

QUESTION 90

The Essence of Law

We next have to consider the exterior principles of acts. Now the exterior principle that inclines us toward evil is the devil, whose temptations were discussed in the first part (*ST* 1, q. 114). On the other hand, the exterior principle that moves us toward the good is God, who both instructs us with law and assists us with grace. Hence, we must first discuss law (questions 90-108) and then grace (questions 109-114).

On the topic of law, we must first consider law itself in general (questions 90-92) and then the parts of law (questions 93-108).

Now there are three things to consider about law in general: first, the essence of law (question 90); second, the different kinds of law (question 91); and, third, the effects of law (question 92).

On the first topic there are four questions: (1) Is law something that belongs to reason? (2) What is the end or purpose (*finis*) of law? (3) What is the cause of law? (4) What about the promulgation of law?

Article 1

Is law something that belongs to reason?

It seems that law is not something that belongs to reason (*non sit aliquid rationis*):

Objection 1: In Romans 7:23 the Apostle says, “I see another law in my members” But in those members [of the body] there is nothing that belongs to reason, since reason does not use a corporeal organ. Therefore, law is not something that belongs to reason.

Objection 2: Nothing exists in reason which is not either a power, a habit, or an act. But law is not the very *power* of reason itself. Likewise, law is not a *habit* of reason, since the habits of reason are the intellectual virtues that were discussed above (q. 57). Nor, again, is law an *act* of reason, since if it were, then law would cease to exist when reason ceased to act, e.g., in those who are asleep. Therefore, law is not something that belongs to reason.

Objection 3: Law moves those who are subject to the law to act in an upright way (*ad recte agendum*). But as is clear from what was said above (q. 9, a. 1), it is properly speaking the role of the will to move one to act. Therefore, law has to do not with reason but rather with the will, in keeping with what [Justinian] the Legal Expert says [in *Digestum Vetus* 1]: “Whatever pleases the ruler (*princeps*) has the force of law.”

But contrary to this: It is law’s function to command and forbid. But as was established above (q. 17, a. 1), commanding belongs to reason. Therefore, law is something that belongs to reason.

I respond: Law is a certain rule and measure of acts in accord with which one is either induced to act or restrained from acting. For ‘law’ (*lex*) is derived from ‘to bind’ (*ligare*), since law obligates (*obligare*) one to act. Now the rule and measure of human acts is reason, which, as is clear from what was said above (q. 1, a. 1), is the first principle of human acts. For it belongs to reason to order things to their end—where, according to the Philosopher, the end is the first principle in matters of action (*in agendis*). But in every genus, that which is the principle is the measure and rule of that genus. For instance, *one* is the measure in the genus *number*, and the first movement is the measure in the genus *movement*. Hence, it follows that law is something that belongs to reason.

Reply to objection 1: Since law is a rule and measure, there are two ways in which it is said to exist in something.

First, law exists in that which measures and regulates. And since this is proper to reason, law taken in this sense exists in reason alone.

Second, law exists in that which is regulated and measured. And this is how law exists in all the things that are inclined in any way by any kind of law. As a result, any inclination that stems from any kind of law can itself be called a law—not by its essence but, as it were, by participation. And it is in this sense that the very inclination of the members [of the body] toward sensual desire is called ‘the law of the members’.

Reply to objection 2: Just as in the case of exterior acts one must consider both the action (*operatio*) and the thing that is done (*operatum*)—e.g., the act of building and the thing built—so too in the works of reason one must consider (a) the very acts of reason, i.e., the act of understanding and the act of discursive reasoning, and (b) what is constituted by acts of this sort. In the case of speculative reason, the constituted things are, first, the definition; second, the proposition (*enunciatio*); and, third, the syllogism or argument.

Now, as was explained above (q. 76, a.1) in keeping with what the Philosopher teaches in *Ethics* 7, practical reason likewise uses a certain type of syllogism with respect to things that can be done (*operabilia*). Hence, in the case of practical reason there is something that is related to the actions (*operationes*) in the same way that the proposition is related to the conclusions in the case of speculative reason. These universal propositions of practical reason, which are ordered toward actions, have the character of law. At certain times these propositions are actually being considered, and at other times reason possesses them as habits.

Reply to objection 3: As was explained above (q. 17, a. 1), it is from the will that reason has its power to effect movement. For it is because someone wills the end that his reason issues commands regarding what is ordered toward the end. However, for an act of will about what is commanded to have the character of law, it must be regulated in some way by reason (*aliqua ratione regulata*). And this is how to understand the claim that the ruler’s will has the force of law; otherwise, the ruler’s will would constitute wickedness (*esset iniquitas*) rather than law.

Article 2

Is law always ordered toward the common good as its end?

It seems that law is not always ordered toward the common good (*bonum commune*) as its end:

Objection 1: It is law’s function to command and forbid. But precepts are ordered toward certain individual goods (*singularia bona*). Therefore, law does not always have the common good as its end.

Objection 2: Law directs a man toward acting. But human acts have to do with particular matters. Therefore, law is likewise ordered toward a certain particular good (*particulare bonum*).

Objection 3: In *Etymologia* Isidore says, “If law is founded upon reason, then law will consist of everything that is founded upon reason.” But it is not just what is ordered toward the common good that is founded upon reason, but also what is ordered toward one’s private good (*bonum privatum*). Therefore, law is ordered not only toward the common good, but also toward one’s private good.

But contrary to this: In *Etymologia* 5 Isidore says, “Law is formulated not for any private advantage, but for the common benefit of the citizens.”

I respond: As has been explained (a. 1), by virtue of the fact that law is a rule and measure, it has to do with the principle of human acts. Now just as reason is the principle of human acts, so too within reason itself there is something which is the principle with respect to everything else. Hence, this must be what law is chiefly and especially concerned with.

Now in actions, which practical reason is concerned with, the first principle is the ultimate end.

But, as was established above (q. 2, a. 7), the ultimate end of human life is happiness or beatitude. Hence, law must have to do mainly with an ordering that leads to beatitude.

Again, since (a) every part is ordered toward its whole in the way that what is incomplete (*imperfectum*) is ordered toward what is complete (*perfectum*), and since (b) a man is part of a complete community, law must properly be concerned with the ordering that leads to communal happiness (*ad felicitatem communem*). Hence, in the definition of legal affairs alluded to above, the Philosopher makes mention of both happiness and political communion. For in *Ethics* 5 he says, “The laws (*legalia*) we call ‘just’ are those that effect and conserve happiness and its elements within the political community.” For as *Politics* 1 puts it, a city is a complete community.

Now in every genus, the genus is especially predicated of the thing that serves as the principle of the others, and the genus is predicated of the others because of their relation to that thing. For instance, fire, which is maximally hot, is a cause of the heat in mixed bodies, which are called ‘hot’ to the extent that they participate in fire. Hence, since ‘law’ is predicated especially in relation to the common good, it must be the case that any other precept about a particular act has the character of law only to the extent that it is ordered toward the common good. And so every law is ordered toward the common good.

Reply to objection 1: ‘Precept’ implies the application of law to the things that are regulated by the law. But an ordering toward the common good, which law is concerned with, is applicable to individual ends. Accordingly, precepts are likewise handed down with respect to certain particular matters.

Reply to objection 2: Actions are, to be sure, concerned with particular matters. However, those particular matters can be referred back to the common good—not, indeed, because they share with it a common genus or species, but rather because they share with it a common final cause. This is why the common good is called a common end.

Reply to objection 3: Just as nothing is firmly established through speculative reason except by being traced back to first indemonstrable principles, so too nothing is firmly established through practical reason except by being ordered to the ultimate end, which is the common good. But what is founded upon reason in this way has the character of law.

Article 3

Whose reason is it that makes law?

It seems that everyone’s reason makes law:

Objection 1: In Romans 2:14 the Apostle says, “When the Gentiles, who do not have the Law, do by nature those things that are of the Law, they, not having the Law, are a law unto themselves.” But he says this in general about everyone. Therefore, everyone is able to make law for himself.

Objection 2: As the Philosopher says in *Ethics* 2, the lawmaker’s intent is to lead men to virtue. But every man is capable of leading another to virtue. Therefore, every man’s reason can make law.

Objection 3: Just as the ruler (*princeps*) of a city is the one who governs (*gubernator*) the city, so too every father of a family (*paterfamilias*) is the one who governs the household. But the ruler of a city is able to make law in the city. Therefore, every father of a family is able to make law in his own household.

But contrary to this: In the *Etymologia* Isidore says (and *Decretals*, dist. 2 repeats this), “A law is an ordinance (*constitutio*) of the people, by which the elders (*maiores*), along with the common people (*plebes*), have sanctioned something.” Therefore, it is not just anyone’s role to make law.

I respond: Law has to do properly, primarily, and principally with an ordering toward the common good. Now to order something toward the common good is the role either of the whole multitude or of someone who is acting in place of the whole multitude. Therefore, establishing a law is something that belongs either to the whole multitude or to a public personage who is in charge of (*habet curam*) the whole multitude. For in all other cases as well, ordering something to an end is the role of someone for whom that end is his own.

Reply to objection 1: As was explained above (a. 1), when law exists in something, it exists not only in that which regulates, but also, by participation, in that which is regulated. And everyone is a law unto himself in the sense that he participates in the order established by that which does the regulating. This is why the Apostle adds immediately in the same place, "... who show the work of the law that is written in their hearts."

Reply to objection 2: A private person cannot efficaciously lead anyone to virtue. For he can only issue a warning, and if his warning is not heeded, he does not have the sort of coercive power (*vim coactivam*) which, according to the Philosopher in *Ethics* 9, law must have in order to lead someone efficaciously to virtue. Now, as will be explained below (q. 92, a. 2), this coercive power is had by the multitude or by a public personage whose role it is to inflict punishments. Only someone like this is in a position to make laws.

Reply to objection 3: Just as a man is part of a household, so a household is part of a city and, as *Politics* 1 puts it, a city is a complete community (*communitas perfecta*). And so just as the good of a single man is not the ultimate end, but is instead ordered toward the ultimate end, so too the good of a single household is ordered toward the good of a single city, which is a complete community. Hence, the one who governs a family can, to be sure, make certain precepts and statutes, but these do not, properly speaking, have the character of law.

Article 4

Is promulgation part of the nature of law?

It seems that promulgation is not part of the nature of law:

Objection 1: Natural law especially has the nature of law. But natural law does not require promulgation. Therefore, it is not part of the nature of law that it be promulgated.

Objection 2: Properly speaking, law plays the role of obligating someone to do or not to do something. But it is not just those to whom a law is promulgated who are obligated to fulfill the law; the others are obligated as well. Therefore, promulgation is not part of the nature of law.

Objection 3: The obligatory force of law extends even into the future, since, as jurists say, laws impose necessity on future transactions. But promulgation is made [only] to those who exist at present. Therefore, law does not require promulgation.

But contrary to this: *Decretals*, dist. 4, says, "Laws are instituted when they are promulgated."

I respond: As has been explained (a. 1), law is imposed on others in the manner of a rule and measure. But a rule or measure is imposed by being applied to the things that are ruled and measured. Hence, in order for a law to acquire the power to obligate, which is proper to law, it must be applied to the men who are supposed to be regulated by it. Now this sort of application is accomplished by the law's being brought to their knowledge through its promulgation. Hence, promulgation is necessary in order for law to have its power.

And so from the four traits that have been mentioned, we can put together a definition of law: Law

is (a) an ordering (*ordinatio*) by reason, (b) directed toward the common good, (c) made by one who is in charge of the community, and (d) promulgated.

Reply to objection 1: The promulgation of the law of nature consists in God's having instilled it in the minds of men in order that they might know it naturally.

Reply to objection 2: Those who are such that the law is not promulgated in their presence are obligated to follow the law insofar as it is or can be brought to their knowledge through others, once the promulgation has been made.

Reply to objection 3: A present promulgation extends into the future by reason of the permanence of writing, which in some sense continually promulgates the law. Hence, in *Etymologia 2* Isidore says, "Law' (*lex*) is derived from reading (*legendo*), because it is written."