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QUAESTIO DE LEGIBUS, DISP. 3, Q. 3¹

WHETHER NATURAL LAW IS ONLY ONE (Utrum lex naturalis sit una tantum)

Varia quaeri possunt hic. Primum, an et eodem tempore et in eodem homine haec lex una sit. Secundo an in omnibus hominibus sit una. Secundo [sic], an successione temporum varietur vel una semper maneat.

Dico primo: Lex naturalis multa complectitur praecepta, quae per reductionem ad unum principium et unum finem ultimum unam legem constituere dicuntur. Est divi Thomae (quaest. 94) et per se clara. Solum est explicanda a nobis varietas horum praeceptorum et ordo inter illa. Pro varietate enim materiarum vel obiectorum distingui possunt haec praecepta. Quaedam enim versantur circa Deum, ut de amando illo, quaedam circa proximum, ut de furando, quaedam circa se ipsum, ut de temperate vivendo.

Distingui etiam possunt iuxta varios gradus et inclinationes hominis, quomodo distinxit illa divus Thomas (art. 2) utens hoc principio: Secundum ordinem naturalium inclinationum sumendum esse ordinem naturalium praeceptorum; quia quidquid est consentaneum naturali inclinationi apprehenditur a ratione, ut bonum est faciendum. Quod principium non de quacumque inclinatione naturali intelligendum est, cum ipse etiam Aristoteles dicat (2 *Ethico-rum*, cap. 9) ad operandum virtutem potius esse naturalibus inclinationibus resistendum.

Sensus ergo est naturam per se inclinare ad bonum, et ideo obiectum talis inclinationis per se consideratum et recta ratione propositum esse honestum et ad legem naturae pertinens. Et hoc modo iuxta varia obiecta naturalium inclinationum distingui posse praecepta naturae, ut v. gr. habet homo nat-

Different things can be asked here. First: whether this law is one at the same time with the same human being. Secondly: whether it is one in all human beings. Thirdly: whether it is changed with a succession of times or always remains the same.

I say first: natural law includes many precepts, which are said to constitute one law through a reduction to one principle and one ultimate end. This is what St. Thomas says ([*ST* IaIIæ.]94) and it is clear *per se*. Only the variety of these precepts and the order among them needs to be explained by us. For these precepts can be distinguished according to the variety of matter or of objects. For some concern God (for example, the one about loving him), some concern one's neighbour (for example, the one about stealing), [and] some concern the [agent] himself (for example, the one about living temperately).

They can also be distinguished according to the different grades [of being] and inclinations of a human being, as St. Thomas distinguished them (art. 2) using this principle: the order of natural precepts should be taken following the order of natural inclinations, because whatever is appropriate to a natural inclination is apprehended by reason as a good that is to be pursued. This principle should not be understood of any natural inclination whatsoever, since even Aristotle himself says in *EN* II, cap. 9 that in order to act virtuously one must rather resist natural inclinations.

Therefore, the sense is that nature through itself inclines to good and therefore the object of such an inclination considered by itself and proposed by right reason is honest and pertains to the law of nature. And in this way the precepts of nature can be distinguished according to the different objects of the

¹Latin text is from Pereña's and Abril's edition of *De Legibus*, vol. 3, pp. 206–09. Their transcription is from: Lisboa, Biblioteca Nacional, Fundo Geral., ms. 3856.

uralem propensionem ad vitam. Hinc oriuntur praecepta quae versantur circa media necessaria ad hunc finem, quae debent recta ratione regulari, quae honestatem maxime respicit. Ratione cuius potest interdum praetermitti cura salutis corporalis (II II, quaest. 197, art. 1 ad 3; Vitoria, *Relectione de temperantia*). Similiter habet homo naturalem propensionem ad conservandam speciem. Unde oriuntur praecepta pertinentia ad usum generationis consentaneum naturae humanae.

Praeterea, quia homo naturali inclinatione est animal sociabile, inde oriuntur leges de publica iustitia et pace servanda ex illo principio: quae vultis ut faciant vobis homines et vos facite illis. De quo Chrisostomus (*Homilia 13 ad populum*). Rursus ex inclinatione naturali hominis ad Deum oritur naturale praeceptum de illo diligendo, ut ostendit Basilius (*Homilia 2 in Fusius disputatis*). Denique ex naturali inclinatione ad vivendum secundum rationem rectam oriuntur naturales leges quae moderantur nostros actus ad id quod honestum est.

Alio modo potest haec [distinctio] praeceptorum explicari ex divo Thoma (quaest. 101, art. 11): quod sicut in speculativis scientiis quaedam sunt prima principia, aliae conclusiones elicitaе proxime a principiis, aliae remotae, et inter principia alia sunt notiora aliis, quamvis omnia quodammodo radicentur in illo [primo]: quodlibet est vel non est, ita in practicis quaedam principia sunt prima, aliae conclusiones proximae vel remotae. Et inter principia quaedam [sunt] notissima quae ignorari non possunt, ut filios esse a parentibus educandos; alia minus nota, ut fornicationem esse malam. Omnia vero reducuntur ad illud: bonum est persequendum, malum est fugiendum, quod de honesto et turpi illi contrario intelligitur.

Loquimur enim de rationali voluntate (?) et recta ratione practica, cuius dictamen primum et omnino naturale est de honesto sequendo, et primus impulsus voluntatis de complectendo honesto. Ex his ergo satis patet tota conclusio et ultima eius pars, quae est de unitate finis. Satis etiam patet in prima quaestione huius disputationis. Est enim huius legis finis con-

natural inclinations, as, for example, a human being has a natural propensity to life. From here arise the precepts which concern the means necessary for this end, which ought to be regulated by right reason which most considers honesty. For this reason, care for the health of the body can sometimes be overlooked (II II, q. 197, art. 1 ad 3; Vitoria, *Relectione de temperantia*). Similarly, a human being has a natural propensity to preserving the species. From this arise the precepts pertaining to the fitting use of procreation of human nature.

In addition, because a human being is a sociable animal by natural inclination, there arise from here laws concerning public justice and preserving peace in accordance with that principle: what you wish humans to do for you, you also do for them. Chrysostom [spoke] about this in *Homilia 13 ad populum*. In turn, from the natural inclination of a human being to God arises a natural precept about loving him, as Basilius shows in the second homily of *Fusius disputatis*. Finally, from the natural inclination to living according to right reason arise the natural laws which guide our acts to that which is honest.

This distinction between precepts can be explicated in another way according to St. Thomas (q. 101, art. 11): for just as among speculative sciences some are first principles, others are conclusions proximately drawn from the principles, others remotely, and among the principles some are better-known than others, although all are rooted in a certain way in that first principle (anything either is or is not), so also in practical [sciences] certain principles are first and others are conclusions, either proximate or remote. And among the principles certain ones are best-known of which one cannot be ignorant, such as that children are to be brought up by their parents. Others are less well-known, such as that fornication is evil. But all are reduced to that [first one]: good is to be pursued and bad is to be avoided, which is understood of honesty and the wickedness contrary to it.

For we are speaking about rational will and right practical reason, whose first dictate concerning honest pursuing is wholly natural and the first impulse of will concerning honest attaining [likewise]. From these, therefore, the whole conclusion and the last part of it, which is about the unity of the end, is sufficiently clear. It is also sufficiently clear in the first

stituere hominem in ea rectitudine quae decet naturam intellectualem.

Dico secundo: Haec lex naturae in omnibus hominibus una est et eadem. <Est> divi Thomae et est communis. Probatur, nam haec lex est veluti naturalis proprietas quae humanam naturam consequitur; sed natura humana est in omnibus eadem; ergo ...

Secundo, synderesis et habitus principiorum et scientiae ac virtutes quae ex illis generantur sunt eiusdem rationis in omnibus; ergo ...

Sed contra, nam legimus in variis nationibus multam reperiri varietatem in rebus et consuetudinibus ad legem naturalem spectantibus. Nonnulla refert Eusebius (libro ultimo *De praeparatione evangelica*) ex Platone et aliis philosophis. Respondeo aliud esse legem naturae a multis gentibus in multis rebus fuisse ignoratam et corruptam, aliud esse variatam. Primum est verum, non secundum. Nam illae gentes quae aliquid contra naturalem legem perceperunt aut probaverunt in eo non naturae legem sed ignorantiam sequebantur; neque erat illa lex, sed legis corruptio. Et ideo dixit divus Thomas (art. 4) legem naturalem esse eandem apud omnes quoad subsistentiam, non quoad notitiam.

Addit tamen ulterius in principiis communibus legis naturae semper esse verum illam esse unam et eandem, in aliquibus autem specialibus praeceptis regulariter et, ut in plurimum, intelligendum id esse, non omnino semper. Quia interdum, etiam seclusa ignorantia, non expedit id quod ius naturae dicat, ut v. gr. depositum esse reddendum. Tamen hoc, licet verum sit, nihilominus ius naturae idem est, nam, si interdum licet non reddere depositum, hoc ipsum dicat ipsum naturae ius, et hoc modo intelligendum etiam est quod dixit Aristoteles (*VI Ethicorum*, cap. 2) ius naturale aliquo modo esse mutabile inter homines, non quia ipsum ius proprie varietur, sed quia variatis circumstantiis variatur materia vel obiectum in quod cadit lex naturae.

Dico tertio: Ius naturae etiam omnibus temporibus idem est, neque mutari ulla ratione potest. Est divi

question of this disputation. For the end of this law is to establish human beings in that rectitude which is fitting to intellectual nature.

I say secondly: this law of nature is one and the same in all human beings. [This] is [the view of] St. Thomas and is common. It is proven: for this law is as if a natural property which follows on human nature. But human nature is the same in everyone. Therefore ...

Secondly, synderesis and the habit of principles and the science and virtues which are generated from them are from the same reason in everyone. Therefore ...

But to the contrary, for we read that great variety is found in different nations in observing the things and customs of natural law. Eusebius refers to some from Plato and other philosophers in the last book of *De praeparatione evangelica*. I respond that it is one thing for the law of nature to have been ignored and corrupted by many peoples in many matters, another for it to be different. The first is true, but not the second. For those peoples which learned or accepted something contrary to natural law were not following the law of nature in that but ignorance, nor was that law but the corruption of law. And therefore St. Thomas said that the natural law is the same for everyone as far as subsistence (*subsistentiam*) is concerned but not as far as acquaintance is concerned.

Still, it is added further that it is always true that it is one and the same in the case of the general principles of natural law, but in other special precepts it should be understood that it is regularly and for the most part and not always entirely. Because sometimes, even excluding ignorance, that which natural right says is not expedient, for example, that a deposit should be returned. Still, this, granted that it is true, nevertheless is the same natural right, for, if sometimes one is permitted not to return a deposit, the natural right itself says this very thing. And in this way should also be understood what Aristotle said in *EN VI*, cap. 2, that natural right in some way is changeable among humans, not because the right itself is properly varied but because the matter or object on which the law of nature falls is varied by different circumstances.

I say thirdly: natural right is also the same in all times nor can it be changed for any reason. [This] is [the

Thomae et clara, quia natura hominis et naturalis ratio idem est semper et, licet possit ita vitiis obscurari ut vix appareat, non tamen extingui vel deleri, quia semper radix usus rationis et libertatis integra perseverat, ut in materia de peccatis late dictum est.

Sed contra, nam in principio creationis mundi naturalis lex erat ut omnia essent communia, ex Isidoro (V *Etymologiarum*, cap. 4), et tamen lex hic mutata est. Similiter libertas est homini naturalis, unde servitus contra naturam (§*ius gentium* Institutionibus, De iure naturali [1, 2, 2]), et tamen usu hominum factum est ut liceat. Propter haec iuristae dicunt naturalem legem posse quoad aliqua per positivam mutari, ut refert Covarrubias (6 *regula possesor*, parte 2, §11). Sed non bene loquitur, nam eadem est ratio de tota lege et de parte eius, cum tam naturale ius sit pars quam totum.

Item quia ius naturale est regula iuris positivi; non ergo potest ab illo mutari. Dicendum est ergo aliquid esse de iure naturae ut praeceptum, et hoc mutari non potest iure positivo; aliquid vero est tantum iure concessum vel datum a natura, quamvis naturalis ratio non praecipiat ut semper idem maneat, quamvis neque prohibeat, sed negative se habeat. Et hoc mutari potest, et ita accidit in exemplis adductis, de quibus latius in materia de iure tractatur.

view] of St. Thomas and it is clear, because the nature of humans and natural reason is always the same and, although it can be so obscured by vices that it is hardly visible, yet it cannot be extinguished or destroyed, because the uninjured root of the use of reason and freedom always perseveres, as was said more broadly in the material on sins.

But to the contrary, for in the beginning of the creation of the world the natural law was that everything was [held] in common, according to Isidorus in *Etymologiarum* V, cap. 4, and yet the law has now been changed. Similarly, freedom is natural to a human being; hence, slavery is contrary to nature (§*ius gentium* Institutionibus, De iure naturali [1, 2, 2]) and yet the use of a human has been made permissible. On account of these, jurists say that the natural law can be changed as long as it is something through positive [law], as Covarrubias refers (6 *regula possesor*, p. 2, §11). But it is not well-said, for the whole law and a part of it have the same nature, since the part is just as much natural right as the whole.

Likewise, because natural right is the rule for positive right. Therefore, it cannot be changed by that. Therefore, it should be said that something is of the right of nature as a precept and this cannot be changed by positive right. But something is only a right permitted or given by nature, although natural reason does not instruct that it always remain the same, although it does not prohibit it, but holds it negatively. And this can be changed and thus it happens in the examples brought up, which are discussed more broadly in the material on right.