

August 2000

Annulments: the Good of the Spouses, the Family, and the Church

Cormac Burke

Follow this and additional works at: <https://epublications.marquette.edu/lnq>

Recommended Citation

Burke, Cormac (2000) "Annulments: the Good of the Spouses, the Family, and the Church," *The Linacre Quarterly*: Vol. 67: No. 3, Article 5.

Available at: <https://epublications.marquette.edu/lnq/vol67/iss3/5>

Annulments: the Good of the Spouses, the Family, and the Church

by

Msgr. Cormac Burke

The author is a former Irish civil lawyer and has retired from the Roman Rota, the high court of the Roman Catholic Church.

As my title suggests, I propose to look at several aspects connected with the topic of annulments, none of which has to do directly with canonical procedures. But a prior word may not be out of place on two questions that I am at times asked. One is, if I am in favor of or against annulments? Perhaps a somewhat naïve question, since naturally I am in favor; very strongly so, when a proper judicial process shows that a declaration of nullity corresponds to the facts. Then one is dealing with a matter of justice, of the upholding of ecclesial rights.

Naturally, another question that not infrequently comes my way is: are there too many annulments? My most precise answer is that I do not know. I could only tell by examining each case one by one. According to my rough calculations, some 60% of the cases coming to us on appeal at the Rota receive a Negative decision – that the nullity has not been proved; and 40% an Affirmative. Regarding cases where the grounds of nullity proposed are those of consensual incapacity, under canon 1095 (and this would include practically all the cases coming from the United States), Negative decisions are notably higher. So in that sense we find a certain excess of what appear to us to be unjustified declarations of nullity.

Is that getting around the question? Perhaps; then let me get around it in another way. Of course there are too many annulments – just as there are too many divorces, just as there are too many marriage breakdowns. We are all aware of this latter fact. Yet it is a fact to be stated, no more.

It must be put into perspective, and that means considering all its implications, above all one which in turn becomes the cause of a further increase in the rate of marital breakdowns and invalid unions. This is the growing skepticism about marriage itself.

Until not so long ago novels and films tended to have a stereotyped ending – usually marriage, with the couple living happily ever after. It was an oversimple formula, as most realized, yet people continued to try it out in an early moment of their lives, with the hope that it would produce the desired result, at least in large measure. Is that hope dying out today? And if it is, what should we conclude? That realism has overcome romanticism? Or that realism has degenerated into skepticism? In any case, if people are losing trust in marriage then we are witnessing a collapse of faith in what formerly was seen as a principal means of fulfillment and happiness. If people are becoming skeptical about marriage, a major prop or hope of human life is giving way.¹

Fear of Commitment

This diffidence about marriage is a main expression of the modern fear of commitment, fear of binding oneself to one thing without an outlet that allows for recurrent change. It is equally an expression of the modern pretension or illusion of finding happiness without commitment; and the modern mentality that there is always – or very soon will be something better to what I have, and I lose out if I don't change to that something better. Windows 95/98/2000. One needs constantly to be updating, upgrading, and if necessary changing one's model completely. And so one must keep one's options always open.

Properly analyzed, this mentality is of course the result not of love for freedom, but of the fear of exercising it; and more basically of the fear that there is nothing in life worth a permanent commitment. If a person is on a trip and arrives at a crossroads, he is free to continue along one of the several roads before him. It is clear that choosing one means leaving the others behind. The more decidedly he goes ahead on the road chosen, the more he departs from the other roads. If the thought crosses his mind that he is endangering his freedom in this way, that he is even losing (rather than *exercising*) it, he may yield to the temptation to turn back, perhaps too because the difficulties of the way are beginning to make themselves felt (every way has its own difficulty), perhaps simply because it seems more important to him to maintain – to preserve – his freedom uncompromised.

The ultimate consequence of yielding to such a way of thinking is obvious. Whoever allows himself to be overcome by the fear of committing himself, keeps returning time and again to his point of departure. He remains at the crossroads – with a freedom that is “intact”, but useless; and so becomes little by little incapable of any permanent and definitive choice.

Personalism

That is the more general background on which I wish to consider our theme. As a more proximate background, some brief reference to the Second Vatican Council and to its program is called for.

Vatican II set out to renew the Church, not with any siege mentality, but so that the *world* can be renewed with the power and vitality the Church has from Christ. In restating the message of salvation, the Council set forth principles for the defense of personal freedom and dignity, which appears to be so threatened in the present world: and for the fulfillment, also in a human sense, of the person. The rationale of this, I think, is that unless we understand and develop our humanity properly, we will not be open to all the saving power of the Humanity of Jesus Christ.

Gaudium et Spes, the Pastoral Constitution on the Church in relation to the modern world, is a focal point of interest for our subject, particularly in the philosophy of human fulfillment it offers, commonly known as personalism.

Christian personalism considers that a person fulfills or realizes himself or herself through a process of responding to the values to be found in life and especially in others. It calls for a coming out of self and self-centeredness, an attitude of openness and receptivity, a readiness to give oneself to others and to worthwhile values. The essence of Christian personalism is summed up in a key phrase of *Gaudium et Spes*: “man can fully discover his true self only in a sincere giving of himself” (no. 24).

This personalism stands in contrast both to collectivism, which treats the individual as simply one piece more in a greater social, economic or political system; and to individualism, whose philosophy is that the individual is ultimately the proper center of his world, the definer of his values and identity, and the reference point for his or her own fulfillment.

The “Good of the Spouses”: Canon 1055

Now let us turn to the reference points for our theme: the “good of the spouses”, in the first place. This expression – the *bonum coniugum*, to give

it its Latin title – is one of the most striking innovations in the section on marriage in the new Code of Canon Law. Canon 1055 says: “The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its nature ordered to the good of the spouses and to the procreation and education of offspring.” In the previous Code of Canon Law, promulgated in 1917, marriage was presented as having a clear hierarchy of ends, with procreation as the primary end, and two secondary ends.² Now it is presented as having *two* co-principle ends, within a union of the whole of life. Here we have a remarkable change in which some see a disturbing rupture while others, like myself, see an enormously positive development – a development that is often very inadequately understood.

It is correct, though it is not sufficient, to say that this very new notion of the *bonum coniugum* is rooted in personalism – in personalism, that is, as applied to married life. A whole history of “married personalism” could be written, as it is a trend of thought that has been gathering force since the early decades of this century. Advancing a view of marriage more centered on the spouses, on their love and aspirations, it advocated that these “personalist” aspects be placed on equal footing with what was called, at times a bit disparagingly, the “institutional” understanding of marriage, centered on procreation. Simplifying and skipping many stages of the historical development involved, I think one can rightly say that, with Vatican II and especially with the 1983 Code of Canon Law and the 1994 *Catechism of the Catholic Church*, the personalist view has been accepted *but* making it clear that any implied opposition between the ends is unfounded. On the contrary, the two ends should be seen in synthesis, not in opposition or disconnection. Furthermore, the tendency of some personalists to classify the ends as if one – the “good of the spouses” – were the personalist end, while the other – procreation – would be the institutional end, has been definitively corrected. Just as both ends, properly understood, are personalistic³, *both* are “institutional” that is, rooted in the institution of marriage by God.⁴

All of this finds striking confirmation in the Bible. If we go to the Book of Genesis, we find two *distinct* accounts in its first and second chapters of the creation of man – male and female – and of the institution of marriage. One expresses a clearly procreative finality, while the other can fairly be described as personalist. The first says: “God created man in His own image, in the image of God He created him; male and female he created them. And God blessed them, and God said to them, ‘be fruitful and multiply’ ”..(Gen. 1, 27-28). The other reads: “The Lord God said, ‘It is not good (“non est bonum”) that man should be alone; I will make him a

helper fit for him' ” ... (so God created woman...and, the narration continues) “therefore a man leaves his father and his mother and cleaves to his wife, and they become one flesh” (Gen. 2, 18-24).

So we find the two ends – one related to spouses, the other to children – present from the very institution of marriage.

My own view of the *bonum coniugum* is that it is an expression of extraordinary interest, and that its introduction into Church teaching is likely to lead to a whole new and enriched understanding of marriage and its ends – *provided* the required analyses are carried out with due rigor.

In pursuing these analyses, canonists need to remember that although the expression “good of the spouses”, used to describe an end of marriage, was first introduced in the 1983 Code, it has since been accepted into general magisterial teaching, in the 1994 *Catechism of the Catholic Church*. Therefore it is not just a canonical term, but even more so an anthropological and theological concept. It would be imprudent for canonists to launch out on their own independent analysis of the *bonum coniugum*, especially in its practical implications regarding the validity of marital consent, without rooting their reflections in firm theological and anthropological ground.

Current canonical literature makes many references to the *bonum coniugum*, but regrettably there is seldom evidence of any real analysis. One is surprised that the obvious scriptural basis is habitually ignored. The *bonum coniugum* is in fact often treated as if it were a self-explanatory term directly drawn from Vatican II.⁵ A large part of current canonical references seems to equate the “good of the spouses” of c.1055 to little more than a not very precise notion of a well-integrated, trouble free and mutually satisfying conjugal life.

We are of course in the early stages of examining the term, and so a certain lack of depth in analysis may be understandable. Nevertheless one cannot avoid registering surprise at a particular and recurring deficiency in the canonical consideration of the *bonum coniugum*. This is the predominant tendency among canonists to treat the expression as if it contained *all* of the personalism of the revised Code, passing over another new canon on marriage which is even more unquestionably and evidently personalist, and which arguably provides the main key to the deeper understanding of the nature of the *bonum coniugum*. This is c.1057, par. 2.

The “Good of the Spouses” and Canon 1057

The canon says : “Matrimonial consent is an act of the will by which a man and a woman, through an irrevocable covenant, mutually give and

accept each other in order to establish a marriage." The new Code places these terse but expressive words at the heart of matrimonial consent, whose validity is of course the one issue to be resolved in a plea for nullity.

Marriage consent means that the spouses mutually give and accept each other. This is pure personalism, Christian personalism in its essence, applied to marriage. In marriage too, it is only in the decision to make "a sincere gift of oneself" (*Gaudium et Spes*, 24) that man and woman can fully discover their destiny and fulfillment. But note well that as applied to marriage, it is not just a decision to give oneself (which certainly means a lot); it is equally a decision to accept another – which can perhaps mean even more.

We seem to be forgetting that this way of conceiving marital consent reflects that spirit of the ages. "I'll be yours for always; will you be mine?" is something canonists seldom if ever say to one another. But those in love say it, or want to say it, hoping to find their desire and promise reciprocated. The traditional formula of marital consent was not invented by canonists or liturgical experts, but by lovers: "I give myself to you and I accept you, for better or for worse, for richer or for poorer, in sickness and in health...all the days of my life."

In we interpret the *bonum coniugum* to mean something along the lines of a life together in which each spouse feels himself or herself "realized" or "fulfilled", or if we take the notion of marital consent presented in c. 1057 not in a personalist sense – I give myself, I accept you – but in a contractualist "quid pro quo" sense – I give as much as you give, not a whit more; I accept (in other words, I will put up with) as much from you as I calculate you are accepting or putting up with from me – then indeed one can construct arguments that the personalist purpose of marriage was not fulfilled, that something was missing from the start, and enter a plea for a declaration of nullity, due to failure to minimally understand what marriage is about, or to incapacity to assume its essential obligations, or to the exclusion of the *bonum coniugum* or to deceit or whatever. I do not say that there may never be a nullity underlying such a situation; but I do hold that the attitudes as I have described them (with a bit of caricature no doubt), and perhaps the juridic grounds invoked to justify the plea, have everything to do with individualism and nothing to do with personalism.

If one takes the *bonum coniugum* as consisting – according to God's plan in instituting marriage – in the *maturing* of the spouses as persons through the generous dedication that married love calls for, then the connection between this new expression in c. 1055 and that other even more notable personalistic phrase of c. 1057 becomes even more evident.

True conjugal love places a personalist accent not only on the sincere “giving of oneself”, but on the no less sincere “*accepting* of the other”: accepting him or her as he or she really is, i.e., with defects. True married commitment – “for better or for worse”; “till death do us part” – is always the pledge of two defective people trying to love each other as they are, defects and all, and to stick to the task. That contributes powerfully to their maturing, their growth and fulfillment as persons, their genuine personalist good – their “*bonum*.” Defects give little grounds to suppose incapacity, though their growth may indeed imply poor effort or even bad will. One’s response to the defects of one’s partner may also be defective – defect for defect – or it can be generous, helped by the experience of how hard it is to battle against one’s own defects.

It seems to me a very lightweight interpretation of the *bonum coniugum* to reduce it to the simple goal of a happy married life together. Of course this is the aim or hope of practically all who marry. Yet to identify the *bonum coniugum* as a divinely given end of marriage, with “shared happiness” does not seem adequate. If one is to make any sense of what seems to be the practical working of God’s providence, the achievement of the “good of the spouses” also involves many things that, to human eyes at least, cannot be termed “happy”: ill health, loss of job, financial hardships, etc. “Shared hardships” can contribute enormously to the “good”. The growth as a person, of each of the spouses. Even what might be considered unilateral hardships (such as the burden of a disabled husband falling totally on the wife; or the more extreme case of infidelity of one partner, where the other remains faithful to the bond) can serve the deeper good of at least one of the parties, in a way that perhaps would not have been brought about by some easier lot.

What then of a claim that one person was not consensually capable under c.1095, because he or she was unable to assume the obligation of making the other person happy? I doubt that it could be juridically upheld. I am sure that it is neither personalist nor in accordance with any true human understanding of the married commitment.

Do you remember Aunt Betsy, in Dickens’ *David Copperfield*? A bossy but a wise woman. When David began to experience the difficulties that came from having married Dora, a very immature and childish girl (only a “child-wife” as Dora herself pleaded to David), Aunt Betsy declined to intervene so as to try to correct or even train Dora, and she told David: “You have chosen freely for yourself, and you have chosen a very pretty and a very affectionate creature. It will be your duty, and it will be your pleasure, too, to estimate her (as you chose her) by the qualities she has, and not by the qualities she may not have. The latter you must develop

in her, if you can. And if you cannot, you must just accustom yourself to do without them...This is marriage" (Ch. 44). To accustom oneself to the fact that one's spouse is not exactly as one would like is a very basic condition of married love, and perhaps has good claim to be considered an essential obligation of marriage.

While not too many nullities are currently sought on the precise grounds of "exclusion of, or incapacity for, the *bonum coniugum*", many inadequate decisions – reversed if they come to the Rota – are based on a very superficial or quite wrong notion of married personalism which suggest that neither the new formulation of c.1055 or that of c.1057 has been properly understood.

The Attractiveness of the Marital Commitment

Are we possibly letting an exaggerated consciousness of the difficulties of married life displace our awareness of the beauty of the challenges that married love expects? Could it be that the logical juridical concern with the essential obligations of the marital commitment in its nature as an exclusive permanent and open to children union, obscure our appreciation of the human attractiveness of these values?

The problem in the Western world – not just among pagans: among Christians, among Catholics – is that we are losing our sense of the natural goodness of marriage as designed by God, and our conviction that that goodness, as things are, can only be achieved with God's grace. We don't admire God's creation enough, and where our defects and sins weaken God's plan, we don't trust in His grace to achieve it nevertheless.

St. Augustine, no stranger in his youth to the difficulties of sex and to the temptations to pessimism which it can induce, was the first great philosopher of the goodness of the marital commitment. In defending it against the negative outlook of the Manichees, he taught that marriage is good, and worthy of praise and admiration, because of three main properties, three *bona*, "goods" or values, as he termed them: the good of the exclusive fidelity of the conjugal union, its procreativity or openness to the enrichment of offspring, and the unbreakable character of the marital bond.

It seems to me that people today still value fidelity, and expect it in marriage – as they define marriage and as long as it lasts. Yet friends also expect each other to be faithful. Much more peculiar to the marital relationship than fidelity is its procreativity and its permanence; and yet so few seem to regard these as values and enrichments.

If there is a positive view regarding children, it may not go beyond seeing them as "optional extras" to a marriage: if they suit us and we can afford them, fine. But not otherwise. The negative view is to see them as liabilities, and limitations on personal freedom.

And the permanence of the bond? No way! No way? That, for a person in love, is a cry of doubt, of anguish and perhaps of despair. I love this girl, this boy, truly and really; of course I would like to love him or her "for always". But...I don't trust him or her; or I don't trust myself. I don't trust love any more.

Trust God, so the Church says, in all moments of marriage: in preparation, in the first difficulties, in full crisis if it comes. Trust God and hold on to your ideal. Give yourself, give and accept: that is what your married consent was all about. Or have you forgotten how pre-marriage instruction drove this home time and again?

Do our current pre-marriage courses drive these basic values home time and again: that true love is self-giving, that the particular values of married life, to be treasured and preserved, are the exclusive fidelity, the shared procreativity, and the mutual bonding until death that it involves; that to keep love in marriage alive and growing, one has to be humble, ready to forgive always and to avoid an attitude of standing on one's rights; one needs to pray and rely on the continuing graces of the sacrament of matrimony? Or do many pre-matrimonial courses center rather on sexual harmony, co-equal roles, effective communication, individual rights, and family planning?

What is the likelihood of a marriage going through difficulties that could turn into a crisis? As high as you like: 99%. What is the likelihood of a breakup in such circumstances? It depends. Without help, very high. And today many couples are leaving themselves or being left without help: without God's help, which He always gives if the spouses ask (but often they give the impression of not asking enough); without the sound help of relatives, friends, pastors, whose help begins with the prudent measure of refusing to take sides, with one against the other, and rather defends the union of both.

Canon 1095 is too well-known and too frequently invoked; canon 1676 is too little-known and often neglected. It says: "Before accepting a case and whenever there seems to be hope of a successful outcome, the judge is to use pastoral means to induce the spouses, if at all possible, to convalidate the marriage and to resume conjugal living." While the canon speaks of the ecclesiastical judge, the pastoral guidelines it offers are clearly binding on all involved in a marriage that is running into troubles. My judicial experience has brought me into contact with no small number of cases where a person seeking advice in a marital situation, *on the very*

first contact with people in the ministry – pastors, marriage counselors, tribunal officials – received as immediate and basic advice: “seek a nullity.” Hopefully the underlying pessimism of such cases is an exceptional phenomenon.

The Good of the Children

This is an issue that of course may seem not to arise, at least directly, as where no children have issued from a union eventually declared null. In fact it might be that the marriage was null precisely because of exclusion of offspring. While this is a frequent grounds of nullity in many countries, I am struck by the fact that just once in my years at the Rota have I acted as a judge in a case coming from the English speaking world, where the plea was exclusion of offspring. Since we live in an age permeated with the contraceptive mentality, I have little doubt that quite a number of unions are null on these grounds; and that in many cases marriage tribunals should examine pleas of nullity in the light of the possible exclusion of offspring or indissolubility, rather than the overworked and often totally unjustified grounds of consensual incapacity.

What are we to say of a marriage *with* children, which the Church is asked to declare null? It is not so easy to reply since there are so many factors involved.

Where children have been born of a union (also in the case of mere cohabitation) what is normally and naturally good for the children is that the parents stay together in reasonable peace. If that is not possible, then it may be (not so much good as) less bad for the children that the parents separate.

Evidently one can say it is a misfortune to be born of a null marriage, just as it is a misfortune to be born of a marriage that ends in divorce. But here we should refine our distinctions, since not all of what can readily be said of marriages ending in divorce can be applied to marriages declared null.

Divorce, if we are to take Jesus at His word, is not in accordance with God's original plans for marriage. A declaration of nullity is indeed very different. It is a declaration (always made by fallible judges) that, despite appearances, there never was a real marriage at all. If so, it is normally God's will that the nullity be declared. This indeed can involve hardship, all the more so if there are children born of the union. But it is not clear how that hardship, generally brought about by human failings or even malice, can be avoided. Let us suppose that in an ecclesiastical hearing it emerges beyond doubt that a woman was deceived into marrying by a

man's pretence of love for her, whereas his only motive was an inheritance she was due to come by, and that when her inheritance fails he immediately abandons her and the child they have had, is that marriage not to be declared null (under the grounds of fraud: c. 1098)?

Leaving aside other aspects of this complex question, I would like to single out one that is particularly disturbing, at least in our present situation where consensual incapacity under c. 1095 is the almost exclusive grounds of nullities. Incidentally the point can help one realize that the saying, "Annulments, oh yes, the Catholic way of divorce", is not just a misstatement. It is an understatement. Annulment, at least in its effects on the children is much worse than divorce.

Children born of a union declared null are considered in canon law to be offspring of a "putative" marriage (c. 1061, 3), and thus legitimate for all ecclesial purposes (c.1137). In cases of long-standing marriages declared null, the records often report protests to the Tribunal made by children who are already in late adolescence and well able to think for themselves: "But you are saying we are illegitimate." The Tribunal answers, with all technical correctness, No! and quotes cc. 1061 and 1137. In one case, however, the grown daughter came back with a further comment: "OK, but what you *are* saying is that my father and mother were never truly husband and wife." To that there was no answer. This in effect is what is being said today of the parents of many thousands of children.

This of course does not happen with divorce. The children of divorcees never doubt that they were legitimate; nor that their parents were really married. Here I think we have a phenomenon, fraught with pastoral consequences, that calls for more serious study than has been given to it.

When nullity is declared because of consensual incapacity, a further important and somewhat related point is to be noted. In such a case, according to a formal judgment of a Church tribunal, one (or both) of the parties (one of the *parents*, in our context) is declared to have suffered from some grave psychic anomaly at the time of consent.

How seriously do children take the suggestion, "I was born of a parent whom the Church considers to have been abnormal, gravely abnormal, at least at the time of the wedding"? How seriously are they *meant* to take it? Or are they expected not to take it seriously?

And here let us be very clear that this cannot be brushed off by saying: all that is meant in such cases is that the person was judged "immature" for marriage; and that is of course a fairly normal thing. That *cannot* be what is implied in a declaration of nullity. Immaturity is not a grounds for consensual incapacity unless precisely it is gravely *pathological*. Once people have reached the normal age of marrying, only seriously abnormal

people can be declared incapable of exercising such a basic human and ecclesial right.

The Good of the Church

In what sense do I speak of the “good of the Church”? Forget about notions of the good of the “Institutional Church”, as if the issue were the protection of human prestige. I am thinking of that *good* which should emanate from the Church in her evangelizing mission as light and salt of the world: the “good aroma of Christ” to use St. Paul’s phrase: that sense that behind the Church there is something more and much better than our earthly experience, a new hope – a Savior – to be found.

The good of the Church has very little, if anything to do with the popularity of her doctrines according to opinion polls. The Church of the first three centuries was anything but popular, it was outlawed and persecuted; and yet its teaching permeated and eventually won the world.

That good, that goodness, of the Church is reflected by the pope in his love for people and in his compassionate, never condemnatory, but absolutely clear and firm stand on evils such as abortion, extramarital sex, and all threatens the dignity of conjugal sexual love and the good of the family. People see the coherence in his witness. He is witnessing to Christ, something which must be a first concern of every Christian.

The good of the Church is the salvation of souls. The Church mediates and communicates that salvation. People are free to respond or not. But they certainly will not respond if they see no message or promise or challenge. Before people will even begin to look on the Church with interest, they must sense the Church is in earnest. That means that the good name of the Church depends on people becoming convinced that the Church is *serious* about God, and about God’s love and His Will and revelation; and about the absolutely primordial importance of the redemption of each one of us.

It would be naïve not to realize that many people sense a lack of coherence in much of present practice on nullity. I am not thinking of declarations of nullity of marriages that last a few months. Certainly not all such marriages are null, but many can be. I am rather thinking of marriages of 5, 10 or 20 years duration, probably with children, that are declared null.

95% or more of the nullities currently declared in the U.S. are under canon 1095: a situation that is running out of credibility. How is it, it may be asked (and people do ask), that the catholic Church is the one church to find that its followers, in extraordinarily high numbers, are incapable of something as basic and natural as consent to marriage? How many

canonists themselves really believe the explanations given in the 1970s and 80s to justify the massive application of the grounds of consensual incapacity: that having reached a new level of psychological sophistication, and knowing so much more than before about the limitations or defects of the human personality, we have discovered that more – many more – people are not capable of valid consent?

Annulment praxis is of course not simply a reflection of legal procedures in the administrative field. It projects the Church's view on marriage – or what people will hold to be the Church's view. And people draw their own conclusions, from what they consider to be an inconsistent position.

Where annulment praxis is lax, then you have to expect the reaction from thinking people: "Either you don't believe in your own declaration that they were humanly and naturally incapable of marriage... Or else you don't believe in your Church's teaching that a true marriage bond is indissoluble." Or perhaps, they might add, you do believe in it, but as a negative factor, an unreasonable demand to make on people who value their dignity and want to hold on to their independence.

I don't think the Church will lose her good name because she teaches that marriage is indissoluble. The Pope teaches it constantly, with no complex about defending a negative, senseless, "institutional" bond. He speaks of indissolubility as *good news*, writing in *Familiaris Consortio* that "it is necessary to reconfirm the good news of the definitive nature of conjugal love" (no. 102).

Indissolubility may be difficult to love; yet lovers want to live it. Its positive and personalist content needs to be explained and understood. Yes, we are faced with the current mentality that to bind oneself in an irrevocable choice amounts to losing one's freedom. And we repeat and must repeat time and again that it is not so: it is to commit oneself to a constant loving exercise of freedom. What sort of love is it that prefers to leave the way out always open? The person truly in love is not afraid of losing his freedom, but of losing his love. It is not the freedom to pledge oneself that one should fear, but the freedom to go back on one's pledge.

It seems to me that at the center of our present crisis, where the Church does not appear to be giving sufficient support to couples in difficulties, is a lack of belief in indissolubility; in the possibility of its being lived; and more fundamentally, in its goodness. For priests to lose their faith in indissolubility is to let their people down. For Catholics to lose their faith in indissolubility is to let the world down. It is certainly not because it holds by and echoes our Lord's teaching on indissolubility that the Church can lose her attraction. That attraction can be lost if people

come to feel that the church seems unconvinced of her own principles or is playing an insincere game.

Catch phrases are current about the cruelty – on the Church's part – of keeping two people bound who are no longer in love. But was it not the couple themselves who wanted to be bound? And if there is cruelty, is it not so often on the part of the one who wants to go back on his or her word? And if it is not cruelty, then surely it is selfishness?

While David Copperfield is not the only novel I have read, I cannot refrain from quoting another passage. You may remember Mrs. Micawber, mother of a large family and wife of a thoroughly shiftless husband who is incapable of keeping any job and always in debt. Throughout she repeats: "I am a wife and mother, and I will never desert Mr. Micawber." At one stage she enlarges on her philosophy: "that at least is my view of the obligation which I took upon myself when I repeated the irrevocable words, 'I, Emma, take thee, Wilkins.' I read the service over the previous night, and the conclusion I derived from it was, that I never could desert Mr. Micawber. And though it is possible I may be mistaken in my view of ceremony, I never will" (Ch. 36). If Mrs. Micawber were a Catholic today, she might get an annulment. But I don't think she would apply for it. I know quite a number of Mrs. Micawbers today who, having overcome a pagan complex of "victimization", have learned to be united to Christ on the cross.

Do people really consider the Church harsh for wanting spouses to mean what they say – what their love should say – when they marry? I doubt it. At most they may think the Church is asking people to say too much, to promise more than can be expected of human nature, much as human nature would wish it to be otherwise. But then it is the Church's optimism (based on grace) which stands in contrast with contemporary pessimism.

People can admire the Church for a firm stance in indissolubility. It is natural, it is an ideal, it is God's will. It is difficult, but it is *possible*, with grace, and with the positive support of relatives, friends, pastors...

Surely a definitive commitment is what the ages have read into the marital commitment: that it is for better or worse, till death do us part? Is that not precisely the good news that human love wishes to communicate to someone with the hope of hearing the same answer in return: "I will love you for always"? Does no one today any longer mean that, or expect that? Have the majority of people so lost hope? Is it possible too that there has been such a massive loss of natural human values among pastors, educators, marriage counselors and judges, that many consider indissolubility as bad news and not good news, something contrary to – and

not in accordance with – what people wish to find in married love? It is serious if something along these lines has happened, and even more serious if it is thought to be a consequence of married personalism.

References

1. There is another major consequence that I will simply mention, because space does not permit further development. Skepticism today is not just about marriage, but about sex itself. It does not take extraordinary anthropological and psychological perception to see that sex today, under an appearance of glorification, is the object of distrust and even fear of sex. There is a growing diffidence about the positive value of sexuality, a diminished sense of the importance of properly developed sexual identity and sexual roles, a barren fascination with physical sex that frequently develops into a revulsion towards it, and, worst of all, a loss of mutual respect and a growing abyss of mistrust, between men and women.
2. The 1917 Code, in c. 1013, § 1, stated: "The primary end of marriage is the procreation and education of offspring; the secondary end is mutual aid and the remedy of concupiscence."
3. Procreation is highly personalistic; we have not grasped the unity of the human-divine sense of marriage unless if children are seen as mere biological by-products of marriage (now available by other methods) or perhaps as optional extras according to the preferences of the couple, and not as a logical fulfillment of the loving personal aspirations of the spouses.
4. Cf. C. Burke: "Marriage: A Personalist or an Institutional Understanding?" *Communio* 19 (1992), 287-289.
5. Whereas Vatican II does not once mention the "bonum coniugum" as an *end* of marriage.