

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

---

The *Summa Theologiae* ranks among the greatest documents of the Christian Church, and is a landmark of medieval western thought. It provides the framework for Catholic studies in systematic theology and for a classical Christian philosophy, and is regularly consulted by scholars of all faiths and none, across a range of academic disciplines. This paperback reissue of the classic Latin/English edition first published by the English Dominicans in the 1960s and 1970s, in the wake of the Second Vatican Council, has been undertaken in response to regular requests from readers and librarians around the world for the entire series of 61 volumes to be made available again. The original text is unchanged, except for the correction of a small number of typographical errors.

The original aim of this edition was not narrowly ecclesiastical. It sought to make this treasure of the Christian intellectual heritage available to theologians and philosophers of all backgrounds, including those who, without claiming to be believers themselves, appreciate a religious integrity which embodies hardbitten rationalism and who recognise in Thomas Aquinas a master of that perennial philosophy which forms the bedrock of European civilisation. Because of this the editors worked under specific instructions to bear in mind not only the professional theologian, but also the general reader with an interest in the 'reason' in Christianity. The parallel English and Latin texts can be used successfully by anybody with a basic knowledge of Latin, while the presence of the Latin text has allowed the translators a degree of freedom in adapting their English version for modern readers. Each volume contains a glossary of technical terms and is designed to be complete in itself to serve for private study or as a course text.

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

NIHIL OBSTAT

C. W. BURKE O.P.

T. C. O'BRIEN O.P.

IMPRIMI POTEST

GERARDUS MEATH O.P.

*Prior Provincialis Angliæ*

die 29 Decembris 1965

NIHIL OBSTAT

JOANNES M. T. BARTON S.T.D., L.S.S.

*Censor deputatus*

IMPRIMATUR

✠ PATRITIUS CASEY

*Vic. Gen.*

Westmonasterii, die 4 Maii 1966

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

---

ST THOMAS AQUINAS  
SUMMA THEOLOGICÆ

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

ST THOMAS AQUINAS

SUMMA  
THEOLOGIAE

Latin text and English translation,  
Introductions, Notes, Appendices  
and Glossaries



Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

PIÆ MEMORIÆ

JOANNIS

PP. XXIII

DICATUM

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

---

ALLOCUTIO

PAULI

PP. VI

MCMLXIII

Cambridge University Press

978-0-521-02936-0 - *Summa Theologiae*: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

---

## HIS HOLINESS POPE PAUL VI

WAS PLEASED to grant an audience, on 13 December 1963,  
to a group, representing the Dominican Editors and the  
combined Publishers of the new translation of the *Summa  
Theologiae* of St Thomas, led by His Eminence Michael  
Cardinal Browne, of the Order of Preachers, and the Most  
Reverend Father Aniceto Fernandez, Master General of the  
same Order.

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

## AT THIS AUDIENCE

THE HOLY FATHER made a cordial allocution in which he first welcomed the representatives of a project in which he found particular interest. He went on to laud the perennial value of St Thomas's doctrine as embodying universal truths in so cogent a fashion. This doctrine, he said, is a treasure belonging not only to the Dominican Order but to the whole Church, and indeed to the whole world; it is not merely medieval but valid for all times, not least of all for our own.

His Holiness therefore commended the enterprise of Dominicans from English-speaking Provinces of the Order and of their friends; they were undertaking a difficult task, less because the thought of St Thomas is complicated or his language subtle, than because the clarity of his thought and exactness of language is so difficult to translate. Yet the successful outcome of their efforts would undoubtedly contribute to the religious and cultural well-being of the English-speaking world.

What gave him great satisfaction was the notable evidence of interest in the spread of divine truth on the part of the eminent laymen concerned, members of different communions yet united in a common venture.

For these reasons the Holy Father wished it all success, and warmly encouraged and blessed all those engaged. He was happy to receive the first volume presented to him as a gesture of homage, and promised that he would follow with interest the progress of the work and look forward to the regular appearance of all the subsequent volumes.



Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

## VOLUMES

### PRIMA PARS

- 1 Christian Theology (1a. 1)
- 2 Existence and Nature of God (1a. 2-11)
- 3 Knowing and Naming God (1a. 12-13)
- 4 Knowledge in God (1a. 14-18)
- 5 The Will and Power of God (1a. 19-26)
- 6 The Trinity (1a. 27-32)
- 7 Father, Son, and Holy Ghost (1a. 33-43)
- 8 Creation (1a. 44-9)
- 9 Angels (1a. 50-64)
- 10 Cosmogony (1a. 65-74)
- 11 Man (1a. 75-83)
- 12 Human Intelligence (1a. 84-9)
- 13 Man Made to God's Image (1a. 90-102)
- 14 Divine Government (1a. 103-9)
- 15 The World Order (1a. 110-19)

### PRIMA SECUNDÆ

- 16 End Happiness (1a2æ. 1-5)
- 17 Human Acts (1a2æ. 6-17)
- 18 Principles of Morality (1a2æ. 18-21)
- 19 Love and Desire (1a2æ. 22-30)
- 20 Pleasure (1a2æ. 31-9)
- 21 Fear and Anger (1a2æ. 40-8)
- 22 Dispositions for Human Acts (1a2æ. 49-54)
- 23 Virtues (1a2æ. 55-67)
- 24 Gifts and Beatitudes (1a2æ. 68-70)
- 25 Sin (1a2æ. 71-80)
- 26 Original Sin (1a2æ. 81-5)
- 27 Effects of Sin (1a2æ. 86-9)
- 28 Law (1a2æ. 90-7)
- 29 The Old Law (1a2æ. 98-105)
- 30 The Gospel of Grace (1a2æ. 106-14)

### SECUNDA SECUNDÆ

- 31 Faith (2a2æ. 1-7)
- 32 Consequences of Faith (2a2æ. 8-16)
- 33 Hope (2a2æ. 17-22)
- 34 Charity (2a2æ. 23-33)

\*

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

- 35 Consequences of Charity (2a2æ. 34-46)  
 36 Prudence (2a2æ. 47-56)  
 37 Justice (2a2æ. 57-62)  
 38 Injustice (2a2æ. 63-79)  
 39 Religion (2a2æ. 80-91)  
 40 Consequences of Religion (2a2æ. 92-100)  
 41 The Social Virtues (2a2æ. 101-22)  
 42 Courage (2a2æ. 123-40)  
 43 Temperance (2a2æ. 141-54)  
 44 Parts of Temperance (2a2æ. 155-70)  
 45 Mysticism and Miracle (2a2æ. 171-8)  
 46 Action and Contemplation (2a2æ. 179-82)  
 47 The Pastoral and Religious Lives (2a2æ. 183-9)

## TERTIA PARS

- 48 The Incarnate Word (3a. 1-6)  
 49 The Grace of Christ (3a. 7-15)  
 50 The One Mediator (3a. 16-26)  
 51 Our Lady (3a. 27-30)  
 52 The Childhood of Christ (3a. 31-7)  
 53 The Life of Christ (3a. 38-45)  
 54 The Passion of Christ (3a. 46-52)  
 55 The Resurrection (3a. 53-9)  
 56 The Sacraments (3a. 60-5)  
 57 Baptism and Confirmation (3a. 66-72)  
 58 The Eucharist I (3a. 73-8)  
 59 The Eucharist II (3a. 79-83)  
 60 The Sacrament of Penance (3a. 84-90)

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

## GENERAL PREFACE

BY OFFICIAL APPOINTMENT THE SUMMA PROVIDES THE FRAMEWORK for Catholic studies in systematic theology and for a classical Christian philosophy. Yet the work, which is more than a text-book for professional training, is also the witness of developing tradition and the source of living science about divine things. For faith seeks understanding in the contemplation of God's Logos, his wisdom and saving providence, running through the whole universe.

The purpose, then, of this edition is not narrowly clerical, but to share with all Christians a treasury which is part of their common heritage. Moreover, it consults the interests of many who would not claim to be believers, and yet appreciate the integrity which takes religion into hard thinking.

Accordingly the editors have kept in mind the needs of the general reader who can respond to the reasons in Christianity, as well as of technical theologians and philosophers.

Putting the Latin text alongside the English is part of the purpose. The reader with a smattering of Latin can be reassured when the translator, in order to be clear and readable, renders the thought of St Thomas into the freedom of another idiom without circumlocution or paraphrase.

There are two more reasons for the inclusion of the Latin text. First, to help the editors themselves, for the author's thought is too lissom to be uniformly and flatly transliterated; it rings with analogies, and its precision cannot be reduced to a table of terms. A rigid consistency has not been imposed on the editors of the different volumes among themselves; the original is given, and the student can judge for himself.

Next, to help those whose native tongue is not English or whose duty it is to study theology in Latin, of whom many are called to teach and preach through the medium of the most widespread language of the world, now becoming the second language of the Church.

The Latin is a sound working text, selected, paragraphed, and punctuated by the responsible editor. Important variations, in manuscripts and such major printed editions as the Piana and Leonine, are indicated. The English corresponds paragraph by paragraph and almost always sentence by sentence. Each of the sixty volumes, so far as is possible, will be complete in itself, to serve as a text for a special course or for private study.

THOMAS GILBY O.P.

T. C. O'BRIEN O.P.

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

ST THOMAS AQUINAS  
SUMMA THEOLOGIAE  
VOLUME 28  
LAW AND POLITICAL  
THEORY  
(1a2ae. 90-97)

Latin text. English translation, Introduction,  
Notes, Appendices & Glossary

THOMAS GILBY O.P.



Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press

The Edinburgh Building, Cambridge CB2 2RU, UK

Published in the United States of America by Cambridge University Press, New York

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9780521393751](http://www.cambridge.org/9780521393751)

© The Dominican Council as Trustee for the English Province of the Order of Preachers 1966  
[Excepting Latin text of 'DE LEGE']

This publication is in copyright. Subject to statutory exception  
and to the provisions of relevant collective licensing agreements,  
no reproduction of any part may take place without  
the written permission of Cambridge University Press.

This digitally printed first paperback version 2006

*A catalogue record for this publication is available from the British Library*

ISBN-13 978-0-521-39375-1 hardback

ISBN-10 0-521-39375-2 hardback

ISBN-13 978-0-521-02936-0 paperback

ISBN-10 0-521-02936-8 paperback

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

---

To

M. R. TRINH THI TU

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

# CONTENTS

xi	General Preface
xix	Editorial Notes
xxi	Introduction
3	Prologue

## QUESTION 90. THE NATURE OF LAW

5	Article 1.	is law a function of mind?
9	Article 2.	is law always ordained to the common good?
13	Article 3.	can anybody legislate?
15	Article 4.	is promulgation essential to law?

## QUESTION 91. VARIETIES OF LAW

19	Article 1.	is there an Eternal Law?
21	Article 2.	is there a natural law within us?
25	Article 3.	is there a human law?
29	Article 4.	was a divine law necessary?
33	Article 5.	is there but one divine law?
37	Article 6.	is there a law of lust?

## QUESTION 92. EFFECTS OF LAW

41	Article 1.	is it an effect of law to make men good?
45	Article 2.	are there four acts of law?

## QUESTION 93. THE ETERNAL LAW

51	Article 1.	is the Eternal Law the supreme exemplar in God's mind?
55	Article 2.	is it recognized by everybody?
59	Article 3.	does every law derive from the Eternal Law?
61	Article 4.	are necessary and everlasting things subject to it?
65	Article 5.	are the contingent facts of nature under it?
69	Article 6.	are all human affairs subject to it?

## QUESTION 94. NATURAL LAW

75	Article 1.	is natural law a habit?
77	Article 2.	does natural law contain many precepts or only one?
83	Article 3.	is every act of virtue of natural law?
87	Article 4.	is natural law the same for all?
91	Article 5.	can natural law be changed?
95	Article 6.	can it be wiped from the human heart?

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

## QUESTION 95. HUMAN LAW IN ITSELF

- 99 Article 1. are man-made laws expedient?  
 103 Article 2. is every human positive law derived from natural law?  
 107 Article 3. does Isidore well describe the qualities of positive law?  
 111 Article 4. does Isidore divide human laws logically?

## QUESTION 96. THE POWER OF HUMAN LAW

- 119 Article 1. should a human law be laid down as a general command?  
 123 Article 2. is it the business of human law to restrain all vice?  
 125 Article 3. does human law prescribe acts of all virtues?  
 129 Article 4. does human law bind a man in conscience?  
 133 Article 5. is everybody subject to the law?  
 137 Article 6. may a subject to a law rightly act against its letter?

## QUESTION 97. LAW AND CHANGE

- 143 Article 1. may a human law be altered in some way?  
 145 Article 2. should it always be changed when it can be improved?  
 149 Article 3. can custom obtain the force of law?  
 153 Article 4. may rulers grant dispensations in matters of human law?

## Appendices

- 157 1. Law and Dominion in Theology  
 162 2. The Theological Classification of Law  
 165 3. Natural Law  
 172 4. Common and Public Good  
 175 5. Legal Sovereignty  
 177 6. Human Law and the Art of Politics  
 180 7. Coercion and Law  
 184 8. Virtue and Legality  
 187 Glossary  
 193 Index



Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

# EDITORIAL NOTES

## THE TEXT AND TRANSLATION

VARIANTS IN printed editions have been consulted and, except for the most trifling, are shown in the text. This in the main follows the Leonine edition. The punctuation, however, has been cleaned up to serve the purpose of this volume, and more paragraphs have been inserted to ease the stages of an argument. The translation has tried to match the order of the sentences in the original, but in order to ease the discourse in English has avoided some repetitions occasioned by St-Thomas's habit of dictation.

## FOOTNOTES

Those signified by a superior number are the references given by St Thomas, with the exception of no. 1 to each article which refers to parallel texts in his writings. Those signified alphabetically are editorial references and explanatory remarks.

## REFERENCES

Biblical references are to the Vulgate. Patristic references are to Migne (PG, Greek Fathers; PL, Latin Fathers). Abbreviations to St Thomas's works are as follows:

*Summa Theologiae*, without title. Part, question, article, reply; e.g. Ia. 3, 2 ad 3. 1a2ae. 17, 6. 2a2ae. 180, 10. 3a, 35, 8.

*Summa Contra Gentiles*, CG. Book, chapter; e.g. CG 1, 28.

*Scriptum in IV Libros Sententiarum*, Sent. Book, distinction, question, article, solution or *quæstiuncula*, reply; e.g. III Sent. 25, 2, 3, ii ad 3.

*Compendium Theologiae*, *Compend. Theol.*

Commentaries of Scripture (*lecturæ, expositiones*): Job, *In Job*; Psalms, *In Psalm.*; Isaiah, *In Isa.*; Jeremiah, *In Jerem.*; Lamentations, *In Thren.*; St Matthew, *In Matt.*; St John, *In Joan.*; Epistles of St Paul, e.g. *In Rom.* Chapter, verse, *lectio* as required.

Philosophical commentaries: On the *Liber de Causis*, *In De causis*. Aristotle: *Peri Hermeneias*, *In Periherm.*; Posterior Analytics, *In Poster.*; Physics, *In Physic.*; *De Cælo et Mundo*, *In De Cæl.*; *De Generatione et Corruptione*, *In De gen.*; *Meteorologica*, *In Meteor.*; *De Anima*, *In De anima*; *De Sensu et Sensato*, *In De sensu*; *De Memoria et Reminiscentia*, *In De*

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

---

*memor.*; Metaphysics, *In Meta.*; Nicomachean Ethics. *In Ethic.*, Politics, *In Pol.* Book, chapter, *lectio* as required, also for Expositions on Boëthius, *Liber de Hebdomadibus* and *Liber de Trinitate*, *In De hebd.* and *In De Trin.*, and on Dionysius, *De Divinis Nominibus*, *In De div. nom.* References to Aristotle give the Bekker annotation.

*Quæstiones quodlibetales (de quolibet)*, *Quodl.*

Main titles are given in full for other works, including the 10 series of *Quæstiones Disputatæ*.

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

## INTRODUCTION

1. THE PLACE of the present treatise in the plan of the *Summa* goes to show that its moral theology, unlike that of some of the stock manuals, is not a declaration of a code of laws followed by a list of the crimes that can be committed against them, a *Tractatus de Præceptis et Peccatis*: indeed the question of law is taken up only after sin has been discussed as deprivation affecting man's God-given constitution according to intelligence and grace and his God-ward activities through virtue.<sup>1</sup> The main movement to the *Prima Secundæ*, which exemplifies the function of theological thought to produce habits of action, revolves round this gift, once lost and now being restored; it starts with our desire for God, and closes with his taking us into his life by grace. Yet St Thomas is in no mood to rush past the human conditions that lie in between, and in his courtesy to creatureliness he delays over the psychology and morality of human acts, even in the viciousness that historically afflict them, which he would not have us lament before we have given it a steady look. Law is part of our build-up—*Deus qui nos instruit per legem*, says the introduction to these Questions—and so he pauses before its general features and main divisions. Then, after a protracted examination of Old Testament legislation,<sup>2</sup> he breaks out, past yet through the conditions of legality, into the light and liberty of the Gospel.<sup>3</sup>

2. Several times he echoes St Augustine that God's law orders all things consummately, and in particular he sees human nature welling up from healthy springs and conducted to divine blessedness. This wide and generous view communicates an air of spaciousness, order, and proportion. He sounds a note of encouragement not usually heard, and shows the general idea and shape of things behind his legal environment, made up of the Roman Law, both civil and canonical, then extending its sway, the Lombard Law still holding some of its own in Italy, the common laws owing much to the churchmen who had rescued the West from barbarism, the customary laws handed on from feudalism, the Mosaic legislation of the Pentateuch, and the miscellaneous statutes of kingdoms and cities. The subject is seen as a whole, lifted out of the tangle of details in which the theologians and jurists had been labouring, and freed from a current Augustinism which stressed the minatory rôle of law. In an age not squeamish about punishment, he brings out the *potestas directiva*, relegating the *potestas coactiva* to a secondary office of positive law, and one not called for

<sup>1</sup>1a2æ. 71–89. Vols. 25, 26 & 27 of this series

<sup>2</sup>1a2æ. 98–105. Vol. 29

<sup>3</sup>1a2æ. 106–108. Vol. 30

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

if citizens are truly lawful. In brief, law has a dignity greater than that of a remedy *propter peccatum*.<sup>4</sup>

The law which enters Christian theology thinking in terms of Greek philosophy is not exactly the law handled by legal specialists.<sup>5</sup> Notice, says St Thomas,<sup>6</sup> that the notion of the 'political' or 'civil' is taken by Aristotle and the jurists in different senses; to a social philosopher the meaning is more comprehensive, since he sees laws which are the bond of political association stemming from moral imperatives other than the regulations men make for themselves. Whether or not a jurist agrees with them will depend on his jurisprudence and philosophy; so far as his particular science is concerned he may claim the privileges of a specialist and, in a positivist spirit, concentrate on what in fact is enacted as law without exploring the background.

3. Moral postulates are among the factors making for social and political cohesion, and they run throughout this treatise. Hence the second part of our title, for an inquiry into the presuppositions of law is bound to turn into political theory. Here again it should be noticed that St Thomas, bypassing St Augustine and going back to Aristotle, treats political institutions as achievements of man's social nature rather than as restrictions on his destructiveness. A distinction and subordination of parts is inherent to *humana civilitas*; private ownership and political dominion are not founded on some original theft and brigandage, since grown respectable and maintained lest worse befall, but are working provisions for human nature apart from complications introduced by the Fall. Their genealogy in history is not above reproach, they might even be improved on, and they are of relative insignificance in the rule of grace, but as institutions they are not essentially flawed. Law itself announces a dignity above its power to punish, and, in the phrase of Frederick II, St Thomas's elder kinsman, authority to rule declares a stainless power.

4. The notion of law in the *Summa* is more embracing than the notion of the State, and its approach therefore is not that of a positive science of law. The State is regarded as the creature of law simply speaking; even the laws made by the State are enacted on the strength of forces that hold it together without themselves being positive laws. And so St Thomas's political testament as a theologian is found in this treatise on law.

He left two political works unfinished, a commentary, the first to be written, on Aristotle's *Politics*,<sup>7</sup> and a study addressed to Hugh III de Lusignan, King of Cyprus, *De regimine principum*.<sup>8</sup> There is also a short

<sup>4</sup>Appendix 7<sup>5</sup>Appendix 1<sup>6</sup>*In Ethic.* v, lect. 12<sup>7</sup>Authentic to III, lect. 6. III, 8. 1280a7. The rest is by Peter of Auvergne.<sup>8</sup>Authentic to II, 5. The rest is by Ptolemy of Lucca.

Cambridge University Press

978-0-521-02936-0 - Summa Theologiae: Volume 28 - Law and Political Theory, (1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

letter to the Duchess of Brabant, mainly about taxation that discriminates against a minority.<sup>9</sup> Preliminaries to the present discussions are found in other works;<sup>10</sup> political questions arise in various parts of the *Summa*,<sup>11</sup> and his commentary on the *Ethics*, which dates from the same period, offers many parallel passages.<sup>12</sup> This volume, however, forms the main repository of his political teaching.<sup>13</sup>

The authorities cited, Aristotle, the Scriptures, Cicero, the *Digest*, Isidore, Gratian, and Peter Lombard, offer a cross-section of the Jewish, Greek, and Roman foundations. The debt owed to feudalism is not manifest, yet the customs and laws of the Christianized tribes that were moulding the Western nations should be taken for granted, not least as setting a mood in favour of personal engagement and contract according to which the discussions are conducted. Except for some characteristic contributions, for instance the assimilation of law-making to Aristotelean art,<sup>14</sup> their originality lies in the well-ordered arrangement and in the development of premises agreed on for more than a century.<sup>15</sup> In particular the ground had been prepared by the work of earlier masters, notably the Franciscan, John of Rochelle (d. 1245), and the Dominican, Roland of Cremona (d. 1259).

5. Its moment in history was in the age of the great lawyer-popes and of travelling justices upholding the common law, of rights according to custom and equity strenuously and successfully maintained, more perhaps north than south of the Alps, for England resisted the Roman Law and equity-lawyers found Orleans more congenial than Bologna, of a scholasticism that was converting ideas into institutions. The Hohenstaufen had been beaten, yet those Canonists who were reaching out to substitute the Pope for the Emperor as sole sovereign in Christendom were already becoming an anachronism, for the Civilians, in alliance with the generation

<sup>9</sup>*De regimine Judaeorum*. Also entitled, 'To the Countess of Flanders'

<sup>10</sup>Thus III *Sent.* 37, 1; on the Decalogue and the advantages of a code. Also IV, 33, 1 & 2. *CG* III, 54–130. The teaching is permeated by the concept of the Eternal Law, though the term itself does not often occur.

<sup>11</sup>1a2ae. 104 & 105, on the judicial precepts of the Jewish theocracy. 2a2ae. 50, on social prudence. 2a2ae. 57–122, on justice and the social virtues (104, obedience)

<sup>12</sup>*Commentary on the Nicomachean Ethics*, translated by C. I. Litzinger. Chicago, 2 vols., 1964. cf especially Books 5, 8 & 9.

<sup>13</sup>C. H. McIlwain, *The Growth of Political Thought in the West*, New York, 1932. A. P. D'Entrèves and J. G. Dawson, *Aquinas, Political Texts*, Oxford, 1948. T. Gilby, *Between Community and Society, A Theology of the State*, London & New York, 1953; *Principality and Policy, The Rise of State Theory in the West*, London (*The Political Thought of Thomas Aquinas*, Chicago), 1958.

<sup>14</sup>Appendix 6

<sup>15</sup>Appendix 2

Cambridge University Press

978-0-521-02936-0 - *Summa Theologiae*: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

of lay-minded statesmen who had digested their Aristotle on the autarkic community, were transforming the Roman Law into an instrument of government for the new Nation-States. Political Papalism was to die hard, defeated rather by the pressure of events and the power that went with the new ideas than by the dialectic of law; the great scholastic theologians had never been attached to it, but on the contrary showed a certain disdain for the theological pretensions of Decretalism,<sup>16</sup> and at the time of the troubles between Philip the Fair and Boniface VIII it is likely that the Dominican John of Paris was closer than the Augustinian Giles of Rome to St Thomas's political temper.

The *Summa* was written at a time of transition from the prevalence of customary liberties and personal engagements to a more statutory and official pattern of political life; its complexity called for laws which could not be developed from morality or represented as restatements of old customs, but were framed more and more according to an administrator's conception of political needs which emphasized the *res publica* of jurists more than the common good of social philosophers. The State was beginning to arise with its own legal personality, and though St Thomas was of the old persuasion, his analysis of the nature of positive law in effect writes the first charter for the new class of its servants.<sup>17</sup>

6. At the same time a certain detachment from contemporary events should also be noted; it gives an air of timelessness to the treatise. When St Thomas's family background is recalled, and the high circles in which he moved, alike in the *Sacerdotium*, the *Imperium*, and the *Studium*, the three great establishments of medieval life, it is remarkable that he gives no clue that the political Canonists were then at the height of their power or that the Emperor was a force to be reckoned with, never refers to the claims of rulers to be invested with the prerogatives of Justinian's *Princeps*, and makes no mention of the *Translatio Imperii* nor of the *Populus Romanus* of medieval jurisprudence. A contemporary of Accursius, whose great gloss did for Civil Law what Gratian had done for the Church's law a century before, and of Hostiensis, the great cardinal-canonist, surrounded by men who were engineering an impressive project in academic and applied law, himself technically well-equipped, as is shown by a few deft touches here and there,<sup>18</sup> he writes as a philosopher and theologian whose thought stands clear of the juridical style and uncommitted to the current party line.

<sup>16</sup>e.g. *Contra retrahentes* 13. *Quodl.* xi, 9 ad 1. 2a2ae. 88, 11

<sup>17</sup>1a2ae. 95, 2

<sup>18</sup>cf I. T. Eschmann, 'St Thomas and the Decretal of Innocent IV.' *Medieval Studies*, VIII. Toronto, 1946.

Cambridge University Press

978-0-521-02936-0 - *Summa Theologiae*: Volume 28 - Law and Political Theory,  
(1a2ae. 90-97)

Thomas Gilby O.P.

Frontmatter

[More information](#)

One result is that he is little concerned with legal titles to authority, and so avoids the myths invoked by Papalists, Imperialists, and Regalists. The prestige of law was never higher than in the thirteenth century; its practitioners combined large views with keen professional acuteness, but they lacked the apparatus and information to investigate the genesis of legal and political institutions, except for those that were chartered or had been founded within the memory of recent generations. They were not critical of their sources; and their publicists were better at making history than writing it.

Rarely occupied with points of legality, the *Summa* usually prefers to settle an issue by an appeal to the reasonableness in Christian commands, not to constitutional technicalities or to an allegedly historical hypothesis.<sup>19</sup> Then, as now, theologians were less engaged than jurists with title-deeds, and, less set on immediate issues than men of politics, were more prepared to accept the *fait accompli* of an establishment so long as it safeguarded the conditions for the good life and the rights of religion. They considered that the State was a juridical association by virtue of a legal deed called a constitution, for where there is no law there is no *populus*, and therefore they supposed some sort of compact to be implicitly or at least virtually present. Yet they invoked no primitive social contract lying at the base of political association in the manner of the eighteenth-century theorists of natural law. St Thomas never harks back to a supposed state of natural innocence, a golden age when all men were equal and free, and the deposit from convention and competitiveness had not yet accumulated. His doctrine of Original Justice is quite another matter; it is an interpretation of an article of faith about man's first creation in a state of grace, and serves as no model for what should be expected in the nature of things from the political community and its laws. There he borrows from Aristotle, not the Stoics, and concludes that civil rights as such are not postulated by the very principles of human nature. That he can be enlisted in support of them is clear, but not that his fundamental theory is that of liberal democracy.

---

<sup>19</sup>As is to be expected from the subject of his discourse, the Canon Law is more frequently cited than the Civil Law. It has been calculated that there are 193 references to Gratian in the *Summa* and *Contra Gentes*, whereas in his entire works there are 155 to the *Corpus Juris Civilis*. The references are usually on minor points, and the appeal to authority holds a subsidiary place in the argument.

L. Lachance, *Le concept de droit selon Aristote et saint Thomas*, 2nd ed. Ottawa-Montreal, 1948. J. M. Aubert, *Le Droit Romain dans l'œuvre de saint Thomas*, Paris, 1955.