162 Murder (*Homicidium*)

Murder is double, namely bodily or spiritually. Bodily happens in many ways, for whoever by counsel, or guile, or deed, or whoever does not free an innocent person being killed, when he could, is a murderer, Extra. *De homicidio,* c. *Sicut*.[[1]](#endnote-1)

¶ Again, bodily murder is committed in three ways: in deed, word, and consent. In deed heretofore in three ways, as when one deprives another of life or throws him in a place where he cannot escape death unless one withdraws him.

¶ In word it happens by consent. It happens in two ways, either when we pursue the death of another or when we do not supply the assistance for freeing when we could, as is treated in c. *Presbyterum*.[[2]](#endnote-2) Just as spiritual homicide is said because the interpretation happens according to the laws in two ways: it happens either by omitting what ought to be done, or as far as oneself by extinguishing the good proposed conception or not following up the conception about which, Isai. 37[:3]: “The children are come to the birth, and there is not strength to bring forth.” Or also as far as one’s neighbor not assisting in extreme necessity, Dist. 86, c. *Pasce*.[[3]](#endnote-3) Feed the one dying of hunger, if you have not fed him, you have killed him, or by not instructing one’s neighbor. Wherefore, he remains in error, Prov. [11:26]: “He that hides corn, shall be cursed among the people.” By committing either what they ought not to do it becomes a spiritual homicide, or he says as far as himself killing through sin, Tob. 12[:10]: “They that commit sin … are enemies to their own soul.” Or also as far as one’s neighbor and this triply. Either by hating in the heart, [1] John 3[:15]: “Whosoever hates his brother is a murderer.” Or they murder by mouth in distorting, or through detraction, or through ill repute, or by evil counseling. Or in works through bad example presenting the occasion of ruin, about which [De penitencia], Dist. 1, c. *Homicidorum*.[[4]](#endnote-4)

¶ Again, note that homicide sometimes is permitted as when it happens without distinction of the Holy Spirit, as is evident in the deed of Elias when he had fire descend to burn the fifty men, 4 Kings [1:14]. Or when it happens from justice through the administration of the law by the zeal for justice, not the malice of envy, but by preserving the order of the law, just as it is treated in [2] Kings 13[:28] and Causa 23, quest. 5, c. *[Si] non licet*,[[5]](#endnote-5) and c. *Miles.[[6]](#endnote-6)* Wherefore, when the criminal is justly executed, the law executed him, not you, Causa 23, quest. 5, c. *Si homicidium*.[[7]](#endnote-7) And then properly it is not said to be the shedding of blood, but the administration of the law, of what sort of judgment ministers of ecclesiastical men can exercise is treated in Extra. *De homicidio,* [c. *Pro humani*], *Libro Sexto*.[[8]](#endnote-8)And these prelates can exhort their judges or others in general that they do justice not however by specifying guilt and that he be hanged, Extra. *De homicidio,* c. *Ex literis*,[[9]](#endnote-9)and c. [*Prelatis*], Libro Sexto.[[10]](#endnote-10) And such a judge so punishing serves as a physician amputating a diseased member lest it infect the body.

¶ Again, manslaughter becomes licit out of zeal for the faith, as when a heretic is killed, Extra. *De hereticis,* c. *Excommunicamus*.[[11]](#endnote-11) Again, he who kills one excommunicated and utterly incorrigible, Causa 23, quest. 5, c. *Excommunicatorum*.[[12]](#endnote-12) Again, to kill another out of unavoidable necessity which you are not able otherwise to escape is not held as guilty, Extra. *De homicidio,* c. *Is qui, Libro Sexto*.[[13]](#endnote-13)

Waste (*Heremis*), see above, chapter [96] Desert (*Desertum*).

1. Decretales, Extra. 5.12.6: Sicut dignum.... § Hi quoque non sunt a culpa liberi, nec a poena debent esse immunes, qui, licet fuering illius *iniquae* machinationis ignari, tamen eis, quos sicarios esse sciebant, *vel* in sarcinis custodiendis ministerium praebuerunt. [↑](#endnote-ref-1)
2. Decretales, Extra. 5.12.7: Presbyterum *autem*, qui quendam puerum intuitu disciplinae percussit in capite *et vulneravit*, quum post paucos dies, *sicut asseris*, exspirasset, tam ab omni altaris ministerio debes perpetuo removere, quam ab officio sacerdotali deponere, si ex ipsa percussione interiit, vel aliam infirmitatem incurrerit, de qua noswcitur excpirasse. [↑](#endnote-ref-2)
3. Decretum, Dist. 86, c. 21: Pasce fame morientem. Quisquis enim pascendo hominem seruare poteris, si non paueris, occidisti. [↑](#endnote-ref-3)
4. Decretum, De poen., Dist. 1, c. 24: Homicidiorum uero tria genera esse dicebat B. Petrus, et penam eorum parilem fore dicebat. Sicut enim homicidas interfectores fratrum, ita detractores eorum, eos que odientes, homicidas esse manifestabat, quia et qui occidit fratrem suum, et qui odit, et qui detrahit, ei pariter homicidæ esse demonstrantur. [↑](#endnote-ref-4)
5. Decretum, Causa 23, quest. 5, c. 9: Si non licet priuata potestate alicui hominem occidere innocentem, cuius occidendi licentiam lex nulla concedit, profecto etiam qui se ipsum occidit homicida est, et tanto fit nocentior, cum se occiderit, quanto innocentior in ea causa fuit, qua se occidendum putauit. [↑](#endnote-ref-5)
6. Decretum, Causa 23. qiest. 5, c. 13: Miles, cum obediens potestati, sub qua legitime constitutus est, hominem occidit, nulla ciuitatis suæ lege reus est homicidii; immo, nisi fecerit, reus inperii deserti atque contempti est. Quod si sua sponte atque auctoritate fecisset, crimen effusi humani sanguinis incidisset. Itaque unde punitur, si fecerit iniussus, inde punietur, si non fecerit iussus. [↑](#endnote-ref-6)
7. Decretum, Causa 23, quest. 5, c. 41: Si homicidium est hominem occidere.... . 1. Cum homo iuste occiditur, lex eum occidit, non tu. [↑](#endnote-ref-7)
8. Decretales, Extra. 5.4.1, Libri Sexti: Pro humani redemptione generis de summis coelorum ad im mundi descendens.... § 1. Quum igitur illi, qui sic horrenda inhumanitate detestandaque saevitia mort4em sitiunt aliorum, ut ipsos faciant per assassinos occidi, non solum corporum, sed mortem procurent etiam animarum, nisi eos exuberans gratia divina praevenerit, ut sint armis spiritualibus praeminit, ad omnis potestas tribuantur a Domino ad justitiam rectumque iudicium exercendum.... [↑](#endnote-ref-8)
9. Decretales, Extra. 5.12.14: Ex literis tuae fraternitatis accepimus, qujod quum *lator praesentium* H. presbyter foenum vellet de curru deponere, perticam superius allegatam, *quum neminem circa currum videret*, proiecit in terram, et, quum foeno insisteret deponendo, .... [↑](#endnote-ref-9)
10. Decretales, Extra. 5.4.2, Libri Sexti: Praelatis vel clericis quibuscunque, qui, de laicis suis malefactoribus querelam penes saecularem judicem deponentes, petunt emendam sibi fieri, et provideri, ne contra eos talia de cetero praesumantur, protestando expresse, quod ad vindictam seu poenam sanguinis in intendunt imputari non debet, quamvis alias in tali casu de iure debeat poen sanguinis irrogari..... [↑](#endnote-ref-10)
11. Decretales, Extra. 5.7.13: Excommuinicamus itaque et anathematizamus omnem haeresim extollentem se adversus hanc sanctam, orthodoxam et catholicam fidem.... § 4. Catholici vero, qui, crucis assumpto charactere, ad haereticorum extgerminium se accinxerint, illa gaudeant indulgentia, illoque sancto privilegio sint muniti, quae accedentibus in terrae sanctgae subsidium conceduntur.l [↑](#endnote-ref-11)
12. Decretum, Causa 23, quest. 5, c. 47: Excommunicatorum interfectoribus (prout in ordine Romanæ ecclesiæ didicisti) secundum intentionem modum congruæ satisfactionis iniunge. Non enim eos homicidas arbitramur, quos, aduersus excommunicatos zelo catholicæ matris ardentes, aliquos eorum trucidasse contingit. [↑](#endnote-ref-12)
13. Decretales, Extra. 5.4.3, Libri Sexti: Is, qui mandat aliquem verberari, licet expresse inhibeat, ne occidatur ullatenus vel membro aliquo mutiletur, irregularis efficitur, si mandatarius, fines mandati excedens, mutilet vel occidat, quum mandando in culpa fuerit, et, hoc evenire posse, debuerit cogitare. [↑](#endnote-ref-13)