

SECOND PART OF THE SECOND PART, QUESTION 62

Of Restitution (In Eight Articles)

We must now consider restitution, under which head there are eight points of inquiry:

- (1) of what is it an act?
- (2) Whether it is always of necessity for salvation to restore what one has taken away?
- (3) Whether it is necessary to restore more than has been taken away?
- (4) Whether it is necessary to restore what one has not taken away?
- (5) Whether it is necessary to make restitution to the person from whom something has been taken?
- (6) Whether the person who has taken something away is bound to restore it?
- (7) Whether any other person is bound to restitution?
- (8) Whether one is bound to restore at once?

Whether restitution is an act of commutative justice?

IIa IIae q. 62 a. 1

Objection 1. It would seem that restitution is not an act of commutative justice. For justice regards the notion of what is due. Now one may restore, even as one may give, that which is not due. Therefore restitution is not the act of any part of justice.

Objection 2. Further, that which has passed away and is no more cannot be restored. Now justice and injustice are about certain actions and passions, which are unending and transitory. Therefore restitution would not seem to be the act of a part of justice.

Objection 3. Further, restitution is repayment of something taken away. Now something may be taken away from a man not only in commutation, but also in distribution, as when, in distributing, one gives a man less than his due. Therefore restitution is not more an act of commutative than of distributive justice.

On the contrary, Restitution is opposed to taking away. Now it is an act of commutative injustice to take away what belongs to another. Therefore to restore it is an act of that justice which directs commutations.

I answer that, To restore is seemingly the same as to reinstate a person in the possession or dominion of his thing, so that in restitution we consider the equality of justice attending the payment of one thing for another, and this belongs to commutative justice. Hence restitution is an act of commutative justice, occasioned by one person having what belongs to another, either with his consent, for instance on loan or deposit, or against his will, as in robbery or theft.

Reply to Objection 1. That which is not due to another is not his properly speaking, although it may have been his at some time: wherefore it is a mere gift rather than a restitution, when anyone renders to another what is not due to him. It is however somewhat like a restitution, since the thing itself is materially the same; yet it is not the same in respect of the formal aspect of justice, which considers that thing as belonging to this particular man: and so it is not restitution properly so called.

Reply to Objection 2. In so far as the word restitution denotes something done over again, it implies identity of object. Hence it would seem originally to have applied chiefly to external things, which can pass from one person to another, since they remain the same both substantially and in respect of the right of dominion. But, even as the term "commutation" has passed from such like things to those actions and passions which confer reverence or injury, harm or profit on another person, so too the term "restitution" is applied, to things which though they be transitory in reality, yet remain in their effect; whether this touch his body, as when the body is hurt by being struck, or his reputation, as when a man remains defamed or dishonored by injurious words.

Reply to Objection 3. Compensation is made by the distributor to the man to whom less was given than his due, by comparison of thing with thing, when the latter receives so much the more according as he received less than his due: and consequently it pertains to commutative justice.

Objection 1. It would seem that it is not necessary to restore what has been taken away. For that which is impossible is not necessary for salvation. But sometimes it is impossible to restore what has been taken, as when a man has taken limb or life. Therefore it does not seem necessary for salvation to restore what one has taken from another.

Objection 2. Further, the commission of a sin is not necessary for salvation, for then a man would be in a dilemma. But sometimes it is impossible, without sin, to restore what has been taken, as when one has taken away another's good name by telling the truth. Therefore it is not necessary for salvation to restore what one has taken from another.

Objection 3. Further, what is done cannot be undone. Now sometimes a man loses his personal honor by being unjustly insulted. Therefore that which has been taken from him cannot be restored to him: so that it is not necessary for salvation to restore what one has taken.

Objection 4. Further, to prevent a person from obtaining a good thing is seemingly the same as to take it away from him, since "to lack little is almost the same as to lack nothing at all," as the Philosopher says (Phys. ii, 5). Now when anyone prevents a man from obtaining a benefice or the like, seemingly he is not bound to restore the benefice, since this would be sometimes impossible. Therefore it is not necessary for salvation to restore what one has taken.

On the contrary, Augustine says (Ep. ad Maced. cxliii): "Unless a man restore what he has purloined, his sin is not forgiven."

I answer that, Restitution as stated above (a. 1) is an act of commutative justice, and this demands a certain equality. Wherefore restitution denotes the return of the thing unjustly taken; since it is by giving it back that equality is reestablished. If, however, it be taken away justly, there will be equality, and so there will be no need for restitution, for justice consists in equality. Since therefore the safeguarding of justice is necessary for salvation, it follows that it is necessary for salvation to restore what has been taken unjustly.

Reply to Objection 1. When it is impossible to repay the equivalent, it suffices to repay what one can, as in the case of honor due to God and our parents, as the Philosopher states (Ethic. viii, 14). Wherefore when that which has been taken cannot be restored in equivalent, compensation should be made as far as possible: for in-

stance if one man has deprived another of a limb, he must make compensation either in money or in honor, the condition of either party being duly considered according to the judgment of a good man.

Reply to Objection 2. There are three ways in which one may take away another's good name. First, by saying what is true, and this justly, as when a man reveals another's sin, while observing the right order of so doing, and then he is not bound to restitution. Secondly, by saying what is untrue and unjustly, and then he is bound to restore that man's good name, by confessing that he told an untruth. Thirdly, by saying what is true, but unjustly, as when a man reveals another's sin contrarily to the right order of so doing, and then he is bound to restore his good name as far as he can, and yet without telling an untruth; for instance by saying that he spoke ill, or that he defamed him unjustly; or if he be unable to restore his good name, he must compensate him otherwise, the same as in other cases, as stated above (ad 1).

Reply to Objection 3. The action of the man who has defamed another cannot be undone, but it is possible, by showing him deference, to undo its effect, viz. the lowering of the other man's personal dignity in the opinion of other men.

Reply to Objection 4. There are several ways of preventing a man from obtaining a benefice. First, justly: for instance, if having in view the honor of God or the good of the Church, one procures its being conferred on a more worthy subject, and then there is no obligation whatever to make restitution or compensation. Secondly, unjustly, if the intention is to injure the person whom one hinders, through hatred, revenge or the like. In this case, if before the benefice has been definitely assigned to anyone, one prevents its being conferred on a worthy subject by counseling that it be not conferred on him, one is bound to make some compensation, after taking account of the circumstances of persons and things according to the judgment of a prudent person: but one is not bound in equivalent, because that man had not obtained the benefice and might have been prevented in many ways from obtaining it. If, on the other hand, the benefice had already been assigned to a certain person, and someone, for some undue cause procures its revocation, it is the same as though he had deprived a man of what he already possessed, and consequently he would be bound to compensation in equivalent, in proportion, however, to his means.

Objection 1. It would seem that it is not sufficient to restore the exact amount taken. For it is written (Ex. 22:1): “If a man shall steal an ox or a sheep and kill or sell it, he shall restore five oxen for one ox, and four sheep for one sheep.” Now everyone is bound to keep the commandments of the Divine law. Therefore a thief is bound to restore four- or fivefold.

Objection 2. Further, “What things soever were written, were written for our learning” (Rom. 15:4). Now Zachaeus said (Lk. 19:8) to our Lord: “If I have wronged any man of any thing, I restore him fourfold.” Therefore a man is bound to restore several times over the amount he has taken unjustly.

Objection 3. Further, no one can be unjustly deprived of what he is not bound to give. Now a judge justly deprives a thief of more than the amount of his theft, under the head of damages. Therefore a man is bound to pay it, and consequently it is not sufficient to restore the exact amount.

On the contrary, Restitution re-establishes equality where an unjust taking has caused inequality. Now equality is restored by repaying the exact amount taken. Therefore there is no obligation to restore more than the exact amount taken.

I answer that, When a man takes another’s thing unjustly, two things must be considered. One is the inequality on the part of the thing, which inequality is sometimes

void of injustice, as is the case in loans. The other is the sin of injustice, which is consistent with equality on the part of the thing, as when a person intends to use violence but fails.

As regards the first, the remedy is applied by making restitution, since thereby equality is re-established; and for this it is enough that a man restore just so much as he has belonging to another. But as regards the sin, the remedy is applied by punishment, the infliction of which belongs to the judge: and so, until a man is condemned by the judge, he is not bound to restore more than he took, but when once he is condemned, he is bound to pay the penalty.

Hence it is clear how to answer the First Objection: because this law fixes the punishment to be inflicted by the judge. Nor is this commandment to be kept now, because since the coming of Christ no man is bound to keep the judicial precepts, as stated above (Ia IIae, q. 104, a. 3). Nevertheless the same might be determined by human law, and then the same answer would apply.

Reply to Objection 2. Zachaeus said this being willing to do more than he was bound to do; hence he had said already: “Behold. . . the half of my goods I give to the poor.”

Reply to Objection 3. By condemning the man justly, the judge can exact more by way of damages; and yet this was not due before the sentence.

Objection 1. It would seem that a man is bound to restore what he has not taken. For he that has inflicted a loss on a man is bound to remove that loss. Now it happens sometimes that the loss sustained is greater than the thing taken: for instance, if you dig up a man’s seeds, you inflict on the sower a loss equal to the coming harvest, and thus you would seem to be bound to make restitution accordingly. Therefore a man is bound to restore what he has not taken.

Objection 2. Further, he who retains his creditor’s money beyond the stated time, would seem to occasion his loss of all his possible profits from that money, and yet he does not really take them. Therefore it seems that a man is bound to restore what he did not take.

Objection 3. Further, human justice is derived from Divine justice. Now a man is bound to restore to God more than he has received from Him, according to Mat. 25:26, “Thou knewest that I reap where I sow not, and

gather where I have not strewed.” Therefore it is just that one should restore to a man also, something that one has not taken.

On the contrary, Restitution belongs to justice, because it re-establishes equality. But if one were to restore what one did not take, there would not be equality. Therefore it is not just to make such a restitution.

I answer that, Whoever brings a loss upon another person, seemingly, takes from him the amount of the loss, since, according to the Philosopher (Ethic. v, 4) loss is so called from a man having “less”^{*} than his due. Therefore a man is bound to make restitution according to the loss he has brought upon another.

Now a man suffers a loss in two ways. First, by being deprived of what he actually has; and a loss of this kind is always to be made good by repayment in equivalent: for instance if a man damnifies another by destroying his house he is bound to pay him the value of the house.

* The derivation is more apparent in English than in Latin, where ‘damnum’ stands for ‘loss,’ and ‘minus’ for ‘less.’ Aristotle merely says that to have more than your own is called ‘gain,’ and to have less than you started with is called ‘loss.’

Secondly, a man may damnify another by preventing him from obtaining what he was on the way to obtain. A loss of this kind need not be made good in equivalent; because to have a thing virtually is less than to have it actually, and to be on the way to obtain a thing is to have it merely virtually or potentially, and so were he to be indemnified by receiving the thing actually, he would be paid, not the exact value taken from him, but more, and this is not necessary for salvation, as stated above. However he is bound to make some compensation, according to the condition of persons and things.

From this we see how to answer the First and Second

Objections: because the sower of the seed in the field, has the harvest, not actually but only virtually. In like manner he that has money has the profit not yet actually but only virtually: and both may be hindered in many ways.

Reply to Objection 3. God requires nothing from us but what He Himself has sown in us. Hence this saying is to be understood as expressing either the shameful thought of the lazy servant, who deemed that he had received nothing from the other, or the fact that God expects from us the fruit of His gifts, which fruit is from Him and from us, although the gifts themselves are from God without us.

Whether restitution must always be made to the person from whom a thing has been taken?

Ila Ilae q. 62 a. 5

Objection 1. It would seem that restitution need not always be made to the person from whom a thing has been taken. For it is not lawful to injure anyone. Now it would sometimes be injurious to the man himself, or to others, were one to restore to him what has been taken from him; if, for instance, one were to return a madman his sword. Therefore restitution need not always be made to the person from whom a thing has been taken.

Objection 2. Further, if a man has given a thing unlawfully, he does not deserve to recover it. Now sometimes a man gives unlawfully that which another accepts unlawfully, as in the case of the giver and receiver who are guilty of simony. Therefore it is not always necessary to make restitution to the person from whom one has taken something.

Objection 3. Further, no man is bound to do what is impossible. Now it is sometimes impossible to make restitution to the person from whom a thing has been taken, either because he is dead, or because he is too far away, or because he is unknown to us. Therefore restitution need not always be made to the person from whom a thing has been taken.

Objection 4. Further, we owe more compensation to one from whom we have received a greater favor. Now we have received greater favors from others (our parents for instance) than from a lender or depositor. Therefore sometimes we ought to succor some other person rather than make restitution to one from whom we have taken something.

Objection 5. Further, it is useless to restore a thing which reverts to the restorer by being restored. Now if a prelate has unjustly taken something from the Church and makes restitution to the Church, it reverts into his hands, since he is the guardian of the Church's property. Therefore he ought not to restore to the Church from whom he has taken: and so restitution should not always be made to the person from whom something has been taken away

On the contrary, It is written (Rom. 13:7): "Render. . . to all men their dues; tribute to whom tribute is due, custom to whom custom."

I answer that, Restitution re-establishes the equality of commutative justice, which equality consists in the equalizing of thing to thing, as stated above (a. 2; q. 58, a. 10). Now this equalizing of things is impossible, unless he that has less than his due receive what is lacking to him: and for this to be done, restitution must be made to the person from whom a thing has been taken.

Reply to Objection 1. When the thing to be restored appears to be grievously injurious to the person to whom it is to be restored, or to some other, it should not be restored to him there and then, because restitution is directed to the good of the person to whom it is made, since all possessions come under the head of the useful. Yet he who retains another's property must not appropriate it, but must either reserve it, that he may restore it at a fitting time, or hand it over to another to keep it more securely.

Reply to Objection 2. A person may give a thing unlawfully in two ways. First through the giving itself being illicit and against the law, as is the case when a man gives a thing simoniacally. Such a man deserves to lose what he gave, wherefore restitution should not be made to him: and, since the receiver acted against the law in receiving, he must not retain the price, but must use it for some pious object. Secondly a man gives unlawfully, through giving for an unlawful purpose, albeit the giving itself is not unlawful, as when a woman receives payment for fornication: wherefore she may keep what she has received. If, however, she has extorted overmuch by fraud or deceit, she would be bound to restitution.

Reply to Objection 3. If the person to whom restitution is due is unknown altogether, restitution must be made as far as possible, for instance by giving an alms for his spiritual welfare (whether he be dead or living): but not without previously making a careful inquiry about his

person. If the person to whom restitution is due be dead, restitution should be made to his heir, who is looked upon as one with him. If he be very far away, what is due to him should be sent to him, especially if it be of great value and can easily be sent: else it should be deposited in a safe place to be kept for him, and the owner should be advised of the fact.

Reply to Objection 4. A man is bound, out of his own property, to succor his parents, or those from whom he has received greater benefits; but he ought not to compensate a benefactor out of what belongs to others; and he would be doing this if he were to compensate one with what is due to another. Exception must be made in cases of extreme need, for then he could and should even take what belongs to another in order to succor a parent.

Reply to Objection 5. There are three ways in which a prelate can rob the Church of her property. First by laying hands on Church property which is committed, not to him but to another; for instance, if a bishop appropriates the property of the chapter. In such a case it is clear that he is bound to restitution, by handing it over to those who are its lawful owners. Secondly by transferring to another person (for instance a relative or a friend) Church property committed to himself: in which case he must make restitution to the Church, and have it under his own care, so as to hand it over to his successor. Thirdly, a prelate may lay hands on Church property, merely in intention, when, to wit, he begins to have a mind to hold it as his own and not in the name of the Church: in which case he must make restitution by renouncing his intention.

Whether he that has taken a thing is always bound to restitution?

Ila IIae q. 62 a. 6

Objection 1. It would seem that he who has taken a thing is not always bound to restore it. Restitution re-establishes the equality of justice, by taking away from him that has more and giving to him that has less. Now it happens sometimes that he who has taken that which belongs to another, no longer has it, through its having passed into another's hands. Therefore it should be restored, not by the person that took it, but by the one that has it.

Objection 2. Further, no man is bound to reveal his own crime. But by making restitution a man would sometimes reveal his crime, as in the case of theft. Therefore he that has taken a thing is not always bound to restitution.

Objection 3. Further, the same thing should not be restored several times. Now sometimes several persons take a thing at the same time, and one of them restores it in its entirety. Therefore he that takes a thing is not always bound to restitution.

On the contrary, He that has sinned is bound to satisfaction. Now restitution belongs to satisfaction. Therefore he that has taken a thing is bound to restore it.

I answer that, With regard to a man who has taken another's property, two points must be considered: the thing taken, and the taking. By reason of the thing taken, he is bound to restore it as long as he has it in his possession, since the thing that he has in addition to what is his, should be taken away from him, and given to him who lacks it according to the form of commutative justice. On the other hand, the taking of the thing that is another's property, may be threefold. For sometimes it is injurious, i.e. against the will of the owner, as in theft and robbery: in which case the thief is bound to restitution not only by reason of the thing, but also by reason of the injurious action, even though the thing is no longer in his possession. For just as a man who strikes another, though he

gain nothing thereby, is bound to compensate the injured person, so too he that is guilty of theft or robbery, is bound to make compensation for the loss incurred, although he be no better off; and in addition he must be punished for the injustice committed. Secondly, a man takes another's property for his own profit but without committing an injury, i.e. with the consent of the owner, as in the case of a loan: and then, the taker is bound to restitution, not only by reason of the thing, but also by reason of the taking, even if he has lost the thing: for he is bound to compensate the person who has done him a favor, and he would not be doing so if the latter were to lose thereby. Thirdly, a man takes another's property without injury to the latter or profit to himself, as in the case of a deposit; wherefore he that takes a thing thus, incurs no obligation on account of the taking, in fact by taking he grants a favor; but he is bound to restitution on account of the thing taken. Consequently if this thing be taken from him without any fault on his part, he is not bound to restitution, although he would be, if he were to lose the thing through a grievous fault on his part.

Reply to Objection 1. The chief end of restitution is, not that he who has more than his due may cease to have it, but that he who has less than his due may be compensated. Wherefore there is no place for restitution in those things which one man may receive from another without loss to the latter, as when a person takes a light from another's candle. Consequently although he that has taken something from another, may have ceased to have what he took, through having transferred it to another, yet since that other is deprived of what is his, both are bound to restitution, he that took the thing, on account of the injurious taking, and he that has it, on account of the thing.

Reply to Objection 2. Although a man is not bound to reveal his crime to other men, yet is he bound to reveal

it to God in confession; and so he may make restitution of another's property through the priest to whom he confesses.

Reply to Objection 3. Since restitution is chiefly directed to the compensation for the loss incurred by the person from whom a thing has been taken unjustly, it stands

to reason that when he has received sufficient compensation from one, the others are not bound to any further restitution in his regard: rather ought they to refund the person who has made restitution, who, nevertheless, may excuse them from so doing.

Whether restitution is binding on those who have not taken?

IIa IIae q. 62 a. 7

Objection 1. It would seem that restitution is not binding on those who have not taken. For restitution is a punishment of the taker. Now none should be punished except the one who sinned. Therefore none are bound to restitution save the one who has taken.

Objection 2. Further, justice does not bind one to increase another's property. Now if restitution were binding not only on the man who takes a thing but also on all those who cooperate with him in any way whatever, the person from whom the thing was taken would be the gainer, both because he would receive restitution many times over, and because sometimes a person cooperates towards a thing being taken away from someone, without its being taken away in effect. Therefore the others are not bound to restitution.

Objection 3. Further, no man is bound to expose himself to danger, in order to safeguard another's property. Now sometimes a man would expose himself to the danger of death, were he to betray a thief, or withstand him. Therefore one is not bound to restitution, through not betraying or withstanding a thief.

On the contrary, It is written (Rom. 1:32): "They who do such things are worthy of death, and not only they that do them, but also they that consent to them that do them." Therefore in like manner they that consent are bound to restitution.

I answer that, As stated above (a. 6), a person is bound to restitution not only on account of someone else's property which he has taken, but also on account of the injurious taking. Hence whoever is cause of an unjust taking is bound to restitution. This happens in two ways, directly and indirectly. Directly, when a man induces another to take, and this in three ways. First, on the part of the taking, by moving a man to take, either by express command, counsel, or consent, or by praising a man for his courage in thieving. Secondly, on the part of the taker, by giving him shelter or any other kind of assistance. Thirdly, on the part of the thing taken, by taking part in the theft or robbery, as a fellow evil-doer. Indirectly, when a man does not prevent another from evil-doing (provided he be able and bound to prevent him), either by omitting the command or counsel which would hinder him from thieving or robbing, or by omitting to do what would have hindered him, or by sheltering him after the deed. All these

are expressed as follows:

"By command, by counsel, by consent, by flattery, by receiving, by participation, by silence, by not preventing, by not denouncing."

It must be observed, however, that in five of these cases the cooperator is always bound to restitution. First, in the case of command: because he that commands is the chief mover, wherefore he is bound to restitution principally. Secondly, in the case of consent; namely of one without whose consent the robbery cannot take place. Thirdly, in the case of receiving; when, to wit, a man is a receiver of thieves, and gives them assistance. Fourthly, in the case of participation; when a man takes part in the theft and in the booty. Fifthly, he who does not prevent the theft, whereas he is bound to do so; for instance, persons in authority who are bound to safeguard justice on earth, are bound to restitution, if by their neglect thieves prosper, because their salary is given to them in payment of their preserving justice here below.

In the other cases mentioned above, a man is not always bound to restitution: because counsel and flattery are not always the efficacious cause of robbery. Hence the counsellor or flatterer is bound to restitution, only when it may be judged with probability that the unjust taking resulted from such causes.

Reply to Objection 1. Not only is he bound to restitution who commits the sin, but also he who is in any way cause of the sin, whether by counselling, or by commanding, or in any other way whatever.

Reply to Objection 2. He is bound chiefly to restitution, who is the principal in the deed; first of all, the "commander"; secondly, the "executor," and in due sequence, the others: yet so that, if one of them make restitution, another is not bound to make restitution to the same person. Yet those who are principals in the deed, and who took possession of the thing, are bound to compensate those who have already made restitution. When a man commands an unjust taking that does not follow, no restitution has to be made, since its end is chiefly to restore the property of the person who has been unjustly injured.

Reply to Objection 3. He that fails to denounce a thief or does not withstand or reprehend him is not always bound to restitution, but only when he is obliged, in virtue of his office, to do so: as in the case of earthly

princes who do not incur any great danger thereby; for they are invested with public authority, in order that they may maintain justice.

Whether a man is bound to immediate restitution, or may he put it off?

IIa IIae q. 62 a. 8

Objection 1. It would seem that a man is not bound to immediate restitution, and can lawfully delay to restore. For affirmative precepts do not bind for always. Now the necessity of making restitution is binding through an affirmative precept. Therefore a man is not bound to immediate restitution.

Objection 2. Further, no man is bound to do what is impossible. But it is sometimes impossible to make restitution at once. Therefore no man is bound to immediate restitution.

Objection 3. Further, restitution is an act of virtue, viz. of justice. Now time is one of the circumstances requisite for virtuous acts. Since then the other circumstances are not determinate for acts of virtue, but are determinable according to the dictate of prudence, it seems that neither in restitution is there any fixed time, so that a man be bound to restore at once.

On the contrary, All matters of restitution seem to come under one head. Now a man who hires the services of a wage-earner, must not delay compensation, as appears from Lev. 19:13, "The wages of him that hath been hired by thee shall not abide with thee until the morning." Therefore neither is it lawful, in other cases of restitution, to delay, and restitution should be made at once.

I answer that, Even as it is a sin against justice to take another's property, so also is it to withhold it, since, to withhold the property of another against the owner's

will, is to deprive him of the use of what belongs to him, and to do him an injury. Now it is clear that it is wrong to remain in sin even for a short time; and one is bound to renounce one's sin at once, according to Ecclus. 21:2, "Flee from sin as from the face of a serpent." Consequently one is bound to immediate restitution, if possible, or to ask for a respite from the person who is empowered to grant the use of the thing.

Reply to Objection 1. Although the precept about the making of restitution is affirmative in form, it implies a negative precept forbidding us to withhold another's property.

Reply to Objection 2. When one is unable to restore at once, this very inability excuses one from immediate restitution: even as a person is altogether excused from making restitution if he is altogether unable to make it. He is, however, bound either himself or through another to ask the person to whom he owes compensation to grant him a remission or a respite.

Reply to Objection 3. Whenever the omission of a circumstance is contrary to virtue that circumstance must be looked upon as determinate, and we are bound to observe it: and since delay of restitution involves a sin of unjust detention which is opposed to just detention, it stands to reason that the time is determinate in the point of restitution being immediate.