

Summa Theologiae, first part of the second part, questions 95-97
Thomas Aquinas (tr., Fathers of the English Dominican Province)

I-II.q95

Question 95: OF HUMAN LAW (FOUR ARTICLES)

We must now consider human law; and (1) this law considered in itself; (2) its power; (3) its mutability. Under the first head there are four points of inquiry:

- (1) Its utility.
- (2) Its origin.
- (3) Its quality.
- (4) Its division.

I-II.q95.a1

Article 1: Whether it was useful for laws to be framed by men?

I-II.q95.a1.o1

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 (*ST I-II.q92.a1*). 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.

I-II.q95.a1.o2

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.

I-II.q95.a1.o3

Objection 3: Further, every law is framed for the direction of human actions, as is evident from what has been stated above (*ST I-II.q90.a1-2*). 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, As stated above (*ST I-II.q63.a1; ST I-II.q94.a3*), 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.

I-II.q95.a1.ad1

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.

I-II.q95.a1.ad2

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.

I-II.q95.a1.ad3

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.

I-II.q95.a2

Article 2: Whether every human law is derived from the natural law?

I-II.q95.a2.o1

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.

I-II.q95.a2.o2

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 (*ST I-II.q94.a4*). Therefore that which is established by human law does not belong to the natural law.

I-II.q95.a2.o3

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.

I-II.q95.a2.o4

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

* *Pandect. Justin.* lib. i, ff, tit. iii, v; *De Leg. et Senat.*

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 (*ST I-II.q91.a2.ad2*). 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.

I-II.q95.a2.ad1

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.

I-II.q95.a2.ad2

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

I-II.q95.a2.ad3

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.

I-II.q95.a2.ad4

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.*

Article 3: Whether Isidore's description of the quality of positive law is appropriate?

Objection 1: It would seem that Isidore's description of the quality of positive law is not appropriate, when he says (*Etym.* v, 21): *Law shall be virtuous, just, possible to nature, according to the custom of the country, suitable to place and time, necessary, useful; clearly expressed, lest by its obscurity it lead to misunderstanding; framed for no private benefit, but for the common good.* Because he had previously expressed the quality of law in three conditions, saying that *law is anything founded on reason, provided that it foster religion, be helpful to discipline, and further the common weal.* Therefore it was needless to add any further conditions to these.

Objection 2: Further, Justice is included in honesty, as Tully says (*De Offic.* vii). Therefore after saying *honest* it was superfluous to add *just*.

Objection 3: Further, written law is condivided with custom, according to Isidore (*Etym.* ii, 10). Therefore it should not be stated in the definition of law that it is *according to the custom of the country*.

Objection 4: Further, a thing may be necessary in two ways. It may be necessary simply, because it cannot be otherwise: and that which is necessary in this way, is not subject to human judgment, wherefore human law is not concerned with necessity of this kind. Again a thing may be necessary for an end: and this necessity is the same as usefulness. Therefore it is superfluous to say both *necessary* and *useful*.

On the contrary, stands the authority of Isidore.

I answer that, Whenever a thing is for an end, its form must be determined proportionately to that end; as the form of a saw is such as to be suitable for cutting (*Phys.* ii, text. 88). Again, everything that is ruled and measured must have a form proportionate to its rule and measure. Now both these conditions are verified of human law: since it is both something ordained to an end; and is a rule or measure ruled or measured by a higher measure. And this higher measure is twofold, viz. the Divine law and the natural law, as explained above (*ST I-II.q95.a2; ST I-II.q93.a3*). Now the end of human law is to be useful to man, as the jurist states.* Wherefore Isidore in determining the nature of law, lays down, at first, three conditions; viz. that it *foster religion*, inasmuch as it is proportionate to the Divine law; that it be *helpful to discipline*, inasmuch as it is proportionate to the nature law; and that it *further the common weal*, inasmuch as it is proportionate to the utility of mankind.

* *Pandect. Justin.* lib. xxv, ff., tit. iii; *De Leg. et Senat.*

All the other conditions mentioned by him are reduced to these three. For it is called virtuous because it fosters religion. And when he goes on to say that it should be *just, possible to nature, according to the customs of the country, adapted to place and time*, he implies that it should be helpful to discipline. For human discipline depends on first on the order of reason, to which he refers by saying *just*: secondly, it depends on the ability of the agent; because discipline should be adapted to each one according to his ability, taking also into account the ability of nature (for the same burdens should be not laid on children as adults); and should be according to human customs; since man cannot live alone in society, paying no heed to others: thirdly, it depends on certain circumstances, in respect of which he says, *adapted to place and time*. The remaining words, *necessary, useful*, etc. mean that law should further the common weal: so that *necessity* refers to the removal of evils; *usefulness* to the attainment of good; *clearness of expression*, to the need of preventing any harm ensuing from the law itself. And since, as stated above (*ST I-II.q90.a2*), law is ordained to the common good, this is expressed in the last part of the description.

This suffices for the Replies to the Objections.

Article 4: Whether Isidore's division of human laws is appropriate?

Objection 1: It would seem that Isidore wrongly divided human statutes or human law (*Etym.* v, 4, seqq.). For under this law he includes the *law of nations*, so called, because, as he says, *nearly all nations use it*. But as he says, *natural law is that which is common to all nations*. Therefore the law of nations is not contained under positive human law, but rather under natural law.

Objection 2: Further, those laws which have the same force, seem to differ not formally but only materially. But *statutes, decrees of the commonalty, senatorial decrees*, and the like which he mentions (*Etym.* v, 9), all have the same force. Therefore they do not differ, except materially. But art takes no notice of such a distinction: since it may go on to infinity. Therefore this division of human laws is not appropriate.

Objection 3: Further, just as, in the state, there are princes, priests and soldiers, so are there other human offices. Therefore it seems that, as this division includes *military law*, and *public law*, referring to priests and magistrates; so also it should include other laws pertaining to other offices of the state.

Objection 4: Further, those things that are accidental should be passed over. But it is accidental to law that it be framed by this or that

man. Therefore it is unreasonable to divide laws according to the names of lawgivers, so that one be called the *Cornelian* law, another the *Falcidian* law, etc.

On the contrary, The authority of Isidore (*ST* I-II.q95.a4.o1) suffices.

I answer that, A thing can of itself be divided in respect of something contained in the notion of that thing. Thus a soul either rational or irrational is contained in the notion of animal: and therefore animal is divided properly and of itself in respect of its being rational or irrational; but not in the point of its being white or black, which are entirely beside the notion of animal. Now, in the notion of human law, many things are contained, in respect of any of which human law can be divided properly and of itself. For in the first place it belongs to the notion of human law, to be derived from the law of nature, as explained above (*ST* I-II.q95.a2). In this respect positive law is divided into the *law of nations* and *civil law*, according to the two ways in which something may be derived from the law of nature, as stated above (*ST* I-II.q95.a2). Because, to the law of nations belong those things which are derived from the law of nature, as conclusions from premises, *e.g.* just buyings and sellings, and the like, without which men cannot live together, which is a point of the law of nature, since man is by nature a social animal, as is proved in *Polit.* i, 2. But those things which are derived from the law of nature by way of particular determination, belong to the civil law, according as each state decides on what is best for itself.

Secondly, it belongs to the notion of human law, to be ordained to the common good of the state. In this respect human law may be divided according to the different kinds of men who work in a special way for the common good: *e.g.* priests, by praying to God for the people; princes, by governing the people; soldiers, by fighting for the safety of the people. Wherefore certain special kinds of law are adapted to these men.

Thirdly, it belongs to the notion of human law, to be framed by that one who governs the community of the state, as shown above (*ST* I-II.q90.a3). In this respect, there are various human laws according to the various forms of government. Of these, according to the Philosopher (*Polit.* iii, 10) one is *monarchy*, *i.e.* when the state is 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* [Responso Prudentum] and *Decrees of the Senate* [Senatus consulta]. Another form is *oligarchy*, *i.e.* government by a few rich and powerful men; and then we have *Praetorian*, also called *Honorary*, law. Another form of

government is that of the people, which is called *democracy*, and there we have *Decrees 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 the *Lords and Commons*, as stated by Isidore (*Etym.* v, 4, seqq.).

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.

I-II.q95.a4.ad1

Reply to Objection 1: The law of nations is indeed, in some way, natural to man, in so far 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 it is distinct from the natural law which is common to all animals.

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

I-II.q96

Question 96: OF THE POWER OF HUMAN LAW (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?

I-II.q96.a1

Article 1: Whether human law should be framed for the community rather than for the individual?

I-II.q96.a1.o1

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 (ST I-II.q90.a1-2). 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 (ST I-II.q90.a1-2). 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 (ST I-II.q92.a2.o2).

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 (ST I-II.q95.a2). 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 (ST I-II.q90.a1-2), 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.

I-II.q96.a2.ad1

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.

I-II.q96.a2.ad2

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 (Ps. 30:33): *He that violently bloweth his nose, bringeth out blood;* and (Mat. 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.

I-II.q96.a2.ad3

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.

I-II.q96.a3

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

I-II.q96.a3.o1

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 (*ST I-II.q96.a2*). Therefore neither does it prescribe all acts of virtue.

I-II.q96.a3.o2

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.

I-II.q96.a3.o3

Objection 3: Further, law is ordained to the common good, as stated above (*ST I-II.q90.a2*). 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 (*ST I-II.q54.a2; ST I-II.q60.a1; ST I-II.q62.a2*). 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 (*ST I-II.q90.a2*) 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.

I-II.q96.a3.ad1

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.

I-II.q96.a3.ad2

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.

I-II.q96.a3.ad3

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?

I-II.q96.a4

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.

I-II.q96.a4.o1

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 Mat. 15:6: *You have made void the commandment of God for your tradition.* Therefore human law does not bind a man in conscience.

I-II.q96.a4.o2

Objection 3: Further, human laws often bring loss of character and injury on man, according to Is. 10:1 et seqq.: *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.

I-II.q96.a4.o3

On the contrary, It is written (1 Pet. 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 Mat. 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.*

I-II.q96.a4.ad1

Reply to Objection 1: As the Apostle says (Rom. 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.

I-II.q96.a4.ad2

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.

I-II.q96.a4.ad3

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.

I-II.q96.a5

Article 5: Whether all are subject to the law?

I-II.q96.a5.o1

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.

I-II.q96.a5.o2

Objection 2: Further, Pope Urban says:* *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 (Rom. 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.

* *Decretals.* caus. xix, qu. 2

I-II.q96.a5.o3

Objection 3: Further, the jurist says* 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.

* *Pandect. Justin. i. ff., tit. 3, De Leg. et Senat.*

On the contrary, The Apostle says (Rom. 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 (ST I-II.q90.a1-2; ST I-II.q90.a3.ad2), 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.

I-II.q96.a5.ad1

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 (Rom. 2:14,15). Consequently the law does not enforce itself upon them as it does on the wicked.

I-II.q96.a5.ad2

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 Pet. 2:13: *Be ye subject . . . to every human creature for God's sake.*

I-II.q96.a5.ad3

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* 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* (Mat. 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.

* Dionysius Cato, *Dist. de Moribus*

I-II.q96.a6

Article 6: Whether he who is under a law may act beside the letter of the law?

I-II.q96.a6.o1

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.

I-II.q96.a6.o2

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.

I-II.q96.a6.o3

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.

I answer that, As stated above (ST I-II.q96.a4), every law is directed to the common weal of men, and derives the force and nature of law accordingly. Hence the jurist says: * *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.

* *Pandect. Justin. lib. i, ff., tit. 3, De Leg. et Senat.*

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.

Question 97: OF CHANGE IN LAWS (FOUR ARTICLES)

We must now consider change in laws: under which head there are four points of inquiry:

- (1) Whether human law is changeable?
- (2) Whether it should be always changed, whenever anything better occurs?
- (3) Whether it is abolished by custom, and whether custom obtains the force of law?
- (4) Whether the application of human law should be changed by dispensation of those in authority?

Article 1: Whether human law should be changed in any way?

Objection 1: It would seem that human law should not be changed in any way at all. Because human law is derived from the natural law, as stated above (ST I-II.q95.a2). But the natural law endures unchangeably. Therefore human law should also remain without any change.

Objection 2: Further, as the Philosopher says (*Ethic. v, 5*), a measure should be absolutely stable. But human law is the measure of human acts, as stated above (ST I-II.q90.a1-2). Therefore it should remain without change.

Objection 3: Further, it is of the essence of law to be just and right, as stated above (ST I-II.q95.a2). But that which is right once is right always. Therefore that which is law once, should be always law.

On the contrary, Augustine says (*De Lib. Arb. i, 6*): *A temporal law, however just, may be justly changed in course of time.*

I answer that, As stated above (ST I-II.q91.a3), human law is a dictate of reason, whereby human acts are directed. Thus there may be two causes for the just change of human law: one on the part of reason; the other on the part of man whose acts are regulated by law. The cause on the part of reason is that it seems natural to human reason to advance gradually from the imperfect to the perfect. Hence, in speculative sciences, we see that the teaching of the early philosophers was imperfect, and that it was afterwards perfected by those who succeeded them. So also in practical matters: for those who first endeavored to discover something useful for the human community, not being able by themselves to take everything into consideration, set up certain institutions which were deficient in many ways; and these

were changed by subsequent lawgivers who made institutions that might prove less frequently deficient in respect of the common weal.

On the part of man, whose acts are regulated by law, the law can be rightly changed on account of the changed condition of man, to whom different things are expedient according to the difference of his condition. An example is proposed by Augustine (*De Lib. Arb.* i, 6): *If the people have a sense of moderation and responsibility, and are most careful guardians of the common weal, it is right to enact a law allowing such a people to choose their own magistrates for the government of the commonwealth. But if, as time goes on, the same people become so corrupt as to sell their votes, and entrust the government to scoundrels and criminals; then the right of appointing their public officials is rightly forfeit to such a people, and the choice devolves to a few good men.*

I-II.q97.a1.ad1

Reply to Objection 1: The natural law is a participation of the eternal law, as stated above (ST I-II.q91.a2), and therefore endures without change, owing to the unchangeableness and perfection of the Divine Reason, the Author of nature. But the reason of man is changeable and imperfect: wherefore his law is subject to change. Moreover the natural law contains certain universal precepts, which are everlasting: whereas human law contains certain particular precepts, according to various emergencies.

I-II.q97.a1.ad2

Reply to Objection 2: A measure should be as enduring as possible. But nothing can be absolutely unchangeable in things that are subject to change. And therefore human law cannot be altogether unchangeable.

I-II.q97.a1.ad3

Reply to Objection 3: In corporal things, right is predicated absolutely: and therefore, as far as itself is concerned, always remains right. But right is predicated of law with reference to the common weal, to which one and the same thing is not always adapted, as stated above: wherefore rectitude of this kind is subject to change.

I-II.q97.a2

Article 2: Whether human law should always be changed, whenever something better occurs?

I-II.q97.a2.o1

Objection 1: It would seem that human law should be changed, whenever something better occurs. Because human laws are devised by human reason, like other arts. But in the other arts, the tenets of former times give place to others, if something better occurs. Therefore the same should apply to human laws.

I-II.q97.a2.o2

Objection 2: Further, by taking note of the past we can provide for the future. Now unless human laws had been changed when it was found possible to improve them, considerable inconvenience would

have ensued; because the laws of old were crude in many points. Therefore it seems that laws should be changed, whenever anything better occurs to be enacted.

I-II.q97.a2.o3

Objection 3: Further, human laws are enacted about single acts of man. But we cannot acquire perfect knowledge in singular matters, except by experience, which *requires time*, as stated in *Ethic.* ii. Therefore it seems that as time goes on it is possible for something better to occur for legislation.

On the contrary, It is stated in the Decretals (*Dist.* xii, 5): *It is absurd, and a detestable shame, that we should suffer those traditions to be changed which we have received from the fathers of old.*

I answer that, As stated above (ST I-II.q97.a1), human law is rightly changed, in so far as such change is conducive to the common weal. But, to a certain extent, the mere change of law is of itself prejudicial to the common good: because custom avails much for the observance of laws, seeing that what is done contrary to general custom, even in slight matters, is looked upon as grave. Consequently, when a law is changed, the binding power of the law is diminished, in so far as custom is abolished. Wherefore human law should never be changed, unless, in some way or other, the common weal be compensated according to the extent of the harm done in this respect. Such compensation may arise either from some very great and every evident benefit conferred by the new enactment; or from the extreme urgency of the case, due to the fact that either the existing law is clearly unjust, or its observance extremely harmful. Wherefore the jurist says* that *in establishing new laws, there should be evidence of the benefit to be derived, before departing from a law which has long been considered just.*

* *Pandect. Justin. lib. i, ff., tit. 4, De Constit. Princip.*

I-II.q97.a2.ad1

Reply to Objection 1: Rules of art derive their force from reason alone: and therefore whenever something better occurs, the rule followed hitherto should be changed. But *laws derive very great force from custom*, as the Philosopher states (*Polit.* ii, 5): consequently they should not be quickly changed.

I-II.q97.a2.ad2

Reply to Objection 2: This argument proves that laws ought to be changed: not in view of any improvement, but for the sake of a great benefit or in a case of great urgency, as stated above. This answer applies also to the Third Objection.

I-II.q97.a3

Article 3: Whether custom can obtain force of law?

I-II.q97.a3.o1

Objection 1: It would seem that custom cannot obtain force of law, nor abolish a law. Because human law is derived from the natural law

and from the Divine law, as stated above (*ST I-II.q93.a3; ST I-II.q95.a2*). But human custom cannot change either the law of nature or the Divine law. Therefore neither can it change human law.

I-II.q97.a3.o2

Objection 2: Further, many evils cannot make one good. But he who first acted against the law, did evil. Therefore by multiplying such acts, nothing good is the result. Now a law is something good; since it is a rule of human acts. Therefore law is not abolished by custom, so that the mere custom should obtain force of law.

I-II.q97.a3.o3

Objection 3: Further, the framing of laws belongs to those public men whose business it is to govern the community; wherefore private individuals cannot make laws. But custom grows by the acts of private individuals. Therefore custom cannot obtain force of law, so as to abolish the law.

On the contrary, Augustine says (*Ep. ad Casulan. xxxvi*): *The customs of God's people and the institutions of our ancestors are to be considered as laws. And those who throw contempt on the customs of the Church ought to be punished as those who disobey the law of God.*

I answer that, All law proceeds from the reason and will of the lawgiver; the Divine and natural laws from the reasonable will of God; the human law from the will of man, regulated by reason. Now just as human reason and will, in practical matters, may be made manifest by speech, so may they be made known by deeds: since seemingly a man chooses as good that which he carries into execution. But it is evident that by human speech, law can be both changed and expounded, in so far as it manifests the interior movement and thought of human reason. Wherefore by actions also, especially if they be repeated, so as to make a custom, law can be changed and expounded; and also something can be established which obtains force of law, in so far as by repeated external actions, the inward movement of the will, and concepts of reason are most effectually declared; for when a thing is done again and again, it seems to proceed from a deliberate judgment of reason. Accordingly, custom has the force of a law, abolishes law, and is the interpreter of law.

I-II.q97.a3.ad1

Reply to Objection 1: The natural and Divine laws proceed from the Divine will, as stated above. Wherefore they cannot be changed by a custom proceeding from the will of man, but only by Divine authority. Hence it is that no custom can prevail over the Divine or natural laws: for Isidore says (*Synon. ii, 16*): *Let custom yield to authority: evil customs should be eradicated by law and reason.*

I-II.q97.a3.ad2

Reply to Objection 2: As stated above (*ST I-II.q96.a6*), human laws fail in some cases: wherefore it is possible sometimes to act beside the

law; namely, in a case where the law fails; yet the act will not be evil. And when such cases are multiplied, by reason of some change in man, then custom shows that the law is no longer useful: just as it might be declared by the verbal promulgation of a law to the contrary. If, however, the same reason remains, for which the law was useful hitherto, then it is not the custom that prevails against the law, but the law that overcomes the custom: unless perhaps the sole reason for the law seeming useless, be that it is not *possible according to the custom of the country*,* which has been stated to be one of the conditions of law. For it is not easy to set aside the custom of a whole people.

* *ST I-II.q95.a3*

I-II.q97.a3.ad3

Reply to Objection 3: The people among whom a custom is introduced may be of two conditions. For if they are free, and able to make their own laws, the consent of the whole people expressed by a custom counts far more in favor of a particular observance, that does the authority of the sovereign, who has not the power to frame laws, except as representing the people. Wherefore although each individual cannot make laws, yet the whole people can. If however the people have not the free power to make their own laws, or to abolish a law made by a higher authority; nevertheless with such a people a prevailing custom obtains force of law, in so far as it is tolerated by those to whom it belongs to make laws for that people: because by the very fact that they tolerate it they seem to approve of that which is introduced by custom.

I-II.q97.a4

Article 4: Whether the rulers of the people can dispense from human laws?

I-II.q97.a4.o1

Objection 1: It would seem that the rulers of the people cannot dispense from human laws. For the law is established for the *common weal*, as Isidore says (*Etym. v, 21*). But the common good should not be set aside for the private convenience of an individual: because, as the Philosopher says (*Ethic. i, 2*), *the good of the nation is more godlike than the good of one man*. Therefore it seems that a man should not be dispensed from acting in compliance with the general law.

I-II.q97.a4.o2

Objection 2: Further, those who are placed over others are commanded as follows (*Dt. 1:17*): *You shall hear the little as well as the great; neither shall you respect any man's person, because it is the judgment of God*. But to allow one man to do that which is equally forbidden to all, seems to be respect of persons. Therefore the rulers of a community cannot grant such dispensations, since this is against a precept of the Divine law.

Objection 3: Further, human law, in order to be just, should accord with the natural and Divine laws: else it would not *foster religion*, nor be *helpful to discipline*, which is requisite to the nature of law, as laid down by Isidore (*Etym.* v, 3). But no man can dispense from the Divine and natural laws. Neither, therefore, can he dispense from the human law.

On the contrary, The Apostle says (1 Cor. 9:17): *A dispensation is committed to me.*

I answer that, Dispensation, properly speaking, denotes a measuring out to individuals of some common goods: thus the head of a household is called a dispenser, because to each member of the household he distributes work and necessaries of life in due weight and measure. Accordingly in every community a man is said to dispense, from the very fact that he directs how some general precept is to be fulfilled by each individual. Now it happens at times that a precept, which is conducive to the common weal as a general rule, is not good for a particular individual, or in some particular case, either because it would hinder some greater good, or because it would be the occasion of some evil, as explained above (*ST I-II.q96.a6*). But it would be dangerous to leave this to the discretion of each individual, except perhaps by reason of an evident and sudden emergency, as stated above (*ST I-II.q96.a6*). Consequently he who is placed over a community is empowered to dispense in a human law that rests upon his authority, so that, when the law fails in its application to persons or circumstances, he may allow the precept of the law not to be observed. If however he grant this permission without any such reason, and of his mere will, he will be an unfaithful or an imprudent dispenser: unfaithful, if he has not the common good in view; imprudent, if he ignores the reasons for granting dispensations. Hence Our Lord says (Lk. 12:42): *Who, thinkest thou, is the faithful and wise dispenser [Douay: steward], whom his lord setteth over his family?*

Reply to Objection 1: When a person is dispensed from observing the general law, this should not be done to the prejudice of, but with the intention of benefiting, the common good.

Reply to Objection 2: It is not respect of persons if unequal measures are served out to those who are themselves unequal. Wherefore when the condition of any person requires that he should reasonably receive special treatment, it is not respect of persons if he be the object of special favor.

Reply to Objection 3: Natural law, so far as it contains general precepts, which never fail, does not allow of dispensations. In other

precepts, however, which are as conclusions of the general precepts, man sometimes grants a dispensation: for instance, that a loan should not be paid back to the betrayer of his country, or something similar. But to the Divine law each man stands as a private person to the public law to which he is subject. Wherefore just as none can dispense from public human law, except the man from whom the law derives its authority, or his delegate; so, in the precepts of the Divine law, which are from God, none can dispense but God, or the man to whom He may give special power for that purpose.