

QUESTION 61

The Parts of Justice

Next we have to consider the parts of justice: first, the *subjective parts*, which are the species of justice, viz., distributive justice and commutative justice (questions 61-78); second, the *integral parts*, as it were, of justice (question 79); and, third, the *potential parts*, as it were, of justice, i.e., the virtues adjoined to justice (questions 80-122).

On the first topic there are two things to consider: first, the parts of justice themselves (questions 61-62); and, second, the opposed vices (questions 63-78).

And since restitution seems to be the act of commutative justice, we will first consider the distinction between commutative justice and distributive justice (question 61); and, second, restitution (question 62).

On the first topic there are four questions: (1) Are there two species of justice, viz., distributive justice and commutative justice? (2) Is the mean taken in the same way in both of them? (3) Are their subject matters uniform or multiple? (4) Is the just the same as reciprocity (*contrapassum*)?

Article 1

Is it appropriate to posit two species of justice, viz., distributive justice and commutative justice?

It seems inappropriate to posit two species of justice, viz., distributive justice and commutative justice (*iustitia distributiva et commutativa*):

Objection 1: There cannot be a species of justice that harms the multitude, since justice is ordered toward the common good. But it harms the common good of the multitude to distribute common goods to the many, both because (a) the common resources are thereby exhausted, and also because (b) men's morals are corrupted; for in *De Officiis* Tully says, "He who receives becomes worse and more prepared to always expect the same thing." Therefore, distribution does not belong to any species of justice.

Objection 2: As was established above (q. 58, a. 2), the act of justice is render to each individual what is his own. However, in a distribution it is not the case that what is his own is rendered to someone; instead, what had been common is now newly appropriated to him. Therefore, this has nothing to do with justice.

Objection 3: As was established above (q. 58, a. 6), justice exists not only in the ruler, but also in his subjects. But it always belongs to the ruler to make a distribution. Therefore, what is distributed is irrelevant to justice.

Objection 4: As is explained in *Ethics* 5, the distributive just has to do with common goods. But common goods have to do with legal justice. Therefore, distributive justice is a species of legal justice and not a species of particular justice.

Objection 5: *One* and *many* do not make for diverse species of a virtue. But commutative justice consists in rendering something to *one* individual, whereas distributive justice consists in something's being given to *many* individuals. Therefore, they are not diverse species of justice.

But contrary to this: In *Ethics* 5 the Philosopher posits two parts of justice and explains, "One directs distributions (*distributiones*) and the other commutations or exchanges (*commutationes*)."

I respond: As has been explained (q. 58, a. 7), particular justice is ordered toward a private person who is related to the community as a part to a whole. Now there are two possible sorts of ordering toward a part:

One is *the ordering of one part toward another*, which is similar to the ordering of one private person toward another. Commutative justice directs this sort of ordering and has to do with those matters which are done mutually by two persons with one another.

The second is *the ordering of the whole toward the parts*, and this ordering includes the ordering of that which is common toward the individual persons. This ordering is directed by distributive justice, which distributes what is common proportionately.

And so there are two species of justice, viz., commutative and distributive.

Reply to objection 1: Just as moderation is commended in distributions made by private persons, whereas prodigality is frowned upon (*effusio culpatur*), so, too, moderation is to be preserved in the distribution of common goods that is directed by distributive justice.

Reply to objection 2: Just as the part and the whole are in some sense the same thing, so what belongs to the whole belongs in some sense to the part. And so when some of the common goods are distributed to the individuals, each in some sense receives what is his own.

Reply to objection 3: The act of distributing that involves common goods belongs to the one who presides over the common goods, even though (a) distributive justice exists in the subjects to whom the distribution is made insofar as they are made content by a just distribution, and even though (b) a distribution of common goods is sometimes made not to the city but to a family, where the distribution of these goods can be done by the authority of a private person.

Reply to objection 4: Movements receive their species from the *terminus ad quem*. And so it belongs to legal justice to order things that belong to private persons toward the common good, but, conversely, it belongs to particular justice to order the common good toward particular persons through distribution.

Reply to objection 5: Distributive justice and commutative justice are distinct not only with respect to *one* and *many*, but also with respect to the notion of what is owed. For what is common is owed to someone in a way different from that in which what belongs to him (*proprium*) is owed to him.

Article 2

Is the mean taken in the same way in distributive justice and commutative justice?

It seems that the mean is taken in the same way in distributive justice and commutative justice:

Objection 1: As has been explained (a. 1), both distributive justice and commutative justice are contained under particular justice. But in all the parts of temperance or fortitude the mean is taken in one way. Therefore, the mean must likewise be taken in the same way in distributive justice and commutative justice.

Objection 2: The form of a moral virtue consists in the mean that is determined in accord with reason. Therefore, since a single virtue has a single form, it seems that the mean must be taken in the same way in distributive justice and commutative justice.

Objection 3: In the case of distributive justice, the mean is taken by attending to the different levels of dignity among the persons (*attendo diversam dignitatem personarum*). But the dignity of persons is likewise attended to in commutative justice; for instance, in the case of punishments, someone who has struck the ruler is punished more than someone who has struck a private person. Therefore, the mean is taken in the same way in both species of justice.

But contrary to this: In *Ethics 5* the Philosopher says that in distributive justice the mean is taken “in accord with a geometrical proportion,” whereas in commutative justice the mean is taken “in accord with an arithmetical proportion.”

I respond: As has been explained, in the case of distributive justice something is given to a private person insofar as what belongs to the whole is owed to a part—where the greater the preeminence that the part itself has within the whole, the more it is given. And so in the case of distributive justice, the more preeminence a person has within the community, the more of the common goods he is given.

Now in an *aristocratic* community preeminence has to do with *virtue*, in an *oligarchic* community it has to do with *wealth*, in a *democratic* community it has to do with *freedom*, and in other sorts of community it has to do with other things. And so in the case of *distributive* justice, the mean is taken from a proportion of things to persons and not from a proportion of thing to thing, with the result that in the same way that one person exceeds another, so, too, the thing that is given to one person exceeds the thing that is given to another. This is why the Philosopher claims that this mean involves geometrical proportionality, in which *equality* or *balance* (*aequale*) involves not *quantity* but *proportion*. For instance, if we say that three is related to two as six is related to four—since in both cases there is a proportion of one and a half, in which the greater contains the lesser plus one-half of the lesser—then there is no equality of excess with respect to quantity, since six exceeds four by two, whereas three exceeds two by one.

By contrast, in exchanges or commutations (*in commutationibus*) something is rendered to a singular person because of a thing of his that has been received; this is especially clear in the case of buying and selling, where the notion of a commutation is found in the first instance. And so one must make a thing equal to a thing, with the result that to the extent that someone has more than what is his own from that which belongs to another, he restores to the latter what belongs to him. And in this sense what is brought about is an equality or balance (*aequalitas*) in accord with an arithmetical mean, which involves an equal excess of *quantity*. For instance, five is the mean between six and four, since it exceeds and is exceeded by one. Therefore, suppose that at the beginning the two individuals had five and that one of them received one of what belonged to the other—so that the one who received will have six and four will remain for the other. Then there will be justice if both of them return to the mean, so that one is received from him who has six, and one is given to him who has four. For in this way both will have five, which is the mean.

Reply to objection 1: In the case of the other virtues, the mean is taken in accord with reason and not in accord with the thing. But justice involves a mean of the thing, and so the mean is taken in diverse ways corresponding to the diversity of the things.

Reply to objection 2: The general form of justice is equality or balance (*aequalitas*), and distributive justice agrees with commutative justice in this. However, in the one case equality or balance is found in accord with a geometrical proportionality, whereas in the other it is found in accord with an arithmetical proportionality.

Reply to objection 3: In the case of actions and passions, the status of the person establishes the quantity of the thing, since it is a greater injury if a ruler is struck than if a private person is struck. And so the status of the person is involved in its own right in distributive justice, whereas in commutative justice it is involved to the extent that the things are diversified by it.

Article 3

Are the subject matters of the two types of justice diverse?

It seems that the subject matters of the two types of justice are not diverse (*materia utriusque iustitiae non sit diversa*):

Objection 1: As is clear from the case of temperance and fortitude, a diversity of subject matter makes for a diversity of virtue (*diversitas materiae facit diversitatem virtutis*). Therefore, if distributive justice and commutative justice had diverse subject matters, it seems that they would not be contained under the same virtue, viz., justice.

Objection 2: As *Ethics* 5 explains, distribution, which belongs to distributive justice, “involves money or honor or anything else that can be distributed among those who live together in a community.”

But it is likewise the exchange of these same things among persons with one another that belongs to commutative justice. Therefore, the subject matter of distributive justice is not diverse from that of commutative justice.

Objection 3: If it is because they differ in species that the subject matter of distributive justice is different from the subject matter of commutative justice, then where there is no difference in species, there should not be a diversity of subject matters. But the Philosopher posits a single species of commutative justice that nonetheless has multiple subject matters. Therefore, it does not seem the species in question have multiple subject matters.

But contrary to this: *Ethics 5* says, “One species of justice directs distributions, and another species directs commutations.”

I respond: As was explained above (q. 58, aa. 8 and 10), justice has to do with exterior operations, viz., acts of distributing and exchanging that involve the use of exterior entities, either *things* or *persons* or even *works*—of *things*, as when someone either takes from or restores to another something that belongs to him; or of *persons*, as when someone inflicts an injury on a man’s very person, e.g., by striking him or reviling him or, again, as when someone shows reverence for another; or of *works*, as when someone justly demands some work from another or renders some work to another.

Therefore, if we take as the subject matter of both sorts of justice *those things that the operations make use of*, then the subject matters of distributive and commutative justice are the same. For things (*res*) can be distributed from what is common to the individuals, and they can also be transferred from one person to another. Likewise, there is a sort of distribution of works of labor, along with compensation.

By contrast, if we take as the subject matter of the two sorts of justice *the main actions themselves by which we make use of persons, things, and works*, then different subject matters are found in the two sorts of justice. For distributive justice directs *distributions*, whereas commutative justice directs *exchanges* that can occur between two persons.

Some of these exchanges are *involuntary*, and some are *voluntary*.

Exchanges or commutations are *involuntary* when someone makes use of another individual’s thing or person or work against his will. This sometimes happens in a hidden way by *fraud*, and sometimes openly by *violence*. Again, both of these happen either with respect to a *thing* or with respect to a *person in his own right* or with respect to a *person connected with him*.

In the case of a *thing*, if one individual takes a thing belonging to another in a stealthy way, it is called *theft (furtum)*; if he does it openly, it is called *robbery (rapina)*.

Against the *person in his own right*, it occurs either with respect to the very constitution of the person or with respect to his dignity. If it is with respect to the person’s constitution, then one is harmed either (a) secretly by a *crafty killing (dolosa occisio)* or by a *beating (percussio)* or by the *administering of poison (veneni exhibitio)*, or else (b) openly by an *evident killing (occisio manifesta)* or by *imprisonment (incarceratio)* or by *flogging or mutilating parts of the body (verberatio seu membri mutilatio)*. As regards the person’s dignity, one is harmed secretly by false witness (*falsum testimonium*) or detraction (*detractio*), by which one loses his reputation, and by other things of this sort, and one is harmed openly by being accused in court (*accusatio in iudicio*) or by being boisterously reproached (*convicii illatio*).

As regards *connected persons*, one is harmed in his wife, most often in secret, by *adultery (adulterium)*, and in his servant when someone induces him to leave his master (*seducit ut a domino discedat*)—and these can also be done openly. And the same line of reasoning applies to other connected persons, on whom injuries can be inflicted in all the ways that they can be inflicted on the principal person. Still, adultery and the inducement of a servant are properly speaking injuries against those persons themselves—though, because a servant is a sort of possession, the inducement of a servant is looked upon as *theft*.

On the other hand, exchanges or commutations are called *voluntary* when someone voluntarily transfers a thing of his own to another. And if he simply transfers a thing of his own to another in the absence of any debt, as with a gift or donation (*donatio*), then this is an act of generosity (*liberalitas*) and not of justice. But to the extent that something of the nature of a debt is involved, a voluntary transfer belongs to justice. There are three ways in which this happens:

In one way, someone simply transfers a thing of his own to another in return for another thing, as happens in the case of buying and selling.

In a second way, someone hands over a thing of his own to another, giving him the use of the thing along with the obligation of giving the thing back. If he gives him the use of the thing for free, this is called *usufruct* (*usufructus*), in the case of things that yield some sort of fruit, or simply *lending for consumption or for use* (*mutuum seu accommodatum*), in the case of things that do not yield fruit, such as currency (*denarii*), vases, and other things of this sort. However, if the use itself of the thing is not given for free, then it is called *leasing* (*locatio*) or *hiring out* (*conductio*).

In the third way, someone hands over a thing of his own—as something to be given back—not for the sake of its use but (a) for the sake of *its being kept safe* (*conservatio*), as with a *deposit* (*depositum*), or (b) because of a *pledge* (*obligatio*), as when a man mortgages a thing of his own as a *security* (*cum aliquis rem suam pignori obligat*), or as when someone pledges a thing of his own as a *bond* for another (*aliquis pro alio fideiubet*).

Reply to objection 1 and objection 2 and objection 3: The replies to the objection are clear from what has been said.

Article 4

Is the just the same thing absolutely speaking as reciprocity?

It seems that the just is the same thing absolutely speaking as reciprocity (*iustum sit simpliciter idem quod contrapassum*):

Objection 1: Divine judgment is the just absolutely speaking. But the form of divine judgment is that someone should undergo what he himself has done—this according to Matthew 7:2 (“For with what judgment you judge, you shall be judged, and with what measure you measure, it shall be measured to you again”). Therefore, the just is the same thing absolutely speaking as reciprocity.

Objection 2: In both sorts of justice something is given to someone in keeping with a certain equality or balance: (a) an equality or balance with respect to *the dignity of the person* in the case of distributive justice, which seems to attend to the dignity of the person especially in light of the works by which he has served the community; and (b) an equality or balance with respect to *the thing by which someone has been put into debt* in the case of commutative justice. But in the case of both sorts of equality or balance, someone is reciprocated according to what he himself has done. Therefore, it seems that the just is the same thing absolutely speaking as reciprocity.

Objection 3: It is especially because of the difference between the voluntary and the involuntary, that it seems unnecessary for someone to be reciprocated in accord with what he has done, since someone who inflicts an injury involuntarily is punished less. But *voluntary* and *involuntary*, which are taken from our side, do not diversify the mean of justice, which is a mean of the thing and not a mean with respect to us. Therefore, the just seems to be the same thing absolutely speaking as reciprocity.

But contrary to this: In *Ethics* 5 the Philosopher proves that the just is not reciprocity.

I respond: ‘Reciprocity’ (*contrapassum*) implies a compensatory instance of being acted upon that is equal to a preceding action (*contrapassum importat aequalem recompensationem passionis ad actionem praecedentem*).

‘Reciprocity’ is most properly used in the case of injurious sufferings by which someone damages *the person of his neighbor*—so that, for instance, if someone strikes his neighbor, then he himself is struck in return. And this, to be sure, is the just as determined in the Law: “He shall render a life for a life ... an eye for an eye ...” (Exodus 21:23ff.).

Again, since to take a *thing* that belongs to another is likewise to do something, ‘reciprocity’ is also used in a secondary sense in such cases—so that, namely, someone who has inflicted a loss is himself made to suffer a loss in what belongs to him. And this, too, is the just as contained in the Law: “If any man steals an ox or a sheep, and kills or sells it: he shall restore five oxen for one ox, and four sheep for one sheep” (Exodus 22:1).

But, third, the name ‘reciprocity’ is transferred to voluntary exchanges or commutations in which there is acting and being acted upon on both sides (*utrinque est actio et passio*)—even though, as has been explained (q. 59, a. 3), voluntariness dilutes the idea of being acted upon (*voluntarium diminuit de ratione passionis*).

According to the nature of commutative justice, in all of these cases compensation must be made as regards equality or balance, so that the compensated instance of being acted upon is equal to the action. However, the compensation would not always achieve balance or equality if someone were to undergo something of the very same species as what he had done.

For, first of all, when someone inflicts an injury on the person of someone preeminent, the action is greater than the passion of the same species that this person has suffered. And so someone who strikes a ruler is not just reciprocated, but is punished much more severely.

Similarly, even when one inflicts an involuntary loss on someone in what belongs to him, the action is greater than the passion would be if that thing had only been lost to him, since the one who inflicted the loss on him did not incur any loss at all in what belongs to him. And so the latter is punished by having to restore the thing several times over, since he inflicted a loss not only on a private person but also on the civil society (*respublica*) by weakening the security of its guardianship.

Similarly, it is not even the case in voluntary exchanges that there is always an equal or balanced passion if someone gives what belongs to him while receiving something that belongs to another. For that other thing might be worth much more than his thing is. And so it is necessary to make the passion equal to the action by some proportionate measure, and that is why money (*numismata*) was invented.

And this is the way in which *commutative justice* is reciprocity.

However, these considerations have no place in the case of *distributive justice*. For in distributive justice one does not attend to an equality or balance having to do with the proportion between *things* or the proportion between *passions* and *actions*. Hence, distributive justice is called reciprocity, but, as was explained above (a. 2), it is a reciprocity that involves a proportion of *things* to *persons*.

Reply to objection 1: The form of divine justice involves the idea of commutative justice, insofar as it gives rewards as compensation for merits and punishments as compensation for sins.

Reply to objection 2: If someone who had served the community were reimbursed for service rendered, this would belong to commutative justice and not to distributive justice. For in the case of distributive justice, one does not attend to the equality or balance between what someone receives and what he has given; rather, one attends to what someone else receives, given the status of both persons.

Reply to objection 3: When an injurious action is voluntary, the injury exceeds the action and so is received as a greater thing. Hence, a greater punishment must be given in return because of the difference in the things themselves—and not because of any difference from our side (*non secundum differentiam quoad nos, sed secundum differentiam rei*).