

Chapter 15 — Marriage and the Family

Indissolubility of Marriage

In an intervention on September 29, 1965 concerning the schema “The Church in the Modern World,” Archbishop Elias Zoghby, Patriarchal Vicar for Egypt and the Sudan, spoke to the council about the trauma of the innocent spouse and asked whether a solution could be provided in the Catholic Church, especially in view of tradition in the Orthodox Church, which considers adultery a cause for the dissolution of marriage. Here is the complete text of Archbishop Zoghby’s intervention.

There is a problem even more agonizing than that of birth control: it is the problem of the innocent spouse who, in the prime of life and through no fault of his or her own, is left alone through the other spouse’s fault.

Shortly after entering into a marriage that seems to be happy, one of the spouses, through weakness or with premeditation, abandons the family and contracts a new union. The innocent spouse comes to his or her pastor or bishop and receives only one answer, “I can do nothing for you. Pray and be resigned to live alone and to practice continence for the rest of your life!” This solution presupposes heroic virtue, a rare faith, and an exceptional temperament. It is not, therefore, a solution that everyone can accept.

The young man or woman who had married because he or she did not feel called to perpetual continence is thus very often driven, in order not to become a bundle of nerves, to contract a new and illegitimate union outside the Church. Although up to then a practicing Catholic, he or she is henceforth doomed to be tortured in conscience. Only one choice is offered: either become an exceptional soul overnight or... perish!

We know on this subject that this solution of perpetual continence is not one for the ordinary Christian. In other words, we know that we leave these young victims without an answer. We ask them to depend on faith that works miracles; but faith that works miracles is not given to everyone. Many among us, bishops of the Church, still have to struggle hard and pray in order to obtain it.

Therefore, the question that these anguished souls are asking the council today is this: has the Church the right to answer an innocent faithful, whatever the nature of the problem that is torturing him or her, “Make the best of it; I have no solution for your case!” Or can the Church in this case offer only an exceptional solution that it knows is meant only for exceptional persons?

The Church has certainly received from Christ sufficient authority to offer all its children the means of salvation proportionate to their strength, and, of course, with the help of divine grace. Heroism, the state of perfection, has never been demanded by Christ under pain of damnation. Christ says, “If you wish to be perfect” ... if you wish it!

The Church therefore cannot lack sufficient authority to protect the innocent spouse against the consequences of sins of the other spouse. It does not seem normal that perpetual continence, which belongs to the state of perfection, can be imposed, like a punishment, on the innocent spouse because the other spouse has been unfaithful.

The Eastern Churches have always been aware of having this authority, and they have always exercised it in favor of the innocent spouse.

The bond of matrimony has certainly been made indissoluble by the positive law of Christ, but, as the Gospel of Saint Matthew indicates (5:32, 19:9) “except on the grounds of adultery.” It is up to the Church to judge the meaning of this clause; even though the Church of Rome has always interpreted it in a restrictive sense, the same has not been true in the East, where the Church interpreted it, from the earliest times, in favor of the possible remarriage of an innocent spouse.

It is true that the Council of Trent in its 24th Session (Canon 7 of *De Matrimonio*) sanctioned the restrictive Roman interpretation. However, it is widely known that the formula adopted at that holy council in that canon has been revised intentionally so as not to exclude the Eastern tradition that followed a practice contrary to that of the Church of Rome. Credit for this is due to the Venetian orators who were well acquainted with the Greek tradition based on the interpretation of the Greek Fathers, and even of certain Western Fathers such as St. Ambrose of Milan.

We know how much the Fathers of the Eastern Church tried to dissuade widowers and widows from a second marriage, thus following the Apostle’s advice, but they have never wished to deprive the innocent spouse who has been unjustly abandoned of the right to remarry. This tradition, preserved in the East, and which was never reprovved during the ten centuries of union, could be accepted again and adopted by Catholics. Progress in patristic studies has indeed brought to the fore the doctrine of the Eastern Fathers who were no less qualified exegetes or moralists than the Western ones.

Pastoral concern for sorely tried spouses has been manifested among the Western canonists in another way. By means of a subtle casuistry that sometimes borders on acrobatics, they have applied themselves to detecting all possible impediments that could vitiate the marriage contract. They have certainly done this out of pastoral concern, but the result sometimes been detrimental to souls. For instance, if it happens that after ten or twenty years of marriage a previously unsuspected impediment of affinity is discovered, it is permitted to resolve everything as if by magic. The jurists find this quite normal and natural, but we pastors must admit that it sometimes amazes and scandalizes our faithful.

Is not the tradition of the Eastern Fathers, cited above, more appropriate than these impediments to marriage for granting divine mercy to Christian spouses?

Abuses are always possible, but abuse of authority does not eliminate authority.

In this age of ecumenism and dialogue, may the Catholic Church recognize the immemorial tradition of the Eastern Church, and may theologians apply themselves to the

study of this problem, in order to bring a remedy to the anguish of innocent spouses permanently abandoned by their spouses, and in order to deliver them from the danger that seriously threatens their souls.

On October 2, 1965, Patriarch Maximos gave some “clarifications” to La Croix on the delicate subject of the indissolubility of marriage. When he was consulted in regard to the intervention of Archbishop Elias Zoghby, his Vicar General in Egypt and the Sudan, on the indissolubility of marriage in the event of infidelity of one of the spouses, he offered La Croix the following clarifications:

Archbishop Zoghby, like all Fathers of the council, enjoys full freedom to say what he thinks. And although he is our vicar in Egypt, he naturally speaks only for himself personally.

As for me, I knew about this intervention only at the time I heard it at the session of the council.

With respect to the heart of the problem, the Church must hold fast to the indissolubility of marriage, for, even though in certain cases the innocent spouse is sorely tried because of this law, the whole of family life would be shaken and ruined without this law. Moreover, if divorce in the strict sense were to be allowed on the grounds of adultery, nothing would be easier for less conscientious spouses than to create this cause.

The contrary practice of the Eastern Orthodox Churches can be supported by a few texts by certain Fathers. But these texts are contradicted by others and do not in every case constitute a sufficiently constant and universal tradition to induce the Catholic Church to change its discipline on this point.

Nevertheless, this question, with the proper nuances, could have been brought before the council as a serious difficulty to be resolved in the dialogue with Orthodoxy. Yet, presented as it is now, without the necessary precision, it can create confusion in many minds.

On October 4, 1965, in a new intervention at the council, Archbishop Zoghby made his ideas more precise.

Since certain publications have attached too much importance to my last intervention at the council concerning the frequent and unfortunate particular case of the innocent spouse abandoned by his or her spouse, and since they have broadcast the text of this intervention throughout the world, I have asked to speak again in the assembly, not to retract or change what I have said, but to call to mind briefly the following:

1. The purpose of my intervention was strictly pastoral, i.e., to discover a solution to the problem of so many young spouses condemned to live alone, in forced continence, through no fault of their part.
2. I clearly affirmed in my intervention the immutable principle of the indissolubility of marriage, and I intentionally avoided using the word “divorce,” because in Catholic usage this word signifies an infraction of the immutable principle of the indissolubility of marriage.
3. This indissolubility of marriage is so deeply rooted in the tradition of Eastern and Western Churches, both Catholic and Orthodox, that it could not be called into question in a conciliar intervention. In fact, Orthodox tradition has always held marriage to be indissoluble, as indissoluble as the union of Christ and His Spouse, the Church, a union that remains the “exemplary model” of the monogamic and sacramental marriage of Christians.

In Orthodox theology, divorce is simply a dispensation granted to the innocent spouse in very clearly defined cases and with a purely pastoral concern, by virtue of what the Orthodox call the “principle of economy,” which signifies “dispensation,” or better, “condescension.” This dispensation does not exclude the principle of indissolubility of marriage. It is even placed at its service, like the dispensation from valid and consummated marriages granted by the Catholic Church by virtue of the Petrine privilege. We shall not speak about the abuses, which are always possible but do not change the theological reality.

4. It is therefore a “dispensation” in favor of the innocent spouse that I was suggesting in my intervention. Referring to the traditional interpretation in the East of Saint Matthew’s texts (Chapters 5 and 19), I envisioned the possibility of adding to the grounds for a dispensation already accepted by the Catholic Church those of fornication and of permanent abandonment of one spouse by the other, to avert the peril of damnation that threatens the innocent spouse. Such a dispensation would not have the effect of placing the validity of the indissolubility of marriage in doubt any more than the other dispensations.
5. This is not a frivolous proposal. It is based on the incontestable authority of the holy Fathers and of the holy Doctors of the Eastern Churches, who cannot without rashness be accused of having yielded to political or human considerations when they interpreted the Lord’s words in the way they did.
6. It is in this perspective, in the East as in the West, of universal fidelity to the principle of the indissolubility of marriage, that the Roman Church, during the long centuries of union as well as after the separation, has not contested the legitimacy of the Eastern discipline favorable to the remarriage of the innocent spouse.

That is the meaning, the tenor of my last intervention at the council. It involves an exegetical, canonical, and pastoral problem that must not be disregarded. As to the

opportuneness of accepting new grounds for a dispensation, analogous to those already introduced by virtue of the Petrine privilege, it is up to the Church to decide.

After studying the entire file of the question reopened by the intervention of Archbishop Zoghby, Patriarch Maximos IV wrote the following memorandum in Paris during the month of November 1966, which he requested be inserted in this anthology. "The important thing," he declared, "is that the door on further research should not be closed."

The interventions made at the conciliar assembly on the subject of the dissolution of a marriage when one of the two spouses is abandoned by the other have had worldwide reverberations and stirred up reaction among people and in the press. Yet they had no practical effect on the council or even held its attention, for we find no trace of them in the explanations of the amendments or in those of the *modi*. Moreover, it seems that they have hardened the contrary position, when it might have been possible, by revealing this difficulty with the required prudence and discretion, to open the door to a study or even to an ecumenical dialogue that could have thrown more light on it.

It seems that this difficulty could have been set forth to the council in the following way, in the hope of holding its attention:

1. The indissolubility of marriage has been solemnly defined by the Council of Trent. It is an object of faith for every Catholic and closes the door to all discussion. Period.
2. In the Catholic Church, as well as in the world, there are cases, which civilization and the love of well-being make increasingly frequent, cases of truly revolting injustice that forces human beings, whose vocation is to live in a normal state of marriage according to the laws of nature created by God, and who are unjustly prevented from doing so through no fault of their own, to endure this abnormal state for the remainder of their lives, although they are not able to do so, humanly speaking. Generally speaking, the world has found a way out of this impasse either by divorce or by other means that the Church does not accept. As for Catholics who find themselves in this situation, they turn their anxious eyes toward the Church, their mother, because they wish to be able to live honorably in the world according to their consciences.
3. Concerning laws that govern the Church spiritually and temporally, there have been created over the centuries and according to specific and varied modes what we might call safety valves for protecting the normal life of the Church and the life of its children. In the East, which is mystical by nature and inclined in its spirituality to consider everything within the mystery of the Church, this safety valve is called *oikonomia* (economy). This alters, or rather elevates, the difficulties that seem inextricable to it, and centers them on Christ, who is the fullness of the Church. In the Western Church, whose basis is more juridical, this safety valve is called a "privilege." Thus we have in the Church the "privilege" known as the "Pauline privilege," with a scriptural basis. But we have other safety valves that have no basis either in Scripture or in Tradition, such as the privilege to

dissolve a marriage that has not been consummated, even though it is completely religious. Likewise, the privilege to dissolve a marriage between a baptized person and a non-baptized one through what is called the “Petrine privilege,” which is also foreign to Holy Scripture and Tradition.

4. This being the case, we do not ask that the general teaching of the Church be disregarded or that we be given an immediate reply or even one in the near future. What we are asking is simply whether it would not be opportune on the occasion of the Second Vatican Council, which desires the union of the Churches and the peace of mind of souls, to seek to settle, or at least to clarify to a greater extent, this great question by creating a commission composed, if possible, of eminent members of the two Churches, Eastern and Western, in order to conduct a study in the light of faith, in a spirit of openness and charity, taking into account Holy Scripture, theology, Tradition, the Fathers, and the conduct of the Church through the centuries, by having recourse to either the *oikonomia* of the Eastern Church or to the “privilege” of the Western Church, in order to alleviate the unjust suffering of such a large number of souls.

We also believe that as long as the Church does not resolve, through its leaders, to do absolutely everything in its power to find a way out of this impasse, it is not entitled to enjoy a peaceful conscience; and its conscience cannot be liberated before God and man unless, after this conscientious work, it turns out to be true that the status quo is indispensable.

Birth Control

Text of the patriarch's intervention pronounced on October 29, 1964, concerning No. 21 of the schema on "The Church in the Modern World."

Today I should like to draw the attention of your venerable assembly to a special point of morals, birth control.

The fundamental virtue that is required of us, pastors assembled in a council that intends to be pastoral, is the courage to come face-to-face with the problems of the hour, in the love of Christ and of souls. Now, among the agonizing and painful problems that disturb the multitudes today, the problem of birth control stands out. It is an urgent problem if there ever was one, for it is at the root of a serious crisis of Catholic conscience. There is a situation of a variance between the official doctrine of the Church and the contrary practice of the immense majority of Christian families. The authority of the Church is called into question on a broad scale. The faithful find themselves driven to live in a state of rupture with the law of the Church, without the sacraments, in constant anxiety, for lack of finding a viable solution between two contradictory imperatives: conscience and normal conjugal life.

Besides, on the social level, demographic pressure in certain countries, especially those with teeming populations, militates under present circumstances against any rise in the standard of living and condemns hundreds of millions of human beings to a shameful and hopeless poverty.

The council must bring a valid solution to this situation. That is its pastoral duty. It must declare whether God really desires this impasse that is depressing and against nature.

Venerable Fathers, since we are aware, in the Lord who died and rose again for the salvation of men, of the painful crisis of conscience which our faithful are now suffering, let us have the courage to grapple with it without any bias.

Frankly, should not the official positions of the Church on this matter be revised in the light of modern science, theological as well as medical, psychological, and sociological?

In marriage, the development of the human being and his or her integration into the creative plan of God form a single whole. The finality of marriage must not be dissected into a primary finality and a secondary finality. This consideration opens up the horizon to new perspectives concerning the morality of conjugal behavior considered as a whole.

Besides, are we not correct in asking ourselves if certain official positions are not tributary to outworn concepts, and perhaps also, to a psychosis of celibates who are strangers to this sector of life? Are we not, without wishing to be, under the influence of that Manichean concept of man and the world, for which sexual intercourse is corrupt in itself and therefore tolerated only for having a child?

Is the external biological rectitude of acts the only criterion here of morality, independently of family life, of its conjugal and familial moral climate, and of the serious imperatives of prudence, the fundamental rule of all our human activity?

Furthermore, does not present-day exegesis urge us to greater prudence in the interpretation of two passages in Genesis—"Be fruitful and multiply," and that of Onan, which have been used so long as classical scriptural proofs of the basic condemnation of birth control?

How relieved was the Christian conscience when His Holiness Pope Paul VI announced to the world that the problem of birth control and of family morality "is under study, a study as broad and deep as possible, that is to say, as serious and honest as the great importance of this subject requires. The Church will have to proclaim this law of God in the light of scientific, social, and psychological truths that, during these recent times, have been the object of studies and documentation" (*Doc. Cath.* July 5, 1964).

In addition, given the extent and gravity of this problem that concerns the entire world, we ask that this projected study be carried out by theologians, physicians, psychologists, and sociologists, with the viewpoint of finding the normal solution that is needed. The collaboration of exemplary married Christians also seems necessary. Besides, is it not in harmony with the ecumenical path of the council to enter into a dialogue on this subject with other Christian Churches, and even with thinkers of other religions? Why fall back on ourselves? Are we not facing a problem that affects all humanity? Must not the Church be open to the world, both Christian and non-Christian? Is not the Church the leaven that will make the dough rise? It must also achieve positive results that give peace of conscience in this area as well as in all other areas that concern humankind.

Far be it from me to minimize the delicacy and gravity of the subject, as well as possible future abuses. But here as elsewhere, is it not the duty of the Church to educate the moral sense of its children, to train them in personal and community moral responsibility that is profoundly matured in Christ, rather than to envelop them in a network of regulations and commandments, and to ask them purely and simply to conform to them with closed eyes? As for us, let us open our eyes and be practical. Let us see things as they are and not as we would wish them to be. Otherwise we would risk talking in a desert. This involves the future of the mission of the Church in the world.

And so let us loyally and effectively put into practice the declaration of Pope Paul VI at the opening of the second session of the council, "Let the world know: the Church looks out on it with profound understanding, with sincere admiration, sincerely disposed not to subjugate it, but to serve it; not to depreciate it, but to give it greater value; not to condemn it, but to give it support and to save it."

At the fourth session of the council, a public discussion of the problem was avoided. In the appropriate commission, at the last minute, the accent was placed on fertility and its primacy in marriage, calling to mind exclusively the doctrine of the encyclical of Pius XI "Casti connubii" and the discourse of Pius XII to Italian midwives. There was therefore

a danger of closing the path to any possibility of evolution in the discipline of the Church on this point. The patriarch decided to write directly to the pope [letter of November 29, 1965] to entreat him not to close the door to a possible evolution.

Mixed Marriages

In its “Observations on the Schemas of the Council” [1963], the Holy Synod said what it thought about a plan for the regulation of mixed marriages, valid especially for the Latin Church, since the Eastern Commission likewise dealt with this question concerning mixed marriages between Eastern Catholics and Orthodox Christians.

We begin by asking the question: Does this chapter “on mixed marriages” apply to Easterners as well? In fact, the subject is dealt with again, in what concerns them, in the schema “On the Eastern Churches.” In this case, one of the two chapters or paragraphs is a duplicate and should be eliminated. If, on the contrary, this chapter is limited to the Latin Church alone, it must be clearly stated.

However, even if this chapter were to apply only to the Latin Church, we think that it is drafted in a tone that is needlessly severe and often offensive to our non-Catholic brethren. Needlessly severe, since the percentage of mixed marriages is continuing to grow in every country, and harsh words can do nothing to prevent this. Often offensive, since it considers the non-Catholic party as necessarily being a danger, whatever his or her personal behavior may otherwise be.

At a time when Christian Churches are opening themselves to ecumenical dialogue, it is not fitting, it seems to us, for the council to speak so superficially of a very serious problem that touches the life of the faithful and of the Church itself. It is a chapter that must be reworked completely from beginning to end, in a perspective that is at once more realistic and more ecumenical.

1. We must start from the principle that mixed marriages are inevitable. Let us think above all of countries where Catholics are in a minority, or even equal in number to other Christian confessions. It is normal for love to blossom among young persons belonging to different religious faiths.
2. Mixed marriages are not necessarily bad. Everything depends on the attitudes of the contracting parties. Neither Scripture nor the Fathers absolutely forbids them.
3. Marriages between Catholics and non-Catholic Christians must not be grouped in the same classification as marriages between Catholics and non-Christians. For a young Catholic girl, there is a great difference between marrying an Orthodox Christian and marrying a Muslim. Canon Law must take this into account not only theoretically but also in a practical way, by not requiring the same conditions for the one case as for the other.

4. The Church must never countenance hypocrisy. Mixed marriages are often, from the religious point of view, a conflict between two sincerities. The Catholic spouse rightly thinks that he or she must contract the marriage in the Catholic Church, baptize the children in the Catholic Church, and then educate them in the Catholic faith. The non-Catholic spouse makes the commitment to respect the religious convictions of his or her Catholic spouse. And yet, in conscience, he or she cannot renounce his or her own religious convictions. And so he or she will also wish to baptize the children and have them educated in his or her own faith. What is to be done? Current Catholic canon law requires that the non-Catholic spouse commit himself or herself in conscience to do things against his or her conscience. Is that moral? What actually happens? If the non-Catholic spouse is an unbeliever or indifferent, he or she promises everything that is asked. And so the marriage is authorized, and on the Catholic side this mixed marriage is considered a success, when it is really based on irreligion and hypocrisy. But if, on the other hand, the non-Catholic spouse, conscious of his or her obligations, claims his or her rights, which are subjectively not less than that of the other spouse, namely, to baptize and educate the children in his or her faith, the authorization is refused. At the very least, this is an abnormal attitude.

5. Besides, might we not succeed, with a little good will on both sides, in seeing in mixed marriages not necessarily a danger but an opportunity for bringing Christians together, an apostolate, the pursuit of ecumenism? Where our Eastern countries are concerned, we frankly declare that our Christians, both Orthodox and Catholic, are shocked by the rigidity that Catholic discipline demonstrates in the authorization of mixed marriages. What scandalizes the faithful is not the fact that Christians belonging to different confessions marry one another, but the fact that they have so many difficulties getting married.

6. Finally, the concept of the *cautiones* (“guarantees”) required by current canon law must be completely re-examined. It is normal to require that the Catholic party make a commitment to do what he or she can on behalf of his or her faith. But it is not normal to require a commitment to do what does not depend on him or her, or that he or she make the commitment to bring the non-Catholic spouse to do what his or her conscience forbids him or her to do.

This chapter on mixed marriages must be studied by the council on entirely different bases from those of the present schema, which still holds to the hypothesis of a Catholicism lived in isolation and bitterly regretting any contact with the outsider, whether he be an infidel or a non-Catholic. Fortunately, we have gotten far beyond that. If the council is to achieve a work of *aggiornamento*, it is certainly to be in this domain. It is necessary to see realities as they are, and to bring to them Christ’s response. Harshness arising from an imaginary situation only serves to aggravate the trouble.

Now here are a few detailed remarks:

1. Why the adverb “rashly” in the expression “*de matrimonio mixto temere non contrahendo*” (on not contracting a mixed marriage rashly), and other similar terms? It

would be better to say: “*de matrimonio mixto imprudenter non contrahendo*” (on not contracting a mixed marriage imprudently). The word “*temere*” is offensive.

2. The drafters of the schema set out to explain the reasons why the number of mixed marriages has increased, but they do it in such a simplistic way that the council risks being held up to derision if their text is adopted.

The first reason, it is claimed, is the migration of peoples which has brought Catholic populations in contact with non-Catholic populations, and this is seen as regrettable. This may be true of certain regions of Germany. However, for the world’s nations taken as a whole this reason is as old as the world. Almost everywhere Catholics live side by side with non-Catholics, and that is a good thing.

The second reason, it is said, is “that it is often not possible to prevent Catholics from entering into social contacts with non-Catholics, and that these friendly relations lead to marriages.” Could it be otherwise?

Finally, the third reason, it is said, is “the decline of piety.” Therefore, mixed marriages are an evil, and a Catholic who wishes to be devout must abstain for that very reason from contracting marriage with a non-Catholic, and that independently of any personal attitude of the non-Catholic party. On the contrary, we think that mixed marriages are the expression of more extensive relations among Christians belonging to different confessions than in the past. It is a sign of the times.

3. As a necessary condition for authorizing a mixed marriage, it is required “that the Catholic party sincerely guarantee that he or she will fulfill his or her duty to baptize the children and to educate them in the Catholic religion.” How can the Catholic party make a commitment to something whose fulfillment does not depend solely on him or her? The Catholic party must not be asked to commit himself or herself to more than he or she can do.

Rationally speaking, we must be content to ask the Catholic party to make the commitment to do everything that he or she can, sincerely and honestly, so that the children belong to his or her Church and share his or her faith. He or she cannot promise more than that.

4. The non-Catholic is required “*se non repugnaturum ut proles catholice baptizetur eiusque catholicae educationi provideatur*” (that he or she will not resist having the children baptized as Catholics, and that there will be provision for their Catholic education). How can a non-Catholic Christian, if he or she is sincere and deeply committed to his or her faith, make such a promise?

Only an unbeliever, an indifferent person, or a liar will do that. Thus, vices have been encouraged, in order to satisfy canon law. That is not normal.

5. Then there is the intent to show ill humor to the very end. Since mixed marriages cannot be prevented, an effort is made to show that they are authorized only reluctantly. As a result, provision is made for a diminished, private, humiliating rite. Why all that? If the mixed marriage has been authorized, it is because all the requisite conditions have been fulfilled. There is need only to bless this marriage like all others.