On Law in Aristotle and Aquinas

In the *Summa Theologica*, Thomas Aquinas draws extensively on the philosophy of Aristotle to develop his own theology and philosophy. One instance of this phenomenon is Aquinas’ discussion of law and justice, and indeed much of Aquinas’ philosophy of law is rooted in that of Aristotle. In this paper, I will demonstrate that- in many ways- Aristotle and Aquinas agree about the basic elements of law, including its relation to happiness, its end in virtue, and the fulfillment of this end through habituation. However, I will argue that, although they also agree that there is a difference between good citizens and good men, they disagree fundamentally about the nature of law, as Aristotle holds that certain political structures allow human laws to craft good men, whereas Aquinas posits that it is impossible for human law to do so.

Before discussing the ends or means of law, it is first necessary to discuss the general so-called must first be concerned with directing those governed toward happiness. Aristotle writes that “the [laws] we call ‘just’ are the ones that produce and safeguard happiness and its parts for the community” (*NE* V.1 1129b17). Thus, for Aristotle, a law is unjust if it does not produce happiness within the political community, although it remains to be seen what constitutes and produces happiness. Similarly, Aristotle claims that “law in the strict sense needs to concern the order of things and happiness in general” (*ST I-II* q90a2, 13); otherwise, it is not properly a law.

Immediately, we are met with the question of what constitutes happiness for Aristotle and Aquinas. As this paper is not concerned with the definition or achievement of happiness, it is sufficient to say that, for both Aristotle and Aquinas, happiness is related in some fashion to the exercise of virtue. Thus, for both Aristotle and Aquinas, virtue is central to a conception of law as well. In Ethics II I, Aristotle writes that “legislators make citizens good” (*NE* II.1 1103b1) or virtuous. How legislators achieve this is yet to be seen, but Aquinas echoes this point, substituting blessedness for virtue: “law especially needs to regard the order of things to blessedness” (*ST I-II* q90a2, 13). Aquinas again claims analogously in question 92 that “the proper effect of law is consequently to make its subject good” (*STI-II* q92a1, 27). We must therefore now probe how laws cultivate virtue in their subjects.

Aristotle and Aquinas begin their explanations of the cultivation of virtue through law by discussing man’s nature as it pertains to virtue. For both philosophers, it seems that there is something intrinsic in man suited to virtue. Aristotle writes that “the virtues come about in us neither by nature nor against nature, rather we are naturally receptive of them” (*NE* II.1 1103a25). Thus, although one might claim that certain men are more disposed to virtue, and certain men seem completely lacking in virtue, Aristotle claims that all men are capable performing virtuous acts. Again, Aquinas is in agreement, writing that “human beings by nature have a capacity for virtue” (*STI-II* q95a1, 52). Law must therefore provide a means by which to develop the virtuous natures of their subjects.

There are many ways that philosophers have thought to instill virtue within men, writes Aristotle, but they are ineffective. It is insufficient to claim that men are virtuous merely as a result of having a particular character disposed to virtue, and it is also incorrect to assume that virtue is instilled by argument and theoretical discourse. Rather, claims Aristotle, virtue is cultivated in humans through habituation. “It is difficult,” Aristotle writes, “for someone to get correct guidance toward virtue from childhood if he has not been nurtured under laws of the appropriate sort” (*NE* X.9 1179b35). It is reasonable to assume that the appropriate sort of laws Aristotle refers to are those which concern happiness and aim at cultivating virtue within their subjects. Aristotle claims in X 9 that it is important not just to have laws which teach children to perform virtuous acts, but laws which cultivate virtue in adults as well, as adults can fall prey to vice as readily as children. Aquinas, referencing Aristotle’s view on habituation, claims that “law makes human beings good as much as their actions conduce to virtue” (*STI-II* q92a1, 27). His view is slightly more nuanced, as Aquinas grants that laws can only make humans good insofar as men choose to follow law, and that laws can be insufficient in making men virtuous.

Turning now to the problem of whether laws can make men truly virtuous, it is possible to begin to understand where Aristotle and Aquinas diverge with respect to their understanding of law. For throughout their discourses on law, both Aristotle and Aquinas have been left with a puzzle about virtue relative to law. Both philosophers recognize that it is possible for men to be good in various ways: in one sense, a man might be virtuous relative to the law, and in another, he may be virtuous absolutely. To put the puzzle more plainly, supposing we find a man who follows all the laws of his community, shall we say that he is truly a good man, or is he merely a good citizen? Although Aristotle and Aquinas’ responses are ostensibly similar, they differ with respect to the possibility of both being true for the man in question.

To situate the question of whether law makes men good citizens or good men, Aristotle writes that there seems to be a different virtue of good men and of good citizens, claiming that “the virtue of a man and of a citizen are not unconditionally the same” (*Pol.* III.41277a15). However, in *Ethics* III 5, Aristotle concedes that it may be possible for the virtue of a good man and a good citizen to be the same under specific circumstances, and “whether, then, the virtue of a good man and that of an excellent citizen are the same or distinct, and in what way they are the same and in what way distinct” (*Pol.* III.51278a30) is evident from a careful study of the political structures from which law arises. This is dependent on human’s “relation to such a regime” that would foster both sorts of virtue. While it is irrelevant to this paper to discuss the best regime which is suitable to make men good as citizens and good as men, it is nevertheless critical to note that Aristotle think it is possible under certain regimes for law to make “the same person unconditionally a good man and a good citizen” (*Pol.* IV.6 1293a5). Even if this is an improbable outcome, Aristotle leaves open the possibility, which is a critical departure from Aquinas’ philosophy.

In order to begin a discussion of Aquinas’ theory on the limits of law with relation to virtue, it is necessary to first discuss the types of law Aquinas presents in *Summa Theologica*. Aquinas posits that there are several types of law: eternal law, natural law, human law, and divine law (*STI-II* q91). Until this point in the paper, I have been exclusively discussing human law, as it is the analogue of laws laid out by regimes in Aristotle’s philosophy. However, human law for Aquinas has certain intrinsic connections to natural and divine law that are impossible to ignore. To recall the earlier discussion of discussion of what constitutes a law, it is evident that Aquinas’ account of law has been abstract, referring to concepts of happiness and blessedness to define what is properly a law (*STI-II* q90a2, 13). Aquinas refines his position in Question 95, in which he writes that “every human law has as much of the nature of law as it is derived from the natural law. And a human law diverging in any way from the natural law will be a perversion of law” (*STI-II* q95a2, 54). As explicated in Question 94, the natural law dictates “everything to which human beings are inclined by their nature” (*STI-II* q94a3, 45). Thus, “all virtuous acts belong to the natural law, since one’s own reason by nature dictates that one act virtuously” (*STI-II* q94a3, 45). This formulation helps us understand Aquinas’ position much more clearly. For Aquinas, virtuous acts are proper to man, and natural law is how man’s reason is able to ascertain what is virtuous. Because it is natural for man to be virtuous, natural law dictates that man act virtuously and create societies in which virtuous acts are legal and encouraged.

The mechanism by which Aquinas conceives that man can dictate virtuous acts within a society is through human law, which, though limited, can begin to cultivate acquired virtue within its subjects. Human laws derive their binding force from their connection to the natural law (*STI-II* q95a2, 54), and address particulars that are not contained in the natural law. For example, writes Aquinas, natural law requires punishment for criminals, but human law may dictate what form that punishment takes.

Human law is limited, however, in its ability to punish all vices and command every virtuous act. Most men, Aquinas claims, have “imperfect virtue,” and cannot be governed by the same laws as truly virtuous persons. Therefore, because human law is established for a collective body of imperfectly virtuous and truly virtuous people, it “does not prohibit every kind of vice, from which the virtuous abstain” (*STI-II* q96a2, 62). Neither can it command every virtuous action, for recalling Aquinas’ earlier stipulation that laws consider happiness “in general,” laws are ordained for the common good. Simply put, they cannot command every virtuous act that can be performed (*STI-II* q96a3, 63). This preservation of the common good is a sort of virtue, because it is just, but it is not virtue in the most complete sense. To understand virtue according to Aquinas in its most complete sense one must understand divine law.

Aquinas offers four reasons that divine law is necessary in addition to natural and human law, but the fourth reason he enumerates is the most germane to this discussion of the limits of human law. In Question 91, Aquinas argues that “In order for every evil to be forbidden and punished, there [needs] to be a divine law forbidding all sins” (*STI-II* q91a4, 21). Furthermore, it is necessary to recall Aquinas’ initial stipulation that laws lead man to blessedness. He purports that, because man is ordered toward blessedness, and human law cannot dictate every virtuous act, there must be “a law superior to the natural law and human laws to direct human beings to their end” (*STI-II* q91a4, 21). Without divine law, human law alone is insufficient at creating truly virtuous men, and thus, for Aquinas, it is impossible for mere human law to create men who are both good as citizens and truly good as men.

I take it that this disagreement between Aristotle and Aquinas about the limit of human law arises from a fundamental difference in their theological understanding. Because man’s end is not just dictated by the fact that he is a man, but because he is a man created by God, Aquinas’ view must also hold that man cannot achieve this blessed end through his own reason alone. This does not mean that we must take a cynical view of Aquinas’ laws and give up on attempting to create human laws which adequately habituate men to virtue. Rather, if we accept Aquinas’ theology, it provides us a trust that, even if human reason is insufficient at directing us toward blessedness, there is a higher power directing us toward our final end.