

QUESTION 92

The Effects of Law

We next have to consider the effects of law. On this topic there are two questions: (1) Is it an effect of law to make men good? (2) Are the effects of law, as the Jurist [Gratian] claims, to command, to forbid, to permit, and to punish?

Article 1

Is it the role of law to make men good?

It seems that it is not the role of law to make men good:

Objection 1: Men are good through virtue, since as *Ethics* 2 puts it, “Virtue is what makes the one who has it good.” But virtue comes to man only from God, since He “works it in us without us,” as was explained when we defined virtue (q. 55, a. 4). Therefore, it is not the role of law to make men good.

Objection 2: Law does a man no good unless he obeys the law. But the very fact that a man obeys the law stems from his goodness. Therefore, a man’s goodness is presupposed in relation to the law. Therefore, it is not the law that makes men good.

Objection 3: As was explained above (q. 90, a. 2), law is ordered toward the common good. But there are some men who act well in matters pertaining to the common good and yet do not act well in their own proper affairs. Therefore, it is not the role of law to make men good.

Objection 4: As the Philosopher points out in *Politics* 3, some laws are tyrannical. But a tyrant aims only at his own advantage and not at the goodness of his subjects. Therefore, it is not the role of law to make men good.

But contrary to this: In *Ethics* 2 the Philosopher says, “Every lawmaker intends to make the citizens good.”

I respond: As was explained above (q. 90, a. 1), law is nothing other than a dictate of reason which exists in the one who is in charge (*in praesidente*) and by which his subjects are governed. Now, in general, the virtue of what is subordinate lies in its being subordinated in the right way to that by which it is governed; for instance, we see that the virtue of the irascible and concupiscible [parts of the soul] consists in their being obedient in the right way to reason. Similarly, as the Philosopher puts it in *Politics* 1, “The virtue of any subject lies in his being subjected to his ruler in the right way (*ut bene subiiciatur principanti*).”

Now each law is ordered toward being obeyed by those subject to it. Hence, it is clear that it is a property of law that it should lead its subjects toward their own proper virtue. Therefore, since virtue is what makes the one who has it good, it follows that a proper effect of law is to make those to whom it is given good, either *absolutely speaking* or *relatively speaking*.

For if the lawmaker’s intention is directed toward the true good, i.e., the common good regulated in accord with divine justice, then it follows that through his law men become good *absolutely speaking*.

On the other hand, if the lawmaker’s intention is not directed toward the good absolutely speaking, but is instead directed toward a good which is advantageous or pleasant for himself or which is incompatible with divine justice, then his law makes men good not absolutely speaking, but only *relatively speaking*, viz., in their relation to that sort of regime. This is the sense in which the good exists even in things that are *per se* evil, as when someone is said to be a good thief because he operates in a way that is appropriate for his end.

Reply to objection 1: As is clear from what was said above (q. 63, a. 2), there are two kinds of virtue, viz., *acquired* virtue and *infused* virtue. The regularity (*assuetudo*) of the actions plays a role in

both kinds of virtue, but in different ways. For this regularity is in fact a *cause* of acquired virtue, whereas it [merely] *disposes* one for infused virtue and then conserves and promotes that virtue once it is already possessed. Since law is given in order to direct human acts, law makes men good to the extent that human acts contribute to virtue. Hence, the Philosopher likewise says in *Politics* 2, “Lawmakers make men good by habituating them.”

Reply to objection 2: It is not always the case that someone obeys the law because of his perfect goodness in virtue. Rather, he sometimes obeys because of his fear of punishment, and at other times simply because of the dictate of reason, which, as was explained above (q. 63, a. 1), is in some sense the principle of virtue.

Reply to objection 3: The goodness of a part is seen in relation to its whole. Hence, as Augustine says in *Confessiones* 3, “Any part that does not fit in with its whole is bad (*turpis*).” Therefore, since every man is part of a polity, it is impossible that any man should be good without being related in the right way to the common good; nor can the whole consist appropriately of anything except parts that are proportioned to it.

Hence, it is impossible for the common good of the city to fare well unless at least the citizens who are the rulers are virtuous. However, as far as the good of the community is concerned, it is enough that the other citizens be virtuous to the extent that they obey the commands of the rulers. This is why in *Politics* 3 the Philosopher says, “The virtue of a ruler is the same as the virtue of a good man, whereas the virtue of a common citizen is not the same as the virtue of a good man.”

Reply to objection 4: Since a tyrannical law is not in accord with reason, it is not a law absolutely speaking, but is instead a kind of perversion of law. And yet to the extent that it retains something of the character of law, it aims at the citizens’ being good. For it has nothing of the character of law except to the extent that (a) it is a dictate of someone who is in charge of the subjects and that (b) it intends that the subjects obey the law in the right way, i.e., that they be good—not absolutely speaking, but in relation to that regime.

Article 2

Are the acts of law correctly enumerated when one says that the acts of law are to command, to forbid, to permit, and to punish?

It seems that the acts of law are not correctly enumerated when one says that the acts of law are to command, to forbid, to permit, and to punish:

Objection 1: As the Jurist [Gratian] says [in *Decretum* 3], law consists in all the general precepts. But to command is the same as to issue a precept. Therefore, the other three acts are superfluous.

Objection 2: As was explained above (a. 1), the effect of law is to lead its subjects to the good. But a counsel concerns a better good than a precept does. Therefore, law has more to do with giving counsel than with issuing precepts.

Objection 3: Just as a man is spurred on toward the good by punishments, so too he is spurred on toward the good by rewards. Therefore, just as punishing is counted as an effect of law, so rewarding should be counted as well.

Objection 4: As was explained above (a. 1), the lawmaker’s intention is to make men good. But one who obeys the law solely out of fear of punishment is not a good man; for as Augustine says, “Even if one does something *good* out of servile fear, i.e., the fear of punishment, he still has not done anything *well*.” Therefore, to punish does not seem to be a property of law.

But contrary to this: In *Etymologia* 5 Isidore says, “Every law either *permits* something (e.g., that a brave man may seek a reward), or it *prohibits* something (e.g., that no one is permitted to seek marriage with a consecrated virgin), or it *punishes* something (e.g., someone who has committed murder shall be put to death).”

I respond: Just as a spoken proposition (*enunciatio*) is a dictate of reason in the mode of *asserting* (*enuntiandi*), so too a law is a dictate of reason in the mode of *issuing a precept* (*praecipendi*).

Now it is proper to reason to go from one thing to another. Hence, in the case of the demonstrative sciences, reason induces assent to the conclusion by means of certain principles; in the same way, it induces assent to a precept of the law by means of something. Now as was explained above (q. 90, a. 1), the precepts of the law concern human acts, which the law directs, and there are three different kinds of human acts:

As was explained above (q. 18, a. 8), some acts, viz., the acts of the virtues, are *good by their genus* (*boni ex genere*), and the act of law that is posited with respect to such acts is *to command* or *to issue a precept*. For as *Ethics* 5 says, law commands all the acts of the virtues.

By contrast, some acts, such as the acts of the vices, are *evil by their genus* (*mali ex genere*), and it is characteristic of law *to forbid* these acts.

On the other hand, some acts are *indifferent by their genus* (*indifferentes ex genere*), and it is characteristic of law *to permit* these acts. In addition, all acts that have either just a little goodness or just a little badness can likewise be called indifferent.

Finally, it is through *fear of punishment* that the law induces obedience to itself, and in this regard *to punish* is counted as an effect of law.

Reply to objection 1: Just as ceasing to do evil has a certain type of goodness, so too a prohibition is a certain type of precept. Accordingly, if ‘precept’ is taken broadly, a law may in general be called a ‘precept’.

Reply to objection 2: To give counsel is not an act proper to law, but can also be the act of a private person who does not have the role of making law. Thus it is that in 1 Corinthians 7:12, when he is giving counsel on a certain matter, the Apostle says, “It is I speaking, and not the Lord.” This is why giving counsel is not posited among the effects of law.

Reply to objection 3: Once again, to reward can be the role of anyone, whereas to punish pertains only to a minister of the law, by whose authority the punishment is inflicted. And this is why only punishing, and not rewarding, is counted as an act of law.

Reply to objection 4: Given that someone begins to be accustomed to avoiding evil and doing good because of his fear of punishment, he is sometimes led to enjoy doing good and to do it by his own will. Accordingly, it is also by punishing that the law leads to men being good.