

Objection 1. It would seem that right is not fittingly divided into natural right and positive right. For that which is natural is unchangeable, and is the same for all. Now nothing of the kind is to be found in human affairs, since all the rules of human right fail in certain cases, nor do they obtain force everywhere. Therefore there is no such thing as natural right.

Objection 2. Further, a thing is called “positive” when it proceeds from the human will. But a thing is not just, simply because it proceeds from the human will, else a man’s will could not be unjust. Since then the “just” and the “right” are the same, it seems that there is no positive right.

Objection 3. Further, Divine right is not natural right, since it transcends human nature. In like manner, neither is it positive right, since it is based not on human, but on Divine authority. Therefore right is unfittingly divided into natural and positive.

On the contrary, The Philosopher says (Ethic. v, 7) that “political justice is partly natural and partly legal,” i.e. established by law.

I answer that, As stated above (a. 1) the “right” or the “just” is a work that is adjusted to another person according to some kind of equality. Now a thing can be adjusted to a man in two ways: first by its very nature, as when a man gives so much that he may receive equal value in return, and this is called “natural right.” In another way a thing is adjusted or commensurated to another person, by agreement, or by common consent, when, to wit, a man deems himself satisfied, if he receive so much. This can be done in two ways: first by private agreement, as that which is confirmed by an agreement between private individuals; secondly, by public agreement, as when the whole community agrees that something should be deemed as though it were adjusted and commensurated to another person, or when this is decreed by the prince who is placed over the peo-

ple, and acts in its stead, and this is called “positive right.”

Reply to Objection 1. That which is natural to one whose nature is unchangeable, must needs be such always and everywhere. But man’s nature is changeable, wherefore that which is natural to man may sometimes fail. Thus the restitution of a deposit to the depositor is in accordance with natural equality, and if human nature were always right, this would always have to be observed; but since it happens sometimes that man’s will is unrighteous there are cases in which a deposit should not be restored, lest a man of unrighteous will make evil use of the thing deposited: as when a madman or an enemy of the common weal demands the return of his weapons.

Reply to Objection 2. The human will can, by common agreement, make a thing to be just provided it be not, of itself, contrary to natural justice, and it is in such matters that positive right has its place. Hence the Philosopher says (Ethic. v, 7) that “in the case of the legal just, it does not matter in the first instance whether it takes one form or another, it only matters when once it is laid down.” If, however, a thing is, of itself, contrary to natural right, the human will cannot make it just, for instance by decreeing that it is lawful to steal or to commit adultery. Hence it is written (Is. 10:1): “Woe to them that make wicked laws.”

Reply to Objection 3. The Divine right is that which is promulgated by God. Such things are partly those that are naturally just, yet their justice is hidden to man, and partly are made just by God’s decree. Hence also Divine right may be divided in respect of these two things, even as human right is. For the Divine law commands certain things because they are good, and forbids others, because they are evil, while others are good because they are prescribed, and others evil because they are forbidden.