

## The Ethical Basis for Taxation in the Thought of Thomas Aquinas

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The difference between just taxation and legal plunder is an important question for Christian ethics, dating back at least to Augustine, who raises the issue of the difference between just kingdoms and great robberies in his *City of God*. In this article, I provide an exposition of the thought of Thomas Aquinas on this moral question. I argue that for Aquinas, taxation is just to the extent that it constitutes fair payment to the sovereign for services rendered, not to the extent that it provides a redistributive mechanism for succoring the poor at the expense of the non-poor. In fact, there is every reason to believe that redistributive taxation would constitute robbery in the eyes of Aquinas. In defending my reading of Aquinas, I devote much space to interaction with his recent interpreter John Finnis, whose defense of redistributive taxation on Thomistic principles involves, I argue, a misunderstanding of Aquinas.

“Justice being taken away, then, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms?”<sup>1</sup> With these words, Augustine of Hippo challenges the moral legitimacy of government by conquest and in the process invites consideration of the fundamental ethical question raised by the phenomenon of taxation: What is the difference between just taxation and legal plunder? A similarity between kings and robbers, after all, is that both extract resources by force from productive members of society. On the face of it, the common claim that, whereas the robber’s behavior is antisocial, the king’s behavior constitutes a public service, requires justification.

The question of what justifies the state’s forcible extraction of resources from the populace is fundamental to any ethic of taxation, not only because a discussion

of the ethics of any behavior should begin by articulating the moral principles underlying its analysis, but also because any answer that is offered to the question of what justifies taxation should also go a long way toward answering the questions of by whom, from whom, under what circumstances, in what manner, and for what purposes taxes may justifiably be collected. Yet, surprisingly, the question of what justifies taxation in the first place has been largely neglected in recent public and scholarly discussions of taxes and tax reform from the point of view of Christian ethics. Instead, those discussions have focused on questions of how best to distribute the tax burden while maintaining or increasing funding for popular government programs.<sup>2</sup> All too often the fundamental question remains unasked.

### **Aquinas on Taxes: Payment for Services Rendered**

Neglect of fundamental questions is not a feature of the thought of the great medieval scholastic Thomas Aquinas. The Angelic Doctor realizes the implications for tax ethics of Augustine's comparison of kingdoms and robberies. Accordingly, he cites *City of God* 4.4 in his *Summa Theologica* in the question on theft and robbery. After suggesting that, since "earthly princes violently extort many things from their subjects," one might be led to conclude that robbery is not always sinful, Aquinas asserts to the contrary that the moral law against robbery applies just as much to princes as to private persons. Nevertheless, taxation is not always robbery. The distinction between just taxation and legal plunder hinges on the prince's official capacity as guardian of the public good. "Robbery," he explains, "implies a certain violence and coercion employed in taking unjustly from a man that which is his." Human societies justly restrict the use of coercion to those having public authority. Princes are entrusted with public authority "that they may be guardians of justice," and therefore are morally authorized to employ coercion, but only "within the bounds of justice," whether it involves "fighting against the enemy" or "punishing evildoers." Aquinas denies that princes commit robbery if they "exact from their subjects that which is due to them for the safeguarding of the common good, even if they use violence in so doing." While he affirms that "whatever is taken by violence of this kind is not the spoils of robbery, since it is not contrary to justice," nevertheless he maintains that "to take other people's property violently and against justice, in the exercise of public authority, is to act unlawfully and be guilty of robbery." He even goes so far as to assert that princes who extort property from their subjects beyond the bounds of justice "are bound to restitution," just as robbers in the private sector would be.<sup>3</sup>

For Aquinas, the prince's position as guardian of public justice justifies not only the spoils of war he takes from foreign enemies and the fines and penalties he exacts from domestic evildoers but also the tribute he levies on the people at large as payment for his services to the public. In his commentary on Paul's Epistle to the Romans, Aquinas affirms that taxes [*tributa*] are due to the prince "as a sort of salary for his ministry." He understands Paul's rationale for the obligation of paying taxes to civil rulers in Romans 13:6 as parallel to the same apostle's rationale for the justice of salaries for Christian ministers: "It is as if he is saying: Each one ought to make a living out of his own ministry, according to that text of 1 Cor. 9[:7]: *Who tends a flock and does not consume any of its milk?*"

The ministry of princes is the preservation of the public peace, in return for which they receive an allowance: "Now princes receive taxes [*tributa*] of this sort for their maintenance, but they labor for the peace of all." This tribute is not, properly speaking, the reward [*praemium*] for their service, but the living to which they are entitled as servants. Their reward is praise and honor, not merely from men, but first and foremost from God.<sup>4</sup> (In a famous letter, Aquinas provides a brief summary of this moral rationale for taxation to the Duchess of Brabant in response to a letter from her in which she has asked whether it is permissible for her to levy tribute on her Christian subjects. Here, he emphasizes that the justification of a prince's collection of taxes is his status as one who fights for the common good.)<sup>5</sup>

In his comments on Romans 13:7, Aquinas distinguishes the tax [*tributum*], which is paid to the prince "for the general administration, by which he governs the realm in peace and tranquillity" from another type of princely revenue, the duty [*vectigal*], which he also views either as a sort of maintenance for the prince or as a sort of payment for further services rendered:

*To whom duty*, that is to say, to whom you owe, render *duty*, that is to say, what is rendered to the prince in certain fixed places from merchants' goods, which are delivered for the maintenance and repair of roads. Or it is called a duty [*vectigal*] because it is given to the prince when he is transported [*devehitur*] through the realm, just as are procurations and other things of this sort.

Although the precise details of the duties Aquinas has in mind are hazy, the moral foundation for them is reasonably clear. In addition to his services as guardian of the public peace, which entitle him to a maintenance at the expense of his subjects, the prince may provide other public services; for example, the upkeep of highways, for which he is entitled to take fair payment from those who chiefly benefit from them.<sup>6</sup>

According to Aquinas, a prince, in exacting taxes, may sin in two ways. First, he may exact more than the populace can afford to pay or more than is permitted to him by established law, “which is a kind of pact between the king and the people.” Second, he may exact lawful taxes from the people but fail to fulfill his duty to provide for the public good.<sup>7</sup> In fact, princes, “who are bound to safeguard justice on earth,” are also bound to refund money to taxpayers if they neglect their duty, for example by failing to suppress theft, “because their salary is given to them in payment of their preserving justice here below.”<sup>8</sup>

From these texts, it seems that, for Aquinas, the proper function of taxation is administrative. It is justified by the prince’s provision of necessary public services, such as defense from foreign enemies, suppression of crime, domestic peace and order, and a transportation infrastructure, and it is morally legitimate only as long as the prince faithfully executes these obligations. Its purpose is to provide the prince with a living and to cover the costs of his administration, its scope is limited by a kind of social contract between the prince and the populace, and its collection qualifies as legal plunder if this purpose and scope are disregarded.<sup>9</sup>

Notably absent from this vision of just taxation, as I have so far presented it, is any notion of a duty on the part of the prince to direct tax revenues to provision for the physical needs of the poor or to redistribute the wealth of the more affluent members of the community to those of limited means. This point is significant, considering that much of the recent discussion of the tax question by Christian ethicists assumes that the moral question of taxation is fundamentally one of distributive justice and that distributive justice means redistribution of wealth by the state. It is often taken for granted that the provision of food, housing, medical care, and schooling, at least to the poorer class of citizens at the expense of the richer, as part and parcel of the state’s administration of justice, is a basic purpose of any tax system. Needless to say, Christian ethicists who envision such a redistributive function for taxation rarely interact with Aquinas.<sup>10</sup>

## **Finnis on Aquinas: Thomas the Redistributionist?**

One present-day Christian thinker who advocates redistributive taxation and who does interact extensively with Aquinas is John Finnis. According to Finnis, the proper function of civil government, in the thought of Aquinas, is the provision of peace. Finnis understands the Thomistic concept of peace as involving three things: first, “absence of words and deeds immorally opposed to peace”; second, “concord, that is, ‘the tranquillity of order’”; “and perhaps also,” third, “a sufficiency of at least the necessities of life.”<sup>11</sup> It is the third suggested component

of peace in the thought of Aquinas that Finnis believes justifies redistributive taxation. While he admits that “Aquinas tends to speak of taxes as a kind of stipend for governing,” nevertheless he insists that a broader purpose for taxation is implied by Aquinas’s views of the responsibility of rulers to provide for their subjects “whatever they would otherwise lack to sustain them” and of the proper use of legislation to encourage the use of goods in common.<sup>12</sup>

Underlying Finnis’s understanding of the proper role played by the Thomistic state in the redistribution of wealth is an understanding of the moral limits of property rights that he purports to derive from Aquinas and that distinguishes among holdings that are absolutely necessary, holdings that are relatively necessary, and holdings that are superfluous. Absolutely necessary holdings are goods one needs to ensure the survival of oneself and one’s dependents. Relatively necessary holdings are whatever additional goods one requires to fulfill one’s other responsibilities in life, in keeping with one’s station. Superfluous holdings are goods left over after absolute and relative necessities have been satisfied. In the view of Finnis (or, more precisely, Finnis’s Aquinas), no one in any event has a moral right to hold superfluous property, and no one has the right to hold even relatively necessary property in the face of another person in extreme need. Finnis admits that the distinction between necessary and superfluous property is “rather indeterminate,” and he insists that, generally speaking, it is the responsibility of the individual property owner to discriminate between necessary and superfluous holdings and to distribute superfluous goods to the poor. He also maintains that no general rule can prescribe what should be distributed to whom. Nevertheless, he asserts that, for Aquinas, “the distribution by owners of their *superflua* is an appropriate subject for legislation to avoid ... inequity.” As a consequence, in a Thomistic regime, “payment of taxes imposed for redistributive purposes will be a primary way in which owners discharge their duty of distribution.”<sup>13</sup>

In fairness to Finnis, he admits that his treatment of the moral, political, and legal theory of Aquinas often goes beyond what is explicit in the texts and includes his own development of principles he believes are implicit.<sup>14</sup> His development of Thomistic principles concerning the distribution of goods involves an important inconsistency. If the identification and proper distribution of superfluous property is the responsibility of property owners themselves, and proper distribution cannot be prescribed by any general rule, surely it must be a matter for private initiative. How, then, can state initiative, in the form of redistributive taxation, be “a primary way” in which the proper distribution of superfluous goods is ensured? I shall return to this inconsistency later. For the present, I shall observe that the passages Finnis cites to support his assertions are often decontextualized, and the logic of the inferences he draws from them is far from compelling. A brief

examination of Finnis's proof texts on property relations and the responsibilities of the ruler in the thought of Aquinas is therefore in order.

## Aquinas on Rulership: The Prince as Provider

Finnis believes that the prince's role as provider for his people in the thought of Aquinas implies a duty on the part of the prince to supply each of his subjects with the basic necessities of life. (For Finnis, this duty necessitates the power of redistributive taxation, so that the poor can be supplied with what they need at the expense of the rich.) To the effect that it is the duty of the ruler to make provision for the necessities of life for his subjects, Finnis cites *Summa Theologica* II-II, Q. 77, art. 4, and *On Kingship* 2.2.<sup>15</sup> The cited article of the *Summa* is a strange proof text for redistributive taxation, considering that it has to do, not with taxes or with gifts to the poor, but with trade. The article deals with the question of whether selling goods for a profit is sinful. In distinguishing between profit-seeking trade and a second kind of trade that does not seek monetary gain, Aquinas has this to say:

Such like trading [viz., trade which does not seek monetary gain], properly speaking, does not belong to tradesmen, but rather to housekeepers or civil servants who have to provide the household or the state with the necessities of life.<sup>16</sup>

To the extent that this passage applies to rulers, it has in view the fair exchange of goods for goods, money for goods, or goods for money, not the confiscation of goods from the rich with no compensation and the distribution of them to the poor at no charge. Aquinas seems to suggest that civil officials will at some times be engaged in exchange for the supply of certain necessary goods to the general public and that this sort of exchange is different from profit-seeking enterprise. Of course, as an example of profit-seeking enterprise, which is morally legitimate, Aquinas mentions the possibility that "a man may take to trade for some public advantage, for instance, lest his country lack the necessities of life." In this case, he may "seek gain, not as an end, but as payment for his labor."<sup>17</sup> Even if this instance could refer to an activity of the ruler as opposed to a private party, then all that is meant is that, at times when it is necessary for the provision of certain goods that the public needs, he may engage in trade for monetary gain as compensation for his labor (presumably over and above whatever costs he has incurred).<sup>18</sup>

The circumstances under which the prince might be involved in trade are suggested by Aquinas in his treatise *On Kingship*. Here, he asserts that the ruler's job of providing for the public good includes three duties: "first of all, to establish a virtuous life in the multitude subject to him; second, to preserve it once established; and third, having preserved it, to promote its greater perfection." The first duty, establishment of a virtuous life in the community, requires not only that order and concord be established in the society but also "that there be at hand a sufficient supply of the things required for proper living, procured by the ruler's efforts." It is this duty of the ruler to which Aquinas seems to allude in *Summa Theologica* II-II, Q. 77, art. 4, and that is there associated with trade, not taxes. What seems to be implied is that the ruler should ensure a sufficiently abundant supply of goods for the society in general (by encouraging, or engaging in, commerce); it goes far beyond what is written to infer a redistribution of goods among individual members of the society. The second duty, preserving the virtuous life, is relatively straightforward and involves the appointment of civil officials, the maintenance of a system of laws with rewards and punishments for virtuous and vicious acts, and the defense of the community from foreign military aggression.<sup>19</sup>

Of the prince's third duty, promoting the "greater perfection" of the virtuous social life, Aquinas says, "He performs this duty when, in each of the things we have mentioned, he corrects what is out of order and supplies what is lacking, and if any of them can be done better he tries to do so."<sup>20</sup> It is not clear what exactly is implied by this duty. Aquinas himself promises to expound on it in greater detail later in the treatise, but if it was ever completed, the portion containing this exposition has been lost. Since Pope Leo XIII inaugurated the modern era of Roman Catholic social thought in 1891 with the publication of the encyclical *Rerum Novarum*, some Roman Catholic thinkers have understood the ruler's third duty in terms of the principle of subsidiarity. The Thomistic state should, as Édouard Crahay argues, do what smaller social units, such as families and business concerns, cannot do for promoting good order in society.<sup>21</sup> With respect to the provision of necessary goods, this duty may imply that if private enterprise is failing to provide an adequate supply of goods necessary for life, the ruler ought to enter into commercial enterprise himself (temporarily?) to supply the deficiency. For example, if inadequate supplies of grain are being grown in his territory and for some reason grain merchants are not importing adequate quantities from foreign parts, Aquinas might have the ruler enter the grain business himself, as either a grower or an importer of grain, which, in light of the passage of the *Summa* cited above, he might then be obligated to sell at cost, or he might be permitted to sell at a price that covered his costs and also provided him (and

the civil servants of the new public grain authority) with fair compensation for their labor. In either case, the public grain authority should not aim at amassing profits (in other words, in the parlance of present-day business law, it should operate as a nonprofit corporation).

The commercial provision of necessary goods by the ruler in the hypothetical event of market failure is still a far cry from redistributive taxation in aid of the poor. Finnis believes that such redistribution is implied by a text in *On Kingship* 2.2 that in English runs thus: “Finally, he must provide for each one what is necessary for his particular condition and state in life; otherwise, the kingdom or city could never endure.” This duty seems to go far beyond mere general provision, via commercial enterprise, of necessary goods to the public, envisioning as it does the provision of what is necessary for each member of the community. Nevertheless, it is far from clear that Aquinas has in mind a permanent system of public assistance based on redistributive taxation. On the contrary, Aquinas mentions this duty in the context of the duties of founders of states, not administrators of states already established. What seems to be meant is a duty that pertains to the initial colonization of an area.<sup>22</sup> In addition to selecting an advantageous site for the colony and setting up a framework of laws and institutions, it is the responsibility of a founding monarch to attract colonists of all the various orders, stations, and occupations necessary for a fully functioning human community and to ensure that each one has what he needs to set up shop, as it were. That is to say, each laborer and craftsman should have the appropriate tools of the trade and access to necessary raw materials and capital, there should be an adequate supply of food for all the colonists to last until the first harvest, and so forth. It cannot be established, on the basis of this text, that Aquinas envisions a permanent system of wealth redistribution via the tax code.

## **Aquinas on Property Relations: Law and the Common Use of Goods**

Finnis also believes that Aquinas’s comments on the legal regulation of property relationships indicate that Aquinas believes it appropriate for rulers to legislate on behalf of “fair distribution of goods for use in consumption.” (For Finnis, such fair distribution implies redistributive taxation.) In support of his understanding of the fair distribution of goods in Aquinas, he cites the *Summa Theologica* I-II, Q. 104, art. 4, and Q. 105, art. 2, and the *Commentary on Aristotle’s Politics*, lib. 2, lec. 4.<sup>23</sup>



Given that none of the texts of Aquinas that he cites deal with state confiscation of goods owned by one person for the purpose of fair distribution to others, it is difficult to see how Finnis can view them as providing moral support for redistributive taxation. The first merely states that it is appropriate for civil authorities “to regulate not only litigious matters, but also voluntary contracts ... and whatever matters concern the community at large and the government thereof.”<sup>24</sup> All that this passage establishes is that for Aquinas, the role of the state extends beyond merely settling disputes between private parties.

The third of Finnis’s proof texts likewise establishes little. Here, Aquinas is commenting on this text of the *Politics*:

In Lacedaemonia, for example, they use one another’s slaves, as if they were their own, and even horses and dogs, if they should lack provisions for journeys in the fields throughout the region. It is therefore apparent that it is better for possessions to be private, but the use of them to be common. But in what manner such arrangements should be brought about, this is a matter proper to the legislator.<sup>25</sup>

Having affirmed Aristotle’s maxim concerning goods being privately owned but commonly used, Aquinas comments on this passage as follows:

Such was the case in the Lacedaemonian state, in which one man could use another’s slave for his own service as if he were his own slave. Likewise, they could use the horses and dogs and vehicles of others as if they were their own, if they were in need, to go into the fields, but in the same region.<sup>26</sup>

Clearly, for Aquinas, this text addresses the borrowing of durable goods, not the redistribution or appropriation of consumable goods. While it is clear that he believes it is a legitimate purpose of legislation to foster this sort of common use of private property, it cannot be established from his commentary on Aristotle that he favors the compulsory transfer of ownership of superfluous goods by the state.

Certain texts from the *Summa Theologica* I-II, Q. 105, art. 2, raise issues that are more relevant to Finnis’s argument, but in the final analysis even they do little to sustain his point of view. In this article, Aquinas argues that, like the customs of Lacedaemonia, the property laws of primitive Israel are good examples of conventions that encourage the common use of privately owned goods. The Old Testament law provided for an initial wide and equitable distribution of land among the Israelites upon their entry into Canaan, and restrictions on the sale of land in perpetuity and on the transfer of property by inheritance from one

tribe to another aimed at preventing the concentration of property in few hands. Otherwise, allowances were made for the transference of goods by sale, loan, and gift. Laws mandating the return of lost property encouraged common care for private goods, and limited rights of appropriation of fruit and grain from private fields for consumption by nonowners encouraged generosity.<sup>27</sup>

It can certainly be established from this article that Aquinas does not favor absolute property rights any more than does the Old Testament law, but do any of the measures Aquinas mentions involve or imply confiscation and redistribution of goods by civil officials? Perhaps Finnis has in mind the laws regarding the consumption of food crops from another's field (Deut. 23:24–25). Aquinas considers the objection that this provision merely encourages theft and replies that the requirement that crops from a neighbor's field be eaten in the neighbor's field and not carried out of it, prevent "the infliction of a grievous harm" or "a disturbance of the peace."<sup>28</sup> Because the redistribution of the same food crops by the state would seemingly require them to be removed from the field prior to consumption, it is not clear that Aquinas would evaluate such an approach to fair distribution positively.

Of course, Finnis might argue that the right of gleaning possessed by the poor of ancient Israel (Lev. 19:9–10; Deut. 24:19–21), mentioned by Aquinas in passing, provides the foundation for redistributive taxation.<sup>29</sup> Nevertheless, the distinction between poor people coming themselves to harvest what is left behind by reapers in private fields and taking it home to eat, and civil officials coming to confiscate whatever fixed portion of the harvest is deemed by law to be superfluous (by force if necessary), then keeping part of it and redistributing part of it to the poor, is a significant one. It is not clear that Aquinas would evaluate the two methods of provision for the poor similarly.

In this regard, it is significant that even the Hebrew tithe for the poor (Deut. 14:28–29) that Finnis himself does not mention but that might be viewed as a classic example of redistributive taxation, is viewed by Aquinas as a gift, an example of "transference of goods by the owner" characterized as a "purely gratuitous transfer."<sup>30</sup> Again, it should be pointed out that there were no state collection agents for this legally mandated transfer, which seems to have depended entirely on the good will of the property owner. Certainly Aquinas regards this example of a duty to distribute (presumably superfluous) goods to the poor as a matter for private, not state, initiative. In summary, Aquinas's comments in this article can in no way be taken to prove that he envisions taxation as a possible instrument of "fair distribution of goods for use in consumption."

## Aquinas on Moral Law: Justice and Good Intentions

I shall now return to the basic inconsistency in Finnis's exposition of Aquinas: On the one hand, the fair distribution of superfluous goods to the poor is the responsibility of individual property owners and cannot be prescribed by any general rule, but, on the other hand, the payment of redistributive taxes is "a primary way" in which property owners are to fulfill this responsibility. Is the "fair distribution of goods for use in consumption" properly a matter for private initiative or state initiative? Finnis seems to want to have it both ways. I believe that the inconsistency is in Finnis, not in Aquinas himself. It can be established on the basis of Aquinas's comments on the Hebrew tithe for the poor that he understood the redistribution of superfluous goods as a matter for private initiative. It cannot be established from any of the cited passages that he accorded initiative to the state to ensure fair distribution via the tax code.

In fact, there is good reason to doubt that Aquinas would look with favor on redistributive taxation. Aquinas's understanding of moral law is such that good ends do not justify any and all means used to achieve them. He insists that "a good intention is not enough," but that one's acts must also conform to fundamental moral precepts. For Aquinas, the locus of good and evil is the will, not the intention. A good intention is a necessary but not a sufficient condition for a good will. In order for the will to be good, the act willed cannot itself be an act that violates a moral law such as "You shall not steal." Aquinas explains:

Thus it often happens that a man acts with a good intention, and yet without profit, through lack of a good will: for instance, if a man steal in order to feed the poor, his intention is good indeed, but he lacks the rectitude of a good will: wherefore no evil, though it be done with a good intention, is to be excused: *Who say: Let us do evil that good may come: whose damnation is just* (Rom. iii:8).<sup>31</sup>

If the individual duty to care for the poor does not, for Aquinas, justify theft or robbery, then neither does any putative duty on the part of the state to safeguard the interests of the poor *of itself* justify redistributive taxation. Rather, an argument is needed that any particular contemplated act of redistribution does not itself constitute theft or robbery. As Aquinas argues, three types of property seizure by the state may be done without the commission of robbery: (1) plunder in war, provided the war is just; (2) civil forfeiture, in the case of property possessed unjustly by someone with no fair title; and (3) taxation, for the purposes of recovering "that which is due" to the prince for his "safe-guarding of the

common good,” that is, for providing a stipend for the prince and covering his administrative costs.<sup>32</sup>

In order to succeed, Finnis’s Thomistic justification of redistributive taxation therefore must view it as a particular instance of legitimate state seizure type 2, viz., civil forfeiture of unjustly held assets. After all, Finnis seems to assert that, as a matter of justice, according to Aquinas, superfluous goods cannot be retained, or more precisely, “that one has a duty *of justice* to dispose of them for the benefit of the poor,” and therefore, presumably, one unjustly holds superfluous goods that one is not applying to the benefit of the poor.<sup>33</sup> It would be entirely just in such a case, Finnis might reason, for the prince to declare such goods unjustly held and seize them for redistribution to the needy. On the same basis, redistributive taxation of superfluous goods would therefore presumably be justified.

A detailed critique of Finnis’s understanding of Aquinas on property rights would take me beyond the scope of this article, but even granting the essential point that, for Aquinas, urgent need trumps property rights and that the right to hold superfluous goods is therefore relative to their use to succor the needy, it does not follow that Aquinas considers redistributive taxation to be justified. After all, Aquinas recognizes that in certain cases, one encountering a person in urgent need may be justified in appropriating the property of a third party to meet the need.<sup>34</sup> Yet, he still condemns those who steal to succor the poor, as noted above. The distinction may be clear if I use an example. If a diabetic happens to be going into insulin shock on the street right in front of me, and I do not have any food on my person, it would be entirely justifiable for me to break into a nearby candy store (which happens to be closed today) and get a Hershey bar for him. Such appropriation is not theft, according to Thomistic categories. It would not, however, be justifiable for me to break into a candy store in order to supply myself with Hershey bars and then go off looking for diabetics to assist. Even if I succeeded in finding several diabetics going into insulin shock and used up all the appropriated Hershey bars in providing them with emergency assistance, I would still, in the eyes of Aquinas, be a thief.

The distinction between the two types of acts will no doubt be obvious to most readers. Furthermore, although it may be less obvious, precisely the same sort of distinction exists between a prince’s succor of the poor by means of civil forfeiture, on the one hand, and by means of redistributive taxation, on the other. It is one thing to rule that person A’s title to property X is unlawful and that he shall forthwith surrender it to person B. It is quite another to enact that 31 percent of all household incomes in excess of £100,000 per year are legally superfluous and shall be annually surrendered to the crown. (The fact that the crown, being

a benevolent institution, will use the proceeds of the levy for the succor of the poor is beside the point. For Aquinas, ends do not justify means.)

It must be remembered that the authority cited in support of legitimate state seizure type 2 is Augustine's *Letter to Vincentius the Donatist*, which refers to the sort of controversy with which present-day Protestant readers may be more familiar than are Roman Catholics: When the church splits, which faction has legitimate title to the property? It is the nature of civil forfeiture cases to arise out of particular conflicts and to resolve actual competing claims. Tax policy, on the other hand, operates independently of any actual competing claims that may exist in the private sector to any given resources. Indeed, it preempts them by transferring the resources to the state. It is not the nature of a tax law to take into account whether a person subject to a tax is really unjustly hoarding the demanded resources to the detriment of the poor.<sup>35</sup> Tax codes, of course, may attempt to target hoarded superfluous goods by concentrating on incomes that remain high after statutory deductions for household and dependent maintenance, business expenses, retirement savings, and charitable donations, but no matter how complex and contorted they are made, there is still no way to guarantee that all the persons subject to them will be unjust hoarders.<sup>36</sup> The most that can be said is that for Aquinas, the prince's power of civil forfeiture may be justly used to enforce "Dives and Lazarus" laws that criminalize the hoarding of wealth while neighbors go without, by ordering payment of damages directly to the poor upon conviction. To use this princely prerogative to justify a redistributive tax system is to grant the state a power that Aquinas certainly never envisions.<sup>37</sup>

I now return to the fundamental question with which I began this article: What is the difference between a just king and a great robber? For Aquinas, the difference is that the just king provides a public good: peace.<sup>38</sup> By diligently defending justice in the community, he shows himself worthy of his keep in the form of tolls and tributes limited by the fundamental law of the land, and he does not extract more than the maintenance his state requires. This view of the taxing power of the civil authority is quite narrowly circumscribed when compared with the understanding of taxation that underlies the modern welfare state, but it stands in a venerable tradition of Christian moral and political thought represented by such other luminaries as Martin Luther and John Calvin.<sup>39</sup> It is a tradition that is not likely to pose the question, "How can the tax burden be more equitably distributed while funding for popular government program X is maintained or increased?" Rather, it is more likely to ask, "Is taxing the public to fund program X doing evil that good may result?" Furthermore, it is a tradition that is likely to classify any tax as legal plunder if it does not constitute just payment for services

rendered. It is a tradition that needs to be heard by moral theologians today lest, in their zeal to promote social betterment, they fail to hear the moral law that insists, “Good intentions are not enough.”

## Notes

1. Augustine of Hippo, *The City of God [De civitate Dei]* 4.4. The translation is that of Marcus Dods (New York: Modern Library, 1993).
2. A prime example is the recent debate in Alabama over tax reform vis-à-vis the Judeo-Christian moral principle of concern for the poor and marginalized. This debate was sparked by the publication in the *Alabama Law Review* of a master’s thesis prepared by United Methodist law professor Susan Pace Hamill as the culmination of a program in theological studies she pursued at Beeson Divinity School. Hamill argues that Alabama’s tax system violates Judeo-Christian ethics by placing a disproportionate burden on the poor while providing insufficient funds for the state education of children. See Hamill, “An Argument for Tax Reform Based on Judeo-Christian Ethics,” *Alabama Law Review* 54 (2002): 1–112.
3. Thomas Aquinas, *Summa Theologica* [hereafter *ST*] II-II, Q. 66, art. 8, obj. 3, responsio, and reply obj. 3. I quote from the translation of the Fathers of the English Dominican Province, rev. ed. (1920; rep., Allen, Tex.: Christian Classics, 1981). Aquinas cites *City of God* 4.4 in the reply to objection 3.
4. Aquinas, *In Romanos*, cap. 13, lec. 1, ad 13:6. There is no published English version of this work currently available; all English quotations from it are my own translation. The Latin text on which I rely is *S. Thomae Aquinatis in omnes S. Pauli apostoli epistolas commentaria*, 7th ed. (Taurini, Italy: Marietti, 1929).
5. This letter is commonly known by the Latin titles *De regimine Judaeorum* and *De regimine subditorum*. For a recent translation of the relevant passage, see “On the Government of Jews,” in *St. Thomas Aquinas: Political Writings*, ed. and trans. R. W. Dyson, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 2002), 236–37. As authoritative support for his claim, Aquinas cites the first sentence in 1 Corinthians 9:7: “Who goeth a warfare any time at his own charges?”
6. *In Romanos*, cap. 13, lec. 1, ad 13:7. I understand Aquinas to be referring, in the section on *vectigal*, to two types of duties: tolls the prince collects on the transportation of merchandise and rights of maintenance he enjoys from local communities when he travels. In the final sentence of the cited passage—“*Vel vectigal dicitur, quod datur principi, quando per patriam devehitur, sicut sunt procurationes et alia hujusmodi*”—the logical subject of *devehitur* seems to me to be the prince. Jean-Éric Stroobant de St.-Éloy, in his French translation of the commentary on Romans,

seems to understand both types of duties to be transit tolls, construing the subject of *devehitur* to be indefinite and translating “*quando per patriam devehitur*” as “*pour le transport qui s’effectue sur son territoire*.” See Aquinas, *Commentaire de l’Épître aux Romains*, trans. St.-Éloy with annotation by Jean Borella and St.-Éloy (Paris: Éditions du Cerf, 1999), 454. At any rate, the moral basis for the duties remains payment for services rendered.

7. *In Romanos*, cap. 13, lec. 1, ad 13:6.
8. *ST II-II*, Q. 62, art. 7, responsio.
9. I think it would be fair to say that for Aquinas, the prince is in a position loosely analogous to the landlord of a large modern apartment community. He provides the populace with a pleasant community in which to live, offering security services, basic infrastructure, rules promoting the common good, and a dispute resolution process, and, in exchange, he is entitled to receive rent and collect service fees, subject to strictures laid down in a community covenant, with his own living derived from such fees.
10. Such a vision of taxation is explicitly defended by, for example, Charles E. Curran, “Just Taxation in the Roman Catholic Tradition,” *Journal of Religious Ethics* 13 (1985): 113–33, whose article, surprisingly, devotes little attention to the Middle Ages and does not interact with Aquinas on taxes. A redistributive vision of just taxation also obviously underlies the work of Hamill, who ignores Aquinas entirely.
11. John Finnis, *Aquinas: Moral, Political, and Legal Theory*, Founders of Modern Political and Social Thought (Oxford: Oxford University Press, 1998), 227.
12. *Ibid.*, 195.
13. *Ibid.*, 191–95.
14. *Ibid.*, viii.
15. *Ibid.*, 195.
16. *ST II-II*, Q. 77, art. 4, responsio.
17. *Ibid.*
18. To the extent that it may apply to present-day civil institutions, this passage establishes a moral framework for public utilities, not for public assistance. It is about water bills, not welfare checks.
19. *On Kingship* 2.4. This treatise, known by two Latin titles, *De regno* and *De regimine principum*, differs in different critical editions as to its book and chapter divisions. My citations follow the divisions of more recent editions, as reflected in the English version *On Kingship, to the King of Cyprus*, trans. Gerald B. Phelan and rev. with introduction and notes by I. Th. Eschmann (Toronto: Pontifical Institute of Mediaeval

Studies, 1949). All English quotations from this treatise are likewise according to the Phelan-Eschmann translation.

20. Ibid. The “things we have mentioned” are the things I myself have mentioned above: the establishment of order and concord; the maintenance of a civil service, a justice system, and a military defense establishment; and the provision of an adequate supply of necessary goods.
21. In greater detail, the principle operates as follows. If smaller social units are accomplishing a certain necessary task, the state should do nothing with respect to the said task. If the smaller units can accomplish a particular task, but are not, the state should order them to do so. If the smaller units cannot accomplish a given task, the state should do it. See Édouard Crahay, *La Politique de saint Thomas d’Aquin* (Louvain: Institut Supérieur de Philosophie, 1896), 141–43.
22. Finnis cites the paragraph numbered 100 in the Phelan-Eschmann English version, the paragraph from which I took the quotation reproduced above. Paragraph 101 begins with a summary of what has just been said: “These are, briefly, the duties that pertain to the office of king in founding a city and kingdom” (*On Kingship* 2.2).
23. Finnis, *Aquinas*, 195.
24. *ST I-II*, Q. 104, art. 2, reply obj. 1. (It is this reply that Finnis cites.)
25. Aristotle, *Politics* 2.5. As cited in Aquinas, *In libros politicorum*, lib. 2, lec. 4. A complete published English translation of Aquinas’s commentary is not currently available. English citations of the work are my own translation. The Latin text on which I rely is *S. Thomae Aquinatis in octo libros politicorum Aristotelis expositio*, ed. R. M. Spiazzi (Taurini, Italy: Marietti, 1966). Note that the quotation from the *Politics* is based on Aquinas’s Latin text of Aristotle.
26. Aquinas, *In libros politicorum*, lib. 2, lec. 4, ad *Politics* 2.5. Finnis’s note erroneously cites *Politics* 2.3 as the text on which Aquinas here comments. Whether Aquinas understands Aristotle correctly is irrelevant to my purposes in this article.
27. *ST I-II*, Q. 105, art. 2, responsio and reply obj. 3. (These are the portions of the article cited by Finnis.)
28. *ST I-II*, Q. 105, art. 2, obj. 1 and reply obj. 1.
29. *ST I-II*, Q. 105, art. 2, responsio.
30. Ibid.
31. Aquinas, *Conferences on the Two Precepts of Charity and the Ten Commandments [Collationes in duo praecepta caritatis et in decem legis praecepta]: On the Love of God* 6. The translation I quote is *The Commandments of God: Conferences on the Two Precepts of Charity and the Ten Commandments*, trans. Laurence Shapcote



(London: Burns Oates & Washbourne, 1937). There is no standardized form of citation for this work. I cite by the title of the *collatio*, as translated by Shapcote, and chapter number, according to the chapter divisions in Jean-Pierre Torrell's 1985 critical Latin text. See "Les *Collationes in decem preceptis* de saint Thomas d'Aquin; édition critique avec introduction et notes," *Revue des sciences philosophiques et théologiques* 69 (1985): 5–40, 227–63. The passage quoted appears on pages 16–17 of the Shapcote translation (which does not have chapter numbers). The question of what makes an act good or evil is a complicated one in Thomistic reasoning. For an extended discussion of the matter, the reader may refer to *ST I-II*, Q. 18, with its eleven articles. Briefly, stealing to help the poor is an example of an act with a good end but an evil species derived from an evil object. (See *ST I-II*, Q. 18, art. 2, responsio; cf. art. 4, obj. 3 and reply obj. 3.)

32. *ST II-II*, Q. 66, art. 8, objs. 1, 2, 3, and replies thereto. I understand the third provision in light of Aquinas's commentary on Romans 13:6–7, as previously argued.
33. Finnis, Aquinas, 191, 192 n.26. In favor of almsgiving from one's superfluous goods as a "duty of justice," he cites *ST II-II*, Q. 66, art. 7. His conclusions about state intervention are his own.
34. *ST II-II*, Q. 66, art. 7, responsio and reply obj. 3.
35. In fact, it might be considered similar to condemning a man who is not accused, an example of unjust judgment in Aquinas. (See *ST II-II*, Q. 67, art. 3.)
36. Furthermore, the very complexity of such a tax code itself poses a burden, arguably unjust, on nonhoarders who are regularly required to justify their income and expenditures to avoid the tax.
37. In fact, it is unclear that Aquinas envisions anything in this text beyond the confiscation of the property of heretics, schismatics, and infidels. I have been giving it the broadest interpretation that seems possibly defensible.
38. In economic terms, a *public good* is one that cannot be effectively provided by the private marketplace.
39. For Calvin's view of taxation, see *Institutes* 4.20.13 and *Commentaries on Romans* ad 13:6. Page references to recent English editions are as follows: John Calvin, *Institutes of the Christian Religion*, trans. Henry Beveridge (Grand Rapids: Eerdmans, 1989), 2:662–63; and *Commentaries on the Epistle of Paul the Apostle to the Romans*, trans. and ed. John Owen (Grand Rapids: Baker Book House, 2003), 483. For Luther's view, see, for example, Martin Luther, *Lectures on Genesis, chs. 1–5*, in *Luther's Works*, ed. Jaroslav Jan Pelikan (St. Louis: Concordia, 1958), 1:211–12; *Sermons on the Gospel of St. John, chs. 1–4*, in *Luther's Works*, ed. Jaroslav Jan Pelikan (St. Louis: Concordia, 1957), 22:95; and *Lectures on Romans, Glosses and Scholia*, in *Luther's Works*, ed. Hilton C. Oswald (St. Louis: Concordia, 1972), 25:172–73.

