

philippine studies

Ateneo de Manila University · Loyola Heights, Quezon City · 1108 Philippines

Divorce in the Catholic Church: Divorce and Remarriage

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Philippine Studies vol. 17, no. 3 (1969): 632–637

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Fri June 30 13:30:20 2008

and theologically incorrect. In the foreword, de Lubac explicitly states that the book is not a doctrinal explanation of the connection between Holy Scripture and Christian Tradition. Furthermore, even if it were, theology after Vatican II avoids speaking of Scripture and Tradition as "sources of revelation" because of the inexactitude of that expression. The possibility suggests itself that the title was chosen to facilitate the sale of the book. But no matter what the intention was, the title is deceptive and erroneous. Publishers have an ethical responsibility to label their products accurately.

JOSEPH J. SMITH, S.J.

DIVORCE IN THE CATHOLIC CHURCH

DIVORCE AND REMARRIAGE. By Victor J. Pospishil. New York: Herder and Herder, 1967. 217 pp.

This book by a priest of the Byzantine Uniate Rite and a canonist for many years of the Tribunal of the Byzantine Catholic diocese of Philadelphia reintroduces the question of the possibility of divorce in the Catholic Church. Only too aware of the rising social problems of divorce in the U.S. and elsewhere, the author attempts to substantiate the theological interpretation of the Eastern Orthodox Church as a possible useful remedy for the current situation. There is also an ecumenical aspect to the question because the Roman Catholic Church has always acknowledged the legitimate orders and sacraments of the Orthodox Church and in so far at least as the early centuries are concerned, its acceptance of the evangelical faith and its particular sacramental practices.

One of these is undoubtedly the more liberal interpretation of the Greek Church in the matter of divorce and remarriage. It is the intention of the author to focus our attention on this interpretation and the teaching of the Greek Church as a possible reason for inquiry into the whole problem of divorce and remarriage, even in the case of two baptized persons.

The book is divided into two parts of which the first part is again subdivided into three sections, namely: divorce and contemporary life. The entire second half of the book is formed of appendices which gather together the testimony of the early fathers of the church, the Roman pontiffs and the various synods and penitentials up until the 10th century. The author comments on the significance of these documents as he adduces them. In no sense does he deny the authority of the Church but addresses himself to the entire Catholic community presenting his evidence as a concerned Christian

and in this case, an ecclesiastical and canonical expert, who sees the vast problem which modern times have brought into marriage relationships and offers at least one possible way of helping it. Therefore the author does not offer any final solution but asks that his evidence be objectively examined to see whether it does contain the elements of a solution. In the first chapter on Divorce in the Bible, after giving briefly the Old Testament evidence on divorce, he then takes up the New Testament evidence. Scriptural scholars will undoubtedly censure Msgr. Pospishil for his handling of the New Testament evidence. In the first place he confines himself simply to Matthew 19 and to the Pauline doctrine, linking the one with the other and then adducing his conclusions. He does not give sufficient weight to the evidence of Mark on this same point. The author relies heavily on the traditional interpretation of the Eastern Orthodox Church of Matthew 19,9 and bases much of his scriptural argument on this admittedly obscure text. It is however a text which has in the recent times received considerable attention from the exegetes, and Pospishil in his brief treatment of the matter does not give a sufficiently objective picture of significant interpretations. According to the author, the Fathers of the Eastern Church and the modern Orthodox Church in general took this text as applying solely to the intrinsic indissolubility of marriage but always left to the Church the right to dissolve the marriage extrinsically and to permit remarriage after the divorce when the cause of the latter was the wife's adultery.

In all fairness, Pospishil should have adduced the weighty evidence for a different interpretation of this text. The foremost exegetes of the Catholic Church today do not accept Matthew 19,9 as allowing any exception to the prohibition of divorce on the part of Christ. If this were the case, then it would have put Christ squarely in the camp of Shammai as against the very liberal interpretation of the school of Hillel and the further question of the disciples would then be pointless. Briefly the background of the text in Matthew is put in the circumstances of a temptation to Jesus. The scribes in the incident in question ask him to take sides between the strict interpretation of the school of Shammai which held that only for adultery was divorce permissible, and the school of Hillel which allowed it for almost any cause whatsoever. The reply of Jesus was in strict rabbinical style; but he goes beyond the questioners' use of the Mosaic text and brings them back to the original teaching of Genesis and in his interpretation of this, recalls marriage to its absolute unity and indissolubility, as being the law of the original creation and therefore the law of the redeemed man.

The obscurity in the text rests on the interpretation of the words "except for *porneia*." This Greek word can be used in several senses. One interpretation would take it as meaning "premarital sexual intercourse" on the part of the woman who was betrothed in the strict

sense and therefore no longer free, even though she has not yet come to live with her husband. Such conduct could be envisaged by Christ as giving grounds for divorce because the marriage was not as yet consummated and the woman had not yet come to live with her husband and therefore, strictly speaking, it would not be a divorce after a valid marriage. The reason for allowing this exception would be to protect the husband from a possible deception as to the virginity of the wife.

The interpreters of the Greek Church who allow divorce for adultery on the basis of this text, adducing as their reason that the term *porneia* can be interpreted as meaning adultery, are shown to be upholding a weak probability. *Porneia*, although it could in some unusual contexts be taken to mean adultery, more literally means prostitution and another term altogether, *moicheia*, is used for adultery. In the interpretation of Bonsirven which has been warmly accepted by many exegetes, the Greek word *porneia* must be understood as translating the Hebrew *zenut* which would mean concubinage. Therefore the sense of the phrase in question would literally be this: "everyone who sends away his woman — except in the case of concubinage — makes her commit adultery." Again in this case there is no question of a consummated marriage but rather an illicit relationship which should be broken up anyway. Consequently dismissing the woman in this case is not strictly speaking a divorce at all except in a very loose sense (cf. Jerome Biblical Commentary, 42:43;38, 131-132).

Even granting for the sake of argument the interpretation of the Greek Church, the command of the Lord still has its own internal difficulties since it has arisen in a social context wherein the wife was in an unequal position as regards marital rights in Jewish law. This is rarely admitted by the author. He offers a more forceful argument from the doctrine of St. Paul and the contradiction which arises from the granting of the so-called Pauline Privilege and its own recent extensions in the case of marriages between baptized and non-baptized persons, as well as in the dissolution of a sacramental but not consummated marriage. Taking our Lord's words literally as applying to all marriages without exception, then it would seem contradictory to allow what is actually a divorce and remarriage privilege of the faith cases. This of course does indicate an intrinsic contradiction with the strict interpretation of Matthew's exceptive clause. And so the question arises as put by the author: is not the extrinsic dissolubility of any marriage always subject to the binding and loosing power of the keys?

To prove this point almost independently of the biblical text, the author goes to the fathers and official pronouncements of the early Church especially during the first ten centuries in both east and west with particular reference to the practice of the Greek Church. This latter practice according to him was never officially

condemned by the Latin Church until the final break took place between the eastern and western churches. However the main argument that he offers to substantiate his claim is more often than not simply an argument from silence. This is a good supporting argument when there is other solid evidence to substantiate it but this evidence does not seem to be as strong as the author contends.

The Council of Trent, although it would seem to have closed the issue completely in the statement of Sess. XXIV, can. 7 on marriage, did not in fact do so in the opinion of Pospishil. To prove his interpretation, he applies some form criticism to the Tridentine canons on the indissolubility of Christian marriage and concludes that this canon was not a final dogmatic decree in the sense that it excluded forever any subsequent possibility of the church exercising its power to dissolve a sacramental and consummated marriage.

In the second section of his work, the author adduces the texts of the Fathers of the early church as well as those of the synods and the penitentials. Again he resorts to his ingenious argument from silence.

Some recent articles have covered this same ground more thoroughly than our author, and the strength of the argument from the early Fathers is highly questionable, to say the least. Thus Henri Crouzel, S.J. in his article, *Les Peres de L'Eglise ont-ils permis le remariage apres separation?* (*Bulletin de Litterature Ecclesiastique, Janvier-Mars, 1969*) concludes against a study by P. J. Moingt, that the latter has argued in a vicious circle; furthermore after examining each text quoted in favor of this practice, he judges that among the Fathers of the first five centuries who can be considered as orthodox, only one has clearly given the deserted husband the right to remarry. This is an unknown author designated as Ambrosiaster.

The one clear and certain factor is the actual practice of the Byzantine Church. The synodal decrees quoted in favor of the practice are not so much proofs of a theological stand as rather an attitude of indulgence toward such second marriages. Thus canon 40 of the Council of Arles and Can. 9 of the Council of Basle.

In commenting on a decision attributed to St. Gregory II, and quoted by Gratian, who himself comments that it was contrary to the sacred canons, Pospishil would say the opposite although one might infer that Gratian was in a better position to make this judgment. The same difficulties can be brought against the arguments of the author from the evidence of the penitentials. Even if they seem to favor the thesis of the author, the very concept of the development of the theology of Christian marriage stemming from the Church's understanding of the gospels seems to be absent from the author's mind. Can we not just as legitimately argue against all the evidence brought

together in this volume that despite this early aberration from the central teaching of the Church, there has been gradually formed a consistent theology of marriage which for the past thousand years has scarcely changed in its substantial? It is a solid objection to the author's thesis, and his evidence does not seem to have substantially disturbed it. So much for the scriptural and theological argument adduced by Msgr. Pospishil.

There is however one other chapter which does offer reason for serious consideration of the situation of marriage in our time. These are the very striking sociological facts as to the number of Christian marriages which are in the process of breaking up today. He contends that there are about 20,000 divorced Catholic couples in Germany and perhaps more than 600,000 in the U.S. His assessment substantially agrees with the sociological data offered by Haring in his volume, *Marriage in the Modern World*. The problem is now to remedy the situation. If one is going to continue to affirm the indissolubility of marriage as a principle and to allow no exception thereto then another means must certainly be sought to assure that marriages entered into in the Church are truly Christian. One of the serious practical problems today is precisely how to handle Christian marriages between non-Catholics who do not accept the principle of indissolubility and rather frequently terminate their first marriages with their non-Catholic partner and then seek to enter a second marriage with a Catholic partner. More often than not the second union is stable but it puts both partners in an agonizing position of conscience. This is one of the aspects of the problem that the Church has not yet come to grips with. One way to handle the situation would be to demand the blessing of the priest as in the oriental church for the complete sacramentality of the marriage. Such a solution would recognize the unions between baptized non-Catholics as legitimate but not sacramental. The whole question of the sacrament would be simply left aside. In other words the application of the principle of indissolubility would be reserved solely to marriages contracted in the Catholic church between two baptized persons.

Another aspect of the situation is the admission of Catholics to the sacrament of marriage. The unsteadiness of the younger generation and its difficulties in making permanent decisions in all aspects of life today has brought about a situation where in some dioceses it is estimated that 30% of teen-age marriages end in their breaking up. Not a few bishops therefore have prohibited teen-age marriages and they refuse to allow their priests to officiate at them. The Vatican Council itself recommended that the age of marriage be raised especially in the urban and industrial centers. All these are areas of feasible action on the part of the Church to stem the growing tide of divorce among married Catholics. It is no doubt a very serious problem and whether one agrees or not on the solutions offered

by Msgr. Pospishil, we owe him a debt of thanks for forcing us to consider the problems of divorce and the manner in which it is beginning to affect Catholics. Hopefully the Catholic people, both clergy and laity, will begin to look more seriously at the problem and will try to offer some real rather than ethereal solutions.

SAMUEL R. WILEY, S. J.

TRIBUTE TO AGUINALDO

THE YOUNG AGUINALDO: FROM KAWIT TO BIYAK-NABATO. By Carlos Quirino. With a Preface by Nick Joaquin. Aguinaldo Centennial Year. Manila: Bookmark, 1969. xii, 230 pp.

In 1963 the present reviewer had the privilege of collaborating with Carlos Quirino (at that time Director of the National Library) in a book which we at the time thought (and still think) was of great national interest. It was the publication in photostatic facsimile of the original manuscript documents relative to the trial of Andres Bonifacio. The documents were in Tagalog, but an English translation was also provided by Mrs. Virginia Palma Bonifacio. Director Quirino, besides providing the photostatic copies of the documents, also provided a historical introduction.

That biographical essay originally published in 1963, has now been expanded into the book under review. It is intended as the first of a two-volume biography of the great leader of the Revolution, the centenary of whose birth is celebrated this year.

Aguinaldo was born in 1869, the year of the opening of the Suez Canal. The two events have a symbolic relation: for the Suez Canal hastened the economic and intellectual development of the Philippines by bringing the Islands closer to Europe; Aguinaldo's role was to hasten the national development of the Filipino people by overturning the old order and attempting to set up the first independent republic in Asia. The experiment did not succeed, not because the Filipinos were not ready for self-government, but because American imperialism stepped in to rob them of their hard-earned independence.

The story of that experiment is one of the most absorbing in the entire history of the world. Carlos Quirino, in the present volume, tells only the first part of the story: from the Cavite meeting of 1872 (which resulted in the martyrdom of the three priests, Fathers Burgos, Gomez and Zamora) to the Pact of Biak-na-bato of 1897. It is a fascinating story, and Carlos Quirino tells it well.