

Obligation, Legislation, and the Common Good:  
Metaphysical Considerations from Thomas Aquinas

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*Introduction*

“*Dicitur enim lex a ligando, quia obligat ad agendum.*” This etymology of “law” stands at the very beginning of Thomas Aquinas’s renowned exposition of the nature of law in the *Summa theologiae*.<sup>1</sup> Students of Aquinas know that he has the habit of choosing his beginnings carefully. This one is surely no exception.

That he indeed adopted this etymology deliberately comes out clearly a few articles later, when he mentions the one proposed by Isidore: “*lex a legendo vocata est, quia scripta est*” (I q.90 a.4 ad 3). In preferring the etymology based on obligation, Thomas was by no means alone among his contemporaries. Albert the Great, for instance, says that the “*ratio nominis*” of ‘*lex*’ is *ligatio*.<sup>2</sup> This remark by Albert also suggests the reason why Aquinas puts the etymology at the very beginning of his account of law. The “*ratio nominis*” is the most basic or common notion expressed by a term, what we might call its immediate or uppermost content, its “surface”. It is standard procedure for Aquinas to use the “*ratio nominis*” or common notion as the starting-point and the guide for the investigation into the real nature of a thing. And in fact his appeal to the etymology

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<sup>1</sup>*Summa theologiae* I q.90 a.1. Hereafter the *Summa theologiae* is cited without the title. The translations of Aquinas are mine.

<sup>2</sup>Albertus Magnus, *De bono*, ed. H. Kühle et al., in *Opera omnia* (Aschendorff: Monasterii Westfalorum) tr.5 q.2 a.2 ad 1. See also the *Summa fratris alexandri*, III p.2 inq.1 q.un. c.1 obj.2, in Alexandri de Hales (attr.), *Summa theologica*, ed. P.M. Perantoni, O.F.M. (Ad Claras Aquas: ex typographia Collegii S. Bonaventurae, 1924-1948) t.IV p.314: *lex habet esse in promulgatione, et tunc meretur nomen legis, quia tunc ligat*. On the use of this etymology by Aquinas’ predecessors, see Ermenegildo Lio, O.F.M., “Annotazioni al testo riportato da S. Tommaso (S.Th. I-II q.90 a.1) ‘*Lex...dicitur a ligando*’,” *Divinitas*, I (1957) pp.372-395.

of law is aimed precisely at justifying his own first, most general formulation of the concept of law: “law is a certain rule and measure of acts, according to which someone is induced to act or restrained from acting; for ‘law’ (*lex*) derives from ‘binding’ (*ligando*), because it obliges to action.”

As even a quick reading would show, this formulation serves as his dominant criterion in the process of isolating the essential principles of law in the rest of Question 90. Repeatedly he argues for or confirms his findings either by reference to this formulation or simply by reference to the obligatory character of law. Indeed, it becomes clear that he judges that, in one way or another, obligation and law always go together. Nothing is a law unless, and until, it obliges (q.90 a.4); and whatever obliges is a law, or at least an application of law (q.90 a.4 obj.2; q.90 a.2 ad 1). We might even go so far as to say that Aquinas’ investigation into the essential principles of law is, in substance, an investigation into the proper causes of obligation.

Given such considerations, it is not very surprising to find that one of history’s most serious students of Aquinas’ doctrine of law, Francisco Suarez, lays great emphasis on the obligatory character of law. Suarez is even more explicit than Aquinas about the need to advert to the notion of obligation in order to form a satisfactory definition of law. His own controlling notion for determining the nature of law appears in fact to be as follows: “law is that act of the prince which *per se* and by its own force induces obligation and binds the subject”.<sup>3</sup> To oblige is the proper, adequate effect of law (*De legibus* I.xiv). Suarez also has a very definite notion of the nature of obligation. It consists in a kind of “moral motion” or “impulse” toward an action (*De legibus* II.vi.22), and one which is of such force

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<sup>3</sup>Francisco Suarez, *De legibus*, ed. L. Pereña & V. Abril (Madrid: Consejo Superior de Investigaciones Cientificas, 1974), I.v.23; see I.i.

as to confer a certain necessity upon that action, typically by way of the sanctions attached to it.<sup>4</sup>

However, despite the apparent agreement between Aquinas and Suarez on the common notion of law as something obligatory, most interpreters concur that Suarez arrives at an understanding of the nature of law which is significantly different from that of Aquinas. If on no other basis, this comes out in the fact that whereas Aquinas had insisted that law was properly a work of reason, Suarez makes it to be properly a work of the legislator's will—his very will to oblige. Of course Suarez does not deny that reason plays an essential role in the genesis of law; for law is essentially something just and ordered to the common good, and it belongs to reason to conceive order and to discern what is just. But although reason may very well produce “rules” or “measures”, Suarez judges that the proper and distinctive feature of law is, as just indicated, its having a moving, compelling force. Without this, what reason produces can only be an indication of or direction toward what is just and conducive to the common good, not a binding impulse toward it.<sup>5</sup> But the chief moving and impelling power of the soul is not reason, but will.

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<sup>4</sup>See *De legibus* II.ix, I.v.12, II.vi.8. This is not to say that for Suarez, sanction or the threat of punishment always suffices to create obligation. Only what is truly a law obliges, and only what is right and just can be truly a law. He also distinguishes, in *human* law, between its being obligatory in conscience and its being sanctioned by penalties; it can be either of these without being the other (*De legibus* V.iv.3). But the obligatory is in any case primarily the obligatory in conscience, and this means, obligatory with the force of the eternal law of God; and the strictly obligatory force of the eternal law itself derives from the *divine* will, considered as *adding to* the intrinsic “rectitude” or “directive” quality of the law (See *De legibus* II.vi.6-25.). This is why, in his effort to explain how the name of law can be properly attributed precepts of natural law (which is nothing other than reason's natural participation in the eternal law), Suarez is so preoccupied with the question of how “natural” is the knowledge that the precepts of natural law derive from God's will. See *De legibus* II.vi.6-25.)

<sup>5</sup>For the distinction between the directive “force” and its obligatory, moving force, see *De legibus* I.v.21; III.xxxii.5,6; III.xxxiii.1,8,9; VII.xix.3.

Still, the precise nature of the discrepancy between Suarez and Thomas, if there is one, is not easy to identify. Although Aquinas regards law as properly a work of reason, he certainly thinks that the legislator's will also plays an essential role in its making: "all law arises from the reason and will of the legislator" (I-II q.97 a.3). He also regards sanction as an essential accompaniment of law (I-II q.92 a.2; q.90 a.3 ad 2; q.96 a.5). There is a clear distinction between issuing a law and enunciating mere counsels or admonitions, even when the latter have virtue and the common good in view (I-II q.90 a.3 ad 2, q.92 a.2 ad 2 & ad 3). In view of these points, it would perhaps even be tempting to conjecture that the difference between him and Suarez is not so much concerned with the nature of law as with matters of psychology, for instance the relation between intellect and will, or the nature of command.

But there is also another possibility. This is that the difference between Aquinas and Suarez does concern the nature of law, but that its real root is to be found, not within their elaborations of the essential principles of law, but at an even more fundamental level, the level from which the elaborations themselves proceed: the level of the common notion of law. In particular, the point at issue would be the notion of obligation, and the conception of the very manner in which the causes of obligation, i.e. the essential principles of law, in fact cause it.

It is of course beyond the scope of the present study to carry out a detailed comparison between Aquinas and Suarez on this issue. The aim of the foregoing remarks has been simply to suggest that any sound interpretation of Aquinas' own doctrine of law must surely address the law's character as a principle of obligation, and that it is first of all necessary to ascertain carefully how he conceives the nature of obligation itself. In an effort to respond to these concerns, the following pages are aimed chiefly at expounding three basic theses, which may be put briefly as follows.

The first thesis is that for Aquinas, the law's obligatory force is *formally identical* with its specific way of being a "rule and measure of acts". That is, it is precisely as a rule and measure, of *human* acts, and not merely in virtue of something merely accompanying this quality, that law also moves, or "induces someone to act or deters him from acting", and does so in an obligatory way. The second thesis is that although the governor's will does play a certain special role in the law's acquiring this force, because it plays a role in the very making of the rule, nevertheless the true source of the law's moving force is nothing other than the common end in view of which it rules. The third thesis, however, adds an important qualification to the second; namely, that the explanation of how the common end gives force to the law requires a certain distinction in the very notion of "common end". According to this distinction, the common end is, in one sense, *identical* with the governing agent who institutes the law. Before attempting to establish these theses, I shall first examine Aquinas' general notion of obligation.

### *I. The nature of obligation*

#### A. The *De veritate* text

As it happens, there is no thematic treatment of obligation in the *Summa theologiae*, although there are some important remarks about it there, as we shall see. Happily, however, Thomas did take up the subject of obligation in a rather detailed way in one of the articles of his early *Quaestiones disputatae de veritate*. Of course, it is the doctrine of the *Summa theologiae* which is our main concern, since the "Treatise on Law" is found there; and the account of the nature of obligation in the earlier work can be assumed to express a view that Aquinas still held at the time of writing the *Summa theologiae*, only if it is not explicitly or implicitly contradicted there. However, the research behind the present study has uncovered no such contradiction; and so, for reasons of economy, instead of

starting with the texts on obligation in the *Summa theologiae* and then analyzing the *De veritate* texts in light of them, I shall begin with the latter, and then use the *Summa theologiae* to complete the account.

In Question 17, Article 3 of the *De veritate*, Aquinas raises the question “Whether conscience binds”, *utrum conscientia liget*.<sup>6</sup> He arrives at an affirmative answer, that conscience binds “with the force of divine precept”, by way of an analysis of “binding” and its place in voluntary action.

The term ‘binding’ (*ligatio*), Aquinas says, is applied to spiritual or voluntary things by way of a metaphorical derivation from bodily things. To bind something is to restrict its movements or to prevent it from changing its place. Binding therefore implies necessity, or the impossibility of being otherwise, e.g. of being in another place. Moreover, the necessity that it implies is an imposed necessity, one arising from something outside the thing subject to that necessity—some

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<sup>6</sup>Oddly, this text has received very little attention in contemporary studies of the Thomistic notion of obligation. See Walter Farrell, O.P., “The Roots of Obligation”, *The Thomist* I (1939) pp.14-30; Farrell, *The Natural Moral Law according to St Thomas and Suarez* (Ditchling: St Dominic’s Press, 1930) pp.130 ff.; Mark MacGuigan, “St Thomas and Legal Obligation”, *The New Scholasticism* vol.35 no.3 (July 1961) pp.281-300. The text is mentioned in passing in Claude Desjardins, S.J., *Dieu et l’obligation morale* (Montreal: Desclée de Brouwer, 1963) p.71 n.3; and it receives a somewhat surprising reading in Oscar Brown, *Natural Rectitude and Divine Law in Aquinas* (Toronto: Pontifical Institute of Medieval Studies, 1981) pp.126-128. In his generally fine piece on obligation as “moral persuasion” in Aquinas, Thomas Hibbs even says that “What Suarez is after—a ‘theory of obligation’—is not extant in Thomas’s texts” (“A Rhetoric of Motives: Thomas on Obligation as Moral Persuasion”, *The Thomist* vol.54 no.2 (April 1990) p.294). Still, Hibbs’s account of Thomas’ notion of obligation is very close to the one proposed in the present study, though I would wish to distinguish more than he does between teaching and legislating. Perhaps even closer to the position for which I am arguing is John Finnis’s highly nuanced study of obligation, especially his comparative treatment of Aquinas and Suarez on legal obligation in *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980) Chap.XI, esp. no.7-8, pp.330-342. However, Finnis does not take up the *De veritate* text on obligation; and in comparison with it, his account seems to assign a diminished role to the legislator’s will and to the legal *imperium* in their precise character as “efficient” principles, i.e. to legislation as a genuine kind of *action*. My thesis is that in promulgating law, and apart from any sanctions attached to it, the legislator not only *displays* a necessity of acting in a certain way, for the sake of the common good, but also *produces* or *institutes* such necessity; in this way he “moves” those subject to the law not only in the manner of a final cause but also in the manner of an agent.

restraining or confining principle. Things that are intrinsically subject to some necessity, for instance fire as subject to the necessity of tending upward, are not said to be “bound” according to that necessity.

Aquinas then distinguishes between two sorts of necessity that can be imposed from outside: the necessity of coercion, or sheer physical force, and hypothetical necessity or necessity on the supposition of an end, “as when it is imposed on someone that if he does not do this, he will not obtain his reward”. Since the simply coerced or forced is directly opposed to the voluntary, the binding of voluntary acts can only be according to hypothetical necessity. Hypothetical necessity is the only kind of necessity that is both compatible with the voluntariness of the act to which the necessity belongs (see I q.82 a.1) and able to be imposed.

Since “to bind” denotes a kind of action, Aquinas continues by specifying the nature of the action by which voluntary acts come to be bound in the manner proper to them. This action, he says, is the command of a governor. “The action by which the will is moved is the command of one ruling and governing”.

However, it is not sufficient that the governor make a command, in order that his subjects be bound by it. Again just as in corporeal things, the action of one thing actually binds another only through contact with it. The “contact” between the governor’s command and his subjects comes about through a reception of knowledge of the command by the subjects. “Whence it is that no one is bound by some precept except by way of knowledge of that precept.” It is in this way that conscience, which is nothing other than the application of the knowledge of a divine precept to the judgment of an act, binds “with the force of divine precept”.

There are several important implications which may be drawn from this text, and, I believe, one or two possible misunderstandings as well. Some of these points

come out more clearly in light of passages from the *Summa theologiae*, which I shall introduce at the appropriate points.

### B. The hypothetical necessity of what is obligatory

The first implication follows from the analogy with physical necessity. Such necessity is not always an instance of “binding”, since it is not always extrinsically imposed. Likewise, it is not always the case that the hypothetical necessity to which a voluntary agent is subject is something imposed upon him. Some follows from his own nature or (what amounts to the same thing) from the nature of the end which is his will’s natural object, and from his natural relation to the end. For example, since one naturally wants to live, it is naturally necessary, for the sake of this, to eat. So considered, the hypothetical necessity of eating cannot be regarded as an “obligation”, since it is not considered as imposed by any superior.

Nor, of course, is the imposition of hypothetical necessity the same as a mere act of manifesting it or informing someone of it. Although one must know it in order for his will to be subject to it, the imposition of it or the “binding” of the will according to it involves not only making it known but also making it exist (in such a way, of course, that it *will* be made known). For instance, in the case of conscience, reason has a hand in making known what one is bound to do; but the binding itself, the imposition of the obligation, belongs properly to God. Its binding force is that of divine precept, and reason’s manifestation is at best a mere instrument in this action of binding.

At this point the question naturally arises, if hypothetical necessity is not always obligation, because it is not always imposed, is all imposed hypothetical necessity obligation? The answer suggested by the *De veritate* text, and confirmed by considerations drawn from the *Summa theologiae*, is no. What is necessary for the sake of an end is properly *obligatory* only if *the end itself* is necessary; for it is

only then that the will is fully “subject” to the hypothetical necessity in question, genuinely “bound” by it. Thus, in the *De veritate* text, Aquinas says that the imposed necessity of which he is speaking is necessity to choose something in view of a good which one “ought” (*debeat*) to attain, or an evil which he “ought” to avoid—necessity for a “due” end. This is an important qualification.

In the *Summa theologiae* Thomas explains what he understands by “due”: “in the term ‘due’ is implied a certain order of exigency or necessity of something to which [what is due] is ordered” (I q.21 a.1 ad 3). In the same vein, he later remarks that “a precept of law, since it is obligatory, is about something that ought (*debeat*) to come about. But this, that something ought to come about, arises from the necessity of some end” (I-II q.99 a.1). Similarly, in discussing the precept of charity, he says:

a precept carries the note of something due. Hence something falls under precept insofar as it has the note of due-ness. But something is due in two ways: in one way, on its own account; in the other, on account of something else. And in every affair, what is due on its own account is the end, since it has the nature of something good on its own account; but what is ordered to the end is due on account of something else (II-II q.44 a.1).

This point makes it easy to distinguish between truly obligatory precepts, for instance precepts with the force of law, and precepts or commands which do indeed impose a kind of necessity, but nevertheless do not properly oblige, because the necessity they impose is not in relation to a truly due or necessary end. Such would be the case, for instance, with unjust “laws”,<sup>7</sup> and in general with acts of

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<sup>7</sup>See I-II q.96 a.4; also I-II q.90 a.1 ad 3, q.92 a.1 ad 4. Thus it is clear that Thomas’ insistence that an unjust law is not a true law, but rather “iniquity”, “perversion” and “violence”, is not at all a mere matter of terminology. An unjust “law” lacks not only justice but also that *motive force* which is *proper* to law, that which derives precisely from its rightly ordering to an end truly apt to move the will. The unjust “law” enjoys only an accidental force, that of public coercive power. This is certainly not nothing, but it is (*ceteris paribus*) inferior to the force of just law; this is seen, among other things, in the relative instability of gravely unjust regimes. In

duress. These do of course impose a kind of necessity to comply with what is dictated, for the sake of avoiding the particular evil which has been threatened for non-compliance. But, at least in Aquinas' doctrine, it is not necessary *simpliciter* to avoid the kinds of evils which an unjust power can threaten, all of them being "external" evils; the truly necessary end is a happy life, which is a life according to virtue. Thus it may be positively obligatory *not* to comply with the unjust dictate, if it is repugnant to the truly due or necessary end.<sup>8</sup>

### C. Obligation and punishment

This in turn suggests the need to distinguish between being obligatory and being coercive, even in dictates which are both, e.g. just laws. Their obligatoriness is something other than the necessity of complying with them for the sake of avoiding punishment. The threat of punishment, it seems, is an *added* inducement to comply, but if the threat itself is just, this is precisely because the compliance itself is *already* necessary for the chief end, *already* obligatory.

It is worth dwelling on this point somewhat, if only because the *De veritate* text may give the impression that Aquinas locates the necessity of obligation

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any case, throughout this study "law" is taken to mean "just law".

<sup>8</sup>See I-II q.96 a.4 (*Nicomachean Ethics* III.1, 1110a26.) The reference to virtue, which will be made repeatedly throughout this study, will of course strike many readers as a fatal confusion of the legal and moral orders. But Aquinas' doctrine of law *is* "confused" in this way, irredeemably. For one thing, he regards the promotion of virtue as one of the chief aims or ultimate objectives of law (distinguishing, of course, between its objectives and its proper effects or immediate ends, i.e. between what the legislator hopes to bring about and what he directly commands or requires); see the excellent account of this in Robert P. George, *Making Men Moral* (Oxford: Clarendon Press, 1993), esp. Chapter I. Moreover, the connection between virtue and law in Aquinas is quite "formal": law-abidingness is itself a moral virtue, indeed the highest one (II-II q.59 a.12); and the very first principles of morality are already ordinations toward a *common* good (I-II q.94 a.3 ad 1). Elizabeth Anscombe once argued that the notion of "moral obligation" is unintelligible without reference to a moral law and a proportionate (i.e. divine) lawgiver ("Modern Moral Philosophy", *Philosophy* 33 (1958) pp.1-19); for Aquinas, it also seems to be the case that the very notion of *legal* obligation is unintelligible outside a doctrine of good and evil in which lawgiving itself can be shown to be something good and necessary, something just. The present study is a partial defense of this interpretation of Aquinas.

precisely in a relation to punishment and reward. This impression may be given not only by the example that Aquinas uses to illustrate the general notion of imposed hypothetical necessity—“if he does not do this, he will not obtain his reward”—but also by his insistence that no precept is obligatory unless it is made known. This means that if someone is not apprised of the command, then his compliance with it is not yet necessary for the end. This condition, of course, does not make sense with regard to some kinds of relation of “necessity for an end”. For instance, in the case of ends which are directly, physically produced by the action that is necessary for them, it makes no difference whether or not the agent knows the action’s order toward them; his failure to perform the action will obstruct the attainment of the end anyway. Someone ignorant that he must not eat toadstools will still get sick from eating them; his ignorance does not “absolve” him. One might conclude, therefore, that the only kind of “necessity for an end” that Aquinas can have in mind is the kind which pertains to actions bear upon an end by way of *merit*: actions necessary for obtaining a reward or avoiding a punishment. For this may seem to be the only sort of necessity for an end which has knowledge as a condition of its existence. No one is rewarded for merely happening to comply with an order of which he was unaware, or punished for not complying with it (if the unawareness was involuntary).

In response to these doubts, let us first try to establish more firmly the point already urged: even if it is the case that obligation somehow pertains to the order of merit, it cannot consist primarily in being threatened with or meriting *punishment* for failure to comply. To say that it does would be to say that the obligatory force of law is identical with its coercive force; and in that case, obligation would simply have no role in the actions of those who comply with the law gladly rather than from fear of punishment. But this is not Aquinas’ view. As he puts it, “good” people are indeed not subject to law with regard to its coercive force, but they are

nevertheless still subject to its directive force (I-II q.96 a.5).<sup>9</sup> And this means precisely that they are still subject to the obligations it imposes.

So, for instance, again in his discussion of the precept of charity, Aquinas raises an objection to the very fittingness of a “precept of charity”, as follows: “charity...makes us free.... But obligation, which arises from precepts, is opposed to freedom; for it imposes necessity.” The reply is simply that obligation is not opposed to freedom, except for those whose minds are opposed to what is commanded, e.g. those who act only from fear of punishment (II-II q.44 a.2 obj.2 & reply). And in fact, he says, the precept of charity *cannot* be fulfilled out of fear, but only freely; for to fulfill it is to act out of love, and to act out of love is to act freely. His thought is clearly that, in so doing, one may still be genuinely “fulfilling a precept”, responding to the necessity or the obligation that arises from the precept. Far from escaping the necessity, one is embracing it gladly. So the “necessity” of obligation is something quite distinct, not only from the necessity of sheer physical force (as the *De veritate* text observed), but also from the kind of coercion or compulsion found in voluntary acts, that of fear (see I-II q.6 a.6).

#### D. Obligation and reward

But if obligation does not arise from the punishments attached to law, does it still somehow pertain to the domain of merit, as concerning what is necessary in order to receive one’s *reward*? This would not be incompatible with the foregoing discussion about charity, since even those who act out of charity *also* still desire and hope for a reward, chiefly the very reward of being united with the object of their love. It seems to me that in Aquinas’ thought, it would be more correct to say

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<sup>9</sup>Further support for this point seems to be given by Aquinas’ claim that even in the state of original justice, when no sanctions would be necessary and there would be no coercive rule, there would still be such a thing as government or dominion, that proper to a community of free beings (I q.96 a.4).

that the necessity of obligation in some way “spills over” into a necessity vis-à-vis a reward, but that it does not chiefly consist in that.

To explain this, consider something Aquinas says regarding the question whether justice is a virtue (II-II q.58 a.3). An objection to its being a virtue is that “what is done out of necessity is not meritorious. But to render another his due, which pertains to justice, is necessary. But by the acts of virtue, we merit. So justice is not a virtue.” The reply to this, which also confirms our earlier conclusion about coercion, is as follows.

Necessity is twofold. One kind is that of coercion; and this, since it is repugnant to the voluntary, takes away the note of merit. But the other is necessity from the obligation of a precept, or from the necessity of an end; when, namely, someone cannot attain the end of virtue unless he does this. But such necessity does not exclude the note of merit; insofar as one does what is necessary in this way voluntarily.

The key point here is what is meant by the “end of virtue”. Obviously, if the end of virtue were precisely the reward which the acts of virtue merit, then obligation would consist in nothing other than necessity for the sake of a reward. But Aquinas is very clear that the proper end of virtue is not a mere reward for one’s good conduct; rather, it is good conduct itself and its immediate object (e.g., in the case of justice, *ius* or the *iustum*—see II-II q.57 a.1). It belongs precisely to virtue to make a person desire and choose good conduct *for its own sake*, and not solely for the sake of what might result from it.

The texts in Aquinas which support this point are innumerable. One of them is in the very article at hand, where he says that the virtuous man does what he ought “with a spontaneous and prompt will” (*ibid.* ad 1). It is in this way that virtue not only renders a man’s action good, but also renders *him* good (*ibid.*, corp.). It is not chiefly the consideration of the reward that makes (say) the just man regard what is just as necessary; rather, it is the consideration that without this his conduct cannot

be good. For without it, his conduct cannot “attain the rule of reason, according to which human acts are rectified” (*ibid.*).

Of course, virtue does not positively exclude desire for a reward; it would be odd if it did, since in fact what is done out of virtue is even more meritorious than what is done *merely* out of desire for a reward. But presumably the kinds of rewards which virtuous people find most desirable, and the corresponding punishments which they would find most painful, are not merely accidental accompaniments to the proper ends of virtue. Rather, they must belong to the very same order of goods to which virtue itself belongs—the order of noble goods, the *bona honesta*.

Aquinas does indeed posit rewards and punishments belonging to this order. To the life of moral virtue in general, the life according to the rule of reason, which proceeds from the love of what is right and true, corresponds the reward of a good conscience; and to the contrary corresponds the punishment of its remorse (see I-II q.87 a.1). To the life of supernatural virtue, according to the law of God, which proceeds from the love of God, corresponds the reward of heavenly bliss; and to the contrary corresponds exclusion therefrom.<sup>10</sup> And presumably for the life of “legal justice”, which is the general virtue of law-abiding people or good citizens, proceeding from love of their community, the corresponding reward would be precisely their freedom to participate in the community’s life and culture, to enjoy intercourse and collaboration with their compatriots, and so forth; just as the punishment which seriously outlawed conduct merits is precisely exclusion from the community.<sup>11</sup> Such “sanctions” are in fact nothing but the subject’s own

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<sup>10</sup>Thus charity does not remove, but perfects hope (II-II q.18 a.8), and brings with it a “filial” fear by which one avoids not only offending God but also being separated from Him, which is a “kind of punishment” (II-II q.19 a.6).

<sup>11</sup>See II-II q.64 a.2.

personal share in or enjoyment of the very objects which virtue makes him or her love for their own sake.<sup>12</sup>

In short, the necessity of an action for the sake of fulfilling a precept, and its necessity for the sake of obtaining the reward which fulfilling the precept merits, go together, “necessarily”. They do so both in the sense that the merit is itself a kind of necessity, a debt of justice, and in the sense that the good toward which the fulfillment of the precept is immediately ordered, e.g. the good of virtue, is itself the chief source of the desirability or goodness of its proportionate reward. But the obligation to perform the action is primarily its necessity for the sake of the precept itself and of that which the precept has in view, and only secondarily its necessity to avoid the loss of the reward.

#### E. Obligation and rectitude

It is clear, then, that the fact that knowledge of a precept is one of the conditions for being obliged to fulfill it, does not entail that obligation is primarily something relative to an object of merit or demerit. Rather, it is primarily

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<sup>12</sup>In fact, these rewards and punishments which are “proper” to the domain of virtue are desired more, the more one loves the deeds of virtue, and the objects of virtuous deeds, for their own sake. The chief motive for desiring the rewards is the love for virtue itself and its object, and the rewards themselves are referred back to this. For instance, the man most intent on having a good conscience, and so most careful to abide by its dictates, is not the one whose chief love is his own inner peace of mind, but the one whose love is truth and righteousness as a whole, *on account of which* he also desires his own share in them. Likewise, Aquinas teaches, the strongest impulse toward attaining eternal life, prompting obedience to the eternal law, proceeds not from concern for one’s own salvation, but from the love of God for His own sake; according to Aquinas, the love of God for His own sake, as a friend, increases rather than diminishes the desire to reach heaven, since “friends wish to enjoy each other”. (See *In III Sententiarum* d.29 a.1 a.4. Thus, according to Aquinas, as charity increases, so does filial fear: II-II q.19 a.10. But just as the desire to enjoy the company of one’s friend proceeds from one’s love of him for his own sake, so too charity makes a person love God more for His own sake than for his own enjoyment of Him: II-II q.26 a.3.) And again, something similar presumably holds in the case of good citizens or good members of a community. They love their community for its own sake, and therefore the chief necessity which they perceive in abiding by its laws is that of the community’s own good; but precisely because they love it, they also desire to share in its life, and it is precisely this which their law-abidingness deserves.

something relative to a due end of human action. Granted, the order between a man's action and his due end gives rise to a relation of merit or demerit, in which the proper object of merit or demerit is precisely a certain share in the end or loss of a certain share in it; but the end itself is still something other than and prior to the share (and is in fact the end of the share itself).

And yet the due end is still something which the human agent can attain, or fail to attain, only voluntarily and knowingly. That this is so comes out in the very article cited earlier on justice as a virtue. For in that article, Aquinas recalls his general doctrine that the end of virtue is good action, that good action is action rightly ordered (to the due end), and that the rule or principle of right order in human action is reason. Obviously the acts by which reason exercises its principality over human action are cognitive acts; and the ends to which reason's direction is proportionate are ends which are attained in relations of knowledge and love, relations of minds.<sup>13</sup> In fact, all of the ends which are *proper* to the domain of voluntary or moral action are attainable only through acts knowingly ordered to them.<sup>14</sup> For these ends include voluntariness, or the subject's own self-application to them, in their very substance; hence, what is *per se* necessary for them must be correspondingly voluntary—and therefore, performed knowingly.

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<sup>13</sup>The *last* end of human life is of course a relation of knowledge and love with God (I-II q.1 a.8); but the proper or immediate end of man's social life is also a relation of knowledge and love. Human association, especially friendship, is above all a communication in thoughts and affections. See *In IX Ethicorum* lect.11 #1909-1910.

<sup>14</sup>Of course this does not mean that inculpable ignorance removes the objective disorder in actions which, according to the criterion of the law, deviate from the end—sinful actions. The existence of this disorder is the very reason for the obligation to seek to know the law. The point is merely that performing a disordered action, on account of inculpable ignorance of the disorder, does not *per se* constitute a deviation of *the subject himself* from the end. Avoiding that action is not yet necessary *for him*, so as to remain in order toward the end. But obviously it is not enough *not to deviate* from the end, in this or that particular case, in order to arrive at it; it is also necessary to act for the end, which requires knowledge of the end and of what leads to it.

These considerations enable us to give a more specific formulation to the kind of necessity proper to what is obligatory. In general, the “necessary” is “that which cannot be otherwise”, and the “hypothetically necessary” is “that which cannot otherwise attain an end” or “that without which a good cannot be”.<sup>15</sup> That which is necessary in the specific sense of “obligatory”, then, is: an action which cannot otherwise be according to its rule or ordered to its “due” end, and which, therefore, cannot otherwise be good, according to the kind of “goodness” proper to action (I-II q.21 a.1). It is in this vein that Aquinas says “all law is obligatory, such that those who do not observe it are called transgressors” (I-II q.91 a.6 obj.2). A “transgressor” is one who has overstepped the boundary, deviated from the rule, exceeded or fallen short of the measure. This statement about law, Aquinas says, “concerns law as a rule and a measure; for it is thus that those who deviate from a law are called transgressors”.<sup>16</sup>

## *II. Obligation and legislation*

This concludes the examination of Aquinas’s general notion of obligation, and brings us back to our opening observations concerning the “common notion” of law. We saw that Aquinas’ original formulation for law was “a certain rule and measure of acts, by which someone is induced to act or drawn back from acting”; and that he somehow wants this to express the obligatory force of law. We are now in a position to try to explain how it expresses this. The explanation rests on two points: that, as we have just seen, the “necessity” which is proper to obligation is

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<sup>15</sup>See St Thomas, *In V metaphysicorum*, lect.6.

<sup>16</sup>I-II q.91 a.6 ad 2. Here he is distinguishing between taking the term ‘law’ in the sense of “rule and a measure” and taking it in the sense of something that comes about *from* a rule of law—in the case at hand, the *fomes peccati*. The former, of course, is law in the *proper* sense. There are several texts on the connection between the notions of obligation and transgression in the *De veritate*: q.17 a.4; q.17 a.5 ad 4; q.23 a.2 obj. 4, ad 2, ad 8.

precisely the kind of necessity whose principle is a *rule*; and that for human beings, rules themselves are also moving principles of action. After spelling out this latter point, we will be able to examine legal obligation in its specific character as something “imposed” by an agent.

A. The moving power of rules, and the question of “making the rules”

Now, it is clear that Thomas means for his original formulation of law to refer to something proper to the domain of human acts; he says “someone”, not “something”. *Why* it is proper to the human domain is also patent, especially if we recall that his immediate purpose in this text is to establish that law is a work of reason. Not only is reason itself the primary rule and measure of human acts; it is also *proper* to reason to make “rules” and “measures” in the strict sense. And just as only people (in the visible world) are moved or induced to act by reason, so too only people are moved or induced to act by *rules*, in their very nature as rules.

In other words, it is *taken as a whole* that the formulation is proper to the human domain. Not every “rule and measure of acts” is *per se* an inducement to or deterrent from action. Some rules are merely descriptions, and others are merely criteria for the judgment, of acts; as in the case of a physical “law”, or a check-list on the performance of a machine. Irrational beings and machines may be in conformity with a rule, but the rule itself is not what moves them, at least not immediately. At most, the immediate source of their movements can only be a kind of “inclination” and improper “participation” in the rule. Aquinas conceives “nature” in this way.<sup>17</sup>

Only people are moved by rules themselves, or become disposed to do what is right and due precisely because it affects them as “right” and “due”.<sup>18</sup> In the case of

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<sup>17</sup>See I-II q.91 a.2, q.93 aa.4-5. Also below, II.C.

<sup>18</sup>See e.g. I-II q.91 a.2; I-II q.93 a.5— “*per intellectum divini praecepti*”; I q.103 a.5 ad 2.

human agents, and only in their case, rules themselves can be “interior principles”, *immediate* principles, of their acts (I-II q.93 a.5). Indeed, it is precisely in this way that Aquinas specifies the kind of moving which is exercised by practical reason: “the practical intellect moves, not as something executing movement, but as something directing toward movement” (I q.79 a.11 ad 1). To “direct” is to “make right”, and a principle of rectitude is a rule. Aquinas wishes to draw our attention to the striking fact that in human acts, rational ordinations can initiate action: “men produce an impulse to action through the ordination of reason” (I-II q.17 a.2 ad 3).

On the other hand, of course, not everything that induces or deters human action is a “rule”. That is, not all of a person’s “reasons” for acting are rules. This means that not all of them define a *boundary* between good and bad, right or wrong, in what he does. Counsels and requests, for example, provide reasons for acting which fall short of being rules.<sup>19</sup> Also of this sort are personal preferences, passions and habits—which not only dispose someone’s action but also provide reasons (even if bad ones).<sup>20</sup> Only the *rules* that induce or deter people are laws. This judgment derives from the very fact that laws oblige; or rather, it spells out that fact. For the obligatory is both something which is necessary for being according to the rule or being “within bounds”, and something which one is moved to do precisely because it is necessary in this way.

The crucial point, however, is that the law’s *proper* moving force, its intrinsic power to “induce and deter”, consists in nothing other than its being a rule. In other words, Aquinas’ thought is not that among the rules for human acts, only some exert a moving force, and only these are full-fledged laws; rather, his thought is

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<sup>19</sup>See II-II q.83 a.1 on request as an act of practical reason.

<sup>20</sup>See I-II q.9 a.2.

that what is not apt to exert a moving force upon human action is either not a rule, or not a rule of *human* action precisely *qua* human, at all.<sup>21</sup>

The idea that rules can possess a “moving force” in virtue of the very fact that they are rules is surely central to Aquinas’s conception of the role of the legislator in giving law its power to move. For it means that it is not necessary, indeed not proper, to locate the moving force of law primarily in something merely attached to it, something accidental, for instance in sanctions. If the legislator is the proper source of the law’s moving power, this must be for no other reason than that he is the proper source of the very fact that the law is the rule. That is, his giving the rule of law its moving force must consist above all in his making it be the rule. His work of moving consists chiefly in this, that he makes the rules.

In the light of our earlier discussion, this notion of “making the rules” or “making the law” is by no means something which ought to be taken lightly. For the rules which *per se* have moving force are the rules of *human* action, *qua* human. And if we are to take the notion strictly, as Aquinas appears to want to do, then it means something more than merely *discerning* and *enunciating* the order of right and wrong; and it also means more than merely giving the additional force of public sanction to the execution of the order. That is, it means more than merely informing the citizens of their obligations, or motivating them to fulfill them. It means *creating* obligations for them, making rules for them, and rules which discriminate good and bad in what they do, rules with which it is necessary for them to comply if they are to be in order toward their due good. And this of course

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<sup>21</sup>It is hardly surprising to find that Suarez gives a vastly different interpretation of the formula: see *De legibus* I.i. See also I.v.22: the moving force of law and its directive force are treated as quite distinct from one another. Another way to state my point would be to say that for Aquinas, there is no such thing (in human acts) as a mere *lex indicans*; all law is *praecipiens*, and the distinction between *indicans* and *praecipiens* applies only to a distinction between persons who communicate or manifest the law; not everyone who “indicates” it is its author, its *praecipiens*.

means that *prior* to the law's making, what it dictates was *not* yet necessary (or not under the same title), not yet something which it would be bad or wrong not to do. To have the power to make law is to have the power to make things be right and wrong, just and unjust, good and bad (see II-II q.57 a.2 ad 2). This is surely an astonishing thought.

The astonishment is only somewhat mitigated, in Aquinas' doctrine, by the facts that not everything which is right or wrong is "made" so, i.e. not every rule is something "posited" and imposed by anyone's action, and that the rules which are "posited" by someone always somehow depend on, or are themselves "ruled" by, rules which are not made by him. For instance, the rules made by human legislators are ruled by the eternal law.<sup>22</sup> But the idea is still astonishing, because it refers to the power of making things *humanly* right or wrong, i.e. right or wrong *in the same sense* as that in which the "unmade" rule itself measures right or wrong. That is, in Aquinas' language, human positive law, when it is truly a law, has obligatory force "in conscience", or according to the eternal law (I-II q.96 a.4). So it is an unavoidable question, how it is that someone's action can alter, or contribute to, or further determine, the very order of right and wrong—the order of right and wrong in the actions of *other* agents.

#### B. Being regulated, regulating, and making the rules

Before addressing the specific question of how it is possible that someone be in a position to make rules for human acts precisely *qua* human, we might do well to consider first a somewhat more general question: what is involved in the general notion of "making a rule" for actions. On this point it is instructive to consider two

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<sup>22</sup>See I-II q.93 a.3. Even the order of the universe, which God voluntarily institutes, is ruled by a "law" not voluntarily instituted by Him; though of course neither is it instituted by anyone else, as though it were something "imposed" upon Him. God's own uncreated goodness and wisdom are as a "law" to His will (I q.21 a.1 ad 2).

apparently incompatible theses laid down by Aquinas. These are, on the one hand, that “no one, properly speaking, imposes a law on his own acts” (I-II q.93 a.5), and on the other, that a legislator is subject to his own law, “as regards its directive force” (I-II q.96 a.5). These claims at least sound somewhat inconsistent; and the resolution of the apparent inconsistency is very instructive in relation to the notion of making rules for action. This will provide the focus for this and the next subsection.

What might seem to be the easiest way to resolve the inconsistency does not prove satisfactory. One might think that if no one can impose a law on his own acts, this is only as regards its *coercive* force, not as regards its directive force; Aquinas does indeed say that “no one, properly speaking, is coerced by himself,” and he grants that the legislator is not subject to the coercive force of his own law. However, when he says that no one imposes a law upon his own acts, Aquinas is explicitly speaking about the *directive* force of law (I-II q.93 a.5), i.e. about law precisely as a rule and measure of someone’s acts.

The true resolution of the difficulty is found, I believe, in the article in which Aquinas lays it down that no one imposes a law upon himself. His claim is that law is “directive of the acts which belong to those who are subject to someone’s government”. The continuation of the article shows that this is not a merely terminological restriction on “law”. There is also a substantive difference between the directive principles which are laws and those which concern only a single individual’s actions. The nature of this difference has a direct bearing on our dominant concern, which is how someone’s action can make things be right and wrong, how someone can make genuine rules.

In this article Aquinas is trying to explain how it can be said that physical events, the actions of irrational things, are subject to God’s eternal law. He begins by showing why one might be surprised by this way of speaking: physical things

are in no way subject to human laws. It is true that people can make physical things act in one way or another, but their doing so never has the character of an imposition of law. This is because people can make a physical thing act only through their own physical action upon it, in such a way that the physical action is nothing but a continuation or an extension of their own bodily action; they cannot instill *in* the other body any directive or regulative principle. That is, they cannot make its actions *be regulated*, except remotely, insofar as they regulates their *own* acts. And although it is true that they can bring about regulative principles for their own acts, or command themselves, this never constitutes the making of a law, since “no one imposes a law on himself”. We want to see why this is so.

The article continues by observing that people can, of course, make regulative principles and instill them in (the minds of) other *people*; this is precisely what it is to make a law. But, Aquinas says, God can do something similar for the whole of nature. For the inner principles of natural things, their natures, are sources of *regularity* in their movements, and these principles derive from the rule of the eternal law. There is a regulative principle in physical agents, which exists in them as the application of a rule which is made and applied by a governing agent.

At the same time, we may recall that the “regulative principles” in irrational things, their natures or natural inclinations, do not quite have the nature of “laws”, even in the way in which a law can exist in those who are subject to it.<sup>23</sup> Again, this is not just a question of terminology. The regulative principle in an irrational thing is not in it in such a way that the thing itself is responsible for *applying* the principle to its acts. That is, the principle is not in the thing in the manner of a rule still to be applied; the rule has already been fully applied, i.e. the thing has already become determined to act according to it, and all that remains is the execution of

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<sup>23</sup>See I-II q.91 a.2 ad 3.

this determination, which comes about spontaneously if no external obstacle is present. But a rule, existing *as* a rule, is something “still to apply”. It is only in people, or in rational beings, that the laws to which they are subject can exist precisely as rules, as things still to be applied to the work of actively regulating their acts. A man’s compliance with the law is a voluntary and free act; he is not already determined to execute it, but determines himself to do so, or applies it to his acts *by* an act of his own, the act of choice.<sup>24</sup> Law exists “as law” only in the agents capable of *regulating themselves*, not just being regulated, according to it. But, as discussed earlier, the kind of rectitude proper to “obligation” is active rectitude, or rectitude voluntarily enacted; it is this sort of rectitude which has *knowledge* of the rule as its condition—the rectitude of what not only is ruled but also rules itself (see II-II q.50 a.2).

However, even if one who is subject to a law can choose to comply or not to comply with the law, it is not by his choice that the law is what it is. Nor is it by his choice, although it may require work on his part to discover, that given the circumstances in which he finds himself, complying with the law requires that he do *this*—e.g. that he pay a certain amount of money in taxes. There may be no law which stipulates an exact quantity to be paid, but only laws which establish criteria for determining in each case how much is to be paid. The determination may be up to the individual to carry out. Nevertheless, the question of whether or not the result conforms with the criteria, i.e. with the law, is not a matter of choice for him. It is a pure question of truth or falsity.

The judgment of conscience is like this. It may come about voluntarily, i.e. by a deliberate application of divine law to one’s own case, but the contents of the judgment are not a matter of choice. This then would explain why the dictates of

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<sup>24</sup>See *Summa contra gentiles* Book III chap.114.

conscience, even though they measure right and wrong in a man's actions and may emerge from his own activity (his "examination of conscience"), cannot be called self-imposed laws. Properly speaking the "imposition" of law belongs to the one to whom it belongs to "make" the law, and this means, the one whose choice determines what the law's *content* is.

### C. The institution of rules through the initiation of common action

Now, people do make commands, the contents of which depend on their own choices, concerning their own actions. Aquinas even likens the way in which a human being moves the parts of his or her own body, by command, to the way in which God moves physical things (I-II q.93 a.5 ad 2). Yet he refrains from calling the commands by which a person conducts himself "laws". The reason for this is patent, if we recall that to be subject to a law is to be under a *necessity* of acting in a certain way, in order for one's action to be right. The mere fact of someone's having commanded himself to act in a certain way can never, of itself, *make* it strictly necessary for him to act in that way in order to act rightly. Either this was *already* necessary, by reference to a rule not made by him; or else, instead of acting according to the command, he can simply revoke it, simply change his mind. His command directs his acts, but it never quite becomes an unqualified "rule" for him.

Still, the comparison with a man's command over his own parts and powers is very helpful in explaining why the genesis of rules is always through the action of a superior or a governor. For it recalls a key point in Aquinas' account of the nature of "command" in the *Summa theologiae*, one which does not appear explicitly in the *De veritate* text on obligation. There, command was considered only as a kind of action by the commander on his subject. This of course is true; but it is not the whole story. A command is an action which has some action to be

performed, some “exterior act”, for its object—you command someone to do something; but at the same time, the act of command itself also belongs to the very domain of “action to be performed”, because it is itself included in the object of the commander’s *choice*. In other words, to issue a command is already to undertake or initiate the performance of what is commanded. The act of command, and the act or acts which are commanded, form a unity. They constitute one action, in the performance of which the subject who commands, and the subject or subjects who are commanded, function as one agent (I-II q.17 a.4).

The significance of this is as follows. Suppose that what the commander commands was originally a matter of choice. He had some end in view, and adopted some specific means, some definite path, by which to attain it. Suppose there were many possible paths, many genuinely effective ways of reaching the end; he could choose freely among them. None of them was necessary. Perhaps it is even the case that none of the paths is such that there is no “turning back”; that is, perhaps it is possible to set out on one of them, and then to change one’s mind, retrace one’s steps, and set out on another. What is not possible, however, is to take more than one path at once. So long as one of them is being followed, the others are “ruled out”. But, as just indicated, the commander’s command to those who are to accompany him along the path *is* a setting out along the path. To issue a command is already to *commit* both oneself and those subject to the command to a definite course of action. Perhaps the command can be revoked, and a new path undertaken; but so long as it is in place, it “must” be observed, if the end is to be reached. The command itself makes something necessary, for the sake of the end, which previously was not necessary.<sup>25</sup> The necessity exists only so long as the command stands; but it is no less truly necessity on that account.<sup>26</sup>

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<sup>25</sup>Of course command is not the only act through which something can *become* due or just or necessary for an end, and its contrary unjust and wrong; and not all of the acts through which

This point makes it easy to explain why no one imposes a law, an unqualified rule, on himself, even though he can issue commands to himself. In the case of commanding oneself, the one who is subject to the command is the same as the one who issues it. This means that although it is necessary while it stands, he *controls* the necessity, rather than being subject to it. If he no longer wishes to follow it, he can simply revoke it. But even in this case, he must indeed revoke it, if his subsequent non-compliance with it is not to be in some way disordered, a failure to be “true to himself”. For instance, one might decide and tell himself to do a certain thing *every day*; if subsequently, without changing his decision, he does not do it on a given day (when he could have), it can only be because he has been negligent or has given in to some momentary impulse.

However, things done (or not done) out of negligence or passion are somewhat less voluntary than things done by deliberate choice;<sup>27</sup> this means that in these cases, the person’s action may indeed be said to have something wrong about it, but it is less fully *his action* than what he might do by deliberate choice. But if he disregards his previous decision by deliberate choice, then he is no longer violating any rule that he has set for himself, because he has set aside the rule. And

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rules come into being are acts of authority or governing powers, or even public acts (see II-II q.57 a.2). Our present question is not about the possibility of “new” rules in general, but about those new rules which come into being by *imposition*, or which are the effects of acts of “binding”; these require authority. As will be discussed below (II.E and Conclusion), *this* way of generating rules always presupposes the existence of a body of rules, or of an order of justice, which is not the mere effect of an act of authority. The authority itself must first be constituted, e.g. by an agreement, or it must exist “by nature”.

<sup>26</sup>An example of something which is not intrinsically necessary for the sake of its end, but which is made so by the command of a governor, is the very order of the universe: “*licet istis rebus quae nunc sunt, nullus alius cursus esset bonus et conveniens, tamen Deus posset alias res facere, et alium eis imponere ordinem*” (I q.25 a.5 ad 3; see q.26 ad 3). On the general notion of creating obligations through the initiation of common action, see Yves Simon, *A General Theory of Authority* (Notre Dame: University of Notre Dame Press, 1980), especially Chapter II, pp.31-49.

<sup>27</sup>See I-II q.6 aa.6-8.

this is why nothing that he commands himself to do has the *unqualified* character of a rule for his acts, at least for his deliberate, fully voluntary acts.

But when the commander is one agent, and the person commanded is another, then the latter is never free, or almost never, to dispense himself from the command even by an act of deliberate choice; that is, his doing so *never* constitutes a revoking of the command, and it is only in very extreme circumstances that it is not altogether out of order and unruly (see I-II q.96 a.6, 97 a.4). At the same time, it is also clear that if the commander himself, in his own personal conduct, also occupies the kind of position to which his command is applicable, then he too must follow it. It is a rule for him as much as for anyone else in the same condition. His deciding not to follow it would not amount to revoking it; to revoke it would require withdrawing it from the whole community of those subject to it. Legislators are subject to their own laws.<sup>28</sup>

#### D. The governed as “belonging to” the governor

Now, the claim that rules of human action have some moving force *per se* does not at all mean that their moving force is always irresistible. The “necessity” of the rule, hypothetical necessity, is in no way incompatible with the voluntariness of the subject’s compliance with it, or with the fact that compliance with it is a matter of choice and hence something which may or may not come about. For it is still up to the agent to move himself, or not, toward the end; his knowledge of the rule merely makes him grasp the end as requiring the action in question.<sup>29</sup>

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<sup>28</sup>In a way, even God “binds” Himself in certain ways by virtue of His own institution (see I q.21 a.1 ad 2, and the discussion of His “*potentia ordinata*” in I q.25 a.5, especially ad 3, and I q.25 a.6 ad 3; also I-II q.100 a.8 ad 2).

<sup>29</sup>See I-II q.91 a.2 ad 2; *Summa contra gentiles* Book III ch.114 This point holds even when the end is itself necessary; for it may still be up to the agent to *consider* the necessity of the end and of what is for the sake of it(see I q.82 a.2, I-II q.10 a.2, I-II q.13 a.6).

It is because not all rules are irresistible that, in addition to its proper moving force, additional force may be attached to a law, in contemplation of the obstacles that it may encounter in those who are ruled by it. This is the force of sanction, i.e. of the order of “accidental” rewards and punishments accompanying the law, besides those which are intrinsic to it (as discussed earlier). But this is not what first makes the law obligatory, as we have already seen. Those who are moved only by the sanctions that happen to be attached to the law are precisely those in whom its obligatory force is not *per se* efficacious, those who are in some way indisposed or at least imperfectly disposed to be swayed by its *proper* “inducement and deterrence”, and who need a “corrective” or “medicinal” treatment. They are the ones for whom the law is in some way a constraint upon their freedom and voluntariness, a “compulsion”. Even in their case, it seems, if the effect of sanction is still to “induce” them to abide by the law (their compliance retains at least the voluntariness of what is done out of fear), rather than merely to suppress the harmful effects of their unlawfulness by rendering them impotent, then some degree of “good disposition” or law-abidingness must remain; the function of sanction, as an “accidental” or indirect cause of obedience, is that of a “*removens prohibens*” to the law’s proper effect, either as a threat dissuading a man from following a bad impulse, or as a “medicine” whose application serves to uproot specific bad dispositions. But the man must still have some basic disposition to live in society and to abide by its exigencies, if he is to be “corrigible”.

Sanctions can also function in a *purely* suppressive way. They do so when the law’s obligatory force, its inducing and deterring, is *completely* ineffective. In this case, sanctions bring it about that even if the law is not obeyed actively, at least the general order which it enjoins will remain intact—even at the expense of the sheer freedom of movement of this or that individual law-breaker. In other words, sanctions bring it about that, as far as possible, the “necessity” of the law’s

execution be not only “hypothetical” but also “absolute”; it will either be obeyed by its subjects, or inflicted upon them.<sup>30</sup> In Aquinas’s judgment, this is itself a “hypothetical necessity”, something which is “due” to the law or which the law “needs”, something “just”.<sup>31</sup> In view of the extraordinary dignity which he attributes to the individual human being, it is striking that he can make this judgment.

Indeed, even the “medicinal” or “corrective” function of sanctions is remarkable in this way; for even if it is possible to consider this function as serving the subject’s own good (as Plato taught), nevertheless it does so in a compulsory way. It therefore proceeds as though the subject’s own good were not simply his own business, but also someone else’s business—nay, even more the other’s business than his own, since the other’s decision about what suits him is taken to *overrule* his own. In other words, the institution of sanctions implies not only that that subject must obey the governor *if* he is to accompany the governor in the pursuit of a goal, but also that he *simply must* accompany the governor, that his debt of obedience is unconditional.<sup>32</sup> It is as though, in effect, he *belongs* to the governor.

Aquinas is perfectly conscious of this implication. Highly significant, in this regard, is another passage from the article cited earlier in which he explains the meaning of ‘due’:

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<sup>30</sup>See I-II q.93 a.6.

<sup>31</sup>See the general account of the “naturalness” of punishment in I- II q.87 a.1.

<sup>32</sup>So, for instance, precisely in speaking of its belonging to law to induce people to virtue, Aquinas says that in order to do this efficaciously, the law “ought” to have coercive power, the power to inflict punishments (I-II q.90 a.3 ad 2). It is *because* what the law enjoins is unconditionally necessary, as conducive to virtue, that a further “necessity” is added to it, one able to move even those not yet disposed to do what virtue requires.

to each one is due what is his. But what is called “his” is what is ordered to him, as the slave is the master’s, and not vice-versa; for that is free which is for its own sake. Hence in the term ‘due’ is implied a certain order of exigency or necessity of something to which [what is due] is ordered (I q.21 a.1 ad 3).

Of course this text is not meant to imply that slavery is always truly just, but only that part of the notion of being a slave is “belonging” to the master.<sup>33</sup> Nor, however, does the text mean that every instance of a person’s “belonging” to another subject is an instance of slavery. To be a slave is to belong to another *individual* human being. Aquinas of course judges that, at least in most cases, this is a highly unnatural (and so ultimately, unjust) state of affairs. But he also judges that other instances of a person’s belonging to “another” are both quite natural and quite just. In these instances, the “other” is a subject of a *higher rank* than the individual human being; for example, in the way in which a whole is of a higher rank than its parts.

To belong to another in this manner need not be at all an infringement upon the individual’s dignity, an invasion of his domain of liberty. In fact, it may be precisely what establishes that domain. This is because someone’s belonging to a subject of a higher rank means that he is free in relation to subjects of lower rank, including those whose rank is equal to his own (see II-II q.57 a.4). (This doctrine does however entail the claim that freedom and dignity admit of degrees.)

It is ultimately in this way that Aquinas can “justify” legal sanction: above and beyond the generic “due end” which serves as the principle for all unqualified “hypothetical necessity” in human action, namely happiness, he must also posit an end whose requirements measure, transcend, and in some cases even override, the

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<sup>33</sup>See also I q.96 a.4.

requirements proper to a given individual's well-being.<sup>34</sup> It does so because it is the end of the subject to whom the individual belongs, and for the sake of which the individual exists. The really first principle, or ultimate end, from which the law derives its necessity, is the *common* happiness (I-II q.90 a.2).

For Aquinas, the most important subjects of higher rank, to whom it is natural and just for individual human beings to belong, are of course civil society and God. The reason why subjection to civil society and to God is natural for human beings is that they cannot attain their own "due end" without it. Nor is this subjection merely a *means* to their personal fulfillment; rather, the principal objects of an individual's personal fulfillment are themselves essentially *common* goods, ones which *cannot* be possessed except by being shared. Such for instance is the good of friendship.<sup>35</sup> Civil society *is* a kind of friendship, and so is that relation with God which constitutes man's highest bliss (see e.g. II-II q.23 a.1); not to mention that God Himself is the most universal good of all. This point has already been touched upon in the discussion of the "due end" at the root of obligation. Aquinas's psychology of the will enables him to hold that it is possible for a "common" good to be an individual's own chief good—not merely in the sense that his private interests depend heavily on the common welfare (see II-II q.47 a.10 ad 2), but above all in the sense that the common good be a more primary object of his own love, something he loves even more than himself. This is in fact the *natural* order of love.<sup>36</sup> The common good is "better", indeed "more divine" than the good of one

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<sup>34</sup>See II-II q.26 a.3: "*quaelibet...pars habet inclinationem principalem ad actionem communem utilitati totius. Apparet etiam hoc in politicis virtutibus, secundum quas cives pro bono communi et dispendia propriarum rerum et personarum interdum sustinent.*" Cfr. II-II q.31 a.3 ad 2.

<sup>35</sup>See Gregory Froelich, "Ultimate End and Common Good", *The Thomist* vol.57 #4 (October 1993) pp.609-619.

<sup>36</sup>See I q.60 a.5, I-II q.109 a.3, II-II q.26 a.3.

individual (II-II q.47 a.10; q.141 a.8).<sup>37</sup> The common good serves as the very measure of the “goodness” of the individuals themselves.<sup>38</sup> This is why the agent which governs for the common good can make rules which measure men’s acts *as* human acts.

E. The proximate “due end” of obligation: subjection to the governor

Now, if the individual’s chief “due good” is in fact a *common* good, then even if it corresponds perfectly to his own nature, and even if his own order toward it is perfectly voluntary, the requirements of that order cannot possibly be adequately enumerated merely on the basis of the consideration of his own nature or his own will. A whole cannot be adequately judged in terms of the natures of its parts, even when its parts are perfectly “at home” in it.

Likewise, the movement toward the common good is not primarily a movement of any one of the community’s parts; its primary subject is the whole

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<sup>37</sup>At the same time, as goes without saying, Aquinas does not understand the principle of the superiority of the common good in such a way as to render citizens mere instruments of their society; they are its “principal parts”, enjoying an immediate relation, indeed a relation of justice, with the whole community (see II-II q.57 a.4), and their self-subordination to its well-being merits from it a share in its blessings. Moreover, if freedom admits of degrees, so does belonging; it is possible to belong to several “others”, to varying degrees or to various effects; one may even also belong to oneself, or exist for one’s own sake, as is the case with all persons. This recalls the distinction made in the *De veritate* text on obligation, between intrinsic necessity and necessity extrinsically imposed; the same distinction also has place in the order of “hypothetical” necessity. But when the imposed hypothetical necessity is an unqualified obligation, i.e. a necessity relative to a truly “due” end, the distinction can never quite amount to a direct clash. A true obligation *may* be in perfect accord with the subject’s inclinations; and it can *never* be perfectly contrary to them—at least, not to his “natural” inclinations. That is, it is true that the obligations imposed in the manner of “positive” law may not *per se* correspond to any natural human inclination; but since their necessity is only *hypothetical*, and this for the sake of a due human good, it finds its ultimate source in the very same thing which gives rise to the necessities of natural law, which are as it were the hypothetical necessities deriving *per se*, by a “natural” determination, from the due human goods (see I-II q.94 a.2). Recalling the *De veritate* comparison with the upward tendency of fire, we might say that true legal obligation never simply suppresses the upward thrust, but only delimits the course that the fire must follow as it rises.

<sup>38</sup>See I-II q.92 a.1; II-II q.47 a.10 ad 2.

community. Hence both the determination of the course to be followed in pursuit of the common good, and the actual initiation of the pursuit, must be an act of the whole community, a public function, a work of the “common mind”. And as we have seen, it is precisely the initiation of a common undertaking which gives rise to new rules, new necessities in the actions of the participants. Thus the making of law is the function of “the whole multitude or to someone acting on behalf of the whole multitude, since the work of ordering to an end belongs to the subject to whom the end is proper” (I-II q.90 a.3). The individual’s order toward the common good, i.e. his own opportunity to share in it, and his belonging to the community, in the strict sense of “belonging”, *go together*. His pursuit of the common good and his subjection to the order of the community are inseparable. Being ordered to an end which transcends what is proper to him entails being subject to an order of which he is not the proper source, an “imposed” order.<sup>39</sup>

But Aquinas’s explanation of why law-making is a public function also contains another important point. To say that the common good is “proper” to the whole community is to say that it primarily “belongs” or is “due” to the whole community. This of course is a different sort of “belonging” from that according to which the community’s members “belong” to it. But this difference does not amount to a sheer equivocation. Rather, this two-fold “belonging” is extremely significant. It in fact helps us to identify an even more immediate due end at the root of legal obligation, and so to spell out more fully the way in which legal obligation comes into being through the command of a governing agent. This “due

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<sup>39</sup>The specific content of the order will therefore not correspond to the intrinsic tendency of the part; the part will be “neutral” to it. Its inclination is merely “to be moved” by the higher principle, in “whatever” way the principle determines. But this is enough for the motion to be “natural” to the part or according to its inclination. See II-II q.2 a.3; *In V metaphysicorum* lect.6 #835.

end” is in fact nothing other than the governing agent itself, the “common mind”, as that to which those who are governed by it ought to adhere and be conformed.

Let us take one last look at the text on the meaning of “due”. The use of the expression *causa sui* in this text recalls Aquinas’s teaching that the free agent is to be understood as a kind of end, “that for the sake of which” other things exist or are done.<sup>40</sup> It is important to keep in mind that for Aquinas, the pursuit of an end or the ordering of things to an end always has a twofold aspect, which corresponds to the distinction between what he calls “love of friendship” and “love of concupiscence”. To pursue an end is always to pursue some desirable perfection; this perfection is the object of love of concupiscence. But the pursuit is also always for someone, i.e. a pursuit of someone’s enjoyment of the good; the person whose good is pursued is the object of love of friendship. These aspects always go together; and the relation between them is such that the one *for whom* the good is pursued has the character of a *principle* relative to what is pursued for him. That is, you seek someone’s perfection, as an end, *because* you love him, and not vice-versa.<sup>41</sup>

These considerations have an evident bearing upon our characterization of obligation as imposed necessity for the sake of a due end. In its chief sense, the “due end” which is the *immediate* object of the necessity proper to obligation appears in fact to be *identical* with the governing agent to whom it belongs to impose obligation. That is, if we ask, what is the end that all such imposed necessities have in common, or what is the kind of end proper to “imposed

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<sup>40</sup>Of course agent causality and final causality are distinct kinds of causality; but it is still possible for the same thing to exercise both, i.e. to be both that from which motion begins and that for whose sake things are moved. For instance, the “principal agent” is that for whose sake instruments exist and act. See *In II De anima* lect.7 #322 .

<sup>41</sup>See I-II q.26 a.4.

necessity for an end” in general, the answer is that it is precisely the end of being well-subjected to the one who imposes it. Subjection to the governor is the most immediate, or proper, end for the sake of which what the governor commands becomes necessary precisely in *virtue* of his commanding it. This is the necessity which corresponds to the very *form of command*, and it is the imposition of this necessity which is the immediate and common effect of law, i.e. the proximate goal for the sake of which something is made into law, given the form of law.

Thus, in explaining in what sense the effect of law is to “make men good” (I-II q.92 a.1), Aquinas says: “law is nothing other than a dictate of reason in the one presiding, by which the subjects are governed. But the virtue of any subject is to be well-subjected to him by whom he is governed.... But each and every law is ordered toward this, that it be obeyed by the subjects”. How does law obtain its “order toward being obeyed”? Primarily by the very fact of being issued in the form of a command or a prohibition, and secondarily by the fear of punishment (I-II q.92 a.2). Its “being ordered toward being obeyed” is precisely its being made obligatory; this comes about when it is promulgated (I-II q.90 a.4).

To say that the governor himself is the “proximate end”, for the sake of which what is commanded, as such, is necessary, is really only another way of saying that the necessity *proper* to what is obligatory is necessity for the sake of being “right” or having “rectitude”. For the *proper* measure of “rectitude” in actions is not the ultimate end to which they are directed, but the directing agency. An action which deviates from its rule is wrong, even if it “happens” to reach the end toward which the rule was directing it.<sup>42</sup>

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<sup>42</sup>“*Magis est de ratione peccati praeterire regulam actionis quam etiam deficere ab actionis fine*” (*Quaestiones disputatae de malo* q.2 a.1). See I-II q.21 a.1.

But in human acts, the directing agency itself “moves” in the manner of an end, i.e. in the manner of the *object* of the will; it moves precisely by conceiving (and in some cases, actively *designing*) the will’s object, and presenting it to the will. So in fact, it is only because the governor can play the role of an end that he can “move” or “impose necessity” upon *voluntary* acts; for what moves the will, its proper object, is what has the nature of an end, and is apprehended as such.<sup>43</sup> In keeping with our earlier discussion of the governor as initiating common action, we ought to think of his “impelling” those subject to him, not as a kind of “pushing” them from behind, but as what results from his going *ahead*, his leading; the immediate end of those who follow a leader is precisely to stay behind him, and their seeing him move is precisely what “impels” them to move after him. This is only an image, of course; what it does not capture is the fact that, in the case of those who are subject to law, the “leader” whom they are *chiefly* intent upon following is the *common* agent, e.g. the whole community. In this case, their “following” cannot consist in a univocal imitation of the leader’s movements; rather, it requires a discernment of the proportion between the common initiative and their particular condition. The principles of this discernment *are* the laws. Once these are communicated to those who are under leadership, it is up to them to apply them to the configuration of their singular acts.

There is an clear connection between the idea that the proper goodness or virtue of “subordinates” (*subditi*) is to be well subordinated to their governor and the idea that the subject to whom someone belongs is a kind of end for him.<sup>44</sup> This

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<sup>43</sup>At least, it is only “*per modum obiecti*” and as an end that a governor can move the will by way of a command, i.e. through something is brought to bear on the will as it were from outside. It is true that God can move the will “from the inside”, because he *makes* the will; but this way of moving the will is not through *command* (see I q.103 a.5 ad 2, q. 105 a.4, I-II q.9 a.6).

<sup>44</sup>Obviously for Aquinas it is not the good of just any community that merits the subordination of the individual to it, or that really “measures” the individual’s goodness. For its laws to be truly obligatory, the community must have an end that is truly common, and truly human; an end

however seems to lead to the rather uncomfortable thought that citizens “belong” to whomever happens to be legislator. But in fact the point is precisely the contrary; it is that the chief source of law, the chief governor, is whatever subject it is to which the citizens truly belong. In many regimes, many of the laws are framed by mere “ministers” of the regime, by minds who are mere servants of the common mind, not identical with it.<sup>45</sup> In this case conformity to them is a kind of end, but only an intermediate one, a means to something else; their choices do determine genuinely legal rules, but only in virtue of their having been chosen to exercise this function by a higher authority. In these instances, both their own legislating, and the subject’s obedience to them, is itself regulated by a *higher* law, e.g. the constitution;<sup>46</sup> and compliance with this is for the sake of adherence to a *higher* mind, with which it is deemed good to comply for its own sake. This higher mind may be nothing other than the “spirit” of the constitution, the mind of the “people”; but in regimes of this sort, such a mind is certainly regarded as something real, and something lovable. And the true, proper end for the sake of which compliance with the law is necessary, i.e. has become necessary through the very institution of the law, is the end of being in harmony with that mind.

To this one may be inclined to respond that it does not seem to be always the case, or even the most ordinary case, that the strongest motive which most citizens have for obeying the law is their love for the regime or for the common good. It is at best the ideal case. Aquinas is quite aware of this. He shows such awareness, for

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which thereby satisfies—at least in part, and for the most part—the natural inclinations of the members. See I-II q.92 a.1 corp. & ad 4.

<sup>45</sup>This seems to be the drift of Aquinas’ distinction between the kind of dominion exercised by a master over his slave and the kind exercised by the “president” of a free community, who governs its members for the common good (I q.96 a.4).

<sup>46</sup>See *In V ethicorum* lect.11 #1009.

instance, when he observes that it is not *by nature* that an individual belongs to this or that regime, and that therefore it does not come *naturally* to him to love his regime more than himself (I q.60 a.5). Such love is not a natural endowment, but an acquired virtue. But part of the very intention and tendency of the rule of law is to instill such virtue, to *make* those subject to it into good citizens. This, I believe, means that the “ideal case” is also the one to which Aquinas looks in forming his general notion of law and of its moving force; the cases which are less than ideal retain the nature of *legal order* insofar as they resemble and tend toward this.

At any rate, even if it is not love, *some* disposition to “belong” to the community and to be ruled by its exigencies must be presupposed, if any precept is to “rule and measure, induce and deter”. “A law is not imposed by any lord except upon his subjects; and hence the precepts of any law presuppose the subjection of him who receives the law to him who gives the law” (II-II q.16 a.1).<sup>47</sup> What is this necessary disposition? The passage just quoted concerns man’s subjection to God’s precepts. This, Aquinas says, comes about through *faith*; it is through faith that God’s authority is made manifest to people (see II-II q.4 a.7 ad 3, q.104 a.3 ad 2). Is there not something similar to faith which must be presupposed in the legal order of civil society, namely *trust*?<sup>48</sup>

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<sup>47</sup>This is a particular instance of the general principle enunciated in *Summa contra gentiles* Book II chap.28: “*cum iustitiae actus sit reddere unicuique quod suum est, actum iustitiae praecedit actus quo aliquid alicuius suum efficitur*”.

<sup>48</sup>There *is* a precept of faith, of course (see I-II q.100 a.4 ad 1); but Aquinas’ point is that a person’s judgment that it is necessary to believe cannot *first* be based on his knowledge of any command to do so. It is not quite the same with the precept of love, since the apprehension of God’s authority (through faith) can precede love, and the precept of love then serves to move one to try to *acquire* love (see I-II q.100 a.10). But in neither case is the precept merely superfluous, even for those who have both faith and love; the precepts provide further a further motive, that of obedience, perhaps somewhat in the way in which one’s commanding *oneself* to do something which he *already* wants to do gives him a further impulse to do it. In these cases, one’s being “bound” by the precept is in fact in perfect accord with his inclination, just as one might bind a heavy object to the ground, keeping it in the very place to which it naturally tends to go—down. Similarly, the will’s first disposition to obey reason cannot come about from a dictate of reason; but there is such a dictate.

*Conclusion: Law as a work of reason and will*

It is clear, then, that for Aquinas, the making of law is a work of both reason and will. Its immediate or proximate source must be reason, on several grounds. First, the sheer conception of the rule to be instituted as law is a work of reason. The principle of this rule is a *common* good, which is to say, a good which is sought precisely in its character as something to be shared by, or distributed to, a multitude. The derivation of a multitude from something which is one must proceed according to an order, and it belongs to reason to conceive order. Likewise, not only the conception but also the institution or enactment of the order of law, its being made apt to *move* people according to it, is essentially a work of reason; the “imposition” of a law upon people is precisely its communication to them in the form of a rule. That is, it is not solely the governor’s own will or “impulse” which must be regulated by reason (I-II q.90 a.1 ad 3); he not only impels in an orderly way, but also impels *by* imparting a principle of order, a rule. This is why the proximate or immediate impelling principle must be reason; the will cannot impel in the specific manner of *ordering* except by applying reason to what is to be impelled and ordered. The law is an application of the governor’s reason to the reason of those whom he directs.

At the same time, of course, the governor makes this application because he wants to; and previously, the determination of a particular order to be instituted, where others might have served, was a matter of his choice. The will’s role is essential. But it should not be conceived as something merely accompanying reason’s product, or as something which comes into play when reason’s own work is complete, i.e. as something which adds the “finishing touch” and gives the rational rule the quality of law. Rather, on the one hand, the choice itself is for the sake of what reason has conceived, so that its “force” is proportionate to the goodness which reason apprehends in the rule; and, on the other, the moving power

which the choice confers upon reason's subsequent pronouncement of the order, i.e. upon the promulgation of the law, is *in* the pronouncement itself, not something added to it. The promulgation of the law is already a genuine action.

Thus the law moves those who are subject to it in virtue of an act of the legislator's will, but its doing so does not consist essentially in its being a sign of that act of will—at least, not if the act of will is to be regarded as something *distinct* from the law's *actually being the law*, its being the order which is actually in place and which the community is already tending to follow. The essential “act of will” is *certainly* not an additional decision to attach sanctions to the rule. Nor is it an additional “will to oblige” the subjects according to the rule, if this means anything other than a will that the community actually undertake the path chosen. The necessity of following that path is a *consequence* of the very act of instituting the law, but the legislator's object in instituting the law is not to produce the necessity (as though this were desirable in its own right); his aim is simply to set out on the path.<sup>49</sup>

At the same time, it would not be correct to insist upon the rationality of the law to the point that its “originality”, or the “novelty” of the order of rectitude which it measures, a novelty which is due to its proceeding from an act of choice, simply vanishes. Its proper necessity, the necessity *generated* by the enactment of the law, involves something more than its mere conduciveness to the common good, i.e. to the *end* to which the community itself is ordered; and in the minds of

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<sup>49</sup>Thus in order to know a law, it may be sufficient for someone to observe that a certain way of acting is commonly undertaken or avoided by the members of the community, i.e. that this is their *custom* (see I-II q.97 a.3); he comes to understand that certain things are simply “not done”, and does not need to advert to any explicit act of institution or even permission of this order on the part of a governor. Man's first understanding of the precepts of natural law seems to have this character; they are first perceived simply as requirements of the order to which the universe is actually subject, and only subsequently does he advert to an intellectual principle of this order. “*Actus humani regulari possunt ex regula rationis humanae, quae sumitur ex rebus creatis, quas naturaliter homo cognoscit*” (I-II q.74 a.7).

those whom it rules, its conduciveness to the common good may at first not even be apparent. For them, it may not always be “transparent” to the common good.<sup>50</sup> Rather, its proper or immediate “transparency” is to the authoritative body from which it proceeds, e.g. the community itself; the law shows itself to be a condition of the individual’s being in harmony with the community. That is, the law’s showing itself so *is* its showing itself to be the law. It is only as the individual grows in his assimilation to the mind of the community, *through* compliance with the law, that he comes to perceive the law’s fittingness in relation to the community’s own well-being.

In part, this reflects the pedagogical aspect of law in Aquinas’s doctrine.<sup>51</sup> For him, teaching too is a kind of action of one mind upon another, an action by which the teacher brings the mind of the student to an apprehension of truth. And corresponding to the necessity of adhering to the governor, for the sake of being rightly ordered to the common good, the student is under the necessity of adhering to the mind of the teacher, if he is to learn. Aquinas is fond of citing Aristotle’s remark that it is necessary for one who is learning to believe his teacher (see especially II-II q.2 a.3).

Still, there remains a difference between teaching and governing. This is shown by the fact that although what the teacher tells the student may not yet appear to the student as something necessary to affirm, i.e. as true, it does appear so to the *teacher*; his teaching it does not make it true, and it is not a matter of choice for him. But it is the governor’s command which *makes* what he commands to be necessary, for the sake of attaining the common good; it was originally a matter of choice for him, and it is only on account of his decision that it is now

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<sup>50</sup>Cfr. Finnis, *op. cit.* pp.340-342.

<sup>51</sup>See Hibbs, *op. cit.*

wrong to do otherwise. Hence, to know the truth is not *formally* the same thing as to agree with your teacher, even if what he teaches is the truth; whereas to act rightly, for those who are subject to a governor, *is* formally to act in compliance with the governor. This is because to be under a government is not only to be acted upon by the governor, but also to act *with* him in pursuit of the common end; and since it is a question of action, it retains an irreducible element of singularity. It is not “arbitrary”, but it *is* a matter of choice. The effect of being taught is to have a mind *like* the teacher’s; but the effect of being governed is to be *united* to the governor, to combine with him in a single, common activity. To be under government is, so to speak, to have one’s *choices*, not just one’s opinions, in another’s hands. This is why I spoke of trust, not merely belief, as the necessary condition for government. Trusting someone contains an element of benevolence, *mutual* benevolence, which may or may not be present in merely believing what he says. In short, students do not “belong” to their teachers in the way in which those who are governed belong to the governor. But the necessity of belonging to a governor, i.e. the justice of this, is certainly not the effect of the governor’s command or will. And for Aquinas, if such “belonging” cannot be justified, then there is simply no such thing as obligation, no such thing as law.

NOTES