

COMMENT

The Catholic tradition concerning marriage has always stressed the objectivity of the sacramental community of the family. Like the sacramental presence of Christ in the Eucharist, the (strangely named) 'marriage bond' comes into existence *through* the personal decision of people but is, in itself, the creation and the word of God. Its continued existence is not, therefore, at the mercy of the attitudes of husband and wife to each other or of their fluctuating personal relationships.

It is the great virtue of this approach that we apprehend marriage as a mystery to be found through but beyond personal relations; its vice is that the marriage bond can come to be seen as something magical and inhuman, irrelevant to working out in practice a life of human companionship and love.

This is fairly clear when we look at the notion of annulment. Annulment avoids the moralism of old-fashioned divorce with its language of 'unfaithfulness' and 'the guilty party'; it is, at least in theory, quite non-judgemental—simply a matter of deciding whether or not a particular sacrament was validly celebrated. The sense of guilt and failure inseparable from marital collapse is at least not exacerbated by a public theory that the failure is simply somebody's fault. The fairly recent English legal concept of 'marital breakdown', which eliminates any attempt to assign blame, is, in some ways, a move towards the Catholic notion of objectivity, though, of course, without the Catholic idea that such an objective bond, once really forged, is beyond the reach of human cancellation.

The practice of annulment avoids a judgemental moralism but only at the cost of the rather implausible suggestion that two people may have been living for years in what, by any ordinary criteria, is exactly like a marriage, but discover (when they find that their relationship has become intolerable) that the marriage had all along been illusory. When Catholics see the lengths to which well-intentioned canonists will nowadays go to establish the non-existence of a marriage they are prompted to echo the title of Martin Ward's recent lecture "How many of us are really married?". In such circumstances, does the problematic fact of being or not being 'married in the eyes of the Church' make any differ-

ence at all in human life except at a time of breakdown?

The notion of sacramental objectivity, of marriage as mystery, must surely not be ditched for the sake of shallow individualist talk of 'fulfilment in personal relationships' and so on; but the notion must be rescued from the idea that it refers to a magical inhuman reality detectable only by canonists. We need to recover and re-explore the vision of Aquinas, for whom marriage was the one sacrament in which not some merely symbolic gesture but natural human moral activity is itself the sacramental sign. If in the course of such an exploration we come to re-think the idea of indissolubility so that it becomes rather less like a brick wall then we shall have taken an important and pastorally necessary step.

But long before all that, and perhaps as a necessary preliminary to real theological development, we can surely dismantle the whole absurd apparatus for the Church's jurisdiction over annulment. Just as there was a time when only the Church provided schools and hospitals and a great part of social welfare, so there was a time when only the Church provided the courts in which to arbitrate between the competing claims of husband and wife. Now that the Church has characteristically brought forth a society capable of the secular control of these things (for in christianity religion is not an alternative to the secular but a creative transformation of it) the Church should be finding new areas of initiative rather than clinging on to institutions that have served their purpose. Just as in the more developed and secularised societies there is no longer a place for the specifically christian teaching of soil chemistry or medieval history, or for the specifically christian treatment of leprosy or malnutrition, so in such societies there is no longer need for a specifically christian jurisdiction over marriage (except in those cases which are not a matter of deciding the validity of a marriage but of the Church's authoritative dissolution of one).

It is the business of the married couple themselves to decide whether they really have a marriage or not—helped, of course, by theological advice and through the operation of the confessional. It is up to them and their consciences what they do about it. What canonists seem frequently not to realise is that in this day and age, even if a Church court has decided against an annulment, it is still simply up to the consciences of the people concerned what they do about it. A legal system with no sanctions is, in the end, simply making recommendations, and this is far more effectively done by the Catholic Marriage Advisory Council. In spite of this, for this sacrament alone, the Church operates a cumbersome and quite unnecessary apparatus of jurisdiction. No such absurdities surround, for example, the Eucharist. I would decline to give Communion to some notorious murderer and torturer, such as one of the Latin American dictators, if he had shown no sign whatever of

repentance, but that does not mean that I require a legal certificate of worthiness from every communicant.

If, in the light of Catholic teaching, someone decides that his or her marriage does not really exist (and one who does not take account of Catholic teaching in this will equally take no account of the decision of an ecclesiastical court) there will remain, of course, decisions to be made as a matter of justice between the two partners and with reference to the children; but it is for deciding such matters that secular divorce courts exist. If a husband should decide dishonestly that he is bound by no sacramental marriage and that he may run away with his secretary, the ecclesiastical courts as at present constituted afford to the wife no protection that is not available from secular courts.

I have said nothing of the horrors in practice of ecclesiastical tribunals, of the delays, the impertinent probing into other's lives, the scarifying inhumanity of it all. Even if every tribunal were as humane, as speedy and as efficient as every practising canonist would wish it to be, it remains that there would be no reason other than historical inertia for the persistence of these institutions. Let us sweep them away; the Church and her clergy have real and important jobs to do.

H.McC.

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