

N.P. Swartz

THOMAS AQUINAS: ON LAW, TYRANNY AND RESISTANCE

ABSTRACT

Thomas Aquinas's notion on law, tyranny and resistance served as a limitation on governmental powers. When those who bear the law command things which exceed the competence of such authority, the subject is free to obey or disobey. The function of the law culminates in two maxims: *quantum ad vim coactivam legis* and *quantum ad vim directivam*. With regard to the former, the prince is above the law (*legibus solutus*). It implies the principle of *Salus reipublicae suprema lex*, which means that the safety of the state is the supreme law. According to this principle property, liberty and life (basic individual rights) are subordinate to or even sacrificed for the supposed public good. With regard to the latter, the prince's power should be subject to the law. The *vis directiva* limits the authority of the prince. This principle is in accordance with the *rule of law*. This notion is concomitant with the constitutional principles entrenched in the *Constitution of South Africa, Act 108 of 1996*. The idea of the Constitution is also bolstered by the entrenchment of the *rule of law*. The purpose of the *rule of law* is to protect basic individual rights. Hereafter the rule of law requires the prince or state to act in accordance with the law. It also means that the prince or branches of state must obey the law. If the prince or state acts without legal authority, it is acting lawlessly, which is against the notion of a constitutional democracy.

1. INTRODUCTION

Thomas Aquinas makes it possible to retrace the foundations of the state in nature rather than in sin. On the one hand he was influenced by Augustine and on the other hand by Aristotle. He perceived the latter's philosophy on politics and the state to be predominant. The former retrace the foundations of the state in sin. To Aquinas, Aristotle had provided a rational explanation of the state. He had

Dr. N.P. Swartz, Director: Unit for Legal Historical Research. Department of Roman Law, Legal History and Comparative Law, Faculty of Law, University of the Free State, P.O. Box 339, Bloemfontein 9300, South Africa. E-mail: swartznp@ufs.ac.za.



attributed a positive value to social and political institutions, as being grounded on the very nature of man. It is significant that Thomas Aquinas did not contradict, in all respects directly and categorically, the explanation of this institution as the result of and divine remedy for sin. For Thomas Aquinas, the idea of sin and its consequences remained a fundamental dogma of the Christian faith. However, sin itself has not invalidated *ipsa principia naturae*. Instead of considering the state as an institution which may well be necessary and divinely appointed, Thomas Aquinas followed Aristotle in deriving the idea of the state from the very nature of man. This means that the justification of the state must be sought in the very nature of man and this is precisely the leading idea Thomas Aquinas derives from Aristotle. The state is not a work of art, but a historical product. It is the highest expression of human fellowship. All that pertains to that fellowship is natural to man. Man is unthinkable without the state, because it is only in the state and through the state that he can achieve perfection. Thomas Aquinas follows Aristotle, when he asserts the state as the highest achievement of man. The ultimate end of man, the *perfecta beatitudo*, is the common good which is higher in value than that of the individual and that of the family (*Summa Theologiae* 1-2, q. 90, a. 3, ad 3um).

Man as a political being must attain his proper end and the highest form of life and of virtue. The political nature of man has a bearing upon the treatment of political obligation. The state would not be possible without authority, and without those who are more wise and righteous having command over the rest. The idea of sin is confined to narrow limits, merely to explain certain inevitable hardships of social and political experience, such as the penal character of laws or the existence of unjust rulers. Politics imply moral responsibility. The door is, therefore, shut to the modern glorification of political leadership, though not to a proper appreciation of leadership as such. Prudence is a virtue — the virtue of good council and right decision — and nowhere does that virtue shine more brightly than in the leadership of men (*Summa Theologica* 2-2, q. 47, a. 50). The divine origin of political government anticipated some of the most widely held interpretations of obedience to government or political office bearers. Honour must be attached to the office of a ruler and not to the person filling the office. Office of the ruler is ordained of God for men's benefit.

This paper discusses this leadership of men as it culminates in the ruler (prince/magistrate). The aim of this paper is also to expound what will happen if legal authority becomes corrupt and disintegrate into tyranny. The limitation of powers can only be achieved under a democratic constitution. Under a democratic constitution the ruler (prince) can effectively promote the welfare of the community. His exercise of power is curbed by constitutional principles. When the ruler (prince) becomes a tyrant, he is not able to promote the welfare of the community. As a tyrant he will fail to discharge the duties of his office. The tyrant's failure will therefore result in the notion that the subjects are no longer bound to him by their oath. Thomas Aquinas warns that wayward

rulers or tyrants must also be obeyed and says that the sanction for the tyrant is eternal damnation, instead of enjoying a happy afterlife. The tyrant is deprived of that supreme blessedness, which is the reward of a good ruler (prince) (*De Regimine Principum, liber primus, caput xi*).¹

2. THOMAS AQUINAS ON LAW

Law is pivotal to Thomas Aquinas's treatment of politics. It expresses the dignity and power of man, whom is the only created being called upon to participate intellectually and actively in the rational order of the universe. Law serves as the basis upon which social and political relations can be secured and comprehended.

Thomas Aquinas admits that communities depend on some superior authority guided by law (D'Entrèves 1965:xxvi). He admits that the proper foundation of law is the consent of the community. Thomas Aquinas is deeply immersed in the medieval tradition of the sanctity of law and assumes that law is inherent and not dependent upon any human origin. According to Thomas Aquinas, law is much broader than a means of regulating human relationships. Human law is for him part and parcel of the whole system of divine government. Law in the narrower human sense is merely one aspect of a cosmic fact. An unlawful ruler is not primarily a violator of human rights and institutions, but a rebel against the whole divine system by which God rules the world (Sabine 1963:251).

The acknowledgement of the law is qualified by the fundamental Christian idea that all power is from God, and namely that law therefore always has a sacred character. Thomas Aquinas bases this notion fitly on Biblical texts, "... *quæ autem sunt, a Deo ordinatæ sunt*,"² and: "*omnis enim potestas a Domino Deo est*."³

He says that law may fail to derive from God for two reasons: either because of the way in which authority has been obtained, or in consequence of the use which is made of it. There are two ways in which the first case may occur: either due to a defect in the person, if he is unworthy; or because of some defect in the way through which power is acquired, e.g. through violence or simony or some other illegal method. The first defect does not impede the acquisition of law; and since law always derives from God, subjects are always obliged to obey such superiors, however unworthy they may be. The second defect prevents the establishment of law for whoever possesses himself of power by violence.

1 "Privatur insuper tyrannus excellentissima beatitudine, quæ regibus debetur pro præmio [...]"

2 *Biblia Sacra*. Vulgate Editionis. *Epistoli Beati Pauli ad Romanos*, Caput XIII, 1. "... all things that are, are set in order by God".

3 *Biblia Sacra*. Vulgate Editionis. *Epistoli Beati Pauli Apostoli ad Romanis*, Caput XIII, 1. "For all power is from the Lord God".

Thomas Aquinas maintains a twofold contention. On the one hand, he is of the opinion that law is always from God and therefore even an unworthy office bearer must be obeyed and on the other hand, he believes that there can be no duty of obedience towards a person (tyrant) whom it is permissible or even praiseworthy to kill. Thomas Aquinas says: "to [a tyrant] no obedience is owed".⁴ Thomas Aquinas. *Commentum in Quatuor Libros Sententiarum*. Liber Secundus. Dist. XLIV, Q. II, A. 2. (Translated by J.G. Dawson).

The abuse of the law may also come about in two ways: First, when that which is ordered by law is opposed to the object for which that law was constituted. In such a case, not only is there no obligation to obey the law, but one is obliged to disobey it, as did the holy martyrs who suffered death rather than obey the impious commands of tyrants. Secondly, when those who bear law (authority) command things which exceed the competence of such authority; as, for example, when a master demands payment from a servant, which the latter is not bound to make. In this instance the subject is free to obey or disobey. Thomas Aquinas. *Commentum in Quatuor Libros Sententiarum*. Liber Secundus. Dist. XLIV, Q. II, A. 2. (Translated by J.G. Dawson).

The function of the law culminates in two maxims: namely, *quantum ad vim coactivam legis* and *quantum ad vim directivam* (*Summa Theologica* 1-2, q. 96, a. 5 ad 3um). With regard to the former principle, the prince or ruler is above the law in respect of the constraining power (*legibus solutus*) (Van Warmelo 1965:97; Wylie 1948:107; D'Entrèves 1965:xxviii). He says the ruler is exempt from its coercive power since this power of law comes from the authority of the ruler. Rulers are exempt only in the sense that no one is competent to judge them (*Summa Theologica* 1-2, q. 96, a. 5 ad 3um). So it is said that the prince is above the law, because if he should act against the law nobody can bring a condemnatory judgment against him (*Summa Theologica* 1-2, q. 96, a. 5 ad 3um). The *vim coactivum* of the prince is concomitant to the precept *Salus reipublicae suprema lex*. The maxim *Salus reipublicae suprema lex* is often connected with the concept of "state security" (Emerson 1982:78-112). According to the precept *Salus reipublicae suprema lex*, the safety of the state is regarded as the supreme law (*S v Essop and Others* 1973 2 SA 815 (T)). This phrase is also based on the implied assent of every member of society. His/her own individual welfare shall, in cases of necessity, yield to that of the community; and his own property, liberty, and life shall, under certain circumstances, be placed in jeopardy or even sacrificed for

4 We must distinguish between good government and tyranny. A person who asserts violence in a transient manner, i.e. *coup d'état* cannot be regarded as a tyrant if he governed justly. It is a different story when he exercises a *coup* and severely suppresses people thereafter. A tyrant robs, murders and enslaves his subjects. He despoils everyone, tramples on the liberties of all, and takes life at a mere whim. This is done perpetually under his rule. This is what Thomas Aquinas meant by tyranny (*De Regimine Principum, liber primus, caput xi*).

the [prince's] [and the] public's good (Venter 1977:235). The principle of *Salus reipublicae suprema lex* is also related to the proverbs *necessitas publica major est quam private* (public necessity is greater than private) and *in casu extreme necessitates omnia sunt communia* (in cases of extreme necessity, everything is in common) (Venter 1977:235). There are many cases in which individuals sustain an injury for which the law gives no action, e.g. where private houses are demolished, or bulwarks are raised on private property for the preservation and defense of the kingdom against the king's enemies or to stop the progress of a fire. This notion reverberates in South African case law: *S v Baker, S v Doyle* (1965 1 SA 821 (W), par. 827E-F). "The state has an inherent right and duty to defend itself." This notion is also echoed in Psalm L (verse 6): "*rex non habet hominem qui sua facta diiudice*" (*Summa Theologica* 1-2, q. 96, a. 5 ad 3um). (It is from the authority of the prince or ruler that the law derives its *vis coactiva* and due to this coercive power the prince is *legibus solutus* (*Summa Theologica* 1-2, q. 96, a. 5 ad 3um; D'Entréves 1965:xxviii). Thomas Aquinas alleges that a government by one is to be preferred to a government by many. According to Thomas Aquinas, the greatest dangers to a community more often arise under a pluralistic government than under a government by one person. For a man may more often be deflected from the common interest if he is one of many rather than if he is alone in government. Whenever one out of a number who form the government fails in his duty to the common welfare, he puts the whole community in danger of strife, for disagreement among rulers is followed by general dissension. If, however, there is only one person at the head of the government, he will more often attend to the common interest; and even if he fails in such high intention, it does not necessarily imply that he will oppress the whole community and become an absolute tyrant, which is the worst form of government. The dangers arising from a government by many should rather be avoided than those dangers arising from a monarchy. (Thomas Aquinas lived in 1225-1274 during the Middle Ages, which was dominated by monarchy rule and he must therefore be evaluated according to that era.) (*De Regimine Principum, liber primus, caput v*).

The doctrine of natural law is pivotal to Thomas Aquinas's treatment of the state and politics. Natural law is the duty of the state, the ground upon which social and political relations can be secured and comprehended. It is, therefore, the duty of the state to protect and improve the rights of its members. It acts against its natural function, the function for which it exists, if it harms rather than helps a single one of its members for the sake of benefiting all the others (Rosmini 1996:34). With regard to the latter principle, *quantum ad vim directivam*, the prince or ruler is, according to his directive power, subject to the law. The *vim directivam* can be related to the doctrine, the *rule of law* (South African Law Commission 1989:17). The principle, *rule of law*, is devised by Dicey in his book *Introduction to the study of the law of the Constitution*. According to Dicey the rule of law requires state institutions to act in accordance with the law. This means the various organs of state must obey

the law. The state cannot exercise power over anyone, unless the law permits it to do so. This means that there must be a law authorising everything the state does. If it acts without legal authority, it acts lawlessly.

The purpose of the *rule of law* is to protect basic individual rights by requiring the (prince) ruler to act in accordance with the law. The prince is therefore subject to the laws of the state. Thomas Aquinas expounds as follows: “Whoever enacts a law for another should apply the same law to himself. And we have it on the authority of the wise man that you should subject yourself to the same law which you promulgate.” (“*Quod quisque iuris in alterum statuit, ipse eodem iure uti debet. Et Sapientis dicit auctoritas: Patere legem quam ipse tuieris.*”) (*Summa Theologiae* 1-2, q. 96, a. 5 ad 3um. *Extra, de Constitutionibus, cap. Cum Omnes*).

Thomas Aquinas also cited the letters of the Prefect LHVolsianus to the Emperors, Theodosius and Valentinian, as stated in the Codex: “It is a saying worthy of the majesty of a ruler, if the prince professes himself bound by the laws: for even our authority depends upon that of the law. And, in fact, the most important thing in government is that power should be subject to laws.” (*Summa Theologicae* 1-2, q. 96, a. 5 ad 3um.)

The *vis directiva* is nothing else than the expression of the natural order of justice, which limits the authority of the prince or ruler. Herewith the prince or state must obey the law. It implies that the state cannot exercise power over anyone unless the law permits it to do so. There must be a law authorising everything the state does. Herewith, a state is not capable of creating human rights by law or by convention; they can only confirm their existence and give them protection. The role of the state is no more than declaratory. Human rights have always existed with the human being. They existed independently of, and before, the state. Alien and even stateless persons must not be deprived of them. The *rule of law* confirmed the *vis directiva* of the prince (state) in the sense that the existence of human rights does not depend on the will of a state.

3. TYRANNY: THE DISINTEGRATION OF A RULER INTO A TYRANT

3.1 The ruler (prince)

The fellowship of society, being natural and necessary to man, follows with equal necessity that there must be some principle of government within the society (*De Regimine Principum, caput 1.*)⁵

5 “*Si ergo naturale est homini quod in societate multorum vivat, necesse est in hominibus esse per quod multitudo regatur.*”

For if a great number of people were to live, each intent only upon his own interests, such a community would surely disintegrate unless one of them cared for the common good: just as the body of a man or of any other animal would disintegrate were there not in the body itself a single controlling force, sustaining the general vitality of all its members. (*De Regimine Principu*, caput 1).⁶

As Solomon tells us in the Holy Bible: “*Ubi non est gubernator, populus corrueat ...*” *Biblia Sacra. Liber Proverborum*, Caput XI, 14.⁷

In the material universe there is a certain order of divine providence under which all bodies are controlled by the first or heavenly body. Similarly all material bodies are controlled by rational creatures. In all multiplicity there must be some controlling principle (*De Regimine Principum*, caput 2). In the context of political government that controlling principle will be the ruler or magistrate.

Office is a trust for the whole community and is imputed to a ruler who must contribute to the common good. His power, because it is derived from God for the happy ordering of human life, is a ministry or service owed to the community of which he is the head. The purpose of government is therefore moral because of its originator, God. It is the duty of the ruler to direct the action of every class in the state that men may live a happy and virtuous life, which is the true end of man in society (*telos*). The ruler must lay the foundations of human happiness by maintaining peace and order, to preserve it by seeing that all the needful services of public administration, of judicature, and of defense are performed, and to improve it by correcting abuses wherever they occur and by removing all possible hindrances to the good life. Due to man's sinful nature, the moral purpose for which political rule exists implies that authority ought to be limited. It should also only be exercised in accordance with law (Sabine 1963:249-250).

The ruler or magistrate must occupy himself particularly with directing the community subject to him to the good life. In this connection he has three tasks: firstly, he must establish the welfare of the community he rules; secondly, he must ensure that nothing undermines the well-being established; and thirdly, he must be at pains continually to extend the welfare (*De Regimine Principum*, caput XV)⁸.

6 “*Multis enim existentibus hominibus et unoquoque id, quod est sibi congruum, providente, multitudo in diversa dispergeretur, nisi etiam esset aliquis de eo, quod ad bonum multitudinis pertinet, curam habens; sicut et corpus hominis et cuiuslibet animalis deflueret, nisi esset aliqua vis regitiva communis in corpore, quae ad bonum commune omnium membrorum intenderet.*”

7 “Where there is no ruler the people shall be scattered.”

8 “...*quod quidem studium in tria dividitur, ut primo quidem in subiecta multitudo bonam vitam instituat; secundo, ut institutam conservet; tertio, ut conservatam ad meliora promoveat.*” (Translation by J.G. Dawson in text).

Bullinger, in the *Second Helvetic Confession* (1566), does not differ much from Thomas Aquinas's views. He says: "The chief duty of the magistrate was to procure and maintain peace and public tranquility ..." (Raath & de Freitas 2003:7).

Thomas Aquinas's acceptance of law and the influence it exerted in the fields of theology and politics also introduce the concept of the biblical idea of office (magistracy) into Catholic politics, together with the theory of the limited powers of office. The limited powers of office and the approach to tyranny can be taken to represent the basic features of Catholic political theory (*Summa Theologiae* 2-2, q. 105, a. 1 ad 2um; D'Entrèves 1965: xxix).

3.2 The tyrant

Political rule is sometimes just and sometimes unjust. On the one hand, if a community is administered by the ruler for the common good, such government will be just and fitting to free men. If, on the other hand, the community is directed in the particular interest of the ruler and not for the common good, it is a perversion of government and is no longer just (*De Regimine Principum*, caput i).

When government is unjustly exercised by one man who seeks personal profit from his position instead of the good of the community subject to him, such a ruler is called a tyrant (*De Regimine Principum*, caput i). The tyrant forcibly oppresses the people instead of ruling justly.

Thomas Aquinas suggests three means of avoiding the evil of tyranny:

In the first place it is necessary that whoever of the possible candidates is proclaimed king shall be of such character that it is unlikely that he will become a tyrant. Secondly, a monarchy should be so constituted that there is no opportunity for the king, once he is reigning, to become a tyrant. Finally, the kingly power should be so restricted that he could not easily turn to tyranny (*De Regimine Principum*, caput VI).

Thomas Aquinas admonishes that if the tyranny is not excessive, it is certainly wiser to tolerate it rather than to run the risk of even greater perils by opposing it. Those who take action against a tyrant may fail in their objectives, and only succeed in rousing the tyrant to greater savagery (*De Regimine Principum*, caput vi). Even when action against a tyrant meets with success, this very fact breeds strife and grave discord among the populace, either in the moment of rebellion or after his overthrow when opinion in the community is divided as to the new form of government. Thomas Aquinas says that a community sometimes succeeds in deposing a tyrant with the help of some or other ruler, who in turn usurps absolute power. But fear of sharing the fate of his predecessor drives him to even greater severity against his new subjects. Thus, it is often the

case with tyranny that a new tyrant is worse than the old one; for the newcomer abandons none of his predecessor's cruelties, but plans even greater oppression in the evil of his heart. At a time when the Syracusans all desired the death of Dionysius, there was an old woman who continually prayed that he would survive her. The tyrant, coming to know this, asked why she acted as such and she replied: "When I was yet a girl we were oppressed by a tyrant, and I desired his death; he was slain, but was succeeded by another who oppressed us even more harshly; and again I was greatly pleased to see the end of his reign. But he was succeeded by you, who are an even harsher ruler. So I fear that if you are taken from our midst you will be succeeded by one who is even more terrible." (*De Regimine Principum*, caput VI)⁹.

If, however, tyranny becomes so excessive as to be intolerable, it has been argued by Thomas Aquinas, that it would be an act of virtue for the more powerful citizens, and not the individual, to kill the tyrant. The collective is obliged to expose themselves to the peril of death for the liberation of the community. One such an example is found in the Old Testament. A certain Aioth slew Eglon, King of the Moabites, with a dagger thrust in the side, because he oppressed the people of God with dire bondage. For this he was made a judge of the people. Thomas Aquinas's admonition is twofold: He advises against the killing of a ruler by an individual (subject) and also that the killing of another human being does not agree with Apostolic teaching. Peter teaches us to obey not only the good and temperate rulers or magistrates, but also to bear reverence to those who are ill-disposed.¹⁰

It seems that Thomas Aquinas declines into dichotomy. On the one hand, he denounces the killing of a ruler by a subject, while in the next sentence, he approves of this killing. Thomas Aquinas mentions that as to the case of Aioth, it would appear that he slew an enemy rather than a legitimate, though tyrannical, ruler of the people. He addresses this misunderstanding with another example in the Old Testament, whereby those who slew Joas, King of Juda, were put to death, even though he was an apostate. Their children were spared according to the precept of the law. Thomas Aquinas argues that it would indeed be dangerous, both for the community and for its rulers, if individuals were, upon private initiative, to attempt the death of those who govern, albeit tyrannically (*De Regimine Principum*, caput vi).

9 "Puella, inquit, existens, cum gravem tyrannum haberemus mortem ejus cupiebam quo interfecto, aliquantum durior successit; eius quoque dominationem finiri magnam existimabam: tertium te importuniorum habere coepimus rectorem. Itaque si tu fueris absumptus, deterior in locum tuum succedet."

10 *Biblia Sacra. Epistola B. Petri Apostoli Prima. Caput II, 20.* "Quæ enim est gloria, si peccantes, et colaphizati suffertis? Sed si beneficientes patienter sustinetis, hæc est gratia apud Deum."

Thomas Aquinas stresses once again that the remedies against the evils of tyranny rather lies in the hands of public authority than in the private judgment of individuals. In particular, where the community has the right to elect a ruler for itself, it would not be contrary to justice for that community to depose the king whom it has elected, nor to curb his power should he abuse it to play the tyrant. The community should also not be accused of disloyalty for thus deposing a tyrant, even after a previous promise of constant fealty; for the tyrant lays himself open to such treatment by his failure to discharge the duties of his office as governor of the community, and in consequence his subjects are no longer bound by their oath to him (*De Regimine Principum*, caput vi). In Medieval Rome, the Roman emperor, Tarquinius, the proud, who had been previously accepted as king, was deposed, because of his and his children's tyranny. Domitian, succeeding to those mildest of emperors, Vespasian, his father, and Titus his brother, was also slain by the Roman Senate because of his tyranny (*De Regimine Principum*, caput vi).

If, however, the right to appoint a king over a certain community belongs to some superior, then the remedy against tyrannical excess must be sought from him. Thus the Jews made complaints to *Cesar* Augustus against Archelaus, when the latter began to rule in the place of his father, Herod, in Judea and had begun to imitate his father's evil ways. At first, therefore, his power was curtailed; the title of king being taken from him and the half of his kingdom being divided between his two brothers. Then, when this proved insufficient to restrain his tyranny, he was exiled by Tiberius Caesar to Lyons, a city of France (*De Regimine Principum*, caput vi).

Thomas Aquinas argues that God permits tyrants to rule in punishment for the sins of the subjects, and such punishment is commonly called the "anger of God" in the scriptures (*De Regimine Principum*, *liber primus*, caput x).¹¹ The Lord says through Hosea: "I will give thee a king in my wrath" (Hosea xiii:11). Although God gives permission for the punishment of His people, Thomas Aquinas believes that the king who inflicted God's wrath upon the people will be unhappy and his dominion cannot be lasting. Thomas Aquinas argues that God, as a loving God, will not fail to pardon and to show mercy, despite His anger: "He is gracious and merciful and ready to repent of the evil" (Joel ii:13). According to Thomas Aquinas, God does not allow tyrants to reign overlong, but makes use of them to let loose a storm upon His people. He sweeps them away and restores calm. We read in *Ecclesiasticus*: "God hath overturned the thrones of proud princess, and hath set up the meek in their stead" (*Ecclesiasticus* x:17; *De Regimine Principum*, caput vi).

11 "Sic igitur Deus praefici permittit tyrannos ad puniendum subditorum peccata. Talis autem punitio in Scripturis ira Dei consuevit nominari."

4. RESISTANCE

Justifiable resistance is a public act of a whole people, and the misuse of the right is safeguarded by the moral condition that those who act as the agents of the people are responsible for seeing that their action is less injurious to the general good than the abuse which they are trying to remove.

Thomas Aquinas has a detestation of unlawful force and proceeds from the principle that power is justified only in so far as it serves the common good. His interest was essentially in the moral limitations laid upon rulers (Sabine 1963:251). The ruler is bound by reason and justice and his power arises from the need of keeping them (reason and justice) in agreement with natural law. The ruler's power is implied by his guardianship of the common good. The dominion of one man over another must not take away the free moral agency of the subject. No man is bound to obedience in all respects and even the soul of a slave is free. Thomas Aquinas states that the Christian notion of obedience was developed in turn into a doctrine of passive obedience and into a duty of resistance. It is for this reason that the resistance of tyranny is not only a right but a duty.

The only sanction for a governmental tyranny is that rulers, instead of enjoying a happy afterlife, will suffer the "pain of eternal death." A tyrant is deprived of that supreme blessedness, which is the reward of a good king, and, what is worse, he brings upon himself the most terrible penalty, namely eternal damnation (*De Regimine Principum*, caput xi). Good kings (rulers), not only during life, but more so after their death, live on in a certain way in the good estimation of men. But the name of the tyrant is soon forgotten, or, if it has been particularly distinguished for his crimes, are remembered only with detestation. Thus Solomon says: "The memory of the just is with praises, and the name of the wicked shall rot." (Proverbs x, 7).

5. CONCLUSION

Thomas Aquinas's notion on law, tyranny and resistance can be complemented by the Constitution of South Africa, Act 108 of 1996, especially with regard to the *rule of law*. The Constitution serves as a limitation on governmental powers. In so doing it prevents legitimate authority from being degraded into (a) tyranny. It implies that the *vis directiva* rather than the *vis coactiva* is applicable. According to the *vis directiva*, which is similar to the *rule of law*, the prince (state) had to act within the powers lawfully conferred on him. This is a fundamental principle of the *rule of law*, which is in turn a fundamental principle of constitutional law. It seems central to the conception of our constitutional order that the legislature and executive in every sphere are constrained

by the principle that they may exercise no power and perform no function beyond that conferred upon them by law.

The prince or state cannot act capriciously or arbitrarily. To do so would be inconsistent with the *rule of law*, which is the core value of the Constitution. The *rule of law* requires that the prince must exercise his powers rationally. According to this, the prince must respect the individual's basic rights. These basic rights ought to be protected by the *rule of law*.

The *rule of law* implies that for a constitution to be effective the judiciary must have the power to enforce its precepts. Therefore court orders must be obeyed by the other branches of the state. The *rule of law* requires the prince or state institutions to act in accordance with the law. The state cannot exercise power over anyone unless the law permits it to do so. If the state acts without legal authority it acts lawlessly, something which a constitutional democracy cannot permit (Currie & De Waal 2005:11). According to the *rule of law* the courts will have the power to uphold human rights by striking down unjust governmental decisions (Currie & De Waal 2005:9). The idea of constitutionalism is bolstered by the entrenchment of the *rule of law*. The purpose of the *rule of law* is to protect basic individual rights by requiring the government to act in accordance with pre-announced, clear and general rules and that they are enforced by impartial courts in accordance with fair procedures. This is the answer of Thomas Aquinas.

BIBLIOGRAPHY

BIBLE

1857. *Biblia Sacra. Vulgate Editionis. Auctoritate Edita. Novo Edita*. Paris: Garnier.

CURRIE, I. & DE WAAL, J.

2005. *Constitution of South Africa, Act 108 of 1996. The Bill of Rights Handbook*. Fifth Edition. Lansdowne: Juta & Co. Ltd.

D'ENTRÈVES, A.P.

1965. *Aquinas. Selected political writings*. Translated by J.G. Dawson. Oxford: Basil Blackwell.

EMERSON, T.

1982. National security and civil liberties. *The Yale Journal of World Order*. Connecticut: New Haven Publishers.

RAATH, A. & DE FREITAS, S.

2003. From Heinrich Bullinger to Puritanism: John Hooper's Theology and the office of magistracy. Printed in the United Kingdom. *Scottish Journal of Theology* 56:208.

SABINE, G.H.

1963. *A history of political theory*. London: Harrap.

SOUTH AFRICAN LAW COMMISSION

1989. *Assignment 25, Project 58: Groups and human rights*. Pretoria: Van Schaik.

THOMAS AQUINAS

1256. *Commentum in Quatuor Libros Sententiarum*.

1267. *De Regimine Principum* liber primus.

1265-1274. *Summa Theologica*.

VAN WARMELO, P.

1965. *Die oorsprong en betekenis van die Romeinse reg*. Pretoria: Van Schaik.

VENTER, F.

1977. *Salus reipublicae suprema lex*. *Journal of Contemporary Roman-Dutch Law*. 40(3):233-252.

WYLIE, J.K.

1948. *Roman constitutional history. From earliest times to the death of Justinian*. Cape Town: The African Bookman.

Keywords

Trefwoorde

Law

Wet

Tyranny

Tirannie

Resistance

Weerstand

Rule of Law

Regering van die Wet

Catholic Politics

Katolieke Politiek