Journal of Markets & Morality
Volume 24, Number 2: 247–268

Aquinas and Libertarianism

Coercion and the Common Good in the *Summa*'s Definition of Law

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While many scholars have addressed the relationship between Aquinas's political philosophy and the concerns of classical liberalism more broadly, less attention has been given to his thought in light of libertarianism's focus on the problem of coercion and the principle of harm more specifically. By reading Aquinas's systematic definition of law from the *Summa Theologiae*'s "Treatise on Law" (*ST* I-II, q. 90, a. 1) in light of the libertarian harm principle, my aim is not only to pinpoint precisely those areas of disagreement between the Thomistic and libertarian approaches to law, but also those areas of either real or at least possible agreement. Where they disagree, I show that this is the result of either assumptions on Aquinas's part that lack necessity or arguments that are fallacious in their reasoning.

Introduction

The political theories of St. Thomas Aquinas (1225–1274) and philosophical libertarianism constitute two influential yet opposed views on the nature and purpose of human law, government, and political society. According to Aquinas and the natural law tradition represented by him, law, even if typically backed by coercion in our post-fall world, is an otherwise pre-fall, natural, and necessary institution of human existence, one responsible for coordinating society and positively directing its members to the good life of virtuous thought and action. Libertarianism, by contrast, as understood here, is the political philosophy based on the "harm" or "Non-Aggression Principle," as articulated, for example, in John Stuart Mill and Murray Rothbard, according to which the only moral use of

coercion is in response to a prior act of harm or aggression, meaning that the purpose of coercive human law is the primarily negative and defensive one of prohibiting and punishing overt acts of harm or injury against the person and property of others.[1] In brief, whereas law for Aquinas is principally characterized by its *final* cause, namely the common good of our cooperative pursuit of human flourishing, for the libertarian, law is primarily defined by its *instrumental* cause of coercion, for which reason libertarianism seeks to radically limit law according to the inherent moral constraints on the use of that coercion.

These differences notwithstanding, Aquinas himself, in a passage that has been described as "not readily distinguishable" from the libertarian harm principle, limits law to the punishment of only the worst forms of vice, such as murder and theft, that involve harm (*nocumentum*), attack (*invasionem*), or injury (*iniuria*) done to others (*ST* I-II, q. 96, a. 2, ad. 1).[2] While most commentators have found little inconsistency between this statement and his generally "perfectionist" view of law as responsible for coordinating society and making men to be moral, the question remains: What is the precise relationship between Aquinas's theory of law and libertarianism?[3] To what extent are they compatible, and where they are incompatible, how might their differences be adjudicated? In this article, I offer at least a partial answer to these and related questions in the form of a libertarian analysis and evaluation of the opening question of Aquinas's "Treatise on Law" (*ST* I-II, q. 90), in which he sets forth his famous, four-part definition of law in general as an ordinance of reason, for the common good, made by one with authority, and promulgated.[4] While many scholars have addressed the relationship between Aquinas's political philosophy and the ideals and concerns of classical liberalism more broadly, less attention has been given to his thought in light of libertarianism's focus on the problem of coercion and the principle of harm more specifically.[5] By reading Aquinas's systematic definition of law in light of the libertarian harm principle, my aim is to pinpoint precisely those areas of disagreement between the Thomistic and libertarian approaches to law, but also those areas of either real or at least possible agreement. Where they disagree, I show that this is the result of either assumptions on Aquinas's part that lack necessity or arguments that are fallacious in their reasoning.

In his question on the essence of law, it should be noted, Aquinas's purpose is to provide a definition of law in general, one that is equally applicable to the principal *kinds* of law—namely, eternal law, natural law, human law, and divine law—that he will go on to discuss in the remaining questions of his "Treatise on Law." In this study, however, we will be primarily focusing on Aquinas's definition of law as it applies to *human* law specifically. As we shall see, Aquinas himself often

has human law in view in his definition of law. Thus, unless the context indicates otherwise, references to *law* in this study should be understood to mean *human law*.

Law as a Command of Reason

Aquinas opens his definition of law by inquiring into its formal cause: Just what *kind* of thing is law (*ST* I-II, q. 90, a. 1)? He answers,

> Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting.… Now the rule and measure of human acts is the reason, which is the first principle of human acts … since it belongs to the reason to direct to the end, which is the first principle in all matters of action.… Now that which is the principle in any genus, is the rule and measure of that genus.… Consequently it follows that law is something pertaining to reason.[6]

Aquinas thus begins his account of law with its metaphysics: Law, in the most general sense of the term, refers to any "rule and measure" (*regula et mensura*) by which a thing characteristically acts or behaves. A tree, when it acts in a tree-like way, does so in accordance with the "law," that is, the rule or measure, of its being; a bird, when it acts in a birdlike way, does so in accordance with the "law" of its being. What is distinctive of human beings is that when they act in a properly human fashion, they do so not passively, out of unthinking, natural necessity or instinct, but by means of their reason—for Aquinas, the ability first to intellectually grasp the truth of a thing and then to discursively connect or relate one intellectual truth with another (*ST* I, q. 79, a. 8)—have the unique power of apprehending and assigning to themselves *their own* rule or measure of action. Human beings have and give themselves *reasons* for their action, legislating for themselves, as it were, the very rules or laws by which they act.

As the first part of Aquinas's definition may be seen to apply to human law in particular, then, and in a statement that no libertarian need object to, law fundamentally belongs to the order of human reason: Law, at least ideally, is among the things that human reason lays down for the proper ordering of human action toward the achievement of identifiably human ends. Law, accordingly, has an objective grounding, and with that grounding, objective limits, in man's nature as a specifically rational being. Man is a rational actor, meaning in this case that he acts for intellectually apprehended ends using means that are also intellectually apprehended as effective for achieving those ends. Aquinas's point, accordingly, is that law, if it is to appropriately direct human action, must likewise be rational in nature. A law is only law, therefore, if, behind that law, reason itself does the commanding. Thus, in contrast with the doctrine of legal positivism dominating

so much jurisprudence today, law is something far more than whatever rules have been established and enforced by those exercising political authority. For Aquinas, on the contrary, law, as a rule of reason, is never law merely because of some government's or ruler's say-so, but only insofar as it participates in and reflects a broader, rational order by which human actions are or may be intelligently directed to recognizably human ends. Related to this, another implication congenial to the libertarian is that, as a command of reason, neither is law intended to serve as a substitute or surrogate rationality for those living under the law, as this would turn law into a matter of blind, unthinking obedience. Law, rather, belongs to an order in which human beings are understood and expected to think and act for themselves, being directed ultimately by their own reason rather than by the reason of another.[7] For a law to be a true law, therefore, it must possess a universality and inherent intelligibility enabling it to be intellectually grasped, at least in principle, by virtually anyone. This is what it means for law to be an ordinance of reason.

That having been said, law, of course, is also distinct among the commands of reason, for as the libertarian would be quick to point out, unlike reason's other directives for human action, law comes with coercive force, meaning it is a rule of reason that is imposed upon its subjects whether they personally accept it as a command of reason or not. Aquinas, too, recognizes the coercive nature of law: Although he never includes coercion in his formal definition of law (because of its generality), later in his "Treatise on Law" he does admit that the very notion of human law in particular includes its coercive power.[8] And in his above argument concerning the rationality of law, he may be seen making an at least oblique reference to the role of coercion in human law when he describes law as "a rule and measure of acts, whereby man is *induced* (*inducitur*) to act or is restrained from acting," a power of compulsion that he restates later as involving a "binding force" (*virtutem obligandi*) that is "imposed on others" (*imponitur aliis*) in a way that is in fact "proper to law" (*proprium legis*—*ST* I-II, q. 90, a. 4). In the third part of his definition of law, finally, addressing its efficient cause, he says that it is only by its "coercive power" (*vim coactivam*) that law is able to "efficaciously induce" (*inducere efficaciter*) its subjects to virtue, in contrast with what he regards as the relatively ineffectiveness of all other, noncoercive means of moving someone to action (*ST* I-II, q. 90, a. 3, ad. 2). Thus, although his general definition of law does not reference human law's distinguishing, instrumental cause of coercion, Aquinas anticipates something of its role here in his account of law's formal cause: Law is not merely an ordinance of reason, but as it turns out, it is an ordinance of reason enjoying a distinctive power of obliging the compliance of those under the law, namely the power of *coercion*.[9]

Human law, then, is something commanded by reason, albeit enforced by coercion, raising the question of when it is in fact *rational* for law to forego reason's usual mode of persuasion and to impose a rule of reason by means of coercion, instead. If law is to be rational, then it is not enough that the content of law should be rational, but there also needs to be a rational—and with it, moral—basis for determining precisely *which* rules of reason may be coercively enforced. The moral question involved in human law's use of coercion is illustrated well in the definition Aquinas himself gives of coercion earlier in the *Summa*: coercion (*coactio*) is the use of "violent" (*violentum*) means in forcing someone to act in a manner contrary to the inclination of their own will and reason (*ST* I, q. 82, a. 1). Inasmuch as human action is voluntary, therefore, having one's own reason as the internal principle and rule of one's action, an act that is coerced is not, of itself, a properly human action, even if the action itself is otherwise morally obligatory, for it essentially substitutes the coercer's own reason in action for the reason of the coerced. As Aquinas puts it in a different context, "forced acts are not acts of the virtues, since the main thing in virtue is choice, which cannot be present without voluntariness to which violence is opposed."[10] The moral question of coercion, accordingly, is under what circumstances might it be permissible to override the reason and will of another human being, a question that Aquinas unfortunately never directly addresses. In some places his position approaches that of the libertarian, as when he argues in the passage cited earlier, for example, that law prohibits not all acts of vice, but only the more serious ones, such as murder and theft, that involve overt harm or injury done to others (*ST* I-II, q. 96, a 2). In general, however, Aquinas recognizes no such fixed and determinate principle for distinguishing when the use of coercion is justified from when it is not. For the libertarian, by contrast, the only moral and rational use of coercion is in response to a prior act of aggression, a principle whose rationale is at least readily expressible in terms of Aquinas's above definition of coercion: inasmuch as coercion involves "violently" moving a person (or their property) contrary to the inclination of their own will and reason, the only "natural" and hence rationally justifiable use of such force is in response to, and in correction of, someone first having violently moved the person or property of someone else in a manner contrary to their own will and reason. Only actions involving the violent overruling of the will and reason of others, in other words, warrant being coercively overruled in their turn. In addition, then, to insisting (with Aquinas) on the rational *content* of law, the libertarian, with his harm principle, may be seen as simply attempting to provide what Aquinas does not, namely a rational and natural law basis for determining precisely *which* rules of reason may be subject to law's coercive enforcement and which may not.

Law and the Common Good

The second part of Aquinas's account of law addresses its final cause: What is the defining *end* that law seeks to achieve or accomplish, distinguishing it from all other rules of human action (*ST* I-II, q. 90, a. 2)? Aquinas's answer, in summary, is that law exists not to promote any individual, particular, or private good or benefit, but the "common good" (*bonum commune*) of an entire community. His argument for this conclusion proceeds in two main stages, the first of which is as follows:

> As stated above [article 1], the Law belongs to that which is a principle of human acts, because it is their rule and measure. Now as reason is a principle of human acts, so in reason itself there is something which is the principle in respect of all the rest: wherefore to this principle chiefly and mainly law must needs be referred. Now the first principle in practical matters, which are the object of the practical reason, is the last end: and the last end of human life is bliss or happiness, as stated above. Consequently the law must needs regard principally the relationship to happiness.

Earlier in the *Summa*, Aquinas had established that all human action and practical reasoning is ordered toward an ultimate end that is common to all human beings, namely that happiness in which our human nature is fulfilled through the exercise of our most distinctive human capacities and the satisfaction of our properly human desires. Aquinas's point here, accordingly, is that inasmuch as happiness is the final cause and principle of all reasoned action, and insofar as law is a particular (political) application of reason, it follows that happiness must therefore also be the final cause of law.

Before evaluating Aquinas's argument above, we may first ask whether the conclusion itself is one with which the libertarian would or need disagree. Owing to libertarianism's emphasis on the individual and his rights, it would be easy to assume that it denies either that there is any such thing as the common good, or if there is, that it has anything to do with the end of law. As it has been defined here, however, libertarianism does not deny the general principle that the end of law is the common good, and would certainly deny that the end of law could consist in any purely private or personal interest (for any law that privileged one individual at the expense of another would be a manifestly unjust law, and thus no true law at all). For the libertarian, rather, the purpose of law is to protect equally *all* individuals and their property from harm done by others, an end that Aquinas would certainly include as a general condition of the political common good (even if, as we shall see shortly, he would not wish to

limit the political common good to so restricted an end). Nor, we might add here, does libertarianism necessarily deny that there are other, higher common goods than those of protecting individual persons and property. Libertarianism, rather, merely denies that such higher common goods, if and where they exist, are or can be the immediate and defining end of coercive human law. Where the real disagreement between Aquinas and the libertarian lies, accordingly, is not over *whether* the end of law is the common good, but over precisely *which* common good is the end of law.[11]

With that said, let us consider the first stage of Aquinas's argument, in which he attempts to establish that the common good with which law is specifically concerned has to do with man's ultimate end of human happiness. Here, too, there is at least a *sense* in which the libertarian need not disagree: If all human action and practical reason is ultimately ordered toward human happiness (which libertarianism *per se* does not deny), and if law is a particular (political) application of practical reason, then it indeed follows that law is likewise ultimately ordered toward human happiness. The problem with this summary of Aquinas's above argument is that it does not in fact capture his most important, and fallacious, inference. For Aquinas's conclusion is *not* that human law is ordered to human happiness in some ultimate and generic sense, for such a conclusion would do nothing to help differentiate law from any of the other rules that reason may issue for human action. Rather, Aquinas's conclusion is that human happiness is that with which law is "chiefly and mainly" (*principaliter et maxime*) concerned—that is, that law has a unique, particular, and direct regard or consideration for happiness that distinguishes it in some fashion from other rules of action. The problem with this claim, however, is that from the true premise that happiness is an *ultimate* principle of practical reason, it in no way follows that law, as an application of practical reason, is therefore "chiefly and mainly" concerned with happiness.[12] To demonstrate that law is properly concerned with happiness, what Aquinas needs, but does not provide, is some further consideration showing happiness to belong to law as law's own special prerogative, capable of distinguishing and defining law *as* law from any other rules of action that might be fashioned by practical reason. Absent such a consideration, there is no reason to think that coercive human law has a higher common good than, say, the more libertarian end of merely protecting persons and property. In view of what Aquinas himself says about law's inherently coercive nature, on the contrary, as well as his expressed views on the kinds of harm-inducing vices that it properly belongs to law to prohibit, there is good reason for suspecting that human law does not and cannot have as its defining end so high a good as human happiness.

The second stage of Aquinas's argument fares no better than the first, as he seeks now to demonstrate that the happiness to which law is ordered is not the happiness of any particular individual or group of individuals, but rather the happiness (*felicitas communis*) of the community as a whole.[13] "Moreover," Aquinas writes, "since every part is ordained to the whole, as imperfect to perfect; and since one man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness." Because law regulates the action of individuals, not *as* individuals, but as member parts of a larger social whole, the happiness with which law is concerned is not their *individual* happiness (which must be as diverse as the individuals involved), but only that degree of happiness which is common or shareable by all members of the political community, or what Aquinas calls "common happiness."

How might the libertarian respond to this argument? First, the premise that the members of the political community are so many "parts ordered to the whole, as imperfect to perfect," is yet another claim that it would be easy to assume to be incompatible with libertarian individualism. Yet such an assumption, once again, would be incorrect. As we have seen, without denying the existence of other, even higher common goods, all that libertarianism denies is that the common good aimed at specifically by coercive law can be anything more than the protection of persons and property from acts of aggression. But insofar as a specifically *political* society exists merely for the sake of providing a level of protection against acts of aggression greater than what its individual members are presumably able to provide on their own, then it is true on the libertarian's own terms that the political community represents an integral "whole" that is more "perfect" than its individual members. Even for the libertarian, then, when it comes to the protection of persons and property, the individual is, as Aquinas puts it, "ordered" toward the community as an "imperfect" part to a more "perfect" whole.[14]

Where the conflict arises, rather, is with Aquinas's follow-up claim that the community with which law is primarily concerned is nothing less than the "perfect community" (*communitas perfecta*), meaning not just any community that happens to be in some respect more perfect or superior than its member parts, but specifically that community organized to be more perfect or complete than all other communities—the "community of communities," as it were—because it has as its defining end the most perfect or complete end that is at least humanly achievable, namely happiness.[15] But is there any reason for assuming, as Aquinas does, that the community whose common good is the end of human law, for example, is nothing less than the perfect community of human happiness—for assuming, in other words, that the political community is identical with what

we might call the "eudaimonistic" community? The only reason Aquinas has given us thus far is his above, fallacious argument and (given law's coercive nature) implausible conclusion that happiness is the primary and defining end of law.[16] Thus, while the libertarian may agree with Aquinas that law is ordered to a common good, and that for this reason, and to this extent, agree that the political community represents a whole more perfect than its individual members, the libertarian would simply deny that which Aquinas himself fails to establish, namely that the common good aimed at by law is the communal happiness, and that the political community is therefore the perfect community of natural or temporal human happiness.[17]

Who Can Make Law?

The third part of Aquinas's definition of law addresses its efficient cause: Who, exactly, gets to make and impose law (*ST* I-II, q. 90, a. 3)? Given that law directs actions to the common good, can just anyone make law? Aquinas answers,

> A law, properly speaking, regards first and foremost the order to the common good. Now to order anything to the common good, belongs either to the whole people, or to someone who is the viceregent of the whole people. And therefore the making of a law belongs either to the whole people or to a public personage who has care of the whole people.

Inasmuch as law directs not just individuals or other private institutions, but an entire community, to the common good, and inasmuch as only the whole community (or its representative) can direct or move the community as such, it follows that only the whole community can make law.[18]

As has already been noted, the libertarian would concur with Aquinas's opening premise that the end of law is the common good, demurring only over what that common good is, and consequently over the identity of the political community, or "whole people" (*tota multitudo*), organized around and hence defined by that common good. Whereas for Aquinas a lawmaking people is a "perfect community," constituted first and foremost around a shared conception and pursuit of universal happiness, for the libertarian, law is concerned with, at least formally, an entirely distinct community, organized around a distinct, lower common good, namely the just protection of persons and property against the aggression of others.[19] Thus, while it might be true for the libertarian to say that it is the whole people (or its representative) that makes law, there is a sense in which the reverse is also, if not even more, true: It is law, or at least the agreement thereover, that makes the political community.

A point the libertarian could appreciate, however, is Aquinas's statement that the making of law "belongs either to the whole people, or to someone who is the viceregent of the whole people," indicating that whatever authority the rulers or government have in making and imposing law is secondary and subordinate to the more ultimate authority possessed by the people they represent. Although Aquinas never develops this into a full-fledged theory of popular sovereignty, human law, he recognizes, comes from the people.[20] At the same time, this and other qualifications that might be made notwithstanding, some scholars have detected in Aquinas's above argument a general tendency to view law in the more positivistic terms of legal statute, that is, as the product of a ruler's act of official legislation without which a law would not be authoritative at all.[21] In short, Aquinas's paradigm for law is more a matter of "civil law" than "common law."[22] In his summary statement of the definition of law at the end of question 90, for example, it is interesting that the role of the "whole people" in making law, which he mentions four times here in his account of law's efficient cause, drops out altogether, as law is instead simply described as that which is made by "him who has care of the community" (*eo qui curam communitatis habet*). If so, Aquinas's tendency to view law as a matter of legislated statute might be further contrasted with the preference amongst many libertarian legal theorists for the more decentralized or polycentric approach to law characteristic of the common law tradition, in which law is something not so much deliberately "made" or planned as it is organically "grown" and "discovered" over time and under the influences of such forces as judicial precedent, tradition, and custom.[23]

Another question the libertarian might pose to Aquinas's position on who can make law is this: If government only derives its authority to make law from the people, from where does a people's own authority to make and impose coercive law come from in the first place? This is another question that Aquinas unfortunately does not directly address, as he instead largely takes the people's right to use coercion for granted.[24] In his reply, for example, to the objection that since anyone can direct anyone to virtue, and directing one to virtue is the task of the lawgiver, it follows that anyone can make law (*ST* I-II, q. 90, a. 3, arg. 2), Aquinas makes the following reply:

> A private person cannot lead another to virtue efficaciously: for he can only advise, and if his advice be not taken, it has no coercive power, such as the law should have, in order to prove an efficacious inducement to virtue.… But this coercive power is vested in the whole people or in some public personage, to whom it belongs to inflict penalties.… Wherefore the framing of laws belongs to him alone." (*ST* I-II, q. 90, a. 3, ad. 2)

As Aquinas puts it above, the coercive power of law is simply "vested in the whole people or in some public personage" (*virtutem coactivam habet multitudo vel persona publica*), but again, exactly where this coercive power possessed by the people or its representative comes from, Aquinas does not explain.

For the libertarian, by contrast, the authority of a whole people to make and impose coercive law is not something to be taken for granted, but itself needs accounting for, which libertarianism seeks to do by tracing the community's right of coercion back to a presumed, natural right of defense against aggression that individuals are thought to have had prior to or in the absence of any political society. Communities, after all, even if they are greater than the sum of their parts, are nevertheless the product of the purposes and actions of their individual members, meaning that it is the actions of a community's individual members who are responsible for creating and constituting whatever authority a political community has to make and impose law. If so, then a community's right to use coercion is not some kind of emergent property that inexplicably comes into existence only with the advent of the community itself, but is (ideally) the careful outworking of its individual members' pre-political right to use coercion to defend themselves or others when no alternate, more public or political means for protecting themselves exists or is available. Aquinas, for his part, elsewhere recognizes that individuals at least have the right to use force, including the use of lethal force if necessary, to defend either their own selves or others from violent attack, though he never connects this right of defense with a possible source for the community's own right to use force.[25] To this right of personal defense the libertarian, however, would also add the individual right, under appropriate circumstances, to use force in defending one's own property or the property of others, inasmuch as property (as Aristotle himself, for example, recognized) is a kind of extension of one's own self and body.[26] And it is this individual right to the use of force in defending person and property, finally, that for the libertarian is standardized, organized, and in general, rendered publicly accountable by the political community in the form of its laws.[27] This is also the reason why the political community's right of coercion is morally limited to prohibiting and punishing only such acts of aggression, for the individuals that make up a community cannot confer upon the community rights of coercion that its individual members do not themselves possess.

Aquinas's above reply to the objection, however, is further notable in that, first, it contains the first explicit mention of coercion in Aquinas's discussion of law's essence; second, it identifies coercion as a distinguishing property of at least human law; third, it includes the virtue of the people as part of the common good aimed at by law; and fourth, it even goes so far as to suggest that, because

of law's coercive power, this end is actually something that law is *uniquely* in a position to achieve. While the libertarian would, of course, deny that the aim of coercive law is to make men virtuous, he might nevertheless affirm that, insofar as law succeeds in prohibiting and punishing acts of aggression, it may *indirectly* help make men to act justly and hence, to that (very limited) extent to actually make men to *be* just.[28] In any case, what the libertarian would contest is Aquinas's statement that coercive law is in general a more "efficacious inducement to virtue" (*efficaciter inducat ad virtutem*) than the encouragement, exhortation, or "advice" (*monitio*) offered by less public, more private influences such as one's family, friends, or other acquaintances. Yet in this, too, the libertarian finds strong support from Aquinas, who himself argues later in his "Treatise on Law" that the kind of private instruction offered by paternal training, for example, and that operates by advice or admonition (*monitio*), generally "suffices" (*sufficit*) for the attainment of the "perfection of virtue" (*virtutis perfectio*), whereas the training and discipline provided by law, owing to its coercive character, is reserved specifically for those violent or reckless (*protervi*) individuals who are best "restrained from evil by force and fear" (*ST* I-II, q. 95, a. 1).[29] Those for whom law is more effective than private admonition, in other words, are precisely those for whom the end of law is *not* virtue *per se*, but the far more intermediate, modest, and appreciably libertarian end of forcing men to "desist from evil-doing, and [to] leave others in peace" (*male facere desistentes, et aliis quietam vitam redderent*). Not only, then, is law not the only means for achieving the common good of a virtuous citizenry, but consistent with libertarianism, Aquinas acknowledges that, insofar as law works by coercion, it is very far from being even the most important and effective means for achieving this end.[30]

Law and Promulgation

The fourth and final part of Aquinas's definition of law is that law, in order to be law, must be *promulgated* (*ST* I-II, q. 90, a. 4): "As stated above [article 1], a law is imposed on others by way of a rule and measure. Now a rule or measure is imposed by being applied to those who are to be ruled and measured by it. Wherefore, in order that a law obtain the binding force which is proper to a law, it must needs be applied to the men who have to be ruled by it. Such application is made by its being notified to them by promulgation. Wherefore promulgation is necessary for the law to obtain its force."[31] The requirement that a law be promulgated contains an important check on government power, as it prohibits the latter from enforcing such capricious or tyrannical measures as secret laws, *ex post facto* laws (i.e., laws that prohibit or require an activity retroactively,

before the law was passed), or even vague, elastic, or overly complex laws.[32] To this extent, the promulgation requirement represents the kind of limit on government power and a protection of individual freedom that the libertarian would want to celebrate.

That having been said, the libertarian might nevertheless find room to raise a concern over, or at least to make a qualification to, Aquinas's promulgation requirement. For Aquinas, the reason law needs to be publicly promulgated is his assumption that, if it is not, then those under the law will be unaware of its existence, and thus unable to direct their actions accordingly. This suggests that what Aquinas primarily has in view in his promulgation requirement is specifically *positive* law, i.e., that law which is *only* law because it has been enacted by a particular society, making promulgation necessary if those under the law are to *know* that a particular law has been enacted. For the libertarian, however, at the heart of human law is the allegedly universal moral prohibition on the use of coercion except in response to prior acts of aggression, a moral principle that is thought to be known either intuitively or at least by good and necessary consequence from basic moral intuitions. This means that, for the libertarian, the aim of law by and large is to enforce some of the most basic norms of human behavior—in short, "don't hurt people and don't take their stuff"—things that everyone and everywhere putatively *already* know to be true. Even Aquinas himself implicitly acknowledges the universal promulgation of something very near to the ideal libertarian law code in his discussion of the law of nations (*ius gentium*), that body of law that all political societies hold in common. On Aquinas's (admittedly idealized and ahistorical) account, the law of nations is comprised of those laws which are derived from the natural law by way of strict logical deduction, and which he illustrates with the examples of the prohibition of murder and the enforcement of "just buyings and sellings" (*ST* I-II, 95, a. 2 and a. 4), but a list John Finnis expands to include also treason, rape, fraud, theft, and the "general provision for punishment of crime," all of which involve either acts of aggression (or the threat thereof) against others or else the community's coercive, punitive response.[33] To the extent that these examples are representative, then, it would seem that for Aquinas himself, the laws that are accepted by virtually all nations, because universally promulgated by the natural law itself, in the main reflect a libertarian ethic of nonaggression.[34] This is not to say that on a libertarian theory of law promulgation would therefore be otiose or unnecessary; the concern, rather, is that, from a libertarian perspective, Aquinas's particular defense of, and the stress he lays upon, the promulgation requirement may indicate what is in fact a more positivist approach to law than the libertarian, or even Aquinas's own more considered instincts, would or ought to be entirely comfortable with.

Conclusion

Saint Thomas Aquinas's "Treatise on Law" contains one of the earliest and, in any case, subsequently most influential definitions of law ever formulated. Although developed within a framework largely alien in its values and perspective from that of modern libertarian political theory, as we have seen, it contains much that even the libertarian might agree with and appreciate. For the libertarian as for Aquinas, law is indeed an ordinance of reason for the common good, made by a community or its representative, and promulgated. Yet for neither the libertarian nor even, it would seem, for Aquinas, does this general definition of law capture all that could or needs to be said about human law in particular, and much of what it does say contains ambiguities lending themselves to quite different and even contradictory interpretations. For Aquinas, human law is a rule of reason for the better regulation of human action; for the libertarian, even more important is that law specifically should rationally regulate the coercive *enforcement* of reason's own dictates. For Aquinas, law has as its distinguishing end the common good of communal happiness, a conclusion that Aquinas both fails to demonstrate and, what is more, seems to contradict when, in his more libertarian moments, he takes seriously law's actual coercive nature and limits. For Aquinas, law is made by the community or its representative, but what defines the law-making community depends entirely, once again, on what one takes the end of law to be, and just where either the community or its representative get their moral right to coerce Aquinas does not consider. For Aquinas, finally, law must be promulgated, a requirement made necessary in part for Aquinas because law uses coercion beyond the libertarian limits that the natural law itself has already explicitly authorized and hence promulgated.

In conclusion, while the political theories of St. Thomas Aquinas and libertarianism represent, in many ways, conflicting views on the nature and purpose of law, government, and political society, there are nevertheless important areas of agreement, and where they disagree, these disagreements may be shown to be the result of either assumptions on Aquinas's part that lack necessity, or else arguments that are simply fallacious in their reasoning. By identifying those areas of compatibility between the two, and where they are incompatible, by demonstrating the deficiencies in Aquinas's position and the comparative cogency of the libertarian alternative, the possibility is opened up of a distinctly Thomistic, natural law libertarianism, one that coherently combines Aquinas's account of law's place within the social and moral dimension of human nature, with the libertarian's arguably more considered and consistent ethic of law's inherently coercive nature.

Notes

1. The classic statement of the libertarian harm principle is Mill's essay *On Liberty*: "The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others." John Stuart Mill, *On Liberty*, ed. David Bromwhich and George Kateb (New Haven: Yale University Press, 2003), 80. A more recent yet representative defense of libertarianism in terms of the Non-Aggression Principle is Murray Rothbard, *For a New Liberty: The Libertarian Manifesto* (Auburn, AL: Ludwig von Mises Institute, 2006), 27. While some libertarian theorists draw a distinction between *harm* and *aggression*, for purposes of this article, I will be treating the terms as synonymous with each other.

2. John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford: Oxford University Press, 1998), 228. See also Christopher Tollefsen, "Pure Perfectionism and the Limits of Paternalism," in John Keown and Robert P. George, eds., *Reason, Morality, and Law: The Philosophy of John Finnis* (Oxford: Oxford University Press, 2013), 214, 217; Martin Rhonheimer, "St. Thomas Aquinas and the Idea of Limited Government," *Journal of Markets & Morality* 22, no. 2 (Fall 2019): 449; and Joel Feinberg, *Harmless Wrongdoing* (New York: Oxford University Press, 1990), 341–342n1. For a contrasting view, see J. Budziszewski, *Commentary on Thomas Aquinas's Treatise on Law* (Cambridge: Cambridge University Press, 2014), 366; idem, *Companion to the Commentary* (Cambridge: Cambridge University Press, 2014), 182.

3. For additional "perfectionist" readings of Aquinas's so-called "harm principle," see Alasdair MacIntyre, "Natural Law as Subversive: The Case of Aquinas," in *Ethics and Politics: Selected Essays*, vol. 2 (Cambridge: Cambridge University Press, 2006), 46–47; Robert P. George, *Making Men Moral: Civil Liberties and Public Morality* (Oxford: Clarendon Press, 1995), 31–32; idem, *In Defense of Natural Law* (Oxford: Oxford University Press, 1999), 306.

4. On Aquinas's status as the first theologian of the medieval period "to put forward *ex professo* a full definition of law by its fundamental properties followed by a balanced division of its types," see Thomas Gilby, *The Political Thought of Thomas Aquinas* (Chicago: University of Chicago Press, 1958), 125.

5. For treatments of Aquinas *vis-à-vis* classical liberalism, see, e.g., George, *Making Men Moral*, 19–47; John Finnis, "Is Natural Law Theory Compatible with Limited Government," in George, ed., *Natural Law, Liberalism, and Morality*; David Van-Drunen, "Aquinas and Hayek on the Limits of Law: A Convergence of Ethical Traditions," *Journal of Markets & Morality* 5, no. 2 (Fall 2002): 315–37; Christopher Wolfe, *Natural Law Liberalism* (Cambridge: Cambridge University Press, 2005), esp. chap. 9: "Liberalism and Natural Law"; Rhonheimer, "St. Thomas Aquinas and the Idea of Limited Government." For an example of a Thomistic, natural-law critique of libertarianism, see Edward Feser, "Classical Natural Law Theory, Property

Rights, and Taxation," *Social Philosophy & Policy* 27, no. 1 (January 2010): 21–52. Feser's critique, however, focuses on the theses of self-ownership and the natural right to commit certain kinds of moral wrong, and so does not deal directly with libertarianism as it is primarily being defined here, namely as an ethic of coercion rooted in the harm principle.

6. All English quotations of the *Summa* are from the Fathers of the English Dominican Province translation.

7. On this claim as the "key" to Aquinas's "Treatise on Law" as a whole, see Gilby, in Thomas Aquinas, *Summa Theologiae: Volume 28, Law and Political Theory (1a2æ. 90–97)*, trans. Gilby (Cambridge: Cambridge University Press, 2006), 4n(a); idem, *The Political Thought of Thomas Aquinas*, 127. See also Finnis, *Aquinas*, 256. For a discussion of how Aquinas would have viewed these principles as a check on the relative authoritarianism of rulers such as Frederick II in Sicily and Louis IX in France in his own day, see MacIntyre, "Natural Law as Subversive," esp. 48–49, 54.

8. As Aquinas writes, referring to articles 1 and 3 of the present question, "As stated above, the notion of law contains two things: first, that it is a rule of human acts; second, *that it has coercive power*" (*ST* I-II, q. 96, a. 5). On why Aquinas does not include coercion in his definition of law, see, e.g., Finnis, "Aquinas's Moral, Political, and Legal Philosophy," *Stanford Encyclopedia of Philosophy* (December 2, 2005), https://plato.stanford.edu/entries/aquinas-moral-political/; Feser, "Classical Natural Law Theory."

9. On the inherently coercive nature of human law for Aquinas, see Gilby, *The Political Thought of Thomas Aquinas*, 126. For Aquinas's own, more general acknowledgement of law's coercive nature (in contrast with the persuasive means of parental training), see Aquinas, *Commentary on Aristotle's Ethics*, bk. 10, lect. 14.

10. Aquinas, *Summa Contra Gentiles* 3.148, trans. Vernon J. Bourke (Notre Dame: University of Notre Dame Press, 1975).

11. On Aquinas's notion of the common good, see, e.g., Gregory Froelich, "The Equivocal Status of *Bonum Commune*," *New Scholasticism* 63, no. 1 (Winter 1989): 42; Mark Murphy, "Consent, Custom, and the Common Good in Aquinas's Account of Political Authority," *The Review of Politics* 59, no. 2 (Spring 1997): 336.

12. Remarkably, this fallacy in Aquinas's argument seems to have been largely overlooked by his commentators. Budziszewski, e.g., softens Aquinas's claim to mean nothing more than that law chiefly concerns itself "with the *order* that lies in such happiness" (emphasis original), and that law is only "aimed *ultimately* at happiness" (emphasis added). Budziszewski, *Commentary*, 31, 33. Aquinas's confusion here deserves to be set in contrast with the care he takes elsewhere in distinguishing, e.g., between prudence in the "absolute" (*simpliciter*) sense, i.e., as that which does intend the ultimate end of human happiness, and prudence in the "particular" (*particularem*)

sense, which "reasons well for the realization," not of the ultimate end, but "of a *particular* end, such as [military] victory" (*ST* I-II, q. 47, a. 2, ad. 1). Just as particular prudence may be said to be truly *ordered* toward the same ultimate end as universal or "absolute" prudence, without leading us to say that particular prudence is "chiefly and mainly" concerned with the same end as universal prudence, so it is entirely possible for law to be *ordered* toward the ultimate end of human happiness without, on that account being "chiefly and mainly" concerned with happiness. One might also contrast Aquinas's above reasoning with his remarks, from the opening of the *Summa*, about our natural knowledge of God, which he says is possessed by us naturally or innately, but not for that reason "absolutely" (*simpliciter*), as the knowledge of God is implanted in us only "in a general and confused way" (*in aliquo communi, sub quadam confusione*) (*ST* I, q. 2, a. 1, reply 3). Like our knowledge of God, law's having happiness as its ultimate end is consistent with law also being ordered toward happiness, not "chiefly and mainly," but "in a general and confused way."

13. On Aquinas's notion of common happiness, see Finnis, *Aquinas*, 113–14.

14. For a complementary argument for the compatibility of Aquinas's principle and the kind of libertarian perspective advocated here, see Finnis, *Aquinas*, 121.

15. I say "humanly achievable" because, of course, Aquinas believes there to be an even higher and more perfect, "eternal" and "spiritual" happiness that is achievable not by human nature, but only by divine grace, and which is mediated through an even higher, more perfect community still, the Christian church. On Aquinas's concept of the perfect community in general, see Finnis, *Aquinas*, 114–15, 219–22, 245.

16. Supporting his assumption, Aquinas does refer his reader here to Aristotle's *Politics*, which he credits with the thesis that "the state is a perfect community" (*perfecta enim communitas civitas est*). But Aristotle also does not argue for this thesis so much as he, too, assumes it, and the argument Aquinas supplies in his commentary on Aristotle's *Politics* commits the same false assumptions and fallacies that, as I argue in the following note, Aquinas is guilty of in the present article. As Aquinas reconstructs Aristotle's thinking, the political community is the perfect or most "superior" (*principalior*) community because it is the one that is comprised of and "includes" (*includit*) all lesser communities, such as households and villages, and because it is the most inclusive community, it must therefore have the most inclusive or comprehensive end, which is the highest human end of happiness. Aquinas, *Commentary on Aristotle's Politics*, 1.1.1, trans. Richard Regan (Indianapolis: Hackett Publishing, 2007). This unjustifiably assumes, however, that a smaller community is nothing more than a mere part of any larger community of which it may be a member, for in order for the larger community to include within its end the entire end of its member communities, it must be assumed that the smaller community has no identity or being beyond its role as a member part, otherwise the possibility would remain of it having an end that is all its own and therefore not subsumed within and subordinated to the

end of the larger community. But even granted that the political community is more self-sufficient and hence superior than, say, the household in some ways, principally (as both Aristotle and Aquinas argue) in its more secure provision of those necessities of life that the household also seeks after, it does not follow that the political community is more self-sufficient or superior to the household in all ways, and that its end is therefore all-inclusive of the end of the household. (Indeed, as Aquinas argues later in his "Treatise on Law," the household is responsible for inculcating virtue, and hence of fostering happiness, in a way that the political community does not and cannot do—see *ST* I-II, q. 95, a. 1.) On the contrary, a larger association is only greater than its member associations to whatever limited extent the smaller associations do indeed comprise a part of the larger, and no further. If so, then Aquinas has once again failed to show any necessity to his identifying these two communities—the political community and the perfect community—that the libertarian at least would insist that we must keep distinct.

17. There is yet a third problem with Aquinas's present argument, one that, while less germane to our analysis here, is nevertheless worth highlighting, and that concerns Aquinas's implicit and fallacious *reduction* of the individual to nothing more than his status as a part of the social whole. As we have seen, what Aquinas attempts (though fails) to establish in the previous stage of his argument is that law is principally concerned with happiness. Even if we grant his conclusion for the sake of argument, in order now to prove that the happiness with which law is concerned is the happiness of the whole community, i.e., the happiness that the entire community shares in common, Aquinas would here need to close the possibility of there being a happiness that is unique or proper to the individual, and therefore a mode of happiness unassimilated to the happiness of the community. For as long as such a possibility remains open, Aquinas is without any reason for thinking that law is not at least also concerned with this individual happiness as well. When Aquinas says, therefore, that the individual is a part ordered toward the communal whole, the validity of his argument rests on his surreptitiously, and invalidly, reducing the individual to nothing more than a part in the communal whole. Budziszewski implicitly acknowledges at least the appearance of a problem with Aquinas's argument here, but denies that Aquinas is really guilty of such apparent reductionism on the (true) grounds that Aquinas elsewhere expressly rejects such reductionism. Budziszewski, *Commentary*, 33. Earlier in the *Summa*, e.g., Aquinas writes how "[m]an is *not* ordained to the body politic, *according to all that he is and has* (*secundum se totum, et secundum omnia sua*); and so it does not follow that every action of his acquires merit or demerit in relation to the body politic" (*ST* I-II, q. 21, a. 4, ad. 3). This denial notwithstanding, later, in his "Treatise on Law," Aquinas contradicts it when he says that, "since one man is a part of the community, each man *in all that he is and has, belongs to the community* (*hoc ipsum quod est et quod habet*); just as a part, in all that it is, belongs to the whole" (*ST* I-II, q. 96, a. 4). It is this occasional and inconsistent reductionism that Grisez has in view, finally, when he writes: "We

might grant that the good of a citizen precisely *as citizen* is subordinate to the common good of society, but the role of citizen is only one dimension of one's whole personality, and the whole person cannot be rightly viewed as a mere part of the social whole.… Aquinas surely was aware of this point, but he did not pay sufficient attention to its implications." Germain Grisez, "Towards a Consistent Natural-Law Ethics of Killing," *The American Journal of Jurisprudence* 15, no. 1 (1970): 68.

18. One important correction, or at least clarification, needs to be made to Aquinas's above argument, which concerns the claim that the ordering of "anything" (*aliquid*) to the common good belongs either to the whole community or to its representative. This is an overstatement, since even on Aquinas's own account every individual, e.g., has the moral duty of ordering his own actions, among other things, toward the common good, to say nothing of his responsibility to help direct to the common good his family members, friends, fellow townsmen, citizens, strangers, and any institutions of which he may be a part or for which he may be responsible (households, churches or parishes, businesses, schools, charities, etc.). What Aquinas presumably means, therefore, is not that the ordering of just *anything* to the common good belongs exclusively to the whole community or its representative, but rather that it is the ordering of the community *as a community* to the common good that belongs exclusively to the whole community or its representative. While a private individual can, and must, direct both his own actions and the actions of others to the common good, only the community as a whole, or its authorized representative, can direct the community as a whole to the common good, and this is what law does.

19. In this, compare Cicero's famous definition, also endorsed by Aquinas, of a commonwealth as a people united in their agreement or consent over what is just or right (*ST* I-II, q. 105, a. 2).

20. As Aquinas argues later in his "Treatise on Law," "If they [a people] are free, and able to make their own laws, the consent of the whole people expressed by a custom counts far more in favor of a particular observance, than does the authority of the sovereign, who has not the power to frame laws, except as representing the people. Wherefore although each individual cannot make laws, yet the whole people can" (*ST* I-II, q. 97, a. 3, ad. 3). And later still, he argues that the best form of government will be at least "partly democracy, i.e., government by the people," because in a democracy "rulers can be chosen from the people," which the people have the "right to choose" (*ST* I-II, q. 105, a. 1). On the popular sovereignty and the doctrine of consent implied in the latter passage, see, e.g., Gilby, "Legal Sovereignty," in Thomas Aquinas, *Law and Political Theory*, 176. See also Murphy, "Consent, Custom, and the Common Good in Aquinas's Account of Political Authority," 330; James M. Blythe, "The Mixed Constitution and the Distinction between Regal and Political Power in the Work of Thomas Aquinas," *Journal of the History of Ideas* 47, no. 4 (October–December 1986): 548; MacIntyre, "Natural Law as Subversive," 50.

21. Two other qualifications to Aquinas's alleged positivism that might be mentioned are, first, his account, later in his "Treatise on Law," of custom as an important non-legislative or statutory means either for creating new law or annulling existing law (*ST* I-II, q. 97, a. 3), and second, his numerous references to law as drawing its authority, not from the one who makes it, but from its derivation from the universal, natural law that supersedes it (*ST* I-II, q. 91, a. 4; q. 93, a. 3; q. 95, a. 2, 4; q. 96, a. 4).

22. For a cogent defense of this interpretation of Aquinas's legal theory, see James Bernard Murphy's in-depth study, "Law's Positivity in the Natural Law Jurisprudence of Thomas Aquinas," chap. 2 in Murphy, *The Philosophy of Positive Law* (New Haven; London: Yale University Press, 2005), 48–116.

23. For a classic statement of a libertarian approach to law, see F. A. Hayek, *Law, Legislation, and Liberty* (New York: Routledge, 2013). For a comparison of Hayek and Aquinas on the limits of legislation and the merits of custom as a source of law, see VanDrunen, "Aquinas and Hayek on the Limits of Law." Although VanDrunen is correct to highlight the role of custom in Aquinas's theory of law, as James Bernard Murphy has compellingly shown, this aspect of his thought is in large measure eclipsed by "Aquinas's consistent focus on the order of deliberate stipulation and, in law, his consistent focus on law deliberately imposed." Murphy, "Law's Positivity," 50.

24. Another, related question that Aquinas also does not answer is just how the power to make law is transferred from the people to its governing authorities. See Gilby, "Legal Sovereignty," in Thomas Aquinas, *Law and Political Theory*, 175; Murphy, "Consent, Custom, and the Common Good," 323.

25. For Aquinas on the right of self-defense, see *ST* II-II, q. 64, a. 7. For a critique of Aquinas as inconsistent in his forbidding, on the one hand, the *intentional* killing of an assailant in self-defense (his so-called principle of "double-effect") on the part of a private person, while allowing, on the other hand, such intentional killing in capital punishment on the part of the political community or its representatives, see Grisez, "Toward a Consistent Natural-Law Ethics of Killing." In addition to the use of force to defend oneself, one could argue that Aquinas's teaching on the right of resistance against tyrants implies a private right to use coercion. On this, see, e.g., Finnis, *Aquinas*, 289. On Aquinas's doctrine of resistance to tyrants more generally, see Michael D. Breidenbach and William McCormick, "Aquinas on Tyranny, Resistance, and the End of Politics," *Perspectives on Political Science* 44, no. 1 (2015): 10–17; N. P. Swartz, "Thomas Aquinas: On Law, Tyranny, and Resistance," *Acta Theologica* 30, no. 1 (2010): 145–57.

26. Aristotle, *Politics*, 1.6, 1255b11. As Aquinas himself comments on this passage, "The slave [which is a species of property] is related to his master as the body is to the soul … but also as a part of his master, as if he were a living instrument that is a separated part of his master's body." Aquinas, *Commentary on Aristotle's Politics*, 1.4.11.

27. See, e.g., John Locke, *Second Treatise on Government*, ed. C. B. Macpheson (Indianapolis: Hackett Publishing, 1980), §§ 6, 7, 87; Frédéric Bastiat, *The Law*, trans. Dean Russell (Irvington, NY: Foundation for Economic Education, 2007), 3.

28. Aquinas himself indicates something very near to this when he states that law makes men virtuous principally by "restrain[ing] from evil by force and fear, in order that, at least, they might desist from evil-doing, and leave others in peace, and that they themselves, by being habituated in this way, might be brought to do willingly what hitherto they did from fear, and thus become virtuous" (*ST* I-II, q. 95, a. 1). However, a little earlier, in his article on "whether an effect of law is to make men good" (*ST* I-II, q. 92, a. 1), he seems to contradict this when he says that "the effect of the law is to make men good *simply*" (*per legem homines fiant boni simpliciter*), that is, law makes them good directly, intentionally, and without qualification, and not just good in a particular respect (*secundum quid*), that is to say, indirectly or accidentally.

29. In a similar vein, in his later contrast of human law with divine law (*ST* I-II, q. 91, a. 4), Aquinas characterizes coercive human law as being "not competent to judge of interior movements, that are hidden, but only of exterior acts," whereas divine law is "sufficient" to "curb and direct interior acts."

30. Related to Aquinas's position on the inefficacy of coercion in inculcating virtue are his views on the limits of coercion in achieving another important aspect of the common good, namely the good of social coordination. As Aquinas argues earlier in the *Summa*, human society, which is brought into being by its many members pursuing their own private interest, if it is to continue in existence, must have someone presiding over, directing, and so coordinating the entire community in matters pertaining to their mutual or common interest (*ST* I, q. 96, a. 4—see also *De regno* 1.1). At the same time, Aquinas says in numerous places throughout his writings that the truest form of government, namely "royal" and "political" rule, is one in which its subjects are not forced but actually left free to act in a manner contrary to the directives of their rulers (see, e.g., *Commentary on Aristotle's Politics* 1.3.9; *ST* I, q. 82, a. 1; *ST* I-II, q. 9, a. 2, ad. 2; *ST* I-II, q. 58, a. 2; *Disputed Questions on Virtue* 1.4). Elaborating on this idea, Finnis writes:

> There is a social act, we can say, when some proposal for co-ordinated action is held out to relevant members of the society in such a way that they can, and some or all do, choose to participate in the proposed action precisely as the action thus, "publicly," proposed.… [This] is indeed what I shall call a policy (however implicit, "unstated," informal, and privy to the group itself), a policy which the relevant members choose to *participate* in carrying out.

Finnis, *Aquinas*, 28, emphasis original. (See also idem, 72–73; 258. For an in-depth analysis of Aquinas's Aristotelian conception of royal and political rule, see Blythe, "The Mixed Constitution," 549–50.) For Aquinas, in other words, yet another principal

end of law, namely the coordination of society, is an end that must be voluntarily chosen by the members of the community and therefore not achieved by coercive means.

31. The first premise of his argument is nearly the same premise with which he had opened his argument in the first article, but with a slight difference: "As stated above, a law is imposed on others (*lex imponitur aliis*) by way of a rule and measure." What he had actually stated above, however, was not that law is something "imposed on others" (*imponitur aliis*), but that it is something by which a man is "induced" (*inducitur aliquis*) to act or refrain from acting. In changing the verb from *inducitur* to *imponitur* and adding the indirect object *aliis*, as I suggested earlier, Aquinas is somewhat clearer here than he was before as to the coercive nature of law. Whereas "inducing" someone to act according to a rule could include rationally persuading them in a voluntary manner, to "impose" a law on someone conveys the idea of forcing them to act in a manner whether they choose to or not. Corroborating this interpretation is Aquinas's next premise, in which he states that, "in order that a law obtain the binding force which is proper to a law (*virtutem obligandi obtineat, quod est proprium legis*) it must needs be applied to the men who have to be ruled by it." If law, in other words, is to be effective in inducing men to do its bidding, law must be made known to and brought to bear on them before the fact. And the way in which law obtains this "force" (*habeat suam virtutem*), finally is "by its being notified to them by promulgation."

32. Budziszewski, *Companion to the Commentary*, 85–89.

33. Finnis, *Aquinas*, 266.

34. One practice that Aquinas, following Roman law, includes under the law of nations but which would *not* seem fit with a libertarian ethic of non-aggression is that of slavery. Even here, however, the slavery Aquinas has in view is not the conventional slavery as was typically practiced throughout human history, but the (once again) highly idealized notion of "natural slavery" discussed by Aristotle, a semi-voluntary relationship of mutual benefit for both the master and the slave (*ST* II-II, q. 57, q. 3). What it would mean for a relationship of natural slavery to be a matter of human law *enforcement* (as distinct, say, from a simple labor contract), however, is not at all clear from Aquinas's writings. In any case, it is uncertain whether on Aquinas's own terms natural slavery should be counted as a law-of-nations deduction from the natural law, since like the institution of private property—which Aquinas classifies not as part of the law of nations (even though it would seem to be presupposed in the law-of-nations provision for "just buying and selling"), but as part of that *civil law* (*ius civile*) by which one political community differs from another—Aquinas does not believe that natural slavery would have existed in man's pre-fall state of innocence (*ST* I, q. 96, a. 4).