

## THE HISTORY OF THE INDISSOLUBILITY OF MARRIAGE

It is the teaching of the Church today that a valid ratified and consummated marriage cannot be dissolved by any human power and that such a marriage is terminated by death alone. This teaching, however, is being more frequently challenged today from within the Church and claims are being made that history provides evidence that the Church can grant divorces for consummated marriages between Christians.

This study is an attempt to examine the sources that might help in discussions on the indissolubility of marriage. It does not purport to be an original study nor a completely comprehensive one. Its scope is limited to the first millennium of Christianity, after which time the indissolubility of the marital bond is, for practical purposes, established in the Church. This history gives particular emphasis to the sources of Western Christianity.

### I. FATHERS OF THE CHURCH

#### A. *Fathers of the West*

##### *Hermas*

The earliest text is that of Hermas in the work, *The Shepherd*. It is usually dated in the period c. 140-150 though some authors assign it to the first century. Hermas was an inhabitant of Rome and his text gives us the teaching of the Roman Church in sub-apostolic times. His work was of such weight that in the early Church it was read in the service of the Church as holy Scripture. Hermas interrogates the angel of penance what he should do if he learns that his wife is guilty of adultery and receives instructions from the angel:

Sir, I said, if anyone has a wife who believes in the Lord, and he detect her in adultery, does the husband sin if he continue to live with her? He said to me: As long as he remains ignorant of her sin, he commits no transgression. But if the husband know of her sin and the wife does not repent, but persists in her fornication, and the husband continue to live

with her, he becomes guilty of her sin and a sharer in her adultery. What then, sir, said I, is the husband to do if his wife persists in this state? Let him put her away, says he, and let the husband remain by himself. But if, after putting away his wife, he marry another, he also commits adultery. . . . For the sake of her repentance, therefore, the husband ought not to marry. Thus the case stands with both husband and wife. . . . For this cause, you are commanded to abide single, whether husband or wife, for in such matters there may be repentance.<sup>1</sup>

In prescribing the dismissal of the adulterous wife, Hermas is in agreement with the *Lex Julia de adulteriis* which stated that a husband must, within sixty days, send away a wife guilty of adultery. In Roman Law, a husband who keeps an adulterous wife is guilty of *lenocinium*, of connivance in the wife's adultery. But in making it a duty to receive back a penitent wife and in forbidding remarriage, Hermas is in direct opposition to the civil law of Rome. It is important to note that even in the earliest of texts, both husband and wife are considered equal and the same teaching applies to both. Even in the extreme case where there is persistent adultery, neither the husband nor wife is permitted to remarry.

#### *Tertullian*

The passages in which Tertullian treats of the permanence of marriage are found for the most part in four of his works: *Ad Uxorem*, written about 200-206 during what may be called the orthodox period; *Adversus Marcionem*, dated 207/8 and placed in the semi-montanist period; *De Exhortatione Castitatis*, 208/11, also of the semi-montanist period; *De Monogamia*, written about 217 in the montanist period.

Several authors have maintained that Tertullian permitted remarriage after divorce.<sup>2</sup> Contrary to their position are others who consider Tertullian as a defender of the absolute indissolubility of marriage.<sup>3</sup>

<sup>1</sup> Hermas, *Pastor*, Mandatum IV.

<sup>2</sup> A. Esmein, R. Genestal, J. Dauvillier, *Le Mariage en Droit Canonique* (Paris, 1935), II, p. 53; B. Bartmann, *Lehrbuch der Dogmatik* (Freiburg, 1921), II, p. 475.

<sup>3</sup> I. Tixeront, *Histoire des Dogmes* (Paris, 1930), I, p. 452; Francesco

Those who hold Tertullian allowed remarriage after divorce base their opinion solely on one text in *Adversus Marcionem*:

But observe, if this Christ be yours when he teaches contrary to Moses and the Creator, on the same principle must he be mine, if I can show that his teaching is not contrary to them. I maintain, then, that there was a condition in the prohibition which he now made of divorce; the case supposed being, that a man put away his wife for the express purpose of marrying another. His words are: "Whoever puts away his wife, and marries another, commits adultery: and whoever marries her that is put away from her husband, also commits adultery." 'Put away,' that is, for the reason wherefore a woman ought not to be dismissed, that another wife may be obtained. For he who marries a woman who is unlawfully put away is as much of an adulterer as the man who marries one who is undivorced. Permanent is the marriage which is not rightly dissolved; to marry, therefore, while matrimony is undissolved, is to commit adultery. Since, therefore, his prohibition of divorce was a conditional one, he did not prohibit absolutely; and what he did not absolutely forbid, that he permitted on some occasions, where there is an absence of the cause why he gave this prohibition. In very deed his teaching is not contrary to Moses, whose precept he partially defends, I will not say confirms.<sup>4</sup>

Marcion had sought to find opposition between the God of the Old Testament and the God of the New Testament, between the Law of Moses and the Law of Christ. One of these antitheses he found in divorce which Christ had forbidden, and which Moses had permitted. Tertullian replies to Marcion that the difference between the Old Testament and New Testament on the matter of divorce is not so great as to see in it a contradiction.

He continues that Christ did not forbid divorce absolutely but in fact permitted it in the case of adultery. The divorce permitted by Christ, however, was subject to the conditions that the husband could not dismiss his wife with the intention of marrying another woman. For the same reason, a man is prevented from marrying a woman

Delpini, *Divorzio e Separazione Dei Coniugi* (Torino, 1956), pp. 58-63; Jacobus Delazer, "De Insolubilitate Matrimonii Iuxta Tertullianum," *Antonianum*, 1932 (7), pp. 441-464.

<sup>4</sup> *Adversus Marcionem*, Lib. IV, c. 34.

dismissed by her husband since the marital bond remains intact. Since the divorce which Christ permits does not allow remarriage, it cannot be the divorce which completely dissolves the union. Logically, therefore, it must refer to imperfect divorce or separation.

From other texts of Tertullian, there is sufficient reason to presume that the "rightly dissolved" marriage cited in the passage quoted refers to the case of death. Death is the only reason that Tertullian permitted remarriage and even in this instance, only with great reluctance.

The obscurity of the passage quoted above cannot be doubted. It must be understood, however, in the context of other statements by Tertullian in which he clarifies his defense of the indissolubility of marriage. In the same work, *Adversus Marcionem*, Tertullian seems to return to his position that Christ did not absolutely forbid divorce but he makes it clear that the bond of marriage cannot be dissolved.

Christ forbids divorce, but Moses permits it . . . Christ (or Apostle of Christ), however, when he commands the wife not to depart from her husband, or if she depart to remain unmarried or be reconciled to her husband, has both permitted dismissal in that he has not altogether forbidden it, and has confirmed the (bond of) marriage in that he has first forbidden it to be severed.<sup>5</sup>

In his work, *Ad Uxorem*, Tertullian manifests his opposition to the dissolution of marriage, while permitting divorce for adultery.

In the first place, let me emphasize that the Lord much prefers that a marriage be not contracted at all than that, once contracted, it be dissolved. For he commends continence, while divorce he absolutely forbids, except for adultery. Therefore, the one man has the duty of preserving his marriage intact, while the other has the liberty of not marrying at all.<sup>6</sup>

Tertullian repeats his teaching in the book, *De Pudicitia*, written 217/23 during the Montanist period. In it he explains St. Paul's attitude on marriage.

After this he prohibits divorce, also, and in its place he requires either perseverance in widowhood or peaceful reconcil-

<sup>5</sup> *Adversus Marcionem*, Lib. V, c. 7.

<sup>6</sup> *Ad Uxorem*, Lib. II, c. 2.

iation. This is according to the Lord's precept against adultery, for: "Whoever puts away his wife, except on account of adultery, causes her to commit adultery and he who marries a woman who has been put away by her husband commits adultery."<sup>7</sup>

Tertullian returns to the teaching of St. Paul in *De Monogamia* and clearly states his own position:

In the very same chapter, then . . . he adds the words: "A woman is bound as long as her husband lives: but if he dies, she is free. Let her marry whom she will—only in the Lord." . . . The separation is one effected by death, not by divorce, since he would not, in contravention of the precept he had established earlier, permit divorced persons to remarry.<sup>8</sup>

To support arguments against the dissolubility of marriage, Tertullian frequently reverts to his well-known principle of the restoral of marriage to its original state. In the beginning God proclaimed the unity of flesh in regard to Adam and Eve. This union precluded any rupture. The bond of this union had to remain perpetual and indissoluble since it prefigured the union of Christ and the Church. In later periods, marriage fell from its primitive state through the toleration of divorce and remarriage. Christ then restored marriage to its original purity by giving it back its quality of indissolubility.<sup>9</sup>

For if we have a practice that goes back to the beginning, then marriage is monogamous by law, since we know that Christ wished things to be as they were in the beginning. For instance, when the question of divorce came up, he said that "it was granted by Moses because of the hardness of their hearts," but that "from the beginning it was not so." Thus, indubitably, he referred to the beginning in support of the indissolubility of marriage. Therefore, "those whom God" from the beginning "has joined together as two in one flesh, let no man put asunder" in our day. . . . And so truly in Christ are all things recalled to their beginning. . . . There is unity of marriage, as it was in the beginning.<sup>10</sup>

<sup>7</sup> *De Pudicitia*.

<sup>8</sup> *De Monogamia*, c. 11.

<sup>9</sup> *De Exhortatione Castitatis*, c. 5.

<sup>10</sup> *De Monogamia*, c. 5.

In a later chapter of his *De Monogamia*, Tertullian returns to this same theme. In this rather lengthy passage, he gives what is perhaps his clearest statement against remarriage after divorce.

These arguments might be thought forced and conjectural, if it were not for the teaching of the Lord on the subject of divorce. He prohibits it, even though it had been permitted in earlier days. His reasons are, first, because, like polygamy, "from the beginning it was not so"; second, because "those whom God has joined together man must not put asunder," lest he act against the Lord's will. He alone may separate husband and wife who has united them in marriage; and he will separate them, not by the harsh method of divorce, which he censures and outlaws, but by the destiny of death. . . . Let this suffice on our obligation not to subvert God's will but rather to revert to his original legislation. There is, moreover, another consideration which is in harmony with this. Rather, it is not another but the one which was responsible for the law from the beginning and which moved God to forbid divorce. This is the fact that a man "who puts away his wife, excepting for the cause of adultery, maketh her to commit adultery; and he that shall marry her that is put away by her husband, commits adultery," as is evident. A divorced woman is not able even to marry legitimately, and if she attempts some sort of union which is not marriage, will she not be guilty of the charge of adultery, seeing that adultery is any offense against marriage? It is God's judgment, one quite different from the judgment of men, that all intercourse with a second man, whether in marriage or promiscuously, is adultery without exception. Let us see what marriage is in the eyes of God and we shall then see what adultery is as well. A marriage is had when God joins two together in one flesh or, finding them already united, blesses their union. Adultery is committed when these two are separated in any way at all and there is commingling with some other—that is to say, alien—flesh. . . .

Therefore, he has abolished divorce, which did not exist from the beginning, in order to strengthen what was from the beginning—the inseparable union of two in one flesh. So true is it that divorce was not from the beginning, that among the Romans it is not until the six hundredth year after the foundation of the city that the first instance of such cruel conduct is recorded. They committed adultery, however,

although they did not divorce; we, on the contrary, do not even permit remarriage, though we allow divorce.<sup>11</sup>

The prohibition of remarriage was applied by Tertullian not only to cases of physical separation but also to instances of the death of one of the spouses. In this same work, *De Monogamia*, he attempts to convince the Catholics that they should be consistent in their defense of indissolubility of marriage, and forbid remarriage after the death of one of the spouses just as they prohibit remarriage after divorce. In both instances, Tertullian argues, adultery is committed.

It is unreasonable, therefore, for you to argue that whereas God does not wish a divorced woman to marry a second time if her husband is living, He consents to it if her husband is dead, since if she is not bound to a husband who is dead, no more is she bound to one who is living. You ask: When either divorce or death severs the marriage bond, a wife is free from all obligations, since the bond, the reason for the obligation, is no longer present; to whom, then would she be under obligation? In the eyes of God there is no difference between a marriage contracted by her after divorce and one contracted after the death of her husband. In neither case does she sin against him, but against herself. Every sin that a man doth is without the body, but he that committeth adultery sinneth against his own body.<sup>12</sup>

The Church has consistently rejected this Montanist teaching of Tertullian against remarriage after death. It can be said that Tertullian erred in regard to the indissolubility of marriage. But he erred not by defect but by excess.

#### *St. Cyprian*

St. Cyprian was a convert in his later years and became Bishop of Carthage about 248. On the question of divorce, he adopted as his own without any comment, the teaching of St. Paul as found in I Cor 7:10-11.

That a wife must not depart from her husband; or if she depart, she must remain unmarried. In the First Epistle of St.

<sup>11</sup> *De Monogamia*, c. 9.

<sup>12</sup> *De Monogamia*, c. 9.

Paul to the Corinthians: "But to them that are married I command, yet not I, but the Lord, that the wife should not be separated from her husband; but even if she do separate, that she remain unmarried or be reconciled to her husband; and that the husband should not put away his wife."<sup>13</sup>

#### *Lactantius*

In his *Divinae Institutiones*, written about 305/310, Lactantius makes a statement which seems to permit to the innocent husband in the case of the adultery of his wife the right to remarry. One cannot conclude with certainty that Lactantius does permit remarriage after divorce. First of all, the author is emphasizing the strictness of the Christian law against the laxity of the civil law. Secondly, he clearly points out that both husband and wife are equal as regards marriage. Why, then, does he seem to contradict himself in the next sentence and apparently allow only to the innocent husband the right to remarry? Since both are equal, he should also permit the innocent wife to remarry after divorcing her husband for adultery.

For such is not the case, as is the interpretation of public law, that she alone is the adulteress who has another man, while the male is free from the charge of adultery, though he have many mistresses. The divine law so joins the two with equal right into a marriage, which is two in one flesh, that whoever breaks apart the joining of the body is regarded as an adulterer. . . . But, however, lest anyone think that he is able to circumscribe the divine precepts, there are added these points, that all calumny and chance for fraud be removed; he is an adulterer who takes a wife who has been sent away by her husband; and so is he who has, aside from the crime of adultery, put a wife away that he may take another. God did not intend for the "one flesh" to be separated and torn apart.<sup>14</sup>

#### *St. Hilary of Poitiers*

Hilary of Poitiers (died c. 366) is another early writer considered by some as a defender of remarriage after divorce.<sup>15</sup> Most authors, however, do not admit this.<sup>16</sup> The text in question seems to show only

<sup>13</sup> *Testimonia Adversus Judaeos*, Lib. III, c. 90.

<sup>14</sup> *Divinae Institutiones*, Lib. VI, c. 23.

<sup>15</sup> Esmein, Genestal, Dauvillier, *op. cit.*, II, p. 56.

<sup>16</sup> J. B. M. Mayaud, *L'Indissolubilité du Mariage* (Strasbourg-Paris, 1952),

that a husband may leave an adulterous wife. There is no clear authority in it for the husband to remarry.

For while the law had granted the liberty of effecting divorce on the authority of a libellus, now the evangelical Faith has not only enjoined on the husband the desire for concord, but has judged him guilty of compelling his wife to adultery if she is married again to another man because of the necessity of his departure; it prescribes no other ground for desisting from wedded life than the defilement of a husband by the society of a polluted wife.<sup>17</sup>

*St. Ambrose*

St. Ambrose (c. 333-397) states very clearly that in marriage both the husband and wife are bound by the same laws of morality.

Do not be deceived by the laws of man. Every immorality is adultery and what is not licit for the wife is neither licit for the husband. The same chastity is due on the husband's part as on the wife's.<sup>18</sup>

In his *Expositio Evangelii Secundum Lucam*, he reminds the Christians of Our Lord's teaching: "He that puts away his wife causes her to commit adultery. Since it is not lawful for her while her husband is alive to enter another marriage, sexual desire will begin to rise in her."<sup>19</sup>

Ambrose leaves no doubt that marriage permits of no dissolution, neither for the husband nor for the wife.

You put away your wife as though you had a right to do so, and were open to no guilt. You think that you are free to do this because human law does not forbid it, but the divine law forbids it. You obey human rulers, but stand in fear of God. Heed the law of God to whom those who make the laws themselves owe obedience: "What God has joined together, let no man put asunder." But here not only is the divine command broken, but God's handiwork is wrecked. . . . Suppose the wife whom you have put away does not marry. This would irk you

pp. 76-77; George H. Joyce, *Christian Marriage* (London, 1948), pp. 313-314; Delpini, *op. cit.*, p. 65.

<sup>17</sup> *Commentarius in Mt. V*, 32, c. iv, 22.

<sup>18</sup> *De Abraham*, I, 25.

<sup>19</sup> *Expositio Evangelii Secundum Lucam*, VIII, 2.

as a man, since she would be remaining faithful to you an adulterer. Suppose she marries. It is you who would be guilty of the crime of her necessity; and what you consider to be a marriage, is really adultery. It makes no difference whether you commit that crime openly confessing it, or you do it as an adulterer disguised under the appearance of a husband. But perhaps someone may say: How is it that Moses permitted that a man could give a bill of divorce and dismiss his wife. The one who says this is Jewish; he is not a Christian. . . . Moses permitted this, but God did not command it; the law of God was from the beginning. What is the law of God? "A man will leave his father and mother and cling to his wife and they will be two in one flesh." Therefore, he who puts away his wife, cuts his own flesh in two, he divides his own body.<sup>20</sup>

In another passage from *De Abraham*, Ambrose is more precise about the prohibition against divorce for men.

No one is permitted to know any other woman except his wife. You have been given the right of marriage so that you do not fall into a snare and become involved with any other woman. "You are bound to your wife; do not seek to be freed," because you are not allowed, while your wife is alive, to marry another woman. Seek another wife while you have your own and you are guilty of the crime of adultery, which is all the more grave because you think that the law covers your sin with its authority.<sup>21</sup>

#### *Ambrosiaster*

Ambrosiaster is the unknown author of commentaries on the epistles of St. Paul, written about 370/75 and formerly attributed to St. Ambrose. He is the only Latin writer who clearly permits a husband to remarry after divorce. In his commentary on I Cor 7:10-11, he first of all denies to the wife any right to remarry if she has left her husband because of his adultery:

It is not permitted to a woman to remarry, if she have sent away her husband by reason of fornication or apostasy. . . because the lesser part has not quite the same rule to follow as the more dignified.

<sup>20</sup> *Expositio Evangelii Secundum Lucam*, VIII, 5.

<sup>21</sup> *De Abraham*, I, 7.

Then he turns his attention to the man and prescribes a different norm:

Let not the husband put away his wife. We must supply the words "save for the cause of fornication." And therefore the Apostle does not add, as in the case of the woman: "but if he depart let him remain unmarried," for a man may marry, if he has put away his offending wife; since the law does not bind him as it does the woman, for "the head of the woman is the man."<sup>22</sup>

There is no doubt of the meaning of these words. Certain hypotheses to explain them have been offered. It has been proposed, for example, that Ambrosiaster is speaking here only of the civil law. Such an opinion would be very difficult to defend. More acceptable is the suggestion that Ambrosiaster is indicating some local laxity of discipline. His statement on the inequality of the spouses is contrary to the teaching of most of the doctors of the Church. Certainly it cannot be maintained that his teaching on divorce is representative of any Christian tradition.

*St. Jerome*

St. Jerome's (340-420) position on indissolubility can be summarized as follows:

1. Moses commanded that a bill of divorce be given only because of the hardness of men's hearts and to avoid worse evils, such as the murder of the wife.<sup>23</sup>
2. According to the teaching of Christ, a wife cannot be dismissed except for adultery or the suspicion of adultery.<sup>24</sup>
3. A wife who has been dismissed cannot marry another man as long as her husband is alive. She has only two alternatives—either to remain unmarried or to be reconciled to her husband. Commenting on I Cor 7:10, Jerome writes:

For he teaches, according to the statement of Our Lord, that a wife is not to be sent away except for adultery; and the

<sup>22</sup> *Commentarium in I. Cor. VII, 10-11.*

<sup>23</sup> *In Evangelium Matthaei Commentarii, I, 5.*

<sup>24</sup> *In Evangelium Matthaei Commentarii, III, 19.*

wife who is dismissed cannot marry another while her husband still lives, or she must be reconciled to her husband.<sup>25</sup>

The alternative of being reconciled to her husband certainly indicates that an innocent husband cannot marry either. If he were allowed to marry in the case of the adultery of his wife, how could the adulterous wife ever be reconciled to him?

4. A wife may dismiss her husband because of his crimes but she cannot enter a second marriage.

As long as her husband lives, though he be an adulterer, though he be guilty of sodomy, though he have committed all kinds of vices and because of these crimes he be abandoned by his wife, he is still considered her husband and she is forbidden to take another husband. Nor does the Apostle say this of his own authority, but he follows the words of Christ who said in the Gospel: He who dismisses his wife except for adultery, makes her commit adultery. And he who takes a woman dismissed, is an adulterer; whether she has put away her husband or been put away by him, he is an adulterer who takes her.<sup>26</sup>

5. Husbands who have abandoned their adulterous wives because of adultery are forbidden to contract second marriages as long as their wives are still alive. This seems to be the reasonable interpretation of the text of St. Jerome in his *Commentary on St. Matthew*.

Because it could occur that a husband falsely accuse an innocent wife and by a second marriage inflict injury on the first marriage by his calumny, he is therefore commanded to dismiss his first wife so that he cannot have a second while his first wife still lives. . . . And since it can happen that in accordance with the same law the wife also could give a bill of divorce to her husband, the same caution is prescribed that she not take another husband.<sup>27</sup>

6. In the matter of dismissal and remarriage, there are equal rights and obligations for husband and wife.

The Lord commanded that a wife must not be put away except for adultery, and if put away, she is to remain un-

<sup>25</sup> *Adversus Iovinianum*, I, 10; *Epistula XLVIII*, 5.

<sup>26</sup> *Epistula LV*.

<sup>27</sup> *In Evangelium Matthaei Commentarii*, III, 19.

married. Whatever is commanded to men consequently affects women. . . . With us what is not licit for women, is equally not licit for men, and as both serve the same God both are bound by the same obligation.<sup>28</sup>

*St. Chromatius*

In a tract on the Sermon on the Mount, St. Chromatius (350-407) describes how Moses permitted divorce because of the hardness of men's hearts. "But now," he continues, "Our Lord and Savior, having abrogated that permission, rightfully restores the precepts (of marriage) to the primitive institution." The command of Christ is that:

the chaste bond of marriage must be preserved indissoluble, showing the law of marriage was in the beginning instituted by him. It was he who said: "What God has joined together, let no man put asunder."

It is unlawful to put away a wife "except for adultery." This demonstrates that:

he acts against the will of God who rashly presumes to separate by an illicit divorce a marriage united by God. Let them be aware, therefore, what a grave crime subject to damnation by God they commit who, for unbridled lust dismiss their wives (without cause of adultery) and seek to pass to another marriage.

While it is unlawful to put away a chaste and pure wife, it is permitted to dismiss an adulteress, because she has made herself unworthy of her husband's relationship by sinning against her own body and daring to violate the temple of God.<sup>29</sup>

In this passage, there is no mention that an innocent husband in the case of adultery on the part of his wife can remarry. It is rash for anyone to argue from this statement of Chromatius, that he permits divorce and remarriage for a husband who dismisses his wife because of unfaithfulness.

<sup>28</sup> *Epistula LXXVII.*

<sup>29</sup> *Tractatus X in cap. V S. Matthaei.*

*St. Augustine*

While practically all of the Fathers of the Church merely touched on the question of the indissolubility of marriage, St. Augustine (354-430) wrote extensively in order to explain the doctrine theologically. He devoted a whole work *De Adulterinis Coniugiis Ad Pollentium*, to the teaching on indissolubility. He admitted, however, that this question was one of the most obscure that one could find in the doctrine on marriage and that it was with great difficulty that he arrived at definitive conclusions on this subject.<sup>30</sup>

In agreement with the fairly common teaching of other Fathers, St. Augustine established the perfect equality of the rights and duties of both husband and wife regarding conjugal fidelity and, as a consequence, the gravity of adultery.

But if both husband and wife have the same nature, each of them commits adultery if one or the other enters into a second union, even though a union with an unfaithful spouse has been disrupted. The Apostle has indicated that there is between husband and wife a natural equity as regards this cause of immorality in that memorable passage which says: "The wife has not authority over her body but the husband;" and where he also adds: "The husband likewise has not authority over his body but the wife."<sup>31</sup>

In the clearest language possible, St. Augustine teaches that the marriage bond is indissoluble. There is no reason whatever that can justify either the husband or the wife to enter a second marriage after divorce. Both spouses are equal and both are bound by the same divine prohibition against remarriage.<sup>32</sup>

St. Augustine admits that there may be reason justifying temporary or even permanent separation. The bond of marriage, however, is not dissolved by this separation. The only thing that dissolves the marital bond is the death of one of the spouses. Augustine makes it a point to clarify what he means by death since there were some who claimed that adultery was the death of the soul and, therefore,

<sup>30</sup> *Retractationes*, II, 83.

<sup>31</sup> *De Adulterinis Coniugiis ad Pollentium*, I, 8.

<sup>32</sup> *De Sermone Domini in Monte*, I, 16; I, 48; *De Bono Coniugali*, 7, 7; *De Adulterinis Coniugiis*, I, 8.

it dissolved the marriage. For St. Augustine the only death that terminates the marital bond completely is physical death.<sup>33</sup>

In his own time, a certain Pollentius had proposed this very difficulty. According to Pollentius adultery caused the death of the soul of the guilty party. Since the guilty party must be regarded as dead, then the innocent party was free to remarry. As in all his arguments in defense of indissolubility, St. Augustine finds his proof in Scripture. He answers that if adultery is death and thereby dissolves the marriage, then the wife guilty of adultery is also free. Anyone marrying this woman, therefore, would not be committing adultery. If this be so, then how is this logical conclusion to be reconciled with the words of Luke: "Whoever marries a woman put away by her husband, commits adultery."<sup>34</sup>

St. Augustine considers at length the exceptive clause in Matthew 19:9. He makes it abundantly clear that the phrase, "except for adultery," is not to be construed as grounds for divorce in the strict sense with the right of the innocent party to remarry. For St. Augustine, there are no exceptions. Though adultery permits separation, it does not dissolve the union. If adultery has been committed by one of the spouses, neither the guilty nor the innocent party may remarry. In case of dismissal because of adultery, the parties must either be reconciled or remain continent. It makes no difference if the parties misunderstand the law and contract new unions which they call marriages. This new union would not be marriage but concubinage. Both spouses would still remain bound by the indissoluble union of their first marriage. Accordingly, if both spouses attempted a second marriage, the result would be four adulterers.<sup>35</sup>

In several passages, St. Augustine states that the clarification of the exceptive clause in Matthew is to be found in the other Evange-

<sup>33</sup> *De Sermone Domini in Monte*, I, 14; I, 16; *Sermo CCCXCII* (Ad Coniugatos), 2; *De Bono Coniugali*, 3, 3; 7, 15; 14; 15, 17; 24, 32; *De Adulterinis Coniugiis*, II, 5, 4; II, 9, 8; II, 13, 13; *De Genesi ad Litteram Imperfectus Liber*, IX, 7; *De Bono Viduitatis*, 4; *De Nuptiis et Concupiscentia*, I, 10; *Contra Iulianum*, V, 12; *De Diversis Quaestionibus*, LXXXIII, q. 83.

<sup>34</sup> *De Adulterinis Coniugiis*, II, 2-3; II, 5, 4.

<sup>35</sup> *De Sermone Domini in Monte*, I, 14; I, 16; I, 44; I, 48; *Sermo CCCXCII* (Ad Coniugatos), 2; *De Bono Coniugali*, 3, 3; 7, 7; *De Adulterinis Coniugiis*, I, 6; I, 8; I, 9; I, 11; I, 21; I, 22; I, 25; I, 28; II, 3-5; II, 9; II, 13.

lists. There cannot be contradiction in the teaching of Christ as given by the Evangelists. Both Luke and Mark make it clear that anyone and whoever dismisses his wife and marries another is guilty of adultery. The prohibition contained in the gospels of Luke and Mark is a general one, giving no conditions and allowing no exceptions.<sup>36</sup>

Having established that adultery is not grounds for the dissolution of marriage, Augustine adds that a Christian marriage cannot be terminated even by a clear case of sterility and a desire for children. Though marriage is contracted for the purpose of procreation, it cannot be dissolved for the purpose of procreation.<sup>37</sup> Not even a vow of chastity can dissolve this bond.<sup>38</sup>

Marriage is indissoluble for St. Augustine not by the civil law but by the law of the gospels.<sup>39</sup> Absolute indissolubility, however, is a quality only of Christian marriages.<sup>40</sup> He does not seem to consider indissolubility as part of the nature of marriage.<sup>41</sup> In fact, Augustine is almost astonished that the law of indissolubility is so severe and absolute in regard to Christian marriage.

St. Augustine realized without any doubts that Scripture imposed the law of indissolubility, but Scripture did not give adequate reasons for the absoluteness of the law. He had to search for a source or basis for the indissolubility. As a result of his study of St. Paul, he found an indisputable foundation in the "sacrament" itself. The solid basis for the indissolubility of marriage comes from the relation of the spouses to the union of Christ and his Church. The conjugal bond is an image of the union between Christ and his Church. The spouses are exhorted and even morally obliged to be the replica of the union of Christ with the Church. Just as Christ and his Church are inseparable, so also are a husband and wife in a Christian mar-

<sup>36</sup> *De Adulterinis Coniugiis*, I, 10-11.

<sup>37</sup> *De Bono Coniugali*, 7, 7; 15, 17; 24, 32.

<sup>38</sup> *De Nuptiis et Concupiscentia*, I, 11.

<sup>39</sup> *Sermo CCCXCII* (Ad Coniugatos), 2; *De Nuptiis et Concupiscentia*, I, 10.

<sup>40</sup> *De Nuptiis et Concupiscentia*, I, 10; *De Bono Coniugali*, 7, 7; 14; 15, 17; 24, 32; *De Adulterinis Coniugiis*, I, 6; I, 22.

<sup>41</sup> *De Bono Coniugali*, 7, 7; 8; 14; 15, 17; 24, 32; *De Adulterinis Coniugiis*, I, 6.

riage inseparable. In this symbol, Christian marriage finds a transcendent bond which transfigures the natural bond. Divorce in the strict sense becomes impossible. Although the spouses can be physically separated and even separated by their wills, they remain united in the City of God by a religious or sacramental bond. Infidelity would not terminate the sacramental bond anymore than apostasy or serious sin would remove the character received at baptism, or deprivation of a clerical office would remove the character of sacred ordination.<sup>42</sup>

#### Venerable Bede

Commenting on Mark 10, Venerable Bede (673-735) makes it quite clear that a man may never remarry while his first wife is still alive.

For a wife to be dismissed, there is only one carnal cause and that is fornication and there is only one spiritual cause and that is fear of God, as it is read that many have done for religious motives. But there is no cause allowed by the law of God whereby a man may marry another woman while the wife whom he has deserted is still alive.<sup>43</sup>

#### Hincmar of Rheims

Hincmar of Rheims (802-882) is not regarded as a Father of the Church in the accepted sense. Among the most illustrious of the Frankish Bishops, he upheld the absolute indissolubility of marriage once it was consummated. In two works, *De Divortio Lotharii et Tetbergae* and *De Nuptiis Stephani*, he established from Scripture and tradition that once lawfully contracted marriage could be terminated only by death.

In conjugal copula . . . that is, in the unity of the body, it is taught that there is a mystery of Christ and Church, and unless there intervene the death of the body, there can be no dissolution of the marriage, as evangelical and apostolic authority testifies as well as the chorus of all the Catholic doctors.<sup>44</sup>

<sup>42</sup> *De Nuptiis et Concupiscentia*, I, 11; I, 21; *Contra Iulianum*, V, 12; *De Bono Coniugali*, 7, 7; 24, 32; *De Genesi ad Litteram Imperfectus Liber*, IX, 7.

<sup>43</sup> *In S. Marcum* X.

<sup>44</sup> *De Nuptiis Stephani*.

B. *The Fathers of the East**St. Justin Martyr*

St. Justin (100/110-163/167) addressed his *First Apology for the Christians* (dated 148-161) to the Emperor Antoninus Pius, his sons, the Senate and the whole Roman people. In it he says that Our Lord taught precepts of a higher moral level than was customary among the Romans and among these was the one that "Whosoever shall marry a woman put away by another man, commits adultery." In this citation, Justin combines the second part of Mt 5:32 with Lk 16:18 and he does not mention the clause: "except for the motive of fornication." His words, therefore, allow no exceptions but declare that any woman put away by her husband would commit adultery if she were to marry another man. He then goes on to say:

So that both those who under the sanction of human law commit bigamy and those who look upon a woman to lust after her, are sinners according to our Teacher.<sup>45</sup>

In his second *Apologia* (dated also 148-161), St. Justin describes the case of a woman who, while a pagan, lived in debauchery with her husband. After her conversion, she reformed and tried also to reform her husband. When she could not and felt that she would be an accomplice of his evil, she gave him the *repudium* and separated. While she availed herself of a bill of divorce under the secular law, Justin's account does not say that she remarried. Justin, therefore, is erroneously cited as a defender of dissolubility on this account. Actually, in accordance with the present discipline of the Church, this woman could have remarried in virtue of the Pauline Privilege since her husband has remained a pagan. As with Hermas, this account shows also that the Christians of that period recognized for the woman the same right as the man to separate from a spouse for reasons of immorality.<sup>46</sup>

*Athenagoras*

Athenagoras was an Athenian philosopher and convert to Christianity. About 177, he addressed his *Legatio Pro Christianis* to the

<sup>45</sup> *Apologia Prima Pro Christianis*, 14, 15.

<sup>46</sup> *Apologia Secunda Pro Christianis*, cap. 2.

Emperors Marcus Aurelius Antoninus and Lucius Aurelius Commodus. In this work, Athenagoras is severely against any form of remarriage, even after the death of a spouse. He argues that Our Lord has expressly forbidden one class of second marriages, those following a divorce. He cites Mt 19:9, omitting the phrase, "except for adultery." He cites as the teaching of Christ: "For whosoever puts away his wife, says He, and marries another commits adultery."<sup>47</sup>

His opposition to second marriage after death are a prelude to the rigorist teaching of the Montanism of Tertullian. According to Athenagoras, Christians should either remain unmarried or be satisfied with a single marriage without any exception. In fact, he calls remarriage after death "adultery in disguise." The rigorist teaching of Athenagoras on digamy which later was uncompromisingly defended by Tertullian has been firmly rejected by the Church. They are mentioned as an indication of how difficult would have been the admission of divorce and remarriage in the Church of the first three centuries. In spite of the erroneous teaching on digamy, Athenagoras clearly prohibits the remarriage of a man who divorces his wife.

#### *Theophilus of Antioch*

Theophilus was bishop of Antioch from about 171-183. In the *Apology to Autolycus* (181/2), he refutes the charges of immorality alleged against the Christians and claims for them a moral standard above that of others. As an instance of this higher morality, he cites Mt 5:32. It is important to note that in citing this text, Theophilus inverts the two clauses of the sentence in order to eliminate any ambiguity.

He who marries, says (the Divine Word), a woman dismissed by her husband commits adultery, and he who dismisses his wife, except for fornication, causes her to commit adultery.<sup>48</sup>

In a later passage of the same work, Theophilus lists among the special characteristics of Christians the fact that "monogamy is observed." The Greek word, *monogamia*, in the early Church implies

<sup>47</sup> *Legatio Pro Christianis*, 33.

<sup>48</sup> *Ad Autolycum*, Lib. III, c. 13.

rejection of successive bigamy. A second marriage after the death of a spouse is consistently called *digamia*.<sup>49</sup>

#### *Clement of Alexandria*

Clement wrote the *Stromata* about 208-211. In the second book of this work, he uses the authority of Scripture to demonstrate that remarriage after divorce is forbidden. A spouse who contracts marriage while the other is still living is guilty of adultery. Not only is that man an adulterer who dismisses his wife but also the one who marries a woman dismissed by her husband. The law of the gospel, therefore, prevents the dissolution of a marriage, though it allows separation for adultery.

Now that the Scripture counsels marriage, and allows no release from the union, is expressly contained in the law, "You shall not put away your wife, except for the cause of fornication" (Mt 5:32; 19:9); and it regards as fornication the marriage of those separated while the other is alive . . . "He that takes a woman that has been put away," it is said, "commits adultery; and if one puts away his wife, he makes her an adulteress" (Mk 10:11), that is, compels her to commit adultery. And not only is he who puts her away guilty of this, but he who takes her, by giving to the woman the opportunity of sinning; for did he not take her, she would return to her husband.<sup>50</sup>

In the third book of the *Stromata*, Clement deals expressly with the case of whether or not the innocent husband who has dismissed his wife for adultery is permitted to remarry. In this passage, he cites the question put to Christ by the Pharisees if the innocent husband can remarry. Clement explains that he understands the reply of Christ in the same manner as the Apostles did, namely, that all remarriages are forbidden.<sup>51</sup>

#### *Origen*

Origen (185/6-254/5) commented extensively on the passage in Mt 19: 2-11. In his *In Matthaeum Commentarii*, written after 244,

<sup>49</sup> *Ad Autolyicum*, Lib. III, c. 15.

<sup>50</sup> *Stromata*, Lib. II, c. 23.

<sup>51</sup> *Stromata*, Lib. III, c. 6.

he testifies that certain bishops have permitted a woman to remarry even though her husband was still alive. He tries to excuse these bishops by saying that their concession was probably the lesser of two evils. At the same time, he does not hesitate to emphasize that this action is against the Scripture and against the primitive law.

But now contrary to what was written, some even of the rulers of the church have permitted a woman to marry, even when her husband was living, doing contrary to what was written, where it said, "A wife is bound for so long as her husband lives," and "Therefore a woman is called an adulteress if she be with another man while her husband lives." Yet they did not take the step altogether without reason. It would seem that they make this concession, contrary though it is to the law established at the creation and contained in Scripture, as the lesser of two evils.<sup>52</sup>

While Origen seems indulgent toward these Bishops who permitted the remarriage of a woman while her husband was still living, there is no doubt of his position on these marriages. To him they constitute concubinage and not a real marriage. He indicates this in the passage given above but is more explicit in the text following the one quoted.

But as a woman is an adulteress, even though she seem to be married to a man, while the former husband is still living, so also the man who seems to marry her who has been put away, does not so much marry her as commit adultery with her according to the declaration of our Saviour.<sup>53</sup>

Origen does not indicate if the husband who dismisses his wife for adultery can remarry. This has led some to think that Origen did not always uphold indissolubility. No positive argument, however, can be drawn from this silence.

#### *St. Epiphanius*

St. Epiphanius (c. 310/20-403), Bishop of Salamis in Cyprus, is often listed as one of the Fathers who explicitly permits remarriage after divorce. In his work, *Penarion*, he has been quoted as saying

<sup>52</sup> *In Matthaeum Commentarii*, 14, 23.

<sup>53</sup> *In Matthaeum Commentarii*, 14, 24.

that both a husband and wife equally can remarry after separation for whatever cause, fornication, or adultery, or some other evil deed. While reputable authors hold that Epiphanius clearly defends remarriage after divorce,<sup>54</sup> there are others who maintain that the text in question from *Panarion* has not been translated correctly.<sup>55</sup>

The doubt centers about the translation of the first section of the passage:

1. Translation favoring indissolubility:

But the man who cannot remain satisfied with his first wife, now dead from whom (it may be) he was separated on the score of fornication, or adultery, or some other disgraceful reason

2. Translation favoring remarriage:

But the man who cannot remain satisfied with his first wife, now dead or who was separated on the score of fornication, or adultery, or some other disgraceful reason

should he take a second wife, or should a woman in like case take a second husband, the Scripture does not blame him, nor does it declare him cut off from the Church or eternal life, but puts up with him because of his frailty: not so that he should have two wives at the same time, while the first wife is still alive; but that being cut off from the first, he should lawfully marry another if he chooses.<sup>56</sup>

In this passage St. Epiphanius was maintaining the lawfulness of second marriage even during the period of public penance against the Cathari who refused widows and widowers to marry again after the death of their first spouse. Because of the doubt about the exact wording of the passage in question and its correct translation, Epiphanius cannot be considered as one who certainly defended remarriage after divorce.

*St. Basil*

St. Basil the Great (330-379) was Bishop of Caesarea, the capital of Cappadocia. He has often been cited as tolerant of divorce and remarriage in the Church. However, his words must be carefully

<sup>54</sup> L. Fahner, *Geschichte der Ehescheidung in Kanonischen Recht* (Freiburg, 1903), p. 32; Esmein, Genestal, Dauvillier, *op. cit.*, II, p. 55.

<sup>55</sup> Joyce, *op. cit.*, pp. 328-329; Delpini, *op. cit.*, pp. 90-91.

<sup>56</sup> *Adversus Haereses Panarium*, 59, 4.

examined since they lend themselves to various interpretations. In none of his writings can it be established with certainty that he admits of remarriage after divorce.

One of his early writings is the *Ethica (Moralia)*. In rule 73, he states: "That a husband must not separate from his wife nor a wife from her husband unless one of them be taken in adultery or is a hindrance to the other in the devout service of God." In caput I of this rule, he then quotes from Scripture the texts of Mt 5:31-32; Lk 14:26, Mt 19:9; I Cor 7:10-11. After this he adds: "That the husband may not put away his wife and marry another, nor may she who is put away by her husband marry another."<sup>57</sup>

The Canons of St. Basil were a body of regulations which had formed the contents of several letters written to St. Amphilochius, Bishop of Iconium. It is these canons which have created the doubt about the position of St. Basil on indissolubility. In reading these passages, it is important to recall that St. Basil is not discussing the moral condition of persons involved in marital infidelity but rather the canonical penalties to be imposed. At the time, a person guilty of adultery had to expiate his or her transgression by fifteen years of penance while a person guilty of fornication was subject to seven years of penance.

With this in mind, we can better evaluate the following canons of St. Basil:

Canon 9: The declaration of the Lord concerning the prohibition to depart from marriage except for the reason of fornication, consistent with the sense, applies equally to men or to women. But such is not the practice. On the contrary, we find great strictness regarding women . . . . But custom orders adulterous men and those who are fornicators to be kept by their wives. Consequently, I do not know whether the woman living with a dismissed husband can be styled an adulteress. For the charge here affects her who dismissed her husband—according to the cause for which she withdrew from marriage. If it was when beaten she did not endure the blows, she should have

<sup>57</sup> *Ethica*, Regula 73, c. 1, c. 2.

been patient rather than have been separated from her husband, or, if she could not endure a loss of money, neither is that a reasonable cause. And if it was because he lived in fornication, we do not observe this practice in the Church; on the contrary, the wife is not commanded to depart even from the unbelieving husband but, because of the uncertainty of the consequences, to remain. . . . Therefore, she who left is an adulteress if she went to another man. But he who was abandoned is to be pardoned; she who dwells with such a one is not condemned. However, if the man separating from his wife went to another woman, then he himself is an adulterer, because he has made her commit adultery, and the woman living with him is an adulteress, because she has turned another's husband to herself.<sup>58</sup>

- Canon 31: She who, after her husband departed and disappeared, lived with another man before she was convinced of her husband's death is an adulteress.
- Canon 35: In the case of the man abandoned by his wife, it is necessary to consider the cause of the desertion; if she seem to have departed without reason, he is deserving of pardon, but she of punishment. And permission will be given to him to be in communion with the Church.
- Canon 36: Wives of soldiers who married when their husbands disappeared are subject to the same rule as those also who during their husbands' sojourn abroad would not await his return, except that here the matter has some excuse because the supposition of death is greater.
- Canon 46: She who unwittingly has married a man deserted at the time by his wife, then has been dismissed because his former wife returned to him, committed fornication but in ignorance. Therefore, she will not be debarred from marriage, but it is better if she remains unmarried.
- Canon 48: She who has been abandoned by her husband ought, in my opinion, to remain. If the Lord said, "If anyone puts away his wife, save on account

<sup>58</sup> *Epistola 188*, ad Amphilochem, c. 9.

of immorality, he causes her to commit adultery," because she is named an adulteress, he debars her from union with another. For how can the man be responsible as the cause of adultery, but the woman be blameless who was called an adulteress by the Lord because of her intercourse with another man?<sup>59</sup>

Canon 77: He who leaves the wife lawfully joined to him and unites himself with another, according to the sentence of the Lord lies under the charge of adultery.<sup>60</sup>

In short, in these canons, St. Basil is not speaking of the morality of the actions of husbands and wives as much as the canonical penalties to be inflicted. The fact that a transgressor of the morality of the marriage state is not excluded from communion with the Church is not to be construed as signifying that the action is permitted. Thus a man may enter a second marriage and not be excommunicated. This would not mean that his second marriage should be considered valid. The present legislation in the Code of Canon Law, for example, does not excommunicate a Catholic who attempts a second marriage after divorce but the marriage is still invalid.

*St. John Chrysostom*

St. John Chrysostom (347-407), Bishop of Constantinople, in many passages spoke on the indissolubility of marriage. A reading of all his statements on this subject can leave no one in doubt that he defends the absolute indissolubility of the marital bond.

In his work, *De Virginitate*, he writes that:

the husband, though he have a wife more intolerable than all besides, must be content with his bondage and cannot find any release or escape from this arbitrary sway. . . . What can be more bitter than this bondage?<sup>61</sup>

He emphasizes the permanence of the marriage bond in a *Homily on St. Matthew*:

<sup>59</sup> *Epistola* 199, ad Amphilochium, c. 31, c. 35, c. 36, c. 46, c. 48.

<sup>60</sup> *Epistola* 217, ad Amphilochium, c. 77.

<sup>61</sup> *De Virginitate*, 28.

But now both by the manner of the creation, and by the manner of legislation, he showed that one man must dwell with one woman continually, and never break off from her.<sup>62</sup>

Both the husband and wife are guilty of adultery if they form a union with another person.

Indeed, just as when a woman who is married to one man has intercourse with another she commits adultery in consequence, so if a man who is married to one woman takes another wife, he has committed adultery. Therefore, such a man will not be an heir to the kingdom, but will fall into hell. . . . If it is not permitted for a man who has divorced his own wife and separated from her to have relations with another woman—for this is adultery—how great a wrong does the man commit who brings in another woman while his wife is still living with him? . . . For Scripture says: . . . “If anyone puts away his wife, save on account of immorality, he causes her to commit adultery.” . . . Do you not know that those who, after the death of their wife, marry another, are censured by many for this, even though the procedure does not merit punishment? Yet you take another wife while yours is still living. What lust does this not betoken? Learn what is said of such men as these. “Their worm dieth not,” Scripture says, “and the fire is not quenched.”<sup>63</sup>

Again in *Homily 62 on St. Matthew*, Chrysostom states:

The man and the woman form only one body; therefore they are no longer two but only one flesh. As therefore it is a crime for man to mutilate his body, so also is it against the law for a man to separate from the wife united to him.<sup>64</sup>

In a long passage from the work, *De Libello Repudii*, St. John Chrysostom makes it evident that a wife is bound to her husband as long as he lives and nothing can break that bond, not his dismissal of her, not her voluntary departure, not even if she marries another. The bond subsists no matter what and the wife marrying another would be an adulteress.

Like the slave who flees his master's home, she carries her chain

<sup>62</sup> *In Matthaicum Homiliae*, 62.

<sup>63</sup> *In Ioannem Homiliae*, 63.

<sup>64</sup> *In Matthaicum Homiliae*, 62.

with her, that is, the law of God which binds her in place of the chain, which accuses her, which condemns her, and which condemns with her all those who take her, reminding them that the true husband still remains and, therefore, they are adulterers. This bond with the true husband is broken only by death. If it is possible for slaves to change their masters, it is not possible for a wife to change her husband. But the civil law permits divorce. God, however, will judge on the last day not according to the civil law but according to the law which He imposed.<sup>65</sup>

St. John Chrysostom condemns strongly the popular view that what was unlawful for the woman could be lawful for the man. Both are equal regarding marital obligations and transgressions.

Tell me not now of those laws from without which drag adulterous women into a court of justice and exact penalties from them, while they do not exact penalties in the case of men who, though having wives, corrupt themselves with harlots; Instead I will give you the law of God which is equally indignant with the woman and the man and calls the act adultery.<sup>66</sup>

In *De Libello Repudii* cited above, Chrysostom uses the expression: "The adulteress is the wife of no one." It can be seen from the context, that this is an oratorical expression describing an apparent or actual situation not a legal one. Some have used this expression to show that Chrysostom holds that adultery dissolves marriage completely.

*St. Asterius*

St. Asterius, Bishop of Amasea in Pontus (c. 400), warned Christians who were lax in the morals of marriage: "You must hold this as entirely certain that nothing except death and adultery can dissolve marriage."<sup>67</sup>

Since he places death and adultery on an equal plane, it would seem that adultery completely severs the marriage bond and thereby

<sup>65</sup> *De Libello Repudii*, 1.

<sup>66</sup> *Homilia V in Epistola I ad Thess.*, 4.

<sup>67</sup> *Homilia V in Mt.* XIX, 3.

permits remarriage. From his words, however, this opinion cannot be considered certain.

## II. ROMAN PONTIFFS

### *Pope St. Siricius*

Pope St. Siricius (384-399) replied to a question put to him by Himerius, Bishop of Arragona:

It is lawful for no one to take as his wife the spouse of another. But you have asked concerning a conjugal matter if a man may take in marriage a young girl already married to another. We forbid in every way possible that this be done because if that priest blessing given to a bride were violated by any transgression, the faithful would consider that act tantamount to sacrilege.<sup>68</sup>

### *Pope St. Innocent I*

In a letter to Victricius of Rouen, dated 404, Pope Innocent I (401-417) replied to a request for information concerning the practice and discipline of the Roman Church. Fourteen regulations were incorporated in the letter, which rules the Pope described as not new but taken from the tradition of the Apostles and Fathers. In the thirteenth of these regulations, Innocent I states that a marriage is dissolved for a wife only by the death of her husband. This rule had forbidden consecrated virgins who had married to be admitted to penance before the death of the husband. In defense of this position the Pope maintained:

For if this regulation is observed by everyone, namely, that whoever marries another man while her husband is still alive is to be regarded as an adulteress and permission to do penance is not given her unless one or the other of her husbands dies, how much more should she be obliged to this who had first united herself to an Immortal Spouse and later passed to human nuptials.<sup>69</sup>

Pope Innocent, in 405, sent a letter to Exsuperius, Bishop of Toulouse, in which letter he answered several questions concerning

<sup>68</sup> *Epistula ad Himerium*, c. 4.

<sup>69</sup> *Epistula II ad Victricium*, c. 13.

marriage. The first reply is interesting because it gives the Pontiff's position on the equality of husband and wife regarding adultery.

You wish to know why men who are communicants do not remain with their adulterous wives, while wives, on the other hand, seem to retain cohabitation with their adulterous husbands. On this matter the Christian religion condemns adultery equally in both sexes. It is difficult for wives to accuse their husbands of adultery and they have no recourse against hidden sins. Men, however, are accustomed to bring charges against their wives with greater frequency and because of this, communion is denied to the wives once their crime is exposed. But since the commission of the crime by the husbands is hidden, it would not be expedient to keep them away from communion on mere suspicion. I grant that if their crime were detected, they would certainly be punished. Though the causes be the same, while proof is lacking, the penalty for the crime cannot be carried out.<sup>70</sup>

In the same letter to Exsuperius, Pope Innocent answers a second question concerning what should be done with those who obtained divorces and remarried. The Pontiff is very clear in stating that both husbands and wives in such instances are adulterers and are to be excommunicated.

You have inquired also about those who, after obtaining a divorce, have married again. It is clearly evident that both parties are adulterers. Those men who, while the wife is still living, hasten to another union, though their marriage seem to have been dissolved, evidently cannot be other than adulterers. This is so true that those women to whom the men in question have united themselves have also committed adultery according to that which we read in the gospels: "Whosoever shall put away his wife and shall marry another, commits adultery and likewise he that marries her when she is put away, commits adultery." All such persons, therefore, are to be kept out of the communion of the faithful.<sup>71</sup>

Noteworthy is a letter of Pope Innocent I to a certain Probus. The date of the letter is not certain but it was obviously after 410 since the epistle mentions the Gothic invasion of Alaric which oc-

<sup>70</sup> *Ad Exsuperium Episcopum Tolosanum*, c. 4.

<sup>71</sup> *Ad Exsuperium Episcopum Tolosanum*, c. 6.

curred in that year. In the Gothic invasion, a certain Ursa was captured by the Goths. Her husband, Fortunius, then contracted another marriage with a woman named Restituta. The first wife, Ursa, was subsequently released and returned to Rome and presented her marriage problem before the Pope (*nos adiit*). The Pope makes a special point of declaring his legal competency to handle the case (*facultati legum intulit casum*). Innocent informs Probus of his decision in the matter.

Wherefore, we decide, in accordance with the prescriptions of the Catholic Faith, that that is the marriage which was established by divine grace in the first place and that the union with the second wife can in no way be legal since the first wife is still alive and was not dismissed by divorce.<sup>72</sup>

This last sentence of the letter to Probus has raised some difficulties. Some have interpreted it to mean that if a divorce on the grounds of adultery had been obtained, the man could have legally married. The sentence, first of all, must be interpreted in context with the other statements of the Pontiff in which he is very clear on the absolute indissolubility of marriage.

While various explanations have been given for the phrase in question,<sup>73</sup> the most acceptable seems to be that which claims that the Pope in judging this case was acting as legal arbitrator. Probus was the civil official to whom the Pontiff was communicating his decision. The Emperor Constantine I had permitted parties in a civil suit to bring their cases to a bishop for arbitration. The bishop's decision, in such cases, was final and civil officials were obliged to carry out the decision communicated to them. This privilege was confirmed in 398 by a constitution of Arcadius and Honorius and again in 408 by Honorius and Theodosius II.

In the case of Ursa, described above, Innocent I stated that in the eyes of the Church the first marriage was still intact because of her laws against second marriages and the first marriage was valid also in the eyes of the State because no divorce had been obtained. In

<sup>72</sup> *Epistula XXXVI ad Probum*.

<sup>73</sup> Delpini, *op. cit.*, p. 53.

other words, whether as ecclesiastical judge or as civil arbitrator, his decision was the same.<sup>74</sup>

The letter of Innocent I to Exsuperius, quoted above, was later cited in 754 by Pope Stephen III (IV) (768-772) as proof of his teaching that no husband may divorce his wife and contract a second marriage.<sup>75</sup>

*Pope St. Leo I*

Pope St. Leo I (440-461), in a letter to Nicetas of Aquileia, established rules similar to those of Innocent I in regard to marriages contracted by women whose husbands had been taken in captivity during the invasion of Italy by Attila in 452. The problem obviously arose when some of these husbands, who had been presumed dead, returned. Leo's decision was that the second marriages must be terminated. Since the wives acted on belief that their husbands were dead, they were not to be punished. If these women refused to return to their first husbands, then they were to be excommunicated.

Since we know that it is written that "a woman is joined to her husband by God," and since we also acknowledge the command that "What God has joined together let no man put asunder," it is necessary to hold that the bonds of legitimate marriage be re-integrated, and that, having removed the evils caused by the hostilities, to each be restored what he legitimately had and for each it be effectively carried out that he receive what is his own . . .

Therefore, if the men who have returned after a long captivity still retain the love for their wives and desire their wives to return to them in cohabitation, then that union which necessity caused must be terminated and judged inculpable, and restored must be the one which fidelity demands. But if some of the wives have been so captivated by the love of their second husbands that they prefer to remain with the latter rather than to go back to the legitimate union, then they are justly to be condemned, even to the point that they be excommunicated. They have chosen to contaminate with a crime a matter held excusable, thereby manifesting their predilection

<sup>74</sup> Joyce, *op. cit.*, p. 320.

<sup>75</sup> *Stephanus III ad monasterium Brittanacum*, c. 5.

for immorality which a just punishment can perhaps atone for.<sup>76</sup>

This decision of Pope Leo I was rendered at a later date in almost the same language by Pope Stephen II (III) (752-757).

*Pope St. Gregory I*

Novel XXII of the Justinian legislation of 536 had permitted a wife or husband to enter the religious life even without the consent of the other party. According to the civil law, this entrance dissolved the marriage and the other party could enter a second marriage.

In three letters, Pope Gregory I (590-604) upheld the indissolubility of marriage by opposing as contrary to the law of God even this ground for divorce. In his communications, the Pope states that the only grounds for separation is adultery but he says nothing about the right to remarriage even where adultery has occurred. The teaching of the Pontiff in his three epistles is contained in that to Theoktist.

For if they say that marriage can be dissolved on the grounds of religion, let it be known that while the human law has conceded this, the divine law forbids it. For Truth says: "What God has joined together, let man not separate." It also said: "It is not lawful to dismiss a wife except for fornication." Who then is to contradict this heavenly legislator? We know that is written: "They will be two in one flesh." If, therefore, the husband and wife are one flesh, and on the grounds of religion a man dismisses his wife, or a wife dismisses her husband while he remains in the world or even goes over to matters immoral, of what value is that conversion in which part of one and the same flesh passes on to a life of chastity while the other part remains in a life of pollution.<sup>77</sup>

*Pope St. Gregory II*

Pope St. Gregory II (715-731) has been accused of being the only Pope who permitted remarriage, thereby breaking the constant tradition of Pontiffs in support of indissolubility. The accusation stems

<sup>76</sup> *Epistola CLIX ad Nicetam Episcopum Aquileiensem.*

<sup>77</sup> *Epistolarum*, Lib. XI, 45, Ad Theotistam Patriciam. Cf. also: *Epistolarum*, lib. XI, 50, Ad Adrianum Notarium; lib. VI, 48, Ad Urbicum.

from a letter that Gregory wrote to St. Boniface in 726. Gratian, in his Decree, was greatly disturbed by the letter and commented: "The passage of Gregory must be regarded as completely contrary to the sacred canons and even to evangelical and apostolic doctrine."<sup>78</sup>

Before citing the letter in question, it would be helpful in understanding the position of Gregory, to mention a prior letter of his written in 716 and addressed to the legates whom he was sending to Bavaria. In his instruction, the Pope spoke of married people:

The Apostle spoke of this: "You are bound to a wife. Seek not to be loosed." In other words, as long as your wife lives, do not seek to pass over to carnal relations with another woman. For the same Doctor of the Gentiles instructs us: "He who commits fornication, sins against his own body," that is, against his own wife with whom he forms one body. By deceiving his wife through immoral embraces, he subjects himself to the guilt of sin.<sup>79</sup>

The letter to Boniface which, according to some, seems to permit remarriage, was in answer to a question from Boniface as to what should be done in the case of a wife overcome by an illness and who cannot have sexual intercourse.

An examination of the words does not reveal a certain argument in favor of remarriage after the dissolution of a ratified, consummated marriage. There is no indication in the epistle whether the infirmity of the wife occurred prior to or after the marriage. If it occurred prior to the marriage, then there seems to have been grounds for an annulment since the infirmity was such that the wife was unable to have sexual relations. Even if it occurred after the marriage, there is no indication whether the illness afflicted the wife prior to or after consummation. It can be argued, therefore, that it came upon her before consummation, in which case the marriage could be legitimately dissolved.

It is worthwhile to recall that German customs often tolerated the marriages of young people, even of children. Therefore, it could have happened that many such marriages were not consummated for long periods of time until the spouses were old enough to cohabit.

<sup>78</sup> C. 18, c. XXIII, q. 7.

<sup>79</sup> *Capitulare Gregorii Papae II. Addit. ad Legatos Biauwariorum*, c. 6.

If such were the case in this instance, then it could easily have happened that an infirmity incapacitating the wife intervened between the marriage and the opportunity for consummation.

Finally, the passage does not indicate the nature of the infirmity. Infirmity is a general term and can run the gamut of all the conditions in a woman which prevent consummation of a marriage. In my own experience of ten years in the tribunal, I have been acquainted with dozens upon dozens of cases of non-consummation in which the infirmity of the woman prevented sexual intercourse. Practically all cases of non-consummation are the result of an infirmity. The basis for the inability to have relations may be a vaginal infection, or frigidity, or tension, or fear, or a psychological block, all of which can be termed an infirmity. Significantly, in most of the cases, the party feels that the condition appeared only after the marriage even though generally there was an interval of but a few hours between the ceremony and the opportunity for consummation.

With these observations in mind, perhaps we can read the passage of Pope Gregory in a different light than has been interpreted by some.

You have asked what is a husband to do if his wife, having been afflicted with an infirmity, cannot have sexual intercourse with the husband. It would be good if he could remain as he is and practice abstinence. But since this requires great virtue, if he cannot live chastely, it is better if he marry. Let him, however, not stop supporting her since she is kept from married life by her infirmity and not by a detestable fault.<sup>80</sup>

*Pope St. Zacharias*

At a time when the question of divorce was being greatly argued in the Frankish realm, Pope Zacharias (741-752) wrote a letter addressed to Pepin, the Mayor of the Palace, the Bishops, Abbots, and other notables of the Franks. To explain the Church's doctrine on the matter of divorce and remarriage, the Pope simply quoted the 47th (48th) canon of the *Apostolic Canons* and canon 8 of the XI Council of Carthage listed as canon 102 of *Codex Canonum Ecclesiae Africanae*.

<sup>80</sup> *Gregorius II Papa ad varias Bonifatii consultationes. Epistula III.*

- C.7: Concerning a layman ejecting his wife, taken from the canon of the holy apostles, chapter 48: If any layman ejecting his own wife, marry another woman or one dismissed by another husband, he is to be deprived of communion.
- C. 12: Concerning those who dismiss their wives or husbands that they remain single, taken from the above-mentioned African Council, in chapter 69: We decree that, according to the evangelical and apostolic discipline, neither the husband dismissed by his wife, nor the wife dismissed by her husband, may marry another; but they are to remain single or be reconciled to each other. If they disobey this law, they are to do penance.<sup>81</sup>

Pope Zacharias was a Calabrian Greek and probably a deacon of the Roman Church. If he was acquainted with the practice of the Eastern Church on divorce and remarriage, then his strong position on the indissolubility of marriage becomes all the more significant.

*Pope St. Nicholas I*

Pope St. Nicholas I (858-867) manifested his defense of the indissolubility of marriage in the strong position he assumed against the divorce of King Lothaire of Lorraine from his legitimate wife, Teutberga. He also upheld indissolubility in various replies.

*Epistola ad Adonem:*

Nor can we consent that those who have been united in the lawful bond of marriage and have been one body for some period of time can obtain a divorce.<sup>82</sup>

*Epistola ad Episcopos Synodi Silvani:*

Blessed Gregory, writing to Theoktist the Patrician, among other things said: 'For if they say that for the cause of religion marriages ought to be dissolved, let it be known that, although this is granted by human law the divine law forbids it.'<sup>83</sup>

*Pope John VIII*

Ethelred, Archbishop of Canterbury, had informed Pope John VIII (872-882) of the practice of divorce in England. In 877 Pope

<sup>81</sup> *Zachariae Papae Epistola VII ad Pipinum Majorem Domus itemque ad episcopos, abbates et proceres Francorum*, c. 7; c. 12.

<sup>82</sup> *Epistola ad Adonem*.

<sup>83</sup> *Epistola ad Episcopos Synodi Silvan.*

John wrote to the Archbishop clearly condemning the practice of divorce and remarriage.

To those men who, as you say, abandon their wives contrary to the precept of the Lord, we command that a husband shall not leave his wife or a wife leave her husband except for fornication. If either one has left for this reason, each shall remain single or be reconciled to each other, for the Lord says: "What God has joined together, let not man put asunder." Therefore, as a husband cannot abandon his first wife with whom he was united in legitimate marriage, so also he is not permitted for any reason whatsoever to take another wife while his first wife is still living. If he should do this and does not amend his ways, then he is to be excluded from the community of the Church.<sup>84</sup>

### III. COUNCILS

#### *Council of Elvira*

The Council of Elvira was held in the autumn of 305 or 306 in the ancient city of Elvira in Granada, Spain. It was attended by nineteen bishops of Spain under the presidency of Hosius of Cordoba and is considered a Plenary Council. Two canons of this Council deal with the indissolubility of Christian marriages and are directed towards women.

Canon 8: Also women who, without cause, leave their husbands and marry again, are not to be received into communion even at the last.

Canon 9: Also a baptized woman who leaves a baptized husband on the ground of his adultery and marries again, is to be prohibited from marrying; if she marry, she is not to be received into communion until the husband whom she has left be departed out of this life, unless perchance extremity of sickness demand it be given her.<sup>85</sup>

While these two canons are concerned specifically with women, it cannot be argued that men are excused from the prohibitions of remarriage after divorce. The action of the Council was not a reply

<sup>84</sup> PL. 126, 746.

<sup>85</sup> *Concilium Eliberitanum*, c. 8; c. 9.

to abuses permitting remarriages. It was rather a reaction to a law passed by Diocletian in 293 permitting women to dissolve their marriages by merely writing a bill of divorce. It was to counteract this civil legislation that the Council of Elvira directed these canons specifically against women.

*Council of Arles*

In 314 there was convened in Arles, France, a Council to decide the Donatist controversy. The tenth canon of this Council was concerned with the question of the remarriage of young men whose wives were guilty of adultery. This canon reads:

Concerning those young men who are Christians who apprehend their wives in adultery and are forbidden to marry, we decree that, as far as it is possible, counsel be given them not to take other wives while their own, though guilty of adultery, are still living.<sup>86</sup>

This canon obviously can be interpreted in various ways. It seems to give merely a counsel against remarriage without an absolute prohibition. However, if it permits remarriage, it is difficult to explain the phrase stating that these young men "are forbidden to marry." Several authors give the opinion that this canon does prohibit remarriage even in cases of adultery but exhorts the clergy to counsel the young men not to take advantage of the existing civil law permitting them to enter a second marriage.

In the *Codex Lucensis*, containing the canons of the Council of Arles, six additional canons are given. According to Mansi, these additional canons belong to another Council of Arles. There is no doubt of the antiquity of these additional canons though no date for them has been suggested. The first of these six additional canons is listed as the 24th canon of the Council of Arles. It covers the same ground as the 10th canon quoted above but adds a penalty.

We decree that, in so far as it is possible, a man who has dismissed his wife be forbidden as something unlawful to marry another woman while his first wife is still alive. But whoever should do this shall be cut off from Catholic communion.<sup>87</sup>

<sup>86</sup> *Concilium Aralatense* I, c. 10.

<sup>87</sup> *Concilium Aralatense* I, c. 24.

It is significant in this canon that the person excommunicated is the husband and, in fact, the innocent husband.

#### *Eleventh Council of Carthage*

In 407, the Bishops of Western Africa convened the Eleventh Council of Carthage. In the canon on the separation of spouses, they state clearly the principle of indissolubility and they make no distinction between husband and wife. This canon 8 of the Council is listed as canon 102 in the *Codex Canonum Ecclesiae Africanae*.

We decree that, according to evangelical and apostolical discipline, neither the husband dismissed by his wife nor the wife dismissed by her husband may marry another, but each must either remain single or be reconciled to the other. If they disobey this law, then they must do penance. Application must be made for the promulgation of an imperial law on this matter.<sup>88</sup>

Mansi states that this same canon was promulgated by the Bishops of Numidia at the Council of Milevis in 416.<sup>89</sup>

#### *Council of Angers*

On the occasion of the consecration of Talasius as Bishop, the Council of Angers was held in 453. Canon 6 stated: "They also who under the name of marriage abuse other men's wives while the husbands are still living are to be considered excluded from communion."<sup>90</sup>

The secular law reputed such unions as marriages but the Church refused to dignify them with the name of marriage and excommunicated the offenders.

#### *First Synod of St. Patrick*

Dated about 456, the legislation of this Synod makes two references to indissolubility.

Canon 19: A Christian woman, having accepted a man in honorable marriage and afterwards departed

<sup>88</sup> *Concilium Cathaginense* XI, c. 8. or *Codex Canonum Ecclesiae Africanae*, c. 102.

<sup>89</sup> *Mansi*, T. IV, col. 331.

<sup>90</sup> *Concilium Andegavense*, c. 6.

from her first husband and joined herself in adultery, for having done so must be excommunicated.

Canon 22: If anyone gives his daughter to a man in honorable marriage and she fall in love with another man, and he give consent to his daughter and accept the dowry, both are to be excluded from the Church.<sup>91</sup>

#### *Second Synod of St. Patrick*

The so-called Second Synod of St. Patrick does not seem to be a true synod but rather a collection of replies to various questions. The date of these canons is uncertain. Bruns states that practically all of the canons are very corrupt and that they can be corrected only by the help of a better manuscript.<sup>92</sup> Canons 26 and 28 admit remarriage for the innocent husband in the case of the divorce of his wife because of adultery.

Canon 26: Also it is not lawful for a man to dismiss his wife except for fornication, as if he should say that for that cause it is permitted. Accordingly if a man marry a second wife as after the death of the first wife, they should not forbid it.

Canon 28: In like manner should first vows and first marriages be observed so that second ones do not void the first except in adultery.<sup>93</sup>

#### *Council of Vannes*

In 465, the Council of Vannes was held under the presidency of St. Perpetuus of Tours on the occasion of the consecration of St. Padarn who was appointed to the See of Vannes. In the second canon, the Council deals with men who have abandoned their wives without proof of adultery and remarried.

Those also who have abandoned their wives, except for the cause of fornication, as the Gospel says, without proof of adultery, and have married others, we decree are to be ex-

<sup>91</sup> *Synodus Sancti Patricii*, c. 19; c. 22.

<sup>92</sup> Herm. Theod. Bruns, *Canones Apostolorum et Conciliorum* (Berolini, 1839), II, p. 305.

<sup>93</sup> *Synodus Alia Sancti Patricii*, c. 26; c. 28.

communicated, lest the sins overlooked through our indulgence entice others to the license of error.<sup>94</sup>

The wording of this canon is awkward and leaves it open to several interpretations. Since it does not seem to excommunicate the husband who has dismissed his wife for adultery and remarries, it cannot be argued that such action was permissible. The canon seems to emphasize the need for proof of adultery before a man can dismiss his wife. Further, it is condemning those who avail themselves of the lax Frankish secular laws which permitted divorce and remarriage.

#### *The Council of Agde*

The Council of Agde in Narbonne was held in 506. Canon 25 of the Council is alluded to by some as permitting in certain circumstances the right to divorce and remarriage. The emphasis, however, seems to be more on the required proof for separation. The Council decrees that a man is not to separate from his wife without the consent of the bishop and without the condemnation of the wife by the civil court on the charge made.

Inasmuch as they dishonor both their faith and their marriage, those laymen are to be excluded from the communion of the Church and from the holy community of the people who dismiss or have already dismissed their conjugal fellowship because of a grave fault and who do not offer any satisfactory grounds for the severance, and thereby forsake their marriage for no other reason than that they may presume to form relationships that are unlawful or with other men's wives, if they put away their wives before they have declared the cause of the separation in the presence of the bishop of the province, and before their wives have been condemned by the court (civil).<sup>95</sup>

There seems to be no indication in this canon that remarriage would be condoned.

#### *Second Council of Orleans*

The Second Council of Orleans, held in 533, promulgated a

<sup>94</sup> *Concilium Veneticum*, c. 2.

<sup>95</sup> *Concilium Agathense*, c. 25.

canon against divorce for subsequent infirmity, probably meaning insanity.

Contracted marriages are not to be dissolved because of a subsequent infirmity, notwithstanding any will to the contrary. If anyone shall do this, let them know that they are deprived of communion.<sup>96</sup>

*Council of Hertford*

Theodore of Canterbury, who in his Penitentials permitted divorce and remarriage, presided over the Council of Hertford in 673, a Council which took a firm stand in favor of indissolubility. This council decreed:

Only a legitimate marriage is permitted to anyone; let no one commit incest. No man may abandon his wife except, as the holy Gospel teaches, for the cause of fornication. But if anyone have expelled his wife united to him in legitimate marriage, if he will rightly to be a Christian, he is not to unite himself with another woman but let him remain single or be reconciled to his own wife.<sup>97</sup>

*Twelfth Council of Toledo*

Held under the presidency of Archbishop Julian, Metropolitan of Toledo, in 681, the Twelfth Council of Toledo legislated that only adultery permitted separation. No permission for remarriage by the innocent husband is indicated. It also penalized a man for separating from his wife for any reason other than adultery.

It is the command of the Lord that a wife must not be dismissed by her husband except for the cause of fornication. Therefore whoever goes beyond the guilt of the crime mentioned above and leaves his wife for any reason whatsoever . . . is to be deprived of ecclesiastical communion and excluded from the community of Christians until such time that he returns to the society of his abandoned wife. . .<sup>98</sup>

*Council of Soissons*

With the rise to power in France of Pepin the Short, an attempt was made at the reformation of morals in France. A beginning

<sup>96</sup> *Concilium Aurelianense II*, c. 11.

<sup>97</sup> *Concilium Herudjordense*, c. 10.

<sup>98</sup> *Concilium Toletanum XII*, c. 8.

was made with the Council of Soissons in 744 attended by twenty-three bishops. It was decreed in this Council that a wife may not remarry during the lifetime of her husband.

Likewise we decree that no layman may have as a wife a woman consecrated to God, nor a relative, nor during the lifetime of the husband shall another man take his wife, nor shall a wife during the lifetime of her husband take another man because a husband must not dismiss his wife except for the ground of her being apprehended in adultery.<sup>99</sup>

Apparently the canon did not command obedience since three years later in 747 Pepin referred questions on the matter to Pope Zacharias. The Pope replied that there was to be no remarriage in any case of separation.

#### *Council of Verberies*

The Council of Verberies in 753 was composed of both laymen and clergy. It did not have the character of an ecclesiastical council in the proper sense of the term. Its decision had force as royal capitularies, though they were later incorporated in many collections of canons. The canons permitted the right of divorce and remarriage in several circumstances.<sup>100</sup>

1. It was decreed that in certain cases of adulterous incest, conjugal life must cease. In such cases, the innocent party was allowed to remarry but the guilty party was prevented from ever contracting a second marriage (canon 2-with step-daughter; canon 10-with step-mother; canon 11-with sister-in-law; canon 18-with wife's cousin).

2. If a wife conspires against her husband's life, he may divorce her and remarry but she is forbidden to marry again (canon 5).

3. If a man left his country because of necessity, but whose wife refused to follow him, and if he cannot abstain may take another wife provided he undergoes penance (canon 9).

4. A husband cannot remarry if he has permitted his wife to enter a convent (canon 21).

<sup>99</sup> *Concilium Suessionense*, c. 9.

<sup>100</sup> *Pippini Regis Capitulare Vermeriense*, cc. 2, 5, 9, 10, 11, 18, 21.

*Council of Compiègne*

Shortly after the Council of Verberies, the Council of Compiègne was convened in 756. Present at the Council were two Roman legates, George, bishop of Ostia, and John the Sacellarius. Also present was an ambassador from the Emperor Constantine V Copronymus.

Separation is decreed of obligation if the wife commits incest with her brother-in-law; in which case the husband has the right to remarry (canon 11). Separation was also obligatory if the husband contracted spiritual affinity with his wife by acting as god-parent to a step-child at confirmation. In this case, however, neither the husband nor the wife could remarry (canon 15).

Contrary to the Council of Verberies, remarriage is permitted if one partner permits the other to enter the religious life (canon 16). If one of the spouses contracts leprosy, the marriage may be dissolved by mutual consent and the party free from the disease may marry again (canon 19). Also contrary to the Council of Verberies, compulsory flight from one's country does not give the right to remarriage (canon 21).

Canon 9 contains a strange ruling. A vassal follows his lord to a new fief. Upon the lord's death a new lord gives the vassal a wife. After a time, the vassal returns to the family of his first lord and marries another wife on their estates. The canon decrees that the second marriage and not the first must remain intact (canon 9).<sup>101</sup>

The Councils of Verberies and Compiègne continued what the Penitentials of Theodore had begun. The Frankish Church accepted their decrees as authoritative. Some of the canons became incorporated in collections of Benedict Levita, Regino of Prum and Burchard of Worms. Divorce seems to have acquired ecclesiastical sanction. The Church had compromised with the Frankish secular law and customs.

*Synod of Aachen*

Canon 43 of the Synod of Aachen held in the palace of Charlemagne in 789 cited canon 102 of the African Canons.

<sup>101</sup> *Pippini Regis Capitulare Compendiense*, cc. 9, 11, 15, 16, 19, 21.

Likewise (it is decreed) in the same (African Council) that neither a wife dismissed by her husband may take another husband while her own husband is alive, nor can a husband take another woman while his first wife is still living.<sup>102</sup>

#### *Council of Friuli*

One of the most explicit and clearest statements on the indissolubility of marriage is contained in the 10th canon of the Council of Friuli held in 791.

Likewise it is decreed that, even though the bond of marriage be dissolved because of fornication, it is not permitted to the husband to take another wife as long as his adulterous wife still lives, despite the fact that she is an adulteress. But the adulteress, who must undergo the severest penalties and the pain of penance, cannot take another husband, whether her husband, whom she was not ashamed of betraying, be living or dead. . . . Hence it is clearly understood that as long as the adulterous wife lives, the husband cannot lawfully or without impunity contract a second marriage.<sup>103</sup>

This particular canon not only clearly declares the indissolubility of marriage but deals also with the difficult passage of Mt 19:9 containing the exceptive clause. The canon admits it as a difficult passage and explains that the works of St. Jerome have been examined for the proper meaning of the text. The canon states that as a result of the research "it became immediately evident that the clause relates solely to the permission for separation."

#### *Council of Rome*

In 826, the Council of Rome was held under Pope Eugenius II. Canon 36 of this Council was awkwardly worded and admittedly is open to doubtful interpretation. The same canon was incorporated in a later Roman Council held in 853 under Leo IV. The canon decreed:

It is not lawful for a man to leave his wife except for the cause of fornication, and then to unite with another. In other

<sup>102</sup> *Karoli Magni Capitularia*. Capitulare Ecclesiasticum, c. 43.

<sup>103</sup> *Concilium Forojuliense*, c. 10.

instances it is expedient for the offender to be reunited in his former marriage.<sup>104</sup>

It is difficult to argue from this canon that a man would be permitted to remarry in the case that his wife was guilty of adultery. Nothing is said about remarriage. The emphasis seems to be on the reasons for separation. It seems to be the indication of the decree that a man should be reconciled with his wife if he left her for grounds other than adultery while in cases of adultery he need not be reconciled.

#### *Sixth Council of Paris*

By the direction of the Emperor Lewis the Pious, a reform council was held at Paris in 829. It decreed the indissolubility of marriage in no uncertain terms for husbands.

It is necessary to know that marriage was made by God . . . .  
As the Lord said, except for the cause of adultery, a man ought not to put away his wife but rather put up with her. And those men who marry others after they have put away their wives because of adultery are by the Lord's sentence to be declared as adulterers.<sup>105</sup>

#### *Synod of Worms*

Among the decrees which "are to be announced to the people," the Synod of Worms in 829 repeated verbatim the canon of the Council of Paris of the same year.

It is necessary to know that marriage was made by God . . . .  
As the Lord said, except for the cause of adultery, a man ought not to put away his wife but rather put up with her. and those men who marry another after they have put away their wives because of adultery are by the Lord's sentence to be declared adulterers.<sup>106</sup>

#### *Council of Nantes*

Mansi gives 658 as the date of the Council of Nantes. There is sufficient evidence, however, that the canons actually date from the

<sup>104</sup> *Synodus Romana*, c. 36.

<sup>105</sup> *Concilium Parisiense VI*, Lib. III, c. 2.

<sup>106</sup> *Hludowici et Hlotharii Capitularia. Constitutiones Wormatienses.*

ninth century. The 12th canon of this Council states that either spouse may separate because of the adultery of the other but neither can ever marry again during the other's lifetime.

If a man's wife shall have committed adultery and this has been discovered and made public by the man, let him dismiss his wife, if he wants to, because of the fornication. The wife, however, is to do public penance for seven years. But the husband cannot in any way marry another while his wife is alive. But he has permission to be reconciled with his adulterous wife if he so chooses. In this case, however, he must do penance with her and after penance has been completed, after seven years both may go to communion. The same procedure is to be followed by the wife if her husband committed adultery against her.<sup>107</sup>

#### *Council of Tribur*

The Council of Tribur near Mainz, Germany, held in 895, decreed:

A husband may in no way marry another woman as long as his (adulterous) wife lives.<sup>108</sup>

#### *Council of Bourges*

The Council of Bourges was held in 1031. Canon 16 of this Council legislated:

that those who dismiss their legitimate wives without the fault of fornication may not accept others while their first wives are living, nor are wives to take other husbands, but let them be reconciled to each other.<sup>109</sup>

While this canon does not speak of remarriage in the case of adultery, it is obvious that the wording leaves room for various interpretations.

#### *Council of Rheims*

In 1049, Pope Leo IX personally traveled to France where he held the Council of Rheims in an attempt at the reformation of the

<sup>107</sup> *Concilium Namnatense*, c. 12.

<sup>108</sup> *Concilium Triburense*, c. 46.

<sup>109</sup> *Concilium Bituricense*, c. 16.

French Church. The twelfth canon of the Council made no exception when it decreed that "no man may desert his legitimate wife to marry another."<sup>110</sup>

*Council of Tours*

Among the various synods held by the Papal Legate, Cardinal Stephen, to correct abuses in the French Church was the Council of Tours convoked in 1061. Canon 9 of this Council ruled:

That any man who dismisses his wife without the judgment of the bishop and has married another or will marry another, let him realize that, until he has given himself over to penance effectively, he is to be excluded and withdrawn from the body and blood of Our Lord Jesus and from the precincts of the Church and to be regarded by all as a putrid member cut off from the sound body by the sword of the spirit.<sup>111</sup>

IV. COLLECTIONS

*Apostolic Canons*

Dated commonly in the year 400, the Apostolic Canons received considerable authority in the Christian Church. Canon 47 (48) states:

If any layman put away his wife and take another, or if anyone take a woman divorced by another man, let him be excommunicated.<sup>112</sup>

*Irish Collection*

The Irish Collection is a collection of canons made about the year 700 in Ireland. It had considerable influence on later collections. On the indissolubility of marriage, it cites St. Augustine:

Thus according to the law and the gospel, a wife is to be taken in marriage lawfully by public nuptials, and all the days of her life, unless by mutual consent and for the sake of devoting herself to God, she is never to be separated by her husband except for the cause of fornication. But if she did

<sup>110</sup> *Concilium Remense*, c. 12.

<sup>111</sup> *Concilium Turonense*, c. 9.

<sup>112</sup> *Canones Apostolorum*, c. 47.

commit adultery, she ought to be put away, but while she still lives, he cannot marry another woman, for adulterers will not possess the kingdom of God.<sup>113</sup>

*Benedict the Levite*

A collection of canons was formulated in 847-850 and bears the name of Benedict the Levite or Deacon of the Church of Mainz. Several of the canons pertain to the question of indissolubility which he strongly upholds.

Lib. III, 73: That while the husband or wife are still alive, neither of them may be united to another in marriage.

Lib. III, 179: If the wife have committed adultery, she is to be dismissed if the husband wants it, but during her lifetime, he may not marry another woman because adulterers will not possess the kingdom of God and her penitence is to be accepted.<sup>114</sup>

To discourage the dismissal of wives even on the grounds of adultery, Benedict the Levite alters a canon of the Council of Paris of 829. While the Council of Paris permitted separation for adultery, in this collection the canon quoted reads:

Lib. II, 235: That according to the Lord's statement, for the cause of adultery a wife ought not to be put away but rather put up with. And those men who marry others after they have put away their wives because of adultery are by the Lord's sentence to be declared adulterers.<sup>115</sup>

#### V. PENITENTIAL BOOKS

Penitential Books made their first appearance about the sixth century in Celtic Christianity from where they spread to the Anglo-Saxon Church and to the continent. They are the works of private authors and had as their purpose to serve as a sort of *vademecum* for confessors. The books indicate specific penances for individual

<sup>113</sup> *Canones Hibernenses*, Lib. 46, c. 2.

<sup>114</sup> *Collectio Capitularium Benedicti Diaconi*, Lib. III, 73; 179.

<sup>115</sup> *Collectio Capitularium Benedicti Diaconi*, Lib. II, 235.

sins. It is well to remember that these books had no official authority of themselves. Composed by individual priests, they often reflected the penitential practice of some specific country.

A. *Period from Fifth to Seventh Century*

*Canones Adomnani*

The *Canones Adomnani* are Irish Penitentials attributed by some to Adumnan, Abbot Iona (679-704). In these canons, a woman is designated a prostitute if she dare abandon her husband for a second or third husband. Even if a wife has left to marry another, the first husband is forbidden to marry again while the wife is still alive.<sup>116</sup>

*Poenitentiale Vinniaus*

The *Poenitentiale Vinniaus* was probably composed about the middle of the sixth century. It is considered one of the most important of the Irish Penitentials. This penitential forbade a husband to remarry while his wife was still alive even if the cause of the separation was sterility or adultery on the part of the wife. Likewise a wife dismissed by her husband was obliged to remain unmarried.<sup>117</sup>

*Poenitentiale Cummeani*

The more probable opinion attributes this penitential book to Cummean, Abbot of Iona, who died about 641. This penitential forbids a husband to remarry because of the sterility of his wife and in the circumstances both are to remain continent.

The same penitential directs that if a wife leaves her husband and then chooses to return to him she is to do penance for a year. The husband is to take her back without a new dowry. The penance is in punishment for her sin. The prohibition against asking for a new dowry signifies that a woman once married, even though guilty of adultery, remains always the true and legitimate wife until death. The same penance is given to the husband who attempts to marry another woman.<sup>118</sup>

<sup>116</sup> *Canones Adomnani*, 16.

<sup>117</sup> *Poenitentiale Vinniaus*, 41; 45.

<sup>118</sup> *Poenitentiale Cummeani*, II, 28; II, 29.

B. *Period from Seventh to Eighth Century*

The penitentials of this period permitted divorce and remarriage for a variety of causes.

1. *Divorce by mutual consent.*

The penitentials of this period generally permitted divorce by mutual consent. Indicative of this is one of the regulations of the *Canones Gregorii*: "It is not licit to separate a legitimate marriage without the consent of both parties."<sup>119</sup> While generally there is a reason for the divorce by mutual consent, there is no evidence that a reason was always required. Thus, in the *Capitula Dacheriana* it is simply stated: "Each of the spouses can give freedom to the other."<sup>120</sup>

2. *Change of personal status.*

The penitentials of this era permitted divorce because of the subsequent enslavement or acquisition of freedom by one of the spouses. Thus the *Poenitentiale Theodori* directed that if two slaves are married and one of them becomes a free person and the other does not have the means of attaining freedom, the free person may marry another free person.<sup>121</sup> According to these same penitentials, however, "if a free man married a slave girl, he could not dismiss her, if beforehand they married with awareness of both."<sup>122</sup>

If a free man becomes a slave because of his adultery, theft, or some other crime, the wife is permitted to divorce and remarry.<sup>123</sup> The *Poenitentiale Theodori* gives the same liberty to a wife but only on condition that the husband who became enslaved was her first husband. She is not allowed to remarry if he was her second husband.<sup>124</sup>

3. *Captivity.*

Captivity in time of war was regarded by the Penitentials as grounds for divorce and remarriage since the prisoner became a

<sup>119</sup> *Canones Gregorii*, 65; *Poenitentiale Theodori*, II, 12, 7.

<sup>120</sup> *Capitula Dacheriana*, 158.

<sup>121</sup> *Poenitentiale Theodori*, II, 13, 4; *Canones Gregorii*, 73.

<sup>122</sup> *Poenitentiale Theodori*, II, 13, 5; *Canones Gregorii*, 175.

<sup>123</sup> *Capitula Dacheriana*, 105; *Canones Gregorii*, 175.

<sup>124</sup> *Poenitentiale Theodori*, II, 12, 8.

slave and also because of the possibility that the prisoner would never return or was dead. It was only natural that the captivity of men was considered more frequently than that of women.

If a wife were captured and the husband could not ransom her, he was permitted to remarry either immediately, or after one year, or after five years. If the wife taken in captivity returned, the Anglo-Saxon Penitentials were in agreement that the husband's second marriage remained intact.<sup>125</sup> The *Confessionale Pseudo-Egberti*, however, required that the husband take back the captive wife.<sup>126</sup>

#### 4. *Infirmity.*

According to the penitentials, if either the husband or the wife suffered an infirmity, the other party could remarry as long as both consented.<sup>127</sup>

#### 5. *Impotency.*

Impotency on the part of the husband constituted grounds for divorce in the penitentials.

If a husband and wife are united in marriage, and afterwards, the wife says of the husband that she cannot have intercourse with him, if she can prove that this is true, she may take another husband.<sup>128</sup>

This regulation is very similar to the present legislation on impotency as grounds for nullity.

#### 6. *Adultery.*

There is no uniform discipline among the penitentials regarding adultery as a cause for divorce. Some penitentials permitted the husband of an adulterous wife to enter another marriage without any limitation of time and without any penance.<sup>129</sup> Others allowed

<sup>125</sup> *Poenitentiale Theodori*, II, 12, 21-24; *Capitula Dacheriana*, 36; *Canones Gregorii*, 72. Cf. *Capitula Merseburgense*, 94; *Penitential Alvendense*, 75.

<sup>126</sup> *Confessionale Pseudo-Egberti*, 26. Cf. *Penitential Silense*, 116.

<sup>127</sup> *Capitula Dacheriana*, 111; *Poenitentiale Theodori*, II, 12, 12.

<sup>128</sup> *Poenitentiale Theodori*, II, 12, 32; *Confessionale Pseudo-Egberti*, 20. Cf. *Poenitentiale Martenianum*, 41.

<sup>129</sup> *Capitula Dacheriana*, 163; Cf. *Capitula Judiciorum*, 9.

the husband in such a case to remarry only if the wife whom he was leaving was his first wife.<sup>130</sup>

Adultery on the part of the husband gave no right to the innocent wife to remarry. If she left an adulterous husband, she only had the right to enter the religious life.<sup>131</sup> Strangely, though, an adulterous wife abandoned by her husband was permitted by the penitentials to remarry after doing penance for five years.<sup>132</sup>

The *Confessionale Pseudo-Egberti* allowed the husband to choose the penalty which should be inflicted on an adulterous wife. Apparently this regulation did not exclude divorce as the penalty to be inflicted by the husband.<sup>133</sup> The penitentials not only permitted the husband to divorce an adulterous wife and to remarry, but at times inflicted severe punishment on the husband if he continued to live with her.<sup>134</sup>

#### 7. *Abandonment by wife.*

If a wife tired of her husband and left him, some penitentials gave the husband the right to remarry after two or five years with the consent of the Bishop.<sup>135</sup> Other texts do not give an explicit right to the husband in such a case but instead, inflict a light penance if he has entered a second marriage.<sup>136</sup>

#### 8. *Entrance into religious life.*

According to the Anglo-Saxon penitentials, a wife was not permitted to make a vow of chastity without the consent of her husband.<sup>137</sup> With the consent of both spouses, however, one could enter the religious life and the other was permitted to enter another marriage.<sup>138</sup>

<sup>130</sup> *Confessionale Pseudo-Egberti*, 19; *Canones Gregorii*, 82.

<sup>131</sup> *Poenitentiale Theodori*, II, 12, 6; *Canones Gregorii*, 67.

<sup>132</sup> *Poenitentiale Theodori*, II, 12, 5; *Confessionale Pseudo-Egberti*, 19.

<sup>133</sup> *Confessionale Pseudo-Egberti*, 33.

<sup>134</sup> *Poenitentiale Theodori*, I, 14, 4.

<sup>135</sup> *Poenitentiale Theodori*, II, 12, 19; *Canones Gregorii*, 70; *Capitula Dacheriana*, 159; *Confessionale Pseudo-Egberti*, 26.

<sup>136</sup> *Poenitentiale Theodori*, I, 14, 13.

<sup>137</sup> *Poenitentiale Theodori*, I, 14, 7; *Capitula Dacheriana*, 39.

<sup>138</sup> *Poenitentiale Theodori*, II, 12, 8; *Canones Gregorii*, 84.

C. Period from Ninth to Tenth Century

*De Poenitentia of Habitgarius*

Habitgarius, Bishop of Cambrai, died about 831. In his *De Poenitentia*, he repeats literally the canon of the Council of Carthage on indissolubility, according to which neither the husband nor the wife is permitted to remarry because of the adultery of the other party.<sup>139</sup>

*Liber Poenitentium of Rabanus Maurus*

Rabanus Maurus (841-855/6), in his *Liber Poenitentium*, reiterated the teaching of Habitgarius. In the case of a wife taken captive, he permits the husband to enter a second marriage. However, if the first wife returns, the husband must take her back.<sup>140</sup>

*De Poenitentia of Burchard of Worms*

In his *De Poenitentia*, Burchard of Worms forbade a husband to remarry during the lifetime of his wife.

No one is permitted to dismiss his wife, except for adultery; that is, if she commits adultery with another man, then her husband can dismiss her because of the adultery, but while she is alive, he cannot marry another woman.<sup>141</sup>

*Poenitentiale Vallicellanum I*

This penitential, composed about the end of the tenth century, admits divorce and remarriage in the case of the captivity of a wife whose husband cannot free her. This same penitential apparently also permitted divorce by mutual consent.<sup>142</sup>

CONCLUSION

It is the firm conviction of this writer that the weight of evidence from the Fathers, Roman Pontiffs, and Councils of the first millennium of Christianity strongly supports the indissolubility of marriage. If there were as much evidence in favor of divorce and remar-

<sup>139</sup> Habitgarius, *De Poenitentia*, IV, 10.

<sup>140</sup> Rabanus Maurus, *Liber Poenitentium*, 7.

<sup>141</sup> Burchardus Vormacensi, *Decretorum Liber XIX, De Poenitentia*, 5.

<sup>142</sup> *Poenitentiale Vallicellanum*, I, 41; I, 37.

riage as there is in favor of indissolubility, then those suggesting the possibility of divorce and remarriage would have more than a legitimate claim from history.

There seems to be no doubt that within the near future the question of divorce and remarriage in the Catholic Church will become a very controversial issue. It is essential that the Church be able to engage in the controversy with objectivity and clarity. Unfortunately, the history of the permanence of the marital bond has been neglected. More research into this teaching is required and urgently required. It is hoped that this general study presented in this article will in some small way stimulate others to carry out more original and deeper research into this area of vital importance to the Church.

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