

SUPPLEMENT TO THE THIRD PART, QUESTION 68

Of Illegitimate Children (In Three Articles)

We must now consider children of illegitimate birth. Under this head there are three points of inquiry:

- (1) Whether those born out of true marriage are illegitimate?
- (2) Whether children should suffer any loss through being illegitimate?
- (3) Whether they can be legitimized?

Whether children born out of true marriage are illegitimate?

Suppl. q. 68 a. 1

Objection 1. It would seem that children born out of true marriage are legitimate. For he that is born according to law is called a legitimate son. Now everyone is born according to law, at least the law of nature, which has more force than any other. Therefore every child is to be called legitimate.

Objection 2. Further, it is the common saying that a legitimate child is one born of a legitimate marriage, or of a marriage that is deemed legitimate in the eyes of the Church. Now it happens sometimes that a marriage is deemed legitimate in the eyes of the Church, whereas there is some impediment affecting its validity; which impediment may be known to the parties who marry in the presence of the Church: or they may marry in secret and be ignorant of the impediment, in which case their marriage would seem legitimate in the eyes of the Church, for the very reason that it is not prevented by the Church. Therefore children born out of true marriage are not illegitimate.

On the contrary, Illegitimate is that which is against the law. Now those who are born out of wedlock are born contrary to the law. Therefore they are illegitimate.

I answer that, Children are of four conditions. Some are natural and legitimate, for instance those who are born of a true and lawful marriage; some are natural and ille-

gitimate, as those who are born of fornication; some are legitimate and not natural, as adopted children; some are neither legitimate nor natural; such are those born of adultery or incest, for these are born not only against the positive law, but against the express natural law. Hence we must grant that some children are illegitimate.

Reply to Objection 1. Although those who are born of an unlawful intercourse are born according to the nature common to man and all animals, they are born contrary to the law of nature which is proper to man: since fornication, adultery, and the like are contrary to the law of nature. Hence the like are not legitimate by any law.

Reply to Objection 2. Ignorance, unless it be affected, excuses unlawful intercourse from sin. Wherefore those who contract together in good faith in the presence of the Church, although there be an impediment, of which however they are ignorant, sin not, nor are their children illegitimate. If, however, they know of the impediment, although the Church upholds their marriage because she knows not of the impediment, they are not excused from sin, nor do their children avoid being illegitimate. Neither are they excused if they know not of the impediment and marry secretly, because such ignorance would appear to be affected.

Whether children should suffer any loss through being illegitimate?

Suppl. q. 68 a. 2

Objection 1. It would seem that children ought not to suffer any loss through being illegitimate. For a child should not be punished on account of his father's sin, according to the Lord's saying (Ezech. 18:20). But it is not his own but his father's fault that he is born of an unlawful union. Therefore he should not incur a loss on this account.

Objection 2. Further, human justice is copied from Divine. Now God confers natural goods equally on legitimate and illegitimate children. Therefore illegitimate should be equalled to legitimate children according to human laws.

On the contrary, It is stated (Gn. 25:5,6) that "Abraham gave all his possessions to Isaac, and that to the children of the concubines he gave gifts": and yet the latter were not born of an unlawful intercourse. Much more, therefore, ought those born of an unlawful intercourse to incur loss by not inheriting their father's property.

I answer that, A person is said to incur a loss for some cause in two ways: First, because he is deprived of his due, and thus an illegitimate child incurs no loss. Secondly, because something is not due to him, which might have been due otherwise, and thus an illegitimate son incurs a twofold loss. First because he is excluded from le-

gitimate acts such as offices and dignities, which require a certain respectability in those who perform them. Secondly, he incurs a loss by not succeeding to his father's inheritance. Nevertheless natural sons can inherit a sixth only, whereas spurious children cannot inherit any portion, although by natural law their parents are bound to provide for their needs. Hence it is part of a bishop's care to compel both parents to provide for them.

Reply to Objection 1. To incur a loss in this second way is not a punishment. Hence we do not say that a per-

son is punished by not succeeding to the throne through not being the king's son. In like manner it is no punishment to an illegitimate child that he has no right to that which belongs to the legitimate children.

Reply to Objection 2. Illegitimate intercourse is contrary to the law, not as an act of the generative power, but as proceeding from a wicked will. Hence an illegitimate son incurs a loss, not in those things which come to him by his natural origin, but in those things which are dependent on the will for being done or possessed.

Whether an illegitimate son can be legitimized?

Suppl. q. 68 a. 3

Objection 1. It would seem that an illegitimate son cannot be legitimized. For the legitimate child is as far removed from the illegitimate as the illegitimate from the legitimate. But a legitimate child is never made illegitimate. Neither, therefore, is an illegitimate child ever made legitimate.

Objection 2. Further, illegitimate intercourse begets an illegitimate child. But illegitimate intercourse never becomes legitimate. Neither, therefore, can an illegitimate son become legitimate.

On the contrary, What is done by the law can be undone by the law. Now the illegitimacy of children is an effect of positive law. Therefore an illegitimate child can be legitimized by one who has legal authority.

I answer that, An illegitimate child can be legitimized, not so that he be born of a legitimate intercourse, because this intercourse is a thing of the past and can never be legitimized from the moment that it was once illegitimate. But the child is said to be legitimized, in so far as the losses which an illegitimate child ought to incur are withdrawn by the authority of the law.

There are six ways of becoming legitimate: two according to the canons (Cap. Conquestus; Cap. Tanta), namely when a man marries the woman of whom he has

an unlawful child (if it were not a case of adultery), and by special indulgence and dispensation of the lord Pope. The other four ways are according to the laws: (1) If the father offer his natural son to the emperor's court, for by this very fact the son is legitimate on account of the reputation of the court; (2) if the father designate him in his will as his legitimate heir, and the son afterwards offer the will to the emperor; (3) if there be no legitimate son and the son himself offer himself to the emperor; (4) if the father designate him as legitimate in a public document or in a document signed by three witnesses, without calling him natural.

Reply to Objection 1. A favor may be bestowed on a person without injustice, but a person cannot be damnified except for a fault. Hence an illegitimate child can be legitimized rather than "vice versa"; for although a legitimate son is sometimes deprived of his inheritance on account of his fault, he is not said to be illegitimate, because he was legitimately begotten.

Reply to Objection 2. Illegitimate intercourse has an inherent inseparable defect whereby it is opposed to the law: and consequently it cannot be legitimized. Nor is there any comparison with an illegitimate child who has no such defect.