THOMAS AQUINAS' CONCEPTION OF LAW: A CRITIQUE

Opafola, Olayinka S.

Abstract

Thomas Aquinas was a natural law theorist. He subscribed to the deontological view of morality according to which actions are either intrinsically right or intrinsically wrong. He assumed that there is a necessary connection between law and morality. This paper explains Aquinas' conception of law with an emphasis on natural law. It assesses the thesis of the natural law theorists. It then mentions the merits of the natural law theory. The paper is divided into five parts starting with the introductory part. The second part deals will: Aquinas' conception of law interpretations and critique of the thesis of natural law theorists are presented in the third part. Merits of the natural law are considered in the fourth part. Summary and conclusion appear in the fifth part.

Introduction

St. Thomas Aquinas was a philosopher. The name given to his philosophy is "Thomism", a form of Aristotelianism developed within the framework of Christian (Catholic) theology of the 13th century. Aquinas was a natural law theorist. He subscribed to the deontological view of morality according to which actions are either intrinsically right or intrinsically wrong. He assumed that there is a necessary connection between law and morality.

This papef explains Aquinas' conception of law. It emphasizes the natural law and evaluates the thesis of the natural law theorists. It then states the merits of the natural law theory. The paper is divided into five parts beginning with the introductory part. The second part covers Aquinas' conception of law. Interpretations and critique of the thesis of natural law theorists are undertaken in the third part. Merits of the natural law theory are presented in the fourth part. Summary and conclusion occupy the fifth part.

Aquinas' Conception of Law

For Thomas Aquinas' "law is an ordinance of reason promulgated with a view to the common good by him who has charge of the community" (Aquinas, Qu. 91. Art 2). Part of the common good is the preservation of order. To prevent harm to people and preserve order in human society, law should be concerned with evils, especially major ones (Hawkins, 1968:116). Aquinas distinguished between four kinds of law, namely:

(a) Eternal law.
(b) Natural law.
(c) Divine law; and
(d) The State (human positive) law.

They are categorized in the order of importancc-lhe highest being the eternal law while the human positive law is the least or the lowest, the human positive law directs one to the divine positive law. The natural law precedes the divine law and is the actualization of the eternal law by reason for the rational beings. The eternal law, which is higher than the natural law, leads all species of living things to its rightful end (Aquinas, 1951:1a, llae, 93, 95, 96). Aquinas maintained that "the eternal law is nothing else than the plan of the divine wisdom considered as directing all the acts and motions of creatures (Aquinas, 1951:1a, llae, 93,1). He regarded eternal law as an expression of God's rational orderings of the universe. Aquinas explained why eternal law is so called: .. .The very notion of the government of things in God, the rules of the universe, has the nature of a law. And since the divine reason's conception of things is not subject to time, but is eternal, according to Prov. VIII: 23, therefore it is that this kind of law must be called eternal (Aquinas, Qu. 91. Art 1). Being a rational being, man can choose to obey or disobeythe eternal law unlike other creatures or beings.

Aquinas was a natural law theorist. He described natural law as the dictate of right reason towards the bad to be avoided or rejected and the good to be pursued or attained. The natural law

participates in and reflects on the eternal law as it relates to man and his free act. Aquinas was further of the view that the natural law assists human beings in the realization of man. The logical relationship between the order of natural inclination towards the good and the order of the precepts of the law of nature is noteworthy. The former precedes the latter. The natural inclination towards the good is common to every substance because each tends to conserve its existence according to its own kind. Aquinas observed further that "as a consequence of this inclination, those actions by which a man's life is conserved and death avoided«belong to the natural law (Aquinas, Qu. 91. Art 1).

It seems that Aquinas subscribed to deontological view of morality. He held that within the context of natural law, actions are either intrinsically right or intrinsically wrong. On this view, an action is right or wrong in itself, not because God approves of it or not because it has good or bad consequence(s). Like St. Augustine and Aristotle, Thomas Aquinas believed that natural law is superior to human (State) positive law and that the latter must conform to the former.

The divine law, according to Aquinas, aids man in his attempt to attain supernatural end. Human positive law comprises rules and regulations through which the government attempts to maintain internal peace, keep the external defence in check and then promote the general well being of its citizens. Human positive law supports the natural law in all cases where it concerns the common good. It is necessary that human law be compatible with the natural law. Aquinas commented thus on the consequence of the incompatibility of human law with the natural law:

> Every human law has the nature of law in so far as it is derived from the law of nature. If in any case it is incompatible with natural law, it will not be law, but a perversion of law (Aquinas, 1951:1a, llae,95,2).

Copleston (1962) has tried to justify the need for divine law, natural law, and human law. The influence of pa^ion and of inclination which are not in accordance with right reason may lead men astray since not all men have the time or ability or patience to discover the whole natural law for themselves. It was necessary that God should reveal the supernatural law, over and above the natural law. Since man is destined to the end eternal beatitude, which exceeds the capacity of the human natural faculty, it was necessary that besides the natural law and human law he should also be directed to his end by a divinely given law (Copleston, 1992:129). Thomas Aquinas agreed with St. Augustine and Aristotle that any human law, which opposes or contradicts the natural law is unjust, is not valid and is a perversion of the law. Human law can also be unjust if it contravenes the divine positive law. In Aquinas' opinion, unjust laws could be removed as acts of violence and their legislators as tyrants (that should be removed from office). According to Aquinas, unjust law ought not to be obeyed. He nevertheless appealed that any unjust law be obeyed if disobedience would result in public scandal and embarrassment. Legislators of unjust laws could be ignored if their removal might lead to disastrous rebellion (Aquinas, 1951:1a, 1 lae, 95, 2, 96, 4).

Interpretations and Critique of the Thesis of Natural Law Theorists

Like other natural law theorists. Thomas Aquinas claimed that any law, which is obeyed just because the authority has the power to punish disobedience; is not a good law and the state is not a good society. In a good state, citizens will obey the law because they perceive its moral foundation. This is the explanation of the thesis of the natural law theorists. Thomas Aquinas also agreed with other natural law theorists that a law, which is immoral, must be regarded as an invalid law. An immoral law is not truly a law. This thesis advances a criterion for law: that is, a criterion for what can be truly called a law. Thus, a moral law is truly a law.

An inquiry into law and its validity can be conducted in two ways. The first way is to specify the criteria for the application of the concept of law in any legal system. In other words, what are the criteria of distinguishing law from other set of rules? Legal rules may be distinguished from moral rules. Such criteria may be specified across state boundaries. One such criterion, which is common to most legal systems and legal philosophers, is the agreement that legal rules impose external obligations while moral rules impose internal obligations. In other words, legal rules control motives and intentions. Unlike law, morality speaks to the heart.

The second way of conducting the inquiry involves the classification of the rules of the particular legal system as a rule within that system. It is not necessary to extend this to other systems. The question that is being asked in this case is: what are the criteria for the validity of **laws within a**

particular legal system? It is important to note the difference between these two ^vays or types of investigations. Concerning the first type of inquiry, investigation is not restricted to a particular geographical boundary but cuts across boundaries. In addition, the question of the validity of law does not arise. In respect of the second way of inquiry or investigation, the following points are noticeable. One, what rule constitutes law has been assumed or taken for granted. Two, the question of validity is spatial and temporal-that is, a law that is valid in one country or system may be invalid in another. Considering the first way of conducting an inquiry into law and its validity, the natural law thesis does not seem to have problems. However, it has to contend with the problem of validity arising from the second way of investigation. This is because validity is relative to a particular place and time. Which of these two investigations better interprets the natural law thesis? Is the natural law thesis saying that a particular rule cannot be called a legal rule if it is immoral? Or, does it say that a particular rule cannot be called a legal rule if it is not valid? The natural law thesis-an immoral law is not truly a law- may be interpreted in two ways:

(1) A rule which is immoral is not a legal rule.
(2) A rule, which is immoral, is not a valid legal rule.

Let us consider some of the consequences of interpreting the natural law thesis in these two ways. It seems the original intention of the natural law theorists is to regard all immoral laws as invalid-that is, to deny validity to immoral laws. This is because there is confusion on their part concerning the notion of validity and its application to laws. They do not seem to recognize, or perhaps they deliberately ignore, the distinction between the two criteria or ways of investigation highlighted above. This distinction underscores the confusion of natural law theorists. It is important to stress that validity or invalidity of legal rules is determined within a particular legal system according to existing criteria stipulated in the constitution. If rules are not made these criteria or procedures, they will be declared by the court(s) as null and void or invalid. The claim (or interpretation) that a rule is not a valid legal rule if it is immoral assumes that morality is part of the criteria of validating laws. This assumption cannot be said to apply universally. It holds in some legal systems (for example, Saudi Arabia) while it does not in others (Nigeria, for instance). It is not the case that only moral rules are legally valid. An immoral law may be valid. If a law is invalid it is not necessary so because it is immoral. Its invalidation may be due to violation of stipulated guidelines for the validation of laws.

Another interpretation of the thesis of the natural law theorists is that a rule, which is immoral, is not a legal rule. What is a legal rule? Is it not one, which has passed through the process of validating legal rules? Natural law theorists are obscuring the problem because they do not give room for reformation of legal rules. There is no harm in saying that a rule is a legal rule but one which is immoral. Seen from this perspective, we may then call for its reformation or even reform it.

The problem of the connection between morality and legality will always remain a puzzle in the natural law theory. It is pertinent to stress that it is difficult to discuss law from the perspective of morality because there is no acceptable criterion or standard of morality, that is, one of distinguishing bad from good behaviour. Unlike the natural law theorists (including Thomas Aquinas), utilitarians (Jeremy Bentlham, for instance) deny that there is any necessary connection between law and morals or law as it is and as it ought to be. They emphatically insist on the separation of law as it is and as it ought to be (Hart, 1977:12 and 23). Hart has observed that:

> **Natural-law theory... in all its protean guises, attempts to assert that all human beings are equally devoted to and united in their conception of aims (the pursuit of knowledge, justice to their fellow men) other than that of survival, and these dictate a further necessary contest to a legal system (over and above my humble minimum i.e. survival) without which it would be pointless. Of course we must be careful not to exaggerate the difference among beings, but it seems to me that above this minimum the purpose men have for living in society are too conflicting and varying to make possible such extension of the argument that some fuller overlap of legal rules and moral standards is 'necessary' in this sense (Hart, 1977:36).**

Aquinas, among other natural law moralists, appeal to natural law in an attempt to justify majority of human actions. Karl Popper has, however, cautioned against undue appeal to naturalism.

He maintained that "there is nothing that has ever occurred to man which could not be claimed to be 'natural' for if it were not in his nature, how could it have occurred to him"(Popper. 1950:73).

Merits of Natural Law Theory

In spite of logical and philosophical problems arising from the natural law theory, it has played significant roles in the development of law and the course of world history. Based on the discussion 1 had with Professor Segun Gbadegesin, the following merits are noteworthy:

1. The tenets of natural law thesis played an important role in the various political revolutions, which we have had up date. The English, the French, the American and the Soviet revolutions. The leaders of these revolutions were moved by the tenets of natural law thesis; that is, by the ideals of freedom and equality which were presupposed by the natural law thesis.
2. It was through the development of the thesis of natural law that we have a synthesis of divine inspiration and the wisdom of men reflected in law books. The American Revolution led to the declaration of independence the statement of which makes reference to the divine intention for creating human beings and their endowment at creation.
3. The tenets of the natural law theory have continued to serve as challenges to human beings to resist oppression of all kinds and to secure fairness and justice for themselves from political authorities.

Summary and Conclusion

In discussing Aquinas' conception of law, we have deliberately emphasized natural law. This is because it seems to be the platform for the meeting of the eternal law, divine positive law, and human positive law-as explained above. One of the salient features of his conception of law is the supposed fusion of law-or necessary connection between law-and morality. This "fusion" or "necessary connection is emphasized in Thomas Aquinas' natural law-a view shared by St. Augustine and Aristotle, among other natural law theorists. This positive implies the view that actions are by nature right or wrong. This is a deonlological view of morality, which is narrow and inadequate. It may be the case that some actions are intrinsically right or wrong. It does not follow from this that every action is right or wrong in itself. At least some actions may be good or bad as a result of their consequences.

This shows that standards of morality vary. This variety has implications for Aquinas' conception of law. There may not be a consensus on what common good is. This renders his conception of law inadequate. Similarly, it is sometimes difficult to agree on what is good and worthy of pursuit as well as on what is bad and avoidable. This poses problem for Aquinas' descriptions of natural law. In fact, it is question-begging to describe natural law as the dictate of right reason towards the good to be pursued or the bad to be avoided. If consensus on what is right or wrong is lacking, then what constitutes right reason is controversial.

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