

## MARRIAGE

Marriage is a beautiful and unique sacrament in which a man and woman pledge themselves to each other in the bond of mutual love. The Catholic tradition sees this commitment arising from the deepest levels of human life, that is, in response to the creative call of God to live in peace -- to love self and others as described in Genesis. Therefore, marriage is seen as the ritual celebration of a love which originates in the creative call of God.

In response to this call a man and a woman pledge themselves to create a community of love. Insofar as this is realized this becomes an experience of salvation, an experience of the presence of Our Risen Lord through whose grace peace is established between husband, wife and, perhaps, children. To experience love is to experience the presence of God. As in all the other sacraments we have discussed, the dual activity is there-- the Lord calls and we respond, all on a personal level.

We have just spoken of "God's call" in our lives. This is not some otherworldly experience -- a voice in the dark, a message from the lips of an angel or a special dream. No, God's call is part of our ordinary life experiences. It is encountered in our daily experienced need to be loved, to be at peace with ourselves, with others, the world and God. It is our constant need to be accepted, to be forgiven, to be free from fear and to live life to its fullest. It is also our awareness of our "call" or "mission" to bring this peace, not only into our own lives, but into the lives of those other human beings whose lives we touch everyday, especially members of our family. God's call is that ever present "creative movement" of God which sustains us in life and beckons us to live a full human life, a life of peace with ourselves and others.

Like all the sacraments this symbolic act is meant to communicate the inner disposition of the people involved -- the inner love and dedication of the two people. It also expresses their faith that this love arises from God's call and finds its fulfillment in the imitation of the love of God as revealed to them in Jesus Christ. They solemnly pledge to answer the call of God in their married lives by committing themselves to the task of steadfast love for each other and their children with all that entails -- kindness, encouragement, forgiveness, trust, hard work, fidelity, etc..

In Catholic tradition, marriage is seen as a fundamental right possessed by every human being. It is also traditional Catholic theology that the couple confers the sacrament of marriage on themselves. The priest does not "marry" the couple, but acts as an official witness of the Church and society to the sacrament which they confer on each other. Ideally, the ceremony itself is meant to give final, public expression to the love and unity that has been growing between them.

In this light, the sacrament of marriage is not simply the sign of something that happens on the wedding day, it is that, but so much more. It is a sign of life-long a commitment to the future with all the risks and uncertainties that the future may hold. Every act of love

from that time on which binds them more closely together is, in a way, a continuing celebration of the Sacrament of Matrimony. Each of these acts, whether it be earning money for the welfare of the family, caring for the home, loving acts of sexual intercourse, etc., is also a specific moment of salvation, for God is the ultimate source of all love and every act of love is a response to the call of God in human life. This is the Good News revealed to us by Jesus. The Christian, therefore, understands the role of husband and wife as that of a bearer of salvation for the other. In the biblical sense they become savior to each other.

There has been a long and evolving discussion of the nature and “ends” of marriage in Catholic thought. Christianity was born in a Jewish/Greek/Roman culture in which marriage was seen as a contractual relationship. The partners were unequal - men superior, women subordinate. Even when Christianity began to view marriage as a sacrament, this concept of a contractual, unequal partnership was retained and the primary end of marriage was considered to be the procreation and education of children. Mutual love between spouses, if mentioned at all, was a secondary end.

There were some notable exceptions. Early on, the Emperor Justinian I (483-565) had coined the beautiful phrase that: “Marriage is a union of a man and a woman embracing an undivided communion of life” (*Instituta*). However, this kind of positive statement did not become characteristic of Catholic thought until well over a thousand years later at Vatican II. In those years between Justinian and Vatican II marriage was typically described as an unequal partnership and a procreative “institution”. Thus its primary end was procreation. As late as 1917 the Code of Canon Law considered marriage as a contract in which “each party gives and accepts a perpetual and exclusive right over the body for acts which are of themselves suitable for the generation of children” (Canon 1081, 2). The Code expressed the centuries long concept that marriage was primarily about “bodies and acts” and procreation, not about persons and mutual love.

However, in 1930, Pius XI in his encyclical *Casti Connubi* inaugurated the beginning of a new concept or model for marriage. He stated that marriage was a procreative “union”, and that the mutual love of husband and wife was a positive good and an secondary end of marriage. While stating that procreation was still the primary end of marriage, he made the historically remarkable statement that mutual spousal love was also important, so important that “it can in a very real sense, be said to be the chief reason and purpose of marriage, if marriage be looked at not in the restricted sense as instituted for the proper conception and educating of the child, but more widely as the blending of life as a whole and the mutual interchange and sharing thereof” (A.A.S., 1902, 548-49). This affirmation of the positive value of conjugal love began a theological reevaluation of marriage that found final expression in The Second Vatican Council in 1965.

In Vatican II’s “Pastoral Constitution on the Church in the Modern World”, the Council Fathers described marriage as a “community of love” (No. 47 ), “an intimate partnership of marital life and love”.... a “conjugal covenant of irrevocable personal consent” (No. 48). Here the legal notion of contract gives way to the biblical notion of covenant. While

stating that marriage and conjugal love find their “ultimate crown” in the procreation and education of children, it avoided the old terminology of primary and secondary ends. It stated that “Marriage to be sure is not instituted solely for procreation” (Note 50). Marriage is also seen as an *equal* partnership ordered *equally* to the love of spouses and the generation of children. This new evaluation of marriage was even incorporated into the revised Code of Canon Law of 1983 (Canon 1055.1).

## **Marriage and Divorce in the Scriptures**

At the present time there is a great deal of discussion within the Catholic community as to the nature of marriage. Since Catholic marriages fail at an alarming rate, the discussion has centered on the problem of divorce and remarriage. As a result, it has led to an examination of the nature of marriage and the possibility of divorce in light of the Scriptures, Catholic tradition and the modern experience of marriage.

The Catholic laws concerning marriage as contained in the Code of Canon Law have been formulated over the years as a direct attempt to remain faithful to the teachings of Jesus as reflected in the Gospels. The great difference between the Roman Catholic interpretation of the Gospel texts and that of most other Christian traditions lies in the fact that Roman Catholic tradition understands the words of Jesus in such a way that a valid marriage between two baptized Christians (not just Catholics) is viewed as creating an indissoluble bond, severed only by death. While Christians may under certain circumstances have to separate and obtain a civil divorce to protect their rights, remarriage is not thought to be permitted. It is this precise point which is under so much discussion today.

Since Catholic theology and the subsequent laws concerning marriage intend to reflect the New Testament teaching of Jesus and St. Paul, we need to understand the background and context in which these teachings arose. We begin with the Old Testament.

Divorce in the Old Testament -- The OT contains no detailed code concerning the regulations of divorce. It is taken for granted that a husband could divorce his wife, however, a wife could not divorce her husband. According to Deuteronomy 24:1 the husband must write a bill of divorce based on some charges. No doubt this was given in some formal way to the wife and perhaps in the presence of an official. The formula of divorce was probably similar to that found in Hosea 2:2: “She is not my wife and I am not her husband.”

The right to divorce was withheld if the husband falsely accused his wife of premarital intercourse (Deut. 22:13-19) or if he had forced her into intercourse before marriage (Deut. 22:28-29). There is, however, an interesting allusion in the story of Joseph and Mary (Mt. 1:19) which might indicate some private type of divorce or at least dissolution of a betrothal.

Grounds for divorce in the OT are ambiguous. The only indication given is in Deut. 24:1: “When a man takes a wife and marries her, if then she finds no favor in his eyes because

he has found “some indecency” in her, and he writes here a bill of divorce and puts it in her hand and sends her out of his house, and she departs out of his house,…” The phrase rendered in the RSV Bible as “some indecency” is an attempt to translate the Hebrew phrase “*erwat dabar*”, which literally means “nakedness of a thing.” The phrase is vague, but may suggest some physical problem rather than a moral defect and perhaps alludes to a list of reasons commonly accepted which has not been preserved. It most certainly would have excluded adultery, because adultery was a capital crime punishable by stoning to death. The same term, “*erwat dabar*” is also found in Deut. 23:14 and here it is within the context of keeping the tribal camp clean by going outside the camp to dig a hole from human excrement, thus keeping the camp clean “Because the Lord your God walks in the midst of your camp”. Thus, whatever “*erwat dabar*” might mean it seems to be in the category of a physical defect, rather than a moral defect.

By the time of Jesus there were two divergent views within the Jewish community concerning the grounds for divorce, one strict and one liberal. These views were represented in the rabbinic schools of the Shammai and Hillel. Those who were of the school of the rabbi Shammai, interpreted Deut. 24:1 (probably incorrectly) as allowing divorce for adultery only, while the school of rabbi Hillel permitted divorce for almost any reason whatsoever -- bad cooking, a scornful look. This was the situation at the time of the ministry of Jesus. We shall see that when the Pharisees ask Jesus about His views on divorce, they do this to “test” Him, to see if He agrees with Shammai or Hillel. As we know, Jesus rejected both positions and made His own startling assessment.

Jesus on Marriage and Divorce -- The NT texts which deal directly with the words attributed to Jesus concerning marriage are found in the Gospel accounts of Mark, Luke and Matthew. Scholars generally conclude that Mark is the oldest Gospel and perhaps contains the most original form of the discourse: (Mk. 10:2-12):

And Pharisees came up and in order to test him asked, “Is it lawful for a man to divorce his wife?” He answered them, “What did Moses command you?” They said, “Moses allowed a man to write a certificate of divorce, and to put her away.” But Jesus said the them, “For your hardness of heart he wrote you this commandment. But from the beginning of creation, ‘God made them male and female. For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one.’ So they are no longer two but one. What therefore God has joined together, let not man put asunder.” And in the house the disciples asked him again about this matter. And he said to them. “Whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery.”

Most scholars agree that the Gospel of Mark is intended mainly for a non-Jewish audience because it does not reflect the more detailed arguments of the Jewish traditions as will be seen in the account in Matthew. Therefore, while the entire discourse is attributed to Jesus, scholars point out that no Pharisee would ask the question about the

lawfulness of divorce. The fact that a man could divorce his wife was taken for granted, the issue was on what grounds. Mark is also distinctive in that Jesus says that a wife who divorces may not remarry. It is highly unlikely that Jesus would have said these words because in first century Jewish culture no woman had the legal right to divorce her husband.

The ability of a woman to divorce her husband reflects the situation under Roman law which dominated in the non-Jewish (Gentile) churches where a wife did have the legal right to divorce her husband. Many scholars believe that the Gospel of Mark was written for the Christian community in Rome about the year 70AD.

The legal right of divorce was not granted to Jewish women as we noted above. A Jewish woman could ask her husband for a divorce, but he had to be the one who granted it. And under Jewish law a woman divorced by her husband could remarry. Therefore, the entire discourse reflects a adaptation of the words of Jesus to a later time and to the non-Jewish cultural setting of an early Christian community some forty years after the death of Jesus.

In any event, it seems fair to say that this passage from Mark contains a clear prohibition, without exception, of the initiation of divorce by either husband or wife. And the fact that Mark reports that the disciples “asked him again about the matter” indicates that this saying of Jesus took them by surprise. This surprise will be more evident in Matthew 19 which we will consider later. Some commentators have argued that, by omission, this saying could leave open or at least may leave ambiguous the situation of the party who did not initiate the divorce and is left abandoned.

Other commentators who differ with the Catholic interpretation have pointed out the context in which this passage appears. They point out that it is placed between two sayings of Jesus: 1) In Ch. 9:43-48, Jesus is quoted as saying that if your hand, foot or eye causes you to sin, then they should be cut off or plucked out. This is a clear exaggeration which Christians have never followed literally and, in fact, it would be considered sinful to follow it literally, and 2) In Ch. 10:17-23, is the directive given to the rich man to sell everything and follow Jesus. Historically, the Church has judged this to be a radical moral demand that represents an ideal, but not a law which every Christian must follow in order to be a disciple of Jesus. Various religious orders of men and women have sprung up in the Church for those who do wish to take this call literally. This type of religious life has been seen as a special vocation which applies only to a few. Most commentators see this as a call to follow the moral teaching of Jesus completely, but that this commitment of follow Jesus can be made within the context of an ordinary life and a farmer, merchant, etc.. Creating jobs and paying a just wage, so that people can feed themselves and their families, is also an expression of a life without greed or a single minded pursuit of riches simply for oneself.

Thus these commentators argue that not all moral statements of Jesus should be taken literally or at least should not be considered absolutely binding in all circumstances. In this case, the statements of Jesus about marriage may well represent an ideal to be

followed, but should not be understood in a strict sense as an immutable, divine law which should be translated into Church law and applied throughout the ages. And careful readers have noted that Jesus does not say that it is *impossible* to divorce and remarry, but only that it is *illicit*. This will become a point of controversy in later Church history.

Other non-Catholic scholars (and a few Catholic ones) speak of these strict sayings of Jesus as an “interim ethic”, meant only to apply to that span of time between the death of Jesus and the final establishment of the Kingdom of God. A minority of scholars conclude that Jesus Himself believed that the final kingdom of God or “end of the world” was close at hand, as John the Baptist had preached. It seems certain that, at least for a time, St. Paul and others in the early Church believed that the Second Coming of Jesus would usher in the final establishment of the Kingdom of God and that this Second Coming of Jesus would happen soon, perhaps in their lifetime.

Thus, in this view, Jesus preached an idealistic ethic meant only for that short time span before the final coming of the Kingdom. However, when Jesus did not return immediately and the full Kingdom was not established, the Christian community needed to rethink and modify this ethic given the new circumstances now facing the Christian community. Paul’s modification of the statements of Jesus about marriage (see below) are seen as an example of the need to reinterpret the words of Jesus in light of new circumstances.

The next passage on divorce is found in Luke. It is terse and seems to remove all reason for divorce and admits of no qualifications: (Lk. 16:18)

Anyone who divorces his wife and marries another commits adultery, and he who marries a woman divorced from her husband commits adultery.

As mentioned above, some commentators have pointed out that these words are set within the context of the ending of the Old Covenant and the coming of the Kingdom. The life within the Kingdom is a constant striving for the perfection of human life. As Luke was also written for a predominately non-Jewish audience there is no hint of the Jewish controversies concerning the grounds for divorce. Again, some commentators take this as the expression of an ideal, rather than a divine law. Not so in the Catholic tradition.

While the accounts in Mark and Luke admit of no exceptions, the references in Matthew’s account do speak of some sort of exception. The first reference is in Matthew 5:31-32:

It was also said, “Whoever divorces his wife, let him give her a certificate of divorce.” But I say to you that every one who divorces his wife, except on the ground of unchastity, makes her an adulteress; and whoever marries a divorced woman commits adultery.”

This saying of Jesus is within the context of the Sermon on the Mount, where the New Law of the Kingdom is proclaimed by Jesus, here seen as the new Moses. Again, the

saying about cutting off the hand and tearing out the eye immediately precedes this saying. Do these words of Jesus express a law for all time or are they an obvious exaggeration or an ideal of the Kingdom which is not yet fully established? And what about the exception, “except on the ground of unchastity”? Is divorce permitted by Jesus in certain circumstances not mentioned by Mark and Luke?

This apparent exception appears again in Matthew Ch. 19:3-12:

And Pharisees came up to him and tested him by asking, “Is it lawful to divorce one’s wife for any cause?” He answered, “Have you not read that he who made them from the beginning made them male and female, and said, ‘For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one’? So they are not longer two but one. What therefore God has joined together, let no man put asunder.” They said to him, “Why then did Moses command one to give a certificate of divorce, and to put her away?” He said to them, “For your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so. And I say to you: whoever divorces his wife, except for unchastity, and marries another, commits adultery.” The disciples said to him, “If such is the case of a man with his wife, it is not expedient to marry”. But he said to them, “Not all men can receive this precept, but only those to whom it is given”.

Here the context is clearly Jewish and the Pharisees are “testing” him as to whether he sides with the view of Hillel (liberal) or Shammai (conservative). In this discourse, unlike the one in Mark, it is assumed that divorce is permitted in Jewish law, the issues revolved around the grounds for divorce.

Jesus is asked if divorce is lawful for “any cause” (Hillel). However, Jesus does not side with either Hillel or Shammai. Jesus does not refer to Deuteronomy directly, rather He responds with a reference to Genesis 2:18-25. God created man and woman to be a unity of one flesh. That Moses allowed divorced, is attributed to the “hardness of their hearts”. Jesus then states that except for “unchastity” no divorce is allowed. When the disciples react to this startling remark, Jesus responds that “not all men can receive this precept, but only those to whom it is given”. Again, some commentators ask could this be interpreted as a moral ideal, rather than a divine law?

The Greek word translated as “unchastity” is *porneia*. There is no agreement as to its precise meaning. Many outside the Roman Catholic tradition have seen it as referring to the stricter view of Shammai interpreting Deut. 24:1 and thus considered it as referring to adultery, however *porneia* is not the ordinary Greek word for adultery which is *moicheia*. Nor, in all probability, does Deut. 24:1 itself refer to adultery as we have discussed earlier. Many Roman Catholic scholars have suggested that *porneia* may well refer to an Aramaic expression which means an illicit union of concubinage and thus could be annulled. Other Catholic scholars submit that it may be the translation of a Hebrew word

meaning “prostitution” in the sense of a incestuous union due to marriage within a forbidden degree of kinship (Lev.18:6-18). This would not be a true marriage and would not require a divorce but only a decree of nullity.

There has also been some discussion in Catholic circles about whether the sayings of Jesus are meant to indicate that divorce and remarriage should not be *permitted* or whether these sayings are meant to indicate that the nature of marriage is such that divorce and remarriage are not *possible*. Some argue that Jesus may well have strongly denounced divorce and prohibited it, but that He did not necessarily declare that divorce was impossible.

For example, when in Mark and Matthew Jesus is quoted as saying “let no man put asunder” He may be saying divorce should not be *permitted*, however, if His words were meant to indicate that marriage creates an unbreakable bond, then He would have said “What God has joined together man *cannot* put asunder”. But, in fact, He did not say that.

There is a minority tradition within the Catholic Church that views divorce and a subsequent marriage as illicit (morally wrong) rather than invalid (not a real marriage). This tradition runs throughout Church history, even up to the time of the Council of Trent in 1545. I stress that this was a *minority* opinion and that it did not prevail in the Catholic tradition and certainly is not reflected in modern Canon Law. However, it was there and it was present for a long time. Some examples follow:

In 375, St. Basil the Great, bishop of Caesarea held that a husband who was unjustly abandoned by his wife and remarried could later be forgiven and be in communion with the Church (*Epistola 199*). The implication here is that the new marriage was illicit, but not invalid.

In the seventh century, Cummean, the abbot of Iona, allowed a second marriage when one’s spouse had entered a monastery (*Poenitentiale Commeani, Canon 30*). Also, Theodore, the Archbishop of Canterbury, allowed a man a second marriage if his wife had been captured by the enemy and even if she returned he was not obliged to take her back.

In 726, Pope Gregory II, in a letter to St. Boniface, held that if a man had a wife incapable of sexual intercourse and the man could not reasonably practice abstinence, then it would be better for him to marry another as long as he supported his first wife (*Epistola 14*). Here the second marriage was not judged to be illicit.

In the 12th century, Pope Alexander III disagreed with Gregory II that a divorce and second marriage could be licit, but he did not maintain that it was invalid. Pope Alexander also alluded to others who felt differently on the matter including his “own predecessors” (*Denzinger Bannwart, n. 397*). Even the Council of Trent, while denying that adultery was just cause for divorce, did not make a declaration that the bond of

marriage was indissoluble.

The discussions and possible interpretations go on and on and perhaps we shall never come to a definite answer to the perplexing exception in Matthew or the exact evaluation of divorce in the mind of Jesus. In any event, non-Catholic scholars have generally seen in Matthew at least some kind of a modification of the absolute terms of Mark and Luke and also point out that the Christian Church for centuries allowed divorce on the grounds of adultery, based on these texts in Matthew. On the other hand, Roman Catholic scholars have traditionally felt that their explanation leaves the theology of the indissolubility of Christian marriage intact.

St. Paul on Marriage and Divorce -- We now will consider the teaching of St. Paul, where a special case for divorce is considered, leaving open at least the *possibility* of remarriage. It is well to note that the writings of Paul are chronologically prior to the writings of the Gospels and thus give the first witness to the sayings of Jesus about marriage and how these sayings were applied in the earliest Christian communities.

Paul faced a problem which Jesus did not -- the conversion of Gentiles and what to do when a marriage between two non-baptized persons broke up because one member converted to Christianity. Sometimes without specific direction from Jesus, Paul had to make some of his own decisions. In 1 Cor. 7:10-16 he writes:

To the married I give charge, not I but the Lord, that the wife should not separate from her husband, (but if she does, let her remain single or else be reconciled to her husband) -- and that the husband should not divorce his wife.

To the rest I say, not the Lord, that if any brother has a wife who is an unbeliever, and she consents to live with him, he should not divorce her. If any woman has a husband who is an unbeliever, and he consents to live with her, she should not divorce him. For the unbelieving husband is consecrated through his wife, and the unbelieving wife is consecrated through her husband. Otherwise, your children would be unclean, but as it is they are holy. But if the unbelieving partner desires to separate, let it be so; in such a case the brother or sister is not bound. For God has called us to peace.

The context is a Gentile community where civil law would allow a wife to divorce her husband. In this text Paul allows for a separation (divorce) in special circumstances, however, he says nothing about remarriage. Paul seems to assume that the parties are already married and one of the parties subsequently converts to Christianity and the non-Christian party desires a separation (divorce). Paul does not imply that the previous marriage of two non-Christians is not valid. The issue is the fact of abandonment by the unbelieving partner. Paul exhorts the Christian partners are not to initiate the separation, but those Christians abandoned by the non-believing spouse, are "not bound". (In the Orthodox tradition, an "abandoned" spouse in a marriage that is judged to be "dead" can

remarry in certain circumstances.)

The interesting point here is that the sayings of Jesus did not cover all circumstances encountered by the early Gentile Church. It is also important to note that Paul as a preacher of the Gospel and a leader in the Church felt free to make some modifications in the sayings of Jesus in light of changed circumstances.

It is also significant for an understanding of current Catholic practice to note that since the fourth century, Christian tradition has gone beyond Paul's exact words and interpreted Paul's words to allow for a "remarriage in the Lord" in certain cases. For example, in a case where two unbaptized persons are married and then divorced, if one party subsequently wishes to be baptized a Catholic and then marry another Catholic in the Church this is deemed possible, because the first marriage was not "sacramental". This is called the Pauline Privilege (see below), even though Paul himself only spoke of separation and not the possibility of remarriage.

**Note:** Today the Catholic Church teaches that *only valid marriages between two baptized Christians are sacramental and thus indissoluble*. While this judgment is based on the words of Jesus, it is important to note that in the Gospels there is no such distinction, nor could there be one. Obviously when Jesus spoke these words there were no "baptized Christians" (Jesus never baptized) and thus any notion of Christian marriage or a distinction between sacramental and non-sacramental marriages would have been impossible.

It is also important to note that in the accounts of Mark and Matthew, Jesus refers back to the creation accounts in Genesis and seems to teach that from the beginning of time God meant for *all* marriages, not just later Christian marriages, to be permanent. The excuse for the Jewish practice is their "hardness of heart." Perhaps this was an attempt by Jesus to protect Jewish women, who in the opinion of Hillel could be divorced on a whim by their husbands. Given these words from Jesus, could the case be made that all marriages are indissoluble not just those considered sacramental by the Catholic Church? Or, on the other hand, could the case be made that this is an ideal which was never intended to be translated into law? Or, as cited above, did Jesus mean to say that divorce is possible, but morally prohibited?

While the current understanding of marriage in the Catholic tradition may be valid, it must be granted that its exact specifications are the result of the interpretations of the words of Jesus by Paul and the Church throughout the centuries in an effort to relate the Gospel message to current historical situations. The present marriage laws of the Catholic Church speak to circumstances - mixed marriages, sacraments, annulments, lack of canonical form - that Jesus never spoke of or experienced.

Given new situations in the future, could the current understanding of marriage change and/or be modified by the Church? I think the answer is yes. It may not happen, but it is certainly possible. Just as the Gospel writers attempted to present the message of Jesus to meet the needs of their differing communities, so too it is the proper function of the

Church to interpret the message of Jesus to meet the special circumstances it encounters throughout the ages. The Church believes it is empowered to do this by of the ongoing presence of the Holy Spirit which Jesus promised He would send. The precedent for changes in the Church's understanding of the permanence of marriage has already taken place in the development of the Pauline and Petrine Privileges. In any event, marriage will remain a mystery open to new discoveries of it meaning and implications for our lives.

### **Dissolutions, Annulments and Divorce in the Modern Church**

*Today the Catholic Church teaches that all valid marriages between two baptized Christians (not just Catholics) are sacramental and therefore cannot be dissolved, even on the grounds of adultery or abandonment.* Thus, while there may be a civil divorce for good reason, there can be no remarriage within the Church under these circumstances. On the other hand, valid marriages in which neither or only one of the partners was baptized are not considered sacramental marriages and under certain circumstances can be dissolved. In practice, this involves dissolving certain marriages using the concepts of "The Pauline Privilege" and "The Petrine Privilege" also known as the "Privilege of the Faith".

#### Dissolutions under The Privilege of the Faith -- Pauline Privilege and Petrine Privilege --

All dissolutions (not annulments) require that the marriage in question not be sacramental, i.e., not between two baptized persons. The basis for these dissolutions does not lie in the words of Jesus, but in the personal, pastoral decision made by St. Paul as related in First Corinthians and cited above.

*The Pauline Privilege* -- Under the "Pauline Privilege", legitimate, legal marriages between two unbaptized persons are dissolved in "favor of the faith" by virtue of the teaching and example of St. Paul in First Corinthians. In modern times this generally involves a situation in which *both parties to a valid marriage were unbaptized*. The parties divorce and now one of the parties wishes to marry a Roman Catholic. If this same party converts and is baptized in the Roman Catholic Church, the prior "non-sacramental" marriage can be considered dissolved (not annulled) to allow a second marriage in the Church. This judgment is based on the example of Paul and the "implied assumption" that a marriage between two unbaptized persons is only a "natural bond", and therefore can be broken if it is "for the good of the faith" to do so. The "good of the faith" would be defined here as the ability of a newly baptized Christian to be married "in the faith" to another baptized Catholic Christian.

*The Petrine Privilege* -- "The Petrine Privilege" is so-called because it allows the Pope to dissolve a marriage in which *only one party in a valid marriage was unbaptized*. This privilege was later expanded to include even marriages contracted between a Roman Catholic and an unbaptized person performed before a priest. The key point here is that there was no sacramental marriage, because both were not baptized at the time of the

marriage. Under these circumstances, such marriages can be dissolved by the power of the Pope in “Favor of the Faith” to allow a second marriage. As in the Pauline Privilege this is based on the need for the Christian to freely live out the faith.

*Nonconsummation* -- This situation is officially designated by the Latin phrase “*ratum non-consummatum*”. These are simply situations in which no completed sexual intercourse took place between the wedded couple. The Church sees sexual intercourse as the final, necessary step for a indissoluble, sacramental marriage. In such cases, the marriage can be dissolved even if both parties are baptized Christians.

These are difficult cases and are only resolved in Rome, because they are seen as an extension of the papal power growing out of the Privilege of the Faith explained above.

Annulments -- Under a variety of circumstances the Church can also grant an annulment. This is different from a dissolution of valid, legal, but non-sacramental marriage. In an annulment a judgement is made that a marriage never legally existed as a valid marriage *under canon law*. The marriage may have been legal under civil law, but not under Church law (Canon Law). There are a variety of grounds for annulment.

(For a detailed treatment of annulments see p. 16 below)

Divorce -- While the Catholic Church may grant annulments and dissolve non-sacramental marriages under the Pauline and Petrine privileges, it does not grant divorces. Catholics who are judged to be validly and sacramentally married may not divorce and remarry. However, for good reasons Catholics may obtain a civil divorce, but remarriage in the Church is forbidden as long as the other spouse is living. The theological basis for such a position is based on the words of Jesus in the Gospels (see above).

Divorced and remarried Catholics who are not granted an annulment or a dissolution are no longer considered excommunicated. This penalty was removed in May 1977, by the United States Catholic Bishops. Divorced and remarried Catholics are encouraged to participate in the life of the Church, however they are restricted from receiving Holy Communion. While there has been some confusion and various theological debates about this restriction, the prohibition from receiving the Eucharist was reiterated on June 24, 2000 in a Vatican letter entitled: *Declaration on Communion for Divorced and Remarried Persons*. The documents refers to the Code of Canon Law which says in part “Those... who obstinately persist in manifest grave sin, are not admitted to Holy Communion” (Canon 915).

The problem remains acute. While most parishes provide support groups for divorced and remarried Catholics, a true solution to the problem, if any, seems to lie in the distant future.

Internal Forum Solution

This is a pastoral solution used in special circumstances as outlined in Canon Law. It can be applied to Catholics in situations involving irregular unions in which there has been a divorce and a subsequent civil union. Their situation has been reviewed and it has been shown that it cannot be covered under the terms of the Pauline or Petrine Privileges or Annulment proceedings. The pastoral goal is to reconcile the couple to the community by means of admission to the sacraments.

In practice, the application of the Internal Forum Solution relates to two different situations:

- 1) Conflict - when there is a well-grounded judgment that the first marriage was null, but that fact cannot be established, e.g., for want of witnesses, evidence, or because of inadequacy of local tribunal, case overload, etc.
- 2) Hardship - when there is no solid evidence that the first union was invalid, and thus it is presumed to have been valid.

In either of these cases the local pastor may invoke the following criteria for making the moral judgment of allowing the reception of the sacraments.

1. First marriage irretrievably broken, reconciliation impossible.
2. Repentance for any fault for breakdown of first union..
3. Willingness to discharge responsibilities for former wife or husband and children.
4. Present union appears stable and enduring, obligations of love, fidelity, care of children  
appropriately assumed.
5. Every effort made to minimize scandal; indissolubility of marriage not compromised.

Given that this process takes place in the internal forum - between couple and pastor - and is essentially a matter of conscience, it is very questionable whether any public record or documentation of it should be made anywhere.

### **A Short History of the Sacrament of Matrimony**

The First Three Centuries -- While the Gospels and St. Paul give witness to the teachings of Jesus about marriage, we know very little about the marriage customs of the early Church. In apostolic times it is presumed that most converts were adults and were already married according to Jewish or other religious customs. There is no mention of a Christian rite of marriage. In the first part of the 2nd century St. Ignatius of Antioch speaks of having the “consent of the bishop” for marriage (*To Polycarp* 5) and early in the 3rd century Tertullian speaks of marriage in connection with the Eucharist and as “sealed by a blessing” (*To His Wife* 2,9). In these first three centuries Christians undoubtedly married within the structure of the civil law, but the ceremony remained a family affair and required no specific blessing or witness from the Church. However, Christian marriage was always considered to be of divine origin, sanctioned by Jesus, and

to be lived “in the Lord”.

During these first three centuries, the issue of divorce was debated among Christian writers. Some like St. Augustine, held marriage to be indissoluble. Others, like Tertullian, permitted a Christian man to divorce a wife who had committed adultery. Tertullian went so far as to speak of Jesus as the defender of the justice of divorce (*Adversus Marcionem*). There seems to have been no legal proceedings or anything like modern marriage courts set up by the institutional Church to make determinations in cases of divorce.

The Fourth to the Eight Century -- In the 4th century it became customary for the bishop or priest to give a blessing to the married couple at the wedding feast or at the Eucharist a few days later. This blessing was considered an honor, but was not required to make the marriage valid. Interestingly, however, at the end of the 4th century Pope Siricius initiated a requirement that all priests and deacons have their own marriages “solemnized” by a priest. Pope Innocent I continued this requirement for clerics early in the next century. No such requirement was made for lay people.

In the 5th century the clergy began to take a more active role in the marriage ceremonies sometimes joining the hands of the couple or placing a garland of flowers over them. This later developed into a liturgical rite in which the priest joined them in marriage and gave them a marriage blessing. This rite was not mandatory and through the 7th century Christians could still marry in a purely secular ceremony.

It was also in the 5th century that St. Augustine began to speak of marriage as a *sacramentum*. In Chapter 7 we discussed the meaning of the word *sacramentum*. In Roman culture, a *sacramentum* was a pledge of fidelity given by a Roman soldier to his general. In like manner Augustine viewed marriage as a sign of perpetual fidelity between the spouses. Baptism, as a commitment to Christ, had also been compared to the *sacramentum* of the Roman soldier. Thus it seemed to follow that just as Christians could not be rebaptized, neither could they be remarried. For Augustine, marriage was a sacred bond “dissolved only by the death of one of the partners” (*On the Good of Marriage* 24). Augustine also considered marriage a *sacramentum* in a second sense, as a visible sign of the invisible union of Christ and His spouse, the Church.

The Eight to the Sixteenth Century -- By the 8th century, church weddings with a liturgical rite became somewhat common. Even the civil law was changed to recognize the legal validity of such ceremonies. It was at this time that theologians in the Eastern Church (now the Orthodox) began to speak of the blessing of the priest as *essential* for the marriage of a Christian couple. However, in the 9th century, Pope Nicholas I declared that in the Western Church marriages were valid without any Church authorities being present. In the Pope’s view it was the couple’s consent which legally established the marriage.

By the beginning of the 11th century, all legal issues involved with marriage and divorce in Europe effectively came under the jurisdictional power of the Church. While there was

as of yet no universally required church ceremony, bishops began to demand that marriages be blessed by a priest to insure that marriages were legal and in front of witnesses. As the role of the priest became more and more involved in the ceremony there gradually developed a liturgical wedding rite.

By the 12th century, in various parts of Europe the wedding ceremony was conducted entirely by a bishop or priest. A fairly standard rite had also developed: the priest welcomed the couple at the door, asked if they consented to the marriage, blessed the ring, and then blessed the marriage.

Because it had been long held that the consent of the partners established marriage, there were a growing number of “secret” marriages and by the 12th century these marriages caused legal problems concerning the legitimacy of children, the rights of inheritance and the desertion of women by men who claimed they had never consented to marriage. Church lawyers had also begun to advocate an old Germanic idea that marriage was not ratified until sexual intercourse had taken place.

Pope Alexander III provided a definitive answer for the Western Church by declaring that the consent of the partners was all that was required for a real marriage. However, because of its powers of jurisdiction, the Church could nullify the marriage if no sexual intercourse had taken place. Once consent and intercourse had taken place between two Christians, no divorce was possible. The marriage bond was now considered indissoluble not only as a Christian ideal in response to the sayings of Jesus, but now as a rule of law. Legal separations were permitted for good cause, but remarriage was not permitted. Only annulments would allow separation and remarriage. This rule has endured until the present time.

The theological basis for establishing the indissolubility of marriage was the theological consensus that marriage was a sacrament and much like Baptism it was a permanent pledge of fidelity. While Augustine had spoken in this way of marriage as a sacrament in the 5th century, theologians had been generally silent on this matter until the 12th and 13th century, when Peter Lombard and St. Thomas developed their theology of marriage. Marriage was to be considered a sacrament in the same way as Baptism and the other sacraments and the *sacramentum* was the consent of the married couple and the marriage which it created. For St. Thomas marriage came into existence through mutual consent, was sealed by intercourse and created a permanent bond.

Finally, because of the continuing problems resulting from the practice of “secret” marriages and in reaction to the Reformation, the Council of Trent (1545) took an unusual step. In the final session of the Council (1563), a decree was formulated that recognized all previous secret marriages, but declared that henceforth no Christian marriage would be valid and sacramental unless contracted in the presence of a priest and two witnesses. This requirement held for over 400 years.

Since Vatican II, a number of options are now available in the case of a Catholic marrying a non-Catholic - a “mixed marriage”. In the case of a mixed marriage there are four

options involving the place and the ministers involved, some require special permission from the local bishop:

- 1) In a Catholic church with only the priest as minister.
- 2) In a Catholic church with a priest and a non-Catholic minister.
- 3) In a non-Catholic church with a priest and a non-Catholic minister.
- 4) In a non-Catholic church with only the non-Catholic minister.

Special approval may sometimes be made for a non-Church setting (outdoors). It is also possible for the non-Catholic party to receive communion during the wedding service, under certain specific circumstances. In a mixed marriage there is no requirement for the celebration of the Eucharist.

## **Annulment in the Catholic Church**

**Definition** -- An annulment is a declaration by a local Diocesan Marriage Tribunal that a marriage never existed as a *sacramental union according to canon law*, (in rare cases an annulment may be decided in Rome). A civil divorce, on the other hand, is a civil dissolution of an existing union. An annulment declares that there never was a valid *sacramental union*, despite appearances to the contrary. A civil divorce recognizes that a valid civil union has indeed taken place, but dissolves it.

It is important to note what this definition *does not* say. It does not say that a relationship, even a loving relationship, never existed between the parties. It does not even say that a marriage never existed between the parties, but only that the marriage was not canonically valid and not considered a sacramental union by the Church. And furthermore it does not say that children born of a canonically invalid marriage are illegitimate. Canon 1137 states clearly and unequivocally that all children are to be considered legitimate who are born of either a valid or a “putative” marriage -- a “putative” marriage in canon law is one which is invalid, but was entered into with a least one party being in good faith.

Annulments are quite common and can be resolved in most dioceses within a year. As the Church has moved from viewing marriage strictly as a contract to viewing it as a covenant, there is a realization that there may be fewer true sacramental marriages than we suppose. Many theologians and canon lawyers have commented that in situations where a marriage has broken down to the point of divorce, it usually points to fact that the conditions for a true covenant marriage, that is, a truly sacramental marriage were probably not present at the time of the marriage. Thus annulment in the sacramental sense become more probable and understandable.

### **Types of Cases** --

**A) Formal Cases** -- This is the most common type and requires a full Tribunal procedure to legally prove that no valid sacramental union ever took place. These cases focus on the

issue of consent. No true consent, no valid marriage. By far, the three most common grounds for declaring a marriage invalid include: psychological grounds, total or partial simulation of consent and force and fear. U.S. Tribunals give about 36,000 decisions in such cases per year.

1) Psychological - By far the majority of all annulments in the U.S. are granted on these grounds. These grounds include intoxication, alcoholism or drug addiction, homosexuality and immaturity. Immaturity is a broad category and includes behaviors at the time of the wedding such as financial irresponsibility; refusal to take care of home or children, excessive dependence on or rebellion from parents, excessive reliance on peer approval; problem drinking; trouble with police or other authorities; difficulty in holding a job; extramarital affairs; or emotional instability.

2) Total or partial simulation of consent - certainly consent is at the heart of a valid marriage, if it is lacking from one or both partners, the marriage is invalid.

Total simulation of consent takes place when one or both parties go through the outward forms of a wedding without any intention of really contracting a marriage. They are really “faking it” when they say “I do”. This is rare, but can happen to please a parent, give a child a name or perhaps, in the past, to avoid the draft.

Partial simulation of consent can take place when the parties are willing to marry, but withhold certain essential elements of the marriage relationship. In practice these fall into three categories:

-- Intention against fidelity -- One or both partners, at the time of the marriage, had no intention of giving the other exclusive sexual rights.

-- Intention against indissolubility -- One or both partners at the time of the wedding reserved the option to divorce if things did not work out between them.

-- Intention against children -- Since the Church holds that one of the primary ends of marriage is the procreation of children, any intention at the time of the wedding on the part of one or both parties to exclude children constitutes a ground for annulment.

3) Force and fear -- One of the conditions of a valid consent to marry is that the consent must be freely given. These include a range of situations including business or political marriages; the old classic “shotgun wedding”; fear of abandonment by parents; pregnancy in a young person with fear of rejection by parents;

The law requires that the fear be grave and inspired or inflicted from without i.e. by someone other than yourself.

B) Documentary Cases -- Rather than focusing on consent, these cases are a matter of law. Here a person may be eligible to marry, but because of a violation of an invalidating

law the marriage is rendered invalid. Invalidating laws include defect of form (some 26,000 cases in the U.S. per year), a previous bond of marriage, and certain diriment impediments. These are defined as:

1) Defect of form -- The Church has set certain requirements for the proper form of Catholic marriages (no such form is required of non-Catholic marriages). Normally, Catholics must be married in the presence of a priest and at least two witnesses. However, with permission, and only with permission, exceptions can be made so that Catholics, especially in mixed marriages, have several options. There are four choices:

- Married in a Catholic Church witnessed by a Catholic priest and two witnesses
- Married in a Catholic Church witnessed by a Catholic priest and a non-Catholic minister and two witnesses.
- Married in a non-Catholic Church witnessed by a Catholic priest and a non-Catholic minister and two witnesses.
- Married in a non-Catholic Church witnessed by a non-Catholic minister and two witnesses.

Therefore, in a case where a Catholic would simply contract marriage by a Justice of the Peace, the marriage would be considered invalid due to lack of proper canonical form.

2) Previous bond of marriage -- A Catholic with a previous valid marriage which has not been annulled or dissolved cannot enter into another marriage during the lifetime of the first spouse.

3) Diriment impediments - These come under the category of disqualifying laws that render a person ineligible for marriage. They are rarely used. These twelve impediments are included in Canons 1083-94.

--Lack of age -- The age of consent for a girl is 14 and 16 for a boy.

--Impotence -- The Church does not consider a marriage consummated until sexual union takes place. This does not include sterility which is neither an impediment nor a ground for annulment.

--Disparity of worship -- This applies to marriages between a Catholic and a nonbaptized person as distinguished from an interfaith marriage between a baptized Catholic and a baptized non-Catholic. This impediment is normally removed by a dispensation from the local bishop.

--Sacred order and religious vows -- Priests and member of religious orders who have pronounced solemn vows may not marry without first obtaining a dispensation.

--Abduction -- This involves force and does not include elopement.

--Murder -- This is rather odd and obviously seldom used, but it involves a case where you or your current spouse murdered your former partner in order to marry each other,

because you are currently in an invalid union.

--Consanguinity -- Blood relatives may not marry if the relationship is close. Defined in Canon 1091 as “Consanguinity in the direct line and to the fourth degree collateral line”.

--Affinity -- The ground of affinity extends the consanguinity impediment to the relationship between you and the family of your former spouse, that is, your former in-laws, including mother-in-law, father-in-law, son-in-law, daughter-in-law, or stepchild, even if your former spouse is deceased.

--Public decency -- Extends consanguinity and affinity impediments to cover common law marriages and other informal sexual relationships.

--Legal relationship -- Cannot marry someone you have adopted or a person closely related in the direct or collateral line to the adopted person.