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Natural Law Theory: On Nature, The Divine and Law

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Abstract

Natural Law Theory: On Nature, The Divine, and Law
By Allyson Beyer

My honors thesis addresses the question of moral relativism and natural law, specifically

by questioning if it is possible to arrive at unchanging moral principles that are grounded in

human nature.  If we view nature and the way the world is constructed in different ways, do

our ideas of morality and law change?  If what we fundamentally believe to be true is different

among different people in different times, and in different cultures, can we conclude that there

is anything universal about ethics?  By examining the legal and political philosophies of St.

Augustine, St. Thomas Aquinas, and G.W.F. Hegel, I show how these three philosophers use

their ideas of human nature and the divine to construct their views of law and ethics to

ultimately determine if morality is relative or if there truly are universal laws.

In order to better understand the connection between law, nature, and the divine, I will

focus first on St. Augustine's *The City of God* and Vernon Bourke's *The Essential Augustine*.  My

first chapter will outline how St. Augustine treats the issue of law and human nature, including

his view of man's fall from grace, starting with Adam and Eve.  In my second chapter, I will

discuss Thomas Aquinas' *Treatise on Law* from the *Summa Theologica*, the foundations of

natural law theory and Thomas Aquinas' view of nature, heavily influenced by Aristotle, and

establish Aquinas' universal ethical understanding in which he emphasizes nature's role in

discovering the human good and our final end. My third and final chapter looks at Hegel's

*Elements of the Philosophy of Right*, and will analyze how Hegel gives an account of human

nature in society and attempts to balance law and ethics as both universal in nature and also

applicable to specific human situations.  Tracing the ideas of human nature and the divine

through St. Augustine, St. Thomas Aquinas, and Hegel will allow me to conclude how our ideas

of nature inform our ideas of ethics and law and ultimately, whether there are universal moral

laws.

Natural Law Theory: On Nature, The Divine, and Law


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**INTRODUCTION**

Communities are created by individuals who share definitive, common, and distinct understandings and beliefs. On one hand, there are common moral principles that are shared across different communities. On the other hand, there are also very significant differences among communities regarding moral principles. If what we fundamentally believe to be true is different among different people in different times, and in different cultures, can we conclude that there is anything universal about ethics? Are there fundamental and universal principles of nature that still allow us to conceive of universal moral laws? By examining the legal and political philosophies of St. Augustine, St. Thomas Aquinas, and G.W.F. Hegel I hope to show how these three philosophers use their ideas of human nature and the divine to construct their views of law and ethics to ultimately determine if morality is relative or if there truly are universal laws. By using their different understandings of metaphysics, nature, and the divine, each of these three philosophers has derived principles of universal moral law.

In order to better understand the connection between law, nature, and the divine, I will focus first on St. Augustine's *The City of God* and selections contained in Vernon Bourke's *The Essential Augustine*. My first chapter will outline how St. Augustine treats the issue of law and human nature, including his view of man's fall from grace, starting with Adam and Eve. In my second chapter, I will discuss Thomas Aquinas' "Treatise on Law" from the *Summa Theologica*, the foundations of his natural law theory. Aquinas' view of nature, heavily influenced by Aristotle, and establish Aquinas' universal ethical understanding in which he emphasizes nature's role in discovering the human good and our final end. My third and final chapter looks at Hegel's *Elements of the Philosophy of Right* and analyzes how Hegel gives an account of human nature in society and attempts to balance law and ethics as both universal in nature and

also applicable to specific human interactions and communities.  Tracing the ideas of human nature and the divine through St. Augustine, St. Thomas Aquinas, and G.W.F. Hegel will allow me to conclude how our ideas of nature and the divine inform our ideas of ethics and law and, ultimately, to determine whether there are universal moral laws that we can use to inform ethical decisions we make in political communities.

**CHAPTER 1:**

**Nature and the Divine in St. Augustine and St. Thomas Aquinas**

**What is Nature?**

Our view of nature and the role of the divine greatly impacts the role of law in ethics. A comparison of Aquinas and Augustine reveals that, while they share many similar understandings of nature and the divine, each philosopher subtly emphasizes different aspects of nature and the divine to portray his individual ideas of man's social nature and human law. St. Augustine approaches his political writings with a Platonic account of nature and, by focusing on the seeming impossibility of man's participation in virtue after original sin, looks internally and to the grace of God to direct man toward virtue. In his discussion of the two cities in *The City of God*, Augustine provides his understanding of human nature in a political state and ultimately concludes that due to the fall man cannot live in a perfect state while on earth. In his "Treatise on Law" in the *Summa Theologica*, St. Thomas, drawing heavily from Aristotle, appears more optimistic about the ability of man to work toward the good. Unlike Augustine, Aquinas looks to the external source of law as a guide away from the vice that originated with the fall. To better analyze the role of nature and the divine on law, I will examine both St. Augustine and St. Thomas Aquinas' concepts of nature to better understand why they emphasize different means of guidance toward virtue, by focusing on two important questions. First, is there a different understanding of nature and human beings in the work of St. Thomas Aquinas and St. Augustine? Second, does the fall make a difference in the view of nature in Augustine and Aquinas? If so, what is the difference, and why does it provide a different understanding of nature and therefore of law?

First, it is important to establish an understanding of Augustine and Aquinas' views of nature, more specifically, human nature.  To begin, Augustine gives a Platonic account of being by developing a threefold hierarchy in which he places the divine at the top, the psychic – soul – as the middle term, and the corporeal at the bottom.[1]  In this ranking, God is placed at the top level and is immutable and unchangeable in regard to time or place.  The intermediary term, the psychic, or the human soul, is placed in a condition of tension between God and corporeal being. In this place, the soul is changeable in time, but not in place.[2]  The lowest term, bodies, are mutable in both time and place.  This hierarchical system is also seen in Plato's work as he describes being in three parts, the calculating part at the top, followed by the spirited, and lastly the desiring part of our being.  While in Book IV of the *Republic* Plato does not place God at the top of the hierarchy, the nature of Plato's hierarchical system allows itself to be easily altered to place God at the top and those below it seeking mobility upward towards the divine.  While these three kinds of being establish Augustine's ideas of nature, Vernon Bourke in *The Essential Augustine* argues that Augustine also reduces these three stages into a "two-level system: all natures are either Creator or creation, eternal or temporal, immutable or mutable, and so on.  Yet man's soul must be fitted between, as we have seen; it requires an intermediate sort of nature for its initial location."[3]  Bourke's analysis shows that Augustine's hierarchy can also be seen as different characteristics that function on two levels, creating a tension for the human soul as it is placed as the middle term in these two-level systems.  Plato has a similar two-level system in Book VI of the *Republic* when he separates objects into the visible and the intelligible using his

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[1] Vernon J. Bourke, *The Essential Augustine*. (Indianapolis, IN: Hackett Publishing Company, 1947), 43.
[2] Ibid.
[3] Bourke, *The Essential Augustine*, 44.

concept of the Divided Line.  The connections between Plato and Augustine are important as they establish Augustine's use of Plato's logic to develop a similar understanding of nature. While Plato does not account for the Christian God in his hierarchy, his work can be altered to include aspects of Christianity that Augustine uses in his understanding of nature.

Aristotle had a different concept of nature from Plato and Augustine.  For Aristotle, nature is self-sufficient and intelligible in a way that is not dependent on a Creator or a Platonic hierarchy of being.  Because nature is self-sufficient, things come into being because of natural necessity.  Aquinas uses and expands on Aristotle's idea of nature.  For Aquinas, like Aristotle, nature is a principle in itself and is ordered and relatively self-contained.  To Aristotle, reason is measured by nature, and we answer to our nature by acting in accordance with what is natural to us.  Aquinas has a similar notion to Aristotle in that we are guided by nature, but Aquinas, unlike Aristotle, believes that this nature is ruled by the Christian God, and so we answer to God who has created nature itself and our own human nature.  However, Aristotle and Aquinas' notions are similar in that reason comes from our understanding of nature, and nature and God act as an Aristotelian final end.  This view of nature comes from the idea that nature is intelligible and so, as rational beings, we can naturally discover its principles using our reason.[4]  This understanding of nature does not rely as heavily on a creator because if there were no God to create, nature itself would be all that is necessary.  However, for Plato and Augustine, nature is not intelligent or self-sufficient in this same way.  This allows for the top part of the hierarchy to determine things for the lower part of the hierarchy.  In this way, God, if placed on the top of the hierarchy,

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[4] Jean Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* (MI: Eerdmans, 2005), 69.

is relevant to Plato and Augustine's account of nature in a different way than he is to Aristotle or Aquinas.

**The Corruption of Nature**

As we develop a difference between Augustine's and St. Thomas' understanding of nature, it is also important to analyze how Augustine and Aquinas develop their ideas on human nature.  For this nuanced difference, sin becomes the crux. While Aquinas insists that "sin does not destroy entirely the good of nature," original sin greatly tarnishes Augustine's view of human nature.[5]  This negativity from Augustine is founded in his own life experience.  While at times throughout history great thinkers can divorce themselves from the knowledge and experience of war and violence, this was not true of Augustine.  To Augustine, "the fallenness of human nature was not based purely on abstract theology; the evidence for it could be seen all around him."[6] While writing *The City of God*, Rome was crumbling and Christianity was deemed a threat to the Roman Empire.  And what was seen around Augustine were "perplexities of which have probably never been exceeded by any period, before or since, in human history…for over a century prior to the birth of Augustine, Romanitas had been suffering from a chronic debility, and nothing which political activity could achieve seemed capable of restoring its original vigor."[7]  As Augustine experienced this violence, he worked to advocate that Christianity was not the detriment to Roman society and politics that it had been portrayed to be by the pagan state which wished "to crush the Christian Church out of existence."[8]  To do this, Augustine

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[5] Thomas Aquinas, *Summa Theologica*, Question 93, Article 6.
[6] Margaret Atkins and Robert J. Dodaro, *Augustine: Political Writings* (Cambridge: Cambridge University Press, 2001), xvii.
[7] Charles Norris Cochrane, *Christianity and Classical Culture (*New York: Oxford University Press, 1957), 380.
[8] F.J.C. Hearnshaw, *The Social and Political Ideas of Some Great Medieval Thinkers* (Great Britain: The Ballantyne & Co. Ltd., 1923), 35.

developed strict ideas about sin, peace, and God, and the falleness of nature became a crucial event that shaped his philosophy of nature and the divine.

While Augustine was surrounded by the tragedies of violence and war, he still fundamentally believed that men are ultimately good. He "saw evil as a real occurrence but not as a nature."[9] Augustine explains, "there exists, then, a nature in which there is no evil, and in which evil cannot exist at all. But there cannot exist a nature in which there is no good. Hence, in so far as it is a nature, not even the nature of the devil himself is evil."[10] Original sin created a distance in the goodness of humans. However, human nature, if guided, can still be helped and directed towards virtue. While we can conclude that original sin played a significant role in Augustine's understanding of human nature, he still believed that evil is a lack of goodness and this goodness is inherent to human nature. Aquinas agrees with this and says, "since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason: and this is to act according to virtue."[11] However, while both Augustine and Aquinas agree that human nature is ultimately directed towards virtue, Augustine believes that the fall fundamentally impacted human nature in a very negative way. Augustine and Aquinas agree that grace is necessary, but grace plays a different role in each philosopher's account. For Aquinas, one can have natural virtues without grace because people can be guided by reason. Grace in Aquinas' account is then complementary, as one cannot understand everything without grace, but it does not have the same necessity as it does for Augustine. Grace founds nature, but does not abolish it. For Augustine, because nature is corrupt, grace is necessary in order to have virtue.

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[9] Bourke, *The Essential Augustine*, 44.
[10] R.W. Dyson, *The City of God against the Pagans*. (Cambridge: Cambridge University Press, 1998), Book XIX, Ch. 13, 939.
[11] S.T., Question 94, Article 3.

Because of the destruction of the good of humans, according to Augustine, humans now must rely on the grace of God to be saved from sin.  One assessment of Augustine holds the following: "man, to be sure, retained his freedom of choice even after the fall; but liberty, the ability not to sin, was gone.  Only the grace of God can restore to man his original liberty; and it is the Christian's hope, according to Augustine, that those saved, though free, no longer will be able to sin."[12]  To reach the virtue that is natural to humans, because of the fall, Augustine believes that we must look to the grace of God for assistance.

Augustine believes that after original sin men are good but still sin.  He believes that there must be a way to overcome obstacles, such as vice, that prevent us from actualizing our goodness and obtaining peace.  This provides the foundation for his thoughts on the grace of God.  Due to the fallenness of human nature, Augustine sees a need for "divine guidance, which he may obey with confidence, and of divine aid, so that he may obey it freely.  Otherwise, in his zeal for knowledge, he may fall into some deadly error because of the infirmity of the human mind."[13]  This divine guidance is given through the grace of God.  For Augustine, the grace of God is necessary for humans to avoid obstacles that could keep us from the good.  Augustine describes God's grace when he says:

> For He, abiding unchangeable, took upon Him our nature, that thereby He might take us to Himself; and, holding fast His own divinity, He became partaker of our infirmity, that we, being changed into some better thing, might, by participating in His righteousness and immortality, lose our own properties of sin and mortality, and preserve whatever good quality He had implanted in our nature, perfected now by sharing in the goodness of His nature.  For as by the sin of one man we have fallen into a misery so deplorable, so by the righteousness of one Man, who also is God, shall we come to a blessedness inconceivably exalted.[14]

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[12] Arthur Hyman, James J. Walsh, and Thomas Williams, *Philosophy in the Middle Ages: The Christian, Islamic, and Jewish Traditions* (Indianapolis: Hackett Publishing Company, 2010), 6.
[13] Dyson, *The City of God*, Book XIX, Ch. 14, 941.
[14] Bourke, *The Essential Augustine*, 179.

In Augustine's account of nature after the fall, man is reliant on God's grace to preserve the good that was part of our nature before original sin.  Because Augustine believes that the grace of God is necessary to direct man to virtue, Augustine turns inward as he says, "man gains knowledge of God and his soul by looking inward, not by examining the outside world.  Searching within, man finds that his own existence is a most certain truth."[15]  For Augustine, the way to pursue virtue after the fall is to reflect inwardly and, with the grace of God, find guidance to the goodness that is natural to human beings.

**The Role of Law**

While Aquinas is also concerned with original sin, it does not consume his thoughts and philosophy in the same way that it does for Augustine.  For Aquinas, "sin does not destroy entirely the good of nature."[16]  He writes as follows: "the natural knowledge of good is darkened by passions and habits of sin.  But in the good both ways are found more perfect: because in them besides the natural knowledge of good, there is the added knowledge of faith and wisdom; and again, besides the natural inclination to good, there is the added interior motive of grace and virtue."[17]  Like Augustine, Aquinas also believes that "human beings are not sufficient to perform good actions without the help of others.  Humans must be guided, must be taught, and must gain wisdom from a variety of sources, even at the level of basic operative moral principles."[18]  These virtues must be conditioned, habituated, and perfected.  While Augustine emphasizes looking inward and turning to the grace of God for guidance, Aquinas believes that the external power of law can direct our virtues and advise against vice.  For Aquinas, law can

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[15] Hyman, Walsh, and Williams, *Philosophy in the Middle Ages*, 5.
[16] S.T., Question 93, Article 6.
[17] Ibid.
[18] John Rziha, *Perfecting Human Actions: St. Thomas Aquinas on Human Participation in Eternal Law*. (Washington, D.C.: Catholic University of America Press, 2009), 97.

"direct and move humans to these good actions so that they perform like actions repetitively in order to form virtues. Without law, they will not know or do the good actions that cause the virtues."[19] By acting in accordance with law, one is prescribed good actions to take in different scenarios and, by continually adhering to the law, one creates a habit of making correct moral decisions and performing good actions. This guidance comes from different forms of law – primarily eternal and natural law.

For Aquinas, God directs us toward virtue through both eternal law and natural law. Eternal law is the ordering of the universe by God.[20] Aquinas explains, "God imprints on the whole of nature the principles of its proper actions…. And thus all actions and movements of the whole of nature are subject to the eternal law."[21] All creatures have natural inclinations that are dictated by eternal law; however, rational creatures are able to respond to these natural inclinations through reason and will and make decisions accordingly. Aquinas argues that this ability to understand the practical aspects of eternal law, through reason, allows humans to interact more perfectly with eternal law.[22] This participation of rational creatures in eternal law is Aquinas' concept of natural law.

While rational creatures participate in eternal law, they cannot know everything about eternal law. Because we can only know eternal law by its effects, we cannot understand it perfectly. John Rziha explains, "because the eternal law is not known directly, humans are able to determine the proper action by means of the intellect discerning the order within nature (for all

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[19] Rziha, *Perfecting Human Actions*, 78.

[20] It is important to note that eternal law, while coming from God, is not the law that is dictated in Scripture, but instead the patterns God has created in nature.

[21] S.T., Question 93, Article 5.

[22] Rziha, *Perfecting Human Actions*, 68.

things are ordered to their particular end)."[23]  Natural law is the same for all men because all men

are rational and rationality allows us to participate in eternal law.  The general principles of

natural law are the same for all, but different conclusions can be drawn from these principles

because of obstacles to reason or knowledge.  While natural law is universal, it does not

prescribe precise action for all circumstances and it relies on men to apply the principles to their

immediate situations.  This means that even though natural law is universal, morality is still

relative in the very limited sense that we must apply the universal principles while also

accounting for our own unique culture, experiences, and situations.

**The Two Cities**

       While the fall impacted both Augustine's and Aquinas' accounts of nature, Augustine

believes that original sin also greatly impacted the social nature of human beings.  Augustine

explains that our fallen nature has created a flawed political state, as he says,

> a social nature was among the perfections granted by God to man, and this nature is
> retained in some measure even after the fall.  Hence, all men live in families and
> organized states for the attainment of tranquility and peace.  But just as natural morality
> is inadequate for the attainment of ultimate human happiness, so is the temporal political
> state insufficient for bringing eternal peace.[24]

While Aquinas believes that human laws derived from natural law can help to mitigate this

imperfection in social nature and establish peace and order, Augustine believes that, due to

original sin, we can no longer live in a perfect social nature while on earth.

       This belief gives Augustine the foundation for his writing on the two cities.  The first city

is the earthly city which rules things of this world.  Augustine explains, "the earthly city, which

does not live by faith, desires an earthly peace, and it establishes an ordered concord of civic

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[23] Rziha, *Perfecting Human Actions*, 77.

[24] Hyman, Walsh, and Williams, *Philosophy in the Middle Ages*, 7.

obedience and rule in order to secure a kind of co-operation of men's wills for the sake of attaining the things which belong to this mortal life."[25]  This city works toward peace and order.  However, the focus of this city is on the finite and mortal life in which we currently live.  The second city is the heavenly city, a city for those who have an understanding of the finitude of the earthly world and the infinite characteristics of the next life.  Comparing the earthly city to the Heavenly City, Augustine writes, "the Heavenly City – or rather, that part of it which is a pilgrim in this condition of mortality, and which lives by faith – must of necessity make use of this peace also, until this mortal state, for which such peace is necessary, shall have passed away."[26]  Because those who reside in the Heavenly City while on earth still live in a mortal world, Augustine describes it as "a captive and a pilgrim, even though it has already received the promise of redemption, and the gift of the Spirit as a kind of pledge of it.  But, for as long as it does so, it does not hesitate to obey the laws of the earthly city, whereby the things necessary for the support of this mortal life are administered."[27]   While these two cities live for two different ends, these cities can live together in peace and, because the "mortal condition is common to both cities, a harmony is preserved between them with respect to the things which belong to this condition."[28]  The account of these two cities portrays a difference between Augustine and Aquinas' thoughts.  While Aquinas relies on law to direct earthly cities in proper action and ruling, Augustine believes that the only city that can rule and live in a way that was natural to us before original sin is the Heavenly City.  Because of this, a city on earth cannot retain the same social nature that was granted by God before the fall.

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[25] Dyson, *The City of God*, Book XIX, Ch. 17, 945.
[26] Ibid.
[27] Ibid.
[28] Dyson, *The City of God*, Book XIX, Ch. 17, 946.

While both Augustine and Aquinas include law and God's grace in their philosophies, by analyzing the emphasis that each philosopher gives when discussing human nature we can discern their ideas about divine guidance on human morality. Despite the fact that both thinkers discuss aspects of law and God's grace, their different views on nature indicate that God plays a different role in their philosophy. Augustine, like Plato, establishes a hierarchy of being. This concept of nature allows Augustine to place God at the top of the hierarchy and allows God's grace to purify nature and create a two-level system in which the purified nature of the divine is raised above the nature that has been perverted by original sin. Aquinas also cites God's grace by using grace as a founding pillar of nature when showing that nature is itself good. However, like Aristotle, Aquinas views nature as intelligent and relatively self-sufficient, establishing a nature that could have a final cause without the Christian idea of God. These differing views of nature, coupled with Augustine's negative view of humans as social creatures, provides differing understandings of the divine's role in human morality. In Augustine's discussion of the two cities in *The City of God*, it becomes clear that due to his Platonic idea of nature and his pessimistic views of human nature, he believes that due to the fall man cannot live in a perfect state while on earth. Because of this, man must look internally and to God's grace for guidance to live a life that will result in citizenship of the Heavenly City. Alternatively, St. Thomas, in the *Summa Theologica*, establishes different types of law that act as an external and internal guide that can direct us toward the virtue that is possible in human nature.

And so, by drawing these conclusions, we can look to our two questions regarding the difference between Aquinas and Augustine. First, Aquinas and Augustine have different understandings of nature that are derived from different influences, mainly Plato and Aristotle. Second, the fall makes a difference in the views of nature between Augustine and Aquinas

because each look to a different place for God's guidance away from sin.  Due to their different views of nature and the divine, Augustine and Aquinas look to different places for guidance from God to direct humans towards virtue and away from sin.

## CHAPTER 2:

## St. Thomas Aquinas and Natural Law

**What is Law**

St. Thomas Aquinas addresses law in the second part of his *Summa Theologica* where he writes on the rational creature's movement towards God.  He begins this section of *The Summa Theologica*, his "Treatise on Law," by connecting his previous work on God to man's role in his account of law:

> Since, as Damascene states (De Fide Orthod. ii, 12), man is said to be made to God's image, in so far as the image implies an intelligent being endowed with free choice and self-movement, now that we have treated of the exemplar, that is, of God, and of those things which came forth from the power of God in accordance with His will, it remains for us to treat of His image, that is, man according as he too is the principle of his actions, as having free choice and control of his actions (Prologue).

In his "Treatise on Law," Aquinas details how nature and reason allow human beings to participate in Eternal law, dictated from God, and act with free choice.  In this chapter I will analyze Aquinas' notions of divine law, eternal law, natural law, and human law as well as how reason and nature make these concepts unique to St. Thomas Aquinas.

By describing law, Aquinas is able to present his ideas on nature and human nature.  To do this, Aquinas first defines law as "a rule and measure of acts whereby man is induced to act or is restrained from acting…because it binds one to act."[29]  This understanding makes law something that is inherently moral and requires an interpretation of what it means to be human. Understanding Aquinas' definition of law must also take into account that a law is "an ordinance of reason for the common good, made by him who has care of the community, and promulgated".[30]  These two definitions together allow a full understanding of law that

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[29] S.T., Question 90, Article 1.
[30] S.T., Question 90, Article 4.

incorporates both human participation in law through rule and measure by focusing on the two most important philosophical concepts for Aquinas' definition of law: reason and the common good. In this section I will focus on how Aquinas' use of reason and the common good construct his understanding of law.

Thomas Aquinas argues that rational creatures, humans, have both natural tendencies and rational powers that direct us towards rational ends.[31] This allows humans to govern themselves by using both natural inclinations and reason to inform actions. This is an important aspect of Aquinas' work on law because it opposes the claim that law is simply a dictate of the will. By arguing that law is an ordinance of reason, Aquinas maintains that God does not dictate or command our actions without our reasoning or will. Instead, our reason allows us to understand and to be obliged by law.[32] Using reason, we are able to comprehend why acting in accordance with certain laws develops values that are important to us as people and to society as a whole. This is exhibited in Aquinas' argument that prudence is created from deliberating, judging, and commanding an act.[33] Each of these parts of prudence requires reason as it orders the deliberation, assists with the judgment, and allows us to command an action. This ordering and measuring returns to Aquinas' idea that law rules and measures our actions and that reason allows us to rule and measure ourselves and it is our nature to do so. Reason is important and necessary to establish law and also to participate in God's law with our decisions and actions.

When we use our reason and natural inclinations in law, we do this to direct ourselves to an ultimate end. To Aquinas, this end is the common good. The common good places emphasis on the community rather than the individual and so, while the individual seeks the common

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[31] DJ O'Connor, *Aquinas and Natural Law* (Bungay, Suffolk: Macmillan & CO, 1967), 48.
[32] Porter, *Nature as Reason*, 14.
[33] Rziha, *Perfecting Human Actions*, 41.

good, this end will benefit the community as a whole. Aquinas argues, "the end of law is the common good; because, as Isidore says (Etym. V. 21) that law should be framed, not for any private benefit, but for the common good of all the citizens."[34] While Aquinas specifies that law should direct a community to a common good, his conception of the common good is extensive because he believes this good must be applicable to all in the community and be applicable to the community without being limited by time. Aquinas argues that this broad sense of a common good is necessary because law should rule and measure and, "if there were as many rules or measures as there are things measured or ruled, they would cease to be of use, since their use consists in being applicable to many things. Hence law would be of no use, if it did not extend further than to one single act".[35] For Aquinas, the common good allows law to be applicable to the whole, making law universal.

The common good is something which can be arrived at rationally because it is based in nature. This means that there is an end, or perfection, in communities that inherently exists in nature. Through our reason we can arrive at what community's ends are with the guidance of law, we can direct our actions accordingly. However, there are different types of law that we understand differently through reason. In this chapter I will discuss divine law, eternal law, natural law, and human law and their connection to nature and reason.

When analyzing Aquinas' understanding of law, it is also important to understand how his view of law differs from the certain narrow definitions of law that we currently use. For Aquinas, law is a broader term than the modern association of the word. Human law can be made by a group of people, but if it is just, it should be consistent with a more extensive idea of

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[34] S.T., Question 96, Article 1.
[35] Ibid.

law grounded in nature.  This more extensive idea of law is grounded in conceptions of how nature functions.  This guide is then interpreted by humans who are able to make more concrete laws that dictate precise ways humans should act in order to comply with the broader idea of natural law.  However, even though human law must be measured by a higher law, the human law is a necessary kind of law.[36]

In addition, Aquinas' notion of law differs from those held by many modern legal positivists in the sense that, for Aquinas, law is fundamentally moral.[37]  For legal positivists, law ought to be moral, but it is not logically necessary that law is moral.  Thomists would see this view of law as extremely limited as it implies that law merely could be a system of conventional social rules with a standard that has been invented and is not necessarily derived from nature.[38]  Thomists would argue that human law points beyond itself.  While culture may influence how the laws are practiced, when understanding law on a broader scale, the core of law's character depends on morality.  To Aquinas, human law should not be rooted in people's desires or will, as this would imply that law is constantly changing; instead it must be rooted in nature as this provides a constant principle from which it can derive its own principles.

**Metaphysics and Nature**

After developing a basic understanding of Aquinas' view of law, it is necessary to discuss the role that nature plays in this account.  Nature plays a significant role in Aquinas' account of law as it impacts both reason and the common good.  Aquinas' view of nature is greatly influenced by Aristotle's notion that nature has a final cause, an important term that will be

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[36] S.T., Question 90, Article 4.

[37] J. Budziszewski, *Written on the Heart: The Case For Natural Law* (IL: InterVarsity Press, 1997), 15.

[38] Budziszewski, *Written on the Heart*, 18.

revisited throughout this discussion as it informs Aquinas' different types of law. To Aristotle, reason is measured by nature and we answer to our nature by acting in accordance with what is natural to us. Aquinas has a similar notion to Aristotle in that we are guided by nature, but Aquinas believes that this nature is ruled by God, and we answer to God. These notions are similar in that reason comes from our understanding, not our commanding, over nature, and nature and God act as a final end.

It is important for Aquinas to develop morality from nature and not from the human will as it allows for a sense of universality. What is in nature shares a final end and so has the same principles. If law is derived from these principles instead of the will of an individual, humans are able to share this sense of law as it accounts for commonalities and is not contingent on individual decisions. This allows for consistency across time and culture.

This view of nature comes from the idea that nature is intelligible and so we can rationally discover its principles. Because nature has a natural pattern, we are able to analyze nature in terms of its own principles and therefore understand its patterns.[39] For Aquinas, humans and human reason have a place in nature and are governed by these patterns. We can discover nature through our reason; however we cannot have mastery over nature or control nature as we are a part of nature. This is different from accounts of nature like those of Kant where humans can gain mastery over nature because we are self-legislating and do not need to discover nature's patterns to influence our own principles and actions.

Aquinas' use of nature is also different from our current understanding of the laws of nature. When we consider laws of nature, such as gravity, we refer to patterns we have discovered within nature through our reason. This is different from what Aquinas means by

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[39] Porter, *Nature as Reason*, 69.

natural law.  Aquinas' natural law is not the patterns of nature, but instead it is the human participation in the eternal law.[40]  Natural law is about human conduct, not the physical laws of nature.  However, natural law still comes from natural patterns, as it is a natural pattern for humans to want to participate in the eternal law.  While Aquinas' notion comes from these natural patterns in human nature, when Aquinas is referring to natural law, he is referring to the human participation in eternal law.

**Eternal Law and Natural Law**

When looking at Aquinas' concept of law, we must first discuss eternal law because all laws that follow right reason are derived from eternal law.[41]  Aquinas says, "law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect community."[42]  For Aquinas, God governs the universe through Divine Reason and, "since the Divine Reason's conception of things is not subject to time but is eternal, according to Prov. viii.23, therefore it is that this kind of law must be called eternal."[43]  Divine Reason allows for God to direct nature and "He governs all the acts and movements that are to be found in each single creature."[44]  Eternal law is the ordering of the universe by God.  It is important to note that eternal law, while coming from God, is not the law that is dictated in the Bible.  Eternal law is the patterns of nature that are governed by God and not revealed to man through means such as the Bible or the Ten Commandments, but instead through man's reason.

While eternal law governs man, eternal law is different from human law.  Aquinas explains, "law directs the actions of those that are subject to the government of someone;

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[40] S.T., Question 91, Article 2.
[41] S.T., Question 92, Article 3.
[42] S.T., Question 91, Article 1.
[43] Ibid.
[44] Ibid.

wherefore, properly speaking, none imposes a law on his own actions".[45]  Eternal law is then a

law to which men are subject; however, did not impose on themselves.  Instead, "God imprints

on the whole of nature the principles of its proper actions…And thus all actions and movements

of the whole of nature are subject to the eternal law"[46].  Because man is part of nature, he is

subject to eternal law however, man is also subject to other kinds of law that Aquinas develops

and will be addressed in later sections.

To understand eternal law's connection to Aquinas' other kinds of law, it is important to

understand reason's role in eternal and natural law.  Eternal law rules and measures all things;

however, rational creatures can participate in eternal law "in the most excellent way."[47]  Aquinas

states "every act of reason and will in us is based on that which is according to nature, as stated

above: for every act of reasoning is based on principles that are known naturally, and every act of

appetite in respect of the means is derived from the natural appetite in respect of the last

end".[48]  All creatures have natural inclinations that are dictated by eternal law however, rational

creatures are able to react to these natural inclinations through reason and will and make

decisions accordingly.  Aquinas argues that this ability to understand the practical aspects of

eternal law, through reason, allows humans to more perfectly interact with eternal law:

"Although the animals share with humans the powers of nourishment, sensation, and local

movement, the power that distinguishes humans from all the animals is the power to understand.

Since all creatures are ordered to the goodness of God by means of their proper act, the act by

which humans are naturally ordered to God is the act of understanding.  Because understanding

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[45] S.T., Question 93, Article 5.
[46] Ibid.
[47] S.T., Question 91, Article 2.
[48] Ibid.

and the corresponding act of the will (loving) are the highest powers of a human, in performing these actions, humans are perfected".[49] This participation of rational creatures in eternal law is Aquinas' concept of natural law.

Now that the relationship between eternal law and natural law has been established, it is important to discuss what Aquinas means by natural law. The first precept of natural law is, "good is to be done and ensued, and evil is to be avoided".[50] Aquinas draws heavily from Aristotle in this regard as he understands that what is good "has the nature of an end" which is Aristotle's notion of the final cause.[51] This means that man's natural inclinations are good or for the good and those that are not truly natural are seen as a perversion of the good. For Aquinas, a perversion of the good is evil and so those things that are not natural are to be avoided. When identifying good and bad within natural inclinations, there are things that are natural to us that are also natural to other animals such as "sexual intercourse, education of offspring and so forth".[52] Aquinas recognizes that we have some natural inclinations that are specific to humans and others that are common and shared with other creatures. All creatures are directed toward their proper end. While nature has provided man with the specific nature of reason which can be used to "know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination belongs to the natural law".[53] Through reason, which is natural to man, we are able to know about God and live in society. These abilities of man are then ruled by natural law.

While rational creatures participate in eternal law, they cannot know everything about eternal law. Aquinas explains, "we cannot know the things that are of God, as they are in

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[49] Rziha, *Perfecting Human Actions*, 68.
[50] S.T., Question 94, Article 2.
[51] Ibid.
[52] Ibid.
[53] S.T., Question 94, Article 2.

themselves; but they are made known to us in their effects".[54]  Because we can only know eternal law by its' effects, we cannot understand it perfectly.  John Rziha explains:

> because the eternal law is not known directly, humans are able to determine the proper action by means of the intellect discerning the order within nature (for all things are ordered to their particular end).  To the extent humans determine the action properly ordered to their ultimate end, they have a certain knowledge of the eternal law.[55]

While eternal law is a metaphysical concept that helps us to understand the way the universe is constructed, natural law is a moral concept.  Eternal law determines the naturally given end while natural law helps direct us toward this end.  We can understand parts of eternal law through our reasoning and through our natural inclinations that are made in alignment with eternal law through natural law.  This means that natural law is both intuitive and innate.  While this knowing is not instinctual like our desire to preserve our lives, we know natural law by reflecting on our own nature and understanding, through reason and our experiences, what is natural to us as humans.[56]

Natural law is the same for all men because all men are rational and rationality allows us to participate in eternal law.  The general principles of natural law are the same for all, but different conclusions can be drawn from these principles because of obstacles to reason or knowledge: "Since in some the reason is perverted by passion, or evil habit, or an evil disposition of nature", people apply natural law differently.[57]  O'Connor expands on this idea: "There are two source of uncertainty about making judgments on the basis of natural law: first, the complexity of the facts may make the decision objectively uncertain; and secondly, we may

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[54] S.T., Question 93, Article 2.
[55] Rziha, *Perfecting Human Actions*, 77.
[56] O'Connor, *Aquinas and Natural Law*, 62.
[57] S.T., Question 94, Article 4.

make the right decision without being fully aware of it"[58]. Natural law is universal in theory, but is not always applied consistently and correctly in all situations. Because the conclusions that we draw from the general principles of natural law could be incorrect, it is difficult to make moral decisions. While natural law is universal, it does not prescribe precise action for all circumstances and it relies on man to apply the principles to their immediate situations. This means that even though natural law is universal, morality is still relative in the very limited sense that we must apply the universal principles while also accounting for our own unique culture, experiences, and situations. Our moral decisions that most align with natural law will be those that are made when our reason is not perverted by evil and when we are able to know the most about a situation. However, these factors are difficult and sometimes impossible to recognize. Because of this, virtue plays an important role in our moral decisions as will be discussed in the next section of this paper.

Aquinas gives an order of natural inclinations that order the precepts of natural law. The first inclination is toward good, so the first precept that Aquinas establishes is that, "good is to be done and ensued, and evil is to be avoided".[59] As stated earlier, for Aquinas, a perversion of the good is evil and so those things that are not natural are to be avoided. The precepts of natural law are according to the order of our natural inclination. The first inclination; an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals".[60] These inclinations that apply to both man and other animals include those things which "nature has taught to all animals, such as sexual intercourse, education of offspring

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[58] O'Connor, *Aquinas and Natural Law*, 43.
[59] S.T., Question 94, Article 2.
[60] S.T., Question 94, Article 2.

and so forth".[61]  The third inclination is, "man has a natural inclination to know the truth about

God, and to live in society".[62]  This precept will include inclinations "to shun ignorance, to avoid

offending those among whom one has to live, and other such things".[63]  These three inclinations

are the basis for the precepts of natural law.  They are important as they detail how man's

participation in eternal law is unique in respect to man.  It is also important to understand that

Aquinas posits these three inclinations in a hierarchical order beginning with the first precept that

details the nature we share with animals to the third inclination that specifies the characteristics

that make humans unique.

     Now that we have established the precepts of natural law and conclusions that are drawn

from that first precept with reason, it is important to establish what can be changed and what is

unchangeable.  These basic precepts are unchangeable as they are based on natural inclinations

and so derived from natural necessity however, the secondary precepts are conclusions that are

derived from the first precept based on our reason and so, can be derived as time goes on.[64]  This

allows for natural law to be an objective and knowable standard from which other more

adaptable laws can be derived.  However, while laws that come from the first precept can be

added, the more general the law the more certain the law is.[65]  While the first precepts of natural

law may not describe exact actions that are right or wrong, it is more certainly in accordance

with eternal law.  As laws become more specific, Aquinas discerns that they may prescribe more

precise actions.

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[61] Ibid.
[62] Ibid.
[63] Ibid.
[64] O'Connor, *Aquinas and Natural Law*, 64.
[65] Porter, *Nature as Reason*, 132.

The conclusions drawn from the first precepts can be added to, but not subtracted from. This means that natural law can be changed by addition of precepts as we learn more however things cannot be subtracted to make what was previously correct later incorrect. One example of applying the precepts of natural law to modern cases is the moral scenario of cloning. When Aquinas worked on his theory of natural law, cloning was not something that he could have predicted we would ever have the technology to do. However, we now have the technology to clone animals and are faced with the moral question of whether we ought to use this technology to clone human beings. While none of the three precepts of Aquinas' natural law theory specifically mentions cloning, the precepts could be applied in this situation to determine what we ought to do. When looking at the first precept that, "good is to be done and ensued, and evil is to be avoided", and the good is what is natural, we can apply this principle to cloning. If the good is what is natural, it becomes questionable that using technology to clone a human being is in accordance with our nature. Because of this, it seems that cloning is not natural and therefore not good. Because good is to be done, when applying the precepts of natural law theory to the ethical issue of cloning, natural law theory would tell us we ought not to clone.

Not only is our cloning issue a good example of applying natural law theory to current issues, it is also a good example of changing natural law theory by addition or subtraction. We are able to add conclusions about things, like cloning, to natural law theory as different moral situations arise. However, once these conclusions are added they should not later be subtracted making something that was once accepted as correct behavior to then later be incorrect or what was forbidden to be permitted. Because of this, Aquinas believes that natural law can be changed through addition, but not subtraction.

Both eternal law and natural law are teleological concepts that have emphasis on an end. For both eternal law and natural law, this end is intrinsic. The end of eternal law "is God Himself, and His law is not distinct from Himself. Wherefore the eternal law is not ordained to another end".[66] However, the end of natural law is in alignment with the end of eternal law as natural law is derived from eternal law and, as humans, we are able to understand the end of natural law. For natural law, Aquinas posits that the end of natural law is the good. The first precept of natural law is that we should seek for good and avoid evil. Eternal law naturally directs us towards this good, but we must use our reason and will to follow this direction and make decisions accordingly. God rules and measures the universe through eternal law and while we cannot fully understand eternal law, through our naturally good inclinations and reason, we can participate in eternal law through natural law. By directing ourselves to the end of natural law, we are directing ourselves to the end of eternal law.

**The Virtues**

It is now important to look at the difference between practical and speculative reasoning as these concepts relate to earlier discussions and are necessary for our understanding of the virtues. When looking at reason in natural law, Aquinas makes a distinction between speculative and practical reasoning. First, speculative reason has "proper conclusions, like the universal principles" and "contain the truth without fail".[67] The first principle of speculative reason is the principle of non-contradiction that establishes that two opposing things cannot both be true. This provides a foundation and truth that is "the same in all men, both as to principles and as to conclusions", but the truth is not equally known to all men.[68] While these principles exist, not all

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[66] S.T., Question 91, Article 1.
[67] S.T., Question 94, Article 4.
[68] Ibid.

men have the same understanding of the complexities of these principles. While the principles

exist, our knowledge concerning these principles differs depending on what we know.

Speculative reason are things like scientific or mathematical principles, metaphysics, or the

philosophy of nature. These are things over which we have no power or control, however we

can know things about these principles.

The second type of reasoning for Aquinas, practical reasoning, is more concerned with

human action and decision making. Aquinas says practical reasoning is, "busied with contingent

matters, about which human actions are concerned".[69] While there are general principles of

practical reason that state how one should act morally, we must apply these principles to our

moral scenarios. These are the precepts of natural law. The further we move away from these

general principles, the more possible our conclusions about our moral actions will be incorrect.[70]

Practical reason plays an important role in our discussion of natural law theory because practical

reason is man's unique way of participating in eternal law. While both men and animals

participate in eternal law, animals participate by instinct. However, humans have practical

reason and therefore can participate in eternal law in a unique way because of the role that reason

plays in our moral decision making.

It is also important to look at virtue's role in natural law because virtue plays a large role

in moral decision making. Virtue relates to natural law because, "since the rational soul is the

proper form of man, there is in every man a natural inclination to act according to reason: and

this is to act according to virtue".[71] Because one's reason prescribes virtuous action, "all acts of

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[69] Ibid.
[70] Ibid.
[71] S.T., Question 94, Article 3.

virtue are prescribed by the natural law".[72]  However, there is a second way in which we can talk

about virtue and that is virtue in itself.  When we look at virtues in themselves, each virtue is not

prescribed by natural law.  Aquinas argues that "many things are done virtuously, to which

nature does not incline at first; but which, through the inquiry of reason, have been found by men

to be conducive to well-living".[73]  This is in harmony with natural law.  Through reason the

actions to which we are naturally inclined are in accordance with virtuous actions.

To further analyze this understanding of virtues, we can see that Aquinas draws on many

of Aristotle's ideas on virtue.  Aquinas argues that, "there is in every man a natural inclination to

act according to reason: and this is to act according to virtue".[74]  While virtues are natural

inclinations, these virtues are not inherent or automatic.  Instead, as Aristotle argues, these

virtues must be made habitual in us through practice as, "we are disposed, because of the actions

we have already performed, to perform similar actions in the future".[75]  One has a disposition to

do the right thing and for the right reason, but one must continually choose those right decisions

to create a habit of making moral decisions.  While repeated decisions make it more likely or

easier for us to make those same decisions in the future, these repeated decisions in no way

condition or necessitate us to act this same way in the future.  However, habituating virtue will

make someone more likely to act in accordance with those virtues and, therefore natural law, in

future decisions.  O'Connor furthers this understanding as he states "each natural inclination

corresponds to a particular virtue, disposing it to operate in an appropriate way".[76]  This means

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[72] Ibid.
[73] Ibid.
[74] Ibid.
[75] Ralph McInerny, *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas*. (Washington, D.C.: Catholic University of America Press, 1997), 92.
[76] O'Connor, *Aquinas and Natural Law*, 176.

that "both the precepts of natural law and virtues stem from the first principles of practical reason".[77]  Both natural law and virtue are things that we can adhere to with moral reasoning and decision making and so are ways in which we use our practical reasoning.

As with natural law, reason plays an important role in Aquinas' account of virtue.  For Aquinas, "in order for human actions to be good they must proceed from correct reason and from a will which is oriented to the good.  The habits which guarantee correct knowledge of the good and steady appetitive orientation to it are virtues".[78]  Because good human action comes from correct reason, when we continually use correct reason to make decisions regarding human action, "the intellect itself is perfected through virtues".[79]  As we use our correct reason to make decisions regarding our actions, we perfect our practical intellect, a virtue that we can then use to make future decisions correctly.  Because of this, virtue, habituation, and natural law all work together to help create good decisions.

However, reason is not the only thing that impacts virtues.  John Rziha argues, "human beings are not sufficient to perform good actions without the help of others.  Humans must be guided, must be taught, and must gain wisdom from a variety of sources, even at the level of basic operative moral principles".[80]  Because these virtues are not inherent in humans by nature, they must be acquired and conditioned.  This allows law to play a role in cultivating these virtues.  Law can, "direct and move humans to these good actions so that they perform like actions repetitively in order to form virtues.  Without law, they will not know or do the good actions that cause the virtues".[81]  By acting in accordance with law, one is prescribed good

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[77] Ibid.
[78] McInerny, *Ethica Thomistica*, 96.
[79] O'Connor, *Aquinas and Natural Law*, 169.
[80] Rziha, *Perfecting Human Actions*, 97.
[81] Rziha, *Perfecting Human Actions*, 78.

actions to take in different scenarios and, by continually adhering to the law one creates a habit of making correct moral decisions and performing good actions.

**Natural Law and Human Law**

Now that we have concluded that man is naturally directed towards virtue, and natural law assists in cultivating virtue, it is important to understand the role of human law. While man is naturally directed toward good, it is difficult to pursue the good because, at times, it compromises pleasures to which men are inclined. In order to protect against vice, human law is established to restrain men from evil through "force and fear, in order that, at least, they might desist from evildoing, and leave others in peace, and that they themselves, by being habituated in this way, might be brought to do willingly what hitherto they did from fear, and thus become virtuous".[82] Laws that direct us against these vices can be found through man's reason as humans have the capacity to direct our action toward virtue using human reason.[83] Through our reason, an authority "who is placed over a community is empowered to dispense in human law that rests upon his authority" can derive law from natural law in order to create human law.[84] And so, like natural law, human law can be understood through human reason and assist in directing man to virtue and away from vice.

Human law, like natural law, also has a final cause: the common good of the political community. The end of human law is "to be useful to man".[85] It is useful as it disciplines man and helps direct the community to virtue. Because man is a social creature, law must be dependent on the ability of nature of those ruled by the law and the human customs. Aquinas

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[82] S.T., Question 95, Article 1.
[83] Ibid.
[84] S.T., Question 97, Article 4.
[85] S.T., Question 95, Article 3.

quotes Isidore to explain, "law should be possible both according to nature, and according to the customs of the country".[86] Natural law and eternal law are not driven by custom and this makes them universal. However, human law is unique to the community and so focuses on custom that is unique to the community and is more consistent with community customs.

Human law, like laws discussed earlier, is also directed to the common good. Human law is established by the ruler of a community. A law giver cannot create a law for every situation that occurs in a community. Because of this, directing the end of human law for the common good allows a lawgiver to create laws for common situations and laws that will help the majority of the community.[87]

While it is the duty of the lawgiver to prescribe human action to the good, the laws put in place by the ruler may not best accomplish this goal. This could be due to a perversion of the good or incorrect knowledge about what would best direct a community to the good. While these perversions may not be known to the lawgiver at the time, these characteristics could affect the law's ability to direct the political community to the common good. It would also be unjust for a ruler to act for their own good and not for the common good because the common good is a criterion that a just human law must meet. Because of this, it is difficult to determine whether all human laws must be obeyed. Aquinas says this is a question of whether law-makers frame laws as just or unjust. If they are just, "they have power of binding conscience, from the eternal law whence they are derived".[88] However, if they are unjust because the law is contrary to the good, the lawgiver goes beyond his power when establishing laws, or are not for the common good

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[86] S.T., Question 96, Article 2.
[87] S.T., Question 96, Article 5.
[88] S.T., Question 96, Article 4.

they are not just.[89] Aquinas considers this and responds, "but if in any point it deflects from the law of nature, it is no longer a law but a perversion of law".[90] If, through reason, one can determine that human law is not consistent with nature this law is a perversion of law and therefore is not something which should direct human action because it would direct us toward vice and not virtue.

While natural law is unchangeable, human law is more fluid. Human law can be changed in two ways. First, through reason when our reason moves to a more perfect understanding of laws and nature. Like natural law, when we learn more about nature, we can adjust laws so that they align with nature and better direct us to the good. Second, by the changed condition of man because human law is connected to the customs of communities.[91] Human law must be changed when it is not in accordance with custom because people will not observe laws they see opposed to custom. This creates a delicate balance between prudence and practical wisdom. However, it is also dangerous to change human law because if law constantly changes it loses its authority. Because of this, it is important to only change human law when necessary for the common good.[92]

Human law and natural law have much in common, but it is also important to understand how their separate characteristics allow the two concepts to work together to provide both absolute and relative aspects to law. Natural law, as discussed above, is applicable to all men and is a participation in eternal law. Because of this, natural law provides an absolute and universal moral principle for human action. Alternatively, human law provides communities

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[89] Ibid.
[90] S.T., Question 95, Article 2.
[91] S.T., Question 97, Article 1.
[92] S.T., Question 97, Article 2.

with laws that are specific to their cultures while also in accordance with natural law. McInerny describes the balance between natural and human law when he says,

> The certainty of such natural law principles is bought at a cost, however. In order to be absolute they must, as the word suggests, be freed from those altering conditions. But it is only in concrete circumstances that men at, and we expect of the moral philosopher advice more tailored to the realm of action. We need more informative rules, counsel that is not so general. And we receive it. We find quite circumstantial rules enunciated by moral philosophers, enshrined in moral codes, parts of legal systems. But this greater informativeness is bought at a cost. Such rules do not apply always and everywhere. The agent must decide when they are applicable, how they are applicable, and all the rest.[93]

Because of this, both natural law and human law are necessary to direct humans to the common good.

**Divine Law**

As we concluded earlier, eternal law is the ordering of the universe by God. However, this eternal law is revealed to man through reason alone and not through Scripture. Alternatively, Divine law reveals aspects of God and the ordering of the universe and it does this through Scripture.[94]

Because Divine law is based in Scripture, Aquinas must justify whether Divine law is found in the Old Testament or the New Testament. Aquinas argues that a child is a less perfect man in the same way that the Old Law needed to be perfected in the New Law.[95] Aquinas expands on the relationship of the Old Law (the Old Testament) and the New Law (the New Testament) in three ways. First, by looking at a common good as law's end. The Old Law prescribes actions for the "earthly good" while the New Law directs us to an "intelligible and

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[93] McInerny, *Ethica Thomistica*, 124.
[94] S.T., Question 91, Article 5.
[95] Ibid.

heavenly good".[96]  Second, law "directs human acts according to the order of righteousness".[97]

Aquinas draws on the saying, "the Old Law restrains the hand, but the New Law controls the

mind" to explain that both laws direct human acts to righteousness however they accomplish this

task in different ways.[98]  The New Law is able to direct our internal acts, while the Old Law can

direct external acts.  Third, because law must be promulgated and "induce men to observe its

commandments".[99]  If law was not known or followed, it would not assist in judgments and

actions.  For this purpose, the Old Law and the New Law encouraged action from man in

separate ways.  Aquinas argues that, "Old Law did by the fear of punishment: but the New Law,

by love, which is poured into our hearts by the grace of Christ, bestowed in the New Law, but

foreshadowed in the Old".[100]  These three differences between Old Law and New Law show that

both laws accomplish the needs of Divine law however Old Law was a precursor to New Law.

Aquinas outlines the necessity of Divine law in addition to natural and human law, by

providing four characteristics of Divine law.  First, Divine law, like natural law and human law,

helps direct us to our proper end.  Aquinas explains, "since man is ordained to an end of eternal

happiness which is improportionate to man's natural faculty, as stated above, therefore it was

necessary that, besides the natural and the human law, man should be directed to his end by a law

given by God".[101]  Divine law provides a way to ensure that the ends we derive from natural law

and human law are in accordance with the end that God has established.  Through Scripture, the

proper actions we must take to direct ourselves toward our end are revealed to us.  Because our

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[96] Ibid.
[97] Ibid.
[98] Ibid.
[99] Ibid.
[100] Ibid.
[101] S.T., Question 91, Article 4.

natural faculties can be perverted and incorrect, divine law is necessary to provide guidance to perform proper acts.

Second, because customs are an important determinant of human action and are relative depending on different communities, human law can allow for different judgments on human action that can at times be contradictory. Divine law provides guidance from God, and so it is correct, as to what man ought to do despite the differences that may come from human laws.[102] In this way, Divine law is a standard that other laws can be compared to when determining the correctness of the human law.

Third, Divine law is necessary to judge interior decisions. Because human law is only able to prescribe and judge exterior actions, there also needs to be a way to judge interior decisions. Aquinas explains, "man is not competent to judge of interior movements, that are hidden, but only of exterior acts which appear: and yet for the perfection of virtue it is necessary for man to conduct himself aright in both kinds of acts. Consequently human law could not sufficiently curb and direct interior acts".[103] In this way, Divine law is harmonious with human law because it can judge what human law is unable to determine.

Fourth, Divine law is needed because human law is made by lawgivers. Lawgivers are human and so are not able to know all evil that must be punished within a community. Some things that need to be punished are not punished by human law because, "while aiming at doing away with all evils, it would do away with many good things, and would hinder the advance of the common good".[104] Human law gives the ability to punish some evil within a community, but Divine law is able to punish evil that human law is unable to punish because it is not within the

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[102] Ibid.
[103] Ibid.
[104] Ibid.

duties of society to punish all evil of which human action is capable. Due to these four reasons, Aquinas concludes that natural law and human law are not enough to direct human action and so, Divine law is also necessary.

**Divine Law and Natural Law**

There is a harmony between Divine Law and Natural law that is established by the moral precepts of the Ten Commandments. The Ten Commandments are revealed, but they only make explicit through Divine Law aspects of Natural Law that are understood through reason and practiced in each society. Aquinas makes this clear when he cites St. Paul to say "the Gentiles, who have not the Law, do by nature those things that are of the Law: which must be understood of thing pertaining to good morals. Therefore all the moral precepts of the Law belong to the law of nature".[105] When referring to the moral precepts, the Ten Commandments, St. Paul is clear that these laws are in harmony with Natural Law. Aquinas continues to explain this harmony between Divine Law and Natural law:

> The moral precepts, distinct from the ceremonial and judicial precepts, are about things pertaining of their very nature to good morals. Now since human morals depend on their relation to reason, which is the proper principle of human acts, those morals are called good which accord with reason, and those are called bad which are discordant from reason. And as every judgment of speculative reason proceeds from the natural knowledge of first principles, so every judgment of practical reason proceeds from principles known naturally.[106]

In this way, Divine Law and Natural Law are harmonious and bounded together by human reason. Through human reason, man is able to understand the moral precepts of Natural Law that are dictated through Divine Law. Together, Natural Law and Divine Law are used to direct human action toward the good even without human law.

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[105] S.T., Question 100, Article 1.
[106] Ibid.

While there are laws that are directly derived from Natural Law and are made explicit through Divine Law, Aquinas is clear that there are also moral precepts that are not known to men by reason:

> there are certain things which the natural reason of every man, of its own accord and at once, judges to be done or not to be done: e.g., Honor thy father and thy mother, and, Thou shalt not kill, Thou shalt not steal: and these belong to the law of nature absolutely. – And there are certain things which, after a more careful consideration, wise men deem obligatory. Such belong to the law of nature, yet so that they need to be inculcated, the wiser teaching the less wise: e.g., Rise up before the hoary head, and honor the person of the aged man, and the like. – And there are some things, to judge of which, human reason needs Divine instruction, whereby we are taught about the things of God: e.g., Though shalt not make to thyself a graven thing, nor the likeness of anything; Though shalt not take the name of the Lord thy God in vain.[107]

This demonstrates that using reason alone, one can understand certain aspects of Natural Law that are found in Divine Law. However, there are other moral precepts that may need Divine instruction to understand or follow. Because of this, Divine Law and Natural Law are never in opposition, but may be used to convey the same idea in different ways.

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[107] Ibid.

**CHAPTER 3:**

**Hegel and the Philosophy of Right**

**Natural Law and Rationality**

To understand Hegel's role in the analysis of natural and universal laws, it is important to begin by establishing the terms and thought process that Hegel uses throughout *Elements of the Philosophy of Right or Natural Law and Political Science in Outline*. Hegel begins his work by explaining, "the truth concerning right, ethics, and the state is at any rate as old as its exposition and promulgation in public laws and in public morality and religion."[108] For Hegel, his work is a new approach to a topic with which philosophers have grappled throughout history. He critiques the examination of concepts by means of definitions, classifications, and inferences. Instead, he proposes and uses a method of speculative reasoning in which concepts have a dialectical unfolding that does not necessarily dictate particular and concrete examples of these concepts, but looks at both the universal and the concrete parts of the concepts together.

Hegel attempts to find a balance between a universal, theoretical understanding of law while also examining the universal application to the concrete, written law. Like Aquinas and Augustine, Hegel asserts that there are universal ethical principles and that humans must apply these principles to particular moments in our lives. He explains,

> human beings think and look for their freedom and the basis of ethics in (the realm of) thought. But however exalted, however divine this right may be, it is nevertheless transformed into wrong if the only criterion of thought and the way in which thought can know itself to be free is the extent to which it diverges from what is universally acknowledged and valid and manages to invent something particular for itself.[109]

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[108] Georg Wilhelm Friedrich Hegel. *Elements of the Philosophy of Right*. Edited by Allen W. Wood (Cambridge: Cambridge University Press, 2015), Preface, 11.
[109] Hegel. *Philosophy of Right*, Preface, 12.

This demonstrates that there exists both a universal thought as well as what is actualized as a particular. Like Aquinas, the closer the particular is to the universal, the more correct the particular. While the universal acts as a broad and general standard, the particulars are heavily influenced by the history and culture surrounding these concepts in our lives and society. This creates an understanding that, for Hegel, concepts have universal existence and these universal concepts play a role in the world in which we know and experience however they are altered and tailored to individual understanding by circumstances surrounding these concepts and our societies. It is important to note that there is objectivity in concepts, but there are also subjective instances of these objective concepts. The distinction, and also the connection, between the universal and the particulars is the foundation of Hegel's theory of natural law.

In a lecture given by Hegel, he outlines two kinds of law: laws of nature and laws of right. Hegel states that in nature, "the highest truth is that law exists at all."[110] Laws of nature are external and beyond human control, while laws of right are logical principles of lived experience and are derived from human beings. Laws of right also have the ability to be judged by human beings based on their proximity to logical conclusions that we make. However, for laws of right, a human also has the capability to judge and measure what is right because, "his inner self always tells him how things ought to be, and he finds within himself the confirmation or repudiation of what is accepted as valid."[111] Human capacity to use reason – an internal component that is specific to humans – allows us to judge the logical conclusions that are made by laws of right and gives us the ability to determine the moral validity of the laws we create.

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[110] Hegel. *Philosophy of Right*, Preface, 13.
[111] Ibid.

Logic plays an important role in Hegel's view of law. For Hegel, logic, nature, and spirit are all self-generations of the divine. Logic is universal in nature, as it is connected with thought, and is *a priori* because it does not derive from experience or the particulars.[112] Because of this, human rationality is an act of the divine. This view influences Hegel's notion of nature. Hegel, like Aquinas, believes that nature is intelligible as it is informed by logic. However, this logic is divine, giving nature a divine origin. While logic is divine, there is also an organic relationship between nature and mind: "the mind that observes nature, emerges out of nature. This cannot be done if nature consists only of entities and processes that are entirely alien to the mind."[113] Logic informs nature and mind and making logic, nature, and mind interconnected.

Like Augustine and Aquinas, Hegel believes rationality and thought give humans the ability to examine law from an ethical perspective. Hegel explains his position, one that is closely aligned with Augustine and Aquinas, as he says, "man has by nature a drive towards right, and also a drive towards property and morality, and also a drive towards sexual love, a drive towards sociability, etc.."[114] Thought and will are necessary in order to reflect and apply judgment to these differing drives. Will is naturally determined by drives, desires, and inclinations.[115] While drives, desires, and inclinations are all characteristics that animals and humans share, animals do not possess will, because rationality, a characteristic unique to humans, is a necessary component of will. When one acts arbitrarily and without rationality, he is not free. The combination of will and rationality brings conduct under more general, universal ethical ideas. These actions are actions that have free will.

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[112] Inwood, Michael. *A Hegel Dictionary* (Cambridge, Massachusetts: Blackwell Publishers, 1992), 269-271.
[113] Inwood, *A Hegel Dictionary*, 196.
[114] Hegel. *Philosophy of Right*, Introduction §19, 51.
[115] Hegel. *Philosophy of Right*, Introduction §11, 45.

Will plays an important role in Hegel's philosophy especially when analyzing the universal and particular aspects of specific concepts. Expanding on the universal and particular, it is helpful to understand the distinction between thought and will. Hegel explains,

> When I think of an object (*Gegenstand*), I make it into a thought and deprive it of its sensuous quality; I make it into something which is essentially and immediately mine. For it is only when I think that I am with myself (*bei mir*), and it is only by comprehending it that I can penetrate an object; it then no longer stands opposed to me, and I have deprived it of that quality of its own which it had for itself in opposition to me.[116]

In this example, Hegel makes the object of his thought universal by making the object a thought devoid of the characteristics that are specific to his individual interaction with the specific object. The characteristics that are specific to that individual object are particular, while the thought of the general object is universal. Thought is objective and universal because, "every representation (*Vorstellung*) is a generalization, and this is inherent in thought. To generalize something means to think it. 'I' is thought and likewise universal. When I say 'I', I leave out of account every particularity such as my character, temperament, knowledge (*Kenntnisse*), and age."[117] Alternatively, the practical,

> begins with thought, with the 'I' itself, and seems at first to be opposed (to the world) because it immediately sets up a separation. In so far as I am practical or active, i.e. in so far as I act, I determine myself, and to determine myself means precisely to posit a difference. But these differences which I posit are nevertheless also mine, the determinations apply to me, and the ends to which I am impelled belong to me.[118]

The practical is the active part of the universal thought. An object has both a practical and universal aspect that create our understanding of the object.

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[116] Hegel. *Philosophy of Right*, Introduction §4, 35.
[117] Ibid.
[118] Hegel. *Philosophy of Right*, Introduction §4, 36.

While there is a distinction between the universal and the practical, they are also connected and related to will.  It is important that "the theoretical is essentially contained within the practical."[119]  They cannot be separated because one cannot will without the intelligence to know what it is willing and make a judgment accordingly.  Because of this, the will contains the theoretical, a distinction between humans and other animals.  Animals act out of instinct in given situations – this is a practical attitude that comes from something inward – but the animal has no will because it does not acknowledge to itself what it desires or the reason that it acts to fill this instinct.[120]  To acknowledge and judge what must be done and have action in accordance to what is thought, one must have will.

Like thought and will, the subjective and objective do not stand in opposition.  Hegel posits, "it is usually believed that the subjective and objective are firmly opposed to one another.  But this is not the case; they in fact pass over into one another, for they are not abstract determinations like positive and negative."[121]  This is so because something that is subjective must have an aspect of its existence that is objective and based in something that is in common with everyone and, something that is objective must have subjective parts that are experienced in order for these concepts to be practiced by people in real life.  The overlap between the subjective and objective is important because, "the activity of the will consists in cancelling (*aufzuheben*) the contradiction between subjectivity and objectivity and in translating its ends from their subjective determination into an objective one, while at the same time remaining with itself in this objectivity."[122]  The activity of the will sublates the contradiction between

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[119] Ibid.
[120] Ibid.
[121] Hegel. *Philosophy of Right*, Introduction §26, 56.
[122] Hegel. *Philosophy of Right*, Introduction §28, 57.

subjectivity and objectivity, making the will an expression of the absolute as freedom of subjectivity and objectivity.[123]  The concept of the will is the mind after it has transitioned from the theoretical to the practical.  This transition is an Hegelian account of Kant's transition from the theoretical to the practical.

**Contracts and The State**

Hegel's notion of a contract is necessary to understand the difference between arbitrary will and universal will.  A contract between two parties is a product of arbitrary will.[124]  For example, consider a contract between two parties, one of whom is an owner of private property.  Hegel explains the arbitrary will of a contract when he says, "the object (*Gegenstand*) of the contract is an individual external thing (*Sache*), for only things of this kind are subject to the purely arbitrary will of the contracting parties to alienate them."[125]  Both parties have being for themselves and their own individual wills.  Because of this, a contract is made between two parties that each has an arbitrary will, but the contract itself is a separate, common will.  This is different from Roman Law that defines a contract as an accordance of two separate wills.  Instead, Hegel's contract is a separate will – a common will – that is distinct from the two arbitrary wills.  It is important to note that while a contract is a universal concept, a common will is still arbitrary and not universal.[126]

When analyzing contracts, we must also determine the connection between the contracts and the state.  While Hegel acknowledges that "it has become very popular to regard the state as a contract of all with all," he argues that this belief is incorrect.[127]  The state is not part of the

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[123] Ibid.
[124] Hegel. *Philosophy of Right*, Abstract Right §75, 105.
[125] Ibid.
[126] Ibid.
[127] Hegel. *Philosophy of Right*, Abstract Right §75 Addition, 106.

common will, so a contract does not employ the state. Thus, contracts exist outside of the state as there is no connection between the state and contracts. For a contract to exist, Hegel requires both parties to have arbitrary wills and one party to own a private possession. Under this definition, the state does not have a contractual relationship with an individual because the state and the individual do not both have arbitrary wills with one as an ownership of a private possession. Instead, the individual is already a citizen of the state by nature and so, the state and the individual are not connected through a contractual system. Hegel explains,

> the arbitrary will of individuals (*Individuen*) is not in a position to break away from the state, because the individual is already by nature a citizen of it. It is the rational density (*Bestimmung*) of human beings to live within a state, and even if no state is yet present, reason requires that one be established. The state itself must give permission for individuals (*Einzelne*) to enter or leave it, so that this does not depend on arbitrary will of the individuals concerned; consequently, the state is not based on contract.[128]

Because the nature of the state's relationship with the individual is natural, this relationship exists outside of a contractual agreement.

**Morality and Law**

Morality is a central point of discussion for Augustine, Aquinas, and Hegel. However, there is a strong distinction between the role that morality plays for Augustine and Aquinas and the role of morality in Hegel's philosophy. To Hegel, morality is an inward action that represents the real concept of freedom. A subjective will is immediate, for itself, distinct, and formal.[129] However, morality cannot exist with only a subjective will because morality must take into account other peoples' will and should be grounded in something that is universal and not particular. Because morality is larger than just one person, the subjective will that is immediate must become mediate by relating to the will of others. The relationship between

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[128] Ibid.
[129] Hegel. *Philosophy of Right*, Morality §108, 137.

different subjective wills makes the subjective will identical to the concept of will, one with universal properties. The change from particular to universal will allows the will to relate to itself and also to relate to others by allowing the subjective and objective to be independent and still be identical.

Hegel presents three aspects of right of the moral will. First is that of action. Action is immediate and the purpose of the subjective will. Second is intention. Intention is the particular aspect of action and applies the universal character to the subjective will. Intention is subjective when analyzed as a single instance; however, when assigning judgment to the intention in general it becomes universal.[130] Third is content which is inward, yet objective, and has being in itself so it can aim for the good.

While the expression or action of the will is external, Hegel believes that moral action is distinct from law because morality is an inward action, while law is external. He explains, "the content of a legal (*gerichtliche*) action (*actio*), which is determined by rules, is not imputable to me; it thus contains only some of the moments of moral action proper, and these are only externally present. That aspect of action which makes it moral in the proper sense is therefore distinct from its legal (*gerichtliche*) side."[131] Hegel makes a clear distinction between intention and action, and only by acting externally does one submit oneself to the law. This means there is a difference between moral action and law. This is different from Augustine and Aquinas' ideas of law and morality. Augustine and Aquinas understand human law as a societal prescription for moral action. However, to Hegel moral action is inward and does not have a relationship with law until moral action becomes external through our actions. This seems to

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[130] Hegel. *Philosophy of Right*, Morality §119, 147.
[131] Hegel. *Philosophy of Right*, Morality §113, 141.

imply that law does not prescribe our actions in the way that Augustine and Aquinas assert, but instead law judges our actions after we act externally.

While Hegel's relationship between morality and law is different from that of Augustine and Aquinas, Hegel and Aquinas have similar notions of authority. Hegel and Aquinas, both writing in Roman context, establish that there is an authority of natural reason and of scriptural authority. We use both reason and authority to determine whether our actions are right or wrong when making moral decisions.[132] However, Hegel identifies a similar problem as Aquinas does, when reason and authority disagree regarding law. Hegel says, "my conviction is indeed an extremely insignificant thing if I cannot recognize the truth; for then it is a matter of indifference how I think, and all that remains for me to think about it that empty good is an abstraction of the understanding."[133] When our reason directs us away from the truth, our reason is not adequate in guiding us to make a determination between right and wrong. Law that is not bounded in truth has similar problems: "such a law is reduced to purely external letter, indeed to an empty word, for it is only my conviction which makes it a law and a binding duty for me.– Such a law may have the authority of God and the state behind it, and the authority of the thousands of years for which it was the bond by which human beings and all their deeds and destinies were held together and sustained – authorities which encompass countless individual convictions."[134] While Hegel admits that humans have the capability to err,[135] he places a stronger emphasis on human reason than on authority when addressing the inconsistency between moral guidance informed by reason and by authority. He understands this inconsistency to be an important

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[132] Hegel. *Philosophy of Right*, Morality §140, 178.
[133] Hegel. *Philosophy of Right*, Morality §140, 180.
[134] Hegel. *Philosophy of Right*, Morality §140, 179.
[135] Ibid.

problem for both morality and law, but because human reason is divine, as logic is *a priori* to nature, he has more confidence in the subjective convictions that one makes on one's own than the convictions made by authority.

**Human Law as Constitutional Law**

Human law is "when what is right in itself is posited in its objective existence (*Dasein*) – i.e. determined by thought for consciousness and known (*bekannt*) as what is right and valid."[136] Human law is a binding force, but is only binding if it is universally known. Hegel gives examples of different types of laws in order to outline the characteristics of human law. He explains that things such as planets have laws that dictate their motions; however, they are unaware of these laws that rule them. Barbarians are governed by drives and customs, but because they do not have the same level of reason, "they have no consciousness of these laws."[137] Influenced by Hume, Hegel concludes that if there are customs that are collected, recorded, universal, and apprehended by society, they become laws. Like Aquinas, who believes that decision is a principle of human nature, Hegel believes that fully developed will becomes decision. While we may all have will, we must act in order to have decision. In this way, will has freedom through decision that natural law does not have. While both planets and barbarians have natural laws and governing principles, they do not have choice that accompanies this law and therefore they do not have will or freedom. However, human law is not the same. Humans are conscious of human laws and so, while humans are directed by custom and law, they also have choice and decision, especially pertaining to human law.

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[136] Hegel. *Philosophy of Right*, Ethical Life §211, 241.
[137] Hegel. *Philosophy of Right*, Ethical Life §211 Addition, 243.

Decision is not the only thing that distinguishes human law from natural law. Hegel also compares law to a tree to explain that law is never fully complete. As it would be foolish to plant a tree, but forbid it to grow new branches, law also must constantly be changing. Hegel says, "it is therefore mistaken to demand that a legal code should be comprehensive in the sense of absolutely complete and incapable of any further determinations…and to refuse to accept, i.e. to actualize, something allegedly imperfect on the grounds that it is incapable of such completion."[138] However, while human law can be variable, there is a consistent, immutable aspect to law that is promulgated. The Ten Commandments, which are seen as universal law, should be promulgated and followed. However, like a tree, we should always be willing to accept new growth from this stable foundation.[139]

Because human law is a universal determination that is applied to individual cases, Hegel proposes a possible problem of balancing universal and particular aspects of law. When applying law to individual cases there are two distinct parts: knowledge of the nature of the case and the case as it applies to the law and restoration of rights. The knowledge of the nature of the case involves reason in finding the facts of the case and proof of these facts, while applying the law is the process of analyzing how the universal law addresses the specific rights in the case. While these two parts are important, Hegel proposes the universal and concrete aspects of law as being possibly problematic for law.

Hegel sees constitutional law as the most fundamental part of human law. Constitution – *politea* – is law at the level of the state and therefore is the inner form of ethical life and the state. The state is the "actuality of the ethical Idea," and because it is the actuality of the substantial

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[138] Hegel. *Philosophy of Right*, Ethical Life §216, 248.
[139] Hegel. *Philosophy of Right*, Ethical Life §216 Addition, 248.

will, it is rational in and for itself.[140]  While the state is an external power on which the family

and civil society depend, it is also an immanent end of civil society.  This presents the question

of the nature of the interaction between the state and the individuals of the state.  To address this

question, Hegel uses a Kantian approach to present an ideal state of existence in which the

particular interests of individuals are not suppressed by the state, but instead work together with

the universal interests of the state.  While this approach has not been seen in the states he has

witnessed, he believes that this is the way in which a healthy state would best operate.  In civil

law and morality, what is right for one person should be right for all, and the duty of one person

should be the duty for all.

In an attempt to balance the particular interests of the individuals with the universal

interests of the state, Hegel insists that a constitution can give the state a "firm foundation" and

build the trust of the individuals within it.[141]  The firm foundation of the state is made possible

by its citizens.

> What matters most is that the law of reason should merge with the law of particular
> freedom, and that my particular end should become identical with the universal;
> otherwise, the state must hang in the air.  It is the self-awareness of individuals which
> constitutes the actuality of the state, and its stability consists in the identity of the two
> aspects in question.  It has often been said that the end of the state is the happiness of its
> citizens.  This is certainly true, for if their welfare is deficient, if their subjective ends are
> not satisfied, and if they do not find that the state as such is the means to this satisfaction,
> the state itself stands on an insecure footing.[142]

In this way, the state's success is measured by its ability to satisfy the needs of the citizens and

its security is dependent on the citizens.  The co-dependence of the citizens and the state

demonstrates the necessity of the balance that Hegel believes is necessary for an ideal state.

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[140] Hegel. *Philosophy of Right*, Ethical Life §257, 275.
[141] Hegel. *Philosophy of Right*, Ethical Life §265, 287.
[142] Ibid.

However, it must be noted, an ideal state will not align with the real state. The concept of the state emerges from history, but history does not achieve the ideal.

To actualize the balance between the state and the individual, a constitution must be codified. However, a constitution exists even before it is codified. If there is a group of individuals who wish to create a constitution, the foundation of a constitution already exists. Because of this, when drafting a constitution, one is merely changing an already existent form of constitution. Hegel presents the idea of a preexistent constitution when he says,

> how such an aggregate could arrive at a constitution, whether by its own devices or with outside help, through altruism (*Güte*), thought, or force, would have to be left to it to decide, for the concept is not applicable to the aggregate. – But if the above question presupposes that a constitution is already present, to draw up a constitution can only mean to change it, and the very fact that a constitution is presupposed at once implies that this change could take place only in a constitutional manner.[143]

This is an instance in which Hegel uses a notion of natural law as he explains a preexistent understanding of law that then influences the human law or positive law that becomes codified. Codifying of a constitution is merely changing the preexisting one and the written constitution should be "regarded as divine and enduring, and as exalted above the sphere of all manufactured things."[144] This demonstrates Hegel's belief that the preexistent constitution should be held as the official and proper law while the codified constitution that is manufactured from the original constitution should be held with less authority. This is similar to the presentation of Augustine and Aquinas' understanding of natural law that then influences human law.

Like Aquinas, Hegel emphasizes the importance of a written constitution that is "appropriate and proper" to each nation.[145] Hegel believes that

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[143] Hegel. *Philosophy of Right*, Ethical Life §273, 311.
[144] Hegel. *Philosophy of Right*, Ethical Life §273, 312.
[145] Hegel. *Philosophy of Right*, Ethical Life §274, 312.

> The spirit of a nation (*Volk*), is both the law which permeates all relations within it and also the customs and consciousness of the individuals who belong to it, the constitution of a specific nation will in general depend on the nature and development (*Bildung*) of its self-consciousness; it is in this self-consciousness that its subjective freedom and hence also the actuality of the constitution lie.[146]

Hegel emphasizes the importance for a constitution to be both written and generally understood. To meet both of these criteria, a constitution cannot simply be written; it must be formalized by the citizens and their actions. For Hegel, this formalization by the citizens is done when law is in accordance with custom. However, demonstrating the developmental nature of Hegel's account, unlike Aquinas who has a separation between natural law and custom, for Hegel, a constitution is only able to be formalized by the citizens if it is developed from natural law that is already consistent with custom. Because of this, natural law is already harmonious with custom. However, for Aquinas, natural law is isolated from custom and culture, and human law works to bridge the gap between natural law and custom.

**Religion and The State**

Because the state must conserve particular interests while also directing these interests to a more universal end, Hegel addresses the particular interest of religion in the context of the state. To Hegel, religion and the state are opposed in form, but not in essence.[147] Hegel explains religion when he says,

> the content of religion is absolute truth, and it is therefore associated with a disposition of the most exalted kind. As intuition, feeling, and representational cognition (*vorstellende Erkenntnis*) whose concern is with God as the unlimited foundation and cause on which everything depends, it contains the requirement that everything else should be seen in relation to this."[148]

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[146] Ibid.
[147] Hegel. *Philosophy of Right*, Ethical Life §270, 299.
[148] Hegel. *Philosophy of Right*, Ethical Life §270, 292.

The state and religion both have absolute truth demonstrating the importance of religion to Hegel. However, religion is different from the state in form because religion views things in relation to God. These relationships to God can give the state, laws, and duties the highest absolute truth and a valuable foundation. If religion and the state can form a community where religion provides a service to the greater community, religion can benefit the state. If the state gives religious communities assistance and protection as they pursue their ends, this can benefit the state because, "the business of its worship consists in actions and in doctrine; for these, it requires possessions and property, as well as individuals dedicated to the service of the community."[149] Hegel even suggests that if a religious community can assist the state in this way, the state "ought even to require all its citizens to belong to such a community – but to any community they please, for the state can have no say in the content (of religious belief) in so far as this relates to the internal dimension of representational thought."[150] Because the values of religion benefit the state, the state and religion can have a beneficial and positive relationship.

However, when religion becomes the foundation of the state, the state becomes divine will, which can cause factions to arise and instability and insecurity to ensue.[151] Hegel sees a problem with religion in a state where a religious community acts subjectively and does not raise this subjectivity to the right and duty of the state. In these instances, the religious communities' actions fail to meet the universal end of the state. Because of this, religion can be a beneficial or a detrimental aspect to the state. To mitigate this issue, Hegel argues that when religious communities provide service to the greater community, a relationship between the state and

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[149] Hegel. *Philosophy of Right*, Ethical Life §270, 295.
[150] Ibid.
[151] Hegel. *Philosophy of Right*, Ethical Life §270, 293.

religion can form. Religion can "see itself as an end in itself, but the state purely as a means."[152] In this way, religion and the state are opposed in form because the state requires a legal duty that religion does not. But, religion and the state are not opposed in content as both religion and the state share similar ethical and rational thoughts. Religion has ethical and rational thoughts that are subjective. The state has domain over ethical and rational thought once this content moves from representation in the form of faith and doctrine into determinate thought.

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[152] Hegel. *Philosophy of Right*, Ethical Life §270, 298.

**CONCLUSION**

Augustine, Aquinas and Hegel have different concepts of nature and the divine and these notions provide a frame for their different understandings of law and morality. We now return to the question: can nature and the divine be used to guide human conduct? First, Augustine's view of nature is driven by his concern for human nature and morality after the fall. Giving a Platonic account of nature and being that creates a hierarchy in which God is placed on the top level, Augustine concludes in *The City of God* that due to the fall, we are no longer able to live in our perfect state while living on earth. Instead, we must rely on God's grace to direct us toward virtue and away from sin. This reliance on God creates a nature in which we must look inward and relate to God in order to be guided towards virtue and away from sin. This view strongly impacts Augustine's understanding of natural law. Natural law is created by God and is given to us to follow through God's grace. While nature guides us to some extent, God is the ultimate guide toward virtuous action.

While Aquinas shares many of Augustine's beliefs regarding nature and the divine, Aquinas' foundation in Aristotle and his more optimistic view of human virtue leads him to a slightly different theory of natural law. In his "Treatise on Law" in the *Summa Theologica*, Aquinas believes that both reason and law, along with God's grace, can direct us to virtue and proper moral action. Agreeing with Aristotle, he understands nature to be a principle in itself, ordered, and intelligible. As rational beings we are able to understand some aspects of nature without access to God and when we act in accordance with what is natural, we act morally. However, he believes that God rules nature and so we answer to God who has created nature and human nature. Due to Aquinas' understanding of nature as intelligible, natural law is created by God, but is consistent with natural necessity. Because we can understand natural necessity with

reason, we can understand aspects of natural law with reason in addition to God's grace. Because moral guidance is a composite of many different informants, the external source of human law can direct individuals and communities to proper moral action.

In *Elements of the Philosophy of Right*, while Hegel presents a natural law, his focus is primarily on the balance between the objective and subjective aspects of law. Hegel's notion of logic most clearly depicts how nature impacts Hegel's view on law. Because logic is universal and is *a priori* to nature, it informs nature. Logic is divine, making both nature and human rationality divine. Aquinas believes that as humans, because we are rational beings, we are able to understand nature without access to God. This is an impossibility in Hegel's philosophy because nature is the externalization of God and so the divine and nature cannot be separated. While he recognizes that there is a universal concept of law, he also questions how this concept can become concrete and can be applied to specific cases. He relies on the will to sublate the contradiction between subjectivity and objectivity of law. This is done through constitutional law – *politea* – because this is the inner-form of Hegel's politics. While Hegel believes that constitutions inherently exist within a group of people, the process of creating written law makes the universal components of natural law into human law that can be applied to individual cases. While there can be problems that arise in translating the universal into the subjective, Hegel believes that human reason, divine in nature, ensures that this process is possible.

Augustine, Aquinas, and Hegel all present a natural law that is founded in nature and the divine. Because understanding nature is necessary to understanding natural law and receiving guidance towards virtue, Augustine, Aquinas, and Hegel each present means for humans to gain an understanding of natural law. Due to the role of human rationality in both Aquinas and Hegel's philosophy, reason can assist us in understanding the principles of natural law.

However, Augustine understands this to be the role of God's grace and believes that only a relationship with God can provide guidance toward virtue and away from vice.

Because each philosopher has a different understanding of nature and the divine, each philosopher provides a different account of natural law. However, they are all in agreement that as humans – with the help of rationality or God's grace – we are provided with glimpses of nature and the divine. While we can utilize this information to make moral decisions and laws that guide us toward virtue, there is no way for humans to fully understand nature or the divine. Acting in accordance with our nature would provide us with perfect action, but as human beings, we are incapable of grasping the complexities of nature or the divine and, therefore, do not have infallible answers to many moral questions. Instead, we must rely on divine, natural, and human law in hopes of moral direction and guidance in our actions.

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