice should be severed from the notion of truth: some false derogatory judgments are just, and some true derogatory judgments are unjust.

1. Introduction

An observation that Joel Feinberg made some time ago still seems to be surprisingly up to date:

In recent years, comparative justice has received far more attention than noncomparative justice … [M]any philosophers have even gone so far as to claim that all justice *consists* (essentially) in the absence of arbitrary inequalities in the distribution of goods and evils, thus ignoring completely the many and diverse contexts for justice which are nondistributive in character**.[[1]](#endnote-1)**

Feinberg acknowledges that in awarding a competitive prize in a just way, the merits of all persons taking part in the competition have to be examined equally and impartially. But he contrasts such situations with cases of grading that involve only an examination of the merits of a single person.[[2]](#endnote-2) Cases of non-comparative justice, accordingly, are cases that do not involve a comparison between the merits of different persons. As the clearest examples of noncomparative injustices, Feinberg singles out cases of unfair punishments and rewards, merit grading, and derogatory judgments.[[3]](#endnote-3)

Some aspects of Feinberg’s analysis of non-comparative justice have provoked perceptive criticism. Phillip Montague and Joshua Hoffman have taken issue with Feinberg’s assertion that, in cases of conflict between the principles of non-comparative and comparative justice, the principles of non-comparative justice always have preponderance over the principles of comparative justice.[[4]](#endnote-4) Both Montague and Hoffman raise the question whether all cases of merit grading are genuinely non-comparative or whether some of them rather involve some hidden comparison.[[5]](#endnote-5) And Joshua Hoffman has taken issue with Feinberg’s sophisticated but counterintuitive view that some derogatory judgments involving comparisons between persons still fall within the domain of noncomparative justice.[[6]](#endnote-6) Nevertheless, although these are important issues concerning the relation between comparative and noncomparative justice, they are somewhat secondary within the framework of Feinberg’s account of noncomparative justice. Obviously, before questions concerning the relation between comparative and noncomparative justice can be meaningfully asked, one needs some initial grasp of the nature of noncomparative justice. In Feinberg’s view, derogatory judgment forms a kind of activity that is “most basic from the point of view of justice.[[7]](#endnote-7) This is why his analysis of judgmental justice is at the center of his analysis of the nature of noncomparative justice. His contention is that what is unjust about derogatory judgments is that they are contrary to the truth. As he puts it: “The injustice in this case consists precisely in the falsity of the derogatory allegation.”[[8]](#endnote-8)

Strikingly, this central thesis has not been discussed by Montague and Hoffman. Nor has the nature of derogatory judgments figured prominently in recent debates on justice. Of course, the absence of debate concerning Feinberg’s central thesis may be due to the fact that it is embedded in a subtle and persuasive argument. Perhaps there is simply no more to be said about the matter. Yet, this impression quickly changes once one looks into the detailed treatment of judgmental justice in Aquinas and the tradition inspired by him. Of course, a comprehensive investigation of the issue of judgmental justice in the Thomistic tradition would be a vast undertaking. For present purposes, I will focus on just one figure from this tradition, the Dominican theologian and philosopher Domingo de Soto (1494-1560), confessor to Emperor Charles V and one of the leading heads of the School of Salamanca.[[9]](#endnote-9) I chose him because, in addition to accepting many views deriving from Aquinas, Soto substantially expands on Aquinas’ treatment of judgmental justice, and he does so in a way particularly relevant for assessing the merits or shortcomings of Feinberg’s theory of noncomparative justice.

Aquinas holds that it is the neglect of relevant evidence that makes derogatory judgments unjust: judgmental injustice, for him, boils down to judging “rashly” (*temere*).[[10]](#endnote-10) Soto agrees with this view but also includes a consideration of natural right into his discussion of judgmental injustice. In section 2, I will examine Aquinas’ reasons for locating judgmental injustice in rashness. Aquinas uses the Aristotelian insight into the necessarily contingent nature of beliefs concerning singular contingents and argues that the rashness is a sin when it is an expression of contempt for the person about whom the judgment is made. Section 3 argues that Aquinas’ account of judgmental injustice leaves a gap: what are we to do with cases in which a derogatory judgment has been formed in a careful way but nevertheless may be inappropriate in certain circumstances? Soto’s arguments for including considerations concerning natural right into a theory of judgmental justice can be understood as an attempt at filling this gap. Moreover, Soto’s emphasis on natural right has interesting implications for his discussion of true but unjust derogatory judgments. Taken together, Aquinas’ and Soto’s arguments indicate why the notion of judgmental justice should be severed from the notion of truth: some false derogatory judgments are just, and some true derogatory judgments are unjust.

2. Falsity Without Injustice

In Feinberg’s view, what makes derogatory judgments unjust is not the harm they cause, but rather the fact that they violate some intuitively accepted standard of rationality. As he puts it, if someone forms a derogatory judgment about me I get treated in a way that “is offensive to reason as well as hurtful.”[[11]](#endnote-11) Feinberg explicates the relevant standard of rationality as one connected with distinctively moral emotions: he accepts Mill’s idea of a “sentiment of justice,” to which Feinberg adds an “element of righteousness.”[[12]](#endnote-12) Crucially, the element of righteousness that Feinberg has in mind is truth-related. It consists in the “sense that … *the truth itself* has been hurt.” The victim’s anger in such cases “is righteous because it is not only in his own behalf; it is also and primarily in the name of the truth, or on behalf of *the way things really are*.”[[13]](#endnote-13) Feinberg is careful to note that the presence of such moral emotions distinguishes cases of judgmental injustice from the legal offense of defamation. In order to constitute defamation, a negative judgment must be expressed to a third party, and it must bring about harm directly to the victim’s reputation.[[14]](#endnote-14) By contrast, “the source of judgmental injustice as such is not harm, but rather simple derogatory misrepresentation, harmful or not.”[[15]](#endnote-15) No doubt, Feinberg has described an important aspect of our moral psychology: We certainly do have strong truth-related emotions, and certainly such emotions can be triggered by false negative judgments. Yet, is the violation of truth really the only kind of violation of standards of rationality that might be relevant to judgmental injustice? An answer that substantially differs from Feinberg’s can be found in Aquinas’ discussion of the justice of judgment—a discussion which subsequently was to become the starting point for the discussion of the issue in the late Aristotelian tradition.

Aquinas’ conception of judgmental justice is closely connected with his conception of objective right—right understood as a certain kind of action: As he puts it: “right or the just thing is a certain action which is equal in relation to another person according to a certain mode of equality.”[[16]](#endnote-16) In this sense, justice always involves a comparison between an actor and someone towards whom an action is directed as well as an objective standard that tells us whether a certain kind of equality between these persons has been upheld. Does the notion of objective right leave room for the concept of noncomparative justice in the sense characterized by Feinberg? As John Finnis has pointed out, there is considerable variation in Aquinas’ categorizations of the “species” or “parts” of justice.[[17]](#endnote-17) Sometimes Aquinas seems to suggest that justice is essentially comparative: “justice … directs one human being in comparison to another …, in one way in comparison to another considered as an individual, in another way in comparison to another considered as belonging to the community …”[[18]](#endnote-18) Certainly, the latter comparison—the comparison to another considered as belonging to the community—essentially involves considering the relations in which someone towards whom an act is directed stands to other members of the community. However, the former comparison—the comparison to another considered as an individual—is one between the actor and the person who is the object of an action. This kind of comparison is compatible with the view that there are instances of justice that do not involve a comparison between persons other than the actor and the person who is the object of an action. In fact, at one place Aquinas distinguishes justice concerning distribution and recompense from “justice properly so called,” which in his view concerns “what is due to everyone without distinction (*indifferenter omnibus*).[[19]](#endnote-19) Finnis also notes an important ambiguity concerning Aquinas’ use of the Aristotelian category of “commutative justice,” corresponding to the ambiguity of the concept *commutatio*. If *commutatio* is understood as exchange, commutative justice essentially involves comparison, e.g., comparison between the value of a good sold and the price to be paid for it, or between a damage done and the recompense required. By contrast, if *commutatio* is understood as interaction between individuals, commutative justice acquires the wider sense of justice in the interaction between individuals.[[20]](#endnote-20)

Finnis does not consider Aquinas’ treatment of judgmental justice and, hence, also not the question into which of Aquinas’ categories judgmental justice would fall. Aquinas himself is also not very forthcoming as to how to categorize judgmental justice. But it seems plausible to classify the justice of judgments under the heading of commutative justice in the second sense—after all, they concern the interaction between individuals without necessarily involving any exchange (e.g., of goods or recompense). In fact, Aquinas regards derogatory judgments communicated to others (*detractio*) as something that takes place in voluntary interactions (*in voluntariis commutationibus*),[[21]](#endnote-21) although obviously thereby nothing is exchanged between two person. Moreover, it seems plausible to classify the justice of judgments under the heading of “what is due to everyone without distinction”—after all, whether a judgment about the qualities of someone is just does not necessarily involve a comparison with the qualities of other persons. In this sense, Aquinas’ category of “justice properly so called” seems to correspond to Feinberg’s category of noncomparative justice. This is why it makes sense to relate what Aquinas says about the injustice of derogatory judgment to the issue of the nature of noncomparative justice.

Aquinas certainly would agree with Feinberg that the falsity of our utterances can have morally problematic implications. Consider his analysis of lying:

Because the disorderliness with respect to signification cannot come from anything other than the falsity of signification, false signification is included in lying. But false signification does not suffice for sin in the realm of morals, because it is not in the power of humans to signify the true, as it is also not in their power to know the true. Thus there must be false signification of such a kind in the lie that someone deviates willingly from what is right.[[22]](#endnote-22)

Thus, falsity constitutes a sin when it is voluntary; but it does not by itself constitute a sin. What does Aquinas have in mind when he claims that “is not in the power of humans to signify the true”? One of the opening arguments in his discussion of the permissibility of suspicion gives a hint:

[W]e cannot have more than an uncertain opinion on matters of individual and contingent fact. When human judgment deals with human acts, which are embodied in individual and contingent events, it would seem that it would never be lawful were basing it on suspicion not allowable.[[23]](#endnote-23)

Of course, Aquinas accepts only a part of this argument. The part that he accepts is the Aristotelian view that we never can be certain about the truth of singular contingent judgments. This is how the insight into the necessarily uncertain nature of judgments about singular human actions motivates an evidence-based conception of judgmental justice. The part of the argument that Aquinas rejects concerns the permissibility of judging on the basis of mere suspicion. Aquinas points out that what is common to different kinds of suspicions is that they are formed the basis of “light *indicia*.”[[24]](#endnote-24) He never gives a definition of the concept of *indicium*, but he gives countless examples of *indicia*. To mention just a few of them: vital heat is an *indicium* for a life in all living beings;[[25]](#endnote-25) the motion towards some form is an *indicium* for life in plants;[[26]](#endnote-26) external bodily phenomena are *indicia* for the presence of passions;[[27]](#endnote-27) that mental functions are impaired through bodily lesions is an *indicium* showing that the mind in its earthly state of life needs bodily *phantasmata* as objects of its operations;[[28]](#endnote-28) that the son of god has taken up human nature is an *indicium* for the degree to which god cares for us;[[29]](#endnote-29) and infamy and suspicion are a special kind of *indicia* in juridical contexts.[[30]](#endnote-30) Most plausibly, then, *indicia* are to be understood as signs that function as evidential basis for judgments. In this sense, Aquinas’ conception of judgmental injustice is evidence-related.

In Aquinas’ view, the insight in the necessarily uncertain nature of judgments about human affairs rather implies that we have a duty to base our judgment on adequate testimonies (*testimonia*).[[31]](#endnote-31) Evidently, suitable testimonies do not convey any certainty as to what really happened. Even if testimonies are as strong as possible in human affairs, the judgment based on them still can be false. However, under these conditions falseness does not violate the appropriate standards of rationality. Rather, if available testimonies have been weighed and, according to acceptable standards for evaluating evidence, been found sufficient, forming a false judgment is not a case of judgmental injustice. To be sure, the falsity of the judgment can trigger strong truth-related emotions. But whether these emotions are adequate or not—and, hence, whether they are morally relevant or not—has much to do with how the false judgments have been arrived at. If they are based on insufficient evidence, the feeling of righteousness seems to be adequate because then in fact an intuitively accepted standard of rationality has been violated. But if they are based on strong and carefully pondered evidence, the feeling of righteousness seems to be inadequate because the falsity of the judgment does not indicate a violation of an intuitively accepted standard of rationality. For Aquinas, what matters for the injustice of a derogatory judgment is how it is formed, not that is false. Hence, the falseness of a derogatory judgment alone does not imply that an injustice has occurred—not, when all available evidence has been weighed as carefully as is humanly possible. Where error is excusable and unavoidable relative to the evidence available, there is no moral vice in derogatory misrepresentation. Aquinas thus seems to have captured a strong reason for favoring an evidence-centered over a truth-centered conception of judgmental injustice.

Still, what exactly is it about neglecting evidence that makes rash judgment not only irrational but also unjust? Aquinas suggests: “If the matter is grave, this is a mortal sin, for it is not without contempt for one’s neighbor.”[[32]](#endnote-32) Moreover, he claims that the one who passes such a judgment wrongs (*iniuriatur*) the victim of contempt, thereby suggesting that some right of the victim have been violated.[[33]](#endnote-33) As far as I can see, Aquinas never fully explicates the conceptual connection between contempt and the *iniuria* connected with derogatory judgment. However, he gives a hint as to what is morally problematic in contempt:

The defect … that precedes sin can either be in practical reason; and in this way all sin is said to derive from error …; or it is in the will that governs the act …; and in this way it is contempt and arrogance, as when someone does not care to be under a precept or a preceptor …[[34]](#endnote-34)

Thus, a very general characterization of contempt involves the disregard for some norm or norm-giver. For Aquinas, such norms include norms of rationality. With respect to the sins of acting precipitously and committing omissions out of negligence, he writes: “[I]n every sin there must be some defect concerning some act of reason. Hence, as precipitation is a special sin due to a special act of reason that is omitted, namely, deliberation …, so is negligence a special sin due to the defect of a special act of reason, namely, careful investigation …”[[35]](#endnote-35) The sins of acting precipitously and committing omissions out of negligence seem to have an informative similarity to judging rashly because some specific acts of reason are voluntarily omitted. In fact, judging rashly could even be understood as a special case of negligence, namely, the negligence to know something: “[I]n the sin of omission not only the act of the will is a sin but also the omission in so far as it is to some extent voluntary. And in this way negligence to know something, or inconsiderateness, is a sin.”[[36]](#endnote-36) Omission is unjust *because* it voluntarily violates some precepts of reason: “And therefore it is opposed to justice. And it is the effect of negligence, in the same way as also the execution of the just act is the effect of right reason.”[[37]](#endnote-37) Voluntary neglect to consider evidence carefully, not the falsity of the judgment, is thus what constitutes the injustice of derogatory judgments. And this implies that, for Aquinas, there can be false derogatory judgments that are not unjust: “[S]ometimes someone is moved by a just error to bring forth an accusation.”[[38]](#endnote-38)

3. Truth Without Justice

May there not also be instances of derogatory judgments that are true but unjust? Feinberg does not consider the possibility of such a situation. That this possibility does not occur to him seems to be a consequence of his emphasis on the moral emotion of righteousness—after all, this is an emotion that, by definition, cannot be triggered by true judgments. Still, the possibility that some true derogatory judgments might be instances of judgmental injustice does not seem to be absurd. Intuitively, the injustice of true derogatory judgments could consist in uttering them in situations in which they hurt, without any need, some right of the person about whom they are made. Due to Aquinas’ emphasis on objective rights, it is not surprise to find that the rights of others do not figure prominently in his account of derogatory justice. Nevertheless, Aquinas is aware that once a negative judgment is formed “in the heart”, people easily let themselves be carried away to make derogatory utterances or to commit damaging acts.[[39]](#endnote-39) Moreover, he maintains that sins that are committed against the other are to be weighed according to the damage that they inflict on the other.[[40]](#endnote-40) And he is clear that among external goods, fame is more important than riches.[[41]](#endnote-41) This is why he takes unjust derogatory judgments in their kind to be a greater sin than theft.[[42]](#endnote-42) Such considerations, however, only show why derogatory judgments can inflict great damage on the other. But they do not indicate why true (and evidentially well-founded) derogatory judgments should be regarded as unjust.

In fact, the possibility of such a situation is noted by Aquinas: In one of the opening arguments of his discussion of *detractio*, he writes: “A person’s reputation can sometimes be blackened even without violating the truth, as in the case where true crimes are bruited abroad.”[[43]](#endnote-43) Aquinas’ response to the problem is quite sketchy and does not go much beyond the view that to reveal hidden sins is legitimate only “for the sake of the good of public justice” (*propter bonum publicae iustitiae*).[[44]](#endnote-44) Plausible as this suggestion is, it is vulnerable to an objection that has been formulated with admirable clarity by another member of the Thomistic tradition, Adrian of Utrecht (1459-1523, the later Pope Hadrian VI). Because Soto’s treatment of true, but unjust derogatory judgments is a response both to Aquinas and Adrian, it will be useful to quote the relevant passage from Adrian at some length.

[W]ho sins publicly, is in the state of infamy and without honor … The minor premise is evident with respect to infamy, because he is not in the state of uninjured dignity; for by sinning he injured his dignity. Also fame is nothing other … than the estimation or opinion concerning the integrity of the way of living; but it has been confirmed that he does not possess integrity in his way of living. With respect to honor, it is evident because honor is nothing other than the testimony and confirmation of virtue; but he does not have virtue; and this has been confirmed; hence, no honor is due to him.[[45]](#endnote-45)

To be sure, Adrian himself rejects the conclusion of this argument. Rather, he takes it “to be a rule that the truth of what is said does not exclude injury; rather, in addition it is requires that it is brought forth not for the sake of pleasure but for a rational and just cause.”[[46]](#endnote-46) But as far as I can see, he does not present a cogent argument for why publicly known sin is no rational and just cause to communicate negative assessments about someone to others. This is exactly the juncture at which Soto takes up the issue.

As Annabel Brett emphasizes, Soto shares with his teacher Francisco de Vitoria (1460-1546) a strong emphasis on the notion of subjective right. Vitoria takes from the Tübingen-based jurist Conrad Summenhart the following definition: “[R]ight is a power or faculty pertaining to a person according to the laws”[[47]](#endnote-47) Vitoria describes right in this subjective sense by using the notion of *dominium*. As he defines it, “*dominium* is the faculty of using an object as one personally sees fit”[[48]](#endnote-48) Brett points out that Soto uses a very similar concept of *dominium* when he declares that “a *dominus* … is he alone in whose faculty it is placed, to use a thing in this way or that way for his own profit …”[[49]](#endnote-49) Brett also notes that the notion of *dominium* provides Soto with a very precise notion of *iniuria*. As Soto puts it, “[w]hoever has *dominium* of a thing is affected by injury when it is taken from him.”[[50]](#endnote-50) But Soto goes beyond Vitoria when he describes the relation in which someone stands to his or her good reputation in term of *dominium*. Soto accepts Aquinas’ view that we possess *dominium* with respect to our actions.[[51]](#endnote-51) Moreover, he argues that good reputation is the outcome of our actions.[[52]](#endnote-52) This is why he believes that we possess *dominium* with respect to our good reputation.[[53]](#endnote-53) Accordingly, all characteristics of the *dominium* relation apply to our good reputation. For example, unless public interest forbids it, we can voluntarily give up our good reputation.[[54]](#endnote-54) By contrast, others can legitimately take away from us our good reputation only under only under certain conditions.

Soto considers cases of persons who make false claims to intellectual or moral virtue. Is it legitimate to make negative judgments about these persons public? Soto emphasizes the role of public interest:

It seems that this is the duty of virtue because such impostors seduce the republic … For when such sycophants bring damage to the republic through their impostures, then it is not only legitimate but also required to reveal their crimes and deceptions; as in the case of those who pretend to be a physician or a cleric, who are a pest for the nation. Then the truth has to be told to the nation.[[55]](#endnote-55)

Soto suggests that the public interest or “common good” could be understood “as the natural felicity … which we reach in this world, i.e., a quiet, untroubled, and peaceful condition of the republic.”[[56]](#endnote-56) Such a condition can be understood as the natural goal of each citizen: “Each part is directed, by natural order, towards the whole to which it belongs, in the same way as something imperfect is directed towards what is perfect.”[[57]](#endnote-57) Thus, the only legitimate reason to uncover impostors is the protection of the natural rights of all members of a community. If such a justification is lacking, there is no reason for communicating derogatory judgments to others. This becomes clear in the second part of Soto’s answer:

But if they are old women who carry with them the appearance of sanctity in order to be able to live from alms, then there is no reason to defame them, even if they are infected with some secret offences, as long as they live in way that is not at all detrimental but harmless for the republic.[[58]](#endnote-58)

In cases where no natural rights of all members of a community are at risk, abstaining from true derogatory judgment may even be grounded in the respect for the natural rights of the potential victim of such judgments. With respect to what makes derogatory judgment based on insufficient evidence as sin, Soto writes: “That it is a sin is evident from the fact that everyone enjoys the natural right of having a good reputation in the eyes of others, until legitimate testimonies reveal his misdeeds.”[[59]](#endnote-59) As Soto explains elsewhere, natural right has a divine origin: “God … has impressed in our minds a light through which we participate in his eternal law and direct our actions towards the suitable goal to which we are carried spontaneously by nature.”[[60]](#endnote-60) Accordingly, natural right could be understood as what enables humans to pursue the goals towards which they are driven by their own nature. Thinking in this way about the dependence of natural right on God implies that humans are capable of recognizing by their own rational capacities the goals towards which their nature carries them.[[61]](#endnote-61) Soto shares the view commonly accepted in the natural law tradition that rationality is essential for human nature, such goals have to do with rational human nature:

[D]ue to reason, human beings have an inclination towards the cognition of God and possess a good with respect to virtue. From which they also possess the striving for society and civility. Hence the saying: Do to others what you wish to be done to you; and do not do to others what you do not wish to be done to you.[[62]](#endnote-62)

Soto’s claim that what makes derogatory judgments based on insufficient evidence unjust is that there is a natural right of having a good reputation unless contrary evidence is available can be understood as a the corollary of the idea that the natural goods of rational human beings include living a life in society.

For Soto, having a good reputation belongs to the circumstances that support the natural good of living a virtuous life. This applies even to cases in which it is permitted by positive law to communicate derogatory judgments, as in the case of convicted criminals. With respect to such cases, Aquinas notes that through a defect of reputation “humans are kept away from many good actions” (*homo impeditur a multis bene agendis*).[[63]](#endnote-63) Soto spells out this intuition as follows:

[I]f someone is publicly and according to law convicted to some punishment, thereby anyone is given the permission of making this crime public … Nevertheless, it is a sin against charity … For good reputation is an especially powerful help for humans in becoming virtuous; and when it is lost, they lose all hope.[[64]](#endnote-64)

Recall Soto’s characterization of the natural goods of rational human beings cited in the previous section. There, it became plain that Soto counts among these natural goods not only a life in society but also—and even more fundamental—a life in virtue. Thus, impairing the conditions of a life in virtue in the absence of strong reasons for doing so constitutes an impairment of natural rights. And Soto seems to regard the loss of good reputation as something that leads to a state of despair that is a serious obstacle to becoming virtuous. To be sure, in the case of convicted criminals Soto believes that making their conviction publicly known is not unjust because such persons have been harmful for the public.[[65]](#endnote-65) This is why in the passage just cited he invokes not justice but the theological virtue of charity. Nevertheless, if the public interest in being warned about harmful persons is absent—and in Soto’s view, this is the case when people have lost their good reputation at one place without, however, having been convicted of a crime—spreading word about this fact at the new place to which they moved is not only uncharitable but unjust. For Soto, there exists a corresponding duty of opposing such judgments when they are made by others and if opposing them does not involve some disproportionate danger for oneself. Obviously, the right kind of opposition is not denying what is said—by supposition, it is a true allegation—but rather the demand that the allegation be suppressed because it is unjust.[[66]](#endnote-66) Soto’s line of argument concerning the conditions of a virtuous life suggests that the injustice in such cases not only consists in taking away without sufficient reason something that is actually valued—as Adrian would have it—but also consists in taking away without sufficient reason something that belongs the natural goods of humans. If this is what Soto has in mind, there is a close connection between the duty of avoiding making true derogatory judgments, if the interest of public justice does not require making them, and the role of natural right in judgmental justice.

4. Reconsidering Feinberg

Let us now return to Feinberg’s claim that the truth-related moral emotion of righteousness is central for understanding how derogatory judgments are unjust. Two of the most vivid examples that he adduces for this claim focuses on reactions shown by children. The first example concerns a situation in which a parental question is answered by the older child; whereupon the older child imputes the younger child with having been silent due to ignorance. The second example concerns a situation in which a boy who is wrongly imputed by his elder brother with wetting his bed.[[67]](#endnote-67) Naturally, the younger children are upset about these allegations, and I have no doubt that an element of righteousness is contained in their emotional reactions—a sense “that truth itself has been hurt.” But do the elder siblings *know* that their allegations are false? Feinberg does not tell us. However, read against the background of Aquinas’ analysis of the role of falsity this question is crucial. Imagine that the elder siblings know that their allegations are false. Presumably, Aquinas would characterize such situations as falling under the heading of lying. According to Aquinas’ analysis of lying what is morally wrong in such a situation is not mere falseness but voluntary falseness. The presence of the emotion of righteousness in such cases thus is not sufficient to indicate that mere falseness is what constitutes judgmental injustice.

By contrast, imagine that the elder siblings do not have the intention of saying something false and that there is some evidence supporting their allegations. And assume that the younger children could have been aware of these facts if they were to pay enough attention. Assume further that the allegation is as false as in the former scenario. It is easily imaginable that, in this scenario, the younger children would show exactly the same truth-related emotional reaction. But would the occurrence of the emotion of righteousness, in the modified scenario, be a strong argument for Feinberg’s claim that the violation of truth is at the core of judgmental injustice? Aquinas makes it plain that favoring an evidence-related standard of rationality over a truth-related standard can be motivated by considerations concerning our fallibility concerning singular contingent judgments. Given the uncertainty of singular contingent judgments about others, there cannot be a moral duty of always forming true judgments. But there can be a moral duty of always considering the available evidence in the most conscientious way possible. This is why, for Aquinas and Soto alike, not every derogatory misrepresentation is unjust—it is not unjust when an error was, by human standards, unavoidable. If all care has been taking in assessing the available evidence, reacting with the moral emotion of righteousness would be inadequate. In fact, it might be no mere coincidence that Feinberg’s most vivid examples concern the emotional life of children. Reacting with righteous indignation to an error arrived at through the most careful consideration of available evidence, it would seem, shows a highly unreflective attitude to the epistemic and emotional situation of others. Or, to put it in a nutshell, it would seem to be a *childish* reaction.

Consider yet another modification of the situation envisaged by Feinberg. Imagine that the elder siblings’ allegations are perfectly true and well-founded. Imagine further that the elder siblings communicate their true derogatory judgment not only to his parents but also to the wider family and his younger brother’s friends, to the friends of his friend, and so on. We can easily imagine that the younger children would be upset about this behavior. But, by definition, since no violation of truth occurs this situation offers no occasion of showing an emotional response to a violation of truth. Should we say here that no judgmental injustice occurs because no violation of the truth occurs? Is the younger brother simply mistaken when he feels treated unjustly? Examining the way in which Soto develops Aquinas’ short remark on true but unjust derogatory judgments suggests that the answer should be No. This seems to be a straightforward consequence of the role that natural rights play in his analysis of this injustice of derogatory judgments—false or true alike. These natural rights include the right to build up normal social relations. And if true derogatory judgments concern serious enough matters communicating such judgments to others can damage the capacity of building up such relations. Perhaps such considerations apply less to the case of the allegation of ignorance (although such allegations can be damaging depending on the seriousness of the allegation); but they certainly would apply to an allegation as the one in the bed-wetting case.

The upshot of these considerations is that very much as the falsity alone may not render a derogatory judgment unjust, so may the truth of a derogatory judgment not be sufficient for avoiding judgmental injustice. In this way, Aquinas’ and Soto’s treatments of derogatory judgment indicate substantial alternatives to the central claim of Feinberg’s treatment of noncomparative justice. This does not mean that there are no other respects in which Aquinas and Soto could provide illuminating alternatives to Feinberg’s position. As Feinberg points out, judgmental justice is closely connected with the precept of giving others the benefit of one’s doubt. Fully consistent with his truth-centered account of judgmental justice, he understands this precept as demanding abstaining from judgment in cases of doubt.[[68]](#endnote-68) Of course, the principle of giving others the benefit of the doubt is very old, and in Aquinas one finds a more demanding interpretation of the principle, an interpretation according to which the principle demands “to tend” (*tendere*) towards thinking well about other.[[69]](#endnote-69) Aquinas’ suggestion is remarkably open to interpretation, and in fact it has triggered a subtle and extended debate in late Scholastic thought about its exact import. In this debate, various ways of understanding the benefit of one’s doubt as a duty that goes beyond merely abstaining from judgment were explored. And in line with his strategy in analyzing true but unjust derogatory judgments, Soto tried to integrate his conception of natural law into an interpretation of the benefit of doubt. To explore these issues, however, will be the task for another paper.

1. Joel Feinberg, “Noncomparative Justice”, *The Philosophical Review*, 83 (1974), pp. 297-338, at pp. 298-299 (Feinberg’s emphasis). For an overview of Feinberg’s work, albeit without a detailed consideration of his views on noncomparative justice, see J. Angelo Corlett, “The Philosophy of Joel Feinberg”, *The Journal of Ethics* 10 (2006), pp. 131-191, which is part of a special issue devoted to Feinberg. [↑](#endnote-ref-1)
2. Ibid., p. 299. [↑](#endnote-ref-2)
3. Ibid., p. 300. [↑](#endnote-ref-3)
4. Phillip Montague, “Comparative and Non-Comparative Justice”, *Philosophical Quarterly*, 30 (1980), pp. 131-140, especially pp. 132-137; Joshua Hoffman, “A New Theory of Comparative and Noncomparative Justice”, *Philosophical Studies* 70 (1993), p. 165-183, especially pp. 173-177. [↑](#endnote-ref-4)
5. Montague (1980), pp. 137-140; Hoffman (1993), pp. 170-172. [↑](#endnote-ref-5)
6. Hoffman (1993), pp. 178-179. [↑](#endnote-ref-6)
7. Feinberg (1974), p. 300. [↑](#endnote-ref-7)
8. Feinberg (1974), p. 302. At the end of his article, Feinberg acknowledges a second form of misrepresentation that, in his view, constitutes a case of non-comparative justice, namely, cases in which someone is misrepresented (although not derogatively) in a way that strongly differs from this person’s self-conception (ibid., pp. 336-337). Since non-derogatory misrepresentation is not discussed under the heading of injustice by Aquinas and Soto, I will not say anything about these cases. [↑](#endnote-ref-8)
9. On Soto’s natural philosophy and its influence on Galileo, see William Wallace, “Duhem and Koyré on Domingo de Soto”, *Synthese* 83 (1990), pp. 239-260; William Wallace, *Domingo de Soto and the Early Galileo*, Burlington: Ashgate, 2004. [↑](#endnote-ref-9)
10. See, e.g., *STh* I-II q. 108 a. 3 co., where he treats “rashly” and “unjustly” as synonyms: “[Christus] ordinat interiorem hominis motum quoad proximum, ut scilicet eum non temerarie aut iniuste iudicemus …” [↑](#endnote-ref-10)
11. Feinberg (1974), p. 320. [↑](#endnote-ref-11)
12. Ibid. [↑](#endnote-ref-12)
13. Ibid., p. 324 (Feinberg’s emphasis). [↑](#endnote-ref-13)
14. Ibid., p. 329. [↑](#endnote-ref-14)
15. Ibid., p. 320. [↑](#endnote-ref-15)
16. *STh* II-II q. 57, a. 1 co: “jus sive justum est aliquod opus adaequatum alteri secundum aliquem aequalitatis modum.” See Georges Kalinowski, “Le fondement objectif du droit d’apres la ‘Somme theologique’ de saint Thomas d’Aquin”, *Archives de la philosophie du droit* 18 (1973), 59-75; Annabel S. Brett, *Liberty, Right and Nature. Individual Rights in Later Scholastic Thought*, Cambridge: Cambridge University Press, 1997, ch. 3. [↑](#endnote-ref-16)
17. John Finnis, *Aquinas. Moral, Political, and Legal Theory*, Oxford: Oxford University Press, 1998, pp. 215-217. [↑](#endnote-ref-17)
18. Aquinas, *Summa theologiae* [henceforth: *STh*], II-II q. 58 a. 5: “iustitia … ordinat hominem in comparatione ad alium … uno modo ad alium singulariter consideratum, alio modo ad alium in communi.” All translations from *STh*, II-II, q. 58 and q. 60 are taken, with some modifications, from St. Thomas Aquinas, *Summa Theologiae*, vol. 37. Trans. Thomas Gilby O.P., Cambridge: Cambridge University Press, 2006; all translations from *STh*, II-II, q. 73 are taken from St. Thomas Aquinas, *Summa Theologiae*, vol. 38. Trans. Marcus Lefébure O.P., Cambridge: Cambridge University Press, 2006. Unless otherwise noted, other translations are my own. [↑](#endnote-ref-18)
19. *STh*, II-II, q. 122 a. 6. [↑](#endnote-ref-19)
20. Finnis (1998), p. 216. [↑](#endnote-ref-20)
21. *STh*, II-II, q. 73 a. 1 ad 1. [↑](#endnote-ref-21)
22. *Super Sent*., lib. 3 d.38 q. 1 a. 1 co: “[Q]uia inordinatio in significando non potest esse nisi ex falsitate significationis, ideo in mendacio falsa significatio includitur. Falsa autem significatio ad rationem peccati in moralibus non sufficit, cum non sit in potestate hominis verum significare, sicut nec verum scire. Unde oportet quod sit talis falsa significatio in mendacio, qua quis volens a recto deviet.” [↑](#endnote-ref-22)
23. *STh*, II-II, q. 60, a. 3 arg. 1. “[D]e singularibus contingentibus non potest haberi opinio nisi incerta. Cum ergo iudicium humanum sit circa humanos actus qui sunt in singularibus et contingentibus, videtur quod nullum iudicium esset licitum si ex suspicione iudicare non liceret.” See Aristotle, *Nicomachean Ethics*, VI, 3, 1139b17.The argument is taken up almost verbatim in Domingo de Soto, *De iustitia et iure*, Salamanca: Benedictus Boyerus, 1573, p. 209. [↑](#endnote-ref-23)
24. *STh*, II-II, q. 60 a. 3. co; see Soto (1573), p. 214. [↑](#endnote-ref-24)
25. *Contra Gentiles*, lib. 2 cap. 88 n. 12. [↑](#endnote-ref-25)
26. *Contra Gentiles*, lib. 4. cap. 11 n. 3. [↑](#endnote-ref-26)
27. *STh* I-II q. 48 a. 2 co. [↑](#endnote-ref-27)
28. *STh* I, q. 51 a. 2. ad 1. [↑](#endnote-ref-28)
29. *STh* II-II, q. 20 a. 4 arg. 3. [↑](#endnote-ref-29)
30. *STh* II-II, q. 33 a. 7 ad 5. [↑](#endnote-ref-30)
31. *STh*, II-II, q. 70, a.2 co. [↑](#endnote-ref-31)
32. *STh*, II-II, q. 60, a. 3 co: “Et hoc, si sit de aliquo gravi, est peccatum mortale, inquantum non est sine contemptu proximi …” On Aquinas’ views on affective responses to contempt, see Shawn D. Floyd, “Aquinas on Emotion: A Response to Some Recent Interpretations”, *History of Philosophy Quarterly* 15 (1998), pp. 161-175, p. 169. [↑](#endnote-ref-32)
33. *STh*, II-II, q. 60, a. 3 ad 2. [↑](#endnote-ref-33)
34. *Super Sent*., lib. 2, d. 42. q. 2 a.1 ad 7: “Defectus autem … praecedens peccatum potest esse vel in ratione dirigente, et sic dicitur omne peccatum esse ex errore …: vel est in voluntate imperante actum …; et sic est contemptus et superbia, secundum quam aliquis non curat subesse praecepto, vel praecipienti …” [↑](#endnote-ref-34)
35. *STh* II-II, q. 54 a. 1 ad 2: “[I]n quolibet peccato necesse est esse defectum circa aliquem actum rationis … Unde sicut praecipitatio est speciale peccatum propter specialem actum rationis qui praetermittitur, scilicet consilium …; ita negligentia est speciale peccatum propter defectum specialis actus rationis qui est sollicitudo …” [↑](#endnote-ref-35)
36. *STh* I-II, q. 76 a. 2 ad 3: “[I]n peccato omissionis non solum actus voluntatis est peccatum, sed etiam ipsa omissio, inquantum est aliqualiter voluntaria. Et hoc modo ipsa negligentia sciendi, vel inconsideratio, est peccatum.” [↑](#endnote-ref-36)
37. *STh* II-II, q. 54 a. 2. ad 2: “Et ideo opponitur iustitiae. Et est effectus negligentiae, sicut etiam executio iusti operis est effectus rationis rectae.” [↑](#endnote-ref-37)
38. *STh* II-II, q. 68 a. 3 ad 1: “Aliquando … ex iusto errore movetur aliquis ad accusandum.” [↑](#endnote-ref-38)
39. *STh* I-II, q. 72 a. 7. co: “[P]rima inchoatio eius est quasi fundatio in corde; secundus autem gradus eius est in ore, secundum quod homo prorumpit facile ad manifestandum conceptum cordis; tertius autem gradus iam est in consummatione operis … Patet tamen quod haec tria pertinent ad unam perfectam peccati speciem, cum ab eodem motivo procedant, iracundum enim, ex hoc quod appetit vindictam, primo quidem perturbatur in corde; secundo, in verba contumeliosa prorumpit; tertio vero, procedit usque ad facta iniuriosa.” [↑](#endnote-ref-39)
40. *STh* II-II, q. 73 a. 3 co. [↑](#endnote-ref-40)
41. Ibid*.* [↑](#endnote-ref-41)
42. Ibid*.* [↑](#endnote-ref-42)
43. *Sth* II-II, q. 73 a. 1 arg. 3: “[Q]uandoque denigratur fama alicuius etiam si nihil subtrahatur de veritate, puta cum aliquis vera crimina alicuius pandit.” [↑](#endnote-ref-43)
44. *STh* II-II, q. 73 a. 2 ad 1. [↑](#endnote-ref-44)
45. Adrian of Utrecht, *Quaestiones quodlibetica*, Lyon: Guilelmus Rovils, 1547, *Quaestio quodlibetica XI* [1506], fol. 234v-235r: “[Q]ui publice peccat, infamis est, & sine honore est … Minor patet de infamia: quia non est illaesae dignitatis. Peccando namque suam dignitatem laesit. Etiam fama nihil est aliud … quam existimatio vel opinio integritatis vitae: quam integritatem constat ipsum non habere. De honore patet, quia honor nihil aliud est quam testimonium & attestatio virtutis. Sed ipse virtutem non habet: & de hoc constat. Ergo non debetur ei honor.” [↑](#endnote-ref-45)
46. Ibid., fol. 244v: “Unde pro regula dico quod sola veritas dicti non relevant ab iniuria, sed oportet ut praeter hoc non sit ex libidine, sed rationabili & iusta causa relatum.” [↑](#endnote-ref-46)
47. Francisco de Vitoria, *Comentarios a la Secunda secundae de Santo Tomas*. Ed. Vicente Beltran de Heredia, vol. 3, Salamanca: Apartado 17, 1934, q. 62 a. 1 n. 5: “jus est facultas vel potestas conveniens alicui secundum leges.” (Translation from Brett (1997), p. 128). [↑](#endnote-ref-47)
48. Ibid., q. 62, a. 1, n. 29: “dominium est facultas ad utendum re pro arbitrio suo” (Translation from Brett (1997), p. 131) [↑](#endnote-ref-48)
49. Soto (1573), p. 262: “Dominus … ille solus est in cuius facultate est situm, re sic, aut aliter in suum commodum uti …” (Translation from Brett (1997), p. 151) [↑](#endnote-ref-49)
50. Ibid.: “Quicunque dominium habet cuiuslibet rei, iniuria afficitur dum illi auferetur.” (Translation from Brett (1997), p. 151) [↑](#endnote-ref-50)
51. *STh* I-II, q. 1 a.1 co; Soto (1573), p. 262. [↑](#endnote-ref-51)
52. Soto (1573), p. 454. [↑](#endnote-ref-52)
53. Ibid. [↑](#endnote-ref-53)
54. Ibid. [↑](#endnote-ref-54)
55. Ibid., pp. 451-452: “Apparet enim id esse virtutis officium, cum tales impostores rempublicam seducant … Quando enim eiusmodi sycophantae suis imposturis perniciem reipublicae afferunt, tunc non solum licet, verum expedit eorum crimina fallaciasque tetegere ut si quis si optimum ementiretur medicum, aut theologum, qui populo essent pestiferi. Tunc enim docendus esset populus veritatem.” [↑](#endnote-ref-55)
56. Ibid., p. 6: “pro naturali felicitate …, quam hoc seculo adipiscimur, quae est, quietus, tranquillusque, & pacificus reipublicae status …” [↑](#endnote-ref-56)
57. Ibid.: “Pars omnis ad suum totum, naturali ordine, dirigitur, sicuti imperfectum ad perfectum: quicunque autem civium, partes sunt civitatis …” [↑](#endnote-ref-57)
58. Ibid., p. 452: “Si autem sunt mulierculae quae foris sanctitatem prae se ferunt qua ratione eleemosynis victitant, licet occulto aliquo crimine sint infectae, neutiquem reipublicae noxio, sed innocue vivunt, non est cur debeant infamari.” [↑](#endnote-ref-58)
59. Ibid., p. 210: “[Q]uod sit peccatum, inde patet, quod unusquisque iure hoc gaudet naturali, ut bonam apud quosque habere debeat sui existimationem, quousque legitima testimonia sua prodant delicta.” [↑](#endnote-ref-59)
60. Ibid., p. 23: “Deus … impressit mentibus nostris lumen, per quod legem eius aeternam participantes, actiones nostras ad debitum finem, quo suapte natura feruntur, dirigeremus.” On Soto’s concept of natural law, see Venancio D. Carro, O.P., *Domingo de Soto y su doctrina juridica*, Madrid: Hijos E. Minuesa, 1943, pp. 85-95. [↑](#endnote-ref-60)
61. Soto (1573), p. 23. [↑](#endnote-ref-61)
62. Ibid., p. 26: “Ex his demum trahitur aliud principium hominis, in quantum est rationalis, qua utique ratione inclinationem habet ad cognitionem Dei, ac virtutis bonum. Ex quo rursus ei convenit appetentia ad societatem, & civilitatem; unde illud: Id facias aliis, quod tibi fieri vis: idque ne facis, quod non tibi vis fieri.” [↑](#endnote-ref-62)
63. *STh* II-II, q. 73 a. 2 co. [↑](#endnote-ref-63)
64. Soto (1573), p. 451: “[I]lle, iure, publicoque praeconio in poenam mulctatus est sua fama, atque adeo cuicunque facta est facultas scelus illud propalandi … Nihilominus peccatum est contra charitatem … Nam bona fama quam maxime hominibus adiumento est ad virtutem: qua perdita, exanimantur.” [↑](#endnote-ref-64)
65. Ibid, p. 457. [↑](#endnote-ref-65)
66. Ibid. [↑](#endnote-ref-66)
67. Feinberg (1974), p. 324. [↑](#endnote-ref-67)
68. Feinberg (1974), p. 337. [↑](#endnote-ref-68)
69. *STh*, II-II, q. 60, a. 4 ad 2. [↑](#endnote-ref-69)