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Michael G. Lawler and
Todd A. Salzman

Saint Paul's advice to Spouses thinking about Divorce

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Around the year fifty-two, Saint Paul wrote to his Corinthian converts, advising spouses in a marriage between a believer in Christ and a non-believer and thinking about divorce that “God has called us to peace” (1 Cor 7:15). Given the stress, and frequently the anger, associated with increased divorce in the modern world, it is probably still good advice. *Peace* is an important category in the New Testament, mentioned ninety-one times. Paul regularly links it with grace in his greetings; for instance, in 1 Cor 1:3, 2 Cor 1:2, Gal 1:3, Eph 1:2, Phil 1:2, Col 1:2, 1 Thess 1:1, 1 Tim 1:2; 2 Tim 1:2; Tit 1:4; Phil 1:3. No one can doubt the importance of peace, especially God's peace, in Paul's theology. The call to peace he sends to his converts in 1 Cor 7:15 is sent specifically to spouses seeking to divorce, but it is good advice also, we suggest, for spouses seeking to stabilize their marriages and to root them more deeply.

Peace is a state of harmony. When there is peace, there are no wars between nations, no discord between peoples, no disharmony between spouses. For most Catholics, grace needs more clarification than peace. Theologians distinguish between what they call uncreated grace, God's forgiving and saving love, and created grace, the effect of this self-gift of God that transforms women and men and their world. Because of uncreated grace, God's always offered self-gift to every human person, every one of them, including every spouse, lives in a state of *offered* grace. Because, however, they do not always recognize this offered gift, it is not always effective as created grace. The situation is analogous to the situation of spouses who do not always concretely acknowledge

Michael G. Lawler is the inaugural holder of the Amelia and Emil Graff Chair in Catholic Theology at Creighton University, Omaha, USA. Todd Salzman is his successor in the Graff Chair. They are the authors of numerous books and articles including *Virtue and Theological Ethics* and *Introduction to Catholic Theological Ethics: Foundations and Applications* [Orbis Press].

THE FURROW

their mutual love; they have to *make love* in some loving action for their love to become concrete and effective. Love is always made manifest and effective in some loving action, and so it is too with uncreated grace. Believers have to *make grace* in some accepted actions, they have to actively acknowledge the presence of God-uncreated grace in their lives for it to become concrete and effective. When grace is understood as uncreated grace, there is no ungraced human person or situation. When grace is understood as created grace, the transformation achieved in women and men by an active loving relationship with God, there are graced persons and situations only when women and men freely accept and respond to God's offer of Godself. Paul teaches that the acceptance of uncreated grace is a root of peace in persons, communities, nations, and marriages.

CHRISTIAN MARRIAGE

The Council of Trent taught that "if anyone says that *marriage* is not one of the seven sacraments...let him be anathema." In the nineteenth-century, the post-revolution French Republic decreed that it had jurisdiction over civil marriages and that the Church, which it considered a remnant of the *ancient régime*, had jurisdiction over the sacrament. Pope Pius IX's Sacred Penitentiary immediately responded that there cannot be a valid marriage between the *faithful* without it being a sacrament, and went on to describe French civil marriage without sacrament as filthy and destructive concubinage. Pope Leo XIII weighed in 1880 in his encyclical *Arcanum Divinae Sapientiae*, arguing that the French attempt to sever the civil contract of marriage from the sacrament of marriage was impossible since in marriage between Christians the contract is inseparable from the sacrament and, therefore, the contract cannot be legitimate and valid without being a sacrament as well¹.

Marriage is a sacrament, Leo continued, because it is a holy sign which gives uncreated grace and shows forth an image of the mystical union of Christ and the Church"². The union of a husband and a wife in marriage signifies the graced union of Christ and the Church; it is a sacrament that cannot be torn apart from the marital contract at the whim of man. The marriage and sacrament of Christians has never been the concern of the State; the marital, sacramental contract has always been dealt with by the Church. Leo insists that no one who thinks rightly of marriage can fail to see that the Church has been its best guardian and defender over

1 *Arcanum*, #21

2 *Ibid.*, #24

the years and how her wisdom has come forth victorious from the lapse of years, from the assaults of men, and from the countless changes of public events. Putting on his prophet's hat, Leo declares that it is easy to see the greatness of the evil that unblessed civil marriages have brought, and ever will bring on human society. The teaching of those who argue that marriage is a purely civil reality is false and is the source of much detriment to marriage³. *Today*, we suggest, we are experiencing that detriment that Leo foresaw at the end of the nineteenth century.

Leo gives a traditional answer to the question what is marriage for? Marriage, he teaches, was instituted for the propagation of the human race and for the betterment and happiness of the lives of husbands and wives. That formulation grew into what came to be called the procreative and unitive ends of marriage. In 1892 a very influential book appeared, authored by the Vatican official, Cardinal Pietro Gasparri, and for the next seventy-five years that book controlled every discussion of marriage in the Catholic Church. *Three* notions were developed in the book that controlled the discussion of marriage in the Church until the Second Vatican Council in the 1960s: *first*, marriage is a contract; *second*, the formal object of the contract is the permanent and exclusive right of each spouse to the use of the other's body for sexual intercourse; *third*, marriage has two ends, a primary procreative end and a secondary unitive end. In 1917, all three of these notions were written into the new *Code of Canon Law* of which Gasparri was a major author.

The opening canon on marriage firmly locates it as a contract and affirms the identity of the contract and the sacrament of marriage⁴. It is followed by one that establishes that "The primary end of marriage is the procreation and nurture of children; its secondary end is mutual help and remedying of concupiscence"⁵. Marriage is "a permanent society⁶, whose primary end is procreation and nurture⁷, a society that is in species a contract that is unitary and indissoluble by nature⁸, whose substance is the parties' exchanged rights to their sexual acts⁹". Gasparri's legal approach led to an *impersonal* definition of marriage that made it difficult to grasp that marriage was, in fact, a loving union of two human beings. In the wave of personalism that flooded Europe after the horrors of World War I, this definition began to be challenged.

3 Ibid.

4 Canon 1012

5 Canon 1013,1

6 Canon 1082

7 Canon 1013

8 Canon 1012 & Canon 1013,2

9 Canon 1081,2

THE FURROW

Pope Pius XI's 1930 encyclical on marriage, *Casti Connubii*, his response to the Anglican Communion's decision that artificial contraception is not always sinful and can be approved in certain circumstances, predictably insisted on everything in the above impersonal definition. Unpredictably, he did more. He retrieved and gave a prominent place to a long-ignored teaching from the *Catechism of the Council of Trent*: marriage is a union of spousal love and intimacy. Marital love, which is proved by loving deeds, Pius teaches, "must have as its primary purpose that man and wife help each other day by day in forming and perfecting themselves in the interior life, so that through their partnership in life they may advance more and more in virtue, and above all that they grow in true love toward God and their neighbor"¹⁰. So important is this mutual spousal love, he continues, that "it can, in a very real sense, as the *Roman Catechism* teaches, be said to be the chief reason and purpose of marriage, if marriage be looked at not in the restricted sense as instituted for the proper conception and education of the child, but more widely as the blending of life as a whole and the mutual interchange and sharing thereof"¹¹. In these *wise* words, Pius directs us to see that there is much personally more to marriage than is contained in the *Code's* impersonal definition. European theologians were poised to move in the same direction, most influentially two Germans, Dietrich von Hildebrand and Heribert Doms.

Summoning Pius XI and *Casti Connubii* in his support, von Hildebrand argues that the primary end of marriage is spousal love and the building up of communion between the spouses. Doms agrees with von Hildebrand that what is natural or unnatural for human animals cannot be decided on the basis of what is natural or unnatural for non-human animals. Humans are specifically spiritual animals, vitalized by a human soul, and not to be judged on the basis of animal biology. Human sexuality drives such a spiritual animal to make a gift, not simply of his or her body but of his or her very *self*.

The Church's immediate reaction to these new theological ideas was, as has so often been the case with new ideas in Catholic theological history, a blanket condemnation that made no effort to sift truth from error. In 1944, Cardinal Ottaviani, Prefect of the Holy Office, now the Congregation for the Doctrine of the Faith, condemned the opinions of some recent authors, who either deny that the primary end of marriage is the generation and nurture of children, or teach that the secondary ends are not essentially subordinate to the primary end, but are equally primary

10 *Casti Connubii*, #23

11 *Ibid.*, #24

and independent. The opinions of von Hildebrand and Doms, however, persisted and attracted more adherents, and in 1951 Pope Pius XII felt obliged to intervene again. The truth is, he decreed, that marriage, as a natural institution in virtue of the will of the Creator, does not have as a primary and intimate end the personal perfection of the spouses, but the procreation and nurture of new life. Catholic teaching could not have been made any clearer. But the Second Vatican Council was only eight years away.

In the face of loud demands to consign the mutual love of the spouses to a secondary place, the Second Vatican Council declared that love to be of the essence of Christian marriage. It declared marriage to be a “communion of love”¹², an “intimate partnership of conjugal life and love”¹³. The Council’s position could not be clearer. In face of the demands of a cabal led by Cardinal Ottaviani to consign the mutual love of the spouses to its traditional secondary place in marriage, the Council rightly declared that love to be of the very essence of marriage. It is difficult not to suggest that the presence of devoted married couples at the Council could have exemplified that truth long before the Bishops gathered. The Council reinforced its opinion on the place of interpersonal love in marriage in another way. It taught that marriage is founded on a “conjugal *covenant* of irrevocable personal consent”¹⁴, abandoning the legal word *contract* and replacing it with the interpersonal word *covenant*, thus establishing marriage as an *interpersonal* rather than a *legal* reality. This was emphasized in yet another way when the Council dealt with the formal object of the covenant and declared that the spouses “mutually gift and accept one another”¹⁵, abandoning the biological notion that they gift merely the right to the use of one another’s bodies for sexual intercourse.

The Council teaches that marriage and the marital love of the spouses “are ordained for the procreation and education of children”¹⁶, but the Commission that edited the document carefully explained that this does not suggest a hierarchy of ends in any way. Marriage “is not instituted solely for procreation”¹⁷. The intense debate that took place in both the Preparatory Commission and the Council itself makes it impossible to claim, as some do, that the absence of a hierarchy of ends was the result of an oversight. It was the result, not of any oversight but of a hotly debated and deliberated choice of the Catholic Church in Council. Every doubt was removed in 1983 by the revised *Code of Canon Law*

12 *Gaudium et Spes*, # 47

13 *Ibid.*, #48

14 *Ibid.*

15 *Ibid.*

16 *Ibid.*

17 *Ibid.*, 50

that taught that “the matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its nature ordered to the good of the spouses and the procreation and education of children”¹⁸, with no suggestion that either end is primary or secondary. The 1983 *Code* adds that “this covenant between baptized persons has been raised by Christ the Lord to the dignity of a sacrament”¹⁹.

There may be some readers who are asking themselves why this long digression from Leo XIII’s *Arcanum Divinae* to a discussion of Vatican II’s ends of marriage. We offer two answers to that question. *First*, the development in the teaching of the Catholic Church about the sacrament of marriage was a theological development from a material biological approach to an interpersonal approach. *Second*, that theological development was initiated by *Arcanum Divinae* and, therefore, the preceding discussion is in no way a digression but simply a consideration, much condensed by space restrictions, of the history of the theology of Catholic marriage since Leo XIII. Leo taught, as we have seen, that marriage was instituted for the propagation of the human race, but also that the lives of husbands and wives might be made better and happier. This comes about in many ways: “by their lightening each other’s burdens through mutual help; by constant and faithful love; by having all their possessions in common; and by the heavenly grace which flows from the sacrament”²⁰. This sacramental marriage can also do much good for families. “It has the power to strengthen union of heart in the parents; to secure the holy education of children; to temper the authority of the father by the example of divine authority; to render children obedient to their parents”²¹.

Spousal love, Vatican II teaches, “is uniquely expressed and perfected through the [sexual] marital act. The [sexual] actions within marriage by which the couple are united intimately and chastely are noble and worthy ones. Expressed in a manner which is truly human, these actions signify and promote that mutual self-giving by which the spouses enrich each other with a joyful and thankful will”²². There can no longer be any doubt: sexual intercourse in marriage is not sinful but “noble and worthy.” The great Augustine had taught, after his own sexual excesses, that sexual intercourse for the sake of offspring is not sinful, but that sexual intercourse, even with one’s spouse, to satisfy concupiscence is a venial sin. That accepted judgment had clouded the Catholic approach to sexuality for fifteen hundred years until

18 *Code*, 1055, 1

19 *Ibid.*, 1055, 2

20 *Arcanum*, #26

21 *Ibid.*

22 *Gaudium et Spes*, # 49

SAINT PAUL'S ADVICE TO SPOUSES

the sun of Vatican II cleared it away. Pope Paul VI, who was intimately involved in shaping *Gaudium et Spes*, continued this positive approach.

In his encyclical *Humanae Vitae*, he had positive words to say about married love. The mutual love of spouses “is above all fully human, a compound of sense and spirit...It is also, and above all, an act of the free will whose *trust* is such that it is meant not only to survive the joys and sorrows of daily life, but also to grow, so that husband and wife become in a way one heart and one soul [Doms’ two-in-oneness], and together attain their human fulfillment.” It is also total, a “very special form of personal friendship in which husband and wife share everything,” and it “is also faithful and exclusive of all other, and this until death.” Finally, it “is fecund. It is not confined wholly to the loving interchange of husband and wife; it also contrives to go beyond this to bring new life into being”²³. Words to be embraced and lived by all spouses.

DIVORCE

“These many and glorious fruits were ever the product of marriage, so long as it retained those gifts of holiness, unity, and indissolubility from which proceeded all its fertile and saving power,” Leo judges, and it would always have brought forth those fruits had it remained “under the power and guardianship of the Church, the trustworthy preserver and protector of these gifts”²⁴. Now, however, “there is a spreading wish to supplant natural and divine law by human law; and hence has begun a gradual extinction of that most excellent ideal of marriage ... even [to Leo’s horror] in Christian marriage”²⁵. The number of divorces has increased among Protestants, and “to such an extent in Germany, America, and elsewhere that all wise thinkers deplored the boundless corruption of morals and judged the recklessness of the laws to be simply intolerable”²⁶. By 2020, Leo XIII’s worst fears were realized. Marriage rates were declining, and marriage was being replaced by cohabitation; marriage and parenthood were being decoupled and there was an increase in single-parent families, headed mostly by women; same-sex marriage was legalized and increasingly availed of in many countries. The divorce rate in Ireland was 15%, significantly below the rate of 55% in France and Italy and of 59% in Portugal, but still troublesome.

Leo quotes the old saw that in imperial Rome divorce was so common that “women used to reckon years not by the change of

23 *Humanae Vitae*, # 9.

24 *Arcanum*, #27

25 *Ibid.*

26 *Ibid.*

THE FURROW

consuls but of their husbands”²⁷. Strangely, however, he never cites what the New Testament says of divorce. The gospels report four sayings of Jesus against divorce and remarriage: Matt 5:32 and 19:9; Mark 10:11-12; Luke 16:18. Paul, who writes before any of the gospel writers, also reports in 1 Cor 7:10-11 a prohibition of divorce and remarriage and attributes it to the Lord. Paul’s words have had the greatest effect in the teaching and practice of the Catholic Church with respect to divorce and remarriage, and so we focus mainly on that.

Paul did not hesitate to interpret Jesus’ words for his Corinthian community. That community was a mixed Jewish-Gentile community, which explains Paul’s choice of words for his instruction on divorce and remarriage. Sometimes he has Jewish law in mind, in which only the husband has the power to divorce; sometimes he has Greco-Roman law in mind, in which both husband and wife have the legal power to dismiss the other. In apparent answer to a question about divorce, Paul replies with a command which he claims is from the Lord. “To the married I give charge, not I but the Lord, that a wife is not to be separated from her husband. If she is separated, she is to remain unmarried or is to be reconciled to her husband. And a husband is not to dismiss his wife” (1 Cor 7:10-11). Given the verbs he uses, it would appear he has in mind the customs of divorce common in both Jewish and Greek law, that is, the dismissal of the wife by the husband. He rules that the husband is not to dismiss his wife, nor is she to be separated by anyone else.

Having dealt with divorce in the case of the marriage of two Christians, Paul then moves on to the question of divorce that must have been prevalent in the early Christian communities, as it is prevalent in mission countries today, the case in which one spouse is Christian and the other is not. Paul has two pieces of advice for the spouses in such marriages, each of them dependent on the choice of the non-Christian partner. In the *first* case, “if any brother has a wife who is an unbeliever and she consents to live with him, he should not dismiss her. If any woman has a husband who is an unbeliever and he consents to live with her, she should not dismiss him” (1 Cor 7:12-13). It would appear here that Paul is thinking here within the terms of Greco-Roman law, in which both wife and husband had the right to end the marriage by dismissing the other, and his instruction is firm. When the unbelieving spouse is willing to live in marriage with the believing one, he or she is not to be dismissed. Jesus’ instruction stands firm: “what God has joined together, let not man put asunder” (Matt 19:6).

²⁷ *Arcanum*, #30

SAINT PAUL'S ADVICE TO SPOUSES

The *second* piece of advice is completely different. "If the unbelieving partner desires to separate, let it be so. In such a case, the brother or sister is not bound. For God has called us to peace" (1 Cor 7:15). In this case, when the unbelieving partner no longer wishes to live with the Christian believer, it is the non-believer who separates herself or himself; neither she nor he is dismissed by the believing spouse. There is no suggestion that the marriage of the believer and non-believer is not a valid marriage. There is no suggestion that Jesus' instruction does not apply to it. There is only the suggestion that in this case Paul is making an exception, "I say, not the Lord" (7:12), and the reason he gives for the exception is that "God has called us to peace." *Peace*, it would seem, is a greater value for Paul than the preservation of a disrupted valid marriage. Given the personal pain and anger and family disruption caused by divorce procedures today, we might ask is it also a greater value in our twenty-first century world?

The Catholic Church sanctioned this approach to dissolving a valid marriage between a Christian believer and a non-believer in the twelfth century, still sanctions it today, and names the process the Pauline Privilege. In the sixteenth century, three Popes, Paul III (1537), Pius V (1561), and Gregory XIII (1585), extended the Pauline Privilege to include the situation of spouses separated by slavery, a process that came to be known as the Petrine Privilege. The 1983 *Code of Canon Law* leaves no doubt as to what kind of marriage cannot ever be dissolved: "A ratified and consummated marriage cannot be dissolved by any human power or for any reason other than death" (Can 1141). Consummation is understood to be the act of sexual intercourse *after*, but not *before* as is now common, the exchange of consent.

Besides these processes to dissolve valid Christian marriages, there is another Catholic process called annulment, which does not dissolve a valid marriage but declares that a marriage was never at any time valid. Thanks to the broadening of grounds for annulment, there are many Church lawyers who now claim that virtually every failed marriage that comes before a Church tribunal can be annulled. That feeling has become so pervasive that it has led to controversy within the Church, some arguing that granting an annulment has become too easy, others arguing that it should be liberalized further to respond to the needs of hurting women and men. The crucial moment for every consideration of annulment is the moment when the couple publicly exchange their consent to be married, when they each say "I do." If that consent is in any way flawed, through general immaturity at the moment of consent, somehow diminished responsibility, or any other psychic or moral impotency, the union of the couple can then be declared annulled

THE FURROW

and both are free to remarry. In 1987, speaking to the Vatican court, Pope John Paul II deplored “the excessive proliferation and automatic annulment of marriages” on pretexts of immaturity and diminished responsibility.

Whatever about the proliferation of annulments, however, every Catholic should understand that the Catholic Church, contrary to the common opinion, grants divorces and the conditions under which it grants them. They should also understand two other things: *first*, and above all, Jesus’ instruction on the indissolubility of marriage, “what God has joined together, let not man put asunder;” *second*, Paul’s and our suggestion that the spousal attitude that preserves a marriage is the peace to which God has called us all, spouses and non-spouses alike.

Into the Desert. Charles de Foucauld was canonised by Pope Francis on 15th May 2022. He was an apostle to the poor and was devoted to living the “hidden life” of Jesus, that is, the ordinary life of poor men and women. He was devoted to interreligious dialogue. His life was one marked by transformation: he served as a soldier, then as an explorer, then he had a conversion experience and he became a monk. Then finally he became a hermit in the desert, spending most of his time serving the Tuareg people of Algeria. He looked after the poor and outcasts in his hermitage. He witnessed to his faith through his quiet example, living with deep prayer. He was friend and “brother” to all. At the end of his encyclical “Fratelli Tutti” (2020) Pope Francis wrote: “Yet I would like to conclude by mentioning another person of deep faith who, drawing upon his intense experience of God, made a journey of transformation towards feeling a brother to all. I am speaking of Blessed Charles de Foucauld. Blessed Charles directed his ideal of total surrender to God towards an identification with the poor, abandoned in the depths of the African desert”.

– JOHN O’BRIEN OFM, *Winter Past: The Spirit of Hope*, UK: Amazon, 2024, p. 99.