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Law of Christian Marriage

John H. A. Whitman

THE LAW OF CHRISTIAN MARRIAGE

In her teachings on marriage the Catholic Church has ever remained immutable. What she holds today she held yesterday and will always hold. She teaches that marriage is a natural, moral and religious contract which had its origin with God in the Garden of Eden when He made them male and female and said to them: "Increase and multiply."

It is a natural contract since it is ordained by the law of nature for a well defined purpose, which purpose precedes all human intervention, and it remains a contract while becoming a Sacrament under the law of Christ; moral, because it is governed by the moral law of God; and religious, because it is instituted for the service of God in its end and object. Moreover, as to its civil effects, which are separate and distinct from the contract of marriage itself, it is a civil contract. That the Church recognizes the civil nature of the marriage contract may be deduced from the following canon:[1]

Baptizatorum matrimonium regitur jure non solum divino, sed etiam canonico, salva competentia civilis potestatis circa mere civiles eiusdem matrimonii effectus.[2]

The marriage of baptized persons is governed not only by the divine law, but also by the canon law, with due regard to the competency of the civil authority concerning the purely civil effects of matrimony. The civil effects here considered are dower rights, the right of succession, property rights between husband and wife, the rights of infants to titles and property, and like material matters.

The limitations and powers of the secular law are as follows: (1) No State has any power to legislate concerning

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1 All canons herein are taken from 5 AUGUSTINE, A COMMENTARY ON THE NEW CODE OF CANON LAW (1923).

2 CANON 1016.

Marriage as a Sacrament, since this is a purely spiritual matter; (2) Neither can the State establish *impediments,* either prohibitive or invalidating; (3) The State may, however, set up laws governing the civil effects of marriage and prescribe a civil form to be followed by the contracting parties under penalty; (4) The State may, for a time and for sufficient reason, prohibit marriage or its consummation, at least indirectly, as, for example, to soldiers; and (5) Under no condition may a State claim the right to enact laws that clash with the natural or divine law, whether a marriage of a baptized or an unbaptized person is concerned, since the State is subject to these laws and not superior to them.

The above rules obtain only when the parties concerned are baptized Christians. With these it is impossible to separate the contract of marriage from the Sacrament. Hence, if the parties have been baptized, and the marriage is valid in all other respects, they have received the Sacrament, whether they will it or not. With the unbaptized, the situation changes. As the Church claims no jurisdiction over the unbaptized, either the individuals or the State regulate their marriage; but since individuals are frequently motivated by self-interest, it would be ruinous to the State to leave so vital a matter to them. Hence, to the legitimate civil authority alone does the right belong so long as its laws are not contrary to the natural or positive divine law.

Catholic ethics concerning marriage, independent of its consideration as a Sacrament, flow necessarily from the natural law, which law is the same for all. Neither the State nor the individual is above it. The Church then is the first to recognize that marriage has its civil consequences; that the State acts wisely within its jurisdiction. Moreover, She insists that Her faithful observe the regulations that the State has ordained. But while admitting that the State has a right to regulate as to the formalities

of marriage, She most emphatically reserves to Herself the right of determining what is and what is not a valid marriage contract. This She claims by divine right, since marriage is a Sacrament, and the Sacraments are all under Her jurisdiction.

In order to obtain a proper conception of the Church's law on the indissolubility of the marriage bond, and the consequent prohibition of absolute divorce, a clear and definite knowledge of three types of marriage is required, namely, an un-christian or legitimate marriage, a marriage *ratum* and a marriage *consummatum*.

An un-christian or legitimate marriage is one that exists between non-baptized persons. The Church teaches that such a union, under certain conditions, may be dissolved and even after consummation,[3] by virtue of the Pauline Privilege. This supposes: (1) That one of the parties to the contract has been converted to the Christian faith; (2) That the other party refuses to live with the converted party; (3) Or that he refuses to the convert the free exercise of the Christian religion; (4) The privilege, however, cannot be used when the converted party leaves the other; (5) Nor can it ever be used without a papal dispensation; (6) The baptized party must question the other party whether he is willing to live peacefully with his christian consort;[4] and (7) The bond of marriage, however, is not dissolved when the dispensation is granted but only when the baptized party contracts another marriage. Should the infidel be converted in the meantime, both are bound to live together. One who has been granted the Pauline Privilege may remarry, and with the proper dispensation, may even marry another un-baptized person. In such a case should the non-baptized party afterwards endeavour to lead the Christian

3 1 Cor. VII., 12-15.
4 This is known as the interpellation.

into infidelity or otherwise act as described in the case of the convert, the bond of marriage will hold and nothing other than the death of one of the parties can free the other.

Marriage *ratum* is one validly contracted by two baptized Christians but as yet has never been consummated. In this situation, if one of the parties makes a Solemn Profession in a Religious Order, the party of the second part is free to contract another marriage. The reason for this is because as yet they have not become "one flesh" but rather are united by a spiritual bond.[5]

In the above two situations, the dissolution takes place only after the ecclesiastical court of the diocese of the respective parties has examined the cause by judicial proceedings and pronounced sentence. In the case of dissolution by papal dispensation, a grave and sufficient reason other than the mere non-consummation must be alleged.

There is no power on earth other than the death of one of the parties capable of dissolving a consummated marriage. To hold that adultery may dissolve the marriage bond is repugnant to right reason, for why should one be permitted to gain advantage to himself by reason of his wrong, and this would be an advantage derived from sin if an adulterous person could contract another marriage. Even the civil law will not allow one to enrich himself by his own wrongful act. It is not merely the ecclesiastical legislation that prohibits divorce but rather the laws of nature and nature's God. As I have already stated, this contract and its essential object have their origin in the law of nature, that is, the purpose of this union is founded in the nature of the

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5 As the consummated marriage is destroyed by the death of one of the body, so the *matrimonium ratum*, which is only a spiritual bond, becomes dissolved by solemn religious profession, which is a spiritual death, by which one dies to the world in order to live to God. St. Thomas.

If any one saith that matrimony contracted, but not consummated, is not dissolved by the solemn profession of religion by one of the parties, let him be *anathema*. Council of Trent.

human species, and the natural law in this, as in other human activities, is a participation in the rational creature of the eternal law of God. From the very dawn of creation, it has been the immutable law of God that marriage should be the union of one woman with one man, but man priding himself on his intellect and incited by passion that would put the brute to shame, has sat in judgment on the eternal decree of God and declared that marriage the most tender and sacred of all human relations should be degraded to a transient society of profit and pleasure with the result that history is full of dissolutions of the marriage vow by fickle passion and cold-hearted ambition.

I will not attempt a historical investigation of the law of divorce due to the difficulty of acquiring historical truth. For "even if history in general were as certain a thing as many believe it to be, we could still acquire from it little reliable knowledge of former divorce laws, to the original records whereof we have not access; since only from such records can we ascertain truly what are our own contemporary ones." [6] Furthermore, since divorce has been explicitly abrogated in the New Dispensation by the words of Christ, "Whosoever shall put away his wife and marry another, committeth adultery against her. And if the wife shall put away her husband and be married to another she committeth adultery." A delving into the pre-christian era would avail naught. This paper then will consider divorce from the view point of Christianity. The term divorce, as used here, is to be understood as divorce *a vinculo matrimonii,* which carries with it the privilege of marrying another. Divorce *a mense et thoro,* being in reality no divorce at all.

If we consider marriage as a purely natural contract, forgetting entirely its sacramental nature, it seems evident that this contract, after the manner of all other contracts,

6 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION (1891) 36.

cannot be dissolved at the discretion of either of the parties. Since the resulting obligation is the issue of their joint consent, nothing other than a mutual consent can dissolve that obligation. The reason for this is that whatever right one of the parties has in the person of the other cannot be taken away without the consent of the other party whose right it is. Nowhere in the statutes of the various states do we find divorce being granted by the mutual consent of the parties. In fact the statute law frowns on such a situation, but will not hesitate to do what the parties themselves cannot do, that is liberate either of the contracting parties for some statutory reason. If the parties to the contract cannot dissolve it by their mutual consent, it is difficult to understand how the State can step in and say the marriage bond no longer binds.

When we examine this question of divorce by the law of nature, we must consider, "in the first place what sort of contract the ends of marriage make necessary; whether they can be effectually obtained by a contract which will expire of itself, after a certain time, or may be dissolved by the act of the parties at any time; or whether they require that it should be perpetual from the beginning, and incapable of being dissolved afterwards. Certainly, where a man and a woman consent to be husband and wife, that is where they enter into a contract of marriage, the ends which they must, from the nature of the contract, have in view, determine what sort of a contract it is that they agree to. If those ends require it to be perpetual and indissoluble, their consenting to it, for the attainment of those ends, implies, whether they express so much or not, that they consent to be husband and wife forever. Nay, if the ends of marriage require such a contract, though they should annex to it any express condition, of being released after a certain time, or of being at liberty to release themselves by joint consent at any time, still such a condition would be void.

If they have a will to enter into a contract, which in its nature is perpetual, they cannot at the same time, with any effect, will any condition which should make that contract not perpetual."[7]

Now the ends of marriage are the mutual happiness of the parties and the procreation of children. By establishing this union, God intended to secure mutual help and support between the contracting parties. Neither man nor woman is complete and self sufficient alone. Nature has made one dependent on the other. The woman being the weaker needs someone on whom to lean. Man needs someone to care for him. Man is characterized by greater strength and energy; he seeks a sphere of worldly activity. Woman's nature is sweet and mild, her sphere of work being confined to the home. Thus their natures complement each other, and in union each acts beneficially upon the other. Furthermore each party will be more ready to comply with the temper of the other, and correct whatever is amiss in their own, when they are under the necessity of continuing together for life, than if they had the refuge of divorce, whenever they grew disagreeable to one another.

"As to the other end of marriage, which is the production of children, it includes in it the duty of maintaining and educating them in the best manner possible. Hence, those who enter in a contract of marriage, with a view to this end, must *ipso facto* be understood to bind themselves to this duty. The care of educating their future children in the best manner that they can, becomes by marriage, the joint duty of the husband and wife. But this duty cannot be carried on by their joint care, unless there is a union of affection and interest; nor can there be such a union, where they know from the beginning, that at a stated period the mutual affections are to be withdrawn from each other, and their interests to be separated. And much less can there

[7] 1 PAGE ON DIVORCE (1850) 37.

be any effectual union when they are at liberty to withdraw their affections from each other and to separate their interests." [8] Since then one of the ends of marriage, and the duty in which the other end of it engages the parties, require that the contract should be perpetual, the consequence is, that when a man and a woman enter into a contract of marriage, they must, from the nature of the act, consent to make that contract perpetual, because it is absurd to suppose that they have a will to contract for such purposes as require their obligation to each other to be perpetual and unalterable, and yet that at the same time they have a will to make that obligation temporary and uncertain.

Marriage then is by its very nature a stable union. To think otherwise is to disregard every dictate of reason and nature. Man cannot reasonably be allowed the privilege of paternity without also assuming its responsibilities; nor can a woman find either reasonable or natural justification in casting from her breast the child of her womb.

It has been frequently asked, why this contract, since its obligations are derived from the will of the parties concerned in it, should not after the manner of other contracts, be capable of being dissolved at the will of the same parties. The only answer to this is the law of nature requires the one to be perpetual while the other is not so. "Certainly if the law of nature makes it necessary from the first, that when two parties marry, the contract of marrying into which they enter shall be perpetual, the same law will forever continue to forbid them to dissolve that contract, after they are entered into it. There is an absurdity in saying, that a contract which is perpetual by its own nature, from the beginning, may lawfully be dissolved at any time by the consent of the parties who are engaged in it. A man and a woman are at liberty whether they will marry or not, but if they will marry, they are not at liberty whether they will

8 PAGE, *op. cit. supra* note 7.

enter into a perpetual union or not. If they will marry, they unite for such purposes as force them to contract for life, since this quality of being perpetual is necessarily connected with and inherent in the contract, it is not left to the discretion of the parties, after they have engaged in the contract, to change this quality by an act of theirs, and thus make the contract temporary and precarious." [9]

The Church is not alone in recognizing the advantages of indissolubility, as opposed to the right of divorce. David Hume has beautifully demonstrated this truth in his essay on *Polygamy and Divorce*. He says:

"If it be true, on the one hand, that the heart of man naturally delights in liberty, and hates everything to which it is confined, it is also true on the other, that the heart of man naturally submits to necessity, and soon looses an inclination, where there appears an absolute impossibility of gratifying it. These principles of human nature may appear contradictory. But what is man but a heap of contradictions. Though it is remarkable, that where principles are after this manner contrary in their operation, they do not always destroy each other, but the one or the other may predominate on any particular occasion, according as circumstances are more or less favorable to it. For instance, love is a restless and impatient passion, full of caprice and variations, arising in a moment from a feature, from an air, from nothing, and suddenly extinguishing in the same manner. But friendship is a calm and sedate affection, conducted by reason and cemented by habit, springing from long acquaintance and mutual obligations, without jealousies or fears, and without those feverish fits of heat and cold, which cause such an agreeable torment in the amorous passion. So sober an affection, therefore, as friendship, rather thrives under constraint, and never raises to such a height as when any strong intent or necessity binds two persons together and gives them some common object of pursuit. We need not, therefore, be afraid of drawing the marriage knot, which subsists chiefly by friendship, the closest possible. The amity between persons where it is solid and sincere, will rather gain by it, and when it is wavering and uncertain, this is the best expedient for fixing it. How many frivolous quarrels and disputes are there, which people of common prudence endeavor to forget when they lie under a necessity of passing their lives together, but which would be inflamed into the most deadly hatred, were they pursued to the utmost, under a prospect of an easy separation. In the third

[9] PAGE, *op. cit. supra* note 7, at p. 40.

place, we must consider that nothing is more dangerous than to unite two persons in all their interests and concerns, without rendering the union entire and total. The least possibility of a separate interest must be the source of endless quarrels and suspicions. The wife, not secure in her establishment, will be driving some separate end or project; and the husband's selfishness, being accompanied with more power, may still be more dangerous." [10]

Paley, writing on this subject says:

"As the duties which, by the law of nature, parents and children owe reciprocally to one another, cannot be fulfilled except by the continued co-habitation of the parents, divorce, because it is at variance with such obligations, is at variance with the natural law. But if there be no children, the objections to divorce rest on the grounds of general expedience. The general utility of making the marriage contract indissoluble during the life of either party, may be proved from its tendency to preserve the happiness of the marriage state, through the advantage of a perpetual common interest. For if a separation could take place at will, the wife, because she is likely to suffer most from separation, would endeavor to draw to herself a fund, in order to guard against the evils of such anticipated divorce. This disunion of interests would be followed by an alienation of affection, which would be detrimental to both parties. But if she be secure from the chance of a capricious separation, the same self-interest which, in the former case, we said would lead to acts productive of misery to both, will lead her to an opposite line of conduct, which would be productive of mutual happiness.

"Again, an indissoluble contract tends to preserve the happiness of the marriage state, by inducing a necessity of mutual compliance. A man and woman in love with each other, do this insensibly. But when love is wanting, nothing will go half so far with the generality of people, as the one intelligible reflection, that they must make the best of their bargain. Therefore, through necessity, they promote the pleasure of each other, and this will soon become a habit so easy and natural, that it will procure them a repose and satisfaction sufficient for their happiness. Besides, as by the constitution of nature, love is not a durable passion, whatever attraction either party may have once seen in the other, will be impaired by possession. And as the desire of novelty can be checked only by the known impossibility of obtaining the object, that check should, in this case, be adopted for its utility; because it supplies to both sides, by a sense of obligation and mutual interest, what satiety has impaired of possession and mutual attachment. But it may be said that divorce by mutual consent

[10] HUME, POLYGAMY AND DIVORCE, ESSAY 19.

would not be exposed to the same evils. But we must consider the indelicate situation, and the prospective misery, to which the dissenting party must be exposed, if the other party has the right to ask her for an agreement to such a plan. The law of nature or of the land, rather, admits a divorce as a remedy for some provable acts, but not as a relief from imaginary grievances, such as dislike, temper, jealousy, and other sources of annoyances, because such objections may always be asserted by one party, and cannot be disproved by the other, and the admission of them as a plea for divorce, would destroy at once the marriage contract. This consideration of the extent of the mischief which would result from a latitude in the power to divorce, is the best answer to those persons who, like Milton, advocate the right to dissolve a marriage on the ground of mutual dislike. For if it be said, that the happiness of both would be best conserved, by the dissolution of a connection disagreeable to both, it may be replied, that as the extension of the rule would produce more misery than its limitation can, the general consequence must not be sacrificed for the benefit of the individual exception." [11]

'The Church realizes that there might be cases where the refusal of divorce will bring about individual hardship; but this results not from the laws of God forbidding divorce but rather from man's selfish nature, and man must bear the consequence. The evils that come to individuals because they cannot be divorced must be weighed against the far greater and more numerous ills that result to society at large because of divorce. When the welfare of society as a whole demands something, the individual must yield. If we reason that because a marriage might be a hardship to an individual it should be dissolved, we should also reason that because a man is forced to labor in dire poverty he should be allowed to steal wealth from his more fortunate neighbor. Going to the defence of one's country is not necessarily the most pleasant occupation in the world, yet under certain circumstances we are forced to do it. The soldier by the same rule should be permitted to desert the colors. The prisoner should be liberated and given back his place in society that he might enjoy himself. Life taken as a whole is no bed of roses. Stern duty faces us on all sides. It

11 PALEY'S MORAL AND POLITICAL PHILOSOPHY, B. 3, pt. 3, ch. 5.

is impossible to escape it. We conquer one struggle only to encounter another, and the oftener we conquer the stronger we become. Hence, when God condemned divorce and proclaimed that marriage could never be dissolved, He issued an appeal to the fulfillment of duty, which no doubt requires virtue, and sometimes even heroic virtue. It may be a hard law; nevertheless it is a law. If men were as reasonable in the use of marriage as they are in the other things of life, divorce would be unheard of. The evil desires of the flesh are not satisfied with one person. *Concupiscence* seeks not the utility which nature intends. It seeks pleasure alone. Satiated lust loathes its victim,—hence divorce.

Not unfrequently does one read in the newspapers of a decision of the Sacred Roman Rota declaring invalid a marriage of two individuals who have lived together as husband and wife, with the result that many of our separated brothers, as well as a great number of the faithful, become bewildered and mystified. The inference drawn is that the Church in reality admits of divorce. If individuals were more given to clear thinking and simple reasoning, instead of jumping at conclusions, especially concerning matters of which they are totally ignorant, there would be less cause for mystification. The whole difficulty arises from the failure to distinguish between Divorce and Nullity. Divorce admits that there actually existed a valid marriage. Nullity denies that such a status ever existed, because some element necessary to a valid marriage was not present at the time the contract was originally entered into. That is, there was present, known or unknown to the parties, a *diriment impediment* which made marriage impossible in their case.

We will now consider the nature and effect of *diriment impediments* since they play such an important part in the law of marriage. A *diriment impediment* (nullifying) to marriage is a personal incapacity in the individual which

renders him or her incapable, from divine or ecclesiastical law, of contracting marriage with anyone (*absolute impediments*), or of contracting marriage with a certain person (*relative impediments*).

The *absolute diriment impediments* are the following: (1) Those that are due to a personal defect which renders one unable to promise with sufficient discretion (the *impediment* of age), or to perform what is promised (the *impediment* of impotency); and (2) Those that are due to a voluntary act which consecrates one to God with the obligation of perpetual celibacy (the *impediments* of Sacred Orders and vows).

The *relative diriment impediments* are as follows: (1) *Ligamen* or the bond of a previous marriage; (2) Disparity of worship; (3) Abduction; (4) Crime; (5) Consanquinity; (6) Affinity; (7) Public probriety; (8) Spiritual relationship; and (9) Legal adoption.

AGE [12]

(1) *Vir ante decimum sextum aetatis annum completum, mulier ante decimum quartum item completum, matrimonium validum inire non possunt.*

(2) *Licet matrimonium post praedictam aetatem contractum validum sit, curent tamen animarum pastores ab eo avertere iuvenes ante aetatem, qua, secundum regionis receptos mores, matrimonium iniri solet.*

(1) A boy cannot validly contract marriage before he has completed his sixteenth, and a girl before she has completed her fourteenth year.

(2) Although marriage contracted after the aforesaid age is valid, pastors of souls should deter from it young people who have not reached the age at which, according to the custom of the country, marriage is usually contracted.

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12 CANON 1067.
The canons are set forth in italics. The interpretation and discussion follow.

The *impediment* is of ecclesiastical law, as regards the determination of age, but of the natural law in so far as the use of reason is demanded. Consequently, the Church may dispense in the former but not in the latter.

Impotency [13]

(1) *Impotentia antecedens et perpetua, sive ex parte viri sive ex parte mulieris, sive alteri cognita sive non, sivi absoluta sive relativa, matrimonium ipso naturae iure dirimit.*

(2) *Is impedimentum impotentiae dubium sit, sive dubio iuris sive dubio facti, matrimonium non est impediendum.*

(3) *Sterilitas matrimonium nec dirimit nec impedit.*

(1) Anterior and perpetual impotency, whether in man or woman, whether known to the other party or not, whether absolute or relative, renders marriage invalid by the very law of nature.

(2) If the *impediment* of impotency is doubtful, whether the doubt be one of fact or by reason of the law being doubtful, marriage should not be hindered.

(3) Sterility renders marriage neither invalid nor illicit.

Should the impotency arise after marriage or be only temporary the marriage would not be invalidated. Impotency that is relative only (in reference to one party only) does not nullify except to a determinate person. This *impediment* is of the natural law.

Sacred Orders [14]

Religious Profession [15]

Invalide matrimonium attentant clerici in sacris ordinibus constituti.

A marriage is invalid when attempted by clerics in major orders.

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13 Canon 1068.
14 Canon 1072.
15 Canon 1073.

Item invalide matrimonium attentant religiosi qui vota sollemnia professi sint, aut vota simplicia, quibus ex speciali Sedis Apostolicae praescripto vis addita sit nuptias irritandi.

Marriage is null, also, if attempted by the religious who have taken solemn vows, or simple vows that have the force of invalidating marriage by special disposition of the Holy See.

In the Latin Church, subdeaconship, deaconship, and priesthood render an attempted marriage invalid. This *impediment* being a child of the ecclesiastical law, the Church may dispense with it, but seldom or ever will. The *impediment* of Religious Profession originates in the sanction of the Church and is therefore *iuris ecclesiastici.* It is to be noted that sacred orders constitute a marriage *impediment* not by reason of the concomitant vow of chastity, but merely by ecclesiastical law; whereas solemn profession is an *impediment* by reason of the vow itself, and indirectly in virtue of the ecclesiastical law.

LIGAMEN OR BOND OF A PREVIOUS MARRIAGE [16]

(1) *Invalidum matrimonium attentat qui vinculo tenetur prioris matrimoni, quanquam non consummati, salvo privilegio fidei.*

(2) *Quamvis prius matrimonium sit irritum aut solutum qualibet ex causa, non ideo licet aliud contrahere, antequam de prioris nullitate aut solutione legitime et certo constiterit.*

(1) Those bound by the bonds of a former marriage, even though it was not consummated, attempt marriage invalidly, excepting the privilege of the faith.

(2) Although the previous marriage be invalid or dissolved for whatever reason, it is not lawful to contract another before the nullity or dissolution of the first has been legally and certainly established.

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16 CANON 1069.

An exception to the law laid down in the above canon is the case of the Pauline Privilege. But even here the bond of the previous marriage remains till the second is contracted. This *impediment* is of the natural and divine law, and it binds all men, the unbaptized as well as the baptized. No dispensation can be granted from this *impediment* as long as it continues; and, moreover, those who would contract a second marriage must offer proof that the bond of the first marriage was non-existent, or that is has ceased.

Disparity of Worship [17]

(1) *Nullum est matrimonium contractum a persona non baptizata cum persona baptizata in Ecclesia catholica vel ad eandem ex haeresi aut schismate conversa.*

(2) *Si pars tempore contracti matrimonii tanquam baptizata communiter habebatur aut eius baptismus erat dubius, standum est, ad normam, canon 1014, pro valore matrimonii, donec certo probetur alteram partem baptizatam esse, alteram vero non baptizatam.*

(1) A marriage is null when contracted by a non-baptized person with a person baptized in, or converted to, the Catholic Church from heresy or schism.

(2) If the party, at the time of the marriage contract, was commonly held to have been baptized, or if his or her baptism was doubtful, the marriage must be regarded as valid in accordance with canon 1014.[18]

The reason why the Church has made Difference of Worship an *impediment* is on account of the grave danger to

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17 Canon 1070.

18 *Matrimonium gaudet favore iuris; quare in dubio standum est pro matrimonii, donec contrarium probetur, salve praescripto canon 1127.*

In re dubia privilegium fidei gaudet favore iuris. Canon 1127.

The law always favors marriage, and hence if a doubt arises as to the validity of any particular marriage, the presumption is in its favor until the contrary is proved (excepting the case of the Pauline Privilege Canon 1127).

In doubtful cases the law favors the privilege of faith, *i. e.*, the liberty of the convert to marry.

which the Catholic party is exposed of suffering the loss of his faith. The Church will grant no dispensation in such a case unless there are written promises made to the effect that the religion of the Catholic party will not be menaced, and that all children born of such a union shall be brought up in the Catholic faith.

ABDUCTION [19]

(1) *Inter virum raptorem et mulierem, intuitu matrimonii raptam, quandiu ipsa in potestate raptoris manserit, nullum potest consistere matrimonium.*

(2) *Quod si rapta, a raptore separata et in loco tuto ac libero constituta, illum in virum habere consenserit, impedimentum cessat.*

(3) *Quod ad matrimonium nullitatem attinet, raptui par habetur violenta detentio mulieris, cum nempe vir mulierem in loco ubi ea commoratur vel ad quem libere accessit, villenter intuitu matrimonii detinet.*

(1) Between the abductor and the woman abducted with a view to marriage there can be no (valid) marriage as long as she remains in the power of the abductor.

(2) If the abducted woman, having been separated from the abductor and restored to a place of safety, consents to have him for a husband, the *impediment* ceases.

(3) As far as the nullity of marriage is concerned the violent detention of a woman is equivalent to abduction, when, namely, a man violently detains her with a view to marriage, in the place where she dwells or to which she has repaired of her own accord.

This *impediment* is founded upon natural law, inasmuch as it affects the freedom of consent. But the formal side of the *impediment* is strictly ecclesiastical or human.

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19 CANON 1074.

CRIME [20]

Valide contrahere nequeunt matrimonium:

(1) *Qui, perdurante eodem legitimo matrimonio, adulterium intre se consummarunt et fidem sibi mutuo dederunt de matrimonio ineundo vel ipsum matrimonium, etiam per civilem tantum actum, attentarunt;*

(2) *Qui, perdurante pariter eodem legitimo matrimonio, adulterium inter se consummarunt eorumque alter coniugicidium patravit;*

(3) *Qui, mutua opera physica vel morali, etiam sine adulterio, mortem coniugi intulerunt.*

There can be no valid marriage between:

(1) Those who, during the same legitimate marriage, have committed adultery with, and promised marriage to each other or attempted it, even by a merely civil act (*promissio cum adulterio*);

(2) Those who, during the same legitimate marriage, have committed adultery together and one of them *conjugicide* (*uno machinante et adulterio*);

(3) Those who, even without adultery, caused the death of a partner by mutual co-operation, either physical or moral (*utroque machinante absque adulterio*).

This *impediment* is of ecclesiastical origin and as such does not affect infidels. The object of the *impediment* is to safeguard the fidelity and rights of married people, and to punish those who resort to adultery or murder in the hope of a new marriage.

CONSANGUINITY [21]

(1) *In linea recta consanguinitatis matrimonium irritum est inter omnes ascendentes et descendentes tum ligitimos tum naturales.*

(2) *In linea collaterali irritum est usque ad tertium gradum inclusive, ita tamen ut matrimonii impedimentum*

20 CANON 1075.
21 CANON 1076.

toties tantum multiplicetur quoties communis stipes multiplicatur.

(3) *Nunquam matrimonium permittatur, si quod subsit dubium num partes sint consanguineae in aliquo gradu linea rectae aut in primo gradu lineae collateralis.*

(1) In the direct line consanguinity invalidates marriage between all ascendants and descendants, whether legitimate or natural.

(2) In the collateral line matrimony is invalid to the third degree inclusively.

(3) In the oblique (or collateral) line, if both sides of the line are equal, there are as many degrees as there are generations on one side; if they are unequal, there are as many degrees as there are generations on the longer side.

This *impediment* is of the natural law as regards the first, and probably all other degrees of the direct line. In other degrees, consanguinity is an *impediment* of the ecclesiastical law only. Hence, it may be dispensed with for weighty reasons.

AFFINITY [22]

(1) *Affinitas in linea recta dirimit matrimonium in quolibet gradu; in linea collaterali usque ad secundum gradum inclusive.*

(2) *Affinitatis impedimentum multiplicatur:*

(1) *Quoties multiplicatur impedimentum consanguinitatis a quo procedit;*

(2) *Iterato successive matrimonio cum consanguineo coniugis defuncti.*

(1) Affinity in the direct line annuls marriage in any degree; in the collateral line it annuls it to the second degree inclusively.

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22 CANON 1077.

(2) The *impediment* of affinity is multiplied:
  (1) As often as the *impediment* of consanguinity, from which it originates, is multiplied;
  (2) By successively repeated marriages with blood relations of the deceased consort.

Affinity arises from carnal union, whether it be licit or illicit. Hence, one cannot validly marry the relations of one with whom he has had complete carnal relations. This *impediment* is entirely ecclesiastical.

PUBLIC DECENCY [23]

Impedimentum publicae honestatis oritur ex matrimonio invalido, sive consummato sive non, et ex publico vel notorio concubinatu; et nuptias dirimit in primo et secundo gradu linea rectae inter virum et consanguineas mulieris, ac vice versa.

The *impediment* of public propriety arises from invalid marriage, whether consummated or not, and from public or notorious concubinage. It annuls marriage in the first and second degree of the direct line between the man and the blood relations of the woman, and vice versa.

As the *impediment* is one of ecclesiastical law, the Church can, and does, grant a dispensation from it for reasonable cause.

SPIRITUAL RELATIONSHIP [24]

Ea tantum spiritualis cognatio matrimonium irritat, de qua in canon 768.

The only spiritual relationship that annuls marriage is that mentioned in Canon 768.

This very ancient *impediment* arises from the sacrament of baptism and invalidates marriage between the minister of baptism and the person baptized, also between the sponsor and the person baptized. Reasons of respect and of intimate relationship make marriage between such individ-

23 CANON 1078.
24 CANON 1079.

uals indecorous, and hence the Church from the earliest times has ruled against it.

Legal Adoption [25]

Qui lege civili inhabiles ad nuptias intre se iuenduas habentur ob cognationem legalem ex adoptione ortam, nequeunt vi iuris canonici matrimonium inter se valide contrahere.

Those who are by civil law considered as incapable of contracting marriage with each other on account of the legal relationship arising from adoption are, by canon law, incapable of contracting marriage validly. Hence, in countries where adoption is a *diriment impediment,* the Church binds the faithful to the same extent as the civil law.

Violence and Fear [26]

(1) *Invalidum quoque est matrimonium initum ob vim vel metum gravem ab extrinseco et iniuste incussum, a quo ut quis se liberet, eligere cogatur matrimonium.*

(2) *Nullus alius metus, etiamsi det causam contractui, matrimonii nullitatem secumfert.*

(1) Marriage is invalid also when it is entered into because of violence or grave fear, caused by an external agent, unjustly, to free himself from which one is compelled to choose marriage.

(2) No other fear, even though it would give cause to the contract, entails the nullity of marriage.

Marriage contracted under grave force or grave fear or violence may be declared invalid, for, whatever is the result of force, fear of violence destroys the free will of the party concerned. A person, forced into making a contract unjustly and unwillingly, might give a purely external and fictitious consent to its terms, in which case,—at least in conscience,—there would be no valid agreement. It would

25 Canon 1080.
26 Canon 1087.

be intolerable if matrimonial consent, extorted by fear, were allowed to stand.

ERROR — SERVITUDE [27]

(1) *Error circa personam invalidum reddit matrimonium.*

(2) *Error circa qualitatem personae, etsi det causam contractui, matrimonium irritat tantum:*

(1) *Si error qualitatis fedundet in errorem personae;*

(2) *Si persona libera matrimonium contrahat cum persona quam liberam putat, cum contra sit serva, servitute proprie dicta.*

(1) Error concerning the person renders a marriage invalid.

(2) Error concerning the quality of the person, even if it is the cause of the contract, renders the marriage invalid only:

(1) When the error about the quality amounts to an error about the person;

(2) If a free person marries one whom he supposes to be free, but who in fact is a slave in the true sense of the word.

Error as to the quality or character of the person (whether rich, poor, noble, or peasant) would not as a general rule constitute error sufficient to invalidate marriage, but if the quality is explicitly made a condition to the contract, and the party in error limits his consent to a person with a particular qualification, the error becomes substantial as to the person and invalidates the marriage.

ERROR AS TO THE NATURE OF MARRIAGE [28]

Simplex error circa matrimonii unitatem vel indissolubilitatem aut a sacramentalem dignitatem, etsi det causam contractui, non vitiat consensum matrimonialem.

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27 CANON 1083.

28 CANON 1048.

A simple error as to the unity, indissolubility, or sacramental character of marriage, even if it be the cause of the contract, does not vitiate the matrimonial consent.

A simple error is one that proceeds merely from intellectual apprehension, and has no formal condition or stipulation attached to it, nor a formal act of the will excluding a substantial feature of marriage. Error or ignorance concerning the meaning of the marriage contract may be of such a vital kind as to make true consent impossible. The parties must at least realize that the primary end or purpose of marriage is the begetting of children. An accurate perception of all that the act of generation entails is not necessary, but some knowledge of a general and confused character, that begetting children results from this union is certainly requisite. In this enlightened age marriages are entered into with very curious notions. Some marry with the express intention of preventing birth of children (the primary object of marriage). Others with the intention of getting divorced should the necessity arise. Should these be made a condition to consent, the validity of the contract would be very seriously questioned. It would be a question for the Rota to decide from the evidence whether the intention to contract marriage is predominant, or whether the consent is vitiated by reason of an immoral condition or positive act of the will leveled against the primary object of marriage or one of its essential properties.

This *impediment* belongs to the natural law because it means the absence of consent, without which, according to the law of nature, marriage cannot be contracted.

Should one knowingly or unknowingly enter into a contract of marriage with any of the above *impediments,* his marriage would be null or invalid *ab initio.* In other words, there never was a marriage and never can be a valid marriage until the *impediment* is removed. If the *impediment* is one of the natural law, it cannot be dispensed with, and

the marriage cannot possibly be. If it is an *impediment* of ecclesiastical origin which the Church is not accustomed to dispense, *v. g.*, affinity in the direct line, it would be almost a waste of time to seek a dispensation. The other *impediments,* for urgent reasons, can be dispensed with.

The policy of the Church in creating *impediments* is to bring to the mind of the faithful that marriages affected by them are altogether undesirable. In this matter the Church is merely exercising the right of any society to protect its members and however one sided and unjust this may seem to non-members, it is perfectly logical and just. There is then no reason for mystification when the Church permits two who have been living as husband and wife to separate and even re-marry. The Church does nothing more than pronounce on a matter of fact. The validity of the union is questioned, testimony *pro* and *con* is laid before the Sacred Rota; witnesses are examined; and from the evidence obtained the conclusion is reached that at the time of the marriage some *diriment impediment* acted as a bar to the validity of the contract. The marriage that seemed to be a valid union was in reality no marriage at all.

John H. A. Whitman.

University of Notre Dame, College of Law.