

THE INDISSOLUBILITY OF CHRISTIAN MARRIAGE

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THE Church's doctrine on the indissolubility of Christian marriage is so well known that one might well wonder what new light a study might throw on it. Trent has spoken clearly on the subject,¹ the Encyclicals of Pope Leo XIII² and Pope Pius XI³ have echoed the voice of Trent; theologians, historians, exegetes and canonists have defended the Church's position by their work. Even those who will not worship at her altars admit that she stands as the lone defender of the sacred indissolubility of the marriage bond. What can this study add to such superabundant testimony? It adds this. A consideration of some facts concerning the interpretation of the much discussed verses in Matthew 5,32 and Matthew 19,9, which may shed a new light on the understanding of the fitness of those verses as proof of the indissolubility of Christian marriage. It proposes no new solution, but submits evidence which renders the traditional solution not only more acceptable but uniquely acceptable.

In carrying out the purpose indicated above, it will be necessary to review the traditional arguments for the indissolubility of Christian marriage, and to indicate the position of those who oppose the teaching of the Church on the alleged warrant of Holy Scripture. This will be done briefly, with special emphasis on the elements which will recur in the solution of Matthew 5,32 and Matthew 19,9. Since any good text-book contains the substance of the general proof, this part need not be copiously documented.

The proof from the documents of the Church runs some-

¹Denzinger-Bannwart (DB) *Enchiridion Symbolorum et Definitionum*, ed. 21-23, 1937, nos. 975 and 977.

²*Acta Sanctae Sedis* XII (1879-80) 388 ff.

³DB. 2235, 2236.

what as follows. Christian marriage cannot be dissolved on the grounds of heresy, willful desertion, *molesta cohabitatio*. Nor for grounds of adultery. But any other reason for divorce is a lesser reason than these. Therefore Christian marriage is absolutely indissoluble. The first part of the major proposition is defined, its second part definable.⁴ The minor proposition is certain.⁵ The conclusion is defended as theologically certain. The power of the contracting parties themselves to dissolve the matrimonial bond was in question, and so this is the matter of intrinsic indissolubility.⁶

The proof from Holy Scripture proceeds as follows. Saint Paul in his *First Epistle to the Corinthians* teaches the divine precept of indissolubility of Christian marriage.⁷ Wives are told not to depart from their husbands. If, however, they should depart, they are to remain unmarried, or be reconciled with their husbands. And husbands are not to dismiss their wives. These words so clearly contain the divine positive law of indissolubility, that even those opposed to the Church's teaching admit that in these verses no grounds for divorce are given, no permission for a second marriage is contained.⁸ Saint Paul is not setting down any reasons which would justify the departure of the wife. But clearly there must have been some such reasons, for an alternative is given, either remain unmarried or be reconciled to the husband. Thus we have the notion of separation from the husband, with the matrimonial bond remaining intact. The argument from Saint Paul's *Epistle to the Romans*, 7,3 is used as a confirmatory argument. As long as the husband lives, the wife will be called adulterous

⁴DB. 975, 977. Perrone, *De Matrimonio Christiano* III (Rome 1858) 407 ff.

⁵Pius XI, *Acta Apostolicae Sedis* XXII (1930) 574: *Quod si neque erravit neque errat Ecclesia cum haec docuit et docet, ideoque certum omnino est, matrimonium ne ob adulterium quidem dissolvi posse, in comperto est, reliquas tanto debiliores, quae afferri solent, divortiorum causas multo minus valere, nibilique prorsus esse faciendas.*

⁶Luther, Martin, *De Captivitate Babylonica* (1520) *Comm. on 1 Cor. VII* (1523).

⁷1 Cor. 7, 10-11.

⁸Lietzman, H. *The Beginnings of the Christian Church* (translation by B. L. Woolf, 1937) 178-179. Von Soden, *History of Early Christian Literature* (Translation, New York, 1906) 42. Plummer, on text, *International Critical Commentary*.

if she is found with another man. The hypothesis is clearly supposed that the matrimonial bond is not dissolved, else the attempted second marriage would not be an adulterous union. Other charges might be levelled against it, but not adultery, which connotes the violation of an existing matrimonial bond.

The arguments from the Gospels according to Saint Luke⁹ and Saint Mark¹⁰ find their parallels in Matthew 5,32 and Matthew 19,3-9, respectively,¹¹ with the well known difference that the former two omit the *excepta fornicationis causa* and *nisi ob fornicationem* clauses. Here again (in Luke and Mark) there is unanimity among the adversaries to the Church's teaching on the fact of clear texts for indissolubility. Hence the scriptural proof for the indissolubility of Christian marriage runs a smooth course, with Matthew's Gospel excepted; so clear is the proof that Catholics and non-Catholics alike admit the doctrine is to be found in the texts cited. But these two groups part company at this point, and go off, not on two, but several ways. For some, the doctrine of Mark and Luke and Paul is to be supplemented by the doctrine of Matthew. For these, Matthew admits divorce for grounds of adultery, and gives to the innocent party the right both to sue for divorce and to marry again once the divorce has been obtained.¹² For others, the doctrine of Paul was found too severe for the Jews and so the Gospel for the Jews introduced a mitigation in the doctrine.¹³ Those who hold substantially this latter view are very honest, but just as wrong. Their position is roughly this. Christ really taught the indissolubility of Christian marriage. But the ninth verse of Matthew's nineteenth chapter contradicts this view. Christ could not contradict Himself. Therefore, the contradiction was introduced by Matthew.¹⁴ This view is important for the honesty of the

⁹Luke, 16, 18.

¹⁰Mark, 10, 2-12.

¹¹Lagrange, *Evangile selon Saint Matthieu*, Paris (1927) 103.

¹²See Schaff, *Creeds*, III, 656, V and footnotes.

¹³Lagrange, *op. cit.*, p. 104. Note 32 cites this view.

¹⁴Allen, W. C., St. Matthew, *Int. Crit. Com.* (1907) 52. Also cited for this view are Plummer, Gore, Kirsopp Lake, De Wette, H. Weiss, Holtzmann, Schmiedel, Loisy. See in Joyce, *Christian Marriage*, 285 n Lagrange, *op. cit.*, p. 369.

admission that the Christian law of indissolubility is clear in the teaching of Jesus. It is wrong in rejecting the inspiration of Holy Scripture and the correlative inerrancy. It sins against inspiration by attributing to Matthew the exclusive authorship of Matthew 19,9. It sins against inerrancy by predicating contradiction of the doctrine in Matthew 19,9 compared with Matthew 19,4-8; Mark 10,2-12; and Luke 16,18. The inadequacies of this summary of opposing positions will be remedied as this study progresses. For the moment what has been noted is important for its admissions. With those admissions (namely, clear teaching of the indissolubility of Christian marriage in the texts in question) and the Catholic teaching on inspiration and inerrancy of Sacred Scripture we are sure that the doctrine on the indissolubility of Christian marriage suffers no diminution in the disputed passages in Matthew. Are the texts genuine? They are. Their presence in the critical editions of Nestle, Merk, von Soden, Tischendorf and Westcott Hort is sufficient warrant for that statement. The texts to be examined are:

Mt. 5,32

Ego autem dico vobis: Quia omnis qui dimiserit uxorem suam, *excepta fornicationis causa*, facit eam moechari: et qui dimissam duxerit, adulterat.

ἐγὼ δὲ λέγω ὑμῖν ὅτι πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας ποιεῖ αὐτὴν μοιχευθῆναι, καὶ ὃς ἐὰν ἀπολελυμένην γαμήσῃ, μοιχᾶται.

Mt. 19,9

Dico autem vobis, quia quicumque dimiserit uxorem suam, *nisi ob fornicationem*, et aliam duxerit, moechatur: (et qui dimissam duxerit moechatur.)¹⁵

λέγω δὲ ὑμῖν ὅτι ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ μὴ ἐπὶ πορνείᾳ καὶ γαμήσῃ ἄλλην μοιχᾶται.

There have been various Catholic explanations of the meaning of these texts advanced. They all have this in common, they recognize no contradiction of the universal law of indissolu-

¹⁵The clause in parenthesis does not occur in the Greek text of the editions of Nestle, Westcott Hort and Tischendorf, and will not be used in presenting the present study.

bility. They are treated at length in many readily accessible volumes.¹⁶ A brief summary of those views here will not be out of place, since their refutation will make clear the exact sense in which the verses are understood in this present study. It has been claimed, 1) That the text is corrupt, and this exceptive clause is an interpolation. This view clearly saves the indissolubility of Christian marriage, but is rejected because of the overwhelming testimony in favor of the genuinity of the clauses. 2) Christ is not talking of the marriage of Christians but of the marriage of the Jews. Thus He is merely explaining the Mosaic law and teaching what the grounds for divorce sanctioned by Moses are.¹⁷ This view is rejected; it has been traditionally accepted that Christ is teaching His doctrine, and is speaking of matrimony in the economy He is inaugurating, therefore of Christian marriage.

The third, fourth and fifth Catholic explanations of the passages in Matthew have this in common, they proceed from the fact that *πορνεία* in itself does not mean adultery, but is specifically fornication. One school of thought says that Christ is talking of sending away a concubine, not speaking of a true wife.¹⁸ Others say that Christ is talking of fornication committed before marriage and is constituting it a diriment impediment of marriage.¹⁹ The last view is that *πορνεία* here means incest, and so Christ is talking of a union which not only may but must be terminated. It is admitted that these views do no violence to the doctrine of the indissolubility of Christian marriage.

But the three last views, based on different understandings of *πορνεία* are rejected. The third, namely that Christ is talking of a concubine, not a true wife, is rejected because it clashes with the whole context in Matthew 19,3-10, in which there is clearly question of a true wife.²⁰ The fourth, namely

¹⁶Perrone, Vol. III Rome (1858) pp. 161-206.

¹⁷Perrone, *op. cit.*, p. 180 sqq.

¹⁸Perrone, *op. cit.*, p. 191 sqq.

¹⁹Perrone, *op. cit.*, p. 186 sqq. For incest theory, see reference in Knabenbauer, *In Matthaeum*, I, 283, and later in this study.

²⁰Mt. 19, 5, Adam and Eve; 19, 8, Put away your wives; 19, 9, his wife.

that Christ is speaking of premarital sin and constituting it a diriment impediment of Christian marriage is rejected on the all-sufficient grounds that the Church could not be ignorant of such an impediment, yet premarital fornication is not a diriment impediment of Christian marriage.²¹ The last view, namely that Christ is talking of an incestuous union, will receive further treatment in this study, because the argument for it has been elaborated at some length.²²

These represent the Catholic interpretations which have been advanced in discussions on the texts in Matthew. To repeat, all save the indissolubility of Christian marriage, but all labor under the defects indicated. And there are other defects in addition. All conciliar and Pontifical pronouncements have been predicated on the acceptance of the texts as meaning adultery, and not permitting another marriage for either the man or the woman responsible for the separation in question. The explanations given above run counter to this general tradition by explaining the texts in such a way that a second marriage is possible for the man and woman in question. Further, all the legislation in the Code on separation *a toro et mensa* stems historically from an interpretation of these texts which assumes that they speak of such a separation.²³ The explanations given above, by denying that there is any question of such a separation depart from this tradition. All these reasons are made more convincing by the commonly accepted Catholic interpretation of the texts in question. Nor is the position that here there is question merely of separation exclusively a Catholic one.²⁴

The commonly accepted Catholic interpretation of the texts in Matthew is the following. Christ, in answer to the question of the Pharisees, first recalls the primitive institution of marriage and indicates that it was to create an indissoluble bond. He is giving His doctrine when He says: "What God hath joined together, let no man put asunder"²⁵, thus removing

²¹CIC. can. 1067-1080.

²²See Knabenbauer, *Comm. in Matthaeum* I (Paris, 1922) 283.

²³CIC. can. 1129; DB. 702, and histories on this point.

²⁴Lagrange, *op. cit.* (p. 370) cites Holtzman to this effect.

²⁵Mt. 19, 6.

power over the matrimonial bond from the competency of any human agent. The Pharisees understood that Christ was teaching that doctrine, for their subsumption: "Why then did Moses command that the bill of divorce be given?" has meaning only on the hypothesis that they consider Christ's words in opposition to the law of Moses.

Christ gives the reason for the Mosaic permission, and reiterates that such was not the mind of God in instituting marriage.²⁶ What follows in the text cannot, therefore, contradict what has been so clearly set down. What follows speaks of some cause for sending one's wife away, namely adultery, and so means that one may send one's wife away for that cause, but the marriage bond is unbroken. This separation is known now and technically as the *separatio a toro et mensa*.²⁷ Thus, briefly, runs the argument.

We now propose to submit it to further study, a study which will arrive at a conclusion which leaves unchanged the substance of the traditional and commonly accepted interpretation, but gives it greater clarity, in a setting introducing a new study of facts bearing directly on the text. We begin with the passage in Matthew 19, for it will be clear that the point we are making is equally applicable, in fact more directly applicable, to Matthew 5. On the occasion of treating Matthew 5 we will meet the objections of those who wish to say that in that text Christ is putting aside the question of adultery, in the sense that there He does not wish to speak of it.²⁸

3. There came to him the Pharisees tempting him saying: Is it lawful for a man to put away his wife for every cause? 4. Who answering said to them: Have you not read, that he who made man from the beginning made them male and female? And he said: 5. For this cause shall a man leave father and mother, and shall cleave to his wife, and they two shall be in one flesh. 6. Therefore now they are not two but one flesh. What therefore God hath joined together, let no man put asunder. 7. They say to him: Why then did Moses command to give a bill of divorce, and to put away? 8. He saith to them: Because Moses by reason

²⁶Mt. 19, 7-8.

²⁷Perrone *op. cit.*, 3, 280; Palmieri, Pesch, Huarte, others.

²⁸Lagrange, *op. cit.*, p. 105-106.

of the hardness of your heart permitted you to put away your wives: but from the beginning it was not so. 9. And I say to you that whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery; (and he that shall marry her that is put away, committeth adultery).

Discussions on this passage in Matthew are introduced, both by the exegetes and dogmatic theologians, by an allusion to the familiar efforts of the Pharisees to discredit our Lord in the eyes of the Jews by catching Him in error on some point of the Mosaic Law. The trap seems well placed here, in view of the disagreement on the part of the followers of Hillel and Shammai concerning the grounds for divorce. Let Jesus side with the interpretation of Hillel and the greater perfection of the interpretation of Shammai can be urged against Him. Let Him side with Shammai, and He incurs the accusation that He, too, is laying insufferable burdens on the shoulders of the people;²⁹ that He, too, is accusing Herod, as John the Baptist had;³⁰ and the direct charge that His Law is no more perfect than theirs.

Jesus avoids the trap by recalling the primitive institution of marriage, by quoting against the Pharisees the words of the Holy Book to which they paid at least lip service, by indicating clearly the indissolubility of marriage as intended by God in the beginning. The solemn injunction not to tamper with a bond which owed its peculiar firmness to God's ordaining was not missed by the Pharisees. Yet they had their subsumption. This Jesus was claiming that God wished marriage to be absolutely indissoluble, and said that man has no power over the matrimonial bond. Yet God spoke to us through Moses. And Moses has prescriptions concerning the course to be followed by one who would put away his wife.

This Jesus was then, against Moses, and so against God who spoke through Moses. The Pharisees challenge Christ to answer this argument. "Why then did Moses command to give a bill of divorce and to put away?" Our Lord answered the Phari-

²⁹Mt. 23, 4.

³⁰Mt. 14, 4, John the Baptist, imprisoned and later decapitated because he had said of Herodias to Herod "Non licet tibi habere eam."

sees by explaining that the permission to put away wives, a permission implicit in the prescribing that a bill of divorce be given, was given by Moses because of hardness of heart. But it was not so from the beginning. Again the minds of the Pharisees are called back to the main point, the indissolubility of marriage in the intention of God, and the reestablishing of that primitive intent by Christ.

Once again, it is the point behind the question that is being answered, a point which if studied may shed new light on this whole passage. What is that point? Simply this. In the first question the mind of the Pharisees is: "Of course a man can divorce his wife, for even trifling reasons, according to Hillel; for unchastity, according to Shammai."³¹ Jesus answers by destroying the foundation on which the question was built. Man cannot break the matrimonial bond, because God is the one who guarantees its firmness, and God alone has power over it. And Jesus bolsters His teaching by citing the words which the Pharisees must acknowledge to have bearing on the case; they must equally admit that the words are more harmoniously interpreted in favor of the existence of an indissoluble bond.

In the second question, the mind of the Pharisees is: "That answer might have weight if God's spokesman for us, Moses, had not given a precept concerning the bill of divorce; with that we have the mind of God clarified for us in favor of divorce." *Jesus in His answer did not deal directly with the bill of divorce here, but with the practise which the bill of divorce sought to restrict, namely, the practise of dismissing their wives.*

It is our Lord who introduces the distinction between putting away one's wife, and giving the bill of divorce. Around the proper understanding of that distinction, hinges the point being made in this study. If the distinction is established, and its implications clearly set forth, the objection to the Catholic interpretation of this passage in favor of *separatio a toro et mensa* is invalid; the objection wrongly alleges that a separation without a severance of the marriage bond was unknown to the

³¹It is not necessary to suppose that the Pharisees were simply asking Jesus to decide in favor of one or the other school of thought, nor is it supposed here. The point made here is that actually that was their mind. See Lagrange, *op. cit.*, p. 366.

Jews. Similarly the correlative objection that the Pharisees asked about a severance of the bond and hence my answer, teaching separation, but denying severance of the bond, would not be an answer to the question proposed, is invalid. Even as the first answer says, equivalently, there is to be no more severance of the matrimonial bond, so the second answer says, equivalently, there is to be no more giving of the bill of divorce in the Christian dispensation.³² The only question those answers leave unanswered is the question of a separation without the bill of divorce, and that is the question which is last answered. We will come to that, in its proper place.

There is a distinction between sending one's wife away, and giving one's wife a bill of divorce. The Jews knew of the separation of husband and wife without the grant of a bill of divorce, and also of the parting of a husband and wife, with the giving of 'a bill of divorce. These are the statements which must be proved before proceeding.

Historians confess that they do not know when the practise of giving the bill of divorce began. They claim that it antedates the Mosaic prescription in Deuteronomy 24,1-4. It is significant that Protestants and Jews are most insistent on making this claim.³³ They understand Moses to be speaking of something well known, to be legislating on only the particular case of a man remarrying the wife he has divorced, in the event that she, after marrying another man, receives from him a bill of divorce.³⁴ Omitting, for the moment, an evaluation of these claims, it should be admitted that the practise of sending away one's wife and the giving of the bill of divorce are not historically coextensive. The identity of the two, in point of time, even the effort to fix the date with Abraham, has been termed fanciful.³⁵ Hence, there was a time when the husband, whose right to do so was not questioned,³⁶ would send his wife away,

³²That Christ is giving His doctrine and law follows from the pronouncements of the Church, v. g. DB. 977.

³³Reider, *Deuteronomy* (Phila., 1937), p. 220 ff. *Jewish Encyclopedia*, V, 646.

³⁴Reider, *op. cit.*, *loc. cit.*

³⁵*Jewish Encyclopedia*, V, 646.

³⁶Reider, *op. cit.*, *loc. cit.* Bonsirven, *Le Judaïsme Palestinien*, II, p. 214. (Not until the 11th century of the Christian Era did the Jews modify this point. See *Jewish Encyclopedia*, IV, under *Divorce*.)

and would marry again, without any bill of divorce having been given. Further, the wife was considered free to marry again.

In default of documents fixing a definite date for the introduction of the practise of giving a bill of divorce, legislation on the bill of divorce, in its first appearance, is at least a term after which the coupling of the sending away and the giving of the bill of divorce are normally two aspects of the one procedure. But not always are the two elements in evidence. Further, the claim that Moses is speaking of a well known practise, i.e. the giving of a bill of divorce, is faced with these inconveniences: 1) Deuteronomy 24,1-4 is the first mention of the fact, and the only mention of the bill of divorce in the Pentateuch. Yet the Pharisees speak of the giving of the bill of divorce as of Mosaic origin. 2) The claim is made that Moses is legislating for one given case. Yet the Pharisees are speaking of all cases when citing the Mosaic prescription concerning the bill of divorce. 3) The bill of divorce is used figuratively by the sacred writers concerning the dealings of God with a faithless Israel, yet their message always assures the nation that God will take Israel back, if Israel do penance.³⁷

Hence one would not be exceeding the evidence were one to say that in the Jewish mind Moses was the originator of the legislation and practise of giving the bill of divorce; that the bill of divorce had as its peculiar effect the declared right of the woman to marry again.

An important point is that the bill of divorce in the mind of Moses is a curb on the dissolution of the marriage bond.³⁸ The husband is faced with the realization that sending away his wife with the bill of divorce entails complete severance, for all time, without hope of reconciliation, of conjugal relations. An irate husband would thus be forced to pause before letting the fit of anger of the moment lead him to a manner of acting which he would regret. At the same time the legislation must have met this practical difficulty. Given the unchallenged right of the husband to send away his wife at a time when there was

³⁷Isaías 50, 1; Jeremias 3, 8.

³⁸Reider, *op. cit.*, p. 222.

no legislation concerning the giving of the bill of divorce, the question whether there is a separation that entails the breaking of the marriage bond or not is very practical. Men would fear to marry the one sent away, lest the husband repent him of his action and seek the return of the wife who had been sent away.³⁹ Thus, the fact of sending away does not mean the breaking of the matrimonial bond. The sending away with the bill of divorce does connote severance of the bond.

Is it demonstrable that there were sendings away without the bill of divorce during Jewish history, and specifically in the time of our Lord? It seems that it is demonstrable. Josephus has this to say: "He that desires to be divorced from his wife. . . . let him in writing give assurance that he will never use her as his wife any more; for by this means she may be at liberty to marry another husband, *although before this bill of divorce be given, she is not to be permitted to do so: . . .*"⁴⁰

There are regulations in the treatise *Gittin*⁴¹ which have their full meaning only on this hypothesis of a separation without the bill of divorce. How for example understand the regulations concerning the sending of a *get* (bill of divorce) to a foreign land?⁴² How else explain the difference, in effect, of the *get* falling at the side of a wife *on the husband's premises* and *on her own premises*?⁴³ Or the forbidding the wife to marry the *one who brought her the get*?⁴⁴ Likewise, the whole formal procedure of the drawing up of the *get*, the defects which would render it invalid, the provisions for paying the dowry, the formality of its normal delivery imply a separation without the bill of divorce being first effected.⁴⁵ On this point, one may even grant that normally the bill of divorce did follow the sending away. The separation, in that case, may have been equivalent to the concession of a decree *nisi* in modern courts.

That is not the point at issue; it is simply this: The separation

³⁹Lagrange, *op. cit.*, p. 103-104.

⁴⁰*Antiquities*, Book IV, 23 (Whiston Trans.) 134b. Note—The omitted words deal with Hillel's view on causes for divorce, of which more later.

⁴¹For convenience, references are to the outline of the *Gittin* as in the *Jewish Encyclopedia*. The *get* is the bill of divorce.

⁴²JE V, 673a.

⁴³JE V, 673b (Chapter vii).

⁴⁴*Ibid.* See Bonsirven, *op. cit.*, p. 215, especially footnote 5.

without a bill of divorce was known. Reconciliations could be effected in the time between the separation and the delivery of the bill of divorce, which was effective only after its due attestation and delivery to the wife. *The notion of a separation in perpetuum might be new, but the idea of separation without the giving of the bill of divorce would remove the concept from the class of the unknown to the Jews*; that is the objection being met at the moment. Even the wonder of the disciples of Jesus: "If the case of a man with his wife be so, it is not expedient to marry," (Mt. 19, 10) still a potent confirmation of the traditional Catholic interpretation, takes on an added meaning in the suggestion here advanced. A restriction placed on the right of sending away the wife, with the question of the right of the husband to effect a severance of the bond by abrogation of that right, is a tremendous perfecting of the Law, and as such would cause wonder, and render even more opportune the exhortation to celibacy which verses 11 and 12 contain.

The argument, based on the distinction between the sending away and the giving of the bill of divorce, runs as follows. In the first answer to the Pharisees (verses 4-6) Jesus is teaching the indissolubility of Christian marriage, by recalling to the minds of the Pharisees the words of God⁴⁵ in the primitive institution, which, with their insistence on "two in one flesh," speak of an indissoluble union. The point is made even clearer by the statement that God hath joined man and woman together, and man has no power over that bond (v. 6).

The Pharisees understood Jesus to be teaching indissolubility, and to be denying the right of the husband to divorce his wife, as their subsumption shows. Their explicit question concerned the Mosaic command that the bill of divorce be given. The right of the husband to give a divorce has been taken away in the first answer. In the second answer, the practise of sending their wives away is directly accounted for. That practise was permitted to avoid greater evils, the hardness of their hearts led them to this departure from the ideal God had in mind in

⁴⁵In Genesis 2, 24, the words are attributed to Adam. Jesus here attributes them to God, under whose inspiration Adam spoke. Cf. Knabenbauer, *In Matthæum*, ed. 3, p. 147.

instituting marriage.⁴⁶ The sense, then, of question and answer is: Pharisees: "If we cannot divorce our wives why did Moses command that the bill of divorce be given?" Jesus: "Moses was constrained to permit you to send your wives away because you would be unwilling to break with that custom you had perversely introduced. The command to give the bill of divorce sought to bring you back to the primitive ideal, little by little, by making divorce harder."

Finally, the Pharisees asked concerning divorce. They have their answer. There is to be no divorce. The Pharisees asked about the bill of divorce. They have their answer. There is to be no bill of divorce. The only thing remaining is the power to send one's wife away. Stripped of its connotation to Jewish minds of a bill of divorce to follow, which will sever the marriage bond, that right still stands. But even that right is restricted, it can only be used in the case of adultery.

Husbands, then, must put up with the ordinary inconveniences of marriage life, even with the extraordinary, unless it is a direct violation of marital fidelity. Now, far from that being completely unheard of, on the part of the Jews, we have evidence that some Jews acted according to that principle. Rabbi Hiyya is one such.⁴⁷ Abba-Areka, the great Rab, was another.⁴⁸ The Talmud speaks of the obligations of a husband to cling to his first wife, and the words evince a concept of the sacredness of matrimony which, if clung to, would have made impossible the practise of divorce.⁴⁹

What has been said establishes at least the presumption that the Jews could understand legislation and doctrine concerning a separation which did not imply the severance of the matrimonial bond. The traditional Catholic interpretation of Matthew 19,9 in favor of a separation without the severance of the matrimonial bond, becomes, in that light, even more firmly established.

⁴⁶Moore, *Judaism* II (Harvard Press, 1927), p. 124 ff.

⁴⁷*Ibid.*, p. 126.

⁴⁸Graetz, *History of the Jews* II (Phila., 1893), 516-7.

⁴⁹Rodkinson, *The Babylonian Talmud* 8, Sanhed., p. 60-61: "He who divorces his first wife, even the altar sheds tears on account of him."

But what has been said does not explain all that one would like explained in that text. Why is the clause *nisi ob fornicationem* inserted? Why is the *et aliam duxerit* found there? If the question of the marriage bond has been treated in verses 4-6, why is there explicit mention of no marriage here, when the subject is directly the power of sending away one's wife, with the bond unsevered? Those questions demand an answer.

To the first, why is *nisi ob fornicationem* inserted, we reply that the answer is found in the whole recorded history of the Jewish attitude towards adultery. We take that as the meaning of πορνεία here.⁵⁰ The various prescriptions concerning the punishment of adultery in the Old Testament and the Talmud, the obligation placed on the husband of denouncing his wife's adultery, the ordeal imposed for suspected cases, the heinousness of that sin in Jewish eyes, made the mention of that violation of the matrimonial pact particularly pertinent in speaking to a Jewish gathering on the subject of marriage.⁵¹

Further the charge that Jesus consorted with sinners, made by the Pharisees, is known. (Mt. 9,11) If He teaches the indissolubility of marriage, abrogates the right to give the bill of divorce, and makes no mention of the rights of the husband in the case of adultery on the part of the wife, He is opening Himself, conceivably, to the charge of indifference to adultery. Hence it is understandable why mention of it enters here. The right of divorce taken away, the right of sending away one's wife, if she is guilty of adultery, is vindicated. That right becomes important with the abolition of the death penalty for adultery. The various mitigations of the death penalty for adultery had made it hard to impose that penalty for some time. But the non-enforcement as the usual and only procedure makes understandable the present reference to the consequences of adultery for married life.⁵² The right of the husband to

⁵⁰Further establishment of this point will be added later.

⁵¹Leviticus, *passim*; Numbers, 5, the ordeal of the bitter waters; Deuteronomy, 22, 22 and 24, punishment by stoning to death: recall John, 8, 17, the woman taken in adultery.

⁵²JE I, under *Adultery*, the abolition of the death penalty forty years before destruction of the second Temple; John 18, 31: "It is not lawful for us to put any man to death." The claim is not being made that Jesus had to mention adultery here; but having mentioned it, the pertinence of the discussion is being explained.

divorce his wife had been his protection against her adultery. The right to send her away is similarly a protection.

The special violence done to the marriage pact by adultery is clear both in the Jewish and the Christian attitude towards that sin. For the Jew, it was never omitted from matrimonial legislation. Jesus, here talking to the Jews, and Matthew, here writing for the Jews, do not omit it. The Jewish attitude towards adultery as a direct violation of marital fidelity is the correct one. In the Christian dispensation, too, adultery has very special consequences. It gives the innocent party, on his or her own authority, the right to separate, and forever, from the one so sinning.⁵³ It does not exclude the possibility of reconciliation, but it does not impose the obligation of seeking a renewal of conjugal life with the one who has offended. But the marriage bond still is firm. The alternative is, as Paul puts it, be reconciled or remain unmarried.⁵⁴

The right of sending one's wife away remains. But it is restricted to the case of adultery. The difficulty is urged that even the Church permits separation for other causes; but this is not to the point here, for this is a question of the right of the husband to effect a separation (and from the equality of rights in the Christian marriage, the wife, too has this permission) on his own authority and forever. And only in case of adultery is this still true.⁵⁵

But why is the clause *et aliam duxerit, moechatur* introduced? That, too, is understandable in speaking to a Jewish audience. Since the right of giving the bill of divorce was recognized as exclusively the right of the husband, and since that right was framed in terms of giving the bill of divorce only after the giving of the bill of divorce was prescribed, it was fundamentally the right of the husband to send his wife away.⁵⁶ The abrogation of the right of giving the bill of divorce does not necessarily take away the right of sending one's wife away.

⁵³See canon 1129, CIC.

⁵⁴1 Cor. 7, 10.

⁵⁵Compare canons 1129 and 1131.

⁵⁶See JE. IV, under *Divorce*, and all histories of the Jewish family life, and all exegetes on the texts in Matthew.

And sending one's wife away might be construed to be a permission to marry again, where the right to send away remained. This construction is eliminated by the *et aliam duxerit*. The right to send away in case of adultery is granted, but it (the right to send away) no longer has the effects it had before it was limited by Moses in his legislation on the giving of the bill of divorce.

Further, the effect of the exercise of the power of putting away one's wife was explicitly clarified, as far as the wife was concerned, in Matthew 5, 32; the effect as far as the husband was concerned was implicit there. Now it is made explicit. He cannot marry again. Such a union would be adulterous. Moses limited the husband's freedom as far as marrying *ipsam dimissam* went; Jesus denies the husband's freedom as far as marrying *aliam* is concerned. The husband has the right to send away an adulterous wife. He has no right to marry anyone else.

We shall return to this point after a consideration of the passage in Matthew 5. In the light of what has been already said, the text there becomes quite clear. The various perfectings of the Law of Moses spoken of in Matthew 5, prepare us for the perfecting of the Law on divorce.⁵⁷ Thus the "Thou shalt not kill," of v. 21 is brought to greater perfection in the following verses, with "I say to you that whosoever is angry with his brother shall be in danger of the judgment . . ." (v. 22) Again, adultery of the body is not the only sin to be avoided where chastity is concerned, but adultery of the eyes is no less deadly. (vv. 27-28ff) Then comes the perfecting of the law on divorce. The way in which the Jewish attitude is expressed and also the manner of expressing the law of Christ are important.

'And it hath been said, Whosoever shall put away his wife, let him give her a bill of divorce.

But I say to you that whosoever shall put away his wife, excepting the cause of fornication, maketh her to commit adultery: and he that shall marry her that is put away, committeth adultery'. vv. 31-32

⁵⁷Lagrange, *op. cit.*, pp. 92, 97, 101, 103.

The perfecting of the law becomes clear, and in a startling way, if we catch the full import of the opposition here indicated. "You say, if one puts away his wife, let him give her a bill of divorce. I say, far from being able to give a bill of divorce (and thus, as you think, be free to marry again, both you and the dismissed one) you may not even send your wives away, except for grounds of adultery. If you do, you expose her to the danger of committing adultery.⁵⁸ How so? Because men will look on her as free. She is not so, and any attempt to marry will be an attempt at effecting an adulterous union."

Here the insistence is on the effect on the wife of the husband's exercise of his right of sending her away. That right exists only in case she has committed adultery. Of old it was thought that all one had to do was give the bill of divorce. It was taken for granted that you had a right to send your wives away. It was taken for granted that freedom to marry again was implicit in the right to send wives away; that the giving of the bill of divorce was a mere technicality. From the exercise of the right to send away wives the abuse of divorce grew. The Mosaic restriction of that right had not curtailed the evil practise, but led to its further spread.

Christ opposed this concept of the husband's right by insisting on the only proper attitude in the case. There is not here a question of the giving of the bill of divorce. That is now outlawed, and the false interpretation of the right to send away wives is being corrected. That right belongs to a man only if his wife is adulterous. If she is, the husband may send her away. If she is not, she is placed in danger of becoming an adulteress by being sent away. For no one can marry a woman who has been sent away. Such a union would be an adulterous union. No one who is put away can remarry, because the matrimonial bond is not dissolved by the fact of sending away. The matrimonial bond is indissoluble.

Thus we read the meaning of this text. It legislates against the husband's right to give the bill of divorce, by showing that

⁵⁸Literally, to be exposed to danger or occasion or actuality of adultery, Lagrange, *op. cit.*, p. 106.

even the sending away is wrong, except in one case. Now the central fact of the bill of divorce was the permission it contained for the wife to remarry. With that power taken away, marriage is indissoluble. But the power to give the bill of divorce may be denied without a withdrawal of the power to send one's wife away. That power is here limited, and the fact that it does not mean dissolution of the marriage bond is clear from the impossibility of another marriage on the part of the dismissed wife. Her attempt can be branded adultery only on the hypothesis that the sending away effected a separation which did not dissolve the matrimonial bond. Any adultery for the Jews was the sin of a man with a *married* woman.⁵⁹ The Jews could not fail to perceive the point here established.

Some exegetes hold that in Matthew 5,32 Jesus did not wish to take up the matter of adultery and its consequences because that was not the moment to do so. The argument is based in part on the meaning of *παρεκτός* which, it is said, should be translated in such a way that the sense is *mis à part le cas d'adultère*.⁶⁰ It is said that it would be strange to say that one who sends one's wife away, because she has committed adultery, exposes her to adultery, since she has already committed that sin. Since the Jews had no concept of a simple separation, the mention of a legitimate cause for sending away must mean for them the right to remarry where that cause is found. Yet Jesus cannot appear indifferent to so grave a sin, so, for the moment, He setting aside the case of adultery.⁶¹

It is granted that the Jews did not envisage separation as a separation *in perpetuum manente vinculo*. But it is the contention of this study that the Jews knew of separation, at least temporary, without the bill of divorce being given. And the step from that knowledge to the understanding of a separation *in perpetuum* with no bill of divorce is not a difficult one. Hence we do not hold that here Jesus is refusing to discuss the special consequences of adultery, but is giving it as the one just

⁵⁹For Jewish concept of adultery, namely only the sin of a married woman with a man, other than her husband, see JE. I, under the word *Adultery*.

⁶⁰Lagrange, *op. cit.*, p. 105; Dreher, *Katholik*, II (1877), 578 ff.

⁶¹Lagrange, *op. cit.*, p. 105-6.

cause for the exercise of the right of sending one's wife away, without the marriage bond being severed.⁶²

It is clear that one sent away because of adultery is already guilty of that sin, but her attempt at marriage, no less than the attempt of one unjustly sent away (that is for a cause other than adultery) would be an attempt at an adulterous union. The *dimissam* of 5,32b is universal, embracing both the one sent away for adultery and the one sent away for any other cause. The status of the wife who has been sent away is explicitly treated in 5,32b. She cannot marry again. Since any attempted union would be adulterous, implicitly the status of the husband is clarified. The bond still stands. She is still a married woman. That is said explicitly. If she is still a married woman, the man who sent her away is still her husband. That is implicit in Mt. 5,32. The status of the husband is explicitly given in Mt. 19,9, in which *his* attempt at a second marriage, with any one at all, is branded as adulterous. Thus the status of both husband and wife is clarified, in the case of sending away the wife. Neither is free to marry again. The prohibition is explicit in the case of the wife in the *qui dimissam duxerit, adulterat* of 5,32b; the prohibition is explicit in the case of the husband in the *et aliam duxerit* of 19,9.⁶³

The positive contribution of this study to the explanation of the indissolubility of Christian marriage, in view of its denial by some on the score of the texts in Matthew, is this. It establishes the distinction between the sending away of one's wife and the giving of the bill of divorce. It shows that this distinction was known to the Jews, as is clear in the legislation in the treatise *Gittin* and other sources. Granted that this distinction did not connote for the Jews separation *in perpetuum*, still it would help them to understand such a separation. Jesus is making the distinction between sending away and giving the bill of divorce in Matthew 5,31-32 and Matthew 19, 6-8.

⁶²*Ibid.* "La solution plus commune depuis Jérôme, c'est que Jésus autorise la separation sans rompre le lien du mariage." Knabenbauer, *op. cit.*, p. 280, defends the common view. Palmieri, *De Matr. Christiano* (1897), p. 187 ff., defends the common view.

⁶³This explanation makes unnecessary the *et qui dimissam duxerit, moechatur*, of Matthew 19, 9b.

APPENDIX

This study has avoided lengthy comment on the discussion between the schools of Shammai and Hillel on the grounds for divorce. Such discussions may be found in all good text-books. Whatever the meaning of *'erwath debar* (ἄσχημον προῶγμα, *aliquam foeditatem*, lit. *nakedness of a thing*,—improper behaviour of some kind) of Deuteronomy 24,1, in the mind of Moses, the fact remains that in the time of our Lord, the schools went to that passage in Deuteronomy as the starting point of their discussions, and claimed to be interpreting that text. Thus Moses is the *terminus a quo* for study of the bill of divorce. The legislation concerning the drawing up of the bill of divorce developed only among the Babylonian Jews.⁶⁴ That legislation marks a date for the knowledge concerning separation which was not *ipso facto* divorce. It is interesting to note that only when divorce was frequent have we certain evidence of the knowledge of a distinction between the separation and the giving of the bill of divorce. Moses spoke of the bill of divorce as the step antecedent to the sending away. (Dt. 24, 1-3). The common legislation of *Gittin* envisages the sending away, then the giving of the bill of divorce. Until the bill of divorce was in the woman's possession she was not free to marry again, nor was the bond considered severed.

These were known facts in the time of our Lord. But certain aspects of the facts have not been emphasized in the manner in which theologians and exegetes have handled them. The emphasis is made in this study. One of the reasons for the lengthy process of drawing up and attesting the bill of divorce was that the delay gave the families and friends of the parties contemplating divorce time to endeavor to effect a reconciliation. In the interval between the sending away and the delivery of the bill of divorce, there was a *de facto separatio a toro et mensa* in many cases. Though temporary, it was a preparation for the understanding of a perpetual separation, with the bond unsevered.

⁶⁴JE. V, 646.

The explanation given in this study is predicated on the understanding of πορνεία as adultery. It admits that μοιχεία is specifically adultery. But the meaning *adultery* is not foreign to πορνεία in its Scriptural uses. The meaning of a word can be determined, often must be determined from its context. Thus, πορνεία is at times used of the generic unchastity.⁶⁵ Again, it is fornication.⁶⁶ It is used at least once to mean incest.⁶⁷ Clearly, in other instances, it is adultery.⁶⁸ In establishing its meaning in the texts in Matthew 5,32 and 19,9, it is worth noting that a common figure used in describing Yahweh's relation to Israel is that of husband and wife. The infidelities of Israel (particularly, idolatry) are spoken of in terms of the infidelities of a faithless wife. And the word used is πορνεία—much more frequently than μοιχεία. But there is no possibility of conceiving the meaning as other than adultery.⁶⁹ Even as the figure used in those cases leads to the correct understanding of the word used, so, in the texts in Matthew, the context predicating the sin πορνεία of a true wife, leads to the determination of its meaning as adultery.

It may be of interest to cite a text in which the collocation of *fornicatio* and *moechata est* occurs in speaking of the complaint of Yahweh to Israel; for the text in Matthew uses both terms. *Et facilitate fornicationis suae contaminavit terram, et moechata est cum lapide et ligno.* (Jer. 3, 9). Idolatry as spiritual adultery is in question in Jeremias, physical adultery in Matthew. For these reasons, any theory which interprets the texts in Matthew on the grounds that the sin spoken of is not adultery, or because there is no question of a true wife is rejected. In addition, such explanations depart from the traditional Catholic explanation in that they envisage a real marriage

⁶⁵1 Cor. 6, 13 and 18.

⁶⁶2 Cor. 12, 21; Gal. 5, 19; Ephes. 5, 3; Coloss. 3, 5; Apoc. 9, 21.

⁶⁷1 Cor. 5, 1.

⁶⁸Amos 7, 17; see 2, 5.

⁶⁹Jer. 3,1; 6,18; Ezech. 16,15. 20.22.25.26 29.33.34. Ezech. 23,8.17.29.35. See Brown, Driver, Briggs, under religious signification of Zāna, and its derivatives. LXX, in texts cited, *born*-derivatives. Vulgate, in texts cited, has *fornicatio*, *fornicare*.

possible for the one who does the sending away. Traditionally it has not been admitted that there is any Scripture warrant here for the *dimittens* marrying a second time as long as the *dimissa* lives.

The same method is to be followed in rejecting the opinion of those who claim that for the Jews ἀπολύειν meant *repudiate* and could not be understood in terms of a separation. For all who embrace that view, insistence is made on the distinction between ἀπολύειν and χωρισθῆναι. That there is a difference in meaning between these words is obvious. That one is not capable, in a given context, of the meaning of the other is denied. The divorce process was not completed by the sending away, but by the delivery of the bill of divorce. In cases where the separation was effected before the drawing up and attesting of the bill of divorce, the ἀπολύειν was an effective *separatio a toro et mensa* in the interval. Then ἀπολύειν⁷⁰ had the specific effect of χωρισθῆναι.⁷¹

Conversely, χωρισθῆναι has the meaning of effect of separation which may terminate in the breaking of the matrimonial bond, as in the Pauline privilege, 1 Cor. 7, 15. Thus, it is the context which determines, or helps to determine the exact sense of the word used. Granted that there is general admission that the χωρισθῆναι of 1 Cor. 7, 15, taken in the text alone, could mean separation without a subsequent severance of the bond or permission to remarry, it is just as strongly maintained that with the context and traditional interpretation it is absolutely impossible that it be limited to this meaning. With context and traditional interpretation, the meaning of ἀπολύειν is just as definitely separation, not repudiation.

⁷⁰Found in Matthew, 5, 31-32; 19, 3, 8-9. In the LXX, its forms translate the Hebrew *balak* of Genesis, 15,2; of Exodus, 33,11; the *gawa* of Num. 20,29, and the *garas* of Psalm 33(34). Forms frequently used in 1 and 2 Machabees; 1 Mach. 3,32; 10,29; 11,38 (sent away); 2 Mach. 4, 47; 6,22 30; 7,9; 10,21 (having let escape); 10,25; (let him go without hurt); 10,46. The context determines meaning.

⁷¹Found in 1 Cor. 7,10 15 bis.