

# THOMAS AQUINAS – HUMAN DIGNITY AND CONSCIENCE AS A BASIS FOR RESTRICTING LEGAL OBLIGATIONS<sup>1</sup>

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**Abstract.** In contemporary positive law there are legal institutions, such as conscientious objection in the context of military service or “conscience clauses” in medical law, which for the sake of respect for judgments of conscience aim at restricting legal obligations. Such restrictions are postulated to protect human freedom in general. On the basis of Thomas Aquinas’ philosophy, it shall be argued that human dignity, understood as the existential perfection of a human being based on special unity (individuality and particularity), provides a foundation for imposing limitations on the scope of legal obligations in general. Human freedom plays a crucial role in understanding dignity as perfection based on the special individuality of a personal being, which in turn is based on the free choice to pursue a unique way of life. Therefore, Aquinas’ argumentation is, at its core, liberal – the perfection rather than the imperfection of a human being underlies the requirement to limit legal obligations. Dignity understood as the special unity of a person also provides the basis for limiting obligations in the case of conscientious objection; however, in that case, such limitations aim at safeguarding internal integrity rather than the individualisation of a given way of life.

**Keywords:** Thomas Aquinas, dignity, conscience, conscientious objection, conscience clause, freedom, legal obligations, liberalism.

## I. Status quaestionis

This contribution was motivated by discussions surrounding so-called “conscience clauses”. This is a legal institution in Polish medical law which for the sake of respect for judgments of conscience aims at restricting legal obligations, allowing medical professionals to refuse to perform certain medical procedures.<sup>2</sup> A similar role is played in the context of military service by conscientious objection, which in the Polish law has an explicit foundation in the Constitution of the

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<sup>2</sup> Physicians and dentists: Ustawa o zawodzie lekarza i lekarza dentystry [1996] art. 39; Nurses and midwives – Ustawa o zawodach pielęgniarki i położnej [2011] art. 12, ust. 2.

Republic of Poland.<sup>3</sup> Restricting legal obligations takes place not only for the sake of conscience, but also for the sake of human freedom in general.

In this context, one may posit a number of fundamental questions. What are the axiological foundations of these institutions and the protection of freedom in general? Why does freedom matter? In the legal protection of human rights on an international level, the intrinsic (inherent),<sup>4</sup> equal and universal<sup>5</sup> dignity of all human beings is indicated as a fundamental and inviolable<sup>6</sup> value and the source of all human rights.<sup>7</sup> However, what is the nature of its function? How can dignity be understood in this light? Although in constitutional and international law, several traits of dignity are recognised, no common definition has been accepted. What are the links between dignity and the postulates restricting the scope of legal obligations? Can Thomas Aquinas provide a philosophical insight into these issues? I shall approach Aquinas's philosophy and its discourse from a practical, contemporary point of view, placing his doctrines in the contemporary context of problems associated with dignity, rather than in the context of his own times.

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<sup>3</sup> The Constitution of the Republic of Poland [1997] art. 85, p. 3; Ustawa o służbie zastępczej [2003]; Ustawa o gwarancjach wolności sumienia i wyznania [1989] art. 3, ust. 3; Constitutional Tribunal Judgment of 7 October 2015 (K 12/14).

<sup>4</sup> The Preamble to the Universal Declaration of Human Rights [1948], which begins: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world..."

<sup>5</sup> The Universal Declaration of Human Rights [1948] art. 1: "All human beings are born [...] equal in dignity and rights." Here references to the characteristics of dignity are limited to a few selected documents defining the ideological basis of modern human rights law; see e.g. Piechowiak [1999b] p. 3-14.

<sup>6</sup> The Charter of Fundamental Rights of the European Union [2000] art. 1: "Human dignity is inviolable. It must be respected and protected." On the universal (U.N.) level of the international protection of human rights, point two of the Proclamation of Teheran (1968) recognizes the inviolability of these rights and the inviolability of dignity as the source of these rights: "The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community." Cf. Basic Law for the Federal Republic of Germany [1949] art. 1: "(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world." The Constitution of the Republic of Poland [1997] art. 30: "The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities."

<sup>7</sup> The Preamble to the International Covenants on Human Rights [1966]: "these rights derive from the inherent dignity of the human person." The Preamble to the Vienna Declaration and Programme of Action [1993]: "Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms."

In his writings on positive law (human law), Thomas Aquinas does not strive to regulate all human actions. Law does not prohibit all acts of vice,<sup>8</sup> nor is it competent to prescribe all acts of virtue.<sup>9</sup> In arguing for these theses, he points out that it should be possible for the law to be followed and that not all people are able to follow a law which prohibits all acts of vice or prescribes all acts of virtue. From this perspective, the reasons for self-restrictions in the law lie in the deficiencies of human beings.

According to Aquinas, however, positive law should not only be feasible, but also necessary – it should regulate only that which is necessary. The latter idea is clearly expressed when he comments on Isidore of Seville's description of the quality of positive law.<sup>10</sup> In his *Commentary on the Sentences*, he postulates leaving the largest possible domain of fair actions unregulated by positive law. He formulates a general principle addressed to the legislator – nothing should be forbidden by law that can be performed in a fair way – "*nihil debet lege prohiberi quod licite fieri potest.*"<sup>11</sup> What are the main philosophical arguments for this position? The crucial role here is played by freedom and dignity, and therefore it can be seen that the perfection rather than the imperfection of human beings underlies the requirement of limiting legal obligations.

A kind of self-restriction of positive law is also present when conscientious objection is concerned. Conscientious objection can be understood as a legal institution comprising a set of legal norms that allow exemptions from the application of a generally formulated legal obligation for the sake of freedom of conscience. Conscientious objection to military service and the so-called conscience clauses in medical law, allowing medical professionals to refuse to perform certain medical procedures,<sup>12</sup> serve as examples of such institutions. Are the reasons which underlie the postulate to restrict positive law in the case of conscientious objection the same as in the case of restrictions postulated for the sake of freedom in general?

In searching for the foundations for restricting legal obligations, this article shall focus on the human person as the addressee of legal norms. Are these foundations rooted in what is constitutive of being a person? This question addresses both human dignity and freedom of choice.

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<sup>8</sup> *Summa Theologiae (STh)*, 1-2, q. 95, a. 3, q. 96 a. 2. The English text of *STh* is based on *Summa Theologica*, Benziger Bros. edition (1947).

<sup>9</sup> *STh*, 1-2, q. 95, a. 3; q. 96 a. 3.

<sup>10</sup> *STh*, 1-2, q. 95, a. 3.

<sup>11</sup> *In III Sent.*, dist. 40, q. 1, a. 1, 3.

<sup>12</sup> Physicians and dentists: *Ustawa o zawodzie lekarza i lekarza dentystry* [1996] art. 39; Nurses and midwives – *Ustawa o zawodach pielęgniarki i położnej* [2011] art. 12, ust. 2.

Thus, it shall be argued that Aquinas develops a philosophical conception of human dignity as existential perfection based on the special unity (special individuality and particularity) of the human being. Dignity understood in this way provides a foundation for postulating limitations on the scope of legal obligations in general. Human freedom plays a crucial role in understanding dignity, and therefore Aquinas' argumentation is, at its core, liberal by nature and perfection rather than imperfection of human beings underlies the postulate of limiting legal obligations. Choosing a unique way of life could therefore be said to contribute to a person's individuality and unity, which are the foundations of human existence.

In the case of conscientious objection, the reason for limiting obligations is also derived from dignity; that is, perfection based on the special internal unity of a person, which would be radically breached if an act contrary to a judgment of conscience were to be chosen.

Little in the literature has been written on this issue. Aquinas' conception of dignity is generally left unnoticed when the philosophical foundations of human rights are considered.<sup>13</sup> John Finnis addressed this issue in brief in *Aquinas*, but when he considered the foundations of dignity, he pointed to human nature, which belongs to the order of essence, while here dignity is understood as a genuine existential "property".<sup>14</sup>

## II. Conscience

It comes as somewhat of a surprise that Aquinas devoted no single article in his *Summa Theologiae* to answering directly the question "What is conscience?"<sup>15</sup> Nevertheless, it can be said that he clearly accepts that it is a judgment of practical reason, which "judges and pronounces sentence on matters of action."<sup>16</sup> The most important remarks for the present undertaking are in *pars prima* of *Summa Theologiae*, Question 79, Article 13, where Aquinas considers the question whether conscience is a power.<sup>17</sup> It should be borne in mind that this article does not intend to

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<sup>13</sup> Aquinas is often overlooked in contemporary reflections on dignity as the foundation of human rights; see e.g. Rosen [2012]; Waldron [2012]; for an acknowledgment of Aquinas' contribution see Finnis [1998] p. 176–180; Piechowiak [1999a] p. 265–291; Piechowiak [2012] (a comparison of the philosophical conceptions of dignity proposed by Kant and Aquinas); see also Piechowiak [2003], [2013]. It is striking that in Davies–Stump [2012] there is no chapter devoted to the problem of dignity and none dedicated to the foundations of the personhood of a human being; surprisingly, the term "dignity" does not even appear in the index.

<sup>14</sup> Finnis [1998] p. 176–178.

<sup>15</sup> Giertych [2012] p. 159–160.

<sup>16</sup> "Ratio practica iudicat et sententiat de agendis", *STh*, 1–2, q. 74, a. 7 co.

<sup>17</sup> Similarly: *De veritate*, q. 17.

establish a definition proper of conscience. The primary thesis is that conscience is not a power, for Aquinas defends the rationality of conscience and thus also of moral life. The same concern dominates Article 12, whose *dubitatio* states: “It would seem that ‘*synderesis*’ is a special power, distinct from the others.” The problem is thus not whether conscience is a power in general, but rather whether conscience is a special power, distinct from other powers. If it were, it would be distinct from reason (intellect). The conscience therefore is an act of practical reason. Arguing that conscience is not a power, Aquinas observes that it is “the application of knowledge or science to what we do.”<sup>18</sup> This is not a definition, because obviously not every application of knowledge to what we do pertains to morality. We can observe, though, that such an act of application is (or at least usually is) an act of judgment, and as such, provides knowledge – practical knowledge. It is an extension of theoretical knowledge, which takes place by means of its application to what we do: “for the practical intellect knows truth, just as the speculative, but it directs the known truth to operation.”<sup>19</sup>

In considering the question of whether conscience is a power, Aquinas indicates three ways such an application can be made:

One way in so far as we recognize that we have done or not done something [...], and according to this, conscience is said to witness.

In another way, so far as through the conscience we judge that something should be done or not done; and in this sense, conscience is said to incite or to bind.

In the third way, so far as by conscience we judge that something done is well done or ill done, and in this sense conscience is said to excuse, accuse, or torment.<sup>20</sup>

Let us consider closely the second means of application – “we judge that something should be done or not done” (“*iudicamus aliquid esse faciendum vel non faciendum*”). Accordingly, conscience provides knowledge about a moral obligation to act or not to act in a certain way.

Aquinas claims that conscience is always binding. He equates the problem of whether the erring conscience is tied to the problem of “whether the will is evil when it is at variance with erring reason”.<sup>21</sup> He answers that “every will at vari-

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<sup>18</sup> *STh*, 1, q. 79, a. 13 co. “The name ‘conscience’ means the application of knowledge to something”, *De veritate*, q. 17, a. 1 co.

<sup>19</sup> *STh*, 1, q. 79, a. 11 ad 2; *STh*, 1, q. 79, a. 11 sc.: “the speculative intellect by extension becomes practical” (Artistotle, *De anima*, III, 10).

<sup>20</sup> *STh*, 1, q. 79, a. 13 co.

<sup>21</sup> *STh*, 1-2, q. 19, a. 5 co.

ance with reason, whether right or erring, is always evil.”<sup>22</sup> Therefore, conscience, including an erroneous one, is always binding, and anyone who acts against conscience is committing a sin.<sup>23</sup> Why is Aquinas so radical? Where is the link between the ontological foundations of human dignity and the postulate never to act contrary to the obligations disclosed by conscience.<sup>24</sup>

Contemporary debates on conscientious objection take into consideration the conflict between a legal obligation to do something and a judgment of conscience which holds that fulfilling such an action would be wrong. The “clause of conscience” as a legal institution protects the moral integrity of an objector, providing an opportunity – under specific conditions – to refuse to carry out an action recognised by him or her as wrong. In this case, there are reasons for requiring an explanation from the objector as to why s/he objects to fulfilling a legal obligation.

The knowledge of a moral obligation to act or not to act in a certain way does not exhaust all forms of moral knowledge concomitant to those human actions which arise as a result of the application of knowledge to what we do. There are also judgments of practical reason, which are not judgments about obligations. It could be said that knowledge about obligations is usually only a small fraction of moral knowledge.

In discussing beatified angels, Aquinas argues that in the case of human beings, freedom of choice involves the possibility of sinning:

It must be said that freedom of choice is related to choosing what is in relation to the end as the intellect’s power of grasping principles is related to drawing conclusions. It is obvious that it pertains to the power of the intellect that it can proceed to diverse conclusions from the given principles, but that it draws a conclusion by neglecting the order imposed by the principles is a defect. Hence that freedom of choice can elect diverse goods ordered to the end pertains to the perfection of liberty, while the choice of something deviating from the end, which is sin, is a defect in liberty. So there is greater freedom of choice in angels who cannot sin than in us who can sin.<sup>25</sup>

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<sup>22</sup> *STh*, 1-2, q. 19, a. 5 co.

<sup>23</sup> “*Omnis conscientia, sive recta, sive erronea, sive in per se malis, sive in indifferentibus, est obligatoria; ita quod qui contra conscientiam facit, peccat*”, *Quodlibet*, 3, q. 12, a. 2 co.

<sup>24</sup> Merkelbach [1962] vol. 1, p. 193: “*Quidquid fit contra conscientiam aedificat ad gehennam. Quod intelligendum est de conscientia praecipiente vel prohibente, non autem de consulente vel permittente quia ista non obligat*”; the conscience, in order to oblige, needs to be certain. *Ibidem* p. 199–200.

<sup>25</sup> *STh*, 1, q. 62, a. 8, ad 3; translation quoted after Shanley [2007] p. 82.

In this way, Thomas explains what practical knowledge is: it is knowledge pertaining to the moral quality of human actions; but at the same time, this is knowledge about what has been chosen. A human being can choose between different goods ordered to the end, that is, genuine goods. S/he can also choose something that is not a genuine good – something deviating from the end. It should be pointed out that there is no reason to assume that in a given situation there is only one genuine good that can be chosen.

Therefore, conscience understood as knowledge about the moral quality of a given action is not only knowledge about an obligation to carry out a certain act or refrain from it, but one that could also be – and this is usually the case – knowledge that our choice is ordered to the end. There are generally many possibilities for achieving this end. In most situations, moral knowledge (knowledge provided by practical reason) informs us about possible choices which are morally acceptable and not about an obligation to perform certain actions. Aquinas does not directly address the relationship between the scope of moral knowledge in general (knowledge provided by practical reason) and knowledge about moral obligations. Drawing upon the classical tradition (and also common experience), we can observe that knowledge about an obligation is, above all, knowledge that something that can be chosen is a deviation from the end, that is, knowledge about an obligation not to act in a certain way. Plato's Socrates expresses this intuition in *Apology*: "It is a voice, and whenever it speaks, it turns me away from something I am about to do, but it never encourages me to do anything."<sup>26</sup> An obligation to act in a given way is secondary to knowledge about what we should not do. The conscience obliges us to act in one particular way when all other choices which have been taken into consideration appear to deviate from the end.

We usually do not choose between something ordered to an end and something deviating from the end. In an everyday situation, we choose between different genuine goods (goods ordered to an end) and our conscience remains as knowledge which accompanies our actions in the background (*reflexio in actu exercito* – a concomitant reflexion). This knowledge does not inform us about an obligation to act in a certain way, but rather informs us that the intended good is ordered to the end. In an everyday situation – conscience "speaks forth" from itself (transforms into *reflexio in actu signato*) only when we consider the choice of something deviating from the end.<sup>27</sup>

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<sup>26</sup> Plato [1997] *Apology* 31d.

<sup>27</sup> Of course, the contents of concomitant reflexion can be transformed into the subject of intentional acts of cognition (they can be given *in actu signato*).

It seems useful at this point to distinguish between (1) conscience in a narrow sense, understood as knowledge pertaining to moral obligations when we understand conscience in this sense in the case of the so-called conscience clauses in medical law and conscientious objection to military service, and (2) conscience in a broad sense, understood as the whole of moral knowledge provided by practical reason.

To sum up, there are situations when the addressee of a legal norm simply prefers recourse to other actions and does not consider the prescribed action to be wrong. In these situations, it is not moral integrity which is at stake, but simply the freedom to choose between different genuine goods.<sup>28</sup> In this particular case, a number of pertinent questions may be raised. But why is such freedom of importance? That is, what are the reasons for postulating limits to the scope of legal regulation to what is necessary? Does the very possibility of making choices between different genuine goods have its own value? Why should a legislator want to protect such a possibility; moreover, why should they want to extend the scope of free choices? Does Aquinas' philosophy offer good reasons for the protection of the freedom of choice?

Now it is time to consider the problem of protecting moral integrity and freedom of choice by limiting the scope of legal obligations, from the perspective of Aquinas' concept of human dignity.

### III. Human dignity and its foundations

#### 1. DIGNITY AS A FOUNDATION OF BEING A PERSON

Aquinas recognizes dignity as a constitutive property of a person:<sup>29</sup> thus, one is a person because one has dignity and it is not the case that, as is generally endorsed today, one has dignity because one is a person. In his *Commentary on the Sentences of Peter Lombard*, Aquinas writes: "the name 'person' signifies an individual substance as having a propriety which is a sign of dignity".<sup>30</sup> Similarly, in the *Summa Theologiae* he writes: "because subsistence in a rational nature is of high dignity, therefore every individual of the rational nature is called a 'person'".<sup>31</sup>

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<sup>28</sup> Gaine [2003] remarks on freedom for excellence (which can be exercised also by saints in heaven) as distinct from freedom of indifference, p. 87–102, 128–134.

<sup>29</sup> Cf. Piechowiak [2010].

<sup>30</sup> "Hoc nomen persona significat substantiam particularem, prout subjicitur proprietati quae sonat dignitatem." Thomas Aquinas, *In I Sent.*, d. 23, q. 1, a. 1 co. Cf. Bonaventura, *In 1 Sent.*, dist. 23, q. 1, a. 1 co.: "Persona de sui ratione dicit suppositum distinctum proprietate ad dignitatem pertinente".

<sup>31</sup> "Quia magnae dignitatis est in rationali natura subsistere, ideo omne individuum rationalis naturae dicitur 'persona'", *STh*, 1, q. 29, a. 3, ad 2. Cf. *STh*, 1, q. 29, a. 3, co. "Person' signifies what is most perfect in all nature – that is, a subsistent individual of a rational nature" ("Persona significat id quod est perfectis-



In the latter passage, the phrase “rational nature” is repeated: it is easy to reduce the foundation of being a person to rationality. Such a grounding of personhood is recognized even in supposedly weighty studies as a standard position in mediaeval philosophy.<sup>32</sup> However, careful reading of the latter quotation reveals that Aquinas’ view is in fact different: one is entitled to the name “person” because of dignity, and dignity is grounded not in rationality itself, as a property of man, but in existing in a particularly perfect way which is specific for intelligent beings. When Aquinas characterizes a person, he does not talk directly about an individual of a certain kind (of a certain nature), but about subsistence (Latin: *subsistens*) in a certain nature. It could be said that rationality is primarily a feature that makes it possible to decide who is entitled to the name “person” (it is a diagnostic property), but it is not the real reason for calling someone “a person”. What is this “subsistence in a rational nature” which characterizes dignity?

## 2. THE PARTICULAR AND THE INDIVIDUAL – DIGNITY AS EXISTENTIAL PERFECTION

In the search for how dignity is understood as a perfection constituting man as a person, we must first refer to Article 1 Question 29 Part 1 of the *Summa Theologiae*, devoted to the definition of a person. The reason for naming a being a person is that “the particular and the individual” (*particulare et individuum*) are found in this being “in a more special and perfect way” (*specialiori et perfectiori modo*).<sup>33</sup> According to Aquinas, a more special and more perfect particularity and individuality prove the perfection of a being’s existence.

It can be noted that the problem of the foundation of being a person is recognized by Aquinas in terms of the transcendental properties of being,<sup>34</sup> characteristics present in every being, but dependent to varying degrees on the mode of existence and the related “power” of existence. Among the transcendental properties Aquinas includes unity (*unum*), which can be understood also as individuality (from Latin: *in-dividuus*) and particularity (*aliquid*). The more something is, the

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*simum in tota natura; scilicet subsistens in rationali natura*”); rendering (as Benziger ed. does) “*subsistens*” by “a subsistent individual” is misleading because the existential aspect of dignity may be easily overlooked. See also e.g. the above quoted *STh*, 1, q. 29, a. 3, ad 2 – “*in rationali natura subsistere*” (underlined by M.P.).

<sup>32</sup> See Gurevich [1995] p. 102.

<sup>33</sup> *STh*, 1, q. 29, a. 1, co.: “in a more special and perfect way, the particular and the individual are found in the rational substances which have dominion over their own actions; and which are not only made to act, like others; but which can act of themselves; for actions belong to singulars. Therefore, also the individuals of the rational nature have a special name even among other substances; and this name is «person».”

<sup>34</sup> For a comprehensive study of Aquinas’ doctrine of the transcendentals see Aertsen [1996]; Aertsen [2012] p. 209–272.

stronger something exists, and the more it is a unity (the less it is internally divided) and a particularity (the more it is distinct from all the other things). This also works in the opposite direction: the more something is a unity and the more something is a particularity, the stronger it exists. In *De Potentia*, Aquinas defines this special unity of a person as individuality (*individualitas*) and special particularity as incommunicability (*incommunicabilitas*): “person formally signifies incommunicability or individuality of one subsisting in a nature.”<sup>35</sup> In this point, Aquinas is following the Platonic heritage, in which unity is recognised as a foundation of existence. Pure unity is ascribed only to God<sup>36</sup> – as Thomas writes in the beginning of the fourth book of *Summa Contra Gentiles*: “the most perfect unity is found in the highest summit of beings, God.”<sup>37</sup> In the same passage, Aquinas directly links the perfection of unity with dignity: “with each reality so much the more it is one, so much the greater is its power and dignity.”<sup>38</sup>

Moreover, it should be emphasized that Aquinas considers the reasons for recognising something as a person to have an existential context. What distinguishes man is a specific way of being. Such an understanding should come as no surprise, because according to Aquinas existence is what is most perfect in every being, and the act of existence is the act of all acts and the perfection of all perfections.<sup>39</sup> Thus, if one is looking for the foundation of the status of a person, the foundation which is man’s greatest innate perfection, which most distinguishes him from other creatures, one should consider the existential aspect.

Individuality and particularity, understood as a special and more perfect way of being particular and individual, describe the ontological status of a human being; but at the same time this status is recognised by Aquinas as the foundation for being a person, and therefore as the foundation for the requirements related to

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<sup>35</sup> “*Nomine personae significatur [...] incommunicabilitas sive individualitas subsistentis in natura.*” *De potentia*, q. 9, a. 6, co.; see also *De potentia*, q. 9, a. 6, ad 4: “*Forma significata per nomen personae non est essentia absolute, sed illud quod est principium incommunicabilitatis sive individuationis*” – the ontological foundation for calling something “a person” is the principle of incommunicability or individuation; and answering objection 3 Aquinas stresses the existential aspect of the person saying that “person” designates not only that which belongs to essence but also a distinct and incommunicable esse. *De potentia*, q. 9, a. 6, ad 3. On incommunicability as a central property of person see Crosby [1996] p. 41–81; polemically – cf. Brock [2005] *passim*.

<sup>36</sup> E.g. see Jones [2005] p. 379–382. Jones argues that in the Scholastic (unlike in the Neoplatonic) framework “there is a metaphysical and epistemological continuity between God and beings that is rooted in the analogy of being (*ens*).” Jones [2005] p. 381. So, Aquinas’ considerations about God can be included in an argument aiming at understanding the human person.

<sup>37</sup> *Summa Contra Gentiles*, 4, 1 *prooemium*.

<sup>38</sup> “[*Q*]uanto est magis unum, tanto est magis virtuosum et dignius.” *Summa Contra Gentiles*, 4, 1 *prooemium*; see Hankey [2012] p. 60–61.

<sup>39</sup> *De potentia*, q. 7, a. 2, ad 9.

how a person should act and how s/he should be addressed by other persons. Therefore, the notions describing the ontological status of a person also have a normative dimension. This will become apparent when Aquinas, in describing this ontological status, points to existence for its own sake (this shall be discussed later) – the subject of dignity has his or her own individual aim which – unlike in the case of animals – is not entirely determined by a common nature shared by all human beings (and conditions of life, including individual property). This ontological status requires proper actions: subjects of dignity ought to pursue their individual aims, and others should treat subjects of dignity as aims in themselves, and therefore should not treat them in a purely instrumental way.

In the analysed Article, which is crucial to the concept of person, Aquinas does not mention rationality as the reason for being a person; rationality is a property that for Aquinas merely serves to indicate the subject of his considerations. It is used by Aquinas mainly as a property that allows him to identify persons (to identify referents of the name “person”). Dignity is a special way of existence which can be attributed to an individual with a rational nature.

John Finnis rightly points out that the “concept of *persona* entails *dignitas*” but in stating that “it is nobility or dignity of the species {*natura*} that counts,”<sup>40</sup> he misses a crucial point made by Aquinas. Finnis’ consideration of dignity remains at the level of “essence”, the level of form – “our bodies’ formative principle”, which Aquinas calls the soul (*anima*) and Aristotle – the *psyche*.<sup>41</sup> Human nature is something that all human beings have in common. If it were a foundation for the primary perfection of person, then it would be incomprehensible why individuality is the core of being a person, why free choice contributes to the development of a person by shaping one’s individual way of life.

### 3. THE INTELLECT AND FREE CHOICE

In Article 1, Question 29 of the first part of *Summa Theologiae*, a fundamental argument for the recognition of the special individuality and the particularity of

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<sup>40</sup> Finnis [1998] p. 176, fn. 206.

<sup>41</sup> Ibidem, p. 176–178. The existential character of dignity is not present either in other conceptions inspired by Aquinas’ philosophy. E.g. Dewan [2007] focuses his analyses on hylomorphic structure and on human knowledge, which indicates the immateriality of the soul – grades of knowledge are related to grades of immateriality (p. 64). The human mind rooted in the form (soul) is the basis of dignity: “To exhibit fundamental human dignity appropriately, we must locate the human being in the hierarchy of beings, the entirety of which is measured by proximity to the cause of being as being. [...] the human being reveals its proximity to the divine goodness, the highest cause, precisely by its possession of mind” (Dewan [2007] p. 64). Brock [2005] on the other hand tends to consider the problem of human dignity from the perspective of “created minds”, which are able to establish a relation to God. A human mind is in some sense infinite, is *capax Dei*; “its greatness is indissociable from that of its object” (p. 199).

rational beings is freedom, the fact that these beings “have dominion over their own actions; and which are not only made to act, like others; but which can act of themselves.”<sup>42</sup>

It should be emphasized that, in his analysis of the relationship between free choice and intellect, Aquinas does not argue that in exercising free choice, man may freely resign from what leads to his development (satisfaction, happiness), but that man who has turned away from what is destructive (and what is the object of knowledge) can choose many roads, each leading to development. Many readers of the *Summa Theologiae* will be surprised by the fact that in his analyses of the relationship between the intellect (reason) and human freedom (free choice) Aquinas, recognizing the intellect as the foundation of freedom (freedom of choice), does not mention that the intellect is necessary for the choice to follow a known good or that cognitive power helps one distinguish between good and evil. Aquinas is certain that even animals know the difference between good and evil, and that this knowledge enables them to follow good and avoid evil. The peculiarity of rational beings lies elsewhere. It can be said that the intellect is the power that enables free choice. The intellect conditions the possibility of having free choice. In writing about the relationship between the intellect and free choice, Thomas emphasizes that thanks to the intellect, man has a general idea of the good:

Only an agent endowed with an intellect can act with a judgment which is free, in so far as it apprehends the common note of goodness; from which it can judge this or the other thing to be good.<sup>43</sup>

It is this general concept of the good, and not the possibility of learning the difference between good and evil, which is the key to freedom and its foundation. Aquinas also says that “the will can tend freely towards various objects, precisely because the reason can have various perceptions of good.”<sup>44</sup>

Due to a general concept of the good, a rational being may, under certain circumstances, create a collection of referents of the concept of good, and can thus compile a whole range of specific goods and means of conduct (generally, none of

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<sup>42</sup> *STh*, 1, q. 29, a. 1, co.

<sup>43</sup> *STh*, 1, q. 59, a. 3, co.; “the reason is a power that compares several things together: therefore, from several things the intellectual appetite—that is, the will—may be moved; but not of necessity from one thing.” *STh*, 1, q. 82, a. 2, ad 3.

<sup>44</sup> *STh*, 1–2, q. 17, a. 1, ad 2: “*Ad secundum dicendum quod radix libertatis est voluntas sicut subiectum, sed sicut causa, est ratio. Ex hoc enim voluntas libere potest ad diversa ferri, quia ratio potest habere diversas conceptiones boni.*”

these means of conduct is wrong, and each could lead to development). Beings without an intellect do not have a general notion of good and cannot compile such a register. Thus, according to Aquinas, under certain circumstances animals learn only one aim proper for them, only one good, and hence, one action.<sup>45</sup>

The intellect is therefore a necessary and sufficient condition for recognizing whether one possesses free choice: “wherever there is intellect, there is free-will.”<sup>46</sup> Every creature which possesses an intellect exists in a special way and also possesses dignity. Hence, the terms “rational being”, “free being”, “being having dignity” refer to the same subjects as the term “person”, but each of these three terms has a different content and points to a different aspect of the perfection of a person. From an ontological point of view, rationality (the fact of having an intellect) is the most fundamental excellence among the listed qualities: rationality allows free choice, which grounds the argument for recognising the special individuality and particularity of a being, and thus a special way of existence. Rationality is not, however, the greatest excellence. The greatest perfection, the one which justifies calling someone a person, is dignity, understood as a particularly powerful means of existence, a specific and more perfect individuality and particularity, or – one could say – existence for one’s own sake.

#### 4. *NATURALITER LIBER ET PROPTER SEIPSUM EXISTENS* – BY NATURE FREE AND EXISTING FOR ITSELF

The existential interpretation of the concept of dignity outlined here is confirmed by an analysis of Aquinas’ remarks on the subject. Although “dignity” is a category used by Aquinas often and in different meanings,<sup>47</sup> he does not broadly and directly (in a separate article) confront the question of what dignity is. As far as personal dignity is concerned, it is (somewhat casually) characterized by Thomas when he considers the admissibility of the death penalty:

By sinning man departs from the order of reason, and consequently falls away from the dignity of his manhood, in so far as he is naturally free, and exists for himself, and he falls into the slavish state of the beasts, by being disposed of according as he is useful to others.<sup>48</sup>

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<sup>45</sup> *STh*, 1, q. 83, a. 1, co.

<sup>46</sup> “*Ubi cumque est intellectus, est liberum arbitrium.*” *STh*, 1, q. 59, a. 3, co.; cf. *STh*, 1, q. 83, a. 1, co.

<sup>47</sup> According to a search in *Thomae Aquinatis opera omnia* (CD-rom edition), Aquinas uses the term “*dignitas*” and its cognates more than 1500 times but very rarely in the modern meaning of “dignity”, signifying the foundation of being a person.

<sup>48</sup> *STh*, 2-2, q. 64, a. 2, ad 3.

Two “properties” are therefore indicated – being free and existing for one’s own sake – a person being an end in her/himself, and therefore not being something which can be simply used for the sake of others. Both of these “properties” describe man’s existence.

In interpreting the category of freedom, one has to refer in this context to the most famous of Aristotle’s definitions of freedom, the one from *Metaphysics*: “the man is free, we say, who exists for his own sake and not for another’s.”<sup>49</sup>

It should be noted that although Aquinas adopts this definition, he fundamentally changes its systemic context. Unlike Aristotle, who believes that freedom is grounded in the possibility of choosing the aims of one’s actions (it is the master who chooses the aims of the actions of his slaves), Aquinas thinks that the basis for freedom can be found in the very structure of a human being, and thus – in contrast to Aristotle – he explicitly rejects slavery by nature: “According to nature one human being is not ordered to another as to an end.”<sup>50</sup> He explicitly recognizes the natural equality of human beings with regard to freedom: “Nature made all human beings equal in liberty.”<sup>51</sup>

The expression “existing for one’s own sake” (*propter seipsum existens*) serves to emphasize the context in which Aristotle’s definition should be understood here – freedom is considered not from the point of view of free will, but rather from the perspective of a human being’s aims. However, the intricacies of dignity in the context of the formula “existing for one’s own sake” should be further investigated. In recognizing existence for one’s own sake, Aquinas refers to the ancient tradition of understanding the honest good (*bonum honestum*) as distinct from the good of utility (*bonum utile*) and the good of pleasure (*bonum delectabile*): “dignity signifies the goodness of something which is good because of itself.”<sup>52</sup>

In the Aristotelian tradition, to which Aquinas refers, to be good is to be an end.<sup>53</sup> Hence, the quote above may as well be read as: dignity signifies being an end because of itself – being for one’s own sake.

How should one understand “existing for one’s own sake”, “being an end in itself”? Certainly, selfishness does not come into play here. Considering the approach to the matter taken by Aristotle, one can say that the expressions mean choos-

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<sup>49</sup> Aristotle, *Metaphysics*, 982 b, trans. W.D. Ross [in:] McKeon [1941].

<sup>50</sup> “Unus enim homo ex natura sua non ordinatur ad alterum sicut ad finem.” In *II Sent.*, dist. 44, q. 1, a. 3, ad 1.

<sup>51</sup> “Natura omnes homines aequales in libertate fecit.” In *II Sent.*, dist. 44, q. 1, a. 3, ad 1.

<sup>52</sup> “Dignitas significat bonitatem alicuius propter seipsam.” In *III Sent.*, dist. 35, q. 1, a. 4 A, co.

<sup>53</sup> See e.g. *Summa Contra Gentiles*, 1, cap. 37.

ing one's own aims. These aims may, and even should, be altruistic – actions for the good of others. This argument can be further developed through Aristotle's concept of justice understood as the most important virtue, and a virtue that is characterized as "another person's good".<sup>54</sup> The beginning of the treatise on the law from *Summa Contra Gentiles* (Book 3, from Chapter 111)<sup>55</sup> sheds more light on the concept of "existing for one's own sake". Here Aquinas justifies the thesis that the aim of intelligent beings is to constitute themselves not only by what is generic, as is the case with animals, but also according to what is individual;<sup>56</sup> in contrast to animals, individual people are not just specimens of the human race. Of course, in the case of animals, depending on the individual (accidental) features and circumstances of an action, the goods of each specimen are also different. After all, each specimen is slightly different and lives in different conditions. Nevertheless, the aim is the realization of generic perfections and what is good is objectively and explicitly determined (by their generic nature, individual characteristics, the circumstances of life). In the case of man, the differences are much deeper. The aims pursued in the here-and-now by man (it should be emphasized – aims leading to man's development) are not generic (not determined entirely by the human nature shared by all human beings), but individual. Indeed, an aim which involves development, happiness or salvation is specified, as is the need to develop the possessed dispositions. However, the manner of this development is not specified. To put it in Aquinas' words:

Now the right ends of human life are fixed [...]. But the means to the end, in human concerns, far from being fixed, are of manifold variety according to the variety of persons and affairs.<sup>57</sup>

Human reason discovers the directions of personal development as something given; they are apprehended as virtues, but the means for the realization of development have to be determined by free choice:

The inclination of moral virtue is in some respects similar to the inclination of nature, and in others it is different from it. It is similar inasmuch as they both have a specific purpose, and different inasmuch as in nature both the aim and what

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<sup>54</sup> "[J]ustice is the only virtue that seems to be another person's good, because it is related to another; for it does what benefits another." Aristotle, *Nicomachean Ethics*, 1130 a.

<sup>55</sup> For a detailed discussion, see Piechowiak [2003].

<sup>56</sup> "Only the rational creature is capable of this direction, whereby his actions are guided, not only specifically, but also individually." *Summa Contra Gentiles*, 3, cap. 113, trans. V. J. Bourke.

<sup>57</sup> *STh*, 2-2, q. 47, a. 15, co.

leads to it are determined. In the case of moral virtue the aim is determined, but not the road leading to it, which can differ in many respects.<sup>58</sup>

The cognition of goods, which can serve as an aim for the development of virtues (determined by human nature, by our species), is usually not sufficient to determine one particular way of acting. We discern a number of possible means of development which are all acceptable from a moral point of view (all are ordered to the right ends of human life). An act of free choice is indispensable for determining the content of our way of life: “many actions are evident, in the case of the rational creature, for which the inclination of the species is not enough.”<sup>59</sup>

Therefore, human actions leading to development are not clearly defined, and the individual aim one pursues is not explicitly defined by one’s nature. The special individuality and incommunicability which characterise persons are not based on the form of human being (the soul), which organises matter, but primarily on the act of existence which – comprising all the elements of a human being – gives him or her a personal character.<sup>60</sup>

## V. Conclusion

1. Aquinas’ conception of dignity, it may be claimed, matches contemporary uses of the term “dignity” in law. Dignity, a perfection (value) situated on an existential level, is the first and most fundamental perfection of a human being. By constituting personhood, dignity encompasses every aspect of a human person and gives these aspects a personal character. Therefore, dignity can be recognised as the source of all human rights – from the right to life to freedom of religion. Because dignity is based on an act of existence, it is the most inherent “property” of a human being. On a fundamental level, dignity as understood by Aquinas is also equal in every human being – a being exists either as an aim in itself or not. The core of the contemporary notion of dignity as used in law comprises – as in Aquinas – the idea of being an end in itself and a related prohibition against purely instrumental treatment.

2. Aquinas’ approach clearly supports making exemptions in positive law to provide for the possibility of refraining from actions which are prohibited by conscience. Choosing freely against the obligations recognised by conscience is

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<sup>58</sup> *In 3 Sent.*, dist. 33, q. 2, a. 3, ad 3.

<sup>59</sup> *Summa Contra Gentiles*, 3, cap. 113.

<sup>60</sup> My analyses of dignity as the foundation of the person support Joseph Owens’ view on the question of the principle of individuality; see Owens [1988]; also Noone [1995] p. 540; White [1995]; polemically – cf. Dewan [1999]; cf. Payne [2004].



deeply incompatible with the special unity of the human being, which is the perfection that constitutes dignity understood as existing in an exceptionally perfect way.

a. First, this leads to the deepest internal division possible from the perspective of the fundamental personal powers – intellect and will. It questions the internal special unity, which is the very core of dignity. Moreover, Aquinas points out that it is not actually the will that makes choices but the person, and it is not intellect which forms judgments but the person.<sup>61</sup> Therefore, by choosing against conscience a person contests her/himself as a whole.

b. Second, a free choice which goes against conscience questions the unity of a person based on existence for one's own sake. The person chooses something s/he recognizes as contrary to his or her end, and therefore does not act for his or her own sake. It can be said that the person treats her/himself in an instrumental way.

3. Aquinas' position also provides reasons for limiting the scope of legal regulations in general. Every person has his or her own individual way of fulfillment, which is determined not only by human nature shared by all human beings, but also by free choices among deferent actions (genuine goods) ordered to the same end. Additionally, from an ontological point of view, being individual is valuable for it contributes to one's inherent unity (individuality) and incommunicability (particularity), which are aspects of dignity.

4. Finally it is possible to find the answer on the level of ontology to a very basic question: why is freedom of choice of importance? Its importance lies in the fact that it contributes to the special unity (individuality and particularity) of a person. It is important not only because it allows one to pursue good, but also because it allows one to choose between different goods, thereby shaping a unique life and contributing to one's individuality.

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<sup>61</sup> Cf. "Non enim propriae loquendo sensus aut intellectus cognoscunt sed homo per utrumque." *De veritate*, q. 2, a. 6, ad 3.

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