

APPENDIX B
THE PROBLEM OF
SECOND MARRIAGES

AN INTERIM PASTORAL STATEMENT
BY THE STUDY COMMITTEE
COMMISSIONED BY
THE BOARD OF DIRECTORS
OF
THE CATHOLIC THEOLOGICAL SOCIETY OF AMERICA
REPORT OF AUGUST 1972

Editor's Note: At the business meeting of September 1, 1972 the Board of Directors of the Catholic Theological Society of America voted unanimously to: a) accept the reports of the Dulles, Connery, and Reich committees without expressing agreement or disagreement with the contents; b) express gratitude to the chairmen and committee members for the work they have performed for the Society; c) publish the three reports in the *Proceedings* for 1972, with the approval of the chairmen; d) encourage independent publication as well for a wider audience in view of the purpose of the studies; e) welcome and encourage reactions from the members of the CTSA on these reports; f) provide a forum for these reactions at the 1973 Convention of the Society in New York; g) publish this resolution for the information of the members—this in the *Proceedings* of 1972.

INTRODUCTION

The Church's mission where the institution and the sacrament of marriage are concerned is to aid individuals and the community to live marriage according to the teaching of Christ. This aid must include constant proclamation of the meaning of marriage "in Christ" and its indissolubility, preparation for permanent marriage and support for existing marriages. It must also include some form of pastoral care for those involved in unions which have failed. This statement will consider two general areas of pastoral concern: 1) the problem of entering second marriages; 2) the problem of participation in the full life of the Church by those already involved in them.

PROBLEM OF SECOND MARRIAGE

It would be rash to assert that every first marriage that has failed was invalid from the beginning, but there are serious reasons today that were either not present or not recognized in the past to question the validity of many of them. One reason that is deservedly being given attention today by the human sciences and theology is the incapacity of some individuals for the type of commitment marriage calls for. This condition, sometimes called "psychological impotence," is being increasingly recognized by church tribunals. And there is good reason to recognize it not only as a defect that would disqualify a person for any marriage, but like physical impotence, one that can be relative to a particular marriage partner.

This incapacity is especially evident in many teenage marriages. The much higher divorce rate currently associated with teenage marriages forces one to question whether many young people are sufficiently mature to make a marriage commitment. The question of maturity has been an important factor in ecclesiastical legislation regarding the age requirement both for perpetual vows and for sacred orders. Is the difference between the religious commitment and the marriage commitment so great that the latter calls for less maturity? Is there not reason to think that it may take at least as

mature a person to see beyond the natural attractiveness of marriage and properly assess the long range problems of this commitment? Such maturity cannot indeed be identified with any particular chronological age, but neither can it be entirely dissociated from age.

In connection with this problem of marital commitment attention should be called to the shift in emphasis that has taken place in Catholic thought on the nature of marriage. Before Vatican II the emphasis was on marriage as a contract. Marital consent was aimed at the act of sexual intercourse, and primarily at the procreative aspect of this act. Since Vatican II the Church sees marriage and marital consent oriented not simply to a particular act but to a total community of life and love. In demanding a basic capacity for marital community as a requirement for valid consent, the tribunals have already moved in this direction. But even more is possible. For in cases where this kind of community has never developed we believe that there is reason to question the validity of the original consent even apart from the more basic issue of capacity. It may not always be easy to judge these cases, but the current emphasis on this type of commitment would seem to demand that they be given consideration.

In addition, we cannot ignore the impact the American attitude toward marriage and divorce must have on those who live in this country. In our culture today there is a desire for loving union, but the growing divorce rate clearly indicates a lack of interest in continuing it if it does not work out. There is a recognition of permanence in the marital commitment, and a desire for it, but considerably less acceptance of absolute indissolubility. According to present church law, simple error regarding indissolubility will not invalidate a marriage consent, but one wonders how realistic it is to speak in terms of simple error in a culture where this type of thinking prevails. We believe that even in Catholic marriages, and in spite of the official teaching of the Church, the intention of those entering the marriage may often be at least implicitly conditioned. (Reason for concern about this is indicated also by the fact that the rate of marital breakup for Catholics approximates the general divorce rate.)

All of these considerations, where they are applicable, raise serious questions about the validity of a marriage that has failed. On the other hand, they may not always, or even often, add up to

the moral certainty a tribunal requires.¹ This means that in current law and much tribunal practice nothing can be done for problem marriages, at least in the legal forum, since apart from such certainty a marriage tribunal may not declare a marriage null. In many instances, therefore, these men and women are not being treated as free to enter another union.

As long as the first marriage is not declared invalid, it is understandable in the present conditions that the Church would hesitate to celebrate a second union. But can these people be reasonably obliged in conscience not to enter a second union? There is question here of a very basic right, the right to marry. Can the Church forbid a person to marry unless it is certain that he does not have this right? In our judgment the absolute prohibition of a second union in cases of doubt is not a necessary public protection of Christian marriage.²

In the light of these considerations it is the judgment of this committee that a marriage case is not automatically closed by a negative decision in the legal forum. Regard for the limitations of the law as well as respect for conscience demand that the local Christian community provide further professional assistance on a more personal level to help couples form their consciences regarding their freedom to marry. While the criteria that should guide such conscience decisions can hardly be spelled out precisely or exhaustively, the

¹ The tribunal system has been helpful in determining the true marital status of couples whose marriages have failed. Like any legal system, however, it is not without its limitations. The most a tribunal has ever attempted by way of a negative judgment is to pronounce that proof of invalidity is lacking (*non constat de nullitate*). There is admittedly a wide gap between such a judgment and one that would pronounce a first marriage certainly valid. In fact, a tribunal judgment of itself says no more than that proof of nullity is lacking, and it can coexist with actual nullity in a first marriage. The ability of a court then to determine true marital status is quite limited.

² One might wish to argue that such a presumption is necessary to support first marriages, and that without it many first marriages would not survive. Because of the ease with which one could be freed of the obligation, many couples facing a marriage problem would not make the effort necessary for survival. This objection fails to take into account the moral obligation those who enter a marriage covenant have to make it succeed. The possibility of entering a second marriage does not remove this obligation, nor the responsibility for a failure.

following may be helpful in determining whether a true Christian marriage ever came into existence: 1) fidelity or its absence from the beginning of the union; 2) absence of every conjugal or familial characteristic; 3) brevity of common life; 4) tolerance or intolerance of common life.

If after such professional consultation a couple decide in conscience that they are justified in entering a second union, the Christian community and its designated representatives should refrain from a judgment of their decision, neither disapproving nor penalizing the couple in any way. Since there are numerous reasons for questioning the validity of first marriages that break down irrevocably, reasons which may not provide the moral certainty demanded by a tribunal, we believe that it is reasonable to admit that a person's marital status before God may not correspond to his status before the law. To accept this is to recognize the limitations of any human community, even one established by God, in determining true marital status. While the community will not officially celebrate these second unions, it will, however, respect the good consciences of those who enter them and help them with whatever pastoral guidance or assistance is necessary.

This is not to say that an individual couple will always be right in their judgment about their freedom to marry. It is not to say either that every couple will be in good faith or that there will be no moral fault in their decision to marry again. There may well be cases in which there is little or no reason to doubt the validity of the first marriage. There will surely be many cases where, if the person is honest, he will accept the conclusion of the tribunal and the advice of his counselors, and judge that he is not free to enter a second marriage. The point we wish to make here is that the Church should develop a pastoral practice that recognizes the limits of human efforts, especially in the legal forum, to determine a believer's marital status.

SECOND MARRIAGES AND PARTICIPATION IN THE LIFE OF THE CHURCH

A second problem concerns the reception of the sacraments and participation in the life of the Church by those who have already

entered second marriages. At the present time, because of a long-standing theological position, these people are judged unworthy of receiving the sacraments, especially sacramental absolution and the Eucharist, and are frequently subjected to certain social sanctions. This has been true even where the second marriage is obviously stable and the couple are living up to all their other religious obligations. The Church, while acknowledging that it may be wrong in many cases for these couples to separate because of obligations to the children and even to each other, has nevertheless continued to refuse them the sacraments unless they would agree to live as brother and sister. Since the willingness to accept such an arrangement and the possibility of living up to it have been understandably rare, most of those presently living in invalid marriages have been deprived of integral participation in the life of the Christian community.

It is the judgment of this committee that, whatever may have been its theological justification or benefits in the past, there is serious reason to modify this practice. From the many reasons we have already cited for questioning the validity of marriages that have broken down, and the powerlessness of any human community to judge so many of these cases with certainty, one can reasonably conclude that there are Catholics whose marital status in the eyes of God does not correspond to their legal status. Also, there are unions, e.g., where children are involved, where it may be morally wrong to terminate the relationship. Many will not understand how it will be possible for them to sustain this relationship without marital union. We do not think these people should be excluded from the sacraments or participation in the life of the Church. If a couple decide after appropriate consultation, reflection and prayer that they are worthy to receive the sacraments, their judgment should be respected. If the consultation and the judgment that takes shape around it are to be responsible, they must center on the quality of the present union, its fidelity and stability, the state of conscience of the couple, the quality of their Catholic lives in other respects, their acceptance by the community.

Some might object that this solution would be a source of scandal. It would arise from the fact that these people are accepted into full participation in the life of the Church without any change in

their present status. But we believe that if the reasons we have given are properly explained to the Catholic people, fear of scandal is unjustified. Moreover, when these couples are leading otherwise responsible and religious lives, their standing in the community is usually very good.

THEOLOGY OF MARRIAGE

Our experience in preparing this statement has convinced us that any attempt to provide a pastoral response to these urgent problems raises fundamental questions about the theology of marriage. For instance, the criteria for determining the existence of an indissoluble marriage call for a judgment regarding the sacramentality of the marriage. The method of arriving at this determination has traditionally paralleled that used for establishing consummation, namely a single discrete physical act (apart from the marriage consent), in this case the valid reception of baptism. The relation of that isolated act to a person's subsequent life was not taken into consideration. Advances in the fields of ecclesiology, ecumenism and sacramental theology have convinced us that such a procedure represents an inadequate understanding of the sacrament of baptism, and therefore of the sacrament of marriage. The act of baptism can only be properly understood as part of a life-long process of commitment which is constantly being renewed. The evidence of one's total life as a Christian must be taken into account in evaluating the sacramentality of a marriage. However difficult this norm may be to apply, we must work toward transcending an evaluative norm which in fact embodies an inadequate baptismal theology.

Questions are also raised regarding the nature of the marriage covenant, the meaning of consummation, the role of the Church in regulating marriage, indissolubility, the power of the Church to dissolve marriages. It is our belief that the theological community has an obligation to the people of God to address itself to such questions as these in greater depth than it has. It is our belief also that the investigation of these questions cannot be carried out in isolation from other branches of theology or from the human sciences. We recommend therefore that the Catholic Theological Society of

America set up a committee to study these questions. Without such a study one can hardly expect a growing and harmonious convergence of the Church's public witness (doctrine, law, practice) with the inner life of individuals and their judgments of conscience.

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