

CHAPTER 27

DIVORCE, REMARRIAGE
& THE EUCHARIST

What God has joined

We begin our treatment of divorce with Jesus' words: 'What God has joined together, let no one separate' (Matthew 19:6; see Catechism n. 1614). This was said in response to a question posed by doctors of the law who were debating whether a husband could divorce his wife for any reason at all, or whether he could do so only in cases of marital infidelity.

Every culture recognises that marriage is important, not just for the couple, but for society. It is appropriate, therefore, to protect it by law. However, in accordance with the tradition they inherited, the lawyers who were questioning Jesus accepted divorce as a male right. Jesus rejects this assumption, declaring that a man who divorces his wife and marries another 'commits adultery against her' (Mark 10:11). Jesus also challenges them to examine the purpose of marriage. God made human beings in God's own image and likeness. One way in which human beings are in God's image is when as male and female they enter into a love-communion through which they continue God's work of creation by bringing human beings into the world (see Genesis 1:26-28). The relationship of husband and wife is a sacred one, to be protected by good law. This can happen only if those responsible for seeing that good law is upheld are faithful to the nature and purpose of marriage.

The general principle enunciated by Jesus is clear. A problem arises when we try to discern which sexual unions 'God has joined together'. Clearly, not all. Jesus is quoted as giving one example of a sexual union that is not joined by God, when he goes on to say: 'Whoever divorces his wife – I am not speaking of an illicit marriage (Greek: *porneia*) – and marries another commits adultery' (Matthew 19:9 as translated in the New Jerusalem Bible). Matthew understands that Jesus' words against divorce do not apply to any and every marriage contract. In a Jewish setting, Jesus is speaking of marriages that are in accordance with the requirements of Jewish law as expressed in the Book of Leviticus – laws which applied also to non-Jews living in Jewish territory (see Leviticus 18:26). These regulations mainly prohibit incest (see Leviticus 20:17ff). Sexual unions involving incest do not constitute a marriage. They are not 'joined by God', and should be broken.

Paul deals with the matter of divorce in his First Letter to the Corinthians. Having addressed his remarks to married couples who are both believers, Paul goes on to speak about a marriage in which one of the couple is not a believer. He is answering questions put to him by the Corinthian community. Under Corinthian law, either partner could divorce simply by making a declaration before witnesses and registering the fact. In an earlier letter Paul had told the community 'not to associate with sexually immoral persons' (5:9). The Corinthians were asking Paul: Did this include a non-Christian spouse? Is the Christian obliged to divorce a non-Christian partner? How does a person committed to the gospel live in a marriage relationship with a spouse who is not committed to it? Should he or she seek a divorce? To such questions Paul replies that the Christian party does not have to divorce. He goes on to remind the Corinthian Christians that through their faithful love they may be instruments for bringing salvation to their non-Christian spouse (see Catechism n. 1637).

What about when the Christian spouse is divorced by the non-Christian spouse? Can the Christian re-marry? It is Paul's reply to this question that interests us here. He writes:

'If the unbelieving partner separates, let it be so; in such a case the brother or sister is not bound. It is to peace that God has called you' (1Corinthians 7:15).

'Not bound' has been interpreted as meaning that the Christian is not bound by the broken marriage contract and so may re-marry. Based on Paul's words, the Church came to see itself as having the right to dissolve a marriage contracted between two unbaptised persons, after the baptism of one of the spouses and the refusal of the other spouse to cohabit peacefully.

In the twelfth century there came about

'a reconciliation of Roman and Germanic views of marriage, which led to the recognition of dispensing from a ratified but not yet consummated marriage. The missionary context occasioned by the age of discovery, colonialism, and the slave trade prompted sixteenth century popes to stretch traditional principles to fit new pastoral realities; and, in the twentieth century, the Church recognized its power to dissolve non-sacramental marriages in favour of the faith'(see John Beal '*Intolerable marriage situations revisited: continuing the legacy of James H. Provost*', *The Jurist* 63, 2003, page 304).

Canon 1141 defines the only marriages that the Church considers beyond her power to dissolve:

'A marriage that is *ratum* [that is, valid and sacramental] *et consummatum* [that is, the validly married spouses have 'performed between themselves in a human fashion a conjugal act which is suitable in itself for the procreation of offspring, to which the marriage is ordered by its nature, and by which the spouses become one flesh'(Canon 1061)] can be dissolved by no human power and by no cause, except death.'

The rest of this paper examines the discussion that is still going on in the Church about what kind of pastoral care can be given to persons whose marriage is judged to be valid, sacramental, and consummated (which rules out any possibility of an annulment), but who have been divorced and remarried in a civil ceremony. Canon Lawyers distinguish two separate situations for those who have been divorced and remarried (Beal, page 254). They speak of the 'conflict situation' in which the previous marriage is objectively invalid, but for some reason it is not possible to prove this in the Church's external forum. Before God the person is free to remarry, but not in the Church, hence the 'conflict'. They speak also of the 'hardship situation' in which a valid marriage has broken down irretrievably and one or both parties have remarried outside the Church.

The discussion over the past twenty-five years has drawn on the following statement of Pope John-Paul II in his post-synodal apostolic constitution on the family (*Familiaris Consortio*, 1981), where he wrote:

Receiving the Eucharist

‘Pastors must know that, for the sake of truth, they are obliged to exercise careful discernment of situations. There is in fact a difference between those who have sincerely tried to save their first marriage and have been unjustly abandoned, and those who through their own grave fault have destroyed a canonically valid marriage. There are those who have entered into a second union for the sake of the children’s upbringing and who are sometimes certain in conscience that their previously and irreparably destroyed marriage has never been valid’(n. 84).

He went on to reaffirm the Church’s traditional discipline of not admitting the divorced and remarried to the sacraments of penance and eucharist.

In 1994 three German Bishops (Saier, Lehmann and Kasper) issued a pastoral in which they acknowledge the Church’s discipline as being generally valid, but added: ‘it cannot regulate all of the often very complex individual cases’ (see *Origens* 23, 1994, 673). They go on to speak of the ‘conflict situation’ and say that in each individual case it needs to be determined whether the generally valid discipline applies, something which ‘cannot be generally presumed, especially when those involved have, based on good grounds, satisfied their consciences of the nullity of their first marriage but no legal proofs exist to obtain a declaration of nullity from an ecclesiastical tribunal’. They also touch on the ‘hardship situation’ referring to ‘an insoluble conflict of duty, where leaving the new family would be the cause of grievous injustice’(page 674). They suggest a number of pastoral processes and the possibility ‘that the marriage partners (or else just one of the partners) may see their conscience clear to approach the table of the Lord’. Canon lawyers speak of this as the ‘Internal Forum Solution’.

This idea received an immediate and authoritative rejection from the Congregation of the Doctrine and the Faith (see *Origens* 24, October 27, 1994, 339-341):

‘In fidelity to the words of Jesus Christ, the church affirms that a new union cannot be recognised as valid if the preceding marriage was valid. If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God’s law. Consequently, they cannot receive holy communion as long as this situation persists’(quoted *Catechism* n. 1650).

Canon 915 states that those are not admitted to the eucharist ‘who obstinately persist in manifest grave sin.’ Scholars debated whether this Canon applies necessarily to divorce followed by civil marriage. The Pontifical Council for the interpretation of legislative texts on June 24, 2000 stated that this canon does apply to the divorced and remarried. However, this statement must be treated with care. Canon Lawyers remind us that there is a carefully worked out discipline for determining the meaning of the canons in the Church’s law. Beal writes

‘If the words of the Church’s law mean whatever a church authority wants them to mean at a particular moment, then we are perilously close to abandoning the “rule of law” in the life of the Church’(page 284).

Canon lawyers speak of ‘canonical equity’ which

‘requires that the diocesan bishop actively intervene to apply the law in a way that does not allow it to be a crushing burden but an occasion for divine mercy. In this way canonical equity ensures that the law retains its vigour while ceding to the demands of the salvation of souls which is always the supreme law in the Church’ (Beal page 290).

All agree that faith is necessary for a marriage to be a sacrament. Today, one cannot argue that a baptismal certificate is proof of faith. Some argue that, since the Church can, in certain circumstances, dissolve a ‘natural marriage’, the Church needs to discern carefully in the case of marriage breakdown of a person who, though baptised, lacks faith. There has been no encouragement of such thinking from the magisterium. However, questions are still asked. Paul did say ‘It is to peace that God has called you’. What is to happen when one believing spouse gives up the faith, in fact if not in theory, and makes it impossible for the other believing spouse to live his or her faith, or to experience peace in the marriage? Some argue that there is no substitute for doing what Paul himself did in his Letter to the Corinthian church: one must examine the actual relationship in the light of the nature of Christian marriage as a sacrament of God’s unfailing love, and attempt a wise, compassionate and realistic discernment.

It is recognised in the case of the eucharist, that when the consecrated bread or wine lose their nature as eatable bread or drinkable wine, they lose their significance as a sacrament. Beal writes:

‘If this traditional doctrine is applied analogously to marriage, one could argue that, when the spouses’ love is so corrupted or destroyed that it is no longer capable of signifying the faithful love of Christ for his Body the Church, their marriage has ceased to be a sacrament’ (page 303).

Fidelity to love can mean the cross. But not every cross is redemptive. Can remaining in an unloving relationship that is destructive be described as being faithful to married love? Keeping faith can, in some circumstances, demand heroic love – a love that is possible only through grace. It can mean dying to oneself, but we must not lose sight of Jesus’ teaching that such dying does issue in life. Though difficult and at times painful, it is not destructive but life-giving, and its fruit is love. Jesus is not commending a waste of life, or a destructive disregard of self. One does not have to go on being abused.

Being a disciple of Jesus does not protect a person against the ordinary situations of hurt or misunderstanding or being the victim of another person’s infidelity that are part of the human condition. The fact that two disciples of Jesus pledge their love to each other in faith does not guarantee them against marriage breakdown. Love does not control, and one partner cannot prevent the sin or the infidelity or the breaking of the covenant by the other.

Since our call in faith is always made and responded to in community, and since the sacraments are celebrations of the community, we are not left to make such discernments on our own.

Discernment

The community is there to assist us in determining the status of a marriage within the faith community. This is the aim of the marriage tribunal. If as a member of the faith community a person opens him or herself to the discernment of the community exercised through the tribunal, and the community judges that what may have appeared to be a sacramental Christian marriage was not in fact so, the person has the support of the community in divorcing, and is free to re-marry. Since one's status within the faith community and therefore one's rights and obligations are a matter of determination by the community, not the individual, one should seek the determination of the community in so far as this is possible.

Of course the discernment of the community is not the only discernment that is to be made. Each must make his or her own discernment before God. If, for whatever reason, it is not evident to a tribunal that the first marriage was not a consummated sacramental marriage, it may still be the case (what we have been calling the 'conflict situation'). Truth cannot always be made evident. One is still free to make a personal conscientious decision on the matter, and a person may in good conscience decide that his or her marriage was not 'put together by God'.

Today we are witnessing in society a shift in people's understanding and expectations of marriage. Increasingly, marriage is seen as a commitment to an inter-personal relationship of love. Elements of this shift have deep Christian roots and have been nurtured by the Church's teaching, though it is not always evident that the Church has integrated this shift fully into her legal procedures. Marriage remains a contract, a covenant, but today there is a heightened expectation that the commitment is to what Vatican II calls a 'partnership of love' (Vatican II, GS n.47). The spouses rightly enter marriage with the intention of committing themselves to such a partnership. They promise such a partnership to their partner and they understand the marriage vows as a similar commitment to them from their partner.

Human experience demonstrates that not every commitment to marriage is wisely made, or sustainable. But the ideal is there, and the hope, and many a couple have been helped by this fact to grow through dark periods into a more mature love. The Church rightly teaches that if the promise can be kept without involving oneself or one's partner in a life that is destructive, it is a serious betrayal of trust to break it.

Let us look again at Canon 1141 which defines the only marriages that the Church considers beyond her power to dissolve:

'A marriage that is *ratum* [that is, valid and sacramental] *et consummatum* can be dissolved by no human power and by no cause, except death.'

The Church acknowledges the possibility of dissolving even a sacramental marriage if it has not been consummated (see Canon 1142), and it defines 'consummated' as when the validly married spouses have 'performed between themselves in a human fashion a conjugal act which is suitable in itself for the procreation of offspring, to which the marriage is ordered by its nature, and by which the spouses become one flesh' (Canon 1061).

In the marriage contract, a sharing of love (including sexual love) is promised. The sacrament is sealed when this love is given. Some argue that more than a physical act is required for consummation of a marriage. They argue that to consummate a marriage the partners must enter into the 'partnership of love' that they have vowed. Furthermore the demands of their life, including the demands as parents, require that they work at maturing in this partnership. It may be that some of their expectations are unrealistic in that they might not be prepared for the sacrifice that such a self-giving and such a maturing will require.

One of the criteria for an annulment is lack of due discretion. Immaturity can be so dominating as to make the initial commitment null. If a couple's experience of marriage is such that a partnership does not develop, and maturity continually evades them, can it be said that their marriage (their commitment to a partnership of love) is 'consummated'? It has been consummated physically, but there is a lot more to love than the physical. They promised each other an on-going fulfilment of inter-personal communion 'for richer for poorer, in sickness and in health till death do us part'. When this promise is not fulfilled can one argue that the marriage has not been 'consummated'? In which case can divorce be an acknowledgment of the fact that their mutual love, though initially sincerely intended, did not lead to the promised 'partnership of love'. Their initial hopes have failed to be realised, their love has died and with it the marriage. If it ever was a sacrament (a sign to the couple and to others of Christ's unfailing love for the Church), it is no longer.

One partner may be willing to work at the relationship, but the other may not be willing to work at forgiveness, reconciliation, maturing, or the level of self-giving without which a partnership of love cannot be achieved. Since it takes two to 'make love', a married relationship may prove impossible. And since staying together for the sake of the children is not necessarily in the best interests of the children, could the community recognise this situation as one that allows divorce and the freedom to develop a relationship which might fulfil a person's rightful hopes for a partnership that is genuinely loving?

The presumption must remain in favour of the marriage, and there is a lot of evidence around to warn us against too readily pulling out of a difficult situation in the hope of finding a better one. Our comments here focus on a situation in which a person has done all that could humanly be considered appropriate by seeking counselling, and by being willing to offer forgiveness and to strive to remain faithful to the attraction that led to the initial commitment. When, in spite of such efforts, a partnership of love is not present, could we say that the marriage has not been consummated, and 'in such a case the brother or sister is not bound. It is to peace that God has called you' (1Corinthians 7:15).

In the current climate where the values underpinning marriage are so discouraged, we should not be surprised that certain expectations of fulfilment which couples bring to their union are unreal and unhealthy. Self-centredness and lack of any genuine self-discipline work against the courage required to build a long-term relationship and to persevere in it. But some of their expectations may well be very healthy and very real, and their unwillingness to live with violence or gross immaturity may well be a healthy response that should be supported, not discouraged, as though staying together at all costs was a Christian value.

It takes courage and humility to recognise and admit a mistake in such an area, and it is Christian virtue to seek the truth and to face its consequences.

Darkness and doubts can invade any marriage, and we know of heroic generosity that has helped one or both partners to go through agony and emerge from it with a stronger marriage. We also know that for many people the endless struggle of trying to inject life and love into a relationship that has already died simply does not work, and that leaving a loveless marriage can take more courage than staying in a situation where all involved are caught in an endless cycle of hurt. John Hosie in his *Catholics, Divorce and Remarriage* (1990) writes:

‘Divorce is about defeat and failure. But it can also be about victory and success. It is about pain and grief, and also about healing and forgiveness and peace. It is about rejection. It can also be about acceptance. It is about the loss of hopes and the end of dreams. It can also be about new life, new hopes and new dreams. Often it is about continuing grief over children who are always separated from one parent or the other and who doubt that they are part of a family any more. It can also be about pride in children who are more mature and more together than their peers, and about single-parent homes, which are more united, more peaceful and more loving than many two-parent homes. In a word, divorce is about death, but it can also be about resurrection.

‘It seems incredible to me that any Christian church could fail to see Christ in the divorced. And yet I am aware that one of the greatest pains for Catholics who are divorced has been the message they have received that there is no place for them in the Catholic Church. In trying to maintain its commitment to the ideal that Jesus Christ put before us, the indissolubility of marriage, we lost sight of the reality: all of us fail; and all of us need pardon and forgiveness. It was to the outcasts, to people who had failed, that Christ offered his special love and compassion. He showed little respect for the Pharisees. When we, as a church, have made outcasts of people who may be more the victims of divorce than its champions, who are the Pharisees? What Christ offered to us, by his word and example, was the promise that we, too, can overcome death as he did, and live again, and love again.’

Few of us have not shared the pain of divorce with members of our own family or close friends. The message of Jesus is that we can rise from death. We can live again and we can love again, and the Christian community is there to sustain us as we grow through the pain, grief and disappointment, and find healing and hope. Every situation that involves divorce must be discerned gently and honestly in its own individual circumstances. The community has a role here, for marriage is vital to community. So law has a role here. Jesus’ words to the lawyers of his day challenge Church lawyers today to go to the heart of the matter – which all agree is about a covenant of love. Even in the most harmonious of relationships there will be times when the demands of fidelity are very great. At such times the support of the Christian community can be decisive, as well as the trust that God will continue to grace the couple to remain faithful to the promise that they have made to each other.

We remember in the dark what we have seen in the light, and our graced efforts at being truthful, at forgiveness, and at seeking help, can take us through a long dark tunnel into the light of a deeper relationship. It must be remembered, however, that grace builds on nature. In certain circumstances the grounds for a successful marriage are not present and no amount of earnest trying can build a partnership of love. Even in what could have been a good marriage, there is no guarantee that both spouses will be open to receive grace and be faithful to it.

Depending on the motives, divorce can be sinful, but it can also be free of sin (see Catechism n. 2383). It can be the most humble and courageous decision a person can take. It can sometimes be a release from a sinfully destructive situation, and, as Paul acknowledges in writing to the Corinthians, it can open the way to a life of faith and of peace. It can be a grace that brings streams to the dry land, and, through the pain, healing can come to two or more broken lives. It can be, through the gentle touch of Jesus, the means of bringing new sight to eyes that thought they would never see again.

At the same time divorce is often a very painful process. While statistics indicate that three-quarters of divorced people remarry, research indicates that ten years down the track, only in one out of ten cases are both partners leading happier lives.

As a community we are right to focus all our love in helping couples work through their problems and, purified by the fire of adversity, to find in the grace of the sacrament a way to find resurrection to new life within their troubled marriage. However, it is possible that the actual experience of relationship in what was intended to be a commitment in love is such that a person simply has to separate him/herself from the other person for physical or psychological survival. For any number of reasons it may be the relationship itself that is the occasion of sin, and it may be a heroically virtuous act to face this fact and put an end to a destructive situation.

If the divorce is sinful, then a person responsible for it needs to come to repentance. If the repentance is genuine, this involves trying to mend what has been broken. If this willingness is there, forgiveness is possible and so is the reception of communion. However, it may not be possible to mend what divorce has irreparably broken. The other person may be unwilling to forgive or to renew the marriage. In which case the willingness of the repentant sinner is enough for forgiveness – a forgiveness that opens the repentant sinner to the reception of communion.

We must listen above all to the experience of those faithful Christians who have been through this experience. Most intended to marry forever. However, their actual experience of marriage was at variance with their expectations. There may well be, as in most human affairs, various degrees of sin involved, but fundamentally, such people are often victims rather than perpetrators of the marriage breakdown. Various internal and external pressures were brought to bear and, however hard they tried, they found themselves unable to understand or manage what was going on. Their genuine efforts to seek marriage guidance and counselling were not effective till they came to a conscientious decision that separation was the only reasonable choice open to them.

Few of us have not been through this decision-making, if not personally, then with relatives or those close to us, and we have often found ourselves sympathetic of the decision to divorce, even hoping for it. We have sometimes found that those who know the couple best are in favour of their separating – and they are of this mind, not because of sinful disregard of Christian values, but precisely to sustain values of truth and peace, and to save those they love from a destructive situation that is devoid of grace. When the actual experience of marriage is soul-destroying, is it virtuous to stay? By what criteria could a decision to break such a marriage relationship be judged sinful?

It is also our experience that we and those nearest to the divorced persons find ourselves hoping that they will find someone with whom they can build a life. When this happens we experience joy – and once again it is not because we are careless about Christian values. On the contrary, we judge that the person's personal needs (and sometimes the needs of others, including the children) are best fulfilled in such a way. They do not have the gift of celibacy, and so their development as loving persons is best aided by a fulfilling relationship, which is perhaps the only way of healing the terrible wounds that they have suffered. Once again by what criteria would their decision to remarry be judged sinful?

A second marriage commitment may be gravely sinful. This is the case where the divorce was sinful and where one's original marriage partner is open to reconciliation. On the other hand, a second marriage may not be sinful. In this situation the second marriage may be the best way to attain healing and peace and the kind of genuine relationship which was found wanting in the first marriage. A person has the right to seek such a partnership of love. If there is no sin involved in forming the second marriage, there is clearly no question of sin in remaining in it.

There are also situations in which, even though it was sinful to enter a second marriage it may not be sinful to remain in it. If the remarriage was indeed gravely sinful, but there is no way of re-connecting with one's former spouse, and/or it would also be gravely sinful to break the second marriage (the needs of the second partner need to be considered) then it must be possible genuinely to repent of the sinful action in remarrying, while remaining in the second marriage and honouring the commitment involved (what we have called the 'hardship situation'). Where such genuine repentance is present, how is it Christian to exclude such a person from the Eucharist?

There is sometimes a tension between public church order on the one hand, which rightly stresses the sacredness of communion and the importance of being part of the life of the community (including sacramental marriage), and, on the other hand, the recognition of ordinary broken people who are making a genuine attempt to live a Christian life and who need and long for communion with Jesus and with the brothers and sisters who share the journey of faith with them. There can be many situations like the remarriages of which we are speaking that can be spoken of as 'irregular' (not in accordance with the law). We all experience sin and failure, but, like the sinners around Jesus, we want to touch his cloak and hear his word. The longing for communion always carries with it the willingness to change our lives where they are infected by sin. But basic to all the Church's teaching is the sacredness of a person's conscience. We are not to judge another's sin.

Ultimately each person is responsible for his or her own decisions, including the decision to approach the table of the Lord. Pastors have some responsibility to help maintain the unity of the Body of Christ in the bond of peace. One of their key responsibilities is to teach clearly, which means helping people see the subtleties of doctrine and acknowledge the areas of grey that are inevitably present when we are dealing with human behaviour. Pastors must not allow themselves to forget that their responsibility never requires of them that they enter the sacred domain of a person's conscience except when invited, and then only to guide, not to decide. Pastors are not responsible for making other people's decisions for them and have no right to impose their will on the conscience of another. Chosen to carry on the mission of Jesus, pastors are to model themselves on the Good Shepherd. People have a right to expect to find in their pastors the kind of welcome they are taught to expect from Jesus.

Let us not forget that the heart of our Mother Church is large enough to live with the tension we are discussing in this chapter. Let us remember that the Eucharist is broken bread for a broken body. We do not expect others to judge us and we hope to receive trust and welcome from our brothers and sisters in the faith. Let us offer this same trust and welcome to those among us who are, perhaps, carrying a cross that would prove too heavy for us.

Beal concludes his article:

'Reflecting on Jesus' encounter with the woman at the well, a woman who had had enough marital misadventures to keep a tribunal busy for a long time, James Provost noted that this encounter led not to condemnation but to conversion, not to the status of pariah for the woman but to "the gift of salvation for the woman and indeed for her whole town". Provost then asked: "Has the way the Church deals with the complex marital situations of people who come to the Church led to the same salvific result? ... Working through the current tribunal system can we ever have the effect of Jesus with the woman at the well? The issue needs to be addressed candidly, without prejudice, and with an openness to the Spirit which Jesus sent to be at work in our midst"'(The Jurist 56, 1996, 613).

We conclude with Paul's words to the Philippians (2:1-5):

'If then there is any encouragement in Christ, any consolation from love, any sharing in the Spirit, any compassion and sympathy, make my joy complete: be of the same mind, having the same love, being in full accord and of one mind. Do nothing from selfish ambition or conceit, but in humility regard others as better than yourselves. Let each of you look not to your own interests, but to the interests of others. Let the same mind be in you that was in Christ Jesus.'