

QUESTION 68

Injustice on the part of an Accuser in Accusing

Next we have to consider matters pertaining to unjust accusation. And on this topic there are four questions: (1) Is a man obligated to make an accusation? (2) Must an accusation be made in writing? (3) In what ways might an accusation be vicious? (4) How should those who make bad accusations be punished?

Article 1

Is a man obligated to make an accusation?

It seems that a man is not obligated to make an accusation:

Objection 1: No one is excused from fulfilling a divine precept because of a sin, since he would then be gaining a reward for his sin. But there are some who, because of their sin, are rendered ineligible to make an accusation, e.g., those who have been excommunicated, those who are disreputable, and those who have been accused of major crimes and have not yet been proved innocent. There are man is not obligated by a divine precept to make an accusation.

Objection 2: Every obligation (*debitum*) depends on charity, which is the end of the precept; this is why Romans 13:8 says, “Owe no man anything except to love one another.” But what belongs to charity is such that a man owes it to everyone, the great and the small, the subjects and the leaders. Therefore, since subjects ought not to make accusations against their leaders, nor the small against the great (as is proved by many chapters in *Decretals* 2, q. 7), it seems that no one is bound by an obligation to make an accusation.

Objection 3: No one is obligated to act contrary to the fidelity that he owes to his friend, since one ought not to do to another what he does not want done to himself. But to make an accusation against someone sometimes runs contrary to the fidelity that one owes to his friend; for Proverbs 11:13 says, “He who walks deceitfully reveals secrets, but he who is faithful conceals what has been entrusted to him by his friend.” Therefore, a man is not obligated to make an accusation.

But contrary to this: Leviticus 5:1 says, “If any one sins and hears the voice of one swearing and, though he is a witness, whether he has seen it himself or come to learn of it, he nonetheless does not speak, he shall bear his own iniquity.”

I respond: As was explained above (q. 67, a. 3), the difference between a denunciation and an accusation is that in the case of a denunciation one is focused on correcting his brother, whereas in the case of an accusation one is focused on punishing a crime.

Now the punishments of the present life are not sought for their own sake, since this is not the ultimate time of retribution; instead, they are sought to the extent that they are medicinal, contributing either to the *correction of the person* who sins or to the *good of the republic*, the tranquility (*quies*) of which is procured by the punishment of sinners. As was just pointed out, it is the first of these that is intended in the case of a denunciation, whereas the second properly belongs to a case of accusation.

And so if a crime is such that it verges toward the detriment of the republic—for instance, when someone’s sin verges toward the corporeal or spiritual corruption of the multitude—then a man is obligated to make an accusation as long as he can sufficiently prove it (which is part of the role of an accuser). However, if the sin is not such that it redounds upon the multitude, or, likewise, if the man cannot present sufficient proof, then he is not obligated to make an accusation; for no one is obligated to do what he cannot accomplish in an appropriate manner.

Reply to objection 1: Nothing prevents someone from being rendered powerless by his sin to do what men are obligated to do, e.g., to merit eternal life or to receive the sacraments of the Church. Nor is the man gaining any reward from this; just the opposite, it is a very grave punishment to fall short of

what he is obligated to do, since virtuous acts are a man's perfections.

Reply to objection 2: The subjects who are prohibited from making accusations against their leaders are those who seek, not out of the affection of charity but out of their perversity, to defame and reprehend the lives of the leaders—or, again, as one reads in *Decretals 2*, q. 7, if the subjects wishing to make an accusation are criminals.

Otherwise, if the subjects are in other ways eligible to make an accusation, then they are permitted to make accusations against their leaders out of charity.

Reply to objection 3: It is contrary to fidelity to reveal secrets to the detriment of a person, but not if those secrets are revealed for the sake of the common good, which is always to be preferred to a private good. And so one is not permitted to receive any secret that is contrary to the common good. But neither is what can be proved by reliable witnesses (*per sufficientes testes*) altogether secret.

Article 2

Must an accusation be made in writing?

It seems that it is unnecessary for an accusation to be made in writing:

Objection 1: Writing was invented in order to aid human memory about past events. But an accusation is made in the present. Therefore, an accusation does not need to be written down.

Objection 2: *Decretals 2*, q. 8 says, “No one who is absent can make an accusation, nor can one who is absent be accused by anyone.” But as is clear from Augustine in *De Trinitate 10*, writing seems to be useful for signifying something to those who are absent. Therefore, writing is not needed for an accusation, especially since the canon says that an accusation made against someone is not to be accepted as a written document (*per scripta*).

Objection 3: Just as someone's crime is made manifest through an accusation, so, too, it is made manifest through a denunciation. But writing is unnecessary in the case of a denunciation. Therefore, it seems to be unnecessary in the case of an accusation as well.

But contrary to this: *Decretals 2*, q. 7 says, “The accusation of a person is never accepted without writing.”

I respond: As was explained above (q. 67, a. 3), when in the case of crimes one proceeds in the mode of an accusation, the one making the accusation is constituted as a party in the sense that that the judge becomes the medium (*medius*) between the accuser and the accused for the purpose of a judicial inquiry (*ad examen iustitiae*), in which it is necessary to proceed with certitude to the extent that this is possible. However, since things that are said with many words easily fall out of memory, it would not be possible for the judge, when he had to render a decision, to be certain about what had been said and how it had been said unless it were rendered in writing. And so it was reasonable to establish that an accusation, along with the other things that go on during a judicial proceeding, should be rendered in writing.

Reply to objection 1: It is difficult to retain individual words because of their multiplicity and variety. An indication of this is that if many individuals, upon hearing the same words, are then interrogated, they do not recall the words in the same way even after a brief period of time. And yet a small difference in the words alters the meaning. And so even if the judge's decision has to be promulgated after just a short time, it still enhances the certitude of the judgment if the accusation is rendered in writing.

Reply to objection 2: As has been pointed out, writing is necessary not only because of the absence of the person who is communicating something or of the person to whom something is being communicated, but also because of the passage of time. And so when the canon says, “No one's

accusation may be received as a written document (*per scripta*) ... ,” this should be understood to be referring to an accusation made by someone who is absent and who is sending his accusation by letter (*per epistolam*). However, this does not exclude its being the case that writing is necessary if the accuser is present.

Reply to objection 3: One who makes a denunciation does not undertake the obligation to prove anything, and so he is not punished if he is unable to provide proof. And it is for this reason that writing is not required in the case of a denunciation; rather, it is enough for someone to make a denunciation verbally to the Church, which will proceed in its own role to correct the brother.

Article 3

Is an accusation rendered unjust by calumny, prevarication, or evasion?

It seems that an accusation is not rendered unjust by calumny (*calumnia*), prevarication (*praevaricatio*), or evasion (*tergiversatio*):

Objection 1: As it says in *Decretals* 2, q. 3, “To engage in calumny is to assert false crimes.” But sometimes one attributes a false crime to someone out of ignorance of what was done, and this excuses him. Therefore, it seems that an accusation is not always rendered unjust if it is calumnious.

Objection 2: To prevaricate is to hide a true crime. But this does not seem to be illicit, since, as was explained above (a. 1), a man is not obligated to reveal every crime. Therefore, it seems that an accusation is not rendered unjust by prevarication.

Objection 3: As is said in the same place alluded to above, “To evade is to withdraw from accusing altogether.” But this can be done without injustice, since in the same place it says, “If someone repents of having criminally made an accusation and inscription concerning something that he was unable to prove, then if he comes to an agreement with the innocent accused individual, let them absolve one another.” Therefore, an accusation is not rendered unjust by an evasion.

But contrary to this: In the same place it says, “The rashness (*temeritas*) of accusers is detected in three ways: for they engage either in calumny or in prevarication or in evasion.”

I respond: As has been explained (a. 1), an accusation is ordered toward the common good, which is what is intended by making a crime known (*per cognitionem criminis*). But no one should harm anyone unjustly in order to promote the common good. And so in the case of an accusation there are two possible ways for there to be a sin:

In one way, by someone’s acts unjustly *against the accused* by attributing false crimes to him, and this is to engage in *calumny*;

In the second way, against the republic whose good is principally intended in an accusation (*ex parte reipublicae, cuius bonum principaliter intenditur in accusatione*), when someone maliciously obstructs the punishment of the sin. There are two possible ways for this to occur:

First, by bringing fraud to bear in the accusation, and this pertains to *prevarication*, since “a prevaricator (*praevaricator*) is, as it were, a straddler (*varicator*) who aids the other side while betraying his own side.”

Second, by withdrawing totally from the accusation, and this is to engage in *evasion* (*quod est tergiversari*), since one desists from what he had begun in the sense that he seems to ‘turn his back’ on it (*quasi tergum vetere videtur*).

Reply to objection 1: A man should not proceed to make an accusation except about a matter which is altogether certain and in which ignorance of what has been done has no place.

Yet it is not the case that just any individual who attributes a false crime to someone is engaging in *calumny*; rather, this is true only of someone who rushes into an accusation out of malice. For it is

sometimes possible to proceed to make an accusation out of mental shallowness (*ex animi levitate*), viz., because one believes too readily what he has heard, and this pertains to *rashness (temeritas)*. And sometimes someone is moved to make an accusation because of a justifiable error (*ex iusto errore*).

All these things need to be discerned in accord with the judge's prudence, lest he rush to the judgment that someone has engaged in calumny when in fact that individual has rashly made an accusation out of shallowness of mind or because of a justifiable error.

Reply to objection 2: Not everyone who conceals a real crime is engaging in prevarication; rather, one does this only if he fraudulently obscures the matter about which he is making the accusation and colludes with the defendant by hiding the proper proofs and introducing false excuses.

Reply to objection 3: To evade an accusation is to desist altogether by displacing the intention to make an accusation, not just in any way whatsoever, but in a disordered way.

Now there are two ways in which it is possible for someone to desist from making an accusation in a non-disordered way without any vice:

In one way, if, in the very process of making an accusation, he realizes that what he is making an accusation about is false, and if the accuser and defendant absolve each other by mutual consent.

In the second way, if the ruler, to whom belongs care for the common good—which is what is intended by the accusation—terminates the accusation.

Article 4

Is an accuser who fails to prove his accusation held to the punishment of retaliation?

It seems that an accuser who fails to prove his accusation is not held to the punishment of retaliation:

Objection 1: Sometimes it happens that one proceeds to make an accusation on the basis of a justifiable error, in which case, as *Decretals 2*, q. 3 says, the judge absolves the accuser. Therefore, it is not the case that an accuser who fails to prove his accusation is held to the punishment of retaliation.

Objection 2: If the punishment of retaliation is to be imposed on one who makes an accusation unjustly, then this will be because of an injury he has inflicted on someone. But it will not be because of an injury inflicted on the one who has been accused, since in that case the ruler would not be able to remit this punishment. Nor, again, is it because of an injury inflicted on the republic, since in that case the one who is accused would not be able to absolve the accuser. Therefore, the punishment of retaliation is not deserved by one who fails in his accusation.

Objection 3: It should not be the case that there are two punishments for the same sin—this according to Nahum 1:9 (“God shall not judge the same thing a second time”). But one who fails at proving his accusation incurs the punishment of infamy or disgrace (*infamia*), which even the Pope seems unable to remit—this according to Pope Gelasius (“Even though we are able to save souls through repentance, we are nonetheless unable to abolish infamy or disgrace”). Therefore, he is not held to the punishment of retaliation.

But contrary to this: Pope Hadrian says, “One who does not prove his accusation is to suffer the punishment that he would have inflicted.”

I respond: As was explained above (a. 2), in a case involving accusation the accuser is the party who intends the punishment of the accused. On the other hand, it belongs to the judge to establish the balance of justice between the two of them.

Now the balance of justice requires that one should himself suffer the harm that he intends for the another—this according to Exodus 21:24 (“An eye for an eye, a tooth for a tooth”). And so it is just that the one who by his accusation places someone in danger of a serious punishment should himself suffer a

similar punishment.

Reply to objection 1: As the Philosopher explains in *Ethics 5*, with justice it is not always the case that compensatory suffering (*contrapassum*) is appropriate absolutely speaking, since it makes a big difference whether it is voluntarily or involuntarily that someone harms another. Voluntary harm deserves punishment, but leniency is due for involuntary harm. And so when a judge recognizes that someone has made a false accusation not with the intention of doing harm, but involuntarily out of ignorance because of a justifiable error, he does not impose the punishment of retaliation.

Reply to objection 2: One who makes a bad accusation sins both against *the person of the one who is accused* and against *the republic*. Hence, he is punished for the sake of each of them.

Accordingly, Deuteronomy 19:18-19 says, “And when, after carrying out a thorough investigation with the utmost diligence, they discover that a false witness has told a lie against his brother, they shall render to him what he meant to do to his brother”—this pertains to the injury against *the person*.

And later (19:19-20), as regards the injury to *the republic*, it adds, “And you shall take the evil one out of your midst, in order that the others who hear this might become fearful and not dare to do such things themselves.”

Still, he especially injures the person of the accused if he makes a false accusation, and so if the accused person is innocent, he can absolve the accuser of his own injury—especially if the accuser made his accusation out of shallowness of mind and did not engage in calumny. By contrast, if he desists from accusing an innocent person because of collusion with an adversary, then he injures the republic, and he cannot be absolved of this by the one who is accused. Instead, he can be forgiven by the ruler, who exercises care for the republic.

Reply to objection 3: An accuser is deserving of the punishment of retaliation in return for the harm that he was trying to inflict on his neighbor, whereas he deserves the punishment of infamy or disgrace (*infamia*) because of the malice out of which he made his calumnious accusation against another.

Sometimes the ruler remits the punishment and does not abolish the infamy or disgrace, whereas sometimes he abolishes the infamy or disgrace as well. Hence, the Pope, too, is able to abolish infamy or disgrace of the sort in question, and what Pope Gelasius says—viz., “We are unable to abolish the infamy or disgrace”—should be taken either (a) to apply to infamy or disgrace that has already been effected, or (b) to mean that it is sometimes not expedient to abolish it. Or, alternatively, he might, as Gratian claims, be talking about disgrace that has been imposed by a civil judge.