

DIVORCE AND THE CATHOLIC CHURCH

Not long ago, the newspapers in France caused quite a sensation by the report that Prince De Broglie, one of the wealthiest French nobles, had been able to induce the ecclesiastical authorities to relax the iron-clad rule against the remarriage of divorced persons. According to the Press statement the Prince, who was a Catholic, had married several years previously and later had obtained a civil divorce. So much for the news report. The truth was that the person in question had never, as far as the Catholic Church was concerned, been married. He had endeavored to marry a divorced woman but could find no priest in France to perform the ceremony. Going to England they were likewise refused. Finally they imposed on the confidence of an English priest to whom they mentioned nothing about the previous divorce of the woman and he married them. As soon as the facts were made known however, the marriage was declared null and void. For the marriage in question no dispensation was issued by the ecclesiastical authorities of Paris; they only set forth the facts of the case namely that the previous marriage of the Prince had been no marriage at all.

When reading in the secular press about such events as the above, care must be taken that we do not accept them too readily. It is not a secret that the Catholic Church is opposed to divorce; yet insinuations and plain misstatements of facts occur very often. Especially does it occur with regard to the Catholic Church and her doctrines. Sometime ago there was a report in the paper that the former Margaret Draper of Washington who married a Catholic Italian nobleman, had applied for an annulment of the marriage. It would have been a simple matter for her to have applied for a civil divorce and to have obtained the same with very little trouble and in a very short time, but the annulment of a Catholic marriage is something entirely different.

Divorce in civil law means the dissolution of the marriage bond, the severance of the relations between a man and woman, of husband and wife. The state bases its claim to the power of granting divorce, on the fact that matrimony is a natural right to be forfeited only by some wrongful act. Therefore the government should permit every suitable person to marry and when one of the parties fails in those mutual duties, so as to

frustrate the ends of marriage, it should provide means whereby the innocent party may be freed from this mere legal bond.¹

Leaving aside the consideration that marriage is supernatural, that it is a sacrament, we cannot admit that the state has the right to regulate concerning the bond of marriage. The natural rights of man can be regulated by the state only in so far as they pertain to the extrinsic relations of domestic society or to the common good. The home depends on the state but we would have no civil society without domestic society, which is the root, the foundation of every state. As marriage then pertains essentially to domestic life; in fact the home would be impossible without marriage; the state has no right to establish anything that would effect the marriage bond in itself, or in so far as it is a natural right; but only in so far as its exterior civil effects are concerned.²

Man is bound to obey his superior, e. g. civil ruler, in all those things which pertain to his exterior acts and human affairs, but for the interior acts of his will, for those actions which pertain essentially to the nature of the body, he is accountable to God alone because all men are equal as far as the preservation of life and the generation of children are concerned.³

Although the state accepts the theory that marriage is a purely civil contract nevertheless, it is not admitted that it is of such a nature that the parties of their own accord can dissolve it. In civil law, marriage is looked upon as a permanent state to be ended only by the death of one of the parties, and when it does grant a divorce it demands evidence that the purpose of the union has been frustrated and that a greater evil will follow by maintaining the marriage than by dissolving it. The causes for which divorce is granted differ in the various states, ranging in number from one to about fourteen. In the District of Columbia and in New York State the only cause for divorce is adultery and in the other states the standard varies; in some cases a trivial quarrel or jealousy of one of the parties being sufficient grounds for divorce proceedings.

The sufficiency of these causes is by no means admitted by all. The prevalence of divorce, the social cancer of America, is an indication of the unsound condition of society. Those who

¹ Bishop, (Marriage, Divorce and Separation).

² Zigliara Summa Philosophia, Vol. III.

³ St. Thomas Summa Theologica II-II, Q. CIV, Art. V.

are endeavoring to remedy this evil may succeed in gaining new legislation, for restricting divorce but there is only one cure and that is a return to the belief in the supernatural character of marriage, a return to the doctrine of the indissolubility of the marriage bond, a return to the Catholic doctrine on marriage. Speaking on this subject Theodore Roosevelt once said, "The census statistics as to divorce are fairly appalling; for easy divorce is now as it ever has been a bane to every nation, a curse to every nation, a menace to the home, an incitement to immorality, an evil thing for men and a still more hideous thing for women."

Catholic marriage is a sacrament, it is something sacred.⁴ Christ raised marriage to the dignity of a sacrament when He honored the marriage feast of Cana with His presence and the performance of His first miracle.⁵ It would be wrong however to imagine that this sacramental dignity destroyed the natural characteristics of marriage, for grace does not destroy but perfects nature. Marriage is a union of a man and woman retaining the individual customs of life. This does not mean merely a mating of male and female but a union based on consent which only a human being is capable of giving. The object of matrimony is the propagation of the human race and the mutual help and companionship of the husband and wife.

The marriage bond is as firm and indissoluble as the union of Christ with His Church. With Catholics divorce is not a controversial subject. Nothing that happens after marriage, whether it be insanity, imprisonment, unfaithfulness, or anything else, can be used for a plea of divorce. The contract is inviolable. If God had so willed it, Christian marriage could have been dissoluble by adultery as the Greeks and Protestants claim it is; but the Catholic Church has always maintained that there is no evidence of any such divine disposition and consequently the principle holds good: "What God has joined together let no man put asunder." Catholic marriage implies a bond of union, of itself perpetual and lasting which can be broken only by the death of one of the parties.

Divorce as it is understood in civil law has no place in the legislation of the Church but there are some ecclesiastical en-

⁴ Eph. V. 22-23.

⁵ Prummer—*Theologia Moralis*, Vol. III. De Matrimonio.

actments which under certain conditions dissolve the marriage bond. Legitimate marriage between unbaptised persons, even if consummated, is dissolved in favor of the faith by the application of the Pauline Privilege.⁶ This supposes a marriage contracted between two unbaptised persons, whether infidels or members of an heretical sect and if one of the parties receives baptism, becoming a Catholic and the other refuses to be baptised or to live peaceably with the Catholic party, the latter can contract another marriage.

The marriage of infidels, although a merely natural contract, is of itself indissoluble. It would often happen however, that converts after receiving baptism, would be abandoned by their unconverted partners or be obliged to abandon them. In order then, that the burden of perpetual continence should not be imposed upon them because of the malice of unbelievers an exception to the law of indissolubility was made in their favor. The basis of this privilege is found in Sacred Scripture in the epistle of St. Paul, 1 Cor. vii, 12-15.

"If any brother hath a wife that believeth not, and she consent to dwell with him, let him not put her away.

"And if any woman hath a husband that believeth not, and he consent to dwell with her, let her not put away her husband.

"For the unbelieving husband is sanctified by the believing wife; and the unbelieving wife is sanctified by the believing husband: otherwise your children should be unclean; but now they are holy.

"But if the unbeliever depart, let him depart. For a brother or sister is not under servitude in such cases. But God hath called us in peace."

Living peaceably does not mean simply to dwell in the same house but it implies much more. The baptised party must be allowed to practise the Catholic religion, to live without injury to faith and morals and to give to the children a Catholic education. If any of these conditions are lacking the Catholic has the right to the privilege; but before it is granted certain conditions must be legally verified, and this process is called *interpellation*.

This process consists in the asking of two questions by the Catholic party, namely, whether the unbaptised is willing to be converted and receive baptism—whether he is willing to live peaceably without blaspheming the Creator. In some cases these questions may be omitted. When the infidel party, whether explicitly or implicitly, has answered the questions and there are

⁶ Codex Juris Can. Can. 1120.

witnesses to prove it; the Catholic is then permitted to form a new union. The marriage contracted in infidelity is not destroyed until the Catholic party has contracted a new one. This Pauline Privilege, however, cannot be applied to a marriage validly contracted with the necessary dispensation between a Catholic and a non-Catholic even if later the Catholic should fall away and the non-Catholic become a Catholic.

With regard to the dissolution of the bond, marriage is considered in ecclesiastical law in various ways. It may be legitimate only, that is a marriage which is valid without being a sacrament, e. g., between two unbaptised persons. When it is a question of the dissolution of such a marriage, if one of the parties should be baptised, the Pauline Privilege, as seen above can be applied. Then again marriage can be ratified only, when it has not been consummated, that is, a marriage between two Catholics but which has not been followed by any sexual intercourse. This marriage may be dissolved in two ways; either by the solemn religious profession of one of the parties or by a dispensation granted by the Holy See. The mere entrance into a religious order, life in the novitiate or the profession of simple vows, even though they be for life as is customary in modern congregations, cannot dissolve a ratified marriage which has not been consummated. The marriage is not dissolved until the profession has actually been made.

Formerly no long delay was imposed on the other party for contracting another marriage but at present such a person would have to wait at least four years; one year during which the novitiate is made, followed by a three-year profession of simple vows before the solemn vows are pronounced. It is practically necessary now that if one of the parties of such a marriage should choose the life of perfection, the marriage bond should be dissolved by papal dispensation.

To grant a dispensation dissolving a ratified marriage, the Pope must have a grave reason. It must be juridically proved that the marriage was not consummated which can be done either by medical examination or by circumstances showing that there could not have been any conjugal relations or by the testimony of the parties themselves confirmed by seven witnesses on each side. Such dispensations can be granted by the Pope only. The bishop is generally delegated to make the proper investigations. Valid marriage, however, ratified and consum-

mated can be dissolved by no living power; by no other cause than death.

Besides the absolute dissolution of the marriage bond mentioned above, ecclesiastical law recognizes limited divorce or, as it is more commonly called, separation. St. Paul makes mention of such a separation in 1 Cor. vii, 2. It sometimes happens that circumstances arise in which it is advisable for the parties to separate for a definite or indefinite time. Cohabitation is not so essential that the bond of marriage cannot exist without it or that separation may never become legitimate.⁷ Serious reasons however are required, for separation is not the normal condition. They may both mutually agree to enter the religious life or if only one does so, some provision must be made whereby the other party will live a continent life. Adultery is sometimes the cause of such a separation. It may happen also that there would be serious danger to soul or body if a separation did not take place; if there was serious danger in delay, it may be effected by private authority but separation because of the mere decision of a civil judge is never permitted to Catholics. Persons so separated cannot remarry.

It must be remembered that limited divorce or separation is not the same thing as a declaration of nullity. The latter is not a dissolution of the marriage bond or a separation but declares that a former marriage was no marriage at all, that it was invalid. In all such cases brought before the ecclesiastical court, it must be proved that at the time of the marriage there was present a diriment impediment, such as defective age, relationship within the third degree of kindred; which would of course invalidate the marriage. It may be stated here that there are no secret impediments nullifying the contract of marriage and discoverable only when the fine Italian hand of some ecclesiastic has been lined with a suitable fee. That accusation can be made only by the ignorant or the malicious, for the conditions nullifying the marriage are clearly set forth in Canon Law, accessible to all.

Ordinarily the principal causes for such an annulment have been the lack of proper consent to the marriage or because the consent was made through violence or fear. Such was the famous case of Dorothy Deacon, the sister of the present

⁷ Council of Trent, Sess. XXIV-Can. VIII.

Duchess of Marlborough, who petitioned for and received the annulment of her marriage on the ground that she had been forced into it against her will. To gain an annulment of a Catholic marriage is by no means as simple as procuring a civil divorce. During the past five years the Tribunal of the Rota, which considers these cases, granted only about seventeen annulments a year. Compare this with the thousands and thousands of divorces granted in the United States alone, and we can form an idea of the indissolubility of marriage as it is considered by the Church and by the State.

—Bro. Clement Nowlen, O. P.

Works consulted:

New Code of Canon Law.

St. Thomas, *Summa Theologica*.

Prummer, *Theologia Moralis*.

Tanquerey, *Theologia Moralis*.

Zigliara *Summa Philosophia*.

Rev. P. Chas. Augustine, O. S. B., *Commentary on Canon Law*.

V. Rev. H. A. Ayrinhac, S. S., *Marriage Legislation on the New Code*.
Catholic Encyclopedia.

MOTHERS' DAY

May Mary guard you, Mother Dear,
 And ease your pain and sorrow;
 Beneath Her care you need not fear
 Life's threatening tomorrow!

That is my wish as this, your day,
 One milestone passed, reminds us
 How far along the homeward way
 Each year, in fleeting, finds us.

And so I greet you, o'er the space
 That parts but cannot sever;
 May God send down His richest grace
 And keep you safe forever!

—Bro. Francis Vollmer, O. P.