

# Chapter 5

## ST. THOMAS AQUINAS

### Treatise on Law

---

According to St. Thomas, the definition of *law* may be rendered thus: "It is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated." Let us briefly explore each of these four aspects of law.

#### ***1. Law is an ordinance of reason.***

For St. Thomas, it is the role of reason, first, to apprehend the good and, second, to determine the most appropriate means to secure the good. Law is that which induces man to act or refrain from acting in such a way as to achieve the practical reason's primary object, namely the good.

#### ***2. The law is always something directed to the common good.***

The ultimate end or goal of human life is happiness and, consequently, the law must pertain first and foremost to the attainment of this end. The purpose of law, therefore, is to make human beings virtuous and good, and this it accomplishes by directing human actions in such a way as to conduce to virtue as well as by incentivizing law abidingness through the fear of punishment. With respect to this latter, St. Thomas makes the following psychological insight: "From becoming accustomed to avoid evil and fulfill what is good, through fear of punishment, one is sometimes led on to do so likewise, with delight and of one's own accord. Accordingly, law, even by punishing, leads men on to being good." Thus the threat of punishment or punishment itself seeks not merely to deter evil acts but also to help habituate human beings to virtue.

Further, it is absolutely crucial to recognize that law is *not* the practical reason ordering what the individual must do with a view to his own private good simply, but rather it is the practical reason ordering what the individual must do with a view to the good of the whole community of which he is but a member: "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."

### 3. *The law is made by him who has care of the community.*

The point here is simply that the making of a law, which by definition exists for the sake of the common good, belongs to whoever is entrusted with the care of the whole people (i.e., a monarch, or a democratic assembly, etc.). For this reason it is absolutely essential that the leader(s) of a community be virtuous, for otherwise their edicts will not be ordinances of reason but of sin and error, not aimed at the common good, and thus they will not have the status of binding law, but rather of legislative tyranny.

### 4. *The law must be promulgated.*

In order for a law to be binding and legitimate, it must be promulgated, or made known to those for whom it is intended. This is so for the obvious reason that one cannot willfully obey a law if one is unaware of its existence.

## The Four Kinds of Law

St. Thomas enumerates four distinct types of law. Let us briefly discuss each one, going from highest to lowest.

### 1. *Eternal law.*

The eternal law is for St. Thomas synonymous with the Divine Reason, or God's providential<sup>1</sup> governance of the universe, which moves all beings according to their several ends in subordination to the end or goal of the entire universe. Consider here St. Thomas' "fifth way" of demonstrating God's existence, known to modern scholars as the "argument from design":

"We see that things which lack intelligence, such as natural bodies, act for an end, and this is evident from their acting always, or nearly always, in the same way, so as to obtain the best result. Hence it is plain that not fortuitously, but designedly, do they achieve their end. Now whatever lacks intelligence cannot move towards an end, unless it be directed by some being endowed with knowledge and intelligence; as the arrow is shot to its mark by the archer. Therefore some intelligent being exists by whom all natural things are directed to their end; and this being we call God" (*Summa Theologiae* Ia, q. 2, a. 3).

Inanimate bodies participate in the eternal law by acting in certain ways by natural necessity, that is, because they cannot act contrary to their God-given nature according to which they are directed to their appropriate end (this would encompass all of the scientific laws which govern the whole of the physical/natural world). Animals, on the other hand, participate (however unconsciously) in the eternal law by being governed by instinct. Human beings, however, because they are endowed with intelligence, participate in the eternal law *through* the natural law (about which more below).

### 2. *Divine law.*

According to St. Thomas, man is directed toward an end (salvation and eternal life) the knowledge of which surpasses the grasp of his reason. That is, knowledge of man's highest good lies *beyond* the capacity of imperfect human reason. For this reason, St. Thomas argues, God saw fit to *reveal* this truth to us via sacred scripture (i.e., the Biblical revelation). Divine law is therefore needed to teach matters that human reason insufficiently understands. In addition, whereas human law only addresses actions, not intent, and since human law is incapable of judging intent (the "interior movements" of the soul, which constitute sin), Divine law is therefore necessary—"all is under the watchful eye of God..."

1. Providence refers to a rational plan according to which things are directed toward an end.

### 3. *Natural law.*

God has endowed mankind with a determinate *nature* by virtue of which human beings exhibit certain basic inclinations that, taken together, not only constitute our “humanity” and thereby distinguish us from all other creatures, but also direct us toward those objects that, in accordance with God’s design, are *good* for us. Morality is thus founded on these natural inclinations as well as on reason’s ability to determine what moral prescriptions ought to be followed based on these inclinations. The first and most universal moral prescription is to “do good and avoid evil,” which is identical to “seek out and acquire those goods toward which you are naturally inclined, and shun anything that is destructive thereof.” This, in brief, is the recipe for a good earthly life, according to St. Thomas.

Let us quickly go through each of the four<sup>2</sup> natural inclinations, from lowest to highest.

a. Self-preservation.

Like all living things, the human being endeavors—and *ought* to endeavor—with all his might to preserve his life. Suicide, as a direct violation of this inclination, is therefore evil.

b. Procreation and rearing of offspring.

Like other animals, human beings are naturally inclined to mate and care for their young. The family unit is the natural expression of this basic inclination. Any activity or manner of living that actively thwarts these desires would be deemed evil, or contrary to nature (which amount to the same thing for St. Thomas).

c. To live in society.

St. Thomas (following Aristotle) argues that man is by nature a political being, i.e., that he cannot attain virtue and happiness in isolation from a political community. Because human beings cannot thrive absent mutually beneficial or collaborative associations, it is imperative that men refrain from injuring those with whom they are called to live.

d. To know the truth about God.

The human being is by nature a creature endowed with intelligence, and thus he is inclined to desire knowledge, particularly about those things that are necessary for the right ordering of his life (i.e., God). As Aristotle said over sixteen centuries earlier, “All men by nature desire to know.” Correlatively, one ought to avoid ignorance and do what one can to dispel it.

### 4. *Human law.*

Human law has specifically to do with determining ways of *applying* natural law. Whereas the precepts of the natural law may not vary, their implementation certainly does. Because there is in the world such a multiplicity of social customs, institutions, mores, climates, histories, topographies, and cultures, St. Thomas believes that different societies will frame different codes of law.

Human law is supposed to proceed from natural law: it should be rational, and it should further fulfill the other three requirements of law (i.e., it must be for the sake of the common good, made by him who has care of the community, and promulgated). Any man-made law that deviates from these requirements is not strictly speaking a valid law.<sup>3</sup>

2. Many commentators list them as three (collapsing C and D into one), but for the sake of clarity I will list them as four.

3. Consider how The Reverend Martin Luther King Jr. drew on the logical consequences of Thomistic natural law theory in his *Letter from Birmingham Jail*, in which he criticizes segregation laws on the grounds that they degrade human personality by creating a false sense of superiority in the segregator no less than a false sense of inferiority in the segregated.

# Treatise on Law

St. Thomas Aquinas

## Question 90 of the Essence of Law<sup>1</sup>

### First Article [I-II, Q. 90, Art. 1]

#### *Whether Law Is Something Pertaining to Reason?*

*I answer that*, Law is a rule and measure of acts, whereby man is induced<sup>2</sup> 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 (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...

### Second Article [I-II, Q. 90, Art. 2]

#### *Whether the Law Is Always Something Directed to the Common Good?*

*I answer that* ...the first principle in practical matters, which are the object of the practical reason<sup>3</sup>, is the last end: and the last end of human life is bliss or happiness,<sup>4</sup> 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,<sup>5</sup> the law must needs regard properly the rela-

From *Summa Theologica*, Part I-II by Saint Thomas Aquinas, Translated by Fathers of the English Dominican Province.

1. For the footnotes portion of this text I am indebted to Peter Kreeft's excellent commentary in his *Summa of the Summa* (San Francisco: Ignatius Press, 1990).

2. That is, led or commanded. Law binds us morally, though not physically: we can use our free will to obey or disobey. Someone living according to reason (which directs us to our goal of leading a good and happy life) will freely choose to obey.

3. The *practical reason* in St. Thomas operates in this way: The intellect apprehends something as good and thereby presents it to the will, which then wishes or wills that good as an end or goal. Once intending the good as its end, the agent (the one who wills) must decide upon the means to the end. If the means are not immediately obvious, the agent deliberates in order to seek out acceptable ways to the end. Reason then issues a judgment as to which means are preferable, followed by an act of will (called *choice*), and then the execution of that choice through deliberate action. For a fuller discussion of practical reason in the thought of St. Thomas Aquinas, see the Internet Encyclopedia of Philosophy: <http://www.iep.utm.edu/prac-med/#SH4a>.

4. Man's ultimate good is happiness, which, for St. Thomas, requires that we live in accordance with our God-given nature. As we will see in our discussion of natural law, God built certain natural inclinations into human nature, the most important of which are our reasoning abilities which allow us to discover our moral obligation to pursue those goods to which we are naturally inclined and to avoid anything which runs contrary to those inclinations (what St. Thomas refers to as "evil"). Man's highest good (*summum bonum* in Latin), however, is not a natural but a supernatural good: the *beatific vision*, seeing God's essence in a direct flash of insight, which is open only to those whom God saves.

5. Just as the soul is an individual substance but also the form of the body, so too is the human being a whole in himself and also a part of the greater whole of the community.

tionship to universal happiness. Wherefore the Philosopher<sup>6</sup>, 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...”

### **Third Article [I-II, Q. 90, Art. 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 vice-regent<sup>7</sup> 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...

### **Fourth Article [I-II, Q. 90, Art. 4]**

#### *Whether Promulgation<sup>8</sup> Is Essential to a Law?*

*I answer that*, 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. 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**

### **First Article [I-II, Q. 91, Art. 1]**

#### *Whether There Is an Eternal Law?*

*I answer that*, 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. 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.

### **Second Article [I-II, Q. 91, Art. 2]**

#### *Whether There Is in Us 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,

6. St. Thomas here refers to the ancient Greek philosopher Aristotle.

7. A vice-regent is a representative who rules for the good of the people.

8. To promulgate is to make known.

## 62 Chapter 5 St. Thomas Aquinas

yet they have the natural law, whereby each one knows, and is conscious of, what is good and what is evil.”

*I answer that,* As stated above (Q. 90, A. 1, ad 1), law, being a rule and measure, can be in a person in two ways: in one way, as in him that rules and measures; in another way, as in that which is ruled and measured, since a thing is ruled and measured, in so far as it partakes of the rule or measure. Wherefore, since all things subject to Divine providence are ruled and measured by the eternal law, as was stated above (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. 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.<sup>9</sup>

### **Third Article [I-II, Q. 91, Art. 3]**

*Whether There Is a Human Law?*

*I answer that,* As stated above (Q. 90, A. 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 (ibid.). 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,<sup>10</sup> 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...<sup>11</sup>

### **Fourth Article [I-II, Q. 91, Art. 4]**

*Whether There Was Any Need for a Divine Law?<sup>12</sup>*

*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...man is ordained to an end of eternal happiness...

9. Therefore the voice of conscience (i.e., man’s reason judging good and evil) is an echo or reflection of the voice of God, and is thus sacred and inviolable.

10. St. Thomas here refers to self-evident theoretical axioms such as the law of non-contradiction (a thing cannot both be and not be at the same time in the same respect) as well as self-evident practical axioms, both general (do good and shun evil) and specific (be just). These are what St. Thomas calls “the precepts of the natural law,” which are naturally known to us just as the first theoretical principles are.

11. “Human law” is also known as “positive law” (law laid down or posited by man).

12. Divine law is that part of eternal law which God promulgated by special revelation (i.e., Sacred Scripture).

Secondly...on account of the uncertainty of human judgment...

Thirdly, because...man is not competent to judge of interior movements, that are hidden...

Fourthly, because...human law cannot punish or forbid all evil deeds...

## Question 92 of the Effects of Law

We must now consider the effects of law; under which head there are two points of inquiry:

1. Whether an effect of law is to make men good?
2. Whether the effects of law are to command, to forbid, to permit, and to punish, as the Jurist states?

### *First Article [I-II, Q. 92, Art. 1]*

#### *Whether an Effect of Law Is to Make Men Good?*

Objection 1: It seems that it is not an effect of law to make men good. For men are good through virtue<sup>13</sup>, since virtue, as stated in *Ethic.* ii, 6 is "that which makes its subject good." But virtue is in man from God alone, because He it is Who "works it in us without us," as we stated above (Q. 55, A. 4) in giving the definition of virtue. Therefore the law does not make men good.

Obj. 2: Further, Law does not profit a man unless he obeys it. But the very fact that a man obeys a law is due to his being good. Therefore in man goodness is presupposed to the law. Therefore the law does not make men good.

Obj. 3: Further, Law is ordained to the common good, as stated above (Q. 90, A. 2). But some behave well in things regarding the community, who behave ill in things regarding themselves. Therefore it is not the business of the law to make men good.

Obj. 4: Further, some laws are tyrannical, as the Philosopher says (*Polit.* iii, 6). But a tyrant does not intend the good of his subjects, but considers only his own profit. Therefore law does not make men good.

*On the contrary*, The Philosopher says (*Ethic.* ii, 1) that the "intention of every lawgiver is to make good citizens."

Reply Obj. 1: Virtue is twofold, as explained above (Q. 63, A. 2), viz. acquired and infused. Now the fact of being accustomed to an action contributes to both, but in different ways; for it causes the acquired virtue; while it disposes to infused virtue, and preserves and fosters it when it already exists. And since law is given for the purpose of directing human acts; as far as human acts conduce to virtue, so far does law make men good. Wherefore the Philosopher says in the second book of the *Politics* (*Ethic.* ii) that "lawgivers make men good by habituating them to good works."

Reply Obj. 2: It is not always through perfect goodness of virtue that one obeys the law, but sometimes it is through fear of punishment...

Reply Obj. 3: The goodness of any part is considered in comparison with the whole; hence Augustine says (*Confess.* iii) that "unseemly is the part that harmonizes not with the whole." Since then every man is a part of the state, it is impossible that a man be good, unless he be well proportionate to the common good: nor can the whole be well consistent unless its parts be proportionate to it. Consequently the common good of the state cannot flourish, unless the citizens be virtuous, at least those whose business it is to govern. But it is enough for the good of the community, that the other citizens be so far virtuous that they obey the commands of their rulers...

Reply Obj. 4: A tyrannical law, through not being according to reason, is not a law, absolutely speaking, but rather a perversion of law...

13. A virtue is a good habit, a moral excellence.

## 64 Chapter 5 St. Thomas Aquinas

**Second Article [I-II, Q. 92, Art. 2]***Whether the Acts of Law Are Suitably Assigned?*

Obj. 4: Further, the intention of a lawgiver is to make men good, as stated above (A. 1). But he that obeys the law, merely through fear of being punished, is not good: because “although a good deed may be done through servile fear, i.e., fear of punishment, it is not done well,” as Augustine says (Contra duas Epist. Pelag. ii). Therefore punishment is not a proper effect of law.

*On the contrary*, Isidore says (Etym. v, 19): “Every law either permits something, as: ‘A brave man may demand his reward’”: or forbids something, as: “No man may ask a consecrated virgin in marriage”: or punishes, as: “Let him that commits a murder be put to death.”

Reply Obj. 4: From becoming accustomed to avoid evil and fulfill what is good, through fear of punishment, one is sometimes led on to do so likewise, with delight and of one’s own accord. Accordingly, law, even by punishing, leads men on to being good.

**Question 93 of the Eternal Law****Second Article [I-II, Q. 93, Art. 2]***Whether the Eternal Law Is Known to All?*

Objection 1: It would seem that the eternal law is not known to all. Because, as the Apostle says (1 Cor. 2:11), “the things that are of God no man knoweth, but the Spirit of God.” But the eternal law is a type existing in the Divine mind. Therefore it is unknown to all save God alone.

*On the contrary*, Augustine says (De Lib. Arb. i, 6) that “knowledge of the eternal law is imprinted on us.”

*I answer that*, A thing may be known in two ways: first, in itself; secondly, in its effect, wherein some likeness of that thing is found: thus someone not seeing the sun in its substance, may know it by its rays. So then no one can know the eternal law, as it is in itself, except the blessed who see God in His Essence. But every rational creature knows it in its reflection, greater or less. For every knowledge of truth is a kind of reflection and participation of the eternal law, which is the unchangeable truth, as Augustine says (De Vera Relig. xxxi). Now all men know the truth to a certain extent, at least as to the common principles of the natural law: and as to the others, they partake of the knowledge of truth, some more, some less; and in this respect are more or less cognizant of the eternal law.

Reply Obj. 1: We cannot know the things that are of God, as they are in themselves; but they are made known to us in their effects, according to Rom. 1:20: “The invisible things of God...are clearly seen, being understood by the things that are made.”

**Third Article [I-II, Q. 93, Art. 3]***Whether Every Law Is Derived from the Eternal Law?*

Obj. 2: Further, nothing unjust can be derived from the eternal law, because, as stated above (A. 2, Obj. 2), “the eternal law is that, according to which it is right that all things should be most orderly.” But some laws are unjust, according to Isa. 10:1: “Woe to them that make wicked laws.” Therefore not every law is derived from the eternal law.

*On the contrary*, Divine Wisdom says (Prov. 8:15): “By Me kings reign, and lawgivers decree just things.” But the type of Divine Wisdom is the eternal law, as stated above (A. 1). Therefore all laws proceed from the eternal law.

*I answer that*...Since then the eternal law is the plan of government in the Chief Governor, all the plans of government in the inferior governors must be derived from the eternal law. But

these plans of inferior governors are all other laws besides the eternal law. Therefore all laws, in so far as they partake of right reason, are derived from the eternal law. Hence Augustine says (*De Lib. Arb.* i, 6) that “in temporal law there is nothing just and lawful, but what man has drawn from the eternal law.”

Reply Obj. 2: Human law has the nature of law in so far as it partakes of right reason; and it is clear that, in this respect, it is derived from the eternal law. But in so far as it deviates from reason, it is called an unjust law, and has the nature, not of law but of violence. Nevertheless even an unjust law, in so far as it retains some appearance of law, though being framed by one who is in power, is derived from the eternal law; since all power is from the Lord God, according to Rom. 13:1.

### ***Sixth Article [I-II, Q. 93, Art. 6]***

#### ***Whether All Human Affairs Are Subject to the Eternal Law?***

*I answer that,* There are two ways in which a thing is subject to the eternal law, as explained above (A. 5): first, by partaking of the eternal law by way of knowledge; secondly, by way of action and passion, i.e., by partaking of the eternal law by way of an inward motive principle: and in this second way, irrational creatures are subject to the eternal law, as stated above (A. 5). But since the rational nature, together with that which it has in common with all creatures, has something proper to itself inasmuch as it is rational, consequently it is subject to the eternal law in both ways; because while each rational creature has some knowledge of the eternal law, as stated above (A. 2), it also has a natural inclination to that which is in harmony with the eternal law; for “we are naturally adapted to the recipients of virtue” (*Ethic.* ii, 1).

Both ways, however, are imperfect, and to a certain extent destroyed, in the wicked; because in them the natural inclination to virtue is corrupted by vicious habits, and, moreover, the natural knowledge of good is darkened by passions and habits of sin. But in the good both ways are found more perfect: because in them, besides the natural knowledge of good, there is the added knowledge of faith and wisdom; and again, besides the natural inclination to good, there is the added motive of grace<sup>14</sup> and virtue...

## **Question 94 of the Natural Law**

### ***Second Article [I-II, Q. 94, Art. 2]***

#### ***Whether the Natural Law Contains Several Precepts, or Only One?***

*I answer that,* As stated above (Q. 91, A. 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

14. Grace refers to that which God bestows freely, as distinct from natural necessity.

## 66 Chapter 5 St. Thomas Aquinas

a body, it is self-evident that an angel is not circumscriptively in a place: but this is not evident to the unlearned, for they cannot grasp it.

Now a certain order is to be found in those things that are apprehended universally. For that which, before aught else, falls under apprehension, is *being*, the notion of which is included in all things whatsoever a man apprehends. Wherefore the first indemonstrable principle is that “the same thing cannot be affirmed and denied at the same time,” which is based on the notion of *being* and *not-being*: and on this principle all others are based, as is stated in *Metaph.* iv, text. 9. Now as *being*<sup>15</sup> 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.”<sup>16</sup> All other precepts of the natural law are based upon this: so that whatever the practical reason naturally apprehends as man’s good (or evil) belongs to the precepts of the natural law as something to be done or avoided.

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

### Third Article [I-II, Q. 94, Art. 3]

#### *Whether All Acts of Virtue Are Prescribed by the Natural Law?*

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

*I answer that*,...If...we speak of acts of virtue, considered as virtuous, thus all virtuous acts belong to the natural law. For it has been stated (A. 2) that to the natural law belongs everything to which a man is inclined according to his nature. Now each thing is inclined naturally

15. By “being,” St. Thomas means that which *is*, whether actual (fully real, perfect, complete) or potential (not yet fully actualized) either in the mind (a “being of reason”) or in objective reality (“a being in nature”); also (*ens*) an entity or substance; (*esse*) the act of existing; (*essentia*) essence or *what* a thing is.

16. It is important to recognize that for St. Thomas, all ethics is fundamentally about *goods*, as opposed to modern ethics, which tends to be concerned most especially with rights, duties, obligations, laws, or “values.” What exactly does St. Thomas mean by “good”? He means that it is 1) metaphysical, 2) objective (unlike “values,” which are relative or subjective), 3) universal (unlike “rights” and “duties”), 4) intellectually grasped (“naturally apprehended by reason as being good”), and 5) correlative or mutually related with natural inclination, in accord with human nature.

to an operation that is suitable to it according to its form: thus fire is inclined to give heat. Wherefore, since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason: and this is to act according to virtue. Consequently, considered thus, all acts of virtue are prescribed by the natural law: since each one's reason naturally dictates to him to act virtuously...

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

## Question 95 of Human Law

### *First Article [I-II, Q. 95, Art. 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.

*I answer that*, As stated above (Q. 63, A. 1; Q. 94, A. 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.<sup>17</sup> 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.

17. For St. Thomas, human beings have a natural aptitude for knowledge and virtue, but we must freely choose to work to acquire both.

**Second Article [I-II, Q. 95, Art. 2]***Whether Every Human Law Is Derived from the Natural Law?*

*I answer that,* As Augustine says (De Lib. Arb. i, 5) “that which is not just seems to be no law at all”: wherefore the force of a law depends on the extent of its justice. Now in human affairs a thing is said to be just, from being right, according to the rule of reason. But the first rule of reason is the law of nature, as is clear from what has been stated above (Q. 91, A. 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.

---

ALL RIGHTS  
RESERVED