188 Judge (*Judex*)

There are two about which judges ought to beware: anger and avarice. As for anger the Philosopher teaches, according to the *Politics*,[[1]](#endnote-1) that an angry judge ought to defer sentence and judgment. Wherefore Valerius narrates in book five,[[2]](#endnote-2) concerning Archytas of Tarentum as it was said above in chapter [186] on Anger [*Ira*]. The reason of this is because James 1[:20]: “For the anger of man works not the justice of God.” And Gregory in *Homilia de penitencia*,[[3]](#endnote-3) it is hard that the one who does not know how to hold moderation of his own life should become the judge of another life.

Wherefore the Philosopher, as before,[[4]](#endnote-4) he is the mediator between the litigants and the one who institutes the law. For from the instigator of the law, he ought to accept the law of justice, from the litigants the knowledge of the case. Wherefore Cassiodorus says *Super Psalmum*,[[5]](#endnote-5) where there is a fervid retribution there can be no temperate justice. Wherefore Chrysostom, *Homilia,* the first,[[6]](#endnote-6) it is more just to evade injustice justly, than to punish the just unjustly. Job [36:18]: “Therefore let not anger overcome you to oppress any man,” this is as far as the first part. “Neither let multitude of gifts turn you aside,” this as far as the second part. The weight where the scales stand equal, if anything is placed on one part it makes it stand aslant. So, the sons of Heli set up as judges declined after avarice and accepted gifts. Therefore, they perished in war, 1 Kings 4[:11]. Therefore rightly he is compared to Moses, Exod. 18[:21], in order to set up judges over the people “such as fear God, and that hate avarice,” in every time, as if saying, such ones will last a long time.

¶ The example when something is seen through a pure and simple medium, then a man can judge clearly, but not thus if he sees something in a double medium as is evident concerning a stick whose one part is in water and the upper part in the air is judged to be broken on account of the diversity of the medium. Thus, when the first one is judged according to the merits or demerits alone one can judge, but when anger or avarice concurs that which is whole, and sound will be judged broken. Here says Master John of Salisbury in his *Policraticus*,[[7]](#endnote-7) that three things subvert judgment: love of gifts, showing favor of a person, and easiness of believing.

¶ Concerning the first, Prov. 17[:23]: “The wicked man takes gifts out of the bosom, that he may pervert the paths of judgment.” For according to Psal. [25:10]: “In whose hands are iniquities: their right hand is filled with gifts.” Concerning the second, Prov. 18[:5]: “It is not good” in judgment “to accept the person of the wicked, to decline from the truth of judgment.” Concerning the third, Eccli. 19[:4]: “He that is hasty to give credit, is light of heart.” And [1] John 4[:1]: “Believe not every spirit but try the spirits if they be of God.” Valerius, book six,[[8]](#endnote-8) narrates how King Cambyses flayed one false judge about whom the verses were made:[[9]](#endnote-9)

¶ Sitting on this seat, judge, stand inflexible, Hold your hand from gifts, your ear from prayer, Let the law be the light of your lamp, and your father’s skin, On which you reside born for your father was freely given.

Again, the judge ought to judge equitably, Causa 33, quest. 5, c. *Hec ymago*.[[10]](#endnote-10) Nor because of nobility of birth, nor because of closeness of alliance, nor because of riches or honors, nor because of delights or favors ought he decline from the right, but as he sits in the middle, thus he ought to be equal between the parts, Extra. *De prebendis [et dignitatibus]*, c. penultima,[[11]](#endnote-11) and Causa 11, quest. 3, c. *Quatuor*.[[12]](#endnote-12) For by four ways human law is perverted: by fear, cupidity, hate, and love.

Again, the judge ought not to put off proceeding, but should sentence known cases, Causa 2, quest. 1, c. *Deus omnipotens*.[[13]](#endnote-13)

Again, he ought to hand down a just judgment, Causa 11, quest. 3, c. *Non debet*.[[14]](#endnote-14) Although it is permitted for an advocate to sell prompt justice and the just counsel to the councilor of the law, according to Gregory, Causa 11, quest. 3, c. *Qui recte*.[[15]](#endnote-15)

What therefore do we say about the second who sells false judgment such as separating the rightly joined whom God has joined, who also do not fear to despoil the living, to prey upon the dead, or to divide unequally with the executors?

Here also note that the judge is corrupted in four ways, namely, out of fear, Eccli. 7[:6]: “Seek not to be made a judge, unless you have strength enough to extirpate iniquities.” Wherefore Isidore, *De summo bono*,[[16]](#endnote-16) he who hides the truth by the fear of the powerful, he provokes the anger of the same truth.”

Second, the judge is corrupted by gifts, Deut. 16[:19] presents, and “gifts blind the eyes” of the judges. Wherefore Augustine,[[17]](#endnote-17) up to how much does the evil of cupidity grow so that now the laws are sold by custom, judgments are corrupted.

Third, the judge is corrupted by hate and love. Wherefore Gregory in *Pastorale*,[[18]](#endnote-18) he is now worthy to judge his subordinates who exercises hate or love in the cases of the subordinates. However, the higher judge cannot be corrupted in these ways. Not by fear because he is most powerful, Job 22[:4]: “Shall he reprove you for fear and come with you into judgment.” Rather then he will be more severe against sinners to the extent that “No brother can redeem,” Psal. [48:8]. Nor is he corrupted by gifts because he is the richest, Matt. 11[:27]: “All things are delivered to me by my Father.” Nor is he hardly bent either by love because he is the most just, Prov. 6[:35]: “Nor will he yield to any man's prayers.” Wherefore Bernard,[[19]](#endnote-19) may that day come in which pure hearts are worth more than astute words.

Again, nor is he bent by hate because he is the best, Wis. 11[:25]: “For you hate none of the things which you have made.” And because he loves. Therefore, as if with passion he punishes, Isai. 1[:24]: “Ah! I will comfort myself over my adversaries.”

1. Aristotle, *Politics* 3.15 1286a33 (Barnes 2:2041): The individual is liable to be overcome by anger or by some other passion, and then his judgment is necessarily perverted. [↑](#endnote-ref-1)
2. Valerius Maximus, *Facta et Dicta Memorabilia* 4.1.ext. 1 (LCL 492:352): Tarentinus Archytas, dum se Pythagorae praeceptis Metaponti penitus inmergit, magno labore longoque tempore solidum opus doctrinae conplexus, postquam in patriam revertit ac rura sua revisere coepit, animadvertit neglegentia vilici corrupta et perdita intuensque male meritum 'sumpsissem' inquit 'a te supplicium, nisi tibi iratus essem': maluit enim inpunitum dimittere quam propter iram iusto gravius punire. [↑](#endnote-ref-2)
3. Gregory, *Homiliae in Evangelia* 2.26.5 (PL 76:1200): Durum quippe est ut qui nescit tenere moderamina vitae suae judex vitae fiat alienae. [↑](#endnote-ref-3)
4. Aristotle, *Politics* 4.12 1296b35 (Barnes 2:2058): The legislator should alwaqys include the middle class in his government: if he makes his laws oligarchical, let him look to the middle class; if he makes them democratic, he should equally by his laws try to attach this class to the state. [↑](#endnote-ref-4)
5. Cassiodorus, *Expositio in Psalmum* 7.12 (PL 70:71): Sed istud in Divinitate non convenit, quia ubi est fervida vindicta, non est temperata justitia. [↑](#endnote-ref-5)
6. (Pseudo-)Chrysostom, *Opus imperfectum in Mattheum,* Homilia 1 ex cap. 1 (PG 56:633): Justius enim est, injustum juste evadere, quam justum injuste perire: quia etsi reus semel evaserit, iterum potest perire: [↑](#endnote-ref-6)
7. John of Salisbury, *Policraticus*  lib. 8, cap. 23 (PL 199:813): Tria quidem sunt, quae prae caeteris, etiam prudentum omne judicium subvertunt, amor munerum, acceptio personarum, facilitas credendi. [↑](#endnote-ref-7)
8. Valerius Maximus, *Facta et Dicta Memorabilia* 6.3.ext.3 (LCL 493:42-43): Iam Cambyses inusitatae severitatis, qui mali cuiusdam iudicis e corpore pellem detractam sellae intendi in eaque filium eius iudicaturum considere iussit. ceterum et rex et barbarus atroci ac nova poena iudicis ne quis postea corrumpi iudex posset providit. [↑](#endnote-ref-8)
9. Cf. *The English Works of John Gower* Notes 7.2889ff.: Sede sedens ista iudex inflexibilis sta, Sit tibi lucerna lux, lex, pellisque paterna, Qua resides natus pro patre sponte datus. A manibus reuoces munus, ab aure preces.

   Cf. H. Walther, Initia carminum ac versuum medii aevi posterioris latinorum. Carmina medii aevi posterioris latina 1 (Göttingen 1959). # 17466. [↑](#endnote-ref-9)
10. Decretum, Causa 33, quaest. 5, c. 13: Hec imago Dei est in homine, ut unus factus sit ex quo ceteri oriantur, habens inperium Dei, quasi uicarius eius, quia unius Dei habet imaginem, ideo que mulier non est facta ad Dei imaginem. Sic etenim dicit: “Et fecit Deus hominem; ad imaginem Dei fecit illum”. Hinc etiam Apostolus: “Vir quidem,” ait, “non debet uelare caput, quia imago et gloria Dei est; mulier ideo uelat, quia non est gloria aut imago Dei”. [↑](#endnote-ref-10)
11. Decretales, X.3.5.37: Venerabilis frater noster Portuensis episcopus supplicavit, .... Discretioni vestrae mandamus, quatenus, si vobis constiterit, praedictam praebendam vacasse, quando ipsam dicto I. contulit episcopus memortus, ipsum ad eam recipi faciatis. [↑](#endnote-ref-11)
12. Decretum, Causa 11, quaest. 3, c. 78: Quatuor modis humanum iudicium peruertitur: timore, dum metu potestatis alicuius ueritatem loqui pertimescimus; cupiditate, dum premio animum alicuius corrumpimus; odio, dum contra quemlibet aduersarium molimur; amore, dum amico uel propinquo prestare contendimus. Gratian. Quam graue uero sit uel odio, uel amicitia, uel munere, uel metu, uel quolibet modo iudicium peruertere Augustinus testatur dicens: Quicumque aut consanguinitate, aut amicitia, uel hostili odio, uel inimicitiis in iudicando ducitur, peruertit iudicium Christi, qui est iustitia, et fructum illius uertit in amaritudinem. [↑](#endnote-ref-12)
13. Decretum, Causa 2, quaest. 1, c. 20: Deus omnipotens, ut nos a precipitandæ sententiæ prolatione conpesceret, cum omnia nuda et aperta sint oculis eius, mala tamen Sodomæ noluit audita iudicare prius, quam manifeste cognosceret que dicebantur, unde ipse ait: “Descendam, et uidebo, utrum clamorem, qui uenit ad me, opere conpleuerint, an non est ita, ut sciam”. .... [↑](#endnote-ref-13)
14. Decretum, Causa 11, quaest. 3, c. 64: Non debet is penam sustinere canonicam, in cuius dampnatione non est canonica prolata sententia. [↑](#endnote-ref-14)
15. Decretum, Causa 11, quaest. 3, c. 66: Qui recte iudicat, et premium remunerationis expectat, fraudem in Deo perpetrat, quia iustitiam, quam gratis inpertire debuit, acceptione pecuniæ uendit. Bonis male utuntur qui pro temporali lucro iuste iudicant. Tales quippe ad ueritatem non iustitiæ defensio, sed amor premii prouocat; quibus si spes nummi subtrahitur, confestim a iustitiæ confessione recedunt. Acceptio nummorum preuaricatio ueritatis est. Unde et pro iusto dicitur: “Qui excutit manus suas ab omni munere, iste in excelsis habitabit”. [↑](#endnote-ref-15)
16. Isidore, *Sententiarum* 3.45 (PL 83:714): Multi enim sacerdotes metu potestatis veritatem occultant, et a bono opere, vel a justitiae praedicatione, rei alicujus formidine aut potestate terrente avertuntur. [↑](#endnote-ref-16)
17. Augustine, *Sermones ad populum,* Sermo 82.3 (PL 39:1905): Usque adeo autem hoc inolevit malum, ut jam quasi ex consuetudine vendantur leges, corrumpantur jura, sententia ipsa venalis sit, et nulla jam causa possit esse sine causa. [↑](#endnote-ref-17)
18. Cf. Gregory, *Homiliae in Evangelia* 2.26.5 (PL 76:1200): Pastor: judicare autem de subditis digne nequeunt, qui in subditorum causis sua vel odia vel gratiam sequuntur [↑](#endnote-ref-18)
19. Bernard, cf. Gregory, *Epistolae,*  Epistola 1. Ad Roberttum, 7 (PL 182:74): Veniet, inquam, veniet dies judicii: ubi plus valebunt pura corda, quam astuta verba; et conscientia bona, quam marsupia plena: quandoquidem Judex ille nec falletur verbis, nec flectetur donis. [↑](#endnote-ref-19)