Mikael M. Karlsson*

St. Thomas Aquinas on the Binding Nature of Law[1]

Abstract

This paper attempts to explicate the views of St. Thomas Aquinas, as they are presented in his "Treatise on Law" (*Summa Theologiæ* IaIIæ 90-97), concerning the binding nature of law and the relationship between a law's being *binding* and it's *imposing an obligation to obey.*

In the Western tradition, most writers on the nature of law, ancient and modern, have maintained that laws, strictly so called, are binding. But they have not been of one mind as to what this means or what accounts for the purportedly binding nature of law. Does this binding character lie in law's being backed by sanctions, penalties, or punishments for disobedience? That is, is the legal order fundamentally a coercive order? Or does it lie in their entrenchment in custom? Or something else? And is being *bound by a law* the same thing as being *obligated to obey it*? Could *coercion* or *custom* create such an *obligation*? And what is *obligation*, anyway?

Here, the author argues that St. Thomas understands bindingness, in the relevant sense, to amount to the rational necessity of following a rule or ordinance. The beings bound by reason to follow rules or ordinances may themselves be rational or non-rational. But all natural beings are bound by reason to follow the rules

* Emeritus Professor of Philosophy at the University of Iceland, Adjunct Professor of Law at the University of the Faroe Islands, and previously founding dean of the Faculty of Law & Social Sciences at the University of Akureyri.

1 The original version of this paper was presented at the international conference "Athafnir, vilji og lög: Málbing um athafna- og lögspeki heilags Tómasar af Aquino" (Action, Will and Law: Seminar on St. Thomas Aquinas' Philosophy of Law and Action), held on October 1st, 2004, at the University of Akureyri, in honor of the publication of the first Icelandic translation of the philosophical core of St. Thomas' so-called "Treatise on Law" (*Summa Theologiæ IaIIæ* 90-97) as *Um lög* (On Law), tr. Þórður Kristinsson (Reykjavík: Hið íslenska bókmenntafélag, 2004); and the inspection of this translation occasioned a re-examination of St. Thomas' views, reflected in this paper. This explains the references in the paper to particular choices of the Icelandic translator. Although these might seem at first sight to be of little interest to the general reader, in fact the Icelandic examples, along with remarks about the 2004 translation, are instructive and have therefore been left in.

that God has set for them. In the case of non-rational beings, the reason is God's and the necessity of following His ordinances is implanted in them by God.

They are thus *bound*, but clearly not *obligated*, to follow these ordinances of reason. What God has implanted in human beings is reason itself, including practical reason, the first precept of which is that the good is to be pursued and evil avoided. Properly framed human laws are built upon this precept. The obligation to obey the law is the rational understanding that to do so is to pursue the good and a rational creature must therefore obey. This ability to reflect rationally upon what is to be done or avoided is *conscience*.

To be *obligated* is to be *bound in conscience*, as St. Thomas words it. St. Thomas appears to conclude that unless human law is binding in conscience, other varieties of bindingness are simply irrelevant to its credentials as human law.

Úrtak

Greinin roynir at lýsa áskoðanirnar hjá sankta Thomas Aquinas, við støði í „Treatise on Law" (*Summa Theologiæ* IaIIæ 90-97), sum viðger spurningarnar: um *lóg*, sum hugtak, er *bindandi;* og samspælið millum eginleikarnar hjá lógini at ávikavist *binda* og *áleggja skyldur at verða lýðin*.

Sambært vesturlendskari siðvenju, hava flestu høvundarnir, ið hava umrøtt hugtakið *lóg* - bæði í fornari og nýggjari tíð - hildið upp á, at lógir eru bindandi. Tó hevur breið semja ikki verið um, nágreiniliga hvat hetta merkir, ella hvørjar treytirnar eru fyri, at hugtakið *lóg* er sokallað bindandi. Er hesin bindandi eginleikin hjá lógini grundaður á, at lógin er stuðlað við tvingsilstiltøkum, sekt ella revsing fyri ólýdni? Er lógarskipanin, við øðrum orðum, grundleggjandi ein tvingsilsskipan? Ella hevur hesin eginleikin røtur í siðvenju? Ella onkra aðrastaðni? Og kann tað javnmetast at verða *bundin av lógini* og at *vera skyldubundin at akta hana*? Kann *tvingsil* ella *siðvenja* skapa slíka *skyldubinding*? Og hvat er *ein skyldubinding*, hóast alt?

Í hesum høpi argumenterar høvundurin fyri, at sankta Thomas skilir hugtakið *binding*, at vera tað sama sum at á ein viðkomandi hátt at fylgja einari reglu ella lógarskipan orsaka av *skynsamari neyðturviligheit*. Tær verur, ið orsaka av skynsemi eru bundnar til at fylgja reglum ella lógarskipanum kunnu sjálvar vera antin skynsamar ella óskynsamar. Men allar náttúrligar verur eru bundnar av skynsemi at fylgja reglunum, sum Gud hevur givið teimum. Tá tað kemur til óskynsamar verur, er skynsemið Guds og neyðturviligheitina at fylgja lógarskipanum hansara, hevur Gud sett í tær.

Tær eru sostatt *bundnar*, men ikki *skyldubundnar*, at fylgja hesum skynsemisskipanum. Tað, ið Gud hevur sett í menniskju, er skynsemi sjálvt, harundir praktiskt skynsemi, hvørs fyrsta fyriskipan er, at strembað eigur at vera ímóti tí góða, og hitt ónda eigur at vera skýggjað. Allar menniskjasligar lógir, ið eru smíðaðar á rættan og rímuligan hátt, byggja á hesa fyriskipan. Skyldan at vera lógini lýðin, byggir á skynsomu fatanina av, at hetta er ein stremban eftir tí góða, og ein skynsom vera má tískil vera lýðin. Hesin førleiki at hugsa skynsamt um hvat skal gerast ella ikki gerast kenna vit sum *samvitska*.

At *vera skyldubundin* er at vera *bundin av samvitsku*, sum sankta Thomas orðar tað. Sankta Thomas letur til at koma til ta niðurstøðu, at uttan so at menniskjaslig lóg bindir umvegis samvitskuna, eru aðrir møguligir formar fyri binding heilt einfalt óviðkomandi fyri at umboða menniskjasliga lóg.

1. The Binding Nature of Law

In those chapters of his *Summa Theologiæ* that have come to be known as the "Treatise on Law", and most especially IaIIæ.90-97, St. Thomas Aquinas articulates a *theory of law* in the sense in which philosophers speak of such things. Above all else, St. Thomas' objective is to give an account of the *nature* of law—that is, of what it is for something to have the special *character* that belongs to law.

One of St. Thomas' most important claims in this regard is that law is *binding: lex,* he claims (in a false etymology) "is derived from *ligare* (to bind) because it obliges (*obligare*) one to act." (IaIIæ.90.1.corpus)[2] But, he adds more specifically, "[I]t belongs properly to a law to bind one to do or not do something" (IaIIæ.90.4.arg.2), or conversely stated, if something is not binding, then it has not the character of law, according to St. Thomas.

2 Quotations are from the translation of *Summa Theologiæ* produced by the Fathers of the English Dominican Province (Benziger Brothers edition, 1947). This is no longer the standard English translation, but in various ways it compares favorably with newer translations. Since the readers of this journal may not be familiar with the standard form of citations to the *Summa Theologiæ*, I will provide a short explanation.
The *Summa Theologiæ* (or *Summa Theologica*), written between 1265 and 1274, is divided into three Parts (large sections), with the second of these being divided again in two. These are referred to as *Prima Pars* (Ia), *Prima Secundæ Partis* (IaIIae), *Secunda Secundæ Partis* (IIaIIae), and *Tertia Pars* (IIIa). There is also a supplement to the third part, *Supplementum Tertiæ Partis* (XP IIIae).
Each of the parts is divided into Questions (Q), and each Question is divided into a Preface (P) and a number of Articles (A). Each Article addresses a particular question that St. Thomas means to be answered affirmatively. Within each article, specific objections ("arg.") to an affirmative answer are first presented ("arg. 1" would be the first objection), followed by St. Thomas' affirmative answer with supporting reasons (this is the body, or *corpus* of the Article), followed by replies ("ad.") to the specific objections presented initially ("ad. 1" would be the reply to the first objection).
Examples: "IaIIæ.90.4.arg.2" would refer to the reply to the second objection in Article 4 of Question 90 in the first Part of the Second Part; "IaIIæ.90.1.corpus" would refer to the corpus of Article 1 of Question 90 in the first Part of the Second Part; while "IaIIæ.93.5.ad 1" would refer to the reply to the first objection in Article 5 of Question 93 in the first Part of the Second Part. As you see, "Q" and "A" are often omitted from the citations, and the typography and orthography of the citations may vary somewhat from these examples.
The so-called "Treatise on Law" belongs to the First Part of the Second Part (IaIIae) and extends from Q 90 to Q 108; but only QQ 90-97 are generally thought to be of special interest for modern legal theory.

2. Obligation and Moral Necessity

But what is it for something to be *binding* in the relevant sense? From much of what St. Thomas says, it is tempting to suppose that what is meant is that law is binding in the sense of placing those subjects to it under an obligation to act in accordance with what law prescribes, for, as St. Thomas remarks, "it belongs to law to command and to forbid." (IaIIæ.90.2.arg.1).

We may keep in mind the difference, in English, between being *obligated* and being *obliged* to which H. L. A. Hart famously drew attention.[3] Both involve being placed under a certain necessity, but in the case of being obligated, the necessity in question is *moral* necessity, whereas in the case of being obliged the necessity may be of another—or alternatively of a wider—sort.

In associating the notion of *being obligated* with moral necessity, I am in fact disagreeing with Hart: not concerning his distinction between being *obligated* and being *obliged* but concerning his account of being obligated. For Hart is a dualist about being obligated; he gives a different account of the obligation involved in being *morally* obligated and in being *legally* obligated.

It is hard to see from his discussion in the *Concept of Law* what common definition *obligation* would fulfil in the two cases (any such definition would have to be extremely thin). I understand obligation *as such* to be a single phenomenon, whether we speak of *moral* or of *legal* obligation.[4] And I believe that it is to be understood as the *moral necessity* of acting in a certain way.[5]

When we are legally obligated, this moral necessity attaches to an action because (or partly because) of a legal mandate. When we are morally obligated, this necessity attaches to an action for reasons other than a legal mandate, reasons that we call "moral" in a rather broad sense.

I speak of *moral necessity* in the sense that St. Thomas would have understood it: *the rational necessity of pursuing good and avoiding evil*, reflecting what he announces to be the first precept of practical reason (see IaIIæ.91.3.corpus).

---

3 See his *Concept of Law*, 2nd ed. (Oxford: Oxford University Press, 1994), pp. 82-91.

4 Just to be as clear as possible on a matter that has often led to confusion and misunderstanding: my point is not that *moral obligations* and *legal obligations*—or that *being morally obligated* and *being legally obligated*—are the same sort of thing but rather that *what it is to be obligated* is the same in both cases.

5 However, see note 7.

This topic cannot be fully explicated within the confines of the present paper but is taken up below in connection with the important idea, introduced by St. Thomas in IaIIæ.96.4. of *bindingness in conscience*; and I have developed my own views on this topic elsewhere.[6]

3. *Obligo*

At any rate, if we understand St. Thomas to have in mind what I have called *moral necessity,* then we may translate St. Thomas' *obligo* (to bind) into English as *to obligate*, or in Icelandic, as *að skuldbinda* (to obligate)[7] and this is indeed the choice made in the 2004 Icelandic translation of the "Treatise on Law".[8] But the Latin *obligo* does not necessarily mean *to obligate,* it may mean also *to oblige,* and its most literal meaning is simply *to bind.* In this last-mentioned sense, it is, practically speaking, a synonym of *ligo.* Thus, whatever St. Thomas' teaching may ultimately be, his Latin "*dicitur enim lex a ligando, quia obligat ad agendum*" might be alternatively rendered in English as:

> *lex* is derived from *ligare* because it obligates one to act

which is the effect of the Icelandic translation,[9] or, with the Dominican Fathers as:

> *lex* is derived from *ligare* because it obliges one to act

or, finally, as:

> *lex* is derived from *ligare* because it binds one to act

6 See my "Roots of Legal Normativity", in *Analisi e diritto 2000*, P. Comanducci & R. Guastini, eds. (G. Giapichelli Editore, 2000), pp. 97-112. Hart also views being obliged as a psychological condition; I disagree with that as well, as can be seen in the article here referred to. I would like to thank Paolo Comanducci for pointing out to me (in December 2005) the necessity of raising these points in the present paper.

7 More literally, one can say that "að skuldbinda" means "to bind as a matter of duty". "Að vera skuldbundinn" would translate into English as "to be duty-bound". The suggestion of the translation seems to be that "að skuldbinda" means to bind morally, but it leaves room for a more "legalistic" interpretation, wherein one is bound as a matter of legal duty or the duty of station. In this sense, one might be, for example, "skuldbundinn" to organize the extermination of the Jews; Adolph Eichmann clearly considered such to be his duty.

8 See note 1.

9 „[O]rðið *lög (lex)* er dregið af *binda (ligare),* með því að þau skuldbinda mann til breytni." (The word *law (lex)* is derived from [the verb] to *bind (ligare)* on account of its obligating a man to act).

The third is the least interpretive, and in that way the safest, of the alternatives. In general, the Dominican Fathers translate *obligo*, where it occurs in St. Thomas' text, as *to bind*, whereas the Icelandic text generally uses *að skuldbinda* (to obligate, to bind morally).

4. Bindingness Beyond Obligation—the Ambit of Rational Necessitation

What considerations militate against taking St. Thomas' general notion of *bindingness* to be that of *moral bindingness* and thus militate against translating his *obligo* as *to obligate*? There are several.

First, St. Thomas claims that it is the essence, or proper nature, of law to be *binding*. This implies that all of the kinds of law which he distinguishes have this character. These include, as those who have read the *Treatise on Law* may recall, what he calls *eternal* law *(lex aeterna), natural* law *(lex naturalis), human* law *(lex humana)* and *divine* law *(lex divina)*. These are distinguished in Question XCI, and each is further discussed in subsequent chapters. It is not my purpose here to discuss these varieties of law in any detail. But in the present connection, a problem is presented by eternal law.

What is eternal law? It is not easy to give a brief account of St. Thomas' theory with precision, but the idea may be gathered pretty well from this passage from (IaIIæ.93.1.corpus):

> God … is the creator of all things, in relation to which He stands as the artificer of the products of his art… He governs all the acts and movements that are to be found in each single creature… Therefore, as the type of the Divine Wisdom in so far as by It all things are created, has the character of art, exemplear, or idea, so the type of Divine Wisdom as moving all things to their due end bears the character of law... [T]he eternal law is nothing else than the type of Divine Wisdom, as directing all actions and movements.

We may simplify St. Thomas' account by saying that eternal law comprises what in English are often referred to as *the laws of nature*, for instance the law of gravity, here conceived as "set" by the Creator by making them the principles of the *actions and movements* of natural beings.

> … God imprints on the whole of nature the principles of its proper actions. And so, in this way, God is said to command the whole of nature… (IaIIæ.93.5.corpus)

In Icelandic such internal principles are not called *laws* (*lög*) but are referred to by other, related, words, such as *lögmál.* Icelandic linguistic practice is indicative of a deep difference between laws in the ordinary sense, which fall within what St. Thomas calls *human law* (and, arguably, also to some extent what he calls *natural law*) and laws in the sense of principles of nature.

St. Thomas fully recognizes this deep difference, but he nevertheless includes laws of nature under *lex.* As such, he evidently means to say that they are *binding* in the sense of Question XC, where he sets out the features definitive of *lex* as such. These features are summed up in IaIIæ.90.4.corpus, where St. Thomas states that law is:

> … nothing other than an ordinance of reason for the common good, made by him who has care of the community, and promulgated.

Although unstated in the sentence just quoted, the binding character of law is a part of this package; for in the same passage St. Thomas maintains—for instance, in connection with promulgation—that "…in order that a law obtain the binding force which is proper to a law" it must be promulgated. (IaIIæ.90.4.corpus)

In IaIIæ 93.5 and 93.6, St. Thomas maintains that natural contingents are subject to the eternal law *(naturalia contingentia . . . subsint legi aeternae)* and that non-rational creatures are subject to the eternal law "by partaking of the eternal law by way of an inward moving principle" (IaIIæ.93.6.corpus). And least we think that the language of *rational ordinances,* the *common good* and *promulgation* could not be meant to apply here, St. Thomas emphasizes the reverse:

> The impressions of an inward active principle is to natural things what the promulgation of law is to men, because law, by being promulgated, imprints on man a directive principle. (IaIIæ.93.5.ad 1)

Evidently, therefore, eternal law is understood by St. Thomas to be *binding* upon natural contingents in the sense of Question XC.[10] But surely St. Thomas does not suppose that non-rational beings (many inanimate) are *obligated* to act in accordance with the internal principles of action and movement that God has imprinted upon them. Indeed, even the notion of *being obliged* does not fit such examples. Obligation, whether the reference is to being obligated or to being obliged, is a kind of subjection to rational necessity: the sort of necessity to which rational creatures can be subjected in virtue of their being rational creatures. This is Kant's view and, I believe, St. Thomas' view as well—in fact, I suppose that Kant was here inspired by St. Thomas, who, unlike ancient writers, made obligation a central subject in the philosophy of law and moral philosophy.

Be that as it may, we have now seen one argument that *obligo,* as it is featured in Question XC, does not there mean *to oblige,* or *to obligate,* as it would be natural to suppose, but refers to a wider notion of *subjection to necessity in action or movement.* This necessity may in principle be physical, rational, logical, moral, or practical. This paper will not enter into any deep discussion of all of these various forms of necessity, but certain points in this connection will come to light in the course of our discussion. Just now, I will consider some further arguments to the conclusion already reached.

10 The modern reader may find St. Thomas' view on these matters to be very far-fetched, deriving from a world view—God as the universal legislator—whose validity most of us no longer recognize, even if we are religious believers. Such a reader may find the application of such notions as *command*, *promulgation*, and *bindingness* to the inanimate natural world an objectionable distortion of these important concepts. Be that as it may, St. Thomas clearly does apply these notions to nature as a whole, inanimate as well as animate, non-rational as well as rational. This yields the very wide notion of *bindingness* discussed in this paper. If we were to "modernize" St. Thomas' view, restricting the notions in question to animate—and more specifically only to rational—creatures, then the notion of bindingness would evidently come down to rational necessitation. Whether that would entirely obviate the need for St. Thomas to distinguish the special category of "bindingness in conscience", discussed below, cannot be considered in the present paper.

5. Custom and Coercion

My second argument brings in what St. Thomas says about custom and coercion. Those who read St. Thomas as conceiving the characteristically binding force of law as a kind of moral force, where an agent lies under an obligation to act or forbear from acting in a given way, may find certain assertions uncomfortable. In (IaIIæ.90.3.ad 2), St. Thomas maintains that:

> A private person cannot lead another to virtue efficaciously; for he can only advise, and if his advice not be taken, it has no coercive power, such as the law should have, in order to prove an efficacious inducement to virtue ... [T]his coercive power is vested in the whole people or in some public personage, to whom it belongs to inflict penalties…

This hints at the view that the binding character of law is, at least in part, founded in its commands being backed by punishments and penalties, an ancient idea which was articulated in its most interesting form some six hundred years after St. Thomas by John Austin in his *Province of Jurisprudence Determined* (1832).[11] Normally, Austin's account is taken to be substantively opposed to that of St. Thomas.

This remark of St. Thomas' can, however, be turned by understanding it to concern an adjunct—perhaps a desirable adjunct—to law rather than a comment upon law's essential character. The thought is that being backed by penalties is not what makes law *binding,* in the sense of imposing an obligation, but what makes law effective as a social institution, i.e. that it gets people to do what they are already obligated to do. Indeed, in Question XCII, which deals with the "effects of law" *(effectus legis)*, St. Thomas comments that people, at least sometimes, obey the law through fear of punishment, rather than from virtue or from a dictate of reason. (IaIIæ.92.1.ad 2) But this strategy seems not to be very easily applied to St. Thomas' assertion in Question XCVI (wherein he refers back to Question XC) that:

> The notion of law contains two things: first, that it is a rule of human acts; secondly, that it has coercive power. (IaIIæ.96.5.corpus)

11 An articulate current advocate of this view is Frederick Schauer; see his article, "Was Austin Right After All? On the Role of Sanctions in a Theory of Law", in Ratio Juris, Vol. 23 No. 1 March 2010, 1–21, and his book, *The Force of Law* (Cambridge, Mass. & London: Harvard University Press, 2015).

This makes it seem that coercion is more intimately related to law's binding character than the suggested *turning* strategy—and the idea that the relevant binding force is that of obligation—accounts for.

Together with this, we may consider St. Thomas' remark in Question XCVII, that "when a law is changed, the binding power of the law is diminished, in so far as custom is abolished" (IaIIæ.97.2.corpus).[12] This is hard to accommodate to the idea that the binding power of law comes down to the power of obligation—to moral necessity—since there is no evident connection between moral necessity and the power of custom. Custom may support an unjust law, for example, which St. Thomas maintains to be no law at all (e.g. at IaIIæ.95.2.corpus, and cf. IaIIæ.96.4.corpus); and conversely an obligatory precept may be antithetical to custom.

6. Bindingness in the Forum of Conscience

It seems from this that both coercion and custom can provide, or contribute to, the binding character of law referred to in Question XC. Now coercion and custom seem not to impose any obligations *per se*.[13] But they may both be described as subjecting an agent to a kind of necessity in action. Unlike the case of the actions of non-rational beings necessitated by eternal law, coercion and custom arguably subject only rational agents to practical necessity; but, as in the former case, this sort of necessity is wider, or perhaps other, than moral necessity. Thus, again, that law binds, evidently comes down to something wider than its imposing obligations.

Thirdly and finally in this series of considerations, I want to assess the import of Question XCVI, article 4, where St. Thomas considers the question of whether human law "has the power to bind a man in conscience" *(habent vim obligandi in foro conscientiae)*. In the prologue to Question XCVI, the question is posed, in the translation of the Dominican Fathers, "Whether [human law] binds men in conscience?" The Icelandic translation asks *Hvort lög manna skuldbindi samvisku mannsins?* (Whether human laws bind the human conscience?). Oddly enough,

12 It has to be noted that St. Thomas does not use the verb *obligo* here but rather *constringo*. The Latin passage reads: *Unde quando mutatur lex, diminuitur vis constrictiva legis, inquantum tollitur consuetudo.* I thank Pierluigi Chiassoni for pointing this out and for other comments that he made on this paper. *Constringo* means *to bind* and is a virtual synonym for *ligo*. It therefore seems that the Dominican Fathers' translation of "vis constrictiva legis" as "the binding power of the law" is reasonable; they construe St. Thomas as using *vis constrictiva* as a stylistic variant of *vis obliganda*. There is nevertheless an opening here for a critic of my interpretation.

13 But see the discussion in my article, "Roots of Legal Normativity" (note 6, above), esp. 105-106.

however, the Latin text asks whether human law *imponat homini necessitam quantum ad forum conscientae*, that is, fairly literally, whether it "imposes a necessity (or compulsion) upon man in the forum of conscience". The verb *obligo* does not occur. Similarly, in the first lines of Question 96, article 4, the Dominican Fathers have St. Thomas asserting that "It would seem that human law does not bind a man in conscience", which is rendered in the Icelandic as: "*[þ]að virðist að lög skuldbindi ekki samvisku mannsins*" (It appears that laws do not obligate the human conscience). But St. Thomas' Latin text reads: "*Videtur quod lex humana non imponat necessitam in foro conscientiae*" (It appears that human law does not impose a necessity in the forum of conscience). Again, the verb *obligo* is missing.

I do not speak here of mistranslation, for what the translators have done, justifiably enough, is to take St. Thomas to be referring, in these introductory lines, to what he discusses in the relevant *corpus,* when he says that:

> *Leges positae humanitus ve1 sunt iustae, vel iniustae. Si quidem iustae sint, habent vim obligandi in foro conscientiae.* (IaIIæ.96.4.corpus)

This may be rendered correctly enough, as in the translation of the Dominican Fathers, "Laws framed by men are either just or unjust. If they are just they have the power of binding in conscience"; or as in the Icelandic translation, "*[L]ög sem maðurinn setur eru annaðhvort réttlát eða ranglát. Ef þau eru réttlát, þá fá þau kraft sinn til að binda samviskuna…*" (The laws set by man are either just or unjust. If they are just, they acquire the power to bind conscience), though in this instance, a bit oddly, the translator avoids the translation "*skuldbindandi kraftur*" (the power to obligate).

If we make the connection in the opposite direction, so to speak, from the translators, we may see that the *binding* of an agent in the forum of conscience is described, in the introductory lines, simply as the imposition of a certain sort of necessity for action. The bindingness is the simple imposition of a necessity of this sort, while the aspect of obligation comes in as a further specification of a certain *sort* of practical necessity, that is, necessity in conscience. For I take it that being *bound in conscience*, in this text of St. Thomas, is what we often, and more normally, describe as *being obligated*.

7. Legal Obligation and the Pursuit of the Good

Bindingness in conscience is not the bindingness introduced in Question XC as a characteristic of law, although it falls, as a specific variety, under bindingness in that more generic sense. The generic bindingness essential to law cannot be

bindingness in conscience—the necessity of obligation—since eternal law, which is *lex,* binds natural contingents to certain sorts of action but does not obligate or even oblige them to act. Eternal law is, by the way, not the only example that shows this, but we need not multiply examples here.

Bindingness in conscience is a form of rational necessitation and is that form which I believe it proper to describe as moral necessitation. Importantly, not all rational necessitation is moral necessitation. For it is not only practical reason that imposes moral necessity or obligation upon a rational agent. Theoretical reason also subjects us to necessity. For example the Law of Non-contradiction, which is a prescription of reason, forbids us to affirm and deny the same thing at the same time. I have no doubt that St. Thomas would include the Law of Non-contradiction as *lex,* and as binding upon rational creatures. But although we are bound to avoid contradiction, it is doubtful that we are duty-bound or obligated to do so. What we are duty-bound to do, generally speaking, is to pursue and do good and avoid evil.

As St. Thomas tells us in Question XCIV, on natural law:

> [T]he first principle in the practical reason is one founded on the notion of good, namely, that the good is what all desire. Hence, this is the first precept of law, that good is to be pursued and done, and evil is to be avoided. All other precepts of the natural law are based upon this, so that whatever the practical reason naturally apprehends as man's good belongs to the precepts of the natural law as something to be done or avoided. (IaIIæ.94.2.corpus)

Natural law, according to St. Thomas, consists in the precepts of reason, which derive from eternal law in the sense that God has made reason the essential principle of human thought and action. It is thus evident to St. Thomas that natural law is binding upon man, *qua* rational creature, in the forum of conscience. He raises the question with regard to human law as something that does not derive from natural law by what we now call deduction, but by making "determinations" about particular sorts of actions.

> These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed…(IaIIæ.91.3.corpus)

So, he is moved to ask, are these human laws, like natural law, binding in conscience? His answer is that they are, provided that they conform with natural law, which sets rational constraints upon human law-making. Being constraints of practical rationality, the rational necessity imposed upon an agent by such human law as conforms with the essential conditions of law, is moral necessity.

Human laws (so-called) which do not conform with those essential conditions:

> … are like acts of violence rather than laws, because, as Augustine says, "a law that is not just seems to be no law at all… " [S]uch laws do not bind in conscience, except perhaps in order to avoid scandal or disturbance. (IaIIæ.96.4.corpus)

8. Bindingness in Conscience is Essential to Human Law

Someone might think to present us, at this point, with the following problem: If, as I have argued, binding force may derive from such things as coercion or custom, and these may attach to unjust human laws (using the term "law" generously)—laws which violate the principles of practical reason—may such laws not then also be binding? The answer is, first, that they may indeed be binding: they may subject an agent, indeed a rational agent, to the necessity (or to a certain sort of necessity) to act in a certain way. But, this will not render them binding in conscience. They will not thereby impose obligations upon a rational agent.

Secondly, bindingness is said to be a necessary characteristic of law; but it is nowhere implied that it is sufficient. A rule may bind without having the character of law, because it may not have the other characteristics essential to law, for example that of being ordered to the common good.

St. Thomas is in no doubt about the possibility of there being systems of coercive rules, set by human beings, which bind through coercion or custom, without binding in conscience. But these will not be systems of human law. Human law has a special character to which coercion and custom make no contribution unless harnessed to the requirements of reason, in particular, practical reason. If they are so harnessed, then, St. Thomas seems to imply, they may contribute in an essential way to human law as a set of binding precepts. But even if this is the case, the morally binding character of law is prior, in that, unless human law is binding in conscience, other varieties of bindingness are simply irrelevant to its credentials as human law.