The Conception of Natural Law in Thomas Aquinas' Philosophy

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Abstract: St. Thomas Aquinas regarded law as an ordinance of reason, directed towards the common good, and promulgated by the one who has the care of the community at heart. Aquinas gave this meaning from the perspective of the natural law stance; which is founded on the belief that a common element unifies the cosmos. This common element is what Heraclitus called the law of nature. All laws according to the natural law proponents are derived from the primordial law, that is, the divine law. The natural law places emphasis on the ethical or moral dimension of law. This simply forms the rubrics of St. Thomas Aquinas' perception of law without broadening the scope of law to include other areas. This paper seeks to examine Thomas Aquinas' concept of natural law with a view to unveil other perspectives of law and then evaluate Aquinas' concept of natural law upon which the flaws in his notion of law will be exposed.

Key Words: Divine Law, Law, Natural Law, Reason.

Introduction

Thomas Aquinas was indisputably the greatest of the medieval philosophers (Kaufmann and Forrest 1994, 325). Aquinas was born about 1225 near Naples. His father was the count of Aquino who had hoped that his son would be a highly educated person and will eventually occupy a lofty position as Abbot of Monte Casino. Aquinas was placed with Abbey of Monte Casino while he was five and at about nine years old he enrolled to pursue his studies. He was interested in the life style of the Dominican Friars and joined the order and made up his mind to take a religious as well as teaching profession. He enrolled at the university of Paris where he came in contact with a prestigious scholar by name Albert the Great (Albertus Magnus). Albert influenced Aquinas greatly as the science for grounding Christian faith and development of mind was taught Aquinas by Albert (Kuafmann and Forrest 1994, 326). Thereby, he pushes the people's interests in recognizing the relevance of philosophy in the propagation of faith.

Aquinas picked up a teaching job in Paris while spending the rest of his life there and writing extensively on philosophical and theological subjects. Like most scholastic thinkers, Aquinas was so much concerned about the relationship between reason and faith using Aristotelian method. Thomas Aquinas believes that natural reason can establish some of the truth in religion, thereby establishing perfect harmony between scriptural knowledge and knowledge based on reason. Thomas Aquinas wrote extensively and among his most famous works is *Summa Theologica* and on the principles of nature: concerning 'Being and Essence.' In 1273, Aquinas stopped writing principally because of his failing health apparently due to mystical experience. He was said to have died in March 7, 1274 at the young age of Forty Nine years (Stumpf 2003, 167).

What is Law?

The question, what is law, cannot be given a straight word answer without a deep insight to reflection: just as we cannot give a simple quick answer to the question what is truth. So many scholars have given different meanings to what law is. Kant searched the meaning of law from a metaphysical parlance, because to him, the meaning of law can only be known from *a priori* point of view rather than *a posteriori* perspective. Kant believed that an empirical study of law will not suffice the underpinning to the meaning of law (Omoregbe, 2003, XI).

The positivists have it that, to know the meaning and nature of law, the best approach is by empirical study. The positivist school of law seeks to give a precise account of law with reference to the fact of the case in law (Omoregbe, 2003, 123). To them there should not be reference to metaphysical or reference to the natural law while dealing with matters of law. Law, to the positivists, is only the positive law. The positivists, in their collective endeavour, repudiate metaphysics as the basis for the study or understanding of law. What this means is simple that there is no need to subscribe to an abstract absolute standard for law; therefore morality alone cannot be a criterion of validity for law. The positivists are not interested in any metaphysical conception of law (Omoregbe, 2003, 123). For this reason; the agenda of the positivists was a total or complete separation of law from morality because they contend that law does not have to conform to morality in order to be valid. This means that whether a law is moral or immoral has nothing to do with its validity as law.

Law, from analytic jurisprudence, entails the analysis of legal concepts or theories *inter alia*, e.g. the concept used in formulating sources of law, adjudication, minimum efficacy, and sanctions; substantive law such as intention, causation and possession, etc. must be taken note of in order not to misunderstand analytic jurisprudence with statutory interpretation of law. A judge or lawyer interpreting a statute carries out certain amount of analysis, but he is not doing exactly the same thing as an analytic jurist is doing (Omoregbe, 2003, 222).

The sociological interpretation of the meaning of law showcased the interrelatedness between society and law. Law is said to regulate the behavior of humans in the society. Hence law can be seen as an institution: a social institution. The study of law in social setting as a social institution is therefore the basis of the sociological approach to jurisprudence (Lloyd 1998, 378). This is the reason why sociological jurisprudence sees law as a social phenomenon. The sociological jurists therefore study the structure, functions effects and values of a legal system.

The meaning and nature of law can also be understood from the historical perspective of law. No legal system can be understood without first understanding the knowledge of the roots of law from its evolution. Therefore, the meaning of law can be seen from the perspective of the reflection of the historical experience of a people. Just as Savgy says that the law of a people is an expression of the spirit of the people, an expression of the creative cultural and historical experience of the people.

Some Definitions of Law

Oliver Wendel, a legal realist, defined law as a prediction of the incidence of the public through the instrumentality of the courts. To say a person has a legal duty to do anything means, according to Holmes, to predict that if he fails to do it he will be made to suffer in this or that way by judgement of the court (Lloyd, p. 277). Hence, Oliver Crona sees law in terms of cause and effect that is the effect it has in the mind of the people once they are internalized. Hence, he defined law as: An immense mass of ideas concerning human behaviour accumulated during centuries through the contribution of innumerable collaborators. These ideas have been expressed in imperative form by their originators, especially through formal legislation and are being preserved in the same form in books of law.

Jeremy Bentham defined law as essentially a command issued by a sovereign to his subordinates or by a superior to his inferiors, who own him allegiance. A law he says is an assemblage of signs declarative of a volition conceived or adopted by the sovereign in a state, concerning the conduct to be observed in a certain case by a certain class of persons, who in the case in question are or are supposed to be subject to his power, such volition trusting for its accomplishment to the expectation of certain events which it is intended such declaration should upon occasion be a means of bringing to pass, and the prospect of which it is intended should act as a motive upon those whose conduct is in question (Bentham 1970, 1).

For John Austin, law is the command of a sovereign enforced by sanction. The purpose of the sanction is to elicit obedience through threat of evil consequences for disobedience. According to Austin's definition of law, law in the proper sense of the word implies the following:

> Positive laws or laws strictly so called are established directly or immediately by authors of three kinds-by monarchs or sovereign bodies, as supreme political superiors: by men in a state of subjection as subordinate political superior by subject or private persons, in pursuance of legal rights, by every positive law, or every law strictly so called is a direct or circuitous command of a monarch or sovereign member...to a person or person in a state of subjection to its author (see, Omoregbe, p. 129).

This does not mean that every command of the sovereign is law because there is general command as well as particular command the first one is what constitute law in the strict sense of the word. To St Thomas Aquinas law is an ordinance of reason, directed towards the common good, and promulgated by the one who has the care of the community (Stumpf, p. 176). This definition will be expatiated later as it forms a major thrust of this excerpt.

The Essential Features of Law

The law has essential features, and they are hinged on the following characteristics:

(A) **Law is an Ordinance:** From the definition of Thomas Aquinas above, law is an ordinance, meaning that law is an order, a rule made by an authority. This order emanates from an authority and is subject to enforcement (Uduigwomen 2010, 9).

(B) **Law is Rational:** Law as an ordinance must be rational or reasonable and not the arbitrary and capricious will and egoism of the law-maker (Uduigwomen 2010, 9). The rationality of law enables law to stand judicial scrutiny in promulgating law for the society. Reason is very cardinal and this makes law to have human face as it is couched on reason which makes the law to be just and have a moral face.

(C) **Law is Social:** A good law must have social dimension because law is a product of a particular society and practiced within such society. All human society has laws which regulate it to prevent anarchy. Law is an instrument for social engineering and interaction of its citizens. It is by the proper function of the law that society of humans strives and develops by which peace can be achieved.

(D) **Law as a Common Good:** Law is made for the overall social/common good of all in the society. The common good being the pursuance of the fundamental human rights of the citizen of the organized society

(E) **Law as Justice:** The centrality of the justice of law is vivid in the purpose of law in organized human society. Fairness and equality to which the term justice refers is indispensable in every human or civilized society. Justice is a virtue and it is enshrined in the body of society's law for the realization of the common good of all.

(F) **Law is Promulgated:** Law is a promulgation of an authority for the purpose of justice, equity and fairness in human organized community for all to flourish. By promulgation it means that the laws made are made known to the general public without exception.

(G) **Law is Legitimate:** This means that laws come from a recognizable authority with appropriate jurisdiction on the society where it is raised to regulate all members of such community.

The Natural Conception of Law

The natural element of law is founded on the belief that common element unifies the cosmos. This common element is what the naturalist philosophers such as Heraclitus called Laws of Nature; Heraclitus referred to the law of nature as divine law (Barker 1994, 224). All laws according to Heraclitus are derived ultimately from this law called the primordial law. Some of the proponents of the natural law are Heraclitus, the Sophists, Plato, Aristotle, the stoics, the Romans, the medieval Christian fathers amongst whom are - St Augustine and St Thomas Aquinas, etc. While in our contemporary age, we have Francis Suurez, Hugo Grotius, Thomas Hobbes, Richard Hooker and John Locke etc.

The natural law placed emphasis on ethical or moral dimension of law. The natural law theory is precisely the search for the ideal law or the ideal standard of justice; it is hopefully that theory of law which stresses the "ought of law" against the "is of law". The natural law suffices to say it is the demand of right reason for the authentic realization of the human person independently of any human legislator. It is a binding order, of ethical nature derived from the nature of things and imposing on man the duty to believe in accordance with his rational nature. Natural law is absolute and universally valid at all times and places. Thus, natural law is an interior law of man's rational nature, not something imposed on him from the outside, and it is by obeying it that man can realize himself (Omoregbe, 59). The reason why natural law is called so is based on the characteristic features of the law. Some of the basic elements are:

1. It is from the very nature of things.
2. It has its origin in spontaneous inclination or tendency.
3. It is known universally by the natural light of reason by all men, at all times and in all places.
4. It is aimed at proper and natural perfection (See, Omoregbe 1994, 60).

From the above, the natural law is the law which is based on man's ontological essence. It indicates the ideal to which man ought to align his behavior in order to realize his vocation as man (Omoregbe, 60).

Thomas Aquinas' Conception of Natural Law

Aquinas viewed morality from a natural perspective than an arbitrary set of rules for behavior. The basis of moral obligation, Aquinas said, is founded on human nature itself. Inclinations such as self-preservation, procreation, search for truth, etc. are all products of human nature. Moral truth, therefore, is simply doing good and the avoidance of evil. As a rational being, man is under the natural obligation to protect his life, in which case, suicide and other careless acts are wrong. Also, the propagation of species forms the basis of the union between wife and husband, any other basis for this unity is wrong. More also, we seek truth because we can do things best by living in peace in the society with others who are also engaged in this quest.

To ensure an ordered society, says Aquinas, human laws are fashioned for the direction of the community's behavior. All of these are fashioned on the basis of human natural inclination. The moral law, says Aquinas, is founded upon human nature, upon the natural inclination towards specific types of behavior, and upon the reason's ability to discern the right course of conduct. This is so because human has certain fixed features, the rules for behavior that correspond to these features are called natural law.

Law, Aquinas says, has to do primarily with reason. Human reason is the standard of our actions because it belongs to reason to direct our whole activities toward our end. These rules and measure of human acts therefore, are based upon reason. Aquinas argued that since God created all things, human nature and the natural law are best understood as the product of God's wisdom or reason. From this Aquinas differentiated between four types of law: eternal law, natural law, human law and divine law. He defined law as "an ordinance of reason directed towards the common good and promulgated by the one who has the care of the community at heart". The eternal law therefore is the law by which God governs the whole creation and by which all created beings are directed to their appropriate end.

The natural law consists, for Aquinas, that part of the eternal law which is particular to govern people. Aquinas says that the "participation of the eternal law in the rational creature is called the natural law". The natural law is nothing else than the rational creature's participation in the eternal law; because beings derive their perspective inclination to their proper acts and ends (Stumpf, p. 176).

Human law, on the other hand, refers to the specific statues of government. These statues or human laws are derived from the general precepts of natural law. What must be recognized here is that the conception of human law is the rejection that law is law only because it was

decreed by a sovereign. Aquinas argued that what gives a rule the character of law is its moral dimension, its conformity with the moral law (Stumpf, p. 177). Aquinas therefore denies the character of law to the command of a government which violates the natural moral law. Such a command, Aquinas said, should be disobeyed. He averred:

> Some laws may be unjust through being opposed to the divine good: such are the laws of tyrant inducing to idolatry, or to anything else contrary to the Divine law. Law of this kind must no wise be observed, because… ought to obey God rather than human being (see Stumpf, p. 178).

Divine law, Aquinas said, is to direct people to their proper end since man is ordained to an end of eternal happiness, which can, of course, direct man to his supernatural end. Man can only alter the spiritual end by the level of man's natural faculty through revelational means- the divine law is available in the scripture. To attain eternal happiness is not from the product of human reason. But, it is given to man by God's grace. The difference between the natural law and divine law is that: the natural law represents our rational knowledge of the good by which the intellect directs our will to control our appetites and passions. This helps us to fulfill our natural end by achieving the virtues of justice, temperance, courage and prudence. Thereby, the divine law comes directly from God through revelation as a gift of God by his grace. Through the divine law we are directed to our supernatural end and attain spiritual virtues of faith, hope, and love.

Evaluation of Thomas Aquinas' Conception of Natural Law

The import or relevance of Thomas Aquinas' conception of the natural law cannot be waved off by the throwing of the wave of the hands. The concept has brought to bear in legal jurisprudence the ideas such as equity, justice and fairness amongst humans. On this platform, the humans, whether citizens or foreigners, are to be treated equally as rational beings that possess within them a spark of creative force. Irrespective of the laudable values of Aquinas' conception of the natural law and its place in the application to human real existence in daily life, it remains very meaningful in assessing the values of human life and dignity in the society. The natural law as perceived from Aquinas' view is bedeviled by a lot of flaws.

Hence, Aquinas perceived law from the natural law parlance basing law on human natural inclination e.g. procreation, moral truth and self-preservation but, knowledge has advanced to show that besides natural inclination law can be understood from other perspectives than the natural law's stand point as advocated by Aquinas. Such other perspectives by which law's meanings and nature could be understood and derived is historical and sociological perspectives. The historical perspective views law from the angle of knowledge of the people of a particular community of the past which form their legal system. This version of law means that law comprises of the creative cultural and historical experiences of a people which grows out of their custom. While the sociological perspective views law as a social instrument for social control. Here law is seen as an institution for social engineering. From this perspective, law is seen from what it can help to do in the society. This is a sheer negation of the Aquinas' version of human nature as a template for human law.

Also, Aquinas told us the right way that nature taught humans to use sex i.e. sex is used primarily for procreation, and this was contrived by Aquinas based on the principle of natural inclination for sex, for propagation of human species, but this has weakness as in our contemporary time sex is not used for procreation purpose alone. People do have sex nowadays for pleasure and hedonistic satisfaction than for procreative purposes.

More-so, it has come to our understanding that human nature and that of animals are two different nature altogether. Human animals are rational animals while animal animals do not possess rationality but, they use instinct against the backdrop of the use of reason by humans so, for Aquinas to equate animals and human animals as having the same nature is fallacious statement which needs redemption. While animal nature is purely biological, that of human

animals is much more than a biological activity. It is an aberration to think Aquinas' conception of law from nature alone to be true from the angle of human inclinations. This is misleading; because, moral principles are not solely based on human inclination alone. Moral norms are not founded on man's biological nature rather morality stems from human rationality than from purely biological build up (see, Omoregbe, 123).

Aquinas made us believe that the force of law is the natural law so the validity of law is the law of nature- therefore any human law made that does not conform to the natural law is declared null and void; such laws are not to be obeyed but to be disobeyed and taken as unjust. Positive law, for Aquinas, is law that is in conformity with natural law. But this is an aberration to the positivists who see the validity of human laws on the basis of 'fact of the case'. To the positivists, there is no absolute standard (outside of the positivist law) to which law must conform in order to be valid, and they also repudiate morality as the criterion of validating law. To the legal positivists' point of view, the search for an ideal law or for an ontological criterion for the evolution of law is not a scientific study. The human mind, says the positivist, cannot go beyond man's empirical experience to discern an absolute norm for law. To them, experience gives us nothing other than the positive law in legal system. Therefore, any law other than positive law is nonsense (Omoregbe, 123). Hence; to the positivist, the subscription to natural law as the basis for the validity of law is nonsensical.

Conclusion

We have studied Aquinas' conviction that the natural law is derived from human nature which is based on human inclination and that there exist four laws – the eternal law, the natural law, the human law and also the divine law – and they are all interwoven. Law according to Aquinas is the ordinance of reason for the common good promulgated by him who cares for the community. We studied that human positive law is valid not because it is the command of the sovereign but rather because the rules are consistent with the general rule of morality.

Therefore, Aquinas' conception of natural law was evaluated critically and a provision was formulated that law cannot be understood solely from the natural law perspective alone rather a thorough understanding can be derived from a combination of other views such as the historical and sociological parlances. That the natural law cannot suffice for the validity of law since the natural law parlance is not scientific but metaphysically contrived. So, Aquinas' conception of natural law was attacked on the basis of the error committed by Aquinas for linking human nature with animal nature than rational nature, which made him perceive morality from human biological nature i.e. sexual than rational nature.

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