

Summa Theologica Ia IIae q92. THE EFFECTS OF LAW

- 1. Is an effect of law to make men good?**
- 2. Are the effects of law to command, to forbid, to permit, and to punish, as the Jurist states?**

[From the *Summa Theologica* of Saint Thomas Aquinas as translated by the Fathers of the English Dominican Province, and from the works of Blessed John Duns Scotus as selected and arranged by Jerome of Montefortino and as translated by Peter L.P. Simpson. Texts are taken from the *Opus Oxoniense* of the Wadding edition of Scotus' works.]

Article 1. Whether an effect of law is to make men good?

Aquinas

Objection 1. It seems that it is not an effect of law to make men good. For men are good through virtue, since virtue, as stated in *Ethic.* ii, 6 is “that which makes its subject good.” But virtue is in man from God alone, because He it is Who “works it in us without us,” as we stated above (55, 4) in giving the definition of virtue. Therefore the law does not make men good.

Objection 2. Further, Law does not profit a man unless he obeys it. But the very fact that a man obeys a law is due to his being good. Therefore in man goodness is presupposed to the law. Therefore the law does not make men good.

Objection 3. Further, Law is ordained to the common good, as stated above (90, 2). But some behave well in things regarding the community, who behave ill in things regarding themselves. Therefore it is not the business of the law to make men good.

Objection 4. Further, some laws are tyrannical, as the Philosopher says (*Polit.* iii, 6). But a tyrant does not intend the good of his subjects, but considers only his own

Scotus [*Loc. infra cit.*]

Objection 1. It seems that making men good is not the effect of law. For [Oxon. 1 d.17 q.3 n.1] it is the concern of virtue itself to make men decent, as the philosopher says (*Ethics* 2 ch.5): “Virtue is what perfects the one who has it and makes his work good;” therefore it is the effect, not of law, but of virtue to render men good.

Objection 2. Man would not obey law, nor submit himself to its prescriptions, unless he was inclined and induced to obedience by virtue; therefore men ought first to be endowed with virtue so that law might be of benefit to them; that effect, therefore, is not induced through the law but is rather presupposed by it.

Objection 3. Legislators and laws look most of all to the common good of republics and cities, in line with what was said above, q.79 a.4 [collected from *Oxon.* 4 d.14 q.2 n.8; d.46 q.4 n.7]. But it can happen that some members of a city should be well disposed towards the common good, because they rightly and in an ordered way carry out the duties committed to them, who in the meantime, and not

profit. Therefore law does not make men good.

On the contrary, The Philosopher says (*Ethic.* ii, 1) that the “intention of every lawgiver is to make good citizens.”

I answer that, as stated above (90, 1, ad 2; A3,4), a law is nothing else than a dictate of reason in the ruler by whom his subjects are governed. Now the virtue of any subordinate thing consists in its being well subordinated to that by which it is regulated: thus we see that the virtue of the irascible and concupiscent faculties consists in their being obedient to reason; and accordingly “the virtue of every subject consists in his being well subjected to his ruler,” as the Philosopher says (*Polit.* i). But every law aims at being obeyed by those who are subject to it. Consequently it is evident that the proper effect of law is to lead its subjects to their proper virtue: and since virtue is “that which makes its subject good,” it follows that the proper effect of law is to make those to whom it is given, good, either simply or in some particular respect. For if the intention of the lawgiver is fixed on true good, which is the common good regulated according to Divine justice, it follows that the effect of the law is to make men good simply. If, however, the intention of the lawgiver is fixed on that which is not simply good, but useful or pleasurable to himself, or in opposition to Divine justice; then the law does not make men good simply, but in respect to that particular government. In this way good is found even in things that are bad of themselves: thus a man is called a good robber, because he works in a way that is adapted to his end.

Reply to Objection 1. Virtue is twofold, as explained above (63, 2), viz. acquired and infused. Now the fact of being accustomed

because of lacking virtue and being subject to vice, suffer in their particular and proper good; therefore it does not pertain to law to make men decent.

On the contrary, Aristotle says (*Ethics* 10, last chapter): “It is the aim of the politician to make men good and obedient to the laws.”

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

to an action contributes to both, but in different ways; for it causes the acquired virtue; while it disposes to infused virtue, and preserves and fosters it when it already exists. And since law is given for the purpose of directing human acts; as far as human acts conduce to virtue, so far does law make men good. Wherefore the Philosopher says in the second book of the Politics (*Ethic.* ii) that “lawgivers make men good by habituating them to good works.”

Reply to Objection 2. It is not always through perfect goodness of virtue that one obeys the law, but sometimes it is through fear of punishment, and sometimes from the mere dictates of reason, which is a beginning of virtue, as stated above (63, 1).

Reply to Objection 3. The goodness of any part is considered in comparison with the whole; hence Augustine says (*Confess.* iii) that “unseemly is the part that harmonizes not with the whole.” Since then every man is a part of the state, it is impossible that a man be good, unless he be well proportionate to the common good: nor can the whole be well consistent unless its parts be proportionate to it. Consequently the common good of the state cannot flourish, unless the citizens be virtuous, at least those whose business it is to govern. But it is enough for the good of the community, that the other citizens be so far virtuous that they obey the commands of their rulers. Hence the Philosopher says (*Polit.* ii, 2) that “the virtue of a sovereign is the same as that of a good man, but the virtue of any common citizen is not the same as that of a good man.”

Reply to Objection 4. A tyrannical law, through not being according to reason, is not a law, absolutely speaking, but rather a perversion of law; and yet in so far as it is

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

something in the nature of a law, it aims at the citizens' being good. For all it has in the nature of a law consists in its being an ordinance made by a superior to his subjects, and aims at being obeyed by them, which is to make them good, not simply, but with respect to that particular government.

this in what follows.)

Reply to Objection 1. [*Oxon.* 1 d.17 q.3 n.15] I concede that virtue perfects him in whom it is and renders his work good. But a man acquires the moral virtues by his acts and by habituation. Therefore the law that commands and directs men in the acts of the virtues thereby makes those subject to it good.

Reply to Objection 2. [*Oxon.* 1 d.17 q.3] It must be said that citizens do not always obey the laws from affection for virtue, of which perhaps they have no experience; but for the most part they obey through fear of the punishments intended by the law for transgressors. Virtue may, therefore, be generated then by habituation to obedience when, by the fact that they are consistent with right reason or with the prudence that is present therein, the things the law commands are performed by men.

Reply to Objection 3. [*Oxon.* 3 d.40] I respond that human laws do indeed make the citizens good but they do not order the private acts of everyone; for to provide this belongs to the divine law alone. Wherefore anyone can be a good politician and a decent citizen as regards acts that concern the republic and yet be subject to intemperance. All that is necessary is that his intemperance not lead to the harm of the public good or perturb the common tranquility; otherwise he will be coerced and subjected to order by the severity of the law. Therefore the argument only concludes that the positive laws of men tend, indeed, to this, that they make men just and decent with respect to those things that can be judged and punished, or also rewarded, by man; but not with respect to those things which cannot be discussed and defined by human judgment.

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

Article 2. Whether the acts of law are suitably assigned?

Aquinas

Objection 1. It would seem that the acts of law are not suitably assigned as consisting in "command," "prohibition," "permission" and "punishment." For "every law is a

Scotus [*Loc. infra cit.*]

Objection 1. The acts of law seem to be not at all properly assigned when it is said that to law pertains: *commanding, forbidding, permitting, and punishing*. For in the law

general precept,” as the jurist states. But command and precept are the same. Therefore the other three are superfluous.

Objection 2. Further, the effect of a law is to induce its subjects to be good, as stated above (1). But counsel aims at a higher good than a command does. Therefore it belongs to law to counsel rather than to command.

Objection 3. Further, just as punishment stirs a man to good deeds, so does reward. Therefore if to punish is reckoned an effect of law, so also is to reward.

Objection 4. Further, the intention of a lawgiver is to make men good, as stated above (1). But he that obeys the law, merely through fear of being punished, is not good: because “although a good deed may be done through servile fear, i.e. fear of punishment, it is not done well,” as Augustine says (*Contra duas Epist. Pelag.* ii). Therefore punishment is not a proper effect of law.

On the contrary, Isidore says (*Etym.* v, 19): “Every law either permits something, as: ‘A brave man may demand his reward’”: or forbids something, as: “No man may ask a consecrated virgin in marriage”: or punishes, as: “Let him that commits a murder be put to death.”

I answer that, Just as an assertion is a dictate of reason asserting something, so is a law a dictate of reason, commanding something. Now it is proper to reason to lead from one thing to another. Wherefore just as, in demonstrative sciences, the reason leads us from certain principles to assent to the conclusion, so it induces us by some means to assent to the precept of the law.

there are found statutes paying rewards to the virtues just as there are found penalties with which the vices are punished. It is equally the job, then, of law to reward as to punish; and yet acts of rewarding are not reckoned among the acts of law.

Objection 2. [*Oxon.* 4 d.46 q.4 n.10] God permits evils to be done among men “because he is able to draw from them greater goods,” as Augustine says (*Enchir.* ch.11); but men are not able to effect from the sins and evils which they permit and allow to go unpunished anything good; therefore an act of permitting evils does not belong to a just law, but rather to an unjust and wrongful one.

Objection 3. It belongs to law to make men good (from the previous article): but men are led to a higher rank of goodness by the counsels; therefore it is in addition the job of the law to give counsel about following the better good; therefore the afore-stated acts, along with which is not numbered the giving of counsel, are insufficient in what they ascribe to the law.

On the contrary, in *Sentences* d.3 ch.4, from Isidore’s enumeration of the acts of law (*Etym.* 1 ch.19), it is written: “Every law either permits something, as that a strong man may ask for a reward; or forbids something, as that none of the Sacred Virgins may ask for marriage; or punishes, as that he who has carried out slaughter is to be suffer the death penalty.”

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.

Now the precepts of law are concerned with human acts, in which the law directs, as stated above (90, A1,2; 91, 4). Again there are three kinds of human acts: for, as stated above (18, 8), some acts are good generically, viz. acts of virtue; and in respect of these the act of the law is a precept or command, for “the law commands all acts of virtue” (*Ethic.* v, 1). Some acts are evil generically, viz. acts of vice, and in respect of these the law forbids. Some acts are generically indifferent, and in respect of these the law permits; and all acts that are either not distinctly good or not distinctly bad may be called indifferent. And it is the fear of punishment that law makes use of in order to ensure obedience: in which respect punishment is an effect of law.

Reply to Objection 1. Just as to cease from evil is a kind of good, so a prohibition is a kind of precept: and accordingly, taking precept in a wide sense, every law is a kind of precept.

Reply to Objection 2. To advise is not a proper act of law, but may be within the competency even of a private person, who cannot make a law. Wherefore too the Apostle, after giving a certain counsel (1 *Corinthians* 7:12) says: “I speak, not the Lord.” Consequently it is not reckoned as an effect of law.

Reply to Objection 3. To reward may also pertain to anyone: but to punish pertains to none but the framer of the law, by whose authority the pain is inflicted. Wherefore to reward is not reckoned an effect of law, but only to punish.

Reply to Objection 4. From becoming accustomed to avoid evil and fulfill what is good, through fear of punishment, one is sometimes led on to do so likewise, with

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

delight and of one's own accord. Accordingly, law, even by punishing, leads men on to being good.

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

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

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.

Reply to Objection 1. There is a reply that since rewarding can pertain to anyone it cannot be a proper act of law; but to punish another belongs only to the minister of the law, by whose authority punishment is inflicted; and that is why rewarding is not posited as an act of law but only punishing. – This response does not appear to us to be something to be approved of; for if punishing has regard to the judge as to the minister of the law, why is it not equally a feature of the same minister of law to distribute the rewards drawn up by the law, and in accord with commutative justice? As it is written: “the laborer is worthy of his hire.” And perhaps Isidore thought it superfluous to reckon rewarding also among the acts of law, since it would be enough to expound that it pertains to law to punish; for by that fact was given immediately to be understood that it belonged equally to the law to reward. But he did not express this act as being proper to the law because in fact it is the job of the prince, as the author of law, to reward, and it does not belong to others except by his special commission. For no one but a king can say: “be possessor of power over ten cities, and you over five” (*Luke 19*). But if [*Oxon.* 1 d.44] it belongs to the prince and legislator alone to reward, as being the author of law and above the law, certainly that act does not belong to law, which binds its subjects to judging precisely according to the law.

Reply to Objection 2. I reply by conceding that in fact God permits evils among men, because he knows how to elicit greater goods from them, which the Master appositely and truly expounds (1 d.46 ch. *Quod vero*). – And when it is added that it does not belong to man to elicit goods from evils therefore the permission of evils is less agreeably attributed to human law, I respond: [*Oxon.* 4 d.33 q.3 n.7] a human law would be unjust in which something was written which might be found prohibited by the divine law; but nevertheless many evils are permitted among men which are allowed to go unpunished, as Augustine says (*De Lib. Arbit. ch.5*), which nevertheless are to be punished at the appointed time through the divine law. And that therefore is what it is to permit evils and to leave them unavenged. These evils are, however, not commanded, nor are they counseled; but they are the more prohibited, and let men be deterred from perpetrating them. Permission, therefore, as an act of law, is a remiss willing-not of some evil which I am aware of, which is yet for that reason permitted because it is not punished, although it be found strictly forbidden in the law. But it is not punished through punitive justice, [*Oxon.* 3 d.39 n.5] but is left to divine vengeance, because the truth of the matter cannot be discovered in the way it would need to be for a just passing of sentence. Nor should that order of justice be omitted under pretext of there being something useful for the republic; because the evils that would follow from a fact like that would be worse than those which are said to be permitted. But it is just and right, that when two evils occur

and one must fall into one of the two, the evil that is less should be chosen.

Reply to Objection 3. I reply that the reason acts of advising do not pertain to the law was said in the solution. For counsel, even when it is most correct, can be given by a prudent man who has no authority for passing law or of obliging anyone to keep his counsels.