

St Thomas Aquinas

Summa Theologiæ

A CONCISE TRANSLATION

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to it; but his passage out of this life to a happier one is not subject to his own free will but to the authority of God.

7 An act of self-defence may have two effects: it may save one's own life and cost the attacker his. Now intending to save one's own life can't make an act illegitimate, since it is in the nature of all things to want to preserve themselves in being as far as they can; but an act that is properly motivated may nevertheless be vitiated by not being proportionate to its goal. Somebody who uses more force than necessary to defend himself will be doing wrong, though moderate use of force can be legitimate. For men are not obliged under pain of losing eternal life to renounce moderate force for fear of killing another; our responsibility for our own life is greater than our responsibility for another's. However, it is not licit for a man actually to intend to kill another in self-defence, since the taking of life is reserved to public authorities acting for the general good. The only people who may deliberately kill in self-defence are those with public authority to do so for the general good, namely, soldiers fighting the enemy and policemen fighting crime; and even they do wrong if they are influenced by private passion. And nobody is allowed to commit adultery or a sexual sin in self-defence: such acts haven't the same necessary connection with saving one's life as the acts of self-defence which can lead to homicide. Accidents as such can't be sins. But what we do not will or intend as such we may nevertheless coincidentally will or intend by removing an obstacle to its happening. Somebody who doesn't avoid circumstances in which a homicide might occur, circumstances which he could and should have avoided, will in a way have willed the homicide. Maybe he killed a man while engaged in nefarious activities he should have refrained from, or maybe he was guilty of negligence in a situation.

65 3 There is a hierarchy of bodily goods: the physical integrity of the body itself which can be damaged by killing or grievous bodily harm; the tranquillity and delight of our senses, which can be disturbed by blows and the infliction of pain; the free movement and use of our limbs, which can be inhibited by imprisonment and detention. All such hostile actions are illegitimate unless done with due process of justice by way of punishment or warning.

9. 66 1 **Injurious deeds – Robbery and theft.** The natures of external things are not subject to man but to God whom they obey without question. But man has a natural dominion over the use of such things, and his mind and will can exploit them for his benefit as things made for him, the less perfect for the more perfect. This is Aristotle's argument 2 to prove possession of external things natural to man. Man in fact

exercises a twofold competence where external things are concerned. Firstly, he is entitled to take care of them and share them out; and in this respect private ownership is both legitimate and necessary. Firstly, because everyone takes more care of the things for which he is privately responsible than of things held in common, the responsibility for which is left to the next man. Secondly, because human affairs are more efficiently organized when each person has his own distinct responsibility to discharge. Thirdly, because there is a greater chance of keeping the peace when everyone is content with his own matters. Man's other competence in relation to external things is their use; and in this regard men should not treat things as exclusively theirs but use them for the good of all, ready to share them with those in need. The distribution of property is not determined by natural justice, but by human agreement and enacted law. Private ownership is not against natural law, but it is something invented by human reason over and above natural law.

The essence of theft is the surreptitious taking of another's property. 3 Concealment can contribute to wrongdoing by making it possible, as in cases of deceit and fraud. In such cases concealment does not lessen the wrongdoing – as it might if it was just a circumstance indicating shame – but rather constitutes it as a special type of wrongdoing. This is what happens with theft. Theft and robbery are wrong because the taking is 4 against the owner's will. But things happen against our will either because we are ignorant of them (and that defines theft) or because force is used (and that defines robbery); so here there are two different types of sin. Even a person who takes back by stealth property of his own 5 unjustifiably held by another is doing wrong: not because of any harm he does the holder (and so he has no obligation to restitution or compensation in that regard), but because he offends against ordinary justice by taking the law into his own hands and bypassing due legal processes. So he is bound to make amends to God and see to it that he mitigates 6 any possible scandal to others. Human society would perish if everybody started stealing from everybody else. Theft then is a fatal sin, opposed to the love of charity. Penalties imposed in this life are corrective rather than retributive, for retribution is reserved to God's judgment. So men should not be sentenced to death in this life for fatal sins, unless they cause irreparable harm or are particularly perverted. Theft is not normally a capital offence since the damage it does can be repaired, though it may be capital if there is some aggravating circumstance like the property being sacred or public, or the stealing being kidnap.

In need everything is common property. In the natural order estab- 7 lished by God's providence lower things are intended to serve men's

needs. The division and apportionment of these by human law must not interfere with this purpose. So that goods possessed over and above our requirements should in natural justice be used to support the poor. Those who suffer want are so numerous that they cannot all be supported from one source, and each individual must decide how to manage his property in such a way as to help in supplying the needs of those who suffer. But in cases of urgent and blatant necessity immediate needs must be met out of whatever comes to hand, and then a person is allowed to supply his own needs out of another's property, secretly or openly. Such action is neither theft nor robbery, for need of that sort renders what a person takes to sustain his life his own.

8 Any private and unauthorized person who takes something from another by force is guilty of robbery. Even public authorities may only use force or coercion to the extent justice permits, when fighting enemies or punishing malefactors. If they confiscate the property of others by force in ways opposed to justice then they commit robbery and are bound to restitution. Indeed they are worse than robbers, inasmuch as they jeopardize more generally the public justice of which they have been made guardians. In theft something is taken against the owner's will through his ignorance, in robbery because force is used. Because force is more directly opposed to the will than ignorance, robbery is a graver sin than theft.

67 **Injurious words – Court cases.** A judge's judgment is like a particular law passed for a particular case, and enjoys similar coercive power; so a judge must have the public authority entitling him to such coercion. It follows that his judgment must be formed by what he learns in his public, not in his private, capacity: through his general knowledge of the law, divine or human, which he must treat as incontrovertible, and in particular cases through the evidence of witnesses, affidavits and other admissible documents. He can allow privately acquired knowledge to lead him to scrutinize this evidence more strictly, looking for possible flaws; but if he cannot fault it by due process of law he must give judgment in accordance with the evidence. A judge is a mouthpiece of justice, *justice personified*, and justice is concerned with relationships to others, not to oneself. So there must be two parties for the judge to adjudicate between: accuser and accused. In criminal trials a judge is not entitled to convict someone who has not been duly charged.

68 Anyone is bound to lay a public complaint in cases where a crime tends to harm society, provided he has the evidence required of a complainant. But if the crime does not impinge on society or there is not enough evidence to substantiate a complaint, no man is obliged to

initiate something he cannot properly complete. An accused is under obligation to give the judge such evidence as the rules of evidence require. He commits a fatal sin if he refuses to confess or denies any truth he is bound to tell. But if the judge asks for something not allowed by the laws of evidence the accused is not bound to reply and he can either appeal or resort to some other technicality. But he is not allowed to lie. One is not obliged to tell the whole truth, but only such truth as a judge can and should require to be told under the laws of evidence. If required to give evidence by a person authorized to require it, we must give such evidence whenever the law says we must, namely when the crimes are public and notorious. Otherwise we are not bound to give evidence. If on the other hand we are asked to give evidence by someone without the requisite authority then, if it is to free a man from unjust penalties of death or loss of reputation or other damages, we are bound to give evidence; for then, even unasked, we are bound to do what we can to reveal the truth to those who can best make use of it. But evidence needed to condemn a man we can only be obliged to give by proper authority according to the rules of evidence. False evidence is wrong on three counts: because witnesses have to swear to what they say, false evidence involves perjury and is always fatally wrong; it is also directly unjust and, like all injustice, in principle fatal; and finally it is a lie and like every lie a sin, though not necessarily fatal.

Lawyers are not always obliged to offer their services free to the poor but only on certain conditions. Otherwise they would have to give up all other work and devote themselves exclusively to the cases of the poor. The same considerations apply to doctors. It is wrong to be an accomplice in wrongdoing, whether by advice or active help or consent of any sort, for advisers and abettors are in effect doers. So if a lawyer defends a cause knowing it to be unjust, he is undoubtedly committing a grave sin, and he is bound to make good the loss the other party incurs through his action. If however he took up the cause not knowing it to be unjust he is excused to the extent that ignorance excuses. A lawyer's professional skill may draw praise, but if he uses it for wrong ends he wills injustice and does wrong. If he begins thinking his cause just and discovers during the proceedings that it is not, he mustn't betray the cause by helping the other party or giving away confidential information; but he can and must give up the case, persuading his client either to concede or settle without loss to the other party. A lawyer defending a just cause is entitled to conceal what might prejudice his case, but not to make use of falsehood. A man is entitled to recompense for any services he is not obliged to offer. And clearly a lawyer is not always