THOMAS AQUINAS

Treatise on Law

(*Summa Theologica,* Questions 90-97)

With an Introduction

by Stanley Parry



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Aquinas' Philosophy of Law

IN THE *Treatise on Law*, Aquinas offers a philosophical analysis of the structure of law. The deeper significance of this analysis lies in its struggle with the problem of moral obligation in the political order, a problem which Aquinas approaches with an observation of fact and an interpretation of that fact. The observation of fact is that men in society live under law; the interpretation of the fact is that law achieves its results by imposing moral obligation rather than outright force on those subject to it. Out of such an interpretation the problem arises: what is the source of this obligation? Aquinas does not ask *why* men live under law, nor is he formally concerned with proving that law imposes moral obligation. His concern focuses almost exclusively on one problem, that of the roots of obligation. The problem is basic because it asks, in effect, by what warrant the human legislator binds the consciences of men. Is not this a power that belongs to God alone? If men possess it, what are the limits within which they may exercise it?

The answer Aquinas gives to these questions is a simple one: "Laws framed by men 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. . . ." (Quest. 96, art. 4). The thought leading to this conclusion, though complex in its full expression, advances through three simple and basic propositions: (1) obligation is a property that inheres in the nature of things (Quest. 95, art. 2), (2) since man has no control over the nature of things, he has no power to determine the basic outlines of obligation (Quest. 93, art. 5), and (3) since the nature of finite things is not self-explanatory, the ultimate source of obligation must be found in the infinite Being who does determine the nature of things (Quest. 93, art. 4). Thus the source of obligation is in the divine conception of the order proper to the universe. As Aquinas concludes: ". . . the plan of government is derived by secondary governors from the governor in chief. . . . Since then the eternal law is the plan of government in the Chief Governor, all the plans of government in the inferior governors must be derived from the eternal law" (Quest. 93, art. 3).

Even this brief outline of his answer distinguishes Aquinas from those whose theories are based on the Hobbesian hypothesis that human will, whether individual or corporate, can originate law. The great truth stressed is that law, insofar as it is morally obligating, must be rooted in God. Although there is a human authority residing in the people by force of nature (Quest. 90, art. 3), not even the people are the original possessors of this power to impose

obligation. Aquinas rejects the Divine Right theory because it explains the power of law to bind conscience by attributing a divine quality to political authority. No political authority, not even the sovereign authority, can impose an obligation on the citizen where it is not already latent in the nature of things.

Granted that human law must conform to eternal law, the human legislator still must have some way of discovering what the directives of eternal law are. The Romanticist solves the problem by his direct acceptance of primitive nature. But this acceptance rests on an emotional or instinctive basis which Aquinas cannot admit. His own solution is an intellectualist one which begins with the premise: "Now the rule and measure of human acts is the reason, which is the first principal of human acts. . . . Consequently it follows that law is something pertaining to reason" (Quest. 90, art. 1). Therefore, just as human law does not impose obligation until it is known to the subject, so also eternal law cannot guide the human legislator until its directives are made evident to him in some way. The use of the terms "right reason" and "natural law," which is sometimes confusing to the reader, becomes clear when one keeps in mind that man must know the law of nature before it can become a guide to action. Obligation lies in the nature of things, but it originates in the mind of God and terminates in the mind of man. Natural law is the objective link between the mind of man and the mind of God. Right

eternal law through its understanding of the moral reason is human reason acting in harmony with imperatives inherent in the nature of things.

By creation God sets finite beings in existence apart from Himself. Each of these beings has a nature. Natures or natural things, as Aristotle defines them, are those things which "have within [themselves] a principle of motion and of stationariness." Now for our purposes, the most relevant aspect of this principle has to do with growth. In the case of man, growth is achieved most obviously in the physical order. But man "grows" in other ways: his intellect develops, his will stabilizes on morally good objects. Such growth, however, is not automatic as in the physical order, but the result of a consciously organized plan of action. The general outlines of this plan of action are pre-determined by the tendencies of man's nature, just as the growth of man's body is pre-determined by tendencies inherent in the physical parts of his nature. Man must therefore read nature in order to discover the type of action by which human nature is perfected. Since eternal law is promulgated in the natural order by the very creation of natures, it follows that natural law is not something different from eternal law but rather a "participation thereof" (Quest. 91, art. 2) which the human legislator must study to discover the mind of God (Quest. 92, art. 2 and 3).

This idea of the way eternal law is promulgated is fundamental to Aquinas's theory of how obligation is transmitted from God to human legislator to citizen.

It keeps before our minds that the issue is not the transfer of a right to rule but the source of the authority which a rightful ruler exercises.

Thus, Aquinas' explanation of the origins of obligation depends on his conception of natural law. It is through the mind's ability to recognize the imperatives of nature that God communicates to man the basic patterns of action proper to him. Moreover, in this process man does not play the part of an automaton. He does not dangle at the end of cosmic puppet strings. Both eternal and natural law are generalized patterns of action, and man, therefore, in determining action in the concrete circumstances of life, contributes something to the determination of right action. The three laws—eternal, natural and human—are not three independent rules of action but one rule progressively specified (Quest. 95, art. 2).

With regard to such political problems as the form of government and the wisdom of particular public policies, the *Treatise* has nothing to say. Basic to it, however, is an implied position on the relationship between law and freedom which, if accepted, will profoundly influence one's conception of the problem of politics. In the Thomistic philosophy of law, human liberty is not an absolute condition. Man exists in the midst of realities which he must recognize and respect if he is to live a human life. He is inherently limited, both morally and physically, by laws that determine the total order of which he is a part. Freedom, or free will, consequently, is the faculty of judging for oneself the

demands of reality. As Laversin says: "The autonomy of the individual will can be understood only as an abstraction, that is to say, only by considering man's power to act as existing independently of his being and the conditions of actual existence." Law, insofar as it puts into concrete terms the general imperatives of nature, is not an adventitious limiting of action. Rather it is a conscious recognition and corporate specification of the natural boundaries of action in the real conditions of life. Thus law is perfectly compatible with the freedom proper to man.

This is not to deny that problems arise with regard to the government that makes the law. For it does not follow from this harmony between law and freedom that a just law cannot also be oppressive. But it does mean that a political philosophy based on the premise of harmony will be radically different from philosophies that begin with a premise of conflict. Utilitarian thought, for instance, begins with the premise that action under law is not free. Behind this premise is the idea that spontaneity is the essential element in freedom. Law, by imposing a rule of action on the citizen in the name of the group, destroys this element of spontaneity and so freedom.

From these two positions there follow two different conceptions of the problem of politics. The problem for the Thomist is to work out a system of government that will realize in fact the theoretical harmony between law and freedom. The problem for the Utilitarian is to work out a system that will sacrifice as little freedom as is compatible with the preservation

of order. The one philosophy supports the theory that all men can conceivably achieve complete freedom; the other begins by supposing that a sacrifice of freedom is inevitable.

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QUESTION 91

OF THE VARIOUS KINDS OF LAW

(*In Six Articles*)

We must now consider the various kinds of law: under which head there are six points of inquiry: (1) Whether there is an eternal law? (2) Whether there is a natural law? (3) Whether there is a human law? (4) Whether there is a Divine law? (5) Whether there is one Divine law, or several? (6) Whether there is a law of sin?

First Article

Whether there is an eternal law?

We proceed thus to the First Article:—

Objection 1. It would seem that there is no eternal law. Because every law is imposed on someone. But there was not someone from eternity on whom a law could be imposed: since God alone was from eternity. Therefore no law is eternal.

Obj. 2. Further, promulgation is essential to law. But promulgation could not be from eternity: because there was no one to whom it could be promulgated from eternity. Therefore no law can be eternal.

Obj. 3. Further, a law implies order to an end. But nothing ordained to an end is eternal: for the last end alone is eternal. Therefore no law is eternal.

On the contrary, Augustine says (*De Lib. Arb.* i. 6): *That Law which is the Supreme Reason cannot be understood to be otherwise than unchangeable and eternal.*

I answer that, As stated above (Q. XC., A. 1 *ad* 2; AA. 3, 4), a law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect community. Now it is evident, granted that the world is ruled by Divine Providence, as was stated in the First Part (Q. XXII., AA. 1, 2), that the whole community of the universe is

governed by Divine Reason. Wherefore the very Idea of the government of things in God the Ruler of the universe, has the nature of a law. And since the Divine Reason's conception of things is not subject to time but is eternal, according to Prov. viii. 23, therefore it is that this kind of law must be called eternal.

Reply Obj. 1. Those things that are not in themselves, exist with God, inasmuch as they are foreknown and pre-ordained by Him, according to Rom. iv. 17: *Who calls those things that are not, as those that are.* Accordingly the eternal concept of the Divine law bears the character of an eternal law, in so far as it is ordained by God to the government of things foreknown by Him.

Reply Obj. 2. Promulgation is made by word of mouth or in writing; and in both ways the eternal law is promulgated: because both the Divine Word and the writing of the Book of Life are eternal. But the promulgation cannot be from eternity on the part of the creature that hears or reads.

Reply Obj. 3. The law implies order to the end actively, in so far as it directs certain things to the end; but not passively,—that is to say, the law itself is not ordained to the end,—except accidentally, in a governor whose end is extrinsic to him, and to which end his law must needs be ordained. But the end of the Divine government is God Himself, and His law is not distinct from Himself. Wherefore the eternal law is not ordained to another end.

Second Article

whether there is a natural law?

We proceed thus to the Second Article:—

Objection 1. It would seem that there is no natural law in us. Because man is governed sufficiently by the eternal law: for Augustine says (*De Lib. Arb.* i) that *the eternal law is that by which it is right that all things should be most orderly.* But nature does not abound in superfluities as neither does she fail in necessaries. Therefore no law is natural to man.

Obj. 2. Further, by the law man is directed, in his acts, to the end, as stated above (Q. XC., A. 2). But the directing of human acts to their end is not a function of nature, as is the case in irrational creatures, which act for an end solely by their natural appetite; whereas man acts for an end by his reason and will. Therefore no law is natural to man.

Obj. 3. Further, the more a man is free, the less is he under the law. But man is freer than all the animals, on account of his free-will, with which he is endowed above all other animals. Since therefore other animals are not subject to a natural law, neither is man subject to a natural law.

On the contrary, A gloss on Rom. ii. 14: *When the Gentiles, who have not the law, do by nature those things that are of the law,* comments as follows: *Although they have no written law, yet they*

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

I answer that, As stated above (Q. XC., A. 1 *ad* 1), law, being a rule and measure, can be in a person in two ways: in one way, as in him that rules and measures; in another way, as in that which is ruled and measured, since a thing is ruled and measured, in so far as it partakes of the rule or measure. Wherefore, since all things subject to Divine providence are ruled and measured by the eternal law, as was stated above (A. 1); it is evident that all things partake somewhat of the eternal law, in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends. Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law. Hence the Psalmist after saying (Ps. iv. 6): *Offer up the sacrifice of justice,* as though someone asked what the works of justice are, adds: *Many say, Who showeth us good things?* in answer to which question he says: *The light of Thy countenance, O Lord, is signed upon us:* thus implying that the light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of

the Divine light. It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law.

Reply Obj. 1. This argument would hold, if the natural law were something different from the eternal law: whereas it is nothing but a participation thereof, as stated above.

Reply Obj. 2. Every act of reason and will in us is based on that which is according to nature, as stated above (Q. X., A. 1): for every act of reasoning is based on principles that are known naturally, and every act of appetite in respect of the means is derived from the natural appetite in respect of the last end. Accordingly the first direction of our acts to their end must needs be in virtue of the natural law.

Reply Obj. 3. Even irrational animals partake in their own way of the Eternal Reason, just as the rational creature does. But because the rational creature partakes thereof in an intellectual and rational manner, therefore the participation of the eternal law in the rational creature is properly called a law, since a law is something pertaining to reason, as stated above (Q. XC., A. 1). Irrational creatures, however, do not partake thereof in a rational manner, wherefore there is no participation of the eternal law in them, except by way of similitude.

Third Article

whether there is a human law?

We proceed thus to the Third Article:—

Objection 1. It would seem that there is not a human law. For the natural law is a participation of the eternal law, as stated above (A. 2). Now through the eternal law *all things are most orderly,* as Augustine states (*De Lib. Arb.* i. 6). Therefore the natural law suffices for the ordering of all human affairs. Consequently there is no need for a human law.

Obj. 2. Further, a law bears the character of a measure, as stated above (Q. XC., A. 1). But human reason is not a measure of things, but vice versa, as stated in *Metaph.* x., text 5. Therefore no law can emanate from human reason.

Obj. 3. Further a measure should be most certain, as stated in *Metaph.* x., text. 3. But the dictates of human reason in matters of conduct are uncertain, according to Wis. ix. 14: *The thoughts of mortal men are fearful, and our counsels uncertain.* Therefore no law can emanate from human reason.

On the contrary, Augustine (*De Lib. Arb.* i. 6), distinguishes two kinds of law, the one eternal, the other temporal, which he calls human.

I answer that, As stated above (Q. XC., A. 1 *ad* 2), a law is a dictate of the practical reason. Now it is to be observed that the same procedure takes

place in the practical and in the speculative reason: for each proceeds from principles to conclusions, as stated above (*ibid.*). Accordingly we conclude that just as, in the speculative reason, from naturally known indemonstrable principles, we draw the conclusions of the various sciences, the knowledge of which is not imparted to us by nature, but acquired by the efforts of reason, so too it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination of certain matters. These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed, as stated above (Q. XC., AA. 2, 3, 4). Wherefore Tully says in his *Rhetoric* (*De Invent. Rhet.* ii.) that *justice has its source in nature; thence certain things came into custom by reason of their utility; afterwards these things which emanated from nature and were approved by custom, were sanctioned by fear and reverence for the law.*

Reply Obj. 1. The human reason cannot have a full participation of the dictate of the Divine Reason, but according to its own mode, and imperfectly. Consequently, as on the part of the speculative reason, by a natural participation of Divine Wisdom, there is in us the knowledge of certain general principles, but not proper knowledge of each single truth, such as that contained in the Divine Wisdom; so too, on the part of the practical reason, man has a natural participation of the eternal law, according to certain

general principles, but not as regards the particular determinations of individual cases, which are, however, contained in the eternal law. Hence the need for human reason to proceed further to sanction them by law.

Reply Obj. 2. Human reason is not, of itself, the rule of things: but the principles impressed on it by nature, are general rules and measures of all things relating to human conduct, whereof the natural reason is the rule and measure, although it is not the measure of things that are from nature.

Reply Obj. 3. The practical reason is concerned with practical matters, which are singular and contingent: but not with necessary things, with which the speculative reason is concerned. Wherefore human laws cannot have that inerrancy that belongs to the demonstrated conclusions of sciences. Nor is it necessary for every measure to be altogether unerring and certain, but according as it is possible in its own particular genus.

Fourth Article

Whether there was any need for a Divine law?

We proceed thus to the Fourth Article:—

Objection 1. It would seem that there was no need for a Divine law. Because, as stated above (A. 2), the natural law is a participation in us of the eternal

law. But the eternal law is a Divine law, as stated above (A. 1). Therefore there is no need for a Divine law in addition to the natural law, and human laws derived therefrom.

Obj. 2. Further, it is written (Ecclus. xv. 14) that *God left man in the hand of his own counsel.* Now counsel is an act of reason, as stated above (Q. XIV., A. 1). Therefore man was left to the direction of his reason. But a dictate of human reason is a human law, as stated above (A. 3). Therefore there is no need for man to be governed also by a Divine law.

Obj. 3. Further, human nature is more self-sufficing than irrational creatures. But irrational creatures have no Divine law besides the natural inclination impressed on them. Much less, therefore, should the rational creature have a Divine law in addition to the natural law.

On the contrary, David prayed God to set His law before him, saying (Ps. cxviii. 33): *Set before me for a law the way of Thy justifications, O Lord.*

I answer that, Besides the natural and the human law it was necessary for the directing of human conduct to have a Divine law. And this for four reasons. First, because it is by law that man is directed how to perform his proper acts in view of his last end. And indeed if man were ordained to no other end than that which is proportionate to his natural faculty, there would be no need for man to have any further direction on the part of his reason, besides the natural law and human law which is

derived from it. But since man is ordained to an end of eternal happiness which is inproportionate to man's natural faculty, as stated above (Q. V., A. 5), therefore it was necessary that, besides the natural and the human law, man should be directed to his end by a law given by God.

Secondly, because, on account of the uncertainty of human judgment, especially on contingent and particular matters, different people form different judgments on human acts; whence also different and contrary laws result. In order, therefore, that man may know without any doubt what he ought to do and what he ought to avoid, it was necessary for man to be directed in his proper acts by a law given by God, for it is certain that such a law cannot err.

Thirdly, because man can make laws in those matters of which he is competent to judge. But man is not competent to judge of interior movements, that are hidden, but only of exterior acts which appear: and yet for the perfection of virtue it is necessary for man to conduct himself aright in both kinds of acts. Consequently human law could not sufficiently curb and direct interior acts; and it was necessary for this purpose that a Divine law should supervene.

Fourthly, because, as Augustine says (*De Lib. Arb.* i. 5, 6), human law cannot punish or forbid all evil deeds: since while aiming at doing away with all evils, it would do away with many good things, and would hinder the advance of the common good, which is necessary for human intercourse. In order

therefore, that no evil might remain unforbidden and unpunished, it was necessary for the Divine law to supervene, whereby all sins are forbidden.

And these four causes are touched upon in Ps. cxviii. 8, where it is said: *The law of the Lord is unspotted, i.e.*, allowing no foulness of sin; *converting souls,* because it directs not only exterior, but also interior acts; *the testimony of the Lord is faithful,* because of the certainty of what is true and right; *giving wisdom to little ones,* by directing man to an end supernatural and Divine.

Reply Obj. 1. By the natural law the eternal law is participated proportionately to the capacity of human nature. But to his supernatural end man needs to be directed in a yet higher way. Hence the additional law given by God, whereby man shares more perfectly in the eternal law.

Reply Obj. 2. Counsel is a kind of inquiry: hence it must proceed from some principles. Nor is it enough for it to proceed from principles imparted by nature, which are the precepts of the natural law, for the reasons given above: but there is need for certain additional principles, namely, the precepts of the Divine law.

Reply Obj. 3. Irrational creatures are not ordained to an end higher than that which is proportionate to their natural powers: consequently the comparison fails.

Fifth Article

whether there is but one divine law?

We proceed thus to the Fifth Article:—

Objection 1. It would seem that there is but one Divine law. Because, where there is one king in one kingdom there is but one law. Now the whole of mankind is compared to God as to one king, according to Ps. xlvi. 8: *God is King of all the earth.* Therefore there is but one Divine law.

Obj. 2. Further, every law is directed to the end which the lawgiver intends for those for whom he makes the law. But God intends one and the same thing for all men; since according to 1 Tim. ii. 4: *He will have all men to be saved, and to come to the knowledge of the truth.* Therefore there is but one Divine law.

Obj. 3. Further, the Divine law seems to be more akin to the eternal law, which is one, than the natural law, according as the revelation of grace is of a higher order than natural knowledge. Therefore much more is the Divine law but one.

On the contrary. The Apostle says (Heb. vii. 12): *The priesthood being translated, it is necessary that a translation also be made of the law.* But the priesthood is twofold, as stated in the same passage, viz.,

the levitical priesthood, and the priesthood of Christ. Therefore the Divine law is twofold, namely, the Old Law and the New Law.

I answer that, As stated in the First Part (Q. XXX., A. 3), distinction is the cause of number. Now things may be distinguished in two ways. First, as those things that are altogether specifically different, *e.g.*, a horse and an ox. Secondly, as perfect and imperfect in the same species, *e.g.*, a boy and a man: and in this way the Divine law is divided into Old and New. Hence the Apostle (Gal. iii. 24, 25) compares the state of man under the Old Law to that of a child *under a pedagogue;* but the state under the New Law, to that of a full grown man, who is *no longer under a pedagogue.*

Now the perfection and imperfection of these two laws is to be taken in connection with the three conditions pertaining to law, as stated above. For, in the first place, it belongs to law to be directed to the common good as to its end, as stated above (Q. XC., A. 2). This good may be twofold. It may be a sensible and earthly good; and to this, man was directly ordained by the Old Law: wherefore, at the very outset of the law, the people were invited to the earthly kingdom of the Chananaeans (Exod. iii. 8, 17). Again it may be an intelligible and heavenly good: and to this, man is ordained by the New Law. Wherefore, at the very beginning of His preaching, Christ invited men to the kingdom of heaven, saying (Matth. iv. 17): *Do penance, for the kingdom of heaven is at hand.* Hence Augustine says (*Contra*

Faust. iv.) that *promises of temporal goods are contained in the Old Testament, for which reason it is called old; but the promise of eternal life belongs to the New Testament.*

Secondly, it belongs to the law to direct human acts according to the order of righteousness (A. 4): wherein also the New Law surpasses the Old Law, since it directs our internal acts, according to Matth. v. 20: *Unless your justice abound more than that of the Scribes and Pharisees, you shall not enter into the kingdom of heaven.* Hence the saying that *the Old Law restrains the hand, but the New Law controls the mind* (3 *Sentent.*, D. xl.).

Thirdly, it belongs to the law to induce men to observe its commandments. This the Old Law did by the fear of punishment: but the New Law, by love, which is poured into our hearts by the grace of Christ, bestowed in the New Law, but foreshadowed in the Old. Hence Augustine says (*Contra Adimant. Manich. discip.* xvii.) that *there is little difference* between the Law and the Gospel—fear and love.*

Reply Obj. 1. As the father of a family issues different commands to the children and to the adults, so also the one King, God, in his one kingdom, gave one law to men, while they were yet imperfect, and another more perfect law, when, by the preceding law, they had been led to a greater capacity for Divine things.

Reply Obj. 2. The salvation of man could not be

* The *little difference* refers to the Latin words *timor* and *amor,—fear* and *love.*

achieved otherwise than through Christ, according to Acts iv. 12: *There is no other name . . . given to men, whereby we must be saved.* Consequently the law that brings all to salvation could not be given until after the coming of Christ. But before His coming it was necessary to give to the people, of whom Christ was to be born, a law containing certain rudiments of righteousness unto salvation, in order to prepare them to receive Him.

Reply Obj. 3. The natural law directs man by way of certain general precepts, common to both the perfect and the imperfect: wherefore it is one and the same for all. But the Divine law directs man also in certain particular matters, to which the perfect and imperfect do not stand in the same relation. Hence the necessity for the Divine law to be twofold, as already explained.

Sixth Article

Whether there is a law in the fomes of sin?

We proceed thus to the Sixth Article:—

Objection 1. It would seem that there is no law of the 'fomes' of sin. For Isidore says (*Etym.* v.) that the *law is based on reason.* But the 'fomes' of sin is not based on reason, but deviates from it. Therefore the 'fomes' has not the nature of a law.

Obj. 2. Further, every law is binding, so that those

who do not obey it are called transgressors. But man is not called a transgressor, from not following the instigations of the 'fomes'; but rather from his following them. Therefore the 'fomes' has not the nature of a law.

Obj. 3. Further, the law is ordained to the common good, as stated above (Q. XC., A. 2). But the 'fomes' inclines us, not to the common, but to our own private good. Therefore the 'fomes' has not the nature of sin.

On the contrary, The Apostle says (Rom. vii. 23): *I see another law in my members, fighting against the law of my mind.*

I answer that, As stated above (A. 2; Q. XC., A. 1 *ad* 1), the law, as to its essence, resides in him that rules and measures; but, by way of participation, in that which is ruled and measured; so that every inclination or ordination which may be found in things subject to the law, is called a law by participation, as stated above (*ibid.*). Now those who are subject to a law may receive a twofold inclination from the lawgiver. First, in so far as he directly inclines his subjects to something; sometimes indeed different subjects to different acts; in this way we may say that there is a military law and a mercantile law. Secondly, indirectly; thus by the very fact that a lawgiver deprives a subject of some dignity, the latter passes into another order, so as to be under another law, as it were: thus if a soldier be turned out of the army, he becomes a subject of rural or of mercantile legislation.

Accordingly under the Divine Lawgiver various creatures have various natural inclinations, so that what is, as it were, a law for one, is against the law for another: thus I might say that fierceness is, in a way, the law of a dog, but against the law of a sheep or another meek animal. And so the law of man, which, by the Divine ordinance, is alloted to him, according to his proper natural condition, is that he should act in accordance with reason: and this law was so effective in the primitive state, that nothing either beside or against reason could take man unawares. But when man turned his back on God, he fell under the influence of his sensual impulses: in fact this happens to each one individually, the more he deviates from the path of reason, so that, after a fashion, he is likened to the beasts that are led by the impulse of sensuality, according to Ps. xlviii. 21: *Man, when he was in honour, did not understand: he hath been compared to senseless beasts, and made like to them.*

So, then, this very inclination of sensuality which is called the 'fomes,' in other animals has simply the nature of a law, (yet only in so far as a law may be said to be in such things), by reason of a direct inclination. But in man, it has not the nature of law in this way, rather is it a deviation from the law of reason. But since, by the just sentence of God, man is destitute of original justice, and his reason bereft of its vigour, this impulse of sensuality, whereby he is led, in so far as it is a penalty follow-

ing from the Divine law depriving man of his proper dignity, has the nature of a law.

Reply Obj. 1. This argument considers the 'fomes' in itself, as an incentive to evil. It is not thus that it has the nature of a law, as stated above, but according as it results from the justice of the Divine law: it is as though we were to say that the law allows a nobleman to be condemned to hard labour for some misdeed.

Reply Obj. 2. This argument considers law in the light of a rule or measure: for it is in this sense that those who deviate from the law become transgressors. But the 'fomes' is not a law in this respect, but by a kind of participation, as stated above.

Reply Obj. 3. This argument considers the 'fomes' as to its proper inclination, and not as to its origin. And yet if the inclination of sensuality be considered as it is in other animals, thus it is ordained to the common good, namely, to the preservation of nature in the species or in the individual. And this is in man also, in so far as sensuality is subject to reason. But it is called the 'fomes' in so far as it strays from the order of reason.