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Marriage and Divorce

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OUTLINE

MARRIAGE AND DIVORCE

I. Introduction

II. Unity and indissolubility of marriage
dependent upon Natural Law

By
JOHN F. COLLOPY

III. Marriage

(A) Origin

(B) Ends

A Thesis Submitted To Fulfill The Requirements For The

b. Education

(C) Forms

DEGREE OF BACHELOR OF ARTS

- a. Polygamy
- b. Polygamy
- c. Polyandry
- d. Monogamy

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IV. Divorce (or Dissolubility)

(A) COLLEGE OF LIBERAL ARTS

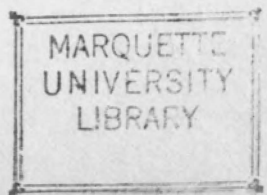
(A) Arbitrary - against primary Natural Law

(B) Restricted- against secondary Natural Law

- a) Evils of power to grant divorce
- b) Objections to our doctrine

Marquette University

June, 1925.



Throughout the world, a wave of moral laxity is being felt at the present time. This suspension of intrinsic conventions causes many misfortunes not only of an individual but also of a national character, as well. This regrettable situation mirrors itself clearly in our regard

OUTLINE

II. Unity and indissolubility of marriage for the world dependent upon Natural Law rests our every permanent social and personal happiness. Decadence marked the fall of every kingdom and empire from Babylon to Napoleonic

III. Marriage retarded progress by producing a primarily insidious, but (A) Origin

It struck (B) Ends a) Procreation b) Education of world might, by attacking the foundation

(C) Forms a) Promiscuity b) Polygyny c) Polyandry d) Monogamy; and this decadence is more or less rapidly sapping the virility of that almost primeval

IV. Divorce (or Dissolubility)

(A) Arbitrary - against primary Natural Law In the United States, we find loose conceptions of marriage and a widespread use of divorce that are appalling.

(B) Restricted- against secondary Natural Law Soon America will lead a) Evils of power to grant divorce b) Objections to our doctrine in the ignominious records of the divorce courts. A clear understanding of the principles underlying the most important

of all human relations - the marriage contract is prerequisite to curative methods along this line. We must come to the true conception of marriage, as a monogamous indissoluble union.

Throughout the world, a wave of moral laxity is being felt at the present time. This suspension of intrinsic conventions causes many misfortunes not only of an individual, but of a national character, as well. This regrettable situation mirrors itself clearly in our regard for the bond of matrimony, upon which rests our every permanent social and personal good. Moral decadence marked the fall of every kingdom and empire from Babylon to Napoleonic France. It stifled progress by producing a primarily insidious, but an ultimately blatant cancer in the body politic. It struck at the very vitals of all the empires of antiquity and the near contemporary powers of world might, by attacking the foundation of all social progress, enlightenment and stability. Its poisonous fangs have fastened themselves upon the youth of Soviet Russia; and this decadence is more or less rapidly sapping the virility of that almost primeval land of Russia.

In the United States, we find loose conceptions of marriage and a widespread use of divorce that are appalling. Soon America will leave pagan Japan far in the rear in the ignominious records of the divorce courts. A clear understanding of the principles underlying the most important of all human relations - the marriage contract is prerequisite to curative methods along this line. We must come to the true conception of marriage, as a monogamous indissoluble union.

Permit an action opposed to the primary precepts is not in the power of anyone, not even of God, at least, by way of a general measure, because the Creator,

The unity and indissolubility of marriage are vitally dependent upon the natural law, whose principles we shall briefly set forth.

The precepts of the natural law are divided into primary and secondary precepts. In opposition to the primary precepts of the natural law are - first, acts directly opposed to the last end of man, such as destroy the relations that exist between man and God; secondly, those acts which tend to undermine the very foundations of society, and, so, of their nature, overturn the relations that are essential between men, and necessary for the common welfare. Opposed to the secondary precepts are those acts which do not tend to destroy the established order, but are of a nature to injure or thwart it in the generality of cases. According as they are really injurious to it, or merely less favorable, such acts are forbidden or simply discountenanced by the natural (secondary) law.

It is true that what is contrary to the secondary principles of the natural law is not injurious to the social order, except in the generality of cases, and may per accidens, and exceptionally, fit in with the general good; nevertheless, this does not prevent it from being forbidden by the natural law, for the law considers things in their generality, in that which is per se.

To permit an action opposed to the primary precepts is not in the power of anyone, not even of God, at least, by way of a general measure, because the Creator,

Himself, can not undermine the order established by Him.

Billot declares there are two kinds of primary precepts of the natural law. He contends "There is, in the first place, all that is in direct and immediate contradiction to the last end, all that which is directly and immediately opposed to God. For these God, Himself, can give no dispensation, not even in virtue of His absolute power. In the second place, there are those acts which are forbidden because they are generally distinctive of the common good, of the social order, and on that account are in mediate opposition to the last end, since that can not be attained otherwise than by means of human society.

For those acts it is evident also that they admit of no general dispensation, granted to a whole community, so as to be regarded as an ordinary privilege; nevertheless, there is no reason why in a particular and altogether exceptional case those acts should not be withdrawn by a divine disposition from their natural condition, according to which they are contrary to their last end, so as to tend to God in a higher and, so to speak, miraculous manner outside of the order of second causes."

To permit an action contrary to the secondary precepts of the natural law, is in the power of God, even by way of a general measure, but not in the power of man. God alone can do that. It belongs to Him alone to dispense from the law that He has made and to determine the cases in which, per accidens, the law admits of derogation. He can give

this dispensation directly, without an intermediate agent, or mediately.

Marriage may be defined as a contract by which man and woman are associated and united with one another as a common principle for the generation and education of children. The contract exists from the accord of two distinct wills in producing a legal effect; and it possesses a special nature in that the accord is between persons of different sexes; and they associate with one view and end; and the unity as a common principle for the generation because the partners become a principle physically and morally one in respect to the same work of generation and education. Procreation is not the work of either alone but of the two together. They do not constitute two partial principles but they act as a single and common principle of generation. The education of the children presents not the same physical unity as that of generation and hence results a difference in the manner and unity of action between the respective duties of husband and wife. Nevertheless, as the one obligation naturally follows from the other, parents are bound to bring up their children precisely for this reason that as a common principle of generation, they have procreated them. Education, then, belongs to the province of the procreative principle and devolves upon the husband and wife as constituting this principle.

The matrimonial contract has its origin in the natural law. It is in the order of nature that the human race should

propagate itself by generation, and that the infant once procreated should not be left to its native powerlessness, but should be formed and educated physically and morally.

This education naturally requires the intimate and permanent collaboration of the father and mother, but this in its turn presupposes a positive agreement, inasmuch as there is at the outset no obligation to marry and consequently each one is at liberty to bind himself to the conjugal life and to its corresponding duty of cohabitation, or to remain unmarried.

To the doctrine of a matrimonial contract many evolutionists oppose themselves. They claim the marriage contract did not exist originally but was decided upon as an expedient, evolving into its present form. They state that promiscuity was the primitive form of married life. Then came marriage by abduction and then marriage by purchase. Westermarck refutes these hypotheses. He points out that promiscuity did and still does prevail in a few uncivilized countries; but he observes that many of the facts formerly alleged have since been recognized as false or insufficiently proved, and he adds quite rightly that one can not logically infer from the existence of promiscuity as a primitive and universal system of marriage. Abduction, he continues, still persists in a few rude tribes which seem to support this part of the thesis. However, it can not be shown that abduction ever waxed general or passed through a legal and universal stage. As a matter of fact,

few tribes are found in which at the present day they mimic the abduction of the bride - and - who can say this symbol had a historical origin in reality? Other explanations are possible. It might be merely a device for emphasizing the separation that marriage imposes on a woman - she must leave her own people and follow her husband. And marriage by purchase seems to have more foundation in fact than either of the preceding types.

No doubt money or its equivalent did change hands in ancient marriages but this is not of necessity the sign of an actual purchase. It may have indicated a return made by the husband for the parental favor or to counterbalance the loss that the parents sustained through the departure of their daughter. It is easy to see how they came to give the price paid on this occasion the name of nuptial price, as the fixing would naturally lead to much discussion. We may rightly infer that in general, arguments drawn from ancient customs in support of marriage by purchase are not conclusive.

Therefore, historical data do not weaken in the least the Christian conception of the origin of marriage. The contract by mutual consent has been its true form from the beginning. If certain customs have deviated from it, if some still do so, that is not a question of evolution but rather of degeneration.

The end that marriage seeks to attain, naturally, is no other than the propagation of the human species and the education thereof. The very idea of marriage includes the

enunciation of this end. Propagation forms the end and aim of the institution. It has no other - this is the only end. Undoubtedly marriage brings with it something more, - affection and mutual support, lawful joys and a remedy for concupiscence; but the true end of marriage is not there. There we find but the means to attain that end, or at the most, and in no proper sense, ends essentially subordinate to the true end.

The use of marriage, while allaying the passions is accompanied with sensible joy, so as to give an impulse to the procreative faculty, and thus come more surely to the end in view. Husband and wife derive from their common life mutual comfort and support that so stability might be given to that life and the education of their offspring secured.

The main types of marriage in the human species may be grouped under the heads of polygny, polyandry, and monogamy.

Polygny became common among many tribes due to a complexity of causes. This form provided one man with two or more wives. It is possible that this form existed among the higher types of animals and some barbarous tribes. In general, it demands an accumulation of wealth and is, therefore rarely practiced. As a human institution it received its chief development in the period of barbarism and appears to have been an accompaniment of the evolution of dominantly militant life and of slavery in that period of human culture.

Now we shall consider the monogamous marriage, which has prevailed because it possesses the rightful characteristic of the marriage contract. Due to general knowledge we need

Polygny may be attributed to the lower instincts of the male, over-supply of women and their economic value.

Polygny violates the natural law in that the wife is reduced to the state of servility for she becomes restricted whereas the husband may do as he pleases. It does not oppose the primary principle of the natural law as here applied, but it opposes the secondary, for it hinders the proper education of the children and works against mutual solace and comfort. However, its greatest drawback lies in the lack of equity in the practice of polygny.

The union of one woman with several men rarely occurred. Polyandry, apparently has never been a widespread form of marriage among humans. McLennan supposed that polyandry had at one time been universal, but we can discover no sound basis in fact for this theory. This form of matrimony militates against the proper education of the offspring and places obstacles in the way of mutual faith. In this system no man can ever know his own child and the house can have no true head, unless the polyandrous wife be so recognized. On the face of it, the wife surely will act as no fount of authority and the house will be vitally rent where it should be united. Suffice it to say that polyandry closely approximates promiscuity and is wholly detrimental to the family and the race, for the children are thus born out of wedlock.

Now we shall consider the monogamous marriage, which has prevailed because it possesses the rightful characteristic of the marriage contract. Due to general knowledge we need

not tarry long on this form. The word "monogamous" comes from the Greek, meaning "one wife". Whereas polyandry and polygyny have ever been exceptional forms of marriage, the union of one man with one woman prevailed among all peoples; and in all ages there has been constantly some form of monogamy. The instinct of man favored monogamy, especially on account of jealousy, so evident in the male. Biological conditions tended to encourage monogamy as the sexes have been fairly consistent in numerical equality. Men found it hard to support more than one wife and the consequent family and so avoided polygamy on economic grounds. Most important of all reasons, however, is that the monogamous marriage affords ampler opportunity to carry the duties incumbent upon those who wed. The children are properly brought into the world and are more apt to sufficient education under the single union than under any other. This form develops affections of an altruistic type and binds more closely family ties. Monogamy, therefore, favors the development of higher types of morality and of civilization generally. Its association with finer kinds of culture is not an accident. At its best, the single marriage presents such superior unity and harmony that it seems easily better fitted than all the forms of marriage to work in harmony with higher civilization and thus the benefit of the individual and the community.

Up to this point we have reviewed the different types of marriage (promiscuity not being a true form) - polygyny.

polyandry and monogamy. The two forms first named may be called polygamy, which we have briefly proven in the foregoing to be unethical. Anything that opposes the primary and secondary precepts of the natural law is hostile to matrimony. Polygamy prevents the necessary unity of the marital contract, as has been shown specifically, and violates all the precepts thereof.

DIVORCE

Monogamy finds itself a victim of a virulent disease, more than ordinarily aggravated by our modern complexity of life and the consequent and inevitable restlessness that seems so general. There appears to exist a vague somewhat illogical tendency to shift from basic principle to basic principle until the very term "principle" resolves into a mere catchword or advertising medium. We vitally need a readjustment along sound lines of clear, correct thought. We must work toward a definite crystallization of ideas concerning the true precepts of matrimony and its present principal foe, divorce.

The arbitrary dissolubility of marriage, preached by advocates of free love, is in opposition to the primary natural law. For this system means the ruin of married life and of the family, and so of society also. It does away with the proper end of marriage, i.e., the procreation and right education of children. The attainment of this end requires for a long space of time the constant and common solicitude of father and mother. There must, therefore, be a bond,

and have contracted fresh marriages.
which, if not perpetual, is at least lasting and secure to bind husband and wife together in such a manner that neither one nor the other is free to break it capriciously at any moment.

Dissolubility restricted and limited to certain determinate causes and circumstances is not repugnant to the primary principles of the natural law, for neither the essence of marriage nor the attainment of its principal end necessarily requires absolute indissolubility. Thus the generation and education of children would not be radically ruined, if it were lawful to dissolve the marriage when the work of education had been completed.

But restricted dissolubility is in opposition to the secondary precepts of the natural law. If it tends not to destroy marriage in its essence, and so to undermine society itself, it is nevertheless of a nature to injure seriously the partnership of marriage. If we look at things, per se, and in their generality, outside of strict indissolubility, the stability of the union between husband and wife and their mutual fidelity are adversely affected by it; the dignity of the wife and the education of the children suffer, so that the end of marriage though still remaining possible becomes more difficult of attainment.

No one will deny that the prospect of a new marriage and of a new family will render the parents less solicitous in providing for the welfare of the children by the existing marriage, and that the lot of the children is truly lamentable when the father and mother are divorced from one another

and have contracted fresh marriages.

Mutual love and conjugal fidelity will weaken and diminish as a direct consequence of the possibility of granting a dispensation in certain cases, for a definite divorce. In the nature of things, the stronger the marriage bond is, the less it can be tampered with, the closer will be the union of hearts, the greater will be the effects of mutual love, the better disposed will husband and wife be to bear with one another's shortcomings and to avoid occasions of discord. On the other hand, if separation is regarded as a realizable possibility, intimacy slackens, love grows cold, especially on the part of the partner contemplating a new alliance, and a frivolous pretext suffices to turn it into aversion and hate. The mere possibility of dissolution causes marriage to be entered upon lightly, without any serious proof of one another, and without looking for a well fixed mutual affection. Finally, the very possibility of a fresh marriage makes married people less inclined to shun unlawful amours and even serves as an incitement to infidelity.

One can now easily understand that the dignity of the wife is at stake, and that the dissolubility of marriage exposes her to contempt and distress. In fact, divorce has far graver consequences for the woman than for the man.

It may be admitted that in certain exceptional cases the power of divorce would not be gravely injurious to the stability of marriage and to that of the social order; but in order that strict indissolubility may be part of the natural law, it is enough that it is, if we look at things,

per se, and in their generality, the only effective guarantee of the stability of the family. If there are grounds for granting a dispensation in certain cases, for a definite class of marriages, in view of special circumstances, it is to God, and to Him alone, that it belongs to do so.

Moreover, no purely human authority would be capable of restriction to the narrow limits within which the power of divorce would be compatible with the general good.

Taking into consideration the inconstancy of man, his inordinate desires and his aversion to trouble and difficulties, the power of granting divorce would inevitably extend more and more until it ended in free union or free love, and the suppression of all permanent marriage.

(Loslever defines free union as a union of man and woman contracted without the intervention of any social authority and dissoluble at the will of the parties. Free love, he continues, goes further, for while free union preserves some semblance of marriage and wedded life, and leaves to the parents the care of the children, free love supposes communism, the surrendering of the children to the care of the community and the matriarchate.) There then we have the logical consequence which the defenders of indissolubility advance against the advocates of divorce; here, too, is the ideal that the advocates of divorce aim at; to this the current of popular opinion is strongly tending as daily experience only too clearly shows.

liberty to renounce his right and liberate the other from his engagement. But in the case of marriage the obligation

We may, therefore, conclude that divorce militates against the good of society as a whole, and consequently the natural law. Therefore, no human authority should have the right to dissolve the marriage bond.

Divorce is injurious to society on more than one head for it not only affects marriage, but also favors immorality, even apart from the violation of the nuptial law. This point is brought out by the infidel writer, Morselli, in his "Per La Polemica sue Divorcio" who says that in proportion to the number of divorces crime of every kind increases especially suicide, prostitution and the like.

Leo XIII wrote some powerful and memorable pages on the indissolubility of marriage, in which he clearly showed the evils of divorce and its sad consequences.

Opposition to the doctrine we have just established seems abundant and we shall endeavor to treat a few of the more weighty objections.

1- "We are all familiar with the saying that the same causes that produce a result are sufficient also to do away with it. Therefore, just as marriage is contracted by the mutual consent of the parties so it can be dissolved, also, by the same."

We reply, with Billot, that "That is quite true of contracts that concern only the private advantage of the contracting parties; in such a case either party is at liberty to renounce his right and liberate the other from his engagement. But in the case of marriage the obligation

concerns the common good and has relation to the normal propagation of the human species; and, so, though this obligation is subject to the free will of the contracting parties at the moment that they assume it, it ceases to be so from the time that it is assumed; for, if it is assumed, it is necessarily assumed in conformity with its nature; but the natural law, having in view the common good, requires that it should be lasting and that it should have all the conditions of stability."

2- "The indissolubility of marriage fetters and insults the liberty of man".

Liberty is not the end of man but only a means to it; hence this liberty is the more perfect as it conduces more surely to the proper end of man. But we have sufficiently shown how useful and even necessary this indissolubility is for the safeguarding of the natural law, and how the liberty of husband and wife has need of its salutary restraint, to prevent them from giving away too readily to feelings of impatience and weariness and from lightly throwing off the marriage yoke.

3- "The union of husband and wife is all the more intimate and consequently more lasting if it is spontaneous and free from constraint of any kind."

We quite agree that if the conjugal union is to be intimate it must be spontaneous in its origin, that is to say, that the parties interested ought to choose their respective partners in accordance with their free and individual tastes. But in order that such intimacy may continue and remain

that the lot of the innocent party is made too hard, being forced to lead a single life through the fault of the unshaken after marriage there is need of a new element, viz., a bond that binds, to strengthen the parties against temptations that are always possible, and against the transitory difficulties that may arise.

4-"The very dissolubility of marriage would provide the desired check and cement mutual affection even better than its indissolubility. For who does not see how easy it is for a husband of a bad disposition to take advantage of the obligation that his wife is under, to annoy her with greater security?"

We do not deny that this may sometimes happen, and a heartless husband would, perhaps, treat his wife with more respect if he knew she could obtain a divorce. But in the first place she can have recourse to judicial separation as a remedy for the evil; and, in the second place, these occasional cases in which the power of divorce would really promote a union of hearts, cannot outweigh the multitude of contrary cases. For it cannot be denied, in the face of daily experience that, as a matter of fact, married people who are free to leave one another and see their way to a new marriage, are less patient in putting up with mutual shortcomings, and find their love growing remarkably cold.

5-"There are households in which life in common has become quite intolerable, and where there is urgent need for divorce."

This, again, is a case for separation, which will, to a great extent, remedy affairs. But if it is still urged

that the lot of the innocent party is made too hard, being forced to lead a single life through the fault of the other, we can admit the lot a hard one and can understand how the dream of a new alliance might come in spite of oneself; but, once more, the law does not lapse because its hand is heavy on some exceptional cases. It looks to the general good as based on the nature of things; and every law, however, good it may be, accidentally treads on somebody's corns. Private good must give way to public good, and under the circumstances, this demands the strict indissolubility of marriage, as St. Thomas points out, that "in legibus matrimonii attenditur quid omnibus expediat quam quid uni competere possit." To break the conjugal bond in a case like this would be to deprive it of all efficiency for the future.

Moreover, like hardships happen in many other matters. Thus the natural law, which forbids the killing of an innocent person, at times demands the sacrifice of life, as for instance, that of a mother in the birth of her child, when it can not be otherwise brought about.

6-"Married life without mutual love is abnormal, or rather immoral; consequently, when love is lost, the bond ought to be broken."

As we have seen the perseverance of conjugal love is largely due to the indissolubility of marriage; for engaged parties, with the knowledge that death, alone, can dissolve their contemplated union, will be careful not to enter the married state lightly, out of mere passion, and

without a sincere assurance of real and mutual love. When once the marriage has been contracted the consciousness of its indissolubility will protect their affection for one another against the natural inconstancy of their disposition and the blind impulse of passion. If, in an exceptional case, cohabitation becomes intolerable, owing to the irremediable loss of love, the solution of the difficulty is to be found above in the answer to the fifth objection.

7-"The good of the children requires that the marriage should be dissolved when the parents are in continual quarrels."

The remedy in such a case is rather to be found in separation than in divorce, for though both measures alike put an end to these domestic scenes, the former is more advantageous to the children since their father and mother will be better able to attend to their education, if they remain separated, without marrying again, than if they were divorced and severally occupied with the care of children by another marriage.

8-"But at least ought to be permitted where there are no children, for then the good of the children, which is the basis of indissolubility is not in question."

The good of the children is not the only advantage that comes from the indissolubility of marriage. Even where there are no children we must remember that marriage is to be considered in its normal and natural conditions, rather than in conditions that are accidental and foreign to its

proper functions. But it is certain that sterility is not natural to marriage, but, relative to its office, of an accidental nature. Finally, if divorce were permitted where there are no children, married people might be inclined to shirk the duty of procreation for the purpose of obtaining it.

It is often stated that Moses permitted divorce among the Israelites and thus the severance of the bond was justified. God allowed Moses to do this because of "the hardness of heart" of the Jews. He can do this, as we have shown in the outline of the natural law, when He so desires, for some reason. St. Thomas says "God can dispense even from the primary precepts of the natural law, but such dispensations are not given to all in general but rather to individuals, in a way analogous to that which is exemplified in the matter of miracles.

The matter of the expediency and right of the monogamous marriage is quite generally recognized, at present; but the immorality of divorce is not admitted by many who should be capable of close discernment in this connection. Most reasonable persons grant the undesirability of divorce but flatly deny the evil of the cutting - a vinculo - of the bonds of matrimony. They sum up their arguments by claiming justification for the means by the end. Here neither the means nor the end can ever possibly be countenanced by a conscientious vigorous moralist. For the bulk of people, divorce has been shown, in the foregoing, to be inexpedient as has polygamy,

except in case of Divine dispensation, with which we are not herein concerned. The entire discussion rests upon the world-old Natural Law. Its precepts are definite; its observation obvious.

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J.P.
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