Summa Theologica

Thomas Aquinas
1265–1274

Human laws encourage habits of right conduct and restrain the wicked. Their justice flows from nature, and so must be fitted to their proper ends. Human law must promote the common good of the community. We should not expect the law to suppress all vices, but only those that are the most harmful. Nor can the law promote all the virtues, but only those necessary to the common good. Just laws bind us in conscience, but unjust laws are not laws at all. Laws should be improved when possible, but too much change diminishes respect for legislation. The customs of a people flow from reason and so have the force of law.

First Part of the Second Part
Question 95
Article 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 (63, 1; 94, 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.

Article 2
Whether Every Human Law Is Derived from the Natural Law?

On the contrary, Tully says (*Rhet*. ii): "Things which emanated from nature and were approved by custom, were sanctioned by fear and reverence for the laws."

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

Article 3
Whether Isidore's Description of the Quality of Positive Law Is Appropriate?

On the contrary, stands the authority of Isidore.

I answer that, Whenever a thing is for an end, its form must be determined proportionately to that end; as the form of a saw is such as to be suitable for cutting (*Phys*. ii, *text*. 88). Again, everything that is ruled and measured must have a form proportionate to its rule and measure.

Now both these conditions are verified of human law: since it is both something ordained to an end; and is a rule or measure ruled or measured by a higher measure. And this higher measure is twofold, viz. the Divine law and the natural law, as explained above (2; 93, 3).

Now the end of human law is to be useful to man, as the jurist states [*Pandect. Justin. lib*. xxv, ff., *tit*. iii; *De Leg. et Senat*.]. Wherefore Isidore in determining the nature of law, lays down, at first, three conditions; viz. that it "foster religion," inasmuch as it is proportionate to the Divine law; that it be "helpful to discipline," inasmuch as it is proportionate to the nature law; and that it "further the common weal," inasmuch as it is proportionate to the utility of mankind.

All the other conditions mentioned by him are reduced to these three. For it is called virtuous because it fosters religion. And when he goes on to say

that it should be "just, possible to nature, according to the customs of the country, adapted to place and time," he implies that it should be helpful to discipline. For human discipline depends on first on the order of reason, to which he refers by saying "just": secondly, it depends on the ability of the agent; because discipline should be adapted to each one according to his ability, taking also into account the ability of nature (for the same burdens should be not laid on children as adults); and should be according to human customs; since man cannot live alone in society, paying no heed to others: thirdly, it depends on certain circumstances, in respect of which he says, "adapted to place and time." The remaining words, "necessary, useful," etc. mean that law should further the common weal: so that "necessity" refers to the removal of evils; "usefulness" to the attainment of good; "clearness of expression," to the need of preventing any harm ensuing from the law itself. And since, as stated above (Question 90, Article 2), law is ordained to the common good, this is expressed in the last part of the description.

Article 4
Whether Isidore's Division of Human Laws Is Appropriate?

On the contrary, The authority of Isidore (Objection 1) suffices.

I answer that, A thing can of itself be divided in respect of something contained in the notion of that thing. Thus a soul either rational or irrational is con-

tained in the notion of animal: and therefore animal is divided properly and of itself in respect of its being rational or irrational; but not in the point of its being white or black, which are entirely beside the notion of animal.

Now, in the notion of human law, many things are contained, in respect of any of which human law can be divided properly and of itself. For in the first place it belongs to the notion of human law, to be derived from the law of nature, as explained above (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. Wherefore certain special kinds of law are adapted to these men.

Thirdly, it belongs to the notion of human law, to be framed by that one who governs the community of the state, as shown above (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" [*Responsa Prudentum*] and "Decrees of the Senate" [*Senatus consulta*]. Another form is "oligarchy," i.e. government by a few rich and powerful men; and then we have "Praetorian," also called "Honorary," law. Another form of government is that of the people, which is called "democracy," and there we have "Decrees of the commonalty" [*Plebiscita*]. There is also tyrannical government, which is altogether corrupt, which, therefore, has no corresponding law. Finally, there is a form of government made up of all these, and which is the best: and in this respect we have law sanctioned by the "Lords and Commons," as stated by Isidore (*Etym*. v, 4, seqq.).

Fourthly, it belongs to the notion of human law to direct human actions. In this respect, according to the various matters of which the law treats, there are various kinds of laws, which are sometimes named after their authors: thus we have the "Lex Julia" about adultery, the "Lex Cornelia" concerning assassins, and so on, differentiated in this way, not on account of the authors, but on account of the matters to which they refer.

Question 96
Article 1
Whether Human Law
Should Be framed for the Community ?

On the contrary, The jurist says (*Pandect. Justin. lib*. i, *tit*. iii, art. ii; *De legibus*, etc.) that "laws should be made to suit the majority of instances; and they are not framed according to what may possibly happen in an individual case."

I answer that, Whatever is for an end should be proportionate to that end. Now the end of law is the common good; because, as Isidore says (*Etym*. v, 21) that "law should be framed, not for any private benefit, but for the common good of all the citizens." Hence human laws should be proportionate to the common good. Now the common good comprises many things. Wherefore law should take account of many things, as to persons, as to matters, and as to times. Because the community of the state is composed of many persons; and its good is procured by many actions; nor is it established to endure for only a short time, but to last for all time by the citizens succeeding one another, as Augustine says (*De Civ. Dei* ii, 21; xxii, 6).

Article 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 gov-

erning of the people rightly permits these things, and that Divine providence punishes them." But Divine providence punishes nothing but vices. Therefore human law rightly allows some vices, by not repressing them.

I answer that, As stated above (90, A1, 2), law is framed as a rule or measure of human acts. Now a measure should be homogeneous with that which it measures, as stated in *Metaph*. x, text. 3,4, since different things are measured by different measures. Wherefore laws imposed on men should also be in keeping with their condition, for, as Isidore says (*Etym*. v, 21), law should be "possible both according to nature, and according to the customs of the country."

Now possibility or faculty of action is due to an interior habit or disposition: since the same thing is not possible to one who has not a virtuous habit, as is possible to one who has. Thus the same is not possible to a child as to a full-grown man: for which reason the law for children is not the same as for adults, since many things are permitted to children, which in an adult are punished by law or at any rate are open to blame. In like manner many things are permissible to men not perfect in virtue, which would be intolerable in a virtuous man.

Now human law is framed for a number of human beings, the majority of whom are not perfect in virtue. Wherefore human laws do not forbid all vices, from which the virtuous abstain, but only the more grievous vices, from which it is possible for the ma-

jority 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.

Article 3
Whether Human Law Prescribes Acts of All the Virtues?

On the contrary, The Philosopher says (*Ethic*. v, 1) that the law "prescribes the performance of the acts of a brave man ... and the acts of the temperate man ... and the acts of the meek man: and in like manner as regards the other virtues and vices, prescribing the former, forbidding the latter."

I answer that, The species of virtues are distinguished by their objects, as explained above (54, 2; 60, 1; 62, 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. Wherefore there is no virtue whose acts cannot be prescribed by the law.

Nevertheless human law does not prescribe concerning all the acts of every virtue: but only in regard to those that are ordainable to the common good—either immediately, as when certain things are done directly for the common good—or mediately, as

when a lawgiver prescribes certain things pertaining to good order, whereby the citizens are directed in the upholding of the common good of justice and peace.

Article 4
Whether Human Law Binds a Man in Conscience?

On the contrary, It is written (1 Peter 2:19): "This is thankworthy, if for conscience ... a man endure sorrows, suffering wrongfully."

I answer that, Laws framed by man are either just or unjust. If they be just, they have the power of binding in conscience, from the eternal law whence they are derived, according to Proverbs 8:15: "By Me kings reign, and lawgivers decree just things."

Now laws are said to be just, both from the end, when, to wit, they are ordained to the common good—and from their author, that is to say, when the law that is made does not exceed the power of the lawgiver—and from their form, when, to wit, burdens are laid on the subjects, according to an equality of proportion and with a view to the common good. For, since one man is a part of the community, each man in all that he is and has, belongs to the community; just as a part, in all that it is, belongs to the whole; wherefore nature inflicts a loss on the part, in order to save the whole: so that on this account, such laws as these, which impose proportionate burdens, are just and binding in conscience, and are legal laws.

On the other hand laws may be unjust in two ways: first, by being contrary to human good, through being opposed to the things mentioned above—either in respect of the end, as when an authority imposes on his subjects burdensome laws, conducive, not to the common good, but rather to his own cupidity or vainglory—or in respect of the author, as when a man makes a law that goes beyond the power committed to him—or in respect of the form, as when burdens are imposed unequally on the community, although with a view to the common good. The like are acts of violence rather than laws; because, as Augustine says (*De Lib. Arb*. i, 5), "a law that is not just, seems to be no law at all." Wherefore such laws do not bind in conscience, except perhaps in order to avoid scandal or disturbance, for which cause a man should even yield his right, according to Matthew 5:40–41: "If a man ... take away thy coat, let go thy cloak also unto him; and whosoever will force thee one mile, go with him other two."

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

Article 5
Whether All Are Subject to the Law?

On the contrary, The Apostle says (Romans 13:1): "Let every soul be subject to the higher powers." But

subjection to a power seems to imply subjection to the laws framed by that power. Therefore all men should be subject to human law.

I answer that, As stated above (90, A1,2; 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. Wherefore a man may be subject to law in two ways.

First, as the regulated is subject to the regulator: and, in this way, whoever is subject to a power, is subject to the law framed by that power. But it may happen in two ways that one is not subject to a power. In one way, by being altogether free from its authority: hence the subjects of one city or kingdom are not bound by the laws of the sovereign of another city or kingdom, since they are not subject to his authority. In another way, by being under a yet higher law; thus the subject of a proconsul should be ruled by his command, but not in those matters in which the subject receives his orders from the emperor: for in these matters, he is not bound by the mandate of the lower authority, since he is directed by that of a higher. In this way, one who is simply subject to a law, may not be a subject thereto in certain matters, in respect of which he is ruled by a higher law.

Secondly, a man is said to be subject to a law as the coerced is subject to the coercer. In this way the virtuous and righteous are not subject to the law, but only the wicked. Because coercion and violence are contrary to the will: but the will of the good is in harmony with the law, whereas the will of the wicked is

discordant from it. Wherefore in this sense the good are not subject to the law, but only the wicked.

Article 6
Whether He Who is under a Law May Act beside the Letter of the law?

On the contrary, Hilary says (*De Trin*. iv): "The meaning of what is said is according to the motive for saying it: because things are not subject to speech, but speech to things." Therefore we should take account of the motive of the lawgiver, rather than of his very words.

I answer that, As stated above (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. Wherefore if a case arise wherein the observance of that law would be hurtful to the general welfare, it should not be observed.

For instance, suppose that in a besieged city it be an established law that the gates of the city are to be kept closed, this is good for public welfare as a general rule: but, it were to happen that the enemy are in pursuit of certain citizens, who are defenders of the city, it would be a great loss to the city, if the gates were not opened to them: and so in that case the gates ought to be opened, contrary to the letter of the law, in order to maintain the common weal, which the lawgiver had in view.

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.

Question 97
Article 1
Whether Human Law Should Be Changed?

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

I answer that, As stated above (Question 91, Article 3), human law is a dictate of reason, whereby hu-

man 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 pub-

lic officials is rightly forfeit to such a people, and the choice devolves to a few good men."

Article 2
Whether Human Law Should Always Be Changed Whenever Something Better Occurs?

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

I answer that, As stated above (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. Wherefore human law should never be changed, unless, in some way or other, the common weal be compensated according to the extent of the harm done in this respect. Such compensation may arise either from some very great and every evident benefit conferred by the new enactment; or from the extreme urgency of the case, due to the fact that either the existing law is clearly unjust, or its observance extremely harmful.

Wherefore the jurist says [*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."

Article 3
Whether Custom Can Obtain Force of Law?

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

I answer that, All law proceeds from the reason and will of the lawgiver; the Divine and natural laws from the reasonable will of God; the human law from the will of man, regulated by reason.

Now just as human reason and will, in practical matters, may be made manifest by speech, so may they be made known by deeds: since seemingly a man chooses as good that which he carries into execution. But it is evident that by human speech, law can be both changed and expounded, in so far as it manifests the interior movement and thought of human reason.

Wherefore by actions also, especially if they be repeated, so as to make a custom, law can be changed and expounded; and also something can be estab-

lished 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.

Article 4
Whether the Rulers of the People Can Dispense from Human Laws?

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

I answer that, Dispensation, properly speaking, denotes a measuring out to individuals of some common goods: thus the head of a household is called a dispenser, because to each member of the household he distributes work and necessaries of life in due weight and measure.

Accordingly in every community a man is said to dispense, from the very fact that he directs how some general precept is to be fulfilled by each individual. Now it happens at times that a precept, which is conducive to the common weal as a general rule, is not good for a particular individual, or in some particular case, either because it would hinder some greater good, or because it would be the occasion of some evil, as explained above (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 (Luke 12:42): "Who, thinkest thou, is the faithful and wise dispenser [*Douay*: steward], whom his lord setteth over his family?"

[Translated by the Fathers of the English Dominican Fathers, 1911; revised 1920; objections and replies omitted]