

QUESTION 69

Injustice on the part of the Accused in his own Defense

Next we have to consider sins that are contrary to justice on the part of the defendant (*ex parte rei*). And on this topic there are four questions: (1) Does a man commit a mortal sin by denying the truth through which he would be condemned? (2) Is one permitted to defend himself by chicanery (*calumniose*)? (3) Is one permitted to escape a judgment by appealing it (*iudicium subterfugere appellando*)? (4) Is someone who has been condemned [to death] permitted to defend himself by violence if he is able to?

Article 1

Can one who has been accused deny without mortal sin the truth through which he would be condemned?

It seems that one who has been accused can deny without mortal sin the truth through which he would be condemned:

Objection 1: Chrysostom says, “I do not say that you should give yourself up publicly or accuse yourself before others.” But if an accused individual were to confess the truth in a judicial proceeding, he would be giving himself up and accusing himself. Therefore, he is not obligated to tell the truth. And so he does not commit a mortal sin if he lies in a judicial proceeding.

Objection 2: Just as a lie is ‘officious’ when someone lies in order to free someone else from death, so a lie seems to be officious when someone lies in order to free himself from death, since one is bound more closely to himself than to another. But an officious lie is counted as a venial sin and not as a mortal sin. Therefore, if an accused individual denies the truth in a judicial proceeding in order to free himself from death, he does not commit a mortal sin.

Objection 3: As was explained above (q. 24, a. 12), every mortal sin is contrary to charity. But it is not contrary to charity—either with respect to love of God or with respect to love of neighbor—for someone who has been accused to lie in order to exculpate himself of the sin he is charged with. Therefore, a lie of this sort is not a mortal sin.

But contrary to this: Everything that is contrary to God’s glory is a mortal sin, since, as is clear from 1 Corinthians 10:31, we are obligated by precept “to do everything for the glory of God.” But for a defendant to confess to something against himself pertains to God’s glory, as is clear from what Joshua said to Achar, “My son, give glory to the God of Israel, and confess and tell me what you have done and do not hide it” (Joshua 7:19). Therefore, it is a mortal sin to lie in order to excuse oneself of a sin.

I respond: As was explained above (q. 59, a. 4), whoever acts against a debt of justice (*contra debitum iustitiae*) commits a mortal sin. But it belongs to a debt of justice that one should obey his superior in those matters to which the right of leadership (*ius praelationis*) extends. Now as was explained above (q. 59, a. 4), a judge is a superior with respect to the one who is being judged. And so the accused is obligated by the due order of justice to reveal to the judge the truth that he requires of him according to the form of the law. And so if he does not will to confess the truth which he is obligated to tell (*si confiteri noluerit veritatem quam dicere teneter*), or if he denies it by lying (*si eam mendaciter negaverit*), then he commits a mortal sin.

However, if the judge demands something that he cannot demand according to the order of the law, then the accused is not obligated to respond to him, but instead he can escape the demand either by appealing it or by some other licit means. But he is not permitted to tell a lie.

Reply to objection 1: When someone is interrogated by a judge in accord with the order of law, he is not giving himself up but is instead being given up by another, as long as the necessity for responding is imposed by someone whom he is obligated to obey.

Reply to objection 2: To lie, with injury to someone, in order to free someone else from death is not just an ‘officious’ lie but instead has something pernicious mixed in with it. But when someone lies in a judicial proceeding in order to exculpate himself, he inflicts an injury on the one whom he is obligated to obey as long as he denies him what is due to him, viz., an acknowledgment of the truth (*confessionem veritatis*).

Reply to objection 3: One who lies in a judicial proceeding in order to exculpate himself does something that is contrary both (a) to the love of *God*, to whom judgment belongs, and (b) to love of *neighbor*, both with respect to the *judge*, to whom he denies what is due to him, and with respect to the *accuser*, who is punished if he fails to prove his case.

Hence, Psalm 140:4 says, “Incline not my heart toward words of malice, toward making excuses for my sins.” A Gloss on this verse says, “This is the way of the impudent, to excuse themselves with falsehoods when they have been found out.” And in *Moralia* 32 Gregory, in expounding Job 31:33 (“If I have hidden my sin as a man ...”), says, “It is a common vice of the human race (a) to commit a sin in secret (*latendo*), (b) to cover it up, once it has been committed, by denying it, and (c) to multiply it, once it has been proved, by defending it.”

Article 2

Is the accused permitted to defend himself by chicanery?

It seems that the accused is permitted to defend himself by chicanery (*accusato liceat calumniose se defendere*):

Objection 1: According to civil law, in a ‘blood case’ (*in causa sanguinis*) one is permitted to bribe his adversary (*licitum est cuiilibet adversarium corrumpere*). But this is a special instance of defending oneself by chicanery. Therefore, the accused in a blood case does not sin if he defends himself by chicanery.

Objection 2: As *Decretals* 2, q. 3 indicates, an accuser who colludes with the accused receives a punishment established by the laws, whereas no punishment is imposed on the accused for colluding with the accuser. Therefore, it seems that the accused is permitted to defend himself by chicanery.

Objection 3: Proverbs 14:16 says, “The wise man fears and shies away from what is bad; the fool leaps up and is confident.” But that which is effected by wisdom is not a sin. Therefore, if someone is liberating himself in any way whatsoever from what is bad, he is not sinning.

But contrary to this: As is established in *Extra, De iuramento calumniae, cap. Inhaerentes*, even in a criminal case the oath against chicanery has to be taken. But this would not be so if one were permitted to defend himself by chicanery. Therefore, the accused is not permitted to defend himself by chicanery.

I respond: It is one thing to remain silent about a truth and another thing to propose a falsehood. The first is permissible in some cases. For one is not obligated to acknowledge every truth, but only that truth which a judge can and ought to require of him in accord with the order of law, e.g., when notoriety about some crime has preceded the judicial proceeding, or when some obvious indications have emerged, or, again, when an incomplete proof has preceded. However, there is no case in which one is permitted to propose a falsehood.

Now one can proceed to what is licit either (a) by routes that are licit and appropriate for the intended end—this belongs to *prudence*—or (b) by routes that are illicit and incongruous with the intended end—this belongs to *craftiness (astutia)*, which, as was explained above (q. 55, a. 3), is exercised through *fraud* and *guile (quae exercetur per fraudem et dolum)*. The first of these routes is praiseworthy, whereas the second is vicious.

So, then, a defendant who is accused is permitted to defend himself by concealing in appropriate ways a truth that he is not obligated to acknowledge—for instance, by not responding to what he is not obligated to respond to. This is not defending himself by chicanery; instead, it is a prudent evasion (*prudenter evadere*).

However, he is not permitted either to tell a lie or to conceal a truth that he is obligated to acknowledge. Neither is he permitted to make use of any sort of fraud or guile, since fraud and guile have the force of a lie, and this would be to defend himself by chicanery.

Reply to objection 1: As is clear in the case of simple fornication, many things that are sins according to God’s judgment are left unpunished by human laws. For human law does not demand from a man perfect virtue (*non exigit ab homine omnimodam virtutem*), which belongs to the few and cannot be found in as great a multitude of people as human law has to sustain.

Now it belongs to perfect virtue that one not will to commit a sin in order to avoid corporeal death, the danger of which threatens the defendant in a blood case. For as *Ethics* 3 says, “Death is the most terrible of all temporal things.” And so if a defendant in a blood case bribes his adversary, he does indeed sin by inducing him to do something illicit, and yet civil law does not apply a punishment to this sin, and to that extent the act is said to be licit.

Reply to objection 2: If the accuser colludes with a defendant who is guilty, he incurs a punishment, and from this it is clear that he is sinning. Hence, since inducing someone to sin, or being a participant in a sin in any way, is itself a sin—given that the Apostle says that those who consent to sins are worthy of death (Romans 1:32)—it is manifest that the defendant sins as well when he colludes with his adversary. However, for the reason just explained, no punishment is imposed on him according to human laws.

Reply to objection 3: The wise hide themselves prudently and not by chicanery.

Article 3

Is a defendant permitted to turn aside a judgment by appealing it?

It seems that a defendant is not permitted to turn aside a judgment by appealing it (*reo non liceat iudicium declinare per appellationem*):

Objection 1: In Romans 13:1 the Apostle says, “Let every soul be subject to higher powers.” But in making an appeal, a defendant is refusing to be subject to a higher power, viz., the judge. Therefore, he commits a sin.

Objection 2: Ordinary power is more binding than a power that we ourselves choose (*maius est vinculum ordinariae potestatis quam propriae electionis*). But as one reads in *Decretals* 2, q. 6, “One is not permitted to put under appeal judges who have been chosen by common agreement.” Therefore, all the less is one permitted to put ordinary judges under appeal.

Objection 3: That which is licit at some times is licit at all times. But it is not licit to appeal after the tenth day; nor is it licit to appeal for a third time on the same point. Therefore, it seems that making an appeal is illicit in its own right.

But contrary to this: As Acts 25:11 recounts, Paul appealed to Caesar.

I respond: There are two reasons why someone might make an appeal:

The first is his firm trust in a just cause, i.e., because he is being unjustly oppressed by the judge. And on this score it is licit to make an appeal, since this is a prudent evasion of the judgment. Hence, *Decretals* 2, q. 6 says, “Anyone who is oppressed is free to appeal to the judgment of the priests if he wants to, and let no one prohibit him from doing so.”

Second, someone might make an appeal in order to bring about a delay, lest a just sentence be

pronounced against him. And this is to defend himself by chicanery—which, as has been explained (a. 2), is illicit. For he inflicts an injury both on the judge, whose function he is impeding, and on his adversary, justice for whom he is perturbing to the extent that he can. And so as *Decretals 2*, q. 6 says, “The one whose appeal is declared unjust should be punished in every way.”

Reply to objection 1: One should be subject to a lower power to the extent that it serves the order of a higher power. And if it departs from that higher power, then one should not be subject to it—for instance, “if a proconsul were to order one thing and the emperor something else,” as is clear from a Gloss on Romans 13:2.

Now when a judge unjustly oppresses someone, then to that extent he is abandoning the order of the higher power in accord with which the requirement of judging justly is imposed upon him. And so one who is oppressed in a way contrary to justice is permitted to have recourse to the discretion of the higher power by making an appeal, either before the sentencing or afterwards.

Furthermore, since one does not assume that there will be rectitude where the true Faith is not present, a Catholic is not permitted to appeal to a non-believing judge—this according to *Decretals 2*, q. 6 (“A Catholic who appeals his cause, whether just or unjust, to a judge of another Faith is to be excommunicated”). For the Apostle likewise criticized those who were contending for judgments before non-believers (cf. 1 Corinthians 6:6).

Reply to objection 2: It is by one’s own defectiveness or negligence that he subjects himself freely to the judgment of another whose justice he does not have a firm trust in. It likewise seems to involve mental shallowness for someone not to persevere in what he has already agreed to. And so it is reasonable to deny the protection of making an appeal in a case involving arbitrators (*a iudicibus arbitrariis*), who have no power except by the consent of the litigants.

However, the power of an ordinary judge does not depend on the consent of the one who is subject to his judgment; instead, it depends on the authority of the king or ruler who appointed him. And so the law affords the protection of making an appeal against an unjust burden imposed by him, so that even if he were simultaneously an ordinary judge and an arbitrator, one would still be able to put him under appeal, since his ordinary power would seem to have provided the occasion for his being chosen as an arbitrator. And in this last sort of case an appeal should not be attributed to the defectiveness of an individual who has consented to someone as an arbitrator whom the ruler had appointed as an ordinary judge.

Reply to objection 3: The balance of the law assists one party in such a way as not to harm the other party. And so it has allowed a period of ten days for an appeal, and it has deemed this sufficient to inquire about whether it is expedient to appeal. On the other hand, if there were no determinate period during which an appeal is permitted, then the certitude of the judgment would always remain in suspense, and so the other party would suffer a loss.

Moreover, the reason why one is not permitted to make a third appeal on the same point is that it is unlikely that so many judges should fail to make the correct judgment.

Article 4

Is one who is condemned to death permitted to defend himself if he is able to?

It seems that one who is condemned to death is permitted to defend himself if he is able to (*liceat condemnato ad mortem se defendere si possit*):

Objection 1: What nature inclines one toward is always permitted in the sense that it belongs to the natural right (*quasi de iure naturali existens*). But nature’s inclination—not only among men and

animals, but even among non-sentient things—is to resist corrupting influences. Therefore, a condemned defendant is permitted to resist being handed over to death if he is able to.

Objection 2: Just as one might escape a death sentence imposed upon him by resisting, so too he might do so by fleeing. But it seems permissible for someone to free himself from death by fleeing—this according to Ecclesiasticus 9:18 (“Stay far away from a man who has the power to kill and not to give life”). Therefore, one is likewise permitted to resist.

Objection 3: Proverbs 24:11 says, “Rescue those who are being led to death, and do not stop freeing those who are being dragged to their demise.” But one is more obligated to himself than to someone else. Therefore, it is licit for someone who has been condemned to defend himself from being handed over to death.

But contrary to this: In Romans 13:2 the Apostle says, “Whoever resists the power resists God’s ordinance and acquires damnation for himself.” But in defending himself a condemned man is resisting the power in the form of what has been instituted by God to punish malefactors and to praise good men. Therefore, he sins in defending himself.

I respond: There are two ways in which someone is condemned to death:

In the first way, he is condemned *justly*. And in such a case the condemned man is not permitted to defend himself. For the judge is permitted to attack him if he resists, and so it follows that the warfare (*bellum*) is unjust on his part. Hence, there is no doubt that he sins.

In the second way, he is condemned *unjustly*. And this sort of judgment is like the violence perpetrated by robbers—this according to Ezechiel 22:27 (“Her rulers in the midst of her are like wolves ravaging their prey to draw blood”). And so just as one is permitted to resist robbers, so he is permitted to resist bad rulers in such a case—except perhaps in order to avoid scandal, since some great disturbance might be feared from it.

Reply to objection 1: Reason is given to a man in order that he might execute what nature inclines him toward not at random but according to the order of reason. And so not every sort of self-defense is permitted, but instead what is permitted is self-defense with the appropriate sort of moderation (*cum debito moderamine*).

Reply to objection 2: No one is condemned in such a way that he is to inflict death on himself; rather, he is to suffer death. And so he is not obligated *to do anything* from which death follows, i.e., to remain in the place from which he is to be led to death.

Nonetheless, he is obligated *not to resist an agent* in order not to suffer what it is just for him to suffer.

For instance, if someone is condemned to die by starvation, he does not commit a sin if he eats food that is secretly provided to him, since he would be killing himself by not eating it.

Reply to objection 3: This saying of the wise man should not induce anyone to free someone else from death in a way contrary to the order of justice. Hence, neither should anyone free himself from death in a way contrary to justice by resisting.