

AQUINAS
Summa Theologica¹
Law in General

(Qu. 90)

The Nature of Law (Art. 1, concl.)

Law is a rule or measure of action in virtue of which one is led to perform certain actions and restrained from the performance of others. The term “law” derives [etymologically] from “binding,” because by it one is bound to a certain course of action. But the rule and measure of human action is reason, which is the first principle of human action: this is clear from what we have said elsewhere. It is reason which directs action to its appropriate end; and this, according to the Philosopher,² is the first principle of all activity.

Reason and Will in Law (ibid. ad 3um.)

Reason has power to move to action from the will, as we have shown already: for reason enjoins all that is necessary to some end, in virtue of the fact that that end is desired. But will, if it is to have the authority of law, must be regulated by reason when it commands. It is in this sense that we should understand the saying that the will of the prince has the power of law.³ In any other sense the will of the prince becomes an evil rather than law.

The Object of the Law is the Common Good (ibid. Art. 2, concl.)

Since every part bears the same relation to its whole as the imperfect to the perfect, and since one man is a part of that perfect whole which is the community, it follows that the law must have as its proper object the well-being of the whole community. So the Philosopher, in his definition of what pertains to law, makes mention both of happiness and of political union. He says (*Ethics* V. chap. 1): “We call that legal and just which makes for and preserves the well-being of the community through common political action”: and the perfect community is the city, as is shown in the first book of the *Politics* (chap. 1).

Who has the right to promulgate Law (ibid. Art. 3, concl.)

Law, strictly understood, has as its first and principal object the ordering of the common good. But to order affairs to the common good is the task either of the whole community or of some one person who represents it. Thus the promulgation of law is the business either of the whole community or of that political person whose duty is the care of the common good. Here as in every other case it is the one who decrees the end who also decrees the means thereto.

(ibid. ad 2um.)

A private person has no authority to compel right living. He may only advise; but if his advice is not accepted he has no power of compulsion. But law, to be effective in promoting right living, must have such compelling force; as the Philosopher says (*X Ethics*, chap. 9). But the power of compulsion belongs either to the community as a whole, or to its official representative whose duty it is to inflict penalties, as we shall see later. He alone, therefore, has the right to make laws.

(ibid. ad 3um.)

¹ Translated, J.G. Dawson

² *i.e.* Aristotle

³ The reference is to the text in the Roman law: “*Quod principi placuit legis habet vigorem.*” (*Dig.*, I, iv, 1, Ulpianus.)

Just as one man is a member of a family, so a household forms part of a city: but a city is a perfect community, as is shown in the first book of the *Politics*. Similarly, as the well-being of one man is not a final end, but is subordinate to the common good, so also the well-being of any household must be subordinate to the interests of the city, which is a perfect community. So the head of a family may make certain rules and regulations, but not such as have, properly speaking, the force of law.

Definition of Law (ibid. Art. 4, concl.)

From the foregoing we may gather the correct definition of law. It is nothing else than a rational ordering of things which concern the common good; promulgated by whoever is charged with the care of the community.

The various types of law

(Qu. 91)

The Eternal Law

As we have said, law is nothing else but a certain dictate of the practical reason “in the prince” who rules a perfect community. It is clear, however, supposing the world to be governed by divine providence ... that the whole community of the Universe is governed by the divine reason. Thus the rational guidance of created things on the part of God, as the Prince of the universe, has the quality of law... This we can call the eternal law.⁴

The Natural Law (Art. 2, concl.)

Since all things which are subject to divine providence are measured and regulated by the eternal law - as we have already shown - it is clear that all things participate to some degree in the eternal law; in so far as they derive from it certain inclinations to those actions and aims which are proper to them. But, of all others, rational creatures are subject to divine providence in a very special way; being themselves made participators in providence itself, in that they control their own actions and the actions of others. So they have a certain share in the divine reason itself, deriving therefrom a natural inclination to such actions and ends as are fitting. This participation in the eternal law by rational creatures is called the natural law.

Human Law (Art. 3, concl.)

Just as in speculative reason we proceed from indemonstrable principles, naturally known, to the conclusions of the various sciences, such conclusions not being innate but arrived at by the use of reason; so also the human reason has to proceed from the precepts of the natural law, as though from certain common and indemonstrable principles, to other more particular dispositions. And such particular dispositions, arrived at by an effort of reason, are called human laws: provided that the other conditions necessary to all law, which we have already noted, are observed.

*The natural law*⁵

(Qu. 94)

Precepts of the Natural Law (Art. 2, concl.)

⁴ The Scholastic approach to natural law was in a sense a form of rationalism in that from its own premises it claimed to reason with rigorous logic, but it must not be overlooked that these premises themselves were derived from certain theological dogmas and traditions which it was forbidden to deny or even doubt. These, therefore, form fundamental presuppositions of the system which were not open to rational refutation.

⁵ See, generally, O'Connor, *Aquinas and Natural Law* 1967), particularly Chap. VII.

The order of the precepts of the natural law corresponds to the order of our natural inclinations. For there is in man a natural and initial inclination to good which he has in common with all substances; in so far as every substance seeks its own preservation according to its own nature. Corresponding to this inclination, the natural law contains all that makes for the preservation of human life, and all that is opposed to it dissolution. Secondly, there is to be found in man a further inclination to certain more specific ends, according to the nature which man shares with other animals. In virtue of this inclination there pertains to the natural law all those instincts “which nature has taught all animals,”⁶ such as sexual relationship, the rearing of offspring, and the like. Thirdly, there is in man a certain inclination to good, corresponding to his rational nature: and this inclination is proper to man alone. So man has a natural inclination to know the truth about God and to live in society. In this respect there come under the natural law, all actions connected with such inclinations: namely, that a man should avoid ignorance, that he must not give offence to others with whom he must associate and all actions of like nature.

The Universality of the Natural Law (Art. 4, concl.)

As we have just said, all those actions pertain to the natural law to which man has a natural inclination: and among such it is proper to man to seek to act according to reason. Reason, however, proceeds from general principles to matters of detail ... The practical and the speculative reason, however, go about this process in different ways. For the speculative reason is principally employed about necessary truths, which cannot be otherwise than they are; so that truth is to be found as surely in its particular conclusions as in general principles themselves. But practical reason is employed about contingent matters, into which human actions enter: thus, though there is a certain necessity in its general principles, the further one departs from generality the more is the conclusion open to exception.

So it is clear that as far as the general principles of reason are concerned, whether speculative or practical, there is one standard of truth or rightness for everybody, and that this is equally known by everyone. With regard to the particular conclusions of speculative reason, again there is one standard of truth for all; but in this case it is not equally known by every one. With regard to the particular conclusions of speculative reason, again there is one standard of truth for all; but in this case it is not equally known to all; it is universally true, for instance, that the three interior angles of a triangle equal two right angles; but this conclusion is not known by everybody. When we come to the particular conclusions of the practical reason, however, there is neither the same standard of truth or rightness for every one, nor are these conclusions equally known to all. All people, indeed, realize that it is right and true to act according to reason. And from this principle we may deduce as an immediate conclusion that debts must be repaid. This conclusion holds in the majority of cases. But it could happen in some particular case that it would be injurious, and therefore irrational, to repay a debt; if, for instance, the money repaid were used to make war against one's own country. Such exceptions are all the more likely to occur the more we get down to particular cases: take, for instance, the question of repaying a debt together with a certain security, or in some specific way. The more specialised the conditions applied, the greater is the possibility of an exception arising which will make it right to make restitution or not.

So we must conclude that the law of nature, as far as general first principles are concerned, is the same for all as a norm of right conduct and is equally well known to all. But as to more particular cases which are conclusions from such general principles it remains the same for all only in the majority of cases, both as a norm and as to the extent to which it is known. Thus in particular instances it can admit of exceptions: both with regard to rightness, because of certain impediments (just as in nature the generation and change of bodies is subject to accidents caused by some impediment), and with regard to its knowability. This can happen because reason is, in some persons, depraved by passion or by some evil habit of nature; as Caesar relates in *De Bello Gallico* (VI, 23), of the Germans, that at one time they did not consider robbery to be wrong; though it is obviously against natural law

The Immutability of Natural Law (Art. 5.)

There are two ways in which natural law may be understood to change. One, in that certain additions are made to it. And in this sense there is no reason why it should not change. Both the divine law and human laws do, in fact, add much to the natural law which is useful to human activity.

⁶ Cf. *ante*, 104.

Or again the natural law would be understood to change by having something subtracted from it. If, for instance, something ceased to pertain to the natural law which was formerly part of it. In this respect, and as far as first principles are concerned, it is wholly unchangeable. As to secondary precepts, which, as we have said, follow as immediate conclusions from first principles, the natural law again does not change; in the sense that it remains a general rule for the majority of cases that what the natural law prescribes is correct. It may, however, be said to change in some particular case, or in a limited number of examples; because of some special causes which make it observation impossible, as we have already pointed out.

Human law

(Qu. 95)

The Necessity for Human Laws (Art. 1, concl.)

From the foregoing it is clear that there is in man a natural aptitude to virtuous action. But men can achieve the perfection of such virtue only by the practice of a “certain discipline.”—And men who are capable of such discipline without the aid of others are rare indeed.—So we must help one another to achieve that discipline which leads to a virtuous life. There are, indeed, some young men, readily inclined to a life of virtue through a good natural disposition or upbringing, or particularly because of divine help; and for such, paternal guidance and advice are sufficient. But there are others, of evil disposition and prone to vice, who are not easily moved by words. These it is necessary to restrain from wrongdoing by force and by fear. When they are thus prevented from doing evil, a quiet life is assured to the rest of the community; and they are themselves drawn eventually, by force of habit, to do voluntarily what once they did only out of fear, and so to practise virtue. Such discipline which compels under fear of penalty is the discipline of law. Thus, the enactment of laws was necessary to the peaceful and virtuous life of men. And the Philosopher says (*I Politics*, 2): “Man, when he reaches the perfection of virtue is the best of all animals: but if he goes his way without law and justice he becomes the worst of all brutes.” For man, unlike other animals, has the weapon of reason with which to exploit his base desires and cruelty.

The Subordination of Human Laws to the Natural Law (Art. 2, concl.)

Saint Augustine says (*I De Lib. Arbitrio*, 5): “There is no law unless it be just.” So the validity of law depends upon its justice. But in human affairs a thing is said to be just when it accords aright with the rule of reason: and, as we have already seen, the first rule of reason is the natural law. Thus all humanly enacted laws are in accord with reason to the extent that they derive from the natural law. And if a human law is at variance in any particular with the natural law, it is no longer legal, but rather a corruption of law.

But it should be noted that there are two ways in which anything may derive from natural law. First, as a conclusion from more general principles. Secondly, as a determination of certain general features. The former is similar to the method of the sciences in which demonstrative conclusions are drawn from first principles. The second way is like to that of the arts in which some common form is determined to a particular instance: as, for example, when an architect, starting from the general idea of a house, then goes on to design the particular plan of this or that house. So, therefore, some derivations are made from the natural law by way of formal conclusion: as the conclusion, “Do no murder,” derives from the precept, “Do harm to no man.” Other conclusions are arrived at as determinations of particular cases. So the natural law establishes that whoever transgresses shall be punished. But that a man should be punished by a specific penalty is a particular determination of the natural law.

Both types of derivation are to be found in human law. But those which are arrived at in the first way as sanctioned not only by human law, but by the natural law also; while those arrived at by the second method have the validity of human law alone.