

# AQUINAS ETHICUS



## THE MORAL TEACHING OF ST. THOMAS

VOLUME 2

The Moral Teaching  
of St. Thomas

Vol. 2

ST. THOMAS AQUINAS

*The Moral Teaching of St. Thomas, Vol. 2*  
*Jazzybee Verlag Jürgen Beck*  
*86450 Altenmünster, Loschberg 9*  
*Deutschland*

*ISBN: 9783849648312*

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## **Second Division, or Secunda Secundæ.**

### **QUESTION XLVII.: OF PRUDENCE.**

*Endnote 002*

Article XII.—Is prudence in subjects or only in superiors?

R. Prudence lies in the reason. Now reason's proper office is to rule and govern; and therefore it is proper to every one to have reason and prudence, in so far as he has any part in ruling and governing. But to rule and govern is not the office of the subject, inasmuch as he is a subject, but rather to be ruled and governed; and therefore prudence is not the virtue of the subject as such. But because every man, inasmuch as he is reasonable, has some share in governing according to the free choice of his reason, to that extent it is proper to him to have prudence. Hence it is manifest that prudence is in the superior after the manner of a mastercraft, but in the subject after the manner of a handicraft.

§ 3. By prudence a man not only commands others, but also commands himself in the sense in which reason is said to command the lower powers.

Article XIII.—Can there be any prudence in those who live in sin?

R. Prudence may be understood in three senses. There is a false prudence, or a prudence metaphorically so called. For

whereas he is prudent who arranges well what has to be done in order to a good end, he who with an evil end in view makes suitable arrangements for that end has a false prudence, inasmuch as what he takes for an end is not really good, but only has the likeness of good. In this sense, that man may be metaphorically styled a prudent burglar, who finds out suitable ways for committing burglary. Of this sort is the prudence of which the Apostle says: "The prudence of the flesh is death," *Endnote 003* that, namely, which places its last end in the delight of the flesh. There is a second prudence, true indeed, because it finds out ways adapted to an end that is truly good, but withal an imperfect prudence, because the good which this prudence takes for its end in view is not the common end and aim of all human life, but of some special department of business; as when one discovers fit and suitable methods of trade or navigation, he is called a prudent trader or seaman. But the third prudence is at once true and perfect, rightly counselling, judging and commanding in view of the end and aim of all human life; and this alone is absolutely called prudence; and it cannot be in those who live in sin: whereas the first-mentioned prudence is in sinners only, and the imperfect sort of prudence is common to good and bad.

#### Article XIV.

§ 3. Acquired prudence is caused by the exercise of acts; hence experience and time are needed to create it; and therefore it cannot be in young people either in habit or in act. But gratuitous prudence is caused by divine infusion: hence in baptized children that have not come to the use of reason, this prudence is found in habit, but not in act, as also is the case in idiots. But in such as have attained to the use of reason, this prudence is found in act also, for the things that are of necessity to salvation, but by exercise it merits increase until it is perfect, like the other infused virtues. *Endnote 004*

## **QUESTION XLVIII.: OF THE PARTS OF PRUDENCE.**

Article I.—Are there three assignable parts of prudence?

R. A part is threefold—integral, as wall, roof, and foundation are parts of a house; subjective, as ox and lion are parts of animal; and potential, as nutritive and sensitive are parts of the soul. In three ways, therefore, may we assign parts to any virtue. In one way according to the likeness of integral parts, calling those things parts of any virtue that must needs concur to the perfect act of the said virtue. Again, by the subjective parts of a virtue we understand its different species. In this way the parts of prudence, strictly considered, are the prudence with which a man governs himself, and the prudence with which he governs a people. Lastly, by the potential parts of a virtue are understood the adjoining virtues that are directed to secondary acts or matters, and have not the full force of the primary virtue.

## **QUESTION LV.: OF THE PRUDENCE OF THE FLESH.**

Article I.—Is the prudence of the flesh a sin?

R. Prudence is conversant with those things that make for the end and aim of our whole life. And therefore that conduct is properly called prudence of the flesh, whereby one takes the goods of the flesh for the ultimate end of his life. Manifestly this is a sin: for hereby man is set in disorder with respect to his last end, which does not consist in the goods of the body.

§ 2. The flesh is for the soul, as the matter for the form, and the instrument for the principal agent. And therefore the flesh is lawfully loved, so that it be directed to the good of the soul as to its end. But if the last end is set up in the

mere good of the flesh, the love will be inordinate and unlawful.

Article VI.—Is it lawful to entertain solicitude for temporal things?

R. Solicitude implies an earnestness of effort applied to the gaining of a purpose. Clearly a greater earnestness of effort is applied where there is fear of a failure: and where there is secure confidence of success, less solicitude comes in. Thus then solicitude for temporal things may be unlawful in three ways. In one way, on the part of the object of our solicitude, if we seek temporal things as our final goal. In another way, by an excessive amount of pains bestowed upon obtaining temporal goods, whereby a man is withdrawn from spiritual things, to which he ought by preference to devote himself. In a third way, by an excess of fear, when a man fears that by his doing what he ought to do the necessaries of life may come to fail him.

§ 1. Temporal goods are subject to man that he may use them for his necessity, not that he may set up his rest in them, or be idly solicitous about them.

Article VII.—Ought one to be solicitous about the future?

R. No work can be virtuous unless it be clothed in due circumstances, one of which is due time, according to the text: “There is a time and opportunity for every business;” *Endnote 005* which saying obtains, not only for outward works, but also for inward solicitude. For every time has its own befitting solicitude, as summer brings the solicitude of reaping, and autumn the solicitude of gathering in the fruit. Any one that in summer-time was already solicitous about gathering in the fruit, would be idly anticipating the solicitude of time to come. Hence our Lord forbids such solicitude as idle, saying: “Be not solicitous for to-morrow; for the morrow will be solicitous for itself;” *Endnote 006* that is, will have its own proper solicitude, which will be sufficient to afflict the soul. And this is the meaning of the addition: “Sufficient for the day is the evil thereof;” that is, the affliction of solicitude which it brings.

§ 1. The ant has a solicitude suitable to the season; and this is what is proposed to us for imitation. *Endnote 007*

## **QUESTION LVII.: OF RIGHT.** *Endnote 008*

Article I.—Is right the object of justice?

R. The proper office of justice in its place among virtues is to direct a man in his dealings with another. For justice involves a certain equality, as the name itself shows; for the things that are equalized are said to be adjusted; and equality is a relation of one thing with another. Other virtues perfect a man only in what is his own private concern. They regard the agent, and the agent exclusively, in the rectitude of conduct which they determine and aim at as their object; but justice fixes its rectitude of conduct in reference to some one else—even passing over the agent. That is called just in our doings, which is in some sort of equality corresponding to something else, as in the instance of wages corresponding to work done. So then that is just, which is the term of a just action, even irrespectively of the disposition of the agent. But in other virtues right action always supposes a certain disposition of the agent. *Endnote 009* And therefore what is called just, that is, right, is determined to be the proper object of justice above other virtues.

§ 3. Because justice involves equality, and we cannot make an equivalent return to God, hence we cannot render to God what is just in the proper sense of the word. Justice, however, tends to this end, that man so far as he can, should make a return to God, subjecting his whole soul to Him.

Article II.—Is right properly divided into natural right and positive right?

R. Right, or a just settlement, is some work made adequate to another work according to some measure of equality. Now a man may get an adequate return in two ways: in one

way, by the very nature of the thing, as when one gives so much to receive exactly as much; and this is called natural right. In another way, one thing is adequate to, or commensurate with another thing by convention, or some common resolve, that is, when a party reckons himself satisfied if he receives so much. And this may be either by private agreement or by public convention, as when a whole people agree that one thing be held adequate to and commensurate with another: or when the prince, who bears the person of the people, ordains this. And this is called positive right. *Endnote 010*

§ 2. The will of men by common agreement can make a thing just in matters that of themselves are not irreconcilable with natural justice; and in these matters positive law has place. Hence the Philosopher says: "Legal justice is in a case where, to start with, it makes no difference whether the thing be so or otherwise; but when the enactment is made, it does make a difference." But whatever is of itself irreconcilable with natural law, cannot be made just by human will. Hence it is said: "Woe to them that make wicked laws." *Endnote 011*

Article IV.—Is paternal right to be placed in a special category?

R. Right, or a just claim, implies the proportion of one thing to another. That is absolutely other, which is altogether distinct, as in the case of two men, one of whom is not under the other, though they are both under one civil ruler; and between such parties a transaction is possible that can be called absolutely just. In another way a being is called other, not absolutely, but as being a part of another being; and in this way the child is in a manner part of the father. And therefore the father is not matched with his child as with something absolutely other than himself; and therefore there is not here a case of absolute justice, or absolute right, but of a certain sort of right, namely, paternal right. Whereas, though the wife is part of the husband, standing to him as his own body, *Endnote 012* still

she is more distinct from the husband than the child from the father, inasmuch as she is taken into partnership in matrimonial life; and therefore there is more of the nature of justice between husband and wife than between father and child.

§ 1. It is a point of justice to render to every one what is by rights his own, on the supposition, however, of a diversity between the two parties; for if any one gives to himself what is due to himself, that is not properly called just dealing.

§ 2. The son, as a son, is his father's chattel; and in like manner the slave, as a slave, is his master's chattel. But both the one and the other, considered as a man, is something subsisting by himself distinct from other beings. And therefore, inasmuch as both the one and the other is a man, justice in some way extends to them. Therefore also there are sundry laws given for the dealings of a father with his son, or of a master with his slave. But to the extent that either son or slave is the chattel of another, the perfect idea of a just claim or right so far fails to be verified in them.

## **QUESTION LVIII.: OF JUSTICE. *Endnote***

*013*

Article I.—Is justice aptly defined to be a standing and abiding will to give every one his due?

R. In the definition of justice, the first thing set down is will, to show that the act of justice ought to be voluntary; then standing and abiding is added, to mark the firmness of the act. And therefore the above is a complete definition of justice, except that the act of willing is put for the habit. And if any one wished to reduce it to the proper form of a definition, he might say that justice is a habit, whereby with a standing and abiding will one gives every one his due.

Article II.—Is justice always to another?

R. The name of justice implies an equality, and therefore justice is essentially to another: for nothing is equal to itself, but to another. And because it belongs to justice to rectify human acts, the equality that justice requires must be between different agents. Now actions are the actions of substances and wholes, not properly of parts and forms, or powers; for it is not properly said that the hand strikes, but the man with the hand; nor is it properly said that heat warms, but the fire through the heat. The other expressions are used, but they are analogical. Justice therefore, properly so called, requires a diversity between those who are parties to it; and holds consequently only of one man in relation to another. But analogically, we may take for different agents different principles of action in one and the same man, as reason, and the irascible faculty, and the concupiscible; and therefore, metaphorically, justice is said to obtain in one and the same man, inasmuch as reason rules the irascible and concupiscible faculties, and they obey reason, and generally inasmuch as to every part of man there is assigned its proper office. Hence the Philosopher styles this, justice metaphorically so-called.

*Endnote 014*

§ 4. The behaviour of a man in regard of himself is sufficiently rectified by the rectification of the passions, which is the work of the other moral virtues; but the behaviour of one man towards another man needs a special rectification, not in relation to the agent only, but likewise in relation to the other person with whom he deals. And therefore there is a special virtue concerned with that behaviour, namely, justice.

Article IV.—Is the will the subject of justice?

R. That power is the subject of justice, to the rectification of whose acts justice is directed. Now justice is not directed to the guidance of any cognitive act; for we are not called just for the fact of our knowing anything correctly. And therefore the subject of justice is not the intellect or reason, which is a cognitive power. But because we are

called just in this that we do a thing rightly, and the proximate principle of action is the appetitive faculty, some portion of the appetitive faculty must be the subject of justice. Now the appetitive faculty is twofold: the will, which is in the reason; and the sensitive appetite that follows the apprehension of sense, which sensitive appetite is divided into irascible and concupiscible. But the rendering to every one of his own cannot proceed from the sensitive appetite; because the apprehension of sense does not extend to the consideration of the proportion of one thing to another: that is proper to reason. Hence neither the irascible nor the concupiscible faculty can be the subject of justice, but the will alone.

Article V.—Is justice a general virtue?

R. Justice directs a man in his relations with another. That may be either with another in his individual aspect, or with another in general, inasmuch as he who serves a community serves all the human beings who are comprised in that community. Justice in its proper essence may deal with either of these objects. All who are comprised in a community stand to the community as parts to the whole. Now all that the part is, belongs to the whole; hence everything good in the part is referable to the good of the whole. In this way then the goodness of every virtue, whether it directs a man in regard of himself, or directs him in regard of other individuals, is referable to the general good to which justice leads. And thus the acts of all the virtues may belong to justice, as that directs a man to the general good; and in this respect justice is called a general virtue. And because it is the office of law to direct a people to the general good, hence the above-described general justice is styled legal justice, because by it man keeps accord with the law that directs acts of all the virtues to the general good.

Article VI.—Is justice, inasmuch as it is a general virtue, essentially identical with all virtue?

R. The word general may be taken in two ways. One way is the way of logical predication, as animal is a general term with respect to man and horse. What is general in this way, must be identical in essence with the things about which it is general; because the genus belongs to the essence of the species, and is included in the definition of the same. A thing is otherwise called general in the way of efficiency. Thus a universal cause is general in reference to all its effects, as the sun in reference to all bodies that are illuminated or changed by its virtue. What is general in this way, need not be identical in essence with the objects in respect whereof it is general: because the essence of the effect and of the cause is not the same. In this latter way legal justice is said to be a general virtue, inasmuch as it directs the acts of the other virtues to its own end, or sets in motion by its command all the other virtues. For as charity may be called a general virtue, inasmuch as it directs the acts of all the other virtues to the good that is in God; so may legal justice also be called general, as it directs the acts of all the virtues to the good of the commonwealth. As then charity is a special virtue in its essence, regarding as its proper object the good that is in God; so also is legal justice a special virtue in its essence, and regards as its special object the good of the commonwealth. And thus legal justice is in the sovereign principally and after the manner of a master-craft, but secondarily and subordinately in the subject. Legal justice then is a virtue, special in its essence, general in its efficacy.

Any virtue however, inasmuch as it is directed thereby to the good of the commonwealth, may be called legal justice; and in this wide sense legal justice is identical in essence with all virtue, but differs in the consideration of the mind.

*Endnote 015*

Article VII.—Besides general, is there any particular justice?

R. Legal justice is not essentially all virtue: but besides legal justice, that directs men immediately to the good of the commonwealth, there must be other virtues that direct them immediately in the matter of private good, touching either a man's own self or his relation to some other individual. For the right ordering of a man within himself, we require the particular virtues of temperance and fortitude: so also, besides legal justice, there must be some particular justice, rightly to order a man in matters that touch another private individual.

Article VIII.—Has particular justice any special subject-matter?

R. All things whatever that can be set right by reason, are the subject-matter of moral virtue. Now the interior passions of the soul, and exterior actions, and exterior things that come under the use of man, are all capable of being set right by reason. The rectification of a man within himself involves attention to interior passions. But the relation of one man to another is by exterior actions, and by exterior things that men can share one with another. And therefore, since justice is in relation to another, it does not embrace the whole subject-matter of moral virtue, but exterior actions only, and exterior things, inasmuch as one man thereby has dealings with another.

Article IX.—Does justice deal with the passions?

R. The true answer to this question is evident from two considerations; first from considering the subject of justice, which is the will, the motions of which power are not passions; only the motions of the sensitive appetite are termed passions; and therefore justice does not deal with the passions, as do temperance and fortitude, which are found in the concupiscible and irascible faculties respectively. In another way the answer appears from the consideration of the subject-matter: for the matter of justice is our dealings with our neighbour; now it is not by the passions that we are brought into immediate relation with our neighbour. *Endnote 016*

Article XI.—Is it the act of justice to render to every man his own?

R. The subject-matter of justice is exterior conduct, inasmuch as the conduct itself, or the thing that we make use of therein, is proportioned to another person, to whom we have relations of justice. Now that is said to be every person's own, which is due to him on the principle of proportionate equality. *Endnote 017* And therefore the proper act of justice is nothing else than to render to every one his own.

## **QUESTION LIX.: OF INJUSTICE.**

Article III.—Can one suffer injustice willingly?

R. Properly, and formally speaking, no one can do injustice otherwise than willingly, nor suffer it otherwise than unwillingly. But accidentally, and materially speaking, one may either do unwillingly, or suffer willingly, that which is of itself unjust.

## **QUESTION LX.: OF JUDGMENT.**

Article III.—Is judgment unlawful when it proceeds upon suspicion?

R. Suspicion is an evil opinion entertained on slight grounds. It may arise in three ways. In one way from the evil character of him who entertains it, who conscious of his own wickedness, easily thinks ill of others; according to the text: "The fool when he walketh in the way, whereas he is himself a fool, esteemeth all men fools." *Endnote 018* In another way from being ill-affected towards a neighbour: for when you despise or hate a person, or are angry with him or envy him, you are apt to think evil of him upon slight indications, because every one easily believes that which he desires. In a third way this arises from long experience:

hence the Philosopher says that “old men are particularly suspicious, because they have often had experience of others’ shortcomings.” Now the first two causes of suspicion manifestly argue some moral obliquity in the harbourer of the suspicion: while the third cause takes off from the essence of the suspicion, inasmuch as experience is an advance towards certainty, and certainty is essentially opposed to suspicion. Therefore suspicion involves a moral flaw in him who harbours it; and the further the suspicion goes, the greater the vice. Now there are three degrees of suspicion. The first degree consists in a man beginning to doubt of the goodness of another on slight indications. This sin is venial and light, a part of that human temptation without which this life cannot be lived. The second degree is when you make up your mind for certain as to the wickedness of another on slight indications; and if this be on any grave matter, it is a mortal sin, inasmuch as it is not without contempt of your neighbour. Hence the gloss says: “If we cannot avoid suspicions, because we are men; at least we ought to refrain from judgments, that is, from definitive and fixed pronouncements.” The third degree is when a judge proceeds to condemn a man on suspicion; and this is a direct act of injustice, and consequently a mortal sin.

Article IV.—Is a favourable construction to be put on dubious proceedings?

R. By having a bad opinion of another without sufficient cause, you do him an injury and contemn him. Now none ought to contemn another, or do him any hurt, without cogent reason. And therefore, where no clear indications appear of another’s wickedness, we ought to hold him to be good, putting a favourable construction on what is doubtful.

§ 2. It is one thing to judge of things, another of persons. In judging of things, there is no question of any good or evil to accrue to the thing that we judge of: for the thing is not hurt, however we judge of it. The only matter at stake here

is the estate of him who forms the judgment—good, if he judges rightly; evil, if he judges falsely: because truth is the good of the intellect, and falsehood the evil thereof; and therefore every one ought to strive to judge of things as they are. But in judging of men, the principal matter at stake is the good or evil thereby accruing to him who is judged,—who is held to be worthy of honour in being judged to be good, and is held up to contempt, if he is judged to be a bad man. And therefore in such a judgment we should rather make a point of judging a man to be good, unless manifest reason appear to the contrary.

§ 3. A favourable or unfavourable construction may be put upon a proceeding, hypothetically. In that way, when we are bound to apply a remedy to evils, whether our own or other people's, it is expedient for the safer application of the remedy to suppose the worse side of the case; because the remedy that is efficacious against a greater evil is much more efficacious against a smaller evil. Or the construction may be put definitively or peremptorily; and in that way, in judging of things, we ought to strive to interpret each thing according as it is; but in judging of persons, to lean in our interpretation to the better side.

Article VI.—Does usurpation make judgment void?

R. He who pronounces judgment, interprets the utterance of the law, applying it to a particular case. Now it belongs to the same authority to enact a law and to interpret it. A law cannot be enacted, nor a judgment passed, except by public authority. And thus, as it would be unjust to compel a man to observe a law that was not enacted by public authority, so also is it unjust to compel a man to submit to a sentence that is not passed by public authority. *Endnote 019*

## **QUESTION LXI.: OF THE PARTS OF JUSTICE.**

Article I.—Is it proper to assign two species of justice, commutative and distributive?

R. Particular justice is in relation to some private person, who stands to the community as a part to the whole. Now to a part we may either have another part related; and that expresses the relation of one private person to another, which relation is regulated by commutative justice, or the justice that is concerned with the mutual dealings of two private persons one with another: or again, we have the relation of the whole to the part; and such is the relation of the community to the individual, which relation is presided over by distributive justice, or the justice that distributes the goods of the common stock according to proportion. And therefore there are two species of justice, distributive and commutative.

§ 3. The act of distribution of the goods of the common stock belongs to him alone who presides over the common stock. Nevertheless distributive justice is found also in the subjects to whom the distribution is made, inasmuch as they are content with a just distribution.

Article II.—Is the mean taken in the same way in distributive as in commutative justice?

R. In distributive justice the mean is not taken according to equality of thing to thing, but according to the proportion of things to persons, so that in proportion as one person exceeds another, so also the thing that is given to the one person exceeds the thing that is given to the other. But in exchanges we must equalize thing to thing, so that whatever excess one party gets, over and above what is his own, of what belongs to another, so much exactly he should restore to the party to whom it belongs.

Article III.—Is the matter of each of these two species of justice the same?

R. Justice is conversant with the exterior acts of distribution and exchange. These are acts of disposing of exterior objects, either things, or persons, or services: things, as when one takes away from or restores to another

the thing that is his; persons, as when one does wrong to the corporal presence of a man, striking him, or using insulting language to him, or again, when one shows him reverence; services, as when one justly exacts some service of another, or renders him some service due. If, therefore, we take as the matter of both species of justice the objects that we act upon and use, the matter of distributive and commutative justice is the same; for things can be distributed from the common store to individuals, and also exchanged between one individual and another: and there is also a distribution of laborious services, and a recompensing of the same. But if we take as the matter of the two species of justice the principal actions themselves by which we make use of persons, things, and services, at that rate we find different subject-matter in the two species. For distributive justice presides over distributions, while commutative justice presides over the exchanges that may have place between two individuals. Of these exchanges some are involuntary, some voluntary. Those are involuntary, in which one uses the thing, or person, or service of another against his will. *Endnote 020* This is done sometimes by fraud, sometimes by open violence. Both the one and the other have place either touching your neighbour's thing, or touching his person, or touching some person related to him. Touching a thing, if one takes the thing of another secretly, it is called theft; if openly, it is called robbery. The involuntary exchange touches the person of your neighbour either in its substance or in its dignity. In the substance of his person, a neighbour is injured secretly by assassination, or by poison; openly by open murder, or by imprisonment, or by beating, or by maiming. In the dignity of his person, a neighbour is injured secretly by false witness or detraction; openly, by a judicial accusation, or by abusive language addressed to him. Touching a person related to him, a man is injured in his wife by adultery, and that secretly for the most part.

Voluntary exchanges, as they are called, are when one voluntarily transfers the thing that is his to another. If the transference is absolute without its being due, as in a gift, that is not an act of justice, but of liberality. A voluntary transference is a matter of justice, then when it bears some character of being due. And this character may be borne in many ways. One way is when a person absolutely transfers the thing that is his to another, to receive compensation in something else, as in buying and selling. Another way is when one hands over the thing that is his to another, granting him the use of the thing, but reserving a claim to the recovery of the thing. If he grants the use of the thing gratis, it is called usufruct in things that fructify, loan or lending in things that do not fructify. If not even the use is granted gratis, it is called letting and hiring. In a third way a man hands over the thing that is his, making it returnable to himself, and bargaining that the receiver shall not use it in the meanwhile, but shall merely hold it in safe-keeping, as a deposit or a pledge.

In all transactions such as these enumerated, whether voluntary or involuntary, the same principle holds of fixing the mean according to an even balance of give and take. And therefore the said transactions all belong to one species of justice, namely, commutative.

## **QUESTION LXII.: OF RESTITUTION.**

Article I.—Is restitution an act of commutative justice?

R. To restore is nothing else than to re-establish a man in the possession or ownership of that which is his; and thus in restitution the equality of justice is obtained by weighing thing against thing; which is characteristic of commutative justice. And therefore restitution is an act of commutative justice, and has place when the thing belonging to one man is held by another, whether by the will of the owner, as in a

case of loan or deposit, or against his will, as in robbery or theft.

Article II.

§ 2. There are three ways of taking away another's character. One is by telling the truth in due order of justice; and then no obligation of restitution exists. Another way is by telling a falsehood contrary to justice; and then the party is bound to restore his neighbour's character by confessing that what he said was false. The third way consists in telling the truth, but unjustly, as when in violation of due order one reveals the crime of another; in which case he is bound to restore that other's character, so far as he can without lying, as by saying that he has spoken amiss, or has defamed him unjustly; or if he cannot restore his character, he is bound to make it up to him in some other way.

Article III.—Is it enough to restore the simple amount that has been unjustly taken away?

R. There are two things to consider in a case of one man taking that which belongs to another. There is first the disturbance of equilibrium of possession, which disturbance may be without injustice, as in loans. Then there is the crime of injustice, which may exist even where equilibrium of possession is undisturbed, as when one seeks to do violence but prevails not. On the first count a remedy is applied by restitution, whereby the equilibrium is restored; and for this it suffices to restore the exact amount that we have taken of another's property. But to the crime a remedy is applied by a penalty, which it is the judge's office to inflict. And therefore, before the culprit is condemned by the judge, he is not bound to restore more than he has taken; but after he is condemned, he is bound to pay the penalty.

Article IV.—Is any one bound to restore what he has not taken away?

R. Whatever causes loss to another may be considered to take away from him so much as the loss amounts to; for

according to the Philosopher, loss means some one having less than he ought to have. *Endnote 021* And therefore a man is bound to restore the amount of loss that he has caused. But there are two ways of suffering loss. One way is by a person being deprived of what he actually had; and such loss must always be made good by paying back an equal amount. Thus if one pulls down another man's house, he is bound to restitution to the extent of the value of the house. Another way of causing loss to a neighbour is by hindering him from attaining what he was in the way of having. Such loss need not be made good by the payment of an equal amount, because the potential having of a thing is less than the actual having; and he who is in the way of attaining has the thing only virtually or potentially; and therefore, if restitution were so made to him as that he should have the thing in act and present reality, he would have that which was taken away restored to him, not simply, but with advantages, which is not necessary to perfect restitution. But he who took it away is bound to make some restitution according to the condition of persons and affairs.

§ 1. He who has sown seed in his land has not yet got the harvest actually, but only virtually; and in like manner [§ 2] he who has money has not yet got gain actually, but only virtually; and both the one and the other acquisition may in many ways be hindered. *Endnote 022*

Article V.—Is restitution always to be made to the person from whom the thing was taken?

R. By restitution a return is made to the equality of commutative justice, which consists in an equilibrium of possessions. Such equilibrium would be impossible, unless the deficiency were made up to him who has got less than of right belongs to him. In order to make up this deficiency, restitution must be made to him from whom the thing was taken away.

§ 1. When the thing to be restored is evidently grievously hurtful to the party to whom restitution is due, or to another party, then restitution ought not to be made to him,

because the end of restitution is the utility of him who receives it; for all articles of possession fall under the category of the useful. Still the retainer of another man's goods ought not to appropriate them to himself, but either preserve them for restitution at a fit time, or hand them over to another for safer custody.

§ 2. There are two sorts of unlawful giving. In one the giving itself is unlawful and illegal, as in the case of simony. The giver there deserves to lose his gift: hence restitution ought not to be made to him. And because the receiver also has broken the law in receiving, he ought not to keep the money for himself, but to turn it to pious uses. The other sort of unlawful giving is giving for a service that is unlawful, though the giving itself is not unlawful, as when one gives to a prostitute her hire. Hence such a woman can keep what is given her: but if she had extorted anything in excess by fraud or guile, she would be bound to make restitution to the party of whom she had it.

§ 3. If no trace can be found of the person to whom restitution is due, the other party is bound to restore so far as he can, by giving alms for his good estate, alive or dead, but not before diligent inquiry made after the person. If the party is dead, restitution is due to his heir, who counts as one person with him. If he is far distant, what is due should be forwarded to him, especially if it is a thing of great value, and can be forwarded easily: otherwise it should be deposited in some safe place to keep for him, and notification thereof sent to the owner.

Article VI.—Is he always bound to restitution, who has taken the thing?

R. There are two matters to consider, the thing itself taken, and the taking of it. Now on the score of the thing taken, a party is bound to restitution so long as he has the thing in his possession: because what he has over and above his own, ought to be withdrawn from him and given to the person to whom it is missing, according to the form of commutative justice. But the act itself of taking the thing

that is another's may assume three several shapes. Sometimes it is wrongful, being done against the will of the owner, as in theft or robbery; and then the taker is bound to restitution, not only on the score of the thing, but also on the score of the wrongful act, even though the thing does not remain in his possession. For as he who strikes another is bound to make compensation for the injury to the sufferer, although nothing remains in his possession: so whoever robs or steals is bound to compensate the loss inflicted, even though he have no profit therefrom; and he ought further to be punished for the wrong done. In another way one takes the thing of another to his own benefit without wrong-doing, that is, with the consent of the owner, as in loans; and then the taker is bound to restitution of the thing taken, not only on the score of the thing, but also on the score of the taking, even though he has lost the thing: for he is bound to recompense him who has done him a favour, which will not be recompensed if the benefactor loses by the transaction. In a third way one takes the thing of another without wrong-doing, but without any benefit to himself; such is the case of a deposit; and he who thus takes a thing is nowise bound on the score of the taking,—nay, by taking he renders a service; but he is bound on the score of the thing taken. And therefore, if the thing passes from him without his own fault, he is not bound to restitution. It would be a different case, if he lost the deposit through his own great fault.

Article VII.—Are they bound to restitution, who have not taken the thing?

R. There is an obligation of restitution, not only on the score of the thing taken, belonging to another, but also on the score of wrongful taking. And therefore whoever is a cause of wrongful taking, is bound to restitution. And this has place in two ways, directly and indirectly. *Endnote 023* Directly, when one induces another to take a thing, either by express precept, counsel, or consent, moving him to take, or by praising him as a man of spirit for having taken,

or by harbouring him, or by lending a hand in his crime of theft or robbery. Indirectly, when one does not hinder it, having the power and the duty to hinder it, or when one keeps back a command or an admonition that would hinder the theft or robbery, or withholds his own assistance whereby he could prevent it, or conceals the deed after it is done. We must know however that five only of the above connections always bind to restitution. First, command, because whoever commands is the prime mover: hence he is primarily bound to restore. Second, consent, in the case of him without whose consent the robbery could not be committed. Third, harbouring, when one is a harbourer and patron of robbers. Fourth, partaking in the crime and in the booty. Fifth, non-intervention, when you are bound to intervene; as princes, who are bound to maintain justice in the land, are bound to restitution, if by their shortcoming robbers increase; because the revenues that they have are a sort of pay regularly given to this end, that they may maintain justice. But in the other cases enumerated there is not always an obligation of restitution; for counsel, or flattery, or the like, is not always an efficacious cause of robbery. Hence the adviser or flatterer is then only bound to restitution, when there is room for a probable estimate that the unjust taking followed on such causation.

§ 3. He who does not inform against a robber, or who stands not in his way, or reproves him not, is not always bound to restitution, but only when he has an official duty to do these things, as rulers of the land have, who are not much endangered by doing so: for it is to this effect that they hold office, that they may be the guardians of justice.

*Endnote 024*

## **QUESTION LXIII.: OF THE RESPECTING OF PERSONS.**

Article I.—Is the respecting of persons a sin?

R. The respecting of persons *Endnote 025* is opposed to distributive justice. For the equality of distributive justice consists in this, that to different persons different things are assigned in proportion to their several dignities and deserts. If therefore one has regard to that attribute in a person, which makes the thing conferred due to him, that is no respecting of the person but a regard for the cause. For instance, if one promotes a person to the degree of master on account of his sufficiency of learning, there the cause of the thing being due *Endnote 026* is regarded, not the person. But if in the person on whom you bestow some emolument you consider, not the reason that makes the bestowal appropriate or due to him, but only the fact of his being this man, Peter, or Martin, that is a respecting of persons, because the honour is awarded, not for any cause that makes the receiver worthy, but it is awarded simply to the person. That consideration must be held to be a purely personal consideration, which is not in respect of any cause rendering the party worthy of the gift in question. Thus if one promotes another to a prelacy, or to a master's degree, because he is rich, or because he is a relation of his, that is a respecting of the person.

§ 3. There are two manners of giving: one appertaining to justice, whereby one gives to another what is due to him; and about such gifts the respecting of persons has place. There is another manner of giving appertaining to liberality, whereby that is given gratuitously to another which is not due to him. Such is the bestowal of the gifts of grace, by which sinners are taken into favour by God. In this bestowal the respecting of persons has no place, because without injustice every one may give of his own as much as he wills, and to whom he wills, according to the text: "Is it not lawful for me to do what I will? Take what is thine and go thy way." *Endnote 027*

Article II.—Is there room for the respecting of persons in the dispensation of spiritualities?

R. Seeing that it is a respecting of persons when something is assigned to a person beyond the proportion in which he is worthy, we may observe that the worthiness of a person may be determined from two points of view. One way it may be determined absolutely and in itself; and in that way he is the more worthy, who abounds more in spiritual gifts of grace. Another way is in reference to the common good; for sometimes the less holy and the less learned may be more available for the common good, by reason of worldly ability or business capacity, or some other such advantage. And because the dispensing of spiritualities has place principally in view the profit of the community, according to the text: "The manifestation of the Spirit is given to every man unto profit:" *Endnote 028* therefore at times, without any respecting of persons, the absolutely less good are preferred to the better in the dispensation of spiritualities, *Endnote 029* as also God at times grants to the less good the graces that are graciously given. *Endnote 030*

§ 1. Concerning a Prelate's kindred a distinction must be drawn. For sometimes they are less worthy both absolutely and in regard of the common good; and in that case, if they are preferred to others more worthy, it is a sin of respecting of persons in the dispensing of spiritual goods, goods of which the Prelate is not master, to be able to give them as he likes, but only dispenser. *Endnote 031* Sometimes on the other hand the Prelate's kindred are equally worthy with the rest; and in that case he may lawfully prefer his kindred without respecting of persons; because in this at least they are superior, that he can trust them more to be of one mind with him in the handling of ecclesiastical affairs. Still this advantage should be foregone on the ground of scandal, if others would take example thence of giving the goods of the Church to their kinsmen even apart from worthiness.

§ 3. For the election to be unexceptionable before a judicial tribunal, it is enough to choose a good man, and there is no need to choose the better man; otherwise every election

would be open to cavil. But for the conscience of the elector it is necessary to choose him who is the better man, either absolutely, or in respect of the common good. The reason is, because if a more fit and proper person can be found for the dignity, and another is preferred to it, this must be for some cause: now if that cause be germane to the matter, then the more fit and proper person will be the person elected; but if it be not germane to the matter, that which is had in view as the cause will be manifestly a respecting of persons.

§ 4. He who is taken from the bosom of the local church to which he is appointed, usually proves more useful for the common good, because he has a greater love for the church in which he has been brought up. And therefore the command is given, "Thou shalt not make a man of another nation king, that is not thy brother." *Endnote 032*

Article III.—Has the sin of respecting of persons any place in the showing of honour and reverence?

R. Honour is a testimony to the virtue of him who is honoured; and therefore virtue alone is a due cause of honour. But it must be observed that a person must be honoured, not only for his own virtue, but also for the virtue of another; as Princes and Prelates are honoured, though they be of evil life, inasmuch as they bear the person of God, and of the community over whom they are set, according to the text: "As he that casteth a stone into the heap of Mercury, *Endnote 033* so is he that giveth honour to a fool." *Endnote 034* For because the Gentiles assigned the keeping of accounts to Mercury, a heap of Mercury means a heap of pebbles used for keeping accounts, in which a merchant sometimes puts one pebble or counter in place of a hundred dollars. Thus also the fool is honoured, who is set in place of God and in place of the whole community.

## **QUESTION LXIV.: OF HOMICIDE.**