

Divorce and Remarriage

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by Jordan Bishop, O.P.

1. Introduction—the present malaise

One of the effects of the Council has been a clearing of the intellectual atmosphere to the point where honesty is tolerated even when it runs counter to deeply rooted taboos. Dr Victor J. Pospishil, priest of the Byzantine Rite Catholic diocese of Philadelphia, has published an appeal for a profound reform in the marriage discipline of the Roman Communion: *Divorce and Remarriage. Towards a New Catholic Teaching* (Burns & Oates, London, 1967). A canonist with experience in tribunal work, Dr Pospishil presents a convincing case for a reform in present discipline which would allow for the extension of the power of the Church to dissolve those marriages which are *ratum et consummatum*, sacramental marriages consummated by the sexual union of the parties. As he points out, these are the only marriages excluded from this power in the Church at present.

There is no doubt that a profound malaise with respect to the ecclesiastical discipline on Christian marriage exists in the Western Church today, a malaise which expresses itself in many ways. There is an ever-increasing number of petitions for nullity or dissolution, and in many cases diocesan tribunals are ill-equipped to handle formal (nullity) cases. The escape provided in the Western Church for people in non-viable situations for the past few centuries is, under present circumstances, clearly inadequate. While it is true that present discipline attempts to give due regard to the serious commitment involved in marriage, it is also true that marriages are declared null and void by reason of purely formal defects, and to many outside observers the technical apparatus of canon law on these questions appears highly artificial.¹ Thus a contemporary Orthodox Bishop writes:

The oddities of rules and canons for annulment are so numerous that any marriage can be declared invalid, void, or null. Any discovered impediment, be it religious, pecuniary, political or degree in relation overlooked at the beginning, may cause annulment.

¹‘J’excepte ici le cas d’un pur vice de forme que le juge sera heureux d’utiliser pour sortir d’une situation douloureuse. Les demandeurs peuvent fort bien agir contre leur conscience en profitant d’une telle aubaine, la légalité est autre chose que la moralité. Devant Dieu, en effet, la valeur d’un lien et la fidélité à laquelle il engage ne peuvent être annulées par une affaire de pure forme’ (Christian Duqoc, ‘Le mariage, amour et institution’ in *Lumière et Vie* 82 (mai-juin 1967), p. 56).

As it is used by the Roman Church the system of annulment is even more lax than it is in the American civil courts.¹

In all fairness to the canonists, one should not cite this without protest. Yet while it is somewhat caricatural, one cannot deny that this may well be the way that the system looks from the outside. The fact that indissolubility has been regarded as dogma has in effect forced canonists into a practice of constantly widening grounds for nullity, and many canonists still see this as a 'solution' to the problems facing marriage discipline today. The practical advantages are obvious: one does not have to question the system in any radical way, and it is very comforting to look back at a broken marriage and say 'of course it didn't work, there was no marriage in the first place'. The difficulties come from the side of realism. Marriages for which no legal cause for nullity exists have ceased to exist as viable human relationships. Secondly, it is a bit too easy, a bit too much like magic, to say 'it didn't work, must not have been real in the first place'.

2. *The Divergence of Tradition in East and West*

The divergence in practice among the Christian Churches, and in particular the divergence between the practice of the Western Church since the eleventh century and the constant tradition of the Eastern Churches, provides a real difficulty in the ecumenical order.

(a) *The Eastern Tradition*

In this context Dom Olivier Rousseau of Chevetogne has contributed an important bibliographical survey to the April 1967 issue of *Concilium*, entitled 'Divorce and Remarriage: East and West' (pp. 57-69). *It is quite clear, both from Pospishil and from Rousseau, that we have to deal with a constant tradition of the Eastern Churches.* Something of the difficulty experienced may be gathered from the language of Dom Rousseau:

However, we must recognize the fact that a more ancient tradition —perhaps close to the age of the apostolic Fathers—has prevailed in the East and has always been respected without receiving formal approbation: consent was given and then one day the tradition was validly supported by Scripture. Such a manner of acting is difficult to stamp out since it is considered akin to a right (p. 62).

This has been explained in function of the dependence of the Bishop of Constantinople on the secular power, but as Rousseau points out, 'we are in the presence of a custom in vogue well before the Christian emperors in an age when the Fathers were in no way obliged to submit to monarchs for anything' (p. 61). Dr Pospishil points out that Greek Matthew is later than Mark and Luke:

When the latter two Gospels received their final redaction, the life of the Christian community was in its inception and simpler.

When the Greek Matthew was prepared for subsequent different

¹Athenagoras Kokkinakis, *Parents and Priests as Servants of Redemption*. New York, Morehouse-Gorham, 1958, p. 51.

and more sophisticated circumstances in which the problem of remarriage would had to be been dealt with, the original logion of Jesus was remembered and preserved for posterity.¹

It is true that modern Western controversialists have attempted to explain both the Matthean clause and subsequent Eastern and early Western tradition in terms of legal separation. Dr Pospishil sees these efforts as anachronistic:

Some Catholic authors attempt to explain the permission of divorce attested to by a number of documents as referring to a simple separation from bed, board and dwelling. This they do because they are ignorant of the fact that no ancient civil law knew of such separation. Neither the Jewish law nor that of the Roman Empire envisioned in the termination of marital unions anything less than total divorce (*ibid.*, p. 45).

The Eastern tradition, as presented by Dom Rousseau, accepts the fact that the *sklerokardia*—hardness of heart—cited by Jesus as the reason why Moses admitted divorce, has not been entirely eliminated in the new economy. *Sklerokardia* plays no part in the life of those who renounce the use of the flesh for the kingdom of heaven, nor among those who practise total monogamy. It begins to appear in ‘the case of spouses who, in the interests of an approved temporary continence, cannot (first appearance of *sklerokardia*) out of excessive zeal expose their partner to danger’ (p. 60), in the case of widows in second marriages (second instance of *sklerokardia*), and in the case of the abandoned spouse toward whom the leaders of the Church are tolerant (third case of *sklerokardia*). Beyond this is the degree of *sklerokardia* mentioned in Matthew 19, 9, that of the ancient Mosaic divorce, ‘for whatever reason’, which is excluded from the new dispensation. Bishop Kokkinakis represents the same tradition:

The followers of the Lord must understand that marriage is a sacred indissoluble unity which lasts until death shall overcome the physical structure of the body. Divorce therefore at will, as was the pagan custom, is something outside the Christian conception of conjugal life (*op. cit.*, p. 45).

The Eastern tradition sees no contradiction between this and the admittance of remarriage when the nuptial tie has been broken:

In the words of Our Lord, in the case of conjugal infidelity the ideal of Christian marriage is entirely defeated. For this reason the bond of mutual trust, love and faith, the mutual exercise of power over each other’s body, is broken; consequently, the scope of marriage is destroyed (*ibid.*, p. 47).

This results not only from *fornicatio carnalis*, but from *fornicatio spiritualis* as well, this being a moral death through such things as incitement to evil deeds such as heresy and apostasy, treacherous actions and threats against the life of a spouse by the other, abandonment for more than two years, and even ‘Incurable insanity lasting

¹Pospishil, *op. cit.*, p. 36. The fact that the *parektos logou porneias* and *me epi porneia* of Mt. 5, 32 and 19, 9 are probably commentary additions (cfr. R. Bultmann, *History of the Synoptic Tradition*, Oxford, 1963, p. 148) hardly weakens his argument.

four years after the marriage, or leprosy' (*Ibid.*, p. 54). The latter is obviously not a question of *fornicatio spiritualis*, but it does effectively impede the realization of the Christian ideal of marriage and can expose people to intolerable temptations.

For such unfortunate people the precise and rigid requirement of the law is not far from the Pharisaic stand. The Church will never justify herself as the dispenser of the grace of God if in her zealous efforts to fulfil the letter of the law she kills the spirit of love and mercy by denying her lapsed people opportunity to repent and re-establish themselves in the life of grace. . . . The truth is that there is no alternative, except choosing the lesser evil. And in the case of broken families the lesser evil is divorce, which the Church, following the example of Moses, grants, not easily and gladly, but hesitantly and sorrowfully, to those who because of the 'hardness' of their hearts, feel unable to continue living their married life 'in two bodies as in one' (*ibid.*, p. 50).

(b) *The Western Tradition*

In the West, development has been quite different, although it is only from the time of Gratian that contemporary Western doctrine begins to take shape. Rousseau writes that: 'beginning with the thirteenth century, Latin theology rallied around Gratian's opinion in an almost general manner, and his interpretations thus attained the force of law' (*art. cit.*, p. 64). Nevertheless, on the eve of the Council of Trent, Cardinal Cajetan complained of 'the torrent of doctors' who had written on the question, and with characteristic frankness gave his own opinion:

I understand from this law of our Lord Jesus Christ that it is permitted to a Christian man to dismiss a wife because of carnal fornication on the part of his wife, and that he can take another wife, excepting of course a contrary definition from the Church which has not yet appeared.¹

Many have attempted to see such a definition in the Council of Trent. However, it now appears certain that the Council, both because of reluctance to condemn the doctrine of various Fathers of the Church and because of pressure from the Venetian ambassadors who had Greek subjects to rule, abstained from any condemnation of the Greek practice.² Thus while some post-Tridentine authors have attempted to find a dogmatic declaration in the statement of the Council, the Fathers of Trent seem to have limited themselves to a defence of Western practice, but without condemning the greatly different practice of the Eastern churches. The sources for canon

¹Cited by Pospishil, pp. 108-109; Rousseau, *art. cit.*, p. 65; cfr. F. Von Gunten, 'La doctrine de Cajétan sur l'indissolubilité du mariage', in *Angelicum* (Rome) 43 (1966), pp. 62-72.

²Rousseau, *art. cit.*, p. 65; Pospishil, p. 66; A.-M. Dubarle has written recently: 'J'ai émis dans mon article l'opinion que la possibilité d'un remariage pour l'époux injustement abandonné n'était pas en contradiction avec les canons du Concile de Trent sur le mariage et donc donné au canon 7 une pleine adhésion, que je formulais ainsi: "l'intransigeance de la tradition occidentale en matière d'indissolubilité ne constitue pas une erreur, tout en n'étant pas l'unique manière d'être fidèle à l'Évangile"' (*Revue des Sciences Phil. et Théol.* 50 (1966), pp. 599-600).

1118 of the present Code of Canon Law, which states that a marriage which is *ratum et consummatum* cannot be dissolved by any human power or by any cause except death, do not mention Trent.¹

The case for a dogmatic rather than disciplinary character for Western practice rests mainly on the practice itself. In practice the modern Western Church treats the marriage bond as if it were some sort of sacramental character (although no theologians hold this). Even this bond is dissolved in the Western Church in the case of non-consummated unions, and it appears that an exaggerated importance has been placed on the act of physical consummation. Thus R. W. Catterall, examining the biblical concept of 'becoming one flesh', concludes that far from referring to the physical act of marital intercourse, it refers to a total union of persons through all structural levels of personality:

It would seem that the purely legal concept of consummation falls far short of the biblical conception. Are we then justified in singling out one particular act—the initial act of intercourse—and saying: 'Now your marriage reflects the mystery of the union of Christ and the Church and is in consequence *absolutely* indissoluble'? I suggest that on exegetical grounds we must answer 'no' and that the 'one flesh' of Genesis 2, 24 refers to the union of man and wife *as a whole*—the 'human reality, the essence of which we must try to clarify in its historical context'. It is the human reality *as a whole* that reflects (or perhaps fails to reflect) the union of Christ and the Church.²

To this writer it seems extremely doubtful whether criteria such as these could find a place in the context of present doctrine and practice, since this human reality *as a whole* must almost necessarily be a question of degree, and the canonist who must judge as to nullity usually looks for clear and certain factors. Obviously if elements in the personality structure of the individuals involved made such a human reality unrealizable from the start, there should be excellent grounds for maintaining that there was no possibility of a real marriage from the beginning. In any event, the progress made in the human sciences as well as in exegesis points up a serious anomaly in present doctrine.³

¹The sources cited for canon 1118 leap from Benedict XII (fourteenth century) to Gregory XVI (nineteenth century). It is true that the reader is referred to canon 1013 §2, which affirms indissolubility as a property of matrimony, where Trent is cited in the sources. However, it should not be forgotten that the Greeks also affirm indissolubility as a property of matrimony. Cfr. also M. Hurley, S.J., 'Christ and Divorce', in *Irish Theological Quarterly*, January 1968, p. 65: 'But the precise relationship between this Church doctrine and the Christian revelation is neither defined nor clear in itself. . . . In other words the indissolubility of consummated sacramental marriage even in the case of adultery is not a dogma. This, however, I hasten to add, does not at all mean that the doctrine is certainly not part of revelation and could certainly not *become* a dogma' (italics mine, J.B.).

²'Divorce and Remarriage', *The Clergy Review*, November 1967, p. 890.

³Cfr., e.g. 'The Christian Response to Marital Breakdown', by Dr J. Dominionian, *Ampleforth Journal*, Spring 1968, p. 3. In this article Dr Dominionian gives an excellent summary of what is currently known from the psychological sciences about the emotional factors that make for the impossibility of a true relationship. Dr Dominionian's book on the subject is due to be published as a Pelican in August under the title *Marital Breakdown*.

3. *Dr Pospishil's Argument against Present Doctrine*

(a) *The argument summarized*

Thus Dr Pospishil contests present doctrine on a more basic level, rejecting the absolutization of the sacramental bond entirely. His arguments can be reduced to the following: The scriptural witness is indecisive; there exists a constant tradition in the East which admits divorce and remarriage; and, as we have seen, Trent did not commit itself on the dogmatic question.

With respect to the Patristic witness, Pospishil's conclusion rests heavily on the argument from silence; it must be admitted that his case is at least as strong and probably stronger than that presented by modern Catholic authors. Some might say that the burden of proof is on him in present circumstances, but Newman's remark on historical evidence is certainly applicable here: 'For myself, I would simply confess that no doctrine of the Church can be rigorously proved by historical evidence: but at the same time no doctrine can be simply disproved by it' (*Certain Difficulties Felt by Anglicans in Catholic Teaching*, London 1888, p. 213). After reading Pospishil's work, one cannot avoid the impression that in much of the 'traditional' writing on the subject we have been exposed to a considerable dose of double-think. A doctrinal tradition is formed, say, on the basis of dubious exegesis, and then the dubious exegesis, both of biblical and patristic texts, is justified on the basis of the doctrinal tradition. While it is true that present Christian belief is, in a sense, normative, the problem is rather more complex here, since it is the character of present convictions that is questioned. This is not to be presumed easily to represent a dogmatic tradition, particularly in the context of the post-Conciliar theological renewal. Especially if the author is correct in affirming that separation 'from bed and board' is a later institution which cannot be read into ancient texts, one is inclined to say that the work of Pospishil and other contemporary theologians has thrown the burden of proof upon those who maintain the dogmatic character of the Western tradition.

Having proposed a convincing argument to the effect that the Western tradition of absolute indissolubility does not in fact represent dogmatic truth, Dr Pospishil proposes lines for a solution, after a brief analysis of solutions which seem to him inadequate (entering a 'non-sacramental' marriage in younger years; widening conditions for nullity in law; the search for more causes for nullity). In his own reading of the history of the problem, the author sees the fact of the admission of divorce in the ancient and Eastern Churches, as well as in contemporary practice of dissolution of non-sacramental and non-summated marriages, as involving a distinction between extrinsic and intrinsic dissolubility:

Thus the distinction is made here between *intrinsic* dissolubility that is, when the spouses themselves are legally entitled to dissolve the marriage contract, and *extrinsic* dissolubility, that is, when some

authority outside the marriage partners, as God, the Church, the State, can dissolve the marriage (*op. cit.*, p. 16).

One can assume that Jesus reaffirmed intrinsic indissolubility and reestablished the true *ideal* of marriage which excludes also extrinsic dissolubility. However, the ideal should not be extended to the point of excluding all extrinsic dissolutions because, after all, God himself permitted them (Deut. 24) (*ibid.*, p. 33).

Intrinsically indissoluble, marriage is able to be dissolved by the Church, and indeed '... the Church is the sole authority to exercise this power for the marriage of Christians' (*ibid.*, p. 127). As the author points out, the Church in fact exercises this power—with no explicit authority in the New Testament—with respect to non-sacramental and non-consummated marriages. The author feels that the historical witness and the Eastern tradition support the extension of this power to all marriages of Christians, although whether or not the Church actually exercises this power depends on historical circumstance, as well as on pastoral criteria. Father Schillebeeckx, discussing the fact that the Church does dissolve certain marriages, says that:

Paul's view of marriage has already shown that these problems cannot be solved simply by having recourse to a purely 'positivist' appeal to the Church's jurisdiction or 'power of the keys', as the jurists and the canonists are in the habit of doing, however right this may be for them. Ecclesiastical law itself must be based on dogmatic insight, and the idea of 'one flesh' promulgated in the Old Testament, deepened by Jesus and clarified by Paul, must always be the guiding principle, the full scope and meaning of which can certainly be interpreted by the Church, but never changed. (*Marriage: Secular Reality and Saving Mystery, I*, London, 1965, p. 240.)

Pospishil's approach here is certainly more juridical than is that of Schillebeeckx, but it must be admitted that he has defended his position rather well with respect to the dogmatic question.

(b) *The argument criticized*

Nevertheless, it is precisely here that some serious questions must be posed with respect to Pospishil's position. In his interpretation of the Council of Trent he is of the opinion that 'in order to separate marriage from civil interference, the Council adopted an obligatory ecclesiastical marriage form, binding with the sanction of nullity wherever the decree *Tametsi* was promulgated' (*op. cit.*, p. 65). Schillebeeckx, approaching the question with a different bias, says:

The introduction by the Council of Trent of an ecclesiastical legal form, carried out in front of the parish priest and at least two witnesses, as a condition of the validity of marriage was therefore intended solely as a measure against clandestine marriages. This is clear from the *acta* and from the attendant legislation (*op. cit.*, p. 176).

Behind this difference—and the present writer is of the opinion that

Schillebeeckx's interpretation is the correct one—there is perhaps another aspect of the widely divergent traditions of East and West, since the traditional Eastern accent on the sacred and on marriage as a divine gift, imparted to the spouses by the Holy Spirit, at the same time as it is a social event governed by civil law, brings into play a different kind of dialectic between the secular reality and the saving mystery than exists in Western theology. Dom Rousseau rightly says that the two traditions have evolved within frameworks that are too different to be capable of juxtaposition (*art. cit.*, p. 65). For the Orthodox Church:

. . . the minister of the sacrament of Matrimony is the grace of God given by the Church through the priesthood; and . . . the grace of God is of primary importance as being the inward part of the sacrament, while its outward part is the free decision of the spouses (Kokkinakis, *op. cit.*, p. 39).

One has the impression that Pospishil, as an Eastern rite Catholic, is constrained to move uneasily between these two worlds. The codification of Eastern marriage law promulgated in 1949, which was rather badly received by many Eastern rite Catholics as an imposition of a Latin mentality, definitely comes down on the side of the Latin tradition of *consent* as making Christian matrimony, although the concession of requiring the priest's intervention with a sacred rite is made to Eastern tradition.¹ The Western tradition, seeing the essence of Christian marriage in the mutual consent, has affirmed exclusive jurisdiction of the Church over aspects of marriage which are of secondary interest to the Eastern Churches, aspects of marriage as a social event governed by civil law. The Eastern position is more faithful to the biblical vision of marriage as a secular reality 'experienced in the Lord' than is the modern Western tradition.

With respect to the question of divorce and remarriage, this divergence appears again, and one wonders if categories such as 'dissolution' mean the same thing applied to marriage seen primarily as a *contract* and to marriage seen, in so far as it is a sacrament, as a gift of God, which is *destroyed* by spiritual death. In the Western Church, today, the demise of Christendom and the advent of a frankly secular society pose *problems which present difficulties to both traditions*; our present situation is perhaps closer to the *diaspora* of early Christians.

4. *Towards a More Radical Solution*

In a secular society the relationship between the interests of the Church and those of civil society appears in a different way. The interest of the Church today, in spite of the declarations of many Catholic authors, should not be defined primarily in terms of the sociological stability of the institution of marriage—an aspect which is of general social interest—even though the area which touches the Church, the proclamation of and witness to the Covenant, can be

¹*Crebrae allatae*, 22 February 1949, can. 72 §1; can. 95 (AAS 41, pp. 105, 107).

prejudiced by the lack of stability. The biblical vision of marriage as a secular reality 'experienced in the Lord' may provide us with some insight here, although considerable theological work remains to be done.

The danger persists of a certain dualism between the secular reality and the saving mystery, and it is here that the solution proposed by Christian Duquoc in a recent article in *Lumière et Vie* seems to fall short. For Duquoc, 'Le sacrement signifie la fidélité de Dieu, et cette fidélité est indestructible. Le sacrement n'a donc pas à être répété. Il doit s'agir en effet, dans le cas des divorcés, d'une miséricorde: répéter le sacrement risquerait de mettre en péril son propre sens' (*art. cit.*, p. 60). One wonders just why this type of 'perfection' is demanded: why could not the fidelity of God be signified by the fidelity of two people in an authentic and viable second marriage? The Western Church sees no difficulty in the sacramentality of a marriage contracted after the dissolution of a valid, sacramental first marriage. The difficulty here is that of conceiving the sacrament as something 'received', as something other than the marriage itself. To be sure, the sacrament as such is a gift of God, and in that sense gratuitous and received. On the other hand, the reality informed by grace in order to proclaim the Covenant is the human reality of marriage. The problem is an anthropological one: what is this human reality that is called to be a sacramental reality?

This writer, with all due respect for tradition and for any subsequent decision on the part of the Magisterium, would prefer to see marriage as a human reality which could in fact cease to exist. Modern Western discipline has tended to affirm dogmatically that since marriage is indissoluble, 'something' permanent always remains to be rediscovered or rebuilt, and that the institution is best protected by intransigence—unless of course a loophole can be found. In practice, more and more people settle for another, humanly viable situation. Even here there is some precedent in history. Pospishil quotes a form for dissolving marriage which dates from the seventh century—and from the Western Church:

Since between N and his wife N no charity according to God but discord reigns between them, and because likewise they cannot by any means uphold it, it has pleased both to agree that they ought to be separated from this partnership, which they hereby have done. . . .¹

The phrase is a terrible one, but it often represents the real state of affairs: 'Since between N and his wife N no charity according to God but discord reigns between them.' One is constrained to ask, when such a situation prevails, how the existence of a sacrament, a sign of the union between Christ and his Church, is maintained.

¹Cited by Pospishil, *op. cit.*, p. 198. No question here of separation 'from bed and board'. Another Western formulary from the same period concludes: 'Whenever my husband shall wish to take a wife, he may do so. Likewise he agrees that whenever the aforesaid wife herself wishes to take another husband, she has the free power to do so' (*ibid.*).

It appears rather to be some sort of pseudo-metaphysical abstraction, and to say that a human relationship of bitterness and hatred remains in some mysterious way a sign of Christ's love for the Church seems little short of blasphemous. As Rosemary Reuther has written:

The assumptions of the ecclesiastical marriage laws have nothing to do with marriage as we now understand it. The validity of marriage rests on the validity of the relationships which make it a viable context for human development. Once the relationships have become destructive beyond repair, then the *raison d'être* of the marriage ceases to exist (*Commonweal*, New York, April 14, 1967, vol. 86, p. 118).

The human reality involved, which Christians are called to experience 'in the Lord', is to some extent culturally defined. The nuclear marriage of today's Western world may not differ 'essentially' from that of previous times, but the whole human reality is certainly a very different thing. The buffers of the extended family no longer exist, and monogamy is practised in a very different way than it was when toleration of adultery on the part of husbands was common.¹ This does not imply that the moral norm of human behaviour should be taken from a sociological norm. On the contrary, the Gospel implies a constant critique of present reality. But it should be recognized that *the human reality which is assumed into the order of grace, which is called upon to manifest the union of Christ and the Church, can in fact be destroyed*. Also, this reality should be taken in all its human density, as culturally defined, and not limited to a formal consideration. The Greek position, which at once proclaims the indissolubility of marriage and takes cognisance of the presence of *sklerokardia*, allows for the living of the secular reality of second marriages 'in the Lord', and it is hard to see how one can say, *a priori*, that the union of two people who have remarried after a divorce could not manifest the union of Christ and his Church better than the now-broken union which preceded it.

There exists, in the modern Latin tradition, a tendency to place an excessive value on the formal aspects, even when these have been emptied of any real content. The inability to admit the possibility of structural defects coupled with an inability to make exceptions or to show mercy to human weakness results in another sort of *sklerokardia*. It is true that the Catholic tradition has always tended towards a primacy of *being over act*,² of structure over event, but this should not exclude the vital importance of event in the Christian economy. The structure, the institution, as a stable and permanent reality, should ideally provide the framework, the 'external reality' for the celebration of a union of love as event and proclamation. This does not

¹Cfr. Schillebeeckx, *op. cit.*, I, pp. 1-23. For example: 'It should hardly be necessary to add that prostitution is a mere drop in the ocean of our contemporary society compared to what it was up to the beginning of the present century. . . . In many middle-class families, it was regarded as "normal" to visit prostitutes in those days' (*ibid.*, p. 8).

²Cfr. D. Bonhoeffer, *Act and Being*, London, 1961, at pp. 11-16 for a statement of the problem of 'act and being'. We use the term in the sense discussed by Bonhoeffer.

imply that the marriage bond as a sacramental reality is *merely eventual*, that it is a sacramental reality only in so far as it actually proclaims the Covenant. But it should be recognized that the basic human structure can be so destroyed as to make the proclamation as event completely impossible. There is no simple or univocal parallel with baptism and holy orders. Where a marriage has been so destroyed as to make the continued celebration of conjugal love as event impossible, the acceptance of a second union of divorced persons in which a real relationship of love is possible seems more in conformity with the Gospel. Rather than a rigid absolutism which to many seems pharisaical, we should admit the possibility of rebuilding the shattered lives of persons whose marriages, as human realities, have ceased to exist.

There are, of course, practical difficulties of a disciplinary order. At the present time, the verification of a cause for nullity is automatic assurance of the admission of the parties to a second marriage. The baptized are presumed, *ipso facto*, to be capable of—and indeed obliged to—the ideal of marriage as a Christian sacrament, even though they may have been ‘living in sin’ for years before the decree of nullity permitted them to ‘regularize’ their situation. Now obviously the gift of God which is the sacrament does not *depend* on the human reality, and it is equally obvious that in such cases there may well be an authentic human reality. Living this reality ‘in the Lord’ depends more on simply living ‘in the Lord’. In other words, it is a question of faith and of the authenticity of the Christian commitment. Oriental practice is in fact not nearly as ‘automatic’; at least in theory the judgement of a bishop to permit the blessing of a second marriage of divorced persons involves not only the finding of juridical fact, but a pastoral criterion which embraces the Christian commitment of the persons involved, their conversion to Christ and the desire to accept the responsibility of Christian marriage. Dr Pospishil’s approach to the problem, centred on the power of the Church to dissolve the marriage bond, would certainly demand juridical processes of a type which do not actually exist in the Church today, the development of norms and criteria for the exercise of this power of the Church. At the present time most tribunals have a considerable backlog of pending cases, and a decision sometimes requires several years. Certainly a more simple process would be required than is presently used, and a process of a pastoral-judicial nature, rather than that of a formal suit at law, would probably be adequate.¹ A procedure resembling that now used for ascertaining

¹One reason for the complexity of present procedure is the need for some rather sophisticated safeguards against fraud. Against the background of present doctrine, some such safeguards are certainly necessary. This would not be the case if remarriage of divorced persons were permitted following pastoral criteria, either under the hypothesis of dissolution of the bond (Pospishil) or that of admitting a non-sacramental second union to be lived in the Lord (Duquoc). Paradoxically, Pospishil’s solution might well create another ecumenical difficulty, since the Orthodox do not admit a *dissolution* of the sacramental tie by any human power, including that of the Church. But as we have mentioned, a very different view of the reality is involved.

the freedom to marry, in which pastoral as well as juridical criteria could come into place, subject to review by the bishop in function of a final decision, seems more in accord with the type of problem involved. A simplified, more pastoral procedure, whose conclusion would be authorization to contract another marriage, would enable cases now processed under nullity to be included in it.

At the present time, the danger of such a procedure becoming merely a matter of form would certainly be present, given the practice of an almost automatic admission to marriage of those whose previous marriages have been dissolved or found null and void. This, on the other hand, is itself based on a sound tradition of equality before law and the abhorrence of admitting qualitative criteria which could appear to be discriminatory. When a question of the authenticity of a conversion, repentance or the sincerity of accepting the responsibilities of Christian life is involved, pastors are rightly hesitant to refuse the sacraments to people, and there is a certain presumption of good will, on this level, that does not always operate when there is a question of juridical proof of nullity, where 'hard facts' are essential.

On the other hand, the danger of abuse should not deter us from facing the problem squarely, and most lawyers would admit that entirely fool-proof legal structures are quite impossible. The problem, given the possibility of a radical change in doctrine and discipline, is clearly a pastoral problem, involving, within the Western tradition, the admission or access to the sacraments, since within that tradition, marriages of baptized persons cannot at the same time be real marriages and not be sacramental. It is true that elements of that tradition are being questioned, and that Western Christians should seriously examine the Greek tradition. This seems to be in effect the solution proposed by Christian Duquoc, and the difficulties in its way appear only in the context of the Western tradition.

The biblical tradition, rather than attempting to determine *a priori* the conditions of human existence, accepts man as he is, at the same time as it calls man to transcend the limitations of sinful humanity. To accept the impossibility of certain situations is not to succumb to the power of sin, but rather to celebrate the power of the Gospel to transform the human reality as it really exists, as part of an unending process of the mysterious realization of the Kingdom.