

# On Dissolving Indissolubility

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Let us begin with dissolving inflated statements on the indissolubility of marriage which do nothing but distort the issue: statements such as *marriage is indissoluble*, or *marriage between Christians is indissoluble*, or *marriage is indissoluble because it is a sacrament*. In point of fact, the Church considers marriage to be generally dissoluble: she claims the power to dissolve marriages between unbaptised spouses and does avail herself of that power when she sees fit to do so. Since by far the majority of spouses that live on our planet are not baptised, the initial proposition must be reworded as follows: in the Church's view, *marriage is dissoluble*, with the proviso that in some cases it is not.

What are those cases which are exceptions to the rule? Marriages between baptised spouses—or, to use the short-cut formula, marriages between Christians? The trouble is that the Church also claims the power to dissolve such marriages and actually goes on to break some, as when she grants a dissolution of the bond to validly married Christian spouses who have failed to 'consummate' their marriage.

What, then, about relating indissolubility to the reception of the Sacrament of Matrimony? Doesn't everybody know that if you are baptised and validly married in the Church, your marriage is *ipso facto* a sacrament and indissoluble by divine law. . . ? Beware, however, of bringing God into the picture before the Church is out of it: for your marriage is a sacrament even though you may have chosen not to consummate it, yet the Church would have no qualms of conscience in regarding you a free man (or a free woman) if you wished, say, to join a religious order and actually made your solemn profession.

So, the indissolubility of marriage revolves not around marriage, baptism or sacrament, but around *consummation*. The one exception to the rule of marriage dissolubility is the case in which a marriage validly contracted between two baptised spouses has been duly consummated: *marriage which is ratified and consummated cannot be dissolved except by death*.

Twenty years ago, the enunciation of the above thesis would have brought to a close our inquiry on the scope of indissolubility: with the stage of consummation, God intervenes as the referee of indissoluble though unhappy marriages and matrimonial courts take their Sunday rest. Today, the thesis is no sooner stated that controversy around the meaning of consummation explodes. For if God was supposedly clear as to how consummation was achieved when He determined that ratified consummated marriages could not be dissolved, the interpreters of His Mind, after centuries of equal clarity, are now in the dark. Is mar-

riage—as was consistently maintained from the time of Pope Alexander III to the Council of Vatican II—consummated in the bodily union realised by physical conjugal intercourse? Or does consummation also require spiritual union reached through mutual support and love? (It is Vatican II that is presumably to blame for throwing the Church into darkness, by relinquishing the venerable distinction between primary and secondary ends of marriage (*Gaudium et Spes*, N.50). The understanding of consummation in terms of physical conjugal intercourse made sense as long as the primary end of marriage was held to be procreation; it becomes illogical when mutual love and support between the spouses are put on a par with procreation.)

Theologians and canonists increasingly tend to answer the second question by the affirmative. The problem is that the resulting concept of consummation involves degrees of maturation and does not easily lend itself to verification; hence the merciless task of determining when and under what conditions consummation would in fact be attained.

'Recent writing shows a remarkably widespread concern that the notion of consummation be rescued from the narrowly physical context into which it has been closetted. It must be given a richer content embracing the whole profound process in which two people become one flesh. . . . The exponents of this broader concept are only too well aware of the far-reaching consequences which it would imply in the matter of assessing the indissolubility of certain marriages. It bristles with problems for the canonist not least of which would be the difficulty of translating this broader concept into juridical terms'. (Seamus Ryan, 'Survey of Periodicals: Indissolubility of Marriage', *The Furrow*, May, 1973, pp. 282-283.)

The difficulty of translating the broader concept of consummation into juridical terms does not seem insuperable: for that language problem to be solved, it is enough to broaden the object of matrimonial consent to include, in addition to the traditional *jus in corpus*, the more novel *jus ad communionem vitae* (or, alternately, *jus ad consortium vitae*). It is the difficulty of defining the elements of that communion of life and of concretely ascertaining its realisation which is the stumbling block.

One way out of the problem is to stretch still further the ministerial power of the Pope and to suggest that the Pope could, after all, dissolve even those marriages that are ratified and consummated. The minor difficulty with that solution would be to get the Pope to act on the suggestion; the major one, to convince his flock that indissolubility is not a farce, since all marriages would thus potentially become dissoluble.

Another way out of the problem is to leave indissolubility and consummation alone and to instead dig out new grounds for nullity declarations. If actual 'communion of life' is too fluid a reality to be circumscribed by law, aptitude to ever reach that stage is apparently more manageable. Should the wedding between Peter and Mary lead over the years to divisive quarrelling, the disaster could hopefully be traced back to a late star in the sky of defects in consent, namely 'psychic in-

drastically to cover their own cultural tradition according to which marriage is finalised by the birth of the first child?<sup>1</sup> There is no foreseeable end to the learned disputes that would likely ensue from the clash of cultural traditions on the meaning both of marriage and of consummation.

Learned disputes, however, sometimes fail to survive the simplicity of the Word of God: 'The sabbath was made for man, not man for the sabbath' (Mk. 2.28), Jesus said, and it was enough for the Pharisees' erudite knowledge on Sabbath observances to dissolve into thin air. The whole controversy on dissolubility is reminiscent of an argument Jesus once had with the Pharisees on the subject of divorce (Mk. 10.1-12; Mt. 19.1-9). From their viewpoint, the important question on marriage was raised by a text of the Law (Dt. 24.1) according to which there were causes justifying a husband in dismissing his wife, the point at issue being what those causes were. Jesus is summoned by the Pharisees to take a stand on the rabbinical debate between the School of Hillel (which, on the basis of that text, allowed a husband to divorce his wife for about any reason) and the School of Shammai (which only allowed him to do so in case of adultery on his wife's part). The Pharisees' question is more explicitly formulated in Matthews' account of the argument: 'Is it lawful to divorce one's wife for any cause'? (Mt. 19, 3).

In his reply, Jesus breaks through that narrow and ultimately futile framework of discussion. The important question on marriage is raised by the Will of God, not by a text of the Law already misrepresenting that Will ('For your hardness of heart Moses wrote . . .'); that question is answered in the very order of creation: 'From the beginning, "God made them male and female" . . . "For this reason a man . . . shall be joined to his wife, and the two shall become one" . . . What therefore God has joined together, let not man put asunder' (Mk. 10, 6-9). And so it came to pass that the Pharisees' painfully collected arsenal of arguments and counter-arguments on the causes justifying divorce suddenly became superfluous: do not waste your time discussing which marriages may be broken and which may not, when God has already declared that none should be.

Seen in the perspective adopted by Jesus, the debate on indissolubility, with all its ramifications, appears just as superfluous. There are, admittedly, differences between the two debates. Theologians and canonists argue on the interpretation of a thesis elaborated by their Thirteenth Century predecessors, a thesis subsequently covered with a cloud of divine authority, while the Pharisees were divided on the interpretation of a text taken from a Law they had clumsily equated with the Word of God. Beneath the differences, the issue is the same: which marriages it is permitted for man to break, which it is not. It so happens that God solved that issue long before Pharisees, theologians and canonists undertook to save His People from conjugal bondage.

By way of conclusion, I venture to make three proposals which, if found agreeable to the brains of the Church, could hasten the day when

<sup>1</sup>Cf. my article in the *African Ecclesiastical Review* (AFER), 'Gospel and Haya Marriage', 1972, 1, pp. 18-27.

the open-ended divine call to *fidelity* will have been substituted for the crippling human constraint of indissolubility, both as a norm regulating marriage and as an ideal towards which spouses should strive. Fidelity is a positive value which is susceptible of degrees and leaves room for progress. As a demand, it is already obeyed in the spouses' honest effort to forgive rather than fight. As an ideal, it is open to ever greater achievements, the model being God's fidelity towards His People.

In short, the solution to the indissoluble marriages predicament is not in the Church modifying her teaching on indissolubility; it is in the Church renouncing that teaching and adopting in its stead that of Christ.

*First*, in the matter of marriage stability, let the starting-point for reflection and action be the Word of God as expressed in creation and announced by Jesus: 'What God has joined together, let not man put asunder'. The Word is clear and cuts short theological as well as conjugal disputes. Your wife has committed adultery and you wonder what your next step should be? Do not look for light in the learned writings on the 'exceptive clause' of Matthew, they will confuse your already distressed mind. Do not too quickly secure a divorce from a civil court either, for your haste could compromise forever your already badly shattered union. Forgive your wife as God forgave His People their adultery, and make a fresh start.—Your husband is suffering a mental breakdown? Do not rush to the ecclesiastical courts for help, the lawyers might not quite manage to conceal their pleasure at that golden opportunity to free you by proving your husband a madman the day you married him. Rather, be compassionate as your Father in heaven is compassionate and let your husband's illness be an additional reason for lovingly caring for him.—You and your wife are pagans and your wife will not follow you to the baptismal font? Keep faithful to your wife and be satisfied with remaining a catechumen all your life. God's design is universal and applies to your marriage no less than it does to marriages between Christians. Disobedience to His Will would be too high a price to pay for the dubious 'Privileges' the traditions of His Church offer you.

The argument of Jesus against divorce, as recorded in Mk. 10, 5-9, has nothing to do with religious affiliation nor with an extra-firmness which supposed indissoluble bonds between baptised spouses would possess and which other bonds would lack. His argument is based on the order of creation and applies to any marriage. The fact that the Church should have taken upon herself to repeatedly break marriages between pagan spouses shows how far her human teaching on indissolubility has deviated from the divine teaching on fidelity.

*Second*, in the event that some spouses would choose to follow their human inclinations rather than God's orientations and would actually divorce and remarry, let their conduct be recorded as at least externally contrary to God's Will, but let the fact of a broken relationship be allowed to override the fiction of an ontologically unbreakable bond. That fiction rests upon an interpretation of the New Testament teaching

on marriage which mistakenly understands that teaching to mean that the matrimonial bond *cannot* be dissolved, while it means that the conjugal relationship *ought* not to be severed. The realistic attitude would have the advantage of directing attention towards the persons involved in a marital breakdown, instead of focussing it on a bond believed to be superimposed on the relationship between the spouses and thought to survive the death of that relationship. In the latter perspective, what counts most—in the occurrence of a marital breakdown—is to determine whether that bond exists and to find ways of dissolving it if it does. In the perspective I propose to adopt, priority is given to understanding the persons concerned (spouses and children) and to supplying them the help they need in that tragic event of their lives.

Many questions can obviously be raised with regard to the allocation of responsibility for the breakdown or the duty of remaining free as long as reconciliation is a concrete possibility. These are questions which could more readily be answered should the ‘indissoluble bond’ fiction be disposed of.

Whatever usefulness the fiction may have in pressuring reluctant spouses into cohabiting under the same roof, it has lost when the spouses have parted ways and found more congenial partners. The Church can lament their sin, if sin there has been; she can also impose an appropriate penance to make up for the scandal given, when a penance is called for. In the end, the Church would gain by following God’s example of compassion and forgiveness and by readmitting the validly married new couples into full communion with God’s People of saints and sinners.

A very sensible solution to the question whether the innocent party may contemplate remarrying after definitive desertion by the other spouse has already been proposed by Brian Byron in an excellent article which concludes as follows: ‘It is the writer’s opinion that Paul’s advice to the Corinthians could be a general guideline. The Church must proclaim to all who will listen that husbands must not divorce their wives, nor wives their husbands. . . . If they do separate for some reason, it can only be regarded as conditional, so that when the offence is removed, reconciliation can take place. But if one partner . . . deserts his partner . . . in a way that is obviously unconditional and permanent, the innocent party is free to remarry’ (I Cor. 7 : 10-15 : ‘Marriage and Divorce’, *Theological Studies*, September 1973, pp. 442-443).

*Third*, it is urgent to re-think the role of the Church in respect of marriage. Jesus denounced the weaknesses of the Jewish Law on marriage, yet he did not call in question the Jewish pattern according to which people married and were officially recognised to be in wedlock. The Church lived for centuries without asking what defined marriage, content with calling married people to live by the Gospel and with eventually blessing incipient marriages. Whatever the historical circumstances which later brought the Church to take on duties normally belonging to civil society, it is now high time she rendered to Caesar what belongs to Caesar: her role is not to define what marriage is, any more than it is to legislate on the validity of marriage or on the modalities of divorce.

The function of the Church is rather to continue in this day and age the mission undertaken by Jesus in his time. That function could briefly be described as follows: to remind spouses that, in God's sight, divorce is no lesser a breach of conjugal fidelity than adultery; to call husband and wife to imitate God's perfection in their conjugal life and to offer as a model the relationship which unites Christ and his Church; to help her members to live by the message of Jesus in such a way as to witness before men to the Truth of divine love which makes people free even in marriage.

The Church can go on lamenting the growing rate of conjugal infidelity in our time. Her sorrow will be of little consequence, as long as so many of her dedicated servants will spend so much energy dissolving those unsuccessful marriages that do not fall within the ever narrowing scope of the traditional indissolubility thesis and seeking to declare the others null on nebulous grounds of abnormality and immaturity. Perhaps there is something to say for dissolving the human tradition of indissolubility and for strengthening Jesus' concern for the God-like faithfulness which should characterise the conjugal relationship.

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