Summa Theologiae,
first part of the second part, selections from questions 90, 91, 94-97
Thomas Aquinas (Blackfriar translation)

Question 90: OF THE ESSENCE OF LAW (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 *ST* I.q114. 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.

Article 1: Whether law is something pertaining to reason?

…

I answer that, Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting: for *lex* [law] is derived from *ligare* [to bind], because it binds one to act. Now the rule and measure of human acts is the reason, which is the first principle of human acts, as is evident from what has been stated above (*ST* I-II.q1.a1.ad3); since it belongs to the reason to direct to the end, which is the first principle in all matters of action, according to the Philosopher (*Phys.* ii). Now that which is the principle in any genus, is the rule and measure of that genus: for instance, unity in the genus of numbers, and the first movement in the genus of movements. Consequently it follows that law is something pertaining to reason.

…

Article 2: Whether the law is always something directed to the common good?

…

I answer that, As stated above (*ST* I-II.q90.a1), 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 (*ST* I-II.q2.a7; *ST* I-II.q3.a1). Consequently the law must needs regard principally the relationship to happiness. Moreover, since every part is ordained to the whole, as imperfect to perfect; and since one man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness. Wherefore the Philosopher, in the above definition of legal matters mentions both happiness and the body politic: for he says (*Ethic.* v, 1) that we call those legal matters *just, which are adapted to produce and preserve happiness and its parts for the body politic*: since the state is a perfect community, as he says in *Polit.* i, 1.

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

…

Article 3: Whether the reason of any man is competent to make laws?

…

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

concerns him to whom the end belongs.

…

Article 4: Whether promulgation is essential to a law?

…

I answer that, As stated above (*ST* I-II.q90.a1), a law is imposed on others by way of a rule and measure. Now a rule or measure is imposed by being applied to those who are to be ruled and measured by it. Wherefore, in order that a law obtain the binding force which is proper to a law, it must needs be applied to the men who have to be ruled by it. Such application is made by its being notified to them by promulgation. Wherefore promulgation is necessary for the law to obtain its force.

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

…

Question 91: OF THE VARIOUS KINDS OF LAW (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?

Article 1: Whether there is an eternal law?

…

I answer that, As stated above (*ST* I-II.q90.a1.ad2; *ST* I-II.q91.a3-4), a law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect community. Now it is evident, granted that the world is ruled by Divine Providence, as was stated in the *ST* I.q22.a1-2, that the whole community of the universe is governed by Divine Reason. Wherefore the very Idea of the government of things in God the Ruler of the universe, has the nature of a law. And since the Divine Reason's conception of things is not subject to time but is eternal, according to Prov. 8:23, therefore it is that this kind of law must be called

eternal.

…

Article 2: Whether there is in us a natural law?

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

Objection 2: Further, by the law man is directed, in his acts, to the end, as stated above (*ST* I-II.q90.a2). But the directing of human acts to their end is not a function of nature, as is the case in irrational creatures, which act for an end solely by their natural appetite; whereas man acts for an end by his reason and will. Therefore no law is natural to man.

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

On the contrary, A gloss on 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.*

I answer that, As stated above (*ST* I-II.q90.a1.ad1), law, being a rule and measure, can be in a person in two ways: in one way, as in him that rules and measures; in another way, as in that which is ruled and measured, since a thing is ruled and measured, in so far as it partakes of the rule or measure. Wherefore, since all things subject to Divine providence are ruled and measured by the eternal law, as was stated above (*ST* I-II.q91.a1); it is evident that all things partake somewhat of the eternal law, in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends. Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law. Hence the Psalmist after saying (Ps. 4:6): *Offer up the sacrifice of justice,* as though someone asked what the works of

justice are, adds: *Many say, Who showeth us good things?* in answer to which question he says: *The light of Thy countenance, O Lord, is signed upon us*: thus implying that the light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light. It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law.

Reply to Objection 1: This argument would hold, if the natural law were something different from the eternal law: whereas it is nothing but a participation thereof, as stated above.

Reply to Objection 2: Every act of reason and will in us is based on that which is according to nature, as stated above (*ST* I-II.q10.a1): for every act of reasoning is based on principles that are known naturally, and every act of appetite in respect of the means is derived from the natural appetite in respect of the last end. Accordingly the first direction of our acts to their end must needs be in virtue of the natural law.

Reply to Objection 3: Even irrational animals partake in their own way of the Eternal Reason, just as the rational creature does. But because the rational creature partakes thereof in an intellectual and rational manner, therefore the participation of the eternal law in the rational creature is properly called a law, since a law is something pertaining to reason, as stated above (*ST* I-II.q90.a1). Irrational creatures, however, do not partake thereof in a rational manner, wherefore there is no participation of the eternal law in them, except by way of similitude.

Article 3: Whether there is a human law?

Objection 1: It would seem that there is not a human law. For the natural law is a participation of the eternal law, as stated above (*ST* I-II.q91.a2). Now through the eternal law *all things are most orderly,* as Augustine states (*De Lib. Arb.* i, 6). Therefore the natural law suffices for the ordering of all human affairs. Consequently there is no need for a human law.

Objection 2: Further, a law bears the character of a measure, as stated above (*ST* I-II.q90.a1). But human reason is not a measure of things, but vice versa, as stated in *Metaph.* x, text. 5. Therefore no law can emanate from human reason.

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

human reason.

On the contrary, Augustine (*De Lib. Arb.* i, 6) distinguishes two kinds of law, the one eternal, the other temporal, which he calls human.

I answer that, As stated above (*ST* I-II.q90.a1.ad2), a law is a dictate of the practical reason. Now it is to be observed that the same procedure takes place in the practical and in the speculative reason: for each proceeds from principles to conclusions, as stated above (*De Lib. Arb.* i, 6). Accordingly we conclude that just as, in the speculative reason, from naturally known indemonstrable principles, we draw the conclusions of the various sciences, the knowledge of which is not imparted to us by nature, but acquired by the efforts of reason, so too it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination of certain matters. These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed, as stated above (*ST* I-II.q90.a3-4). Wherefore Tully says in his Rhetoric (*De Invent. Rhet.* ii) that *justice has its source in nature; thence certain things came into custom by reason of their utility; afterwards these things which emanated from nature and were approved by custom, were sanctioned by fear and reverence for the law.*

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

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

Reply to Objection 3: The practical reason is concerned with practical matters, which are singular and contingent: but not with necessary things, with which the speculative reason is concerned. Wherefore human laws cannot have that inerrancy that belongs to the demonstrated conclusions

of sciences. Nor is it necessary for every measure to be altogether unerring and certain, but according as it is possible in its own particular genus.

Article 4: Whether there was any need for a Divine law?

…

I answer that, Besides the natural and the human law it was necessary for the directing of human conduct to have a Divine law. And this for four reasons. First, because it is by law that man is directed how to perform his proper acts in view of his last end. And indeed if man were ordained to no other end than that which is proportionate to his natural faculty, there would be no need for man to have any further direction of the part of his reason, besides the natural law and human law which is derived from it. But since man is ordained to an end of eternal happiness which is inproportionate to man's natural faculty, as stated above (*ST* I-II.q5.a5), therefore it was necessary that, besides the natural and the human law, man should be directed to his end by a law given by God.

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

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

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

And these four causes are touched upon in Ps. 118:8, where it is said: *The law of the Lord is unspotted, i.e.* allowing no foulness of sin;

converting souls, because it directs not only exterior, but also interior acts; *the testimony of the Lord is faithful,* because of the certainty of what is true and right; *giving wisdom to little ones,* by directing man to an end supernatural and Divine.

…

Question 94: OF THE NATURAL LAW (SIX ARTICLES)

We must now consider the natural law; concerning which there are six points of inquiry:

(1) What is the natural law?
(2) What are the precepts of the natural law?
(3) Whether all acts of virtue are prescribed by the natural law?
(4) Whether the natural law is the same in all?
(5) Whether it is changeable?
(6) Whether it can be abolished from the heart of man?

…

Article 4: Whether the natural law is the same in all men?

…

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

…

I answer that, As stated above (*ST* I-II.q94.a2-3), to the natural law belongs those things to which a man is inclined naturally: and among these it is proper to man to be inclined to act according to reason. Now the process of reason is from the common to the proper, as stated in *Phys.* i. The speculative reason, however, is differently situated in this matter, from the practical reason. For, since the speculative reason is busied chiefly with the necessary things, which cannot be otherwise than they are, its proper conclusions, like the universal principles, contain the truth without fail. The practical reason, on the other hand, is busied with contingent matters, about which human actions are concerned: and consequently, although there is necessity in the general principles, the more we descend to matters of detail, the more frequently we encounter defects. Accordingly then in speculative matters truth is the same in all men, both as to principles and as to conclusions: although the truth is not known to all as regards the conclusions, but only as regards the principles which are called common notions. But in matters of action, truth or

practical rectitude is not the same for all, as to matters of detail, but only as to the general principles: and where there is the same rectitude in matters of detail, it is not equally known to all.

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

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

…

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

…

Article 5: Whether the natural law can be changed?

…

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

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

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

Secondly, a change in the natural law may be understood by way of subtraction, so that what previously was according to the natural law, ceases to be so. In this sense, the natural law is altogether unchangeable in its first principles: but in its secondary principles, which, as we have said (*ST* I-II.q94.a4), are certain detailed proximate conclusions drawn from the first principles, the natural law is not changed so that what it prescribes be not right in most cases. But it may be changed in some particular cases of rare occurrence, through some special causes hindering the observance of such precepts, as stated above (*ST* I-II.q94.a4).

…

Reply to Objection 3: A thing is said to belong to the natural law in two ways. First, because nature inclines thereto: *e.g.* that one should not do harm to another. Secondly, because nature did not bring in the contrary: thus we might say that for man to be naked is of the natural law, because nature did not give him clothes, but art invented them. In this sense, *the possession of all things in common and universal freedom* are said to be of the natural law, because, to wit, the distinction of possessions and slavery were not brought in by nature, but devised by human reason for the benefit of human life. Accordingly the law of nature was not changed in this respect, except by addition.

…

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.

…

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

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

Objection 2: Further, positive law is contrasted with natural law, as stated by Isidore (*Etym.* v, 4) and the Philosopher (*Ethic.* v, 7). But those things which flow as conclusions from the general principles of the natural law belong to the natural law, as stated above (*ST* I-II.q94.a4). Therefore that which is established by human law does not belong to the natural law.

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

Objection 4: Further, it is possible to give a reason for things which are derived from the natural law. But *it is not possible to give the reason for all the legal enactments of the lawgivers,* as the jurist says.* 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.

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

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

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

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

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

…

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.

…

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* [Responsa 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.

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.

…

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?

…

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

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.*

Article 5: Whether all are subject to the law?

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

…

Objection 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.*

…

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.

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.

…

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*

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

…

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

…

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 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 3: Whether custom can obtain force of law?

…

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.

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.

…

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.

…

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

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.

…