

SECOND PART OF THE SECOND PART, QUESTION 69
Of Sins Committed Against Justice On the Part of the Defendant
(In Four Articles)

We must now consider those sins which are committed against justice on the part of the defendant. Under this head there are four points of inquiry:

- (1) Whether it is a mortal sin to deny the truth which would lead to one's condemnation?
- (2) Whether it is lawful to defend oneself with calumnies?
- (3) Whether it is lawful to escape condemnation by appealing?
- (4) Whether it is lawful for one who has been condemned to defend himself by violence if he be able to do so?

Whether one can, without a mortal sin, deny the truth which would lead to one's condemnation? Ila Ilae q. 69 a. 1

Objection 1. It would seem one can, without a mortal sin, deny the truth which would lead to one's condemnation. For Chrysostom says (Hom. xxxi super Ep. ad Heb.): "I do not say that you should lay bare your guilt publicly, nor accuse yourself before others." Now if the accused were to confess the truth in court, he would lay bare his guilt and be his own accuser. Therefore he is not bound to tell the truth: and so he does not sin mortally if he tell a lie in court.

Objection 2. Further, just as it is an officious lie when one tells a lie in order to rescue another man from death, so is it an officious lie when one tells a lie in order to free oneself from death, since one is more bound towards oneself than towards another. Now an officious lie is considered not a mortal but a venial sin. Therefore if the accused denies the truth in court, in order to escape death, he does not sin mortally.

Objection 3. Further, every mortal sin is contrary to charity, as stated above (q. 24, a. 12). But that the accused lie by denying himself to be guilty of the crime laid to his charge is not contrary to charity, neither as regards the love we owe God, nor as to the love due to our neighbor. Therefore such a lie is not a mortal sin.

On the contrary, Whatever is opposed to the glory of God is a mortal sin, because we are bound by precept to "do all to the glory of God" (1 Cor. 10:31). Now it is to the glory of God that the accused confess that which is alleged against him, as appears from the words of Josue to Achan, "My son, give glory to the Lord God of Israel, and confess and tell me what thou hast done, hide it not" (Joshua 7:19). Therefore it is a mortal sin to lie in order to cover one's guilt.

I answer that, Whoever acts against the due order of justice, sins mortally, as stated above (q. 59, a. 4). Now it belongs to the order of justice that a man should obey his superior in those matters to which the rights of his authority extend. Again, the judge, as stated above (q. 67, a. 1), is the superior in relation to the

person whom he judges. Therefore the accused is in duty bound to tell the judge the truth which the latter exacts from him according to the form of law. Hence if he refuse to tell the truth which he is under obligation to tell, or if he mendaciously deny it, he sins mortally. If, on the other hand, the judge asks of him that which he cannot ask in accordance with the order of justice, the accused is not bound to satisfy him, and he may lawfully escape by appealing or otherwise: but it is not lawful for him to lie.

Reply to Objection 1. When a man is examined by the judge according to the order of justice, he does not lay bare his own guilt, but his guilt is unmasked by another, since the obligation of answering is imposed on him by one whom he is bound to obey.

Reply to Objection 2. To lie, with injury to another person, in order to rescue a man from death is not a purely officious lie, for it has an admixture of the pernicious lie: and when a man lies in court in order to exculpate himself, he does an injury to one whom he is bound to obey, since he refuses him his due, namely an avowal of the truth.

Reply to Objection 3. He who lies in court by denying his guilt, acts both against the love of God to whom judgment belongs, and against the love of his neighbor, and this not only as regards the judge, to whom he refuses his due, but also as regards his accuser, who is punished if he fail to prove his accusation. Hence it is written (Ps. 140:4): "Incline not my heart to evil words, to make excuses in sins": on which words a gloss says: "Shameless men are wont by lying to deny their guilt when they have been found out." And Gregory in expounding Job 31:33, "If as a man I have hid my sin," says (Moral. xxii, 15): "It is a common vice of mankind to sin in secret, by lying to hide the sin that has been committed, and when convicted to aggravate the sin by defending oneself."

Objection 1. It would seem lawful for the accused to defend himself with calumnies. Because, according to civil law (Cod. II, iv, De transact. 18), when a man is on trial for his life it is lawful for him to bribe his adversary. Now this is done chiefly by defending oneself with calumnies. Therefore the accused who is on trial for his life does not sin if he defend himself with calumnies.

Objection 2. Further, an accuser who is guilty of collusion with the accused, is punishable by law (Decret. II, qu. iii, can. Si quem poenit.). Yet no punishment is imposed on the accused for collusion with the accuser. Therefore it would seem lawful for the accused to defend himself with calumnies.

Objection 3. Further, it is written (Prov. 14:16): “A wise man feareth and declineth from evil, the fool leapeth over and is confident.” Now what is done wisely is no sin. Therefore no matter how a man declines from evil, he does not sin.

On the contrary, In criminal cases an oath has to be taken against calumnious allegations (Extra, De iuramento calumniae, cap. Inhaerentes): and this would not be the case if it were lawful to defend oneself with calumnies. Therefore it is not lawful for the accused to defend himself with calumnies.

I answer that, It is one thing to withhold the truth, and another to utter a falsehood. The former is lawful sometimes, for a man is not bound to divulge all truth, but only such as the judge can and must require of him according to the order of justice; as, for instance, when the accused is already disgraced through the commission of some crime, or certain indications of his guilt have already been discovered, or again when his guilt is already more or less proven. On the other hand it is never lawful to make a false declaration.

As regards what he may do lawfully, a man can employ either lawful means, and such as are adapted to the end in view, which belongs to prudence; or he can use unlawful means, unsuitable to the proposed end, and this belongs to craftiness, which is exercised by fraud

and guile, as shown above (q. 55, Aa. 3, seqq.). His conduct in the former case is praiseworthy, in the latter sinful. Accordingly it is lawful for the accused to defend himself by withholding the truth that he is not bound to avow, by suitable means, for instance by not answering such questions as he is not bound to answer. This is not to defend himself with calumnies, but to escape prudently. But it is unlawful for him, either to utter a falsehood, or to withhold a truth that he is bound to avow, or to employ guile or fraud, because fraud and guile have the force of a lie, and so to use them would be to defend oneself with calumnies.

Reply to Objection 1. Human laws leave many things unpunished, which according to the Divine judgment are sins, as, for example, simple fornication; because human law does not exact perfect virtue from man, for such virtue belongs to few and cannot be found in so great a number of people as human law has to direct. That a man is sometimes unwilling to commit a sin in order to escape from the death of the body, the danger of which threatens the accused who is on trial for his life, is an act of perfect virtue, since “death is the most fearful of all temporal things” (Ethic. iii, 6). Wherefore if the accused, who is on trial for his life, bribes his adversary, he sins indeed by inducing him to do what is unlawful, yet the civil law does not punish this sin, and in this sense it is said to be lawful.

Reply to Objection 2. If the accuser is guilty of collusion with the accused and the latter is guilty, he incurs punishment, and so it is evident that he sins. Wherefore, since it is a sin to induce a man to sin, or to take part in a sin in any way—for the Apostle says (Rom. 1:32), that “they... are worthy of death... that consent” to those who sin—it is evident that the accused also sins if he is guilty of collusion with his adversary. Nevertheless according to human laws no punishment is inflicted on him, for the reason given above.

Reply to Objection 3. The wise man hides himself not by slandering others but by exercising prudence.

Objection 1. It would seem unlawful for the accused to escape judgment by appealing. The Apostle says (Rom. 13:1): “Let every soul be subject to the higher powers.” Now the accused by appealing refuses to be subject to a higher power, viz. the judge. Therefore he commits a sin.

Objection 2. Further, ordinary authority is more binding than that which we choose for ourselves. Now according to the Decretals (II, qu. vi, cap. A iudicibus) it is unlawful to appeal from the judges chosen by common consent. Much less therefore is it lawful to appeal from ordinary judges.

Objection 3. Further, whatever is lawful once is always lawful. But it is not lawful to appeal after the tenth day*, nor a third time on the same point†. Therefore it would seem that an appeal is unlawful in itself.

On the contrary, Paul appealed to Caesar (Acts 25).

I answer that, There are two motives for which a man appeals. First through confidence in the justice of his cause, seeing that he is unjustly oppressed by the judge, and then it is lawful for him to appeal, because this is a prudent means of escape. Hence it is laid down (Decret. II, qu. vi, can. Omnis oppressus): “All those who are oppressed are free, if they so wish, to appeal

* Can. Anteriorum, caus. ii, qu. 6 † Can. Si autem, caus. ii, qu. 6

to the judgment of the priests, and no man may stand in their way.” Secondly, a man appeals in order to cause a delay, lest a just sentence be pronounced against him. This is to defend oneself calumniously, and is unlawful as stated above (a. 2). For he inflicts an injury both on the judge, whom he hinders in the exercise of his office, and on his adversary, whose justice he disturbs as far as he is able. Hence it is laid down (II, qu. vi, can. *Omnino puniendus*): “Without doubt a man should be punished if his appeal be declared unjust.”

Reply to Objection 1. A man should submit to the lower authority in so far as the latter observes the order of the higher authority. If the lower authority departs from the order of the higher, we ought not to submit to it, for instance “if the proconsul order one thing and the emperor another,” according to a gloss on Rom. 13:2. Now when a judge oppresses anyone unjustly, in this respect he departs from the order of the higher authority, whereby he is obliged to judge justly. Hence it is lawful for a man who is oppressed unjustly, to have recourse to the authority of the higher power, by appealing either before or after sentence has been pronounced. And since it is to be presumed that there is no rectitude where true faith is lacking, it is unlawful for a Catholic to appeal to an unbelieving judge, according to *Decretals II, qu. vi, can. Catholicus*: “The Catholic who appeals to the decision of a judge of another faith shall be excommunicated, whether his case be just or unjust.” Hence the Apostle also rebuked those who went to law before unbelievers (1 Cor. 6:6).

Reply to Objection 2. It is due to a man’s own fault

or neglect that, of his own accord, he submits to the judgment of one in whose justice he has no confidence. Moreover it would seem to point to levity of mind for a man not to abide by what he has once approved of. Hence it is with reason that the law refuses us the faculty of appealing from the decision of judges of our own choice, who have no power save by virtue of the consent of the litigants. On the other hand the authority of an ordinary judge depends, not on the consent of those who are subject to his judgment, but on the authority of the king or prince who appointed him. Hence, as a remedy against his unjust oppression, the law allows one to have recourse to appeal, so that even if the judge be at the same time ordinary and chosen by the litigants, it is lawful to appeal from his decision, since seemingly his ordinary authority occasioned his being chosen as arbitrator. Nor is it to be imputed as a fault to the man who consented to his being arbitrator, without adverting to the fact that he was appointed ordinary judge by the prince.

Reply to Objection 3. The equity of the law so guards the interests of the one party that the other is not oppressed. Thus it allows ten days for appeal to be made, this being considered sufficient time for deliberating on the expediency of an appeal. If on the other hand there were no fixed time limit for appealing, the certainty of judgment would ever be in suspense, so that the other party would suffer an injury. The reason why it is not allowed to appeal a third time on the same point, is that it is not probable that the judges would fail to judge justly so many times.

Whether a man who is condemned to death may lawfully defend himself if he can?

IIa IIae q. 69 a. 4

Objection 1. It would seem that a man who is condemned to death may lawfully defend himself if he can. For it is always lawful to do that to which nature inclines us, as being of natural right, so to speak. Now, to resist corruption is an inclination of nature not only in men and animals but also in things devoid of sense. Therefore if he can do so, the accused, after condemnation, may lawfully resist being put to death.

Objection 2. Further, just as a man, by resistance, escapes the death to which he has been condemned, so does he by flight. Now it is lawful seemingly to escape death by flight, according to *Ecclus. 9:18*, “Keep thee far from the man that hath power to kill [and not to quicken]”*. Therefore it is also lawful for the accused to resist.

Objection 3. Further, it is written (*Prov. 24:11*): “Deliver them that are led to death: and those that are drawn to death forbear not to deliver.” Now a man is under greater obligation to himself than to another. Therefore it is lawful for a condemned man to defend himself from being put to death.

On the contrary, The Apostle says (*Rom. 13:2*):

“He that resisteth the power, resisteth the ordinance of God: and they that resist, purchase to themselves damnation.” Now a condemned man, by defending himself, resists the power in the point of its being ordained by God “for the punishment of evil-doers, and for the praise of the good”†. Therefore he sins in defending himself.

I answer that, A man may be condemned to death in two ways. First justly, and then it is not lawful for the condemned to defend himself, because it is lawful for the judge to combat his resistance by force, so that on his part the fight is unjust, and consequently without any doubt he sins.

Secondly a man is condemned unjustly: and such a sentence is like the violence of robbers, according to *Ezech. 22:21*, “Her princes in the midst of her are like wolves ravening the prey to shed blood.” Wherefore even as it is lawful to resist robbers, so is it lawful, in a like case, to resist wicked princes; except perhaps in order to avoid scandal, whence some grave disturbance might be feared to arise.

Reply to Objection 1. Reason was given to man

* The words in the brackets are not in the Vulgate † 1 Pet. 2:14

that he might ensue those things to which his nature inclines, not in all cases, but in accordance with the order of reason. Hence not all self-defense is lawful, but only such as is accomplished with due moderation.

Reply to Objection 2. When a man is condemned to death, he has not to kill himself, but to suffer death: wherefore he is not bound to do anything from which death would result, such as to stay in the place whence he would be led to execution. But he may not resist those who lead him to death, in order that he may not

suffer what is just for him to suffer. Even so, if a man were condemned to die of hunger, he does not sin if he partakes of food brought to him secretly, because to refrain from taking it would be to kill himself.

Reply to Objection 3. This saying of the wise man does not direct that one should deliver a man from death in opposition to the order of justice: wherefore neither should a man deliver himself from death by resisting against justice.