



Thomas Aquinas

Summa Theologiae - TREATISE ON LAW

(QQ 90-108)

1 OF THE ESSENCE OF LAW (FOUR ARTICLES)

We have now to consider the extrinsic principles of acts. Now the extrinsic principle inclining to evil is the devil, of whose temptations we have spoken in the FP, Q114. But the extrinsic principle moving to good is God, Who both instructs us by means of His Law, and
5 assists us by His Grace: wherefore in the first place we must speak of law; in the second place, of grace.

Concerning law, we must consider: (1) Law itself in general; (2) its parts. Concerning law in general three points offer themselves for our consideration: (1) Its essence; (2) The
10 different kinds of law; (3) The effects of law.

Under the first head there are four points of inquiry:

- (1) Whether law is something pertaining to reason?
- (2) Concerning the end of law;
- (3) Its cause;
- (4) The promulgation of law.

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Question 90

Article 1: Whether law is something pertaining to reason?

OBJ 1: It would seem that law is not something pertaining to reason. For the Apostle
20 says (Rm. 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.

1 OBJ 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 habit of reason: because the
habits of reason are the intellectual virtues of which we have spoken above (Q57). Nor again
is it an act of reason: because then law would cease, when the act of reason ceases, for
5 instance, while we are asleep. Therefore law is nothing pertaining to reason.

 OBJ 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 (Q9,
A1). Therefore law pertains, not to the reason, but to the will; according to the words of the
10 Jurist (Lib. i, ff., De Const. Prin. leg. i): "Whatsoever pleaseth the sovereign, has force of
law."

 On the contrary, It belongs to the law to command and to forbid. But it belongs to
reason to command, as stated above (Q17, A1). Therefore law is something pertaining to
15 reason.

 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
20 human acts, as is evident from what has been stated above (Q1, A1, 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
25 reason.

 Reply OBJ 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.
30 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."

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1 Reply OBJ 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. With regard to the speculative reason, this is first of all the definition; secondly, the
5 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 (Q13, A3; Q76, A1) 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
10 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.

15 Reply OBJ 3: Reason has its power of moving from the will, as stated above (Q17,
A1): 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.
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Article 2: Whether the law is always something directed to the common good?

25 OBJ 1: It would seem that the law is not always directed to the common good as to
its end. For it belongs to law to command and to forbid. But commands are directed to
certain individual goods. Therefore the end of the law is not always the common good.

30 OBJ 2: Further, the law directs man in his actions. But human actions are concerned
with particular matters. Therefore the law is directed to some particular good.

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35 OBJ 3: Further, Isidore says (Etym. v, 3): "If the law is based on reason, whatever is
based on reason will be a law." But reason is the foundation not only of what is ordained to
the common good, but also of that which is directed private good. Therefore the law is not
only directed to the good of all, but also to the private good of an individual.

1 On the contrary, Isidore says (Etym. v, 21) that "laws are enacted for no private profit, but for the common benefit of the citizens."

5 I answer that, As stated above (A1), the law belongs to that which is a principle of human acts, because it is their rule and measure. Now as reason is a principle of human acts, so in reason itself there is something which is the principle in respect of all the rest: wherefore to this principle chiefly and mainly law must needs be referred. Now the first principle in practical matters, which are the object of the practical reason, is the last end: and the last end of human life is bliss or happiness, as stated above (Q2, A7; Q3, A1).

10 Consequently the law must needs regard principally the relationship to happiness. Moreover, since every part is ordained to the whole, as imperfect to perfect; and since one man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness. Wherefore the Philosopher, in the above definition of legal matters mentions both happiness and the body politic: for he says (Ethic. v, 1) that we call those legal matters "just, which are adapted to produce and preserve happiness and its parts for the body politic": since the state is a perfect community, as he says in Politic I, 1.

15 Now in every genus, that which belongs to it chiefly is the principle of the others, and the others belong to that genus in subordination to that thing: thus fire, which is chief among hot things, is the cause of heat in mixed bodies, and these are said to be hot in so far as they have a share of fire. Consequently, since the law is chiefly ordained to the common good, any other precept in regard to some individual work, must needs be devoid of the nature of a law, save in so far as it regards the common good. Therefore every law is ordained to the common good.

25 Reply OBJ 1: A command denotes an application of a law to matters regulated by the law. Now the order to the common good, at which the law aims, is applicable to particular ends. And in this way commands are given even concerning particular matters.

30 Reply OBJ 2: Actions are indeed concerned with particular matters: but those particular matters are referable to the common good, not as to a common genus or species, but as to a common final cause, according as the common good is said to be the common end.

35 Reply OBJ 3: Just as nothing stands firm with regard to the speculative reason except that which is traced back to the first indemonstrable principles, so nothing stands firm with

1 regard to the practical reason, unless it be directed to the last end which is the common
good: and whatever stands to reason in this sense, has the nature of a law.

5 Article 3: Whether the reason of any man is competent to make laws?

OBJ 1: It would seem that the reason of any man is competent to make laws. For the
Apostle says (Rm. 2:14) that "when the Gentiles, who have not the law, do by nature those
things that are of the law . . . they are a law to themselves." Now he says this of all in general.
10 Therefore anyone can make a law for himself.

OBJ 2: Further, as the Philosopher says (Ethic. ii, 1), "the intention of the lawgiver is
to lead men to virtue." But every man can lead another to virtue. Therefore the reason of any
man is competent to make laws.

15 OBJ 3: Further, just as the sovereign of a state governs the state, so every father of a
family governs his household. But the sovereign of a state can make laws for the state.
Therefore every father of a family can make laws for his household.

20 On the contrary, Isidore says (Etym. v, 10): "A law is an ordinance of the people,
whereby something is sanctioned by the Elders together with the Commonalty."

I answer that, A law, properly speaking, regards first and foremost the order to the
common good. Now to order anything to the common good, belongs either to the whole
25 people, or to someone who is the viceregent of the whole people. And therefore the making
of a law belongs either to the whole people or to a public personage who has care of the
whole people: since in all other matters the directing of anything to the end concerns him to
whom the end belongs.

30 Reply OBJ 1: As stated above (A1, ad 1), a law is in a person not only as in one that
rules, but also by participation as in one that is ruled. In the latter way each one is a law to
himself, in so far as he shares the direction that he receives from one who rules him. Hence
the same text goes on: "Who show the work of the law written in their hearts."

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1 Reply OBJ 2: A private person cannot lead another to virtue efficaciously: for he can
only advise, and if his advice be not taken, it has no coercive power, such as the law should
have, in order to prove an efficacious inducement to virtue, as the Philosopher says (Ethic. x,
9). But this coercive power is vested in the whole people or in some public personage, to
5 whom it belongs to inflict penalties, as we shall state further on (Q92, A2, ad 3; SS, Q64,
A3). Wherefore the framing of laws belongs to him alone.

 Reply OBJ 3: As one man is a part of the household, so a household is a part of the
state: and the state is a perfect community, according to Polit. i, 1. And therefore, as the
10 good of one man is not the last end, but is ordained to the common good; so too the good of
one household is ordained to the good of a single state, which is a perfect community.
Consequently he that governs a family, can indeed make certain commands or ordinances,
but not such as to have properly the force of law.

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Article 4: Whether promulgation is essential to a law?

 OBJ 1: It would seem that promulgation is not essential to a law. For the natural law
20 above all has the character of law. But the natural law needs no promulgation. Therefore it is
not essential to a law that it be promulgated.

 OBJ 2: Further, it belongs properly to a law to bind one to do or not to do
something. But the obligation of fulfilling a law touches not only those in whose presence it
25 is promulgated, but also others. Therefore promulgation is not essential to a law.

 OBJ 3: Further, the binding force of a law extends even to the future, since "laws are
binding in matters of the future," as the jurists say (Cod. 1, tit. De lege et constit. leg. vii).
But promulgation concerns those who are present. Therefore it is not essential to a law.

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 On the contrary, It is laid down in the Decretals, dist. 4, that "laws are established
when they are promulgated."

 I answer that, As stated above (A1), a law is imposed on others by way of a rule and
35 measure. Now a rule or measure is imposed by being applied to those who are to be ruled

1 and measured by it. Wherefore, in order that a law obtain the binding force which is proper
to a law, it must needs be applied to the men who have to be ruled by it. Such application is
made by its being notified to them by promulgation. Wherefore promulgation is necessary
5 for the law to obtain its force.

Thus from the four preceding articles, the definition of law may be gathered; and it is
nothing else than an ordinance of reason for the common good, made by him who has care
of the community, and promulgated.

10 Reply OBJ 1: The natural law is promulgated by the very fact that God instilled it
into man's mind so as to be known by him naturally.

15 Reply OBJ 2: Those who are not present when a law is promulgated, are bound to
observe the law, in so far as it is notified or can be notified to them by others, after it has
been promulgated.

20 Reply OBJ 3: The promulgation that takes place now, extends to future time by
reason of the durability of written characters, by which means it is continually promulgated.
Hence Isidore says (Etym. v, 3; ii, 10) that "lex [law] is derived from legere [to read] because
it is written."

Question 91

25 OF THE VARIOUS KINDS OF LAW (SIX ARTICLES)

We must now consider the various kinds of law: under which head there are six
points of inquiry:

- (1) Whether there is an eternal law?
- (2) Whether there is a natural law?
- 30 (3) Whether there is a human law?
- (4) Whether there is a Divine law?
- (5) Whether there is one Divine law, or several?
- (6) Whether there is a law of sin?

35 Article 1: Whether there is an eternal law?

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OBJ 1: It would seem that there is no eternal law. Because every law is imposed on someone. But there was not someone from eternity on whom a law could be imposed: since God alone was from eternity. Therefore no law is eternal.

OBJ 2: Further, promulgation is essential to law. But promulgation could not be from eternity: because there was no one to whom it could be promulgated from eternity. Therefore no law can be eternal.

OBJ 3: Further, a law implies order to an end. But nothing ordained to an end is eternal: for the last end alone is eternal. Therefore no law is eternal.

On the contrary, Augustine says (De Lib. Arb. i, 6): "That Law which is the Supreme Reason cannot be understood to be otherwise than unchangeable and eternal."

I answer that, As stated above (Q90, A1, ad 2; AA3,4), a law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect community. Now it is evident, granted that the world is ruled by Divine Providence, as was stated in the FP, Q22, AA1,2, that the whole community of the universe is governed by Divine Reason. Wherefore the very Idea of the government of things in God the Ruler of the universe, has the nature of a law. And since the Divine Reason's conception of things is not subject to time but is eternal, according to Prov. 8:23, therefore it is that this kind of law must be called eternal.

Reply OBJ 1: Those things that are not in themselves, exist with God, inasmuch as they are foreknown and preordained by Him, according to Rm. 4:17: "Who calls those things that are not, as those that are." Accordingly the eternal concept of the Divine law bears the character of an eternal law, in so far as it is ordained by God to the government of things foreknown by Him.

Reply OBJ 2: Promulgation is made by word of mouth or in writing; and in both ways the eternal law is promulgated: because both the Divine Word and the writing of the Book of Life are eternal. But the promulgation cannot be from eternity on the part of the creature that hears or reads.

1 Reply OBJ 3: The law implies order to the end actively, in so far as it directs certain
things to the end; but not passively---that is to say, the law itself is not ordained to the end---
except accidentally, in a governor whose end is extrinsic to him, and to which end his law
must needs be ordained. But the end of the Divine government is God Himself, and His law
5 is not distinct from Himself. Wherefore the eternal law is not ordained to another end.

Article 2: Whether there is in us a natural law?

10 OBJ 1: It would seem that there is no natural law in us. Because man is governed
sufficiently by the eternal law: for Augustine says (De Lib. Arb. i) that "the eternal law is that
by which it is right that all things should be most orderly." But nature does not abound in
superfluities as neither does she fail in necessities. Therefore no law is natural to man.

15 OBJ 2: Further, by the law man is directed, in his acts, to the end, as stated above
(Q90, A2). But the directing of human acts to their end is not a function of nature, as is the
case in irrational creatures, which act for an end solely by their natural appetite; whereas man
acts for an end by his reason and will. Therefore no law is natural to man.

20 OBJ 3: Further, the more a man is free, the less is he under the law. But man is freer
than all the animals, on account of his free-will, with which he is endowed above all other
animals. Since therefore other animals are not subject to a natural law, neither is man subject
to a natural law.

25 On the contrary, A gloss on Rm. 2:14: "When the Gentiles, who have not the law,
do by nature those things that are of the law," comments as follows: "Although they have no
written law, yet they have the natural law, whereby each one knows, and is conscious of,
what is good and what is evil."

30 I answer that, As stated above (Q90, A1, ad 1), law, being a rule and measure, can be
in a person in two ways: in one way, as in him that rules and measures; in another way, as in
that which is ruled and measured, since a thing is ruled and measured, in so far as it partakes
of the rule or measure. Wherefore, since all things subject to Divine providence are ruled and
35 measured by the eternal law, as was stated above (A1); it is evident that all things partake

1 somewhat of the eternal law, in so far as, namely, from its being imprinted on them, they
derive their respective inclinations to their proper acts and ends. Now among all others, the
rational creature is subject to Divine providence in the most excellent way, in so far as it
partakes of a share of providence, by being provident both for itself and for others.

5 Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its
proper act and end: and this participation of the eternal law in the rational creature is called
the natural law. Hence the Psalmist after saying (Ps. 4:6): "Offer up the sacrifice of justice,"
as though someone asked what the works of justice are, adds: "Many say, Who showeth us
good things?" in answer to which question he says: "The light of Thy countenance, O Lord,
10 is signed upon us": thus implying that the light of natural reason, whereby we discern what is
good and what is evil, which is the function of the natural law, is nothing else than an
imprint on us of the Divine light. It is therefore evident that the natural law is nothing else
than the rational creature's participation of the eternal law.

15 Reply OBJ 1: This argument would hold, if the natural law were something different
from the eternal law: whereas it is nothing but a participation thereof, as stated above.

 Reply OBJ 2: Every act of reason and will in us is based on that which is according to
nature, as stated above (Q10, A1): for every act of reasoning is based on principles that are
20 known naturally, and every act of appetite in respect of the means is derived from the natural
appetite in respect of the last end. Accordingly the first direction of our acts to their end
must needs be in virtue of the natural law.

 Reply OBJ 3: Even irrational animals partake in their own way of the Eternal
25 Reason, just as the rational creature does. But because the rational creature partakes thereof
in an intellectual and rational manner, therefore the participation of the eternal law in the
rational creature is properly called a law, since a law is something pertaining to reason, as
stated above (Q90, A1). Irrational creatures, however, do not partake thereof in a rational
manner, wherefore there is no participation of the eternal law in them, except by way of
30 similitude.

Article 3: Whether there is a human law?

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1 OBJ 1: It would seem that there is not a human law. For the natural law is a participation of the eternal law, as stated above (A2). Now through the eternal law "all things are most orderly," as Augustine states (De Lib. Arb. i, 6). Therefore the natural law suffices for the ordering of all human affairs. Consequently there is no need for a human law.

5 OBJ 2: Further, a law bears the character of a measure, as stated above (Q90, A1). But human reason is not a measure of things, but vice versa, as stated in Metaph. x, text. 5. Therefore no law can emanate from human reason.

10 OBJ 3: Further, a measure should be most certain, as stated in Metaph. x, text. 3. But the dictates of human reason in matters of conduct are uncertain, according to Wis. 9:14: "The thoughts of mortal men are fearful, and our counsels uncertain." Therefore no law can emanate from human reason.

15 On the contrary, Augustine (De Lib. Arb. i, 6) distinguishes two kinds of law, the one eternal, the other temporal, which he calls human.

20 I answer that, As stated above (Q90, A1, ad 2), a law is a dictate of the practical reason. Now it is to be observed that the same procedure takes place in the practical and in the speculative reason: for each proceeds from principles to conclusions, as stated above (De Lib. Arb. i, 6). Accordingly we conclude that just as, in the speculative reason, from naturally known indemonstrable principles, we draw the conclusions of the various sciences, the knowledge of which is not imparted to us by nature, but acquired by the efforts of reason, so too it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination of certain matters. These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed, as stated above (Q90, AA2,3,4). Wherefore Tully says in his Rhetoric (De Invent. Rhet. ii) that "justice has its source in nature; thence certain things came into custom by reason of their utility; afterwards these things which emanated from nature and were approved by custom, were sanctioned by fear and reverence for the law."

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35 Reply OBJ 1: The human reason cannot have a full participation of the dictate of the Divine Reason, but according to its own mode, and imperfectly. Consequently, as on the part of the speculative reason, by a natural participation of Divine Wisdom, there is in us the knowledge of certain general principles, but not proper knowledge of each single truth, such

1 as that contained in the Divine Wisdom; so too, on the part of the practical reason, man has
a natural participation of the eternal law, according to certain general principles, but not as
regards the particular determinations of individual cases, which are, however, contained in
the eternal law. Hence the need for human reason to proceed further to sanction them by
5 law.

Reply OBJ 2: Human reason is not, of itself, the rule of things: but the principles
impressed on it by nature, are general rules and measures of all things relating to human
conduct, whereof the natural reason is the rule and measure, although it is not the measure
10 of things that are from nature.

Reply OBJ 3: The practical reason is concerned with practical matters, which are
singular and contingent: but not with necessary things, with which the speculative reason is
concerned. Wherefore human laws cannot have that inerrancy that belongs to the
15 demonstrated conclusions of sciences. Nor is it necessary for every measure to be altogether
unerring and certain, but according as it is possible in its own particular genus.

20 Question 92

OF THE EFFECTS OF LAW (TWO ARTICLES)

We must now consider the effects of law; under which head there are two points of
inquiry:

(1) Whether an effect of law is to make men good?

25 (2) Whether the effects of law are to command, to forbid, to permit, and to punish,
as the Jurist states?

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

OBJ 1: It seems that it is not an effect of law to make men good. For men are good
30 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 (Q55, A4) in giving the definition of virtue. Therefore the law does not
make men good.

1 OBJ 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.

5 OBJ 3: Further, Law is ordained to the common good, as stated above (Q90, A2). 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.

10 OBJ 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 profit. Therefore law does not make men good.

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

20 I answer that, as stated above (Q90, A1, ad 2; AA3,4), 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 concupiscible 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.

35 Reply OBJ 1: Virtue is twofold, as explained above (Q63, A2), viz. acquired and infused. Now the fact of being accustomed to an action contributes to both, but in different

1 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
5 by habituating them to good works."

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Reply OBJ 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 (Q63, A1).

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Reply OBJ 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
20 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."

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Reply OBJ 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 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.