

SECOND PART OF THE SECOND PART, QUESTION 120

Of “Epikēia” or Equity (In Two Articles)

We must now consider “epikēia,” under which head there are two points of inquiry:

- (1) Whether “epikēia” is a virtue?
- (2) Whether it is a part of justice?

Whether “epikēia”^{*} is a virtue?

IIa IIae q. 120 a. 1

Objection 1. It seems that “epikēia” is not a virtue. For no virtue does away with another virtue. Yet “epikēia” does away with another virtue, since it sets aside that which is just according to law, and seemingly is opposed to severity. Therefore “epikēia” is not a virtue.

Objection 2. Further, Augustine says (De Vera Relig. xxxi): “With regard to these earthly laws, although men pass judgment on them when they make them, yet, when once they are made and established, the judge must pronounce judgment not on them but according to them.” But seemingly “epikēia” pronounces judgment on the law, when it deems that the law should not be observed in some particular case. Therefore “epikēia” is a vice rather than a virtue.

Objection 3. Further, apparently it belongs to “epikēia” to consider the intention of the lawgiver, as the Philosopher states (Ethic. v, 10). But it belongs to the sovereign alone to interpret the intention of the lawgiver, wherefore the Emperor says in the Codex of Laws and Constitutions, under Law i: “It is fitting and lawful that We alone should interpret between equity and law.” Therefore the act of “epikēia” is unlawful: and consequently “epikēia” is not a virtue.

On the contrary, The Philosopher (Ethic. v, 10) states it to be a virtue.

I answer that, As stated above (Ia IIae, q. 96, a. 6), when we were treating of laws, since human actions, with which laws are concerned, are composed of contingent singulars and are innumerable in their diversity, it was not possible to lay down rules of law that would apply to every single case. Legislators in framing laws attend to what commonly happens: although if the law

be applied to certain cases it will frustrate the equality of justice and be injurious to the common good, which the law has in view. Thus the law requires deposits to be restored, because in the majority of cases this is just. Yet it happens sometimes to be injurious—for instance, if a madman were to put his sword in deposit, and demand its delivery while in a state of madness, or if a man were to seek the return of his deposit in order to fight against his country. In these and like cases it is bad to follow the law, and it is good to set aside the letter of the law and to follow the dictates of justice and the common good. This is the object of “epikēia” which we call equity. Therefore it is evident that “epikēia” is a virtue.

Reply to Objection 1. “Epikēia” does not set aside that which is just in itself but that which is just as by law established. Nor is it opposed to severity, which follows the letter of the law when it ought to be followed. To follow the letter of the law when it ought not to be followed is sinful. Hence it is written in the Codex of Laws and Constitutions under Law v: “Without doubt he transgresses the law who by adhering to the letter of the law strives to defeat the intention of the lawgiver.”

Reply to Objection 2. It would be passing judgment on a law to say that it was not well made; but to say that the letter of the law is not to be observed in some particular case is passing judgment not on the law, but on some particular contingency.

Reply to Objection 3. Interpretation is admissible in doubtful cases where it is not allowed to set aside the letter of the law without the interpretation of the sovereign. But when the case is manifest there is need, not of interpretation, but of execution.

Whether “epikēia” is a part of justice?

IIa IIae q. 120 a. 2

Objection 1. It seems that “epikēia” is not a part of justice. For, as stated above (q. 58, a. 7), justice is twofold, particular and legal. Now “epikēia” is not a part of particular justice, since it extends to all virtues, even as legal justice does. In like manner, neither is it a part of legal justice, since its operation is beside that which is established by law. Therefore it seems that “epikēia” is not a part of justice.

Objection 2. Further, a more principal virtue is not assigned as the part of a less principal virtue: for it is to the cardinal virtue, as being principal, that secondary virtues are assigned as parts. Now “epikēia” seems to be a more principal virtue than justice, as implied by its name: for it is derived from *epi*, i.e. “above,” and *dikaion*, i.e. “just.” Therefore “epikēia” is not a part of justice.

* epieikeia

Objection 3. Further, it seems that “epikeia” is the same as modesty. For where the Apostle says (Phil. 4:5), “Let your modesty be known to all men,” the Greek has *epieikeia*[†]. Now, according to Tully (De Invent. Rhet. ii), modesty is a part of temperance. Therefore “epikeia” is not a part of justice.

On the contrary, The Philosopher says (Ethic. v, 10) that “epikeia is a kind of justice.”

I answer that, As stated above (q. 48), a virtue has three kinds of parts, subjective, integral, and potential. A subjective part is one of which the whole is predicated essentially, and it is less than the whole. This may happen in two ways. For sometimes one thing is predicated of many in one common ratio, as animal of horse and ox: and sometimes one thing is predicated of many according to priority and posteriority, as “being” of substance and accident.

Accordingly, “epikeia” is a part of justice taken in a general sense, for it is a kind of justice, as the Philosopher states (Ethic. v, 10). Wherefore it is evident that “epikeia” is a subjective part of justice; and justice is predicated of it with priority to being predicated of legal justice, since legal justice is subject to the direction of “epikeia.” Hence “epikeia” is by way of being a higher

rule of human actions.

Reply to Objection 1. Epikeia corresponds properly to legal justice, and in one way is contained under it, and in another way exceeds it. For if legal justice denotes that which complies with the law, whether as regards the letter of the law, or as regards the intention of the lawgiver, which is of more account, then “epikeia” is the more important part of legal justice. But if legal justice denote merely that which complies with the law with regard to the letter, then “epikeia” is a part not of legal justice but of justice in its general acceptance, and is condivided with legal justice, as exceeding it.

Reply to Objection 2. As the Philosopher states (Ethic. v, 10), “epikeia is better than a certain,” namely, legal, “justice,” which observes the letter of the law: yet since it is itself a kind of justice, it is not better than all justice.

Reply to Objection 3. It belongs to “epikeia” to moderate something, namely, the observance of the letter of the law. But modesty, which is reckoned a part of temperance, moderates man’s outward life—for instance, in his deportment, dress or the like. Possibly also the term *epieikeia* is applied in Greek by a similitude to all kinds of moderation.

[†] to *epieikes*