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**THE RELEVANCE OF AQUINAS'S NOTION OF FREEDOM AND LAW TODAY**

**A Long Essay Submitted in Partial Fulfillment of the Requirements for the Ecclesiastical**

**Degree of Baccalaureate in Philosophy**

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**DECLARATION**

I hereby declare that this long essay is my work originally achieved by the way of my reading and research. It is submitted in partial fulfillment in Degree in Philosophy at Tangaza University College. It has never been submitted to any other college, university or institution of learning for the goal of academics. The materials and sources that have been used here have been acknowledged.

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## **DEDICATION**

First, I dedicate this work to my family members especially my parents for their support since my childhood and the encouragement they have been giving me since I began this journey of philosophy. I am glad that they would see part of the fruits as a result of the effort and investments that they have been placing in me. Also, they have been praying for me to the almighty God which is the main cause of my getting to this level of my academics.

I also dedicate this work to my Camillian formation team and all the Camillian brothers at large. They have been responsible for my welfare in the seminary, providing me with the requirements needed and more so, paying my school fees. I also dedicate this work to whoever would wish to read my work so that he or she can be able to get some knowledge that I have shared through this work.

Without looking upon my Lecturers and the Tangaza community at large, this work is also dedicated to them. The lecturers have journeyed with me in instilling philosophical knowledge into my mind and that is the reason why I could find a way in which I write this philosophical paper.

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## CHAPTER ONE

### GENERAL INTRODUCTION

#### Introduction

This paper examines the relevance of Aquinas's notion of freedom and law today. Aquinas' freedom and law are based on will and reason respectively. This will is possessed by the soul as its power which is an inclination towards what we desire and this inclination is free hence freedom. On the other hand, the law is the command and standard of acts set in place to guide man to do something or avoid doing something. Aquinas' says that this command and standard of a human act is the reason.

My objectivity in writing this paper is to give an explanation on how the notion of Aquinas about freedom and law is relevant today. Does it have any impact or influence on how people view the concept of freedom and law today? Aquinas in one of the quotes says that "The highest manifestation of life consists in this: that a being governs its own actions (this implies freedom). A thing which is always subject to the direction of another is somewhat of a dead thing." Again in his quote, he says, "Law: an accordance of the reason for the common good is made by him who has care of the community."<sup>1</sup> Looking at these quotes I can be able to see some possibilities of their relevance to today's society.

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<sup>1</sup>Thomas Aquinas, "Thomas Aquinas Quotes", BrainyMedia, no 25 (4 [https://www.brainyquote.com/quotes/thomas\\_aquinas\\_148678#:~:text=%20Thomas%20Aquinas%20quotes%20from%20BrainyQuote.com%20%22The%20highest,of%20another%20is%20somewhat%20of%20a%20dead%20thing.%22](https://www.brainyquote.com/quotes/thomas_aquinas_148678#:~:text=%20Thomas%20Aquinas%20quotes%20from%20BrainyQuote.com%20%22The%20highest,of%20another%20is%20somewhat%20of%20a%20dead%20thing.%22), accessed on 23/08/2022

## 1.1 Background of the study

The concept of freedom and the concept of law, both of them are crucial to any group of people, to any state and also to any society. These two concepts have undergone several perceptions and understandings from time to time especially in the current world, whereby they have different meanings according to a particular place. We need to ask ourselves what freedom is in a clear definition. At the same time, what law is in a clear definition? These are crucial terms that we encounter in our today's lives and we cannot avoid coming across them.

The differences in understanding of the terms freedom and law have affected how people in different parts of the world behave or carry out themselves. What is considered freedom or law here might not imply freedom or law in another place. For example, according to the Catholic Church, it is the law that abortion should not be encouraged or should not be done. However, when it comes to the state, to be specific, Kenya, there is no article in the constitution which dictates that people should not practice abortion. In other words, a person being restrained from practicing abortion is not the law. No legal measures or punishment will be given to anyone who is found to have aborted, keeping in mind that the law is always attached to punishment if one goes against it.

Using the above case, we find out that at the level of state there is freedom of abortion, one may either decide to abort or not. Contrary to the church, there is no freedom. Therefore, it is worth looking at Aquinas's notion of freedom and law, who can be seen as an all-round person, that is, both a philosopher and a theologian. It is important to see how he perceives and describes the meaning of freedom and law, and thereafter make an analysis of how his

views are applicable to the lives of today. Can his views match today's views at some points? Can they be applicable to how people today perceive the notion of freedom and law? And if yes, how are they applicable?

### **1.2 Statement of the problem**

Aquinas bases his notion of freedom and law on free will and reason respectively. Do legislation bodies or institutions in today's society consider free will when it comes to stipulating freedom of individuals? Some of the cases that are presented as freedom, in real sense or in practicality are they freedom? Someone may be forced to do something under pressure but not as he or she wills, is that freedom as per Aquinas's definition? Again some of laws in today's society are not created out of right reason which does not reflect Aquinas's conception of law. Some of the laws are created only to protect the strong and their possessions and make the weak and without property in the society to suffer, are they to be called law with regards to Aquinas's perception?

### 1.3 Literature review

Different philosophers also have different views or conceptions or take in the notion of freedom and law. Liberalists claim that a free person is one who has the ability to do something by his capabilities and is not prevented from doing it by anything or anybody<sup>2</sup>. Here, one has the capacity to do something that he or she chooses to do, keeping in mind that there are possible hindrances, but at that moment they do not prevent him. Liberalists call this freedom negative liberty, by the very fact that it is freedom from being interfered with by somebody or something in doing something.

Emmanuel Kant claims that for one to have freedom, it must involve free will. He does not agree with what the liberalists say what freedom is. According to him, freedom does not involve one doing something out of his or her own choice in absence of external hindrances, but, it involves one's will to have the capability of self-determination of what the person chooses to do<sup>3</sup>. The will in this case is free from the minimal laws that belong to nature. This gives the human agent the freedom to do something according to the moral law. Kant's freedom, therefore, requires that there is the subjection of human desires or inclinations to the rule of reason which he terms autonomy, "the property of the will by which it is the law to itself"

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<sup>2</sup> Will Dudley. *Hegel, Nietzsche, and Philosophy Thinking Freedom*, ( Cambridge: Cambridge University Press, 2007)pg 3

<sup>3</sup> Paul Guyer. *Kant on Freedom, Law and Happiness*, (Cambridge: Cambridge University Press ,2000)pg 129

In ancient Greece, the notion of law was viewed as a set of commands or rather prohibitions, which usually prevented people from doing something<sup>4</sup>. Moreover, this law was being attached to punishment if one breaks or goes against it. This vision of law seems to incline on one side. It only stipulates what should not be done by individuals but does not state what should be done by individuals.

Thomas Hobbes speaks of the "law of nature." He says that it is the law that is created by the use of reason. It is through this law, an individual is prohibited to do something that can destroy his life or even something that does away with the ways put in place to preserve life. Moreover, the law is that by which an individual is needed to act upon that which he is sure and certain that it takes care of and preserves life.

#### **1.4 The relevance of the study**

The notion of freedom and law has been running into my mind since I came to realize that these two notions have relative meaning. Freedom is freedom ad law is the law according to how people in a particular place take it. This concern even came more vibrant in me when I was introduced to philosophy. Through philosophy, I came to be aware of Aquinas's notion of freedom and law. Philosophy, which is concerned with searching for the truth, I am convinced that what Aquinas said about freedom and law and himself being a philosopher, can be taken as the more refined meaning of freedom and law.

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<sup>4</sup>Sevel, M. and Leiter, Brian. "Philosophy of Law." *Encyclopedia Britannica*, no 3(August 2016): 2. <https://www.britannica.com/topic/philosophy-of-law>

Different understandings of freedom and law have led to some people or groups of people being given too many privileges in the name of freedom, without considering the negative side of it. Again, some members of a particular society may be denied their rights and freedom because of the restraints put in place in the name of the law. This work of research of w is therefore presented, taking Aquinas' views as the root knowledge of freedom and law, to compare the relationship with today's conception of freedom and law. This research work will look at how Aquinas's views are being applied today, to see the relationship.

### **1.5 Justification of the study**

The issue of multiple understandings of freedom and law in today's society is very crucial. For example, in most countries, there is freedom of speech and expression. However, for instance, one may be caught and be punished by the government authority for saying something that is meant to correct the government in a positive way, on how it is carrying out itself. Do this really what is called freedom according to Aquinas? Or rather, how does Aquinas's take apply here?

Take an example there is a law that states "there is the freedom to vote," because of this law, one is protected from being denied voting. However, someone may go to vote, may be based on tribalism and therefore ends up choosing a leader who will never act as a leader in any way, and therefore he regrets voting for him. Did this person applying the law to vote employ reason, to make Aquinas's conception of law, suit this so-called law to vote?

## **1.6 The objectives**

Upon examining *The Relevance of Aquinas' Notion of Freedom and Law Today*, my research work will base on the following two objectives:

1. To explore Aquinas' notion of freedom and law.
2. To analyze the relevance of Aquinas' notion of freedom and law today.

## **1.7 Methodology**

In carrying out this study, I will use the method of philosophy which is analytical. This study will analyze in depth what Aquinas said about freedom and law, the ideas that are recorded in books, journals and internet materials. This work will also use the descriptive method, which will be used to explain apart from interpreting, terms that will be used in the research, and also, to evaluate data that will be gathered from a variety of sources.

The main source that will be used in doing this research will be Aquinas's *Summa Theologiae*. There will also be secondary sources that will be collected from the library and electronic materials that will be seen as being related to the research topic. All materials that will be used in this research work as the sources will be acknowledged in the footnotes and the bibliography of the study.

## **1.8 Scope and limitation**

This study will dwell primarily on figuring out how the notion of freedom and law according to Aquinas is connected or important or how it is applied today. It is going look into free will as the root background of freedom according to Aquinas. It is also going to look into how reason is the standard act which contributes to qualifying law to be called law, according to

Aquinas. Thereafter, this paper will study how the above two conform to today's lives in order to illustrate their relevance today.

However, being a research paper, there are challenges that I would come across when trying to go deeper into this work. It is challenging to understand some of the hard terms used by the authors in some of the sources, which would result in me taking time to understand some of the contents. It is also a limitation that, being pure analytical research, I would not be expected to go to the field and engage people through ways such as interviewing and giving out questionnaires.

## **Conclusion**

In my life, I have been encountering issues concerned with freedom and law if not always, often. However, it seems that these two terms have relative meaning especially when they are applied practically today. Doing or being involved in some actions may be freedom here and not freedom there, though it is the same kind of act. For example, practicing homosexuality is considered freedom in the United States of America but in Kenya, it is not freedom. When it comes to the law, it is the same thing. According to the Catholic Church, it is a law that a man should only marry one wife. However, when it comes to the state for instance Kenya a man not marrying more than one wife is not law.

Nonetheless, we have seen that the issue of freedom and law is not universal, especially in today's society. The emphasis of this work is that: in the presence of the many understandings and applications of freedom and law, how does Aquinas's notion of freedom and law applicable in each of them?

## CHAPTER TWO

### AQUINAS' NOTION OF FREEDOM AND LAW

#### Introduction

As we long for being acquainted with Aquinas' view of freedom, it would be important to take into account some hardships that are met during the analysis of this term. The term freedom can be defined according to the subject. For example, Aquinas calls the will free, however, what is this thing called will? Freedom can also be viewed as the state in which one does something willingly without being subjected to any force or coercion.

Aquinas, in question 90 of the "First part of the Second Part" of the *Summa Theologiae*, articulates that law is the "rule and measure of acts" by which we are directed to do or not to do certain actions<sup>5</sup>. The basic foundation of our actions is the reason, in that, before doing something, we first think of it. For example, if I want to steal, that idea of stealing would first run through my mind in order to decide whether to steal or not. In this sense, the reason is responsible for gauging and ruling our actions. Hence Aquinas says that "Now the rule and measure of human acts is reason..." I, therefore, come to understand that law is something that involves reason, for it to be called law, according to Aquinas.

#### 2.1.1 The will

When someone is asked the meaning of the word, there will be various responses. The will refers to a document that a person writes about what he or she wishes to happen to his wealth, family, and body for example should it be buried or cremated or even where his body should

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<sup>5</sup> Thomas Aquinas, *The Summa Theologica*, Trans by The Fathers of English Dominican Province, (Global Grey, 2019) q90, a1.

be buried<sup>6</sup>. This document is usually confidential and mostly given to the lawyer by the person himself before he dies. The will also is a word that is used in an English sentence to show a future event. For example, next year the doctor will buy a new car.

However, in this philosophical context, the word will have a different meaning. What then is the philosophical meaning of the will? In his treatise, the third part of the second book, in the first section, David Hume shows that the will is among the direct passions, which are immediately given rise from pleasure or pain. He describes the will as the impression that is inside us, at the same time we have a feeling of it and also at the same time we have its consciousness, when we produce any motion that is new in our body or the perception that is new in our mind<sup>7</sup>. I may be walking on the streets and meet a poor man lying helplessly in a pool of water, then the impression comes into my mind that this poor man is sick, at the same time I feel that his sickness is painful and yet he is unable to go to the hospital because he is poor, also I become conscious of this man's state, therefore, I make a move inside my mind that I should take this man to the hospital. This is what David Hume describes as what the will is.

Also in general, the will is described as an appetite. Then what is this thing called appetite? An appetite is that desire for something that occurs naturally from within the soul. In other words, it can be said that an appetite is that power that is possessed by our souls, and this power makes us get inclined towards some things, keeping in mind that this power is a natural one. For example, human beings always have a natural desire for food and sex which occurs from within the person himself without being imposed by anyone. With the help of appetite

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<sup>6</sup> Oxford Advanced Learners Dictionary

<sup>7</sup> L.A Selby- Bigge, *Hume's Treatise of Human Nature*, ( England: Oxford Clarendon Press, 1960), 399

power, we are always longing for keeping in touch with different things in different ways and if these things are removed from our lives, we feel uncomfortable.

Aquinas depicts that the will is an inclination which is natural, and this natural inclination moves towards what is good because it is being directed by the intellect<sup>8</sup>. This means that the will is rational. Therefore for someone to have a feeling to want to do a particular action, he or she must have a conviction from the intellect that the object of the action is good. A thief will want to steal because the judgment of his intellect tells him from stealing, he would acquire property without sweat which for him is good. A gold miner would want to dig deeper into the mines despite risking his life because his intellect judges that when he finally gets the gold out of the mines, it would make him rich which is good.

The process by which the intellect gauges that the cause of action and the action itself is good is called deliberation. And deliberation can probably be defined as the process of carefully thinking about something which involves contemplating upon options. If I want to have a meaningful life, should I work hard to earn a living or steal to earn a living? According to Aquinas, he says that the state of willingness which comes from the judgment which is deliberated is called “deliberated willing”. Therefore when someone acts from the intellect and the will, it means that he or she is acting from volition that comes from deliberation. Hence, for human actions to be called "human actions", it means that they are actions out of deliberated willing<sup>9</sup>. (Precisely, willing is an activity from the appetitive power and precisely

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<sup>8</sup> Thomas Aquinas, *The Summa Theologica*, Trans by The Fathers of English Dominican Province, ( United Kingdom: Global Grey, 2019) q82, a1.

<sup>9</sup> Scott MacDonal, “Ultimate Ends in Practical Reasoning: Aquinas's Aristotelian Moral Psychology and Anscombe's Fallacy”, *The Philosophical Review*, Vol. 100, No. 1 (Jan. 1991),31-66

deliberation is an activity from the intellectual power. Because of these, deliberated willing is a desire which is rational.)

### **2.1.2 Necessity**

When someone says that something is of necessity, in simple terms, he simply means that it cannot be avoided. If it is an action, someone has to pursue it even if he or she does not want. Therefore it will be good to know if in any case, something of necessity is desired by the will or necessity in the will nullifies freedom.

#### **Internal necessity**

From the word 'internal', this is a kind of necessity which is brought about by internal causes. In his *Summa Theologiae*, Aquinas stipulates that the internal principles of necessity in physical things are form and matter<sup>10</sup>. About form, we may say that, for a square to be called so, it must have four sides which are equal, and at the same time, four angles of which each is 90 degrees. About matter, we can say that anything that contains sugar substance is necessarily sweet. This necessity is natural and Aquinas calls it an "absolute necessity." Considering that the will is not physical or material, it lacks any necessity that is in line with the cause which is natural. Nevertheless, the will is regarded as natural and is the principle through which a person partakes in an action. Therefore, the will has a natural necessity because it is inclined naturally towards the universal good<sup>11</sup>. The will necessarily follow what is directed by reason

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<sup>10</sup> Thomas Aquinas, *The Summa Theologica*, Trans by The Fathers of English Dominican Province, (United Kingdom: Global Grey, 2019) q82, a1,

<sup>11</sup> Thomas Aquinas, *Oestiones Disputatae de Veritate*, Trans by Robert W. Schmidt, S.J Chicago,(Henry Regnery Company, 1954)q22, a5

because before someone will do something, he or she must first know that thing. For example, before I will to help the poor, I must first have known what is meant by helping, because if I don't know the meaning of helping, I may end up causing more suffering to this poor person.

### **External necessity**

From the word external, this is a kind of necessity which is brought about by external causes. External causes in this case may be either the agent or the end. Aristotle refers to these kinds of causes as either the efficient cause or the final cause respectively<sup>12</sup>. The final cause is that thing which the end cannot be reached or attained without its presence. It must be there for the end to be attained. For example, when I want to travel to town using my car, it must have petrol. Without petrol in my car, I would not be able to get to town using it. Petrol in this case becomes the final cause. On the other hand, the efficient cause is the doer or rather the agent by which something is caused. For example, when a man pushes a car that has been stuck in the mud out of it, in this case, he becomes the efficient cause of that car moving out of the mud.

Efficient cause results in movement which is contrary to natural inclination. By the law of gravity, when a ball is in the air, it is inclined to move downwards towards the earth's surface. However, when a boy who is the efficient cause kicks the ball upwards he will be forcing it to move contrary to its natural inclination. Aquinas refers to this kind of necessity as the "necessity of coercion." This is because, by the fact that someone wills, it has naturally come to be that way. Therefore, the efficient cause is supposed to be in line with this person's will which is not the case. The example case

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<sup>12</sup> W. D Ross, *Aristotle's Metaphysics*, Vol 2, (New York: Oxford University Press Inc., 1924), pg 234,235

is, a child who wants to go out to play but the mother demands him to remain indoors. Here he has been forced to stay indoors which is not in line with his will. It becomes necessary to stay indoors by force hence the "necessity of coercion"

However, the final cause does not go against the will. Aquinas refers to it as the "necessity of the end", and also "utility." The explanation as to why is not against the will is that: the will being an appetite, it is a power which makes us inclined towards various things. However, by the virtue of inclination, it tells us that there must be an object of inclination which is the end. As discussed earlier, the end that is reached by the will is universal goodness, which is attained by the fact of its very nature. Therefore, if the end causes the necessity to the will, it means that it is in union with the means to attain it. For example, from the will to have a new laptop, there arises the necessity of looking for money.

### **2.1.3 The Voluntary**

We have found out that coercion negates the freedom of the will. This calls us to look into the question: what is the meaning of voluntary? John Locke tells us what makes one conclude that a certain action is voluntary, is that that action is a consequence of volition. Volition simply means the act of willing. This is not different from what Aquinas says about the will. Aquinas too depicts that the word voluntary means that which comes from the will. Necessities, which are things that concern the will and cannot be avoided but they are per finality and nature, are also voluntary<sup>13</sup>. The actions of the will still come from the will itself despite what the will is naturally and the end at which it aims, being of necessity. These acts from the will itself are

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<sup>13</sup> Thomas Aquinas, *The Summa Theologica*, Trans by The Fathers of English Dominican Province, (United Kingdom: Global Grey, 2019) q83 a1 and 3

called voluntary acts. Alternately, necessities are not voluntary because they are not acts that come from the will. Instead, they are operational principles.

#### **2.1.4 Freedom**

After all these discussions, we may now ask ourselves this question: to what situation does the word freedom apply? Or rather, in which case does freedom qualify to be called freedom? As we have seen we cannot say that there is freedom when somebody is forced or coerced to act in a certain manner because even it does not pertain to the will. Again, we cannot say that there is freedom when somebody has acted in a certain manner because of demands of nature or because of the demands of the end that he or she wants to arrive at. This is because necessities of nature and those of the end are just principles of willing and are not entities of the will.

For example, we cannot say that there is freedom if a young girl who is so well dedicated to studies, her studies are cut short by her parents to make her get married. This is because by her getting married will be against her will, it will be a forced issue against her dedicated studies. Also, an athlete who is aiming at winning the race, he or she will strive so much to make hard and painful exercises in order to make the body flexible for the race. In this case, we cannot say that this person is exercising painfully because he is comfortable and free with that, it is because it is a condition for him to reach the end which is winning the race. Nature demands that when there is soil erosion, people should take measures such as the building of gabions in order to prevent further erosion. Therefore, man will construct gabions and by doing so he would be responding to nature, hence, this will not be in line with his freedom. He has just acted due to the demands of nature as the principle of willing.

Therefore, freedom is the practice of the will and the acts that belong to the will. By citing Aristotle in *Summa Contra Gentiles*, Aquinas depicts that the principle of self-motion in humans is the will<sup>14</sup>.

## **2.1 Law**

Just like it is the case of freedom, the word law has different connotations according to the contest in which it is used. In other words, the meaning of 'law' is ambiguous. For example, sometimes law may be used to mean a legal order that has been put in place to guide a certain group of people. On the other hand, it may be used to mean an upright notion of justice<sup>15</sup>. In the case of positive law which is not just, is where we can clearly obtain the ambiguity which arises when defining law. ( Positive law simply means, the laws that have been formulated by institutions such as the court and the parliament and are subject to revision and debate, unlike, negative laws which are dogmatic.) This can give rise to contradictory statement statements like the law established in the Kenyan constitution concerning corruption issues, which is not the real law.

Therefore, the question of 'What is law?' centres on whether the notion 'law' refers to every juridical order which is suitable for a particular region of which its content does not matter and which is mostly determined by power, or, whether there is an obligatory relationship between morality and law<sup>16</sup>.

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<sup>14</sup> Thomas Aquinas, *On The Truth of the Catholic Faith, Summa Contra Gentiles*, Trans by James F. Anderson, (New York: Doubleday & Company, 1956), book 2 chap 48

<sup>15</sup> J.R. de Ville, *Law, Order and Freedom*,(New York: Springer Dordrecht Heidelberg , 2011), pg 4.

<sup>16</sup> J.R. de Ville, *Law, Order and Freedom*,(New York: Springer Dordrecht Heidelberg , 2011), pg 4.

According to Plato, the law is a thought which comes as a result of reason and is incorporated into the command of the state. Thomas Hobbes defines law in his book *Leviathan*, decree “addressed to one formerly obliged to obey” the one who commands<sup>17</sup>. For him when a command is made to a person but that command is not obligatory to follow, then it does not qualify to be called law.

Now, getting to the main point of discussion of this essay, what does Aquinas say about what law is? According to Aquinas, “law is a particular rule and measure of acts whereby man is induced to act or is restrained from acting<sup>18</sup>.” For Example, when a country's policies state that when a person kills should be imprisoned and when any citizen wants to be the leader of others, he or she must be voted in. The former is the rule which is put in place to hold back people's action to kill and also at the same time a measure put in place to deal with people who kill. The other rule prompts any citizen who wants to be a leader of others to go through the process of asking for votes for him to qualify to be the leader of others.

However, according to Aquinas, this is not enough for a certain rule and measure to be called law. For him, laws should pertain to reason. This means that a rule which does not pertain to reason does not qualify to be called law. Just as in this case, the education system should only be that in which a student's competence is determined by scoring good grades in exams. I can say that this rule does not contain the right reason because; it does not give room for those students who are not good in exams but good in other areas such as a particular talent. This rule may

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<sup>17</sup> M.M Goldsmith, *The Cambridge Companion to Hobbes*, ( Cambridge: Cambridge University Press, 2006), 274-304

<sup>18</sup> Thomas Aquinas, *The Summa Theologica*, Trans by The Fathers of English Dominican Province, (United Kingdom: Global Grey, 2019) I-II, q90, a1

result in a lack of identification of natural skills i.e., for new inventions, which might be better than those acquired through paper education.

The word law whereby in Latin is termed "*lex*", is extracted from the Latin word "*ligare*", which means to bind<sup>19</sup>. To bind in this case means to tie up someone in doing something hence the law obliges someone to act in a certain manner according to the way it states. Reason assumes the responsibility of being the measure and rule of human acts. This qualifies it to be the first basis or principle of human acts. This is because; reason has the responsibility of directing one to attain the end in a particular action, whereby according to Aristotle, in all cases that involve action, it is the first principle.<sup>20</sup> In *Summa Theologica*, Aquinas says that something which is the principle of another thing, at the same time is the measure and rule of that thing<sup>21</sup>. For example, the principle of our bodies to remain fit is doing exercise; therefore, doing exercise is the measure and rule of our bodies' fitness. Accordingly, in the same case, the law is something that concerns reason.

Then, after coming to a consensus that law is something that is directed or ordered by reason, we need to ask ourselves this question, where is this reason directing us? Obviously, a person does an action with an aim of attaining the end and the end is good. Reason directs us towards that which is good.

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<sup>19</sup>Aquinas, *On Law, Morality and Politics*, Trans by Richard J. Regan, (Indiana: Hackett Publishing Company, Inc. 2002), pg 10.

<sup>20</sup> Aristotle, *Aristotle Physics Books I and II*, Trans by William Charlton, (New York: Oxford University Press Inc., 1970), pg 43.

<sup>21</sup> Thomas Aquinas, *The Summa Theologica*, Trans by The Fathers of English Dominican Province, (United Kingdom: Global Grey, 2019) I-II, q90, a1

And the ultimate good of man is happiness, as Aristotle states in *Nicomachean Ethics*.<sup>22</sup> The responsibility of law now is to establish a just relationship between actions by humans and the ends of life that is virtuous.

The word 'man' signifies an individual who is related to another individual. Therefore, this means that any action he does must have an effect on another individual like him. Man has got the nature of being a social-political entity, this means that he cannot reach his end which is good, without collaboration with others in the community. Therefore, when a person struggles to attain his true good, at the same time, he realizes the good of others in the community.<sup>23</sup> For example, when I work so hard in looking for funds to start a business such as a food business, I will be able to attain both my good which is the profit from the business and the good of other people in the community which is the provision of food commodities for easy access.

This indicates that the law orders things for the common good. Aquinas says that " And so since we chiefly call something law because it orders things to the common good, every other precept regarding particular acts has the nature of law only because it orders things to the common good. And so every law is ordered to the common good."<sup>24</sup> Therefore, according to Aquinas, for something to be called law, it is supposed to have the following elements: it concerns reason and is ordered to the common good.

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<sup>22</sup> Aristotle, *Nicomachean Ethics*, Trans by Rodger Crisp, (Cambridge: Cambridge University Press, 2000), pg 5.

<sup>23</sup> Aldo Vendemiati, *In the First Person. An Outline of General Ethics*, Trans by C.R Nicolosi, (Italy: Urbaniana University Press, 2005),pg 110.

<sup>24</sup> Aquinas, *On Law, Morality and Politics*, Trans by Richard J. Regan, (London: Hackett Publishing Company, Inc. 2002), pg 13.

## **Conclusion**

I do not agree with Aquinas when he says that freedom is the practice of the will and the acts that belong to the will. I can illustrate this in this way: being a human being, I am a social animal. This means that at my normal orientation, my will is inclined to mingle and interact with other human beings on various occasions. For example, when I was a kid, in disregard of good or bad reasons, my mother sometimes could command me not to go out and play with my friends. I could definitely have that strong feeling within myself to join others in the play but the problem was that I could not respond to that feeling because of the restriction. In other words, I could not be free to respond to that feeling. In case I would be allowed to go out for the play, I could do it without any worry or that sense of restriction in me, I could be free hence freedom. Again, when I am hungry and the only option for me to get food is stealing, stealing becomes a necessity for me to reach the end of getting food, although I feel that I should not steal. I will steal to get food but since it would not be an act that comes from my will, I will start feeling guilty about myself. If stealing would be in line with my will, I will not have that sense of guilt in me but a sense of freedom.

Am also of the idea that, that law concerns reason and at the same time, it is ordered for the common good. The genuine aim of the establishment of laws is to keep in check how people conduct themselves in order to live in an orderly way and protected lives. Generally, I can say that people's lives are in the hands of laws. Even during the times of Israelites, there were laws which are the Ten Commandments that were to guide them through their lives. So when they are established, reason must be involved to avoid tempering the lives of people. When laws are established within a particular geographical area or community, they are meant for everybody in that community. Therefore, it must follow that that everybody must benefit from them, hence the idea of the common good.

## **CHAPTER THREE**

### **THE RELEVANCE OF AQUINAS'S NOTION OF FREEDOM AND LAW TODAY**

#### **Introduction**

The word 'relevance' refers to a particular topic being in a position to be linked to another topic in a manner that makes it useful to contemplate upon the second one considering the first one. It is the quality of something to be appropriate or closely connected to another thing.

Now, we have seen Aquinas's standpoint when it comes to the concepts of freedom and law. We have seen or come to find out that Aquinas has a special way of looking into the meaning and essence of these terms. It is a special way because; he gives definitions that are critically developed. By doing this, in one way or another, he deviates from the literal meanings and understandings of these terms that have been adopted by many around the globe. However, this does not mean that Aquinas's conception of these terms does not completely merge with how today's world goes about concerning these same terms. Actually, there are connections that can be made and this is the key point of this chapter.

Therefore, let us look around; let us have a look at different laws and modes of doing things in different countries, communities, institutions, churches and even organizations around the globe. Let us find out what they have in their constitutions and the way of governing themselves today. Sticking to the topic of our thesis, we could then make connections or see how Aquinas's conception of freedom and law is relevant today.

### 3.1 Child Protection Laws in India

#### Child Labour and the Right to Education

In India, already before the time of independence, *The Children (Pledging of labour) Act, of 1933*<sup>25</sup>, this act was formulated to bar any “agreement to pledge the labour of a child.”

In this case, the agreement would imply that is the “agreement, written or oral, expressed or implied, whereby the parent or guardian of the child, in return for any payment of benefit received by him, undertakes to cause or allow the services if the child to be utilized in any employment” (section 2). This law goes forward to say that such kind of agreement will be invalid. This act again goes a step forward to stipulate the penalties for anyone, either a guardian or a parent who would be found making such an agreement, in section 4.

To increase the efforts of combating child labour, India found out that the best way to do so is to ensure that there is the education of children. This is found in *The Right of Children to Free and Compulsory Education Act, 2009*(RTE).<sup>26</sup> The word ‘compulsory’ raises the obligation to the government of India and the responsible local authorities to ensure and also provide ground for admission, attendance and finishing of basic education, and this applies to all children between the age of six to fourteen.<sup>27</sup> The word ‘free’ means that no child will be required to pay any money, any charges or any fee which may prevent him or her from attending and completing basic education.

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<sup>25</sup> Jesu Pudumai Doss, *Child Protection Laws in India*, (Don Bosco Youth Animation, 2015), pg 25, see also <http://www.commonlii.org/pk/other/PKLJC/reports/55.html> accessed on 21/09/2022

<sup>26</sup> Jesu Pudumai Doss, *Child Protection Laws in India*, (Don Bosco Youth Animation, 2015), pg 28, see also [http://dsel.education.gov.in/rte#:~:text=The%20Constitution%20\(Eighty%2Dsixth%20Amendment,may%2C%20by%20law%2C%20determine](http://dsel.education.gov.in/rte#:~:text=The%20Constitution%20(Eighty%2Dsixth%20Amendment,may%2C%20by%20law%2C%20determine) accessed on 21/09/2022

<sup>27</sup> <https://vikaspedia.in/education/policies-and-schemes/right-to-education/right-of-children-to-free-and-compulsory-education-act-2009-right-to-education-act> accessed on 21/09/2022

Observing the way this kind of law was formulated and designed, we find out that Aquinas's notion of law is relevant here. The reason is applied in this law in this way; after the country realized that there are children who are being subjected by their parents to hard work beyond their limit as instruments for them to earn income, they had to set up a law to condemn these kinds of actions. However, it seemed that this alone would not enable them to attain the end which is to combat child labour. The legislators of this law had to think more about how to make this law strong to help the country attain the end.

Therefore, they thought of establishing penalties against those who will be found subjecting children to child labour. This is because, if the statement of the law could not contain any penalty for breaking it, there is a very high possibility that people could easily assume it and there would definitely no end to be reached.

As if it was not enough, the government saw that setting the penalties against the breakers of this law would not be enough. Maybe some citizens would continue to break it without the knowledge of the government or to others; the penalty established would not be a big deal to them and so risking breaking the law would be nothing to them. Also, some citizens would continue exposing children to child labour because they don't have any alternative but to do so.

Therefore, the government and legislators arrived at a consensus that, "the best way to combat child labour is to ensure the holistic education of children."<sup>28</sup>

The mode of this education is said to be free and compulsory. This is the right reason because; if it is not compulsory, still there will be a good number of children that will not access this education, and therefore, there will continue being the subjects of child labour

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<sup>28</sup> Jesu Pudumai Doss, *Child Protection Laws in India*, (India: Don Bosco Youth Animation, 2015), pg 28

even without knowing that it has a negative impact on their lives. And therefore, there will be no satisfactory end that would be attained, which is to stop child labour. This education is made free so as to accommodate every child despite of the family's status, either rich or poor. Therefore, the government would not expect any child to miss education on financial status basis. Keeping in mind that the role of law is to attain the end which is for the common good,<sup>29</sup>the Indian law about child labour and the right to free and compulsory education is set to fulfil this role of the common good.

When the government stops child labour through the provision of education, actually it will be for the collective good of all children and citizens generally in India. First and foremost, stopping child labour will allow children to grow healthily as most of the children who are involved in child labour, their health is always endangered, and this would reduce the death rate of children, hence the country at large will grow. There will be no fear of a lack of potential future generations to take over the country.

Also, there will be a learned and educated generation that will be able to sustain itself without much suffering from poverty. The generation will be able to come up with ideas that will enable themselves individually and the country at large, to deal with problems that affect humanity and to have positive growth in different aspects of life.

### **3.2 Freedom of association in Australia**

In the constitution of Australia, the citizens have got the freedom, or let us say that they are free to mingle and interact with anyone they like, also, they are free to be involved and take part in

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<sup>29</sup> Aldo Vendemiati, *In the First Person. An Outline of General Ethics*, Trans by C.R Nicolosi, (Italy: Urbaniana University Press, 2005), 110.

various activities. These activities include peaceful protests or demonstrations.<sup>30</sup> From this, we find out that Alexis de Tocqueville in his book *Democracy in America* compares freedom of association in Australia to be the most unchallengeable as the freedom of an individual. In these he says:

“The freedom most natural to man, after the freedom to act alone, is the freedom to combine his efforts with those of his fellow man and to act in common... The legislator cannot wish to destroy it without attacking society itself.”<sup>31</sup>

A human being is naturally a social animal and by this, it means that he is inclined naturally towards interacting with other human beings. Therefore, when I decide to go out to interact with my friends, this action would definitely be proceeding from my will itself. My ‘will’ will freely will hence the ultimate freedom according to Aquinas. In examining what has been said about the freedom of association in Australia, it conquers Aquinas's. Therefore, Aquinas's concept of freedom is relevant to Australia's freedom of association.

### **3.3 Freedom of Belief in the U.S.A**

In the U.S.A, the first amendment in their constitution deals with religion and free expression.

According to the amendment about the freedom of belief, it is said that being free in believing is the basis at which one gets the freedom to choose any kind of religion at one’s own will and also

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<sup>30</sup> *Final Report of the Constitution Commission, Australia*, Volume 1 (1988), 468

<sup>31</sup> Alexis de Tocqueville, *Democracy in America*, (Library of America, 2004), pg 220, see also Antony Gray, “Freedom of Association in the Australian Constitution and the Crime of Consorting”, *University of Tasmania Law Review*, no 32 (2013) 149,161

the freedom to make a decision upon the way in which one expresses his or her self.<sup>32</sup> In this amendment, it is stated that; acting from the point view of freedom of religion, the court stipulated that, “although the freedom to act on one’s beliefs could be limited, the freedom of belief in what one wills is independent.”<sup>33</sup> Here, the word ‘independent’ is used to mean that the freedom of belief should not be controlled or given limitations by any impediment.

Upon careful examination of this kind of freedom, we find out that Aquinas's notion of freedom owes it relevance. From this statement, "... the freedom of belief in what one wills...", we get to know that U.S.A citizens are allowed to believe according to the inclination of their will. This means that if one is disposed towards Hinduism, he is able to practice it without any hindrance, if another is disposed towards Christianity, he too is able to act according to its demands without any obstacle. Therefore, as it is a matter of fact that citizens in the U.S.A are inclined towards different kinds of beliefs, and therein, the government gives them the freedom to act towards their favourite belief, we conclude that their practice of a particular belief is the object of their will. Therefore, their freedom of belief coincides with Aquinas’s notion of freedom.

### **3.4 The Rule of Law: Right to marry**

In the rule of law, under human rights, article 12, there is a right to marry. It states that any man or woman, or rather, two people of the opposite gender that have attained the age of marrying according to the laws of the nation taking care of this right, have the right to marry and create a

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<sup>32</sup> U.S. Const. amend I sec. 2, (2016)

<sup>33</sup> West Virginia State Bd. Of Educ. V. Barnette, 319 U.S. (1943), 624, 642

family.<sup>34</sup> This law gives a particular state permission to regulate this right. For example, just as it is being done in the UK, "the age and capacity required for a valid marriage, and lay down procedural rules to be followed, but there is otherwise no community exception to this right."<sup>35</sup>

When examining this particular kind of law, we also find Aquinas's notion of law relevant here. First and foremost, it is the right reason for the law to state that marriage should be between people of the opposite gender, and later we see that this law is aiming at an end which is to create a family. In a general sense, a family means or comprises of father, mother and children. So when the law outlines that marriage is between people of the opposite gender, it is reasonable because it would be possible for the children to be sired and from this, a full family is created. This is also evident in the book of Genesis in the Bible whereby God creates a woman for man, one of the reasons being to facilitate procreation,<sup>36</sup> and the Bible is considered by Christians to contain the highly reasoned truth of God. On the contrary, if this law could have given room for marriage between people of the same gender, it would not be the right reason because it would be impossible for the children to be sired.

This kind of law is also ordered for the common good. When children are raised, this means growth of population and a lively nation. The country that follows this kind of law will be able to have a balanced population in the sense that, the population will consist of children, youths and the aged. Therefore, there will always be continuous enough manpower to make progress within the country as when parents get old, their children would replace them in whatever they were doing in order to make the country progress. There will be more and more important ideas and innovations that will come about as more generations are being given birth. The common good

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<sup>34</sup> Tom Bingham, *The Rule of Law*, (London: Penguin Books Publishers, 2010), 80

<sup>35</sup> Tom Bingham, *The Rule of Law*, (London: Penguin Books Publishers, 2010), 80

<sup>36</sup> The Catholic Answer Bible, (Chennai: Divine Printers & Publishers, 2005), 9

here is seen when the country is self-sufficient, the citizens will be in a better position economically.

### **3.5 Standard Law on the Equalization of Opportunities for Persons with Disabilities Awareness-raising.**

This law stipulates that the authorities who are responsible should issue out information that is updated about services and programmes to people facing disabilities, the families where they come from and the public in general. This information to people facing disabilities should be made available in a form that can be easily accessed.<sup>37</sup> This means that the form of information should be looked upon according to the kind of disability the victim is facing. Moreover, the form of availing information to a blind person should not be the same as the form of issuing information to a deaf person. Where people use radios instead of televisions let the information be availed through the radios also. Where people don't have radios or television gadgets, let the information be availed to them verbally.

The state also should institute and aid information campaigns that relate to people facing disabilities and policies that concern disabilities. These campaigns should primarily convey the message that people with disabilities are also like other citizens. Citizens should share the same rights and responsibilities as others. This warrants the measures to do away with all hindrances to full participation.<sup>38</sup>

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<sup>37</sup> *The Standard Laws on the Equalization of Opportunities for Persons with Disabilities*, United Nations, 1994, 17

<sup>38</sup> *The Standard Laws on the Equalization of Opportunities for Persons with Disabilities*, United Nations, 1994, 17

This law also says that the nation should encourage the depiction of people with disabilities by the media in a positive way. The organizations that take care of people with disabilities need first to be consulted about this matter.<sup>39</sup> This means that portrays of people with disabilities should not just be laid to the public without the appropriate consent.

Lastly, the states are supposed to give the invitation to people with disabilities together with their families and organizations that deal with them, to participate in programmes of education that educate on matters of disability.<sup>40</sup>

After looking into the way this kind of law is formulated, we can deduce the relevance of Aquinas's notion of law. First and foremost, the government and authority of goodwill may be in a very good position and have the best ways of helping the victims of disabilities. However, when proper communication cannot be made, it may not be able to carry out this activity to the fullest, and therefore, it will not attain the end which is to ensure that this group of people is helped. Some persons with disabilities within the country might be staying in very remote regions where it is very difficult to get such information. Some people may not be in a position to access information gadgets like radios. Therefore, when this law requires that information about helping the victims of disabilities should be made known to all and in the form that can be accessed, it follows

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<sup>39</sup> *The Standard Laws on the Equalization of Opportunities for Persons with Disabilities*, United Nations, 1994, 17

<sup>40</sup> *The Standard Laws on the Equalization of Opportunities for Persons with Disabilities*, United Nations, 1994, 17

from the right reason. By this, this law would help the nation to move some steps forward in terms of taking care of people with disabilities.

Some forms of disabilities are very critical that the victims of them don't want the public to see them. When their images and portraits are displayed to the public without their consent and to make matters worse, in a negative way, it may affect them psychologically and lower their self-esteem and above all, some may feel this act as dehumanizing. When this law requires that their portrayal should be made in a positive way and through the right channel, it follows that it is as a result of the right reason.

In addition, we can say that this law about awareness rising leads to the common good. This common good cuts across to people suffering from disabilities, the families where they come from and the nation at large. When awareness is made to the public, it means that the government is aiming to benefit each member who is facing a disability situation therefore the common good for all of them. Let's say that if the government is aiming at helping an individual or a particular group of the few, there is no need for awareness to be made to the public, it could just go directly to him or them.

The common good also comes in this way; when the government helps people with disabilities through the said awareness, not only the victims receive the benefit but also the families where they come from. Through this awareness, an individual may benefit from sponsorship programmes and by this, the family is relieved from some burdens, more especially financial burdens. In this case, both the individual and his or her family benefit hence the common good.

### **3.6 International Humanitarian Law on Food**

In international humanitarian law, there is a special role played by food. It plays an important role on that part of international law which concerns itself with situations of conflict." In the

statement, *The Right to Food* made to the UN's Commission on Human Rights in April 2001. The ICRC described the major relevant rules.”<sup>41</sup> The rules are as follows:

- International humanitarian law clearly forbids civilians from being starved, this being a method of the battle of both regional and international armed conflict. This prohibition by the law is broken when there is no food for civilians to feed on and also when people are suffering from hunger due to food sources being deprived of them.<sup>42</sup>
- In order to elaborate on the prohibition of intentional starvation in the interest of warfare, international humanitarian law particularly prohibits “attacking, destroying, removing, or rendering useless objects indispensable to the survival of the civilian population. Such objects include foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations, drinking water supplies, and irrigation works.”<sup>43</sup>

Aquinas's notion of law has no exemption of being relevant to this International Humanitarian Law on Food. Food is one of the natural inclinations human beings tend to have. This means that human beings will always have the desire to eat, this being a force or influence that comes from within themselves without the influence of man himself or other men, and this automatically becomes their right. Moreover, if the right obtains its rational formulation not through man but through nature, it becomes the natural law.<sup>44</sup> Therefore, when the humanitarian law forbids

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<sup>41</sup> George Kent, *Freedom From Want; The Human Right to Adequate Food*, (Washington: Georgetown University Press, 2005),pg 49

<sup>42</sup> George Kent, *Freedom From Want; The Human Right to Adequate Food*, (Washington: Georgetown University Press, 2005),pg 49

<sup>43</sup> George Kent, *Freedom From Want; The Human Right to Adequate Food*, (Washington: Georgetown University Press, 2005), pg 49

<sup>44</sup> Aldo Vendemiati, *In the First Person. An Outline of General Ethics*, Trans by C.R Nicolosi, (Italy: Urbaniana University Press, 2005),pg 111

starving civilians, in other words, it protects the human right which is the right to food. Since the right to food is viewed as a rational formulated law Aquinas's notion of law owes relevance to it.

The notion of the common good is detected here when; the law forbids the destruction of vital commodities or services such as points of getting drinking water and places of agriculture, it is doing so while aiming at a larger number of people in a given region hence the common good. When the government protects water sources such as dams as stated by this law, it does so for the benefit of all citizens around it. It is impossible for the government to protect the dam for the benefit of an individual citizen while excluding others.

When this law is protecting areas for agriculture, here also is the theme of the common good. However, on the issue of land for agriculture, some people may argue out that it is for the good of an individual because it will benefit the owner per se in terms of produce and income. This should be seen in this way, even if the land for agriculture belongs to an individual, out of this individual employs other citizens, they also benefit from it. If an owner of the land produces a lot of produce, he may decide to sell to others which also benefits them. This is because he would have created a provision which without doing so other citizens could not be in a position to access such products with ease.

### **3.7 Concept of Freedom in International Humanitarian Law on Food**

When this law forbids the starvation of civilians, while doing so, it gives the civilians the freedom to access food and eat. As much as eating or the desire to eat is a natural inclination of human beings, also, when a person eats, he does it out of his or her own will. A person is not forced or coerced to take food when he needs it unless he is sick. Therefore, when civilians are given the freedom to access food by this humanitarian law when they do it freely, this act will be an object of their will rendering Aquinas's notion of freedom relevant to it.

## **Conclusion**

Before, when I had not examined what Aquinas conceives of freedom and law, it has never come to my mind that his notion of the two can relate to today's notions about the same two. However, even if I would have known what Aquinas says about freedom and law, I would not have been certain about its relevance today, because, perhaps I would not have taken my time to find out whether there is a connection between Aquinas's and today's understanding to these two notions. Now that I have done my comparison in this chapter, it is clear that Aquinas's notion of law and freedom is relevant to today's notion of the same. This has been revealed in various ways. Some ways show full relevance while others show partial relevance.

## **GENERAL CONCLUSION**

When Aquinas was giving his say on freedom and law, especially in his work of *Summa Theologica*, he did it in a more detailed and procedural manner. This has made it easier to understand in a clear manner, what he meant by freedom, and what he meant of law. For example, before coming to the conclusion of what he meant by law, there was a need first to understand the will, two types of necessity and the voluntary as the foundation to clearly know what freedom is. On the part of the law, there was a need to understand what the law concerns and what it aims at. Aquinas does not just give the literal meaning of freedom and law.

Although today's conception of law and freedom might not have formed procedurally just like Aquinas did, we find out that Aquinas's conceptions are relevant to some of them in one way or another. We find out that what was being said by Aquinas a long time ago was incorporated into today's freedom and law. This has the potential of being demonstrated practically today. As we have seen, it can be demonstrated in various kinds of laws and freedoms. It does not necessarily

apply to government laws and freedoms but also to specific laws and freedoms such as those of specific institutions, groups of people and also international ones.

As much as we find Aquinas's conceptions relevant today, the negative side is that mostly, it is so theoretical but not practical. When we observe keenly and closely, some of these laws and freedoms are not followed and practised as they have been stated in the constitution or wherever they have been stated. Let's take an example of child protection law against child labour in India, it is clear that still there are cases of child labour. However, there are possible impediments that are faced by the government and the authority that make it impossible to fulfil this law to the fullest. It might be because of the very high population of children of which most of them are raised by lower-class parents; this becomes a great burden for the government to bear to the full.

In the case of freedom of association in Australia, there is also an impediment against this kind of freedom hence it cannot be practised fully everywhere. For example, the poor cannot freely associate with the rich since a high percentage of the rich are under security personnel in order to be protected together with their riches. Therefore, any person who is poor and willing to interact with the rich will find it difficult to associate with him or her. Therefore, this gap between these two people of different statuses becomes a strong hindrance to freedom.

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