**Aquinas, Thomas**

**Introduction**

Born in Italy in 1225, and despite a relatively short career that ended around 50 years later in 1274, Thomas Aquinas went on to become one of the most influential medieval thinkers on political and legal questions. Aquinas was educated at both Cologne and Paris, later taking up (after some controversy) a chair as regent master in theology at the University of Paris, where he taught during two separate periods (1256-1259, 1269-1272). In the intermediate period he helped establish a *studium* for his Order in Rome, beginning work on the *Summa Theologiae,* the masterwork for which he is still well-known. Subsequent to an experience (traditionally, a vision) Aquinas had on the feast of St. Nicholas in 1273, Aquinas intentionally refrained from further work on that text, so that it remained incomplete at the time of his death a year later in 1274. Apart from his own contributions, the Thomistic school – including followers within and without the Dominican Order to which Aquinas belonged – has had profound and far-reaching influence upon the history of legal thought in the West. Many of the classical developments of Thomistic thought are written as commentaries on the *Summa Theologiae* (hereafter, ST)*,* including the works of Tomasso de Vio (Cajetan) and those of Domingo Banez, Francisco de Vitoria, Bartholome de las Casas, and the other highly influential members of the School of Salamanca who are noteworthy for developing Aquinas’ political and legal thought in the 16th century.

Specifically, the ways in which Aquinas synthesized classical political and legal themes around the law, morality, and the common good provided a touchstone for what has come to be called ‘natural law jurisprudence.’ Natural law thinkers, in short, appeal to objective facts about what is good for human beings, and the social or political nature of the kind of creatures that we are, as a standard against which we measure the legal and social institutions created by human institutions. What is crucial here is that facts about human beings as social animals constitute *reasons* for individuals and groups to act or be structured in certain ways, such that ‘nature’ is the proper source for jurisprudential and political principles.

**The common good**

For Aquinas, politics has its roots in human nature. Specifically, politics is an endeavor natural to human beings in at least two related ways. The first is that political authority itself is a natural institution. Aquinas does not think of political authority as in contradiction with the freedom of individuals, as it would be if it were merely a necessary evil or punishment for sin. Quite to the contrary, Aquinas claims that the kind of dominion exercised by masters over slaves is an effect of sinful human behavior, but that the dominion over men exercised in political communities would have been appropriate before the Fall of Adam and Eve (ST I, q. 96, a. 4). Aquinas’ argument to this conclusion appeals to the fact that the social life of a community could not be well-ordered without authority to guide the acts of that community toward the communal good. And Aquinas’ premises to that conclusion appeal to a more fundamental way in which political life is natural to human beings: humans are naturally social. This is what ensures that political life, and the end aimed for by society, is truly good for each individual citizen: human beings are social animals such that their individual flourishing depends in many ways on the social structures in which they live. Consequently, well-structured societies are good for everyone in that given society inasmuch as well-structured societies are good for human beings in general.

To say that political life in a well-ordered society is good for each individual that takes part in the life of that society points to a central ideal for Aquinas’ legal and political theory: the ‘common good’ of the political society. A good that is ‘common’ is one that is not diminished by being shared, unlike private or public goods such as water or foodstuffs. Knowledge (for example) is a good that can be shared and so one and the same item of knowledge can be a good common to many people; goods that are common in this way are supposed to be good *for* each individual that participates in them. This is to say, however, that the common good of political society is quite simply the *end* or aim for which that society exists, where this end must be something that each individual citizen can see as good for them. Much of this vision from Aristotle’s *Politics,* where the aim of political community is simply to promote or ensure *living well* for the human beings who are its members. Aquinas draws out the implication that the reason for living in political community, and the end of human law, is going to be intimately related to the end of life for any given individual, namely, happiness (ST I-II, q. 90, a. 2). Whereas, however, an individual operates on principles of practical reasoning in terms of what is good for them to do, the political community operates chiefly in terms of aiming at *legal justice,* legal arrangements which will produce and preserve happiness in a general way for the members of that society.

There are important ways in which legal justice in a community differs from justice considered, then, as the moral virtue of an individual person. The extent and power of human laws have intrinsic limits: on one hand, the lawmakers cannot aim at bringing about complete virtue by the laws, since the effectiveness and character of law is limited by what measures would be prudent relative to the actual state of its members, the common good considered not as an ideal but as what is able to be achieved ‘here and now’; and, on the other, by the fact that the law only aims at the *common* rather than the individual good, not being able to regulate the private thoughts or intentions of individual citizens except as they relate to the good public order (ST I-II, q. 96, a. 2 & 3). All that can be required of most citizens is that they obey the laws, and that is usually sufficient for the community to do well.

Nevertheless, neither the common good, nor the law, are morally neutral. The common good is intimately connected with morality in two respects. The first of these respects concerns the way in which laws can be evaluated as more or less practically reasonable. Since Aquinas understands practical reasoning in jurisprudence and politics as another instance of general practical reasoning, an exercise of communal rather than individual practical reasoning, so law has an intrinsic, normative connection with whatever gives us reasons to act in general, that is, with what Aquinas calls the ‘natural law.’ The second of these respects concerns the way in which individual persons relate to the law and to society as a whole. Aquinas’ theological views bear important implications for the aims and nature of civil government, entailing that civil government is radically imperfect and that there are important human goods over which that civil government has no jurisdiction.

**Ordinance of reason**

If the ‘common good’ is to serve any normative role in informing our political or legal deliberations on anything more than a very generic, abstract level, we need to be able to determine what that common good implies as to the requirements of legal justice both in general and in particular cases. Aquinas adopts from the Roman tradition the view that justice aims at ‘rendering to each one his right,’ where the individual moral virtue is a habit of so intending to respect the rights of others (ST II-II, q. 58, a. 1). ‘Right’ (*jus*) in this context refers to *just* or appropriate relations among people in the community. Legal justice thus concerns relating people to each other in the correct ways, and the common good as a whole can be broken down into constitutive parts or elements according to the way in which laws aim at ensuring that these rights are so respected by citizens. Aquinas understands ‘right’ relation to mean relations between persons where an equality ought to be preserved in their dealing with each other, a normative relation where certain actions are ‘owed’ or ‘deserved’.

Aquinas in turn distinguishes those normative relations resulting from agreement among individuals or by public law – *positive* right – and those resulting from no such agreement, but by facts independent of any such agreement – *natural* right (ST II-II, q. 57, a. 2). Falling somewhere in between, there are those rights which are recognized not merely by some particular country, but by all men and in every country: the ‘right of nations’ (ST II-II, q. 57, a. 3). For example, Aquinas argues that the right to private property is not strictly speaking a natural right, but nevertheless is such that it constitutes a specification or addition to what is right by nature (ST II-II, q. 66, a. 2, ad 1). The right to private property is a paradigm instance of these ‘rights of nations.’ Agreement or convention can therefore specify those natural rights in particular respects, as where human law outlines conditions under which individuals possess private property rights. By contrast, human agreement can neither abrogate nor change what is right by nature. Aquinas’ examples are that law could not make it just to either steal or commit adultery, and if laws command acts that are evil, such commanding idolatry contrary to God’s law, then one has a moral obligation to disobey such commands (ST I-II, q. 96, a. 3).

This raises a well-known aspect of natural law jurisprudence: Aquinas endorses a maxim from St. Augustine of Hippo that “a law that is not just, seems to be no law at all” (*De Lib. Arb*. i, 5), and so argues that unjust laws do not bind in conscience. Such unjust laws might be laws aiming at the private good of the ruler (not the good of society), or in being beyond the authority of the legislator, or as imposing unjust burdens on the community even if in view of the common good (contrary to natural right). Unjust laws do not morally bind citizens to obey them, although Aquinas believes it is better, in many of the cases, to obey the law so as to avoid scandal or disturbance.

Nevertheless, the claim that unjust law is *no* law could be taken in an overbroad direction, since Aquinas does not mean, e.g., that ‘unjust law’ is a literal contradiction in terms. Rather, what Aquinas seems to mean is that unjust laws do not exemplify the essential character of *law*, and, in virtue of failing to be such, they fail to be binding*.* Aquinas defines ‘law’ in terms of four constitutive aspects: [1] an ordinance of reason, [2] aimed at the common good, [3] which is promulgated [4] by legitimate authority (ST I-II, q. 90). One may notice that the ways in which laws are unjust correspond roughly to failing in one or more of these aspects. The apparent paradox in which a law is unjust and so non-binding, and nevertheless be such that one is still bound to obey the law out of desire not to undermine public order unnecessarily, points to the deeper foundation on which Aquinas rests his legal doctrine: practical reasonability.

The binding character of the laws arises, Aquinas thinks, from the rational need for authority to produce and promote the common good. Law-making is an exercise in communal ‘practical’ reasoning, directing citizens to act in certain ways that conduce to the general welfare (e.g., ST I-II, q. 96, a. 1). Laws are, in short, practically reasonable when they aim for that good and are so fitted to achieve it. And, given the fact that justice involves recognizing the component rights that constitute the common good, “the force of a law depends on the extent of its justice” (ST I-II, q. 95, a. 2, resp.). But, as was already noted, justice involves recognizing and respecting those normative relations that should hold between human beings in society. Those natural rights, which are established prior to and independent of human law (i.e., what is right by nature), are such that all positive right is founded upon them as a specification or addition thereto. In this way, Aquinas holds that the normative force of all law rests on what is right by nature.

**The ‘natural law’**

Law is binding, in short, when (and insofar as) it is based on good reasons. Aquinas’ understanding of a ‘natural’ law relies on the view, as with his view of natural right, that there are objective facts about human beings which then constitute good reasons for human beings to act in certain ways rather than others. Francisco Suárez differed on the source of the binding character of the natural law; for Suárez, the natural law acquires force as law, rather than as merely counsel or good advice, when it is perceived as promulgated by God (see cross-reference on Suárez). Aquinas by contrast seems to hold that the natural law has its normative force merely from the apprehension that certain acts are appropriate to human nature (see Brock 2020). As he defines it, the ‘natural law’ is “nothing else than the rational creature’s participation of the eternal law” (ST I-II, q. 91, a. 2, resp.), and this refers to the rational creature’s ability to judge right from wrong – knowing what they ought to do – based on their ability to rationally apprehend the order in human nature.

Controversy attaches to this point among Thomistic interpreters, as Aquinas argues that human beings are naturally such that they are able to perceive their own natural inclinations and that the fundamental precepts of the natural law are thereby both the same among and self-evident to everyone (ST I-II, q. 94, a. 2). John Finnis and Germain Grisez are known to accentuate the self-evident, in the sense of epistemically basic, character of these precepts (see cross-reference on Finnis), whereas the classical school holds that these precepts rest instead upon our natural rational ability to perceive normative facts about what is good for members of the human species. For the classical school, the first principle of practical reason, ‘that good is to be pursued and evil avoided,’ is self-evident in the sense that ‘good’ is a primitive concept, but the precepts of the natural law are not therefore epistemically basic.

Natural law encompasses both general moral precepts and the foundational principles for legal justice, but requires specification within a political community, by legitimate authority, in order to acquire force within specific legal situations. By itself the natural law does not answer all legal questions as to whether society should be ordered in one way or another, nor do we even know all things that are morally virtuous merely by knowing our natural inclinations (ST I-II, q. 94, a. 3, resp.). When Aquinas notes that all human positive law ought to be either a conclusion or specification of the natural law (ST I-II, q. 95, a. 2), this is then simply because the ‘natural law’ is nothing other than those general (good) reasons for which humans perform any action at all. If positive law were *not* based on the natural law, in this general way, nobody would have good reasons to obey those laws.

Nevertheless, Aquinas concedes that not all laws are *conclusions* drawn from precepts of the natural law; the force of many laws is merely that of being one possible way in which authority has decided to secure goods for the community. Aquinas considers, for example, a law that private citizens may not kill as such a conclusion from a general moral precept that one should harm no one, whereas laws imposing a fine or specific penalty for wrongdoing would be an addition or determination of the natural law within that community. Further, the natural law in its specifics is not intuitive or self-evident to all. The Ten Commandments, alongside the commandments to love God and one’s neighbor drawn from Matt. 22: 37-39, constitute a summary of what the natural law requires (ST I-II, q. 100, a. 3, ad. 1), and the revelation of these naturally-knowable precepts by God to Moses was – Aquinas thinks – a practically necessary aid to human reasoning about morality, given the realities of sin and ignorance (e.g., ST I-II, q. 91, a. 4). Knowing the natural law in its specificity requires inquiry, and so our knowledge of what morality requires is often derived from other people, whether learned in human society or by revelation.

**Societal structures**

Beyond those epistemic limits, however, Aquinas also holds that the law (and human political authority generally) does not suffice for either the direction of individual human action or of life in the community, precisely because both the law and political authority remain limited in being *extrinsic* to the members of the community. There is then a second respect in which the common good is connected with morality, and this is more fundamental than the claim explored above that the rationality of human law is grounded in the natural law. An important and over-looked feature of Aquinas’ account of law is that, on his view, “every law aims at establishing friendship, either between man and man, or between man and God” (ST I-II, q. 99, a. 1, ad. 2). Friendship clearly is not something that can be imposed by coercive force, but neither is the fulfillment of justice alone a sufficient condition for friendship among members of a given community.

Aquinas generally follows Aristotle, derived from the *Politics* and *Ethics,* as regards his account of the nature of cities, the constitutions of different regimes, the duties of rulers, etc. Like Aristotle, Aquinas accepts the inevitability of slavery, is skeptical of democratic forms of government (endorsing a ‘mixed’ regime as ideal), and does not share modern concerns about political equality for women. Nevertheless, Aquinas moves beyond Aristotle in key ways, developing an account on which the best regime is one in which rulers are selected by the people (ST I-II, q. 105, a. 1), or on which governmental power is illegitimate when seized contrary to the will of the people and in which resistance to tyrants, extending to regicide, can therefore be justified under appropriate conditions (e.g., *Super Sententiis* II, d. 44, q. 2, ad 5). But Aquinas’ most important developments on his predecessor’s political thinking are inspired by his theology. Aristotle had already noted in the *Politics* that political justice exists between free and equal persons, where societies aim at civic friendship or concord among citizens. Aquinas is committed theologically to a fundamental equality between all human beings, where all are made in the image of God, and he therefore qualifies the Aristotelian claim that slavery is ‘natural,’ agreeing with Augustine of Hippo that slavery appeared in human affairs as a result of sin (ST I, q. 96, a. 4).

More globally, Aquinas understands the aim of political association to be ‘peace,’ a well-ordered concord among members of the community where each agree in pursuing what is good. Yet, unlike Aristotle, Aquinas holds that perfect peace is not (ultimately) a natural good even if human civic organization can promote some measure of peace. Civil or legal justice removes obstacles to friendship among citizens, but it is insufficient to bring about peace in society. Only the supernaturally-infused theological virtue of *caritas,* love of God, can positively dispose individuals toward each other in society appropriately so that they find perfect peace with themselves, each other, and God (ST II-II, q. 29; esp. a. 3, ad. 3). The common good aimed at in political association is, however, nothing other than peace, and Aquinas’ position therefore implies that human authority remains radically limited or defective. How then can civil government aim at ‘making men good,’ which is what Aquinas also claims is the aim of government?

For Aquinas, there are important revealed facts about the limits to civil power. There are *two* sorts of complete politicalsocieties to which human beings can belong and to which they are subject, the civil government andthe Church. These communities also have distinct ends: the hierarchy of the Church aims to promote faith and charity among its members and thus care for the *spiritual* common good. The authority of civil government is inherently limited, as a consequence, to the *temporal* common good of the community. Distinguishing what is proper to the authority of the Church versus the authority of the State allows Aquinas to delineate those more specific constitutive elements of the common good that pertain to the law of civil governments.

Thus, while Aquinas – with Christians of his time – believes that political authority exercised by unbelievers over Christians is spiritually dangerous, can see only pragmatic reasons for toleration of the religious worship of non-Christians in a Christian country, and holds that heresy poses such a danger to a Christian country as to warrant the death penalty, Aquinas does not dispute the legitimacy of government exercised by unbelievers (ST II-II, q. 10, a. 10). While Christian rulers have duties toward the Church to allow the Church to pursue its mission and to govern in accordance with the moral teaching of its hierarchy (outlined most clearly in Aquinas’ letter to the king of Cyprus, *De Regno*), the distinct ends of society mean that the civil government aims at fostering virtuous living among the citizens, insofar as that virtue affects justice and the common good of society. But this authority does not extend to eliminating any and all private vices (ST I-II, q. 96, a. 3), nor specifically to directing consciences, especially in matters of religion, which is the proper domain of the Church.

When the directives of Church and State conflict, the conflict is resolved by appeal to these ends; when the ecclesial authority’s directives conflict with those of the civil authority on matters that are properly civil, assuming that the civil directives are not immoral or contrary to divine law, then the civil directives are to be followed (*Super Sententiis* II d. 44 ex. ad 4). Thus, these distinct ends thus do not entail a wholesale ‘subordination’ of one authority to another, as if the Church – having a higher end – could rightly command the civil government in any matter whatsoever.

**Wrongs**

Political authority can clearly go wrong in many respects, and Aquinas is quite aware of the dangers posed by tyrants, unjust regimes, and laws which all overstep the boundaries of their authority. As we already have seen, Aquinas holds that tyrants and unjust regimes might be opposed under the right circumstances, as not having received power legitimately from the people or as employing it for their own ends rather than for the common good, and that unjust laws, to the degree that they are unjust, do not bind the consciences of citizens. In terms of violations of distributive justice by the government, Aquinas focuses primarily on one type of abuse of power rampant in his time: ‘respect of persons’ in distributing offices or honors within a society on the basis of family or other connections that are irrelevant to the common good. Even within the Church, Aquinas notes that moral character is no guarantee of administrative ability and so is not a sufficient basis for selecting officials.

Aquinas instead devotes extensive attention to moral and legal problems associated with the procedural affairs of justice. In keeping with his general approach to law as deriving its force from justice, while Aquinas notes that the sovereign to be exempt from the coercive force of the law (given the legal arrangements with which he was familiar), this is in some respects accidental, since the sovereign is still bound by the directive force of the law as much as anyone else and would be accountable for violations of the law to God, even if there is nobody would be competent to pass sentence on the sovereign if he violates the law (ST I-II, q. 96, a. 5, ad. 3). Similarly, Aquinas holds that judges act as ‘public persons’ whose task is the interpretation of justice in a particular case (e.g., ST II-II, q. 67, a. 2 & 3). Judges are thereby accountable to justice itself and to higher authority, which is why Aquinas affirms the rights of defendants to appeal sentences when those sentences are perceived to be unjust (ST II-II, q. 69, a. 3, ad. 1). Judges can exceed their authority in pronouncing judgment on those not subject to their authority, in acting on private knowledge or opinion about an accused person’s guilt that has not been established through proper judicial procedure, or by sentencing those not publicly accused.

But judges can also fail in two important other ways to uphold justice. One of these is that judges can fail to uphold the written law, not judging in accordance with it. As Aquinas notes, written law does not give force to law – as the force of law derives from the natural law and natural right – and so the judge is not bound to judge in accord with unjust laws. However, the judge is otherwise bound to judge in accord with the written law, as the written law determines what is just in particular instances, either by specifying the natural right or by giving force to positive rights enumerated in the law itself. The judge is, however, empowered to judge according to that equity had in mind by the legislator when the observance of the written law would lead to a conflict with natural right (ST II-II, q. 60, a. 5).

Another of these judicial failures is that remitting punishment that is deserved by a wrong-doer – when it is not in his power or appropriate to grant clemency – would be a failure of justice and constitute a harm to the common good (ST II-II, q. 67, a. 4, ad. 3). Aquinas notes that the temporal common good consists in an order of justice among men, so that disruptions of that order deserve punishment that aims to correct or preserve the order in question. Since the fault committed is on account of something perverse in the will of the offender, the restoration of the social order requires inflicting on that offender what is contrary to the will, painful, and deserved on the basis of fault (ST I-II q. 46, a. 6, ad. 2). The order of justice is restored in this way when the offender accepts punishment voluntarily, as a penance, and seeks to make compensation to his victims. But punishments sometimes are intended for the benefit of others besides the offender, as in the case of capital punishment, and Aquinas defends this. The societal order of justice benefits even when the punishment does not achieve or is intended to achieve any restorative effect on that criminal’s moral character, as long as it is proportionate to the crime (ST I-II, q. 87, a. 3, ad. 2). From Aquinas’ perspective, punishment primarily aims to protect rights and restore equity in society, so advancing that common good of peace which the law, rulers, and judges all aim to preserve and promote.

**Conclusion**

In conclusion, it should be noted that the place of Thomism as a ‘school’ of thought is perhaps as important as the place of the texts of Aquinas themselves in understanding the historical course and commitments of ‘natural law’ politics or jurisprudence. Thomas’ views both on the way in which nature provides reasons for human action and on what reasons there are have been taken in different – and contradictory – directions by his followers. There are also deep disagreements concerning the way in which to interpret central principles in his theory, especially as those principles apply to specific moral or legal circumstances. Whatever the case might be, Aquinas’ thought on legal matters and on political life has provided principles around which a family of views have grown, exerting significant influence on the history of legal philosophy, and his thought has proved deserving of continued attention even by contemporary scholars.

**Cross-References**

Francisco Suárez

John Finnis

Natural Law

Francisco de Vitoria

Medieval Jurisprudence

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[quotations in-text taken from the *Summa Theologiae* as translated by Fathers of the English Dominican Province (1920), Benzinger Bros, 2nd and revised ed., New York]

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