Acknowledgment

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John Duns Scotus

On Bigamy

Ordinatio IV distinction 33 q. 1
Latin text and English translation

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Contents

[Utrum aliquando licita fuerit bigamia]

1 Circa istam distinctionem trigesimam tertiam quaero primo de bigamia, secundo de repudiatione uxoris.[1] Quantum ad primum quaero quantum ad legem mosaicam vel naturam, utrum aliquando licita fuerit bigamia, sive utrum licitum fuerit patribus antiquis habere simul plures uxores matrimonio sibi unitas.

Ad primum arguitur quod non:

Quia bigamia est contra legem naturae et contra primam institutionem matrimonii. Quod probatur: tum ex illo dicto Genesis 2: "Erunt duo in carne una", ubi expressit legem naturae de matrimonio.[2] Ergo, non licet nec licuit habere plures. Tum ex glossa quadam interlineari, Genesis 4 de Lamech, qui accepit duas uxores, ubi habetur, quod iste primus induxit bigamiam – et contra legem naturae.[3]

2 Item, biviria – ut ita loquar – numquam licuit, ut scilicet mulier duos viros haberet; ergo, nec e converso. Consequentia probatur quia actus coniugales aequales iudicantur – I ad Corinthios 7.[4]

3 Ad oppositum:

Genesis 16: Abraham habuit Saram, Agar et Cethuram; et de Iacob (29 et 30), qui habuit duas uxores, et de David (Regum 2), qui multas habet uxores et concubinas.[5] Non est autem probabile quod isti sancti patres in tali copula fecerint aliquid illicitum. Ergo, etc.

4 Item, ad hoc est A u g u s t i n u s , *De bono coniugali* versus finem: "Antiquis iustis non fuit peccatum quod pluribus feminis utebantur. Neque contra naturam faciebant hoc, cum causa gignendi hoc facerent, neque contra legem, neque contra morem, quia illo tempore nulla lege erat prohibitum."[6]

[I. – Ad Quaestionem]

5 Hic primo videndum est, quid requiritur ad strictam iustitiam commutativam in contractu matrimoniali, et hoc ex parte

[Has bigamy ever been allowed?]

With regard to the thirty-third distinction, I first raise a question about bigamy, and, second, about repudiating one's wife.[1] On the first issue I ask whether bigamy has ever been allowed according to the Mosaic law or the law of nature, or whether the old patriarchs had ever been allowed to have several wives, at the same time united with them by the bond of matrimony. 1

As to the first issue it is argued that it is not the case:

Bigamy is against the law of nature and against the first institution of matrimony. This is proved as follows: on the basis of what is said in Genesis 2: "The two will be in one flesh", where this expresses the law of nature about matrimony.[2] Therefore, to have several wives is neither allowed, nor was it allowed. Moreover, on the basis of a certain interlinear gloss on Genesis 4 about Lamech who took two wives. There it is stated that he was the first to introduce bigamy and doing so was against the law of nature.[3]

Likewise, bigamy so that a woman would have two husbands – `biviry,' so to speak – was never allowed. Therefore, the opposite is not allowed either. The inference is proved, for coniugal acts are considered to be equal. See I Corinthians 7.[4] 2

For the opposite view: 3

Genesis 16 – Abraham had Sara, Hagar, and Keturah. Jacob had two wives (Genesis 29 and 30), and David many wives and concubines (II Samuel).[5] However, it is not probable that these holy patriarchs did anything wrong by such sexual unions. Therefore [it was allowed for them to do so].

Likewise, what Augustine says in his *De bono coniugali*, near the end, is relevant here: "The righteous ancient men did not sin, when they made use of several wives. They did not do so against the law of nature, when they did so for the sake of offspring – neither against the law, nor against morals, for at that time no law prohibited polygamy."[6] 4

[I. – Scotus' answer to the Question]

First, we have to see here what strict retributive justice requires in a marriage contract – namely, on the side of those who enter into the 5

contrahentium; et quid ultra hoc additur ad completam iustitiam in tali contractu, et hoc ex parte superioris. Secundo, quid in casu sufficit ad iustitiam quantum ad istam materiam de qua quaeritur, et qualiter illud fiat sufficiens et complete iustum.

[a. – Quid requiritur ad strictam iustitiam]

6 De primo dico quod in omni commutatione quantum est ex parte commutantium et commutatorum, stricta iustitia requirit aequalitatem valoris commutatorum quantum possibile est ad illum finem propter quem fit commutatio. Ista autem commutatio in contractu matrimoniali fit propter duas causas: una propter procreationem prolis, alia in remedium vitandae fornicationis. Quantum ad primum, corpus viri est maioris valoris quam mulieris, quia pro eodem tempore potest idem vir plures feminas fecundare quam mulier eadem possit a viris concipere.

7 Quantum ergo ad istum finem de stricta iustitia licita videtur bigamia, ut vir per tot corporibus mulierum corpus suum commutet quot potest fecundare, eo modo quo possibile est virum eas fecundare. Unde non est contra naturam in aliis aliquibus quod unus masculus habeat plures feminas; nec tamen in statu innocentiae quando matrimonium fuit et fuisset praecise in officium, fuit vel fuisset bigamia, quia non fuisset tunc necessitas quod vir commutasset corpus suum pro pluribus ad plures procreandas, quia per simplicem commutationem unius pro una fuisset sufficiens procreatio, cum nec vir nec mulier fuisset tunc sterilis.

8 Quantum ad secundum finem, qui est tantum pro statu naturae lapsae, scilicet pro fornicatione vitanda, aequalis valoris corpus viri et mulieris. Ideo, de stricta iustitia pro statu naturae lapsae considerando istum contractum ut est ad utrumque finem, requiritur commutatio unici corporis pro unico.

9 Addo quod completio iustitiae in ista commutatione non est nisi ex auctoritate superioris instituentis vel approbantis talem vel talem commutationem, quia etsi res aliquae sunt inferiorum ut dominorum,

contract –; and what is added to achieve full justice in such a contract – namely, on the side of the superior. Second, what suffices in this case as far as justice is concerned in the matter that is at stake, and how bigamy functions in an adequate and entirely just way.

[a. – What strict justice requires]

About the first issue I say that on the side of those who make the 6
exchange and from the viewpoint of what they exchange, strict justice requires in every exchange that, as far as possible, the equal value of what is exchanged is maintained for the purpose for which the exchange is made. There are two reasons for the exchange in a marriage contract: one, the procreation of offspring; two, the remedy to avoid fornication. As far as the first purpose is concerned, the male body is able to do more than the female, because for the same time the same man can impregnate more women than the same woman can conceive through men.

Therefore, as far as strict justice is concerned with regard to this 7
purpose, bigamy seems to be allowed so that a male person could make a bodily exchange with as many bodies of women as he can impregnate in the way that it is possible for a male person to impregnate them. Hence, it is not unnatural on some other occasions that one male person has more women. Nevertheless, there was no bigamy and there would not have been bigamy in the state of innocence when matrimony was and would have been exclusive, for then there would have been no need for a man to share his body with more women to procreate more children. The simple exchange between one man and one woman would have sufficed for procreation, because neither man nor woman would have been sterile by then.

As far as the second purpose is concerned – namely to avoid 8
fornication – which is only valid for the state of fallen nature, the bodies of man and woman are of equal value. Therefore, strict justice in the state of fallen nature requires the exchange of one body with one body, when we consider the contract in terms of both purposes.

I add that in this exchange full justice is only there because of the 9
authority of a superior who institutes and approves of one or the other exchange, for although some things belong to inferiors who are owners,

tamen commutatio earum licita talis vel talis determinatur recta a legislatore, et multo magis in proposito, de corporibus invicem commutandis in comparatione ad legislatorem qui est Deus. Ipse autem et pro statu innocentiae et pro statu naturae lapsae statuit regulariter commutationem debere fieri unius pro uno. In hoc ergo est completa iustitia.

[b. – Quid sufficit ad iustitiam et qualiter fiat iustum]

10 De secundo articulo dico quod dispensatio est iuris declaratio vel iuris revocatio. Potuit enim Deus vel legem suam de commutatione ista vel declarare vel in casu aliquo revocare; et rationabiliter in isto casu, quando maius bonum provenit ex revocatione quam ex observatione.

11 Nunc autem quando erat necessitas genus humanum multiplicandi, vel simpliciter vel ad cultum divinum, utpote quia pauci erant cultores Dei, necessitas fuit ut cultores Dei procrearent quantum possent, quia in sua successione eorum mansit fides et cultus divinus. Ergo, pro tunc rationabiliter dispensavit ut commutaret unus vir corpus suum pro pluribus corporibus mulierum multiplicatione cultorum Dei, quae sine hoc non fieret. Sic autem dispensavit de facto, ut praesumitur de Abraham et quibusdam aliis patribus.

12 Qualiter autem hic salvabitur iustitia considerando contractum ex parte contrahentium, sic declaratur, quia quando aliquid ordinatur ad duos fines, principalem et minus principalem, rationabile est uti eo illo modo quo magis valet ad finem principaliorem, licet per hoc aliquid detrahatur a fine minus principali. Exemplum: cibus valet ad delectationem, quae minus principalis est, et ad nutritionem quae magis principalis est. Secundum rectam rationem utendus est cibo eo modo quo plus valet ad nutritionem, licet in hoc minus valeat ad delectationem.

13 Contractus autem iste matrimonialis est ad carnale debitum reddendum, ut vitetur fornicatio, tamquam ad finem minus principalem, et ad bonum prolis, ut ad principaliorem. Ergo,

still what determines that one or the other exchange of these things is licit, depends on the legislator. This is much more true in what is to be discussed here with respect to the mutual bodily exchange as related to the legislator who is God. Both for the state of innocence and for the state of fallen nature he instituted as a rule that a bodily exchange ought to be between one person and one other person. In this case, therefore, there is full justice.

[b. – How bigamy may become just]

About the second article I say that a dispensation is a juridical clarification, or a juridical revocation. God could either clarify his law about this exchange or revoke it in some case – and in this case with good reason, when a greater good results from its revocation than from its observation. 10

Now, when it was necessary for mankind to increase – in an unqualified sense or in view of serving God, because there were few who worshiped God –, it was necessary that those who served God would get offspring as much as possible, for faith and the worship of God would continue in their successors. Therefore, at such a time God gave dispensation with good reason, so that one man could share his body with several bodies of women in order to increase the number of those who worship God. This would not happen without such a dispensation. In this way he in fact gave a dispensation, as we may assume in the case of Abraham and certain other patriarchs. 11

How justice is preserved, considering the contract on the part of those who enter into the contract, is explained as follows. When two aims – the main aim and a less important aim – structure something, it is reasonable to use it in a way that ascribes more value to the main aim, although this takes something away from the aim that is not the main aim. For instance – food contributes to pleasure – pleasure is not the main aim – and to feeding – feeding is the main aim. In terms of a correct analysis, food has to be used in such a way that it ascribes more value to feeding, although this ascribes less value to pleasure. 12

Now, the marriage contract is related to fulfilling the duty of intercourse in order to avoid fornication – which is not the principal aim –, and to the good which offspring is – which is the main goal. So, in 13

secundum rectam rationem debent contrahentes sic commutare, ut commutatio plus valeat ad procreationem, licet minus valeat ad redditionem illam. Sed hoc fit in commutatione corporis unius viri pro pluribus corporibus mulierum, et sicut istud absolute faciendum est, ita in casu necessitatis. Necessario faciendus est, scilicet quando valde necessarius est ille finis principalis, et tunc quasi negligendus est finis minus principalis.

14 Et ex hoc patet quomodo ex parte partium est iustitia, quia secundum rectam rationem utraque pars debet velle aliquid de suo iure dimittere in commutando et percipiendo in comparatione ad finem minus principalem ut recipiat aequales in comparatione ad finem magis principalem, quem magis debet desiderare, licet debeat aliquid commutari de aliquo, quod esset sibi detrimentum remittere. Et quandoque necesse est in aliquo casu, quando scilicet ad talem remissionem tenetur et complete licet et debet quando a superiori est hoc ordinatum.

15 Istud patet, quia Sara (Genesis 16) quasi coegit Abraham, ut ingrederetur ad Agar ancillam suam, ut vel sic de ancilla haberet filium, quem de se ipsa non poterat habere.

16 Si obicias quod hoc pro tempore moderno esset bigamia et illicitum, respondeo: Etsi illicitum sit propter hoc quod non est a legislatore pro nunc dispensatum, immo reductum illud legis naturae "Erunt duo in carne una" per Christum (Matthaeo 19), tamen loquendo de iustitia ex parte contrahentium et contractus non est modo licitum quia non est ille finis principalis nunc necessarius, quod eo quod multi fidelium vacant generationi, quorum filii omnes ordinantur ad cultum Dei et religiose educantur et ideo sine tali contractu est fides multiplicata. Cessante ergo necessitate detrahendi aliquid secundo fini, propter necessitatem primi finis, servandus est contractus, ut iustitia ibi servatur in comparatione ad utrumque finem. Hoc autem est maxime quod unus habeat unam.

17 Si tamen in aliquo casu per bellum vel cladem vel pestem multitudo virorum caderet et mulierum remaneret, posset bigamia esse nunc licita, considerando praecise iustitiam ex parte commutantium et

terms of a correct analysis, they who enter into the contract ought to exchange so that the exchange ascribes more value to the procreation of offspring, even if it ascribes less value to fulfilling their duty. Now this takes place in the exchange of the body of one man with more bodies of women and just as it has to be done absolutely speaking, likewise in the case of urgency – it has to be done urgently, namely when the principal aim is very urgent. And then the less important aim can be neglected as it were.

14 From this it is clear how there is justice on the side of the parties, for in terms of a correct analysis both parties ought to be willing to turn in something of their rights when they exchange and when, with respect to the less important aim, they see to it that one receives an equal part with respect to the most important aim – which one ought to desire more, although one has to turn in something – which would be to one's disadvantage. At times it is necessary in some case, namely when such a concession is required and entirely allowed and a must, when the Most High orders it.

15 This is clear, because Sara forced Abraham (Genesis 16), as it were, to have intercourse with her maid servant Hagar, so that he would have a son from her maid servant instead, whom he could not have from her.

16 If you object that this would be bigamy and illicit for our present time, then I reply: Although it is not allowed, because for the present time the Lawgiver has not given a dispensation – indeed, that element of the law of nature was restored by Christ: "the two will be in one flesh" (Matthew 19) –, yet when we speak of justice on the part of those who enter into the contract and on the part of the contract itself, it is not allowed merely because that principal aim is not necessary now for the reason that many believers are available for procreation and all their children are ready to worship God and receive religious education and, therefore, the faith is spread without such a contract. Since the need to withdraw something from the second aim because of the urgency of the first aim does not obtain anymore, the marriage contract must be observed in order to preserve justice with respect to both aims. This twofold aim is best observed, when one man has one wife.

17 If in some situation many men fell through war, the sword, or pestilence and there were still many women, bigamy could now be allowed, if one considers justice exclusively on the part of those who

commutationum, et etiam deberent ex parte sua velle sic commutare mulieres cum viris plus pro minori quantum ad secundum finem, sed aequale pro aequali quantum ad primum finem; et deberet tunc velle mulier secundum rectam rationem hoc ut accidat bonum prolis per connexionem viri sui cum alia. Nec deficeret ibi nisi tantummodo completio iustitiae, quae est ex approbatione divina, quae forte tunc fieret et Ecclesiae specialiter revelaretur.

[II. – Ad argumenta principalia]

18 Ad argumenta: ad primum[7] dico sicut dictum est in distinctione decima septima[8], quod aliquid dicitur de lege naturae dupliciter: primo scilicet quod est verum practicum simpliciter notum lumine naturalis rationis, et ibi potissimum gradum tenet principium practicum notum ex terminis. Secundum gradum tenet conclusio demonstrata ex talibus principiis.

Secundario, autem est de lege naturae quod regulariter est consonum legi naturae primo modo dictae.

19 Circa primum nulla cadit dispensatio et ideo oppositum eius videtur semper esse peccatum mortale. Circa secundum in casu cadit dispensatio in quo oppositum videtur communiter consonum legi naturae.

20 Et praecise hoc secundo modo monogamia est de lege naturae, et bigamia contra eam, et sic concedo probationes illas: Genesis 2 et Glossa Genesis 4. Nec tamen ex hoc sequitur quod in casu non possit oppositum esse licitum, immo in casu est necessarium et commutando iustitiam ex parte commutationis et commutantium quando propter necessitatem recta ratio dictat alio modo debere fieri commutationem et quando praeceptum divinum adest.

21 Verumtamen de Lamech potest absolute concedi quod peccavit mortaliter, quia contra legem naturae, etsi secundo modo. Peccavit, inquam, contrahendo cum pluribus non in casu in quo recta ratio dictaret illam legem revocandam, nec superior dispensavit. Immo, fuit

exchange and their exchanges. Then women, from their side, would have to be willing to exchange with men by giving more for less as far as the second aim is concerned, but equal for equal as far as the first aim is concerned. In terms of a correct analysis the woman would have to will this so that the good of offspring is achieved by intercourse of her husband with another woman. There would be no deficiency here only if full justice is done, which derives from God's approval, which in this case would certainly occur and would be specifically revealed to the Church.

[II. – To the initial arguments]

To the arguments: As to the first argument[7] I say – as has already been said in the seventeenth distinction[8] – that something is said to be according to natural law in two ways: namely, first, what is simply a practical truth is known in virtue of a natural argument. Here, the highest degree of practical truth is held by a practical principle which is known on the basis of its terms. The second degree is held by a thesis which has been proven on the basis of such principles. Second, something belongs to the natural law that is, as a rule, in harmony with the natural law taken in the first sense. 18

No dispensation takes place in the first sense of natural law and, therefore, the opposite of it seems always to be a mortal sin. In the second sense of natural law, dispensation takes place in the case that, in general, the opposite appears to be in harmony with the law of nature. 19

Monogamy belongs to the law of nature in this second sense only, and bigamy is against it. In this way I grant those proofs taken from Genesis 2 and the Glosse on Genesis 4. Yet, it does not follow from this that in a special case it is impossible that the opposite is allowed. Indeed, it is even necessary in a special case by a just exchange on the part of the exchange and those who enter it, when because of urgency a correct account prescribes that the exchange must take place in a different way, and when a divine command obtains. 20

However, as for Lamech, one can grant absolutely that he sinned mortally, because he acted against the law of nature, though to be taken in its second sense. He sinned – I say – by entering a contract with more women when neither a correct account prescribed the revocation of that 21

oppositum utriusque.

22 Ad secundum[9] dico quod numquam fuit ex parte contractus iustitia inter commutantes sic commutare, ut minus eveniat finis principalior, et magis eveniat finis minus principalis, quia finis principalis est magis volendus. Sed biviria magis esset ad finem minus principalem et multo minus ad finem principaliorem, quia eadem mulier infra idem tempus a pluribus viris impregnari non posset.

23 Ad argumentum in oppositum.[10] Licet de aliquibus sanctis patribus praesumatur quod in contrahendo bigamiam non peccaverunt, quia utraque ratio contrahendi ibi concurrit, et scilicet necessitas propter quam iuste erat sic contrahendum, et divina auctoritas approbans et praecipiens, tamen si aliqui sine istis causis, vel altera earum contraxerunt, quod peccaverunt mortaliter, non est mihi inconveniens, quia non reputo eos confirmatos.

law, nor the Most High gave a dispensation. Indeed, it was just the opposite of both.

As to the second argument[9] I say that on the part of a contract there 22
was never justice between those who made an exchange of such a sort that the most important aim yields less and the less important aim yields more, for the principal aim has to be willed more. However, biandry would serve more the less important aim and much less the most important aim, for the same woman could not be impregnated by more men during the same period.

To the argument for the opposite view.[10] Although one may assume 23
that some holy patriarchs did not sin in committing bigamy, because in these cases both reasons obtained for doing so, namely both the urgency why it was just to commit this, and the divine authority which approved and prescribed it, nevertheless, if some of them committed this without these reasons or without the one or the other, it is not unacceptable for me that they sinned mortally, for I do not look upon them as confirmed by grace.

Endnotes

[1] This point is not addressed in III d. 33 quaestio 2, as one would expect, but in quaestio 3.
[2] See Genesis 2:24.
[3] See Genesis 4:19.
[4] See I Corinthians 7:2-5.
[5] See II Samuel 5:13-16.
[6] Cf. Augustine, *De bono coniugali*, ch. 25, par. 33; CSEL 41 (J. Zycha, 1900), p. 228. Scotus cites the slightly different rendering of Peter Lombard.
[7] See n. 1 above.
[8] Scotus refers to *Ordinatio* IV 17.3, which has the same structure: 'A practical truth is a practical truth of natural law, if its truth is known on account of its terms – in that case it is a principle of natural law, just as a theoretical principle is known on account of its terms –, or if it follows evidently from a truth which is known in that way – in that case it is a practical thesis which has been demonstrated. Strictly speaking, only a principle or a thesis which has been demonstrated in this way pertains to the law of nature. Nevertheless, sometimes something is said to belong to the law of nature in an extended sense, if it is a practical truth that is in harmony with the principles and theses of the law of nature as far as it is instantly known to everyone that it is consistent with such a law.' ('Illud (sc. ius naturale) est verum practicum de iure naturale cuius veritas est nota ex terminis – et tunc est principium in lege naturae, sicut et in speculabilibus principium notum ex terminis – sive quod sequitur evidenter ex tali vero sic noto, cuiusmodi est conclusio practica demonstrata. Et stricte loquendo, nihil aliud est de lege naturae nisi principium vel conclusio demonstrata sic. Tamen extendendo quandoque illud dicetur esse de lege naturae, quod est verum practicum consonum principiis et conclusionibus legis naturae in tantum quod statim notum omnibus illud convenire tali legi'). The text is available in Wolter, *Duns Scotus on the Will and Morality*, Washington 1986, 262.
[9] See n. 2 above.
[10] See n. 3 and 4 above.