

WORDS AND BONDS

By
Michael Sharratt
Ushaw College
Durham

The purpose of this paper is to discuss the bond of marriage. I shall ask whether one can hold both that marriage is a life-long union and that remarriage after the irretrievable breakdown of a first marriage should not be ruled out; in other words, I shall ask whether there can be a middle way between indissolubility and plain dissolubility. I shall examine some implications of Roman Catholic teaching and of the report, Marriage Divorce and the Church. (1) Since my interests are philosophical it will be understood that the theological and juridical considerations which inevitably form a large part of this paper will be treated only to the extent necessary to specify what sort of marriage bond is being discussed.

There are three sections to my paper: the first gives a sketch of Roman Catholic teaching on indissolubility and starts with some remarks about nullity and its relation to the principle of indissolubility; the second examines some implications of the Report's views and includes some discussion of the notion of an ontological bond; the final section deals with implications of Roman Catholic teaching and practice, again with some comments on the notion of an ontological bond.

I Roman Catholic Teaching on Indissolubility

It is commonly thought that Roman Catholic teaching on divorce and remarriage is apparently absolutist, but tempered in practice by allowing some unions to be null on technical legal grounds. This common impression must be commented on at some length before the nature of the marriage bond can be discussed adequately.

(a) Nullity

It would take someone familiar with the actual practice of the law to say whether or not it is sometimes fair to describe an ecclesiastical declaration of nullity as divorce by another name. I restrict myself to a brief discussion of the principle.

The Report is a document which seems suspicious of Roman Catholic nullity procedures, but it concedes the principle:

There are, of course, occasions where it must properly be said that no true marriage has ever existed, and the

decree of nullity gives legal effect to this judgement.
(Para. 126, p. 63)

Clearly, to say that marriage is indissoluble but that some 'marriages' are not true marriages is quite consistent. Whether marriage is something about which the Church has the right to legislate, is an important question which I do not discuss; I shall assume that it has such a right, though of course there are limits to what it could enact. But if it has the right to legislate about marriage, it must have the right to include legislation about nullity.

This is as far as the general principle takes us. Acceptance of the principle leaves plenty of scope for criticism. Criticism can be directed to the way the present system works; one could argue, for instance, that it works so slowly that, on that score alone, it gives rise to injustices. Or criticism can be directed to the content of the laws; constructive criticism of this kind (concerning the whole of the marriage laws, not just the laws affecting nullity) has been widespread in recent years, and it is reasonable to hope that considerable improvement will come in the foreseeable future.

Now, though such criticism does not form the topic of this paper, I mention in passing that a matter of great ecumenical concern can conveniently be brought under the heading 'nullity', even though it does not involve any process of granting a decree of nullity. The requirement of the canonical form for the wedding of a Roman Catholic has the effect of making many marriages invalid in the eyes of the Roman Catholic Church.(2) The reason for the original Tridentine legislation no longer obtains universally and whatever reasons there may be in favour of retaining this law, the fact remains that it gives no ground for refusing a wedding in Church to a Roman Catholic who has contracted a union 'outside the Church', has divorced his partner and wishes to contract a fresh union with another partner. The Report is right to call this one of the least satisfactory features of Roman Catholic practice.(Para. 134, p. 63)

But to recognise the legitimacy of a serious criticism like this is not the same as to concede that the role of the legislation on nullity and validity is to mitigate the rigour of the absolute indissolubility of marriage which is upheld in principle. Despite the impression one could get from the Report (Para. 7, p. 4), the role of the legislation is to specify whether or not a true marriage has taken place. Even granting that the law about the canonical form has anomalous consequences, it is still not very plausible to see the laws concerning nullity as in practice favouring divorce by another name. They do not seem to be seen that way by those Roman Catholics who would like to see some change in the rigorously indissolubilist doctrine. The fact that the law, rightly or wrongly, presumes a

marriage to be valid until it is shown not to be is by itself an indication that divorce, even by another name, is not looked on kindly.(3)

(b) Indissolubility

Leaving aside, then, the question of whether in fact the recognition of nullity is -- sometimes, frequently -- indistinguishable from divorce by the back door, but assuming that, even if the present legislation calls for revision, some legislation is needed, we can move on to the other part of the commonly held view about Roman Catholic teaching, namely that it is absolutist. In certain contexts it would be legitimate to say: 'the Roman Catholic Church forbids divorce' and to go on to say what sort of marriage bond is implied by such a teaching.

In the present context, however, cognisance must be taken of the fact that the Roman Catholic Church does allow divorce, that is, it does dissolve valid marriages leaving the partners free to contract another marriage. For this reason a summary of Roman Catholic teaching will not be out of place. A couple of preliminary remarks will help to put the summary in perspective.

First, the schematic outline I shall give will seem odd if one does not take into account the fact that this teaching is the result of haphazard challenges to pastoral care and theological reflection over a long period of time. Secondly, the undoubted fact that the Roman Catholic Church does allow divorce in certain cases must not be allowed to obscure the fact that there is one class of marriage -- I use the phrase 'class of marriage' for convenience, though it is not a very happy label -- in which divorce is never allowed. It is this class with which I start:

Matrimonium validum ratum et consummatum nulla humana potestate nullaque causa, praeterquam morte, dissolvi potest. (Canon 1118 of the Codex Juris Canonici)

We shall need a label for this class of marriage, the ratum et consummatum; I shall call it consummated Christian marriage, meaning a valid marriage between two validly baptised persons which has been consummated. The effect of the canon, then, is that consummated Christian marriage cannot be dissolved except by death. No human authority, not even the Pope, can dissolve such a marriage.(4) Naturally this canon is simply a summary for the purposes of the law of part of the Church's teaching and since that teaching has been developed to a large extent (doubtless, to too large an extent) in a legal context, to quote the canon is an apt way of summarising an important part of Roman Catholic teaching on marriage.

The unease expressed by the Report about a 'metaphysical or ontological' bond existing independently of any empirical features (Para. 125, p. 63) must be mentioned here, since the canon seems to imply some such notion of the marriage bond. But before discussing the nature of the bond, it is necessary to complete the outline of Roman Catholic teaching on indissolubility.

It must be noted that, since marriage is a state or institution in its own right, there are valid marriages besides those between Christians. The Roman Catholic view is that every valid marriage is intrinsically indissoluble; this means that no marriage can be dissolved merely by the will of one or both of the partners. Further, no valid marriage is extrinsically dissoluble by any merely human authority. However, any valid marriage, except a consummated Christian marriage, is, in certain circumstances, extrinsically dissoluble by Church authority, the idea being that the Church, though human, is acting not on its own authority but on God's; even those authors who shy away from talk of acting vicariously for God would see the Church as authentically interpreting and applying God's laws.(5)

I have given this bald summary of a doctrine which rests on a whole series of presuppositions and I have set it down abruptly without providing a context, not in order to deprive it of plausibility but to emphasise the fact that any account of the bond of marriage in Roman Catholic teaching must be nuanced. The answer to the question: 'does the Roman Catholic Church hold that marriage is indissoluble?' must be: 'it depends on what you mean by "indissoluble"'. If you mean 'intrinsically indissoluble' then yes, all valid marriages are intrinsically indissoluble. 'Extrinsically indissoluble' is another matter: on the one hand all valid marriages are extrinsically indissoluble in that not even the highest civil authority can dissolve a valid marriage -- an important aspect of Roman Catholic teaching, on which I shall not comment in this paper --; on the other hand, one has to say of all classes of marriage except consummated Christian marriage that they are, in certain circumstances, dissoluble by Church authority.

Since the 'certain circumstances' are relatively rare it is understandable that Roman Catholic writers should emphasise the fact that, apart from those circumstances, those marriages are indissoluble. But given that indissolubility is the main concept that is being examined in this paper, the exceptions will have to be taken into account when we come to discuss the notion of an indissoluble bond in Roman Catholic teaching and practice.

II Implications of the Report's Views

Since indissolubility has been discussed in terms of an ontological bond, I start with the criticism voiced by the Report in paragraph 125, page 63:

The notion of a metaphysical or ontological bond existing independently of any empirical features was satisfactory enough to philosophers and theologians in what is known as the Realist tradition. The difficulty today is to persuade ourselves of the existence of any such bond when everything observable in the relationship and dispositions of the persons concerned points to its non-existence. In other words we can entertain and accept the idea of a complete breakdown of marriage, and when faced with this the Christian community is driven to determine its pastoral response.

The suggestion in the final sentence seems to be that anyone who holds that a marriage is absolutely indissoluble could never legitimately admit that the marriage has broken down irretrievably. I would say, however, that even the most rigorous of indissolubilists could allow, with the writers of the Report, that marriages sometimes do break down (or are broken down) irretrievably. But he could insist that the partners are still bound to each other. What he must do is give an answer to the implicit question of the Report: what sort of bond is this which is devoid of the observable features of the bond of a happy marriage?

Before tackling that question I wish to make two preliminary comments on the Report. First, although plenty of obscure nonsense can be paraded under the general rubric 'metaphysics', this by itself is not a sufficient reason for rejecting all metaphysics. One of the prime suspects in twentieth-century attacks on metaphysics has been talk about God, any talk about God. Though I cannot say anything about this vast theme here, I mention it by way of a caution, since I do not see how a Christian can avoid all commitment to metaphysical views, be those views ever so implicit and inarticulate. To say this is, of course, not enough to show that a Christian view of marriage must involve an ontological or metaphysical bond, still less an indissoluble one. But it does remind us that all talk about God can be classed as 'metaphysical'.

The second preliminary comment concerns 'performative utterances' as instanced by the institutions of promise-making and vow-taking. (6) I have no doubt that if one holds that marriage is a life-long union and yet one does not rule out the permissibility of remarriage after the irretrievable breakdown of a first marriage, then this view can readily be expressed in terms of 'frustration': the vows are held to be frustrated on the grounds that it is no longer possible to fulfil them. (7) But it would still remain to be asked: on this view of frustration, what would it mean to call marriage a life-long union?

I shall come to that question presently. The purpose of this preliminary comment is to point out that the performative utterances investigated by J. L. Austin are not something completely unknown to theological tradition. In fact Austin's discussion of the things that can go wrong with performatives is often reminiscent of routine discussion in the manuals about the administration and reception of the sacraments; it must also be remembered that vows and promises have long been a favourite topic. I say this not to belittle Austin's original work nor to justify by-passing discussion of performatives, but rather to point out that here is common ground between two ways of thinking which are often thought to be worlds apart.(8)

In my discussion of the bond of marriage I shall take as my guide-line a passage from the Second Vatican Council:

The intimate partnership of married life and love has been established by the Creator and qualified by His laws. It is rooted in the conjugal covenant of irrevocable personal consent. (Gaudium et Spes, 48)

That brief passage provides a convenient frame-work into which all the various aspects of marriage can be fitted without distortion. This must be borne in mind, since in this paper I shall simply be taking for granted many very important aspects of marriage. The fact that I do not mention them does not mean that I take marriage to be adequately described in what follows. In particular I dispense myself from repeating the points made so well by Professor Macquarrie and Mr Lucas in their discussion of the bond of marriage.(9) Instead I shall take up some of Lady Oppenheimer's comments. In this way I hope to throw some light on the implications of the Report.

In the light of Professor Macquarrie's contribution Lady Oppenheimer accepts the fact that a metaphysical bond need not be something belonging to 'the realm of mysterious untestable entities legalistically conceived' and she acknowledges that there 'is no need after all for a metaphysical bond to be something sinister. It need be no more than a real moral bond provided that morality itself is understood in a sufficiently metaphysical way' (pp. 9 - 10 of the paper). But even if there is, at least in this sense, an ontological bond in marriage, must one say it is an indissoluble bond? Must one say that the partners' moral rights and duties are valid for life? (I am here paraphrasing Lady Oppenheimer's comments.)

I should say that if one says that the moral rights and duties are valid for life, one has provided an empirical feature which could allow one to say that an indissoluble bond persists even when the marriage has broken down. X and Y are people who are married to each other, they committed themselves to each other in marriage

which is a life-long union and though their marriage may have broken down it will always be true not only that there once was a bond between them but also, simply in virtue of the fact that they are married, that this bond is indissoluble.

This of course is no answer to Lady Oppenheimer who is objecting precisely to the understanding of the rights and duties of marriage in this way. But I have deliberately put matters thus in order to bring out a difficulty. In answer to Lady Oppenheimer and the Report an indissolubilist can say: 'marriage is an indissoluble union, so of course if a marriage breaks down completely the observable features of a happy marriage which show us what the bond of marriage is in its full meaning will no longer be present. All that will remain is the fact that the partners are married, i.e. indissolubly'.

I am not here trying to prove that marriage is indissoluble. Rather I am getting round to examining the notion of indissolubility in order to see whether one can talk of the indissolubility of marriage without implying that a marriage must be held to remain in being even when all the observable features of a happy marriage are things of the past.

It is in this connection that mention is sometimes made of an ontological or metaphysical bond. Possibly it was the frequent talk of an ontological or objective bond in Schillebeeckx's Marriage: Secular Reality and Saving Mystery which prompted the Report's interest in this theme. Given that interest, I shall add my comments later when it will be seen that I think this particular aspect of the debate has got bogged down in confusion. For the moment I take up Lady Oppenheimer's remark about a real moral bond and point out that the main strength of the indissolubilist view lies in its emphasis on life-long commitment whatever happens, an emphasis which at least prima facie seems to grasp the root of what Jesus taught (10) and which can be reinforced by Paul's remarks in Ephesians 5 and by Roman Catholic theology about marriage as a sacrament. I do not say that no attention need be given to other aspects of indissolubilist teaching, but I do think those other aspects must all be referred to the irrevocable personal consent. (11) That is why the direct question: 'which is the more important, the institution of marriage or the welfare of the two people concerned' (Para. 55, p. 28) touches indissolubilists more nearly than do queries about the ontological status of the marriage bond, since it calls into question the whole attempt to bring out the seriousness of the consent by the simple means of treating it as something from which there can never be any release.

But it is also the reason why indissolubilists will have questions to put to the authors of the Report who also wish, after

all, to take the consent very seriously. I am concerned with only one of those questions: can one hold both that marriage is a permanent state entered into by a life-long commitment and that when a marriage breaks down completely a second marriage cannot be ruled out? (I am deliberately oscillating between calling marriage 'indissoluble' and calling it 'permanent' or 'life-long'; the reason for this will appear shortly.)

To clarify the matter I take up the Report's remarks about the form at present used in the register office (Para. 136, p. 69). The Report says 'it must be presumed, in the absence of evidence to the contrary, that a permanent marriage is being made'. Granting this, it still remains to be asked: is marriage under the civil law indissoluble or not? The possibility of divorce may not affect a person at the time of marrying and yet the mere fact that divorce is obtainable must be taken into account when deciding whether marriage is to be called indissoluble. If the form used is one which says or implies that marriage is a life-long union then this, as the Report says, enables a couple to intend a permanent marriage. But given the possibility of divorce accorded by the law, marriage is dissoluble in the eyes of the law, though perhaps not in the eyes of the couple.

Perhaps the word 'indissoluble' may be thought to prejudge the issue. It might be said: 'of course marriage is dissoluble in the eyes of the law, since divorce is permitted. But for all that it is a life-long union, not a terminable contract, which is being entered into. In fact marriage according to the civil law is the union of one man and one woman voluntarily entered into for life to the exclusion of all others'. To which it must be replied: 'is that a coherent view?'

It is clear that the authors of the Report do not see marriage as a terminable contract. They rightly claim to have a high view of marriage and repeatedly emphasise the permanency of the union. Their way of describing irretrievable breakdown is to say that a marriage has broken down before it has grown into what it should become, a life-long union (Para. 70, p. 36). To see how this hangs together I wish to distinguish two questions which I have so far not tried to keep apart:

- 1) Are the authors of the Report entitled to say that marriage is indissoluble?
- 2) Are they entitled to say that it is a life-long union?

To the first question one can answer promptly but inadequately, no: if divorce is allowed then marriage is dissoluble. But this is inadequate as ^{an} answer since it is content to rely on the claim: if any exception is allowed, then marriage is dissoluble. The clarity of this claim is, perhaps, purchased at the expense of over-simplification.

Suppose, for the sake of argument, that marriage were held to be indissoluble except in the case of supervenient insanity. I am not concerned to argue for or against such a view of marriage; but if someone held such a view I should not want to insist that according to him all marriages are dissoluble, since anyone can go mad. It would seem reasonable to allow him to say that marriage is indissoluble except in the case of supervenient insanity; the 'for better or worse' could be understood as expressing a life-long commitment with the tacit proviso that supervenient insanity allows an end to be put to the marriage. Whether or not a case could be made for allowing this exception without having to allow all sorts of other grounds for dissolution is another matter. All I am concerned to point out is that if someone said that marriage is indissoluble except in the case of supervenient insanity, we should know what he was claiming: 'indissoluble' would have a clear meaning in this case, as would 'permanent' and 'life-long'.

But the Report's view is something else again. It is not specifying one or two exceptional cases and saying that apart from those marriage is indissoluble. Rather it holds that if a marriage has broken down irretrievably -- the criteria for whether it has being those in our civil law or similar ones -- then the marriage is recognisable by the law as already dissolved and the vows made can no longer be held to bind the partners (or at least, can be held no longer to bind the partners). In other words, the Report does not hold that marriage is indissoluble and part of its object is to show that there is no indissoluble bond in marriage.

But this brings us to the second question: if one refuses to call marriage indissoluble and indeed allows for remarriage after irretrievable breakdown, is one entitled to the high view of marriage put forward by the Report, namely that it is a life-long union?

In my opinion what the Report says on this point calls for further examination. Nor need an indissolubilist object if this examination is conducted partly appropos of the performative utterance of marrying by saying the appropriate words in the appropriate context, since the issue is the meaning of consenting 'for better or worse'...or whatever words are used to express a life-long commitment. Words expressive of life-long commitment are used because marriage is held to be a permanent, life-long state. This is common ground between indissolubilists and the Report.

Now the Report, Lady Oppenheimer and Professor Macquarrie all quote from Schillebeeckx a passage to the effect that the patristic view was that dissolution of marriage was not permissible whereas the scholastic view was that it was impossible. (Para. 125, pp.62-63; Macquarrie, p. 2; Oppenheimer, p. 10) I am not sure that

Schillebeeckx's interpretation of this contrast is accurate; in any case it has given rise to discussion (in the Report and in Lady Oppenheimer's paper) which I take to be wide of the mark. (12) I think the issue between indissolubilists and the writers of the Report is: can one hold both that marriage is a life-long union and that remarriage is possible in the life-time of a partner if a marriage breaks down? In other words an indissolubilist can say: divorce is impossible not because of some metaphysical bond but because the moral obligation is absolute, that is, it cannot be over-ridden by any other consideration. I am not going into the reasons why indissolubilists and the authors of the Report hold that marriage is a life-long union; I am asking: granted that it is, how can one hold that the obligation, the bond, does not remain when a marriage breaks down?

The Report is too thorough and serious a document not to cater for this central difficulty. So far as I can see its answer would be: marriage is a life-long union entered into by a firm commitment for better or worse. Irretrievable breakdown shows that a particular marriage has not attained the true nature of marriage; tragic though it may be, the partners can no longer be held to their original commitment. The only solution is to respond to the facts as they are and allow the lawfulness of a second marriage which, though it can never show the full meaning of marriage as well as it could if it were a first marriage, can nevertheless be a permanent life-long union realising a great deal of that meaning.

This seems to me to be the same as saying: marriage is meant to be a life-long union -- one could even say, it is meant to be indissoluble -- but the true meaning of marriage is not always achieved; indeed, a marriage is sometimes so far from realising the true nature of marriage that there is nothing left of the marriage at all.

It now begins to appear that what is at issue is how to incorporate what both the Report and indissolubilists take to be the true meaning of marriage into the institution of the wedding ceremony and the legislative context which helps to determine the meaning of that ceremony and so formalises a society's understanding of how this meaning of marriage can be achieved in actual marriages. Connected with this issue, for Christians, is the question, if I may put it this way, of how to take the sayings of Jesus about marriage and divorce. Are they to be taken as universal laws admitting of no exceptions or as ideals to strive for or what? Even if there were no Matthean exception or Pauline privilege to engage the attention of exegetes, this question of how to take the teaching of Jesus would still remain. (13)

This is a point well known to the authors of the Report. But whatever one thinks about their interpretation of scripture, it is not clear that they are successful in their attempt to preserve the life-long nature of marriage. If I have summarised their view fairly by saying that marriage is meant to be a life-long union, that that is the meaning of marriage, still the question remains: does the recognition of the right to remarry after irretrievable breakdown allow any firm distinction to be made between (1) the view which says marriage is meant to be indissoluble but in fact is dissoluble and (2) the view which just says marriage is dissoluble? Despite the welcome discussion of just this point in Appendix 5 of the Report and in Lady Oppenheimer's paper, I am still not clear about the matter.

Certainly one can rely on the ambiguity of the word 'normal' and say that marriage is normally a life-long union, normally indissoluble and so on (cf. Appendix 5, p. 140) and that the concept of infidelity is parasitic on that of fidelity. But what is supposed to be at issue: a logical point about consistency (the implications of consenting to a life-long union) or a factual point (whether if the Report's views were accepted there would be so many divorces recognised by the Church that it would no longer be plausible to go on saying that marriage was meant to be a life-long union)? It is, in my opinion, not at all clear what acceptance of the Report would commit one to. In particular it is not clear that one would still be justified in calling marriage a life-long union or what one would mean if one did; in this connection the reference to the civil law's view that marriage is a life-long union does nothing to clarify things and is far from reassuring to indissolubilists. So even on the limited point I have been discussing, I can only say that I am not convinced that the Report does do justice to the nature of marriage as a life-long union. With this not very helpful assessment I turn now to some of the implications of Roman Catholic teaching.

III Implications of Roman Catholic Teaching

The Roman Catholic view of the indissolubility of consummated Christian marriage entitles Roman Catholics to make the sort of criticism of the Report which I have made in the preceding section. But, whereas Professor Macquarrie and Mr Lucas are entitled to talk of indissolubility without qualification, anyone explaining Roman Catholic doctrine has to take into account what is said about classes of marriage other than consummated Christian marriage.

The difficulty is to show how all classes of marriage except consummated Christian marriage can, in certain circumstances, be

dissolved without making nonsense of the general doctrine that, apart from those circumstances, all marriages are indissoluble and without justifying the dissolutions which are permitted by reasons which would apply equally well to consummated Christian marriage. I shall not try to perform this difficult task, but I shall try to make clear what it involves. (14)

The discussion of these questions among Roman Catholics is often conducted in terms of what powers the Church has; in these terms the Church has the power to dissolve all classes of marriage except one. This whole approach can be very shallow. Whether it is shallow or not depends on the strength of the theological reasons advanced for ascribing to the Church just those powers which are claimed for it and on the overall theology of marriage which emerges.

I take first the Roman Catholic refusal to countenance dissolution of a consummated Christian marriage. The reason given for interpreting the teaching of Jesus in just this way is 'the mystical signification of Christian wedlock, seen in its full perfection in consummated marriage between Christians' (Pius XI, Casti Connubii, ET (C.F.S.) Para. 35, p. 19). I gloss this passage as follows. In all marriages there is a bond, since marriage is rooted in the conjugal covenant of irrevocable personal consent. There can be over-riding reasons for dissolving this bond in some rare cases -- Casti Connubii mentions certain natural marriages between non-Christians and non-consummated Christian marriage -- but such reasons cannot be adduced in the case of a consummated Christian marriage, since such a marriage is a full sign of the union which subsists between Christ and the Church.

Now all sorts of criticisms can be made against this view but I do not think it stands or falls by the doctrine of a metaphysical bond as understood by the Report. It is not that there is in consummated Christian marriage a metaphysical bond which, because it is metaphysical, cannot be broken, and no metaphysical but 'only' a moral bond in all other cases. Rather the idea behind Roman Catholic practice is, I think, that there is a bond, call it metaphysical or call it moral or call it both, in all marriages, but the salvation of souls (15) can sometimes justify releasing people from that bond, even though it has been entered into by irrevocable personal consent. Such release is not possible if their commitment has already been reinforced by consummation of a Christian marriage, for a Christian marriage signifies explicitly the union of Christ and the Church and consummation of this marriage signifies that union fully. Because the true meaning of marriage is signified fully in consummated Christian marriage, this marriage has to be absolutely indissoluble.

This summary of and commentary on part of Roman Catholic teaching is very sketchy, but I hope it is sufficiently accurate to give a basis for further comment. The strongest point in this account lies in the fact that if consummated Christian marriage is not indissoluble then there is no reason to think that any marriages are indissoluble. If the words of Jesus are to be taken as indissolubilists do take them, then at least they must apply to consummated Christian marriage and, as I said in the preceding section, unless one takes them in the indissolubilist's sense, it is not clear what one is saying when one calls marriage a life-long union.

But there are, nevertheless, awkward aspects of this doctrine. There is often a certain adhocness about explanations of why a non-consummated Christian marriage should be dissoluble.(16) Further, both the 'Christian' and the 'consummated' of 'consummated Christian marriage' are interpreted very legalistically: two valid baptisms, one valid marriage and one act of intercourse and, if these components are not in the wrong order, one has indissolubility.(17) Hence the increasingly frequent attempts to propose new interpretations of who is to count as a Christian and what is to count as consummation. These are important issues and worth several papers in their own right; it is reasonable to hope that current theological discussion within the Roman communion will result in a richer account of sacramental marriage, less reliant on juridical positivism. But even as it stands Roman Catholic teaching on the indissolubility of consummated Christian marriage is clearly a consequence of taking very seriously indeed the life-long nature of marriage. Any improved theology will have to do the same or provide sound theological justification for a departure from the indissolubilist position, whether the departure is like that proposed in the Report or some other variety of non-indissolubilism.

It is not so easy, however, to provide a coherent rationale for the Roman Catholic doctrine of the dissolubility of non-sacramental marriages. It seems to be a consequence of the doctrine that the life-long commitment has to be understood as something which, admittedly in exceptional circumstances, can be declared to bind the partners no longer. One cannot account for this simply by saying that the bond of these marriages is less firm than that of consummated Christian marriages, because that is simply to put the difficulty in another way.

Certainly one has to say that, although marriage as a sacrament is held to be a natural institution raised to a new level or given a fuller meaning, the Roman Catholic view depends on making a clear distinction between sacramental and non-sacramental marriage.

The Report criticises this distinction, precisely because of the consequences for indissolubility. It says (Para. 72, p. 37):

The doctrine that mutual consent by two baptized persons of itself involves the creation of an indivisible vinculum or bond (in contrast to the union of the unbaptized) is not biblical... (18)

In fact, of course, the doctrine about the dissolubility of non-sacramental marriages arose from the Roman Catholic interpretation of the 'Pauline privilege' which was (and is) thought by Roman Catholic theologians to have a sound scriptural basis in chapter seven of the first epistle to the Corinthians. I am not competent to discuss the exegetical question of the relation of Paul's teaching to that of Jesus and I can see that in any case the question of 'how to take' the teaching of Jesus (and of Paul) still remains. I content myself with examining some implications of current Roman doctrine and practice.

First it is clear that non-sacramental marriages are dissoluble. But the doctrine is not the same as that of the Report, since in the Roman Catholic view this dissolubility is restricted to exceptional circumstances. Apart from those circumstances a strictly indissolubilist view is taken of non-sacramental marriages. From the practical point of view the relative rarity of such dissolutions may relieve Roman Catholics of some of the unease this doctrine could otherwise cause and, at least as things are, one would know what was meant if told that non-sacramental marriages are normally indissoluble: the norm could be described in terms of the circumstances when dissolution is possible. But, quite apart from the fact that the circumstances could occur with increasing frequency, one needs a better theological rationale than: the bond of non-sacramental marriage is sufficiently firm to exclude its dissolution except in just those circumstances admitted by current Roman practice.

The matter is particularly urgent, since the canonical practice of the last fifty years has gradually extended so far that dissolutions have been granted which previously had been thought to be out of the question and this extension of the practice does not seem to have been accompanied by any but the most meagre theological reflection. (19) It may be that this is an instance of a sound practice preceding a theological account of what is involved; the Report suggests (Para. 141, p. 72) that that is now its proposals might be viewed. There would be nothing unusual in that, but it is certainly my impression that a full-scale theology of this part of Roman practice is still to come and it may be that when the theology does come it will lead to some revision of the practice.

Even Schillebeeckx, who of course brings the full range of his theological expertise to bear in his discussion of the 'Pauline privilege', seems to rely in part on equating 'indissoluble' with 'objective' or 'ontological'. (20) This will not do, because the problem is to show why there can be dissolution of a bond which would otherwise be indissoluble and which is just as objective or ontological as the bond of sacramental marriage even if it is not absolutely indissoluble. One may grant that it is baptism which 'makes the difference' and look to an explicit reference to salvation through Christ as essential to marriage in its full meaning, so that if this reference is explicitly rejected then there could be grounds for dissolving a marriage. But even if this offers a promising line of thought it not only needs to be developed in terms of cases other than the 'Pauline privilege', it must also avoid giving the impression that the bond of non-sacramental marriages is not objective. The explanation must be on the lines that, though objective, the bond of non-sacramental marriage is not as complete, does not bring out the full meaning of marriage, which is found only in the bond, also objective, of Christian marriage -- and consummated Christian marriage at that. Since I am no theologian, it is quite possible that a theological account of the kind I am asking for is already available unknown to me or that I have misunderstood the ones I have seen. In that case it will not be difficult for a theologian to fill the gap caused by my ignorance.

Conclusion

In conclusion I would say that Roman Catholic teaching about the indissolubility of non-sacramental marriages needs further theological investigation to show why such marriages are dissoluble in certain cases but are otherwise held to be absolutely indissoluble. Though further theological investigation of sacramental marriage is also very much needed, the arguments advanced by the Report do not convince me that one can hold both that marriage is a life-long union and allow remarriage after irretrievable breakdown. My main difficulty is that it seems hard to find a middle way between indissolubility and plain dissolubility; I am not convinced that such a middle way has been found by the Report. But even on the limited topic I have discussed, I have left out many valuable points made by the Report; nor have I provided a satisfactory account of the whole of Roman Catholic doctrine on indissolubility, since I have left important matters for further investigation, particularly as regards non-sacramental marriages. I have, however, not relied on the move of attributing ontological or objective status to the

bond of sacramental marriages only, since I take it that there is an ontological or objective bond in all marriages and in any case 'ontological' and 'indissoluble' are not synonyms. Though this is rather a meagre and perplexed conclusion to a lengthy paper, I comfort myself that in this perplexity I am in good company:

His ita pro meo modulo pertractatis atque discussis, quaestionem tamen de conjugii obscurissimam et implicatissimam esse non nescio. Nec audeo profiteri omnes sinus ejus, vel in hoc opere, vel in alio me adhuc explicasse, vel jam posse, si urgear, explicare. (Augustine, De conjugii adulterinis, Liber Primus, Caput XVI, 33 in Migne, Patrologia Latina, Vol. 40, col. 469.)

NOTES

- (1) Marriage Divorce and the Church, The Report of a Commission appointed by the Archbishop of Canterbury to prepare a statement on the Christian Doctrine of Marriage, London, S.P.C.K., 1971. I shall refer to this as Report, giving references in the text by paragraph and page number.
- (2) For useful discussion of the Tridentine legislation and its relevance today see: Giuseppe di Mattia, 'La dottrina sulla forma canonica del matrimonio e la proposta per un suo riesame', Apollinaris, XLIV (1971), pp. 471 - 522; Swithun McLoughlin, O.S.B., 'Mixed Marriages: The Need to Relax Church Law', The Ampleforth Journal, LXXIV, Part III (Autumn, 1969), pp. 356 - 375.
- (3) For a comparison of the Roman Catholic law of nullity and the law in England since the Reformation see 'The Roman Catholic Law of Nullity', Appendix 5, pp. 57 - 59 of The Church and the Law of Nullity and Marriage, The Report of a Commission appointed by the Archbishops of Canterbury and York in 1949 at the request of the Convocations, London, S. P. C. K., 1955; for a guide to Roman Catholic procedures see Ralph Brown, Marriage Annulment, a practical guide for Roman Catholics and others, London, Geoffrey Chapman, 1970.
- (4) For increasingly precise statements on this point by Pius VI, Pius IX, Pius XI and Pius XII see Urbanus Navarette, S.J., 'Potestas Vicaria Ecclesiae: Evolutio Historica conceptus atque observationes attentae doctrina Concilii Vaticani II', Periodica, 60 (1971), pp. 414 - 486, at pp. 456 - 459 in notes 73 - 82.
- (5) I use the phrase 'dissoluble by Church authority' as a handy label to include cases covered by general legislation and cases where the intervention of the Pope is needed. It should be noticed, then, that under this label comes the 'Pauline privilege', for which of course there is held to be good scriptural authority. For a slightly fuller account see Terence P. Cunningham, 'The Bond of Marriage', in The Meaning of Christian Marriage, Papers of Maynooth Union Summer School 1962, Edited by Eada McDonagh, Dublin, Harrow Trust and Gill, 1963, pp. 92 - 113.
- (6) I am here referring to 'Vows', Appendix 5, pp. 131 - 141 of the Report, by Lady Oppenheimer and Bishop Montefiore.

- (7) See 'Vows' (reference in note 6), pp. 135 - 138.
- (8) See, for instance, Aquinas In IV Lib. Sent., Lib. IV, dist. XXVII, quaest. I, art. II, 'Utrum consensus sit causa efficiens matrimonii'; Summa Theol., III, 66, 5, 3m for the explanation that words used in sacraments are uttered not only 'causa significandi' but also 'causa efficiendi'; I am fairly sure that Aquinas somewhere uses the phrase 'vox activa', but I am unable to trace the reference at the moment.
- (9) I am referring to their papers circulated to members of the Commission. See also the paper by Mr Lucas, 'Frustrated Vows?', in For Better For Worse, Essays on the Report 'Marriage, Divorce and the Church', Printed and published by the Church Union, Church Literature Association, London, 1971, pp. 45 - 51. The reference in the text is to Lady Oppenheimer's paper, circulated to members of the Commission.
- (10) Cp. Lady Oppenheimer's remarks on p. 2 of her paper.
- (11) Must this mean that the indissolubilist is committed to a theology of the wedding ceremony rather than a theology of marriage? Not if the wedding ceremony expresses a theology of marriage as a life-long covenant.
- (12) See E. Schillebeeckx, O.P., Marriage: Secular Reality and Saving Mystery, Vol. I, Marriage in the Old and New Testaments, Vol. II, Marriage in the History of the Church, Translated by N. D. Smith, London, Sheed and Ward, 1965. The main passages are at I, pp. 203 - 204 and II, pp. 68 - 70. My misgivings about the accuracy of Schillebeeckx's interpretation arise from the fact that he sometimes seems to equate 'objective' with 'indissoluble'; I take up this point later (p. 15). If Aquinas' commentary on the Sentences is typical then it seems to me that the discussion of the ontological bond in the Report and in Lady Oppenheimer's paper is in danger of attributing to Schillebeeckx's (not very clear) interpretation of the objective bond a role it need not play in Roman Catholic theology. Hence the main issue between the Report and indissolubilists is obscured.
- (13) On this see Appendix I, pp. 79 - 95 of the Report, by Bishop Montefiore and the same author's Remarriage and Mixed Marriage, A plea for dual reform, London, S. P. C. K., 1967. For the view of Erasmus that Christ's words should be taken as an ideal rather than as a strict command, see G. H. Joyce, S.J., Christian Marriage, An Historical and Doctrinal Study, London, Sheed and Ward, 1933, pp. 386 - 389, especially the quotation on p. 388.
- (14) Among the many surveys available I recommend Louis de Naurois, 'Le problème de la dissolution du mariage par l'Eglise', Nouvelle Revue Théologique, Tome XCIII (1971), pp. 50 - 77. See also the issue of Theologische Quartalschrift, 1971, 1, which is devoted to various aspects of divorce.
- (15) I use a customary label; others in use are in favorem fidei and in bonum animarum; see, for instance, Arcturus De Jorio, 'Privilegium Petrinum seu solutio matrimonii in favorem fidei', Seminarium, 1966, pp. 715 - 741.
- (16) Donal Flanagan, 'The Sacrament of Marriage', pp. 36 - 61 of The Meaning of Christian Marriage (reference in note 5 above) makes this point appropos of medieval theology and offers a more promising alternative on p. 58.

- (17) From the large literature on this point I recommend Jean-Marie Aubert, 'Foi et sacrement dans le mariage. A propos du mariage de baptisés incroyants', La Maison - Dieu, 104 (1971, 4), pp. 116 - 143. For a useful critical survey of some of the literature up to 1968 see Urbanus Navarrete, S.J., 'Indissolubilitas matrimonii rati et consummati: Opiniones recentiores et observationes', Periodica, 58 (1969), pp. 415 - 489.
- (18) It will be noticed that the Report is not quite accurate here since it makes no mention of consummation. But this inaccuracy in no way weakens the force of its remarks. See also the important paragraph 24 on page 14 of the Report.
- (19) For an example of canonical writing which is influential, unexceptionable in its own terms, but content with the most rudimentary theology of marriage see Ferdinandus Lameruschini, 'Disputatio de potestate vicaria Romani Pontificis in matrimonium infidelium', Apollinaris, XXVI (1953), pp. 175 - 197.
- (20) Schillebeeckx op. cit. (in note 12), Vol. I, pp. 221 - 241. I am not absolutely certain that Schillebeeckx would say that there is an objective bond in Christian marriage only, but this is the most natural reading at least of the English translation. Needless to say, even if my criticism of Schillebeeckx is well founded his book remains an outstanding contribution to the theology of marriage.