QUESTION 57

The Right

After prudence, we next have to consider justice. On this topic there are four things to be considered: (a) justice (questions 57-60); (b) the parts of justice (questions 61-120); (c) the gift [of the Holy Spirit] that belongs to justice (question 121); and (d) the precepts that pertain to justice (question 122)

As for justice, there are four things to consider: (a) the right (*ius*) (question 57); (b) justice itself (question 58); (c) injustice (question 59); and (d) judgment (question 60).

On the first topic there are four questions: (1) Is the right (*ius*) the object of justice? (2) Is the right appropriately divided into the natural right and the positive right? (3) Is the right of nations (*ius gentium*) the same as the natural right? (4) Should the right of dominion and the paternal right be distinguished as species?

Article 1

Is the right the object of justice?

It seems that the right (*ius*) is not the object of justice (*iustitia*):

Objection 1: Celsus the Jurist says, "The right (*ius*) is the art of the good and the fair (*ars boni et aequi*)." But an art is *per se* an intellectual virtue and not the object of justice. Therefore, the right is not the object of justice.

Objection 2: In *Etymologia* Isidore says, "Law is a species of the right." However, law is the object not of justice, but instead of prudence; this is why the Philosopher posits a lawmaking part of prudence. Therefore, the right is not the object of justice.

Objection 3: Justice mainly subjects a man to God; for in *De Moribus Ecclesiae* Augustine says, "Justice is the love that serves God alone, and because of this it orders well the other things that are subject to a man." Now the right pertains not to divine things but only to human things; for in *Etymologia* Isidore says, "The religious (*fas*) is divine law, whereas the right (*ius*) is human law."

But contrary to this: In the same place Isidore says, "Something is called the right (*ius*) because it is just." But the just is the object of justice; for as the Philosopher says in *Ethics* 5, "Everyone wants to call 'justice' the habit whereby just things are done." Therefore, the right is the object of justice.

I respond: It is proper to justice, among all the virtues, to order a man in those matters that pertain to others. For as the name itself (*iustitia*) makes clear, justice implies a certain sort of equality or balance (*aequalitas*), since things that are balanced off (*ea quae adaequantur*) are commonly said to be 'made right' or 'justified' (*iustari*). But equality or balance is had with respect to something else.

Now the other virtues perfect a man only in those things that belong to him within himself (*secundum seipsum*). So, then, what is upright (*rectum*) in the works of the other virtues, i.e., what the virtue's inclination tends toward as its proper object, is understood only in relation to the agent. By contrast, what is upright in a work of justice, over and beyond its relation to the agent, is constituted by its relation to something else. For what is said to be just in our act is what corresponds to some sort of equality or balance with something else—for instance, a payment owed in return for a service rendered.

So, then, something is called just when it has the rectitude of justice in which the act of justice is terminated, even without taking into account *the way in which* the act is done by the agent. By contrast, in the case of the other virtues, something is not fixed as upright except in accord with *the way in which* it is done by the agent. And for this reason the act of justice, more than with the other virtues, is specifically determined by its object, which is called *the just* (*iustum*). But this is *the right* (*ius*). Hence, it is clear that the right is the object of justice.

Reply to objection 1: It is common for names to be switched from their primary imposition in

order to signify other things. For instance, the name 'medicine' was first imposed to signify a remedy given in order to heal someone who is sick, but was later switched to signifying the art by which healing is accomplished. So, too, the name '*ius*' was first imposed to signify the just thing itself, but (a) was afterwards switched to signifying the art by which one knows what is just and (b), further on, was turned to signifying the place in which justice (*ius*) is rendered, as when someone is said to appear in a court of justice (*comparere in iure*), and, further on, (c) '*ius*' is also used for the judgment rendered by someone whose office is to deliver justice, even if what he decrees is unjust (*iniquum*).

Reply to objection 2: Just as a plan regarding things that are done externally preexists in the craftsman's mind, so, too, a certain plan—a rule of prudence, as it were—preexists in the mind regarding a work of justice that reason decides upon. And this plan is called a law if it is written down; for according to Isidore, a law is "a written regulation" (*constitutio scripta*). And so the law is not, properly speaking, the right itself, but is instead a sort of plan for the right (*ratio iuris*).

Reply to objection 3: Justice implies equality or balance, whereas we are unable to repay God in full (*Deo non possumus aequivalens recompensare*). This is why we cannot render to God what is just in a complete sense. And it is for this reason that the right is not properly called divine law; rather, the religious (*fas*) is properly called divine law, since it satisfies God that we fulfill it to the extent that we are able to.

Nonetheless, justice tends toward a man's compensating God as much as he can by totally subjecting his soul to Him.

Article 2

Is it appropriate for the right to be divided into the natural right and the positive right?

It seems that it is not appropriate for the right to be divided into the natural right (*ius naturale*) and the positive right (*ius positivum*):

Objection 1: What is natural is immutable and the same for everyone. But no such thing exists in human affairs, since all the rules belonging to the human right fail in certain cases, and they do not have the same force everywhere. Therefore, there is no such thing as the natural right.

Objection 2: What is called 'positive' is such that it proceeds from the human will. But it is not because it proceeds from the human will that something is called just. Otherwise, there could be no such thing as an unjust human will. Therefore, since the just is the same thing as the right, it seems that there is no such thing as the positive right.

Objection 3: The divine right is not the natural right, since it exceeds human nature. Similarly, the divine right is likewise not the positive right, since it depends on God's authority and not on any human authority. Therefore, it is inappropriate to divide the right into the natural right and the positive right.

But contrary to this: In *Ethics* 5 the Philosopher says, "Some of what is politically just is natural, whereas some is legal, i.e., posited by law."

I respond: As has been explained (a. 1), the right, i.e., the just, is a work that is adequate for or commensurated to someone else with respect to some mode of balance or equality (*opus adaequatum alteri secundum aliquem aequalitatis modum*).

Now there are two ways in which something can be commensurated to a man:

First, *by the very nature of the thing*, as when someone gives *this* much in order that he might receive just as much in return. And this is called *the natural right*.

In the second way, something is made equal or commensurate by a *pact or mutual agreement* (*ex condicto sive ex communi placito*), so that one regards himself as satisfied if he receives just *this* much. There are two ways in which this can happen:

In one way, *through a private pact* (*per aliquod privatum condictum*), in the sense of something that is confirmed by a contract among private persons (*firmatur aliquo pacto inter privatas personas*).

In the other way, *through a public contract* (*ex condicto publico*), as when an entire people agrees that something is, as it were, adequate for and commensurate with another, or as when this is ordained by a leader who is entrusted with the care of the people and acts in their stead. And this is called *the positive right*.

Reply to objection 1: What is natural to something that has an immutable nature must be such that it obtains everywhere and at every time. But a man's nature is mutable. And so what is natural to a man can sometimes fail to obtain. For instance, there is a natural equality or balance in returning what is held on deposit to the one who deposited it, and if human nature were always morally upright (*recta*), then this rule would always have to be observed. But since it sometimes happens that a man's will is depraved, there are some cases in which what has been deposited should not be returned, lest a man with a depraved will use that thing badly—as, for instance, if a furious man or an enemy of the republic were to demand his deposited weapons back.

Reply to objection 2: The human will can do something just by mutual agreement in matters that are not in their own right incompatible with natural justice. And in such matters there is room for the positive right. Hence, in *Ethics* 5 the Philosopher says that the legally just is such that "at the beginning it does not matter whether it is the one way or the other, but it does matter once it is set in place."

However, if there is something that is in itself incompatible with the natural right, then it cannot be made just by a human decision—as, for instance, if it were decreed that stealing or adultery is permissible. Hence, Isaiah 10:1 says, "Woe to those who make wicked laws."

Reply to objection 3: What is called the divine right is that which is divinely promulgated. And the divine right is partly about things that are naturally just (even if their being just lies hidden from men), but also partly about things which are made just by divine institution. Hence, the divine right can likwise be divided into two, just as the human right can be. For in divine law certain things are commanded because they are good and prohibited because they are bad, whereas there are other things that are good because they are commanded and bad because they are prohibited.

Article 3

Is the right of nations the same as the natural right?

It seems that the right of nations is the same as the natural right:

Objection 1: It is only in what is natural to them that all men agree. But all men agree as regards the right of nations; for the Jurist says, "The right of nations is what the human nations make use of." Therefore, the right of nations is the natural right.

Objection 2: Servitude (*servitus*) is natural among men, since, as the Philosopher proves in *Politics* 1, some men are naturally servants. But as Isidore points out, types of servitude (*servitutes*) belong to the right of nations. Therefore, the right of nations is the natural right.

Objection 3: As has been explained (a. 2), the right is divided into the natural right and the positive right. But the right of nations is not the positive right, since it is not the case that all nations ever concurred in establishing something by common agreement. Therefore, the right of nations is the natural right.

But contrary to this: Isidore says, "The right is either the natural right or the civic right or the right of nations." And so the right of nations is distinct from the natural right.

I respond: As has been explained (a. 2), the natural right, i.e., the natural just, is by its very nature adequate for or commensurated to another. Now there are two ways in which this can happen:

In the first way, *by considering the thing absolutely*, in the way that a male is by his very nature commensurated to a female in order that he might generate from her, and in the way that a parent is commensurated to her child in order that she might feed him.

In the second way, one thing is commensurated to another not by its nature absolutely speaking, but instead *with respect to something that follows upon the nature*, e.g., the ownership of possessions. For instance, if a field is considered absolutely, then there is no reason why it should belong to *this* individual rather than to *that* one; however, as is clear from the Philosopher in *Politics* 2, if the field is considered with respect to the opportunity to cultivate it and use it peaceably, then it is commensurated to belonging to the one individual rather than the other.

Now to apprehend something absolutely belongs not only to man but to other animals as well. And so the right that is called natural in the first sense above is common to us and the other animals. But as the Jurist points out, the right of nations covers less than natural right taken in this sense, since the latter is common to all animals, whereas the former is common only to men among themselves.

By contrast, to consider something by comparing it to that upon which it follows is proper to reason. And so what reason dictates is natural to man in accord with natural reason. This is why Gaius the jurist says, "Among all men natural reason puts in place what is preserved among all the nations, and this is called the right of nations."

Reply to objection 1: This makes clear the reply to the first objection.

Reply to objection 2: Absolutely considered, *this* man's being a servant rather than *that* man's being a servant does not have a natural explanation, but only an explanation on the basis of some sort of resultant usefulness—given that, as *Politics* 1 says, it is useful for *this* man to be governed by someone wiser and for *that* man to be assisted by *this* man. And so the servitude that belongs to the right of nations is natural in the second sense, but not in the first sense.

Reply to objection 3: Since natural reason dictates the things that belong to the right of nations, viz., as having a conformity by their proximity to reason, it follows that they do not need any special institution; rather, natural reason itself institutes them, as was pointed out in the passage quoted above.

Article 4

Should the paternal right and the right of dominion be viewed as distinct species [of the right]?

It seems that the paternal right (*ius paternum*) and the right of dominion (*ius dominativum*) should not be viewed as distinct species [of the right]:

Objection 1: As Ambrose puts it in *De Officiis*, "It belongs to justice to render to each individual what is his own." But as has been explained (a. 1), the right is the object of justice. Therefore, the right has to do with each individual equally. And so one should not view the right of the father and the right of the master as distinct species [of the right].

Objection 2: As has been explained (a. 1), law is a plan for the right (*ratio iuris*). But law has to do with the *common* good of a city and kingdom and not with the *private* good of an individual or even of an individual family. Therefore, there should be no specific right or just that is the right or the just of the master or of the father (*iustum dominativum vel paternum*), since, as *Politics* 1 has it, *master* and *father* pertain to a household.

Objection 3: There are many other differences of rank among men, so that some are soldiers, some priests, some rulers, etc. Therefore, one would also have to designate a species of the just for each of them.

But contrary to this: In *Ethics* 5 the Philosopher says that the dominative just and the paternal

just and others of this sort are distinct in species from the political just.

I respond: The right, i.e., the just, bespeaks a commensuration or balance with respect to another. But there are two senses of 'another':

(a) The first is 'another' *absolutely speaking*, in the sense that the other is altogether distinct, as in a case involving two men, neither of whom is subject to the other, but both of whom are subject to the one ruler of the city. And according to the Philosopher in *Ethics* 8, between such men the just exists in an absolute sense (*inter tales est simpliciter iustum*).

(b) In the second way, 'another' bespeaks someone else not in an absolutely sense, but as something that belongs to one (*quasi aliquid eius existens*). And thus in human affairs the child is something belonging to the father (*filius est aliquid patris*), since, as *Ethics* 3 says, the child is in some sense a part of the father; again, the servant is something belonging to the master, since, as *Politics* 1 says, the servant is the master's instrument.

And so the relation of a father to his child is unlike his relation to another in an absolute sense, and for this reason in this case the just does not exist in an absolute sense; instead, the just is of a certain sort, viz., the paternal just (*quoddam iustum, scilicet paternum*). And, for the same reason, the just does not exist in an absolute sense between a master and his servant; rather, the dominative right exists between them.

However, even though a wife is something belonging to her husband, nonetheless, because, as is clear from the Apostle in Ephesians 5:28, he is related to her as to his own body, she is more distinct from her husband than a child is from his father or a servant from his master. For she is taken up into the kind of life of companionship that belongs to marriage (*assumiter enim in quandam socialem vitam matrimonii*). And so, as the Philosopher points out, there is more of the essence of justice between a husband and wife than between a father and child or between a master and servant. However, since, as is clear from *Politics* 1, husband and wife have an immediate relation to the domestic community, it follows that what exists between them is not the political just absolutely speaking, but is instead the just that belongs to the household (*iustum oeconomicum*).

Reply to objection 1: It belongs to justice to render to each individual what is the right for him (*reddere ius suum unicuique*), but this presupposes that there is a diversity between the one individual and the other (*supposita tamen diversitate unius ad alterum*). For if someone gives *himself* what is owed to him, this is not properly called the just. Further, since what belongs to the child belongs to the father, and since what belongs to the servant belongs to the master, it follows that there is no justice properly speaking of a father with respect to his child or of a master with respect to his servant.

Reply to objection 2: A child, insofar as he is a child, is something belonging to his father, and a servant, insofar as he is a servant, is something belonging to his master.

However, both the child and the servant, considered as human beings, are things that subsist in their own right. And so insofar as both of them are human beings, there is in a certain sense justice with respect to them. For this reason, certain laws are handed down about matters that pertain to the father with respect to the child and to the master with respect to the servant. However, to the extent that both are something belonging to another, the complete nature of the just or the right is lacking here.

Reply to objection 3: All the other types of diversity of persons that exist in the city have an immediate relation to the community of the city and to its ruler. And so with respect to those persons the just exists in its complete essence.

Still, the just itself is divided according to the diverse roles. Hence, there is the military right, or the right for magistrates or for priests—not because of something that falls short of the just in an absolute sense, as happens in the case of the paternal right and the right of dominion, but because something specific is due to each position that belongs to a person in accord with his proper role.