

# AQUINAS TREATISE ON LAW

## Abridged

*The purpose of this abridgement is to highlight the main points of Aquinas's ideas on Natural and Human Law*

### Qu. 90 Essence of Law

Law is a rule and measure of acts

1. Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting... 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 (Q. 1, A. 1, ad 3); 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.

The Law is always directed to the common good

2. 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: Therefore 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 (Q. 2, A. 7; Q. 3, A. 1). 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 [happiness of the community].

Therefore 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... 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.

3. Can any person make law?

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.

#### 4. Is promulgation necessary for law?

As stated above (A. 1), a law is imposed on others by way of a rule and measure. Now a rule or measure is imposed by being applied to those who are to be ruled and measured by it. Therefore, 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. Therefore 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.

### Qu. 91 The kinds of law

#### 1. Is there an Eternal Law?

As stated above (Q. 90, A. 1, ad 2; AA. 3, 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 First Part (Q. 22, AA. 1, 2), that the whole community of the universe is governed by Divine Reason. Therefore 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.

#### 2. Is there a Natural Law?

Therefore, since all things subject to Divine providence are ruled and measured by the eternal law, as was stated above (A. 1); it is evident that all things partake somewhat of the eternal law, in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends. Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Therefore 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.

#### 3. Is there a human law?

As stated above ( Question [90], Article [1], ad 2), 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 ( Question [90], Articles [2],3,4).

## Qu. 94 The Natural Law

2. Whether the natural law contains several precepts, or one.

As stated above ( Question [91], Article [3]), the precepts of the natural law are to the practical reason, what the first principles of demonstrations are to the speculative reason; because both are self-evident principles. Now a thing is said to be self-evident in two ways: first, in itself; secondly, in relation to us. Any proposition is said to be self-evident in itself, if its predicate is contained in the notion of the subject: although, to one who knows not the definition of the subject, it happens that such a proposition is not self-evident. For instance, this proposition, "Man is a rational being," is, in its very nature, self-evident, since who says "man," says "a rational being": and yet to one who knows not what a man is, this proposition is not self-evident. Hence it is that, as Boethius says (De Hebdom.), certain axioms or propositions are universally self-evident to all; and such are those propositions whose terms are known to all, as, "Every whole is greater than its part," and, "Things equal to one and the same are equal to one another." But some propositions are self-evident only to the wise, who understand the meaning of the terms of such propositions: thus to one who understands that an angel is not a body, it is self-evident that an angel is not circumscriptively in a place: but this is not evident to the unlearned, for they cannot grasp it.

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

Since, however, good has the nature of an end, and evil, the nature of a contrary, hence it is that all those things to which man has a natural inclination, are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance. Therefore according to the order of natural inclinations, is

the order of the precepts of the natural law. Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature: **and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law.** Secondly, there is in man an inclination to things that pertain to him more specially, **according to that nature which he has in common with other animals:** and in virtue of this inclination, those things are said to belong to the natural law, "which nature has taught to all animals" [\*Pandect. Just. I, tit. i], such as sexual intercourse, education of offspring and so forth. Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: **thus man has a natural inclination to know the truth about God, and to live in society:** and in this respect, whatever pertains to this inclination belongs to the natural law; for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things regarding the above inclination.

4. Whether the natural law is the same in all men?

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

As stated above ( Articles [2],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).

#### 5. Whether the natural law can be changed?

Objection 2: Further, the slaying of the innocent, adultery, and theft are against the natural law. But we find these things changed by God: as when God commanded Abraham to slay his innocent son (Gn. 22:2); and when he ordered the Jews to borrow and purloin the vessels of the Egyptians (Ex. 12:35); and when He commanded Osee to take to himself "a wife of fornications" (Osee 1:2). Therefore the natural law can be changed. Objection 3: Further, Isidore says (Etym. 5:4) that "the possession of all things in common, and universal freedom, are matters of natural law." But these things are seen to be changed by human laws. Therefore it seems that the natural law is subject to change.

On the contrary, It is said in the Decretals (Dist. v): **"The natural law dates from the creation of the rational creature. It does not vary according to time, but remains unchangeable."** I answer that, A change in the natural law may be understood in two ways. **First, by way of addition.** In this sense nothing hinders the natural law from being changed: since many things for the benefit of human life have been added over and above the natural law, both by the Divine law and by human laws. Secondly, a change in the natural law may be understood by way of subtraction, so that what previously was according to the natural law, ceases to be so. In this sense, the natural law is altogether unchangeable in its first principles: but in its secondary principles, which, as we have said ( Article [4]), are certain detailed proximate conclusions drawn from the first principles, the natural law is not changed so that what it prescribes be not right in most cases. But it may be changed in some particular cases of rare occurrence, through some special causes hindering the observance of such precepts, as stated above ( Article [4]).

Reply to Objection 2: All men alike, both guilty and innocent, die the death of nature: which death of nature is inflicted by the power of God on account of original sin, according to 1 Kgs. 2:6: "The Lord killeth and maketh alive." Consequently, by the

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

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

## Qu. 95 Human Law

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

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.

As stated above ( Question [63], Article [1]; Question [94], Article [3]), 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.

2. Whether every human law is derived from the natural law?

As Augustine says (De Lib. Arb. i, 5) "that which is not just seems to be no law at all": Therefore 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 ( Question [91], Article [2], ad 2). **Consequently every human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of law.**

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

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

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

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 ( Article [2]). **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 ( Article [2]). 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. **Therefore 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** ( Question [90], Article [3]). 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, seq.).

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.

## Qu. 96 OF THE POWER OF HUMAN LAW

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

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."

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. **Therefore 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).



## 2. Whether it belongs to the human law to 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 [vices], and that Divine providence punishes them." But Divine providence punishes nothing but vices. **Therefore human law rightly allows some vices, by not repressing them.**

As stated above ( Question [90], Articles [1],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. Therefore 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. **Therefore human laws do not forbid all vices, from which the virtuous abstain, but only the more grievous vices, from which it is possible for the majority to abstain;** and chiefly those that are to the hurt of others, without the prohibition of which human society could not be maintained: thus human law prohibits murder, theft and such like.

## 3. Whether human law prescribes acts of all the virtues?

The species of virtues are distinguished by their objects, as explained above ( Question [54], Article [2]; Question [60], Article [1]; Question [62], Article [2]). 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 ( Question [90], Article [2]) is ordained to the common good. Therefore 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.

## 4. Whether human law binds a man in conscience?

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

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

##### 5. Whether all are subject to the law?

As stated above ( Question [90], Articles [1],2; Article [3], ad 2), the notion of law contains two things: first, that it is a rule of human acts; secondly, that it has coercive power. Therefore 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. Therefore in this sense the good are not subject to the law, but only the wicked.

6. Whether he who is under a law may act beside [contrary] the letter of the law?  
As stated above ( Article [4]), every law is directed to the common weal of men, and derives the force and nature of law accordingly. Hence the jurist says [\*Pandect. Justin. lib. i, ff., tit. 3, De Leg. et Senat.]: "By no reason of law, or favor of equity, is it allowable for us to interpret harshly, and render burdensome, those useful measures which have been enacted for the welfare of man." Now it happens often that the observance of some point of law conduces to the common weal in the majority of instances, and yet, in some cases, is very hurtful. Since then the lawgiver cannot have in view every single case, he shapes the law according to what happens most frequently, by directing his attention to the common good. **Therefore if a case arise wherein the observance of that law would be hurtful to the general welfare, it should not be observed.** For instance, suppose that in a besieged city it be an established law that the gates of the city are to be kept closed, this is good for public welfare as a general rule: but, it were to happen that the enemy are in pursuit of certain citizens, who are defenders of the city, it would be a great loss to the city, if the gates were not opened to them: and so in that case the gates ought to be opened, contrary to the letter of the law, in order to maintain the common weal, which the lawgiver had in view.

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

## Qu. 97 OF CHANGE IN LAWS

1. Whether human law should be changed in any way?

I answer that, As stated above ( Question [91], Article [3]), 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."

2. Whether human law should always be changed, whenever something better occurs?  
As stated above ( Article [1]), 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. Therefore 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. Therefore the jurist says [\*Pandect. Justin. lib. i, ff., tit. 4, De Constit. Princip.] 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."

3. Whether custom can obtain force of law?

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. Therefore 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.

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

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 necessities 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 ( Question [96], Article [6]). 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 ( Question [96], Article [6]). 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?"

## Qu. 100 OF THE MORAL PRECEPTS OF THE OLD LAW

1. Whether all the moral precepts of the Old Law belong to the law of nature?

The moral precepts, distinct from the ceremonial and judicial precepts, are about things pertaining of their very nature to good morals. Now since human morals depend on their relation to reason, which is the proper principle of human acts, those morals are called good which accord with reason, and those are called bad which are discordant from reason. And as every judgment of speculative reason proceeds from the natural knowledge of first principles, so every judgment of practical reason proceeds from principles known naturally, as stated above ( Question [94], Articles [2],4): from which principles one may proceed in various ways to judge of various matters. For some matters connected with human actions are so evident, that after very little consideration one is able at once to approve or disapprove of them by means of these general first principles: while some matters cannot be the subject of judgment without much consideration of the various circumstances, which all are not competent to do carefully, but only those who are wise: just as it is not possible for all to consider the particular conclusions of sciences, but only for those who are versed in philosophy: and lastly there are some matters of which man cannot judge unless he be helped by Divine instruction; such as the articles of faith.

It is therefore evident that since the moral precepts are about matters which concern good morals; and since good morals are those which are in accord with reason; and since also every judgment of human reason must needs be derived in some way from natural reason; it follows, of necessity, that all the moral precepts belong to the law of nature; but not all in the same way. For there are certain things which the natural reason of every man, of its own accord and at once, judges to be done or not to be done: e.g. "Honor thy father and thy mother," and "Thou shalt not kill, Thou shalt not steal": and these belong to the law of nature absolutely. And there are certain things which, after a more careful consideration, wise men deem obligatory. Such belong to the law of nature, yet so that they need to be inculcated, the wiser teaching the less wise: e.g. "Rise up before the hoary head, and honor the person of the aged man," and the like. And there are some things, to judge of which, human reason needs Divine instruction, whereby we are taught about the things of God: e.g. "Thou shalt not make to thyself a graven thing, nor the likeness of anything; Thou shalt not take the name of the Lord thy God in vain."

## Qu. 105 OF THE REASON FOR THE JUDICIAL PRECEPTS

### 1. Whether the Old Law enjoined fitting precepts concerning rulers

Two points are to be observed concerning the right ordering of rulers in a state or nation. One is that all should take some share in the government: for this form of constitution ensures peace among the people, commends itself to all, and is most enduring, as stated in Polit. ii, 6. The other point is to be observed in respect of the kinds of government, or the different ways in which the constitutions are established. For whereas these differ in kind, as the Philosopher states (Polit. iii, 5), nevertheless the first place is held by the "kingdom," where the power of government is vested in one; and "aristocracy," which signifies government by the best, where the power of government is vested in a few. Accordingly, the best form of government is in a state or kingdom, where one is given the power to preside over all; while under him are others having governing powers: and yet a government of this kind is shared by all, both because all are eligible to govern, and because the rules are chosen by all. For this is the best form of polity, being partly kingdom, since there is one at the head of all; partly aristocracy, in so far as a number of persons are set in authority; partly democracy, i.e. government by the people, in so far as the rulers can be chosen from the people, and the people have the right to choose their rulers.

Such was the form of government established by the Divine Law. For Moses and his successors governed the people in such a way that each of them was ruler over all; so that there was a kind of kingdom. Moreover, seventy-two men were chosen, who were elders in virtue: for it is written (Dt. 1:15): "I took out of your tribes wise and honorable, and appointed them rulers": so that there was an element of aristocracy. But it was a democratical government in so far as the rulers were chosen from all the people; for it is written (Ex. 18:21): "Provide out of all the people wise [Vulg.: 'able'] men," etc.; and, again, in so far as they were chosen by the people; Therefore it is written (Dt. 1:13): "Let me have from among you wise [Vulg.: 'able'] men," etc. Consequently it is evident that the ordering of the rulers was well provided for by the Law.

## TREATISE ON GRACE (Questions [109]-114)

### 2. Whether man can wish or do any good without grace?

Man's nature may be looked at in two ways: first, in its integrity, as it was in our first parent before sin; secondly, as it is corrupted in us after the sin of our first parent. Now in both states human nature needs the help of God as First Mover, to do or wish any good whatsoever, as stated above ( Article [1]). But in the state of integrity, as regards the sufficiency of the operative power, man by his natural endowments could wish and do the good proportionate to his nature, such as the good of acquired virtue; but not surpassing good, as the good of infused virtue. But in the state of corrupt nature, man falls short of what he could do by his nature, so that he is unable to fulfil it by his own natural powers. Yet because human nature is not altogether corrupted by sin, so as to be shorn of every natural good, even in the state of corrupted nature it can, by virtue of its natural endowments, work some particular good, as to build dwellings, plant vineyards, and the

like; yet it cannot do all the good natural to it, so as to fall short in nothing; just as a sick man can of himself make some movements, yet he cannot be perfectly moved with the movements of one in health, unless by the help of medicine he be cured.

And thus in the state of perfect nature man needs a gratuitous strength superadded to natural strength for one reason, viz. in order to do and wish supernatural good; but for two reasons, in the state of corrupt nature, viz. in order to be healed, and furthermore in order to carry out works of supernatural virtue, which are meritorious. Beyond this, in both states man needs the Divine help, that he may be moved to act well.