

QUESTION 120

Epieikeia

Next we have to consider *epieikeia*. And on this topic there are two questions: (1) Is *epieikeia* a virtue? (2) Is *epieikeia* a part of justice?

Article 1

Is *epieikeia* a virtue?

It seems that *epieikeia* is not a virtue:

Objection 1: No virtue removes another virtue. But *epieikeia* removes another virtue, since it undermines what is just according to the law and seems to be opposed to strictness (*severitas*). Therefore, *epieikeia* is not a virtue.

Objection 2: In *De Vera Religione* Augustine says, “In the case of those temporal laws, even though men pass judgment on them when they are instituting them, nevertheless, once they have been instituted and confirmed, a judge is not permitted to pass judgment *on* them, but is permitted only to pass judgment *in accord with* them.” But a man who is fair (*epieikes*) seems to pass judgment on the law when he decides that it should not be observed in a given case. Therefore, *epieikeia* is more a vice than a virtue.

Objection 3: As the Philosopher claims in *Ethics 5*, *epieikeia* seems to involve taking into account the lawmaker’s intention. But it is the role of a ruler alone to interpret the lawmaker’s intention; hence, in the codex *De Legibus et Constitutionibus*, the emperor says, “It is both necessary and permitted for Us alone to find an interpretation that is interposed between fairness (*aequitas*) and the law.” Therefore, the act of *epieikeia* is illicit. Therefore, *epieikeia* is not a virtue.

But contrary to this: In *Ethics 5* the Philosopher posits *epieikeia* as a virtue.

I respond: As was explained above when we were talking about law (*ST* 1-2, q. 96, a. 6), since human acts, about which laws are handed down, consist in contingent singulars that are able to vary in infinitely many ways, it was impossible for any rule of law to be instituted that would fail in no case at all. Rather, lawmakers look to what happens in most cases and produce the law accordingly. Yet in certain cases observing this law is contrary to the balance of justice and to the common good, which is what the law intends. For instance, the law establishes that things that have been left in deposit should be returned, since this is what is just in most cases. And yet it sometimes happens that it is harmful to do this—as it would be, for instance, if a mad man were to deposit his sword and then demand it back when he was in a fury, or if someone were to demand his deposit back in order to fight against his fatherland. In these and other similar cases it would be bad to follow the law as handed down, whereas it is good, with the letter of the law set aside, to follow what the nature of justice and the common advantage demand. And this is what *epieikeia*, known among us as fairness (*aequitas*), is ordered toward.

Reply to objection 1: An individual who is being fair (*epieikes*) does not abandon the just absolutely speaking, but instead abandons the just as determined by the law. Nor, again, is a fair individual opposed to strictness, which follows the truth of the law in cases in which it should be followed, whereas it is vicious to follow the letter of the law in cases in which it should not be followed. This is why the codex *De Legibus et Constitutionibus* says, “Without a doubt one acts against the law if, having embraced the letter of the law, he acts contrary to the intention behind the law.”

Reply to objection 2: Someone is passing judgment on the law if he claims that the law was not well made (*non esse bene positam*). However, someone who claims that the letter of the law should not be observed in this particular case is not passing judgment on the law, but is instead passing judgment on some particular matter that has occurred.

Reply to objection 3: Interpretation has a place in doubtful matters in which it is not permitted to depart from the letter of the law without the determination of a ruler. But in obvious cases there is no need to interpret [the law], but only a need to carry it out.

Article 2

Is *epieikeia* a part of [the virtue of] justice?

It seems that *epieikeia* is not a part of [the virtue of] justice:

Objection 1: As is clear from what was said above (q. 58, a. 7), there are two sorts of justice, one *particular* and the other *legal*. But *epieikeia* is not a part of particular justice, since it extends to all the virtues, just as legal justice does. Similarly, it is likewise not a part of legal justice, since it operates beyond what is posited in the law. Therefore, it seems that *epieikeia* is not a part of justice.

Objection 2: A more principal virtue is not assigned as a part to a less principal virtue; for instance, secondary virtues are assigned as parts to the cardinal virtues, where the latter are, as it were, the principal virtues. But *epieikeia* seems to be a more principal virtue than justice is; the very name suggests this, since it comes from *epi*, which means *beyond*, and *dikaion*, i.e., *the just*. Therefore, *epieikeia* is not a part of justice.

Objection 3: *Epieikeia* seems to be the same thing as modesty. For in Philippians 4:5, where it says, “Let your modesty be known to all men (*modestia nostra nota sit omnibus hominibus*),” the Greek text has *epieikeia*. But according to Tully, modesty is a part of temperance. Therefore, *epieikeia* is not a part of justice.

But contrary to this: In *Ethics 5* the Philosopher says, “*Epieikeia* is a sort of justice.”

I respond: As was explained above (q. 48), a virtue has three sorts of parts, viz., (a) *subjective* parts, (b) *integral* parts, and, as it were, (c) *potential* parts.

Now a *subjective* part is a part of which the whole is predicated, and it is less than the whole. This happens in two ways. For sometimes something is predicated of many according to a *single nature* (*secundam unam rationem*), in the way that *animal* is predicated of *horse* and *ox*, whereas sometimes something is predicated according to *prior and posterior*, in the way that *being* (*ens*) is predicated of *substance* and *accident*.

Therefore, as the Philosopher says in *Ethics 5*, *epieikeia* is a part of justice, taken in the general sense, as a certain sort of justice. Hence, it is clear that *epieikeia* is a subjective part of justice. And *justice* is said of *epieikeia* prior to its being said of *legal justice*, since legal justice is directed in accord with *epieikeia*. Hence, *epieikeia* is, as it were, a higher rule of human acts (*quasi superior regula humanorum actuum*).

Reply to objection 1: *Epieikeia* corresponds properly speaking to *legal justice*, and (a) in a certain sense it is contained under it and (b) in a certain sense it goes beyond it:

(a) If legal justice is said to be justice that moderates the law, either with respect to the letter of the law or with respect to the lawmaker’s intention, which is more important, then *epieikeia* is the most important part of legal justice.

(b) On the other hand, if legal justice is said to be justice that moderates the law with respect to the letter of the law, then *epieikeia* is a part not of legal justice, but instead a part of justice taken generally, and it is divided off from legal justice as something that goes beyond it.

Reply to objection 2: As the Philosopher says in *Ethics 5*, *epieikeia* is better than a certain sort of justice, viz., legal justice that observes the letter of the law. However, since it itself is likewise a certain sort of justice, it is not better than all justice.

Reply to objection 3: *Epieikeia* involves moderating something, viz., the observance of the letter

of the law. But the modesty that is posited as a part of temperance moderates a man's exterior life, viz., in deportment or in clothing or in other things of this sort. However, it is possible that among the Greeks the name '*epieikeia*' is transferred through a certain sort of similitude to all sorts of moderation.