

The Separation of Spouses

From a valid marriage there arises between the spouses a bond which by its own nature is permanent and exclusive. Moreover in Christian marriage the spouses are, by a special sacrament, strengthened and, as it were, consecrated for the duties and dignity of their state (cf. c. 1134).

The intimate union of husband and wife argues for an unbreakable oneness between them. "So they are no longer two, but one. Man must not separate, then, what God has joined together" (Mt. 19, 6).

The Church, without renouncing her consistent teaching on dissolubility, however, acknowledges the fact that in some instances the separation of the spouses may be justified — separation that in some cases involves dissolution of marriage bond.

That explains why, in this chapter on the Separation of Spouses, the Code deals with the two different kinds of separation: the one involving dissolution of the bond (cc. 1141-1150), and the mere separation — temporal or permanent — while the bond endures (cc. 1151-1155).

I. DISSOLUTION OF THE BOND

Separation, dissolution, declaration of nullity, indissolubility are different things. Perhaps an initial explanation of the terms is needed; the best way to do it is by pointing out some of their differences.

Firstly, a declaration of nullity or annulment presupposes that the marriage was invalid from the very beginning; however, the dissolution of the bond and the mere separation presuppose, on the contrary, the existence of a valid marriage. Secondly, in the case of dissolution of the bond a second marriage is permitted; not so in the case of mere separation of the spouses.

Another thing worth noticing is that since the marital relationship is not an exclusively private matter, the spouses may never declare themselves divorced or the marriage bond dissolved. The dissolution is carried out by the Church, by making use not of any "human" authority, but of a *vicarious* power received directly from Christ and enjoyed by the person of the Supreme Pontiff. Such a power has traditionally been exercised only in exceptional occasions and within certain limits, as later on we will see.

The scheme of the Code about the dissolution of the bond is simple. In the first place, it mentions the principle of indissolubility of any ratified (among baptized) consummated marriage, and its normal dissolution in the case of physical death of one of the spouses. Then, the Code refers to exceptional cases in which the dissolution of a presumably valid but non-sacramental marriage is permitted, namely, Pauline privilege and Petrine privilege, cases connected with "the favor of the faith."

A. ABSOLUTE INDISSOLUBILITY OF A RATIFIED CONSUMMATED MARRIAGE

Official teaching of the Church. The consistent teaching held by the Church throughout its history on indissolubility of marriage is summed up in the fundamental principle of c. 1141: "A ratified and consummated marriage cannot be dissolved by any human power or for any reason other than death."¹

The theological argument for indissolubility is based on the saying of Jesus in the Synoptic Gospels (Mk. 10, 9; Mt. 5, 32; 16, 18; Lk. 16, 18). As these passages do not mention the degrees

¹ A ratified or sacramental marriage is one between two baptized persons. This includes other Christians who are validly baptized such as most Protestants and all Orthodox. When a ratified marriage is subsequently consummated by sexual intercourse, performed in a human fashion, the union becomes absolutely indissoluble.

of indissolubility, the nature of sacramentality or the effect of consummation, the Church itself has traditionally determined the limits of such indissolubility.

The present Code, leaving aside questionable interpretations, simply states the constant position of the Church on this regard, position which is leaned on two basic features: the sacramentality — “any marriage among baptized is a sacrament” — and consummation. Both elements together give such a character to the matrimonial bond that the Church has never considered herself competent to dissolve it.

Doctrinal Attempts. Some studies have argued that even a ratified and consummated marriage could be dissolved by the Supreme Pontiff. What can be said about such a principle of indissolubility? Although a substantial change of it is not foreseen in the future (Navarrete), some Catholic authors are attempting to go deeper into the nature of marriage and interpretation of the biblical text. Some hypotheses have been put forth, regarding either the power of the Church, the nature of marriage or the spouses themselves.²

“Why exclude the vicarious power of the Roman Pontiff from the cases of ratified consummated marriage only?” (Bride). “The fact that until now the Church had not made wider use of such a power does not mean its radical incapacity to do so” (O'Connor). Likewise, “if the Church allows a second marriage in case of death of one of the spouses, that is a juridical concession, because in the eschatological order the first marriage goes on being indissoluble, why, then, not to authorize in the same way the dissolution of a ratified consummated marriage?” (Steininger).

“The mere presence of both baptism and physical consummation should not be enough for a marriage to be considered indissoluble: a kind of psychological consummation, a union of the parties in their whole personality, should also be necessary.” (Finnegan) “The marriage of a mere nominally baptized could be equivalent to a natural (not sacramental) marriage, which the Church does not consider as absolutely indissoluble” (Dayley) · The

² Cf. J. L. Santos, *Disolución y Separación del Matrimonio*, en *Derecho Canónico*, vol. II, Eunsa, Pamplona, 1974, pp. 149-150.

sacramental character should be a confirming, not a decisive, factor of natural indissolubility" (Dupre).

"The existence of a true marriage at both human and supernatural level (the only one indissoluble) depends on many personal individual factors" (Huizing). "Social factors very often influence the individual commitment of the spouses" (Dayley). "Why not extend to the Latin church the praxis of permitting a second marriage in case of adultery, as it has been accepted in the Oriental Church?" (Zoghby). "Why not accept adultery as sufficient cause for dissolution, its effects being still more serious than those contemplated in the case of the pauline privilege?" (Dupre).

B. DISSOLUTION OF MARRIAGE BETWEEN BAPTIZED

Two cases are contemplated under this title: physical death of one of the spouses, and non-consummated marriages.

1. *Normal Dissolution: Death of One of the Spouses*

Death has been accepted as a sufficient reason for a ratified and consummated marriage to be considered dissolved (cf. c. 1141). It simply means that celebration of a new marriage by the remaining party is possible once the death of the other spouse has been proved.

In cases of disappearance of one of the spouses, when there is no evidence of his or her death, positive proofs are required; silence or mere absence are enough (cf. c. 1707).

Some authors say that "psychological death," that is, the irrevocable death of affection between the spouses should be a cause also for the dissolution of marriage, arguing that marriage is not only physical presence of the spouses, but also spiritual and affective relationship. There is no mention of it in the Code.

2. *A Ratified but Non-consummated Marriage*

"A non-consummated marriage between baptized person(s) ... can be dissolved by the Roman Pontiff for a just cause, at the request of both parties or of one of the parties, even if the other party is unwilling" (c. 1142).

In other words, if the consent has not been consummated by sexual intercourse in a human fashion, the Supreme Pontiff, by making use of his vicarious power, can dissolve the bond, permitting the parties to marry again.

a) *Legal Basis and Competency*

The bases for the dissolution here are to be found, first, in the fact that consummation adds to the sacramental bond (valid marriage between baptized persons) such a definitive character as to make it absolutely indissoluble, as clearly appears from comparing the text of cc. 1141 and 1142; second, in the will of the Supreme Authority of the Church, who considers himself competent to dissolve it.

Such a competency is derived both from the power transmitted by Christ to the Church (cf. Mt. 18, 18), and from the interpretation and continued practice of the Church over the centuries. In fact, going back to history, in the twelfth century, Pope Alexander III first granted a series of dissolutions precisely on the ground that the marriages had not been consummated. Some centuries later, in 1767, Pope Benedict XIV declared that the Pope undoubtedly possessed the power to dissolve non-consummated marriage.³

The 1917 Code described the papal action on dissolution as "dispensation" (cf. c. 1119). Though the expression has not been maintained, the present canon shows that the Supreme Pontiff actually dissolves the bond.

Popes use personally their vicarious power, which is something different from the social or jurisdictional power they enjoy as heads of the Church considered as mere social human community.⁴

b) *Prerequisites for the Dissolution*

The dissolution presupposes the existence of the following requirements:

³ Cf. T. P. Doyle, *The Separation of the Spouses*, in *The Code of Canon Law: Text and Commentary*, New York, 1985, p. 813.

⁴ The vicarious power, reserved to the Roman Pontiff, in this context is at present regulated by the SCDF, *Normae procedurales pro conficiendo processu dissolutionis vinculi matrimonialis in favorem fidei*, 6 December 1973.

Baptism of both parties or at least of one of them. According to c. 1142 dissolution is not extended to marriages in which neither spouse is baptized. The reason for this requirement is to fully justify the competency of the Holy See in the case. By baptism the person "is incorporated into the Church and constituted a person on it" (c. 96) and consequently becomes a subject to pontifical authority.

The non-consummation of marriage, that is, the absence of complete sexual intercourse at any time after the celebration of marriage. The questions on the more precise meaning of consummation concern both the biological component of the sexual intercourse and the manner in which it is completed. The essential biological components are discussed in the chapter of impotence (cf. c. 1084). Regarding the quality of sexual intercourse required for consummation the present Code simply states that it must take place in a human fashion ("humano modo"). It must be the expression of mutual love: lack of freedom, the use of force, physical or moral coercion and violence are clearly excluded.⁵

The existence of a proportionate just cause. Dissolution of marriage bond cannot be done without a serious reason; the quality of the vicarious power (in Christ's name) demands it. Some reasonable cause would be, for instance, the irreconcilable breakdown of the marriage, the possibility of scandal, grave quarrels among the relatives, possible impotence, civil divorce and moral or religious perversion.⁶

c) *Process to Obtain the Dissolution*

The procedure is found in Book VII, cc. 1697-1706. It is quite simple; administrative in character. The competent local ordinary accepts the petition and initiates the gathering of proofs. After the case has been prepared, the acts are submitted to the Sacred Congregation for the Sacraments for further study. The final decision is made by the Supreme Pontiff himself. Finally,

⁵ Cf. *Communicationes* 6 (1974) 187.

⁶ Cf. W. Doheny, *Canonical Procedure in Matrimonial Cases*, Milwaukee, 1944, p. 197. T. P. Doyle, *l.c.*, p. 813.

the rescript of dispensation is sent back to the bishop by the Apostolic See and takes effect as soon as the dispensation is granted, without the need of waiting until the new marriage of spouses.

C. DISSOLUTION OF MARRIAGE BETWEEN NON-BAPTIZED

Exception to the general principle of indissolubility is accepted by the Church in the cases of marriage celebrated between non-baptized if one of the parties receives baptism. The premises are connected with pauline and petrine privileges in favor of the faith.

1. *Pauline Privilege*

"A marriage entered by two non-baptized persons is dissolved by means of the pauline privilege in favor of the faith of a party who receives baptism and then enters a subsequent marriage, provided the non-baptized party departs" (c. 1143).

The privilege is based on an interpretation of the passage of St. Paul in which the Apostle advises converts to depart if their unbelieving spouses refuse to continue married life in peace (cf. 1 Cor. 7, 12-15).

Such a principle has traditionally become part of the canonical legislation. The current praxis shows that the Church is still fully aware of her faculty to dissolve for serious reasons non-sacramental marriages, even if consummated.

The privilege is intended to favor the faith of the newly baptized party, by making it possible for him or her the contract of new marriage through dissolution of the previous one. For the Church, indeed, the access to faith or the permanence in it is more important than keeping a marriage bond that, in particular cases, is a serious obstacle to said faith.

a) *Conditions for the application*

The required conditions for the application of the privilege to take place are the following, according to c. 1143:

Valid marriage entered by two-non-baptized persons. The privilege is not applied when there is doubt about the baptism of one of the parties.

Reception of baptism by one of the parties. It can take place either in the Catholic church or in any other Christian community.

Departure of the non-baptized spouse. The canon in its second paragraph further explains the meaning of departure: "...if he or she does not wish to cohabit in peace without insult to the creator."

The canonical requirement is not fulfilled and, therefore, the privilege cannot be applied if the baptized party is the culpable cause of the separation. If, for instance, the party commits adultery or has an affair and is baptized with the intention of dissolving the marriage.

The entrance of a new marriage by the baptized party. The separation of the spouses in itself does not dissolve the natural bond; rather, the entrance to a second marriage — to which the baptized party has a right to after the departure of the non-baptized party — accomplishes it.

b) *The Interpellation (cc. 1144-1147)*

The physical or moral departure of the non-baptized party has to be proven. Ordinarily the non-baptized spouse makes known his or her intentions of neither to be baptized nor to live peacefully with the baptized party in response to the interpellations.

The interpellations are in fact questions posed to the non-baptized party after the baptism of the other spouse. The object of these and the other processes is to determine the non-baptized spouse's intentions concerning baptism and conjugal life with the baptized spouse.

Since the use of the privilege depends on the verification of the above mentioned conditions, the interpellations are in principle required for the validity of the second marriage. Yet, as they are a means to an end and not an end in themselves, the local ordinary, for serious reasons, can permit this interrogation to take place before baptism or even dispense from them (cf. c. 1144, 2).

Formerly, the Holy See reserved to itself the right to dispense from the interpellations altogether. This power was extended to

diocesan bishops in *De Episcoporum Muneribus*, and is theirs by law in the present Code.

Regarding the *manner of making the interpellations* (cf. c. 1145), both public and private forms are accepted, provided that its taking place as well as the authenticity of the responses are established. Regularly they are made by the local Ordinary of the baptized party after he first ascertains that the marriage took place while both parties were non-baptized. The usual method is by letter sent by himself or his delegate to the non-baptized party, in which he or she is also informed that a reasonable period of time is allowed for the responses and that a failure to respond will be interpreted as a negative answer.

Finally, once the "departure" of the non-baptized party has been proved, the baptized party has a right to enter a second marriage either with a Catholic person or with a non-Catholic one, whether baptized or not, in which case permission from the local Ordinary, is required as well of the observance of the prescriptions on mixed marriages.

One thing is to have the right and another one is to make use of it. The new marriage should take place only after reconciliation with the non-baptized party fails and the parties subsequently separate.

2. *Petrine Privilege*

Based on the same principle of the favor of the faith, the Church has also made special provisions regarding the procedures to be followed particularly in cases of polygamous marriages and other situations in which two non-baptized parties to a marriage are separated from each other due to captivity or persecution.

This has been popularly known as "petrine privilege." Its historical background goes back to the sixteenth century, when three papal constitutions (*Altitudo* of Paul III, 1 June 1537; *Romani Pontificis* of Pius V, 2 August 1571; and *Populis* of Gregory XIII, 25 January 1585) were issued specifically for certain mis-

sion territories in which these circumstances were encountered.⁷ The present Code incorporates them so that they can be applied as well to similar circumstances encountered anywhere.

Polygamous marriages. After baptism, a convert may not remain in a polygamous marriage. Consequently, if it can be done without difficulty, the convert should remain with the first person he or she married. If not, the convert should choose one of the spouses and dismiss the others (cf. c. 1148, 1).

The subsequent marriage is to be contracted according to canonical form and the other requirements of law (cf. c. 1148, 2). Sufficient provision is to be made in accordance with the norms of justice, charity and natural equity for the needs of the first wife and the other wives (nothing is said for the dismissed husbands) who are dismissed (cf. c. 1148, 3).

Separated two non-baptized parties. Let us examine the case in which two non-baptized parties are separated from each other with great difficulty or rather impossibility of communication between them. A party baptized during the separation may enter a subsequent marriage, even if the other party received baptism in the meantime.

The similarity with the dissolution through pauline privilege is that in both cases the party who receives baptism is authorized to contract new marriage; also that in both cases the second marriage dissolves the first. The main difference, however, is that the Interpellations of the pauline privilege are not required here.

II. SEPARATION WHILE THE BOND ENDURES

(cc. 1151-1155)

A. THE NATURE OF MARITAL SEPARATION

Separation, either temporal or permanent, involves a variety of psychological as well as social, familiar and economic effects on the spouses.⁸ This makes the problem of marital separation far from a simple matter.

⁷ Cf. B. A. Siengle, *Marriage Today*, 3rd ed. New York, 1979, p. 218-220.

⁸ Cf. R. Weis, *Marital Separation*, New York, 36-68; A. Cherlin, *Marriage, Divorce and Remarriage*, Cambridge, 1981, 69-92.

In itself separation is an offense against the Christian dignity of the spouses and the sacrament as well. That is why the Church, while permitting it in some cases, makes everything in her hands to preserve conjugal life, which is first a duty and a right of the spouses.

1. Duty and right to preserve conjugal life

The common life ("convictus coniugalis") is a fundamental obligation of marriage. The gravity of the obligation is related to the nature of marriage itself, defined by the Vatican II as "communion of life" (cf. GS, 50).

The community of life involves the actual living together of the spouses, which is essential if the purpose of marriage is to be attained.

The form of marital life prescribed by the law basically refers to the sharing of domicile, which is a juridical feature with immediate social connotations. Other inner aspects involved in the community of life and in the purposes of marriage, left to the will and personal conscience of the spouses — in fact some of them belong more to the moral sphere than to the juridical one — are undoubtedly helped by the common sharing of dwelling.

However, situations which make the harmonious living of married life impossible may arise. Separation, then, may be the more prudent way of dealing with a relationship that has deteriorated to the opposite of what true marriage is supposed to be.

While maintaining the principle that spouses have the obligation to do all in their power to foster the common life, canon 1151 states that "a legitimate cause excuses the spouses from maintaining the marital community." In such statement, the Church is not taking the problems of separation lightly. On the contrary, she tries to balance the welfare of the spouses, the practical obligation of cohabitation, and the good of any child involved.

The Code, although it presents separation primarily as a judicial and administrative matter, also incorporates two other vital elements: (a) charitable forgiveness of a spouse, which is rooted in the very nature of the conjugal covenant, and (b) the value of

involving a third party in the process of discerning whether or not counselling or some other form of intervention will help in restoring marital life.

2. *Common characteristics of separation*

Among the characteristic elements of marital separation worth noticing are the following:

a) *The endurance of conjugal bond.* Although the spouses do not share a life together, they are still married to one another and are bound to the obligation of mutual fidelity. The indissoluble bond remains intact in any case of separation, temporal or permanent.

b) *Separation is not a punishment or sanction.* Separation has a preventive character: in order to avoid possible future harm to the spouses. It has not penal character in itself. Sometimes separation is the result of mutual peaceful agreement. Even in the case of permanent separation, what the Church does, rather than to impose it, is to permit it, as for instance in the case of adultery (cf. c. 1152). Appeal is made, however, by the law to the essential covenant element of forgiveness grounded in charity. In any case, we have to clearly distinguish between adultery as punishable feature, and adultery as cause of permanent separation.

c) *Submission to the Church authority.* Marriage is a sacrament involving public commitment. Once made, it is subject to the laws of a higher authority than the spouses themselves.

The Church requires couples to submit their case to her when separation is contemplated. They have to because of the indissoluble nature of marriage and the serious consequences of the problem both in the spouses and in the children. However, the Church nowadays does not claim absolute competence for herself on mere conjugal separation cases; neither in cases concerning only with the mere civil effects of marriage. Permission is easily given by the ecclesiastical authority to approach the civil forum, particularly when it is foreseen that a civil sentence is not contrary to divine law (cf. c. 1692).

B. SEPARATION BECAUSE OF ADULTERY (c. 1132)

Adultery is an offense against the Christian dignity of the spouses and the sacrament as well; it is an offense against the right to fidelity which is enjoyed by both husband and wife.

In case of adultery by one of the spouses, according to c. 1152, the other party "has the right to severe conjugal living, unless he or she consented to the adultery, gave cause for it, or likewise committed adultery".

Again, one thing is to have the right and another one is to make use of it, which in this particular case is not at all recommended. Conjugal life can be saved by forgiveness, Christian forgiveness born from charity.

But it is clear that forgiveness cannot be imposed by force. That is why the canon "earnestly recommends" that the innocent spouse not refuse to pardon the adulterous partner (cf. c. 1152, 1). Only if the spouse has neither expressly nor tacitly condoned the other's fault, after having spontaneously terminated the common conjugal life, he or she, making use of his/her own right, is to bring the case for separation to the competent ecclesiastical authority (cf. c. 1152, 3), whose role will be to decide whether permission should be given for an indefinite separation or whether reconciliation should be urged.

No need to say that separation in itself is not the solution to the problems in the relationship, since even in the case of permanent termination of common conjugal living, marriage still survives and the spouses still have an obligation to try to heal it. Such endurance of conjugal bond, consequently incapacitates the spouses to contract a new marriage.

1. *Prerequisites for the separation*

For separation to take place several conditions established in the Code have to be fulfilled.

a) *Adultery as cause of separation.* Separation has to be grounded on the actual commission of adultery by one of the spouses. Strict interpretation of the term presupposes the

the existence of real, consummated and deliberate adultery. It means, in other words, sexual intercourse outside of marriage by either partner, committed neither by error or any kind of coercion, but fully aware of its serious implications in conjugal fidelity.

b) *The innocent party has not lost his/her right.* The innocent spouse loses the right to separate if he or she condoned the adultery or was adulterous. Cooperation in adultery or condoning extramarital relationships is a serious perversion of the covenant and an offense against the institution of marriage.

Tacit condonation, as defined by the canon, occurs if the innocent spouse, after becoming aware of the adultery, has willingly engaged in a marital relationship with the other spouse, having maintained the common conjugal living for six months, and has not had recourse to ecclesiastical or to civil authority.

c) *Conditions must be verified.* They must not be open to doubt. Particularly in case of judicial sentence, positive proof or certainty of the existence of adultery is needed. Nevertheless, given the intimate nature of adultery, though it is sometimes difficult to produce evidence, it is not impossible to do so. Moral certainty can in fact be gathered by the judge, either by confession of the parties, presumptions and other circumstances and means.

2. *Manner and Effects of the Separation*

Separation because of adultery can be implemented either by the spouse's own authority or by intervention of the competent ecclesiastical authority. Both of them are lawful and foreseen by canonical legislation.

In the first case, the innocent spouse takes the initiative only after being sure that the other party has committed adultery. This type of separation is temporary and does not produce itself civil effects (neither canonical effects, according to some authors), for its effectiveness in the external forum the intervention of the competent authority is required.

In the second case, with the intervention of the competent authority, separation can be permanent. The case of separation,

initiated on the own authority of the innocent spouse, within six months of having spontaneously terminated the common conjugal life, is brought to the ecclesiastical authority which, after having examined all the circumstances, is to consider whether the innocent party can be brought to condone the fault and not to prolong the separation permanently (cf. c. 1152, 3).

This authority mentioned in the canon is either the diocesan bishop, who may authorize a separation by decree, or a competent judge, who issues a sentence of separation at the conclusion of a judicial process (cf. c. 1692).

When judicial procedure is used, the effects of the separation are particularly important not only because it gives opportunity to the parties and to the judge to better ponder the facts, but also because the sentence has better chances of having juridical effects in the civil forum, as it happens in most countries where recognition is given to the decisions of ecclesiastical tribunals.

In any case, "justice tempered with mercy" is to be administered, having in mind that even in cases of permanent separation certain duties remain regarding the children, goods and other civil effects, which need to be provided for.

C. SEPARATION FOR OTHER CAUSES (c. 1153)

Separation, as mentioned above, is not punitive in character, but medicinal; it only tries to avoid possible future harm to the spouses and children.

That the main concern of the Church is also the protection of the marital community is clearly indicated in c. 1153 where the Code points out the cases that may justify a separation. Such are those which result in serious *danger of spirit or body* to one of the spouses or children. Also, any other that renders, likewise, common life too hard (cf. c. 1153, 1).

1. *Causes for Separation*

Which are these situations or actions which put conjugal life at stake? It is impossible to provide an exhaustive list for them. The juridical experience tells us that very often they were very

simple in origin, and that these causes usually regard the two mentioned types of circumstances, corporal and spiritual that make the common life too difficult to sustain.

Threat to physical integrity. They mainly refer to those cases in which the common conjugal living put a serious danger to life itself, physical integrity or health of the members of the family. Such would be, for instance, the case of psychological disturbance, highly contagious illness or ill treatment. A reasonable fear that such circumstances may occur is considered sufficient reason, whether the moral responsibility can be imputed to the person or not.

Threat to spiritual integrity. Any kind of violence, either physical (hitting, deprivation of goods...) or moral (defamation, quarrels, insults...), internal or external, supposes an offense against the dignity and feelings of the person. To have juridical validity they need to be grave, to happen not just occasionally but repeatedly, and, finally, to seriously affect the common living, so that with its termination the cause for the separation ceases as well.

2. *Manner and Effects..*

What was said about the manner and effects of the separation in the case of adultery is basically valid also here. In any case it is urged that recourse to the ecclesiastical authority be made prior to the actual separation. Nevertheless, if there is danger in delay, the innocent spouse may act on his or her own authority (cf. c. 1153).

Perhaps it is worth mentioning that there are no ecclesiastical penalties for failure to observe the canon on separation. Spouses who separate without ecclesiastical permission may not be deprived of the sacraments unless one or the other enters subsequent marriage without ecclesiastical approval.

3. *Restoration of common conjugal life*

The statement of c. 1153, 2 appears to be quite simple. "In all cases," we read, "when the reason for the separation ceases to

exist, conjugal living is to be restored unless ecclesiastical authority decides otherwise."

Statements like this are easily understood coming from the Church, always with her pastoral zeal and concern. Really it is an appeal to the "good will" of the people. But the Church also knows that reality is not simple. If the causes of the discord are truly serious, the spouses will probably be incapable of working out a true reconciliation on their own. The ecclesiastical authority should allow protracted separation only after attempts at counselling have been made.

On her part, the Church does not spare efforts in order to find a solution to the problems in family relationship. First, by earnestly recommending the innocent spouse to renounce the right to separation and laudably readmit the other spouse to the conjugal life (cf. c. 1155). Then, by appealing to the ecclesiastical authority and even to the judge to use pastoral means to induce the parties to be reconciled and to resume conjugal life (cf. c. 1695). Finally, when a separation has taken place, by guaranteeing that provision is made for the due maintenance and upbringing of the children (cf. c. 1154), as demanded by justice and charity.

D. CONCLUSION: "NO" TO A DIVORCE MENTALITY

The closing remarks of the Code on the chapter on the Separation of Spouses are a call addressed in the first place to the spouses themselves to strive for the restoration of conjugal life. They are also a reminder to them of the obligation they have at any time, even in the case of separation, to build up and heal their marriage.

Our conclusion to these pages cannot be different both in tone and in content. It is a firm "No" to the 'divorce mentality' of our secular culture.

Objections such as: "it is easy as unwise to say that, when you are not personally living in the hell some marriages have brought home," may arise. I accept the validity of the objection, and I am forced to repeat that separation may be in some cases the more prudent way of dealing with a relationship that has deteriorated to the opposite of what true marriage is supposed to be.

Nevertheless, legal separation is not in itself an end or solution to the problems of a troubled marriage. Perhaps in a particular case it can be a privileged moment for the spouses to examine their relationship; and separation may bring about a stronger marital relationship.

It would be the miracle of love. Love strengthened by the essential covenant element of forgiveness. We all know that one of the challenging aspects of marital fidelity is a love for the other which enables a spouse to overcome unfaithfulness. That is the ideal the Church is inviting married couples to strive for.

Annulments, Pauline and Petrine Privileges, etc. can become so many devices for a Church with unsophisticated skills and ministries in caring for family life. These are always last resort measures. Church separation can be a medicinal means of stopping short of the last resort.

Yet, the proliferation of divorce in contemporary society is a possible indicator of the weakening of the will to do all one can to make the marriage survive. This should be challenged. The Church itself has to deal with such unfortunate reality in a positive and pastoral manner.

JAVIER GONZALEZ, O.P., JCD
University of Santo Tomas
Manila