2
Law
ST I–II
Question 90
Of the Essence of Law

[In Four Articles]

We have now to consider the extrinsic principles of acts. Now the extrinsic principle inclining to evil is the devil, of whose temptations we have spoken in the First Part. But the extrinsic principle moving to good is God, Who both instructs us by means of His law and assists us by His grace; wherefore, in the first place, we must speak of law; in the second place, of grace.

Concerning law, we must consider (1) law itself in general; (2) its parts. Concerning law in general, three points offer themselves for our consideration: (1) its essence; (2) the different kinds of law; (3) the effects of law.

Under the first head, there are four points of inquiry: (1) Whether law is something pertaining to reason? (2) concerning the end of law; (3) its cause; (4) the promulgation of law.

FIRST ARTICLE
Is Law Something Pertaining to Reason?

We proceed thus to the First Article:

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.

Obj. 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 of which we have spoken above. 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.

Obj. 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, as is evident from what has been said above. Therefore, law pertains not to the reason but to the will, according to the words of the Jurist: "Whatever pleases the ruler has the force of law."  

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

I answer that Law is a certain 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 reason, which is the first principle of human acts, as is evident from what has been stated above, since it belongs to reason to direct to the end, which is the first principle in all matters of action, according to the Philosopher. 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 Obj. 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 reason alone. Second, 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 Obj. 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 kind of syllogism in respect to the work to be done, as stated above and as the Philosopher teaches, 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. Suchlike 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 Obj. 3. Reason has its power of moving from the will, as stated above, 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 ruler has the force of law; otherwise, the ruler's will would savor of lawlessness rather than of law.

SECOND ARTICLE

Is the Law Always Directed to the Common Good?

We proceed thus to the Second Article:

Obj. 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.

Obj. 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.

Obj. 3. Further, Isidore says, "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 to private goods. Therefore, the law is not only directed to the common good but also to the private good of an individual.

On the contrary, Isidore says that "Laws are enacted for no private profit but for the common benefit of the citizens."

I answer that. As stated above, 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, as stated above. 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 a single 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 that we call those legal matters just "which are adapted to produce and preserve happiness and its parts for the body politic" since the political community is a perfect community, as he says in Politics I, 1.

Now, in every genus, that which belongs to it most of all 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 insofar 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 insofar as it is ordered to the common good. Therefore, every law is ordained to the common good.

Reply Obj. 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 Obj. 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 Obj. 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.

THIRD ARTICLE
Is the Reason of Any Person Competent to Make Laws?

We proceed thus to the Third Article:

Obj. 1. It would seem that the reason of any person is competent to make laws. For the Apostle says 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.

Obj. 2. Further, as the Philosopher says, "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.

Obj. 3. Further, just as the ruler of a political community governs the political community, so every father of a family governs his household. But the ruler of a political community can make laws for the political community. Therefore, every father of a family can make laws for his household.

On the contrary, Isidore says, "A law is an ordinance of the people, whereby something is sanctioned by nobles together with commoners." Not everyone, therefore, is competent to make law.

I answer that Law, properly speaking, regards first and chiefly an ordering to the common good. Now to order anything to the common good belongs either to the whole people or to someone who is the vicegerent of the whole people. And, therefore, the making of 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 Obj. 1. As stated above, 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, insofar
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 Obj. 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. But this coercive power is vested in the whole people or in some public personage to whom it belongs to inflict penalties, as we shall state further on. Wherefore, the framing of laws belongs to him alone.

Reply Obj. 3. As one man is a part of the household, so a household is a part of the political community, and the political community is a perfect community, according to Politics 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 political community, 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 nature of law.

FOURTH ARTICLE
Is Promulgation Essential to a Law?

We proceed thus to the Fourth Article:

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

Obj. 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.

Obj. 3. Further, the obligation of a law extends even to the future since "laws are binding in matters of the future," as the jurists say. But promulgation is made to those who are present. Therefore, it is not essential to a law.

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

I answer that. As stated above, 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 a certain ordinance of reason for the common good, made by him who has care of the community, and promulgated.

Reply Obj. 1. The natural law is promulgated by the very fact that God instilled it into men's minds so as to be known by them naturally.

Reply Obj. 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 Obj. 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 that "lex [law] is derived from legere [to read] because it is written."

Question 91
Of the Various Kinds of Law
[In Six Articles]

We must now consider the various kinds of law, under which head there are six points of inquiry: (1) Whether there is an eternal law? (2) Whether there is a natural law? (3) Whether there is a human law? (4) Whether there is a divine law? (5) Whether there is one divine law or several? (6) Whether there is a law of sin?
FIRST ARTICLE

Is There an Eternal Law?

We proceed thus to the First Article:

Obj. 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.

Obj. 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.

Obj. 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, "That law which is the supreme reason cannot be understood to be otherwise than unchangeable and eternal."¹

I answer that. As stated above, a law is nothing else but a dictate of practical reason in the ruler who governs a perfect community.² Now it is evident, granted that the world is ruled by divine providence, as was stated in the First Part,³ 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 Pr. 8:23, therefore it is that this kind of law must be called eternal.

Reply Obj. 1. Those things that are not in themselves exist with God inasmuch as they are foreknown and preordained by Him, according to Rom. 4:17, "Who calls those things that are not, as those that are." Accordingly, the eternal concept of the divine law bears the nature of an eternal law insofar as it is ordained by God to the government of things foreknown by Him.

Reply Obj. 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.

SECOND ARTICLE

Is There a Natural Law in Us?

We proceed thus to the Second Article:

Obj. 1. It would seem that there is no natural law in us because man is governed sufficiently by the eternal law; for Augustine says that "the eternal law is that by which it is right that all things should be most orderly."⁴ But nature does not abound in superfluities, as neither does it fail in necessities. Therefore, there is no natural law in man.

Obj. 2. Further, by the law man is directed in his acts to the end, as stated above.⁵ But the directing of human acts to their end is not by 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, there is no natural law for man.

Obj. 3. Further, the more a man is free, the less is he under the law. But man is freer than all other 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 Rom. 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."⁶

I answer that. As stated above, 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 insofar as it partakes of the rule or measure.⁷ Therefore,
since all things subject to divine providence are ruled and measured by the eternal law, as was stated above, it is evident that all things partake somewhat of the eternal law insofar 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 a more excellent way, insofar 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 "offer up the sacrifice of justice," as though someone asked what the works of justice are, adds: "Many say, 'Who shows us good things?';" in answer to which question he says: "The light of Your 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 pertains to 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 Obj. 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 Obj. 2. Every act of reason and will in us is derived from that which is according to nature, as stated above, 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 Obj. 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. 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.

THIRD ARTICLE
Is There a Human Law?

We proceed thus to the Third Article:

Obj. 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. Now, through the eternal law, "all things are most orderly," as Augustine states. Therefore, the natural law suffices for the ordering of all human affairs. Consequently, there is no need for a human law.

Obj. 2. Further, a law has the nature of a measure, as stated above. But human reason is not a measure of things, but vice versa, as stated in Metaphysics IX, 1. Therefore, no law can emanate from human reason.

Obj. 3. Further, a measure should be most certain, as stated in Metaphysics 10. But the dictates of human reason in matters of conduct are uncertain, according to Wisdom 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 distinguishes two kinds of law: the one eternal; the other temporal, which he calls human. I answer that, As stated above, a law is a certain dictate of 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 (ibid.). Accordingly, we conclude that just as, in the speculative reason, from naturally know 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 certain particular determinations of the laws. These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed, as stated above. Wherefore, Tully says in his Rhetoric that "justice has its source in nature, thence certain things came into custom by reason of their utility; afterward these things which emanated from nature and were approved by custom
were sanctioned by fear and reverence for the law.”

Reply Obj. 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 particular legal sanctions.

Reply Obj. 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, whereas the natural reason is the rule and measure, although it is not the measure of things that are from nature.

Reply Obj. 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.

FOURTH ARTICLE
Was There Any Need for a Divine Law?

We proceed thus to the Fourth Article:

Obj. 1. It would seem that there was no need for a divine law because, as stated above, the natural law is a participation in us of the eternal law. But the eternal law is a divine law, as stated above. Therefore, there is no need for a divine law in addition to the natural law and human laws derived therefrom.

Obj. 2. Further, it is written that “God left man in the hand of his own counsel.” Now counsel is an act of reason, as stated above. Therefore, man was left to the direction of his reason. But a dictate of human reason is a human law, as stated above. Therefore, there is no need for man to be governed also by a divine law.

Obj. 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: “Set before me for a law the way of Your justifications, O Lord.”

I answer that, Besides the natural and the human law, it was necessary for the directing of human life 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 on the part of his reason beyond the natural law and human law which is derived from it. But since man is ordained to an end of eternal happiness which is in proportionate to man’s natural faculty, as stated above, 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, 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 unsotted," 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 Obj. 1. By natural law, the eternal law is participated in in proportion 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 Obj. 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 Obj. 3. Irrational creatures are not ordained to an end higher than that which is proportionate to their natural powers, consequently, the comparison fails.

FIFTH ARTICLE
Is There But One Divine Law?

We proceed thus to the Fifth Article:

Obj. 1. It would seem that there is but one divine law because, where there is one king in one kingdom, there is but one law. Now the whole of mankind is compared to God as to one king, according to Ps. 46:8: "God is the King of all the earth." Therefore, there is but one divine law.

Obj. 2. Further, every law is directed to the end which the lawgiver intends for those for whom he makes the law. But God intends one and the same thing for all men, since, according to 1 Tim. 2:4, "He will have all men to be saved and to come to the knowledge of the truth." Therefore, there is but one divine law.

Obj. 3. Further, the divine law seems to be closer to the eternal law, which is one, than the natural law, according as the revelation of grace is of a higher order than natural knowledge. Therefore, much more is the divine law only one.

On the contrary, The Apostle says, "The priesthood being translated, it is necessary that a translation also be made of the law." But the priesthood is twofold, as stated in the same passage, viz., the levitical priesthood and the priesthood of Christ. Therefore, the divine law is twofold, namely, the Old Law and the New Law.

I answer that. As stated in the First Part, distinction is the cause of number. Now, things may be distinguished in two ways. First, as those things that are altogether specifically different, e.g., a horse and an ox. Secondly, as perfect and imperfect in the same species, e.g., a boy and a man, and in this way the divine law is divided into Old and New. Hence the Apostle compares the state of man under the Old Law to that of a child "under a pedagogue" but the state under the New Law to that of a full-grown man who is "no longer under a pedagogue."

Now the perfection and imperfection of these two laws is to be taken in connection with the three conditions pertaining to law, as stated above. For, in the first place, it belongs to law to be directed to the common good as to its end, as stated above. This good may be twofold. It may be a sensible and earthly good, and to this, man was directly ordained by the Old Law; wherefore, at the very outset of the law, the people were invited to the earthly kingdom of the Canaanites. Again, it may be an intelligible and heavenly good, and to this man is ordained by the New Law. Wherefore, at the very beginning of His preaching, Christ invited men to the kingdom of heaven, saying: "Do penance, for the kingdom of heaven is at hand." Hence Augustine says that "promises of
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 reasoning. In like manner, through the deficiency of his age, a child cannot use the habit of understanding principles, or the natural law, which is in him habitually.

SECOND ARTICLE
Does the Natural Law Contain Several Precepts or One Only?

We proceed thus to the Second Article:

Obj. 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. If, therefore, there were many precepts of the natural law, it would follow that there are also many natural laws.

Obj. 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.

Obj. 3. Further, law is something pertaining to reason, as stated above. 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 indeemonstrable principles. Therefore, there are also several precepts of the natural law.

I answer that. As stated above, 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, 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 circumspectively 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 indeemonstrable principle is that the same thing cannot be affirmed and denied at the same time, which is based on the nature of "being" and "not-being," and on this principle all others are based, as it is stated in Metaphysics IV. 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 in the 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. Where-
fore the order of the precepts of the natural law is according to the order of natural inclinations. 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," 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 Obj. 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 Obj. 2. All the inclinations of any parts whatsoever of human nature, e.g., of the concupiscible and irascible parts, insofar 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 Obj. 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.

THIRD ARTICLE
Are All Acts of Virtue Prescribed by the Natural Law?

We proceed thus to the Third Article:

Obj. 1. It would seem that not all acts of virtue are prescribed by the natural law because, as stated above, 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 regard to acts of temperance. Therefore, not all acts of virtue are the subject of natural law.

Obj. 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.

Obj. 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 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 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; the 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 Obj. 1. Temperance is about the natural concupisences 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 Obj. 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—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 heterosexual intercourse, which is natural to all animals, is male homosexual union, which has received the special name of the unnatural vice.

Reply Obj. 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.

FOURTH ARTICLE
Is the Natural Law the Same in All Men?

We proceed thus to the Fourth Article:

Obj. 1. It would seem that the natural law is not the same in all. For it is stated in the Decretum 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, “all do not obey the gospel.” Therefore, the natural law is not the same in all men.

Obj. 2. Further, “Things which are according to the law are said to be just,” as stated in Ethics 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.

Obj. 3. Further, as stated above, 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, “The natural law is common to all nations.”

I answer that. As stated above, to the natural law belong 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.22 The speculative reason, however, is differently situated in this matter from the practical reason. For, since the speculative reason is concerned chiefly with 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 concerned 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 deviations. Accordingly, then, in speculative matters, truth is the same for 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 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. 24

Reply Obj. 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." 25

Reply Obj. 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 falling in a few.

Reply Obj. 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.

FIFTH ARTICLE
Can the Natural Law Be Changed?

We proceed thus to the Fifth Article:

Obj. 1. It would seem that the natural law can be changed because, on Sir. 17:9, "He gave them instructions, and the law of life," a gloss says: "He wished the law of the letter to be written in order to correct the law of nature." 26 But that which is corrected is changed. Therefore, the natural law can be changed.

Obj. 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, 27 and when He ordered the Jews to borrow and purloin the vessels of the Egyptians, 28 and when He commanded Hoshea to take to himself "a wife of concubinage." 29 Therefore, the natural law can be changed.

Obj. 3. Further, Isidore says that "the possession of all things in common and universal freedom are matters of natural law." 30 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 Decretum: "The natural law dates from the creation of the rational creature. It does not vary according to time but remains unchangeable." 31

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, are like certain proper conclusions closely related to 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 32 through some special causes hindering the observance of such precepts, as stated above.

Reply Obj. 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 Obj. 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 Kings: "The Lord kills and makes 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 handed down by 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 First Part. 

Reply Obj. 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 them 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.

SIXTH ARTICLE

Can the Law of Nature Be Abolished from the Heart of Man?

We proceed thus to the Sixth Article:

Obj. 1. It would seem that the natural law can be abolished from the heart of man because, on Rom. 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.

Obj. 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.

Obj. 3. Further, that which is established by law is made just. But many things are legally established 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, "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, 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 particular action insofar as reason is hindered from applying the general principles to a particular point of practice on account of concupiscence or some other passion, as stated above. 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, as the Apostle states, were not esteemed sinful.

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

Reply Obj. 3. The 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

[In Four Articles]


FIRST ARTICLE
Was It Useful for Laws to Be Framed by Men?

We proceed thus to the First Article:

Obj. 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. 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.

Obj. 2. Further, as the Philosopher says, “men have recourse to a judge as to justice in the flesh.” But justice in the flesh is better than inanimate justice, which is 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.

Obj. 3. Further, every law is framed for the direction of human actions, as is evident from what has been stated above. But since human actions are about singulars, which are infinite in number, matters 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, “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. As stated above, 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 they might at least 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, “a man is the most noble of animals if be be perfect in virtue, so is he the lowest of all if he be severed from law and justice.” Because man can use his reason to devise means of satisfying his lusts and evil passions, which other animals are unable to do.

Reply Obj. 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 Obj. 2. As the Philosopher says, “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 judge of things present, toward which they are affected by love, hatred, or some kind of cupiditas; wherefore their judgment is perverted.

Since then, the embodied 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 Obj. 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.

SECOND ARTICLE

Is Every Human Law Derived from the Natural Law?

We proceed thus to the Second Article:

Obj. 1. It would seem that not every human law is derived from the natural law. For the Philosopher says 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 all derived from the natural law.

Obj. 2. Further, positive law is contrasted with natural law, as stated by Isidore and the Philosopher. But those things which flow as conclusions from the general principles of the natural law belong to the natural law, as stated above.

Therefore, that which is established by human law does not belong to the natural law.

Obj. 3. Further, the law of nature is the same for all, since the Philosopher says 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.

Obj. 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. Therefore, not all human laws are derived from the natural law.

On the contrary. Tully says, "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, "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. 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 defies 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 the 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 conclusion, 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 evildoer should be punished; but that he be punished in this or that way is not directly by natural law but is a certain determination of it.
governed by one, and then we have "royal ordinances." Another form is aristocracy, i.e., government by the best men or men of highest rank, and then we have the "authoritative legal opinions" ("responsa prudentum") and "decrees of the senate" ("senatusconsulta"). Another form is oligarchy, i.e., government by a few rich and powerful men, and then we have "prætorian," also called "honorary," law. Another form of government is that of the people, which is called democracy, and there we have "decree of the commonalty" ("plebiscita"). There is also tyrannical government, which is altogether corrupt, which, therefore, has no corresponding law. Finally, there is a form of government made up of all these, and which is the best; and in this respect, we have "law sanctioned by nobles together with commoners," as stated by Isidore.Æ

Fourthly, it belongs to the notion of human law to direct human actions. In this respect, according to the various matters of which the law treats, there are various kinds of laws, which are sometimes named after their authors: thus we have the Lex Julia about adultery, the Lex Cornelia concerning assassins, and so on, differentiated in this way not on account of the authors but on account of the matters to which they refer.

Reply Obj. 1. The law of nations is indeed in some way natural to man insofar as he is a reasonable being, because it is derived from the natural law by way of a conclusion that is not very remote from its premises. Wherefore men easily agreed thereto. Nevertheless, it is distinct from the natural law, especially from that natural law which is common to all animals.

The Replies to the other Objections are evident from what has been said.

Question 96
Of the Power of Human Law

[In Six Articles]

We must now consider the power of human law. Under this head, there are six points of inquiry: (1) Whether human law should be framed for the community? (2) Whether human law should repress all vices? (3) Whether human law is competent to direct all acts of virtue? (4) Whether it binds man in conscience? (5) Whether all men are subject to human law? (6) Whether those who are under the law may act beside the letter of the law?

FIRST ARTICLE
Should Human Law Be Framed for the Community Rather Than for the Individual?

We proceed thus to the First Article:

Obj. 1. It would seem that human law should be framed, not for the community, but rather for the individual. For the Philosopher says 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.

Obj. 2. Further, law is the director of human acts, as stated above. But human acts are about individual matters. Therefore, human laws should be framed, not for the community, but rather for the individual.

Obj. 3. Further, law is a rule and measure of human acts, as stated above. But a measure should be most certain, as stated in Metaphysics 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 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."Æ

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, "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 occupations, and as to times, because the political community is composed of many citizens 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.⁷

Reply Obj. 1. The Philosopher 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 prescriptions in particular cases." 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."⁸

Reply Obj. 2. A principle of direction should be applicable to many; wherefore the Philosopher says that all things belonging to one genus are measured by one which is the first in that genus.⁹ 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 of prudent men are made for the purpose of directing individual actions, whereas law is a general precept, as stated above.¹⁰

Reply Obj. 3. "We must not seek the same degree of certainty in all things."¹¹ 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.

SECOND ARTICLE

Does It Belong to Human Law to Repress All Vices?

We proceed thus to the Second Article:

Obj. 1. It would seem that it belongs to human law to repress all vices. For Isidore says that "laws were made in order that, in fear thereof, man's audacity might be held in check."¹² But it would not be held in check sufficiently unless all evils were repressed by law. Therefore, human law should repress all evils.

Obj. 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.

Obj. 3. Further, human law is derived from the natural law, as stated above.¹³ But all vices are contrary to the law of nature. Therefore, human law should repress all vices.

On the contrary. We read in De libero arbitrio: "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."¹⁴ But divine providence punishes nothing but vices. Therefore, human law rightly allows some vices by not repressing them.

I answer that. As stated above,¹⁵ law is imposed as a certain rule or measure of human actions. Now, a measure should be homogeneous with that which it measures, as stated in Metaphysics X,¹⁶ 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, law should be "possible both according to nature and according to the customs of the country."¹⁷ 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. Therefore, 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 suchlike.
Reply Obj. 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 Obj. 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: “He that violently blows his nose, brings out blood,” and 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 runs out,” i.e., the precepts are despised, and those men, from contempt, break out into evils worse still.

Reply Obj. 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: “The law which is framed for the government of political communities 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.

THIRD ARTICLE
Does Human Law Prescribe Acts of All the Virtues?

We proceed thus to the Third Article:

Obj. 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. Therefore, neither does it prescribe all acts of virtue.

Obj. 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.

Obj. 3. Further, law is ordained to the common good, as stated above. 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 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 political community or for upholding the rights of a friend, and in like manner with the other virtues. But law, as stated above, 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 ordained to the common good—either immediately, as when certain things are done directly for the common good, or mediate, as when a lawgiver prescribes certain things pertaining to good training whereby the citizens are disciplined in the upholding of the common good of justice and peace.

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

Does Human Law Bind a Man in Conscience?

We proceed thus to the Fourth Article:

Obj. 1. It would seem that human law does not bind a 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.

Obj. 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.

Obj. 3. Further, human laws often bring loss of character and injury on man, according to Is. 10:1: "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: "This is thanksworthy, if for 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 Pr. 8:15: "By Me kings reign, and lawgivers decreed just things." Now laws are said to be just 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, "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 your coat, let go your cloak also unto him, and whosoever will force you 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 of this kind must nowise be observed because, as stated in Acts 5:29, "we ought to obey God rather than men."

Reply Obj. 1. As the Apostle says, all human power is from God ...; "therefore, he that resists the power" in matters that are within its scope "resists the ordinance of God," so that he becomes guilty according to his conscience.

Reply Obj. 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 Obj. 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.