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Thomas Gilby O.P.

Excerpt

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## SUMMA THEOLOGIAE, 2a2ae. 57, 1

CONSEQUENTER POST PRUDENTIAM considerandum est de justitia; circa quam quadruplex consideratio occurrit: prima est de justitia; secunda de partibus ejus; tertia de dono ad hoc pertinente; quarta de præceptis ad justitiam pertinentibus.

Circa justitiam vero consideranda sunt quatuor:

- primo, quidem de jure;
- secundo, de ipsa justitia;
- tertio, de injustitia;
- quarto, de iudicio.

## Quæstio 57. de jure

Circa primum quæruntur quatuor:

1. utrum jus sit objectum justitiæ;
2. utrum jus convenienter dividatur in jus naturale et positivum;
3. utrum jus gentium sit idem quod jus naturale;
4. utrum jus dominativum et paternum debeant specialiter distingui.

*articulus 1. utrum jus sit objectum justitiæ*

AD PRIMUM sic proceditur:<sup>1</sup> 1. Videtur quod jus non sit objectum justitiæ. Dicit enim Celsus, jurisconsultus, quod *jus est ars boni et æqui*.<sup>2</sup> Ars autem non est objectum justitiæ, sed est per se virtus intellectualis. Ergo jus non est objectum justitiæ.

<sup>1</sup>cf 1a2ae. 60, 1<sup>2</sup>*Digesta* I, 1, 1. K 1, 29a

<sup>3</sup>Prudence: placed first of the cardinal virtues, because it intelligently commands the other moral virtues. See preceding treatise, 2a2ae. 47-56, Vol. 36 of this series, ed. T. Gilby.

<sup>4</sup>This treatise on justice is completed by Vols. 38, ed. M. Lefébure; 39, ed. K. O'Rourke; 40, ed. T. F. O'Meara & M. J. Duffy; and 41, ed. T. C. O'Brien.

<sup>5</sup>*Jus, dikē, justum, dikaiōn*, which we have translated right, the right, a right, and sometimes the just, are analogical terms, as indicated in this art. In its first and primitive sense it applies to what is objectively right according to a relationship of balance or *æqualitas*. This may be called right in the objective sense. In a second and derivative sense it is applied to the power or faculty, *potestas* or *facultas*, of a responsible being, that is, for moral theology, a human being, of adjusting or adapting himself to the universe and his community by making certain claims and dis-

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AFTER PRUDENCE<sup>a</sup> justice is next to be considered. And this under four main headings; first, justice; second, its parts (61–120); its corresponding Gift (121); and fourth, the pertinent commandments (122).<sup>b</sup>

Four topics fall under the first heading:

- one, right (57);
- two, justice itself (58);
- three, injustice (59);
- four, passing judgment (60).

## Question. 57 right

Here there are four points of inquiry:

1. whether right is what justice is about;
2. whether right is fairly divided between natural right and positive right;
3. whether the *jus gentium* is natural right;
4. whether the right of a master and of a father should be especially marked out.

*article 1. is right the objective interest of justice?°*

THE FIRST POINT:<sup>1</sup> I. It would seem not. A jurist, Celsus,<sup>d</sup> says that the right is the art of the good and equitable.<sup>2</sup> An art, however, is not the objective interest of justice, since of itself it is a virtue of mind. Therefore right is not the objective interest of justice.

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charging certain duties. This may be called right in the subjective sense. The distinction is involved when we speak of a state of affairs as being right and of a man having certain rights. The usual, but not invariable, practice on the *Summa* is to take *jus* in the first sense, as the objective interest, *objectum formale*, of justice; in speaking of our right, e.g. to private property or self-defence, it speaks of being at liberty or having the ability to do so and so: cf 2a2ae. 64, 7; 66, 2.

Licitness introduces the related notion of law, *lex, nomos*. The Latin etymologies are similar, *jus* from *jungo*, to join, *lex* from *ligo*, to bind. *Jus* is generally taken to mean that which is consonant with law. The *Summa* treats *jus naturale* and *lex naturalis* as synonymous, but strictly speaking *jus* refers to a fundamental condition in objective reality according to right reason and will, whereas law is an effective ordinance to maintain it for the common good. cf 1a2ae. 90, Vol. 28, ed. T. Gilby.

<sup>a</sup>Celsus Juventus, 2nd-cent. jurist of the early classical period. Known to St Thomas only from the medieval glossators on the 6th-cent. legislation of the Emperor Justinian.

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## SUMMA THEOLOGIAE, 2a2ae. 57, I

2. Præterea, *lex*, sicut Isidorus dicit, *juris est species*.<sup>3</sup> *Lex autem non est objectum justitiæ, sed magis prudentiæ; unde et Philosophus legispositivam partem prudentiæ ponit*.<sup>4</sup> Ergo jus non est objectum justitiæ.

3. Præterea, justitia principaliter subjicit homines Deo; dicit enim Augustinus quod *justitia est amor tantum Deo serviens, et ob hoc bene imperans cæteris quæ homini subjecta sunt*.<sup>5</sup> Sed jus non pertinet ad divina, sed solum ad humana; dicit enim Isidorus quod *fas lex divina est, jus autem lex humana*.<sup>6</sup> Ergo jus non est objectum justitiæ.

SED CONTRA est quod Isidorus dicit quod *jus dictum est quia est justum*.<sup>7</sup> Sed *justum* est objectum justitiæ; dicit enim Philosophus quod *omnes talem habitum volunt dicere justitiam a quo operativi justorum sunt*.<sup>8</sup> Ergo jus est objectum justitiæ.

RESPONSIO: Dicendum quod justitiæ proprium est inter alias virtutes ut ordinet hominem in his quæ sunt ad alterum. Importat enim æqualitatem quamdam, ut ipsum nomen demonstrat: dicuntur enim vulgariter ea quæ adæquantur justari; æqualitas autem ad alterum est. Aliæ autem virtutes perficiunt hominem solum in his quæ ei conveniunt secundum seipsum. Sic ergo illud quod est rectum in operibus aliarum virtutum, ad quod tendit intentio virtutis quasi in proprium objectum, non accipitur nisi per comparisonem ad agentem; rectum vero quod est in opere justitiæ, etiam præter comparisonem ad agentem, constituitur per comparisonem ad alium. Illud enim in opere nostro dicitur esse justum quod respondet secundum aliquam æqualitatem alteri, puta recompensatio mercedis debitæ pro servitio impenso.

Sic ergo justum dicitur aliquid quasi habens rectitudinem justitiæ, ad quod terminatur actio justitiæ etiam non considerato qualiter ab agente fiat. Sed in aliis virtutibus non determinatur aliquid rectum nisi secundum quod aliquid fit ab agente. Et propter hoc specialiter justitiæ præ aliis virtutibus determinatur secundum se objectum, quod vocatur *justum*; et hoc quidem est jus. Unde manifestum est quod jus est objectum justitiæ.

1. Ad primum ergo dicendum quod consuetum est quod nomina a sui prima impositione detorqueantur ad alia significanda; sicut nomen medicinæ impositum est primo ad significandum remedium quod præstat

<sup>3</sup>*Etymologiarum Libri* v, 2. PL 82, 199

<sup>5</sup>*De Moribus Ecclesiæ* I, 15. PL 32, 1322

<sup>7</sup>op cit 3. PL 82, 199

<sup>8</sup>St Isidore of Seville, d. 636. 'Hispalensis.' His 20 books of *Etymologies*, a richly rather than carefully packed storehouse of late Roman learning, was much used by medieval writers. His etymological explanations are sometimes fanciful.

<sup>4</sup>*nomothetikē*, cf 2a2ae. 50, 1.

<sup>4</sup>*Ethics* VI, 8. 1141b25

<sup>6</sup>loc cit. PL 82, 198

<sup>3</sup>*Ethics* v, 1. 1129a7

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2. Besides, according to Isidore,<sup>e</sup> *law is a species of right*.<sup>3</sup> Now law is not the objective interest of justice, but rather of prudence; hence Aristotle places law-making as a part of prudence.<sup>4f</sup> Consequently right is not the objective interest of justice.

3. Also, the main function of justice is to subject men to God; Augustine<sup>g</sup> writes that *justice is love serving God alone, and on account of this governing aright all under human control*.<sup>5</sup> Now right, *jus*, covers only human, not divine, matters; as Isidore observes, *fas is divine law, whereas jus is human law*.<sup>6h</sup> Therefore justice is not centred on *jus*, or right.

ON THE OTHER HAND, Isidore tells us that *jus is so named because it is justum, just*.<sup>7</sup> Now the just is the objective interest of justice; Aristotle notes that *all are agreed in applying the name of justice to the preparedness to do just works*.<sup>8</sup> And so justice is occupied with *jus*, or a right.

REPLY: The proper characteristic of justice, as compared with the other moral virtues, is to govern a man in his dealings towards others. It implies a certain balance of equality, as its very name shows, for in common speech things are said to be adjusted when they match evenly. Equality is relative to another. The other moral virtues, however, compose a man for activities which befit him considered in himself. So then that which is correct in their working and which is the proper object of their bent is not thought of save in relation to the doer. Whereas with justice, in addition to this, that which is correct is constituted by a relation to another, for a work of ours is said to be just when it meets another on the level, as with the payment of a fair wage for a service rendered.<sup>1</sup>

So then something is said to be just because it has the rightness of justice; it is this that engages the activity of justice, even abstracting from the temper in which it is done;<sup>2</sup> by contrast, the rightness of the other moral virtues is not determined apart from the frame of mind of the person acting. This is why for justice especially, in comparison with other virtues, an impersonal objective interest is fixed. We call it *the just thing*, and this indeed is a right. Clearly, then, right is the objective interest of justice.

Hence: 1. By customary usage words are twisted from their original

<sup>e</sup>St Augustine of Hippo, d. 430. The major theological authority throughout the *Summa*.

<sup>h</sup>*fas*, originally referred to the dictates of religion and contrasted with human law; later extended to other obligations.

<sup>1</sup>The difference between justice and the moral virtues of temperance and fortitude is developed below, 2a2ae. 58, 9-11.

<sup>2</sup>cf below, 2a2ae. 60, 6. 'Caesar in good, though Tiberius may be wicked.'

## SUMMA THEOLOGIAE, 2a2ae. 57, 2

infirmo ad sanandum, deinde tractum est ad significandam artem qua hoc fit. Ita etiam hoc nomen *jus* primo impositum est ad significandum ipsam rem justam, postmodum autem est derivatum ad artem qua cognoscitur quid sit justum, et ulterius ad significandum locum in quo jus redditur, sicut dicitur aliquis comparere in jure, et ulterius dicitur etiam quod jus redditur ab eo ad cujus officium pertinet justitiam facere, licet etiam id quod decernit sit iniquum.

2. Ad secundum dicendum quod sicut eorum quæ per artem exterius fiunt quædam ratio in mente artificis præexistit, quæ dicitur regula artis, ita etiam illius operis justici quod ratio determinat quædam ratio præexistit in mente, quasi quædam prudentiæ regula; et hoc si in scriptum redigatur, vocatur *lex*; est enim *lex*, secundum Isodorum, *constitutio scripta*;<sup>9</sup> et ideo *lex* non est ipsum *jus* proprie loquendo, sed aliqualis ratio juris.

3. Ad tertium dicendum quod quia justitia æqualitatem importat, Deo autem non possumus æquivalens recompensare, inde est quod *justum* secundum perfectam rationem non possumus reddere Deo; et propter hoc non dicitur proprie *jus* *lex* divina, sed *fas*, quia videlicet sufficit Deo ut impleamus quod possumus. Justitia tamen ad hoc tendit ut homo, quantum potest, Deo recompenset, totaliter animam ei subiciens.

*articulus 2. utrum jus convenienter dividatur in jus naturale et jus positivum*

AD SECUNDUM sic proceditur:<sup>1</sup> I. Videtur quod *jus* non convenienter dividatur in *jus* naturale et *jus* positivum. Illud enim quod est naturale est immutabile, et idem est apud omnes. Non autem invenitur in rebus humanis aliquid tale, quia omnes regulæ juris humani in aliquibus casibus deficient, nec habent suam virtutem ubique. Ergo non est aliquid *jus* naturale.

2. Præterea, illud dicitur esse positivum quod ex voluntate humana procedit. Sed non ideo aliquid est justum quia a voluntate humana procedit; alioquin voluntas hominis injusta esse non posset. Ergo cum justum sit idem quod *jus*, videtur quod nullum sit *jus* positivum.

3. Præterea, *jus* divinum non est *jus* naturale, cum excedat naturam humanam; similiter etiam non est *jus* positivum, quia non innititur auctoritati humanæ, sed auctoritati divinæ. Ergo inconvenienter dividitur *jus* per naturale et positivum.

<sup>9</sup>loc cit note 7<sup>1</sup>cf below 2a2ae. 60, 5. In *Ethic* v, lect. 12<sup>k</sup>So in Plautus, Horace, Juvenal.<sup>1</sup>So in Cicero, Livy.<sup>m</sup>cf below, 2a2ae. 60, 5.<sup>n</sup>The justice of religion lies in the due, not the equal; 2a2ae. 80, 1.<sup>a</sup>Natural and positive as contrasted terms. Natural as found in Aristotelean and

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application to signify other things; 'medicine', for instance, first applied to a healing remedy for the sick, was afterwards extended to the art which procures this. Likewise 'right' was first applied to the just thing itself, and then derivatively to the art which discerns what this is; then further to the courts where justice is administered, thus when somebody is said to appear juridically, *in jure*,<sup>k</sup> and further when we speak of *ius* being delivered by one holding the office of administering justice,<sup>l</sup> even when his decision is wicked.

2. An idea in the mind of the maker, which is called the rule and pattern of art, exists before the production of external works of art, and likewise an idea in the mind, a rule or pattern for prudence or practical wisdom, prescribes what is a just deed according to reason. If this be set down in writing, it is called a law; *a law*, says Isidore, *is a written regulation*.<sup>9m</sup> And so, properly speaking, it is not a right itself, but a design for a right.

3. Since justice implies equality and we cannot offer God an equivalent return, it follows that we cannot render to him what is just in the plain sense of the term.<sup>n</sup> Accordingly his law is referred to strictly as *fas*, not *ius*; for God it is enough that we do what we can. All the same justice urges us to repay God as far as possible by committing our lives utterly to him.

*article 2. is natural right and positive right a fair division of right?*

THE SECOND POINT:<sup>1a</sup> 1. It would seem not. For that which is natural is unchangeable, and is the same for all. Nothing like this can be found in human affairs, for all human juridical rules fail to meet certain cases, nor do they hold force everywhere. There is no such thing, then, as natural right.

2. Besides, that is called positive which springs from human will. But it is not thereby right, otherwise man's will could not be unjust. Hence, since the just and the right are the same, it seems that there is no such thing as positive right.

3. Then again, a divine right is not a natural right, for it transcends human nature. Nor is it a positive right, since it is based on divine, not human authority. Therefore the division of right into natural right and positive right does not fit.

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Stoic philosophy, used of movements from within, not excluding those from grace and charity, and so, unless the context clearly shows otherwise, not contrasted with supernatural. cf Vol. 1, ed. T. Gilby, Appendix 8, *Natural and Supernatural*.

Positive, not as contrasted with negative, but as posited or imposed by will, not deriving from the inner exigencies of the subject.

Natural and positive law; 1a2æ. 91, 2, 7, 3; 94 & 95. Vol. 28, ed. T. Gilby, Appendix 3, *Natural Law*.

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## SUMMA THEOLOGICÆ, 2a2æ. 57, 2

SED CONTRA est quod Philosophus dicit quod *politici iusti hoc quidem naturale est, hoc autem legale*,<sup>2</sup> id est lege positum.

RESPONSIO: Dicendum quod, sicut dictum est,<sup>3</sup> jus sive justum est aliquod opus adæquatum alteri secundum aliquem æqualitatis modum. Dupliciter autem potest alicui homini esse aliquid adæquatum. Uno quidem modo ex ipsa natura rei, puta cum aliquis tantum dat ut tantumdem recipiat, et hoc vocatur jus naturale. Alio modo aliquid est adæquatum vel commensuratum alteri ex conducto, sive ex communi placito, quando scilicet aliquis reputat se contentum, si tantum accipiat. Quod quidem potest fieri dupliciter: uno modo per aliquod privatum conductum, sicut quod firmatur aliquo pacto inter privatas personas; alio modo ex conducto publico, puta cum totus populus consentit quod aliquid habeatur quasi adæquatum et commensuratum alteri, vel cum hoc ordinat princeps, qui curam populi habet, et ejus personam gerit; et hoc dicitur jus positivum.

1. Ad primum ergo dicendum quod illud quod est naturale habenti naturam immutabilem oportet quod sit semper et ubique tale. Natura autem hominis est mutabilis, ideo id quod naturale est homini potest aliquando deficere; sicut naturalem æqualitatem habet ut deponenti depositum reddatur, et si ita esset quod natura humana semper esset recta, hoc esset semper servandum; sed quia quandoque contingit quod voluntas hominis depravatur, est aliquis casus in quo depositum non est reddendum, ne homo perversam voluntatem habens male eo utatur, puta si furiosus vel hostis reipublicæ arma deposita reposit.

2. Ad secundum dicendum quod voluntas humana ex communi conducto potest aliquid facere justum in his quæ secundum se non habent aliquam repugnantiam ad naturalem justitiam; et in his habet locum jus positivum. Unde Philosophus dicit quod *legale justum est quod ex principio quidem nihil differt sic vel aliter; quando autem ponitur differt*.<sup>4</sup> Sed si

<sup>2</sup>*Ethics* v, 7. 1134b18<sup>3</sup>art. 1 above<sup>4</sup>cap cit note 2. 1134b20

<sup>b</sup>Already in the late 13th cent., with the growing specialization of politics and juridical conceptions of the Nation-State, St Thomas sometimes found it necessary to render the Greek *politikon* with the two terms *sociale et politicum*. In this sense all *dikaion* is *politikon*, and this is divided into natural right, *phusikon*, and positive right, *nomikon*.

The main headings for right and law in the *Summa* are as follows. First, natural right and positive right. Natural right is not confined to a hypothetical state of pure nature, but is present throughout the activities of human nature under the reign of grace; the natural law corresponding to it is not a code. Second, positive law is divided into divine law and human law. Divine law is here taken to refer to the legislation of the Old Testament. Human law is subdivided into civil law and canon law: ecclesiastical law occupies a territory between these two. All these divisions are of abstractions; in fact and history their respective commands may



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ON THE OTHER HAND, there is Aristotle holding that of *the politically and socially just*<sup>b</sup> one part is natural and another is legal,<sup>2</sup> that is, established by law.

REPLY: As we have seen,<sup>3</sup> the right and just is a work that is commensurate with another person according to some sort of fairness. This can be measured in two ways. One, from the very nature of the case, as when somebody gives so much in order to receive as much in return: this is called natural right. The other, the commensurate to the other is settled by agreement or mutual consent, as when a person counts himself content to receive such or such in return. And this may come about in two ways. First, by private engagement, as when the parties bind themselves to a contract without the State entering in; and second, by public agreement, as when the whole civil community or State fixes what is adequate and commensurate or when this is so ordained by the sovereign authority who has charge over and personifies the people: this is called positive right.<sup>c</sup>

Hence: 1. That which is natural to a thing with an immutable nature is necessarily constant always and everywhere. Man's nature, however, is variable.<sup>d</sup> And so that which is natural to him can fail to meet the situation sometimes. For instance natural equity requires a deposit to be restored to the depositor.<sup>e</sup> Now were human nature always upright this requirement would have to be met. Yet since, as sometimes happens, it is wrong-willed, there are cases when a deposit should not be restored, lest a man make criminal use of it, as when one beside himself with rage or an enemy of the State demands the return of his weapons.

2. By mutual agreement the human will can establish that which is just in matters which of themselves do not conflict with natural justice. It is here that positive right has its place. Hence Aristotle says that the legally just is that which is morally neutral in principle and can be decided in one way or the other, though once decided it remains no longer neutral.<sup>4</sup> However if anything conflict with natural right, human will cannot make it

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overlap and intermingle. cf Vol. 28, ed. T. Gilby, Appendix 2, *The Theological Classification of Law*.

<sup>c</sup>Private and public. The terms are taken from Roman jurisprudence. Private, not involving official position or State interest: public, of or belonging to the people or State. The distinction is adopted on occasion by the *Summa*, but the tension, more deeply moral and less juridical, is expressed in the terms *bonum unius personæ* and *bonum commune*, the good of a person and the common good.

<sup>d</sup>Variable by its embodiment in a world of the individual and contingent, adjustment to which is the work of law and the practical reason. This affects the deductive development and drawing of conclusions of natural law, and the improvisations of positive law: cf 1a2æ. 94, 4-6; 95, 2.

<sup>e</sup>Equity, or *epiieikeia*. cf 1a2æ. 96, 6. 2a2æ. 120. *Nicomachean Ethics* v, 10.



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## SUMMA THEOLOGIAE, 2a2ae. 57, 3

aliquid de se repugnantiam habet ad jus naturale, non potest voluntate humana fieri justum, puta si statuatur quod liceat furari, vel adulterium committere. Unde dicitur *Isa.*, *Væ qui conduunt leges iniquas.*<sup>5</sup>

3. Ad tertium dicendum quod jus divinum dicitur quod divinitus promulgatur; et hoc quidem partim est de his quæ sunt naturaliter justa, sed tamen eorum justitia homines latet; partim autem de his quæ fiunt justa institutione divina. Unde etiam jus divinum per hæc duo distingui potest, sicut et jus humanum. Sunt enim in lege divina quædam præcepta quia bona, et prohibita quia mala; quædam vero bona quia præcepta, et mala quia prohibita.

*articulus 3. utrum jus gentium sit idem cum jure naturali*

AD TERTIUM sic proceditur:<sup>1</sup> I. Videtur quod jus gentium sit idem cum jure naturali; non enim omnes homines conveniunt nisi in eo quod est eis naturale. Sed in jure gentium omnes homines conveniunt; dicit enim jurisconsultus quod *jus gentium est quo omnes gentes utuntur.*<sup>2</sup> Ergo jus gentium est jus naturale.

2. Præterea, servitus inter homines est naturalis; quidam enim sunt naturaliter servi, ut Philosophus probat.<sup>3</sup> Sed *servitutes pertinent ad jus gentium*, ut Isidorus dicit.<sup>4</sup> Ergo jus gentium est jus naturale.

3. Præterea, jus, ut dictum est,<sup>5</sup> dividitur per jus naturale et positivum. Sed jus gentium non est jus positivum; non enim omnes gentes unquam convenerunt ut ex communi conducto aliquid statuerent. Ergo jus gentium est jus naturale.

SED CONTRA est quod Isidorus dicit quod *jus aut naturale est, aut civile, aut gentium;*<sup>6</sup> et ita jus gentium distinguitur a jure naturali.

RESPONSIO: Dicendum quod, sicut dictum est,<sup>7</sup> jus sive justum naturale est quod ex sui natura est adæquatum vel commensuratum alteri. Hoc autem potest contingere dupliciter. Uno modo secundum absolutam sui considerationem; sicut masculus ex sui ratione habet commensurationem ad

<sup>1</sup>*Isaiah* 10, 1<sup>1</sup>cf 1a2ae. 95, 4 ad 1. *In Ethic.* v, lect. 12<sup>2</sup>*Digest* 1, 1, 1. K 1, 29a<sup>3</sup>*Politics* 1, 2. 1254a15<sup>4</sup>*Etymol.* v, 6. PL 82, 199<sup>5</sup>art. 2<sup>6</sup>loc cit note 4<sup>7</sup>art. 2<sup>1</sup>Some sins are out of the range of human laws, and with regard to others that are not political good sense may decide not to declare them illegal. cf 1a2ae. 96, 2 & 3.<sup>8</sup>Commanded because good: thus the natural law precepts in the Old Testament. Good because commanded: thus the disciplinary regulations of the Old Law.<sup>9</sup>The *jus gentium* belongs to the history of law, but enters theology through the references to it by Isidore, Agobard of Lyons, Hincmar of Rheims, and Rabanus

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## RIGHT

just, for instance by decreeing that one may rightfully steal or commit adultery.<sup>1</sup> And so Isaiah cries, *Woe to them who make wicked laws.*<sup>5</sup>

3. That which is divinely promulgated is termed divine right. Partly it is of matters that belong to natural right, though their justice is hidden from men and not recognized, and partly of matters that are made just by divine institution. Accordingly divine right, like human right, may be distinguished under two heads; certain things are commanded because they are good or forbidden because they are evil, while others are good because they are commanded or evil because they are forbidden.<sup>8</sup>

*article 3. is the jus gentium the same as natural right?*

THE THIRD POINT:<sup>1</sup> 1. So it would seem. For all men do not agree save in that which is natural to them. Now all agree on the *jus gentium*, for a jurist observes that it is adopted by all nations.<sup>2a</sup> Therefore it is natural right.

2. Further, among men servitude is natural; according to Aristotle some are congenital slaves.<sup>3</sup> But servitude is part of the *jus gentium*, as Isidore notes.<sup>4</sup> Therefore it is natural right.

3. Moreover, we have agreed on the division between natural and positive right.<sup>5</sup> Now the *jus gentium* is not positive right, for the nations have never come together to lay down anything by common agreement. So then the *jus gentium* is natural right.

ON THE OTHER HAND, there is the teaching of Isidore, *Right is either natural or civil or the jus gentium.*<sup>6</sup>

REPLY: We have said that natural right or the naturally just is that which of itself is adequate to and commensurate with another.<sup>7</sup> There are two ways of arriving at this. First, by looking at it purely and simply in itself, thus it is of the biology of male to mate with female in order to generate

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Maurus. It was that part of the Roman system which had grown partly from the judgments of magistrates with jurisdiction over strangers, partly from the studies of jurists who sought to accommodate the relations between different nationalities. It is discussed in two places in the *Summa*, here and in 1a2æ. 95, 4. There it is related to natural law, and treated as among the conclusions which are drawn from it (cf 1a2æ. 95, 2, an important article with its distinction between inferences from and constructions put upon natural law). This is allowed for here, ad 3, but the main theme is the contrast between the *jus gentium* and natural law taken in a rather primitive sense by Ulpian, a pre-juridical adaptation as in sex. The significance of this late text should not be overloaded, but at least this recognition of the biological bases of law is not unexpected when the author's strengthening Aristotelean materialism is taken into account. cf T. Gilby, *Principality and Polity*, London; *The Political Thought of Thomas Aquinas*, Chicago, 1958. v, 4; vi, 1.