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Marcus Lefebure O.P.

Excerpt

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SUMMA THEOLOGIAE, 2a2ae. 63, 1

DEINDE CONSIDERANDUM EST de vitiis oppositis praedictis iustitiae partibus. Et primo de acceptione personarum, quae opponitur iustitiae distributivae; secundo de peccatis quae opponuntur iustitiae commutativae.

Quaestio 63. de acceptione personarum

Circa primum quaeruntur quatuor:

1. utrum personarum acceptio sit peccatum;
2. utrum habeat locum in dispensatione spiritualium;
3. utrum in exhibitione honorum;
4. utrum in iudiciis.

articulus 1. utrum personarum acceptio sit peccatum

AD PRIMUM sic proceditur:¹ 1. Videtur quod personarum acceptio non sit peccatum. In nomine enim personae intelligitur personae dignitas.² Sed considerare dignitates personarum pertinet ad distributivam iustitiam. Ergo personarum acceptio non est peccatum.

2. Praeterea, in rebus humanis personae sunt principaliores quam res, quia res sunt propter personas, et non e converso. Sed rerum acceptio non est peccatum. Ergo multo minus acceptio personarum.

3. Praeterea, apud Deum nulla potest esse iniquitas vel peccatum. Sed Deus videtur personas accipere, quia interdum duorum hominum unius conditionis unum assumit per gratiam, et alterum relinquit in peccato, secundum illud *Matt.*, *Duo erunt in lecto; unus assumetur, et alius relinquetur.*³ Ergo acceptio personarum non est peccatum.

SED CONTRA, nihil prohibetur in lege divina nisi peccatum. Sed personarum acceptio prohibetur *Deut.* ubi dicitur, *Non accipietis cuiusquam personam.*⁴ Ergo personarum acceptio est peccatum.

RESPONSIO: Dicendum quod personarum acceptio opponitur distributivae iustitiae. Consistit enim aequalitas distributivae iustitiae in hoc quod

¹cf *In Rom.* 2, *lect.* 2. *In Gal.* 2, *lect.* 2

²cf *Ia.* 29, 3 ad 2

³*Matthew* 24, 40

⁴*Deuteronomy* 1, 17

^{*}The article referred to in note 2 occurs in the treatise on the Trinity. And it is in connexion with the use of the term 'person' in this context that he recalls the original use of the word to refer to the masks worn by actors in dramatic performances. He comments that it was to the extent that such masked actors represented distinguished personages that the word person came to suggest a certain

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NEXT TO CONSIDER the vices opposed to the several parts of justice which we have just indicated (2a2æ. 61, Intro.). They can be divided into two categories: first, unfair discrimination, which is the vice opposed to distributive justice; and, second, sins opposed to commutative justice (64–78).

Question 63. unfair discrimination

Here there are four points of inquiry:

1. is unfair discrimination a sin?
2. can it occur in granting spiritual rights and benefits?
3. or in the conferring of honours?
4. or in the giving of judgements?

article 1. is unfair discrimination a sin?

THE FIRST POINT:¹ 1. It would seem that discrimination is not a sin. For the term ‘person’ suggests a person’s station.^{2a} But taking a person’s station into account is part of distributive justice. Therefore discrimination is not a sin.

2. In human affairs people are more important than things, since things are for people and not the other way round. But it is not a sin to discriminate as to things. There is, therefore, even less reason for discrimination as to persons being a sin.

3. There can be no iniquity or sin in God. Yet God seems to discriminate between people; for it sometimes happens that two people are in the same situation and that he raises one up by grace whilst leaving the other in sin, as we read in *Matthew*, *Then two men will be in one bed; one is taken and one is left.*^{3b} Therefore discrimination is no sin.

ON THE OTHER HAND, nothing is prohibited by the divine law except sin. Yet unfair discrimination is prohibited, according to *Deuteronomy*, *You shall not be partial in judgement.*⁴ Therefore unfair discrimination is a sin.

REPLY: Unfair discrimination is opposed to distributive justice. This is because the equitable nature of distributive justice consists in different

standing or eminent station in life. For the changing usage, histrionic, legal, theological, political, see H. C. Dowdall. *The Word ‘Person’*, in *TLS*, 8 May, 1948. Also T. Gilby, *Principality and Polity*. VII, 5. London, 1958.

^bThe quotation, in fact, conflates *Matthew* 24, 40 with *Luke* 17, 34.

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diversis personis diversa tribuuntur secundum proportionem ad dignitates personarum. Si ergo aliquis consideret illam proprietatem personae propter quam id quod ei confertur est ei debitum, non erit acceptio personae, sed causae; unde glossa, super illud ad *Ephes.*, *Non est personarum acceptio apud Deum*, dicit quod *judex justus causas discernit, non personas*.⁵ Puta si aliquis promoveat aliquem ad magisterium propter sufficientiam scientiae, hic attenditur causa debita, non persona; si autem aliquis consideret in eo cui aliquid confert, non id propter quod id quod ei datur, esset ei proportionatum vel debitum, sed solum hoc quod est iste homo (puta Petrus vel Martinus), est hic acceptio personae, quia non attribuitur ei aliquid propter aliquam causam quae faciat eum dignum, sed simpliciter attribuitur personae. Ad personam autem refertur quaecumque conditio non faciens ad causam propter quam sit dignus hoc dono; puta si aliquis promoveat aliquem ad praelationem vel magisterium quia est dives, vel quia est consanguineus suus, est acceptio personae. Contingit tamen aliquam conditionem personae facere eam dignam respectu unius rei, et non respectu alterius; sicut consanguinitas facit aliquem dignum ad hoc quod instituatur haeres patrimonii, non autem ad hoc quod conferatur ei praelatio ecclesiastica. Et ideo eadem conditio personae in uno negotio considerata facit acceptionem personae, in alio autem non facit.

Sic ergo patet quod personarum acceptio opponitur justitiae distributivae in hoc quod praeter proportionem agitur. Nihil autem opponitur virtuti nisi peccatum. Unde consequens est quod personarum acceptio sit peccatum.

1. Ad primum ergo dicendum quod in distributiva justitia considerantur conditiones personarum quae faciunt ad causam dignitatis vel debiti; sed in acceptione personarum considerantur conditiones quae non faciunt ad causam, ut dictum est.⁶

2. Ad secundum dicendum quod personae proportionantur et dignae redduntur aliquibus quae eis distribuuntur propter aliquas res quae pertinent ad conditionem personae; et ideo hujusmodi conditiones sunt attendendae, tanquam propriae causae. Cum autem considerantur ipsae personae, attenditur non causa ut causa; et ideo patet quod quamvis personae sint digniores simpliciter, non tamen sunt digniores quoad hoc.

3. Ad tertium dicendum quod duplex est datio. Una quidem pertinet ad justitiam, qua scilicet aliquis dat alicui quod ei debetur; et circa tales dationes attenditur personarum acceptio. Alia est datio ad liberalitatem pertinet, qua scilicet gratis datur alicui quod ei non debetur; et talis est collatio munerum gratiae, per quae peccatores assumuntur a Deo; et in hac donatione non habet locum personarum acceptio, quia quilibet potest

⁵*Ephesians* 6, 9. *Interlinear.* & Lombard. PL 192, 218⁶In the reply

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people receiving different things according to their social worth, so that for one person to receive something on the basis of what gives him that social worth is respect not of the person but of the reason. This is why a gloss on the passage in *Ephesians* about there *being no partiality with God* is to this effect, *The just judge scrutinizes causes, not appearances*.⁵ Therefore if one person appoints another to a teaching post on the basis of his professional competence, he is paying regard to a due cause and not to the person, whereas if what he takes into account is not his qualification for the position but the fact that he is the particular individual he is, say Peter or Martin, he is practising unfair discrimination; for in this case he is giving him something not because he has any proper title to it, but only because of personal considerations. And what acting on the basis of such personal considerations means is taking into account factors which are irrelevant to the candidate's qualification for the particular position, as, for instance, when somebody promotes another to an ecclesiastical or academic preferment because he is rich or a relative. It may, of course, happen that a person is qualified in one respect without thereby being qualified in another, in the way in which blood-relationship gives a person a claim to the inheritance of property, though not to ecclesiastical preferment. Accordingly to take into account the same personal condition gives rise to unfair discrimination in the one case and not in the other.

It is, therefore, clear that unfair discrimination is opposed to distributive justice in so far as it offends against the principle of apportionment according to social worth. But nothing is opposed to virtue except sin. Therefore unfair discrimination is a sin.

Hence: 1. The exercise of distributive justice involves taking into consideration such qualities of people as give them a title or qualification, whereas unfair discrimination is a matter of taking into consideration factors extraneous thereto, as shown.⁶

2. People become qualified to receive what they are allocated in virtue of the things that go to make up their situation, and this is why such situations count as due grounds. But when the mere person is taken into account, what is not a cause is counted as a cause. From which it is clear that although persons as such are more important than things, their being persons is not of itself a qualification for any sort of office.

3. There are two sorts of giving. One belongs to justice, in so far as one person gives another his due. And it is in connexion with such giving that unfair discrimination can arise. The other sort of giving belongs to liberality, which is a matter of somebody freely giving to another something that is not his due. And conferring the gifts of grace by which sinners are raised by God is of this sort. And unfair discrimination has no place here, for anyone can without injustice give anyone whatever he wants, on

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absque injustitia de suo dare quantum vult, et cui vult, secundum illud *Matt.*, *An non licet mihi quod volo facere? Tolle quod tuum est et vade.*⁷

articulus 2. utrum in dispensatione spiritualium locum habeat personarum acceptio

AD SECUNDUM sic proceditur:¹ I. Videtur quod in dispensatione spiritualium locum non habeat personarum acceptio. Conferre enim dignitatem ecclesiasticam seu beneficium alicui propter consanguinitatem videtur ad acceptionem personarum pertinere, quia consanguinitas non est causa faciens hominem dignum ecclesiastico beneficio. Sed hoc non videtur esse peccatum, cum hoc ex consuetudine praelati Ecclesiae faciant. Ergo peccatum personarum acceptionis non videtur locum habere in dispensatione spiritualium.

2. Præterea, præferre divitem pauperi videtur ad acceptionem personarum pertinere, ut patet *fac.*² Sed facilius dispensatur cum divitibus et potentibus, quod contrahant matrimonium in gradu prohibito, quam cum aliis. Ergo peccatum personarum acceptionis non videtur locum habere circa dispensationem spiritualium.

3 Præterea, secundum jura,³ sufficit eligere bonum, non autem requiritur quod aliquis eligat meliorem. Sed eligere minus bonum ad aliquid altius, videtur ad acceptionem personarum pertinere. Ergo personarum acceptio non est peccatum in spiritualibus.

4. Præterea, secundum statuta Ecclesiae,⁴ eligendus est aliquis de gremio ecclesiae. Sed hoc videtur ad acceptionem personarum pertinere, quia quandoque sufficientiores alibi invenirentur. Ergo personarum acceptio non est peccatum in spiritualibus.

SED CONTRA, est quod dicitur *fac.*, *Nolite in personarum acceptione habere fidem Domini nostri Jesu Christi*,⁵ ubi dicit Glossa Augustini, *Quis ferat, si quis divitem eligat ad sedem honoris Ecclesiae, contempto paupere instructiore et sanctiore?*⁶

RESPONSIO: Dicendum quod, sicut dictum est,⁸ acceptio personarum est peccatum in quantum contrariatur justitiæ. Quanto autem in majoribus

⁷ *Matthew* 20, 15 & 14⁸ art. I¹ cf *Quodl.* IV, 8, 4; VI, 5, 3; VIII, 4, I² *James* 2, I³ *Decretals of Gregory IX*, I, 6, 32. RF II, 79⁴ *ibid*⁵ *James* 2, I⁶ *Ordinaria VI*, 212A Augustine, *Epist.* CLXVII, ad *Hieronymum* 6. PL 33, 740⁸ The ordinance referred to is a 'Decretal', that is to say, a papal letter, in principle a response to a question, which had the force of law. As such, decretals came to be included in the collection of the canons of the councils of the Church, both universal and local, and the decrees of influential bishops. This collection grew into what

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the principle recorded by *Matthew*, *Am I not allowed to do what I choose? Take what belongs to you, and go.*⁷

article 2. does unfair discrimination occur in granting spiritual rights and benefits?

THE SECOND POINT:¹ I. It would seem that unfair discrimination does not occur in granting spiritual rights and benefits. Conferring an ecclesiastical preferment or benefice on somebody on the grounds of relationship would seem to be an instance of unfair discrimination, since relationship does not qualify a person for such a benefit. Yet such a practice would not seem to amount to a sin since dignitaries of the Church are accustomed to do this. The sin of unfair discrimination would, therefore, not seem to arise in the granting of spiritual rights and benefits.

2. Preferring the rich to the poor would seem to be a case of unfair discrimination, as *James* makes quite clear.² Yet dispensations to marry within the prohibited degrees are more readily granted to the rich and the powerful. Again, therefore, the sin of unfair discrimination would not seem to arise in the case of granting spiritual benefits.

3. According to the relevant statute law of the Church,^{3a} it is enough to appoint a suitable person to an office, and there is no obligation to appoint the most suitable. To appoint the less suitable person for a higher office, however, suggests unfair discrimination. Therefore unfair discrimination is no sin in spiritual affairs.

4. The same statute law of the Church⁴ also lays down that somebody is to be appointed *de gremio ecclesiae*, from the membership of a church. But this again seems to suggest unfair discrimination in so far as more suitable candidates may at times be available elsewhere. Thus unfair discrimination is not a sin in spiritual matters.

ON THE OTHER HAND, *James* says, *Show no partiality as you hold the faith of our Lord Jesus Christ.*⁵ On which the Gloss, following Augustine, comments, *Who would tolerate a rich man being raised to a position of honour in the Church at the expense of a more learned and holy man who happened to be poor?*⁶

REPLY: As we have already seen,⁸ discrimination is a sin to the extent that it thwarts justice. But the more momentous the matters in which justice

gradually became canon law, and evolved through successive phases of intermittent consolidation, the most notable of which was the work of Gratian. His *Decretum*, or *Concordantia Discordantium Canonum*, issued c. 1150, marked a turning-point in the development of canon law, and was the basis of all subsequent compilations in the West.

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aliquis justitiam transgreditur, tanto gravius peccat. Unde cum spiritualia sint temporalibus potiora, gravius peccatum est personas accipere in dispensatione spiritualium quam in dispensatione temporalium.

Et quia personarum acceptio est cum aliquid personae attribuitur praefer proportionem dignitatis ipsius, considerare oportet quod dignitas alicujus personae potest attendi dupliciter: uno modo simpliciter et secundum se, et sic majoris dignitatis est ille qui magis abundat in spiritualibus gratiae donis; alio modo per comparisonem ad bonum commune; contingit enim quandoque quod ille qui est minus sanctus et minus sciens potest magis conferre ad bonum commune propter potentiam vel industriam saecularem, vel propter aliquid hujusmodi. Et quia dispensationes spiritualium principaliter ordinantur ad utilitatem communem, secundum illud *I Cor.*, *Unicuique datur manifestatio spiritus ad utilitatem*,⁹ ideo quandoque absque acceptione personarum in dispensatione spiritualium illi qui sunt simpliciter minus boni melioribus praeferuntur, sicut etiam et Deus gratias gratis datas quandoque concedit minus bonis.

1. Ad primum ergo dicendum quod circa consanguineos praelati distinguendum est. Quia quandoque sunt minus digni et simpliciter et per respectum ad bonum commune; et sic si dignioribus praeferantur, est peccatum personarum acceptionis in dispensatione spiritualium; quorum praelatus ecclesiasticus non est dominus, ut possit ea dare pro libito, sed dispensator, secundum illud *I Cor.*, *Sic nos existimet homo ut ministros Christi, et dispensatores mysteriorum Dei*.¹⁰ Quandoque vero consanguinei praelati ecclesiastici sunt aequae digni ut alii: et sic licite potest absque personarum acceptione consanguineos suos praeferre; qui saltem in hoc praeminent quod de ipsis magis confidere potest ut unanimiter secum negotia Ecclesiae tractent. Esset tamen hoc propter scandalum dimittendum, si ex hoc aliqui exemplum sumerent etiam praefer dignitatem bona Ecclesiae consanguineis dandi.

2. Ad secundum dicendum quod dispensatio matrimonii contrahendi principaliter fieri consuevit propter foedus pacis firmandum: quod quidem magis est necessarium communi utilitati circa personas excellentes; et ideo cum eis facilius dispensatur absque peccato acceptionis personarum.

3. Ad tertium dicendum quod quantum ad hoc quod electio impugnari

⁹*I Corinthians 12, 7*

¹⁰*I Corinthians 4, 1*

^bThis technical term, *gratia gratis data*, is explained in 1a2ae. III, 1: *gratia gratis data* is the freely given grace of being able to cooperate with others for their sakes, whereas *gratia gratum faciens* is the grace of being opened up to communication with God oneself.

^cThe principle that authority in the Church is service, *diakonia*, has never been lost, whatever distortions and culturally conditioned interpretations it may have

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is thwarted, the graver the sin. It follows that since spiritual matters are more important than temporal ones, it is a graver sin to practise unfair discrimination in granting spiritual rights and benefits than in dispensing temporal ones.

Now since unfair discrimination occurs where a person is given more than his social worth warrants, we should note that a person's social worth can be seen in two ways. Firstly, simply in itself—here the person who has greater spiritual gifts of grace stands higher; secondly, however, in relation to the common good—for it does happen that somebody who is less holy and less learned can contribute more to the common good, because he has more worldly influence or wisdom, or something of the sort. And because spiritual benefits are dispensed above all for the common good, as St Paul tells us: *To each is given the manifestation of the spirit for the common good.*⁹ those who are less truly good may be preferred to the better without this being unfair discrimination—just as even God sometimes gives charismatic grace^b to the less good.

Hence: 1. We have to make a distinction in relation to a dignitary's relations. For sometimes they are less well qualified both in themselves and in relation to the common good, in which case there is a sin of unfair discrimination if they are given spiritual benefits in preference to more worthy people; for a dignitary is, after all, a steward of spiritual benefits, and not an absolute owner who can do with them what he wills, as St Paul says, *This is how one should regard us, as servants of Christ and stewards of the mysteries of God.*^{10c} Relatives of dignitaries may, however, also be as well qualified as others, and in such a case it is legitimate to prefer one's relatives without thereby practising unfair discrimination; for they do at least have this advantage over the others that they are more likely to work well together for the Church. This advantage should, however, be set to one side if it begins to give scandal and to encourage the fashion of distributing ecclesiastical benefits regardless of merit.

2. The granting of dispensations to marry was practised primarily to reinforce peace treaties, and keeping the peace in this way is more important for the common good when the powerful are involved. Granting such people dispensations does not, therefore, necessarily entail unfair discrimination.

3. It is enough to make an appointment immune from attack in court

received at various stages in the Church's history. A classical expression of it is to be found in the *Liber Regulae Pastoralis* of Pope Gregory I (c. 540–604) (II, 5–6. PL 77, 32–38), who also applied the title *servus servorum Dei* to himself as pope. This principle of authority as service has now been restated for our own times by Vatican II.

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non possit in foro judiciali, sufficit eligere bonum, nec oportet eligere meliorem, quia sic omnis electio posset habere calumniam; sed quantum ad conscientiam eligentis, necesse est eligere meliorem vel simpliciter vel in comparatione ad bonum commune; quia si potest haberi aliquis magis idoneus erga aliquam dignitatem, et alius praeferatur, oportet quod hoc sit propter aliquam causam; quae quidem si pertineat ad negotium, quantum ad hoc erit ille qui eligitur magis idoneus; si vero non pertineat ad negotium id quod consideratur ut causa, erit manifeste acceptio personae.

4. Ad quartum dicendum quod ille qui de gremio ecclesiae assumitur, ut in pluribus consuevit esse utilior quantum ad bonum commune, quia magis diligit ecclesiam in qua est nutritus: et propter hoc etiam mandatur *Deut.*, *Non poteris alterius gentis facere regem qui non sit frater tuus.*¹¹

*articulus 3. utrum in exhibitione honoris et reverentiae locum habeat peccatum
acceptio personarum*

AD TERTIUM sic proceditur:¹ 1. Videtur quod in exhibitione honoris et reverentiae non habeat locum peccatum acceptio personarum. Honor enim nihil aliud esse videtur quam reverentia quaedam alicui exhibita in testimonium virtutis, ut patet per Philosophum.² Sed praelati et principes sunt honorandi, etiamsi sint mali, sicut etiam parentes, de quibus mandatur *Exod.*, *Honora patrem tuam et matrem tuam,*³ et etiam domini sunt a servis honorandi, etiamsi sint mali, secundum illud *1 Tim.*, *Quicumque sunt sub iugo servi, dominos suos honore dignos arbitrentur.*⁴ Ergo videtur quod acceptio personae non sit peccatum in exhibitione honoris.

2. Praeterea, *Lev.* praecipitur, *Coram cano capite consurge, et honora personam senis.*⁵ Sed hoc videtur ad acceptio personarum pertinere, quia quandoque senes non sunt virtuosus, secundum illud *Dan.*, *Egressa est iniquitas a senioribus populi.*⁶ Ergo acceptio personarum non est peccatum in exhibitione honoris.

3. Praeterea, super illud *Jac.*, *Nolite in personarum acceptio habere fidem* etc.,⁷ dicit Glossa Augustini, *Si hoc quod Jacobus dicit, Si introierit in conventu vestro vir habens anulum aureum, etc., intelligatur de quotidianis consessibus, quis hic non peccat, si tamen peccat?*⁸ Sed haec est acceptio

¹¹Deuteronomy 17, 15¹cf Quodl. x, 6, 1²Ethics 1, 5. 1095b26. St Thomas lect. 5³Exodus 20, 12⁵Leviticus 19, 32⁶Daniel 13, 5⁸See note 6 to art. 2 above¹ Timothy 6, 1⁷James 2, 1 ff.

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to appoint a suitable man, without there being an obligation to appoint a better one. Otherwise every appointment would be open to dispute. But in conscience a man ought to appoint the more suitable, whether this is interpreted absolutely or in relation to the common good. For if there is a more suitable candidate for some office and somebody else is appointed, this must be for some reason. Now if this factor is relevant to the position in question the person appointed will to that extent be the more suitable. If, on the other hand, it is irrelevant, there will be a clear case of unfair discrimination.

4. A person chosen from among the members of a church is more likely to serve the common good, because he bears a greater affection for the church in which he was reared. This is why *Deuteronomy* commands, *You may not put a foreigner over you, who is not your brother.*^{11d}

article 3. can unfair discrimination occur in paying honour and reverence?

THE THIRD POINT:¹ 1. It would seem that there can be no question of unfair discrimination in the paying of honour and respect. Honour appears to be nothing but the respect paid to somebody in acknowledgement of his virtue, as Aristotle makes clear.² But prelates and governors are to be honoured, even if they are bad, just as parents are, in accordance with the prescription of *Exodus*, *Honour your father and mother.*³ Even masters are to be honoured by their slaves, although they are bad men, as Paul writes: *Let all those who are under the yoke of slavery regard their masters as worthy of all honour.*⁴ It would, therefore, seem that it is not in paying honour that sin of unfair discrimination occurs.

2. *Leviticus* contains the command, *You shall rise up before the hoary head, and honour the face of an old man.*⁵ But this would seem to involve unfair discrimination since old men are sometimes not virtuous, as in the incident recorded in *Daniel*: *Iniquity came forth from those who were supposed to govern the people.*^{6a} Therefore unfair discrimination is not a sin connected with paying respect.

3. On the passage of *James* which begins *Show no partiality*⁷, the Gloss follows Augustine and comments, *If what James is saying when he says, If a man with gold rings and in fine clothing comes into your assembly etc. is to be understood of our daily meetings, who does not sin if this constitutes sin?*⁸

⁴St Thomas explains elsewhere, in his treatise on charity, that 'brother' is to be taken in its evangelically universal sense: 2a2ae. 25, 1, 8 & 12; 26, 1-13; 44, 2, 3, & 7.

⁸This expression of the *leitmotiv* of the story of Susannah comes from the apocryphal section of *Daniel*.