

# An Overview on Practical Reason in Aquinas

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## 1 The Four *Leges: Aeterna, Naturalis, Divina and Humana*

Aquinas and his teacher in Paris and Cologne, Albertus Magnus (1193–1280), brought order to the disarray existing among the various medieval natural-law conceptions.<sup>1</sup>

Albertus Magnus (Albertus Magnus 1968, V, 11; 1933, tr. V, q. 1, a. 2) stated that no law is natural law proper if it is either animal instinct in the sense set out by Ulpian, or the cosmic order, along the lines drawn from the Latin translation and comment that Calcidius made of Plato's *Timaeus*.

Aquinas drew a distinction between *lex aeterna*, *lex naturalis*, *lex divina*, and *lex humana*.

(a) *Lex aeterna* is God's own reason inasmuch as he is the sovereign of the universe and brings all things to their accomplishment.

Now it is evident, granted that the world is ruled [*regatur*] by Divine Providence, [...] that the whole community of the universe is governed [*gubernatur*] by Divine Reason [*ratione divina*]. Wherefore the very idea [the *ratio*, meaning “design,” “schema,” “concept,” or “type”] of the government of things in God the Ruler of the universe, has the nature of a law [*legis habet rationem*: it is of the type proper to norms]. And since Divine Reason's conception of things is not subject to time [*divina ratio nihil concipit ex tempore*] but is eternal [*habet aeternum conceptum*] [...] therefore it is that this kind of law [*legem*, norm] must be called eternal. (Aquinas 1947, 1.2, q. 91, a. 1)<sup>2</sup>

*Lex aeterna* absorbs the concept of natural law as cosmic law (so conceived by the medieval readers of Calcidius' comment to Plato's *Timaeus*) and recasts it in a new vision: *Lex aeterna* (the eternal norm) is far more than the norm of nature—it is God's own reason, which presides over the whole universe and includes the norm of nature.

Only God and the blessed can fully contemplate the *lex aeterna*. Humans have only a partial grasp of it. They merely know what is essential to their behaviour in their earthbound lives:

Consequently,

as on the part of the speculative reason, by a natural participation of Divine Wisdom [*per naturalem participationem divinae sapientiae*], there is in us the knowledge of certain general principles, but not proper knowledge of each single truth, such as that contained in the Divine Wisdom; so too, on the part of the practical reason, man has a natural participation of the eternal law [*naturaliter homo participat legem aeternam*, eternal norm], according to certain general principles, but not as regards the particular determinations [*particulares directiones*] of individual cases, which

<sup>1</sup> On natural law and pre-Thomistic Scholasticism, see Marenbon, forthcoming, Section 3.2.

<sup>2</sup> The Latin original: “Manifestum est autem, supposito quod mundus divina providentia regatur, [...] quod tota communitas universi gubernatur ratione divina; et ideo ipsa ratio gubernationis rerum in Deo, sicut in principe universitatis existens, legis habet rationem; et quia divina ratio nihil concipit ex tempore, sed habet aeternum conceptum, [...] inde est, quod huiusmodi legem oportet dicere aeternam” (Aquinas 1894, 1.2, q. 91, a. 1).

are, however, contained in the eternal law [*aeterna lege*, in the eternal norm]. (Aquinas 1947, 1.2, q. 91, a. 3)<sup>3</sup>

(b) *Lex naturalis* is that part of *lex aeterna* that man knows and literally takes part in through irradiation: It is the participation of *lex aeterna* in the rational creature (*participatio legis aeternae in rationali creatura*).

Now among all others, the rational creature [*rationalis creatura*] is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others [*in quantum et ipsa fit providentiae particeps, sibi ipsi, et aliis providens*]. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end [*in ipsa participatur ratio aeterna, per quam habet naturalem inclinationem ad debitum actum, et finem*]: And this participation of the eternal law [*legis aeternae*, of the eternal norm] in the rational creature is called the natural law [*lex naturalis*, the natural norm]. (Aquinas 1947, 1.2, q. 91, a. 2)<sup>4</sup>

*Ratio*, in the expression *ratio aeterna*, designates types as conceived by God *ab aeterno*. Man comes to know the first principles of being and the ultimate ends of action, intuitively and from within, the ones by way of theoretical reason (*intellectus*) and the others by way of practical reason (*synderesis*).

Aquinas, with his *lex naturalis*, welcomes the rationalistic version of natural law.

*Lex naturalis* is properly the norm of nature: It is that part of divine providence and of the eternal norm that humans participate in, whereby a human being is provident for himself, or herself, and for others, and has a natural inclination to the due action and to his or her ends.

(c) *Lex divina*, instead, is the posited law of God: It is God's will as expressed in the Ten Commandments and the holy scriptures. *Lex divina* is distinguished from *lex naturalis* in that *lex divina*, brought into being by God's will and expressed in the holy scriptures, concerns humans' otherworldly ends (it is designed to enable humans to achieve eternal beatitude), whereas *lex naturalis* concerns human ends and behaviour on Earth.

Besides the natural and the human law [*legem naturalem, et legem humanam*, the natural norm and the human norm] it was necessary for the directing [*ad directionem*] of human conduct to have a Divine law [*legem divinam*, the divine norm]. [...] And indeed if man were ordained [*ordinaretur*] to no other end than that which is proportionate to his natural faculty, there would be no need for man to have

<sup>3</sup> The Latin original: "Et ideo, sicut ex parte rationis speculativae per naturalem participationem divinae sapientiae inest nobis cognitio quorundam communium principiorum, non autem cuiuslibet veritatis propria cognitio, sicut in divina sapientia continetur: ita etiam ex parte rationis practicae naturaliter homo participat legem aeternam secundum quaedam communia principia, non autem secundum particulares directiones singulorum, quae tamen in aeterna lege continentur" (Aquinas 1894, 1.2, q. 91, a. 3).

<sup>4</sup> The Latin original: "Inter caetera autem rationalis creatura excellentiori quodam modo divinae providentiae subiacet, in quantum et ipsa fit providentiae particeps, sibi ipsi, et aliis providens: unde et in ipsa participatur ratio aeterna, per quam habet naturalem inclinationem ad debitum actum, et finem: et talis participatio legis aeternae in rationali creatura *lex naturalis* dicitur" (Aquinas 1894, 1.2, q. 91, a. 2).

any further direction [*aliquid directivum*] on the part of his reason [*ex parte rationis*], besides the natural law and human law [*legem naturalem, et legem humanitatem positam*, the natural norm and the posited human norm] which is derived from it. But since man is ordained [*ordinatur*] to an end of eternal happiness which is disproportionate to man's natural faculty, as stated above (q. 5, a. 5), therefore it was necessary that, besides the natural and the human law [*legem naturalem et humanam*, the natural and the human norm], man should be directed [*dirigeretur*] to his end by a law given by God [*lege divinitus data*, a norm given by God]. (Aquinas 1947, 1.2, q. 91, a. 4)<sup>5</sup>

*Lex divina* absorbs the voluntaristic conception of natural law and fashions it into a new vision: *Lex divina* is not the norm of nature but God's will insofar as this will is directed at human behaviour and is posited through written law. It is therefore the posited divine norm (the Commandments and the holy scriptures) aimed at achieving human beatitude and otherworldly life. In any case, God's will (*lex divina*) cannot be at variance with God's reason (*lex aeterna*).

(d) *Lex humana* is the norm posited by human will. It is human will as set out by a sovereign who takes care of the common good on earthly society. *Lex aeterna*, *lex divina*, and *lex naturalis* require no matrixes. And *lex naturalis*, as part of *lex aeterna*, is itself the matrix of the normativeness of *lex humana*.

A *lex humana* that should come to be at variance with *lex naturalis* (the other two kinds of *lex* cannot) *non erit lex, sed legis corruptio*: This *lex* will not be a norm—a *regula et mensura actuum*—but rather the forgery of a norm, of a rule or standard.

*Jus*, as what is objectively right toward others, is contained in a *lex*, in a norm. But if we compare the partitions of *lex* considered in this section with the partitions of *jus* considered in Section 6, we will find that there is nothing in Aquinas like a *jus aeternum* that is the content of *lex aeterna*.

*Lex humana* contains the *jus humanum* that will be *jus positivum, jus civile*, or *jus gentium*. *Lex naturalis* contains *jus naturale*. *Lex divina* contains *jus divinum*. But when Aquinas turns to *lex aeterna*, he does not speak of any *jus aeternum*. Why?

Because *lex aeterna* is not properly obligatory, or binding: It is rather more simply necessary. And *jus* is instead what is objectively right in the sense that it is right that the types of behaviour contained in norms be binding per se, and specifically, that they be per se obligatory, permitted, or forbidden.

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<sup>5</sup> The Latin original: “Praeter legem naturalem, et legem humanam, necessarium fuit ad directionem humanae vitae habere legem divinam [...] et si quidem homo ordinaretur tantum ad finem, qui non excederet proportionem naturalis facultatis hominis, non oporteret quod homo haberet aliquid directivum ex parte rationis supra legem naturalem, et legem humanitatem positam, quae ab ea derivatur: sed quia homo ordinatur ad finem beatitudinis aeternae, quae excedit proportionem naturalis facultatis humanae, ut supra habitum est (q. 5. art. 5); ideo necessarium fuit, ut supra legem naturalem, et humanam dirigeretur etiam ad suum finem lege divinitus data” (Aquinas 1894, 1.2, q. 91, a. 4).

## 2 The Two Ways in Which *Lex Humana* Can Flow from *Lex Naturalis*: Static and Dynamic Systems

Aquinas envisions two ways in which the human norm (*lex humana*) comes from the natural norm (*lex naturalis*):

(i) By deduction from general principles, much the same way as conclusions in science are drawn from premises (*per modum conclusionum*).

(ii) By specification (*per modum determinationis*, or *specificationis*), in much the same way as an architect specifies a general form, such as the general form of a house, through one or another of the shapes a house may take. Likewise, human lawmakers can specify a principle given by nature—such as the principle under which wrongdoers must be punished—by establishing through enacted law that a given punishment (a five-year prison term, for example) should be inflicted for certain wrongdoings, such as theft (of course these examples are mine and refer to the present day).

A law [*lex, norm*] is a dictate of the practical reason. Now it is to be observed that the same procedure takes place in the practical and in the speculative reason: For each proceeds from principles to conclusions [...]. Accordingly we conclude that just as, in the speculative reason, from naturally known indemonstrable principles, we draw the conclusions of the various sciences, the knowledge of which is not imparted to us [*indita, introduced in us*] by nature, but acquired [*inventa*] by the efforts [*industria*] of reason, so too it is from the precepts of the natural law [*legis naturalis, of the natural norm*], as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination of certain matters [*ad aliqua magis particulariter disponenda*]. These particular determinations, devised by human reason, are called human laws [*leges humanae, human norms*], provided the other essential conditions of law [*quae pertinent ad rationem legis*, which belong to the essence, the fineness, of the norm] be observed. (Aquinas 1947, 1.2, q. 91, a. 3)<sup>6</sup>

But it must be noted that something may be derived from the natural law [*a lege naturalis, from the natural norm*] in two ways: first, as a conclusion from premises [better yet, from principles, *ex principiis* in Latin], secondly, by way of determination of certain generalities. The first way is like to that by which, in sciences, demonstrated conclusions are drawn from the principles: while the second mode is likened to that whereby, in the arts, general forms are particularized as to details [*formae communes determinatur ad aliquid speciale*]: Thus the craftsman needs to determine the general form [*formam communem*] of a house to some particular shape [*figuram*]. Some things are therefore derived from the general principles of the natural law [*a principiis communibus legis naturae*, from the general principles of the norm of nature], by way of conclusions; e.g., that one must

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<sup>6</sup> The original Latin: “Lex est quoddam dictamen practicae rationis: similis autem processus esse invenitur rationis practicae, et speculativae: utraque enim ex quibusdam principiis ad quasdam conclusiones procedit [...]; secundum hoc ergo dicendum est, quod, sicut in ratione speculativa ex principiis indemonstrabilibus naturaliter cognitis producuntur conclusiones diversarum scientiarum, quarum cognitio non est nobis naturaliter indita, sed per industriam rationis inventa; ita etiam ex praceptis legis naturalis, quasi ex quibusdam principiis communibus, et indemonstrabilibus, necesse est quod ratio humana procedat ad aliqua magis particulariter disponenda: et istae particulares dispositiones ad inventae secundum rationem humanam dicuntur *leges humanae*, observatis aliis conditionibus, quae pertinent ad rationem legis” (Aquinas 1894, 1.2, q. 91, a. 3).

not kill may be derived as a conclusion from the principle that one should do harm to no man: while some are derived therefrom by way of determination; e.g., the law of nature [*lex naturae*, the norm of nature] has it that the evil-doer should be punished; but that he be punished in this or that way, is a determination of the law of nature [*legis naturae*, of the norm of nature].

Accordingly both modes of derivation are found in the human law [*Utraque igitur inveniuntur in lege humana posita*, Therefore both things (those derived by way of conclusions and those derived by way of determination) are found in the posited human norm]. But those things which are derived in the first way, are contained in human law not as emanating therefrom exclusively [*continentur in lege humana non tamquam sint solum lege posita*: not as if they came only by way of a posited norm], but have some force from the natural law [*aliquid vigoris ex lege naturali*] also. But those things which are derived in the second way, have no other force than that of human law [*ex sola lege humana vigorem habent*]. (Aquinas 1947, 1.2, q. 95, a. 2)<sup>7</sup>

In Aquinas's view, what is (objectively) right among nations (*jus gentium*) is derived by deduction (*per modum conclusionum*) from *lex naturalis*, whereas what is (objectively) right among citizens within a nation (*jus civile*) is derived by specification through deliberation (*per modum determinationis* or *specificationis*) from *lex naturalis*.

In this respect positive law [*jus positivum*, what is right by position] is divided into the *law of nations* [*jus gentium*, what is right among nations] and *civil law* [*jus civile*, what is right among citizens], according to the two ways in which something may be derived from the law of nature [*ex lege naturae*, from the norm of nature], as stated above (a. 2). Because, to the law of nations [*jus gentium*, what is right among nations] belong those things which are derived from the law of nature [*ex lege naturae*, from the norm of nature], as conclusions from premises, e.g., just buyings and sellings, and the like, without which men cannot live together, which is a point of the law of nature [*lege naturae*, the norm of nature], since man is by nature a social animal. [...] But those things which are derived from the law of nature [*ex lege naturae*, from the norm of nature] by way of particular determination, belong to the civil law [*jus civile*, what is right among citizens], according as each state [*civitas*] decides [*determinat*] on what is best for itself. (Aquinas 1947, 1.2, q. 95, a. 4; italics added)<sup>8</sup>

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<sup>7</sup> The Latin original: “Sed sciendum est, a lege naturali *dupliciter* potest aliquid derivari: *uno modo*, sicut conclusiones ex principiis: *alio modo*, sicut determinations quaedam aliquorum communium. *Primus* quidem modus similis est ei, quo in scientiis ex principiis conclusiones demonstrativaes producuntur. *Secundo* vero modo simile est, quod in artibus formae communes determinantur ad aliquid speciale: sicut artifex formam communem domus necesse est quod determinet ad hanc, vel illam domus figuram; derivantur ergo quaedam a principiis communibus legis naturae per modum conclusionum: sicut hoc quod est *non esse occidendum*, ut conclusio quaedam derivari potest ab eo quod est, *nulli esse faciendum malum*: quaedam vero per modum determinationis: sicut lex naturae habet, quod ille qui peccat, puniatur; sed quod tali poena, vel tali puniatur, hoc est quaedam determinatio legis naturae: utraque igitur inveniuntur in lege humana posita: sed ea, quae sunt primi modi, continentur in lege humana, non tanquam sint solum lege posita, sed habent etiam aliquid vigoris ex lege naturali: sed ea, quae sunt secundi modi, ex sola lege humana vigorem habent” (Aquinas 1894, 1.2, q. 95, a. 2).

<sup>8</sup> The Latin original: “Et secundum hoc dividitur *jus positivum*: in *jus gentium*, et *jus civile*,

These two methods of inference—deriving by deduction (*per modum conclusionum*) what is right among nations and deriving by specification, or through deliberation (*per modum determinations* or *specificationis*), what is right among citizens within a nation—foreshadow, in a way, Kelsen's distinction between static and dynamic systems respectively (Pattaro, forthcoming, Section 7.2).

### 3 Aquinas in the Light of Aristotle: Scientific Reason and Calculating, or Opinion-based, Reason

Aristotle distinguished within the rational part of the soul (*to logon*) two different parts: the scientific rational part (*to epistēmonikon*), which concerns itself with those things the principles of which do not vary; and the calculating rational part (*to logistikon*), also named the opinion-based (*to doxastikon*), or conjectural, part, which concerns itself with those things which vary.

This second group includes productive activity, the object of art (*tekhnē*), and behaviour (*praxis*), the object of practical wisdom or prudence (*phronēsis*) and of good deliberation (*euboulia*).

Deliberation is the same thing as calculating (*logistikon*), given that one does not deliberate with regard to things that do not vary. Good deliberation requires an ability to achieve the best possible behaviour for man through calculating reasoning.

It has been said before that the soul has two parts, one rationale [logon] and the other irrational [alogon]. Let us now similarly divide [diaireteon] the rational part, and let it be assumed that there are two rational faculties [duo ta logon econta], one whereby we contemplate [theoroumen] those things whose first principles [arcai] are invariable [mh endecontai], and one whereby we contemplate those things which admit of variation [endecomema]: since, on the assumption that knowledge is based on a likeness or affinity of some sort between subject and object, the part of the soul adapted to the cognition of objects that are of different kinds must themselves differ in kind. These two rational faculties may be designated the Scientific Faculty [to epistēmonikon] and the Calculative Faculty [to logistikon] respectively; since calculation [logizesqai] is the same as deliberation [bouleuesqai] and deliberation is never exercised about things that are invariable [mh endecomemwn], so that the Calculative Faculty [to logistikon] is a separate part of the rational half of the soul. (Aristotle 1968, 1139a 5-6)<sup>9</sup>

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secundum duos modos, quibus aliquid derivatur a lege naturae, ut supra dictum est (a. 2.): nam ad jus gentium pertinent ea quae derivantur ex lege naturae, sicut conclusiones ex principiis; ut justae emptiones, venditiones, et alia hujusmodi, sine quibus homines ad invicem convivere non possunt: quod est de lege naturae; quia homo est naturaliter animal sociabile [...]: quae vero derivantur a lege naturae per modum particularis determinationis, pertinent ad jus civile, secundum quod quaelibet civitas aliquid sibi accommodare determinat" (Aquinas, *Summa Theologiae* (a), 1.2, q. 95, a. 4).

<sup>9</sup> The Greek original: "προ τερον μὲν οὖν ἐλέχθη δύ' εἶναι μέρη τῆς ψυχῆς, τό τε λόγον ἔχον καὶ τὸ ἀλογον: νῦν δὲ περὶ τοῦ λόγον ἔχοντος τὸν αὐτὸν τρόπον διαιρετέον. καὶ ὑποκείσθω δύο τὰ λόγον ἔχοντα, ἐν μὲν ᾧ θεωρούμεν τὰ τοιαύτα τῶν ὅντων ὅσων αἱ ἀρχαὶ μὴ ἐνδέχονται ἄλλως ἔχειν, ἐν δὲ ᾧ τὰ ἐνδεχόμενα:

#### 4 The Context of Discovery: *Synderesis*

It will come of use, in reading Aquinas in the light of Aristotle, to take up the distinction between the context of discovery and the context of justification, a distinction rightly ascribed to Hans Reichenbach (1891–1953), but which can be traced back to Plato and Aristotle, in that they distinguished between an ascending process towards principles (towards their knowledge and “discovery”) and a process of descent in which the conclusions are derived from principles (so that principles are used to “justify” the conclusions reached) (see Reichenbach 1966, 6–7, 381–2).

As Wedberg has pointed out (Wedberg 1982–1984) the distinction between context of discovery and context of justification can be detected so early as in Pascal. True enough. But Pascal got it from the Port-Royal logicians, who had restored the Platonic distinction between two methods, indeed two moments within the same methods: the ascending, analytical method that leads to principles, and the descending, synthetic, compositive method that proceeds from the principles to their conclusions.

Aquinas models his conception of practical reason on Aristotle’s conception of scientific reason (*to epistēmikon*) in what concerns the context of discovery of the principles of action: Aquinas holds that the knowledge of first principles is no less objective in the realm of action than in the realm of being. He therefore parts ways with Aristotle’s approach to the realm of action where the *discovery* of the principle of action is concerned (cf. Pattaro 1988, 115–6).

The question of the knowability of first principles seems to Aquinas to hinge on so close a bond between the realm of action and the realm of being as to warrant our taking the first principle of practical reason (*Bonum est faciendum et prosequendum, et malum vitandum*: “The good is to be done and fostered, and evil avoided”) and pinning it down to its ontological roots by bringing it on a par with the principle of non-contradiction (*non est simul affirmare et negare*: “The same thing cannot be affirmed and denied at the same time”). In his own words:

As stated above (q. 91, a. 3), the precepts of the natural law are to the practical reason, what the first principles of demonstrations are to the speculative reason [*praecepta legis naturae hoc modo se habent ad rationem practicam, sicut principia prima demonstrationum se habent ad rationem speculativam*]; because both are self-evident principles. [...] Wherefore the first indemonstrable principle is that *the same thing cannot be affirmed and denied at the same time*, which is based on the notion of *being* and *not-being*: and on this principle all others are based, as is stated in *Metaph.* (iv, text. 9). Now as *being* is the first thing that falls under the apprehension simply, so *good* is the first thing that falls under the apprehension of the practical

πρὸς γὰρ τὰ τῶ γένει ἔτερα καὶ τῶν τῆς ψυχῆς μορίων ἔτερον τῶ γένει τὸ πρὸς ἐκάτερον πεφυκός, εἴπερ καθ' ὁμοιότητά τινα καὶ οίκειότητα ἡ γνῶσις ὑπάρχει αὐτοῖς. λεγέσθω δὲ τούτων τὸ μὲν ἐπιστημονικὸν τὸ δὲ λογιστικόν: τὸ γὰρ βουλεύεσθαι καὶ λογίζεσθαι ταῦτον, οὐθεὶς δὲ βουλεύεται περὶ τῶν μὴ ἐνδεχομένων ἄλλως ἔχειν. ὡστε τὸ λογιστικόν ἐστιν ἐν τι μέρος τοῦ λόγου ἔχοντος.”

reason, which is directed to action [*bonum est primum, quod cadit in apprehensione practicae rationis, quae ordinatur ad opus*]. (Aquinas 1947, 1.2, q. 94, a. 2)<sup>10</sup>

Here reason, *ratio*, means a cognitive power, and in particular it means intuitive rational power, which gets specified as *intellectus*, where *ratio speculativa* is concerned, and as *synderesis*, where *ratio practica* is concerned.

Just as we know the *communia principia* (Aristotle's *koinai arkhai*) in the theoretical order, so we know the *communia principia* in the practical order (cf. Pattaro 1988, 115–6). The former we come to know by the intellect (Aristotle's *nous*), the latter by *synderesis* (as transliterated in Aquinas's text), the analogue of intellect in the sphere of practical reason. In Aquinas's own words:

Consequently, as on the part of the speculative reason, by a natural participation of Divine Wisdom [*per naturalem participationem divinae sapientiae*], there is in us the knowledge of certain general principles, but not proper knowledge of each single truth, such as that contained in the Divine Wisdom; so too, on the part of the practical reason, man has a natural participation of the eternal law [*naturaliter homo participat legem aeternam*, eternal norm], according to certain general principles, but not as regards the particular determinations [*particulares directiones*] of individual cases, which are, however, contained in the eternal law [*aeterna lege*, in the eternal norm]. (Aquinas 1947, 1.2, q. 91, a. 3)<sup>11</sup>

Now the first speculative principles bestowed on us by nature do not belong to a special power [*potentiam*], but to a special habit [or attitude: *habitum*], which is called *the understanding of principles* [rational intuition of principles: *intellectus principiorum*], as the Philosopher explains (*Ethic.* vi. 6). Wherefore the first practical principles, bestowed on us by nature [*nobis naturaliter indita*], do not belong to a special power [*potentiam*], but to a special natural habit [a natural attitude: *habitum naturale*], which we call *synderesis*. (Aquinas 1947, 1, q. 79, a. 12)<sup>12</sup>

*Synderesis* is said to be the law of our mind [the norm of our rational intuition: *lex intellectus nostri*], because it is a habit containing the precepts of the natural law, which are the first principles of human actions [*est habitus* (*habitus* understood as

<sup>10</sup> The Latin original: “Sicut supra dictum est (q. 90 art. 1 ad 2 et q. 91 a. 3), pracepta legis naturae hoc modo se habent ad rationem practicam, sicut principia prima demonstrationum se habent ad rationem speculativam: utraque enim sunt quaedam principia per se nota [...] et ideo primum principium indemonstrabile est, quod non est simul affirmare, et negare, quod fundatur supra rationem entis, et non entis: et super hoc principio omnia alia fundantur, ut dicit Philos. in 4. Metaphys. (tex. 9 seq.) Sicut autem ens est primum, quod cadit in apprehensione simpliciter; ita bonum est primum, quod cadit in apprehensione practicae rationis, quae ordinatur ad opus” (Aquinas 1894, 1.2, q. 94, a. 2).

<sup>11</sup> The Latin original: “Et ideo, sicut ex parte rationis speculativae per naturalem participationem divinae sapientiae inest nobis cognitio quorundam communium principiorum, non autem cuiuslibet veritatis propria cognitio, sicut in divina sapientia continetur: ita etiam ex parte rationis practicae naturaliter homo participat legem aeternam secundum quaedam communia principia, non autem secundum particulares directiones singulorum, quae tamen in aeterna lege continentur” (Aquinas 1894, 1.2, q. 91, a. 3).

<sup>12</sup> The Latin original: “Prima autem principia speculabilium nobis naturaliter indita non pertinent ad aliquam speciale potentiam, sed ad quemdam speciale habitum, qui dicitur *intellectus principiorum*, ut patet in 6. Ethic. (cap. 6.). Unde et principia operabilium nobis naturaliter indita non pertinent ad speciale potentiam, sed, ad speciale habitum naturale, quem dicimus *synderesim*” (Aquinas 1894, 1, q. 79, a. 12).

“attitude”) *continens praecepta legis naturalis quae sunt prima principia operum humanorum*. (Aquinas 1947, 1.2, q. 94, a. 1)<sup>13</sup>

The function of principles, in the practical and the theoretical sphere alike, is to set up the basis, the premises, on which the conclusions rest:

Just as nothing stands firm with regard to the speculative reason except that which is traced back to [*per resolutionem ad*] the first indemonstrable principles, so nothing stands firm with regard to the practical reason, unless it be directed to [*per ordinationem ad*] the last end which is the common good. (Aquinas 1947, 1.2, q. 90, a. 2)<sup>14</sup>

Natural reason [*ratio naturalis*] known by the name of *synderesis* appoints the end to moral virtues, [...] but prudence does not do this [...]. The end concerns the moral virtues, not as though they appointed the end, but because they tend to the end which is appointed by natural reason [*ratio naturalis*]. In this they are helped by prudence, which prepares the way for them, by disposing the means [*ea quae sunt ad finem*]. Hence it follows that prudence is more excellent than the moral virtues, and moves them: yet *synderesis* moves prudence, just as the understanding [*intellectus*, rational intuition] of principles moves science. (Aquinas 1947, 2.2, q. 47, a. 6)

## 5 The Context of Justification

Aquinas follows Aristotle in the view that prudence, or practical wisdom (*phronēsis* in Aristotle, *prudentia* in Aquinas), provides us with the means but not with the ends of action. As was observed earlier, Aquinas parts with Aristotle on the question of the discovery, or knowledge, of ends (meaning the principles of action): He views ends as appointed not by custom, as Aristotle assumes them to be<sup>15</sup> (nor even by the moral virtues, which tend toward the ends

<sup>13</sup> The Latin original: “synderesis dicitur lex intellectus nostri, in quantum est habitus continens praecepta legis naturalis, quae sunt prima principia operum humanorum” (Aquinas 1894, 1.2, q. 94, a. 1).

<sup>14</sup> The Latin original: “Sicut nihil constat firmiter secundum rationem speculativam, nisi per resolutionem ad prima principia indemonstrabilia: ita firmiter nihil constat per rationem practicam, nisi per ordinationem ad ultimum finem, qui est bonum commune” (Aquinas, *Summa Theologiae* (a), 1.2, q. 90, a. 2).

<sup>15</sup> Cf. Pattaro 1988, 112–3. Compare Aristotle, *Nicomachean Ethics*: “Nor again must we in all matters alike demand an explanation of the reasons why things are what they are; in some cases it is enough if the fact that they are so is satisfactorily established. This is the case with first principles; and the fact is the primary thing—it is a first principle. And principles are studied—some by induction, others by perception, others by some form of habituation, and also others otherwise; so we must endeavour to arrive at the principles of each kind in their natural manner, and must also be careful to define them correctly, since they are of great importance for subsequent course of enquiry. The beginning is admittedly more than half of the whole, and throws light at once on many of the questions under investigation” (Aristotle 1968, 1098b). The Greek original: “οὐκ ἀπαιτητέον δ' οὐδὲ τὴν αἰτίαν ἐν ἀπασιν ὄμοιώς, ἀλλ' ἵκανὸν ἐν τισὶ τῷ ὅτι δειχθῆναι καλῶς, οἷον καὶ περὶ τὰς ἀρχάς· τὸ δ' ὅτι πρῶτον καὶ ἀρχή· τῶν ἀρχῶν δ' αἱ μὲν ἐπαγωγῇ θεωροῦνται, αἱ δ' αἰσθήσει, αἱ δ' ἐθισμῷ τινὶ, καὶ ἄλλαι δ' ἄλλως. μετιέναι δὲ πειρατέον ἐκάστας ἡ πεφύκασιν, καὶ σπουδαστέον ὅπως διορισθῶσι καλῶς· μεγάλην γὰρ ἔχουσι

but do not appoint them), but by a special natural rational habit (*habitus naturalis, ratio naturalis*) called *synderesis* (as transliterated in Aquinas's text).

But then Aquinas is again lined up with Aristotle in making happiness the ultimate end of human life, even if Aquinas proceeds here, of course, in the manner of Christian theology:

Now the first principle in practical matters, which are the object of the practical reason [*ratio practica*], is the last end: And the last end of human life is bliss or happiness [*felicitas, vel beatitudo*]. (Aquinas 1947, 1.2, q. 90, a. 2).<sup>16</sup>

And, most especially—in the domain of action and in the context of justification (the use of principles)—Aquinas recovers from Aristotle the specificity of practical reason.

True, Aquinas finds that even in the context of justification practical reason possesses in part the deductive nature of scientific reason, and it does so with regard to what is right among nations (*jus gentium*). But what is most important is that practical reason, according to Aquinas, partakes as well, and primarily, of the calculating (*logistikon*), conjectural (opinion-based: *doxastikon*) character proper to prudence, and it does so with regard to what is right among the citizens within a nation (*jus civile*).

In this latter case, prudential practical reason operates and is exercised through the application of principles, by implementing determinations or specifications of them which may vary according to circumstances while remaining coherent with the principles in question.

The practical reason [*ratio practica*: here understood as a cognitive power] is concerned with practical matters [*operabilia*], which are singular and contingent: but not with necessary things, with which the speculative reason is concerned [speculative = *ratio speculativa*, understood as a cognitive power]. Wherefore human laws [*leges humanae*, human norms] cannot have that inerrancy that belongs to the demonstrated conclusions of sciences [*conclusiones demonstrativa scientiarum*]. Nor is it necessary for every measure [*mensura*] to be altogether unerring and certain, but according as it is possible in its own particular genus. (Aquinas 1947, 1.2, q. 91, a. 3)<sup>17</sup>

Even Aquinas's reference to what is possible *in genere suo* draws clearly on Aristotle:

the cultured person will exact precision (*akribēia*) in every kind of discourse, but only as much precision as the subject matter treated admits of, for otherwise we

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ὅπῃ πρὸς τὰ ἔπομενα. δοκεῖ γὰρ πλεῖον ἡ ἡμισυ τοῦ παντὸς εἶναι ἡ ἀρχή, καὶ πολλὰ συμφανῆ γίνεσθαι δι' αὐτῆς τῶν ζητουμένων.”

<sup>16</sup> The Latin original: “primum autem principium in operativis, quorum est ratio practica, est finis ultimus: est autem ultimus finis humanae vitae felicitas, vel beatitudo” (Aquinas 1894, 1.2, q. 90, a. 2).

<sup>17</sup> The Latin original: “Ratio practica est circa operabilia, quae sunt singularia, et contingentia, non autem circa necessaria, sicut ratio speculativa; et ideo leges humanae non possunt illam infallibilitatem habere, quam habent conclusiones demonstrativa scientiarum: nec oportet, quod omnis mensura sit omnino infallibilis, et certa, sed secundum quod est possibile in genere suo” (Aquinas 1894, 1.2, q. 91, a. 3).

would fall into the fallacy of expecting persuasive discourse (*pithanologountos*) from a mathematician and demonstration (*apodeixeis*) from a rhetor (Aristotle 1968, 1094b, 17–25; cf. Pattaro 1987).<sup>18</sup>

## 6 The Partitions of Jus

### 6.1 Jus Naturale: What Is Right by Nature

What is right or just (*jus sive justum*) is something (*opus*: an action, an undertaking, an enterprise) adjusted to others (*adaequatum alteri*) according to some mode of equality: *secundum aliquem aequalitatis modum*. This mode or manner of being right with respect to others will come either *ex ipsa natura rei* (from the nature of things) or *ex condicto, sive ex communi placito* (by agreement or common consent).

In short, the mode by which something can be said to be what is right with respect to others is either by nature or by will.

Now, there are two modes by which something can be said to be what is right by nature with respect to others: one is the absolute, unconditional mode (*secundum absolutam sui considerationem*); the other is by the consequences that may flow from that mode of being in relation to others (*secundum aliquid quod ex ipso consequitur*).

The *right [jus]*, what is right toward others] or the *just [justum]*, what is just] is a work that is adjusted to another person according to some kind of equality. Now a thing can be adjusted to a man in two ways: first by its very nature, as when a man gives so much that he may receive equal value in return, and this is called *natural right [jus naturale]*. In another way a thing is adjusted or commensurated to another person, by agreement, or by common consent, when, to wit, a man deems himself satisfied (Aquinas 1947, 2.2, q. 57, a. 2)<sup>19</sup>

The natural right or just [*jus sive justum naturale*, what is right or just by nature] is that which by its very nature is adjusted to or commensurate with another person. Now this may happen in two ways; first, according as it is considered absolutely [*secundum absolutam sui considerationem*]: thus a male by its very nature [according to its type: *ex sui ratione*] is commensurate with the female to beget offspring by her, and a parent is commensurate with the offspring to nourish it.

<sup>18</sup> “It is the mark of an educated mind to expect that amount of exactness in each kind which the nature of the particular subject admits. It is equally unreasonable to accept merely probable conclusions from a mathematician and to demand strict demonstration from an orator” (Aristotle 1968, 1094b). The Greek original: “πεπαιδευμένου γάρ ἐστιν ἐπὶ τοσοῦτον τὰκοιβὲς ἐπιζητεῖν καθ’ ἔκαστον γένος, ἐφ’ ὅσον ἡ τοῦ πράγματος φύσις ἐπιδέχεται παραπλήσιον γάρ φαίνεται μαθηματικοῦ τε πιθανολογοῦντος ἀποδέχεσθαι καὶ ὁτοικὸν ἀποδείξεις ἀπαιτεῖν.”

<sup>19</sup> The Latin original: “*Jus sive justum est aliquod opus adaequatum alteri secundum aliquem aequalitatis modum: dupliciter autem potest alicui homini aliquid esse adaequatum: uno quidem modo ex ipsa natura rei; puta cum aliquis tantum dat, ut tantumdem recipiat; et hoc vocatur jus naturale: alio modo aliquid est adaequatum, vel commensuratum alteri ex condicto, sive ex communi placito; quando scilicet aliquis reputat se contentum, si tantum accipiat*” (Aquinas 1894, 2.2, q. 57, a. 2).

Secondly a thing is naturally commensurate with another person, not according as it is considered absolutely [not according to its type absolutely considered: *non secundum absolutam sui rationem*], but according to something resultant from it, for instance the possession of property. For if a particular piece of land be considered absolutely [*absolute*], it contains no reason why it should belong to one man more than to another, but if it be considered in respect of its adaptability to cultivation, and the unmolested use of the land, it has a certain commensuration to be the property of one and not of another man. (Aquinas 1947, 2.2, q. 57, a. 3)<sup>20</sup>

In the first case, what is right by nature is *jus naturale* in Ulpian's sense: *Quod natura omnia animalia docuit*, where "omnia animalia" is to be understood as inclusive of humans.

In the second case, what is right by nature requires reason, in that *considerare autem aliquid comparando ad id quod ex ipso sequitur, est proprium rationis* (Aquinas 1894, 2.2, q. 57, a. 3): "to consider a thing by comparing it with what results from it, is proper to reason" (Aquinas 1947, 2.2, q. 57, a. 3).

Note how in the foregoing passages, *jus* has quite appropriately and consistently been translated by the Fathers of the English Dominican Province as "right": "natural right" (*jus naturale*), "the right of nations" (*jus gentium*).

## 6.2 Jus Gentium: The Right of Nations

The right of nations (*jus gentium*) pertains only to what all humans have in common, and that thing is reason. As Gaius says, "*quod naturalis ratio inter omnes homines constituit, id apud omnes gentes custoditur, vocaturque jus gentium.*" And "*ea quae sunt juris gentium naturalis ratio dictat*" ("Natural reason dictates that which pertains to the right of nations").

It follows from this statement that *jus gentium* requires no special institution, but is rather itself instituted by *naturalis ratio*.

To consider a thing by comparing it with what results from it, is proper to reason [*est proprium rationis*: here *ratio* refers to cognitive power], wherefore this same is natural to man in respect of natural reason which dictates it [*rationem naturalem*: here, too, and on the following occurrence, *ratio* refers to cognitive power, and in particular to prudence, for it dictates, and in reason it is prudens that prescribes]. Hence the jurist Gaius says (Digest. i. 1; De Just. et Jure i. 9): *whatever natural reason [naturalis ratio] decrees among all men, is observed by all equally, and is called the right of nations*. (Aquinas 1947, 2.2, q. 57, a. 3)<sup>21</sup>

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<sup>20</sup> The Latin original: "Ius sive iustum naturale est quod ex sui natura est adaequatum vel commensuratum alteri. Hoc autem potest contingere dupliciter. Uno modo, secundum absolutam sui considerationem, sicut masculus ex sui ratione habet commensurationem ad feminam ut ex ea generet, et parens ad filium ut eum nutrit. Alio modo aliquid est naturaliter alteri commensuratum non secundum absolutam sui rationem, sed secundum aliquid quod ex ipso consequitur, puta proprietas possessionum. Si enim consideretur iste ager absolute, non habet unde magis sit huius quam illius, sed si consideretur quantum ad opportunitatem colendi et ad pacificum usum agri, secundum hoc habet quandam commensurationem ad hoc quod sit unius et non alterius" (Aquinas 1894, 2.2, q. 57, a. 3).

<sup>21</sup> The Latin original: Considerare autem aliquid, comparando ad id quod ex ipso sequitur, est proprium rationis; et ideo hoc idem est naturale homini secundum rationem naturalem, quae

Since natural reason dictates matters which are according to the right [*jus*] of nations, as implying a proximate equality, it follows that they need no special institution, for they are instituted by natural reason itself [by *naturalis ratio*]. (Aquinas 1947, 2.2, q. 57, a. 3)<sup>22</sup>

Note how in the foregoing passages, *jus* has quite appropriately and consistently been translated by the Fathers of the English Dominican Province as “right”: “natural right” (*jus naturale*), “the right of nations” (*jus gentium*).

### **6.3 Jus Voluntarium: What is Right by Will. Jus Positivum: What Is Right by Position. What Is Right by Divine Position (Jus Positivum Divinum) and What Is Right by Human Position (Jus Positivum Humanum)**

In addition to what is right by nature, we have what is right (*jus sive justum*) by agreement (*ex condicto*), or by common consent (*ex communi placito*; and an agreement can take place among private citizens or it can be a public agreement.

We will have a public agreement when the entire population agrees, or when something is ordained by the Prince, who has the people in his care, and in this case we speak of what is right by position (*jus positivum*) (note 19). The difference between what is right by nature (*jus naturale*) and what is right by position (*jus positivum*) is set out more fully by Aquinas in the following terms:

A thing is adjusted or commensurated to another person, by agreement, or by common consent, when, to wit, a man deems himself satisfied, if he receive so much. This can be done in two ways: first by private agreement, as that which is confirmed by an agreement between private individuals; secondly, by public agreement, as when the whole community agrees that something should be deemed as though it were adjusted and commensurated to another person, or when this is decreed by the prince who is placed over the people, and acts in its stead, and this is called *positive right* [*jus positivum*: “what is right by position”] (Aquinas 1947, 2.2, q. 57, a. 2)<sup>23</sup>

Note how in the foregoing passages, *jus* has quite appropriately and consistently been translated by the Fathers of the English Dominican Province as “right”: “natural right” (*jus naturale*), “positive right” (*jus positivum*).

hoc dictat; et ideo dicit Caius Jurisc. (*lib. 9. ff. cod.*), “quod naturalis ratio inter omnes homines constituit, id apud omnes peraeque custoditur, vocaturque jus gentium” (Aquinas 1894, 2.2, q. 57, a. 3).

<sup>22</sup> The Latin original: “Quia ea quae sunt iuris gentium naturalis ratio dictat, puta ex propinquuo habentia aequitatem; inde est quod non indigent aliqua speciali institutione, sed ipsa naturalis ratio ea instituit” (Aquinas 1894, 2.2, q. 57, a. 3).

<sup>23</sup> The Latin original: “Aliquid est adaequatum, vel commensuratum alteri ex condicto, sive ex communi placito; quando scilicet aliquis reputat se contentum, si tantum accipiat. Quod quidem potest fieri *dupliciter: uno modo* per aliquod privatum condictum; sicut quod firmatur aliquo pacto inter privatas personas: *alio modo* ex condicto publico; puta cum totus populus consentit, quod aliquid habeatur quasi adaequatum, et commensuratum alteri; vel cum hoc ordinat Princeps, qui curam populi habet, et ejus personam gerit; et hoc dicitur jus positivum” (Aquinas 1894, 2.2, q. 57, a. 2).

The various kinds of *jus* deserve a final consideration. Specifically, we will need to say something on *jus divinum* and *jus humanum* understood as posited—through the will of God and human will respectively.

*Jus divinum* (the divine right) is defined by Aquinas with an important parallelism to *jus humanum*, in the sense that *sunt enim in lege divina quaedam praecepta, quia bona; et prohibita, quia mala, whereas quaedam vero bona quia praecepta; et mala quia prohibita*: “There are things in the divine norm that are commanded because they are good, or forbidden because they are bad,” whereas “other things in the divine norm are good because commanded, or bad because prohibited.”

The Divine right [*jus divinum*, what is right by the will of God] is that which is promulgated by God [*divinitus promulgatur*]. Such things are partly those that are naturally just [*naturaliter justa*], yet their justice is hidden to man, and partly are made just by God’s decree [*fiunt justa institutione divina*]. Hence also Divine right [*jus divinum*, what is right by the will of God] may be divided in respect of these two things, even as human right [*jus humanum*, what is right by human will] is. For the Divine law commands certain things [*sunt enim in lege divina*, “in the divine norm,” *quaedam praecepta*] because they are good [*bona*], and forbids others, because they are evil [*mala*], while others are good because they are prescribed [*bona quia praecepta*], and others evil because they are forbidden [*mala quia prohibita*]. (Aquinas 1947, 2.2, q. 57, a. 2)<sup>24</sup>

Note how in the foregoing passage, *jus* has quite appropriately and consistently been translated by the Fathers of the English Dominican Province as “right”: “divine right.”

As far as I have been able to see, there is not in *Summa Theologiae* a single occurrence of *jus aeternum*, whereas, clearly, *jus naturale* is the content of *lex naturalis*, *jus divinum* is the content of *lex divina*, and *jus humanum* (the various *jus civile* and *jus gentium*) is the content of *lex humana*. This circumstance deserves further investigations which we cannot enter into here, but which will verisimilarly carry interesting theoretical implications on account of the fact that *lex aeterna* presides over the whole of creation, including human beings; but where human beings are concerned, *lex aeterna* irradiates itself (in human beings) as *lex naturalis*: *Lex naturalis* is a *participatio* of *lex aeterna in rationali creatura*, and the content of this participation in *rationali creatura* is *jus naturale*, so designated and qualified by Aquinas in parallel with the qualifier *naturalis*, used to modify *lex*. *Lex aeterna*, insofar as it is not participated in *rationali creatura*, but is rather impressed in all creatures—even in man, to the degree that man is not a rational being (but is simply an animal)—cannot, it seems, give place to any *jus*, in the strict sense of this term, as its content.

The expression *justitia aeterna*, in contrast to *jus aeternum*, does have at least one occurrence in *Summa Theologiae* (2.2, q. 58, a. 2).

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<sup>24</sup> The Latin original: “[*J*]us divinum dicitur, quod divinitus promulgatur: et hoc quidem *partim* est de his quae sunt naturaliter justa, sed tamen eorum justitia homines latet; *partim* autem de his, quae fiunt justa institutione divina; unde etiam jus divinum per haec duo distingui potest, sicut et jus humanum: sunt enim in lege divina quaedam praecepta, quia bona; et prohibita, quia mala: quaedam vero bona, quia praecepta; et mala, quia prohibita” (Aquinas 1894, 2.2, q. 57, a. 2).

The justice of God is eternal. But nothing else is co-eternal with God. Therefore justice is not essentially towards another. [...] God's justice is from eternity in respect of the eternal will and purpose (and it is chiefly in this that justice consists); although it is not eternal as regards its effect, since nothing is co-eternal with God. (Aquinas 1947, 2.2, q. 58, a. 2)<sup>25</sup>

That there should a *justitia aeterna* in parallel to *lex aeterna* is very much understandable, for *justitia* is a virtue of the *governator*, of the legislator: The divine providence that expresses itself in *lex aeterna* is supported by *ratio divinae sapientiae*. *Jus*, in contrast, because it is contained in a *lex*, comes into play to the extent that *lex* is addressed to rational beings (to man), whereas there is no sense to bringing *jus* into consideration in relation to the *lex* impressed in the plant, mineral, and animal world to which it is addressed (a world that is not rational in itself).

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<sup>25</sup> The Latin original: “[J]ustitia Dei est aeterna: sed nihil aliud fuit Deo coaeternum; ergo de ratione justitiae non est quod sit ad alterum. [...] [J]ustitia Dei est ab aeterno secundum voluntatem, et propositum aeternum: et in hoc praecipue justitia consistit: quamvis secundum effectum non sit ab aeterno; quia nihil est Deo coaeternum” (Aquinas 1894, 2.2, q. 58, a. 2).

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