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WHAT THOMAS AQUINAS CAN TEACH US ABOUT TAXATION (REVISED)

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Introduction

This paper grows out of a larger project that seeks to excavate theological perspectives on taxation throughout the history of the western world. Here, I argue that Thomas Aquinas can help us re-envision tax by speaking to three facets of what I call the contemporary tax predicament. He does so by operating with a "baseline," against which tax justice can be measured, that is derived from the interplay of natural and positive law.

I discuss the contemporary predicament first, then move to an account of Aquinas' thoughts on property and taxation, and finally construct a Thomistic tax philosophy that is susceptible to comparison with other tax philosophies.[1]

The Contemporary Tax Predicament

There are three parts to the contemporary predicament.

Fragmentation of Law. First, tax law is disconnected from the rest of law. Tax is linked to some idea of distributive justice; the rest of law is associated with a version of commutative justice.[2] For instance, the contemporary legal theory called law and economics considers wealth-maximization to be the main purpose of legal systems, while redistribution through taxation is, at best, adjunct to that purpose.[3] Linda Sugin writes:

> For better or for worse, the tax law is the major tool of redistribution we have. Tax policy debate is one of the very few areas of the law in which discussions of distributive justice are considered appropriate. The political reality is that most other economic regulation is oriented towards maximization of wealth, rather than its distribution. The tax law comes in after productivity is maximized, and it should—to

[1] I use the term "tax philosophy" to refer to what ethical traditions (e.g., Thomism, Kantianism, utilitarianism) say about taxation. "Tax policy" refers to decisions about tax structures made through the political process. "Tax theory" is intermediate, an application of tax philosophy to the demands of society, with assumptions and conclusions. "Tax structure" refers to any set of positive tax laws.

[2] As interpreted by Aquinas, who received them from Aristotle, commutative justice refers to "the mutual dealings between two persons" and distributive justice to "the order of the whole [the community] towards the parts [each single person]." Thomas Aquinas, *Summa theologiae* (trans. Fathers of the English Dominican Province; 8 vols.; Latin-English edition; New York: NovAntiqua, 2009-16), IIa-IIæ, Q. 61, Art. 1, resp.

[3] See Richard A. Posner, *The Economics of Justice* (Cambridge, Mass.: Harvard, 1983), 80-81, 101.

> some extent at least—rearrange the results produced by markets that operate to concentrate wealth and opportunity.[4]

In other words, after wealth is produced, taxation is introduced to correct injustices produced by market forces. Tax law is not integrated with the rest of law.

Elusiveness of Equity. The second part of the predicament is the elusiveness of any norm for the very redistribution that tax policy seeks to accomplish. This elusiveness is why tax systems are as complex as they are. Tax justice is assumed to be a function of horizontal equity and vertical equity. Horizontal equity refers to the idea that equal incomes should bear the same tax burden, vertical equity to the idea that the burden of taxation should increase as income increases. Nevertheless, horizontal equity is quickly seen to produce inequitable results. Even if everyone similarly situated could be taxed in the same way and in the same amount, the results would be very uneven. This unevenness necessitates exceptions to taxes and tax rates, and then exceptions to the exceptions, and so on.[5]

Consider, for instance, the "marriage penalty" and the "marriage bonus" in U.S. federal income tax law. From its inception in 1913 until 1948, the federal income tax system provided only for individual returns. Requiring each individual to file a return, regardless of marital status, seemed to honor horizontal equity. However, as the income tax became more progressive by the late 1940s, "income splitting" proved to be an irresistible temptation. Assume that one spouse earned $20,000 in a year and the other spouse earned nothing. Because marginal rates increased as income increased, the total tax on two incomes of $10,000 was likely to be lower than the tax on one income of $20,000.[6]

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[4] Linda Sugin, "Theories of Distributive Justice and Limitations on Taxation: What Rawls Demands from Tax Systems," 72 *Fordham Law Review* 5 (2004): 2013-14.

[5] See John F. Witte, *The Politics and Development of the Federal Income Tax* (Madison, Wis.: The University of Wisconsin Press, 1985), 371–72.

[6] Anne L. Allstott, "Updating the Welfare State: Marriage, the Income Tax, and Social Security in the Age of Individualism," *Yale Law School Legal Scholarship Repository*, 703 [cited 16 July 2016]. Online: http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5876&context=fss_papers.

To make matters worse, some states looked more favorably on income-splitting than others. Congress responded in 1948 by effectively requiring income-splitting of all married couples. A joint rate schedule was introduced. It contained tax brackets for married couples filing jointly that were twice as wide as those for single filers. Under the new schedule, a married couple with $20,000 of total income would owe the same tax regardless of how they divided the income between them.[7] It seemed that horizontal equity had been re-established, at no cost to vertical equity.

The problem was that joint returns only treated all similarly situated *married couples* in a similar way. As long as marriage remained the social norm, joint brackets that were twice as wide as single brackets were politically acceptable. By 1969, however, divorce rates were increasing, people were marrying later in life, and wives were increasingly entering the workforce. In the face of complaints of unfairness from single taxpayers, Congress reduced the width of the joint brackets.[8] The goal of the adjustment was, once again, to tax people earning the same amount at approximately the same rates.

The adjustment's effect was to create the marriage penalty, which persists to this day. Applying income tax rates for tax year 2016,[9] a single taxpayer earning $100,000 pays income tax of $21,036.75 (without deductions). Two single taxpayers each earning $100,000 pay twice that much, $42,073, in the aggregate. However, if the two taxpayers are married and file jointly, they pay income tax of $42,985.50 on their combined $200,000 of income. The difference, $912.50, is the marriage penalty. On the other hand, if one of the individuals earns $10,000 and the other $190,000, their combined tax liability is $47,273 ($1,036.25 plus $46,236.75) if they are single but still $42,985.50 if they are married filing jointly. This difference, $4,287.50, is the marriage bonus.

[7] Allstott, "Updating the Welfare State," 704.
[8] Allstott, "Updating the Welfare State," 705.
[9] Internal Revenue Service Revenue Procedure 2015-53, 2015-44 Internal Revenue Bulletin 615.

Which is more valuable: vertical equity or horizontal equity? When they conflict, which is the "true" equity? The exact shape of an equitable curve in a progressive tax system has proved elusive. Fighting on the two fronts of vertical equity and changing societies, horizontal equity has proved equally as elusive.

Baseline Problem. The final and most fundamental facet of the contemporary predicament is that we in western nations lack what Witte calls a "positive ideal of equality."[10] The mid-twentieth-century University of Chicago tax philosopher Henry Simons, "faced with the question of redistribution, . . . merely threw up his hands, renounced efforts to prove its utility, and opted for a simple declaration that the alternative was distinctly unpleasant."[11] Witte writes: "Simons' problem and solution have haunted later philosophical discussion of taxation and have been mirrored in the actual politics of taxation."[12]

This lack is connected to the "baseline problem," the problem of identifying an ideal, hypothetical tax that reflects society's ideas of justice and against which actual tax structures can be measured. Utilitarian thinkers, as discussed in more detail below, have long agreed that only a lump-sum tax can deter all tax-motivated responses.[13] Columbia Law School professor Alex Raskolnikov observes, however, that the lump-sum tax runs afoul of the "redistribution problem": "[T]he main argument supporting the view that tort law, corporate law, and contract law, for instance, should focus on efficiency is that redistribution is better accomplished through the tax system."[14] The result is the optimal tax model, which seeks to optimize the tradeoff between efficiency and equity, or between distortion (which only the lump-sum tax can solve) and redistribution (which the lump-sum tax cannot solve).[15] Optimal

[10] Witte, *Politics and Development*, 376.
[11] Ibid.
[12] Ibid.
[13] Alex Raskolnikov, "Accepting the Limits of Tax Law and Economics," *Cornell Law Review* 98 (2013): 544–45.
[14] Ibid., 545.
[15] Ibid., 546–47.

tax theory chooses an "ability to pay" tax as its baseline. Raskolnikov finds this choice arbitrary:

> At this point, one needs to decide what should be the basis of redistribution. There is no obvious answer to this question, and there is nothing in economic theory that gives economists a particular advantage in formulating possible answers and choosing among them. Maybe we should redistribute based on ability, maybe based on benefits, sacrifice, opportunities, luck, sunny disposition, good looks, or something else. This seems like a question for moral philosophers. . . . Yet for whatever reason, Kant and Hegel, Nietzsche and Kierkegaard, Rawls, Raz, and Dworkin have not been particularly interested in addressing the question. So economists did the best they could, settled on ability to pay as the answer, and proceeded with the analysis.
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> That choice alone, it seems, is not just more contestable than the rational behavior assumption [in law and economics theory]; it reflects a different order of contestability. It involves value judgments about what constitutes a just society, what citizens owe to each other, and what limitations on liberty are acceptable, to name a few.[16]

Others agree with Raskolnikov's assessment, as discussed below.

The baseline problem underlies the fragmentation of law and the elusiveness of equity. Tax justice cannot be integrated with justice in other areas of law without a tax baseline that reflects society's overall conception of justice; and without a universally acceptable baseline, any conflict between horizontal and vertical equity must remain unresolved.

Before using Thomas' thoughts about taxation to respond to the contemporary predicament, I will summarize what he says about private property.

Property and Taxation in the *Summa*

This paper assumes that a theology of taxation is inseparable from a theology of property. Even the tax philosophers Liam Murphy and Thomas Nagel, known for their staunch opposition to the "everyday libertarian" notion of taking pretax property rights as a moral

[16] Ibid., 562.

baseline,[17] nevertheless acknowledge that "taxes are essentially modifications of property rights that entitle the state to control over part of the resources generated by the economic life of its citizens."[18] Murphy and Nagel call property rights "the moral category most directly relevant to tax policy."[19]

Aquinas' remarks about the morality of private property in dramatically different lights in the *Summa theologiae*, depending on whether Thomas considers property in terms of human law or natural law.

For instance, Question 66 of Secunda Secundae of the *Summa* arises from the tension between the private appropriation of exterior things and their availability for common use. Article 8 of Question 66 is particularly relevant to taxation because it considers the taking of private property by public authority.[20] The question Aquinas seeks to answer in Article 8 is whether robbery can be committed without sin, in light of the fact that robbery "implies a certain violence and coercion." Thomas responds that rulers are entitled to exact "that which is due to them for the safe-guarding of the common good, even if they use violence in so doing."[21]

There are limits, however. If the rulers take something "unduly," their exactions revert to the category of robbery. Thomas writes in his Reply to Objection 3 in Article 8: "[I]f they extort something unduly by means of violence, it is robbery even as burglary is."

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[17] I use the term "tax baseline" to refer to an ideal, hypothetical tax against which actual tax structures are measured and the term "moral baseline" to refer to the values that make the tax baseline ideal.

[18] Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford: Oxford University Press, 2002), 44. For a discussion of the importance of *The Myth of Ownership* in contemporary tax philosophy, see Sugin, "Theories of Distributive Justice," 1991-93.

[19] Murphy and Nagel, *Myth of Ownership*, 43.

[20] The term "property" is roughly synonymous with "exterior things" or "external things." In Roman law, particularly in Justinian's *Institutes* (533), "property" had a broad meaning—any "thing, material or immaterial, that was owned or possessed and had some economic value." Diana Wood, *Medieval Economic Thought* (Cambridge: Cambridge University Press, 2002), 18.

[21] Aquinas, *Sum* IIa-IIæ, Q. 66, Art. 8, ad. 3.

In other words, Aquinas carves out of private ownership a space for the public taking of property. Nevertheless, the language of private ownership remains dominant within the limited scope of Article 8.

In the broader context of Question 66 as a whole, however, the language of private ownership is balanced by the language of common property. In Article 2, for example, individual possession of things is both lawful and "necessary to human life" in that (1) people are more careful to procure what can be theirs than what is common to many or all, (2) order (as opposed to confusion) requires a division of labor, and (3) contentment, which ensures peace, arises from having something of one's own. Nevertheless, in the use of things, an individual "ought to possess external things, not as his own, but as common, so that, to wit, he is ready to communicate them to others in their need." Thus, the nature of things impinges on their use,[22] so that community of ownership circumscribes private property rights.

When Aquinas says in Article 2 that the human power of procurement makes possession lawful, he means "lawful" according to positive rather than natural law. Article 2, Reply to Objection 1, makes it clear that division of possessions arises from "human agreement." Natural law prescribes community of goods. Natural law, however, does not preclude division of possessions. Positive law adds to natural law in this respect; it does not conflict with it. Positive law filters natural law through practical reason so that it can apply to particular circumstances.

With that background, I turn now to the ways in which I believe Thomas can help us gain perspective on what I call our contemporary tax predicament. I begin by summarizing

[22] It is tempting to identify positive law with ownership and natural law with use, as some commentators do. See Anthony Parel, "The Thomistic Theory of Property, Regime, and the Good Life," in *Calgary Aquinas Studies* (ed. Anthony Parel; Toronto: Pontifical Institute of Medieval Studies, 1978), 83; R. W. Dyson, ed. and trans., *Aquinas: Political Writings* (Cambridge: Cambridge University Press, 2002), xxxi. The distinction appears too neat, however, particularly in light of Article 2 of Question 66. There the distinction is between nature (God's command over everything) and use (humankind's dominion over external things). Use, it seems, can apply as readily to appropriation and dominion as to the circumscribing law of common possession.

the connection in Thomas' thought between justice and equality, and then show that equality is best understood in terms of indebtedness.

Justice, Equality, and Indebtedness

Aquinas would have felt at home with our contemporary linking of justice and equality. He thought of justice as denoting "a kind of equality,"[23] although "equality" turns out to be a misleading translation. The Latin original, *aequalitas*, may just as easily mean "equivalence."[24] For Aquinas, *aequalitas* has content because it is connected to *debitum*, the word that is usually translated "duty."

The translation of *debitum* as "duty" makes the word sound deontic. At its root, *debitum* is "debt" in an accounting sense. Metaphorically, to be sure, it means "duty," but even at this level it is far from a deontic "ought." As Eugene Rogers writes, "We are not true to Aquinas if we allow *debitum* to float free of display and diagnosis and mean the great Kantian duty in the sky."[25] For Thomas to say that something is a *debitum* is to say that it has *aequalitas*, or equivalence, to something physical or something in nature.[26] In this sense, we can say that *debitum* is objective.[27]

Debitum is "due" in a strong sense. Thomas connects *debitum* with the idea of belonging in his discussion of restitution in the *Summa*. He says: "That which is not due to

[23] Aquinas, *Sum* IIa-IIæ, Q. 57, Art. 1, resp.

[24] Étienne Gilson, *The Christian Philosophy of St. Thomas Aquinas* (London: Victor Gollancz, 1961), 306.

[25] Eugene F. Rogers, Jr., *Aquinas and the Supreme Court: Race, Gender, and the Failure of Natural Law in Thomas's Biblical Commentaries* (Oxford: Wiley-Blackwell, 2013), 89.

[26] Paraphrasing Thomas, Gilson writes: "To perform an act of justice is to render someone his due in such a manner that what is rendered is equal to what is owed. Thus two notions are inseparable from that of justice, the notion of debt and the notion of equality." Gilson, *Christian Philosophy*, 333.

[27] A *debitum* is something "given, based on objectively existing circumstances . . . ." Martin Rhonheimer, "Sins Against Justice (IIa IIæ, qq. 59-78)" (trans. F. Lawrence), in *The Ethics of Aquinas* (ed. Stephen J. Pope; Washington: Georgetown University Press, 2002), 287 (footnotes omitted).

another is not his properly speaking . . . ."[28] A *debitum* can be described as something that is, paradoxically, both owned and yet lacking to the owner.[29]

The idea of an objective, strong *debitum* makes Question 66 more accessible. In Article 7 of Question 66, human need (*necessitas*) gives the natural law of common ownership priority over the positive law of appropriation:

> Things which are of human right cannot derogate from natural right or Divine right. . . . Wherefore the division and appropriation of things which are based on human law, do not preclude the fact that man's needs have to be remedied by means of these very things. Hence whatever certain people have in superabundance is due, by natural law, to the purpose of succoring the poor.

Aquinas makes two crucial points in this passage. First, the need of people who do not have enough property triggers a demand on those who have too much. Secondly, once natural law is triggered in this way, the superabundance of those who have too much becomes a *debitum*, as a matter of natural law, to those in need.

This superabundance principle appears in Aquinas' treatment of tithing as well. In Question 87, Article 1, of Secunda Secundae, Aquinas asks whether Christians are required to tithe. Thomas identifies three kinds of Old Testament tithes: (1) the tithe set apart for the needs and uses of the Levites, which corresponds to provision for the clergy in the New Testament era; (2) the tithe reserved for the offering of sacrifices, which "has no place in the New Law"; and (3) the part of the tithe set part to provide food for the stranger, the fatherless, and the widow.[30] The third kind of tithe, far from being superseded, "is increased in the New Law." Christ commanded, according to Aquinas, that Christians "give to the poor not merely the tenth part, but all our surplus [*omnia superflua*]."[31]

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[28] Aquinas, *Sum* IIa-IIæ, Q. 62, Art. 1, ad. 1.

[29] Joseph M. Magee, "Debitum and Personae: The Metaphysical Foundation of Justice," *Thomistic Philosophy Page*, n.p. [cited 12 May 2016]. Online: http://www.aquinasonline.com/Topics/justice.html.

[30] Ibid., Q. 87, Art. 1, ad. 4.

[31] Ibid.

The tithe is analogous to the debt that people owe to those who protect them. In his answer in Article 1, Aquinas explains that the people's obligation to provide for "those who minister the divine worship" is a dictate of natural reason just as "it is the people's duty to provide a livelihood for their rulers and soldiers and so forth."[32]

In summary, there is a duty, concretized in the relationship of natural and positive law, to dispose of *superflua*. To strip that concept of its deontological connotations, one individual's positive-law *superflua* is converted (or, more precisely, reverts) by operation of natural law into something that belongs to others.

Moral Indebtedness

The positive law of appropriation and the natural law of expropriation limit each other. They do so through the demand that each good places on the other. This section argues that these two demands amount to moral debts.

Aquinas was not the first to grapple with the tension between the positive law of appropriation and the natural law of common ownership. In trying to resolve the same tension, Augustine, for instance, had gone so far as to call private property legitimate,[33] leaving it in an amoral neutral zone, "merely useful to man on his pilgrimage through this life."[34] Aquinas, on the other hand, treated it as a positive good. He writes in his *Commentary*

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[32] Ibid., Art. 1, resp.

[33] Augustine wrote:

> For by divine right, "The earth is the Lord's, and the fullness thereof." The poor and the rich God made of one clay; the same earth supports alike the poor and the rich. By human right, however, one says, This estate is mine, this house is mine, this servant is mine. By human right, therefore, is by right of the emperors. Why so? Because God has distributed to mankind these very human rights through the emperors and kings of this world.

Augustine, *Homilies on the Gospel of John*, 6, 25, *Christian Classics Ethereal Library* [cited 5 Aug. 2016]. Online: http://www.ccel.org/ccel/schaff/npnf107.iii.vii.html. Augustine's solution, according to Diana Wood, was to make God the indirect author of human law. Augustine viewed private property as indirectly approved by God because "God instituted rulers, and rulers legitimated private property in a world which continued to be ruled by God's providence." Wood, *Economic Thought*, 19.

[34] Wood, *Economic Thought*, 20.

on the Nichomachean Ethics that "external goods that are used purposively by man have a moral character."[35]

Aquinas lived at a time when Europe was emerging from several centuries marked by the absence of regular taxation. Rome's crisis in the third century and then the "relative economic autarchy of the early Middle Ages and the political fragmentation following the barbarian invasions" had destroyed the sophistication of the Roman tax system.[36] The Merovingian and Gothic kings lacked any regular tax income. In fact, the absence of regular taxation was one of the preconditions that allowed the elements of feudalism to fall into place.[37]

During the thirteenth century, however, Europe's deep political fragmentation began to give way to an "enlargement of territory and the increase of political power."[38] These developments inevitably required the emerging powers to maintain armies and pursue wars, and those demands, in turn, placed extreme pressure on the existing means of raising revenue.

By Thomas' time, the new needs of governments were assisted by the rediscovery of Roman legal science, which reintroduced the concept of legislative power. Different formulations of the relation of custom to legislation were offered. Custom tended to be associated with the power of a community to make laws for itself, while legislation was typically associated with the power of the ruler. The Glossators Azo, Hugolinus, Bulgarus, and John Bassianus maintained that the people had not irrevocably surrendered their power to

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[35] Thomas Aquinas, *Commentary on the Nicomachean Ethics* (trans. C.I. Litzinger; Chicago: Henry Regnery, 1964), 1, lect. 3, no. 34. J. M. Kelly calls Aquinas' doctrine of private property "the first elaborate justification of private property, not indeed its ascription to natural law . . . , but its legitimate creation by positive human law as an addition to the law of nature." J. M. Kelly, *A Short History of Western Legal Theory* (Oxford: Clarendon, 1992), 151.

[36] Richard Bonney, ed., *The Rise of the Fiscal State in Europe, c. 1200–1815* (Oxford: Clarendon, 1999), 9.

[37] N. J. G. Pounds, *An Economic History of Medieval Europe*, (2d ed.; London: Longman, 1994), 47.

[38] Pounds, *Economic History*, 439.

the *princeps* and, thus, universal custom abrogated statute.[39] Irnerius and Placentinus, meanwhile, denied the power of custom to override legislation.[40]

Aquinas took a moderately conservative view, generally elevating custom over legislation simply because the tendency to change laws seemed to him to weaken the respect that subjects would have for them.[41] Nevertheless, Thomas also maintained that both types of human law are valid because "human reason and will" lay behind both. Statute expresses reason and will through speech, custom through repeated action.[42]

Arising from a feudal background, the new principles of taxation depended on de facto "tax rights" before the concept of sovereignty was clarified.[43] Thomas and his near contemporaries worked, instead, within the confines of *dominium*, the ability of humans, by "reason and will," to use "external things" for their "own profit."[44] As we have seen, *dominium* supplied the grounds for human possession of external things.[45] Before Bartolus of Sassoferrato articulated his theory of state sovereignty, sovereignty and *dominium* were separate concepts. Sovereignty referred to "independence from legal constraints by outside powers."[46] It was a Roman concept, associated with dignity and majesty. In the twelfth, thirteenth, and fourteenth centuries, it applied only to the German emperor.

Dominium did not necessarily imply sovereignty, but it did imply a type of jurisdiction.[47] By the early fourteenth century—if not earlier—the idea of exercising temporal (i.e., coercive) jurisdiction was closely connected to the right of ownership. Implicit in the dispute between Pope John XXII and Ludwig of Bavaria, Antony Black observes, was the

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[39] Kelly, *Short History*, 138.
[40] Ibid.
[41] Aquinas, *Sum* Ia-IIæ, Q. 97, Art. 2, resp.
[42] Ibid. See also Kelly, *Short History*, 138.
[43] Bonney, *Fiscal State*, 4.
[44] Aquinas, *Sum* IIa-IIae, Q. 66, Art. 1, resp.
[45] Ibid.
[46] Antony Black, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992), 113.
[47] Ibid.

"connection between the right of ownership and the right . . . of clergy to exercise temporal, coercive jurisdiction."[48] The connection with the appropriation of property is unmistakable.

For Thomas, the legitimate power to take is not dominion in the sense of mere domination. It is *dominium*, which has a moral component. When an individual appropriates property, the moral component comes from the individual's capacity to act upon the property according to reason and will. There is moral content to both the individual's appropriation of property and to the ruler's expropriation of property. Both appropriation and expropriation serve the common good.

Tax Justice as Equilibrium

The term "common good" occupies a complicated and ambiguous, but important, place in medieval political theology.[49] Among its ambiguities is its connection to justice. Antony Black argues that for Aristotle and many of his medieval followers, to say that an action was "for the common good" was almost tantamount to saying it was just.[50] Aquinas, however, appears to have made a distinction. Black detects a wedge between the common good and justice in Question 96 of Prima Secundae, precisely on the issue of taxation, "'when burdens [sc., probably, taxes], even though directed at the common good, are unjustly distributed through society.'"[51]

I would suggest that justice and the common good are separate in Aquinas because both the individual's appropriation of property and the ruler's expropriation of it can serve the common good. Something additional is required to balance these two genuine goods. The additional thing is justice.

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[48] Ibid., 56.
[49] See Black, *Political Thought*, 25.
[50] Ibid.
[51] Ibid., 26 (quoting Aquinas, *Sum* Ia-IIæ, Q. 96, Art. 4, resp.) (bracketted phrase in original).

In promoting individual ownership of property, Aquinas was following Aristotle, who, in the name of harmony and efficiency, "had supported private property against the community of wives and property recommended by Plato in his *Republic*."[52] A distinctive feature of Aristotle's and Thomas' idea of justice is the way it accommodates two moral goods, two *debita*. Odd Langholm writes: "As with all classical authors, the 'just' is what is 'fair': 'to give each one his due'; but with Aristotle 'fair' comes to mean 'equal', justice is an equation involving opposing 'dues.'"[53] So it is with Aquinas as well.

The full significance of *aequalitas* for Aquinas now becomes apparent. *Aequalitas* is not a formal ideal used to sanitize the compromise struck through the political process between hostile interests. Rather, it is equilibrium, the balance between two opposing *debita*.

The idea that justice balances the two competing ways in which property can "belong"—both ways serving the common good—reflects the reality of taxation in Thomas' day. Until the twelfth century, property rights were based on feudal agreement and, therefore, were adjustable only by consent of the parties to the agreement. Any attempt by the ruler to tax his subjects required adjustment. Parliaments arose as the mechanisms of consent to such adjustments.[54]

As early as the twelfth century, however, taxation was coming to mean something new. As the role of money in the economy began to increase, the peasant's obligations to the lord became less about relationship and agreement and more about political legitimacy.[55]

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[52] Black, *Political Thought*, 23. Aristotle wrote:

> The present system would be far preferable, if it were embellished with social customs and the enactment of proper laws. It would . . . combine the merits of a system of community of property with those of the system of private property. For, although there is a sense in which property *ought* to be common, it should in general be private. When everyone has his own separate sphere of interest, there will not be the same ground for quarrels; and they will make more effort, because each man will feel that he is applying himself to what is his own.

Aristotle, *Politics* (trans. Ernest Barker; Oxford: Oxford University Press, 1995), II.5, 1263^{a}21.

[53] Odd Langholm, *Price and Value in the Aristotelian Tradition: A Study in Scholastic Economic Sources* (Bergen: Universitetsforlaget, 1979), 14.

[54] Black, *Political Thought*, 163–64, 168.

[55] Pounds, *Economic History*, 209.

Money now legitimately belonged to one in possession of political power. Tax was no longer a matter of benefits and burdens.

I suggest that Thomas was resisting the erosion of moral baselines on both sides of the tax equation. That is, his highly developed doctrine of private property as a genuine good was designed to infuse the holding of individual property with moral content. At the same time, he insisted that the whole is greater than the part and that *necessitas* in one form or another allows the communal good both to circumscribe the individual's appropriation of goods and to limit and direct the ruler's expropriation of the individual's goods so appropriated.

The Measure of Indebtedness

To summarize the argument so far, justice denotes equality for Thomas. Equality has a positive ideal, namely, indebtedness. Tax has a role in establishing justice, by balancing indebtedness according to positive law against indebtedness according to natural law. We can say that, for Thomas, taxation operates against a baseline that accommodates both private property rights and community of ownership. But a question remains: what is the measure of this indebtedness?

Aquinas' general answer is that I am indebted to others in the amount of my *superflua*—that is, in the amount by which my property exceeds what I need. More precisely, the measure is self-sufficiency, as Thomas explains in lecture 9 of book 1 of the *Commentary on the Nicomachean Ethics*.[56] Self-sufficiency draws the line between *necessitas* and *superflua* in two ways. First, the tipping point is reached when "a truly happy" person "is undisturbed by the things that are unnecessary even though attainable."[57] In other words, we arrive at the outer limit of *necessitas* when the acquisition of additional goods would do nothing to increase the happiness of one whose desires are "controlled by reason." Thomas

[56] Aquinas, *Commentary on Ethics*, 1, lect. 9, nos. 112–16.
[57] Ibid., no. 116.

can wax quite specific in the *Summa*. In Question 2, Article 1, of Prima Secundae, he enumerates the items that "serve as a remedy" for "natural wants." They are "food, drink, clothing, cars [*vehicula*], dwellings, and such like."

Secondly, there is a point at which the accumulation of property begins to undermine, rather than promote, self-sufficiency. "Superabundance," Thomas writes, "makes people less self-sufficient since a man must have the help or service of many servants to guard and manage excessive possessions."[58]

Necessitas on the *community's* side has three components: "that the community be established in the unity of peace," that the community "be guided to act well," and "that, through the industry of the ruler, there be a plentiful supply of those things necessary to living well."[59] *Necessitas* and *superflua* provide the measurement of these components as well. To return to our starting point—Article 8 of Question 66—if "princes" exact property from their subjects "unjustly," they are bound to make restitution. This means that if they take something that is not "due" them, they have violated justice, measured by *aequalitas*, determined by the line drawn between *necessitas* and *superflua*. If I am right, Thomas' high view of individual property rights is in part a reaction to his concern that a rapacious kind of state was emerging before his eyes. In a similar way, the *necessitas* of the state serves as a constraint on the limitless acquisitiveness that can beset individuals. The state and the individual do not simply keep each other honest, as we would say now. They serve as reminders to each other that the acquisition of property by either is always only instrumental; it must never become an end in itself.

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[58] Ibid., 10, lect. 13, no. 2128.

[59] Thomas Aquinas (Tolomeo of Lucca), "De regimine principum," bk. 1, ch. 16, in *St. Thomas Aquinas: Political Writings* (ed. and trans. R. W. Dyson; Cambridge: Cambridge University Press, 2002), 44. Thomas did not complete "De regimine principum" before his death; that task fell to his friend and disciple, Tolomeo of Lucca. The sections of the work that are referenced here, however, are usually accepted as Thomas' own writings. See James M. Blythe, introduction to *On the Government of Rulers: De Regimine Principum* (trans. James M. Blythe; Philadelphia: Penn, 1997), 1.

The Baseline Problem Revisited

The tax equilibrium found in Aquinas' political theology, as described above, and the measure of indebtedness grounded in *necessitas*, as described in the last section, can be illustrated by constructing tax policies from Thomas' theology of tax. This constructive exercise facilitates comparison of Thomas' tax theology with other philosophies of tax.[60]

To recapitulate, Witte's assertion that we lack a "positive ideal of equality" is connected to the baseline problem in current tax philosophy. The baseline problem refers to the difficulty of identifying a set of pretax conditions (e.g., property rights, income, consumption, or wealth) that can be treated as a moral baseline so that a fair tax system—a "tax baseline" —can be formulated "by saying how much tax different individuals should pay as a function of their position on this baseline."[61] The following summary illustrates the baseline problem in two philosophical traditions, and then constructs a Thomistic tax model using Aquinas' two *debita*, private property rights and community of property.

Classical Utilitarianism. Classical utilitarian tax theories assumed that happiness or well-being was the fundamental value that tax policy choices need to take into account.[62] The idea of loss, or "sacrifice," entered tax theory as a corollary to the assumed correlation between income and happiness.[63] Tax systems were evaluated according to how much damage they did to well-being, that is, how much sacrifice they demanded.

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[60] Thomas was capable of economic reasoning. In Thomas' time, and in the four centuries that followed, economics was not yet a distinct area of study from moral theology. "Theologians," in Wim Decock's words, "were frequently consulted by merchants and bankers." Wim Decock, *Theologians and Contract Law: The Moral Transformation of the* Ius Commune (*ca. 1500-1650*) (Leiden & Boston: Martinus Nijhoff Publishers, 2013), 50. Aquinas' work, it seems, was simply more suitable to the concerns and objectives of those merchants and bankers than the work of other theologians: "The victory of Thomas' *Summa* at the expense of Lombard's *Sentences* has been ascribed, amongst other reasons, to the more expressly juridical and technical character of the *Summa Theologiae*. This characteristic made it more fit for the solution of new and complex problems related to the discovery of the Americas and the expansion of commercial capitalism." Ibid.

[61] Murphy and Nagel, *Myth of Ownership*, 163-64.

[62] Witte, *Politics and Development*, 33.

[63] Ibid..

Three models of sacrifice developed: *equal sacrifice* (i.e., each taxpayer's loss of utility should be equal or constant), *proportional sacrifice* (the loss of utility should result in an after-tax ratio of utility between taxpayers that was equivalent to the before-tax ratio), and *minimal sacrifice* (the aggregate utility loss for all taxpayers should be minimized).[64] Minimal-sacrifice theory proved to be the most enduring model. As long as we assume "some form of continuous declining marginal utility of income," a "prescription for a progressive tax system is forthcoming."[65] Taxes should be extracted from individuals with the highest incomes, with that group continuously expanding as the top incomes become equal.[66]

Minimum sacrifice suffered from a fatal weakness: it failed to encompass all relevant values, including economic effects. As T. N. Carver recognized, taxation carries with it two "evils": (i) the sacrifice of the taxpayer and (ii) the repressive effect that a tax may have on industry and enterprise.[67] According to Carver, minimal-sacrifice theory minimizes the first evil, while equal sacrifice minimizes the second. Consequently, competing goals "must be folded into one calculus."[68] Classical utilitarian tax doctrine left off with Carver's attempt to fold the two negatives into one calculus. Optimal tax theory picks up there.

Optimal Tax Theory. The objective of optimal tax theory is to resolve the conflict between equity and efficiency.[69] "Equity" in this context refers to the fair distribution of the tax burden, "efficiency" to "the social costs of raising revenue."[70] Optimal tax theory is fundamentally utilitarian in that its stated purpose is to determine "how progressive an income tax should be if the system's goal is maximization of social welfare."[71] The optimal tax model is more descriptive than normative, as it "is amenable to different definitions of

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[64] Ibid.
[65] Ibid., 34.
[66] Ibid., 34-35.
[67] Ibid., 36.
[68] Ibid.
[69] Linda Sugin, "A Philosophical Objection to the Optimal Tax Model," 64 *Tax Law Review* 229 (2010-2011): 229.
[70] Ibid.
[71] Ibid., 230.

distributional fairness."[72] Nevertheless, it purports to be normative because it offers "a way to derive a particular rate schedule from equity and efficiency concerns."[73]

The model's claim to normative status depends on its most basic assumption: that "endowment," or "ability to earn," is ideally what we want to tax.[74] In fact, the true baseline in utilitarian economic theory is the lump-sum tax, because it "allows the market to operate freely."[75] A lump-sum tax, however, is "intuitively unfair."[76] The optimal tax model settles on an endowment tax as the next-best tax baseline. An endowment tax is considered analogous to a lump-sum tax in that it cannot be avoided by changing behavior. Thus, it has no distortion effect. At the same time, however, it is perceived as equitable because it is sensitive to individuals' ability to pay.[77]

Classical utilitarian tax philosophy had produced a clear formula: utility for each group of persons in society can be conceived of as earnings minus tax paid: $U_n = Z(n) - T(n)$, where U is utility, n is a group of persons in society, Z is income, and T is taxes paid. [78] Classical utilitarianism, however, did not produce a definite rate structure. Happiness was utility's proxy, but could not be measured. The classical model simply substituted social welfare (W) for utility (U), and could progress no further.

J. A. Mirlees' was the first optimal tax model. To concretize function n, Mirlees linked each individual in society to that individual's ability to earn and then substituted actual earned income for ability to earn. In other words, he made two assumptions: (1) earning potential (endowment) is what tax systems seek to tax; and (2) a person generally earns as much as he or she is potentially able to earn.[79] Function $T(n)$ was now the tax paid by a group

[72] Ibid., 229.
[73] Ibid., 230.
[74] Ibid.
[75] Ibid., 231.
[76] Ibid., 232.
[77] Ibid.
[78] Witte, *Politics and Development*, 37.
[79] Sugin, "Philosophical Objection," 230.

of ability type *n*. The utility for any group in society was that group's ability type multiplied by the frequency of that type in society: *f(n)*. Total utility was the sum of *f(n)* for all groups in society. If the levels of ability in society are represented by *N*, then for *N* levels of ability in society,[80]

$$W = \sum_{n=1}^{N} [Z(n) - T(n)]\, f(n).$$

However, the failure of utilitarian theories to take into consideration all relevant values persists in the optimal tax model. At the heart of deontological, or "liberal egalitarian," criticisms of the optimal tax model is the conviction that "a fair tax cannot be based on any single isolated variable."[81]

In Linda Sugin's view, the endowment tax baseline overrides a central component of individual autonomy, namely, the choice of occupation. In an optimal tax world, people have to work as much as they are able. This fact alone, Sugin argues, disqualifies the optimal tax model from advancing justice in taxation. The optimal tax model is fundamentally at odds with "liberal egalitarian concerns," she writes, because nonmarket activities "are often more integral to an individual's sense of self."[82]

Liberal egalitarian concerns about optimal tax theory tend to come from tax philosophers who consider themselves neo-Kantian. Kant himself justified taxation in three ways.[83] First, all rights "to external things as one's own . . . must be derived from the sovereign as *lord of the land*, or better, as the supreme proprietor of it. . . ."[84] In the context of land tax, the sovereign's "rightfully prior ownership of all land is what creates the condition

[80] Witte, *Politics and Development*, 37.

[81] Sugin, "Philosophical Objection," 255.

[82] Ibid., 250.

[83] In this and the following two paragraphs, I am condensing the summary of Kant's views on taxation found in Gary Banham, "Kant and the Ethics of Taxation," in *Kant Studies Online*, 341 [cited 8 Aug. 2016]. Online: http://ssrn.com/abstract=2035147.

[84] Immanuel Kant, *The Metaphysics of Morals* (trans. and ed. Mary Gregor; Cambridge: Cambridge University Press, 1996), 6:323. As Gary Banham summarizes Kant's first justification, "public ownership is the basis of private ownership." Banham, "Kant and the Ethics of Taxation, 341.

under which subsequent private ownership of land can be given."[85] It follows that the state can dissolve any given recognized instance of private ownership. Private ownership is "thus open to public taxation."[86]

Kant justified taxation, secondly, on the basis of the state's police power, which he associated with the state's "right to administer the state's economy, finances, and police."[87] The economy needs revenue to exist. For Kant, according to Banham, "taxation of the economy" is simply "part of its possibility of existence." As in the case of taxation of land, "the need of the state for such finances is essential to its perpetuation."[88]

Thirdly, the state has an "indirect" right to impose taxes for the support of the poor in order to ensure the people's own preservation.[89] Kant concluded that the state's end of maintaining those "unable to maintain themselves" can best be reached by extraction from the wealthy, because the wealthy owe their existence to the commonwealth:

> For reasons of state the government is therefore authorized to constrain the wealthy to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs. The wealthy have acquired an obligation to the commonwealth, since they owe their existence to an act of submitting to its protection and care, which they need in order to live; on this obligation the state now bases its right to contribute what is theirs to maintaining their fellow citizens.[90]

The obligation of the wealthy to pay taxes is not a moral, or even a legal, obligation towards the poor. It is, rather, an obligation towards the *commonwealth*, to whom the wealthy owe their existence.

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[85] Banham, "Kant and the Ethics of Taxation," 341.
[86] Ibid., 342.
[87] Kant, *Metaphysics*, 6:325.
[88] Banham, "Kant and the Ethics of Taxation," 344.
[89] Ibid., 347-48.
[90] Kant, *Metaphysics*, 6:326.

It appears that in a Kantian framework, the tax baseline would have to be a "benefit tax," that is, a tax imposed on the wealthy (without obvious limit) in accordance with the (immeasurable) benefit they have received from the state, which, to perpetuate its own existence must redistribute the revenue it receives from the wealthy to maintain the poor. Assume the following:

- *M* is the amount needed for each member of society to have the "most necessary natural wants";
- *G* is the amount needed for the state's general right of administration;
- *P* is wealth accumulated;
- *n* is an individual within the society who has accumulated more wealth than needed for most necessary natural wants;
- *Q* is the aggregate amount needed to bring all members of society lacking most necessary natural wants up to *M*;
- *T* is taxes.

Assume also that society consists of five individuals. Individual v has accumulated 40,000 of wealth, individual w has accumulated 30,000, individual x 20,000, individual y 10,000, and individual z 1,000. Assume, as well, that the minimum subsistence level is 10,000 (with the result that z needs 9,000 (*Q*) to reach the minimum subsistence level), and that the state needs 20,000 (*G*) for its general right of administration.

The total amount of revenue that needs to be raised (*Q* + *G*), therefore, is 29,000. Total wealth in excess of subsistence is 30,000 + 20,000 + 10,000, or 60,000. If the tax needed were prorated according to how much each "wealthy" individual has in excess of subsistence, then v would pay would 50% of the tax (14,500), w would pay one-third (9,667), and x would pay 4,833. This progressive tax model can be expressed as:

$$T(n) = [G + Q] \times [(P(n) - M) / \sum^{N}(P(n) - M)].$$

Alternatively, the *total* wealth of the three "wealthy" individuals could be prorated. The result would be a proportional tax above the subsistence level, expressed as:

$$T(n) = [G + Q] \times [P(n) / \sum_{N}(P(n)]$$

The Kantian tax model, however, ultimately collapses into the utilitarian one. The Kantian baseline is a target, an ideal condition toward which society moves. As institutions other than the tax structure become rigid and inflexible, they falter in their efforts to adjust the distribution of resources.[91] Taxation becomes one of the few institutions nimble enough to make the necessary adjustments. Taxation inevitably falls into its role as the primary instrument of social justice. In the end, optimal taxation for liberal egalitarians becomes a balance of efficiency and equity, just as it is for the latter-day utilitarians. We have reached the first facet of the contemporary tax predicament.

Nevertheless, Kantian theory may be more honest than utilitarianism in acknowledging that equity is often efficiency in disguise.[92] The state needs revenue, which means that it depends on efficiency for wealth-generation. Even the British political philosopher Dudley Knowles writes, if somewhat ruefully:

> When sociologists (or, more likely social workers) point out the level of unmet needs in a variety of different policy contexts, e.g., health, education, housing, provision for the elderly, and urge a greater measure of redistribution of resources, politicians, increasingly of *all* mainstream parties, respond that meeting these needs first requires further economic growth, that the strategic political priority must be the effectively painless process of raising more resources, achieving a greater social fund of income and profit which can be taxed without creating disincentive effects.[93]

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[91] See Linda Sugin's critique of John Rawls on taxation in Sugin, "What Rawls Demands from Tax Systems," 2010-11.

[92] See Murphy and Nagel, *Myth of Ownership*, 85. Murphy and Nagel cite the example of dirty and clean streets. They ask us to suppose that the rich, as may well be the case, are happy to pay a lot of money (in taxes) for clean streets but that the poor are willing to pay very little for clean streets. The rich would rather have clean streets than more disposable income, because they already have disposable income. The poor, who have very little if any disposable income, would prefer to have disposable income than clean streets. Apart from any intent to redistribute resources from the rich to the poor through progressive taxation, the poor are likely to end up with clean streets paid for by the rich. The only alternatives are that the poor pay more for clean streets than clean streets are worth to them or that the rich get dirty streets and more disposable income, even though clean streets are worth more to them than disposable income. Progressive taxation, coupled with use of the revenue to clean the streets, is the only efficient alternative.

[93] Dudley Knowles, *Political Philosophy* (London: Routledge, 2001), 211-12.

That is, the state's interests have become aligned with the efficiency factor in tax equations. Equity was already aligned with the state's interests. We have seen this in Kant and his followers, for whom redistributive goals arise in the service of perpetuating the commonwealth. Murphy and Nagel acknowledge that justice itself demands the "function of a market economy . . . as a means to the encouragement of production and the generation of wealth."[94]

In a sense there is a double collapse: of Kantianism into utilitarianism and of equity into efficiency. Both "collapses" reflect the absence of an adequate counterbalance to the dominant pole within the baseline. Once the state becomes the creator and guarantor of equity, its revenue needs become paramount. Likewise, once efficiency becomes the prerequisite of equity, equity is eclipsed.

Thomistic thought, in contrast to utilitarian and Kantian philosophy, produces a tax baseline that balances two perspectives on the same moral category: property. These two perspectives, from positive law and from moral law, yield private property rights and community of property, respectively. The ideal tax structure, from a Thomistic standpoint, brings the two *debita* of private and communal property into harmony through the concepts of *necessitas* and *superflua*.

Assume, in a manner similar to the Kantian example, that:

- *M* is the amount of each member of society's *necessitas*;
- *G* is the amount that the ruler needs to ensure the society's peace and virtue;
- *P* is wealth accumulated;
- *n* is an individual within the society who has accumulated *superflua*;

[94] Murphy and Nagel, *Myth of Ownership*, 69.

- Q is the aggregate amount needed to bring all members of society lacking *necessitas* up to M;
- T is taxes.

Also assume, again, that society consists of five individuals. Individual v has accumulated 40,000 of wealth, w 30,000, x 20,000, y 10,000, and z 1,000. The level of *necessitas* for each of these individuals is 10,000 (with the result that z needs 9,000 (Q) to reach z's level of *necessitas*). The ruler needs 20,000 (G) to ensure peace and virtue.

Again, the total amount of revenue that needs to be raised ($Q + G$) is 29,000. Expressed as a welfare (W) function, $W = G + Q$. Because the ruler collects and uses tax for the common welfare, the calculation of aggregate tax imposed follows the welfare function: $T = G + Q$. The analysis from that point is similar to the analysis in the Kantian context. If the tax is prorated according to the members' *superflua* or according to their total wealth, a progressive or proportional rate structure, respectively, would result.

However, welfare (W) is only one consideration. The line between *necessitas* and *superflua* forms another baseline. For Thomas, taxation is also the public taking of any individual's *superflua*. It is true that $T = G + Q$, but it is also true that $T(n) = P(n) - M(n)$. A more comprehensive formula would reflect the double *debita*:

$$T = \min\{\sum^{N}[P(n) - M(n)], [G + Q]\}.$$

The formula must be a "lesser of" equation. If it were "greater of," G + Q would potentially dip into the *necessitas* of individual members of society, thus undermining positive law.

The interplay of positive and natural law gives the Thomist more stable poles with which to construct moral and tax baselines than those at the disposal of the Kantian or utilitarian.

From the standpoint of modern economics, however, the Thomistic model contains a mathematical difficulty, which I will call the problem of superabundant *superflua*. The resolution of this problem, to the extent the resolution can be discerned in Thomas' writings, is more theological than economic and is the subject of the last section of this paper.

Justice and Liberality

Because the Thomistic tax formula must be a "lesser of" equation, a glaring problem presents itself immediately. What if aggregate *superflua* is greater than the *necessitas* of the ruler? In the example above, for instance, aggregate *superflua* is greater: $T = \min[(90{,}000 - 30{,}000), (20{,}000 + 9{,}000)]$. Tax is the lesser of 60,000 or 29,000. Tax, therefore, is 29,000, leaving 31,000 unaccounted for.

Thomas' answer to the problem of superabundant *superflua* would be that the problem does not exist. In his discussion of covetousness in the *Summa*, Thomas writes that covetousness is a sin "directly against one's neighbor, since one man cannot over-abound in external riches, *without another man lacking them*, for temporal goods cannot be possessed by many at the same time."[95] In opposing the vice of covetousness to the virtue of liberality, Thomas writes further that a person commits the sin of covetousness by obtaining "money beyond his due, by stealing or retaining another's property."[96] No gap appears between possessing one's due and retaining another's property. It seems that, for Thomas, economics was a zero-sum game. Anyone's *superflua* necessarily subtracted from someone else's *necessitas*.

On a more foundational level, the problem of superabundant *superflua* does not exist in the *Summa* because *superflua* is not where Thomas' attention is focused. For Thomas, the true benefit of parting with property or money is this: "when a man quits hold of a thing he

[95] Aquinas, *Sum* IIa-IIae, Q. 118, Art. 1, ad. 2 (emphasis added).
[96] Ibid., Art. 3, resp.

frees it, so to speak, from his keeping and ownership, and shows his mind to be free of attachment thereto."[97] Thomas makes this statement, to be sure, in the context of liberality rather than justice. Liberality has to do with "the regulation of internal passions," whereas justice "establishes equality in external things."[98] Moreover, liberality "is not a species of justice, since justice pays another what is his whereas liberality gives another what is one's own."[99] Nevertheless, liberality, like, justice depends on a *debitum*: "Although liberality does not consider the legal due [*debitum legale*] that justice considers, it considers a certain moral due [*debitum quoddam morale*]."[100]

Why, then, does taxation, a kind of licit robbery by public authority, even enter Thomas' moral vision of the community of goods that circumscribes individual appropriation? Why should the adjudication of the two *debita* not simply be left to the moral dictates of individual liberality?

The dichotomy is a false one. Thomas writes that "there is a certain extraneous good which awaits man after he has lived this mortal life: namely, the final blessedness to which he looks forward in the enjoyment of God after death."[101] On the plane of political theology as well, the final good also begins outside of the individual but turns out to be the individual's own good:

> If the end of man were some good existing only in himself, therefore, the final end of government would similarly be to acquire and preserve that good for the whole community. Thus if that ultimate end, whether of one man or of a community, were the life and health of the body, the physicians would have the duty of governing. And if the final end were abundant wealth, the steward would be king of the community. And if the good were that the community might achieve knowledge of the truth, the king would have the duty of a teacher. But it seems that the end for which a community is brought together is to live according to virtue; for men come together so that they may live well in a way that would not be possible for each of them living singly. For the

[97] Aquinas, *Sum* IIa-IIae, Q. 117, Art. 2, resp.
[98] Ibid., Art. 2, ad. 3.
[99] Ibid., Art. 5, resp.
[100] Ibid., Art. 5, ad. 1.
[101] Aquinas, "De regimine," bk. 1, ch. 15.

> good is life according to virtue, and so the end of human association is a virtuous life.[102]

Only in light of this extraneous interiority, or personalized externality, does it make sense to say with Thomas that "the proper effect of law is to lead its subjects to their proper virtue: and since virtue is 'that which makes its subject good,' it follows that the proper effect of law is to make those to whom it is given, good, either simply or in some particular respect."[103]

A helpful clarification of the meaning of the virtue of justice in the *Summa* surfaces in Thomas' discussion of the vice of injustice.[104] Injustice can be one of two things, Thomas writes in Question 59 of Secunda Secundae. "Illegal injustice," which is opposed to legal justice, is contempt for the common good. Justice, however, can also be "imbalance in relationship to others."[105] What is this imbalance? It is the result of wanting too many goods. The injustice that is opposed to special, or particular, justice is the imbalance that arises "when one man wishes to have more goods, riches for example, or honors, and less evils, such as toil and losses."[106] To put the matter in terms of Question 66, special injustice arises when one party seeks to hold onto *superflua* rather than resting content with *necessitas*.

In our world, the criteria of tax justice are object-focused. The measure of success, if there is one, is the benefits received by those on whose behalf tax is collected. For Thomas, I would suggest, the final measure of taxation is the *necessitas* of the one *from* whom tax is collected. There is, of course, a component of legal justice in the *Summa*: the poor ought to be provided for. Nevertheless, the injustice of holding onto *superflua* is not just that it is a kind of robbery; it is also the injustice of having more than one needs, of holding more property or money that is due. As Thomas puts it, "Now the use of money consists in parting with it."[107]

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[102] Ibid.

[103] Aquinas, *Sum* Ia-IIæ, Q. 92, Art. 1, resp.

[104] As Martin Rhonheimer observes, for "each objective realm of justice," there is in Thomas' structure "an opposite respective injustice." Rhonheimer, "Sins Against Justice," 288.

[105] Aquinas, Sum IIa-IIae, Q. 59, Art. 1, resp. The translation here is from Rhonheimer, "Sins Against Justice," 287.

[106] Aquinas, *Sum* IIa-IIae, Q. 59, Art. 1, resp.

[107] Aquinas, *Sum* IIa-IIae, Q. 177, Art. 4, resp.

As the mechanism of honoring *necessitas*, taxation can train us to think of what we owe to others on the basis that it belongs to them. It can bring us to the place where justice becomes an interior, Christian virtue.

Conclusion

To conclude and summarize, I have suggested that Aquinas provides categories that permit us to reimagine taxation. In this vision, first, the equality that taxation seeks is not equalization after economic damage is done, but the rendering to others of what they own yet somehow lack. Secondly, that rendering to others is the payment of a moral indebtedness. Thirdly, taxation balances two real goods, one found in the law of nature, the other a practical application of it, and both serving the common good. Fourthly, the moral indebtedness has both a measure and a solid baseline. Finally, liberality and taxation are not in conflict; a just law—even a just tax law—leads to virtue rather than overriding the will of the individual.