

THE SETTLEMENT OF MARRIAGE CONFLICTS OUTSIDE THE MATRIMONIAL COURT

By

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The problem of the so-called "intolerable marriage" underscores the need of searching for new avenues towards its immediate solution in cases of deserving couples involved in juridically insoluble marriage conflicts. A typical case in point is that of Glenda.

She is a filipino girl who fell head over heels in love with a charming, thoughtful and generous "well-beeled" foreigner-tourist. After his whirlwind courtship she said 'yes', and they middle-aisled it. She thought him to be the epitome of an ideal man and husband, for he was a catholic too, in addition to other personal assets. But he later confided that he was a divorcee, having been civilly married to a protestant girl who gave him several children. However, he had obtained an official divorce, and thus was a 'free' man at the time of his marriage to her.

But she was in for some more shocking discoveries about him during their early weeks together. Their honeymoon was not yet over, when she learned that her man had had his vasectomy and thus was sterile. He also confided to her that his notion about marriage was that of a temporary union while everything is rosy and sweet, but not permanent "in poverty, sickness, till death".

As months glided on, came the inevitable misunderstandings, little and trivial at first but growing more and more in number and gravity. After one year Glenda could not bear any longer and decided to leave him and seek an annulment from the Church, and indeed on apparently valid grounds and just motives. But will her allegations prosper in the ecclesiastical court? Will the husband serve her wishes by disclosing officially his vasectomy and his queer idea about the nature of marriage? Can she get witnesses to testify on her behalf? For indeed the burden of the proof of the reasons for a probable declaration rests squarely on her. Even if her marriage were *ab initio* invalid, as she contends, it could not be declared null and void until she presented juridically evident arguments of its nullity. And without such an official declaration of nullity, she is barred from taking a second husband. She could marry, only if at all, outside the Church, at which she revolted for she had been brought up a pious and practicing catholic.

So after her separation from the first man in her life, Glenda is caught in the horns of a painful dilemma of whether to spend the rest of her life in solitariness, or rather to get a new man at any cost, even without the benefit of a Catholic marriage. She refuses to accept either alternative and is bent in asking from the Church a remedy to her predicament that would allow her to have a family life again with the stamp of the Church's approval. So the question arises: Is there anything the Church can offer Glenda for her comfort and peace of mind?

THE PASTORAL ARRANGEMENT

The Pastoral Arrangement is a common practice among Lutherans. It consists in permitting a second marriage when, in the opinion of the Lutheran pastor, it is established that the first bond no longer exists, and that the spouse seeking a second marriage is the innocent party in the first union.¹ There is no need to bring the case to the Lutheran Marriage Court.

Is this solution or something similar feasible and admissible within the framework of the Catholic Church law?

We may begin answering this question by saying that the assumption that in the Catholic Church all marriage cases must be settled in the ecclesiastical tribunal is totally unwarranted. For there are cases of an exceptional nature, in which it is not necessary to follow the procedures and proceedings of a formal trial. Though exceptional in nature, such cases are not necessarily few; and they can be settled entirely at the Diocesan Chancery, though in some instances there may be a need to have recourse to the competent Roman Congregation. In fact the handling of marriage cases arising from certain invalidating impediments — such as age, impotence, consanguinity, solemn vows, pre-existing bond, etc., demands formalities similar to those of a juridical procedure, but needs not be brought to ecclesiastical court, whenever there is unequivocal proof from certain and authentic documents, such as the certificate of baptism, marriage, death, an expert's pronouncements . . . that the impediment really exists and that no dispensation has yet been granted.²

Marriages of Catholics, when they have been performed outside the Church,³ are handled administratively at diocesan levels or by the pastor or parish priest in consultation with his bishop. The same is true with

¹ HERTEL, J. R., *When Marriage Fails*. Paulist Press, N.J., 1969, pp. 30, 54.

² Motu Proprio "Causas Matrimoniales". AAS, 63 (1971), p. 441-446; CIC, c. 1990.

³ CIC, c. 1094.

cases involving the following: the presumption of death of the former spouse, the lack of valid mandate for the proxy, etc.⁴

All these exceptions notwithstanding, the solicitous concern of the Church on this matter is necessary and understandable. The pastor must be always ready to offer immediate assistance to couples in distress, at least by referring them to experts who have had some training in marriage problems and in the complexities of canon law and court procedures. The rank and file of the clergy is indeed unprepared for this difficult task, and even unequal to the simple duty of maintaining a healthful attitude towards the role and function of the law in the life of the visible Church.

Oftentimes a parish priest has come to realize only the hard way that the settlement of marriage problems does not depend merely on good will and pastoral concern, but that it requires a special expertise and skill, which many a pastor lacks, at least to a degree of competency. Thus he can have a sigh of relief only when he is instrumental in turning over the responsibility of solving such intricate cases to the diocesan tribunal or chancery.

THE PERSONAL CONSCIENCE SOLUTION

Persons caught in the mealstorm of an intolerable marriage have the right to decide their problem in accordance with their individual conscience, for conscience is the proximate norm of human action. If a spouse honestly and conscientiously believes that he is a "free" man or woman, then he or she should be permitted to try his or her luck in a second marriage.⁵ This is the gist of the Personal Conscience Solution.

This theory, in the words of Hertel, "presupposes that Christian faith in its ideal state is a living force in the lives of the people. It is a presupposition highly desired and to be striven after with incessant zeal. But we simply have to face the unpleasant truth that such is not the case. Not only is ideal christianity far from realization in the lives of most (including the clergy), but the factor of genuine, emotional, psychological turmoil in the distraught spouses very often precludes the objective vision so essential for the operation of an upright conscience."⁶

In truth, for those who would use this criterion or solution, the marriage bond will seldom, if ever, be given a chance to prevail over the personal decision of the spouses desperately yearning and struggling to

⁴ HUDSON, E., *Handbook for Marriage Nullity Cases*, Saint Paul University, Ottawa, pp. 168-172.

⁵ KELLEHER, S.J., *The Problem of the Intolerable Marriage*. America CXIX (1968), pp. 178-182.

⁶ HERTEL, op., cit., p. 53.

see it broken. In other words, the anguished and tormented, whoever they are or in whatever circumstances they may find themselves, are under the influence of emotion rather than clear, objective reason. And who will dare calling the attention of the spouses as morally lax and even guilty in adopting a solution just because it is favorable to them and in consonance with their desires?

THE CASE OF THE DIVORCED SPOUSES

The case of the divorced spouses who entered a second marriage without having waited for a declaration of nullity of the former union, poses serious problems in the juridical as well as in the pastoral order. The legal system has little to offer as a relief to the painful situation of such remarried persons. The law must uphold the indissolubility of marriage and the existence of a true union till the contrary is proven. The spouse who fails to show the court the non-existence of the previous marital bond can not expect his second marriage to be legitimated. So remarried divorcees are forced to live in the state of sin or to lead a 'sinful life', and are barred from the sacraments, specifically from penance and the holy eucharist. However, on the strength of a personal conviction of the nullity of their first marriage, the spouses look at the new union as legitimate and they insist in receiving the sacraments.

The dilemma is self-evident. The case is an irreversible one and the law finds itself inadequate to disentangle it. The divorced spouse on account of the inadequacy of the system, or perhaps due to his own fault, or to both, is actually living in 'sin'. Should she or he be denied indefinitely the active participation in the sacramental life of the Church?

The motherly concern and solicitude of the Church for her children seems to have discovered a suitable solution to the problem at least in the pastoral aspect. That is, remarried spouses can avail themselves of the sacraments in *foro interno* though only under certain conditions. According to Ziegler, this practice, which is called the Internal Forum Solution, has been sanctioned in and for the internal forum only by the Sacred Penitentiary, and has been in use in many dioceses of the USA for the last twenty years or more? This was made possible in the past and is being done at present under the following conditions:

— That there must exist a well founded doubt regarding the validity of the first marriage. The petitioner should be given ample time and be aided in the study of his personal problem. If after a serious and prolonged consideration of the case she or he comes to form a 'certain con-

¹ ZIEGLER, B. A., *Marriage Today*. Alba House, N.Y., 1973, p. 272; CAREY, R. C., *The Good Faith Solution*. *The Jurist*, XXIX (1969), p. 428.

science' or conviction as to the non-existence of the first marital bond, then the second marriage may be regarded as a union 'in good faith'. The admission of the spouses to the sacraments is then in order, but it should not be looked upon as a recognition of the validity of the first marriage.

— That the remarried divorcee or divorcees must have been living together for years, and that their union must have enjoyed and shown a certain degree of stability.

— That an assurance should be secured from the parties that when they took marital vows for the second time, they did so in good faith, and were motivated by their personal conviction that there was no breach of God's laws in their union.

— That extreme caution should be exercised to avoid scandal among those not familiar or conversant with the problem.⁸

But this Good Faith Solution is sure to raise grave problems and meet objections. It may be asked at the outset: Who is supposed to establish or guarantee the sincerity and certainty of the decision arrived at by the spouse or spouses in their own recondite consciences or hearts? Perhaps the distraught parties themselves? Or rather the pastor? Or still the marriage counsellor?

Surely such a decision should not be left to the spouses themselves. On the other hand the endorsement by the pastor or counsellor carries no guarantee of the Church's approval and support of such a private or non-judicial decision. Yet the disturbed and anguished spouses need the reassurance that the Church is behind the course of action they have decided to follow, if only for psychological reasons. J. Catoir, presiding judge of the Patterson Matrimonial tribunal, USA, introduced this practice which has been adopted in many other diocesan and regional matrimonial courts. The task of passing judgment upon, and upholding, the decision arrived at by the parties or spouses regarding the nullity of the prior marriage devolves on, and is reserved to, the Tribunal. The remarried spouses are admitted to the sacramental life of the Church in *foro interno* once the Tribunal has been duly and fully convinced that the second marriage was entered into in good faith, even if juridically outside the Church.⁹

Some ecclesiastical savants would prefer that the remarried spouses should have been left undisturbed at the very outset. However, it seems better founded and more practical for both the spouses and their pastor

⁸ ZIEGLE, B. A., *op. cit.*, p. 273.

⁹ CATOIR, J. T., *The Church and Second Marriage*. Commonweal, LXXXVI 1967, p. 113.

to have the decision of the parties supported and sanctioned by the Ecclesiastical Tribunal in a quasi-official manner. The method could serve as a partial and interim solution of marital conflicts or problems where one of the spouses fails to establish canonical grounds for annulment despite the solid probability that such grounds really exist.

In situations where the conditions set above can not be met, as when the validity of the first marriage can not be doubted or questioned, then "the pastoral charity of the christian and the priest must be capable, with regards to those excluded from the sacraments, of revealing the face of a Church that remains a Mother for them, even when she can not admit them to the sacraments. It should also be capable of leading remarried divorcees to accept their fate with trust in the Lord, as a stage to their conversion to christian life, and as a painful reminder of the value of the indissolubility of marriage."¹⁰

¹⁰ *L'Osservatore Romano*, July 1, 1976, p. 4; KOSNIK, A., *The Pastoral Care of Those involved in canonically Invalid Marriages*. *The Jurist*, XXX (1970), pp. 31-34.