

Objection 1. It would seem that Isidore's description of the quality of positive law is not appropriate, when he says (Etym. v, 21): "Law shall be virtuous, just, possible to nature, according to the custom of the country, suitable to place and time, necessary, useful; clearly expressed, lest by its obscurity it lead to misunderstanding; framed for no private benefit, but for the common good." Because he had previously expressed the quality of law in three conditions, saying that "law is anything founded on reason, provided that it foster religion, be helpful to discipline, and further the common weal." Therefore it was needless to add any further conditions to these.

Objection 2. Further, Justice is included in honesty, as Tully says (De Offic. vii). Therefore after saying "honest" it was superfluous to add "just."

Objection 3. Further, written law is condivided with custom, according to Isidore (Etym. ii, 10). Therefore it should not be stated in the definition of law that it is "according to the custom of the country."

Objection 4. Further, a thing may be necessary in two ways. It may be necessary simply, because it cannot be otherwise: and that which is necessary in this way, is not subject to human judgment, wherefore human law is not concerned with necessity of this kind. Again a thing may be necessary for an end: and this necessity is the same as usefulness. Therefore it is superfluous to say both "necessary" and "useful."

On the contrary, stands the authority of Isidore.

I answer that, Whenever a thing is for an end, its form must be determined proportionately to that end; as the form of a saw is such as to be suitable for cutting (Phys. ii, text. 88). Again, everything that is ruled and measured must have a form proportionate to its rule and measure. Now both these conditions are verified of human law: since it is both something ordained to an end;

and is a rule or measure ruled or measured by a higher measure. And this higher measure is twofold, viz. the Divine law and the natural law, as explained above (a. 2; q. 93, a. 3). Now the end of human law is to be useful to man, as the jurist states*. Wherefore Isidore in determining the nature of law, lays down, at first, three conditions; viz. that it "foster religion," inasmuch as it is proportionate to the Divine law; that it be "helpful to discipline," inasmuch as it is proportionate to the nature law; and that it "further the common weal," inasmuch as it is proportionate to the utility of mankind.

All the other conditions mentioned by him are reduced to these three. For it is called virtuous because it fosters religion. And when he goes on to say that it should be "just, possible to nature, according to the customs of the country, adapted to place and time," he implies that it should be helpful to discipline. For human discipline depends on first on the order of reason, to which he refers by saying "just": secondly, it depends on the ability of the agent; because discipline should be adapted to each one according to his ability, taking also into account the ability of nature (for the same burdens should be not laid on children as adults); and should be according to human customs; since man cannot live alone in society, paying no heed to others: thirdly, it depends on certain circumstances, in respect of which he says, "adapted to place and time." The remaining words, "necessary, useful," etc. mean that law should further the common weal: so that "necessity" refers to the removal of evils; "usefulness" to the attainment of good; "clearness of expression," to the need of preventing any harm ensuing from the law itself. And since, as stated above (q. 90, a. 2), law is ordained to the common good, this is expressed in the last part of the description.

This suffices for the Replies to the Objections.

* Pandect. Justin. lib. xxv, ff., tit. iii; De Leg. et Senat.