

FIRST PART OF THE SECOND PART, QUESTION 97

Of Change in Laws (In Four Articles)

We must now consider change in laws: under which head there are four points of inquiry:

- (1) Whether human law is changeable?
- (2) Whether it should be always changed, whenever anything better occurs?
- (3) Whether it is abolished by custom, and whether custom obtains the force of law?
- (4) Whether the application of human law should be changed by dispensation of those in authority?

Whether human law should be changed in any way?

Ia IIae q. 97 a. 1

Objection 1. It would seem that human law should not be changed in any way at all. Because human law is derived from the natural law, as stated above (q. 95, a. 2). But the natural law endures unchangeably. Therefore human law should also remain without any change.

Objection 2. Further, as the Philosopher says (Ethic. v, 5), a measure should be absolutely stable. But human law is the measure of human acts, as stated above (q. 90, Aa. 1,2). Therefore it should remain without change.

Objection 3. Further, it is of the essence of law to be just and right, as stated above (q. 95, a. 2). But that which is right once is right always. Therefore that which is law once, should be always law.

On the contrary, Augustine says (De Lib. Arb. i, 6): “A temporal law, however just, may be justly changed in course of time.”

I answer that, As stated above (q. 91, a. 3), human law is a dictate of reason, whereby human acts are directed. Thus there may be two causes for the just change of human law: one on the part of reason; the other on the part of man whose acts are regulated by law. The cause on the part of reason is that it seems natural to human reason to advance gradually from the imperfect to the perfect. Hence, in speculative sciences, we see that the teaching of the early philosophers was imperfect, and that it was afterwards perfected by those who succeeded them. So also in practical matters: for those who first endeavored to discover something useful for the human community, not being able by themselves to take everything into consideration, set up certain institutions which were deficient in many ways; and these were changed by subsequent lawgivers who made institutions that might prove less frequently deficient in respect of the common weal.

On the part of man, whose acts are regulated by

law, the law can be rightly changed on account of the changed condition of man, to whom different things are expedient according to the difference of his condition. An example is proposed by Augustine (De Lib. Arb. i, 6): “If the people have a sense of moderation and responsibility, and are most careful guardians of the common weal, it is right to enact a law allowing such a people to choose their own magistrates for the government of the commonwealth. But if, as time goes on, the same people become so corrupt as to sell their votes, and entrust the government to scoundrels and criminals; then the right of appointing their public officials is rightly forfeit to such a people, and the choice devolves to a few good men.”

Reply to Objection 1. The natural law is a participation of the eternal law, as stated above (q. 91, a. 2), and therefore endures without change, owing to the unchangeableness and perfection of the Divine Reason, the Author of nature. But the reason of man is changeable and imperfect: wherefore his law is subject to change. Moreover the natural law contains certain universal precepts, which are everlasting: whereas human law contains certain particular precepts, according to various emergencies.

Reply to Objection 2. A measure should be as enduring as possible. But nothing can be absolutely unchangeable in things that are subject to change. And therefore human law cannot be altogether unchangeable.

Reply to Objection 3. In corporal things, right is predicated absolutely: and therefore, as far as itself is concerned, always remains right. But right is predicated of law with reference to the common weal, to which one and the same thing is not always adapted, as stated above: wherefore rectitude of this kind is subject to change.

Whether human law should always be changed, whenever something better occurs?

Ia IIae q. 97 a. 2

Objection 1. It would seem that human law should be changed, whenever something better occurs. Because human laws are devised by human reason, like other arts. But in the other arts, the tenets of former

times give place to others, if something better occurs. Therefore the same should apply to human laws.

Objection 2. Further, by taking note of the past we can provide for the future. Now unless human laws had

been changed when it was found possible to improve them, considerable inconvenience would have ensued; because the laws of old were crude in many points. Therefore it seems that laws should be changed, whenever anything better occurs to be enacted.

Objection 3. Further, human laws are enacted about single acts of man. But we cannot acquire perfect knowledge in singular matters, except by experience, which “requires time,” as stated in *Ethic.* ii. Therefore it seems that as time goes on it is possible for something better to occur for legislation.

On the contrary, It is stated in the *Decretals* (*Dist.* xii, 5): “It is absurd, and a detestable shame, that we should suffer those traditions to be changed which we have received from the fathers of old.”

I answer that, As stated above (a. 1), human law is rightly changed, in so far as such change is conducive to the common weal. But, to a certain extent, the mere change of law is of itself prejudicial to the common good: because custom avails much for the observance of laws, seeing that what is done contrary to general custom, even in slight matters, is looked upon as grave. Consequently, when a law is changed, the binding power of the law is diminished, in so far as cus-

tom is abolished. Wherefore human law should never be changed, unless, in some way or other, the common weal be compensated according to the extent of the harm done in this respect. Such compensation may arise either from some very great and every evident benefit conferred by the new enactment; or from the extreme urgency of the case, due to the fact that either the existing law is clearly unjust, or its observance extremely harmful. Wherefore the jurist says* that “in establishing new laws, there should be evidence of the benefit to be derived, before departing from a law which has long been considered just.”

Reply to Objection 1. Rules of art derive their force from reason alone: and therefore whenever something better occurs, the rule followed hitherto should be changed. But “laws derive very great force from custom,” as the Philosopher states (*Polit.* ii, 5): consequently they should not be quickly changed.

Reply to Objection 2. This argument proves that laws ought to be changed: not in view of any improvement, but for the sake of a great benefit or in a case of great urgency, as stated above. This answer applies also to the Third Objection.

Whether custom can obtain force of law?

Ia IIae q. 97 a. 3

Objection 1. It would seem that custom cannot obtain force of law, nor abolish a law. Because human law is derived from the natural law and from the Divine law, as stated above (q. 93, a. 3; q. 95, a. 2). But human custom cannot change either the law of nature or the Divine law. Therefore neither can it change human law.

Objection 2. Further, many evils cannot make one good. But he who first acted against the law, did evil. Therefore by multiplying such acts, nothing good is the result. Now a law is something good; since it is a rule of human acts. Therefore law is not abolished by custom, so that the mere custom should obtain force of law.

Objection 3. Further, the framing of laws belongs to those public men whose business it is to govern the community; wherefore private individuals cannot make laws. But custom grows by the acts of private individuals. Therefore custom cannot obtain force of law, so as to abolish the law.

On the contrary, Augustine says (*Ep. ad Casulan.* xxxvi): “The customs of God’s people and the institutions of our ancestors are to be considered as laws. And those who throw contempt on the customs of the Church ought to be punished as those who disobey the law of God.”

I answer that, All law proceeds from the reason and will of the lawgiver; the Divine and natural laws from the reasonable will of God; the human law from the will of man, regulated by reason. Now just as human reason and will, in practical matters, may be made mani-

fest by speech, so may they be made known by deeds: since seemingly a man chooses as good that which he carries into execution. But it is evident that by human speech, law can be both changed and expounded, in so far as it manifests the interior movement and thought of human reason. Wherefore by actions also, especially if they be repeated, so as to make a custom, law can be changed and expounded; and also something can be established which obtains force of law, in so far as by repeated external actions, the inward movement of the will, and concepts of reason are most effectually declared; for when a thing is done again and again, it seems to proceed from a deliberate judgment of reason. Accordingly, custom has the force of a law, abolishes law, and is the interpreter of law.

Reply to Objection 1. The natural and Divine laws proceed from the Divine will, as stated above. Wherefore they cannot be changed by a custom proceeding from the will of man, but only by Divine authority. Hence it is that no custom can prevail over the Divine or natural laws: for Isidore says (*Synon.* ii, 16): “Let custom yield to authority: evil customs should be eradicated by law and reason.”

Reply to Objection 2. As stated above (q. 96, a. 6), human laws fail in some cases: wherefore it is possible sometimes to act beside the law; namely, in a case where the law fails; yet the act will not be evil. And when such cases are multiplied, by reason of some change in man, then custom shows that the law is no

* *Pandect. Justin. lib. i, ff., tit. 4, De Constit. Princip.*

longer useful: just as it might be declared by the verbal promulgation of a law to the contrary. If, however, the same reason remains, for which the law was useful hitherto, then it is not the custom that prevails against the law, but the law that overcomes the custom: unless perhaps the sole reason for the law seeming useless, be that it is not “possible according to the custom of the country”[†], which has been stated to be one of the conditions of law. For it is not easy to set aside the custom of a whole people.

Reply to Objection 3. The people among whom a custom is introduced may be of two conditions. For if they are free, and able to make their own laws, the con-

sent of the whole people expressed by a custom counts far more in favor of a particular observance, that does the authority of the sovereign, who has not the power to frame laws, except as representing the people. Wherefore although each individual cannot make laws, yet the whole people can. If however the people have not the free power to make their own laws, or to abolish a law made by a higher authority; nevertheless with such a people a prevailing custom obtains force of law, in so far as it is tolerated by those to whom it belongs to make laws for that people: because by the very fact that they tolerate it they seem to approve of that which is introduced by custom.

Whether the rulers of the people can dispense from human laws?

Ia IIae q. 97 a. 4

Objection 1. It would seem that the rulers of the people cannot dispense from human laws. For the law is established for the “common weal,” as Isidore says (Etym. v, 21). But the common good should not be set aside for the private convenience of an individual: because, as the Philosopher says (Ethic. i, 2), “the good of the nation is more godlike than the good of one man.” Therefore it seems that a man should not be dispensed from acting in compliance with the general law.

Objection 2. Further, those who are placed over others are commanded as follows (Dt. 1:17): “You shall hear the little as well as the great; neither shall you respect any man’s person, because it is the judgment of God.” But to allow one man to do that which is equally forbidden to all, seems to be respect of persons. Therefore the rulers of a community cannot grant such dispensations, since this is against a precept of the Divine law.

Objection 3. Further, human law, in order to be just, should accord with the natural and Divine laws: else it would not “foster religion,” nor be “helpful to discipline,” which is requisite to the nature of law, as laid down by Isidore (Etym. v, 3). But no man can dispense from the Divine and natural laws. Neither, therefore, can he dispense from the human law.

On the contrary, The Apostle says (1 Cor. 9:17): “A dispensation is committed to me.”

I answer that, Dispensation, properly speaking, denotes a measuring out to individuals of some common goods: thus the head of a household is called a dispenser, because to each member of the household he distributes work and necessities of life in due weight and measure. Accordingly in every community a man is said to dispense, from the very fact that he directs how some general precept is to be fulfilled by each individual. Now it happens at times that a precept, which is conducive to the common weal as a general rule, is not good for a particular individual, or in some particular case, either because it would hinder some greater good, or because it would be the occasion of some evil,

as explained above (q. 96, a. 6). But it would be dangerous to leave this to the discretion of each individual, except perhaps by reason of an evident and sudden emergency, as stated above (q. 96, a. 6). Consequently he who is placed over a community is empowered to dispense in a human law that rests upon his authority, so that, when the law fails in its application to persons or circumstances, he may allow the precept of the law not to be observed. If however he grant this permission without any such reason, and of his mere will, he will be an unfaithful or an imprudent dispenser: unfaithful, if he has not the common good in view; imprudent, if he ignores the reasons for granting dispensations. Hence Our Lord says (Lk. 12:42): “Who, thinkest thou, is the faithful and wise dispenser [Douay: steward], whom his lord setteth over his family?”

Reply to Objection 1. When a person is dispensed from observing the general law, this should not be done to the prejudice of, but with the intention of benefiting, the common good.

Reply to Objection 2. It is not respect of persons if unequal measures are served out to those who are themselves unequal. Wherefore when the condition of any person requires that he should reasonably receive special treatment, it is not respect of persons if he be the object of special favor.

Reply to Objection 3. Natural law, so far as it contains general precepts, which never fail, does not allow of dispensations. In other precepts, however, which are as conclusions of the general precepts, man sometimes grants a dispensation: for instance, that a loan should not be paid back to the betrayer of his country, or something similar. But to the Divine law each man stands as a private person to the public law to which he is subject. Wherefore just as none can dispense from public human law, except the man from whom the law derives its authority, or his delegate; so, in the precepts of the Divine law, which are from God, none can dispense but God, or the man to whom He may give special power for that purpose.

[†] q. 95, a. 3