

34. PECCATUM SERVITUTIS

(Ordinatio IV, dist. 36, q. 1)

Circa istam distinctionem trigesimam sextam quaero utrum servitus impediatur matrimonium.

[Argumenta Pro et Contra]

Quod non:

Nullus debet dari alienum; sed corpus servi est domini ipsius, secundum Philosophum III *Politicorum* [cc. 3–6].

Item, favorabilior est professio religionis quam matrimonium carnale; sed servus non potest profiteri religionem sine voluntate domini; ergo nec matrimonium contrahere.

Oppositum:

“Extra de coniugio servorum,” cap. 1 [Decretales IV, titulus 9 dicit: “. . . nec inter servos matrimonia debent ullatenus prohiberi. Et, si contradicentibus dominis et invitis contracta fuerint, nulla ratione sunt propter hoc ecclesiastico iudicio dissolvenda; debita tamen et consueta servitia non minus debent propriis dominis exhiberi”].

[Corpus Quaestionis]

Hic duo sunt videnda: primo unde inducta est servitus, et si iuste inducta; secundo ad propositum.

[Articulus 1: Quomodo Servitus Inducta Est]

De primo dicitur quod de lege naturae omnes nascuntur liberi; tamen servitus vel magis proprie filialis ad patrem est magis de lege naturae, puta obedientia filialis pertinens ad disciplinam, quia secundum Philosophum VIII *Ethicorum* [c. 12, 1162a6–8]: “Filius habet a patre esse et disciplinam.”

Ista servitus de qua loquimur, secundum quam dominus potest vendere suum servum, sicut pecudem, est de qua loquitur Aristoteles I *Politicorum* [c. 4, 1254a11–17], quia servus non potest exercere actus virtutis, pro eo quod oportet eum ad praeceptum domini exercere actus serviles. {Additio: Et haec servitus est ut aliquis sit totius alterius iuris, et haec non est ad bonum servi sed ad malum, et ista servitus est de qua dicit Aristoteles quod servus est sicut instrumentum inanimatum, nec potest esse bonus et virtuosus; illa servitus non est ad bonum servi, sed ad malum, ut dictum est ideo dicit Apostolus [I Cor. 7:22–23; Gal. 5:14], liberi sciti estis, nolite servitute esse subiecti, etc.} Ista autem non est inducta nisi aliqua lege positiva.

34. THE SIN OF ENSLAVEMENT

Regarding this thirty-sixth distinction [of Bk. IV] I ask: Does slavery impede matrimony?

[Arguments Pro and Con]

That it can:

No one can give what belongs to another; but the body of the slave belongs to the master, according to the Philosopher in III *Ethics*, chs. 3–6 [passim].

Furthermore, religious profession is more pleasing than carnal marriage; but a slave cannot make religious profession against the will of his master; neither, then, can he contract marriage.

To the contrary:

The canon “Dignum est” entitled “The Marriage of Slaves,” [Decretales Gregorii IX IV, tit. 9, c. 1, states that “marriage among slaves shall in no way be prohibited. And if they shall have contracted marriage against the will and objections of their masters, on no grounds is this to be dissolved by an ecclesiastical court, but they are no less bound to render their own masters their due and customary service”].

[Body of the Question]

Here there are two points to be investigated: [1] How did slavery originate and was it introduced justly? [2] Does it impede marriage?

[Article 1: The Origins of Slavery]

As for the first, it is said that by the law of nature all are born free. However, servitude or, more properly, filial subjection to the father pertains to the law of nature, for instance, filial obedience pertaining to education. For according to the Philosopher in Bk. VIII of the *Ethics*: “The son has existence and education from the father.”

But the slavery about which we are talking is that described by the Philosopher in Bk. I of the *Politics*, according to which the master can sell the slave like an animal, for he cannot exercise acts of manly excellence, since he has to perform servile actions at the command of his master. {Addition: And this servitude or enslavement is such that an individual loses all his legal rights to another person, which is something not to the good of the slave, but to his detriment, and this slavery is what Aristotle talks about when he says a slave is like an inanimate instrument, neither can he be good or virtuous. This kind of slavery, as we said, is not good but bad for the slave, and therefore the Apostle says: “Know that you are free and do not make yourself subject to any man.”} This sort of slavery is introduced only by positive law.

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