

PART IV

ON HUMAN DOINGS: LIFE IN THE COSMO

NATURAL INCLINATION AS A BASIS FOR NATURAL LAW

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Toward the end of his long account of human sin and its effects, Thomas Aquinas makes an argument that appears quite strange to modern readers. In *Summa Theologiae* I-II, q. 87, a. 1, he argues that among the effects of sin is the “debt of punishment” (*reatus poenae*). His argument for this proceeds as follows:

It has passed from natural things to human affairs that whenever one thing rises up against another, it suffers some detriment therefrom. For we observe in natural things that when one contrary supervenes, the other acts with greater energy, for which reason *hot water freezes more rapidly*, as [Aristotle states in his *Meteorologica*]. Thus we find that the natural inclination of man is to repress those who rise up against him. Now it is evident that all things contained in an order, are, in a manner, one, in relation to the principle of that order. Consequently, whatever rises up against an order, is put down by that order or by some principle thereof. And because sin is an inordinate act, it is evident that whoever sins, commits an offense against an order: wherefore he is put down, in consequence, by that same order, which repression is punishment.¹

As Aquinas continues his explanation, there are actually three orders for which punishment is relevant: the order of reason, which punishes the sinner through the pangs of conscience after the sinful act is completed; the order of human law, which punishes criminal behavior; and the order of divine law, which embraces all actions and whereby God inflicts punishments both in this life and the next. As we return to the central argument for the debt of punishment, however, it is difficult to avoid noticing the strangeness of Aquinas’s reasoning, which has particularly interesting implications for the justification of

¹ Thomas Aquinas, *Summa Theologica* (ST), translated by the Fathers of the English Dominican Province (Westminster, Maryland: Christian Classics, 1981). Unless otherwise noted, all English quotations of the *Summa Theologiae* are taken from this translation.

punishment as a human institution. What does it mean to say that the inclination to repress aggressors “has passed” to human affairs from natural things? What sort of natural things does Aquinas have in mind? Why, one might ask, should natural things be a standard for human conduct at all? And what are we to make of the seemingly bizarre reference to Aristotle’s *Meteorologica* citing the tendency of hot water to freeze more rapidly? Suspending for a moment the question as to whether this claim is even true, what does it have to do with human things like sin, justice, political society, and the human institution of punishment?

This appeal to natural inclination must be understood in relation to Aquinas’s later well-known claim, seven questions later in the *Summa Theologiae*, that the precepts of the natural law are all grounded in natural inclination. There, Aquinas argues that the natural inclinations are required to give content to the first principle of practical reason, that “good is to be done and pursued and evil is to be avoided.”² One only knows what is good by observing the things to which one is naturally inclined. More specifically, one should consider three orders of inclinations in connection with the three strata of human nature: first, those inclinations we share with all substances, such as the inclination to preserve life; second, the inclinations we have in common with animals, such as the inclination to reproduce and protect one’s offspring; and thirdly, the inclinations we have by virtue of our rational nature, by which we are inclined to live in society and pursue knowledge.

It is not entirely clear which of these three levels of natural inclination would include the inclination to “repress those who rise up” against us. To be sure, one notices this phenomenon at all levels of nature. Aristotle’s example of hot water freezing more rapidly suffices for the inanimate world, and who can deny the tendency in animals to exhibit this sort of behavior, whether we consider the reaction of bees to someone who disturbs their hive or a dog who snaps at another animal that threatens to take its food. Although human nature is far more complex, this inclination is no less observable. The phenomenon to which Aquinas seems to be appealing is the all too human sentiment of righteous indignation. Whether in response to an injustice committed against ourselves or against someone close to us, human

² ST I-II, q. 94, a. 2.

beings instinctively desire to make sure their assailants suffer some degree of harm. To be sure, it is quite possible for such indignation to get the better of us, but in general Aquinas follows the Aristotelian teaching (against the Stoics) that the complete expulsion of anger from one's life is actually a vice.³ Thus understood, the natural inclination to punish that comes in the form of anger may actually be reason's ally. It is not without the help of such an inclination, then, that human beings come to understand an essential aspect of the natural law. To be sure, Aquinas is not using the term "natural inclination" synonymously with the movement of the sensitive (in this case irascible) appetite. The natural inclination to repress those who rise up against us is presumably experienced at the rational level, or at least is guided by reason. And yet the sub-rational dimension of this inclination is also apparent in Aquinas' treatment of it. After all, he speaks of it as having "passed" to human affairs from "natural things," and the example he chooses to illustrate its naturalness ("hot water freezing more rapidly") appears to be deliberately taken from the sub-rational world.

I. THE MODERN DISMISSAL OF NATURAL INCLINATION

From Aquinas's explanation of the debt of punishment, it is fairly evident that he endorses a relatively retributive theory of criminal justice. The issue at stake in question 87 is the *reatus poenae*, the "debt," or literally the "guilt," of punishment. The implication seems to be that criminals are punished, first and foremost, because they deserve it. To be sure, this is not everything. Aquinas speaks of "medicinal punishment" quite frequently,⁴ and believes that criminals, or even society as a whole,⁵ might be improved through the infliction of punitive measures, but this dimension of punishment is clearly absent from the fundamental justification of punishment *per se* seen above, where Aquinas appeals to natural inclination and (implicitly) natural law. Somehow, by this argument, our very inclination to repress our assailants shows us that criminals deserve to be punished and that such punishment is a real good for human beings considered collectively.

³ Cf. ST II-II, q. 158, a. 8; *Commentary on Aristotle's Nicomachean Ethics*, book 4, lecture 13.

⁴ For example, ST I-II, q. 87, a. 8; II-II, q. 108, a. 4.

⁵ ST I-II, q. 87, a. 3, ad 2.

It is precisely in the appeal to natural inclination that Aquinas' approach to ethics and politics has been taken to task by many strains of modern philosophy. Jeremy Bentham, for instance, mocked the natural law approach to punishment (and ethics in general) as having compromised the role of reason. Bentham classifies natural law under what he calls the principle of "sympathy and antipathy," which he finds unacceptable because it bases morality and public policy upon a person's unreflective feelings. As he explains:

... in looking over the catalogue of human actions (says a partisan of this principle) in order to determine which of them are to be marked with the seal of disapprobation, you need but to take counsel of your own feelings: whatever you find in yourself a propensity to condemn, is wrong for that very reason.⁶

According to Bentham's utilitarianism, natural inclination and rational calculation constitute two separate and irreconcilable bases for human action. One should only punish for the sake of rationally calculable goals such as rehabilitation, deterrence, and the physical protection of society (Bentham liked deterrence the best), not because one feels inclined to do so. Simply following the natural urge to punish is the result of a morally and politically immature society. Again, Bentham's description of natural law's basis for punishment is harshly sarcastic:

If you hate much, punish much: if you hate little, punish little: punish as you hate. If you hate not at all, punish not at all: [why should] the fine feelings of the soul ... be overbourned ... by the harsh and rugged dictates of political utility[?]"⁷

Far from having any philosophical defensibility, on this view, Aquinas' natural law argument for punishment would be nothing more than a legitimization of organized vengeance.

Bentham's rejection of natural law and natural inclination as a basis for punitive justice effectively constitutes a rejection of the very concept of criminal desert. Criminals ought not to be punished because they deserve it, but because of the felicitous consequences that

⁶ Jeremy Bentham, *Introduction to the Principles of Morals and Legislation* (London: Athlone Press, 1970), chapter 2, section 13.

⁷ *Ibid.*

punishment promises to bring with it, that is, a safer and more orderly society. Certainly, Aquinas's response to this basis for punishment would involve an appeal back to the *reatus poenae*, the *debt* of punishment. It is only if one understands there to be such a debt, Aquinas would likely argue, that punishment can have any intelligible connection with justice. As C. S. Lewis put it, "it is only as deserved or undeserved that a sentence [of punishment] can be just or unjust."⁸

Interestingly enough, this same objection to the utilitarian theory of punishment is expressed by modern philosophers, as well. Their appeal, however, is not to Aquinas, but to Immanuel Kant, who argued that punishing criminals for the sake of something like deterrence violates the categorical imperative, which forbids us from using persons (even if they should be criminals) as a means to our own ends (even if those ends should be the prevention of future crime). In citing Kant as the father of retributivist penology, such modern philosophers align themselves with an extremely rigid alternative to utilitarian thought. As Kant explained:

Punishment by a court (poena forensis) ... can never be inflicted merely as a means to promote some other good for the criminal himself or for civil society. It must always be inflicted upon him because he has committed a crime. For a human being can never be treated merely as a means to the purposes of another or be put among the objects of rights to things: his innate personality protects him from this, even though he can be condemned to lose his civil personality. He must previously have been found punishable before any thought can be given to drawing from his punishment something of use for himself or his fellow citizens. The law of punishment is a categorical imperative, and woe to him who crawls through the windings of eudaimonism in order to discover something that releases the criminal from punishment or even reduces its amount by the advantage it promises, in accordance with the pharisaical saying, "It is better for one man to die than for an entire people to perish." For if justice goes, there is no longer any value in human beings' living

⁸ C. S. Lewis, "The Humanitarian Theory of Punishment," in *God in the Dock* (Grand Rapids, Michigan: Eerdmans, 1970), 288.

on the earth ... for justice ceases to be justice if it can be bought at any price whatsoever.⁹

Kant takes his retributivism much further than Aquinas, who was quick to add that the punishments of this life are largely medicinal, yet both thinkers agree that the central dimension of punitive justice is the concept of desert. Interestingly, however, the Kantian would join the utilitarian in condemning Aquinas' appeal to natural inclination. This is because Kant, like Bentham, considers natural inclination in opposition to reason, or, in Kant's language, *pure reason*, and therefore, even though he defends retribution as the sole justifying purpose of punishment, one's motivation must be completely free from the promptings of nature. Natural inclination is precisely what pure reason is pure of, and Kant could not be clearer in emphasizing that such natural inclinations provide no basis for moral or political obligations whatsoever:

Now an action done from duty must altogether exclude the influence of inclination and therewith every object of the will. Hence there is nothing left which can determine the will except objectively the law and subjectively pure respect for this practical law, i.e., the will can be subjectively determined by the maxim that I should follow such a law even if all my inclinations are thereby thwarted.¹⁰

When it comes to meting out punishment, then, it is no better to consult one's natural inclination to punish than it is to punish for the sole purpose of deterrence. The only motive that Kant would approve is the cold and calculated consultation of reason to determine what the criminal actually deserves. Far from looking to the consequences of punishment, and even farther from looking to one's own inclinations, reason should provide the proper type and amount of punishment. In spite of his radically different alternative, therefore, Kant's criticism of Aquinas would very likely be the same as Bentham's, namely, that Aquinas' appeal to natural inclination turns punishment into a mere disguise for vengeance.

⁹ Immanuel Kant, *The Metaphysics of Morals*, translated by Mary Gregor (Cambridge, Massachusetts: Cambridge University Press, 1996), 331-32.

¹⁰ Immanuel Kant, *The Grounding for the Metaphysics of Morals*, translated by James Ellington (Indianapolis, Indiana: Hackett, 1993), 400.

II. RETRIEVING THE MORAL SIGNIFICANCE OF INCLINATION: THE CASE OF PUNISHMENT

What reply can the Thomist make to these objections? First, it should be pointed out that when Aquinas argues that the debt of punishment is rooted in natural inclination he is not arguing that it is rooted in mere anger or vengeance. A closer look at ST I-II, q. 94, a. 2 makes this clear. As we saw, the three orders of natural inclination are those which human beings have in common, first with all substances, second with all animals, and third those which are exclusive to man's rational nature. Interestingly, in ST I-II, q. 87, a. 1, Aquinas does not specify to which of these three orders of natural inclination the punitive inclination belongs. At first, one may surmise that it belongs to the lowest order, or that which we share with all substances. After all, Aquinas' example is that of hot water, which "freezes more rapidly" when cooled. But certainly one can also see this "punitive" tendency in the animal kingdom, as many animals exhibit the inclination to "rise up" against those things which threaten their existence (recall the earlier example of the bees' aggressive defense of their hive). By virtue of its sentient nature, the animal displays this inclination in an entirely different way than the inanimate substance. Likewise, we may consider that the punitive tendency may also be a third-order inclination. After all, Aquinas does mention that among these more rational inclinations, one finds the inclination to live in society. If we assume that this may also mean to live in society according to principles of justice, the human desire to inflict a just penalty upon a criminal (as neither a survival tactic nor merely an instinctual thirst for revenge) would fall squarely among the third order inclinations as well.

The fact that the punitive inclination is experienced on many levels enables us to address the objection that Aquinas' natural law based penology is merely a legitimization of collective anger. As Aquinas would certainly remind his critics, anger is only sinful when out of accord with the order of reason. It is not anger, therefore, that serves as the guide for how much or what kind of punishment one should inflict. It is rather the judgment of reason that should determine the proper degree of punishment as well as how much anger one should permit oneself to feel. As Aquinas explains:

if [out of anger] one desires revenge to be taken in accordance with the order of reason, the desire of anger is praiseworthy, and is called *zealous anger*. On the other hand, if one desire the taking

of vengeance in any way whatever contrary to the order of reason, for instance if he desire the punishment of one who has not deserved it, or beyond his deserts, or again contrary to the order prescribed by law, or not for the due end, namely the maintaining of justice and the correction of defaults, then the desire of anger will be sinful, and is thus called *sinful anger*.¹¹

It is clear, therefore, that anger is not the same as the natural inclination to punish. Whereas anger is a movement of the sensitive appetite, the natural inclination to punish (although perhaps including anger) also includes the rational apprehension of a good to be achieved by means of punishment, for instance, the reestablishment of the equality of justice. Anger thus assists reason in hitting its target. When the passion of anger is added to the recognition that a criminal deserves to be punished, society is better motivated to impose the required penalty. This does not mean, though, that anger *provides* the target. It would still be rationally knowable that a punishment is deserved even if no anger was felt. An analogy from concupiscence is perhaps helpful. Human beings are affected by the desire for food and drink and are moved by that desire to pursue a real human good, namely, bodily health. That one is moved by a concupiscible passion does not exclude the possibility of recognizing the good of health with the practical intellect. Passion assists reason and moves the agent towards this good in accordance with the order of reason.

Of course, passion may also lead reason astray, influencing one to act out of accord with that order while making the agent unmindful of the good to which these concupiscible passions are ultimately directed.¹² In the same way, anger can cause human beings to desire punishment for others while losing sight of the natural good to which our anger should be directed and from which our anger derives meaning. In Aquinas' view, just as the bodily desire for food and drink provides additional support to the rational judgment that bodily health is a real good that ought to be pursued, anger provides additional support to the rational judgment that an injustice has been done and that the perpetrator of that injustice ought to be punished. Both desires become sinful and disordered when they boil over, causing us to lose sight of the higher standard of these naturally predetermined ends,

¹¹ ST II-II, q. 158, a. 2.

¹² Cf. ST II-II, q. 141, a. 3.

ends which are recognized by the practical intellect. The very fact that Aquinas appeals to such a standard in his discussion of anger shows that he understands the difference between retributive punishment and mere vengeance.¹³

This teaching is best summarized in Aquinas' discussion of punishment as it pertains to the virtue of justice, namely, in explaining the virtue of vindication: "It is clear," he says, "that the virtues perfect us so that we follow in due manner our natural inclinations, which belong to the natural law. Wherefore to every definite natural inclination there corresponds a special virtue." Harkening back to the argument of ST I-II, q. 87, a. 1, Aquinas continues:

Now there is a special inclination of nature to remove harm, for which reason animals have the irascible power distinct from the concupiscible. Man resists harm by defending himself against wrongs, lest they be inflicted on him, or he avenges those which have already been inflicted on him, with the intention, not of harming, but of removing the harm done.¹⁴

Thus understood, the natural inclination to repress those who rise up against us, like all inclinations, directs us toward what is good and may be brought within the parameters of the order of reason.

III. CONCLUSION

To conclude, we may observe that, for Aquinas, natural inclination provides the basis for punitive justice in two important ways. First, the natural inclinations of the irascible appetite motivate human beings to punish criminals where they might be remiss. Contrary to what Kant would have allowed, reason is able to recognize that a passion such as anger, though not intelligent in itself, has an intelligible purpose. Just as nature wisely provides us with the concupiscible inclinations to pursue things that we need to preserve our life and health, so it also provides us with the assistance of irascible inclinations which, when reflected upon, motivate the human will to take punitive action that reestablishes the equality of justice and serves the common good. Reflecting upon such inclinations properly will lead the reasonable

¹³ See my "Two Theories of Retributive Punishment: Immanuel Kant and Thomas Aquinas," *History of Philosophy Quarterly* 22, no. 4 (2005): 325-33.

¹⁴ ST II-II, q. 108, a. 2.

person to conclude that anger must be kept within the boundaries established by those same goals for which nature allows us to feel angry in the first place.

Secondly, Aquinas would add that reason not only restrains and interprets sub-rational inclinations. It also has inclinations of its own. That is to say, there are things to which human beings are *rationally* inclined, among which we may include the preservation of social order and the reestablishment of justice, which depends upon the infliction of punishment on criminals. It is on this basis that punishment is not only considered morally obligatory, but *good*. And for all the apparent strangeness of Aquinas's appeal to the natural inclination to repress our assailants, the institution of punishment would be indefensible, as well as unintelligible, without this inclination. Bentham may have thought that natural law theory produces a penology of nothing more than legitimized rage when he mocked it as allowing us simply to "punish as we hate." He was clearly unaware of Aquinas's doctrine according to which inclination may guide us in discerning the moral law while reason simultaneously prevents us from giving in to blind passion.