

QUESTION 70

Injustice on the part of a Witness in Testifying

Next we have to consider injustice that belongs to the person of a witness (*de iniustitia pertinente ad personam testis*). And on this topic there are four questions: (1) Is a man obligated to give testimony (*utrum homo teneatur ad testimonium ferendum*)? (2) Is the testimony of two or three witnesses sufficient? (3) Might someone's testimony be refuted without his being at fault? (4) Is it a mortal sin to present false testimony (*perhibere falsum testimonium*)?

Article 1

Is a man obligated to give testimony?

It seems that a man is not obligated to give testimony (*non teneatur ad testimonium ferendum*):

Objection 1: In *Questiones in Heptateuchum libri septem* Augustine claims that Abraham, in saying of his wife, "She is my sister," wanted to conceal the truth without telling a lie. But in concealing the truth, one withholds his testimony. Therefore, one is not obligated to testify.

Objection 2: No one is obligated to act deceitfully (*fraudulenter*). But Proverbs 11:13 says, "He who walks deceitfully reveals secrets, but he who is faithful conceals the thing entrusted to him by his friend." Therefore, a man is not always obligated to give testimony, especially about things that have been entrusted to him by a friend.

Objection 3: Clerics and priests are obligated with respect to those things that are necessary for salvation. But clerics and priests are prohibited from offering testimony in a blood case. Therefore, testifying is not necessary for salvation.

But contrary to this: Augustine says, "He who hides the truth and he who tells a lie are both guilty, the one because he does not will to do good and the other because he desires to do harm."

I respond: Distinctions must be drawn with respect to giving testimony, since one's testimony is sometimes demanded and sometimes not demanded.

If what is demanded is the testimony of someone who is subject to a higher authority whom he is obligated to obey in matters that pertain to justice, then there is no doubt that he is obligated to give testimony about those things with respect to which, according to the order of justice, testimony is required of him, e.g., in matters that are manifest and in matters about which there has been antecedent notoriety (*in his de quibus infamia praecessit*).

However, if what is demanded of him is testimony in other matters, e.g., in hidden matters and matters in which there is no antecedent notoriety, then he is not obligated to testify.

On the other hand, if his testimony is demanded but not by an authority whom he is obligated to obey, then a distinction must be drawn.

For if a man's testimony is demanded in order to free someone either from an unjust death or from an unjust punishment of any sort, or from false notoriety, or from an unfair loss, then he is obligated to give testimony (*tenetur ad testificandum*). Even if his testimony is not demanded, he is obligated to do what he can to make the truth known to someone who can do some good with it. For Psalm 8:4 says, "Rescue the poor man, and deliver the needy man from the hand of the sinner." And Proverbs 24:11 says, "Deliver those who are being led to death." And Romans 1:32 says, "It is not only those who do these things that are worthy of death, it is also those who consent to those who are doing them"—where a Gloss says, "To consent is to remain silent when you are able to offer a disproof."

However, in matters that pertain to someone's condemnation, one is not obligated to offer testimony except when compelled to by a superior in accord with the order of justice. For if the truth concerning this sort of matter is hidden, no one incurs a special loss—or, if danger threatens the accuser, this is of no concern, since he has put himself into this danger by his own will, whereas the situation is

different with the defendant, whom danger threatens against his will.

Reply to objection 1: Augustine is talking about hiding the truth in a case in which (a) one is not compelled by the authority of a superior to divulge the truth and in which (b) hiding the truth is not specifically harmful to anyone.

Reply to objection 2: A man must not in any way offer testimony about what has been entrusted to him in secret in Confession, since he knows things of this sort not as a man but as God's minister, and the sacrament is more binding than any human precept.

As for things that are entrusted in secret to a man in other ways, we must draw a distinction:

Sometimes these things are such that as soon as they come to a man's knowledge, the man is obligated to reveal them, e.g., if the thing in question has to do with the spiritual or corporeal corruption of many people or with a grave loss to some person, or if it is something else of this sort that one is obligated to reveal either by testifying to it or by denouncing it. And in the face of this duty he cannot be obligated by the fact that he has been entrusted with a secret and would, in revealing it, be breaching the fidelity that he owes to another.

By contrast, sometimes the things in question are such that one is not obligated to reveal them. Hence, he can be obligated by the fact that these things are entrusted to him as secrets. And in such a case he is in no way obligated to reveal them, even by the command of a superior, since to it belongs to the natural right to keep faith, and nothing can be commanded of a man that is contrary to what belongs to the natural right.

Reply to objection 3: As was explained above (q. 40 a. 2 and q. 64, a. 40), effecting or cooperating in the killing of a man is inappropriate for the ministers of the altar. And so according to the order of the law they cannot be compelled to offer testimony in a blood case.

Article 2

Is the testimony of two or three witnesses sufficient?

It seems that the testimony of two or three witnesses is not sufficient (*non sufficiat duorum vel trium testimonium*):

Objection 1: Judgment requires certitude. But certitude with respect to the truth is not had through the testimony of two witnesses (*per dictum duorum testium*); for 3 Kings 21:9ff reports that Naboth was falsely condemned on the testimony of two witnesses. Therefore, the testimony of two or three witnesses is not sufficient.

Objection 2: There ought to be agreement about what is credible. But most of the time there is something about which there is disagreement in the testimony of two or three witnesses. Therefore, their testimony in a judicial proceeding is not effective for proving the truth.

Objection 3: *Decretals* 2, q. 4 says, "A bishop shall not be condemned unless there are seventy-two witnesses. A cardinal priest of the city of Rome shall not be deposed unless there are forty-four witnesses. A cardinal deacon of the city of Rome shall not be condemned unless there are twenty-eight witnesses.. A subdeacon, acolyte, exorcist, lector, or porter shall not be condemned unless there are seven witnesses." But a sin is more dangerous, and thus less to be tolerated, when it is committed by someone who has been established in a major office (*in maiori dignitate constitutus est*). Therefore, the testimony of two or three witnesses is likewise not sufficient for the condemnation of other individuals.

But contrary to this: Deuteronomy 17:6 says, "By the mouth of two or three witnesses shall he die that is to be killed." And further on, at 19:15, it says, "In the mouth of two or three witnesses every charge will stand."

I respond: According to the Philosopher in *Ethics* 1, one should not seek certitude in the same way in every subject matter. For in the case of human acts, concerning which judicial proceedings are set up and testimony is required, one cannot have demonstrative certitude, since judicial proceedings and testimony have to do with things that are contingent and variable. And so the certitude of likelihood (*probabilis certitudo*), which attains to the truth most of the time (*ut in pluribus*), is sufficient, even if it falls short of the truth in a few cases (*in paucioribus*). And so when the defendant is the lone individual denying something, whereas many witnesses assert the same thing as the accuser (*asserunt idem cum actore*), it has been plausibly established, by both the divine right and the human right, that one should side with the testimony of the witnesses.

Now there is a trio that includes every multitude, viz., (a) the beginning, (b) the middle, and (c) the end; this is why the Philosopher says in *De Caelo* 1, “We posit everything and the totality in three things.” And a trio of affirmers is constituted when two witnesses agree with the accuser (*cum actore*). And so what is required is a pair of witnesses—or, for greater certitude, let it be a trio, i.e., a completed multitude, just of witnesses. Hence, Ecclesiastes 4:12 says, “A threefold cord is not easily broken.”

On the other hand, in commenting on John 8:17 (“... the testimony of two men is true”), Augustine says, “In a mysterious way this is a commendation of the Trinity, in which there is an everlasting firmness of truth.”

Reply to objection 1: No matter what the number of witnesses might be set at (*quantacumque multitudo testium determinaretur*), it would still be possible for their testimony to be at times unjust. For Exodus 23:2 says, “You shall not follow the crowd in doing evil.” Still, as has been explained, it is not the case that because infallible certitude cannot be had in such matters, one should neglect the certitude of likelihood that can be had from two or three witnesses.

Reply to objection 2: Disagreement among the witnesses about certain important circumstances that change the substance of a deed—e.g., disagreement about the time or place or persons that are mainly being talked about—destroys the efficacy of the testimony. For if they disagree about such things, it seems that each is peculiar in his own testimony and that they are talking about different deeds. For instance, if one witness claims that the deed was done at one time or place and another witness claims that the deed was done at some other time or place, then they seem not to be talking about the same deed. However, their testimony is not compromised if the one witness says that he does not remember the time or place and the other witness claims that it was a specific time or place.

Moreover, if in such matters the witnesses for the accuser and the witnesses for the defendant disagree completely, and if they are equal in number and on a par with respect to their stature (*pares dignitate*), then the matter is settled in favor of the defendant (*statur pro reo*), since a judge should be more ready to acquit than to condemn—except perhaps in ‘favorable causes’ (*nisi forte in causis favorabilibus*), such as a case involving someone’s liberty or something of that sort.

On the other hand, if the witnesses for the same side disagree among themselves, then the judge should discern at his own discretion (*debet iudex ex motu sui animi percipere*) which party the matter should be settled in favor of, either because of the number of the witnesses, or because of their stature, or because of the favorability of the cause, or because of the nature of the case and what has been testified to. And the testimony of a witness is all the more rejected if he disagrees with himself when he is questioned about what he saw and what he knows—but not if disagrees with himself when he is questioned about an opinion or a rumor (*fama*), since he could have been moved to respond in diverse ways depending on various things he has seen and heard.

On the other hand, if there is disagreement in the testimony about certain circumstances that are not relevant to the substance of what was done—for instance, if the sky was cloudy or clear at the time in question, or if the house was painted or not, or something of this sort—then such disagreement does not undermine the testimony, since men do not normally much care about such things and so those things easily fall from memory. Just the opposite, some disagreement about such things renders the testimony

more credible, as Chrysostom points out in *Super Mattheum*, since if the witnesses agreed in everything, even the smallest details, they would seem to be contriving to offer the same story (*viderentur ex conducto eundem sermonem proferre*). Still, this is left for the judge's prudence to discern.

Reply to objection 3: These rules have a place specifically in the case of the bishops, priests, deacons, and clerics of the Church in Rome because of its importance—and this for three reasons.

First, because in that Church those who are appointed should be such that their holiness is more credible than the testimony of many witnesses.

Second, because men who are charged with judging others often, because of their justice, have many adversaries. Hence, one should not indiscriminately trust witnesses against them unless a great multitude of witnesses agrees.

Third, because the condemnation of one of them would detract in men's opinion from the dignity and authority of that Church. This is more dangerous than tolerating a sinner, except for a very public and manifest sinner from whom a great scandal will arise.

Article 3

Should someone's testimony be disallowed only because of a fault on his part?

It seems that someone's testimony should be disallowed only because of a fault on his part (*alicuius testimonium non sit repellendum nisi propter culpam*):

Objection 1: As is clear in the case of those who are known as notorious (*qui infamia notantur*), it is imposed as a punishment on some individuals that they are not allowed to give testimony. But a punishment should not be imposed except for some fault. Therefore, it seems that one's testimony should not be disallowed except because of some fault.

Objection 2: Every individual should be presumed to be good unless the contrary becomes apparent. But it pertains to a man's goodness that he gives true testimony. Therefore, since the contrary could not be clear except because of some fault on his part, it seems that no one's testimony should be disallowed except because of some fault.

Objection 3: No one is rendered unworthy of what is necessary for salvation except because of some sin. But as was explained above (a. 1), giving testimony to the truth is necessary for salvation. Therefore, no one should be excluded from giving testimony except because of some fault.

But contrary to this: Gregory says (and this is contained in *Decretals* 2, q. 1), "As for the bishop who was accused by his servants, know that those servants should not have been listened to at all."

I respond: As has been explained (a. 2), testimony has the certitude of likelihood and not infallible certitude. And so anything that enhances the likelihood of a contrary claim renders a given piece of testimony ineffective. Now the contrary claim is rendered likely if one is not firm in testifying to the truth, sometimes *because of a fault*—as in the case of non-believers or of those who are notorious, and, again, in the case of those who are guilty of a public crime and who likewise cannot make an accusation—but sometimes *without fault*. This might happen (a) because of a *defectiveness in reasoning* (*ex defectu rationis*), as is clear in the case children, women, and those who have lost their mind, or (b) because of *passion* (*ex affectu*), as is clear in the case of enemies and of connected persons and domestic staff, or even (c) because of an *exterior condition* (*ex exteriori conditione*), as in the case of those who are poor or servants or who can be bossed around (*potest imperari*)—in all these cases it is likely that they can easily be induced to offer testimony that is contrary to the truth.

And so it is clear that the testimony of an individual may be rejected either because of his fault or without any fault on his part.

Reply to objection 1: Disallowing someone's testimony has more to do with being careful about

avoiding false testimony than with punishing him. Hence, the argument does not follow.

Reply to objection 2: Good is to be presumed of each individual unless the contrary becomes apparent—as long as there is no tendency toward danger to another. For caution is to be applied in order that not everyone be easily believed—this according to 1 John 4:1 (“Do not believe every spirit”).

Reply to objection 3: To give testimony is necessary for salvation, given the appropriateness of the witness and the order of justice (*supposita testis idoneitate et ordine iuris*). Hence, there is nothing to prevent certain individuals from being excused from offering testimony if they are not deemed fit according to the law.

Article 4

Is false testimony always a mortal sin?

It seems that false testimony is not always a mortal sin (*falsum testimonium non semper sit peccatum mortale*):

Objection 1: It is possible for someone to offer false testimony out of ignorance of the deed. But this sort of ignorance excuses one from mortal sin. Therefore, false testimony is not always a mortal sin.

Objection 2: A lie that benefits someone and harms no one is an ‘officious lie’, which is not a mortal sin. But sometimes this sort of lie is involved in false testimony—e.g., when one presents false testimony in order to free someone from death or from an unjust sentence that threatens him because of other false witnesses or because of the perversity of the judge. Therefore, false testimony of this sort is not a mortal sin.

Objection 3: An oath is required of a witness in order that, because he swears, he might fear committing a mortal sin. But this would not be necessary if false testimony were in its own right a mortal sin. Therefore, false testimony is not always a mortal sin.

But contrary to this: Proverbs 19:5 says, “A false witness shall not go unpunished.”

I respond: False testimony has a threefold deformity:

First, because of the *perjury*, since witnesses are not admitted unless they are sworn in. And on this score false testimony is always a mortal sin.

Second, because of the *violation of justice*. And on this score false testimony is a mortal sin by its genus, just as every injustice is. And this is why false witness (*falsum testimonium*) is forbidden in those very words in a precept of the Decalogue, where Exodus 20:16 says, “You shall not bear false witness against your neighbor (*non loquaris contra proximum tuum falsum testimonium*).” For one does not act ‘against’ someone by preventing him from doing something injurious; instead, one acts ‘against’ someone only by undermining what is just for him (*sed solum qui ei suam iustitiam tollit*).

Third, because of the *falsehood itself*, since every lie is a sin. And on this score false testimony is not such that it is always a mortal sin.

Reply to objection 1: In giving testimony a man ought not to assert for certain, as if knowing it, what he is not certain of. Rather, he ought to put forward something doubtful as doubtful and to assert something that he is certain of as certain.

However, since it is possible because of the weakness of human memory for a man sometimes to think himself certain of something that is in fact false, if someone, thinking things over with due care, thinks himself to be certain about what is in fact false, he does not commit a mortal sin in asserting it, since he gives false testimony not *per se* and intentionally, but *per accidens* and contrary to what he intends.

Reply to objection 2: An unjust judicial proceeding (*iniustum iudicium*) is not a judicial proceeding. And so false testimony offered in an unjust judicial proceeding in order to prevent an

injustice has the nature of a mortal sin not by dint of the judicial proceeding, but only because of the broken oath.

Reply to objection 3: Men especially abhor as the most grievous sins those sins that are committed against God, among which is perjury. However, they do not abhor in this way sins that are committed against their neighbor. And this is why a witness's oath is required in order for the testimony to have greater certitude.