

BOLETIN ECLESIASTICO de FILIPINAS

PROPOSED CHANGES IN THE PHILIPPINE CIVIL CODE ON MARRIAGE

Catholic Bishops' Conference of the Philippines

THE BIBLE ON DIVORCE

Efren Rivera, O.P.

THE CHURCH AND THE INDISSOLUBILITY OF MARRIAGE

Excelso Garcia, O.P.

DIVORCE — AN ANSWER TO UNSUCCESSFUL MARRIAGE?

Ismael Misolas

PREVENTIVE MEASURES AGAINST DIVORCE

Wilfredo Paguio

DECLARATION ON MARRIAGE AND DIVORCE

Bishops of Chile

BOLETIN ECLESIASTICO de FILIPINAS

THE OFFICIAL INTERDIOCESAN ORGAN

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GUEST EDITORIAL

Statement on the Doctrine of the Church on Christian Marriage

The campaign for the legalization of divorce has been resumed with vigour through all the avenues of mass media, sowing confusion and disturbance in the minds and hearts of our people. In this state of affairs the People of God have the right to turn for light and comfort to those whom the Heavenly Father has set to teach, rule, and sanctify his flock. We are cognizant of this our sacred duty and mission to give unambiguous witness to the clear teaching of Christ on this matter and to express our sympathy and solicitude for the seemingly helpless plight in which many of God's children find themselves.

The Bible plainly teaches that the first and fundamental form of human society is the marital society. So fundamental, indeed, that God did not leave it to human wisdom alone; because it is "a relationship which, by Divine Will and in the eyes of society too, is a lasting one. For the good of the spouses and their offspring, as well as of society, the existence of this sacred bond no longer depends on human decisions alone." (Vat. II — The Church in the Modern World, n. 48)

When God brought Eve to Adam, He commanded them: "Increase and multiply, and fill the earth." (Gen. 1:28) In giving them to each other, He instituted such a close and intimate bond between them: "For this reason a man leaves his father and mother and clings to his wife, and the two became one flesh." (Gen. 2:24) The meaning of this expression was given by Our Blessed Lord in these clear terms: "What therefore God has joined together, let no man put asunder."

And when the Pharisees objected, "why then did Moses command to give a written notice of dismissal, and to put her away?", Our Lord replied, "it was not so from the beginning." And added immediately: "And I say to you, that whoever puts away his wife, and marries another, commits adultery; and he who marries a woman that has been put away, commits adultery." (Mat. 19:6-9)

Thus, on the express interpretation of Our Lord of the account of Genesis, it is clear that marriage by its nature is a union of **one man and one woman for life**.

Furthermore, in the New Testament, Christ raised the natural institution of marriage into a Sacrament which signifies the great mystery of the permanent union of Christ and the Church (cf. Ephes. 6:25-32), and through this Sacrament "the Savior of men and the Spouse of the Church comes into the lives of married Christians... [and] abides with them thereafter so that, just as He loved the Church and handed Himself over on her behalf, the spouses may love each other with perpetual fidelity through mutual self-bestowal." (Vat. II, **The Church in the Modern World**, n. 48)

Marriage therefore is regulated fundamentally by both natural and divine laws. Our Holy Father Paul VI says: "Marriage is not the effect of chance or the product of evolution of unconscious natural forces; it is the wise institution of the Creator to realize in mankind His design of love... For baptized persons, moreover, marriage invests the dignity of a sacramental sign of grace, inasmuch as it represents the union of Christ and of the Church." (**Humanae Vitae**, n. 8) To dissolve the marriage bond is beyond the competence of any human power.

This is the doctrine gathered by the Church from the Bible and uninterruptedly taught by her from the beginning up to the present. We will present it at greater length in a forthcoming Pastoral Letter, in which we will also explore the pastoral solutions and remedies to the problems that afflict family life in our country today. We assure our people that it is with deepest sympathy, concern, and feeling that in this past meeting we have given serious thought to these problems and difficulties.

Those who are happily married, let them be an eloquent witness of the beauty and dignity of Christian married life. At the same time, let this Christian witness be a source of hope for those less fortunate, a living assurance of the efficaciousness of human cooperation with the sacramental grace effected within them at the foot of the altar by taking each other in mutual love as Christ and His Church. Christ was conscious of the weakness and frailty of human love, of the many trials that threaten to quench the fire of charity in married life. Precisely for this reason He willed to invest matrimony with the dignity of a sacrament of grace, so that human "married love is caught up into divine love and is governed and enriched by Christ's redeeming power and the saving activity of the Church." (**The Church in the Modern World**, n. 48)

We invite our dear brothers and sisters in Christ, both the married and the unmarried, the young and the old, the healthy and the sick, to exercise this saving activity of the Church, by offering the trials and hardships we all have to endure in our respective states of life for the relief and redemption of the ills that afflict family life everywhere.

We ask our people to pray that the Holy Spirit fill our hearts with understanding, gentleness, and love in the discharge of our Pastoral concern.

CATHOLIC BISHOPS' CONFERENCE OF THE PHILIPPINES

PROPOSAL:

**TO INTRODUCE THE FOLLOWING CHANGES
INTO THE CIVIL CODE OF THE PHILIPPINES
(REPUBLIC ACT NO. 386)
BOOK I. — PERSONS. — TITLE III. — MARRIAGE**

**Endorsed to President Marcos
by
The Catholic Bishops' Conference of the Philippines**

It has been repeatedly published in the local press that a Draft on divorce had been presented to the President of the Philippines for a possible Presidential Decree legalizing divorce in this country. It is also common knowledge that the Draft was prepared by a group of professional women-lawyers under the auspices of the U.P. Law Center. What the public does not probably know is that the contents of the Draft are excessively more ample than the legal prescriptions they propose for divorce. Judging from the title of the proposed Draft, we may say that it seeks "equal rights to men and women of the Philippines by amending and repealing certain provisions of the Civil Code, Revised Penal Code, and the Child and Youth Welfare Code, as well as special laws related thereto, in order to promote the full development of women". The Draft therefore covers a very wide subject matter.

Our Proposal, however, covers only marriage legislation. It takes into account some of the suggestions introduced in the Draft of the U.P. Law Center and those changes that, as commentators on marriage law have been pointing out, should be incorporated into the Civil Code. The criterion which has guided us in drafting this proposed revision of marriage law is not a strictly Catholic criterion, as some might expect, but rather an ecumenic clamor for religious freedom in a matter which is entirely pervaded by religion and wherein only religious convictions and attitudes can ensure a lasting success and happiness for the Filipino family and nation.

No discrimination whatsoever of religious character is involved in the proposed changes. All religious denominations are considered on equal footing, so as to preclude any infringement of the frequently invoked principle of separation of the Church and State. No church, sect or religion is given any particular attention or preference in our proposal. All receive equal treatment and respect.

CIVIL CODE OF THE PHILIPPINES
(Republic Act. No. 386)
BOOK I — PERSONS
TITLE III — MARRIAGE

Chapter 1

REQUISITES OF MARRIAGE

Art. 52. Marriage is not a mere contract but an inviolable social institution. Its nature, consequences, and incidents are governed by law and not subject to stipulation, except that the marriage settlements may to a certain extent fix the property relations during the marriage.

Proposed change:

Art. 52. Marriage is not a mere contract but an inviolable social institution. Its nature, consequences and incidents are governed by natural and civil laws and not subject to stipulation, except that the marriage settlements may to a certain extent fix the property relations during the marriage.

Justification for the change:

According to Art. 52 of the present Civil Code, the intrinsic indissolubility of matrimony is clearly sustained, inasmuch as the marriage tie cannot be broken by any mutual agreement of the spouses. But is the extrinsic indissolubility of marriage sustained? No definite answer may be advanced to this effect, since in this article there is no basis as to how the term **law** can be understood.

Is Art. 52 of the present Civil Code to be understood as subjecting the nature, consequences and incidents of marriage to the governance of **human positive law**? If so, may the human legislator change the nature, consequences and incidents of marriage in any manner he may deem proper? Should the human law-maker decide, for instance that the consent of the contracting parties is not a necessary requisite for marriage, would marriage still be valid? Or, should the same legislator declare that two persons of the same sex may marry each other, would their agreement to live together still be a valid marriage? These possibilities and many others would make marriage a creature of human legislation. To defend these possibilities is highly ridiculous and no sound mind will dare to sustain them.

We know that marriage was in existence before any State came to exist. No human power instituted marriage. God alone was the Author and Institutor of marriage. And He gave the laws that should govern marriage from the very beginning. The Magisterium of the Church proclaims this fact in crystal-clear terms:

"Let it be affirmed as an immutable and inviolable fundamental doctrine that matrimony was not instituted or restored by man but by God; nor by man were the laws made to strengthen and confirm and elevate it, but by God, the Author of nature, and by Christ our Lord by Whom nature was redeemed; and hence these cannot be subject to human decrees or to any contrary pact even of the spouses themselves. This is the doctrine of Holy Scripture, this is the constant tradition of Universal Church, this the solemn definition of the Sacred Council of Trent, which declares and establishes from the words of Holy Writ itself that God is the Author of the perpetual and indissoluble stability of the marriage bond, its unity and its firmness . . . It is to be noted, therefore, that the partnership of true marriage is constituted both by the divine will and the human will. From God comes the very institution, the ends, the laws, and the blessings of matrimony; while on man, through generous surrender of his own person made to another for the whole span of life, depends, with the help and cooperation of God, the existence of a particular marriage, with the duties and blessings established by God" (Pius XI, Enc. CASTI CONNUBII, Dec. 31, 1930: AAS, 1930, pp. 541-42).

Let us note carefully that the above mentioned passage does not refer only to Christian marriage but to natural marriage alike: "Marriage was not instituted by man, but by God, the Author of nature". "From God comes the very institution, the end, the laws, and the blessings of matrimony".

When the Civil Code states that "marriage nature, consequences and incidents are governed by law", we cannot think of other law than divine law. Otherwise, we have to admit that the essence of marriage can be changed by human legislation and that the essential elements we regard as absolutely necessary for a valid marriage, as the capacity of the contracting parties, their free matrimonial consent might be disregarded as such by human law, which obviously cannot be sustained.

Marriage, therefore, as a social institution is governed by **Divine Natural Law and by human positive law**. The latter ratifies and conforms to the tenets of the former and determines along this line what has not been determined by the same. The addition of the words "natural and civil laws", therefore, will be most appropriate

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and in conformity with Art. 220, where the indissolubility of the marriage bonds is explicitly sustained.

Art. 53. No marriage shall be solemnized unless all these requisites are complied with:

- (1) Legal capacity of the contracting parties;
- (2) Their consent, freely given;
- (3) Authority of the person performing the marriage; and
- (4) A marriage license, except in a marriage of exceptional character.

Proposed change:

Art. 53. No marriage shall be solemnized unless the following two essential requisites are complied with:

- (1) Legal capacity of the contracting parties; and
- (2) Their consent, freely given.

Moreover, no marriage shall be solemnized unless the two following requisites are fulfilled:

- (1) Authority of the person performing the marriage, and
- (2) A marriage license, except in a marriage of exceptional character.

Justification for the change:

It is obvious that the first two requisites for the validity of marriage, namely the legal capacity of the contracting parties and their consent freely given are essential requisites for the validity. Without such requisites a valid marriage cannot even be conceived. However, the other two requisites, namely the authority of the person performing the marriage and a marriage license do not belong to the essence of marriage itself. They are legal requirements imposed by human positive law as necessary for the validity of marriage. They can be changed if the law-maker deems it necessary, as it happens in marriages of exceptional character where the marriage license is not required.

We suggest, therefore, that a distinction to this effect be made in the enumeration of the requisites for the celebration of marriage. As they are treated in Art. 53 of the present Civil Code, the four requisites seem to have the same importance.

Art. 54. Any male of the age of sixteen years or upwards, and any female of the age of fourteen years or upwards, not under any of the impediments mentioned in articles 80 to 84, may contract marriage.

Proposed change:

Art. 54. Any male of the age of twenty years or upwards, and any female of the age of eighteen years or upwards, not under any of the impediments mentioned in articles 80-83, may contract marriage.

Justification for the change:

The present Civil Code prescribes the age of sixteen years for males and fourteen years for females, in order to get married validly. Experience teaches that such an age is obviously inadequate to guarantee any success in marriage. Most of the existing unhappy unions derive their complete failure from the immaturity with which the contracting parties enter into the married life.

It is really startling how and why a young man, and a young woman of sixteen and fourteen years respectively, who in fact should be called a boy and a girl, can be wedded, though with parental consent. All they need is a marriage license, which they can get after their application has been duly filed and posted for ten days at the civil registrar's office. The law has no further requirement from them. A boy of sixteen years cannot get his driver's license as easily as that. For he must prove first his ability to drive a car before he will be given a driver's license. And yet he can marry without proving his maturity and preparation to tackle the responsibilities and difficulties of married life. And a girl of fourteen years who is not even entitled to vote in any election, may marry because she is capable of procreating, though she is not sufficiently prepared for the duties of a wife and a mother. At present there is no law requiring any proof or guarantee of psychological or psychical maturity and other aspects of preparedness for marriage, such as a stable job, the capacity to feed and educate the prospective offspring. It is no wonder that not a few marriages of such minors later on turn out to have been ill-advised, so that they clamor for divorce just a few years or even months after having signed their marriage contract, which binds them forever.

Art. 84, mentioned in Art. 54 of the existing Civil Code, does not contain any diriment impediment for the validity of marriage, as all authors agree. This is the reason for its substitution with Art. 83.

Art. 55. No particular form for the ceremony of marriage is required, but the parties with legal capacity to contract marriage must declare, in the presence of the person solemnizing the marriage and of two witnesses of legal age, that they take each other as husband

and wife. This declaration shall be set forth in an instrument in triplicate, signed by signature or mark by the contracting parties and said two witnesses and attested by the person solemnizing the marriage.

In case of a marriage on the point of death, when the dying party, being physically unable, cannot sign the instrument by signature or mark, it shall be sufficient for one of the witnesses to the marriage to sign in his name, which fact shall be attested by the minister solemnizing the marriage.

No objection to the wording of this Article 55, as contained in the present Civil Code.

Art. 56. Marriage may be solemnized by:

- (1) The Chief Justice and Associate Justices of the Supreme Court;
- (2) The Presiding Justice and the Justices of the Court of Appeals;
- (3) Judges of the Courts of First Instance;
- (4) Mayors of cities and municipalities;
- (5) Municipal judges and justices of the peace;
- (6) Priests, rabbis, ministers of the gospel of any denomination, church, religion or sect, duly registered, as provided in article 92; and
- (7) Ship captains, airplane chiefs, military commanders, and consuls and vice-consuls in special cases provided in articles 74 and 75.

Proposed change:

Art. 56. Marriage may be solemnized by:

- (1) The Chief Justice and Associate Justices of the Supreme Court;
- (2) The Presiding Justice and the Justices of the Court of Appeals;
- (3) Judges of the Courts of First Instance;
- (4) Mayors of cities and municipalities;
- (5) Municipal judges and justices of the peace;
- (6) Priests, rabbis, ministers of the gospel of any denomination, church, religion or sect, while duly authorized by their respective denomination, church, religion or sect and duly registered as provided in Art. 92.
- (7) Ship captains, airplane chiefs, military commanders, and consuls and vice-consuls in special cases provided in articles 74 and 75.

Justification for the change:

The **justification** for this change is that in a Christian country, like the Philippines, there is no reason to deny Christian marriage the legal civil effects, when the person solemnizing the marriage is not expressly authorized by the State. Freedom of religion would be better preserved and respected by abolishing this requirement. It will not entail any favoritism for any sect or church. Moreover, priests and ministers of various religious denominations are far better qualified to solemnize marriages than those mentioned in number (7), namely ship captains, airplane chiefs and military commanders.

Finally the phrase "while duly authorized by their respective denomination, church, religion or sect" to be introduced in the change, guarantees sufficiently the proper celebration of marriage, since all religious denominations, churches, and sects need to be registered in the Register of the Government to operate in the Philippines.

Art. 57. The marriage shall be solemnized publicly in the office of the judge in open court or of the mayor, or in the church, chapel or temple, as the case may be, and not elsewhere, except in cases of marriages contracted on the point of death or in remote places in accordance with article 72 of this Code, or in case of marriage referred to in Art. 76 or when one of the parents or the guardian of the female or the latter herself if over eighteen years of age request it in writing, in which cases the marriage may be solemnized at a house or place designated by said parent or guardian of the female or by the latter herself in a sworn statement to that effect.

Proposed change:

Art. 57. The marriage shall be solemnized publicly in the office of the judge in open court or of the mayor, or in the church, chapel or temple, as the case may be, and not elsewhere, except in cases of marriages contracted on the point of death or in remote places in accordance with article 72 of this Code, or in case of marriage referred to in Art. 76 or when one of the parents or the guardian of the female or the latter herself requests it in writing, in which cases the marriage may be solemnized at a house or place designated by said parent or guardian of the female or by the latter herself in a sworn statement to that effect.

This Art. 57 should be retained as it is in the present Civil Code, not as proposed by the U.P. Law Center in its Draft for a Presidential Decree.

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The Draft has eliminated from this Art. 57 the case of marriages celebrated in remote places in accordance with Art. 72 of the present Civil Code. This means that marriages celebrated in remote places are considered in the Draft as ordinary marriages, not as marriages of exceptional character, since they have been eliminated also by the Draft from Art. 72.

The reason for the deletion in the Draft is not given. Is it perhaps the facility of communication? Does this facility of communication really exist in all remote places? How can these marriages be celebrated in the office of the judge in open court or of the mayor, or in the church, chapel or temple, as the case may be, if the couple is prevented to reach the office of the mayor or the court, the church or temple, because of bad weather, floods, etc. and this condition lasts for some time? We think that the case of marriages in remote places, as described in Art. 72 of the Civil Code should be retained as a case of marriages of exceptional character. Mention of these marriages should be made in Art. 57, as in the present Civil Code, and repeal the wording of the Draft.

The words "if over eighteen years of age" are unnecessary if the age of the females to get married validly is raised to eighteen.

Art. 58. Save marriages of an exceptional character authorized in Chapter 2 of this Title, but not those under article 75, no marriage shall be solemnized without a license first being issued by the local civil registrar of the Municipality where either contracting party habitually resides.

No objection to this Article 58, as contained in the present Civil Code.

Art. 59. The local civil registrar shall issue the proper license if each of the contracting parties swears separately before him or before any public official authorized to administer oaths, to an application in writing setting forth that such party has the necessary qualifications for contracting marriage. The applicants, their parents or guardians shall not be required to exhibit their residence certificates in any formality in connection with the securing of the marriage license. Such application shall insofar as possible contain the following data:

- (1) Full name of the contracting party;
- (2) Place of birth;
- (3) Age, date of birth;
- (4) Civil status (single, widow, or widower, or divorced);
- (5) If divorced, how and when the previous marriage was dissolved;

- (6) Present residence;
- (7) Degree of relationship of the contracting parties;
- (8) Full name of the father;
- (9) Residence of the father;
- (10) Full name of the mother;
- (11) Residence of the mother;
- (12) Full name and residence of the guardian or person having charge, in case the contracting party has neither father nor mother and is under the age of twenty years, if a male, or eighteen years if a female.

Proposed change:

Art. 59. The local civil registrar shall issue the proper license if each of the contracting parties swears separately before any public official authorized to administer oaths, to an application in writing setting forth that such party has the necessary qualifications for contracting marriage. The applicants, their parents or guardians shall be required to exhibit their residence certificates. Such application shall insofar as possible contain the following data:

- (1) Full name of the contracting party;
- (2) Place of birth;
- (3) Age, date of birth;
- (4) Civil status (single, widow, or widower, or divorced);
- (5) If divorced, how and when the previous marriage was dissolved;
- (6) Present residence;
- (7) Degree of relationship of contracting parties;
- (8) Full name of the father;
- (9) Residence of the father;
- (10) Full name of the mother;
- (11) Residence of the mother.

Justification for the change:

The only thing required now by law from the applicants to get a marriage license is a sworn written statement declaring that they are qualified to marry. The first question coming to one's mind is: Will any applicant declare that he or she is not qualified? If all one needs to get a marriage license is such a declaration and the ordinary data included in the application form, it is obvious that to obtain a marriage license is extremely easy. The applicants "are not even required to exhibit their residence certificates", which would be the most logical thing to do considering the legal provision of Art. 58, namely that the marriage license shall be "issued by the local civil registrar of the municipality where either con-

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tracting party habitually resides". How can the civil registrar verify that the applicants reside in the municipality where they intend to obtain the marriage license? How can he confirm the information given by them about their legal capacity?

Something else should be required by law in order to check and confirm the legal capacity of the applicants for a marriage license.

Number 12 of this Art. 59, as contained in the present Civil Code, is unnecessary if the age to get married validly is raised, as suggested in Art. 54.

Art. 60. The local civil registrar, upon receiving such application, shall require the exhibition of the original baptismal or birth certificates of the contracting parties or copies of such documents duly attested by the persons having custody of the originals. These certificates or certified copies of the documents required by this article need not be sworn to and shall be exempt from documentary stamp tax. The signature and official title of the person issuing the certificate shall be sufficient proof of its authenticity.

If either of the contracting parties is unable to produce his baptismal or birth certificate or a certified copy of either because of the destruction or loss of the original, or if it is shown by an affidavit of such party or of any other person that such baptismal or birth certificate has not yet been received though the same has been requested of the person having custody thereof at least fifteen days prior to the date of the application, such party may furnish in lieu thereof his residence certificate for the current year or any previous years, to show the age stated in his application or, in the absence thereof, an instrument drawn up and sworn to before the local civil registrar concerned or any public official authorized to solemnize marriage. Such instrument shall contain the sworn declaration of two witnesses, of lawful age, of either sex, setting forth the full name, profession, and residence of such contracting party and of his or her parents, if known, and the place and date of birth of such party. The nearest of kin of the contracting parties shall be preferred as witnesses, and in their default, persons well known in the province or the locality for their honesty and good repute.

The exhibition of baptismal or birth certificates shall not be required if the parents of the contracting parties appear personally before the local civil registrar concerned and swear to the correctness of the lawful age of said parties, as stated in the application, or when the local civil registrar, shall, by merely looking at the applicants upon their personally appearing before him, be convinced that either or both of them have the required age.

Proposed change:

Art. 60. The local civil registrar, upon receiving such application, shall require the exhibition of the original baptismal or birth certificates of the contracting parties or copies of such documents duly attested by the persons having custody of the originals. These certificates or certified copies of the documents required by this article need not be sworn to and shall be exempt from documentary stamp tax. The signature and official title of the person issuing the certificate shall be sufficient proof of its authenticity.

If either of the contracting parties is unable to produce his baptismal or birth certificate or a certified copy of either because of the destruction or loss of the original, or if it is shown by an affidavit of such party or of any other person that such baptismal or birth certificate has not yet been received though the same has been requested of the person having custody thereof at least fifteen days prior to the date of the application, such party may furnish in lieu thereof his residence certificate for the current year or any previous years, to show the age stated in his application.

The exhibition of baptismal or birth certificates shall not be required if the parents of the contracting parties appear personally before the local civil registrar concerned and swear to the correctness of the lawful age of said parties, as stated in the application.

Justification for the change:

Again, the necessity of producing the original baptismal or birth certificates, or copies of such documents in order to get the marriage license appears so vague and elusive that the legislator seems to be satisfied with other means easy to be produced or fabricated. Even the personal impression received by the local civil registrar by his merely looking at the applicant's appearance to this effect and his getting convinced of the required age is enough. All these make the celebration of marriage extremely easy with the consequent probability of failure. The portions deleted are unnecessary for that reason.

Art. 61. In case either of the contracting parties is a widowed or divorced person, the same shall be required to furnish, instead of the baptismal or birth certificate required in the last preceding article, the death certificate of the deceased spouse or the decree of the divorce court, as the case may be. In case the death certificate cannot be found, the party shall make an affidavit setting

forth this circumstance and his or her actual civil status and the name and the date of the death of the deceased spouse.

In case either or both of the contracting parties, being neither widowed or divorced, are less than twenty years of age as regards the male and less than eighteen years as regards the female, they shall, in addition to the requirements of the preceding articles, exhibit to the local civil registrar, the consent to their marriage, of their father, mother or guardian, or persons having legal charge of them, in the order mentioned. Such consent shall be in writing, under oath taken with the appearance of the interested parties before the proper local civil registrar or in the form of an affidavit made in the presence of two witnesses and attested before any official authorized by law to administer oaths.

Proposed change:

Art. 61. In case either of the contracting parties is a widowed or divorced person, the same shall be required to furnish, instead of the baptismal or birth certificate required in the last preceding article, the death certificate of the deceased spouse or the decree of the divorce court, as the case may be. In case the death certificate cannot be found, the party shall make an affidavit before any public official authorized to administer oaths setting forth this circumstance and his or her actual civil status and the name and the date of the death of the deceased spouse.

No marriage license shall be issued to a widow till after three hundred days following the death of her husband, unless in the meantime she has given birth to a child.

Justification for the change:

The prohibition not to issue a marriage license to a widow till after three hundred days following the death of her husband, unless in the meantime she has given a birth to a child, should not be repealed, as requested in the Draft, but it can be incorporated in this Article 61. Said prohibition does not constitute any discrimination against women; it simply does not apply to mean.;

If the age to contract marriage validly is raised, as suggested in Art. 54, we sincerely believe that the consent of the parents, guardians or persons having legal charge of the contracting parties is not necessary anymore. Consequently the second paragraph of Article 61 could be eliminated.

Art. 62. Males above twenty but under twenty-five years of age, or females above eighteen but under twenty-three years of age, shall be obliged to ask their parents or guardian for advice upon the intended marriage. If they do not obtain such advice, or if it be unfavorable, the marriage shall not take place till after three months following the completion of the publication of the application for marriage license. A sworn statement by the contracting parties to the effect that such advice has been sought, together with the written advice given, if any, shall accompany the application for marriage license. Should the parents or guardian refuse to give any advice, this fact shall be stated in the sworn declaration.

This Art. 62, as contained in the present Civil Code, should be retained, not repealed as suggested in the Draft of U.P. Law Center.

Unlike parental consent, the advice of the parents is something that should not be done away with, as the Draft suggests. Young people need this advice in order not to commit a possible mistake in getting married. Any important affair in human life calls for consultation with those persons who can shed enlightenment. Marriage is the most important affair a human being undertakes. Nobody is more qualified than the parents to give this advice to their children. Article 62 of the present Civil Code, therefore, should not be repealed.

Art. 63. The local civil registrar shall post during ten consecutive days at the main door of the building where he has his office a notice, the location of which shall not be changed once it has been placed, setting forth the full names and domiciles of the applicants for a marriage license and other information given in the application. This notice shall request all persons having knowledge of any impediment to the marriage to advise the local registrar thereof. The license shall be issued after the completion of the publication, unless the local civil registrar receives information upon any alleged impediment to the marriage.

Proposed change:

Art. 63. The local civil registrar shall post during ten consecutive days at the main door of the building where he has his office a notice, the location of which shall not be changed once it has been placed, setting forth the full names and domiciles of the applicants for a marriage license and other information given in the application. This notice shall request all persons having knowledge of any impediment to the marriage to advise the local registrar thereof.

The license shall be issued after the completion of the publication and after reminding the contracting parties of the obligations implied in marriage, unless the local civil registrar receives information upon any alleged impediment to the marriage.

Justification for the change:

The posting of a notice of the application for a marriage license at the main door of the building where the registrar's office is located is the only effort made to find out possible matrimonial impediments aside from the willing confession of the applicants, which is not to be expected. No personal interview to confirm the capacity to marry is effected nor is any attempt made to enlighten them on the seriousness of the step they are about to take. No wonder that many marriages meet their crisis at the very dawn of their existence. To fill up the application of an ordinary job is harder than the one required to obtain a marriage license. One's qualifications and ability have to be declared and even shown before being accepted. For getting married everything is taken for granted.

The provision contained in roman types will remedy this defect and will help the applicants think of the importance of the step they are about to take with more reflection and get more prepared to undertake it.

Art. 64. Upon being advised of any alleged impediment to the marriage, the local civil registrar shall forthwith make an investigation, examining persons under oath. If he is convinced that there is an impediment to the marriage, it shall be his duty to withhold the marriage license, unless he is otherwise ordered by a competent court.

No objection to this Article 64, as contained in the present Civil Code.

Art. 65. The local civil registrar shall demand the previous payment of fees required by law or regulations for each license issued. No other sum shall be collected, in the nature of a fee or tax of any kind, for the issuance of a marriage license. Marriage licenses shall be issued free of charge to indigent parties, when both male and female do not each own assessed real property in excess of five hundred pesos, a fact certified to, without cost, by the provincial treasurer, or in the absence thereof, by a statement duly sworn to by the contracting parties before the local civil registrar. The license shall be valid in any part of the Philippines; but it shall be good for no more than one hundred and twenty days from the

date on which it is issued and shall be deemed cancelled at the expiration of said period if the interested parties have not made use of it.

Art. 66. When either or both of the contracting parties are citizens or subjects of a foreign country, it shall be necessary, before a marriage license can be obtained, to provide themselves with a certificate of legal capacity to contract marriage, to be issued by their respective diplomatic or consular officials.

No objection to Articles 65 and 66, as contained in the present Civil Code.

Art. 67. The marriage certificate in which the contracting parties shall state that they take each other as husband and wife, shall also contain:

- (1) The full names and domiciles of the contracting parties;
- (2) The age of each;

(3) A statement that the proper marriage license has been issued according to law and that the contracting parties have the consent of their parents in case the male is under twenty or the female under eighteen years of age; and

(4) A statement that the guardian or parent has been informed of the marriage, if the male is between the ages of twenty and twenty-five years, and the female between eighteen and twenty-three years of age.

Proposed change:

Art. 67. The marriage certificate in which the contracting parties shall state that they take each other as husband and wife, shall also contain:

- (1) The full names and domiciles of the contracting parties;
- (2) The age of each;

(3) A statement that the proper marriage license has been issued according to law and that the guardian or parent has been informed of the marriage, if the male is between the ages of twenty and twenty-five years, and the female between eighteen and twenty-three years of age.

Justification for the change:

In accordance with what has been explained in Art. 61 regarding the parental consent and in Art. 62 regarding the advice of the parents, number 3 of this Art. 67 of the present Civil Code should be rephrased, not as in the Draft, but as above, comprising

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therefore, the first part of number 3 and the whole number 4 of the present Civil Code.

Art. 68. It shall be the duty of the person solemnizing the marriage to furnish to either of the contracting parties one of the three copies of the marriage contract referred to in article 55, and to send another copy of the document not later than fifteen days after the marriage took place to the local civil registrar concerned, whose duty it shall be to issue the proper receipt to any person sending a marriage contract solemnized by him, including marriages of an exceptional character. The official, priest, or minister solemnizing the marriage shall retain the third copy of the marriage contract, the marriage license and the affidavit of the interested party regarding the solemnization of the marriage in a place other than those mentioned in article 57 if there be any such affidavit, in the files that he must keep.

Art. 69. It shall be the duty of the local civil registrar to prepare the documents required by this Title, and to administer oaths to all interested parties without any charge in both cases.

The documents and affidavits filed in connection with application for marriage licenses shall be exempt from the documentary stamp tax.

Art. 70. The local civil registrar concerned shall enter all applications for marriage license filed with him in a register book strictly in order in which the same shall be received. He shall enter in said register the names of the applicants, the date on which the marriage license was issued, and such other data as may be necessary.

Art. 71. All marriages performed outside the Philippines in accordance with the laws in force in the country where they were performed, and valid there as such, shall also be valid in this country as determined by Philippine law.

No objection to these Articles 68-71, as contained in the present Civil Code.

Chapter 2

MARRIAGES OF EXCEPTIONAL CHARACTER

Art. 72. In case either of the contracting parties is on the point of death or the female has her habitual residence at a place more than fifteen kilometers distant from the municipal building and there is no communication by railroad or by provincial or local highways between the former and the latter, the marriage may be solemnized without necessity of a marriage license; but in such cases the official, priest, or minister solemnizing it shall state in an affidavit made before the local civil registrar or any person authorized by law to administer oaths that the marriage was performed in articulo mortis or at a place more than fifteen kilometers distant from the municipal building concerned, in which latter case he shall give the name of the barrio where the marriage was solemnized. The person who solemnized the marriage shall also state, in either case, that he took the necessary steps to ascertain the ages and relationship of the contracting parties and that there was in his opinion no legal impediment to the marriage at the time that it was solemnized.

This Article 72 should be retained as it is in the present Civil Code, not as proposed in the Draft presented the U.P. Law Center. Please see what we have said in Art. 57 regarding the case of marriages celebrated in remote places. It should not be deleted from this article.

Art. 73. The original of the affidavit required in the last preceding article, together with a copy of the marriage contract, shall be sent by the person solemnizing the marriage to the local civil registrar of the municipality where it was performed within the period of thirty days, after the performance of the marriage. The local civil registrar shall, however, before filing the papers, require the payment into the municipal treasury of the legal fees required in article 65.

Art. 74. A marriage in articulo mortis may also be solemnized by the captain of a ship or chief of an airplane during a voyage, or by the commanding officer of a military unit, in the absence of a chaplain, during war. The duties mentioned in the two preceding articles shall be complied with by the ship captain, airplane chief or commanding officer.

Art. 75. Marriages between Filipino citizens abroad may be solemnized by consuls and vice-consuls of the Republic of the Philippines. The duties of the local civil registrar and of a judge or justice of the peace or mayor with regard to the celebration of marriage shall be performed by such consuls and vice-consuls.

Art. 76. No marriage license shall be necessary when a man and a woman who have attained the age of majority and who, being unmarried, have lived together as husband and wife for at least five years, desire to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The official, priest or minister who solemnized the marriage shall also state in an affidavit that he took steps to ascertain the ages and other qualifications of the contracting parties and that he found no legal impediment to the marriage.

Art. 77. In case two persons married in accordance with law desire to ratify their union in conformity with the regulations, rites, or practices of any church, sect, or religion, it shall no longer be necessary to comply with the requirements of Chapter 1 of this Title and any ratifications so made shall merely be considered as a purely religious ceremony.

No objection to Articles 73-77, as contained in the present Civil Code.

Art. 78. Marriages between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices. No marriage license or formal requisites shall be necessary. Nor shall the persons solemnizing these marriages be obliged to comply with article 92.

However, twenty years after the approval of this Code, all marriages performed between Mohammedans or pagans shall be solemnized in accordance with the provisions of this Code. But the President of the Philippines, upon recommendation of the Secretary of the Interior, may at any time before the expiration of said period, by proclamation, make any of said provisions applicable to the Mohammedan and non-Christian inhabitants of any of the non-Christian provinces.

Art. 79. Mixed marriages between a Christian male and a Mahammedan or pagan female shall be governed by the general provisions of this Title and not by those of the last preceding article, but mixed marriages between a Mohammedan or pagan male

and a Christian female may be performed under the provisions of the last preceding article if so desired by the contracting parties, subject, however, in the latter case to the provisions of the second paragraph of said article.

These two Articles 78-79 should be repealed, as proposed in the Draft of U.P. Law Center.

Chapter 3

VOID AND VOIDABLE MARRIAGES

Art. 80. The following marriages shall be void from the beginning:

(1) Those contracted under the ages of sixteen and fourteen years by the male and female respectively, even with the consent of the parents;

(2) Those solemnized by any person not legally authorized to perform marriages;

(3) Those solemnized without a marriage license, save marriages of exceptional character;

(4) Bigamous or polygamous marriages not falling under article 83, number 2;

(5) Incestuous marriages mentioned in article 81;

(6) Those between stepbrothers and stepsisters and other marriages specified in article 82.

Proposed change:

Art. 80. The following marriages shall be void from the beginning:

(1) Those contracted under the age of twenty and eighteen years by the male and female respectively, even with the consent of the parents;

(2) Those contracted without the consent of either contracting party, freely given;

(3) Those not solemnized in accordance with Art. 55;

(4) Those solemnized by any person not legally authorized to perform marriages;

(5) Those solemnized without a marriage license, save marriages of exceptional character;

(6) Bigamous or polygamous marriages;

(7) Incestuous marriages mentioned in Art. 81;

(8) Those where one or both contracting parties have been found guilty of the killing of the spouse of either of them;

(9) Those between step-brothers and step-sisters and other marriages specified in Art. 82;

(10) Those contracted with physical incapacity or impotence coeundi of one or both contracting parties, which exists at the time of the celebration of marriage and appears to be incurable and perpetual, whether known or unknown to the other party.

(11) Those marriages declared null and void from the beginning by the authority of a church, religious sect or denomination legitimately operating in the Philippines on common grounds accepted and recognized by both religious and civil laws. Such declaration of nullity, however, shall be registered in the local Civil Register.

Justification for the change:

(1) The change in the age is in conformity with Art. 54, which if the change is accepted, requires eighteen years of age for females and twenty years of age for males in order to get married validly.

(2) Art. 53, number 2, mentions the consent of both contracting parties freely given as an essential requisite for a valid marriage. It is logical that those marriages celebrated without such consent be considered by law as void *ab initio*. It is surprising that Art. 80 of the present Civil Code, which declares null and void marriages celebrated without the other three requisites enumerated in Art. 53, namely (1) the legal capacity of the contracting parties, (2) the authority of the person performing the marriage, and (3) the marriage license, is however silent about marriages celebrated without the consent of the contracting parties, which is considered as the efficient cause of marriage and the most essential requisites for its validity. The Draft does not correct this omission.

(3) The law requires that the contracting parties must declare in the presence of the person solemnizing the marriage and of two witnesses that they take each other as husband and wife.

(4) It is the same as the one contained in number 2 in the present Code.

(5) It is the same as the one contained in number 3 in the Civil Code.

(6) This number which comes under number 4 in the present Civil Code is changed by suppressing the words "not falling under Art. 83, number 2."

The justification for the suppression of these words is that the validity of the subsequent marriage celebrated by the present spouse during the presumed death of the absent spouse is to be based on the objectivity or reality of the death of the latter. Such subsequent marriage is presumed validly contracted because of the presumption of the absentee's death. Now, any presumption gives way to the truth. The moment the truth is well known there is no reason to sustain the presumption anymore. In the case contemplated in Art. 83, number 2, there are two possibilities:

- (a) that the absent spouse is really dead: logically the second marriage contracted by the present spouse is valid;
- (b) that the absent spouse is still alive: in this case the second marriage contracted by the present spouse is objectively invalid, since the first marriage still exists; but the second marriage is presumed validly contracted until the fact of the absentee still being alive is known. The moment this fact is known to the parties of the second marriage the presumption of the validity of their marriage cannot be sustained any longer.

This is the case of the marriage called in the Church's Law **putative marriage**, which objectively is null and void, though it enjoys the favor of the law as long as the presumed spouses are in good faith.

(7) It is the same as the one contained in number 5 of the Civil Code.

(8) It is the same as the one contained in number 6 of the Civil Code.

(9) It is the same as the one contained in number 7 of the Civil Code.

(10) Please see what is said in Art. 85, number 6.

(11) This number is new. Its justification is that this addition will show respect for the human person as well as for the freedom of conscience. At the same time it will be in conformity with the provision of Art. 56, number 6. Most of the marriages solemnized in the Philippines are celebrated with a religious ceremony in one or other religious denomination. It is thus but proper that marriages celebrated under the auspices of a church or sect be declared null and void by its legitimate authority, when such marriages did not conform with the requisites that both religious and civil laws prescribe as essential for their validity. On the other hand the fact that the declaration of nullity of such marriages is to be registered in the local Civil Register does not deprive the State of its prerogative of calling the attention of those religious officials

who may be found remiss in the discharge of their duties in this matter.

Art. 81. Marriages between the following are incestuous and void from their performance, whether the relationship between the parties be legitimate or illegitimate:

- (1) Between ascendants and descendants of any degree;
- (2) Between brothers and sisters, whether of the full or half blood;
- (3) Between collateral relatives by blood within the fourth civil degree.

Proposed change:

Art. 81. Marriages between the following are incestuous and void from their performance, whether the relationship between the parties be legitimate or illegitimate:

- (1) Between ascendants and descendants of any degree;
- (2) Between collateral relatives by blood within the fourth civil degree.

Justification for the change:

Number 2 of Art. 81, as contained in the present Civil Code, seems to be superfluous, since the relationship between brothers and sisters is contained in the relationship mentioned in number 3. Number 2 therefore should be suppressed.

Art. 82. The following marriages shall also be void from the beginning:

- (1) Between stepfathers and stepdaughters, and stepmothers and stepsons;
- (2) Between the adopting father or mother and the adopted, between the latter and the surviving spouse of the former, and between the former and the surviving spouse of the latter;
- (3) Between the legitimate children of the adopter and the adopted.

No objection to this Art. 82, as contained in the present Civil Code.

Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(1) The first marriage was annulled or dissolved; or

(2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court.

Proposed change:

Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless the first marriage was annulled or dissolved.

When a spouse had been absent for seven consecutive years without the spouse present having news of the absentee being alive, or when the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present, or when the absentee is presumed dead according to articles 390 and 391, the subsequent marriage contracted by the present spouse shall be presumed valid until declared null and void by a competent court in case of reappearance of the absent spouse.

Justification for the change:

The case specified in number 2 of this article has been sufficiently discussed in Art. 80, number 6. When the absent spouse reappears and the parties of the second marriage know about his still being alive, no presumption can be sustained for the validity of the second marriage. This marriage should be declared null and avoid from the moment the absentee reappears.

Even the present wording of the last phrase of said number of Art. 83, as contained in the present Civil Code, points to what we sustain, though the phrase is in itself contradictory. Said phrase runs as follows:

"The marriage so contracted shall be **valid** in any of the three cases until **declared null and void** by a competent court."

The phrase is contradictory since a **valid** marriage is never **declared null and void**; it is annulled or nullified. The use of the words "until declared null and void", however points to the fact

that the second marriage is null and void when the absent spouse is still alive.

Art. 84. No marriage license shall be issued to a widow till after three hundred days following the death of her husband, unless in the meantime she has given birth to a child.

The contents of this article should not be repealed. True that this is not its place, since the fact of being a widow is not a diriment impediment to get married. This prohibition however should be incorporated in Art. 61.

Art. 85. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

(1) That the party in whose behalf it is sought to have the marriage annulled was between the ages of sixteen and twenty years, if male, or between the ages of fourteen and eighteen years, if female, and the marriage was solemnized without the consent of the parent, guardian or person having authority over the party, unless after attaining the ages of twenty or eighteen years, as the case may be, such party freely cohabited with the other and both lived together as husband and wife;

(2) In a subsequent marriage under article 83, number 2, that the former husband or wife believed to be dead was in fact living and the marriage with such former husband or wife was then in force;

(3) That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife;

(4) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as her husband or his wife, as the case may be;

(5) That the consent of either party was obtained by force or intimidation, unless the violence or threat having disappeared, such party afterwards freely cohabited with the other as her husband or his wife, as the case may be;

(6) That either party was at the time of marriage, physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable.

The discussion on the contents of Art. 85 is most delicate and important, since it touches the line of indissolubility of marriage enjoyed by any valid marriage according to Natural Law. Voidable marriages are considered valid by law until a competent court sets them aside. That is why serious consideration and study should

be given to this matter. We sincerely believe that only an impartial and dispassionate study and judgment of the cases mentioned in Art. 85 can be the key to solve this difficult problem. The following exposition is an attempt to offer a solution acceptable to the Church and not difficult for the State to include among the changes to be introduced in the marriage law.

(1) The lack of parental consent is considered by the present Civil Code as a ground for voidable marriages. If the age to get married validly is raised to eighteen years for females and twenty years for males, the parental consent should not be regarded anymore as a ground for voidable marriages. The above mentioned age gives enough maturity to the contracting parties, who after all are the ones to be bound by the marital bond, not the parents. If so, number 1 of Art. 85 can be repealed.

(2) The case mentioned in this number has been sufficiently discussed in Art. 80, number 6. The marriage in question is invalid and should be simply declared null and void, since an existing valid marriage is a diriment impediment to remarry.

(3) How the free consent of the contracting parties, as required by Art. 53, number 2 for the validity of marriage, can coexist with the unsound mind of either party in a voidable marriage as stated in Art. 85, number 3 is something that psychology rejects. Said Art. 85 implies that only when the party of unsound mind comes to reason and freely cohabits with the other party, can his marriage cease to be voidable and become simply valid and indissoluble. We ask: If before the unsound party coming to reason his marriage is valid (though voidable), how could he have given free consent during the celebration when said party is supposed to be of unsound mind and out of reason? Freedom requires the use of reason. The case contemplated in Art. 85, number 3 is obviously a case of lack of consent and therefore a case of an invalid marriage. It is covered already by Art. 80, number 2, as we propose. That unsoundness of mind be considered as a diriment impediment is also in conformity with Art. 39 which states that **insanity and imbecility** are circumstances modifying or limiting capacity to act.

(4) Most often fraud comes about through personal misrepresentation. Error about the person to whom one intends to marry or about exclusive personal qualities renders marriage null and void. So, this kind of fraud should be considered as a diriment impediment to get married validly for lack of true consent, because the object of the matrimonial consent is distorted and misrepresented by fraud.

(5) This number 5 is in contradiction with Art. 53, number 2, where the consent of the contracting parties, **freely given**, is con-

sidered as an essential and necessary requisite for the validity of marriage. Art 85, however, states that when the consent of either party is **obtained by force or intimidation** marriage is voidable, i.e. valid until a competent court puts it aside. How consent "obtained by force or intimidation" can be "freely given" is something we cannot understand. Freedom cannot coexist with force and intimidation.

(6) If by physical incapacity **impotence coeundi** is meant and it exists at the time of the celebration of marriage and is incurable (perpetual), it should be considered as a diriment impediment by the Civil Law according to the modification we suggest to be made in Art. 52. Such impotence is imposed as a diriment impediment by Natural Law.

Considering the above mentioned reasons, it seems that there is no solid basis to retain this Article 85 on voidable marriages, which on the other hand, constitute a breaking of the indissolubility of marriage as stated by Natural Law.

Art. 86. Any of the following circumstances shall constitute fraud referred to in number 4 of the preceding article:

(1) **Misrepresentation as to the identity of one of the contracting parties;**

(2) **Non-disclosure of the previous conviction of the other party of a crime involving moral turpitude, and the penalty imposed was imprisonment for two years or more;**

(3) **Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband.**

No other misrepresentation or deceit as to character, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage.

The case contemplated in number 1 of this article has been discussed in Art. 85, number 4.

The cases referred to in numbers 2 and 3 are not likely to happen if the parties to the marriage take the necessary precaution and time to know each other before the marriage.

Art. 87. The action for annulment of marriage must be commenced by the parties and within the periods as follows:

(1) **For causes mentioned in number 1 of article 85, by the party whose parent or guardian did not give his or her consent, within four years after attaining the age of twenty or eighteen years, as the case may be; or by the parent or guardian or person having legal**

charge, at any time before such party has arrived at the age of twenty or eighteen years;

(2) For cause mentioned in number 2 of article 85, by the spouse who has been absent, during his or her lifetime; or by either spouse of the subsequent marriage during the lifetime of the other;

(3) For causes mentioned in number 3 of article 85, by the sane spouse, who had no knowledge of the other's insanity; or by any relative or guardian of the party of unsound mind, at any time before the death of either party;

(4) For causes mentioned in number 4, by the injured party, within four years after the discovery of the fraud;

(5) For causes mentioned in number 5, by the injured party, within four years from the time the force or intimidation ceased;

(6) For causes mentioned in number 6, by the injured party, within eight years after the marriage.

If Art. 85 should be repealed for the reasons given in Art. 85, there is no reason why this Art. 87 can be retained.

Besides there are other inconsistencies in Art. 87 which, if retained, should be corrected. The following are the inconsistencies contained in Art. 87:

(1) There is no reason why the party who got married without the parental consent should still be given the right to petition for the annulment of the marriage he entered into by willingly breaking the law. The right should be given to the other party who perhaps was made to believe that the parental consent was duly obtained by the other partner.

The logic applied in number 3 of this article should also be applied in this number 1.

That the parents, guardians or person having charge be given this right is in order.

(2) The norm contained in this number 2 creates a very anomalous situation, so much so that it seems to legalize bigamy. Art. 80, number 4 of the present Civil Code includes this case among bigamy cases, though excluded from marriages void *ab initio*.

Not only the three persons mentioned in this number 2 should have the right to petition for the annulment of the second marriage. A government official should have *ex officio* the duty to petition the court to act upon it, since the first marriage still stands valid.

(3) The content of this number is logical. This logic should apply also to number 1.

(4) The content of this number is also logical.

(5) The injured party can be both spouses if force and intimidation was inferred by a third person.

(6) The wording of this number is logical. What lacks logic is the interpretation given by Jurisprudence and commentators. Marriage, though a contract, is a special, *sui generis* contract. Because it is a very peculiar contract, not all the norms ruling ordinary contracts should rigidly apply to marriage. If the purpose of marriage is procreation, physical impotence *coeundi*, whether known or unknown to the other party, if it exists at the time of the celebration of marriage and is incurable and perpetual is always a diriment impediment imposed by Natural Law.

Art. 88. No judgment annulling a marriage shall be promulgated upon a stipulation of facts or by confession of judgment.

In case of non-appearance of the defendant, the provisions of article 101, paragraph 2, shall be observed.

If the preceding articles on voidable marriage are repealed, as suggested, this Art. 88 should also be repealed.

Art. 89. Children conceived or born of marriages which are void from the beginning shall have the same status, rights and obligations as acknowledged natural children, and are called natural children by legal fiction.

Children conceived of voidable marriages before the decree of annulment shall be considered as legitimate; and children conceived thereafter shall have the same status, rights and obligations as acknowledged natural children, and are also called natural children by legal fiction.

Proposed change:

Art. 89. Children conceived or born of marriages which are void from the beginning shall have the same status, rights and obligations as acknowledged natural children, and are called natural children by legal fiction.

Justification for the change:

The second paragraph of this article refers to voidable marriages; therefore it should be repealed.

Art. 90. When a marriage is annulled, the court shall award the custody of the children as it may deem best, and make provision for their education and support. Attorney's fees and expenses incurred in the litigation shall be charged to the conjugal partnership property, unless the action fails.

Proposed change:

Art. 90. When a marriage is declared null and void, the court shall award the custody of the children as it may deem best, and make provision for their education and support. Attorney's fees and expenses incurred in the litigation shall be charged to the conjugal partnership property, unless the action fails.

Justification for the change:

What the present Civil Code states regarding the case of annulment should be made to apply instead to declaration of nullity.

Art. 91. Damages may be awarded in the following cases when the marriage is judicially annulled or declared void from the beginning:

(1) If there has been fraud, force or intimidation in obtaining the consent of one of the contracting parties;

(2) If either party was, at the time of the marriage, physically incapable of entering into the married state, and the other party was unaware thereof;

(3) If the person solemnizing the marriage was not legally authorized to perform marriages, and that fact was known to one of the contracting parties, but he or she concealed it from the other;

(4) If a bigamous or polygamous marriage was celebrated, and the impediment was concealed from the plaintiff by the party disqualified;

(5) If in an incestuous marriage, or a marriage between a step-brother and a stepsister or other marriage prohibited by article 82, the relationship was known to only one of the contracting parties but was not disclosed to the other;

(6) If one party was insane and the other was not aware thereof at the time of the marriage.

Proposed change:

Art. 91. Damages may be awarded in the following cases when the marriage is judicially declared void from the beginning:

(1) If there has been fraud, force or intimidation in obtaining the consent of one of the contracting parties;

(2) If either party was, at the time of the marriage, physically incapable of entering into the married state, and the other party was unaware thereof;

(3) If the person solemnizing the marriage was not legally authorized to perform marriages, and that fact was known to one of the contracting parties, but he or she concealed it from the other;

(4) If a bigamous or polygamous marriage was celebrated, and the impediment was concealed from the plaintiff by the party disqualified;

(5) If in an incestuous marriage, or a marriage between a step-brother and a stepsister or other marriage prohibited by article 82, the relationship was known to only one of the contracting parties but was not disclosed to the other;

(6) If one party was insane and the other was not aware thereof at the time of the marriage.

Justification for the change:

The word **annulment** has been deleted, since voidable marriages are also suppressed.

Chapter 4

AUTHORITY TO SOLEMNIZE MARRIAGES

Art. 92. Every priest, or minister, or rabbi authorized by his denomination, church, sect, or religion to solemnize marriage shall send to the proper government office a sworn statement setting forth his full name and domicile, and that he is authorized by his denomination, church, sect, or religion to solemnize marriage, attaching to said statement a certified copy of his appointment. The director of the proper government office upon receiving such sworn statement containing the information required, and being satisfied that the denomination, church, sect, or religion of the applicant operates in the Philippines, shall record the name of such priest or minister in a suitable register and issue to him an authorization to solemnize marriage. Said priest or minister or rabbi shall be obliged to exhibit his authorization to the contracting parties, to their parents, grandparents, guardians, or persons in charge demanding the same. No priest or minister not having the required authorization may solemnize marriage.

Proposed change:

Art. 92. Every church, sect, or religion shall send to the proper government office a complete list duly sworn of the priests, ministers or rabbis **authorized by the respective religious denomina-**

tions to solemnize marriages, setting forth their full name and domicile with a certified copy of his appointment. The director of the proper government office shall record the names of such priests or ministers in a suitable register. Said priests or ministers or rabbis shall be obliged to exhibit the authorization of their respective religious denominations to the contracting parties, to their parents, grandparents, guardians or persons in charge demanding the same. No priest or minister not having met the requirements herein may solemnize marriage.

Justification for the change:

We have suggested in Art. 56, number 6, a modification so that priests, rabbis, ministers of the gospel of any denomination, church, religion or sect while duly authorized by their respective denomination, church, religion or sect, and duly registered, may solemnize marriages. A list of said priests, rabbis and ministers authorized by their respective religious denominations should be furnished therefore to the proper government office for the purpose of keeping a complete record of the persons authorized by law to perform marriages.

Art. 93. Freedom of religion shall be observed by public officials in the issuance of authorization to solemnize marriages. Consequently, no public official shall attempt to inquire into the truth or validity of any religious doctrine held by the applicant or by his church.

Proposed change:

Art. 93. Freedom of religion shall be observed by public officials in registering the authorization to solemnize marriages. Consequently, no public official shall attempt to inquire into the truth or validity of any religious doctrine held by religious denomination, church or sect.

Justification for the change:

The words omitted do not apply if the suggestion done in Article 92 is accepted.

Art. 94. The public official in charge of registration of priests and ministers shall cancel the authorization issued to a bishop, head, priest, rabbi, pastor or minister of the gospel of any denomination, church, sect, or religion, on his own initiative or at the request of any interested party, upon showing that the church, sect or religion whose ministers have been authorized to solemnize

marriage is no longer in operation. The cancellation of the authorization granted to a priest, pastor, or minister shall likewise be ordered upon the request of the bishop, head, or lawful authorities of the denomination, church, sect or religion to which he belongs.

Proposed change:

Art. 94. The authorization of priests, rabbis, pastors or ministers of the gospel is automatically cancelled when their respective church, sect or religion ceases operating legally in the Philippines. Likewise, said authorization shall be regarded as void upon its cancellation by the bishop, head, or lawful authorities of the respective denomination, church, sect or religion and the corresponding notification to the government office.

Justification for the change:

The changes in the wording of this Art. 94 is in accordance with the suggestion of Art. 92.

Art. 95. The public official in charge of registration of priests and ministers, with the approval of the proper head of Department, is hereby authorized to prepare the necessary forms and to promulgate regulations for the purpose of enforcing the provisions of this Title. Said official may also by regulations fix and collect fees for the authorization of priests and ministers to solemnize marriages.

Proposed change:

Art. 95. The public official in charge of registration of priests and ministers, with the approval of the proper head of Department, is hereby authorized to prepare the necessary forms and to promulgate regulations for the purpose of enforcing the provisions of this Title. Said official may also by regulations fix and collect fees for the registration of priests and ministers to solemnize marriages.

Justification for the change:

The word "authorization" of Art. 95 is substituted by the word "registration" in accordance with Art. 94, as suggested.

Art. 96. The existing laws which punish acts or omissions concerning the marriage license, solemnization of marriage, authority to solemnize marriages, and other acts or omissions relative to the celebration of marriage shall remain and continue to be in force.

No objection to Art. 96, as contained in the present Civil Code.

TITLE IV — LEGAL SEPARATION

It is really surprising that a group of professional women lawyers is most vocal in favor of divorce. The reasons on which they base their issue are rather emotional, lacking logic, consistency and strength.

Their goal is to introduce in the marriage law such provisions as to insure legal equality between men and women, without any discrimination whatsoever. "The present law which makes separate causes for women and for men for legal separation should be changed" (Irene Cortes, Dean of U.P. College of Law, *Women's Home Companion*, Nov. 20, 1975, page 21). So far so good. We think the double standard existing at present should be done away with. To consider **adultery** of the wife enough ground for the husband to ask for legal separation and to require **concubinage** on the part of the husband in order that the wife may petition for legal separation is really a legal discrimination which can hardly be justified. The Church Law, which gives both spouses equal rights, considers adultery of either party as enough ground for legal separation. No discrimination whatsoever is admitted in the Church's Law in this respect. The same thing should be done in the State's Law.

But one thing is to eliminate the legal discrimination existing in the present Civil Code and another is to introduce divorce as a necessary means to eliminate such a legal discrimination. If legal equality can be given through legal separation and marriage can be saved, why resort to divorce which touches the marriage bond and ruins family ties and unity? If legal separation is granted to both husband and wife on the same grounds, as happens in the Church, there is no reason to advocate divorce, which causes so much moral ruin to domestic and civil societies. It seems that it is not only legal equality which is sought in the divorce issue. Something else is covered under it.

Some advocates of divorce have expressed strange opinions and feelings that run counter to sound morals and certainly are not likely to improve a bit the situation of the Filipino family. They repeal the present provisions for legal separation because legal separation gives only the husband the opportunity to commit infidelity, which is to be condemned, they say. Nevertheless the same women advocate divorce because it gives both husband and wife that opportunity equally. Once divorce is granted both husband and wife can go around and forget about each other.

In short, what they reprove theoretically as evil in the husbands breaking conjugal fidelity in legal separation they believe should be given to both spouses through divorce. One is really puzzled

about the nature of morality the advocates of divorce entertain. If, as Christians, they believe that marriage is indissoluble, as the Church teaches, they should logically think that infidelity on the part of both spouses, which is always present in divorce, is always worse than the infidelity of only one spouse, which they openly condemn.

Divorce, even if legalized, cannot change into good what is evil in itself. Human law cannot change the morality of actions that should only conform with divine law. Only God may change His law and dissolve a valid marriage for that matter. "What God has joined together, let no man put asunder."

We may add another reason why divorce should not be legalized in the Philippines wherein a New Society is emerging at present with promising hope of national strength and progress. A decree legalizing absolute divorce would undermine the spirit and purpose of the following provisions of the 1973 Philippine Constitution:

"The State shall strengthen the family as a basic social institution. x x x." (Article II Section 4.)

"The State recognizes the vital role of the youth in nation-building and shall promote their physical, intellectual, and social well-being." (Article II, Section 5.)

Such a decree is productive of a divorce mentality that would erode the faith of the spouses in one another, weaken their sense of security, solidarity and belonging as well as those of their children, breed among them mutual distrust, suspicion, and discord and thus lead to cleavage, estrangement, the commission of offenses, the breakdown of family ties, and petitions for absolute divorce. In short, a divorce decree would nurture a divorce mentality that would weaken, not strengthen, family ties, and jeopardize, not promote, the development of the youth. In such situation, the above mentioned provisions of the new Constitution, ratified by the Filipino people, will be dead letter, not a reality, and the New Society envisioned in this Constitution will be morally weak and shattered.

Since divorce is condemned by divine law, natural and positive, the Church which is the depositary and authentic interpreter of this law, cannot accept divorce. Our attempt, therefore will be not to see whether the proposed Draft is acceptable to the Church, but to consider what changes should be introduced in the Civil Code regarding legal separation, taking into consideration the present clamor of women for their legal equality with men.

Articles 97-108, therefore, as presented in the Draft of M.P. Law Center are repealed, since they consider divorce only.

Art. 97. A petition for legal separation may be filed:

- (1) For adultery on the part of the wife and for concubinage on the part of the husband as defined in the Penal Code; or
- (2) An attempt by one spouse against the life of the other.

Proposed change:

Art. 97. A petition for legal separation may be filed for:

- (1) Adultery or having a paramour committed by the respondent in any of the ways specified in the Revised Civil Penal Code;
- (2) An attempt by the respondent against the life of the petitioner, which shall be understood to refer to attempted parricide as determined under the provisions of the Revised Penal Code;
- (3) Abandonment of the petitioner by the respondent without just cause for a period of seven (7) consecutive years.

Justification for the change:

(1) There is no major objection in admitting the added phrase, suggested in the Draft, as a ground for legal separation, provided "paramour" is defined as "any person who lives with another person of either sex under circumstances where they assume and exercise towards each other the rights and privileges which belongs to a matrimonial relation" (cfr. **Woman's Home Companion**, Nov. 20, 1975, p. 19). Adultery and having a paramour are similar crimes committed against marital fidelity, which enables the innocent party to petition for legal separation.

(2) There is no objection to the words which are introduced in the Draft, since it merely states who is the respondent and consequently the petitioner for legal separation, which in the present Civil Code is not indicated.

(3) This number 3 is new. There is no objection either to this new ground for legal separation if "abandonment" is defined as "neglect and refusal to perform the legal and actual responsibilities of marriage" (cfr. **Woman's Home Companion**, Nov. 20, 1975, p. 19). If so defined, abandonment should also be regarded as a crime against one's marital obligations.

Please note that in this number 3 the words "without just cause" are used, which in the first two numbers are wanting. This is most

important to define in Art. 100 who can be properly called "innocent".

Art. 98. In every case the court must take steps, before granting the legal separation, toward the reconciliation of the spouses, and must be fully satisfied that such reconciliation is highly improbable.

No objection to this Art. 98, as contained in the present Civil Code.

Art. 99. No person shall be entitled to a legal separation who has not resided in the Philippines for one year prior to the filing of the petition, unless the cause for the legal separation has taken place within the territory of this Republic.

Proposed change:

Art. 99. No person who has not resided in the Philippines for one year prior to the filing of the petition shall be entitled to a legal separation, unless the cause upon which the petition is based has taken place within the territory of the Philippines.

Justification for the Change:

The modification is taken from the Draft of the U.P. Law Center. The text is clearer than the one of the Civil Code. Only the word "divorce" should be substituted for "legal separation".

Art. 100. The legal separation may be claimed only by the innocent spouse, provided there has been no condonation of or consent to the adultery or concubinage. Where both spouses are offenders, a legal separation cannot be claimed by either of them. Collusion between the parties to obtain legal separation shall cause the dismissal of the petition.

Proposed change:

Art. 100. The legal separation may be claimed only by the innocent spouse, provided there has been no condonation of or consent to the cause upon which the petition is based nor has said spouse given cause to the same. Where both spouses are offenders, a legal separation cannot be claimed by either of them. Collusion between the parties to obtain legal separation shall cause the dismissal of the petition.

Justification for the change:

It is only fair and just that the innocent spouse alone should enjoy the right to petition for legal separation. It would be ridiculous that the guilty party or the spouse who has consented or already condoned the crime committed by the guilty party be given the privilege of requesting for legal separation. This is clearly stated in both the present Civil Code and in the Draft.

There is however, something wanting in both the Civil Code and the Draft which we think should be included. A person is said **innocent** when such a person has not committed the crime in question nor has participated in nor given a cause or occasion to its commission: Can a spouse be said **innocent** when his or her strange behavior is the cause for the other spouse being tempted to commit adultery or being induced to live somewhere else? Can a spouse be said **innocent** when he or she unreasonably refused to give the other the marital debt and the latter resorted to commit adultery as an outlet for his or her natural urges? Will said refusing spouse still be considered as **innocent** as to be given the right to petition for a legal separation from the partner who was unjustly denied the marital rights and was driven to be unfaithful to his or her conjugal vows? This is a situation not covered by the present Civil Code nor foreseen in the proposed Draft. The Church's Law expressly mentions this situation and denies the right to petition for legal separation to the spouse who is the cause for the other to be unfaithful.

Art. 101. No decree of legal separation shall be promulgated upon a stipulation of facts or by confession of judgment.

In case of non-appearance of the defendant, the court shall order the prosecuting attorney to inquire whether or not a collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the State in order to take care that the evidence for the plaintiff is not fabricated.

Proposed change:

Art. 101. No decree of legal separation shall be promulgated upon a stipulation of facts or by confession of judgment, or by default.

In case of non-appearance of the respondent, the court shall order the prosecuting attorney to inquire whether or not a collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the State in order to take care that the evidence for the petitioner is not fabricated.

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Justification for the change:

The modification is taken from the Draft of U.P. Law Center. The only difference is that the word "divorce" should be substituted by "legal separation."

Art. 102. An action for legal separation cannot be filed except within one year from and after the date on which the plaintiff became cognizant of the cause and within five years from and after the date when such cause occurred.

Proposed change:

Art. 102. An action for legal separation cannot be filed except within one year from and after the date on which the petitioner becomes cognizant of the cause and within five years from and after the date when such cause occurred.

Justification for the change:

The modification is taken from the Draft of U.P. Law Center for the sake of clarity.

Art. 103. An action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition.

Art 103 contained in the present Civil Code should be retained.

Art. 104. After the filing of the petition for legal separation, the spouses shall be entitled to live separately from each other and manage their respective property.

The husband shall continue to manage the conjugal partnership property but if the court deem it proper, it may appoint another to manage said property, in which case the administrator shall have the same rights and duties as a guardian and shall not be allowed to dispose of the income or of the capital except in accordance with the orders of the court.

Proposed change:

Art. 104. After the filing of the petition for legal separation the spouses shall be entitled to live separately from each other and to manage their respective property.

Whoever is the administrator of the conjugal partnership of gains or of the absolute community of property at the time of the

filing of the petition shall continue to manage the common property unless the court, upon petition, appoints another to manage said property, in which case the administrator shall have the same rights and duties as a guardian and shall not be allowed, to dispose of the income or of the capital except in accordance with the orders of the court.

Justification for the change:

The modification is taken from the Draft of U.P. Law Center, since legal equality of both husband and wife is sought.

Art. 105. During the pendency of legal separation proceedings the court shall make provision for the care of the minor children in accordance with the circumstances, and may order the conjugal partnership property or the income therefrom to be set aside for their support; and in default thereof said minor children shall be cared for in conformity with the provisions of this Code; but the Court shall abstain from making any order in this respect in case the parents have by mutual agreement, made provision for the care of said minor children and these are, in the judgment of the court, well cared for.

Proposed change:

Art. 105. During the pendency of the legal separation proceedings, the court shall make provision for the care of the minor children in accordance with the circumstances, and may order the common property or the income therefrom to be set aside for their support; and in default thereof, said minor children shall be cared for in conformity with the provisions of this Code, the Child and Youth Welfare Code or other applicable laws; but the court shall abstain from making any order in this respect in case the parents have, by mutual agreement, made provision for the care of said minor children and they are, in the judgment of the court, well cared for.

Justification for the change:

The modification is taken from the Draft from U.P. Law Center.

Art. 106. The decree of legal separation shall have the following effects:

(1) The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;

(2) The conjugal partnership of gains or the absolute conjugal community of property shall be dissolved and liquidated, but the offending spouse shall have no right to any share of the profits earned by the partnership or community, without prejudice to the provisions of article 176;

(3) The custody of the minor children shall be awarded to the innocent spouse, unless otherwise directed by the court in the interest of said minors, for whom said court may appoint a guardian;

(4) The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent one shall be revoked by operation of law.

This Art. 106, as it is contained in the present Civil Code, should be retained.

Art. 107. The innocent spouse, after a decree of legal separation has been granted, may revoke the donations by reason of marriage made by him or by her to the offending spouse. Alienations and mortgages made before the notation of the complaint for revocation in the Registry of Property shall be valid.

This action lapses after four years following the date the decree became final.

Likewise, Art. 107 as contained in the present Civil Code should be retained.

Art. 108. Reconciliation stops the proceedings for legal separation and rescinds the decree of legal separation already rendered.

The revival of the conjugal partnership of gains or of the absolute conjugal community of property shall be governed by article 195.

Art. 108 should also be retained as contained in the present Civil Code.

TITLE V — RIGHTS AND OBLIGATIONS BETWEEN HUSBAND AND WIFE

Art. 109. The husband and wife are obliged to live together, observe mutual respect and fidelity, and render mutual help and support.

- This Art. 109 should be retained as contained in the present Civil Code.

Art. 110. The husband shall fix the residence of the family. But the court may exempt the wife from living with the husband if he should live abroad unless in the service of the Republic.

Proposed change:

Art. 110. The husband and the wife shall jointly determine the family residence, in the fixing of which the family interests shall be paramount.

In case of disagreement the husband, as head of the family, will decide.

Justification for the change:

The equality of both sexes asks indeed for mutual consultation on determining the family residence. But to bring such equality so far as to have a recourse to the court for a settlement in case of disagreement, as proposed in the Draft of U.P. Law Center, is to distort the issue. Following that logic all differences of some importance between them should be settled by the court, which is not proper. In any society, the domestic not excluded, there has to be a head. In the family it is the husband.

Art. 111. The husband is responsible for the support of the wife and the rest of the family. These expenses shall be met first from the conjugal property, then from the husband's capital, and lastly from the wife's paraphernal property. In case there is a separation of property by stipulation in the marriage settlements, the husband and wife shall contribute proportionately to the family expenses.

The Draft of U.P. Law Center proposes the following change:

Art. 111. The husband and the wife are jointly responsible for the support and maintenance of the family. These expenses shall be met first from the conjugal property, then from the separate property of both spouses equally. If the property of one spouse is insufficient, then the property of the other shall answer for the difference, subject to reimbursement. In case there is a separation of property, by stipulation in the marriage settlements or as decreed by the court, the husband and wife shall contribute equally to the family expenses.

The question which arises upon reading the proposed change is: Whose property is to be used first, that of the husband or that of the wife? Legal equality seems to leave undetermined which

comes first. The present Civil Code is more accurate and precise and therefore should be retained.

Art. 112. The husband is the administrator of the conjugal property, unless there is a stipulation in the marriage settlements conferring the administration upon the wife. She may also administer the conjugal partnership in other cases specified in this Code.

The Draft of U.P. Law Center repeals this Art. 112. It is up to qualified lawyers to decide whether to retain said Article or to repeal it. We are for its retention, since it does not imply any discrimination against women, but simply right and proper administration.

Art. 113. The husband must be joined in all suits by or against the wife, except:

- (1) When they are judicially separated;
- (2) If they have in fact been separated for at least one year;
- (3) When there is a separation of property agreed upon in the marriage settlements;
- (4) If the administration of all the property in the marriage has been transferred to her, in accordance with articles 196 and 197;
- (5) When the litigation is between the husband and the wife;
- (6) If the suit concerns her paraphernal property;
- (7) When the action is upon the civil liability arising from a criminal offense;
- (8) If the litigation is incidental to the profession, occupation or business in which she is engaged;
- (9) In any civil action referred to in article 25 to 35; and
- (10) In an action upon a quasi-delict.

In the cases mentioned in Nos. 7 to 10, the husband must be joined as a party defendant if the third paragraph of article 163 is applicable.

Art. 114. The wife cannot, without the husband's consent, acquire any property by gratuitous title, except from her ascendants, descendants, parents-in-law, and collateral relatives within the fourth degree.

Art. 115. The wife manages the affairs of the household. She may purchase things necessary for the support of the family, and the conjugal partnership shall be bound thereby. She may borrow money for this purpose, if the husband fails to deliver the proper sum. The purchase of jewelry and precious objects is voidable,

unless the transaction has been expressly or tacitly approved by the husband, or unless the price paid is from her paraphernal property.

Again the Draft of U.P. Law Center proposes changes in these Articles 113-115 in order to eliminate all differences between husband and wife. The change for Art. 115 especially seem to be ridiculous. It reads as follows:

Art. 115. The labors of a spouse, in managing the affairs of the household, shall be credited with compensation at the same rate as that paid to a third person hired to perform the same nature of work.

We are for the retention of Articles 113-115 as contained in the present Civil Code.

Art. 116. When one of the spouses neglects his or her duties to the conjugal union or brings danger, dishonor or material injury upon the other, the injured party may apply to the court for relief.

The court may counsel the offender to comply with his or her duties, and take such measures as may be proper.

This Art. 116 is, to our mind, very important and its contents should be expanded. It can help a lot in mending marital differences, preventing legal separation or thinking of divorce.

Art. 117. The wife may exercise any profession or occupation or engage in business. However, the husband may object, provided:

(1) His income is sufficient for the family, according to its social standing, and

(2) His opposition is founded on serious and valid grounds.

In case of disagreement on this question, the parents and grandparents as well as the family council, if any, shall be consulted. If no agreement is still arrived at, the court will decide whatever may be proper and in the best interest of the family.

Again the issue of equality of sexes is brought too far in the Draft of U.P. Law Center. This Art. 117 could be formulated some other way more acceptable to women. We sincerely think its rejection, as suggested in the Draft, implies great deterioration of family life especially the education of the children who are minors.

THE BIBLE ON DIVORCE

by

Fr. Efren Rivera, O.P.

The current debate on divorce does not, in itself, question biblical doctrine or its interpretation by the Church. The point at issue is whether, in the Philippine situation where the Church is separate from the State and lives in a pluralistic society, it should or should not consent to a proposed presidential decree allowing a practice which the Church does not allow. Nevertheless, in the course of the debate the Bible is invoked — sometimes rightly, but most of the time wrongly. The occasion calls for a re-study of biblical texts.

In this brief article it is not possible to give an exhaustive treatment of the topic. But I hope to establish certain points that will show just what is biblically true or false or undetermined regarding divorce or its opposite — the indissolubility of marriage.

First I shall put down the main biblical texts and add brief comments. Secondly, I shall examine whether, according to the biblical data, the indissolubility of marriage is a natural law.

I. BIBLICAL TEXTS AND BRIEF COMMENTS

1. Genesis 2: (v. 21) So the Lord God caused a deep sleep to fall upon the man, while he slept took one of his ribs and closed up its place with flesh; (v. 22) and the rib which the Lord God had taken from the man he made into a woman and brought her to the man. (v. 23) Then the man said, "This at last is bone of my bones and flesh of my flesh; she shall be called Woman, because she was taken out of man." (v. 24) Therefore a man leaves his father and mother and cleaves to his wife, and they shall become one flesh. (Revised Standard Version).

The text comes from the Yahwist (J) tradition, which was put in writing not later than 721 B.C.

The Yahwist was a daring thinker, a theologian in his own right. To limit his ideas to those prevailing in the world of his time is to miss completely the value of his contribution to the development of revelation. This is what is done by those interpreters who want to reduce this text to a mere aetiological narra-

tive — an attempt to assign a cause to the strong attraction among the sexes. Gerhard von Rad, for example, says that "The story is entirely aetiological, i.e., it is told to answer a quite definite question. A fact needs explanation, namely the extremely powerful drive of the sexes to each other . . . Its point of departure, the thing to be explained, is for the narrator something in existence, present, not something 'paradisaical' and thus lost!" Taking the side of other interpreters, I disagree with such an exegesis. I concede that the Yahwist shared the aetiological concerns of his contemporaries, but he went beyond them to teach about God's plan for man.

Aside from the fact that the New Testament (see Mt. 19:4ff; Mk. 10:6ff; I Cor. 6:16; Eph. 5:31) saw in this verse a teaching on monogamous and permanent marriage, there is enough basis for asserting that the Yahwist sought to recommend monogamous and permanent marriage as an ideal for man. Or, to say it another way, he wanted to teach that in God's intention marriage is a monogamous and permanent union of man and woman.

True, polygamous marriage as well as divorce were generally accepted practices in Israel's world of the 8th century B.C. and in more ancient times. But through serious reflection and under the guidance of divine inspiration, the Yahwist saw the defects of the system and pointed out the ideal that should replace it eventually. He was not commanding his contemporaries to be monogamous nor to reject divorce. But he suggested to them that the improvement of man and society should be sought in that direction.

Verse 23. "Bone of my bone and flesh of my flesh" was a form of speech widely used in the Old Testament (see Gen. 29:14; 37:27; Judges 9:2; 2 Samuel 5:1; 19:13). It indicated that the other person was someone as close as one's own body. It emphasized that the relationship of the two cannot be set aside. In the present context it is used to describe the closeness and strength of the relationship between husband and wife.

This verse also sums up the Yahwist's idea that in the beginning man and woman were equally superior to animals and that together they constituted the complete human being.

Verse 24. "A man leaves his father and mother and cleaves to his wife . . ." The attraction of the husband to his wife is strong enough to break his attachment to his family. If we keep in mind how greatly the ancient Israelites esteemed family ties, we would appreciate better how strong is the bond that the author sees between man and wife. To his mind it should prevail over

his commitment to his parents. The overwhelming attraction of sex is certainly meant here, but there is no reason to exclude from the author's mind the idea of a permanent union between husband and wife that would involve every fibre of their being.

The verse does not quite correspond to the patriarchal family custom of ancient Israel. It was the wife, rather than the husband, who broke loose from her family in order to join her husband. This observation confirms my objection to the "entirely aetiological" interpretation of the man-and-woman passage of Genesis 2. In my viewpoint, the Yahwist here pursues his idea about the equality of the sexes and the permanent bond that should unite man and woman in marriage.

For a man to "cleave" or cling to his wife denotes both physical and psychological attachment and envisages a situation which is not far from what we call indissolubility. Only a bias against the Yahwist's capability of making a breakthrough in ancient thinking about marriage would prevent interpreters from seeing this verse in this light.

"They become one flesh" refers both to the conjugal act and to its psychological and physical consequences. Psychologically it creates a bond stronger than that of kinship and confirms the great attraction between the sexes. Physically it leads to the birth of a child which is the husband and wife's "one flesh". Seen in this light, the verse provides some basis for the argument that the good of the child postulates the indissolubility of marriage.

2. Deuteronomy 24: (v. 1) "When a man takes a wife and marries her, if then she finds no favour in his eyes because he has found some indecency in her, and he writes her a bill of divorce and puts it in her hand and sends her out of his house, and she departs out of his house, (v. 2) and if she goes and becomes another man's wife, (v. 3) and the latter husband dislikes her and writes her a bill of divorce and puts it in her hand and sends her out of his house, or if the latter husband dies, who took her to be his wife, (v. 4) then her former husband, who sent her away, may not take her again to be his wife, after she has been defiled; for that is an abomination before the Lord, and you shall not bring guilt upon the land which the Lord your God gives you for your inheritance."

See also Jeremiah 3:1-5; Hosea 2:2-3.

This deuteronomic legislation, written around 620 B.C., does not institute divorce. In fact, nowhere in the Bible do we find a text instituting divorce. It is presupposed as a custom which the people have practiced from time immemorial. The deuterono-

conomic legislation, then, is not, properly speaking a law of divorce. It merely seeks to regulate a previously established practice.

The regulation seeks to restrain husbands from divorcing their wives. It requires: (a) that there be definite and substantial basis, as for example, improper or indecent behaviour, before a husband could divorce his wife; (b) that the husband's determination to divorce his wife be attested by a properly formulated legal document; (c) that the writ of divorce be formally served upon the wife; (d) and that the woman must be sent forth formally, by her husband, out of his house.

Verse 4 deserves special attention in a discussion which seeks clarification on the indissolubility of marriage. A woman is said to "defiled" when she commits adultery (see Leviticus 18:20; Numbers 5:13.14.20). What could it mean than, when a divorced woman is said to be "defiled" when she remarries? It could only mean that, as far as the former husband is concerned, she becomes an adulteress through remarriage. This is logical only if the former marriage is thought to remain valid in spite of the divorce — if marriage is, by its very nature, indissoluble. Divorce is a practical but undesirable way out of a bad situation.

This verse further implies that it is quite tolerable for a husband to let his divorced wife become an adulteress through remarriage as long as she stays from his house. But for him to condone her adultery to the extent of taking her again as his wife is an intolerable thing. She should be punished, at least by being kept away from her first husband.

It is presumed that the husband who divorces his wife can remarry without becoming an adulterer. The reason for this favoured position of the husband is the presumption that he is the innocent party in the divorce.

3. Malachi 2: (v. 13) And this again you do. You cover the Lord's altar with tears, with weeping and groaning because he no longer regards the offerings or accepts it with favor at your hand. (v. 14) You ask, "Why does he not?" Because the Lord was witness to the covenant between you and the wife of your youth, to whom you have been faithless, though she is your companion and your wife by covenant. (v. 15) Has not the one God made and sustained for us the spirit of life? And what does he desire? Godly offspring. So take heed to yourselves, and let none be faithless to the wife of his youth. (v. 16) "For I hate divorce, says the Lord the God of Israel, and covering one's garment with violence, says the Lord of Hosts. So take heed to yourselves and do not be faithless."

This text was written around the year 445 B.C. Noteworthy is its reference to marriage as a covenant (berith) requiring covenantal love (hesed), which consists not only of affection but also of fidelity and truth. Divorce is founded on the opposite of love, fidelity and truth. No wonder God — the God of the covenant — hates it.

4. The Synoptic Gospels have the following texts on divorce:

Matthew 5: (v. 31) It was also said, "Whoever divorces his wife, let him give her a certificate of divorce." (v. 32) 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.

Matthew 19: (v. 3) And Pharisees came to him and tested him by asking, "Is it lawful to divorce one's wife for any cause?" (v. 4) He answered, "Have you not read that he who made them from the beginning made them male and female, (v. 5) 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'? (v. 6) So they are no longer two but one. What therefore God has joined together, let not man put asunder." (v. 7) They said to him, "Why then did Moses command one to give a certificate of divorce and put her away?" (v. 8) He said to them, "For your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so. (v. 9) And I say to you: whoever divorces his wife, except for unchastity, and marries another, commits adultery."

Mark 10: (v. 2) And Pharisees came up and in order to test him asked, "Is it lawful for a man to divorce his wife?" (v. 3) He answered them, "What did Moses command you?" (v. 4) They said, "Moses allowed a man to write a certificate of divorce, and to put her away." (v. 5) But Jesus said to them, "For your hardness of heart he wrote you this commandment. (v. 6) But from the beginning of creation, 'God made them male and female.' (v. 7) 'For this reason a man shall leave his father and mother and be joined to his wife, (v. 8) and the two shall become one.' So they are no longer two but one. (v. 9) What therefore God has joined together, let not man put asunder."

Luke 16: (v. 18) Everyone who divorces his wife and marries another commits adultery, and he who marries a woman divorced from her husband commits adultery.

These texts unequivocally state the indissolubility of marriage. In Mark and Luke there is no mention of any case which could justify divorce. In Matthew separation is allowed when the wife

is guilty of "unchastity". The following remarks can be made in this regard::

a. The "divorce" spoken of allows separation but not remarriage of the wife because if she remarries she commits adultery and a man who marries her commits adultery. As in the deuteronomic law nothing is said about the remarriage of the presumably innocent husband.

b. The word translated "unchastity" is **porneia**, which generally means premarital unchastity, but, as in our case, may also include adultery (for which the precise Greek word is **moicheia**).

c. Some authors interpret **porneia** to mean an intimate relationship between a man and a woman who are not legally married or whose marriage is considered invalid by the Church, as in the case of a union between a man and his sister. In this case their separation would not be divorce properly speaking, but a recognition of nullity.

d. Since Matthew alone, differing from Mark and Luke, adds the clause "except on the ground of unchastity", exegetes generally consider this as an addition coming from the early Church. The words are not the words of Christ. Jesus originally would have made no exception allowing divorce.

This raises the problem of whether or not the Church has the power to introduce an exception where Christ did not. Or, putting the question another way: does Matthew provide a scriptural basis for the "Petrine Privilege"? This is usually understood as the power by which the Church dissolves unconsummated marriages of Christians or the marriages of the unbaptized.

There would be no basis for the "Petrine Privilege" in this text if remarks (a) and (c) above are accepted: Matthew's text would not have allowed divorce in the proper sense, but only separation or a declaration of nullity. The "Petrine Privilege" would then stand solely on the texts of Matthew 16:19 and 18:18, which speak of the ecclesiastical power of binding and loosing on earth.

I Corinthians 7: (v. 10) To the married I give charge, not I but the Lord, that the wife should not separate from her husband (v. 11) (but if she does, let her remain single or else be reconciled to her husband) — and that the husband should not divorce his wife. (v. 12) 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 divorced her. (v. 13) If any woman has a husband who is an unbeliever, and he consents to live with her, she should not divorce him. (v. 14) For the unbelieving husband is consecra-

ted 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. (v. 15) 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.

(v. 39) A wife is bound to her husband as long as he lives. If the husband dies, she is free to be married to whom she wishes, only in the Lord.

Verses 12-13 raises the question, whether Paul is merely giving a counsel (as Cyril of Alexandria, Augustine, Ambrosiaster, Pelagius, St. Thomas Aquinas, etc., thought), or a prohibition. The Greek construction (*me* with the imperative *aphieto*) is in favor of interpreting the passage as a negative precept. The Christian ("brother" or "sister") is prohibited from divorcing the unbelieving partner when that partner consents to continue the marriage peacefully.

Verse 15, which is usually invoked as the basis of the "Pauline Privilege", is of special interest to our discussion. Two points need to be examined:

a. In case the marriage of a believer and a non-believer ends in separation, are they free to remarry? Christian tradition, from the 4th century has taught the so-called "Pauline Privilege", namely, that the Christian convert is free to contract another marriage if the unbeliever refuses to cohabit peacefully. But it must be pointed out that Paul's words grant explicitly only separation, and it seems from v. 39 that, for Paul only the death of one partner would give the surviving partner the freedom to marry again.

b. Verse 15c, "For God has called us to peace", certainly gives the reason why a Christian convert may separate from an unbelieving spouse who would cause marital discord, antagonism and continual wrangling. Is it also the reason why the Christian convert is prohibited (or counseled?) not to separate from an unbelieving spouse who desires to continue a happy marriage? The answer seems to be yes. In this case, peace would seem to be a value held high over other values in marriage. Is it superior even to the indissolubility of marriage? The answer to this question in the pauline context is restricted by two considerations:

(1) Paul is speaking only of mixed marriages and not of marriages "in the Lord" or between Christians.

(2) As mentioned above, Paul advocates a separation of spouses for the sake of peace, but he does not say whether they could remarry.

6. Ephesians 5: (v. 28) Even so husbands should love their wives as their own bodies. He who loves his wife loves himself. (v. 29) For no man ever hates his own flesh, but nourishes and cherishes it, as Christ does the Church, (v. 30) because we are members of his body. (v. 31) "For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one." (v. 32) This is a great mystery, and I take it to mean Christ and the Church: (v. 33) however, let each one of you love his wife as himself, and let the wife see that she respects her husband.

Paul reiterates the theology of the Yahwist and the teaching of Christ on marriage as constituting man and woman into "one flesh", and he connects this with the mystery of the Church.

It is not clear whether the "great mystery" Paul refers to is human marriage (specifically that of love). In the former case, marriage would be a "mystery" (a) because it is a Sacrament in the traditional sense of this word, or (b) because it is an earthly reality that is attached to a heavenly one (the marriage of Christ and the Church). In the latter case, the emphasis of Paul's words would not be in the affirmation that the relationship of Christ and the Church is a mystery, but that it is a **GREAT** mystery.

In my opinion, human marriage and the marriage of Christ and the Church are two parts that constitute one Great Mystery. If I rightly interpret Paul's thoughts, it would be something like this: When God instituted human marriage in the beginning, he gave it a mysterious force that would lead to its development until it culminates one day (at the Parousia) in the marriage of Christ and the Church. Marriage is a reality which develops in the course of human history. In the past, people may not have realized how deep a relationship it demands of men and women. Now, in the Christian revelation, Christians should be more aware of the exigencies of marriage, and through their exemplary life in a monogamous and permanent marriage announce prophetically in the world that perfection which marriage will acquire when Christ takes the Church as his bride at the Parousia.

Paul, therefore, thinks of marriage as an institution endowed by God with a transcendent value which is based on its monogamous and indissoluble nature.

II. IS THE INDISSOLUBILITY OF MARRIAGE A NATURAL LAW?

The question that goes to the heart of the matter in the present discussion is whether, in the biblical point of view, natural law requires marriage to be indissoluble.

This question is complicated by the fact that our notion of natural law has been developed from concepts quite different from the biblical mentality.

Natural law, as we usually understand the term today, is a set of conclusions drawn from a concept of nature. When we ask what is the natural law for man, we seek the answer by first forming a concept or definition of human nature. From this definition which is characterized by immutability, we draw conclusions on what is good or bad for man at all times and all places. These conclusions would then express the "natural law" found in human nature. Catholic Theology usually avers that natural law can be known by man without the benefit of revelation. But usually it is only after much effort is spent in trial and error does man attain the natural law in its entirety, and even then his knowledge is replete with uncertainties. It is through revelation that natural law is more easily and firmly known by man.

In biblical mentality natural law is not drawn from a definition of nature. It is the dynamism inherent in nature. The natural law for man is human nature itself as it operates and urges man to accomplish God's will. Man becomes aware of this dynamic orientation through his mind (*nous* — see Romans 2:14; 7:25) without the help of revelation.

From the biblical viewpoint, is the indissolubility of marriage a natural law? Two biblical texts would seem to incline us to the affirmative. First, in Matthew 19:8 Christ says: "For your hardness of heart Moses allowed you to divorce your wives, but **from the beginning it was not so.**" It would seem from this text that "from the beginning", when God created man, he gave him a nature that called for the indissolubility of marriage. St. Thomas Aquinas, in fact, used this as an argument to defend the thesis that the inseparability of the wife is a natural law (see *Summa Theologica*, Supplement, q. 67, a. 1).

The second text is that of Ephesians 5:32. According to the interpretation I gave above (see part one), marriage is a "great mystery" because God endowed it with a dynamism that would one day lead men to monogamous and indissoluble marriage, in preparation for, and as a symbol of, the "monogamous and indissoluble marriage" of Christ and the Church.

But there is one point that hinders us from saying that, according to the Bible, the indissolubility of marriage is part of natural law. Both in Catholic Theology and in the Bible it is admitted that natural law must be something that the human mind can attain without revelation, at least if man would try hard enough.

Now, the Bible is silent on this point, as far as the indissolubility of marriage is concerned.

We should therefore note that the indissolubility of marriage is not on par with the teaching of St. Paul in Romans 2:14-15 on the natural law about the basic duties of man toward the one true God. St. Paul clearly says there that pagan men know these duties: they are "engraved on their hearts".

No such statement on the indissolubility of marriage is found in the Bible. It only tells us about God's plan for the indissolubility of marriage, and keeps silent on whether man, through his natural intellectual powers, can grasp this plan. In fact, it calls this divine plan a "great mystery".

The most we can say is that the Bible provides the basis for a theological reasoning which would rightly form the conclusion that marriage is, by natural law, indissoluble.

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HOMILIES . . .

(Continued from page 96)

themselves with the ancient prophets of Israel, and imitate them in denouncing those in authority or existing institutions. Yet the parallel is defective. Israel was a theocratic state, Yahweh was its true King and Ruler. Government and religion were intended to be unified. The modern world has separation of state and Church. The motivation for the Christian prophet is Christ's gospel and his Law of Love.

Our Response: The Christian exercises his prophetic role chiefly by his example of a good Christian life, his fidelity to Christian principles, and willingness to stand up for them in face of opposition. He likewise deepens his knowledge continually of what God has revealed to be his will in the Scriptures, especially the Gospels, and he willingly hearkens to the Voice of Christ resounding in the words of those whom Christ has placed over his flock to feed and guide them. This knowledge will enable him to come to the aid of others who are groping for the truth, and to defend the stand of the Church when it is attacked. He is not afraid to speak up boldly, even though that may merit him to "be lifted up with his Lord" and to suffer derision and opprobrium.

THE CHURCH AND THE INDISSOLUBILITY OF MARRIAGE

by

Excelso Garcia, O.P.

Theology teaches us that grace does not absorb nor destroy human nature; on the contrary, it perfects and raises us to a new level, i.e. to the supernatural order. Divine revelation causes identical effect in human knowledge. Our imperfect understanding of nature through human reason is enlightened by faith, giving us confidence and assurance on what our weak intelligence can apprehend only with a mixture of doubt and error. This happens especially in regards to our knowledge of truths that are directly related to our salvation. "The Word enlighteneth every man who comes into this world", St. John says in his Gospel.

St. Thomas Aquinas, dealing on this matter, mentions lack of leisure for serious study, lack of interest, and lack of mental equipment, as the reason for moral revelation (St. Thomas, **Summa contra gentiles**, Ch. 4.) On the other hand, Pius XII identifies the obstacles to a correct knowledge of the natural truths of religion with the fact that the truths themselves lie beyond the range of the senses, their practical application calls for severe self-control and man's evil inclinations which tend to interfere with right judgment. Both St. Thomas and Pius XII point out the difficulties that hinder human reason in apprehending truth in its purity. It is only with a mixture of doubt and error that we know truth in the natural order.

The natural consequence of this imperfect knowledge is that instead of tending towards God, our natural destiny, with ease and expediency, we are hindered by our passions and frequently fail to see our way to heaven. Pius XII most appropriately declared that

"in the acquisition of the truths that have to do with God and the relations between God and men the human intellect is hampered not only by the impulses of the senses and the imagination, but

* The notes we offer in these pages are only meant to help our clergy and members of religious organizations to make a correct judgment on the delicate issue of *divorce*. To elaborate the topic properly would require besides a deep grasping of theology ability to convey the principles enuntiated by the Magisterium on the matter to the readers.

also by evil passions stemming from original sin. As a result, men readily persuade themselves in such matter that what they do not wish to be true is false or at least doubtful" (Pius XII, Enc. **Humani generis**, Aug. 12, 1950:AAS, 1950, pp. 561-578).

Stanley Bertke admits a rather widespread **de facto** ignorance of the absoluteness of the natural law in very practical problems of our age, such as birth control, abortion, divorce, etc., among non-Catholics. He also admits the existence of much apparently inculpable ignorance among Catholics who are not well instructed (Stanley Bertke, **The Possibility of Invincible Ignorance of the Natural Law**, 1941).

"The men of our time, says Pius XII, when confronted by events which bring up difficult metaphysical and religious problems to be solved, gladly, without a thought of higher principles, persuade themselves that it is enough to act as the exigencies of the moment demand" (Pius XII: AAS, 43, 1951, p. 32; cfr. Bouscaren, **Canon Law Digest**, III, pp. 119-131).

This deplorable situation in regards to the possession of truth which leads us to God is common patrimony of all human beings. It is the effect of our original deviation from God. Thus, it is not only the common man, but also the intellectual, who needs revelation and the guidance of the Church in order to have an adequate knowledge of the natural law . . . The problem of ignorance of the natural law concerns not only the intellectual elite; it extends to men in general, and therefore includes professional men, such as lawyers and doctors, and the common people (Ford-Kelly, **Contemporary Moral Theology**, 1958, I, pp. 9-10).

In view of this universal ignorance or lack of knowledge on fundamental moral truths, revelation appears as the only salvation board for mankind. Pius XII declared its necessity when he said:

"It is for this reason (impulses of sense, imagination and passions) that divine revelation must be called necessary, so that those religious and moral truths which are not of their nature beyond the reach of reason may, also in the present condition of the human race, be known by all with ease, with unwavering certitude, and without any admixture of error" (Pius XII, Enc. **Humani generis**, Aug. 12, 1950: AAS, 42, pp. 561-578).

The first Vatican Council affirmed already the moral necessity of divine revelation in the present condition of mankind, that the religious truths which are by their nature not impervious to reason may be known more readily by all, with firm certitude, and without

any admixture of error (D.S. 3005). The conciliar proposition has been repeated practically verbatim by the Roman Pontiffs who have dealt on natural law, like Pius XI in his Enc. **Casti Connubii** (AAS, 1930, p. 579-80) and Pius XII in **Humani generis** (AAS, 1952 pp. 561-562). The Second Vatican Council made reference to this in his decree on Divine Revelation by saying:

"The Sacred Synod affirms that God, the beginning and end of all things, can be certainly known by the light of human reason (cf. Rom. 1, 10); but teaches that it is through His revelation 'that those religious truths which are by their nature accessible to human reason can be known by all men with ease, with solid certitude and without mixture of error even in this present state of human race'" (n. 6).

The possibility, therefore, of knowing with certainty the truths that are related to our salvation, not by our human reason alone but aided by divine revelation, is a theological principle all Catholics must profess. But how can we grasp these truths that must give life to our existence in order to achieve with safety our final goal? God, Whose existence can be known by reason, revealed Himself to mankind in another supernatural way" (Hebr. 1, 1 ff.), namely through the prophets and through Our Lord Jesus Christ Universal Restorer of the Law. And it is to the Church, not to the individuals that Christ gave His revelation, "of which moral obligations are an essential part." And it was to the Church alone that Christ promised the divine aid required for avoiding error.

Father Haring says:

"God made His will known to us through Christ, Who established the Catholic Church as custodian and interpreter of His revelation. Hence the immediate or proximate norm of morality for us is the will of God revealed in Christ, as it is presented by the Catholic Church (objective norm), and as it is understood by human reason submissive to supernatural revelation and inwardly enlightened by the Holy Spirit (subjective norm)" (Fr. Haring, **The Law of Christ**, 1, 229).

Two things therefore are to be borne in mind. First, that the Catholic Church has authority to teach the revelation, and second, that her guidance is a practical and moral necessity for obtaining an adequate knowledge of moral and religious truths. It is only through conformity with the teaching of the Church that individual conscience is safe from error. In Christ's salvific plan for mankind individual conscience is subordinated to the Church. It has to submit itself to the teaching of the Magisterium. The first and

more solid argument in Catholic Theology is the teaching of the Magisterium. This acquiescence and submission to the Church's Magisterium is more necessary in this era of individual reluctance to accept any directive from legitimate authority and when freedom seems to pervade all aspects of human life and people are strongly inclined to accept only what they see and agree with.

That the Church was constituted depositary and interpreter of Divine Revelation by Her Founder and consequently given to mankind as a safe teacher and guide seems to be beyond any reasonable doubt. But does the teaching power of the Church extend also to declare and interpret the Natural Law as well? If anything is clear in the practice of the Church, it is that She has the power to teach and interpret the Natural Law. This has been authentically stated by many Popes, particularly by Pius XII:

"Jesus Our Redeemer gave to His Church the Natural Law written in the heart of men and the truths and precepts of supernatural revelation as the moral treasure of humanity in order that She might preach them to all creatures, explain them, and hand them on intact and safeguarded from all contamination and error from one generation to another" (Pius XII; AAS, 1952, p. 272).

From Leo XIII to John XXIII, the second Vatican Council, and Paul VI, there is increasing frequency of referrals to the Natural Law motivated in part by the modern insistence on reasonableness apart from religious pronouncements. The last encyclicals were addressed to the whole world. The problems of peace and war, the confrontation with totalitarian regimes, social justice, ethnic and racial relations, underdeveloped countries, marital relations, medico-moral questions, all these were to be answered in terms of the natural dignity of man and the inherent rights of human nature.

Addressing to the Cardinals in 1954, Pius XII pointed out that "there are some noticeable attitudes and tendencies of mind which presume to check and set limits to the power of the Bishops (the Roman Pontiff not excluded), as being strictly the shepherds of the flock entrusted to them. They fix their authority, office and watchfulness within certain bounds which concern strictly religious matters, the statements of the truths of faith, the regulations of devotional practices, administration of the sacraments of the Church, and the carrying out of liturgical ceremonies. They wish to restrain the Church from all undertakings and business which concern life as it is conducted, 'the realities of life', as they say" (Pius XII, Address to Cardinals, 1954: AAS, p. 666-677).

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And he himself firmly declared how the Church confronts these attitudes and tendencies of modern mind:

"We must take an open and firm stand against errors of this kind. The power of the Church is not bound by the limits of 'matters strictly religious', as they say, but the whole matter of the natural law, its foundation, its interpretation, its application, so far as their moral aspects extends, are within the Church's power. For the keeping of the natural law, by God's appointment, has reference to the road by which man has to approach his supernatural end. But, on this road, the Church is man's guide and guardian in what concerns his supreme end" (Pius XII, Address to the Cardinals, 1954: AAS, pp. 666-672).

Any aspect of human life insofar as it involves morality or religion falls under the concern and authority of the Church. Problems of the social field that touch and pertain to the moral order, therefore,

"are of concern to conscience and the salvation of men; thus they cannot be declared outside the authority and care of the Church... Common sense, and truth as well, are contradicted by whoever asserts that these and like problems are outside the field of morals, and hence are, or at least can be, beyond the influence of that authority established by God to see to a just order and to direct the conscience and actions of men along the path to their true and final destiny" (Pius XII, Address to the Cardinals, Nov. 2, 1954: AAS, 46, pp. 666-677).

In 1952 the same Roman Pontiff had already declared:

Our predecessors, and We Ourselves, in the confusion of war and in the troubled aftermath of war, did not cease to insist on the principle that the order willed by God embraces life as a whole, not excluding public life, in whatever form. Such insistence was based on the persuasion that this entails no restriction of true freedom, not any interference in the competence of the State. Rather, it is an insurance against errors and abuses, against which Christian morality, when rightly applied, offers protection." Pius XII: AAS, 44, 1952, pp. 276-77).

Undoubtedly men need authoritative guidance concerning the moral law and its application to the various spheres of human activity. And it was Christ's will that His Church should give this guidance. And with reason:

"for the dictates of the Natural Law and the truths of Revelation spring forth in a different manner, like two streams of water that

do not flow against one another but together, from the same divine source; and the Church, guardian of the supernatural Christian order, in which nature and grace converge, must form the conscience even of those who are called upon to find solutions for the problems and the duties imposed by social life" (Pius XII, radio message: AAS, 1941, p. 218).

When we already know a truth taught by the Church's Magisterium, the innate mental difficulty will still be present hindering us from fully grasping the truth under the light of reason alone. This shows why we have difficulties in understanding even moral truths that belong to the natural order, especially when metaphysical argumentation and great intellectual effort are needed to prove them. Such is the case, for instance, of intrinsic immorality of contraception, abortion, divorce, etc. Because of the same innate difficulties that are still operative in our intellectual process the arguments presented by the Church's Magisterium in proving certain truths seem sometimes not to be cogent to human reason.

To accept only apodictically conclusive demonstration on moral problems presented by the Church is to distort both scope and function of her divine mission in passing to mankind the divine message of the gospel. She makes known to us her judgment on problems like abortion, contraception and divorce. But our motive in accepting her doctrine on these problems is not the intrinsic conclusiveness of her arguments, but her divine mission to teach us on faith and morals with Christ's promise of inerrancy. We are therefore bound to submit our private judgment to the teaching of the Church, even when we feel her demonstration is not metaphysically conclusive. Pius XII explains what must be our attitude in such a case:

"When it is a question of instructions and propositions which the properly constituted shepherds (i.e. the Roman Pontiff for the whole Church and the bishops for the faithful entrusted to them) publish on matters within the natural law, the faithful must not invoke that saying (which is want to be employed with respect to opinion of individuals): 'the strength of the authority is no more than the strength of the arguments'. Hence even though some individuals may think that certain declarations of the Church are not proved by the arguments put forward, their obligation to obey still remains. This was the mind, and these are the words, of St. Pius X in his Enc. *Singulari quadam* of Sept. 24, 1912 (AAS, 4, p. 658): 'All our actions, in so far as they are morally good or evil, that is, agree with, or are in opposition to divine and natural

law, are subject to the judgment and authority of the Church' " (Pius XII, 1954: AAS, pp. 666-677).

Individual theologians can, indeed, entertain and elaborate their own opinions on certain matters. But when what they say is at variance with the teaching of the Church's Magisterium, their opinion has no validity with the people of God. Individual theologians have received no divine mandate to teach on faith and morals as the Church has received. Only the Church is competent to declare the contents and the extent of divine revelation. When the Church teaches on a concrete moral issue, She does it by virtue of her divine mission. Nowadays when almost everything is questioned, even moral tenets that in the past were held beyond any doubt, the warning of Pius XII is most appropriate:

"When the Supreme Pontiffs in their official documents purposely pass judgment on a matter up to that time under dispute, it is obvious that the matter according to the mind and will of the same Pontiffs, cannot be any longer considered a question open to discussion among theologians" (Pius XII, Enc. *Humani generis*, Sept. 2, 1950: AAS, 1950, pp. 561-578).

Modern man strongly rejects all kind of submission to others and invokes the intangibility of personal rights. Personal conscience is most sacred and no authority may impose a directive contrary to its dictates, they say. How may the Church require from the faithful to accept and follow doctrinal tenets that are contrary to what the individual thinks is correct? Obviously the Church may not impose any religious doctrine contrary to the moral natural law or divine revelation. If therefore there is any opposition between her doctrine and the individual conscience, it is in the latter where the defect is to be found. Individual conscience when well formed and properly educated is certainly to be respected. No violence to it is ever allowed. The question is: can a real opposition between this kind of conscience and the Church's authority exist? The answer is absolutely negative. The reason is simply because such a conscience is fully imbued with Christian sense and love and consequently is perfectly submissive to the teaching of the Church, because it feels that only by following the Church it follows Christ, her Founder. Pius XII teaches us that

"the education of conscience must consist in enlightening the individual person as to what Christ said and what Christ wants; and in this, of course, the Church is indispensable because it was to the Church that Christ left the moral treasure of mankind—

including both natural and divine positive law; and was Christ's will that the Church should preserve this treasure uncontaminated and hand it on from generation to generation of the faithful" (Pius XII, radio message of March 23, 1952: AAS, 44, 1952, pp. 270-278).

Bearing in mind what we have explained, we may raise the following questions:

1. Has the Church taught that Christian marriage is indissoluble?
2. Has the Church taught that any valid marriage, even the one celebrated among pagans, is indissoluble?
3. Has the Church made any pronouncement on divorce legalized by the civil power?

These are three questions we have to answer. And the answer we propose to give is the quotation of the pronouncements themselves, so that our readers may see clear and precise the answer to the questions proposed.

The indissolubility of marriage was defined by the Council of Trent in its canon seventh, *De Sacramento Matrimonii*:

"If anyone shall say that the Church is in error, when it taught and still teaches, in accordance with the teaching of the Gospels and the Apostles, that the bond of marriage cannot be dissolved by reason of the adultery of one of the partners, and that neither of them, not even the innocent one who gave no cause to the adultery, can contract another marriage while the other partner is alive: and that the man who dismisses his adulterous wife and marries another, and the woman who dismisses her adulterous husband and marries another, are guilty of adultery — let him be anathema."

Pius XI, in his Enc. *Casti Connubii*, said:

"If the Church has not erred and does not err in teaching this, and if consequently it is certain that the bond of marriage cannot be loosed even on account of the sin of adultery, it is evident that all the other weaker excuses that can be, and are usually brought forward are of no value whatsoever".

In its fifth canon the Council of Trent had already declared:

"If anyone shall say that the bond of matrimony can be dissolved by one of the partners on the ground of heresy, of gross unkindness, or of desertion, let him be anathema".

The same Council of Trent declared also that all marriages are indissoluble in virtue of a divine law made known to our first

parents. Christ did not impose a new obligation, but simply renewed the original precept already binding all married couples:

"The first father of the human race, inspired by the Divine Spirit pronounced the bond of marriages **perpetual and indissoluble**, when he said: **This now is bone of my bone, and flesh of my flesh. Wherefore a man shall leave father and mother, and shall cleave to his wife, and they shall be two in one flesh.**

But that by this bond two only are united and joined together, Christ our Lord taught more plainly when rehearsing those words as having been uttered by God. He said: **Therefore now they are two, but one flesh:** and forthwith confirmed the firmness of that tie, so long before proclaimed by Adam, by these words: **What therefore God hath joined together let no man put asunder**" (Sess. XXIV, *De matrimonio*, Preface).

Pius VI, mentioned by Pius XI in his Enc. *Casti Connubii*:

"**Marriage even in the state of nature . . . should carry with it a perpetual and indissoluble bond which cannot therefore be dissolved by any civil law**".

Pius IX in his *Allocution* of Sept. 27, 1852 (Denzinger, *Enchiridion*, n. 1767) referring to the laws imposed on the people of Columbia by the Government, said:

"We do not propose to dwell on that decree, in which the mystery, the dignity and the sanctity of marriage were entirely disregarded . . . and in accordance with heretical errors which have already been condemned and in opposition to the teaching of the Catholic Church, it was declared that marriage must be considered a mere civil contract, that in certain cases divorce properly so-called can be granted, and that all matrimonial causes must be brought before secular tribunals and be judged by them".

The same Pontiff condemned in the *Syllabus* the proposition 67 regarding marriage:

"**By the law of nature the bond of marriage is not indissoluble, and in certain cases a divorce in the full sense of the word may be sanctioned**" (Denzinger, *Enchiridion*, 1767).

Leo XIII, who in his Enc. *Inscrutabili*, of 1878 called impious the laws enacted against the dignity and sacredness of marriage, in his Enc. *Arcanum* of 1880 recounts in detail the evils derived from divorce, and declared:

"Christ brought back matrimony to the nobility of its primeval origin by condemning the custom of the Jews in their abuse of the plurality of wives and of the power giving bills of divorce, and still more by commanding most strictly that no one should dare to dissolve that union which God Himself had sanctioned by a bond perpetual. Hence, after setting aside the difficulties which were adduced from the law of Moses, He thus decreed, in the character of Supreme Lawgiver, concerning husbands and wives: 'I say to you, that whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery, and he that shall marry her that is put away committeth adultery' (Matth. 19.9).

Those husbands and wives are guilty of a manifest crime who plan, for whatsoever reason, to be united in a second marriage before the first one has been ended by death."

Pius XI condemns divorce in his Enc. *Casti Connubii* of 1930.

"The advocates of the neopaganism of today have learned nothing from the sad state of affairs, but instead, day by day, more and more vehemently, they continue by legislation to attack the indissolubility of the marriage bond, proclaiming that the lawfulness of divorce must be recognized, and that the antiquated laws should give place to anew and more humane legislation . . .

Opposed to all these reckless opinions stands the unalterable law of God, fully confirmed by Christ, a law that can never be deprived of its force by the decrees of man, the ideas of a people, or the will of any legislator: 'What therefore God has joined together, let no man put asunder' (Matth. 19, 6). And if any man, acting contrary to this law, shall have put asunder, his action is null and void, and the consequence remains, as Christ Himself has explicitly confirmed: 'Everyone who puts away his wife and marries another, commits adultery; and he who marries a woman who has been put away from her husband commits adultery. (Lk. 16, 18). Moreover, these words refer to every kind of marriage, even that which is natural and legitimate only; for, as has already been observed, that indissolubility by which the loosening of the bond is one and for all removed from the whim of the parties and from every secular power, is a property of every true marriage."

Pius XII, addressing to the members of the Sacred Roman Rota, stated:

"Even where the parties are not baptized, marriage legitimately contracted is a sacred thing in the natural order. **The civil courts have no power to dissolve it, and the Church has never recognized the validity of divorce decrees in such cases**" (Pius XII, 1946).

John XXIII, addressing to the Officials of the Roman Rota in 1961, said:

"In the doctrinal uncertainties which here and there and in various forms threaten to mislead public opinion, it is necessary that a solemn and serious call be directed to the soundness of the principles which inspire the position of the Church in the defense of matrimony. In its tutelage and zealous care of the **indissolubility** of the bond and the **sanctity of sacramentum magnum**, the Church defends not only the ecclesiastical and civil laws, but **above all the natural and divine positive laws**. These two great and necessary blessings are obscured by the veil of passions and of prejudices, and sometimes forgotten. Before being accepted by positive laws, **the former is imposed by natural law** engraved with immutable characters in the human conscience; and **the latter by the divine law** of Our Lord Jesus Christ. It is not a question of prescriptions and norms imposed by circumstances and which can be modified in the course of generations, but imposed by divine law, by the order established by God Himself to safeguard the first nucleus which is the basis of society. **It is the divine primordial law** which in the fullness of time, the words of Christ: 'but from the beginning it was not so' gave anew its genuine integrity".

DECLARATION OF THE BISHOPS OF CHILE ON "MARRIAGE AND DIVORCE"

(Extract)*

Introduction

1. The words that Christ said to the world on marriage, love and the family, illuminate us through the centuries, and in the different situations and challenges of every age are illuminated, within the Church, in every new aspects of their inexhaustible riches. Repeated bills on divorce dissolving the marriage bond induce us, as bishops of Chile to present this evangelical word today, setting before Catholics the real thought of the Church and offering them and all Chileans of good will our thought on divorce, and more generally and positively on the human and divine grandeur of married love.

2. We are convinced that in this way we are serving not only the cause of Catholic faith or the good of the Church, but also the highest interests of the national community. Here, therefore, it is not a question of a purely ecclesiastical problem, or of a more or less subjective and individual doubt of conscience. This thought is dedicated by grave reasons founded on the very nature of the family and society. One heard it said that Catholics, being opposed to divorce for religious reasons, should abstain from taking advantage personally of these laws, without preventing others from having recourse to them, and without imposing their own criterion of judgment on the whole community. But this opinion, which invokes in its favour the pluralism of our society, is based mainly on an individualism that we cannot share. For the purpose of legislation is not the advantage that the individual can draw from it or not, but the common good of society as such. We believe that divorce with the dissolution of the bond is contrary to the real national interest, apart from whether believers have recourse of it or reject it. And it is rightly in the name of this solidarity with the whole country that we address these words to all Chileans.

* This is a treatment of marriage and divorce from the natural viewpoint. It is the first part of the Declaration issued by the Bishops of Chile in 1971, published in *L'Osservatore Romano* (English Weekly Edition), May 6, 1971, page. 8. We omit the rest of the Declaration. — Editor.

3. Furthermore, it is not just religious and ecclesiastical reasons that determine the attitude of the Church on this matter. In the same way our thought is not limited to marriage as a sacrament. We believe that marriage receives, from the very structure of the person and of civil society, a vocation of stability that was impressed on it by the Creator of nature, and which positive law cannot fail to recognize. For the sake of clarity, we will deal first with the natural condition of marriage, offering thoughts that seem to us acceptable even for those who do not share our faith. We will then go on to consider Christian marriage in the light of revelation.

A Natural Need

4. Of the many forms that men have given to sexual life, love and conjugal society, history dedicates a privileged place to stable monogamous marriage in the rise of mankind towards higher forms of life. The moral improvement of a society brings with it an evolution of the family type towards monogamy and stability. This progress of man's cultural energy and ethical conscience expresses and gradually clarifies a need of our deepest nature. In human history, it is true, room must be made for regressive processes and decadence, but this just means, in the subject that interests us, a regression towards the different forms of polygamy, free love and promiscuity.

5. Today, in the name of real progress, ardent pleas are heard for a "liberation" of instinct and sentiment, "repressed"—as is said—by conventional censure. Underlying these equivocal cries we believe we see a great spiritual abdication on the part of man, which leads to a decadent chaos and certainly not to anything "creative". The solidity of the family institution, on the basis of the stable unity of marriage, clearly coincides with the greatness of peoples and the apex of their genuine creative forces. Culture, in its broadest sense, is based on an ascetic principle: the finalization of the sexual instinct—dominated, not repressed, in the cause of personal love between man and woman, which culminates in the transcendent riches of children.

6. How can we fail to see, in the testimony of human science of these facts, the central line of a need of nature? The integration of sex in love; the fullness of love in the stable community of marriage; the fullness of marriage in fertility; and the natural guarantee of this whole process in the indissoluble bond of marriage: here is a consistent image, visible to the natural intelligence of man when he tries to transcend the historical multiplicity of facts and pick out, from among them all, the original light of the plan of creation, the call that God himself impressed on the nature of his human creature.

Marriage as a Personal Bond

7. The very deep bond of persons in marriage has such characteristics of spiritual and physical completeness that it alone affixes an indissoluble seal. Sex, in this context, is not a dispersed or fragmentary energy that can meet with possible satisfactions, but acquires a personal depth that touches the innermost intimacy of beings: the mutual natural attraction of instinct is transformed into a means of complete dedication of persons.

8. Both the intimate communion of husband and wife, and the communion that both establish with the mystery of the new life, deeply mark the destiny of the couple, creating a community of life, a third reality—the “us”—which of itself aspires to be lasting. Is this not what the declarations of lovers everywhere express? Swearing love “until death” or “for ever”, they express the absolute character of their affection. Therefore we regard every condition set, every demand qualified by a condition of time, by a limit, as a sin against love.

9. The experience of so very many faithful marriages is built on this “always” which resounds in human conscience in the form of fortitude, unconditional loyalty. This noble condition of marriage, which is called faithfulness, is not reduced to the mere fact of not betraying one’s partner. It becomes the positive form of complete adherence to the loved person. This adherence, based on the sharing of pleasure and on affinity of sentiments, certainly dominates individual events, which are changeable like all the processes of human psychology; so that even when these factors of affinity are modified as time goes on, faithfulness can continue to exist, and even, perhaps, renew them, in its character as a moral decision of the person, of free adherence to the other persons as such.

10. It is said that no one can compromise or mortgage his future in this way. Why not, if man is something more than the chance biological or psychical result of present becoming? Man is the only animal that can make a promise, Nietzsche said. Every dignity of ours is based on the power of carrying out our promises. We believe that man as a person is capable of keeping his word until death, and that marriage comprises a call to this precise type of promise.

The Social Dimension of Marriage

11. Then, too, marriage is far more than the spontaneous agreement of a couple that desires each other. Husband and wife are not alone on the earth. The whole of mankind surrounds them, and their offspring is potentially present in them in the very plan of love. That is, present and future society surrounds and penetrates them, conferring on their union a social dimension that goes far beyond their intentions.

12. Paradoxically, if there is nothing more intimate and private than the intimacy of husband and wife, on the contrary there is nothing that has more public importance than the social result of this intimacy. That explains why marriage, which is such a free community in its cause and its origin—the voluntary choice of the contracting parties—is, once established, so irreversible in its effects, in the social and juridical conformation of its indissolubility. A man and a woman marry because they wish to: but once married, they can no longer do what they like with their union.

13. In the indissoluble character of marriage, some essential interests of the community are involved. The stable constitution of the family has the strength of the whole society. Hence comes the fact that, once founded, it is above the will of the caprice of the parties. The particular case, however dramatic it may be, will therefore give way to the common interest, unless we ask—as divorce does—to consecrate juridically the principle of individual selfishness as the norm of social behaviour. The concern of the legislator must be the contrary: how to consolidate the family, by strengthening the marriage bond, and supplying it with the elements to establish itself with maturity in a favourable economic and social environment.

14. This is particularly a necessity for families that are not well off who make up the vast majority of the national community. The people does not pose the problem of divorce, which is more felt, on the other hand, by the well-to-do classes. The people feels urgently the opposite problem: the necessity of quaranteeing the family, binding the husband to his home, where the wife, so often, bears the weight of running the home and is the stable element of the family nucleus. The popular cause, therefore, is opposed to divorce; on the contrary, one of its greatest interests in the affirmation of the marriage bond.

External Confirmations

Our reasons are so based on the very nature of things that we often see them upheld by thinkers and statesmen very far from the Catholic faith, who, however, let themselves be guided by the reality of facts and a natural moral sense. This happens, for example, also with Karl Marx with regard to divorce. Although he does not draw all the consequences of his affirmation—because he end up by admitting divorce in a very particular and restrictive case—his point of view is categorical in affirming that marriage is above the will of persons by virtue of its social dimension. We quote him with pleasure on account of the great distance that separates us from his principles.

16. He says: "The dissolution of marriage nearly always means the dissolution of the family; also from a juridical point of view the situation of the children and of their property cannot be made to depend on the arbitrary will of the parents, on what they desire. If marriage were not the basis of the family, it would not be the object of legislation, as friendship, for example, is not. Thus (in divorce) only the individual will, or rather, the will of the spouses, is considered, but the intention of marriage, that is the moral substance of this relationship, is not considered . . . No one is obliged to contract a marriage but he who does so must be obliged to observed the laws of marriage, and rightly so, because he has contracted it. He who gets married does not create marriage, far less invent it; he is not its creator or its inventor, just as the swimmer is not with regard to nature and the laws of water and gravity".

17. He is also contrary to facilitating of divorce: "Does there exist in nature a healthy, strong and firmly organized body that can be destroyed by and external impulse or by any injury? Would you not be offended if it were established as an axiom that your friendship cannot stand up to the slightest difficulty and that it must necessarily be dissolved on account of every slight caprice?" As for the legislator, Marx wishes him to adopt the following criteria: "Let him respect marriage and recognize its deep moral essence, considering that it is strong enough to face up to a multitude of conflicts without its essence suffering. To comply with the desires of individuals mean becoming cruel to what constitutes the conscience of the collectivity, that is, with the moral reason embodied in moral relationships" (Marx, **The bill on divorce**).

SYMPOSIUM

THE DIVORCE ISSUE

by

Fr. Agerico Galang

It was on August 29, 1975 that Justice Secretary Vicente Abad Santos sparked nation-wide controversy with his willingness to draft a divorce law in our country.

Since then reams and reams of paper have been used up on the pros and cons of the matter.

The most avid dissenter in our country has understandably been the Catholic Church. In a pastoral letter dated Sept. 13, Archbishop Jaime Sin, expressed his views and suggested that instead of legalizing divorce the State should update its laws on nullity, annulment and legal separation.

This was followed by a three-page manifesto from Msgr. Oscar Cruz, of the Metropolitan Tribunal of the Ecclesiastical Province of Manila which clarified further the Church's stand on the matter as one not premised on purely religious or strictly ecclesiastical reasoning but on natural law. He advocated that legal minds work towards the formulation of a distinctly Philippine manner of resolving marriage cases in lieu of divorce which he termed as "a foreign system alien to Asian — Filipino cultural and social values".

On the other hand, the supporters of the movement have advocated divorce as a step towards the attainment of the legal equality of men and women, a solution to problems of illegitimacy and immorality. A draft of this decree on divorce prepared by a group of lawyers, most of them women, was actually hailed as one of the highlights of this year's observance of International Woman's Year. To this draft, UST issued a rejoinder upon the request of the Catholic Hierarchy for their use, a commentary suggesting among other things the substitution of the term legal separation for divorce.

Meanwhile, the people have been very vocal on the matter, their views ranging from the erudite to the banal, arguing both for and against, and supporting their views with statistics or excerpts from the Bible and

* The following three papers were read at a Symposium on Divorce at the University of Sto. Tomas, January 20, 1976.

the Philippine Constitution; invoking God or damning the Catholic Church laws and precepts as outmoded and obsolete. Suggestions are just as interestingly varied — why not trial marriage, says one, another suggests a national referendum on the matter.

Is Divorce indeed the solution to an unhappy marriage?

What preventive measures, if any, may be taken to prevent the dissolution of a marriage?

These are the two concrete topics we have chosen to discuss on the matter. As guardians of the unity and indissolubility of a Christian marriage, it is our duty to give the matter our serious thought and consideration, hopefully this exchange of views will serve to enlighten and clarify whatever doubts, questions one may have on the controversial subject of divorce.

IS DIVORCE THE SOLUTION TO AN UNSUCCESSFUL MARRIAGE?

by

Fr. Ismael Misolas

I was once asking a lawyer about his views on divorce. But instead of answering, he jokingly asked: "Why are priests so concerned about divorce? If it is legalized, you will not be affected." "And why are you also concerned about whether priests are going to marry or not," I countered. (A week before this lawyer had asked me about celibacy) "Well," he replied, "you see, my son wants to become a priest, and if the rumors become true that priests will be allowed to marry, I'll not let him become one." "If that's the case," I said, "I'm interested in divorce because if those rumors would indeed become true, then priests will be affected. Perhaps, I will be affected, too."

It is not really that I will be affected which is the reason why I write on divorce. The more one puts the "I" on the issue of divorce, the more he gets confused. But the reason why we cannot do away with the personal is that marriage is a relationship of persons. There are as many marriages as there are couples. In fact, no two marriages are exactly the same; one is completely different from the other. But each of these marriages corresponds to a blueprint, an original plan. Thus, we have two pictures of marriage: one is what it is, as lived by this or that particular couple, and the other is what it ought to be. Marriage has a model, and it has a reality; the blueprint and the edifice, the score of the music

and the way it is being played. Therefore, marriage has two senses: one, as an actual relationship of persons, and the other, as a blueprint for this relationship.

When we speak of unsuccessful marriage we obviously do not refer to the sense of marriage as a blueprint, the model. We rather refer to the relationship that has not succeeded in bringing the two persons together to live as husband and wife. If it has not succeeded it is because the persons are hindered by a marriage problem. Again, when we speak of a marriage problem, we do not mean that the marriage as a blueprint is a problem, but that it is a problem of two persons who have entered into the marriage union. When a student complains that he has problem with the school, he does not mean that schools are problems, but that it is he who is troubled with coping up with the demands of the school.

What is this marriage problem which causes many unsuccessful marriages? Perhaps we can generalize by saying that a marriage problem arises from the difficulty of the husband and wife to be together, or in the words of St. Paul, to be "one flesh," because of personal defects and imperfections. If the problem is personal, and if it is how to bring two persons together, then we cannot call a solution that which separates the two persons who are supposed to be together. One who has a migraine headache complains that pain seems to split his head. What, if somebody comes with an ax and actually splits his head. The migraine headache stops, not because it is cured, but because the one who has the head is dead. To cure him is to let him feel that his head is one.

To solve then a marriage problem is to give a medicine that will help the couple to understand each other better and absolutely not to separate them so that they can forget each other. Let us suppose you have a problem with academic life. You feel you will not pass the course this school year. And the reason is you have not been too diligent in your studies, and you have been remiss in your duties. Even if you want to concentrate you can't because your friends can't leave you alone. To solve your problem is to resuscitate your dying hope of making it for the school year. To do that, you have to double up your efforts, concentrate on your books and leave your friends. But to drop from school, to break the "bond" with the academic life, is definitely not a solution. It is turning one's back to the problem; it is an escape from a difficulty. Divorce does not admit that the problem lies in the persons, but puts the blame on the blueprint. Divorce advocates the revision of the model to accommodate the personal weakness. It is an escape from the difficulties of married life.

Sometimes the reason alleged for the difficulty in living together as husband and wife is that there was a mistake in the choice of partners.

There is something catching about this statement. When a person does a thing, he is liable to commit a mistake on three counts. Suppose he buys a ball pen. He wanted a blue ball pen. But because the store was dark and he was in a hurry, instead of getting a blue ball pen, he got a red one. Or, perhaps, he may think that ball pens write like Parker pens. When he goes home and discovers that they don't, he will certainly say there is a mistake. Or, again, if the man has amputated hands, he is said to be mistaken in buying a ball pen, because he can never use it.

The first complain in marriage is there was a mistake in getting a cruel brute which looked like an angel before marriage. Will divorce remedy the situation? The mistake was committed because the person was not careful enough in choosing his or her partner. To remedy erroneous choices is to make people who wish to marry aware of their serious responsibility to make the right choice. This responsibility is relaxed when they know that they can always have a way out. A divorce provision encourages carelessness in making the choice. And naturally there will be more mistakes.

The second kind of mistake is when one discovers that the real does not correspond to the ideal. Here mistake comes to be identified with the "worse" that has eventually mingled with the married life. Under the guise of incompatibility, its logic is: when the worse comes, marriage becomes a mistake; marriage is only for the better, but not for the worse.

What criterion do we have to be able to tell that a choice was a mistake? Is it the difficulty to understand each other, a difficulty inherent in marital life? If it is, then all marriages are mistakes. Couples discover that the ideal they had in mind is shattered by the reality they are now in. When they do not increase the dose of self-denial, sacrifice, mutual understanding and adjustment, this natural mistake will become an "irreconcilable incompatibility." G. K. Chesterton once observed that "if incompatibility is a common ground for divorce, then every husband and wife should really separate and divorce. By nature, man and woman are incompatible to one another; and certainly, if they will not try hard to be compatible, their marriages will really break up."

The third type of mistake is caused by some defects which disqualify one to enter into the marriage union. For instance, an incurably impotent man and a woman with unsound mind are absolutely disqualified. Because of this disqualifying impediments the partners did not actually marry each other, even if apparently all the external requirements for marriage were fulfilled. Can this mistake be corrected? Here we do not need to legalize divorce, because the only way to correct the mistake is to declare that the partners were disqualified, and hence, there was no marriage at all. This is what the ecclesiastical courts are doing. They simply declare a marriage null and void *ab initio*.

But the one argument which sweeps one's emotions to favor divorce is that of unhappiness. When the wife recounts her miserable life in the hands of her cruel husband, one cannot but pose the question: "Should she not be released from the clutches of cruelty and start life anew?" One gets the impression that the woman should be freed from the cruelty of an indissoluble marriage, and not from her cruel husband. And this is the reason why upon hearing the sad life of the wife, one immediately rushes to blame the marriage institution. But why apply the law to the marriage institution when it is the husband who is erring?

Divorce is based on two assumptions. First, it assumes that unhappiness is caused by the marriage institution. Second, that by changing the institution it can grant happiness to unhappy spouses. The assumptions are false. Happiness or unhappiness is caused by the persons. Happiness in marriage is brought about by mutual understanding of the couple; unhappiness, on the other hand, is the result of having grown tired to practice the virtue of give-and-take, of not trying to remedy personal defects for the sake of the other. Furthermore, because unhappiness comes from the persons themselves, any attempt at second marriage will not guarantee happiness. The defects which were the cause of unhappiness will not instantly disappear; they will rather be carried over to the next marriage, and instead of only one unhappy couple, now we have two couples sharing this unhappiness. Divorce will not change a cruel and womanizing husband, or a flirting wife in the second marriage.

Everybody has the right to be happy. No law, however, can guarantee to give happiness to everybody. Otherwise, many unhappy people will be blaming the law for their unhappiness. But what the law can guarantee is that nobody or nothing hinders one from pursuing happiness. One thing is the right to be happy, another thing is the right to pursue happiness. Those who want to legalize divorce argue that indissolubility in marriage hinders one from achieving his personal happiness, in the event that his marriage becomes intolerably unhappy. Hence, the law should come in and remove the hindrance. However, the right to pursue one's happiness is not an unlimited right, but is always restricted by norms of morality. Otherwise, a thief would justify his theft, a husband his adultery, a prostitute her sexual adventures, by appealing to the right to pursue his or her own happiness. Poverty is a hindrance to the pursuit of happiness, but can theft and murder be legalized to remove the hindrance? If we can legalize divorce, can we not also legalize adultery which is much easier and simpler?

So far, what I have been emphasizing is that the source of problem in marriages is the persons who enter into the marriage union. There is nothing wrong with the blueprint of marriage which is the institution. It has been the source of happiness for millions of couples in the world. But those who advocate divorce put the whole blame on the failure of marriages in marriage being indissoluble. What does indissolubility mean?

There are two senses of indissolubility. One sense is juridical. In this a marriage which is sacramental and consummated is indissoluble because a bond is said to come into existence which no human power (extrinsic indissolubility) nor the marriage partners themselves (intrinsic indissolubility), could untie. The other sense is moral. Here indissolubility is an absolute moral precept, a moral *ought* inherent in the marriage union. Because marriage represents the most intimate union of man and woman and is inseparably bound to procreation and education of children, it ought to be one and permanent. That is, from the very beginning there is a most serious obligation upon the couple to support and strengthen this marriage. They are obliged not to let the marriage fall apart and die. And when the relationship has fallen apart and separation occurs, they must resuscitate it. Divorce does not give a chance to fulfill this moral *ought*.

What we need now is not to tamper with the institution, but to strengthen the marriage relationship when external forces try to weaken it. The thrust of the legislation should be to prevent prospective unhappy marriages and to strengthen the weak ones.

PREVENTIVE MEASURES AGAINST DIVORCE

by

Fr. Wilfredo Paguio

At the outset, let us agree on this: that just as when we travel, we want safety, when we marry we want stability. For, indeed, marrying is similar to travelling.

We have all travelled. During our travels, as we go driving along a road, we know that we have to follow traffic signs. Traffic signs set up by those in authority for us to follow so as to prevent accidents.

Those who marry, just as those who travel, must also follow certain guideposts promulgated by those in authority in order to avoid the disruption of the marital bond.

In the following pages my contention is: that just as we would not want coffins to be waiting for the end of our travels, we would neither desire the idea of a divorce law lurking at our marriage. The proposal is: that we should rather order the improvement of our traffic signs than legislate on how to arrange our burials. We should rather order the improvement of our laws which serve as guideposts for the preservation of matrimonial unity than presuppose its disruption by a law on divorce.

In this connection, I state that the purpose of these pages is to review the provisions of Canon Law preventive of divorce, some of which can serve as a model of our civil law and to which we can add some canonico-pastoral suggestions for future legislation. However, let it be said at the start, that I lay no claim on exhaustiveness nor on having all or the best measures which can prevent divorce. All that I can say is that I have searched the legislations of the Church on this matter; I have looked back through the short pastoral experience that I have; I have rethought the little readings that I have made on this regard; and this is what I give.

We divide our topic into three sub-topics, namely, preparation for marriage, maintenance of marriage, and rehabilitation of marriage.

PREPARATION FOR MARRIAGE

REMOTE PREPARATION — As a remote preparation for marriage, the Church has always insisted that there be an atmosphere of faith in every Christian community. For, indeed, we must always remember that even as Christ changed water into wine at the marriage of Cana, Christ also elevated the marriage contract of his followers into the dignity of a sacrament. A sacrament which presupposes knowledge. Knowledge which presupposes those who teach. For how can one believe, if he does not even know the principles of faith? And how can one know the principles of faith, if there are not those who teach?

This is the reason why, our Holy Mother Church commands pastors, parents, guardians, godparents and heads of households to instruct on the faith those subject to them or are entrusted to their care (Can. 467, 1329, 1335), to prepare them for the reception of the sacraments (Can. 1330), and even after the reception of the sacraments to continually and more fully educate them, both children and adults (Can. 1332), on Christian doctrine (Can. 1331). Helped by other clerics and members of parish organizations (Can. 1333), pastors are most seriously obligated to implant faith in the hearts of the faithful. Parish priests have the duty of preaching on Sundays and holidays of obligation (Can. 1344) to which the people are to be zealously exhorted and admonished to listen (Can. 1348).

More specifically, since it is evident that the general morality of the people depends in a great measure on their attitude toward marriage, it has been ordained that "the pastor shall not omit prudently to instruct the people on the sacrament of Matrimony and its impediments" (Can. 1018).

PROXIMATE PREPARATION — Going to the proximate preparation of the parties for marriage, we can note with pride that, regarding the screening of the candidates for this sacrament, as far as the letter of the law

is concerned, compared with our civil code, canon law is far more careful, far more discreet, and far more precise in her norms.

Thus, we hear of church laws speaking on spousals giving chance for the spouses to know each other better (Can. 1017). Pius XI, speaking on this, states that: "...those about to enter into wedlock should carefully deliberate in choosing the person with whom henceforward they must live continually; they should in so deliberating, keep before their minds the thought first of God and of the true religion of Christ, then of themselves, of their partner, of the children to come, as also of human and civil society, for which wedlock is a fountainhead." (*Casti Connubii*, n. 115).

Ever cautious on marriages of *vagi* and minors, the Code states: "The pastor shall not assist at the marriage of *vagi*, except in a case of necessity, without referring the matter to the Ordinary, or to the priest delegated by him for that purpose, and obtaining permission to assist" (Can. 1032). Similarly, on minors, it says: "The pastor shall earnestly warn children who are still minors not to contract marriage without the knowledge of their parents or against their reasonable objections. If these young people reject his advice, he shall not assist at their marriage before he has consulted the local Ordinary" (Can. 1034).

In the same manner, in enumerating the diriment impediments for marriage, with the view of having more mature and more prepared candidates for this sacrament, the Church has given her own regulations over and above the requirements of divine, natural and positive, law (Can. 1067-1080). Thus, for example, even if natural law only requires, for marriage, the age when individuals have the use of reason and may give their matrimonial consent, the Church requires the ages of sixteen and fourteen for man and woman respectively in order to have candidates who are more mature and more prepared to shoulder the responsibilities of married life (Can. 1067). The same is true of the impediment of major orders (Can. 1072). Though there is no positive divine law that those ordained may not marry, yet the Church forbids the marriage of these people because they cannot fully dedicate themselves to the burdens of family life.

In procuring the same end, Canon Law demands that inquiries be made on the qualifications of the candidates for marriage. Hence, Canon 1020 states that: "The pastor whom the law entitles to assist at the marriage shall at an opportune time prior to the marriage inquire diligently whether there is any impediment to the marriage. He shall also question both the man and the woman carefully and separately as to whether they are under any impediment, whether they freely consent to the marriage (specially the woman), and whether they are sufficiently instructed in Christian doctrine, unless he knows from the qualifications of parties that this last investigation is superfluous". Added to this, banns must be published. Baptismal certificates must be presented. And Canon 1033 states that "the pastor

shall not fail to instruct the parties to be married, according to their varying conditions, regarding the sanctity of the Sacrament of Matrimony, the mutual marital obligations, and the duties of parents towards their offspring".

Usually, this duty of the parish priest can well be taken over by the so-called Pre-Cana conferences, by parish youth counselling bureaus, or even by confessions and spiritual directions.

These are the remote and proximate preparations which the Church requires from those who are about to be married. Through them she fervently hopes that the parties will be sufficiently prepared for the reception of this sacrament.

MAINTENANCE OF MARRIAGE

However, no matter how prepared, a newly married couple will have to face the problem of maintaining the stability of their marriage. For, indeed, no one is perfect.

It was St. Augustine who taught us that: "A triple good attaches to Matrimony. ...The second (of these) is the faithfulness which each spouse owes to the other". That faithfulness which bids each other to pursue that secondary end of marriage which is mutual help (Can. 1013). Mutual help which is but the effect of the love which the spouses have for each other. That natural love which, in every Christian marriage, is perfected by grace. That grace which is to sanctify them and confirm the indissolubility of their union.

SPIRITUAL AID — It is, therefore, with this background that I submit that the strength of every marital union is in direct proportion to the strength of the interior life of the individuals that compose that union. It is no wonder, therefore, that, with this in mind, the Church has always emphasized the importance of spiritual life in the family.

Specially, when, as time passes, the spouses prove to be inconstant in their mutual love, there is nothing that can help them rekindle this love for each other but their faith. Their faith which tells them that even if because of life's circumstances love should die, a marriage still continues to be the sign of the love of Christ and of the Church. For, indeed, we believe that, in the Old Testament, Christian marriage is modelled after God's covenant of love and fidelity with the Jewish people. We believe that, in the New Testament, this same Christian marriage is patterned after Christ's covenant with his Church. We believe that, just as God in the Old Testament did not nullify his covenant with the Jewish people despite their infidelity, so also, Christ does not call off his covenant with the Church on account of the infidelity of some of her members. And, there-

fore, similarly, we believe that the covenant of love and affection, which is Christian marriage, does not cease to exist even when there is no more love between husband and wife.

Hence, it is in this context that we suggest that legislations encouraging liturgical, as well as paraliturgical, exercises for families be included in the new Code. Retreats, novenas and missions for family life must receive a new boost from our legislators. Prayer groups, for example, can be a great spiritual and psychological help for couples in trouble. Parish marriage counselling committees can also have its place. Family visitations can afford moral support to disintegrating relationships. Family oriented organizations, like the Christian Family Movement, must be propagated.

MATERIAL HELP — Moreover, aside from these spiritual aids, material help unable to be given by civil governments can also save a marriage about to be torn apart. For though "... the parties themselves, for a considerable time before entering upon married life, ... strive to dispose of, or at least diminish, the material obstacles in their way ...", there are instances where financial problems render the observance of God's commands difficult for married couples.

In these cases, our proposal is: that parish job placement bureaus be established. Referrals by pastors can also be of great value for, after all, it is their duty to "assist the poor" of their parishes (Can. 467). Job training programs may also be undertaken as a project of parish organizations. These can help especially newly married couples who are still finding their path through the often confusing ways of married life.

REHABILITATION OF MARRIAGE

However, despite these spiritual and material aids, which one can offer a couple for the maintenance of their marriage, we can always find those who fail to cope up with the greatness that is demanded of a particular marriage. Thus, we know of people who, though not divorced, agree to separate even after long years of marital life.

The proposition is: that, to those people, the Church cannot but show deep concern and compassion. It is a good sign that the Church has been trying ways and means to update her marriage tribunals. But our attention should not be centered on tribunals which should be the last resort. Our concern should be on how to save sick and dying marital relationships — or even on how to resuscitate dead marriages.

For this purpose, our suggestion is: that the Christian community should always be made conscious of its duty to help out these ailing relationships. Societies, not only for supporting but also for rehabilitating severed marital bonds, should be organized. And these ministers of reconciliation, while doing their job, should meanwhile be able to educate the separated spouses on chastity and celibacy.

SUMMARY

To summarize, we can say that, to prevent the disruption of marital bonds, the Church, through the years, has well emphasized proper preparation for the reception of the sacrament of matrimony. She has well pointed out the need of spiritual as well as material help for the maintenance of marital relationships. And She has well expressed her deep concern and compassion for troubled marriages.

However, the importance of material ministries in the Church, in so far as it does not run in conflict with her primary spiritual objective, should be given prominence in our ecclesiastical legislations. For, indeed, it is true that the spiritual realities that we preach to the faithful can only be made tangible by the material aid that we give them.

Moreover, we suggest that there be expressed legislation for a more systematic education of our people on the faith. Marriage counselling bureaus should be set up in every parish. For these, Church laws should also provide for teachers and counsellors grounded on true Catholic values—more specifically, on true Catholic principles on marriage. Principles, which, according to some people are outdated and must, therefore, be changed. An allegation which we deny! Because, precisely, in our mechanized age, when almost everything is transitory...when almost everybody suffers social as well as emotional solitude, there is nothing that can help man better than a permanent and stable relationship in marriage. And the concern of governments, as well as that of the Church, if they are to truly care for the common good, should, therefore, be to stabilize the marital bond through the strengthening of matrimonial laws — matrimonial laws preventive of divorce.

HOMILETICS

by

Bernard J. LeFrois, S.V.D.

I. BIBLICAL NOTES FOR HOMILIES

FIRST SUNDAY OF LENT

(March 7, 1976)

First Reading: Genesis 9: 8-15

Second Reading: First Peter 3: 18-22

Gospel Reading: Mark 1: 12-15

First Reading: A passage from the Priestly Code. The covenant plays a major role in that document. Its import is that God earnestly desires to lead all men to a life of communion with himself (this ultimately is salvation). Covenant theology dominates all religious thought in the Old Testament and climaxes in the intimate union of all men in Christ in the New Covenant in his Blood. In this passage, God's covenant with Noah embraces not only Noah and his descendants but the whole of creation. The Omnipotent God who punished his creatures by a disastrous flood is also a merciful Savior, leading mankind to new life and hope. A divine promise is given that there will be no repetition of such a disaster, and thus mankind is assured of its continuance and of God's favor. When God "hangs up his bow in the skies" (an idea probably taken from mythology but given a theological import by the author) it is a reminder of his divine promise. The rainbow marks the end of the storm and the break-through of sunshine.

Gospel Reading: Mark's description of the temptation scene is brief but powerful. Impelled by the Spirit of God, the beloved Son and Servant of Yahweh (v.11) goes forth to meet the enemy of God and man. The holy war is on: Christ assisted by his angels against Satan with all his wiles. Mention of wild beasts is either to intensify the desert scene, considered the abode of evil spirits, or to describe the victory of the Messiah by alluding to the messianic peace described by Is. 11:6. As God's champion, Jesus begins at once to inaugurate the reign of God by proclaiming the Good News. There are two requisites if it is to be accomplished in

man: metanoia, an interior change of heart, and acceptance of the message by living it. These words are now said to each of the faithful as ashes are placed on his head on Ash Wednesday: Repent and believe the Gospel.

Second Reading: In offering a word of consolation to those who are suffering and being persecuted, Peter presents the paschal mystery of Christ, touching on his vicarious death for sinners, his glorious resurrection, ascension and exaltation to the Father's right hand, the acknowledged Lord of the world. Likewise the consequences of this salvific work: man is reconciled to God, victory is proclaimed to the disobedient and rebellious spirits, and new life in the spirit is communicated to believers through baptism. Thus the paschal mystery of Jesus is offered as a strong motivation of encouragement for those who suffer like the Master. Baptism is aptly compared with the flood, for both wipe away all evil, and both save through the saving wood. The effects of baptism are internal, wrought by the power of the Risen Christ.

Of minor importance is the difficult question to which disobedient spirits is Peter referring? Is it a reference to Christ's descent to Hades, to announce deliverance to those who were once disbelieving in the days of the flood? It is not clear why Peter would inject such a thought at this juncture, unless he has in mind some event known from Jewish tradition. More probably he is referring to Christ announcing his victory to the evil spirits (thought to be imprisoned until the day of judgment as mentioned in Jude v.6). St. Paul has a strikingly similar thought in Col. 2:15: "God disarmed the principalities and powers. He made a public show of them and leading them off captive, triumphed in the person of Christ."

SECOND SUNDAY OF LENT

(March 14, 1976)

First Reading: Genesis 22: 1-2,9a,10-13, 15-18

Second Reading: Romans 8: 31b-34.

Gospel Reading: Mark 9: 1-9 (Greek: 9:2-10)

First Reading: The story of Abraham sacrificing a ram instead of his son Isaac may have had originally its own peculiar significance, such as a polemic against human sacrifice, but the meaning it took on in its redaction as part of the inspired scriptures is undoubtedly that of the severe test that Abraham underwent at the hands of Jahweh (v.1) and the reward for his total obedience to God's will (v.17). Obedient to God's call, Abraham left all (Gen. 12:1ff) and took up his abode in an entirely unknown land. Then, after long years without an heir, he is promised one,

despite his age and his wife's barrenness. He believes the divine message and this makes him most pleasing to God (15:6). Now, after his beloved son Isaac had grown up, Abraham is bidden to sacrifice the very heir on whom the promises rested. But God knew his man and tested him like gold in the fire. The complete commitment of Abraham to the will of God in the obedience of faith makes him a model for all generations.

The narrative is outstanding in its depth of pathos and appealing presentation. Countless progeny as many as the stars and grains of sand is hyperbole indicating an indefinitely large number. In Christ, the true offspring of Abraham, the entire world would find itself blessed. The Fathers of the Church have seen in Isaac a type of Jesus carrying his own cross to the place of immolation, but there the tables are turned. It is he who vicariously substitutes for all his brothers.

Gospel Reading: In this section of his gospel, Mark begins to reveal more at length the mystery of Christ. Between two foretellings of the death and resurrection (8:31 and 9:31) he places a deeply mystical experience given to the three chosen disciples, the same who would be with him in the Garden of Gethsemani and who witnessed the daughter of Jairus brought back to life. Its purpose was to bolster up their courage in face of the dire prophecies concerning his death. Jesus for a fleeting moment is completely transformed, the sight of which enraptures them, while they are given a deeper understanding of his person.

A mystical experience, though factual and real, is very difficult to the theophany of Sinai of which the transfiguration is the counterpart. Six days alludes to the six days in which mount Sinai was not visible on account of clouds but on the seventh day Yahweh spoke to Moses from out of the clouds (Ex. 24:16). Moses and Elijah are both connected with mount Sinai (Horeb). They bear witness that the Law (Moses) and the prophets (Elijah) cede to Jesus in whom both are brought to highest perfection. In the Tabernacle built on Sinai God was with his people manifesting his presence by the overshadowing cloud (Ex. 40:35). But here is the living Tabernacle of God, Christ in human flesh, full of the Glory of God (Jn. 1:14). No longer does God speak to his people merely in the Law but in the very Person of his Son. Him they must now heed. Entering into the overshadowing cloud spells close involvement with the mystery of Christ, which still remains unintelligible in its full import, for they ponder over his words "to rise from the dead". This mystical experience made a deep impression on the apostles as can be seen from 2 Pet. 1:17f.

Second Reading: Overwhelmed by the mighty power of God's love, Paul asks rhetorically: what stands in the way of man's salvation (utter fulfilment)? Surely not God whose love manifested itself the extreme by not sparing his only Son (a possible allusion to Abraham's whole-hearted sacrifice), and handing him over to death (alluding to Jesus being

handed over) so that man might be totally renewed. Surely not Christ who carried out every detail of the Paschal Mystery for our sake, even continuous intercession for us with the Father. In and with Christ, man can overcome all trials and obstacles.

THIRD SUNDAY OF LENT

(March 21, 1976)

First Reading: Exodus 20: 1-17 (or: 20: 1-3, 7-8, 12-17)

Second Reading: 1 Corinthians 1:22-25

Gospel Reading: John 2: 13-25

First Reading: The decalogue (ten "words") serves to reveal God's loving will for his People, so that they become what he is himself: holy. In time it will become the foundation of morals for all God's People, also those in Christian times. Israel was firmly convinced that the decalogue was delivered by Yahweh to Moses on the mount (Ex. 34: 27f). Originally all ten "words" were brief; the Priestly Code and Deuteronomy (5:6-21) have elaborated them in line with their purposes. In the texts there is no enumeration of the commandments, so various divisions are possible. Catholic usage follows that of Deuteronomy, while Jewish and Protestant usage prefers that of Exodus 20. In the first three God shows how he wants to be worshipped, in the last seven he teaches man to be concerned for his fellowman. Modern man may not be inclined to worship wood or stone, but he can become so engrossed in any man-made activity or object that it becomes his god. And if he would observe the commandments earnestly, there would be peace among men. Law is guide-post to the thoughts of God, yet it does not confer the power to observe that which is commanded. Man obtains this gift of God through prayer and worship. The purpose of Law was never the extreme legalism practiced by the Pharisees, but rather it was meant to attune man to respond openly to God's revealing word. Jesus summed up the entire Law in the double commandment of love of God and neighbor (Mt. 22: 37f), for he who truly loves God and his fellowman will observe all the commandments without fail.

Gospel Reading: The Jewish feast of Passover commemorated the event in Exodus where Yahweh passed over the Israelites sparing them (Ex. 12:27) and also how Israel passed through the sea out of Egyptian bondage toward the goal of the promised land (Ex. 15:16). It was an annual feast in which the paschal lamb was slaughtered, roasted by fire and eaten with unleavened bread. By so doing, Israel meant to re-live with her ancestors the mighty act of Yahweh, delivering her from the enemy.

In the temple at Jerusalem there were several large courtyards. Traffic of buying and selling those things needed for sacrifices had encroached on one of these courtyards, with the people exchanging the Roman coins for the Jewish half-shekel. Jesus is appalled at this desecration of the sacred place of worship, his Father's house. As Son, coming into his own, he is filled with holy indignation and drives them all out. However, there is nothing in the text that would approve of violence. Jesus laid hands on man nor harmed anyone. Cattle is easily found by the right owners and no doubt the money-changers would scramble for their ill-gotten gain. But it was necessary to manifest righteous anger to drive home his point.

Jesus then prophesies concerning his resurrection but the adversaries understand him to mean the material temple. Only in the light of the resurrection would even the disciples understand his words correctly. In the theology of the fourth gospel, there is a contrast between the material temple of the Old Law and the Living Temple of the New: Jesus himself in person. His action symbolizes what he came to effect: cleansing and renewal. He cleanses and renews the ordinances of the Old Covenant, bringing them to perfection in himself. He renews human nature by his own death and resurrection, which in turn will renew all mankind in the final resurrection.

Second Reading: The Jewish world awaited a powerful political Savior who would inaugurate his redemptive work with great divine interventions (signs), raising Israel above all the nations. The Greek (Gentile) world sought for a system of philosophy (wisdom) that would satisfy all their intellectual queries. God made use of neither. Salvation was to come purely through an act of acceptance (faith) in a Crucified Messiah-Savior. This was something revolting to the Jew and utter folly to the Gentile. Yet, to those who accepted him, the Crucified became the very power of God and the immense wisdom of God, for his helplessness brought them strength and his death of folly brought them the marvel of God's love.

FOURTH SUNDAY OF LENT

(March 28, 1976)

First Reading: Second Chronicles 36: 14-16, 19-23

Second Reading: Ephesians 2: 4-10

Third Reading: John 3: 14-21

First Reading: The Chronicler sums up in brief the continued downward trend of the Southern Kingdom (the tribe of Judah making up the bulk of the people). Both priests and people showed an appalling neglect of their covenant-relations to Yahweh, violating his sabbath-rests and desec-

rating his Temple. The destruction of the Northern Kingdom over a hundred years previous ought to have been a stern warning, but it went unheeded, as did the oft-repeated pleadings of the prophets which the all-merciful God sent his People. So the Chaldeans with Nebuchadnezzar their prince become Yahweh's instrument of punishment, destroying both Temple and city, with large numbers carried off to Babylonian captivity. Thus the land of Judah had enforced sabbath-rests, and God's People were chastened through chastisement. Only with the coming of the Persian was a ray of hope given to Judah, with the decree of Cyrus to return to the homeland and rebuild Temple and city.

Gospel Reading: The evangelist has added theological reflections to the words of Jesus to Nicodemus which apparently end with v.15. A comparison with the brazen serpent of Num. 21:4-9 brings out the fact that both were raised up for all to see, both are objects of revulsion, and yet through faith both become means of salvation (see Bol. Ecl. July 1975, p. 487), but in the case of the Crucified, not only for temporal healing but for life unending. The "lifting up" of the Son of man is an ambivalent term in John's gospel, referring both to his death on the cross and to his resurrection-exaltation as source of life (as also in 8:28 and 12:32). In v.16 the role of the Father comes to the fore: his immense love spent itself, so to say, in his total gift of his Son to us. "Give" also is ambivalent, having the added meaning of giving him up to death, to be the source of life for all men. One could call v.16 the quintessence of the Christian religion: God's love wants us to share his divine life through acceptance of his Son.

The mission of the Son was to be Savior of the world, not its Judge (v.17). He came as the Light to enlighten everyone (1:9), but if man wilfully remains in his sin he will not share this Light. He is enveloped in total darkness and stands self-condemned, for the Light of the world is inescapable. To "act in truth" in a Johannine expression meaning to follow the Light that is Christ (as in 1 Jn. 1:6 and 3 Jn. 3).

Second Reading: Paul envisions regenerated man as incorporated into Christ and one with him. Four times in this passage he depicts the Christian as most intimately sharing all things with Christ. He is given new life in Christ and thus experiences a spiritual resurrection. He shares heavenly glory in and with Christ in a spiritual exaltation and enthronement in the heavens. In Christ Jesus he is recipient of God's abundant favors in a pentecostal outpouring of God's love. All this is not recompense for man's labor but sheer gift of God's undeserving love. Man's role is acceptance in deep and grateful faith. In this new creation of God, it is not so much man who is at work (possibly alluding to Gen. 1:28) but God himself working through Christ in every member of Christ. The entire passage reflects the "realized eschatology" of John's gospel. But Paul is also well aware of a final eschatology as in 1 Cor. 15:28.

II. HOMILIES

March 7, 1976: First Sunday of Lent

THE CHALLENGE OF CHRISTIAN LIVING

The Human Situation: Give anyone a worthwhile challenge and you have instigated interest, energy and ambition, if the person has any idealism at all. Witness the numerous races in the field of sports, the contests in arts and music, the essay and other literary competitions. All bring out the best in man. Even handicapped persons or those who know they suffer from leukemia and have not long to live, are known to have accomplished marvels for their fellowmen, just because they met the challenge with which they were faced.

The Good News: To be a Christian is a real challenge. Christ never intended the following to him to be easy. He said: "Whoever loves father or mother, son or daughter, more than he is not worthy of me" (Mt. 10:38). And again: "Whoever wishes to be my follower must deny his very self, take up his cross each day, and follow in my steps" (Lk. 9:23). His very first announcement was not a message that people welcomed: "Repent" he tells us in today's gospel. Metanoia, a change of heart, a change of attitudes.

Many are hardly aware that they need a change of attitudes, and that they are catering to the standards of Satan. The lust for power, to dominate the minds and wills of others, to push their own will through at any cost, with no concern for the personal needs and happiness of others: these are not Christ's standards but Satan's, and there is need of a change of heart. The greed for acquiring wealth, not the honest effort for means to live decently with personal or family requirements, but the avid desire to acquire, possess and selfishly cling to all manner of worldly possessions: these are not Christ's standards but Satan's, and there is need of a change of heart. To put pleasure and comfort before all other considerations, regardless of the moral angle involved in these pursuits: these are the standards of Satan, not Christ's, and there is need of a change of heart.

In the battle against evil, Christ has given us a powerful example. In the wilderness, nothing that Satan proposed to him succeeded in alluring him, neither easy solutions to problems, nor the lust for power, nor the glamor of spectacular success. The will of the Father was the sole guideline for Jesus, and this he found in the ordinary duties of everyday life, the daily drudgery of work and toil combined with prayer and love. In these he found his daily cross until the cross became a reality on Golgotha where he gave himself up as a victim for all mankind.

But Christian living implies more than a change of heart from past ways. It involves a serious following of the ways and guidelines of Christ: to think as he did about life and eternity, to live as he did with the constant aim to please the Father (Jn. 8:29) and serve his fellowman: "The Son of Man has come not to be served by others but to serve, to give his life as a ransom for the many" (Mt. 20:28). He came to give, not to take away. He came to share our life with all its inconveniences and troubles in order to sanctify all our sufferings in the crucible of love. Therefore the second part of his announcement in today's gospel was: Believe the Good News. Believe what I tell you, what I propose to you for your happiness, and live the Gospel message; live the life that I am leading, for this alone will make you truly human, and fulfill your inmost desires for happiness. Then you are meeting the challenge of Christian living.

Our Response: The reason of Lent beckons to us to make a whole-hearted response. A change of heart will enable many to turn away from selfish aims and come to the need of their fellowmen, to share their goods with those more in need, to spend their time and efforts on things of real value. For the true follower of Christ has found joy in life and strength in good living.

March 14, 1976: Second Sunday of Lent

ENCOUNTER WITH CHRIST

The Human Situation: It is one thing to know about a person, his life and his teaching, and quite another thing to know that person with loving knowledge and genuine friendship. Many know a good deal about Christ, his life and teaching, but it is quite another thing to know Christ personally. That comes with a personal encounter with Christ in the depth of one's heart or Christ discovered hidden in one's fellowman. Such is the encounter that changed Paul from a rabid persecutor of Christ to his most ardent follower and champion. And such a spiritual experience is changing many today both young and old from a lukewarm, careless way of life, even from a life of sin and all manner of indulgence, to a fervent and meaningful life of genuine Christian commitment. They have experienced a deep insight into his love for them and feel impelled to make a return of love by leading a life worthy of Christ's love. It is amazing how many people of all classes have had this experience in this our day of materialism and permissiveness.

The Good News: Peter, James and John had been in the company of Jesus for a long time already. Daily they had seen his exemplary life, heard his dynamic words, listened to his parables and their explanations, witnessed his signs and miracles and shared his companionship. But on that day when they climbed the mountain with Him, something happened. They could not explain it too well. None of the saints have been able to describe adequately their deeply spiritual encounters with the Deity. But they never doubted the reality of that special experience which they enjoyed that day. It formed part of the kerygma of the Early Church, and all three evangelists narrate it at some length (Mt. 7:1; Mk. 9:1; Lk. 9:28). Jesus know only too well that his trusted friends would need strengthening for the great hour of trial that lay ahead, the hour of his passion and death.

God often gives his friends special graces and favors before letting them taste the bitter cup of suffering, and letting them share a greater portion of the cross. He foresees that unexpected failure, that illness paralyzing all effort, that death entering into the family circle, that hour of discouragement because of personal disgrace or losses. It is part of our growing in Christ, part of our becoming more like the Master, that we shoulder our cross manfully and willingly, bitter though it may be. But before the blow falls, he grants his beloved ones beforehand special marks of his love, glimpses of God's plan, a tasting of God's immense love, joys that fill the heart with delight in the things that God has provided. God's presence seems so real again, Christ's gentle and personal care so manifest.

This is the Lord's strengthening hand, assuring the earnest heart that he is near, he is with us like he was with his chosen ones of old. We realize clearly again what a Father he has been to us all along, we sense the reality of his indwelling Spirit guiding and leading us to our destined goal. Under the impact of his grace our ears are open to his voice speaking to us in the depth of our hearts, or in the word of God in the divine Scriptures, or again in the signs that surround us in persons and events. This is the day of transfiguration. It is not yet the day of glory and final reward. There lies ahead the many challenges that constitute our special cross, our Golgotha, through which we must pass to resurrection and new life.

Our Response: Like the three Apostles entering into the over-shadowing cloud, we determine to be more involved than even with the mystery and the Person of Christ, who alone is our Way and our Life. Like Paul, we resolve to champion his cause, to spend our selves for others, be they in our close family circle or in our fellowmen whom we know are in need of our help. God's special graces are given with a purpose. We do not wish to default.

March 21, 1976: Third Sunday of Lent

CHANGING THE STRUCTURES

The Human Situation: Change affects people in different ways. Many welcome it when structures have become outmoded, stagnating, paralyzing. They realize that changes are at times not only good but imperative, if the organism is to continue in vigorous and fruitful activity. Others are allergic to any change. Often they fail to distinguish between changing essentials and things that are non-essential; and oppose every change as a challenge to the "status quo". It may be on account of a lack of openness to new developments and realities of a changing world, or a spirit entrenched on its own narrow outlook. Or again it may be fear of the risk of the new, because one has not kept up with the world around. Those who see the need of structural changes and are helpless to bring them about, suffer greatly. Jesus did not fear to make changes when he saw they had to be made.

The Good News: For years the traders had encroached on the sacred Temple precincts with their sheep and oxen, their doves and exchange cashiers. Here change was not only useful but imperative. It was the House of God and Christ let nothing stand in the way until he had cleansed the Temple, even though it meant a show of great indignation and fierce anger. He restored the sacred halls as a house of prayer, his Father's House.

In doing so, the Lord symbolized that far greater changes were at hand. The material Temple, the sacrifice of animals, the minute ceremonial prescriptions of the Law for worship in God's house were about to be abolished and taken over by a more perfect form of worship for the People of God of the New Covenant. He was the Living Temple of God, the offering of himself would henceforth be the only sacrifice pleasing to the Father a new rite of worship in a sacrificial meal would be established for all future time. Old structures were no longer sufficient. The New Covenant in his Blood would demand structures that were not focussed on the Law but were Christocentric.

In the world at large, the Church is the Body of Christ and the living Temple of the Spirit. But also here structures become decrepit. Institutions that were established to help those in need are no longer sufficient or have become impractical. The realities facing the Christian world are changing rapidly and quickly. Today the Church has become more aware of minority groups, those that are marginalized, those who are living in sub-human conditions, those who are not able to make a decent living for their families, those that are forced to work in conditions unworthy of a human person. Action is necessary and bold action. Structures need to be reformed and transformed. Not with violence that would harm others or

their property. Jesus harmed no man in expelling the buyers and sellers from the sacred precincts they had usurped. He harmed no property in driving out the cattle, for the owners could easily find their cattle in the narrow streets of the city. Ill-gotten gain was justly overthrown. Nor was it lost to any degree, one can be sure.

It takes courage to stand up for what is right, and only concerted effort can bring it about. No just laws are in question. No violent methods are invoked. There is no honest man who does not respect such needed action, even though he be the lawgiver himself. Once concerted action is inaugurated it is surprising how many more timid admirers will come to the fore and back the needed reform. The Body of Christ is a living organism, growing daily in a changing world. As it experiences the new conditions of the times, the crying needs of the members of Christ, the inadequacy of present structures, it will do all it can to put forth new ideas, new methods, new solutions, so that life and vigor flourish. This will bring about dissension at times and suffering. There is no growth without some pain.

Our Response: A concentrated effort of every parish in all the dioceses and of every family in each parish, to follow the Alay Kapwa program of our Bishops for this Lenten period cannot but bring results. It would deepen each one's awareness of the problems to be faced, so that everyone, rich and poor alike, would enter into a self-examination as to whether he is really doing his best to help the oppressed, those deprived of their living wages, and all those who suffer injustice. Lent will then bring about a true renewal, a cleansing of structures, a transformation of the "status quo".

March 28, 1976: Fourth Sunday of Lent

THE PROPHETIC ROLE OF THE CHRISTIAN

The Human Situation: Any organization or community that would develop well its potential must have genuine leaders, who are not out for their personal advancement, but for the good of the organization or the community. In aiming at a definite goal, a leader will meet with obstacles and even opposition, if the ideals he sets forth jar with the lower standards of those less concerned about the good of the organization than with their own personal interests. Opposition is no sign of poor leadership. It may evidence just the contrary.

The Good News: By the witness of his gospel message and his powerful deeds, Jesus proclaimed the Kingdom of God to be at hand. He himself is the great Prophet of God, God's mouthpiece, the very Word of

God Incarnate, clearly manifesting to his brothers in the flesh what the will of the Father is for them. The fact that he boldly proclaims what is right in God's eyes, and what the Father in heaven wants his children to do, brings upon him mounting opposition, "because men loved darkness rather than light" (Jn. 3:19); and the opposition breaks out into open hostility until he is "lifted up" on the Cross, betrayed by one of the Twelve, rejected by his own People, and handed over to the pagans. Yet, he did proclaim that "I, once I am lifted up from the earth, will draw all men to myself" (Jn. 12:32).

Christ continues to fulfill his prophetic office in the Church today. This he does not only through the hierarchy but also through the laity. They also have been called to be his witnesses. Both the understanding of the faith and the grace of speech have been given to them. Endowed with these gifts, the power of the Good News is to shine forth in their lives, and the virtues of the gospel message blossom fully, shining like the Christ-life itself in the midst of men (Vat. II, The Church, 35). Continuing the prophetic role of Christ, the Christian spreads the faith by word and deed. He is not primarily concerned with revealing the unknown future, and if this is occasionally resorted to, it is always in relation to conversion and renewal in the Christian commitment. His main task is to admonish, reprimand, instruct and console, always exhorting God's People to carry out the mind of Christ in his commandment of universal love.

While the role of the teacher is to preserve and hand down the doctrine of Christ, interpreting it for the People, the role of the prophet is to render the message more relevant by applying it to existing situations which need proper and immediate attention, as well as by proposing solutions for rising problems in the light of the Gospel. Therefore the prophetic Christian has to be dynamic, stirring up his fellowmen to the urgent need at hand. He speaks boldly like John the Baptist or the Savior himself, and is not afraid to call misdeeds by their proper name. Hence he will often stir up opposition, and even hostility, because men are too often more interested in material gain than in the Law of Love of Jesus Christ. The prophet brings to light by his words and by his example the falsehood that is latent in every man, and the inner sinfulness which pride is unwilling to acknowledge and confess. His role is to lead men to the Light so that they see what their calling as Christians should be, so that they recognize that Christ alone can bring salvation, fulfillment and universal peace.

To function worthily in his role, the Christian needs constant contact with the deposit of faith as handed down from apostolic times. Without this loyal adherence to the guidance of those in authority, prophetic voices soon degenerate into misguided individualism and fanatical imposition of their own views. At times, some self-styled prophets like to compare

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