

SUPPLEMENT TO THE THIRD PART, QUESTION 52

Of the Impediment of the Condition of Slavery (In Four Articles)

We must now consider the impediment of the condition of slavery. Under this head there are four points of inquiry:

- (1) Whether the condition of slavery is an impediment to matrimony?
- (2) Whether a slave can marry without his master's consent?
- (3) Whether a man who is already married can make himself a slave without his wife's consent?
- (4) Whether the children should follow the condition of their father or of their mother?

Whether the condition of slavery is an impediment to matrimony?

Suppl. q. 52 a. 1

Objection 1. It would seem that the condition of slavery is no impediment to matrimony. For nothing is an impediment to marriage except what is in some way opposed to it. But slavery is in no way opposed to marriage, else there could be no marriage among slaves. Therefore slavery is no impediment to marriage.

Objection 2. Further, that which is contrary to nature cannot be an impediment to that which is according to nature. Now slavery is contrary to nature, for as Gregory says (Pastor. ii, 6), "it is contrary to nature for man to wish to lord it over another man"; and this is also evident from the fact that it was said of man (Gn. 1:26) that he should "have dominion over the fishes of the sea," but not that he should have dominion over man. Therefore it cannot be an impediment to marriage, which is a natural thing.

Objection 3. Further, if it is an impediment, this is either of natural law or of positive law. But it is not of natural law, since according to natural law all men are equal, as Gregory says (Pastor. ii, 6), while it is stated at the beginning of the Digests (Manumissiones, ff. de just. et jure.) that slavery is not of natural law; and positive law springs from the natural law, as Tully says (De Invent. ii). Therefore, according to law, slavery is not an impediment to any marriage.

Objection 4. Further, that which is an impediment to marriage is equally an impediment whether it be known or not, as in the case of consanguinity. Now the slavery of one party, if it be known to the other, is no impediment to their marriage. Therefore slavery, considered in itself, is unable to void a marriage; and consequently it should not be reckoned by itself as a distinct impediment to marriage.

Objection 5. Further, just as one may be in error about slavery, so as to deem a person free who is a slave, so may one be in error about freedom, so as to deem a person a slave whereas he is free. But freedom is not accounted an impediment to matrimony. Therefore neither should slavery be so accounted.

Objection 7. Further, leprosy is a greater burden to the fellowship of marriage and is a greater obstacle to the good of the offspring than slavery is. Yet leprosy is not reckoned an impediment to marriage. Therefore neither should slavery be so reckoned.

On the contrary, A Decretal says (De conjug. servorum, cap. Ad nostram) that "error regarding the condition hinders a marriage from being contracted and voids that which

is already contracted."

Further, marriage is one of the goods that are sought for their own sake, because it is qualified by honesty; whereas slavery is one of the things to be avoided for their own sake. Therefore marriage and slavery are contrary to one another; and consequently slavery is an impediment to matrimony.

I answer that, In the marriage contract one party is bound to the other in the matter of paying the debt; wherefore if one who thus binds himself is unable to pay the debt, ignorance of this inability, on the side of the party to whom he binds himself, voids the contract. Now just as impotence in respect of coition makes a person unable to pay the debt, so that he is altogether disabled, so slavery makes him unable to pay it freely. Therefore, just as ignorance or impotence in respect of coition is an impediment if not known but not if known, as we shall state further on (q. 58), so the condition of slavery is an impediment if not known, but not if it be known.

Reply to Objection 1. Slavery is contrary to marriage as regards the act to which marriage binds one party in relation to the other, because it prevents the free execution of that act; and again as regards the good of the offspring who become subject to the same condition by reason of the parent's slavery. Since, however, it is free to everyone to suffer detriment in that which is his due, if one of the parties knows the other to be a slave, the marriage is none the less valid. Likewise since in marriage there is an equal obligation on either side to pay the debt, neither party can exact of the other a greater obligation than that under which he lies; so that if a slave marry a bondswoman, thinking her to be free, the marriage is not thereby rendered invalid. It is therefore evident that slavery is no impediment to marriage except when it is unknown to the other party, even though the latter be in a condition of freedom; and so nothing prevents marriage between slaves, or even between a freeman and a bondswoman.

Reply to Objection 2. Nothing prevents a thing being against nature as to the first intention of nature, and yet not against nature as to its second intention. Thus, as stated in De Coelo, ii, all corruption, defect, and old age are contrary to nature, because nature intends being and perfection, and yet they are not contrary to the second intention of nature, because nature, through being unable to preserve being in one thing, preserves it in another which is engendered of the other's corruption. And when nature is unable to bring

a thing to a greater perfection it brings it to a lesser; thus when it cannot produce a male it produces a female which is “a misbegotten male” (De Gener. Animal. ii, 3). I say then in like manner that slavery is contrary to the first intention of nature. Yet it is not contrary to the second, because natural reason has this inclination, and nature has this desire—that everyone should be good; but from the fact that a person sins, nature has an inclination that he should be punished for his sin, and thus slavery was brought in as a punishment of sin. Nor is it unreasonable for a natural thing to be hindered by that which is unnatural in this way; for thus is marriage hindered by impotence of coition, which impotence is contrary to nature in the way mentioned.

Reply to Objection 3. The natural law requires punishment to be inflicted for guilt, and that no one should be punished who is not guilty; but the appointing of the punishment according to the circumstances of person and guilt belongs to positive law. Hence slavery which is a definite punishment is of positive law, and arises out of natural law, as the determinate from that which is indeterminate. And it arises from the determination of the same positive law that slavery if unknown is an impediment to matrimony, lest one who is not guilty be punished; for it is a punishment to the wife to have a slave for husband, and “vice versa.”

Reply to Objection 4. Certain impediments render a marriage unlawful; and since it is not our will that makes

a thing lawful or unlawful, but the law to which our will ought to be subject, it follows that the validity or invalidity of a marriage is not affected either by ignorance (such as destroys voluntariness) of the impediment or by knowledge thereof; and such an impediment is affinity or a vow, and others of the same kind. Other impediments, however, render a marriage ineffectual as to the payment of the debt; and since it is within the competency of our will to remit a debt that is due to us, it follows that such impediments, if known, do not invalidate a marriage, but only when ignorance of them destroys voluntariness. Such impediments are slavery and impotence of coition. And, because they have of themselves the nature of an impediment, they are reckoned as special impediments besides error; whereas a change of person is not reckoned a special impediment besides error, because the substitution of another person has not the nature of an impediment except by reason of the intention of one of the contracting parties.

Reply to Objection 5. Freedom does not hinder the marriage act, wherefore ignorance of freedom is no impediment to matrimony.

Reply to Objection 6. Leprosy does not hinder marriage as to its first act, since lepers can pay the debt freely; although they lay a burden upon marriage as to its secondary effects; wherefore it is not an impediment to marriage as slavery is.

Whether a slave can marry without his master's consent?

Suppl. q. 52 a. 2

Objection 1. It would seem that a slave cannot marry without his master's consent. For no one can give a person that which is another's without the latter's consent. Now a slave is his master's chattel. Therefore he cannot give his wife power over his body by marrying without his master's consent.

Objection 2. Further, a slave is bound to obey his master. But his master may command him not to consent to marry. Therefore he cannot marry without his consent.

Objection 3. Further, after marriage, a slave is bound even by a precept of the Divine law to pay the debt to his wife. But at the time that his wife asks for the debt his master may demand of him a service which he will be unable to perform if he wish to occupy himself in carnal intercourse. Therefore if a slave can marry without his master's consent, the latter would be deprived of a service due to him without any fault of his; and this ought not to be.

Objection 4. Further, a master may sell his slave into a foreign country, where the latter's wife is unable to follow him, through either bodily weakness, or imminent danger to her faith; for instance if he be sold to unbelievers, or if her master be unwilling, supposing her to be a bondswoman; and thus the marriage will be dissolved, which is unfitting. Therefore a slave cannot marry without his master's consent.

Objection 5. Further, the burden under which a man binds himself to the Divine service is more advantageous than that whereby a man subjects himself to his wife. But a slave cannot enter religion or receive orders without his master's consent. Much less therefore can he be married without

his consent.

On the contrary, “In Christ Jesus...there is neither bond nor free” (Gal. 3:26,28). Therefore both freeman and bondswoman enjoy the same liberty to marry in the faith of Christ Jesus.

Further, slavery is of positive law; whereas marriage is of natural and Divine law. Since then positive law is not prejudicial to the natural or the Divine law, it would seem that a slave can marry without his master's consent.

I answer that, As stated above (a. 1, ad 3), the positive law arises out of the natural law, and consequently slavery, which is of positive law, cannot be prejudicial to those things that are of natural law. Now just as nature seeks the preservation of the individual, so does it seek the preservation of the species by means of procreation; wherefore even as a slave is not so subject to his master as not to be at liberty to eat, sleep, and do such things as pertain to the needs of his body, and without which nature cannot be preserved, so he is not subject to him to the extent of being unable to marry freely, even without his master's knowledge or consent.

Reply to Objection 1. A slave is his master's chattel in matters superadded to nature, but in natural things all are equal. Wherefore, in things pertaining to natural acts, a slave can by marrying give another person power over his body without his master's consent.

Reply to Objection 2. A slave is bound to obey his master in those things which his master can command lawfully; and just as his master cannot lawfully command him not to eat or sleep, so neither can he lawfully command him to re-

frain from marrying. For it is the concern of the lawgiver how each one uses his own, and consequently if the master command his slave not to marry, the slave is not bound to obey his master.

Reply to Objection 3. If a slave has married with his master's consent, he should omit the service commanded by his master and pay the debt to his wife; because the master, by consenting to his slave's marriage, implicitly consented to all that marriage requires. If, however, the marriage was contracted without the master's knowledge or consent, he is not bound to pay the debt, but in preference to obey his master, if the two things are incompatible. Nevertheless in such matters there are many particulars to be considered, as in all human acts, namely the danger to which his wife's chastity is exposed, and the obstacle which the payment of the debt places in the way of the service commanded, and other like considerations, all of which being duly weighed it will be

possible to judge which of the two in preference the slave is bound to obey, his master or his wife.

Reply to Objection 4. In such a case it is said that the master should be compelled not to sell the slave in such a way as to increase the weight of the marriage burden, especially since he is able to obtain anywhere a just price for his slave.

Reply to Objection 5. By entering religion or receiving orders a man is bound to the Divine service for all time; whereas a husband is bound to pay the debt to his wife not always, but at a fitting time; hence the comparison fails. Moreover, he who enters religion or receives orders binds himself to works that are superadded to natural works, and in which his master has power over him, but not in natural works to which a man binds himself by marriage. Hence he cannot vow continence without his master's consent.

Whether slavery can supervene to marriage?

Suppl. q. 52 a. 3

Objection 1. It would seem that slavery cannot supervene to marriage, by the husband selling himself to another as slave. Because what is done by fraud and to another's detriment should not hold. But a husband who sells himself for a slave, does so sometimes to cheat marriage, and at least to the detriment of his wife. Therefore such a sale should not hold as to the effect of slavery.

Objection 2. Further, two favorable things outweigh one that is not favorable. Now marriage and freedom are favorable things and are contrary to slavery, which in law is not a favorable thing. Therefore such a slavery ought to be entirely annulled in marriage.

Objection 3. Further, in marriage husband and wife are on a par with one another. Now the wife cannot surrender herself to be a slave without her husband's consent. Therefore neither can the husband without his wife's consent.

Objection 4. Further, in natural things that which hinders a thing being generated destroys it after it has been generated. Now bondage of the husband, if unknown to the wife, is an impediment to the act of marriage before it is performed. Therefore if it could supervene to marriage it would dissolve it; which is unreasonable.

On the contrary, Everyone can give another that which is his own. Now the husband is his own master since he is free. Therefore he can surrender his right to another.

Further, a slave can marry without his master's consent, as stated above (a. 2). Therefore a husband can in like manner subject himself to a master, without his wife's consent.

I answer that, A husband is subject to his wife in those things which pertain to the act of nature; in these things they are equal, and the subjection of slavery does not extend thereto. Wherefore the husband, without his wife's knowledge, can surrender himself to be another's slave. Nor does

this result in a dissolution of the marriage, since no impediment supervening to marriage can dissolve it, as stated above (q. 50, a. 1, ad 7).

Reply to Objection 1. The fraud can indeed hurt the person who has acted fraudulently, but it cannot be prejudicial to another person: wherefore if the husband, to cheat his wife, surrender himself to be another's slave, it will be to his own prejudice, through his losing the inestimable good of freedom; whereas this can nowise be prejudicial to the wife, and he is bound to pay her the debt when she asks, and to do all that marriage requires of him for he cannot be taken away from these obligations by his master's command.

Reply to Objection 2. In so far as slavery is opposed to marriage, marriage is prejudicial to slavery, since the slave is bound then to pay the debt to his wife, though his master be unwilling.

Reply to Objection 3. Although husband and wife are considered to be on a par in the marriage act and in things relating to nature, to which the condition of slavery does not extend, nevertheless as regards the management of the household, and other such additional matters the husband is the head of the wife and should correct her, and not "vice versa." Hence the wife cannot surrender herself to be a slave without her husband's consent.

Reply to Objection 4. This argument considers corruptible things; and yet even in these there are many obstacles to generation that are not capable of destroying what is already generated. But in things which have stability it is possible to have an impediment which prevents a certain thing from beginning to be, yet does not cause it to cease to be; as instanced by the rational soul. It is the same with marriage, which is a lasting tie so long as this life lasts.

Objection 1. It would seem that children should follow the condition of their father. Because dominion belongs to those of higher rank. Now in generation the father ranks above the mother. Therefore, etc.

Objection 2. Further, the being of a thing depends on the form more than on the matter. Now in generation the father gives the form, and the mother the matter (De Gener. Animal. ii, 4). Therefore the child should follow the condition of the father rather than of the mother.

Objection 3. Further, a thing should follow that chiefly to which it is most like. Now the son is more like the father than the mother, even as the daughter is more like the mother. Therefore at least the son should follow the father in preference, and the daughter the mother.

Objection 4. Further, in Holy Writ genealogies are not traced through the women but through the men. Therefore the children follow the father rather than the mother.

On the contrary, If a man sows on another's land, the produce belongs to the owner of the land. Now the woman's womb in relation to the seed of man is like the land in relation to the sower. Therefore, etc.

Further, we observe that in animals born from different species the offspring follows the mother rather than the father, wherefore mules born of a mare and an ass are more like mares than those born of a she-ass and a horse. Therefore it should be the same with men.

I answer that, According to civil law (XIX, ff. De statu hom. vii, cap. De rei vendit.) the offspring follows the womb: and this is reasonable since the offspring derives its formal complement from the father, but the substance of the body from the mother. Now slavery is a condition of the body, since a slave is to the master a kind of instrument in working; wherefore children follow the mother in freedom and bondage; whereas in matters pertaining to dignity as proceeding from a thing's form, they follow the father, for instance in honors, franchise, inheritance and so forth. The canons are in agreement with this (cap. Liberi, 32, qu. iv, in

gloss.: cap. Inducens, De natis ex libero ventre) as also the law of Moses (Ex. 21).

In some countries, however, where the civil law does not hold, the offspring follows the inferior condition, so that if the father be a slave the children will be slaves although the mother be free; but not if the father gave himself up as a slave after his marriage and without his wife's consent; and the same applies if the case be reversed. And if both be of servile condition and belong to different masters, the children, if several, are divided among the latter, or if one only, the one master will compensate the other in value and will take the child thus born for his slave. However it is incredible that this custom have as much reason in its favor as the decision of the time-honored deliberations of many wise men. Moreover in natural things it is the rule that what is received is in the recipient according to the mode of the recipient and not according to the mode of the giver; wherefore it is reasonable that the seed received by the mother should be drawn to her condition.

Reply to Objection 1. Although the father is a more noble principle than the mother, nevertheless the mother provides the substance of the body, and it is to this that the condition of slavery attaches.

Reply to Objection 2. As regards things pertaining to the specific nature the son is like the father rather than the mother, but in material conditions should be like the mother rather than the father, since a thing has its specific being from its form, but material conditions from matter.

Reply to Objection 3. The son is like the father in respect of the form which is his, and also the father's, complement. Hence the argument is not to the point.

Reply to Objection 4. It is because the son derives honor from his father rather than from his mother that in the genealogies of Scripture, and according to common custom, children are named after their father rather than from their mother. But in matters relating to slavery they follow the mother by preference.