

Objection 1. It seems that he who is subject to a law may not act beside the letter of the law. For Augustine says (*De Vera Relig.* 31): “Although men judge about temporal laws when they make them, yet when once they are made they must pass judgment not on them, but according to them.” But if anyone disregard the letter of the law, saying that he observes the intention of the lawgiver, he seems to pass judgment on the law. Therefore it is not right for one who is under the law to disregard the letter of the law, in order to observe the intention of the lawgiver.

Objection 2. Further, he alone is competent to interpret the law who can make the law. But those who are subject to the law cannot make the law. Therefore they have no right to interpret the intention of the lawgiver, but should always act according to the letter of the law.

Objection 3. Further, every wise man knows how to explain his intention by words. But those who framed the laws should be reckoned wise: for Wisdom says (*Prov.* 8:15): “By Me kings reign, and lawgivers decree just things.” Therefore we should not judge of the intention of the lawgiver otherwise than by the words of the law.

On the contrary, Hilary says (*De Trin.* iv): “The meaning of what is said is according to the motive for saying it: because things are not subject to speech, but speech to things.” Therefore we should take account of the motive of the lawgiver, rather than of his very words.

I answer that, As stated above (a. 4), every law is directed to the common weal of men, and derives the force and nature of law accordingly. Hence the jurist says*: “By no reason of law, or favor of equity, is it allowable for us to interpret harshly, and render burdensome, those useful measures which have been enacted for the welfare of man.” Now it happens often that the observance of some point of law conduces to the common weal in the majority of instances, and yet, in some cases, is very hurtful. Since then the lawgiver cannot have in view every single case, he shapes the law according to what happens most frequently, by directing his attention to the common good. Wherefore if a case

arise wherein the observance of that law would be hurtful to the general welfare, it should not be observed. For instance, suppose that in a besieged city it be an established law that the gates of the city are to be kept closed, this is good for public welfare as a general rule: but, it were to happen that the enemy are in pursuit of certain citizens, who are defenders of the city, it would be a great loss to the city, if the gates were not opened to them: and so in that case the gates ought to be opened, contrary to the letter of the law, in order to maintain the common weal, which the lawgiver had in view.

Nevertheless it must be noted, that if the observance of the law according to the letter does not involve any sudden risk needing instant remedy, it is not competent for everyone to expound what is useful and what is not useful to the state: those alone can do this who are in authority, and who, on account of such like cases, have the power to dispense from the laws. If, however, the peril be so sudden as not to allow of the delay involved by referring the matter to authority, the mere necessity brings with it a dispensation, since necessity knows no law.

Reply to Objection 1. He who in a case of necessity acts beside the letter of the law, does not judge the law; but of a particular case in which he sees that the letter of the law is not to be observed.

Reply to Objection 2. He who follows the intention of the lawgiver, does not interpret the law simply; but in a case in which it is evident, by reason of the manifest harm, that the lawgiver intended otherwise. For if it be a matter of doubt, he must either act according to the letter of the law, or consult those in power.

Reply to Objection 3. No man is so wise as to be able to take account of every single case; wherefore he is not able sufficiently to express in words all those things that are suitable for the end he has in view. And even if a lawgiver were able to take all the cases into consideration, he ought not to mention them all, in order to avoid confusion: but should frame the law according to that which is of most common occurrence.

* *Pandect. Justin. lib. i, ff., tit. 3, De Leg. et Senat.*