versions, the Canon Law and the Civil Law. Each should be looked at rather as a new work of art than as developed from the medieval deposit of morals and custom. Here again we recall that the original distinction between them was not that between the codes of two separate bodies, namely Church and State, the first concerned with the spiritual and the other with the material organization of social life, but that between the disciplines of two different interests within one single community, namely the Christian Commonwealth. Its life was not split into two halves, one given to the sacred and the other to the profane. Two social purposes were not divided as they were by Dante, the *duo ultima* of the *Monarchia* corresponding to the two beatitudes, heavenly and earthly, described in the *Convivio*.[1] Such dualism was not to the mind of St Thomas whose repetition of St Augustine's doctrine of the two cities was merely reminiscent and rhetorical. All duties, contractual or communal, public and private, civil and ecclesiastical, were performed from the motion of grace in human nature; all shared the same intent, to take us to our single end, the face-to-face vision of God.

1. *Law-Making as Art*

The lawyers were grumbled at for going their own way. There was nothing new in that. They were the experts whom ordinary men had perforce to employ. True, there were safeguards, and some of their entanglements could be broken through by a public opinion formed by a strong sense of religion and custom. As the thirteenth century drew on so laws tended to become additions to, rather than adaptations of, the familiar social structure. The academic lawyers themselves were no longer mainly commentators and interpreters, for the Post-Glossators, joined by the new statesmen who had digested the lessons of the *Politics*, were shaping Roman laws into instruments of government in the Nation-States then separating out from feudal Christendom. Legal and political disciplines began to acquire a privileged status, which put them beyond the reach of theology and folk-custom.

[1] *Monarchia*, iii, 16. *Convivio*, iii, 4, 6, 13, 15. iv, 13, 17, 22.
A. P. D'Entrèves. *Dante as a Political Thinker*.

The process can be described according to a current technical vocabulary adopted from Aristotle. His philosophy encouraged the close analysis and detailed classification of parts in individual and social psychology. The responses of organisms to their environment were not left undifferentiated but were apportioned to their various active powers, abilities, propensities; *potentiae*, *facultates*, *aptitudines*. Sensation, for example, was not identified with emotion nor seeing with touching.[1] Furthermore, the higher cognitive and affective abilities were not altogether instinctive but allowed for some free play; they could be trained in one direction rather than in another by supervening qualities called habits, *habitus*.[2]

It was not enough to record that an activity was performed. There were questions to be pressed. From what power was it elicited? What was its condition? Scientific treatment of individual and social behaviour demanded nothing less. Hence the inquiries of the Aristotelean Summists into the virtues, or good habits of activity.[3] Instead of describing, in the manner of St Gregory, the components and general conditions of virtues so that they shaded off into another one, they set themselves to define the peculiarities of each special type. The classical achievement of this method is found in the *Secunda Secundae*, where, without an exaggerated faculty-psychology or losing sight of the unity of the human substance and its all-round activity or treating virtues as little entities separate from one another, more than ninety distinct species were exactly classified. The basis was laid down in Aristotle's *de Anima* and *Ethics*, and amplified in the *Prima Pars* and *Prima Secundae*. The working principle of the classification was that different objective targets or 'formal objects' in our surroundings diversified our activities about them, and therefore the appropriate habits and abilities.

The theoretical and practical reasons were not regarded as distinct abilities or faculties. The human mind was single; one and the same power looked into eternity and accommodated itself to time, asked questions about its environment and sought

[1] 1a. lxxvii, 1, 2, 3, 5, 6.
[2] 1a–2ae. xlix, 1, 3, 4. l, 3, 4, 5. li, 1.
[3] 1a–2ae. lv, 2, 3.

to change it.[1] Nevertheless a twofold function was engaged, contemplative and active. The mind may remain a spectator—we speak of philosophical contemplation, for religious contemplation is another matter. It may observe the world and develop the implications of what it sees, yet while enunciating truths not do anything more about them or put anything into effect. It may stop short at theory and speculation. Or it may go on to be active and practical by planning and directing other psychological powers, by shaping conduct and exploiting the world and by turning things to advantage.

For both pursuits the mind could acquire or be endowed with certain good habits. Leaving aside those qualities of character called the moral virtues, five qualities of mind or intellectual virtues were enumerated by Aristotle and taken over by St Thomas, namely intuitive reason, scientific knowledge, wisdom, practical wisdom, and art.[2] Of these we reserve attention to scientific knowledge, *scientia*, a virtue of the theoretical mind, *ratio speculativa*, and to practical wisdom, *prudentia*, and art, *ars*, both of which were virtues of the practical mind, *ratio practica*.

Scientia meant demonstrated knowledge, the result of the kinds of proof described in the *Posterior Analytics*. Observing the logical proprieties, it arrived at conclusions which could be shown to be inevitable, given assent to the premisses and patience. The discourse was deductive. Yet such scientific knowledge had its limitations. It might grasp reasons embodied in the outside world, but these were abstract and general whereas material beings were concrete and individual. It might understand types, perhaps even examples; it could not comprehend things. Here, in brief, was the cause of the profound uneasiness in the strictly scientific reading of the world on the Aristotelean theory of knowledge; here the perennial problem of the gap between notional essence and real existence—hang up philosophy if it cannot make a Juliet!

Aristotle and St Thomas set themselves to close it by bringing the mind into contact with individual facts. It must suffer a

[1] 1a. lxxix, 9, 10. 1a–2ae. iii, 5.

[2] *Ethics*, vi, 3. 1139 b 16. 1a–2ae. lvii, 2, 3, 4.

real experience of the outside world.[1] This could take place in several ways. We may notice two. First, if reason were fused with sensation and emotion then such 'imaginative' knowledge could reach nearer to an individual thing than could a convergence of general ideas. Secondly, and this is relevant to our present discourse on social and political theory, if it entered physical process by doing or making something then it could be occupied, as we say, 'with real things'.

We need not delay on the distinction between *doing* and *making*. The first, a dynamic condition relating immediately to the agent, is the affair of prudence defined as *recta ratio agibilium*, which can be rendered as right reason in human activity. The second, which relates to the external effect, is the affair of art, *recta ratio factibilium*, which can be rendered as right reason in the product.[2] Obviously the two are closely connected, and their distinction needs to be elaborated when discussing the relations of morals and aesthetics.

For the present it is enough to notice how both differ from *scientia* in that they are directly engaged with concrete situations. For though sound learning is a moral discipline, scientific knowledge does not ensure that we shall act aright or make things well; a good scientist is not *ipso facto* an admirable character or a sound practitioner. Science, as we know, gives power, but it is power for good and ill. It is morally neutral. It is also, as such, ineffective. Renoir said that no beautiful picture is made by theories. They may provide the recipe, but not the know-how. Conversely, the judgments of prudence and art cannot be taken back entirely to theory. Nor can they expect to enjoy scientific certitude, but only the practical confidence to be gained by careful calculation, reliable information, courage to commit oneself and stamina.[3] So much must be said if we are to appreciate what was meant when lawmaking and statesmanship were described in terms of prudence and art.

Both addressed themselves to the practicable here-and-now

[1] T. Gilby. *Poetic Experience: An Introduction to Thomist Aesthetic*. London, 1934.

[2] 1a–2ae. lvii, 4.
J. Maritain. *Art and Scholasticism*. Tr. J. F. Scanlan. London, 1939.

[3] 2a–2ae. xlvii, 9, *ad* 2. *II Ethics, lect.* 2. *VI lect.* 6.

without ambition about the far and abiding values. They dealt with the useful, *bonum utile*, rather than with the worthy, *bonum honestum*, and their immediate social purpose correspondingly was to promote team-work and cooperation, *amicitia utilis*, rather than deeper ease and intimacy, *amicitia honesta*.[1] Their temper was pragmatic, ready to chop and change according to circumstances, to lay down a ruling here, to take advantage of an opening there: they were content with limited gains. Such was practical wisdom—for a large problem, atomic armament let us say, may be insoluble as it stands, and yet be broken into parts on some of which effective agreement may be reached. It was not low cunning, it was better than the *Klugheit* of Kant, it was virtue being shrewd.

The Low-Latin term *positivus* signified what was accidental and imposed as against what was essential and inherent, hence Positive Law as such meant a practical ordering of issues in themselves neither right nor wrong, not a deduction from ethical principles. Statesmanship, too, meant the businesslike employment of existing facts for the welfare of the community, more immediately concerned to secure *concordia* or unanimity in the conduct of affairs than to ensure the inner peace which was the fruit of virtue.[2] We may question the definition which says that politics is the art of translating moral principles into institutions, certainly if that signifies merely the extension of ethics to community-processes. For these are directed into certain arbitrary courses by human law and politics, neither of which looks to pure theory for its authoritativeness. Part of the evidence for what they do is simply that they do it.[3]

Again, a certain pliancy is called for if law and politics are to make the adaptations necessary for the well-being of the State. To be oversensitive to the charge of trimming, that is less of a weakness in moral theologians than in legislators and statesmen who should practice compromise and pragmatism, and be paragons like Talleyrand, of whom it is said that the sense of proportion and the sense of occasion transcended

[1] 1a. v, 1. 2a–2ae. xxiii, 3, *ad* 1. *V Ethics, lect.* 12. *VIII, lect.* 2, 3.

[2] 2a–2ae. xxix, 1.

[3] J. Dabin. *La philosophie de l'ordre juridique positif.* Paris, 1929.

opportunism, but amounted to genius.[1] Of course a social doctrine must be present if community-life is to have meaning and ultimate purpose and there are enduring principles for political as for military art, yet they have to be constantly rethought, restated, and applied analogically in no hard and fast manner: thus command of the sea should not be pinned to surface-warships. Past prestige is dangerous if it leads to repetitions of what was appropriate once but is no longer applicable to reach a world which has moved on. James I has been criticized for seeing himself as the schoolmaster of his realm, and indeed rulers should be practitioners rather than men of theory for on them lies the responsibility of getting things done and making them work. Hence they should respond to the play of changing forces.

The conduct of affairs may go case-hardened because of a tradition of success or by the action of conservative sectional forces. A State too largely controlled by moralists and legalists stiff on detail is particularly exposed to this danger: perhaps an inflexible pedantry of government contributed as much as anything to the decline of the Spanish Empire from the seventeenth century onwards. Clericalist polities have also been liable to lose touch with actual conditions, and have failed, not because they were corrupt, but because they represented the specialist preoccupations of a class—the clericals have not always been priests and their supporters, for liberals, and communists too, can count their doctrinaires who failed in the business of government by sticking too closely to formulas.

Now it was recognized by the Scholastics that the precepts of the Natural Law, indeed of all moral laws, were in themselves statements of a theory or doctrine although they were about what we should do. They told us which types of action were to be done and which to be avoided. It was left to the individual to apply these abstractions to the particular occasions of his conduct. He did this by a judgment of conscience—preferably informed by prudence—which bade him do what he should do here and now.[2] Similarly the community applied moral social principles through the political wisdom, *prudentia politica*, of its

[1] H. Nicolson *The Congress of Vienna*, x, 2. London, 1947.

[2] 1a. lxxix, 13. 1a–2ae. xix, 3 (*ad* 2), 4, 5.

rulers and citizens.[1] What kind of conscience a man possessed largely determined what kind of man he was. So also a country's political good sense manifested in repeated acts throughout its history went to build up the national character and stamp the quality of the laws and constitution. Prudence was not only an intellectual virtue which dealt with ways and means on the presupposition of certain principles and ends, it was a moral virtue as well and without it there could be no true moderation, courage, or justice.[2]

Doctrine and realism went together, the theory which gazed at ends and the practice which adapted means to ends. The first was the business of the social philosopher; left to himself he tended to simplify situations since principles were his interest, not the multiple and variety of individual cases. The second was the affair of the lawyers and statesmen—practical men whose talents were with facts and who consequently tended to dismiss philosophical questions as being academic. Both were distinct and complementary.

That bad morals made bad law might be true, also that no lasting political advantage followed from wrong conduct. Conversely, bad laws and policies hindered good morals. Good laws and policies rendered it easier for a man to be a good citizen, and so helped him to be a good man. But the converse did not follow, for excellent moral doctrine and moral dispositions could not of themselves produce beneficial legislation and successful statemanship. The reason for this, one of the ironies of history, was found in the analysis we have just conducted.

These considerations may now be applied more closely to Positive Law, bearing in mind a distinction drawn by St Thomas. Decisions, he said, may be derived from the Natural Law in two ways, either as conclusions from premisses or as applications of abstractions, *sicut determinationes quaedam aliquorum communium.*[3] The first was the method employed by science when one truth was proved from another: thus when the

[1] 2a–2ae. xlcii, 10, 11, 12.

[2] 1a–2ae. lxvi, 3 *ad* 3. 2a–2ae. xlvii, 6, 7.
Also 1a–2ae. lxvi, 3 *ad* 5. lviii, 4, 5. lxv, 1, *ad* 3, 4.

[3] 1a–2ae. xcv, 2. *V Ethics, lect.* 12. 1a–2ae. xciv, 5. 2a–2ae. lvii, 2, 3. lxvi, 2, *ad* 1.

precept, thou shalt not murder, was seen to be implied in the Natural Law principle that wrongful harm was not to be inflicted on anybody. The second was the method employed by art when general ideas, *formae communes*, were made concrete, *determinantur ad laiquod speciale:* thus when from the Natural Law principle, that crime should be punished, the legislator proceeded to enact what kind of punishment shall be inflicted. He might try to make the punishment fit the crime, yet his business was not with poetic justice and, except in some cases of compensation, there was an arbitrary quality about the sentence he passed. A human penal code, unlike divine justice, could not pursue the interior connection between human acts and their effects, but had to be content to attach certain deterrent or remedial consequences to some outward acts which disturbed the community.

It was in the second manner of derivation that purely political decisions were arrived at and positive laws enacted. They were expected not to contravene the principles and conclusions of morality but they were not implied in them. Right or wrong was not the only question, or indeed the decisive one. What was feasible and advantageous, that was the point, and moral theory could not settle it. It could no more achieve a prudent political course or a good piece of lawmaking than an elaboration of the theory of building will make a man a good architect, for the general idea of a house had to be shaped in all manner of ways, and what served for one was no use for another; *artifex formam communem domus necesse est quod determinet ad hanc vel illam domus figuram.*[1] The medievals had no methods of mass-production except for such things as coins.

Pragmatism determined every case, for, as Aristotle taught, meanings were expressed in general terms, but actions and facts were particular instances. A scientist—we use the word in its Scholastic sense—was not as such an artist, nor even a prudent man. His function was not to intrude himself into his subject-matter and to let the evidence speak for itself, whereas prudence was responsible for what was done and art entered into its material and contributed to the result. In other words, the

[1] 1a–2ae. xcv, 2.

sort of detachment proper to the theoretical reason was not to be looked for in the practical reason.

The Natural Law itself was no less elastic than the human lives it measured; the history of human laws witnessed to the variations they have allowed. Yet schools of professionals may become too stereotyped in their methods—it has happened to painters, poets, literary critics, philosophers and football-teams. Politico-legists are no exception. When Aristotle criticized Phaleas of Chalcedon and Hippodamus of Miletus, both of them doctrinaire town-planners, he noticed that Nature itself was less rigid than the schemes imposed on her—easier to set bounds to property, he remarked, than to control the birth-rate.[1]

Not that he advocated that human legislation and political action should be modified according to every shift of circumstance, for, as he also pointed out, tinkering with the operation of a law was not like altering the technique of an art, since its authority to instil obedience came from habit formed by the passage of time. Consequently he deprecated changing laws too lightly.[2] All the same, if citizens would know where they stood and statesmen pursue fairly undeviating courses, it still remained true that positive legislation and acts of State policy were largely responses to present and future opportunity, not to a past doctrine. Though respectful of history and custom, they had in them an element of innovation.[3]

The corollary of this teaching, that to this extent the legislating and political organs of authority acted of their own right, met the growing lay sentiment of the late thirteenth century. The Roman Law itself, so admired for its geometrical elegance, had in fact been a political instrument, not least when Justinian modified its severity under the influence of Christianity. When mastered by the medievals it was not long before they too began to adapt it to the conditions of their period.

Law, then, was the art of framing and directing social life, *quaedam ars humanae vitae instituendae vel ordinandae*. Even *jus* itself came to signify the technical ability of discerning what was

[1] *Politics*, ii, 7, 8. 1269 a 11–24.

[2] *Politics*, ii, 8. 1269 a 13–24.

[3] 1a–2ae. xcvii, 1, 2.

right under the circumstances.[1] To determine the official measures which protected the factors of social cohesion in the developing life of the community was the work of lawyers. To see they were supported by public opinion was the work of statesmen. The relationship of the laws to religion entered when they were being deliberated on—hence the importance of the Lords Spiritual in Parliament—but to speak precisely of Positive Laws as such, laws, that is, which did more than reinforce a precept of morality, expediency was the ground on which they were settled. They then became what has been in fact enacted, what should be accepted, and what will be enforced. They bound in conscience, not because they were logically implied in the moral law, but because they have been prudentially added and willed by just authority. Only in that sense were they 'irradiations' of the Eternal Law—a condition of all lawfulness to medieval thinkers. The obligation was bound up with the duty of living in agreement with one's group and of obeying the *dictamen* of its legislative and political head about what was *utile*.[2]

That an article of Positive Law was good because commanded had long been recognized. Both Aristotle and Cicero had noted its difference from natural law on this count.[3] What St Thomas brought out was that legislators were practical contrivers, not scientists; they were *sicut architectores in artificialibus*.[4] Hitherto law had not been classed as an art except in so far as training for litigation had been included in rhetoric. Now lawyers began to claim their independence. The freedom of law from morals, however, was less that of a separate and systematic body of ideas than of a collection of judgments about particulars which no theory could comprehend. Law was free in the sense that history was free, because its material escaped definition and facts were intractable to generalization, not in the sense that mathematics was free, because its own proper theoretical object could be developed in isolation from everything else.

[1] 1a–2ae. civ, 4. 2a–2ae. lvii, 1, *ad* 1.

[2] 1a–2ae. xcii, 1. *V Ethics*, *lect.* 12.

[3] *Ethics*, v, 7. 1134 b 20.

[4] *VI Ethics*, *lect.* 7.

Law and politics accordingly were social arts which preserved the continuity of tradition and at the same time adapted the life of the community to fresh conditions. Vain to expect them to build up a system of consistent propositions. The construction was haphazard. Like the English Common Law, they were worked up more by judges, practitioners and men of affairs than by academic teachers. The *sententialia justa* were not the enunciation of rules but the discernment of living meaning and its application to particular cases.[1] Civil laws and political institutions grew by experience and improvisation, rather than by logic and theorems. The English jury, for example, works on the antique prescription that twelve men must digest the evidence and be unanimous in their findings; that it was devised by a scientific legislator is inconceivable, so also that it could be tolerated by a tyrant.[2]

Some of the most successful civil growths have little to recommend them in pure theory; some, like flogging, may even have moral sentiment against them. Of course in a Christian community a specifically Christian view will be taken of them. Moreover, both jurisprudence and political theory can also be taken as normative sciences, in which case they will have something to say about what kind of relations should prevail in the State and the manner in which they should be conducted.

Theology pressed on medieval conduct and nobody, not even the Civilians, whether teachers or practitioners, imagined that positive law could enjoin a course of action repugnant to natural justice.[3] Rulers swore acceptance of treaties in church. The criterion of authority was right, not might. Laws were binding only when given a moral reference. This began to change from the thirteenth century onwards, though for a long time the laws were enacted against a background of religion and a theological doctrine was present in official action as a theory of perspective was present in landscape-painting. The reference to morality, however, gradually became more indirect in the case of human legislation and political action on matters about which the moral law was silent.

[1] *V Ethics, lect.* 12.
[2] P. Devlin. *The English Jury.* Hamlyn Lecture 1. *The Times,* 15 November 1956.
[3] 2a–2ae. lvii, 2, *ad* 2.

Hence law and politics could not be wholly interpreted by ethical principles; they were no more branches of moral science than military art was a branch of geography because its manoeuvres complied with topography. They were subaltern disciplines, and some of their character was quite their own, not borrowed from elsewhere. So much was granted, not freedom to do what they liked: for if they were not contained in moral science they were still to be regulated by its precepts. It was not until the fifteenth century that *raison d'état* emerged as an independent interest, and not until the sixteenth century that diplomacy became a specialized profession, the practices of which were difficult to reconcile with older standards of honour and decency, and not until much later was it held that ordinances could be legal and yet violate the principles of morality.[1]

Whereas early medieval law had been the declaration of custom, discovered perhaps by itinerant justices or settled by consultation with the magnates, and the purpose of legislation had been to expand and reinforce what had been implicitly present from of old, after the thirteenth century a sovereign body began slowly to emerge as the master, not the creature of law. New law was made, the force of which did not lie in its moral cogency or conformity with ancient usage, but in the fact and threat of enactment and enforcement. Hence law came to mean statute, and custom sank to an inferior condition; it almost possessed the force of law, but existed on sufferance according to the goodwill of the prince. An analogy may be found here with medieval land-law corresponding to the upper and lower social strata: bookright was the law administered in the Royal Courts, folkright the customs operative in the daily life of the rural population.[2]

St Thomas himself considered custom superior to statute because it regulated men's conduct by their own habits of mind, and there was less compulsion about it from outside authority. All the same even he quoted the *Digest*, that explanation cannot be offered for everything our betters lay down, and Aristotle too, that we ought to attend to the undemonstrated

[1] G. Mattingly. *Renaissance Diplomacy.* London, 1955.
[2] P. Vinogradoff. 'Customary Law.' *LMA,* p. 302.

statements and opinions of older and more experienced people not less than to proofs.[1]

Any theory of State absolutism was quite strange to medieval thought, though, in one sense, not altogether inconsistent with one strain in Augustinism. For what public power can be pitted against Leviathan? If political authority were not inherently committed to true justice, as when it arose outside the Christian scene, but formed by toughs ganging up for their own immediate advantage, and, if it had the monopoly of worldly power, could it not then dare anyone to declare its commands illegal however much the private conscience condemned them as vicious?[2] On the Thomist theory, however, that political authority rose from the needs of human nature, it followed that the natural justice with which it was charged, though not necessarily subjected to ecclesiastical tests, could be subsumed by Christian righteousness. Moreover, reason, not will, sounded the first note of law; authority was made evident by an appeal to the mind and not by the threat of force. It was a dictate of governing reason.[3] Might must show its right: this was a condition of its validity. Then also in the Middle Ages the sheer power of the ruler, limited in any case by the primitive mechanics of government and the strength of regional feeling, was mitigated by the general preference for government by custom as against government by edict, for tested and stable institutions as against new fangled devices and innovations likely to unsettle the people.[4]

All the same, new ideas were already beginning to ferment. One of them concerned the power of the prince to make new law, which the growth of a centralized bureaucracy made more forceful. Another was his more formal augustness and legal sovereignty. We have already noticed how St Thomas's later writings seemed to enhance the prestige of existing authority: the violent deaths in his own family during the troubles that marked the end of the Hohenstaufen added poignancy to his condemnation of rebellion. He required better

[1] 1a–2ae. xcvii, 3. 1a–2ae. xcv, 2, 2, *ad* 4. *Ethics*, vi, 11. 1143 b 11.
[2] J. N. Figgis. *The Political Aspect of St Augustine's City of God*, p. 64.
C. H. McIlwain. *The Growth of Political Thought in the West*, pp. 155–60.
[3] 1a–2ae. xcii, 1.
[4] *de Regimine Judaeorum*, i.

warrant than the moralists of an earlier age for any attempt to disturb the civil order. He was less downright than John of Salisbury in defending tyrannicide, for he admitted a kind of law even in unjust rule. More to the point, however, was his admission that the offices of legislators and statesmen were exercised in a proper medium. A positive law was a moral imperative specifically by the fact that it has been laid down, not by its content. In this sense he was against the moralization of all legality. Now let us consider his more clearly marked opposition to the legalization of all morality.

2. *The Limits to Legalism*

Positive Law formed a code of injunctions and restraints additional to those of the moral law, and it was largely determined by the history, genius, national character and constitutional structure of the State.[1] If, as in the Middle Ages, it was not all-inclusive but restricted to bodily and temporal arrangements within the wider eternal and spiritual community served by religion, then only limited sovereignty could be claimed and in fact self-denying ordinances were implicit in legislation. Even the Church, as Innocent III acknowledged, did not judge of hidden matters—an impressive admission from so commanding a pontiff.

The Treatises in the *Summa Theologica* on Civil Law and on the Jewish Law, the only code examined in detail, were at pains to hedge-in the field of legality: St Thomas was certainly among those who hold that the science of human law is but part of social science. While he recognized the majesty of law, his attitude to the legislature was not unlike that of a Victorian property-holder to the police—they exist to safeguard the liberties of the subject and are answerable to the public. He was closer to the English constitutional principle, that the law allows what it does not specifically forbid, than to the opposite assumption of Imperial Rome, that a citizen might have to produce a law authorizing what he wanted to do, otherwise he might suffer from the *coercitio* of the magistrates.[2]

[1] *V Ethics, lect.* 2.
[2] A. V. Dicey. *Introduction to the Study of the Law of the Constitution*. 9th ed. p. 202. London, 1939.
E. G. Hardy. *Studies in Roman History*, p. 37. London, 1906.

Still, law did not solicit, but commanded and engendered an obligation to make a right actual. Hence it dealt with what is possible and keyed with non-legal and non-moral processes of life; the human response to it was a judgment of fact as well as of value. It bound in conscience to its performance, not merely to the penalty for its infringement, for though St Thomas was familiar with rules not binding under sin, since the Dominicans themselves lived under them, such ordinances lacked the scope and majesty of law, and he did not entertain the notion of a purely *penal law*.[1] This says, in effect, that you may obey or disobey on condition that you accept the sanction—take your chance but do not complain if you have to pay the price.

Though every matter of law was a matter of conscience, the converse was not true, for not every matter of conscience could be made a matter of law. Not all moral precepts were to be enforced, but those only directly affecting public order, *pertinentia ad bonam disciplinam*.[2] In other words, every crime might be a sin, but not every sin was a crime. It was not that the dynamism of law stopped short of virtue, but that those charged with its making and maintenance should not assume responsibility for what lay beyond being law-abiding.

Though the Canonists claimed jurisdiction over many extra-religious cases because sin was involved—clerical tribunals were later restricted to *crimen ecclesiasticum*, a crime touching religion—both they and the Civilians were beginning to perceive, if not always to practise, the economy proper to their disciplines and to confine themselves to breaches in the outward order which was their concern.[3] Like Queen Elizabeth later, they refused 'to make windows into men's souls'. The early texts, it is true, did not clearly discriminate between *crimen* and *peccatum*: this however was not without advantage, for the

[1] 1a–2ae. xciv, 4. xcv, 3. 2a–2ae. lxii, 3.
J. Tonneau. 'Les lois purement pénales et la morale de l'obligation.' *RSPT.* xxxvi, pp. 30–51. Paris, 1952.
[2] 1a–2ae. xcvi, 3.
[3] W. Ullmann. *Medieval Papalism*, p. 103.
S. Kuttner. *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX*, pp. 2–22.
F. Russo. 'Pénitence et excommunication. Etude historique sur les rapports entre le théologie et le droit canonique dans le domaine pénitentiel du IXe au XIIIe siècle.' *Recherches des sciences religeuses*, xxxviii, pp. 257–79. Paris, 1947.

analysis of circumstances conducted by Penitentialists and Casuists, and their insistence on the importance of intention when assessing responsibility, provided models for the investigations of secular criminal lawyers.

The cause of civil and ecclesiastical liberty was advanced when it was established that immorality as such was not illegality, and, on the other hand, that some acts might be frowned on without fault being imputed. A cleric who killed a man in legitimate self-defence might incur a penalty, but no blame. It meant, among other things, that the governing officials of the organized community, whether of Church or State, were halted before they could invade the individual conscience. There God was the sole judge. The law's business was with deeds and intents outwardly expressed, not with thoughts and private motives. That at least was the theory, and modern techniques of 'brain-washing' were not available to tempt rulers to do more. Of course, then as now, there were fanatical improvers who would if they could have exacted total conformity, in the name more often of a quasi-religious doctrine than of good citizenship. The distinction between fault and irregularity may later have induced a state of mind to which laws were merely penal or to be discreetly evaded on condition that you were ready to pay the price if detected, but this has been outweighed by the advantage that superiors have been prevented from laying intolerable moral burdens on their subjects.

Doing your duty and enjoying yourself could coincide—St Thomas was no puritan. He supposed no conflict between law and liberty—the virtuous were never coerced, for they were the free and lawful men, prompt to render the justice of obedience.[1] Positive Laws as such did not contain explicitly moral values; they were observed because put forward by legitimate authority for the sake of community ease and agreement, and perhaps to safeguard some social decencies. The proper response to them in the normal course of things was provided by ordinary legalist justice.

On occasion, however, justice had to go beyond the letter of a law to its meaning and spirit; it was then called equity,

[1] 1a–2ae. xcvi, 5. 2a–2ae. civ, 1, 2, 5, 6.

epieikeia—epicheia in scholastic spelling.[1] Dutifulness and emancipation were not contrasted after the fashion of some canonico-moralists, as though rival virtues were at work, legalist justice standing strictly for the code, equity making exceptions. Rather they were different intensities within one and the same justice which began on set forms yet was already in sympathy with a fairness transcending them. All the same, as appeared in his comparison of Mosaic and Gospel Law, a tension was recognized between the legal pattern and the Christian project: legality was external, approximate, pragmatic, and, by implication, coercive: equity was spiritual, confident, categoric and impelled by charity.[2]

A positive law, which could take into account only what should happen in the majority of cases, attempted to be as constant and complete as may be, and its broad effect disregarded what was rare and exceptional.[3] Now *jus* itself, embodied in individual things, was modulated according to circumstances and could never be wholly explicated in general propositions. Aristotle's lesson had been well learnt, that the individual could not be reduced to scientific rule: *scientia non est de singulari*.[3] The moralists were well aware of this, and the lawyers supported their own distrust of abstract formulae with the maxim *omnis definitio in jure civili periculosa*.

Moreover, effective law operated through a judiciary. Not only had a multitude of contingent events to be grouped under a general heading by a legislature when it formulated what types of action were to be prescribed or forbidden, but these abstractions had to be brought to bear on special cases as they arose. The number of factors irreducible to theory was thereby increased. Unlike the philosophical reason which dwelt largely in the world of lucid meanings, the practical reason had to cope with acts to be done and things to be made, *operabilia* and *opera*, all of which were singular and escaped simplification, and some of which were paradoxical. You could not squeeze more

[1] 2a–2ae. cxx, 1. 1a–2ae. xcvi, 6. 2a–2ae. lx, 1, 4, 5.

[2] 1a–2ae. cvii, 1, 2, 4.

[3] 1a–2ae. xcvi, 1.

[3] 1a–2ae. xci, 3, *ad* 1, and *passim*.

rational evidence out of a subject than it will yield.[1] Hence the verdicts of human law could not aspire to the certitude proper to demonstrated conclusions, but must make do with practical or moral certitude, sometimes called *certitudo probabilis*. Judgment on mere suspicion was ruled out.[2] Modern usage makes a similar distinction, for a balance of probability is enough to decide a civil case whereas proof beyond reasonable doubt is required for a criminal case.

Laws and rules of policy were not like mechanisms the automatic application of which could dispense with human discernment, adjustment and tact. How impracticable was the canonical prohibition of money loans at interest when the economic structure of Europe changed after the Middle Ages—the question is at least arguable. A written code amounted to no more than a net of approximate rules, and though some of the cases that escaped its meshes might be met by unwritten and case law and by the *responsa prudentum*, the process of law could not work fairly unless inspired by a justice beyond legality. Modestinus was cited, to the effect that recourse to equity must be made when the mere application of the code would prove unjust; then the judge must put the better construction on doubtful cases.[3] Note that equity was not regarded as one department of justice, still less a subsidiary one at that: rather it was the virtue of supreme justice.[4] St Thomas sided with the 'Equity Wing' among the lawyers, the *Gosiani* or followers of Martinus Gosia, described by Hostiensis as a spiritual man for his period—the mid-twelfth century—who had a sense of the Divine Law and softened the rigour of the Civil Law.[5]

When he echoed the 'Police Theory', that secular laws operated to suppress crime rather than to promote virtue, it was in no mood of pessimism, as if the typical subject were the froward man or the potential criminal not the free and lawful person,

[1] 2a–2ae. lx, 3, *c.* & *ad* 1. 1a–2ae. xcvi, 1, *ad* 3.
I Ethics, lect. 3, 11.

[2] 1a–2ae. xci, 3, *ad* 3. xcvi, 1, *ad* 2, 3. 2a–2ae. lx, 3, 4.

[3] 1a–2ae. xcvi, 4.

[4] 2a–2ae. lx, 4, 5, *ad* 2. cxx, 1, 2.

[5] *Lectura in Decretale Gregorii IX*, i, 43. Quoted by H. Kantorowicz, *Glossators*, p. 91.

but in order to show their inherent limitations.[1] The echo was faint, for even coercion was meant to bring its subjects to a better mind. Human laws worked within a pale smaller than the full domain of social virtue; they did not touch all the relations of justice of men among themselves, let alone those of the other virtues; they did not make men good but rather established the outward conditions in which a good life can be lived.[2] Hence the preliminary definition adopted at the beginning of his treatise in the *Summa Theologica*, that law was the rule and measure whereby a person was induced to or restrained from certain acts, *regula et mensura actuum secundum quam inducitur aliquis ad agendum vel ab agendo retrahitur*, better expressed its external character than the popular definition given by Alexander of Hales, that law is a holy sanction, commanding decency, forbidding the contrary, *sanctio sancta, jubens honesta, prohibens contraria*.[3] Bracton, more lawyerlike, substituted *justa* for *sancta*, and St Albert ascribed a similar definition to Cicero.

The curbing of over-legal zeal appeared also in the principle that an authority could legislate and pronounce sentence only where it was competent to judge. God alone searched the heart and the reins, he alone knew the secrets of hearts. We saw what was externally manifested, and our inferences from them to what has really gone on inside a man were often guesswork, and could never be infallible.[4] Our praise and blame were approximate. Consequently there was a great difference between divine and human law regarding the ability to assess the presence or absence of the three conditions of virtuous activity indicated by Aristotle, namely that it should be done knowingly, willingly, and in a right frame of mind.[5]

To assess the degrees of guilty knowledge in order to convict for a crime was difficult; all the same a human court could go sufficiently far in the case of statutory offences.[6] Perhaps we

[1] 1a–2ae. xci, 1–5. xcii, 1, 2. xciii, 1–4. xcv, 1, 2, 4, 6. xcvii, 1, 3. 2a–2ae. lvii, 1. lviii, 1, 2, 8, 11. lix, 1.
[2] 1a–2ae. xcii, 1.
[3] 1a–2ae. xc, 1. *Summa Theologiae*, III, xxvi, 4.
[4] 1a–2ae. xci, 4. *IV Sentences*, XVIII, ii, 2.
[5] *Ethics*, ii, 4. 1105 a 31. 1a–2ae. c, 9.
[6] J. Ll. Edwards. *Mens Rea in Statutory Offences*. London, 1956.

cannot improve on the McNaughton Rules. We can ask simply whether by ordinary standards a man knew what he was doing and whether he knew that it was wrong, without penetrating to the springs of human conduct. Torture and trial by ordeal were attempts to supply human defects of knowledge.[1] Yet it was a step forward in civilization when these strained attempts to get at the truth were superseded by the uninspired processes of rational inquiry, even though they lead to a middling sort of justice.

Moralists and psychologists are uneasy—and rightly according to their lights—about the workings of courts where attention is paid more to types of action and inherent purposes of action than to idiosyncracies of character and the peculiar circumstances of a crime. Nevertheless the acceptance of a norm, which carries with it a limitation, is a condition of the stability of law, and, on analysis, of the freedom of the subject.[2] For once the administration of justice is swayed by purely personal factors then it must judge on them, and where it may judge there it may go on to enforce. A code for common civil conduct might be replaced by a set of psychological case histories, and the legal profession, instead of keeping us in our appointed places within the community, will write our biographies. Canon Law can regulate the time when an obligation can be undertaken; it cannot determine when a subject begins to exercise the use of reason.[3] Similarly, Civil Law can ask what a reasonable man might be expected to do, not what an individual of non-normal mentality could do under the circumstances.[4] Systems of Positive Law do not set up courts of morals or psychological boards, but confine themselves to certain rules of normal behaviour, departures from which are condemned according to formal procedures which are not allowed to stray outside the strictly juridical evidence.[5]

The element of will was even more difficult to decide. How far was any particular act free from compulsion? God knows.

[1] *Expositio in Job X, lect.* 1.
[2] 1a–2ae. xcvi, 1.
[3] *Contra Retrahentes*, 12.
[4] *See Regina v. Ward*. Court of Criminal Appeal. *The Times*, 12 Jan. 1956.
[5] 2a–2ae. lxvii, 2.

Here again a limitation must be accepted. Unlike Divine Law, which could judge the interior motions of the will, human law did not punish a man who has not carried into execution the murder harboured in his heart. As for virtuous dispositions, there it had nothing to say, for not even Divine Law punished as a transgressor of its precepts a man who did his duty to his parents without, however, possessing the virtue of piety towards them.[1] The penalties of human law fell on crime, not sin. And even there, as was inevitable if a pity all the same, a court was directly concerned with a criminal act, not with a habit of criminality. The law comes down more heavily on one unfortunate lapse than on the disposition never to be anything but a burden to the community: an honest man who has committed an act of murder will . . . may be tried and condemned, whereas a man habitually murderous in his heart may well escape the law.

Furthermore human laws were framed to fit men in a given system of reference, *in ordine ad tale regimen.*[2] What was to the public benefit, *utile communitati*, varied according to the type of constitution: a good monarchy man was not necessarily a good whig, nor a good whig a good democrat. Human law operated to make men good subjects, not necessarily good men—the two were not irreconcilable, and Aristotle, for instance, unlike the early Christians, would scarcely have envisaged a conflict between good citizenship and personal integrity.[3] We can imagine, too, St Thomas wanting to qualify Newman's contrast —of 'the beggar-woman, lazy, ragged, filthy, not over-scrupulous of truth, but if she is chaste, and sober and cheerful, and goes to her religious duties, she will, in the eyes of the Church, have a prospect of Heaven, quite closed and refused to the State's pattern-man'. But then his times were not so respectability-ridden.

The citizen of a State regulated by divine justice will be a virtuous man through obedience to the laws. Nevertheless, their immediate business was not his eternal salvation but to ensure public tranquillity and safety. Over and above this a good

[1] 1a–2ae. c, 9.
[2] 1a–2ae. xcii, 1. *III Politics, lect.* 3. *V Ethics, lect.* 2.
[3] 1a–2ae. xcii, 1, *ad* 2. *Politics*, iii, 2. 1277 a 20.

man had much else to supply. For the laws did not command all the virtues, nor was perfect virtue a legal obligation. Even though the legislator's motive might be to direct men to virtue, it was the law itself that was of precept, not its purpose, *finis praecepti non cadit sub lege.*[1] On the other hand, a moral duty did not constitute a legal right. The government's control was limited to public affairs; there it should be content with obedience, preferably good-humoured, and demand neither obsequiousness nor enthusiasm.

All supposed that the cause of law was the cause of freedom; few medievals laboured the fact that every positive law was a restriction of liberty. The Dark Ages and invasions of the Northmen were near enough for men not to know that the law was their protection against barbarism; the revival of Hellenism confirmed their objections to capricious power. Yet legality was not elevated into an object of awe. It was respected, but as an instrument well under control, the purpose of which was *utilitas hominum, sicut etiam Jurisperitus dicit.*[2] It was limited to what was expedient for the political community, that is to the outward acts of certain virtues. The prince could make sure that justice was done, but not that it was done justly, for the mode of virtue lay outside the scope of positive law. Some plain needs made its operation irrelevant, since necessity knew no law: thus a starving man could help himself to food so long as he did no harm and acted without contempt of civil authority.[3]

Prepared to tolerate a lesser evil lest the alternative be worse, not impatient with common weaknesses, restrained in moral indignation, the ruler should accept human nature as it is, knowing that people's habits cannot suddenly be changed by legislation, no more than a spirit of co-operation and sharing can be induced by the nationalization of the means of production.[4] To take one instance. Usury was hateful to the medieval temper, as Dante's scorching words bear witness; it stood condemned by economics, the scriptures and the law—Canonists and Civilians agreed on this point. Moral philosophy

[1] *III Sentences XXXVII*,i ii, 2, *l. See* ii, 4. 1a–2ae. xcii, 2, *ad* 2. xcvi, 3.
[2] 1a–2ae. xcv, 3.
[3] 1a–2ae. xcvi, 6. xcv, 3, *ad* 2.
[4] 1a–2ae. xcvi, 2, *c.* & *ad* 2. ci. 3, *ad* 2. III *Contra Gentes*, 71. 2a–2ae. lxix, 2, *ad* 1.

went farther, and condemned interest on a money loan as such, not merely an exorbitant rate of interest. The Arab and Jewish casuists were no less disapproving. It was energetically denounced by Popes, and by General Councils from the Third Lateran (1179) to Vienne (1311). Nevertheless to destroy a practice to which clerics themselves and ecclesiastical institutions were committed proved impracticable. Churches, then as now, were built on loans. The most that could be done was to confine the activities of usurers, and even commands to this effect became muted when the growth of commerce and Capitalism changed conceptions about the function of money and the social doctrine of Christianity.[1]

Then also ordinances should be reserved to matters where sanctions could be effectively applied. No law should be passed which cannot be enforced, since no bill of rights could go beyond what the State could guarantee. The power to punish went with the power to make laws, *huiusmodi disciplina cogens metu est disciplina legum*[2] Men of goodwill were not intimidated, but criminals were kept from evildoing; in this sense 'the law is not made for the righteous man, but for the lawless and disobedient'.[3] The hope was, of course, that fear would lead to love. In the meantime right should be backed by might and the State should inspire healthy respect by ensuring that the consequences of crime were painful and inescapable.

St Thomas sought some correspondence between crime and punishment, yet, while he allowed for 'poetic justice' in the expression of corporate disapprobation, he did not admit a vengeful spirit in human law which demanded an eye for an eye and a tooth for a tooth. Naked vindication belonged to divine law alone where, but for the intervention of mercy, the penalty followed inevitably from the nature of the deed, and

[1] *In errno*, xvii.
2a–2ae. lxxviii, 1–4. Disputations, XIII *de Malo*, 4.
A. Bernard. 'La formation de la doctrine ecclésiastique sur l'usure.' *DTC*, fasc. cxliv–cxlv, 2316–36. Paris, 1948.
G. le Bras. 'La doctrine ecclésiastique de l'usure à l'époque classique (XIIe–XVe siècles)' *Ibid.* 2336–72.
H. du Passage. 'La doctrine à partir du XVIe siècle.' *Ibid.* 2372–90.

[2] 1a–2ae. cv, 4, *ad* 5. xcv, 1. xcvi, 5. *X Ethics*, *lect.* 14, 15. (1180 a).

[3] I Timothy, i, 9.

was not arbitrarily imposed.[1] Evil was chosen, evil will be found; God was not chosen, the sinner will lose him.

Human authority could pronounce no such tragic doom. The reasons for the penalties it inflicted were utilitarian. Unless they could be shown to be reformative or protective they could not be justified. Punishment was prospective, that is, it sought a future good effect, whether considered as a piece of surgery which amputates a corruptive member from the community, or as healthy medicine to rehabilitate the offender, or as a deterrent and warning to others. The idea of reformative punishment is of course a dangerous one, though it looks humanitarian: imprisonment for instance, originally preventive by segregation of the offender, turns into solitary confinement or special treatment under isolation so that the offender may come to a better mind. In the Ages of Faith the death-penalty itself was reformative, and a Christian prison-chaplain may say that it still is, since the wrongdoer has the opportunity to face God's judgment prepared.

The *Codex Juris Canonici* acknowledges that its laws look to the future, not the past, except to serve as a warning.[2] And so it is with all human codes, the punishment inflicted should not be retrospective. Its designation and execution should not be the making of gestures about what has happened, for then execration would be no worthier than the venting of spleen. The purpose of the penalty is to promote the observance of law; if it cannot hope to prevent a man from being a misery to himself, it can yet act to prevent him from being a danger to others. Thirteenth-century penology was moving away from retaliation and mass-effects. Innocent IV forbade corporate excommunication, and St Thomas attacked the idea of indiscriminate punishment. The parable of the cockle suffered to grow in the wheat was cited. The purport of excommunication was revised, and in part restricted to the outward order, the *consortium Ecclesiae militantis* where *jurisdictio in foro causarum* could operate.[3]

The more law there is the less it will be respected, and

[1] 2a–2ae. lxviii, 1. xcix, 4. lxi, 4. *V Ethics*, *lect.* 8. 1a–2ae. xxi, 3. xlvi, 7. xlv, 3.
For *vindicatio*, *severitas*, and *clementia* see 2a–2ae. cvii, clvii. Also 2a–2ae. lxvii, 4.

[2] Canon 10.

[3] 1a–2ae. lxxxvii, 7, 8. 2a–2ae. lxiv, 2. lxvii, 4. lxviii, i. cviii, 1, 3. xlvii, 1, 2. clix, 1, 2. 1a. xxi, 3, 4. *IV Sentences*, XVIII, ii, 3, *ii*. XIX, i, 1, *iii*.

therefore economy should be practised.[1] Otherwise occasions of sin will be multiplied. The impulse to make laws has to be checked by wider social considerations, historical, psychological, moral and theological. 'We cannot go on legislating for ever', Palmerston remarked to Goschen—one of those touches which endeared him to ordinary folk, who ruefully feel that more laws are passed than are repealed. The danger is the greater when laws are not so much the organic development of community-sentiments as the manifestations of the improving zeal of official planners—or of their desire to justify their existence. Art is more unregulated than nature. As the avarice for artificial wealth is more unbounded than natural lusts, since these are self-limiting, so arbitrary enactments are more likely than the commands of natural reason to go on piling up, particularly in the hands of technicians.[2] The more impressive the instrument the greater the threat of over-organization.

Government is like a machine which tends to take charge even of the governors, and to attack those very human values it was invented to serve. A living theology and liturgy can be clogged by legalism and rubrics. Devotion itself can be lost in elaboration. Civilization can be overdone. The Eighth Army fought better after it had burnt its paper. Regulations should be kept to the minimum consonant with good administration. Criminal law should be reserved for criminals. Already in the Middle Ages men lamented too great a growth of discipline; centuries later the process came to a head when the Civil Law, instead of promoting the dispensation of justice, became a technical system for the creation of costs, and government officials who would otherwise be under-employed used the State for the creation of jobs. Such search for occupation does not make for a happy and efficient political community.

Legal reforms are usually inspired from outside the legal system. Perhaps it is too much to expect the law to remedy the very conditions it sets up. All the same it can recognize its own bounds, as when a court, deeming it inexpedient to inflict

[1] 1a–2ae. xcvi, 2, *ad* 2.

[2] 1a–2ae. ii, 1, *ad* 3.

punishment not fixed by statute, allows an absolute discharge of a person found guilty of a crime. What is required above all is a sense of proportion which appreciates that the system is open to pre-legal and post-legal influences, or that human law should take human nature as it is and consult a superior moral order. From this may follow a lively sense of equity. Obedience will be no less prompt, but happier, when it is felt that there are limits to government and that the administration of law is humane and fraught with fair dealing. It was in this temper, common to the English Common Law and the *Summa Theologica*, that equity was enthroned as the highest justice.[1] Equity was a virtue all good citizens should share. It was not a special legal department, nor the power of dispensation, nor the ameliorative interpretation of burdensome laws allowed by juridical experts.[2]

The legal machine of Church and State had not reached such a size in the thirteenth century that St Thomas felt compelled to build up works of defensive engineering in the style of later moralists. There was some humour in their proceedings, for, like the old soldier who scrounges from the quartermaster's stores, they sought to mitigate the law by legal maxims, for instance, that a doubtful law does not oblige, that positive law does not oblige to grave detriment, that a trespass must be proved not assumed, and that some laws are merely penal and not binding in conscience.[3]

3. *Legality and Politics*

The State means different things to men at different times. Juridical and political doctrines vary with their historical, geographical, and religious backgrounds. The Nazis had their own ideas about the nature of law and the American and Rus-

[1] 2a–2ae. cxx, 2. See below pp. 300–12.

[2] 2a–2ae. cxx, 1. li, 4. lx, 1, 5. lxvii, 2. *V. Ethics, lect.* 16.
T. Gilby. *Between Community and Society*, xx, 3. 'Equity'.

[3] Disputations, XVII *de Veritate*, 3. II *Quodlibets*, 7, 8. VIII, 13. IX, 5.
1a–2ae. xcvi, 4, 6. 2a. 2ae. lxii, 3. lxxix, 2, *ad* 2. cxlvii, 4, *ad* 3.
A van. Hove. *de Legibus Ecclesiasticis*. vi, 3. '*de epikeia et aequitate*.' pp. 274–304. Malines, 1930.
T. Deman. 'Probabilisme.' *DTC* xiii, 2. 417–619. Paris, 1936.
H. Davis. *Moral and Pastoral Theology*, i, pp. 80–115.

sian conceptions of politics are based on opposed theories about what human nature is or should be, whether these be clearly stated as reasoned convictions or vaguely held as inherited or injected prejudices.[1] With respect to social deportment, the forms it will take in the good citizen, 'the State's pattern-man' as Newman called him, are stamped on him by the laws and are configurated in miniature to the larger shape of his community. The same lines will not be drawn under competitive and planned economies.

Now the factors which go to make up the constitutional physique, temperament, and character of the State may be summarized under two headings. The first includes all manner of social forces, both pre-political and post-political; they range from the physical impulse to huddle to the desire for the highest spiritual intercourse. All these offer the living material presupposed to political science, which, said Aristotle, does not make men but takes them from nature.[2]

Under the second heading are ranged specifically political forces.[3] They are those directly and immediately concerned to produce and foster that state of social order which is called civilization, that is to say, a stable arrangement of rational beings so communicating in a common purpose that they agree on the rules they will keep and are prepared to back them. Much lay outside this 'polite conversation', much more in the Middle Ages than in classical Greece, when the *polis* was well nigh all-inclusive. St Thomas pictured the political order as a community within the larger communities of the race and the City of God; it rose from the first, aspired to the second, and was responsive to the conditions of both. Hence he had to call on two adjectives, *animal sociale et politicum*, in order to translate Aristotle's one, *zöon politikon*.[4]

A further narrowing of the term *politicum* should be noticed. Of course it was never given its modern party-sense, as when it is said, for instance, that the President of the United States 'is

[1] *II Politics, lect.* 1.
[2] *Politics*, i, 10. 1258 a 21.
[3] *VI Ethics, lect.* 7; *I. lect.* 2.
[4] Occasionally he used the term, *animal civile*, also *animal domesticum et civile*. St Albert spoke of *animal conjugale et civile*. *Animal sociale* came from Seneca.

meant to be a national but strictly non-political figure'.[1] Politics covered the whole business of civil government, and all agreed that it must be founded on *jus* expressed in laws.[2] But whereas the philosophers brought in terms of social psychology and considered what was advantageous, the jurists treated the subject in terms of positive law and considered what had been enacted.[3] The distinction may appear in judgments on world affairs, where a country may be a real aggressor even when no infringement of International Law can be proved, while on the other hand a country may offend the United Nations yet be acting only in legitimate self-defence.

St Thomas was a philosopher rather than a jurist, nevertheless he could not but accept the legal cast to politics which had been copied from Rome. He was faced with a social organization in which juridical forms and institutions were more dominant than they had been in Greece and more deeply affected conduct. And so his social thought differed from Aristotle's not only because he allowed for a wider city, both earthly and heavenly, enfolding the *polis*, but also because he read there the influence of Positive Laws in shaping the constitution and determining the virtuous pattern of life.

The political community was knit both by natural and artificial bonds. Thus sedition, the sin which strikes at its unity, was wrong because it was both anti-social and illegal.[4] For the people were not any sort of gathering of the multitude, so St Augustine echoed Cicero, but an association united for common welfare and in one consent of law.[5] *Utilitatis communione* and *juris consensu*—the two phrases corresponded respectively to the two sides of the commonwealth, the political *bonum commune* and the more legal *res publica*, or, let us say, the country, and the State. That the State was the government, in other words that the constitution was identified with its ruling part, is a proposition more likely to arise from a reading of Aristotle than of St Thomas, for whom the action of the power in office

[1] *The Times*, 13 Sept. 1949.
[2] *III Politics, lect.* 7. *V Ethics, lect.* 8.
L. Lachance. *Le concept de Droit selon Aristote et S. Thomas*. Montreal, 1933.
[3] *V Ethics, lect.* 12.
[4] 2a–2ae. xlii, 2.
[5] *de Civitate Dei*, ii, 21. xix. 21.

was limited by customary and constitutional law, and who had not to face the problem of political continuity beneath the alternations of tyranny, aristocracy and democracy.

Consequently apart from the Common Good taken in the widest sense—namely the universal good shared by all who live with God, a theological value which moralists expected to be upheld, or at least not to be attacked, whatever the system of government—two lesser and more local conceptions began to be distinguished. One was Greek in inspiration, the social health of the whole community translated as the *bonum commune* or *communis utilitas*; the other was more legal and Roman, the *res publica* or *unitas juris*. The Common Good was served by *justitia generalis*, the public order by *justitia legalis*—two terms which brought out different aspects of one and the same virtue serving the commonwealth.[1] It may be noted in passing that the State was interpreted to begin with as a partnership and afterwards as a legal corporation; the notion of community-service was older than that of legal due.

Thus three conceptions, theological, political and juridical, could be disengaged when the best form of constitution was discussed. So long as moral virtue was safeguarded the theologian was not disposed to be engaged with the ways and means of politics. To him they offered choices between morally permissibles. Should the State be monarchic, aristocratic, or democratic? These were questions of secondary importance. As a political philosopher St Thomas preferred, for the sake of the *communis utilitas*, a constitution which showed a balanced mixture of all three. The proportion should vary according to circumstances. The legal pattern of the State, however, was less fluid, for laws are bound to be more frozen than social and political purposes. Unlike articles of experimental science or of art, they could not be changed to match every variation in the situation, though judges should be responsive to the climate of public opinion in enforcing them. Revision of the laws, however, supposed judgments of equity and political good sense which referred to values outside the system of positive

[1] 2a–2ae. lviii, 5. See below Ch. VII, 3.
E. Barker. Introduction to Gierke's *Natural Law and the Theory of Society*, 1500 *to* 1800, pp. xxi–xxiii. Cambridge, 1934.

law. These three phases, the theological universal good, the political common good, and the juridical public good respectively correspond to the distinctions between the good man, the good citizen, and the good subject obedient to law.

One effect of the entrance of legal studies into social thought was to congeal political forms and purposes. As we have said, St Thomas was a philosopher rather than a jurist, and he scarcely discussed the legal foundation of sovereignty. Nevertheless a combination of the social teleology of Aristotle with the stylized order of the Roman Law can be discerned in his thought. He stood midway between the old and the new in the movement which was marked in civil government by the substitution of official edict for folk-custom, and in ecclesiastical government by the substitution of the elective chapter for the acclaim of clergy and people.[1] And, we may add, in the theology of the Fall by the transition from the notion of racial guilt to that of corporate delict. Twenty years after his death legality was seen to menace the *lex perfecta juxta vias philosophiae*, as Roger Bacon put it; he burst out with the reflection that there was more worth in a few chapters of Aristotle than in the entire *Corpus Juris*.[2] So also Giles of Rome, though a Canonist himself, called the legists *ydiote politice*.[3]

4. *Legal Supremacy*

Common speech, customs, and traditions all went to unify people who dwelt in the same territory; it was their home country to which they owe service.[4] There they were rooted. The fact constituted a fundamental right, and the mass deportations of modern times have done violence to natural morality. Geographical and political unity were not identical. The medieval theologians never subscribed to a principle of nationality such as would demand that by Natural Law all the people of the same race in the same area should belong to the same State—they might have criticized the border between the Five Counties and the rest of Ireland, but not because it was

[1] F. M. Powicke. *Stephen Langton*, p. 80. Oxford, 1928.
[2] *Compendium Studii Philosophiae*. ed. J. S. Brewer. pp. 420–2. London, 1859.
[3] *de Regimine Principum*, ii, 2.
[4] *II Politics, lect.* 1. *III. lect.* 2. 2a–2ae. ci, 1, 2, *ad* 3.

against a primary precept of morality.[1] Nor would they have maintained that no restrictions could be put upon what a State did with its own territory.

The essential factor of unity was an acknowledged ruler who directed the entire community effectively and exercised its power to defend itself even to the extremity of inflicting the death penalty and waging war.[2] Otherwise, as Metternich said of Italy, the country was but a geographical expression. The supreme power was currently expressed in the making and applying of laws. He was sovereign who pronounced law.[3] What was the sovereign power?—the political complexion of the State was determined by the reply to the question. In the thirteenth century it was certainly not answered in terms which suggested that any authority existed in this world free from all restraints of morals, religion, custom and prescription.

Everybody agreed that government should serve the common interest and not merely sectional advantage. That moral right and duty being supposed, more specifically political inquiries began into the origins and purposes of political institutions.[4] Here, as we have noticed, St Thomas entered midway between two conceptions—informal politico-cultural and codified politico-legal—of the State. The first belonged to the immemorial tradition that a folk accommodated itself to changes in environment of its own consent and from its own resources; the ruler, a trustee and interpreter for the group, came to decisions only after a *colloquium*, or talking things over with the notabilities. The second rose from the revised ideal of the *Princeps* in the light of the Roman Law. He could invent new ordinances, and the State he governed was the multitude formed into a juridical association by virtue of a deed called a constitution.

If sovereignty meant absolute power and the State were sovereign in that sense then it could not at the same time be subject to law. So much was recognized. Hence the State was not granted unlimited liberty of action against which there was no

[1] M. Sheehy. *Divided We Stand: A Study of Partition*. London, 1955.
[2] 2a–2ae. lxiv, 3.lxvii 1. xl, 1.
[3] 2a–2ae. l, 1, *ad* 3. lx, 6.
[4] Y. Simon. *Nature and Functions of Authority*. Milwaukee, 1940. *Philosophy of Democratic Government*. Chicago, 1951.

appeal. The deified Emperor of the Old Empire had long been eclipsed.[1] In the East the Empire was Christian, and the religious honours shown to the *Basileus* were not debased by Statolatry. In the West, despite its high pretences, the imperialist cause ineffectively wrestled with a loose unity of duchies, ecclesiastical principalities, and merchant-cities, which according to shifts of policy might support one claimant or another to the crown. The Christian ideal of Empire was a powerful force in the Middle Ages, but it cannot be identified with the historical Empire of the West which by the time of St Thomas was but one State among others with no higher effective rights than its neighbours. The office of Caesar was hawked about and eventually under Papal patronage became hereditary in the House of Habsburg, and it was round the rulers of other realms and republics, not round the person of the Emperor, that the idea of the State gathered strength.

While the power of commanding others had not perplexed the Greeks since *kurion* was a straightforward need which called for no apology, *dominatio* seemed to the early Latin Christian social writers to be flawed with sin. This theological prepossession, which, in theory at any rate, checked undue awe for earthly authority, was not shared by the Aristotelean schoolmen. They considered that ruling-power, which would have existed in a state of innocence, was rooted in inequalities not wholly caused by sin. Not all were equal in the eyes of God, for some were holier than others, and it was divine election which made the difference.[2] Nature, too, showed its favouritism; that men should be born with different aptitudes was part of the essential course of things.

Since their endowments were different there was no reason to suppose that they should strive to live at the same social level, quite the contrary, for their common life should display an hierarchical order. As Chrysippus drily said, some seats at the theatre are always better than others. It was desirable that all should be equal before its laws, for that ensured civic liberty and the maintenance of contracts—the notion of liberty was not unlike that of John Stuart Mill, a man might do anything that

[1] T. P. Parker. *Christianity and the State in the Light of History*. ch. ii–v.
[2] 1a. xx, 3.

did not restrict the freedom of others.[1] Slavery, they held, was a consequence of the Fall, and not to be countenanced, because repugnant to the human decencies and a bar to widespread political responsibility.[2] But the power of command was another question. No blame attached to its possession, and that all were not equally wise was not anybody's fault. Consequently those who prevail in understanding should wield authority.[3] It was their responsibility, and the theme, *sapientis est ordinare*, often recurred in St Thomas's writings; he belonged to an order which granted consultative and special electoral status to Masters in Theology.

The organ of government or the effective sovereign with large communities cannot consist in the assembly of the people. How was it constituted? We must return to the distinction between political morals and political legality in order to understand the situation as it appeared to the medieval Scholastics. The Greeks were not preoccupied with the legal titles to supreme power. The State was a *polis*, *civitas*; its responsible parts were *polites*, *cives*; its constitution a *politeia*, *politia*, out of which developed the *politeuma*, the *maxime principatus* or the supreme governing power. The constitution, the arrangement of magistracies in the political community, was in fact the government; it was everywhere the sovereign, and determined the State's identity.[4]

The problem, how this could persist beneath the fluctuations of parties and laws, was not discussed. It did not arise, any more than it does in the United Kingdom to-day, where continuity and conformity are ensured because of the monarchy, a permanent civil service and a judiciary independent of party-politics; it may be added that organic principles are largely uncodified and unwritten, and that reliance has to be placed on extra-legal assents and traditional loyalties.[5] But given a break with the past, as has happened elsewhere, then the strict

[1] *II Sentences* XLIV, i, 3, *ad* 1. 1a. xcii, 1. xciv, 4. III *Contra Gentes*. 81.
[2] 1a–2ae. xciv, 5. 1. 2. 2a–2ae. lvii, 4.
[3] *I Politics*, *lect.* 1. (i, 2. 1252 a 31).
[4] *III Politics*, *lect.* 2. (iii, 6. 1278 b 9). *III lect.* 6. Moerbeke, *dominans quidem ubique est politeuma civitatis*. St Thomas comments: *talis impositio ordinis est ipsa respublica*.
[5] J. W. Gough. *Fundamental Law in English Constitutional History*. Oxford, 1955.

legality of the office and exercise of acts of sovereignty will be more searchingly scrutinized. To take such examples as the unification of Italy, the formation of Yugoslavia and the partition of British India, once the changes of sovereignty were successfully effected then the legal principles governing them became matters of great moment.[1]

Aristotle was no more troubled about preserving the continuity of the State under changes of regime than were the citizens of medieval Italian cities, where opponents were banished or killed and the populace sided with the faction in power. It is true that he assumed that the magistrates would be of Hellenic race, but what he was attending to was the government considered less as a juridical form than as a power shared in by all. It was this which shaped the whole of social life and which settled what manner of man the citizen should be.[2] Ideas of political right and obligation according to a legal charter were of later date and came from the Roman lawyers, civil and canonical. The Greeks were content with the theory and informal practice of a common good secured by a working *politeuma*, though Aristotle, no legalist himself, opened the way for the lawyers when he affirmed that the deliberative body was the supreme organ in the State.[3] St Thomas, true to his habit of running Greek notions into Latin words, treated the *politeuma* as the *res publica*. Yet, as we shall see, he had little to say about the juridical foundations of supreme power.[4]

The Roman effort to justify legal dominion became in effect the search for the source of law. A special problem was encountered when law was conceived as the bond of political partnership, *civilis societatis vinculum*. St Augustine had taught that where there was no *jus* there was no *populus*, and if this were taken to mean that the authority of a people was caused by some sort of legal deed, not by some pre-legal principle, men might well ask, What legalized the original act of legislation? What made the first law lawful? Moreover, if this *vinculum juris* were supposed to arise originally from consent and to be sealed

[1] See D. P. O'Connell. *The Law of State Succession*. Cambridge, 1956.
[2] *III Politics*, *lect.* 6.
[3] *Politics*, iv, 14. 1299 a 2.
J. W. Jones. *The Law and Legal Theory of the Greeks*. Oxford, 1956.
[4] *III Politics*, *lect.* 5.

by some kind of compact, and there emerged the figure of the *persona publica* who 'impersonated' the State and protected and promoted the *res publica*, then it might well be an urgent matter to challenge his legal warrant, especially when he took on the airs of an official proprietor.[1]

The inquiry was conducted less on a moral than on legal grounds. To an Aristotelean the State was an organic order which responded to men's social needs and limits them in pursuit of a common object. To a jurist it was a legal system founded on convention, entered into by the people. Few thought that the prince was directly appointed by God or that he was sacrosanct whatever he did. St Thomas's contribution was slight. He referred, somewhat vaguely, to the power of deposing a tyrant when the ability is present, *cum facultas adest.*[2]

This *facultas* was the problem. Was it a legal power? He raised the point in considering the extinct Jewish constitution, *qualiter debeat institui supremus princeps*, but only to disappoint us.[3] He was meeting the criticism that no provision was made for sovereign authority although detailed instructions were issued about subordinate offices, and that, consequently, the Mosaic system did not amount to a political constitution. He pointed out that the Jewish State was a theocracy where God reserved to himself the appointment of the legal head of the community. Then, as though aware that this language was over-juridical and anachronistic, he added that the power in question was charismatical rather than constitutional, since the chosen people needed saviours and deliverers on whom the spirit of the Lord descended, and their epic and prophetic vocation called for measures surpassing the rational forms of Graeco-Roman thought. The kingdoms of Israel and Juda held the interest of historical theology not because they were models of government but because they symbolized the Church married to the Lord; like Hosea's wanton wife, their courses were not those of law but of the drama of unfaithfulness yielding to the strategems of divine patience and mercy.

[1] *de Civitate Dei*, xix, 21. Cicero, *de Re Publica*, i, 26, 28, 32. ii, 43, 44. C. H. McIlwain. *The Growth of Political Thought in the West*. pp. 116–118.
[2] *II Sentences*. XLIV, ii, 2.
[3] 1a–2ae. cv, 1, *obj.* 1 & *resp.*

His predecessors and contemporaries were interested more in the legal functioning than in the legal origins of authority.[1] Things were taken as they were, without overmuch inquiry into their past. The main question concerned actual jurisdiction. The State was treated *in facto esse*, not *in fieri*. Existing institutions were accepted so long as they were not manifestly illegal or immoral. The theory of the origin of power scarcely strayed outside theology. All power was of God, and coercive power was a consequence of sin.[2] There was some talk of the hypothetical surrender which was supposed to have given Caesar his original sovereignty; the discussion was on surer historical ground when it moved to the consecration of the Holy Roman Emperor by the Church. The theory of a transference of power from the people and the fact of this blessing was extended to all independent princes. On occasion the legitimacy of particular rulers might be disputed or denied, nevertheless, the legality of sovereignty as such was not taken as a special question and threshed out. The persistence of feudal principles was partly the reason, for positive law was considered as the consequence not the cause of the community, from which it issued in the shape first of custom and afterwards of ordinances conformable to custom. Statutes were still tested by the stock of immemorial habits, and respected Natural Law and Christian teaching.

This may go to explain the indifference of the moralists to the State's particular constitution. Whether the government was controlled by one, or few or many, determined whether the laws were conceived monarchically, aristocratically or democratically; what was much more important, they held, was the effectiveness of laws for promoting the Common Good. The term *politia* was generally applied to all just constitutions, thus St Albert, *omnis politia est ad commune bonum et nulla ad privatum.*[3] St Thomas sometimes spoke of monarchy, aristocracy and democracy as three kinds of *politia*, and sometimes expressed his own preference and contrasted *principatus regalis* with *principatus politicus*, reserving the last for a mixed and balanced

[1] *III Politics*, cap. 4.
[2] A. J. Carlyle. *A History of Mediaeval Political Theory*, i, p. 11.
[3] *II Sentences* XLIV, i. 2.

constitution which combined unified rule and the service of an élite with popular participation in the business of government: then only were human relations truly 'polite' or 'civil'.[1]

Supreme dominion might be effectively possessed by one man, or a council, or a parliament or even theoretically by the assembly of the whole people. Even so the same question arose, What was the act investing the sovereign with the right to rule? The moralist's preliminary answer was bald. The right lay in a relationship to the common good, and this was a moral value to be evaluated by philosophy and theology, not by law.[2] It was true that Civil Law touched its outward conditions, namely the public security or *tranquillitas* of the present city, and this, unless it were a mere agreement of people to work together in concord, perhaps for wickedness, was a preparation for virtue, while virtue itself was a preparation for a vision and fruition of God.[3] Law to be law must fit in with this high purpose, or at least on the most pessimistic reading not impede the peace of the *Civitas Dei*, which St Augustine called a most orderly coherence and fruition of God and of one another.[4] No lesser order was the ideal of the Scholastics. Whatever the constitutional shape of the State, obedience could be morally commanded only when government on the whole was for the common good taken up into this highest good, and not merely for the interests of a section. Hence tyranny, self-seeking plutocracy, and mob-rule lacked the moral right to rule because of their defective telcology.

So much for the final cause or purpose of Law. Now for its efficient cause, producer, or *agens*. St Thomas instituted no historical investigation into the origins of legislative authority, but was led by a process of deduction to place it in the people. He was—if we may employ a term apart from its history—what may be called a liberal constitutionalist, who maintained the moral excellence of a régime where political prudence was widespread and as many citizens as possible assumed responsi-

[1] *III Politics, lect.* 5, 6. *I, lect.* 10. *Politia* was sometimes translated simply as *civitas*.

[2] 1a–2ae. xc, 3. xcvii, 3. 1a. cv, 1. 2a–2ae. lx, 6.

[3] 2a–2ae. clxxx, 2.

[4] *de Civitate Dei*, xix, 13.

bility for political decisions under a common law.[1] Not only should the government be directed to the common good, it should also in some manner proceed from the common will of the people, since, apart from the direct intervention of the divine will, no lesser and sectional competence was commensurate with such a wide purpose: the dialectic followed his usual method of determining *potentia* from *actus*, and ability from proper object.

If this were thought of as a kind of 'general will' it was neither interpreted as the corporate appetite of a group which constituted an entity over and above its members nor was it in theory committed to a majority vote—though in practice there might be no alternative means of ascertaining what it was.[2] It was the responsible resolve of free men enlightened by counsel and desiring the common good. In this sense the Scholastics, in accordance with custom and Roman Law, treated the people as the source of sovereignty.[3] While they skated lightly over any suggestion of a primitive bargain or social contract, whereby the people have given their services in exchange for the prince's protection, they spoke of, and more frequently implied, the need of popular consent and collaboration in the business of government. The thirteenth century appreciated that the magnates tended to represent only themselves. 'Then why not call in the lesser gentry and the burgesses? They are always used in local matters. Why not use them in national concerns? Bring them up to Westminster, two gentlemen from every shire, two tradesmen from every borough.'[4]

The *populus* no more meant the populace than a *civis* meant anybody in the community. If we see here the affirmation of what is now called popular sovereignty we should recall that it may have meant nothing more than the denial that the prince held power of his own right and as a personal possession. St Thomas was clear that the status of the people, considered as a political group and not merely as a mass, was not conceded by the prince; the reverse is true, the prince

[1] *I Politics, lect.* 1, 2.

[2] T. Gilby. *Between Community and Society*, pp. 114, 196, 249.

[3] 1a–2ae. xc, 3. 2a–2ae. lvii, 2.

[4] Winston S. Churchill. *A History of the English-Speaking People.* i, p. xv. London, 1956.

depended on the people. He adopted Aristotle's division between natural and conventional rights within the political order, and supposed the existence of rights in the people antecedent to, and immune from interference by, the legal organ of sovereignty. In addition he spoke of positive rights arising from ordinary consent between persons within the political community and from public compact based on common agreement which were besides those ordained by the prince who was the people's guardian and acted in their person.[1]

Et ejus personam gerit—here was the crux of the matter. All agreed that public authority was originally vested in the people, and most that it was not possessed by such a title as inheritance, which sufficed for private ownership. It is remarkable how strongly the old classical republicanism lingered on, and what advantage it was to the Papalists in their disputes with the Imperialists, though Frederick II showed that both sides could play at the game when to spite Gregory IX he flattered the people and senate of Rome.

The phrases which refer to sovereign power, *condere legem vel pertinet ad totam multitudinem vel pertinet ad personam publicam quae totum multitudinis curam habet*, and again, *vel totum multitudinis vel alicujus gerentis vicem*,[2] suggest that the prince's office was to represent. However, a representative was not merely a delegate and, unlike some Papalists, St Thomas did not argue that the secular prince was merely the vicar of the people in the sense that he was a mere channel of their voice, a stately demagogue existing on sufferance. The concept of authority responsive to some kind of general will lay deep in the Canonical Tradition, and more than a hundred years later, during the attempts to heal the Papal schism, those Canonists who supported the Conciliar Theory were to contend that the Pope's right to rule was conferred by the *congregatio fidelium* which could not irrevocably alienate its own authority.[3]

The Canonists generally had a keen sense of the rights of an 'ordinary'. They were familiar with the concept of an office which, although derivative, carried its own proper responsibili-

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[3] B. Tierney. *Foundations of the Conciliar Theory.*

ties. Dominican philosophers, too, were at ease with that seeming contradiction in terms, a secondary principal cause. It entered into the relations of beneficial clerks to bishops, and of bishops to the Pope. Bulgarus had pointed out that each and every man cannot do what is permitted to his *universitas* or to him who holds the place of the *universitas*, that is the people. Some jurists held that supreme authority still resided in the people, others, perhaps the majority of the Civilians, that it had been irrevocably transferred to the *persona publica* who thereafter required no consent or confirmation for his authority. The doctrine of the Divine Right of Kings was foreshadowed by this doctrine that power had been alienated from the people and that the prince was secured by divine ordinance from any attack on his prerogatives.

St Thomas cannot be cited in support of this act of abdication. His immediately political test for legitimacy was the consent of the community. His followers shaded off into two schools, neither of which allowed the ruler to run out of control. On one side it was maintained that political authority primordially lodged in the people still remained there, and while for convenience it had been *translated* to the ruler, the form of government was, as we should say nowadays, democratic. On the other side it was maintained that Natural Law was silent about popular sovereignty, but that historically a government was *designated*, and henceforth, democratic or not, possessed authority so long as it enabled people to live decently together.[1]

His own political preference was for some sort of government by the people, at least when they act as *cives*, not *subditi*, free because conscious of themselves, or as Kant said, as authors of the laws they obey. Even so, he was silent about the political instrument or quasi-legal intervention which set up sovereignty. Was it really strange that he should never refer to the general teaching of the jurists that the people had conferred legislative authority on the prince, though he was well acquainted with their writings? Was it not in keeping with his concentration on philosophical politics rather than on legal politics? Because of his nonchalance about the legal fashions of his time he avoided

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the anachronism of transferring the attributes of Justinian's Prince to the medieval ruler, and the incongruity of tracing the political ancestry of the Orsini and Colonna factions and the Aventine rabble from the *Senatus Populusque Romanus*.

VII

CITIZENSHIP AND ECCENTRICITY

SHARING on one side, solitude on the other, both are human needs. A struggle goes on between the attraction of the group, in which the individual can be merged and find security, and the impulse to be separate and express personality. To be committed or free? It was a major question and not to be avoided when we leave academic ideas and consider St Thomas's response to the culture and ethos of his historical environment. It went with a profoundly religious unrest, for the Patristic Age had revealed the stresses between the institutional and pneumatological conceptions of the Christian fellowship, stresses which were complicated by rigorists on one side and trimmers on the other.[1] They grew stronger when Christianity set up a design for social living as well as throwing down a challenge to what this world stood for, and the Church advanced claims not only as a religious but also as an economic and political power of great importance.

Public service and private freedom began to manifest themselves in new ways during the thirteenth century when social life was assuming a more compact political form. Royal officials had a conception of office which was not that of feudal lords, and friars bore witness to the Kingdom of God in a manner strange and even scandalous to the monks. Yet as we shall see, despite the new ideals developed from Aristotle and the Roman Law, the old ideals of personal integrity remained strong and St Thomas recalled the loyalties and traditional observances of the twelfth century no less than he foretold the juridical institutions of the fourteenth.[2]

During his lifetime the settlement of natural rights and duties by personal arrangement between individuals was being superseded by the more impersonal action of the State.[3] The area of

[1] K. E. Kirk. *The Vision of God: The Christian Doctrine of the* Summum Bonum. London, 1931.
R. A. Knox. *Enthusiasm*. Oxford, 1950.
[2] J. Maritain. *Man and the State*. Chicago, 1951.
[3] 2a–2ae. lviii, 8. *V Ethics, lect.* 3.

private contract was being invaded by public control. The figure of the Crown Prosecutor was entering Civil Law, and proceedings against a plaintiff could dispense with a defendant. No representation, no taxation; the principle was there in embryo, but consent to a tax did not mean that it was a free engagement, to which one man could agree and another refuse. Again, despite the preaching of the Waldenses, which reappeared with Wycliffe a century later, that the validity of status depended on righteousness, the distinction between person and office was made more clear-cut; divines and jurists alike recognized that dominion was founded on legal possession, not grace. Title mattered more than worth when justice was formalized. It was inevitable, and the effect was not without its social compensations of security. Men knew where they stood.

Partly due to Romanizing influences a written code weakened the archaic force of custom; partly due to political centralization the enactments displaced the less official agreements produced by the play of individuals and associations among themselves. The power of the ruler solidified. *Caesar lex viva*—he was no longer the guardian of custom and the avenger of violations of the common law, but the fount of justice and the chief of a State-machine of which the administrative officers became more important than the landowners. Bishops, too, were in a parallel case, and might wonder how they stood to the Roman Court. A similar opposition grew between the *Curia* and the bishops. The sovereign stood complete in his own right, almost as it were apart from the commonalty. His was a *potestas rotunda*, rounded off from all others.

The development of the interior organization of the State was partly repeating, though on a smaller scale, the history of the three centuries from Augustus to Diocletian. Despite many differences of property arrangement, there was a similar movement towards a money-economy and the officialdom of a salaried bureaucracy and away from local self-government, and some repetition, too, of the process whereby municipal councils lost their administrative functions and were changed into bodies responsible for the payment of taxes. Absorption was resisted, and with some success, by the powerful merchant-cities which were in a position to control supplies.

The political situation was paralleled in the University of Paris when an oath of obedience to the Rector was added to the oath to obey the liberties and honest customs of the Faculties.[1] A similar issue was raised later during the Conciliar disputes about the Pope's position as *caput Ecclesiae*. Gradually the functions of government evolved according to State-needs away from the principles of personal morality. Such at least was the tendency; not for centuries was the process complete, though then as now rulers might compensate themselves for private maladjustment by public aggression. Political amorality was neither defended nor legal unconcern with natural rights professed.

St Thomas was of the old persuasion that the sovereign will manifested by custom is more deep-seated than that manifested by new decree. On this account he disapproved of the making up of laws as the community goes along, as though law worked in the provisional manner of an empirical science and ever sought to improve itself from every chance occasion.[2] But since Positive Law derived from an act of quasi-autonomous human will, to that extent it was set apart from the unfoldings of moral precepts and immemorial custom and moved on its own proper course. The immunity of lawyers and politicians to checks from outside was to be pushed later to the extreme; in the thirteenth century, however, the claims of the moral law were still paramount, and they were supported by the spirit of feudalism, above all by the conviction that no man however exalted could shuffle off the responsibility for what he did.

The notion had not yet arisen of the State as a *persona* making its own demands which could sweep aside private decencies, or of a public justice which could overrule private justice between individuals. 'I'd sue the country,' said the American soldier surveying the ruins of Hiroshima, a statement his Japanese guide found incomprehensible. He spoke in the tradition of the Middle Ages. But this was weakening, for as the social and economic organization grew more complex so the personal touch counted for less: even the Cistercians, instead of directly farming their demesnes, changed to an economy of rents and

[1] H. Rashdall. *The Universities of Europe in the Middle Ages*. i, p. 329.
[2] 1a–2ae. xcvii, 2, 3, *c* & *ad* 2, 3.

leases, and our pious hopes are the only evidence that they proved kindlier landlords than other anonymous business concerns.

The fame and honour of the medieval ruler depended on a dignity and delicacy, an *honestas* and *verecundia* which to the Stoics were ingredients of virtue. The *Summa Theologica* restated these sentiments in the specialized terms of Aristotle's logical and moral science, and set them in the economy of grace.[1] *Prudentia militaris*, good soldiering, was transferred from art to the virtue of prudence, but in a subordinate capacity.[2] St Thomas was civilian-minded. Roman virtue and early medieval chivalry were grafted on the magnanimous man of the *Ethics*, and the composite type was lifted up by the law of the Gospel, which was a challenge addressed to the personal conscience.[3] In brief, the Christian prince and his servants were answerable to God as individual men. There was no evasion, and they could not cloak their disgrace under an impersonal and official justice or allege that they acted merely as instruments of State policy.

Another effect of centralization was to emphasize the strangeness of bodies of men—the medieval community was composed of groups rather than of individuals—which renounced property and its obligations and were not constrained by the observances of ordinary ways of life and sometimes not restrained in attacking them. Enthusiasm more readily ran to anarchism as the organization of Church and State became tighter and more uniform. By comparison with earlier times when discipline was more informal, some of the inspiration and easy confidence had gone out. Later religious revivals were not like the Great Alleluia of North Italy in 1233 when the friars were in their Pentecostal period; it was a time of peace and quiet, wrote Salimbene, of merriment and gladness, of praise and rejoicing. The legalism which by forcing a stilted style on moral theology was sometimes to cramp the life of the spirit, and by subjecting the citizen to a complicated code was to embarrass his freedom, had also the effect of making the community less tolerant of

[1] 2a–2ae. cxliv–cxlv. 1a–2ae. ii, 2, 5, 6.
[2] 2a–2ae. l, 4.
[3] 2a–2ae. lx, 4. cxxix, 2–4, cxxxii, 4. *IV Ethics, lect.* 10.

minorities. They were either absorbed or went eccentric and nonconformist, and so were persecuted. Movements previously humoured were now becoming outcast and disreputable.

The Abbot Joachim of Fiore, a respected figure of a century before, had allegorized the scriptures: the Old Testament of the Father prefigured the Gospel of the Son, and this prefigured the new Age of the Spirit. St Thomas spoke of him with gentle disparagement.[1] Yet soon the historical symbolism was turned into a social cause by men discontented with the rule of law. The apocalyptic stream was swollen by friars unable to reconcile evangelical poverty with a status in the official structure of the Church. The new era never dawned, and the zeal went to waste in the bitter troubles of the Spirituals and Fraticelli, described by Angelo de Clareno in his *Historia Septem Tribulationum Ordinis Minorum.*[2] Even the Dominicans, aloof from the extravagances of revivalism by their essentially clerical profession and rationalist temper, came under fire from the entrenched clergy, secular and monastic. Mistrusted as a para-ecclesiastical formation, a kind of private army, they were saved by establishing themselves in the universities and in the counsels of the Pontifical Court. The Franciscans followed their example and, under the generalship of St Bonaventure and with the support of Nicholas III, secured a similar position.

Official orthodoxy grew more formal, its discourse arid, its justice repressive. Underneath lurked a morbidness of which some symptoms were the whispering campaign which led to the suppression of the Templars and the mass-hysteria of the flagellants. Theology lost the grace of literature. The spirit of Arcady flourished only in the arts which sang a fresh awareness of natural beauty, transferred light to paint, and drew out the resources of the vernacular in novel and poem.[3] There were poets and singers among the Aquino family. The first sonnet ever composed came from Frederick II's Court. The Rinaldo d'Aquino, who was the author of the tender lament on the

[1] *Expositio in Secundam Decretalem. IV Sentences* XLIII, i, 3. 1a. xxxix, 5. 1a–2ae. cvi, 4.
P. Fournier. *Etudes sur Joachim de Flore et ses doctrines.* Paris, 1909.
[2] D. Douie. *The Nature and Effect of the Heresy of the Fraticelli.* Manchester, 1932.
[3] See K. Clark. *Landscape into Art*, i. 'The Landscape of Symbols.' pp. 1–15. London, 1949.

departure of a lover for the Crusades, *Giammai non mi conforto*, if not the elder brother who hired a courtesan to put St Thomas off the Dominicans, was a close kinsman.[1]

A defence of the lonely and lyrical virtues, truer to the heart than to the civic reason, was all the more important because its author was a cleric and a theologian committed to the cause that political association and authority were natural and rightful. Free from the endemic religious pessimism which set little store on social institutions, except as checks to sin, St Thomas brought out the dignity of law and the majesty of the sovereign without thereby dulling the play of personal freedom. He never explicitly considered the romantic love of the poets and so did not condemn it; he was aware, however, of a springing purpose in friendship which preceded and surpassed the reasonable order of law and social good manners.

1. *Justice within the Official Community*

Feudalism may be pictured pyramidally with the king at the apex. In practice the structure was loose. For if in England his power was maintained in royal courts, exercised through sheriffs and extended by royal writs, so that a crime anywhere was a breach of the king's peace, elsewhere the system was less tightly held together from the top. Power was so spread out that its application usually lay between an immediate superior and his subordinate within an arrangement of mutual relationships affecting protection and service. Political apparatus was rudimentary, communications were slow and difficult, and government departments, such as they were, lacked trained staffs with long traditions of service.

Hence the pressure of the whole acting through an effective organ of sovereignty was not easily concentrated against one part of the community. Feudal domains such as Normandy, Flanders, Anjou, Blois, Champagne and Burgundy 'in the eleventh and twelfth centuries played a similar part to that of the Greek city states in antiquity, or to that of the Italian municipalities in the Renaissance'.[2] Power could be controlled,

[1] F. Brittain. *The Medieval Latin and Romance Lyric to A.D.* 1300, pp. 200–202. Cambridge, 1951.

[2] C. Dawson. *Religion and the Rise of Western Culture*. p. 169. London, 1950.

for its instrument was not enormous, its effects not remote; it could be clearly attributed to its holder as a personal responsibility. It was not anonymous. An official was a trustee, and what was done could be brought home to the individual person. Christianity inculcated the lesson that rulers were answerable to God for their actions. Churchmen, who lacked neither the spirit to speak out nor the temporal means to enforce their disapproval, were not at all inclined to be onlookers when common morality was abused or the rights of religion impugned. St Hugh of Lincoln elbowed his way without ceremony into the circle of courtiers round Henry II.

No detailed theory of contract had yet emerged, and the essential condition of equality between the partners was not present in a feudal engagement. For all that, social life was covered by a network of personal associations freely accepted if not freely entered into, which supposed that trust would be honoured. There was little call for State-intervention. Most of what now falls under public service and is governed by public law was then an affair more of private law between master and man, performed in a system of personal rights and duties based on faithfulness and loyalty. A feudal suzerain was no imperator, nor was the ideal of the Christian prince that of the *Princeps* of the law-books. The transition from one to another appears when St Louis is compared with his grandson, Philip the Fair.[1] It was slow, for examples from the past continued to be evoked and admired well into the period of the humanism which perished at the Reformation; such men as Erasmus and More, writing later than Machiavelli, refused to allow rightful conflict between private and public morality, and More died for his conviction.

Aristotelean social philosophy and Roman jurisprudence were like marginal comments on the text of history written by economics and sociology. A State was being superimposed on the old feudal community. The king, once the war-leader of a tribe and still at the head when it had reached agricultural stability, wielded a power that devolved through many inter-

[1] H. Dupin. *Le Courtéoisie au moyen âge, d'après les textes du XIIe et du XIIIe siècles*. v, 'La loyauté et la fidelité.' Paris, 1931.
Jean de Joinville. *Le livre des saints paroles et des bon faits de nôtre saint roi Louis* (1309). Transl. and ed. R. Hague, *The Life of St Louis*. London, 1955.

mediaries and rarely was brought directly to bear. With the expansion of trade, the growth of towns, the increased efficiency of the machinery of government and the rise of a class from which permanent officials could be recruited, the central authority was able to take more on itself. Supported by the middle-class of burgesses and merchants, it could find the money to pay for the professional troops against which the feudal levies could not stand. The proportion of direct royal vassals increased. Before long the nobles were deprived of their private armies, and the palatines became in effect anachronisms. The great offices of State were filled, not by feudal magnates with a stake in the land, but by officials who might be, like Henry III's Poitevins, strangers to the country.

Already under Henry II, when the Judiciary and Exchequer tightened the administrative and financial organization of the English Realm, the beginning of the process could be seen.[1] There however the influence of the Roman Law was limited and indirect, and the supreme organ of the State never became formidably formal until the reign of the Tudors. But elsewhere the reception of the Roman Law hastened the process. The Post-Glossators dwelt on the sovereign power of the Nation-State, the *universitas superiorem non recognoscens*, more than on other attributes, such as the unification of a people within a determinate territory.[2] The claims of the political community to self-sufficiency described by Aristotle were sharpened; its power gradually closed in on itself and rejected any public authority from outside its own organic structure. The ruler, the dread sovereign and *persona publica* who gathered to himself the might of the community, tended to become more and more exempt from personal moral judgments in the exercise of his official functions. When Charles I left Strafford to his fate he was advised that his conscience as a king could be separated from his conscience as a man.

Supreme power, moreover, was specialized in one organ; indeed both in Church and State later polemics produced the image of a head able to act without a body. The theory of some

[1] T. F. Tout. *Chapters in the Administrative History of Mediaeval England.* Manchester, 1920.

[2] G. de Lagarde. *Naissance de l'esprit laïque au déclin du* moyen âge. i. 9. *Le Droit romain et la théorie de l'Etat.* pp. 144–165.

Papalists during and after the Conciliar Movement ran parallel to the Regalism of the civil lawyers; publicists on both sides prompted the ideals of autocephalous absolutism. I, declared Louis XIV, am the State, and Pius IX was supposed to be speaking in much the same sense when he remarked that he was Tradition. In effect sovereign authority was stylized, and, to speak only of the State, it assumed a special kind of activity which seemed different in kind from the pooled activity of all its members. It was a political engine created with purposes not precisely those of the men who drove it, purposes which might override their private wills.

Whether the constitution was monarchic—the typical form in the Middle Ages—or aristocratic or even democratic, the idea of the trustee-ruler was losing ground and it was easier for the government to run out of control. It was the law, it claimed, not merely the guardian of law. It performed functions which could not be resolved into the responses of honour and conscience. It acquired mannerisms which were not those of individual persons. It sucked policy-making into the recesses of government offices. Even now we have yet to relearn from Tocqueville's admiration for English ways that a strong government does not necessarily spell a highly centralized administration.

St Thomas played some part in this movement inasmuch as he treated all human law as public law, enacted by the legal sovereign for the common good; he also allowed political authority the freedom of acting like an artist. All the same he praised political discipline for its ability to control community-action. He insisted that a ruler was personally responsible when he applied the State's power; any wrong he did was aggravated by the exalted office entrusted to him by God, and if the harm exceeded his culpability, well that was the penalty of his dignity and he must take the consequences, like the captain whose ship has grounded through the navigator's error. He was the administrator of the commonwealth, not the owner. In short, the action of the whole on the part was a matter of particular and personal justice.[1] Nobody thought that human

[1] Commentary on the *Politics*, Prologue. *de Regimine Principum*, i, 12. 2a–2ae. lviii, 7 lxi, 1, 2.

power could be constituted apart from the decisions of human persons. Leviathan had not yet emerged.

Resistance in the past to any pretensions to impersonal and active power had been based on feudal usage. While it is true that popular liberties and representative democracy as we know them were unknown and that Magna Charta, for instance, protected the interests of the baronial class, the ideal of government responsible to the people was nothing novel. It was now reinforced by the draft of citizenship set forth in the *Ethics* and *Politics*, and taking on a new colour from the rising middle-class. The pattern-man was a figure in a rational programme, not in a heroic legend or moral story; the token of his dealings was the just price, not knightly honour. The new man's greed was less for spreading territorial possessions than for gold. Make a profit in this world, save your soul in the next, that was his sentiment.[1]

Chivalry was becoming a court luxury and literary cult; like Romance in the cinema, the glamour shed on it was a sign that it had been tamed. Henceforth when it came to resisting the Prince it is to a secular individualism we must look rather than to a gentility with its sword at the service of the Church and the poor. Great nobles might still fire the imagination, but the new magnates were the merchants together with the civil lawyers who served their interests: these were the men of power, if not of panache. At first the Crusades had been undertaken by straggling marches across the Balkans and Asia Minor, but later they were carried and supplied by sea-power and their course was decided more in the counting-houses of Genoa and Venice than in the castles of warrior-lords.

The civil lawyers entered into this rising lay and mercantile movement which was irked by canonical restrictions. Romanists were not welcomed at the Inns of Court, and it was not altogether because they stood for something alien. The competitive system of sixteenth-century Capitalism was to break the planned economy of the medieval clerics, and those governments not in alliance with the movement went down like the

[1] I. Origo. *The Merchant of Prato: Francesco di Marco Datini*. London, 1957.
J. Hagenauer. *Das justum pretium bei Thomas von Aquin*. Stuttgart, 1931.
For fraud, a special injustice in buying and selling, see 2a–2ae, lxxvi.

Cavaliers before the New Model Army. In England an aristocracy, marrying into trade and popular with the crown, defeated the policies of the Bourbon courts, and Acton and others have discerned some of their Grand Whiggery in St Thomas.

He mingled patrician and radical sentiments. His family was governing-class, more notable as soldiers and administrators in the royal and imperial than service for their feudal holdings: an uncle was Viceregent for Frederick II in Jerusalem. Sensitive to honour, he praised a delicacy and tenderness not found in the philosophical ideal of the magnanimous man though his references to women were lacking in gallantry. Money-changing he found distasteful—*quamdam turpitudinem habet*—and like most contemporaries he abhorred usury.[1] He admired the soldierly virtues, and added to Aristotle's moral categories the special virtue of military prudence.[2] His own Order was closely associated with the Military Orders, not always without injury to its own genius during the period of its collaboration with the Teutonic Knights. Yet the Dominicans in East Prussia, as in Wales and Ireland, if they came in with the conqueror were soon identified with native interests: the English found Anian of Nannau no tractable nominee as Bishop of St Asaph.[3] Most of the Dominicans were also urban in outlook, and, on the whole, his ethical and political philosophy may fairly be called middle-class: the ideal type was not the fighting man or landed paterfamilias, but the good citizen, the reasonable man in a polity, the maker and keeper of contracts.

One effect of the growth of medieval town-life, an important contribution to the history of law, was connected with the development of the theory and practice of Contract.[4] The transactions of the free associations, religious, academic, professional and mercantile—examples of the *amicitia utilis* described in the *Ethics*—were governed by private law.[5] The Roman Law supplied the concepts of the *societas* or business partnership, and the *universitas* or legal corporation. Gierke,

[1] 2a–2ae. lxxvii, 4. lxxviii, 1, 2, 3, 4.
[2] 2a–2ae. l, 4.
[3] R. Easterling. *Flints Historical Society Journal*, i, 1915. DNB under 'Schonau'.
[4] P. Vinogradoff. *Customary Law*. LMA. p. 311.
[5] *VIII Ethics, lect.* 3, 4, 13. *IX lect.* 6, 12. *Contra Impugnantes*, 3.

with his feeling for the State as an organism, regretted that the medieval lawyers did not keep the two distinct. The political theorists, who gathered many of their ideas from the Roman lawyers, when they came to deal with the origin of the State, 'borrowed the contract of partnership rather than the apparently far more appropriate act of incorporation.'[1] Consequently they were disposed to consider political union as a partnership of citizens arising from some sort of social contract.

Casting farther back than any pact, convention or covenant, St Thomas declared that the political community rose from the pre-contractual conditions of natural impulses. Nevertheless its actual constitution should be markedly contractual. For the *justum simpliciter*, the unqualified right observed by ordinary justice, was a matter lying between two distinct and equal parties. Consequently, like Aristotle and unlike Plato, he favoured a pluralist order for the State in which free associations were not merely agencies of supreme authority, and persons could deal with one another not merely under licence from the top.[2] For equality was not present between part and whole but only between part and part, and this partnership was dissolved when an individual 'belonged' or was 'incorporated'. He concluded accordingly that the *justum politicum simpliciter* demanded that citizens should stand on their own, free and equal under the law.[3]

2. *Private and Public*

The *Commentary on Job*, composed by St Thomas between 1261 and 1264, enlarged on the comfort of Eliphaz the Themanite; retribution was exacted for sins committed by men, not merely as private persons, but also as rulers, *peccata pertinentia ad principatum*.[4] Violence in obtaining power, capricious might in exercising it, failure to render subjects their due or to protect the weak against oppression, none of these would God's

[1] Maitland-Gierke, p. 89. Barker-Gierke, p. lvii.
J. W. Gough. *The Social Contract: A Critical Study of its Development*. 2nd ed. Oxford, 1957.
[2] 2a–2ae. lvii, 4.
[3] *V Ethics, lect.* 11.
[4] *in Job expositio, xxii, lect.* 1.

judgment overlook at the Great Assize. The theologians were unanimous that princes were not exempt in the name of public necessity from the rules of justice obtaining between ordinary men, and on this charge would be judged before the divine tribunal. No use to say, How doth God know? can he judge through the dark cloud? for his justice, though patient, is not to be escaped.[1]

Responsibility could be more easily assigned when the community was politically amorphous, a *familia* governed by the private justice of *scientia oeconomica*, not a *civitas* governed by the public justice of *scientia politica*. The State had not yet developed its own legal personality, or a special morality which might cover the deeds of its officials. Now justice was the virtue of rendering others their due, and these 'others' were no other than living persons. The notion of service due to the group as such was not distinguished from the notion of duties to our neighbour. Taxation itself was paid as a kind of rent. But with the reception of Aristotle's political philosophy and of legal doctrines of incorporation, the *bonum commune* and *res publica* appeared to be more than the sum of the particular goods within the community. Public authority accordingly made claims which could not be broken down to the private rights of men among themselves. Between the *jus* of the *princeps* and the *jus* of the *dominus* or *paterfamilias* lay a difference of kind.

Previously the moralists were not exercised by the problem of reconciling two goods, namely the rights of the whole, personified in the *Princeps*, and the rights of its parts, existing in people. Social issues were tested by the plain question of right and wrong, and that was addressed to the individual mind and will. Responsibility lay there, and nowhere else. The notion that the civil community had an independent personality or a will over and above the wills of individuals, had never struck them; if it had they would have rejected it. It was not a natural body born of mass needs and embodying a group-instinct but a legal entity constituted by a convention of men among themselves under divine Providence, a tolerable compromise to check the effects of sin. The right of the organized community, both civil and ecclesiastical, to oversee private

[1] *Job*, xxii, 13.

transactions was admitted; sumptuary regulations were a case in point, also the office of the *fiscus*. Those institutions, however, which modern lawyers would class as part of public law were permeated by principles governing the relations of one person to another, and the forms of private law served most political functions. When John of Salisbury described the commonwealth as if it were a living creature, he was speaking in metaphors and not teaching that the State was really an organism with a life of its own.

On the other hand, the earthly group was no longer reproached for being gathered together in the power of the Prince of this World, since kingship was now consecrated by religion, although the suspicion still lingered that secular dominion was tainted at its source—as were ownership and sex—and its sacrifice was admired. Medieval denunciations of rulers centred on their abuse of power, for the practice of social morality was perhaps no better than then now. That was a difficulty, but not the problem expressed in Cavour's reflection: 'If we did for ourselves what we did for our country, what rascals we should be.' Nobody held that it was allowable for the group to act through its officers in a manner contrary to the ordinary laws of decency which all could recognize. Some, thinking of the history of John of England—though perhaps he was not so black as he was painted by Victorian histories—would not have disagreed with Mandeville's paradox that private vices could make for public benefits. High position, of course, laid a man open to special temptations, and his sins might be tolerated with indulgence—just as a court chaplain might condone his royal master's mistresses.

Machiavelli's observation, that those princes who have achieved great things have held good faith of little account, led him to reflect that while it may be beneficial to appear merciful, humane, religious and upright, it may be injurious to the State to act accordingly and not craftily. This was certainly contrary to the convictions of the thirteenth century. Everybody, however exalted, was judged by the same standard of virtue. Everybody was responsible for what he did, and nobody could shuffle off the onus on the plea of public necessity. The State had no other life than that of the men composing it; they had no other life than that lived according to justice. If the group were moved to injustice, then moral judgment was passed according to the rules governing *co-operatio ad malum* or co-operative injustice, and the participants condemned and bound to restitution according to their degree of fault.[1] Group-responsibility for wrong was broken up into its parts. The matter was handled in law as a criminal conspiracy, in which individuals combined to break the law and had implicated others.

This is not to assume that public injustice was in fact consistently checked, despite the steady intervention of the Church, or that whole towns were not razed and countrysides devastated by private ruffians or public tyrants, but merely that convictions were operative which later found expression in the Nuremberg Trials. Some deeds were abominable and admitted no excuse of an anonymous will or higher orders. When Innocent IV decided against mass-excommunication, which punished the innocent with the guilty, he seems to have regarded a people much as English law does a firm, namely as a collective name for the partners.[2] He was in agreement with the prevailing feeling, that responsibility should be brought home to particular persons. This could be done more readily when the individual was not swallowed in the community. That was before the State was credited with a movement of its own, to which ordinary men contributed as subjects rather than as partners, and superiors led a double life, as men and as rulers.

St Thomas lived when a political community in which sovereign rights were seen as the culmination of the personal rights of its members was becoming one where rights descended from the top to the bottom—the simplification may be allowed to stand in order to typify the transition. Occasionally he referred to law as an instrument of co-ordination, a contractual bond between citizens, yet in general his treatise conceived law rather as an instrument of subordination of individuals to the common welfare. His approach was in the spirit more of a social moralist than of a jurist, his interest was the *bonum commune* rather than the *res publica*, and the discussion hinged

[1] 2a–2ae. lxii, 7. *IV* Sentences, XV, i, 5, *iii*.
[2] Decretal, *Romana Ecclesia*, 21 April 1246. See *IV Sentences*, XVIII, ii, 3, *ii*.

rather on the Aristotelean notions of general justice towards the State and particular justice towards the individual than on the notions of public and private law.[1]

True, he allowed that *jus positivum* might be set up *per aliquod privatum condictum*, a contract between private persons, as well as *ex condicto publico*, when the whole people agreed that such shall be the law, or when the prince, who guards the people and acts in their person, so ordained.[2] The rights of free associations within the public constitution of the commonwealth were also entertained.[3] There was no clear separation of *public* and *private* and the two notions ran into one another. The first represented the community, the second the condition of a human person apart from his office in that community. 'If I may speak broadly,' said Vincent of Beauvais, 'private persons are those who are not constituted in some dignity.'[4]

Since all law was conceived as directed to the common good, how was it possible in theory to draw a hard and fast distinction between Public Law and Private Law? Although the welfare of the State might appear to be engaged more immediately in some cases than in others, was not the purpose of every law a public affair, as was shown by the State's readiness to enforce it? In practice, however, Public Law was restricted to those actions in which the *Princeps* was a party. This supposed that an ordinary person could be pitted, as it were, against the person who represented the power of the State. On analysis this came back to Private Law, for it revealed a situation in which one party within the community was conducting an action against another; it was not a relationship of part to whole.[5] Note with regard to Criminal Law that the wrongdoer who was a diseased and dangerous member, the *homo periculosus communitati et corruptivus ipsius propter aliquod peccatum*, was not reckoned a true part of the living body politic and could be treated accordingly.[6] At the same time his condemnation was

[1] *V Ethics, lect.* 2. *VIII, lect.* 10, 11.
I Politics, lect. 1, 4. *III lect.* 6.
[2] 2a–2ae. lvii, 2.
[3] *Contra Impugnantes*, 3.
[4] *Speculum Doctrinale*, vii, 77.
[5] J. T. Delos. *La société et les principes du droit publique*. Paris, 1929.
[6] 2a–2ae. lxiv, 2, 6.

governed by personal morality, a judicial sentence being a matter of commutative justice, that is, lying between person and person.[1] Consequently any unjust penalty inflicted carried an obligation to make restitution.[2]

The Romans had investigated the notions of the *imperium* of the State and the *dominium* of the citizens, but their working practice allowed private rights little weight when they conflicted with State-interest. Matters were otherwise in the thirteenth century, when the State had not yet appeared with its own ponderous personality and all community-policies were subordinate to moral and religious values, of which the Church was the effective guardian. There was then no acceptance of State omnicompetence, no religious resignation or passive resistance; instead Christian men felt they had the duty of fighting tyrannical laws with all apt weapons at their disposal. The sovereign was the creature, not the creator of law.

The State, such as it was, possessed no paramount rights over every social interest. Nobody reckoned that it was inclusive with a *potestas plena atque rotunda*; nobody credited it with sovereignty in the modern sense of the word. It could be described as an association the rights of which were still private when set against the general and public background of Christendom. An analogy may be sought from the present condition of International Law, which still remains a system of Private Law inasmuch as nations deal together as if they were individuals, with the awkward thought that each of them will claim to do exactly as it pleases within the territory it controls, until such time as an effective supra-national court is set up to which individuals may appeal against their States.[3] Then International Law may achieve some of the dignity held by the virtual embodiment of some Natural Law principles in the public ordinances of Western Christendom during the Middle Ages.

3. *Individual and Social Justice*

Justice put a man in his due place in the universe and set him interacting properly with others. It looked outwardly to

[1] 2a–2ae. lxxx, 1, *ad* 1.
[2] 2a–2ae. lxii, 1, 2, 4, 7.
[3] H. Lauterpacht. *International Law and Human Rights*. London, 1950.

objective things and so was wider, as it were, than the virtues of fortitude or temperance which composed his individual emotions. The *Commentary on the Sentences* applied the term *general* to justice, first, because a certain measured fairness was an integral part of every virtue, hence righteousness itself was called *justitia*, and second, because all virtues were commanded by some law, human or divine, and therefore as *legal* were matters of justice.[1] The *Summa Theologica* gave more precise attention to the idea of general justice.[2] There justice was discussed according to its specific meaning as one of the four moral virtues—a virtue of the will rendering to others their due and keeping the balance between rights and duties. In classifying its types or species both sides were taken into account, namely the object claiming a service or invested with a right and the subject duly rendering it.

Consider first who had the right to receive justice in the broadest sense. That was either the community at large or a person—real or legal—within it. Immediately the distinction arose between *General Justice* which directly served the common good of the whole community, and *Particular Justice* which directly safeguarded the rights of an individual or an association of individuals. All moral virtue was political virtue in some manner since man was a social animal and all he was and did had an effect on his community, and therefore should be pervaded by duties towards it—duties perhaps less pressing in the medieval *universitas* than in the tighter Aristotelean *polis*. But in addition there were occasions when a man stood in a special relationship to the group, and owed it a determinate duty, for instance, of paying his taxes or doing his military service. These were covered by a special type of justice, called *General Justice* because it subordinated our deeds to the general welfare, and *Legal Justice* because such was the purpose of law.

Two notes were sounded here, of the Common Good and its legal form; their relations vary with the extremes of biological and juridical social theory. Which is emphasized will depend

[1] *III Sentences, XXXIII,* i, 1, *iii, ad* 3.
[2] 2a–2ae. lviii, 5, 6. lix, 1. *V Ethics, lect.* 1, 2, 3.
1a–2ae. lv, 4, *ad* 4. c, 2 *ad* 2. cxiii, 1.
H. M. Hering. *de Justitia Legali.* Fribourg, 1944.
J. Newman. *Foundations of Justice.* Cork, 1954.

on whether the community is taken teleologically in a Greek temper as promising the ends and amenities of the good life or more statically in a Roman frame of mind as a *respublica* or State which establishes a system of rights: a similar oscillation appears in theological discussions about the structure of the Church. *Justitia legalis*, usually taken to stand for all community service, could be narrowed to the observance of the letter of the law and so came to signify legalistic justice as opposed to equity.[1]

Marking that justice was therefore an analogical term, we pass now from the object to the subject who rendered what is due, namely the individual person. St Thomas never paused on the idea that the community as such had a duty towards the individual: the obligation resided in its responsible ministers. What nowadays is called Social Justice was ascribed to persons, either to private citizens in their dealings with their group, or to public officers of State in dispensing the advantages arising from community life. The subject of such justice was a personal will, its object a personal right, not the welfare of the whole community, which was already the object of general justice.[2]

In other words it was a special and *particular justice* governing fair dealing with our fellows within the social order, but considered in themselves rather than as parts of the community. Unlike General Justice, it did not subordinate us to the whole, but co-ordinated us among ourselves.[3] The whole field of morality was not covered by this particular justice. It was a special and localized virtue, not engaged on every virtuous occasion. But it maintained a measure in external actions and things without which civilized life was impossible. A man who paid his debts grumpily could not be accused of injustice on this head, though he might be illiberal, unfriendly and mean; indeed there were many grave sins which broke no strict obligation in particular justice—among them despair, pride and secret hate.[4]

The first division of Particular Justice lay between *justitia commutativa*, a fair give-and-take in mutual exchanges between

[1] 2a–2ae. cxx, 2.
[2] 2a–2ae. lviii, 7.
[3] 2a–2ae. lviii, 8.
[4] 2a–2ae. cxiv, cxvii, cxviii, cxxxv.

persons, and *justitia distributiva*, a fair allotment of what could be dispensed from the credit of the community. Both directly served the interests of individual persons and were, therefore, kinds of particular justice; both were elicited by an individual will.[1] But whereas Commutative Justice was exercised in the engagements of real or legal persons among themselves, usually according to contractual obligations, Distributive Justice was administered by our public representatives in apportioning benefits and honours from the community surplus.

Both types of Particular Justice gave what was proportional to the recipient, but in different manners.[2] Commutative Justice proceeded according to fixed rule and arithmetical proportion; so much was promised and so much must be repaid, no more no less, irrespective of the condition of the parties. On this score a magnate must discharge his debts exactly like an ordinary man. It implied a relationship between equals, and any failure to render the *quid pro quo* incurred the obligation of restitution. Distributive Justice, on the other hand, was not egalitarian in this sense, but aristocratic, for it bestowed wealth, honours and jobs in alterable proportions according to merit, whether that was measured by initiative, ownership, or excellence of character.[3] Justice here meant dealing unequally with unequal men; it allowed, as we say nowadays, for differentials. It was open to the abuse called favouritism, *acceptio personarum*, against which remedies might exist, although in strict justice—though not perhaps in decency—the party with a grievance possessed no strict right to receive compensation.[4] Some wrong deeds, remember, are not specifically unjust.

The State was not merely the individual multiplied.[5] Nor were its functionaries merely people of more than ordinary importance. Hence Distributive Justice was not Commutative

[1] 2a–2ae. lxi, 1, *c* & *ad* 4.
[2] *Ethics*, v, 3, 4. 1131 a 10–1132 b 20. St Thomas, *lect.* 5, 6, 7.
[3] 2a–2ae. lxi, 2, 3.
A. J. Faidherbe. *La justice distributive*. Paris, 1934.
M. L. Martinez. 'Distributive Justice according to St Thomas.' *The Modern Schoolman*, xxiv, pp. 208–223. St Louis, 1947.
[4] 2a–2ae. lxiii, 1, 3, 4, *ad* 1.
[5] 2a–2ae. lviii, 7, *ad* 2.

Justice quantitatively increased, but a special kind of justice, more flexible and applied less evenly. What one person, real or legal, owed another according to commutative justice could be isolated, often in the light of a contract, without consulting wider considerations. The sentence and verdict on a breach of Commutative Justice could be passed without considerations of class: in this sense, all citizens of a polity were equal under the law. But given a heterogenous structure of the political community, grants were conferred not in equal measure but in proportions graduated to the merit or status of the recipient—a ship's company shares the prize money according to length of service and rank, the army officer wins the DSO, his runner the DCM.

Hence it may be suggested that whereas the claims of Commutative Justice should be pressed to the hilt, since literal observance of engagements is essential to civilized intercourse, the claims of a person in the community, or of a section in it, to special State-benefits according to Distributive Justice should safeguard the balance of the commonwealth and be tempered by opportunity. Let justice be done though the heavens fall; this is true of straightforward rights, not of favours. A Trades Union may bargain with private employers according to Commutative Justice, but when an industry is nationalized and preferential treatment is demanded by its workers—like the workers in the vineyard who came before the eleventh hour—then another kind of justice is brought into play. Note that Distributive Justice does not deal with the elementary decencies, such as a living-wage and tolerable conditions, but rather with rewards where fair shares have to be assigned according to a sliding-scale adjusted by the ruler of the commonwealth.

The three distinct types of justice—General, Commutative, Distributive—were not exclusive but complementary duties. General Justice and Distributive Justice governed the basic order beneath the particular exchanges regulated by Commutative Justice.[1] Let us consider them as they affected sovereign and official authority.

[1] P. D. Dognin. 'La justice distributive.' *RSPT*, xxxix, pp. 18–37. Paris, 1949.
P. O'Donoghue. 'The Scope of Distributive Justice.' *Irish Theological Quarterly* xxii, pp. 291–317. Dublin, 1954.

General Justice was at its highest pitch in the *persona publica* who was the guardian of the whole community: *est in principe principaliter et quasi architectonice.*[1] For rulers were expected to act for the commonweal, more so than subjects were. Self-seeking perverted democracy into mob-rule, aristocracy into oligarchy, monarchy into tyranny.[2] To the sovereign power belonged the making of law; it was *legis positiva* and regulated the common exchanges within the political community.[3] To it belonged the exercise of equity when judgment must transcend the code in the name of general justice.[4] Also the reaching of decisions from the highest political prudence, *prudentia regnativa.*[5]

Now this official power was not pictured as acting in an impersonal situation which allowed for no play of character. Particular justice was involved on both sides, of the giver and of the receiver of orders. The *praeses* could not divest himself of personal responsibility when discharging his public functions.[6] The people have recourse to a judge, said St Albert, as to the *jus animatum.*[7] The business of the judiciary, which applied law in the courts, was to see that particular justice was done, and commutative justice at that.[8] Were unjust damage inflicted or rights denied then an obligation of making restitution might be incurred.[9] The living law, the *jus dicens* and *interpres justitiae* was found in human agents who must act according to their conscience, although their acts have an essentially official and public character, notably in sentencing to punishment; judges, counsel, jury and witnesses, all have to answer for their share in the verdict and sentence.[10]

One embarrassment was that judicial procedure had to be conducted according to the evidence submitted in court since a case was not to be settled by private certitudes. The English

[1] 2a–2ae. lviii, 6.
[2] *Politics*, iii, 7. 1279 b 5. *de Regimine Principum*, i, 3. *VIII Ethics*, *lect.* 10. 1a–2ae. cv, 1.
[3] 2a–2ae. lxxx, 1, *ad* 4. lviii, 5.
[4] 2a–2ae. lxxx, 1, *ad* 5.
[5] 2a–2ae. l. 1.
[6] 2a–2ae. lxi, 1, *ad* 3.
[7] Commentary, *I Politics*, *cap.* 14.
[8] 2a–2ae. lxvii, *Prologue.*
[9] 2a–2ae. lxii, 1, 2, 6, 7.
[10] 2a–2ae. lx, 1. lxvii, 3. lxxx, i, *ad* 1. lxvii, lxviii, lxx, lxxi.

Common Law and the *Summa Theologica* here agreed; a judge was an umpire, not an inquisitor, not even a benign one. He must avoid the *judicium temerarium* of his secret heart, and confine himself to what was set forth before him, though perhaps its course might run counter to his own unofficial conviction.[1] Even so, the very purpose of this teaching was to protect the private rights of individuals by maintaining a stable system of law. Justice should not only be done, but shown to be done according to manifest outward form not secret information. The judiciary was not the instrument of the executive acting *ad hoc*, at its best to protect every delicate individual cause, at its worst to push government advantage; its duty was to uphold the laws of the country. Hard cases, it is said, make bad law; hence remedy for grievance arising must be sought by appealing to a higher court of equity or to the prerogative of mercy.

The prince and his servants were required to observe particular justice with respect to the individual rights of citizens. Unjust extortion amounted to plain theft; the sovereign must punish the officials responsible and compel them to make restitution, and could not himself profit from their malpractices with an easy conscience.[2] Their public standing did not destroy their liability as ordinary persons, and they might be summoned by common law. It may be noted that modern codes of military law, not least in Germany, have come round to the principle that subordinates are not to obey 'criminal orders'.

An unresolved problem remained none the less. Perhaps State needs could override individual rights, not because these were not recognized, as in totalitarian theory, but because there were occasions, perhaps rare, when between the whole and a part the conflict was between two goods? A case in point was a condemnation which was just according to the show of legal evidence though actually the accused was innocent. Here there was a clash of principle, on one side that law should follow constant rules, on the other that nobody should be punished except for guilt. That was an extreme instance, but there were many other rubs. They seemed inevitable since no political community could mirror the complete rights of all its

[1] 2a–2ae. lxvii, 2. lx, 2, *ad* 1.
[2] *Regimine Judaeorum*, vii. 22ae. lxi, 1, *ad* 5.

persons or reproduce within itself all the justice of personal relationships—that was reserved for the perfect society of the Kingdom of God.[1] Not even within the Church itself was the tension between the *congregatio fidelium* and the juridical institute perfectly resolved.

The State had its own proper character and could not be treated, except by rhetoric, as the human individual or family writ large.[2] Nor could its public acts be stripped down to the elements of personal acts or be completely judged by the standards which suffice for the intercourse of men among themselves. Inasmuch as the State's dealing was for and from the whole and not between equal parties its justice was said to be metaphorical.[3] The most that could be hoped was that official depersonalization was kept to the minimum required by any complicated community. As far as possible personal responsibility should be always brought home, for if ordinary people sometimes had to suffer for the advantages of belonging to a State why should its dignitaries be immune? No excuse of superior orders nor of official capacity should be accepted for a breach of common morality.

Correspondingly the non-ruling parts of the political community should demonstrate by their bearing that mere civic obedience was not enough for virtue. Good citizenship itself was not merely being a good subject who carried out the commands of the executive. Social life demanded more than keeping on the right side of the law, and personal honour demanded more still: non-criminality was but an accommodation to an external measure. Were public injustice flagrant then it might be dealt with, but the underlying problem remained, inherent in the very nature of human group-life. The official action of the State was sometimes bound to be clumsy with personal values. Then the good of the actually working community was at variance with the immediate good of the individual, and the power of the whole might even be mounted against the right of a part. How St Thomas appreciated the

[1] 1a–2ae. xcvi, 1. 2a–2ae. lviii, 2.

[2] *I Politics*, *lect.* 1, 5.

[3] *Ethics*, v, 11. 1138 b 5. St Thomas, *lect.* 17. 2a–2ae. lviii, 2.

problem will appear from his teaching of the Common Good and the Corporate Personality of the State.[1]

4. *Politics and Morals*

Early in the *Ethics* Aristotle argued that moral character built up from within was proof against misfortune from without.[2] So also the conditions of political morality were regarded as within our power to bring about: national honour could ride misfortune. Whatever the reason was able to control was an affair for moral virtue, and men were not at the mercy of the instruments they contrived and were held responsible for the effects of their operation.[3] No individual person should be caught up and carried away helplessly by the flood of governmental power.

St Thomas held no brief for the State being allowed to run out of hand. He agreed with Aristotle that politics was a practical science, because its objects were practicable; he would have agreed with Marx that it was a method not only of interpreting social conditions but also of changing them. Political prudence was part of prudence—the charioteer of the other virtues—which commands means to good ends. To that extent it was a category of morality: good morals meant human activity keyed to true happiness, discovered by experiment, reflection and inference, not by an unearthly intuition of right for right's sake.[4] Right and wrong in human acts, he said, should be discussed in the same temper as good and bad in things.[5]

Moral science was divided into three departments: the first dealt with personal conduct, the second with the management of a household, the third with the government of the city or realm. Correspondingly three types of prudence were enumerated: personal prudence, *prudentia simpliciter dicta* sometimes called *prudentia monastica*, domestic prudence, *prudentia oeconomica*, and political prudence, *prudentia politica*. The last was like

[1] See below pp. 237–262.

[2] *Ethics*, i, 11. 1100 a 10–1101 a 21. St Thomas, *lect.* 15, 16.

[3] 2a–2ae. lviii, 8. *I Politics*, *lect.* 1.

[4] 1a–2ae. i, 3, 7. ii, 7, 8. iii, 3, 4, 5. xviii, 2, 4, 6, 7.
A. Mansion. 'L'eudémonisme aristotélicien et la morale thomiste.' *Xenia Thomistica*, i, pp. 435–41. Rome, 1925.

[5] 1a–2ae. xviii, 1.

General or Legal Justice in that it dealt directly with the common welfare.[1]

The complete subordination of political morals to personal morals was not thereby argued, such as would require a Chancellor of the Exchequer to conduct the nation's financial policy according to the rules governing private business and to declare in advance his intentions regarding taxation or currency valuation. Nevertheless, the plea of office was not taken to excuse a man from breaches of the code of personal morality in civic affairs—if it is doubtful whether the sort of moral indignation could have been roused in the Middle Ages which brought down Dilke and Parnell, there was quick sensitiveness to official contempt for law and custom. State action never became so impersonal that nobody was held responsible. Medieval sentiment would have agreed with President Wilson's demand that corporations should deal with one another after the fashion expected of individual men among themselves. Even International Law, it seems, must be treated as a species of private law until a supra-national tribunal is constituted to sit on State rights and limit sovereignty.[2]

The problem does not concern purely political decisions, that is, when principles of decency are not engaged, for these are not regarded as ethical judgments at all. When a man states that he is against proportional representation he does not expect his words to carry the same force as when he states that he is against compulsory euthanasia. The problem arises when political action involves right and wrong, and especially when it involves right and wrong, and especially when it involves a conflict of rights between the just claims of the State and those of the individual. How then to relate personal and group morality and preserve honour while providing for the needs of the community? Where are the rights when the police prevent parents making a private deal and paying the ransom to the kidnappers of their child?

The question was more embarrassing for the Aristoteleans than for those Augustinists who, after all, expected the secular

[1] L. E. Palacios. *La prudencia politica*. Madrid, 1946.
[2] J. T. Delos. 'La sociologie de saint Thomas et le fondement du droit international.' *Angelicum*. xxii, pp. 3–16. Rome, 1945.

State to betray a certain injustice. After all, since its authority did not derive from true religion, some injustices were inevitable and to be tolerated by a Christian so far as he could without compromising himself. It was as if provisional accommodations were made to its power, not profoundly moral assents. To Aristoteleans, however, it was natural and just. They also admitted that State-action was not entirely reducible to the acts of individual men. Hence political science was different from the science of personal morality, because its activity was not the activity of one man or many men but of the group they composed. The same discipline, St Thomas remarked, did not consider the behaviour of parts when they were together if the whole they made up was not a substantial unity but an arrangement of separate things.[1]

Thus a distinction was allowed between individual psychology and group psychology, as there was between the personal reminiscences of a soldier and the military science which studied the campaign of his army. Thus also, the distinction between the single good of a person and the common good of his group was not merely of degree but also of kind; *non secundum multum et paucum sed secundum formalem differentiam.*[2] Consequently a State was not to be reckoned just like many people multiplied a thousandfold; its claims and duties were extensions neither of individual moral imperatives nor of private law. This is indicated by special qualities of the public criminal law which are unlike those of private arrangements: for instance, its habits of not reversing a process or compounding a felony.

Aristotle taught that man's highest powers were brought out by life in the political community, and that politics was the most comprehensive part of morals. In his rôle of commentator St Thomas did not disagree that all social relations were conducted within the State: *omnes communicationes continentur sub politica.*[3] He added the proviso, however, that the supremacy was not absolute but relative to the other practical disciplines which served the civilized life, for above political ends rose the higher and ampler ends considered by theology.[4] No Dominican

[1] *I Ethics, lect.* 1.
[2] *I Ethics, lect.* 2. 1a. lviii, 7, *ad* 2. 1a–2ae. xc, 2. 2a–2ae. lviii, 7, *ad* 2.
[3] *VIII Ethics, lect.* 9.
[4] *I Ethics, lect.* 2.

was likely to forget the need of theory behind practice. That contemplation fed action was the principle of his life—as Hugh of St Cher said, 'The bow is bent in study, the arrow let fly in preaching.' Aristotle also, it should be remembered, had been convinced of the supremacy of the contemplative life over the active life, that is, life as lived in the State, and was understood to suggest that the highest contemplation in which our true happiness lay was out of this world altogether.[1]

Certainly the political order manifested a true value not inherently compromised by sin and was, within limits, an end in itself, *bonum honestum*, not merely a means to something else, *bonum utile*; so much so that serving it was to the social philosopher the noblest and most important of human activities.[2] Still it was only one city or realm within the wider and more ultimate order of the City of God; the common good it proposed was more confined than the universal good which was man's whole happiness and was confined to a temporal tranquillity, a *pax civitatis*.[3]

Furthermore, this social security which was the prime purpose of government was itself only a postulate and no more to be questioned by political science than health by medical science.[4] Was it worth having? How and where might it be found? What were its conditions? These were questions for other sciences, anthopological, psychological, moral and theological, which entered more deeply into the nature of man and things. Some of these had to be opened out before political inquiry could profitably begin.

Hence the medieval writers treated politics as a subordinate study and properly to be approached with prepossessions. The same was true of moral science itself, for happiness explained right conduct, not right conduct happiness. As moral science, having accepted the notion of human happiness from elsewhere, mainly from philosophical psychology and theology, then proceeded to discuss the kinds of action conducive to it, allowances being made for circumstances and motives, and as psychology in its turn consulted physiology, and as economics itself did not produce the goods whose disposal it arranged, so politics assumed, but did not prove, that the civilized order was a true and practicable value, and then set out to explore and supply the means to it.[1]

[1] 1a–2ae. iii, 5, 6, 7, 8.
[2] 1a. xcvi, 4. *X Ethics, lect.* 11. *de Regimine Principum*, i, 12. 1a–2ae. lxvi, 4. 2a–2ae. l, 2, *ad* 2. lviii, 12.
[3] 1a–2ae. lxxii, 4. 1a–2ae. xcvii, 1, *ad* 3. xcvi, 6, ad 2. xcvii, 1. xcv, 1.
[4] *de Regimine Principum*, i, 2.

In other words political discipline did not work in a vacuum. In order to keep its rightful character and to be successful, anyhow as a long-term affair, it must appreciate what human nature is in the individual and in the group, how men will react to a given set of social circumstances, and, ultimately, what they want from life and what they are for. And if then the reading of human nature is cynical and conjectures about its destiny are pessimistic, is not that better than the inconsequential opportunism of pure politics?

Hitler was not the only one who has shown what disastrous policies issue from bad philosophy and theology: false theological beliefs, and not merely insults to established worship, were crimes against the social order, according to Plato's *Laws*, and therefore to be repressed. Not that good philosophy and theology offer any guarantee of good government —otherwise the Papal States might well have been a model realm. The art of government is for experts and politics form a special discipline, distinct in that they have their own proper medium, but not self-sufficient because they should respond to the conditions set by wider interests.

The point is not merely of academic interest, for it marks the difference between those who recognize inalienable human rights and social values antecedent to legal or political action and those who believe such rights and values relative to the historical development of the community at any given stage. Also the difference between those who would check the power of the executive by customary or constitutional law and those who would commit themselves to the sovereignty of an emergent will—or the improvisations of ambitious politicians.

Subordination, however, does not spell subservience. For not every secondary cause is merely an instrument of the first cause, not every intermediate end merely a means to the ultimate end.

[1] *I Politics, lect.* 8. i, 10. 1258 a 21.

A pluralist philosophy rejoices in a world of many principals and purposes, indeed of many substances, and welcomes a hierarchy of sciences, each independent within its own field. The Scholastics reckoned that subordination was of two kinds, strait and easy. The distinction roughly corresponded to that between implicit and virtual content, or that between analytic and synthetic inference. By *subalternatio propria* the premisses of a derivative science were the conclusions of another and schematically higher science; so optics could be ranged under geometry, and so also a special section of a science fell under its general treatment of metaphysics and optics under geometry. Politics was not thus contained under ethics. By *subalternatio impropria* one science was either governed in practice by another—so military science was dependent on political science and all sciences were guided by logic—or in theory was related to it as a species to a more generic science of which it observed the findings when working with its own special procedure and data—so psychology depended for its material on physiology and music came under arithmetic.[1] After this fashion political science was checked by ethics and accepted ethical data; it was not thereby merely a department of ethics any more than the species *man* was merely a branch of the genus *animal*. As we have seen, personal goodness of character will no more of itself produce a good statesman than muscle or nerve will sense or think, or mathematical numbers will sing.

Circumstances in some countries have thrust on Catholics the need of forming their own political parties for good and sufficient reasons; the situation is now changing with respect to confessional membership. The effect has sometimes been to entangle religion and morality with lesser matters and to commit them to answers on open questions. For a political party is bound to take a line in debates such as those on the Navy Bills in Hohenzollern Germany or on colonial expansion under the Third Republic or on the break-up of large estates in Southern Italy: even in municipal politics a clerical party has to come to a decision about the contract for the sewerage works. The project of Catholic Action launched by Pius XI was misunderstood in quarters not sympathetic to the concept of

[1] See *de Trinitate*, v, 1, *ad* 5, 6. 1a, i, 2.

political action descending hierarchically from above though executed by laymen. But whatever the arrangement, the effective maintenance of the Church's duty to speak on social questions always involves the possibility of a clash with the civil power. This can be avoided only if the Church swallows the State, or if Christians, resigning themselves to the condition of passive onlookers, agree that religion is a private and other-worldly matter. Neither alternative is acceptable to Catholics, and the second was never even contemplated by the men of the Middle Ages—they would have wondered how the priest's right to speak on politics could ever be questioned.

All the same St Thomas never considered that theological science was ever a substitute for statesmanship. He avoided alike the philosophism of making the natural sciences so many branches of metaphysics and the moralism of deriving political science from the principles of Natural Law. To say that morality should never be outraged did not imply that politics came under moral condescension. As Richelieu said, none is more dangerous to the State than he who would govern by maxims drawn from books. Moral precepts provided few clues to what was politically advantageous.[1]

Similarly he was free from clericalism, another name for government for sectional benefit condemned in the *Ethics*. He held that the political discourse could proceed without arguing from ecclesiastical prescriptions. The division of two castes, the clerical and the lay, called by Stephen of Tournay (d. 1203) the *duo populi*, went deep into social life. St Thomas relegated to an appendix this jurisdictional and largely canonical division of the Church considered as an integral and functional whole, an institute which worked through various states and offices.[2] To be a cleric or a vowed religious was only supplementary to the common purpose of all Christians, the life of friendship with God through Christ.[3] All in this sense were ministers of Christ, but not all were accredited ministers in the juridical

[1] *V Ethics*, *lect.* 2. *VII*, *lect.* 7. *de Trinitate*, v, 1, 2. Disputations, I *de Potentia*, 4. *I Posterior Analytics*, *lect.* 21. *Metaphysics*, Prologue. IV *Metaphysics*, *lect.* 6. *de Divinis Nominibus*, i, *lect.* 2.

[2] 2a–2ae. lxxxiii, 2.

[3] 1a–2ae. lxxi, 2. xcviii, 5. 2a–2ae. xl, 2. lxx, 1, 2. lxxxvii, 4. clxxxiv, 3. clxxxv, 6. clxxxix, 8. *de Perfectione Vitae Spiritualis*, 1, 2, 7, 8, 10, 11.

Church founded by Christ—both senses were found in St Paul.

Politics was not restricted to demonstrations; it must have elbow-room because much of it dealt with shifting evidences about the ways people behave in groups. Aristotle warned us that relativity always entered genuine discourse about what was practical. If this were true of morals it was even more true of politics. Its methods, determined not only by what should work in theory but also by what does work in fact, were those of art which makes up as it goes along without casting back to the evidence of its principles. Otherwise, like Lot's wife, it became petrified. Guides to practice were not like abstract judgments which were indubitably certain. There was no Chinese immobility about the Greek *polis* or the medieval *civitas*: neither was the product of theory. A good constitution and government was no more brought about by right views, good will and general friendliness than a thirteenth-century cathedral by an upsurging of religious aspiration; both were the work of artists applying the proper geometry, using the proper engines and ready to compromise, improvise and invent.

In this sense the statesman must be a politician, even in the modern and derogatory sense of the term. They call Adenauer an old fox—is that so bad? Let the *politicus virtuosus* be a match for the children of this world. Why should he not be secret, put a twist on things, display masterly inactivity and sometimes make a deal with successful enemies rather than with unsuccessful friends? Political business is not usually conducted in an atmosphere of kindly sentiment. There comes a point where an evil must be tolerated lest its removal be worse, as Newman saw in preferring Conservatism to subversion—and was thereby criticized by Acton for divorcing politics from morals.[1]

St Thomas was not high-minded to the extent of disdaining material considerations or being squeamish about bringing force to bear. Right was built on good, and good was built on physical facts. In the order of time lower good came before higher good, *non prius quod spirituale est, sed quod animale*—you must eat before you philosophize.[2] He would not have disagreed with Marx, that the political understructure determined the over-

[1] *Letters to Mr Gladstone*, p. 181. London, 1913.
[2] 1a–2ae. cv, 3.

structure. Political discipline must inevitably include the *ars subministrativa* of economics, or the art of acquiring property, the *chrematistic* of Aristotle, the *possessiva* or *pecuniativa* of Moerbeke and Albert.[1] All the same the proper business of politics is disengaged only when economic arrangements have been satisfactorily settled. Thus it has been argued that Socialism, for instance, can set about its real civilized mission only now that the Welfare State is as established as taxation can make it.[2]

Artificial wealth was suspected because the lust for it knew no limits.[3] The financiers came in for strong criticism—St Thomas called the spivs and money-lenders the Cahorsins—it is surprising that he branded the men of Cahors for a business mainly conducted from Northern Italy, the Florentines being most powerful in the century from 1250.[4] Real wealth, however, was not despised and search for it, the profit-motive, held a proper place in moral and political science. 'Virtue' says Cardinal Newman, 'is the child of knowledge: Vice of Ignorance, therefore education, periodical literature, railroad travelling, ventilation, drainage, and the arts of life, when fully carried out, serve to make a population moral and happy.'[5]

Similarly politics consulted geography. Thus the city should not be low down nor in a place subject to fog or frosts nor near to marshes but open to the skies and temperate breezes.[6] How blessed his own University of Paris has been by its climate. On the other hand a programme that mistook sanitation for health or fancied that economic arrangements could supply for a lack of political order incurred the criticism levelled against Phaleas of Chalcedon: he missed the heart of the matter, *insufficienter de substantia ordinavit*.[7] It may be that the predominance of economic interests in a civilization is not the least factor in its disintegration.

The general field—or in scholastic language the material

[1] *Politics*, i, 4. 1253 b 23. i, 8–11. 1256 a 1–1259 b 35.
[2] C. A. R. Crosland. *The Future of Socialism*. London, 1956.
[3] *I Politics, lect.* 7.
[4] J. H. Clapham. 'Commerce and Industry in the Middle Ages.' *Cambridge Medieval History*, v, p. 486. 1929.
[5] *Apologia pro Vita Sua*. Note A. ed. 1886.
[6] *de Regimine Principum* ii, 2, 3.
[7] *II Politics, lect.* 9. (ii, 7).

object—of political science was covered by a mesh of relationships caused by human beings living together. They produced needs and opportunities which exceeded the sum of their personal wants and contributions. At the same time they could never abrogate their personal responsibilities with respect to the moral law. Within this field a special aspect—or formal object—was studied: this was the right and practicable arrangement of means to the common security based on laws which could be enforced by earthly sovereignty.

Two conditions were presupposed to this pattern of a civilization formed within a wider cultural and religious pattern. First, that physical and psychological needs antecedent to politics were fulfilled and that the decencies demanded in the name of divine and natural law were observed. Second, that political art was allowed sufficiently free play to shape the social material confronting it.

The first had long been appreciated, but the second, on which the practice of statesmanship principally centres, was not explored until the thirteenth century. Then it was recognized that civil legislation and political decisions were more than functions of morality. The practical rule, *go to war only when you think you can win*, is a case in point. History is full of the misfortunes of policies inspired by religious or moral indignation without the strength to back them up. That under some circumstances war is permissible is an ethical judgment. That here and now it should be declared is a political judgment, and a more problematical and reluctant one, calling for the consideration of many factors outside the field of moral science. By war, of course, is meant the classical *bellum*, an extension of a policy seeking eventual peace and agreement, not destruction seeking unconditional surrender. Even so it is a clumsy instrument to adopt for it deprives the statesman of control. Bismarck, a master of the art of limiting an objective, declared that the Balkans were not worth the bones of a Pomeranian grenadier.[1]

Indeed utilitarianism is nobler than it sounds. It is surprising that a generation which had learnt from Aristotle could have been in a mood to support the attempt of the Joachimites and Spirituals to establish an anarchy of pure love out of due time,

[1] A. J. P. Taylor. *Bismarck: The Man and the Statesman*. London, 1955.

though to some extent the secularists and *fraticelli* were brought together by their common hatred of an ecclesiastical power which took its temporal responsibilities seriously, perhaps some may think too seriously. Twenty years after St Thomas died, a mingling of religious enthusiasm and weariness with political churchmanship, as much for its gloss as for its corruption, was to elect a bewildered hermit to the Papacy. Celestine V was to fumble dangerously with the machinery of government for a few weeks before he resigned. The experiment was never repeated.

5. *Personal and Common Good*

For all his careful arranging of abstract types, each holding its appointed place in the scheme or moving from essential principles to general ends, an advertence that every act was an individual event and a solicitude for singular substances ran constant through the moral writings of St Thomas. He was not so scholastic as to forget that the Christian religion was a response to the *gesta Dei* or to imagine that living it was the same as exhibiting a stock of reasons or deferring to a list of obediences. Perhaps also, like other philosophers, he sought a metaphysical ground for an historical experience, for his times were favourable to a sense of the individual and, particularly in Northern Italy, to the need for political freedom.

Furthermore he thought of the single human substance not merely as an individual, a numerical unit to be determined by location in a quantitative field of reference, but also as a person, the *thing* divinely created however else some elements were formed, the ultimate rational substance, the centre of free activity, able to know and love God in himself and not only in his effects. If *individual* was a term of natural philosophy, *person* belonged to metaphysical and moral philosophy, and above all to theology.[1]

The term *persona* originally meant the part of a man played on the stage, the face, or mask, he showed the world, the figure he cut, the personage he appeared: thus Sabellius said that the

[1] 1a. viii, 3. xii, 4. xix, 4. xxix, 1. xliii, 3. IV *Contra Gentes*, 15. *V Metaphysics, lect.* 8. *I Physics, lect.* 1.
E. Kurz. *Individuum und Gemainschaft beim hl. Thomas von Aquin*. Munich, 1932.
J. Maritain. *The Person and the Common Good*. New York, 1941.

Person of the Father was the Son in that he was born of Mary, and the Holy Ghost in that he sanctifies us.[1] Afterwards it acquired a legal sense and indicated free status, the man *sui juris et non alieni* or of official standing, thus the *persona publica*.[2] Then during the Trinitarian and Christological controversies of the early General Councils it became philosophically charged; the definition of Boethius—the individual substance of rational nature—was expanded, and person signified the intimate reality and inalienable value of a human being which could not be merged into anything else, the very substance or hypostasis, *sui juris et alteri incommunicabilis*.[3] *Acceptio personarum* was the sin of choosing a man for office for purely private connections and not on grounds of his public fitness; the phrase in the Epistles, that God is no respecter of persons, meant something rather different, namely that divine grace was not deferential towards differences of status, profession, nationality, or sex but regarded only inner worth.[4]

Theologians enriched the legacy left by St Augustine, the doctrine of the person, the noblest thing in nature, who was made to the image of God, who actively participated in the Eternal Law and the work of Providence, and, though called to be engaged in a doctrinal, sacramental and jurisdictional system, reached out to God himself without the interposition of human authority.[5] Faith assented in a darkness doctrinal exposition could not illumine; charity was deeper than profit, well-wishing and serving; the presence of God in the soul was unmediated by thoughts about him.[6]

On the other hand this ideal of extra-political perfection had to be reconciled with integration in the life of the group. Had not Aristotle taught that all virtue was political virtue? St

[1] H. C. Dowdall. 'The Word "Person".' *The Times Literary Supplement*, 8th May, 1948. 1a. xxvii, 1.
[2] 2a–2ae. clxxxiii, 1. 1a–2ae. xc, 3.
[3] Boethius, *Contra Eutychen. PL* lxiv, 1343. 1a. xxix, 1, 2. xxx, 1. 3a. ii, 2, 3. Disputations, IX *de Potentia*, 4.
[4] 2a–2ae. lxiii, 1. Commentaries, *Job*, *lect.* 1. *Romans*, ii, *lect.* 2. See Ephesians vi, 9. I Peter i, 17.
[5] Disputations, X *de Veritate*, 1, 2, 7. 1a. xxix, 3. 2a–2ae. ii, 3. 1a–2ae. xcix, 3. c, 2. *III Sentences*, X, ii, 7, iii. IV *Contra Gentes*, 22.
[6] 2a–2ae. i, 1, 2, 4. vi, 1. xxiii, 1. xxiv, 2. 1a. viii, 3.
A. Gardeil. *La structure de l'âme et l'expérience mystique*. Paris, 1927.

Thomas followed him closely enough to agree that the good life was subordinate to an immediate project, namely the civilized social community, outside of which it cannot be found, and that self-damage and suicide were unjust because they injured the State.[1] Moreover the political virtues were the noblest and most beautiful of all the moral virtues.[2] The claims of the person and of the group which enter into the fundamental social debate of our time, how to plan for freedom, cannot perhaps be altogether harmonized. At least the nature of the tension was not unappreciated in the thirteenth century.

No steady advance towards its resolution can be recorded. The *Prima Secundae* (1269) declared that the human person was not entirely enclosed in the political community, *homo non ordinatur ad communitatem politicam secundum se totum et secundum omnia sua*.[3] Just over a year later the *Secunda Secundae* talked in a different tone of the whole person ordained to the service of the whole community, *ipse totus homo ordinatur ut ad finem ad totam communitatem*.[4] If the contexts dispel the contradiction, there is at least a contrast of tone. As the Aristoteleanism deepened so a City was presented which possessed a more fundamental justice than the patristic commonwealth and which spoke in more stately and commanding terms. At the same time the exaltation of community-power was qualified by polemics on behalf of men who were vowed to live as poor wanderers, or, their enemies would say, as parasites on the body ecclesiastic and politic.

When the University Professors of Divinity attacked the friars the paradox was that they themselves were Augustinists and therefore disposed, theoretically at least, to exalt personal worth above integration in any governmental scheme, while some of their chief opponents were Aristoteleans with a growing sense of the organic quality of the group. It was heightened by the fact that social authority could be represented as possessing little more than a conventional title on *Propter Peccatum* premis-

[1] 2a–2ae. lxiv, 5. lxv, 1. *Ethics* v, 11. 1138 a 10.
[2] *X Ethics*, *lect.* 11. I *de Regimine Principum*, 12.
[3] 1a–2ae. xxi, 4, *ad* 3.
[4] 2a–2ae. lxv, 1.
I. T. Eschmann. '*Bonum commune melius est quam bonum unius*. Eine Studie uber den Wertvorrang des Personalen bei Thomas Aquinas.' *MS.* vi, pp. 62–120. Toronto, 1944.

ses, whereas to the Aristoteleans it sprang from the very constitution of social human nature. On this score the Paris Masters and not the Dominicans should have been the defenders of extra-civic virtue. They were entrenched, however, in a system of benefices against intrusion, and the established order counted more than ideas did.

Between the lines of the controversy can be read the theme that a life of political usefulness could not easily be combined with the 'folly' of perfection. Though he would have had legal justice control all moral virtue, St Thomas limited the field of positive law and was not over-confident about the State's improving rôle.[1] He stressed the reasoned mode of virtue, yet adopted the passages in the *Liber de Bona Fortuna* on the fortunate man to illustrate the 'enthusiasm' of the Gifts of the Holy Ghost.[2] Nobody was exempt from duties to the group, but justice ended where mystery began. His ideal of the free and lawful man, not entirely possessed by the political virtue of the Greek or sobered by the gravity of the Roman, was touched by the heroism of the Gospel, the genius of the eccentric and the virtue of the anchorite living apart not because he was brutal and could not endure his fellows, but because he would cleave wholly to divine things.[3]

Here were ends strange to social reform, and he welcomed them; he allowed for the enemy harboured in the human heart to any order short of the final order and for a disquiet with any knowledge short of vision. Forms of theory and practice, rational meanings and precepts, indeed any social organization scheme, even the most sacred, are means not ends, and only the sight of the living God beyond them all will still human restlessness.[4] The Spirituals exercised no great influence on the universities. His longing for the perfect liberty of the sons of God in the Christian Society was not weaker than theirs. But if

[1] *V Ethics, lect.* 2. 1a–2a. xcvi, 2, 3. xcii 1.

[2] 1a–2ae. lv, 4. lvi, 3. lviii, 4. lxiv, 2. lxv, 1. lxviii, 1. The *Liber de Bona Fortuna*, a medieval compilation from the *Magna Moralia*, ii, 8. and the *Eudemian Ethics*, vii, 14. St George Stock, *Magna Moralia, Ethica Eudemia, de Virtutibus et Vitiis*. Introduction. Oxford, 1915.
T. Gilby. *Poetic Experience: An Introduction to Thomist Aesthetic*. London, 1934.

[3] 1a–2ae. lxi, 5. 2a–2ae. clxxxviii, 8.

[4] 1a–2ae. ii, 8. iii, 1, 6, 7, 8.

anarchism was an aspiration it was not a doctrine, still less a programme. He never expected such an outpouring of the spirit as would set up the rule of the saints and do away with the political institutions of Church or State.[1]

It might be argued that he spoke in two parts, as a theologian for the supremacy of the person, as a social philosopher for the supremacy of the community. Certainly he brought out the extra-political character of perfection when he wrote on such topics as sanctifying grace, the theological virtues of faith, hope, and charity, and the contemplative life. For sanctifying grace marked a personal quality and friend-relationship rather than a place or status in an organization.[2] Divine faith laid the mind open to ultimate reality, *prima veritas*, and did not, as it were, cage it in a system of propositions.[3] The theological virtues soared beyond all reasonable regulations to God himself who was not enclosed in the scheme of things. Not the common good but the supreme good was the object of charity.[4] The contemplative life directly served no good outside itself.[5]

All these were of immense value to social health. For if Christianity promised no short-cuts by which you could avoid having to work hard with natural rights, St Thomas echoed the experience of Christian spokesmen, that the precepts of justice were not enough for happy human relationships. True peace was more profound than concord or mere absence of strife; it was a blessing which followed only from charity.[6]

He drew some sort of distinction between the Christian and the purely ethical man; thus he referred to sin as an offence both against God and against reasonable living.[7] Nevertheless his social teaching is misrepresented if the simplification and separation of Nature and Grace are pressed, for he never thought that men lived under two contrary dispensations, one natural, the other supernatural. Nor did he think of them as

[1] 1a–2ae. cvi, 4.

[2] *VII Quodlibets*, 17. III *Contra Gentes*, 136. 1a–2ae. xciii, 9 *ad* 2.

[3] 2a–2ae. i, 1, 2, 6, 9.

[4] Disputations, *de Caritate*, 5, *ad* 4. 1a–2ae. lxii, 1, 2.

[5] 2a–2ae. clxxxii, 1. 3a. xl, 1. *de Hebdomadibus*, Prologue.

[6] III *Contra Gentes*, 130. 1a–2ae. lxix, 1, 3. 2a–2ae. xxix, 1, 3, 4.
E. Bezzina. *de valore sociali caritatis secundum principia S. Thomae Aquinatis*. Naples, 1952.

[7] 1a–2ae. lxxxi, 6, *ad* 5.

parallel—and not really meeting. He took them together, as they have been lived in history. Grace has always been on the scene, either accepted or rejected, explicitly or implicitly. The purely natural man and the City of Reason are fictions—scientific abstractions only partially corresponding to concrete historical things and situations. All the same they are useful pieces of methodology when we investigate how human nature ought to act when left to itself, and what natural decencies ought to persist through the highest operations of religion.

In truth the issue between community-service and self-expression lay elsewhere. It was not pitched between the natural and the supernatural. The tensions were found within both orders, though they would have made no more sense to Aristotle than they do a juridically-minded Roman theologian. Social philosophy recognized how they spread into justice itself; there, as we have noticed, legal justice and particular justice may set up pulls in different directions, and equity has to absorb the pressure of legalism. High theology, too, recognizes the polarity of authority and freedom, of disciplined obedience and conscience. Macrobius spoke of the virtues of the soul in purgatory, a state of other-worldly purification, present when we break out of the conditions of group-life.[1] This was no academic abstraction but could present a practical problem. What about the early Christian solitaries of Egypt and Syria who deliberately cut themselves off even from the sacramental life of the Church? The inevitable friction in the working of any organization does not necessarily argue injustice or abuse of power. A sacred group is no less subject to them than a secular group, and probably more so, not only because the contenders are higher and the struggle deeper, but also because the issue is more delicate. St Thomas noted that the ecclesiastical hierarchy imperfectly matches the angelic hierarchy, for often those closest to God are not highest in office.[2]

Bonum commune was the key-term, and its ambiguity confused the issue. *Bonum in communi* was an abstract generalization, namely goodness in general. The common good could also be taken as a collective total, the sum of the purposes at work

[1] 1a–2ae. lxi, 5.
[2] 1a–2ae. cvi, 3, *ad* 1.

within the group. But it could also stand for a universal value neither increased nor diminished by the number of the things which share in it, and at least once it was identified with God himself.[1] One may say roughly that *bonum commune* represented a collective idea when men were treated as individual units enclosed within the whole community—as, for instance, when it was said that a criminal, having lost his human dignity, could be excised from the body politic to which he was a danger.[2] It represented a more open and universal idea when they were treated as persons, actively co-operating in a shared purpose not merely numbers in a crowd. What was this shared purpose but the *bonum commune*, transcending the sum of all single goods and the collectivity they compose, which was the outside principle and end of all striving?[3] It was in the mind which stood apart from the process, like the idea of an ordered army in the mind of the commander: it was the *bonum separatum* introduced towards the end of the *Metaphysics*—the supreme Good, separate from the world yet no absentee, the total cause of every being and activity, the meaning of all goodness, subsistent and completely real, *ipsum bonum subsistens*.[4]

Since God was the happiness of all creatures, and, in a special manner, of rational creatures, theologians were led to reflect on the nature of union with him. Men were citizens of this world and partners with Providence, and it was noticed that when they entered into things by knowledge and love no absorption or destruction was implied and no third entity or compound was generated as in physical processes.[5] The metaphysics of cognition and appetition and the mystical theology of association in the life of the persons of the Blessed Trinity were the undercurrent of St Thomas's political doctrine, which drew more deeply from the *de Trinitate* of St Augustine than from the

[1] 1a–2ae. x, 1. 1a. xxxi, 1, *ad* 2. lxv, 2. ciii, 2, *ad* 3. lx, 5, *c*, & *ad* 5.
See T. Gilby. *Between Community and Society*. xiv, 1, 2. xv, 3.
[2] 2a–2ae. lxiv, 2.
[3] 1a–2ae. xc, 2, *ad* 2, 3.
III *Contra Gentes*, 17. I *Quodlibet*, iv, 8. *de Perfectione vitae spiritualis*, 13. 1a. xlvii, 1. 1a–2ae. xix, 10. xxi, 4. cix, 3.
[4] *Metaphysics*, xii, 10, 1075 a 11. *St Thomas*, lect 12. 1a. vi, 2, 4.
[5] *III de Anima, lect.* 24. 1a. vii, 2, *ad* 2. xxx, 1, *ad* 4. lxv, 2. lxxxi, 1. xciii, 2. 1a–2ae ii, 3. lxxix, 2.

de Civitate Dei. Every human grouping, however humble, reflected the exemplars of divine association. The political community was no exception; friendship was its greatest blessing and the aim of its legislation. It sought to be an ordered whole of which the well-being was never really promoted by violence done to any of its parts.

Given such a theology of the *bonum commune*, it was clear that virtues, however dutiful their air, could never be confined within a closed system. If they were able to move into a world beyond the cosmos, the *universitas creaturarum*, they were certainly not to be confined to the *polis*—and still less to the *res publica*, an arrangement of offices rather than a way of life, the geographically wider but socially narrower and more legal structure the Romans made of the Greek State. Not until Christianity is obliterated from memory will political subordination be made the test of all virtue, or the State appear as completely self-contained and offering the satisfaction of every human want. To many liberals and humanists the Church no longer appears an effective society, yet they invoke its likeness when they appeal over the head of the government to a tradition of human decency and Natural Law.

Let us now turn to the historical succession of St Thomas's ideas and discover if the emphasis was shifted in the relations of the person and the group. In 1256, soon after he had finished the *Commentary on the Sentences*, he wrote the first of his polemical tracts in support of the friars, entitled *Contra Impugnantes Dei cultum et religionem*. St Bonaventure's *de Paupertate Christi* appeared about the same time. Both were defending their brethren against the philistinism, *astutia philistinorum*,[1] of William of St Amour, whose *de Periculis Novissimorum Temporum* accused the Dominicans and Franciscans of not undertaking social responsibilities and leading a life contrary to morality and religion. This was a resumé of another broadside *de Antichristo et ejusdem ministris*, aimed at the Dominicans.

The nerve of the controversy, touched by Matthew Paris, was constitutional and concerned the rights of the mendicants to set up chairs of theology in the University, but the struggle ranged far and wide over the whole field of property and

[1] *Contra Impugnantes*, Prologue.

poverty.[1] On the somewhat rambling arguments of the *Contra Impugnantes* in favour of the free-lance work of economically unproductive and non-beneficed groups, vowed to poverty but not to stability, we need not delay since they were set forth more systematically many years later in two works, the *de perfectione vitae spiritualis* (1269) and the *Contra pestiferam doctrinam retrahentium homines a religionis ingressu* (1270), written when the offensive against the friars was renewed.

The *Summa contra Gentes*, begun in 1259, reached its third book two or three years later. This was a defence of the traditional doctrine of a particular Providence against the inroads of the Averroist doctrine of a single World-Mind which dealt only with broad effects. It showed that God was not remote and uncaring. His causality did not leave secondary causes to work out the details; his knowledge and love entered into every minute particular. A reference occurs to the collective good of the community as being more godlike, *divinius*, than any particular good, that is, it better represents God's goodness.[2] But the burden of the discourse was to show that the individual was more important than the race. Human persons were not utilities, pawns in a game, but ends in their own right, responsible agents who could consort with God and share his mind.[3] The very argument that a part is subordinate to the whole was bent to prove the supremacy of the person, for a personal mind could possess all being and so, a microcosm, as such was no longer a subservient component but itself an open and generous whole.[4]

Next, the Disputations *de Spiritualibus Creaturis* (1266–8) lifted from Aristotle's *Metaphysics* the idea of a twofold order in the universe: one the general arrangement or common good intrinsic to the group and constituted by the co-ordination of the parts themselves within the whole—this, on a smaller scale, was the common good of a political community—the other the plan and purpose outside the scheme conceived in the mind and

[1] *Chronica Majora*, v. (ed. H. R. Luard. Rolls Series. 7 vols. 1872–80). See H. Rashdall. *The Universities of Europe in the Middle Ages*. i, pp. 344–97. 'The Mendicants and the University.'

[2] III *Contra Gentes*, 64.

[3] III *Contra Gentes*, 111–5, 128.

[4] III *Contra Gentes*, 112.

will of its maker. The first, the *finis intra* or *bonus intrinsecum*, was compared to an army's organized array, the second, the *finis separatus* or *bonum extrinsecum*, to the general on an eminence commanding his troops on the battlefield whose will makes the victory—the picture was like that of Blenheim or Waterloo, not of soldiers' battles such as Albuera or Inkerman.[1] The comparison illustrated how purposes could work to an end not contained within their own immediate system—St Thomas's political philosophy followed his natural and metaphysical philosophy in not adopting closed systems except as useful hypotheses for specialized and departmental investigation.

The attack on the friars flared up again in 1269. It was led by Gerard of Abbeville, a cooler and deadlier opponent than William of St Amour. St Thomas, who had been rushed back from Italy to Paris by the authorities of his Order, countered the *Geraldini* with the two works de *Perfectione* and *Contra Retrahentes*, of which the first was the more important. St Bonaventure's *Apologia Pauperum* also belonged to this period.[2]

Nicholas of Lisieux, one of the chief critics, reckoned that the *de Perfectione* was subversive of the Church's discipline, *libellus in quo sacrosancta subvertitur hierarchia*. Unusual among St Thomas's works in that Aristotle was not quoted, it has become the classical exposition of what constitutes the life of religious perfection. Charity and nothing else was the heart of the matter; men were good and perfect by observing the two great precepts of the Gospel, not by their rank in an organized body; holiness admitted no professional caste system within itself. The 'state of perfection'—a technical phrase—was constituted by religious vows by which a person was fixed, committed and dedicated to special means to holiness, ratified by the Church as juridical obligations. Vowed poverty, chastity and obedience were classical methods to free the spirit—there were others. In the thirteenth century religious Orders were founded, for instance, the Mercedarians under Dominican auspices, the members of which bound themselves to release captives from the

[1] *de Spiritualibus Creaturis*, 8. *Metaphysics*, xii, 10. *XII Metaphysics*, *lect.* 12.

[2] P. Glorieux. 'Les polemiques contra Geraldinos'. *RTAM* vi, pp. 5–41. Louvain, 1934. vii, pp. 129–157. 1935. ix, pp. 56–84. 1937.

Moors by offering themselves in ransom—yet their profession was secondary and instrumental to the play of the moral and theological virtues, above all of charity.[1] Their purpose was nothing more extraordinary than a good Christian life.

This also was the message of the spirited tractate, *Contra Retrahentes* (1270), written in a style unusually informal. Skilful appeal was made to the Fathers and the Canons to defend the friars against the criticism that they were untraditional and not integrated in the propertied establishment of the Church. Beginning with a manifesto against secular business, since Christ himself, *auctor fidei et consummator*, was born in lowly Bethlehem of a virgin who knew not man and who lived in poverty and refused power, it went on to argue that there was nothing queer or esoteric about the ideal set by the friars.

They were not enthusiasts who despised plain morality, for you could keep the Gospel precepts without the counsels, but not the counsels without the precepts. Nor were they types of special calibre nor spiritual athletes who flattered themselves they had mastered the practices of virtue and could now dispense with them and go on to something better: this was a necessary reassurance in view of the contemporary fears of antinomianism. They were men like other men and their religious state could be tackled without elaborate preparation, even in the case of the young or recent converts from error or sin.[2] Of course their life was a folly, but after all the Gospel had something to say about that. St Paul had gloried in preaching Christ crucified, a stumbling-block to the Jews and foolishness to the Greeks. To condemn it out of hand was to fall foul not only of the authority of holy doctors but also of the teachings of psychology, *sed etiam physicis documentis*, since Aristotle in a chapter entitled *de Bona Fortuna* admired those who are moved by an instinct better and more divine than human calculation. Let a man blush who calls himself a Catholic yet displays more worldliness than a pagan philosopher.[3]

The disputations *de Caritate* (1269–72) again picked out the

[1] *de Perfectione*, 1, 2. 2a–2ae. clxxxiv, 1, 2, 3, 4.

[2] *Contra Retrahentes*, 1, 3, 4, 5, 8.

[3] Ibid. 9. See 1a–2ae. lxviii, 1. Commentary, *St Matthew*, v, *lect.* 2.

idea of a social love going beyond the group.[1] Aristotle had said that if men were to be good citizens they should be trained to love the common interest and act well as parts of the State to which they belong.[2] Now by divine grace men were admitted to the heavenly happiness of seeing and enjoying God; they were enrolled as partners and companions of that blessed society called the heavenly Jerusalem: *you are fellow-citizens with the saints, and of the household of God.*[3] To this end were they trained and equipped and were they to play a worthy part they should have the welfare of their company entirely at heart. What was this but God's own goodness? *Bonum divinum prout est beatitudinis objectum*, that was the cause of eternal joy in friendship.

But, the argument went on, the common interest might be loved in two ways, as something to be possessed and as something to be cherished. To love the common good for what you get out of it did not make for political virtue; even a tyrant acted like that since it was to his advantage to command a well-run State. To love the common good more than oneself, however, to such an extent that death was risked and private advantage thrown away for its safety and increase, that was virtuous patriotism and love of the commonwealth. To be devoted to the good in which the blessed share, not merely in order to possess it oneself, for so even wicked men desire heaven, but also for its own sake, that the Kingdom of God should spread and be strong and safe from attack, that was the true virtue of men who belong to the society of the blessed, that was charity which loves God for himself and our neighbour as ourself.

In other words the notion of the Common Good in the argument was not that of a well-ordered mass of citizens composing an order within themselves, nor even, from a religious point of view, the *urbs Jerusalem beata vivis ex lapidibus*, but an end outside the group, so beloved that men will suffer deprivation and death rather than disown it. The transcendence was more evident a quality of the *bonum divinum* than of the *bonum civitatis*, and it is not difficult to appreciate why it was spoken of in more elevated

[1] *de Caritate*, 2. See 7, *ad* 5.
[2] *Politica*, viii, 1. 1337 a 20.
[3] Ephesians, ii, 19.

tones in the disputations *de Caritate* than in the contemporaneous commentaries on the *Ethics* and *Politics*, which were more concerned to interpret Aristotle than to put him in a Christian setting.

The introduction to the *Ethics* repeated without disapproval and in language Siger of Brabant might have used, Aristotle's remark that the purpose of the State was greater and fuller than that of any single man; the inference was drawn that the science which investigated it, namely politics, therefore took all other human interests in its stride. The introduction to the *Politics*, too, agreed that the State contained all other communities as a house included its walls.[1] Yet the non-utilitarian elements of Aristotle's thought were also brought out and they were reinforced by lessons learnt from St Augustine. Politics was supreme only in the domain of practice, which did not enclose all the things which were ours to contemplate and enjoy. Prudence was surpassed by wisdom as the *bonum utile* was surpassed by the *bonum honestum et delectabile*. The test of success might apply to what we produced and how we conducted ourselves, but there were higher objects and ends outside the reach of pragmatism.

The mature judgment of the *Summa Theologica* combined both strains of thought, namely, that a man must act for ends lying beyond the *civitas* and the *universitas creaturarum*, and that he must be integrated in the political community. Dedicated virginity was defended, though its social benefits were difficult to certificate.[2] The common good was regarded as a true human value only when it was grasped by personal mind.[3] The very co-ordination of parts within the universe existed for a *finis ulterior* outside them; God, *ipse Deus*, not the well-being of the whole, was man's ultimate end.[4] The *Summa Theologica* agreed with the *Ethics* in rejecting health, wealth, pleasure and power as the highest aims of human activity; at the same time it noted the inadequacy of the felicity in the philosophical contemplation of the whole universe and its parts.[5] Beatitude

[1] *I Ethics, lect.* 1. *I Politics, lect*, 1.
[2] 2a–2ae. clii, 4, *ad* 3.
[3] 1a–2ae. ii, 1, 8.
[4] 1a–2ae. ii, 8, *ad* 2.
[5] 1a–2ae. ii, 1, 2, 4, 6. iii, 6, 7. iv, 1 2.

was nothing less than the face to face vision of God and enjoyment of his friendship.[1] The political community existed to promote social virtue, but even moral virtue, noble though it be, was not its own reward, for it opened out to an object outside itself.[2]

On the other hand the present city was more consolidated in the *Summa Theologica* than in the earlier writings. It was the complete community to which the individual past was subordinated as imperfect to perfect. Its well-being was the purpose of law: *cum omnis pars ordinetur ad totum, sicut imperfectum ad perfectum, unus autem homo est pars communitatis perfectae, necesse est quod lex proprie respiciat ordinem ad felicitatem communem.*[3] The doctrine hardened against rebellion and grudged the subject's right to remove a tyrant, yet not the State's right to cut out a diseased and criminal member of the community. Clerics, however, were to stand apart from the proceedings.[4] Like St Augustine who did not shrink from the harsh beauty of good edged by pain, the argument at times seemed more sensitive to the spectacle of the justice of a whole order than to the ease of any part.[5] St Thomas's successors were inclined to strengthen the might of the community, perhaps to be less tender towards the victimization of individuals which might arise. When a man fitted in with the State then he lived according to reason, *cum vivit secundum rempublicam operatur secundum rationem*, wrote Peter of Auvergne, the continuator of the *Commentary on the Politics*.[6] And Remigio de Girolami, who had followed St Thomas's lectures in Paris and was Dante's master, appealing at Santa Maria Novella for concord among his fellow-citizens, told them that otherwise they would ruin the city and themselves: then will you be not a Florentine, *forentinus*, but a weeper, *flerentinus*, and if not a citizen then not a man, *si non es civis non es homo*.[7]

[1] 1a–2ae. iii, 8.
[2] 1a–2ae. iv, 4. v, 4, 7. xix, 2. xxi, 1. lv, 2, 4.
[3] 1a–2ae. xc, 2.
[4] 2a–2ae. xlii, 2, *c* & *ad* 3. lxiv, 2, 3, 4. lxvi, 1. civ, 5.
[5] See 1a. xlix, 2. xxxiii, 5, *ad* 3. xlviii, 2. 1a–2ae. lxxxvii, 3, *ad* 3.
[6] *V Politics, lect.* 7. St Thomas's commentary ends III, *lect.* 7.
[7] G. de Lagarde. *Naissance de l'esprit laïque au déclin du moyen âge*. iii, 5. 'Les successeurs de Saint Thomas, 1270–1300.'

6. *The Corporate Group*

Corporate property was managed according to thirteenth-century jurisprudence as if it were a matter of joint ownership; the rights of the whole were bound up with the rights of the men comprising it, and the rights of the members were asserted by actual enjoyment of their common possession.[1] A human group was not yet credited by political and legal theory with a kind of soul of its own. The political community formed a whole, *quoddam totum*, to which the attributes of a body might be ascribed—the body politic of the State, the mystical body of the Church—and afterwards those also of a person.[2] First, then, let us consider the group as corporate; next, the nature of group-personality.

Extremes of political theory have offered opposite interpretations. On one side the State may be represented as a legal artifice or as a mechanism made by individuals for their own convenience, which, though it may gather its own impetus, should always be kept under control. On the other side it may be represented as an organism with its proper life, over and above and absorbing the lives of its members. The distinction corresponds roughly to St Thomas's first classification of wholes, namely single objects which somehow contain different parts,[3] into logical whole and real wholes.

The political group was certainly at least a logical whole, that is to say, an object expressed by a single concept and term. A generalization made by the mind to cover many things was sometimes called a *communitas*.[4] It might be used as a collective term, in which many things are bracketed together and for convenience of speech assume a group individuality indicated by the grammar of giving them a singular verb.[5] It might also refer to a distributive general idea when many objects shared in one nature. Thus in speaking of *all* as a single idea we might

[1] J. W. Jones. *Historical Introduction to the Theory of Law*. p. 75.
[2] *III Politics, lect.* 1.
B. Tierney. *Foundations of the Conciliar Theory*. ii. 'The Structure of a Medieval Ecclesiastical Corporation.' iii. 'The Whole Church as a Corporation.' pp. 106–53.
[3] 1a. lxxv, 8.
[4] *I Sentences*, XXV, i, 3.
[5] 1a. xxxi, 1, *ad* 2.

be taking the term either collectively—all together and only together—or distributively—all together and each alone.[1] The logic could be applied to general justice, which might be represented as a *bloc* notion, an overall attribute produced by the State to which all partially conspired. But, more profoundly, it was a personal virtue in which all fully shared, in the sense that the justice of all was the justice of each.[2] Our present inquiry is whether St Thomas, and if so, to what extent, treated the State as a real whole.

A real whole, that is to say an actual reality not merely a verbal heading which covers many items, could be of several kinds. If its parts were incomplete realities so coalesced that one single subsisting thing was formed, then a *substantial whole* was the result. This was subdivided: it was called an *essential whole, totum essentiale*, with respect to any components of its very nature—thus man was composed of body and soul; an integral whole, *totum integrale*, with respect to any quantitative parts, thus a man's body was composed of its bodily members; a functional whole, *totum potestativum*, with respect to diverse abilities in the same subject—thus a man could be treated as a complexus of abilities, intellect, will, senses and emotional powers.[3] When, however, the parts in question remained complete things and were not assimilated in a higher substance, the result was an *accidental whole*, so called because the union was constituted by their relation of order among themselves, and *relation* fell into the category of accident, not substance.[4] This also was subdivided, into a *natural group*, when the things were conjoined in pursuit of their innate and proper purposes, thus a family or swarm of bees; an *artificial whole*, when they were assembled by human planning, thus a machine or a sporting club; a *chance whole* when the collection was haphazard, thus a drift of leaves or a random mob.

Now to apply these divisions to the political community. At once we can rule out the likelihood that medieval writers of the European tradition considered that any group of men, however

[1] *II Politics, lect.* 2.
[2] 2a–2ae. lviii, 6.
[3] 3a. ii, 1. *I Sentences*, XIX, iv, 1. 1a. lxxvi, 8. lxxvii, 1, *ad* 1. 1a–2ae. lvii, 2, *ad* 2. 2a–2ae. xlviii, 1.
[4] 3a. ii, 6.

compact, could compose a substantial whole; they had no hankering after or even notion of a State Absolute. The Aristotelians among them were firm that individual things were the first substances and the real subjects of existence. They defined the person as the ultimate unassimilable, *incommunicabilis*. To Christians it was the centre of responsible activity. The universe itself, supposedly forming a greater unity than any city, was not a higher substance containing lower individual substances: its unity was not that of a single substance, but of the positioning and ordering of many parts which remained themselves without being absorbed in the whole, *unum positione vel ordinem cujus plurimae partes non sunt assumptibiles*.[1] Hence at the beginning of his *Commentary on the Ethics*, where various types of combination were reviewed, St Thomas expressly rejected any theory of incorporation which implied that the political community was a single thing or substance.[2]

It was not even to be compared to one large household, for he agreed with Aristotle that if you strain for too close a unity you destroy the proper character of the State and level it down to a more primitive condition: 'it is like forcing harmony to unison'.[3] For a truly political whole kept its parts intact, unlike Plato's State in which lesser groups were mere agencies completely controlled by the highest power.[4]

Moreover, justice without qualification, the justice which serves the *jus politicum* was essentially a matter between two quite distinct parties: *simpliciter est ad alterum sicut ad quod est omnino distinctum*. When one was somehow not entirely his own but the other's, as when children or slaves were dealt with by father or master, then the justice engaged fell short of full justice. For this required that individual right-givers and right-takers were balanced in agreed opposition, as appeared when two parties were equal before the law which adjudicated between them and neither was in the other's power though both were subjects of the same civil authority: *sicut apparet in*

[1] 3a. iv, 1, *ad* 4.
[2] *I Ethics, lect.* 1.
[3] Politics, ii, 2. 1261 a 16. Also ii, 5. 1263 b 30.
[4] J. J. Navone. 'Division of Parts in Society—Plato and Aristotle'. *Philosophical Studies*, vi, pp. 113–22. Maynooth, 1956.

duobus hominibus quorum unus non est sub altero, sed ambo sunt sub uno principe civitatis, et inter tales secundum Philisophum est simpliciter justum.[1]

Allowances should be made for the metaphorical description of the State as a body. Then it appeared either as an integral whole, when it was set forth as a group of people arranged according to status, or as a functional whole when it was set forth as an ordered system of offices.[2] Allowances also should be made for the social biology and psychology which might discover a herd instinct among animals, treat it as an entity and extend it to human groups. Notwithstanding such figures of speech, individual human beings were always considered to be the prime realities. Gierke was probably right in his contention that the medieval idea of a corporation, in which the principle of unity resided in the members who came together in order to achieve an end determined by themselves, was transformed by the Canonists into the idea of an institution of which the principle of unity was imposed from outside and above. It seems strange, however, that he should have thought that the thirteenth-century schoolmen encouraged an organic theory of the State, or allowed that a human group-reality could be a real thing distinct from the men and women composing it.[3] The political community was not a substance, but a collection, order or arrangement of substances, *compositio vel ordo vel figura*, an accidental group in the sense already defined.[4]

It did not follow that the political community was therefore merely a chance aggregation, a number of human beings who happened to live together with little sense and less service of common purposes: a mass of people enclosed within a wall may be a nation, but not a State. 'Like this, we may say, was Babylon.'[5] No more was it only a vast *artificium juris*, an artificial group set up by convention and edict, a juridical corporation

[1] 2a–2ae. lvii, 4. *V Ethics, lect.* 11 v, 6. 1134 a 16.
[2] For the differences of 'states' and 'offices', see 2a–2ae. clxxxiii, 1, 3.
[3] O. von Gierke. *Political Theories of the Middle Ages*. Transl. F. W. Maitland. Cambridge, 1900.
E. Lewis. 'Organic Tendencies in Medieval Political Thought'. *American Political Science Review*, xxxii, pp. 849–76. 1938.
[4] *I Ethics, lect.* 1.
[5] *Politics*, iii, 3. 1276 a 27. See iii, 9. 1280 b 12.

which pursued legal ends through official means. If it might be presented as such according to an Augustinist antithesis of nature and convention, to the Aristoteleans it was a natural combination, partly instinctive and partly deliberate, rooted in preconventional rights, a 'mystery' embodied in folk-lore and custom, and which, through an enhancement rather than a cession of individual freedom, promoted the decencies and virtues of human, that is social, life.

Cicero had spoken of the *totum corpus rei publicae*.[1] The term *body* was used to designate any organized structure, thus *corpus civile* or *corpus ecclesiasticum*, or a systematized collection of articles, thus *corpus juris*. The *body politic* was a classical phrase, and it was a favourite practice of writers on social morality, such as John of Salisbury, Vincent of Beauvais, and Ptolemy of Lucca, to draw out its allegorical senses.[2] The comparison occurred to St Thomas, but not frequently; thus a criminal was likened to a diseased member of an organism, and the inference was drawn that through his own fault he had lost his personal rights and lapsed into the condition of an individual part, which could be surgically removed if dangerous to the health of the whole.[3]

That the usage was metaphorical appeared when he discussed the mystical body of the Church; there the cohesion was certainly more intimate than in any State. He was aware of the anthropomorphism and, while admitting its propriety as a figure of speech, would not have the Church's physical unity pressed too literally. Of the individuals composing a human group he said cautiously, *reputantur quasi unum corpus*, and of the Church, *dicitur unum corpus mysticum per similtudinem ad corpus naturale*.[4] So also he spoke about the Church as a building, *ad aedificationem Ecclesiae*.[5] His reserve may also be usefully repeated

[1] *de Officiis*, i, 25, 85.
[2] *Policraticus* iv, 2, 3. v, 2.
Speculum Doctrinale, vii, 8.
de Regimine Principum, iv, 3.
[3] 2a–2ae. lxiv, 2, 3.
[4] 1a–2ae. lxxxi, 1. 3a. viii, 1, *c* & *ad* 2.
See 1a. lxxv, 1. 1a–2ae. xci, 2, 3, 4. 2a–2ae. lvii, 7. clxxxiii, 2. *Romans*, xii, *lect.* 2. I *Corinthians*, xii, *lect.* 3.
[5] 2a–2ae. clxxi, 1. clxxxii, 2, 3.

with regard to tropes such as the Bride of Christ or Mother Church, lest theology match an uncritical fashion in social philosophy, which lifts a social organism from biology or a Mass-Will from psychology, or in foreign history which treats the John Bull or Uncle Sam of the cartoonist as real figures. The rhetoric may be more genial, the logic is no less invalid.

7. *State Personality*

The attribution of personality is no less tricky. Activities issue from a human group different in kind from the activities of its constitituents clubbed together; similarly the difference between a heterogeneous whole and its parts taken together is not just one of degree or size.[1] Previously treated rather as partnerships, associations from the thirteenth century onwards were coming to be treated more as corporations. The Canonists naturally responded to the institutional continuity of the Church and saw there a principle of corporate permanence underlying the successive changes of individual life. The Civilians borrowed the notion of a *corporation sole* from ecclesiastical law.[2] Gradually the State itself was portrayed less as a family or a number of individuals in partnership together than as a living thing with a personality of its own.

The discourse was muddled by the double meaning of *person*, legal and philosophical or theological. The term could stand either for a subject possessing a histrionic, public, and juridical character, and acting in that capacity, or alternatively for the single private rational substance who was the subject of moral responsibility. The two were distinct, for one real person could be several legal persons, for instance, a citizen, a magistrate, a university elector, whereas one legal person could be composed of many real persons, for instance, a religious foundation or a college.

At the outset the lawyers were not occupied with the philosophical overtones of the term, but—the Canonists especially—

[1] 2a–2ae. xlvii, 10, 11. l,1.

[2] F. W. Maitland, *Collected Papers*, ed. H. A. L. Fisher, iii, p. 245. Cambridge, 1911.
F. Pollock and F. W. Maitland. *History of English Law*, i, pp. 486–511.
W. S. Holdsworth. *History of English Law*, iii, pp. 469–490. London, 1923.

with problems of corporation law arising from litigation undertaken by bishoprics, religious orders, abbeys, priories, colleges, chantries, guilds, confraternities and other institutional bodies, greater and lesser, within the embracing *universitas* of the Church. All they were attempting was to explain certain technical rules which for certain acts treated a group enjoying rights recognized by the law as if it were one person, and, following the example of Innocent IV, the reputed father of the notion, they were content to regard such a personality as a fictitious entity.[1] It was not due to them, but to those political publicists and philosophers who were over-impressed by the organic character of the State, that group-personality was blown out into a quasi-metaphysical object.

The theologians on their side were exercised about the moral personality and responsibility of groups. They had to cope with the major problem of the collective guilt of Original Sin. Here was a fault of the whole human race, not confined to the doings of one local corporation.[2] Everybody born into the world incurred the penalty, and also, which was more embarrassing, the guilt of a sin not committed by any personal act of their own. In what sense could the whole of humanity be blamed? How could Original Sin really be called sin at all?

It was true, of course, that innocents suffered through another's fault, that was the way things worked, as when parents neglected their children or a careless driver let his wagon run away—in those days instruments were not so lethal as they are now, and one slip did not have such far-reaching effects. On the other hand it was a principle of justice that penalties should not be inflicted when no crime or fault had been committed; only for the wrong a man himself did should he be punished as a criminal, *quia actus pecati aliquid personale est.*[3]

The problem of Original Sin was more profound than the legal difficulty of punishing collective guilt. That arose when many persons, each and all, were accused in varying degrees of

[1] I. T. Eschmann. 'St Thomas and the Decretal of Innocent IV. Romana Ecclesia.,' *MS*, viii, p. 33.
P. Gillet. *La personalité juridique en droit ecclesiastique*, Malines, 1927.

[2] I. T. Eschmann. 'Thomistic Social Philosophy and the Theology of Original Sin.' *MS* ix, pp. 19–55. Toronto, 1947.

[3] 1a–2ae. lxxxvii, 7, 8. *II Sentences*, XXXVII, i, 4.

co-operating criminally to abuse the specific means offered by their community-organization. The more humane jurists sought to exclude the innocent from the penalty; for this reason Innocent IV abolished the practice of mass-excommunication.[1] It was appreciated that sin was an ambiguous term when applied to a fault of the race and a fault of the person. All the same, was not Original Sin indiscriminate in its effects—even more so than the hydrogen bomb? The tentative solutions proposed—for even the scholastic theologians recollected that they were addressing themselves to a mystery—took two different lines; one may be called biological, the other juridical.[2]

Along the first the human race was approached as a single descent-group. The hereditary infection which was seen to run through it from its origins provoked reflections in various moods. The lust which bore us from the loins of Adam might be lamented or the inevitable consequences of belonging to the physical world of predatory natures might be more dispassionately assessed. Whether it occasioned revulsion or resignation Original Sin was seen as a flaw transmitted to all who are generated from the same origins and belong to the same mass. The streak ran through the entire *corpus malorum*, and therefore through us all. If you inquire, Vincent of Beauvais remarked, whether it be contracted by violence or by will or by nature, then we reply by nature, and by corrupt nature at that, though by previous just secret judgment of God.[3]

Along the second line of argument the problem of our solidarity in sin moved in a more legal setting; the human race was treated as a single constitutional association which fell from original justice in the person of its first representative formally appointed by divine Providence, and so was continued throughout posterity, disinherited and deprived of its titles to happiness.

Both themes appeared in St Thomas. He sought analogies

[1] See *IV Sentences*, XVIII, ii, 3, *ii*.
[2] J. B. Kors. *La justice primitive et le péché originel d'après saint Thomas.* R. Bernard. *Somme Théologique. Le Péché*, i, Appendice 2. Paris, 1931. For some of the background difference see E. Gilson. 'Pourquoi saint Thomas a critiqué saint Augustin.' *AHDL*, i, pp. 5–127. Paris, 1926–7.
[3] *Speculum Naturale*, xxix, 98.

from medicine, physiology, psychology, logic and law to try to explain why the tragedy should have spread. At first he took Original Sin as a racial defect, without labouring the point of individual involvement.[1] He observed the point of law, that a child is *res patris*, the fact that a family sank to poverty as a result of the parents' fault and that disease can be inherited, although as in the case of the man born blind, it was idle to track down the blame.[2] He also scouted in Porphyry's logic, on the common sharing of individuals in the species, to see if he could find some clue there to explain the notion of a general sin.[3]

His final thought revolved round two arguments. The first compared the human race to a single organism, in which all individual parts were moved by a common will, and conceived Original Sin as a *peccatum naturae*; the second compared it to a single community put to trial and found guilty in the person of its representative, and compared Original Sin to a *delictum universitatis*. We were responsible for what our rulers did, *quod princeps civitatis facit dicitur civitas facere.*[4] Their contrast of the two arguments was sharpened by the disputes of two Dominican theologians, Dominic Soto and Ambrose Caterini, at the Council of Trent.

Less involved in natural philosophy than the medieval authors and affected by the Roman theory of corporations, the theologians of the Baroque enlarged on the attributes of legal personality attaching to sovereignty. Stressing the second argument, they put Adam in the position of the *princeps* of the *civitas humana* which by divine covenant had been given a grant of corporateness. The first argument, less juridical and closer to racial sources and instinctive motions, has been revived in recent years: anthropology has discovered how widespread is the figure of the public scapegoat, who acts as a vehicle to draw off the evils which afflict a whole people.[5] We are the

[1] *II Sentences*, XXX, i, 1, 2.
[2] *II Sentences*, XXXIII, i, 2, ad 3, 4, 5. Commentary, *St John*, ix, *lect.* 1.
[3] *IV Contra Gentes*, 50, 52.
[4] Disputations, IV *de Malo*, 1. Commentary, *Romans*, v, lect. 3. *Compendium Theologiae*, 196. 1a–2ae. lxxx, 1.
[5] J. G. Frazer. *The Golden Bough: A Study in Magic and Religion.* Abridged ed. lvii, lviii. New York, 1945.

seed of Adam; he is less our prince than our begetter. There is a kind of will, *voluntas totius humanae naturae*, primarily in the head and consequently in the members, which descends to each of us from our natural origin. From the failure of this will we are weakened in body and soul, vulnerable and exposed to destructive forces.[1] A *vis praeditiva* now roves through the *universitas humana* as it does through the *universitas politica*.[2]

The corporate sin of mankind cast but the faintest shadow of a 'Race-Soul' theory to the eyes of the medievals. Yet they might have found something suggestive in the notion of a collective unconscious, the repository of ancient and dynamic images, called archetypes by Professor C. G. Jung, which may represent past stages of development.[3] And why not also of past lapse? As it may go to explain the sense of 'God-almightiness' which is the heritage of some peoples—'we don't do that sort of thing in the Buffs'—so may it serve for the awareness of lack of integrity widespread in the entire human race.

The Aristoteleans, however, would have recollected that symbolism was one discipline and rational metaphysics another, and to the latter there was no such thing as a human group possessing substantial identity. The ascription of corporateness and personality was guarded—*omnes homines possunt considerari ut unus homo, reputatur communitas quasi unus homo.*[4] A quasi-personality was granted, inasmuch as the organized group was bent on an end which was not the sum of the personal purposes of its components, and for this reason the science which studied it, namely political philosophy, was not resolved in the ethics of personal activity.

The common good was different in kind, not merely in number and degree, from the total of single goods.[5] Emergent characteristics are disclosed by the group which are not those of its members; thus the first Lord Halifax noted an accumulative cruelty in a number of men though none in particular are ill-natured. It is shown in the jeers hurled at the referee during

[1] 1a. lxxxii, 4. lxxxi, 3, *ad* 2. 1a–2ae. lxxxii, 1, *ad* 1, 3.
[2] See *I Politics, lect.* 6.
[3] N. P. Williams, *The Ideas of the Fall and of Original Sin*. p. 528. London, 1927.
V. White. *God and the Unconscious*. London, 1952.
[4] 1a–2ae. lxxxi, 1.
[5] 2a–2ae. lviii, 7, ad 2. *I Ethics, lect.* 1. *I Politics, lect.* 1.

a professional soccer-match. Mass-hysteria is another case in point, and, of greater dignity, the majestic tread and devastating volleys of the Fusiliers at Albuera. On more humdrum occasions too, it is evident how business done through groups of people acting collectively as committees differs from the conduct of single individuals.[1]

8. *A Note on Terminology*

Here and there these pages have suggested that St Thomas allowed for two extreme types of human conjunction. One corresponded to the material cause or stuff of civilized association: it was the mass into which a man was born or otherwise incorporated, and to which he belonged as a part subordinate to the whole, a unit in a scheme, an instrument for an overriding community purpose. The other corresponded to the final cause or purpose: it was a communication of minds and wills through contemplation and charity, a society which involved no surrender of identity or of proper interests and was loaded with no burden of duties and rights, though these may be embraced.[2] Between these extremes was placed a combination, namely the political community which rose from the first and aspired to the second—a mixed type and, like a mongrel, all the tougher for not being of one strain. The nature of a group was determined by what sort of things composed it—hence the difference between a producer-consumer in a community, a friend in a society, and a citizen in a State.[3]

St Thomas's political philosophy can be accordingly presented as a dialectic based on these three abstract types, the pure community, the pure society and the society-community.[4] His terminology, however, followed no consistent usage and sometimes was indiscriminate. His general heading was *communitas*, the equivalent of Aristotle's *koinonia*, an analogical term which included logical and real wholes or groups of every

[1] K. C. Wheare. *Government by Committee*. Oxford, 1955.
[2] III *Contra Gentes*, 158. 1a–2ae. lxxxvii, 7. 3a. xlviii, 2, *ad* 1.
[3] *III Politics, lect.* 1.
[4] See T. Gilby. *Between Community and Society*.
I. T. Eschmann. *Studies on the Notion of Society in St Thomas Aquinas*. MS, viii, pp. 1–42. 1946.

kind. It could stand for a generalized classification, a mass, a household, a city, a fellowship, a partnership, a commonalty, the universe itself. *Universitas* was a synonym, usually taken by St Thomas in its widest sense—as by Cicero, thus *in universitate rerum*, or *in universitate generis humani*—was coming to have a narrower juridical meaning and signify a set of men joined together for some particular project, who possessed a common property, undertook lawsuits, decided policy by a majority vote and who had been granted by higher authority the *privilegium universitatis*. Such a group might be called a *collegium*.[1]

Groups approximating to the condition of the pure community might be indicated by such terms as *genus humanum*, *gens*, *natio*, *familia*, *patria*; associations which were like the pure society by *amicitia*, *conversatio*, and *communicatio spiritualis*; while for the intermediate group we have *communitas societatis*, also *congregatio*—thus *congregatio corporis mystici*.[2] It is interesting that *communitas* was used for sacramental unity, but *societas* for fellowship in what the sacraments signify, the *res sacramenti*.[3] The terminology was not altogether consistent, for St Thomas also spoke of a *mercationum societas* and *societas oeconomica*.[4]

The political group, *communitas civitatis*, was commonly called the *civitas*: the Aristotelean *polis*, the community in which everything sufficient for life can be found, was extended to the size of a realm or *regnum*.[5] *The* Kingdom in the thirteenth century was not the *Regnum Italicum*, nominally part of the Empire though the field of contention between communes and feudal lords, but St Thomas's own country of Sicily and Naples; the Dominicans in those parts were divided from the *Provincia Romana* to form the *Provincia Regni* (1294), the older Province in North Italy being entitled the *Provincia Lombardiae*. The city was not a place, *urbs*, but the people, *civitas vel populus*; it was

[1] *Contra Impugnantes*, 3.
[2] 2a–2ae. ci, 1. 1a–2ae. iii, 2, *ad* 3. 2a–2ae. xxiii, 5.
Disputations, *de Caritate*, *VIII Ethics*, *lect.* 9. 2a–2ae. xxiii, 1, *ad* 1.
3a. lxv, 1. *IV Sentences*, XV, i, 5. *iv*, *ad* 3.
Vincent of Beauvais, *Speculum Doctrinale*, vii, 6.
[3] 3a. lxv, 1. lxxiii, 3.
[4] *Contra Impugnantes*, 3. Note the distinction between *auxilium amicorum* and *societas amicorum*, 1a–2ae. iv, 8.
[5] Disputations, *VII de Veritate*, 1. *de Regno* was the alternative title of the *de Regimine Principum*. *I Politics*, *lect.* 2.

the *multitudo*, and to be precise, the ordered multitude, *multitudo ordinata*, which functioned as a *coetus* or *collegium populorum*.[1]

He did not echo those Glossators who likened European communities to the municipalities of the classical texts, and which enjoyed no rights as against the *Populus* who had conferred power on the *Princeps* whose successor was the Holy Roman Empire. Instead there is nothing in his writings against a sentiment not uncommon among the Dominicans who came after him, that the rulers of independent States possessed the old imperial prerogatives within their own territories. At the time of Philip the Fair it was said, 'le roi de France est emperour dans son royaume'.

Different nations might own the same political allegiance or one nation might be governed by different rulers, for nation was a term which stood for a geographical grouping. The French Nation at Paris University included the Mediterranean peoples, and the English Nation the Flemings and peoples from across the Rhine and North Sea. Oxford men were divided by the Trent into *Australes* and *Boreales*; the differences between southerners and north-countrymen were composed in 1274, and the term *nations* ceased to be used, 'a symbol,' says Rashdall, 'of that complete national unity which England was the first of the European kingdoms to affirm'.[2]

None of the three main groups as such, the mass or pure community, the political community, and the pure society—certainly not the two extremes—should be imagined to represent complete concrete situations sealed off in different compartments. The historical dialectic proceeded with an intermingling of all three types. Even in the wide world itself, the *universitas rerum*, the perfection of each part derived from its communion in the common good.[3] Hence it was called a commonalty ordered by law.[4] Intelligent creatures made it their own.[5] They

[1] 1a–2ae. xcvii, 3, *ad* 3. xcviii, 6, *ad* 2. cv, 3, *ad* 2.
2a–2ae. xcii, 2. c, 6, *ad* 4. 1a. xxxix, 3. 3a. lxxxi, 2.
IV Sentences, XL, i, 1. *Contra Impugnantes*, 7.
[2] *Medieval Universities*, iii, p. 58.
P. Kibre. *The Nations in the Mediaeval Universities*. Mediaeval Academy of America, 49. Cambridge (Mass.), 1948.
[3] 1a. xliv, 4. III *Contra Gentes*, 19–21, 24.
[4] 1a. lxxxix, 5. ciii, 1. 1a–2ae. xix, 3, 8, *c* & *ad* 2. xxi, 4, *ad* 3.
[5] 1a–2ae. iv, 8. v, 1, 5, *ad* 1. 2a–2ae. ii, 3.

became partners with God, and enjoyed the intercourse of persons with persons.[1] Companionship above all, for, though justice needed friendship, friendship could dispense with justice.[2]

[1] 1a. ciii, 5, *ad* 3. 1a–2ae. xci, 2. xcix, 3. c, 2, 3.

[2] *VIII Ethics, lect.* 1.

VIII

THE RECEPTION OF ARISTOTLE

THERE seems to have been no period of his life when St Thomas did not write as an Aristotelean, even when he had not yet discovered Aristotle's mind on an issue. Nevertheless he was no mere repeater of another man's arguments. For one thing he was not equipped to set them in their historical context, for another he was not always in possession of a clear and authentic text. In any case he held that argument from human authority held the lowest place in science—the point is not, who said it? but, is it true?[1] Respect for the Philosopher nowhere implied that his patronage was a substitute for hard thinking, and St Albert made mock of the awe which regarded Aristotle as a god.[2] Many quotations were in effect free adaptations, many conclusions exceeded the range of Greek speculation.

When St Thomas was a student and young lecturer at Paris the Masters of the Arts Faculty had not yet declared that Aristotle's philosophy was equivalent to philosophy itself, and the troubles of the Double-Truth Theory—that truths of reason could contradict truths of faith yet both be professed—were yet to come. The Franciscans refused to separate, in St Bonaventure's phrase, the water of philosophy from the wine of the Scriptures; the Dominicans of the period legislated against profane novelties—so much philosophy was allowed, but not too much. The brethren were not to address themselves to the secular sciences and liberal arts, nor to study books of pagan philosophy, though they might dip in them for an hour or so—the 'hour' was a concession soon stretched. In comment-

[1] 1a. i, 8. *de Coelo et Mundo*, i, *lect.* 22.

[2] *VIII Physics, cap.* i,

ing on the *Sentences* St Albert used the great seventh book of the *Ethics* on justice; St Bonaventure ignored it.[1]

During the decade following his death St Thomas was episcopally condemned at Paris and Oxford; the Franciscans maintained their hostility to his teaching much longer.[2] His Scholastic opponents were no obscurantists. They esteemed Aristotle, blended Avicennism with their Augustianism, and were ardent and exacting scientific investigators. What they feared was the establishment of a self-contained world of human values owing nothing to revealed religion, and their fears were largely borne out by the later development of scientific and political thought in the West. The reaction of the divines against lay-minded philosophy and law was prompt and the interdictions of Aristotle in 1215 and 1231 were recalled. No wonder the rising young Dominicans soon after the middle of the century were accused of naturalism and worse for espousing so whole-heartedly the new cause—St Albert sometimes irascibly, St Thomas always composedly.[3]

Both possessed the complete texts of Aristotle's two main works on social philosophy, the *Nichomachean Ethics* and the *Politics*. The two books of the *Economics*, by an early Peripatetic, mentioned three times by St Albert but never by St Thomas,

[1] B. M. Reichert. *Acta Capitulorum Generalium Ordinis Praedicatorum* 1220–1303. Monumenta Historica, iii. Rome–Stuttgart, 1898.
B. M. Reichert. *Litterae Encyclicae Magistrorum Generalium*, 1223–1376. Monumenta Historica, v. Rome-Stuttgart, 1900.
M. D. Chenu. 'The Revolutionary Intellectualism of St Albert.' *Blackfriars*, January, 1938. Oxford.
Humbert of Romans. *Opera de vita regulari*. Ed. J. J. Berthier. Rome, 1888.

[2] M. Burbach. 'Early Dominican and Franciscan Legislation regarding St Thomas.' *MS*. iv. Toronto, 1942.
P. Glorieux. 'Comment les thèses thomistes furent proscrites à Oxford (1284–86).' *Revue Thomiste*, xxxiii, pp. 259–91. St Maximin. 1928.
E. Gilson. *History of Christian Philosophy in the Middle Ages*. pp. 387–427. 'The Condemnation of 1277.'

[3] M. Grabmann. *Mitteralterliches Geistesleben, Band II*. xiv, xvi, xvii. Munich 1936.
E. Gilson. 'Les sources Gréco-Arabes de l'augustinisme avicennisant.' *AHDL*, iv. pp. 142–9. Paris, 1930.
R. de Vaux. 'La première entrée d'Averroès chez les Latins.' *RSPT*, xxii, pp. 193–243. Paris, 1933.
D. Salman. 'Albert le Grand et l'averroisme latin.' *RSPT*, xxiv, pp. 38–64. Paris, 1935.

may have been translated by William of Moerbeke.[1] The *Ethics* were more freely quoted by St Thomas than any other of Aristotle's works, at first in the Latin version preceding that of William of Moerbeke.[2] Before 1269, when he embarked on the *Secunda Pars* of the *Summa Theologica*, he had completely analysed Moerbeke's text: a comparison of the techniques of his moral science before and after shows a decided advance. As for the *Politics*, his commentary, started some years later, probably in 1269, reached only into the third book.[3] Important as this portion is, especially for its firm assertion of the inherent excellence of political institutions and the naturalness of civilization, the political teaching of the commentary on the *Ethics* is more considerable. The suggestion is unfounded that economic and political questions are omitted: you have only to look at the treatment of general justice in the fifth book, of political prudence in the sixth, of friendship in the eighth and of conventional law in the concluding chapter.[4] Moreover personal virtue was an essential theme in his social morality.

1. *The Commentaries on the* Ethics *and* Politics

Usually when St Thomas's first systematic work, the *Commentary on the Sentences* (1254–6) appealed to the *Nicomachean Ethics*—in Grosseteste's translation—it was rather to drive home a point than to explain an argument. His last systematic work, the *Summa Theologica* (1266–73), was technically more accomplished and more familiar with Aristotle's thought. Its moral part (*Prima Secundae*, 1269–70, and *Secunda Secundae*, 1271–2) was based on his careful and detailed study of Moerbeke's revision of Grosseteste's version of the *Ethics* divided into *lectiones*. The date of this commentary, *in X libros Ethicorum Expositio*, has been moved back by recent research from 1269 to 1266, and it may have been composed in 1264 when the *Contra Gentes* was

[1] *Œconomica*. Translated and Edited by E. S. Foster. Oxford, 1921.
P. Mandonnet. 'Guillaume de Moerbeke, traducteur des Economiques. Albert le Grand et les Economiques.' *AHDL*, viii, pp. 9–35. Paris, 1933.

[2] Thus, in 1256, *the Contra Impugnantes*, 6, *ad* 9, and 7, *ad* 2, referred to *Ethics* ii on the virtuous man, and to iv on the magnanimous and liberal man.

[3] To *III Politics*, *lect.* 7 inclusively, (1280 a 7).

[4] A. M. Pirotta. Preface, p. xiii. *In decem libros Ethicorum Aristotelis ad Nicomachum expositio*. Turin, 1934.

finished, or even earlier.[1] The witness of Ptolemy of Lucca is not clear on the point in his *Historia Ecclesiastica*.

On the first reading it appears a disappointing document, a mere paraphrase of Moerbeke's text, lacking the reflectiveness of his other commentaries, notably on the *Metaphysics* and *Physics*, and even on the *de Anima*. It marked, however, a decided advance towards the scientific moral doctrine of the *Summa Theologica*. Here was a human morality which was to be sublimated in a theology of grace. From a consideration of the Good to which everything tends, of the End which is the *beatitudo* of rational creatures and of the facts of life, the possible means of achieving happiness were systematically set forth. They are the co-ordinated human acts which proceed from appropriate abilities and habits in response to right objects and ends within the unity of the human organism. The dynamism was exactly analyzed on a scientific classification of kinds and types of activity, but the importance of personal motives and special circumstances was allowed for.[2] The study of human group-activity was set in this context.

Nor is the *Politicorum Expositio* (1269) taken alone more rewarding.[3] Begun too late to affect his thought profoundly, it stopped at the eighth chapter of the third book, the remainder being continued by Peter of Auvergne with a greater bias towards a self-contained rational community than St Thomas

[1] P. Mandonnet. *Des écrits authentiques de saint Thomas d'Aquin*. Fribourg, 1910.
M. Grabmann. *Die Werke des hl. Thomas von Aquin*. 3rd ed. p. 284. Munster, 1949.
L. W. Keller. 'The Vulgate text of St Thomas's Commentary on the Ethics.' *Gregorianum*, xvii, p. 434. Rome, 1933.
E. Franceschini. 'S. Tommaso e l'etica nicomachea.' *Rivista di Filosofia Neo-Scholastica*, xxviii, p. 328. Milan, 1936.
G. Verbeke. 'La date du commentaire de saint Thomas sur l'Ethique.' *Revue Philosophique*, xlvii, p. 203. Louvain, 1949.
R. A. Gaulthier. 'La date du commentaire de saint Thomas sur l'Ethique à Nicomaque.' *RTAM*, xviii, pp. 66–105. Louvain, 1951.

[2] 1a–2ae. xviii, 1, 2, 3, 8, 9.
H. Y. Jaffa, *Thomism and Aristoteleanism: A Study of the Commentary by Thomas Aquinas on the Nicomachean Ethics*. Chicago, 1952.

[3] *In VIII Libros Politicorum Expositio, seu de Rebus Civilibus*. Vol. xxi of the Parma *Opera Omnia*, p. 364–466. Paris, 1966.
A. O'Rahilly. 'Notes on St Thomas: II, The Commentary on the Politics.' *Irish Ecclesiastical Record*, xxx, pp. 614–622. Dublin, 1948.

perhaps would have shown. However he seems to have been acquainted with the whole of the *Politics*—he quoted the eighth book. At the beginning of his commentary on the third book he surveyed topics raised in the fourth and seventh books, though he made no detailed examination of the separation of governmental powers.[1] To the 104 references to the *Politics* in the *Summa Theologica*, of which twelve are to texts outside his commentary, there are but three references in the *Contra Gentes*. The *Ethics*, which was cited much more frequently, played a preponderant part in the formation of his social theory.

St Albert's study of the *Politics* appeared about the same time.[2] The two Dominicans were the first Latin expositors of a work which, with Plato's *Republic* and *Laws*, is the chief contribution of Greece to Western political theory. A comparison is interesting. Both commentaries were running explanations of a Latin word-for-word translation from the Greek. They divided and sub-divided every phrase of Aristotle's argument step by step. Both authors may be assumed to approve the doctrine they are elucidating unless the contrary clearly appears, but their intention was rather to present an impartial exposition than to express their own personal views; these were to be found elsewhere in their *quaestiones* and *summae*.

Neither was aware that the text was a mosaic and that the traditional order of the books needs to be re-arranged.[3] They knew nothing about Aristotle's own *Constitution of Athens*, and little about the cultural background to social and political patterns of classical times. They did not appreciate that the Greeks themselves were heirs to the mature civilizations of Troy, or that Mycenae and Crete were matrices of both. But then they were not undertaking the sort of criticism for which they were not qualified, and their occasional touches of historical information come almost as a surprise, as when the importance of sea-power to Athens was noted, or the fact that cattle-raising preceded crop-growing in the history of culture.[4]

[1] *Politics*, vii, 12–14.
[2] *Opera Omnia*. Ed. A. Borgnet, viii, Paris, 1891.
[3] W. Jaeger. *Aristotle, Fundamentals of the History of his Development*. Transl. K. Robinson. Oxford, 1934. The books of the *Politics* are set out in this chronological order—ii, iii, vii, iv, v, vi, i.
[4] *I Politics, lect.* 2. 1a–2ae. xciv, 2. *in Job, i, lect.* 1.

Despite minor misreadings on points of detail, for instance on slavery,[1] they showed a remarkable sympathy with and understanding of Aristotle's discourse isolated from its historical context—it was as if they were explaining a contemporary. They referred to his Greek interpreters, Alexander of Aphrodisias, Porphyry, Themistius and Simplicius, and were familiar with Jewish and Arab thought; their religious bent was towards Avicenna, yet their respect for Averroes, if critical, was generously acknowledged.

St Albert's style was vivid, rather uncouth; he was inclined to be wild with his etymologies and to guess at a meaning, like a cockney explaining the Elephant and Castle without a nod towards the Infanta of Castille. He took *Rhetora* as the proper name of a writer on jurisprudence, and, confusing timocracy and democracy, remarked *demos enim divites sunt. Dike*, he also construed, *civilis communicatio est*.[2] He professed to restrain himself to the plain exposition of the text, *nunquam de me dixi aliquid, sed opiniones peripateticorum quanto fidelius potui exponi*;[3] in fact here, as in his other commentaries, he could not resist a fling at his fellow divines for obstructing the advance of science and philosophy. St Thomas, more self-effacing, wrote more drily and with fewer digressions. His divisions were neater; he made less parade of authorities from Greek and Latin literature, and was quicker to suggest the Christian setting of a topic; he spoke of marrying where St Albert spoke of mating. His information was not so extensive and possibly he touched contemporary life at fewer points, but he was the more careful and synthetical thinker, and the greater theologian.

The *Summa Theologica* and the *Contra Gentes* made forty-three references to the *Timaeus*, twenty each to the *Phaedo* and the *Phaedrus*, nine to the *Republic*, eight to the *Parmenides*, five to the *Theaetetus*, four to the *Alcibiades* (authenticity doubtful) and to the *Meno*, three to the *Philebus* and to the *Laws*. The communism of the *Republic* criticized by Aristotle was mentioned by Moerbeke as occurring in some sort of way in Plato's political thought

[1] *Politics*, i, 6.
[2] *I Politics, cap.* 4, 3, 2.
[3] *Epilogue*, Ed. Borgnet, viii, p. 803. F. Pelster. *Kritische Studien zum Leben und zu den Schriften Alberts des Grossen*. Freiburg. 1920.

—quemadmodum in politia Platonis.[1] The locus according to St Albert was the second part of a book called the *Timaeus*, which he described as a treatise on positive justice and the ordering of cities, adding that such a treatise was not a common Latin interest, *quas apud Latinos rara est, quamvis habeatur a quibusdam*. St Thomas was no less perfunctory.[2] Where Aristotle admired the originality and inquiring spirit of Plato's writings and warned us that perfection is not to be expected everywhere, Moerbeke mistranslated and presented Socrates' talk as redundant, trifling, immature and querulous, *superfluum quidem habent omnes Socratis sermones et leve et nobum et quaestionum plenum*.[3] St Albert and St Thomas were little more considerate. How could they have been otherwise?

2. *The Brief Neo-Hellenism*

Susemihl, the first editor of Moerbeke's translation of the *Politics*, praised him for his faithfulness and for reproducing the curtness of the original.[4] It must be confessed, however, that the medieval Latin versions of Aristotle are crabbed documents, and insertions from Arabic authors do not make for easier reading. The look of whole paragraphs and *lectiones* is uninviting, though occasional phrases are telling. No considerations of literary style deterred the later Scholastics from tying and untying the knots of close argument.

Whatever the reason—the growth of analytic specialization or of the apparatus for government or too rich an experience for the academics to assimilate—the fact was that as the thirteenth century wore on so the jargon of experts increased at the expense of graciousness. Their terminology may have achieved exact description, but it was not communicative except to people in the know, as happens when specialists lack a general education. The clichés of Scholasticism were not even in plain wording. The poets, historians and orators of ancient Rome were omitted from the Arts curriculum of Paris; grammar

[1] *Politics* ii, 1. 1261 a 5 (Republic IV, 421c–427*b*, 457*b*).
[2] *I Politics, cap.* 1 & *lect.* 1.
[3] *Politics* ii, 6. 1265a 10. St Albert. *cap.* 3. St Thomas, *lect.* 6.
[4] *Aristotelis Politicorum libri octo cum vetusta translatione Gulielmi de Moerbeka*. Leipzig, 1872.

drove out literature and cramming from set books replaced browsing on the classics.[1] Even for Orleans, where the tradition of Chartres lingered longer than in other French universities, there is scant documentary evidence that a regular Faculty of Arts existed after the end of the century. It is not much of an exaggeration to say that the fertile deposits from twelfth-century humanism were blown into dust, the racy allegories of the biblical theologians were left brittle by the logicians, and the rich humours of custom were dried under the legists.[2]

Music and mathematics were sisters, but philosophy was forgetting how to sing. The schoolmen disputed about abstract truths; they did not show us their hearts. Lengthy passages of analysis in rough logical notation were unrelieved by description. A few intermittent prose lyrics relieved the *Summa Theologica* but the work was less eloquent than the *Contra Gentes*, and neither could compare with the best work of earlier divines. Chartres was no longer a school; only its cathedral survived to manifest the marriage of the perfect ratios of Pythagoras with the philosophy of light.[3] Theologians left the gardens and fields to the painters and profane poets. To the philosophers they were but an occasion for a treatise on vegetables. It is is strange that an intellectual conviction of the real and not merely symbolical value of the sensible world should have waxed with a decay of style in declaring its beauty.

Such however was the effect of Latin Aristoteleanism, except in the theology of the devout life.[4] Even there Petrarch deplored the professionalism it engendered, and spiritual writers preferred a *docta ignorantia*. Symbolism turned on ecclesiastical ornamentation, natural science failed to live up to its promise at the time of Grosseteste, the full empirical method practised by St Albert, particularly in zoology, relapsed into the hearsay

[1] H. Denifle and E. Chatelain. *Chartularium Universitatis Parisiensis*, i, 228, 278; ii, 678; iii, 145. Paris, 1889–97.

[2] E. Faval. *Les arts poétiques de XIIe et XIIIe siècles*. Paris, 1933.
H. Waddell. *The Wandering Scholars*. v, 'Humanism in the first half of the Twelfth Century.'
E. Gilson. 'Le moyen âge et le naturalisme antique.' *AHDL*, viii. Paris, 1932.

[3] O. von Simson. *The Gothic Cathedral: The Origins of Gothic Architecture and the Medieval Concept of Order*. London, 1956.
K. Clark. *Landscape into Art*, i, 'The Landscape of Symbols'. London, 1949.

[4] H. Grundmann. *Religiöse Bewegungen im Mittelalter*. Berlin, 1935.

of the medieval bestiaries, philosophy was lost in nominalism. Not surprisingly fables abounded and the world seemed composed less of objects of fresh observation, experiment, and research, than of hackneyed allegories with a moral—the pelican in its piety, the viper a warning to frigid women.[1] If the humanities languished under Scholasticism and an earlier warmth and colour were dispelled, still the arts and philosophy had not altogether drifted apart in the thirteenth century. Men were at least trying to argue with a real Aristotle, not to exhibit a dummy dressed up in scholastic orthodoxy. The sap of humanism still flowed beneath the wrinkled integument.

On occasion St Thomas could write with elegance and feeling, as some of his prologues and his liturgical poems bear witness. Cicero and Seneca were quoted, the poets too, Horace, Ovid and Terence, the historians Julius Caesar and Livy, the geographer Strabo. Macrobius was used and, on points of political doctrine, the anecdotes of Valerius Maximus. Sallust was often referred to in the *de Regimine Principum*. The military text of Vegetius—Marlborough's favourite reading—sprang to his mind on points of Scripture.[2] Like other medievals he had learnt from the *Timaeus* the justice of the world-order, and an early fourteenth-century fresco by Triani at Pisa portrays him seated between Plato and Aristotle who offer him their books. Quotations from most authors were usually at second-hand. Polybius was not consulted, Cassiodorus was known only for his exposition of the Psalter. It is said, however, that he possessed a wider knowledge of Greek patristic literature than most of his immediate predecessors and contemporaries.[3]

His workaday prose, terse and laconic of phrase, repetitive of commonplace analogies and monotonous in syntax, was sufficiently functional and sometimes revealed a certain spare beauty undecorated by imagery: usually he composed by

[1] *The Book of Beasts*. Edited by T. H. White. London, 1954.
A. C. Crombie. 'Grosseteste's Position in the History of Science.' *Robert Grosseteste*, Scholar and Bishop. Ed. D. A. Callus. Oxford, 1955.

[2] *de Factis Dictisque Memorabilibus Libri IX. Rei Militaris Institua.*
1a–2ae. xl, 5. 2a–2ae. cxiii, 1, *ad* 2. cliii, 5, *ad* 2.

[3] I. Backes. *Die Christologie des hl. Thomas von Aquin und die griechischen Kirchenvater*. Paderborn, 1931.

dictation to a secretary.[1] The fixtures of his social and political theory may look like law-words and logic-words, and the mechanics of their combination may conceal the lope, one may well say, the leap of his argument. Latin terms which came trailing a long history in Roman jurisprudence were newly inflected from Greek thought and breathed an ampler air than the categories of law, thus, for example, *consensus*, *usus*, *imperium*, *ratio*, *dominium*, *naturale*, *jus*, *societas*, *judicium*, *mos* and *aequitas*. The Roman *dos* was heightened to signify the lissomeness, glow and other qualities of human bodies after the Resurrection.[2] Later Scholasticism scarcely sustained the freshness and naturalism.

Few writers of the thirteenth century were well-versed in Greek. *Politica vero a polis, quod est pluralitas*, hazarded Vincent of Beauvais.[3] Roger Bacon was scathing about 'inexpert boys who were made Masters before they were fit to be scholars'. Yet he also referred to men well able to work from Greek texts.[4] They were to be found in the circles in which St Thomas moved—William Moerbeke was a conspicuous example—and the scraps of Greek in his commentaries were lifted from Grosseteste. Interpretations of Aristotle were more confident when dealing with ideas, as in the first book of the *Politics*, than with Greek history, as in the second book. His insight into Aristotle's mind was remarkable, especially when it is remembered how easily he could have been distracted by the Neo-Platonists and the Arab Aristoteleans. A genuine Hellenism was recaptured: a pity it was lost so soon. Perhaps a genuinely philosophical discourse which corresponded to the Greek City could not answer to the new Nation-States or manage the apparatus of Roman Law taken over from the Late Empire and furbished by the Glossators.

Then also he met and lived with other Dominicans, either attached to the *Provincia Graeciae*, the thirteenth foundation of the Order (1228), in whose territory the still unruined Parthenon was a Christian temple, or working in the Near and Middle

[1] A. Dondaine. *Secrétaires de Saint Thomas*. Rome, 1956.
[2] *Supplementum*, lxxxii–lxxxv.
[3] *Speculum Doctrinale*, iv, 2.
[4] *Opus Minus*, 7. Opus Tertium, xxv.

East. His *de Regimine Principum* was dedicated to the King of Cyprus; in return a chapel was dedicated to him after his death in the Cathedral of Nicosia. Though most of the friars were Westerners, mistrusted by the Greeks as intruders and chaplains to the Frankish aggressors or to the Genoese and Venetian traders, others were true Hellenists, acquainted with the literature of the men with whom they debated. If Greek was taken into Latin so was Latin into Greek—the translation might even be of the Latin version of a Greek Father.[1]

The commerce of ideas between West and East matched the trade exchange of woollens, salted fish and ironmongery for silks, spices and precious stones. Both were paralleled by the attempt to impose Western political forms and ecclesiastical discipline and ritual on the occupied territories of the Eastern Empire. The Byzantines were proud of their culture and disposed to dismiss Latin theology as crude because of the alleged poverty of its language. Though the title of Romans adhered, as Gibbon said, to the last fragments of the Empire of Constantinople, the name of Frank and Latin had acquired an equal signification and extent and the Latin tongue had fallen into gradual oblivion since the reign of Justinian.[2]

The split between the Western and Eastern Churches was now beyond human repair; the crucial date was not 1054 under the Patriarch Michael Cerularius, but 1204, when the behaviour of the Latins during the Fourth Crusade brought to a head the resentment the Greeks had long felt about the establishment of the Frankish and German Empires, their apprehensions of designs on the Balkans by the Normans who had conquered Byzantine Italy and their disapproval of the Hildebrandine reforms which had made the Pope his own Emperor.[3] From fear of the Turk the schism was temporarily healed—it was the main business of the Council of Lyons to which St Thomas was travelling when he died—but the fundamental differences of ideology, liturgy and discipline were not composed, and Constantinople was nervous about the ambitions of the dour

[1] R. Loernetz. *Autour du traité de fr. Barthelmy de Constantinople contre les Grecs*. AFP vi, pp. 267–311, 361–71. Rome, 1036.
[2] *Decline and Fall of the Roman Empire*, ch. liii.
[3] S. Runciman. *The Eastern Schism: A Study of the Papacy and the Eastern Churches during the XIth and XIIth Centuries*. Oxford, 1956.

king at Naples, Charles of Anjou, brother to St Louis and friend of the Dominicans—though rumour passed into legend that he was reputed to have poisoned St Thomas.

The Western Church was never quite able to forget that its first language was Greek. Nevertheless its adoption of Latin, the language of a long tradition of law and administration, brought its own subtle dangers to philosophical and religious thinking especially when it became a kind of *lingua franca*, a medium between peoples with their own different and racier vernaculars, and relapsed into a condition like that of pidgin English, useful for business transactions but not for the communication of imaginative and abstruse conceptions. The ordinary people were unable to enter into its discourse, and it became a class-language for schoolmen. It served for clerics in the Canon Law and professionals in the Civil Law; it invested the forms of religion itself so that many became matters of sectional interest, unlike the great days of Eastern Christianity, when speculation and the liturgy were conducted in a language generally understood and an educated body of laymen threw itself into theological debates.

The grave genius of Latinity fitted the disputation when terms—and ideas—were cut and polished as if they were stones. In the hands of many of his successors, trained in canonical legalism, St Thomas's moral science took on a hard glitter and his dialectic lost its suppleness. The response of the single human substance to the living God was analysed into a set of abstract items, which were isolated and made to look like granulated particles within a system of regulations mechanically adjusted to a hairsbreadth. Whereas he had recognized an inner finality in law, even in its sanctions, and had related the idea of power to ultimate felicity, later social theologians had the air of insisting on the *status quo*.[1] Whereas he had taken *imperium* as the expression of practical wisdom charging a right human act at the moment of performance, they transformed it into the dictate of governing will.[2] Whereas he had treated right as the

[1] 1a–2ae. ii, 4. xc, 3, *ad* 2. 2a–2ae. lxvii, 1.
V Metaphysics, lect, 1. *I Politics, lect.* 1–5.

[2] 1a–2ae. xvii, 1–9. *III Ethics, lect.* 1. *VI, lect.* 9. *III de Anima, lect.* 15. Disputations, XVII *de Veritate*, 3.

dikaion of the Greeks and the equity of the Roman Stoics, for them it was the less elastic *jus* of the legalists.[1] Whereas he acknowledged the spiritual freedom of the person talking with God beyond the scheme of creatures, their notion was less versatile.[2] The freeman became merely the possessor of such rights which the ruler allowed as not detrimental to the State and which were accordingly guaranteed against violation or trespass by another private person, and of a capacity for originating such action as belongs to the scheme of law. The process had been at work in the life of the Western Church since the beginning of the Middle Ages. A position for every clerk in the hierarchy of jurisdiction was defined; there was no ordination without a title, and this was provided by the benefice, or permanent endowment for the office.[3]

The ideal of the *civitas*, a harmonious common life, gained in clearness but lost in richness when it was legalized as a *vinculum sociale* engendering an obligation, and that, according to juridical theologians, *ex delicto*, for human nature was criminal, they thought, and unless prevented by law man will prey on man. To St Thomas, on the other hand, citizenship was an active partnership, a sharing in a social process, as well as the possession of certain legally guaranteed rights. A *politia* was a living association adapting itself to people's various and changing needs as well as a legal and immobile setting, or *Status*, established once for all.[4] The common good was more embracing and generous than the public good. Social life had not yet been tidied up by the detailed legislating of a central authority; there was more of a sprawl about it than a political planner would like, and also a profounder *pietas* and religion.

The *multitudo ordinata* was peopled with persons striving for their proper ends rather than with individuals set in their proper places. 'Reason', according to St Thomas, was less the

[1] *I Metaphysics, lect.* 3. (i, 2, 982 b 25).

[2] *de Hebdomadibus*, Prologue. *III Sentences*, X,ii,2, iii. I *de Potentia*. 1. X *de Veritate*, 2, *ad* 5.

[3] G. le Bas. 'Canon Law'. *LMA* p. 330–1.

[4] 2a–2ae. clxxxiii, 1, 2.
A. E. Zimmern. *The Greek Commonwealth: Politics and Economics in Fifth-Century Athens*. Oxford, 1922.

Latin *ratio* than the Greek *logos*. In a sense he had to wrestle with unyielding terms; his achievement may be compared with the effect of Rubens on previous Flemish mannerisms. It will pass unnoticed unless his constant use of analogy is appreciated and the variations he played on the meaning of terms. The law-words he used in social philosophy should not be taken in an unequivocal sense. His use of contrasting forms in a single situation is coarsened when treated as the shaking of lumps in a deposit; thus his teaching on the so-called 'mixed life' of perfection was later rendered as if it demanded periods of contemplation interspersed with bouts of activity.[1] Greek modulations also should relax Latin words in the context of ownership, of law and of obedience. *Superior* and *praelatus* kept their sense of high place and preference, but *auctoritas* recovered its old sense of *fontalitas*; ruling meant pasturing, and principality proclaimed origin rather than self-assertiveness.[2]

Let us not exaggerate the inflexibility of contemporary Latin. In the thirteenth century it was not yet a dead language, and accent and assonance, which disregarded the quantities of literary Latin, were telling effects in expository treatises and chancery documents as well as in poetry. St Jerome's Vulgate, as Dean Milman said, had almost created a new language, pliant and expansive, naturalizing Eastern imagery, modes of expression and religious notions, yet retaining much of its own peculiar strength and solidity. Later came rhyme, then new rhythms from the vernacular. Hymnody borrowed from the secular lyric, and the Goliards who parodied liturgical pieces were merely reversing the process; in those days the partition was thin between the sacred and the profane.[3] Some things are better said *in romana*, said Hugh of St Victor. St Thomas preached in the Neapolitan, but the tang of romance in his

[1] 2a–2ae. clxxxviii, 6.

[2] *I Sentences*, XXIX, i, 1. 1a. xxxiii, 4, *ad* 1. 3a. xvi, 11. lv, 5. lxiv, 6. 2a–2ae. lxxiv, 1. xcviii, 3.
Commentary, *Psalms*, xxii, 1.
T. Roberts. *Black Popes: Authority, its Use and Abuse*. London, 1954.

[3] See S. Gaselee. *The Transition from the Late Latin Lyric to the Medieval Love Poem*. Cambridge, 1931.
F. J. E. Raby. *History of Christian-Latin Poetry from the beginnings to the Close of the Middle Ages*. Oxford, 1927.
F. Brittain. *The Medieval Latin and Romance Lyric to A.D.* 1300.

writings, blended with Hellenism, evaporated too soon and there was little trace of it in his followers.

One does not have to read between the lines of his scholastic arguments to perceive that humane intercourses were accounted more important than official transactions. He did what Sir Ernest Barker requires for an appreciation of Aristotle's thought: unhooking the word *nature* from the Latin *natura*, with its suggestion of *nativitas*, birth and the primitive, he hitched it to the Greek *phusis*, with its suggestion of growing up and the civilized.[1] *Natura finis est*, translated Moerbeke, *finis rerum naturalium est natura ipsarum*, commented St Thomas.[2] His teleology was less concerned to accumulate external purposes for happenings than to discover the inherent drives at work.[3] The political virtues disposed from within themselves to contemplation.[4] In other words, the present city and the City of God were stages in a single process. By serving our country we may help save our souls and the sword should not sleep in our hand till we have built Jerusalem in a green and pleasant land.

3. *Political Method*

Scholasticism has been compared to Cobdenism or Marxism for its habit of meeting changed circumstances with doctrinaire rigidity, as for example with its allegedly obsolete condemnation of usury. Certainly many social theologians and philosophers of its tradition only grudgingly reconciled themselves to the creation of credit by a paper entry, and never to industrial Capitalism. Perhaps they did not altogether avoid what Lord Salisbury called the commonest error—of sticking to the carcasses of dead policies.

The *a priori* temper of the schoolmen of the high Middle Ages has been exaggerated. They sought everywhere for reasons, some of which appeared far-fetched and empty when the early impulse of Aristotelean empiricism had died out. The later Scholastics, the nominalists included, would have been the

[1] *The Politics of Aristotle*. 'Notes on the Vocabulary', p. xxiii.

[2] *Politics*, i, 2. 1252 b 27.

[3] *III Contra Gentes*, 14.

[4] 2a–2ae. clxxx, 2.

better for a dose of positivism. During the thirteenth century, however, it was well recognized that induction was indispensable to sound reasoning and that *a priori* proof was but one half of deduction, and the second half at that. St Thomas's own argumentation never pretended to arrive at facts from principles, rather the reverse, for it was by *a posteriori* deduction that it interpreted the findings of induction from sense-data.[1] His reason was not cold, his metaphysics did not dwell in a lunar landscape of meanings seen in a reflected light. His political theory took account of the variety of social experience, offered no ready-made orthodoxy, and recommended no single line of action from which Utopia would result.

His learning did not comprehend economic history, the comparative study of cultures, or the sociological investigation of human behaviour as affected by the social structure. If he appreciated, which is doubtful, that the distinction between warriors and food-producers was taken for granted by the Greeks and was the foundation of their communities, he himself did not restrict citizenship to an élite living on a tributary population. As we have noticed, his was a civilian, not a military, conception of the State. Then also he belonged to a world-religion with a universal doctrine and law. Consequently the frontiers of his political community were more open than those of the Greeks. Intermarriage between subjects of different City-States was abnormal according to Aristotle; it was not frowned on by the Church's law which then, as now, strove to break down barriers of race, prejudice and accident.

There is little to suggest that the medieval writers ever thought that their plan, still less the accomplishment, of the *civitas* or *regnum* was a reconstruction of antique models. They themselves, the largest body of writers to attract palaeographers, had no knowledge of palaeography. They may appear to us to have been conscienceless about the falsification of facts, yet with respect to history it was their powers of criticism that were deficient rather than their sympathy. They felt the dramatic strength of the Bible and never doubted that it was the authentic word of God, but it was a widespread habit to use the factual

[1] T. Gilby, *Barbara Celarent: A Description of Scholastic Dialectic*, xxvii, xxviii. London, 1949.

details chiefly as textual ornamentations to an argument.

When they did not treat history as theology or literature or, as Bolingbroke said, as 'philosophy teaching by examples', they manipulated it as an art rather than a science, and when, for instance, they appealed to such titles as the Donation of Constantine and the Translation of the Empire, their success in shaping the future by their version of the past anticipated the Whig interpretation of Magna Charta or the derogatory picture of Toryism between the two World Wars drawn by Labour publicists.[1] Although they stretched points of history it was not with the passion of later controversialist: the age was not one of confessional conflict like that which produced the *Magdeburg Centuries* or the *Ecclesiastical Annals* of Baronius.

Mythical and real characters were spoken of in the same breath—Aeneas, Trajan, King Arthur, King Alfred, and the Cid Campeador, all were equally real. Alexander the Great was at once a historical figure and the dream-symbol of Daniel's prophecy; he was regarded sometimes as an instrument of God and sometimes as a manifestation of the devil.[2] The medievals were not historicists who felt that an accumulation of events of themselves disclosed meanings; they saw themselves caught up in a living drama of which the acts were the great events of the Redemption played in the soul of Everyman. They had an eye for detail, a taste for anecdote, a keen sense of precedent, and they produced many chroniclers, but history, they thought, was as universal as Divine Providence. They found it in the Bible and the Lives of the Saints. They saw it painted on the broad canvas of St Augustine's *de Civitate Dei*. Their religion was grounded on the deeds of God still made manifest, not on a stock of reasons. History was the record of a world-process which began with the Creation, was centred in Christ and his Church, and culminated in the Judgment. It was not the record of events which stretched into endless future series or ever repetitively circled back.[3]

Their interest was not in pure history. Committed to a

[1] *See Deliberatio Domini Papae Innocentii super factum imperii de tribus electis.* PL, ccvi, 1025.
[2] G. Cary. *The Medieval Alexander.* Cambridge, 1956.
[3] J. Baillie. *The Belief in Progress.* London, 1950.

cause, they would have appreciated the bias of a Droysen or Treitschke, but not the detachment of a Ranke. With this difference, however, in the case of the Aristoteleans among them, namely that their dialectic was not an idealism which imagined that ideas could produce facts, or that any abstraction, or accumulations of abstractions, could adequately express real things. Despite his skill with analysis, classification, and synthesis, St Thomas never reckoned, as the Averroists did, that singular substances were trivial because they could not entirely be stated as formal types or schematized.[1] Truth was the uttering of what exists, not the understanding of a bodiless essence, and what exists first of all for the human mind was an individual material thing. Every true statement we made came back to a judgment about the physical world. The mind was in touch with this environment through *ratio particularis*, that is through the experience and experiment of intelligent sensation.[2] Hence natural philosophy, to which moral and political science were were committed, if it were to remain natural must preserve the movement and sensibility of our surroundings and resist the temptation of transferring its conclusions wholly into mathematical notation.[3]

The world was like a woman then, not quite tractable by cold argument. Moreover politics was a discipline which dealt with the practicable in a workaday world. Its proper material was much more contingent than that of natural philosophy. Hence it was not really an exact science. As Clausewitz said of the art of war, that while it must adhere to the capital maxim, maintenance of object, for the rest it operates in the province of chance, for the intrusion of which it must leave a great margin.

Nevertheless its method combined insight into ideas with an examination of facts and decisions about them. If some of its rules were merely the result of digested experience, others were conclusions of higher sciences. For it was not practical to take means and let those ends follow which might. For means were determined by ends, and ends as such were objects of theory.

[1] Disputations, *de Caritate*, 2.
[2] *XV de Veritate*, 2. *ad* 3. 1a. lxxviii, 4. *II de Anima, lect.* 13.
[3] *I Physics, lect.* 1. *de Trinitate*, vi, 1, 2.

Thus prudence applied theory to contingent events.[1] Thus meanings lay behind the technique of politics. That didactic moral generalizations were none of its business might well be granted. Nevertheless if it were to be really practical, as Clarendon recognized, it must allow for transcendental notions, such as Divine Providence working through history and the suprarational character of social happiness, and not reduce itself to the positivism of Hobbes' *Leviathan*.[2]

The Roman Law itself was not developed by mere practitioners but by lawyers who reflected on *ratio naturalis* and its implications. They were rarely so empirical as to be wary about philosophizing. The theoretic apparatus provided by the Byzantine academics was influenced by Christian values. It played an important part in shaping the imperial jurisprudence, as did instruction in the texts of Justinian in reviving it. Yet when all is said and done, politics is specifically empirical and practical.

'Observation shows us that—' this phrase, which began the *Politics*, was sustained throughout. The first disciples of Aristotle in the West were neither exclusively *a priori* in their discourse, nor even deductive, but thoroughly involved in the play of events.[3] They were not political puritans who suffered an abstract principle to override the feelings, desires, hopes and fears of ordinary human beings. They were not so preoccupied with an allegedly divine design as to be forgetful of experience. They were well aware that political science operated in a mutable medium, *in materia variabili et contingenti*, where even justice varied according to differing conditions.[4] Their judgments were not distilled in a vacuum but were in touch with the way things worked. They remembered familiar custom, turned to experience and argued by induction.[5] If they were rationalists their mood was not that of the Enlightenment and French Revolution. If they showed an improving spirit their schemes were not imposed in defiance of the past.

[1] *VI Ethics, lect.* 7.
[2] B. H. G. Wormald. *Clarendon*. p. 237, Cambridge, 1951.
[3] R. Linhardt. *Die Sozialprinzipen des hl. Thomas von Aquin*. Freiburg, 1932.
[4] *V. Ethics, lect.* 2, 12. *I, lect.* 3. VI lect. 9. 2a–2ae. xlvii, 3, 6, 7.
[5] *I Ethics*, lect. 11. *II Posterior Analytics*, lect. 20. *II Sentences*, XXV, ii, 2.

Legal science was expected to consult the *sententialia* of judges and limit its precepts to what was practicable. Similarly politics should know that the practicable is not the same as the everything possible. Let it imitate the House of Savoy taking Italy leaf by leaf like an artichoke. Then a disciplined order may be achieved, in which men are content with sufficient justice, suspicious of fanaticism, unsubmissive to a martinet conscience and prepared, like Sir Robert Walpole, to let sleeping dogs lie.

A favourite comparison likened the well-ordered city to the balanced personality composed of different powers, intellectual, volitional, sensitive and emotional.[1] He was not a doctrinaire or an ascetic who attempted to live by will-power alone. He was neither fanatical nor finical. He suffered no part of himself to tyrannize over the rest. He was reasonable, dutiful and sufficiently sensual. He fitted his skin. And so the science which treats of such a political community will not demand abstract demonstration on points of fact: from past experience and present inclination it will distrust a lofty moral tone. It will not be tyrannized over by ideas, still less by incantations, such as equality and colonialism. To use the words of St Thomas More, it will not be the philosophy 'that makes everything to be alike fitting at all times', but 'another philosophy that is more pliable, that knows its own proper scenes, and accommodates itself'; it will recognize that human affirmations or negation do not change the natural course of events.[2] Perhaps political good sense thrives best in a temperate zone. *Est igitur eligenda regio temperata ad institutionem civitatis vel regni.*[3] History bears out the reflection that representative institutions formed in a empirical, sceptical and tolerant atmosphere hardly bear transplanting to a hotter climate.

4. *The Polity*

Let the ruler be the servant of his subjects—the pride and pomp of power may have prevented compliance with this injunction

[1] 1a–2ae. lviii, 2. *V Ethics, lect.* 17. 1a. lxxxi, 3, *ad* 2.
[2] *I Perihermeneias, lect.* 14.
[3] *de Regimine Principum*, ii, 1.

of which a prince was reminded by the ceremonies of Maundy Thursday. He may have been a rough master, but there were many such moments when the Church recalled him to pity and even tenderness. During the thirteenth century it was the general conviction that the realm was preserved by customary and constitutional law. The king was a kind of trustee whose duty it was to safeguard the laws. There was scarcely any important statute in which he omitted to claim that he had consulted advice and received assent, in other words, that he was in agreement with the legal convictions of the community.[1] Powerful interests jealously watched for a breach of promise on his part, and this might well provoke appeal to ecclesiastical authority.

The Church's own government was theocratic not democratic in that authority descended from top to bottom, and the action of the popes was directed towards securing greater freedom from constitutional checks—an issue which came to a head in the later fourteenth and early fifteenth centuries with the disputes between the *conciliaristae* and the *papalistae*—the terms seem to date from Laurence of Arezzo in 1440.[2] Nevertheless the weight of the Canonists, not least those of the Papalist wing, was generally thrown on the side of those who would limit the civil executive by law and popular consent. Their convictions went deeper than their motives about political expedience. Their temper was strongly constitutionalist. They were accustomed to the formal procedure of discussion and agreement. Their bias was toward deliberation and majority decision and away from the magic of majesty acquired by force or inherited by blood.

When St Thomas quoted the *Glossa Ordinaria* to the effect that the prince was above criticism, he capped it with the remark from Gregory IX's *Decretals*, that whatever law a man makes for another that he should keep himself.[3] This text marks his intermediate position between the old constitutionalism of feudal custom and the new absolutism of the legalist

[1] F. Kern. *Kingship and Law in the Middle Ages*. p. 73.
[2] *Liber de Ecclesiastica Potestate*. See A. H. Chroust and J. A. Corbett. *MS*, xi, pp. 62—76. Toronto, 1949.
B. Tierney. *Foundations of the Conciliar Theory*.
[3] 1a–2ae. xcv, 5, *ad* 3.

lawyers. It cannot be alleged that the Canon Law was on the side of liberty as nineteenth-century Liberals conceived it. No Roman lawyer was for freedom in the sense that an English common lawyer used the term. Yet the canons favoured a show of reasonableness and the consent of subjects, and the civil law borrowed much from them, for instance in applying the maxim, *quod omnes tangit ab omnibus approbetur.*[1]

Monarchy was the normal type of government in the Middle Ages. Inside the universe conceived as a hierarchy of powers, the supreme temporal ruler gathered some of the awe due to divine majesty. The *Contra Gentes* made a passing reference to the *altitudo regiae dignitatis*, and the dedication to the King of Cyprus of the *de Regimine Principum* wonders, almost in the eighteenth-century fashion, what might be offered *regiae celsitudini dignum.*[2] Nevertheless there was no feeling that the prince personated Jupiter, no dread of the divinity that hedges in a king. The mystique of the Divine Right of Kings, of the Lord's anointed, of their Sacred Majesties, of Throne and Altar and the romantic ideals of legitimism were later sentiments not generally entertained by the medievals.

The Holy Roman Emperor had once been a *vicarius Dei* and almost a priest, but papal policy, mistrustful of a rival pontiff and a civic sacramentalism, had drily restrained the veneration paid to him: no indelible character was conferred at the coronation anointing. Legend might murmur of Barbarossa, not dead but sleeping in the mountain, and his cult was encouraged by Frederick II's party. But the climate in which St Thomas lived was not favourable to the imperial spell. Cologne was a trading city ruled by its Bishop and merchants, Paris and the Umbrian cities had their own pride, and Naples, though it rallied to Manfred and Conradin, was never part of the Reich. Men west of the Rhine and south of the Alps were not cowed by *Kaiserpolitik*; their princes were no mere *reguli*, and they met an arrogant imperialism much in the spirit of John of Salisbury's sharp rejoinder to Rainald of Dassel, 'Who then appointed the Germans to be judges over the nations?'

[1] M. Gaines Post. 'A Romano-Canonical Maxim ... in Bracton.' *Traditio*, iv, pp. 197–251. New York, 1946.
M. V. Clarke. *Medieval Representation and Consent*, p. 266. London, 1936.
[2] *III Contra Gentes*, 49. *de Regimine Principum*, Prologue. see 1a. cviii, 6.

It was acknowledged that a prince might be compared to a father; he was sire, and an almost involuntary respect for his grandeur conferred on the throne and kingdom the strength of patriarchal loyalty and confidence of race. All the same if St Thomas warmed to non-rational factors of social cohesion, he was cool about purely paternalist rule—political prudence differed from domestic prudence because the State was not a large household.[1] Indeed a Slave-State, apart from its abuses, was rather like a family in that subjects were not their own masters, whereas a true polity was composed of free men and the executive power was constitutionally limited, *coarctata secundum aliquas leges civitatis.*[2] The superiority of the ruler derived more from the excellence of his political virtue than from the glamour of his name, and the ranks of power were computed according to divine causality working through office and not according to ties of blood, emotions of abasement or any submissive sympathy. People should not crave to have their decisions taken for them. There was no *mein Führer* business, the sovereign's duties were rather those of a first magistrate—the thought was closer to Jefferson than to Bolingbroke and the idea of a Patriot-King.[3]

Three strands entered into the idea of monarchy, the central principle of unity, the mode of transmitting kingly power, and the restrictions, if any, on its exercise. As for the first, the arguments for having one person at the head of the community, to look beyond conflicting sectional interests and to direct the whole to the common welfare, were generally admitted; from this point of view, monarchy seemed as natural as the V formation of migrating geese.[4]

Secondly, the succession might be established by heredity, or election, or *coup de main* subsequently ratified. Theologians showed a preference for election, and this too was canonical form—even the absolutist lawyers harked back to a concession of power in the distant past. The imperial dignity itself was not dynastic. Elective representation was in accord with the

[1] *Politics*, i, 2. 1252 a 20. 1259 b 8–16.
[2] *I Politics, lect.* 1. *III, lect.* 7. *V Ethics, lect.* 8.
[3] *I Politics, lect.* 10. *de Regimine Principum*, i, 4. (Ptolemy of Lucca. iv, 8)
[4] *de Regimine Principum*, i, 2, 6.

political mood of the Church. It was supported by the moral teaching that obedience was not submission to force, genial or otherwise, but the free acceptance of authority as being one's own and no alien imposition.

Thirdly, was the effective sovereign bound to abide by the rules agreed on by the people or, the limits set by moral laws being taken for granted, could his power be exercised absolutely? That was to become a live question. A written constitutition which can be amended only by a referendum and which constrains both legislature and executive is a modern instrument only sketchily anticipated in the Middle Ages. A law was a measure agreed on by a community of freemen, and the ruler had to observe its bounds. Respect for the liberties of Christian men was expressed alike by the feudal lawyers and thirteenth-century publicists, and confirmed by the teachings of Aristotle; the ruler was subject to the interests of the polity of which he was part.[1] The now powerful merchant classes shared the same view: the men of Lincoln maintained that ill luck befell a king who wore his crown within its walls.

Sparta was praised because the supreme council of State arrived at its decisions on the basis of written rules set down in legal form.[2] St Albert described sovereign authority in a civilized State as being that of one man who accepted the task of governing other men free like himself, and who did not command them except according to the constitutional charter.[3] There was no room for the hero or superman who declared that the law was what he had in fact enacted. An edict, observed St Thomas, which is not formed according to reason has the character of violence, not of law; that is, it exacts a non-voluntary response, whereas a truly lawful action is performed reasonably and freely.[4] There was no mention of the philosopher-king whose wisdom found no need to consult the

[1] *Politics*, iii, 6. 1278 b 32. St Thomas, *lect.* 15. Such also was the thought of the *Roman de la Rose.*

[2] *II Politics*, *lect.* 14. (ii, 9. 1270 b 30).

[3] *I Politics*, *cap.* 9.

[4] 1a–2ae. xciii, 3, *ad* 2.
P. Halmos, 'Political Leadership and the "Abnorm".' *Towards a Measure of Man*, pp. 128–143. London, 1957.

will of his subjects or who brought law out of his own bosom. Medieval sentiment was that of Plato's *Laws*, not of the *Republic*.

Left to itself the tendency of this political Aristoteleanism might well have been to transform the king into the first magistrate. It encountered contrary movements, however, set up partly by a mystique of kingship, but more, in the realm of ideas, by the development of the Roman Law. Justinian's *Princeps* became the new model of the ruler. The twelfth century had been robustly critical of kings who acted beyond their powers. The thirteenth century was tamer by comparison. Concerning tyrannicide St Thomas was more hesitant than John of Salisbury and almost, one might say, more prim. He spoke of the right of active resistance more decisively in earlier than in later texts.[1] Though he had nothing but condemnation for the lawless exercise of government and probably remained of the opinion that the people had not entirely alienated their power to the prince, he seemed to grow more sensitive, perhaps more deferential, about the prerogatives of the sovereign, even when they were exercised improperly.[2] No writ could run against the Prince, though he was rightfully subject to the direction of law; no effective power—apart from the Church—existed to dismiss him or coerce him into constitutional paths.[3] This situation has proved a perpetual embarrassment to those Scholastic moralists whose tenet has been that all rebellions are wrong—until they succeed.

Evidence of what St Thomas reckoned was the soundest form of government is furnished by the Constitutions of his own group, the Order of Preachers. He was prominent in its academic administration and was a member of legislative Chapters and Commisions. His whole thought has proved such a pervasive influence on their temper, clerical in discipline yet lay in sympathy, that the Dominicans seem to stem as much from him as from St Dominic. Their Constitutions, which were thoroughly systematized by St Raymund of Pennafort, the disciplinarian Master-General who succeeded the more dashing Blessed Jordan of Saxony (d. 1237), had already been shaped

[1] For instance, compare *II Sentences*, XLIV, ii, 2 and 2a–2ae. xliii, 2, *ad.* 3.

[2] 2a–2ae. lxiii, 3.

[3] 1a–2ae. xcvi, 5, *ad* 3.

in most essentials before the death of St Dominic in 1221. In some ways the most impersonal of religious founders, St Dominic with good grace had allowed his self-governing institution to outvote him at a General Chapter on an important question of property-administration. His Castilian background was not that of the Inquisition and a centralizing court, but of local *fueros* and free communes that were the nurseries of European constitutional liberties. His Order was to grow with the guilds, corporations, parliaments and universities of the West, and to flourish most happily in the Free Cities and Nation-States where free citizenship was least impeded and the shadow of the Emperor did not fall. Ptolemy of Lucca was not untypical in his admiration for the Republic of Venice.

There may have been some connection through Simon de Montfort between the Dominican Constitutions and English parliamentary institutions; certainly both are the fruits of the same growth.[1] They are also said to have influenced the American Constitution, through Benjamin Franklin who studied them during his residence in Paris. The system combined a strong executive—the canonical *plena potestas*—with the practice of electing to administrative office and holding periodical inquests on the conduct of business. The spirit of feudalism and paternalism was absent; after one experiment with an abbot, *primus atque novissimus*, said Jordan of Saxony cryptically, priors of houses and priors provincials of national groups were elected who held office for a limited period, after which they returned to the ranks. The rule was later extended to the Master-General, the head of the whole order. Some appointments were made by the executive: tensions later developed between a free democracy and an efficient aristocracy, the former tending to lapse into easy-going ways, the latter to stiffen into a concern for privilege and vested interest. Nevertheless the ideal was that of authority welling up from within the community and checked by constitutional laws decided at periodical general assemblies, or Chapters.

The elective principle was of old standing and the functions of a Chapter to advise an ecclesiastical ruler were well under-

[1] E. Barker. *The Dominican Order and Convocation.*
W. A. Hinnebusch. *The Early English Friars Preachers.*

stood. Yet the bishop or abbot was a father, whereas the Dominican prior was an official; an abbey was a family, the Dominican priory a polity. The Dominican electorate not only chose their higher rulers, but also periodically called them to account, for a special place was assigned in Provincial and General Chapters to special commissaries or definitors, *diffinitores*, elected for this purpose. They sat alongside the priors or provincials in order to represent the non-governing class sentiment of the Order; they could be expected to be immune from the official defensiveness of superiors and, if necessary, to be properly critical of bureaucratic encroachments.[1]

Such was the mixed constitution of the group to which St Thomas belonged. The brethren, or *populus*, elected the Master-General, or constitutional monarch, through their representatives at the General Chapter, or Parliament. The same method, scaled down, was adopted in the election of the Prior Provincial at the Provincial Chapter or a Prior Conventual at the Chapter of the priory. A definitor may be compared to the *defensor civitatis* under the later Roman Empire, the justiciar in the Spanish kingdoms, the *sindicatus* in late medieval Italian cities who might call a retiring magistrate to account for any miscarriage of justice, and, in a sense, to the judges in Great Britain who protect the public against the official machine. The Masters in Theology, who were given a special advisory and honorific status, were like an aristocracy.

The balance has not always been preserved, for most company and service executives are inclined to strengthen their own hand, usually in the name of efficiency, and, given easier means of transmitting orders, an authoritarian temper grows at the expense of local responsibility. It has happened in the Admiralty, the Foreign Office, the highest religious institutions. A governing class emerges, sometimes on the strength more of achievement in the past than of capacity for the future. The Dominican aristocracy in particular has at times been regarded by the rest rather as the old Radicals regarded the House of

[1] M. D. Knowles. *The Religious Orders in England*, p. 154 sqq. Cambridge, 1948.
H. Denifle. 'Die Constitutionen des Predigerordens vom Jahr 1228.' *Archiv für Litteratur und Kirchenegeschichte*, i, pp. 165–227. Berlin-Freiburg, 1885.
'Quellen zur Gelehtengeschichte des Predigerordens im 13 und 14 Jahrhundert.' *Ibid.* ii, pp. 265–248.

Lords. The intellectual limits of obedience, however, have been consistently appreciated; the requirement has been satisfied that before ordinances can be issued evidence should be shown for them. The rigidity of standardization has been countered less by the indulgence of superiors than by the officially recognized instrument of dispensation, recommended without apology as the more reasonable and therefore the better course, not as a concession to human weakness. The tide of freedom has always run strong among the Dominicans, despite, or perhaps because of, the classical severity of their theology. St Albert refrained from condemning *democratia* in those parts of the *Ethics* and *Politics* where Aristotle was hostile; Lacordaire sat on the left in the Constituent Assembly of 1848, and declared before his reception into the French Academy that he hoped to die penitently religious but impenitently liberal.

The feeling for a true polity charged St Thomas's examination of prudence, the governing virtue of human practice.[1] It was divided into personal, domestic, and political prudence according to three different fields, namely, of the life of the individual, of the family, and of the commonwealth. The division was roughed out in the *Commentary on the Sentences* which quoted Aristotle and Cicero and echoed a phrase from Andronicus of Rhodes about *prudentia regnativa*, the governmental prudence the ruler should possess in his double office of laying down the law, *legis positiva*, and administering the political community. As yet there was only a vague reference to another kind of prudence which should be expected of his subjects, namely the statesmanship of the citizens themselves.[2] Some questions later, when the political virtues were discussed, they were taken to mean the ordinary moral virtues knit together to make a good man and neighbour; nothing, however, was said either about his public service or the common good.[3]

The examination moved closer in the *Summa Theologica*: there Aristotle's meaning was modified. Statesmanlike prudence, *prudentia politica*, was not reserved to the ruler, though his was

[1] T. Deman. *La Prudence. Somme Théologique.* Edition de la Revue des Jeunes, pp. 282, 319–24. Paris, 1949.
[2] *III Sentences*, XXXIII, iii, 1, iv.
[3] *III Sentences*, XXXVI, i.

that excellent type of it called *prudentia regnativa* matching his *justitia executiva*; it was that virtue of practical intelligence whereby citizens freely made their own the ordinances of political authority.[1] A text in the *Ethics* was alleged for a political prudence in subjects which corresponded to the ruling prudence of princes: in fact Aristotle was there merely drawing a distinction between the two functions of the governor, namely to command and to issue particular decrees.[2] Moreover the *Politics*, also quoted in this connection, seemed to restrict political prudence to the governor.[3] St Thomas was a careful exegete on the *Ethics* and avoided the misreading; on the *Politics* he was uneasy about the limitation of political responsibility.[4] In the *Summa Theologica*, however, he felt freer to expound his own sentiments even if that meant stretching what Aristotle had said. The *legis positiva* and the government was in some sense everybody's responsibility. Influenced by the recovered ideal of *urbanitas* and by his own doctrine that law should be reasonably shared in by those it directs, he thought of men acting like craftsmen—*chirotechnae*, said Moerbeke. They were citizens with a law rather than subjects under a law, for a subject, as such, was one who cannot command or freely dispose of his own doings, and to that extent cannot be responsible or prudent.[5]

Citizens were those who took an active part in politics. Thus political prudence, corresponding to general justice which served the Common Good, should be well dispersed and not concentrated in the official rulers of the State. Government should be broadly based, and its responsibilities, including the deliberative, judicial and executive functions, should be assumed not solely but jointly.[6] Why should the official technique of running the State be immune from comment by

[1] 2a–2ae. l, 1, *ad* 1.
[2] 2a–2ae. xlvii, 12 *sed contra*. *Ethics*, vi, 8. 1141 b 24.
[3] 2a–2ae. xlvii, 12, obj. 1. *Politics*, iii, 4. 1277 b 26.
[4] *VI Ethics*, *lect.* 6, 7. *III Politics*, *lect.* 3.
[5] *VI Ethics*, lect. 7. 2a–2ae. xlvii, 12, *ad* 1.
[6] *III Politics*, *lect.* 4.
A. J. Carlyle, *Political Liberty: A History of the Conception in the Middle Ages and Modern Times*. Oxford, 1941.

interested amateurs? Hence the preference for a political régime which welcomed the participation of the ordinary man, an ideal like that of the high political thought of the Jews, that every man had in himself the nobility of a prince. It is true that only a minority is able or prepared to think hard and act effectively, and St Thomas showed himself well aware of the fact; nevertheless the ideal, like that of Christian holiness, is to be preached. Historically it has proved one of the successful myths of government.

Texts which seem to favour the idea of simple monarchy should be read as recommendations of its advantages in the abstract, not as flat historical judgments on contemporary institutions. Monarchy served the principle of unity as aristocracy served virtue and democracy served freedom. St Thomas can no more be described as an ardent royalist than as a sober democrat. He never alluded to the ins and outs of party government. One man one vote, that he never advocated—he had too strong a sense of graded responsibilities.

It was essential that the régime should be *for* the common good; for the rest he applied no doctrinaire political test. He had an eye for country. Aware that circumstances alter cases, he appreciated that the right style of government varied with climate, geography and history. The best political system was a compromise; the worst was when one section in the country predominated. Despotism was bad, the rule of mediocrities not much better.[1] Free play should be allowed the wisdom of a leader, *prudentia principis*; let him observe the laws without being hidebound. Men were faced with a balance of evils: if fearful of tyranny, they will lack the unity and dignity of monarchy; if they adopt a king then they must suffer the risk of suffering a tyrant.[2] He spoke sardonically of the doubtful blessing of monarchy to the Jews.[3]

From our standpoint we may say that his practical ideal resembled the constitutional monarchy of the nineteenth century, a *regimen bene commixtum* of the three streams of

[1] *VIII Ethics, lect,* 10.

[2] *de Regimine Principum,* i, 4.

[3] 1a–2ae. cv, 1, *ad* 2. (I Kings, 8).

monarchy, aristocracy, and what is now called democracy.[1] Roman and Christian writers—Cicero, Polybius, Dio Chrysostom—had drawn the same conclusion before him; political liberty implied some share in the government, State affairs in some sense were the business of all citizens.[2] Perhaps he might have agreed with Sir Winston Churchill that his preference has proved the worst form of government—except for the others that have been tried.

No fool-proof system can be devised: one must accept the risk of a monarch becoming a *roi soleil*, the aristocracy an East India lobby, the populace a class wanting something for nothing. That constitution is most tolerable which offers the most practical advantages. Unanimity, the strength of the State, was best served when as many as possible have a stake in the country and play their part in running its political life. Then stability was ensured, and fewer occasions for sedition were offered.[3] As with private property, where he adopted Aristotle's pragmatic criticisms of communism and added his own reason, namely man's dignity as a self-reliant and responsible producer created to the image of God, so with political government, he required a happy versatility, and a balance of majesty, nobility and popularity. *Melius* and *expeditius* went together—the best was also the most practicable.[4] For he was a utilitarian, in the sense that he related moral means to ends beyond morals, not an ethical formalist, for whom duty was to be done for duty's sake without reference to the stream of physical processes, and preferably in defiance of them.

The give-and-take of free citizens within the political community was brought back to the concept of justice, the self-controlling habit of dealing fairly. Admittedly some kind of *justum* existed within a slave-group or a family, for the members possessed some rights and could not be treated as though they were chattels, not human beings. (In passing we may notice that during the Middle Ages slaves were not uncommon in rich Italian households; there was a traffic in them from the Black

[1] 1a. xcv, 4.

[2] 1a–2ae. xc, 3.
E. Demougeot. *Le meilleur régime politique selon saint Thomas.* Paris, 1928.

[3] 2a–2ea. lxvi, 1.

[4] 2a–2ae. xl, 2.

Sea.) What was lacking, however, was the rights of persons standing on their own for they were part and parcel of one another; hence only an imitation of full justice, a metaphorical justice, was engaged.

Were the country one great family or slave-system, as it would be according to the extremes of some conservative and communist theory, then, if the system were benign, everybody would be cared for and some sort of justice would be ensured. On the other hand its monolithic structure would permit no interplay of mutual rights and obligations, no function of free associations, no contracts between independent groups, no pluralism of fully constituted units, in short no truly political community.[1] For the act of justice, in the proper sense of the word, was free, and the *justum simpliciter* lay between equals who were their own masters. The political community was composed of citizens who stood on their own feet and were, with respect to essential political rights, equal: *habebunt partem in magno principatu.*[2] The ideal of a completely classless society was not urged, since equal shares in community-benefits or equal payment for community-services was not demanded by social justice. Instead fair shares and obligations should be distributed in varying proportions, not identical amounts, to match the value of the recipient. There was no question of 'to every man a penny'.

Only a community of responsible citizens could receive law strictly so called, for law was not merely a command to be carried out but also a reason to be consented to and possessed. It was not given to slaves or even to sons, but to freemen; it supposed 'civil conversation'.[3] They might be called subjects, though that perhaps was too passive a term; a better, because more active, was citizens. When Aristotle said they were the people who take part in politics, or that they were rulers and ruled in turn, he was not describing actual conditions.[4] Nor did the description apply in the Middle Ages, except for brief and turbulent episodes in the history of the Italian City-States.

[1] *II Politics*, *lect.* 5. 2a–2ae. lvii, 4.
[2] *II Politics*, *lect.* 14.
[3] 1a–2ae. xcviii, 6, *ad* 2. *VI Ethics*, *lect.* 7. *See V lect.* 11. *III Politics*, *lect.* 3, 4, 7.
[4] *Ethics*, vi, 8. 1141 b 2 8. St Thomas, *lect.* 7. 1a–2ae. cv, 3, *ad* 2.

Most men had their own work to do and enjoyed little time for narrowly political occupations.[1] More important than a rota of public jobs was a temper of freedom, confirmed by the law and defended by the leisure class or contemplatives. It cannot be said that the *clercs* of the thirteenth century betrayed their trust.

The terminology was not always consistent. St Thomas accepted the three classical types of a just regime, *regimen rectum*, namely *monarchia* or *regnum*, *aristocratia*, and *timocratia*, opposed to which respectively were the three deviation types, *regimina perversa*, or *tyrannis*, *oligarchia*, and *democratia*. Democracy sometimes had an unpleasant ring, as with Plato, and was treated as the decay of *timocratia*, but the two were not always distinguished.[2] The rule by men of property, called oligarchy by Plato, plutocracy by Xenophon and timocracy by Aristotle, entered into this preferred constitution. He agreed with Aristotle and favoured the limitation of responsibility to men with a stake in the country, as in Sparta, where the Council of State was chosen from certain families.[3] Carthage, too, was admired; there the aristocracy was popular with common folk and—another point of resemblance to the rule of the Whigs—men could go to the colonies to make their fortune.[4] His thought bears some points of resemblance to that of Catholic Liberalism during the first three decades of the *Risorgimento*: freedom-loving, yet with no more liking for mob-rule than for despotism. His man of property, of course, was not a man who lived on his rents and investments, nor was he quite a nineteenth-century freeholder, but anybody who was self-determining and responsible about his work and could support a family. A timocracy may easily go stodgy, and he saw no sin of sedition in upsetting it; he disliked bourgeois mediocrity.[5] One feels, however, that he would have preferred Louis Phillippe to Louis Napoleon.

He spoke well of *status popularis*—*populus* signified the *demos*,

[1] *II Politics*, *lect.* 9.
[2] *VIII Ethics*, *lect.* 10. *II Politics*, *lect.* 6.
[3] *Politics*, ii, 10. St Thomas, *lect.* 15.
[4] *Politics*, ii, 11. St Thomas, *lect.* 16.
[5] *VIII Ethics*, lect. 10.

or public as we say, that is the whole multitude rightfully united, not just the largest section of it. He did not differentiate within the upper classes between the numerically few, *oligoi*, the economically wealthy, *plousoi*, by culture and character the best, *aristoi*, who possessed prestige, *gnorimoi*, and were able to enjoy leisure, *epieikeis*; nor within the lower classes, who may make up the crowd, *plethos*, or rabble, *ochlos*, between the poor, *penetes*, the workers for hire, *thetes*, the manual labourers, *chernetes*, the artisans, *technitai*, the toilers and unleisured, *ascholoi*, and the men of the vulgar sort, *banausoi*. If we take the Dominican Breviary lessons for the feasts of medieval saints we find three titles employed to designate their family background. There were the *nobiles*—from which nearly three-quarters were recruited—or property-owners employing workers; the *pauperes* who had no capital beyond what they earned; and in between, the *honesti*, self-employed tradesmen and artisans.[1] Most Dominicans were townsmen, and this was an urban division.

Commending in turn now kingship, now aristocracy, now popular rule, but always as abstractions, he was committed to none of these three straight types of constitution. His final texts approved the *politia* in which they are blended: monarchy provided unity and personal disinterestedness, aristocracy enlightened policies and good administration, and democracy a general feeling of responsibility for the country's government.[2] When the common good was not the affair of one man alone then most will not think of it as another's care, but each as though it were his own. Hence he praised the rise of the Roman Republic and noted that the Jews were not altogether happy under their kings.[3] An exclusive insistence on any one of the three types of regime may make forceful doctrine, yet prove unworkable. He knew, as Aristotle did, that the type of constitution is not settled by weight of numbers. The formal sovereignty of an individual, or a minority or a majority does

[1] S. Bullough. 'Class Distinction among our Saints.' *The Life of the Spirit*. xi, 122, pp. 82–8. London, 1956.

[2] 1a–2ae. cv, 1. 2a–2ae. xl, 2. lxi, 2. *II Politics, lect.* 14.
C. H. McIlwain. *The Growth of Political Thought in the West*. pp. 330–6. carefully discusses St Thomas's monarchism and does not understate it.

[3] *de Regimine Principum*, i, 4.

not give the State its deepest character. The one, the few, or the most considered merely as quantities are lesser matters than the psychological and moral qualities of unity, of dignity and of common consent which fosters agreement despite differences. Otherwise two nations may result, of consumers and producers, of overseers and workers, of commissars and the rest.[1]

He compared a healthy political community, centred on one authority which encouraged the gifted to assume office and the citizens to collaborate, to a happy family blended of the monarchy of the father, the aristocracy of husband and wife, and the democracy of the children.[2] Or again, to a balanced personality in which the psychological powers work harmoniously without one tyrannizing over another.[3] Aristocrats might possibly form a majority, the king might be a cabinet, but in fact the wise are few, and for ultimate authority one man is better than a board. In practice it is difficult to find an alternative to the counting of votes and the settlement of policy by majority-decision. Hence, just as positive laws have to be expressed in fixed terms and therefore miss the analogical values of equity, so this levelling down by the weight of numbers produced a dullness which is one of the prices to be paid for democracy. Such consequences were not examined by St Thomas—far less than Aristotle can he be compared with Tocqueville—nor did he relate the condition of the fine arts to the decline of patronage.

The will of the *populus*, which was not identified with any one class in the community, was not that of a proletariat or working class, not that of the bourgeois or the 'best people', and certainly not that of the dictator as such. It was expressed in law, which takes its meaning and force from the Common Good. Precisely as such it envisaged a classless society, inasmuch as all were equal under the law. That apart, equality of birth or of opportunity was not entertained. The monarchy issued the *constitutiones principum*, the aristocracy the *responsa prudentum*, also the *senatus consulta*, the democracy the *plebiscita*, yet law without

[1] *II Politics, lect*, 5.

[2] *VIII Ethics, lect.* 11.

[3] *V Ethics, lect.* 17.

qualification, and especially customary law, was commensurate only with the *populus*.[1]

The spilling over of Aristotle's *prudentia politica* from the governing class to the whole people was perhaps not unintentional on St Thomas's part. He was rarely limited to the authentic meaning of a text, and he was writing when a social movement promised a wider citizenship than any known to the Greeks. Slavery had almost gone, the revived Roman Law still bore the print of its popular origins and theology was bringing into jurisprudence the figure of the Christian man, freer and more lawful than the citizen of Athens. Politics was in the air and now beginning to be studied with some of the detachment of Machiavelli's *Discourses*, but as yet with no intention of setting up the tyranny of *The Prince*. If a liberal spirit were fermenting no intoxication on the word *Democracy* resulted. In those days political causes were no substitutes for religious convictions, and St Thomas was typical in being a political pragmatist. The organized national interest, that was the people. It was the source and purpose of civil authority, which was, therefore, in some sense elected, since under Divine Providence nobody but the people could designate the ruler. There was nothing sacred about an opinion which happened to be identified with the sentiments of the majority. Whatever else it meant, government by consent and representation was not tantamount to the constant control of policy by the populace.

5. *Political Equity*

Inferior power should not act against superior within a *universitas* conceived as a hierarchy of powers descending from God. The obedience commanded, however, lay within the bounds of due observance, and these were drawn according to a scaled gradation of competence within the system—the proconsul should not be obeyed against the emperor, nor the bailiff against the king.[2] What were the limits of a supreme civil power which was legitimate by origin? When the question was put it was assumed that the substance of authority was communicated by God in virtue of a man's office, not his personality.[1]

[1] 1a–2ae. xcv, 4.
[2] Commentary, *Romans., xiii, lect.* 1. 1a. cv, 1. cvii, 1. cx, 1. 2a–2ae. x, 10. civ, 6, ad 6. cv, 1.

This teaching found support alike in current theology, feudal custom and the aristocratic temper reacting against a personal conception of kingship. There was then no cult of genius which would substitute inspiration or force for government by charter applied by the power of due order and jurisdiction. Not even holiness could do that. The limits to supreme temporal power appeared from two recognized abuses, of government *contra legem Dei* and government *ultra vires*. If the ruler commanded vice then the subject was bound not to obey, for the only justification of civil authority was that it defended and fostered virtue. If he went beyond his warrant, for instance, if he exacted tribute or demanded service to which he was not entitled, then the subject was not bound either to obey or disobey.[2]

The conviction that the people had the right to resist actively or passively was older than the idea that a formal agreement existed between ruler and subject; it was rooted in custom only afterwards rationalized in terms of contract.[3] The legitimacy of political power was conditional on its observance. The twelfth century was prepared to disobey openly tyrannical edicts which flouted the laws of God and traditional rights. Later, when the deposing power of subjects had lost ground before the advance of public authority personified in the prince, the need for some form and method to remove a tyrannical or incompetent ruler was recognized.[4] The mood still persisted into the fourteenth century, when a group of cardinals cast about for ways and means of deposing the Pope.

In the thirteenth century those who declared that the Emperor possessed the *coeleste arbitrium* were countered by those Papalists who held that he was no more than a dismissable functionary, some of whom for their part were not indisposed to erect the Papacy beyond the reach of the laws. The extremists on neither side represented the main tradition

[1] *Contra Impugnantes*, 4.
[2] *II Sentences, XLIV*, ii, 2.
[3] F. Kern. *Kingship and Law in the Middle Ages*, p. xviii.
[4] *de Regimine Principum*, i, 6.

of the theologians and jurists, which remained faithful to the idea that no ruler, whether of Church or of State, could dispose of constitutional law and dispense from it as he thought fit. He must begin by learning to obey. The principle was applied to ecclesiastical government. The *Summa Theologica* stood stiffly against the power of the Pope to dispense from religious vows—its position was not sustained in later official practice.[1]

No thirteenth-century lawyer had to face the prospect of statute conflicting with religious truth or moral justice, nor even of the State denying the legislative competence—or even competition—of the Church through the Canon Law, which might be added to by new decretals or conciliar decrees. The honoured phrase, *lex injusta non est lex*, seemed a glimpse of the obvious. Not until the Tudor Act of Supremacy achieved a change of legal and political theory in England, and the Prince in Parliament became a self-sufficient omnicompetent legislative body, did men such as Fisher and More find themselves in the predicament of affirming that law was null when it traversed a higher law. They stood less for the freedom of conscience or for the old ideal of a unanimous Christendom than for the principle that no earthly ruler could change the nature of Christ's Church.[2]

Already, however, sovereign authority was becoming edged with a certain severity as authority lost its geniality and adopted an official demeanour. The transition from tribal and feudal institutions to the *estates* and *offices* of a legal and political organization involved a stylization of the *persona publica*. Whereas the rule of a father or patriot-king could be pliant, since his temperament counted for much and his virtue, benevolence and caprice were not vitrified by law, and whereas the accommodations of the community were more likely to be congenial to its members when they were regulated by old custom and not by a book of words to which the sovereign could make additions, the situation changed when the constitution of the State became more formal. Private moods should not colour official action and public administration, in a sense,

[1] 2a–2ae. lxxxviii, 10, *ad* 2, 11. *III Politics, lect.* 4.
[2] D. M. Knowles. 'The Limits of Law'. *Blackfriars*, xxxvii, pp. 402–12. London, 1956.

should be 'soulless'. No harm is done, but only on condition that it be accepted that the State covers an area narrower than the whole of man's social interests, and that its main duty is to maintain a framework in which his freedom can be secure.

The conception of the State as a juridical body, constituted largely by Positive Law the limits of which were well recognized, should in fact have proved a corrective to official aggrandisement. St Thomas required the State's action to be confined to what is external, public, and measurable by standard patterns —Aristotle might have wondered at the need for this insistence, but then the Greeks had never left the administration of justice in the hands of lawyers, and they were not faced with a great engine of State. St Thomas accepted the Roman Law, but was not disposed to extend its scope, or even allow the juridical State it created to take a lofty line. Its business was not to train its subjects, heart and soul, to what on the official view was the highest virtue. The State was for men, not men for the State; they were not its creatures to be shaped entirely to its needs or overawed. Even the *Jus Civile* of the Romans had not interfered in the internal affairs of the family.

Having so drawn its boundaries, he was then able to accord the legal State a workmanlike dignity. Let it be treated with respect in the name of social stability and with the confidence that such a limited instrument will not prove a sprawling menace. Nevertheless it was not neutral to morality. Its laws were not merely tolerable as patterns of outward behaviour to which the subject showed outward deference and which he observed merely because otherwise he might be found out and punished. For public authority had moral rights and expected moral responses. True laws obliged in conscience. The ultimate purpose of the political community was nothing less than the life of friendship, of men with God and among themselves, promoted through education and disciplined manners. Its immediate business, however, was less ambitious, and only this was it able to enforce. It was concerned with the social work, not with the mode of virtue; it could command certain virtuous deeds, but not that they should be performed virtuously. For men could make laws only on matters they were able to judge, and they were able to judge only external appearances. Hence

the adage, the purpose of a precept does not fall within the law.[1]

St Thomas then, was not one of those who would extend the competence of public administration. He was sensitive to two dangers, of too improving a spirit on the part of legislators, and of indifference on the part of subjects. Citizens must watch with a certain vigilant irreverence for any signs of school-marm fussiness in their rulers, lest the police become our moral mentors and measure the length of bathing costumes on the beach, or sacristans prowl round our churches like invigilators. Nor must they allow the specialism of political and juridical action so to ramify that the whole of social life is covered leaving them mere onlookers, responsible only for matters of their own private conscience. Otherwise public life will proceed merely according to the impetus of the existing legal machine without respect for *humanitas* and *animus*.

Both threats were met by his doctrine of Equity. It was a virtue all citizens should exercise; it was not merely the exercise of a jurisdiction complementary to law, nor a special department of the judiciary. Most social philosophers, especially if they are Christians, will feel more at ease with *aequitas* than with the stricter Roman *fides*. To St Thomas, however, Equity was no mere ethical temper, foreign to the theory and practice of lawyers who like things cut and dried. It was prompted by the very genius of law itself, for fundamentally law is a humane measure transcending mathematical adjustments. It exists for persons, not for standardized units in a scheme. As the Greek theologians practised the principle of economy, and were prepared to tolerate various modes of expression without pushing a difference to an anathema, so Justinian and his assistants expected Christian humanity to temper the quasi-mechanical action of the laws.

A comparison of the *Summa Theologica* with the *Commentary on the Sentences* shows the transition towards a less rigid notion of justice. It was as though it was felt that freer-minded citizens were needed when the sovereign grew stronger, and that personal self-confidence was the remedy for too detailed a State intervention.

[1] 1a–2ae. xci, 4. F. Suarez, *de Legibus*, iv, 12–13.

That law itself postulated a certain elasticity was learnt from the teaching of Martinus, one of the four great doctors of Bologna who followed Irnerius. The leader of the 'Equity-Wing', his influence may be traced through his pupil Rogerius who taught Placentinus, who founded the School of Montpellier. This, together with the Schools of Orleans and Paris, was the home of a French jurisprudence rivalling the Italians in Civil Law and perhaps surpassing them in Canon Law. The early professors of Bologna admitted that *jus* was modulated by circumstances and that a spirit of fair play should breathe through the codes, but it was the French schools, strongholds of humanism and attracting churchmen as well as professional lawyers, which exhibited an easier and more theological mastery of their apparatus, and a less slavish adherence to the Gloss.[1]

It was in their temper that St Thomas approached legality. The movement, sensibility and living purposes appreciated by natural science and philosophy, the uncrimped prudence which quickened practical morals, all these entered into his unadorned discourse.[2] Set going by Aristotle's distinction between the just and the equitable, he began to speak more definitely about the need for the letter of the law to be charged with the spirit of equity.[3] The change took place within the space of one year, after 1269 when he was writing the second part of the *Summa Theologica*.

Positive laws, he held, should not be credited with the immutability of Natural Law, hence they called for constant reassessment in the light of a changing situation, though they should not be lightly repealed lest customs were unsettled and social stability shaken.[4] Codification was valuable, and for the reason later given by Locke, that government should proceed according to standing laws and not according to extempore decrees. All the same, what was needed was less a flexible law than a flexible mind in the citizens.[5] The topic was discussed

[1] H. Kantorowicz. *Glossators*, pp. 3, 24.
C. K. Allen. *Law in the Making*. v. 'Equity.' Oxford, 1927.
[2] *II Ethics, lect*, 2. *VI, lect*. 6.
[3] *Ethics*, V, 10. 1137 a 32. St Thomas, *lect*. 16.
[4] 1a–2ae. xcvii, 1, *c. & ad* 1, 2.
[5] 2a–2ae. lxi, 5. 1a–2ae. xcvi, 6.

under three headings, first under Law, secondly under Prudence, thirdly under Justice.[1] Let us take them in order, noting that between the first and the second, in 1270, the *Summa Theologica* had treated of the Gospel Law and sent a breeze blowing through the rabbinical regulations.[2]

Human Law, based on what happens in the majority of cases over a long stretch of time, ordained a fixed standard of behaviour.[3] It wielded moral power, yet inevitably bore more heavily on the *proni ad malum* than on the *prompti ad bonum*, for the virtuous were like princes—beyond coercion.[4] It stuck to certain defined forms of justice, hence on occasion failed to fit some exceptional case.[5] The lawyers themselves used legal fictions to attempt to bend this rigidity. The theologians and philosophers, who had never reckoned law among the liberal arts and were disinclined to grant that law was sufficient unto itself, were perhaps more sensitive to the need for suppleness. The stock example was at least as old as Plato: a man who was engaged by law to return a deposit might refuse to do so because of the damage that would result, thus to restore a sword to somebody beside himself with rage. Legality was highly prized, yet most agreed that an exception should be made when the keeping of the letter would harm the commonwealth.[6] No code was a substitute for subjects keeping their wits. A judicial decision itself was an act of conscience, and no human law could override that.

So much was recognized practice. The theory was opened out in the treatise on Law in the *Prima Secundae*. Faced with an unusual crisis with which the ordinary forms of law could not deal, the preliminary observation was that, out of respect for public authority, recourse should be made to the proper dispensing authority; a dispensation was not a grudging concession to weakness but a favour which honoured the fair-mindedness of a superior and his sense of situation. This,

[1] 1a–2ae, xcvi, 6. 2a–2ae. li, 4. lx, 5, *ad* 2. cxx, 1, 2.
[2] 1a–2ae. cv.
[3] Hence it differed from privilege and 'case law'—*privilegia et sententialia*, 1a–2ae. xcvi, 1, 2, *ad* 2, 3. xcvii, 1, c, 2, 9.
[4] 1a–2ae. xcvi, 4, 5.
[5] 1a–2ae. xcvii, 1, *ad* 3.
[6] 1a–2ae. xcvi, 6. 2a–2ae. lx, 5, *ad* 2.

however, was not always possible, for time and place might not allow the procedure of appeal. Then the urgency of the case might carry its own dispensation—necessity knows no law, *necessitas non subditur legi*, and there were claims on us higher than keeping the positive law.[1]

The personal initiative here brought into action spelt no disrespect for the standing regulations or any suggestion that lynch law could be defended. Respect for legal processes was a medieval trait, and Socrates, that constant questioner, was venerated for his refusal to dishonour the laws or evade their consequences. The argument, therefore, acknowledged their dignity. Law was no mere form of words to be subscribed to when it paid us not to do otherwise. It expressed the conscience of the community. When, however, it encountered a situation it did not forecast, then Equity must be brought into play.

This was a judgment which took into account what the legislator supposedly intended, and decided in the light of higher principles than the law in question that it was better honoured in the breach than in the observance. It was neither an interpretation of the law nor an attempt at ameliorative legislation, both of which were matters for expert legists and competent officials; instead, less ambitious, it was merely a judgment here and now that the law in question was not engaged, a recognition, not that an exception proved the law, but that a law did not prove the exception.

The free spirit of the argument was put in legalist terms, as might be expected from its setting in the treatise on law: the public benefit was stressed, also an appraisement of the legislator's mind and the presumption of permission; it was noted that a petition for a dispensation should be made when practicable.[2]

The argument was less fettered by legality when it was repeated under the heading of Prudence. This was the virtue which supplied working rules of action in contingent matters where abstract certitudes, scientific and legal, were not available and which operated confidently and without straining

[1] 1a–2ae, xcvii, 4. c, 8.
[2] Consult the parallel passage, 'Whether the precepts of the Decalogue can be dispensed from?' *III Sentences*, XXXVII, i, 4.

after artificial reassurance.[1] Prudence played for truth, not safety. After taking counsel, *eubulia*, the decision of ordinary prudence, *synesis*, which sufficed in normal cases, might well find itself at a loss in some odd conjunction of circumstances. Then a special kind of prudence came into operation; it was called *gnome*, a flair for judging the exceptional.[2]

Taking his stand on the teaching of the *Ethics* and confidently accepting the assurance that not a sparrow shall fall without your heavenly Father knowing it, St Thomas was sanguine that no puzzle of practice could be wholly unintelligible when taken to the highest system of reference, however baffling it appeared to proximate principles of interpretation. Thus miracles and monsters, scandals to specialist science, have their proper place in the wider drama of Providence; thus, we may add, shaggy-dog stories which break the formal rules of wit are relished by a larger humour. The ordinary precepts of moral practice might fail to meet the case, but prudence, lissom like an athlete and not square-drilled like a Potsdam recruit, was well equipped to deal with exceptionl ones. Its shrewd judgment was not formed only by standard conventions. The just man, said Aristotle, is no stickler for his legal rights, for laws are like the lead rules that can be bent to Lesbian mouldings and adapted to the shape of the stones.[3] When he acts, as it were, off the note let him not necessarily apologise as though guilty of an aberration. The ability to make such a decision was not regretted; on the contrary, for it displayed a prudence out of the rut, a law which belonged to the highest justice.

St Thomas might have been expected to hedge when he returned to the topic in his treatise on Justice. Instead he was more downright and generous. The exceptional case was governed by that kind of justice called equity, or *epieikeia*.[4] It would have been enough had he regarded equity as an example of occasional and extraordinary justice, a rare flourish on the surface of plain dealing, or a virtue, similar to liberality and

[1] 2a–2ae. li, 4. 1a–2ae. cv, 2, *ad* 8
[2] 2a–2ae. li, 1, 2, 3, 4.
[3] *Ethics*, V, 10. 1137 b 30.
[4] 2a–2ae. cxx. *V Ethics, lect.* 16.

subordinate to justice.[1] He did more. He affirmed that the highest and most enduring type of justice was that which went beyond the letter to reach the spirit of law.[2] St Albert spoke of its possessors as *superjusti*.[3] Furthermore equity was not a particular kind of justice dividing the field with legalistic justice and acting as a kind of countercheck; rather it transcended, contained and inspired the workings of all law and justice. The argument, though compressed, was carefully stated according to the logic of analogy—the spirit of equity, not the observance of a code, was the primary and supreme type of justice: *de ea justitia dicitur per prius quam de legali*.[4]

How the lawyers reversed the relationship of equity and legality in the fourteenth century is significant.[5] When the State's supremacy was more massively legalized, justice according to the law was treated as the primary idea and equity was reduced to a derivative and complementary function. Few were found bold enough to question the official exposition and application of law when it ran counter to justice and expediency. The ecclesiastical authors themselves submitted to this legalism, and the effects were manifest in the manuals of moral theology. But equity, as St Thomas conceived it, most nearly approached God's own justice, which is his mercy.[6]

The severity of law was admirable only when it was true; the good as such was not the difficult, and law was not meant to be burdensome.[7] Equity existed in its own right, not merely to mitigate the rigour of law; it was the prime social virtue. It was the fortifying, not the softening, of justice. The *jus aequum* was not a branch of law set apart from the *jus strictum*, but *jus* looked at from the highest point of view and reflecting *humanitas* and *justitia*. The just man was lawful and fair, *legalis et aequalis*. Were

[1] 2a–2ae. cxvii.
[2] 2a–2ae. cxx, 1, *ad* 1.
[3] *III Politics*, cap. 8.
[4] 2a–2ae. cxx, 2.
[5] W. Ullmann. *Lucas de Penna and the Medieval Idea of Law*, p. 12, note 4.
C. N. S. Woolf. *Bartolus of Sassoferrato*, p. 390.
[6] 1a. xxi, 1. Commentary, *Psalms*, xxv, 1, xlii, 1.
[7] 2a–2ae. cxx, 1.
1a–2ae, xcix, 1, *ad* 2, 2.
X Ethics, lect. 14.

he politically just merely according to the laws and constitution he would be only partially just, *justus secundum quid*.[1] He must be *justus simpliciter*, just before God, if he is to be completely and freely just in his community. The confidence that law was the servant of freedom underlaid this doctrine. In Cicero's phrase, all were servants of law in order that we might be free. St Paul said much the same, at greater strength and depth.

[1] *V Ethics, lect.* 1, 2, 11.

CONCLUSION

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THE POLITICAL DISCOURSE

St Thomas came after the humanism of the twelfth century with its delight in the whole sensible appearances of things and before the scholasticism of the fourteenth with its crabbed analyses of set books. When he wrote the logicians had not yet ousted the poets from the universities. His theology was both biblical and speculative. His political mood was later than that of John of Salisbury's delineation of the body politic composed of members tempered by human virtue and governed by a head with a personal conscience, earlier than that of Marsiglio of Padua and John of Jandun and their image of the State living in its own right. Augustinism was left behind him, secularism was still to come. From internal evidence alone he could probably be dated to the third quarter of the thirteenth century—after the grandeur of the *Dies Irae* and before the emotion of the *Stabat Mater*. Nevertheless few writers have been so consistently explained outside his period, perhaps because of a certain agelessness about his thought. It may be the mark of a great work to rise above history; it is well to set it back in its period to know what its author meant.

His arguments were not preoccupied with the political vogues of his time and provide no information about the turn of events. The Dominicans had been expelled from Naples by Frederick II in 1239, a few years before he joined them; he passed over the Holy Roman Empire without mention, and did not harp on the political prestige of the Papacy and the ambitions of the Canonists. He belonged to an Order traditionally not committed to party-lines. Such detachment, while a merit in pure theory, is an embarrassment when fitting him into his historical surroundings. It has been said that his thought was too transparent to cast a shadow.

1. *The Historical Effect*

So far as political theory was concerned the fourteenth century hurried men into preoccupations St Thomas had not entertained. He had never treated Church and State as though either could appeal to exclusive loyalties, and his political community belonged neither to the theologians nor to the lawyers, nor to the Canonists nor to the Civilians, nor to the landed lords nor to the merchants. Much lay outside the precepts of natural morality, much could not be reduced to Positive Law. He was Dante's guide in heaven, but not in the world of politics. To Lucas de Penna he was *sanctus doctor*—the Neapolitan pride was to be expected—and he was quoted occasionally by civil lawyers. Petrarch mentioned his name, coupled with that of St Bonaventure, only in passing and to remind the French what they owed to the Italians. No lasting institutions were the memorial of his social thought.

His reputation grew as a philosopher and theologian; the Council of Vienne vindicated his teaching on the psychophysical unity of man in 1312 and John XXII canonized him in 1323. He was the official theologian of the Dominicans, but they were but one of the professional corps of the Church in rivalry with others, and they suffered grievously from the Black Death. His wisdom became the tenets of one particular clerical school among others and lost its air of being as large as life.

Nostro datus, nostro natus
Thomas est in ordine
et in scholis conservatus
sparso verbi semine,
sui palmam doctoratus
miro tulit omine

Such was part of a parody in a Dominican breviary about 1500 of his eucharistic hymn, *Pange lingua*.

Before that, somewhat paradoxically, as Professor Knowles notes, while the English Franciscans excelled in speculative theology the English Dominicans were distinguished by their excursions into diplomacy.[1] They were royal confessors until the rise of the House of Lancaster, and rallied to the hopeless

[1] *The Religious Orders in England*, pp. 166–170.

causes of their patrons, Edward II and Richard II. St Thomas's contemporaries, John of Darlington, Hugh of Manchester and William of Hotham, were charged with the highest affairs of State. The French Dominicans sided with Philip the Fair in his quarrel with Boniface VIII. John of Paris spoke as a moderate in favour of the regal power, Ptolemy of Lucca was more of a Papalist but he was a communalist as well; both were first-generation Thomists who left their mark on political history. Perhaps the only Dominican team-work which impressed itself on actual policies was that of San Marco of Florence associated with St Antoninus (d. 1459) and Savonarola (d. 1498).[1]

St Thomas's credit grew with Vitoria and the great Spanish Thomists of the sixteenth century who helped to humanize the Spanish conquest of America; this classical example of the effective and beneficent influence of academics on politics earned for the University of Salamanca the grateful admiration of Dr Johnson. The pressing importance of the Church's social doctrine has been increasingly realized in the last hundred years and Leo XIII set the philosophy of St Thomas on the period of its greatest vitality. Consequently the phrase 'Political Thomism' sometimes appears, but it is doubtful if it bespeaks more than adherence to the social teaching of the Encyclicals.[2] Modern attempts to make of St Thomas a man either of the Left or the Right, in theology or in politics, have never looked even plausible.

His ineffectiveness in shaping the course of events has been shared by some of the greatest figures in the history of political thought, by Plato who trimmed the *Republic* with the *Laws*, and was strangely neglected for centuries; by Aristotle, whose main thesis on the naturalness of political institutions went underground for as long; by Cicero and Seneca, whose ideals, though acknowledged by Roman social philosophers and jurists, shone fitfully in the lurid gangsterism of Nero's reign.

Take his writings as they stand, or compare them with those of Giles of Rome or Marsiglio, then they seem unpromising material to the student of medieval constitutional or political

[1] B. Jarrett. *S. Antonino and Mediaeval Economics*. London, 1914.
[2] J. Haessle. *Das Arbeitsethos der Kirche nach Thomas von Aquin und Leo XIII*. Freiburg, 1923.

history. They never formed a ruling and representative system in the Middle Ages. Many secular thinkers followed the vein of Averroism; many religious thinkers, turning from the authentic Aristotelean philosophy to nominalism, prepared the way for a fideistic theology unable to produce a public check to the civil power. The State could do what it liked, leaving the individual to wrestle with his doubts in the privacy of his conscience. Even the interests of most Dominicans in the late Middle Ages seem to have narrowed to domestic Church affairs if we are to judge from their library catalogues which have come down to us. These include bibles, postils, commentaries on the Scriptures and *Sentences*, the Fathers, Canon Law, sermon books and lives of the saints, yet few works of immediate influence on the political community.

With social cohesion, as with sex, many factors, and these the most important, escape a closely topological treatment. Although St Thomas was the first Western writer to bring out the difference of politics from the other sciences and to distinguish the operation of Civil Law from Moral Law, his rudimentary political theory can be reduced to purely political techniques no more successfully than Shakespeare can be explained by the rules of prosody. Politics, it has been remarked, needs statesmen with philosophic gifts and philosophers with practical interests. Also, that bad doctrines are more damaging than bad actions to the common good. The end should determine the means and not be improvised as opportunity offers; consequently the good statesman is a man of principle, which is to say that he has some sort of philosophy or religion.

Social teaching should be seen as a whole, and the student should be prepared to delay on parts seemingly remote from the conduct of State-business. 'Is it not the fact,' asks Sir Ernest Barker, 'that Plotinus preferred to think of the flight of the Alone to the Alone, and had no attention to give to social and political life, itself a fact of first importance in the history of social and political ideas?'[1] The dogmas of religion which St Thomas discussed were what all men of his time felt to be true, powerfully if sometimes obscurely; their convictions did not always determine their actions but at least toned what they

[1] *From Alexander to Constantine*. p. ix.

thought about them. These doctrines are all profoundly social. They work in and through the fellowship. They are at once an introduction and an epilogue to politics. And they still stir in the modern world. He may be treated as a pure philosopher by a useful academic abstraction, but he was first of all a theologian, and to call him a political Aristotelean is about as true as calling St Augustine a Stoic or Mill a Lockian.

2. *The Three Social Phases*

St Augustine's social thought can be schematized by a diagram of concentric rings. In the middle is the *domus*, outside that the *civitas* and State, outside that the *orbis terrae* and wider still the *mundus*. Transcending the whole is the spiritual City of God. The fact of sin makes a break between the temporal and eternal; there the visible Church entered as a kind of mediatorial kingdom, 'partly seated in the course of these declining times and partly in the solid estate of eternity.'[1] It was the plan of an imperial intellect setting the powers and principalities in their places.

St Thomas's thought was basically physical, that is to say he started, as Aristotle did, with a science about the outside world of Nature. The principles, not the details, of the *Physics* determined his whole treatment, even, one may say, of systematic theology. And so in comparison with St Augustine his gaze was less sweeping. He took the social organism in front of him and sought to read its developing inner purposes. He was less given to forced contrasts, less haunted by the sway of evil. He saw a greater continuity in the social evolution. Three periods can be marked in the movement of his social dialectic, corresponding to three main types of human intercourse. They apply to the development of social life alike through nature and grace, in other words they can be adopted by ecclesiology as well as by political philosophy.

The first was the community-group; the parts were like members of a body, subservient to the whole. The second was *civilis conversatio* or partnership in the political-group which, while respecting the conditions of the community-group from

[1] *de Civitate Dei*, i, 1.

which it evolved, established laws which guaranteed the citizens' independence. It reached out to a third type of association, the society of fellowship where nothing personal was surrendered. Similarly there were three types of authority, of might to be feared, of political right to be obeyed, of the sight of truth to be loved; these in some respects corresponded to the distinction of kingly, priestly and scientific power.[1] So also there were three types of social virtue described in the *Secunda Secundae*; they began with the almost instinctive and childlike respect for family and country, and moved through the observance of political and juridical obligations into the free play of equity and friendship. Patriotism, social justice, divine charity, that was the order and plan. By filling in the details the whole of St Thomas's social and political philosophy may be described.

Our special interest is the political community, the *civitas* or *regnum* which gave form to the human mass, also a special character to the sins of schism and sedition.[2] It occupied an intermediate position between the extremes of pure community and pure society, from both of which it drew its being; both, as we have said, should be regarded as abstractions or logical models, not as complete historical situations. 'In the life of a nation,' writes Dr G. M. Young, 'we are aware of two elements which need to be kept in adjustment—the irrational elements of customs, tradition, habit making for stability, and the rational, critical elements making for improvement.'[3]

The healthy State respects both its origins and its ends; the civilized achievement is not cut off from its own agriculture nor closed to spiritual forces. It discourages elegances and artifices which estrange men from physical nature and refuses any doctrinaire break with the past. It may well be cautious about ameliorative legislation that looks well enough on paper but is likely to comfort to the detriment of national morale, sapped more easily by sophistication from within than by aggression from without. This, of course, is no argument against social

[1] Commentary, *Job* xii, *lect.* 2. *I Politics*, *lect.* 5.
G. Fessard. *Autorité et Bien Commun*. Paris, 1944.
B. de Jouvenel. *Du Pouvoir. Histoire naturelle de sa croissance*. Geneva, 1947.

[2] 2a–2ae. xlii, 1, *ad* 2.

[3] 'Essay on Government.' *The Character of England*, p. 85, Oxford, 1947.

reforms as such, merely a reminder that soft conditions do not make for strength.

There are some crises where above all it is necessary to keep your nerve though the appearances and even all reasonable expectations are against you, and when any surrender to or collaboration with alien forces, speak they ever so fairly, must be doggedly rejected. The old nations which survive, like the Poles under repeated misfortune, or the British against continental hegemonies, are those with profound memories, indefinite perhaps on detail but firm on fundamentals. They act by a sort of tribal intuition and achieve a collective exaltation, which, in their manner, they may treat as a sort of joke. A government is well-advised to look below the pattern of its laws and policies and observe these deeper rhythms. They vary, and solid self-interest will usually prevail. It was on the side of the Whigs when they beat the Tories to the tune of *Lillibulero*. It was still on their side when the Jacobites produced a better romance than the Hanoverians could manage, for Charles Edward was powerful enough only to leave a legend and move Queen Victoria.

Here the infra-rational forces of race and tradition and the supra-rational persuasions of religion meet together. As the government must cherish the first so must they protect the second. The State will not survive if it be insulated from higher influences, for, as Professor Jung remarks, without the idea of God the masses begin to breed mental epidemics. There is no true and lasting power in the earthly city which does not derive from the heavenly—hence the social mission of contemplatives to bear witness to the Communion of Saints.[1] That however is indestructible, and grace can look after itself much better than nature can. More vulnerable is wholesome social materialism, and its worst enemy calls itself rationalist materialism.

The *Ethics* noticed that natural friendship, a *philia* that went deeper than legal arrangements, held States together, and accordingly the wise legislator cherished unanimity no less than justice.[2] The Roman Law itself supposed fidelity and loyalty—

[1] *Quodlibets*, vii, 18. *Contra Impugnantes*, 2.
2a–2ae. clxxxiii, 2. Inaugural address, *Rigans Montes*.
[2] *Ethics*, viii, 1. 1155 a 23. St Thomas, *lect.* 1.

quid leges sine moribus? Behind the civilization of Plato and Aristotle lay the Homeric phase of heroic barbarism. The divisions of party politics are largely matters of emotive images which command the allegiance of the steady voters on either side. Even new countries find it necessary to create their myths —Abraham Lincoln, Kemal, Gandhi, Stalin. Some wear better than others. And so a sound constitution, even the legal artefact of the State, is supported by an accumulation of blind and unconscious racial pressures, of pre-rational affections deriving from immemorial sources of terror and wonder, of a sense of kinship and of honour, of usage and custom, of panache and prejudice—*ut orare contra orientem apud omnes catholicos*,[1] which may seem childish or superstitious or merely quaint to a rationalism which ignores the force of mythology.

Had he dwelt on descriptions of the natural origin of the State St Thomas would have included the fabulous with the primitive, for nothing seemed to him exotic. He differed from his predecessors, alike by his psychology of the soul as the substantial form of body, by his biological reading of law and by his lack of morbidness about the instinctive motions of the human organism. There was no radical corruption; the *massa humana* was not a *massa damnationis*, and the God-given faculty for legislation remained intact within it. The germ of Natural Law appeared when men recognized that some events occurred according to a settled order and not by the capricious intervention of unseen personal agencies. He had no dislike for or illusions about the aborginal, no hankering to have it artificially tamed and clipped by State planning. He was alive to the danger of the body politic ossifying under too much law.

Homo naturaliter pars multitudinis—a natural *impetus* caused social cohesion before the entrance of the formal factors of law and the inspiration of spiritual friendship.[2] Human beings huddle together and exemplify the biological benefits of crowding, observable in the lowest organisms.[3] The human

[1] Vincent of Beauvais. *Speculum Doctrinale*, vii, 58.
VIII Ethics, lect. 11. 2a–2ae. cxliv–cxlv.
[2] *I Politics*, lect. 1.
[3] M. F. Ashley. 'The Origin and Nature of Social Life and the Biological Basis of Co-operation.' *Horizon*, xix, p. 384. London, 1949.
M. Mead. *Co-operation and Competition among Primitive Peoples*. London, 1937.

mass-group is formed by drives from within, from impulses to cohabit and share, different from the forces from without which produce the mere conglobations, as they have been called, of moths round a lamp, flies on meat or cattle at a water-hole. There are in fact no truly solitary organisms, and this holds true even of such supposedly unsocial creatures as sharks and tiger-beetles.[1] Sharing the same reek—*in eodem fumo et eodem igne communicantes*—human beings produce and consume together, and are produced and consumed; they mingle with one another by *actio-passio* rather than by distinct awareness and affection.[2] St Thomas never seemed to have wrinkled his nose at the smell of humanity, which Palmerston, truer than he knew, called *esprit de corps*.

At this stage the operation of the group is determined accordingly. Its parts as such are not persons, separately conscious and self-determining. A baby, Freud said, is more aware of his mother's breast than of his own toes. The individual in such a mass is so subordinate to the purpose of the whole as to be borne onwards by its needs instinctively or willy-nilly. He incarnates the herd-instincts, lust, avarice, hate—all healthy in their place. And the leader in this type of community is the strong man, who is deposed, or expelled, or killed when his strength fails—as in an elephant herd.

Such a collectivity exists in a Slave-State organized solely for production and consumption under the rule of the strongest. There the Church, a *societas peregrina* uncommitted to the social processes around it, may work without agitating for political liberty, considering the slave sufficiently emancipated by the liberty of the Gospel.[3] Its happiest form is the family or *domestica multitudo*, which, precisely as such, is not a society of persons, but a biologically social unit, the shared life of male and female for the procreation of young.[4] It is, of course, designed to grow out of that condition into a partnership where there is a 'civil' relationship between husband and wife—St

[1] W. M. Wheeler. *Essays in Philosophical Biology*, p. 158. London, 1939. W. C. Allee. *Co-operation among Animals*, p. 12. London, 1951.

[2] St Albert, *I Politics*, cap. 1. 2a–2ae. lxi, 4. 3a. xx, 1, *ad* 2.

[3] 3a. xx, 1, *ad* 2. 2a–2ae. lxi, 4. *V Ethics, lect.* 6. *I Politics, lect.* 11.

[4] 2a–2ae. clii, 4. cliv, 2. *V Ethics, lect.* 6. *I Politics, lect.* 11.

Thomas wrote in a wife-beating age—and the children are being educated into adultness and friendship.

The fusion of individuals in mass-purposes, however, was not altogether destroyed in what comes after: thus the Dionysus Myth of the king who is killed was taken into Christianity. The sexual coupling, the being rooted in the same soil and being involved with the same material possessions, the ties of blood and sense of kinship, all these persisted when the ecological group was transformed into the neighbourhood group, and that into the political group. They were safeguarded even in the communications of divine charity. Evolving forms do not kick away the ladders up which they climb. Even a Pope remembers his country, and remains a Venetian like Pius X or a Milanese like Pius XI. In the ascending scale, *jugum legis*, *regula rationis*, *vinculum amicitiae*, there are no suppressions.[1]

The gradual separating of the parts of the community may be represented as a movement from barbarism to civilization as men assumed a diversity of functions and fulfilled them as responsible agents. The political community was not an ant-hill; there was no justice without a polarity of free persons.[2] It was barbarous, said Aristotle, to make no distinction between women and slaves; it was barbarous, added St Thomas, not to be ruled by civilized laws and not to hold liberal converse according to lawful idiom, which was why the Venerable Bede translated fine literature lest the English be reputed barbarians.[3] In general barbarism can be defined as a condition where the members of a community act from the compulsions either of brute force or of appeals to weakness. Men may be jingoes or pacifists, and their group may seek aggression or appeasement; in neither case is might possessed by right, and consequently civilization is not present.[4] Barbarism is a term of disparagement only when applied to a community which should be civilized but is arrested at the compulsive level or reverts to it. The same holds true of individuals.

[1] 2a–2ae. xxvi, 7. lxxvii, 4. *de Regimine Principum*, i, 15.

[2] 2a–2ae. lvii, 4.

[3] *I Politics, lect.* 1.

[4] R. G. Collingwood. *The New Leviathan. Man, Society, Civilization and Barbarism.* Oxford, 1942.

Among the factors of social cohesion which preceded political relations properly so called were the virtues of *pietas* and *observantia*—family loyalty, patriotism, and reverence for power.[1] Our attachment to kindred and country, *quoddam essendi principium*, of which we are begotten and nourished, was more binding than any bond tied by rational enactment—and more difficult to shake off. We were engaged before we chose, and our 'sympathy', *connaturalitas*, was no more to be explicated in the concepts of law than the works of mercy were to be couched in the forms of justice.[2] Treason is not just the abuse of legal protection, a mere matter of a passport, but an offence against one's own kin.[3] It is more damaging and strikes deeper than breach of contract. Traitor is an uglier term than rebel, or revolutionary, or recalcitrant, or recusant.

Patriotism may be contrasted with social justice, indeed may seem sometimes to conflict with it, as when a loyal soldier receives wrong orders, or like a stubborn German paratrooper fights on for his country though he knows the régime is unjust and the consequences will be more widespread disaster: conventions have changed, for in the days of classical war it was no dishonour to haul down your flag when further fighting would be plain massacre.[4] Patriotism and social justice have different objects and purposes; patriotism looks back to one's origins, rejoices in being a true-born Englishmen and hinges on the pride of nationality; social justice looks forward to the common good, serves the State and hinges on the principle of law. The Queen is the symbol of the first, the Constitution the symbol of the second.[5]

There were other connected social habits, primitive and not fully reasoned out, all healthy in their degree. While awe before mere fact of size and might should be controlled—the power of disposing of slaves, noted St Thomas, had not such grandeur about it that it should be venerated—the response to real greatness was expressed in sentiments of honour, glory, and

[1] 2a–2ae. ci, cii.
[2] 2a–2ae. ci, 1. *c. & ad* 2, 3.
[3] Rebecca West. *The Meaning of Treason*. London, 1949.
[4] C. S. Forester. *The Naval War of* 1812. London, 1957.
[5] 2a–2ae. ci, 3, *ad* 3.

reverence.[1] Even fear could be bracing, though any servility in it, as when God was feared merely as the inflicter of punishment, was morbid.[2] Respect for power could be enhanced by the charismatical character it received from religious consecration: the king was anointed and crowned by the pontiff and his power was sealed by an oath of allegiance.[3]

These sentiments were not so fully deliberate as to possess the full quality of Aristotelean virtue. They were the pre-conditions of virtue, like the delicacy to which moralists appealed in defence of chastity. Thus, when St Thomas condemned incest he spoke of a *quaedam turpitudo honorificentiae contraria*.[4] When people condemn something as disgraceful we are apt to suspect prejudice; in truth, however, the argument from an affronted sense of decency, as in the case of incest, lies deeper than the reasons of social morality which are also advanced against it, namely, that it makes family relationships ambiguous and causes a psychological inbreeding which narrows the circle of friends.[5]

From these semi-instinctive responses to social authority a more deliberate attitude could develop, formed by a supervening set of virtues which corresponded to community-power less informally and more juridically presented. They clustered round the idea of obedience. This, in the strict sense of the term, was owed to civilized or political authority, not to patriarchal authority or *potestas dominativa*.[6] It was offered to an animate law and meaning, not to a brute fact, to a power that could explain itself, not to mere power in possession of superior force. It was not content with 'because father says no' or 'big brother knows better'.

Obedience responded to a precept, that is, a reasonable command, either tacit or expressed.[7] God's majesty was to be obeyed in all matters, but human authority only partially

[1] *I Politics, lect.* 5. 1a–2ae, ii, 2, 3.
[2] 2a–2ae. xix, 5.
[3] 2a–2ae. cii, 1. ciii, 1.
M. Bloch. *Les rois thaumaturges*. Strassburg, 1942.
[4] 2a–2ae. cliv, 9.
[5] *Ibid.* See 2a–2ae. cxliv, clxv.
[6] *I Politics, lect.* 5.
[7] 2a–2ae. civ, 2.

reflected divine power.[1] We were not bound to obey another man in the private motions of our inner life, for, as Seneca said, to suppose that slavery falls on the whole man is wrong.[2] Obedience was not abject, it was the virtue of the good citizen and subordinate, not of the yes-man.[3] Conscience was not abdicated, we were not blindly committed, but pledged our reasonable service on appropriate occasions as the law commanded, that is, to legal superiors in their office of government.[4]

If we seek the exemplar of human happiness we must look where *beatitudo* is found. Not in *potestas*, for that is not ultimate enough: we can ask, Power for what? For good, we reply. But what is our good? It is not in this world, but only with God.[5] And so lifted above the mass and the political community, yet not despising them, are the communications of spiritual being within a fellowship without slavery, property or institutions. St Thomas went to Plotinus for an account of sublime virtue when he was introducing his treatment of the theological virtues, extravagances to the reasonable life described in the *Ethics*.[6] These are qualities of the spirit freed from the world, ranging unhampered by the complications of an organized scheme; these are the three theological virtues of faith which assents first to God himself and only afterwards to a dogmatic articulation; of hope which trusts him beyond all the sensible appearances; of charity which enters into friendship with the Divine Persons.[7] Though they inspire heroic detachment they are rooted in ordinary life, for faith preserves the reason, hope the desires and charity the natural friendliness of the human organism.

The Church as set forth by the medieval Canonists might look like a system of clerical offices—indeed critics sourly remarked that they were careerists who reduced it to a system of benefices—yet in truth the conception of a fellowship of believers, a *societas* quickened by the Holy Spirit, was not alien

[1] 2a–2ae. civ, 4.
[2] 2a–2ae. civ, 5, *c*, & *ad* 2.
[3] 1a–2ae. c, 5.
[4] 1a–2ae. vi, 4. xix, 5, 6. 2a–2ae. cii, 2, *ad* 2, 3. civ, 5.
[5] 1a–2ae. ii, 4, 8. iii, 8.
[6] 1a–2ae. lxi, 5. 1a–2ae. lxii.
[7] 2a–2ae. i, 1. ii, 3. xvii, 2, 5. xxiii, 1, 6. xxiv, 8, 9. xxv, 1. xxvi, 3.

to their thought. They worked alongside Christian philosophers and theologians. The political horizon was enlarged beyond the State and beyond the visible Church. Man was a true cosmopolite, a citizen of the whole universe, not because that was a society but because everything in it belonged to God, and by accepting him we entered into companionship with him in all his works. That companionship, which grew with divine charity and contemplation, formed a true society. It was not a State, not even an ideal State, such as More's Utopia or Campanella's City of the Sun. It was more like St Augustine's City of God built outside the boundaries of the present world. It was the intercourse of persons with God, who as Saint Bernard said, *amat ut caritas, novit ut veritas, sedit ut aequitas*.[1]

Any science of politics which thinks it can neglect this supra-political association will fall into the danger of talking merely about the trivial. It will certainly fail to analyse its principles. Happiness does not consist in being practical, but in what we are practical for.[2] What exactly do human beings want from their work and their social life? When the inquiry is pressed it will meet answers which imply judgments belonging to high philosophy and religion. They may be right or wrong, aspiring or merely comfort-seeking, confident or half-hearted. The society which alone could be man's true home may be drawn with the firm outlines of Christian dogma or brought out as a wish-fulfilment dream or left as a hazy ideal. No matter. Omit it, and the study of politics is left inadequate.

Aristotle noted that a city is most properly identified with its preponderant element.[3] Consequently an organized community of Christians, or of persons who know a dignity superior to State-service will be expected to differ from a closed system according to materialist or positivist theory: we must remember, of course, that in practice men are often both worse and better than their theories. They are wayfaring to a *communicatio amicorum*, a heavenly *urbanitas* surpassing civic friendliness or team work or the *amicitia utilis* of people banded together for a

[1] *de Consideratione*, v, 5. PL, clxxxii, 795.
See *de Regimine Principum*, i, 4.
[2] 1a–2ae. iii, 5.
[3] *Ethics*. ix, 8. 1168 b 32. 1a–2ae. cvi, 2.

common job. At the best they will be the leaven in the mass. At the worst, one may reflect that it is better to be ruled by clerical than by lay commissars: priests at least daily confess their sins and are usually neither so grim nor ruthless. Matters so work out that religious countries appear strong in faith but weak in public spirit, and non-believing countries appear less tolerant of social abuses and jerrymandering. That may be an accident of history and racial temperament. There is another paradox: family feeling remains strongest, also folk-customs, art and the tang of nature, where the otherworldly virtues are most admired.

The spiritual and free society differs from a material and coercive community on three counts. First, it forms no collectivity, no mass greater than its components, no body of which the associates are members: it is compared to the leaven, the ferment, the living catalyst which appears at the end of a physiological reaction unaltered. As a consequence, secondly, the persons in a society are equals and not hierarchically arranged in due subordination. Thirdly, they are ruled by no coercive law, for they are freemen not bondmen, and the law they willingly receive is the Eternal Law, the Logos conceived in the mind of God, the name appropriated to the Son, and known directly in the companionship of the blessed.[1] Such is not the condition of the present civil community, as Plato the protagonist for the Inquisition, recognized; nor of the present religious community, for though the use of force to extend religion has usually proved disastrous, the Church must still accommodate itself to a world where most of us are children or mental or moral defectives.

The pure society is like the pure community; each is a real type which can engage philosophical inquiry without representing a complete concrete situation for the whole man, who is neither a pure soul nor a pure body, nor merely a friend nor a kinsman, but a centre of multiple relationships. Heaven is the end and examplar of the State, the forms and official practices of which have to be constantly tested in its light. Political courses anyhow are determined by convictions about

[1] 1a–2ae. xci, 5. xciii, 1, *ad* 2. 2, 4, *ad* 2. cvi, 1, *c & ad* 6.
2a–2ae. xxiii, 1. lviii, 3, *ad* 2.

matters lying outside political organization. Magna Charta can be traced from the teaching in the schools of Paris, the French Revolution to the Encyclopedists, and the influence of academic ideas on historical practice still continues. Are not the physicists the masters of politics today?

Men are not only common and productive but also aristocratic and contemplative. How they should live together is largely decided by what they think they are, and this turns out to be a theological question whatever the answer given. Some sort of utopia lurks in every political doctrine. Faulty ideals and and false goals vitiate the details of practice, for social exemplars are not idle dreams but present realities, entering as ends into the constitution of the community which is in movement towards them. Restlessness moves to quiet, all rational association to friendship.[1] Human life is not more exhausted by the pursuit of virtue than by practical activity. Beyond beckons the friendship of God. Beyond, and yet already present in what we do. St John of the Cross knew that courtesy was part of the Christian life; were it lost among the Carmelites, he warned, and superiors to rule harshly and by force, then the Order could be mourned for as ruined. He quoted St Thomas that men brought up under fear presently degenerate; they become slave-minded, little-souled, incapable of strenuous and manly deeds.[2] So it is with the political community, when active debate and collaboration are superseded whether by the dictate of tyrannical power or the drag of comfort.

The glow from the heavenly city, far from blurring the earthly city in a haze, makes it clear and real; the authority of God, far from reducing the exercise of political power to a series of interim accommodations to a shadow-world, lends it authentic strength. For reality and causality entirely derive from eternal sources. We can afford to exalt the power of the State when we know that its extent is limited, we can stress obedience when we know that it is not an end in itself, just as we can admit no deviation from mathematical truths without being

[1] *II Politics, lect.* 1. *de Regimine Principum*, im 14.

[2] *Spiritual Sayings*, xi. Complete Works. ed. E. Allison Peers. iii, p. 314. London, 1943.
de Regimine Principum, i, 3.

overwhelmed by them. Justice, said Masaryk, is the arithmetic of love.

The higher form is at work in the lower as the lower in the lowest. One of St Thomas's favourite principles was that the superior does not dispense with the inferior; sensitive does not destroy vegetative, nor intellective sensitive. He would have approved the answer to the question in Lorca's poem: What makes the gloss on the horse's coat?—Sweat. He was not mistrustful of the self-love in which charity moves and which it surpasses, nor of economic factors in political processes, nor of the profit-motive in the service of the common good. Oppositions in his dialectic were not contradictions and exclusions, but complements. Friendship holds passion, and society the warmth of kinship. The resonances of the infra-rational and the supra-rational remain in the real truth of the reason; physical sympathy or *compassio* should be kept and spiritual freedom welcomed by the reasonable political community. If the claims of grace in the City of God do not destroy the primitive instinct for comfort, if the spirit blesses the flesh, still less should the arts and institutions of the civilized State be impositions on the natural group, like the rococo and palladian palaces peremptorily plastered by Peter the Great on the morasses of the Neva, and now called Leningrad.

3. *Summary*

It now remains to gather the fragments together and offer a compendium of what has been discovered from St Thomas's pioneering work in political philosophy. We began with the social ideas and moods of his political background. (Part One).

I. In their expression by the theologians, especially his immediate predecessors among the Paris schoolmen, a new awareness of the value of secular values was noticed, together with a feeling for the dignity of civil authority, though the Augustinian conviction persisted that dominion existed to mitigate the effects of sin (1)[1]. Their researches into the patterns of social life which followed the reception of God's Eternal Law by the human mind opened up questions of individual and social psychology, and gave precision to a Natural Law theory

[1] Roman numerals indicate chapters. Arabic numerals in brackets their sections.

governing political association which owed little to legal positivism (2).

II. At the same time the Jurists were exploiting and adding to the resources of the recovered Roman Law which was displacing folk and customary law. Some of the Canonists were running a political cause, a Papal Caesarism in matters temporal as well as spiritual. Here St Thomas stood apart, since he did not hold that all rights were communicated through the visible Church. It was rather from the spirit of the legal teaching common to all of them that he drew. The canonical insistence on the reasonableness of law was shown by the need for proper promulgation and display of evidence in its processes; on the responsibility of its subjects by their preference for due election to supreme authority as against hereditary or forcible acquisition; and on dispassionate administration by the distinction between person and office (1). The Civilians had not yet come to plenary political power. St Thomas owed more to the French than to the Italian Schools, notably in his respect for custom, desire for constitutional checks on government, and admission of equity which played above the letter of the law (2).

III. A sketch of his surroundings indicated how the feudal order was changing into a town-culture. Social life was becoming at once less rooted and more formal. St Thomas was not a cloistered monk, but at home in universities and courts (1). Yet the Dominicans were vagrants with a difference, for they were also canons, dedicated to liturgical observances and accredited preachers of orthodox theology (2).

IV. The twelfth century had given birth to a natural philosophy which addressed itself to a world of real not symbolic values (1). This was stimulated by the discovery of Aristotle known by Latin translation first from the Arabic and afterwards from the Greek. At a time when Western Christendom, united under Emperor and Pope, was separating into the Nation-States, the *Ethics* and the *Politics* inspired the ideal of a City of Reason which owed nothing to the Christian revelation (2).

That in résumé was the first part of this study. The theme then turned to the assimilation and transmutation of these

ideas and forces by St Thomas. It was divided into four movements, theological, juridical, cultural and philosophical (Part Two).

V. The investigations of the theologians had left the field untidy, and it was his merit in jurisprudence to put it in order. He achieved a comprehensive definition of law (2). Also a classification of its various types which allowed for supra-legal and infra-legal specimens—the Gospel Law and 'the law in my members'—and included the historical category known as the *Jus Gentium* (3, 4). But his chief contribution to the political philosophy of law lay elsewhere, in his biological reading of the social reason which united men in the political community. This was not imposed on natural processes from outside; it was neither the postulate of a mind which stood apart from them yet had to domesticate their savagery nor was it a dictate of will which checked sinful greed through the institutions of private property and civil dominion. Rather it sprang from the original drives of the human organism. When man was described as a social and political animal a real not an artificial unity was signified (1). Moreover his subordination to the group belonged to the essential things and was not due to the Fall. This teaching departed from the common Christian persuasion, deriving from St Augustine, that the right of the State to govern resulted from a compromise with sin (5).

VI. Inspecting more closely the functions of law-making and statesmanship, St Thomas, like all his contemporaries, did not place them outside the framework of moral doctrine. Nevertheless they were unlike conclusions drawn by theoretic argument. Occupied with concrete situations which could not be wholly elucidated by abstractions, they represented in the main those pragmatic adaptations to environment which, according to Aristotle, were elicited by art and prudence not by moral or scientific doctrine. Hence they were not extensions of religion, and could claim some immunity from clerical censorship (1). They might claim obedience in conscience but were not to be moralized. At the same time, not all morality was to be legalized or made a matter of public politics. Not all sins were crimes, since the power of the State to prescribe or punish was limited to its own protection (2). Christianity revealed a City of God

beyond all earthly organization, hence the merely political *bonum commune*, if wider than the *bonum publicum* according to juridical Roman conceptions, was conceived in less inclusive terms by St Thomas than by the Greeks (3). His theological inquiry into the origins of authority scarcely went beyond the general statement that all lordship was from God and might be presumed to be present so long as nothing vicious was commanded. The possession of civil power did not in essence depend on ecclesiastical ratification. In so far as he followed the legal inquiry into the source of authority and law he was content to repeat that it lay with the people; the tenor of his thought suggests that he was opposed to the suggestion that they could abdicate this radical responsibility (4).

VII. Growing State centralization and officialdom gave new point to the perennial problem of individual responsibility for group-action. By his Christian conscience, his semi-feudal conception of honour and his philosophy of the dignity of the person, St Thomas could not allow the State to act out of human control; on the other hand it had a life of its own and followed ends which were not the total of those of its parts. The problem was broken up into pieces. The notion of official justice was related to the notion of contract involving personal responsibility (1). The divorce between private and public life was considered (2). There were distinctions between justice done by person to person, by person to group, by group to person (3). It was recognized that politics may have to be content with the second-best and to tolerate what it cannot abolish (4). With regard to the profound tension between part and whole, it was accepted that persons were somehow anarchic in any association lower than the City of God (5). The State was not a single organism, and only in a metaphorical sense was it a body in which human beings are subservient members (6). The ascription to it of a personality was no more than a useful fiction, though, as in the case of the human race considered as one group, the bonds could be so close that all may share in general guilt and penalties (7).

VIII. The philosophical stage was set by Aristotle. The full effect of the *Ethics* and *Politics* were beginning to be felt and the first commentaries were written (1). Yet the flourishing of the

Hellenic spirit was brief, and it was soon stifled in the schools by an excess of logic and law. The qualified acceptance of a strictly rational realism in theist and moral philosophy by the Dominicans was not that of the majority outside their ranks. Others who had gone the whole hog and were prepared to countenance contradictions to the dogmas of Christian faith were condemned. Some survived to join forces with the Regalist lawyers in attacking the civil supremacy of the Pope (2). The short-lived model of a Christian polity for which St Thomas assembled the parts was neither an improvisation nor a piece of scholasticism, if that means a speculative grid imposed rigidly on the world of fact. It was built on experience (3). It also matched noble social ideals of the thirteenth century, among them the rule of law freely accepted by subjects and government based on consent (4). The right to criticize and resist the abuse of power was also recognized, together with the overriding need for Equity lest the administration of law become hidebound (5).

The conclusion treated St Thomas's political philosophy almost as a period piece which exercised little influence on the history of the later Middle Ages (1). Its general dialectic was outlined according to three phases: the primitive condition of human solidarity formed by pre-rational factors which still persist; the condition of association freely entered into or accepted proper to the civilized State; and the ultimate condition of friendship beyond the dream of respectability and the threat of coercion. This was already prefigured in political processes (2). 'Charity', says St Thomas,[1] 'embraces in itself all human loves, those alone excepted which spring from sin. Hence love for relations and for fellow-citizens and for companions wayfaring together, or indeed for anybody however associated, can be from charity and worthy of heaven.'

[1] Disputations, *de Caritate*, 7.

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