

ARTICLES

WHAT CAN THE BLUES BROTHERS TEACH US ABOUT THE COMMON GOOD?

A PRIMER ON THOMAS AQUINAS' PHILOSOPHY OF NATURAL LAW

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I. INTRODUCTION

Loyola University New Orleans College of Law has dedicated the Summer 2014 edition of its Law Review to the “Natural Law.” This paper aims to provide for lawyers and students of civil law a rudimentary introduction to natural law theory.

Expressed very simply, the theory of natural law holds that everything has a purpose and is directed towards an ultimate goal or *telos*. Everything has its *telos* fixed in its nature, and everything acts according to its nature. Human nature is unique because it includes the ability to “reason.” Through reason, humans may discern an immediate response to an immediate problem. Reason also allows humans to discern which of the array of possible responses is best directed towards fulfilling humankind’s ultimate purpose. When an individual or society orders itself according to the fundamental standards that are best directed towards fulfilling humankind’s ultimate purpose, that individual or society is living the natural law.

Natural law theory is an enormous field of study. To make the subject a bit more manageable, this paper will focus on the natural law philosophy developed by Thomas Aquinas. Aquinas is perhaps the greatest and best-known pre-modern philosopher of the natural law in the Christian tradition. His exposition on the natural law is found in his great work, the *Summa Theologica*, Part I-II, Questions 91 through 94,¹ which is part of

1. ST. THOMAS AQUINAS, THE SUMMA THEOLOGICA OF ST. THOMAS AQUINAS (The Fathers of the English Dominican Province trans., Burns Oates & Washbourne Ltd. 2d rev. ed.) [hereinafter SUMMA THEOLOGICA]. The citations to passages in the *Summa Theologica* require some explanation. Aquinas divided the *Summa Theologica* into three major parts. Broadly speaking, the first part deals with God and creation, the second part deals with issues of moral theology, and the third part deals with Christ and the Church. The topics of each part are analyzed through a series of “Questions” with the answers to each question explained in “Articles.” The Articles are further divided into a series of objections, counter statements, arguments and replies to objections. To complicate matters the *Summa Theologica*’s Second Part is itself split into two sub-parts called the “First part of the Second Part” and the “Second Part of the Second Part”. The *Summa Theologica*’s Third Part contains a supplement. Citations to the *Summa Theologica* in this paper are to the Part, Question, and Article. Citations to the objections, counter statements, etc., within an Article are omitted in an effort at simplification (although customarily in

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his broader exposition on the idea of “law” found in *Summa Theologica*, Part I-II, Questions 90-108 (also known as the *Treatise on Law*).²

Throughout this paper, the grossly exaggerated and intentionally comical instances of human nature and action found in the 1980 movie *The Blues Brothers* will be used to consider Aquinas’ conclusions on the natural law. The Blues Brothers’ story involves two singers, Jake and Elwood Blues, who learn the orphanage in which they were raised will close unless a large sum of money is found to pay back taxes. They decide to perform a concert and donate the proceeds to the orphanage. They succeed in raising the money and saving the home but in the process commit a variety of actions that certainly violate human positive law and would also seem to violate the natural law: lying, stealing, reckless endangerment of human life, etc. Yet these two characters from popular culture use their consciences to justify all of the mayhem. They claim they are “on a mission from God” and that to go against one’s conscience is wrong. Applying Aquinas’ philosophy to the Blues Brothers’ predicament will, hopefully, provide a glimpse into the more serious topics of human nature, human reason, and the purpose of law.

The principles of the natural law tradition Aquinas espoused place great weight and dignity in human reason and in the idea that law and justice must be put to individual and the community good in material ways. This paper will begin by exploring in Section II the issue of human “reason” and its relation with the human “will.” Such an inquiry leads into the preliminary question of how law, which is the product of both human reason and will, can guarantee society’s common good. Section III

writings intended for philosophers and theologians these should also appear in the citation). So, for example, Aquinas’ *Treatise on Law* is in the First Part of the Second Part of the *Summa Theologica* at Questions 90 through 108. A citation to the entire *Treatise on Law* would, therefore, be: “SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 90-108.” When an Article within a Question is referenced, say for example Question 91, Article 2, of the *Treatise on Law* which asks: “Whether there is in us a natural law,” the citation would be: “SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 91, art. 2” (the First Part of the Second Part of the *Summa Theologica* at Question 91, Article 2).

2. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 90-108. Aquinas’ views of law and justice are found throughout his many works. While this paper cites some of these other works, the *Summa Theologica* and to a lesser degree the *Summa Contra Gentiles*, are used as the primary sources as these two works contain the essentials of Aquinas’ jurisprudence.

addresses Aquinas' idea of the "common good." The idea of the "common good" is fundamental to the balance of this paper that addresses the levels of human positive law and the human obligation to abide by both positive law and one's own conscience.

II. REASON AND THE LAW OF NATURE

When someone decides to pursue a goal or end, such as saving an orphanage, the various means of achieving that goal must then be decided. The goal is the cause of, and in a sense dictates, the means.³ The Blues Brothers' decision to save the orphanage establishes their desired end. The various means they choose to reach this end, however, involve breaking a long list of civil and criminal laws. This clash between the individual's will to achieve personal goals and the greater society's expectations that its members will obey the law has been the source of much deliberation in legal theory throughout history.

Natural law theory in western culture has ancient origins and is born in part from the philosophical struggle over how laws should both reflect and shape society.⁴ In the West, primitive ideas of law existed within a broader complex of theology and social practices: a primitive society's law and religion were essentially the same.⁵ This relation of law and religion caused early societies to view their law codes as unchangeable and universal. These two characteristics came under question as societies advanced and people became more aware that different societies could have very different law codes that were often amended and reformed. As the perception of law as something

3. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 8, art. 3. ("Since the end is willed in itself, whereas the means, as such, are only willed for the end, it is evident that the will can be moved to the end, without being moved to the means; whereas it cannot be moved to the means, as such, unless it is moved to the end." ([C]um finis sit secundum se volitus, id autem quod est ad finem, inquantum huiusmodi, non sit volitum nisi propter finem; manifestum est quod voluntas potest ferri in finem sine hoc quod feratur in ea quae sunt ad finem; sed in ea quae sunt ad finem, inquantum huiusmodi, non potest ferri, nisi feratur in ipsum finem)).

4. This effort can be seen, for example, in Plato's *Laws* and in an earlier work, the *Gorgias* as well as perhaps in the *Minos* (although doubt exists over whether Plato is the *Minos*' true author). See, e.g., V. Bradley Lewis, *Plato's Minos: The Political and Philosophical Context of the Problem of Natural Right*, 60 REV. METAPHYSICS 17, 17 & n.2 (2006).

5. HEINRICH A. ROMMEN, *THE NATURAL LAW: A STUDY IN LEGAL AND SOCIAL HISTORY AND PHILOSOPHY* 5 (Thomas R. Hanley trans., Liberty Fund 1998). Professor Rommen's *The Natural Law* is a classic, accessible, and systematic survey of Western legal philosophy.

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immutable and universal proved to be incorrect, a distinction developed between the essentially unchanging law based on a perceived natural moral order in the universe and the mundane and flexible human legislation. But if legislation is mundane and flexible then on what basis can it claim any moral authority or binding force? Stated differently, if the Blues Brothers need to break, even egregiously break, laws to accomplish their ends, what, other than society's greater and opposing collective will, should stop them?

Around the year 360 B.C., the ancient philosopher Plato addressed this subject in his work the *Laws*.⁶ He concluded that laws are necessary to prevent members of society from living like "wild animals."⁷ Laws in this sense are good and necessary curbs on human nature and the human will. While such a view of laws as curbs on human nature seems obvious, even trite, the tone of the *Laws* suggests that such a view may not always have been universally accepted. In the *Gorgias*,⁸ which was written about twenty years before the *Laws*, Plato, through the words of his mentor Socrates, discusses the way humans *should* live as opposed to the way humans would will to live.⁹ While Plato's *Gorgias* is a dialogue in which Socrates discusses the relative lifestyles of those seeking wisdom and those seeking power, a more central point is the nature of power and its relationship to the good that is common to all in society. In other words, Plato is wrestling with the question of whether, or to what extent, human nature and the human will *should* be curbed.¹⁰ In this regard he recognizes two possible sources of law: the will of the strong person and the reason of the wise person.

Law's authority and binding force can come from the "will" and "strength" of the person who promulgates the law. Strength

6. PLATO, *Laws*, in PLATO: COMPLETE WORKS 1318 (John M. Cooper & D.S. Hutchinson eds., Trevor J. Saunders trans., Hackett Publishing Co. 1997) [hereinafter *Laws*].

7. *Id.* at 1533. The term "law" in this sense means human or positive law; to avoid possible confusion, the term "legislation" may be used in this paper as a synonym for human or positive law.

8. PLATO, *GORGIAS* (Donald J. Zeyl trans., Hackett Publishing Co. 1987) [hereinafter *GORGIAS*].

9. Donald J. Zeyl, *Introduction* to PLATO, *GORGIAS*, at xiii-ix (Donald J. Zeyl trans., Hackett Publishing Co. 1987) [hereinafter *Zeyl*].

10. *Zeyl*, *supra* note 9, at xi.

as a basis of law's authority is a type of "law of nature."¹¹ Nature reveals that the stronger should have more than the weaker because nature allows the strong to exploit their strength.¹² Under this view, law is an expression of strength by the strong who press their own advantages just as would animals in the jungle.¹³

Plato also developed another idea that proposes that law's authority and binding force should be found not in the will of the strong but in conformity to a different law of nature—a natural order of human goods.¹⁴ This order is "natural" because it accords to reason and reason is integral to humanity.¹⁵ Good law, like the work of good craftsmen, should direct society in such a way that the finished product reflects an intended order.¹⁶ If good craftsmen bring order *to* their work, then order *in* such work must be good.¹⁷ That which is good for human society is not found in the wild jungle.¹⁸ If law is the result of unbridled personal gratification, then humans will end up living essentially like animals—driven by desire rather than reason.¹⁹

Plato's conclusion that "reason" rather than "will" should be the standard by which human affairs are governed does not address the preliminary question of how law, which is the product of human interactions, can secure the natural order of human goods. In other words, Plato is not entirely clear on just how reason should govern human affairs. When humans interact, reason must always contest with the equally natural but baser human desire for personal gratification. After all, Socrates' argument in the *Gorgias* that reason should govern society's legal system does not win over the others with whom he is debating.

11. Zeyl, *supra* note 9, at xiii. The term "law of nature" should not be confused of the idea of the "natural law." Plato uses the term "nature" to describe a type of natural human order akin to what may be seen as the "law of the jungle." *Id.*

12. GORGIAS, *supra* note 8, §§ 483c9-e4, at 54.

13. GORGIAS, *supra* note 8, § 483e, at 54.

14. *Cf. id.* §§ 506d-507a, at 86-87.

15. *Id.* §§ 508d-e, at 89.

16. *Id.* §§ 503e5-504a3, at 83-84.

17. GORGIAS, *supra* note 8, §§ 504a8-b1, at 83. Socrates carries this point out from good order in crafts to good order in the human body and spirit. He reasons a physician will work in an orderly fashion to bring the patient's body back into good working order and further to good order in the human soul. *Id.* §§ 504b2-3, 504a3-6, 504b5-9, at 83.

18. GORGIAS, *supra* note 8, §504d1-3.

19. *See, e.g., id.* § 521d.

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The amicable dispute ends with Socrates' colleagues still retaining their ideas of justice being based on the will of the strong. Such a conclusion suggests that perhaps one of Plato's more subtle points in the *Gorgias* is that human reason has limits against human desires.

III. THE COMMON GOOD

In the *Laws*, Plato refines his ideas on the links between law, reason, and a natural order of human goods.²⁰ Plato's natural order consists of a hierarchy of conditions that are beneficial for both the body and the intellect.²¹ Human reason reveals, and Human Law should promote, these human goods.²²

Aquinas, like Plato, also figured a relation of law, reason, and a natural order of common human goods. As explained in more detail below, Aquinas defines law²³ as an "ordinance of reason" for the "common good" made and promulgated by one who has care for the community.²⁴ In his later work, the *Summa Contra Gentiles*,²⁵ Aquinas proposes a second, complementary, definition: "Law" is the way in which the lawmaker directs individuals in a rational plan toward his own end.²⁶ These definitions suggest that law should direct humans towards an end that is the "common good." Aquinas describes, as did Plato

20. See, e.g., *Laws*, *supra* note 6, §§ 720b, 728d, 733a, 689b, 690c, 697b-c, 717c, 726a-730a, 743e-744a, 870a-b, 892a-c, 896c-897b, 943a, 959a-b, 961b, 966e-967b, 875d.

21. *Id.* §§ 726-728c.

22. *Id.* §§ 644c-645c, 713e.

23. JEREMIAH NEWMAN, FOUNDATIONS OF JUSTICE: A HISTORICO-CRITICAL STUDY IN THOMISM 14-15 (Cork University Press 1954).

24. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 90, art. 4. "[D]efinitio legis, quae nihil est aliud quam quaedam *rationis ordination* ad *bonum commune*, ab eo qui curam communitatis habet, promulgata." *Id.* (emphasis added).

25. ST. THOMAS AQUINAS, SUMMA CONTRA GENTILES (Joseph Kenny, O.P. ed., Vernon J. Bourke et al. trans., Hanover House 1955-57) [hereinafter CONTRA GENTILES]. Like the *Summa Theologica*, the citations to passages in the *Summa Contra Gentiles* require some explanation. Aquinas divided the *Summa Contra Gentiles* into four books. Each book is divided into chapters, each dealing with various issues of Catholic faith. These chapters are further divided into paragraphs that systematically respond to, or explain, the subject issue. For example, Aquinas' treatment of how human reason allows humans to receive and be subject to law (both human and divine) is found in Book III of the *Summa Contra Gentiles* at Question 114, paragraph 4 (CONTRA GENTILES, *supra* note 27, bk. III, ch. 114, ¶ 4).

26. CONTRA GENTILES, *supra* note 25, bk. III, ch. 114, ¶ 5. "Cum lex nihil aliud sit quam ratio operis; cuiuslibet autem operis ratio a fine sumitur: ab eo unusquisque legis capax suscipit legem a quo ad finem perducitur . . ." *Id.*

centuries before, good law as the work of good craftsmen, directing society. Aquinas saw God as the “craftsman” and true “lawmaker” directing individuals towards Himself.²⁷ God is the rational creature's ultimate end and humans, as rationale creatures, receive the natural law from God.²⁸ But one should not dismiss these ideas of law as being merely pre-modern theology dressed as jurisprudence; Aquinas' views of law, reason, and the common good may be considered apart from Aquinas' theology. Aquinas believed that God is the universal cause, governor, and sustainer of all creation but that God governs and sustains creation through natural, not supernatural, means.²⁹ Aquinas also reasoned that human intellect is meant to know the nature of the material world.³⁰ Therefore, the human intellect can come to understand human nature and the common good to which laws, as ordinances of reason, should direct individuals and society.³¹

Aquinas' idea of the “common good” is based on the observation that humans are, by their nature, not only rational but also social.³² As naturally social animals, humans need each other to attain their ends.³³ If nature directs humans to live in

27. CONTRA GENTILES, *supra* note 25, bk. III, ch. 114, ¶ 5.

28. *Id.* bk. III, chs. 113-115, 129. Aquinas is not suggesting that God gives all law in the sense of a Mount Sinai experience. God is not the *direct* source of legislation nor does God necessarily speak through legislation in the sense of “vox populi, vox dei.” Instead, reason is bestowed on humans. Despite its human origin, the well-reasoned legislation of a good ruler or state can claim moral authority and binding effect. The good law of a good society is the work of an essential divine gift: human reason.

29. CONTRA GENTILES, *supra* note 25, bk. III, ch. 68, ¶ 4; *id.* bk. III, ch.77, ¶ 2. An example of this idea would be an artist using a paintbrush to create art; the brush is doing the painting but only because it is in the artist's hands.

30. “Quod obiectum intellectus nostri, secundum praesentem statum, est quidditas rei materialis.” SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 85, art. 8.

31. Aquinas believed that faith is necessary for “salvation” and that salvation is one's ultimate telos. Since salvation requires faith based on divine knowledge, natural knowledge is insufficient to achieve this telos. SUMMA THEOLOGICA, *supra* note 1, pt. II-II, q. 2, art. 3. “Faith,” however, cannot be subject to a scientific method of inquiry and so faith would not seem necessary to discovering the natural law. *Id.* pt. II-II, q. 1, art. 5. He suggests this point in a round about way. The human intellect is to know truth. *Id.* pt. I, q. 85, art. 5. Humans must accept those things which science or reason can prove. *Id.* pt. II-II, q. 2, art. 4. Humans must be able to know by reason alone the natural law (i.e., the self-principles necessary for individual and in community living). *Id.* pt. I, q. 94, art. 3.

32. CONTRA GENTILES, *supra* note 25, bk. III, ch. 117, ¶ 4; NEWMAN, *supra* note 23.

33. CONTRA GENTILES, *supra* note 25, bk. III, ch. 117, ¶ 4 (“Cum homo sit

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society, then such an inclination to society must be “good.”³⁴ The society towards which humans are inclined by their nature is an end in itself. Positive law as “ordinances of reason”³⁵ should promote this end by promoting the good of all who comprise the community; by promoting the “common good.”³⁶ In this regard the “common good” does not mean what is beneficial for the majority of citizens, or special classes of citizens, but what is good for everyone. As Professor Jeremiah Newman writes: “When St. Thomas speaks of a common good he means to be understood literally.”³⁷

Aquinas reasons that all who comprise a community “stand in relation to that community as parts to a whole.”³⁸ Those who comprise the community should act both personally and in relations with others for the common good.³⁹ The individual’s good in a community advances the community’s common good, and the community’s common good generally advances the members of the community as a whole. The common good, however, is more than just the collective good of all singular individuals.⁴⁰ Aquinas sees the common good as different from the individual good in the same sense that the whole differs from a part.⁴¹

This distinction between the “common” good and the “individual” good, when read in light of Aquinas’ point that, in acting, every agent intends some end, suggests that the common good functions in two ways.⁴² When individuals act with the

naturaliter animal sociale, indiget ab aliis hominibus adiuvari ad consequendum proprium finem.”).

34. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 94, art. 2.

35. *Id.* pt. I-II, q. 90, art. 4.

36. CONTRA GENTILES, *supra* note 25, bk. III, ch.17, ¶ 6.

37. NEWMAN, *supra* note 23, at 34.

38. SUMMA THEOLOGICA, *supra* note 1, pt. II-II, q. 58, art. 5.

39. *Id.* pt. II-II, ch. 58, art. 9.

40. *Id.* pt. II-II, ch. 47, art. 10; NEWMAN, *supra* note 23.

41. *Id.* pt. II-II, ch. 58, art. 7.

42. Aquinas writes that “[s]ince the end is willed in itself, whereas the means, as such, are only willed for the end, it is evident that the will can be moved to the end, without being moved to the means; whereas it cannot be moved to the means, as such, unless it is moved to the end.” SUMMA THEOLOGICA, *supra* note 1, pt. II-I, q. 8, art. 3 (“[C]um finis sit secundum se volitus, id autem quod est ad finem, in quantum huiusmodi, non sit volitum nisi propter finem; manifestum est quod voluntas potest ferri in finem sine hoc quod feratur in ea quae sunt ad finem; sed in ea quae sunt ad finem, in quantum huiusmodi, non potest ferri, nisi feratur in ipsum finem.”).

common good as their end, they both promote harmony within the community and help order the entire community towards its own collective perfection and wellbeing.⁴³

The Blues Brothers' 1974 Dodge Monaco can be used as an analogy to explain this relationship and how both the individual and the community act to achieve the common good. The Monaco is made up of many different parts, each of which is manufactured separately and exists separately from the other parts. If all of the parts necessary to build the Monaco were brought together, the collection of parts would still not make an automobile. In other words, the collected sum of all the automobile parts does not make a functioning automobile. Instead, the parts must be organized with the goal of creating a functioning automobile. All of the parts must not only function by fulfilling their individual purpose, but they must also all function together in harmony for the automobile to fulfill its ultimate purpose of providing transportation.⁴⁴ Conversely, only when the automobile fulfills its ultimate purpose of providing transportation does each part have significance and effectiveness. If the owner neglects any one part of the automobile (e.g., if the spark plugs are corroded or the fan belt breaks), then the entire automobile will fail to fully function as intended or may fail to function at all. The various parts' common good exists only when each individual part is fully- and well-functioning so that the whole, the organized 1974 Dodge Monaco, provides transportation.

The goal of creating an automobile that is capable of providing transportation directs how the parts fit together. The directions in constructing the Blues Brothers' Monaco are analogous to laws by which the lawmaker directs individuals in a rational plan toward a desired end. The 1974 Dodge Monaco analogy only goes so far, however, because the parts of an automobile do not know, or actively participate, in the plan of construction. Humans, on the other hand, do participate in their own government by enacting laws.⁴⁵

43. See, e.g., *SUMMA THEOLOGICA*, *supra* note 1, pt. II-II, q. 58, art. 9.

44. As Aquinas says: "[I]t is evident that all parts are ordered to the perfection of the whole, since a whole does not exist for the sake of its parts, but, rather, the parts are for the whole." *CONTRA GENTILES*, *supra* note 25, bk. III, ch. 112, ¶ 5. ("Manifestum est partes omnes ordinari ad perfectionem totius: non enim est totum propter partes, sed partes propter totum sunt.")

45. *CONTRA GENTILES*, *supra* note 25, bk. III, ch. 113, ¶ 5. "Only the rational

IV. JUSTICE

For the common good to include the good of singular individuals as well as the collective whole a sense of equality must come into play. Equality in Aquinas' writings implies justice,⁴⁶ and justice means rendering to each person his or her due.⁴⁷ Indeed, the equality of justice is essentially a relationship.⁴⁸ As he writes: "something is not equal in itself but in relation to others."⁴⁹ In the *Summa Theologica*, Aquinas writes about this relationship and how justice is connected to and promotes the common good.⁵⁰ Justice directs, or should direct, human action and not just human thought.⁵¹ One must act justly, not merely think justly.

Justice is described principally as "distributive" or "commutative."⁵² These terms imply that the community as a whole has duties to its individual members regardless of their status in society and that each member, in turn, has duties to the collective whole.⁵³ In this regard, the principles of distributive justice direct the fair and proper allocation of resources among different people throughout the entire community. Such resources include wealth, goods, and privileges but also duties and obligations. On the other hand, commutative, or legal, justice dictates fairness in the agreements and interactions between individuals.⁵⁴

Throughout the story, the Blues Brothers destroy a significant amount of property belonging to others to achieve

creature is capable of receiving law." *Id.* bk. III, ch. 114, ¶ 4 ("Sola igitur rationalis creatura est susceptiva legis.").

46. SUMMA THEOLOGICA, *supra* note 1, pt. II-II, q. 58, art. 9.

47. "Et si quis vellet in debitam formam definitionis reducere, posset sic dicere, quod iustitia est habitus secundum quem aliquis constanti et perpetua voluntate ius suum unicuique tribuit." *Id.* pt. II-II, q. 58, art. 1.

48. "[I]ustitiae proprium est . . . ordinet hominem in his quae sunt ad alterum. Importat enim aequalitatem quondam Aequalitas autem ad alterum est." SUMMA THEOLOGICA, *supra* note 1, pt. II-II, q. 57, art. 1.

49. "[N]ihil enim est sibi aequale, sed alteri." *Id.* pt. II-II, q. 58, art. 2.

50. SUMMA THEOLOGICA, *supra* note 1, pt. II-II, q. 58, art. 2.

51. *Id.* pt. II-II, q. 58, art. 5; *id.* pt. II-II, q. 58, art. 8; *id.* pt. I-II, q. 22, art. 3; *id.* pt. I-II, q. 59, art. 4; *id.* pt. II-II, q. 58, art. 9.

52. SUMMA THEOLOGICA, *supra* note 1, pt. II-II, q. 61, art. 1.

53. *Id.*

54. *Id.* pt. I-II, q. 113, art. 1; *id.* pt. II-II, q. 57, art. 1; *id.* pt. II-II, q. 58, arts. 2, 5, 12.

their end of saving the home. In one instance they attempt to evade the police by driving their Monaco through, and demolishing, a crowded shopping mall. When the Blues Brothers eventually raise the money necessary to save the orphanage they must rush to the county clerk's office before closing time to satisfy the back taxes. Again, they drive with utter recklessness and disregard for human life, crashing into many other vehicles and destroying private property along the way.⁵⁵ These acts of damaging or destroying others' property are unjust because they amount to depriving others of their property. Deprivation creates inequality in the sense that the injured persons no longer possess what is rightfully theirs.⁵⁶ The parties injured by the Blues Brothers' recklessness would be entitled to justice in the sense of restoring equality. This justice would be pursued through the civil court system, which, in theory and ideally in practice, amounts to the community as a whole distributing justice fairly and impartially between the parties. The resulting judgment, if any, would be an example of commutative justice because it would likely compel the brothers to compensate the injured persons.

V. THE BASIS OF AQUINAS' THEORY OF NATURAL LAW

If reason allows humans to be uniquely receptive to law, then an attempt to describe Aquinas' theory of law should include an explanation of what Aquinas held to be the source of human reason: the human soul.⁵⁷ Aquinas' ideas about the soul exist

55. Endangering innocent human life is particularly offensive. Aquinas maintains that innocent persons should not be killed even to further enhance the common good. *SUMMA THEOLOGICA*, *supra* note 1, pt. II-II, q. 68, art. 3.

56. He makes this point through an example of killing another person's ox. One of the many moral questions Aquinas addresses in the *Summa Theologica* is the issue whether killing plants and animals for a proper purpose is sinful. He concludes that killing another person's ox is wrong not because one is killing an ox *per se*, but because through killing the ox, one is depriving another of his property. The wrongful act in this instance is not "murder" of an irrational animal but "theft or robbery" of another person's property. "Quod ille qui occidit bovem alterius peccat quidem, non quia occidit bovem, sed quia damnificat hominem in re sua. Unde non continetur sub peccato homicidii, sed sub peccato furti vel rapinae." *SUMMA THEOLOGICA*, *supra* note 1, pt. II-II, q. 64, art. 1.

57. The term "soul" may carry overtly religious meanings to many people. However, a belief in the Aquinas' theology is not arguably necessary to a study of his philosophy of the Natural Law, which may be considered independently of any religious underpinnings. The tone of the *Treatise on Law* suggests that Aquinas himself valued observation and experience as bases for secular sciences and law.

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within the framework of Aristotelian metaphysics.⁵⁸ Aristotle saw humans as “form and matter,” “potency and act,” and Aquinas adopted these ideas.⁵⁹ The body is matter that the soul forms or establishes as an animate being.⁶⁰ Matter has the potential to be anything;⁶¹ the soul is what actualizes this potential.⁶² The human soul, therefore, is what forms and makes a person substantially human.⁶³

Aquinas, like Aristotle, reasoned out a hierarchy of different kinds of souls as forming different kinds of animate beings.⁶⁴ The lowest type of soul is the vegetative that accounts for very basic processes such as nourishment and reproduction.⁶⁵ Plants have only this first kind of soul. Next is the sensitive soul by which higher animals perceive and react on natural instinct.⁶⁶ This soul includes the power of self-motion but without the power of reasoned self-motion.⁶⁷ All animals have this higher soul.⁶⁸ Finally, the highest soul is the rational soul, which is unique to humans and by which humans are able to speak and think abstractly.⁶⁹ The higher souls perform all of the functions of the lower kinds of souls.⁷⁰ The human rational soul, therefore, is also the source in humans of the sensitive and vegetative functions.⁷¹ The intricate interworking of human vegetative, sensitivity, and rationality grants the soul the power of reason (self-awareness, understanding, etc.), the power to will (drive, appetite, etc.) and the power of passion (emotions, affections, etc.).⁷²

Under this model of the soul, any deliberate human action

58. See, e.g., SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 78, art. 1. Aquinas cites as authority Aristotle’s *De Anima*, Book II, Parts 1-3.

59. See, e.g., *id.* pt. I, q. 75, art. 5.

60. SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 76, arts. 1, 4.

61. SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 75, art. 4.

62. *Id.* pt. I, q. 76, art. 1, 4, 5; CONTRA GENTILES, *supra* note 25, bk. II, ch. 61, ¶ 2.

63. CONTRA GENTILES, *supra* note 25, bk. II, ch. 57, ¶ 14 (“Est igitur anima forma corporis animati.”).

64. SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 78, art. 1.

65. *Id.* pt. I, q. 78, art. 2.

66. *Id.* pt. I, q. 78, art. 1.

67. *Id.*

68. SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 78, art. 1.

69. *Id.*

70. *Id.*

71. *Id.* pt. I, q. 76, art. 1.

72. SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 77, art. 4.

results from the soul's interrelating and interacting powers.⁷³ Reason recognizes a situation and then presents to the will possible solutions. Under the varying emotional influences, the will moves the person to achieve the desired solution.⁷⁴ The will is motivated into action, however, only if the will is emotionally interested at some level in achieving the action's end.⁷⁵

For example, when the Blues Brothers learn that the orphanage will close, they reason to pursue the goal or end of preserving the home. Their deliberations may have been influenced by emotions, such as a sentimental attachment to the orphanage. After all, they consider the nun who runs the orphanage and the janitor to be their only family. At this early stage of the process, however, reason has only made a judgment; the brothers have taken no action to achieve the end.

The human soul reasons in two distinguishable ways: speculatively and practically.⁷⁶ The fact that humans can reason both speculatively and practically is, for Aquinas, self-evident.⁷⁷ Speculative reason deals with matters that contain obvious truth or self-evident logic.⁷⁸ The principles of mathematics, for example, are known by speculative reason. For example, the equation $1+1=2$ contains the self-evident correct answer without fail; $1+1$ can never equal anything but 2. Speculative reason's truth does not depend on one actually knowing the truth. The equation $1+1=2$ is true regardless of whether one knows even rudimentary mathematics. The first principle of speculative reason, the first fact that human reason reveals as self-evident and requiring no further demonstration, is the rule or law of noncontradiction.⁷⁹ The rule of noncontradiction holds that something cannot be both true and false in the same way at the same time.⁸⁰ From this first principle of speculative reason emerges the human ability to think logically.

73. SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 79, art. 1.

74. *See id.* pt. I, q. 77, arts. 1-2; *see also* ELEONORE STUMP, AQUINAS 280-90 (Routledge 2005).

75. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 17, art. 1; *see also* JOHN FINNIS, NATURAL LAW AND NATURAL RIGHTS 399 (Oxford University Press 2d ed. 2011) (1980).

76. SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 79, art. 11.

77. *Id.* pt. I-II, q. 94, art. 2.

78. *Id.* pt. I-II, q. 94, art. 4.

79. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 94, art. 2.

80. *Id.*

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The Blues Brothers, however, cannot necessarily reason out the appropriate means to save the orphanage in the same way they would mathematically arrive at the sum of $1 + 1$. As Aquinas observed, in moral matters human reason cannot provide solutions with scientific certainty.⁸¹ To discern whether a given solution or course of conduct is “right” or “wrong,” humans must use practical reason. Practical reason allows humans to perceive a condition, reach various conclusions about that condition, and then proceed to act based on the conclusions. Stated differently, Aquinas saw speculative reason’s end as promoting the human intellect while practical reason’s end as promoting right human behavior.⁸² Just as human speculative reason recognizes noncontradiction as the first principle of thinking, human practical reason recognizes, as a basis of action, that something is “good” and that what is “good” should be desired and pursued.⁸³

An example of how practical reason functions may be found in the idea of self-preservation.⁸⁴ A subplot to the Blues Brothers’ story involves Jake’s jealous former girlfriend who is out to kill him. Rather than meet violence with violence, Jake decides to simply run away from the danger in self-defense.

Aquinas would likely reason that Jake’s act of self-defense was driven by two desires and was meant to achieve intended consequences (although an act often results in consequences that are both intended and unintended).⁸⁵ Jake acted in self-defense because he wanted to save his own life and prevent his ex-girlfriend from achieving her intended goal of killing him. The desire to keep one’s self alive, or in being, as long as possible is natural and therefore good.⁸⁶ Jake’s desire to stay alive, therefore, seems very reasonable. Beyond the desire to stay alive,

81. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 94, art. 4.

82. SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 79, art. 11.

83. *Id.* pt. I-II, q. 94, art. 2.

84. *Id.* pt. II-II, q. 64, art. 7. I use the term self-preservation to convey the sense of legal and moral neutrality that has been lost in Aquinas’ original work. Aquinas uses the term “se defendendo,” which means self-defense. By modern standards the term “self-defense” carries an association with violence. While Aquinas himself associates a certain amount of violence with the act of self-defense, he probably did not view violence as necessarily bad. *See, e.g., id.* (stating that proportional violence is morally justified in the act of self-defense: “ad defendendum propriam vitam utatur maiori violentia quam oporteat, erit illicitum”).

85. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 12, art. 1.

86. *Id.* pt. II-II, q. 64, art. 7.

Jake had to also take action to prevent his ex-girlfriend from killing him. When considering his options, Jake could morally take better care of his own life than someone else's life and so even the extreme act of taking the aggressor's life in self-defense would not necessarily be immoral.⁸⁷ But Aquinas cautions that the means must be in proportion to the end; if Jake had used unnecessary violence in his own self-defense, his action would have been against the natural law and therefore immoral.⁸⁸ Jake's decision to flee from, rather than resist, the ex-girlfriend's aggression was practical reason deciding the proportional means to achieve the moral end of self-defense.

VI. FREEDOM OF CHOICE

To fully exercise practical reason, the will in the human soul must be free to decide among the various options when acting and judging.⁸⁹ Aquinas calls this freedom free will, freedom of judgment, or free choice.⁹⁰ Having freedom of choice, however, should not be interpreted as Aquinas saying that humans have wills that are free in every sense.⁹¹ Aquinas maintains that humans *exercise* freedom in making judgments and choices.⁹² But while the human will is free to make judgments and choices, the will is never free in its basic inclination.⁹³ While the human intellect recognizes goodness as a basis of action,⁹⁴ the human will is inclined only towards "goodness."⁹⁵ The will must always choose what it perceives as good even if the choice is, or turns out to be, wrong or even evil.⁹⁶ As a result, the human will is not free in the sense that the will only desires what it perceives to be good.⁹⁷

87. SUMMA THEOLOGICA, *supra* note 1, pt. II-II, q. 64, art. 7.

88. *Id.*

89. *Id.* pt. I, q. 80, art. 1; *id.* pt. I, q. 82, art. 1; *id.* pt. I, q. 82, art. 2; *id.* pt. I, q. 83, art. 1; *id.* pt. I, q. 83, art. 3; CONTRA GENTILES, *supra* note 25, bk. II, ch. 48, ¶ 3; *id.* bk. III, ch. 47, ¶ 5.

90. CONTRA GENTILES, *supra* note 25, bk. II, ch. 48, ¶ 3; *id.* bk. II, ch. 47, ¶ 2; SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 82, art. 1; *id.* pt. I, q. 83, art. 1; *id.* pt. I, q. 83, art. 1.

91. SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 83, art. 1.

92. *Id.* pt. I, q. 83, art. 2.

93. CONTRA GENTILES, *supra* note 25, bk. II, ch. 48, ¶ 6.

94. *Id.*; SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 94, art. 2.

95. CONTRA GENTILES, *supra* note 25, bk. II, ch. 48, ¶ 6.

96. *Id.*; SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 82, art. 1; *id.* pt. I, q. 83, art. 4.

97. CONTRA GENTILES, *supra* note 25, bk. II, ch. 47, ¶ 2; *id.* bk. II, ch. 48, ¶ 3; *id.*

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Aquinas maintains that all humans desire goodness.⁹⁸ The human will decides the “good” to which it is inclined by assessing the inherent nature of each option. Aquinas seems to be saying that everything (each person, goal, thing, idea), by the fact of actual or potential existence, possesses some degree of wholeness or perfection.⁹⁹ Aquinas saw the degree of wholeness or perfection as denoting goodness in some measure; the more perfect a thing the better.¹⁰⁰ The degree of goodness existing in each thing can be the source of attraction for the will.¹⁰¹ This broad attraction to a goodness based on a degree of perfection, however, is a broad attraction to only partial goodness.

While everything possesses some degree of goodness, nothing—no one person, goal, thing, idea—is truly perfect and so nothing is absolutely good. To the extent something is incomplete or imperfect it also lacks goodness and the lack of goodness can repel the will.¹⁰² When Jake and Elwood learn the orphanage is about to close unless the taxes are paid, they see good in raising the tax money and this good attracts their wills to the goal of raising the tax money. They could also have seen good in *not* raising the tax money because their wills could have been repelled by the thought of all the trouble and inconvenience raising the money would cause.

bk. II, ch. 48, ¶ 6; SUMMA THEOLOGICA, *supra* note 2, pt. I, q. 82, art. 1; *id.* pt. I, q. 83, art. 1.

98. *Id.* pt. I-II, q. 94, art. 2 (“[A]ll those things to which man has a natural inclination are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance.”). “[E]st quod omnia illa ad quae homo habet naturalem inclinationem, ratio naturaliter apprehendit ut bona, et per consequens ut opere prosequenda, et contraria eorum ut mala et vitanda.” *Id.*

99. *See, e.g.*, SUMMA THEOLOGICA, *supra* note 1, pt. 1, q. 5, art. 1.

100. *Id.* pt. I, q. 5, art. 1. (“[Q]uod bonum dicitur per informationem, prout accipitur bonum simpliciter, secundum ultimum actum.”). “Goodness is a form so far as absolute goodness signifies complete actuality.” *Id.*

101. *See, e.g.*, *id.* pt. I, q. 5, art. 1; *id.* pt. I-II, q. 94, art. 2. For example, the goodness of existence itself is among a living thing’s primary inclinations and this is seen in the basic “will to survive.”

102. As Aquinas says: “So it is possible for the will to be inclined toward anything whatever that is presented to it under the aspect of good, there being no natural determination to the contrary to prevent it.” CONTRA GENTILES, *supra* note 25, bk. II, ch. 48, ¶ 6. “Quicquid igitur offeretur sibi sub ratione boni, poterit voluntas inclinari in illud, nulla determinatione naturali in contrarium prohibente.” *Id.*

VII. CHOOSING THE GOOD

Now that the brothers' wills are more attracted to the good than the lack of good they see in the goal of raising the necessary money, they must set upon the means. When the brothers consider various options available in raising the tax money, they can typically see good and a lack of good, pros and cons, in each option. A reasoned choice as to the means is often the result of comparisons of these pros and cons, comparisons that in different cases can lead to different, even opposite, conclusions. Whatever means the Blues Brothers use, their wills must assent to the choice because in all deliberation the will is free. The will's inherent attraction to a thing's goodness and repulsion by a lack of goodness explains why the brothers may choose an option that is bad even though their wills perceive a good.

The brothers decide to perform a blues concert and use the show's proceeds to pay the orphanage's taxes; but this course of action presents additional moral dilemmas. The brothers must first raise the money necessary to stage the concert. To raise the money they pretend to be another band and they take the other band's place, and the money the other band would have earned, at a local country bar. Unfortunately, they consume so many beverages that the wages amount to less than they owe the bar when the performance ends. Rather than settle their tab, they drive away without paying. These acts, which are essentially fraud and theft, are contrary to the natural law because they are acts of injustice.

An action is genuinely good or bad depending on whether the action's end promotes or hinders the common good.¹⁰³ The acts of fraud and theft are not good and are contrary to the common good if done purely out of a desire to possess the stolen money.¹⁰⁴ This is because, as outlined above, the good of a well-functioning human society rests on a sense of the justice inherent in the equality of each person having what is rightfully his or hers.¹⁰⁵ To achieve the perceived good of illegally possessing another's money via fraud or denying another due money is contrary to justice because equality is defeated.¹⁰⁶

103. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 1, art. 7.

104. *Id.* pt. II-II, q. 66, art. 4.

105. *Id.* pt. II-II, q. 66, art. 5.

106. *Id.*

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Having said this, material objects and wealth exist to support human needs.¹⁰⁷ If one is in “manifest and urgent” need then he or she must resolve that urgent need by whatever means are available, including creating equality through taking property from one who has more than enough.¹⁰⁸ Taking another’s surplus, even by illegal means, in cases of extreme need is good. This is because under such limited circumstances society’s well-being is promoted through the forced creation of a particular just equality.¹⁰⁹

As this example of the Blues Brother’s fraud and theft demonstrates, a person’s will is not always attracted to what is genuinely good. Achieving a goal that is truly good requires a variety of intellectual and moral qualities to apprehend and then, in the appropriate way, pursue the goal.¹¹⁰ Actions are good or moral if they accord with reason and are bad if they are contrary to reason.¹¹¹ In other words, while the will desires what seems to be good, reason should desire what is truly good in the sense of what also promotes the common good.

Given that the human will only wants what at least seems to be good, human reason must be assisted in deciding what is truly good. Assisting human reason to discern the truly good is, Aquinas reasons, law’s function.¹¹²

VIII. ETERNAL AND DIVINE LAW

The solutions to moral questions, as outlined above, are found in practical reason.¹¹³ Practical reason allows humans to recognize and pursue an end as good.¹¹⁴ An end is truly or morally good if it accords with human nature and is directed towards the common good.¹¹⁵ The *Treatise on Law* characterizes any type of law as essentially a “rule and measure” of practical reason, inducing or restraining human action for the common

107. SUMMA THEOLOGICA, *supra* note 1, pt. II-II, q. 66, art. 1.

108. *Id.*

109. *Id.*

110. *Id.* pt. I-II, q. 1, art. 2.

111. “In actibus autem humanis bonum et malum dicitur per comparationem ad rationem Dicuntur autem aliqui actus humani, vel morales, secundum quod sunt a ratione.” *Id.* pt. I-II, q. 18, art. 5.

112. *Id.* pt. I-II, q. 91, art. 2.

113. SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 79, art. 11.

114. *Id.* pt. I-II, q. 94, art. 2.

115. *Id.* pt. I-II, q. 18, art. 5.

good.¹¹⁶ The *Treatise on Law* divides these rules and measures into four categories of law: Eternal Law, Divine Law, Natural Law, and Human Law.¹¹⁷

The Eternal Law, despite the transcendent-sounding name, is found in the imminent. The Eternal Law is the reason for the nature inherent in all things. All things have a nature and all things must act according to their nature.¹¹⁸ Since all things must act according to their nature, a thing's nature functions as a rule and measure (i.e., a law) of its conduct.¹¹⁹ Aquinas credited the nature of things to God's divine plan or wisdom.¹²⁰ But, as mentioned above, Aquinas also believed that one could understand the nature of things and thereby participate in the Eternal Law through human reason.¹²¹

The Eternal Law differs from the Divine Law, the latter being revelation of the Eternal Law, specifically in Scripture, meant to disclose necessary divine truths that exceed human reason.¹²²

IX. THE NATURAL LAW AND PRIMARY PRINCIPLES

The natural law is human participation in the Eternal Law.¹²³ From an understanding of human nature comes the recognition and discernment of the various human inclinations to the good.¹²⁴ In recognizing the various human inclinations to the

116. "[L]ex quaedam regula est et mensura actuum." *SUMMA THEOLOGICA*, *supra* note 1, pt. I-II, q. 90, art. 1. "[O]mnis lex ad bonum commune ordinatur." *Id.* pt. I-II, q. 90, art. 2.

117. *Id.* pt. I-II, q. 91, arts. 1-4.

118. *SUMMA THEOLOGICA*, *supra* note 1, pt. I-II, q. 93, art. 1.

119. *Id.* pt. I-II, q. 91, arts. 1-2.

120. A law is a dictate of practical reason emanating from the ruler. Aquinas attributed each thing's inherent nature to the Divine Ruler, God, who governs with Divine Reason. Since the Divine Reason is not subject to change but is eternal, this type of law is called "eternal." *Id.* pt. I-II, q. 91, art. 1.

121. As the great natural law philosopher John Finnis explains: "Aquinas's notion of . . . participation of the Eternal Law is no more than a straightforward application of his general theory of the cause and operation of human understanding in any field of inquiry." *FINNIS*, *supra* note 75, at 399.

122. For example, Aquinas reasons that knowing God is the source of the eternal law and can only be gained through God's own revelation. *SUMMA THEOLOGICA*, *supra* note 1, pt. I-II, q. 93, art. 2.

123. *Id.* pt. I-II, q. 91, art. 2.

124. *Id.* pt. I-II, q. 94, art. 2. Indeed, the human intellect's purpose is to understand the nature of things, and in this sense humans share nothing in common

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good, humans may then, in exercising their reason and free choice, discover the best way to achieve the good to which human nature inclines.¹²⁵ The natural human inclination to achieve the proper good through reason and free choice is the natural law. The natural law is the way humans as rational beings discover, use, and benefit from the eternal law.¹²⁶

The will is attracted to the good and practical reason recognizes as a basis of action that something should be pursued as good.¹²⁷ This self-evident principle of practical reason leads to the first precept or primary expression of the natural law: “pursue good and avoid evil.”¹²⁸ From this first precept derive the natural law’s other primary principles. These primary principles correlate with human nature’s most essential and basic inclinations. Examples of human reason grasping the natural law’s primary principles are found in such legal contexts as the *U.S. Declaration of Independence*. The *U.S. Declaration of Independence*, for example, proclaims that it is based on “self-evident” “truths” of human equality.¹²⁹ The United Nation’s *Universal Declaration of Human Rights* claims to be based on the premise that all humans “are born free” and “are endowed with reason and conscience.”¹³⁰

Since the ability to reason is one of humanity’s defining traits, Aquinas recognizes that as a rational being, whatever a person knows, he or she knows as an existing person.¹³¹ Arguably the first and foremost primary principle derived from the first precept, therefore, is the right to physical existence: the right to life. One must exist before practical reason can be exercised and its dictates followed. Indeed, the very reason the Blues Brothers’ recklessness is so outrageous is because it

with the other animals. CONTRA GENTILES, *supra* note 25, bk. III-I, ch. 25, ¶ 12; *id.* bk. III-I, ch. 37, ¶ 2.

125. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 91, art. 2.

126. *Id.*

127. *Id.* pt. I-II, q. 94, art. 2.

128. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 94, art. 2.

129. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776), *available at* http://www.archives.gov/exhibits/charters/declaration_transcript.html.

130. Universal Declaration of Human Rights of the United Nations, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), *available at* <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/043/88/IMG/NR004388.pdf?OpenElement>.

131. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 94, art. 2; *see also* RALPH MCINERNEY, *ETHICA THOMISTICA: THE MORAL PHILOSOPHY OF THOMAS AQUINAS* 42 (The Catholic University of America Press rev. ed. 1997) (1982).

demonstrates a disregard for human life and thus a disregard for this most basic natural law principle.

Like the right to life, the first precept would seem to specify other conditions necessary to support life and promote the common and individual good.¹³² These conditions may perhaps be called natural rights. If both the individual and the community are directed to the good then the individual within the community must have access to the means of fulfilling the natural inclinations towards such good. In other words, when the basic hierarchy of natural inclinations emanating from the first precept is viewed against the justice of giving to each what is due, then the ability to pursue these natural inclinations seems necessary.¹³³ In this light, the *Summa Theologica* defends certain legal arrangements as being either natural or at least not contrary to the natural law.

An example of a basic necessity stemming from the natural law's primary principles involves the use and possession of property. The right to use property is derived from the premise that possessing external things is natural to humans.¹³⁴ Humans, because of their reason and free will, must be able to use the things necessary to pursue their good inclinations. Aquinas struggled, however, over the issue of whether property ownership should be communal or personal.¹³⁵ He recognized that, according to the natural law, everything is common property and that private ownership goes against an idea of allowing community access to necessary things.¹³⁶ He seems to base this point on the observation that all objects and animals are free in nature and that humans are not naturally born with any

132. The term "right" should be defined. A "legal" right refers to a right recognized in existing legislation or Human Law. A legal right exists when passed into positive law and its scope is limited to the enacting jurisdiction. Legal rights carry enforceable claims and sanctions against others. A "legal right" differs from a "moral" right. A "moral right" refers to a moral claim that lawmakers may or may not recognize in positive law. Moral claims are not, therefore, necessarily conditioned on legal recognition. See, e.g., Ralph McInerny, *Natural Law and Human Rights*, 36 AM. J. JURIS. 1, (1991). Aquinas uses the term "*ius naturalis*" (natural right) in his writings but he is not using the term in the sense of a basis to enshrine a human right in positive law. Yet the existence of some natural entitlements or claims is latent in his philosophy.

133. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 94, arts. 2-3.

134. *Id.* pt. II-II, q. 66, art. 1.

135. *Id.*

136. *Id.* pt. II-II, q. 66, art. 2.

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property. Whatever is contrary to the natural law, Aquinas reasons, is unlawful.¹³⁷ He solves this conflict in favor of private property by saying common ownership is not a dictate of the natural law.¹³⁸ While the natural law dictates the use of things, the natural law does not dictate how such things are to be held or titled. The modes of property possession are, in a sense, human conventions.¹³⁹

If one is to follow his or her naturally good inclinations to have property and live in community, then wages earned through labor are necessary to support such inclinations. In other words, the right to work would seem to emanate from the natural law. Aquinas uses the term “manual labor” to describe all human occupations by which one can lawfully earn a living.¹⁴⁰ He reasons that nature provided humans with hands instead of weapons and clothes so that weapons, clothes, and all other necessities might be obtained.¹⁴¹ Manual labor is directed to several things including the avoidance of idleness but, more importantly, providing basic necessities such as food.¹⁴²

To say that Aquinas’ philosophy contains at least latent arguments for certain moral or legal rights is not to say Aquinas’ philosophy contains latent arguments for all of the moral or legal rights taken for granted in Western society. If freedom or liberty is any type of moral right, then Aquinas’ conclusions on the subject of slavery are flawed.¹⁴³ Yet, while seeing slavery as consistent with the natural law, Aquinas still afforded slaves a

137. SUMMA THEOLOGICA, *supra* note 1, pt. II-II, q. 66, art. 2.

138. *Id.*

139. SUMMA THEOLOGICA, *supra* note 1, pt. II-II, q. 57, art. 2.

140. *Id.* pt. II-II, q. 187, art. 3.

141. *Id.* (“Unde et natura manus homini dedit loco armorum et tegumentorum, quae aliis animalibus tribuit, ut scilicet per manus haec et omnia necessaria conquirant.”).

142. *Id.*

143. Later generations should never use their own moral standards to seriously judge the thoughts and actions of prior generations. This tenet’s importance grows with the distance in time separating the generations. Having said this, Professor Brian Tierney has argued that, despite Aquinas’ stated position on slavery, Catholic philosophers at least two centuries before the Enlightenment had relied on Aquinas’ work to argue for the natural right of freedom as springing from the natural law. Brian Tierney, *The Idea of Natural Rights-Origins and Persistence*, 2 NW. J. INT’L HUM. RTS. 2, ¶ 28 (2004); BRIAN TIERNEY, *THE IDEA OF NATURAL RIGHTS: STUDIES ON NATURAL RIGHTS, NATURAL LAW AND CHURCH LAW* (Wm. B. Eerdmans Publishing Co. 1997).

certain amount of dignity because a slave, as a man, is endowed with reason.¹⁴⁴ Therefore, perhaps Aquinas' philosophy, while ill-reasoned on the subject of slavery by every modern standard, is well-reasoned, when viewed from a different angle, on the subject of why human liberty should be a basic right. If humans are rational and have free will, then to deny them liberty would be against the natural law.

X. HUMAN POSITIVE LAW

The final category of law in the *Treatise on Law* is Human Law. Human Law is, or should be, directed towards the good of sustaining order within and among communities. The need for Human Law is a secondary principle that flows from the more primary principles. To allow people in society the basics necessary to pursue the good and avoid evil, society must establish “ordinances of reason”¹⁴⁵ that serve as rules and measures¹⁴⁶ of human conduct and interaction (i.e., Human Law). Legislation against endangering human life, for example, would flow from the first precept to pursue good and avoid evil through to a primary principle that life should be preserved and not endangered. The primary principle that life should be preserved and not endangered leads to a secondary principle that society should legislate against endangering or taking human life. Hence, society develops legislation against murder, reckless endangerment, etc.

Aquinas recognizes two levels of Human Law in his *Treatise on Law*.¹⁴⁷ The first, involves civil legislation arising out of popular or customary practices.¹⁴⁸ Traffic regulations are examples of this type of law. Whether a stop sign is placed at all four corners of an intersection or only at two corners is a customary law with no legal authority beyond the enacting human institution or community itself. Such customary laws,

144. “[S]ervus, in quantum servus, est aliquid domini. Uterque tamen prout consideratur ut quidam homo, est aliquid secundum se subsistens ab aliis distinctum. Et ideo in quantum uterque est homo, aliquo modo ad eos est iustitia. Et propter hoc etiam aliquae leges dantur de his quae sunt . . . domini ad servum.” SUMMA THEOLOGICA, *supra* note 1, pt. II-II, q. 57, art. 4.

145. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 90, art. 1.

146. *Id.*

147. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 95, arts. 2, 4.

148. *Id.* pt. I-II, q. 95, art. 3.

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under many circumstances, have no real moral content.¹⁴⁹ The common good can be pursued whether two or four intersections have posted stop signs. When the Blues Brothers run a stop sign, as they often do in the movie, their act acquires a moral facet because they are intentionally violating the civil law so as to drive recklessly. But even in such a case, any moral facet of driving recklessly comes from the potential for injury or death (i.e., the violation of the primary precept and primary principles) and not from violating a popular or customary practice *per se*.¹⁵⁰

The second type of Human Law carries more moral weight; this is the law of nations or *ius gentium*.¹⁵¹ Today the term “law of nations” is commonly understood as synonymous with international law. Aquinas, however, speaks of the law of nations as an expression of the common law’s primary principles that are found to be common in all societies regardless of other popular or customary practices.¹⁵²

Further developing the traffic regulations example may help to explain how the law of nations is related to, but differs from, human civil law. When the Blues Brothers intentionally run stop signs, exceed the posted speed limits, drive on the wrong side of the road, etc., they violate local civil law. The fact that the Blues Brothers’ reckless conduct would be illegal in every society, however, is an example of *ius gentium*. The law of nations is what compels all societies to regulate traffic in some fashion. To pursue good and avoid evil (the first precept) the members of a society ought not harm each other (a primary principle drawn

149. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 95, art. 4; *id.* pt. I-II, q. 100, art. 11; *id.* pt. I-II, q. 104, art. 1.

150. An insight on how Aquinas viewed positive law may be found in his example of the craftsman. SUMMA THEOLOGICA, *supra* note 1, pt. II-II, q. 57, art. 1. A craftsman, Aquinas argues, has a mental image of the thing he intends to make before starting work that is “called the rule of his craft.” *Id.* “[S]o too” Aquinas reasons “there pre-exists in the mind [of the ruler] an expression of the particular just work which the reason determines, and which is a kind of rule of prudence.” *Id.* If this rule of prudence is expressed in writing it is called a “law.” *Id.* The example of Aquinas’ craftsman takes a quite literal approach to positive “law.” Positive law is not necessarily the same as what is “right” (“right” in the sense of “proper” and not in the sense of a legally recognized right to something). Instead, positive law is merely a written expression of what should be right according to the ruler’s mind. This example does, however, suggest that any good found in positive laws must first exist like a rule of craft in the intellect. *Id.*

151. *See, e.g.*, FINNIS, *supra* note 75, at 296.

152. *Id.*

from the first precept). Among the more secondary principles flowing from the first precept and primary principles is arguably the ability to travel. The ability to travel fulfills basic human desires and inclinations—to engage in commerce, explore, and interact in society. In other words, the ability to travel promotes the pursuit of the good. Potentially endangering human life violates the first of the primary principles—life should be preserved and not endangered. Every society, therefore, in some way seeks to protect innocent human life by outlawing actions that endanger human life. Hence, every society regulates traffic in an attempt to minimize the threat that human life is recklessly endangered while driving automobiles; this is the law of nations. On the other hand, what types of actions qualify as reckless while driving an automobile and the consequences of driving recklessly (e.g., fines, license forfeiture, prison sentences, etc.) is human civil law.

This example of the Blues Brothers' reckless driving follows a fairly straight line from the first precept to the final, secondary principles justifying the "civil" and "nations" law. Some legal conclusions require greater analysis because such conclusions stretch farther from the natural law's first precept. Therefore, unlike the first precept and the primary principles (which everyone can deduce), some legal conclusions require careful reflection.¹⁵³ In other words, lawmakers must reason the particular application of the primary principles to more complex social exchanges.¹⁵⁴

153. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 100, art. 3.

154. *Id.* pt. I-II, q. 95, art. 1. Aquinas seems to favor a system of positive law codes over a common law system. Quoting Aristotle, he asserts that "it is better that all things be regulated by [positive law codes], than left to be decided by judges." *Id.* Aquinas offers three reasons to support his position. First, finding a few wise men who are competent to frame right laws is easier than finding the many men necessary to rightly judge every single case. *Id.* Secondly, lawmakers have longer and more leisurely time than judges to determine a just long-term result. *Id.* Thirdly, lawmakers consider abstract future possibilities while judges focus on present emergencies." *Id.* ("Ad secundum dicendum quod, sicut philosophus dicit, I Rhetor., melius est omnia ordinari lege, quam dimittere iudicium arbitrio. Et hoc propter tria. Primo quidem, quia facilius est invenire paucos sapientes, qui sufficiant ad rectas leges ponendas, quam multos, qui requirentur ad recte iudicandum de singulis. Secundo, quia illi qui leges ponunt, ex multo tempore considerant quid lege ferendum sit, sed iudicia de singularibus factis fiunt ex casibus subito exortis. Facilius autem ex multis consideratis potest homo videre quid rectum sit, quam solum ex aliquo uno facto. Tertio, quia legislatores iudicant in universali, et de futuris, sed homines iudiciis praesidentes iudicant de praesentibus, ad quae afficiuntur amore vel odio, aut aliqua cupiditate; et sic eorum depravatur iudicium.").

XI. LAW AND TOLERANCE

Someone with legislative authority must promulgate the ordinances of reason that serve as rules and measures inducing or restraining human action for the common good.¹⁵⁵ Aquinas seems to recognize at least two forms of legislative authority: a democracy or a representative autocracy.¹⁵⁶ The common good, as described above, should be the entire community's goal, and since civil laws direct the entire community towards its proper end, the entire community, either as a group of individuals or through a representative individual, should participate in promulgating the civil laws.¹⁵⁷

The Lawmaker's task in drafting good law requires a certain benevolence and understanding of human nature. The purpose of Human Law as rules and measures is to express the right order of a community.¹⁵⁸ Human legislation is valid to the extent that it conforms to the natural law's principles and its "force depends on the extent of its justice."¹⁵⁹ As a result, Aquinas believed that any Human Law that fails to conform to the law of nature is "a perversion of law."¹⁶⁰

While Human Law is meant to apply equally to all who comprise a society, the individuals who comprise a society all have different abilities, and each group of individuals has its own

Aquinas does admit, however, that lawmakers cannot cover every possible contingency and so judges are necessary to adjudicate matters that cannot be covered by legislation and to weigh evidence; i.e., to decide whether something has happened or not happened. *Id.* ("Ad tertium dicendum quod quaedam singularia, quae non possunt lege comprehendi, necesse est committere iudicibus, ut ibidem philosophus dicit, puta de eo quod est factum esse vel non esse, et de aliis huiusmodi.").

155. *SUMMA THEOLOGICA*, *supra* note 1, pt. I-II, q. 90, art. 4. Aquinas reasons that a civil law must actually be promulgated in order to have binding force. *Id.*

156. *Id.* pt. I-II, q. 90, art. 3.

157. "And therefore the making of a law belongs either to the whole people or to a public personage who has care of the whole people: since in all other matters the directing of anything to the end concerns him to whom the end belongs." *Id.* ("Et ideo condere legem vel pertinet ad totam multitudinem, vel pertinet ad personam publicam quae totius multitudinis curam habet. Quia et in omnibus aliis ordinare in finem est eius cuius est proprius ille finis.").

158. *SUMMA THEOLOGICA*, *supra* note 1, pt. II-II, q. 57, art. 1.

159. *Id.* pt. I-II, q. 95, art. 2 ("Unde in quantum habet de iustitia, intantum habet de virtute legis.").

160. *Id.* ("Unde omnis lex humanitus posita intantum habet de ratione legis, in quantum a lege naturae derivatur. Si vero in aliquo, a lege naturali discordet, iam non erit lex sed legis corruptio.").

unique customs. Quoting St. Isidore, Aquinas reasons that a society should draft its positive laws in such a way as to take both human nature and the local customs into account.¹⁶¹ The law, in its role of properly ordering society, should not burden imperfect people with the obligations they cannot meet, even if the more virtuous in the community can more easily heed such obligations. The state, for example, cannot pass a law requiring all of its citizens to abstain from evil. “Otherwise,” Aquinas writes, “these imperfect ones, being unable to bear such precepts, would break out into yet greater evils.”¹⁶²

An example of this idea in practice may again be found in the Blues Brothers’ actions. Throughout the story, the brothers lie to each other and to most of the people they cross. Their act of lying (i.e., making a knowingly false statement to deceive), however, breaks no particular positive law. This would not be the result if the brothers’ lying amounted to “perjury” (making a knowingly false statement in order to deceive while under a legally enforceable duty to tell the truth).¹⁶³ States typically prohibit and penalize perjury but not lying.¹⁶⁴ To enforce a law against lying in all of its forms, because of the pervasiveness of such a vice, would result in a totalitarian, and therefore objectionable, form of government. To maintain society, Human Laws should only prohibit those vices from which most people can abstain and, more importantly, those actions that harm other people.¹⁶⁵

Aquinas’ views on legislation are also found in passages where he addresses objections to non-Catholic religious practices.

161. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 96, art. 2 (“Unde oportet quod etiam leges imponantur hominibus secundum eorum conditionem, quia, ut Isidorus dicit. ‘Lex debet esse possibilis et secundum naturam, et secundum consuetudinem patriae.’”). Aquinas also recognizes that custom “has the force of law, abolishes law, and is the interpreter of law.” *Id.* pt. I-II, q. 97, art. 3 (“et secundum hoc, consuetudo et habet vim legis, et legem abolet, et est legum interpretatrix.”).

162. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 96, art. 2 (“Alioquin imperfecti, huiusmodi praecepta ferre non valentes, in deteriora mala prorumperent . . .”).

163. *See, e.g.*, 18 U.S.C. § 1621 (2012).

164. *Id.*

165. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 96, art. 2 (“Et ideo lege humana non prohibentur omnia vitia, a quibus virtuosi abstinere; sed solum graviora, a quibus possibile est maiorem partem multitudinis abstinere; et praecipue quae sunt in nocentum aliorum, sine quorum prohibitione societas humana conservari non posset, sicut prohibentur lege humana homicidia et furta et huiusmodi.”). Aquinas’ position assumes that societal customs do not oppose the natural law. Some evils exist, like murder, which are so grave that they threaten the community’s stability and cannot be tolerated.

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He admits that some practices that he finds “intolerable” (on theological grounds) should nevertheless be tolerated. Toleration is encouraged to avoid greater evils.¹⁶⁶ In supporting this position, Aquinas adds that “God is all-powerful and supremely good, nevertheless He allows certain evils to take place in the universe, which He might prevent, lest, without them, greater goods might be forfeited, or greater evils ensue.”¹⁶⁷ Thus, human governments should not be coercive if God is not coercive. The state must at least tolerate the established customs and practices of its minorities, even those of which it disapproves. This position finds further support in Aquinas’ doctrine of free choice outlined above. If all persons are free to choose among apparent goods, then the community arguably must not encroach upon this natural freedom.

XII. SELF-EVIDENT AND UNCHANGING

Aquinas describes the first precept as self-evident and the primary principles of natural law on which Human Laws are based.¹⁶⁸ They exist in the human soul in the same sense as things that are “known are in the knower.”¹⁶⁹ His description of “self-evident,” however, is nuanced. To Aquinas, the primary principles of natural law are self-evident in the same sense that a comparison between two things is obviously correct or not.¹⁷⁰ The statement that “a bird is not a cat” is immediately and self-evidently true.¹⁷¹ Applying Aquinas’ idea of “self-evident” to the

166. Evils such as “the scandal or disturbance that might ensue, or some hindrance to the salvation of those who if they were unmolested might gradually be converted to the faith.” *SUMMA THEOLOGICA*, *supra* note 1, pt. II-II, q. 10, art. 11 (“[N]on sunt aequaliter tolerandi, nisi forte ad aliquod malum vitandum, scilicet ad vitandum scandalum vel dissidium quod ex hoc posset provenire, vel impedimentum salutis eorum, qui paulatim, sic tolerati, convertuntur ad fidem.”).

167. *Id.* pt. II-II, q. 10, art. 11 (“Deus autem, quamvis sit omnipotens et summe bonus, permittit tamen aliqua mala fieri in universo, quae prohibere posset, ne, eis sublati, maiora bona tollerentur, vel etiam peiora mala sequerentur. Sic igitur et in regimine humano illi qui praesunt recte aliqua mala tolerant, ne aliqua bona impediatur, vel etiam ne aliqua mala peiora incurrantur . . .”).

168. *SUMMA THEOLOGICA*, *supra* note 1, pt. I-II, q. 94, art. 2; MCINERNY, *supra* note 131, at 41.

169. *SUMMA THEOLOGICA*, *supra* note 1, pt. I-II, q. 94, art. 1.

170. MCINERNY, *supra* note 131, at 41.

171. The statement above that “a bird is not a cat” is immediately self-evidently true *but* only to anyone who has seen a bird and a cat. So one needs experiences to develop reason. Aquinas explores the relationship between one’s experiences and the innate ability to grasp the first precepts in some of his other works (e.g., “*Questiones Disputatae Veritate*”), but such subject is beyond this paper’s scope.

“traffic laws” example, he is not saying that the need to regulate traffic is a secondary principle that is a per se self-evident end. Instead, as the automobile’s use increased, the unchanging primary principle to preserve human life and safety caused the regulation of automobile traffic to be a self-evident necessity to promote the common good.

Regardless of how much society may change, the natural law’s primary principles are unchangeable. By the use of “unchangeable,”¹⁷² Aquinas draws a distinction between change as “addition to” and change as “subtraction from” the natural law. Human reason, working with the natural law, causes frequent improvements in society. Such improvements necessitate additions to, or modifications of, existing positive law.¹⁷³ The frequent and necessary changes to positive law do not mean the natural law itself is changing. Instead, changes in positive law simply reflect the reasoned recognition that the natural law’s primary principles now apply to new or additional conditions.¹⁷⁴ The human conventions that establish the modes of property possession mentioned above are in a sense additions to the natural law that reason has devised to further human ends.¹⁷⁵ The need to regulate automobile traffic to promote human safety and discourage people from driving like the Blues Brothers is another example of new circumstances, which Aquinas could never have imagined, leading to new positive law based on the unchangeable primary principles.

On the other hand, if a change in the natural law means a subtraction of a primary principle, then in this sense, the natural law is unchangeable. If society ever abolishes traffic laws, then such abolition would be because such laws are no longer practical (perhaps society no longer uses automobiles) and not because society now believes that people should drive recklessly like the Blues Brothers.

While the natural law’s general principles are unchangeable and self-evident, people do not always apply natural law

172. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 94, art. 5.

173. *Id.*

174. Aquinas provides the example that humans are naturally born naked and this facet of the natural law is unchangeable. The use of clothes as further protection against the elements is a self-evident necessary good that in practice is an addition to the natural law.

175. *Id.* pt. II-II, q. 66, art. 2.

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principles uniformly. In other words, humans do not all pursue good and avoid evil in the same way. This is because, while “truth” is universal, the “truth” of some point may not be universally known.¹⁷⁶ One’s reckless driving could be the result of ignorance of the law rather than intentional recklessness. Ignorance of the law may not be a *defense* to an accusation of reckless driving, but ignorance of the law may excuse one from the moral implications of reckless driving. In other words, ignorance of the fact that one is legally obligated to drive on the right side of the road may lead one to conclude that driving on the left side is morally acceptable and so not a violation of the natural law.

XIII. SYNDERESIS AND CONSCIENCE

Because the natural law’s first precept and primary principles are self-evident to human reason, Aquinas deduces the human mind must innately “have”¹⁷⁷ the natural law to some degree.¹⁷⁸ He places this innate grasp of the natural law in a process called “synderesis.”¹⁷⁹ Synderesis is the ability to realize on some level, and without any prior experience, that some thought or act is morally right or wrong.¹⁸⁰ Aquinas appears to base the idea of synderesis on the observation that often the natural law’s self-evident principles just assert themselves spontaneously into an otherwise passive thought process. This spontaneity allows one to recognize immediately and without any active discernment a thought or act as being with or against the natural law.¹⁸¹ Synderesis cannot be extinguished from the soul¹⁸² because synderesis is what makes the human soul rational.¹⁸³ Since the ability to at least sense some “good” in a

176. Individuals will apply the primary principles differently depending on personal integrity (or what Aquinas calls “practical rectitude”). SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 94, art. 4.

177. Aquinas deduces the human mind must “have” the natural law in the sense that synderesis is a “habit” found in relation to the human soul. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 50, art. 2. Aquinas uses the word “habit” as a derivative of the Latin “habere,” meaning “to have.” *Id.* pt. I-II, q. 49, art. 1.

178. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 94, art. 1.

179. *Id.* pt. I, q. 79, art. 12.

180. *Id.*

181. *Id.*

182. ST. THOMAS AQUINAS, QUESTIONES DISPUTATAE DE VERITATE q. 16, art. 3 (Joseph Kenny, O.P. ed., Robert W. Mulligan et al. trans., Henry Regnery Company 1952-1954) [hereinafter DE VERITATE].

183. “For this light belongs to the nature of the soul, since by reason of this the

decision is basic to any reasoned decision, to lose synderesis is to lose the ability to reason altogether.¹⁸⁴

An example of synderesis in action appears early in the *Blues Brothers* when Elwood tells his brother Jake: “all I’m saying is we got to figure out some way to get that money [to save the orphanage] honestly.”¹⁸⁵ Elwood is innately aware of the moral principle that getting money dishonestly through fraud or theft is wrong. He also recognizes that given their limited resources and the large amount of money they must raise in a short period of time, the only viable options available to them amount to some form of fraud or theft.

Synderesis may seem to be similar to the idea of “conscience,” but Aquinas treats synderesis and conscience differently.¹⁸⁶ While synderesis allows the intellect to *recognize* the primary principles of the natural law, conscience enables the intellect to apply the good of the primary principles to specific situations.¹⁸⁷ In other words, synderesis is the passive and conscience is the active participation in the natural law.

Despite Elwood knowing the tax money must be raised honestly, the brothers decide instead to act dishonestly. As mentioned above, to raise money the brothers pretend to be another band and take that band’s place, and the money the other

soul is intellectual.” *Id.* (“[H]oc enim lumen est de natura ipsius animae, cum per hoc sit intellectualis.”).

184. DE VERITATE, *supra* note 182, q. 16, art. 3.

185. BLUES BROTHERS: UNRATED VERSION 17:51 (NBC Universal 1980) [hereinafter BLUES BROTHERS].

186. Aquinas’ conclusion on this issue is not surprising; any other conclusion would go against observable human nature.

187. SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 79, art. 13. Aquinas saw conscience’s application of knowledge through synderesis to action as allowing for the recognition that something should or should not be done (or what he calls the “witness” of conscience). This recognition causes one to judge that something should or should not be done (and in this sense conscience “incites or binds”). Through conscience one then judges that an accomplished action was well or badly executed (the conscience that “excuses, accuses, or torments”). *Id.* pt. I, q. 79, art. 13. Timothy E. O’Connell in *Principles of Catholic Morality* describes these three dimensions of the human conscience in more contemporary terms. TIMOTHY E. O’CONNELL, PRINCIPLES OF CATHOLIC MORALITY (Harper Collins Publishers 1990). The first dimension (Conscience #1) is the perception of right and wrong. *Id.* at 110-11, 117. The second dimension (Conscience #2) is revealed in what leads the individual to choose the right. *Id.* at 111-12, 114. O’Connell sees the third dimension (Conscience #3) as conscience’s judgment. *Id.* at 112-14; *see also*, MCINERNEY, *supra* note 131, at 105.

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band would have earned, at a local performance. Beginning with “avoid evil,” the deduction of primary and secondary principles should lead Jake and Elwood to conclude that pretending to be someone else and taking his salary is a form of lying and stealing and therefore ought not to be done. Yet they do not reach this conclusion and this can be explained in at least two ways.

First, the brothers knew lying and stealing were bad but their life experiences did not teach them that pretending to be someone else and taking their money are forms of lying and stealing. In this instance they are not acting contrary to their conscience and so their actions would not be morally wrong. After all, they did actually perform the music themselves and were paid for *their*, not the other band’s, performance. A second explanation is that they knew lying and stealing were bad and they simply acted contrary to their conscience. Perhaps they found lying and stealing thrilling and therefore pleasurable. In this second instance, acting contrary to their conscience would be morally wrong.

One could expect synderesis to cause the Blues Brothers to realize that not only were their plans to raise the money morally wrong, but their actions to carry out their plans were contrary to the common good and therefore to be avoided. At this point in the story, however, the interaction of synderesis and conscience shows why the brothers conclude the natural law principles they know innately through synderesis do not apply to their immediate goal of raising money.

In addition to a perceived good in saving the orphanage, the brothers are also moved by a sense that God wants them to do whatever is necessary to achieve this goal. This sense of a divine command motivates their actions. For example, when the brothers deliberate over whether to speed away from, and to lose, the police by recklessly driving through a crowded shopping mall, they affirmatively resolve the question by saying, “We’re on a mission from God.”¹⁸⁸ The idea of saving the orphanage came from the brothers’ passive synderesis recognizing a primary natural law principle that children should be protected and sustained. Their conscience then dictated that they take any action, regardless of how extreme or contrary to other natural law principles, to uphold this primary natural law principle.

188. BLUES BROTHERS, *supra* note 185, at 28:21.

If conscience is the application of principles to action, then one may well wonder whether the Blues Brothers are indeed obliged to take any action, regardless of how extreme or contrary to other natural law principles, to save the orphanage. Asked another way: Are the brothers bound by a conscience that appears so grossly mistaken? Aquinas answers this question in Article III of Question 17 of *De Veritate* with the statement, “conscience is certainly binding.”¹⁸⁹ For the brothers to be “bound” by their conscience, they must feel some necessity is imposed on their conscience.¹⁹⁰ In this instance, the belief of being on a mission from God binds their conscience and imposes on their conscience the sense of necessity to accomplish their mission at any cost.

The idea of a divine mission to save the orphanage came to the brothers as they listened to a lively sermon preached by James Brown. Could hearing such a sermon result in an imposed necessity on their conscience? Aquinas reasons that necessities may be imposed through “coercion” or “inducement.”¹⁹¹ Coercion occurs when some outside power or person forces one to act. Coercion does not apply to the brothers’ predicament for two reasons. First, no outside power or person is forcing them to do anything; no one is blackmailing or threatening them to save the orphanage. Second, because their wills are free to judge, no type of spiritual “coercion” to conscience could externally force them to believe that God is missioning their actions. Ultimately the Blues Brothers must each independently accept and believe they are on a mission from God or not.

While the sermon could not force them to independently both accept and believe they are on a mission from God, it may have led or induced them to such a belief. Inducement occurs when one acts on a desired end or for some reward.¹⁹² James Brown’s sermon introduces to the brothers’ wills an attraction to the idea that God is calling them to achieve the desired end of saving the orphanage.

Even if the brothers’ wills are induced to believe that God is calling them to save the orphanage at all costs, this still does not

189. “Dicendum, quod conscientia procul dubio ligat.” DE VERITATE, *supra* note 182, q. 17, art. 3.

190. *Id.*

191. *Id.*; SUMMA THEOLOGICA, *supra* note 1, pt. I, q. 79, art. 13.

192. DE VERITATE, *supra* note 182, q. 17, art. 3.

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solve the problem of the binding nature of such a faulty belief. Quoting St Augustine, Aquinas recognizes the problem of the binding nature of a faulty conscience. “[S]in is a word, deed, or desire contrary to the law of God. Therefore, nothing binds under pain of sin except God’s law. But a false conscience is not in accordance with God’s law. . . . Therefore, it does not bind under pain of sin.”¹⁹³ On the other hand, one cannot seem to be able to avoid sin “if his conscience, no matter how mistaken, declares that something which is indifferent or intrinsically evil is a command of God, and with such a conscience he decides to do the opposite.”¹⁹⁴ To go against one’s conscience in such a case is a decision to specifically act against God’s law, which is always sin. This is because the object of the human will is not the good but the good as reason presents it.¹⁹⁵ So Aquinas reasons that, although a mistaken conscience can be changed, “nevertheless, as long as it remains, it is binding, since one who acts against it necessarily commits a sin.”¹⁹⁶

The error through faulty reasoning must be made, for lack of a better term, in “good faith.” If the brothers intentionally acted against their conscience and claimed being on mission from God as an excuse rather than as a belief, then they are not acting on conscience but simply failing to adhere to synderesis. Willfully failing to adhere to synderesis renders the resulting actions wrong.¹⁹⁷

Regarding the ideas of synderesis and conscience, Aquinas has come full circle to the idea of freedom of the will. A false conscience born of true ignorance is not a free choice because it is not willful and therefore the resulting action is not wrong. An action that goes against conscience is not born of true ignorance but is a free choice and therefore the resulting action is wrong. As long as the brothers act in good and well-formed belief that “they are on a mission from God,” they are not acting immorally

193. DE VERITATE, *supra* note 182, q. 17, art. 4 (“Quia ut dicit Augustinus, peccatum est dictum vel factum vel concupitum contra legem Dei. Ergo nihil ligat ad peccatum nisi lex Dei. Sed conscientia erronea non est secundum legem Dei. Ergo non obligat ad peccatum.”).

194. “Non videtur . . . quod aliquis peccatum evadat, si conscientia, quantumcumque errans, dictet aliquid esse praeceptum Dei sive sit indifferens sive etiam per se malum; si contrarium, tali conscientia manente, agere disponat.” *Id.*

195. SUMMA THEOLOGICA, *supra* note 1, pt. I-II, q. 8, art. 1.

196. DE VERITATE, *supra* note 182, q. 17, art. 4.

197. *Id.*

even though the rest of society considers their actions to be illegal and immoral.

The Blues Brothers' story ends with the orphanage being saved and the brothers landing in jail for violating Human Law. Aquinas would probably not quarrel with this result given his views that a community's laws must be rational directives promoting the common good. Saving the orphanage was a good end, but few would argue that the means were in proportion to that end.

While society may impose civil penalties for violating positive Human Law, at least the perpetrator is, if acting in good conscience, not immoral. Conversely, those who act in bad faith, act against the natural law and also subject themselves to society's punitive measures. A clear conscience would not be a defense (though perhaps at best a mitigation) to society's punitive measures. After all, many people have suffered society's condemnation for following their own conscience.

XIV. CONCLUSION

The Blues Brothers' means to achieve their goals may be described as extreme, outrageous, and for many, even funny because they violate a sense of "good" that goes beyond just being illegal. In other words, the brothers' actions offend the fundamental standards that should govern human conduct and society to the extent of being farcical. This sense of right and wrong that makes their actions laughable comes from human reason that intuitively recognizes on some level what acts conform to the basic principles of human conduct. Like all things, humans have a nature that functions as a law of conduct; everything must act according to its nature. Human nature is rational and inclined towards certain good. Because of reason and free will, humans can discern those actions that lead to humanity's ultimate and common good. The natural human inclination to achieve the proper good through reason and free choice is the natural law.