

THE CHURCH ON DIVORCE

The advocates of neopaganism, having learned nothing from the present sad state of affairs, continue daily to attack more bitterly the sacred indissolubility of marriage and the laws that support it, and contend that there must be a decision to recognize divorce, that other and more humane laws be substituted for the obsolete laws.

They bring forward many different causes for divorce, some deriving from the wickedness or sin of persons, others based on circumstances (the former they call subjective, the latter objective); whatever makes the individual married life more harsh and unpleasant. . . .

So there is prattle to the effect that laws must be made to conform to these requirements and changed conditions of the times, the opinions of men, and the civil institutions and customs, all of which individually, and especially when brought together, most clearly testify that opportunity for divorce must forthwith be granted for certain causes.

Others, proceeding further with remarkable impudence, believe that inasmuch as matrimony is a purely private contract, it should be left directly to the consent and private opinion of the two who contracted it, as is the case in other private contracts, and so can be dissolved for any reason.

But opposed to all these ravings stands the one most certain law of God, confirmed most fully by Christ, which can be weakened by no decrees of men or decisions of the people, by no will of legislators: "What God hath joined together, let no man put asunder" [Matt. 19:61]. And if a man, contrary to this law puts asunder, it is immediately illegal; so rightly, as we have seen more than once, Christ Himself has declared: "Everyone that putteth away his wife and marrieth another, committeth adultery, and he that marrieth her that is put away, committeth adultery" [Luke 16:18]. And these words of Christ refer to any marriage whatsoever, even that which is purely natural and legitimate; for indissolubility is proper to every true marriage, and whatever pertains to the loosening of the bond is entirely removed from the good pleasure of the parties concerned and from every secular power.

Pius XI.

Encycl. 'Casti Connubii'
(*cfr. Denz. 2249,2250*)



Henry VIII, King of England, asked the Pope to grant him divorce from his lawful wife, Catherine of Aragon, so that he might marry Anne Boleyn. The king had rendered valuable services to the Church. If the Pope refused, England would surely be plunged in heresy. But Pope Clement VII stood firm. Not even to save England for the Church could he break God's law. The only reply he gave was: "Non possumus" I have no authority to set aside the divine law." As a result, Henry VIII abandoned his obedience. He revolted from the Church. This was the beginning of the Anglican Church.

INDISSOLUBLE MARRIAGE AND DIVORCE

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When the Church started her divine mission of preaching the Gospel to all nations, divorce prevailed as a normal legal institution. Jews and pagans regarded it as altogether unobjectionable. Only after a hard and long struggle did the Church succeed in presenting the institution of marriage as an indissoluble union according to the teachings of her Divine Founder, and thus the indissolubility of marriage was eventually

incorporated in the laws of the western world. In the last centuries, however, a reverse process has taken place and her achievement in preserving matrimony as a monogamous and indissoluble institution has been undermined by a licentious ideology which is always ready to repeal any law whereby human freedom is contained within certain bounds. Unfortunately, this modern ideology prevails today and the Church finds herself in a situation similar to the one at her infancy, as long as divorce is concerned.

The number of divorces has increased rapidly during the last centuries in most of the European and American Countries. At present, it is legalized in practically all nations in Europe, save Spain, Andorra, San Marino, Ireland and Iceland. The Parliament of Italy passed the divorce bill only two years ago, notwithstanding the official protest of the Holy See, which exposed the bill as a breach of the Lateran Concordat between the Vatican and the Italian State. It is sad to say that for the moment it seems that the legal acceptance of divorce will go on increasing.

The main reason why divorce has continuously been gaining ground and has been recognized by many civil powers, is due to the fact that it is regarded as an institution which springs from the principles of justice and liberty. Art. 16 of the *Universal Declaration of Human Rights* adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948, implies the recognition of divorce: "Men and women of full age . . . are entitled to equal rights as to marriage, during marriage and at its dissolution."

In the Philippines, relative divorce (*separation a mensa et thoro*) was, during the Spanish regime, regulated only by the *Siete Partidas*. The provisions of the Civil Code ruling on the matter of divorce were suspended by Governor-General Weyler on December 1889. It was only in 1917 that the absolute divorce law (Act No. 2710) was passed by the Legislature, thereby repealing the provision of the *Siete Partidas*. Again, during the World War II and under the Japanese occupation, a new law in favor of divorce was enacted. It was Executive Order No 141, whereby Act No. 2710 was repealed. On 1944, upon the liberation of the Islands by the American forces, the said law was nullified by General MacArthur and the pre-war Act No. 2710 was revived.

In the existing Philippine Code, absolute divorce is discarded, and only a relative divorce or legal separation is admitted. A group, however, of Delegates to the Constitutional Convention seems to advocate for the incorporation of Divorce to the fundamental law of the land. Since divorce is repealed by the present legislation, they feel this Christian criterion should not be imposed over the cultural minorities, especially the Muslims. The draft of provisions on Divorce reads as follows:

"Sec. _____

- a) The dissolution of marriage shall be based on grave causes only.
- b) Until Congress provides additional grounds, divorce may be granted under existing procedures for legal separation for any of the causes enumerated below:
 - (1) Adultery on the part of the wife or concubinage on the part of the husband;
 - (2) Attempt of one spouse against the life of the other;
 - (3) Complete and uninterrupted hostile separation for at least five (5) years ;
 - (4) And such other grounds for annulment or divorce which are recognized by Churches, religious sects or denominations wherein the marriage was solemnized.
- c) Divorce decrees granted by foreign Courts to Filipino citizens shall be valid only on the grounds recognized under Philippine Laws."

It is surprising, however, that such a provision has to appear in the Constitution of the nation which, as a fundamental law, should be general in character for the Filipino People as a whole. The matter of divorce, as other particular matters, should rather be an object of particular legislation, if there is a need for it. This has been the practice up to the present and it seems that particular situations have been properly attended to. For instance, Republic Act No. 394, approved on June 17, 1949, provides: "For a period of twenty years from the date of approval of this Act, divorce among Muslims residing in non-Christian provinces shall be recognized and be governed by Muslim customs and practices". House Bill 343 amending Act 394 has already been approved by the House of Representatives, but is now pending in the Senate. This Bill would extend by fifteen years the effectivity of Rep. Act 394.

From the plain reading of the draft, we draw the following conclusions:

1. The grave causes considered as a ground for divorce are grouped into four categories. The first two groups, namely adultery on the part of the wife or concubinage on the part of the husband and the attempt of one spouse against the life of the other, are grounds acknowledged now by the Civil Code for legal separation. (Art. 97). The third and fourth groups are entirely new.

2. It should be noticed that in the draft it is stated that divorce may be granted for any of the four above-mentioned categories of grave causes until Congress provides *additional grounds*. In other words, the four categories enumerated in the draft proposed in the Constitutional Convention as legal grounds for divorce, if approved will remain inasmuch as these provisions will be a part of the Constitution of the land which, of course, cannot be abrogated nor changed by the Congress. What the Con-

gress will be able to do is to *provide additional grounds* for divorce. We will have, therefore, the four categories of causes enumerated in the draft as part of the Constitution and the possible additional grounds that the Congress may provide in the future.

3. I want to call the attention of the readers especially to the fourth group of grave causes considered as a legal ground for divorce, namely "and such other grounds for annulment or divorce which are recognized by churches, religious sects or denominations wherein the marriage was solemnized." I wonder if the Government can effectively check on the possible grounds for annulment or divorce recognized by the various churches, religious sects and denominations existing at present or that may exist in the future in the Philippines. I only think of the enormous difficulty which the Catholic Church will encounter in accepting within her fold any follower of other churches, religious sects or denominations when, previous to his conversion, divorce had been resorted to.

4. In b) number (4) of the Draft of Provisions on Divorce, mention is made of "other grounds for *annulment* or divorce which are recognized by the various churches, religious sects and denominations wherein the marriage was solemnized." Judging by some press releases of some Delegates on their stand on divorce, the term *annulment* is obviously misused. Referring to the action of the Church's tribunal on certain marriages, they affirm that "the Church *annuls* the marriage because of vitiated consent. This cause for *annulment* recognized by the Church is not recognized by the Civil Code." Obviously the term *annulment* is taken for *declaration of nullity*, the meaning of which is entirely different. *Annulment* in the Civil Code is the action of a competent Court through which a marriage, considered as valid by law, is rendered null and void because of a circumstance existence *at the time* of the marriage celebration, due to which the law itself gives the Court power to nullify the marriage. *Declaration of nullity*, however, is the official pronouncement of a competent tribunal on the nullity of a union which, from its beginning, was already null and void due to a circumstance existing *at that time*, and declared by law as a diriment impediment. The ecclesiastical tribunal *does not annul* any valid marriage. It merely *declares a marriage to be null and void when it was invalid from the very beginning*. There is therefore no marriage to be annulled, because of its invalidity from the beginning.

5. The legislation of the Catholic Church on the indissolubility of marriage will be affected by the Draft of Provisions on Divorce, as proposed in the Constitutional Convention. Even Christian marriage, which is subject only to the Church's jurisdiction, is susceptible of dissolution according to this provision. No religious tenet is respected with regards to the use of divorce itself. The religious denominations are only referred to in so far as the grounds for annulment or divorce recognized by them will

constitute also a cause for divorce. Any Catholic couple therefore will be strongly tempted to apply for a divorce, whenever a cause of those enumerated in the draft is present, which is obviously against the Catholic tenet.

The Church teaches that any valid marriage is indissoluble, whether it be natural marriage (the one contracted among non-baptized) which is only a contract, through of a *peculiar* kind, or a Christian marriage which it at the same time a contract and a sacrament. It always enjoys this property of being indissoluble. The breaking up of the marital bond of a valid marriage will always be not only unlawful but also impossible.

Consequently, neither one of the spouses nor both of them in mutual accord may dissolve the tie created by them when marrying each other. Not even those endowed with the highest authority in a perfect human society have any power to undo what the contracting parties did through their lawful exchange of marital consent. The words of Jesus Christ, Supreme Legislator, are taxative and clear: "What God therefore hath joined together, let no man put asunder" (Matthew XIX 6). The marriage bond is as indissoluble by human authority as some illnesses are incurable by human medication. Of course this is not tantamount to saying that God is powerless to dissolve a valid marriage. As God can restore health to a patient afflicted with an incurable disease, so too, can God dissolve a valid marriage.

The above-mentioned doctrine is rejected by almost all non-Catholic denominations. However, not all of them explain in the same way the possibility or advisability of granting vincular divorce. Some believe that both spouses, in mutual accord, enjoy the right of dissolving their conjugal life whenever it becomes a heavy burden for them; others hold the belief that this right may be used by either of them, notwithstanding the other's opposition. There are some, however, who hold the tenet that, as a rule, divorce should be refused and indissolubility be upheld. For considering the sad conditions prevailing nowadays, divorce, according to them, is a social evil. However, they believe that serious reasons may demand its concession on certain circumstances which should be carefully determined by law. Thus, the Orthodox Greeks and Protestants reject divorce, save on one occasion only, namely when one of the spouses has committed adultery. Only on this condition, they believe, can the innocent party have the right to leave the guilty one and break the marital bond.

The defenders of divorce argue in this manner. Marriage is a private contract. Private contracts are left to the consent and good pleasure of both parties. Marriage, therefore, can be dissolved for any reason whatsoever, if the spouses agree in breaking their marriage tie.

*I here
agree*

We don't need to be long in exposing the erroneous argumentation here involved. It is assumed that marriage is a private contract and therefore rescindable by mutual agreement of the contracting parties. But marriage is not so, it is not a *mere contract*, but an *inviolable social institution*. In marriage a double cause is to be considered: the proximate cause, i.e. the free consent of the parties that is limited to decide whether to marry or not to marry and to choose the partner, and the remote cause, i.e. the divine institution of marriage from which the binding force of the laws governing matrimony is derived. Being a social institution marriage cannot be regarded as a mere private contract. The welfare of the offspring and the good of human society are here involved. Hence, marriage is subject to the provisions of public authority, which must respect the divine law, the source of the marriage institution itself. Nor can marriage be regarded as a mere *civil contract* when both parties are not baptized. Besides its being a social institution, marriage is a *sacred institution*. Every true marriage, even the one contracted among pagans, "*is religious in nature, having in itself something sacred, not added but innate, not received from man but imposed by nature itself*" (Leo XIII, Enc. *Arcanum*, Feb. 10, 1880). This explains why in all nations and at all times the celebration of marriage has always been associated with religious rites and ceremonies accompanied by sacrifices and with the intervention of priests. (Cfr. A. Knecht, *Derecho Matrimonial*, Madrid, 1932, p. 3.) Marriage, therefore, can never be considered as a mere civil contract. It has always and everywhere been considered as a *holy and religious contract*, even among infidels. Besides the above-mentioned testimony of Leo XIII, we have other pontifical pronouncements where this is affirmed in crystal-clear terms. Pius XII, for instance, speaking of civil divorce, said: "Even where the parties are not baptized, marriage legitimately contracted is a *sacred thing in the natural order. The civil courts have no power to dissolve it, and the Church has never recognized the validity of divorce in such cases.*"

If Christian marriage is to be considered, its contractual element cannot be separated from its sacramental element. Leo XIII expounds this doctrine eloquently in the following terms: "Let no one then be deceived by the distinction which some Court legists have so strongly insisted upon—the distinction namely, by which they sever the matrimonial contract from the sacrament, with the intent to hand over the contract to the power and will of the rulers of the State, while reserving questions concerning the sacrament to the Church. A distinction, or rather severance of this kind cannot be approved: for certain it is that in Christian marriage *the contract is inseparable from the sacrament and that for this reason the contract cannot be true and legitimate without being a sacrament as well.* For Christ our Lord added to marriage the dignity of a sacrament; but marriage is the contract itself whenever that contract

is lawfully concluded. Marriage, moreover, is a sacrament, because it is a holy sign which gives grace, showing forth an image of the mystical nuptials of Christ with the Church. But the form and image of these nuptials is shown precisely by the very bond of that most close union in which man and woman are bound together in one; which bond is nothing else but the marriage itself. Hence it is clear that *among Christians every true marriage is in itself and by itself a sacrament*; and that nothing can be farther from the truth than to say that the sacrament is a certain added ornament or outward endowment, which can be torn away from the contract at the caprice of man." (Enc., *Arcanum*, Feb 10, 1880).

Likewise Pius XI in his Enc. *Casti Connubii* expressly mentions and refutes this argument in favor of divorce, based on the contractual element of marriage. These are his words: "They put forward in the first place that matrimony belongs entirely to the profane and purely civil sphere, that it is not to be committed to the religious society, the Church of Christ, but to civil society alone. They then add that the marriage contract is to be freed from any indissoluble bond, and that separation and divorce are not only to be tolerated but sanctioned by the law; from which it follows finally that, robbed of all its holiness, matrimony should be enumerated among the secular and civil institutions. The first point is contained in their contention that the civil act itself should stand for the marriage contract (civil matrimony, as it is called), while the religious act is to be considered a mere addition, or at most a concession to a too superstitious people. Moreover they want it to be no cause for reproach that matrimony be contracted by Catholics with non-Catholics without any reference to religion or recourse to the ecclesiastical authorities. The second point, which is but a consequence of the first, is to be found in their excuse for complete divorce and in their praise and encouragement of those civil laws which favor the loosening of the bond itself. As the salient features of the religious character of all marriage and particularly of the sacramental marriage of Christians have been treated at length and supported by weighty arguments in the encyclical letters of Leo XIII, letters which we have frequently recalled to mind and expressly made Our own."

Summing up and applying the principles held by the Catholic Church on the indissolubility of any valid marriage, it may be safely affirmed that:

1. The indissoluble marital bond "is not subject to any civil power" since divine law "can never be deprived of its force by the decrees of men, the ideas of people or the will of any legislator." (Pius XI, *Ibid.*). "What God hath joined together, let no man put asunder". (Matth. XIX, 6).

2. "If any legislator acting contrary to divine law shall put asunder the marital bond, his action is null and void." (Pius XI, *Ibid.*)

3. The draft of provisions on divorce, as presented in the Constitutional Convention, is against the prescriptions of natural and divine positive law, which state that any valid marriage is indissoluble, be it contracted among pagans or among Christians. (Pius XI, *Ibid.*; Pius XII, 1946).

By way of conclusion, let us transcribe the words Pius XI addressed to the whole Church on this matter and from which our Christian population and our Delegates to the Constitutional Convention can draw some useful conclusions:

"Wherefore, let the faithful also be on their guard against the over-rated independence of private judgment and the false autonomy of human reason. For it is quite foreign to everyone bearing the name of Christian to trust his own mental powers with such pride as to agree only with those things which he can examine from their inner nature, and to imagine that the Church, sent by God to teach and guide all nations, is not conversant with present affairs and circumstances; or even that they must obey only in those matters which she has decreed by solemn definition as though her other decisions might be presumed to be false or putting forward insufficient motive for truth and honesty. Quite to the contrary, a characteristic of all true followers of Christ, lettered or unlettered is to suffer themselves to be guided and led in all things that touch upon faith or morals by the Holy Church of God through its Supreme Pastor the Roman Pontiff, who is himself guided by Jesus Christ Our Lord."

Hence, lest concord be broken by rash charges, let this be understood by all, that the integrity of Catholic Faith cannot be reconciled with opinions verging on Naturalism, or Rationalism, the essence of which is utterly to sterilize Christianity, and to install in society the supremacy of man to the exclusion of God. Further, it is unlawful to follow one line of conduct in private and another in public, respecting privately the authority of the Church, but publicly rejecting it: for this would amount to joining together good and evil, and to putting man in conflict with himself; whereas he ought always to be consistent, and never in the least point nor in any condition of life to swerve from Christian virtue.

(The Encyclical *Immortale Dei*)