

## QUESTION 71

### Injustice on the part of Advocates

Next we have to consider injustice that is effected in judicial proceedings by advocates (*de iniustitia quae fit in iudicio ex parte advocatorum*). And on this topic there are four questions: (1) Is an advocate (*advocatus*) obligated to defend the cause of the poor (*utrum advocatus teneatur praestare patrocinium causae pauperum*)? (2) Should any individual be excluded from the role of advocate (*utrum aliquis debeat arceri ab officio advocati*)? (3) Does an advocate sin by defending an unjust cause? (4) Does an advocate sin by accepting money for his defense?

#### Article 1

##### Is an advocate obligated to defend the cause of the poor?

It seems that an advocate is obligated to defend the cause of the poor (*advocatus teneatur patrocinium praestare causae pauperum*):

**Objection 1:** Exodus 23:5 says, “If you see the ass of him that hates you lying down underneath its burden, you shalt not pass by, but shall lift it up with him.” But no less of a danger threatens a poor man if his cause is being suppressed in a way contrary to justice than it would be if his ass were lying down under its burden. Therefore, an advocate is obligated to defend the cause of the poor.

**Objection 2:** In a certain homily Gregory says, “Let him who has understanding take care lest he remain altogether silent; let him who has an abundance of wealth take care lest he grow dull in showing mercy; let him who has a skill by which he directs himself share the exercise of that skill with his neighbor; let him who has the opportunity of speaking in the presence of the wealthy intercede on behalf of the poor. For the very least that each individual has received will be counted as a ‘talent’.” But as is clear from the punishment inflicted on the servant who hid his talent in Matthew 25:24ff., each individual is obligated to dispense faithfully—and not to hide—any talent that has been committed to him. Therefore, an advocate is obligated to defend the cause of the poor.

**Objection 3:** Since the precept about carrying out the works of mercy is an affirmative precept, it imposes an obligation for any time and place (*pro loco et tempore*), and this holds especially in cases of necessity. But the time of necessity seems to occur when the cause of someone poor is being suppressed. Therefore, in such circumstances it seems that an advocate is obligated to offer a defense.

**But contrary to this:** The need that an indigent man has for food is no less than the need he has for an advocate. But one who has the power to feed is not always obligated to feed a poor man. Therefore, neither is an advocate always obligated to defend the cause of the poor.

**I respond:** Since defending the cause of the poor belongs to the works of mercy, one should say the same thing here that was said above (q. 32, aa. 5 and 9) about other works of mercy. For no one is sufficient to do the works of mercy for all who are needy. And so as Augustine says in *De Doctrina Christiana* 1, “Since you are unable to do good for everyone, you should help those who, by reason of the opportunities provided by place and time, or by reason of the opportunities provided by anything whatsoever, are more closely connected to you by a sort of lottery, as it were (*quasi quadam sorte*).”

He says “by reason of the opportunities provided by place,” because a man is not obligated to search the world for needy individuals whom he might help; rather, it is sufficient if he does the works of mercy for those who cross his path (*qui occurrunt sibi*). Hence, Exodus 23:4 says, “If you run into an ox or ass that belongs to your enemy, take it back to him.”

He adds “and time,” because a man is not obligated to provide for someone else’s future needs; rather, it is sufficient if he takes care of the individual’s present need. Hence, 1 John 3:17 says, “If anyone sees his brother in need and closes his heart off from him, etc.”

What’s more, he adds “by anything whatsoever,” because a man ought especially to take care of

those connected to him by any necessity—this according to 1 Timothy 5:8 (“If anyone does not take care of his own, and especially of those who live with him, then he has denied the Faith”).

However, even with all these points in place, we still have to ask whether someone might suffer from such a great need that it is not immediately clear how he could be helped in any other way. And in such a case one is obligated to perform the act of mercy. On the other hand, if it is immediately clear how the individual could be helped in some other way, either by himself or by another person who is more closely connected to him or who is more capable helping, then one is not obligated by necessity to help the needy individual, i.e., obligated in such a way that he would sin by not doing it—even though, if he were to help him in the absence of any such necessity, he would be acting in a praiseworthy manner.

Hence, an advocate is not always obligated to defend the cause of the poor; instead, he is obligated to do so only when the conditions just explained come together. Otherwise, he would have to neglect all his other business and concentrate only on assisting the causes of the poor. And the same thing should be said about a physician as regards caring for the poor.

**Reply to objection 1:** When the ass is lying down under its burden, the individual in this case cannot be helped in any way other than to be helped by those who are passing by, and so they are obligated to give their help. However, they would not be obligated if assistance could be provided from elsewhere.

**Reply to objection 2:** A man is obligated to dispense in a useful way any talent that is entrusted to him, as long as the opportunities presented by place and time and other things are in place in the way that has been explained.

**Reply to objection 3:** Not every need engenders an obligation to help, but only needs of the sort explained above.

## Article 2

### Is it inappropriate for anyone to be excluded by law from the role of advocate?

It seems that it is inappropriate for anyone to be excluded by law from the role of advocate:

**Objection 1:** No one ought to be excluded from the works of mercy. But as has been explained (a. 1), presenting a defense for certain causes belongs to the works of mercy. Therefore, no one ought to be excluded from that role.

**Objection 2:** It does not seem that the same effect comes from contrary causes. But being given over to the things of God is contrary to be given over to sins. Therefore, it seems absurd for some individuals, e.g., clerics and monks, to be excluded from the role of advocate because of their religious commitments (*propter religionem*) and for other individuals, e.g., heretics and notorious individuals, to be excluded from the role of advocate because of their sins (*propter culpam*).

**Objection 3:** A man ought to love his neighbor as himself. But it is an effect of love that one should be an advocate in defense of some cause. Therefore, it is absurd that some individuals to whom the authority of being advocates has been granted for their own causes should be excluded from offering a defense for the causes of others.

**But contrary to this:** According to *Decretals* 3, q. 7, many persons are excluded from the role of being postulators (*arcentur ab officio postulandi*).

**I respond:** There are two ways in which someone is prevented from performing some act: (a) because of a lack of power (*propter impotentiam*) and (b) because of impropriety (*propter indecentiam*). Now a lack of power excludes one from the act absolutely speaking, whereas impropriety does not exclude one from the act absolutely speaking, since necessity can remove the impropriety.

So, then, certain individuals are prohibited from the office of advocate because of a *lack of power*, given that they are lacking in *sense*—either *interior sense*, as in the case of madmen and youths, or *exterior sense*, as in the case of the deaf and the mute. The reason for this is that an advocate needs both (a) *interior expertise*, by which he is able to show in a fitting way the justice of the cause, and also (b) *speech and hearing*, so that he is able both to speak in public and to hear what is being said to him. Hence, those who suffer from a deficiency in these things are altogether prevented from being advocates, either for themselves or for others.

On the other hand, there are two ways in which one's *propriety* for exercising this role can be undermined. First, it can be undermined by the fact that one is *tied to more important things* (*rebus maioribus obligatus*). Hence, it is unfitting for monks and priests to be advocates in any cause, or for clerics to play this role in secular judicial hearings, since persons of these types are restricted to the things of God. Second, it can be undermined by *personal deficiencies*, either (a) *corporeal deficiencies*, as is clear in the case of the blind, who cannot conveniently stand before a judge, or (b) *spiritual deficiencies*, since it is not appropriate for someone to be a defender of justice (*iustitiae patronus*) for another individual when he has shown so little esteem for justice in himself. And, for this reason, non-believers and those who are notorious and those who have been convicted of serious crimes are not fit to be advocates.

However, necessity takes precedence over this sort of impropriety. And for this reason persons of the kind in question can play the role of advocate for themselves or for persons who are closely connected with them. Hence, clerics are able to be advocates for their churches, and monks are able to be advocates for the cause of their monasteries if their abbot commands it.

**Reply to objection 1:** Some individuals are prevented from doing works of mercy at times because of a lack of power and also at times because of impropriety. For not all the works of mercy are fitting for everyone; for instance, it is not fitting for those who are foolish to give counsel or for those who are ignorant to give instruction.

**Reply to objection 2:** Just as a virtue is corrupted both by excess and by deficiency, so some individuals become unfit both by *being above* and by *being below* (*per maius et per minus*). And for this reason some individuals are prevented from presenting a defense in certain causes because they are *above* such a role, as with religious and clerics, whereas some are *below* what would make them fit for this role, as with the notorious and non-believers.

**Reply to objection 3:** The necessity for defending the causes of others is not as much a threat as the necessity for defending one's own causes, since the others can help themselves in other ways. Hence, the arguments are not parallel.

### Article 3

#### Does an advocate sin if he defends an unjust cause?

It seems that an advocate does not sin if he defends an unjust cause :

**Objection 1:** Just as a physician's expertise is shown if he cures a hopeless disease, so an advocate's expertise is shown if he is able to defend an unjust cause. But a physician is praised if he cures a hopeless disease. So, too, then, an advocate does not sin, but should rather be praised, if he defends an unjust cause.

**Objection 2:** Every sin is such that it is permissible to desist from it. But as *Decretals* 2, q. 3 has it, an advocate is punished if he abandons his cause (*punitur si causam suam prodiderit*). Therefore, an advocate does not sin in defending an unjust cause if he has already undertaken the task of defending it.

**Objection 3:** If one used unjust means to defend a just cause, e.g., by producing false witnesses or

by adducing false laws, this would seem to be a greater sin than defending an unjust cause, since the former is *formally* a sin (*peccatum in forma*), whereas the latter is *materially* a sin (*peccatum in materia*). But it seems that an advocate is permitted to use shrewd tactics of this sort (*videtur advocato licere talibus astutiis uti*) in the way that a soldier is permitted to fight with insidious tactics (*sicut militi licet ex insidiis pugnare*) (cf. q. 40, a. 3). Therefore, it seems that an advocate does not sin if he defends an unjust cause.

**But contrary to this:** 2 Paralipomenon 19:2 says, “You offer help to the impious ... and thereby deserve the wrath of the Lord.” But an advocate who defends an unjust cause offers help to the impious. Therefore, he deserves the wrath of the Lord by sinning.

**I respond:** No one is permitted to cooperate in doing evil, whether by advising or by assisting or by consenting in any way. For one who advises or assists is in some sense doing evil, and in Romans 1:32 the Apostle says, “It is not only those who commit the sin who are worthy of death, but also those who consent to those committing the sin.” Hence, it was explained above (q. 62, a. 7) that all such individuals are obligated to make restitution.

Now it is clear that an advocate offers both assistance and advice to the one whose cause he is defending. Hence, if he knowingly defends an unjust cause, then without doubt he commits a grave sin, and he is obligated to make restitution for the loss which the other party incurs because of the injustice committed with his assistance. On the other hand, if he defends an unjust cause unknowingly, thinking it to be a just cause, then he is excused in the way in which ignorance can provide an excuse.

**Reply to objection 1:** A physician who takes on the task of curing a hopeless disease does no injury to anyone. By contrast, an advocate who takes on an unjust cause unjustly harms the one against whom he is presenting his defense. And so the arguments are not parallel. For even though he seems praiseworthy as regards expertise in his art, he still sins as regards the injustice of his will, by which he uses his art for something bad.

**Reply to objection 2:** If at the beginning an advocate believes that the cause is just and if afterwards, within the proceeding, it becomes clear that it is unjust, he ought not to abandon it in such a way as to help the other party or to reveal the hidden elements of his cause to the other party. However, he can and should give up the cause either by inducing the one for whose cause he is acting to cede his case or by inducing him to settle his case without loss to his adversary.

**Reply to objection 3:** As was explained above (q. 40, a. 3), in waging a just war, a soldier or commander is permitted to use insidious tactics, in the sense of prudently concealing what he will do, to do what he needs to do—though not in the sense of fraudulently resorting to falsehoods. For as Tully says in *De Officio* 3, one must keep faith with one’s enemy. Hence,, in defending a just cause, an advocate is likewise permitted to conceal prudently whatever his progress could be impeded by, but he is not permitted to make use of falsehoods.

#### Article 4

##### Is an advocate permitted to take money in return for his defense?

It seems that an advocate is not permitted to take money in return for his defense:

**Objection 1:** The works of mercy are not to be done with the thought of human remuneration—this according to Luke 14:12 (“When you give a dinner or a banquet, do not invite your friends or your brothers or your kinsmen or rich neighbors, lest they also invite you in return, and you be repaid”). But, as has been explained (a. 1), presenting a defense of someone’s cause has to do with acts of mercy. Therefore, an advocate is not permitted to take the payment of money in return for the defense he has presented.

**Objection 2:** The spiritual should not be traded for the temporal. But the presentation of a defense seems to be something spiritual, since it is an exercise of one's knowledge of the law. Therefore, an advocate is not permitted to take money in return for presenting a defense.

**Objection 3:** The person of the judge and the person of the witness are related to judgment in the same way that the person of an advocate is. But according to Augustine in *Ad Macedonium*, "A judge should not sell a just judgment, nor should a witness sell true testimony." Therefore, neither is an advocate able to sell a just defense.

**But contrary to this:** In the same place Augustine says, "An advocate licitly sells a just defense, and a legal expert licitly sells truthful advice."

**I respond:** One can justly accept payment in return for giving to another what he is not obligated to give him. But it is clear that an advocate is not always obligated to present a defense or to give advice for the causes of others. And so if he sells his defense or his advice, he is not acting in a way contrary to justice. And the same argument holds for a physician who gives help for healing and for all other persons of this sort, as long as they receive moderate compensation, taking into account the situation of the persons involved and of the matter at hand and of the labor, along with the customs of their native place.

However, if an advocate extorts something immoderately through wickedness, then he sins against justice. Hence, in *Ad Macedonium* Augustine says, "It is normal to demand from them restitution for what they have extorted by wicked immoderation, but not for what has been given to them in accord with tolerable custom."

**Reply to objection 1:** It is not always the case that what a man does mercifully is such that he is obligated to do it for free; otherwise, no one would be permitted to sell anything, since a man can give anything whatsoever mercifully. However, when he does give something mercifully, he should be seeking divine remuneration and not human remuneration.

Similarly, when an advocate mercifully defends the cause of the poor, he should desire divine remuneration and not human remuneration, even if he is not always obligated to provide the defense for free.

**Reply to objection 2:** Even if knowledge of the law is something spiritual, its exercise is nonetheless accomplished by a corporeal work. And so he is permitted to take money as his compensation; otherwise, no skilled individual one would be permitted to profit from his art.

**Reply to objection 3:** The judge and the witness are common to both parties, since the judge is obligated to issue a decision, and the witness is obligated to give true testimony—and justice and truth do not deviate toward one side rather than the other. And so for the judges there are stipends established publicly for their work, and the witnesses receive expenses, not as a prize for their testimony but as a stipend for their labor, either from both parties or from the party by whom they are called. For as 1 Corinthians 9:7 says, "No one ever serves as a soldier at his own expense (*suis stipendiis*)."

By contrast, an advocate defends one side only. And so he can licitly accept payment from the party whom he assists.