

QUESTION 90, ARTICLE 1: WHETHER LAW IS SOMETHING PERTAINING TO REASON?

Copyright © J. Budziszewski

TEXT	PARAPHRASE
<i>Whether law is something pertaining to reason?</i>	In order to be truly law, must a thing be reasonable? Must it relate in some essential way to reason?

Whether law is something pertaining to reason?

The Latin word St. Thomas uses for "reason," *rationis*, is in the genitive case, so it would be equally correct for the English version of the question to ask whether law is something "of" reason. Law is of reason, or pertains to reason, if it is of the nature of reason, if it is reasonable in its very essence. Nothing unreasonable, and nothing related to reason in a merely accidental or contingent way, is truly the sort of thing law is.

<i>Objection 1. It would seem that law is not something pertaining to reason. For the Apostle says (Romans 7:23): "I see another law in my members," etc. But nothing pertaining to reason is in the members; since the reason does not make use of a bodily organ. Therefore law is not something pertaining to reason.</i>	Objection 1. Apparently, in order to be truly law, a thing does <i>not</i> have to relate in some essential way to the power of reason. For reasoning is not a bodily activity, yet, as St. Paul says in his letter to the Romans, he sees a law of some kind in his bodily parts and appetites. If a law can be in something unrelated to reason, then law does not have to be reasonable to be what it is.
---	---

Objection 1. It would seem that law is not something pertaining to reason.

To say that "law is something pertaining to reason" is to say that it pertains to the very essence of law to be reasonable rather than arbitrary, to address itself to the intellect rather than merely the will, to be something that the mind can recognize as right. The objections deny that this is essential to true law.

For the Apostle says (Romans 7:23): "I see another law in my members," etc.

Because St. Thomas could expect his readers to be familiar with the Bible, he often quotes only a few words to indicate the passage that he has in mind. The context of this passage is the seventh chapter of St. Paul's letter to the young church at Rome, in which he discusses the dislocation, which only Christ can cure, in the heart of fallen man. Offering himself as a paradigm case, St. Paul says in verses 22-23, "For I am delighted with the law of God, according to the inward man: But I see another law in my members, fighting against the law of my mind, and captivating me in the law of sin, that is in my members." By his "members" he means the organs of his body along with the appetites that are "in" or associated with them. St. Paul is not arguing that all sins are sensual, because there are intellectual sins too. Nor is he arguing that the sensual appetites are bad in themselves, bad by nature, because everything God creates is good; taking the term "nature" in its proper sense, there is no such thing as an evil nature. Rather St. Paul's point is that these appetites are in a bad *condition*, for ever since the Fall, they have been disobedient to the mind. The whole matter of Pauline "law of the members" is threshed out by St. Thomas at a later point in the *Treatise on Law*. Here, though, we are hearing the Objector's view.

But nothing pertaining to reason is in the members; since the reason does not make use of a bodily organ. Therefore law is not something pertaining to reason.

The Objector argues as follows. (1) St. Paul speaks of a law "in" the bodily organs. (2) This law has nothing in common with reason, because nothing pertaining to the mind is "in" the bodily organs. Therefore (3) law does not have to be reasonable to be law.

I note in passing that when the Objector says "nothing pertaining to reason is in the members," he is expressing a blunter view of the relation between mind and body than that of St. Thomas himself, who says in I-II, Q. 48, Art. 3: "Although the mind or reason makes no use of a bodily organ in its proper act, yet, since it needs certain sensitive powers for the execution of its act, the acts of which powers are hindered when the body is disturbed, it follows of necessity that any disturbance in the body hinders even the judgment of reason; as is clear in the case of drunkenness or sleep."

St. Thomas understands perfectly well that the mind needs the body *in order* to reason, so that body affects the mind, just as the mind affects the body. Even so, reasoning as such is not a bodily act.

The pairing of the opening sentence of the Objection, "It would seem that law is not something pertaining to reason," with its closing sentence, "Therefore law is not something pertaining to reason," seems tedious to us, but would not have seemed so to St. Thomas's contemporaries. Used in this way, it forms an instance of the rhetorical device called *inclusio*, also known as "envelope structure." *Inclusio* marks out the boundaries of a unit of argument by using similar language, or referring to similar ideas, at the beginning and end. Though it is often overlooked, the device is well-known in the ancient and medieval world, and is common in Greek and Latin literature, to both the Old and New Testaments of the Bible, and to English literature from the time of *Beowulf* if not earlier, not to mention the literature of other languages. Of course it would have been obvious that Objection 1 forms a unit even without its conspicuous *inclusio*. Sometimes, however, a reader who is unaware of this device will completely miss the thematic divisions in a unit of poetry or prose, for example the way that the Lord's Prayer is divided into sections by the opening, "Our Father who art *in heaven*," and the subsequent reiterations of the phrase "in heaven."¹

Besides *inclusio*, St. Thomas employs a variety of classical rhetorical devices in the *Summa*. One of the risks of the freer style of paraphrase I sometimes use is that, by rearranging phrases, it may obscure some of them. Partly for that reason, from time to time I call attention to important literary devices which might otherwise be overlooked. So far as I know, no one has made a comprehensive study of St. Thomas's rhetorical figures, but such effort would be richly repaid.²

<i>Objection 2. Further, in the reason there is nothing else but power, habit, and act. But law is not the power itself of reason. In like manner, neither is it a</i>	<i>Objection 2. Moreover, if we seek to classify the things that relate essentially to reason, we find only capacities, dispositions, and instances of actual</i>
--	---

¹I draw this classical example from Richard G. Moulton, *The Literary Study of the Bible: An Account of the Leading Forms of Literature Represented in the Sacred Writings* (London: Isbister, 1896), pp. 69-70.

²I gratefully acknowledge the stimulation of many conversations with my friend Arlen Nydam, a close student of Latin poetry.

<p><i>habit of reason: because the habits of reason are the intellectual virtues of which we have spoken above (57).³ Nor again is it an act of reason: because then law would cease, when the act of reason ceases, for instance, while we are asleep. Therefore law is nothing pertaining to reason.</i></p>	<p><i>reasoning. Law is not the capacity to reason. Nor is it one of the dispositions connected with reasoning, which we have discussed already. Nor is it an act of reasoning, because in that case law would not exist while we are sleeping. Since law isn't any of these things, it must not be related essentially to reason.</i></p>
---	--

Objection 2. Further, in the reason there is nothing else but power, habit, and act.

The powers of reason are its capacities, the habits of reason are the dispositions by which these powers are exercised, and the act of reason is its actuality, what it is or what it is doing when its sleeping potentialities are awakened. Now the act of reason is "in" reason, meaning that it pertains to reason. Because the act of reason springs from its powers and habits, these powers and habits may be said to be "in" reason or to pertain to reason too. What else is "in" reason? According to the Objector, nothing else; that's it.

But law is not the power itself of reason. In like manner, neither is it a habit of reason: because the habits of reason are the intellectual virtues of which we have spoken above (57). Nor again is it an act of reason: because then law would cease, when the act of reason ceases, for instance, while we are asleep. Therefore law is nothing pertaining to reason.

The Objector argues that if nothing pertains to reason but its powers, habits, and acts, then in order to say that law pertains to reason, law must be either a power of reason, a habit of reason, or the very actuality of reason. Obviously, it is not a power of reason; this is so plain that no argument need be given. Neither is it one of the intellectual dispositions by which these powers are exercised, such as practical wisdom, also called prudence, because these have already been classified in I-II, Question 57, and law was not one of them. Finally, it is not the very actuality of reason -- by contrast with the mere potentiality -- because in that case, law would go

³Like this one, most cross-references and references to other works are provided not by St. Thomas himself, but by the translators. In the rare instances in which a citation is erroneous, I correct it in a footnote.

to sleep when the mind goes to sleep, and obviously, this does not happen. Therefore, says the Objector, law is not one of the things that pertain to reason.

Objection 3. *Further, the law moves those who are subject to it to act aright. But it belongs properly to the will to move to act, as is evident from what has been said above (9, 1). Therefore law pertains, not to the reason, but to the will; according to the words of the Jurist (Lib. i, ff., De Const. Prin. leg. i): "Whatsoever pleaseth the sovereign, has force of law."*

Objection 3. Still further, law prompts those who are subject to the law to act the right way. But as we saw earlier in the *Summa*, what prompts us to act is the will. Therefore, law is based on will, not on reason. The great jurist Ulpian says the same thing: "Whatever pleases the foremost man has the force of law."

Objection 3. Further, the law moves those who are subject to it to act aright.

Here the Objector anticipates something that St. Thomas himself will assert: That for those who are under the law, law functions as a rule of action. Its function is to command us, "Do this," so that we do it.

But it belongs properly to the will to move to act, as is evident from what has been said above (9, 1). Therefore law pertains, not to the reason, but to the will; ...

The Objector holds that commanding us to "Do this" pertains not to reason but the will. Therefore, law too must pertain not to reason but to will. He tries to call St. Thomas's own arguments to his aid, for as St. Thomas had said in I-II, Question 9, Art. 1, "the will moves the other powers of the soul to their acts, for we make use of the other powers when we will. For the end and perfection of every other power, is included under the object of the will as some particular good: and always the art or power to which the universal end belongs, moves to their acts the arts or powers to which belong the particular ends included in the universal end. Thus the leader of an army, who intends the common good -- i.e. the order of the whole army -- by his command moves one of the captains, who intends the order of one company."

As we will see, however, the Objector is taking these words out of context. Whenever St. Thomas uses the term "act," he is not thinking, as we do, of mere behavior -- of something that I happen to do -- but of *the actualization of a*

potentiality inherent in something. One of the questions we always need to ask, then, is "inherent in what?" St. Thomas is preparing to explain that in this case, the "what" is reason.

**... according to the words of the Jurist (Lib. i, ff., De Const. Prin. leg. i):
"Whatsoever pleaseth the sovereign, has force of law."**

This time the Objector calls to his aid the Roman *iurisconsult*, or legal authority, Ulpian, who seemed to say that law springs not from the reason of the *princeps* (literally, the first or foremost man, who in Rome was the emperor), but from his will -- what "pleases" or is agreeable to him (*placuit*).⁴

Whatever one may think of this particular maxim -- as we see shortly, St. Thomas takes a very different view of it than the Objector does -- the appeal to a traditionally accepted body of legal maxims is not a mere antiquarian quirk. Such maxims reflected a reservoir of the community's legal wisdom, hard-won by the convergence of many minds over centuries and tested in practice. In most cases, legal maxims were much more specific than the first principles of natural law, and they did not, like them, hold without exception. However, they were viewed as derivations from the first principles, and functioned as a basis for the derivation of further conclusions still.

Our own law too once depended on traditional juristic maxims to reach and justify legal decisions, such as *consuetudo est altera lex*, "custom is another law," *delegatus non potest delegare*, "a delegate cannot delegate," *nemo debet esse iudex in propria causa*, "no one can be judge in his own cause," and *nemo tenetur ad impossibile*, "no one is required to do what is impossible." For centuries, such maxims shaped and nourished the minds of would-be advocates, judges, rulers, and legislators. Thus Sir John Fortescue recommends to the young English prince-in-exile, who prefers military exercises, that in but a year of study he could learn the elements "from which all the laws of the realm proceed" -- especially those precepts "which those learned in the laws of England and mathematicians alike call maxims."⁵ The

⁴Ulpian's statement is quoted in *Digest*, Book 1, Title 4, Section 1. Compare his statement that the sovereign is exempt from the laws, discussed in Q. 96, Art. 5, Obj. 3 and ad 3.

⁵John Fortescue, *In Praise of the Laws of England*, trans. S.B. Chrimes, rev. Shelley Lockwood, in Shelley Lockwood, ed., *Sir John Fortescue: On the Laws and Governance of England* (Cambridge: Cambridge University Press, 1997), pp. 14-15.

waning of maxim jurisprudence in our own day probably reflects the rising disorder and contentiousness of legal thought in general.⁶

<p><i>On the contrary, It belongs to the law to command and to forbid. But it belongs to reason to command, as stated above (17, 1). Therefore law is something pertaining to reason.</i></p>	<p>On the other hand, it has traditionally been held that commanding and forbidding are functions of law. But as we saw earlier, what commands is reason. From this it follows that law <i>must</i> be essentially reasonable to be law.</p>
---	---

On the contrary, It belongs to the law to command and to forbid. But it belongs to reason to command, as stated above (17, 1). Therefore law is something pertaining to reason.

Having presented the objections, we now turn to a sympathetic restatement of the traditional view, the one the objections reject. Normally, when the *sed contra* or “on the other hand” cites someone, it cites a traditional authority. In this case that is not necessary, because the particular aspect of the traditional view that is here on display has already been discussed in I-II, Question 17, Article 1, “Whether command is an act of the reason or of the will?”

The tradition *agrees* with the Objector's claim that commanding and forbidding are functions of law, and St. Thomas returns to the point later, in Q. 92, Art. 2. But the tradition *disagrees* with the Objector's view that commanding and forbidding are functions of will alone, in isolation from reason. What St. Thomas had explained in Question 17 was that will functions only in partnership with reason, and reason functions only in partnership with will: “Command is an act of the reason presupposing, however, an act of the will. In proof of this, we must take note that, since the acts of the reason and of the will can be brought to bear on one another, in so far as the reason reasons about willing, and the will wills to reason, the result is that the act of the reason precedes the act of the will, and conversely.” This means *the fact there is a command* requires an act of will, but *what the command directs*

⁶For an intriguing discussion of the past, present, and possible future of maxim jurisprudence, see J. Stanley McQuade, “Ancient Legal Maxims and Modern Human Rights,” 18 *Campbell Law Review* 75-120 (1996).

requires an act of reason.⁷ This is true, by the way, not only when we are reasoning well, but even when we are reasoning badly, for example when we casually treat as good whatever the senses present as good, without investigation.

I answer that, Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting: for "lex" [law] is derived from "ligare" [to bind], because it binds one to act. Now the rule and measure of human acts is the reason, which is the first principle of human acts, as is evident from what has been stated above (1, 1, ad 3); since it belongs to the reason to direct to the end, which is the first principle in all matters of action, according to the Philosopher (Phys. ii). Now that which is the principle in any genus, is the rule and measure of that genus: for instance, unity in the genus of numbers, and the first movement in the genus of movements. Consequently it follows that law is something pertaining to reason.

Here is my response. Law is both the governing ordinance and the measuring rod for distinctively human acts, because it makes us do the right thing in the right way. This is confirmed by the very origin of the Latin word for law, for it comes from an earlier word meaning "to bind," reflecting the fact that law binds us to act. As I made clear earlier, the governing ordinance and measuring rod of distinctively human acts is the source from which they spring, the power of reason, because, as Aristotle teaches, the source from which all actions spring is the end that we seek, and reason is what directs us to this end.

To speak more generally, in any genus whatsoever, the governing principle and measuring rod for the things of that genus is whatever they spring from. For example, all numbers in the genus of numbers begin from unity, so unity is the governing ordinance and measuring rod of numbers; and all changes spring ultimately from the first cause of change, so the first cause of change is the

⁷See also I-II, Q. 9, Art. 1, ad 3: "The will moves the intellect as to the exercise of its act; since even the true itself which is the perfection of the intellect, is included in the universal ⁷good, as a particular good. But as to the determination of the act, which the act derives from the object, the intellect moves the will; since the good itself is apprehended under a special aspect as contained in the universal true. It is therefore evident that the same is not mover and moved in the same respect." In other words, the will prompts the intellect to carry out the act, but the intellect prompts the will by presenting its object to it, so that it wills the very thing that it does.

	governing ordinance and measuring rod of changes. We see from all this that law is essentially related to reason after all.
--	---

I answer that, ...

The fact that the "on the contrary" and the "I answer that" come to the same conclusion should not blur the difference between them. In the former, St. Thomas was restating the tradition; here he is presenting his own argument.

Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting: ...

Wittgenstein once remarked that "The work of the philosopher consists in assembling reminders for a particular purpose."⁸ Although Wittgenstein was no Thomist, with this point St. Thomas would agree. In his statement that law is a rule and measure of acts, St. Thomas is not dropping a formula upon us from on high, but reminding us of something we all know already. To say that law is a *rule* of acts is to say that it tells us what to do; to say that it is a *measure* of acts is to say that it presents a standard with which our acts can be compared and by which they can be evaluated.

But following a rule and measuring ourselves according to a standard are operations of reason. This is the point of St. Thomas's reference to *man*: He is not contrasting us with angels, who are also rational and bound by law, but with subrational animals. Animals are certainly subject to law in an analogical sense; the rational order of providence can be perceived in the design of their impulses. But they do not perceive that order; we do. *To them*, it is not law, but merely urge. In the strict sense, then, law – far from being a fetter -- is a privilege of the rational mind.

Another way to think of the difference between rational and subrational animals is by analogy with dynamic physical systems. A subrational animal is extremely stable, not in the sense that it never changes, in the sense that in most cases, its inbuilt impulses allow it to go only one way: It will fight, flee, mate, eat, whatever the dominant impulse of the moment requires. It is like a cart built for rolling downhill, which is very difficult to slow down, speed up, or steer. Though the has

⁸Ludwig Wittgenstein, *Philosophical Investigations*, 3rd ed., trans. G.E.M. Anscombe (Oxford, England: Basil Blackwell, 1953, 1972), Section 127, p. 50.

no pilot, it doesn't need one, because it will almost inevitably arrive just as far down the hill as it can go. In most cases that is fine, because as far down as possible is the right place to be. But the cart doesn't know what it is doing, so if the bottom of the hill is the wrong place to be, it will go there anyway.

By contrast, the rational creature is *unstable*, not in the sense that it cannot be controlled, but in the sense that it *requires* control. In fact it is designed to require it. Because its inbuilt impulses are pushing it in a dozen conflicting directions at once, it is very easy to direct; it is like an airplane that can go up, down, right, left, fast, or slow. Unlike the cart, however, it does need a pilot, a skilled and knowledgeable directive intelligence who knows what each control surface is for and can get the craft to a safe landing at its destination. Law is like the rules of flying, along with a map, on which the destination is marked. The map doesn't interfere with a journey by flight; it makes the journey possible.

... for "lex" [law] is derived from "ligare" [to bind], because it binds one to act.

Modern etymologists believe that the Latin word *lex* is derived not from *ligare*, to bind, but from *legere*, to gather or read.⁹ But the point is not whether St. Thomas got the etymology right. His faulty etymology functions not as a proof, but merely as an additional way of reminding us of something we already know. It is as though he had added, "We all understand law to be something that binds us. In fact, in Latin the very word for law comes from the notion of binding." As it turns out, that isn't really where it comes from, but what he thinks we all understand, we really do.

Interestingly, St. Thomas mentions the other hypothesis, that the word *lex* is derived from *legere*, in Article 4. We will comment on it when we come to it.

Now the rule and measure of human acts is the reason, which is the first principle of human acts, as is evident from what has been stated above (1, 1, ad 3); since it belongs to the reason to direct to the end, which is the first principle in all matters of action, according to the Philosopher (Phys. ii).

Here St. Thomas asserts what earlier in the paragraph he had only implied. Law is the rule and measure of *human* acts, and acts are properly called *human* only when they arise in the way that is distinctive to human nature. He had argued in I-II, Q. 1, that "man differs from irrational animals in this, that he is master of his actions." He is their master through a *deliberate will*, which means a will formed by rational

⁹Oxford English Dictionary, online version, entry for *law*, n. 1.

deliberation with a view to some end perceived as good. The fact that deliberation begins by considering the end or purpose to be accomplished had been analyzed by Aristotle in *Physics*, Book 2, Chapter 9.

In passing, we should give some attention to the third objection in I-II, Q. 1, that "man does many things without deliberation, sometimes not even thinking of what he is doing; for instance when one moves one's foot or hand, or scratches one's beard, while intent on something else. Therefore man does not do everything for an end." St. Thomas replies to the objection, not that human beings never engage in such behaviors, but that they are not properly called "human acts," because they do not engage our distinctively human powers. Law is not a rule and measure of behaviors we perform without noticing, or of things we do while thinking of something else, but of acts that arise from a deliberate will.

Now that which is the principle in any genus, is the rule and measure of that genus: for instance, unity in the genus of numbers, and the first movement in the genus of movements. Consequently it follows that law is something pertaining to reason.

The reasoning here is dependent on Aristotle, *Metaphysics*, Book 10 (Iota). It is a bit compressed because St. Thomas's "beginners" would have been familiar with that work already. Let us expand the argument a little. Obviously, the rule and measure for anything must be appropriate to the kind of thing it is. To be appropriate, it must be the *same sort* of thing, of the same genus, "homogeneous" with it. But not just any member of the genus is suitable to serve as the rule and measure for the others; we must identify the member of the genus from which the other members spring.

Numbers, for example, arise from the multiplication of unity. Therefore, the way to measure numbers is to consider how many unities are in them; two contains more multiples of unity than one, three more multiples of unity than two, and so on. "Movements," by which St. Thomas means changes,¹⁰ arise as effects of logically prior causes. Therefore, the way to measure movements is to arrange them by their remoteness to the first cause of movement; the second effect in the chain is more remote than the first effect, the third effect is more remote than the second, and so on. Now in both of these examples, we are measuring things according to sequential order, but that is only one sort of order. The crucial point is that things are measured and set in order according to that from which they spring. From what then do

¹⁰We use the term movements for changes in *location*, which St. Thomas calls "local movements." But a change in, say, temperature, is also in his sense a kind of movement.

distinctively human actions spring? From a deliberate will, a will formed by rational deliberation with a view to some end perceived as good. Therefore, the rule and measure appropriate to distinctively human actions -- which we are calling law -- must also address itself to reason, and also has reference to the good.

Reply to Objection 1. *Since law is a kind of rule and measure, it may be in something in two ways. First, as in that which measures and rules: and since this is proper to reason, it follows that, in this way, law is in the reason alone. Secondly, as in that which is measured and ruled. In this way, law is in all those things that are inclined to something by reason of some law: so that any inclination arising from a law, may be called a law, not essentially but by participation as it were. And thus the inclination of the members to concupiscence is called "the law of the members."*

Reply to Objection 1. Law is a kind of governing ordinance and measuring rod, but in general, such a thing may be said to be "in" something in either of two ways. First, it may be said to be "in" the thing that does the measuring and governing. We may infer that in this sense, law is "in" reason, and not in anything else. Second, it may be said to be "in" the thing that is measured and governed. We may infer that in this sense, law is in everything over which law rules. So a disposition that arises from a law may itself be called a "law," not in the former sense (because it is not *essentially* law), but, so to speak, by participating or sharing in law's nature. It is in this latter sense that St. Paul calls the inclination of our sensual appetites to resist reason their *law*.

Reply to Objection 1. **Since law is a kind of rule and measure, it may be in something in two ways. First, as in that which measures and rules: and since this is proper to reason, it follows that, in this way, law is in the reason alone. Secondly, as in that which is measured and ruled.**

Since the Objector denies that law is "in" reason, and since St. Thomas holds that law is a kind of rule and measure, he investigates the senses in which a rule and measure can be said to be "in" something. First, it can be said to be "in" *the thing that is doing* the measuring and ruling, second, it can be said to be "in" *the thing that is done* according to that measure and rule.

For instance, when the ballerina is practicing dance, she is guided by her conception of the dance. This conception is "in" her mind or reason essentially, because that is where it is operating. But in another sense -- by participation, so to speak -- it is "in" the practiced habits of her body, because that is where it has its effect.

In this way, law is in all those things that are inclined to something by reason of some law: so that any inclination arising from a law, may be called a law, not essentially but by participation as it were.

Now it is just the same with law as it is with the conception in the ballerina's mind. In its essence, law is "in" reason, and nowhere else. By participation, however, it may also be said to be "in" every inclination that is governed by law, in her case her trained habits of physical movement.

And thus the inclination of the members to concupiscence is called "the law of the members."

At first this concluding line seems to come out of nowhere. How does what has been said help us solve the puzzle of the "the law of the members"? Reason might be "in" the sensual desires, by participation, if they are obedient to reason -- but isn't St. Paul's whole point that they *aren't* obedient to reason? This is one of the rare places in which, instead of building upon something that he has said earlier, St. Thomas anticipates something that he is not going to explain fully until later on, in Q. 91, Art. 6. What he says is that even though the disorder of our sensual appetites is *disobedient* to the rule of reason, nevertheless, in another sense it *arises* from the rule of reason. How could this be? The key is to recognize that something can arise from a rule in two different ways. In one sense, it arises from the rule only if it obeys the rule. In another sense, it arises from the rule if it is a penalty or consequence for disobedience, but one which arises from the nature of the rule itself. That is just what happens here. By habitually refusing to subordinate our desires to the rule of reason, we breed in them a habitual insubordination to the rule of reason. Eventually we cannot make them obey reason even when we want to, like a pilot who has lost control of his craft. Considered from a historical perspective, that is how original sin works; considered from the perspective of a single life, that is how actual sin works.

Reply to Objection 2. Just as, in external action, we may consider the work and the work done, for instance the

Reply to Objection 2. In external actions, we distinguish between the work itself and the result that the work

work of building and the house built; so in the acts of reason, we may consider the act itself of reason, i.e. to understand and to reason, and something produced by this act. With regard to the speculative reason, this is first of all the definition; secondly, the proposition; thirdly, the syllogism or argument. And since also the practical reason makes use of a syllogism in respect of the work to be done, as stated above (13, 3; 76, 1) and since as the Philosopher teaches (Ethic. vii, 3); hence we find in the practical reason something that holds the same position in regard to operations, as, in the speculative intellect, the proposition holds in regard to conclusions. Such like universal propositions of the practical intellect that are directed to actions have the nature of law. And these propositions are sometimes under our actual consideration, while sometimes they are retained in the reason by means of a habit.

accomplishes -- for example, between the work of building, and the house that the work of building accomplishes. In just the same way, we may distinguish between the act of reason itself (understanding and reasoning) and the result that this act accomplishes. Taken in order, the results accomplished by theoretical reason are the definition, the proposition, and the syllogism or argument.

But as we saw at a previous stage (and as taught by Aristotle), practical reasoning too uses syllogisms. It employs them to decide what is to be done, for the *decision* of a practical syllogism corresponds to the *conclusion* of a theoretical syllogism. The universal propositions with which practical syllogisms begin have the nature of law. They are not always in the mind as thoughts, but they are always in the mind as dispositional tendencies.

Reply to Objection 2. Just as, in external action, we may consider the work and the work done, for instance the work of building and the house built; so in the acts of reason, we may consider the act itself of reason, i.e. to understand and to reason, and something produced by this act.

This is very much like the distinction St. Thomas made in the reply to the previous objection. In our example of the ballerina, the work is practice, and the work done is the skill that this practice forms.

With regard to the speculative reason, this is first of all the definition; secondly, the proposition; thirdly, the syllogism or argument.

The old-fashioned expression "speculative reason" makes most contemporary readers think of extravagant exercises of imagination, which we have come to call "speculations." That is not what St. Thomas has in mind, and today most translations use the expression "theoretical reason" instead. The Latin root *speculatio* and the Greek root *theoria* have essentially the same meaning: To view, to scrutinize, to consider.

Speculative or theoretical reasoning is reasoning directed simply to knowledge; by contrast, practical reasoning is reasoning directed toward choosing a course of action in the light of an end. St. Thomas is pointing out that just as in building a house (or practicing ballet), so too in speculative or theoretical reason, we may distinguish between the work itself and the thing that the work achieves. The exercise of building a house achieves a house; the exercise of practicing ballet achieves skill; the exercise of speculative or theoretical reason achieves definitions, propositions, and syllogisms.

And since also the practical reason makes use of a syllogism in respect of the work to be done, as stated above (13, 3; 76, 1) and since as the Philosopher teaches (Ethic. vii, 3); hence we find in the practical reason something that holds the same position in regard to operations, as, in the speculative intellect, the proposition holds in regard to conclusions.

In the case of an ordinary syllogism, the premises and the conclusion are all propositions. For example, from the propositions "All men are mortal" and "Socrates is a man" follows the proposition "Socrates is mortal." In the case of what St. Thomas and Aristotle call a practical syllogism, however, the result is not a proposition, but a decision or judgment, followed by a choice (I-II, Q. 13, Art. 1, ad 2, and I-II, Q. 76, Art. 1). For example, from the proposition "Health is good," which supposes the appropriateness of pursuing it, and the proposition "Moderation in eating promotes health," which tells how to accomplish it, a man with self-control arrives at the decision to practice moderation in eating, and he chooses to do so. Plainly, the *decision* to practice moderation because it is good is not the same as the *proposition* that it would be good to practice moderation; the former is an act of the will. However, this act of the will holds the same place in a practical syllogism that the concluding proposition holds in an ordinary syllogism.

Such like universal propositions of the practical intellect that are directed to actions have the nature of law.

In the example of a practical syllogism offered above, the universal proposition, also called the major premise, was "Health is good." But the practical intellect makes use of many such universal propositions. Because these propositions are what the deliberate choice springs from, they are its rule and measure, and so they have the nature of law. This explains in what sense law pertains to reason even though nothing is "in" reason but powers, habits, and actions; the fact that nothing else is "in" reason is beside the point.

And these propositions are sometimes under our actual consideration, while sometimes they are retained in the reason by means of a habit.

Although St. Thomas has finished replying to the objection, he makes one more point to forestall a possible confusion. Although in a certain sense we always know the universal propositions he has just been speaking about, this does not mean that we are always thinking about them; they may also operate in the background, as *dispositions* of the mind, so that we deliberate *as though* we were thinking about them. For example, I may do something for the sake of health, even though at no point do I think to myself "Step one. Health is good, therefore ..."

Sometimes the question arises whether St. Thomas's distinction between habitual and actualized knowledge is the same as the contemporary distinction between conscious and unconscious knowledge. I think it would be better to say that the contemporary distinction is an unsuccessful attempt to get at what the Thomistic distinction gets at more successfully. When we call knowledge "conscious," we seem to mean that it is under actual consideration. But when we call knowledge "unconscious," we do not seem to be able to make up our minds what we mean. It is as though we were trying to say that we are thinking about something, and at the same time that we are not thinking about it. When the inconsistency of this way of speaking is pointed out to us, we say "I am thinking of the thing in my unconscious mind, not my conscious mind. I don't have conscious access to what I am thinking unconsciously." But if I don't have access to my unconscious mind, then in what sense is it really "my mind"? St. Thomas might suggest, "Don't say that you are both thinking and yet not thinking about something, or thinking about it in what both is and yet is not your real mind. Rather say that you have *one* mind, but its operations are subtle and complex. Even when you are not actually thinking about something, you may actually think of it at any moment, and in the meantime, your mind may continue to be dispositionally influenced by it."

Reply to Objection 3. Reason has its

Reply to Objection 3. Reason draws its

power of moving from the will, as stated above (17, 1): for it is due to the fact that one wills the end, that the reason issues its commands as regards things ordained to the end. But in order that the volition of what is commanded may have the nature of law, it needs to be in accord with some rule of reason. And in this sense is to be understood the saying that the will of the sovereign has the force of law; otherwise the sovereign's will would savor of lawlessness rather than of law.

ability to prompt us to action from the will. First reason sees what action the end in view requires, then, by means of the will, it commands it. But the former step is crucial, because for the underlying volition to be true law, it really must be directed by reason. For Ulpian's statement about the will or pleasure of the sovereign having the force of law to be true, it must be taken in this sense, not in the Objector's sense.

Reply to Objection 3. Reason has its power of moving from the will, as stated above (17, 1): for it is due to the fact that one wills the end, that the reason issues its commands as regards things ordained to the end.

Remember the point made earlier: Reason and will function together, not in isolation. The function of reason is to identify the purpose that is to be pursued, which is always some good, and to work out what must be done to achieve it. The bodily senses present their own images of what is good, but reason need not accept these images at face value. It recognizes not just what seems good to appetite but also other kinds of goods; it takes account of circumstances; it ponders which goods are more important and which are less; and it distinguishes between what is really good and what merely seems to be good. The function of will, in turn, is to command what reason has indicated.

But in order that the volition of what is commanded may have the nature of law, it needs to be in accord with some rule of reason.

Without reason, will would not know what to will; but reason commands *through* will. Without will, reason would be unable to command.

And in this sense is to be understood the saying that the will of the sovereign has the force of law; otherwise the sovereign's will would savor of lawlessness rather than of law.

The Objector took Ulpian's statement that "Whatsoever pleaseth the sovereign, has force of law," to mean that whatever the sovereign wills *even in isolation from*

reason has force of law. Rather than saying that Ulpian's statement is wrong, St. Thomas says it is wrong *taken in that sense*. If taken in a different sense -- which he considers its proper sense -- it is perfectly reasonable: That whatever the sovereign wills *in accordance with reason* has the force of law.

DISCUSSION

Because of the disputational form -- objections, *sed contra*, *respondeo*, replies to the objections -- first-time readers may get impression that St. Thomas thinks we begin the discussion not knowing anything and have to be taught everything. Nothing could be further from the truth. In St. Thomas's view, we have to know something, or we are not ready to begin inquiry; if we don't know something already, then we would have neither a starting point nor a way of getting on. Who is it that knows this "something"? All of us; there are some things that everyone really knows, and these supply the starting points for thought. On this view, the task of the philosopher is not to push common opinion aside, as modern thinkers do, but to stand upon it in order to reach higher. Not everything in common opinion is true, but there is always some grain of truth in it, or it could never seem plausible in the first place. The philosopher's task is separate that grain from the chaff -- to sift, purify, rectify, elevate, and ennoble it.

This movement of thought is properly called dialectic, although the meaning of the term has been distorted by Marxists, Hegelians, and so-called dialectical theologians. It is the method that the classical thinkers use when they are doing philosophy. The literary genre most suited to dialectic is the dialogue, whether formal dialogue, like the dialogues of Plato, in which one character speaks and another responds, or virtual dialogue, like some of the treatises of Aristotle, in which various abstract views take the stage in succession and "converse" back and forth as characters would. For this reason, it may also be called "dialogical."

The literary genre perhaps *least* suited to dialectic, or dialogue, is the one that St. Thomas has chosen, the disputation. Yet a surprise awaits us, for the way that he uses the disputational form is essentially dialogical. A great example of how he uses it meets us here at the beginning of the *Treatise on Law*, in Question 90, Article 1.¹¹ When he says, "Law is a rule and measure of acts, whereby man is induced to act or

¹¹Yves R. Simon has called attention to the dialectical movement of Q. 90 in *The Tradition of Natural Law: A Philosopher's Reflections* (New York: Fordham University Press, 1965, 1992), trans. Vukan Kuic, pp. 71-82. I am suggesting that such movement is characteristic of his thought more generally.

is restrained from acting," he is presenting a sort of broad and general definition, a starting point for better definition, yet he offers it without argument: Why? Because no argument is needed; he isn't trying to convince us of something we might not know, but putting into words what everyone already means by law without thinking about it. The questions that he goes on to ask in the next four articles are real questions, not just occasions for him to opine. Their purpose is to unpack and clarify this everyday idea, as though we were having a conversation with St. Thomas and he asked, "Now if you agree that this is true, then wouldn't you also say so-and-so?" We answer, "Why, yes," and so the conversation builds to its conclusion, laying assent to assent as a builder lays brick to brick. By the end of Article 4, the unpacking and clarifying is finished, and in place of the rough notion with which we began, we have a much more precise definition that is ready to do some work.

We must not assume that St. Thomas proceeds dialogically only when he is doing philosophy. He proceeds dialogically when he is doing theology too. One might expect that he wouldn't, for dialogue begins with what we already know, but theology is about revelation, which discloses things that we *don't* already know; Revelation declares "Thus says the Lord" in a way that unaided reason cannot. Yet even here, dialogue does not just drop out. Why not?

The first reason is that Revelation is not composed *only* of things that we don't already know; far from it. When God declares, as a prologue to the Ten Commandments, "I am the Lord thy God, who brought thee out of the land of Egypt, out of the house of bondage,"¹² he is reminding the Israelites of his mercy and arousing their sense of indebtedness. They know He is merciful, and they know they are indebted; they just need to be reminded. When he asks the Israelites what other nation is so great as to have laws like the ones he is giving them,¹³ the question presupposes that they are able to make the comparison. And so they are.

The second reason is that even when Revelation does disclose things we don't already know, it often builds on what we do already know, on premonitions and starting points that are present within us. The traditional way to put this is to say that nature is a preparation for grace. St. Paul, for example, builds on the natural experiences of conscience and godward longing, among others. Writing to the Christians of Rome, he says that when gentiles who do not have the law of Moses do what it requires, this shows that the work of the law is "written on their hearts, while

¹²Exodus 20:2.

¹³Deuteronomy 4:8.

their conscience also bears witness and their conflicting thoughts accuse or perhaps excuse them." Speaking to pagans in the Areopagus of Athens, he comments on their altar to "an Unknown God" and continues, "What therefore you worship as unknown, this I proclaim to you."¹⁴ The movement in these discourses is certainly dialogical, albeit in a modified sense. Even though it seeks assent to something not yet known -- something that will turn the world inside out and provide the believer with a new identity in which he no longer lives, but Christ lives in him¹⁵ -- the starting point of the process of being turned inside-out is recognition of something quite well known already.

¹⁴Romans 2:15 (see 2:14-16); Acts 17:23 (see 17:16-34).

¹⁵Galatians 2:20.