

SUPPLEMENT TO THE THIRD PART, QUESTION 57

Of Legal Relationship, Which Is by Adoption (In Three Articles)

We must now consider legal relationship which is by adoption. Under this head there are three points of inquiry:

- (1) What is adoption?
- (2) Whether one contracts through it a tie that is an impediment to marriage?
- (3) Between which persons is this tie contracted.

Whether adoption is rightly defined?

Suppl. q. 57 a. 1

Objection 1. It would seem that adoption is not rightly defined: "Adoption is the act by which a person lawfully takes for his child or grandchild and so on one who does not belong to him." For the child should be subject to its father. Now, sometimes the person adopted does not come under the power of the adopter. Therefore adoption is not always the taking of someone as a child.

Objection 2. Further, "Parents should lay up for their children" (2 Cor. 12:14). But the adoptive father does not always necessarily lay up for his adopted child, since sometimes the adopted does not inherit the goods of the adopter. Therefore adoption is not the taking of someone as a child.

Objection 3. Further, adoption, whereby someone is taken as a child, is likened to natural procreation whereby a child is begotten naturally. Therefore whoever is competent to beget a child naturally is competent to adopt. But this is untrue, since neither one who is not his own master, nor one who is not twenty-five years of age, nor a woman can adopt, and yet they can beget a child naturally. Therefore, properly speaking, adoption is not the taking of someone as a child.

Objection 4. Further, to take as one's child one who is not one's own seems necessary in order to supply the lack of children begotten naturally. Now one who is unable to beget, through being a eunuch or impotent, suffers especially from the absence of children of his own begetting. Therefore he is especially competent to adopt someone as his child. But he is not competent to adopt. Therefore adoption is not the taking of someone as one's child.

Objection 5. Further, in spiritual relationship, where someone is taken as a child without carnal procreation, it is of no consequence whether an older person become the father of a younger, or "vice versa," since a youth can baptize an old man and "vice versa." Therefore, if by adoption a person is taken as a child without being carnally begotten, it would make no difference whether an older person adopted a younger, or a younger an older person; which is not true. Therefore the same conclusion follows.

Objection 6. Further, there is no difference of degree between adopted and adopter. Therefore whoever is adopted, is adopted as a child; and consequently it is not right to say that one may be adopted as a grandchild.

Objection 7. Further, adoption is a result of love, wherefore God is said to have adopted us as children through charity. Now we should have greater charity towards those who are connected with us than towards strangers. Therefore adoption should be not of a stranger but of someone connected with us.

I answer that, Art imitates nature and supplies the defect of nature where nature is deficient. Hence just as a man begets by natural procreation, so by positive law which is the art of what is good and just, one person can take to himself another as a child in likeness to one that is his child by nature, in order to take the place of the children he has lost, this being the chief reason why adoption was introduced. And since taking implies a term "wherefrom," for which reason the taker is not the thing taken, it follows that the person taken as a child must be a stranger. Accordingly, just as natural procreation has a term "whereto," namely the form which is the end of generation, and a term "wherefrom," namely the contrary form, so legal generation has a term "whereto," namely a child or grandchild, and a term "wherefrom," namely, a stranger. Consequently the above definition includes the genus of adoption, for it is described as a "lawful taking," and the term "wherefrom," since it is said to be the taking of "a stranger," and the term "whereto," because it says, "as a child or grandchild."

Reply to Objection 1. The sonship of adoption is an imitation of natural sonship. Wherefore there are two species of adoption, one which imitates natural sonship perfectly, and this is called "arrogatio," whereby the person adopted is placed under the power of the adopter; and one who is thus adopted inherits from his adopted father if the latter die intestate, nor can his father legally deprive him of a fourth part of his inheritance. But no one can adopt in this way except one who is his own master, one namely who has no father or, if he has, is of age. There can be no adoption of this kind without the authority of the sovereign. The other kind of adoption imitates natural sonship imperfectly, and is called "simple adoption," and by this the adopted does not come under the power of the adopter: so that it is a disposition to perfect adoption, rather than perfect adoption itself. In this way even one who is not his own master can adopt, without the consent of the sovereign and with the authority of a magistrate: and one who is thus adopted does not inherit the estate of the adopter, nor is the

latter bound to bequeath to him any of his goods in his will, unless he will.

This suffices for the Reply to the Second Objection.

Reply to Objection 3. Natural procreation is directed to the production of the species; wherefore anyone in whom the specific nature is not hindered is competent to be able to beget naturally. But adoption is directed to hereditary succession, wherefore those alone are competent to adopt who have the power to dispose of their estate. Consequently one who is not his own master, or who is less than twenty-five years of age, or a woman, cannot adopt anyone, except by special permission of the sovereign.

Reply to Objection 4. An inheritance cannot pass to posterity through one who has a perpetual impediment from begetting: hence for this very reason it ought to pass to those who ought to succeed to him by right of relationship; and consequently he cannot adopt, as neither can he beget. Moreover greater is sorrow for children lost than for children one has never had. Wherefore those who are impeded from begetting need no solace for their lack of children as those who have had and have lost them, or could have had them but have them not by reason of some accidental impediment.

Reply to Objection 5. Spiritual relationship is contracted

through a sacrament whereby the faithful are born again in Christ, in Whom there is no difference between male and female, bondman and free, youth and old age (Gal. 3:28; Col. 3:11). Wherefore anyone can indifferently become another's godfather. But adoption aims at hereditary succession and a certain subjection of the adopted to the adopter: and it is not fitting that older persons should be subjected to younger in the care of the household. Consequently a younger person cannot adopt an older; but according to law the adopted person must be so much younger than the adopter, that he might have been the child of his natural begetting.

Reply to Objection 6. One may lose one's grandchildren and so forth even as one may lose one's children. Wherefore since adoption was introduced as a solace for children lost, just as someone may be adopted in place of a child, so may someone be adopted in place of a grandchild and so on.

Reply to Objection 7. A relative ought to succeed by right of relationship; and therefore such a person is not competent to be chosen to succeed by adoption. And if a relative, who is not competent to inherit the estate, be adopted, he is adopted not as a relative, but as a stranger lacking the right of succeeding to the adopter's goods.

Whether a tie that is an impediment to marriage is contracted through adoption?

Suppl. q. 57 a. 2

Objection 1. It would seem that there is not contracted through adoption a tie that is an impediment to marriage. For spiritual care is more excellent than corporeal care. But no tie of relationship is contracted through one's being subjected to another's spiritual care: else all those who dwell in the parish would be related to the parish priest and would be unable to marry his son. Neither therefore can this result from adoption which places the adopted under the care of the adopter.

Objection 2. Further, no tie of relationship results from persons conferring a benefit on another. But adoption is nothing but the conferring of a benefit. Therefore no tie of relationship results from adoption.

Objection 3. Further, a natural father provides for his child chiefly in three things, as the Philosopher states (Ethic. viii, 11,12), namely by giving him being, nourishment and education; and hereditary succession is subsequent to these. Now no tie of relationship is contracted by one's providing for a person's nourishment and education, else a person would be related to his nourishers, tutors and masters, which is false. Therefore neither is any relationship contracted through adoption by which one inherits another's estate.

Objection 4. Further, the sacraments of the Church are not subject to human laws. Now marriage is a sacrament of the Church. Since then adoption was introduced by human law, it would seem that a tie contracted from adoption cannot be an impediment to marriage.

On the contrary, Relationship is an impediment to marriage. Now a kind of relationship results from adoption, namely legal relationship, as evidenced by its definition, for "legal relationship is a connection arising out of adoption." Therefore adoption results in a tie which is an impediment to marriage.

Further, the same is proved by the authorities quoted in the text (Sent. iv, D, 42).

I answer that, The Divine law especially forbids marriage between those persons who have to live together lest, as Rabbi Moses observes (Doc. Perp. iii, 49), if it were lawful for them to have carnal intercourse, there should be more room for concupiscence to the repression of which marriage is directed. And since the adopted child dwells in the house of his adopted father like one that is begotten naturally human laws forbid the contracting of marriage between the like, and this prohibition is approved by the Church. Hence it is that legal adoption is an impediment to marriage. This suffices for the Replies to the first three Objections, because none of those things entails such a cohabitation as might be an incentive to concupiscence. Therefore they do not cause a relationship that is an impediment to marriage.

Reply to Objection 4. The prohibition of a human law would not suffice to make an impediment to marriage, unless the authority of the Church intervenes by issuing the same prohibition.

Objection 1. It would seem that a relationship of this kind is contracted only between the adopting father and the adopted child. For it would seem that it ought above all to be contracted between the adopting father and the natural mother of the adopted, as happens in spiritual relationship. Yet there is no legal relationship between them. Therefore it is not contracted between any other persons besides the adopter and adopted.

Objection 2. Further, the relationship that impedes marriage is a perpetual impediment. But there is not a perpetual impediment between the adopted son and the naturally begotten daughter of the adopted; because when the adoption terminates at the death of the adopter, or when the adopted comes of age, the latter can marry her. Therefore he was not related to her in such a way as to prevent him from marrying her.

Objection 3. Further, spiritual relationship passes to no person incapable of being a god-parent; wherefore it does not pass to one who is not baptized. Now a woman cannot adopt, as stated above (a. 1, ad 2). Therefore legal relationship does not pass from husband to wife.

Objection 4. Further, spiritual relationship is stronger than legal. But spiritual relationship does not pass to a grandchild. Neither, therefore, does legal relationship.

On the contrary, Legal relationship is more in agreement with carnal union or procreation than spiritual relationship is. But spiritual relationship passes to another person. Therefore legal relationship does so also.

Further, the same is proved by the authorities quoted in the text (Sent. iv, D, 42).

I answer that, Legal relationship is of three kinds. The first is in the descending order as it were, and is contracted between the adoptive father and the adopted child, the latter's child grandchild and so on; the second is between the adopted child and the naturally begotten child; the third is like a kind

of affinity, and is between the adoptive father and the wife of the adopted son, or contrariwise between the adopted son and the wife of the adoptive father. Accordingly the first and third relationships are perpetual impediments to marriage: but the second is not, but only so long as the adopted person remains under the power of the adoptive father, wherefore when the father dies or when the child comes of age, they can be married.

Reply to Objection 1. By spiritual generation the son is not withdrawn from the father's power, as in the case of adoption, so that the godson remains the son of both at the same time, whereas the adopted son does not. Hence no relationship is contracted between the adoptive father and the natural mother or father, as was the case in spiritual relationship.

Reply to Objection 2. Legal relationship is an impediment to marriage on account of the parties dwelling together: hence when the need for dwelling together ceases, it is not unreasonable that the aforesaid tie cease, for instance when he ceases to be under the power of the same father. But the adoptive father and his wife always retain a certain authority over their adopted son and his wife, wherefore the tie between them remains.

Reply to Objection 3. Even a woman can adopt by permission of the sovereign, wherefore legal relationship passes also to her. Moreover the reason why spiritual relationship does not pass to a non-baptized person is not because such a person cannot be a god-parent but because he is not a fit subject of spirituality.

Reply to Objection 4. By spiritual relationship the son is not placed under the power and care of the godfather, as in legal relationship: because it is necessary that whatever is in the son's power pass under the power of the adoptive father. Wherefore if a father be adopted the children and grandchildren who are in the power of the person adopted are adopted also.