

Domingo de Soto (1494–1560)
DE IUSTITIA ET IURE LIBRI DECIM, LIB. I, Q. 4, ART. 5¹

WHETHER THE LAW OF NATURE CAN BE CHANGED OR ABOLISHED (Utrum lex naturæ mutari aboliri possit)

<36, col. a> 1. Post hæc facile est hoc quinto articulo duo perspicere quæ superiorum corollaria sunt nempe utrum lex naturæ aut mutabilis sit: aut ab humana mente eradicabilis. Arguitur ergo quod sit mutabilis. Legitur enim Ecclesiast. 17. Addidit eis disciplinam, et legem vitæ, ubi circumscribitur glossa, legem scilicet literæ quantum ad correctionem legis naturalis. Et Isido. li. 5 (quod est dist. 1, c. ius naturale) ait communem omnium possessionem et libertatem esse de iure naturæ: cum tamen iam iure gentium, tum rerum divisio, tum etiam servitus inducta in orbem sit: est ergo lex naturæ mutabilis. Sed et quod a nostris cordibus avelli possit, arguit primo ex his quæ dicta sunt. Multæ enim fuere gentes adeo hebetes et morum pravitate tabefactæ, ut leges naturæ contrarias ædiderint. Unde super illud ad Rom. 2. Cum gentes quæ legem non habent, etc. ait glossa, quod in interiore homine per gratiam innovato lex iustitie inscribitur, quam deleverat culpa. Et quarto arguitur. Lex gratiæ efficacior est quam lex naturæ, gratia vero deletur per culpam: ergo multo facilius deleri potest lex naturæ.

2. In contrarium autem est decretum Gratia. dist. 5, cap. 1. Ius naturale non variatur tempore, sed immutabile semper permanet, et sententia August. 2, lib. Confes. Lex tua scripta est in cordibus hominum, quam nec ulla quidem delet iniquitas.

3. Ad hanc quæstionem facillima est per distinctionem responsio: supposito enim primo intervallo quod inter principia eiusque conclusiones interiectum est, bifariam lex naturæ censi potest mutabilis. Uno modo per additionem, quæ ei fiat: atque altero per distractionem.

1. After this it is easy in this fifth article to see two things which are certainly corollaries of the above: whether the law of nature either is mutable or eradicable from the human mind. Therefore it is argued that it is mutable. For Eccl. 17[:9] reads: ‘He imparted instruction and the law of life to them’. A gloss is written in here, namely, the law of the letter insofar as it is a correction to the natural law. And Isidorus in book 5 (that is, dist. 1, the chapter on natural right) says that common ownership of everything and freedom is of natural right. Yet since the right of the people has already introduced both the division of things and also slavery into the world, therefore the law of nature is mutable. But that it can even be wrested from our hearts, he argues in the first place from these things which were said. For many nations were indeed deadened and fallen apart by a depravity of morals, so that they constructed contrary laws of nature. Hence, beside that passage from Rom. 2, ‘since the nations who did not have the law . . .’, the gloss says that the law of justice was inscribed anew in the interior of human beings, which guilt had erased. And fourth it is argued: the law of grace is more effective than the law of nature, but grace is erased through guilt. Therefore, the law of nature can be erased much more easily.

2. But Gratian’s *Decretum* dist. 5, c. 1 is opposed: ‘Natural right does not change with time, but always remains immutable’. Also Augustine’s view in *Conf. II*: ‘Your law was written in the hearts of humans, which no iniquity can erase.

3. A response to this question is most easy through a distinction: for having accepted the first interval that is placed between its principles and conclusions, the law of nature can be thought mutable in two ways. In one way through addition, which can happen to it, and in the other way through a drawing away.

¹Latin text is from the 1556 Salamanca edition. Marginal comments omitted; most abbreviations expanded. Changed some punctuation, e.g., removed periods after numbers. Paragraph numbers are mine.

4. Statuitur ergo prima conclusio. Nihil vetat legem naturæ priori modo esse mutabilem. Adiecta enim est illi lex divina tam vetus quam nova duobus præcipue commodis. Uno scilicet, quia iam obscurata erat in mortalium mentibus et caligine obducta, ut innovaret. Nempe ut constaret non solum externos actus, verum et internos esse ad legis normam componendos: neque solum iura naturæ amicis deberi, verum et inimicis. Altero ut ea consilia quæ illi deerant supplerentur. Et hoc est quod gloss. Ecclesiast. 17 in primo argumento citata appellat correctionem legis naturæ, quæ facta est per legem literæ.

5. Secunda conclusio. Lex naturæ non est quantum ad prima principia posteriori modo mutabilis, ut scilicet quod prius fuit legis naturæ desinat esse talis iuris. At vero quantum ad secunda præcepta quæ sunt velut proximæ conclusiones, licet plurimum immutabilis sit, potest nihilominus quandoque, sed raro, mutari propter humana impedimenta, ut articulo proximo expositum est. Nam et circa necessarias conclusiones speculabilium contingit ob mentis lippitudinem nonnunquam hallucinari. Quocirca mutatio hæc non tam in lege fit, quam in rebus ipsis: veritas enim illius generalis præcepti. Depositum reddendum est, aut illius fides promissa custodienda: non mutatur nisi mutatis rebus ex quarum mutatione contraria nascitur veritas. Quoniam et hæc lex, Esus carniū vini que potus salubris est hominibus, ob id in particulari mutatur: quod homo febrī correptus est, cui talis victus nocuus fit. Unde Aristot. 5 Ethico. c. 7. Ius iniquit [sic] naturæ immutabile est, sicuti ignis ubique urit: quod de primis principiis intelligit: de conclusionibus autem subdit, posse <37> mutari, non tamen apud Deos, qui immutabiles sunt: sed apud nos, qui mutari possumus. Quo fit, leges triumphantium in regno cœlorum nullatenus mutari posse: quia neque fœlices [sic] illi mutantur. Autoritas autem Isidori non sic intelligenda est, ut libr. 3, q. 4 dicturi sumus, ac si communem possessionem præcipiat aut servitutem interdicit: alias ius gentium non potuisset tales leges revocare: sed dicuntur hæc negative de lege naturæ: quia illa nec divisionem fecit, nec servitutem iussit. Restabat hic tamen tractare an huiusmodi præcepta naturæ sint dispensabilia, cuius nimirum inde coniecturæ fiunt, quod Deus Abrahæ necem filii præcepit, et Osea ut fornicaretur, et filiis Israel ut deprædarentur Aegyptios: hæc autem dubitatio inferius, q. 2, art. 8

4. Therefore, the first conclusion is established. Nothing prohibits that the law of nature is mutable in the first way. For the divine law was added to it, the old as much as the new, for two advantages. One, namely, because it had already been obscured in the minds of mortals and covered in fog, so it was renewed. Certainly, so that it was agreed that not only external acts, [but] truly even internal [acts] are for composing the norm of the law; nor is the right of nature only owed to friends, but truly also to enemies. The other so that those counsels which they lacked were supplied. And this is what the gloss to Eccl. 17 cited in the first argument calls the correction of the law of nature, which was made through the law of the letter.

5. The second conclusion: the law of nature is not mutable in the latter way insofar as the first principles are concerned, so that, namely, what was earlier of the law of nature ceases to be of such a right. But on the other hand, as far as the secondary precepts which are as if proximate conclusions are concerned, although many are immutable, they can nevertheless sometimes—but rarely—be changed on account of human impediments, as was explained in the proximate article. For it can happen even about necessary conclusions of things that can be seen that it hallucinates on account of the lippitude of the mind. Wherefore, this mutation happens not so much in the law as in the matters themselves. For the truth of that general precept that ‘a deposit should be returned’ or that ‘promises should be kept’ is not changed except as a result of the situations changing such that the truth of the contrary arises by that change. Since even this law that ‘Jesus of flesh and wine having been swallowed is good for human beings’ is changed on account of this in particular that a human being is seized by a fever, to whom such nourishment becomes harmful. Hence, Aristotle in *EN* V, c. 7 says that the right of nature is immutable just as fire burns anywhere. What is understood of the first principles but what is placed under the conclusions can be changed, yet not in view of God who is immutable but in view of us, who can be changed. Hence it happens that the laws of the triumphant in the reign of the heavens can in no way be changed, since those happy ones are not changed. But the authority of Isidorus should not be understood in this way, as we are about to say in lib. 3, q. 4, as if communal possession is commanded or slavery forbidden. Otherwise, the law of the nations could not have revoked such laws. But these are called of the law of nature negatively, because it did not make the division [of possessions] not command slavery. But it remains here to discuss whether the precepts of nature are dispensable in this way, of the ones conjectured that without doubt happened thence that God commanded Abraham to kill his

propriam habitura est sedem.

6. Tertia conclusio similis est huic proximæ. Lex naturæ quantum ad prima principia et præcepta non potest ab humana mente stirpitus eradicari: potest tamen licet non plurimum, sed raro quantum ad conclusiones et secunda præcepta in aliquibus hominibus deleri. Conclusio non alio indiget testimonio, quam quod a superioribus petitur. Possunt enim Barbari tanta morum vitiositate perverti atque errorum perversitatibus offuscari, ut pro peccatis non ducant, quæ lex naturæ vetat. Neque id solum in conclusionibus quæ longe a principiis distant, ut est officiosum mendacium, et simplex fornicatio: verum et in his quoque quæ propinquo, subindeque lucidiores existunt. Sunt enim (ut a fide dignis accepimus) reperti inter illos mortales Novi Orbis qui nefandum turpitudinem contra naturam non solum impune permittebant, verum nulla culpa denotabant. Qua utique ratione fieri potest ut respublicæ et principes leges contra naturam instituant secundum verbum Isaïæ. Væ qui condunt leges iniquas. Et secundum hoc intelligenda est illa glossa ad Rom. 2 quæ ait culpam delevisse legem iustitiæ ab infidelium cordibus.

7. Restant ergo duo superiorum argumenta soluta. Ad tertium autem respondetur, quod etsi gratia sublimior sit atque efficacior quam natura, non est tamen nobis ingenita, et innata, atque adeo neque tam penitus infixæ: et ideo facilius per culpam nostram eradicatur, quam lex naturæ.

son, Hosea to fornicate, and the children of Israel to pillage the Egyptians. But this doubt will have a proper place later in q. 2, art. 8.

6. The third conclusion is similar to the last one. The law of nature insofar as the first principles and precepts are concerned cannot be wholly eradicated from the human mind. Nevertheless, insofar as the conclusions and secondary precepts are concerned, it can be erased in some humans, although not often but only rarely. The conclusion does not require other testimony than that which is asked for by those above. For barbarians can be perverted by such a viciousness of morals and darkened by the perversities of their errors that they cannot be thought of as sins which the law of nature prohibits. Nor is this only in conclusions which stand far from the principles, as is officious lying and simple fornication. Truly, even in these also which are nearer and immediately after are thought clearer. For they are of those (as we learn from those worthy of trust) among those mortals of the New World who not only permit abominable wickedness against nature with impunity but even observe no guilt. By which reason, at any rate, it can certainly happen that republics and princes institute laws against nature according to the words of Isaiah: 'Woe to those who make unjust laws'. And that gloss on Rom. 2 which says that guilt erased the law of justice from the hearts of the unfaithful should be understood according to this.

7. Two solutions to the arguments from above, therefore, stand firm. But to the third it is responded that even if grace is more eminent and effective than nature, still it is not instilled in us by birth and innate and therefore neither is it implanted as deeply. And therefore it is eradicated through our guilt more easily than the law of nature.