

Acceptio personarum

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The School of Salamanca
A Dictionary of its Juridical-Political Language

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1 Definition and context

- 1 The authors of the School of Salamanca define *acceptio personarum* (English: ‘acceptation of persons’, ‘respect of persons’ or ‘[undue] regard for persons’) as a sin and as opposed to distributive justice. A distributor of public goods commits *acceptio personarum* when he considers a recipient’s personal qualities that do not pertain to the intended cause for the goods’ allotment. This can result in an inappropriate person being preferred over an appropriate one, or a less appropriate over a more appropriate one, who thereby attains the good. Nonetheless, which distributors, recipients, public goods, and personal qualities qualify for *acceptio personarum* is a matter of debate. Some authors suggest that the sin of *acceptio personarum* should also be considered as opposed to commutative justice, particularly in the context of court decisions.
- 2 The Salamancan authors follow Thomas Aquinas’ *quaestio* on *acceptio personarum* (STh II-IIae, q. 63). However, they expand the scope (in accordance with Cajetan) from ecclesiastical benefices, honours, and court decisions to secular offices and taxes. Furthermore, they reflect on the biblical roots of the concept and, in the *De Auxiliis* controversy, discuss its theological dimension, particularly with reference to Augustine’s understanding of *acceptio personarum* and the Pelagian debate.
- 3 The debates concerning *acceptio personarum* address the administration of ecclesiastical and political institutions, both in general and with a particular focus on the church and state building process in the Indies. The Salamancan authors’ use of the term shows how an originally judicial argument was used to compete for offices and to argue for just taxation. Depending on the type of public good and the criteria of distribution, *acceptio personarum* can mean different things, such as partiality, favouritism, nepotism, corruption, prejudice, and discrimination.

1.1 Word field

- 4 *ac(c)ep(ta)cion de personas, acceptio personae, acceptio personarum, acceptor personarum, personam accipere, respectus humanus, respectus personarum*

1.2 Related concepts

- 5 *beneficium, bonum commune, dignitas, electio, gratia, honor, iudicium, iustitia, officium, peccatum, persona, praebenda, restitutio, simonia, tributum*

2 *Acceptio personarum* in the School of Salamanca

2.1. Defining *acceptio personarum*

- 6 The Salamancan authors often start their attempts to define *acceptio personarum* with etymological considerations, as classical Latin authors did not use either the nominal

phrase *acceptio personarum* nor the verbal phrase *personam accipere* to denote undue respect of persons (Soto 1553, pars 1, lib. 3, q. 6, art. 1, p. 250; Salón 1591, q. 63, art. 1, col. 970; Aragón 1590, q. 63, art. 1, p. 302; Zapata y Sandoval 1609, pars 1, cap. 4, p. 47-49). Báñez considers it a technical term used by saints and theologians (Báñez 1594, q. 63, p. 279). Some authors point to the term's Hebraic roots (Zapata y Sandoval 1609, pars 1, cap. 4, p. 48; Torres 1621, disp. 21, dub. 1, no. 1, col. 211). Lessius mentions the Hebrew idiom ##### (Lessius 1605, lib. 2, sect. 5, cap. 32, dub. 1, p. 372), and Soto refers to its Greek translation, # ##### (Soto 1553, pars 1, lib. 3, q. 6, art. 1, p. 250). The expression *acceptio personarum* refers to the act of taking and elevating someone's face during the ancient oriental greeting procedure (Zapata y Sandoval 1609, pars 1, cap. 4, p. 48; Torres 1621, disp. 21, dub. 1, no. 3, col. 212). Thus, *persona* does not relate to the Boethian definition of person as the individual substance of a rational nature, but to the traditional meaning of face or a character in a play (Salón 1591, q. 63, art. 1, col. 970; *persona*). Soto suggests that a more appropriate phrase is *respectus personarum* (respect of persons) (Soto 1553, pars 1, lib. 3, q. 6, art. 1, p. 250).

- 7 In accordance with its Hebraic origins, the term *acceptio personarum* is considered a metaphor warning judges (*iudex*) to remain impartial by not considering any personal qualities of the parties that are unrelated to the case – such as their descent, sex, age, or other attributes like poverty, wealth, or political power – but might influence the judge's decision (Lev. 19:15, Deut. 1:17, Deut. 16:19). Irrespective of the word's Hebraic roots, Salamanca authors provide examples of judicial impartiality practiced in ancient Greece and Egypt (Soto 1553, pars 1, lib. 3, q. 6, art. 1, p. 250; Báñez 1594, q. 63, p. 279; Torres 1621, disp. 21, dub. 1, no. 3, col. 212).
- 8 Most Salamanca authors define *acceptio personarum* only as opposed to distributive justice (Soto 1553, pars 1, lib. 3, q. 6, art. 1, p. 249; Aragón 1590, q. 63, art. 1, p. 302; Lessius 1605, lib. 2, sect. 5, p. 372; Zapata y Sandoval 1609, pars 1, cap. 5, no. 7, p. 70; Salas 1611, disp. 20, sect. 7, no. 69, p. 531; *iustitia*). However, authors like Vázquez, Torres, and Lugo y Quiroga acknowledge that *acceptio personarum* can also be contrary to commutative justice (Vázquez 1609, pars 1, disp. 86, cap. 4, pp. 549-550; Torres 1621, disp. 21, dub. 1, concl. 4, fol. 212; Lugo y Quiroga 1642, vol. 2, disp. 34, sect. 1, nos. 3-5, p. 508). Commonly, *acceptio personarum* is defined as a crime of injustice, in which the judge's focus is not on the matter (*causa*) but on unrelated personal qualities (Soto 1553, pars 1, lib. 3, q. 6, art. 1, p. 250; Salón 1591, q. 63, art. 1, col. 971; Báñez 1594, q. 63, art. 1, p. 281; Zapata y Sandoval 1609, pars 1, cap. 4, nos. 8-9, p. 52). This means that the same quality can be considered a legitimate factor in one distributive matter but not in another. For example, the criterion of consanguinity is a necessary factor in the distribution of an inheritance but not in the granting of ecclesiastical benefices (Soto 1553, pars 1, lib. 3, q. 6, art. 1, p. 250; Valencia 1603, disp. 5, q. 7, punct. 1, col. 1221; Zapata y Sandoval 1609, pars 1, cap. 4, nos. 9-10, p. 53).
- 9 There are two requirements for committing *acceptio personarum*. First, there must be a public good to be distributed that is not subject to the arbitrary control of the distributor. Second, the distributor must in his choice of recipient consider a condition of that person that is unrelated to the purpose of the distribution, resulting in an inappropriate recipient being favoured over an appropriate one, or a less appropriate over a more appropriate

one (Valencia 1603, disp. 5, qu. 7, punct. 1, cols. 1222-1223; Lessius 1605, lib. 2, sect. 5, cap. 32, dub. 1, no. 2, p. 372).

- 10 Regarding the first requirement, the Salamanca authors discuss the distribution of public goods (*bona communia*) such as benefices (*beneficium*), ecclesiastical and secular offices (*officium*), honours (*honor*), burdens and taxes (*tributum*), as well as court decisions (*iudicium*). They emphasize that the differences between distributive justice, on the one hand, and commutative justice, grace, and generosity, on the other, have to be considered. Commutative justice, grace, and generosity pertain to private goods rather than public goods. Therefore, in these cases, considering personal qualities does not qualify as *acceptio personarum* (Aragón 1590, q. 63, art. 1, p. 302; Zapata y Sandoval 1609, pars 1, cap. 4, no. 12, p. 54).
- 11 Regarding the second requirement, it is important to consider the potential qualities of the recipients. In the context of conferring offices and honours, the authors discuss the worthiness (*dignitas*) of candidates, categorizing them as worthy, worthier, worthiest, less worthy, or unworthy of the office (Lessius 1605, lib. 2, cap. 34, dub. 14, p. 397). By doing so, the authors posit a geometric proportionality, meaning that the worthier a recipient is, the more or better public goods he should receive. In cases where the distributor considers unrelated personal qualities, rather than merit and worthiness, the Salamanca authors explore criteria for *acceptio personarum* such as friendship, consanguinity, faction, nobility, economic status, political status, sex, age, descent, ethnic background, and homeland (Soto 1553, pars 1, lib. 3, q. 6, art. 1, p. 250; Aragón 1590, q. 63, art. 1, p. 302; Salón 1591, q. 63, art. 1, col. 971; Lessius 1605, lib. 2, sect. 5, cap. 32, dub. 1, no. 1, p. 372).
- 12 Vitoria also considers two cases of distribution according to necessity: a father who distributes bread, and the act of giving wheat and money to the poor (Vitoria 1934, q. 63, art. 2, no. 9, p. 239-240).
- 13 Relevant distributors include the pope, the king, and their advisors, as well as ecclesiastical and secular officeholders. Patrons with the right to present candidates for ecclesiastical offices are also considered distributors (Covarrubias y Leyva 1573, vol. 1, pars 2, sect. 7, art. 4-5; *ius patronatus*).

2.2. The theological dimension of *acceptio personarum*

2.2.1 God is no acceptor of persons

- 14 The Salamanca authors discuss God as a distributor of rewards for good deeds and penalties for bad deeds. Biblical passages, such as Romans 2:11, Ephesians 6:9, and Acts 11:34, suggest that God does not show favouritism (Torres 1621, disp. 21, dub. 1, no. 6, col. 213). Consequently, the Salamanca authors are concerned with how to rule out the possibility of God being a respecter of persons (Aragón 1590, q. 63, art. 1, p. 303; Zapata y Sandoval 1609, pars 1, cap. 6, p. 79). This theological dimension is connected to the juridical-political dimension by the question of whether there are similarities between divine justice or divine grace and human favouritism.

- 15 The underlying debate is whether human justification depends on divine grace or human merit. Authors of the School of Salamanca refer to Augustine (Augustinus 1865, lib. 2, cap. 7, col. 686), who argues against the Pelagians for the importance of divine grace over human merit. The Salamancan authors mostly oppose neo-Pelagian positions, which claim that justification depends on merit.
- 16 Early on, Soto differentiates between a person receiving grace for the first time—where there is no obligation on God's part—and the consideration of the works of a person already admitted into grace. In the latter case, it is evident that God distributes his rewards for good deeds and penalties for bad deeds according to distributive justice, as individuals receive what is due based on the merits that, however, arise from divine grace itself (Soto 1553, pars 1, lib. 3, q. 6, art. 1, p. 250; see also Aragón 1590, q. 63, art. 1, p. 303; Salón 1591, q. 63, art. 1, col. 974-5; Zapata y Sandoval 1609, pars 1, cap. 4, nos. 20-28, pp. 59-66; Torres 1621, disp. 21, dub. 1, no. 6, col. 213).
- 17 In the late 16th and early 17th centuries, the debate culminates in the so called De Auxiliis controversy. Following Soto, Dominicans such as Báñez argue that justification depends more on grace than on merit. Báñez argues that God remains the absolute proprietor of the goods he distributes (whether according to merit or by grace). Furthermore, God surpasses every law of justice and cannot be subordinated to anything inferior to himself (Báñez 1594, q. 63, art. 1, p. 283-284). However, Báñez distinguishes between two arguments: in human affairs, the distributor must take merit into account and acceptio personarum is a sin, whereas God cannot commit acceptio personarum even when he does not consider merit.
- 18 In contrast to these Dominican views, Jesuits like Molina and Suárez emphasize the role of human cooperation and merit in obtaining divine grace. In his Concordia, Molina expresses a controversial position on divine grace and human free will, underlining the importance of free will and individual merits (Molina 1595, q. 23, art. 4-5, disp. 1, memb. 6, pp. 327-336).
- 19 Another well-known controversy concerning the absence of divine favouritism is the debate between Suárez and Vázquez regarding Aquinas' STh Ia, q. 21. Vázquez argues that God is no acceptor of persons because he owes no debts. Where there is no debt, there is no right; therefore, humans do not have a right to receive goods from God (Vázquez 1609, pars 1, disp. 86, cap. 2-3, pp. 545-547; Vázquez 1621, tract. De Beneficiis, cap. 2, par. 3, no. 47, p. 482). Suárez, on the other hand, contends that God has promised humanity a reward for good deeds and, therefore, is obligated to reward condign merit not only through distributive justice but also through commutative justice (Suárez 1858, opusc. 6, sect. 3, pp. 549-564).
- 20 Lessius begins his discussion of the impartiality of God by stating that God does not distribute his goods to everyone, nor does he distribute them equally among humans. He provides three reasons why God does not show favouritism. Firstly, God distributes his own goods, to which no human has a right. Secondly, he grants his grace for just reasons that humans might not recognize. Thirdly, God helps everyone who does good deeds (Lessius 1605, lib. 2, sect. 5, cap. 32, dub. 1, par. 2, p. 373).

21 In the context of discussing whether God shows favouritism, Salamancan authors also comment on the parable of the workers in the vineyard from Matthew 20:1–16, who all receive the same pay from the landowner at the end of the day, irrespective of when they began work. Using interpretations from church fathers such as Gregory of Nazianzus, Jerome, Augustine, and John Chrysostom, Zapata y Sandoval argues that there are indeed differences in merit, as some workers accomplish more in less time (Zapata y Sandoval 1609, pars 1, cap. 6, no. 21, pp. 92-93). For Lugo y Quiroga, however, the landowner does not owe the workers proportional reward but can dispense his own goods according to the virtue of liberality (Lugo y Quiroga 1642, vol. 2, disp. 34, sect. 1, no. 1, p. 507).

2.2.2 *Acceptio personarum* as a mortal sin

22 According to biblical passages, such as Jacob 2:1, Lev. 19:15, Deuter. 1:17, Deuter. 16:19, Eccles. 42:1, *acceptio personarum* should be considered a sin (Báñez 1594, q. 63, art. 1, p. 281; Zapata y Sandoval 1609, pars 1, cap. 5, no. 1, p. 67; peccatum). Insofar as *acceptio personarum* is against the virtues of justice and charity, it is to be considered a mortal sin (Soto 1553, pars 1, lib. 3, q. 6, art. 1, p. 250; Báñez 1594, q. 63, art. 1, p. 281). *Acceptio personarum* is classified as a grave sin, as it harms both the republic and the person who ought to receive the distributed good (Covarrubias y Leyva 1573, vol. 1, pars 2, sect. 7, art. 2, p. 481; Báñez 1594, q. 63, art. 1, p. 281). It can also be seen as a vice (Zapata y Sandoval 1609, pars 1, cap. 5, no. 2, p. 68; vitium), a crime, or a misdeed (Soto 1553, pars 1, lib. 3, q. 6, art. 1, p. 250; crimen/delictum).

23 There are, however, cases where *acceptio personarum* is not a mortal sin but a venial one. This can occur when an act is insufficiently deliberate or not fully voluntary, or when the matter is trivial, such as when the difference in aptitude between two candidates is minimal, or when the issue itself is not significant, like a seating arrangement around a table. (Lessius 1605, lib. 2, sect. 5, cap. 32, dub. 1, no. 4, p. 373; Zapata y Sandoval 1609, pars 1, cap. 5, nos. 4-5, p. 69).

2.3 *Acceptio personarum* in political-juridical matters of distribution

2.3.1 *Acceptio personarum* in conferring ecclesiastical offices and benefices

24 Most Salamancan authors agree that electors can commit *acceptio personarum* in the distribution of benefices (Torres 1621, disp. 22, dub. 1, no. 2, col. 217; Vázquez 1621, tract. De Beneficiis, cap. 2, par. 3, no. 48, p. 482). An elector commits *acceptio personarum* when he chooses an unworthy candidate, as this choice violates commutative justice (towards the church) and distributive justice (towards the deserving candidate) (Soto 1553, pars 1, lib. 3, q. 6, art. 2, p. 254). An unworthy person is somebody unsuited to the office due to infamy, a sinful lifestyle, ignorance, ill-health, or other impediments that suggest he will not perform the office satisfactorily (Lessius

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1605, lib. 2, cap. 34, dub. 12, p. 395). Worthiness consists in being suitable and having the capacity, the required age, etc. (Lugo y Quiroga 1642, vol. 2, disp. 35, sect. 1, p. 521). It is not permissible to confer a benefice on an unworthy person if somebody worthy can be found. Clerics who elect an unworthy person are to be punished by being deprived of future election rights and suspended from their benefice for three years (Lessius 1605, lib. 2, cap. 34, dub. 12, p. 395). All heresies and evils in the church stem from unworthy individuals attaining benefices; thus, the overall good of the church depends on the proper election of ministers (Lessius 1605, lib. 2, cap. 34, dub. 14, p. 397).

- 25** In addition, the Salamanca authors discuss whether benefices that are communally funded must be conferred to the worthier candidate; whether the worthier candidate must always be chosen or whether it is sufficient to elect an adequate candidate; or whether the worthiest among several candidates must be elected (Vitoria 1934, q. 63, art. 2, no. 4, p. 234; Lessius 1605, lib. 2, cap. 34, dub. 13-14, pp. 396-399). Popes, bishops, and secular rulers are not the proprietors of the benefices but only the administrators; they therefore must promote the good of their divine master (Lessius 1605, lib. 2, cap. 34, dub. 14, p. 397). As a rule, benefices have to be given not only to a worthy candidate but to the worthier candidate (Lessius 1605, lib. 2, cap. 34, dub. 14, p. 396; Torres 1621, disp. 22, dub. 1, no. 1, col. 217). Doing otherwise qualifies as *acceptio personarum* and thus as a mortal sin (Torres 1621, disp. 22, dub. 1, no. 1, col. 217). In certain cases, however, it is sufficient to simply select a candidate who is worthy; for example, when the tasks associated with the office are not of great importance, which, however, is rarely the case (Torres 1621, disp. 22, dub. 1, no. 1, col. 217). It is permissible to overlook a worthier candidate when a lay patron presents someone worthy, even if the latter is from his own family (Lessius 1605, lib. 2, cap. 34, dub. 13, p. 396). When there are many electors among whom few are tending towards choosing the worthiest candidate, an elector can vote for a worthy candidate who has a higher probability of being elected than the worthiest one, in order to prevent an unworthy candidate from being chosen (Lessius 1605, lib. 2, cap. 34, dub. 13, p. 396).
- 26** *Acceptio personarum* in distributing spiritual goods, such as benefices, is a more grievous sin than in distributing temporal goods, like secular offices, because greater harm is done in spiritual matters (Vitoria 1934, q. 63, art. 2, no. 1, p. 232). One has to distinguish between the inherent worthiness of a person and his worthiness for a specific office (Vitoria 1934, q. 63, art. 2, no. 1, p. 232). The worthiest candidate is not necessarily the most erudite or pious person, but rather the one who, all things considered, will perform the office best and be of the greatest utility to the church (Lessius 1605, lib. 2, cap. 34, dub. 12, p. 395). When it comes to university chairs, according to positive law, the more erudite candidate must be elected; otherwise, it is considered a mortal sin. However, according to natural law, this would not be necessary (Vitoria 1934, q. 63, art. 2, no. 23, p. 250).
- 27** Those elected require the right character, and additional abilities such as knowledge, prudence, skill, and other mental qualities necessary for the administration of the office (Soto 1553, pars 1, lib. 3, q. 6, art. 2, p. 254). Salón discusses the necessary conditions for obtaining a benefice: an honest lifestyle, the required age, the necessary knowledge;

and whether a knowledge of theology or canon law is required for a bishop (Salón 1591, q. 63, art. 2, cols. 980-994). Toledo argues that it is unjust and an act of *acceptio personarum* to confer benefices on someone who does not know how to administer the office or who is unable to do so due to being occupied with other matters, even if they are learned or morally good (Toledo 1600, lib. V, cap. 78, fol. 437r).

- 28 If the chosen candidate is unworthy of the office, restitution is necessary, i.e. the unworthy candidate has to resign the office. Choosing an unworthy candidate constitutes an act against commutative justice—the obligation to hire qualified individuals (Lessius, lib. 2, cap. 32, dub. 3, no. 13, p. 374). According to canon law, the election of a worthy candidate is valid and cannot be annulled, and there is no need to pay restitution to the worthier candidate (Vitoria 1934, q. 63, art. 2, no. 26, p. 251; Soto 1553, pars 1, lib. 3, q. 6, art. 2, p. 254). According to Azpilcueta, restitution is obligatory only for the violation of a perfect right (*ius in re*), not for an imperfect right (*ius ad rem*) (Azpilcueta 1556, cap. 17, no. 69, p. 210). However, in the forum of conscience, the worthier candidate has to be elected, as argued by Aquinas, Alexander of Hales, Adrian, Maior, etc. (Soto 1553, pars 1, lib. 3, q. 6, art. 2, p. 254; Lessius 1605, lib. 2, cap. 34, dub. 14, p. 398).

2.3.2 *Acceptio personarum* in conferring secular offices

- 29 Similar to the discussion on benefices and ecclesiastical offices, the Salamancan authors explore whether it is sufficient for the ruler to choose worthy candidates for secular offices, or whether he has to appoint the worthier amongst the candidates. Furthermore, *acceptio personarum* does not only concern the ruler, but also those who have been granted potestas by the ruler (Lugo y Quiroga 1642, vol. 2, disp. 34, sect. 2, no. 9, p. 510). Most authors consider the appointment of unworthy persons to secular offices a mortal sin (Lessius 1605, lib. 2, cap. 32, dub. 3, no. 13, p. 374; Lugo y Quiroga 1642, vol. 2, disp. 34, sect. 2, no. 9, p. 510). Secular rulers are obligated by commutative justice to elect a worthy candidate and must make restitution if they have appointed an unworthy person (Torres 1621, disp. 23, dub. 1, no. 4, col. 233).
- 30 When it comes to electing the worthier candidate, there are two main positions. Most authors affirm that the worthier candidate must be appointed (Vitoria 1934, q. 63, art. 1, no. 2, p. 223; Soto 1553, pars 1, lib. 3, q. 6, art. 4, p. 267; Villalobos 1569, aer. com., lemma E, no. 42, fol. 54r; Aragón 1590, q. 63, art. 2, pp. 322-323; Salón 1591, q. 63, art. 2, contr. 9, cols. 1065-1066; Báñez 1594, q. 63, art. 2, p. 305; Lessius 1605, lib. 2, cap. 32, dub. 3, no. 15, p. 374; Pérez de Salamanca 1574, vol. 2, lib. 7, tit. 2, l. 22, p. 410; Torres 1621, disp. 23, dub. 1, no. 6, col. 233; Valencia 1603, disp. 5, qu. 7, punct. 2, par. 5, col. 1240). However, a minority argues that it is sufficient to elect a worthy candidate, even if there is a worthier one. In their view, distributive justice is not required when secular offices are conferred (Burgo de Paz; Cajetan 1525, verb. elect. sec. offic., fol. 54r, Vázquez 1621, tract. De Beneficiis, cap. 2, par. 3, dub. 13, pp. 490-491).
- 31 The first position considers secular offices as common goods of the republic (Soto 1553, pars 1, lib. 3, q. 6, art. 4, p. 267; Salón 1591, q. 63, art. 2, contr. 9, cols. 1065-1066; Báñez 1594, q. 63, art. 2, p. 305; Lessius 1605, lib. 2, cap. 32, dub. 2, no. 3, p. 373).

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As the ruler's power is derived from the republic, he is obliged to elect the worthier candidate (Báñez 1594, q. 63, art. 2, p. 305). Therefore, secular offices have to be conferred according to merit. For Salón, the king does not have absolute dominium over offices, but governmental dominium (Salón 1591, q. 63, art. 2, contr. 7, col. 1046). However, it is a common opinion that rulers who pass over worthier candidates to appoint worthy ones are not obliged to make restitution (Torres 1621, disp. 23, dub. 1, no. 3, fol. 233).

- 32 Representing the second position, Vázquez asserts that it is sufficient to choose a worthy candidate, even at the expense of a worthier one. If the king were able to govern the republic by himself, he ought to do so; but as he cannot, he has to appoint ministers. As Vázquez does not consider secular offices to be public goods, the ruler is not obliged to select the worthier candidate. Furthermore, Aquinas does not mention secular offices in STh II-IIae, q. 63 (Vázquez 1621, tract. De Beneficiis, cap. 2, par. 3, dub. 13, pp. 490-491).
- 33 Regarding the necessary qualities of candidates for secular offices, virtue is commonly considered more important than wealth. Soto demands not only moral integrity but also knowledge, prudence, skill, and above all strength of mind (Soto 1553, pars 1, lib. 3, q. 6, art. 4, p. 268). Báñez first rejects sinners and criminals, then demands that candidates be virtuous and industrious (Báñez 1594, q. 63, art. 2, p. 305). Lessius warns against atheist, politically calculating, ambitious, and greedy ministers, placing knowledge first, followed by fear of God, truthfulness, and hatred of avarice (Lessius 1605, lib. 2, cap. 32, dub. 3, no. 18, p. 375; see also Zapata y Sandoval 1609, pars 2, cap. 16, pp. 302-309). Birthplace and residency are generally considered decisive for ecclesiastical offices and municipal ranks (see below 2.4).
- 34 As an additional point, the Salamancan authors discuss the venality of offices. Generally, they reject this practice as immoral; if offices are sold, they advocate for specific restrictions, such as refraining from selling judicial offices, choosing buyers who are worthy or more deserving, and ensuring that offices are sold at a fair price (Soto 1553, pars 1, lib. 3, q. 6, art. 4, p. 268; Salón 1591, q. 63, art. 2, contr. 8, col. 1049; Lessius 1605, lib. 2, cap. 32, dub. 4, p. 376; Zapata y Sandoval 1609, pars 2, cap. 18, p. 328; Torres 1621, disp. 23, dub. 2, cols. 234-236; cf. Vázquez 1621, tract. De Beneficiis, cap. 2, par. 3, dub. 13-14, pp. 491-492).

2.3.3 Acceptio personarum in court decisions

- 35 Basic reference points for acceptio personarum in court decisions (iudicium) are Aquinas STh II-IIae, q. 63, art. 4, Proverbs 18:5 and Lev. 19:15, and VI.5 De reg. iur., 12: "In iudiciis non est acceptio personarum habenda" (Báñez 1594, q. 63, art. 4, p. 311; Torres 1621, disp. 24, dub. 2, col. 240).
- 36 The traditional link between acceptio personarum and court decisions raises the question of whether acceptio personarum is a sin opposed more to commutative justice than to distributive justice, as jurisdiction seems to pertain to commutative justice (Soto 1553, pars 1, lib. 3, q. 6, art. 5, p. 271; Torres 1621, disp. 24, dub. 2, no. 1, col. 240).

The Salamancan authors try to address this difficulty by describing court decisions as the distribution of right (Lessius 1605, lib. 2, cap. 32, dub. 2, p. 373). Consequently, the act of jurisdiction is carried out according to the form of distributive justice, as the judge makes his decision based on the merits of the parties' claims and of the proofs presented; thus, according to the right that each has, the judge takes from one party and grants to another (Salón 1591, q. 63, art. 4, col. 1079). Therefore, it is considered *acceptio personarum* when a judge takes from one party and gives to another without justification (Vitoria 1934, q. 63, art. 4, no. 1, p. 264). This includes favouring the poor (Vitoria 1934, q. 63, art. 3, no. 4, p. 265; Salón 1591, q. 63, art. 4, col. 1080).

- 37 Lugo y Quiroga, on the other hand, states that to pronounce judgment is not a proper act of distributive justice, because the judge does not distribute public goods, but of commutative justice, as the judge returns the private goods of a single person. In this case, therefore, *acceptio personarum* is opposed to commutative justice, but has the semblance of distributive justice, as the judge has to take the merits into account to find the true owner of the thing in question (Lugo y Quiroga 1642, vol. 2, disp. 34, sect. 1, no. 3, p. 508). Torres argues that the judge commits *acceptio personarum* against distributive justice when he neglects geometrical proportionality, and against commutative justice when he disregards arithmetic equality (Torres 1621, disp. 24, dub. 2, no. 5-6, col. 241).

2.3.4 *Acceptio personarum* in bestowing honour

- 38 Honour (honor) is a sign of virtue and serves as a reward for virtue and merit; one honours other persons because of their virtue or the virtue of the person they represent (Salón 1591, q. 63, art. 3, col. 1072; Báñez 1594, q. 63, art. 3, p. 308). Virtue should be honoured first, followed by the participation in the dignity of God (in those standing in God's place, like prelates or kings). Furthermore, nobles, parents and elders should be honoured; there is no favouritism in honouring them, because it is the cause itself, not the person, that receives the honour (Soto 1553, pars 1, lib. 3, q. 6, art. 6, p. 274; Báñez 1594, q. 63, art. 3, p. 308; Lessius 1605, lib. 2, cap. 32, dub. 2, p. 373).
- 39 If someone honours another person for reasons other than virtue, such as wealth, it is considered *acceptio personarum* (Vitoria 1934, q. 63, art. 3, no. 1, p. 261). More precisely, it is *acceptio personarum* when one honours the rich solely because of their wealth rather than their position in the community (Soto 1553, pars 1, lib. 3, q. 6, art. 6, p. 274; Salón 1591, q. 63, art. 2, contr. 7, col. 1043; Rodriguez 1595, cap. 6, pp. 9-10). Riches are not inherently good, but can be good depending on their use; wealth is an instrument for carrying out many human actions, it increases power and enables a life of dignity and superiority (Soto 1553, pars 1, lib. 3, q. 6, art. 6, p. 274; Lugo y Quiroga 1642, vol. 2, disp. 34, sect. 1, no. 7, p. 509). For Lugo y Quiroga, Jacob 2:1-10 does not condemn honouring the wealthy in general, but only if it is carried to excess or abused, for example when someone prefers a foolish or unjust rich person over a wise, holy, and admirable poor person; at the same time, the passage also condemns contempt for the poor (Lugo y Quiroga 1642, vol. 2, disp. 34, sect. 1, no. 8, p. 509).

40 If there is a single person to be honoured, it is a matter of respectfulness and commutative justice; it becomes a matter of distributive justice if there is more than one person deserving of honour, though it is not a proper act of distributive justice (Lessius 1605, lib. 2, cap. 32, dub. 2, p. 373; Torres 1621, disp. 24, dub. 1, no. 5-6, col. 237). To honour somebody more than another is not a mortal sin as long as the latter receives the honour due to him. In practice, one cannot honour one person more than another without injuring the latter (Vitoria 1934, q. 63, art. 3, no. 3, p. 262). Favouritism can also be found in matters of gratuitous honours (Vitoria 1934, q. 63, art. 3, no. 4, p. 263; Soto 1553, pars 1, lib. 3, q. 6, art. 6, p. 275; Salón 1591, q. 63, art. 3, contr. 1, col. 1077; Báñez 1594, q. 63, art. 3, p. 309).

2.3.5 Acceptio personarum in imposing taxes

41 Thomas de Vio Cajetan explicitly links burdens and distributive justice in his commentary on Aquinas' STh I–II, q. 96, art. 4. He discusses the concept of *acceptio personarum* and taxes (*tributum*) in other works (Cajetan 1525, verb. *Vectigalia*, fol. 225r). Vitoria follows Cajetan in this regard (Vitoria 1934, q. 63, art. 1, no. 8-23, pp. 227-232), as do Soto and many other authors of the School of Salamanca (Soto 1553, pars 1, lib. 3, q. 6, art. 7, p. 275; Lessius 1605, lib. 2, cap. 33, dub. 7, p. 384; Zapata y Sandoval 1609, pars 2, cap. 19, p. 339; Lugo y Quiroga 1642, vol. 2, disp. 36, p. 548).

42 *Acceptio personarum* can be found not only in the distribution of public goods, but also in the contributions to the common good (Soto 1553, pars 1, lib. 3, q. 6, art. 7, p. 275). Rulers are allowed to collect just and reasonable taxes, which subjects are obliged to pay. However, in the forum of conscience subjects are not obliged to pay unjust taxes (Vitoria 1934, q. 63, art. 1, nos. 8-9, pp. 227-228). For taxes to be just, they must be imposed by legitimate authorities for legitimate causes and adhere to the principle of proportional equality in distributive justice (Lessius 1605, lib. 2, cap. 33, dub. 1, no. 8, p. 378; Zapata y Sandoval 1609, pars 2, cap. 19, nos. 11-22, pp. 345-352).

43 The ruler commits *acceptio personarum* when he neglects the proportionality of taxes among his subjects (Lugo y Quiroga 1642, vol. 2, disp. 36, sect. 1, p. 548). Those with greater means should pay more, while those with less should pay less. This reflects formal equality, as opposed to material equality; the latter would result in severe inequality—akin to a child being required to carry the same weight as an adult man (Lugo y Quiroga 1642, vol. 2, disp. 36, sect. 2, no. 23, p. 553). Paradigmatically, this means that the poor should not carry a higher burden than the rich (Lessius 1605, lib. 2, cap. 33, dub. 1, p. 377). It would be unjust and contrary to civil and natural law if only the poor were required to pay taxes while the rich were exempt (Vitoria 1934, q. 63, art. 1, no. 18, p. 230). Everybody should be taxed according to their ability (*facultas*) and profits, and the poor have little ability to pay and no profits from business (Lessius 1605, lib. 2, cap. 33, dub. 7, p. 384; Zapata y Sandoval 1609, pars 2, cap. 19, no. 22, p. 352). In exceptional circumstances, such as in times of public necessity or with popular consent, heavy taxes on the poor are permissible (Lessius 1605, lib. 2, cap. 33, dub. 7, p. 384). At the other end of the social scale, the tax exemption of noblemen, who govern and sustain the republic, and of clergymen, who contribute to the common good

through their professions, is not considered favouritism (Vitoria 1934, q. 63, art. 1, no. 18, p. 230; Soto 1553, pars 1, lib. 3, q. 6, art. 7, p. 277; Zapata y Sandoval 1609, pars 2, cap. 20, no. 4, p. 355).

2.4 *Acceptio personarum* in the Indies

- 44 The concept of *acceptio personarum* is particularly significant in the development of church and state administration in the Indies. Favouritism by the Spaniards and discrimination against the indigenous population are seen as factors that weaken administrative efficiency, leading to corruption and ethnic separation, and hindering the acceptance of newly established structures.
- 45 Zapata y Sandoval gives a unique twist to the application of the concept in New Spain by focusing on the importance of the candidates' descent and homeland in the distribution of offices. Excluding indigenous candidates from offices because they are collectively regarded as neophytes (*neophytus*) is incorrect because, at a collective level, they have been converted for 90 years, while on an individual level, 10 years of conversion is sufficient for holding an office (Zapata y Sandoval 1609, pars 2, cap. 11, nos. 9-13, pp. 249-251). For bishops in the Indies, knowledge of indigenous languages is important to be able to properly care for the people. Furthermore, citizens of New Spain, i.e. both Creoles and Indigenous, should be preferred over Spaniards (Zapata y Sandoval 1609, pars 2, cap. 15, no. 11, p. 288). This preference is not to be seen as *acceptio personarum* but as a generally accepted rule in both church law (D.61 c.12; C.3 q.6 c.12 et c.13 et c.15) and Spanish law (Covarrubias 1571, vol. 3, cap. 35, no. 5, p. 214; López 1555, Part. II, tit. 11, l. 1, v. De los suyos, fol. 31v; López 1555, Part. II, tit. 181, l. 1, v. De fuera, fol. 54v), which states that candidates from the local community should be favoured over non-local candidates (Zapata y Sandoval 1609, pars 2, cap. 11, no. 16-17, p. 253).
- 46 Zapata also discusses the imposition of taxes in the Indies and criticizes the tax on the indigenous, known as the *tostón*, as being too high and disregarding the indigenous people's ability to pay (Zapata y Sandoval 1609, pars 2, cap. 21, no. 8, p. 365). The tax should be reduced to allow the indigenous people to flourish and to promote the common good of New Spain – and thus of the entire kingdom – through their work in the fields, mines, and transportation, rather than by paying excessively high taxes (Zapata y Sandoval 1609, pars 2, cap. 21, nos. 38-39, pp. 383-384).
- 47 Later authors use the term *acceptio personarum* less frequently. Solórzano Pereira refers to Zapata's work in passages arguing in favour of preferring indigenous candidates over foreign ones in conferring ecclesiastical benefices (Solórzano Pereira 1629, vol. 2, lib. 3, cap. 19, nos. 30 et 38, p. 847). However, he uses the term *acceptio personarum* only once, citing the principle that there is no favouritism with God (Solórzano Pereira 1629, vol. 2, lib. 3, cap. 19, no. 2, p. 843).
- 48 León Pinelo draws on the concept of *aceptación de personas* when discussing the distribution of *encomiendas* to the descendants of the conquistadors (León Pinelo 1630, cap. 14, no. 30, fol. 73r). He refutes the argument that there is no favouritism involved

in distributing encomiendas to both conquistadors and non-local persons, because it implies that these are not public goods (León Pinelo 1630, cap. 15, no. 3, fol. 75r). He argues that, according to the principles of distributive justice, those who served in the Indies are more deserving of receiving encomiendas than non-locals and should therefore be preferred over foreigners (León Pinelo 1630, cap. 15, no. 37, fol. 77r).

- 49 Moreno speaks of *acceptacion de personas* and *injunta acceptacion* with regard to judges in the Indies. He argues that an advisor has to make restitution if his advice was the cause of favouritism (Moreno 1637, pars 1, regla 1, fol. 3r). Those mocking or denouncing indigenous parties to the judge also cause *injunta acceptacion* (Moreno 1637, pars 1, regla 3, fol. 4v). Moreno reports that some judges in the Indies exhibit favouritism by allowing *corregidores* to avoid making restitution to indigenous parties simply because the *corregidor* is poor (Moreno 1637, pars 1, regla 25, fol. 43r).
- 50 Avendaño rarely uses the term *acceptio personarum*, but mentions it, for example, in the context of the elections of *alcaldes* (Avendaño 1668, vol. 6, pars 1, tit. 8, no. 1047, p. 366). Instead, he uses the term *respectus humanus* for what he considers a frequent occurrence in the Indies (Avendaño 1668, vol. 2, tit. 8, cap. 6, par. 3, no. 83, p. 175; Avendaño 1668, vol. 2, tit. 17, cap. 5, no. 33, p. 250; Avendaño 1668, vol. 2, tit. 19, cap. 1, no. 5, p. 295). Avendaño considers it a grave venial sin when senators choose a less worthy candidate as *alcalde* due to favouritism, because this act entails some injustice to the worthier candidate (Avendaño 1668, vol. 1, tit. 8, cap. 2, no. 12, p. 227).

3 Final remark

- 51 From the middle of the 17th century onwards, the term *acceptio personarum* no longer plays a significant role in early modern political debates. In the English-speaking context, the King James Bible (1604/11) translates the phrase as ‘respect of persons’. Thomas Hobbes in his *Leviathan* uses ‘acceptation of persons’ from John Wycliffe’s 14th-century translation, but dismisses the concept of distributive justice referring to merit; instead, he speaks of ‘equity’ and ‘partiality’ (Hobbes 1651, part 1, chap. 15, pp. 75-78). In the 19th century, there was an extensive theoretical debate among German-speaking jurists regarding partiality in court decisions, for which they used the Greek term ‘*prosopolepsia*’ instead of the Latin *acceptio personarum* (Hattenhauer 2009, 212-214).
- 52 The term and concept of *acceptio personarum* remains of interest in church politics and canon law. The term is still in use in CIC 1917 and 1983 (Gudenus 2012) with regard to the elections of church officials. Furthermore, modern moral philosophy continues to debate the problem of partiality, and contemporary theories of distributive justice continue to discuss the merit system (desertism) and the ability-to-pay principle.
- 53 There is a growing number of studies on *acceptio personarum* in the School of Salamanca. These include Reinhardt on the topic in general (Reinhardt 2016, 136-156), Forster on Domingo de Soto’s understanding of *acceptio personarum* (Forster 2013) and Bermejo on Bartolomé de Carranza’s (Bermejo 2014), as well as Garriga on the allocation of offices in the Indies (Garriga 2003). For an overview on Zapata’s work on distributive justice and *acceptio personarum*, see Quijano (Quijano 2017, 209-261).

The School of Salamanca. A Dictionary of its Juridical-Political Language.

Englard touches on the topic in his overview of late scholastic debates on distributive and commutative justice (Englard 2009, 27-42, 51, 84-90).

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