

The Catholic Lawyer

Volume 17
Number 2 *Volume 17, Spring 1971, Number 2*

Article 3

February 2017

Oeconomia: A Corrective to Law

George A. Maloney, S.J.

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>



Part of the [Catholic Studies Commons](#), and the [Religion Law Commons](#)

Recommended Citation

George A. Maloney, S.J. (1971) "Oeconomia: A Corrective to Law," *The Catholic Lawyer*. Vol. 17 : No. 2 , Article 3.

Available at: <https://scholarship.law.stjohns.edu/tcl/vol17/iss2/3>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

OECONOMIA: A CORRECTIVE TO LAW

GEORGE A. MALONEY, S.J.*

Prologue**

WHEN THE COMMITTEE on this Regional meeting went to get a program, they felt that they should try to get something useful, something large, not a marginal issue. Having gone over several possible topics, they looked into a situation where the orthodox churches and ourselves have had a long history of divergence. It was the question of divorce, rather, the question of admitting a person back to the Sacraments after a divorce and remarriage. Now, this is based upon a principle very familiar to the orthodox church called *Oeconomia*. We looked for somebody who would be able to explain this because it has a long history. It refers to the Old Testament, it has a biblical basis and it has practically all of the variations of the Latin word "dispensatio". But the Latin Church, in regard to marriage, has not allowed it. Now, looking for somebody competent to review this whole question, its theological principles, its history, we were fortunate to find here in New York, Father George A. Maloney. He is the Director of what will be the Russian Institute in New York, a program for a Masters Degree in Russian studies over the summer time conducted at the John XXIII Russian Center. He has been there since 1951. He himself is a graduate of the Pontifical Institute for Oriental Studies, has been at this work a long

* B.A., St. Louis, 1948; P.H.L., St. Louis, 1951; S.T.L., Gregorianum, Rome, 1958; S.E.O.D., Doctor Scientiarum Ecclesiarum Orientalium, Pontifical Oriental Institute, Rome, 1962. Associate Professor of Patristic Theology since 1963 at Fordham University; Founder and Editor of *DIAKONIA*, quarterly to promote ecumenical dialogue between Catholics and Orthodox; Director of the John XXIII Institute for Eastern Christian Studies; member of the American Catholic Bishops' commission of theologians in the bi-laterals with the Orthodox; member of the New York Archdiocesan Ecumenical Commission.

** *Prologue* by Francis J. Glimm, Professor of History at the Seminary of the Immaculate Conception, Huntington, New York.

time, is very familiar with the Greek and Russian Church. We understand this is a controversial topic. We understand it is not part of the Latin tradition and in fact we have a kind of tendency to feel that it is not entirely legitimate. But, it does offer a very great opening and it *may* be, without displacing anything that we have, that it will be a solution, as he says, a corrective to some difficulties in our own Canon Law System.

In an interview published in the U.S. News & World Report, September, 1970, Cardinal John Wright, head of the Vatican's Congregation for the Clergy, stated that with "new knowledge of psychiatry and psychology," the Catholic Church may eventually broaden its present attitude on divorce and remarriage. The 61-year-old Cardinal went on to say: "Now there is a considerable movement within the Church . . . to see if perhaps with our new knowledge of psychiatry and psychology of what makes the human tick, there may be people who go through the marriage contract—or, for that matter, the priestly ordination ceremony—unfit to do so. It is in this area that one might look for an eventual broadening of the attitude of the Church. That is to say, we may come to see that some marriages really were not valid from the beginning—because of the immaturity of the people who were married, because of their lack of freedom in any full sense or because of their incapacity for marriage."

Besides a real plug that the Church might change its present attitude on divorce and remarriage through new knowledge from psychiatry and psychology (we call Cardinal Krol's attention to this!), the

reason for my citing this interview is mainly to show that Cardinal Wright seems to approach the problem of divorce and remarriage solely from an annulment viewpoint. This seems to indicate if he is a typical Roman Catholic churchman, that his mind (and that of the Church) is pretty well settled on the fundamental principle that all validly contracted marriages between Catholics are absolutely indissoluble. That is to say, those that are validly contracted between Catholics and consummated. Which seems to indicate that our theology of marriage has been developed around a canonical rule of thumb for validity of marriages. When Pope Alexander III introduced the new juridical category of sexual intercourse, added to that of mutual consent, as the two extrinsic criteria determining an absolutely indissoluble marriage, then in the 13th century, our theology of marriage became canonical and limited. The only way to move was then in a legal way: backwards towards the conditions that either made the mutual consent a valid contract or not.

Ideally a well-rounded approach to marriage should flow from a rich scriptural theology added to solid pastoral norms flowing likewise from that scriptural theology that would be further formulated in canonical practices which would reflect not only the justice of God's law but also His infinite plan of mercy to draw all men from sin and error into His shared Divine Life of grace by means of His Church. It seems to me that we are now in the Church's history at the level of pressing for needed changes on the pastoral level concerning marriage and remarriage which hopefully will result in a change of canon-

ical practices. This paper is not to show patristically that the Church earlier granted divorces and hence the Church can today do the same. It is an exploratory attempt to broaden the theological basis for future pastoral and canonical practices. In the Church of the first millenium and continued today in the Eastern Orthodox Churches as well as in the Oriental Orthodox Churches (the Monophysite and Nestorian Churches) the principle of *oeconomia* served as a corrective to ecclesiastical and civil law. It is this principle that I would like to propose, first in general, and hence I am not in the beginning concerned solely with marriage and divorce in order to broaden our basis to see the role of the Church as the extension of the infinitely merciful Savior in time and space. Before one can understand any particular application of ecclesiastical economy, there must be a wider understanding of the divine economy.

Formal Presentation

I would like to develop firstly the broad meaning etymologically of the term *oikonomia*, or *economy*, distinguishing between divine and ecclesiastical economy. These meanings I will try to present as rooted in Scripture and the patristic literature. Then I would like to present the more specific aspects of ecclesiastical economy as practised in the Eastern Churches and more concretely in the Orthodox Churches of our more recent times. After pointing out a few examples of economy as practised in the Catholic Church, I will discuss marriage and divorce as the Orthodox apply economy as a principle about law expressing the infinite mercy of the Lord

Jesus in the face of human weaknesses. My conclusion will be a plea for theologians and canonists to explore possible applications of this corrective to the strict laws of the Church, especially in the area of Christian marriage.

Etymologically *oikonomia* comes from the Greek word *nemo* (dividere-administrare)-(Brys, De dispensationis ecclesiasticae notione)-*oikos*, referring to the family or household and *nomos*, the creative, sustaining, regulative principle that is necessary for the good management of any household or undertaking.

The Church is the extension of the mind of Christ and His powerful operations upon us humans in an attempt to divinize us and make us by the power of His Holy Spirit, sons of God and co-heirs with Him of Heaven forever. We cannot, however, understand ecclesiastical economy, a term of accommodating Church laws and disciplines to adjust to the human situation for the good of souls, without grounding it solidly in the divine economy.

We see the divine economy spoken of in Holy Scripture in four passages of St. Paul: Ephes. 1:10; 3:9; Col. 1:25 and I Tim. 1:4.¹ In these citations, Paul applies the term *economy* to the work proper to God in unifying the whole world into one eternal plan. Again Paul speaks of the ministers and the members of the Church through whom the divine economy is fulfilled. Here we see the nexus between the divine and ecclesiastical economy. And

¹ Cf. D. STANILOAE: The Economy of Salvation and Ecclesiastical Economia *Diakonia* Vol. 116-122 (1970).

lastly, Paul spells out this relation between God's eternal plan and the ecclesiastical fulfillment of that historical space and time in assigning a primary role of importance to the Apostles and after them to the Church's hierarchy.

The early Fathers also develop the idea of divine economy from which would flow in their thinking the application of ecclesiastical economy.² They understand the term to apply basically to the Incarnation of the Son of God and all that He had done and suffered through His *kenosis* of the Incarnation in order to save us. It also in a broader sense embraces all of God's divine revelation, which is God's giving of Himself to mankind, culminating in the Incarnation of Christ. Finally, the Fathers use the divine economy to refer to the work of fulfilling all things in Christ, the *recapitulation* or *anakephalaiosis* of all men in Christ, a work that is carried out in a visible manner through the Church but also that is effected by the hidden work of Christ beyond the visible lines of the Church's operations.

God gives Himself, fulfilling His eternal plan of mankind's salvation in history. He must be intrinsically bound up with the conditions of the history process; He meets men in their existential situation in a world that is groaning in travail. He consents in His humble and loving *condescension-sunkatabasis*—to appear as the loving and merciful Lord in the circumstances brought about by human free will.

Economy, therefore, touches God's in-

² *Id.* at 123-125; Vol. 5,3, (1970), 218-231.

finite *philantropia*, His love for mankind. It is the supreme operation of the Law of God's will in which justice and love are in perfect unity.

In what I consider to be the most balanced work written by an Orthodox on the principle of economy,³ Dr. Hamilcar Alivizatos divides the term *oikonomia* as used in Orthodox theology into three basic meanings: the divine economy as based on the Incarnation of the Divine Son for the salvation of the world and its continued application by the Holy Spirit through His Church; the *economy* of the Word and the Sacraments whose charge has been given to the Apostles and their successors, and finally and more restrictively, the regulation of ecclesiastical life and order according to the circumstances and needs of a particular time and place.

Here precisely economy is seen as an accommodating principle that allows a deviation from the strict observance of an established ecclesiastical order without destroying that order. This latter interests us in this paper.

The basis for such an accommodating principle is found in effect, as St. John

³ OIKONOMIA KATA KANONIKOU DIKAIΟΥ TES ORTHODOXOU EKKLESIAS (Athens, 1949). He had written an earlier work specifically on the validity of Anglican orders: TO KUROΣ TES HIΕRO-SINES TES ANGLIKANIKES EKKLESIAS (Athens, 1940). I. Kotsonis, the present Archbishop of Athens, has written several authoritative works also on economy: PROVLEMATA TES EKKLESIAS-TIKES OIKONOMIAS (Athens, 1957); E. KANONIKE APOPSIS PERI EPIKOINONIAS META TON HETERO-DOXON (Athens, 1957); *Validity of the Anglican Orders according to the Canon Law of the Orthodox Church*, GREEK ORTHODOX THEOLOGICAL REVIEW (1958).

Chrysostom comments on Acts 2,23, in the early Christian community. Christ Himself showed that the law did not constitute an end in itself. He frequently healed on the Sabbath (Mark 3:1-5; John 5:1-17; John 7:23 etc.). "The Sabbath was made for the good of man; man was not made for the Sabbath" (Mark 3:25-27). He exhorted us to practise mercy in the parable of the unforgiving servant: "You should have had mercy on your fellow servant, just as I have had mercy on you" (Matt. 18:33). Thus, in the 1st Council of Jerusalem St. James applies economy to the Gentiles.

"It is my opinion that we should not trouble the Gentiles who are turning to God" (Acts 10, 19-20). Paul allows a believer to remarry if the first unbelieving partner will not permit the other spouse the free practice of the Christian faith (I Cor. 7,15).

The early Church applied the principle of economy to the validity of a Baptism not by water but by blood. The "lapsi" were received back into the Church through *economy* against the stricter opinion that maintained that apostates had been cut off forever from the Christian community. The thorny problem about the validity of the Baptism of heretics vexed the early Church and tore it into two factions. Cyprian and Firmilian favored the ancient practice of Asia Minor and insisted on the invalidity of Sacraments administered by heretics because of a doctrinal corruption while the West, including the pope of Rome, held to a validity, provided the Trinitarian formula and right belief in that fundamental doctrine were maintained by the heretics. This policy was confirmed in

the second ecumenical Council that recognized the validity of Baptism by heretics, especially the Asians. Thus economy became a working principle in order that the Church could properly exercise its stewardship. St. Basil is the first who explicitly has recourse to the principle of economy as an already established procedure against certain existing procedures. He accepts the Baptism of the schismatic Cathari and the Encratites even though Cyprian and Firmilian and other earlier Fathers rejected their sacraments. His reason is "oikonomias eneka ton pollón," "by condescension on behalf or for the sake of many." He considered it the duty of the Church to act as Christ would act towards the lost sheep to show mercy to the sinner for whom Christ and His Church want health and not death.

If this concept of the teaching Church regarding *economy* is not found in any authorized laws or canons of the Church, it is nonetheless appealed to as a working principle by official synodal decisions by which non-Orthodox were accepted or rejected into Orthodoxy without reiteration of the sacraments. The thesis of the power that the Church possesses to validate non-Orthodox sacraments is generally accepted, but the nature of this power (*economy*) has not been clarified.

Economy is not however a *carte blanche* at the Church's disposition to be used as the Church wishes, especially in extreme difficulties or embarrassing situations. Its usage is limited by the fundamental rules of faith which the Church cannot violate through excessive liberalism or indifference or excessive rigorism. Alivizatos gives three reasons for permitting *economy*: the salvation of men; the good order of the

Church, e.g. among the Orthodox in the U.S.A. today, earlier conciliar canons are violated that insist on only one bishop in one diocese; and to avoid scandal.

The measure of economy will be greater in dealing with new sheep coming into the Church in regard to the validity of their Baptism than in recognizing the validity of ordinations conferred illegitimately outside of the Church.

The Gospel must not become an unnecessary burden to anyone (cf. Acts XXI, 20-26). Economy is used wherever a strict application of the law would put in peril the essential aim of the Church, i.e., the salvation of souls according to the spirit of the Gospel. In its essence economy is the pardon through the Church of faults committed by children of the Church or those outside the Church who wish to return to the Church in order to facilitate a restoration to full Christian life. We will point out the realistic but merciful pardon of the Church of both the East and the West of the first millenium and now of the Orthodox Churches of our own times of those who have married a second time. A rigorist position as maintained by the Roman Church would forgive all sins, even murder, and thus allow the sinner to be restored to the full Christian sacramental life, except in the case of divorce. An unforgiveable sin has been committed and the salvation of souls is in danger unless *economy* be applied.

There are some limits to the exercise of economy. These are firstly the fundamental principles of dogma and of Christian morality. The Church cannot give rights to Holy Communion to a heretic who denies the doctrine of the Eucharist.

The indissolubility of marriage must be maintained until a canonical investigation can determine that a first marriage no longer is a living sign of Christ loving His Church. Validation of orders through economy requires apostolic succession at least and preferably also a cononically correct administration of that sacrament.

Economy, contrary to the opinion of Greek theologian, K. Dyovouniotis,⁴ does not allow the Church to make valid sacraments invalid or vice versa. It is a Christ-given power to His Church that recognizes uncanonical sacraments as now canonical. The Church recognizes the sacraments as operative or non-operative of Christ's grace.

Economy is not totally a dispensation in the Roman sense.⁵ One application of

⁴ Cf. K. DYOVOUNIOTIS: PERI TES KENOSIS TES ANGLIKANIKES EKKLESIAS META TES ORTHODOXOU KAI TOU KUROUS TON ANGLIKANIKON CHEIROTONION (Athens, 1932) at 24, n.4; also, K. DYOVOUNIOTIS: *The Principle of Economy*, CXIV CHURCH QUARTERLY REVIEW, 94 (1933).

⁵ In ancient classical Latin, *dispensatio* meant to weigh out the metal money, *aes pensare*. It referred to the office of one who weighs the money, the dispensator is the servant of the treasury whose duty is to dispense the money. It referred to the act by which one paid the expenses of domestic administration. The Greek word, *oikonomia*, or *oikonomein*, was used by the Councils of Antioch and Chalcedon in a similar way to translate the Latin concept of *dispensare* in the classical sense. In administration of the Church's order it was seen necessary in certain circumstances to have some indulgence with a suspension more or less complete of the existing law. Thus a more technical sense was attached to the word through Church usage. Canonically it was the act by which the legislator exempts someone from the observance of a law in a particular circumstance while the law remains in force. It is distinct from privilege or from

economy is *proleptic* and is similar to a dispensation that is obtained before the administration of a sacrament. The other application is retroactive where the Church does not effect a valid or invalid sacrament but rather recognizes the free flow of grace.

Who has the power to exercise economy? Ecumenical synods as the supreme authority in the Church have the right to adapt or change the ancient canons. Regional synods of bishops can decide the complex matter of recognizing the ordination of a heterodox bishop in their area. A local bishop generally can handle such matters as recognizing a marriage within forbidden degrees of consanguinity or an ordination performed by an Orthodox bishop acting in another diocese with the permission of the local bishop. Nothing has been juridically codified even though there have come down some procedures through church practice. If, granted that there be no denial of revealed doctrine, economy is exercised; when the particular occasion has passed, *akriveia* or the strict-

absolution. Privilege replaces common law by a particular law, while dispensation does not suppress any law and allows a momentary suspension for a particular case. Absolution looks to the past and loosens from the punishment incurred while dispensation concerns especially the future. One well-known dispensation in Roman Church law is the *sanatio in radice* whereby a pontifical act revalidates a marriage that was null and produces a retroactive effect back to the moment when it was first accomplished by the exchange of consent in marriage. The Church acts as it would have acted had it given proleptically the dispensation which was given only later. There is no need to renew a consent which is a dispensation of positive law. It carries with it the legitimization of children born before the *fictio juris* was effected.

ness of the law returns. Each act of economy stands by itself. No precedents can bind any decision. It is an application of dogma and church teaching to living circumstances; above all, it should be considered as a principle about law whereby the existing strictness of the law is applied with accommodation to the human existential situation of man in sin, in his not-yet condition as viator, frail and sinful. It is cognitive, not preceptive or normative.

Examples of Economy as Practised in the Catholic Church

Sanatio in radice is an example of economy whereby a pontifical act revalidates a marriage that was null and produces a retroactive effect back to the moment when it was first accomplished by the exchange of consent in marriage. The Church acts as it would have acted had it given proleptically the dispensation which was given only later. In the area of marriage-divorce we have the Pauline Privilege that has come down to Roman practice from the 4th century interpretation of St. Paul by Ambrosiaster. Other examples are: the dissolution of non-consummated unions from the 11th century for solemn religious profession; non-consummated marriages by papal dispensation from Pope Martin V (1417-1431); non-sacramental marriages annulled by papal dispensation from the 16th century; marriage between a baptized Christian and non-baptized without dispensation of disparity of cult from 1924; from 1958, Pius XII dissolved a marriage of two non-baptized persons with no subsequent Baptism involved.

Much is being written as you well know about this basic problem: does in-

trinsic and extrinsic indissolubility of sacramental marriages preclude the possibility of a dissolution?⁶ Put into the context of this paper we could ask: does such indissolubility of sacramental marriages preclude the principle of economy to at least reconcile and bless second marriages? I do not wish here to review the literature on the powers of the Church in regard to indissolubility. I would merely like to apply all that has been said so far about the principle of economy to this thorny problem of marriage-divorce and ask some hard questions.

⁶ Some of the literature include the following works: V. POSPISHIL: *DIVORCE AND REMARRIAGE* (New York, 1967); J. Bernhard: *A propos de l'indissolubilité du mariage chrétien*, *REVUE DES SCIENCES RELIGIEUSES*, 243-256 (1970); *A propos de l'hypothèse concernant la notion de consommation existentielle du mariage*, *REVUE DE DROIT CANONIQUE*, 184-192 (1970); *Reinterpretation (Existentielle et dans la Foi) de la Législation canonique concernant l'Indissolubilité du Mariage chrétien*, *REVUE DE DROIT CANONIQUE*, 243-277 (1970); P. Huizing, *L'indissolubilité du mariage dans le Droit canonique*, *38 CONCILIIUM*, 45-56 (1968); Wm. W. Bassett, *Divorce and Remarriage—The Catholic Search for a Pastoral Reconciliation, Part I*, *THE AMERICAN ECCLESIASTICAL REVIEW*, 20-36 (1970). U. Navarrete, S.J., *Indissolubilitas matrimonii rati et consummati. Opiniones recentiores et observationes*, *PERIODICA*, II/III/69, 415-489; P. Fransen, *Divorce on the Ground of Adultery—The Council of Trent (1583)*, *CONCILIUM* (London, 1970) V, 6; 5, 89-100; Lewis P. Patsavos, *The Orthodox Position on Divorce*, *DIAKONIA* (N.Y.) 4-15 (1970); J.G. Gerhartz, S.J., *L'indissolubilité du mariage et sa dissolution par l'Eglise dan la problematique actuelle*, *LE LIEN MATRIMONIAL, Annuaire de Cerdic 1970* (Strasbourg) at 198-234; V.J. Pospishil, *The Eastern Churches and the Question of Remarriage of Divorced Catholics*, *DIAKONIA* (N.Y. 1966). L. de Naurois, *Le probleme de la dissolution du mariage par l'Eglise*, *NOUVELLE REVUE THEOLOGIQUE*, T., 50-77 (1971).

First, I would like to apply this principle of economy to the Orthodox view of marriage and divorce. We remember that no council or pope has ever condemned the practice among the Orthodox from earliest times to the present of allowing divorce and remarriage in the case of adultery. In the Council of Florence when the Greeks were questioned on this point in the presence of Pope Eugene IV, they replied that this was in conformity with the Gospel and the teaching of the Eastern Fathers. There was no further discussion on this point and it was not deemed an obstacle to reunion.⁷ Even earlier in the Council of Lyons II (1274) the Greek practice of divorce and remarriage had not even been raised and hence apparently was not even considered an obstacle to reunion of the East and the West. In the Council of Trent the delegates to the Council from Venice explained that both the Greek Orthodox and Uniates had different practices regarding divorce and hence asked the Fathers of the Council not to condemn the practice of the Greeks. Canon 7 (D.977) was not a *de fide* definition on the indissolubility of marriage but rather a condemnation of those as heretics who hold that the Church is in error when it teaches that the bond of matrimony cannot be dissolved.

Let us look at the development of the Orthodox position in regard to divorce and remarriage through the use of economy. Dr. John T. Noonan, Jr. has shown that from Constantine to Justin II there was in Roman divorce law no assertion that mar-

⁷ Pospishil, *supra* note 6.

riage was indissoluble or irrevocable by the law of God, nature or man; no assertion that a valid first marriage was any barrier to a valid second marriage.⁸ Novel 22 of Justinian's Code reads: "Of those things which occur among men, whatever is bound is soluble." Are we justified in seeing such an attitude to Christian marriage by a Christian emperor and theologian as totally depraved and the introduction of a laxity into marriage legislation that opposed the Gospel spirit? Noonan thinks not; and the whole Orthodox Church thinks not in its habitual use of the principle of economy in regard to marriage. Father Anthony J. Bevilacqua of the Brooklyn Chancery and Henri Crouzel have developed the thinking of the Fathers in regard to indissolubility.⁹ There can be shown a significant number of early ecclesiastical writers, especially in the West such as Ambrose and Augustine and in the North African Councils, who opposed the civil law and strongly preached the indissolubility of marriage.

Josef Zhishman, the noted historian of Oriental canon law, warns us not to make broad assumptions taken from the statements of the Fathers and the early councils.¹⁰ Zhishman interprets the canons of

the Council of Carthage, for example, as a condemnation of consensual divorce, not of divorce for the approved legal causes determined by judicial decision. He goes on to assign to the Fathers a pedagogic rather than a judicial role in preaching to the masses who were quite entrenched still in paganism to a Christian ideal of marriage. We definitely see a rudimentary awareness of the holiness of marriage slowly permeating the masses of Christians that would evolve to a full affirmation of its sacramentality only in the 13th century.

One important point about Noonan's work with Justinian law, I have found, is his accent on the fact that no church council or group of Fathers of the Church ever denounced these imperial laws as contrary to Christianity. Bishops were involved in the operation of the divorce laws in trying to reconcile the parties. Justinian appealed to the "defenders of the Church" not to grant divorces but to confirm the existence of a marriage. Noonan points out that nowhere is there a consciousness of conflict between the civil law and the canons of the Church. It would be naive to suppose that the Church Fathers were merely tolerating a moral evil perpetrated by civil administrators. Would it not be truer to find in Justinian's legislation a valid testimony of the belief of a great part of Christianity? Justinian was a serious Christian, well-educated theologian and must have sought advice from his ecclesiastical leaders to draw up civil laws that would not contradict Christianity. Had he so completely misinterpreted Christianity's teaching on divorce and remarriage, he would have met with tremendous opposition from

⁸ John T. Noonan, Jr., *Novel 22, THE BOND OF MATRIMONY*, 41-96 (1968).

⁹ *The History of the Indissolubility of Marriage*, 22 PROCEEDINGS OF THE CATHOLIC THEOLOGICAL SOCIETY OF AMERICA, 253-308. H. Crouzel, *Séparation et remariage selon les Pères anciens*, 47 GREGORIANUM, 472-94 (1966); *Remarriage after Divorce in the Primitive Church: A Proposal of a Recent Book*, IRISH THEOL. QUARTERLY, 21-41 (1971).

¹⁰ DAS EHERECHT DER ORIENTALISCHEN KIRCHE (Vienna, 1864), cited by Noonan, *supra* note 8, at 92.

the Church and yet we find no protest from the Church concerning Novel 22. Some Fathers, on the contrary, mentioned the legislation such as St. Epiphanius of Cyprus who taught in harmony with this law: "He who cannot keep continence after the death of the first wife or who has separated from his wife for a valid motive as fornication, adultery or another misdeed, if he takes another wife, or if the wife takes a husband the divine word does not condemn him nor exclude him from the Church or the life; but she tolerates it rather on account of his weakness."¹¹

It is important to note that the Western Penitentials from the 7th to the 10th century reflect similar legislation. A close study of these Penitentials reveals a pastoral practice of allowing divorce and re-marriage for mutual consent, change in personal status, captivity, infirmity, adultery, abandonment and entrance into religious life.¹²

The Church's teaching was faithful to the ideal set by Jesus Christ in the Gospel: the first and only marriage was blessed in the Church during the Eucharist. Second and third marriages, either after widowhood or after divorce, were concluded at a civil ceremony, after both had performed penance. The Church considered divorce a grave sin. An ecclesiastical divorce was

a contradiction in terms.¹³ It is not a reality belonging to the being of the Church as one and holy. Divorce relates to the conditions of the terrestrial existence of the Church as a consequence of the old Adam in his fallen nature. If the Church is led to tolerate divorce, it is because of the "not-yet" of its terrestrial existence. Divorce cannot be authorized by Church law; otherwise one entering upon marriage would have this in mind. This would be a sacrilege. Nevertheless, the principle of economy is applied to the pastoral area where good pastoral guidelines take into consideration the human weakness of any given person encountering difficulty in observing the ideal of indissolubility of marriage as proposed by the Gospel and the Church with unanimity throughout the ages.

After the 10th century when the Byzantine emperors gave to the Church the legal monopoly of registering and validating all marriages, the Church was obliged to issue statements of divorce. But this, it must be noted, was done generally in conformity with the civil legislation of the Empire. Under the Moslems, the Ecumenical Patriarch was considered before the Phanar as the civil authority and hence again the Church became the means of carrying out what the civil legislation had already enacted as a necessary corrective in a Christian context to the weaknesses of men.¹⁴

¹¹ St. Epiphanius, *Against Heresies*, 69, PG. 41, 1024C-1025A.

¹² Poenitentiale Theodori, II, 12, 7; Capitula Dacheriana, 158; Poenitentiale Theodori, II, 13, 4, 5; Poenitentiale Alvendense, 75; Poenitentiale Theodori, II, 12, 12; Capitula Dacheriana, 163; Confessionale Pseudo Egberti, 19; Poenitentiale Theodori, II, 12, 19; I, 14, 7. Cf. also on this subject Posposhil, *supra* note 6, at 196-200.

¹³ Cf. Elia Melia, *Le lien matrimonial a la lumiere de la theologie sacramentaire et de la theologie morale de l'Eglise Orthodoxe*, LE LIEN MATRIMONIAL, 180-197 (1970).

¹⁴ Cf. J. MEYENDORFF, MARRIAGE: AN ORTHODOX PERSPECTIVE (1970) and A. Schmemann, *The Indissolubility of Marriage: The Theological*

Father A. Schmemmann gives the Eastern Christian view when he writes in regard to the Church's attitude toward divorce and remarriage: "The whole point therefore is that this is not a 'compromise' but the very antinomy of the Church's life in this world. The marriage is indissoluble, yet it is being dissolved all the time by sin and ignorance, passion and selfishness, lack of faith and lack of love. Yes, the Church acknowledges the divorce, but she does not divorce! She only acknowledges that here, in this concrete situation, this marriage has been broken, has come to an end, and in her compassion she gives permission to the innocent party to marry again."¹⁵

From the exceptive clause in Matthew's Gospel (Mt. 19:9; 5:32) the Eastern Churches argued to other human weaknesses that rendered a marriage an ineffectual, therefore dead, sign of Christ's great love for His spouse, the Church. The civil code of Greece today grants a divorce for adultery or bigamy, malicious abandonment for two years of the other partner; an attempt on the life by the other; in the case where conjugal relationship has been violently strained through the fault of one to such a point that maintaining of conjugal life in common becomes reasonably unsupportable for the one petitioning the divorce; when one has brought a mental alienation to such a degree that a communion of minds has been suppressed and on the condition that the demented party had suffered this for at least four years during the marriage; in the case of leprosy;

in declared absence of one partner; in the case of impotence if this existed since the celebration of marriage and has lasted three years and continues to exist at the moment of petition.¹⁶

The present procedure for obtaining a divorce in Greece consists of three phases. At first the local bishop meets with the two partners in an attempt to reconcile them. If he fails, the two partners then appear before the civil tribunal. When the court has granted them the divorce, the bishop declares the spiritual dissolution of the marriage.¹⁷

This is the practice that the Holy See has respected as a legitimate ecclesiastical procedure in regard to the Orthodox in past councils of reunion of Lyons II and Florence and evidently in the Council of Trent. In Vatican II it indirectly seems to sanction this practice in its decree on Ecumenism: "From the earliest times, moreover, the Eastern Churches followed their own disciplines, sanctioned by the Holy Fathers, by synods, even ecumenical Councils. Far from being an obstacle to the Church's unity, such diversity of customs and observances only adds to her comeliness and contributes greatly to carrying out her mission, as has already been recalled . . ." (#16). Is this not a move towards an acceptance of the principle of economy when the Fathers of the Council declare that the Eastern Churches are to rule themselves according to their own disciplines, "since these are better suited to the temperament of their faithful

Tradition of the East, THE BOND OF MATRIMONY, 97-116.

¹⁵ *Id.* at 104.

¹⁶ *Cf.* 4 *DIAKONIA*, 80 (1969).

¹⁷ *Id.* at 79.

and better adapted to foster the good of souls," (#16). Pope Pius XII invalidated a marriage in 1958 between two un-baptized persons for the same reason: "the salvation of souls."

If Rome does so much for non-Christians in order that they may enter marriage with a Christian, if Rome has always recognized the Orthodox procedure of practicing the principle of economy in allowing civil divorce and remarriage with full restoration to the sacramental life, can it not do as much for Roman Catholics? If the Catholic Church can bestow the mercy of Jesus Christ upon any sinner for any crime committed, why can it not begin to extend the infinite mercy of Jesus Christ to those poor sinners who have made an unsuccessful marriage? Yet millions of such Catholics are deprived of the sacraments because of one false move that the Church considers unforgivable to the extent that such sinners cannot be reconciled fully to the spouse of Christ and be fed with the Bread of life.

It is not a question of the Church being torn between its imperative by Christ to preach incessantly the indissolubility of marriage and its duty to pass judgment on the validity or invalidity of marriages. It is a question of a merciful Church recognizing (and not necessarily always distrusting and rejecting) the duty of the state to resolve for the common good certain matrimonial situations that, if left unresolved will cause greater damage to the children and the partners involved and hence to the society that the state must primarily legislate to protect. This mercy sees the need for greater pastoral adaptation to the new forces in society that tend to make a long

range commitment to another person or way of life most difficult. The psychological and spiritual immaturity of the young entering into marriage demands an adaptation of the Church's law on marriage to the existential situations in which so many Christians live today that have pitted them against the Church of Christ. Jacques Ellul in his book "The Theological Foundation of Law" states what I would hold out to you canonists and theologians as the most important task of our age. "Our task, therefore, is not to determine what law with a Christian content is; rather, it is to find out what the lordship of Jesus Christ means for law (law as it exists) and what function God has assigned to law."¹⁸

The doctrine of the indissolubility of marriage represents as an ideal a development in the faith-vision of Christianity as the Founder, Jesus Christ surely taught. The Church must continue to preach this ideal so that as many as enter into this sacred bond of self-giving as Christ gives Himself to His Church may develop as full Christians and synonymously as full human beings. But is it not time to recognize, in the ancient Church and in the continuance of that ancient tradition in the Orthodox Churches today, also the mind of Christ in giving us the principle of economy whereby, not by another legislation by law, but by the charism of the Holy Spirit given to the Church, the clergy and hierarchy, the shepherds will seek to temper the strictness of the law with the mercy and condescension of the principle of economy? The Church has the power to

¹⁸ J. ELLUL, *THE THEOLOGICAL FOUNDATION OF LAW*, 13 (1969).

forgive with Christ's forgiveness. It has not the power to grant divorces; but it has the power to recognize by the Spirit, the bond of love and its sacramental absence where a marriage has ceased to be a true sacramental sign, not only signifying but also effecting what it signifies, the self-giving of Christ to His beloved spouse. The Church has the power to apply the love of God and that love of God all-too often comes to us children of Adam as mercy. I think the Church has the power to exercise this mercy in a court of equity set up in each parish or diocese to not invalidate marriages or grant divorces but to pass merciful judgment on those who can be readmitted to the Church's life-giving sacraments. If the Church has not this power or rather *diakonia*, a service in love to the weak, then it has ceased to be what Christ wanted it to be, the extension of His redemptive love and mercy unto every human being made by God according to the image and likeness of God.

QUESTIONS AND ANSWERS:

REV. CHESTER A. MELOCH: I have a couple of questions which I have discussed with Fr. Maloney, but I would like to bring to the attention of everyone. First of all, looking at the incidents of divorce in the Orthodox Churches, where they are approved and people received into full communion of those churches: I'm a consultant with orthodox priests in the western New York area and they all said one thing, that the incident was very very low in number. Now, I wonder whether anyone who is connected with these Orthodox Churches would give us something on numbers because sometimes we feel that if this happens, when we start approving these marriages, the whole marriage institution

will go out of the window. Does anyone have any statistics on that?

REV. GEORGE A. MALONEY: Maybe Msgr. Pospishil could add something. He has researched this.

REV. MSGR. VICTOR J. POSPISHIL: I once asked the Greek Archdiocese, which handles all divorces centrally, and there are three or four hundred divorces in this country. Which is the reason why probably, many who had a divorce or were estranged from the Church simply entered a Protestant or a civil marriage. But a more important thing is the question whether a change in the divorce law, say of the Catholic Church, would then stimulate people to sooner get a divorce. I would deny that. The reason is that when people in a marriage break up, they are, not only against each other, but against the institution of marriage. So if, as you might normally do, you suggest to one or the other, "Now don't worry you will get another wife or husband," they'd say, "Don't even mention it." Since marriage breakup is not for people in the Church (even a civil divorce can be permissible to protect certain rights) therefore, generally speaking, I think whether legislation is permissible or not, this will not influence the rate of marriage breakup. I want to mention also that we cannot find much from the Orthodox Church because they are living in a different societal structure. They are mostly agricultural countries. Therefore (due to these) other factors, societal factors, the number of incidents of marriage breakups and consequent divorces will also be lessened.

REV. FRANCIS X. GLIMM: I can just add one point to that. I asked some of the Greek priests on Long Island. Most of them would have three or four applications each year for this so-called divorce—rather readmission to the Sacraments—and that they have the impression that among their people that go to Church perhaps one

in ten is involved in a second marriage. We have an entirely different problem, so that there is some fear, I suppose, that if a change in the Latin practice were announced it might create a kind of threat. Certainly the Greeks and Russians do not have the same problem as we have in numbers.

REV. CHESTER A. MELOCH: My second question or observation is this, outside of Msgr. Pospishil and a few other elite members of the Eastern Catholic Church, it seems to me that the Eastern Catholic Church is more strict in applying the indissolubility of marriage as a practice in their Tribunals, Chanceries. I think that the Latin Church has become much more lenient in the application of nullities of marriage, etc. In my practice, some of the Eastern Catholic dioceses are so strict on even D. F. cases, you wonder how they could even grant even a few of them a year with the normal processes, testimonies and everything else which they demand. It seems that even the Eastern Catholics are adverse even much more so to this application than the Latin Catholics might be.

REV. GEORGE A. MALONEY: I think the answer to that is in the area of understanding the education of the Eastern Catholics, especially in the United States. Practically all of the Bishops and those who work in the Chancery Offices have been educated in Latin Seminaries, especially Catholic University. They really don't understand their traditions and I don't say that in any disparaging way. It's, to me, the most blatant objective fact. Also the choice of bishop has been throughout the history, since Bishop Takach was first appointed over the Eastern Catholics in the United States, a choice of a person who would follow very faithfully the instructions from the Oriental Congregation, so that you don't have wild eyed or even creative individuals, you have people who just ask Rome what should be done and they do it. Again, because they are so close to the Orthodox,

because forty, fifty years ago so many of these Eastern Catholics went over to the Orthodox faith over the issue of celibacy and Church property, trustees and all this sort of thing, I think they have this sense of rigidity so that they want to be extremely faithful to Rome and they don't want to show too much of this loose orientation towards the Orthodox view. They tend to be hyper-conservative to say the least.

REV. MSGR. VICTOR J. POSPISHIL: There is another more, let's say, simple explanation of that. In the six dioceses of the Eastern Rite in this country there are four canonists working. So this, of course, explains why the dioceses are sometimes screaming because they have simply not enough men. Another thing is while I would easily grant a remarriage after divorce, frankly if it is a question of annulment and everything, all the rules concerning annulments should be applied because it was annulled.

QUESTION: "[Priest unidentified] Father, you seem to imply that a first marriage would be considered a sign of Christ's love for His Church; but would that second marriage which was entered only civilly also be considered a Sacramental marriage, a sacramental sign of the love of Christ and the Church?"

REV. GEORGE A. MALONEY: I think the Orthodox would view it as a not fully realized sign or not one that is totally open both within the individual's conscience and in the community in which these two people continue to live where people know that there has been a breakup in the first marriage. So that it is considered a valid Sacrament in that sense, but it is defective. It is not the perfect openness to fully realizing the symbolic sign of the marriage. That only can be the first marriage. Even by death, the second marriage is considered a valid marriage but not in its full orientation, in its elicitation of this sign between

Christ and His Church—the husband for the wife. So, you see, it isn't either valid or invalid. I think it's a matter of more or less signifying the fullness.

REV. MSGR. WILLIAM VARSANYI: "I would like to know how far this principle of *Oeconomia* would go in various orthodox churches. I spoke to someone, I can't remember, I think it was a Romanian Orthodox Bishop, and he said that they can grant it three times, but then no more *Oeconomia*. What is the real principle then?"

REV. GEORGE A. MALONEY: Yes, there is a limit and it again is established that a fourth marriage would be completely invalid and would be not permissible. Now, there they begin to hedge. I think why they choose only three and then stop at the fourth is by having gone through three marriages, you should be ready for the grave. I really don't see any other reason except that just existentially it doesn't happen that often. But there again, I'm sure, that in the concrete given circumstance, except in the case for a priest, where the priest's wife dies, he would never be granted the privilege to remarry, as a priest, unless he were laicized. Then he can be with the *hoi polloi* up to four marriages. The fourth one would not be allowed. But, by that time they would figure very misogynistic like, that his passions would have run the day, and he should now think of death and it's a very wholesome thing now to not undertake this when it's a tottering sign of Christ's love for the Church.

REV. MSGR. VICTOR J. POSPISHIL: "Not only after death—after widowhood it is the same."

REV. GEORGE A. MALONEY: "Yes. The death?—What?"

REV. MSGR. VICTOR J. POSPISHIL: "It is not only after divorce, three marriages; it is

also after widowhood you cannot have a fourth marriage."

REV. GEORGE A. MALONEY: "Yes. That's what I've said earlier. When a person, one partner, dies and the other is still alive, that person can only remarry. As I said, the *hoi polloi*, only up to, through three marriages. Yes, irrespective; either by divorce or just widowhood, you are only allowed this. And Father understood that, I think."

REV. MSGR. WILLIAM VARSANYI: "In your explanation you made reference a number of times to the 'innocent party.' Would there be any difference regarding the second or third marriage for the guilty party?"

REV. GEORGE A. MALONEY: Well, there I think, if the guilty party had entered into an actual marriage, then it would be in the power of the Church to take that existential situation and say, "We cannot, you know, approve of this, but we can allow this union to continue and you, after a penance, can be brought back to the Sacraments." But, the Church in the case of a guilty party, violating the validating reasons for a second marriage, would not be able to say, "This first marriage is dead." The Church would have to insist that the first marriage is very much alive, this person was the guilty party, but then would recognize that now you have a new situation—there is new love, there are new obligations, children are in the second marriage and so the Church after due penance would allow this party to come back, but always realizing that it's again a very defective sign.

REV. MSGR. WILLIAM VARSANYI: "My final question is: What Church authorities, on what level is the decision made—would it be the parish or—"

REV. GEORGE A. MALONEY: It would be on the level of the Bishop. You wouldn't have

to go to a higher regional synod of Bishops for this. But each Bishop for his diocese from earliest times was empowered to judge where there was a marriage. In fact, this is exactly what a priest is doing when he officiates at a marriage. It isn't within his compass to say "this is a marriage in Christ." He is actually the delegation of the Bishop who is passing judgment that this is a sign only after due process that the priest, therefore the Bishop, recognizes that these two people have a full understanding of a Christian marriage, the obligations and the joys, the duties of moving into this type of Christ's spouse-relationship and when the Bishop knows this through his priest, then it is the Church that is charismatically saying, "I pronounce you man and wife. I recognize that your contract is one made in Christ. There it is, a Sacrament." So, a fortiori, also it would follow that the Church is the one, through the Bishop. But there he would not delegate it especially to a priest unless he would do it through a Tribunal of equity, something like Msgr. Stephen Kelleher proposed. (I think that's very much in keeping with the orthodox usage, where he allows within even a parish with due delegation from the Bishop.) But there again it is the Church passing judgment in its charismatic function, recognizing that there is no marriage anymore, not dissolving it, but these two people have dissolved it through sin or some extrinsic force beyond their control. The Church has that charism from Christ to say there is no marriage. Msgr. Kelleher has utilized precisely the revelation of Christ through people like psychologists and psychiatrists, sociologists and would insist on his commission of equity that there truly be these people who are feeding into the mind of the Church these factors which are certainly a revelation of God, too. We can't divorce the Church with its direction to God, God's revelation to the Church, from God's revelation in the human situation as discerned by psychology and sociology.

REV. ROBERT T. WICKMAN: I have great difficulty with the whole concept of Oeconomia from this point of view. You mentioned that the Pauline Privilege would consider an example of the use of this privilege; that a return of "lapsi" as an example of the use of this privilege; the dissolution of a ratum non-consummated marriage, as an example; the dissolution of a nonsacramental marriage as an instance. Well, I'm sitting here and I'm saying to myself, quite frankly, this principle has a chameleon-like appearance. It seems to change in color depending on the case you're putting it to. In other words, I wonder if we have studied the principle sufficiently in the Western Church to take it now and put it on our laws and on our customs and on our history as almost a superstructure that we don't quite understand.

REV. FRANCIS X. GLIMM: Just let me say for the record that we understood that the principle of Oeconomia is not in fact a Western principle and that in relation to marriage, particularly since the reformation where we have been used to the idea that the Greek Church grants divorces or accepts them and we do not, we have kind of pushed away from that. So that the talk here today is, so to speak, exploratory and I think that nobody feels that we can adopt this principle without further discussion or that it can easily fit in with our procedures. But, looking further ahead, supposing that it were at some future date usable, I think it would not bypass the usual Catholic procedures where a person might for the sake of conscience feel that he would rather have his marriage declared null and void as from the beginning, rather than take advantage of this principle if it ever goes to operation. So, this is purely an exploratory talk and quite hypothetical in regard to the practice of the Western Church. Now, we'll let Father Maloney answer the rest of it.

REV. GEORGE A. MALONEY: From the tone of

your question, I foresee a type of thinking that I've been trying to avoid, namely just substituting your laws for another law or bringing into your strict law another law and this is precisely what I wanted to avoid. On the other hand, it does seem chameleon-like, shifting, and that is the whole force of this principle about a law, namely you can't legislate for it ahead of the circumstances. So I think that before we could ever use this as a principle about our law, to accommodate our law, its strictness, to manifest the mercy of Christ, we really need a theology about marriage. We don't have a theology about marriage. If you start talking about marriage, you immediately start talking about Pope Alexander III, and why in the world did he say: A Sacramental marriage that is indissoluble is that which is *ratum et consummatum*. But, isn't that a sacramental valid marriage too, between two Catholics, *ratum non consummatum*? But the Church has been dissolving that. Why do we just settle on a theology of marriage for that "*consummatum*". What does the physical do in the light of psychology today? We know that many consummated marriages are far from being realized marriages in Christ. We know that many are marriages before they have consummated it. And so, just like Baptism, we no longer see it as one concrete moment, Confirmation as one concrete moment, Marriage as one concrete moment; but it is a process, it's an evolutionary discovery of Christ in this situation. And so, there has to be a movement in marriage and it's this, I think, that we have to understand: that *oeconomia* will only be a working principle when we have rediscovered what is marriage, what is the theology of being married—two people married in Christ—and then we will be able to reflect on our inadequate expressions of that theology by our inadequate canons, our canonical legislation. And above all, I think, the first thing to recognize, that there is something wrong, is the pastoral practices. As all of you are well

acquainted, your heart bleeds when you see the many causes for breakups of marriage that never were conceived in the middle ages. And yet we're laboring in our canonical practices under those conditions that invalidate it or annul marriages. It's here, therefore, that we must redevelop a more comprehensive vision of the theology of marriage that will then allow us to re-examine our canonical basis and also our pastoral practices. So that the three of these can go hand in hand. I think a great deal has been done just in the last year. I have a bibliography, and I hope this will be printed if any of you are interested, but in the last year's issue of *Revue de Droit Canonique*, you have some excellent articles there, especially by Father J. Bernhard. He calls it "Reinterpretatione (Existentielle et dans la Foi) de la Legislation canonique concernant l'Indissolubilité du mariage chretien." An existential reinterpretation and in the faith of the canonical legislation concerning the indissolubility of Christian marriage. And Huizing and other people have been writing in this vein also. So that I think you could see theologians and canon lawyers are coming to grips with other factors that cannot be outside of God's revelation, namely, these psychological and sociological factors that are making us now understand more about the theology of marriage than the limited theology of marriage that was confined once Alexander III set up this in the thirteenth century, the "*consummatum*" as the typical Catholic sacramental marriage that was totally indissoluble. Anything outside of that was up for grabs. But, here, this was where we talk about marriage. Well, this is to limit our theology, therefore, and I think we all suffer greatly from that. What does the physical consummation add to the theology? We musn't work that way. We have to work around the scripture, we have to work around the meaning of Christ in His relationship to the Church in the divine economy and then see that the theology of marriage flows out of the existential situa-

tions in which human beings must develop as human beings and synonymously as full Christians.

REV. GEORGE A. MALONEY: Thank you very much. I think those are very important observations. I would extend that, as I'm sure all of you have experienced in your Court Tribunal cases, not just to the blacks because it's such a minor group of Catholics—among the blacks—but the Puerto Ricans where they have a whole different ethos towards marriage—just their consensual regard to just living together and if it works fine without even going to the Church. This, I think, has been accepted. The Church is going along with a sociological factor that if these people start a marriage with that, whether there was any form or not, the Church goes along and accepts their word that they really felt through the social mores that this is the way to do it. The people in their society have been doing this for years, centuries, and so they went along, too. But, we do see, and that would be the second point I want to make: for instance, the Church has suddenly seen very clearly in the dispensation of perpetual vows of Religious (and in a way priests) that a human nature is not that aristotelian, essential thing that's "way off" and "the same" all through centuries. But it's an ongoing fluid thing that keeps changing and the person I was yesterday is the same person today, but today there's a great difference depending on how situations hit me. I can see now that the social factors in my life can really change my whole value structure very strongly. We see, for instance, just on the matter of a whole new concept towards original sin: the social impact that I am not a person all by myself, an island, a rolling stone. I am part of a society and if the society has inherited certain false values they come into my life and well, whether you're going to say I'm guilty or not, it does show me that sin is a mounting thing and also it shows me that I am a part of my society

and I'm an ongoing formation, I'm always changing. Now if the Church recognizes that Religious who make a commitment fully before God, eternally to live this type of life, can be dissolved—Why? Well, not only to avoid greater scandal and destroying lives, but precisely I think implicitly is that they have undergone a change, that they now see new values that they didn't see before and therefore legitimately they can be laicized. Now, if that happens for Religious, why can't it happen in married life where you are dealing with something that is even more difficult to foresee than say the Religious life. Are you committed? Before any Religious Order accepts a person now there is a battery of psychological tests. But, what do we do to prepare people for marriage? A few pre-Cana Conferences that do not even touch the psychological maturity of these people. Well, they just love each other. But, is it love that they have seen in the movies and all this sort of thing or is this the real mature judgment that comes from years of accepting responsibility in their lives? No. They're very immature as far as responsibility goes; sexually they're precocious and they settle for that. Yet, only in the living situation do they come up with the unforeseen which is the ordinary; and then they find it's too much. Are we going to hold them to this type of nature that they were—even they didn't know who they were when they entered that. They were too much influx. I see that constantly teaching college students. In the matter of faith: they are not capable of making a faith commitment to Jesus Christ and they're rebelling against the external side of Church which in a way they have to do in their thrust towards a personal involvement. But they don't have the stability of an ordinary life, they don't have the sense of responsibility, they don't have the struggle, the conflict that will confront them and force them to a sense of identity, a sense of who Jesus Christ is in terms of ultimacy to them. And so, I think

what you say is very true that our nature is constantly an ongoing process of evolution and the society with all its values comes in and forms us. And so the Church has to consider the changeability in human nature and it cannot just look to a natural law and apply it universally to all people without looking at this individual person.

DR. THOMAS E. BIRD: (Dr. Thomas E. Bird, a Contributing Editor to the periodical *Diakonia* and a professor at Queens College, New York was present on the dais with Father Maloney and made the following observations.) Obviously mankind is very different in the various cultures in which he has lived and developed particular forms. It would be fatuous to deny a difference, in a cultural sense, in the sense of life style and value structure, between Latin and Greek and Romanian.

But, I would like to suggest to you that there has been more than a full element of pride and face saving on the part of legislators and ecclesiastics since the division between the Christian West and East. Once that break took place there was a great need to justify what each segment of the Churches were doing. Rather than talk about the various rights or cultures or Churches, I would like to come back to a focus on the single Christian community which her Founder intended would live at one and raise in your mind the meaningfulness today of terms such as "Eastern Christian" and "Western Christian" when we have an Eastern Christian Church and community and living out of that life style and tradition at Thirteenth Street and Broadway and the living out of a Western Church style complete with the paraphernalia of tradition and canons two blocks away. Father's comment about future shock and permanent commitment, it seems to me, has to be addressed to us as members of the Roman Church who can perpetuate the sin, the guilt of the Roman Church, if we don't address ourselves to the unity of the human condition and not

continue to allow the division, which her Founder did not will, to find expression in the canons and confirm us in our psychosis of division within the human family and division within the Christian community.

Next point, at least since the turn of the century and the eucharistic congresses at the end of the 19th, Rome has been fulsome in her saccharin rhetoric about an esteem for the Eastern Churches and what they stand for and what they represent and the deep regard for the richness for these traditions and liturgies. If we are not to let those words hang in air or lie in the dust of Papal archives, then we have a serious responsibility to examine not just during the January week of unity, the quaint and interesting liturgical practices of this small benighted group of Christians, but as Father Maloney has pointed out precisely and eruditely, the Roman Church has at various important points in her life (I mean the Councils) taken cognizance of what this very significant, very sophisticated, very intelligent Christian community was up to, has taken cognizance of how it dealt with this terribly critical problem and has then proceeded to close the book and move on in her own way. It seems to me, if we are to be honest and at all concerned about what Vatican II was saying about the universality of the message of the Lord, about the unity of the Christian community, then we must not stop with a single Tuesday, ten to twelve session in examining the question of "economy," but we should take practical steps like dissertations in the schools of canon law on what the practice in this question has been among the Orthodox in North America, dissertations on what the practice has been for the last two centuries in the Melkite Patriarchate and the Maronite and the Armenian Patriarchates, taking as Father Maloney noted to account the fact that a great deal of the thinking of the Eastern Catholic Churches has been very much under a Roman shadow. But at least these will provide wherever there has been action in the area of ecclesiastical divorce,

ecclesiastical expression and use of the principle of *oeconomia* (and there has been in the last one hundred and fifty years) a kind of irrefutable evidence and solid basis for building. It seems to me we have to ask ourselves hard questions about the legitimacy of continuing to talk in such very rigid terms about "their" culture and "our" culture. If the Latin Church has had any particular genius it certainly has included an openness to pragmatism and the reality of the human condition. It seems to me this ought to be only the first, if we're genuinely concerned about this question,

and of course we are, only the first of a great deal of searching and fact finding and continuing to examine how these other communities, which we do not know well in any guise, how they have dealt as Christians with this very critical problem.

REV. FRANCIS X. GLIMM: "Thank you Dr. Bird. We are all interested. We have all profited from the information and the experience, the insights of our two panelists. We could go on for a long time, but I think we simply have to stop now because of time."