
TREATISE ON LAW (SUMMA THEOLOGICA I-II)

ST. THOMAS AQUINAS (1224-1274)

Question 90 On the Essence of Law

Article 1 Whether law is something pertaining to reason?

Objection 1: It would seem that law is not something pertaining to reason. For the Apostle says: "I see another law in my members," etc. But nothing pertaining to reason is in the members; since the reason does not make use of a bodily organ. Therefore law is not something pertaining to reason.

Objection 2: Further, in the reason there is nothing else but power, habit, and act. But law is not the power itself of reason. In like manner, neither is it a habit of reason: because the habits of reason are the intellectual virtues.... Nor again is it an act of reason: because then law would cease, when the act of reason ceases, for instance, while we are asleep. Therefore law is nothing pertaining to reason.

Objection 3: Further, the law moves those who are subject to it to act aright. But it belongs properly to the will to move to act....Therefore law pertains, not to the reason, but to the will; according to the words of the Jurist (Lib. i, ff., De Const. Prin. leg. i): "Whatsoever pleaseth the sovereign, has force of law."

On the contrary, It belongs to the law to command and to forbid. But it belongs to reason to command....Therefore law is something pertaining to reason.

I answer that, Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting: for "lex" [law] is derived from "ligare"

[to bind], because it binds one to act. Now the rule and measure of human acts is the reason, which is the first principle of human acts; since it belongs to the reason to direct to the end, which is the first principle in all matters of action, according to the Philosopher (Phys. ii). Now that which is the principle in any genus, is the rule and measure of that genus: for instance, unity in the genus of numbers, and the first movement in the genus of movements. Consequently it follows that law is something pertaining to reason.

Reply to Objection 1: Since law is a kind of rule and measure, it may be in something in two ways. First, as in that which measures and rules: and since this is proper to reason, it follows that, in this way, law is in the reason alone. Secondly, as in that which is measured and ruled. In this way, law is in all those things that are inclined to something by reason of some law: so that any inclination arising from a law, may be called a law, not essentially but by participation as it were. And thus the inclination of the members to concupiscence is called "the law of the members."

Reply to Objection 2: Just as, in external action, we may consider the work and the work done, for instance the work of building and the house built; so in the acts of reason, we may consider the act itself of reason, i.e. to understand and to reason, and something produced by this act. With regard to the speculative reason, this is first of all the definition; secondly, the proposition; thirdly, the syllogism or argument. And since also the practical reason makes use of a syllogism in respect of the work to be done, and since as the Philosopher teaches

(Ethic. vii, 3); hence we find in the practical reason something that holds the same position in regard to operations, as, in the speculative intellect, the proposition holds in regard to conclusions. Such like universal propositions of the practical intellect that are directed to actions have the nature of law. And these propositions are sometimes under our actual consideration, while sometimes they are retained in the reason by means of a habit.

Reply to Objection 3: Reason has its power of moving from the will: for it is due to the fact that one wills the end, that the reason issues its commands as regards things ordained to the end. But in order that the volition of what is commanded may have the nature of law, it needs to be in accord with some rule of reason. And in this sense is to be understood the saying that the will of the sovereign has the force of law; otherwise the sovereign's will would savor of lawlessness rather than of law.

Article 2

Whether the law is always something directed to the common good?

Objection 1: It would seem that the law is not always directed to the common good as to its end. For it belongs to law to command and to forbid. But commands are directed to certain individual goods. Therefore the end of the law is not always the common good.

Objection 2: Further, the law directs man in his actions. But human actions are concerned with particular matters. Therefore the law is directed to some particular good.

Objection 3: Further, Isidore says (Etym. v, 3): "If the law is based on reason, whatever is based on reason will be a law." But reason is the foundation not only of what is ordained to the common good, but also of that which is directed private good. Therefore the law is not only directed to the good of all, but also to the private good of an individual.

On the contrary, Isidore says (Etym. v, 21) that "laws are enacted for no private profit, but for the common benefit of the citizens."

I answer that, As stated above (Art 1), the law belongs to that which is a principle of human acts, because it is their rule and measure. Now as reason is a principle of human acts, so in reason itself there is

something which is the principle in respect of all the rest: wherefore to this principle chiefly and mainly law must needs be referred. Now the first principle in practical matters, which are the object of the practical reason, is the last end: and the last end of human life is bliss or happiness. Consequently the law must needs regard principally the relationship to happiness. Moreover, since every part is ordained to the whole, as imperfect to perfect; and since one man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness. Wherefore the Philosopher, in the above definition of legal matters mentions both happiness and the body politic: for he says (Ethic. v, 1) that we call those legal matters "just, which are adapted to produce and preserve happiness and its parts for the body politic": since the state is a perfect community, as he says in Polit. i, 1.

Now in every genus, that which belongs to it chiefly is the principle of the others, and the others belong to that genus in subordination to that thing: thus fire, which is chief among hot things, is the cause of heat in mixed bodies, and these are said to be hot in so far as they have a share of fire. Consequently, since the law is chiefly ordained to the common good, any other precept in regard to some individual work, must needs be devoid of the nature of a law, save in so far as it regards the common good. Therefore every law is ordained to the common good.

Reply to Objection 1: A command denotes an application of a law to matters regulated by the law. Now the order to the common good, at which the law aims, is applicable to particular ends. And in this way commands are given even concerning particular matters.

Reply to Objection 2: Actions are indeed concerned with particular matters: but those particular matters are referable to the common good, not as to a common genus or species, but as to a common final cause, according as the common good is said to be the common end.

Reply to Objection 3: Just as nothing stands firm with regard to the speculative reason except that which is traced back to the first indemonstrable principles, so nothing stands firm with regard to the practical reason, unless it be directed to the last end which is the common good: and whatever stands to reason in this sense, has the nature of a law.

Article 3

Whether the reason of any man is competent to make laws?

Objection 1: It would seem that the reason of any man is competent to make laws. For the Apostle says (Rm 2:14) that "when the Gentiles, who have not the law, do by nature those things that are of the law . . . they are a law to themselves." Now he says this of all in general. Therefore anyone can make a law for himself.

Objection 2: Further, as the Philosopher says (Ethic. ii, 1), "the intention of the lawgiver is to lead men to virtue." But every man can lead another to virtue. Therefore the reason of any man is competent to make laws.

Objection 3: Further, just as the sovereign of a state governs the state, so every father of a family governs his household. But the sovereign of a state can make laws for the state. Therefore every father of a family can make laws for his household.

On the contrary, Isidore says (Etym. v, 10): "A law is an ordinance of the people, whereby something is sanctioned by the Elders together with the Commonalty."

Answer that, A law, properly speaking, regards first and foremost the order to the common good. Now to order anything to the common good, belongs either to the whole people, or to someone who is the viceregent of the whole people. And therefore the making of a law belongs either to the whole people or to a public personage who has care of the whole people: since in all other matters the directing of anything to the end concerns him to whom the end belongs.

Reply to Objection 1: As stated above (Art 1, ad 1), a law is in a person not only as in one that rules, but also by participation as in one that is ruled. In the latter way each one is a law to himself, in so far as he shares the direction that he receives from one who rules him. Hence the same text goes on: "Who show the work of the law written in their hearts."

Reply to Objection 2: A private person cannot lead another to virtue efficaciously: for he can only advise, and if his advice be not taken, it has no coercive power, such as the law should have, in order to prove an efficacious inducement to

virtue, as the Philosopher says (Ethic. x, 9). But this coercive power is vested in the whole people or in some public personage, to whom it belongs to inflict penalties. . . . Wherefore the framing of laws belongs to him alone.

Reply to Objection 3: As one man is a part of the household, so a household is a part of the state: and the state is a perfect community, according to Polit. i, 1. And therefore, as the good of one man is not the last end, but is ordained to the common good; so too the good of one household is ordained to the good of a single state, which is a perfect community. Consequently he that governs a family, can indeed make certain commands or ordinances, but not such as to have properly the force of law.

Article 4

Whether promulgation is essential to a law?

Objection 1: It would seem that promulgation is not essential to a law. For the natural law above all has the character of law. But the natural law needs no promulgation. Therefore it is not essential to a law that it be promulgated.

Objection 2: Further, it belongs properly to a law to bind one to do or not to do something. But the obligation of fulfilling a law touches not only those in whose presence it is promulgated, but also others. Therefore promulgation is not essential to a law.

Objection 3: Further, the binding force of a law extends even to the future, since "laws are binding in matters of the future," as the jurists say (Cod. 1, tit. De lege et constit. leg. vii). But promulgation concerns those who are present. Therefore it is not essential to a law.

On the contrary, It is laid down in the Decretals, dist. 4, that "laws are established when they are promulgated."

Answer that, As stated above (Art 1), a law is imposed on others by way of a rule and measure. Now a rule or measure is imposed by being applied to those who are to be ruled and measured by it. Wherefore, in order that a law obtain the binding force which is proper to a law, it must needs be applied to the men who have to be ruled by it. Such application is made by its being notified to them by promulgation. Wherefore promulgation is necessary

for the law to obtain its force.

Thus from the four preceding articles, the definition of law may be gathered; and it is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated.

Reply to Objection 1: The natural law is promulgated by the very fact that God instilled it into man's mind so as to be known by him naturally.

Reply to Objection 2: Those who are not present when a law is promulgated, are bound to observe the law, in so far as it is notified or can be notified to them by others, after it has been promulgated.

Reply to Objection 3: The promulgation that takes place now, extends to future time by reason of the durability of written characters, by which means it is continually promulgated. Hence Isidore says (Etym. v, 3; ii, 10) that "lex" [law] is derived from *legere* [to read] because it is written."

Question 91 OF THE VARIOUS KINDS OF LAW

Article 1

Whether there is an eternal law?

Objection 1: It would seem that there is no eternal law. Because every law is imposed on someone. But there was not someone from eternity on whom a law could be imposed: since God alone was from eternity. Therefore no law is eternal.

Objection 2: Further, promulgation is essential to law. But promulgation could not be from eternity: because there was no one to whom it could be promulgated from eternity. Therefore no law can be eternal.

Objection 3: Further, a law implies order to an end. But nothing ordained to an end is eternal: for the last end alone is eternal. Therefore no law is eternal.

On the contrary, Augustine says (De Lib. Arb. i, 6): "That Law which is the Supreme Reason cannot be understood to be otherwise than unchangeable and eternal."

I answer that, As stated above (Q. 90, art 1) , a law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect

community. Now it is evident, granted that the world is ruled by Divine Providence, as was stated in the FP, Question [22], Articles [1],2, that the whole community of the universe is governed by Divine Reason. Wherefore the very Idea of the government of things in God the Ruler of the universe, has the nature of a law. And since the Divine Reason's conception of things is not subject to time but is eternal, according to Prov. 8:23, therefore it is that this kind of law must be called eternal.

Reply to Objection 1: Those things that are not in themselves, exist with God, inasmuch as they are foreknown and preordained by Him, according to Rm. 4:17: "Who calls those things that are not, as those that are." Accordingly the eternal concept of the Divine law bears the character of an eternal law, in so far as it is ordained by God to the government of things foreknown by Him.

Reply to Objection 2: Promulgation is made by word of mouth or in writing; and in both ways the eternal law is promulgated: because both the Divine Word and the writing of the Book of Life are eternal. But the promulgation cannot be from eternity on the part of the creature that hears or reads.

Reply to Objection 3: The law implies order to the end actively, in so far as it directs certain things to the end; but not passively---that is to say, the law itself is not ordained to the end---except accidentally, in a governor whose end is extrinsic to him, and to which end his law must needs be ordained. But the end of the Divine government is God Himself, and His law is not distinct from Himself. Wherefore the eternal law is not ordained to another end.

Article 2

Whether there is in us a natural law?

Objection 1: It would seem that there is no natural law in us. Because man is governed sufficiently by the eternal law: for Augustine says (De Lib. Arb. i) that "the eternal law is that by which it is right that all things should be most orderly." But nature does not abound in superfluities as neither does she fail in necessities. Therefore no law is natural to man.

Objection 2: Further, by the law man is directed, in his acts, to the end, as stated above (Q. 90, art 2) . But the directing of human acts to their end is not a function of nature, as is the case in irrational

creatures, which act for an end solely by their natural appetite; whereas man acts for an end by his reason and will. Therefore no law is natural to man.

Objection 3: Further, the more a man is free, the less is he under the law. But man is freer than all the animals, on account of his free-will, with which he is endowed above all other animals. Since therefore other animals are not subject to a natural law, neither is man subject to a natural law.

On the contrary, A gloss on Rm. 2:14: "When the Gentiles, who have not the law, do by nature those things that are of the law," comments as follows: "Although they have no written law, yet they have the natural law, whereby each one knows, and is conscious of, what is good and what is evil."

I answer that, As stated above (Q. 90, art 1), law, being a rule and measure, can be in a person in two ways: in one way, as in him that rules and measures; in another way, as in that which is ruled and measured, since a thing is ruled and measured, in so far as it partakes of the rule or measure. Wherefore, since all things subject to Divine providence are ruled and measured by the eternal law, as was stated above (art 1); it is evident that all things partake somewhat of the eternal law, in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends. Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law. Hence the Psalmist after saying (Ps 4:6): "Offer up the sacrifice of justice," as though someone asked what the works of justice are, adds: "Many say, Who showeth us good things?" in answer to which question he says: "The light of Thy countenance, O Lord, is signed upon us": thus implying that the light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light. It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law.

Reply to Objection 1: This argument would

hold, if the natural law were something different from the eternal law: whereas it is nothing but a participation thereof, as stated above.

Reply to Objection 2: Every act of reason and will in us is based on that which is according to nature, as stated above (Q. 90, art 1) for every act of reasoning is based on principles that are known naturally, and every act of appetite in respect of the means is derived from the natural appetite in respect of the last end. Accordingly the first direction of our acts to their end must needs be in virtue of the natural law.

Reply to Objection 3: Even irrational animals partake in their own way of the Eternal Reason, just as the rational creature does. But because the rational creature partakes thereof in an intellectual and rational manner, therefore the participation of the eternal law in the rational creature is properly called a law, since a law is something pertaining to reason, as stated above (Q. 90, art 1). Irrational creatures, however, do not partake thereof in a rational manner, wherefore there is no participation of the eternal law in them, except by way of similitude.

Article 3

Whether there is a human law?

Objection 1: It would seem that there is not a human law. For the natural law is a participation of the eternal law, as stated above (art. 2). Now through the eternal law "all things are most orderly," as Augustine states (De Lib. Arb. i, 6). Therefore the natural law suffices for the ordering of all human affairs. Consequently there is no need for a human law.

Objection 2: Further, a law bears the character of a measure, as stated above (Q. 90, art. 1). But human reason is not a measure of things, but vice versa, as stated in Metaph. x, text. 5. Therefore no law can emanate from human reason.

Objection 3: Further, a measure should be most certain, as stated in Metaph. x, text. 3. But the dictates of human reason in matters of conduct are uncertain, according to Wis. 9:14: "The thoughts of mortal men are fearful, and our counsels uncertain." Therefore no law can emanate from human reason.

On the contrary, Augustine (De Lib. Arb. i, 6) distinguishes two kinds of law, the one eternal, the

other temporal, which he calls human.

I answer that, As stated above (Q. 90, art. 1), a law is a dictate of the practical reason. Now it is to be observed that the same procedure takes place in the practical and in the speculative reason: for each proceeds from principles to conclusions, as stated above (De Lib. Arb. i, 6). Accordingly we conclude that just as, in the speculative reason, from naturally known indemonstrable principles, we draw the conclusions of the various sciences, the knowledge of which is not imparted to us by nature, but acquired by the efforts of reason, so too it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination of certain matters. These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed, as stated above (Q. 90, art. 2). Wherefore Tully says in his Rhetoric (De Invent. Rhet. ii) that "justice has its source in nature; thence certain things came into custom by reason of their utility; afterwards these things which emanated from nature and were approved by custom, were sanctioned by fear and reverence for the law."

Reply to Objection 1: The human reason cannot have a full participation of the dictate of the Divine Reason, but according to its own mode, and imperfectly. Consequently, as on the part of the speculative reason, by a natural participation of Divine Wisdom, there is in us the knowledge of certain general principles, but not proper knowledge of each single truth, such as that contained in the Divine Wisdom; so too, on the part of the practical reason, man has a natural participation of the eternal law, according to certain general principles, but not as regards the particular determinations of individual cases, which are, however, contained in the eternal law. Hence the need for human reason to proceed further to sanction them by law.

Reply to Objection 2: Human reason is not, of itself, the rule of things: but the principles impressed on it by nature, are general rules and measures of all things relating to human conduct, whereof the natural reason is the rule and measure, although it is not the measure of things that are from nature.

Reply to Objection 3: The practical reason is concerned with practical matters, which are singular

and contingent: but not with necessary things, with which the speculative reason is concerned. Wherefore human laws cannot have that inerrancy that belongs to the demonstrated conclusions of sciences. Nor is it necessary for every measure to be altogether unerring and certain, but according as it is possible in its own particular genus.

Article 4

Whether there was any need for a Divine law?

Objection 1: It would seem that there was no need for a Divine law. Because, as stated above (art. 2), the natural law is a participation in us of the eternal law. But the eternal law is a Divine law, as stated above (art. 1). Therefore there was no need for a Divine law in addition to the natural law, and human laws derived therefrom.

Objection 2: Further, it is written (Ecclus. 15:14) that "God left man in the hand of his own counsel." Now counsel is an act of reason. Therefore man was left to the direction of his reason. But a dictate of human reason is a human law as stated above (art 3). Therefore there is no need for man to be governed also by a Divine law.

Objection 3: Further, human nature is more self-sufficing than irrational creatures. But irrational creatures have no Divine law besides the natural inclination impressed on them. Much less, therefore, should the rational creature have a Divine law in addition to the natural law.

On the contrary, David prayed God to set His law before him, saying (Ps. 118:33): "Set before me for a law the way of Thy justifications, O Lord."

I answer that, Besides the natural and the human law it was necessary for the directing of human conduct to have a Divine law. And this for four reasons. First, because it is by law that man is directed how to perform his proper acts in view of his last end. And indeed if man were ordained to no other end than that which is proportionate to his natural faculty, there would be no need for man to have any further direction of the part of his reason, besides the natural law and human law which is derived from it. But since man is ordained to an end of eternal happiness which is inproportionate to man's natural faculty...therefore it was necessary that, besides the natural and the human law, man should be directed

to his end by a law given by God.

Secondly, because, on account of the uncertainty of human judgment, especially on contingent and particular matters, different people form different judgments on human acts; whence also different and contrary laws result. In order, therefore, that man may know without any doubt what he ought to do and what he ought to avoid, it was necessary for man to be directed in his proper acts by a law given by God, for it is certain that such a law cannot err.

Thirdly, because man can make laws in those matters of which he is competent to judge. But man is not competent to judge of interior movements, that are hidden, but only of exterior acts which appear: and yet for the perfection of virtue it is necessary for man to conduct himself aright in both kinds of acts. Consequently human law could not sufficiently curb and direct interior acts; and it was necessary for this purpose that a Divine law should supervene.

Fourthly, because, as Augustine says (De Lib. Arb. i, 5,6), human law cannot punish or forbid all evil deeds: since while aiming at doing away with all evils, it would do away with many good things, and would hinder the advance of the common good, which is necessary for human intercourse. In order, therefore, that no evil might remain unforbidden and unpunished, it was necessary for the Divine law to supervene, whereby all sins are forbidden.

And these four causes are touched upon in Ps. 118:8, where it is said: "The law of the Lord is unspotted," i.e. allowing no foulness of sin; "converting souls," because it directs not only exterior, but also interior acts; "the testimony of the Lord is faithful," because of the certainty of what is true and right; "giving wisdom to little ones," by directing man to an end supernatural and Divine.

Reply to Objection 1: By the natural law the eternal law is participated proportionately to the capacity of human nature. But to his supernatural end man needs to be directed in a yet higher way. Hence the additional law given by God, whereby man shares more perfectly in the eternal law.

Reply to Objection 2: Counsel is a kind of inquiry: hence it must proceed from some principles. Nor is it enough for it to proceed from principles imparted by nature, which are the precepts of the natural law, for the reasons given above: but there is need for certain additional principles, namely, the

precepts of the Divine law.

Reply to Objection 3: Irrational creatures are not ordained to an end higher than that which is proportionate to their natural powers: consequently the comparison fails.

Question 94 Of The Natural Law

Article 1

Whether the natural law is a habit?

Objection 1: It would seem that the natural law is a habit. Because, as the Philosopher says (Ethic. ii, 5), "there are three things in the soul: power, habit, and passion." But the natural law is not one of the soul's powers: nor is it one of the passions; as we may see by going through them one by one. Therefore the natural law is a habit.

Objection 2: Further, Basil [*Damascene, De Fide Orth. iv, 22] says that the conscience or "synderesis is the law of our mind"; which can only apply to the natural law. But the "synderesis" is a habit, as was shown in the FP, Question [79], Article [12]. Therefore the natural law is a habit.

Objection 3: Further, the natural law abides in man always, as will be shown further on (art. 6). But man's reason, which the law regards, does not always think about the natural law. Therefore the natural law is not an act, but a habit.

On the contrary, Augustine says (De Bono Conjug. xxi) that "a habit is that whereby something is done when necessary." But such is not the natural law: since it is in infants and in the damned who cannot act by it. Therefore the natural law is not a habit.

I answer that, A thing may be called a habit in two ways. First, properly and essentially: and thus the natural law is not a habit. For it has been stated above (Q. 90, art. 1) that the natural law is something appointed by reason, just as a proposition is a work of reason. Now that which a man does is not the same as that whereby he does it: for he makes a becoming speech by the habit of grammar. Since then a habit is that by which we act, a law cannot be a habit properly and essentially.

Secondly, the term habit may be applied to that

which we hold by a habit: thus faith may mean that which we hold by faith. And accordingly, since the precepts of the natural law are sometimes considered by reason actually, while sometimes they are in the reason only habitually, in this way the natural law may be called a habit. Thus, in speculative matters, the indemonstrable principles are not the habit itself whereby we hold those principles, but are the principles the habit of which we possess.

Reply to Objection 1: The Philosopher proposes there to discover the genus of virtue; and since it is evident that virtue is a principle of action, he mentions only those things which are principles of human acts, viz. powers, habits and passions. But there are other things in the soul besides these three: there are acts; thus "to will" is in the one that wills; again, things known are in the knower; moreover its own natural properties are in the soul, such as immortality and the like.

Reply to Objection 2: "*Synderesis*" is said to be the law of our mind, because it is a habit containing the precepts of the natural law, which are the first principles of human actions.

Reply to Objection 3: This argument proves that the natural law is held habitually; and this is granted.

To the argument advanced in the contrary sense we reply that sometimes a man is unable to make use of that which is in him habitually, on account of some impediment: thus, on account of sleep, a man is unable to use the habit of science. In like manner, through the deficiency of his age, a child cannot use the habit of understanding of principles, or the natural law, which is in him habitually.

Article 2

Whether the natural law contains several precepts, or only one?

Objection 1: It would seem that the natural law contains, not several precepts, but one only. For law is a kind of precept, as stated above (Q. 92, art. 2). If therefore there were many precepts of the natural law, it would follow that there are also many natural laws.

Objection 2: Further, the natural law is consequent to human nature. But human nature, as a

whole, is one; though, as to its parts, it is manifold. Therefore, either there is but one precept of the law of nature, on account of the unity of nature as a whole; or there are many, by reason of the number of parts of human nature. The result would be that even things relating to the inclination of the concupiscible faculty belong to the natural law.

Objection 3: Further, law is something pertaining to reason, as stated above (Q. 92, art. 1). Now reason is but one in man. Therefore there is only one precept of the natural law.

On the contrary, The precepts of the natural law in man stand in relation to practical matters, as the first principles to matters of demonstration. But there are several first indemonstrable principles. Therefore there are also several precepts of the natural law.

I answer that, As stated above (Q. 92, art. 3), the precepts of the natural law are to the practical reason, what the first principles of demonstrations are to the speculative reason; because both are self-evident principles. Now a thing is said to be self-evident in two ways: first, in itself; secondly, in relation to us. Any proposition is said to be self-evident in itself, if its predicate is contained in the notion of the subject: although, to one who knows not the definition of the subject, it happens that such a proposition is not self-evident. For instance, this proposition, "Man is a rational being," is, in its very nature, self-evident, since who says "man," says "a rational being": and yet to one who knows not what a man is, this proposition is not self-evident. Hence it is that, as Boethius says (*De Hebdom.*), certain axioms or propositions are universally self-evident to all; and such are those propositions whose terms are known to all, as, "Every whole is greater than its part," and, "Things equal to one and the same are equal to one another." But some propositions are self-evident only to the wise, who understand the meaning of the terms of such propositions: thus to one who understands that an angel is not a body, it is self-evident that an angel is not circumscriptively in a place: but this is not evident to the unlearned, for they cannot grasp it.

Now a certain order is to be found in those things that are apprehended universally. For that which, before aught else, falls under apprehension, is "being," the notion of which is included in all

things whatsoever a man apprehends. Wherefore the first indemonstrable principle is that "the same thing cannot be affirmed and denied at the same time," which is based on the notion of "being" and "not-being": and on this principle all others are based, as is stated in *Metaph. iv, text. 9*. Now as "being" is the first thing that falls under the apprehension simply, so "good" is the first thing that falls under the apprehension of the practical reason, which is directed to action: since every agent acts for an end under the aspect of good. Consequently the first principle of practical reason is one founded on the notion of good, viz. that "good is that which all things seek after." Hence this is the first precept of law, that "good is to be done and pursued, and evil is to be avoided." All other precepts of the natural law are based upon this: so that whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of the natural law as something to be done or avoided.

Since, however, good has the nature of an end, and evil, the nature of a contrary, hence it is that all those things to which man has a natural inclination, are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance. Wherefore according to the order of natural inclinations, is the order of the precepts of the natural law. Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature: and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law. Secondly, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals: and in virtue of this inclination, those things are said to belong to the natural law, "which nature has taught to all animals" [*Pandect. Just. I, tit. i], such as sexual intercourse, education of offspring and so forth. Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination belongs to the

natural law; for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things regarding the above inclination.

Reply to Objection 1: All these precepts of the law of nature have the character of one natural law, inasmuch as they flow from one first precept.

Reply to Objection 2: All the inclinations of any parts whatsoever of human nature, e.g. of the concupiscible and irascible parts, in so far as they are ruled by reason, belong to the natural law, and are reduced to one first precept, as stated above: so that the precepts of the natural law are many in themselves, but are based on one common foundation.

Reply to Objection 3: Although reason is one in itself, yet it directs all things regarding man; so that whatever can be ruled by reason, is contained under the law of reason.

Article 3

Whether all acts of virtue are prescribed by the natural law?

Objection 1: It would seem that not all acts of virtue are prescribed by the natural law. Because, as stated above (Q. 92, art. 2) it is essential to a law that it be ordained to the common good. But some acts of virtue are ordained to the private good of the individual, as is evident especially in regards to acts of temperance. Therefore not all acts of virtue are the subject of natural law.

Objection 2: Further, every sin is opposed to some virtuous act. If therefore all acts of virtue are prescribed by the natural law, it seems to follow that all sins are against nature: whereas this applies to certain special sins.

Objection 3: Further, those things which are according to nature are common to all. But acts of virtue are not common to all: since a thing is virtuous in one, and vicious in another. Therefore not all acts of virtue are prescribed by the natural law.

On the contrary, Damascene says (*De Fide Orth. iii, 4*) that "virtues are natural." Therefore virtuous acts also are a subject of the natural law.

I answer that, We may speak of virtuous acts in two ways: first, under the aspect of virtuous; secondly, as such and such acts considered in their

proper species. If then we speak of acts of virtue, considered as virtuous, thus all virtuous acts belong to the natural law. For it has been stated (art. 2) that to the natural law belongs everything to which a man is inclined according to his nature. Now each thing is inclined naturally to an operation that is suitable to it according to its form: thus fire is inclined to give heat. Wherefore, since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason: and this is to act according to virtue. Consequently, considered thus, all acts of virtue are prescribed by the natural law: since each one's reason naturally dictates to him to act virtuously. But if we speak of virtuous acts, considered in themselves, i.e. in their proper species, thus not all virtuous acts are prescribed by the natural law: for many things are done virtuously, to which nature does not incline at first; but which, through the inquiry of reason, have been found by men to be conducive to well-living.

Reply to Objection 1: Temperance is about the natural concupiscences of food, drink and sexual matters, which are indeed ordained to the natural common good, just as other matters of law are ordained to the moral common good.

Reply to Objection 2: By human nature we may mean either that which is proper to man---and in this sense all sins, as being against reason, are also against nature, as Damascene states (De Fide Orth. ii, 30): or we may mean that nature which is common to man and other animals; and in this sense, certain special sins are said to be against nature; thus contrary to sexual intercourse, which is natural to all animals, is unisexual lust, which has received the special name of the unnatural crime.

Reply to Objection 3: This argument considers acts in themselves. For it is owing to the various conditions of men, that certain acts are virtuous for some, as being proportionate and becoming to them, while they are vicious for others, as being out of proportion to them.

Article 4

Whether the natural law is the same in all men?

Objection 1: It would seem that the natural law is not the same in all. For it is stated in the Decretals (Dist. i) that "the natural law is that which is contained in

the Law and the Gospel." But this is not common to all men; because, as it is written (Rm. 10:16), "all do not obey the gospel." Therefore the natural law is not the same in all men.

Objection 2: Further, "Things which are according to the law are said to be just," as stated in Ethic. v. But it is stated in the same book that nothing is so universally just as not to be subject to change in regard to some men. Therefore even the natural law is not the same in all men.

Objection 3: Further, as stated above (art. 2), to the natural law belongs everything to which a man is inclined according to his nature. Now different men are naturally inclined to different things; some to the desire of pleasures, others to the desire of honors, and other men to other things. Therefore there is not one natural law for all.

On the contrary, Isidore says (Etym. v, 4): "The natural law is common to all nations."

I answer that, As stated above (art. 2), to the natural law belongs those things to which a man is inclined naturally: and among these it is proper to man to be inclined to act according to reason. Now the process of reason is from the common to the proper, as stated in Phys. i. The speculative reason, however, is differently situated in this matter, from the practical reason. For, since the speculative reason is busied chiefly with the necessary things, which cannot be otherwise than they are, its proper conclusions, like the universal principles, contain the truth without fail. The practical reason, on the other hand, is busied with contingent matters, about which human actions are concerned: and consequently, although there is necessity in the general principles, the more we descend to matters of detail, the more frequently we encounter defects. Accordingly then in speculative matters truth is the same in all men, both as to principles and as to conclusions: although the truth is not known to all as regards the conclusions, but only as regards the principles which are called common notions. But in matters of action, truth or practical rectitude is not the same for all, as to matters of detail, but only as to the general principles: and where there is the same rectitude in matters of detail, it is not equally known to all.

It is therefore evident that, as regards the general principles whether of speculative or of practical reason, truth or rectitude is the same for all, and is

equally known by all. As to the proper conclusions of the speculative reason, the truth is the same for all, but is not equally known to all: thus it is true for all that the three angles of a triangle are together equal to two right angles, although it is not known to all. But as to the proper conclusions of the practical reason, neither is the truth or rectitude the same for all, nor, where it is the same, is it equally known by all. Thus it is right and true for all to act according to reason: and from this principle it follows as a proper conclusion, that goods entrusted to another should be restored to their owner. Now this is true for the majority of cases: but it may happen in a particular case that it would be injurious, and therefore unreasonable, to restore goods held in trust; for instance, if they are claimed for the purpose of fighting against one's country. And this principle will be found to fail the more, according as we descend further into detail, e.g. if one were to say that goods held in trust should be restored with such and such a guarantee, or in such and such a way; because the greater the number of conditions added, the greater the number of ways in which the principle may fail, so that it be not right to restore or not to restore.

Consequently we must say that the natural law, as to general principles, is the same for all, both as to rectitude and as to knowledge. But as to certain matters of detail, which are conclusions, as it were, of those general principles, it is the same for all in the majority of cases, both as to rectitude and as to knowledge; and yet in some few cases it may fail, both as to rectitude, by reason of certain obstacles (just as natures subject to generation and corruption fail in some few cases on account of some obstacle), and as to knowledge, since in some the reason is perverted by passion, or evil habit, or an evil disposition of nature; thus formerly, theft, although it is expressly contrary to the natural law, was not considered wrong among the Germans, as Julius Caesar relates (*De Bello Gall.* vi).

Reply to Objection 1: The meaning of the sentence quoted is not that whatever is contained in the Law and the Gospel belongs to the natural law, since they contain many things that are above nature; but that whatever belongs to the natural law is fully contained in them. Wherefore Gratian, after saying that "the natural law is what is contained in the Law and the Gospel," adds at once, by way of example,

"by which everyone is commanded to do to others as he would be done by."

Reply to Objection 2: The saying of the Philosopher is to be understood of things that are naturally just, not as general principles, but as conclusions drawn from them, having rectitude in the majority of cases, but failing in a few.

Reply to Objection 3: As, in man, reason rules and commands the other powers, so all the natural inclinations belonging to the other powers must needs be directed according to reason. Wherefore it is universally right for all men, that all their inclinations should be directed according to reason.

Article 5

Whether the natural law can be changed?

Objection 1: It would seem that the natural law can be changed. Because on *Ecclus.* 17:9, "He gave them instructions, and the law of life," the gloss says: "He wished the law of the letter to be written, in order to correct the law of nature." But that which is corrected is changed. Therefore the natural law can be changed.

Objection 2: Further, the slaying of the innocent, adultery, and theft are against the natural law. But we find these things changed by God: as when God commanded Abraham to slay his innocent son (*Gn.* 22:2); and when he ordered the Jews to borrow and purloin the vessels of the Egyptians (*Ex.* 12:35); and when He commanded Osee to take to himself "a wife of fornications" (*Osee* 1:2). Therefore the natural law can be changed.

Objection 3: Further, Isidore says (*Etym.* 5:4) that "the possession of all things in common, and universal freedom, are matters of natural law." But these things are seen to be changed by human laws. Therefore it seems that the natural law is subject to change.

On the contrary, It is said in the *Decretals* (*Dist.* v): "The natural law dates from the creation of the rational creature. It does not vary according to time, but remains unchangeable."

I answer that, A change in the natural law may be understood in two ways. First, by way of addition. In this sense nothing hinders the natural law from being changed: since many things for the benefit of human life have been added over and above the

natural law, both by the Divine law and by human laws.

Secondly, a change in the natural law may be understood by way of subtraction, so that what previously was according to the natural law, ceases to be so. In this sense, the natural law is altogether unchangeable in its first principles: but in its secondary principles, which, as we have said (art. 4), are certain detailed proximate conclusions drawn from the first principles, the natural law is not changed so that what it prescribes be not right in most cases. But it may be changed in some particular cases of rare occurrence, through some special causes hindering the observance of such precepts, as stated above (art. 4).

Reply to Objection 1: The written law is said to be given for the correction of the natural law, either because it supplies what was wanting to the natural law; or because the natural law was perverted in the hearts of some men, as to certain matters, so that they esteemed those things good which are naturally evil; which perversion stood in need of correction.

Reply to Objection 2: All men alike, both guilty and innocent, die the death of nature: which death of nature is inflicted by the power of God on account of original sin, according to 1 Kgs. 2:6: "The Lord killeth and maketh alive." Consequently, by the command of God, death can be inflicted on any man, guilty or innocent, without any injustice whatever. In like manner adultery is intercourse with another's wife; who is allotted to him by the law emanating from God. Consequently intercourse with any woman, by the command of God, is neither adultery nor fornication. The same applies to theft, which is the taking of another's property. For whatever is taken by the command of God, to Whom all things belong, is not taken against the will of its owner, whereas it is in this that theft consists. Nor is it only in human things, that whatever is commanded by God is right; but also in natural things, whatever is done by God, is, in some way, natural, as stated in the FP, Question [105], Article [6], ad 1.

Reply to Objection 3: A thing is said to belong to the natural law in two ways. First, because nature inclines thereto: e.g. that one should not do harm to another. Secondly, because nature did not bring in the contrary: thus we might say that for man to be naked is of the natural law, because nature did

not give him clothes, but art invented them. In this sense, "the possession of all things in common and universal freedom" are said to be of the natural law, because, to wit, the distinction of possessions and slavery were not brought in by nature, but devised by human reason for the benefit of human life. Accordingly the law of nature was not changed in this respect, except by addition.

Article 6

Whether the law of nature can be abolished from the heart of man?

Objection 1: It would seem that the natural law can be abolished from the heart of man. Because on Rm. 2:14, "When the Gentiles who have not the law," etc. a gloss says that "the law of righteousness, which sin had blotted out, is graven on the heart of man when he is restored by grace." But the law of righteousness is the law of nature. Therefore the law of nature can be blotted out.

Objection 2: Further, the law of grace is more efficacious than the law of nature. But the law of grace is blotted out by sin. Much more therefore can the law of nature be blotted out.

Objection 3: Further, that which is established by law is made just. But many things are enacted by men, which are contrary to the law of nature. Therefore the law of nature can be abolished from the heart of man.

On the contrary, Augustine says (Confess. ii): "Thy law is written in the hearts of men, which iniquity itself effaces not." But the law which is written in men's hearts is the natural law. Therefore the natural law cannot be blotted out.

I answer that, As stated above (art. 4), there belong to the natural law, first, certain most general precepts, that are known to all; and secondly, certain secondary and more detailed precepts, which are, as it were, conclusions following closely from first principles. As to those general principles, the natural law, in the abstract, can nowise be blotted out from men's hearts. But it is blotted out in the case of a particular action, in so far as reason is hindered from applying the general principle to a particular point of practice, on account of concupiscence or some other passion). But as to the other, i.e. the secondary precepts, the natural law can be blotted out from

the human heart, either by evil persuasions, just as in speculative matters errors occur in respect of necessary conclusions; or by vicious customs and corrupt habits, as among some men, theft, and even unnatural vices... were not esteemed sinful.

Reply to Objection 1: Sin blots out the law of nature in particular cases, not universally, except perchance in regard to the secondary precepts of the natural law, in the way stated above.

Reply to Objection 2: Although grace is more efficacious than nature, yet nature is more essential to man, and therefore more enduring.

Reply to Objection 3: This argument is true of the secondary precepts of the natural law, against which some legislators have framed certain enactments which are unjust.

Question 95 Of Human Law

Article 1

Whether it was useful for laws to be framed by men?

Objection 1: It would seem that it was not useful for laws to be framed by men. Because the purpose of every law is that man be made good thereby, as stated above (Q. 92, at. 1). But men are more to be induced to be good willingly by means of admonitions, than against their will, by means of laws. Therefore there was no need to frame laws.

Objection 2: Further, As the Philosopher says (Ethic. v, 4), "men have recourse to a judge as to animate justice." But animate justice is better than inanimate justice, which contained in laws. Therefore it would have been better for the execution of justice to be entrusted to the decision of judges, than to frame laws in addition.

Objection 3: Further, every law is framed for the direction of human actions, as is evident from what has been stated above (Q. 92, at. 1). But since human actions are about singulars, which are infinite in number, matter pertaining to the direction of human actions cannot be taken into sufficient consideration except by a wise man, who looks into each one of them. Therefore it would have been

better for human acts to be directed by the judgment of wise men, than by the framing of laws. Therefore there was no need of human laws.

On the contrary, Isidore says (Etym. v, 20): "Laws were made that in fear thereof human audacity might be held in check, that innocence might be safeguarded in the midst of wickedness, and that the dread of punishment might prevent the wicked from doing harm." But these things are most necessary to mankind. Therefore it was necessary that human laws should be made.

I answer that,... man has a natural aptitude for virtue; but the perfection of virtue must be acquired by man by means of some kind of training. Thus we observe that man is helped by industry in his necessities, for instance, in food and clothing. Certain beginnings of these he has from nature, viz. his reason and his hands; but he has not the full complement, as other animals have, to whom nature has given sufficiency of clothing and food. Now it is difficult to see how man could suffice for himself in the matter of this training: since the perfection of virtue consists chiefly in withdrawing man from undue pleasures, to which above all man is inclined, and especially the young, who are more capable of being trained. Consequently a man needs to receive this training from another, whereby to arrive at the perfection of virtue. And as to those young people who are inclined to acts of virtue, by their good natural disposition, or by custom, or rather by the gift of God, paternal training suffices, which is by admonitions. But since some are found to be depraved, and prone to vice, and not easily amenable to words, it was necessary for such to be restrained from evil by force and fear, in order that, at least, they might desist from evil-doing, and leave others in peace, and that they themselves, by being habituated in this way, might be brought to do willingly what hitherto they did from fear, and thus become virtuous. Now this kind of training, which compels through fear of punishment, is the discipline of laws. Therefore in order that man might have peace and virtue, it was necessary for laws to be framed: for, as the Philosopher says (Polit. i, 2), "as man is the most noble of animals if he be perfect in virtue, so is he the lowest of all, if he be severed from law and righteousness"; because man can use his reason to devise means of satisfying his lusts and

evil passions, which other animals are unable to do.

Reply to Objection 1: Men who are well disposed are led willingly to virtue by being admonished better than by coercion: but men who are evilly disposed are not led to virtue unless they are compelled.

Reply to Objection 2: As the Philosopher says (Rhet. i, 1), "it is better that all things be regulated by law, than left to be decided by judges": and this for three reasons. First, because it is easier to find a few wise men competent to frame right laws, than to find the many who would be necessary to judge aright of each single case. Secondly, because those who make laws consider long beforehand what laws to make; whereas judgment on each single case has to be pronounced as soon as it arises: and it is easier for man to see what is right, by taking many instances into consideration, than by considering one solitary fact. Thirdly, because lawgivers judge in the abstract and of future events; whereas those who sit in judgment of things present, towards which they are affected by love, hatred, or some kind of cupidity; wherefore their judgment is perverted.

Since then the animated justice of the judge is not found in every man, and since it can be deflected, therefore it was necessary, whenever possible, for the law to determine how to judge, and for very few matters to be left to the decision of men.

Reply to Objection 3: Certain individual facts which cannot be covered by the law "have necessarily to be committed to judges," as the Philosopher says in the same passage: for instance, "concerning something that has happened or not happened," and the like.

Article 2

Whether every human law is derived from the natural law?

Objection 1: It would seem that not every human law is derived from the natural law. For the Philosopher says (Ethic. v, 7) that "the legal just is that which originally was a matter of indifference." But those things which arise from the natural law are not matters of indifference. Therefore the enactments of human laws are not derived from the natural law.

Objection 2: Further, positive law is contrasted with natural law, as stated by Isidore (Etym. v, 4) and

the Philosopher (Ethic. v, 7). But those things which flow as conclusions from the general principles of the natural law belong to the natural law, as stated above (Q. 94, at. 4). Therefore that which is established by human law does not belong to the natural law.

Objection 3: Further, the law of nature is the same for all; since the Philosopher says (Ethic. v, 7) that "the natural just is that which is equally valid everywhere." If therefore human laws were derived from the natural law, it would follow that they too are the same for all: which is clearly false.

Objection 4: Further, it is possible to give a reason for things which are derived from the natural law. But "it is not possible to give the reason for all the legal enactments of the lawgivers," as the jurist says [*Pandect. Justin. lib. i, ff, tit. iii, v; De Leg. et Senat.]. Therefore not all human laws are derived from the natural law.

On the contrary, Tully says (Rhet. ii): "Things which emanated from nature and were approved by custom, were sanctioned by fear and reverence for the laws."

I answer that, As Augustine says (De Lib. Arb. i, 5) "that which is not just seems to be no law at all": wherefore the force of a law depends on the extent of its justice. Now in human affairs a thing is said to be just, from being right, according to the rule of reason. But the first rule of reason is the law of nature, as is clear from what has been stated above (Q. 91, at. 2). Consequently every human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of law.

But it must be noted that something may be derived from the natural law in two ways: first, as a conclusion from premises, secondly, by way of determination of certain generalities. The first way is like to that by which, in sciences, demonstrated conclusions are drawn from the principles: while the second mode is likened to that whereby, in the arts, general forms are particularized as to details: thus the craftsman needs to determine the general form of a house to some particular shape. Some things are therefore derived from the general principles of the natural law, by way of conclusions; e.g. that "one must not kill" may be derived as a conclusion from the principle that "one should do harm to no

man": while some are derived therefrom by way of determination; e.g. the law of nature has it that the evil-doer should be punished; but that he be punished in this or that way, is a determination of the law of nature.

Accordingly both modes of derivation are found in the human law. But those things which are derived in the first way, are contained in human law not as emanating therefrom exclusively, but have some force from the natural law also. But those things which are derived in the second way, have no other force than that of human law.

Reply to Objection 1: The Philosopher is speaking of those enactments which are by way of determination or specification of the precepts of the natural law.

Reply to Objection 2: This argument avails for those things that are derived from the natural law, by way of conclusions.

Reply to Objection 3: The general principles of the natural law cannot be applied to all men in the same way on account of the great variety of human affairs: and hence arises the diversity of positive laws among various people.

Reply to Objection 4: These words of the Jurist are to be understood as referring to decisions of rulers in determining particular points of the natural law: on which determinations the judgment of expert and prudent men is based as on its principles; in so far, to wit, as they see at once what is the best thing to decide.

Hence the Philosopher says (Ethic. vi, 11) that in such matters, "we ought to pay as much attention to the undemonstrated sayings and opinions of persons who surpass us in experience, age and prudence, as to their demonstrations."

Question 96 Of the Power of Human Law

Whether human law should be framed for the community rather than for the individual?

Objection 1: It would seem that human law should be framed not for the community, but rather for the individual. For the Philosopher says (Ethic. v, 7)

that "the legal just . . . includes all particular acts of legislation . . . and all those matters which are the subject of decrees," which are also individual matters, since decrees are framed about individual actions. Therefore law is framed not only for the community, but also for the individual.

Objection 2: Further, law is the director of human acts, as stated above (Q. 90, at. 1). But human acts are about individual matters. Therefore human laws should be framed, not for the community, but rather for the individual.

Objection 3: Further, law is a rule and measure of human acts, as stated above (Q. 92, at. 1). But a measure should be most certain, as stated in Metaph. x. Since therefore in human acts no general proposition can be so certain as not to fail in some individual cases, it seems that laws should be framed not in general but for individual cases.

On the contrary, The jurist says (Pandect. Justin. lib. i, tit. iii, art. ii; De legibus, etc.) that "laws should be made to suit the majority of instances; and they are not framed according to what may possibly happen in an individual case."

I answer that, Whatever is for an end should be proportionate to that end. Now the end of law is the common good; because, as Isidore says (Etym. v, 21) that "law should be framed, not for any private benefit, but for the common good of all the citizens." Hence human laws should be proportionate to the common good. Now the common good comprises many things. Wherefore law should take account of many things, as to persons, as to matters, and as to times. Because the community of the state is composed of many persons; and its good is procured by many actions; nor is it established to endure for only a short time, but to last for all time by the citizens succeeding one another, as Augustine says (De Civ. Dei ii, 21; xxii, 6).

Reply to Objection 1: The Philosopher (Ethic. v, 7) divides the legal just, i.e. positive law, into three parts. For some things are laid down simply in a general way: and these are the general laws. Of these he says that "the legal is that which originally was a matter of indifference, but which, when enacted, is so no longer": as the fixing of the ransom of a captive. Some things affect the community in one respect, and individuals in another. These are called "privileges," i.e. "private laws," as it were, because

they regard private persons, although their power extends to many matters; and in regard to these, he adds, "and further, all particular acts of legislation." Other matters are legal, not through being laws, but through being applications of general laws to particular cases: such are decrees which have the force of law; and in regard to these, he adds "all matters subject to decrees."

Reply to Objection 2: A principle of direction should be applicable to many; wherefore (Metaph. x, text. 4) the Philosopher says that all things belonging to one genus, are measured by one, which is the principle in that genus. For if there were as many rules or measures as there are things measured or ruled, they would cease to be of use, since their use consists in being applicable to many things. Hence law would be of no use, if it did not extend further than to one single act. Because the decrees than to one single act. Because the decrees of prudent men are made for the purpose of directing individual actions; whereas law is a general precept, as stated above (Q. 92, at. 2).

Reply to Objection 3: "We must not seek the same degree of certainty in all things" (Ethic. i, 3). Consequently in contingent matters, such as natural and human things, it is enough for a thing to be certain, as being true in the greater number of instances, though at times and less frequently it fail.

Article 2

Whether it belongs to the human law to repress all vices?

Objection 1: It would seem that it belongs to human law to repress all vices. For Isidore says (Etym. v, 20) that "laws were made in order that, in fear thereof, man's audacity might be held in check." But it would not be held in check sufficiently, unless all evils were repressed by law. Therefore human laws should repress all evils.

Objection 2: Further, the intention of the lawgiver is to make the citizens virtuous. But a man cannot be virtuous unless he forbear from all kinds of vice. Therefore it belongs to human law to repress all vices.

Objection 3: Further, human law is derived from the natural law, as stated above (Q. 95, at.

2). But all vices are contrary to the law of nature. Therefore human law should repress all vices.

On the contrary, We read in De Lib. Arb. i, 5: "It seems to me that the law which is written for the governing of the people rightly permits these things, and that Divine providence punishes them." But Divine providence punishes nothing but vices. Therefore human law rightly allows some vices, by not repressing them.

I answer that, As stated above (Q. 90, at. 1), law is framed as a rule or measure of human acts. Now a measure should be homogeneous with that which it measures, as stated in Metaph. x, text. 3,4, since different things are measured by different measures. Wherefore laws imposed on men should also be in keeping with their condition, for, as Isidore says (Etym. v, 21), law should be "possible both according to nature, and according to the customs of the country." Now possibility or faculty of action is due to an interior habit or disposition: since the same thing is not possible to one who has not a virtuous habit, as is possible to one who has. Thus the same is not possible to a child as to a full-grown man: for which reason the law for children is not the same as for adults, since many things are permitted to children, which in an adult are punished by law or at any rate are open to blame. In like manner many things are permissible to men not perfect in virtue, which would be intolerable in a virtuous man.

Now human law is framed for a number of human beings, the majority of whom are not perfect in virtue. Wherefore human laws do not forbid all vices, from which the virtuous abstain, but only the more grievous vices, from which it is possible for the majority to abstain; and chiefly those that are to the hurt of others, without the prohibition of which human society could not be maintained: thus human law prohibits murder, theft and such like.

Reply to Objection 1: Audacity seems to refer to the assailing of others. Consequently it belongs to those sins chiefly whereby one's neighbor is injured: and these sins are forbidden by human law, as stated.

Reply to Objection 2: The purpose of human law is to lead men to virtue, not suddenly, but gradually. Wherefore it does not lay upon the multitude of imperfect men the burdens of those who are already virtuous, viz. that they should abstain from all evil.

Otherwise these imperfect ones, being unable to bear such precepts, would break out into yet greater evils: thus it is written (pr. 30:33): "He that violently bloweth his nose, bringeth out blood"; and (MT. 9:17) that if "new wine," i.e. precepts of a perfect life, "is put into old bottles," i.e. into imperfect men, "the bottles break, and the wine runneth out," i.e. the precepts are despised, and those men, from contempt, break into evils worse still.

Reply to Objection 3: The natural law is a participation in us of the eternal law: while human law falls short of the eternal law. Now Augustine says (De Lib. Arb. i, 5): "The law which is framed for the government of states, allows and leaves unpunished many things that are punished by Divine providence. Nor, if this law does not attempt to do everything, is this a reason why it should be blamed for what it does." Wherefore, too, human law does not prohibit everything that is forbidden by the natural law.

Article 3 **Whether human law prescribes acts of all the virtues?**

Objection 1: It would seem that human law does not prescribe acts of all the virtues. For vicious acts are contrary to acts of virtue. But human law does not prohibit all vices, as stated above (art. 2). Therefore neither does it prescribe all acts of virtue.

Objection 2: Further, a virtuous act proceeds from a virtue. But virtue is the end of law; so that whatever is from a virtue, cannot come under a precept of law. Therefore human law does not prescribe all acts of virtue.

Objection 3: Further, law is ordained to the common good, as stated above (Q. 90, at. 2). But some acts of virtue are ordained, not to the common good, but to private good. Therefore the law does not prescribe all acts of virtue.

On the contrary, The Philosopher says (Ethic. v, 1) that the law "prescribes the performance of the acts of a brave man . . . and the acts of the temperate man . . . and the acts of the meek man: and in like manner as regards the other virtues and vices, prescribing the former, forbidding the latter."

I answer that, The species of virtues are distinguished by their objects, as explained above. Now all the objects of virtues can be referred

either to the private good of an individual, or to the common good of the multitude: thus matters of fortitude may be achieved either for the safety of the state, or for upholding the rights of a friend, and in like manner with the other virtues. But law, as stated above (Q. 90, at. 2) is ordained to the common good. Wherefore there is no virtue whose acts cannot be prescribed by the law. Nevertheless human law does not prescribe concerning all the acts of every virtue: but only in regard to those that are ordainable to the common good---either immediately, as when certain things are done directly for the common good---or mediately, as when a lawgiver prescribes certain things pertaining to good order, whereby the citizens are directed in the upholding of the common good of justice and peace.

Reply to Objection 1: Human law does not forbid all vicious acts, by the obligation of a precept, as neither does it prescribe all acts of virtue. But it forbids certain acts of each vice, just as it prescribes some acts of each virtue.

Reply to Objection 2: An act is said to be an act of virtue in two ways. First, from the fact that a man does something virtuous; thus the act of justice is to do what is right, and an act of fortitude is to do brave things: and in this way law prescribes certain acts of virtue. Secondly an act of virtue is when a man does a virtuous thing in a way in which a virtuous man does it. Such an act always proceeds from virtue: and it does not come under a precept of law, but is the end at which every lawgiver aims.

Reply to Objection 3: There is no virtue whose act is not ordainable to the common good, as stated above, either mediately or immediately.

Article 4 **Whether human law binds a man in conscience?**

Objection 1: It would seem that human law does not bind man in conscience. For an inferior power has no jurisdiction in a court of higher power. But the power of man, which frames human law, is beneath the Divine power. Therefore human law cannot impose its precept in a Divine court, such as is the court of conscience.

Objection 2: Further, the judgment of conscience depends chiefly on the commandments of God. But sometimes God's commandments are

made void by human laws, according to Mt. 15:6: "You have made void the commandment of God for your tradition." Therefore human law does not bind a man in conscience.

Objection 3: Further, human laws often bring loss of character and injury on man, according to Is. 10:1 et seq.: "Woe to them that make wicked laws, and when they write, write injustice; to oppress the poor in judgment, and do violence to the cause of the humble of My people." But it is lawful for anyone to avoid oppression and violence. Therefore human laws do not bind man in conscience.

On the contrary, It is written (1 Pt. 2:19): "This is thankworthy, if the conscience . . . a man endure sorrows, suffering wrongfully."

I answer that, Laws framed by man are either just or unjust. If they be just, they have the power of binding in conscience, from the eternal law whence they are derived, according to Prov. 8:15: "By Me kings reign, and lawgivers decree just things." Now laws are said to be just, both from the end, when, to wit, they are ordained to the common good---and from their author, that is to say, when the law that is made does not exceed the power of the lawgiver---and from their form, when, to wit, burdens are laid on the subjects, according to an equality of proportion and with a view to the common good. For, since one man is a part of the community, each man in all that he is and has, belongs to the community; just as a part, in all that it is, belongs to the whole; wherefore nature inflicts a loss on the part, in order to save the whole: so that on this account, such laws as these, which impose proportionate burdens, are just and binding in conscience, and are legal laws.

On the other hand laws may be unjust in two ways: first, by being contrary to human good, through being opposed to the things mentioned above---either in respect of the end, as when an authority imposes on his subjects burdensome laws, conducive, not to the common good, but rather to his own cupidity or vainglory---or in respect of the author, as when a man makes a law that goes beyond the power committed to him---or in respect of the form, as when burdens are imposed unequally on the community, although with a view to the common good. The like are acts of violence rather than laws; because, as Augustine says (De Lib. Arb. i, 5), "a law that is not just, seems to be no law at all." Wherefore

such laws do not bind in conscience, except perhaps in order to avoid scandal or disturbance, for which cause a man should even yield his right, according to Mt. 5:40,41: "If a man . . . take away thy coat, let go thy cloak also unto him; and whosoever will force thee one mile, go with him other two."

Secondly, laws may be unjust through being opposed to the Divine good: such are the laws of tyrants inducing to idolatry, or to anything else contrary to the Divine law: and laws of this kind must nowise be observed, because, as stated in Acts 5:29, "we ought to obey God rather than man."

Reply to Objection 1: As the Apostle says (Rm. 13:1,2), all human power is from God . . . "therefore he that resisteth the power," in matters that are within its scope, "resisteth the ordinance of God"; so that he becomes guilty according to his conscience.

Reply to Objection 2: This argument is true of laws that are contrary to the commandments of God, which is beyond the scope of (human) power. Wherefore in such matters human law should not be obeyed.

Reply to Objection 3: This argument is true of a law that inflicts unjust hurt on its subjects. The power that man holds from God does not extend to this: wherefore neither in such matters is man bound to obey the law, provided he avoid giving scandal or inflicting a more grievous hurt.

Article 5

Whether all are subject to the law?

Objection 1: It would seem that not all are subject to the law. For those alone are subject to a law for whom a law is made. But the Apostle says (1 Tim. 1:9): "The law is not made for the just man." Therefore the just are not subject to the law.

Objection 2: Further, Pope Urban says [*Decretals. caus. xix, qu. 2]: "He that is guided by a private law need not for any reason be bound by the public law." Now all spiritual men are led by the private law of the Holy Ghost, for they are the sons of God, of whom it is said (Rm. 8:14): "Whosoever are led by the Spirit of God, they are the sons of God." Therefore not all men are subject to human law.

Objection 3: Further, the jurist says [*Pandect. Justin. i, ff., tit. 3, De Leg. et Senat.] that "the

sovereign is exempt from the laws." But he that is exempt from the law is not bound thereby. Therefore not all are subject to the law.

On the contrary, The Apostle says (Rm. 13.1): "Let every soul be subject to the higher powers." But subjection to a power seems to imply subjection to the laws framed by that power. Therefore all men should be subject to human law.

I answer that, As stated above (Q. 90, art 1; 3), the notion of law contains two things: first, that it is a rule of human acts; secondly, that it has coercive power. Wherefore a man may be subject to law in two ways. First, as the regulated is subject to the regulator: and, in this way, whoever is subject to a power, is subject to the law framed by that power. But it may happen in two ways that one is not subject to a power. In one way, by being altogether free from its authority: hence the subjects of one city or kingdom are not bound by the laws of the sovereign of another city or kingdom, since they are not subject to his authority. In another way, by being under a yet higher law; thus the subject of a proconsul should be ruled by his command, but not in those matters in which the subject receives his orders from the emperor: for in these matters, he is not bound by the mandate of the lower authority, since he is directed by that of a higher. In this way, one who is simply subject to a law, may not be a subject thereto in certain matters, in respect of which he is ruled by a higher law.

Secondly, a man is said to be subject to a law as the coerced is subject to the coercer. In this way the virtuous and righteous are not subject to the law, but only the wicked. Because coercion and violence are contrary to the will: but the will of the good is in harmony with the law, whereas the will of the wicked is discordant from it. Wherefore in this sense the good are not subject to the law, but only the wicked.

Reply to Objection 1: This argument is true of subjection by way of coercion: for, in this way, "the law is not made for the just men": because "they are a law to themselves," since they "show the work of the law written in their hearts," as the Apostle says (Rm 2: 14). Consequently the law does not enforce itself upon them as it does on the wicked.

Reply to Objection 2: The law of the Holy Ghost is above all law framed by man: and therefore

spiritual men, in so far as they are led by the law of the Holy Ghost, are not subject to the law in those matters that are inconsistent with the guidance of the Holy Ghost. Nevertheless the very fact that spiritual men are subject to law, is due to the leading of the Holy Ghost, according to 1 Pt. 2:13: "Be ye subject . . . to every human creature for God's sake."

Reply to Objection 3: The sovereign is said to be "exempt from the law," as to its coercive power; since, properly speaking, no man is coerced by himself, and law has no coercive power save from the authority of the sovereign. Thus then is the sovereign said to be exempt from the law, because none is competent to pass sentence on him, if he acts against the law. Wherefore on Ps. 50:6: "To Thee only have I sinned," a gloss says that "there is no man who can judge the deeds of a king." But as to the directive force of law, the sovereign is subject to the law by his own will, according to the statement (Extra, De Constit. cap. Cum omnes) that "whatever law a man makes for another, he should keep himself. And a wise authority [*Dionysius Cato, Dist. de Moribus] says: 'Obey the law that thou makest thyself.'" Moreover the Lord reproaches those who "say and do not"; and who "bind heavy burdens and lay them on men's shoulders, but with a finger of their own they will not move them" (Mt. 23:3-4). Hence, in the judgment of God, the sovereign is not exempt from the law, as to its directive force; but he should fulfil it to his own free-will and not of constraint. Again the sovereign is above the law, in so far as, when it is expedient, he can change the law, and dispense in it according to time and place.

Article 6

Whether he who is under a law may act beside the letter of the law?

Objection 1: It seems that he who is subject to a law may not act beside the letter of the law. For Augustine says (De Vera Relig. 31): "Although men judge about temporal laws when they make them, yet when once they are made they must pass judgment not on them, but according to them." But if anyone disregard the letter of the law, saying that he observes the intention of the lawgiver, he seems to pass judgment on the law. Therefore it is not right for one who is under the law to disregard the letter

of the law, in order to observe the intention of the lawgiver.

Objection 2: Further, he alone is competent to interpret the law who can make the law. But those who are subject to the law cannot make the law. Therefore they have no right to interpret the intention of the lawgiver, but should always act according to the letter of the law.

Objection 3: Further, every wise man knows how to explain his intention by words. But those who framed the laws should be reckoned wise: for Wisdom says (Prov 8:15): "By Me kings reign, and lawgivers decree just things." Therefore we should not judge of the intention of the lawgiver otherwise than by the words of the law.

On the contrary, Hilary says (De Trin. iv): "The meaning of what is said is according to the motive for saying it: because things are not subject to speech, but speech to things." Therefore we should take account of the motive of the lawgiver, rather than of his very words.

In answer that, As stated above (art. 4), every law is directed to the common weal of men, and derives the force and nature of law accordingly. Hence the jurist says [*Pandect. Justin. lib. i, ff., tit. 3, De Leg. et Senat.]: "By no reason of law, or favor of equity, is it allowable for us to interpret harshly, and render burdensome, those useful measures which have been enacted for the welfare of man." Now it happens often that the observance of some point of law conduces to the common weal in the majority of instances, and yet, in some cases, is very hurtful. Since then the lawgiver cannot have in view every single case, he shapes the law according to what happens most frequently, by directing his attention to the common good. Wherefore if a case arise wherein the observance of that law would be hurtful to the general welfare, it should not be observed. For instance, suppose that in a besieged city it be

an established law that the gates of the city are to be kept closed, this is good for public welfare as a general rule: but, it were to happen that the enemy are in pursuit of certain citizens, who are defenders of the city, it would be a great loss to the city, if the gates were not opened to them: and so in that case the gates ought to be opened, contrary to the letter of the law, in order to maintain the common weal, which the lawgiver had in view.

Nevertheless it must be noted, that if the observance of the law according to the letter does not involve any sudden risk needing instant remedy, it is not competent for everyone to expound what is useful and what is not useful to the state: those alone can do this who are in authority, and who, on account of such like cases, have the power to dispense from the laws. If, however, the peril be so sudden as not to allow of the delay involved by referring the matter to authority, the mere necessity brings with it a dispensation, since necessity knows no law.

Reply to Objection 1: He who in a case of necessity acts beside the letter of the law, does not judge the law; but of a particular case in which he sees that the letter of the law is not to be observed.

Reply to Objection 2: He who follows the intention of the lawgiver, does not interpret the law simply; but in a case in which it is evident, by reason of the manifest harm, that the lawgiver intended otherwise. For if it be a matter of doubt, he must either act according to the letter of the law, or consult those in power.

Reply to Objection 3: No man is so wise as to be able to take account of every single case; wherefore he is not able sufficiently to express in words all those things that are suitable for the end he has in view. And even if a lawgiver were able to take all the cases into consideration, he ought not to mention them all, in order to avoid confusion: but should frame the law according to that which is of most common occurrence.