

ST. THOMAS AQUINAS AND LAW¹

A QUOTATION from the fearless and original thought of Baron Friedrich von Hugel² will be our justification with those who may consider our praise of St. Thomas Aquinas unjustly superlative. He writes: “. . . this Norman-Italian Friar Noble, a soul so apparently derivative and abstractive, is more complete and balanced and penetrates to the specific genus of Christianity more deeply than Saints Paul and Augustine, with all their directness and intensity. . . . No one has put this point better than Professor Troeltsch: “The decisive point here is the conception peculiar to the Middle Ages of what is Christian as supernatural.”’

Whilst I hesitate to give my master, St. Thomas, the praise of this latest panegyrist, I feel that his words will be a clue to my attempt to deal with St. Thomas and Law. Indeed, the names mentioned in the quotation are more akin to the subject of this paper than, perhaps, the writer thought. In the life of St. Paul the idea of Law had played almost the major part. The seeming opposition between Law and faith, or works and faith, had, for a moment, led him into opposition with a section of the Church; and even with St. Peter. Augustine, too, like St. Paul, had come to an intellectual and practical rejection of Manichean Dualism by the master-vision of a creative Law which was, at the same time, one, good, and all-powerful; indeed so powerful in its goodness as to be able to turn evil to good.

If, then, as von Hugel and Troeltsch remark, Aquinas has outdistanced Paul and Augustine in his

¹ A paper read to the Aquinas Society in the Common Room, Middle Temple, London.

² *Essays and Addresses* (J. M. Dent, 1921), p. 87.

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presentation of Christianity as the supplement and perfection of nature, few spheres of St. Thomas's thought present, as the sphere of Law presents, his special genius.

That special genius found itself by nature and circumstance drawn to the profound study of the principles of Law. Perhaps the world has never known a mind of greater analytical and synthetical power. If we were asked what word or idea we should single out as indicative of the mind of Aquinas, we should single out the word *Ordo* or *Order*. In seeking for order, even amongst a mass of seemingly disorderly facts or theories, it is often amazing how he finds a hidden law. It would almost seem as if unity, order, law was the first quality his mind sought in all its life-long searching.

Such was his mental nature. But his instinct for Law was furthered by the circumstances of his time. He was so much a child of his age, and even of his generation, that, had he been born a generation sooner—or even later—his legacy to all time might have been less generous. His vast powers of synthesis working on a memory of equal calibre enabled him to use all that previous thinkers had discovered in the matter of Law. Yet though he borrowed, as no other thinker has ever borrowed, from the past, he overpaid his borrowings with usurious interest. Only those who have second-hand acquaintance with his thought could look on him as a mere summarist or compiler. Even Aristotle's master-piece, the *Nicomachean Ethics*, is so enriched in form and matter by Aquinas that it might well be disputed who is the real founder of *Ethics* as a Science.

As St. Thomas borrowed heavily from his intellectual contemporaries of all the preceding centuries, he borrowed equally from the men of thought and action whom he found in the world of his day. He was a

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kinsman of Frederick II, who, in 1231, had commissioned Pietro delle Vigne to draw up the famous code called 'The Laws of Sicily.' Later on, he was the fellow-friar of Raymund of Pennafort, of Spanish birth and Bolognese training, whose *Decretals*, published in 1234, were designed by Gregory IX as an answer to the Emperor's *Laws of Sicily*. So close was the intellectual fellowship between Raymund of Pennafort and St. Thomas that the latter's apologetic masterpiece, the *Summa Contra Gentiles*, was suggested by the former.

A chronological view of St. Thomas's studies on Law shows how continuous and deep was his thought. Already (A.D. 1254-56), between his twenty-seventh and thirtieth year, he is explaining and enriching the scanty reference to the Law of the Decalogue in his Commentary on the Sentences of Peter Lombard. The commentary, though much fuller and richer than the text commented, has scarcely five thousand words. Few authorities are quoted. Aristotle is quoted most; yet only his *Metaphysics* and *Ethics*; never his *Politics*. Yet the slender treatise of Aquinas is an amazing achievement of a mind still under thirty years.

Four or five years later he published his *Summa Contra Gentiles*, suggested and no doubt revised by Raymund of Pennafort. As might be expected in a book written to meet discussion with Jews and Mohammedans, there is a treatise on the Old Law. But as the book had to study brevity, the treatise on Law is of no greater length than that of his commentary on the Lombard. Yet it touches on the analysis of the Torah which was to make so valuable a part of his final treatise on Law.

That final and classical treatise, *De Lege (On Law)*, was written as part of his *Summa Theologica* at Bologna, the home of Legal Science, in the fullness of his mental power, about two years before his death.

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The vast work, the *Summa Theologica*, of which this treatise *On Law* is a part, was and still is the greatest, if not the only, synthesis of human thought. None of the intellectual giants of Hellas had dreamed—or at least had realised their dream—of setting out the thoughts that really mattered in a unity of thought. But what Hellas had not the mind or courage to attempt, the Dumb Ox of Sicily attempted and achieved. The *Summa Theologica*, like so many of the architectural achievements of his age, is not just a masterpiece; but a masterpiece of masterpieces. In design and craftsmanship it is incomparable as a whole; yet the several parts that make up the whole are classical in their perfection. Even the thirteenth century that witnessed so many achievements of daring originality was amazed at what St. Thomas had accomplished in his newly-created Science of Ethics, so soberly called the *Secunda Pars*. Fitly placed in that Ethical treatise, and fitly companioned with Grace as a help to man in his way to his end, was found the treatise on Law.

To place the treatise of Law where St. Thomas had placed it in the vast synthesis of human thought was a stroke of scientific genius. By housing the treatise on Law within the large liberties of Ethics it was made clear that even the Aristotelian Politics were in their essence ethical. To make this clear was to avoid the very imminent danger of making ethics political. It is not certain that Aristotle avoided this danger, even after Plato's Republic had seemed to demand of the organised Community—the ΠΟΛΙΣ, the same moral virtues as were demanded of each citizen. It had not escaped the eye of St. Thomas that in his ethical teaching, Aristotle 'the Philosopher intended to treat of virtues as directed to civic life.'³ Such a view of Ethics was incomplete rather than inaccurate; but its

³ *Summa Theologica*, IIa IIae, Qu. 161, Art. 1, Obj. 5.

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incompleteness could turn to dangerous inaccuracy if Ethics became a branch of Politics. It is significant of this danger that some of our recent Aristotelian experts have maintained that the subordination of Ethics to Politics is the true idea of Aristotle. Whatever may be the opinion of modern followers or historians of Aristotle, his most accredited commentator, Aquinas, by placing the treatise on Law and Politics in the larger treatise of Ethics, has left no burden of doubt upon his own followers.

The number of authors quoted has grown since, some twenty years before, he had written his first thoughts on Law. Yet even this growth has left the number quoted still far from many. Amongst the Greeks, Plato and Aristotle, among the Romans, Cicero (in his *Rhetoric* and *Offices*), amongst the jurists, Papinianus and Ulpian, amongst the Christian fathers, Chrysostom, Hilary, Jerome, the pseudo-Dionysius, Augustine, Boethius, Gregory, Isidore, Rabanus, John Damascene, amongst the Jews, Josephus and Moses Maimonides, amongst the Collections, the *Corpus Juris Civilis*, the *Decretum* of Gratian, the *Decretales* of Gregory IX. No philosopher is so often quoted as Aristotle; no Christian writer is so often quoted as Augustine. He quotes Aristotle's *Ethics*, *Politics*, *Metaphysics*, *Physics*, *Rhetoric*, and *Heaven and Earth*. He quotes Augustine's *Free Will*, *Against Faustus*, the *Confessions*, the *City of God*, *On True Religion*, *The Trinity*, *Nature and Grace*, *Christian Doctrine*, *Enchiridion*, *On Instructing the Unlettered*, *On Wedding Boons*, *Genesis*, *On the Spirit and the Letter*, *On the Gospel of St. John*, *On the Usefulness of Belief*. His bibliography has scarcely the names of fifty books. But they are for all time the fifty best books which the intelligence of a genius found ample as material for building up the structure of his own original thought.

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There was urgent need for such a scientific structure if Law was not to lose all claim or chance to be a Science. The state of legal thought, even in the thirteenth century, may well be summed up in the opening words of Professor W. A. Hunter's treatise on Roman Law: 'The first sections of the Institutes of Gaius and Justinian attempt an explanation of the most general ideas of Law. The effort was, to a great extent, frustrated by the weakness of the Roman jurists in the Philosophy of Law, and the defect of their technical language.'⁴

The little philosophy which had tinted Roman Law was not Platonic idealism nor Peripatetic intellectualism, but what we might call Stoic pragmatism. Under its sway Roman Law and Roman Justice became, not the fine *Ars boni et aequi*, the Art of the Good and Right, as defined by Celsus, but the art of widening the swoop of the Imperial eagles. This degradation of Roman Law had been forestalled by the degradation of Greek Ethics, which, having made the City or State the final cause of the ethical man, gradually made the City or State the final arbiter of ethical right and wrong.

So much had happened since Plato and Aristotle had created Greek thought and Romulus and Remus had founded the *Urbs Romana* that St. Thomas seemed born in a certain fullness of time. If we take three names from those whose works he quotes, it is both because they three are the three thinkers whom he mostly follows, and because they are typical of the three great peoples whose thought has been for the first time given a scientific fusion and unity in his synthesis. These three are Aristotle the Greek, Augustine the Roman, and Moses Maimonides the Jew.

⁴ *Roman Law*, by William A. Hunter, M.A. (London: Wm. Maxwell & Son, 1876), p. xxxvii.

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It would be difficult to narrow even into a lecture, and still more difficult to compress into a paragraph all that St. Thomas's treatise on Law owes to the thought of Aristotle. No little of that debt to the one he calls 'the Philosopher' is the Hellenic austerity of style, which is as perfect an expression of intellectual truth as the Parthenon is of intellectual beauty. But although the *Metaphysics* of Aristotle is only rarely quoted, the ideas of unity and causality are too closely woven into the treatise for us to be able to estimate the debt to Aristotle by mere quotations. Again, it would be impossible to appraise the influence of Aristotle's *Ethics* and *Psychology*. These two sciences are of such importance to any true knowledge of the function of Law that the legal profession, like any other liberal profession—medical, sacerdotal—if shorn of them becomes mere craftsmanship instead of culture. These self-evident principles need no reinforcing within walls where another Thomas was the fine flower of the English Renaissance.

If it is hard to tax St. Thomas's debt to the Greek Aristotle, it is still harder to say what he owes to the Roman Augustine. If Harnack may be taken as a fair judge :

Augustine's living has been incessantly lived in the course of the fifteen hundred years that have followed. Even to our own days interior and exterior living piety among Catholics as well as the mode of its expression has been essentially Augustinian; the soul is permeated by his sentiment, it feels as he felt and thinks as he thought. It is the same with many Protestants also, and they are by no means the worst. And even those to whom dogma is but a relic of the past proclaim that Augustine's influence will last for ever.⁵

No wonder that in his hundred best books—amongst which the majority were on Law—Lord Acton should

⁵ A. Harnack: *The Essence of Christianity* (London, 1900), p. 161.

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place the Letters of Augustine. In the difficult matter of Law St. Thomas quotes mainly St. Augustine's treatise on the Trinity—his *Confessions*, his *City of God*, and his treatise on Free Will. Each of these profoundly original works was of importance to the scientific development of Law. In his doctrine of the Trinity the best thought of Plato, and even of Aristotle, was used to analyse the essential life and inward relationship of Infinite Intelligence and Will. The foresight and fore-ordering of this Infinite were stated in terms intelligible by men. In his doctrine of Free-Will he provided a needed commentary on Plato's apophthegm that Law-makers—*i.e.*, Statesmen—should be artificers of Freedom. Lastly, in his *Confessions* and *City of God*, not only did he originate two undying classes of literature—Autobiography and the Philosophy of History—but he showed how nothing, not even the course of the individual mind and will, nor the still vaster course of human history, is exempt from law. Even the presence of miracles in the normal course of nature is not an interruption of the steady sovereignty of Law, but the supremacy of a higher over a lower law. No wonder, when replying to his question 'Whether all human affairs are subject to the Eternal Law?'⁶ Aquinas quotes from *The City of God*: 'Nothing evades the laws of the most high Creator and Governor, for by Him the peace of the universe is established.'⁷ Perhaps in making the Philosophy of History a study on the City—albeit the City of God—St. Augustine was quietly supplementing the incomplete view of Aristotle's Ethics and Politics, that the good human act and the good human law should be directed to the peaceful self-sufficient human City. The Word made Flesh had dwelt for a time,

⁶ Ia IIae, Qu. 93, Art. 6. On the contrary.

⁷ *De Civ. Dei.*, ch. xix.

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and had died in this human City to assure mankind that 'we have not here an abiding city, but we seek one that is to come.'^a

The borrowings which St. Thomas made from the Greek Aristotle and the Roman Augustine were supplemented by borrowings from the Spanish Jew, Moses Maimonides. This great thinker, who died a few years before St. Thomas's birth, was almost the last of the Judaic effort to wed the wisdom of the Greeks. It is significant that the influence of Maimonides was greater among the Christians than amongst his fellow-Jews; and perhaps greatest with Aquinas. The blend of Aristotelian intellectualism and realism with Judaic revelation was a quality of Maimonides which St. Thomas, more than any Catholic thinker, might be expected to appreciate. To give praise where due, we must confess that had Moses Maimonides not written his famous book, *Guide of the Doubting*, there would never have been written a still more famous book, St. Thomas's treatise on Law.

It is now necessary to undertake the hopeless task of setting before you in outline this masterpiece of St. Thomas. Two quotations may serve to make clear what otherwise I should leave obscure. 'As the type of the divine wisdom inasmuch as by it all things are made has the character of ART; so the type of the divine Wisdom as moving all things to their end has the character of LAW.'^b In other words, Art is the idea of making things; Law is the idea of moving things made. Or, again, Art is the idea that brings things into being; Law is the idea that moves things to their well-being.

^a Heb. xiii, 14.

^b Ia IIae, Qu. 93, Art. 1.

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To this principle we will add another in the words of St. Thomas, when showing the need of a Natural Law :

Law, being a rule and measure, can be in a person in two ways ; in one way as in him that rules and measures ; in another way as in that which is ruled and measured. . . . Wherefore since all things subject to divine providence are ruled and measured by the eternal Law, it is evident that all things partake somewhat of the eternal Law in so far as, namely, from its being imprinted on them they derive their respective inclinations to their proper acts and ends. Now among all others the rational creature is subject to divine providence in the most excellent way, in so far as it partakes of a share of providence by being provident both for itself and for others. Wherefore it has a share of the eternal Reason, whereby it has a natural inclination to its proper act and end ; and this participation of the eternal Law in the rational creature is called the Natural Law.¹⁰

Before venturing to apply these principles to the divisions and details of St. Thomas's treatise on Law, let me here forestall an objection which may arise in your minds. The word and idea ' Law ' is very simple both in origin and implication. It arose in simple communities of men who needed an official settlement of contentious doubts and misunderstandings. It implied merely an official ruling by one having the right to voice the community. But this gives the simple idea of Law no right to be made a vast cosmic generalisation applied not merely to the Universe, but even to the Intelligence which is taken to direct the Universe.

To this most self-diffident doubt I would reply by taking the fact as a fact. If in point of fact the word *law* is now amongst the most world-embracing in human speech this fact is of undeniable significance. Universal acceptance of a word or idea is usually proof-positive of its validity. *Securus judicat orbis*

¹⁰ Ia IIae, Qu. 91, Art. 2.

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terrarum. Thus though we do not know the origin and first meaning of such simple words as *one*, or *part*, or *whole*, or *thing*, yet these words which, in their world-wide meaning, can be applied accurately by the average man or woman are yet seen by the philosopher to be the very matter of all philosophical thinking. If, then, the word 'law,' which originally may have meant some official ruling by authority, has now become a necessary thought-form for every kind of Science, we may conclude that an intelligent view of the Universe is the implicit certitude of the man in the street and the scholar in the library or laboratory.

It is, therefore, to be expected that the sound thought of St. Thomas would begin his treatise on Law at the beginning. As the Universe has an Intelligent Maker and a good end, the primary Law is the divine Wisdom moving all things—necessary things necessarily; free things freely—to their end.

But correlative to this law in the giver of the Law is the law in the recipient of the Law. Here the present writer may make what is perhaps a humble and is at least a sincere confession. For some forty years his mind was perplexed by finding that though scientists were constantly using the term 'Law of Nature,' nowhere could he find a satisfactory definition of a 'Law of Nature.' Scientists were more intent on using the term than on defining it. At last the passage from St. Thomas's treatise on Law ended the anxiety of forty years. A Law of Nature, not in the giver but in the receiver, is 'the natural inclination of a being to its proper act and end.' Of course this Law in beings that are not conscious or reflectively self-conscious is not a self-conscious inclination. But intelligent beings, as men, who have reflective self-consciousness, have this inclination in an intelligent form that qualifies it as properly Law. In contradistinction to a written law, this Natural Law, or Law of Nature, may

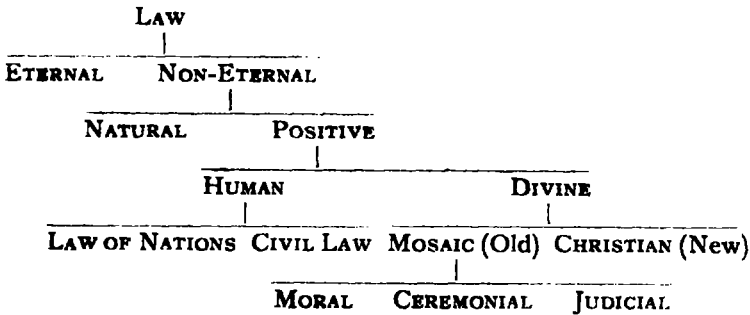
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be called a *lex indita*: which our English translators of the *Summa* have called an Instilled Law.

But the written Law is promulgated either by reason unenlightened by faith (HUMAN LAW), or by reason enlightened by faith (DIVINE LAW). The Divine Law is two—the OLD LAW, or MOSAIC LAW, and the NEW LAW, or CHRISTIAN LAW. Moreover, this Human Law, which should be a derivation from the Natural Law, is either LAW OF NATIONS (*Jus Gentium*) or CIVIL LAW (*Jus Civile*).¹¹

To measure the contribution of St. Thomas to these deep questions of Law might well baffle any historian of philosophical thought, or indeed of political institutions. Such historians are gradually coming to ask themselves if this treatise on Law, written in Bologna about 1272, was not in time the first and in importance the greatest of any such treatise to be written. The vast synthesis of thought, wherein this treatise on Law found itself a part, has begotten a school of thinkers. Modern historians of International Law are frankly realising that from this Thomistic school of thinkers sprang the Science of Law, National and International. When the Carnegie Institution of Washington undertook to republish the leading classics of International Law it is not without significance that their

¹¹ The following scheme, drawn from Ia IIae, Qqu. 90-108, may be of use.



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first published classic was the *De Indis relectio prior* of the Spanish Dominican, Francis de Victoria (1480-1546), delivered at Salamanca in 1532 (first published Lyons, 1557). In his preface to this Carnegie reprint and translation, the editor, James Brown Scott, writes :

The general editor is unwilling to allow the volume to go to press without a tribute in passing to the broad-minded and generous-hearted Dominican, justly regarded as one of the founders of International Law, and whose two tractates here reproduced are, as Thucydides would say, a possession to the international lawyer. . . . They are sufficient, however, to show that International Law is not a thing of our day or generation, or of the Hague Conference, nor indeed the creation of Grotius, but that the system is almost as old as the New World.¹²

In the same re-edition of de Victoria's work, Professor Nys writes that Grotius quotes Franciscus de Victoria in the Prolegomena to his *De jure belli et pacis*; and that in *Mare Liberum* Grotius often mentions de Victoria. Indeed, Hermann Conring (1606-1681), professor of Helmstaedt, 'insists on the fact that Franciscus de Victoria was the first to raise moral problems in juridic questions. . . . If Grotius produced the incomparable book *De jure belli et pacis*, he owes it to his reading of the Spanish jurisconsults, Ferdinand Vasquez and Diego Covarruvias, who had in their turn made use of their master, Franciscus de Victoria.'¹³ Henry Wheaton,¹⁴ James Lorimer,¹⁵ Thomas Erskine Holland,¹⁶ Thomas Alfred Walker,¹⁷

¹² Classics of International Law, *De Indis et de Jure Belli Relectiones*, Franciscus de Victoria (Carnegie Institution of Washington, 1917), Preface, p. 5.

¹³ *Ibid.*, p. 98.

¹⁴ *History of the Law of Nations in Europe and America*.

¹⁵ The Institutes of the Law of Nations.

¹⁶ *Studies in International Law*.

¹⁷ *History of the Law of Nations*.

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have all given Franciscus de Victoria his rightful place as a pioneer of International Law. But whatever praise is given to the school of de Victoria is rightly handed on to the genius of St. Thomas Aquinas, from whom the principles of their more detailed thought were borrowed. His vast, accurate, scientific synthesis of thought not only by its fullness gave them a lading and a destination, but by its accuracy kept them in the fairway of truth.

Maine, in his *Ancient Law*, has succeeded in suggesting a further effect of St. Thomas's handling of the Natural Law and Natural Rights. After speaking of the enthusiasm of French jurists for the Natural Law, he writes :

The American lawyers of the time, and especially those of Virginia, appear to have possessed a stock of knowledge which differed chiefly from that of their English contemporaries in including much which could have been derived from the legal literature of continental Europe. A very few glances at the writings of Jefferson will show how strongly his mind was affected by the semi-juridical, semi-popular opinions fashionable in France; and we cannot doubt that it was sympathy with the peculiar ideas of the French jurists which led him and other colonial lawyers who guided the course of events in America to join the specially French assumption that 'all men are born equal' with the assumption, more familiar to Englishmen, that 'all men are born free,' in the very first lines of their Declaration of Independence.¹⁸

If it was the Spanish school of Jurists, led by Francis de Victoria, who applied the principles of St. Thomas to create the study of Natural and International Law, the influence of St. Thomas on the making of the American Constitution is worthy of a monograph. Such a monograph would also include a study of Jefferson's copy of the Constitutions in the

¹⁸ *Ancient Law*, Henry Sumner Maine, third edit. (London, 1866), p. 95.

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Congress Library, and of the discernible influence of these Dominican Constitutions so largely shaped by Raymund of Pennafort and St. Thomas over the Constitution of the United States.

St. Thomas, in treating of Human Law in general, has laid down for all time the principles on which laws should be made, promulgated, interpreted, dispensed, suspended. In his treatise on Justice as a moral virtue he may be looked upon as the creator of the ethics of a judiciary with a moral sense.¹⁹ He sets out the duties of judge, plaintiff, defendant, witness, advocate, with the ripened wisdom of a judge.

But if his treatise on Law in its nature, making and application, left legal Science his debtor, that debt is further increased by his prolonged and masterly analysis of the Old Law—the Thorah of the Jews. He may have been led to this analysis by Aristotle's treatise—if indeed he had seen it—on the Athenian Constitution. But to contrast the two works is to realise how far the world of intellect had travelled between 322 B.C. and 1272 A.D.

My readers may imagine the consternation even a modern jurist would feel if asked to codify the Mosaic Law as gathered together in the book called the Old Testament. So great a task might seem impossible even to jurists acquainted with such syntheses as the *Corpus Juris Civilis*, the American Constitution, or the Code Napoleon.

Yet this seemingly impossible task has been attempted and achieved by the patient scholarship of Aquinas. His genius and instinct for order has rarely been seen at such full flood as in his codification—for we can hardly call it less than codification—of the Mosaic Law.

¹⁹ *Summa Theologica*, Ia IIae, Qqu. 67-71.

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His first grouping of this Law into Moral, Ceremonial, and Judicial precepts is given a philosophical basis :

We must, therefore, distinguish three kinds of precepts in the Old Law ; *vis.*, *Moral* precepts, which are dictated by the natural law ; *Ceremonial* precepts, which are determinations of the divine worship ; and *Judicial* precepts, which are determinations of the justice to be maintained among men.²⁰

It surely ought to be of interest to makers or administrators or judges of law that a little people—almost the least of all peoples—based their whole Civil legislation on a Moral Code, the Decalogue. This would seem a phenomenon without precedent in the history of political and legal institutions ! The phenomenon appears all the more superhuman when, on its analysis some three thousand years afterwards by such an expert as Aquinas, it is found to be in as strict ethical series as the tables of addition or multiplication are found to be in mathematical series. Students of anthropology who are deeply mystified by the survival value of Judaism may well be directed to the profound analysis St. Thomas gives of the Moral precepts of the Mosaic Law.

If we pass at once to the treatise on the Judicial precepts, without dwelling on the Ceremonial precepts, it is not that we think these precepts, regulating the external relations of Jewry to Jehovah, of less than primary importance, but for the reason that here in the home of Civil Law a detailed description would be almost irrelevant. But as if in compensation, we may direct the attention of students of Civil Law to the treatise on the Judicial precepts of the Mosaic Code, which, based on the Moral precepts and buttressed by the Ceremonial precepts made up a Code

²⁰ *Ibid.*, Ia IIae, Qu. 99, Art. 4.

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almost without parallel in the history of political and legal institutions. The judicial insight and judgment of St. Thomas are seen in the four divisions which he makes of these Judicial precepts. The article is too flawless a masterpiece to be patient of mere quotation. It must be written all, if at all.

Whether it is possible to assign a distinct division of the Judicial precepts? He answers: 'Wherever there is order there must needs be division. But the action of order is chiefly applicable to the judicial precepts, since thereby that people was ordained. Therefore, it is most necessary that they should have distinct division.

'I answer that, since Law is the art, as it were, of directing and ordering the life of man, as in every art there is a distinct division in the rules of the art, so in every law there must be a distinct division of precepts; else the law would be rendered useless by confusion. We must, therefore, say that the judicial precepts of the Old Law, whereby men were directed in their relations to one another, are subject to division according to the divers ways in which man is directed.

'Now in every people a fourfold order is to be found. *First*, of the people's sovereign to his subjects: a *second*, of the subjects among themselves; a *third*, of the citizens to foreigners: a *fourth*, of members of the same household, such as the order of the father to his son, of the wife to her husband, of the master to his servant, and according to these four orders we may distinguish different kinds of judicial precepts in the Old Law.²¹

Each of these four primary divisions of the Mosaic Judicial precepts is given a most searching analysis. His first article on the precepts concerning Rulers contains in outline the rules for all effective form of authority. The second article on the precepts framed as to the relations of one man to another is an accurate application of the moral laws of Justice. The philosophy of property and possessions is here outlined;

²¹ Ia IIae, Qu. 104, Art. 4.

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even though the outlines are here and there somewhat detailed, as in the following :

' . . . the Philosopher says (*Polit.* ii) that the things possessed should be distinct, and that the use thereof should be partly common and partly granted to others by the will of the possessors. These three points were provided for by the Law. Because, in the *first* place, the possessions themselves were divided among individuals. . . . And since many states have been ruined through want of regulations in the matter of possessions, as the Philosopher observes (*Polit.* II, 6), therefore the Law provided the threefold remedy against the irregularity of possessions. The *first* was that they should be equally divided. . . . A *second* remedy was that possessions could not be alienated for ever, but after a certain lapse of time should return to their former owner, so as to avoid confusion of possessions. The *third* remedy aimed at the removal of this confusion and provided that the dead should be succeeded by their next of kin.

' *Secondly*, the Law commanded that, in some respects, the use of things should belong to all in common. First, as regards the care of them. . . . *Secondly*, as regards fruits. . . . And specially as regards the poor. . . .

' *Thirdly*, the Law recognised the transference of goods by the owner a gratuitous transfer and a transfer for a consideration, for instance, by selling and buying, by letting-out and hiring, by loan, and also by deposit.'²²

He even forecasts a state of things which seems to be realised to-day. Thus he says :

' . . . the Philosopher says (*Polit.* II, 4) that the regulation of possessions conduces much to the preservation of the State or nation. Consequently, as he himself observes, it was forbidden by the law in some of the heathen states that anyone should sell his possessions except to avoid a manifest loss. For if possessions were to be sold indiscriminately they might happen to come into the hands of a few; so that it might become necessary for a state or country to become void of inhabitants.'²³

²² *Ibid.*, Qu. 105, Art. 2.

²³ *Ibid.*, reply obj. 3.

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These words of scientific prophecy have received a strange confirmation in the world of to-day, so poignantly described by Pope Leo XIII as a state of injustice in which 'a small number of very rich men have been able to lay upon the teeming masses of the labouring poor a yoke little better than that of slavery itself.'²⁴

Even the problem of housing receives from St. Thomas's hand a treatment measured by accurate principles. Thus he says :

'As town houses were not allotted to distinct estates, therefore the Law allowed them to be sold in perpetuity like moveable goods. Because the number of houses in a town was not fixed, whereas there was a fixed limit to the amount of estates, which could not be exceeded, while the number of houses in a town could be increased. On the other hand, houses situated not in a town, but in a village, that hath no walls, could not be sold in perpetuity, because such houses are built merely with a view to the cultivation and care of possessions.'²⁵

Political wisdom of no common quality is here found in the words of one of the profoundest metaphysicians of all time.

Under the precept regarding foreigners, St. Thomas began to outline for his intellectual descendants the laws of Peace and War, elsewhere²⁶ discussed with more detail. Even the questions of Citizenship and Naturalisation are not overlooked, but are given a wise treatment according to principles. The treatise ends with an analysis of the Mosaic laws framed to safeguard family life; laws of such wisdom that to-day, after three thousand years of promulgation, the family life of the law-abiding Jews is one of the firmest social institutions of the world.

²⁴ Encyclical, *Rerum Novarum*.

²⁵ Ia IIae, Qu. 105, Art. 2, reply obj. 3.

²⁶ IIa IIae, Qu. 40.

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There is the wisdom not merely of Moses, but of a Greater than Moses, in St. Thomas's explanation of the very aim of social laws.

'As the Apostle says, Rom. xiii, 8, he that loveth his brother hath fulfilled the law; because, to wit, all the precepts of the Law, chiefly those concerning our neighbour, seem to aim at the end that men should love one another.

'Now it is the effect of love that men give their own goods to others; because, as stated in I John iii, 17, : "He that . . . shall see his brother in need and shall shut up his bowels from him, how doth the charity of God abide in him?" Hence the purpose of the Law was to accustom men to give of their own to others readily; thus the Apostle, I Tim. vi, 18, commands *the rich to give easily and to communicate to others*. Now a man does not give easily to others if he will not suffer another man to take some little thing from him without any great injury to him. And so the Law laid down that it should be lawful for a man, on entering his neighbour's vineyard, to eat of the fruit thereof; but not to carry any away, lest this should lead to the infliction of a grievous harm, and cause a disturbance of the peace; for among well-behaved people the taking of a little does not disturb peace; in fact, it rather strengthens friendship and accustoms men to give things to one another.'²⁷

With this lyrical note, a gift of Golgotha to the world, we leave St. Thomas on Law.

Yet before we take leave of our subject and of our patient hearers, we might be allowed to resume the fruits of some forty years' fellowship with the thought of St. Thomas. A few studies of his masterpiece soon convinced us, and life has brought only a strengthening of the conviction, that in the thought of St. Thomas there were no stray thoughts and in his words no word at random. Seven centuries of acute and sometimes hostile criticism have failed to find an argument that was illogical or a phrase, or even a word, that was superfluous. If he states principles with the

²⁷ Ia IIae, Qu. 105, Art. 2, reply obj. 1.

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naive simplicity of an arithmetical table—if, indeed, he seems to justify those who once called him the Dumb Ox, it will be found that his simplicity is often as consummate a masterpiece as those line-pictures that the artist made by the skilled rubbing-out of elaborate drawings. None but the life-long student of his thought can realise how any one principle of St. Thomas, even in Law, may have meant for its almost platitudinous expression the understanding of a hundred principles in Physics, Psychology, Ethics, and Metaphysics. My hearers might have noticed with what pleasure I detailed for you his definitions of the Art and the Law of God—Art being the type of a thing made in the mind of the maker; and Law the type of a thing moved to its end in the mind of the mover. Not Plato, nor Aristotle, had reached the fine thinking of these simple words. Beneath their simple surface lies a world of thought. Indeed, not centuries, but scores of centuries are crested in their simplicity. Plato, who once said that the future rulers of the City should be told one royal lie, has given us daring errors that have enriched the world. This Art of Aquinas could never have epitomised the truth and made the great treatise on Law had Plato never erred; or Aristotle never corrected those errors with his pilot-mind; or Augustine never saved the intuition of Plato from too much piloting; or a greater than Plato or Aristotle or Augustine never revealed to us some of those mysterious laws of mercy that mended what was shattered and saved what was lost, by the Good Shepherd's paradoxical device of laying down His life for His sheep.

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