"Till Death Do Us Part"

by Dr. Antonio T. Piñon

An Appraisal of the Arguments for Divorce

The widespread climate of permissiveness, specially in matters of sex, has occasioned a spate of attacks and campaigns against all those institutions that would impose some curbs on sexual activity. To cite but the most significant, there was first the spirited, and still ongoing, campaign for birth control to "liberate" sex from children. Today we witness the start of movement for the legalization of divorce to "liberate" sex from the indissoluble ties of marriage. One needs no gift of prophecy to foretell where all this is bound to end—the scrapping of marriage in the name of the complete "liberation" of sex, which is but the deodourized term for free-wheeling absolute promiscuity.

This permissiveness has so permeated all levels and strata of society that not even the Church has succeeded in escaping its influence altogether. While Vatican II was still in session there were priests, bishops, and even cardinals, who openly advocated the licitude of contraceptive practices and were telling everybody that the Church was on the verge of changing her uncompromising stand against contraception until Paul VI showed them up as false prophets with his forthright encyclical *Humanae Vitae*.

So now we also see in print statements attributed to priests like the following: "Fr. Healy told the convention delegates that discussion on divorce was in progress in the Church and that one insight gaining ground was the theory that while Christ was against divorce, 'He was holding it up as an ideal and not as a precept.'" (*Panorama*, 13 Feb. 1972) Although the reporter does not make it clear, I presume that what Christ was holding up as an ideal was not divorce, but indissoluble marriage.

To get our bearings straight on this matter a distinction must be made and clearly understood between these three things: *declaration of nullity*, *legal separation*, and *divorce*.

DECLARATION OF NULLITY

It is not uncommon to meet people, even well-educated ones, who misconstrue a declaration of nullity granted by the Holy See as a decree of divorce. One often hears it said that moneyed couples can bring their cases to Rome and obtain an ecclesiastical sentence allowing them to separate and remarry. And if this is not divorce, then what is it?

The answer is that what these couples get is not divorce but a declaration of nullity, which is an altogether different thing.

Marriage, it is true, is much more than a contract. It is a state of life. It is an interpersonal relationship. But it is no less true that the gateway of this interpersonal relationship and state of life is the marriage contract. By this contract a man and a woman acquire the right to the sort of interpersonal relationship that is the woof and warp of the married state of life. Now, as in all contracts, certain conditions are required by law for the marriage contract to be valid or binding. Where any of the requisites for the validity of the contract is wanting, then the contract is *null and void from the very beginning*. In plain terms, there never was any contract at all.

A declaration of nullity should never be confused with an *annulment*. Annulment is the voiding of a contract that was valid and binding up to the moment of its annulment. When a marriage is annulled there was a valid marriage and the couple were truly man and wife up to the time when the sentence of annulment was passed. On the other hand, in a declaration of nullity there never was a valid and binding contract. When a marriage is declared null and void there is *no unmaking* of what was made and existed before. There is only an official finding that there never was a marriage, that the couple were never truly man and wife because some essential requisite(s) for validity were wanting at the time the marriage contract was solemnized.

What happened in this case is that the couple mistakenly thought they had contracted a valid marriage whereas no valid marriage had taken place in reality, and they never were man

and wife. When the error is detected, the couple either contracts a valid marriage, that is, makes good the defective contract in any of the ways provided for by law, or else they are bound to separate. If they choose the latter alternative, since they never were married, it is obvious that both are free to marry someone else.

It must always be borne in mind that a declaration of nullity does not dissolve a marriage simply because there is no marriage to dissolve. On the other hand, divorce always implies or presupposes a valid marriage contract which binds the couple to each other.

LEGAL SEPARATION

A valid marriage contract produces two effects. In the first place, each party gives to the other the *exclusive right to his or her body for the performance of the marital act.* In the second place, and as a natural corollary of the right to the marital act, the contract effects a *certian unity of life* whereby the man and the woman share the same roof, board, and bed.

When a married couple break the complementary unity of life, when they no longer sleep together, nor live in the same house, we have an *imperfect* or *relative* divorce, more commonly known by the term *legal separation.*

DIVORCE

It should be obvious that what binds two people together in the state of matrimony is not the physical or geographical togetherness. It is the marital rights and duties exchanged by the marriage contract. So long as these rights and duties subsist, the man is bound to the woman and the woman is bound to the man even if they should no longer live together. And so long as the bond subsists, the marriage subsists.

When the man and the wife agree not merely to sleep in different rooms, or to live in different houses, but take the further step of revoking the exclusive rights they mutually granted each other, then the marriage bond itself is broken the marriage dissolved, and the divorce is called *perfect* or *absolute.*

To prevent misunderstanding, I shall employ the term of divorce always in its perfect or absolute sense. Proponents of divorce are fundamentally interested in the right to remarry.

This right to remarry is absent in mere legal separation where, despite the physical separation, the parties remain bound and married to each other. It is precisely the dissolution of the married bond, which absolute divorce presumes to effect, that leaves the divorced parties free to marry again.

The Church admits both the declaration of nullity and the legal separation, the latter usually on broader grounds than the civil codes. For instance, the Philippine Civil Code provides for only three causes for legal separation, to wit, adultery on the wife's part, concubinage on the husband's part, and attempt on the life of either of the spouses. Besides these, Canon Law allows legal separation for other causes, e.g. criminal and ignominious life, spiritual danger to either spouse, cruelty. Legal separation is ordinarily effected by order of the competent authority, but Canon Law allows the innocent party to leave the guilty one on his/her authority if there be danger in delay. A similar proviso is wanting in the Philippine Civil Code.

ANNULMENT OF NON-CONSUMMATED MARRIAGE

Likewise Canon Law admits the annulment of marriage. This is granted for cause, usually in the case of a validly contracted *but not consummated* marriage. When a valid contract is voided the contracting parties are returned to the status they had prior to the contract, as if the contract had not taken place. In the case of marriage this is possible before the consummation of the marriage, but it is obviously impossible once the marriage is consummated.

Still more, marriage is not a run-of-the-mill contract. It is an exceptionally exceptional contract in that its subject matter is the very persons of the contracting parties and it has the most profound repercussions in their intimate individual lives. Marriage is a total giving of the self to another. Therefore if liberty is an essential ingredient of any contract, utmost liberty ought to be available and guaranteeable for this exceptionally exceptional contract. The point of no return where freedom must make its choice is the definitive ratification of the marriage contract represented by the actual possessing of each other's person in the marital act which consummates the marriage.

Conversely, this is the last rampart and defense of the individual's liberty. Often a man or a woman are compelled

to go through a shotgun marriage. Is the wedding ceremony the moment of truth? No. After the ceremony is ended and the documents are duly signed and witnessed, after the reception is through and the guests have gone home, the moment of truth comes in the privacy of the nuptial chamber and bed. A shotgun marriage can be performed under well camouflaged duress, but in the sanctuary of the nuptial chamber consummation does not take place without the free volition of both parties. This is the moment of truth. Consummation is strong evidence that the parties have changed their minds and now under no compulsion freely ratify the contract and take each other as man and wife in the marital act. On the contrary, a persistent refusal of consummation is strong proof of a continuing repudiation of the marriage celebrated under duress. Thus consummation or non-consummation is the clearest indicator of free consent or lack of it to the marriage contract.

The contention thus boils down to divorce, i.e. to the dissolution of the marriage bond and the consequent freedom to remarry in the case of a validly and *consummated* marriage. But the issue still needs to be nailed down more accurately.

THREE QUESTIONS

When anything is proposed to be done three questions can be raised about it: (1) Can it be done? (2) Should it be done? (3) How is it to be done?

Likewise three questions can be raised about divorce: (1) Can divorce be legalized? In other words, is it within the authority of the state or of the Church validly to legalize divorce? (2) Should the state or the Church legalize divorce? (3) How is divorce to be legalized? That is, what kind of provisions are to be included in a divorce law?

Now, these three questions cannot be raised in any order as you please. They must be raised in precisely the order stated because the first question is presupposed by the second, and the second question is presupposed by the third.

THE FUNDAMENTAL POINT AT ISSUE

In plain language, the fundamental question is whether the state — or the Church — possesses the competent authority validly to legalize divorce. This is the fundamental point at

issue, and it must be settled prior to any other. If it is not, all other issues are left without a proper foundation.

To illustrate crudely. Suppose a Constitutional Convention delegate were to propose the inclusion in the fundamental charter of the land of a provision to the effect that typhoons and earthquakes shall be banned by the state. There is any number of good reasons why they *should* be banned from the country: to spare the lives of the people, to insure their properties, to protect the crops to safeguard the economy, etc. There is but one fly in the soup — the fact that, as natural phenomena, typhoons and earthquakes obey the laws of nature, they are beyond the purview of the state's power and authority.

BEGGING THE QUESTION

The proponents of divorce muster what looks like a formidable array or arguments in defense of their position. On closer inspection, however, one finds that they all boil down to two. First, the state should legalize divorce in order to do away with all the illicit relationships that fester in our midst. Secondly, divorce should be legalized in order to provide a remedy for so much unhappiness in the spouses and in the children. People should not be condemned to suffer because of one mistake; on the contrary, the humane thing to do is to allow them a chance to make good their mistake.

These are emotionaly loaded arguments. "Illicit relationships," "unhappiness," "condemned to suffer" — these key words all aim straight for, and score a bull's-eye on, the heart. Nothing wrong with that, provided, of course, that the heart is not allowed to play a trick on the intellect by obscuring the fact that, as arguments, they all suffer from one fatal defect. *They all miss the fundamental issue.*

The debate got off on the wrong foot because it got off on question no. 2, viz. *should* divorce be legalized? By starting off with that question, the first and fundamental question — has the state the authority validly to legalize divorce? — was completely overlooked and bypassed.

The effect of overlooking this fundamental question is that the power or authority of the senate to legalize divorce is assumed or taken for granted. Since that is precisely the fundamental point at issue, to take it for granted is unwittingly to fall into the fallacy of *begging the question.*

I shall, therefore, take the liberty to challenge the fundamental assumption and to nail the debate down to the basic issue: does the state have the power or authority validly to dissolve the marriage bond?

ARE ALL MISTAKES CORRIGIBLE?

To argue that divorce should be legalized so that people may have the chance to correct their mistakes is, to begin with, to assume that marriage is dissoluble, which is to beg the question.

In the second place, the argument also assumes that all mistakes are corrigible, which is patently false. There are mistakes that can be corrected, and there are mistakes beyond correction. This is crystal clear to common sense.

Suppose you decide to end your life by slashing your wrist. A moment later, as you see blood spurting out, you decide that it was a mistake, that you want to go on living after all. This is the kind of mistake that can be made good. You have a servant apply a tourniquet and call for a doctor. On the other hand, suppose you decide to go by stepping off the window of your apartment which happens to be on the 12th storey. A split second later, as you clutch at emptiness, you feel that it was all a mistake. We can only accompany you in being sorry for yourself. Your mistake is irretrievable.

This argument is also often presented in the following form: What you do freely, you can freely undo. A man enters into marriage freely; he ought to be able to get out of it freely. People who argue this way forget that the act is one thing, and the *consequences* of the act are quite another thing. To place or not to place the act lies within the scope of your freedom. But once you place the act, its consequences may lie completely beyond your freedom. You are absolutely free to jump or not to jump off the window of your apartment on the 12th storey. But once you have jumped, you are not free to fall or not to fall. The natural law of gravity takes over and smashes you on the pavement below.

THE RIGHT TO HAPPINESS?

The argument that divorce should be legalized because people have a right to happiness is wobbly on a number of counts.

In the first place, speaking strictly within the context of law whether statutory or constitutional, the right to happiness is not a fit subject for legislation. The reason is quite simple. When a right is made the subject of legislation, the object or subject matter of that right is guaranteed by law. Now, is it possible for the law to guarantee *happiness* to any man? Obviously no. Therefore the right to happiness cannot be guaranteed or enforced by the law. Therefore it is not a fit subject legislation.

What is guaranteeable and enforceable by law is the right to the *pursuit* of happiness. That is to say, the state can by law see to it that a man is not hindered in his search for happiness and that the state of affairs is so organized and ordered that man shall have some means to achieve happiness. But whether he will be happy or not, that is beyond the power of the state to guarantee or enforce.

However, the pursuit of happiness is not, and cannot be, an unrestricted right. There is no right to pursue happiness in any manner and by whatever means one chooses. Otherwise, a rapist could justify his crime by claiming that he was merely exercising his right to pursue happiness. A man has the right to pursue happiness only by licit ways and means.

But would legalizing divorce not make it a licit way of pursuing happiness? To answer in the affirmative without producing proof is simply to beg the question. People who answer yes, if they were consistent, should have no qualms about legalizing rape, theft, murder so that the lustful, the thieving, and the violent may have a licit way of pursuing and achieving their happiness. And why go to all the bother and expense of suing for divorce? Would it not be much simpler, less expensive, less troublesome more convenient to legalize adultery?

LEGAL DISCRIMINATION

In the second place, just what is meant by domestic happiness or domestic unhappiness? Can anybody come up with a satisfactory legal definition of these terms? The obvious impossibility of defining them for legal purposes is the reason why divorce statutes prefer to concern themselves with the causes of marital unhappiness, e.g. adultery, concubinage, attempt on the life of either spouse, etc. These are things that can be objectively assessed and described with sufficient accuracy for legal purposes.

In which case what does legalizing divorce really amount to? Simply this: if you are unhappy because of adultery, or concubinage, or an attempt on your life . . . rejoice: The law grants you a second chance at happiness. But should you be miserable for any other cause, then wallow and sink deeper in your misery; you cannot have another chance at happiness. In plain language, the law says that some unhappy people have the right to be happy with another partner, but some other unhappy people must stay put in their unhappiness.

If the right to pursue happiness is a fundamental right, then it belongs to each and every one. And if divorce is justified on the basis of this fundamental right, then any divorce law which would specify certain causes for divorce and rule out other causes is inconsistent and discriminatory.

THE INTERNAL LOGIC OF DIVORCE

This is precisely the reason why, once it has gained a legal foothold, no matter how slight, divorce cannot be contained or restricted only to a few serious cases, as its proponents would lead us to believe. Water is impelled by a built-in tendency to spread itself out. So, too, legalized divorce is propelled by an internal logic to an ever increasing relaxation of standards, to more and more permissiveness, to a greater facility in dissolving marriages.

The evidence lies before our eyes, not merely in the experience of other countries, but in the *very draft of the divorce proposal.* Up to now there was only legal separation, which could not be obtained save on the following serious grounds: adultery on the part of the wife, concubinage on the part of the husband, attempt on the life of either spouse. Then came the proposal to legalize divorce on the self-same grounds. The proponents tell us with a straight face, "See? We haven't liberalized anything; now, have we? The grounds or causes are still the same."

Are they so naive as not to be aware that the mere jump from legal separation to divorce is in itself an enormous relaxation of marital morals? Besides, does not the draft itself provide a convenient door to further relaxation by empowering Congress to specify other grounds or causes for divorce?

To come to the heart of the matter, when the law itself in effect starts making distinctions and setting up different

classes among married couples, favouring some with the right to sue for divorce while denying the same right to others, can anyone seriously believe that the unfavoured ones will not clamour and agitate for a change in the law that will allow them the same access to divorce? How can the law credibly tell me to stay unhappily put with my partner when it allows my neighbour to divorce his?

A CURE FOR UNHAPPINESS.

In the third place, the most distressing fact about this whole business is that those who hold up divorce as a second chance at happiness miss the mark by a wide mile. To tout divorce as a cure for unhappiness is to foist, unwittingly perhaps, a deception on unsuspecting people.

Divorce is not, and cannot be a cure for marital unhappiness. To convince oneself of this truth it is enough honestly to consider the grounds for which divorce is granted. Examine any one of them — adultery, concubinage, attempt on the life of either spouse, and any other cause that may be subsequently specified by law — and you cannot but admit to yourself that it is not marriage but a personal fault, defect, or shortcoming, that is the true cause of marital disharmony and unhappiness. If the wife is a flirtatious butterfly that got herself singed in the flames of passion, if the husband all but strangled his wife to death in a fit of jealously, will divorce magically cure the wife of her flirtatious nature or the husband of his cankerous jealously? Obviously not.

And if divorce is but the prelude to another marriage — since that is precisely the reason why people are not satisfied with legal separation and demand divorce — then the personal faults and shortcomings, that are the true causes of marital unhappiness, are carried over like bad debts, liabilities and encumbrances, to the next marriage to wreak havoc on it.

Which is why divorces and divorcees keep changing hands like bad money, and experience supports the truth of the statement that nothing succeeds in breeding more divorces than divorce.

ILLICIT RELATIONSHIPS

Divorce, it is argued, is "better than tolerating illicit relationships which have now become rampant in our midst." (*Panorama*, 13 Feb. 1972)

The fatal weakness of this argument lies in the assumption that the only reason why the relationship is illicit is the fact that it is not countenanced by the law. The present statutes do not allow a married couple to separate and remarry: hence, the affairs entered into by either spouse with other persons are illicit. However, if the present statutes were amended to allow divorce and remarriage, illicit relationships will cease to exist.

Obviously, the contention that legalizing divorce will do away with illicit relationships holds water only in the supposition that the state possesses the authority validly to legalize divorce. But that is precisely the fundamental point at issue.

To make this clear, let us probe deeper into the argument. Illicit relationships have become rampant in our midst. Therefore let us eliminate them by legalizing divorce. Suppose we argue in the same vein: the crimes of theft and murder have become rampant in our midst. Therefore let us eliminate them by legalizing theft and murder. Imagine the advantages of such a move: at one stroke police blotters would be purged of criminal entries; our jails, at present bursting at the seams due to over congestion, would be emptied of more than 50% of their population; the crime rate would drop miraculously; we could save by cutting our police force by more than half; jailbirds would be rehabilitated and turned overnight into law-abiding citizens.

What would the man in the street, with two cents' worth of common sense, say to this? He would state flatly that it cannot be done, that it is beyond the authority and power of the state to legalize the killing of innocent people or the arbitrary dispossession of rightfully acquired property. That if the state should persist in legalizing theft and murder it would then be guilty of the most atrocious and heinous tyranny to such an extent that it would become incumbent on every decent man to resist and overthrow it.

This insight of common sense is significant in that it acknowledges limits to the state's power or authority in making laws, limits that are set by fundamental human rights which are not of the state's making but prior to the state itself. These fundamental rights are rooted neither in Congress nor even in the Constitution. They are inherent in the very nature of things — of man, in this case — or in the explicit will of God.

As a *natural bodily organism*, man is subjected to and ruled by natural physico-chemico-bilogical laws which define what is good or bad for his life and health. As a *natural person*, man is governed by natural moral laws which define what is good or bad for him as a rational, free, and responsible agent. On either level the natural law and order is antecedent to and independent of the state.

When it legislates on matters of health the state cannot act independently of, but must take into account the natural physico-chemico-biological laws which determine what is good or bad for the health of the citizens. Likewise, when it legislates on matters of free and responsible behaviour the state cannot proceed independently of, but must keep in mind the natural moral laws which define the good and evil use of human freedom.

SENSES OF THE TERM SOCIAL

At this point the challenge is raised that all this has pretty little to do with marriage. Even if it is granted that man is himself prior to the state, what has that to do with marriage? Isn't it true that marriage is a social institution? If social, then it is a creation of, and dependent on, the society or state.

The weakness of this challenge lies in its ambiguous use of the term *social*. A thing can be called social in many different senses:

1. Because it is a creation of the society or state itself. In this sense the banking and credit system is a social institution, and so are trade-unions, cooperatives, business corporations, forms of government.

2. Because it exists and develops itself within the society or state, with or without the latter's acceptance, protection, and guarantee. In this sense graft and corruption, usury, private armies have become social institutions in this country.

3. Because it associates or brings people together. In this sense birthday celebrations, concerts and operas, weddings, parties, balls, graduations, inaugurations are called social affairs or events.

4. Because it lies at the basis, foundation, or origin of society. It is in this sense that Rousseau employed the term *Social Contract*.

When therefore it is argued that marriage depends on the society because it is a social institution, in what sense is the term *social* used? In the first of the enumerated senses? In that case we would be back at the fundamental fallacy of begging the question.

Marriage is social in the second sense — it exists and develops itself in the society with society's blessing and protection. However, this does not prove that marriage is purely and simply society's creation any more than the fact that man is born, grows, and develops himself in the society and is defended by society proves that man is purely and simply a creature of society.

Marriage is social also in the third sense — it associates a man and a woman in the common task of begetting and bringing up children. But if this proves anything, it proves that of itself marriage belongs to the natural order and, consequently, is prior to the state. The preservation and continuation of the species is not a goal set by convention or human agreement, or by government statute, it is a goal of nature itself. The institution or association whose specific goal and objective is determined by nature is itself properly a natural institution, a natural association.

This is to say that marriage is, as a natural institution, ruled by natural laws, i.e. laws that are prior to, and independent of, the state; therefore, laws which it is not in the state's power or authority to abrogate or dispense with; laws that maintain their vigour and validity despite contrary acts by the state.

INSIGHTS FROM THE TASADAYS

One approach to ascertain the natural characteristics of marriage begins by assuming the position of the proponents of divorce, finding its necessary implications and then verifying whether the facts support the implications or contradict them. Actually this is an application of the well-known and tested rule of logic: if p then q; but not q therefore not p.

Let us therefore assume that marriage is purely and simply a creation of the state. In this supposition it would follow that no form of marriage existed prior to the state. This implies that the marriage institution has evolved out of a primitive condition characterized by the absence of any form of marriage,

that is to say, a state of utter and absolute promiscuity. Out of this primeval promiscuity would have evolved the first forms of marriage characterized naturally by residues of promiscuity, viz. group marriage whether polygynous or polyandrous. Out of these polygamous forms of marriage would have ultimately evolved our present monogamous marriage for life.

Thus these theorists would have us believe that as we trace back the history of marriage, its present well-defined structure of lifelong pairing of one with one would first blur into the hazy and indistinct lines of polygyny, polyandry and group marriage, and as we continue pushing farther and farther back into earlier ages and more primitive groups, even these hazy lines would finally dissolve into utter promiscuity, which is the absolute denial of the marriage institution itself.

Do the facts square with the theory?

A very recent find in our own backyard in the mountains of South Cotabato set the anthropological world agog. Anthropologists were understandably excited by the discovery of the Tasadays. The significance of the Tasadays lies in the fact that they are still living in the paleolithic age, that is, in the early part of the stone age, when men had just begun to fashion tools and implements out of stone. Here then was a living sample of one of the earliest types of human existence — a matchless chance to confront theory with fact, to glean answers to nagging questions about human behaviour and its standards or norms.

The Sunday Times of 16 April 1972 published a report signed by E.P. Patanñe with the title *Tasaday Group Confirms Ethnological Insights.* Among the insights are:

> — That monogamy, rather than polygyny or polyandry, has an ancient sanction in the primitive social order . . .
>
> — That in the most simple of human organizations, a form of marriage was observed. The comic-strip notion of the caveman dragging a mate by the hair is thus farcical . . .
>
> Early theories about the origins and history of marriage forms which conceived of a primitive state of promiscuity *have thoroughly been demolished from the Tasaday data.*

> The anthropologists Beals and Hoijer have, however, stated: *"No evidence of a state of promiscuity has ever been recorded*, whether among primitives or others. Every human society known *has rigid rules of marriage*, similar in kind and complexity . . . And group marriage (polygyny or polyandry), while it is *so rare as to be notable*, and like polygamy is not confined to primitives." (*Loc. cit.*, pg. 12; underscoring mine)

In plain language, according to the report the structure of marriage does not become hazy nor does it dissolve into utter promiscuity as we trace it back to earlier and earlier ages. Indeed the opposite appears to be the case: the earlier the age, the more prehistoric the group, the more stripped it is of the veneer and accretions of civilization, the closer it is to a state of nature as it were, monogamous marriage is clearly seen as the norm. On the other hand, polygyny, polyandry, group marriage are seen with equal clarity as *notable rarities*, or deviations from the norm.

One further observation and insight deserve our special attention to wit:

> — That cave-dwelling — and an *extended family* rather than just a nuclear family — appear to be the oldest form of human organization. (*Ibid.*; underscoring mine)

To say that the extended family appears to be the oldest form of human organization is equivalent to saying that the larger civil or political society grew as an extension of the family. But the family is itself an augmentation or extension of the marital society of husband and wife. Thus the data confirm that marriage is prior to the civil and/or political society.

A second implication is that not marriage but divorce is a product or result of human invention. For if the oldest form of human organization appears to be the extended family, it follows that divorce is either non-existent, or if it exists, is another notable rarity or deviation from the norm. Divorce strikes at the very roots of marriage. Divorce dissolves marriage and, consequently, dissolves the home and the family.

Therefore where divorce is socially acceptable as part of normal living, an extended family is both a psychological and a social impossibility.

In short, the earliest anthropological data available clearly point to the fact that marriage is prior to the state. Consequently, marriage is governed by laws prior to state laws. Add to this that the specific goal of marriage and the task correlative to it are set by nature, and you have that the basic structure and laws of marriage are likewise set by nature.

Consider now that in the oldest form of human organization divorce appears to be either non-existent or a notable rarity, i.e. a deviation from the norm, and you have that in the earliest form of marriage the norm appears to be a pairing of one for life. When you say "earliest form of marriage," you say that form of structure which is the least adulterated, which most closely hews to the purity, as it were, of the state of nature. When you say "pairing of one," you say monogamous. And when you say "for life," you say indissoluble save by death.

Therefore when you say that from all available data the earliest form of marriage appears to be a pairing of one with one for life, you are simply saying that the available data confirm the fact that monogamy and indissolubility are seen as characteristics of the structure of marriage that is closest to what may be described as the state of nature.

THE EXPLICIT LAW OF GOD

From whom can we more clearly learn the characteristics and laws inherent in the very nature of the institution of marriage than from God, the author and designer of marriage? The Catholic Church's uncompromising and unalterable opposition to divorce does not really stem from the findings of human sciences nor from arguments. She stands four-square on what God Himself has revealed about marriage as He, its Author, designed and willed it to be.

The Holy Scripture describes the first meeting of man and woman in these terms: "These now is bone of my bones, and flesh of my flesh . . . Wherefore a man shall leave father and mother, and shall cleave to his wife; and they shall be two in one flesh." (Gen. 2, 22-24) Many centuries later the Pharisees tempted Christ with the question, "Is it lawful for a

man to put away his wife for any cause?" Our Lord prefaced his reply with a reference to the institution of marriage. "Have you not read that the Creator, from the beginning, made them male and female, and said, 'For this cause a man shall leave his father and mother, and cleave to his wife, and the two shall become one flesh?' " (Math. 19, 3-5).

It is interesting to note that in Genesis it is Adam who speaks those words, whereas Our Lord puts them not in Adam's mouth but in the mouth of the Creator Himself. Obviously, then, we have Christ's testimony that Adam spoke under the inspiration and motion of God, it was God speaking through Adam.

But what exactly did the Creator mean by these words? Christ, the Son of God, makes their meaning crystal clear by adding immediately. "Therefore now they are no longer two, but one flesh. What therefore God has joined together, *let no man put asunder.*" (Matt. 19, 6).

The Pharisees immediately understood Christ's meaning, for they at once objected. "Why then did Moses command to give a written notice of dismissal and to put her away?" The answer of Our Lord is illuminating. "Moses, by reason of the hardness of your heart, permitted you to put away your wives: but *it was not from the beginning.*" (Matt. 19, 7-8).

Two things stand out in this short and pithy reply. First, "it was not so from the beginning." At its very institution marriage was indissoluble, divorce had no place in it. Secondly, God subsequently, through Moses, permitted divorce (cf. Deut. 24, 1-4) "by reason of the hardness of your heart." It comes like a thunderbolt to realize that while we press for divorce on grounds of humanitarianism, in the eyes of God all such reasons are reduced to one: hardness of heart. This stark analysis from the mouth of wisdom Incarnate should give us pause and make us see through all the humane pretenses that gift-wrap divorce proposals. Verily "My thoughts are not your thoughts; not your ways my ways, saith the Lord" (Is. 55, 8). "Man seeth those things that appear, but the Lord beholdeth the heart" (I Kings 16, 17), for "all the ways of a man are open to his eyes; the Lord is the weigher of spirits." (Prov. 16, 2).

PRECEPT, NOT COUNSEL

I mentioned at the outset the opinion being bandied about, even by priests, that the words, "What God has joined together, let no man put asunder," should be taken to mean that Christ Himself was personally against divorce; nonetheless, Our Lord did not intend thereby categorically to forbid divorce. In other words, indissoluble marriage is not imposed by way of precept, but only held up or counseled as an ideal.

This supposed "insight" is, to speak bluntly, nothing but a distortion of the biblical text. For we read in Luke: "Everyone who puts away his wife and marries another commits adultery; and he who marries a woman who has been put away from her husband commits adultery." (Luke 16, 18) Mark is no less explicit: "Whoever puts away his wife and marries another, commits adultery against her; and if the wife puts away her husband, and marries another, she commits adultery." (Mark 10, 11) And Mathew also explicitly concurs: "Whoever puts away his wife, except for immorality, and marries another, commits adultery; and he who marries a woman who has been put away commits adultery." (Matt. 19, 9)

Note that all the three Synoptics agree in that Christ defines remarriage after marital separation as *adultery*. Now, the Jews, to whom Christ was speaking, understood to a man the very serious nature of adultery. It was a capital crime punishable by stoning to death. The "insight" that would have us believe that an injunction the violation of which is sanctioned by capital punishment is merely counseled as an ideal is utterly ridiculous on the face of it. What is qualified or defined in terms of a capital offense can be nothing but an extremely serious, strict, and rigorous precept or commandment.

NO EXCEPTION

The text of Matthew just quoted appears to supply ammunition to the proponent of divorce. They gleefully point out that Christ Himself makes an exception: "Whoever puts away his wife, *except for immorality*, and marries another, commits adultery . . ." (Italics added). Therefore, by Christ's own words, in case of inmorality or infidelity divorce is justified and licit.

To understand this passage correctly several things must be taken into consideration. To begin with, the clause, "except for immorality," is clearly an exceptive clause; thus, a qualifying clause. What does it qualify? If we look at the text, we find that it can qualify either "whoever puts away his wife," or "and marries another."

In the second place, Christ uttered those words in reply to a question. Therefore, to interpret His meaning correctly, His reply must be referred to the question which it is meant to answer. There are two possible questions here. One, is it lawful for a man to put away his wife? Two, is it lawful for him to marry another?

In the third place, what was the actual question put to Our Lord? Matt. 19, 3, records the question in the following words: "And there came to him some Pharisees, testing him, and saying, 'Is it lawful for a man to put away his wife *for any cause?*'" (Underscoring supplied). That was the actual question placed before Christ, to which the answer is negative, except for immorality."

Therefore the genuine interpretation of the passage is this: it is not lawful for a man to put away his wife for any cause; only in the case of immorality will it be lawful for a man to put away his wife. Thus the exceptive clause, "except for immorality," is a qualifier of "whoever puts away his wife."

But once this question is settled, a second question logically crops up. Suppose a man has put away his wife because of immorality. It is lawful for him to do that. Now, then, is it also lawful for him to marry another woman? And is it lawful for the woman to marry another man? This second question is touched upon by the Pharisees when they called attention to the law of Moses in Deut. 24, 1-4. There it is explicitly allowed that the divorced wife could marry another man. Bearing this in mind, we can fully appreciate how loaded was the retort of the Pharisees: "Why then did Moses command to give a written notice of dismissal and to put her away?" (Matt. 19, 7)

The Pharisees must have been gloating inwardly. They thought that they had finally caught Our Lord in an airtight trap. They fully understood what Jesus had meant by saying: "What therefore God has joined together, let no man put asunder." What did He mean to do? Overrule Moses the Lawgiver?

But the wisdom of men is foolishness before God (I Cor. 1, 20 and 25). To this loaded question Christ replies by reminding his tempters of two things: one, the reason behind the permission granted by God through Moses, viz. "the hardness of your heart"; two, God's original intention and design: "but it was not so from the beginning." Then, having laid down this foundation, He proceeds to answer the question directly. He assumes the full role, power, and authority of the Son of God Who had come to fulfill the Law (Matt. 5, 17): "And I say to you" — note that Jesus here employs the first person singular, the same form of authoritative address that He had previously employed in the Sermon on the Mount when "the crowds were astonished at His teaching; for He was teaching them *as one having authority*, and not as their Scribes and Pharisees" (Matt. 7, 28-29) — "I say to you, that whoever puts away his wife [even if it be for immorality], and marries another, commits adultery; and he who marries a woman who has been put away commits adultery." (Matt. 19, 9).

TAKE IT OR LEAVE IT

That this is the authentic interpreation of Christ's answer is shown by the unbelieving and shocked reaction of His own disciples. Mark recalls that after the encounter with the Pharisees Jesus retired to a house and there "his disciples again asked Him concerning this." Concerning what? Concerning the lawfulness of a man putting away his wife because of immorality? No. Jesus had already agreed to that; and, besides, that was the accepted custom. Concerning the lawfulness of marrying another after a separation on grounds of immorality? If Jesus had also agreed to this, there would be no reasoning for reopening the question, since it was also the accepted ethic.

The reason why the disciples reopened the problem and began plying the Lord with questions all over again was because, in His debate with the Pharisees, Jesus had clearly and definitely repealed the permission given through Moses to marry again. To the importunations of his own disciples, Christ merely reiterated what He had said to the Pharisees. He did not attempt to soften, attentuate, water down in any manner the revocation of the exception given through Moses. "And He said to them, 'Whoever puts away his wife and marries another, commits adultery against her; and if the wife puts away her husband, and marries another, she commits adultery." (Mark 10, 10-12).

In Matthew we read the final, dazed reaction that this uncompromising, flat, definitive reply of Jesus caused in His disciples. "His disciples said to Him, 'If the case of a man with his wife is so, it is not expedient to marry.'" In modern language: if a man marries and finds out it was a mistake but is not allowed to correct his mistake, if he is condemned to unhappiness for as long as he lives, then it is much better not to marry ever.

To which Jesus answers: "Not all can accept this teaching; but those to whom it has been given. For there are eunuchs who were born so from their mother's womb; and there are eunuchs who were made so by men; and there are eunuchs who have made themselves so for the sake of the kingdom of heaven. Let him accept it who can." (Matt. 19, 10-12).

In plain language: Christ does not disagree with the assessment made by the disciples. Yes, it is better not to marry provided you do it for the sake of God and not simply to be able to indulge your lusts with more freedom and no responsibilities. The man who puts away his wife because of immorality must thereafter live as a eunuch for the sake of the kingdom of heaven. Of course this is not an easy teaching, and many will dispute it. Take it or leave it.

ST. PAUL'S TEACHING

If further confirmation is needed, we have the testimony of the Apostle St. Paul. His testimony is particularly significant since, as he himself point out, his doctrine and teaching were revealed to him directly by Christ. (Gal. I, 11-12).

In Rom. 7, 2-3, Paul teaches that "the married woman is bound by the Law while her husband is alive; but if her husband dies, she is set free from the law of the husband. Therefore while her husband is alive, she will be called an adulteress if she be with another man; but if her husband dies, she is set free from the law of the husband, so that she is not an adulteress if she has been with another man."

What does Paul mean by "the law of the husband?" In I Cor. 7, 4, he explains that "the wife has not authority over her body, but the husband; the husband likewise has not authority over his body, but the wife." The authority, or right, acquired by the husband over the wife through marriage is what Paul calls "the law of the husband." It is this which binds the wife to the husband, even if she be legally separated from

him, for as long as he lives. She is set free from this law or bond only by the husband's death. Obviously, since the husband has no right over his body but his wife, the husband is also bound by what we might similarly call "the law of the wife" for as long as she lives; only her death can set him free from this bond. Thus, if the wife is an adulteress if she be with another man while her husband lives, so is the husband an adulterer if he be with another woman while his wife lives.

Consequently Paul admonishes: "To those who are married, not I, but the Lord commands" — note that the apostle does not say *advises*, or *counsels*, but *commands;* mark, too, that he is careful to say that the command is not his (Paul's) but the Lord's — "that a wife is not to depart from her husband, and if she departs, that *she is to remain unmarried* or be reconciled to her husband." (I Cor. 7, 10-11; underscoring supplied). Obviously, the same command applies equally to the husband.

ULTRA VIRES

Marriage is a natural social institution. Its structure, fundamental laws and properties are determined by the Author of nature, God. When He instituted marriage God designed it for the replication and perpetuation of the race and made it both monogamous and indissoluble.

These three things are inherent in the very nature of marriage. They can be dispensd from only by divine authority. They cannot be voided by any human power or authority. On the contrary, being grounded on the absolutely supreme and unappealable authority of God, they nullify and void any contrary human enactment, be it in the form of a congressional statute, or of a constitutional provision, or even purely ecclesiastical legislation. Not even the Church can, on her own authority, authorize divorce. Any such enactment is an act that jurists describe by the term *ultra vires*, that is to say, *beyond the power* of any human agency. No human authority can validly legislate against the natural law or against the explicit command of God. Natural and divine laws retain their inherent vigour and validity despite contrary acts by any human power.

The first and basic question was: Does the state have the power or authorty validly to legalize divorce? The answer to that is a clear and round NO. This negative reply renders all further questions nugatory.