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WHETHER THE EFFECT INTENDED BY LAW IS TO MAKE SUBORDINATES GOOD (Utrum effectus a Lege intentus sit facere subditos bonos)

1. Explicando naturam legis fere omnes eius causas declaravimus. Primo efficientem, quia esse debet ab eo, qui potestatem, et iurisdictionem habeat. Deinde materialem quasi subiectivam, quia esse debet in intellectu, aut voluntate, vel in quacunquere, quæ signum illius voluntatis possit in se recipere: et materialem quasi obiectivam, quia esse debet de re honesta, et circa subditos. Formalem etiam causam exposuimus, declarando modum, quo lex ferri debet, et promulgari. Denique finalem etiam attigimus, cum diximus, legem debere ferri pro communi bono, quia vero finis cum effectu coincidit, non potuit sine illo plene explicari. Hic ergo incipimus de effectibus tractare, et simul innotescet amplius finis legis, qui est probitas, et honestas subditorum, et ideo ab hoc generali effectu incipimus.

2. Ratio ergo dubitandi esse potest, quia lex divina non habet hunc effectum, ergo multo minus aliæ. Antecedens patet, quia lex divina, ut lex est, non præbet vires, nec iuvat ad operandum bonum, ob quam rationem Paulus ad Roman. 3 legem veterem vocat legem mortis: et c. 4 ait, legem iram operari, et c. 5 *lex subintravit, ut abundaret delictum*. Secundo saltem lex civilis non habet facere hominem bonum, propter quod Arist. 3 Polit. c. 3 aliam dicit esse virtutem boni viri, et aliam boni civis: ergo et lex alia: lex ergo civilis facit bonum civem, sed non simpliciter bonum virum. Ratio autem est, quia finis civitatis solum est huius vitæ temporalis conservatio in exteriori pace, et iustitia, ut sumitur ex eodem Philosopho 1 Politic. cap. 2 ad quem finem etiam ordinantur civiles leges; non ergo intendunt veram probitatem morum, quæ facit hominem bonum, sed solum exteriorem quandam

1. In explaining the nature of law we revealed almost all of its causes. First, the efficient [cause], because it should be from that which has power and jurisdiction. Next, the material quasi-subjective [cause], because it should be in the intellect or the will or in whatever thing that can receive in itself the sign of that will, and the material quasi-objective [cause], because it should be about honest matter and concerning subordinates. We also explained the formal cause, revealing the way in which the law ought to be instituted and promulgated. Finally, we also arrived at the final cause, since we said that the law ought to be instituted for the common good, but since the end coincides with the effect it was not possible to be properly explained without that. Therefore, we begin to discuss the effects here. At the same time, the end of the law which is the probity and honesty of the subordinates will become better-known, and therefore we start from this general effect.

2. Therefore, the reason for doubting can be that the divine law does not have this effect. Therefore, the others even less. The antecedent is clear because the divine law insofar as it is law does not present power nor aid in doing good. For this reason Paul calls the old law the law of death in Rom. 3[:22]. And in 4[:15] he says that the law enacts wrath and in 5[:20]: ‘the law was added so that transgression might abound’. Secondly, the civil law at least does not think to make a human being good, which is why Aristotle says in *Pol.* III, c. 3 that it is one thing to be a virtue of a good man and another [to be a virtue] of a good citizen.¹ Therefore, the law is also different. Therefore, the civil law makes a good citizen, but not, strictly speaking, a good man. Moreover, the reason is because the end of a state is only the preservation of this temporal life in external peace and justice, as is taken from the same philosopher in *Pol.* I, c. 2.² Civil laws are also ordered to this end. They do not intend, therefore, the true probity of morals which makes

¹Latin text is from the 1679 London edition. Marginal comments omitted; ‘j’s changed to ‘i’s and most abbreviations expanded. Changed some punctuation, e.g., removed periods after numbers.

observantiam, quæ facit bonum civem. Tertio ad legem implendam non est necessarius actus bonus; imo sæpe per peccatum impletur etiam canonica lex: sed homo non fit bonus, nisi bonis actibus: ergo observantia legis non facit bonum: ergo multo minus lex ipsa.

3. Nihilominus dicendum est, finem intentum a lege esse, facere subditos bonos: atque ita hunc esse quasi ultimum effectum legis. Ita docet D. Thom. q. 92, art. 1 quem omnes sequuntur. Consonat Arist. 2 Ethic. cap. 1 dicens, *legumlatores ipsos cives assuefacientes bonos efficere*. Ratio D. Thomæ est, quia bonum subditi in hoc consistit, ut motioni superioris subiiciatur, ut sentit etiam Aristot. 1 Polit. cap. ult. movetur autem subditus a superiore, mediante lege: ergo per illam efficitur bonus, si ei subiiciatur. Et confirmatur, quia lex, ut sit lex, debet esse iusta: ut autem sit iusta, oportet, ut tendat in bonum finem ad bonum commune pertinentem, et per medium honestum: ergo qui servaverit legem, operabitur circa honestum, et propter commune bonum, quantum est ex vi legis: ergo ex vi illius bonus fiet. Sed hoc declarabitur melius inductione facta in singulis legibus, et respondendo ad rationes dubitandi.

4. Circa primum ergo argumentum manifestum est, divinas leges eo tendere, ut faciant homines bonos: nam *Lex quidem sancta, et mandatum sanctum, et iustum et bonum*, ut ait Paulus [ad Rom. 7:12]. Quod non solum verum est de lege scripta, ut contra hæreticos infra ostendemus, sed a fortiori etiam de lege gratiæ, et de lege naturali per se est evidens: nam prohibet quidquid est malum, præcipit autem omnem virtutem unde de illa maxime dictum creditur. *Quis ostendet nobis bona? signatum est super nos lumen vultus tui Domine*. Denique pro ratione sufficit, Deum esse auctorem alicuius legis, ut certo constet ad efficiendos homines bonos datum esse. Unde ad omnem Dei legem applicari possunt omnes laudes, quas de lege divina prosequitur David toto Psal. 118, inter alia. *Lucerna pedibus meis verbum tuum, et lumen semitis meis*. Nam hoc modo præcipue lex facit bonos, scilicet, dirigendo ad id, quod bonum est, et obligationem illud operandi imponendo, cui consonat illud Psal. 18. *Lex Domini immaculata, convertens animas*. Et infra, *Præceptum Domini lucidum, illuminans oculos*.

for a good human being, but only a certain external observation which makes for a good citizen. Thirdly, a good act is not necessary to satisfy the law. On the contrary, even the canon law is often satisfied by a sin. But a human being does not become good except by good acts. Therefore, observance of the law does not make [one] good. Therefore, much less the law itself.

3. Nevertheless, it should be said that end intended by law is to make subordinates good and in this way this is as it were the ultimate effect of law. St. Thomas teaches this in [ST IaIIæ].92.1, which everyone follows. Aristotle agrees in EN II, c. 1, saying: ‘legislators themselves make citizens accustomed to the good’.³ St. Thomas’s reason is that the goodness of a subordinate consists in being subjected to the motion of his superior, as Aristotle also thinks in the last chapter of Pol. I. Moreover, the subordinate is moved by the superior by means of the law. Therefore, he is made good through that, if he is subject to it. And it is confirmed, because law, insofar as it is law, ought to be just. But in order to be just, it must tend to the good end pertaining to the common good and through honest means. Therefore, he who will keep the law, acting with honest and for the sake of the common good, to the extent that it is by the strength of the law, he will therefore become good by its strength. But this will be revealed better once application has been made to individual laws and in responding to the reasons for doubting.

4. Concerning the first argument, therefore, it is manifest by that that divine laws tend to make human beings good. For, as Paul says [in Rom. 7:12]: ‘Indeed, the law is holy and the commandment is holy, just, and good’. This is true not only concerning written law, as we will show below against the heretics, but *a fortiori* also concerning the law of grace and it is evident *per se* concerning the natural law. For it prohibits whatever is evil, but orders every virtue whence is especially believed concerning it the saying [in Ps. 4:7]: ‘Who can show us good? The light of your face, O Lord, was stamped on us’. Finally, it suffices for this reason: God is the author of any law so that it certainly continues to bring about that good human beings are given. Hence all praise can be applied to every law of God, which David pursues concerning the divine law in all of Ps. 118, among others: ‘Your word is a lamp to my feet and a light for my path’ ([v. 105]). For the law creates good especially in this way, namely, by directing to that which is good and by imposing an obligation to do that, to which Ps. 19[:7] agrees: ‘The law of the Lord is without blemish, converting souls’. And in the next verse: ‘The precept of the Lord is shining, illuminating the eyes’.

5. Est autem advertendum, Paulum distinguere legem a gratia, quia lex, ut lex, licet ostendat, quid operandum sit, per se non dat vires ad id exequendum: hoc enim ad gratiam spectat. Unde est illud Pauli ad Rom. 7. *Video aliam legem in meis repugnantem legi mentis meae*, etc. Et infra, *Quis me liberabit de corpore mortis huius?* et respondet, *Gratia Dei per Iesum Christum*: lex ergo, si multa præcipiat, et vires operandi non præbeat, quamvis per se tendat ad bonum, potest esse occasio, ut homo propter fragilitatem suam peior fiat. Atque hic est sensus Pauli in prioribus locis: nam hæc erat infirmitas legis veteris, quod multa iubebat, et non iuvabat, et ideo dicitur, iram, et mortem operatam fuisse, non per se, vel ex intentione sua, sed per occasionem ab hominibus acceptam. Unde cum dicitur, *ut abundaret delictum*, posita particula, *ut*, non significat finem, sed consequentiam, quod in illa particula, *ut*, frequens est, et notandum in Scriptura.⁴ Ponitur autem ad denotandum, effectum illum prævisum esse a Deo, et ex speciali providentia permissum, ut homines suam fragilitatem, et necessitatem divinæ gratiæ, ac redemptionis Christi cognoscerent.

6. Circa secundum de lege civili aliqui Thomistæ existimant propterea D. Thomam addidisse, *legem facere bonum, vel simpliciter, vel secundum quid*: quia lex civilis, licet non faciat bonum virum, quod est esse bonum simpliciter, facit bonum civem, quod est esse bonum secundum quid. Sed advertendum est, illud *secundum quid* dupliciter accipi posse: uno modo, ut distinguitur bonum in aliquo genere, v. g. scientiæ, vel artis a bono morali, seu honesto, quod vocamus bonum simpliciter: alio modo sumi potest, prout intra ipsum genus honesti bonum unius tantum virtutis est secundum quid, respectu collectionis omnium virtutum, quomodo temperatus, si non sit bonus, vel iustus, dicitur bonus secundum quid. D. Thomas ergo sine dubio loquutus est in priori sensu, adeo ut dixerit, leges latronum si servantur, facere bonos latrones, et idem est de lege militiæ et cuiuslibet artis: sed illæ leges non sunt leges simpliciter, sed secundum quid, ut ex principio materiæ constat. Unde leges civiles, quæ simpliciter leges sunt, re vera non tantum faciunt bonum secundum quid in illo sensu, sed simpliciter, quia bonum morale et honestum intendunt. Ita profitetur Iureconsultus in l. 1 ff. de iust. et iur. dicens, *Iustitiam colimus, licitum ab illicito discernentes, bonos non solum metu pœnarum,*

5. But it should be noted that Paul distinguishes law from grace, because law, insofar as it is law, although it shows what should be done, it itself does not give the strength to follow it, for this pertains to grace. This is why Paul says in Rom. 7[:23]: ‘I see another law in my members fighting against the law of my mind . . .’ And later: ‘Who will free me from the body of this death? ([v. 24]).’ And he responds: ‘The grace of God through Jesus Christ’ ([v. 25]). The law, therefore, if it instructs much but does not provide the strength for acting, although in itself it tends to good, can be the occasion for a human being to become more wicked on account of his frailty. And this is Paul’s sense in the previous places. For this was the weakness of the old law that commanded much but did not assist. And therefore it is said that wrath and death were its work, not in itself or by its intention but through an occasion accepted by humans. Hence, when it is said ‘so that transgression might abound’, the particle used, ‘so that’ (*ut*), does not signify the end but the consequence. That particle ‘so that’ is frequently used this way and it should be noted in the Scriptures. Moreover, it is used to denote that that effect was foreseen by God and permitted by special providence, so that humans learn about their frailty and the necessity of divine grace and the redemption of Christ.

6. About the second [argument] concerning civil law some Thomists think that it is for this reason that St. Thomas added: ‘law makes good, either strictly speaking or in a qualified way’. Because civil law, although it does not make a man good, which is being good strictly speaking, it does make a good citizen, which is being good in a qualified way. But it should be noted that that ‘in a qualified way’ can be taken in two ways. In one way so that good in some genus is distinguished, for example, of science or art from moral or honest good, which we call good strictly speaking. It can be taken in another way as within the genus itself of honest [good] the good of one virtue alone is [good] in a qualified way, with respect to the collection of all the virtues, in which way temperance is called good in a qualified way if it is not good or just. Therefore, St. Thomas without doubt was speaking in the former sense, precisely as he said that the laws of robbers make good robbers if they are observed. And it is the same concerning the law of military campaigning and any other arts. But these laws are not laws strictly speaking, but in a qualified way as is clear from the beginning of the matter.

Hence civil laws, which are laws strictly speaking, actually do not make good only in a qualified way in that sense but strictly speaking, because they intend moral and honest good. The Jurist declares this in law 1 ff. in *De Iusticia et Iure*, saying: ‘We cultivate justice, distinguishing

sed etiam ex hortatione præmiorum efficere cupientes. Idem sentit Arist. 3 Polit. c. 4 dicens finem civitatis esse *bene vivere, et honestatem aliquam participare*, et c. 6 ait; *De virtute, et vitio publice cogitant quicumque curam habent bene instituendi civitatem*, et 1 Politicor. cap. ultim. dicit *omnes cives debere esse participes virtutis moralis, quantum opus est.* Tamen in Principe requirit virtutem simpliciter, utique in secundo sensu posito, i.e. collectionem omnium virtutum, quia in omnibus debet præcipere.

7. Ratio autem a priori est, quia finis humanæ reipublicæ est vera felicitas politica, quæ sine moribus honestis esse non potest: per leges autem civiles dirigitur in eam felicitatem, et ideo necesse est ut illæ leges ad bonum morale per se tendant, quod, ut dixi, est bonum simpliciter. Quando vero Arist. bonum civem distinguit a bono viro, id facit, quia plus requiritur ad virtutem boni viri, quam boni civis: quamvis enim virtus boni civis moralis sit, et honesta ex se, tamen præcise sumpta est secundum quid, secundo sensu supra declarato, et sola non sufficit ad constituendum simpliciter bonum virum. Unde si quis sit solitarius, poterit esse vir bonus, etiam si non sit bonus civis. Qui autem pars est civitatis, non erit bonus simpliciter, nisi et vir bonus, et bonus civis sit, quia bonum ex integra causa: poterit autem esse bonus civis, licet non sit bonus vir, quia esse bonum civem, est esse bonum secundum quid.

8. Atque hinc constat a fortiori, leges canonicas facere bonum simpliciter in eodem sensu: nam si illæ tantum servantur, non faciunt bonum omnino consummatum, id est, in omni genere boni: quod de quacumque lege in particulari dici potest, quia non præcipit omne bonum, sed partem eius, præter legem charitatis, quæ virtute omnia complectitur. Atque ita unaquæque lex facit bonum ex parte (ut ita dicam) et in hoc sensu facit bonum secundum quid: tota autem collectio legum facit absolute bonum. Et hoc ipsum in re censuerunt Cajetan. et Soto circa dictum artic. 1 quamvis in verbis differre videantur.

9. Circa tertium occurrebat disputatio cum Adrian. et aliis: an peccando mortaliter possit vere lex aliqua servari. Sed de hoc videri potest D. Thomas

the licit from the illicit, desiring to effect good not only from a fear of punishments but by the encouragement of rewards', Aristotle thinks the same in *Pol.* III, c. 4, saying that the end of the state is 'to live well and to participate in some honesty'.⁵ In c. 6 he says: 'Whoever has the office of establishing the state well considers public virtue and vice'.⁶ And in the last chapter of book I he says: 'each citizen ought to participate in moral virtue insofar as it is his task'.⁷ Nevertheless, of the prince he requires virtue strictly speaking, at least in the second sense posited, i.e., a collection of all virtues, because he ought to instruct in everything.

7. Moreover, the argument is *a priori*, because the end of a human republic is true political felicity, which cannot exist without honest morals. But one is directed to that felicity through civil laws and therefore it is necessary that those laws tend in themselves to moral good, which, as I said, is good strictly speaking. But when Aristotle distinguishes the good citizen from the good man, he does so because more is required for the virtue of a good man than for a good citizen. For although the virtue of a good citizen is moral and honest according to itself, yet taken precisely it is [good] in a qualified way, as shown in the second sense above, and does not suffice alone for constituting a good man strictly speaking. Hence, if someone is living alone, he will be able to be a good man even if he is not a good citizen. But he who is a member of a state, will not be good strictly speaking unless he is both a good man and a good citizen, because good has to be good in every respect. But he will be able to be a good citizen even if he is not a good man, because to be a good citizen is to be good in a qualified way.

8. And from here it is clear *a fortiori* that canon laws make good strictly speaking in the same sense. For if these are only observed, they do not make a wholly consummate good, that is, in every genus of good. This can be said of any law in particular, because it does not command all good, but only a part of it (except the law of charity, which includes all virtue). And in this way any law makes good according to a part (if I may say it that way) and in this sense makes good in a qualified way. But the whole collection of laws makes good absolutely. And actually Cajetan and Soto think this very thing concerning the statement in art. 1, although they seem to differ in words.

9. Concerning the third, a disputation was occurring with Adrian and others about whether some law can be observed in sinning mortally. But concerning this,

1. 2 quæstione 100, art. 9 et 2. 2 quæstion. 44, articular. 4 et infra tractando de lege positiva disputabitur, nunc admitto posse legem servari per actum malum, non vero quatenus malus est, sed quatenus aliquid boni ex suo genere habet, ex quo solum sequitur legem non præcipere semper omne bonum loquendo de una lege in particulari, neque ita efficaciter reddere hominem bonum, ut non possit ipse malitiam aliquam admiscere bonitati intenta a lege. Unde quia bonum ex integra causa, malum autem ex quocumque defectu fit, ut actus quidem sit simpliciter malus propter circumstantiam ab homine adiunctam, et nihilominus propter bonam substantiam, quam habet, sufficiat ad implendam legem. Deinde dicitur, hic maxime habere locum vulgatum principium, *Finem legis non cadere sub legem*. Nam quamvis lex præcipiendo actum bonum ex genere, intendat etiam, ut bene fiat, ut hoc modo possit hominem bonum facere, non tamen hoc totum præcipit semper, sed solum actus substantiam, ideoque per illam poterit impleri.

St. Thomas can be seen in [ST] IaIIæ.100.9 and IIaIIæ.44.4 and it will be discussed below in treating the positive law. For now I grant that a law can be observed through an evil act, but not insofar as it is evil but insofar as it has something of the good in its genus. From this it only follows that the law does not always command every good when speaking of one law in particular nor does it so efficaciously deliver a good human being that he cannot mix in some evil with the goodness intended by the law. Hence, because good happens when good in every respect, but evil from any defect, so that an act, indeed, is strictly speaking evil on account of a circumstance attached by a human and nevertheless suffices for satisfying the law on account of the good substance which it has. Finally, it is said that the common principle ‘the end of the law does not fall under the law’ especially has its place here. For although the law in commanding a good act according to its genus also intends that it be done well, that in this way it can make a good human being. Yet it does not always command this whole, but only the substance of the act and therefore it will be able to be satisfied through that.

- 1 1276b34–35: ‘Hence it is evident that the good citizen need not of necessity possess the excellence which makes a good man’. All quotations of Aristotle in the notes are from the revised Oxford translation of *The Complete Works of Aristotle*, edited by Jonathan Barnes (Princeton: Princeton University Press, 1984).
- 2 1252b27–1253a2: ‘When several villages are united in a single complete community, large enough to be nearly or quite self-sufficing, the state comes into existence, originating in the bare needs of life, and continuing in existence for the sake of a good life. And therefore, if the earlier forms of society are natural, so is the state, for it is the end of them, and the nature of a thing is its end. For what each thing is when fully developed, we call its nature, whether we are speaking of a man, a horse, or a family. Besides, the final cause and end of a thing is the best, and to be self-sufficing is the end and the best’.
- 3 1103b3: ‘This is what happens in states; for legislators make the citizens good by forming habits in them, and this is the wish of every legislator; and those who do not effect it miss their mark, and it is in this that a good constitution differs from a bad one’.
- 4 Cf. Pereña et al.’s edition.
- 5 1280a31: ‘But a state exists for the sake of a good life’. 1280b38–1281b2: ‘The end of the state is the good life, and these are the means towards it. And the state is the union of families and villages in a perfect and self-sufficing life, by which we mean a happy and honourable life’.
- 6 1280b5: ‘Whereas, those who care for good government take into consideration political excellence and defect’.
- 7 1260a20–24: ‘Clearly, then, excellence of character belong to all of them; but the temperance of a man and of a woman, or the courage and justice of a man and of a woman, are not, as Socrates maintained, the same; the courage of a man is shown in commanding, of a woman in obeying’.