

Summa of a Scotus Summa.

The following translations from Jerome of Montefortino's selection and arrangement of Scotus' writings are meant to make more readily and readably accessible the philosophical theology of the Subtle and Marian Doctor. The selections follow the pattern of St. Thomas Aquinas' *Summa Theologica*. However, only the responses in the body of each article are translated here. Adding the objections and replies that are in Montefortino's original (again following the Thomistic pattern) would not only greatly extend the size of the translation but would also make the whole less accessible to interested readers. It would again put Scotus' positions back into the larger dialectical context whereas the desideratum here is to present those positions as simply and as straightforwardly as possible. One does, admittedly, in this way lose the completeness as well as some of the rigor and flavor of Scotus' own writing, but if one really wants Scotus as Scotus pure, one should not bother with Montefortino in the first place but go directly to the recently completed critical texts of Scotus' own writings. The present 'Summa of a Summa' (title borrowed, with appreciation, from Peter Kreeft) has a different purpose and a different utility.

Peter L P Simpson
November 2013

Contents of the Summa of a Scotus Summa

First Part of Part Two

QUESTION NINETY: THE ESSENCE OF LAW

- Article 1: Whether Law is something pertaining to Reason*
- Article 2: Whether the law is always something directed to the common good*
- Article 3: Whether the reason of any man is competent to make laws*
- Article 4: Whether promulgation is essential to a law*

QUESTION NINETY-ONE: THE VARIOUS KINDS OF LAW

- Article 1: Whether there is an Eternal Law*
- Article 2: Whether there is in us a Natural Law*
- Article 3: Whether there is a Human Law*
- Article 4: Whether there was any Need for a Divine Law*
- Article 5: Whether there is but one Divine Law*
- Article 6. Whether there is a law in the Tinder [Fomes] of Sin*

QUESTION NINETY-TWO: THE EFFECTS OF LAW

- Article 1: Whether an Effect of Law is to make Men Good*
- Article 2: Whether the Acts of Law are suitably Assigned*

QUESTION NINETY-THREE: THE ETERNAL LAW

QUESTION NINETY-FOUR: THE NATURAL LAW

- Article 1: Whether the Natural Law is a Habit*
- Article 2: Whether the Natural Law contains several Precepts or only One*
- Article 3: Whether all Acts of virtue are Prescribed by the Natural Law*
- Article 4: Whether the Natural Law is the Same for all Men*
- Article 5: Whether the Natural Law can be Changed*
- Article 6: Whether the Law of Nature can be Abolished from the Heart of Man*

QUESTION NINETY-FIVE: HUMAN LAW

QUESTION NINETY-SIX: THE POWER OF HUMAN LAW

- Article 1: Whether the Human Law should be framed for the Community rather than for the Individual*
- Article 2: Whether it belongs to the Human Law to repress all Vices*
- Article 3: Whether the Human Law prescribes the Acts of all the Virtues*

QUESTION NINETY-SEVEN: CHANGE IN LAW

- Article 1: Whether the Human Law should be Changed in any Way*
- Article 2: Whether the Human Law should always be Changed whenever something Better occurs*
- Article 3: Whether Custom can obtain the Force of Law*
- Article 4: Whether the Rulers of the People can dispense from Human Laws*

QUESTION ONE HUNDRED: THE MORAL PRECEPTS OF THE OLD LAW

- Article 1: Whether all the Precepts of the Old Law belong to the Law of Nature*
- Article 8: Whether the Principles of the Decalogue are Dispensable*

QUESTION NINETY: THE ESSENCE OF LAW

Article 1: Whether Law is something pertaining to Reason

Response, it is said here in the Sentences that law is something of reason: for the rule and measure of human acts is reason, since it is proper to reason itself to order things to the end, which is the first principle in things to be done. But in any genus whatever, what is the principle is equally the measure and rule of that genus, as unity in the case of numbers. Law therefore ought to pertain to reason. It seems to us, that law is rather an act of will, informed by prudence, on the presupposition of a practical pointing out by reason. Declaration: [Oxon. 4 d.15 a.2 n.6ff.; d.47 q.1 n.3ff.; 1 d.44 n.1ff.] law (lex) is derived from binding (ligando): he alone can restrict others through legitimate authority to obeying his just mandates who can give commands and prescriptions to those who are bound to obey to him; otherwise he would be passing laws in vain if he could not compel observance of them; it belongs to the same power and virtue, then, to pass laws and to give commands. But to command is an act of will, its object having been shown to it in advance, and not of reason, although reason shows practically what needs to have been done; nevertheless rational appetite is able, by its innate power of domination over itself, to follow reason's dictates or, by choosing other or opposed things, to condemn them, as was declared above (q.17 a.1); therefore the making of laws and the binding of subjects to them by legitimate authority will equally belong to the will. Next, [Oxon. 4 d.14 q.2 n.5] intellectual virtue says what is true or not true, whether it be practical or theoretical. But law bids to act, to work towards what it has prescribed, but does not incline one to making an announcement that one must thus act. Law therefore does not belong to the intellective virtue, but rather to the appetitive. (But see q.17 a.1.)

Article 2. Whether Law is always something directed to the Common Good

I answer that law is always ordered both to intend the end and to be concerned about the common good. Declaration: [Oxon. 4 d.15 q.2n.6] law ought to be sanctioned, established, and proceed from him who has prudence and authority in the republic. This is evident, because if prudence is absent, the law will be irrational and fatuous. If it does not possess authority, it does not bind anyone, and in this way the nature of law does not consist of right and prudent dictate. But by the fact of that authority, by which he can bind the republic to carrying out his laws, the legislator has an end other than that which is observed by whoever is subject to him. As, therefore, [Oxon. ib. d.14 q.2 n.7] he excels them all in authority, so ought the end by which he is moved, and to which he orders the members of the republic which he governs, to be more universal. That more universal end is nothing other than the common good of the republic and of its members, for whom he wishes well being and whom he commands to conduct themselves among themselves in ordered fashion. And to be sure that ought to be the end of the law and of the legislator; not his own good, unless the good of the legislator excels every good of the community, as is the divine good with respect to the divine laws passed for the sake of men; for of these the ultimate end is the glory of the Legislator himself. By establishing, therefore, for everyone laws marked with prudence and rectitude, he orders and directs, compels and urges them towards the common good intended by him, using general precepts to

command things to be done and forbid the contrary, though only because these latter oppose right reason and impede the common good.

Article 3. Whether the reason of any man is competent to make laws

I answer that, it must be said [Oxon. 4 d.15 q.2 n.6; d.46 q.1] that it cannot pertain to merely anyone to sanction some law. *Declaration:* from what was said in the preceding article, it is primarily and *per se* the job of the law to order towards the common good of the republic those whom it acts on, so much so that sometimes breaking particular laws, even just ones, may be held to be more just if the observance of those laws should appear to lead to the detriment of the common good. Therefore he who establishes laws ought to be informed with prudence and authority – with prudence, to be sure, so that he might establish what is to be carried out for achieving civil happiness by the community, or so that the community might partake in the common good, which results from the observance of the laws in the community, which community is, through aggregation, a certain unity. But this cannot be enough for the stabilizing of law if authority be lacking. For since ‘law’ [lex] is derived from ‘binding’ [ligando], not any opinion of even the most prudent man binds the community; nor does it in any way bind anyone at all if he does not preside over anyone as a prince to whom just power has been derived from the elders or was recently handed over by the community. Since, therefore, this public authority does not reside in just any person, neither will it thence belong to just anyone to pass laws and to oblige others to keep them.

Article 4. Whether promulgation is essential to a law

I answer that, it must be said that promulgation so enters into the idea of law that, unless this be understood, law has no power of binding others to its observance. *Declaration:* [Oxon. 4 d.3 q.4 n.4] it does not seem true, in the first place, that laws are instituted then when they are promulgated, but rather promulgation ought to presuppose the institution of the law. For a law is not promulgated unless it be first determined by the legislator, from whom it has its firmness and strength; but that determination is rightly said to be the institution of the law. When this is done, the law is to be revealed by the legislator to some person as to a solemn herald of the law, if it is through a person that it is to be intimated and promulgated to others. For if this sort of intimation and promulgation happen to be absent, no one is held to keep the commands of positive law, which is not something known interiorly in the heart. *Proof:* for the Savior says (John 15): “If I had not come and had spoken to them, they would not have sin.” From which saying I take this proposition: no one is held to any divine positive precept, which may not be known by nature, unless it be promulgated to him by someone suitable and authenticated. For someone cannot be understood to have been bound to the keeping a law by the mere institution of it unless it be proposed to him through an authentic herald, or by the true repute and testimony of good men, whose testimony anyone is rationally held to believe. Promulgation is therefore necessary to law, and has regard to its idea, to such an extent that, if this be taken away, it does not bind others, nor is anyone obligated to observing it, even if the institution and determination of a legislator will have preceded who is endowed with prudence and the necessary authority.

QUESTION NINETY-ONE: THE VARIOUS KINDS OF LAW

Article 1: Whether there is an Eternal Law

[N.B. For this article Jerome inserted passages from Alexander of Hales. For Scotus himself he refers back to Q.19 a.4, which reads as follows: [Oxon. 1 d.3 q.4, d.43; Quodlib. q.18; 12 Metaph. q.4] By the name of eternal law we understand the judgment of the divine intellect which, producing all things in intelligible being, gives to each thing thereby its proper and first intelligible being, and in these things all truths shine out, so much so that as the intellect goes through the terms it necessarily understands all the truths involved therein, whether speculative or practical. Therefore the divine intellect, seeing, from the nature of the terms, that the good is to be loved and that the highest good is to be highest loved, that lies are not to be told, that no one is to be afflicted with harm, and other things of the sort, judges them all together to be so; and it is on such immutable judgment that the eternal law stands firm and immovable in the divine intellect, from which law those terms have, initially and effectively in their intelligible being, the aforesaid connection among themselves, although formally they have it from themselves. But the created intellect, which is a certain spiritual light derived from the uncreated light of the divine intellect, sees, upon apprehending the terms, the connection between them, which they have received from the first truth, and by reason of its participated light naturally understands that good is to be loved and evil fled from; for this is what right reason dictates by its natural virtue, and then positive laws make right reason more explicit, and prescribe these and those things to be done but forbid other things. For the divine intellect is the measure of the whole of nature, and nature is a certain making explicit of the divine art. Since [Quodlib. q.18 n.3] therefore the goodness of the act of will depends on the right dictate of reason as on its intrinsic and proximate rule, it ought more to depend on the eternal law, of which the law of nature imprinted on all is a certain participation, and from whose immobility it happens that the law of nature thereby always and infallibly indicates what is to be done or not done.

Article 2. Whether there is in us a Natural Law

I answer that, in line with the premised authority of the Apostle, there is indeed a natural law altogether instilled in us. *Declaration*: [Oxon. 4 d.17 n.3; 3 d.37 n.5] for we call that natural law whose truth is known from the terms; and such is what a practical principle in the law of nature is, known from the terms as a principle in theoretical matters is, albeit far more principles occur and are found in the theoretical faculties than in the practical ones. Natural law therefore embraces the practical principles known from their terms, as that the good and honorable is to be loved, the evil and base to be fled from; and embraces in addition the conclusions necessarily and evidently deduced therefrom. For if the good is to be loved, the highest loved is to be loved with all one's might. Since God, therefore, is such a highest good, he is to be loved with all one's strength. Therefore the natural law includes the command of the will, or includes the practical reason as moved by the will, dictating what needs to have been done; and it is not only located in the judgment of reason, which judgment is a participation in uncreated light or in the eternal

law, but there is added moreover the command of the will establishing the law about things to be done. As therefore the natural law properly includes the idea of law, thus insofar as it is a participation in the eternal law the law of nature departs from the true idea of law, because it precedes the act of will. God, to be sure, [Oxon. *ib.* 1 d.43] by the simple intuition of his intellect attains, in the first moment, all possibilities and sees their terms and goes through the agreements of all of them, and the disagreements of all the terms of possibles, and judges them to be so; thence, further, laws and rules about things to be done are established when the approval of the will is added. Therefore the judgment of the divine intellect indicates to the will that the thing is so or is not so, which agreement or disagreement the terms carry, of themselves, formally on their face, and as established in their principles by the divine intellect; but the force of obligating they obtain from the divine will. Therefore, since the intellect is confronted with principles about things to be done that are known of themselves, or the conclusions inferred from them do, they have the force of natural law and properly bind rational nature. But the judgment of the intellect, as it is understood to be previous to the command of the will, has the force of indicating but not of binding.

Article 3. Whether there is a Human Law

I answer that, it must be said that there ought to have been and to be human laws.

Declaration: [Oxon. 3 d.37 n.5; 4 d.17 nn.3-5] although there be instilled in us a law that is natural and derived from the uncreated light of the divine mind, which is the eternal law; nevertheless through such a law we only know the first practical principles, as that the good is to be loved, the evil fled from, the honorable to be followed, the base to be held in hatred; along with the conclusions evidently and necessarily inferred from those principles. And strictly speaking there is nothing else to be said, as regards this natural law; however, by extension, sometimes that also is said to be of the law of nature which is a truth of practice consonant with the principles or conclusions of the law of nature. But as human nature has been vitiated by sin, and like a ship without a rudder is tossed about hither and thither by the storm of the passions, which proceed from the concupiscent and irascible affections and from reason thence clouded over and held down by the weight of corruptible flesh; those things which become known to him by the natural light cannot be enough for living rightly and for directing his acts in civil life towards conducting life peacefully and securely. Hence it is [Oxon. 4 d.15 q.2 n.7; 3 d.40 n.6] that men were able come together and agree among themselves to hand over to a very few in the community, or to one man, political authority over everyone in that community, by whom they might be ruled and ordered to the public good. For in those things which are not contrary to the law of God anyone can justly submit himself to one person, or to a community, to be better directed through him in those matters where he can be ordered better than he can order himself. Further, with the authority or power that has been handed over to that one man, or to several, of directing them who justly handed over to him such power (the dictate of prudence, whether in himself or in his counselors, preceding), he is empowered to set up laws, to bind his subjects to the observance of them, whereby the end of having handed over authority to him is attained. Therefore to the extent it is necessary, after the fall, for there to be political authority among men for preserving the peace and for living quietly and securely, to that extent it was altogether

necessary that human laws be and be passed as the public good and the times required.

Article 4. Whether there was any need for a Divine law

[Jerome places nothing here from Scotus for this article but refers to what he has collected under Ia q.1 a.1. from *Oxon. q.1 Prolog. and Report. ib. q.3*]

Article 5. Whether there is but one Divine law

I answer that it must be said that God gave law to the Israelite people through Moses and to all men through his Son united to our human nature; but these laws are distinguished as the perfect is distinguished from the imperfect, and as a disposition is distinguished from the form for which it is the preparation. For [Oxon. 4 d.1 q.3 n.8] a later law was always more perfect than an earlier, as is apparent about the law of nature and the Mosaic law. For God proceeds by acting in an orderly manner from the imperfect to the perfect: but the Gospel law is the most perfect of all the laws that God set up for men for life's state; it is indeed the last, according to that statement of *Matthew 26*: "Of the new and eternal testament;" and after it there will, without doubt, be nothing else. But in a true process from the imperfect to the perfect the later are more perfect. – Next, [Miscell. q.6 n.3] the Old Law is a disposition to the New Law and to Christ, as the Apostle says (Galat. 3): "The law was our school teacher in Christ." But although the disposition to a form and the form be from the same agent, they are not so in the same way; for sometimes the agent induces the disposition through another, but the form he impresses through himself; just as an architect disposes the material through an assistant and, when it has been got ready, attains the production of the form through himself. Thus God, when giving the Old Law, used the assistance of angels; the Gospel, however, he handed down through his Son, as the Apostle testifies (Hebrews 1): "Last of all, in these days he has spoken to us in his Son." Therefore [Oxon. 3 d.40 n.7] as the form excels in perfection with respect to the disposition for it, so the Gospel law is more excellent than the Mosaic law. For this purpose it was fitting for this most perfect law to be adorned with the most perfect aids to grace, which has in fact been done. For there have been instituted in it efficacious sacraments, and more and easier ones than in the Old Law. In addition it contains a doctrine more explicative and declarative of the truth. And, finally, to those who observe the Gospel law is explicitly promised eternal life; but in the Old Law only temporal goods were promised: but never, certainly, do temporal goods as much attract the soul to keeping the law as eternal goods do. The Gospel law is therefore simply more perfect than the Old Law; and they are for that reason distinguished from each other as the imperfect is different from the perfect, and as a disposition is something other than the form to which it is a disposition and an ordering.

Article 6. Whether there is a law in the Tinder [Fomes] of Sin

[Jerome has nothing from Scotus on this article and quotes from Alexander of Hales instead.]

QUESTION NINETY-TWO: THE EFFECTS OF LAW

Article 1: Whether an Effect of Law is to make Men Good

I answer that, it must be said that the effect of law is to make good as many as are subject to the law. *Declaration:* [Oxon. 4 d.15 q.2 n.6; 3 d.36 nn.21-23] a just law requires in the legislator prudence and authority. But the philosopher says (Ethics 6, last chapter on

prudence): “In prudence, being single, all the virtues will be present;” and indeed if prudence is perfect, not only in intension but also in extension, all the virtues will thus be present in it as being something single; but prudence is never as perfect in extension as it can be, unless it be perfect about everything to which it can extend itself: but that means everything pertaining to any of the moral virtues whatever. – But we do not thereby intend to assert that any legislator of human laws whatever must be endowed with this most perfect prudence; but only to show that prudence about things to be done cannot so subsist that from thence should follow the commands and laws that concern the public good (in line with what was said in q.90 a.2) unless there be present the necessary virtues, such that it is by his affection and instinct for them that the prince is led on to the passing of laws. But the character and inclination of the virtues is that others should in like manner become serious and adorned with the virtues; since therefore the law and the legislator have the same end, that end has the tendency, and concerns itself things of such sort, that it should make those decent and endowed with the virtues whom the legislator wishes to bind to his commands. – Next, [Oxon. 3 d.33 n.4] according to Aristotle (Pol. 1 ch.13): “It is necessary for the ruling prince to have virtue so that he may rule rightly, and to have a more principal virtue than, so that he may be rightly subject, exists in the slave.” If it is necessary, therefore, that the prince be equipped with the virtues, so that he might rightly exercise command, and be equipped with a stronger reason than the subordinate has for rightly obeying, then the whole study and intention of princes ought to be placed in this, that they direct those subject to them to obeying the laws, since in this consists the good of the republic and the civil happiness of individuals; but this is nothing else than to try to make those subject to the law decent through the exercise of the virtues; therefore the concern of the laws is to make men good. – All these things must be understood of just positive laws. For if [Oxon. 4 d.14 q.2 n.7] some laws are passed through abuse of authority, which therefore do not respect the common good or the public tranquility of the republic, but proceed rather to the particular advantage of the legislator, then those laws are to be held unjust and tyrannical and not to have been passed with prudence as their guide, and even less to have proceeded out of affection for virtue but only for the oppression of the subjects and for the damage of the city. By these laws, to be sure, subjects are not made obedient to the good, but rather, being accustomed to wrong and base actions, they would be made depraved in their morals. – But since those laws are just which are not contrary to the law of God, and through which the subjects can be better directed in their acts than through themselves and might thus participate in the public good, then, if it is characteristic of these laws to make men good, divine laws will in a far more excellent way and order and efficacy produce that very result. Certainly those who keep these laws [Oxon. 3 d. 40] and submit themselves to them in all things are made simply decent and just, which the positive laws of men cannot secure, however just and right they may be; nevertheless they do give a disposition to acquiring sincere justice, and do make citizens good according to the order prescribed by them. (But more about this in what follows.)

Article 2: Whether the Acts of Law are suitably Assigned

I answer that, [Oxon. 1 d.47 n.2] there are in general two acts of the human will, namely *to will* and *to will not*, and each of them is a positive act; and if they are about the same

object they are contrary acts; they are also expressed in other words, which are *to love* and *to hate*. Further, both to will and to will not can be efficacious or remiss. The first is when the will is not only pleased with the being of the thing willed, but also, if it could posit it in reality, would there and then do so. Thus also a willing-not is efficacious when he who wills that neither of these be not only impedes something but, provided he can effect it, completely destroys it. But a remiss or inefficacious will is when the thing willed pleases it but in such a way that the will does not at all posit the thing in reality, although it could do so. Willing-not is similarly remiss when, although the thing willed against is displeasing, the will does not however prevent its real existence, even if it absolutely could do so.

Therefore, the legislator, supported by prudence and authority and having the good of the republic in view and being busy about promoting this—which good is understood in particular to rely on and consist in tranquility and peace and the mutual concord of the citizens—efficaciously orders the things that are to be done, as he rules the citizens by his command, so that thereby the public advantage might be increased and promoted; and by his efficacious willing-not prohibits as things not to be done what he understands to cause disadvantage to the republic and what he sees to be causes of making the citizens indecent and worse. There thereby emerge, therefore, two principal acts of law, which are to command or to prescribe what those subject to the law are to do (and these are in particular the acts of the political virtues), and to prohibit or forbid what they are not to do.

But acts of permitting seem to have regard to the willing-not that is remiss. For [Oxon. 1 d.47 n.2] a willing-not is whereby the thing willed-not is displeasing but in such a way that its existence is not prohibited as it could be prohibited. Therefore, for us, permission proper is the remiss willing-not of some evil of which I am aware; for I am not truly said to permit that which I am wholly ignorant of, or that which is done by another such that it pleases me; but that properly I permit which I know to be badly done by another and which displeases me and which, if I do not prohibit, I permit, provided I have the ability to deter it. This therefore is what an act of the law is rightly said to permit. For since the laws are decrees of prudent and wise men, prudence sometimes dictates that certain things in human acts are to be permitted, and in fact ought to be permitted, for reasons known to the legislator, because of the fact especially that he judges the not punishing of acts of that sort to be more expedient for the republic, since greater evils would otherwise arise.

But counsel, or persuasion, or warning is the indication of a will that is not efficaciously but remissly willing an act; however [Oxon. 4 d.15 q.2 n.6] this act is not attributed to the law, because to give counsel to another does not only belong to a legislator who is advising through the law but also to a prudent man even if the passing of laws does not concern him. For law (*lex*) is derived from binding (*ligando*): but not any opinion whatever of a man endowed with prudence binds the community, nor does it bind anyone at all if he is in authority over no one. Therefore, although the act of advising can come from the law, yet because it can belong to someone other than a legislator it goes beyond law and is, for that reason, not counted among the acts of law.

But to call down punishments established by law on the delinquent is the job of law and of punitive justice; hence rightly is punishing counted among the acts of law. Further, punitive justice inflicts, for the sake of preserving the law, condign punishments on those

who sin against the law, whether those punished are reformed or not; for the proximate end of punishing [Oxon. 4 d.14 q.2 n.7] is the conservation of the law; and the ulterior end is that which is the end of the law. But the end of a just human law is not the legislator himself, or his good, but the common good; therefore law, and the conservation of law, is for the sake of that end; and that is why punishing or chastising the guilty according to the law is a just and right act, in so far as it is ordered to the end of the law and of the legislator.

Acts of distributing rewards [Oxon. 4 d.14 q.2 n.8] also seem to need to be attributed to the law, although Isidore does not explicitly mention them. However, if regulating guilt against the law through statutory punishments regards the punitive law, by greater right must an act of bestowing rewards also be said to pertain to the law, since that act is far more excellent than to avenge evil deeds through punishments. For acts of distributing rewards is proper to the legislator according to distributive justice and belongs to no one else, except by commission of the former.

But other acts [Oxon. 4 d.14 q.2 n.8] pertaining to commutative justice can belong to certain individuals; and a more excellent act, other things being equal, is proper to a more excellent person, such as to the legislator and the prince. For to give rewards has every extreme at a more noble level, namely the merit in view of which it is made, the reward which is conferred, and the deserving person on whom it is conferred, which excel the punishment, the guilt, and the guilty person on whom punishment is inflicted. Therefore, if we omit to enumerate counsel among the acts of law, it is proper to law to command, to forbid, to permit, to punish, and to reward. But if the prince be considered as author of law, and has power to judge independently of it, and has more respect to his own magnificence than to the law, then to reward is so his act that it is not an act of law.

QUESTION NINETY-THREE: THE ETERNAL LAW

[Jerome includes nothing here from Scotus, inserting instead selections from Alexander of Hales to fill the gap. What he could find from Scotus about the eternal law he had already collected under q.19 a.4 (translated above under q.91 a.1)]

QUESTION NINETY-FOUR: THE NATURAL LAW

Article One: Whether the Natural Law is a Habit

I answer that, on the supposition that the idea of law pertains to the will, so much so that it belongs to the will alone, reason having preceded, to pass laws and to bind subjects to their observance, then, with this supposed, I say it is manifest that a natural law, having the power of a law that restricts and binds, necessarily implies an act of the divine will, by which also nature is founded. But rules about doable things passed by the divine will are preceded by a judgment of the divine intellect, which intellect since, by its simple intuition of all possibilities, has given to them their first intelligible and possible being, so it has passed judgment on their agreement and disagreement with each other, whether in theoretical or practical matters, because all principles, whether practical or theoretical, are taken from the ultimate end; and, further, by such judgment of the divine intellect the eternal law stands and is constituted, as we said in q.19 a.4 [see above on q.90 a.1]. But

since [Oxon. 1 d.3 q.4 n.24; d.43] rational nature is a certain participation in the uncreated light, it too in its own way equally discerns in the terms it apprehends the immutable agreement and disagreement of the same—the act of the divine intellect, which judges that that is how they are and should be judged by everyone, giving them their perpetuity and immutability. The intellect of God, indeed, is the measure of the whole of nature [Quodlib. q.18 n.3ff.] so that nature cannot be in any other way than as it has received from the measure that gives it its first intelligible and possible existence; so the terms, being posited with such existence, are in either agreement or disagreement. In the way, therefore, that the judgment of the divine intellect, preceding the choice of the will, constitutes the eternal law as immutable and first measure of doable things (by which law judgment and discernment are made about the agreement and disagreement of all things, and judgment is made about what is required for the thing done to be said to be in agreement or disagreement with its own first measure); in that way the law, to the extent that it is understood to be derivative and to be instinct in the rational creature, can exactly indicate whether what happens is in agreement or disagreement with its nature, which is a participation in the uncreated light. But in such an indicating or showing there does not appear to be any force of binding; for it is a certain necessary and immutable illumination in whose light is, indeed, beheld some idea of the honorable and dishonorable through a comparison with itself as it inclines always to that which is better and is more consonant with its perfection, yet it cannot, in the process, see itself to be obliged to follow such an instinct. Rules were, therefore, necessarily added by which this same nature might be bound to following the dictates of its own nature. Therefore the natural law, or rather the law of nature, insofar as it is a certain judgment, in which the force of obligating does not shine forth, is not a habit but an act of reason judging that the agreement and disagreement of the terms with each other and with itself are as they are. But the natural law which has completely and perfectly the nature of a binding law includes, in addition, an act of will commanding that we should perform whatever is judged and dictated by right reason; and that is the bearing of the divine mandates about love of God and neighbor [Oxon. *Prolog.* q.2 n.7] even though not all of them are principles, or conclusions evidently derived from the principles: nevertheless the divine positive law handed down in Sacred Scripture seems to be a certain explication of the natural law which, according to the Apostle in *Romans* 2, “is written in our hearts.” And it is manifest that these obligatory explications and rules belong to an act of the divine will.

Article Two: Whether the Natural Law contains several Precepts or only One

I answer that the whole matter around which the natural law turns is rightly reduced to three heads. For [Oxon. 3 d.37 nn5-8; 4 d.17 n.3] first and most strictly there pertain to this law the first practical principles known, from the apprehension of the terms themselves, to everyone. For because by the instinct of nature all things desire the good and, next, by the reason of the good and agreeable that is apparent to the intellect, there is a perception and conviction that the good of acts is to be desired and loved and the evil and disagreeableness of them is to be fled from and rejected. Since again there is situate in everyone a notion of God, the first principle and the infinite good, the intellect, apprehending that fact right then and there, judges that God is to be loved the most of all

and before all things. Again, rational nature is inclined to the good and the perfect, and such is every honorable act, especially as it agrees with the natural inclination, which is towards that which is agreeable to it according to its affection for justice; therefore it sees and approves the fact that everything honorable is to be loved and pursued, that therefore the dishonorable and base is to be rejected, and thus that no one is to be inflicted with injury. For right reason sees that that will be displeasing to neighbors, so that it should displease the one who inflicts it. Wherefore, if in these known principles, which are love of God above all things and love of others as we desire ourselves to be loved, stands the universal law, then certainly the progression of law in the Scriptures seems to be nothing other than a certain explication, impressed in our hearts, of the law of nature. But not just any such explication is a first practical principle, or a conclusion deduced from it. Therefore the first rank of those things about which the natural law turns is held by those practical principles that are, from their terms, known to everyone. Succeeding next on these are the conclusions that are evidently and necessarily inferred from the first principles, and hence they hold the second rank. For just as [Quodlib. 18 n.14] the principles in theoretical matters are first truths, and the conclusions deduced from them are not first truths but the truth in them is derived from the principles, so too in practical matters the first good is derived to the first practical principles from the ultimate end, and from these the conclusions that thence necessarily follow receive their goodness; and in this way is established the second rank or order of natural precepts or of those things about which natural law turns. Finally follow third [Oxon. *Prolog.* q.2] those which are neither principles of doable things known by their terms, nor conclusions evidently and necessarily inferred therefrom, but are practical truths consonant with the principles and conclusions of the law of nature, so much so that they are at once known to everyone to be of the sort that agrees with such a law, albeit they do not necessarily follow from it. Of such a sort is marriage, [Oxon. 4 d.26 q.1 n.7] or the fact that it is most consonant with natural law for male and female to be bound by a mutual perpetual bond for the receiving of offspring, even though this cannot be concluded by a necessary deduction.. Again, the fact that theft is not to be committed, that another's wife is not to be played with, that lies should be not used, and other things of the sort which compose the second table of the divine law – all these are indeed consonant with natural law but proof shows that they belong to the third rank, about which there will be a more explicit discussion below (q.100 aa.1, 8).

Article Three: Whether all Acts of Virtue are prescribed by Natural Law

I answer that, [Oxon. 2 d.7 n.1; *Report. ib.* q.1 n.1] it must be confessed that vice is present in man against his rational nature. For Damascene says (Bk.2 ch.30): “For neither is vice anything other than the departure of good, in the way that gloom is the going away of light. And therefore, while we remain in the state that agrees with nature, we are in virtue, but when we turn away from the natural state, that is, away from virtue, we fall into that which is repugnant to nature and we are in vice.” But how this teaching of Damascene is to be understood was stated above (q.72 a.2). For one must not think that vice is opposed and is contrary to rational and intellectual nature considered in itself; on the contrary, since it is established that the vices proceed from the powers of the concupiscent and irascible part, and since nature is most of all delighted in what is

agreeable to it, the vices are proved to fall more in line with nature, and to incline heavily towards nature's own advantage, than to be contrary to it. Therefore the contrariety that is in them is this, [Oxon. *ib.* n.26] that vice is contrary to that act whose nature it is to be elicited in agreement with the inclination of rational nature. From which it follows that vice is contrary to nature only with a virtual contrariety, namely because it is opposed to its effect, which effect would be more according to nature; since, therefore, the natural inclination of rational nature is to act in line with the dictate of right reason, then, certainly, whoever sins is acting contrary to the natural inclination of rational nature. – Since, therefore, nature is more inclined to positing a perfect act than to positing an imperfect one, because it becomes better by the former and worse by the latter, any act of virtue whatever is more in agreement with it than is a vicious act. If, therefore, everything is said to belong to the law of nature that a man can do in line with his natural inclination, which inclination is towards what will perfect him more, namely put him in line with the dictates of right reason, then without doubt the acts of all the virtues can be said to concern the law of nature. – But if the law of nature is understood to consist most properly of the first practical principles, and of the conclusions evidently deduced from them, and also, lastly, of those things which are consonant with such principles and conclusions, then, because of the fact that this agreement with the principles of nature and with their conclusions cannot be discerned by all nature's forces, but only after diligent investigation or from a declaration, made by other laws either divine or human, of natural right, these things to be sure cannot belong to the law of nature. They are of course acts of virtue and virtuous, since they are posited in line with the prescription of law; but that they are to be performed is not evident to everyone according to the instinct of nature proper.

Article Four: Whether the Natural Law is the Same for all Men

I answer that, [Oxon. 4 d.17 n.3; 3 d.37 n.5] in line with what was said in the preceding articles, a true practice of natural right is one whose truth is known from the terms, and of such sort is the principle whose truth is at once evident to those who apprehend the terms, as that the good is to be loved and the evil fled from, and in addition the conclusions evidently deduced from the principles, as that if the good is to be loved then God is to be loved with all one's strength since he is infinitely good. – Further, [Oxon. 3 d.37 n.8] some things are said to regard and to belong to the law of nature in that they are most consonant with that law, albeit they are not necessary consequences of the practical principles that every intellect which conceives their terms knows from those terms. Speaking, therefore, of the law of nature as it embraces the first principles of things to be done and the conclusions thence necessarily deduced, that law must be altogether one and invariable and found always among everyone. For since our reason is a certain participation in uncreated light, whatever there is in the class of things theoretical or in the line of things practical (for all principles both theoretical and practical are taken from the ultimate end and from the first truth) that that light has judged to be so and to hold by the formal reason of the terms (to which it has given the first intelligible and practical being), an intellect participating in that light must thus necessarily judge and approve; therefore the connections of the first principles about things doable and the necessity of the conclusions derived from them are, for every intellect conceiving the terms, one and

the same among all who have been made partakers in reason, and that is why uncreated light has, for the measuring of themselves, been derived to them. – But as regards those things that are said to regard the law of nature insofar as they are consonant with the first principles of things to be done and with the conclusions contained in them, the account is different. For diverse [Oxon. 4 d.33 q.1] persuasions, and the customs derived therefrom, can exist among diverse nations: and these are even changeable according to diversity of times and other extrinsic causes which induce nations to follow or not to follow the more honest counsels. For although it be consonant with natural law taken in its most proper sense for man and woman to be bound by an indissoluble bond for taking up offspring and for duly educating them, nevertheless that is not so known in the same way to all nations that they cannot be persuaded of the contrary. Hence some approve of a multitude of wives as being something more consonant to the institutions of nature, the aim of which is a sufficient multiplication of the human race; but others think that it pertains to the public advantage to put away a sterile wife and to replace her with a fertile one. Similarly as regards the division of property and also about many other things that are only consonant with the law of nature known to all. About these things, therefore, it must be said that the law of nature is different in diverse nations, because different and thereby contrary persuasions can exist among them.

Article Five: Whether the Natural Law can be Changed

I answer that, the law of nature can be understood to change in two ways. For it may be subject to variation either through addition of precepts to the law of nature or it may be said to change through a reduction of the same. And in the first way indeed, without any inappropriateness, the law of nature is understood to have changed. For, since [Oxon. *Prolog.* q.2 n.7] it is the law of nature that God, as the ultimate end and the first of all principles, is to be loved above all things; and again, right reason dictates to everyone that his neighbor is to be loved as himself, for this is a conclusion evidently inferred from that principle: “Whatever you wish that men do to you, you do that also to them, and what you do not wish to be done to yourself, neither do that to another” (Matt. 7); “And on this two precepts hang the whole law and the prophets” (Matt. 12) – from all this, as from principles of practice, other rules of practice follow that are handed down in the Scriptures, being things honorable and consonant to reason, so much so that they shine out in everyone as an explication of the law of nature, which “is written in our hearts” (Rom. 2). For this reason many things are added in divine positive law to the law of nature for its fuller explication and for the usefulness of those to whom it has been given. To these also, beyond the divine positive right which is contained in Sacred Scripture, [Oxon. 4 d.17 n.4] the Church has set up many things, both for the clarifying of that right, and for a more honorable observance in morals, and for a greater reverence in receiving and dispensing the sacraments. And so the law of nature has in fact undergone change from the many things added to it; but by this change it has become far more perfect than it was before, as is clear.

But as regards change through the subtraction of precepts from it, one must say [Oxon. 3 d.37 n.5] that, to the extent the law of nature embraces practical principles known from their terms and the conclusions evidently following therefrom, then, taken in that way, it cannot change with this kind of variation. For suchlike principles and

conclusions are of an eternal and invariable truth, as are the principles of the first table, which thereby cannot be dispensed from and are altogether immutable. – But the account is different for those things to which, because they are consonant with the first principles and with the conclusions of them (although they are not necessarily deduced therefrom), the law of nature is extended; for these have no such invariable and immutable interconnection that any change should be repugnant to them; nay rather, because most precepts of the second table are of this sort, that is why the Legislator can dispense from them; and that there has been dispensation in certain cases will be explained below (q.100 a.8).

Further [Oxon. 4 d.15 q.2 n.3ff.; 3 d.37 n.8] there can be derogation from the natural law also by positive human right, in that, with respect to something right reason used once to declare should be done, there can, when notice is taken of a variation in circumstances, be a different disposition made about that declaration of right reason. And so the light of nature, in its primeval institution, used to declare that all things should be common among men, and that no one should make anything his own property to the exclusion of others; nevertheless, when nature fell from its innocence, there was introduced through human law, for the preservation of the peace, a division of things and of possessions. *Declaration of the first point*: for the use of things ought, according to right reason, so to belong to men that it is in harmony with their peaceful conversation with each other and with the necessary sustenance of each. But in the state of innocence the common use of things without distinction of dominion was more congruently conducive to each of these results. For then no one had taken what was necessary for another, nor had it become requisite to wrest it from him by violence, but anyone at all could have immediately taken, for his necessary use, whatever necessary thing he had first come across. In this way there would also have been more sufficiency for the sustenance of life than if any thing had been excluded from someone's use because of the appropriation made of it by another.

But [Oxon. 4 d.15 q.2 n.5] when nature had, through sin, turned to the worse, and when concupiscence had become strong, the natural precept about having all things in common was revoked for reasons of usefulness, and a division of things was introduced and a diversity of dominions. For, in such a state, a community of all things would be contrary to peaceful conversation, since the evil and greedy would occupy things beyond what was necessary for them, and doing so by bringing violence against others who might want to use, for their necessities, all the same things along with them. Also this would lead to the loss of necessary sustenance because the stronger and more audacious would deprive the weak and powerless of that which was necessary for life. Since, therefore, this division of things was introduced among men by no divine law (from d.8 ch.1, where Augustine *Tract. 6 in Ioan.* is adduced), nor by natural right (for it does not appear by what reason nature should determine opposite things, and nature, as soon as it was instituted, determined that all things should be common to all); therefore the division of things and distinct dominions were made by positive human right; [Oxon. *ib.* n.3] and that is what Augustine means (*loc. cit.*) when he says: "By what right do you defend the villas of the Church? By divine or human right? Whence is it that anyone possesses what he possesses? Surely by human will? For by divine right the earth is the Lord's and the fullness thereof. Therefore it is by human right that it is said: this house is mine, this villa is mine, this servant is mine." By a positive law of some sort, then, was the first division

of dominions made, whether that was a paternal law with respect to sons, or a public one, or a political one of the community or the prince, to whose rule others willingly subjected themselves, so that in him the just authority of ruling might reside.

Article Six: Whether the Law of Nature can be Banished from the Heart of Man

I answer [Oxon. 3 d.37 nn.5, 8] treating as given what was said in the preceding articles, namely that the law of nature can be taken in a most strict sense, which is the sense in which it includes the first practical principles and the conclusions necessarily deduced from them; and in a sense in which those things are said to be of the law of nature which are very consonant with that law, albeit they do not follow necessarily from the practical principles (which are known through their terms and are necessarily known by every intellect that apprehends them), and in this sense all the precepts of the second table are of the law of nature, because their rightness is very much consonant with the practical principles known of themselves. – Accordingly, if the discussion is about the law of nature taken in its first sense, then it is written in our hearts so that it is altogether indelible. For [Oxon. 3 d.27] it cannot happen that, with the judgment of the divine intellect in place judging the terms to agree formally of themselves, a created intellect should, when apprehending the like complexes of terms, not judge them in exactly the same way. *An example:* God judges that *the highest goodness is to be highest loved*; but because a created mind is a participation in uncreated light, when it apprehends that complex of terms, it necessarily offers its assent to it; and the same goes for all practical principles of that sort and with the conclusions thence deduced by necessary inference. And indeed, [Oxon. 3 d.36 n.13] no wayfarer is incorrigible; therefore none can altogether err about the first practical principles. For if someone is in error about the principles of things to be done, he has nothing else left in him by which he could be recalled to the good. For however persuasion is presented to him he will just deny the assumptions, because nothing can be assumed that is more known than the first principle of things to be done. – But, speaking of the law of nature in its secondary understanding, then that it can be destroyed from our hearts is not only evident from what was said in the preceding article, but is also established from this, [Oxon. 4 d.33 q.1] that depraved customs and morals can be acquired and introduced instead, whereby a contrary law is made, and in place of the rectitude of natural law, which is consonant with the rectitude of the first principles and of the conclusions thence deduced, another law and custom is approved – as is evident in the case of polygamy among the nations who do not know God and about other such things.

QUESTION NINETY-FIVE: HUMAN LAW

[Jerome finds nothing for question 95, either from Scotus or from Hales, save what he has already collected for Scotus in q.90 aa.2 & 3 and q.91 a.3 above.]

QUESTION NINETY-SIX: THE POWER OF HUMAN LAW

Article One: Whether the Human Law should be framed for the Community rather than for the Individual

I answer that, [Oxon. 1 d.44] from the fact that it is the concern of the law to consider the common good of the republic, and to direct and obligate to it those subject to the legislator, as was expounded in q.90 a.2, from this it necessarily follows that the laws must be laid down in common. For about particular cases and persons there are not laws but judgments according to law, for these are inferred from those, as that this murderer is to be punished with death, because a justly passed law forbids the committing of murder and a punishment has been enacted against those who have emerged as violators of the law.

Article Two: Whether it belongs to the Human Law to repress all Vices

I answer that, from what was said above in q.92 a.2, it does not pertain to human law to restrain all vices, but [Oxon. 4 d.33 q.3 n.7] must rather allow very many things to go unavenged and to leave them to be avenged through the eternal law, as Augustine says (*De Lib. Arb. ch.6*). But this is a general truth, since there is no way of being sure about offenses that is complete and preserves the order of justice; and it would be a greater evil for those to be subjected to certain punishments about whose guilt there is no sure knowledge. For of two evils the lesser is to be chosen. For it is enough for the legislator not to command evil, and not directly to approve of it; otherwise his law would be unjust because contrary to the most right ordering of the divine law. But if he permits, because he does not punish, this pertains to his prudence, especially since he knows that evils are at some time to be completely punished justly. (But see the continuation in the following article.)

Article Three: Whether the Human Law prescribes the Acts of all the Virtues

I answer that, because it is the concern of the law to make decent the men subject thereto, it can rightly seem that it should also be its concern to order all the acts of everyone altogether which proceed from the virtues, since it is proper to virtue to perfect the one who has it and to make his work good. And to all the virtues altogether belongs the same office, and the same idea belongs to them all and agrees with them all. However, it was expounded above (q.92 a.1) how the virtues are *per se* referred to human law and to its author, namely, that these directly order only the acts of those virtues which serve to keep the public tranquility, peace, and justice; for it is in the exercise of these sorts of virtues that the public good of the republic stands, namely if to each is given his right, and it is not permitted to inflict violence with impunity on another, and if the neighbor is not harmed in anything and justice is kept in selling and exchanging things and, lastly, if each carries out the office incumbent on him. But if it happens that, in the process, a decent citizen also exercises other virtues for the sake of these political virtues, this can only indirectly and accidentally pertain to human law. For it is proper to divine law alone perfectly to order man to God, his neighbor, and to himself. (But see the above cited article.)

QUESTION NINETY-SEVEN: CHANGE IN LAW

Article 1: Whether the Human Law should be Changed in any Way

I answer that, [Oxon. 4 d.25 q.2 n.6] it is not to be doubted but that human law can sometimes justly be changed; and not only by addition of new laws, that make clear and even perfect laws already passed, so that the observance of later laws might proceed to the greater utility of the republic than the ones sanctioned earlier, as was said above about the natural law (q.94 a.5), which law becomes more explicit and more perfect through the addition of divine positive right; but also can it be changed through the lessening of it, whether as regards a part or as regards the whole. *Declaration:* [Oxon. 4 d.15 q.2 n.6] the positive law necessarily demands in the legislator, by whom it is sanctioned and passed, prudence and authority. Prudence, indeed, so that he might, by the dictate of right reason, establish in the community whatever he has judged will be to its profit and proceed to its advantage, for which end the passing of laws is ordered. But authority for this reason, that he might be able to oblige to observance of the law those with respect to whom he has sanctioned the law. For if authority is lacking, laws established even by much prudence do not oblige nor do they bind anyone to obeying those sorts of command.

On these suppositions, [Oxon. 4 d.33 q.3] it can happen that what right reason has judged conduced to the public utility and to the tranquility of the republic might be found, through the process of time, to be useless and pernicious; not because the prior law was not just and right, but by the fact that the morals of men, to the direction of which it was applied, have changed, and other morals have been gradually introduced in their place, to which, thereby, another and even a contrary law agrees; then, therefore, through the legislator, with prudence preceding, a law of such a sort is to be established, the prior law having been corrected or abrogated, as is agreeable to the new morals. And for this Augustine gives an example (*loc. cit.*): “If the people,” he says, “is well moderated and grave and a most careful guardian of the common utility, and if everyone among this people gives less weight to his private affairs than to public ones, surely is not then such a law rightly passed that allows this people to create its own magistrates, by whom its own affairs, that is the public affairs, might be administered? Rightly passed indeed. Further, if the same people, having been little by little depraved, prefers its private affairs to the republic, and should put elections up for sale, and, having been corrupted by those who love honors, should commit the regime itself to the criminal and wicked, surely would not a good man who had much ability, if he should then appear, rightly again take from this people the power of giving honors and reduce it to the decision of a few good men or even of one good man?” Thus Augustine. As often, therefore, as the observance of laws proceeds to the damage of the republic [Oxon. 4 d.45 q.1 n.11], which laws were to serve its happiness and were even approved as sanctioned for promoting it, then they are by right reason to be abrogated altogether or to be corrected in part. For it is just not to keep laws justly passed when they oppose the end for whose sake they were sanctioned; but that end is the public justice of the republic or community.

*Article 2: Whether the Human Law should always be Changed whenever something
Better occurs*

I answer that, human law is not to be changed as often as something better occurs, but only when from such a change the public happiness is simply better. *Declaration:* [Oxon. 4 d.14 q.2 n.7ff.] the end of human law is not the legislator himself who passes the law, nor his good, but the common good; and that is why law and its observance therefore exist. For, in order for the law to continue in place, punishments are appointed and instituted by the law against violators of it, and the proposed rewards are to be distributed to those who keep the law. But those who have become accustomed to the dictates of the law that has been passed have, from their acts elicited in accordance with the law, necessarily acquired a habit of thereby performing with delight or with ease and more promptly the same acts which they have the habit of. But as for things proposed to them in a new law, because they have not been exercised in what has been recently commanded, they are, by this very fact, sluggish in keeping them, because of the difficulty of acting against an acquired habit. It cannot be that these things come about and be done without damage to public peace and tranquility, and although from the passing of the new law certain particular advantages might follow in the future, nevertheless what has been recognized and ordered by ancestors is not, for that reason, to be revoked and something else introduced. – Nevertheless [Oxon. 4 d.46 q.1 n.11] because it belongs to law to consider the public advantage and the common happiness, and that is why it has regard to the particular claims of right of the citizens and members of the republic, when keeping the law as it affects and pertains to particular rights might lead to the loss of the public right or the well being of the republic, not keeping such a law but rather, by its abrogation, doing the opposite and introducing an opposite one would be better, as Augustine, cited in the preceding article, says. – Further, [Oxon. 4 d.33 q.3 n.7] sometimes the stubbornness of subordinates is the cause that a passed law should be abrogated and another proposed for them to keep, even though in other respects not abrogating it would, were they tractable and teachable, be to their advantage. Therefore when a prince sees his subordinates prone to that whose opposite it would be more decent and useful to keep, although he could persist in his opinion and, should his subordinates be found more ready for obedience, altogether prefer that what is better be kept, nevertheless he can justly relax the old law and abrogate it and introduce in its place another one more in agreement with their inclination, lest, if he were to persist in his opinion of keeping the passed law, they should more often commit wrong.

Article 3: Whether Custom can obtain the Force of Law

I answer that, it must be said that custom can obtain the force of law. For, [Oxon. 4 d.25 q.2 n.6] as Gratian says (d.4 ch.3), as the laws are approved and confirmed by the morals of those who use them so are they abrogated by the morals of those who act in contrary fashion and establish a contrary law. But that is most of all true when the morals contrary to the new law rely on reason. Hence it is, Gratian says, that when Pope Thelesphorus

decreed that clerics should generally fast from meat and delicacies from Quinquagesima Sunday, he who, because this was not approved by the morals of the users, acted otherwise is not proved by this fact to have been guilty of transgression. And in d.4 ch.1 he brings forward very many examples to show the same. He also rightly excepts natural and divine law from this rule, saying that contrary customs do not prevail against these rights. This is to be understood in line with what was said in q.94 a.5. For no custom can obtain the force of law which is proved to be contrary to natural and divine right. For a law of this sort is, by that very fact, necessarily unjust.

Article 4: Whether the Rulers of the People can dispense from Human Laws

I answer that it must be said that the directors of the multitude can dispense in human laws if the laws have received from them the force of binding those subject to the law or if they might, at any rate, have received from them the power of doing that. For since [Oxon. 4 d.3 q.2 n.9] no inferior can revoke the law of a superior, neither simply nor for a certain time, manifestly the power of dispensing from human law resides in him who could give to the law its binding force, or in someone who has his permission. – Further [Oxon. 4 d.33 q.1 n.4] dispensation is *a declaration of right or a revocation of right*. And indeed that he who establishes a law can thus dispense from it again so that it should remain abrogated was said in articles 1 and 2 above. But he can more easily, or as much as he has power to declare law as it applies to certain cases or persons, refuse to bind others to its observance, for certain and rational causes. For if he should do that irrationally through imprudence he would abuse his power and, by exempting these and those from keeping the law, he would harm the republic, nor would he benefit those whom he declared exempt. – Therefore, on the basis of a dictate of right reason, the directors of the community can dispense from human laws, that is, declare that in such and such circumstances these and those are not liable to the keeping of the law. And as God dispensed the patriarchs from the law of monogamy, giving them power to take several women to wife (so that the human race might be multiplied for divine worship, which was a greater good than would have happened from the law of monogamy), so the directors of the community, in order not to seem to have received power for destruction rather than for edification, should, when dispensing from laws, have before their eyes both the common good, for whose sake the laws passed have been approved, and the good and right peculiar to the individuals of the community, of whom the community is made up. Otherwise, without a rational cause for dispensation, they would, as was said, abuse their power through imprudence, and would, by the relaxing of the laws, do very much damage to the republic, the care of which they bear.

QUESTION ONE HUNDRED: THE MORAL PRECEPTS OF THE OLD LAW

Article 1: Whether all the Precepts of the Old Law belong to the Law of Nature

I answer that, [Oxon. 3 d.37 n.5] granted what was expounded above (q.94 a.2) about the notion of the law of nature, namely how by the term law of nature are first properly and strictly meant the first practical principles, as *the good is to be loved but evil is to be fled from*; how the second rank is held by the conclusions which are evidently deduced from

such first principles, as that *therefore God is to be loved, pride is to be detested*, by the fact that it is evil; and finally how, third, by extending the signification of the name, all those things can be said to be of the law of nature which, though not being first principles nor necessary conclusions of those principles, are nevertheless very consonant with them; then such indeed is what the moral precepts contained in the second table are proved to be. – But that these precepts are not all of the law of nature as known from their terms is established by the fact that the reasons for what is there prescribed or prohibited are not simply necessary practical principles nor simply necessary conclusions. For there is not in those there prescribed a goodness necessary for the goodness of the ultimate end, turning one towards the ultimate end; nor is there in those there prohibited a malice necessarily turning from the ultimate end. So if that good had not been prescribed the ultimate end could still be loved and attained; and if that evil had not been prohibited the acquisition of the ultimate end could stand with it. For several of the things [Oxon. 3 d.37 n.3ff.] which are forbidden as illicit would be licit if they were prescribed or permitted by the legislator, as theft, murder, adultery, and other things of that kind (whether they be said to be licit through change of matter or circumstances, or through dispensation from the law or by interpretation of the same); these indeed do not of their nature involve a malice necessarily turning away from the ultimate end, as neither do their opposites have a good necessarily turning towards the same. But certain things that regard the second table are of themselves depraved, and hence they belong *per se* to the law of nature taken strictly, as are *do not bear false witness* and *do not lie*; and so they do not admit of any dispensation. But several of these precepts do not include in themselves necessary connection and truth such that, antecedent to any act of the divine will, everyone apprehending their terms would know that thus they must be and so cannot be otherwise, and that therefore they must be placed among the practical principles, or among their necessary conclusions, and that thereby all the moral precepts belong altogether to the law of nature. Nevertheless [Oxon. ib. n.8] all the precepts even of the second table may rightly be said to belong to the law of nature insofar as they are very consonant to the law of nature taken most strictly and most properly. – As concerns the precepts of the first table, [Oxon. ib. n.6ff.] which are, first: *I am the Lord thy God, thou shalt not have foreign gods before me*; second: *thou shalt not take the name of the Lord thy God in vain*; third: *remember that thou keep holy the sabbath day*; about these one must speak differently. For since they immediately refer to God as their object, the two first of them, if they be understood as merely negative, are most strictly of the law of nature. For it is evident to anyone who apprehends the terms that nothing other than God is to be worshipped as God, that no injury or irreverence is to be directed against him. The third precept is affirmative, *thou shalt keep holy the sabbath day*. For there it is commanded that worship is to be given to God at some determinate time. As far, then, as the determination of this or that time is concerned, the command is not, strictly speaking, of the law of nature. Neither, similarly, is it as regards the prohibition, included in that affirmation, of servile acts for a determinate time. For those acts are not forbidden except insofar as they impede or draw one away from the act there prescribed. But whether this precept about the sabbath is strictly of the law of nature as regards worship needing to be given to God for some determinate time, that is doubtful. [Cf. q.100 a.8]

Article 8: Whether the Principles of the Decalogue are Dispensable

I answer that, those who think that all the precepts of the Decalogue belong to the law of nature in the strict sense (according to what was expounded in a.1) infer thence that they are totally unable to be dispensed from. For from the fact that [Oxon. *ib.* n.2] the things prescribed include the formal goodness that turns per se to the ultimate end, and that, again, the things prohibited import the malice that turns away from the same end, the former are prescribed because they are good but the latter prohibited because they are in themselves evil. For all precepts of that sort either immediately or mediately descend from the first practical principles known by the light of reason, to assenting to which the intellect is naturally inclined, and to assenting to such a dictate the will is naturally inclined; they are therefore totally unable to be dispensed from. For what is of itself illicit cannot through any will turn out as licit; and consequently since it is, by the nature of the terms, evil to kill one's neighbor, then, as long as the same cause or matter, on which the act operates, remains, the act will always be evil; and thus, no willing, because it is outside the logic of those terms, can bring it about that the act be good. And then the authorities, which seem to say that God has dispensed in such cases in this way, are expounded thus, that although there could be a dispensation as regards the act in its genus as act, there could not be as regards the act itself insofar as it is prohibited, and so not as against the prohibition.

But we do not think this opinion is to be approved. For [Oxon. *ib.* n.3] to dispense is not to make it to be that the precept may be flouted while it remains in effect; but to dispense is to revoke the precept, or to explicate how it is to be understood. For there is a twofold dispensation, namely revoking of the right and explicating the right. – This supposition in hand, I inquire whether, when the circumstances of that act which is the killing of a man stay the same, only the circumstance of its being prohibited or not prohibited being changed, God could make it that that act, which was, with these circumstances, prohibited, not be prohibited but rather permitted. If the answer be yes, then God can simply dispense by revoking the right, making it thereby the case that, the act remaining the same, one is not bound to it as heretofore. This is also the way any legislator simply dispenses, when he revokes a precept of the positive law he himself has set up, and not by making it the case that, though the precept remains as such, it loses its nature as illicit and becomes licit. God also in this way simply dispensed from the Old Law as regards its ceremonies, when he laid down the New Law. – But if God cannot make it the case that an act, which with such circumstances was prohibited, should turn out as licit while the same circumstances remain, then neither could he make it that to kill a man should not be prohibited, the opposite of which is manifestly clear in the case of Abraham, whom God commanded to kill his son. – Next, [Oxon. *ib.* n.4] things that are true from the terms, whether they be first principles or conclusions necessarily deduced therefrom, precede, in their truth, every act of will; for they have a truth where every willing is delimited as 'per impossible'. If therefore all the precepts of the Decalogue are endued with the like necessary connection, such that these are necessary: *one's neighbor is not to be killed, theft is not to be committed*, and consequently, all willing having been

removed, they would be thus known to every intellect apprehending the terms of their composition, the divine intellect would, on apprehending them, understand them as true of themselves, and then the divine will would of necessity accord with such propositions, or it would not be right; and thus the idea of practical science in God would receive addition, which is false. Moreover, God's will would simply be necessarily determined with respect to certain objects of will outside itself, which was the error of the philosophers.

It must be said, therefore, that most precepts of the Decalogue, or in particular those belonging to the second table, are dispensable simply. For since [Oxon. *ib.* n.5] there does not shine out in them, when a view is had of the formal nature of such precepts, a goodness necessary for attaining the ultimate end, nor, conversely, does there appear in the things forbidden any malice necessarily turning one away from the ultimate end, therefore they are to be adjudged evil because prohibited, and good because commanded, by God. As, therefore, he has prescribed that theft is not to be committed, nor adultery, nor murder, he could have prescribed or could prescribe the opposite; and in that case, though remaining the same with the same circumstances, the act would be licit which was otherwise prohibited and, because of that prohibition, disordered. But dispensation does not make it that the prohibition stands along with the goodness of the act; for that, taken in the composite sense, is impossible as regards any legislator at all; but dispensation takes away the prohibition, or revokes the positive right, and by that fact what was, while the law stood, illicit and disordered can be performed simply licitly. – As regards the precepts of the first table, one must speak differently. For [Oxon. *ib.* n.6] they immediately regard God as object. And indeed the two prior, namely *thou shalt not have foreign Gods* and *thou shalt not take the name of thy God in vain* (that is, thou shalt not do thy God irreverence), if they be understood as only negative, belong strictly to the law of nature. For the consequence is necessary: if God is, he is to be loved as God and nothing else is to be worshipped as God; nor are injury and irreverence to be done against God; and hence God cannot so dispense from these that it be licit to perform the opposite. – The third precept [Oxon. *ib.* n.6], which is about *keeping the sabbath holy*, is affirmative; for the prescription is that some worship is to be presented to God at a determinate time; as regards the determination of time it does not strictly belong to the law of nature, because it is not a practical principle known of itself nor a conclusion inferred therefrom. Nor again can it, as regards the negative part involved in the precept, in that servile work is forbidden on the sabbath day, belong to the law of nature. For that act is prohibited in that it draws away from or impedes the presenting of worship to God at that period of time which falls under the precept of worship; but whether this precept about presenting worship to God on set days belongs to the law of nature is dubious.

And to be sure [Oxon. 3 d.37 n.7] if it be said not to belong to the law of nature as regards the first or second rank, therefore God can simply dispense from it such that a man be held at no time of his life to have a good movement towards God nor to repay him any act of love as necessary for salvation; but this seems incredible and thoroughly impossible of proof, because without any good willing of the ultimate end no one can have a good willing of what is for the end. Just as, therefore, [Oxon. 3 d.27 n.18] a man is held to do some virtuous act, so he is held to do some act of that precept (Deuteron. 6 and Matthew 22), *thou shalt love the Lord thy God*, which act is free love of God. And to be sure, [Oxon. *ib.* q.1 n.3] if the acts of the moral virtues are necessary for anyone for

salvation, much more will the acts of the theological virtues, through which the acts of the moral virtues are ordered to the end, be necessary. And certainly a man in possession of his reason, keeping the moral precepts of the second table, would do nothing for salvation unless, at least virtually, he were to exercise himself, in these acts of virtues, for the sake of the ultimate end. – Next, it cannot happen [Oxon. 3 d.37 n.7] that, in the whole of one's lifetime, an opportunity for doing an act of love toward God should not occur. Just as, on the opposite side, observance of the precept about honoring one's parents can perdure though no such act be done, because the precept does not bind to an act except at the time when opportunity occurs, and it is possible that this opportunity be absent for the whole of one's lifetime. But nothing can impede and forever exclude an opportunity of adoring and worshipping God; and for that reason every adult is held to sometime eliciting an act of this affirmative precept. This inference therefore seems necessary: *God is not to be held in hatred, or injury is not to be purposed against God;* therefore he is at some time to be loved. And just as the antecedent belongs to the right of nature in the strictest sense, so also does the inferred conclusion.

But that the consequence does not pertain to the law of nature most strictly taken seems to be proved [Oxon. 3 d.37 n.7] from the fact that to the right of nature strictly taken does not belong that a man should now or today elicit an act of love toward God; it is indeed not a practical principle known of itself, nor a conclusion evidently deduced from the principle. Since the determination here is diverse and different in diverse laws, as was said, and it has been conceded that it does not regard the law of nature, therefore neither is it a thing naturally known that God is to be worshipped tomorrow or at any determinate time; for by the reason by which it follows not that worship is to be shown God now, by equal reason it follows not that it be shown then, or at any determinate time; therefore it does not seem possible to conclude when someone may be held to show worship to God, either then or now or, by equal reason, at any time generally; because to no act is anyone held for any indeterminate time to which he is not held for some definite time when certain opportunities arise. But to those who hold the affirmative side the solution to this argument is easy; for they would say that when it is argued from singulars to a universal the fallacy of figure of speech is committed, as in the case of inferring from several other determinate things to one indeterminate thing. For from the fact that this food is not necessary for sustaining life, nor that, nor another, it does not follow that no food at all will be necessary.

The sum is this [Oxon. 3 d.37 n.7], if it be held that worship's at some time needing to be given to God regards the law of nature properly taken, then the precept *thou shalt keep holy the sabbath day*, since it imports this worship and love of God, will be wholly indispensable, as was said of the other two precepts of the first table; but if it be put outside that law, then one must judge of it in the way that was said of most of the precepts of the second table.