Phil 324: Law and Morality

Module 2 Reading Guide

# Thomas Aquinas, Selections from *Summa Theologiae I-II*

## Question 90, Article 1

1. What is “the rule and measure of human action” according to Aquinas?
2. **What does Aquinas think law belongs to?**
3. How does Aquinas respond to the objection that law is instead “whatever is pleasing to the prince”?

## Question 90, Article 2

1. When does a rule meet the requirements of reason and thereby have the force of law?

## Question 90, Article 3

1. Who has the power to make laws? Why?

## Question 90, Article 4

1. Why does a rule have to be promulgated in order to have the force of law?
2. **Altogether, what is Aquinas’ definition of law?**

## Question 94, Article 4

1. In this passage, Aquinas responds to the worry that, if laws were just principles of reason, there would be no room for the diversity of laws, given principles of reason should be the same for everybody. Aquinas’ strategy is to distinguish general principles of reason and conclusions of those principles. The general principles, Aquinas claims, are always the same for everybody, but conclusions of those principles are the same only “in most cases.” What is Aquinas’s example of a principle and its conclusion?

## Question 95, Article 2

1. NB: This passage is not included in the pdf. You can access it via the link on GitHub. It starts with the question: “Whether every human law is derived from the natural law?”
2. **What, according to Aquinas, is the relationship between natural law and human law?**
3. **What are the two ways in which human law (positive law) may be derived from natural law?**

## Question 96, Article 4

1. NB: Again, you can find the link to this passage on GitHub, which starts with the question: “Whether human law binds a man in conscience?”
2. Note that Aquinas introduces another necessary condition on a human law being just: it must “impose proportionate burdens.”
3. When might an unjust law still bind us in conscience, that is, have the force of law?

# John Austin, Selections from *The Province of Jurisprudence Determined*

1. **What, according to Austin, is the “matter of jurisprudence”?**
2. How is positive law distinct from other kinds of things that we sometimes call “law”? Which does Austin think can be properly called “law”? Which are not worthy of the name?
3. Austin then introduces his main thesis: “laws or rules, properly so called, are a species of *commands*” (my emphasis).
4. **What is a command according to Austin?**
5. **How does a command give rise to a duty?**
6. Skip the rest of p. 57.
7. P. 58: Read only the last but three paragraph (“It appears, then, from what has been premised . . .”), where Austin gives a helpful summary of his analysis of command.
8. P. 59: Start from the fourth full paragraph (“Commands are of two species. . . .”). What is the difference between these two species of commands?
9. **Does Austin think a particular/specific/occasional command can be law?**
10. Then Austin cautions against a misconception of what it means for laws or rules to be general. For Austin, laws or rules are general just in case they concern a class of acts, but not necessarily when they command a class of *persons* to act. For example, on Austin’s account, a rule that commands a specific person to act in a general way is still general, and a rule that commands a general class of persons to act in a specific way is not.
11. **At the bottom of the left column of p. 61, Austin introduces a third element to his analysis: laws are not just any general commands, but general commands of political superiors to political inferiors. How does Austin analyze the concept of superiority?**
12. In the rest of Lecture I, Austin deals with putative counterexamples to his analysis of laws as a species of commands. What are the three categories of laws that are not commands but may still be part of the proper subject matter of jurisprudence?
13. Skip to p. 64. How does Austin respond to the worry that customary law or judge-made law is not a species of commands?

## Lecture VI

1. **But law can’t be the commands of *any* superior. Rather, it must be the commands of the *sovereign*. How does Austin analyze the concept of the sovereign?**
2. Skip the rest of Lecture IV.