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William Ferree S.M.
Mount St. John

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Saint Thomas and Social Justice

William Ferree, S.M.

The modern scientific concept of Social Justice is no older than the month of May of 1931—the date of the publication by Pius XI of his Encyclical *Quadragesimo Anno*. It is true that the term “Social Justice” had been coming into increasing use since the middle of the nineteenth century; but its meaning was fuzzy and ambiguous, and amounted to little more than “social problems.”

In Pius XI, the term is a scientific renaming of the age-old “legal justice” which comes down to us across the centuries from the golden age of Greek Philosophy; but which through more than two millennia of mankind’s best efforts, failed to become anything more than a museum-piece, dutifully displayed at the beginning of any serious treatise on justice, but then left completely undeveloped.

Such treatment began with Aristotle himself, who was probably the first to commit to writing mankind’s thinking on the subject. He begins the fifth Book of his *Nicomachean Ethics* with a distinction of the various senses of the word “justice.” He points out rightly that there is a sense in which “justice” is “not a part of virtue, but virtue entire”; and then goes on to say: “But at all events, what we are investigating is the justice which is a part of virtue; for there is a justice of this kind, as we maintain. Similarly, it is with injustice of the particular sense that we are concerned.”

How faithfully this procedure was followed right into modern times is perhaps best exemplified in the first volume of Waffelaert’s *De Justitia*, where, in a work on the moral virtues intended to be of monumental proportions, Legal Justice is accorded exactly one paragraph and a footnote! The paragraph, a bit shorter even than the footnote, ends as follows: “Of this general justice we shall no more have anything special to say.”

It is no wonder, therefore, that when Pius XI finally decided to develop the concept with scientific precision, he also decided to change its name. In the Encyclical *Studiorum Ducem*, in which he honors the one exception to the desolate panorama just traced through the history of human thought, he indicates briefly his intention to abandon the term “legal justice” to the lawyers and to substitute the term “Social Justice” in its stead. Not once after this does he use the term “legal justice” in its traditional sense: it is always, and exclusively, “Social Justice.”

Our business in this talk is with the one exception: the Philosopher and Theologian who was honored in the Encyclical *Studiorum Ducem*; and who alone in over two thousand years made a real and significant advance in the primitive and rather

incidental treatment accorded by Aristotle to what has become in our days the most important concept in moral theology.

But before examining in detail the specific contribution of Saint Thomas Aquinas to the scientific development of the concept of social justice, let us see briefly what happened to it in 1931 and since.

The real title of the Encyclical *Quadragesimo Anno* was "On the Restructuring of Social Order," "*Quadragesimo Anno*" being simply the first two words of the text which advert to the fact that the Encyclical was published on the fortieth Anniversary of the first great "Social Encyclical": Leo XIII's *Rerum Novarum*. This real title, "On the Restructuring of Social Order," names with scientific precision something which would have astonished Aristotle no end: a *specific* and "*elicited*" act of the "*general*" justice which in his view could have only "*commanded*" acts! Furthermore, this "social justice" is paralleled and animated by a "social charity," thus suggesting that there is also a "social fortitude" and a "social temperance" to be added to the "social prudence" which was the one social virtue which the philosophy of antiquity had been able to identify.

The implications of this state of affairs is rather startling. Far from being a mere repetition which could be dispensed with (legal justice being defined as *all of virtue*, but only as it regarded the common good), the treatise on legal or social justice must be even more extensive than that on particular justice—or better, the series of treatises on social virtues must be longer and more complex than that on particular virtues, which latter has made up the *whole* of moral philosophy and theology since the time of Aristotle!

The reason why this is true is evidence itself: the matter of the social virtues—the structuring of the common good—is far more complex than any particular virtue, and far more significant for human development.

Let us follow the reasoning that allowed such an incredible oversight to occur. Aristotle saw very clearly what has become constantly better understood down through the centuries, namely, that every act of every virtue in the particular order would somehow promote the general welfare. Furthermore, since it was equally clear that every act of particular vice would harm the same general welfare (think of the present deterioration of whole neighborhoods when individual crimes start rising), a case could be made for a special obligation—deriving from the common good itself—to practice particular virtue, in which case the particular virtue in question would be "commanded" by the common good and assume the additional merit of legal justice. This legal justice was therefore a "general" virtue which could and did "command" the acts of all other virtues for the sake of the common good. But this common good was viewed as a "given" whose principal need was for protection, notably from foreigners who were likely to have other ideas, from women and children who could not be full citizens, and from those beings who were reputed to be unable to practice virtue, namely, slaves and, even worse, mechanics, who suffered a

"special and separate slavery" because they didn't even have the reflected glory of a master!

It is utterly impossible for us at the present time to recreate this vision of the way things are. We can see that it was there, and that it was a very tight ship; but we have no way of really entering into it. We can only surmise that it made our present dynamic and institutional view of society quite unnecessary if not incomprehensible, so that there was no room for actually making or "structuring" a common good which was not "given": to have attempted it would have been to be like the foreigners with their other ideas, and nothing more.

This left Aristotle with a general or legal justice which was simply "tota virtus" or "virtus perfecta," even though it was viewed from the point of view of the common good. Since he expressly intended to cover in his treatise every possible "part" of this "tota virtus," it is easy to see why he brought up the "general virtue" only to get it out of the way so as to get on with all its "parts."

Pius XI's vision is worlds away from this. Society is not a "given," but rather an institution which man constructs or structures, to meet his needs. Furthermore, like all structures, this one is constantly breaking down and having to be repaired ("re-structured"); and man is constantly developing through history so that new structures become necessary to meet new needs. The result is that the common good *can* be worked at *directly* (by structuring and restructuring), and even those particular virtues which are "commanded" by this overriding task take on an entirely new physiognomy of "structure" which no longer permits us to let the particular virtue "stand" for the social one. It suffices to think of how different organizational "morale" is from individual "courage." History is full of brave men who broke under incompetent leadership, and of ordinary "Joes" who stood up to impossible odds with inspired leadership. There is simply no way of pretending that the two are one thing, and that they can therefore be handled in a single treatise, after the manner of Aristotle and of anyone who wrote on the subject after him right into our own century, with the single exception of St. Thomas Aquinas whose memory we are celebrating.

In order to better judge his contribution, let us pass rapidly in review a few more ideas that underlie the modern concept. Pius XI defines the common good as consisting of three things: 1) the wealth and resources of nature; 2) the knowledge and know-how of mankind; and 3) the institutions of human life. A mere glance at this enumeration will suffice to realize that the wealth and resources of nature are a "given" which is quite "fixed" except for the progressive discovery and exploitation made possible by man's knowledge and know-how. This latter, though it is capable of gradual increase over the generations through the institutions of education and training, is also fairly fixed over long periods of time in any one culture. It is thus only the third, the institutions of human life, which can be completely "managed" in the structuring of the common good. It is no wonder that they have gradually assumed paramount importance in our vision of the common good.

Moreover, besides being the only fully manageable element of the common good, these institutions of human society take so tight a grip on human life that they largely determine whether, and to what extent, individual perfection will be even accessible to each one, another title certainly to overriding importance.

In this vision, society which embodies the common good is the coordinated actions of men, and is just as subject as any other actions to the exigencies of moral law. It is social justice, informed by social charity, which sets the norms by which these coordinated actions—society itself—are to be judged to keep them constantly “re-structured” in favor of human development. All through history, philosophers liked to maintain that society was an “ens rationis cum fundamento in re”—logical being with a foundation in reality—which was therefore fairly unmanageable. What they did not notice was that what they were really defining was the *concept* of society, and that they were saying absolutely nothing about it which would not be equally true of any other concept whatever! The simple fact is that society is real being, though it is what the older philosophers would have called “an accident of an accident.” That is, it consists of the coordinated (a “mode”) actions (an “accident”) of men (the substances).

This is a very hasty sketch which cannot possibly answer all the questions that will arise in the minds of men trained in older notions. But, as the modern youth culture puts it, that is where it's at.

Now to Saint Thomas. His performance when faced with an obvious deficiency in the thought on which he was largely basing his own system, is a model of how a tradition can be honored in the very fact of bringing it up to date. This is worlds away from our modern belief that we have to try, sentence, and execute the past before we can even think of building on it. This is becoming a major problem in our world of the “communications revolution” and the consequent public character of theological speculation at all stages of integration or—more usually—lack of integration. We really need a pastoral theology of integration, and Thomas offers us some remarkable insights into how it is done. The best way to see this is to follow him step by step in his commentary on Aristotle. We will find that he scrupulously gives credit where credit is due; but that when he finds it necessary to innovate he doesn't hesitate for a moment to do so. At the same time, however, he keeps the past and the present in fruitful dialogue so that each influences the other, and the present clearly grows out of the past.

We may expect to find in St. Thomas' *Commentary on Aristotle's Nicomachean Ethics*, and in the development he later gave to his doctrine in the *Summa Theologica* an interesting example of his method of “constructive commentary” whereby he kept very close to the text of The Philosopher, and yet managed to find or to make opportunities to perfect or complete the earlier doctrine.

Nor will we be disappointed, for we are here confronted with as interesting an example of such constructive commentary as is to be found anywhere in his work.

Almost every aspect of Aristotle's teaching receives a certain transformation, yet the whole is done so unobtrusively that one must really be looking for the changes to find them.

Aristotle, for instance, speaks consistently of legal justice as "the whole of virtue" or "complete virtue," having in mind the complexus of all virtues as we have already seen:

Aristotle:

Ipsa quidem igitur justitia virtus quidem est perfecta, sed non simpliciter, sed ad alterum.

St. Thomas:

Dicit ergo primo, quod ipsa justitia est quaedam virtus perfecta non simpliciter, sed in comparatione ad alterum.

The insertion of the single particle *quaedam* in the *Commentary* turns the meaning from "complete virtue" to "a certain complete virtue" thus preparing the way for St. Thomas' great contribution to the theory: namely, a specific virtue of legal justice in addition to the general virtue of Aristotle.

Nor does it take him long to follow up this lead. A few lines further on Aristotle asks how legal justice differs from virtue itself. He answers, of course, that there is only a logical distinction. The very same thing which is justice when considered in relation to another, is virtue without qualification when considered simply as a habit:

Aristotle:

Quid autem differt virtus et justitia hoc manifestum ex hic, quae dicta sunt. Est quidem eadem esse subjecto, ratione autem non idem. Sed secundum quod ad alterum quidem, justitia; secundum autem quod talis habitus, simpliciter virtus.

St. Thomas:

Manifestat quoddam quod potest ease dubium circa praemissa. Et dicit quod ex dictis manifestum est, in quo differunt virtus et justitia legalis. Quia secundum substantiam est eadem, sed secundum rationem non est idem; sed per comparationem ad alterum dicitur justitia; inquantum autem est habitus operativus talis boni, est simpliciter, virtus.

So far, St. Thomas could hardly follow the text more literally and still call it a commentary; but whereas Aristotle's text ends here, St. Thomas goes quietly on as if still commenting:

St. Thomas:

Hoc autem intelligendum est quantum ad ipsum actum justitiae et virtutis. Actus enim idem subjecto producitur a justitia legali et a virtute simpliciter dicta, puta non moechari; tamen secundum aliam et aliam rationem. Verum, quia ubi est specialis ratio objecti etiam

in materia generali, oportet esse specialem habitum, inde est, quod ipsa justitia legalis est determinata virtus habens speciem ex hoc quod intendit ad bonum commune.

But this is a doctrine which is simply not found in Aristotle. And more than that, it is, as we have already noted, the most important part of the whole doctrine! Whether St. Thomas had come across it in some other source, or whether it is the fruit of his own profound analysis when he perceived a certain vagueness in the Aristotelian text is a question which I am not at present prepared to decide. What is most interesting is the method by which he hands over this personal addition to *The Philosopher* as if it belonged to the latter. The illusion is created with the equivocal use of the word *ratio*. Aristotle's use of it is clearly "substantially the same but logically different" as St. Thomas points out in his "*secundum rationem*" of the parallel passage. In the supplementary passage, St. Thomas uses the word twice: the first use (*secundum aliam et aliam rationem*) is non-committal in itself, but in the context probably still means "only logically" though out of this particular context it could equally mean "specifically" different. The next use, (*specialis ratio objecti*) however, can only mean "specifically," and he immediately proceeds to point out then from Aristotle's own principle announced shortly before, that if there is a specific object, then there must also be a specific and determinate habit or virtue. The casual reader could hardly escape the impression that the whole doctrine is actually contained in Aristotle's text, and he would not be set right by the words which immediately follow:

St. Thomas:

Postquam Philosophus ostendit (1) qualis sit justitia legalis, quae est communis—(What Aristotle actually said was "*tota*") virtus; hic ostendit quod praeter eam est quaedam particularis justitia.

To send out one's own contributions to knowledge in a way so completely integrated with former teachings as to hide the very fact that they are new contributions, is admirable scientific detachment indeed, and is moreover a powerful instrument for moulding a constructive continuity of human thought; yet it is not without its disadvantages, not the least of them being that the earlier incomplete teaching is kept so much in honor that it is still studied in itself without the subsequent developments, and its very incompleteness is thus perpetuated. Some such influence is almost certainly at work in the centuries of neglect which the doctrine of legal justice has encountered at the hands of philosophers and moralists; for if Aristotle's conception of it is once accepted, then it really deserves no more attention than he himself gave it.

What we have seen so far is a fundamental addition to Aristotle's doctrine; but there are many other points where St. Thomas has strengthened Aristotle's teaching without altering it. Usually this is done by shifting emphasis from one aspect to another which actually occurs in the earlier text though it occupies there a subordinate position. An example is furnished in the second-last passage quoted above where St. Thomas characterizes legal justice by the fact that it is directed to the common good. Aristotle's ordinary characterization of it is that it be towards another, which is the generic note of all justice and hence the proper designation of Aristotle's concept of legal justice which was not a specific virtue, but the whole of virtue. Ordinarily, of course, St. Thomas, faithful to his role as commentator, sticks to Aristotle's generic designation, but he is careful to insert at strategic points a greater emphasis on the common good:

Aristotle:

Ad alterum enim et in communicatione jam princeps. Propter hoc autem ipsum, et alienum bonum videtur esse justitia sola virtutum quoniam ad alterum est.

St. Thomas:

Ille enim qui est princeps jam se habet in communicatione ad alterum, quia ad eum pertinet disponere ea quae ordinantur ad bonum commune. Et ex hoc habetur quod perfectio virtutis ostenditur ex hoc, quod unus se habet ad alterum.

Notice that in the second sentence St. Thomas carefully indicates genus and species; pointing out that it is specifically from the ordering to the common good that this kind of "ad alterum" (the generic mark of justice) can be called *virtus perfecta*. Aristotle had no need to insist on this since his legal justice was precisely the whole of virtue, (*tota virtus, virtus perfecta*) and the generic designation was sufficient. Again:

Aristotle:

Quare manifestum, quod justitia praeter totam, alia in parte. Univoca autem, quoniam definitio in eodem genere. Ambae enim in eo quod ad alterum habent potentiam.

St. Thomas:

Dicit ergo primo, quod justitia particularis est univoca, idest conveniens in nomine cum legali. Et hoc quidem quia conveniunt in definitione secundum idem genus, inquantum utraque est in eo quod est ad alterum: licet justitia legalis attendatur in ordine ad aliquod quod est bonum commune, justitia autem particularis ordinatur ad alterum quod pertinet ad aliquam personam privatam.

Note here once more that for Aristotle the difference between the two justices is that one is part of the other. This idea runs consistently through his discussion. Even when, as in the passage immediately following the one quoted, Aristotle attempts a

more detailed explanation of the difference, he remains in this field of extension (part to whole):

Aristotle:

sed haec quidem circa honorem, vel pecunias, vel salutem vel si quodam habeamus uno nomine comprehendere haec omnia: vel propter delectationem, quae a lucro. Haec autem circa omnia circa quaecumque studiosus.

Closely connected with this "difference of part and whole" is the fact that for Aristotle legal justice contains the other virtues, while for St. Thomas it directs them, by a sort of dominion, towards its own specific end, the common good. "Each virtue, according as it is directed by the above virtue (special in essence but general in its sway) towards the common good, may be called legal justice.

Incidentally, the immediate continuation of this text makes it quite clear that St. Thomas knew exactly what he was doing; i.e., that he was developing the doctrine of legal justice far beyond anything contained explicitly in the text of Aristotle: "In this sense legal justice is the same in essence with all virtue, but is logically distinct; and it is in this sense that The Philosopher speaks."

To go on with other points of development, it should be noted that Aristotle's concept of legal justice is rigidly dependent on law; so much so that, as we have seen Lessius suggests that if any specific virtue is to be looked for in his concept, it will have to be the virtue of obedience.

Aristotle:

Secundum quidem igitur totam virtutem ordinata iustitia et iniustitia; haec quidem totius virtutis existens usus ad alium, haec autem malitiae; dimittantur. Et iustum, et iniustum secundum has enim manifestum quomodo determinandum. Fere enim multa legalium tota virtute praecepta sunt. Secundum unamquamque enim virtutem praecipit vivere, et secundum unamquamque enim virtutem praecipit vivere, et secundum unamquamque malitiam prohibet lex.

St. Thomas:

Et dicit quod dimittenda est ad praesens iustitia legalis quae ordinatur secundum totam virtutem, inquantum ad eam pertinet usus totius virtutis ad alium. Et similiter dimittenda est iniustitia ei opposita, inquantum ad eam pertinet usus totius malitiae. Manifestum est enim quomodo debeat determinari id quod dicitur iustum vel iniustum, secundum huiusmodi iustitiam vel iniustitiam, quia ea sunt quae determinantur lege. Major enim pars legalium praeceptorum praeciuntur secundum quod conveniunt toti virtuti, inquantum scilicet lex praecipit vivere secundum quamcumque virtutem, et prohibet vivere secundum quamcum-

que malitiam. Sunt vero quaedam lege determinata quae non pertinent directe ad usum alicujus virtutis, sed ad aliquam dispositionem exteriorum bonorum.

It would appear from this text of the *Commentary* that St. Thomas accepts Aristotle's rigid dependent correlation with law, yet there are other passages where it appears that for St. Thomas legal justice is rather analogous to law (positive human law, of course) than dependent on it. Thus in the *Summa Theologica*, after explaining how every act of virtue whatever can somehow be directed towards the common good, he makes the following comment:

And because it is the function of law to ordain matters toward the common good, therefore it is that such justice which is general in the sense just stated (i.e., which can direct any act of virtue whatever towards the common good) is called legal justice; namely, because by it man is made conformable with law which orders the acts of all virtues to the common good.

This would seem to indicate a conception in which legal justice, as a virtuous habit has the same function in regard to all other virtues that law has as a public ordinance; from which identity in function (the direction of all virtues) and in object (the common good) the analogical designation "legal" applies appropriately to both.

However, it cannot be maintained that the difference between St. Thomas and Aristotle on this point is a clear-cut one. There are times when St. Thomas seems to make legal justice as rigidly dependent on law—"political" law—as did Aristotle. An example of this is supplied in the discussion of the place of *epicheia* in relation to legal justice:

It must be maintained that *epicheia* corresponds properly to legal justice, in one sense being contained under it, and in another sense going beyond it. For if that is called legal justice which obeys the law, whether it be according to the words of the law, or according to the intention of the legislator, which is higher, then *epicheia* is the more excellent part of legal justice. If, however, that only is called legal justice which obeys [obtemperat] the law according to the words of the law, then *epicheia* is not a part of legal justice, but is a part of justice generally speaking [communiter dictae], divided against legal justice as going beyond it.

In both cases legal justice in this passage would be a virtue "which obeys the law" (quae obtemperat legi), and in both cases also, since it is either "the words of the law" or "the intention of the legislator" that is obeyed, the law referred to is positive law. The body of the article in question confirms this impression, which might otherwise be considered intentionally incomplete, since it is contained in what is after all only a limited reply to a direct objection:

Epicheia ergo est pars justitiae communiter dictae, tamquam justitia quaedam existens, ut Philosophus dicit. Unde patet quod *epicheia* est pars subiectiva justitiae; et de ea justitia dicitur per prius quam de legali; nam legalis justitia dirigitur secundum *epicheiam*.

Here once more *legalis justitia* would seem to be directly concerned only with positive laws. In other texts it is clear that this positive law with which legal justice is concerned is both human and divine:

Bonum autem sub ratione debiti pertinet proprie ad justitiam: ad legalem quidem si debitum accipiatur in ordine ad legem divinam vel humanam; ad specialem autem justitiam, secundum quod debitum consideratur in ordine ad proximum.

Thus, although St. Thomas offers the very interesting and fruitful suggestion as we have seen that legal justice may be rather analogous to law than rigidly dependent on it, he does not follow up this suggestion, and seems in the majority of passages to accept Aristotle's more limited view, that legal justice is the virtue that obeys positive law. This point is particularly interesting because it is in regard to it that the greatest modern advances in the theory have been made.

There remain a few matters of detail to complete the comparison of St. Thomas' doctrine of legal justice with that of Aristotle. It will have been noted above that St. Thomas integrates the doctrine of *epicheia* with that of legal justice, whereas Aristotle said simply that *epicheia* "was itself just and was better than one kind of justice," without further determination. He calls it, indeed a *directio justi legalis* but we have already seen that for him *justum legale* was a much more restricted notion than *justitia legalis*. The importance of this point is that it makes clear that the term "legal justice" is used in several analogical senses.

It is at least possible that this abundance of meanings, and the great difficulty which results from them in the analysis of legal justice, come from St. Thomas' great deference to Aristotle's doctrine even after he had radically improved it.

Another point of special interest is the ability—or lack of it—of slaves, laborers, and mechanics to practice virtue. Since the purpose of law is to make men good, it would follow that the good citizen would be a good man. But Aristotle refused to admit this if any of the above classes were admitted to citizenship, for they could not be good men even if, in some poorly organized state, they should be admitted to citizenship. St. Thomas, in commenting on Aristotle's passing reference in his treatment of legal justice, goes only so far as to admit that

there are indeed certain forms of government, not rightly ordered, according to which one may be a good citizen, who is not a good man; but according to the best political science no one is a good citizen who is not a good man.

In his treatment of prudence, which is correlative with justice, St. Thomas seems

to soften somewhat the rigidity of Aristotle's doctrine by applying it to the slave "only insofar as he is a slave," and to the subject "only insofar as he is a subject," and then by pointing out that both, insofar as they are men, are rational, and therefore participate in governing according to the rule of reason and possess prudence. The same argument can evidently be applied to legal justice. No Christian, of course, could maintain anything less, and it is quite possible that here to, his attention to The Philosopher prevented St. Thomas from attending fully to reality.

Finally, we have already noted that St. Thomas in his sense of "Justa Legalia" (the object of legal justice), enumerated "principally the virtues, and instrumentally such things as riches, and other exterior goods of like sort." This is particularly interesting in relation to another passage which St. Thomas inserts into his commentary:

But there are some other things determined by law which do not pertain directly to the exercise of any virtue, but rather to some disposition of exterior goods.

Would such texts suggest the possibility of an act of legal justice which is not at the same time an act of some other virtue? For Aristotle such a possibility obviously could not even be considered, since legal justice was simply another name for virtue taken as a whole, a name which applied to the whole of virtue insofar as it was "towards another," and for this reason an act of some other virtue would always have to be present before legal justice could be present, for legal justice would be that act of some other virtue in its relation to one's neighbor. It may, indeed, be seriously questioned whether it is proper at all to speak of an "act" of legal justice in Aristotle's sense, any more than it would be proper to speak of an "act" of metaphorical justice.

In St. Thomas' conception of legal justice, however, the question is quite different. For him, legal justice is a specific virtue, "having its specific nature in the fact that it is directed towards the common good." Thus any act performed expressly for the common good would be an act of legal justice; and the question now arises whether this act would have to be in every case, an act of some other virtue before it could be legal justice. But this requires further development elsewhere. The principal points to be noted here are: 1) the introduction of a specific virtue of legal justice; 2) having a specific object: the common good, instead of the generic *ad alium*; 3) and hence differing from particular justice not merely as whole to part, but as directed towards common and particular good; 4) and directing the acts of all virtues to its own end, rather than simply containing them all as the whole its parts; 5) possibly being analogical to law in that both it and law have the common good as direct end, rather than being simply "the virtue which obeys the law"; 6) probably applying to all men, but still somehow lacking in slaves "as such"; and 7) that legal justice itself is an analogical term in the development given it by St. Thomas Aquinas.

Mt. St. John's
Dayton, Ohio

