https://doi.org/10.22364/jvzl.09.02

THE THOMIST REVIVAL IN LAW AND POLITICS IN THE 19TH AND 20TH CENTURIES

JÉRÔME CASALI
Doctoral student in legal history, Aix-Marseille University,
CERHIIP, Aix-en-Provence, France
E-mail: *jerome.CASALI@univ-amu.fr*

ABSTRACT

Thomism is a school of thought based on the works of Thomas Aquinas (1225–1274). This article focuses on significant aspects of the Thomist revival in French-speaking area, encouraged in 1879 by the papal encyclical *Aeterni Patris* of Leo XIII (pontification from 1878 to 1903). Legal Thomism seems particularly interesting in its assessment of positive law according to natural law, a notion that Thomist jurists strive to make intelligible through a teleological conception of social relations, whose correct form is determined by the common good of each relation.

Keywords: legal Thomism, legal neo-Thomism, common good, natural law.

INTRODUCTION

Thomism and its tradition

Thomism is the philosophical and theological system of Thomas Aquinas, an Italian scholastic theologian of the 13th century. It consists of realist and finalist thinking, based primarily on Aristotelianism. Its conclusions are inspired by Catholic dogma, but its arguments are strictly rational: a revealed truth is never used as an argument of authority, but rather as the confirmation of a thesis (Elders 2013, 20–21). A distinction must be made between Thomism and Scholasticism, which more generally refers to the method and the doctrine taught in medieval European schools and universities from the 11th to the 17th century. This tradition was illustrated by authors like Cajetan (1469–1534), Sylvester of Ferrara (1478–1528), and famous

theologians of the second Scholasticism in the 16th century, for example, Francisco de Vitoria (1480–1566) or Francisco Suarez (1548–1617). Notably, the second Scholasticism brought innovations, without invariably keeping faith with the work of Thomas Aquinas. In the 17th century, the scholastic tradition gradually declined because of a confinement in a closed and verbose system and a divorce with men of science (De Wulf 1950, 117–118).

The revival of Thomism in the 19th century

Encouraged by the reconsideration of the image of the Middle Ages (Mercier 1894), many European authors defended the philosophy of Thomas Aquinas. In Spain, it was Jacques Balmes (1810–1848), in Germany – Joseph Kleutgen (1811–1883), and particularly in Italy – Gaetano Sanseverino (1811–1865), Luigi Taparelli d'Azeglio (1793–1862) and Matteo Liberatore (1810–1892). Meanwhile, the official revival of Thomism came in 1879 with the encyclical *Aeterni Patris*, in which Pope Leo XIII praised the splendour of Thomistic doctrine and ordered that its study be renewed to establish a solid Christian philosophy. He advocated a return to the original texts of Thomas Aquinas, leaving aside archaic elements and welcoming modern scientific progress (Leo XIII 1879).

The neo-Thomism in the French-speaking area

One of the most important intellectual centres of Thomism was the Higher Institute of Philosophy of the Catholic University of Leuven in Belgium, under the direction of Cardinal Mercier (1851–1926). Leuven's Thomism was a progressive trend characterized by a fruitful dialogue with modern science, and the exposition of Thomist theses in the vernacular and not only in Latin.

Thomism benefited from two major publications: the *Revue néo-scolastique* in Belgium (founded in 1894 and today known as the *Revue philosophique de Louvain*), and the *Revue Thomiste* in France (founded in 1893).

French Thomism was also exported to North America by the efforts of Jacques Maritain (1882–1973), Yves Simon (1903–1961) and Etienne Gilson (1884–1978), who founded the Pontifical Institute for Medieval Studies in Toronto in 1929. However, despite the wishes of Leo XIII, the Thomist revival never really spread beyond Catholic circles.

The author of the current paper would like to look at the legal and political reflections of neo-Thomism, which has provided some of the intellectual matter of the social doctrine of the Catholic Church. Firstly, a general overview of Thomasian legal doctrine and its position within the natural law tradition will be provided. Subsequently, some of the significant ideas updated by legal neo-Thomism will be identified.

THE THOMASIAN LEGAL DOCTRINE AND THE NATURAL LAW TRADITION

A finalist conception of nature

Thomism, like classical thought, admits a teleological conception of nature, both physical and social. All beings in the universe manifest a natural inclination towards the complete realization of their nature (Gardeil 1957, 50–53), in accordance with the eternal law (Thomas Aquinas 1984, I^a II^{ae}, q. 91, a. 1). Man must realize his nature as a rational animal through an act of his higher faculty, intelligence. The most perfect intellectual act consists of the contemplation of the supremely intelligible object, the first cause of all things, God (Thomas Aquinas 1984, I^a II^{ae}, q. 3, a. 8). All the ends that a man is led to pursue are therefore subordinated to the contemplation and love of God.

Human sociability oriented towards the common good

The ultimate goal of man can only be attained by living in society: man is a social animal because he needs others to satisfy his material and spiritual needs (Thomas Aquinas, 2015, 71). The goal of a human community, called the common good, is basically the good life (*bene vivere*). It must allow the convergence of the individual goods of each one, in conformity with the spiritual destiny of man (Aubin 2010, 349–355).

Natural law as proportionate social relations

The purpose of each social relationship, its common good, determines the correct form of that relationship. Natural law (*ius naturale*) is a fair proportion by which persons adjust to one another, according to the purpose they pursue. Therefore, the law is conceived as a real relational object, and not as a rule which is the formal measure of the law but not the law itself. This view is in accordance with a famous maxim of Roman law: "It is not from the rule that we derive the law, but from the law that we derive the rule" (Hulot 1803, Digest, 50, 17, 1).

Balanced interpersonal relationships are concretely illustrated by a balanced distribution of external things (***res exteriores***, which are material things, dignities, or social functions), according to the social position of each person with regard to the common good. Indeed, it is up to the judge to attribute to each one what is due to him, in the words of the Roman jurist Ulpian: *suum cuique tribuere* (Hulot 1803, Digest, 1, 1, 10). The judge is considered as the living justice, the one who concretely states the law (Thomas d'Aquin 1985, II^a II^{ae}, q. 58, a. 1).

Nevertheless, legislation is needed for several reasons. On the one hand, a small number of legislators are more likely to be wise and impartial than a large number of judges; the positive law must therefore provide for as many cases as possible, and leave as few cases as possible to the judge (Thomas Aquinas 1984, I^a II^{ae}, q. 95, a. 1). On the other hand, the legislature adds fixedness, written form, and precision to natural law (Villey 2013, 91–96).

The human positive law *(lex humana)*

Human positive law is considered as a rational orientation towards the common good of society, emanating from the authority in charge of it, and promulgated (Thomas d'Aquin 1984, I^a II^{ae}, q. 96, a. 1). Positive law established by human authority must derive from natural law (*lex naturalis*), which is the rational inclination towards the good, otherwise it is not binding in conscience. According to Thomas Aquinas, the most appropriate form of government for this task would be a mixed regime, composed of a balanced mix of monarchy, oligarchy, and democracy (Margelidon, Floucat 2023, 514).

The various schools of natural law

Harmonizing Aristotelian and Roman principles, Thomas Aquinas belongs to the school of classical natural law. It is an objectivist conception of natural law, considered as a relational object, as a balanced social relationship. This concept links the word *ius* to the etymology *iustum* (the right thing, that which is right). This Thomasian conception is shared by Michel Villey (Villey 2001, 54–57) and Alain Sériaux (Sériaux 1999).

This approach must be distinguished from the school of modern natural law, which has both a legalist and a subjectivist orientation. The legalist conception, which identifies law and rule, seems to have been influenced by Suarez, who placed the study of l*ex* before that of *justitia*. This approach brings the word *ius* closer to the etymology *iussum* (order, injunction). Villey criticized the assimilation of *ius* and *lex* by the second Scholasticism, as well as the neo-Thomist tendency to seek immutable rules of natural law (Villey 2002, 87–89).

Finally, the subjectivist conception, which seems to come from Occam and Hobbes (Villey 2001, 106–109), considers natural law as an individual power. Villey has criticized subjective rights declared abstractly, independently of any legal relationship, and ineffective in the settlement of trials (Villey 2014). It is this subjectivist view that has prevailed in the Universal Declaration of Human Rights of 1948.

After this familiarization with Thomasian legal objectivism, let us now consider some attempts at updating the thought of Thomas Aquinas.

SOME SIGNIFICANT IDEAS UPDATED BY LEGAL NEO-THOMISM

Empirical and dialectical methodological renewal

One of the first innovations of the neo-Thomists was their interest in contemporary social sciences, claiming to follow the realistic approach of Thomas Aquinas (Serry 2004). Arguing against the abstract rationalist conception of natural law as a system of fixed rules outside of time and space, Simon Deploige (1868–1927) took into account the results of sociology, without going as far as the moral sociology of which he accused Durkheim. He promoted a middle position, using sociological data to determine concretely the best possible institutions, according to the extent that they allow the full development of man in accordance with his spiritual destiny (Deploige 1910).

Michel Villey also contributed a methodological reflection, criticizing the rationalist conception that tends to deduce the law of axioms, in the manner of Christian Wolff. Following Thomas Aquinas, according to whom prudence includes dialectics (Thomas Aquinas 1985, II^{a} II^{ae}, q. 48, a. 1), Villey considered dialectics as the only authentic method of legal practice. He argued that human right should flow from natural law, not in the way a certain conclusion follows deductively from a demonstration, but in the way a probable conclusion follows dialectically from a dialogue (Villey 2014, 99–101). It is only through a dialectical procedure such as is practiced in judicial or parliamentary debates that the common good and the law can be determined.

A legal understanding of the common good

The French Thomist jurist Georges Renard (1876–1943) considered the Maurice Hauriou's theory of institution as the legal valorisation of the Thomist notion of Common Good. Maurice Hauriou (1856–1929), who claimed the influence of scholasticism on his work (Hauriou 1916, XXIV), considered the institution as a permanently established social form characterized by three main elements (Billier, Maryioli 2001, 227–231):

- a guiding and static idea to realize,
- the organization of power necessary for the dynamic realization of the idea,
- the consent required from the members of the institution to allow the legitimacy of the power exercised.

Renard assimilated the guiding idea to be realized to the Thomasian common good, and it's in its light that the correct form of social relations can be determined (Renard 1930, 31–33). These relationships can be divided

into three types of fundamental relationships, regulated by the three Thomasian forms of justice (Margelidon, Floucat 2023, 304):

- the general justice that adjusts members of a community to the common good,
- the distributive justice that adjusts a community to its members,
- the commutative justice that adjusts individuals to each other.

The relationship between the individual good and the common good

In the 20th century, the relationship between the common good and the individual good aroused controversy, motivated by the double fear of individualism and totalitarianism. Various authors grouped around the position of Jacques Maritain, such as Ignace Theodore Eschmann (1898–1968) or Yves Simon, affirming that the common good can only be ordered at the service of the human person, who, as an autonomous and worthy subject, may not form only a part of a whole constituted by the society. Conversely, Charles de Coninck (1906–1965) criticized the personalist conception, undermining the community dimension of the individual. He insisted on the Thomasian integration of man into society as part of a whole: the good of a whole allows its parts to attain a good that each part would not attain alone (Thomas Aquinas 1984, I^a II^{ae}, q.92, a.1).

Maritain sketched an intermediate solution to this paradox of social life by distinguishing individuality (consisting of a man being part of a whole) from personality (consisting of a man being himself a whole). In view of this distinction, the temporal common good appears superior to the good of a man as an individual citizen, but inferior to the good of a man as a person turned towards transcendence (Daguet 2017, 353–388).

A criticism of legal voluntarism

Guided by the idea of an objective common good, Georges Renard defended an objectivist and finalist theory of law against legal voluntarism. According to him, the substance of the law on which the obligation is based is the rational idea (*finis legis*) sought and implemented by a formal legal act, and not the will (*praeceptum legis*) establishing the act (Renard 1929, 657–670). Renard thus criticizes the positivism which reduces the law to the human will, making the science of law a mere recognition of facts. Renard stated that the natural law is a criterion for judging the facts, and that the lawyer's job is not to comment but to criticize the human law and check its conformity with natural law. Renard accused this positivist illusion of divinizing the state, which has no more legitimacy than other institutions like the family or the corporation (Renard 1930, 5–14). In the same way, Jacques Maritain attacked the concept of sovereignty, linked

to absolutism, considering that neither the state nor the people are sovereign, because sovereignty is God's own (Touchard 2014, 836–837).

The conception reducing the law to human rules yields a fundamental theoretical interest to the coercive aspect of the law. That is why Joseph-Thomas Delos (1891–1974) opposed Léon Duguit who made the sanction the principal characteristic of law. Delos argued that coercive force is not instituted, but simply derives from the transcendent foundation of law, which is its guiding force, in other words the common good that it pursues (Renaud-Boulesteix 2020, 262–268).

A political cohesion based on social friendship

According to Thomas Aquinas, friendship appears as the foundation of social association around a common good (Margelidon, Floucat 2023, 41). Promoting this fundamental dimension of sociability, Joseph-Thomas Delos strongly criticizes Carl Schmitt's conception of politics, whose "dialectic of friend and enemy implies that the formation of an association of friends is inseparable from the designation of an enemy". According to Delos, the enemy must be considered as being of the same nature as the friend: they are both reasonable creatures who share the same humanity. Against an alleged fatalism of the conflict, they can choose to pursue common interests, such as security and prosperity (Renaud-Boulesteix 2020, 213–223).

Delos transposed this imperative of social friendship into the international order of which he conceived the organization according to the distributive justice of Aristotle, based on the international common good consisting mainly of peaceful relations. Peace seems not only justified by the Christian ideal of universal charity, but also as the supreme answer to man's natural need for sociability (Renaud-Boulesteix 2020, 162–212).

Political cohesion based on social friendship must be preserved by an organized political authority. Concerning the form to be given to the government, Jacques Maritain gave a democratic interpretation of the *Summa Theologiae*, after in 1927 he dissented from the political movement *Action Française* which had made Thomas Aquinas a monarchist theorist because of his circumstantial work *De regno*. Maritain's democracy does not mean an egalitarian society or a direct democracy, but a general philosophy of legitimizing power through its orientation towards the good of the people. Its position is based on the participation of the people in the political government promoted by Thomas Aquinas (Thomas d'Aquin 1984, I^{a} II^{ae}, q. 105, a. 1), necessary to maintain the interest of all in the common good and avoid a return to purely private concerns (Meyer-Bisch 2012). In any case, Aquinas subjects the question of the best political regime to the assessment of concrete circumstances.

CONCLUSIONS

These observations are faltering and require advancement throughout the research of the thesis. Nevertheless, it can be asserted that all Thomistic legal and political proposals are linked to a unitary conception where the notion of purpose, merging with that of good, holds a central place. It is the common goal of a community that determines both its structure of and its internal relations, on which the law depends.

The stake for the contemporary relevance of Thomistic legal doctrine appears to be the maintenance of a solid and intelligible teleological conception, particularly in the disciplinary fields on which the philosophy of law depends. Michel Villey seemed to be of the same opinion when he called for the reanimation of the Aristotelian philosophy of nature and the notion of final cause, discarded since the Baconian criticism for methodological reasons.

One could see an attempt at contemporary rehabilitation of finalism in the work of philosopher Raymond Ruyer.

ABREVIATIONS

I^{a} – First part of Aquinas' *Summa theologiae*

I^{a} II^{ae} – First section of the second part of Aquinas' *Summa theologiae*

II^{a} II^{ae} – Second section of the second part of Aquinas' *Summa theologiae*

a. – article

q. – question

BIBLIOGRAPHY

PRIMARY LITERATURE

Deploige, S., 1910. Morale thomiste et sciences des mœurs. *Revue néo-scolastique de philosophie*, 17^{e} année, n° 68, 445–475.

Hauriou, M., 1916. *Principes de droit public*. 2^{e} éd. Paris: Sirey.

Hulot, H. et al. (trad.), 1803. *Corpus juris civilis*. Metz, Behmer et Lamort. Paris: Rondonneau. Available at: https://www.histoiredudroit.fr/corpus_iuris_civilis.html

Leo XIII, 1879. *Aeterni Patris, Encyclical of Pope Leo XIII on the restoration of Christian philosophy*. Available at: https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_04081879_aeterni-patris.html

Mercier, D., 1894. La Philosophie Néo-Scolastique. *Revue néo-scolastique*, 1^{e} année, n° 1, 5–18.

Renard, G., 1929. La théorie des *leges mere poenales*. *Mélanges Maurice Hauriou*. Paris: Sirey, 625–708.

Renard, G., 1930. *La Théorie de l'Institution, Essai d'ontologie juridique*. Paris: Sirey.

Thomas d'Aquin, 2015. *Penser le politique*. Nodé-Langlois, M. (trad.). Paris: Dalloz.

Thomas d'Aquin, 1984–1986. *Somme Théologique*. Roguet, A.-M., *et al.* (trad.). Paris: Les éditions du Cerf.

Villey, M., 2001. *Philosophie du droit, Définitions et fins du droit, Les moyens du droit.* Paris: Dalloz.

Villey, M., 2014. *La Nature et la Loi, Une philosophie du droit*. Paris: Les éditions du Cerf.

Villey, M., 2014. *Le droit et les droits de l'homme*. 2e éd. Paris: Presses Universitaires de France.

SECONDARY LITERATURE

Aubin, V., 2010. La partie et le tout, l'intérieur et l'extérieur: pour lire le traité des lois de saint Thomas. Humbrecht, T.-D. (dir.). *Saint Thomas d'Aquin*. Les Cahiers d'Histoire de la Philosophie. Paris: Les éditions du Cerf, 317–356.

Billier, J.-C., Maryioli, A., 2001. *Histoire de la philosophie du droit*. Paris: Armand Colin.

Daguet, F., 2017. *Du politique chez saint Thomas d'Aquin*. Paris: Vrin.

De Wulf, M., 1950. *Précis d'histoire de la philosophie*. 9e éd. Louvain: E. Nauwelarts.

Elders, L. J., 2013. *Thomas d'Aquin, Une introduction à sa vie et à sa pensée*. Paris: Les presses universitaires de l'IPC.

Gardeil, H.-D., 1957. *Initiation à la philosophie de S. Thomas d'Aquin, II, Cosmologie*. 3e éd. Paris: Les éditions du Cerf.

Margelidon, P.-M., Floucat, Y., 2023. *Dictionnaire de philosophie et de théologie thomistes*. 3e éd. Editions Parole et Silence.

Meyer-Bisch, G., 2012. Maritain, penseur de la démocratie: lecteur fidèle de Thomas d'Aquin? La lecture maritanienne du meilleur régime dans la pensée de Thomas d'Aquin. *Le Philosophoire*, 2 (38), 251–272.

Renaud-Boulesteix, B., 2020. *Modernité politique et Bien commun, La pensée antilibérale catholique et la crise du libéralisme dans l'entre-deux-guerres*. Paris: Hermann.

Sériaux, A., 1999. *Le droit naturel*. 2e éd. Coll. Que sais-je? Paris: Presses Universitaires de France.

Seriaux, A., 1999. L'objectivité du "ius" selon Saint Thomas d'Aquin. *Persona y Derecho*, 1, 257–270.

Serry, H., 2004. Saint Thomas sociologue? Les enjeux cléricaux d'une sociologie catholique dans les années 1880–1920. *Actes de la recherche en sciences sociales*, 3 (153), 28–40.

Touchard, J., 2014. *Histoire des idées politiques, Du XVIIIe siècle à nos jours*. 3e éd. Paris: Presses Universitaires de France.

Villey, M., 2002. *Leçons d'histoire de la philosophie du droit*. Paris: Dalloz.

Villey, M., 2013. *La formation de la pensée juridique modern*. 2e éd. Paris: Presses Universitaires de France.

TOMISMA ATDZIMŠANA JURIDISKAJĀ ZINĀTNĒ UN POLITIKĀ 19. UN 20. GADSIMTĀ

ŽEROMS KASALI
Tiesību vēstures doktorants Eksas-Marseļas Universitātē
E-pasts: *jerome.CASALI@univ-amu.fr*

ANOTĀCIJA

Tomisms ir uzskatu skola, kas balstās Akvīnas Toma (1225–1274) mācībā. Raksts pievēršas nozīmīgiem tomisma atdzimšanas aspektiem Eiropas reģionā, kur runā franču valodā. Šo procesu pamudināja pāvesta Leo XIII (pāvests no 1878. līdz 1903. gadam) 1879. gadā izdotā enciklika *Aeterni Patris*. Tiesiskais tomisms šķiet īpaši interesants, novērtējot pozitīvās tiesības saskaņā ar dabiskajām tiesībām, uzskatu, ko tomistu juristi cenšas padarīt saprotamu, izmantojot teleoloģisku koncepciju par sociālajām attiecībām, kuru pareizo formu nosaka katra kopīgais labums.

Atslēgvārdi: tiesiskais tomisms, tiesiskais neotomisms, kopējais labums, dabiskās tiesības.

Kopsavilkums

Tomisms seko Akvīnas Toma uzskatiem. Tas izsīka 17. gadsimtā, atdzimstot tikai 19. gadsimta beigās pāvesta impulsa ietekmē. Tomistu tiesību doktrīna, atdzīvinot Aristoteļa un romiešu principus, balstās uz teleoloģisku sabiedriskās dzīves koncepciju. Tas ir katras sociālās attiecības objektīvais mērķis (kopējais labums), kam vajadzētu noteikt pareizo kopienas attiecību struktūru. Savstarpējo attiecību līdzsvars, kas precīzi ir dabiskais likums (*ius naturale*), tiek izteikts konkrētos nosacījumos, līdzsvaroti daloties ar ārējām lietām – gan taustāmām, gan nemateriālām. Politikai, īstenojot likumu, sabiedrība ir jāvirza uz kopējo labumu. Šī klasiskā dabisko tiesību koncepcija ir jānošķir no mūsdienu dabisko tiesību tiesiskās un subjektīvās ievirzes, kas tiesības pielīdzināja vai nu valdīšanai, vai individuālajai varai.

Tiesiskais neotomisms ir mēģinājis aktualizēt tomisma garu, ņemot vērā mūsdienu sociālo zinātņu atziņas, pārskatot dialektisko pieeju tiesību meklējumiem, kopīgā labuma juridisku izpratni ar institūcijas teorijas palīdzību, individuālā labuma formulējumu un kopējo labumu, objektīvu un finālistisku tiesiskā voluntārisma kritiku, uzsvaru uz sociālo draudzību kā sabiedriskuma stimulu un tautas līdzdalību politiskajā valdībā. Tomisma nozīme tiesībās, šķiet, ir atkarīga no stabilas filozofijas uzturēšanas, ko paredz šī intelektuālā sistēma.