

SECOND PART OF THE SECOND PART, QUESTION 70

Of Injustice with Regard to the Person of the Witness (In Four Articles)

We must now consider injustice with regard to the person of the witness. Under this head there are four points of inquiry:

- (1) Whether a man is bound to give evidence?
- (2) Whether the evidence of two or three witnesses suffices?
- (3) Whether a man's evidence may be rejected without any fault on his part?
- (4) Whether it is a mortal sin to bear false witness?

Whether a man is bound to give evidence?

IIa IIae q. 70 a. 1

Objection 1. It would seem that a man is not bound to give evidence. Augustine say (QQ. Gn. 1:26)*, that when Abraham said of his wife (Gn. 20:2), "She is my sister," he wished the truth to be concealed and not a lie be told. Now, by hiding the truth a man abstains from giving evidence. Therefore a man is not bound to give evidence.

Objection 2. Further, no man is bound to act deceitfully. Now it is written (Prov. 11:13): "He that walketh deceitfully revealeth secrets, but he that is faithful concealeth the thing committed to him by his friend." Therefore a man is not always bound to give evidence, especially on matters committed to him as a secret by a friend.

Objection 3. Further, clerics and priests, more than others, are bound to those things that are necessary for salvation. Yet clerics and priests are forbidden to give evidence when a man is on trial for his life. Therefore it is not necessary for salvation to give evidence.

On the contrary, Augustine[†] says: "Both he who conceals the truth and he who tells a lie are guilty, the former because he is unwilling to do good, the latter because he desires to hurt."

I answer that, We must make a distinction in the matter of giving evidence: because sometimes a certain man's evidence is necessary, and sometimes not. If the necessary evidence is that of a man subject to a superior whom, in matters pertaining to justice, he is bound to obey, without doubt he is bound to give evidence on those points which are required of him in accordance with the order of justice, for instance on manifest things or when ill-report has preceded. If however he is required to give evidence on other points, for instance secret matters, and those of which no ill-report has preceded, he is not bound to give evidence. On the other hand, if his evidence be required by authority of a superior whom he is bound to obey, we must make a distinction: because if his evidence is required in order to deliver a man from an unjust death or any other penalty, or from false defamation, or some loss, in such cases he

is bound to give evidence. Even if his evidence is not demanded, he is bound to do what he can to declare the truth to someone who may profit thereby. For it is written (Ps. 81:4): "Rescue the poor, and deliver the needy from the hand of the sinner"; and (Prov. 24:11): "Deliver them that are led to death"; and (Rom. 1:32): "They are worthy of death, not only they that do them, but they also that consent to them that do them," on which words a gloss says: "To be silent when one can disprove is to consent." In matters pertaining to a man's condemnation, one is not bound to give evidence, except when one is constrained by a superior in accordance with the order of justice; since if the truth of such a matter be concealed, no particular injury is inflicted on anyone. Or, if some danger threatens the accuser, it matters not since he risked the danger of his own accord: whereas it is different with the accused, who incurs the danger against his will.

Reply to Objection 1. Augustine is speaking of concealment of the truth in a case when a man is not compelled by his superior's authority to declare the truth, and when such concealment is not specially injurious to any person.

Reply to Objection 2. A man should by no means give evidence on matters secretly committed to him in confession, because he knows such things, not as man but as God's minister: and the sacrament is more binding than any human precept. But as regards matters committed to man in some other way under secrecy, we must make a distinction. Sometimes they are of such a nature that one is bound to make them known as soon as they come to our knowledge, for instance if they conduce to the spiritual or corporal corruption of the community, or to some grave personal injury, in short any like matter that a man is bound to make known either by giving evidence or by denouncing it. Against such a duty a man cannot be obliged to act on the plea that the matter is committed to him under secrecy, for he would break the faith he owes to another.

* Cf. *Contra Faust.* xxii, 33,34 † *Can. Quisquis*, caus. xi, qu. 3, cap. *Falsidicus*; cf. *Isidore, Sentent.* iii, 55

On the other hand sometimes they are such as one is not bound to make known, so that one may be under obligation not to do so on account of their being committed to one under secrecy. In such a case one is by no means bound to make them known, even if the superior should command; because to keep faith is of natural right, and a man cannot be commanded to do what is contrary to nat-

ural right.

Reply to Objection 3. It is unbecoming for ministers of the altar to slay a man or to cooperate in his slaying, as stated above (q. 64, a. 4); hence according to the order of justice they cannot be compelled to give evidence when a man is on trial for his life.

Whether the evidence of two or three persons suffices?

IIa IIae q. 70 a. 2

Objection 1. It would seem that the evidence of two or three persons is not sufficient. For judgment requires certitude. Now certitude of the truth is not obtained by the assertions of two or three witnesses, for we read that Naboth was unjustly condemned on the evidence of two witnesses (3 Kings 21). Therefore the evidence of two or three witnesses does not suffice.

Objection 2. Further, in order for evidence to be credible it must agree. But frequently the evidence of two or three disagrees in some point. Therefore it is of no use for proving the truth in court.

Objection 3. Further, it is laid down (Decret. II, qu. iv, can. Praesul.): "A bishop shall not be condemned save on the evidence of seventy-two witnesses; nor a cardinal priest of the Roman Church, unless there be sixty-four witnesses. Nor a cardinal deacon of the Roman Church, unless there be twenty-seven witnesses; nor a subdeacon, an acolyte, an exorcist, a reader or a doorkeeper without seven witnesses." Now the sin of one who is of higher dignity is more grievous, and consequently should be treated more severely. Therefore neither is the evidence of two or three witnesses sufficient for the condemnation of other persons.

On the contrary, It is written (Dt. 17:6): "By the mouth of two or three witnesses shall he die that is to be slain," and further on (Dt. 19:15): "In the mouth of two or three witnesses every word shall stand."

I answer that, According to the Philosopher (Ethic. i, 3), "we must not expect to find certitude equally in every matter." For in human acts, on which judgments are passed and evidence required, it is impossible to have demonstrative certitude, because they are about things contingent and variable. Hence the certitude of probability suffices, such as may reach the truth in the greater number, cases, although it fail in the minority. No it is probable that the assertion of several witnesses contains the truth rather than the assertion of one: and since the accused is the only one who denies, while several witness affirm the same as the prosecutor, it is reasonably established both by Divine and by human law, that the assertion of several witnesses should be upheld. Now all multitude is comprised of three elements, the beginning, the middle and the end. Wherefore, according to the Philosopher

(De Coelo i, 1), "we reckon 'all' and 'whole' to consist of three parts." Now we have a triple voucher when two agree with the prosecutor: hence two witnesses are required; or for the sake of greater certitude three, which is the perfect number. Wherefore it is written (Eccles. 4:12): "A threefold cord is not easily broken": and Augustine, commenting on Jn. 8:17, "The testimony of two men is true," says (Tract. xxxvi) that "there is here a mystery by which we are given to understand that Trinity wherein is perpetual stability of truth."

Reply to Objection 1. No matter how great a number of witnesses may be determined, the evidence might sometimes be unjust, since it is written (Ex. 23:2): "Thou shalt not follow the multitude to do evil." And yet the fact that in so many it is not possible to have certitude without fear of error, is no reason why we should reject the certitude which can probably be had through two or three witnesses, as stated above.

Reply to Objection 2. If the witnesses disagree certain principal circumstances which change the substance of the fact, for instance in time, place, or persons, which are chiefly in question, their evidence is of no weight, because if they disagree in such things, each one would seem to be giving distinct evidence and to be speaking of different facts. For instance, one say that a certain thing happened at such and such a time or place, while another says it happened at another time or place, they seem not to be speaking of the same event. The evidence is not weakened if one witness says that he does not remember, while the other attests to a determinate time or place. And if on such points as these the witness for prosecution and defense disagree altogether, and if they be equal in number on either side, and of equal standing, the accused should have the benefit of the doubt, because the judge ought to be more inclined to acquit than to condemn, except perhaps in favorable suits, such as a pleading for liberty and the like. If, however, the witnesses for the same side disagree, the judge ought to use his own discretion in discerning which side to favor, by considering either the number of witnesses, or their standing, or the favorableness of the suit, or the nature of the business and of the evidence.

Much more ought the evidence of one witness to be rejected if he contradict himself when questioned about

what he has seen and about what he knows; not, however, if he contradict himself when questioned about matters of opinion and report, since he may be moved to answer differently according to the different things he has seen and heard.

On the other hand if there be discrepancy of evidence in circumstances not touching the substance of the fact, for instance, whether the weather were cloudy or fine, whether the house were painted or not, or such like matters, such discrepancy does not weaken the evidence, because men are not wont to take much notice of such things, wherefore they easily forget them. Indeed, a discrepancy of this kind renders the evidence more credible, as Chrysostom states (Hom. i in Matth.), because if the witnesses agreed in every point, even in the minutest of details, they would seem to have conspired together to say the same thing: but this must be left to the prudent dis-

cernment of the judge.

Reply to Objection 3. This passage refers specially to the bishops, priests, deacons and clerics of the Roman Church, on account of its dignity: and this for three reasons. First because in that Church those men ought to be promoted whose sanctity makes their evidence of more weight than that of many witnesses. Secondly, because those who have to judge other men, often have many opponents on account of their justice, wherefore those who give evidence against them should not be believed indiscriminately, unless they be very numerous. Thirdly, because the condemnation of any one of them would detract in public opinion from the dignity and authority of that Church, a result which would be more fraught with danger than if one were to tolerate a sinner in that same Church, unless he were very notorious and manifest, so that a grave scandal would arise if he were tolerated.

Whether a man's evidence can be rejected without any fault of his?

Iia IIae q. 70 a. 3

Objection 1. It would seem that a man's evidence ought not to be rejected except on account of some fault. For it a penalty on some that their evidence is inadmissible, as in the case of those who are branded with infamy. Now a penalty must not be inflicted save for a fault. Therefore it would seem that no man's evidence ought to be rejected save on account of a fault.

Objection 2. Further, "Good is to be presumed of every one, unless the contrary appear"* . Now it pertains to a man's goodness that he should give true evidence. Since therefore there can be no proof of the contrary, unless there be some fault of his, it would seem that no man's evidence should be rejected save for some fault.

Objection 3. Further, no man is rendered unfit for things necessary for salvation except by some sin. But it is necessary for salvation to give true evidence, as stated above (a. 1). Therefore no man should be excluded from giving evidence save for some fault.

On the contrary, Gregory says (Regist. xiii, 44): "As to the bishop who is said to have been accused by his servants, you are to know that they should by no means have been heard": which words are embodied in the Decretals II, qu. 1, can. Imprimis.

I answer that, As stated above (a. 2), the authority of evidence is not infallible but probable; and consequently the evidence for one side is weakened by whatever strengthens the probability of the other. Now the reliability of a person's evidence is weakened, sometimes indeed

on account of some fault of his, as in the case of unbelievers and persons of evil repute, as well as those who are guilty of a public crime and who are not allowed even to accuse; sometimes, without any fault on his part, and this owing either to a defect in the reason, as in the case of children, imbeciles and women, or to personal feeling, as in the case of enemies, or persons united by family or household ties, or again owing to some external condition, as in the case of poor people, slaves, and those who are under authority, concerning whom it is to be presumed that they might easily be induced to give evidence against the truth.

Thus it is manifest that a person's evidence may be rejected either with or without some fault of his.

Reply to Objection 1. If a person is disqualified from giving evidence this is done as a precaution against false evidence rather than as a punishment. Hence the argument does not prove.

Reply to Objection 2. Good is to be presumed of everyone unless the contrary appear, provided this does not threaten injury to another: because, in that case, one ought to be careful not to believe everyone readily, according to 1 Jn. 4:1: "Believe not every spirit."

Reply to Objection 3. To give evidence is necessary for salvation, provided the witness be competent, and the order of justice observed. Hence nothing hinders certain persons being excused from giving evidence, if they be considered unfit according to law.

* Cap. Dudum, de Praesumpt.

Objection 1. It would seem that it is not always a mortal sin to give false evidence. For a person may happen to give false evidence, through ignorance of fact. Now such ignorance excuses from mortal sin. Therefore the giving of false evidence is not always a mortal sin.

Objection 2. Further, a lie that benefits someone and hurts no man is officious, and this is not a mortal sin. Now sometimes a lie of this kind occurs in false evidence, as when a person gives false evidence in order to save a man from death, or from an unjust sentence which threatens him through other false witnesses or a perverse judge. Therefore in such cases it is not a mortal sin to give false evidence.

Objection 3. Further, a witness is required to take an oath in order that he may fear to commit a mortal sin of perjury. But this would not be necessary, if it were already a mortal sin to give false evidence. Therefore the giving of false evidence is not always mortal sin.

On the contrary, It is written (Prov. 19:5): “A false witness shall not be unpunished.”

I answer that, False evidence has a threefold deformity. The first is owing to perjury, since witnesses are admitted only on oath and on this count it is always a mortal sin. Secondly, owing to the violation of justice, and on this account it is a mortal sin generically, even as any kind of injustice. Hence the prohibition of false evidence by the precept of the decalogue is expressed in this form when it is said (Ex. 20:16), “Thou shalt not bear false wit-

ness against thy neighbor.” For one does nothing against a man by preventing him from doing someone an injury, but only by taking away his justice. Thirdly, owing to the falsehood itself, by reason of which every lie is a sin: on this account, the giving of false evidence is not always a mortal sin.

Reply to Objection 1. In giving evidence a man ought not to affirm as certain, as though he knew it, that about which he is not certain and he should confess his doubt in doubtful terms, and that which he is certain about, in terms of certainty. Owing however to the frailty of the human memory, a man sometimes thinks he is certain about something that is not true; and then if after thinking over the matter with due care he deems himself certain about that false thing, he does not sin mortally if he asserts it, because the evidence which he gives is not directly an intentionally, but accidentally contrary to what he intends.

Reply to Objection 2. An unjust judgment is not a judgment, wherefore the false evidence given in an unjust judgment, in order to prevent injustice is not a mortal sin by virtue of the judgment, but only by reason of the oath violated.

Reply to Objection 3. Men abhor chiefly those sin that are against God, as being most grievous and among them is perjury: whereas they do not abhor so much sins against their neighbor. Consequently, for the greater certitude of evidence, the witness is required to take a oath.