

CHAPTER 2

THOMAS AQUINAS ON CONSCIENCE

INTRODUCTION

The advantage of the theory of Petrazycki is that it takes seriously the moral impulses and intuitions of the judges. It allows us to look behind legal arguments directly into the depth of judicial conscience. Petrazycki's theory provides also an ideal of judicial intuitive law expressed in the terms of ethical love. However, as it was shown in the previous chapter, his theory of conscience, and especially his vision of ethical love, were left undeveloped. There are several questions in his theory to which Petrazycki did not give sufficient answers. Firstly, is there a common content of the intuitive law which is shared by members of the society including the judges? Secondly, how to explain and solve the conflict of intuitive laws amongst the members of society? Thirdly, what is the relationship between ethical love and the intuitive law? And finally, how should the judges use the principles and rules of the positive law which point at different decisions than does their intuitive law?

In resolving these issues, the theory of Thomas Aquinas can contribute significantly. It was noted already that the theory of Petrazycki represents a sort of psychological theory of natural law, and therefore the natural law theory of Aquinas can provide further insights to the issues. It may be also the case that Petrazycki's theory would not only benefit from the assistance of Thomistic thought, but the latter itself can be understood better in the light of psychological interpretation of natural law. In this chapter it is not my intention to produce a hybrid of two theories which were written in different ages and in different social and intellectual contexts. My purpose is to combine the advantages of these two approaches to explore and to educate the conscience of judges. It is beyond doubt that both theories possess a rich potential for fulfilling the task of this book.

The moral theory of Thomas Aquinas was developed as a part of his theological doctrine which has had a great impact on the whole of moral and legal philosophy. Thomistic doctrine has influenced much of the present vision of conscience and its problems. It continues to be considered among the highest authorities in modern Roman Catholic thought. Some of the most fundamental ideas of Aquinas have found revision and re-establishment in the works of modern Roman

Catholic theorists of natural law such as Grisez and Finnis.¹ In his important work *Natural Law and Natural Rights* John Finnis offered the theory of practical reasonableness which originates in the Thomistic doctrine.²

It seems that Finnis' concept of practical reasonableness is broader than the concept of conscience. Finnis elaborates the notion of practical reasonableness in detail but he said only a few words about conscience. The merit of Finnis' works is that he tried to maintain the relevance of Aquinas's thought to modern legal theory, although he asserted that this relevance might be maintained without Aquinas's appeal to God as the ultimate authority. I shall maintain that the idea of God is essential for understanding of what Aquinas has written about conscience.

THE BASICS UNDERPINNINGS OF THE MORAL THEORY OF AQUINAS IN THEIR RELEVANCE TO THE CONCEPT OF CONSCIENCE

First of all it is necessary always to keep in mind that Thomas Aquinas developed his doctrine as theology. God as revealed in the Scriptures takes the central position. All the other concepts are treated in the doctrine in so far as they relate to God.³ It is arguable in fact how much his theory contains theology and how much philosophical Aristotelianism which does not necessarily require knowledge of God. This point is crucial, for the answer to this first question could lead to different theoretical implications. The way the theory of Aquinas is interpreted at this point determines the whole vision of conscience: whether conscience is an application of moral knowledge acquired by the activities of the human intellect alone or is an application of moral knowledge given us by God through revelation.

I would argue that although Aquinas experienced the strong influence of Aristotle, his vision is mainly theological. He wrote: "We always need divine assistance in order to take thought about anything, inasmuch as it is God who moves the intellect into action."⁴ Aquinas believed that there are two means of God's assistance to know the moral truth: the first is by natural illumination, the second is by grace. Although every human being is able to know the moral truth through one's use of intellect, in practice everyone can hardly escape from making errors of moral judgement. Because of sin a human being is not able to grasp moral truth completely only through his natural capacities. Reason is subject to sin, and it may be corrected only by grace of God who reveals the moral truth supernaturally in His Son, Jesus Christ.⁵ "Man can in no way rise up again from sin by himself without the assistance of grace."⁶ Thus, the problems of conscience cannot be separated from the issues of sin and grace. This leads us to the problem of how Aquinas's theological concept of conscience can address unbelievers.

¹ *Natural Law*. - Ed. by J. Finnis. - In 2 Vol. - Aldershot: Dartmouth, 1991.

² Finnis J. *Natural Law and Natural Rights*. - Oxford: Clarendon Press, 1980.

³ Thomas Aquinas. *Summa Theologiae*. I. 1. 7.

⁴ *ibid.*, I-II. 109. 1.

⁵ *ibid.*, I-II. 109. 8.

⁶ *ibid.*, I-II. 109. 7.

It is very important to note that according to Aquinas, moral truth is already given to everyone. Conscience does not need to discover what is already revealed naturally to it. But to a certain extent, sin prevents a human being to grasp and especially to follow the moral truth. The ability to know the moral truth and follow it is deeply enshrined in the nature of a human being.⁷ Man is a part of the created world, and his position is determined by the fact that he is a dependent creature, whose last end, his beatitude, consists in achieving the unity with God which is lost as the consequence of the original sin. The particular feature of the moral theology of Thomas Aquinas is the stress on the acts of virtue which direct the human being to salvation from sin and eternal death.⁸ Like the knowledge of the moral truth, the acts of virtue are possible only through divine grace which embraces not only the supernatural revelation of the truth but also the supernatural power to live a virtuous life.⁹ Because the condition of grace is belief in Lord Jesus, Aquinas addressed the problem of whether the unbelievers can do any good at all in accordance with what is revealed naturally to their consciences. He came to the conclusion that unbelievers can do some good, but not everything that God requires from a human being.¹⁰

The idea that unbelievers can do what God's law requires is based on the writings of Apostle Paul who wrote that unbelievers not having the law do by nature things required by the law: "They show that the requirements of the law are written on their hearts, their consciences also bearing witness."¹¹ Aquinas following Augustine maintained that unbelievers can do what God's law requires also because of the Spirit of grace.¹² That implies that a theory of good conscience cannot be restricted only to believers but also to unbelievers. Nevertheless, that does not deny the importance of the supernatural revelation. Aquinas stood firmly on the position that "Man's ultimate well-being cannot be achieved save through Christ."¹³ God's grace is important not only for grasping moral truth which then shall be applied by the act of conscience. The act of conscience itself needs divine assistance. Aquinas wrote: "Man needs the assistance of God in two ways in order to live rightly. Firstly, as regards a certain habitual gift by which spoiled human nature is healed, ... secondly, man needs the assistance of grace so as to be moved by God to act."¹⁴ It is worth stressing that the importance of receiving God's grace through faith in Christ does not exclude those who do not believe in Christ from receiving God's grace at all. Those who do not believe that Jesus is the only begotten Son of God can acknowledge that his life and teaching contain the highest moral standards, and even those who never heard about Jesus can do what Jesus commanded to his followers.

⁷ *ibid.*, I. 9.

⁸ *ibid.*, II-II. 4. 3-5; *De Charitate*, 11: "Without charity no one can attain eternal salvation, and with charity one does reach eternal salvation." (Cited by T. C. O'Brien in the commentary on the p. 113. Vol. 27 of the *Summa*.)

⁹ *Summa Theologiae*. I-II. 13. 8-9.

¹⁰ *ibid.*, I-II. 109.2.

¹¹ Rom. 2, 14-15.

¹² *Summa Theologiae*. I-II. 109.4.

¹³ *ibid.*, I-II. 91. 5.

¹⁴ *ibid.*, I-II. 109. 9.

From this theological vision of human nature and the need of God's grace for man's moral well-being springs the importance of conscience in the life of human beings and society as the whole. The chief contribution of Thomas Aquinas to the problems of conscience is his idea that one must act in accordance with one's conscience. Finnis, commenting on this, wrote that Thomas Aquinas seems to be the first theorist who has formulated this requirement "in all its unconditional strictness."¹⁵ This requirement is fundamental when approaching the ethical aspects of judicial activities. Aquinas's doctrine not only formulates this requirement, it tries to answer the crucial question: "why should one follow one's conscience?" Finnis' interpretation of Aquinas is that acting according to conscience is a realisation of human nature as a reasonable being. This reasonableness which finally finds its form in judgements of conscience "is not simply a mechanism for producing correct judgements, but an aspect of personal well-being, to be respected in every act as well as 'over-all' - whatever the consequences."¹⁶ That is correct. But this is not the whole picture. For Aquinas, following one's conscience is the way to relate to God, and any personal well-being without God is impossible. Conscience is a relational category. It is not about following **my reason**, it is about obedience to **God**.

Finnis's contribution is that he has brought into focus the relationship between the question 'Why should one follow one's conscience?' and the nature and the sources of obligation. However, he incorrectly opposes Aquinas's position to the one held by Grotius and Suarez. According to Finnis, moral and legal obligation is derived by Grotius and Suarez from God's will, while Aquinas saw the foundation of the obligation in "one's understanding of the basic forms of human well-being as desirable and potentially realised in one's action, action to which one is already beginning to direct oneself in this very act of practical understanding."¹⁷ However, Aquinas emphasised that in the cases of conflict between the commands of our own reason and God's precepts, the latter must be obeyed.¹⁸ Finnis's attempt to confront obedience to God and understanding of basic forms of human well-being is easily understood in the context of his desire to get rid of Aquinas's theology. For Finnis, consideration of the basic forms of human well-being does not necessarily involve the idea of God.

Taking away a theological argument from Aquinas's theory of conscience would be, however, an incorrect representation of his views. Aquinas stressed that our understanding (whether of the basic forms of human well-being or whatever else) is moved by God's will. We need the assistance of God's will because of our nature corrupted by sin: "We always need divine assistance in order to take thought about anything, inasmuch as it is God who moves the intellect into action."¹⁹ Though one may agree with Finnis that the theory of the basic forms of human well-being and the theory of basic requirements of practical reasonableness and their legal implications can be developed without appeal to the theological concepts, it

¹⁵ Finnis J. *Natural Law and Natural Rights*. - Oxford: Clarendon Press, 1980. - P. 125.

¹⁶ *ibid.*, p. 126.

¹⁷ *ibid.*, p. 45.

¹⁸ *Summa Theologiae*. I-II.19.5-6.

¹⁹ *ibid.*, I-II. 109. 1.

seems that in this case the contribution of the doctrine of Thomas Aquinas to the theory of legal reasoning would be insignificant. Without his theological inheritance Thomas Aquinas finally appears as just one of the successful commentators on Aristotle.

Theology is an essential part of the moral doctrine of Thomas Aquinas, and it can contribute to the theory of law in several ways. Thomas Gilby commenting on the significance of the Thomistic doctrine wrote that: "The relationship between theology and the positive science of law is like that between general philosophy and the particular sciences", and that "theology provides law with an 'outside' test for what may be held and done."²⁰ The question of relevance of the Thomistic theology to legal theory is a part of a broader problem of the contribution of theological reflection to the solution of matters of law. The latter problem requires general consideration which exceeds the limits of this book. However, we do need to outline the problem of the possible contribution of the theological vision of conscience by Aquinas to the issues related to the application of positive law carried out by the judges.

AQUINAS'S THEOLOGICAL ARGUMENT FOR THE SUPREMACY OF A JUDGE'S CONSCIENCE

The main difficulty lies in the fact that modern legal reasoning is primarily secular while the general moral principles are based in the theory of Aquinas mainly on theological presuppositions. A judge even believing in God will be very reluctant to use a theological argument for justification of his decision; even so his belief might be crucial for the outcome of the legal process. Therefore, if one has to justify a theological argument, one has to show that this argument can and should be accepted even by the person who does not believe in God. Although it is a task which I can hardly solve within this book, I would like to point at some advantages of the theological argument of Aquinas even for a secular mind.

First of all, the advantage of the theological argument of Aquinas is more evident for those who accept the supremacy of conscience in making judicial decisions. One can argue in favour of the supremacy of conscience using either a general philosophical justification, for example, that following one's conscience is a realisation of human nature as a reasonable being, or a theological justification. The theological justification shared by Aquinas is that the judges must follow their consciences because God requires them to do so. The theological argument is more simple. It appeals to self-evident truth. It is already available for those who are ready to follow their consciences. It does not necessarily require the judges to have a further rational reflection similar to the one of Shakespearean Hamlet: 'to be or not to be'. The philosophical argument depends on acceptance of the idea of what is rational in order to justify the supremacy of conscience. Therefore it is conditional. The theological argument is unconditional, especially, if faith in God is seen not as a

²⁰ Gilby T. Commentaries. - In: Thomas Aquinas. *Summa Theologiae*. - In 61 vol. - London: Blackfriars, 1960- 1981. - Vol. 28. P. 159.

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