

# Divine Law, Natural Law, Positive Law

## 45

### Thomas Aquinas on Natural Law and Positive Law

#### *Summa Theologiae*

Part II/1, Question 94. On the Natural Law

Article 2. Is the natural law a habit?

*We thus proceed to the first inquiry.* It seems that the natural law is a habit, for the following reasons:

*Objection 1.* “Three things belong to the soul: powers, habits, and emotions,” as the Philosopher says in the *Ethics*.<sup>1</sup> But the natural law is neither a power of the soul nor an emotion. Therefore, the natural law is a habit.

*Objection 2.* Basil says that conscience, that is, *synderesis*, is “the law of our intellect,”<sup>2</sup> and we can only understand such regarding the natural law. But *synderesis* is a habit, as I maintained in the First Part.<sup>3</sup> Therefore, the natural law is a habit.

*Objection 3.* The natural law always abides in human beings, as I shall make clear later.<sup>4</sup> But human beings’ reason, to which that law belongs, is not always thinking about the natural law. Therefore, the natural law is a habit, not an act.

*On the contrary,* Augustine says in his work *On the Marital Good* that “habits are the means whereby we do things when we need to.”<sup>5</sup> But the natural law is not such, since that law belongs to infants and the damned, who cannot act by reason of its presence. Therefore, the natural law is not a habit.

*I answer that* we can speak about habits in two ways. We speak of them in one way in the strict sense and essentially, and then the natural law is not a habit. For I have said before that the

1 *Ethics* II, 5 (1105b20–21).

2 *On the Six Days of Creation*, homily 7, n. 5 (PG 29:157).

3 I, Q. 79, A. 12.

4 A. 6.

5 *On the Marital Good* 21 (PL 40:390).

natural law is constituted by reason,<sup>6</sup> just as propositions are works of reason. And what one does, and the means whereby one does it, are not the same. For example, one makes a fitting speech by means of the habit of grammar. Therefore, since habits are the means whereby one does things, the natural law cannot be a habit in the strict sense and essentially.

We can speak of habits in a second way as what we possess by reason of habits. For example, we call faith what we have by reason of the habit of faith. And so, as reason sometimes actually considers precepts of the natural law and sometimes only habitually possesses them, we can in the latter way say that the natural law is a habit. Just so, the indemonstrable first principles in theoretical matters are principles belonging to the habit of first principles, not the very habit.

*Reply Objection 1.* The Philosopher in the cited text is attempting to discover the genus of virtues. And since virtues are evidently sources of activity, he posits only things that are sources of human activity, namely, powers, habits, and emotions. But other things belong to the soul besides the latter three. For example, certain acts belong to the soul: willing to those willing, and things known to those knowing. And the natural properties of the soul, such as immortality and the like, belong to the soul.

*Reply Objection 2.* Basil calls *synderesis* the law of our intellect insofar as it is the habit that contains the precepts of the natural law, that is, the first principles of human actions.

*Reply Objection 3.* The argument of this objection reaches the conclusion that we possess the natural law in a habitual way, and we concede this.

*Qualification to the argument in the section On the contrary.* Sometimes, due to an impediment, one cannot make use of what one possesses habitually. For example, human beings cannot make use of habitual knowledge when they are asleep. And likewise, children cannot make use of habitual understanding of first principles, or even of the natural law, which they possess habitually, due to their immature age.

Article 2. Does the natural law include several precepts or only one?

*We thus proceed to the second inquiry.* It seems that the natural law includes only one precept, not several, for the following reasons:

*Objection 1.* Law belongs to the genus of precept, as I have maintained before.<sup>7</sup> Therefore, if there were to be many precepts of the natural law, it would follow logically that there would also be many natural laws.

*Objection 2.* The natural law results from the nature of human beings. But human nature as a whole is one, although multiple regarding its parts. Therefore, either there is only one precept of the natural law because of the unity of the whole, or there are many precepts because of the many parts of human nature. And so even things that regard inclinations of concupiscible power will need to belong to the natural law.

*Objection 3.* Law belongs to reason, as I have said before.<sup>8</sup> But there is only one power of reason in human beings. Therefore, there is only one precept of the natural law.

6 I-II, Q. 90, A. 1, *ad* 2.

7 I-II, Q. 92, A. 2.

8 I-II, Q. 90, A. 1.

*On the contrary*, the precepts of the natural law in human beings are related to action as the first principles in scientific matters are related to theoretical knowledge. But there are several indemonstrable first principles of theoretical knowledge. Therefore, there are also several precepts of the natural law.

*I answer that* as I have said before,<sup>9</sup> the precepts of the natural law are related to practical reason as the first principles of scientific demonstrations are related to theoretical reason. For both the precepts of the natural law and the first principles to scientific demonstrations are self-evident principles. And we speak of things being self-evident in two ways: in one way as such; in a second way in relation to ourselves. We indeed speak of self-evident propositions as such when their predicates belong to the nature of their subjects, although such propositions may not be self-evident to those who do not know the definition of the subjects. For example, the proposition “Human beings are rational” is by its nature self-evident, since to speak of something human is to speak of something rational, although the proposition is not self-evident to one who does not know what a human being is. And so, as Boethius says in his work *On Groups of Seven*,<sup>10</sup> there are axioms or universally self-evident propositions, and propositions whose terms all persons know (e.g., “Every whole is greater than one of its parts” and “Things equal to the same thing are themselves equal”) are such. But some propositions are self-evident only to the wise, who understand what the proposition’s terms signify. For example, for those who understand that angels are not material substances, it is self-evident that angels are not circumscriptively in a place, something not evident to the uneducated, who do not understand the nature of angels.

And there is a priority regarding the things that fall within the understanding of all persons. For what first falls within our understanding is being, the understanding of which is included in everything that one understands. And so the first indemonstrable principle is that one cannot at the same time affirm and deny the same thing. And this principle is based on the nature of being and nonbeing, and all other principles are based on it, as the *Metaphysics* says.<sup>11</sup> And as being is the first thing that without qualification falls within our understanding, so good is the first thing that falls within the understanding of practical reason. And practical reason is ordered to action, since every efficient cause acts for the sake of an end, which has the nature of good. And so the first principle in practical reason is one based on the nature of good, namely, that good is what all things seek. Therefore, the first precept of the natural law is that we should do and seek good, and shun evil. And all the other precepts of the natural law are based on that precept, namely, that all the things that practical reason by nature understands to be human goods or evils belong to precepts of the natural law as things to be done or shunned.

And since good has the nature of end, and evil the nature of the contrary, reason by nature understands to be good all the things for which human beings have a natural inclination, and so to be things to be actively sought, and understands contrary things as evil and to be shunned. Therefore, the ordination of our natural inclinations ordains the precepts of the natural law.

First, for example, human beings have an inclination for good by the nature they share with all substances, namely, as every substance by nature seeks to preserve itself. And

<sup>9</sup> I-II, Q. 91, A. 3.

<sup>10</sup> *On Groups of Seven* (PL 64:1311). This work is otherwise known as *How Substances as Existing Things Are Good*.

<sup>11</sup> Aristotle, *Metaphysics* III, 3 (1005b29–34).

regarding this inclination, means that preserve our human life and prevent the contrary belong to the natural law.

Second, human beings have more particular inclinations by the nature they share with other animals. And so the *Digest* says that things “that nature has taught all animals,”<sup>12</sup> such as the sexual union of male and female, and the upbringing of children, and the like, belong to the natural law.

Third, human beings have inclinations for good by their rational nature, which is proper to them. For example, human beings by nature have inclinations to know truths about God and to live in society with other human beings. And so things that relate to such inclinations belong to the natural law (e.g., that human beings shun ignorance, that they not offend those with whom they ought to live sociably, and other such things regarding those inclinations).

*Reply Objection 1.* All the precepts of the natural law, insofar as they relate to one first precept, have the nature of one natural law.

*Reply Objection 2.* All the inclinations of any part of human nature (e.g., the concupiscible and irascible powers), insofar as reason rules them, belong to the natural law and are traced to one first precept, as I have said.<sup>13</sup> And so there are many precepts of the natural law as such, but they share a common foundation.

*Reply Objection 3.* Reason, although as such one power, ordains everything that concerns human beings. And so the law of reason includes everything that reason can rule.

Article 3. Do all virtuous acts belong to the natural law?

*We proceed thus to the third inquiry.* It seems that not all virtuous acts belong to the natural law, for the following reasons:

*Objection 1.* It belongs to the nature of law that law be ordained for the common good, as I have said before.<sup>14</sup> But some virtuous acts are ordained for the private good of an individual, as is particularly evident in the case of acts of the virtue of moderation. Therefore, not all virtuous acts are subject to the natural law.

*Objection 2.* All sins are contrary to certain virtuous acts. Therefore, if all virtuous acts belong to the natural law, it seems that all sins are consequently contrary to nature. And yet we say this in a special way about some sins.

*Objection 3.* Everybody agrees about things that are in accord with nature. But not everybody agrees about virtuous acts, for things that are virtuous for some are vicious for others. Therefore, not all virtuous acts belong to the natural law.

*On the contrary,* Damascene says in his work *On Orthodox Faith* that “virtues are natural.”<sup>15</sup> Therefore, virtuous acts are also subject to the natural law.

*I answer that* we can speak about virtuous acts in two ways: in one way as virtuous; in a second way as we consider such acts in their own species. Therefore, if we are speaking about virtuous acts as virtuous, then all virtuous acts belong to the natural law. For I have said

12 Justinian, *Digest* I, title 1, law 1.

13 In the body of the article.

14 I-II, Q. 90, A. 2.

15 *On Orthodox Faith* III, 14 (PG 94:1045).

that everything to which human beings are inclined by their nature belongs to the natural law.<sup>16</sup> But everything is by its nature inclined to the activity that its form renders fitting. For example, fire is inclined to heat things. And so, since the rational soul is the specific form of human beings, everyone has an inclination from one's nature to act in accord with reason. And this is to act virtuously. And so in this regard, all virtuous acts belong to the natural law, since one's own reason by nature dictates that one act virtuously.

But if we should be speaking about virtuous acts as such and such, namely, as we consider them in their own species, then not all virtuous acts belong to the natural law. For we do many things virtuously to which nature does not at first incline us, but which human beings by the inquiry of reason have discovered to be useful for living righteously.

*Reply Objection 1.* Moderation concerns the natural desires for food and drink and sex, which desires are indeed ordained for the natural common good, just as other prescriptions of the natural law are ordained for the common moral good.

*Reply Objection 2.* We can call the nature proper to human beings the nature of human beings. And so all sins, insofar as they are contrary to reason, are also contrary to nature, as Damascene makes clear in his work *On Orthodox Faith*.<sup>17</sup> Or else we can call the nature common to human beings and other animals the nature of human beings. And so we speak of certain particular sins being contrary to nature. For example, the sexual intercourse of males, which we specifically call the sin contrary to nature, is contrary to the sexual union of male and female, and such sexual union is natural for all animals.

*Reply Objection 3.* The argument of this objection is valid regarding virtuous acts as such and such. For then, because of the different conditions of human beings, some acts may be virtuous for some persons, as proportionate and suitable for them, which are nonetheless wicked for other persons, as disproportionate for them.

Article 4. Is the natural law the same for all human beings?

*We thus proceed to the fourth inquiry.* It seems that the natural law is the same for all human beings, for the following reasons:

*Objection 1.* The *Decretum* says that "the natural law is contained in the [Old] Law and the Gospel."<sup>18</sup> But what is contained in the Law and the Gospel is not in the common possession of all, since Rom. 10:16 says: "Some do not heed the Gospel." Therefore, the natural law is not the same for all human beings.

*Objection 2.* "We call things in accord with law just," as the *Ethics* says.<sup>19</sup> But the same work says that nothing is so universally just that it is not otherwise for some.<sup>20</sup> Therefore, even the natural law is not the same for all human beings.

*Objection 3.* Things to which human beings' nature inclines them belong to the natural law, as I have said before.<sup>21</sup> But nature inclines different human beings to different things. For

16 A. 2.

17 *On Orthodox Faith* II, 4 and 30 (PG 94:876, 976).

18 Gratian, *Decretum* I, dist. 1, preface.

19 Aristotle, *Ethics* V, 1 (1129b12).

20 *Ibid.* V, 7 (1134b32).

21 AA. 2, 3.

example, nature inclines some to desire pleasures, others to desire honors, others to desire other things. Therefore, the natural law is not the same for all human beings.

*On the contrary*, Isidore says in his *Etymologies*: “The natural law is common to all nations.”<sup>22</sup>

*I answer that* things to which nature inclines human beings belong to the natural law, as I have said before,<sup>23</sup> and one of the things proper to human beings is that their nature inclines them to act in accord with reason. And it belongs to reason to advance from the general to the particular, as the *Physics* makes clear.<sup>24</sup> And regarding that process, theoretical reason proceeds in one way, and practical reason in another way. For inasmuch as theoretical reason is especially concerned about necessary things, which cannot be otherwise disposed, its particular conclusions, just like its general principles, are true without exception. But practical reason is concerned about contingent things, which include human actions. And so the more reason goes from the general to the particular, the more exceptions we find, although there is some necessity in the general principles. Therefore, truth in theoretical matters, both first principles and conclusions, is the same for all human beings, although some know only the truth of the principles, which we call universal propositions, and not the truth of the conclusions. But truth in practical matters, or practical rectitude, is the same for all human beings only regarding the general principles, not regarding the particular conclusions. And not all of those with practical rectitude regarding particulars know the truth in equal measure.

Therefore, the truth or rectitude regarding the general principles of both theoretical and practical reason is the same for all persons and known in equal measure by all of them. And the truth regarding the particular conclusions of theoretical reason is the same for all persons, but some know such truth less than others. For example, it is true for all persons that triangles have three angles equal to two right angles, although not everybody knows this.

But the truth or rectitude regarding particular conclusions of practical reason is neither the same for all persons nor known in equal measure even by those for whom it is the same. For example, it is correct and true for all persons that they should act in accord with reason. And it follows as a particular conclusion from this principle that those holding goods in trust should return the goods to the goods’ owners. And this is indeed true for the most part, but it might in particular cases be injurious, and so contrary to reason, to return the goods (e.g., if the owner should be seeking to attack one’s country). And the more the particular conclusion goes into particulars, the more exceptions there are (e.g., if one should declare that entrusted goods should be returned to their owners with such and such safeguards or in such and such ways). For the more particular conditions are added to the particular conclusion, the more ways there may be exceptions, so that the conclusion about returning or not returning entrusted goods is erroneous.

Therefore, we should say that the natural law regarding general first principles is the same for all persons both as to their rectitude and as to knowledge of them. And the natural law regarding particulars, which are, as it were, conclusions from the general principles, is for the most part the same for all persons both as to its rectitude and as to knowledge of it. Nonetheless, it can be wanting in rather few cases both as to its rectitude and as to knowledge of it. As to rectitude, the natural law can be wanting because of particular obstacles,

22 *Etymologies* V, 4 (PL 82:199).

23 AA. 2, 3.

24 Aristotle, *Physics* I, 1 (184a16–27).

just as natures that come to be and pass away are wanting in rather few cases because of obstacles. And also as to knowledge of the natural law, the law can be wanting because emotions or evil habituation or evil natural disposition has perverted the reason of some. For example, the Germans of old did not consider robbery wicked, as Caesar's *Gallic Wars* relates,<sup>25</sup> although robbery is expressly contrary to the natural law.

*Reply Objection 1.* We should not understand the cited statement to mean that all the matters included in the Law and the Gospel belong to the natural law, since the Law and the Gospel transmit to us many things above nature. Rather, we should understand the statement to mean that the Law and the Gospel completely transmit to us the things that belong to the natural law. And so Gratian, after saying that "the natural law is contained in the Law and the Gospel," immediately adds by way of example: "And everyone is thereby commanded to do unto others what one wishes to be done to oneself."

*Reply Objection 2.* We should understand the cited statement of the Philosopher regarding things just by nature as conclusions derived from general principles, not as the general principles. And such conclusions are correct for the most part and are wanting in rather few cases.

*Reply Objection 3.* As the power of reason in human beings rules and commands other powers, so reason needs to direct all the natural inclinations belonging to other powers. And so it is universally correct for all persons to direct all their inclinations by reason.

Article 5. Can the natural law vary?

*We thus proceed to the fifth inquiry.* It seems that the natural law can vary, for the following reasons:

*Objection 1.* A gloss on Sir. 17:9, "He [God] supplied them with instruction and the law of life," says: "He wanted the [Old] Law to be written in order to correct the natural law."<sup>26</sup> But what is corrected is changed. Therefore, the natural law can vary.

*Objection 2.* The killing of innocent human beings as well as adultery and theft are contrary to the natural law. But God altered these precepts. For example, God on one occasion commanded Abraham to slay his innocent son, as Gen. 22:2 relates. And God on another occasion commanded the Jews to steal vessels the Egyptians had lent them, as Ex. 12:35–36 relates. And God on another occasion commanded Hosea to take a fornicating wife, as Hos. 1:2 relates. Therefore, the natural law can vary.

*Objection 3.* Isidore says in his *Etymologies* that "the common possession of all property and the same freedom for all persons belong to the natural law."<sup>27</sup> But we perceive that human laws have altered these prescriptions. Therefore, it seems that the natural law can vary.

*On the contrary,* the *Decretum* says: "The natural law originates with rational creatures. It does not vary over time and abides without change."<sup>28</sup>

*I answer that* we can understand the mutability of the natural law in two ways. We can understand it in one way by things being added to it. And then nothing prevents the natural law

25 Julius Caesar, *Gallic Wars* VI, 23.

26 *Glossa ordinaria*, on Sir. 17:9 (PL 109:876; 113:1201).

27 *Etymologies* V, 4 (PL 82:199).

28 Gratian, *Decretum* I, dist. 5, preface.

changing, since both divine law and human laws add to natural law many things beneficial to human life.

We can understand the mutability of the natural law in a second way by way of substraction, namely, that things previously subject to the law cease to be so. And then the natural law is altogether immutable as to its first principles. And as to its secondary precepts, which we said are proper proximate conclusions, as it were, from the first principles,<sup>29</sup> the natural law is not so changed that what it prescribes is not for the most part completely correct. But it can be changed regarding particulars and in rather few cases, due to special causes that prevent observance of such precepts, as I have said before.<sup>30</sup>

*Reply Objection 1.* We say that written law has been given to correct the natural law either because the written law supplements what the natural law lacked, or because the natural law in the hearts of some regarding particulars had been corrupted insofar as they thought that things by nature evil were good. And such corruption needed correction.

*Reply Objection 2.* All human beings, without exception, both the innocent and the guilty, die when natural death comes. And God's power indeed inflicts such natural death on human beings because of original sin, as 1 Sam. 2:6 says: "The Lord causes death and life." And so, at the command of God, death can without any injustice be inflicted on any human being, whether guilty or innocent.

Likewise, adultery is sexual intercourse with another man's wife, whom the law handed down by God has allotted to him. And so there is no adultery or fornication in having intercourse with any woman at the command of God.

And the argument is the same regarding theft, which consists of taking another's property. One does not take without the consent of the owner (i.e., steal) anything that one takes at the command of God, who is the owner of all property.

Nor is it only regarding human affairs that everything God commands is owed to him. Rather, regarding things of nature, everything God does is also in one respect natural, as I said in the First Part.<sup>31</sup>

*Reply Objection 3.* We speak of things belonging to the natural law in two ways. We speak of them belonging in one way because nature inclines us to them. For example, one should not cause injury to another. We speak of them belonging in a second way because nature did not introduce the contrary. For example, we could say that it belongs to the natural law that human beings are naked, since nature did not endow them with clothes, which human skill created. And it is in the latter way that we say that "the common possession of all property and the same freedom for all persons" belong to the natural law, namely, that the reason of human beings, not nature, introduced private property and compulsory servitude. And so the natural law in this respect varies only by way of addition.

Article 6. Can the natural law be excised from the hearts of human beings?

*We thus proceed to the sixth inquiry.* It seems that the natural law can be excised from the hearts of human beings, for the following reasons:

29 A. 4.

30 Ibid.

31 I, Q. 105, A. 6, *ad* 1.

*Objection 1.* A gloss on Rom. 2:14, “When the Gentiles, who do not have the law,” etc., says: “The law of righteousness, which sin had wiped out, is inscribed on the inner human being renewed by grace.”<sup>32</sup> But the law of righteousness is the natural law. Therefore, the natural law can be wiped out.

*Objection 2.* The law of grace is more efficacious than the law of nature. But sin destroys the law of grace. Therefore, much more can the natural law be wiped out.

*Objection 3.* What law establishes is rendered just, as it were. But human beings have established many things contrary to the natural law. Therefore, the natural law can be excised from the hearts of human beings.

*On the contrary,* Augustine says in his *Confessions*: “Your law is inscribed on the hearts of human beings, and indeed no wickedness wipes it out.”<sup>33</sup> But the law inscribed on the hearts of human beings is the natural law. Therefore, the natural law cannot be wiped out.

*I answer that* as I have said before,<sup>34</sup> there belong to the natural law, indeed primarily, very general precepts, precepts that everyone knows, and more particular, secondary precepts, which are like proximate conclusions from first principles. Therefore, regarding the general principles, the natural law in general can in no way be excised from the hearts of human beings. But the natural law is wiped out regarding particular actions insofar as desires or other emotions prevent reason from applying the general principles to particular actions, as I have said before.<sup>35</sup>

And the natural law can be excised from the hearts of human beings regarding the other, secondary precepts, either because of wicked opinions, just as errors in theoretical matters happen regarding necessary conclusions, or because of evil customs or corrupt habits. For example, some did not think robbery a sin, or even sins against nature to be sinful, as the Apostle also says in Rom. 1:24–28.

*Reply Objection 1.* Sin wipes out the natural law regarding particulars but not in general, except perhaps regarding secondary precepts of the natural law, in the way I mentioned.<sup>36</sup>

*Reply Objection 2.* Although grace is more efficacious than nature, nature is nonetheless more essential to human beings and so more abiding.

*Reply Objection 3.* The argument of this objection is valid regarding the secondary precepts of the natural law, contrary to which some lawmakers have passed wicked statutes.

## Part II/1, Question 97. On Revision of Laws

Article 1. Should human law be revised in any way?

*We thus proceed to the first inquiry.* It seems that human law should be revised in no way, for the following reasons:

32 *Glossa ordinaria*, on Rom. 2:14 (PL 114:476); Peter Lombard, *Glossa*, on Rom. 2:14 (PL 191:1345).

33 *Confessions* II, 4 (PL 32:678).

34 AA. 4, 5.

35 I–II, Q. 77, A. 2.

36 In the body of the article.

*Objection 1.* Human law is derived from the natural law, as I have said before.<sup>37</sup> But the natural law remains immutable. Therefore, human law ought to remain immutable.

*Objection 2.* Measures ought to be most permanent, as the Philosopher says in the *Ethics*.<sup>38</sup> But human law is the measure of human actions, as I have said before.<sup>39</sup> Therefore, human law ought to remain without change.

*Objection 3.* It belongs to the nature of law to be just and upright, as I have said before.<sup>40</sup> But things once upright are always upright. Therefore, things once law ought always to be law.

*On the contrary,* Augustine says in his work *On Free Choice*: “Temporal law, although just, can be justly revised over time.”<sup>41</sup>

*I answer that* as I have said before,<sup>42</sup> human law is a dictate of reason directing human actions. And so there can be two reasons why laws may be rightly revised: one, indeed, regarding reason; the second regarding human beings, whose actions laws regulate. One reason indeed regards reason, since it seems to be natural for reason to advance step-by-step from the imperfect to the perfect. And so we perceive, regarding theoretical sciences, that the first philosophers transmitted imperfect doctrines that later philosophers corrected. So also is this the case in practical matters. For the first lawmakers, who strove to discover things useful for the human community but were unable of themselves to contemplate everything, instituted imperfect laws that were deficient in many respects. And later lawmakers revised those laws, establishing laws that could fail to serve the commonweal in fewer cases.

And regarding human beings, whose actions laws regulate, laws can be rightly revised to suit the changed conditions of human beings, and different things are expedient for human beings according to their different circumstances. Just so, Augustine in his work *On Free Choice* poses this example:

If a people should be well-tempered and serious and most diligently mindful of the commonweal, a law is rightly framed that permits such a people to choose magistrates to administer the commonwealth. Then, if the same people, corrupted over time, sell their votes and entrust their governance to scoundrels and criminals, the power to bestow offices is rightly taken away from such a people, and the power to bestow the offices falls to the choice of a few good persons.<sup>43</sup>

*Reply Objection 1.* The natural law is a participation in the eternal law, as I have said before,<sup>44</sup> and so the natural law remains immutable. And the natural law has this immutability from the immutability and perfection of the divine reason that establishes human nature. But human reason is mutable and imperfect.

And besides, the natural law consists of universal precepts that always abide, while laws established by human beings consist of particular precepts that regard different situations that arise.

37 I-II, Q. 95, A. 2.

38 *Ethics* V, 5 (1133a25).

39 I-II, Q. 90, AA. 1, 2.

40 I-II, Q. 90, A. 2.

41 *On Free Choice* I, 6, n. 14 (PL 32:1229).

42 I-II, Q. 91, A. 3.

43 *On Free Choice* I, 6, n. 14 (PL 32:1229).

44 I-II, Q. 91, A. 2; Q. 96, A. 2, *ad* 3.

*Reply Objection 2.* Measures ought to be as permanent as possible. But there cannot be anything altogether immutably permanent in mutable things. And so human laws cannot be altogether immutable.

*Reply Objection 3.* We predicate upright of material things in an absolute sense, and so they stay upright as far as it is in their power. But we speak of the rectitude of laws in relation to the commonweal, to which the same things are not always duly proportionate, as I have said before.<sup>45</sup> And so such rectitude changes.

Article 2. Should human laws always be revised for something better?

*We thus proceed to the second inquiry.* It seems that human laws should always be revised for something better, for the following reasons:

*Objection 1.* Human reason devises human laws, just as it devises human skills. But prior rules regarding other skills are modified for better rules. Therefore, we should also do the same regarding human laws.

*Objection 2.* We can provide for the future from things of the past. But many unsuitable things would result if human laws were not revised by adding better provisions, since the laws of antiquity were unsophisticated in many respects. Therefore, it seems that laws should be revised as often as something better presents itself to be made law.

*Objection 3.* Human laws are framed for the particular actions of human beings. But regarding such actions, we can gain complete knowledge only by experience, which “takes time,” as the *Ethics* says.<sup>46</sup> Therefore, it seems that better things can occur over time and should be enacted as laws.

*On the contrary,* the *Decretum* say: “It is foolish and rather detestably shameful to allow the traditions of our forefathers to be modified.”<sup>47</sup>

*I answer that* as I have said,<sup>48</sup> human laws are revised insofar as their revision serves the commonweal. But the very revision of laws, considered as such, involves some detriment to the commonweal. For custom avails very much for the observance of laws, since we regard things done contrary to common custom, even if those things be in themselves slight, as rather serious. And so the binding force of law is diminished when laws are revised, since custom is removed. And so human laws should never be revised unless the commonweal gains in one respect as much as it loses in the other. And such indeed is the case either because a very great and very clear benefit results from the new law, or because there is a very great necessity due either to the fact that the existing law is clearly unjust, or to the fact that observance of the existing law is most harmful. And so the Jurist says that “in establishing new laws, the benefit of departing from laws long perceived as just ought to be evident.”<sup>49</sup>

45 In the body of the article.

46 *Ethics* II, 1 (1103a16).

47 Gratian, *Decretum* I, dist. 12, c. 5.

48 A. 1.

49 *Digest* I, title 4, law 2.

*Reply Objection 1.* The rules relating to skills derive their efficacy only from reason, and so prior rules should be revised whenever a better reason presents itself. But “laws have their greatest power from custom,” as the Philosopher says in the *Politics*.<sup>50</sup> And so we should not rush to revise laws.

*Reply Objection 2.* The argument of this objection rightly concludes that laws should be revised. But they should be revised for the sake of a great benefit or necessity, not for the sake of any betterment, as I have said.<sup>51</sup>

*Reply Objection 3.* The same argument applies to this objection.

Article 3. Can customs obtain the force of law?

*We thus proceed to the third inquiry.* It seems that customs cannot obtain the force of law or abolish laws, for the following reasons:

*Objection 1.* Human law is derived from the natural law and the divine law, as is evident from what I have said before.<sup>52</sup> But human customs cannot alter the natural law or the divine law. Therefore, they also cannot alter human law.

*Objection 2.* Moral good cannot come out of many wicked acts. But those who first begin to act contrary to a law act wickedly. Therefore, many such acts do not produce something morally good. But law is something morally good, since law regulates human actions. Therefore, customs cannot abolish laws so that the customs obtain the force of law.

*Objection 3.* Framing laws belongs to public persons, whose business it is to govern a community, and so private persons cannot make law. But customs flourish through the acts of private persons. Therefore, custom cannot obtain the force of law so as to abolish laws.

*On the contrary,* Augustine says in a letter: “We should consider the customs of God’s people and the prescriptions of our ancestors as laws. And as those who disobey God’s laws should be punished, so also should those who condemn the Church’s customs.”<sup>53</sup>

*I answer that* all laws come from the reason and will of lawmakers: the divine and natural laws, indeed, from the reasonable will of God, and human laws from human wills regulated by reason. But the deeds of human beings as much as their words indicate their reason and will regarding things to be done. For example, everyone seems to desire as good what one carries out in deed. And human words evidently alter and also explain laws insofar as the words explain the internal movements and thoughts of human reason. And so also even acts, especially when repeated so as to constitute custom, can alter and explain laws, and cause things to obtain the force of law, namely, insofar as repeated external acts most effectively manifest internal movements of the will and the thoughts of reason. For things done repeatedly seem to proceed from deliberate judgments of reason. And so custom both has the force of law and abolishes law and interprets law.

50 *Politics* II, 5 (1269a20–24).

51 In the body of the article.

52 I-II: Q. 93, A. 3; Q. 95, A. 2.

53 *Letter 36*, to Casulanus (*PL* 33:136).

54 In the body of the article.

*Reply Objection 1.* The natural law and the divine law come from the divine will, as I have said.<sup>54</sup> And so only divine authority, not customs that come from the will of human beings, can alter those laws. And so no custom can obtain the force of law in opposition to the divine and natural laws, as Isidore says in his *Synonyms*: “Let custom yield to authority; let law and reason prevail over wicked customs.”<sup>55</sup>

*Reply Objection 2.* Human laws are wanting in particular cases, as I have said before.<sup>56</sup> And so one can sometimes act outside the law, namely, in cases in which the laws are wanting, and yet the actions will not be morally evil. And when such instances are repeated because of alterations in human beings, then customs indicate that laws are no longer useful, just as it would be evident that laws are no longer useful if expressly contrary laws were to be promulgated. But if the same reason for which the original law was useful still persists, the law prevails over the custom, not the custom over the law. There may be an exception if the law seems useless simply because it is not “possible according to a country’s customs,” which was one of the conditions of law.<sup>57</sup> For it is difficult to destroy a people’s customs.

*Reply Objection 3.* The people among whom a custom is introduced can be in two situations. For if a people is free, that is, self-governing, the consent of the whole people, which custom indicates, counts more in favor of a particular legal observance than the authority of its ruler, who only has the power to frame laws insofar as the ruler acts in the name of the people. And so the whole people can establish laws, but individual persons cannot.

But if a people should not have the free disposition to frame laws for itself or to abolish laws imposed by a higher power, the very customs prevailing in such a people still obtain the force of law insofar as those who have the power to impose laws on the people tolerate the customs. For rulers thereby seem to approve what the customs introduce.

Article 4. Can the people’s rulers dispense subjects from human laws?

*We thus proceed to the fourth inquiry.* It seems that the people’s rulers cannot dispense subjects from human laws, for the following reasons:

*Objection 1.* Laws are established “for the commonweal,” as Isidore says.<sup>58</sup> But the common good should not be cast aside for the private convenience of a particular person, since “the good of the people is more godlike than the good of one human being,” as the Philosopher says in the *Ethics*.<sup>59</sup> Therefore, it seems that no one should be dispensed to act contrary to the people’s common law.

*Objection 2.* Dt. 1:17 commands those with authority over others: “You shall listen to the lowly as well as the mighty, nor shall you regard who anyone is, since your judgment is God’s.” But to grant to one what is denied to all seems to be regard for who the person is. Therefore, the people’s rulers cannot give such dispensations, since this is contrary to a precept of the divine law.

55 *Synonyms* II, n. 80 (PL 83:863).

56 I–II, Q. 96, A. 6.

57 I–II, Q. 95, A. 3.

58 *Etymologies* II, 10 (PL 82:131); V, 3 (PL 82:199).

59 *Ethics* I, 2 (1094b9–10).

*Objection 3.* Human law, if just, needs to be in accord with the natural and divine laws; otherwise, it would not “be fitting for religion” or “be suitable for training,” which are prerequisites of law, as Isidore says.<sup>60</sup> But no human being can dispense anyone from the divine and natural laws. Therefore, neither can any human being dispense someone from a human law.

*On the contrary,* the Apostle says in 1 Cor. 9:17: “Dispensation has been entrusted to me.”

*I answer that* dispensing, properly speaking, signifies allotting common goods to individuals. And so we also call the heads of households dispensers, since they with due weight and in due measure distribute to each member of their households both duties and things necessary for living. Therefore, we also say regarding any political community that one dispenses, since that one in a way ordains how individuals should fulfill a general precept. And a precept generally for the convenience of the community may sometimes be unsuitable for a particular person or in a particular case, either because it would prevent something better, or because it would even bring about some evil, as is evident from what I have said before.<sup>61</sup> But it would be most dangerous to commit this to the discretion of each individual, except, perhaps, when there is a clear and present danger, as I have said before.<sup>62</sup> And so those empowered to rule a people have the power to dispense from human laws that rest on the rulers’ authority, namely, as regards persons or situations in which the law is wanting, to grant permission not to observe precepts of the law.

But if rulers should grant this permission at their mere whim, without the persons or situations warranting it, they will be unfaithful or unwise dispensers. Rulers will be unfaithful dispensers if they do not aim at the common good, and they will be unwise dispensers if they ignore the reason for granting dispensations. And so the Lord says in Lk. 12:42: “Who, do you think, is faithful and wise dispenser that a master sets over his household?”

*Reply Objection 1.* One ought not to be dispensed from observing general laws at the prejudice of the common good. Rather, dispensations should be granted for the purpose of benefiting the common good.

*Reply Objection 2.* There is no regard for who persons are if unequal things are dispensed to persons who are unequal. And so when the condition of persons requires that special things be reasonably accorded them, there is no regard for who the persons are if special favors are granted them.

*Reply Objection 3.* The natural law as consisting of general precepts, which are never wanting, cannot be dispensed. But human beings sometimes dispense from other precepts of the natural law, which are quasi-conclusions from the general precepts (e.g., dispensing from the obligation to repay loans owed to traitors, or the like).

But every human being is subject to the divine law as private persons are subject to public law. And so, as only rulers or their representatives can dispense from human laws, so only God or his special representatives can dispense from precepts of the divine law.

60 *Etymologies* II, 10 (PL 82:131); V, 3 (PL 82:199).

61 I-II, Q. 96, A. 6.

62 *Ibid.*