ON THE AQUINIAN CONCEPT OF LAW

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In no way seeking to be exhaustive, much less authoritative, we proceed to advance an analytical examination of the concept of law as formulated by Thomas Aquinas, with a view to encouraging a deeper study of the Aquinian contribution to the juridical science and assize its due worth.

Although the Angelic Doctor writes of law in several of his works, what has come to pass for his definition of law is the following:

> *"Lex est ordinatio rationis ad bonum commune ab eo qui curam communitatis habet promulgata."* (Law is an ordinance of reason promulgated for the common good by him who is in charge of the community).

This definition must needs be understood in the light of the general philosophy of the School. In keeping with the Aristotelian notions, ,the Schoolmen, led by Saint Thomas, insisted upon the four constitutive causes of any created being, viz., material, formal, efficient, and final.

What then would be the *material cause* of law in the Aquinian concept? By material cause, as is known, is meant that *whereof* a thing is made. Consequently, the material cause of law—the stuff of which it is made—is an *ordinance,* that is to say, an order or precept—a rule or norm of conduct. Law, therefore, is a measure calculated to affect conduct or behaviour in an *imperative* manner. The material cause of law is an order, not a request or advice. The latter also seek to affect conduct but not in a *compulsory* way. Law must be made, in consequence, of a *command* or a *prohibition;* it does not concern itself with advisory pronouncements or with polite pleas.

The material cause of anything is far from exhausting the nature of the same. It is, as already adverted to, only one of the constituents of a being. For this reason, one should now proceed to ask which is the *formal* cause of law, if we are to complete our knowledge of the same.

Formal cause means that specific arrangement or disposition of the material cause that would thus specify the nature of the being concerned. Take wood, for example, as the material cause

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of a chair. For wood to become a chair there is need of the formal cause, that is, the wood must be so arranged as to convert it into a chair and not into a table, which, by the way, can also be made of wood. It is not the matter that makes a thing be itself and nothing else, but its form.

In law, the *formal* cause, as per the Aquinian definition, would be *reasonableness*. Note that St. Thomas says that the *ordinance* (material cause) must be "of reason", i.e., reasonable. This is its formal cause, for it specifies the ordinance and converts it into a law. Every law must be an ordinance, but it does not follow that every ordinance is a law, just as every wooden chair is made of wood, yet it does not mean that everything made of wood is a chair. Because the *ordinance,* in law, must be *reasonable,* law is thus differentiated from any authoritative command or decree that is arbitrary and tyrannical. An unreasonable order or command or prohibition would not be law; it would, rather, be, in the words of St. Thomas, "a species of violence". Hence, in judging of a piece of legislation one should not confine himself to examining the mechanics of its enactment and approval. It is imperative that the contents of the law be studied; that is to say, one must find out whether the provisions of the measure are reasonable, i.e., in conformity with human reason and the superior principles of truth and justice. This specifying characteristic contained in the definition of law given by Saint Thomas precludes oppressive legislation and the enthronement of tyranny.

Matter and form, however, would only make up a being when they are joined together, with the latter specifying the former. This can only be achieved by the *efficient* cause, i.e., the maker or author. A wooden table is made of *wood* (material cause) and that *specific form* of table (formal cause). But the form of a table would not come to the wood or vice-versa of their own volition, for they have none. It is necessary that a third factor intervene. This is the *carpenter* or *table-maker.* He is known as the efficient cause.

In law the efficient cause is, in the words of St. Thomas: he who is in charge of the community. By this, the Saint means the *legislator*—the public authority concernel with the welfare of the community. Any ordinance intended for the community but not enacted by the competent authority, that is, the legitimate law-maker (efficient cause), would not be law. Because of his function as a formal cause, the legislator must possess adequate uncommon knowledge of human conduct, both in its abstract expression and in its concrete manifestation; he must, therefore, understand human be-

haviour as such and that behaviour as encompassed within the reality of the community for which he seeks to legislate. Then, again, he must know the principles of ethics in order that he may succeed in enacting only reasonable norms of conduct.

To unite this *formal* cause (reasonableness) with the *material* cause (ordinance) in order to give forth a law, the legislator must consider the *final* cause of the same. This is so, because no efficient cause ever acts without the impulse of the *final* cause. By the latter, we mean the purpose, end, objective of the being concerned. Everything is done for a purpose; everything has a final cause. It is this, as a matter of fact, that justifies the very existence of the thing. And no true knowledge of anything can be had unless its final cause is understood. Thus, as F. J. Sheed points out, knowing what a razor is made *of* will not give us knowledge of the razor, unless and until we know what the razor is *for*. Similarly, knowing what man or a group of men is made *of* (and this is given us by the sciences) is not enough to possess knowledge of man or community. One must also know what man or a community is *for*.

But to come back to law. According to the definition advanced by St. Thomas, the *final* cause of law is "the common good" (*ad bonum commune*). The legislator, therefore, must only unite reasonableness with ordinance to make a law when he sees that such union would be for the common good of the community, of which he is in charge. Anything short of that would defraud the final cause of law and, consequently, would denaturalise law, would render it *not* a law. This requisite protects the people from arbitrary class legislation and any other such manifestation as would benefit a particular group at the expense of the general body politic.

The preceding analysis, we trust, must have given us all a clear picture of what St. Thomas Aquinas understands by law: a reasonable command or prohibition enacted by competent authority for the good of a community.

There is, however, one other point that is worth taking up. We refer to the *promulgation* of the law. The question that is often asked is this: Is promulgation essential to law? In other words, would an *unpromulgated* law be law at all?

Those who answer in the affirmative point out that if it were not an essential ingredient of the law, it would not have been included by St. Thomas in his definition of law, for it is well known that, for St. Thomas, a definition, to be so, much only include the essential elements of the thing defined. Again, promulgation is es-

sential so that the subjects of the law may know what the law is; else, how can they obey it?

Those who believe otherwise argue that, for all we know, St. Thomas might have erred in including this element in his definition of law. Also, promulgation is making the law known to the subjects thereof; consequently, promulgation presupposes the existence of the law, which is to be made known to the people. Promulgation, then, is an integral or complementary element, but not essential, to the concept of law.

It seems to us that the answer may be found after one should have rendered the Latin translation of the definition in a manner more in keeping with the nature of that language. Indeed, the translation given above reads, "an ordinance of reason promulgated for the common good". We believe that a more accurate translation should be: "a promulgated ordinance of reason". In this manner, the term "promulgated" is used as an adjective modifying the noun, "ordinance". As an adjective related to the noun, "ordinance", it becomes part and parcel of the latter; now, since this has to be "of reason" or reasonable, then, that promulgation of the law is also a demand for reason, is reasonable, for an ordinance, by itself, connotes the notion of being something binding or compulsory. If the subjects do not know of such ordinance, how can they be "reasonably" deemed bound by it? Promulgation, then, is *essential* to law because it is demanded by the "formal" and the "material" causes of law.

To be sure, this is our own, personal way of understanding the Thomistic definition of law. It would be profitable to learn of some other, better interpretation.