

Law's Coordinative Capacity
in the Service of Evil
in St. Aquinas's Philosophy

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Definitions

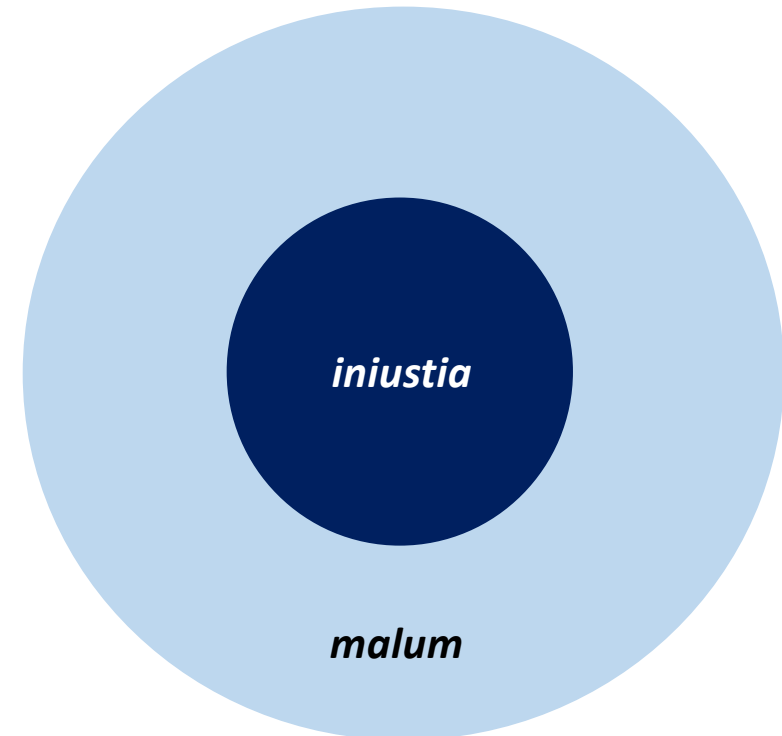
Definitions: two concepts of evil

Broad: *malum* ('evil')

– when applied to evil at large
(*e.g.*, the problem of evil)

Narrow: *iniustia* ('injustice')

– when applied to evil law



Definitions: what is evil?

Evil as *malum*

‘Therefore it must be that by the name of evil is signified **the absence of good.**’

ST, Part I, Q48, A1

‘[T]he evil which consists in the subtraction of the due operation in voluntary things has the nature of a **fault (*culpa*)** for this is imputed to anyone as a fault to fail as regards perfect action, of which he is master by the will.’

‘[T]he evil which comes from the withdrawal of the form and integrity of the thing, has the nature of a **pain [or punishment] (*poena*)**’

ST, Part I, Q48, A5

Definitions: what is evil law?

Evil as iniustia

'[E]very human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it **deflects from the law of nature**, it is no longer a law but a perversion of law.'

ST, Part I-II, Q95, A2

'Laws framed by man are either just or **unjust**.'

'On the other hand laws may be unjust in two ways: first, by being **contrary to human good**, through being opposed to the things mentioned above---either **in respect of the end**, as when an authority imposes on his subjects burdensome laws, conducive, not to the common good, but rather to his own cupidity or vainglory---or **in respect of the author**, as when a man makes a law that goes beyond the power committed to him---or **in respect of the form**, as when burdens are imposed unequally on the community, although with a view to the common good.'

'Secondly, laws may be unjust through being **opposed to the Divine good**: such are the laws of tyrants inducing to idolatry, or to anything else contrary to the Divine law.'

ST, Part I-II, Q96, A4

Unjust law

Lex iniusta non est lex – Unjust law is not a law St Augustine, De Lib. Arb. i, 5

‘[I]s not a law, absolutely speaking, but rather a **perversion of law**’

ST, Part I-II, Q92, A1, ad. 4;

‘[I]t is no longer a law but a **perversion of law**’

ST, Part I-II, Q95, A2

‘The like are **acts of violence rather than laws**; because, as Augustine says
<...> *”a law that is not just, seems to be no law at all.”*’

ST, Part I-II, Q96, A4

Unjust law: is it that simple?

Unjust law is not law in the **first sense of the word (*simpliciter*)**, but in the **secondary sense of the word (*secundum quid*)**

‘Far from denying legal validity to iniquitous rules, the tradition explicitly (by speaking of ‘unjust laws’) **accords to iniquitous rules legal validity**, whether on the ground and in the sense that these rules are accepted in the courts as guides to judicial decision, or on the ground and in the sense that, in the judgment of the speaker, they satisfy the criteria of validity laid down by constitutional or other legal rules, or on both these grounds and in both these senses.’

Finnis, Natural Law and Natural Rights, p. 364-365

Coordinative function of law

Coordinative function of law: primacy

‘Law is **principally a work of reason**; it belongs to the very definition of law to be a work of reason, whereas **coercive power is something secondary**, made necessary by those who do not cooperate with the intention of the legislator.’

Goyette, ‘On the Transcendence of the Political Common Good: Aquinas versus the New Natural Law Theory’, p. 142

Coordinative function of law: angels

‘The order of government, which is the order of a multitude under authority, is derived from its end. Now the end of the angels may be considered in two ways. First, according to the faculty of nature, so that they may know and love God by natural knowledge and love; and according to their relation to this end the orders of the angels are distinguished by natural gifts. Secondly, the end of the angelic multitude can be taken from what is above their natural powers, which consists in the vision of the Divine Essence, and in the unchangeable fruition of His goodness; to which end they can reach only by grace; and hence as regards this end, the orders in the angels are adequately distinguished by the gifts of grace, but dispositively by natural gifts, forasmuch as to the angels are given gratuitous gifts according to the capacity of their natural gifts; which is not the case with men, as above explained.’

ST Part I, Q108, A4

Coordinative function of law: state of innocence

Coordination problems:

‘But a man is the master of a free subject, by directing him either towards his proper welfare, or to the common good. Such a kind of mastership would have existed in the state of innocence between man and man, for two reasons. First, because man is naturally a social being, and so in the state of innocence he would have led a social life. Now a social life cannot exist among a number of people unless under the presidency of one to look after the common good; for many, as such, seek many things, whereas one attends only to one.’

Expertise:

‘Secondly, if one man surpassed another in knowledge and virtue, this would not have been fitting unless these gifts conduced to the benefit of others.’

ST, Part I, Q96, A4

Coordinative function of law: demons

‘Now it is plain from what we have said, that the demons are **by natural order subject to others**; and hence their actions are subject to the action of those above them, and this is what we mean by precedence---that the action of the subject should be under the action of the prelate. So the very natural disposition of the demons requires that there should be authority among them.’

ST, Part I, Q109, A2

‘The concord of the demons, whereby some obey others, does not arise from mutual friendships, but from their common wickedness whereby they hate men, and fight against God's justice. For it belongs to wicked men to be joined to **and subject to those whom they see to be stronger**, in order to **carry out their own wickedness**.’

ST, Part I, Q109, A2, ad.2

Coordinative function of law: back to privation

‘The idea of a chaos or an absolute anarchy is as contradictory as the notion of an absolute evil. Just as evil is a parasite of the good, anarchy is a parasite of order. If anarchy were to triumph, it would immediately self-destruct.’

Bonino, ‘Angels and Demons’, 280

Conclusion

- (I) Aquinas describes evil law as *iniustia* (narrower conception), but is still attuned to the definition of evil as *malum* (broader conception) – specifically evil as privation
- (II) Aquinas believes that evil law is not law *simpliciter* (in the primary sense of the word), but still thinks it is law *secundum quid* (in the secondary sense of the word)
- (III) Aquinas, following from (I) and (II), indicates that evil regimes need coordination provided by law

Thank you!

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